

HB

96

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

Commercial and Fair Business Section
P.O. BOX 110300
123 4TH ST. DIMOND COURT HOUSE
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2539

March 1, 2005

Sectional Analysis of HB 96 (Marijuana)

(Prepared by the Department of Law, March 1, 2005)

HB 96 would enlarge the class of persons to whom delivery of certain controlled substances constitutes a crime; add new types of misconduct involving certain controlled substances that constitute a crime; lower the possession threshold amounts for certain degrees of misconduct involving a controlled substance; make the possession of any amount of marijuana a crime; and change the formula for calculating the aggregate weight of marijuana plants.

Sec. 1: Section 1 sets out the purpose of the bill.

Sec. 2: Section 2 sets out the bill's findings.

Sec. 3: Section 3 makes it a crime under the statute to deliver certain controlled substances to someone under the age of 21. Under the current law, delivery to someone who is under 19 and at least three years younger constitutes a crime.

Sec. 4: Section 4 lowers the minimum amount of certain controlled substances a person must possess to constitute a crime under the statute from one pound to four ounces.

Sec. 5: Section 5 lowers the minimum amount of certain controlled substances a person must possess to constitute a crime under the statute from one pound or more to one ounce or more. It also criminalizes under the statute the act of possessing certain controlled substances while driving or operating a motor vehicle, aircraft, or motorized watercraft.

Sec. 6: Section 6 lowers the minimum amount of certain controlled substances a person must possess to constitute a crime under the statute from less than one-half pound to less than one ounce.

Section 6 also adds the following types of conduct to the list of conduct that is criminalized under the statute:

- manufacture, delivery, or possession with intent to manufacture or deliver less than one ounce of certain controlled substances;

- possession of certain controlled substances while a passenger in a motor vehicle, aircraft, or motorized watercraft;
- being the driver or operator of a motor vehicle, aircraft, or motorized watercraft and knowingly permitting a passenger to possess certain controlled substances.

Sec. 7: Section 7 changes the calculation of the aggregate weight of a marijuana plant to be a percentage of the measured weight of a plant after its roots have been removed.

Sec. 8: Section 8 sets out an immediate effective date.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 96
 (H) Publish Date: 1/21/05
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title RELATING TO MARIJUANA USE AND POSSESSION

RDU Juvenile Justice

Component Probation Services

Sponsor (RLS) BY REQUEST OF THE GOVERNOR

Requester GOVERNOR

Component No. 2134

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0)						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill is not anticipated to have a significant impact on Division of Juvenile Justice staff workloads and therefore no fiscal impact.

Prepared by: Patty Ware
 Division: Juvenile Justice
 Approved by: Joel S. Gilbertson, Commissioner
 Agency: Department of Health and Social Services

Phone 465-2112
 Date/Time 01/20/2005
 Date 01/20/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 96
 (H) Publish Date: 1/21/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act making findings relating to marijuana RDU CRIMINAL
use and possession; relating to marijuana and misconduct." Component CDCO
 Sponsor _____
 Requester Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill creates a new statutory section making findings regarding the mental and physical health risks, illegality and dangers of marijuana use. The bill makes changes to AS 11.71.030, .040, .050, and .060 concerning the crime of misconduct involving a controlled substance by adding additional offenses and significantly decreasing the amount of marijuana in possession that would constitute a violation. All of the conduct prohibited in this bill is already a crime in Alaska, although recent decisions by the appellate courts have made it difficult to investigate and prosecute some of these offenses. We do not expect the policies of police agencies to change significantly in response to this bill, and therefore we do not expect a workload increase above and beyond what was experienced before the courts made prosecution more difficult. Anticipated fiscal impact is zero.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 1/14/05 11:19 AM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 1/14/2005
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: HB 96
 (H) Publish Date: 1/21/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title An Act relating to marijuana use and possession; RDU Alaska State Troopers
marijuana and misconduct controlled substance Component AST Detachments
 Sponsor Rules Committee
 Requester Governor Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 Passage of this Act will have no fiscal impact on the Department of Public Safety. The potential increase in the number of arrests for violations can be handled by available staff. Provisions of this Act will help deter marijuana use and possession overall. The Act also addresses the issue of driving under the influence of marijuana which is a serious problem. Contrary to some contention on the subject, marijuana is not a harmless recreational drug.

Prepared by: Lieutenant Todd Sharp Phone 907-269-4532
 Division: Alaska State Troopers Date/Time 1/20/05 2:20 PM
 Approved by: Commissioner William Tandeske Date 1/20/2005
 Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: HB 96
 (H) Publish Date: 1/21/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to marijuana RDU Legal and Advocacy Services
use and possession... Component Public Defender Agency
 Sponsor Rules Committee
 Requester Governor Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	115.5	115.5	115.5	115.5	115.5	115.5
Travel	4.8	4.8	4.8	4.8	4.8	4.8
Contractual	35.9	35.9	35.9	35.9	35.9	35.9
Supplies	2.7	2.7	2.7	2.7	2.7	2.7
Equipment	6.7	0.7	0.7	0.7	0.7	0.7
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	165.6	159.6	159.6	159.6	159.6	159.6

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	165.6	159.6	159.6	159.6	159.6	159.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	165.6	159.6	159.6	159.6	159.6	159.6

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This proposed bill significantly increases the penalties for possession, use, and delivery of marijuana. It raises from a B misdemeanor to a B felony in many cases the delivery of marijuana, in any amount to someone under 21. Possession of 4 ounces or more of marijuana is raised to a C felony from a misdemeanor. It also adjusts the misdemeanor penalties related to marijuana and creates new misdemeanors for possessing marijuana while driving, permitting a passenger to possess it, or being a passenger in possession. This bill would have an impact on Agency operations. We handle 500 misdemeanor drug cases, primarily involving marijuana. At least half of these would become felonies. Felonies take more work than misdemeanors. Also more misdemeanors would be prosecuted for less amounts and vehicle related offenses. This will increase by 50% the current number of misdemeanor cases handled by the Agency. The Agency will need one full time attorney to meet this increased case and work load. The position would be in Kenai, since their numbers are increasing in this area, and almost match Anchorage.

Prepared by: Linda K. Wilson, Deputy Director
 Division Public Defender Agency
 Approved by: Micheal Tibbies, Deputy Commissioner
 Agency Department of Administration

Phone (907)334-4416
 Date/Time 1/19/05 10:32 AM
 Date 1/19/2005



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name:

Committee on HB 96, dated 4-8-05
bill # / subject public hearing date

Please do not support the recriminalization of marijuana as contained in HB 96.

I have worked in the criminal justice area as a defense attorney for the past 22 years.

There are much more serious criminals than marijuana users that need to be prosecuted.

I urge you not to pass HB 96 from committee.

Thank you.

Signed: Joe Ray Skrha
Testifier

Private attorney
Representing (optional)

2455 Watergate Way Kenai, AK 99611
Address

283-7100
Phone number



Alaska State Legislature

Please enter into the record my testimony to the

HOUSE JUDICIARY
committee name

Committee on

HB 96

bill # / subject

, dated

4-8-05

public hearing date

SEE ATTACHED 4 PAGES

Signed:

John M. Zinda
Testifier

Representing (optional)

P.O. Box 1683 / Soldotna, Alaska

Address

267-4152

Phone number

To Whom it May Concern:

In the words of one of the most respected governors in Alaska's history... "It is hypocritical to criminally punish users of marijuana, while legally sanctioning the use of alcohol..." Jay Hammond said that in 1975. This attempt to re-criminalize small amounts of cannabis is a violation of Alaska's state Constitution and is an insult to and attack on the integrity of our state's Supreme Court and appellate courts.

Over 44% (more than 125,000 Alaskan adults) voted in 2004 to decriminalize cannabis. Does the Murkowski administration wish to fill our already overcrowded prisons with these people? The U.S.A. already leads the world with more than 2.1 million of its citizens or 1 out of every 143 Americans currently incarcerated in its prisons and jails (a very high percentage of them are cannabis users). In the mid 1970s the Dutch legalized cannabis and began taxing and regulating it and in Holland today a much smaller percentage of underage youth have used cannabis than in the U.S. Even with our draconian laws supposedly serving as a deterrent. The argument that cannabis is more dangerous today because it is more potent is simply ridiculous. It's only logical that the more potent the cannabis is, the less of it people will use. Why don't we outlaw all booze that is stronger than beer then? It is the same bizarre logic. In fact, it is scientifically known that liquor and cigarettes are extremely addictive (cannabis is not) and far more dangerous than cannabis health-wise. So if the governor is truly interested in the health and well-being of Alaskans why isn't he pushing to ban their use?

I use to use all three substances (alcohol, cigarettes, and cannabis) and I decided to quit them all in 1994. Quitting cannabis was quite easy. Quitting alcohol and cigarettes however proved to be extremely difficult.

This is a blatant attempt by the Markowski administration to usurp the authority and jurisdiction of Alaska's courts. Both the Alaska State Supreme Court (in 1975) and a state appellate court (in 2003) have affirmed the right of Alaskans to possess and use cannabis in the privacy of their own homes. We already have more than enough legislation to punish those who buy and sell it. As a native born Alaskan (back when Alaska was a territory) I find this attempt to usurp Alaska's State Constitution, which as it stands is the very best in the nation, quite worrisome. By the way, anyone who is knowledgeable on the subject knows that different varieties of cannabis have always had different potencies. So following the convoluted, common sense less thinking that inspired this virulent bill would those busted with a less potent variety be punished less severely than those caught with a more potent variety? I remember the illegal voter referendum of the early 1990s which re-criminalized cannabis that was struck down by a state appellate court in the Noy case in 2003. How many Alaskans were prosecuted and sentenced under that illegal act? If this unscrupulous attempt to make possession of a small amount of cannabis a felony with penalties as severe as certain sex crimes is successful how many more Alaskans will suffer until the Alaskan courts once again strike down this heinous legislation? Also how many more.

cops will we need to hire and how many more prisons will we need to build to house the 10s of thousands of cannabis users in this state? We already have to ship a plethora of prisoners out of state at a tremendous cost because we have no place to house them. Will other more serious and violent crimes have to go uninvestigated, unprosecuted, and unpunished simply because we would rather spend our increasingly scarce dollars drastically punishing people who prefer to relax with a joint of cannabis in the privacy of their own homes rather than with a stiff shot of booze? If this legislature wants to declare war on a drug that is devastating individuals and families other than the sacred cow, alcohol, I suggest it concentrate on methamphetamine. Even in the bastion of prohibition where cannabis isn't legal the punishment for possession of a small amount is a misdemeanor. Why is the Murkowski administration so intent on establishing such harsh penalties? Meanwhile the rest of the Western World is decriminalizing cannabis as most of Western Europe has done or legalizing it, such as; Belgium where individuals are now allowed to grow up to five plants for personal use.

The primary reason I am writing this letter is on behalf of a close friend who wishes to remain anonymous. He suffers from a debilitating and progressive, chronic disease and cannabis works extremely well in alleviating the intense pain and nausea he suffers from on a daily basis. Plus it is also quite effective in stimulating his appetite which is very important since his weight has plummeted from 168 lbs. down to 119 lbs. His physician has refused to prescribe cannabis out of fear of federal prosecution but has no problem prescribing very potent and addictive narcotics and anti-nausea medicine which are very expensive with sometimes harsh

side effects, My friend greatly prefers the relief he gets from Cannabis. His doctor has stated to him that he has a friend in the D. E. A. who has told him the feds are contemplating prosecuting physicians who do prescribe it. So he refuses to take the risk. As a matter of fact there are very few doctors in Alaska from what I understand who will prescribe it for that very reason. If this proposed legislation becomes law it would leave people in his position (and I believe there are many) without any type of legal protection. Does the Legislature want to put people like my friend behind bars and have the taxpayers finance their healthcare? My friend has far too much on his plate as it is. He is not a criminal and does not deserve to be treated like one. If that is the case one can only hope that every legislator who votes for this remarkably vicious and vitriolic bill gets to walk a mile in my friend's moccasins, so to speak.

This legislation is classic mean-spirited, alcoholic thinking. Maybe the legislature should be more concerned with banning liquor from being consumed in their offices in the publicly owned capital building. After all, alcohol has devastated millions of Americans' lives and often leads to terrible decisions, such as; this bill. If this is an example of compassionate conservatism in a Kinder and gentler America, I want no part of it.

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110601
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3030
FAX: (907) 465-3068

April 15, 2005

The Honorable Lesil McGuire
Chair, House Judiciary Committee
State Capitol, Room 118
Juneau, Alaska 99801-1182

Re: HB 96 (Marijuana)


Dear Chair McGuire:

The Department of Health and Social Services supports HB 96, the Governor's bill on marijuana. Committee hearings on SB 74, the senate companion, have focused on scientific studies.

While the scientific studies make for interesting debate, I encourage you and the other committee members consider some of the facts regarding the harmful effects of marijuana use on real live Alaskans, particularly youth and Alaska Natives. My Department has worked with the Department of Law to compile hard facts about marijuana use in Alaska. A copy in bulleted form is attached to this letter.

At the end of the hearings, I urge you to review these bullet points and ask whether opponents of the bill have explained to your satisfaction how each statistic does not demonstrate a harmful effect of marijuana use in Alaska.

Sincerely,



Joel Gilbertson
Commissioner

JSG:lb

Marijuana: Things Have Changed and Parents Choices Matter

A Parent's Choice to Use Marijuana Affects Their Children

- **“More adolescents who report their parents use marijuana frequently use marijuana themselves compared with youths whose parents do not use marijuana” (22.6% to 5%).** *The State of Adolescent Health in Alaska, May, 1990, p.41.*
- **“Among youths in 2003 who perceived that their parents would strongly disapprove of trying marijuana or hashish once or twice, 5.4% used marijuana in the past month, vs. 28.7% of youths whose parents would not strongly disapprove”** *Overview of Findings from the 2003 National Survey On Drug Use and Health, Department of Health and Human Services, SAMHSA, Office of Applied Studies, 2004, p.23.*

The THC Content of Today's Alaska Marijuana is 14 Times Levels Found in Ravin

- **Average THC content in Alaska marijuana has steadily increased and averaged nearly 14% in 2003. This is approximately twice the national average THC content and 14 times stronger than THC content levels assumed and relied upon by the Alaska Supreme Court in weighing the harmful effects of marijuana.** *State v. Ravin, 537 P.2d 494, 505 (Alaska 1975)* (“Most marijuana available in the United State has a THC content of less than one percent.”) *Average THC Levels for Alaska, National Averages, Reports Prepared by Dr. Elsohly, University of Mississippi, National Center for Natural Products Research.*

The Face of Alaska Marijuana Use: Who Is Using Alaska's Powerful Marijuana?

Pregnant Mothers

- **Between 1990 and 2000, the rate of pregnant mothers in Alaska using marijuana remained fairly constant at about 5%. (400 to 450 newborns each year) This rate was approximately 67% higher than the national average (3%) for this time period and just slightly below the rate for Alaskan mother's prenatal alcohol use. (5.3%).** *Alaska Maternal and Child Health Data Book, 2003, State of Alaska, Department of Health and Social Services, Division of Public Health, Section of Maternal Child and Family Health, pp. 52-55; 150-151.*
- **The prevalence of prenatal marijuana use among Alaska Native pregnant mothers has been significantly higher than the overall state prevalence over the last decade. More than twice the state average in 2002. (3.5% Alaska average for prenatal marijuana use vs. 7.8% for Alaska Natives).** *Women's and Children's & Health Fact Sheet, 2005, State of Alaska, Department of Health and Social Services, (Information from Alaska Pregnancy Risk Assessment Monitoring System, PRAMS, 2002).*
- **Recent progress has been made and the overall rate of pregnant mothers in Alaska using marijuana was down to 3.5%. (Nearly 1 in 29)** *Women's, Children's, & Family Health Fact Sheet, 2005, State of Alaska Department of Health and Social Services. (Information from Alaska Pregnancy Risk Assessment Monitoring System (PRAMS), 2002.*
- **The approximately 400 to 450 Alaskan newborns exposed to marijuana may suffer negative physical and behavioral effects. (Three recently published scientific studies found evidence a pregnant mother's marijuana use has negative physical and behavioral effects).** *Porath AJ, Fried PA "Effects of Prenatal Cigarette and Marijuana Exposure on Drug Use Among Offspring" ("[m]ale offspring of mothers who reported using marijuana while pregnant had nearly four times the odds of initiating marijuana use compared to offspring whose mothers did not report using marijuana during pregnancy ... As data indicates that cannabinoid receptors are present in the placenta, and the fetal and neonatal brain, it is possible that prenatal exposure to marijuana also sensitizes the brain to the subsequent influence of marijuana consumed later in life. ... In summary ...the data suggest that in utero exposure to*

marijuana is associated with cigarette smoking and marijuana use initiation ... a reduction in rates of use may not only yield direct health benefits for the substance users ... it may also have unanticipated benefits for their offspring) ; Neurotoxicology Teratology, 2005 Mar-Apr; 27(2):267-77; Hurd, YL, Wang X, et.al., "Marijuana Impairs Growth in Mid-Gestation Fetuses": Neurotoxicology Teratology, 2005 Mar-Apr; 27(2):267-77; Wang X, et.al., "In Utero Marijuana Exposure Associated with Abnormal Amygdala Dopamine D2 Gene Expression in the Human Fetus", Biological Psychiatry, Dec. 2004, pages 909-915.

Pre-School Age Children and Their Parents

- **A study of rural Alaska villages found preschool parents aged 26-34 were using marijuana at a rate roughly 3 times the national average. (19% vs. 6.7%)** *Stillner, V, et.al., Drug Use in Very Rural Alaska Villages, Substance Use and Misuse, 1999.*

Elementary School Students

- **By sixth grade, (age 11) 7-10% of Alaskan students have tried marijuana.** *1995, Alaska Youth Risk Behavior Survey (7% of middle school students started smoking marijuana before age 11); 1999, Alaska Youth Risk Behavior Survey (8.5% of middle school respondents (excluding Anchorage) started smoking marijuana before age 11; 2003, Youth Risk Behavior Survey Resu' , Northwest Arctic Borough School District Middle School Survey: Unweighted (10.2% of students tried marijuana for the first time before the age of 11)*
- **Students who started smoking marijuana before the age of 11 usually make up from 25-30% of the overall group of middle school students reporting a lifetime use of marijuana.** *Id.*
- **Kids who started smoking marijuana before the age of 11 made up 40% of the juveniles placed in Alaska's secure juvenile facilities in a survey done in 1998.** *1999, Division of Juvenile Justice Survey of Youths in Secure Facilities.*
- **Kids who smoked marijuana 10 to 40 times or more a month made up 46% of the juveniles placed in Alaska's secure juvenile facilities.** *Id.*

- **67% of the youth in Alaska's secure juvenile facilities have smoked marijuana 100 or more times in their lives. *Id.***

Middle School Students

- **Roughly one in four of all Alaska middle school students has at least tried marijuana. 1995, Alaska Youth Risk Behavior Survey (26.1%); 1999, Alaska Youth Risk Behavior Survey (28.9%, unweighted excluding Anchorage).**
- **These middle school students make up some of the 3-4,000 youth aged 12-17 in Alaska that initiate marijuana use each year. (100 to 150 a day). *Initiation of Marijuana Use, Trends, Patterns, and Implications, Gfroerer, J, Department of Health and Human Services, SAMHSA, Office of Applied Studies, 2002, Table 4.1.***
- **Many of the middle school students using marijuana are doing so before or during school. *Middle school students were part of a 1990 survey of students in grades 7-12 which found 25% of students reporting marijuana use in the past year used marijuana before or during school. The State of Adolescent Health in Alaska, May, 1990.***
- **Middle school students may also start to make up the roughly 150-170 Alaskan youth aged 12-17 (on average for the years 2000-2003) admitted into a treatment facility primarily for marijuana abuse. *Substance Abuse Treatment Admissions by Primary Substance of Abuse, SAMHSA TEDS data.***

High School Students

- **If you are one of the 6% of Alaska high school age students in an alternative high school due to being at risk for not graduating from a regular high school, there is an about an 85% chance you have used marijuana and a 53% chance you are a current marijuana user. *Youth Risk Behavior Surveillance – National Alternative High School Youth Risk Behavior Survey, United States, 1998.***
- **If you are a Alaska Native high school student there is a 70% chance you have tried marijuana and a 35.5% chance you are a current user. 2003, *Alaska Youth Risk Behavior Survey.***

- **In high schools across the state, (excluding Anchorage) 18.8% of male students and 14.7% of female students have already tried marijuana for the first time by their freshmen year.** *1999 Alaska Youth Risk Behavior Survey. The national average for 2003 was 9.9% for all students. 2003 National Youth Risk Behavior Survey Results.*
- **The average age of first marijuana use in Alaska is 16 years, but for American Indian / Alaska Native students (nationally), it is 14.1 years.** *SAMHSA, Office of Applied Studies, "Trends in Marijuana Incidence, Initiation of Marijuana Use: Trends, Patterns, and Implications Report", Table 3.6 and SAMHSA, Office of Applied Studies, Youth Substance Use: State Estimates from the 1999 National Household Survey on Drug Abuse, Table C.5.*
- **If you are high school age, a current user of marijuana, and have a predisposition to psychosis, your marijuana use increases the chances you will express a psychotic disorder or experience.** *Os, J., et.al., "Prospective Cohort Study of Cannabis Use, Predisposition for Psychosis, and Psychotic Symptoms in Young People", British Medical Journal, January, 2005.*
- **Daily use of marijuana by teenage females will also greatly increase (5 times) the chances of suffering from depression and anxiety. Weekly or more frequent use of marijuana by any teenager doubles the odds that you will suffer from depression and anxiety.** *Patton, G, et.al., Cannabis Use and Mental Health in Young People: Cohort Study, British Medical Journal, November, 2002.*
- **You may also be the one in six teenage drivers who drives while under the influence of marijuana.** *O'Malley, P., et.al., "Unsafe Driving by High School Seniors: National Trends from 1976 to 2001 in Tickets and Accidents After Alcohol, Marijuana and Other Illegal Drugs", Journal of Studies on Alcohol, May, 2003 (Data shows that 15% of U.S. high school seniors surveyed said they drove after using marijuana and 16% drove under the influence of alcohol).*
- **The New England Journal of Medicine has published results from a roadside study of reckless drivers (not impaired by alcohol) in which 45 % tested positive for marijuana. Another survey found that 68% of teen drivers who use drugs regularly reported they drive while under the influence of drugs.** *ONDCP, Press Release, Nov. 19, 2002.*

- **If you are a teenage driver who consumes both alcohol and marijuana and drives, the negative effects on your driving ability are magnified.** *National Highway Traffic Safety Administration, Traffic Tech, Number 201, June 1999, "Marijuana and Alcohol Combined Increase Impairment", ("The effect of combining moderate doses of alcohol and moderate doses of marijuana resulted in a dramatic performance decrement and levels of impairment as great as observed when at .14 BAC alone").*
- **If you are one of the approximately 75% of tobacco smokers who initiate their use as adolescents and you are a marijuana smoker, the additive effect of the carcinogens and other chemicals in marijuana increase the risk you will develop many respiratory symptoms associated with disorders common to tobacco use such as chronic bronchitis, chronic obstructive pulmonary disease, and cancer.** *State of Alaska, DHSS-Epidemiology Bulletin "Youth Tobacco Use", Results from the 2003 Youth Risk Behavior Survey; Moore, et.al., "Respiratory Effects of Marijuana and Tobacco Use in a U.S. Sample", Journal of General Internal Medicine, 2004.*

Adulthood

- **By the time you reach adulthood, if you are still using marijuana and have committed a crime and are incarcerated, you will be one of the 93% of Alaska inmates who have ever tried marijuana and may be one of the 23% of Alaska inmates with a marijuana disorder that needed treatment in the year prior to incarceration.** *State of Alaska, Department of Health and Social Services, Division of Alcoholism and Drug Abuse, "Substance Abuse Treatment Needs of Alaska's Newly Incarcerated Prisoner Population Prior to Incarceration, 2000.*
- **If your crime was rape, there is a 15% chance you used marijuana just prior to the assault and a little less than 10% chance that your victim was impaired by marijuana at the time of the rape.** *Descriptive Analysis of Sexual Assaults in Anchorage, October 2003.*

- **If you are Alaska Native and have a primary alcohol disorder for which you need treatment, it is more likely than not that you also have a secondary or co-occurring marijuana disorder.** *Alaska Natives Combatting Substance Abuse and Related Violence Through Self Healing, Center for Alcohol and Addiction Studies, January, 1999, (63% of native men and women with severe drinking problems surveyed in 1997 were also dependent on marijuana).*
- **If you are an Alaska Native male using marijuana, and you are seen at a community mental health center in rural Alaska, you may be one of the 17.4% of such patients with a diagnosis of marijuana dependence.** *Mental Disorders of Eskimos Seen at a Community Mental Health Center in Rural Alaska, Auon, S, et.al., Psychiatric Services, November 1998, vol.49, no. 11.*
- **If you committed a domestic violence crime and were arrested, there is a 69% chance you will test positive at the time of arrest for marijuana use.** *April, 2004, ONDCP Anchorage, Alaska, Profile of Drug Indicators. In comparison, there is only a 23% chance you would test positive for cocaine if you committed any type of violent crime. Id.*
- **If you somehow end up a drowning victim, you will be one of the 11% of drowning victims in Alaska that were found to have marijuana in their system.** *Drowning In Alaska Waters, Public Health Reports, v111, p.531-5, 1996.*

*Tougher Criminal Penalties and Fines Have A Deterrent Effect
And Individuals Respond To Changes In How
The Government Treats Illegal Drugs*

- **"The marijuana arrest rate has a strong negative effect [on use by adults] ... enforcement of drug possession violations reduces drug demand ... Changes in arrest rates [increase] for possession predict percentage point decreases of ... 3.0% in marijuana participation among juveniles";** *Price and Enforcement Effects on Cocaine and Marijuana Demand, Economic Inquiry, Desimone, J et.al., January, 2003; "[b]oth higher fines for marijuana possession and increased probability of arrest decrease the probability that young adults will use marijuana ..."* *Farrelly, MC, et.al., The Joint Demand for Cigarettes and Marijuana: Evidence from the National Household Surveys on Drug Abuse" Journal of Health Economics, 2001; Chaloupka, FJ, et.al., "Do Higher Cigarette Prices Encourage Youth to Use*

Marijuana", National Bureau of Economic Research, Working Paper No. 6938, 1999 (Study of the 8th, 10th, and 12th grade surveys found marijuana decriminalization had a positive and significant effect on both the prevalence and quantity consumed of marijuana when median jail terms and fines were included in the model); Chaloupka, F.J., et al, "The Demand for Cocaine and Marijuana by Youth", University of Chicago Press, 1999 (Data from the 1982 and 1989 Monitoring the Future Study showed individuals living in decriminalized states were significantly more likely to report use of marijuana in the past year); Saffer, H, and Chaloupka, FJ, "The Demand for Illicit Drugs", Economic Inquiry, 1999, (Analyzing data from the 1988, 1990, and 1991 NHSDA's and finding that decriminalization had a positive and significant effect on [reducing] marijuana prevalence).



WORKSAFE, Inc.

OCCUPATIONAL HEALTH & SAFETY

April 26, 2005

VIA FACSIMILE AND FIRST CLASS MAIL

(907) 465-5241

✓ **(907) 465-6592**

(907) 465-2040

(907) 465-2059

✓ Rep. Lesil McGuire
Chair, House Judiciary Committee
Room 118, State Capitol
Juneau, AK 99801-1182

Rep. Norman Rokeberg
Chair, House Rules Committee
Room 214, State Capitol
Juneau, AK 99801-1182

Sen. Ralph Seekins
Chair, Senate Judiciary Committee
Room 125, State Capitol
Juneau, AK 99801-1182

Sen. John Cowdery
Chair, Senate Rules Committee
Room 101, State Capitol
Juneau, AK 99801-1182

Re: HB 96 / SB 74 (Marijuana)

Dear Lesil, Ralph, Norman and John:

I am writing you to encourage quick passage of HB 96/SB 74. I find it amazing that it's the 21st century and we're still debating the ill effects of marijuana. This is a drug that was bad for you when it was made illegal under federal law in 1937 and is even worse today. It's worse because the average THC content is nearly 14 percent (2003), which means it is significantly stronger in potency than hashish. (THC stands for delta-9-tetrahydrocannabinol, the main psychoactive ingredient in marijuana). The Alaska Supreme Court based its decision in *Ravin v. State* on the assumption that marijuana contained 1 percent THC or less.

I am president of WorkSafe, an Alaska company that conducts drug and alcohol testing for the workplace. I can tell you that marijuana is the drug of choice for Alaskans. Some 79 percent of all positive drug tests in Alaska are positive for marijuana. Amazingly more than 6 percent of non-regulated job applicants test positive for drugs even though these folks know they must take a pre-employment drug test.

Marijuana is a disaster in the workplace. Marijuana users have 55 percent more industrial accidents than non-users and 85 percent more injuries. Their absentee rate is 78 percent higher and they create 64 percent more disciplinary problems.

Of course, the "workplace" also includes state employees. The State of Wisconsin estimates that expenses and losses related to substance abuse average 25 percent of the salary of each worker affected. I have no reason to think Alaska's numbers would be less. Unfortunately we can expect the problem to keep getting worse if a clear message against marijuana is not sent.

DHSS representatives and Dr. David Murray have testified in committee about the doubling and tripling of addiction rates for marijuana in the last 10-15 years. They have also testified the cause of this increase is due in large part to the increasing potency of the drug. Marijuana also plays a significant negative role when trying to treat alcoholics. A secondary marijuana addiction is a significant reason why many persons undergoing treatment for alcoholism fail to reach and maintain sobriety. The usual pattern is the person stops drinking, fails to remain completely sober by continuing to smoke marijuana, and ends up drinking again. More than 60 percent of Native Alaskans undergoing treatment for alcoholism have a secondary marijuana disorder.

Marijuana decreases motor skills, concentration and coordination, which is why the federal government requires drug testing for key federal employees and DOT regulated employers. (An impetus for the DOT drug testing program was the 1987 train wreck that killed 16 people and injured 174. The brakeman and engineer had shared a joint of marijuana on duty, missed several warning signals and crashed into a passenger train at 105 miles an hour). Studies show that up to 12 percent of non-fatally injured drivers and up to 16 percent of fatally injured drivers have marijuana in their bloodstreams.

Employees who use drugs have 300 percent higher medical costs, which increase insurance rates, and are five times more likely to file a workers' compensation claim. Employers end up bearing some of the costs for these workers compensation claims. Some states have considered passing laws that would ban payment for injuries due to marijuana consumption.

No one has studied the specific cost of marijuana in the Alaska workplace but a study by the Governor's Advisory Board on Alcoholism and Drug Abuse found that lost worker productivity accounts for more than half of the \$600 million annual impact of substance abuse in Alaska. These losses occur when alcohol and drugs result in death, reduce worker efficiency due to mental or physical impairment or result in incarceration, inpatient treatment or hospitalization.

Alaskans well understand the dangers of marijuana, which is why they have spoken with clarity three times over the past 15 years. Alaskans voted 54 percent to 46 percent in 1990 to re-criminalize marijuana after the Alaska Supreme Court

ruled that residents had a constitutional right to possess a small amount of pot in the privacy of their homes. Alaskans turned down an effort to decriminalize marijuana in 2000 by a vote of 41 percent to 59 percent. And last fall, Alaskans rejected an initiative to legalize marijuana by a vote of 44 percent to 56 percent, despite a million-dollar campaign by the pro-initiative group. Edison Media Research's exit polls for the 2004 election found that nearly 80 percent of the "no" votes against the initiative legalizing marijuana were persons who voted for George Bush, i.e., Republicans and moderates.

The Supreme Court's refusal to recognize the voice of the people has now been taken to a new level. Recent rulings in the State v. Crocker and State v. Noy cases not only reaffirm the Ravin v. State decision by allowing up to 4 ounces of marijuana for personal use, (four ounces equals about 360 very potent marijuana cigarettes, an amount most Alaskans would consider more a "mis-use" than personal use), but the Court reversed precedent from another marijuana case, Gray v. State, by denying the state even the opportunity to present facts on the issue.

HB 96 / SB 74 are the right thing to do to protect Alaskans, particularly our most vulnerable, the young and those who suffer from mental disorders and alcohol abuse. It rights a wrong that dates back to 1975 when the Alaska Supreme Court ruled in Ravin that Alaskans' right of privacy protects the personal possession and use of marijuana in the home. From the 1990 study by DHSS we now know that children in the homes of parents who use marijuana are 350 percent more likely to smoke themselves.

Alaska is on the cusp of an exciting economic future, with the gas line, ANWR, Pogo and Pebble all on the horizon or in development. Alaskans deserve a drug-free, safe workplace and these mega-projects deserve a drug-free, productive workforce.

The passage of HB 96/SB 74 sends a clear, positive message to all Alaskans, including employees and employers. I encourage you to support and pass this legislation this session. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew T. Fagnani', written over a horizontal line.

Matthew T. Fagnani
President



Alaska State Legislature

Please enter into the record my testimony to the _____ House Judiciary
committee name

Committee on _____ HB 96 _____, dated _____ 4-8-05
bill # / subject public hearing date

Please do not support the recriminalization of marijuana as contained in HB 96.

I have worked in the criminal justice area as a defense attorney for the past 22 years.

There are much more serious criminals than marijuana users that need to be prosecuted.

I urge you not to pass HB 96 from committee.

Thank you.

Signed: _____ Joe Ray Skrha
Testifier

_____ Private attorney
Representing (optional)

_____ 2455 Watergate Way Kenai, AK 99611
Address

_____ 283-7100
Phone number



Alaska State Legislature

Please enter into the record my testimony to the

HOUSE JUDICIARY
committee name

Committee on

HB 96

bill # / subject

, dated

4-8-05

public hearing date

SEE ATTACHED 4 PAGES

Signed:

John W. Burden
Testifier

Representing (optional)

P.O. Box 1683 / Seldotway Alaska
Address

267-4152

Phone number

Westlaw.

83 P.3d 545
 83 P.3d 545
 (Cite as: 83 P.3d 545)

Page 1

H

Court of Appeals of Alaska.
 David S. NOY, Appellant,
 v.
 STATE of Alaska, Appellee.
 No. A-8327.

Nov. 14, 2003.

Background: Defendant was convicted following jury trial in the Fourth Judicial District Court, Fairbanks, Jane F. Kauvar, J., of possession of less than eight ounces of marijuana. Defendant appealed, and the Court of Appeals, 83 P.3d 538 reversed.

Holdings: On State's petition for rehearing, the Court of Appeals, Mannheimer, J., held that:

- (1) *Ravin* did not create affirmative defense that possession was less than four ounces of marijuana on case-by-case basis;
- (2) State was collaterally estopped from further prosecution in attempt to prove possession of more than eight ounces after defendant was acquitted on that charge; and
- (3) application of *Ravin* in instant case did not prevent State from challenging validity of *Ravin* in future.

Petition for rehearing denied.

West Headnotes

[1] Controlled Substances ⇨49

96Hk49 Most Cited Cases

Ravin holding that privacy clause of state constitution restricted legislature's authority to enact laws prohibiting possession of marijuana in one home's for personal use did not create affirmative defense that defendants could raise, on case-by-case basis, that possession was less than four ounces. K.S.A. Const. Art. 1, § 22.

[2] Double Jeopardy ⇨100.1

135Hk100.1 Most Cited Cases

[2] Double Jeopardy ⇨101

135Hk101 Most Cited Cases

Double jeopardy protections did not merely preclude State from seeking appellate review of jury verdict of acquittal of possession of eight ounces or more of marijuana; State was also collaterally estopped from pursuing later prosecution of defendant on same charge, regardless of potential jury error in determining amount of marijuana that defendant possessed. U.S.C.A. Const.Amend. 5.

[3] Courts ⇨100(1)

106k100(1) Most Cited Cases

Application of *Ravin* holding as basis for determination that statute criminalizing possession of any amount of marijuana by adults in their home for personal use as violated state constitutional right to privacy would not preclude State from challenging validity of *Ravin* in future. Const. Art. 1, § 22; AS 11.71.060(a).

West Codenotes

Held Unconstitutional

AS 11.71.060(a).

*545 William R. Satterberg, Jr., Fairbanks, for the Appellant.

Kenneth M. Rosenstein, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Gregg D. Renkes, Attorney General, Juneau, for the Appellee.

Before: COATS, Chief Judge, and MANNHEIMER and STEWART, Judges.

OPINION ON REHEARING

MANNHEIMER, Judge.

In *Ravin v. State*, 537 P.2d 494 (Alaska 1975), the Alaska Supreme Court held that the privacy clause of the Alaska Constitution (Article I, Section 22) protects the possession of marijuana in one's home for personal use. In 1990, the voters of Alaska enacted *546AS 11.71.060(a), which purports to

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

83 P.3d 545
 83 P.3d 545
 (Cite as: 83 P.3d 545)

Page 2

criminalize the possession of any amount of marijuana, even when the marijuana is possessed in one's home for personal use. In our initial opinion in this case--*Noy v. State*, Alaska App. 83 P.3d 538, 2003 WL 23207968 (2003) [FN1]--we held that this statute is unconstitutional because it conflicts with the right of privacy recognized in the *Ravin* decision. However, we concluded that the statute could be preserved to the extent that it prohibits possession of four ounces or more of marijuana.

FN1. 83 P.3d 538.

The State now seeks rehearing. In its petition for rehearing, the State argues that this Court's initial opinion is flawed in some half-dozen ways, but most of the State's arguments ultimately rest on one underlying assertion: that we misunderstood the nature of the Alaska Supreme Court's decision in *Ravin*.

[1] In our initial decision in this case, we read the *Ravin* opinion to say that the privacy clause of the Alaska Constitution restricts the legislature's (and the voters') authority to enact laws prohibiting the possession of marijuana in one's home for personal use. The State contends that this view of *Ravin* is fundamentally flawed--that *Ravin* did not announce a constitutional restriction on the government's law-making power.

According to the State, *Ravin* did not hold that Article I, Section 22 of the Alaska Constitution restricts the government's authority to enact statutes that prohibit possession of marijuana in one's home for personal use. Rather, *Ravin* restricted the government's authority to enforce such statutes--by creating an affirmative defense that individual defendants can raise if they are prosecuted for violating such a statute.

The State argues that this defense is similar to a claim of entrapment or selective prosecution, in that it does not rest on a claim that the defendant is innocent of wrongdoing, but rather on a claim that the government violated constitutional guarantees when it singled out this particular defendant as the target of prosecution. According to the State, *Ravin* stands for the proposition that, in any prosecution for possession of marijuana in one's home, the defendant can assert that the possession was of a

small amount for personal use. If the defendant raises such a claim, the matter is decided (before trial) by a judge, not a jury. To defeat the proposed defense, the State would have to prove either (1) that the marijuana was not for personal use, or (2) that the government had a sufficient interest in prohibiting the possession of that particular amount of marijuana under the specific circumstances of that defendant's case.

In other words, the State argues that *Ravin* created a system in which the constitutionality of marijuana prosecutions would be decided by trial judges on a case-by-case basis--and that, in these case-specific hearings the State would repeatedly try to convince numerous different judges that there is a sufficient government interest to justify imposing criminal penalties on people who possess varying amounts of marijuana.

The State's proposed interpretation of the *Ravin* decision would seemingly put us on the road to legal chaos. Under the State's proposal, dozens of judges across the state would be required to issue potentially inconsistent rulings as to whether, under the facts of a particular defendant's case, the State had sufficient justification to criminalize the defendant's possession of 3.0 ounces, or 2.2 ounces, or 1.4 ounces, or 0.6 ounces of marijuana.

However, our primary reason for rejecting the State's interpretation of *Ravin* is that the State's interpretation is inconsistent with *Ravin* itself.

The *Ravin* decision does not speak of an affirmative defense of the type proposed by the State in its petition for rehearing, nor does the *Ravin* opinion describe itself as establishing case-specific limits on the State's enforcement of marijuana statutes. Rather, in the opening sentence of *Ravin*, the Alaska Supreme Court described the issue before them as "[t]he constitutionality of Alaska's statute prohibiting possession of marijuana" [FN2] *547 Later in the opinion, after the supreme court held that Article I, Section 22 of our state constitution guarantees a right of privacy in one's home [FN3], the court declared that two major questions remained:

FN2. *Ravin*, 537 P.2d at 496.

83 P.3d 545
 83 P.3d 545
 (Cite as: 83 P.3d 545)

Page 3

FN3. *Id.* at 504.

whether the State has demonstrated sufficient justification for the prohibition of possession of marijuana in general ... and ... whether the State has met the greater burden of showing a close and substantial relationship between the public welfare and control of ingestion or possession of marijuana in the home for personal use.

Ravin, 537 P.2d at 504.

The supreme court then proceeded to analyze the scientific data concerning the uses and effects of marijuana. The court did not attempt to analyze the particular facts of Irwin *Ravin's* case; rather, the court assessed the legislature's overall justification for regulating *any* person's possession of marijuana in their home. [FN4]

FN4. *See id.*, 537 P.2d at 504-511.

And when the *Ravin* court announced its conclusion, the court did not frame that conclusion in terms of whether the State had an interest in prohibiting the possession of marijuana under the particular facts of the case before it. Instead, the court framed its conclusion as a general restriction on the government's authority to legislatively control this aspect of people's personal behavior:

[W]e conclude that [the state has shown] no adequate justification for the state's intrusion into the citizen's right to privacy by its prohibition of possession of marijuana by an adult for personal consumption in the home [...] The privacy of the individual's home cannot be breached absent a persuasive showing of a close and substantial relationship of the intrusion to a legitimate governmental interest. Here, mere scientific doubts will not suffice. The state must demonstrate a need based on proof that the public health or welfare will in fact suffer if the controls are not applied.

The state has a legitimate concern with avoiding the spread of marijuana use to adolescents who may not be equipped with the maturity to handle the experience prudently, as well as a legitimate concern with the problem of driving under the influence of marijuana. Yet these interests are insufficient to justify intrusions into the rights of adults in the privacy of their own homes.

Ravin, 537 P.2d at 511.

In the years since *Ravin* was decided, there has been no suggestion (until now) that *Ravin* was something other than normal constitutional litigation in which the supreme court adjudicated the constitutionality of a particular category of criminal statute. For example, six months after *Ravin*, in *Belgarde v. State*, the supreme court referred to *Ravin* as "[a] case [in which] we held that the state may not prohibit possession of [marijuana] by an adult in [their] home for personal consumption". [FN5] In 1978, in *State v. Erickson*, the supreme court again declared that *Ravin* represented a restriction on the state's power to legislate:

FN5. 543 P.2d 206, 207 (Alaska 1975).

In *Ravin v. State*, this court held that the state could not bar the personal use and possession of marijuana in the home. In view of the relative harmlessness of the drug, the individual's right to privacy under the Alaska Constitution was found to outweigh the state interest in regulation.

574 P.2d 1, 21 (Alaska 1978) (footnote omitted). And more recently, in *Luedtke v. Nabors Alaska Drilling, Inc.*, the supreme court declared that "*Ravin* addressed the issue of whether the state could prohibit the use of marijuana in the home. We held that it could not." [FN6]

FN6. 768 P.2d 1123, 1135 (Alaska 1989).

Based on this analysis of the *Ravin* decision and the later supreme court decisions construing *Ravin*, we are convinced that the State's interpretation of *Ravin* is wrong. *Ravin* did not create an affirmative defense that defendants might raise, on a case-by-case basis, when they were prosecuted for possessing marijuana in their home for personal use. Instead, both in the *Ravin* opinion itself and in the supreme court's later descriptions of *Ravin*, the Alaska Supreme *548 Court has repeatedly and consistently characterized the *Ravin* decision as announcing a constitutional limitation on the government's authority to enact legislation prohibiting the possession of marijuana in the privacy of one's home.

Accordingly, we reject the State's suggestion that *Ravin* left Alaska's marijuana statutes intact but created an affirmative defense to be litigated in each

83 P.3d 545
 83 P.3d 545
 (Cite as: 83 P.3d 545)

Page 4

individual case.

Although this is not a factor in our interpretation of *Ravin*, we note that the Alaska Legislature took this same view of *Ravin* when they refashioned this state's drug laws twenty years ago. As we described in *Walker v. State* [FN7], the legislature responded to *Ravin* in 1982 by enacting a statute--former AS 11.71.060(a)(4)--that prohibited possession of four ounces or more of marijuana, even if the marijuana was possessed in one's home for personal use. In the commentary that accompanied this statute, the legislature declared:

FN7. 991 P.2d 799 (Alaska App.1999).

[T]his legislation is intended to clarify the law in Alaska concerning possession of marijuana, in light of the decision of the Supreme Court of Alaska in *Ravin v. State*, 537 P.2d 494 (Alaska 1975). *Ravin* held that Alaska's constitutional right to privacy protects the possession and use of marijuana by an adult, in the home, in amounts indicative of personal use in a purely personal, non-commercial context. The approach taken in this Act is to define, for purposes of the decision in *Ravin*, an amount which is indicative of personal use, and to provide a clear line of demarcation of four ounces, so that citizens of this state will know precisely what conduct is prohibited.

Commentary and Sectional Analysis for the 1982 Revision of Alaska's Controlled Substances Laws (CCSB 190), p. 19 (quoted in *Walker v. State*, 991 P.2d at 802-03).

Thus, not only is the State's suggested interpretation of *Ravin* at odds with the supreme court's statements on this question, but it is also at odds with the Alaska Legislature's announced policy aims in this area of the law: the aim of "defin[ing], for purposes of ... *Ravin*, [a specific] amount which is indicative of personal use", and the aim of "provid[ing] a clear line of demarcation ..., so that citizens of this state will know precisely what conduct is prohibited".

We now address certain other aspects of the State's petition for rehearing.

[2] In our original decision in this case, we stated

that because the jury acquitted Noy of the charge of possessing eight ounces or more of marijuana, the State is barred from asserting, in any future litigation, that Noy did indeed possess eight ounces or more of marijuana. The State argues that this conclusion is mistaken for two reasons.

First, the State contends that the doctrine of collateral estoppel does not apply when the aggrieved party had no method of seeking appellate review of the adverse judgement. The State points out that the double jeopardy clauses of the federal and state constitutions preclude the State from seeking appellate review of a jury's verdict of acquittal. Thus, the State argues, the fact that Noy's jury acquitted him of possessing eight ounces or more of marijuana should not estop the State from continuing to assert that Noy possessed more marijuana than the jury found.

The problem with the State's argument is that it is directly contrary to the United States Supreme Court's holding in *Ashe v. Swenson*, 397 U.S. 436, 445- 46, 90 S.Ct. 1189, 1195-96, 25 L.Ed.2d 469 (1970).

Second, the State argues that the jury's acquittal should not be considered conclusive because the jury was misinstructed on how to calculate the weight of marijuana. The State asserts that, given the evidence presented at Noy's trial, it is obvious that Noy possessed at least eight ounces of marijuana, and therefore the jury's verdict of acquittal must have been the fruit of the flawed jury instruction.

But as we explained in our initial opinion, the State did not introduce the marijuana itself; instead, the State relied on photographs and testimony concerning the marijuana. The photographs showed that the marijuana contained stalks, not just leaves *549 and buds. Even if the jury had been correctly instructed, they would have been told that stalks are not to be considered when assessing the weight of harvested marijuana. Although there may be a substantial possibility that the erroneous weight-calculation instruction influenced the jury's thinking when they assessed the weight of the marijuana, it is also possible that the jurors were not convinced beyond a reasonable doubt that the harvested marijuana, minus the stalks, weighed

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

83 P.3d 545
83 P.3d 545
(Cite as: 83 P.3d 545)

Page 5

eight ounces or more. Thus, we must apply the collateral estoppel rule of *Ashe v. Swenson*. See our discussion of a related point in *State v. McDonald*, 872 P.2d 627, 660 (Alaska App.1994).

Moreover, even if we assume that the erroneous jury instruction played an instrumental role in the jury's decision to acquit Noy of possessing eight or more ounces of marijuana, the State would still be bound by the jury's verdict. The law on this point is summarized in Wayne R. LaFare, Jerold H. Israel, and Nancy J. King, *Criminal Procedure* (2nd ed.1999):

If the jury reaches a verdict of acquittal or the judge grants a judgment of acquittal, double jeopardy bars a new trial even if it appears that the acquittal was based on an erroneous interpretation of the law.

Id., § 25.1(g), Vol. 5, p. 648. See also *id.*, § 25.3(b), Vol. 5, pp. 666-68.

This view of the double jeopardy clause is borne out in the case law. See *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 571, 97 S.Ct. 1349, 1354, 51 L.Ed.2d 642 (1977); *Livingston v. Murdaugh*, 183 F.3d 300, 301-02 (4th Cir.1999).

[3] Finally, the State argues for the first time that if we adjudicate the constitutionality of AS 11.71.060(a) in Noy's case, our decision will unfairly preclude the State from attempting to prove that *Ravin* should be overruled or limited--*i.e.*, preclude the State from attempting to prove that there is sufficient justification for a criminal statute prohibiting any and all possession of marijuana, even possession of marijuana by adults in their home for personal use.

But our decision in this case merely implements the supreme court's constitutional ruling in *Ravin*. The State remains free in the future to challenge the continuing vitality of *Ravin*.

For all of these reasons, the State's petition for rehearing is DENIED.

83 P.3d 545

END OF DOCUMENT

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

Westlaw.

83 P.3d 538
 83 P.3d 538
 (Cite as: 83 P.3d 538)

Page 1

H

Court of Appeals of Alaska.
 David S. NOY, Appellant,
 v.
 STATE of Alaska, Appellee.
 No. A-8327.

Aug. 29, 2003.
 Rehearing Denied Nov. 14, 2003.

Background: Defendant was convicted following jury trial in the District Court, Fourth Judicial District, Fairbanks. Jane F. Kauvar, J., of possession of less than eight ounces of marijuana. Defendant appealed.

Holdings: The Court of Appeals, Stewart, J., held that:

- (1) statute declaring that any possession of marijuana by adults in their homes for personal use was a crime contravened constitutional right to privacy, but it remained constitutional to the extent it prohibited possession of four ounces or more of marijuana under those circumstances;
 - (2) reversal of conviction was required because jury was not asked to determine what amount less than eight ounces was possessed by defendant;
 - (3) necessity defense was governed by statute specifically defining affirmative defense of medical necessity to possession of marijuana, rather than by general necessity statute; and
 - (4) jury instructions regarding aggregate weight of live marijuana plant should not be given if defendant is only charged with possessing harvested marijuana.
- Reversed.

West Headnotes

[1] Constitutional Law ⇨38

92k38 Most Cited Cases

When a statute conflicts with a provision of State Constitution, the statute must give way.

[2] Criminal Law ⇨13(1)

110k13(1) Most Cited Cases

A statute that purports to attach criminal penalties to constitutional protected conduct is void.

[3] Statutes ⇨325

361k325 Most Cited Cases

Just as statutes enacted through normal legislative process must not violate State Constitution, statutes enacted by ballot initiative must not violate the Constitution. Const. Art. 12, § 11.

[4] Constitutional Law ⇨48(1)

92k48(1) Most Cited Cases

Court has a duty to preserve a statute to the extent that it is consistent with Constitution.

[5] Constitutional Law ⇨82(7)

92k82(7) Most Cited Cases

[5] Controlled Substances ⇨6

96Hk6 Most Cited Cases

Statute declaring that any possession of marijuana by adults in their homes for personal use was a crime contravened constitutional right to privacy as interpreted by state Supreme Court, but statute remained constitutional to the extent it prohibited possession of four ounces or more of marijuana under those circumstances. Const. Art. 1, § 22; AS 11.71.060(a)(1).

[6] Criminal Law ⇨1173.2(3)

110k1173.2(3) Most Cited Cases

Reversal of conviction for possession of less than eight ounces of marijuana that was found in defendant's home was required because jury was not asked to determine what amount less than eight ounces defendant possessed and defendant had the right, under privacy provision of State Constitution, to possess less than four ounces in his home for personal use. Const. Art. 1, § 22; AS 11.71.060(a)(1).

[7] Judgment ⇨751

228k751 Most Cited Cases

Jury's acquittal of defendant on charge of possessing eight ounces or more of marijuana collaterally estopped state from retrying him on that

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

83 P.3d 538
 83 P.3d 538
 (Cite as: 83 P.3d 538)

Page 2

charge following reversal of conviction for possessing less than eight ounces of marijuana. AS 11.71.050(a), 11.71.060(a).

[8] Double Jeopardy ↪108

135Hk108 Most Cited Cases

State remained free, following reversal of conviction for possessing less than eight ounces of marijuana that may have been based on a belief by jury that defendant possessed less than four ounces in his home for personal use, to retry defendant on a claim that he possessed at least four ounces of marijuana, thus exceeding the amount he had a right to possess at home for personal use pursuant to privacy provision of State Constitution. Const. Art. 1, § 22; AS 11.71.060(a)(1).

[9] Controlled Substances ↪51

96Hk51 Most Cited Cases

Claim of necessity, as raised in defense to charge of marijuana possession, was governed by statute specifically defining affirmative defense of medical necessity for possession of marijuana, rather than by the general necessity statute. AS 11.71.060, 11.71.090, 11.81.320.

[10] Controlled Substances ↪97

96Hk97 Most Cited Cases

Jury instructions on aggregate weight of a live marijuana plant, as being the weight of the marijuana when reduced to its commonly used form, should not be given if defendant was only charged with possessing harvested marijuana. AS 11.71.060, 11.71.080.

West Codenotes

Limited on Constitutional Grounds

AS 11.71.060.

*539 William R. Satterberg, Jr., Law Offices of William R. Satterberg, Jr., Fairbanks, for Appellant.

*540 Kenneth M. Rosenstein, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Gregg D. Renkes, Attorney General, Juneau, for Appellee.

Before: COATS, Chief Judge, and MANNHEIMER and STEWART, Judges.

OPINION

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

STEWART, Judge.

A jury convicted David S. Noy of violating AS 11.71.060(a), which prohibits possession of less than eight ounces of marijuana. The marijuana was found in Noy's home. Noy appeals his conviction, arguing that he was convicted for engaging in conduct (possession of marijuana for personal use in one's home) that is protected by the privacy provision of the Alaska Constitution (article I, section 22). [FN1]

FN1. See *Ravin v. State*, 537 P.2d 494 (Alaska 1975).

We agree that Noy may have been convicted for conduct that is constitutionally protected. As we explain here, Alaska citizens have the right to possess less than four ounces of marijuana in their home for personal use. Accordingly, we reverse Noy's conviction. The State remains free to retry Noy if the State believes it can prove that Noy possessed at least four ounces of marijuana.

Noy also claims that the district court should have allowed him to raise the defense of medical necessity. However, as we explain, the district court properly rejected Noy's proposed defense.

Facts of the case

The North Pole police contacted Noy at his home and told him they smelled growing marijuana. The police searched Noy's house and found approximately eleven ounces of harvested marijuana, consisting of buds, leaves, and stalks. The police also found five immature marijuana plants. The police did not, however, find any scales or packaging material; nor was there any other evidence that Noy was engaged in any commercial conduct involving marijuana.

Except for the immature plants, all the plant material--including the buds, leaves, and stalks--was placed in a paper bag and sent to the state crime lab for identification and weighing. The immature plants were not tested, nor did they form part of the State's case. Ultimately, Noy was charged with possessing more than eight ounces of harvested marijuana.

83 P.3d 538
 83 P.3d 538
 (Cite as: 83 P.3d 538)

Page 3

At trial, however, the State did not offer the paper bag in evidence. Therefore, the jury had to rely on testimony and photographs showing what the police had placed in the bag. Based on the testimony and photographs, the paper bag obviously contained stalks along with buds and leaves. Among other things, the jury was instructed that "[m]arijuana means the seeds, leaves, buds, and flowers of the plant, Cannabis, whether growing or not, but it does not include the stalks of the plants, or fiber produced from the stalks." The jury found Noy not guilty of possessing eight ounces or more of marijuana, but guilty of possessing less than eight ounces.

Alaska Statute 11.71.060(a)(1), the statute that prohibits possession of less than eight ounces of marijuana under any and all circumstances, violates article 1, section 22 of the Alaska Constitution as construed in Ravin v. State

Noy was convicted under AS 11.71.060(a)(1), which makes it a class B misdemeanor to use or display any amount of marijuana, or to possess "one or more preparations, compounds, mixtures, or substances" containing marijuana "of an aggregate weight of less than one-half pound." [FN2] This statute criminalizes conduct that the Alaska Supreme Court has declared is protected under article 1, section 22 of the Alaska Constitution.

FN2. AS 11.71.060(a)(1) & (b).

Article 1, section 22 states: "The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section."

*541 In *Ravin*, the Alaska Supreme Court held that this provision of our constitution protects possession of marijuana for personal use in one's home. The court acknowledged that there is no fundamental right to possess or ingest marijuana. Nevertheless, the court held that article 1, section 22 gives people a heightened expectation of privacy with respect to their personal activities within their home. [FN3] The court held that this heightened right of privacy "encompass[ed] the possession and ingestion of ... marijuana in a purely personal, non-commercial context in the home" unless the state could show that such an intrusion into people's

privacy bore "a close and substantial relationship ... to a legitimate governmental interest"--that is, unless the state proved "that the public health or welfare [would] in fact suffer" if private possession of marijuana were not prohibited. [FN4]

FN3. *Ravin*, 537 P.2d at 504-12.

FN4. *Id.* at 504, 511.

The supreme court concluded that the state had demonstrated a substantial interest in regulating the use of marijuana by drivers, in prohibiting the use of marijuana by children, in regulating the use or possession of marijuana in public places, and in regulating the buying and selling of marijuana. [FN5] The supreme court added that the state could validly prohibit "[p]ossession at home of amounts of marijuana indicative of [an] intent to sell rather than possession for personal use." [FN6] However, the court concluded that the state had shown "no adequate justification for ... prohibit[ing] possession of marijuana by an adult for personal consumption in the home." [FN7]

FN5. *Id.* at 511.

FN6. *Id.*

FN7. *Id.*

In 1975, following the supreme court's decision in *Ravin*, the Alaska Legislature amended AS 17.12 (the then-existing marijuana laws) to take into account the supreme court's ruling. The legislature exempted marijuana from the normal penalties for possession of "depressant, hallucinogenic, or stimulant drugs" [FN8] and enacted two special provisions governing marijuana possession: former AS 17.12.110(d) and (e). [FN9]

FN8. Former AS 17.12.110(a), as amended by ch. 110, § 1, SLA 1975.

FN9. Ch. 110, § 1, SLA 1975.

Former AS 17.12.110(d) prohibited public use of marijuana, possession of more than an ounce of marijuana in a public place, possession of any amount of marijuana while operating a motor vehicle or airplane, and possession of any amount

83 P.3d 538
83 P.3d 538
(Cite as: 83 P.3d 538)

Page 4

of marijuana by a minor. The maximum penalty for violating these provisions was a fine of \$1,000.

Former AS 17.12.110(c) prohibited possession by an adult of one ounce or less of marijuana in a public place. It also prohibited possession by an adult of any amount of marijuana for personal use in a non-public place. This second provision clearly encompassed possession of marijuana in one's home for personal use--conduct that, in *Ravin*, the supreme court had said was protected from governmental intrusion. However, the legislature declared that there was no criminal penalty for violating subsection (c); rather, the offender faced a "civil fine of not more than \$100."

Seven years later, in 1982, the legislature moved Alaska's drug laws from Title 17 to Title 11. The provisions of AS 17.12 dealing with marijuana were repealed, and new marijuana provisions were enacted in AS 11.71. [FN10] In this 1982 revision of the marijuana laws, the legislature dropped the civil fine for possession of marijuana for personal use in a non-public place--thus ending any potential conflict with *Ravin*.

FN10. Ch. 45, § 26, SLA 1982 (the repeal of AS 17.12) and § 2 (the enactment of AS 11.71).

Under the newly enacted AS 11.71.050(a)(3)(E), possession of eight ounces or more of marijuana was made a class A misdemeanor. Under the newly enacted AS 11.71.060(a)(4), possession of four ounces or more of marijuana was made a class B misdemeanor. [FN11] The legislature also made it a *542 violation to possess any amount of marijuana in a public place. [FN12] However, no statute prohibited possession of less than four ounces of marijuana for personal use in a non-public place.

FN11. The 1982 version of AS 11.71.060(a) also prohibited use of marijuana in a public place, or possession of one ounce or more of marijuana in a public place, or possession of any amount of marijuana while operating a motor vehicle, or possession of any amount of marijuana by a person under 19 years of age.

FN12. Former AS 11.71.070(a)(2).

In other words, following the legislature's 1982 revision of the marijuana laws, there was no penalty (whether criminal or civil) for possessing less than four ounces of marijuana in one's home for personal use. But this changed in 1990.

In the general election of 1990, the voters of Alaska approved a ballot proposition that amended AS 11.71.060(a) and repealed AS 11.71.070. [FN13] Under the amended (that is, the current) version of AS 11.71.060(a), possession of any amount of marijuana less than eight ounces is a class B misdemeanor. [FN14] This is the statute that Noy violated.

FN13. 1990 Initiative Proposal No. 2, §§ 1-2.

FN14. AS 11.71.060(a)(1) and (b).

The question presented in this case is whether AS 11.71.060(a) is constitutional to the extent that it prohibits possession of marijuana by adults in their homes for personal use.

[1][2] On one level, the answer is straightforward. The Alaska Supreme Court ruled in *Ravin* that the right of privacy codified in article I, section 22 of our state constitution protects the right of adults to possess marijuana in their homes for personal use. When a statute conflicts with a provision of our state constitution, the statute must give way. [FN15] Thus, a statute which purports to attach criminal penalties to constitutionally protected conduct is void.

FN15. See *Falcon v. Alaska Public Offices Comm'n*, 570 P.2d 469, 480 (Alaska 1977) ; *Ravin*, 537 P.2d at 511.

On a deeper level, the question is whether the voters of Alaska can, through the initiative process, abrogate a constitutional ruling of the Alaska Supreme Court--in particular, the court's ruling in *Ravin* that article I, section 22 of our state constitution protects an adult's right to possess marijuana in the home for personal use. The answer to this question is found in the Alaska Constitution itself. Article XII, section 11 states that the people

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

83 P.3d 538
 83 P.3d 538
 (Cite as: 83 P.3d 538)

Page 5

of this state, through the ballot initiative process, may exercise "the law-making powers assigned to the legislature" (subject to the limitations codified in article XI of the constitution). That is, the initiative process constitutes a method by which the people of this state can directly enact legislation.

[3] But just as the statutes enacted through the normal legislative process must not violate the constitution, the statutes enacted by ballot initiative must not violate the constitution. [FN16] Thus, even though the voters enacted AS 11.71.060(a)(1) through the initiative process, the constitutionality of this statute must be assessed in the same way as if it had been enacted through the normal legislative process. And, as we have said, this statute contravenes the constitutional right of privacy as interpreted by our supreme court in *Ravin*--because it declares that any possession of marijuana by adults in their homes for personal use is a crime.

FN16. See *Alaskans for Legislative Reform v. State*, 837 P.2d 960, 962, 966 (Alaska 1994); *Citizens Coalition for Tort Reform v. McAlpine*, 810 P.2d 162, 168 (Alaska 1991).

Alaska Statute 11.71.060(a) must be limited to preserve its constitutionality

We have concluded that AS 11.71.060(a)(1) is unconstitutional to the extent that it proscribes marijuana possession that, under the *Ravin* decision, is protected by article I, section 22 of the Alaska Constitution. But this does not mean that the statute is unconstitutional in its entirety. In *Ravin*, the supreme court acknowledged that the legislature could validly prohibit possession of marijuana in the home if the marijuana was of such a quantity as to be "indicative of [possession with] intent to sell rather than possession for personal use." [FN17] Thus, in *Walker v. State* [FN18] we held that the legislature could *543 validly prohibit possession of eight ounces or more of marijuana--even if the marijuana was possessed by an adult in their home for personal use. [FN19]

FN17. 537 P.2d at 511.

FN18. 991 P.2d 799 (Alaska App.1999).

FN19. *Id.*

The question inherent in this analysis is whether, consistent with *Ravin*, the legislature might validly prohibit all instances of marijuana possession in some amount less than eight ounces. As we noted in *Walker*, the *Ravin* decision "does not elaborate on what amount of marijuana might constitute an 'amount ... indicative of intent to sell.'" [FN20]

FN20. *Id.* (quoting *Ravin*, 537 P.2d at 511).

Before the marijuana laws were amended by voter initiative in 1990, the Alaska Legislature had (by statute) defined the amount of marijuana that adults could lawfully possess in their home for personal use. Under the pre-1990 statutes governing marijuana possession, an adult could be prosecuted for possessing four ounces or more of marijuana in their home for personal use. Possession of less than this amount was not a crime. [FN21]

FN21. See former AS 11.71.060 and AS 11.71.070.

There are no appellate cases testing the constitutionality of the legislature's four-ounce dividing line. However, Noy has not argued that this four-ounce dividing line violates *Ravin*. We note, moreover, that article I, section 22 entrusts the legislature with the duty of implementing the constitutional right of privacy. Given the language of article I, section 22, and given the deference that we should pay to the decision of a co-equal branch of government, we conclude that the legislature's four-ounce dividing line is presumptively constitutional under *Ravin*.

[4] Although we have declared that the current version of AS 11.71.060(a) is unconstitutional (because it prohibits conduct that is constitutionally protected), we have a duty to preserve the statute to the extent possible--that is, to the extent that it is consistent with the constitution. [FN22] The pre 1990 version of the statute contained a four-ounce ceiling on marijuana possession in the home by adults for personal use--a ceiling that is presumptively constitutional. The 1990 voter initiative expanded the scope of AS 11.71.060(a) by eliminating this four-ounce ceiling and declaring

83 P.3d 538
 83 P.3d 538
 (Cite as: 83 P.3d 538)

Page 6

that all possession of marijuana by adults in their homes for personal use was illegal. In this new version, the statute violates article I, section 22 of the constitution. To make the statute conform to the constitution again, we must return it to its pre-1990 version.

FN22. See *Hoffman v. State*, 404 P.2d 644, 646 (Alaska 1965) (ruling that if a statute may be reasonably construed to avoid unconstitutionality, the court must do so).

[5] We thus conclude that, with respect to possession of marijuana by adults in their home for personal use (conduct that is protected under the *Ravin* decision), AS 11.71.060(a)(1) remains constitutional to the extent that it prohibits possession of four ounces or more of marijuana. Restricted in this fashion, AS 11.71.060(a)(1) remains enforceable.

Noy is entitled to a new trial

[6] We have ruled that AS 11.71.060(a) validly continues to prohibit possession of four ounces or more of marijuana, even when the possession is by adults in their home for personal use. But it is possible that the jury convicted Noy even though they believed that he possessed less than this amount. For this reason, we must reverse Noy's conviction.

As explained earlier in this opinion, Noy was prosecuted under AS 11.71.050(a) for possessing eight ounces or more of marijuana. The jury acquitted Noy of this charge, but convicted him under AS 11.71.060(a) for possessing some amount of marijuana less than eight ounces. The problem is that the jury was not asked to determine what lesser amount of marijuana Noy possessed.

[7][8] The State remains free to retry Noy for marijuana possession. However, because the jury acquitted Noy of possessing eight ounces or more of marijuana, the State is collaterally estopped from asserting that Noy possessed eight ounces or more. The State can, however, claim that Noy possessed *544 at least four ounces of marijuana--enough to justify a conviction under AS 11.71.060(a)(1) (as we now have limited it).

Was Noy entitled to raise a common law defense of medical necessity?

At trial, Noy argued that he was entitled to have the jury decide whether his possession of marijuana was justified by medical necessity under AS 11.81.320. The trial judge, District Court Judge Jane F. Kauvar, ruled that Noy could not avail himself of the normal defense of necessity under AS 11.81.320. Rather, Judge Kauvar ruled, Noy could only assert the affirmative defense for the medical use of marijuana codified in AS 11.71.090.

Judge Kauvar's ruling was based on the wording of AS 11.81.320. This statute declares that the defense of necessity remains available "to the extent permitted by common law" unless "[Title 11 or another] statute defining the offense provides exemptions or defenses dealing with the justification of necessity in the specific situation involved," or unless "a legislative intent to exclude the justification of necessity ... otherwise plainly appear[s]." [FN23]

FN23. AS 11.81.320(a)(1)-(2).

Judge Kauvar noted that the legislature has enacted another statute, AS 11.71.090, that specifically deals with the defense of medical necessity for the possession of marijuana. Because of this, Judge Kauvar ruled that Noy's claim of medical necessity for his possession of marijuana had to be raised and litigated under AS 11.71.090 rather than under the general necessity defense codified in AS 11.81.320.

[9] This ruling was correct. The general necessity defense statute, AS 11.81.320, expressly states that a more specific statute takes precedence. Noy asserted that he had a medical need to use marijuana. Alaska Statute 11.71.090 specifically addresses this issue, and defines a separate affirmative defense of medical necessity to possess marijuana. Noy's claim of necessity was therefore governed by the specific necessity statute, AS 11.71.090, rather than by the general necessity statute, AS 11.81.320.

Jury instructions

Noy does not contest the jury instructions that were given at his trial. However, because Noy may be

83 P.3d 538
83 P.3d 538
(Cite as: 83 P.3d 538)

Page 7

retried, we believe we should address the State's contention that Judge Kauvar inaccurately instructed the jury concerning how to determine the weight of harvested marijuana.

END OF DOCUMENT

[10] Judge Kauvar properly instructed the jury that "[m]arijuana means the seeds, leaves, buds, and flowers of the plant[.]" [FN24] But Judge Kauvar also instructed the jury that the aggregate weight of a live marijuana plant was "the weight of the marijuana when reduced to its commonly used form." Based on this instruction, Noy urged the jury to consider only the aggregate weight of the "buds" in determining how much marijuana he had possessed. But the "commonly used form" of marijuana is only relevant when a person is charged with possessing live marijuana plants. [FN25] Noy was only charged with possessing harvested marijuana. Therefore, in the event of a retrial, assuming the State again charges Noy with possessing only harvested marijuana, the district court should not instruct the jury on how to determine the aggregate weight of live marijuana, or allow the parties to argue about the definition of the "commonly used form" of marijuana.

FN24. See AS 11.71.900(14).

FN25. See *Maness v. State*, 49 P.3d 1128, 1134 (Alaska App.2002) (quoting *Gibson v. State*, 719 P.2d 687, 690 (Alaska App.1986)) (the "commonly used form" language of AS 11.71.080 "refers to the method of calculating the aggregate weight of live marijuana plants").

Conclusion

To make AS 11.71.060(a)(1) consistent with article I, section 22 of the Alaska Constitution as interpreted in *Ravin*, we must limit the scope of the statute. As currently written, the statute prohibits possession of any amount of marijuana. But with regard to possession of marijuana by adults in their home for personal use, AS 11.71.060(a)(1) *545 must be interpreted to prohibit only the possession of four ounces or more of marijuana.

The judgment of the district court is REVERSED.

83 P.3d 538

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

Westlaw.

97 P.3d 93
 97 P.3d 93
 (Cite as: 97 P.3d 93)

Page 1

C

Court of Appeals of Alaska.
 STATE of Alaska, Petitioner,
 v.
 Leo Richardson CROCKER Jr., Respondent.
 No. A-8462.

Aug. 27, 2004.

Background: Defendant was charged with fourth-degree controlled substance misconduct after the police executed a search warrant at his home and found marijuana and marijuana-growing equipment. The Superior Court, Third Judicial District, Homer M. Francis Neville, J., found that the search warrant for defendant's home should not have been issued, and the superior court therefore suppressed all of the evidence and dismissed the charges. State appealed.

Holding: The Court of Appeals, Mannheimer, J., held that search warrant application failed to establish probable cause to believe that defendant's possession of marijuana fell outside realm of marijuana possession that was constitutionally protected. Affirmed.

Coats, C.J., filed a dissenting opinion.

West Headnotes

[1] Controlled Substances ↪146

96Hk146 Most Cited Cases

Upon seeking a warrant authorizing the search of a home for marijuana, government's warrant must establish probable cause to believe that the marijuana possessed in that home falls outside the person's constitutional right to privacy, which protects an adult's right to possess less than four ounces of marijuana. Const. Art. 1, § 22.

[2] Controlled Substances ↪6

96Hk6 Most Cited Cases

[2] Controlled Substances ↪49

96Hk49 Most Cited Cases

Personal use of marijuana in an amount less than four ounces is not an affirmative defense to be raised by persons charged with marijuana possession; rather, there exists a constitutional limitation on the government's authority to enact legislation in the first instance that prohibits the possession of marijuana in the privacy of one's home. Const. Art. 1, § 22.

[3] Searches and Seizures ↪113.1

349k113.1 Most Cited Cases

Before a search warrant can lawfully issue, the government must establish probable cause to believe that the evidence being sought is connected to a crime.

[4] Controlled Substances ↪146

96Hk146 Most Cited Cases

No search warrant can issue for evidence of marijuana possession unless the State affirmatively establishes probable cause to believe that the type of marijuana possession at issue in that case is something other than possession for personal use, in an amount less than four ounces. Const. Art. 1, § 22

[5] Criminal Law ↪394.4(6)

110k394.4(6) Most Cited Cases

Search warrant application failed to establish probable cause to believe that defendant's possession of marijuana fell outside the realm of marijuana possession that is constitutionally protected, and therefore evidence obtained under authority of that warrant was properly suppressed; although two officers smelled a strong odor of growing marijuana when they stood at defendant's front door, the search warrant application contained no assertion that the strength of the smell gave the officers any indication of the amount of marijuana that might be growing in the house, and it could not be assumed, in the absence of evidence, that there was a direct proportionality between the strength of the odor and the amount of marijuana giving rise to that odor. Const. Art. 1, § 22.

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

97 P.3d 93
 97 P.3d 93
 (Cite as: 97 P.3d 93)

Page 2

[6] **Controlled Substances** 146

96Hk146 Most Cited Cases

The amount of electricity usage at defendant's house failed to establish probable cause that defendant's possession of marijuana fell outside the realm of marijuana possession that is constitutionally protected; although the search warrant application stated the average rate of electricity consumption, and defendant's usage greatly exceed the average rate, the search warrant application failed to describe the size of defendant's house, and the magistrate who issued the warrant had no way of knowing whether one would reasonably expect defendant's electricity usage to fall within, below, or above the average range for all electricity users. Const. Art. 1, § 22.

*94 Kenneth M. Rosenstein, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Gregg D. Renkes, Attorney General, Juneau, for the Petitioner.

Andrew Haas, Haas & Spigelmyer, Homer, for the Respondent.

Before: COATS, Chief Judge, and MANNHEIMER and STEWART, Judges.

OPINION

MANNHEIMER, Judge.

Leo Richardson Crocker Jr. was charged with fourth-degree controlled substance misconduct after the police executed a search warrant at his home and found marijuana plants, harvested marijuana, and marijuana-growing equipment. The superior court later concluded that the search warrant for Crocker's home should not have been issued. The superior court therefore suppressed all of this evidence and dismissed the charges against Crocker. The State now appeals the superior court's decision.

Our main task in this appeal is to clarify what the State must prove in order to obtain a warrant to enter and search a person's home for evidence of marijuana possession. The issue arises because not all marijuana possession is illegal. In *Ravin v. State*, [FN1] the Alaska Supreme Court held that the privacy provision of our state constitution (Article I, Section 22) protects an adult's right to possess a

limited amount of marijuana in their home for personal use. And recently, in *Noy v. State*, [FN2] we held (based on *Ravin*) that Alaska's marijuana statutes must be construed to allow possession by adults of any amount less than four ounces of marijuana in the home for personal use. [FN3]

FN1. 537 P.2d 494 (Alaska 1975).

FN2. 83 P.3d 538 (Alaska App.2003), *on rehearing*, 83 P.3d 545 (Alaska App.2003).

FN3. *Noy*, 83 P.3d at 542-43, *on rehearing*, 83 P.3d at 546-48.

For the reasons explained in this opinion, we hold that a judicial officer should not issue a warrant to search a person's home for evidence of marijuana possession unless the State's warrant application establishes probable cause to believe that the person's possession of marijuana exceeds the scope of the possession that is constitutionally protected under *Ravin*. And, because the State's warrant *95 application in Crocker's case fails to meet this test, we conclude that the superior court properly suppressed the evidence against Crocker.

A search warrant application must establish probable cause to believe that the property being sought is connected to the commission of a crime.

Under AS 12.35.020, a judicial officer is empowered to issue a warrant authorizing the police to enter a premises and search for specified property if the government's warrant application establishes probable cause to believe:

that the property was stolen or embezzled, or
 that the property was used as a means of committing a crime, or
 that the property is the intended means of committing a crime, and the property either is in the possession of a person who intends to commit the crime or is in the possession of someone else to whom it has been delivered for the purpose of concealing it or otherwise preventing its discovery, or
 that the property constitutes evidence of a particular crime or tends to show that a certain person has committed a particular crime.

In every case, the government must establish probable cause to believe that the property being sought is connected in one of these ways to the

97 P.3d 93
 97 P.3d 93
 (Cite as: 97 P.3d 93)

Page 3

commission (or intended commission) of a crime.

Not all possession of marijuana is a crime. Thus, when the government seeks a warrant authorizing the search of a home for marijuana or related paraphernalia, the government's warrant application must establish probable cause to believe that the marijuana possessed in that home falls outside the type of possession protected under Ravin.

[1] Not all marijuana possession is a crime in Alaska. Under *Ravin* and *Noy*, an adult may possess any amount of marijuana less than four ounces in their home, if their possession is for personal use. Thus, it would seem that a court should not issue a search warrant based on an allegation of marijuana possession unless the State establishes probable cause to believe that the type of marijuana possession at issue in the case is something other than the type of possession protected under *Ravin*. (For instance, a court might properly issue a search warrant if the State establishes probable cause to believe that the marijuana is possessed for commercial purposes, or that the amount of marijuana is four ounces or more.)

[2] But the State disputes this conclusion. In its brief to this Court, the State argues that *Ravin* does not actually forbid the legislature from criminalizing the possession of marijuana. Rather (the State argues), *Ravin* established an affirmative defense--the defense of personal use--that can be raised by people who are charged with marijuana possession. Based on this interpretation of *Ravin*, the State argues that all possession of marijuana continues to be crime in Alaska--and, thus, a judicial officer can lawfully issue a search warrant for evidence of marijuana possession so long as the State establishes probable cause to believe that the premises to be searched contains *any* marijuana (or any other property tending to show possession of marijuana).

We addressed and rejected this same argument in our opinion on rehearing in *Noy*:

Ravin did not create an affirmative defense that defendants might raise, on a case-by-case basis, when they were prosecuted for possessing marijuana in their home for personal use.... [T]he Alaska Supreme Court has repeatedly and

consistently characterized the *Ravin* decision as announcing a constitutional limitation on the government's authority to enact legislation prohibiting the possession of marijuana in the privacy of one's home.

Accordingly, we reject the State's suggestion that *Ravin* left Alaska's marijuana statutes intact but created an affirmative defense to be litigated in each individual case.

Noy (opinion on rehearing), 83 P.3d at 547-48.

The State further argues that if search warrant applications must establish probable cause to believe that the marijuana possession *96 at issue in that case falls outside of the marijuana possession protected by *Ravin*, this would be tantamount to "a presumption that all marijuana possessed in a home is for purely personal use". But this "presumption" of non-criminality is built into the search and seizure clause of the Alaska Constitution and the statutory law governing the issuance of search warrants.

[3] Before a search warrant can lawfully issue, the government must establish probable cause to believe that the evidence being sought is connected to a crime. This same rule governs search warrants for all controlled substances, not just marijuana.

Every day, people obtain controlled substances legally through a doctor's prescription. For instance, several prescription painkillers contain codeine, which is a Schedule IA controlled substance. [FN4] Our state constitution protects people from government intrusion into their homes unless the government affirmatively establishes a valid reason for the intrusion. Thus, even though the police may have firm information that a person currently possesses codeine in their home, a judicial officer should not issue a warrant that authorizes the police to enter the person's home and search the person's cupboards and drawers for evidence of this codeine possession unless the police also present the magistrate with some affirmative reason to believe that the codeine was obtained illegally or that (having been obtained lawfully) it is being distributed illegally.

FN4. AS 11.71.140(b)(1)(G).

[4] The same rule applies to marijuana possession.

97 P.3d 93
 97 P.3d 93
 (Cite as: 97 P.3d 93)

Page 4

Under the supreme court's decision in *Ravin* and our recent decision in *Noy*, not all possession of marijuana is illegal. Rather, Alaskans have a right to possess a limited amount of marijuana for personal use in their homes. We accordingly hold that no search warrant can issue for evidence of marijuana possession unless the State affirmatively establishes probable cause to believe that the type of marijuana possession at issue in that case is something other than the type of possession protected under *Ravin*.

As the State correctly points out, the question is one of probable cause, not ultimate proof. Thus, the search warrant application need not negate every other reasonable, exculpatory explanation of the observed facts. [FN5] But the search warrant application can not rely solely on the fact that someone is in possession of marijuana. The warrant application must provide an affirmative reason to conclude that the possession is illegal or that the marijuana otherwise constitutes evidence of a crime.

FN5. See *McCoy v. State*, 491 P.2d 127, 130 (Alaska 1971); *State v. Grier*, 791 P.2d 627, 632 n. 3 (Alaska App.1990).

In his dissent, Judge Coats asserts that this holding is a departure from precedent. He points out that in several prior decisions, this Court has accepted the premise that the smell of growing marijuana could establish probable cause for a search of a home. But those cases were decided in the context of state law that forbade any and all possession of marijuana (and the parties did not attack that law under *Ravin*). Thus, in those prior instances, the smell of growing marijuana emanating from a house was persuasive evidence that someone was breaking the law. That is no longer the case.

Judge Coats also seconds the State's argument that, if we require the police to present the magistrate with some reason to believe that a homeowner's possession of marijuana is illegal, we are creating the unwarranted "presumption" that all possession of marijuana is legal. This is a misunderstanding of our decision.

Our holding does not rest on a presumption, one way or the other, about whether a particular instance of possession of marijuana in the home is

legal. Rather, our holding rests on the constitutional principle that no search warrant can issue until the police present a magistrate with good reason to believe that the law has been broken (and that evidence of that illegality can be found on the premises to be searched).

Evidence that a person possesses an unspecified quantity of marijuana in their home does not, standing alone, establish probable cause to believe that the person is breaking *97 the law. Thus, without some additional indication of illegality (for instance, evidence suggesting that the marijuana is being sold, or that the amount of marijuana equals or exceeds the statutory ceiling of four ounces), the search and seizure provision of our state constitution (Article I, Section 14) prohibits the issuance of a search warrant.

Under the law advocated by the State and by Judge Coats in his dissent (that is, if possession of any amount of marijuana in one's home constituted adequate grounds for the issuance of a search warrant), Alaska citizens would have the constitutional right to possess marijuana for personal use in their homes, but they would exercise this right at their peril--because their possession of marijuana would subject them to thorough-going police searches of their homes. If this were the law, the Alaska Constitution's protection of the right of privacy in one's home--the cornerstone of the *Ravin* decision--would be eviscerated.

We therefore reiterate that no search warrant can issue for evidence of marijuana possession unless the State affirmatively establishes probable cause to believe that the type of marijuana possession at issue in that case is something other than the type of possession protected under *Ravin*.

The State's search warrant application in Crocker's case failed to establish probable cause to believe that his possession of marijuana fell outside the realm of marijuana possession that is protected under Ravin.

[5] The search warrant application in Crocker's case begins with seven pages of "boilerplate"--dozens of paragraphs containing general descriptions of how marijuana is normally grown and processed. The warrant application then contains one page of factual assertions specific to

97 P.3d 93
 97 P.3d 93
 (Cite as: 97 P.3d 93)

Page 5

Crocker's case.

According to these case-specific assertions, the state troopers received a tip from an unidentified "confidential source" that marijuana cultivation was being conducted in the Anchor Point residence of Debra Steik. Based on this tip, two officers visited the Steik residence "to conduct an investigative contact". The two officers smelled "a strong odor of growing marijuana" when they stood at Steik's front door. Thus, there was ample probable cause to believe that marijuana was being grown inside the residence. The question, however, is whether there was probable cause to believe that this marijuana was being grown for commercial purposes or that the amount of marijuana inside the house exceeded the amount protected under the *Ravin* and *Noy* decisions.

The State asserts that the strength of the smell (including the fact that the officers could detect the odor while standing outside the house) tends to show that the amount of marijuana inside the house must have exceeded the amount protected by *Ravin* and *Noy*. But the search warrant application contains no assertion that the strength of the smell gave the officers any indication of the amount of marijuana that might be growing in the house.

Moreover, we can not simply assume that there is a direct proportionality between the strength of the odor and the amount of marijuana giving rise to that odor. We addressed a similar issue in *Ballard v. State*, 955 P.2d 931 (Alaska App.1998), where we concluded that nystagmus (an involuntary "jerking" of a person's eyeball as they attempt to follow the path of a moving object) is a reliable indicator of alcohol consumption, but that there is no direct correlation between the *degree* of a person's nystagmus and the amount of their alcohol consumption or intoxication. *Id.* at 933, 939- 940, 942.

There may or may not be a correlation between the strength of the odor of growing marijuana and the amount of marijuana being grown. But the search warrant application in the present case makes no assertion concerning such a potential correlation, and we will not assume such a correlation in the absence of evidence.

Moreover, even if such a correlation exists, the officer in this case merely asserted that the odor was "strong". There was nothing to indicate whether an odor of this unexplained degree of strength provided a reasonable basis for concluding that the amount of marijuana in the house exceeded the amount protected under *Ravin* and *Noy*.

*98 [6] The State also argues that the amount of electricity usage at the Steik residence provided probable cause to believe that the amount of marijuana inside the house exceeded the amount of marijuana protected under *Ravin* and *Noy*.

After receiving the tip from their "confidential source" that marijuana was being grown at the Steik residence, the police--employing unspecified means-- conducted a "check" of the utility usage at the residence. They discovered that, over the preceding thirteen months, the average electricity usage at Steik's home was 56.6 kilowatt hours per day. The officer who applied for the search warrant asserted that, "[b]ased on [his] training and experience, the [electricity] consumption at [Steik's] residence [was] higher than average for a home of [its] size."

One of the boilerplate paragraphs of the search warrant application contains an assertion that, according to the Homer Electric Association, "prospective customers should expect an average monthly [electricity] consumption of approximately 22 [kilowatt-hours] per day with natural gas heating, and 27 to 31 [kilowatt-hours] per day with electric heat." However, the search warrant application does not describe Steik's house (other than identifying its address). The magistrate had no way of knowing whether Steik's house was of average size or was smaller or larger than average. Thus, the magistrate had no way of knowing whether one would reasonably expect Steik's electricity usage to fall within, below, or above the average range for all of the Homer Electric Association's customers.

Indeed, when the officer who applied for the search warrant made his assertion about the "higher than average" electricity usage at Steik's residence, he did not rely on the estimate given by the Homer Electric Association. Rather, the officer relied on his "training and experience". But the officer did

97 P.3d 93
 97 P.3d 93
 (Cite as: 97 P.3d 93)

Page 6

not explain what training or experience he might have received that would allow him to offer an informed opinion concerning the typical or average electricity usage for homes of various sizes.

And although the officer asserted that the electricity usage at Steik's home was "higher than average" for a house its size, the officer did not say how much higher than average this usage was. When an "average" amount of electricity usage has been identified for a particular type or size of house, this means that many (conceivably, up to half) of those houses will have electricity usage that is *higher* than average. Thus, even if we credit the officer's assertion that the Steik residence was using more electricity than average for a house its size, this unelaborated assertion did not significantly bolster the assertion that Steik's house was the site of marijuana cultivation. Much less did this "higher than average" electricity usage establish probable cause to believe that the amount of marijuana being cultivated in the house exceeded the amount protected under *Ravin* and *Noy*.

For these reasons, we conclude that even though the search warrant application established probable cause to believe that marijuana cultivation was being conducted inside the residence, the warrant application failed to establish probable cause to believe that this marijuana cultivation was for commercial purposes or that the amount of marijuana being cultivated exceeded the amount protected under *Ravin* and *Noy*. Accordingly, the search warrant should not have been issued, and the superior court correctly suppressed the evidence obtained under the authority of that warrant.

Conclusion

The decision of the superior court is AFFIRMED.

COATS, C.J., dissents.

COATS, Chief Judge, dissenting.

In reviewing whether a magistrate properly issued a search warrant, this court is to give the magistrate's findings great deference. This court "view[s] the evidence in the light most favorable to upholding the warrant and will only invalidate the warrant if the magistrate abused her discretion." [FN1] We are *99 to uphold the decision to issue the search

warrant in doubtful or marginal cases. [FN2] When I apply this standard, I conclude that the information contained in the warrant established a fair probability that Crocker possessed an unlawful amount of marijuana. I would therefore uphold the warrant.

FN1. *Van Buren v. State*, 823 P.2d 1258, 1261 (Alaska App.1992) (citing *State v. Chapman*, 783 P.2d 771, 772 (Alaska App.1989)).

FN2. *McClelland v. State*, 928 P.2d 1224, 1225 (Alaska App.1996); *State v. Conway*, 711 P.2d 555, 557 (Alaska App.1985).

In several prior decisions, this court has upheld search warrants that were based primarily on testimony from police officers that they smelled the strong odor of growing marijuana coming from a particular source. [FN3] In its decision today, the court overrules all these prior cases and adds a further requirement for the State to obtain a warrant: the State must prove that the growing marijuana was not a small quantity being grown for personal use, protected by *Ravin v. State*. [FN4] I would adhere to our precedent.

FN3. See, e.g., *Lustig v. State*, 36 P.3d 731, 732-33 (Alaska App.2001); *Wallace v. State*, 933 P.2d 1157, 1163 (Alaska App.1997); *McClelland*, 928 P.2d at 1226-27; *Landers v. State*, 809 P.2d 424, 424-25, 426-27 (Alaska App.1991).

FN4. 537 P.2d 494 (Alaska 1975).

Our former cases, going back many years, accepted the conclusion that where the police could establish that there was a strong odor of growing marijuana, there was probable cause that there was criminal activity and that a search warrant could properly be issued. Without any notice to the State, the court has suddenly reversed ground. The court now assumes that a marijuana growing operation is protected by *Ravin* and that the State has the duty to disprove this presumption before obtaining a search warrant. I do not see any basis for the majority's presumption. [FN5] and therefore, I would follow our former precedent. [FN6]

97 P.3d 93
 97 P.3d 93
 (Cite as: 97 P.3d 93)

Page 7

FN5. See *Illinois v. Gates*, 462 U.S. 213, 245 n. 13, 103 S.Ct. 2317, 2335 n. 13, 76 L.Ed.2d 527 (1983) (stating that "innocent behavior frequently will provide the basis for a showing of probable cause"); *Van Sandt v. Brown*, 944 P.2d 449, 452 (Alaska 1997) (quoting *Murdock v. Stout*, 54 F.3d 1437, 1441 (9th Cir.1995)) (stating that probable cause "requires only a fair probability or substantial chance of criminal activity, not an actual showing that such activity occurred"); *McCoy v. State*, 491 P.2d 127, 130 (Alaska 1971) (holding that probable cause existed despite possible innocent explanation for conduct); *Badoino v. State*, 785 P.2d 39, 41 (Alaska App.1990) (quoting *Harrelson v. State*, 516 P.2d 390, 396 (Alaska 1973)) ("Probable cause to issue a search warrant exists when 'reliable information is set forth in sufficient detail to warrant a reasonably prudent [person] in believing that a crime has been or was being committed.' "); *State v. Grier*, 791 P.2d 627, 632 n. 3 (Alaska App.1990) ("[P]robable cause is established even though the facts known to the officer could also be reconciled with innocence."); *Dunn v. State*, 653 P.2d 1071, 1079 (Alaska App.1982) (holding that probable cause existed even though "various factors, if taken individually, are as readily consistent with innocence as guilt, ... the main point to be made is that the factors did not occur individually, and in isolation from each other"); *People v. Atley*, 727 P.2d 376, 377-78 (Colo.1986) (holding that the state established probable cause when the suspect's apartment did not appear to be lived in and the apartment contained a mushroom growing operation even though the informant's observations were as consistent with growing lawful mushroom plants, as they were with growing psychedelic mushrooms containing psilocybin, a controlled substance).

FN6. See *Planned Parenthood of Southeastern Penn. v. Casey*, 505 U.S. 833, 854, 112 S.Ct. 2791, 2808, 120

L.Ed.2d 674 (1992) (explaining that courts have a duty and obligation to follow precedent); *State v. Coon*, 974 P.2d 386, 394 (Alaska 1999) (quoting *State v. Fremgen*, 914 P.2d 1244, 1245 (Alaska 1996)) (stating that courts should reverse prior decisions only when they are "clearly convinced that the rule was originally erroneous or is no longer sound because of changed conditions, and that more harm than good would result from a departure from precedent").

The majority states that our prior cases are questionable authority because they were decided "in the context of a state law that forbade any and all possession of marijuana." But *Ravin* has been the law in Alaska since 1975. So in our prior cases the parties and the court had to be aware of *Ravin*. Furthermore, the state statute which was based on the initiative that "forbade any and all possession of marijuana" was in effect at the time the warrant was issued in this case. *Noy v. State*, striking down that law, was decided long after the magistrate issued the search warrant in Crocker's case. [FN7]

FN7. *Noy v. State*, 83 P.3d 538 (Alaska App.2003) was issued in 2003, while the warrant in this case was issued in 2001.

*100 I certainly believe, as does the majority, that it is this court's duty to follow the supreme court's decision in *Ravin*. My concern, however, is that the majority's decision actually threatens the viability of *Ravin* by departing from our former precedent and operating on the assumption that a marijuana growing operation is legal unless the State shows otherwise. The majority's decision makes it difficult for the State to enforce legitimate laws prohibiting the possession and sale of marijuana.

97 P.3d 93

END OF DOCUMENT

Westlaw.

537 P.2d 494.
 537 P.2d 494
 (Cite as: 537 P.2d 494)

Page 1

▷

Supreme Court of Alaska.
 Irwin RAVIN, Petitioner,
 v.
 STATE of Alaska, Respondent.
 No. 2135.

May 27, 1975.
 As Amended May 28, 1975.

Proceeding was instituted on defendant's motion to dismiss charge of violation of statute proscribing possession of marijuana. The District Court, Third Judicial District, Anchorage, Dorothy D. Tyner, J., denied motion to dismiss and the superior court affirmed and petition for review from the superior court's affirmance was granted. The Supreme Court, Rabinowitz, C. J., held that need for control of drivers under influence of marijuana and existing doubts as to safety of marijuana demonstrate a sufficient justification for statutory proscription of possession of marijuana, and thus an individual's right to possess or ingest marijuana while driving is subject to statute proscribing possession of marijuana; and that no adequate justification exists for State's intrusion into citizen's right of privacy by its prohibition of possession of marijuana by an adult for personal consumption in home, and thus possession of marijuana by adults at home for personal use is constitutionally protected.

Remanded for further proceedings.

Boochever and Connor, JJ., filed specially concurring opinions.

West Headnotes

[1] Criminal Law ⇨82(2)

110k1030(2) Most Cited Cases

Issue of cruel and unusual punishment in application of statute proscribing possession of marijuana to possession of marijuana for personal use was not considered by Supreme Court, since issue was not raised below or in petition for review to Supreme Court. Rules of Appellate Procedure,

rule 24(c); AS 17.12.010, 17.12.150.

[2] Constitutional Law ⇨82(1)

92k82(1) Most Cited Cases

(Formerly 92k82)

Once a fundamental right under State Constitution has been shown to be involved and it has been further shown that this constitutionally protected right has been impaired by governmental action, government must come forward and meet its substantial burden of establishing that abridgment in question was justified by a compelling governmental interest.

[3] Constitutional Law ⇨82(1)

92k82(1) Most Cited Cases

(Formerly 92k82)

When governmental action interferes with an individual's freedom in an area which is not characterized as fundamental, a less stringent test is ordinarily applied and, in such cases, court's task is to determine whether legislative enactment has a reasonable relationship to a legitimate government purpose, and under this "rational basis" test state need only demonstrate existence of facts which can serve as a rational basis for belief that measure would properly serve public interest.

[4] Constitutional Law ⇨82(7)

92k82(7) Most Cited Cases

(Formerly 92k82)

If governmental restrictions interfere with individual's right to privacy, court will require that relationship between means and ends be not merely reasonable but close and substantial.

[5] Constitutional Law ⇨82(7)

92k82(7) Most Cited Cases

(Formerly 92k82)

Federal right to privacy arises only in connection with other fundamental rights, such as the grouping of rights which involve the home, and even in connection with penumbra of home-related rights, right of privacy in sense of immunity from prosecution is absolute only when private activity will not endanger or harm the general public.

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

537 P.2d 494.
537 P.2d 494
(Cite as: 537 P.2d 494)

Page 2

Const. art. 1, § 22; U.S.C.A.Const. Amends. 1, 3-5, 14.

[6] Constitutional Law ⇨82(7)

92k82(7) Most Cited Cases
(Formerly 138k41 Drugs and Narcotics, 92k82)
Right to privacy amendment to Alaska Constitution cannot be read so as to make the possession or ingestion of marijuana itself a fundamental right. Const. art. 1, § 22.

[7] Constitutional Law ⇨82(7)

92k82(7) Most Cited Cases
(Formerly 92k82)
Privacy amendment to Alaska Constitution was intended to give recognition and protection to the home. Const. art. 1, § 22.

[8] Constitutional Law ⇨82(7)

92k82(7) Most Cited Cases
(Formerly 92k82)
Privacy in the home is a fundamental right. Const. art. 1, § 22; U.S.C.A.Const. Amend. 4.

[9] Constitutional Law ⇨82(7)

92k82(7) Most Cited Cases
(Formerly 92k82)
Right of privacy in the home must yield when it interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare. Const. art. 1, § 22; U.S.C.A.Const. Amend. 4.

[10] Constitutional Law ⇨82(7)

92k82(7) Most Cited Cases
(Formerly 92k82)
No one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely. Const. art. 1, § 22; U.S.C.A.Const. Amend. 4.

[11] Constitutional Law ⇨82(7)

92k82(7) Most Cited Cases
(Formerly 92k82)
Right of privacy in home is limited in that possession of substances is guaranteed only for purely private, noncommercial use in home. Const. art. 1, § 22; U.S.C.A.Const. Amend. 4.

[12] Constitutional Law ⇨70.1(10)

92k70.1(10) Most Cited Cases

In determining validity of legislative proscription of possession of marijuana, it is not function of court to reassess scientific evidence in the manner of a legislature.

[13] Constitutional Law ⇨82(1)

92k82(1) Most Cited Cases
(Formerly 92k82)
State cannot impose its own notions of morality, propriety, or fashion on individuals when the public has no legitimate interest in the affairs of those individuals.

[14] Constitutional Law ⇨82(1)

92k82(1) Most Cited Cases
(Formerly 92k82)
The right of an individual to do as he pleases is not absolute and it can be made to yield when it begins to infringe on the rights and welfare of others.

[15] Constitutional Law ⇨81

92k81 Most Cited Cases
Authority of state to control activities of its citizens is not limited to activities which have a present and immediate impact on public health or welfare.

[16] Constitutional Law ⇨82(7)

92k82(7) Most Cited Cases
(Formerly 92k82)
State is under no obligation to allow otherwise "private" activity which will result in numbers of people becoming public charges or otherwise burdening the public welfare.

[17] Health ⇨356

198Hk356 Most Cited Cases
(Formerly 199k20 Health and Environment)
Statutes designed to protect the public health will receive a liberal construction.

[18] Health ⇨350

198Hk350 Most Cited Cases
(Formerly 199k20 Health and Environment)
There is a presumption in favor of public health measures.

[19] Health ⇨350

198Hk350 Most Cited Cases
(Formerly 199k20 Health and Environment)

[19] Health ⇨372

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

537 P.2d 494.
537 P.2d 494
(Cite as: 537 P.2d 494)

Page 3

198Hk372 Most Cited Cases
(Formerly 199k20 Health and Environment)
When there is substantial doubt as to safety of a given substance or situation for public health, controls intended to obviate the danger will usually be upheld.

[20] Automobiles ↪332
48Ak332 Most Cited Cases
Need for control of drivers under influence of marijuana and existing doubts as to safety of marijuana demonstrate a sufficient justification for statutory proscription of possession of marijuana; and thus an individual's right to possess or ingest marijuana while driving is subject to statute proscribing possession of marijuana. AS 05.25.060, 17.12.010, 17.12.150, 28.35.030; Const. art. 1, § 22; U.S.C.A.Const. Amends. 1, 14.

[21] Controlled Substances ↪6
96Hk6 Most Cited Cases
(Formerly 138k43.1, 138k43 Drugs and Narcotics)
No adequate justification exists for State's intrusion into citizen's right of privacy by its prohibition of possession of marijuana by an adult for personal consumption in home, and thus possession of marijuana by adults at home for personal use is constitutionally protected. AS 17.12.010, 17.12.150; Const. art. 1, § 22; U.S.C.A.Const. Amends. 1, 4, 14.

[22] Constitutional Law ↪82(7)
92k82(7) Most Cited Cases
(Formerly 92k82)
Privacy of individual's home cannot be breached absent a persuasive showing of a close and substantial relationship of the intrusion to a legitimate governmental interest.

[23] Controlled Substances ↪25
96Hk25 Most Cited Cases
(Formerly 138k68.1, 138k68, 138k62.1, 138k62 Drugs and Narcotics)

[23] Controlled Substances ↪33
96Hk33 Most Cited Cases
(Formerly 138k62.1, 138k62 Drugs and Narcotics)

[23] Controlled Substances ↪36
96Hk36 Most Cited Cases
(Formerly 138k62.1, 138k62 Drugs and Narcotics)

Neither federal nor Alaska Constitution affords protection for the buying or selling of marijuana, nor absolute protection for its use or possession in public. AS 17.12.010, 17.12.150; Const. art. 1, § 22; U.S.C.A.Const. Amends. 1, 4, 14.

[24] Controlled Substances ↪29
96Hk29 Most Cited Cases
(Formerly 138k66 Drugs and Narcotics)
Possession at home of amounts of marijuana indicative of intent to sell rather than possession for personal use is unprotected. AS 17.12.010, 17.12.150; Const. art. 1, § 22; U.S.C.A.Const. Amends. 1, 4, 14.

[25] Constitutional Law ↪250.1(2)
92k250.1(2) Most Cited Cases

[25] Controlled Substances ↪6
96Hk6 Most Cited Cases
(Formerly 138k43.1, 138k43 Drugs and Narcotics)
Statute proscribing possession of marijuana is not violative of equal protection on ground that other commonly used recreational drugs, such as alcohol and tobacco, are not proscribed, even though they may inflict more damage on user than does marijuana. AS 17.12.010, 17.12.150; Const. art. 1, § 22; U.S.C.A.Const. Amends. 1, 14.

[26] Health ↪354
198Hk354 Most Cited Cases
(Formerly 199k20 Health and Environment)
It is not irrational for legislature to regulate those public health areas where it can do so, when other areas exist where controls are less feasible.

[27] Controlled Substances ↪6
96Hk6 Most Cited Cases
(Formerly 138k43.1, 138k43 Drugs and Narcotics)
Fact that marijuana may be the least harmful of drugs covered by statute proscribing possession is not alone sufficient to make classification of marijuana with other drugs covered irrational. AS 17.10.010 et seq., 17.12.010, 17.12.150(3); U.S.C.A.Const. Amends. 1, 14.

[28] Constitutional Law ↪70.3(12)
92k70.3(12) Most Cited Cases
Wisdom of statute proscribing possession of marijuana was for legislature, rather than judiciary. AS 17.10.010 et seq., 17.12.010, 17.12.150(3).

537 P.2d 494.
537 P.2d 494
(Cite as: 537 P.2d 494)

Page 4

*496 R. Collin Middleton and Robert H. Wagstaff, Anchorage, for petitioner.

Stephen G. Dunning, Asst. Dist. Atty., Joseph D. Balfe, Dist. Atty., Anchorage, Norman C. Gorsuch, Atty. Gen., Juneau, for respondent

OPINION

Before RABINOWITZ, C. J., and CONNOR, ERWIN, BOOCHEVER and FITZGERALD, JJ.

RABINOWITZ, Chief Justice.

The constitutionality of Alaska's statute prohibiting possession of marijuana is put in issue in this case. Petitioner Ravin was arrested on December 11, 1972 and charged with violating AS 17.12.010. [FN1] Before trial Ravin attacked the constitutionality of AS 17.12.010 by a motion to dismiss in which he asserted that the State had violated his right of privacy under both the federal and Alaska constitutions, and further violated the equal protection provisions of the state and federal constitutions. Lengthy hearings on the questions were held before District Court Judge Dorothy D. Tyner, at which testimony from several expert witnesses was received. Ravin's motion to dismiss was denied by Judge Tyner. The superior court then granted review and after affirmance by the superior court, we, in turn, granted Ravin's petition for review from the superior court's affirmance.

FN1. AS 17.12.010 provides:

Except as otherwise provided in this chapter, it is unlawful for a person to manufacture, compound, counterfeit, possess, have under his control, sell, prescribe, administer, dispense, give, barter, supply or distribute in any manner, a depressant, hallucinogenic or stimulant drug.

AS 17.12.150 defines 'depressant, hallucinogenic, or stimulant drug' to include all parts of the plant Cannabis Sativa L.

[1] Here Ravin raises two basic claims: first, that there is no legitimate state interest in prohibiting possession of marijuana by adults for personal use, in view of the right to privacy; and secondly, that

the statutory classification of marijuana as a dangerous drug, while use of alcohol and tobacco is not prohibited, denies *497 him due process and equal protection of law. [FN2]

FN2. In his briefs before this court, Ravin also attempts to raise the issue of cruel and unusual punishment in the application of AS 17.12.010 to possession of marijuana for personal use. Because this issue was not raised below or in the petition for review to this court, we decline to consider the issue in this proceeding. See Appellate Rule 24(c). Cf. *Moran v. Holman*, 501 P.2d 769, 770 n. 1 (Alaska 1972).

We first address petitioner's contentions that his constitutionally protected right to privacy compels the conclusion that the State of Alaska is prohibited from penalizing the private possession and use of marijuana. Ravin's basic thesis is that there exists under the federal and Alaska constitutions a fundamental right to privacy, the scope of which is sufficiently broad to encompass and protect the possession of marijuana for personal use. Given this fundamental constitutional right, the State would then have the burden of demonstrating a compelling state interest in prohibiting possession of marijuana. In light of these controlling principles, petitioner argues that the evidence submitted below by both sides demonstrates that marijuana is a relatively innocuous substance, at least as compared with other less-restricted substances, and that nothing even approaching a compelling state interest was proven by the State.

Ravin's arguments necessitate a close examination of the contours of the asserted right to privacy and the scope of this court's review of the legislature's determination to criminalize possession of marijuana.

[2] We have previously stated the tests to be applied when a claim is made that state action encroaches upon an individual's constitutional rights. In *Breese v. Smith*, 501 P.2d 159 (Alaska 1972), we had before us a school hairlength regulation which encroached on what we determined to be the individual's fundamental right to determine his own personal appearance. There we stated:

537 P.2d 494.
537 P.2d 494
(Cite as: 537 P.2d 494)

Page 5

Once a fundamental right under the constitution of Alaska has been shown to be involved and it has been further shown that this constitutionally protected right has been impaired by governmental action, then the government must come forward and meet its substantial burden of establishing that the abridgement in question was justified by a compelling governmental interest. [FN3]

FN3. 501 P.2d at 171. See *State v. Wylie*, 516 P.2d 142 (Alaska 1973); *State v. Van Dort*, 502 P.2d 453 (Alaska 1972); *Gray v. State*, 525 P.2d 524, 527 (Alaska 1974); *Gilbert v. State*, 526 P.2d 1131, 1133 (Alaska 1974); *State v. Adams*, 522 P.2d 1125 (Alaska 1974).

This standard is familiar federal law as well. As stated by the United States Supreme Court:

Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling. [FN4]

FN4. *Bates v. Little Rock*, 361 U.S. 516, 524, 80 S.Ct. 412, 417, 4 L.Ed.2d 480, 486 (1960). See *Roe v. Wade*, 410 U.S. 113, 155, 93 S.Ct. 705, 35 L.Ed.2d 147, 178 (1973).

The law must be shown 'necessary, and not merely rationally related, to the accomplishment of a permissible state policy.' [FN5]

FN5. *McLaughlin v. Florida*, 379 U.S. 184, 196, 85 S.Ct. 283, 290, 13 L.Ed.2d 222, 231 (1964), quoted in the concurrence of Mr. Justice Goldberg in *Griswold v. Connecticut*, 381 U.S. 479, 497, 85 S.Ct. 1678, 14 L.Ed.2d 510, 523 (1965).

[3] When, on the other hand, governmental action interferes with an individual's freedom in an area which is not characterized as fundamental, a less stringent test is ordinarily applied. In such cases our task is to determine whether the legislative enactment has a reasonable relationship to a legitimate governmental purpose. [FN6] Under this latter test, which is sometimes referred to as the

'rational basis' test, the State *498 need only demonstrate the existence of facts which can serve as a rational basis for belief that the measure would properly serve the public interest.

FN6. See *Concerned Citizens v. Kenai Peninsula Borough*, 527 P.2d 447, 452 (Alaska 1974); *Mobil Oil Corp v. Local Boundary Comm'n*, 518 P.2d 92, 101 (Alaska 1974); *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923).

In our recent opinion in *Lynden Transport, Inc. v. State*, 532 P.2d 700 (Alaska 1975), we recognized the existence of considerable dissatisfaction with the fundamental right-compelling state interest test. There we said:

It has been suggested that there is mounting discontent with the rigid two-tier formulation of the equal protection doctrine, and that the United States Supreme Court is prepared to use the clause more rigorously to invalidate legislation without expansion of 'fundamental rights' or 'suspect' categories and the concomitant resort to the 'strict scrutiny' tests. We are in agreement with the view that the Supreme Court's recent equal protection decisions have shown a tendency towards less speculative, less deferential, more intensified means-to-end inquiry when it is applying the traditional rational basis test and we approve of this development. See Gunther, *Forward: In Search of Evolving Doctrine on a Changing Court: A Model for Newer Equal protection*, 86 Harv.L.Rev. 1 (1972). See, e. g., *James v. Strange*, 467 U.S. 128, 92 S.Ct. 2027, 32 L.Ed.2d 600 (1972); *Jackson v. Indiana*, 406 U.S. 715, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972); *Humphrey v. Cady*, 405 U.S. 504, 92 S.Ct. 1048, 31 L.Ed.2d 394 (1972); *Eisenstadt v. Baird*, 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972); *Reed v. Reed*, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971).

[4] This court has previously applied a test different from the rigid two-tier formulation to state regulations. In *State v. Wylie*, [FN7] we tested durational residency requirements for state employment by both the compelling state interest test and a test which examined whether the means chosen suitably furthered an appropriate

537 P.2d 494.
537 P.2d 494
(Cite as: 537 P.2d 494)

Page 6

governmental interest. [FN8] It is appropriate in this case to resolve Ravin's privacy claims by determining whether there is a proper governmental interest in imposing restrictions on marijuana use and whether the means chosen bear a substantial relationship to the legislative purpose. If governmental restrictions interfere with the individual's right to privacy, we will require that the relationship between means and ends be not merely reasonable but close and substantial.

FN7. 516 P.2d 142 (Alaska 1973).

FN8. *Id.* at n. 16.

Thus, our undertaking is two-fold: we must first determine the nature of Ravin's rights, if any, abridged by AS 17.12.010, and, if any rights have been infringed upon, then resolve the further question as to whether the statutory impingement is justified.

As we have mentioned, Ravin's argument that he has a fundamental right to possess marijuana for personal use rests on both federal and state law, and centers on what may broadly be called the right to privacy. This 'right' is increasingly the subject of litigation and commentary and is still a developing legal concept. [FN9]

FN9. The right to privacy was recently made explicit in Alaska by an amendment to the state constitution. Alaska Const. Art. I, s 22.

In Ravin's view, the right to privacy involved here is an autonomous right which gains special significance when its situs is found in a specially protected area, such as the home. Ravin begins his privacy argument by citation of and reliance upon *Griswold v. Connecticut*, [FN10] in which the Supreme Court of the United States struck down as unconstitutional a state statute effectively barring the dispensation of birth control information to married persons. Writing for five members of the Court, Mr. Justice Douglas noted that rights protected by the Constitution are not limited to those specifically enumerated in the *499 Constitution. In order to secure the enumerated rights, certain peripheral rights must be recognized. In other words, the 'specific guarantees in the Bill of

Rights have penumbras, formed by emanations from those guarantees that help give them life and substance.' [FN11] Certain of these penumbral rights create 'zones of privacy', for example, First Amendment rights of association, Third and Fourth Amendment rights pertaining to the security of the home, and the Fifth Amendment right against self-incrimination. The Supreme Court of the United States then proceeded to find a right to privacy in marriage which antedates the Bill of Rights and yet lies within the zone of privacy created by several fundamental constitutional guarantees. It was left unclear whether this particular right to privacy exists independently, or comes into being only because of its connection with fundamental enumerated rights.

FN10. 381 U.S. 479, 85 S.Ct. 1673, 14 L.Ed.2d 510 (1965).

FN11. 381 U.S. at 484, 85 S.Ct. at 1681, 14 L.Ed.2d at 514.

The next important Supreme Court opinion regarding privacy is *Stanley v. Georgia*, [FN12] in which a state conviction for possession of obscene matter was overturned as violative of the First and Fourteenth Amendments. The Supreme Court had previously held that obscenity is not protected by the First Amendment. [FN13] Put in *Stanley* the Court made a distinction between commercial distribution of obscene matter and the private enjoyment of it at home. The Constitution, it said, protects the fundamental right to receive information and ideas, regardless of their worth. Moreover, the Supreme Court said,

FN12. 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969).

FN13. See *Roth v. U. S.*, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957).

... in the context of this case—a prosecution for mere possession of printed or filmed matter in the privacy of a person's own home—that right takes on an added dimension. For also fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy. [FN14]

537 P.2d 494.
 537 P.2d 494
 (Cite as: 537 P.2d 494)

Page 7

FN14. 394 U.S. at 564, 89 S.Ct. at 1247,
 22 L.Ed.2d at 549.

The Supreme Court concluded that the First Amendment means a state has no business telling a man, sitting alone in his own home, what books he may read or what films he may watch. The Court took care to limit its holding to mere possession of obscene materials by the individual in his own home. It noted that it did not intend to restrict the power of the state or federal government to make illegal the possession of items such as narcotics, firearms, or stolen goods.

The Stanley holding was subsequently refined by a series of cases handed down in 1973. In *Paris Adult Theatre I v. Slaton*, [FN15] the Supreme Court rejected the claim of a theater owner that his showing of allegedly obscene films was protected by Stanley because his films were shown only to consenting adults. The Court explicitly rejected the comparison of a theater to a home and found a legitimate state interest in regulating the use of obscene matter in local commerce and places of public accommodation. It apparently found no fundamental right involved in viewing obscene matter under these conditions, for it noted that the right to privacy guaranteed by the Fourteenth Amendment extends only to fundamental rights. The protection offered by Stanley, the Supreme Court stated, was restricted to the home, and it explicitly refused to say that all activities occurring between consenting adults were beyond the reach of the government. [FN16]

FN15. 413 U.S. 49, 93 S.Ct. 2628, 37 L.Ed.2d 446 (1973). See also *United States v. Orito*, 413 U.S. 139, 93 S.Ct. 2674, 37 L.Ed.2d 513 (1973); *United States v. 12 200-Ft. Reels*, 413 U.S. 123, 93 S.Ct. 2665, 37 L.Ed.2d 500 (1973).

FN16. In a companion case, *United States v. Orito*, 413 U.S. 139, 93 S.Ct. 2674, 37 L.Ed.2d 513 (1973), the Supreme Court observed that the Stanley right to possess obscene matter in the home is limited to the home and does not create a right to transport, receive, or distribute the matter. The Supreme Court further said that it is not true that a zone of constitutionally

protected privacy follows such materials when they are moved outside the home. See *United States v. 12 200-Ft. Reels*, 413 U.S. 123, 93 S.Ct. 2665, 37 L.Ed.2d 500 (1973).

*500 [5] These Supreme Court cases indicate to us that the federal right to privacy arises only in connection with other fundamental rights, such as the grouping of rights which involve the home. And even in connection with the penumbra of homerelated rights, the right of privacy in the sense of immunity from prosecution is absolute only when the private activity will not endanger or harm the general public.

The view is confirmed by the Supreme Court's abortion decision, *Roe v. Wade* [FN17] There appellant claimed that her right to decide for herself concerning abortion fell within the ambit of a right to privacy flowing from the federal Bill of Rights. The Court's decision in her favor makes clear that only personal rights which can be deemed 'fundamental' or 'implicit in the concept of ordered liberty' are protected by the right to privacy. The Supreme Court found this right 'broad enough to encompass a woman's decision whether or not to terminate her pregnancy,' but it rejected the idea that a woman's right to decide is absolute. At some point, the state's interest in safeguarding health, maintaining medical standards, and protecting potential life becomes sufficiently compelling to sustain regulations. One does not, the Supreme Court said, have an unlimited right to do with one's body as one pleases.

FN17. 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973).

The right to privacy which the Court found in *Roe* is closely akin to that in *Griswold*; in both cases the zone of privacy involves the area of the family and procreation, [FN18] more particularly, a right of personal autonomy in relation to choices affecting an individual's personal life.

FN18. Cf. *Eisenstadt v. Baird*, 405 U.S. 438, 453, 92 S.Ct. 1029, 1038, 31 L.Ed.2d 349 (1972) where the Supreme Court said in part:

If the right of privacy means anything, it is

537 P.2d 494.
 537 P.2d 494
 (Cite as: 537 P.2d 494)

Page 8

the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.

In Alaska this court has dealt with the concept of privacy on only a few occasions. One of the most significant decisions in this area is *Breese v. Smith*, [FN19] where we considered the applicability of the guarantee of 'life, liberty, the pursuit of happiness' found in the Alaska Constitution, [FN20] to a school hairlength regulation. Noting that hairstyles are a highly personal matter in which the individual is traditionally autonomous, we concluded that governmental control of personal appearance would be antithetical to the concept of personal liberty under Alaska's constitution. Since the student would be forced to choose between controlling his own personal appearance and asserting his right to an education if the regulations were upheld, we concluded that the constitutional language quoted above embodied an affirmative grant of liberty to public school students to choose their own hairstyles, for 'at the core of (the concept of liberty) is the notion of total personal immunity from government control: the right 'to be let alone.' [FN21] That right is not absolute, however; we also noted that this 'liberty' must yield where it 'intrude(s) upon the freedom of others.' [FN22]

FN19. 501 P.2d 159 (Alaska 1972).

FN20. Alaska Const. Art. I, s 1.

FN21. 501 P.2d at 168.

FN22. 501 P.2d at 170, quoting *Bishop v. Colaw*, 450 F.2d 1069, 1077 (8th Cir. 1971).

Subsequent to our decision in *Breese*, a right to privacy amendment was added to the Alaska Constitution. Article I, section 22 reads:

The right of the people to privacy is recognized and shall not be infringed. The *501 legislature shall implement this section.

The effect of this amendment is to place privacy among the specifically enumerated rights in Alaska's constitution. But this fact alone does not, in and of itself, yield answers concerning what

scope should be accorded to this right of privacy. [FN23] We have suggested that the right to privacy may afford less than absolute protection to 'the ingestion of food, beverages or other substances'. [FN24] For any such protection must be limited by the legitimate needs of the State to protect the health and welfare of its citizens. [FN25]

FN23. For a discussion of the origins and scope of a similar constitutional guarantee of privacy, in the Hawaii Constitution, Art. I, s 5, see *State v. Kantner*, 53 Haw. 327, 493 P.2d 306 (1972), particularly n. 4 in the dissent of Justice Levinson at p. 314. This court has, in the area of searches and seizures, attempted to define the right of privacy. See, e.g., *Erickson v. State*, 507 P.2d 508 (Alaska (1973)); *Mattern v. State*, 500 P.2d 228 (Alaska 1972); *Davis v. State*, 499 P.2d 1025 (Alaska 1972); *Ellison v. State*, 383 P.2d 716 (Alaska 1963); *Rubey v. City of Fairbanks*, 456 P.2d 470 (Alaska 1969); *Sleziak v. State*, 454 P.2d 252 (Alaska 1969).

FN24. *Gray v. State*, 525 P.2d 524, 528 (Alaska 1974). In *Gray* we said:

There is no available recorded history of this amendment, but clearly it shields the ingestion of food, beverages or other substances. But the right of privacy is not absolute. Where a compelling state interest is shown, the right may be held to be subordinate to express constitutional powers such as the authorization of the legislature to promote and protect public health and provide for the general welfare.

FN25. *Id.* If the State were required, for instance, to carry the extremely heavy burden of showing a compelling state interest before it could regulate the purity of foodstuffs and medicines, the result would be a practical inability to protect the public from health threats which consumers could neither know about nor protect themselves against.

Although a number of other jurisdictions have considered the privacy issue as it applies to marijuana prosecutions, they provide little help in

537 P.2d 494.
537 P.2d 494
(Cite as: 537 P.2d 494)

Page 9

defining the scope of article I, section 22 of Alaska's constitution. In Hawaii, whose constitution also contains an express guarantee of the right to privacy, [FN26] the supreme court has faced a similar issue. In *State v. Kantner*, [FN27] the Supreme Court of Hawaii upheld a conviction for possession of marijuana by a 3-2 vote, with one member of the majority concurring only because he thought the constitutional issue had not been properly raised. A majority rejected the claim that application of the statute violated guarantees of equal protection and due process, and two members of the court rejected the claim of violation of 'fundamental liberty' based on *Griswold*. In dissent, Justice Levinson emphasized the guarantees of privacy and personal autonomy which he found in both the Hawaii Constitution and the due process clause of the Fourteenth Amendment to the United States Constitution. He found that the right to privacy 'guarantees to the individual the full measure of control over his own personality consistent with the security of himself and others.' [FN28] The experiences generated by use of marijuana are mental in nature, he wrote, and thus among the most personal and private experiences possible. So long as conduct does not produce detrimental results, the right of privacy protects the individual's conduct designed to affect these inner areas of the personality. The state failed to show, he found, any harm to the user or others from the private, personal use of marijuana, and so the statute infringed on the right to personal autonomy.

FN26. Hawaii Const. Art. I, s 5.

FN27. 53 Haw. 327, 493 P.2d 306 (1972).

FN28. 493 P.2d at 315.

In a Michigan case the same year, a conviction for possession of marijuana was overturned by a unanimous court, though for a variety of reasons. One of the justices in *People v. Sinclair*, [FN29] Justice T. G. Kavanagh, rested his opinion squarely on the basic right of the individual to be free from government intrusions. He found the marijuana possession statute to be 'an *502 impermissible intrusion on the fundamental rights to liberty and the pursuit of happiness, and is an unwarranted interference with the right to possess and use private property.' [FN30] He noted the basic freedom of

the individual to be free to do as he pleases so long as his actions do not interfere with the rights of his neighbor or of society. '... 'Big Brother' cannot, in the name of Public health, dictate to anyone what he can eat or drink or smoke in the privacy of his own home.' [FN31]

FN29. 387 Mich. 91, 194 N.W.2d 878 (1972).

FN30. 194 N.W.2d at 896.

FN31. *Id.*

Generally, however, privacy as a constitutional defense in marijuana cases has not met with much favor. It was rejected, for instance, by the Massachusetts Supreme Judicial Court in *Commonwealth v. Leis*, [FN32] where the court held that there was no constitutional right to smoke marijuana, that smoking marijuana was not fundamental to the American scheme of justice or necessary to a regime of ordered liberty, and that smoking marijuana was not locatable in any 'zone of privacy'. Furthermore, the court said, there is no constitutional right to become intoxicated. [FN33]

FN32. 243 N.E.2d 898 (Mass.1969).

FN33. The privacy argument has been rejected in several other cases. *Miller v. State*, 458 S.W.2d 680 (Tex.Crim.App.1970); *In re Klor*, 64 Cal.2d 816, 51 Cal.Rptr. 903, 415 P.2d 791 (1966); *People v. Aguiar*, 257 Cal.App.2d 597, 65 Cal.Rptr. 171 (1968); *United States v. Drotar*, 416 F.2d 914 (5th Cir. 1969), vacated on other grounds, 402 U.S. 939, 91 S.Ct. 1628, 29 L.Ed.2d 107 (1971); *Borras v. State*, 229 So.2d 244 (Fla.1969); *Raines v. State*, 225 So.2d 330 (Fla.1969). See *Scott v. United States*, 129 U.S.App.D.C. 396, 395 F.2d 619 (1968).

[6] Assuming this court were to continue to utilize the fundamental right-compelling state interest test in resolving privacy issues under article I, section 22 of Alaska's constitution, we would conclude that there is not a fundamental constitutional right to possess or ingest marijuana in Alaska. For in our

537 P.2d 494.
 537 P.2d 494
 (Cite as: 537 P.2d 494)

Page 10

view, the right to privacy amendment to the Alaska Constitution cannot be read so as to make the possession or ingestion of marijuana itself a fundamental right. Nor can we conclude that such a fundamental right is shown by virtue of the analysis we employed in Breese. In that case, the student's traditional liberty pertaining to autonomy in personal appearance was threatened in such a way that his constitutionally guaranteed right to an education was jeopardized. Hairstyle, as emphasized in Breese, is a highly personal matter involving the individual and his body. In this sense this aspect of liberty-privacy is akin to the significantly personal areas at stake in *Griswold* and *Eisenstadt v. Baird*. Few would believe they have been deprived of something of critical importance if deprived of marijuana, though they would if stripped of control over their personal appearance. And, as mentioned previously, a discrete federal right of privacy separate from the penumbras of specifically enumerated constitutional rights has not as yet been articulated by the Supreme Court of the United States. Therefore, if we were employing our former test, we would hold that there is no fundamental right, either under the Alaska or federal constitutions, either to possess or ingest marijuana.

The foregoing does not complete our analysis of the right to privacy issues. For in *Gray* we stated that the right of privacy amendment of the Alaska Constitution 'clearly it shields the ingestion of food, beverages or other substances', but that this right may be held to be subordinate to public health and welfare measures. Thus, *Ravin's* right to privacy contentions are not susceptible to disposition solely in terms of answering the question whether there is a general fundamental constitutional right to possess or smoke marijuana. This leads us to a more detailed examination of the right to privacy and the relevancy of where the right is exercised. At one end of the scale of the scope of the right to privacy is possession or ingestion *503 in the individual's home. If there is any area of human activity to which a right to privacy pertains more than any other, it is the home. The importance of the home has been amply demonstrated in constitutional law. Among the enumerated rights in the federal Bill of Rights are the guarantee against quartering of troops in a private house in peacetime (Third Amendment) and the right to be 'secure in their . . . houses . . .

against unreasonable searches and seizures . . .' (Fourth Amendment). The First Amendment has been held to protect the right to 'privacy and freedom of association in the home.' [FN34] The Fifth Amendment has been described as providing protection against all governmental invasions 'of the sanctity of a man's home and the privacies of life.' [FN35] The protection of the right to receive birth control information in *Griswold* was predicated on the sanctity of the marriage relationship and the harm to this fundamental area of privacy if police were allowed to 'search the sacred precincts of marital bedrooms.' [FN36] And in *Stanley v. Georgia*, [FN37] the Court emphasized the home as the situs of protected 'private activities'. The right to receive information and ideas was found in *Stanley* to take on an added dimension precisely because it was a prosecution for possession in the home: 'For also fundamental is the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy.' [FN38] In a later case, the Supreme Court noted that *Stanley* was not based on the notion that the obscene matter was itself protected by a constitutional penumbra of privacy, but rather was a 'reaffirmation that 'a man's home is his castle.'" [FN39] At the same time the Court noted, 'the Constitution extends special safeguards to the privacy of the home, just as it protects other special privacy rights such as those of marriage, procreation, motherhood, child rearing, and education.' [FN40] And as the Supreme Court pointed out, there exists a 'myriad' of activities which may be lawfully conducted within the privacy and confines of the home, but may be prohibited in public. [FN41]

FN34. *Moreno v. United States Dep't of Agriculture*, 345 F.Supp. 310, 314 (D.D.C.1972), *aff'd*, 413 U.S. 528, 93 S.Ct. 2821, 37 L.Ed.2d 782 (1973).

FN35. *Boyd v. U. S.*, 116 U.S. 616, 630, 6 S.Ct. 524, 29 L.Ed. 746, 751 (1886).

FN36. 381 U.S. at 486, 85 S.Ct. at 1682, 14 L.Ed.2d at 516.

FN37. 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969).

537 P.2d 494.
537 P.2d 494
(Cite as: 537 P.2d 494)

Page 11

FN38. 394 U.S. at 564, 89 S.Ct. at 1247, 22 L.Ed.2d at 549.

FN39. *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 66, 93 S.Ct. 2628, 2640, 37 L.Ed.2d 446, 462 (1973).

FN40. *U. S. v. Orito*, 413 U.S. 139, 142, 93 S.Ct. 2674, 2677, 37 L.Ed.2d 513, 517 (1973). See *U. S. v. 12 200-Ft. Reels*, 413 U.S. 123, 93 S.Ct. 2665, 37 L.Ed.2d 500 (1973).

FN41. *U. S. v. Orito*, 413 U.S. 139, 142-143, 93 S.Ct. 2674, 37 L.Ed.2d 513, 518 (1973).

[7] In Alaska we have also recognized the distinctive nature of the home as a place where the individual's privacy receives special protection. This court has consistently recognized that the home is constitutionally protected from unreasonable searches and seizures, reasoning that the home itself retains a protected status under the Fourth Amendment and Alaska's constitution distinct from that of the occupant's person. [FN42] The privacy amendment to the Alaska Constitution was intended to give recognition and protection to the *504 home. Such a reading is consonant with the character of life in Alaska. Our territory and now state has traditionally been the home of people who prize their individuality and who have chosen to settle or to continue living here in order to achieve a measure of control over their own lifestyles which is now virtually unattainable in many of our sister states.

FN42. *State v. Spietz*, 531 P.2d 521 (Alaska 1975); *Ferguson v. State*, 488 P.2d 1032 (Alaska 1971). See cases cited supra at n. 21.

[8][9][10][11] The home, then, carries with it associations and meanings which make it particularly important as the situs of privacy. Privacy in the home is a fundamental right, under both the federal and Alaska constitutions. We do not mean by this that a person may do anything at anytime as long as the activity takes place within a person's home. There are two important limitations on this facet of the right to privacy. First, we agree

with the Supreme Court of the United States, which has strictly limited the Stanley guarantee to possession for purely private, noncommercial use in the home. And secondly, we think this right must yield when it interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare. No one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely. Indeed, one aspect of a private matter is that it is private, that is, that it does not adversely affect persons beyond the actor, and hence is none of their business. When a matter does affect the public, directly or indirectly, it loses its wholly private character, and can be made to yield when an appropriate public need is demonstrated.

Thus, we conclude that citizens of the State of Alaska have a basic right to privacy in their homes under Alaska's constitution. This right to privacy would encompass the possession and ingestion of substances such as marijuana in a purely personal, non-commercial context in the home unless the state can meet its substantial burden and show that proscription of possession of marijuana in the home is supportable by achievement of a legitimate state interest.

This leads us to the second facet of our inquiry, namely whether the State has demonstrated sufficient justification for the prohibition of possession of marijuana in general in the interest of public welfare; and further, whether the State has met the greater burden of showing a close and substantial relationship between the public welfare and control of ingestion or possession of marijuana in the home for personal use.

[12] The evidence which was presented at the hearing before the district court consisted primarily of several expert witnesses familiar with various medical and social aspects of marijuana use. [FN43] Numerous*505 written reports and books were also introduced into evidence. [FN44]

FN43. Among the works we have examined in addition to the testimony below are the following: *Marihuana: A Signal of Misunderstanding*, the First Report of the National Commission on Marihuana and Drug Abuse (March 1972);

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

537 P.2d 494.

537 P.2d 494

(Cite as: 537 P.2d 494)

Page 12

Drug Use in America: Problem in Perspective, the Second Report of the National Commission on Marihuana and Drug Abuse (March 1973); Drug Use in Anchorage, Alaska, 223 J.Am.Med. Ass'n 657 (1971); G. Nahas, Marihuana: Deceptive Weed (1973); Nahas et al, Inhibition of Cellular Mediated Immunity in Marihuana Smokers, 183 Science 419 (1974); L. Grinspoon, Marihuana Reconsidered (1971); Hearings before the U. S. Senate Subcommittee on Internal Security, May 1974; Nahas & Greenwood, The First Report of the National Commission on Marihuana (1972): Singal of Misunderstanding or Exercise in Ambiguity, draft of article to be published in Bulletin of N. Y. Academy of Medicine; Marihuana and Health: Fourth Annual Report to the U. S. Congress from the Secretary of Health, Education, and Welfare (1974); Silverstein & Tessin, Normal Skin Test Responses in Chronic Marihuana Users, 186 Science 740 (1974); Marihuana: The Grass May No Longer Be Greener, 185 Science 683 (1974); Marihuana (II): Does it Damage the Brain?, 185 Science 775 (1974); Depression of Plasma Testosterone Levels After Chronic Intensive Marihuana Use, 290 N.Engl.J.Med. 872 (1974); Plasma Testosterone Levels Before, During and After Chronic Marihuana Smoking, 291 N.Engl.J.Med. 1051 (1974); Marijuana Survey-State of Oregon, Drug Abuse Council (1974).

FN44. It is not the function of this court to reassess the scientific evidence in the manner of a legislature. See *U. S. v. Thorne*, 325 A.2d 764 (D.C.App.1974), where an attack on the constitutionality of the District of Columbia marijuana statutes was made. There the court said:

In our opinion the court below misconceived its function in its approach to the constitutionality of the statutory proscription of the possession and use of marijuana. In deciding that this drug has virtually no harmful effects upon the human system, the court had occasion to

consider the testimony of four expert witnesses and a voluminous mass of documentary studies. The court weighed this evidence and resolved the conflict to its own satisfaction. If this were a hearing or a trial turning upon the determination of facts upon which there was conflicting testimony, such procedure was, of course, correct.

But a holding that a legislative enactment is invalid cannot rest open a judicial determination of a debatable medical issue.

Any party assailing the constitutionality of a statute has the heavy burden of demonstrating that it has no rational basis.

. . . It is apparent from the record in this case that the question decided by the court below after the hearing on the pretrial motions was 'at least debatable.' Hence, under the tests set forth in *Carolene Products*, the court should have deferred to congressional judgment.

Similarly the Supreme Judicial Court of Massachusetts in *Commonwealth v. Leis*, 243 N.E.2d 898, 901-02 (1969), said:

We know of nothing that compels the Legislature to thoroughly investigate the available scientific and medical evidence when enacting a law. The test of whether an act of the Legislature is rational and reasonable is not whether the records of the Legislature contain a sufficient basis of fact to sustain that act. The Legislature is presumed to have acted rationally and reasonably. See *Commonwealth v. Finnigan*, 326 Mass. 378, 379, 96 N.E.2d 715; *Coffee-Rich, Inc. v. Commissioner of Pub. Health*, 348 Mass. 414, 422, 204 N.E.2d 281. 'Unless the act of the Legislature cannot be supported upon any rational basis of fact that reasonably can be conceived to sustain it, the court has no power to strike it down as violative of the Constitution.' *Sperry & Hutchinson Co. v. Director of the Div. on the Necessaries of Life of Commonwealth*, 307 Mass. 408, 418, 30 N.E.2d 269, 274, 131 A.L.R. 1254.

See *United States v. Carolene Prod. Co.*, 304 U.S. 144, 154, 58 S.Ct. 778, 82 L.Ed. 1234.

Justice Kirk, in his concurring opinion in

537 P.2d 494.
 537 P.2d 494
 (Cite as: 537 P.2d 494)

Page 13

Leis, also explains the question of legislative judgment and the range of judicial cognizance.

Marijuana is the common term for dried leaves or stalk of the plant *Cannabis sativa* L. The primary psychoactive ingredient in the plant is delta-9-tetrahydrocannabinol (THC). Most marijuana available in the United States has a THC content of less than one percent. Other cannabis derivatives with a higher THC content, such as hashish, are available in the United States although much less common than is marijuana.

According to figures published by the National Commission on Marihuana and Drug Abuse [FN45] in 1973, an estimated 26 million Americans have used marijuana at least once. The incidence generally cuts across social and economic classes, though use is greatest among young persons (55% of 18-21 year-olds have used it). Only about 2% of the adults who have used it were classified by the National Commission as 'heavy users' (more than once daily). The experience in Alaska seems to be similar. A report published in the *Journal of the American Medical Association* in 1971 indicated that 24% of Anchorage school children in grades six through twelve had used marijuana, as had 46% in grades eleven and twelve. [FN46]

FN45. *Drug Use in America: Problem in Perspective, the Second Report of the National Commission on Marihuana and Drug Abuse* (March 1973) at 64.

FN46. *Drug Use in Anchorage, Alaska*, 223 *J.Am.Med.Ass'n* 657 (1971).

Scientific testimony on the physiological and psychological effects of marijuana on humans generally stresses the variability of effects upon different individuals and on any one individual at different times. The setting and psychological state of the user can affect his responses. Responses also vary with the amount of marijuana one has used in the past. A new user, for instance, often feels no effects at all.

*506 The short-term physiological effects are relatively undisputed. An immediate slight increase in the pulse, decrease in salivation, and a slight

reddening of the eyes are usually noted. There is also impairment of psychomotor control. These effects generally end within two to three hours of the end of smoking.

Long-term physiological effects raise more controversy among the experts. The National Commission on Marihuana and Drug Abuse reported that among users 'no significant physical, biochemical, or mental abnormalities could be attributed solely to their marijuana smoking.' [FN47] Certain researchers have pointed to possible deleterious effects on the body's immune defenses, [FN48] on the chromosomal structures of users, [FN49] and on testosterone levels in the body. [FN50] The methodology of certain of these studies has been extensively criticized by other qualified medical scientists, however. These studies cannot be ignored. It should be noted that most of the damage suggested by these studies comes in the context of intensive use of concentrated forms of THS. It appears that the use of marijuana, as it is presently used in the United States today, does not constitute a public health problem of any significant dimensions. It is, for instance, far more innocuous in terms of physiological and social damage than alcohol or tobacco. But the studies suggesting dangers in intensive cannabis use do raise valid doubts which cannot be dismissed or discounted.

FN47. *Marihuana: A Signal of Misunderstanding, First Report of the National Commission on Marihuana and Drug Abuse* (March 1972), p. 61.

FN48. See Nahas, et al. *Inhibition of Cellular Mediated Immunity in Marihuana Smokers*, 183 *Science* 419 (1974). But cf. *Normal Skin Test Responses in Chronic Marijuana Users*, 186 *Science* 740 (1974).

FN49. See Stenchever, *Statement before the Senate Subcommittee on Internal Security*, May 16, 1974. The National Institute on Drug Abuse, in *Marihuana and Health, Fourth Report to the United States Congress from the Secretary of Health, Education, and Welfare*, states in part: The preclinical findings of greatest interest and potential significance during the past two years have been a series of studies

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

537 P.2d 494.
 537 P.2d 494
 (Cite as: 537 P.2d 494)

Page 14

indicating that delta-9-THC (and possibly other marijuana constituents) have an effect upon certain basic cellular mechanisms which involve the uptake of amino acids and the nucleotides into primary nuclear components such as DNA.

Since this may interfere with basic biological processes, the preliminary data raises the possibility that the effects of marijuana, under some circumstances, may be more widespread on the organism than has been previously thought.
 Id. at 6.

FN50. Depression of Plasma Testosterone Levels After Chronic Intensive Marijuana Use, 290 N.Engl.J.Med. 872 (1974). But cf. Plasma Testosterone Levels Before, During and After Chronic Marijuana Smoking, 291 N.Engl.J.Med. 1051 (1974).

The immediate psychological effects of marijuana are typically a mild euphoria and a relaxed feeling of well-being. The user may feel a heightened sensitivity to taste and to visual and aural sensations, and his perception of time intervals may be distorted. A desire to become high can lead to a greater high; fear of becoming high or general nervousness can cause the user to fail to experience any high at all. In rare cases, excessive nervousness or fear of the drug can even precipitate a panic reaction. Occasionally a user will experience a negative reaction such as anxiety or depression, particularly when he takes in more of the substance than needed to achieve the desired high. However, in smoking marijuana, the usual method of taking it in this country, the user can self-titrate, or control the amount taken in, since the effect builds up gradually.

Additional short-term effects are an impairment of immediate-past-memory facility and impairment in performing psychomotor tasks. Experienced users seem less impaired in this regard than naive users.

In extremely rare instances, use of marijuana has been known to precipitate psychotic episodes; however, the consensus of the experts seems to be that the potential for precipitating psychotic episodes exists only for a limited number of prepsychotic *507 persons who could be pushed

into psychosis by any number of drug or nondrug-related influences.

There is considerable debate as to the long-term effects of marijuana on mental functioning. Certain researchers cite evidence of an 'amotivational syndrome' among long-term heavy cannabis users. However, the main examples of this effect are users in societies where large segments of the population exhibit such traits as social withdrawal and passivity even without drug use. The National Commission concludes that long-time heavy users do not deviate significantly from their social peers in terms of mental functioning, at least to any extent attributable to marijuana use. [FN51]

FN51. Marijuana: A Signal of Misunderstanding, the First Report of the National Commission on Marijuana and Drug Abuse (March 1972), 63. See also Marijuana and Health, Fourth Report to the United States Congress from the Secretary of Health, Education and Welfare (1974), which reads at 12:

While chronic users in the United States have used for appreciably shorter periods of time than users overseas, studies of American chronic users are potentially of great importance in assessing possible implications of marijuana use for the American population. In one large scale study of undergraduate student use comparisons were made between nonusers (including those who had done a limited amount of experimentation), occasional users and chronic users (those who had used three or more times a week for three years or more or for two years if use was almost daily). No statistical differences in academic performance were found nor was there any evidence of reduced motivation. . . . Another study of moderately using medical students who has used regularly for three or more years and who were matched with nonusing medical students for intelligence, found no difference on an extensive battery of neuropsychological tests.

The experts generally agree that the early widely-held belief that marijuana use directly

© 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.

537 P.2d 494.
537 P.2d 494
(Cite as: 537 P.2d 494)

Page 15

causes criminal behavior, and particularly violent, aggressive behavior, has no validity. On the contrary, the National Commission found indications that marijuana inhibits 'the expression of aggressive impulses by pacifying the user, interfering with muscle coordination, reducing psychomotor activities and generally producing states of drowsiness, lethargy, timidity and passivity.' [FN52] Moreover, the Commission and most other authorities agree that there is little validity to the theory that marijuana use leads to use of more potent and dangerous drugs. Although it has been stated that the more heavily a user smokes marijuana, the greater the probability that he has used or will use other drugs, 'it has been suggested that such use is related to 'drug use proneness' and involvement in drug subcultures rather than to the characteristics of cannabis, per se.' [FN53]

FN52. *Id.* at 70-71.

FN53. *Marihuana and Health*, Fourth Report to the United States Congress from the Secretary of Health, Education, and Welfare (1974) at 6.

The most serious risk to the public health discerned by the National Commission is the possibility of an increase in the number of heavy users, who now constitute about 2% (500,000) of those who have used the drug. Within this group certain emotional changes have been observed among 'predisposed individuals' as a result of prolonged heavy use. This group seems to carry the highest risk, particularly in view of the risk of retarding social adjustment among adolescents if heavy use should grow.

Most authorities have accepted the theory that marijuana users develop a 'reverse tolerance', that is, that a moderate user needs less and less marijuana over time to achieve a high. Recent research indicates that this may be true only up to a point, and that beyond a certain intensity of use a true tolerance begins to develop. [FN54] If true, this may be relevant regarding only *508 heavy use of concentrated forms of cannabis, since marijuana use is self-limiting due to the forms in which it is taken.

FN54. 'While tolerance to the effects of

marihuana has not been generally observed among American users, there is increasingly convincing evidence that tolerance (i. e., larger dosages required to produce the same effects found with lower dosages) does develop under conditions of heavy, regular use. Given the relatively low doses and infrequent use typical of present patterns of use in the United States it is not surprising that tolerance has not usually been observed. . . . While the amounts involved were usually large and quite atypical of current use patterns, the probability of a withdrawal syndrome in at least some American heavy users must be considered.' *Marihuana and Health*, Fourth Report to the United States Congress from the Secretary of Health, Education, and Welfare (1974) at 10, 75-81.

The National Commission rejected the notion that marijuana is physically addicting. It also rejected the notion that marijuana as used in the United States today presents a significant risk of causing psychological dependency in the user. Rather, the experimental or intermittent user develops little or no psychological dependence. Lengthy use on a regular basis does present a risk of such dependence and of subsequent heavier use, and strong psychological dependence is characteristic of heavy users in other countries. This pattern of use is rare in the United States today, however.

While there is no confirmed report of a human ever having died from an overdose of cannabis, the toxic levels of THC have been determined from tests on animals. The lethal dose for marijuana is approximately 40,000 times the dose needed to achieve intoxication. The equivalent ratio of intoxicating to lethal doses for alcohol is 4/10 and for barbiturates is 3/50.

The number of persons arrested for marijuana possession has climbed steeply in recent years. In 1973, over 400,000 marijuana arrests occurred, a 40% rise over the previous year. It should also be noted that 81% of persons arrested for marijuana-related crimes have never been convicted of any crime in the past, and 91% have never been convicted of a drug-related crime. [FN55]

537 P.2d 494.
 537 P.2d 494
 (Cite as: 537 P.2d 494)

Page 16

FN55. Marihuana: A Signal of Misunderstanding, Appendix II, at 622.

The justifications offered by the State to uphold AS 17.12.010 are generally that marijuana is a psychoactive drug; that it is not a harmless substance; that heavy use has concomitant risk; that it is capable of precipitating a psychotic reaction in at least individuals who are predisposed towards such reaction; and that its use adversely affects the user's ability to operate an automobile. The State relies upon a number of medical researchers who have raised questions as to the substance's effect on the body's immune system, on chromosomal structure, and on the functioning of the brain. On the other hand, in almost every instance of reports of potential danger arising from marijuana use, reports can be found reaching contradictory results. It appears that there is no firm evidence that marijuana, as presently used in this country, is generally a danger to the user or to others. But neither is there conclusive evidence to the effect that it is harmless. [FN56] The one significant risk in use of marijuana which we do find established to a reasonable degree of certainty is the effect of marijuana intoxication on driving. We shall return to this aspect of the problem later in this opinion.

FN56. Petitioner's witnesses, Doctors Fort and Ungerleider, both testified that marijuana was not harmless.

Possibly implicit in the State's catalogue of possible dangers of marijuana use is the assumption that the State has the authority to protect the individual from his own folly, that is, that the State can control activities which present to harm to anyone except those enjoying them. Although some courts have found the 'public interest' to be broad enough to justify protecting the individual against himself, [FN57] most have found inherent limitations on the police power of the state. An apposite example is the litigation regarding the constitutionality of laws requiring motorcyclists to wear helmets. Most of the courts addressing the issue, including this one, have resolved it by finding a connection between *509 the helmet requirement and the safety of other motorists, [FN58] but a significant number of courts have explicitly rejected such restrictive measures as beyond the police power of the state because they do not benefit the

public. [FN59] Typical of the logic of these latter cases is the dissent of Justice Abe in *State v. Lee*, [FN60] in which the Hawaii Supreme Court upheld a motorcycle helmet requirement despite finding no clear link between lack of the equipment by the motorcyclist and injury to others. The court reasoned that where a person's conduct is so reckless, and the resulting injury and death are so widespread as to be of concern to the public, then the conduct affects the public interest and is within the scope of the police power. Justice Abe dissented, citing a general right to be left alone or liberty to do as you please. There has to be a genuine harm to others, he wrote, to justify such controls; a state cannot simply decide what is in a person's best interest and compel it. [FN61]

FN57. E. g., *Raines v. State*, 225 So.2d 330 (Fla.1969).

FN58. E. g., *Kingery v. Chappel*, 504 P.2d 831 (Alaska 1972); *People v. Bielneyer*, 54 Misc.2d 466, 282 N.Y.S.2d 797 (1967); *State v. Mele*, 103 N.Y.Super. 353, 247 A.2d 176 (1968).

FN59. E. g., *American Motorcycle Ass'n v. Davids*, 11 Mich App. 351, 158 N.W.2d 72 (1968); *People v. Fries*, 42 Ill.2d 446, 250 N.E.2d 149 (1969). See *Everhardt v. New Orleans*, 208 So.2d 423 (La.App.1968), rev'd, 217 So.2d 400 (1969); *People v. Carmichael*, 53 Misc.2d 584, 279 N.Y.S.2d 272 (1967), rev'd, 56 Misc.2d 388, 288 N.Y.S.2d 931 (1968).

FN60. 51 Haw. 516, 465 P.2d 573 (1970).

FN61. Similarly, in *State v. Kantner*, 53 Haw. 327, 493 P.2d 306 (1972), which involved the constitutionality of Hawaii's marijuana statute, Justice Abe noted his belief that the statute, went beyond the police power of the state because of the lack of evidence that use of marijuana harms anyone other than the user. There is, he wrote, under the Hawaii Constitution a fundamental right of liberty to make a fool of oneself so long as one's act does not endanger others.

537 P.2d 494.
537 P.2d 494
(Cite as: 537 P.2d 494)

Page 17

[13][14] We glean from these cases the general proposition that the authority of the state to exert control over the individual extends only to activities of the individual which affect others or the public at large [FN62] as it relates to matters of public health or safety, or to provide for the general welfare. We believe this tenet to be basic to a free society. The state cannot impose its own notions of morality, propriety, or fashion on individuals when the public has no legitimate interest in the affairs of those individuals. The right of the individual to do as he pleases is not absolute, of course: it can be made to yield when it begins to infringe on the rights and welfare of others. [FN63]

FN62. Cf. *Liggett Co. v. Baldrige*, 278 U.S. 105, 111-12, 49 S.Ct. 57, 59, 73 L.Ed. 204, 208 (1928):

The police power may be exerted in the form of state legislation where otherwise the effect may be to invade rights guaranteed by the Fourteenth Amendment only when such legislation bears a real and substantial relation to the public health, safety, morals, or some other phase of the general welfare.

FN63. See *Roe v. Wade*, 410 U.S. 113, 154, 93 S.Ct. 705, 35 L.Ed.2d 147, 177 (1974); *Gray v. State*, 525 P.2d 524, 528 (Alaska 1974); *Breese v. Smith*, 501 P.2d 159, 170 (Alaska 1972).

[15][16] Further, the authority of the state to control the activities of its citizens is not limited to activities which have a present and immediate impact on the public health or welfare. It is conceivable, for example, that a drug could so seriously develop in its user a withdrawal or amotivational syndrome, that widespread use of the drug could significantly debilitate the fabric of our society. Faced with a substantial possibility of such a result, the state could take measures to combat the possibility. The state is under no obligation to allow otherwise 'private' activity which will result in numbers of people becoming public charges or otherwise burdening the public welfare. But we do not find that such a situation exists today regarding marijuana. It appears that effects of marijuana on the individual are not serious enough to justify widespread concern, at least as compared with the

far more dangerous effects of alcohol, barbiturates *510 and amphetamines. Moreover, the current patterns of use in the United States are not such as would warrant concern that in the future consumption patterns are likely to change. [FN64]

FN64. We recognize that more potent forms of cannabis than marijuana are commonly used in other countries and are available on a limited scale here. However, studies of use patterns here do not indicate any great likelihood of a significant shift in use here to the more potent substances. If such a shift were to occur, then marijuana use could be characterized as a serious health problem.

[17][18][19] Research is continuing extensively. Scientific doubts persist, however, and that fact has significance for our application of the law. It is a long-standing rule of law that statutes designed to protect the public health will receive a liberal construction. [FN65] We have seen repeated examples in recent years where scientific doubts as to the safety of various products, drugs, or environmental conditions have been held to justify controls. There is a presumption in favor of public health measures; when there is substantial doubt as to the safety of a given substance or situation for the public health, controls intended to obviate the danger will usually be upheld.

FN65. 3 Sutherland Statutory Construction s 71.02 (4th ed. 1974) and the cases cited in note 42 supra.

But one way in which use of marijuana most clearly does affect the general public is in regard to its effect on driving. All of which brings us to the opposite (from the home) end of the scale of the right to privacy in the context of ingestion or possession of marijuana, namely, when the individual is operating a motor vehicle. Recent research has produced increasing evidence of significant impairment of the driving ability of persons under the influence of cannabis. [FN66] Distortion of time perception, impairment of psychomotor function, and increased selectivity in attentiveness to surroundings apparently can combine to lower driver ability. [FN67] In this regard, Ravin points out that marijuana usually

537 P.2d 494.
 537 P.2d 494
 (Cite as: 537 P.2d 494)

Page 18

produces passivity and inactivity, in contrast to alcohol, which increases aggressiveness and is likely to result in overconfidence in one's driving ability. Although a person under the influence of marijuana may be less likely to attempt to drive than *511 a person under the influence of alcohol, there exists the potential for serious harm to the health and safety of the general public. [FN68]

FN66. See Marijuana and Health, Fourth Report to the United States Congress from the Secretary of Health, Education, and Welfare 105 (1974). This report contains citations to the most recent studies.

FN67. Evidence that marijuana has a detrimental effect on driving performance, especially as the dose increases, continues to mount. It has been found to increase both braking and starting times, to adversely affect attention and concentration abilities, and to detract from performance on a divided attention task, all of which are presumably involved in driving. A recent Canadian study of driving ability while marijuana-intoxicated examined drivers' performance under both driving course and actual traffic conditions. A significant decline in performance as measured by several criteria was found in most drivers tested. Based on the accumulated evidence, it seems clear that driving while under the influence of marijuana is ill-advised. Marijuana and Health, Fourth Report to the U. S. Congress from the Secretary of Health, Education, and Welfare 10-11 (1974).

Petitioner's own experts do not disagree with the Secretary's conclusions. Dr. Grinspoon testified that ' . . . it stands to reason that anybody who is intoxicated or has a psychoactive drug in him should not drive, because there is no question . . . his wherewithall is not with him, and I think that would be the case with marijuana.' Dr. Fineglass stated that ' . . . moderate or heavy use of marijuana can definitely interfere with some of the local skills that would be necessary for the operation of a motor vehicle, and therefore, in their

recommendations did take note of driving while intoxicated as a potential danger to the public safety.' Dr. Ungerleider testified that although the immediate effects of marijuana intoxication on the organs and bodily functions are transient and have little or no permanent effect, 'there is a definite loss of some psychomotor control, temporary impairment of time space perception. . . .' Later in the course of his testimony, Dr. Ungerleider concluded that recent studies had proven that driving under the influence of marijuana presents a serious risk resulting from impaired driving ability.

FN68. Current Alaska law enacted since the trial of this case prohibits driving under the influence of an hallucinogenic drug. AS 28.35.030. Alaska law also specifically prohibits operation of a boat while under the influence of marijuana. AS 05.25.060.

There does not now exist a means for detecting the presence of cannabis in the body which is available for practical use by law enforcement agencies. Such means are in use in laboratories, however, and research is progressing toward a device which could be used by police in the way that breathalyzer tests for alcohol are used now.

[20][21][22][23][24] In view of the foregoing, we believe that at present, the need for control of drivers under the influence of marijuana and the existing doubts as to the safety of marijuana, demonstrate a sufficient justification for the prohibition found in AS 17.12.010 as an exercise of the state's police power for the public welfare. Given the evidence of the effect of marijuana on driving an individual's right to possess or ingest marijuana while driving would be subject to the prohibition provided for in AS 17.12.010. However, given the relative insignificance of marijuana consumption as a health problem in our society at present, we do not believe that the potential harm generated by drivers under the influence of marijuana, standing alone, creates a close and substantial relationship between the public welfare and control of ingestion of marijuana or possession

537 P.2d 494.
 537 P.2d 494
 (Cite as: 537 P.2d 494)

Page 19

of it in the home for personal use. Thus we conclude that no adequate justification for the state's intrusion into the citizen's right to privacy by its prohibition of possession of marijuana by an adult for personal consumption in the home has been shown. The privacy of the individual's home cannot be breached absent a persuasive showing of a close and substantial relationship of the intrusion to a legitimate governmental interest. Here, mere scientific doubts will not suffice. The state must demonstrate a need based on proof that the public health or welfare will in fact suffer if the controls are not applied.

The state has a legitimate concern with avoiding the spread of marijuana use to adolescents who may not be equipped with the maturity to handle the experience prudently, as well as a legitimate concern with the problem of driving under the influence of marijuana. Yet these interests are insufficient to justify intrusions into the rights of adults in the privacy of their own homes. [FN69] Further, neither the federal or Alaska constitution affords protection for the buying or selling of marijuana, nor absolute protection for its use or possession in public. Possession at home of amounts of marijuana indicative of intent to sell rather than possession for personal use is likewise unprotected. [FN70]

FN69. We do not intend to imply that the right of privacy in the home does not apply to children. See *Breese v. Smith*, 501 P.2d 159, 167 (Alaska 1972). We note that distinct government interests with reference to children may justify legislation that could not properly be applied to adults.

FN70. Statistics indicate that few arrests for simple possession occur in the home except when other crimes are simultaneously being investigated. The trend in general in law enforcement seems to be toward minimal effort against simple users of marijuana, and concentration of efforts against dealers and users of more dangerous substances. Moreover, statistics indicate that most arrests for possession of marijuana in Alaska result in dismissals before trial.

In view of our holding that possession of marijuana by adults at home for personal use is constitutionally protected, we wish to make clear that we do not mean to condone the use of marijuana. The experts who testified below, including petitioner's witnesses, were unanimously opposed to the use of any psychoactive drugs. We agree completely. It is the responsibility of every individual to consider carefully the ramifications for himself and for those around him of using such substances. With the freedom which our society offers to each of us to order our lives as we see fit goes the duty to live responsibly, for *512 our own sakes and for society's. This result can best be achieved, we believe, without the use of psychoactive substances.

[25][26] We briefly address Ravin's second assertion of error, namely that AS 17.12.010 denies him due process and equal protection of the law. The argument is two-fold. First, Ravin asserts, the proscription denies equal protection because the other commonly used 'recreational' drugs, alcohol and tobacco, are not proscribed, though they inflict far more damage on the user than does marijuana. We reject, however, the assumption that the legislature must apply equal controls to equal threats to the public health. Assuming some degree of control of marijuana use is permissible, it does not follow that the political obstacles to placing controls on alcohol and tobacco should render the legislature unable to regulate other substances equally or less harmful. [FN71] It is not irrational for the legislature to regulate those public health areas where it can do so, when there exists other areas where controls are less feasible.

FN71. See *U. S. v. Maiden*, 355 F.Supp. 743 (D.Conn 1973); *U. S. v. Kiffer*, 477 F.2d 349 (2d Cir. 1973). In attacking a complex problem, the state need not choose between attacking every aspect of that problem or not attacking that problem at all. *Dandridge v. Williams*, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970); *McDonald v. Board of Election Commissioners*, 394 U.S. 802, 89 S.Ct. 1404, 22 L.Ed.2d 739 (1969).

[27] Ravin also attacks as irrational the classification of marijuana with the other drugs

537 P.2d 494.
 537 P.2d 494
 (Cite as: 537 P.2d 494)

Page 20

covered by AS 17.12.150(3) ('depressant, stimulant, or hallucinogenic'). He may be correct that marijuana is the least harmful of the drugs covered by AS 17.12.150(3), but that alone is not sufficient to make the classification irrational. In a number of cases the classification of marijuana either as or with narcotic drugs has been struck down as irrational in view of the relative harmlessness of marijuana. [FN72] In other cases, courts have deferred to the legislative finding of facts implicit in the classification. [FN73] However, in every case in which statutes have been struck down, the statutory scheme classified marijuana with, or subject to equal sanctions with, the most dangerous proscribed drugs. In Alaska, however, 'hard' drugs are in a completely different category [FN74] from marijuana, with substantially greater penalties for misuse. The drugs with which marijuana is grouped in AS 17.12.150(3) are not so different from marijuana that yet another classification must be set up for marijuana alone. We find no merit to Ravin's contention on this point.

FN72. E. g., *People v. McCabe*, 49 Ill.2d 338, 275 N.E.2d 407 (1971); *Attwood v. State*, 509 S.W.2d 342 (Tex.Crim.App.1974); see *People v. Sinclair*, 387 Mich. 91, 194 N.W.2d 878 (1972); cf. *State v. Zornes*, 475 P.2d 109 (Wash.1970).

FN73. E. g., *Bettis v. United States*, 408 F.2d 563 (9th Cir. 1969); *Commonwealth v. Leis*, 243 N.E.2d 898 (Mass.1969); *Miller v. Texas*, 458 S.W.2d 680 (Tex.Crim.App.1970); *Raines v. State*, 225 So.2d 330 (Fla.1969); *People v. McKenzie*, 169 Colo. 521, 458 P.2d 232 (1969); *People v. Stark*, 157 Colo. 59, 400 P.2d 923 (1965). See *State v. Kantner*, 53 Haw. 327, 493 P.2d 306 (1972).

FN74. See AS 17.10.010 et seq. (The Uniform Narcotic Drug Act).

[28] One other facet of this petition remains for discussion. Ravin urges us to recognize that whatever harm results from marijuana use is far outweighed by the negative aspects of enforcement. Over 400,000 persons were arrested for marijuana-related crimes in 1973; 81% of them had

no previous criminal records. Using these statistics, and asserting that marijuana use does not pose a substantial public health threat, Ravin questions the wisdom of AS 17.12.010. We note that the Alaska Bar Association, American Bar Association, National Conference of Commissioners on Uniform State Laws, National Advisory Commission on Criminal Justice Standards and Goals and the Governing Board of the American Medical Association have recommended decriminalization of possession of marijuana. The National Commission on Marijuana and Drug Abuse has recommended that private possession for personal use no longer be an offense. A Canadian study has arrived at similar results. And at least one state, Oregon, has already decriminalized possession of small amounts of marijuana. [FN75]

FN75. O.R.S. 167.207. The Alaska legislature have also recently passed a bill which would decriminalize possession of marijuana in certain contexts.

In opposition, the State argues that under Alaska's constitutional system of separate but equal branches of government the issue is a 'political controversy over the State's fundamental policy toward the drug marijuana'. Thus, the 'issue should be properly determined by the people's elected representatives'. We agree that determination of the wisdom of a particular legislative enactment is more properly the subject of investigation and resolution by the legislature rather than the judiciary.

The record does not disclose any facts as to the situs of Ravin's arrest and his alleged possession of marijuana. In view of these circumstances, we hold that the matter must be remanded to the district court for the purpose of developing the facts concerning Ravin's arrest and circumstances of his possession of marijuana. Once this is accomplished, the district court is to consider Ravin's motion to dismiss in conformity with this opinion.

Remanded for further proceedings consistent with this opinion.

BOOCHEVER, Justice (concurring, with whom CONNOR, Justice, joins).

Because of the importance of the issues discussed

537 P.2d 494.

537 P.2d 494

(Cite as: 537 P.2d 494)

Page 21

in this case and the possibility that portions of the opinion may be construed as substantially circumscribing the Alaska Constitutional right to privacy, I find it necessary to file this concurrence. By its reliance on certain United States Supreme Court cases [FN1] and the manner in which some of the conclusions are set forth, the opinion may be read as limiting the right of privacy principally to protection of activities engaged in within the confines of the home. [FN2] The opinion relies chiefly on United States Supreme Court precedent, although there is no Federal Constitutional provision corresponding to art. 1, s 22 of the Alaska Constitution which specifies that 'the right of the people to privacy is recognized and shall not be infringed'. While Federal cases defining the right of privacy derived from other provisions of the United States Constitution are of assistance in determining the perimeters of our constitutional right to privacy, we are certainly not bound by those cases in construing the separate Alaska provision. Even when Alaska Constitutional provisions are closely akin to those of the Federal Constitution, we have stated:

FN1. Stanley v. Georgia, 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969); Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965).

FN2. The court writes that art. 1, s 22 of the Alaska Constitution '... was intended to give recognition and protection to the home'.

While we must enforce the minimum constitutional standards imposed upon us by the United States Supreme Court's interpretation of the Fourteenth Amendment, we are free, and we are under a duty, to develop additional constitutional rights and privileges under our Alaska Constitution if we find such fundamental rights and privileges to be within the intention and spirit of our local constitutional language and to be necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage. We need not stand by idly and passively, waiting for constitutional direction from the highest court of the land. Instead, we should be moving concurrently to develop and expound the principles embedded in

our constitutional law. [FN3]

FN3. Baker v. City of Fairbanks, 471 P.2d 386, 401-02 (Alaska 1970) (footnotes omitted).

Although the majority opinion emphasizes the right of privacy in the home, it recognizes *514 that analysis of the Federal decisions does not indicate that the right of privacy is relegated to the home. It is true that Griswold v. Connecticut [FN4] invalidated a Connecticut statute prohibiting the distribution of contraceptives and the dissemination of birth control information to married adults by finding a right of privacy, emanating from other constitutional provisions, within which the marital relationship, arguably home related, was protected. But the later case of Eisenstadt v. Baird [FN5] held that a statute prohibiting the distribution of contraceptives to unmarried persons but allowing such distribution to married persons violated the equal protection clause of the fourteenth amendment. In so holding, the Court referred to Griswold and explained what the case stood for.

FN4. 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965).

FN5. 405 U.S. 438, 92 S.Ct. 1029, 31 L.Ed.2d 349 (1972).

If under Griswold the distribution of contraceptives to married persons cannot be prohibited, a ban on distribution to unmarried persons would be equally impermissible. It is true that in Griswold the right of privacy in question inhered in the Marital relationship. Yet the marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup. If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child. [FN6]

FN6. Id. 405 U.S. at 453, 92 S.Ct. at 1038, 31 L.Ed.2d at 362.

The Court held that the right of privacy involved

537 P.2d 494.
537 P.2d 494
(Cite as: 537 P.2d 494)

Page 22

being free to decide for oneself whether to bear or beget a child, a right relating to the autonomy of the individual, not to a place.

Similarly, *Roe v. Wade*, [FN7] in upholding the right of a woman to decide whether she should terminate her pregnancy, stated:

FN7. 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973).

This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. [FN8]

FN8. *Id.* 410 U.S. at 153, 93 S.Ct. at 727, 35 L.Ed.2d at 177.

Again, the right of privacy pertained to the freedom of the individual to decide as to her course of action and was unrelated to any situs.

On the other hand, there are the *Stanley-Paris Adult Theatre I* group of cases [FN9] holding that the 'broad power to regulate obscenity does not extend to mere possession by the individual in the privacy of his own home' although obscenity is not otherwise constitutionally immune from state regulation.

FN9. *Stanley v. Georgia*, 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969); *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 93 S.Ct. 2628, 37 L.Ed.2d 446 (1973); *United States v. Orito*, 413 U.S. 139, 93 S.Ct. 2674, 37 L.Ed.2d 513 (1973); *United States v. 12 200-Ft. Reels*, 413 U.S. 123, 93 S.Ct. 2665, 37 L.Ed.2d 500 (1973).

Thus it appears that the United States Supreme Court has found a right of privacy to exist as to activities within the home or with reference to values associated with the home, and, additionally, as a right of personal autonomy, to make decisions that shape an individual's personal life. [FN10]

FN10. On Privacy: Constitutional Protection for Personal Liberty, 48 N.Y.U.L.Rev. 670, 703 (1973).

Since the citizens of Alaska, with their strong emphasis on individual liberty, enacted an amendment to the Alaska Constitution expressly providing for a right to *515 privacy not found in the United States Constitution, it can only be concluded that that right is broader in scope than that of the Federal Constitution. As such, it includes not only activities within the home and values associated with the home, but also the right to be left alone and to do as one pleases as long as the activity does not infringe on the rights of others. Thus, the decision whether to ingest food, beverages or other substances comes within the purview of that right to privacy. [FN11]

FN11. *Gray v. State*, 525 P.2d 524 (Alaska 1974).

The right to privacy, however, is not monolithic. For example, the right to decide whether to eat strawberry ice cream cannot be placed on the same level as that of deciding whether to bear a child. Moreover, the importance of the right may properly be related to the place where it is exercised, for example, at the home or in the market place. Other considerations would be the nature of relationships involved (marital, doctor-patient, attorney-client, etc.), the particular activity in question and the individual's interest in it.

Having discussed generally the contours of what I perceive to be the right to privacy under the Alaska Constitution, I shall turn briefly to the test utilized by the court in determining infringements of that right. Particularly in equal protection cases, but also as to cases alleging infringement of other constitutional rights, the United States Supreme Court, [FN12] and this court [FN13] in the past, have followed a two-tiered test. If the right involved was deemed to be 'fundamental', a statute infringing upon it was required to be 'necessary' to further a 'compelling state interest'. Whereas if the right infringed upon was classified as non-fundamental, any rational basis that might be conceived to justify the legislation was held to be sufficient. [FN14] As a practical matter, the test was result oriented, since once a right was declared

537 P.2d 494.
537 P.2d 494
(Cite as: 537 P.2d 494)

Page 23

to be fundamental, the challenged regulation or legislative act would be stricken, [FN15] whereas otherwise some reason could usually be found to sustain it.

FN12. See *Bates v. Little Rock*, 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480 (1960); *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973).

FN13. *Lynden Transport, Inc. v. State*, 532 P.2d 700 (Alaska 1975); *Breese v. Smith*, 501 P.2d 159 (Alaska 1972).

FN14. *Lynden Transport, Inc. v. State*, 532 P.2d 700, 706 (Alaska 1975).

FN15. Where a fundamental right has required use of the compelling state interest test, only one law has been found valid by the Supreme Court, *Korematsu v. United States*, 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194 (1944), but no state law has passed muster. *Dunn v. Blumstein*, 405 U.S. 330, 363-64, 92 S.Ct. 995, 31 L.Ed.2d 274, 296-97 (1972) (Burger, C. J., dissenting). See 48 N.Y.U.L.Rev. 670 at 702. See also *Gilbert v. State*, 526 P.2d 1131 (Alaska 1974).

I agree with the majority's departure from that test in areas where we have discretion to depart from standards established by the United States Supreme Court. With reference to laws challenged as invading the Alaskan right of privacy, [FN16] I would apply a single flexible test dependent first upon the importance of the right involved. Based on the nature of that right, a greater or lesser burden would be placed on the state to show the relationship of the intrusion to a legitimate governmental interest. I agree with the majority opinion that interference with rights of privacy within one's home requires a very high level of justification. Similar considerations would apply to certain relationships, without reference to situs, i. e. attorney-client, doctor-patient, priest-parishioner, marital relationship, parent-child. In all cases involving a right of privacy, I believe that the relationship of the intrusion to a legitimate governmental interest must be carefully examined. The court should not abandon protection of the

right of an individual to decide how to conduct his life because a rational basis may be 'conceived' *516 for the legislation in question. The importance of the governmental interest and the means utilized to accomplish this goal must be balanced against the nature of the particular right of privacy. [FN17]

FN16. Of course, in any event where Federal Constitutional rights are involved, we must at least apply the minimum standards prescribed by the United States Supreme Court. *Baker v. City of Fairbanks*, 471 P.2d 386, 401-02 (Alaska 1970).

FN17. 48 N.Y.U.L.Rev. 670 at 705.

Applying this test to the facts in this case, assuming that the defendant was found in possession of marijuana in an automobile, I agree with the majority that a valid reason existed for the prohibition due to the proven effect of marijuana on driving, and the unavailability of practical tests for ascertaining whether one is under the influence of an hallucinogenic when balanced against the rather minor status of the right involved, to possess marijuana in public. Accordingly, I would affirm the order denying the motion to dismiss.

CONNOR, Justice (concurring).

I concur in the majority opinion and the separate concurring opinion of Justice BOOCHEVER, but wish to add some observations.

The decision today properly leaves unanswered the question of how far the right to privacy, in connection with the possession of marijuana, extends outside the home. Such a determination can be made only when we are presented with specific facts against which the individual's claim of privacy can be measured, as opposed to the state's assertion of power to control the possession of marijuana. Under the test we have employed in determining the scope of the right to privacy, it is necessary to balance these conflicting claims and determine whether the state's prohibition bears a direct and substantial relationship to effectuating a legitimate state interest.

The record in the case before us does not contain

537 P.2d 494.
537 P.2d 494
(Cite as: 537 P.2d 494)

Page 24

facts about that particular circumstances in which appellant possessed marijuana. Accordingly, we must remand the case for further elucidation of the facts.

It is certain that the right to privacy does not vanish when one leaves the home. [FN1] There are certain aspects of personal autonomy which one carries with him even when he ventures out of the home, though the claim to privacy diminishes in proportion to the extent that one's person and one's activities impinge upon other persons. But, in order to trace the contours of the right to privacy, it will be necessary to engage in a critical analysis of the facts of each case which presents itself for decision. Only in this fashion can the right to privacy, outside the home, be determined on a reasoned, coherent basis so as to furnish the courts and the public with reliable rules of action. Much definitional work, therefore, remains to be done in the cases yet to be determined.

FN1. The right to privacy which received protection in *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), has nothing to do with the locus of the home and, for the most part, is concerned with matters occurring outside the home.

537 P.2d 494

END OF DOCUMENT



April 22, 2005

Dear Madam Chair,

On Thursday, April 21, your office should have received a three-volume set of materials submitted by the ACLU of Alaska pertaining to HB 96. Volume Three of those materials, unfortunately, is missing two of the documents listed in the index for that Volume. Index tabs 12 and 13 were inadvertently omitted from the copy of the materials sent to you. We are therefore enclosing copies of those two documents, as listed below:

12. van den Bree, M., and Pickworth, W., *Risk Factors Predicting Changes in Marijuana Involvement in Teenagers*, 62 Arch Gen Psychiatry (2005).
13. *The Government's Drugs Policy: Is it Working?* Home Affairs Committee, House of Commons, United Kingdom Parliament (2002).

I apologize for any inconvenience caused by this error.

Sincerely,

Allen Hopper
Senior Staff Attorney
ACLU Drug Law Reform Project

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

DRUG LAW
REFORM PROJECT
1100 BROADWAY, SUITE 1100
NEW YORK, NY 10018
PHONE: 212 694-2500
FAX: 212 694-2501

NATIONAL OFFICE
1100 BROADWAY, SUITE 1100
NEW YORK, NY 10018-1100
PHONE: 212 694-2500
FAX: 212 694-2501
WWW.ACLU.ORG

OFFICERS AND DIRECTORS

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

LEGAL DEPARTMENT
DRUG LAW REFORM PROJECT

1100 BROADWAY, SUITE 1100
NEW YORK, NY 10018-1100
PHONE: 212 694-2500

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

Risk Factors Predicting Changes in Marijuana Involvement in Teenagers

Marianne B. M. van den Bree, PhD; Wallace B. Pickworth, PhD

Background: Marijuana use during adolescence has various adverse psychological and health outcomes. It is poorly understood whether the same risk factors influence different stages in the development of marijuana involvement.

Objective: To establish which risk factors best explain different stages of marijuana involvement.

Design: Data were collected at 2 points using computer-assisted personal interview (wave 1 and wave 2 were separated by 1 year). Twenty-one well-established risk factors of adolescent substance use/abuse were used to predict 5 stages of marijuana involvement: (1) initiation of experimental use, (2) initiation of regular use, (3) progression to regular use, (4) failure to discontinue experimental use, and (5) failure to discontinue regular use. Data were analyzed using logistic regression analysis.

Participants: Middle school and high school students

(N = 13 718, aged 11-21 years) participating in the National Longitudinal Study of Adolescent Health (Add Health).

Results: Three risk factors (own and peer involvement with substances, delinquency, and school problems) were the strongest predictors of all stages. Their combined presence greatly increased risk of initiation of experimental (odds ratio, 20) and regular (odds ratio, 87) marijuana use over the next year. Personality, family, religious, and pastime factors exerted stage-specific, sex-specific, and age-specific influences.

Conclusions: Assessment of substance, school, and delinquency factors is important in identifying individuals at high risk for continued involvement with marijuana. Prevention and/or intervention efforts should focus on these areas of risk.

Arch Gen Psychiatry. 2005;62:311-319

MARIJUANA IS THE MOST commonly used illicit drug. Approximately 50% of secondary-school students in the United States indicate having used marijuana.¹ It is one of the leading substances reported in arrests, emergency department and treatment admissions, and autopsies.² Short-term risks of marijuana use include traffic accidents³ and unprotected sex.⁴ In addition, marijuana use is associated with lack of motivation; greater involvement with and inability to quit other substances; psychiatric problems, including depression, schizophrenia, anxiety, suicide, conduct problems, antisocial behavior, and criminal behavior; and reduced chances of participation and stability in adult roles (eg, not graduating from high school, abortion, unemployment, and divorce).⁵⁻¹³

Experimentation with substances usually takes place during adolescence when tolerance is lower and risk of dependence is greater than in adulthood.¹⁴ Al-

though most adolescents use marijuana infrequently, without adverse health consequences, a minority progress to harmful use.¹⁵ A better understanding of the risk factors that put adolescents at increased risk for experimentation with marijuana, progression to regular use, and failure to discontinue use can make important contributions to the evidence-based development of prevention and intervention programs.

Previously published studies have indicated that marijuana involvement is associated with a multitude of risk factors, including psychological, family, peer, and school variables.¹⁶ However, most risk factor studies conducted to date have focused on a single aspect of the development of marijuana involvement, usually lifetime use or initiation of experimentation.¹⁶ It is poorly understood to what extent well-established risk factors are associated with different stages of marijuana involvement.¹⁷ The primary aim of our study was to establish and compare the contributions of risk factors to the stages

Author Affiliations: Division of Psychological Medicine, College of Medicine, Cardiff University, Cardiff, Wales (Dr van den Bree); National Institute on Drug Abuse, Intramural Research Program, National Institutes of Health, Baltimore, Md (Dr Pickworth). Dr Pickworth is now with the Battelle Center for Public Health Research Evaluation, Baltimore.

Table 1. Marijuana Use Development From Wave 1 to Wave 2*

Wave 1	Wave 2			
	Experimental Use		Regular Use	
	No	Yes	No	Yes
Experimental Use				
No	10 331 (83)	390 (88), group A	981 (10), group B	260 (3), group C
Yes	2323 (17)	955 (45), group D	786 (37), group E	382 (18), group F
Regular use				
No	12 454 (91)		11 812 (95)	642 (5)
Yes	1264 (9)		640 (47), group G	664 (53), group H

*Values are expressed as number (percentage) of subjects. Experimental user, 1-10 times; regular user, >10 times. Five stages were assessed based on comparisons of groups who changed their marijuana use since wave 1 vs those who did not. Stages were initiation of experimental marijuana use (compared groups A and B), initiation of regular marijuana use (compared groups A and C), progression to regular use (compared groups E and F), failure to discontinue experimental use (compared groups E and D), and failure to discontinue regular use (compared groups H and G).

of initiation, progression, and failure to discontinue experimental and regular marijuana use. Most previous studies have focused on 1 or a few risk factors. Our second aim was to evaluate a wide range of relevant risk factors to provide well-funded evidence for their relative importance in predicting development of marijuana involvement. Third, most previous studies have been cross-sectional in nature. Our study uses a longitudinal design, enabling us to predict developments in marijuana involvement based on risk factors assessed in the previous year.

METHODS

The National Longitudinal Study of Adolescent Health (Add Health) was established to determine the causes of health-related behaviors of adolescents and their outcomes in young adulthood. The primary sampling frame included all high schools in the United States with an 11th grade and at least 30 enrollees. From this, a systematic random sample of high schools was selected. Overall, 79% of schools contacted agreed to participate (final sample of 134 schools). Among students, a random sample was selected to take part in in-home interviews. Sixteen thousand seven hundred six subjects were selected to be interviewed at 2 points, wave 1 in 1995 (response rate, 78.9%) and wave 2 in 1996 (response rate, 88.2%). Estimates in this sample were not significantly biased by missing data from dropouts and graduates.¹⁸ The Add Health study and sampling procedures are described in detail elsewhere.¹⁹ For the present study (N=13718), we excluded any nonrandomly selected subsamples, duplicates, and students with missing data on marijuana use. Subjects were aged 11 to 21 years, with a mean (SD) age of 15.4 (1.6) years.

Data were gathered by computer-assisted interview, which yields higher reported prevalences of high-risk behaviors than regular interviews.²⁰ Interviews took 1 to 2 hours and were administered in the presence of trained assistants. Subjects responded to questions by typing in answers on a laptop computer. Sensitive questions, including those on marijuana involvement, were given on headphones. This avoided the problem of underreporting, which may occur in situations where subjects are face to face with the interviewer.²⁰ At wave 1, adolescents indicated how many times they had used marijuana during their lives; 1 year later, during wave 2, they reported on their use since wave 1. For both waves, we established the following groups: nonusers, experimental users (used 1-10

times), and regular users (used >10 times). We subsequently assessed changes in marijuana involvement between the 2 waves according to 5 stages: (1) initiation of experimental use (we selected nonusers at wave 1 and compared those who started experimental use at wave 2 with those who had remained nonusers), (2) initiation of regular use (we selected nonusers at wave 1 and compared those who started regular use at wave 2 with those who had remained nonusers), (3) progression to regular use (we selected experimental users at wave 1 and compared those who progressed to regular use at wave 2 with those who had remained experimental users), (4) failure to discontinue experimental use (we selected experimental users at wave 1 and compared those who had discontinued experimental use at wave 2 with those who had remained experimental users), and (5) failure to discontinue regular use (we selected regular users at wave 1 and compared those who had discontinued regular use at wave 2 with those who had remained regular users) (Table 1).

Risk factors were established at wave 1 and were used to predict these 5 stages of marijuana involvement. To establish these risk factors, 8 major risk factor domains were first established a priori from the literature, and variables (total of 238) were selected from the Add Health data set to best represent these domains. Next, factor analysis was used to identify within each domain the presence of subdomains (21 identified altogether). Factor solutions were rotated orthogonally (Varimax rotation) to make individual risk factors within each domain independent from each other. For each subject, for each risk factor, summed risk factor scores were obtained by adding those items with relatively high loadings on a factor (≥ 0.30) and discarding items with lower factor scores. The great majority of the sample had no missing responses for all items making up each risk factor (ie, $\geq 95\%$ of the sample had 0 missing values for 18 of the 21 risk factors). Individuals with 10% or more of the responses to a summed score missing were excluded from further analyses. For those with fewer than 10% missing values, an imputation formula was used, based on replacing the missing items by the mean of the nonmissing responses. Prior to further analysis, the scored risk factors were normalized using the Blom transformation.²¹ The correlation coefficients between the factors as obtained by factor analysis and normalized summed risk factors were equal to or exceeded 0.90 for 18 of 21 subdomains, illustrating the legitimacy of the procedures used to obtain summed risk factors (ie, excluding items with factor scores >0.30 , imputation of missing values, and normalization of the summed scores). We conducted 2 sets of logistic regression analyses. First, in analyses including 1 risk factor at a time, we evaluated their association with each of the stages

of marijuana involvement. Subsequently, we performed stepwise logistic regression analyses to select the subset of risk factors best predicting the 5 stages of marijuana involvement. Included as independent variables were all risk factors that were significant in the first set of analyses. For all regression analyses, a conservative significance level of $P \leq .03$ for factors to enter and remain in the model was specified a priori. The influences of age,⁷ race,²² urbanicity,²³ and socioeconomic status²⁴ (parental educational and occupational status) on the relations between the risk factors and marijuana involvement were taken into account in all analyses. These variables were force-entered into each model before the introduction of the risk factors. Therefore, the associations between the stages of marijuana involvement and the risk factors were corrected for the influences of these 5 variables. Socioeconomic status was assessed by 2 variables: parental level of education and occupation. In the case of a single residential parent, these were the only 2 indicators of socioeconomic status used. In the case of 2 residential parents, the mean level of education and of occupational level was used in regression analyses. Since sex differences have been established in substance use,^{25,26} we performed regression analyses including sex as a covariate and, if significant, the analysis was repeated for males and females separately. Data were missing for 29% of the subjects on the items assessing the relationship and activities undertaken with the father. Therefore, regression analyses were run twice, first, including these 2 factors and establishing their significance on the marijuana variables, and next, on having established that these influences were not significant, the regression analyses were repeated excluding these 2 variables, allowing us to include more subjects in the analyses. The results of the latter analyses are presented. The significance of mean differences between groups was assessed by *t* test (level of $P \leq .05$ used). All analyses were performed using SAS (SAS Institute Inc, Cary, NC).²⁷

RESULTS

The majority of adolescents had not tried marijuana, and among those who had, experimental use was more common than regular use. However, most adolescents who had used marijuana at wave 1 continued to do so 1 year later (Table 1).

All risk factor information was gathered at wave 1, allowing us to establish the influences on the development of marijuana involvement over the next year. Boys had significantly higher mean scores on most risk factors, except somatic symptoms, depressive symptoms, self-doubt, irrational decision making, activities with mother, and religious involvement, for which girls scored higher (Table 2). There were no significant sex differences for activities with father and extent to which the parents allow the adolescent to make independent decisions.

Most risk factors contributed significantly to at least some of the stages of marijuana involvement (Table 3). However, 3 risk factors were stronger predictors than others and influenced all stages of marijuana development: own and peer involvement with substances; delinquency; and school-related problems. Other risk factors had smaller effects and tended to be stage and/or sex specific. Considerably more risk factors significantly influenced initiation of experimental and regular marijuana use than progression to regular use or failure to discontinue experimental and regular use.

Stepwise regression analyses were performed to establish the set of variables best predicting each stage of

marijuana involvement. The results (Table 4) further confirmed the importance and global influence of these 3 risk factors. "Own and peer involvement with substances" predicted initiation of experimental marijuana use (odds ratio [OR], 1.79 for boys and 2.94 for girls), initiation of regular use (OR, 2.72 for boys and girls combined), failure to discontinue experimental use (OR, 0.65 for girl), and failure to discontinue regular marijuana use (OR, 0.62 for boys and girls combined). Delinquency predicted initiation of experimental marijuana use (OR, 1.30 for boys and 1.34 for girls), initiation of regular use (OR, 1.36 for boys and girls combined), progression to regular use (OR, 1.35 for boys), failure to discontinue experimental use (OR, 0.71 for boys), and failure to discontinue regular use (OR, 0.77 for boys and girls combined). School variables predicted initiation of experimental marijuana use (OR, 1.17 for boys and 1.21 for girls), initiation of regular use (OR, 1.57 for boys and girls combined), and progression to regular use for girls (OR, 1.60). Other risk factors exerted stage-specific and sex-specific influences: low religiosity predicted initiation of experimental marijuana use in girls (OR, 0.78) and initiation of regular use in boys and girls combined (OR, 0.83); independent decision making predicted progression to regular use in boys (OR, 1.30), and activities with the mother predicted failure to discontinue regular marijuana use for boys and girls combined (OR, 1.17).

We divided the sample into age groups 11 to 15 years ($n=7334$) and 16 to 21 years ($n=6999$) and conducted age-specific analyses for the 3 stages of marijuana involvement in Table 3 for which significant age differences were found. For initiation of experimental use in girls, 4 risk factors were significant for the younger age group (own and peer involvement with substances, OR, 3.12 [95% confidence interval (CI), 2.50-3.90]; delinquency, OR, 1.39 [95% CI, 1.15-1.67]; unhappy in school, OR, 1.25 [95% CI, 1.08-1.44]; and religion, OR, 0.76 [95% CI, 0.66-0.87]), while only own and peer involvement with substances (OR, 3.12 [95% CI, 2.42-4.02]) and religion (OR, 0.81 [95% CI, 0.68-0.97]) were significant in the older group. For initiation of regular use for boys and girls combined, own and peer involvement with substances and trouble in school were significant in both the younger (OR, 2.94 [95% CI, 2.11-4.09] and OR, 1.61 [95% CI, 1.20-2.16], respectively) and older age groups (OR, 2.87 [95% CI, 2.10-3.94] and OR, 1.63 [95% CI, 1.20-2.23], respectively). In addition, delinquency (OR, 1.42 [95% CI, 1.06-1.89]) and irrational decision making (OR, 1.36 [95% CI, 1.08-1.71]) were significant in the younger age group, while inactive pastimes was significant for the older age group (OR, 1.35 [95% CI, 1.05-1.75]). Finally, failure to discontinue experimental use for girls was explained by religion only in the younger age group (OR, 1.34 [95% CI, 1.05-1.72]) and own and peer involvement with substance: only in the older age group (OR, 0.54 [95% CI, 0.36-0.82]).

To further establish the influences of the 3 strongest risk factors on marijuana involvement (combining the factors "trouble in school" and "happy in school"), we divided the sample in a high-risk group who scored in the upper 33% for each of the 3 risk factors ($n=1386$) and a low-risk group who scored in the lower 33%

Table 2. Means, Standard Deviations, and P Values Associated With *t* Tests for Sex Differences for the Risk Factors*

Domain	Boys, Mean (SD)	Girls, Mean (SD)	P Value
Daily activities†			
Active pastime	6.72 (2.90)	6.37 (2.77)	<.001
Passive pastime	6.31 (2.78)	6.34 (2.69)	<.001
Psychological health‡			
Somatic symptoms	14.67 (7.59)	17.73 (8.92)	<.001
Positive emotions	8.15 (2.63)	7.84 (2.75)	<.001
Depressive symptoms	6.41 (6.30)	7.97 (6.30)	<.001
Personality§			
Self-doubt	21.99 (6.80)	21.14 (6.37)	<.001
Irrational decision making	10.85 (2.86)	10.95 (2.91)	.047
Problem avoidance	11.44 (2.58)	10.98 (2.46)	<.001
School situation			
Dissatisfaction with school	21.38 (6.48)	20.82 (6.32)	<.001
Trouble in school	10.81 (5.15)	9.20 (4.62)	<.001
Family functioning¶			
Relations with mother	31.47 (3.80)	30.82 (4.69)	<.001
Activities with mother	3.84 (1.20)	4.44 (1.71)	<.001
Relations with father	22.34 (3.53)	21.59 (4.12)	<.001
Activities with father	12.19 (2.67)	12.14 (2.82)	.28
Family relations	24.91 (4.53)	24.47 (4.92)	<.001
Independent decision making	5.02 (1.61)	5.04 (1.54)	.43
*Rough living**			
Substance involvement, substance involvement of peers	8.65 (10.11)	7.75 (8.91)	<.001
Violence	2.04 (2.93)	0.91 (1.81)	<.001
Delinquency	3.85 (4.77)	3.03 (3.71)	<.001
Religion**	13.60 (4.95)	14.39 (4.74)	<.001
Neighborhood††	13.69 (2.40)	13.50 (2.56)	<.001

*Analyses are based on the full sample regardless of the status of marijuana use. To facilitate interpretation, the means are given for the nonnormalized risk factors. However, the *t* tests are based on the normalized risk factors. In the case of unequal variances for the 2 groups, *t* tests are based on the Satterthwaite method.²⁷

†Active pastimes include active sports, exercise, hobbies, rollerblading, cycling, working around the house, and chores. Passive pastimes include hours watching television and videos, playing video and computer games, and listening to the radio.

‡Somatic symptoms include feeling tired, weak, moody, and/or dizzy; having trouble relaxing; frequent crying; insomnia; waking up tired; feeling very sick; feeling hot; frequent stomachaches; feeling fearful; poor appetite; chest pains; headaches; aches and/or pains; cold sweats; painful urination; too sick for social activities; sore throat and/or cough; acne; and being too sick for school. Positive emotions include feeling hopeful about the future, enjoying life, and feeling happy and just as good as others. Depressive symptoms include feeling depressed, sad, the blues, lonely, bothered by things, people dislike you, life is a failure, fearful, too tired to do things, it's hard to get going, life is not worth living, people are unfriendly to you, poor appetite, and talking less than usual.

§Self-doubt includes not feeling proud of self, not liking self, having no good qualities, feeling unloved and unwanted, not fitting in, having low energy, having poor coordination, if sick, not recovering quickly, and often sick. Irrational decision making includes not seeing many approaches to problems, not researching solutions, irrational decision making, not evaluating outcome of decision, and not believing in accomplishment through hard work. Problem avoidance includes never arguing with anyone, never criticizing others, never feeling sad, avoiding confronting problems, and relying on gut feelings.

||Dissatisfaction with school includes being happy at school, part of school, and close to people at school; feeling teachers treat students fairly, safe in school, students prejudiced, and teachers care about me; and having no trouble with homework. Trouble in school includes having trouble with teachers, having trouble paying attention, frequently skipping school, being suspended, repeating a grade, having trouble with homework, being expelled, not wanting to attend college, having a low grade point average, and being unlikely to attend college.

¶Relations with mother includes having a good relationship with mother, good communication with mother, mother is warm and loving, discusses ethics with mother, mother encourages independence, having few arguments about behavior, feeling mother cares, and being close to mother. Activities with mother includes talking about grades, school issues, personal problems, and life; working on school projects; going shopping, to the movies, concerts, plays, or sporting events; and doing things. Relations with father includes a good relationship with father, good communication with father, father is warm and loving, feeling father cares, and being close to father. Activities with father includes talking about grades and school issues; working on school projects; talking about life; having few arguments about behavior; discussing personal problems; father would be disappointed if didn't graduate from college; going to the movies, concerts, plays, or sporting events; father disappointed if didn't graduate from high school; and doing things. Family relations includes family paying attention to you, having fun together, understanding you, caring about you, and not wanting you to leave home. Independent decision making includes making own choices on television amount and television programs, clothing, diet, weekday bedtime, friends, and weekend curfew.

**Substance involvement, substance involvement of peers includes frequent alcohol consumption, drunkenness, 5 or more drinks on a single occasion, alcohol use outside family, being hung over, throwing up after drinking, best friends drink alcohol, alcohol use more than 2 to 3 times, regretting actions because of alcohol, best friends smoke marijuana, regular cigarette smoking, best friends smoke cigarettes, regretting sex because of alcohol, having parental trouble because of alcohol, having dating problems because of alcohol, ever smoking cigarettes, driving while drunk, having problems with friends because of alcohol, being drunk at school, getting into physical fights because of alcohol, having first sex at an early age, having school problems because of alcohol, and spending nights away from home without permission. Violence includes pulling a knife or gun on someone, having a knife or gun pulled on you, being shot, stabbing someone, using a weapon in a fight, seeing a shooting or stabbing, being jumped or stabbed, carrying a weapon to school, getting into physical fights, and being seriously injured from a fight. Delinquency includes shoplifting, stealing worth more than \$50, causing property damage, painting graffiti, burglary, selling drugs, being loud or rowdy in public, lying to parents about whereabouts, joyriding, and running away from home.

††Religion includes attending religious services, religion is important to you, prayer, participating in youth groups, and believing scriptures are the word of God.

†††Neighborhood includes neighbors looking out for others, being unhappy to move, knowing most neighbors, stopping and talking to neighbors, feeling safe in neighborhood, and being happy in neighborhood.

Table 3. Associations of the Risk Factors With Marijuana Involvement*

Risk Factor	Initiation of Experimental Use		Initiation of Regular Use		Progression to Regular Use		Failure to Discontinue Experimental Use		Failure to Discontinue Regular Use	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
Active lifestyles										
Inactive lifestyles	1.16	0.74								
Somatic symptoms	1.15	1.26								
Positive emotions		0.80								
Depressive symptoms	1.18	1.33								
Self-doubt		1.27								
Ir. alcohol decision making		1.14	1.24	1.46			1.34		0.62	
Problem avoidance					0.79					
Dissatisfaction with school	1.34	1.62†	1.58†	2.03†					0.78	
Trouble in school	.51†	1.83†	2.16†	2.32†		1.60†			0.78	
Relations with mother	0.86	0.80		0.73						
Activities with mother										1.40
Relations with father	0.79	0.74		0.57†						
Activities with father										
Family relations	0.78	0.69	0.66	0.66†						
Independent decision making		1.20	1.30		1.29					
Substance involvement	2.15†	3.77†	2.63†	6.98†	1.51†	1.49	0.76	0.64†	0.54†	0.64†
Violence	1.49	1.55†	1.68†	2.10†						
Delinquency	1.71†	2.21†	1.77†	3.54†	1.32		0.72	0.80	0.68	0.75
Religion	0.83	0.70	0.76	0.73				1.20		
Neighborhood										

*Values are expressed as odds ratios. Analyses are based on normalized, summed risk factor scores. Significant odds ratios were obtained from regression analyses run for each of the individual risk factors separately. Covariates age, race, urban status, and parental educational and occupational status were force-entered into each model before the introduction of the risk factors. A significance level of $P \leq .03$ for factors to enter and remain in the model was specified a priori. See Table 2 for explanation of risk factors.

†Odds ratios of highest value (≤ 0.67 or ≥ 1.50).

($n = 1696$), while excluding the middle 33%, and repeated the regression analyses. In the high-risk group, 28% of adolescents initiated marijuana use in the next year compared with 2% in the low-risk group (OR, 19.90 [95% CI, 12.02-32.95]). Regular marijuana use was initiated by 16% in the high-risk group compared with 0.3% in the low-risk group (OR, 78.40 [95% CI, 26.40-232.85]). In the low-risk group, no individual progressed to regular use (39% in high-risk group) or continued using marijuana experimentally or regularly (52% and 60% in high-risk group, respectively), so no ORs could be calculated for these 3 stages.

COMMENT

In this large population-based sample, 13% of nonusers at wave 1 had become involved with marijuana 1 year later (at wave 2, 10% experimentally and 3% regularly). More than half (55%) of adolescents who had experimented with marijuana at wave 1 continued to use marijuana either experimentally (37%) or regularly (18%). The great majority of regular users at wave 1 remained involved with marijuana (53% on a regular basis and 20% experimentally). These numbers indicate that initiation tends to result in continuation.

The risk factors that have been most consistently related to marijuana use in the literature include the following: (1) Daily activities. Low levels of engagement in prosocial activities are associated with marijuana use^{28,29}; (2) Psychological health. Marijuana use is associated with

intrapersonal difficulty,³⁰ poor control of emotions,³⁰ and depression and anxiety^{31,32}; (3) Personality. Risk of marijuana use may be increased in those with limited inner resources to cope with psychological stress³³ and poor self-concept.³⁴⁻³⁶ Other personality traits associated with increased risk include deviance,³⁷ rebelliousness,²⁵ being unempathetic,³⁸ and unconventional^{30,38}; (4) School situation. School-related risk factors include poor academic performance,³⁹⁻⁴³ low connectedness to school,⁴⁴ truancy, and school dropout^{43,47}; (5) Family functioning. Risk factors within the family environment include poor, inconsistent family management practices; family conflict; low bonding^{48,49}; poor parental monitoring; and lack of structure and rules^{23,42,50}; (6) Rough living. Risk of marijuana use is increased in those with greater use of other substances^{6,51} and substance-using friends.^{24,51-53} Marijuana use has also been associated with a maladaptive conflict style,^{44,55} aggression,³⁶ delinquency,^{6,7,37} violence,^{23,38} and precocious and risky sexual behavior.^{59,60}; (7) Religiosity and conservative beliefs may protect against adolescent substance use⁶¹; and (8) Risk of substance use may be greater in disadvantaged neighborhoods.^{62,63}

Our analyses indicated that, when analyzed individually, most of these risk factors predicted at least some stages of marijuana involvement. However, the strongest predictors were substance use by adolescents themselves and their peers; delinquency; and school-related problems. These factors also influenced most stages of marijuana involvement, suggesting that intervention efforts aimed at these risk factors may be broadly applicable. In addition, when

Table 4. Stepwise Logistic Regression Analysis on the Development of Marijuana Use Between Waves 1 and 2*

Significant Factor	Boys	Girls
Initiation of Experimental Marijuana Use†		
Substance involvement, substance involvement of peers	1.78 (1.53-2.07)	2.84 (2.48-3.49)
Delinquency	1.30 (1.17-1.54)	1.34 (1.16-1.55)
Trouble in school	1.17 (1.02-1.36)	
Unhappy in school		1.21 (1.08-1.36)
Religion		0.78 (0.70-0.87)
	R, E*	A*
Initiation of Regular Marijuana Use†		
Substance involvement, substance involvement of peers	2.72 (2.21-3.34)	2.72 (2.21-3.34)
Trouble in school	1.57 (1.31-1.88)	1.57 (1.31-1.88)
Delinquency	1.36 (1.13-1.64)	1.36 (1.13-1.64)
Religion	0.83 (0.71-0.97)	0.83 (0.71-0.97)
	A, E*	A, E*
Progression to Regular Marijuana Use†		
Delinquency	1.35 (1.00-1.88)	
Independent decision making	1.30 (1.05-1.60)	
Trouble in school		1.80 (1.28-2.01)
	R*	
Failure to Discontinue Experimental Marijuana Use†		
Delinquency	0.71 (0.61-0.84)	
Substance involvement, substance involvement of peers		0.65 (0.50-0.84)
		A*
Failure to Discontinue Regular Marijuana Use†		
Substance involvement, substance involvement of peers	0.62 (0.50-0.77)	0.62 (0.50-0.77)
Delinquency	0.77 (0.66-0.90)	0.77 (0.66-0.90)
Activities with mother	1.17 (1.02-1.34)	1.17 (1.02-1.34)
	E, O*	E, O*

Abbreviations: A, age of the subject at wave 1; CI, confidence interval; E, parental education; O, parental occupation; OR, odds ratio; R, race; U, urban status.

*Analyses based on normalized, summed risk factor scores. In all regression analyses, the following factors were specified to be entered into the model: the age of the subject at wave 1 (A), race (R), urban status (U), parental education (E), and parental occupation (O). In case any of these factors were significant, their abbreviation is included in the table. The χ^2 test for the combined effect of the independent variables is based on the -2 log likelihood method. A significance level of $P = .03$ was specified for the χ^2 score for entering a factor in the model and for the factor to remain in the model.

†Sex differences were nonsignificant; therefore, boys and girls were combined in analyses on this variable.

we performed analyses on the younger (11-15 years) and older (16-21 years) age groups separately; these risk factors remained the strongest predictors.

Our results confirm previous reports of the importance of the risk factors "substance use by self and peers"^{6,15,51,53,64} and "delinquency."^{6,7,65} Use of alcohol or drugs during adolescence increases the risk of substance dependence in adulthood.⁸ Marijuana use has been related to failure to quit other substances.¹¹ Peers may influence adolescent substance use by changing personal attitudes, serving as role models, and being a source of information and providing access, encouragement, and a social setting for experimentation with substances.^{64,66-68} De-

viant peer affiliations pose a risk to retention rates during substance abuse treatment and may need to be dealt with specifically during treatment.⁶⁹ The combination of the risk factors "substance abuse" and "delinquency" may lead to a career of crime.¹⁶ High rates of substance use, involvement with delinquent activities, and being part of deviant peer groups seem to reflect low concern with the future or perceived future perspectives. Indeed, illicit drug use is associated with reduced chances of successful participation in adult roles.¹²

School-related variables presented the third strong risk factor. Poor academic achievement^{39,41,42,45,47} has been previously associated with marijuana involvement. The present study used a broader assessment of the school situation. Risk factor "trouble in school" included, in addition to an indicator of test results (grade point average), information on problems with teachers, trouble paying attention, frequently skipping school, suspension, repeating a grade, expulsion, and no desire or intention to attend college. "Dissatisfaction with school" assessed being happy in school, part of school, safe in school, close to people in school, whether teachers care about students and treat them fairly, and whether other students are prejudiced. The few previous studies that have used similar broader evaluations of the school environment have also found that the broader school context is an important risk factor in marijuana involvement.^{36,44} Interestingly, one of these studies found that school bonding is closely related to self-efficacy.³⁶ Our findings are not limited to marijuana use; we have previously found that school-related problems predict experimentation with cigarettes and progression to regular smoking.⁷⁰ It has been previously reported that remedial academic classes can improve not only school performance but also reduce smoking rates.⁷¹

Adolescents spend a major part of their lives in school. Certain school characteristics (eg, high turnover of staff and pupils, pupil-staff ratio, absenteeism, and indices of low socioeconomic status in pupils) have been associated with childhood disorder and deviance⁷² and may also increase risk of marijuana involvement. Schools can play a role in shaping the development of socially approved conduct,⁷³ and active discouragement of substance use in schools can be effective.⁷⁴ Positive results achieved with classroom-based programs aimed at increasing academic and social competence as well as school-bonding⁷⁵ become particularly relevant in the light of the present results.

Other significant predictors in our study exerted stage-specific, sex-specific, and age-specific influences. Religion reduced risk of initiation of experimental marijuana use for girls (both age cohorts), initiation of regular use for boys and girls combined (but not in age-specific analyses), and continuation of experimental marijuana use in younger girls. It has previously been reported that religiosity and conservative beliefs are protective factors for adolescent substance use.^{45,70} Possibly, the protective effects of religiosity may exert themselves through the family environment⁷⁶ or by enhancing ability to cope with stress.⁷⁶

Family-related variables have been previously reported to be important in the development of adolescent substance use involvement. We found that 2 family-

related risk factors influenced marijuana involvement; independent decision making (eg, freedom in choosing what to wear, eat, when to go to bed, television time and programs) predicted progression to regular use for boys, and activities with the mother (eg, discussing school grades and personal problems) predicted discontinuation of regular marijuana use for boys and girls combined. Both parental monitoring and parent-child attachment have been previously related to adolescent substance involvement.^{77,78} In our study, these influences were found to exert stage-specific and sex-specific influences. Possibly, family-related factors become less influential once the impact of other mediating factors (for example, socioeconomic status) and peer influences have been statistically accounted for, as in the analysis used in this study.

Two other factors were only significant in age-specific analyses: irrational decision making predicted initiation of regular marijuana use for boys and girls combined and inactive pastimes predicted the same variable for the older age cohort. Irrational decision making is characterized by the inability to make rational decisions, to research solutions, to evaluate outcomes of decisions, and to believe things can be accomplished through hard work. It reflects a lack of responsibility and self-efficacy, personality traits that have been previously related to marijuana involvement.⁷⁹ Inactive pastimes (hours spent watching television, playing computer and video games, listening to the radio) have also been related to risk of substance use.^{28,29}

Most risk factor studies have focused on the initiation of marijuana use. The few studies that have also focused on discontinuation of use have indicated that use of other licit and illicit drugs, deviance, selection of social settings favorable for use, increased risk of victimization, and self-medicating to improve mood are important risk factors.⁸⁰⁻⁸² These findings are in agreement with our results. In addition, we found the progression and failure to discontinue (ie, of experimental and regular use) stages were influenced by considerably fewer risk factors than the initiation stages, and the 3 risk factors with the strongest associations with marijuana use were also the strongest predictors of failure to discontinue.

Adolescents with the highest scores on all 3 risk factors had considerably increased risks of initiating experimental (20 times) and regular marijuana use (87 times). When selecting the highest and lowest scoring groups for each risk factor individually, rather than combined, ORs ranged between 1.6 and 4.0, strongly indicating that the presence of multiple risk factors makes adolescents especially vulnerable for marijuana use and abuse. Therefore, directing intensive prevention and intervention efforts at those groups at greatest risk may be more successful than programs aimed at all students in a school, many of whom will never consider trying marijuana. The percentages of adolescents who were increasingly involved with marijuana were in the high-risk group more frequently than the low-risk group (28% vs 2% for experimental initiation; 16% vs 0.3% for regular initiation; 39% vs 0% for progression; 52% vs 0% for continued experimental use; and 60% vs 0% for continued regular use). This indicates that successful prevention and/or intervention efforts based on these combined risk

factors may have an effect on a large proportion of adolescents at risk.

Identification of individuals at risk should take place in any setting where the 3 most important risk factors can be assessed, for example, in schools, medical practices, the judicial system, and substance treatment centers. Prevention and intervention should incorporate strategies to address other substance use and the peer group, delinquent activities, and the school situation. In addition, our finding of fewer risk factors influencing the progression and failure to discontinue use stages suggests that the greatest opportunities for intervention are during earlier stages of marijuana involvement. During later stages, genetic and other biological factors involved in habituation and dependence may become increasingly important⁸³ and treatment, more difficult.

Although we evaluated many carefully selected risk factors, not all relevant aspects of risk were assessed (for example, genetic factors^{26,83} or attitudes toward drug use⁸⁴). Despite the advantages of a longitudinal design, we cannot rule out the possibility that other factors at wave 1 influenced both risk factors as well as marijuana involvement. In addition, the analytical methods used cannot account for complex interactions between risk factors. Sample sizes were lower for analyses of the progression and failure to discontinue use stages. This could have influenced our finding of fewer significant risk factors and should be taken into account when evaluating our conclusions. Many comparisons between behaviors and marijuana involvement were made in this study, and it is therefore possible that significant findings have arisen owing to chance. Reassuringly, however, all associations were in the expected directions and agree with results obtained in previous studies. In addition, a conservative approach was adopted by presenting the results in terms of the strongest findings (P values of $\leq .03$ for the regression analyses). Additional research, also including clinical populations, is needed to confirm the results and to further enhance their practical implications.

Our study indicates that the assessment of licit substance use, information on peers, delinquency, and how adolescents experience their school environment strongly predict risk of involvement with marijuana. Therefore, these risk factors can be used to identify adolescents who may require early and intensive prevention efforts and to address these factors in efforts to help them.

Submitted for Publication: March 31, 2004; final revision received July 27, 2004; accepted August 20, 2004.
Correspondence: Marianne B. M. van den Bree, PhD, Division of Psychological Medicine, Cardiff University, Heath Park, Cardiff CF14 4XN, Wales (vandenbreeemb@cardiff.ac.uk).

Funding/Support: This research uses data from the National Longitudinal Study of Adolescent Health (Add Health) project, a program project designed by J. Richard Udry, PhD, principal investigator, and Peter Bearman, PhD, and funded by grant P01-HD31921 from the National Institute of Child Health and Human Development, Bethesda, Md, to the Carolina Population Center, University of North Carolina at Chapel Hill, with cooperative funding participation by the National Cancer In-

stitute; the National Institute of Alcohol Abuse and Alcoholism; the National Institute on Deafness and Other Communication Disorders; the National Institute on Drug Abuse; the National Institute of General Medical Sciences; the National Institute of Mental Health; the National Institute of Nursing Research; the National Institutes of Health Office of AIDS Research, Office of Behavioral and Social Science Research, Office of the Director, and Office of Research on Women's Health; the Department of Health and Human Services, Office of Population Affairs; the Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics and Office of Minority Health; the Department of Health and Human Services, Office of Public Health and Science Office of Minority Health; the Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation; Bethesda, Md, and the National Science Foundation, Arlington, Va. Persons interested in obtaining data files from the Add Health project should contact Add Health Project, Carolina Population Center, 123 W Franklin St, Chapel Hill, NC 27516-2524 (<http://www.cpc.unc.edu/addhealth>).

Acknowledgment: We are grateful for continual information technology and library support provided by Mary Pfeiffer, Michael J. Owen, MD, Eliot Gardner, PhD, Hollie V. Thomas, PhD, Andrew McBride, MD, and Nicole Eid have provided helpful comments.

REFERENCES

- Johnston LD, O'Malley PM, Bachman JG. *Monitoring the Future: National Survey Results on Adolescent Drug Use: Overview of Key Findings*. Bethesda, Md: National Institute on Drug Abuse, US Dept of Health and Human Services; 2003.
- Dennis M, Babor TF, Roebuck MC, Donaldson J. Changing the focus: the case for recognizing and treating cannabis use disorders. *Addiction*. 2002;97(suppl 1):4-15.
- Williams AF, Peat MA, Crouch DJ, Wells JK, Finkle BS. Drugs in fatally injured young male drivers. *Public Health Rep*. 1985;100:19-25.
- Kingree JB, Braithwaite R, Woodring T. Unprotected sex as a function of alcohol and marijuana use among adolescent detainees. *J Adolesc Health*. 2000;27:179-185.
- Tunving K. Psychiatric effects of cannabis use. *Acta Psychiatr Scand*. 1985;72:209-217.
- Rey JM, Sawyer MG, Raphael B, Patton GC, Lynskey M. Mental health of teenagers who use cannabis: results of an Australian survey. *Br J Psychiatry*. 2002;180:216-221.
- Fergusson DM, Horwood LJ, Swain-Campbell N. Cannabis use and psychosocial adjustment in adolescence and young adulthood. *Addiction*. 2002;97:1123-1135.
- Brook DW, Brook JS, Zhang C, Cohen P, Whiteman M. Drug use and the risk of major depressive disorder, alcohol dependence, and substance use disorders. *Arch Gen Psychiatry*. 2002;59:1039-1044.
- Tunving K. Psychiatric aspects of cannabis use in adolescents and young adults. *Pediatrics*. 1987;84:85-91.
- Weiser M, Reichenberg A, Rabinowitz J, Kaplan Z, Caspi A, Yasvitzky R, Mark M, Knobler HY, Nahon D, Davidson M. Self-reported drug abuse in male adolescents with behavioral disturbances, and follow-up for future schizophrenia. *Biol Psychiatry*. 2003;54:655-660.
- Ford DE, Vu HT, Anthony JC. Marijuana use and cessation of tobacco smoking in adults from a community sample. *Drug Alcohol Depend*. 2002;67:243-248.
- Kandel DB, Davies M, Karus D, Yamaguchi K. The consequences in young adulthood of adolescent drug involvement: an overview. *Arch Gen Psychiatry*. 1986;43:746-754.
- Brook JS, Balka EB, Whiteman M. The risks for late adolescence of early adolescent marijuana use. *Am J Public Health*. 1999;89:1549-1554.
- Chen K, Kandel DB, Davies M. Relationships between frequency and quantity of marijuana use and last year proxy dependence among adolescents and adults in the United States. *Drug Alcohol Depend*. 1997;46:53-67.
- Johnston LD, O'Malley PM, Bachman JG. *Monitoring the Future: National Survey Results on Drug Use, 1975-2002. Volume I: Secondary School Students*. Bethesda, Md: National Institute on Drug Abuse, National Institutes of Health, Dept of Health and Human Services; 2002.
- Clayton RR. Transitions in drug use: risk and protective factors. In: Glantz MD, Pickens RW, eds. *Vulnerability to Drug Abuse*. Washington, DC: American Psychological Association; 1992:15-51.
- Warner LA, Kessler RC, Hughes M, Anthony JC, Nelson CB. Prevalence and correlates of drug use and dependence in the United States: results from the National Comorbidity Survey. *Arch Gen Psychiatry*. 1995;52:219-229.
- Udry JR, Chantala K. Missing school dropouts in surveys does not bias risk estimates. *Soc Sci Res*. 2003;32:294-311.
- Resnick MD, Bearman PS, Blum RW, Bauman KE, Harris KM, Jones J, Tabor J, Beuhring T, Sleving RE, Shew M, Ireland M, Bearinger LH, Udry JR. Protecting adolescents from harm: findings from the National Longitudinal Study on Adolescent Health. *JAMA*. 1997;278:823-832.
- Turner CF, Ku L, Rogers SM, Lindberg LD, Pleck JH, Sonenstein FL. Adolescent sexual behavior, drug use, and violence: increased reporting with computer survey technology. *Science*. 1998;280:867-873.
- Blom G. *Statistical Estimates and Transformed Beta Variables*. New York, NY: John Wiley & Sons; 1958.
- Reardon SF, Buka SL. Differences in onset and persistence of substance abuse and dependence among whites, blacks, and Hispanics. *Public Health Rep*. 2002;117(suppl 1):S51-S59.
- Finke L, Williams J. Alcohol and drug use of inter-city versus rural school age children. *J Drug Educ*. 1999;29:279-291.
- von Sydow K, Lieb R, Pfister H, Hoffer M, Wittchen HU. What predicts incident use of cannabis and progression to abuse and dependence? a 4-year prospective examination of risk factors in a community sample of adolescents and young adults. *Drug Alcohol Depend*. 2002;68:49-64.
- Block J, Block JH, Keyes S. Longitudinally foretelling drug usage in adolescence: early childhood personality and environmental precursors. *Child Dev*. 1988;59:336-355.
- Miles DR, van den Bree MB, Pickens RW. Sex differences in shared genetic and environmental influences between conduct disorder symptoms and marijuana use in adolescents. *Am J Med Genet*. 2002;114:159-168.
- SAS Institute Inc. *SAS OnlineDoc, Version 8*. Cary, NC: SAS Institute Inc; 1999.
- Pate RR, Heath GW, Dowda M, Trost SG. Associations between physical activity and other health behaviors in a representative sample of US adolescents. *Am J Public Health*. 1996;86:1577-1581.
- Harrison PA, Narayan G. Differences in behavior, psychological factors, and environmental factors associated with participation in school sports and other activities in adolescence. *J Sch Health*. 2003;73:113-120.
- Brook JS, Whiteman M, Gordon AS, Cohen P. Changes in drug involvement: a longitudinal study of childhood and adolescent determinants. *Psychol Rep*. 1989;65:707-726.
- Christie KA, Burke JD Jr, Regier DA, Rae DS, Boyd JH, Locke BZ. Epidemiologic evidence for early onset of mental disorders and higher risk of drug abuse in young adults. *Am J Psychiatry*. 1988;145:971-975.
- Robertson JR, Miller P, Anderson R. Cannabis use in the community. *Br J Gen Pract*. 1996;46:671-674.
- Nicholi AM Jr. The nontherapeutic use of psychoactive drugs: a modern epidemic. *N Engl J Med*. 1983;308:925-933.
- Kaplan HB, Martin SS, Johnson RJ, Robbins CA. Escalation of marijuana use: application of a general theory of deviant behavior. *J Health Soc Behav*. 1986;27:44-61.
- Miller P, Plant M. Heavy cannabis use among UK teenagers: an exploration. *Drug Alcohol Depend*. 2002;65:235-242.
- Kumpfer KL, Turner CW. The social ecology model of adolescent substance abuse: implications for prevention—special issue: prevention interventions for children at risk. *Int J Addict*. 1990;25:435-463.
- Hays RD, Ellickson PL. Associations between drug use and deviant behavior in teenagers. *Addict Behav*. 1996;21:291-302.
- Wills TA, Vaccaro D, McNamara G. Novelty seeking, risk taking, and related constructs as predictors of adolescent substance use: an application of Cloninger's theory. *J Subst Abuse*. 1994;6:1-20.
- Newcomb MD, Maddahian E, Bentler PM. Risk factors for drug use among adolescents: concurrent and longitudinal analyses. *Am J Public Health*. 1986;76:525-531.
- Wills TA, Cleary S, Filer M, Shinar O, Mariani J, Spera K. Temperament related to early-onset substance use: test of a developmental model. *Prev Sci*. 2001;2:145-163.
- Stevens MM, Freeman DH Jr, Mott L, Youells F. Three-year results of prevention

- programs on marijuana use: the New Hampshire study. *J Drug Educ.* 1996;26:257-273.
42. Duncan SC, Duncan TE, Biglan A, Ary D. Contributions of the social context to the development of adolescent substance use: a multivariate latent growth modeling approach. *Drug Alcohol Depend.* 1998;50:57-71.
 43. Hops H, Davis B, Lewin LM. The development of alcohol and other substance use: a gender study of family and peer context. *J Stud Alcohol Suppl.* 1999;13:22-31.
 44. Sale E, Sambrano S, Springer JF, Turner CW. Risk, protection, and substance use in adolescents: a multi-site model. *J Drug Educ.* 2003;33:91-105.
 45. Bachman JG, Johnston LD, O'Malley PM. Smoking, drinking, and drug use among American high school students: correlates and trends, 1975-1979. *Am J Public Health.* 1981;71:59-69.
 46. Mensch BS, Kandel DB. Dropping out of high school and drug involvement. *Sociol Educ.* 1988;61:95-113.
 47. Bray JW, Zarkin GA, Ringwalt C, Qi J. The relationship between marijuana initiation and dropping out of high school. *Health Econ.* 2000;9:9-18.
 48. Hawkins JD, Catalano RF, Miller JY. Risk and protective factors for alcohol and other drug problems in adolescence and early adulthood: implications for substance abuse prevention. *Psychol Bull.* 1992;112:64-105.
 49. Brook JS, Whiteman M, Finch S, Cohen P. Longitudinally foretelling drug use in the late twenties: adolescent personality and social-environmental antecedents. *J Genet Psychol.* 2000;161:37-51.
 50. Kosterman R, Hawkins JD, Guo J, Catalano RF, Abbott RD. The dynamics of alcohol and marijuana initiation: patterns and predictors of first use in adolescence. *Am J Public Health.* 2000;90:360-366.
 51. Hoffer M, Lieb R, Perkonig A, Schuster P, Sonntag H, Wittchen HU. Covariates of cannabis use progression in a representative population sample of adolescents: a prospective examination of vulnerability and risk factors. *Addiction.* 1999;94:1679-1694.
 52. Brook JS, Kessler RC, Cohen P. The onset of marijuana use from preadolescence and early adolescence to young adulthood. *Dev Psychopathol.* 1999;11:901-914.
 53. Prinstein MJ, Boergers J, Spirito A. Adolescents' and their friends' health-risk behavior: factors that alter or add to peer influence. *J Pediatr Psychol.* 2001;26:287-298.
 54. Colsman M, Wulfert E. Conflict resolution style as an indicator of adolescents' substance use and other problem behaviors. *Addict Behav.* 2002;27:633-648.
 55. Siqueira L, Diab M, Bodian C, Rolnitzky L. The relationship of stress and coping methods to adolescent marijuana use. *Subst Abuse.* 2001;22:157-166.
 56. Brook JS, Whiteman M, Cohen P, Tanaka JS. Childhood precursors of adolescent drug use: a longitudinal analysis. *Genet Soc Gen Psychol Monogr.* 1992;118:195-213.
 57. Coffey C, Carlin JB, Lynskey M, Li N, Patton GC. Adolescent precursors of cannabis dependence: findings from the Victorian Adolescent Health Cohort Study. *Br J Psychiatry.* 2003;182:330-336.
 58. Arseneault L, Moffitt TE, Caspi A, Taylor PJ, Silva PA. Mental disorders and violence in a total birth cohort: results from the Dunedin Study. *Arch Gen Psychiatry.* 2000;57:979-988.
 59. Ary DV, Duncan TE, Biglan A, Metzler CW, Noell JW, Smolkowski K. Development of adolescent problem behavior. *J Abnorm Child Psychol.* 1999;27:141-150.
 60. Orr DP, Beiter M, Ingersoll G. Premature sexual activity as an indicator of psychosocial risk. *Pediatrics.* 1991;87:141-147.
 61. Wills TA, Yaeger AM, Sandy JM. Buffering effect of religiosity for adolescent substance use. *Psychol Addict Behav.* 2003;17:24-31.
 62. Crum RM, Lillie-Blanton M, Anthony JC. Neighborhood environment and opportunity to use cocaine and other drugs in late childhood and early adolescence. *Drug Alcohol Depend.* 1996;43:155-161.
 63. Barnett JR. Does place of residence matter? contextual effects and smoking in Christchurch. *N Z Med J.* 2000;113:433-435.
 64. Kandel DB. On processes of peer influences in adolescent drug use: a developmental perspective. *Adv Alcohol Subst Abuse.* 1985;4:139-163.
 65. Kandel DB, Davies M. High school students who use crack and other drugs. *Arch Gen Psychiatry.* 1996;53:71-80.
 66. Kaplan HB, Martin SS, Robbins C. Pathways to adolescent drug use: self-derogation, peer influence, weakening of social controls, and early substance use. *J Health Soc Behav.* 1984;25:270-289.
 67. Johnson BD. *Marijuana Users and Drug Subcultures.* New York, NY: John Wiley & Sons; 1973.
 68. Adler PT, Lotecka L. Drug use among high school students: patterns and correlates. *Int J Addict.* 1973;8:537-548.
 69. Battjes RJ, Gordon MS, O'Grady KE, Kirock TW. Predicting retention of adolescents in substance abuse treatment. *Addict Behav.* 2004;29:1021-1027.
 70. van den Bree MB, Whitmer MD, Pickworth WB. Predictors of smoking development in a population-based sample of adolescents: a prospective study. *J Adolesc Health.* 2004;35:172-181.
 71. Hu TW, Lin Z, Keeler TE. Teenage smoking, attempts to quit, and school performance. *Am J Public Health.* 1998;88:940-943.
 72. Rutter M, Yule B, Quinton D, Rowlands O, Yule W, Berger M. Attainment and adjustment in two geographical areas, III: some factors accounting for area differences. *Br J Psychiatry.* 1975;126:520-533.
 73. Rutter M. Family and school influences on behavioural development. *J Child Psychol Psychiatry.* 1985;26:349-368.
 74. Kumar R, O'Malley PM, Johnston LD, Schulenberg JE, Bachman JG. Effects of school-level norms on student substance use. *Prev Sci.* 2002;3:105-124.
 75. Webster-Stratton C, Taylor T. Nipping early risk factors in the bud: preventing substance abuse, delinquency, and violence in adolescence through interventions targeted at young children (0-8 years). *Prev Sci.* 2001;2:165-192.
 76. Kendler KS, Gardner CO, Prescott CA. Religion, psychopathology, and substance use and abuse: a multimeasure, genetic-epidemiologic study. *Am J Psychiatry.* 1997;154:322-329.
 77. Chilcoat HD, Anthony JC. Impact of parent monitoring on initiation of drug use through late childhood. *J Am Acad Child Adolesc Psychiatry.* 1996;35:91-100.
 78. Brook JS, Brook DW, Gordon AS, Whiteman M, Cohen P. The psychosocial etiology of adolescent drug use: a family interactional approach. *Genet Soc Gen Psychol Monogr.* 1990;116:111-267.
 79. Kaplan HB. Self-esteem and self-derogation theory of drug abuse. *NIDA Res Monogr.* 1980;30:128-131.
 80. Chen K, Kandel DB. Predictors of cessation of marijuana use: an event history analysis. *Drug Alcohol Depend.* 1998;50:109-121.
 81. Kandel DB, Raveis VH. Cessation of illicit drug use in young adulthood. *Arch Gen Psychiatry.* 1989;46:109-116.
 82. Sussman S, Dent CW. One-year prospective prediction of marijuana use cessation among youth at continuation high schools. *Addict Behav.* 1999;24:411-417.
 83. van den Bree MB, Johnson EO, Neale MC, Pickens RW. Genetic and environmental influences on drug use and abuse/dependence in male and female twins. *Drug Alcohol Depend.* 1998;52:231-241.
 84. Bachman JG, Johnson LD, O'Malley PM. Explaining recent increases in students' marijuana use: impacts of perceived risks and disapproval, 1976 through 1996. *Am J Public Health.* 1998;88:887-892.

- 131 Q. 1271. Back
- 132 QQ. 1268; 1270. Back
- 133 Q. 208. Back
- 134 QQ. 301-2. Back
- 135 *Drugs and the Law*, p. 48. Back
- 136 *Drug Misuse declared in 2000*, pp. 34-5; 74-8. Back
- 137 *Ibid*, pp. 36; 45. Back
- 138 Q. 563. Back
- 139 Professor Nutt, Q. 484. Back
- 140 Independent Drug Monitoring Unit, Ev 111. Back
- 141 *Drug Misuse declared in 2000*, p. 45. Back
- 142 National Treatment Agency, Ev 142 Back
- 143 *Drug Misuse declared in 2000*, pp. 74-79. Back
- 144 Q. 1272. Back

145 Q. 488. Back

146 Rosemary Jenkins, Department of Health, Q. 46. Back

147 Q. 613. Back

148 *Drug Misuse declared in 2000*, pp. 74-81. Back

149 Numbers were calculated as between 162,544 and 243,820 in a recent study, *A comparison of different methods for estimating the prevalence of systematic drug misuse in Great Britain*, M Frischer, M Hickman, F Mariani, L Kraus and L Wiessing (2001), *Addiction* 96 1465-1476, quoted in *Official Report*, 21 November 2001, 353W. Back

150 *Drugs and the Law*, p. 21. Back

THE GOVERNMENT'S DRUGS POLICY: IS IT WORKING?

Harm to users

151. Heroin is highly addictive and its illegality means that the addiction is difficult to satisfy safely. Numerous medical experts have told us that, if used in a sanitary and controlled way, heroin itself does not cause health problems—apart from a high level of dependence. Rosemary Jenkins from the Department of Health told us that "clean heroin is not in itself particularly dangerous except of course for the area we all know about which is that it is highly addictive and produces dependence".[151]

152. Professor Nutt told us that, if managed properly, heroin use need not prevent an individual from having a relatively normal life:

"Clean heroin clearly if used appropriately is safe...we have seen patients who have been using heroin for 20 or 30 years on a three to four times a day basis just to keep their dependence at bay. Some of these are very successful individuals. As long as you do not get the secondary complications of heroin like hepatitis or AIDS, then heroin is quite safe provided you do not overdose on it. You do get dependent on it, so it does affect the mind and there is no doubt that these people are heavily dependent but they are not physically harmed".[152]

153. It is this dependence, frustrated by the illegality—and therefore inaccessibility—of the substance, which causes users to engage in a cycle of high risk and damaging behaviour in order to obtain the heroin on which they depend. The main harm to health associated with use of illegal heroin are overdose and risks associated with unsanitary using techniques, particularly injecting. These are both risks which can be managed. The reason people die of heroin overdose is largely because of the body's loss of tolerance. A user builds up tolerance to heroin very quickly, and correspondingly increases the dose needed to achieve a "high". If for some reason—entering into custody, abstinence treatment, or being unable to find a "fix" for some time—the individual does not have heroin for a short while, their tolerance is completely lost. If they then gain access to heroin and take the dose they were on before losing tolerance, they overdose. If an addict is to live safely, understanding and managing the correct dose of the drug is of utmost importance. Risky using techniques are usually sharing needles and using dirty equipment. This spreads blood borne viruses such as AIDS, Hepatitis B and C.

154. Because users cannot easily purchase clean heroin and safe equipment, they will use whatever they can find: often dirty or shared equipment. Ignorance of how tolerance to the drug ebbs and flows will lead people to make fatal mistakes about safe dosages. Because their habit is illegal, they cannot—or do not—readily come forward for advice from health professionals. The Report of the Advisory Council on the Misuse of Drugs stated in its report *Reducing Drug Related Deaths*, "what stands out with total clarity is that year after year it is heroin misuse which is making the major contribution to drug-related deaths".[153]

155. Deaths have also resulted from impurities present in street heroin, although we were told that this was a minor problem in comparison to that of overdose.[154] The presence of impurities also means that users cannot always know how much heroin they are taking, which may lead users to take a dangerous dose in error.

Treatment

156. Existing users must be able to have access to treatment. In the case of opiate use a treatment model exists which has been proven to work and to deliver not only health improvements, but also lifestyle improvements, reductions in criminality and an economic saving to society: methadone programmes backed up with help with housing, employment and other lifestyle problems.[155]

157. However, we have heard widespread disappointment with treatment for heroin users. Although methadone is the standard treatment for opiate users, and has a strong evidence base for its effectiveness, we have heard that the number of available places for patients is much too small: "methadone treatment is...not universally available in this country, so we do not...have the standard intervention for long-term opiate drug use available to everybody in this country".[156]

158. Professor Strang, Professor of Addictions and Director of the National Addiction Centre told us:

"the Government...are missing a golden opportunity to harvest huge benefits. With some types of treatment for some types of drug problems you have treatments which more than pay for themselves for each day the person is in treatment. This is the equivalent of the Post Office or the Bank of England releasing bonds which you can buy for one pound each and cash them in the afternoon for a fiver. I have to say if that happened I would go out and I would buy, buy, buy. It is beyond understanding why that approach is not adopted with those bits of treatment where there is a rock solid evidence base that the benefit more than pays for the costs".[157]

159. We also heard that methadone was not always given out in the correct doseages. Dr Colin Brewer told us: "The average methadone dose in this country...is somewhere round about 50mg to 60mg whereas the national guidelines say that somewhere between 60mg and 120mg and an average probably nearer 90mg to 100mg is what we should be aiming at".[158]

160. We recommend that the Government substantially increases the funding for treatment for heroin addicts and ensure that methadone treatments and complementary therapies are universally available to those who need them. We recommend that the guidance on the correct dosage of methadone to be used is strengthened.

161. There are, however, many users for whom methadone does not work well, and there cannot be the expectation that one solution will work for everyone. As Dr Brewer suggested:

"an addiction and treatment unit should be rather like a family planning clinic. You do not go to a family planning clinic to be told you can have the pill and nothing else. Everybody who goes to a family planning clinic knows broadly why they are there and you discuss sensibly with the staff a range of options and if you do not like one, they will offer you another. Addiction treatment has to be like that".[159]

162. We received evidence of effective work being done by residential centres for drug users. Mr Bill Nelles, General Secretary of the Methadone Alliance and former drug user, told us:

"residential rehab is very important. It changed my life. Without a doubt, by going into residential rehab at the time I did, I learnt essential principles of self-discipline which kept me alive and that is why it is very valuable".[160]

163. This is a particularly important treatment for addicts living in a community where heroin use is common. Mrs Tina Williams of Parents and Addicts against Narcotics in the Community, told us "a lot of [addicts] cannot get clean in the community, there is too much [drug use] around them, they can see it all the time".[161] Lord Adebawale, Chief Executive of Turning Point, told us that residential facilities were particularly important for homeless people, to create some stability in their lives before treatment could start:

"there is a high proportion of homeless, rough sleepers who have substance misuse problems where accommodation is an essential base for treatment. It is not the treatment and

that is often the error which is made. Residential services are not the treatment but they are required to treat those people who are extremely chaotic and may exist on our streets".[162]

164. We recommend that the broadest possible range of treatments is made available to opiate users, and that all treatments and therapies should have abstinence as their goal.

165. It should be recognised, too, that there is no point in weaning people off their habit if, at the end of their treatment, they are returned to the environment that gave rise to their addiction. To be effective treatment will, therefore, have to be combined with other measures such as help with housing, education and employment to help put back together otherwise chaotic lives.

Methadone treatment in prison

166. We have also been told that treatment within prisons for opiate misuse is not consistent with that available in the community. Entering custody can, therefore, disrupt a treatment package, making it less likely that treatment will succeed.[163]

167. In particular, the Committee has heard, offenders are likely to be offered detoxification in the first instance. Mr Ainsworth seemed to confirm this when he said "Overwhelmingly, if they are going in and the length of sentence is such that detoxification can be completed, then whether or not they have been on treatment before they go in, detoxification is the road that people start to look at".[164] This is contrary to the medical best practice advice in the community, as Dr Andy Thompson of the NHS Alliance told us: "All the evidence that we have in opiate abuse is that in moderate to high dose maintenance methadone is the most effective treatment while waiting for people to realise that they want to come off opiates".[165]

168. We noted this problem in our report of 1999 into *Drugs and Prisons* (the "new strategy" referred to below is the current National Strategy):

"concerns centred on possible unjustifiable variations in practice in different establishments in the way detoxification was tackled and in the extent to which prisoners already on a prescribed drug substitution programme on entry into prison could continue the programme...Provision of appropriate prescription courses for drug misusers is, quite correctly, a matter ultimately for clinical judgement; nevertheless it is clear there is continuing dissatisfaction from qualified observers as to the lack of consistency in present practice. We trust that the new strategy, through increased availability of services, will enable some of the inconsistencies to be removed, but the Prison Service needs also to review whether further guidance needs to be prepared and distributed and whether implementation needs to be more closely monitored".[166]

169. We recommend that appropriate treatment forms a mandatory part of custodial sentences and that offenders have access to consistent treatment approaches within the prison estate as well as outside it. This should include strictly supervised methadone treatment in the first instance, as the most effective treatment available.

170. We have heard that an anomaly exists in respect of prison drug treatment facilities, in that, unlike services in the community, they are not audited by the National Treatment Agency. We believe that this situation is unsatisfactory.

171. In the interests of consistency, we recommend that the National Treatment Agency should have responsibility for auditing drug treatment services in prisons, as it does for services outside prisons.

Helping users into treatment

172. Not all users want to be treated. There will usually come a point when treatment does seem more appealing to most users than the other alternatives open to them, but for a large part of their using career this will not be apparent. It is vital that treatment programmes are well publicised, that addicts know where to go to seek treatment and that they are encouraged to join such programmes. However, some will still be reluctant. In the meantime it is necessary to minimise the harm which even these users are causing to themselves and others, in the hope of providing a bridge into a more ordered way of life. The user can then be offered treatment with the eventual goal of abstinence. One obvious possibility is the provision, under strict conditions, of legal, clean heroin (or diamorphine) to persistent heroin addicts.

Diamorphine provision

173. Doctors in Britain are unusual in the world in already having limited access to diamorphine prescribing as a treatment for opiate addiction. The Home Office has the ability to grant a licence to prescribe in this way, upon application by a doctor. However, we have heard that this system is not operating very effectively, and that the number of doctors possessing and using these licences appears to be very small. Professor Gerry Stimson, Director, Centre for Research on Drugs and Health Behaviour, Imperial College School of Medicine and Chair, UK Harm Reduction Alliance, submitted to the Committee an unpublished report of a study he conducted into doctors prescribing diamorphine to opiate dependent drug users in the UK. [167] The study looked at the doctors listed by the Home Office as having a licence to prescribe diamorphine, and also asked 108 potentially eligible doctors, why they did not have a licence. The conclusions raised questions about the Home Office's record-keeping as well as about prescribing practices. Of 164 doctors on the Home Office list, thirty-two had moved away from the address held and could not be traced. Forty-one on the list reported that they did not, in fact, hold a licence. Seventy reported they currently held a licence, of which only forty-six were currently using it to prescribe.

174. Practices of those using their licences varied widely, in terms of the number of patients to whom they were prescribing and the doses used. When asked under what conditions they might consider prescribing diamorphine to more patients, licence holders cited lower drug and dispensing costs, better facilities, evidence of effectiveness compared to methadone and more support from Government and health authorities for it.

175. Doctors eligible for but not holding licences (108 eligible doctors asked and 59 replied) were asked their reasons for not holding a licence. Two had applied for a licence and been turned down. Others cited lack of resources, little research evidence or best practice guidance on diamorphine, the anticipation of problems for patients, the belief that diamorphine was unsuitable for opiate treatment, concern that a "honeypot effect" might overwhelm the clinic, and belief that there was no demand for it.

176. The main conclusion of this study was that "in spite of eighty years of prescription of diamorphine to opiate addicts in the UK, no clear consensus has yet emerged for who should be treated and in what way, and what benefits they might expect to receive thereby". The article goes on, "these questions can only be resolved by research, but up to this date this has been inadequate".

177. We conclude that the licencing system of providing a limited number of heroin addicts with diamorphine on prescription is badly monitored and evaluated, provides practitioners with inadequate training and guidance, and patients with a variable standard of care.

178. We recommend that a proper evaluation is conducted of diamorphine prescribing for heroin addiction in the UK, with a view to discovering its effectiveness on a range of health and social indicators, and its cost effectiveness as compared with methadone prescribing regimes.

179. We recommend that the guidance and training provided to practitioners prescribing diamorphine to heroin addicts is strengthened, with a view to spreading best practice.

Swiss and Dutch research

180. Persuasive evidence of the effectiveness of diamorphine prescribing does, however, exist elsewhere in Europe. We took evidence from Professor Juergen Rehm, Director and Chief Executive, Addiction Research Institute, Zurich, Switzerland, and Senior Scientist, Centre for Addiction and Mental Health, Toronto, Canada, and from Dr Gerrit Van Santen, from Amsterdam Municipal Public Health Laboratory, both of whom have been involved with pilots of diamorphine prescribing to heroin addicts, in Switzerland and The Netherlands respectively.

181. Professor Rehm's study found that treatment of heroin addicts in Switzerland with prescribed heroin was often successful, with many patients going on to methadone treatment or abstinence therapy after being treated with prescribed heroin.[168] Results from the Dutch trial were also positive. The study found that the treatment led to improvements in patients' physical and mental health, and significant reductions in illegal activities amongst the patients. The researchers found that they were able to deliver the treatment programme without serious health risks for the treatment staff or the patients. Nor were there serious public order and controllability problems for the treatment staff or the neighbourhood.[169]

Both Professor Rehm and Dr Van Santen also told us that the programmes were set up in such a way that there was no leakage of pharmaceutical heroin from the clinics onto the black market.[170] The drugs were only dispensed under strict supervision. The Swiss study also found that the heroin prescribing programmes saved money for society. While the programmes were expensive to run, the reduced criminality of patients and improved health meant that, overall, savings were made to the criminal justice and health systems.

182. The Home Secretary has indicated that he is looking at the possible expansion of heroin prescription to addicts, and has set up a team of experts to consider the issue. Mr Ainsworth explained:

"What we are worried about is that the current guidance has led us to be a little too restrictive as to where we are prepared to offer heroin as a form of treatment and that there are situations where people are not being allowed access to that treatment where it may well be appropriate and that is in part because, or we believe it is in part because, of the guidance that we have given and the effective restriction of the guidance which has been given".[171]

183. The group of experts is expected to report back with their conclusions by the end of 2002. **We do not think that it is enough for the Government simply to expand the number of doctors licensed to prescribe diamorphine to heroin addicts.**

184. It has been persuasively argued to us that the legalisation and regulation of heroin would collapse the criminal market, drastically reduce the level of acquisitive crime and make addiction easier to treat. For reasons already given (see paragraph 65 above) we do not propose to go down this road. We do, however, accept that there is a strong case for bringing heroin use above ground, so that those who wish to be helped can be, and those who do not wish to be helped can at least indulge their habit at a minimum risk to their own health and that of the public. The obvious first step is the introduction of safe injecting houses (so-called "shooting galleries") of the sort that exist elsewhere in Europe. At their most basic these are places where addicts can go without fear of arrest to inject illegally purchased heroin and where practical advice is available as to the safest means of injection and the safe disposal of needles. The Home Office told us that "the current government position is that injecting rooms for illicit drugs should not be introduced in this country whilst we have no evaluations of those developed in other European countries".[172]

185. We believe that such facilities may offer potential to reduce harm. As well as helping users to reduce the risks to their health, safe injecting premises could make a significant impact on the nuisance caused to others by illicit injecting. All members of the Committee have heard from constituents about the problem of discarded needles and other paraphernalia in the street posing a health and safety risk, particularly to children. If injecting users could be directed to safe premises, needles could be disposed of in a safe way and the problem contained.

186. **We recommend that an evaluated pilot programme of safe injecting houses for heroin users is established without delay and that if, as we expect, this is successful, the programme is extended across the country.**

187. We go further. As we have seen, a number of other European countries have established carefully controlled programmes for the treatment of heroin users which involve making clean heroin (or diamorphine) legally available to users together with sanitary equipment and sound advice on dosage and injecting techniques. The aim is to help addicts manage their habit and in due course to wean them off their addiction. It also has the additional benefit for society as a whole that they no longer have to rely on acquisitive crime to fund their habit. As Mrs Tina Williams, whose son is addicted to heroin, put it to us "if you are treating the user with what they need to keep them well why would they go to the black market?".[173] The Association of Chief Police Officers said recently:

"There is a compelling case to explore further the merits of prescribing drugs of addiction to patients with entrenched dependency problems who have not responded to other forms of therapy...this should include the wider use of heroin within a menu of treatments".[174]

188. Opinion, however, is far from unanimous. Dr Claire Gerada, of the Royal College of General Practitioners, told us that providing diamorphine to addicts would mean "colluding and creating life long addicts".[175] We asked Mr Ralf Löfstedt, Deputy Director of the Swedish Ministry of Health and Social Affairs, for his opinion of heroin prescribing, given Sweden's more restrictive approach to drugs policy. He told us that providing prescribed heroin implied that some patients were "uncurable" and warned that society would be sending out inconsistent messages: "What will the effect on society be if we take more and more people directly from drug addiction into another type of drug addiction, but one sponsored by society?".[176] He also suggested that it might be harder to motivate addicts to take up treatment such as methadone and drug-free programmes if they were able to access clean heroin.[177] He told us that the reductions in crime which had been seen in the Swiss and Dutch programmes might not be sustained and suggested further that heroin treatment programmes might cause a rise in the numbers of new users.[178]

189. Mrs Williams told us that "on humanitarian grounds to prescribe controlled diamorphine to people that are really sick and need it is not a signal to encourage people to take it".[179] The Dutch report addressed many of the objections to diamorphine prescribing:

"It should be emphasised that drug users are not 'given up' when prescribing heroin, nor that it is accepted that these persons will remain addicted for the rest of their lives. Heroin prescription may be a new hold for heroin addicts for whom there has been no adequate treatment so far. By enabling drug users to return to their original intoxication through medically prescribed heroin, also the use of illicit drugs other than heroin may be reduced...In addition, through the prescription of heroin, medical and social care may be initiated and efforts may be undertaken to help these addicts to structure their lives, and—for some addicts—to achieve abstinence from drugs. For example, 10% of the patients admitted to the Swiss heroin program (22% of all discharges) left the program to start abstinence oriented treatment."[180]

190. We conclude that the Dutch and Swiss evidence provides a strong basis on which to conduct a pilot here in Britain of highly structured heroin prescribing to addicts. We recommend that a pilot along the lines of the Swiss or Dutch model is conducted in the UK. Should such a pilot generate the positive results which one would expect from the Dutch and Swiss experience, we recommend that such a system should supersede the little-used "British system" of licensing.

191. We recommend that a pilot offering prescribed diamorphine to heroin addicts is targeted, in the first instance, at chronic addicts who are prolific offenders.

Diamorphine for persistent addicts who have not yet accessed treatment

192. Professor Rehm and Dr Van Santen told the Committee that the Swiss and Dutch programmes to provide diamorphine to addicts were only to open to persistent addicts who had tried, and failed, to comply with other treatments such as methadone, over a period of some years. They emphasised, however, that this did not necessarily allow the most problematic group to be accessed, who were described as:

"a smaller group of not adapted people, who are actually causing lots of problems. They have a very high frequency of emergency room visits, they refuse any treatment and they take sometimes methadone in very low thresholds, but only if it is on an occasional basis— if it has to be on that day for whatever reason. Those are the kinds of drug users which cost the most to society".[181]

193. The suggestion is that diamorphine on prescription may offer a way of encouraging these people, too, to enter treatment. Dr Van Santen said: "I think the power of the prescribing of heroin lies not among those poor performers on methadone but on those people not reached yet by services, by necessary care".[182] Professor Rehm too described this as potentially a much more important role for diamorphine prescription than that explored by the trials: "we want to see can they attract non-treatment goers in our society, which is way more a problem in Switzerland".[183] He referred to a trial about to begin in Germany, run by Hamburg University, in which the criteria for admission to the scheme will be widened slightly to include not only those who have failed on an alternative treatment but also those who have not accessed any treatment for at least the past six months.[184]

194. We recommend that the Government commissions a further trial to look at the prescription of diamorphine to addicts who have not yet, or are not currently accessing any treatment, despite having a long history of heroin addiction.

195. It has been emphasised to us that diamorphine prescription should be used as a complement to already existing treatments which are backed up by strong evidence, such as methadone treatment. If diamorphine treatment could be offered to all problematic users who do not successfully access other treatments, we believe it could play a useful part in managing the social problems generated by this group of people.

151 Q. 106. Back

152 Q. 494. Back

153 *Reducing Drug Related Deaths*, p. 58. Back

154 Professor Nutt, Q492-3. Back

155 *NTORS at one year: The National Treatment Outcome Research Study: Changes in Substance Use, Health and Criminal Behaviour One Year after Intake*, Michael Gossop, John Marsden and Duncan Stewart, Department of Health, 1998 (hereafter "*NTORS at one year*"). Back

156 Bill Nelles, General Secretary of the Methadone Alliance, Q. 577. Back

157 Q. 572. Back

158 Q. 578. Back

159 Q. 584. Back

160 Q. 616. Back

161 Q. 1387. Back

162 Q. 592. Back

163 Dr Andy Thompson, NHS Alliance, Q. 1034. Back

164 Q. 1301. Back

165 Q. 1034. Back

166 Fifth Report of the Home Affairs Committee, 1998-99, *Drugs and Prisons*, HC 363-I, p. xlix. Back

167 *Survey of doctors prescribing diamorphine (heroin) to opiate dependent drug users in the United Kingdom*, Nicky Metrebian, Tom Carnwath, Gerry V Stimson, Thomas Storz, accepted for publication by *Addiction* magazine. Back

168 *Feasibility, safety and efficacy of injectable heroin prescription for refractory opioid addicts: a follow-up study*, Jürgen Rehm, Patrick Gschwend, Thomas Steffen, Felix Gutzwiller, Anja Dobler-Mikola, Ambros Uchtenhagen, *The Lancet* Vol. 358 No. 9291, 27 October 2001. Back

169 *Medical co-prescription of heroin: two randomised controlled trials*, Central Committee on the treatment of heroin addicts, Wim van den Brink, Vincent M. Hendriks, Peter Blanken, Ineke A. Huijsman, Jan M. van Ree, 2002 (hereafter "*Medical Co-prescription of heroin*"). Back

170 QQ. 882; 883. Back

171 Q. 1298. Back

172 Vol III, Ev 227. Back

173 Q. 1458. Back

174 *A Review of Drugs Policy and Proposals for the Future*, The Association of Chief Police Officers, Drugs Committee, April 2002, p. 16. Back

175 Q. 981. Back

176 Q. 1564. Back

177 Q. 1568. Back

178 Q. 1577; Q. 1578. Back

179 Q. 1466. Back

180 *Medical co-prescription of heroin*, Section 2.8.1. Back

181 Professor Rehm, Q. 796. Back

182 Q. 826. Back

183 Q. 839. Back

184 *The German project of heroin assisted treatment of opiate dependent patients: a multicentre, randomised, controlled clinical trial*, Principal Investigator: Prof. Dr. Michael Krausz, Deputy Director of the Centre of Psycho social Medicine, Psychiatry and Psychotherapy, Director of the Centre for interdisciplinary Addiction Research of Hamburg University. Back

THE GOVERNMENT'S DRUGS POLICY: IS IT WORKING?

OTHER ISSUES

196. While the Committee has focussed mainly on legislative change as offering solutions to the drugs problem in Britain, we have also looked at other issues. In *Tackling Drugs to Build a Better Britain*, Mr Hellowell said that "we must now shift our emphasis from reacting to the consequences of drug misuse to tackling its root causes".[185] In his *First Annual Report and National Plan* he reiterated this sentiment: "the overall aim of the ten-year strategy is to shift the emphasis away from dealing with the consequences of the problem, to actively preventing it happening in the first place".[186] Prevention is better than cure. It is also far cheaper, both in terms of cost to the individual and to society as a whole.

197. We have heard that the causes of damaging drug use include underlying mental health problems, social exclusion, deprivation and abuse, which are also implicated in drug-related

crime committed by users. A combination of education, social interventions and treatment, alongside enforcement will be required to tackle these causes. A recent report by the Advisory Council on the Misuse of Drugs observed that:

"On strong balance of probability, deprivation is today in Britain likely often to make a significant causal contribution to the cause, complication and intractability of damaging kinds of drug misuse... We want now and in the future to see deprivation given its full and proper place in all considerations of drug prevention policy".[187]

DRUGS EDUCATION AND PREVENTION WORK WITH YOUNG PEOPLE

198. Many witnesses have stressed to us the importance of preventive work with young people designed to discourage them from starting to take drugs. In fact this forms an important strand of the National Strategy, under the Young People target. The Home Office have told us how they are approaching this issue with a plethora of initiatives including the Personal, Social and Health Education curriculum, the *National Healthy School Standard*, the National Drugs Helpline, the new cross-departmental Children and Young People's Unit, *Positive Futures*, *Connexions*, Health Action Zones projects, Youth Offending Teams, and *Young People's Substance Misuse Plans*.

199. However, the Home Office has not presented us with any evidence of the effectiveness of this work. The Health Development Agency told us in evidence that:

"Most initiatives and innovations in the drug education and prevention field are not evidence-based and have not been subject to evidence-based evaluation. Initial findings from [our] review show that there are very few systematic reviews of drug education and prevention activity".[188]

200. Mr Mike Trace told the Committee:

"It was suggested in the strategy that a concerted programme of education in schools, backed up by more intensive programmes targeted at socially excluded children and adolescents, would achieve these targets [relating to reducing young people's drug use]. The evidence base for this hope was thin at the time and looks thinner now. While good drug education in schools, and investments in programmes for marginalised kids may be a good thing in their own right, they are unlikely to have an impact on the overall prevalence of young drug use, and will certainly not get anywhere near the target of a 50 per cent reduction".[189]

201. We are also concerned about the quality of drugs education material, and the possibility of ambiguous messages contained within it. We accept Mr Ainsworth's recognition that "preaching at young people is not going to work".[190] However, we believe that all drugs education material should be based on the premise that any drug use can be harmful and should be discouraged.

202. Our attention was drawn to two leaflets. The first was produced by DrugScope and entitled *What and why?: Cannabis*. This document explains in some detail what cannabis is, how it is taken, and some of the effects which may be expected. While the leaflet explains

that cannabis may have unpleasant effects upon the user, it also lists some perceived pleasurable effects:

"cannabis alters perception. The sensation is usually a pleasant one of general relaxation, a sense of being on the same wavelength as others who are 'stoned', and heightened sensitivity to colour and sound. Also common are the urge to eat ('the munchies') and fits of giggles as ordinary things become very funny".

203. The leaflet goes on to state that "Cannabis is usually smoked by people who are part of a social group that sees cannabis use as acceptable (or even normal) and who want to relax and enjoy the company of others". DrugScope told us that this leaflet is not aimed at children but at parents and drugs workers.

204. When we asked for further clarification of their philosophy, we were told that DrugScope "as an organisation prides itself on providing balanced, accurate drug information to professionals and the public". They went on:

"whether we like it or not, drugs are part of most young people's lives. It is from this premise that DrugScope believes young people should be given balanced, accurate information about drugs...A 'just say no approach' or shock tactics do not connect with young people's reality; they are not credible with young people who may think the message, in their experience, does not reflect the whole truth. The approach may also make young people seek information elsewhere, from friends, for example, which may not be accurate".[191]

205. The second leaflet given to us was produced by Lifeline and entitled *How to survive your parents discovering you're a drug user*. This leaflet includes a comic strip and some advice which includes:

"Don't get caught in the first place. Don't be blatant or obvious and remember: parents search bedrooms and coat pockets...If you do get caught, don't expect your parents to understand".

206. In response to our request for further information, Lifeline told us:

"Education and prevention are often confused, an assumption is made that drug education prevents people from taking drugs. There is no evidence that will stand up to serious scrutiny that supports this from anywhere in the world...In the mid 1980s when faced with the threat of AIDS amongst injecting drug users, Lifeline looked at the available evidence and spoke to drug users. Our conclusion was that we did not know how to stop people taking drugs...we therefore decided to look at what was possible. We believed that preventing HIV among injecting drug users was both a more serious threat and preventable...we are trying to reduce the harm from drugs by telling the truth; the lies and exaggerations of primary prevention campaigns just make our job harder".[192]

207. We acknowledge the need to provide realistic drugs education, but we believe that examples such as the Lifeline leaflet cross the line between providing accurate information and encouraging young people to experiment with illegal drugs. We believe that publicly funded organisations involved in educating impressionable

young people about drugs should take care not to stray across this line.

208. The parents of one recent young casualty of a heroin overdose, Rachel Whitear, made the difficult decision to release police photographs of their daughter's body in the hope of preventing others from using drugs. We applaud them for courageously allowing their daughter's photograph to be. **We do not share the view that confronting young people with shocking images of the harm caused by some drug use is counter productive.**

209. The initial memorandum from the Home Office to the Committee stated that:

"Earlier this year [2001] the Government commissioned a long-term study on the impact of drug, alcohol and tobacco education in schools. This will be a joint project between the Department for Education and Skills, the Department of Health and the Home Office. The study will look at which types of educational input and other factors, such as socio-economic and cultural have most impact on influencing behaviour. The project will start in the autumn." [193]

210. The study will conclude in 2007. We welcome the commissioning of this research, but until 2007, the Home Office must find other evidence on which to base policy. While we believe that drugs education and prevention work are desirable, we would be disappointed to see money being spent without evidence of effective outcomes from policy.

211. We acknowledge the importance of educating all young people about the harmful effects of all drugs, legal and illegal. Nonetheless, we recommend that the Government conducts rigorous analysis of its drugs education and prevention work and only spends money on what works, focussing in particular on long term and problem drug use and the consequent harm.

212. The point has also been made to the Committee that the young people most vulnerable to drug abuse are those excluded from school. It is therefore extremely important to aim drugs education programmes not only at those attending school, but, perhaps more importantly, at those who do not attend. The 1998/9 Youth Lifestyles Survey demonstrated that half of all truants and excluded children had used an illegal drug, as compared with 13% of school attenders. While only a tiny proportion of school attenders used Class A drugs regularly, 7% of excludees did so. [194] Mr Ainsworth told the Committee that:

"the degree to which we focus on those groups and the degree to which we are going outside the young people's area and the degree to which we link up with Neighbourhood Renewal and Social Exclusion Programmes—because that is where the main impact of drug misuse is being inflicted on communities—are issues that we are trying to pick up in the stocktaking review". [195]

213. We recommend that drugs prevention and education programmes are targeted towards particularly vulnerable groups of young people, such as truants, those excluded from school and children in care.

HEALTH AND SOCIAL CARE FOR USERS

214. The National Strategy contains a strong commitment to treatment for drug users. However, drug users not only require treatment for their drug problem; they also require general medical services, in common with the rest of the population.

215. We were surprised and disappointed by the minimal response to our request for evidence from the British Medical Association on this issue. We have heard disturbing evidence that a large, albeit decreasing, proportion of GPs appears to be unwilling to treat drug users, with the effect that many users are without access to general medical services. Dr Claire Gerada of the Royal College of General Practitioners, told us that according to estimates made in the 1980s,

"around 5-10% of general practitioners were actively involved in the care of drug users. Of these doctors that were involved they tended to have large numbers of patients with some estimates showing that 5% of general practitioners looked after 50% of all the drug using patients receiving treatment in a primary care setting".[196]

216. Dr Gerada went on to tell us that a more recent, unpublished study suggested that GP involvement has risen since then:

"50 per cent of a random sample of English GPs had seen a drug user in the last month and 25 per cent of the total...had prescribed methadone to a drug user...also the numbers of [drug-using] patients each GP is seeing...has doubled as well".[197]

217. Dr Gerada pinpointed the minimal training of GPs in this area as the reason for any residual reluctance to treat drug users. She told the Committee that, in an average five year undergraduate training course, a medical student is given around thirty minutes training in drug misuse problems. She said that: "every single doctor wherever they practise, maybe in the Outer Hebrides, will see a drug user and yet there is virtually no training in it".[198] This lack of understanding "breeds prejudice, it breeds fear".[199] We were encouraged to hear, however, that the number of GPs interested in training was high.[200]

218. We conclude that General Practitioners are, for the most part, inadequately trained to deal with drug misuse. We recommend that training in substance misuse is embedded in the undergraduate medical curriculum and postgraduate General Practice curriculum, as a problem which will arise with increasing frequency over the careers of all prospective doctors training today. We recommend that the Department of Health funds more training courses in substance misuse for existing General Practitioners.

219. We would also expect the British Medical Association and the Royal College of General Practice to take a rather greater interest in this area than is evident so far. In particular we would expect these organisations to use their considerable influence to ensure that treatment of drug misuse is included in the medical curricula. We would also expect the professional bodies to encourage more of their members to take an interest in treating drug abusers so that a handful of dedicated General Practitioners are not left to shoulder the burden alone.

185 *Tackling Drugs to Build a Better Britain*, p. 8 Back

186 *First Annual Report and National Plan*, Cabinet Office 1999, p. 1. Back

187 *Drug Misuse and the Environment*, Advisory Council on the Misuse of Drugs, Home Office, 1998, pp. 113; 115. Back

188 Ev 104. Back

189 Ev 182. Back

190 Q. 1312. Back

191 Vol III, Ev 274. Back

192 Vol III, Ev 273-4. Back

193 Ev 2. Back

194 *At the margins: drug use by vulnerable young people in the 1998/99 Youth Lifestyles Survey*, Chris Goulden and Arun Sondhi, Home Office Research Study 228, 2001, p. vi. Back

195 Q. 1313. Back

196 Vol III, Ev 242. Back

197 Q. 927. Back

198 Q. 941. Back

199 Q. 944. Back

200 Q. 927. Back

THE GOVERNMENT'S DRUGS POLICY: IS IT WORKING?

Treatment for Hepatitis C

246. We have received some evidence that injecting drug users are denied treatment for Hepatitis C. A group of drugs treatment professionals, Action against Hepatitis C, told us that although deaths from Hepatitis C can be prevented by treatment, some guidelines exclude current injecting drug users. They told us:

"This is a major concern because drug users form the greatest number of those who are infected with [Hepatitis C Virus]. It ignores the human right to life and will considerably increase the morbidity and mortality of drug users".[229]

247. While the Home Office told us that this exclusion was based on clinical concerns of reinfection and non-compliance, our evidence contradicted this.[230]

248. We recommend that the Government reviews existing guidelines on the treatment of injecting drug users for Hepatitis C and amends the guidelines if necessary to ensure that users are not excluded from treatment.

Paraphernalia

249. Other harm reduction activities are obstructed by the regulations in the Misuse of Drugs Act relating to drugs paraphernalia—the equipment used by people taking drugs. Professor Stimson told the Committee:

"Section 9A [of the Misuse of Drugs Act] which deals with drug paraphernalia laws would be best done away with altogether...There is an exemption for syringes but not for other equipment which may make drug use safer...Some of the drug paraphernalia makes the ingestion of drugs safer...It is in the Act to discourage drug use but I do not see that it actually does".[231]

250. Mrs Christine Glover, of the Royal Pharmaceutical Society, reiterated this point:

"We have an ironical situation where we are not allowed to supply the paraphernalia which also helps with harm reduction. It is not appropriate that we are in a situation where we cannot make a supply of citric acid or a swabs order for injection because we are breaking the law...It is a nonsense".[232]

251. The Minister seemed unaware of this concern:

"Overwhelmingly the provision of equipment has been about syringes and needles, for obvious reasons, because it is blood borne infections that people that have been worried about, Hepatitis B, Hepatitis C and HIV. If there is a case that can be made for the provision of other equipment we will be happy to look at it".[233]

252. We recommend that the Government reviews Section 9A of the Misuse of Drugs Act 1971, with a view to repealing it, to allow for the provision of drugs paraphernalia which reduces the harm caused by drugs.

Premises

253. The Committee has also heard numerous representations concerning Section 8 of the Misuse of Drugs Act, which regulates premises used for the consumption of drugs. Section 8 has been recently amended to make it more comprehensive in its reach. The Section makes it an offence for landlords knowingly to allow use of any drug on their premises, which makes it difficult to look after people who are known drug users.

254. Drugs agencies have expressed concerns that Section 8 will make it impossible for them to continue to help individuals known to be using drugs, and impossible for them to help them to take their drugs in safer ways on their premises. Professor Stimson told us:

"Section 8...is a very problematic section, partly because drug paraphernalia can be used as evidence of drug use on premises and that makes the harm reduction effort more difficult. It is a difficult section because people who are working with hard-to-reach drug users may often be in circumstances where drug use may be taking place and it makes their task very difficult to have that piece of the Act".[234]

255. DrugScope showed a similar concern:

"Section 8 of the Misuse of Drugs Act should be reviewed and amended as appropriate to ensure that services and individuals helping vulnerable people and drug users do not fall within its purview. There is considerable disquiet that the recent hasty amendment to the Misuse of Drugs Act 1971 was ill-conceived and potentially damaging to those working with at-risk groups".[235]

256. Mr Ainsworth did not seem to see this as a major problem:

"There is some worry and we took representations over a period of time in order to try to satisfy ourselves that Section 8 provisions were appropriate, where necessary, and would not lead to people being criminalised in an inappropriate situation...If we were to give some kind of exemption to people in any given circumstance then we could find ourselves in a situation where facilities were being abused and the prosecuting authorities would have no ability to deal with the issue. We are only aware of a couple of problems...As long as people are sensible about how they use these provisions we would be very loathe to lose them with the consequences that could arise in terms of facilities being abused rather than used." [236]

257. We recommend that Section 8 of the Misuse of Drugs Act 1971 is amended to ensure that drugs agencies can conduct harm reduction work and provide safe injecting areas for users without fear of being prosecuted.

Dispensing

258. We heard from the Royal Pharmaceutical Society that antiquated regulations make it much more difficult for community pharmacists to dispense controlled drugs such as methadone to users in a sensible and efficient way:

"Pharmacists providing services for drug misusers are often placed in potentially confrontational situations with clients as a result of:

- Prescriptions not satisfying legal requirements
- Instalment dispensing
- Requests for collections by clients representatives
- Dispensing for public and local holidays...

The key areas relate to:

- the rules for prescribers' handwriting exemptions on controlled drugs prescriptions should be reviewed by the Home Office
- pharmacists should be able to amend instalment prescriptions after contacting the prescriber
- the Misuse of Drugs Regulations relating to instalment dispensing need updating and amendment of facilitate action when a client fails to collect
- the Regulations should be amended to allow an instalment scheduled for supply on a day when the pharmacy will be closed to be supplied on the preceding day
- there should be a review of the legality of dispensing prescriptions for methadone mixture where the client asks for variation from the formulation prescribed
- the maximum number of days' treatment on any prescription for drug misusers should be 14 days". [237]

259. Mr Ainsworth told the Committee that:

"this is not an issue that has been raised with me...I have to admit that I have not talked directly with pharmacists... We will need to pick that up and find out whether or not there is an issue...If there are issues that pharmacists want to raise obviously we will look at them".[238]

260. We recommend that the Home Office and the Department of Health urgently review the current legal framework on the dispensation of controlled drugs by community pharmacists in consultation with the Royal Pharmaceutical Society.

Treatment through the criminal justice system

261. One of the Government's innovations has been the enhancement of treatment options available to drug users through the criminal justice system, through Drug Treatment and Testing Orders and Arrest Referral Schemes. Drug Treatment and Testing Orders are community sentences which require offenders—with their consent—to undergo treatment and other programmes, designed to tackle their drug misuse and offending, at a specified place for a period of between six months and three years. Under the terms of the Order, offenders must also be tested regularly for illegal drugs, and attend court for periodic reviews of their progress. Under Arrest Referral Schemes, drugs workers visit police custody suites to offer advice and services to drug users. In the main, evidence to the Committee has been positive about the impact of such initiatives, although the Substance Misuse Faculty at the Royal College of Psychiatrists told us that they "do not believe that evidence supports the efficacy of coercive treatments".[239]

262. The Committee has heard representations that the schemes have, in some places, been set up in such a way that offenders receive preferential treatment over non-offenders: "in some districts, the quickest way to access treatment is to commit a serious crime".[240] **We consider it highly undesirable that it should be easier for a drug addict to access treatment through the criminal justice system than in the community. This is a further reason, if any were needed, for the Government to provide more treatment in the community.**

263. A new sanction being piloted in sentencing drugs offenders is the Drug Abstinence Order, which requires the offender to remain abstinent as a condition of his or her sentence. Mr Roger Howard, Chief Executive of DrugScope, told us that his organisation had lobbied for conditions of treatment to be attached to these Orders, without success. Their view was that "the requirement for someone with a potential drug problem to remain drug free without adequate access to treatment is irresponsible".[241] Mr Ainsworth assured the Committee:

"For those for whom it is felt appropriate, we should be offering drug treatment and testing orders. For people who have a lower level of dependency, then it may well be that drug abstinence orders are appropriate...we have no desire or intent to roll these pilots out and to make them available nationwide before we have the treatment capacity in order to be able to refer people on...Drug abstinence orders should not be being used, and I have heard the allegation, 'setting people up to fail', but they should be used in circumstances where people should be able to cope with the commitment that they are being expected to make without the testing requirement and we should not be pushing them in there if there is no treatment available".[242]

264. We recommend that Drug Abstinence Orders are amended to carry the requirement of access to treatment.

229 Action on Hepatitis C, Ev 17. The "UK guidelines" referred to are the *Report of the National Institute for Clinical Excellence: Guidance on the Use of Ribavirin and Interferon Alpha for Hepatitis C*, 2000, *Clinical Guidelines on the management of hepatitis C*, British Society of Gastroenterology, 2001, and *Consensus Statement*, EASL International Consensus Conference on Hepatitis C, 1999, *Journal of Hepatology*, 30, pp. 956-961. Back

230 Vol III, Ev 227; our evidence cited two articles, *Is it Justifiable to Withhold Treatment for Hepatitis C from Illicit Drug Users?* Edlin, B.R., Seal, K.H., Lorvick, J., *et al*, 2001, *New England Journal of Medicine*, Vol 345, No 3, pp. 211-214 and *Treatment of hepatitis C infection in injecting drug users*, Backmund, M., Meyer, K., Von Zielonka, M., & Eichenlaub, D., 2001, *Hepatology*, 34, (1), pp. 188-193, cited in Ev 17-18. Back

231 QQ. 522; 524-5. Back

232 Q. 961. Back

233 Q. 1333. Back

234 Q. 526. Back

235 Ev 46. Back

236 Q. 1332. Back

237 Ev 176. Back

238 Q. 1335; 1337. Back

239 Ev 174. Back

240 Substance Misuse Faculty, Royal College of Psychiatrists, Ev 174. Back

241 Ev 46. Back

242 Q. 1303. Back

THE GOVERNMENT'S DRUGS POLICY: IS IT WORKING?

INTERNATIONAL TREATIES

265. The United Kingdom is one of many signatories to several international treaties on drugs, which constitute a fairly restrictive cradle around our own legislative regime. Significant changes, such as the legalisation of some or all drugs, could not be pursued unilaterally without transgressing the treaties, and could therefore only follow their renegotiation.

266. Having said this, the treaties do not lay down specific control mechanisms within the basic premise of criminality of drug possession and supply. With this in mind, there is actually substantial "room for manoeuvre" within the treaties for change to the UK's regime. In fact, all of our recommendations could be implemented without breaching the treaties or requiring their renegotiation. In the long term, however, we believe the time has come for the international treaties to be reconsidered. The Commission on Narcotic Drugs is the central policy-making body within the United Nations system dealing with drug-related matters. It compiles biannual reports on the global drug situation and develops proposals to strengthen the international drug control system.

267. We recommend that the Government initiates a discussion within the Commission on Narcotic Drugs of alternative ways—including the possibility of legalisation and regulation—to tackle the global drugs dilemma.

THE GOVERNMENT'S DRUGS POLICY: IS IT WORKING?

CONCLUSIONS

268. There are no easy answers to the problems posed by drug abuse, but it seems to us that certain trends are unmistakable. If there is any single lesson from the experience of the

last 30 years, it is that policies based wholly or mainly on enforcement are destined to fail. It remains an unhappy fact that the best efforts of police and Customs have had little, if any, impact on the availability of illegal drugs and this is reflected in the prices on the street which are as low as they have ever been. The best that can be said, and the evidence for this is shaky, is that we have succeeded in containing the problem.

269. What we do know is that the ready availability of illegal drugs is sustaining a vast criminal industry and that the need of addicts to fund their habit is responsible for an enormous amount of acquisitive crime. We also know that the harm caused by illegal drugs varies immensely from one drug to another and—since most users and potential users know this—there is no point in pretending otherwise.

270. It, therefore, seems to us that certain conclusions follow inexorably: First, that harm reduction rather than retribution should be the primary focus of policy towards users of illegal drugs. We are glad to note that the Government is making the first tentative steps in that direction. We believe it should go further and have offered some suggestions.

271. Second, that law enforcement should focus primarily on the criminal network responsible for manufacturing and importing the most harmful drugs—notably heroin and cocaine. We are glad to note that increasingly this is happening.

272. Three, that we should invest in a programme of education—addressing all forms of drug abuse, including cigarettes and alcohol—to make young people aware of the damage they can inflict upon themselves and others. To be effective, however, such programmes must be realistic, honest, targeted and preferably delivered by someone with "street credibility"—recovered addicts, for example.

273. Four, we have to recognise that, however much advice they are offered, many young people will continue to use drugs. In most cases this is a passing phase which they will grow out of and, while such use should never be condoned, it rarely results in any long term harm. It therefore makes sense to give priority to educating such young people in harm minimisation rather than prosecuting them. The Government's recent advice to users of so-called "recreational drugs", *Safer Clubbing*, is a welcome step in this direction.

274. Five, overwhelmingly we should focus on treating or reducing the harm caused by the 250,000 or so problematic users whose habit is damaging not only their own lives, but those of their families and the communities in which they live. Although there are recent signs of improvement, treatment facilities remain woefully inadequate.

275. Finally, many sensible and thoughtful people have argued that we should go a step further and embrace legalisation and regulation of all or most presently illegal drugs. We acknowledge there are some attractive arguments. However, those who urge this course upon us are inviting us to take a step into the unknown. To tread where no other society has yet trod. They are asking us to gamble the undoubted potential gains against the inevitability of a significant increase in the number of users, especially amongst the very young. They are overlooking the fact that the overwhelming majority of young people do not use drugs and that many are deterred by the prospect of breaking the law. We, therefore, decline to support legalisation and regulation.

276. It may well be that in years to come a future generation will take a different view. Drugs policy should not be set in stone. It will evolve like any other. For the foreseeable future, however, we believe the path is clear.

SUMMARY OF KEY CONCLUSIONS AND RECOMMENDATIONS

- 1.**
We believe that drugs policy should primarily be addressed to dealing with the 250,000 problematic drug users (paragraph 38).

- 2.**
While acknowledging that there may come a day when the balance may tip in favour of legalising and regulating some types of presently illegal drugs, we decline to recommend this drastic step (paragraph 66).

- 3.**
We accept that to decriminalise possession of drugs for personal use would send the wrong message to the majority of young people...and that it would inevitably lead to an increase in drug abuse. We, therefore, reject decriminalisation (paragraph 74).

- 4.**
We are not persuaded that an intent to supply should be presumed on the basis of amounts of drugs found; we therefore recommend that the offences of simple possession and possession with intent to supply should be retained without alteration (paragraph 77).

- 5.**
We recommend that a new offence is created of "supply for gain", which would be used to prosecute large scale commercial suppliers (paragraph 83).

- 6.**
We support...the Home Secretary's proposal to reclassify cannabis from Class B to Class C (paragraph 121).

- 7.**
We...recommend that ecstasy is reclassified as a Class B drug (paragraph 135).

8.

We recommend that the number of treatment places for cocaine users is substantially increased. We recommend that resources are channelled into researching and piloting innovative treatment interventions for cocaine users (paragraph 140).

9.

We consider that the risks posed by cocaine to the user and to other people merit it remaining a Class A drug (paragraph 141).

10.

We recommend that more treatment places are created for crack users and that resources be channelled into researching and piloting more effective treatments. We further recommend that in the meantime efforts are redoubled to extinguish supply of crack cocaine (paragraph 147).

11.

We recommend that the Government substantially increases the funding for treatment for heroin addicts and ensure that methadone treatments and complementary therapies are universally available to those who need them (paragraph 160).

12.

We recommend that appropriate treatment forms a mandatory part of custodial sentences and that offenders have access to consistent treatment approaches within the prison estate as well as outside it. This should include strictly supervised methadone treatment in the first instance (paragraph 169).

13.

We recommend that a proper evaluation is conducted of diamorphine prescribing for heroin addiction in the UK...as compared with methadone prescribing regimes (paragraph 178).

14.

We recommend that the guidance and training provided to practitioners prescribing diamorphine to heroin addicts is strengthened (paragraph 179).

15.

We recommend that an evaluated pilot programme of safe injecting houses for heroin users is established without delay and that if...this is successful, the programme is extended across the country (paragraph 186).

16.

We conclude that the Dutch and Swiss evidence provides a strong basis on which to conduct a pilot here in Britain of highly structured heroin prescribing to addicts. We recommend that a pilot along the lines of the Swiss or Dutch model is conducted in the UK. Should such a pilot generate the positive results which one would expect...we recommend that such a system should supersede the little-used "British system" of licencing (paragraph 190).

17.

We believe that all drugs education material should be based on the premise that any drug use can be harmful, and should be discouraged (paragraph 201).

18.

We conclude that General Practitioners are, for the most part, inadequately trained to deal with drug misuse. We recommend that training in substance misuse is embedded in the undergraduate medical curriculum and postgraduate General Practice curriculum...We recommend that the Department of Health funds more training courses in substance misuse for existing General Practitioners (paragraph 218).

19.

We recommend that a target is added to the National Strategy explicitly aimed at harm reduction and public health (paragraph 245).

20.

We recommend that the Government reviews Section 9A of the Misuse of Drugs Act 1971, with a view to repealing it, to allow for the provision of drugs paraphernalia which reduces the harm caused by drugs (paragraph 252).

21.

We recommend that Section 8 of the Misuse of Drugs Act 1971 is amended to ensure that drugs agencies can conduct harm reduction work and provide safe injecting areas for users without fear of being prosecuted (paragraph 257).

22.

We recommend that the Home Office and the Department of Health urgently review

the current legal framework on the dispensation of controlled drugs by community pharmacists (paragraph 260).

23.

We recommend that Drug Abstinence Orders are amended to carry the requirement of access to treatment (paragraph 264).

24.

We recommend that the Government initiates a discussion within the Commission on Narcotic Drugs of alternative ways—including the possibility of legalisation and regulation—to tackle the global drugs dilemma (paragraph 267).

ANNEX: NOTE ON IMPLEMENTATION OF THE COMMITTEE'S RECOMMENDATIONS

1. "We do not agree with the Police Foundation. Those guilty of "social supply" should not escape prosecution for this offence on the basis that their act of supply was to their friends for their personal consumption. We believe that this act of "social supply", while on a different scale from commercial supply, is nonetheless a dangerous crime which must be punished as such" (paragraph 82).

"We believe that while there are two different crimes of supply, the law only formally recognises one. We recommend that a new offence be created of "supply for gain", which would be used to prosecute large-scale commercial suppliers. So-called "social suppliers" who share drugs between their friends on a not-for-profit basis should continue to be prosecuted for supply" (pararaph 83).

1.1 At present, there is a single offence for "supply"[243] under the Misuse of Drugs Act 1971. The offence does not require proof of payment or reward so, for example, it would cover the act of passing a reefer cigarette to a friend so that he can have "a draw",[244] in addition to acts of large scale commercial supply.

1.2 Under the present statutory scheme, the following offences all carry the same maximum penalties for each class of drug:

- Importation**
- Production**
- Supply**
- Possession with intent to supply**

Where the above offences concern a Class A drug, the maximum penalty on indictment is life imprisonment.

1.3 Maximum penalties roughly reflect the gravity of an offence, but they do not determine the sentence that will actually be imposed in any given circumstance. The actual sentence will be one which, in the opinion of the court, is commensurate with the seriousness of the offence and which does not exceed the maximum. From time to time the Court of Appeal lays down guidelines for the sentencing of an offence or class of offences.

1.4 The new offence of "supply for gain" could be made subject to the same statutory maximum penalty as the existing offences of supply and possession with intent to supply. It would then be for the courts to determine appropriate sentences which reflect the relative gravity of offences, within that bracket. Alternatively, the new offence could have a higher maximum penalty to reflect the seriousness of supplying for gain. This could be achieved by reducing the maximum penalty for supply and possession with intent to supply (currently, life imprisonment) where gain is not involved. In addition, two new offences could be established, "supply for gain" and "possession with intent to supply for gain", which carried a maximum penalty of life imprisonment.[245]

2. "In the event of the successful completion of clinical trials and a positive evaluation by the Medicines Control Agency, we recommend that the law be changed to permit the use of cannabis-based medicines" (paragraph 109).

2.1 This recommendation requires an amendment to the Misuse of Drugs Regulations 1985 (S.I. 1985, No.2066, as amended).

2.2 At present, cannabis can only lawfully be produced, offered, supplied or possessed under licence by the Secretary of State.[246] There is no general exception which would otherwise permit its use for medicinal purposes.[247]

2.3 Section 7 of the Misuse of Drugs Act 1971 (MDA 1971) empowers the Secretary of State to make regulations which except specified controlled drugs from the restrictions of importation and exportation, production, supply and possession. The 1985 Regulations, which were made under this section, provides general exceptions for the drugs listed in Schedules 2 to 5.[248] This excludes cannabis, which is listed in Schedule 1 to the Regulations.

2.4 The drugs listed in schedules 2 and 3 (which include Class A, B and C drugs) are excepted (subject to conditions) from the restrictions of production, supply and possession. Different rules for record-keeping apply to each, with tighter requirements for Schedule 2 drugs. Schedule 4 excepts benzodizepines and anabolic steroids from most of the restrictions which apply to controlled drugs. Schedule 5 is concerned with preparations which contain very small proportions of controlled drugs.

2.5 The simplest means of implementing the Committee's recommendation would be to amend the 1985 Regulations in order to move cannabis from Schedule 1 to either Schedule

2 or 3. Schedule 2 may be the most appropriate categorisation, given that tighter record-keeping requirements apply.

3. **"We support the Home Secretary's proposal to reclassify cannabis as a Class C drug" (paragraph 121).**

"We...recommend that ecstasy is reclassified as a Class B drug" (paragraph 135).

3.1 These recommendations require amendments to Schedule 2, MDA 1971, which classifies controlled drugs into the three classes—A, B and C.

3.2 Reclassification must be implemented by Order in Council.[249]

3.3 The prescribed procedure is set out in section 2(5) of the Misuse of Drugs Act 1971.

- The Government must first consult the Advisory Council (unless it is acting on the recommendation of the Advisory Council).
- After consultation, the Government must lay a draft Order before Parliament, which must be approved by resolution of each House.
- Once the draft order has been approved by Parliament, the Government may recommend that Her Majesty in Council do make the Order.

3.4 The terms of the Order(s) would need to exclude ecstasy from the list of Class A drug[250] and include it in the list of Class B drug[251] and, similarly, exclude cannabis from the list of Class B drugs and include it in the list for Class C.[252]

4. **"We recommend that appropriate treatment forms a mandatory part of custodial sentences and that offenders have access to consistent treatment approaches within the prison estate as well as outside it. This should include strictly supervised methadone treatment in the first instance, as the most effective treatment available" (paragraph 169).**

4.1 The recommendation that appropriate treatment forms a mandatory part of custodial sentences is likely to require primary legislation. The recommendation that offenders have access to consistent treatment approaches does not appear to require legislation. It could be implemented through policy, as the existing legislation makes general provision for the medical treatment of prisoners.

4.2 The existing legislation does not, however, make *express* provision for treatment of drug addiction, nor does it require Prison Governors to make provision for drug treatments within the prison estate.

4.3 The Prison Act 1952 makes provision for prisoners who require medical attention, to receive it outside the prison estate, if the Secretary of State so directs.[253] In addition, there is general provision for the medical treatment of prisoners within the prison estate. For example, every prison must appoint a medical officer (who must be a fully registered medical practitioner), to be entrusted with "the care of the health, mental and physical, of the

prisoners of that prison".[254] Section 47 of the Act empowers the Secretary of State to make regulations (the "Prison Rules") for the treatment of prisoners, among other things.[255] Although neither the Act, nor the Prison Rules, make express provision for treatment of drug addiction, there is provision for drug testing.[256]

4.4. Rule 3 of the Prison Rules provides that the "purpose of the training and treatment of convicted prisoners shall be to encourage and assist them to lead a good and useful life". Treatment for drug addiction would not appear to fall outside that purpose. However, the courts have held (in the context of the "sex offender treatment programme") that the rule does not impose a mandatory duty on the Prison Service to provide a rehabilitative programme.[257]

4.5 The latter part of the Committee's recommendation could be implemented by amendment to the Prison Rules. For example, the Prison Rules could be amended by inserting a new Rule 20A:

"20A (1) For the purposes of this rule, the medical officer shall consult a medical practitioner who is a fully registered person within the meaning of the Medical Act 1983 and has the necessary qualifications or experience for the purpose of treating drug addiction (the "drug treatment practitioner"). A drug treatment practitioner may work within the prison under the general supervision of the medical officer.

(2) The medical officer or the drug treatment practitioner shall make arrangements for the provision of treatment to any prisoner being addicted to any controlled drug,[258] with a view to the reduction or elimination of the offender's addiction to drugs.

(3) For the purposes of this rule, a prisoner shall be regarded as being addicted to a drug if, and only if, he has as a result of repeated administration become so dependent upon the drug that he has an overpowering desire for the administration to be continued.[259]

4.6 This amendment would confine the provision of drug treatments to prisoners who were addicted to drugs (as defined).

5. "We recommend that an evaluated pilot programme of safe injecting houses for heroin users be established without delay and that if, as we expect, this is successful, the programme be extended across the country" (paragraph 186).

5.1 This requires an amendment to section 8 of the MDA 1971, which creates an offence for occupiers who knowingly permit or suffer various drug-related activities on their premises. This recommendation is dealt with in more detail at paragraph 5 below.

6. "We recommend that a pilot along the lines of the Swiss or Dutch model, is conducted in the UK. Should such a pilot generate the positive results which one would expect from the Dutch and Swiss experience, we recommend that such a system should supersede the little-used "British system" of licencing" (paragraph 190).

"We recommend that the Government commission a further trial to look at expanding prescription of diamorphine to addicts who have not yet or are not currently accessing any treatment, despite having a long history of heroin addiction" (paragraph 194).

6.1 The Misuse of Drugs (Supply to Addicts) Regulations 1997[260] prohibit doctors from supplying or prescribing certain drugs (cocaine, diamorphine and dipipanone) to addicts, except under licence of the Secretary of State (or for the purpose of treating organic disease or injury).

6.2 It would appear that any pilot programme would need to be exempted from these regulations.

7. **"We recommend that training in substance misuse be embedded in the undergraduate medical curriculum and postgraduate General Practice curriculum, as a problem which will arise with increasing frequency over the careers of all prospective doctors training today" (paragraph 218).**

"We would also expect the British Medical Association and the Royal College of General Practice to take a rather greater interest in this area than is evident so far. In particular we would expect these organisations to use their considerable influence to ensure that treatment of drug misuse is included in the medical curricula." (paragraph 219).

7.1 The Education Committee of the General Medical Council is responsible for overseeing the content of the undergraduate medical curricula. The Privy Council has certain default powers to act where the Education Committee does not.

7.2 An individual can only practice medicine if he is a fully registered medical practitioner (or provisionally, with limited registration). Entitlement to register is conditional on (a) holding one or more primary United Kingdom qualifications specified in the Medical Act 1983; (b) passing a qualifying examination; and (c) satisfying certain specified requirements as to post-qualification experience.[261] Accordingly, training for drug misuse may either be included on the curricula for qualification or, alternatively, it may form part of the post-qualification experience.

7.3 The Medical Act 1983 provides that:

— The General Medical Council's Education Committee shall have "the general function of promoting high standards of medical education and co-ordinating all stages of medical education".[262]

— For this purpose, the Education Committee must (among other things) "determine the extent of the knowledge and skill which is to be required for the granting of primary United Kingdom qualifications and secure that the instruction given in universities in the United

Kingdom to persons studying for such qualifications is sufficient to equip them with knowledge and skill of that extent.[263] Accordingly, the Education Committee has a duty to determine the knowledge and skill requirements of medical qualifications. It may decide that drug misuse ought to be required as part of the medical qualification.

— If it appeared to the Privy Council that the Education Committee ought to determine that drug misuse be a requirement of the medical qualification, but had failed to do so, then the Privy Council may direct the Committee to do so.[264] If the Education Committee failed to comply with such directions, the Privy Council could effectively step into the shoes of the Education Committee and exercise the power itself.[265] This power may be exercised by any two or more of the lords and others of the Privy Council.[266]

8. "We recommend that the Government review Section 9A of the Misuse of Drugs Act, with a view to repealing it, to allow for the provision of drugs paraphernalia which reduces the harm caused by drugs" (paragraph 252).

8.1 The purpose of section 9A was to prohibit the sale of drug kits, which were previously available on the open market.[267] Repealing the section would allow the re-emergence of the legitimate sale of drug kits. There is an argument that the ready availability of such kits might encourage, or otherwise legitimise, drug use. The section could be amended, however, to ensure that paraphernalia is available to addicts for the purposes of harm reduction.

8.2 At least two options are available. First, the section could be amended to exempt specific articles of paraphernalia, which are known to reduce harm (for example, witnesses have mentioned citric acid in particular). These could be exempted in the same way that hypodermic needles are excluded (see section 9A(2) of the Act below). Secondly, the section could be amended to permit supply by specified persons (such as doctors, nurses, pharmacists etc). This would prevent the commercial sale of drug kits on the open market, whilst allowing supply by *bona fides* treatment providers.

8.3 Section 9A (at present) provides:

"(1) A person who supplies or offers to supply any article which may be used or adapted to be used (whether by itself or in combination with another article or other articles) in the administration by any person of a controlled drug to himself or another, believing that the article (or the article as adapted) is to be so used in circumstances where the administration is unlawful, is guilty of an offence.

(2) It is not an offence under subsection (1) above to supply or offer to supply a hypodermic syringe, or any part of one.

(3) A person who supplies or offers to supply any article which may be used to prepare a controlled drug for administration by any person to himself or another believing that the article is to be so used in circumstances where the administration is unlawful is guilty of an offence.

(4) For the purposes of this section, any administration of a controlled drug is unlawful except—

(a) the administration by any person of a controlled drug to another in circumstances where the administration of the drug is not unlawful under section 4(1) of this Act, or

(b) the administration by any person of a controlled drug to himself in circumstances where having the controlled drug in his possession is not unlawful under section 5(1) of this Act.

(5) In this section, references to administration by any person of a controlled drug to himself include a reference to his administering it to himself with the assistance of another."

9. "We recommend that Section 8 of the Misuse of Drugs Act be amended to ensure that drugs agencies can conduct harm reduction work and provide safe injecting areas for users without fear of being prosecuted" (paragraph 257).

9.1 Section 8 was only recently amended by the Criminal Justice and Police Act 2001 (s. 38), which extended its application quite significantly (although the amendment is not yet in force).[268] The purpose of the extension was to cover so-called "crack houses", although it would appear to extend more widely than that.[269]

9.2 Section 8 (as amended) provides:

A person commits an offence if, being an occupier or concerned in the management of premises, he knowingly permits or suffers any of the following activities to take place on those premises, that is to say—

(a) producing or attempting to produce a controlled drug in contravention of section 4(1) of this Act;

(b) supplying or attempting to supply a controlled drug to another in contravention of section 4(1) of this Act, or offering to supply a controlled drug to another in contravention of section 4(1);

(c) preparing opium for smoking;

(d) smoking cannabis, cannabis resin or prepared opium;

[(d) administering or using a controlled drug which is unlawfully in any person's possession at or immediately before the time when it is administered or used.]

NB: the new paragraph (d) (substituted by the Criminal Justice and Police Act 2001, s. 38) is underlined and in square brackets. This will replace the italicised paragraph (d), when it

comes into force.

9.3 There are two options for implementation of the Committee's recommendations. The first is draft an exclusion clause, which applied specifically to a defined group (eg drugs agencies), or for a defined purpose (eg to provide safe injecting areas). The second, and perhaps simpler, option is to draft an exemption which permitted a licencing system, whereby the Secretary of State would authorise specific harm reduction activities to take place on specified premises.

9.4 Adopting the second option, section 8 could be amended as follows:

(1) A person commits an offence if, being an occupier or concerned in the management of premises, he knowingly permits or suffers any of the following activities to take place on those premises, that is to say—

(a) producing or attempting to produce a controlled drug in contravention of section 4(1) of this Act;

(b) supplying or attempting to supply a controlled drug to another in contravention of section 4(1) of this Act, or offering to supply a controlled drug to another in contravention of section 4(1);

(c) preparing opium for smoking;

(d) administering or using a controlled drug which is unlawfully in any person's possession at or immediately before the time when it is administered or used.

(2) It shall not be unlawful for any person mentioned in sub-section (1) to knowingly permit or suffer any activity which is authorised in accordance with the terms of a licence, issued by the Secretary of State, and in compliance with any conditions attached to the licence."

10. **"We recommend that the Home Office and the Department of Health urgently review the current legal framework on the dispensation of controlled drugs by community pharmacists in consultation with the Royal Pharmaceutical Society" (paragraph 260).**

10.1 This would require a review of the Misuse of Drugs Regulations 1985[270] and, in particular, Regulations 15 (form of prescriptions) and 16 (provisions to supply on prescription).

11. "We recommend that Drugs Abstinence Orders be amended to carry the requirement of access to treatment" (paragraph 264).

11.1 This recommendation requires amendment to those provisions of the Powers of Criminal Courts (Sentencing) Act 2000, which deal with Drug Abstinence Orders.

11.2 Drug Abstinence Orders may only be made in respect of adult offenders (18 and over) where, in the opinion of the Court, the offender is dependent on, or has a propensity to misuse specified Class A drugs and he has either been convicted of a "trigger" offence,[271] or the court feels that his Class A drug misuse caused or contributed to the offence.

11.3 Such orders must be made for a specified period not less than 6 months and not exceeding three years.[272]

11.4 At present, Drug Abstinence Orders must include only two requirements. First, that the offender abstain from misusing specified Class A drugs and, secondly, to undertake a drug test on instruction.[273] Accordingly, there is no express power to make provision for treatment within the order.

11.5 By contrast, Drug Treatment and Testing Orders must include a requirement that the offender submit to treatment, in addition to testing.[274] Accordingly, treatment under a DTTO is compulsory.

11.6 Drug Abstinence Orders could be amended to require the Court to make an order which includes provision for access to appropriate treatment, through the following amendment to section 58A of the Powers of Criminal Courts (Sentencing) Act 2000. After sub-paragraph (4) insert:

"(4A) The drug abstinence order shall provide that, for the duration of the order, the offender shall have access to an appropriate course of treatment by or under the direction of a specified person having the necessary qualifications or experience, with a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs."

243 The offence covers "supplying or offering to supply a controlled drug or being concerned in the doing of either activity by another". MDA 1971, s. 4(3). Back

244 R v. Moore [1979] Crim. L. R. 789. Back

245 On indictment. Back

246 1985 Regulations, Reg. 5. Back

247 Cannabis falls within Schedule 1 of the 1985 Regulations, to which the general exceptions do not apply. There are, however, two specific exceptions applicable to cannabis. The first permits the smoking of cannabis or cannabis resin for research purposes, in premises approved by the Secretary of State (1985 Regulations, Reg.13), and the second permits the cultivation of cannabis plants under licence issued by the Secretary of State (MDA 1971, s. 6 and 1985 Regulations, Reg.12). Back

248 For example, doctors and dentists (or any person acting in accordance with the directions of a doctor or dentist) are permitted to administer to a patient any drug specified in Schedule 2, 3, or 4 and Any person can administer to any other person a drug specified in Schedule 5 (1985 Regulations, Reg.7). Back

249 MDA 1971, s. 2(2). Back

250 Part I of Schedule 2, MDA 1971 contains the list of Class A drugs. Ecstasy (or "methylenedioxymethylamphetamine", MDMA) is not specifically mentioned in Schedule 2, but it is a Class A controlled drug as being a compound falling within paragraph 1(c) of Part of I of Schedule 2 (Archbold: criminal pleading, evidence and practice 2000, para. 26-15). Back

251 Part II of Schedule 2, MDA 1971. Back

252 Part III of Schedule 2, MDA 1971. Back

253 Prison Act 1952, s. 22(2). Back

254 Prison Act 1952, s. 7(4) and Medicine Act 1983, ss.55 and 56, Sched. 6, para. 11(2); Prison Act 1952, s. 7(1); s. 47; Prison Rules 1999 (S.I. 1999, No.728), Reg. 20(1). Back

255 Regulations 20 and 21 of the Prison Rules 1999, make various general provisions for the medical attention of prisoners within the prison estate. Back

256 The Prison Act 1952 provides for the compulsory testing of prisoners for drugs (section 16A) and alcohol (section 16B). However, the Act makes no express provision for treatment of drug addicts (or, indeed, alcoholics). Back

257 *R. v. Secretary of State for the Home Department, ex p. John Shaw*, 10 February 2000, QBD. Back

258 "Controlled drug" is already defined in the Prison Rules as "any drug which is a controlled drug for the purposes of the Misuse of Drugs Act 1971", Rule 2(1). Back

259 This replicates the definition of drug addict, as defined in the Misuse of Drugs (Supply to Addicts) Regulations 1997, S.I. 1997, No. 1001. Back

260 S.I. 1997, No. 1001. Back

261 Medical Act 1983, s. 3(1)(a). Section 3(1)(b) provides that EEA nationals are entitled to be registered if they hold one or more primary European qualifications. Back

262 Medical Act 1983, s. 5(1). Back

263 Medical Act 1983, s. 5(2)(a). Back

264 Medical Act 1983, s. 50(1)(b). Back

265 Medical Act 1983, s. 50(2), (3). Back

266 Medical Act 1983, s. 52. Back

267 Rudi Forston, *Misuse of Drugs and Drug Trafficking Offences*, (Sweet and Maxwell, 2002), para. 7-35. Back

268 Date in force: to be appointed; Criminal Justice and Police Act 2001, s. 138(2). Back

269 Rudi Forston, *Misuse of Drugs and Drug Trafficking Offences*, (Sweet and Maxwell, 2002), para. 7-01. Back

270 S.I. 1985, No.2066 (as amended). Back

271 Schedule 6 of the Criminal Justice and Courts Act 2000, sets out a list of offences which are "trigger" offences. Back

272 Powers of Criminal Courts (Sentencing) Act 2000, s. 58A(7), as inserted by Criminal Justice and Courts Act 2000, s. 47. Back

273 Powers of Criminal Courts (Sentencing) Act 2000, s. 58A(1). Back

274 Powers of Criminal Courts (Sentencing) Act 2000, s. 52-8. Back

HOUSE JUDICIARY COMMITTEE
12 April 2005

WITNESS LIST

- BILL PARKER
 - Spokesman for Alaskans for Marijuana Regulation and Control

- WES MacLEOD-BALL
 - Director, Alaska Civil Liberties Union

- JACK COLE
 - Director, Law Enforcement Against Prohibition and retired narcotics police officer

- MITCH EARLEYWINE, Ph.D.
 - Associate Professor of Psychology, University of Southern California

- SCOTT BATES
 - Economist, Boreal Economic Analysis and Research, Fairbanks

- GREGORY CARTER, M.D.
 - Professor of Medicine, University of Washington, Seattle

- TIM HINTERBERGER, Ph.D.
 - Associate Professor of Biomedicine, University of Alaska, Anchorage

- KELLY DREW, Ph.D.
 - Associate Professor of Chemistry and Biochemistry, University of Alaska, Fairbanks

- JIM WELCH
 - Medical Marijuana patient, Eagle River
- DEBBIE SOULE
 - Medical Marijuana patient, Wasilla

WRITTEN TESTIMONY

- LESLIE IVERSON
 - Visiting Professor of Pharmacology, University of Oxford, England
- ROBERT MELAMEDE, Ph.D.
 - Professor of Biology, University of Colorado at Colorado Springs
- LESTER GRINSPOON, M.D.
 - Associate Professor of Psychiatry, Harvard Medical School

**Testimony to House Judiciary Committee
April 12, 2005**

My name is Bill Parker. I am a former member of the Alaska House of Representatives, and I retired from state service as Deputy Commissioner of Corrections. Today I speak for Alaskans for Marijuana Regulation and Control.

H.B.96 attempts to recriminalize marijuana for adults in Alaska, in violation of the Alaska Constitution.

In 1975, in a landmark case known as *Ravin*, the Alaska Supreme Court ruled the privacy clause of the Alaska Constitution protects possession of a small amount of marijuana by adult Alaskans in their own homes for their own use. In 1975, the Alaska Legislature changed the statutes to decriminalize marijuana in Alaska.

Various attempts have been made in the 30 years since to attack this de-criminalization, both legally and politically.

An initiative in 1990 attempted to re-criminalize marijuana in Alaska, but initiatives change statutes, not the Constitution, and the initiative had no effect.

Many legal attempts have been made to test the constitutionality in the courts, all unsuccessful. The latest was last fall when the Alaska Supreme Court declined to take up the Appellate Court's latest ruling upholding *Ravin*.

H.B.96 is another attempt to attack the constitutional issue in a legal and political manner.

If H.B.96 passes with these findings, they will be admissible in court, and the administration will have new arguments that marijuana is much more potent and dangerous than in 1975, so much so that it is almost a different substance.

That is why the findings section of this bill is important. The findings are flawed. Expert witnesses from Alaska and Outside are going to explain those flaws today.

They will discuss the complex medical and sociological issues that other government panels have studied at length.

- The Shafer Commission's report to President Nixon in 1972, "Marijuana: Signal of Misunderstanding."
- The National Research Council's 1982 report, "An Analysis of Marijuana Policy."
- The Institute of Medicine's 1999 report, "Marijuana and Medicine: Assessing the Scientific Base."
- The 2002 report of the British Advisory Council on the misuse of drugs, "The Classification of Cannabis."
- The House of Commons Home Affairs Committee 2002 study, "The Government's Drug Policy: Is It Working?"
- Jamaica's 2001 National Commission on Ganja came to the same conclusion;

Marijuana is not so harmful that the penalties for possession need to be increased.

H.B.96 would take Alaska in the opposite and wrong direction.

The State's witnesses could not be called objective observers. Those directly involved in implementing an administration's policies cannot evaluate those policies impartially. Evaluators should be independent academics.

The testimony today will show that the time schedule alone for H.B.96 is inadequate to evaluate marijuana in Alaska. We have submitted, in writing, the findings of experts in their fields who determine marijuana to be relatively harmless compared to alcohol. Each finding must be examined individually as the other commissions and committees have done with scientific integrity.

Here is a quick review of the evidence you will hear today:

Experts will point out the differences between scientific research and pseudo-science, the confusion between correlation and causation.

The administration's assertions about increased potency of marijuana are inaccurate and misleading in several respects:

- There are serious questions about the actual potency of marijuana today and yesterday. There is no reliable way to measure potency.
- There is no proof that marijuana is more addictive or dangerous than previously.
- In fact, more potent marijuana would result in people using less, because of the effect of autotitration.

The administration's treatment of statistics is misleading because most of their conclusions are court-ordered, not a clinical diagnosis of marijuana addiction or even a self-referral. Most had to choose between treatment or incarceration. Most chose treatment.

The rate of marijuana use among minors in Alaska is no higher today than it was in 1975. In fact, according to the government's own statistics, overall use in grades 6 through 12 in Alaska schools is lower now after 30 years of decriminalization.

Marijuana use by minors has not been shown to cause psychosis later in life.

Marijuana use does not induce violent behavior, rape, or child abuse.

The emergency room data used to show that marijuana is more dangerous today is not conclusive. The relation to marijuana in patients is so widely construed as to be meaningless. And the administration has overstated and misinterpreted the evidence of marijuana's link to lung cancer, juvenile crime, and the possibility of addiction and dependence.

The weight of scientific evidence available today discredits the old 'gateway drug' theory.

There are laws already in place to prohibit driving while impaired by alcohol or marijuana. These laws will remain in effect.

H.B.96 would have a bad effect on medical marijuana patients by jeopardizing their ability to possess marijuana if adult use of marijuana in the home is criminalized.

If the administration's aim is to promote the public health and welfare, re-criminalizing personal, adult use of marijuana in the home won't do it. Re-criminalization will only feed the black market and increase the social costs that flow from it.

And the spontaneous response by the citizen witnesses in the capitol and that the legislative information offices (LIOs) across the state show the Alaska public understands all this.

Science shows marijuana causes far less harm to the public health and welfare than alcohol or tobacco. And that's as true today as it was in 1975.

Alaska Civil Liberties Union
An affiliate of the American Civil Liberties Union
P. O. Box 201844
Anchorage, AK 99520
907-258-0044/907-258-0288 (fax)

**Testimony of Michael W. Macleod-Ball, Executive Director, before the House
Judiciary Committee Regarding HR 96 (marijuana legislation)**

Thank you Chairman Seekins for this opportunity to address the committee. I'd also like to thank your staff for doing their best to keep us up to date on schedules and the like and for keeping their good humor despite their many competing interests. My name is Michael Macleod-Ball and I'm the executive director of the Alaska Civil Liberties Union.

I have submitted a written copy of my testimony before the Senate HESS committee for your consideration. Today, I'd like to address several other points that we believe to be important for this committee to consider.

History of legislation and case law

First, it's important to fully understand the history – the context in which this debate exists. The Ravin decision of 1975 has been much maligned as the decision that legalized marijuana in Alaska. That reputation is unfair and only part of the story. Ravin was much more about defining the scope of privacy than it was about legalizing marijuana. The privacy amendment to the Alaska Constitution had only recently been enacted at the time of the Ravin decision.

At its core, Ravin stood for the proposition that there are zones of privacy and if the government makes a law invading that privacy zone, it needs to be for a compelling reason. In that sense, the privacy right is just like any other fundamental right – free speech, right to worship – restrictive legislation needs a strong justification....something more than the basis for legislative action that doesn't infringe upon a fundamental right. You wouldn't enact a law barring all public discussion of whether marijuana is harmful. You wouldn't enact a law barring all Presbyterians from worshipping. Similarly, you wouldn't enact a law restricting an individual's right to be left alone.

Ravin declared that there is a protected zone of privacy in one's home. Ravin also stands for the proposition that an activity that doesn't harm someone else is due greater deference. In evaluating marijuana laws in light of the privacy amendment, the Ravin court said that the risks of marijuana were not so great as to justify state infringement of the zone of privacy.

It's important to note what Ravin did not do. It did not bar legislation related to driving under the influence. It did not bar legislation aimed at prohibiting commercial cultivation. It did not bar legislation prohibiting sales of marijuana. It did not bar legislation prohibiting use by minors. And no court decision since then has done any of

these things. So – all the talk by the administration about marijuana as a cash crop, needing to bar sales to kids, etc., is irrelevant to the issues before you in this bill. Such things are illegal now and will be illegal in the future.

After the Ravin decision, this body adopted legislation in effect codifying its terms. That legislation was the origination of the four ounce threshold for personal possession in the home, not the court decision. In 1990, a referendum attempted to recriminalize marijuana. Just last year, an appeals court overturned that decision. Once again, the decision was not about marijuana per se, but rather about the procedural means by which a constitutional right can be restricted. A constitutional amendment requires a 2/3 vote of the legislature plus the affirmative vote of the populace. It was logical that the court would not permit the dilution of a duly adopted constitutional provision based solely on a referendum. To do otherwise would have discounted the right of the legislature to initiate such constitutional provisions.

Because the referendum was not a valid procedure to change the constitution, the court was left to determine the state of the law with respect to marijuana – and it was clear that the law in effect immediately prior to the referendum would control. That law included the four ounce limit for personal use and possession which this law seeks once again to overturn.

Some risk isn't enough

As noted previously, the Ravin court acknowledged that marijuana had some risks associated with it. It considered a wealth of evidence, more in some ways than this panel has, and concluded that there was debate about the risks of marijuana, some evidence suggested greater risk than other evidence. That risk, however, was insufficient to justify government intrusion into the privacy of the home. What's more – the court even anticipated the presence of children in the home and said that even with kids in the home there was insufficient threat to public safety or welfare to justify a government invasion of the privacy of the home.

Findings should match the facts and the state's claims are exaggerated

Taking it all together, the obvious question is whether there is any way the legislature can act to restrict marijuana use and possession in the home. We believe the answer is 'no' given the current state of the science and the nature of the right being infringed.

The risks associated with the private possession of marijuana for personal use in the home simply haven't been demonstrated to exist – if they even exist to any greater degree than they did in the 1970's. In this bill, the findings overstate the known risks of marijuana in the hope that the courts will defer to these findings and agree that the stated risks justify restriction. To counter those exaggerations, you will hear testimony from internationally renowned experts who will tell you that the risks of marijuana are not substantially greater than 30 years ago. You will hear them say that the findings do not

reflect the best science. You will hear them say that the administration's testimony exaggerates or misleads or takes scientific conclusion out of context.

Compare this to the administration's overstatements: At a hearing last week, they asserted that kids get their pot at home from family. But if you look at the actual study they relied on to make that statement, you'll see that kids mostly get their pot from friends. Only a small fraction get it from family members. And there is no indication that when they get pot from the home, they're getting it from adult family members. The materials submitted to Senate HESS and the testimony provided there made the alarming claim that 15% of rape suspects have smoked marijuana in the hours before the arrests. But if you look at the study from which that claim is drawn, you'll find that over 70% of those same suspects have consumed alcohol in the hours before arrest. And you'll find there is no indication whether the marijuana smokers also drank alcohol...and you'll find that the authors of the study were so concerned with the alcohol correlation that they provided much additional follow on information about alcohol use. And you'll find they deemed the marijuana link minor, perhaps trivial, in scientific terms...and deemed it unworthy of more detailed review. Those are just two examples of the administration's overstatements – if you had more time to look at their information, you might just find more.

If you want to be honest with the Alaskan public about this by adopting accurate findings, you have to admit that the weight of the evidence does not support the findings and does not justify a restriction on private possession of small amounts of marijuana for personal use in the home. The evidence may suggest driving while under marijuana's influence should be banned – but it already is and this legislation doesn't change that. It may suggest that commercial cultivation should be banned – but it already is and this legislation doesn't change that. This legislation does ban possession of any amount, no matter how small, even for private consumption in the home – and the findings are a smokescreen, without any support relevant to that restriction.

Findings will be subject to judicial review

The end result of this will be another court challenge...and the court this time will be left in the position not of defining the privacy right and not of explaining the proper way to amend the constitution, but rather of revealing the fallacy of these proposed findings. When a fundamental right is involved, the court will not simply defer to legislative findings. Clarence Thomas, when on the appellate court, said that simply saying so cannot make black into white or slavery into freedom. In this case, simply saying there is justification to invade the privacy of the home won't make it so. If this legislature doesn't wish to take the time to evaluate all the science methodically and with impartiality, the courts will certainly do so. And they'll find what other eminent and impartial panels have found – that marijuana has some risks, but far fewer than alcohol, tobacco, and other substances.

Criminalization doesn't help – it just creates more criminals and poverty

What should this legislature do? If, as we suspect, there is a predisposition to ban marijuana in public and in private, then a constitutional amendment is the only way to go. We'd oppose such a movement, but there would be no doubt of the validity of the process, if successful. Significantly, nothing has been offered to show that criminalization works. The administration has decried the increase in usage rates – and impliedly blamed the court's privacy rulings. But as discussed earlier, we had effective prohibition for close to 15 years from the referendum until the decision negating that vote. If the administration's claims of increased usage are true, they occurred in a climate of perceived prohibition. If the concern of this legislature is really usage rates, why not focus on things that have been shown to work for other substances. Focus on education, focus on prevention.

At the very least, focus on all of the science presented to you today – if you look at it with an open mind, we believe you will be unable in good conscience to approve the findings you have before you in support of a restriction on a fundamental right.

Thanks for your attention and I'll be happy to answer questions.

Jack A. Cole, New Jersey State Police Lieutenant (retired)
27 Austin Road
Medford, Massachusetts 02155
(781) 393-6985 www.leap.cc

My name is Jack Cole. I retired as a Detective Licutenant after a 26-year career with the New Jersey State Police. For fourteen of those years I worked as an undercover narcotics officer. My investigations spanned the spectrum of possible cases, from street drug users to international “billion-dollar” drug trafficking organizations.

I am also the executive director of LEAP or Law Enforcement Against Prohibition. LEAP was founded by five former cops to give voice to members of law enforcement who believe the war against drugs is not only a dismal failure but a terribly destructive policy. In the 2 ½ years of our existence we have grown to over 2,000 members and we are no longer just cops—now we are police, judges, prosecutors, prison wardens—we even have retired DEA officers who help make up our bureau of 85 speakers.

Passing bills that raise criminal penalties and assess harsher sentences for non-violent drug offenses is very poor public policy.

1. From 1975 to 1990, Alaska had 15 years of decriminalized adult use in the privacy of the home (based on the Alaska Supreme Court opinion in Ravin);
2. From 1990 to 2003 AK had a return to full de facto prohibition (based on an initiative that purported to recriminalize marijuana); and
3. From 2003 to now, marijuana in the home was decriminalized again (based on the Alaska Court of Appeals decision in November).
4. According to Alaska’s own statistics overall use among children in grades 6 to 12 has **decreased** since 1975, while across the United States that rate has

increased (30 % for 12th graders, 65% for 10th graders, and 88% for 8th graders).

For 35 years, with a budget of over ½ trillion dollars, the United States has fought the war on drugs with ever harsher policies. We have arrested 1.6 million people for nonviolent drug offenses—fully half of the arrests were for marijuana violations. Two million two-hundred-thousand are in prison in the US, far more per capita than any country in the world. And what do we have to show for all those ruined lives and misspent money: Today drugs are cheaper, more potent and far easier to get than they were in the 1970 when I started buying them undercover. I believe that is the very essence of a failed public policy.

Nearly a thousand young people went to jail as a direct result of what I did as an undercover narcotics agent.

I can't say how many of those children would have gone on to become valuable citizens had I not intervened, but I'm sure the number would be huge.

Think of all the folks you know who used an illegal drug as a youngster, then put the drugs behind them and went on to live productive lives. Many are now members of our government. George Bush, Bill Clinton, Al Gore, Dan Quail, Newt Gingrich. The line is too long to enumerate but they all had two things in common, they all used illegal drugs, then quit, and when they arrived at a position of power they all got selective amnesia so now they say police should arrest young people and destroy their life prospects for doing exactly what they did.

We have a saying at LEAP: You can get over an addiction, but you will never get over a conviction. A conviction will follow you every day for the rest of your life—every time you apply for a job it is over your head like an ugly cloud.

There are many unintended consequences of the war on drugs. When you prohibit a drug, even the worst drug, you don't cause less people to imbibe. All you do is create an underground market that is instantly filled with criminals.

Worse, you create an artificially inflated value for that drug that can be up to 17,000 percent of the initial investment—making marijuana worth more than gold and heroin worth more than uranium. I would suggest that whole armies of police can not arrested our way out of drug problems when prohibition creates such obscene profit motives for prospective dealers. Every time I arrested a drug dealer I was simply creating a job opening.

For those of you who think that by backing this bill you are in the mainstream of public thinking, let me say that I believe that is not true: In the last year LEAP started attending national and international law enforcement conferences. We kept track of the opinions of the nearly 1,200 officials we spoke to on a one-to-one level. Even we were surprised to find that after we spoke with them, 6% wanted to continue the war on drugs, 14% were undecided, but a whopping 80% agreed with us that we must end prohibition. The most interesting thing about that 80% was only a very small number of them realized that any other law enforcement officer felt as they did. Peer pressure to not appear soft on drugs or soft on crime is so strong that they don't talk to each other about their beliefs.

Please, don't pass bills that tie up more police hours in projects that do nothing to lessen the incidence of death, disease, crime, and drug addiction—let police get back to protecting us from violent crime. We will all be much better off.

STATEMENT REGARDING S.B. 74 AND H.B. 96

MITCH EARLEYWINE, PH.D., Associate Professor of Psychology, University of Southern California; author, *Understanding Marijuana* (Oxford University Press, 2002)

Like the language in S.B. 74 and H.B. 96, many media reports suggest that cannabis (marijuana) has increased in potency quite dramatically in recent years. These reports have generated considerable debate, and in fact the magnitude of the increase is difficult to document and is most likely greatly exaggerated. In addition, the assumption -- clearly implied in the bills' findings -- that increased marijuana potency translates into greater danger from the drug is untrue.

Reports of a stronger drug actually began over 30 years ago. By the middle of the 1980s, some authors suggested that marijuana's potency had increased by a factor of 100 (MacDonald, 1984). These claims clearly suffered from exaggeration or misinformation. Other arguments about increased potency arose from the University of Mississippi's Potency Monitoring Project, a program that reports the average THC content of cannabis taken in drug arrests. Estimates were extremely low in the 1970s, sometimes below 1%. But these figures are inherently suspect, because cannabis with this little THC has no impact on subjective experience -- that is, it does not produce a "high." The idea that a drug with no effects would increase dramatically in popularity over the years, as marijuana clearly did during the 1960s and 1970s, makes little sense. Thus, these estimates from the 1970s were probably inaccurate reflections of the amount of THC in marijuana available at the time.

Investigators hypothesize that the data from the Potency Monitoring Project underestimate the true amount of THC in marijuana from the 1970s. First, the estimates were based on very few samples of seized cannabis. In some years there were no more than 50 samples to analyze (PMP, 1974-1996). In addition, police may have stored the marijuana in hot lockers that allowed the THC to degrade rapidly (Mikuriya & Aldrich, 1988). Despite the small samples and poor storage, the average THC content in 1976 was 2% (ElSohly, Holley, & Turner, 1984).

An alternative source of potency information, an independent laboratory in California, analyzed many more samples than the Potency Monitoring Project. This laboratory found a large range in THC concentration. In 1973 this laboratory tested over 100 samples and found that marijuana had an average of THC content of 1.6 % (Ratcliffe, 1974). Later analyses ranged up to almost 8% THC (Perry, 1977). Thus, the idea that all, or even most, cannabis of the 1970s had less than 1% THC seems unlikely. Ratcliffe's (1974) estimate of an average potency level of 1.6% may be conservative but credible; the 1976 estimate of 2% may be closer to the truth. And clearly, marijuana much stronger than 2% was available in the mid-1970s

Potency data from the 1980s through the middle of the 1990s suggest that THC content continued to vary dramatically from strain to strain and sample to sample. With improved storage techniques and much larger samples, the Potency Monitoring Project found THC concentrations varied from 2% to almost 4%. Average concentrations approached 4% THC in 1984, 1988, 1990, and 1991 (PMP, 1974-1994). Trends in the rest of the 1990s showed comparable THC content, with a peak around 4.5% THC in 1997. Other cannabinoids like cannabitol and cannabidiol have not increased in

concentration over the years (ElSohly, et al., 2000). Thus, claims of 1000% (Cohen, 1986) or 10,000% (MacDonald, 1984) increases in marijuana potency are clearly inaccurate. A threefold elevation from approximately 1.5% in the early 1970s to 4.5% in the late 1990s may be closer to the truth. A simple doubling from an average of 2% to an average of 4% also seems the most plausible.

Although many media reports warn that increased potency translates into greater danger, scientific data suggest otherwise. Recent alarms about increased mentions of marijuana in emergency rooms have received a great deal of attention, with many authors positing that stronger cannabis has created more emergency room visits. In fact, the data that allegedly support these allegations are extremely questionable. Emergency rooms have no estimates of the strength of the cannabis used by those who appear for treatment. The purported increase in reports of cannabis use in emergency rooms likely stem from improved assessments by emergency room personnel or a gradual decrease in the stigma associated with use of the plant, not from ill-effects caused by marijuana use. Previous work suggests that emergency room assessments of drug use were wildly inaccurate (Roberts, 1996). Because marijuana appears incapable of causing fatal overdoses, it is implausible that the reported increase in ER "mentions" of marijuana is due to life- or health-threatening reactions caused by cannabis.

Marijuana with greater amounts of THC is probably **less** hazardous than weaker cannabis. First of all, acute administration of the drug is essentially non-toxic. No one has ever died from THC poisoning. Smoking enough cannabis to ingest a lethal amount of THC may be physically impossible. Estimates of a fatal dose of any drug arise from some rather gruesome animal research. Different groups of animals receive large amounts of a

drug until a particular dosage kills 50% of them. Researchers refer to the dose that is lethal for 50% of the animals as the LD 50. Investigators then extrapolate from these data to estimate a lethal dose for humans. The LD 50 for THC is approximately 125 milligrams for every kilogram of body weight (Nahas, 1986). Thus, a 160 pound (approximately 73 kilogram) person would need 9,125 milligrams of THC to have a 50% chance of dying. A typical marijuana cigarette weighs one gram and contains roughly 20 milligrams of THC, suggesting that a lethal overdose would require smoking roughly 450 joints in a brief period. Furthermore, at least 50% of the THC is destroyed in the burning process or lost to sidestream smoke. Given this loss, 900 joints would be a more appropriate estimate of a fatal amount (Doweiko, 1999). The 900 joints would weigh roughly 2 pounds. Although experienced users tell many exaggerated tales about smoking large amounts of cannabis, this dosage exceeds 100 times the quantity typically consumed by the heaviest users.

Marijuana with larger percentages of THC actually has benefits. Stronger cannabis leads to smoking smaller amounts. Smoking smaller quantities could provide some protection against the health problems normally associated with inhaling smoke. Smokers may take smaller, shorter puffs when using more potent marijuana (Heishman, Stitzer, & Yingling, 1989). Smoking less may decrease the amount of tars and noxious gases inhaled, limiting the risk for mouth, throat, and lung damage (Matthias, et al., 1997). Obviously, avoiding smoke completely would eliminate these problems. Thus, eating or vaporizing cannabis products may have fewer negative consequences than smoking them.

For the reasons outlined above, I believe it is inappropriate to base penalties for marijuana-related offenses on purported dangers related to an increase in cannabis potency.

REFERENCES

- Cohen, J. (1986). *Statistical power analysis for the behavioral sciences*. Hillsdale, NJ: Lawrence Erlbaum.
- Doweiko, H. E. (1999). *Concepts of chemical dependency*. New York: Brooks Cole.
- Earleywine, M. (2002). *Understanding marijuana*. New York: Oxford University Press.
- ElSohly, M.A. Holley, J. H. & Turner, C. E. (1984). Constituents of cannabis stava L. XXVI. The delta-9-tetrahydrocannabinol content of confiscated marijuana, 1974-1983. In D. J. Harvey, (Ed.), *Marijuana '84* (pp. 233-247). Oxford: IRL.
- Heishman, S. J., Stitzer, M. L. & Yingling, J. E. (1989). Effects of tetrahydrocannabinol content on marijuana smoking behavior, subjective reports, and performance. *Pharmacology, Biochemistry & Behavior*, 34, 173-179.
- MacDonald, D. I. (1984). *Drugs, drinking, and adolescents*. Chicago: Year Book Medical Publishers.
- Matthias, P., Tashkin, D. P., Marques-Magallanes, J.A., Wilkins, J. N. & Simmons, M.S. (1997). Effects of varying marijuana potency on deposition of tar and delta9-THC in the lung during smoking. *Pharmacology, Biochemistry and Behavior*, 58, 1145-1150.

Mikuriya, T. H. & Aldrich, M. R. (1988). Cannabis 1988: Old drug, new dangers, the potency question. *Journal of Psychoactive Drugs*, 20, 47-55.

Nahas, G. G. (1986). Cannabis: Toxicological properties and epidemiological aspects. *Medical Journal of Australia*, 145, 82-87.

Perry, D. (1977). Street drug analysis and drug use trends, Part II, 1969-1976. *PharmChem Newsletter*, 6, 4.

Potency Monitoring Project. Quarterly Reports. University of Mississippi: Research Institute of Pharmaceutical Sciences (1974 to 1996).

Ratcliffe, D. (1974). Summary of street drug results, 1973. *PharmChem Newsletter*, 3, 3.

Roberts, C.D. (1996). Data quality of the Drug Abuse Warning Network. *American Journal of Drug & Alcohol Abuse*, 22, 389-401.

STATEMENT REGARDING ALASKA SB 74 AND HB 96

Scott Bates, Economist
Boreal Economic Analysis & Research, Fairbanks AK

Hello, my name is Scott Bates. I work for Boreal Economic Analysis & Research in Fairbanks. I have a Master of Science in Economics from the University of Alaska Fairbanks. I have worked on various projects as a research analyst over the last few years, and I am here to speak to you because I was involved in preparing a report called The Economic Implications of Marijuana Legalization in Alaska, prior to the vote on Ballot Measure 2 in 2004.

As detailed in that report, the costs to the State of Alaska of prohibiting marijuana include the actual costs of policing, prosecuting and corrections, as well as some indirect social costs. In total, we estimated that direct costs to the justice system are on the order of \$16 million per year to prohibit marijuana. This was based on information gathered from the State, as well as data collected from the US DOJ, for State expenditures from 1997 to 2002. Social costs were estimated to amount to well over \$7 million per year, including lost economic output, social services, and secondary offenses which occur as a result of probation violations and such. Based on our estimates from the report last year, I have estimated the additional costs that will result from passage of this bill.

Of the \$16 million mentioned above, about \$1.5 million were for law enforcement costs of marijuana arrests. This estimate was based on the fact that roughly 3.5% of all arrests in Alaska are for marijuana. Nationally the rate of marijuana arrests as a proportion of total arrests is approximately 5%.

It is reasonable to assume that if marijuana is recriminalized in Alaska, the proportion of marijuana arrests compared to total arrests will rise to become similar to the US average. In this case the costs of law enforcement would rise by at least \$1 million, which is calculated by taking 1.5% of the average \$68.1 million law enforcement budget for the last few years.

If committee members have looked at the fiscal notes that accompany this bill, they might have been surprised to see that the Department of Public Safety claims that "passage of this act will have no fiscal impact" on policing costs, because "The potential increase in the number of arrests for violations can be handled by available staff." More than one member of the Senate HESS committee found this difficult to believe, and I don't expect you to believe it either.

The rise in marijuana cases does not mean a similar decrease in other crimes. So if we consider the average \$68 million budget for law enforcement, we have to ask, what will they give up in order to spend another million dollars on marijuana arrests? Since I am an economist, you know that the next words from me must be "opportunity costs." When we spend resources on a specific activity, we give up the opportunity to spend those resources on any other activities. Unless the law enforcement folks come to you and ask for more money, they are going have to decide which crimes are more important to

respond to—marijuana possession or other offenses.

Of all the components of the justice system affected by marijuana prohibition, policing is the *least* costly. The court system had average expenditures of \$129.4 million over the last few years. Out of this total, we calculated that marijuana cases account for about \$9.45 million per year on average. Clearly an increase in arrests will mean an increase in the court's case load. If the case load increase comparably to the arrest rate, the court system could have additional costs of about \$4 million, bringing the total to \$13.46 million for marijuana cases. Again, you may have found it difficult to believe the fiscal note submitted by the Department of Law, in which the attorney general's office anticipates no additional funding needs.

In fact, because my \$4 million estimate is based on current levels of activity, we must conclude that the figure would actually be higher, since some crimes that are now misdemeanors would become felonies. You have heard or will hear that the Public Defender Agency anticipates a rise in their workload if this bill is enacted into law. Part of the reason is that felonies require more work than misdemeanors. I don't have the cost-per-case breakdown for Alaska, but we did find a fiscal note from the Iowa Legislative Services Agency regarding Iowa's costs of prosecution. In 2004 it was estimated that simple misdemeanors cost \$14 to \$300, serious misdemeanors were \$100 to \$5,000 and the lowest felonies ranged from \$2,000 to \$8,000. If Alaska's costs are similar, then it is clear how and why costs will rise. The Public Defender Agency says that the new law will result in at least 250 of its current misdemeanor cases becoming felonies, as well as a 50% increase in the number of misdemeanor cases they handle.

Corrections costs will also rise. Since we are more prone to incarcerate felons, there will be an increase in the number of felons who must be housed, although there may be more people convicted of marijuana misdemeanors who will be ordered to serve time as well. We estimated last year that approximately 132 people were incarcerated in one way or another because of marijuana convictions, at an estimated annual cost of \$5.05 million. In keeping with my preceding calculations, we can expect an increase in corrections expenditures of about \$2.16 million with the addition of roughly 56 inmates to the system.

The sum of the new costs is therefore estimated at \$6.77 million, bringing the total average yearly direct costs of marijuana prohibition in Alaska to \$22.77 million.

In the report prepared last year, we calculated some indirect costs as well. We estimated that lost productivity from marijuana prosecutions amounted approximately to \$6 million annually in wages and benefits, plus taxes paid by the employer. This number rises to \$8.26 million when we contemplate the increase in prisoner numbers. The lost productivity is actually higher because the value of the employee output should be higher than the combined costs of creating that output.

We also tried to estimate social service costs, which is tricky without a lot more inmate/family information. I would refer you to the original report for a detailed explanation of our estimation procedures, but our result for the current number of people in jail because of marijuana convictions easily surpasses \$1 million when all types of

assistance are figured in. The addition of another projected 31 inmates with families adds another \$450,000 to the potential costs.

6.2% of the corrections population is there because of parole and probation violations and may add another \$500,000 to corrections costs if the relationship of marijuana offenders to total offenders holds to this level. This cost might rise to over \$700,000 if the above inmate population increases occur.

In summary, then, if this bill is passed into law, and marijuana crimes are prosecuted as they are in the Lower 48, I have estimated that the annual direct costs to the criminal justice system will be \$5.77 million, and the indirect costs of things like lost wages, family assistance, and secondary offenses will be another \$3.35 million. In round numbers, we can look forward to an additional economic impact of \$10 million, bringing the total costs of marijuana prohibition for Alaska to the range of \$35 million to \$40 million per year.

If prohibition *works*, one might argue that these costs are tolerable. But if prohibition *fails*, these costs are in *addition* to any social costs that actually stem directly from marijuana use. There is little doubt that many people will avoid a behavior if it is illegal. The questions we must ask are, by how much is marijuana use reduced, and is it worth the costs that result from prohibiting it.

Prohibition of marijuana shows little or no evidence of being effective in its primary goal, reducing consumption. In the interest of time, I won't discuss in detail the studies that demonstrated this in our report from last year. In fact, you only need to consider Finding #1 from this bill to realize that prohibition has failed: "marijuana has been for many years and continues to be the most commonly used illegal controlled substance in the United States".

I do not believe, based on the studies I have cited here and in last year's report, that there will be a significant reduction in the use of marijuana either through the higher risk of punishment or through the higher prices that will result. Violent crime and crimes against property may even rise, as they did after the recriminalization of marijuana in 1990.

I do believe that this Legislature has good intentions, such as reducing marijuana consumption by adolescents. However, it is virtually certain that increased penalties for marijuana use will fail to accomplish that, and instead will result in large cost increases to the people of this State. I strongly urge you to reject this bill.



Department of Rehabilitation Medicine
Gregory T. Carter, M.D.
Clinical Associate Professor
Rehabilitation Medicine
Box 3564
Phone: 206-598-4511
FAX: 206-598-2811
e-mail: gtcarter@u.washington.edu

April 07, 2005

Testimony of Gregory T. Carter, MD

This document is provided in regards to Alaska State Senate Bill No. 74 and House Bill 96, which intend to re-criminalize marijuana. I wish to comment on a number of scientific inaccuracies in the "findings" section of these bills. I am a practicing physician and medical researcher, studying the medicinal uses of marijuana (cannabis). I have published and lectured in this area extensively. This is all documented in my curriculum vitae, which I have also made available.

The overall health consequences of recreational marijuana use -- even heavy, chronic use -- are fairly minor, particularly if one avoids smoking. This is something an increasing number of marijuana users are doing by use of relatively simple devices known as vaporizers. The addiction and dependence potential of marijuana is relatively low, much lower than tobacco and alcohol. According to an Institute of Medicine study in 1999, the addiction rate of marijuana is less than half that of alcohol and less than one-third that of tobacco. A proportion of regular users of cannabis will develop some tolerance. A number of studies have demonstrated that acute cannabis smoking produces minimal effects on complex cognitive task performance in experienced cannabis users.

Marijuana does not cause aggression or violent behavior but rather tends to reduce it. In contrast, alcohol is well documented to lead to aggression in some people. Statements in SB 74 legislation (section 2.5) such as, "A high percentage of adults arrested in this state for domestic violence test positive for marijuana..." are misleading and meaningless without a complete analysis of the dependent and independent variables involved in the episodes. To the degree that such statements are intended to imply that marijuana is a cause of violence, the research overwhelmingly suggests that such a conclusion is simply wrong. This is much akin to the early links purportedly found between coffee drinking and cancer, which later turned out to be spurious. They simply reflected the fact that many coffee drinkers also smoked tobacco.

Indeed marijuana is a complex plant, with several existing phenotypes, each containing over 400 chemicals. Approximately 70 are chemically unique and classified as plant cannabinoids. There are also naturally occurring cannabinoids produced in the human body and these are part of our natural physiology controlling mood, pain, and appetite, among other functions. Delta-9 tetrahydrocannabinol (THC) is the most powerful psychoactive ingredient in marijuana, and this is the active ingredient in

dronabinol (Marinol). The Food and Drug Administration (FDA) first licensed and approved dronabinol in 1986 for treatment of nausea and vomiting associated with chemotherapy. The indication was expanded in 1992 for the treatment of anorexia associated with weight loss in patients with AIDS wasting syndrome.

Dronabinol was initially made available by prescription as a schedule II drug, the most restrictive category of drugs that are legal for medical use under federal law. However, since there has never been a reported overdose or serious, life-threatening side effect, the United States Drug Enforcement Administration, in cooperation with the Food and Drug Administration, reclassified the scheduling status of dronabinol from a Schedule II (CII) to a Schedule III (CIII) controlled substance. Under this less-restrictive schedule, dronabinol prescriptions can now be phoned in, with multiple refills authorized on a single prescription. Dronabinol is 100% THC, the strongest ingredient in natural marijuana, and the Federal government licenses it with minimal prescribing restrictions. The strongest natural marijuana—which is only seen relatively rarely—would only contain 25-30% THC by weight. From a pharmacological perspective, marijuana is actually remarkably safe, with relatively low toxicity, notably lower than that of many legal medicinal and recreational drugs. Lethal doses in humans have never been described. The theoretical lethal dose in 50 percent (LD50) is estimated to be 1 to 20,000 or 1 to 40,000. In plain English, that means, it would require 1500 pounds of cannabis smoked in fifteen minutes to induce a lethal effect. In contrast, you can quite easily kill yourself with a bottle of extra-strength Tylenol or aspirin.

The claim that today's marijuana is so much stronger and more dangerous than it was in 1975 (made in section 2.9), implying that it is effectively a different drug, is scientifically preposterous. The same, ridiculous argument could be made regarding today's coffee, comparing a triple shot espresso drink of today with the Maxwell House of yesterday. The only difference between this example and marijuana is that one can overdose on caffeine and there are potentially serious health consequences of extreme caffeine intake, including cardiac arrhythmia, acute hypertension, and stroke. With marijuana, no such consequences have been documented.

Further, according to the Federal Government's own website (WhiteHousedrugpolicy.gov), which was last updated on October 16, 2004, the average potency of marijuana today stands at approximately 5 percent THC. Indeed, this figure is an increase over past years. THC content averaged 4 percent in the 1990s, and just under 3 percent for the 1980s. However, in terms of drug strength, this increase is nearly inconsequential. Marijuana poses no risk of fatal overdose, regardless of THC content, and studies indicate that recreational pot smokers readily distinguish between high and low potency marijuana and moderate their use accordingly just as an alcohol consumer would drink fewer ounces of (high potency) bourbon than they would ounces of (low potency) beer.

With regard to the increase in people allegedly in treatment for "marijuana abuse" (mentioned in section 2.10), this is reflective of the increase in marijuana arrests, as the majority of such admissions are court mandated. This is a sign of more aggressive law enforcement, not proof of addiction. Since 1995, approximately 5.5 million Americans have been arrested on marijuana charges. Nearly 90 percent of them were charged with possession only, and approximately one out of three were first-time, youthful (age 14 to 19 years old) offenders. Naturally, most judges are hesitant to sentence these defendants to jail or saddle them with a criminal record. Their only alternative is drug

treatment.

What is the end result of all this? Admissions to drug rehabilitation clinics among adolescent marijuana users have increased dramatically since the mid-1990s. However, this rise in marijuana admissions is due exclusively to a proportional increase in teens referred to drug treatment by the criminal justice system. In fact, since 1995, the proportion of admissions from all sources other than the criminal justice system has actually declined, according to the federal Drug and Alcohol Services Information System (DASIS). Consequently, DASIS reports that today, "over half (54 percent) of all adolescent marijuana admissions [are] through the criminal justice system," with an additional 25 percent coming from referrals from schools and substance abuse providers.

Although recent science has provided truly astounding evidence about cannabis and its relative dangers and benefits, government studies from around the world have affirmed this for over a century. As far back as 1894, The Indian Hemp Drugs Commission concluded, "the moderate use of hemp drugs is practically attended by no evil results at all." In 1925: The Panama Canal Zone Report concluded, "The influence of marijuana has apparently been greatly exaggerated. There is no evidence that it has any appreciably deleterious influence on the individual using it." In 1944 the LaGuardia Commission Report concluded "there is no direct relationship between the commission of crimes of violence and marijuana. Marijuana does not lead to morphine or cocaine or heroin addiction." In 1969, the British Wooten Report stated, "we think that the dangers of marijuana use as commonly accepted in the past have been overstated. There is no evidence that in Western society serious physical dangers are directly associated with the smoking of cannabis."

More recently, in 1970, the Canadian LeDain Commission Report found that "physical dependence to cannabis has not been demonstrated and it would appear that there are normally no adverse physiological affects occurring with abstinence from the drug, even in regular users." In 1972 the National Commission on Marijuana and Drug Abuse, also known as the Nixon Commission, concluded "there is little proven danger of physical or psychological harm from the experimental or intermittent use of natural preparations of cannabis. Moreover, existing social and legal policy is out of proportion to the individual and social harm engendered by the drug." In 1972, the Dutch Baan Commission found that "cannabis does not produce tolerance or physical dependence. The physiological effects of the use of cannabis are of a relatively harmless nature."

In 1977, the Commission of the Australian Government concluded, "one of the most striking facts is that its acute toxicity is low compared with that of any other drugs. No major health effects have manifested themselves in the community." In 1982, the National Academy of Sciences Report observed "over the past 40 years, marijuana has been accused of causing an array of antisocial effects including, provoking crime and violence, leading to heroin addiction, and destroying the American work ethic in young people. "These beliefs have not been substantiated by scientific evidence." In 1995, the report by the Dutch Government concluded, "cannabis is not very physically toxic. Everything that we now know leads to the conclusion that the risks of cannabis cannot be described as 'unacceptable.'" In 1999, the Institute of Medicine published a series of reports on marijuana, documenting its low toxicity and high therapeutic potential.

Arguably marijuana is neither a miracle compound nor the answer to everyone's ills. Yet it is not a compound that deserves the tremendous legal and societal commotion

that has occurred over it. Over the past 30 years, the United States has spent billions in an effort to stem the use of illicit drugs, including marijuana, with limited success. Some very ill people have had to fight long court battles to defend themselves for the use of a compound that has helped them. There is no evidence that recreational marijuana use has increased in states that allow for its medicinal use. Moreover, prohibition strategies have never proven terribly effective at limiting the use of a substance for any reason, whether alcohol or other compounds. In my opinion, the medicinal marijuana user should never be considered a criminal in any state. Most major medical groups, including the Institute of Medicine, agree that marijuana is a compound with significant therapeutic potential. Over a decade ago the Drug Enforcement Administration (DEA) studied the medicinal properties of cannabis [*Re Marijuana Rescheduling Petition*, United States Department of Justice, Drug Enforcement Administration, Docket No. 86-22, 9/6/1988]. After considerable study, Administrative Law Judge Francis L. Young concluded that marijuana should be transferred to schedule II to make it available to doctors and patients, stating:

"There are those who, in all sincerity, argue that the transfer of marijuana to Schedule II will *send a signal that marijuana is "OK"* generally for recreational use. This argument is specious. It presents no valid reason for refraining from taking an action required by law in light of the evidence . . . The evidence in this record clearly shows that marijuana has been accepted as capable of relieving the distress of great numbers of very ill people, and doing so with safety under medical supervision. It would be unreasonable, arbitrary and capricious for DEA to continue to stand between those sufferers and the benefits of this substance in the light of the evidence in this record."

Judge Young's recommendation was ignored. Marijuana remains in schedule I. During the past thirty years, researchers mostly funded by the federal government, have studied every conceivable way that marijuana might be harmful to individual users and society. They have found very little evidence of any major physiological, psychological or social harm that can be directly attributed to marijuana. Despite all this, over a decade later the DEA and the rest of the federal government persist in their policy of total prohibition.

The scientific process continues to evaluate the therapeutic effects of marijuana through ongoing research and assessment of available data, and the trend is clearly toward greater appreciation of marijuana's beneficial effects and relatively low toxicity. Our legal system should take a similar approach, using science and logic as the basis of policy making rather than political views and societal trends that are more reflective of a paranoia over perceived potential harmful effects of recreational marijuana use, which, in fact, are not substantiated by the medical literature.

While Alaska does have a medical marijuana law, my understanding is that patients have great difficulty obtaining their medicine, and some have already testified that they fear this legislation will make their already-difficult situation even worse. That alone should be reason to look upon this legislation with great skepticism.

Respectfully submitted.

Gregory T. Carter, MD
Associate Professor
Department of Rehabilitation Medicine
Co-Director, Muscular Dystrophy Association/Amyotrophic Lateral Sclerosis Center
University of Washington School of Medicine

STATE OF ALASKA, SENATE BILL No 74 "An Act making findings relating to marijuana use and possession;"

EXPERT WITNESS STATEMENT:

Kelly L. Drew, Ph.D.

Associate Professor
Department of Chemistry and Biochemistry
Institute of Arctic Biology
Box 757000
University of Alaska Fairbanks
Fairbanks, AK 99775-7000
ffkld@uaf.edu

Statement:

It is an honor and privilege to address the Alaskan State Senate about an issue that affects a large number of Alaskans and their families. Our purpose is to assess risks of marijuana use and ask if increased penalties are warranted based on these risks. First, I would like to introduce myself and testify to my expertise in the area of drug abuse and marijuana. I am a life-long Alaskan. I moved to Alaska with my family in 1976. I am an alumni of West Valley High School and UAF. I left Alaska in 1981 for graduate and post-doctoral training. I returned to Alaska in 1990 and have since been employed at UAF where I am currently an Associate Professor in the Department of Chemistry and Biochemistry. I have devoted my life to the study of the brain and how drugs and naturally occurring drug-like chemicals affect the brain. After receiving a bachelors of science degree in psychology at UAF, I did graduate work at Mount Sinai School of Medicine in New York, NY; and at Albany Medical College in Albany, New York. My Ph.D. training and research was in neuropharmacology. Pharmacology is the study of the theory and principles of drug action. Neuropharmacology is the study of the theory and principles of drug action on the brain. I was trained by Dr. Stanley Glick, an established neuropharmacologist who has studied drug addiction and abuse and pharmacotherapies for drug addiction for more than 4 decades. My Ph.D. thesis showed how learning is involved in drug addiction. Learned, drug seeking behavior, is now recognized as a primary target for treatment of addictions. I received 3 years of post-doctoral training at the Karolinska Institute in Stockholm, Sweden in the laboratory of Dr. Urban Ungerstedt, another preeminent neuropharmacologist who pioneered our understanding of dopamine, a neurotransmitter now known to lie at the heart of addiction, motivation and reward. I have published 33 peer reviewed papers and 5 book chapters regarding addiction and aspects of drugs and the brain. I was a leader in establishing a neuroscience program at UAF funded in 2000 by a \$7.5 million grant from the National Institutes of Health. Most recently I am recognized as an expert on neuroprotection and neuroplasticity in hibernation, a phenomenon my laboratory studies as a model of tolerance to stroke and neurodegenerative disease such as Alzheimer's and Parkinson's disease. Here I comment on findings purported by the legislature to suggest that marijuana poses a threat to the

public health that justifies prohibiting its use and possession in the state of Alaska, even by adults in private.

FINDINGS.

The legislature finds that

(1) marijuana has been for many years and continues to be the most commonly used illegal controlled substance in the United States;

Estimates of the number of Alaskans who use marijuana emphasizes the numbers of Alaskans who will be affected by this legislation. In addition to users of marijuana, their families are affected by legal and health related consequences of marijuana use and highlights the importance of rational and informed discussion of these risks. As a wife, mother, and long-time Alaskan, I have witnessed devastating consequences of federal marijuana use and trafficking laws on families in the Fairbanks area. In my professional opinion as a neuropharmacologist, the health and social risks of marijuana do not in any way, justify the severity of consequences imposed by federal law. Indeed, legal risks far outweigh health and social risks associated with marijuana use.

(2) marijuana has many adverse health and social effects, and there is evidence that it has addictive properties similar to heroin and other similar illegal controlled substances;

Addiction, (operationally defined as drug seeking behavior), is a combined effect of drug reward and drug withdrawal. Reward, as well as desire to reduce unpleasant symptoms of withdrawal, increases frequency of drug seeking behavior. Human epidemiological data (i.e., statistical analysis of patterns of use) as well as animal data rank addictive properties of marijuana below tobacco, alcohol, cocaine and heroin. Regarding human use, evidence suggests that as few as 10% of individuals who experiment with marijuana become daily users (cf. McRae et al., 2003), and others (Anthony et al., 1994) report that dependence among users is highest for tobacco, followed by heroin, alcohol, cocaine and finally cannabis.

<i>Drug</i>	<i>Dependence among users (%)</i>	
	<i>Male</i>	<i>Female</i>
Tobacco	33	31
Heroin	22	25
Alcohol	21	9
Cocaine	18	15
Cannabis	12	5

* Dependence is defined by DSM-III criteria, evaluated via a modified Composite International Diagnostic Interview. Adapted from Anthony et al., (1994).

Laboratory animal data is consistent with low addictive potential of cannabis where positive-reinforcing and dependence-producing actions of THC, the active ingredient in marijuana, have been difficult to demonstrate (reviewed by Tanda and

Goldberg, 2003). Three standard techniques known as, conditioned place preference, intracranial self-stimulation and self-administration are used to assess addictive potential. All three of these techniques have failed to show consistent, positive reinforcing effects of THC. While Tanda and Goldberg (2003) argue that 3 decades of negative findings regarding abuse potential of marijuana are due to suboptimal conditions of drug preparation and rates of intravenous administration, other drugs of abuse have not been difficult to optimize for animal studies.

The low addictive potential of cannabis may be due, in part, to the fact that abstinence seldom produces pronounced signs of withdrawal (Anthony et al., 1994; Tanda and Goldberg, 2003). THC is stored in fat tissue due to its high fat solubility and then slowly released. This slow release likely prevents development of a pronounced withdrawal syndrome when cannabis use is abruptly stopped (Grotenhermen, 2003). Overall, given the difficulty in training animals to self-administer THC and the absence of pronounced withdrawal symptoms, the suggestion that marijuana has addictive properties similar to heroin and other illegal substances is not warranted.

Anthony et al, 1994, *Experimental and Clinical Psychopharmacology*, 2(3), 244-268.

Grotenhermen, 2003, *Drug Disposition*, 42(4), 327-360.

McRae et al., 2003, *Journal of Substance Abuse Treatment*, 24, 369-376.

Tanda and Goldberg, 2003, *Psychopharmacology*, 169(2),115-34.

(3) in addition to concerns about marijuana use generally, the legislature is particularly concerned with the rates of use of marijuana by young people and Alaska Natives, which exceed national averages; and,

(4) early exposure of children to marijuana increases the likelihood of lifelong health and social problems, and makes it much more likely that the person will go on to use more potent illegal controlled substances;

A model known as the "gateway theory" of adolescent drug use was first proposed in 1975 (Kandel, 1975). The gateway theory suggests that adolescents typically use tobacco or alcohol before progressing to illicit substances including marijuana. Later studies showed that cigarette or alcohol use predicts subsequent illicit drug use for females while alcohol use predicts progression to illicit drug use in males (reviewed in Helstrom et al., 2004). After cigarette and alcohol use, progression may continue to marijuana, however, the cause of this progression is unknown. The simplest explanation for the observed progression is that early access to and use of cannabis may reduce perceived barriers against the use of other illegal drugs and provide access through the illicit market to more addictive drugs of abuse such as heroin, cocaine and methamphetamine (Lynskey et al., 2003).

Kandel, 1975, *Science*, 190, 912-914

Lynskey et al., 2003, *JAMA*, 289:427-433

Helstrom et al., 2004, *Prevention Science*, Vol 5(4), 267-277

As a mother I want my 14 year old daughter to know the difference between risks associated with marijuana and "harder" more addictive and life-threatening drugs such as cocaine, heroin, methamphetamine and the broad, poorly defined class of inhalants.

(5) a high percentage of adults arrested in this state for domestic violence test positive for marijuana at the time of arrest;

Marijuana intoxication reduces incidence of violence (Hoaken and Stewart, 2003) so a causal relationship is unlikely. Marijuana persists in fatty tissues and consequently plasma where the half-life for elimination varies between 20 to 57 hours (Grotenhermen, 2003). To interpret the relationship between positive tests for marijuana and arrests for domestic violence one would need to know, first, what analytical tests were used to detect THC or its metabolites and second, if these individuals also tested positive for alcohol.

Grotenhermen, 2003, *Drug Disposition*, 42(4), 327-360.

Hoeken and Stewart, 2003, *Addictive Behaviors*, 28, 1533-1554.

(7) marijuana consists of over four hundred different chemicals and can affect almost every organ and system in the body, including the lymph system, the heart, and the lungs; marijuana can disrupt memory, attention, judgment, and other cognitive functions and can impair motor coordination, time perception, and balance, especially in children;

Marijuana contains a large number of chemicals because it consists of the leaf and flowers of plants. Plants are complex mixtures of chemicals. Tobacco, for example is equally as complex, however, nicotine is the primary active ingredient in tobacco. Similarly, delta-9-tetrahydrocannabinol (THC) is the primary active ingredient in marijuana. THC is a chemical that affects the body by interacting with receptors. Receptors are specialized docking sites on cells and drugs bind to these receptors. Receptors that recognize THC are called cannabinoid receptors. There are two types of cannabinoid receptors, CB1 and CB2. Marijuana or THC will have effects wherever these receptors are located. Distribution of these receptors in the brain explains why marijuana intoxication is associated with effects on memory and motor function. Recently, it was found that activation of cannabinoid receptors on immune cells (microglia) in the brain prevents Alzheimer's disease pathology (Ramirez et al., 2005). Activation of CB1 receptors is also known to have therapeutic potential in Parkinson's disease and stroke.

Two other chemicals found in marijuana are cannabidiol and cannabivarin. These compounds have some properties similar to THC, but cause less psychoactive effects. These chemicals do, however have beneficial effects because they, like THC, are antioxidants (Hampson et al., 2000). We consume complex mixtures of chemicals in the foods we eat everyday, and sometimes, worry that they may cause cancer or other adverse effects. Most evidence on marijuana, however, is pointing to positive effects. Like the complex mixture of chemicals in blueberries, red wine and chocolate, the mixture of chemicals in marijuana may have beneficial effects on health. Research is

ocused on identifying the key beneficial components so that these may be isolated and developed as drugs. Most evidence suggests that THC, the ingredient that causes the high also causes positive effects elsewhere in the body through activation of CB1 receptors.

Ramirez et al., 2005, *J. Neuroscience*, 25(8), 1904-1913

Hampson et al., 2000, *Ann N Y Acad Sci.* 2000;899:274-82

(8) marijuana smoke contains more carcinogenic hydrocarbons than tobacco smoke and a person who smokes several marijuana cigarettes a week may be taking in as many cancer-causing chemicals as someone who smokes a full pack of tobacco cigarettes every day;

The real health risks associated with chronic marijuana use may include chronic bronchitis, impaired lung function and increased risks of some types of cancers of the respiratory tract (Moore et al., 2005). Prohibition may be the greatest barrier in identifying these real health risks because prohibition interferes with accurate reporting of marijuana use.

Moore et al., 2005, *J Gen Intern Med.*,20(1), 33-7

(9) the potency of marijuana in the 1960s and 1970s was very low compared to the potency in 2005; the average amount of delta-9-tetrahydrocannabinol (THC), the main psychoactive ingredient, nationwide, was less than one percent in the 1960s and 1970s, but has increased steadily in the 1980s and especially the 1990s, and by 2003 was more than six times that level, at 6.4 percent; in addition, marijuana grown in this state is often more potent than national averages, and has been tested with THC levels of over 20 percent; marijuana of the potency generally available in 2005 is a strong hallucinogenic drug that can command hundreds of dollars per ounce on the illegal market; the increasing potency of marijuana corresponds to an increase in the number of persons seeking emergency medical care for marijuana-related incidents.

Increased potency does not mean that increased amounts are consumed. People (and animals) typically take less drug if the drug is more concentrated. This means that more potent marijuana will likely cause people to smoke less and this will decrease risk of respiratory complications. When research animals are enticed to self-administer THC (Justinova et al., 2003) the number of self-administered injections decreases as concentration is increased until animals stop taking the drug at all, presumably because the high concentrations produce unpleasant side-effects.

Justinova et al., 2003, *Psychopharmacology*, 169(2):135-40.

(11) Alaska consistently ranks in the top 10 states, and occasionally in the top five states, nationwide, in the amount of marijuana illegally grown indoors, and large amounts of marijuana grown in this state are sold throughout the state and exported to other parts of the

United States; the price of high-quality marijuana is hundreds of dollars per ounce and thousands of dollars per pound; testimony received by the legislature in 1999 and confirmed in 2005, shows that marijuana often sells for \$500 or more per ounce;

The cost of marijuana seems irrelevant to the public health risks unless high costs are driving users to crime to pay for marijuana. In contrast to heroin, cocaine and methamphetamine abusers, no evidence exists to suggest that a significant proportion of marijuana users resort to crime to pay for the drug. This is consistent with a low addictive potential of marijuana.

(12) a large percentage of persons arrested in this state, including adults and juveniles who commit violent offenses, have marijuana in their system at the time of arrest;

Marijuana intoxication is known to decrease violent behaviors (Hoeken and Stewart, 2003) suggesting that other drugs, like alcohol, are involved (Parker, 2004)

Hoeken and Stewart, 2003, *Addictive Behaviors*, 28, 1533-1554.
Parker, 2004, *J Psychoactive Drugs*, Suppl 2, 157-63.

(13) marijuana use by a parent has been, and will continue to be, a major contributing factor to children having easy access to and using marijuana;

Research shows that legal and financial hardship incurred on parents as a result of penalties for possessing marijuana may have as many detrimental consequences on families as increased risk of marijuana use by children (Robertson et al., 1996).

Robertson et al., 1996, *Br J Gen Pract.*, 46(412), 671-4.

Summary and Conclusions:

In summary, evidence does not support the assertion that marijuana poses a threat to public health that justifies prohibiting its use and possession in this state, especially by adults in private. Issues regarding access to children warrant further investigation into the impact of access through illicit channels. As a mother, I want my daughter to know the difference between drugs such as methamphetamine and marijuana.

Final note: Given the growing presence of methamphetamine in Alaska, my personal and professional opinion is that it would be irresponsible to put time and money into persecuting marijuana users when resources are inadequate to respond to the growing threat of methamphetamine in our community. I hope you as legislatures can look beyond moral judgment of marijuana users and address real health risks associated with far more dangerous drugs.

My name is Jim Welch. I have lived in Eagle River since 1978. For almost 20 years now I have had MS. MS is a disease which short-circuits nerve pathways. It can thus affect anything that depends upon nerve messages getting through, whether it be the functioning of a limb or an organ, or sensation, be it numbness or pain. There is no cure for it, so as things deteriorate doctors try to treat symptoms. One of the problems with this however, is that many of the drugs used to treat the symptoms have side effects worse than the symptoms they are supposed to treat.

Over the years I've tried many prescription drugs for many different reasons, usually with limited success and often with unpleasant side effects. In 1998 I was active in the campaign to pass the initiative legalizing medical marijuana. I found that for two or three years marijuana was the only thing that allowed me to get through most nights without wracking muscle spasms or headaches that would not allow me to sleep and still allow me to function the next day.

Passing this proposed legislation will make it even more difficult for medical marijuana users to obtain the marijuana they are theoretically allowed to have. You can legally have it, but you can't legally get it.

I applaud what the Legislature has tried to do with crystal meth. That's a drug everyone can agree has no redeeming qualities. But further demonizing marijuana is engaging in the wrong battle. Comparing marijuana to heroin is like comparing aspirin to morphine. Saying that marijuana today is stronger than it was in the 70s and therefore dangerous is like saying Alleve is stronger than Tylenol, that you only have to take one pill instead of two.

To me that seems a good thing because it means you have to put less smoke into your lungs. I've never smoked tobacco and if I never had to put any more smoke in my lungs or take another drug in my life it would be fine with me.

This is not the 40s era of "Reefer Madness" or even the Nancy Reagan 80s of "just say no." This is the 21st century and in the last election 44% of Alaskans voted to legalize marijuana. You may have the power of the majority to make criminal penalties more severe, but it is a slap in the face to a very large portion of the Alaskan populace who believe that marijuana is okay and who just a few years before voted by a substantial majority to legalize the use of medical marijuana.

I don't know why the Governor has chosen to make marijuana the bad boy of his drug campaign. It doesn't make any sense to me. I know it's not addictive. I smoked marijuana several times a week for three years. When it was no longer effective I stopped. I experienced no withdrawal, no craving, no side effects, no problem.

Unlike tobacco or alcohol no one has ever died from marijuana. I would argue that at worst it's innocuous and at best it has some significant medical benefits.

As for its connection to violent criminals, anyone who has ever used marijuana knows the effects last only a few hours, whereas it can be detected as having been used up to 30 days ago. That's like blaming a DWI on a beer someone drank a month before.

In the last World Cup soccer matches in Portugal, Security checked the persons and all bags being brought into the stadium. Any alcohol was immediately seized, but any

marijuana that fans were bringing into the game was not even confiscated. That tells you what kind of behavior the people in charge of security thought resulted from people using marijuana. They worried about the notoriously rowdy soccer fans, but not the ones using marijuana.

I don't expect you to become proponents of legalizing marijuana. Nobody's asking you to do that. I do however, ask you to recognize the folly of harsher criminalization penalties. It means putting more nonviolent offenders in jail, devoting more time and money resources of our police to what amounts to a low-priority use of their time. I ask you to put your anti-drug energies against something like crystal meth. Fighting marijuana is the wrong battle in any war on drugs. You have bigger issues to deal with.

What's especially frustrating to me testifying before you is knowing that nothing anyone says here will change your minds. My testimony is from my personal experience. Medical marijuana even now is impossible to obtain legally and will be even harder to get with the passage of this law. But harder to swallow is how easily you ignore or dismiss the testimony from expert witnesses who present you with hard data and evidence refuting every premise of the preamble to this. It is frustrating to me that you seem to listen but cannot be persuaded by reason, by evidence or expertise. That you have already made up your mind and it has nothing to do with the facts. Marijuana is not more dangerous than it used to be. Marijuana is not addictive. It does not make people more violent. Listen to the substance of what these experts have told you. Vote on the basis of reason and evidence, if you dare. I dare you.

STATEMENT REGARDING ALASKA SB 74 AND HB 96

Debbie Soule, medical marijuana patient

My name is Debbie Soule. I live in Wasilla. I am married, 55 years old, a grandmother and own my own business.

Seven years ago, my husband and I had a near fatal car accident. I broke everything from my neck down and then lost my right leg. The doctors had me on nine different medications. None of them worked. I was slowly being killed by all the medications they had to give me after our accident. And all of this after they insisted on keeping me alive. Now I have a life of pain and loss.

I found out from my doctor that I might get some relief from some of the pain by using marijuana. I thought about this for over two years before I tried it and found it worked better than any medication I had tried. I also found that it didn't leave me doped up and unable to function like all of the medication they had prescribed.

The problem I have found is that although Alaska supposedly has a medical marijuana law, the State of Alaska has made it impossible to find a doctor who will sign the paper work. When I wanted to try smoking pot to relieve my pain, my husband had to buy it illegally and feel like a criminal. Alaska's medical marijuana law simply doesn't help anybody. Even if I could find a doctor to sign my forms, what good does it do if there's no legal way for me to get it? I know the law allows me to grow up to 6 plants, but that's just not practical for a lot of patients, including me. Unless you fix the medical marijuana law in this state, patients will have to buy it the same way everybody else does. That's why keeping the protection for personal use under the Ravin decision is so important to me.

If this new law is passed, the situation for people who use medical marijuana will go from bad to worse. At least now, if I got arrested for having it without a doctor's signature, I would have some protection in the eyes of the courts. You want to take that away from me. Of course I understand you want to keep marijuana out of the hands of kids—everybody wants that. But you have to admit that when marijuana possession was made illegal in 1990, teenagers went on smoking it anyway. Why do you think going back to that kind of law will make any difference now? This new law won't do anything to help kids, but it will make it tougher for plenty of people in wheelchairs, like me, to get the one medicine that helps us the most.

I find it odd that our good senators don't have anything better to do with their time than to attack and try to outlaw my medication. Why aren't you doing anything about the panhandlers on every street corner in Anchorage? Why aren't you doing anything about our alcohol problem? Why don't you spend a week in a wheelchair and see what a problem your so called handicap accessibility is? If you really want to do some good for our great state, as you say you do, then why don't you spend your time on our horrific alcohol and domestic violence problems, on unemployment, on decent roads, homelessness, and out of control children? In fact, if you pass this law and tell the police to go back to arresting every marijuana user, they will have less time to spend on these other things that are far more important. Thanks a lot.

The doctors are willing to give me any medication I need to keep me comfortable and turn me into a drug addict until it finally kills me, but they won't sign for medical marijuana. I feel I will now live longer and be much healthier and in a lot less pain because I have chosen to smoke pot.

STATE OF ALASKA, SENATE BILL No 74 –“An Act making findings relating to the use and possession...”

EXPERT WITNESS STATEMENT:

PROFESSOR LESLIE LARS IVERSEN, PhD, FRS, University of Oxford, England

Professor Leslie Iversen. PhD, FRS Brief Curriculum Vitae:

Visiting Professor of Pharmacology, University of Oxford 1999-

Director of the Wolfson Centre for Research on Age Related diseases at Kings College London (1999-2004).

Director of the Neuroscience Research Centre for Merck & Co Inc in the UK (1983-1995)

Director of the Medical Research Council Neurochemical Pharmacology Unit in Cambridge, England (1970-1983)

Well known for his research on how drugs interact with chemical messengers in the nervous system and has published more than 300 scientific papers on this topic. Fellow of the Royal Society of London, and Foreign Associate Member of the US National Academy of Sciences.

Acted as Scientific Advisor to the UK House of Lords Select Committee on Science & Technology review of Cannabis (1998-2000)

Author of “The Science of Marijuana” Oxford University Press, 2000

Member of the UK Government “Advisory Council on the Misuse of Drugs”

Member of the UK Royal College of Physicians Working Party on medicinal cannabis 2004-2005

Statement:

As a scientist with expert knowledge of the medical and scientific literature on cannabis (marijuana) I feel that the statements in Senate Bill No 74 give an inaccurate picture of the scientific data about marijuana. I wish to make the following comments:

Increased potency of modern marijuana:

It is frequently stated that modern-day marijuana is 10-20-times more potent than that available in the 1960's or 1970's. But the available evidence does not support this conclusion. Scientists at the University of Mississippi Potency Monitoring project in the USA have been measuring the THC content of marijuana seizures since the 1970's. They have reported an increase of approximately 3-fold in the potency of herbal marijuana in the past 3 decades, and this is still by far the most widely used product. The European Monitoring Centre for Drugs and Drug Addiction published an overview of cannabis potency in Europe in July 2004, and reached similar

conclusions in Europe. Some samples originating from Cannabis plants grown under optimal conditions indoors may contain as much as 15-20% THC but these remain relatively rare and account for only a minority of marijuana use.

Addictive nature of marijuana:

It is recognized that some frequent heavy users of marijuana can become psychologically dependent on the drug, but few scientists would rate this in the same category of addictiveness as heroin, cocaine or amphetamines. Unlike heroin addiction, dependence on marijuana affects a minority of regular users (approximately 10%) and most dependent marijuana users are able to quit. I would rate marijuana as more similar to alcohol than to heroin in addictive potential.

Association of marijuana use with domestic violence:

This is an unusual allegation; in most instances intoxication with marijuana is not associated with violent aggressive behavior – although this may occur in rare examples. The abuse of alcohol is far more likely to be a cause of public and domestic violence.

Marijuana contains more than 400 different chemicals:

All plant derived foods or drugs contain complex mixtures of chemicals. Tomato juice, for example, contains more than 400 different chemicals – but this does not make it harmful. The leaves and flowers of the Cannabis plant (marijuana) contain more than 70 complex organic chemicals known as cannabinoids. But of these only one –delta-9-tetrahydrocannabinol (THC) - is capable of activating the cannabinoid receptor in human brain. The other cannabinoids have no known pharmacological activities and are generally regarded as harmless.

Marijuana impairs higher brain functions:

Marijuana temporarily impairs memory and other aspects of cognitive brain function, but this is no different from any other intoxicant drug – for example, alcohol. There is no evidence that marijuana use leads to significant long term damage to the brain.

Marijuana smoke is carcinogenic:

Marijuana smoke contains a similar mixture chemicals to that found in tobacco smoke, including some known carcinogens. Although a single marijuana joint delivers more tar to the lungs than a tobacco cigarette it is very difficult to see how someone smoking several marijuana joints a week could be thought to equate to a cigarette smoker consuming a full pack each day. The arithmetic simply does not add up. Furthermore, although there is a hypothetical risk of lung cancer from marijuana smoke, there is no evidence for such a relationship in fact.

Summary and Conclusions:

Marijuana contains an intoxicant drug (THC) that has modest dependence liability; the smoke can irritate the lungs and there is a potential risk, as yet unproven, of lung cancer. Nevertheless, I conclude that the medical risks associated the marijuana use do not equate to those of "harder" drugs such as heroin, cocaine or amphetamines. In my view marijuana is a relatively safe drug, and its use does less medical/social harm than alcohol or tobacco.

References:

Iversen.L (2000)"The Science of Marijuana", *Oxford University Press*, New York

Iversen L (2003) Cannabis and the Brain, *Brain*, **126**: 1252-1260 .

Iversen L (2004) Long term effects of exposure to cannabis. *Current Opinion in Pharmacology*, **5**: 69-72

Leslie Iversen
Oxford
March 18th, 2005



University of Colorado at Colorado Springs
Department of Biology
1420 Austin Bluffs Parkway
Colorado Springs, CO 80918
719-262-3135 Fax 719 262-3266
<http://www.uccs.edu/~biology>



My name is Robert Melamede, Ph.D. I am submitting the following testimony regarding Senate Bill NO. 74. I am the Chairman of the Biology Department at the University of Colorado in Colorado Springs. Additionally, I am an active scientist involved in cancer research and I am a founder of a new biotechnology company that is developing novel approaches to treat cancers. I am also the father of four and grandfather of two.

The stated purpose of Bill 74, "The purpose of this Act is to protect the health and safety of persons in this state, and to provide legislative findings concerning this Act regarding marijuana and its effects in this state" is a valuable pursuit for any state to embark on. Unfortunately, the findings stated in the bill are, for the most part, in direct contradiction to those that would have been arrived at had modern peer reviewed science determined the bill's findings.

Finding 1 is correct. Marijuana is the most commonly used illegal drug in the United States.

Finding 2 is largely correct. While marijuana has some adverse affects on health, its benefits far out weight its harm. Regarding Finding 8, while smoking anything is a respiratory irritant, there is no evidence that smoking marijuana causes lung cancer. Recent peer-reviewed scientific findings clearly demonstrate that the nicotine found in tobacco causes cancer by preventing genetically damaged cells from dieing. **Cannabis does not contain nicotine, hence cells genetically damaged by the carcinogens in the smoke are insufficient to cause cancer in the absence of nicotine.** If the intent of Bill 74 is to protect the health of Alaskans it should be directed towards tobacco products that kill over 400,000 Americans yearly from respiratory and cardiovascular illnesses, including lung cancer.

In contrast to tobacco cannabis has many health benefits. Regarding Finding 7, the reason that the cannabinoid compounds exert multitudinous effects on the body is that they mimic the way our bodies function. **Current science shows that we all produce marijuana-like compounds that regulate all of our body systems (cardiovascular, neurological, immunological, respiratory, excretory, digestive, muscular-skeletal).** Age related biochemical imbalances in these systems lead to diseases such as autoimmune diseases (diabetes, arthritis, ALS, Crohn's, and multiple sclerosis), cardiovascular disease (heart attacks and strokes), neurological diseases (Alzheimer's, Parkinson's) and cancers. Again, modern science indicates that cannabinoids that we produce or consume can delay the onset and reduce the severity of many of these illnesses.

How can cannabis have so many positive health effects and yet be viewed as so dangerous? Again, the benefits come from how it mimics the way our bodies try to counter these illnesses by making marijuana-like compounds (endocannabinoids). The



University of Colorado at Colorado Springs
Department of Biology
1420 Austin Bluffs Parkway
Colorado Springs, CO 80918
719-262-3135 Fax 719 262-3266
<http://www.uccs.edu/~biology>



reason public policy has been contrary to the above scientific findings is due to the lag in widespread knowledge of these facts. For example, the Institute of Medicine report was released in 1998 and contained data that was a few years old. The bulk of the exploding level of research on cannabinoids has occurred since then. For example, the Institute report examined cannabis as an anti nausea agent potentially useful for cancer suffers. **We now know that cannabinoids kill a variety of cancer cells including those from breast, prostate, leukemia, lymphoma, glioma, and skin cancers.**

Regarding Finding 9, a recent article describes a new animal model for self-administration of marijuana (a measure of addictive behavior). The paper showed **that a monkey would self-administer THC only to a point and then would stop.** When extrapolated to equivalent human doses the study indicated that **a human would take a few drags and no more.**

The above experiment has important implications for current concerns regarding higher THC levels in current marijuana. Regardless of THC concentration, only a particular level of effect is desirable. Too much is avoided. Hence a logical conclusion is that the availability of strong cannabis means less would be consumed. It should be remembered that there is no achievable lethal dose of cannabis and consuming too much results in sleep.

Finding 10, regarding the increased number of individuals seeking treatment for cannabis use is a pathetic example of sacrificing the truth for an agenda. Persons arrested for marijuana possession are often given a choice between treatment or prison. Even with marijuana use, these persons are capable of making the logical decision in favor of treatment instead of incarceration.

The old Nahas studies referred to in Bill 74 do not reflect modern immunological knowledge. They were done with very high doses, beyond what anyone would use. His work has largely been discredited by the scientific community. The immune system has two arms to it, a pro-inflammatory TH1 response that is balanced by an anti-inflammatory Th2 response. Endocannabinoids, that we all produce, shift the immune response to TH2. Depending on circumstances this effect could be good or bad. We need a strong Th1 response to fight certain infections such as tuberculosis, Legionnaire's disease and leishmania infection. However, in a modern society most death occurs from age related diseases that are in fact exacerbated by an excessive TH1 response. Hence, as mentioned above, cannabis is good for autoimmune diseases such as diabetes, multiple sclerosis, arthritis and Crohn's disease, neurological diseases such as stroke and Alzheimer's disease, cardiovascular disease, as well as cancer. **THC has been show to directly kill a number of different cancer cells including breast, prostate, leukemia, lymphoma, glioma and skin cancer.**



University of Colorado at Colorado Springs
Department of Biology
1420 Austin Bluffs Parkway
Colorado Springs, CO 80918
719-262-3135 Fax 719 262-3266
<http://www.uccs.edu/~biology>



Cannabinoids regulate the biochemistry of our male and female reproductive systems. Excess consumption can impair sperm maturation and prevent the implantation of a fertilized egg into the uterine wall. These effects are not permanent and are readily reversed. In fact the uterus cannabinoid levels go down during ovulation to allow implantation but then are necessary for normal fetal development. **Keep in mind that cannabinoids are found in mother's breast milk where they are important for feeding and probably other functions such as sleep and stress relief in infants.**

Mother nature uses cannabinoids. Remember, every time every member of the legislature gets hungry, it is because they are giving themselves the munchies with the cannabinoids that they make. Every time they feel pain, the pain is less that it would be if they were not making cannabinoids to turn down the pain. When they are feeling relaxed and free of stress it is because cannabinoids that they make are helping them to feel better.

I have provided you with an article, Harm Reduction--The Cannabis Paradox. The article was peer reviewed and has been approved for publication in the Harm Reduction Journal. It contains references that verify the facts that I have testified to.

Dr. Robert Melamede
Chairman, Biology Department
Room 232 Science Building
University of Colorado
1420 Austin Bluffs Parkway
Colorado Springs, CO 80918

719 262-3135
rmelamed@uccs.edu
<http://www.uccs.edu/~rmelamed/>

STATEMENT ON ALASKA SB 74 & HB 96

TIMOTHY HINTERBERGER, ASSOCIATE PROFESSOR, UNIVERSITY OF ALASKA

I am an Associate Professor in the Biomedical Program and the Department of Biological Sciences at the University of Alaska Anchorage. I have been the chair of the Nervous System course in the medical school curriculum of the WWAMI Program at UAA since 1992, with an affiliate appointment in the Department of Biological Structure at the University Of Washington School Of Medicine. I mention my university affiliations only to establish my credentials; my statements are not intended to represent the official positions of the University of Alaska or the University of Washington, their administrations, or their boards of regents.

Although I have not personally conducted research on the health effects of marijuana use, I am well acquainted with the current literature on this topic. More importantly, I do have first-hand experience in the process of scientific peer review, and I understand of how consensus is established among biomedical researchers.

One of the University of Washington courses I have taught to medical students in the Alaska WWAMI program is about how to critically read and evaluate the medical literature. Besides emphasizing the most recent data, we emphasize that different sorts of papers carry different weight. A well-designed review of many experimental studies is more valuable than any single experimental study alone. When you look at the information cited by the State in support of SB 74 and HB 96, it turns out that those papers are predominantly not review articles. My 1st-year medical students would easily be able to find their way to the latest, thoroughly reviewed literature on marijuana's health effects, such as the article by Dr. Iversen in the February 2005 issue of Current Opinions in Pharmacology that we have included in the written testimony for this hearing.

In the hierarchy of scientific opinions contributing to a consensus position, the most authoritative conclusions are those from expert panels and commissions, since they conduct the most extensive review. A large number of independent commissions, both in this country and abroad, have investigated the effects of marijuana. I won't attempt to discuss all of them, but one of the best known is the 1972 National Commission on Marijuana and Drug Abuse, appointed by President Richard Nixon. After reviewing the scientific evidence, they were "of the unanimous opinion that marijuana is not such a grave problem that individuals who smoke marijuana, and possess it for that purpose, should be subject to criminal prosecution." Most importantly, nothing we have learned since 1972 about brain function, brain development, or marijuana's effects on the brain and other organs has changed that consensus position. In 1999, the Institute of Medicine, part of the National Academy of Sciences, looked at the possible medical use of marijuana. They concluded that the health and social risks of marijuana use were not so great as to rule it out as a medical treatment. Since then, expert commissions established by the British Parliament and the Canadian Senate have conducted reviews that included even more recent evidence and have reached essentially the same conclusions as did the U.S. National Commission in 1972. As a result of the British study, England has actually reduced its penalty for possession of small amounts of marijuana, exactly the opposite of what the Alaska Legislature is currently

considering.

One of the State's witnesses before Senate HES, Dr. David Murray of the ONDCP, has suggested that a small number of recent experimental studies on possible psychological effects of marijuana use by young people should, because they were published in prestigious medical journals, outweigh this long-standing consensus on marijuana's relatively low potential for harm. It is essential to remember that these new studies have not been replicated, and their conclusions are still the subject of substantial debate among psychologists and epidemiologists. Moreover, the implication that marijuana use may frequently cause psychological problems is at odds with the fact that the incidence of such problems in the general public has not risen with marijuana use over the past few decades. Therefore, these new data, while interesting and worthy of further study, are at this point insufficient to reshape the consensus.

The scientific consensus is quite clear, and it has not changed since 1972, when President Nixon's National Commission concluded that, while marijuana is not entirely safe, its dangers have been grossly overstated. Unfortunately, many of the 19 findings in these bills perpetuate this history of overstatement. I will comment briefly on Findings #1 through #14, as they deal with the health and social effects of marijuana use.

"(1) marijuana has been for many years and continues to be the most commonly used illegal controlled substance in the United States"

While certainly true, this statement is largely irrelevant to this bill. To the extent that it is relevant, it emphasizes the need to take carefully into account any unintended consequences of increasing the penalties for marijuana possession, because they will affect many, many Alaskans.

"(2) marijuana has many adverse health and social effects, and there is evidence that it has addictive properties similar to heroin and other similar illegal controlled substances:"

Instead of "addiction" psychologists now speak of "dependence". The issue of dependence is addressed in the testimony from other experts including Dr. Iversen, who rates marijuana more similar to alcohol than to heroin. Other pharmacologists have rated marijuana's dependence potential more similar to that of caffeine (Zimmer & Morgan, 1997, p. 29). Epidemiological surveys indicate that the large majority of people who try marijuana do not become long-term frequent users. As Earleywine has noted (2002, p. 231), "No one hocks their possessions or turns to prostitution to support a cannabis habit."

"(3) in addition to concerns about marijuana use generally, the legislature is particularly concerned with the rates of use of marijuana by young people and Alaska Natives, which exceed national averages"

This statement, linking use by "young people" (adolescents? young adults?) with use by Alaska Natives, strikes me as revealing a paternalistic attitude towards Native people of all ages.

"(4) early exposure of children to marijuana increases the likelihood of lifelong health and social problems, and makes it much more likely that the person will go on to use more potent illegal controlled substances:"

I am unaware of any studies clearly demonstrating that early exposure to marijuana increases health and social problems throughout life—indeed, what is meant by "exposure," and how

“early”? As noted above, studies showing a correlation between adolescent marijuana use and later psychological problems remain controversial and certainly have not demonstrated a cause-and-effect relationship. Another very recent study (van den Bree & Pickworth, 2005) looked at a group of more than 13,000 teens over 2 years, examining risk factors for experimenting with marijuana, for moving from experimental to regular use, and for continuing to use. Consistently, three factors emerged as the most consistent *predictors* of starting as well as of continued or increased use: involvement of the students or their peers with substances, delinquency, and trouble in school (including poor grades, skipping class, trouble paying attention, feeling unsafe in school). In other words, teen marijuana use is likely not the cause of these problems, but rather, may simply be another symptom of an underlying personality or family dysfunction.

The second part of this finding appears to refer to the now discredited “gateway theory”. According to the Institute of Medicine (1999, p. 6), “In the sense that marijuana use typically precedes rather than follows initiation of other illicit drug use, it is indeed a gateway drug. But because underage smoking and alcohol use typically precede marijuana use, marijuana is not the most common, and is rarely the first, gateway to illicit drug use. There is no conclusive evidence that the drug effects of marijuana are causally linked to the subsequent abuse of other illicit drugs.” What the gateway theory presents as a causal explanation is a statistical association between common and uncommon drugs. People who have used less common drugs, such as heroin, cocaine and LSD, are likely to have also used marijuana. Most marijuana users never use any other illegal drug. Indeed, for the large majority of people, marijuana is a *terminus* rather than a gateway drug (Zimmer & Morgan, 2002, p. 32).

“(5) a high percentage of adults arrested in this state for domestic violence test positive for marijuana at the time of arrest;”

This would be a meaningful statement only if the percentage of people arrested for domestic violence who test positive for marijuana metabolites were significantly higher than the percentage of people of similar age and socioeconomic status in the general population who would test positive. Another meaningful comparison might be between domestic violence arrestees and people arrested for other types of offenses. But in the absence of any appropriate comparison, this statement conveys essentially no information. To suggest that marijuana use causes violence is completely contradicted by a large body of research, addressed in more detail by others testifying today, showing that marijuana *decreases* rather than *increases* aggression.

“(6) marijuana use by children is associated with an increased risk of attempting suicide;

A statistical association is not, by itself, evidence that marijuana *caused* the harm. In its testimony, the State has offered that “Teens engaging in risk behaviors, such as use of drugs including marijuana, are at increased odds for depression, suicidal ideation, and suicide attempts.” citing Hallfors et al (2004). This study only identified a correlation between risk behaviors and depression or suicidal behavior. The authors even state, “causal direction has not been established.” There is no evidence that marijuana use actually increases depression or suicide. Only a longitudinal study that randomly assigns people to either smoke marijuana or not smoke it can produce evidence of causation. Obviously that has not been done, so we’re forced to try and draw conclusions from retrospective association studies, which is much more difficult.

“(7) marijuana consists of over four hundred different chemicals and can affect almost every organ and system in the body, including the lymph system, the heart, and the lungs; marijuana can disrupt memory, attention, judgment, and other cognitive functions and can impair motor coordination, time perception, and balance, especially in children;”

Finding #7 is an interesting example of the way the authors of this bill play fast and loose with the facts. The statement that “marijuana... can impair motor coordination, time perception, and balance, especially in children” sounds consistent with what we know about the short-term effects of marijuana in adults—but in fact, no study has ever been conducted in which children were given marijuana and tested for motor function, etc.! The mention of children can only have been added to the bill text in order to sensationalize.

“(8) marijuana smoke contains more carcinogenic hydrocarbons than tobacco smoke and a person who smokes several marijuana cigarettes a week may be taking in as many cancer-causing chemicals as someone who smokes a full pack of tobacco cigarettes every day;”

This assertion, that marijuana smoke contains approximately 20 times the concentration of carcinogenic hydrocarbons found in tobacco smoke, appears to me to be a gross exaggeration—the source would be interesting to learn. It has long been established that, except for their active ingredients (nicotine and cannabinoids), tobacco smoke and marijuana smoke are similar (Busch et al., 1979; Huber et al., 1991). While it is relatively easy to look at the chemical composition of smoke, determining the effects on actual humans is far more complicated. Even the researchers who have published the largest number of papers on marijuana’s effects on the lungs admit that “Additional well designed epidemiological and immune monitoring studies are required to determine the potential causal relationship between marijuana use and the development of respiratory infection and/or cancer” (Tashkin et al., 2002).

“(9) the potency of marijuana in the 1960s and 1970s was very low compared to the potency in 2005; the average amount of delta-9-tetrahydrocannabinol (THC), the main psychoactive ingredient, nationwide, was less than one percent in the 1960s and 1970s, but has increased steadily in the 1980s and especially the 1990s, and by 2003 was more than six times that level, at 6.4 percent; in addition, marijuana grown in this state is often more potent than national averages, and has been tested with THC levels of over 20 percent; marijuana of the potency generally available in 2005 is a strong hallucinogenic drug that can command hundreds of dollars per ounce on the illegal market; the increasing potency of marijuana corresponds to an increase in the number of persons seeking emergency medical care for marijuana-related incidents;”

I know that other experts deal thoroughly with the issue of marijuana potency in their testimony. I would like to add only that there is absolutely no basis for assuming that higher concentrations of THC make marijuana “a strong hallucinogenic drug”. Even the highest doses of THC rarely produce hallucinatory effects, whereas drugs such as LSD, mescaline and psychoactive mushrooms readily do so. Increasing the concentration of THC in marijuana does not change the basic characteristics of its effects, any more than being drunk on whiskey is fundamentally different than being drunk on beer.

In its testimony, the State cites Compton (2004) in saying, “Nationally, among past year marijuana users, overall rates of past year abuse or dependence have increased while the approximate number of users has remained steady. This indicates that the increased potency of marijuana may be to blame.” To put this into perspective, the past-year prevalence of DSM-IV

marijuana abuse or dependence identified in large national surveys increased from 1.2% in 1991-1992 to 1.5% in 2001-2002, not a large amount. Rates did not increase among whites, only among certain age groups of blacks and Hispanics. If the increase were due to pharmacological properties of marijuana, it should have been seen in all demographic groups. This suggests that sociological factors are responsible instead.

In his written testimony, Dr. Earleywine also addresses the purported emergency medical care for marijuana-related incidents. Those who raise this issue deceitfully distort the statistical data compiled by the Drug Abuse Warning Network (DAWN) to convey the incorrect impression that marijuana is responsible for a large number of hospital emergency department cases and even for drug-abuse deaths. It all comes down to a gross misrepresentation of what DAWN terms "drug mentions." When a patient mentions marijuana during questioning by the hospital staff, it does not mean that marijuana *caused* the hospital visit. For every drug-related hospital visit—what DAWN calls a "drug abuse episode"—hospital staff lists up to five drugs that the patient reports having used recently. This includes illicit drugs, prescription drugs, and over-the-counter medications. "Therefore, not every reported substance is, by itself, necessarily a cause of the medical emergency," as is noted in each report that DAWN releases. It is impossible to imagine that experienced professionals like the authors of this bill misread the DAWN data accidentally.

"(10) several hundred adults and children in this state are admitted into treatment each year for marijuana abuse, with more than half of the admissions being children under the age of 18 and more than a third of the admissions being Alaska Natives; youth and Alaska Natives made up a disproportionate number of the total statewide treatment admissions for marijuana abuse in 2003;"

It is true that there has been a surge in the numbers entering marijuana treatment. But almost 60 per cent of those admissions in the U.S. last year were ordered by judges (Gardner, 2005), and the proportion of people entering treatment as a result of a court order has risen substantially. This reflects a sea-change in U.S. criminal justice. Since 1990, there has been an explosion in the number of "drug courts" which allow individuals charged with some drug offences to avoid jail if they follow a carefully supervised treatment program. At the same time, the idea of "therapeutic justice," as it is sometimes called, has been widely adopted by regular courts. As a result, Americans charged with marijuana possession today are routinely given a choice between punishment and treatment. Not surprisingly, most choose treatment. Add to this the numbers of high school students required to seek treatment as part of school disciplinary action and workers directed into treatment programs as a result of workplace drug testing, and the increase is readily accounted for. What must be emphasized is that in the vast majority of these cases, treatment occurs *without* there having been a clinically valid diagnosis of marijuana abuse.

Regarding the disproportionate number of treatment admissions among Alaska Natives, the foregoing should make it clear that it would be readily explained by a higher arrest rate for marijuana possession among Natives. Data by ethnicity are not available for Alaska marijuana arrests, but generally speaking, it appears that the rural arrest rate for marijuana is higher than that for the Anchorage census area. That in turn suggests a disproportionately higher marijuana arrest rate for Alaska Natives.

“(11) Alaska consistently ranks in the top 10 states, and occasionally in the top five states, nationwide, in the amount of marijuana illegally grown indoors, and large amounts of marijuana grown in this state are sold throughout the state and exported to other parts of the United States; the price of high-quality marijuana is hundreds of dollars per ounce and thousands of dollars per pound; testimony received by the legislature in 1999 and confirmed in 2005, shows that marijuana often sells for \$500 or more per ounce;”

The most prominent effect of the prohibition of any popular commodity is inflated pricing. Interestingly, marijuana use has been found to be extremely unresponsive to price (Pacula et al., 2001). The elasticity of demand with respect to price is -0.06 . That is, a 1% increase in price results in only a 0.06 percent decline in demand. Another way of saying this is that a 16.67% increase in price is required to reduce demand by just 1%. The most recent study available (DeSimone & Farrelly, 2003) found that “adult marijuana demand was not related to its own price” and that for juveniles, price was also irrelevant. This is further demonstration that increased criminal penalties are not an effective means of reducing consumption.

“(12) a large percentage of persons arrested in this state, including adults and juveniles who commit violent offenses, have marijuana in their system at the time of arrest;”

Exactly the same comments apply to this finding as to Finding #5: it would be a meaningful statement only if the percentage of people arrested for violent offences who test positive for marijuana metabolites were significantly higher than the percentage of people in the general population who would test positive. Furthermore, it contradicts the vast literature showing no association between marijuana use and aggression.

“(13) marijuana use by a parent has been, and will continue to be, a major contributing factor to children having easy access to and using marijuana;”

The intended meaning of this statement is entirely unclear--does it refer to current use by a parent, or to prior use before that person became a parent? Does it mean to imply that large numbers of children are given marijuana by their parents, or that the children steal their parent's marijuana? I don't see how any discussion of this “finding” can even be attempted.

“(14) criminal penalties for marijuana possession and education efforts are effective in reducing marijuana use and limiting its access by children;”

There are several separate points to address here. Are criminal penalties for marijuana possession effective in reducing use? As noted above for Finding #11, there is no good evidence that this is true. Indeed, if Finding #1 is true, as everyone agrees, it is *prima facie* evidence that criminal penalties are ineffective. In a recent cost/benefit analysis of the criminal penalties for marijuana possession in Alaska, Bates (2004) writes:

After reviewing the empirical work regarding marijuana prohibition, we must conclude that it is an ineffective means of reducing marijuana use. We cannot even state positively that prohibition decreases consumption *at all*. There are mixed results, but even those studies reporting an effect of prohibition find one so small as to leave room for debate. *Prohibition does not achieve its principal objective in any meaningful way.*

Are education efforts effective in reducing marijuana use? There is every reason to believe that properly designed education efforts, especially in an environment of regulation rather than of

prohibition, would be effective in reducing adolescent marijuana use. The success of education efforts to reduce adolescent tobacco use show this to be possible. It does not mean that *current* marijuana education efforts are effective, as the widely used DARE program illustrates. In the 20 years since DARE began, studies have consistently shown it has no significant effect on students' use of drugs. The General Accounting Office of the US Government found "no significant differences in illicit drug use between students who received DARE...and students who did not" (GAO, 2003). Of course, the issue of education is irrelevant to this hearing, since SB 74 and HB 96 only increase criminal penalties and do nothing towards education.

Summary and Conclusions:

I find it extremely troubling that SB 74 and HB 96 attempt to disregard the existing scientific consensus on the health, social, and economic effects of our current marijuana policy and replace it with so-called "findings" that have little or no basis in fact. If the Alaska Legislature passes into law Section 2 of these bills, it will demonstrate to the world that it has no regard for the scientific process nor, frankly, for a systematic and methodical legislative process. These hearings present an opportunity for the Legislature to take a step back, to look seriously at the evidence, and to reconsider whether it wishes to enact legislation that is so completely at odds with the scientific consensus.

References:

- Bates S, 2004. *Economic Implications of Eliminating Marijuana Prohibition in Alaska* (Alaskans for Rights and Revenue, Anchorage)
- Busch FW, Seid DA, Wei ET, *Cancer Lett.* 1979 May;6(6):319-24
- Compton WM. *JAMA* May 5 2004
- DeSimone J, Farrelly M, *Economic Inquiry*, January 2003;41(1):98-115
- Gardner D, "Is Pot Far More Potent Than in the Past?" *The Ottawa Citizen*, Sat, 19 Mar 2005
- Hallfors DD, et al, 2004, *Am J Prev Med* 27(3):224-31
- Huber GL, et al., 1991. *Pharmacol. Biochem. Behav.* 40:629-636
- Earleywine M. 2002. *Understanding Marijuana* (Oxford University Press)
- General Accounting Office, 2003. *Youth Illicit Drug Use Prevention: DARE Long-Term Evaluations and Federal Efforts to Identify Effective Programs*, Jan 16, 2003. (GAO-03-172R)
- Institute of Medicine, 1999. *Marijuana and Medicine: Assessing the Science Base* (Washington DC: National Academy Press)
- Pacula RL, et al., In: *Risky Behavior among Youth: An Economic Analysis*. Ed. J Gruber. Chicago, University of Chicago Press. 2001:271-326
- Tashkin DP, et al., *J Clin Pharmacol.* 2002 Nov; 42(11 Suppl):71S-81S
- Van den Bree MBM, Pickworth WB, *Arch Gen Psychiatry* 2005 Mar; 62:311-320
- Zimmer L, Morgan J. *Marijuana Myths, Marijuana Facts: A Review of the Scientific Evidence*, (New York: The Lindesmith Center, 1997)

LEGISLATIVE RESEARCH REPORT

APRIL 8, 2005



REPORT NUMBER 05.237

COSTS OF DEFENDING UNCONSTITUTIONAL LAWS

PREPARED FOR REPRESENTATIVE LES GARA

BY CHUCK BURNHAM, LEGISLATIVE ANALYST

BACKGROUND: LANDMARK ALASKA COURT RULINGS ON MARIJUANA POSSESSION	2
CHANGES TO POSSESSION LAWS PROPOSED IN HB 96.....	3
<i>Table 1: Current and Proposed Crimes of Marijuana Possession</i>	4
LEGAL COSTS OF DEFENDING CERTAIN LAWS DETERMINED TO BE UNCONSTITUTIONAL	4
<i>Noy v. State of Alaska</i>	5
<i>Department of Health and Social Services, Karen Purdue Commissioner v. Planned Parenthood of Alaska, Inc., et al.</i>	5

You asked for an analysis of HB 96, which relates to the use, possession, and criminality of marijuana in Alaska. Specifically, you wanted to know how this bill differs from the provision of AS 11.71.060(a)—regarding marijuana possession—that was recently found unconstitutional by the Alaska Court of Appeals. In addition, you asked about the costs to the state for mounting legal defenses for certain laws found to be unconstitutional. Specifically, you asked that we determine the costs for attorneys, support staff, and other significant expenses associated with defending the statutes and regulations that were found by the courts to be unconstitutional in the following cases:

- *Noy v. State of Alaska*; and
- *Department of Health and Social Services, Karen Purdue Commissioner v. Planned Parenthood of Alaska, Inc., et al.*

SUMMARY

In 1975 and 2003 Alaska courts issued rulings that found the possession of small amounts of marijuana—under four ounces—to be protected by privacy provisions of the state constitution. Nonetheless, both bodies of the Alaska Legislature are currently considering bills that would decrease the marijuana possession thresholds for the criminal charges of misconduct involving a controlled substance in the fourth, fifth, and sixth degrees, respectively. To the extent that the governor's bills, HB 96 and SB 74, seek to criminalize the possession of less than four ounces of marijuana in private homes for personal use, the bills appear to contravene the rulings of Alaska's courts.

The significant measurable costs to the state of defending AS 11.71.060(a) in *Noy v. Alaska* were approximately \$7,600. Because *Noy* began as a relatively routine misdemeanor case, the costs were relatively low. By contrast, the total costs to the state upon the 2001 final ruling in the civil case *Department of Health and Social Services, Karen Purdue Commissioner v. Planned Parenthood of Alaska, Inc., et al* were about \$452,000.

In the remainder of this report we provide further information on state court rulings regarding marijuana possession, a brief analysis of HB 96, and details of the costs of defending the state's position in the *Noy* and *Planned Parenthood* cases.

BACKGROUND: LANDMARK ALASKA COURT RULINGS ON MARIJUANA POSSESSION

In 1975, the Alaska Supreme Court ruled in *Ravin v. State* that the privacy clause of the Alaska Constitution (Article 1, Section 22) protects the possession of marijuana in one's home for personal use. The court's decision is summarized in *Lexis* online as follows:

The court held that privacy in the home was a fundamental right under both constitutions. However, the right had to yield when it interfered in a serious manner with the health, safety, or rights of others, or with the public welfare. The state had to meet a substantial burden of showing that proscription of possession of marijuana in the home was in the interest of public welfare. It did not meet that burden because the evidence presented did not prove that marijuana as presently used in the country was generally a danger to the user or others. The privacy of the home could not be breached absent a persuasive showing of a close and substantial relationship of the intrusion to a legitimate governmental interest. However, possession at home of amounts of marijuana indicative of intent to sell rather than for personal use was unprotected.¹

Following the *Ravin* decision, Alaska laws were changed to allow possession of less than four ounces of marijuana by adults in their homes. Fifteen years later, in the 1990 general election, however, Alaska voters approved Ballot Measure 2, which criminalized possession of marijuana in any amount.² The initiative amended AS 11.71.060(a) to read as follows:

¹ *Ravin v. State of Alaska*, No. 2135, Supreme Court of Alaska; 537 P.2d 494; 1975 Alas. LEXIS 334.

² Initiative No. 88MARI: Marijuana Law Amendments, appeared on the November 6, 1990, general election ballot.

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the sixth degree if the person

(1) uses or displays any amount of a schedule VIA [including marijuana] controlled substance or possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one-half pound containing a schedule VIA controlled substance; or

(2) refuses entry into a premise for an inspection authorized under AS 17.30.

The amended law effectively made possession of even very small amounts of marijuana a Class B misdemeanor punishable by up to ninety days in jail and a one-thousand dollar fine.³

In *Noy v. State of Alaska* (2003), however, the Alaska Court of Appeals, looking to the Supreme Court's decision in *Ravin*, determined neither the legislature nor the voters have the power to enact laws that criminalize possession of small amounts of marijuana. The court, therefore, found AS 11.71.060(a) to be unconstitutional to the extent that it prohibits possession of less than four ounces of marijuana in one's home for personal use.⁴

CHANGES TO POSSESSION LAWS PROPOSED IN HB 96

In the transmittal letter accompanying HB 96, Governor Murkowski identified the primary purposes of the bill as follows:

This bill would provide a forum for the Legislature to hear expert testimony on the effects of marijuana and to make findings that the courts can rely on in cases where marijuana is an issue. In addition to educating the Legislature, courts, and the public about the harmful effects of marijuana, this bill would deter possession and use of marijuana by increasing criminal penalties for certain types of possession. It also would provide a fair and efficient process for determining the usable weight of live marijuana plants in criminal prosecutions.

Section 6 of the bill would amend AS 11.71.060(a)—the section found unconstitutional by the Alaska Court of Appeals—as follows (bolded, underlined text has been added; text in brackets is deleted):

Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the sixth degree if the person

(1) uses or displays any amount of a schedule VIA controlled substance;

(2) [OR] possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one ounce [ONE-HALF POUND] containing a schedule VIA controlled substance; [OR]

(3) manufactures, delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one-half ounce containing a schedule VIA controlled substance;

(4) possesses one or more preparations, compounds, mixtures, or substances containing a schedule VIA controlled substance while a passenger in a motor vehicle, aircraft, or motorized watercraft;

³ Maximum fines for Class B misdemeanors were subsequently increased to \$2,000.

⁴ *Noy v. State*, 79 P.3d 1201, 2003 Alas. App. LEXIS 209 (Alaska Ct. App., 2003).

(5) being the driver or operator of a motor vehicle, aircraft, or motorized watercraft, knowingly permits a passenger to possess one or more preparations, compounds, mixtures, or substances containing a schedule VIA controlled substance; or

(6) [(2)] refuses entry into a premise for an inspection authorized under AS 17.30.⁵

As you can see, the second provision of this section decreases the amount of marijuana required to justify a charge of misconduct involving a controlled substance in the sixth degree—a Class B misdemeanor. Amendments proposed in Sections 4 and 5 of the bill also decrease possession thresholds for the charges of misconduct with a controlled substance in the fourth and fifth degree, respectively. It appears that in criminalizing the possession of less than four ounces of marijuana in the privacy of one's home, Sections 5 and 6 of HB 96 may contravene the Courts' decisions in *Ravin* and *Noy*. Table 1 shows current possession thresholds and those proposed by HB 96, the criminal charges for those levels of possession, and the maximum punishment allowed for each charge.

Table 1: Current Statutory Language and Proposed Crimes of Marijuana Possession					
Statute / HB 96 Section	Level of Crime	Possession Threshold		Maximum Sentence	
		Current	Proposed: HB 96	Imprisonment	Fine
AS 11.71.040 / Section 4	Class C Felony	One pound or more	Four ounces or more	Five years	\$50,000
AS 11.71.050 / Section 5	Class A Misdemeanor	One-half pound or more	One ounce or more	One year	\$10,000
AS 11.71.060 / Section 6	Class B Misdemeanor	Less than one-half pound	Less than one ounce	Ninety days	\$2,000

Notes: More serious charges involving marijuana are generally restricted to crimes involving selling the drug. In its ruling in *Ravin v. State*, the Alaska Supreme Court determined that selling marijuana, unlike possessing small amounts for personal use in the home, is not afforded constitutional protection.
Source: Alaska Statutes (2004), HB 96 (2005).

LEGAL COSTS OF DEFENDING CERTAIN LAWS DETERMINED TO BE UNCONSTITUTIONAL

Kathryn Daughhete, Administrative Services Director, Alaska Department of Law provided cost figures including salaries for attorneys and other staff and fees awarded by the court, where applicable.⁶ Other costs, such as witnesses' fees and travel costs, which Ms. Daughhete estimated to be relatively minimal, are not included. It is important to note that the primary attorneys representing the state in both of the cases were Department of Law staff. The Department does not consider the salaries of these attorneys and their support staff to be strictly associated with these cases. That is, had the attorneys and staff not been working on the cases

⁵ We include, as Attachment A, a copy of HB 96.

⁶ Ms. Daughhete can be reached at (907) 465-3673.

in question, they would have, nonetheless, been drawing the same salaries while working on other cases. Nonetheless, for the purposes of this report, Department of Law staff salaries are included in the state's costs for these cases.

NOY V. STATE OF ALASKA

As we mentioned, *Noy* was a criminal case involving a misdemeanor charge of marijuana possession. Following a two-day trial in the Fourth District Court in Fairbanks, the defendant was convicted. On appeal, the Alaska Court of Appeals found that Mr. Noy was entitled to a new trial because the trial judge had incorrectly instructed the jury on how to determine the weight of marijuana plants. The Court of Appeals held unconstitutional the marijuana possession statute under which Mr. Noy was convicted, AS 11.71.060(a), because the state did not show a sufficient governmental interest in limiting Alaskans' right to privacy under the state constitution by criminalizing marijuana possession.⁷

The Criminal Division of the Alaska Department of Law does not track attorney and staff time by case. Nonetheless, the Department estimates that a total of 77.5 "billable" hours were dedicated to the case at an average rate of \$98 per hour for attorney and staff salaries. The total of these costs to the state, therefore, was approximately \$7,600.

*DEPARTMENT OF HEALTH AND SOCIAL SERVICES, KAREN PURDUE COMMISSIONER V.
PLANNED PARENTHOOD OF ALASKA, INC., ET AL.*

In 1998, Planned Parenthood of Alaska and two private practice physicians brought this civil suit challenging 7 AAC 43.140, which relates to Medicaid funding for abortions. Under the regulation, Medicaid funds could be used for abortions only in cases where the life of the mother was in danger or where the pregnancy was the result of rape or incest. In 2001, the Third District Superior Court found, and the Alaska Supreme Court affirmed, that the state, having undertaken a program to provide health care for poor Alaskans, was required to adhere to neutral criteria in distributing that care. It could not deny medically necessary services to eligible individuals based on criteria unrelated to the purposes of the public health care program. Moreover, the courts found that the regulation discriminatorily burdened the exercise of constitutional rights by poor Alaskan women by denying funding solely on political disapproval of a medically necessary procedure. In the view of the courts, this selective denial of medical benefits violated Alaska's constitutional guarantee of equal protection.⁸

The state was represented in the case by the Attorney General's office. In addition, the Legislature contracted with the Anchorage law firm of Brena, Bell & Clarkson to file an amicus brief in support of the regulation. Further substantial costs were incurred because, having

⁷ We include, as Attachment B, a copy of the decision in *David S. Noy v State of Alaska*, Court of Appeals No. A-8327, No. 1906, November 14, 2003; 83 P.3d 545; 2003 Alas. App. LEXIS 234

⁸ We include, as Attachment C, a copy of the decision in *Department of Health and Social Services, Karen Purdue Commissioner v. Planned Parenthood of Alaska, Inc., et al.*, Supreme Court No. S-9109, No. 5443; 28 P.3d 904; 2001 Alas. LEXIS 97.

prevailed against the state, the plaintiff was awarded full attorney's fees.⁹ The total costs of attorneys, staff, fees, and the contracted amicus brief in this case was approximately **\$452,000**. The components of this total amount are as follows:

- Department of Law costs \$158,000
- Plaintiff's fees \$269,000
- Contract for amicus brief \$25,000

Please note, however, the Department of Law does not consider the costs for its attorneys and staff to have been incurred strictly due to this case because salaries for those positions would be paid regardless of the existence of this particular case.

If you would like a legal opinion of the chances of HB 96 or SB 74 passing constitutional muster, please contact Legal Services.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

⁹ The criteria the court uses in weighing a plaintiff's private motivation against the extent of public interest involved appear among the annotations to Civil Rule 82 as follows: (1) Is the case designed to effectuate strong public policies? (2) If the plaintiff succeeds will numerous people receive benefits from the lawsuit? (3) Can only a private party have been expected to bring the suit? (4) Would the purported public interest litigant have sufficient economic incentive to file suit even if the action involved only narrow issues lacking general importance?

DAVID S. NOY, Appellant, v. STATE OF ALASKA, Appellee.

Court of Appeals No. A-8327, No. 1906

COURT OF APPEALS OF ALASKA

83 P.3d 545; 2003 Alas. App. LEXIS 234

November 14, 2003, Decided

PRIOR HISTORY: [**1] Appeal from the District Court, Fourth Judicial District, Fairbanks, Jane F. Kauvar, Judge. Trial Court No. 4FA-01-3003 Cr.

Noy v. State, 79 P.3d 1201, 2003 Alas. App. LEXIS 209 (Alaska Ct. App., 2003).

DISPOSITION: Rehearing denied

LexisNexis(R) Headnotes

COUNSEL: Appearances: William R. Satterberg, Jr., Fairbanks, for the Appellant.

Kenneth M. Rosenstein, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Gregg D. Renkes, Attorney General, Juneau, for the Appellee.

JUDGES: Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges.

OPINIONBY: MANNHEIMER

OPINION: [*545] ON REHEARING

MANNHEIMER, Judge.

In *Ravin v. State*, 537 P.2d 494 (Alaska 1975), the Alaska Supreme Court held that the privacy clause of the Alaska Constitution (Article I, Section 22) protects the possession of marijuana in one's home for personal use. In 1990, the voters of Alaska enacted AS 11.71.060(a), [*546] which purports to criminalize the possession of any amount of marijuana, even when the marijuana is possessed in one's home for personal use. In our initial opinion in this case [**2] -- *Noy v. State*, Alaska App. Opinion No. 1897 (August 29, 2003) n1 -- we held that this statute is unconstitutional because it conflicts with

the right of privacy recognized in the *Ravin* decision. However, we concluded that the statute could be preserved to the extent that it prohibits possession of four ounces or more of marijuana.

n1 80 P.3d 255, 2003 Alas. App. LEXIS 167, 2003 WL 22026345.

The State now seeks rehearing. In its petition for rehearing, the State argues that this Court's initial opinion is flawed in some half-dozen ways, but most of the State's arguments ultimately rest on one underlying assertion: that we misunderstood the nature of the Alaska Supreme Court's decision in *Ravin*.

In our initial decision in this case, we read the *Ravin* opinion to say that the privacy clause of the Alaska Constitution restricts the legislature's (and the voters') authority to enact laws prohibiting the possession of marijuana in one's home for personal use. The State [**3] contends that this view of *Ravin* is fundamentally flawed -- that *Ravin* did not announce a constitutional restriction on the government's law-making power.

According to the State, *Ravin* did not hold that Article I, Section 22 of the Alaska Constitution restricts the government's authority to enact statutes that prohibit possession of marijuana in one's home for personal use. Rather, *Ravin* restricted the government's authority to enforce such statutes -- by creating an affirmative defense that individual defendants can raise if they are prosecuted for violating such a statute.

The State argues that this defense is similar to a claim of entrapment or selective prosecution, in that it does not rest on a claim that the defendant is innocent of wrongdoing, but rather on a claim that the government violated constitutional guarantees when it singled out this particular defendant as the target of prosecution.

According to the State, *Ravin* stands for the proposition that, in any prosecution for possession of marijuana in one's home, the defendant can assert that the possession was of a small amount for personal use. If the defendant raises such a claim, the matter [**4] is decided (before trial) by a judge, not a jury. To defeat the proposed defense, the State would have to prove either (1) that the marijuana was not for personal use, or (2) that the government had a sufficient interest in prohibiting the possession of that particular amount of marijuana under the specific circumstances of that defendant's case.

In other words, the State argues that *Ravin* created a system in which the constitutionality of marijuana prosecutions would be decided by trial judges on a case-by-case basis -- and that, in these case-specific hearings, the State would repeatedly try to convince numerous different judges that there is a sufficient government interest to justify imposing criminal penalties on people who possess varying amounts of marijuana.

The State's proposed interpretation of the *Ravin* decision would seemingly put us on the road to legal chaos. Under the State's proposal, dozens of judges across the state would be required to issue potentially inconsistent rulings as to whether, under the facts of a particular defendant's case, the State had sufficient justification to criminalize the defendant's possession of 3.0 ounces, or 2.2 ounces, or [**5] 1.4 ounces, or 0.6 ounces of marijuana.

However, our primary reason for rejecting the State's interpretation of *Ravin* is that the State's interpretation is inconsistent with *Ravin* itself.

The *Ravin* decision does not speak of an affirmative defense of the type proposed by the State in its petition for rehearing, nor does the *Ravin* opinion describe itself as establishing case-specific limits on the State's enforcement of marijuana statutes. Rather, in the opening sentence of *Ravin*, the Alaska Supreme Court described the issue before them as "the constitutionality of Alaska's statute prohibiting possession of marijuana". n2 [*547] Later in the opinion, after the supreme court held that Article I, Section 22 of our state constitution guarantees a right of privacy in one's home n3, the court declared that two major questions remained:

n2 *Ravin*, 537 P.2d at 496.

n3 *Id.* at 504.

Whether the State has demonstrated sufficient justification for [**6] the prohibition of possession of marijuana in general ... and ... whether the State has met the greater burden of showing a close and substantial

relationship between the public welfare and control of ingestion or possession of marijuana in the home for personal use.

Ravin, 537 P.2d at 504.

The supreme court then proceeded to analyze the scientific data concerning the uses and effects of marijuana. The court did not attempt to analyze the particular facts of Irwin *Ravin*'s case; rather, the court assessed the legislature's overall justification for regulating any person's possession of marijuana in their home. n4

n4 *See id.*, 537 P.2d at 504-511.

And when the *Ravin* court announced its conclusion, the court did not frame that conclusion in terms of whether the State had an interest in prohibiting the possession of marijuana under the particular facts of the case before it. Instead, the court framed its conclusion as a general restriction on the government's authority [**7] to legislatively control this aspect of people's personal behavior:

We conclude that [the state has shown] no adequate justification for the state's intrusion into the citizen's right to privacy by its prohibition of possession of marijuana by an adult for personal consumption in the home[.] The privacy of the individual's home cannot be breached absent a persuasive showing of a close and substantial relationship of the intrusion to a legitimate governmental interest. Here, mere scientific doubts will not suffice. The state must demonstrate a need based on proof that the public health or welfare will in fact suffer if the controls are not applied.

The state has a legitimate concern with avoiding the spread of marijuana use to adolescents who may not be equipped with the maturity to handle the experience prudently, as well as a legitimate concern with the problem of driving under the influence of marijuana. Yet these interests are insufficient to justify intrusions into the rights of adults in the privacy of their own homes.

Ravin, 537 P.2d at 511.

In the years since *Ravin* was decided, there has been no suggestion (until now) that *Ravin* was something [**8] other than normal constitutional litigation in which the supreme court adjudicated the constitutionality of a particular category of criminal statute. For example, six months after *Ravin*, in *Belgarde v. State*, the supreme court referred to *Ravin* as "[a] case [in which] we held that the state may not prohibit possession of [marijuana] by an adult in [their] home for personal consumption".

n5 In 1978, in *State v. Erickson*, the supreme court again declared that *Ravin* represented a restriction on the state's power to legislate:

n5 543 P.2d 206, 207 (Alaska 1975).

In *Ravin v. State*, this court held that the state could not bar the personal use and possession of marijuana in the home. In view of the relative harmlessness of the drug, the individual's right to privacy under the Alaska Constitution was found to outweigh the state interest in regulation.

574 P.2d 1, 21 (Alaska 1978) (footnote omitted). And more recently, in *Luedtke v. Nabors Alaska Drilling, Inc.*, the supreme court declared that "*Ravin* addressed the issue of whether the state could prohibit the use of marijuana in the home. We held that it could not." n6

n6 768 P.2d 1123, 1135 (Alaska 1989).

Based on this analysis of the *Ravin* decision and the later supreme court decisions construing *Ravin*, we are convinced that the State's interpretation of *Ravin* is wrong. *Ravin* did not create an affirmative defense that defendants might raise, on a case-by-case basis, when they were prosecuted for possessing marijuana in their home for personal use. Instead, both in the *Ravin* opinion itself and in the supreme court's later descriptions of *Ravin*, the Alaska Supreme [*548] Court has repeatedly and consistently characterized the *Ravin* decision as announcing a constitutional limitation on the government's authority to enact legislation prohibiting the possession of marijuana in the privacy of one's home.

Accordingly, we reject the State's suggestion that *Ravin* [*10] left Alaska's marijuana statutes intact but created an affirmative defense to be litigated in each individual case.

Although this is not a factor in our interpretation of *Ravin*, we note that the Alaska Legislature took this same view of *Ravin* when they refashioned this state's drug laws twenty years ago. As we described in *Walker v. State* n7, the legislature responded to *Ravin* in 1982 by enacting a statute -- former AS 11.71.060(a)(4) -- that prohibited possession of four ounces or more of marijuana, even if the marijuana was possessed in one's home for personal use. In the commentary that accompanied this statute, the legislature declared:

N7 991 P.2d 799 (Alaska App. 1999).

This legislation is intended to clarify the law in Alaska concerning possession of marijuana, in light of the decision of the Supreme Court of Alaska in *Ravin v. State*, 537 P.2d 494 (Alaska 1975). *Ravin* held that Alaska's constitutional right to privacy protects the possession and use [*11] of marijuana by an adult, in the home, in amounts indicative of personal use in a purely personal, non-commercial context. The approach taken in this Act is to define, for purposes of the decision in *Ravin*, an amount which is indicative of personal use, and to provide a clear line of demarcation of four ounces, so that citizens of this state will know precisely what conduct is prohibited.

Commentary and Sectional Analysis for the 1982 Revision of Alaska's Controlled Substances Laws (CCSB 190), p. 19 (quoted in *Walker v. State*, 991 P.2d at 802-03).

Thus, not only is the State's suggested interpretation of *Ravin* at odds with the supreme court's statements on this question, but it is also at odds with the Alaska Legislature's announced policy aims in this area of the law: the aim of "defining, for purposes of ... *Ravin*, [a specific] amount which is indicative of personal use", and the aim of "providing a clear line of demarcation ..., so that citizens of this state will know precisely what conduct is prohibited".

We now address certain other aspects of the State's petition for rehearing.

In our original decision in this case, we stated that because [*12] the jury acquitted Noy of the charge of possessing eight ounces or more of marijuana, the State is barred from asserting, in any future litigation, that Noy did indeed possess eight ounces or more of marijuana. The State argues that this conclusion is mistaken for two reasons.

First, the State contends that the doctrine of collateral estoppel does not apply when the aggrieved party had no method of seeking appellate review of the adverse judgement. The State points out that the *double jeopardy clauses* of the federal and state constitutions preclude the State from seeking appellate review of a jury's verdict of acquittal. Thus, the State argues, the fact that Noy's jury acquitted him of possessing eight ounces or more of marijuana should not estop the State from continuing to assert that Noy possessed more marijuana than the jury found.

The problem with the State's argument is that it is directly contrary to the United States Supreme Court's holding in *Ashe v. Swenson*, 397 U.S. 436, 445-46, 25 L. Ed. 2d 469, 90 S. Ct. 1189, 1195-96 (1970).

Second, the State argues that the jury's acquittal should not be considered conclusive because the jury was misinstructed on [**13] how to calculate the weight of marijuana. The State asserts that, given the evidence presented at Noy's trial, it is obvious that Noy possessed at least eight ounces of marijuana, and therefore the jury's verdict of acquittal must have been the fruit of the flawed jury instruction.

But as we explained in our initial opinion, the State did not introduce the marijuana itself; instead, the State relied on photographs and testimony concerning the marijuana. The photographs showed that the marijuana contained stalks, not just leaves [*549] and buds. Even if the jury had been correctly instructed, they would have been told that stalks are not to be considered when assessing the weight of harvested marijuana. Although there may be a substantial possibility that the erroneous weight-calculation instruction influenced the jury's thinking when they assessed the weight of the marijuana, it is also possible that the jurors were not convinced beyond a reasonable doubt that the harvested marijuana, minus the stalks, weighed eight ounces or more. Thus, we must apply the collateral estoppel rule of *Ashe v. Swenson*. See our discussion of a related point in *State v. McDonald*, 872 P.2d 627, 660 (Alaska App. 1994) [**14] .

Moreover, even if we assume that the erroneous jury instruction played an instrumental role in the jury's decision to acquit Noy of possessing eight or more ounces of marijuana, the State would still be bound by the jury's verdict. The law on this point is summarized in

Wayne R. LaFave, Jerold H. Israel, and Nancy J. King, *Criminal Procedure* (2nd ed. 1999):

If the jury reaches a verdict of acquittal or the judge grants a judgment of acquittal, double jeopardy bars a new trial even if it appears that the acquittal was based on an erroneous interpretation of the law.

Id., § 25.1(g), Vol. 5, p. 648. See also *id.*, § 25.3(b), Vol. 5, pp. 666-68.

This view of the *double jeopardy clause* is borne out in the case law. See *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 571, 51 L. Ed. 2d 642, 97 S. Ct. 1349, 1354 (1977); *Livingston v. Murdaugh*, 183 F.3d 300, 301-02 (4th Cir. 1999).

Finally, the State argues for the first time that if we adjudicate the constitutionality of AS 11.71.060(a) in Noy's case, our decision will unfairly preclude the State from attempting to prove that *Ravin* should [**15] be overruled or limited -- *i.e.*, preclude the State from attempting to prove that there is sufficient justification for a criminal statute prohibiting any and all possession of marijuana, ever possession of marijuana by adults in their home for personal use.

But our decision in this case merely implements the supreme court's constitutional ruling in *Ravin*. The State remains free in the future to challenge the continuing vitality of *Ravin*.

For all of these reasons, the State's petition for rehearing is DENIED.

Attachment C

Department of Health and Social Services, Karen Purdue Commissioner v. Planned Parenthood of Alaska, Inc., et al., Supreme Court No. S-9109, No. 5443; 28 P.3d 904; 2001 Alas. LEXIS 97

**STATE OF ALASKA, DEPARTMENT OF HEALTH & SOCIAL SERVICES,
KAREN PERDUE, Commissioner, Appellant, v. PLANNED PARENTHOOD OF
ALASKA, INC., JAN WHITEFIELD, M.D., and SUSAN LEMAGIE, M.D.,
Appellees.**

Supreme Court No. S-9109, No. 5443

SUPREME COURT OF ALASKA

28 P.3d 904; 2001 Alas. LEXIS 97

July 27, 2001, Decided

PRIOR HISTORY: **[**1]** Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Sen K. Tan, Judge. Superior Court No. 3AN-98-7004 CI.

DISPOSITION: The manner in which the State allocates public benefits is subject to constitutional limitation under Alaska's equal protection provision. The State, having undertaken to provide health care for poor Alaskans, must adhere to neutral criteria in distributing that care. It may not deny medically necessary services to eligible individuals based on criteria unrelated to the purposes of the public health care program. Moreover, the DHSS regulation in this case discriminatorily burdens the exercise of a constitutional right. Because we conclude that denial of Medicaid assistance to poor women who medically require abortions violates equal protection, we **AFFIRM** the decision of the superior court.

LexisNexis(R) Headnotes

COUNSEL: Lisa M. Kirsch, Assistant Attorney General, and Bruce M. Botelho, Attorney General, Juneau, for Appellant.

Christine Schleuss, Suddock & Schleuss, Cooperating Counsel **[**2]** to the Alaska Civil Liberties Union, Anchorage, and Louise Melling, Jody Yetzer, Talcott Camp, and Jennifer Dalven, ACLU Foundation, Reproductive Freedom Project, New York, New York, for Appellees.

Kevin G. Clarkson, Brena, Bell & Clarkson, P.C., Anchorage, for Amicus Curiae The Alaska State Legislature. Jeffrey D. Troutt, Juneau, and Paul Benjamin Linton, Northbrook, Illinois, for Amicus Curiae United Families International.

Susan Orlansky, Feldman & Orlansky, Anchorage, Karen E. Katzman, Sheila S. Boston, and Dina L. Bakst, Kaye Scholer Fierman Hays & Handler, LLP, New York, New York, and Martha F. Davis and Yolanda S. Wu, NOW Legal Defense and Education Fund, New York, New York, for Amicus Curiae NOW Legal Defense and Education Fund.

JUDGES: Before: Fabe, Chief Justice, Matthews, Eastaugh, Bryner, and Carpeneti, Justices.

OPINIONBY: FABE

OPINION: **[*905]**

FABE, Chief Justice.

I. INTRODUCTION

Alaska's Medicaid program funds virtually all necessary medical services for poor Alaskans -- "regardless of race, age, national origin, or economic standing" **n1** -- but it denies funding for medically necessary abortions. Alone among

Medicaid-eligible Alaskans, women whose health is endangered [**3] by pregnancy are denied health care based solely on political disapproval of the medically necessary procedure. This selective denial of medical benefits violates Alaska's constitutional guarantee of equal protection. Our conclusion is supported by the majority of jurisdictions that have considered comparable restrictions on state funding of medically necessary abortions: these state courts have concluded that, under their state constitutions, government health care programs that fund other medically necessary procedures may not deny assistance to eligible women whose health depends on obtaining abortions. n2

n1 AS 47.07.010.

n2 See *Committee to Defend Reprod. Rights v. Myers*, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (Cal. 1981); *Moe v. Secretary of Admin. & Fin.*, 382 Mass. 629, 417 N.E.2d 387 (Mass. 1981); *Women of Minnesota v. Gomez*, 542 N.W.2d 17 (Minn. 1995); *Right to Choose v. Byrne*, 91 N.J. 287, 450 A.2d 925 (N.J. 1982); *New Mexico Right to Choose/NARAL v. Johnson*, 1999 NMSC 5, 975 P.2d 841, 126 N.M. 788 (N.M. 1998), cert. denied, 526 U.S. 1020, 143 L. Ed. 2d 352 (1999); *Women's Health Ctr. of W. Va., Inc. v. Panepinto*, 191 W. Va. 436, 446 S.E.2d 658 (W. Va. 1993); but see *Renee B. v. Florida Agency for Health Care Admin.*, 750 So. 2d 1036, 2001 Fla. LEXIS 1396, 2001 WL 776533 (Fl. 2001); *Doe v. Department of Soc. Servs.*, 439 Mich. 650, 487 N.W.2d 166 (Mich. 1992); *Rosie J. v. North Carolina Dep't of Human Resources*, 347 N.C. 247, 491 S.E.2d 535 (N.C. 1997); *Hope v. Perales*, 83 N.Y.2d 563, 634 N.E.2d 183, 611 N.Y.S.2d 811 (N.Y. 1994); *Fischer v. Department of Pub. Welfare*, 509 Pa. 293, 502 A.2d 114 (Pa. 1985).

A number of lower state courts have also found that funding restrictions similar to those challenged today violated their state constitutions. See *Simat Corp. v. Arizona Cost Containment System Admin.*, [slip op.], No. CV1999014614 (Ariz. Super. May 23, 2000); *Doe v. Maher*, 40 Conn. Supp. 394, 515 A.2d 134 (Conn. Super. 1986); *Roe v. Harris*, [slip op.], NO. 96977 (Idaho Dist. Feb. 1, 1994); *Doe v. Wright*, [slip op.], No. 91-CH-1958 (Ill. Cir. Dec. 2, 1994); *Clinic for Women v. Humphreys*, [slip op.], No. 49D12-9908-MI-1137 (Ind. Super. Oct. 18, 2000); *Jeannette R. v. Ellery*, [slip op.], No. BDV-94-811 (Mont. Dist. May 19, 1995); *Planned Parenthood Ass'n v. Department of Human Resources of Oregon* 63 Ore. App. 41, 663 P.2d 1247 (Or. App. 1983), aff'd on other grounds, 297 Ore. 562, 687 P.2d 785 (Or. 1984) (declining to reach constitutional issue); *Low-Income Women of Texas v. Bost*, 38 S.W.3d 689 (Tex. App. 2000); *Doe v. Celani*, [slip op.], No. S81-84CnC (Vt. Super. May 23, 1986); but see *Doe v. Childers*, [slip op.], No. 94CI02183 (Ky. Cir. Aug. 7, 1995).

[**4]

This case concerns the State's denial of public assistance to eligible women whose health is in danger. It does not concern State payment for elective abortions; nor [**906] does it concern philosophical questions about abortion which we, as a court of law, cannot aspire to answer. We join the California Supreme Court in clarifying that "this case does not turn on the morality or immorality of abortion, and most decidedly does not concern the personal views of the individual justices as to the wisdom of the legislation itself or the ethical considerations involved in a woman's individual decision whether or not to bear a child." n3 Indeed, as the California Supreme Court emphasized, "similar constitutional issues would arise if the Legislature . . . funded [Medicaid] abortions but refused to provide comparable medical care for poor women who choose childbirth." n4 The constitutional issue in this case therefore "does not involve a weighing of the value of abortion as against childbirth, but instead concerns the protection of either procreative choice from discriminatory governmental treatment." n5 As the California court recognized, the issue presented is "not whether [**5] the state is generally obligated to subsidize the exercise of constitutional rights for those who cannot otherwise afford to do so." n6 Rather, the issue is whether the State, having enacted a benefits program, may discriminate between recipients in the manner attempted by the Department of Health and Social Services (DHSS) today. We hold that it may not. Once the State undertakes to fund medically necessary services for poor Alaskans, it may not selectively exclude from that program women who medically require abortions.

n3 *Myers*, 625 P.2d at 780.

n4 *Id.*

n5 Id.

n6 Id.

Although the State argues that courts may not enjoin unconstitutional use of the legislative appropriations power, this proposition is unsupported by case law from any jurisdiction. The legislature's spending power does not create license to disregard citizens' constitutional rights. In rejecting this part of the State's argument, we concur with every state and federal court [**6] that has considered this issue.

II. FACTS AND PROCEEDINGS

Alaska provides medical services for poor Alaskans primarily through the Medicaid program. n7 Medicaid is a comprehensive health care program designed to provide medical assistance for all eligible poor per [*907] sons in the state. n8 But a DHSS regulation, 7 Alaska Administrative Code (AAC) 43.140, imposes a limit on the state's health care funding: It denies Medicaid assistance for medically necessary abortions unless a pregnant woman is at risk of dying or her pregnancy resulted from rape or incest. n9 Because DHSS offers no other funding source for abortions, 7 AAC 43.140 ensures that a woman who medically requires an abortion will receive no assistance from the state.

n7 See AS 47.07; see also 42 U.S.C. § 1396-1396v (1997).

A second program, Chronic and Acute Medical Assistance (CAMA) complements Medicaid by providing some medical care for Alaskans who are poor but ineligible for Medicaid. See AS 47.08.150. CAMA's predecessor, the General Relief Medical program (GRM), funded abortions for eligible women when the procedure was necessary to protect their health or when pregnancy resulted from sexual assault, sexual abuse of a minor, or incest. See 7 AAC 47.200(a)(4)(F) (2000); 7 AAC 47.290(8) (2000). In 1998, after nearly 30 years of government support for medically necessary abortions through GRM, the legislature stopped funding the program and enacted CAMA as a replacement. CAMA covers essentially the same services as GRM, except that it does not fund any abortions. Compare AS 47.08.150 with 7 AAC 47.200. [**7]

n8 See AS 47.07.010. Medicaid relies on joint state-federal funding, with the federal government paying a portion of the state's costs. See 42 U.S.C. §§ 1396b(a), 1396d(b). The "Hyde Amendment" limits federal Medicaid contributions for abortions: Federal funding is available for abortions in cases of rape or incest or where the woman's life is in danger, but not for abortions necessary to protect a woman's health. See Pub. L. No. 106-554, §§ 508-509, 114 Stat. 2763 (2000); *Right to Choose v. Byrne*, 91 N.J. 287, 450 A.2d 925, 928-29 (N.J. 1982) (discussing history of Hyde Amendment).

n9 7 AAC 43.140 (2000) provides in part:

(a) Payment for an abortion will, in the department's discretion, be covered under Medicaid if the physician services invoice is accompanied by certification that the

- (1) life of the mother would be endangered if the pregnancy were carried to term; or
- (2) pregnancy is the result of an act of rape or incest.

The range of women whose access to medical care is restricted [**8] by the regulation is broad. According to medical evidence provided to the superior court, some women -- particularly those who suffer from pre-existing health problems -- face significant risks if they cannot obtain abortions. Women with diabetes risk kidney failure, blindness, and preeclampsia or eclampsia -- conditions characterized by simultaneous convulsions and comas -- when their disease is complicated by pregnancy. Women with renal disease may lose a kidney and face a lifetime of dialysis if they cannot obtain an abortion. And pregnancy in women with sickle cell anemia can accelerate the disease, leading to pneumonia, kidney infections, congestive heart failure, and pulmonary conditions such as embolus. Poor women who suffer from conditions such as epilepsy or bipolar disorder face a particularly brutal dilemma as a result of DHSS's regulation --

medication needed by the women to control their own seizures or other symptoms can be highly dangerous to a developing fetus. Without funding for medically necessary abortions, pregnant women with these conditions must choose either to seriously endanger their own health by forgoing medication, or to ensure their own safety but endanger **[**9]** the developing fetus by continuing medication. Finally, without state funding, Medicaid-eligible women may reach an advanced stage of pregnancy before they can gather enough money for an abortion; resulting late-term abortions pose far greater health risks than earlier procedures.

In June 1998 the plaintiffs -- two medical doctors and Planned Parenthood of Alaska -- filed a complaint against DHSS. They sought to enjoin enforcement of 7 AAC 43.140 and also sought a judgment declaring that the State's denial of funding for medically necessary abortions violates Alaska's Constitution. Superior Court Judge Sen K. Tan granted summary judgment in favor of Planned Parenthood. Based on this court's holding that "reproductive rights are fundamental . . . [and] include the right to an abortion," **n10** the superior court concluded that 7 AAC 43.140 impermissibly interferes with Medicaid-eligible women's constitutional rights to privacy. Because the State failed to articulate a compelling state interest for this interference, the superior court permanently enjoined DHSS from enforcing the regulation "so as to deny coverage for medically necessary abortions." The State now appeals. **n11 [**10]**

n10 *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice*, 948 P.2d 963, 969 (Alaska 1997).

n11 For part of the time that this appeal was pending, DHSS continued to withhold funding for medically necessary abortions, despite the superior court's injunction. On Planned Parenthood's motion, the superior court held a show cause hearing to determine whether the Department was in contempt of court. The court heard DHSS's claim that funding was unavailable, and determined, after a "struggle", not to hold the agency in contempt. However, the court issued a new injunction to reiterate the terms of the first injunction and explicitly direct that, while DHSS retained discretion over its use of resources, it should consider state Medicaid funds available to pay for medically necessary abortions. The parties on appeal presented records from these proceedings and additional related briefing.

[*908] III. STANDARD OF REVIEW

We review a grant of summary judgment de novo, exercising our independent **[**11]** judgment to "determine whether the parties genuinely dispute any material facts and, if not, whether the undisputed facts entitle the moving party to judgment as a matter of law." **n12** On questions of constitutional law, we also apply our independent judgment. **n13** We may affirm the superior court on any ground supported by the record. **n14**

n12 *M.C. v. Northern Ins. Co. of N.Y.*, 1 P.3d 673, 674-75 (Alaska 2000).

n13 See *Rollins v. State, Dep't of Revenue, Alcoholic Beverage Control Bd.*, 991 P.2d 202, 206 (Alaska 1999).

n14 See *James v. McCombs*, 936 P.2d 520, 523 n.2 (Alaska 1997); see also *Dixon v. Dixon*, 747 P.2d 1169, 1175 n.5 (Alaska 1987).

IV. DISCUSSION

A. The Challenged Regulation Violates Equal Protection.

By providing health care to all poor Alaskans except women who need abortions, the challenged regulation violates the state constitutional guarantee of "equal rights, opportunities, **[**12]** and protection under the law." **n15** The State, having established a health care program for the poor, may not selectively deny necessary care to eligible women merely because the threat to their health arises from pregnancy. Because we decide this case on state constitutional equal protection grounds, we do not review the superior court's privacy-based ruling. We do note, however, that our analysis today closely parallels that applied by many of the fifteen courts that have rejected similar restrictions. **n16** Although other courts' decisions have rested on a variety of state constitutional provisions, including equal protection, **n17** constitutional equal-rights-for-women clauses, **n18** due process, **n19** and privacy, **n20** the underlying logic has

been the same in decision after decision: "When state government seeks to act for the common benefit, protection, and security of the people in providing medical care for the poor, it has an obligation to do so in a neutral manner so as not to infringe upon the constitutional rights of our citizens." n21 As the Massachusetts Supreme Judicial Court observed, the constitutional principle at issue is straightforward: [**13] "It is elementary that 'when a State decides to alleviate some of the hardships of poverty by [*909] providing medical care, the manner in which it dispenses benefits is subject to constitutional limitations.'" n22 The State's spending discretion is limited by the constitution -- "while the State retains wide latitude to decide the manner in which it will allocate benefits, it may not use criteria which discriminatorily burden the exercise of a fundamental right." n23

n15 Alaska Const. art. I, § 1.

n16 See supra note 2.

n17 See, e.g., *Doe v. Maher*, 40 Conn. Supp. 394, 515 A.2d 134, 157-59 (Conn. Super. 1986); *Right to Choose v. Byrne*, 91 N.J. 287, 450 A.2d 925, 934-37 (N.J. 1982); *Planned Parenthood Ass'n v. Department of Human Resources of Oregon*, 63 Ore. App. 41, 663 P.2d 1247, 1257-61 (Or. App. 1983), aff'd on other grounds, 297 Ore. 562, 687 P.2d 785 (Or. 1984); see also *Committee to Defend Reprod. Rights v. Myers*, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (Cal. 1981). [**14]

n18 See, e.g., *New Mexico Right to Choose/NARAL v. Johnson*, 1999 NMSC 5, 975 P.2d 841, 850-57, 126 N.M. 788 (N.M. 1998); *Doe v. Maher*, 515 A.2d at 159-62.

n19 See, e.g., *Moe v. Secretary of Admin. & Fin.*, 382 Mass. 629, 417 N.E.2d 387, 398-99 (Mass. 1981); *Doe v. Maher*, 515 A.2d at 146-57.

n20 See, e.g., *Women of Minnesota v. Gomez*, 542 N.W.2d 17, 26-32 (Minn. 1995); *Women's Health Ctr. of W. Va., Inc. v. Panepinto*, 191 W. Va. 436, 446 S.E.2d 658, 664-66 (W. Va. 1993).

n21 *Panepinto*, 446 S.E.2d at 667; see also *Myers*, 625 P.2d at 781 (addressing the narrow question "whether the state, having enacted a general program to provide medical services to the poor, may selectively withhold such benefits from otherwise qualified persons because such persons seek to exercise their constitutional right of procreative choice in a manner which the state does not favor and does not wish to support" and holding that it may not); *Gomez*, 542 N.W.2d at 28 (defining the "relevant inquiry" as "whether, having elected to participate in a medical assistance program, the state may selectively exclude from such benefits otherwise eligible persons solely because they make constitutionally protected health care decisions with which the state disagrees," and concluding that the state may not); *Byrne*, 450 A.2d at 937 ("We hold that the State may not jeopardize the health and privacy of poor women by excluding medically necessary abortions from a system providing all other medically necessary care for the indigent."); *Johnson*, 975 P.2d at 856 ("Courts very rarely require the government to fund its citizens' exercise of their constitutional rights. . . . But that is not to say that when the Department elects to provide medically necessary services to indigent persons, it can do so in a way that discriminates against some recipients on account of their gender."). [**15]

n22 *Moe*, 417 N.E.2d at 401 (quoting *Maher v. Roe*, 432 U.S. 464, 469-70, 53 L. Ed. 2d 484, 97 S. Ct. 2376 (1977)).

n23 *Id.*

Alaska's constitutional equal protection clause mandates "equal treatment of those similarly situated;" n24 it protects Alaskans' right to non-discriminatory treatment more robustly than does the federal equal protection clause. n25 In analyzing a challenged law under Alaska's equal protection provision, we first determine what level of scrutiny to apply, using Alaska's "sliding scale" standard. n26 The "weight [that] should be afforded the constitutional interest impaired by the challenged enactment" is "the most important variable in fixing the appropriate level of review." n27

Second, we examine the State's interests served by the challenged regulation. n28 If the burden placed on constitutional rights by the regulation is minimal, then the State need only show that its objectives were legitimate for the regulation to survive an equal protection challenge. n29 But if "the objective [**16] degree to which the challenged legislation tends to deter [exercise of constitutional rights]" n30 is significant, the regulation cannot survive constitutional challenge unless it serves a compelling state interest. n31 Finally, if the State shows that its interests justify burdening the rights of citizens, for the regulation to survive constitutional challenge the State must demonstrate that the means it has chosen to advance those goals are well-fitted to the ends, and that its goals could not be accomplished by less restrictive means. n32

n24 *Alaska Pacific Assurance Co. v. Brown*, 687 P.2d 264, 271 (Alaska 1984).

n25 See *State v. Anthony*, 810 P.2d 155, 157 (Alaska 1991).

n26 See *Matanuska-Susitna Borough Sch. Dist. v. State*, 931 P.2d 391, 396 (Alaska 1997).

n27 *Id.* (quoting *Alaska Pacific Assurance Co.*, 687 P.2d at 269).

n28 See *id.*; *State v. Ostrosky*, 667 P.2d 1184, 1192 (Alaska 1983).

n29 See *id.*

n30 *Alaska Pacific Assurance Co.*, 687 P.2d at 271. [**17]

n31 See *Matanuska-Susitna Borough Sch. Dist.*, 931 P.2d at 396 (quoting *Alaska Pacific Assurance Co.*, 687 P.2d at 269-70).

n32 See 931 P.2d at 396-97.

The regulation at issue in this case affects the exercise of a constitutional right, the right to reproductive freedom. n33 Therefore, the regulation is subject to the most searching judicial scrutiny, often called "strict scrutiny." n34 We have explained in the past that such scrutiny is appropriate where a challenged enactment affects "fundamental rights," including "the exercise of intimate personal choices." n35 This court has specified that the right to reproductive freedom "may be legally constrained only when the constraints are justified by a compelling state interest, and no less restrictive means could advance that interest." n36

n33 See *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice*, 948 P.2d 963, 968-69 (Alaska 1997).

n34 See *State v. Ostrosky*, 667 P.2d 1184, 1192 (Alaska 1983). [**18]

n35 *Id.*

n36 *Valley Hosp.*, 948 P.2d at 969.

Judicial scrutiny of state action is equally strict where the government, by selectively denying a benefit to those who exercise a constitutional right, effectively deters the exercise of that right. In *Alaska Pacific Assurance Co. v. Brown*, we held the State to a "very high" burden to justify a statute that reduced workers' compensation benefits paid to workers who exercised their constitutional right to leave the state. n37 We concluded that the challenged regulation did not meet this high standard and thus violated equal protection. n38 Like the regulation at issue today, [**910] the challenged statute in *Alaska Pacific Assurance Co.* did not forbid individual exercise of constitutional rights; rather, it limited the government benefits distributed to the class of individuals who exercised that right. n39 As we explained in that case, we look to the real-world effects of government action to determine the appropriate level of equal protection

scrutiny: "The suspicion with which this court will [**19] view infringements upon [constitutional rights] depends upon . . . the objective degree to which the challenged legislation tends to deter [the exercise of those rights]." n40

n37 687 P.2d at 273-74.

n38 See *id.* We have since applied more relaxed scrutiny where "the infringement on [the] right to travel is relatively small and would not be likely to deter a person from traveling." *Church v. State, Dep't of Revenue*, 973 P.2d 1125, 1131 (Alaska 1999). In this case the likelihood of deterring exercise of the right is very high: The State's own statistics and the findings of the superior court indicate that, under the challenged regulation, some women "will have no choice but to go forward with the pregnancy." We therefore follow *Alaska Pacific Assurance Co.* in applying strict scrutiny.

n39 See 687 P.2d at 266-67.

n40 *Id.* at 271.

We reached a similar conclusion in *Alaska Gay Coalition v. Sullivan*, [**20] holding that the Municipality of Anchorage could not constitutionally withhold a public benefit based on a potential recipient's beliefs and public expression. n41 The municipality had undertaken to publish a guidebook to public and private organizations in Anchorage, but excluded the Alaska Gay Coalition from the book. n42 We held that this exclusion violated the Coalition's constitutional rights to equal protection under the law. n43 We explained:

n41 578 P.2d 951, 960 (Alaska 1978).

n42 *Id.*

n43 *Id.*

When the Municipality decided to publish a limited informational guide to public and private local resources, it did not thereby assume the obligation of providing space to every possible group. . . . Had the Municipality deleted groups at random or used criteria not related to the nature of the particular organizations, constitutional violations may not have resulted. In deleting the Alaska Gay Coalition . . . however, appellees denied that group [**21] access to a public forum based solely on the nature of its beliefs. In so doing, they violated appellant's constitutional rights to . . . equal protection under the law.[n44]

n44 *Id.*

Similarly, in the instant case, the State's obligations do not depend on whether the State has undertaken to provide limitless health care services to all poor Alaskans. Rather, DHSS is constitutionally bound to apply neutral criteria in allocating health care benefits, even if considerations of expense, medical feasibility, or the necessity of particular services otherwise limit the health care it provides to poor Alaskans.

The State argues in this case that it does not provide all necessary medical care to indigent Alaskans. For support, it cites 7 AAC 43.385, a regulation that excludes from Medicaid coverage such services as medically unnecessary inpatient treatment, n45 beautifying cosmetic surgery, n46 and transplants of organs other than kidney, cornea, skin, and bone marrow. n47 This [**22] regulation has not been challenged, and the issue has not been thoroughly briefed by the parties, but the restrictions appear to relate to medical necessity, cost, and feasibility -- all politically neutral criteria. Such spending limits are irrelevant to the constitutional issue raised by the State's denial of coverage for medically necessary abortions. As the United States Supreme Court noted in *Shapiro v. Thompson*:

We recognize that the State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens.[n48]

n45 7 AAC 43.385(2), (6), (9), (11) & (12).

n46 7 AAC 43.385(4).

n47 7 AAC 43.385(17).

n48 394 U.S. 618, 633, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969).

[**23]

Like Alaska Pacific Assurance Co., Alaska Gay Coalition establishes that under Alaska's equal protection provision the government [*911] may not allocate state benefits so as to deter citizens' exercise of constitutional rights.

In this case, it is undisputed that 7 AAC 43.140 deters women from obtaining abortions. The State itself stated that eliminating public assistance for medically necessary abortions would cause about thirty-five percent of women who would otherwise have obtained abortions to instead carry their pregnancies to term, despite the associated threat to their health. Under Alaska Pacific Assurance Co., such a restriction warrants the highest degree of judicial scrutiny.

In the seminal Shapiro v. Thompson decision, the United States Supreme Court also strictly scrutinized -- and ultimately held unconstitutional -- state programs that denied benefits to citizens based on their exercise of constitutional rights. n49 Shapiro invalidated state laws that denied welfare benefits to persons who had moved into the jurisdiction within the past year. n50 The Court found that "the prohibition of benefits . . . creates a classification which constitutes [**24] an invidious discrimination denying [new residents] equal protection of the laws." n51 The Court held that states could not constitutionally tailor their benefits programs to deter immigration from other states: "If a law has no other purpose . . . than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional." n52

n49 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), partly rev'd on other grounds, *Edelman v. Jordan*, 415 U.S. 651, 670-71, 39 L. Ed. 2d 662, 94 S. Ct. 1347 (1974).

n50 See 394 U.S. at 621.

n51 *Id.* at 627.

n52 *Id.* at 631 (internal quotations omitted) (alteration in original) (quoting *United States v. Jackson*, 390 U.S. 570, 581, 20 L. Ed. 2d 138, 88 S. Ct. 1209 (1968)). This precedent was not discussed in the U.S. Supreme Court's later decision, in *Harris v. McRae*, that the Hyde Amendment was permissible under the federal constitution. 448 U.S. 297, 100 S. Ct. 2671, 65 L. Ed. 2d 784 (1980). But in *Valley Hospital*, we explained that Alaska's broader constitutional protection at times mandates parting ways with federal precedent. See 948 P.2d at 969. In that case, we rejected the plurality opinion of *Planned Parenthood v. Casey*, 505 U.S. 833, 877-78, 120 L. Ed. 2d 674, 112 S. Ct. 2791 (1992), in order to declare that a woman's right to an abortion is fundamental. See *Valley Hosp.*, 948 P.2d at 969. We now join the majority of state courts in concluding that the federal Supreme Court's decision in *McRae* provides inadequate protection under our state constitution.

[**25]

Although Shapiro and Alaska Pacific Assurance Co. applied strict scrutiny to reject restrictions like the one at issue in this case, 7 AAC 43.140 would fail equal protection analysis under any standard. Under the regulation, the State grants needed health care to some Medicaid-eligible Alaskans, but denies it to others, based on criteria entirely

unrelated to the Medicaid program's purpose of granting uniform and high quality medical care to all needy persons of this state. n53 Thus, even if 7 AAC 43.140 did not affect constitutional privacy rights and we applied our most deferential standard of review, the regulation still could not withstand equal protection challenge. Under Alaska's rational basis standard, n54 differential treatment of similarly situated people is permissible only if the distinction between the persons "rests upon some ground of difference having a fair and substantial relation to the object of the legislation." n55 DHSS provides necessary medical care to all Medicaid-eligible Alaskans except women who medically require abortions. This differential treatment lacks a fair and substantial relation to the object of the Medicaid program, [**26] and therefore violates equal protection. n56

n53 In the "Purpose" section of the Medicaid statute, the legislature "declares as a matter of public concern that the needy persons of this state receive uniform and high quality medical care, regardless of race, age, national origin, or economic standing." AS 47.07.010.

n54 See *Sonneman v. Knight*, 790 P.2d 702, 705 (Alaska 1990) (using term "rational basis" to describe lowest standard of review under Alaska's sliding scale).

n55 *Isakson v. Rickey*, 550 P.2d 359, 362 (Alaska 1976) (quoting *State v. Wylie*, 516 P.2d 142, 145 (Alaska 1973)). *Isakson* establishes that Alaska's rational basis review is more rigorous than that of the United States Supreme Court. *Id.*

n56 We note that the United States Supreme Court reached the opposite conclusion regarding the analogous federal regulation in *Harris v. McRae*, 448 U.S. 297, 65 L. Ed. 2d 784, 100 S. Ct. 2671 (1980). However, as noted above, federal rational basis review is a less rigorous standard than Alaska's rational basis review. See *Isakson*, 550 P.2d at 362. We have explained that Alaska's broader constitutional protection at times mandates parting ways with federal precedent. See *Valley Hospital*, 948 P.2d at 969. The United States Supreme Court in *Harris v. McRae* did not consider the discriminatory allocation of government benefits cases, *Shapiro v. Thompson*, 394 U.S. 618, 22 L. Ed. 2d 600, 89 S. Ct. 1322 (1969) and *United States Department of Agriculture v. Moreno*, 413 U.S. 528, 37 L. Ed. 2d 782, 93 S. Ct. 2821 (1973), discussed in this opinion.

[**27]

[*912] The United States Supreme Court reached a similar conclusion in *Shapiro*: although the Court invalidated states' differential treatment of similarly situated welfare recipients under strict scrutiny, it also noted that the differentiation would be deemed "irrational and unconstitutional" even under federal rational basis review. n57 In *United States Department of Agriculture v. Moreno*, the United States Supreme Court invalidated a similar restriction under rational basis scrutiny alone. n58 The Court found no rational basis for a statute denying food stamps to unrelated persons who shared a household; it therefore concluded that the statute violated equal protection. n59

n57 *Shapiro*, 394 U.S. at 638.

n58 413 U.S. at 538.

n59 See *id.* The Court noted legislative history indicating congressional intent to exclude "so[-]called 'hippies' and 'hippie communes'" from the food stamp program. *Id.* at 534. But it concluded:

The challenged classification clearly cannot be sustained by reference to this congressional purpose. For if the constitutional conception of "equal protection of the laws" means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate government

interest. As a result, [a] purpose to discriminate against hippies cannot, in and of itself and without reference to [some independent] considerations in the public interest, justify the [challenged] amendment.

Id. at 534-35 (internal quotations omitted, third alteration added).

[**28]

Lower court decisions have applied this principle to states' allocation of health care benefits, and concluded that "classification [among recipients] must be based upon some difference between the classes which is pertinent to the purpose for which the legislation is designed." n60 A California court found that the state violated equal protection by paying for attendant services by spouses of elderly and blind aid recipients, but denying payment for the same services by the spouses of otherwise disabled aid recipients. n61 And New York's highest court held that equal protection was violated by a statute that "effectively provided . . . that the aged, disabled, and blind are entitled to less public assistance than other needy persons." n62

n60 *Vincent v. State*, 22 Cal. App. 3d 566, 572, 99 Cal. Rptr. 410 (Cal. App. 1971).

n61 See *id.*

n62 *Lee v. Smith*, 43 N.Y.2d 453, 373 N.E.2d 247, 248, 402 N.Y.S.2d 351 (N.Y. 1977); see also *White v. Beal*, 555 F.2d 1146, 1149-50 (3d Cir. 1977) (finding equal protection issue sufficient to support jurisdiction, but not deciding on equal protection grounds, where remedial eye-care was available only if a person's visual impairment resulted from eye disease or pathology); *County of Orange v. Ivansco*, 67 Cal. App. 4th 328, 337-38 (Cal. App. 1998) (finding equal protection violation where parents supporting noncustodial children received different benefits depending on the children's eligibility for AFDC); but see *Moreno v. Draper*, 70 Cal. App. 4th 886, 888-89 (Cal. App. 1999) (analyzing same regulation as in County of Orange and finding no equal protection violation).

[**29]

DHSS's differential treatment of Medicaid-eligible Alaskans violates equal protection under rational basis review as surely as it does under strict scrutiny. Under any standard of review, "the State may not jeopardize the health and privacy of poor women by excluding medically necessary abortions from a system providing all other medically necessary care for the indigent." n63

n63 *Right to Choose v. Byrne*, 91 N.J. 287, 450 A.2d 925, 937 (N.J. 1982).

Because 7 AAC 43.140 infringes on a constitutionally protected interest, the State bears a high burden to justify the regulation. n64 Unless the State asserts a compelling state interest, the statute will necessarily fail constitutional scrutiny. n65 The State has failed to demonstrate such an interest in this case. It primarily defends 7 AAC 43.140 on [*913] the grounds that "medical and public welfare interests . . . are served by the legislature's decision to fund childbirth." But the regulation does not relate to funding for [*30] childbirth, and the State's decision to fund prenatal care and other pregnancy-related services has not been challenged. Indeed, a woman who carries her pregnancy to term and a woman who terminates her pregnancy exercise the same fundamental right to reproductive choice. Alaska's equal protection clause does not permit governmental discrimination against either woman; both must be granted access to state health care under the same terms as any similarly situated person. The State's undisputed interest in providing health care to women who carry pregnancies to term has no effect on the State's interest in providing medical care to Medicaid-eligible women who, for health reasons, require abortions.

n64 See *Matanuska-Susitna Borough School Dist.*, 931 P.2d 391, 396-97 (Alaska 1997) (outlining State's burden for justifying regulations); *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice*, 948 P.2d 963, 971 (Alaska 1997) ("Since the right is fundamental, it cannot be interfered with unless the interference is justified by a compelling state interest.").

n65 See *Matanuska-Susitna Borough Sch. Dist.*, 931 P.2d at 396-97.

[**31]

The State also asserts an interest in minimizing health risks to mother and child, and submits that these interests are often closely aligned. But those interests are not aligned in precisely the situation contemplated by 7 AAC 43.140's Medicaid exclusion: when pregnancy threatens a woman's health. Under the U.S. Supreme Court's analysis in *Roe v. Wade*, the State's interest in the life and health of the mother is paramount at every stage of pregnancy. n66 And in Alaska, "the scope of the fundamental right to an abortion . . . is similar to that expressed in *Roe v. Wade*." n67 Thus, although the State has a legitimate interest in protecting a fetus, at no point does that interest outweigh the State's interest in the life and health of the pregnant woman. n68

n66 410 U.S. 113, 163-64, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973).

n67 *Valley Hospital*, 943 P.2d at 969.

n68 Accord *Byrne*, 450 A.2d at 935 (holding, based on *Roe*, that "at no point in pregnancy may [the state's interest in protection of potential life] outweigh the superior interest in the life and health of the mother").

[**32]

Because the State has not asserted an interest sufficiently compelling to justify denying medically necessary care to women who need abortions, we need not consider the means-ends fit of the challenged regulation. We conclude that 7 AAC 43.140 violates equal protection under the Alaska Constitution.

B. The Separation of Powers Doctrine Cannot Shield Unconstitutional Legislation.

The State argues that by holding the Medicaid program to constitutional standards, the superior court effected an appropriation of funds in violation of the separation of powers between branches of government. We disagree. Under Alaska's constitutional structure of government, "the judicial branch . . . has the constitutionally mandated duty to ensure compliance with the provisions of the Alaska Constitution, including compliance by the legislature." n69 The superior court had not only the power but the duty to strike the challenged restriction and any underlying legislation if it found them to violate constitutional rights; the same duty mandates our decision today.

n69 *Maione v. Meekins*, 650 P.2d 351, 356 (Alaska 1982); see also *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.").

[**33]

The separation of powers doctrine and its complementary doctrine of checks and balances are implicit in the Alaska Constitution. n70 In light of the separation [**914] of powers doctrine, we have declined to intervene in political questions, which are uniquely within the province of the legislature. n71 But under the same doctrine, we "cannot defer to the legislature when infringement of a constitutional right results from legislative action"; legislative intent is not paramount when that intent conflicts with the constitution. n72 And the mere fact that the legislature's appropriations power underlies Medicaid funding cannot insulate the program from constitutional review. As the California Supreme Court observed in rejecting nearly identical restrictions on abortion funding, the State's claim would remove all constitutional restraints from legislative exercise of the spending power:

n70 See *State v. Dupere*, 709 P.2d 493, 496 (Alaska 1985), modified, 721 P.2d 638 (Alaska 1986) ("The separation of powers doctrine must be considered along with the complementary doctrine of checks and balances."); *Alaska State-Operated Sch. Sys. v. Mueller*, 536 P.2d 99, 103 (Alaska 1976); *Public Defender Agency v. Superior Court*, 534 P.2d 947, 950 (Alaska 1975).

The United States Supreme Court recently discussed the division of powers within the federal system of government. See *United States v. Morrison*, 529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658 (2000). It reiterated the duty of courts to limit acts of legislation when those acts conflict with rights guaranteed by the Constitution, explaining that the framers of the Constitution divided power among the three branches of government so that the Constitution's provisions would not be defined solely by the political branches nor the scope of legislative power limited only by public opinion and the legislature's self-restraint. It is thus a permanent and indispensable feature of our constitutional system that the . . . judiciary is supreme in the exposition of the law of the Constitution.

120 S. Ct. at 1753 n.7 (internal quotations and citations omitted). [**34]

n71 See *Aboud v. League of Women Voters*, 743 P.2d 333, 338 (Alaska 1987); *Malone*, 650 P.2d at 356-57.

n72 *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice*, 948 P.2d 963, 972 (Alaska 1997).

There is no greater power than the power of the purse. If the government can use it to nullify constitutional rights, by conditioning benefits only upon the sacrifice of such rights, the Bill of Rights could eventually become a yellowing scrap of paper.[n73]

n73 *Committee to Defend Reprod. Rights v. Myers*, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (Cal. 1981).

Legislative exercise of the appropriations power has not in the past, and may not now, bar courts from upholding citizens' constitutional rights. Indeed, constitutional legal rulings commonly affect state programs and funding. Many of the most heralded constitutional decisions [**35] of the past century have, as a practical matter, effectively required state expenditures. In *Green v. County School Board*, the United States Supreme Court ordered effective desegregation of public schools; n74 in *Gideon v. Wainwright*, it required funding of counsel for indigent criminal defendants; n75 and in *Shapiro v. Thompson*, it required states to give newcomers to the jurisdiction equal welfare benefits. n76 In each of these cases, a judicial decision upholding constitutional rights required state expenditures to support those rights. As appellee doctors and Planned Parenthood point out, the funding implications and separation of powers issue in this case would be identical if the State relied on other suspect criteria, such as race, to deny Medicaid benefits. Following the State's argument, the exclusion of one ethnic group -- or inclusion only of other specified groups -- within legislative Medicaid appropriations would be immunized from constitutional review, merely because the legislature had exercised its spending power. We emphatically reject such a claim. Like the Supreme Court decisions listed above, today's holding is squarely within the [**36] authority of the court, not in spite of, but because of, the judiciary's role within our divided system of government.

n74 391 U.S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968).

n75 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963).

n76 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), partly rev'd on other grounds, *Edelman v. Jordan*, 415 U.S. 651, 670-71, 39 L. Ed. 2d 662, 94 S. Ct. 1347 (1974).

Our conclusion that the separation of powers doctrine supports today's decision is firmly supported by twenty-one other courts that have considered a state's exclusion of medically necessary abortions from state-funded health care programs. n77 The State has not identified a single state or federal case holding that the separation of powers precludes a court from ordering the state to provide equal funding for women whose health is endangered by pregnancy. n78 Courts that have explicitly consider the separation of powers challenges to holdings like the one we reach today have dismissed the challenges in no uncertain [**37] terms. The Massachusetts Supreme Judicial Court, for example, wrote:

n77 See supra note 2.

n78 A single justice in a concurring opinion stated that the judiciary may not, under the equal protection clause of Michigan's constitution, require legislative funding for medically necessary abortion. *Doe v. Department of Soc. Servs.*, 439 Mich. 650, 487 N.W.2d 166, 182-83 (Mich. 1992) (Levin, J., concurring). To our knowledge, his is the sole dissenting voice on this issue.

We have never embraced the proposition that merely because a legislative action involves an exercise of the appropriations power, it is on that account immunized against judicial review. [We reject] the [*915] argument that either the doctrine of separation of powers or the political question doctrine requires that result. Without in any way attempting to invade the rightful province of the Legislature to conduct its own business, we have a duty, certainly since *Marbury v. Madison*, to adjudicate a claim that a [**38] law and the actions undertaken pursuant to that law conflict with the requirements of the Constitution. "This," in the words of Mr. Chief Justice Marshall, "is of the very essence of judicial duty." [n79]

n79 *Moe v. Secretary of Admin. & Fin.*, 382 Mass. 629, 417 N.E.2d 387, 395 (Mass. 1981) (internal citations omitted); see also *Committee to Defend Reprod. Rights v. Cory*, 132 Cal. App. 3d 852, 183 Cal. Rptr. 475, 478 (Cal. App. 1982) ("When there is an unconstitutional restriction in an existing appropriation, it offends no constitutional principle to direct that the disputed payments be made from funds already appropriated for the same general purpose."); *Clinic for Women, Inc. v. Humphreys*, No. 49D12-9908-MI-1137, Slip Op. at 12 (Ind. Super., Oct. 18, 2000) ("If the challenged enactments violate the state Constitution, the Court can grant relief even if doing so means that state funds will be spent in a manner not explicitly approved by the Legislature. The Court has the power to shape appropriate remedies and the Legislature has a duty to appropriate funds to meet its constitutional obligations."); *Low-Income Women v. Bost.*, 38 S.W.3d 689, 702 (Tex. App. 2000) ("The relief sought by Low-Income Women -- funding medically necessary abortions -- cannot be characterized as a new appropriation. They do not ask for a new appropriation of funds to the Medical Assistance Program. Rather, they seek declaratory and injunctive relief against unconstitutional restrictions placed on the use of funds already appropriated pursuant to a pre-existing law authorizing funds to be used for health care under the program.").

[**39]

We agree with this articulation of the court's fundamental powers and duties.

A federal case, *State of Georgia v. Heckler*, also directly supports our conclusion. n80 In that case, the state of Georgia sought reimbursement from the federal Department of Health and Human Services (HHS) for money spent by the state to fund medically necessary abortions. Although the Court of Appeals for the Eleventh Circuit ultimately denied Georgia's claim, it emphatically rejected HHS's argument that because Congress had not appropriated money for medically necessary abortions, a district court could not compel HHS to pay the claims. n81 As the Eleventh Circuit court noted, the statute could preclude payment only if an interpreting court so determined. n82 "There is no doubt," the Heckler court concluded, "that if this Court decided that these payments were legally required, HHS would be authorized to make them." n83

n80 768 F.2d 1293 (11th Cir. 1985).

n81 See *id.* at 1295-96.

n82 See *id.* at 1296. [**40]

n83 *Id.*

We agree with the Eleventh Circuit: It is legally indisputable that a trial court order requiring state compliance with constitutional standards does not violate the separation of powers doctrine.

V. CONCLUSION

The manner in which the State allocates public benefits is subject to constitutional limitation under Alaska's equal protection provision. The State, having undertaken to provide health care for poor Alaskans, must adhere to neutral criteria in distributing that care. It may not deny medically necessary services to eligible individuals based on criteria unrelated to the purposes of the public health care program. Moreover, the DHSS regulation in this case discriminatorily burdens the exercise of a constitutional right. Because we conclude that denial of Medicaid assistance to poor women who medically require abortions violates equal protection, we **AFFIRM** the decision of the superior court.

Steve Andison

9346 Parkview Court, Juneau, AK. 99801
907-790-2111 Business Phone/Fax
907-790-4467 Residence
aredandi@ak.net

Judiciary Standing Committee
House Bill 96

April 11, 2005

Madam Chair, representatives of the standing committee I appreciate your allowing me to speak from the practical view of a constituent regarding House Bill 96. I am Steve Andison and have lived in Alaska for more than 30 years. I do not use marijuana and had almost lost touch with its potency and prevalence until my wife needed relief from her Multiple Sclerosis. We had tried every medication, including Marinol. Her pain was chronic and a method for relief had eluded her doctors and me. I encourage this committee to ask me questions that are not "soft-balled".

Since I am not an "expert" on marijuana, I cannot speak authoritatively about the biochemical interactions of this exogenic substance at the molecular level. That specificity is best provided by experts like whose knowledge, studies and baseline data I greatly appreciate. Now I better understand the progression of cannabis horticulture, and the almost geometrically increasing levels of THC per gram of product that is present on the streets today. I am very scientific in my approach to using chemicals in natural, concentrated, or synthesized forms. Knowledge is simply truth and wise people incorporate it into their thinking. I have not used marijuana for nearly thirty years. I do, however, purchase it for medicinal use by my wife.

I found the discussion of this issue very interesting last Friday even though some underlying agenda's and biases were evident. I was greatly encouraged to hear that some open minded scientists are simply documenting knowledge to explore and document both the potential usefulness of this powerful plant and possible risks as well. Marijuana and its components will be studied for many years; but how do we control its use until all of the facts are in? Indeed, pharmacological history indicates that people tend to weigh potential risks versus potential benefits both by personal experience as well as scientific data. The data regarding cannabis is far from comprehensive or conclusive and thus far has not persuaded me that it is either addictive or harmful to the average periodic user. It is not universally addictive, but I understand that it is to some. Because a statistically insignificant number of people become addicted does not negate its potential benefits or appropriate use.

I would like to address 5 basic issues with you this afternoon: 1) The likelihood that HB 96 will have the opposite effect that its sponsors and advocates intend, and would be impossible to enforce. 2) The availability of marijuana to children and inexperienced young people. 3) Effects of marijuana in rural areas. 4) Legal use of Medicinal Marijuana is a sham in Alaska. 5) What we, the public, expect of our legislative bodies.

1) This attempt at marijuana prohibition would likely backfire on its proponents. Some younger people will be afraid to purchase marijuana, bolder ones will step up to the plate to help distribute and will want a cut to support their own recreational use. Higher risks in handling illegal volume will develop new methodologies and the extra risks and costs will be incorporated into higher prices. Higher prices will encourage competition to provide the "best bang for the buck" (more potent marijuana). To gain greater market share dealers will have to prove that you get more "high" for your money buying from them, because the same high will be achieved with half the quantity of product. You will encourage "new and improved" super-pot, and you will stimulate the marijuana economy.

This bill is aimed at arresting growers and distributors of the cash crop to reduce if not eliminate its availability. We don't have enough investigators, our judiciary caseload is already overburdened, and the monetary burden of imprisoning many additional non-violent newly created criminals will be born by the general citizenry while there will be no discernable improvement in the situation. It will require more troops than have been estimated, and will be much more lengthy and expensive than we are initially led to believe.

2) Regarding the availability of marijuana to children and inexperienced young people; I understand and appreciate the problem and concern. The problem, however, cannot be legislated away. Many young people experiment with alcohol. They go through a learning curve in doing so. Unfortunately many terminal cases of alcohol poisoning will occur every year. We don't make it illegal to have alcohol in the home, but there is enough legal alcohol to cause lethal ingestion by youth in millions of homes with children. Everclear mixed with punch will go down smoothly without the bight of alcohol. Junior high school and even college aged students die from this harmless thrill seeking. The answer is education. And yes, experienced pot users take "test-tokes" fifteen or twenty minutes apart to see how potent the new source of marijuana is and are fully aware of delayed effects. Young people can overdose on anything mind-altering while enjoying the euphoria of the moment if they are not educated about delayed and undesirable effects.

We want freedom and privacy in our homes; but even that sacrosanct right is not without limits. While Michael Jackson may be able to serve wine-coolers to under aged youth in his home, we know that we cannot. The law should come down hard on anyone who provides or allows open access to alcohol, marijuana, guns, and prescription drugs to children and under aged adults in their homes or elsewhere.

3) The effects of marijuana in rural communities are of great concern to me. I have lived in rural communities where the rate of alcoholism, suicide, and drug abuse was well above the urban rate in Alaska, and far above the national average. I think that we all want to do what we can to ease the situations for our rural citizenry and cultures; but here again it would be a noble but empty gesture if we try to legislate away those problems. While it would be a very handy item to target and demonize, those of us who have been there know that these problems are caused by boredom, hopelessness, unachievable expectations and poor self esteem issues. A negative outlook on the present and future combined with greater expectations than can be delivered has a greater correlation to drug and alcohol abuse than does the availability of marijuana.

It is very difficult to stimulate and diversify sustainable rural economies. It is much easier to pick marijuana and alcohol as causal agents rather than recognizing and attempting to address the real issues. This law would change nothing in our villages. Believe me, when other escape mechanisms and altered states are unavailable through marijuana, I have seen sniffing of many kinds of solvents, glues, cleaning agents and other easily obtained chemicals in the absence of more conventional and expensive forms. If young people are bored and hopeless, they will seek out a chemical escape regardless of unknown dangers and possibly suffer permanent and severe damage.

4) Legal use of Medicinal Marijuana is a sham in Alaska. Please, correct me if I am wrong or am missing something. I've heard it said that this bill would not affect the medicinal use of marijuana and in no way affects the rights and confidentiality between doctors and patients. How many doctors are encouraged to explore the medicinal use of marijuana? If I found a doctor, would he not be irresponsible if he wrote a prescription for an unknown percentage of active ingredients from an unknown source? The fact is that marijuana is so demonized and so few doctors are familiar with its benefits that they would not risk their professional reputation by writing such a prescription. The pharmaceutical manufacturers send their representatives out to push their patented drugs, but doctors are not taught much about herbal medicine, dietary affects on disease, about beneficial use of marijuana.

If I could find a doctor who was confident about writing a prescription, where would I take the prescription to be filled?

You may tell me that you support my wife's right to have a small amount of marijuana for medicinal use; but then government and law enforcement add fine-print caveats. You can buy the marijuana as long as you have a prescription and purchase from a certified medicinal grower (the existence of which is virtually nill). You can buy it, but all sources are illegal to purchase from. You can possess it, but you can't find a legal source to purchase it from. If your retailer grows or possess enough cannabis that it is commercially viable, they are illegal drug dealers.

IF my wife gets a prescription, there is no quality control and I am buying unknown quality and concentrations of her medicine. If someone possesses a permit for growing medicinal marijuana, they are not allowed to reach scales of economy that warrant the manufacturing of the product. As Alaska has set up this situation, it is virtually impossible to find a prescribing doctor or legitimate and dependable source of this drug. If I care about my wife, I must still buy her medicine off the street.

You can't legitimize the use of a drug without also legitimizing a source for it. If you legitimize a source, government should inspect and have licensing requirements. In addition, you must allow the growers and retailers an adequate volume of production and sales to justify their time and effort.

5) What we, the public, expect of our legislative bodies.

I admire those who step up and offer their skills as public servants. I know that the legislature is trying to read the scientific data and public opinion at the same time. I also know that many of you just want to get it right. If you do, if you are not trying to just to read the political wind, some things will become simpler. One size shoe will not fill all. One overall broad sweeping law will not be fair to everyone. What do we, the public, want? We basically want freedom, privacy, safety, and fairness. If you view the marijuana initiatives in this light many things become simpler.

We do not want ANYONE driving on the road under the influence of ANYTHING. If it impairs your judgment, motor skills, or reaction time you do not belong behind the wheel. We think this is a good blanket rule; alcohol, antidepressants, sedatives, cough syrup, antihistamines, or pot; WE DON'T CARE! Under the influence is under the influence; period.

We don't want to support crack, cocaine, heroin or other addictive substances that are destructive; especially if they are popular with our youth who are long on thrill seeking and short on judgment of consequences and mortality.

We will not tolerate adults distributing any substances that may be dangerous to our children or underage adults. Adults may have rights to privacy in their homes, but not if it involves our children. Adults that are able to competently make their own choices may drink alcohol, may take legally prescribed drugs, and may smoke pot or cigarettes. But we will not tolerate distribution to our children in the homes of adults on the streets, or from a point of sale.

In my personal opinion there is a great deal of difference between legalizing marijuana and regulating it. Putting our heads in the sand and ignoring uncontrolled growth, use, and increasing potency would be irresponsible; especially when it relates to our young people, their learning abilities, and their safety. Outlawing cannabis by prohibition (whether by straight-up legislation, or back door squeezing out the supply) is not yet warranted by science or by scare tactics. Read the labels of most any prescribed drug, magnify insignificant statistics, and you can scare anyone out of using most any medication.

April 11, 2005

We need government to vertically integrate the legal and controlled use of marijuana from the licensed growing source, to the licensed wholesaler, to the licensed distributor. Regulate the age of legal use or possession, determine appropriate or inappropriate use in public. By regulation, require testing for safe and consistent percentage of THC for prescription titration rates of standardized product. Then go after the outlaws and black market dealers that deal death in any form for a dollar. Protect us, but respect us and our freedom. Punish those that cross reasonable lines set by enforceable laws, while preserving our rights, freedom, and privacy. At all times, share education, new science, and adjust statutes according to the preponderance of evidence that has a high level of statistical confidence regarding our risks.

Sincerely,



Steve Anderson

HB 96, NO! SB 74, NO!
REGULATE CANNABIS AND SPREAD THE WEALTH, YES!

My name is Aaron Mattley, I'm a registered voter and I've smoked marijuana for the past 8 years. During this time I have excelled in many aspects of life including: division two varsity cross country and varsity soccer, I'm not saying that it is a performance enhancer, but it is simply managed in ones life according to their goals. My fastest time in cross country was 5 miles in 28 min and 30 seconds. I've climbed 14,000 foot peaks, I'm a former president of a college music organization who was featured at a formal University President's dinner. I have a design patent in process, I'm a woodcrafter, outdoorsman, I have released 3 music cds, I assisted in the releasing of a full featured film, I have a steady lady friend of two years who does not smoke pot, I have my Bachelors degree in professional accounting and I currently work for the State of Alaska as a Junior Auditor in Legislative Audit, but for the record I have made arrangements not to be at work this morning so that I may testify representing myself, it is costing me money to be here right now, and I think democracy is weakened when people have to decide between participating in a democratic process or paying rent and putting food on the table. I am here on my own time and am fortunate that I can make that sacrifice. My expertise credentials that allow me to speak on HB 96 and SB 74 root from my direct involvement with the cannabis culture in the lower 48 and the great AK, a culture of millions of people that have been demonized by government propaganda that seeks cultural domestication and drug war profiteering.

I am all for regulation of marijuana in order to keep children under the age of 18 from using it and adults under 21 from using it. Lets regulate it!

However, I am strongly opposed to HB 96 and SB 74. These bills are not about keeping marijuana away from children or increasing the wellness of society, they only create disharmony and are part an on going effort to oppress a natural resource that undermines Big Money and special interests(i.e fossil fuels, timber, petrochemicals/nylon, and oil based plastics, pesticide consumption by GE food companies with 10,000 seed patents). There is more money being made in pretending that you're stopping marijuana use than there is selling it. Quick example: Myself and two friends were fined \$3,500 for a \$35 bag of weed. Plus there are privatized prisons knocking on Alaska's door for that per prisoner revenue amount, while Alaska SB 56 gives judges the ability to increase felony sentencing i.e non-violent marijuana activists. There is more money being made in pretending that you're stopping it than there is selling it. SHAME ON THE POLITICAL FUEL OF THESE BILLS.

All the information and research needed to support the legalization of marijuana has already been presented countless times before despite independent-unmarginalized marijuana research being barred from Universities as the Federal government produces propaganda from "White House Experts" or "contracted" research studies from universities, when in court this marijuana legalization information and research places the burden of proof on the proponents of these desecrated bills. The facts stand why marijuana should be legalized lets start out with some Patriotic facts:

"Benjamin Franklin started one of America's first paper mills with cannabis. This allowed America to have a free colonial press without having to beg or justify paper and books from England."

"Make the most of hemp seed, sow it everywhere." George Washington

"Any prohibition is a strike against liberty." Abraham Lincoln

(Refer to "Whale Song" Article stating uses of hemp given in verbal testimony):

1. Textiles and Fabrics- The word "canvas" is the Dutch pronunciation (twice removed, from French and Latin) of the Greek word "Kannabis."
2. Fiber & Pulp Paper
3. Rope, Twine, and Cordage
4. Art Canvas
5. Paints and Varnishes
6. Biomass Energy
7. Medicine
8. Lighting Oil
9. Food Oils and Protein
10. Building Materials and Housing
11. Smcking, Leisure & Creativity
12. Economic Stability, Profit & Free Trade

When debating a bill that stated it would be a criminal offense for a government official to act in their government position/capacity and line their pockets with more than \$5,000 dollars. Juneau Republican Legislative representative Bruce Weyhrauch stated "why \$5,000, why not \$4,000" then he voted to no on the bill, keeping the option to line his pockets with money as a government official acting in government capacity, legislative profiteering. So with marijuana, why 4 oz of marijuana = felony? Legislative profiteering!

The challenge to the world and this legislature is this: Try to prove the facts wrong:

"If all fossil fuels and their derivatives, as well as the deforestation of trees for paper and agriculture, are banned from use in order to save the planet and reverse the greenhouse effect:
Then there is only one known renewable natural resource able to provide the overall majority of our paper, textiles and food, meet all the world's transportation, home and industrial energy needs, reduce pollution, rebuild the soil and clean the atmosphere-all at the same time-or old stand by that did it all before: Cannabis Hemp ...Marijuana!"

HOW DANGEROUS IS MARIJUANA...IN COMPARISON TO OTHER SUBSTANCES?

NUMBER OF AMERICAN DEATHS PER YEAR that result directly or primarily from the following selected causes nation wide, according to World Almanacs, Life Insurance Actuarial (death) Rates, and the last 20 years of U.S. Surgeon Generals' reports. (Figures are for 1988 from the federal governments Bureau of Mortality Statistics and the National Institute on Drug Abuse, et al.-the last complete year at eh time of this writing.)

TOBACCO = 340,000 TO 425,000 DEATHS!

ALCOHOL(Not including 50% of all highway deaths and 65% of all murders) = 150,000+ DEATHS!

ASPRIN(Including deliberate overdose) = 180 to 1,000+ DEATHS!

CAFFEINE(From stress, ulcers and triggering irregular heartbeats, etc.) =
1,000 TO 10,000 DEATHS!

'LEGAL' DRUG OVER DOSE (Deliberate or accidental) from legal, prescribed
or patent medicines and or mixing with alcohol-e.g., Valium/alcohol =
14,000 to 27,000 DEATHS!

ILLICIT DRUG OVERDOSE (Deliberate or accidental) from all illegal drugs =
3,800 to 5,200 DEATHS!

THEOPHYLLINE (Pharmaceutical drug legally prescribed for asthma) = 50 DEATHS!
Theophylline is also responsible for 6,500 Emergency Room admits and
1,000 cases of permanent brain damage per year.


MARIJUANA = 0 DEATHS!

Reference(Where further extended references are noted):

"The Emperor Wears No Clothes"
-Jack Herer

Politics, from pg. 4

That "growth," in light of our red-ink economy, is about as shallow as the almost heretical attacks on John Kerry's Vietnam War heroism by members of the draft-evading experts in the entire Bush Administration. Whereas Kerry fought for his nation in medaled honor, even reenlisting knowing full well in his heart this was an unjust war yet one in which American men and women were being killed—killed by actual enemy fire and not by military mishaps or friendly fire which is happening all too often in Iraq. This didn't stop the "Republican attack dogs" who were shameless enough to publish the prevarication Kerry had acted insubordinate in Vietnam. The Iraq mistake, tax cuts for the wealthy railroaded through Congress, a ballooning debt for our children on top of a "February surprise" for Social Security benefactors (as the ranking house Democrat Nancy Pelosi forewarned last month), lying to voters for private gain and public-purse giveaways like the "taking of our (im)permanent fund and the Halliburton-Bechtel mismanagement charade, are all in store with another term for G.W.

Let's show both these supercilious administrations we can't be so easily duped by the Bush-oholic—Murkowski oilism scam next month. Vote for the real heroes. Vote a straight "Democrat ticket." 

Marijuana plant's historical roots reach far

By Thane Kelly

WHALESONG REPORTER

With the upcoming November elections, it is wise to explore the larger context of ballot initiative two from a historical and utilitarian perspective. There are many moral arguments for and against cannabis, as well as human rights issues around prohibition in general. However, there is not much focus on the utility of Cannabis Sativa, and the extent to which it was once used on a worldwide scale.

The best reference book available is Jack Herer's book, *The Emperor Wears No Clothes*, which is often referred to as the cannabis bible due to its wealth of historical information, all completely documented and referenced. Herer writes, "All of my information about CANNABIS/HEMP/MARIJUANA has been taken from Federal and State Department of Agriculture reports, articles from Popular Mechanics, Popular Science, Pulp & Paper Magazine, Scientific American, entries from encyclopedias and pharmacopoeias, and studies from all over the world during the last 200 years. This is all public information".

A few interesting points:


- Cannabis used to make over 25,000 products before it was outlawed in 1937.
- 125 years ago, 70 to 90 percent of all rope, twine, cordage, ship sails, canvas, fiber, cloth, etc., was made out of hemp fiber. In 1937, it was replaced by DuPont's newly discovered petrochemical fiber, known as nylon.
- Cannabis was the number one annually renewable natural resource for 80 percent of all paper, fiber, textiles and fuel, from 6,000 years ago until about 125 years ago.
- Cannabis was used for 5 to 50 percent of the food, light,

land and soil reclamation, and even 20 percent or more of all medicine.

- Prior to the 1800s, hempseed oil was the number one source for lighting oil throughout the world.
- Until 1937-38, even paints and varnishes were 80 percent hempseed oil.
- Hempseed oil is non-toxic and has been used to make high-grade diesel fuel, oil, aircraft and precision oil.
- The pulp from hemp is the most efficient sustainable source of plant pulp for biomass fuel to make charcoal, gas, methanol, gasoline and electricity in a natural way.
- Nutritionally, hempseed is the most perfectly balanced and highest source of omega-3 and omega-6 fatty acids.
- Cannabis can be cultivated anywhere in the world, and is the healthiest plant for the soil, due to its root system, which penetrates up to six feet deep, aerating the soil and leaving a large amount of organic matter to recycle nutrients back into the land.

As it fertilizes the soil, it also increases soil stability. In fact, cannabis was used for land reclamation until 1915.

- Cannabis cloth is 4 times softer than cotton, 4 times warmer, 4 times more water absorbent, has 3 times the strength, is much more durable, and flame retardant.
- Fifty percent of all pesticides are used on cotton, yet cotton uses only 1 percent of the farmland in the U.S. Cannabis requires no pesticides or herbicides for cultivation.
- There have been 13 million arrests for Cannabis within the last 30 years in the United States.

For more facts and references, visit: <http://www.jackherer.com/> 

Police should leave pot users alone

Letter to the editor

Marijuana relieves many of my multiple sclerosis symptoms. What we do in our own homes is our own business. MS gives me enough challenges as it is.

If Gov. Frank Murkowski wants to amend the constitution, he shouldn't try to do it behind our backs.

Supporters of Senate Bill 74 and House Bill 96 argue that marijuana is more potent now than it used to be; therefore, it's more dangerous. First, they offered no legitimate proof for this. Second, potent marijuana doesn't equal dangerous marijuana. If anything, people who use more potent marijuana need to use less of it. This means they ingest less smoke, tar, and other irritants.





Under the new laws, possession of four ounces of marijuana would become a class C felony - the same punishment faced by a father who commits incest or indulges in child pornography.

The Alaska Public Defender Agency says that half of the 500 marijuana-related misdemeanors they handle a year would be felonies under the new law. These new laws will fill Alaska prisons with hundreds of nonviolent offenders.

I want my police getting violent criminals off the street, not chasing marijuana users.

Nancy Andison

Juneau

-  [Print this](#)
-  [E-mail this](#)
-  [Discuss this](#)
-  [Send Editor Comment](#)



[Click here to return to the original story](#)

Cultural myopia

Letter to the editor

In considering whether or not to criminalize cannabis and get some patently outrageous "findings" about cannabis on the record, please think deeply about this question: How can a substance capable of killing its users in one sitting be legal and ubiquitous, while another substance with no known lethal dose is illegal and its users persecuted and prosecuted?

Alcohol, especially in its super-potent distilled form, is a lethal drug. If anyone doubts this fact, simply Google "alcohol poisoning deaths." The attentive searcher will find many people, especially college age young people, die each year as a direct result of alcohol consumption. Yet, no one is demanding the killer drug alcohol be criminalized. Can you imagine the hue and cry if even one young person died as the direct result of cannabis consumption? How do you explain this stupefying double standard? Cultural myopia? Perhaps quid pro quo between the alcohol industry (and other legal drug pushers) and elected representatives? Does any elected public official accept money from the alcohol, tobacco or pharmaceutical industries? We need full disclosure, please.

For anyone knowledgeable about cannabis, its prohibition is the most bogus scam to be foisted on the U.S. citizenry by its elected representatives during the past century. To illustrate the absurdity of allowing alcohol to be legal and widely available while criminalizing a relatively benign plant, I pose this challenge to Messrs. Guaneli, Murkowski, Bobo, and all elected state representatives of Alaska: Let us meet at a public place of your choosing. Let this meeting be televised. I will consume a "bong hit" of the most potent unadulterated organic sinsemilla cannabis available every three minutes. You will consume a shot (one fluid ounce) of the distilled alcohol of your choice (minimum 90 proof) every three minutes. We will continue in this way for six hours. I think this televised experiment will clarify the discussion of the relative dangers of cannabis and alcohol once and for all.

John Colman-Pinning

Waldport, Ore.

Click here to return to story:

http://juneauempire.com/stories/041105/let_20050411018.shtml

\$19.95

HEMP

& THE MARIJUANA CONSPIRACY:

UPDATED & EXPANDED!
1993/94 EDITION • 9TH PRINTING
More Documentation Than Ever!
Including the Schlichten / Scripps Letters &
the American and German "Hemp for Victory"



THE EMPEROR WEARS NO CLOTHES

*The Authoritative Historical Record
of the Cannabis Plant, Marijuana Prohibition, &
How Hemp Can Still Save the World.*

By
**Jack
Herer**

Editors: Chris Conrad, Lynn & Judy Osburn, Ellen Komp

A BRIEF SUMMARY OF THE USES OF HEMP

OUR CHALLENGE TO THE WORLD: TRY TO PROVE US WRONG

If all fossil fuels and their derivatives, as well as the deforestation of trees for paper and agriculture, are banned from use in order to save the planet and reverse the greenhouse effect:

Then there is only one known renewable natural resource able to provide the overall majority of our paper, textiles and food, meet all the world's transportation, home and industrial energy needs, reduce pollution, rebuild the soil and clean the atmosphere—all at the same time—our old stand-by that did it all before: Cannabis Hemp ... Marijuana!

1. SHIPS AND SAILORS

Ninety percent* of all ships' sails (since before the Phoenicians, from at least the Fifth Century B.C. until long after the invention and commercialization of steam ships [mid- to late-19th century]) were made from hemp. (See picture.)

* The other 10% were usually flax or minor fibers like ramie, sisal, jute, abaca.

(Abel, Ernest, *Marijuana: The First 12,000 Years*, Plenum Press, 1980; Herodotus, *Histories*, 5th century B.C.; Frazier, Jack, *The Marijuana Farmers*, 1972; U.S. Agricultural Index, 1916-1982; USDA film, *Hemp for Victory*, 1942.)

The word "canvas" is the Dutch pronunciation (twice removed, from French and Latin) of the Greek word "Kannabis."*

* Kannabis—of the (Hellenized) Mediterranean Basin Greek language, derived from the Persian and earlier Northern Semitics (Quanuba, Kanabosm, Cana?, Kanah?) which scholars have now traced back to the new-found dawn of the 6,000-year-old, Indo-Semitic-European language family base of the Sumerians and Accadians. The early Sumerian/Babylonian word K(a)N(a)B(a), or Q(a)N(a)B(a) is one of man's longest surviving root words. (KN means cane and B means two--two reeds or two sexes.)

In addition to the canvas sails, virtually all of the rigging, anchor ropes, cargo nets, fishermen's nets, flags, shrouds, and oakum (the main sealant for ships against salt water for use between loose or green beams) were made from the stalk of the marijuana plant until this century.

Even the sailors' clothing, right down to the stitching in the seamen's rope-soled and (sometimes) "canvas" shoes were crafted from cannabis.*

* An average cargo, clipper, whale, or naval ship of the line, in the 16th, 17th, 18th, or 19th centuries carried 50 to 100 tons of cannabis

hemp rigging, not to mention the sails, nets, etc., and needed it all replaced every year or two, due to salt rot. (Ask the U.S. Naval Academy, or see the construction of the USS Constitution, a.k.a. "Old Ironsides," Boston Harbor.)

(Abel, Ernest, *Marijuana, The First 12,000 Years*, Plenum Press, 1980; Ency. Britannica; Magoun, Alexander, *The Frigate Constitution*, 1928; USDA film *Hemp for Victory*, 1942.)

Additionally, the ships' charts, maps, logs, and Bibles were made from paper containing hemp fiber from the time of Columbus (15th century) until the early 1900s in the Western European/American World, and by the Chinese from the first century A.D. on. Hemp paper lasted 50 to 100 times longer than most preparations of papyrus, and was a hundred times easier and cheaper to make.

Nor was hemp use restricted to the briny ~~ss~~ deep.

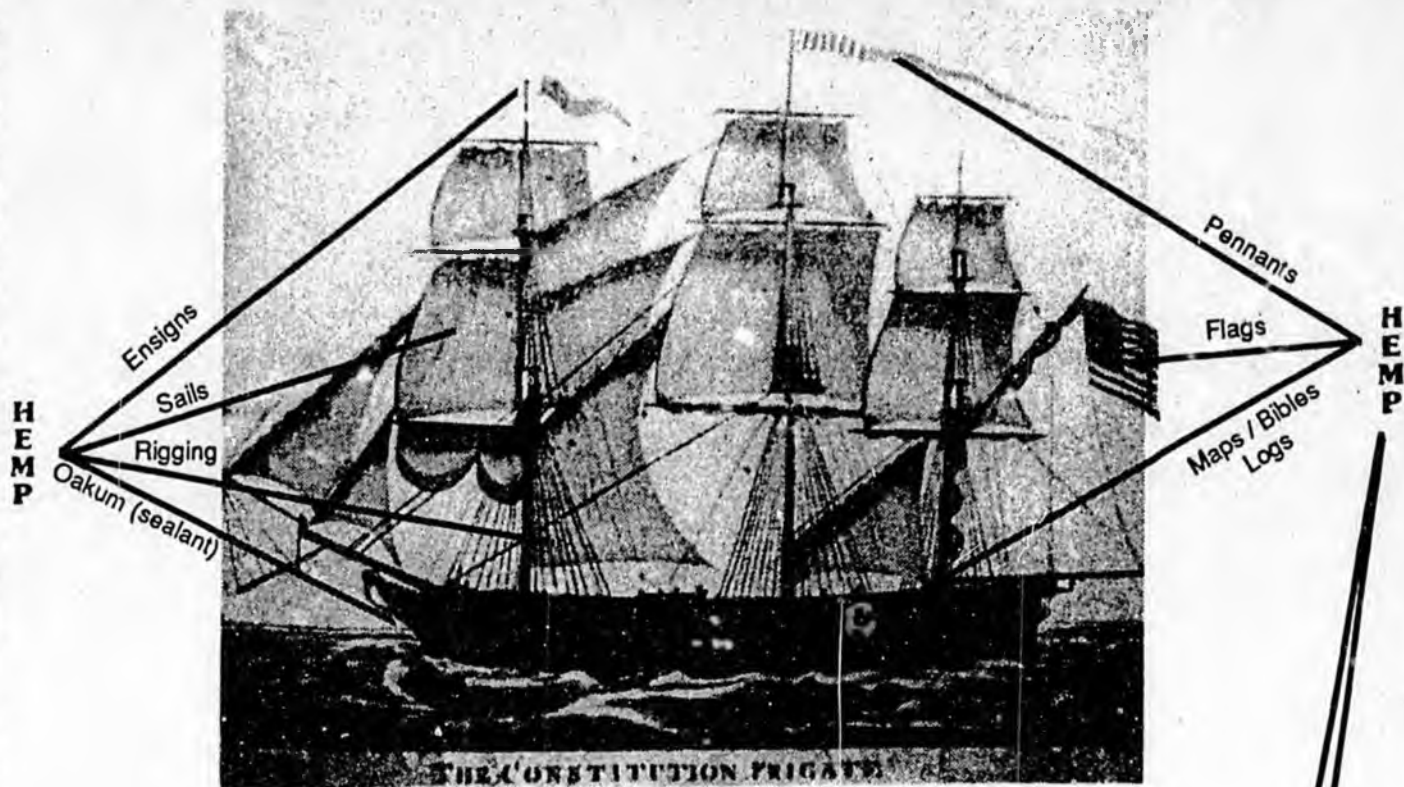
2. TEXTILES AND FABRICS

Eighty percent of all mankind's textiles and fabrics for clothes, tents, linens,* rugs, drapes, quilts, bed sheets, towels, diapers, etc., including our flag, "Old Glory," were made principally from cannabis fibers until the 1820s in America and until the 20th century in most of the rest of the world.

For hundreds, if not thousands of years (until the 1830s) Ireland made the finest linens and Italy made the world's finest cloth for clothing with hemp.

* The 1893, 1910 Encyclopaedia Britannicas indicate—and in 1938, *Popular Mechanics* estimated—that at least half of all the material that has been called linen was not made from flax, but from cannabis. Herodotus (c. 450 B.C.) describes the hempen garments made by the Thracians as equal to linen in fineness and that "none but a very experienced person could tell whether they were of hemp or flax."

THERE WERE AT LEAST 60 TONS OF HEMP ON THE U.S.S. CONSTITUTION ALONE.



(A.K.A. "Old Ironside")

Partial list of rigging (rope) required for the 1927 restoration of the U.S.S. Constitution and other Historic Ships", by F. Alexander Magoun, S.B., S.M. The Southworth Press ©1928 by The Marine Research Society, Boston, Massachusetts Pgs 96 and 97

Each mast (fore, mizen, main, etc.) required lifts, braces, reefs, jiggers, tackles, etc. The Constitution carried well over four miles of hemp rope.

Standing Rigging, Hard Laid Hemp

Item	Circumference
Mainstay	12 inches
Forestay	12 "
Pendants	9 1/4 "
Fore and main shrouds	9 1/4 "
Mizen shrouds	7 "
Topmast backstays	9 "
Topmast stays	8 "
Topgallant backstays	5 "
Topgallant stays	4 "
Royal stays	2 1/4 "

Running Rigging, Soft Laid Hemp

Item	Circumference	Gross Length
Truss tackles	2 1/4 inches	260 Feet
Jeer fall	4 1/4 "	350 "
Pendant tackles	3 1/4 "	1200 "
Lifts	3 1/4 "	470 "
Braces	4 "	608 "
Tacks	4 "	400 "
Sheets	4 1/4 "	400 "
Clew garnets	3 "	400 "
Main Bowline	3 1/4 "	120 "
Reef tackles	3 1/4 "	350 "
Buntlines	2 1/4 "	530 "
Leechlines	2 1/4 "	432 "
Clew jiggers	2 "	520 "
Top burlins	3 "	1060 "
Topsail tye halliards	3 1/4 "	1440 "
Topsail lifts	4 1/4 "	360 "
Topsail braces	3 1/4 "	600 "
Best power anchor cable	22 1/4 "	720 "
Messenger	14 "	600 "
Gun breeching (each)	7 "	24 "
Out-haul tackles (each)	2 1/4 "	60 "

Clothes / Uniforms



Papers

CONTINENTAL SOLDIER

The fact that hemp is softer than cotton, warmer than cotton, more water absorbent than cotton, has three times the tensile strength of cotton and is many times more durable than cotton was well known to our forebearers.

Homespun cloth was almost always spun from the family hemp patch into the early 1900s.

In fact, when the patriotic, real life, 1776 mothers of our present day blue-blood "Daughters of the American Revolution" (the D.A.R. of Boston and New England) organized "spinning bees" to clothe Washington's soldiers, the majority of the thread was spun from hemp fibers. Were it not for the historically forgotten (or censored) and currently disparaged marijuana plant, the Continental Army would have frozen to death at Valley Forge, Pennsylvania.

The common use of hemp in the economy of the early republic was important enough to occupy the time and thoughts of our first U.S. Treasury Secretary Alexander Hamilton, who wrote in a Treasury notice from the 1790s, "Flax and Hemp: Manufacturers of these articles have so much affinity to each other, and they are so often blended, that they may with advantage be considered in conjunction. Sailcloth should have 10% duty."

(Herndon, G.M., *Hemp in Colonial Virginia*, 1963; D.A.R. histories; Able, E, *Marijuana, the First 12,000 Years*; also see the 1985 film *Revolution* with Al Pacino.)

The covered wagons went west (to Kentucky, Indiana, Illinois, Oregon, and California*) covered with sturdy hemp canvas tarpaulins,² while ships sailed around the "Horn" to San Francisco on hemp sails and ropes.

* The original, heavy-duty, famous Levi pants were made for the California '49ers out of hempen sailcloth and rivets. This way the pockets wouldn't rip when filled with gold panned from the sediment.³

Homespun cloth was almost always spun from the "family" hemp patch until after the Civil War, and into the early 1900s, by Americans and people all over the world.*

* In the 1930s, Congress was told by the Federal Bureau of Narcotics that many Polish-Americans still grew pot in their backyards to make their winter "long johns" and work clothes, and greeted the agents with shotguns for stealing their next year's clothes.

The age and density of the hemp patch influences fiber quality. If a farmer wanted soft linen-quality

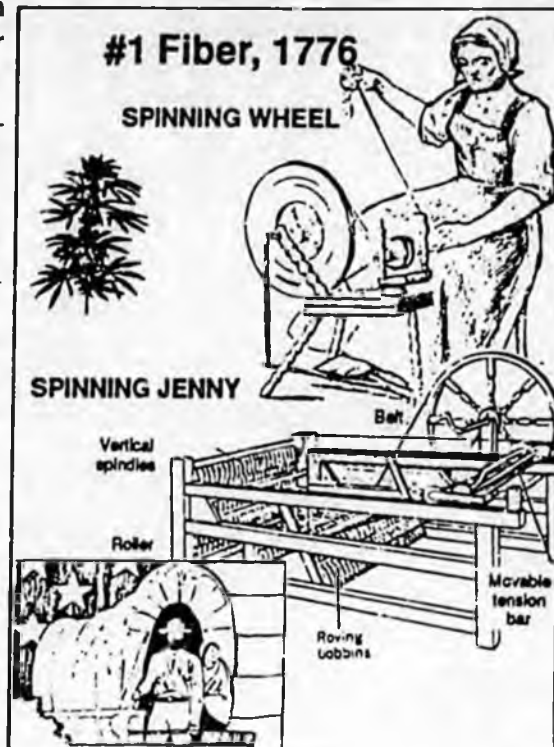
fibers he would plant his cannabis close together.

As a rule of thumb, if you plant for medical or recreational use, you plant one seed per five square yards. When planted for seed: four to five feet apart.

(Univ. of KY Ag. Ext. leaflet, March 1943.)

Two hundred seeds to the square yard are planted for rough cordage or coarse cloth. Finest linen or lace is grown up to 900 plants to the square yard and harvested between 80 to 100 days.

(Farm Crop Reports, USDA international abstracts. CIBA Review 1961-62 Luigi Castellini, Milan Italy.)



Were it not for the marijuana plant, the Continental Army would have frozen to death at Valley Forge.

By the late 1820s, the new American hand cotton gins (invented by Eli Whitney in 1793) were largely replaced by European-made "industrial" looms and cotton gins ("gin" is just short for engine), because of Europe's primary equipment-machinery-technology (tool and die making) lead over America.

For the first time, light cotton clothing could be produced at less cost than hand retting (rotting) and hand separating hemp fibers to be handspun on spinning wheels and jennys.⁴

However, because of its strength, softness, warmth and long-lasting qualities, hemp continued to be the second most used natural fiber* until the 1930s.

* In case you're wondering, there is no THC or "high" in hemp fiber. That's right, you can't smoke your shirt! In fact, attempting to smoke hemp fabric—or any fabric, for that matter—could be fatal!

After the 1937 Marijuana Tax law, new DuPont "plastic fibers" under license of 1936 German I.G. Farben Corporation patents (with patent surrenders as part of Germany's reparation payments to America from World War I) replaced natural hempen fibers. (Some 30% of Hitler's I.G. Corps, e.g., Farben, were owned and financed by America's DuPont.) Dupont also introduced Nylon (invented in 1935) to the market when they patented it in 1938.

(Colby, Jerry, *DuPont Dynasties*, Lyle Stewart, 1984.)

Finally, it must be noted that approximately 50% of all chemicals used in American agriculture today are used in cotton growing. Hemp needs no chemicals and has few weed or insect enemies—except for the U.S. government and the DEA.

3. FIBER & PULP PAPER

From 75-90% of all paper in the world was made with cannabis hemp fiber until 1883: books, Bibles, maps, paper money, stocks and bonds, newspapers, etc., including the Gutenberg Bible (15th century); Pantagrue and the Herb Pantagrue, Rabelais (16th century); King James Bible (17th century); Thomas Paine's pamphlets, "The Rights of Man," "Common Sense," "The Age of Reason" (18th century); the works of Fitz Hugh Ludlow, Mark Twain, Victor Hugo, Alexander Dumas, Lewis Carroll's "Alice in Wonderland" (19th century); and just about everything else was printed on hemp paper.

The first draft of the Declaration of Independence (June 28, 1776) was written on Dutch [hemp] paper, as was the second draft completed on July 2, 1776. This was the document actually agreed to on that day and announced and released on July 4, 1776. ...On July 19, 1776, Congress ordered the Declaration be copied and engrossed on parchment (a prepared animal skin) and this was the document actually signed by the delegates on August 2, 1776.

What we (the colonial Americans) and the rest of the world used to make all our paper from was the discarded sails and ropes sold by ship owners as scrap for recycling into paper.

The rest of our paper came from our worn-out clothes, sheets, diapers, curtains and rags* sold to scrap dealers made primarily from hemp and sometimes flax.

* Hence the term "rag paper."

Rag paper, containing hemp fiber, is the highest quality and longest lasting paper ever made. It can be torn when wet but returns to its full strength when dry. Rag paper is stable for centuries, barring extreme conditions. It will almost never wear out.

Our ancestors were too thrifty to just throw anything away, so, until the 1880s, any remaining scraps and clothes were mixed together and recycled into paper. Many U.S. government papers were written, by law, on hempen "rag paper" until the 1920s.⁶

It is generally believed by scholars that the early Chinese knowledge, or art, of hemp paper making (First Century A.D.—800 years before Islam discovered how, and 1,200 to 1,400 years before Europe) was one of the two chief reasons that Oriental knowledge and science were vastly superior to that of the West for 1,400 years. Thus, the art of long-lasting hemp papermaking allowed the Orientals' accumulated knowledge to be passed on, built upon, investi-

gated, refined, challenged and changed, for generation after generation (in other words, cumulative and comprehensive scholarship).

Hemp paper lasted 50 to 100 times longer than most preparations of papyrus, and was a hundred times easier and cheaper to make.

The other reason that Oriental knowledge and science sustained superiority to that of the West for 1,400 years was that the Roman Catholic Church forbade reading and writing for 95% of Europe's people; in addition, they burned, hunted down, or prohibited all foreign or domestic books—including their own Bible!—for over 1,200 years under the penalty and often-used punishment of death. Hence, many historians term this period "The Dark Ages." (476 A.D.—1000 AD, or even until the Renaissance). (See chapter 10 on Sociology.)

4. ROPE, TWINE, AND CORDAGE

Virtually every city and town (from time out of mind) in the world had an industry making hemp rope.⁶ Russia, however, was the world's largest producer and best-quality manufacturer, supplying 80% of the Western world's hemp from 1740 until 1940.

Thomas Paine outlined four essential natural resources for the the new nation in *Common Sense* (1776): "cordage, iron, timber and tar."

Chief among these was hemp for cordage. He wrote, "Hemp flourishes even to rankness, we do not want for cordage." Then he went on to list the other essentials necessary for war with the British navy: cannons, gunpowder, etc.

From 70-90% of all rope, twine, and cordage was made from hemp until 1937. It was then replaced mostly by petrochemical fibers (owned principally by DuPont under license from Germany's I.G. Corporation patents) and by Manila (Abaca) Hemp, with steel cables often intertwined for strength—brought in from our "new" far-Western Pacific Philippines possession, seized from Spain as reparations for the Spanish American War in 1898.



5. ART CANVAS

"Hemp is the perfect archival medium."⁷

The paintings of Rembrandt, Van Gogh, Gainsborough, etc., were primarily painted on hemp canvas, as were practically all canvas paintings.

A strong, lustrous fiber, hemp withstands heat, mildew, insects and is not damaged by light. Oil paintings on hemp canvas have stayed in fine condition for centuries.

6. PAINTS AND VARNISHES

For thousands of years, virtually all good paints and varnishes were made with hemp seed oil and/or linseed oil.

For instance, in 1935 alone, 116 million pounds (58,000 tons*) of hemp seed were used in America just for paint and varnish. The hemp drying oil business went principally to DuPont petro-chemicals.*

*National Institute of Oilseed Products congressional testimony against the 1937 Marijuana Transfer Tax Law. * As a comparison, consider that the U.S. Drug Enforcement Agency (DEA), along with all America's state and local police agencies, claim to have seized for all of 1988, 651.5 tons of American-grown marijuana—seed, plant, root, dirt clump and all.

Congress and the Treasury Department were assured through secret testimony given by DuPont in 1935-37 directly to Herman Oliphant, Chief Counsel for the Treasury Dept., that hemp seed oil could be replaced with synthetic petro-chemical oils made principally by DuPont.

Oliphant was solely responsible for drafting the Marijuana Tax Act that was submitted to Congress.* (See complete story in chapter 4, "The Last Days of Legal Cannabis.")

(National Narcotics Intelligence Consumers' Committee, NNICC Report, 1988 DEA office release, El Paso, TX, April, 1989.)

7. LIGHTING OIL

Until about 1800, hemp seed oil was the most consumed lighting oil in America and the world. From then until the 1870s, it was the second most consumed lighting oil, exceeded only by whale oil.

Hemp seed oil lit the lamps of the legendary Aladdin, Abraham the prophet and in real life, Abraham Lincoln. It was the brightest lamp oil.

Hemp seed oil for lamps was replaced by petroleum kerosene, etc., after the 1859 Pennsylvania oil discovery and "Rockefeller's" 1870-on national petroleum stewardship. (See chapter 9 on "Economics.")

In fact, the celebrated botanist Luther Burbank stated, "The seed of [cannabis] is prized in other countries for its oil, and its neglect here illustrates the same wasteful use of our agricultural resources."

(Burbank, Luther, *How Plants Are Trained To Work For Man, Useful Plants*, P. F. Collier & Son Co., NY, Vol. 6, pg. 48.)

8. BIOMASS ENERGY

In the early 1900s, Henry Ford and other futuristic organic, engineering geniuses, (as their intellectual scientific heirs still do today) recognized an important

point—that up to 90% of all fossil fuel used in the world today (coal, oil, natural gas, etc.— should long ago have been replaced with biomass such as: corn stalks, cannabis, waste paper and the like.

Biomass can be converted to methane, methanol or gasoline at a fraction of the current cost of oil, coal, or nuclear energy—especially when environmental costs are factored in—and its mandated use would end acid rain, end sulfur-based smog and reverse the green house effect on our planet—right now!*

* Government and oil and coal companies, etc., will insist that burning biomass fuel is no better than using up our fossil fuel reserves, as far as pollution goes; but this is patently untrue.

Why? Because, unlike fossil fuel, biomass comes from living (not extinct) plants that continue to remove carbon dioxide pollution from our atmosphere as they grow, through photosynthesis. Furthermore, biomass fuels do not contain sulfur.

This can be accomplished if hemp is grown for biomass and then converted through pyrolysis (charcoalizing) or biochemical

composting into fuels to replace fossil fuel energy products.*

* Remarkably, when considered on a planet-wide, climate-wide, soil-wide basis, cannabis is at least four and could be many more times

WHEN HEMP SAVED GEORGE BUSH'S LIFE

One more example of the importance of hemp: Five years after cannabis hemp was outlawed in 1937, it was promptly re-introduced for the World War II effort in 1942.

So, when the young pilot George Bush bailed out of his burning airplane after a battle over the Pacific, little did he know:

- Parts of his aircraft engine were lubricated with cannabis hemp seed oil;
- 100% of his life-saving parachute webbing was made from U.S. grown cannabis hemp;
- Virtually all the rigging and ropes of the ship that pulled him in were made of cannabis hemp;
- The firehoses on the ship (as were those in the schools he had attended) were woven from cannabis hemp; and,
- Finally, as young George Bush stood safely on the deck, his shoes' durable stitching was of cannabis hemp, as it is in all good leather and military shoes to this day.

Yet Bush has spent a good deal of his career eradicating the cannabis plant and enforcing laws to make certain that no one will learn this information—possibly including himself....

(USDA film, *Hemp for Victory*, 1942; U. of KY Agricultural Ext. Service Leaflet 25, March, 1943; Galbraith, Gatewood, *Kentucky Marijuana Feasibility Study*, 1977.)

richer in sustainable, renewable biomass/cellulose potential than its nearest rivals on the planet—cornstalks, sugarcane, kenaf, trees, etc. (Solar Gas, 1980; Omni, 1983; Cornell University; Science Digest, 1983; etc.). Also see chapter 9 on Economics.

One product of pyrolysis, methanol, is today used by most race cars and was used by American farmers and auto drivers routinely with petroleum/methanol options starting in the 1920s, through the 1930s, and even into the mid-1940s to run tens of thousands of auto, farm and military vehicles until the end of World War II.

Methanol can even be converted to a high-octane lead-free gasoline using a catalytic process developed by Georgia Tech University in conjunction with Mobil Oil Corporation.

9. MEDICINE

From 1842 and through the 1890s, extremely strong marijuana (then known as cannabis extractums) and hashish extracts, tinctures and elixirs were routinely the second and third most-used medicines in America for humans (from birth, through childhood, to old age) and in veterinary medicine until the 1920s and longer. (See chapter 6 on "Medicine," and chapter 13 on the "19th Century.")

As stated earlier, for at least 3,000 years, prior to 1842, widely varying marijuana extracts (buds, leaves, roots, etc.) were the most commonly used real medicines in the world for the majority of mankind's illnesses.

However, in Western Europe, the Roman Catholic Church forbade use of cannabis or any medical treatment, except for alcohol or blood letting, for 1200-plus years. (See chapter 10 on "Sociology.")

The U.S. Pharmacopoeia indicated cannabis should be used for treating such ailments as: fatigue, fits of coughing, rheumatism, asthma, delirium tremens, migraine headaches and the cramps and depressions associated with menstruation. (Professor William EmBoden, Professor of Narcotic Botany, California State University, Northridge.)

Queen Victoria used cannabis resins for her menstrual cramps and PMS, and her reign (1837-1901) paralleled the enormous growth of the use of Indian cannabis medicine in the English-speaking world.

In this century, cannabis research has demonstrated therapeutic value—and complete safety—in the

treatment of many health problems including asthma, glaucoma, nausea, tumors, epilepsy, infection, stress, migraines, anorexia, depression, rheumatism, arthritis and possibly herpes. (See chapter 7, "Therapeutic Uses of Cannabis.")

10. FOOD OILS AND PROTEIN

Hemp seed was regularly used in porridge, soups, and gruels by virtually all the people of the world up until this century. Monks were required to eat hemp seed dishes three times a day, to weave their clothes of it and to print their Bibles on paper made with its fiber.

(See Rubin, Dr. Vera, "Research Institute for the Study Of Man," Eastern Orthodox Church; Cohen & Stillman, *Therapeutic Potential of Marijuana*, Plenum Press, 1976; Abel, Ernest, *Marijuana, The First 12,000 Years*, Plenum Press, NY, 1980; Encyclopaedia Britannica.)

Hemp seed can be pressed for its highly nutritious vegetable oil, which contains the highest amount of essential fatty acids in the plant kingdom. These *essential* oils are responsible for our immune responses and clear the arteries of cholesterol and plaque.

The byproduct of pressing the oil from the seed is the highest quality protein seed cake. It can be sprouted (malted) or ground and baked into cakes, breads and casseroles. Marijuana *seed* protein is one of mankind's finest, most complete and available-to-the-body vegetable proteins. Hemp seed is the most complete single food source for human nutrition. (See discussion of edistins and essential fatty acids, Chapter 8.)

Hemp seed was—until the 1937 prohibition law—the world's number-one bird seed, for both wild and domestic birds. It was their favorite* of any seed food on the planet; four million pounds of hemp seed for song-birds were sold at retail in the U.S. in 1937. Birds will pick hemp seeds out and eat them first from a pile of mixed seed. Birds in the wild live longer and breed more with hemp seed in their diet, using the oil for their feathers and their overall health. (More in chapter 8, "Hemp as a Basic World Food.")

* Congressional testimony, 1937: "Song birds won't sing without it," the bird food companies told Congress. Result: sterilized cannabis seeds continue to be imported into the U.S. from Italy, China and other countries.

The hemp seed produces no observable high for humans or birds. Only the most minute traces of THC are in the seed.

(Frazier, Jack, *The Marijuana Farmers*, Solar Age Press, New Orleans, LA, 1972)

CANNABIS, U. S. P. (American Cannabis):
Fluid Extract No. 598.. (Alcohol 80%).. 5.00



11. BUILDING MATERIALS AND HOUSING

Because one acre of hemp produces as much cellulose fiber pulp as 4.1 acres of trees,* hemp is the perfect material to replace trees for pressed board, particle board and for concrete construction molds.

* Dewey & Merrill, *Bulletin #404*, U.S. Dept. of Ag., 1916.

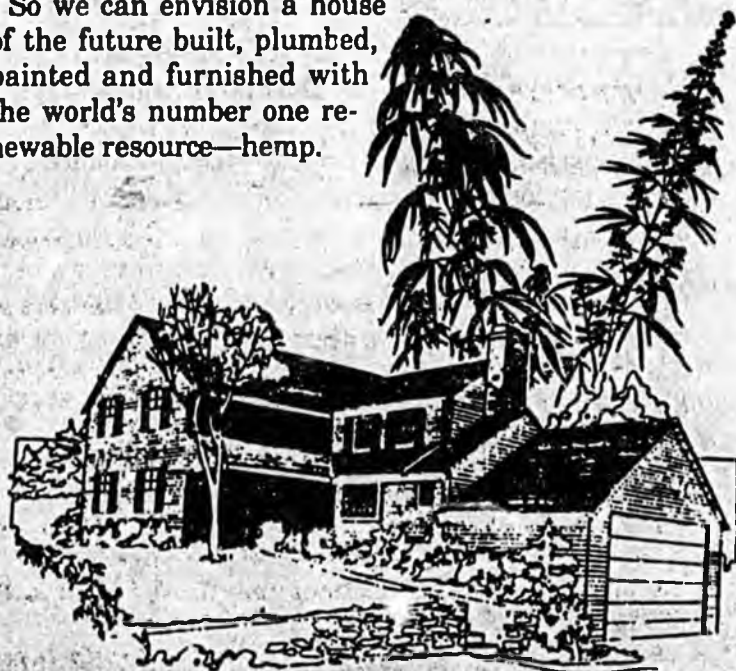
Practical, inexpensive fire-resistant construction material, with excellent thermal and sound-insulating qualities, is made by heating and compressing plant fibers to create strong construction paneling, replacing dry wall and plywood. C&S Specialty Builder's Supply near Eugene, OR, in conjunction with Washington State University (1991-1993), has demonstrated the superior strength, flexibility, and economy of hemp composite building materials compared to wood fiber, even as beams.

Isochanvre, a rediscovered French building material made from hemp hurds mixed with lime, actually petrifies into a mineral state and lasts for many centuries. Archeologists have found a bridge in the south of France, from the Merovingian period (500-751 A.D.), built with this process. (See Chènevotte Habitat of René, France in Appendix I.)

Hemp has been used throughout history for carpet backing. Hemp fiber has potential in the manufacture of strong, rot resistant carpeting—eliminating the poisonous fumes of burning synthetic materials in a house or commercial fire, along with allergic reactions associated with new synthetic carpeting.

Plastic plumbing pipe (PVC pipes) can be manufactured using renewable hemp cellulose as the chemical feedstocks, replacing non-renewable petroleum-based chemical feedstocks.

So we can envision a house of the future built, plumbed, painted and furnished with the world's number one renewable resource—hemp.



12. SMOKING, LEISURE & CREATIVITY

The American Declaration of Independence recognizes the "inalienable rights" of "life, liberty and the pursuit of happiness." Subsequent court decisions have inferred the rights to privacy and choice from this, the U.S. Constitution and its Amendments.

Many artists and writers have used cannabis for creative stimulation—from the writers of the world's religious masterpieces to our most irreverent satirists. These include Lewis Carroll and his hookah smoking caterpillar in *Alice in Wonderland*, plus Victor Hugo and Alexander Dumas; such jazz greats as Louis Armstrong, Cab Calloway, Duke Ellington and Gene Krupa; and the pattern continues right up to modern day artists and musicians such as the Beatles, the Rolling Stones, the Eagles, the Doobie Brothers, Jefferson Airplane, Willie Nelson, Buddy Rich, Country Joe & the Fish, Joe Walsh, David Carradine, David Bowie, Iggy Pop, Lola Falana, Hunter Thompson, Peter Tosh and the Grateful Dead, Cypress Hill, Sinead O'Connor, Black Crowes, etc.

Of course, smoking marijuana only enhances creativity for some and not for others.

But throughout history, various prohibition and "temperance" groups have attempted and occasionally succeeded in banning the preferred relaxational substances of others, like alcohol, tobacco or cannabis.

Abraham Lincoln responded to this kind of repressive mentality in December, 1840, when he said:

"Prohibition...goes beyond the bounds of reason in that it attempts to control a man's appetite by legislation and makes a crime out of things that are not crimes.... A prohibition law strikes a blow at the very principles upon which our government was founded."

13. ECONOMIC STABILITY, PROFIT & FREE TRADE

We believe that in a competitive market with all facts known, people will rush to buy long-lasting, biodegradable Pot Tops or Mary Jeans.

It's time we put capitalism to the test and let the unrestricted market of supply and demand as well as "Green" ecological consciousness decide the future of the planet.

A cotton shirt in 1776 cost \$100 to \$200; while a hemp shirt cost \$.50 to \$1. By the 1830s, cooler, lighter cotton shirts were on par in price with the warmer, heavier, hempen shirts, providing a competitive choice.

People were able to choose their garments based

WHY NOT USE HEMP TO REVERSE THE GREENHOUSE EFFECT & SAVE THE WORLD?

In early 1989, Jack Herer and Maria Farrow put this question to Steve Rawlings, the highest ranking officer in the U.S. Department of Agriculture who was in charge of reversing the Greenhouse Effect, at the USDA world research facility in Beltsville, MD.

First, we introduced ourselves and told him we were writing for Green political party newspapers. Then we asked Rawlings, "If you could have any choice, what would be the ideal way to stop or reverse the Greenhouse Effect?"

He said, "Stop cutting down trees and stop using fossil fuels."

"Well, why don't we?"

"There's no viable substitute for wood for paper, or for fossil fuels."

"Why don't we use an annual plant for paper and for biomass to make fuel?"

"Well, that would be ideal," he agreed. "Unfortunately there is nothing you can use that could produce enough materials."

"Well, what would you say if there *was* such a plant that could substitute for all wood pulp paper, all fossil fuels, would make most of our fibers naturally, make everything from dynamite to plastic, grows in all 50 states and that one acre of it would replace 4.1 acres of trees, and that if you used about 6% of the U.S. land to raise it as an energy crop—even on our marginal lands, this plant would produce all 75 quadrillion billion BTUs needed to run America each year? Would that help save the planet?"

"That would be ideal. But there is no such plant."

"We think there is."

"Yeah? What is it?"

"Hemp."

"Hemp!" he mused for a moment. "I never would have thought of it.... You know, I think you're right. Hemp could be the plant that could do it. Wow! That's a great idea!"

We were excited as we outlined this information and delineated the potential of hemp for paper, fiber, fuel, food, paint, etc., and how it could be applied to balance the world's ecosystems and restore the atmosphere's oxygen balance with almost no disruption of the standard of living to which most Americans have become accustomed.

In essence, Rawlings agreed that our information was probably correct and could very well work.

He said, "It's a wonderful idea, and I think it might work. But, of course, you can't use it."

"You're kidding?" We responded. "Why not?"

"Well, Mr. Herer, did you know that hemp is also marijuana?"

"Yes, of course I know, I've been writing about it for about 40 hours a week for the past 17 years."

"Well, you know marijuana's illegal, don't you? You can't use it."

"Not even to save the world?"

"No. It's illegal," he sternly informed me. "You cannot use something illegal."

"Not even to save the world?" we asked, stunned.

"No, not even to save the world. It's illegal. You can't use it. Period."

"Don't get me wrong. It's a great idea," he went on, "But they'll never let you do it."

"Why don't you go ahead and tell the Secretary of Agriculture that a crazy man from California gave you documentation that showed that hemp might be able to save the planet and that your first reaction is that he might be right and it needs some serious study. What would he say?"

"Well, I don't think I'd be here very long after I did that. After all, I'm an officer of the government."

"Well, why not call up the information on your computer at your own USDA library. That's where we got the information in the first place."

He said, "I can't sign out that information."

"Well, why not? We did."

"Mr. Herer, you're a citizen. You can sign out for anything you want. But I am an officer of the Department of Agriculture. Someone's going to want to know why I want all this information. And then I'll be gone."

Finally, we agreed to send him all the information we got from the USDA library, if he would just look at it.

He said he would, but when we called back a month later, he said that he still had not opened the box that we sent him and that he would be sending it back to us unopened because he did not want to be responsible for the information, now that the Bush administration was replacing him with their own man.

We asked him if he would pass on the information to his successor, and he replied, "Absolutely not."

In May, 1989, we had virtually the same conversation and result with his cohort, Dr. Gary Evans of the U.S. Department of Agriculture and Science, the man in charge of stopping the global warming trend.

In the end, he said, "If you really want to save the planet with hemp, then you (hemp/marijuana activists) would find a way to grow it without the narcotic (sic.) top—and then you can use it."

This is the kind of frightened (and frightening) irresponsibility we're up against in our government.

THE BATTLE OF BULLETIN 404

OR HOW WORLD WAR I COST US HEMP & THE FORESTS

In 1917, the world was battling World War I. In this country, industrialists, just beset with the minimum wage and graduated income tax, were sent into a tailspin. Progressive ideals were lost as the United States took its place on the world stage in the struggle for commercial supremacy.

It is against this backdrop that the first 20th-century hemp drama was played.

The Players

The story begins soon after the release of Bulletin 404. Near San Diego, California, a 50-year-old German immigrant named **George Schlichten** had been working on a simple yet brilliant invention. Schlichten had spent 18 years and \$400,000 on the decorticator, a machine that could strip the fiber from nearly any plant, leaving the pulp behind. To build it, he had developed an encyclopedic knowledge of fibers and paper making. His desire was to stop the felling of forests for paper, which he believed to be a crime. His native Germany was well advanced in forestry and Schlichten knew that destroying forests meant destroying needed watersheds.

Henry Timken, a wealthy industrialist and inventor of the roller bearing, got wind of Schlichten's invention and went to meet the inventor in February of 1917. Timken saw the decorticator as a revolutionary discovery that would improve conditions for mankind. Timken offered Schlichten to grow 100 acres of hemp on his ranch in the fertile farmlands of Imperial Valley, California, just east of San Diego, so that Schlichten could test his invention.

Shortly thereafter, Timken met with the newspaper giant **E. W. Scripps**, and his long-time associate **Milton McRae**, at Miramar, Scripps' home in San Diego. Scripps, then 63, had accumulated the largest chain of newspapers in the country. Timken hoped to interest Scripps in making newsprint from hemp hurds.

Turn-of-the-century newspaper barons needed huge amounts of paper to deliver their swelling circulations. Nearly 30 percent of the four million tons of paper manufactured in 1909 was newsprint; by 1914 the circulation of daily newspapers had increased by 17% over 1909 figures to over 28 million copies.¹

By 1917, the price of newsprint was rapidly rising, and McRae, who had been investigating owning a paper mill since 1904,² was concerned.

Sowing the Seeds

In May, after further meetings with Timken, Scripps asked McRae to investigate the possibility of using the decorticator in the manufacture of newsprint.



E. W. Scripps

McRae quickly became excited about the plan. He called the decorticator "a great invention. . . [which] will not only render great service to this country, but it will be very profitable financially. . . [it] may revolutionize existing conditions." On August 3rd, as harvest time neared, a meeting was arranged between Schlichten, McRae, and newspaper manager Ed Chase.

Without Schlichten's knowledge, McRae had his secretary record the three-hour meeting stenographically. The resulting document, the only record of Schlichten's voluminous knowledge found to date, is reprinted fully in Appendix I.

Schlichten had thoroughly studied many kinds of plants for paper, among them corn, cotton, yucca, and *Espina baccata*. Hemp seemed to be his favorite:

"The hemp hurd is a practical success and will make paper of a higher grade than ordinary news stock," he stated.



Milton McRae

His hemp paper was even better than that produced for USDA Bulletin 404, he claimed, because the decorticator eliminated the retting process, leaving behind short fibers and a natural glue that held the paper together.

At 1917 levels of hemp production Schlichten anticipated making 50,000 tons of paper yearly at a retail price of \$25 a ton. This was less than 50% of the price of newsprint at the time! And every acre of hemp turned to paper, Schlichten added, would preserve five acres of forest.

McRae was very impressed by Schlichten. The man who dined with presidents and captains of industry wrote to Timken, "I was to say without equivocation that Mr. Schlichten impressed me as being a man of great intellectuality and ability; and so far as I can see, he has created and constructed a wonderful machine." He assigned Chase to spend as much time as he could with Schlichten and prepare a report.

Harvest Time

By August, after only three months of growth, Timken's hemp crop had grown to its full height—14 feet!—and he was highly optimistic about its prospects. He hoped to travel to California to watch the crop being decorticated, seeing himself as a benefactor to mankind who would enable people to work shorter hours and have more time for "spiritual development."

Scripps, on the other hand, was not in an optimistic frame of mind. He had lost faith in a government that he believed was leading the country to financial ruin over the war, and that would take 40% of his profits in income tax. In an August 14 letter to his sister, Ellen, he said:

"When Mr. McRae was talking to me about the increase in the price of white paper that was pending, I told him I was just fool enough not to be worried about a thing of that kind." The price of paper was expected to rise 50%, costing Scripps his entire year's profit of \$1,125,000! Rather than develop a new technology, he took the easy way out: The Penny Press Lord simply planned to raise the price of his papers from one cent to two cents.

The Demise

On August 28, Ed Chase sent his full report to Scripps and McRae. The younger man also was taken with the process: "I have seen a wonderful, yet simple, invention. I believe it will revolutionize many of the processes of feeding, clothing, and supplying other wants of mankind."

Chase witnessed the decorticator produce seven tons of hemp hurds in two days. At full production, Schlichten anticipated each machine would produce five tons per day. Chase figured hemp could easily supply Scripps' west coast papers, with leftover pulp for side business. He estimated the newsprint would cost between \$25 and \$35 per ton, and proposed asking an east-coast paper mill to experiment for them.

McRae, however, seems to have gotten the message that his boss was no longer very interested in making paper from hemp. His response to Chase's report is cautious: "Much will be determined as to the practicability by the cost of transportation, manufacture, etc., etc., which

we cannot ascertain without due investigation." Perhaps when his ideals met with the hard work of developing them, the semi-retired McRae backed off.

By September, Timken's crop was producing one ton of fibre and four tons of hurds per acre, and he was trying to interest Scripps in opening a paper mill in San Diego. McRae and Chase travelled to Cleveland and spent two hours convincing Timken that, while hemp hurds were usable for other types of paper, they could not be made into newsprint cheaply enough. Perhaps the eastern mill at which they experimented wasn't encouraging—after all, they were set up to make wood pulp paper.

By this time Timken, too, was hurt by the wartime economy. He expected to pay 54% income tax and was trying to borrow \$2 million at 10% interest to retool for war machines. The man who a few weeks earlier could not wait to get to California no longer expected to go West at all that winter. He told McRae, "I think I will be too damn busy in this section of the country looking after business."

The decorticator resurfaced in the thirties, when it was touted as the machine that would make hemp a "Billion Dollar Crop" in articles in *Mechanical Engineering* and *Popular Mechanics*.* (Until this edition of *The Emperor*, the decorticator was believed to be a new discovery at that time.) Once again, the burgeoning hemp industry was haulted, this time by the Marijuana Tax Act of 1937.

— Ellen Komp

A full account of the story, with reproductions of the letters that reveal it,³ is in the Appendix.

*See pp. 16-20.

Footnotes:

1. World Almanac, 1914, p. 225; 1917
2. *Forty Years in Newspaperdom*, Milton McRae, 1924 Bretano's N.
3. Scripps Archives, University of Ohio, Athens, OH; and Ellen Browning Scripps Archives, Denison Library, Claremont College, Claremont, CA

San Diego, Calif.,
August 28, 1917

Mr. E. W. Scripps
Mr. Milton A. McRae
Gentlemen:

I have spent many hours with G. W. Schlichten, the inventor of the decortivating machine. Friday and Saturday last I spent with him at the Timken Ranch in Imperial Valley, while a portion of his first crop of hemp was being run through his machine. I have seen a wonderful, yet simple, invention. I believe it will revolutionize many of the processes of feeding, clothing and supplying other wants of mankind.

Heretofore, before the fiber could be extracted from hemp, the hemp stalks had to lie on the ground for months to be "rotted." The fiber is then extracted by hand or by certain crude machines. To make a long story short, the fiber from rotted hemp is of a poorer quality as to strength and so expensive to set into proper shape, that Kentucky hemp is quoted in the *Fiber Trade Journals* at 160 per lb. (\$320.00 per ton). The fiber has been extracted from hemp, the residue consists chiefly of "hurds." Hemp hurds are the woody, inner portion of the stalk broken into pieces, turn out only small amounts of fiber and small and scattered heaps of hurds. The old machines, handling rotted hemp, turn out only small amounts of fiber and small and scattered heaps of hurds. Only about seven thousand tons of these hurds have been available in the United

Chapter Three:

FEBRUARY 1938: POPULAR MECHANICS MAGAZINE:

"NEW BILLION DOLLAR CROP"

FEBRUARY 1938: MECHANICAL ENGINEERING MAGAZINE:

"THE MOST PROFITABLE & LESIREABLE CROP THAT CAN BE GROWN"

Modern technology was about to be applied to hemp production, making it the number one agricultural resource in America. Two of the most respected and influential journals in the nation, Popular Mechanics and Mechanical Engineering, forecast a bright future for America's hemp. Thousands of new products creating millions of new jobs heralded the end of the Great Depression. Instead hemp was persecuted, outlawed and forgotten at the bidding of W. R. Hearst who branded hemp the "Mexican killer weed, marijuana."

As early as 1901 and continuing to 1937, the U.S. Department of Agriculture repeatedly predicted that, once machinery capable of harvesting, stripping and separating the fiber from the pulp was invented or engineered, hemp would again be America's Number One farm crop. The introduction of G. W. Schlichten's decorticator in 1917 (See facing pages and Appendix I) nearly fulfilled this prophesy.

The prediction was reaffirmed in the popular press when Popular Mechanics published its February, 1938 article "Billion-Dollar Crop." The first reproduction of this article in over 50 years was in the original edition of this book. The article is reproduced here exactly as it was printed in 1938.

Because of the printing deadline, this article was prepared in the Spring of 1937, when cannabis hemp for fiber, paper, dynamite and oil was still legal to grow and was, in fact, an incredibly fast growing industry.

Also reprinted on these pages is an excerpt from the Mechanical Engineering article about hemp, published the same month. It originated as a paper presented a year earlier at the Feb. 26, 1937 Agricultural Processing Meeting of the American Society of Mechanical Engineers, New Brunswick, New Jersey.

Reports from the USDA during the 1930s and Congressional testimony in 1937 showed that cultivated hemp acreage had been doubling in size in America almost every year from the time it hit its bottom acreage, 1930—when 1,000 acres were planted in the U.S.—to 1937—when 14,000 acres were cul-

tivated—with plans to continue to double that acreage annually in the foreseeable future.

As you will see in these articles, the newly mechanized cannabis hemp industry was in its infancy, but well on its way to again becoming America's largest agricultural crop. And, in light of subsequent developments (e.g., biomass energy technology, building

materials, etc.), we now know that hemp is potentially the world's largest industry and most important ecological tool.

The Popular Mechanics article was the very first time in American history that the term "billion-dollar"* was ever applied to any U.S. agricultural crop.

* Equivalent to \$20-\$40 billion now.

Experts today conservatively estimate that, once fully restored in America, hemp industries will generate \$500 billion to a trillion dollars per year, and will save the planet and civilization from fossil fuels and their derivatives—and from deforestation!

If Anslinger, DuPont, Hearst and their paid-for (know it or not) politicians had not outlawed hemp—under the pretext of marijuana (see chapter 4, "Last Days of Legal Cannabis")—and suppressed hemp knowledge from our schools, researchers and even scientists; the glowing predictions in these articles would already have come true by now—and more benefits than anyone could then envision—as new technologies continue to develop.

As one colleague so aptly put it: "These articles were the last honest word spoken on hemp's behalf for over 40 years..."

KENTUCKY HEMP FIELDS

For a fascinating delineation of hemp's role during the period 1782-1900, read *The Reign of Law: A Tale of the Kentucky Hemp Fields*, James Lane Allen, published by McMillan & Co., 1900.*

* Pay special attention to pages 1 through 23 and the picture on page 25. These pages are entirely reproduced in our appendix.

NEW



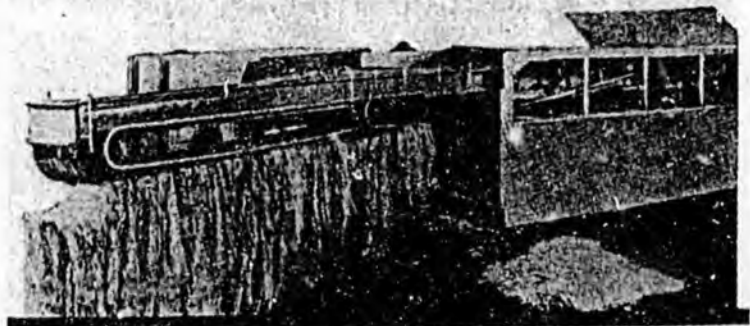
AMERICAN farmers are promised a new cash crop with an annual value of several hundred million dollars, all because a machine has been invented which solves a problem more than 6,000 years old. It is hemp, a crop that will not compete with other American products. Instead, it will displace imports of raw material and manufactured products produced by underpaid coolie and peasant labor and it will provide thousands of jobs for American workers throughout the land.

The machine which makes this possible is designed for removing the fiber-bearing cortex from the rest of the stalk, making hemp fiber available for use without a prohibitive amount of human labor.

Hemp is the standard fiber of the world. It has great tensile strength and durability. It is used to produce more than 5,000 textile products, ranging from rope to fine laces, and the woody "hurds" remaining

after the fiber has been removed contain more than seventy-seven per cent cellulose, and can be used to produce more than 25,000 products, ranging from dynamite to Cellophane.

Machines now in service in Texas, Illinois, Minnesota and other states are producing fiber at a manufacturing cost of half a cent a pound, and are finding a profitable market for the rest of the stalk. Machine operators are making a good profit in com-



Top, sailing the seas with sails and rope made of hemp. Bottom, hemp fiber being delivered from machine ready for baling. Pile of pulverized hurds beside machine is seventy-seven per cent cellulose

February, 1938

BILLION-DOLLAR CROP

petition with coolic-produced foreign fiber while paying farmers fifteen dollars a ton for hemp as it comes from the field.

From the farmers' point of view, hemp is an easy crop to grow and will yield from three to six tons per acre on any land that will grow corn, wheat, or oats. It has a short growing season, so that it can be planted after other crops are in. It can be grown in any state of the union. The long roots penetrate and break the soil to leave it in perfect condition for the next year's crop. The dense shock of leaves, eight to twelve feet above the ground, chokes out weeds. Two successive crops are enough to reclaim land that has been abandoned because of Canadian thistles or quack grass.

Under old methods, hemp

(Continued to page 144A)



Top, modern version of linen duster made from hemp. Bottom, harvesting hemp with a grain binder. Hemp grown luxuriously in Texas

239

New Billion-Dollar Crop

(Continued from page 239)

was cut and allowed to lie in the fields for weeks until it "retted" enough so the fibers could be pulled off by hand. Retting is simply rotting as a result of dew, rain and bacterial action. Machines were developed to separate the fibers mechanically after retting was complete, but the cost was high, the loss of fiber great, and the quality of fiber comparatively low. With the new machine, known as a decorticator, hemp is cut with a slightly modified grain binder. It is delivered to the machine where an automatic chain conveyor feeds it to the breaking arms at the rate of two or three tons per hour. The hurds are broken into fine pieces which drop into the hopper, from where they are delivered by blower to a baler or to truck or freight car for loose shipment. The fiber comes from the other end of the machine, ready for baling.

From this point on almost anything can happen. The raw fiber can be used to produce strong twine or rope, woven into burlap, used for carpet warp or linoleum backing or it may be bleached and refined, with resinous by-products of high commercial value. It can, in fact, be used to replace the foreign fibers which now flood our markets.

Thousands of tons of hemp hurds are used every year by one large powder company for the manufacture of dynamite and TNT. A large paper company, which has been paying more than a million dollars a year in duties on foreign-made cigarette papers, now is manufacturing these papers from American hemp grown in Minnesota. A new factory in Illinois is producing fine bond papers from hemp. The natural materials in hemp make it an economical source of pulp for any grade of paper manufactured, and the high percentage of alpha cellulose promises an unlimited supply of raw material for the thousands of cellulose products our chemists have developed.

It is generally believed that all linen is produced from flax. Actually, the majority comes from hemp—authorities estimate that more than half of our imported linen fabrics are manufactured from hemp fiber. Another misconception is that burlap is made from hemp. Actually, its source is usually jute, and practically all of the burlap we use is woven by laborers in India

who receive only four cents a day. Binder twine is usually made from sisal which comes from Yucatan and East Africa.

All of these products, now imported, can be produced from home-grown hemp. Fish nets, bow strings, canvas, strong rope, overalls, damask tablecloths, fine linen garments, towels, bed linen and thousands of other everyday items can be grown on American farms. Our imports of foreign fabrics and fibers average about \$200,000,000 per year; in raw fibers alone we imported over \$50,000,000 in the first six months of 1937. All of this income can be made available for Americans.

The paper industry offers even greater possibilities. As an industry it amounts to over \$1,000,000,000 a year, and of that eighty per cent is imported. But hemp will produce every grade of paper, and government figures estimate that 10,000 acres devoted to hemp will produce as much paper as 40,000 acres of average pulp land.

One obstacle in the onward march of hemp is the reluctance of farmers to try new crops. The problem is complicated by the need for proper equipment a reasonable distance from the farm. The machine cannot be operated profitably unless there is enough acreage within driving range and farmers cannot find a profitable market unless there is machinery to handle the crop. Another obstacle is that the blossom of the female hemp plant contains marijuana, a narcotic, and it is impossible to grow hemp without producing the blossom. Federal regulations now being drawn up require registration of hemp growers, and tentative proposals for preventing narcotic production are rather stringent.

However, the connection of hemp as a crop and marijuana seems to be exaggerated. The drug is usually produced from wild hemp or locoweed which can be found on vacant lots and along railroad tracks in every state. If federal regulations can be drawn to protect the public without preventing the legitimate culture of hemp, this new crop can add immeasurably to American agriculture and industry.

☐ Popular Mechanics Magazine can furnish the name and address of the maker of, or dealer in, any article described in its pages. If you wish this information, write to the Bureau of Information, inclosing a stamped, self-addressed envelope.

MECHANICAL ENGINEERING

February 26, 1937

"Flax and Hemp: From the Seed to the Loom" was published in the February 1938 issue of Mechanical Engineering magazine. It was originally presented at the Agricultural Processing Meeting of the American Society of Mechanical Engineers in New Brunswick, NJ of February 26, 1937 by the Process Industries Division.

FLAX AND HEMP: FROM THE SEED TO THE LOOM

by George A. Lower

This country imports practically all of its fibers except cotton. The Whitney gin, combined with improved spinning methods, enabled this country to produce cotton goods so far below the cost of linen that linen manufacture practically ceased in the United States. We cannot produce our fibers at less cost than can other farmers of the world. Aside from the higher cost of labor, we do not get as large production. For instance, Yugoslavia, which has the greatest fiber production per acre in Europe, recently had a yield of 883 lbs. Comparable figures for other countries are Argentina, 749 lbs.; Egypt 616 lbs.; and India, 393 lbs.; while the average yield in this country is 383 lbs.

To meet world competition profitably, we must improve our methods all the way from the field to the loom.

Flax is still pulled up by the roots, retted in a pond, dried in the sun, broken until the fibers separate from the wood, then spun, and finally bleached with lye from wood ashes, potash from burned seaweed, or lime. Improvements in tilling, planting, and harvesting mechanisms have materially helped the large farmers and, to a certain degree, the smaller ones, but the processes from the crop to the yarn are crude, wasteful, and injurious. Hemp, the strongest of the vegetable fibers, gives the greatest production per acre and requires the least attention. It not only requires no weeding, but also kills off all the weeds and leaves the soil in splendid condition for the following crop. This, irrespective of its own monetary value, makes it a desirable crop to grow.

In climate and cultivation, its requisites are similar to flax and, like flax, should be harvested before it is too ripe. The best time is when the lower leaves on the stalk wither and the flowers shed their pollen.

Like flax, the fibers run out where leaf stems are on the stalks and are made up of laminated fibers that are held to-

THE MOST PROFITABLE AND DESIREABLE CROP THAT CAN BE GROWN

gether by pectose gums. When chemically treated like flax, hemp yields a beautiful fiber so closely resembling flax that a high-power microscope is needed to tell the difference — and only then because in hemp, some of the ends are split. Wetting a few strands of fiber and holding them suspended will definitely identify the two because, upon drying, flax will be found to turn to the right or



Early International Harvester mule drawn mechanical hemp reaper provided a tremendous savings in human labor. Mechanical harvesting was a major step in making American hemp a competitive natural fiber.

clockwise, and hemp to the left or counterclockwise.

Before [World War I], Russia produced 400,000 tons of hemp, all of which is still hand-broken and hand-scutched. They now produce half that quantity and use most of it themselves, as also does Italy from whom we had large importations.

In this country, hemp, when planted one bu. per acre, yields about three tons of dry straw per acre. From 15 to 20 percent of this is fiber, and 80 to 85 percent is woody material. The rapidly growing market for cellulose and wood flour for plastics gives good reason to believe that this hitherto wasted material may prove sufficiently profitable to pay for the crop, leaving the cost of the fiber sufficiently low to compete with 500,000 tons of hard fiber now imported annually.

Hemp being from two to three times as strong as any of the hard fibers, much less weight is required to give the same yardage. For instance, sisal binder twine of 40-lb. tensile strength runs 450 ft. to the lb. A better twine made

MECHANICAL ENGINEERING

February 26, 1937

of hemp would run 1280 ft. to the lb. Hemp is not subject to as many kinds of deterioration as are the tropical fibers, and none of them lasts as long in either fresh or salt water.

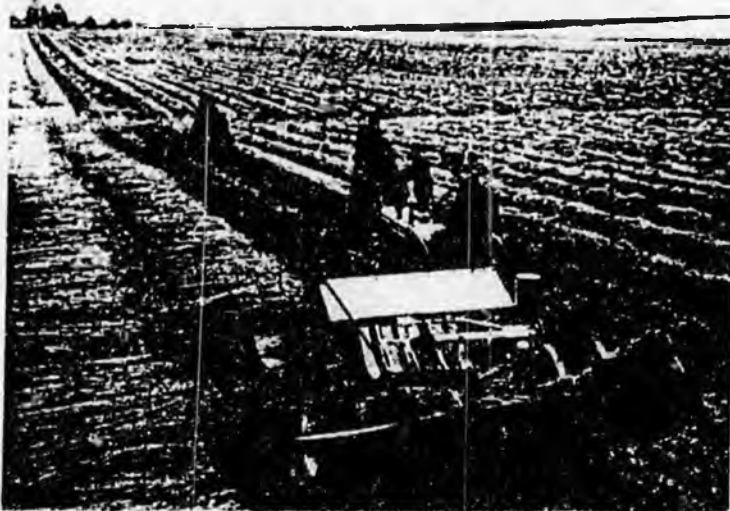
While the theory in the past has been that straw should be cut when the pollen starts to fly, some of the best fiber handled by Minnesota hemp people was heavy with seed. This point should be proved as soon as possible by planting a few acres and then harvesting the first quarter when the pollen is flying, the second and third a week or ten days apart, and the last when the seed is fully matured. These four lots should be kept separate and scutched and processed separately to detect any difference in the quality and quantity of the fiber and seed.

Several types of machine are available in this country for harvesting hemp. One of these was brought out several years ago by the International Harvester Company. Recently, growers of hemp in the Middle West have rebuilt regular grain binders for this work. This rebuilding is not particularly expensive and the machines are reported to give satisfactory service.

Degumming of hemp is analogous to the treatment given flax. The shards probably offer slightly more resistance to digestion. On the other hand, they break down readily upon completion of the digestion process. And excellent fiber can, therefore, be obtained from hemp also. Hemp, when treated by a known chemical process, can be spun on cotton, wool, and worsted machinery, and has as much absorbance and wearing quality as linen.

Several types of machines for scutching the hemp stalks are also on the market. Scutch mills formerly operating in Illinois and Wisconsin used the system that consisted of a set of eight pairs of fluted rollers, through which the dried straw was passed to break up the woody portion. From there, the fiber with adhering shards -- or hurds, as they are called -- was transferred by an operator to an endless-chain conveyor. This carries the fiber past two revolving single drums in tandem, all having beating blades on their periphery, which beat off most of the hurds as well as the fibers that do not run the full length of the stalks. The proportion of line fiber to tow is 50 percent each. Tow or

short tangled fiber then goes to a vibrating clear-shakes out some of the hurds. In Minnesota and another type has been tried out. This machine consists of a feeding table upon which the stalks are placed horizontally. Conveyor chains carry the stalks along until they are grasped by a clamping chain that grips them and carries them through half of a scutching machine.



International hemp harvester cut the hemp and laid it out in thin layered rows to begin the natural dew retting process near Mason City, Iowa.

A pair of intermediate scutching machines of the lawnmower-type are placed at a 45-degree angle to the feeding table. The first machine breaks the hemp over the sharp edge of a steel plate, the object being to break the woody portion of the straw and whip the hurds from the fiber. On the other side and slightly beyond the first machine is another set, which is placed at 90-degrees from the first pair and whips out the hurds.

The first clamping chain transfers the stalks to another machine which scutches the fiber that was under the clamp at the beginning. Unfortunately, this type of scutcher makes even more tow than the so-called Wisconsin type. This tow is difficult to separate because the hurds are broken into long slender pieces which tenaciously adhere to the fiber.

Another type passes the stalks through a series of geared fluted rollers. This breaks up the woody portion of the hurds about 3/4 inch long, and the fiber then passes through a series of reciprocating slotted plates worked between stationary slotted plates.

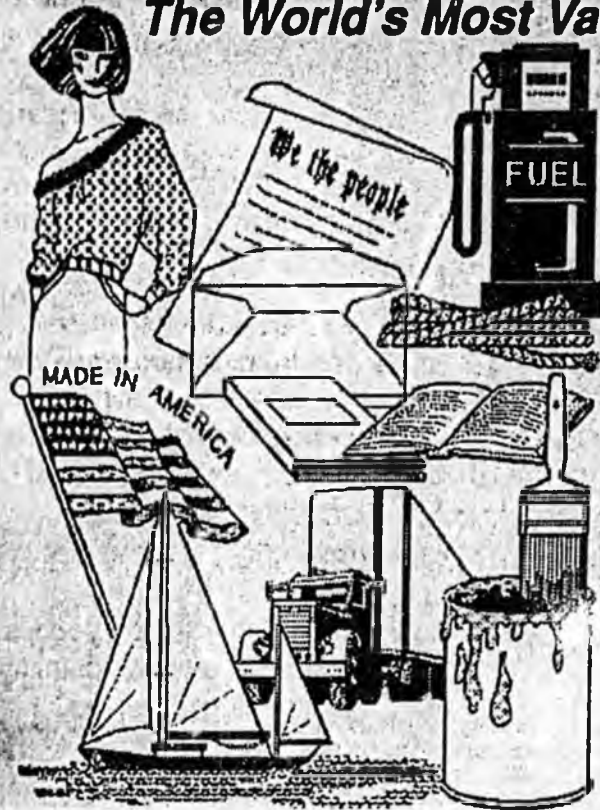
Adhering hurds are removed from the fiber which then continues on a conveyor to the baling press. Because no rubbing of the fiber against the grain occurs, this type of scutcher makes only line fiber. This is then processed by the same methods as those for flax.

Paint and lacquer manufacturers are interested in hempseed oil which is a good drying agent. When machinery has been developed for the products now being wasted, seed and hurds, hemp will prove, both for the farmer and the public, the most profitable and desirable crop that can be grown, and one that can make American mills independent of importations.

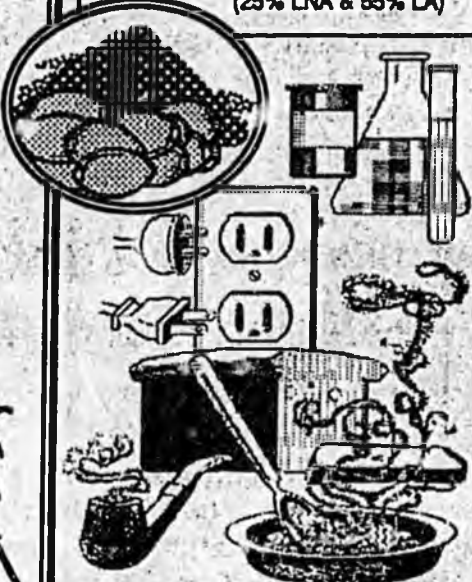
Recent floods and dust storms have given warning against the destruction of timber. Possibly, the hitherto waste products of flax and hemp may yet meet a good use of that need, especially in the plastic field which is going to be limited by supply and demand.

THE MANY USES OF HEMP

The World's Most Valuable & Versatile Natural Resource



SEEDS FOR FOOD & OIL: Hemp seeds contain complete, easily digestible protein and are the highest source of *essential* fatty acids in the plant kingdom. (25% LNA & 55% LA)



FLOWERS FOR HEALING & RELAXATION: Hemp has long-recognized medical value for easing pain, relieving stress and treating illnesses from glaucoma to asthma to nausea and beyond. Cannabis flowers and leaves are also smoked or eaten for many therapeutic, religious and relaxational purposes.



STEMS FOR FABRIC, FUEL, PAPER & COMMERCIAL USE. Hemp is dried and broken down into two parts: threadlike fibers and bits of "hurd," or pulp. Each of these products has its own distinct applications:



The fiber strands are spun into thread, which is either made into rope or woven into durable, high quality textiles and made into clothing, sails, fine linens and fabrics of all types and textures.

The fragments of dried stalk that remain are hurds—77% cellulose—that can be made into tree-free, dioxin-free paper; non-toxic paints and sealants; industrial fabrication materials; construction materials; plastics; and much, much more! Hemp is the best source of plant pulp for biomass fuel to make gas, charcoal, methanol, gasoline or even produce electricity.

ROOTED IN AMERICA: Even hemp roots play an important role: they anchor and invigorate the soil to control erosion and mudslides. Hemp can save family farms, create jobs, reduce acid rain and chemical pollution, and reverse the Greenhouse effect.

BACH Presented as a public service by the **BUSINESS ALLIANCE FOR COMMERCE IN HEMP**
 P.O. Box 71083, L.A. CA 90071-0083
 810/288-4152 Recommended Reading: *The Emperor Wears No Clothes* by Jack Herer

MU9201

This bulletin is printed on paper manufactured from hemp hurds
run No. 143, which is recorded on page 30

CONTENTS

UNITED STATES DEPARTMENT OF AGRICULTURE



BULLETIN No. 404

Contribution from the Bureau of Plant Industry
WM. A. TAYLOR, Chief



Washington, D.C.

PROFESSIONAL PAPER

October 14, 1916

HEMP HURDS AS PAPER-MAKING MATERIAL

By LYSTER H. DEWEY, *Botanist in Charge of Fiber-Plant Investigations*, and
JASON L. MERRILL, *Paper-Plant Chemist, Paper-Plant Investigations*.

CONTENTS

	Page		Page
The production and handling of hemp hurds by Lyster H. Dewey		The manufacture of paper from hemp hurds, by Jason L. Merrill	
What hemp hurds are	1	Introduction	7
Pith, wood, and fiber	2	Factors justifying an investigation of hemp hurds	8
Character of hurds affected by retting	2	Character of the material	11
Proportion of hurds to fiber and yield per acre	3	Character of the tests	12
Hurds available from machine-broken hemp	3	Operations involved in a test	13
Present uses of hemp hurds	4	Description of tests	16
Present supplies of hurds available	5	Comparison of the tests and commercial practice	21
Baling for shipment	5	Physical tests of the papers produced	24
Cost of baling	5	Conclusions	25
Summary	6		

In preparing the report on the manufacture of paper from hemp hurds it became evident that a short discussion of the agricultural aspects of this material should be included in the publication. Such an article was prepared, therefore, and the two reports are here presented together.

THE PRODUCTION AND HANDLING OF HEMP HURDS.

By LYSTER H. DEWEY, *Botanist in Charge of Fiber-Plant Investigations*

WHAT HEMP HURDS ARE.

The woody inner portion of the hemp stalk, broken into pieces and separated from the fiber in the processes of breaking and scutching, are called hemp hurds. These hurds correspond to shives in flax, but are much coarser and are usually softer in texture.

When the USDA published Bulletin 404 in 1916, it used for the first time hemp pulp paper (as opposed to hemp fiber paper) to demonstrate the outstanding qualities of using hemp hurds for pulp instead of using tree pulp; not only to reduce the cutting of trees but also to reduce the need for sulphuric acid compounds to break down the plant for the making of paper.

The frontal piece over the cover of the bulletin (reproduced above) tells you that the document is printed on hemp pulp paper, although the frontal piece itself was *not* printed on hemp pulp.



One acre
of hemp
equals
4.1 acres
of
forest land.

Cannabis Sativa (L.)
at three months.

THE LAST DAYS OF LEGAL CANNABIS

As you now know, the industrial revolution of the 19th century was a setback for hemp in world commerce, due to the lack of mechanized harvesting and breaking technology needed for mass production. But this natural resource was far too valuable to be relegated to the back burner of history for very long.

By 1916, U.S.D.A. Bulletin 404 predicted that a decorticating and harvesting machine would be developed, and hemp would again be America's largest agricultural industry. In 1938, Popular Mechanics, Mechanical Engineering and others introduced a new generation of investors to fully operational hemp decorticating devices, bringing us to this next bit of history:

BREAKTHROUGH IN PAPERMAKING

If hemp was legally cultivated using 20th-Century technology, it would be the single largest agricultural crop in the United States and world today.

(Popular Mechanics February 1938; Mechanical Engineering, February 1938; U.S. Department of Agriculture Reports 1903, 1910, 1913.)

In fact, when the preceding two articles were prepared early in 1937, hemp was still legal to grow. And those who predicted billions of dollars in new cannabis businesses did not consider income from medicines, energy (fuel) and food which would now add another trillion dollars or more annually to our troubled economy. Relaxational smoking would add only a relatively minor amount to this figure.

The most important reason that the 1938 magazine articles projected billions in new income was hemp for "pulp paper" (as opposed to fiber or rag paper). Other reasons were its fiber, seed and many other pulp uses.

This remarkable new hemp pulp technology for papermaking was invented in 1916 by our own U.S. Department of Agriculture chief scientists, botanist Lester Dewey and chemist Jason Merrill.

This technology, coupled with the breakthrough of O. W. Schlichten's decorticating machine, patented in 1917, made hemp a viable paper source at less than half the cost of tree-pulp paper. The new harvesting machinery, along with Schlichten's machine, brought the processing of hemp down from 200 man-hours per acre to just a couple of hours.* Twenty years later, advancing technology—the building of

roads, for example—made hemp even more valuable. Unfortunately, by then, opposition forces had gathered steam and acted quickly to suppress hemp cultivation.

*See Appendix I.

A PLAN TO SAVE OUR FORESTS

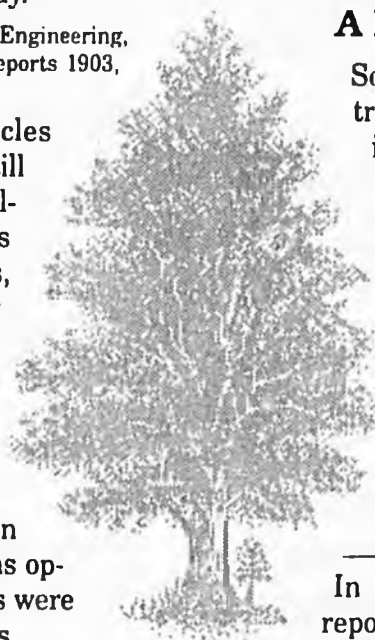
Some cannabis plant strains regularly reach tree-like heights of 20 feet or more in one growing season.

The new paper process used hemp "hurds"—77% of the hemp stalk's weight, which was then a wasted by-product of the fiber stripping process.

If the hemp pulp paper process of 1916 were in use today, it could replace 40 to 70% of all pulp paper, including corrugated boxes, computer printout paper and paperbags.

In 1916, USDA Bulletin No. 404 (see picture), reported that one acre of cannabis hemp, in annual rotation over a 20-year period, would produce as much pulp for paper as 4.1 acres of trees being cut down over the same 20-year period. This process would use only 1/4 to 1/7 as much polluting sulfur-based acid chemicals to break down the glue-like lignin that binds the fibers of the pulp, or even none at all using soda ash. The problem of dioxin contamination of rivers is avoided in the hemp paper making process, which does not need to use chlorine bleach (as the wood pulp paper making process requires), but instead substitutes safer hydrogen peroxide in the bleaching process.

All this lignin must be broken down to make pulp.



Hemp pulp is only 4-10% lignin, while trees are 18-30% lignin. Thus hemp provides four times as much pulp with at least four to seven times less pollution.

As we have seen, this hemp pulp-paper potential depended on the invention and the engineering of new machines for stripping the hemp by modern technology. This would also lower demand for lumber and reduce the cost of housing, while at the same time helping re-oxygenate the planet.¹

As an example: If the new (1916) hemp pulp paper process were legal today, it would soon replace about 70% of all wood pulp paper, including computer printout paper, corrugated boxes and paper bags.

Pulp paper made from 60% to 100% hemp hurds is stronger and more flexible than paper made from wood pulp. Making paper from wood pulp damages the environment. Hemp papermaking does not.

(Dewey & Merrill, *Bulletin #404*, U.S.D.A., 1916; New Scientist, 1980; Kimberly Clark production from its giant French hemp-fiber paper subsidiary De Mauduit, 1937 through 1984.)

CONSERVATION & SOURCE REDUCTION

Reduction of the source of pollution, usually from manufacturing with petrochemicals or their derivatives, is a cost-cutting waste control method often called for by environmentalists.

Whether the source of pollution is CFCs (chloro-flouro-carbons) from spray cans, computers and refrigeration, or tritium and plutonium produced for military uses, or the sulfuric acids used by paper-makers, reducing the source of pollution is the goal.

In the supermarket when you are asked to choose paper or plastic for your bags, you are faced with an environmental dilemma: paper from trees that were cut, or plastic bags made from fossil fuel and chemicals. With a third choice available—hemp hurd paper—one could choose a biodegradable, durable paper from an annually renewable source—the hemp plant.

The environmental advantages of harvesting hemp annually—leaving the trees in the ground!—make papermaking from hemp hurds crucial for source reduction of pollution, along with using hemp to replace fossil fuel as an energy source.

A CONSPIRACY TO WIPE OUT THE NATURAL COMPETITION

When mechanical hemp fiber stripping machines and machines to conserve hemp's high-cellulose pulp finally became state-of-the-art, available and affordable in the mid-1930s, the enormous timber acreage and businesses of the Hearst Paper Manufacturing Division, Kimberly Clark (USA), St. Regis—and virtually all other timber, paper and large newspaper holding companies—stood to lose billions of dollars

and perhaps go bankrupt.

Coincidentally, in 1937 DuPont had just patented processes to make plastics from oil and coal, as well as new sulfate/sulfite processes to make paper from wood pulp which would, according to their own corporate records and historians,* account for over 80% of all its railroad carloadings for the next 50 years.

* Author's research & communications with DuPont, 1985.

If hemp had not been made illegal, 80% of DuPont's business would never have come to be; nor would the great majority of the pollution which has been inflicted on our Northwestern and Southeastern regions have ever occurred.

In an open marketplace, hemp would have saved the majority of America's vital family farms which would probably have boosted their numbers, despite the Great Depression of the 1930s.

Competing against the environmentally-friendly hemp-paper and natural plastic technology would have jeopardized the lucrative financial schemes of Hearst, DuPont and DuPont's chief financial backer, Andrew Mellon of the Mellon Bank of Pittsburgh.

"SOCIAL REORGANIZATION"

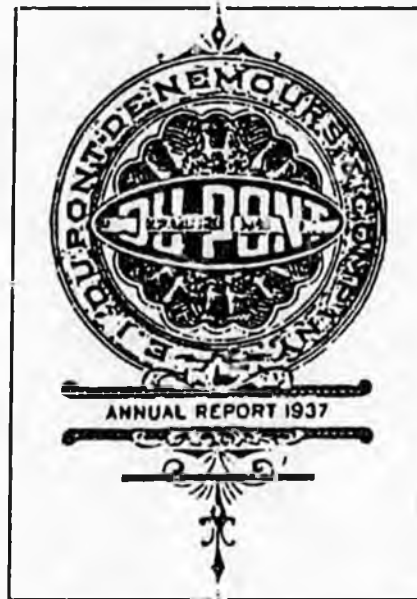
A series of secret meetings were held.

Mellon, in his role as Hoover's Secretary of the Treasury, in 1931 appointed his future nephew, Harry J. Slinger, to be the newly organized Federal Bureau of Narcotics and Dangerous Drugs (FBN) in a post he held for the next 31 years.

These industrial barons and financiers knew that machinery to bale, decorticate (to separate fiber from high-cellulose hurd), and process

hemp into paper or plastics was becoming available in the mid-1930s. Cannabis hemp would have to

In DuPont's 1937 Annual Report to its stockholders the company strongly urged continued investment in its new, but not readily accepted, petrochemical synthetic products. DuPont was anticipating "reforms" from "the revenue raising power of government. . . converted into an instrument for the acceptance of sudden new ideas of industrial



**THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES**

MAN-MADE FIBER ... THE TOXIC ALTERNATIVE TO NATURAL FIBERS.

The late 1920s and 1930s saw continuing consolidation of power into the hands of a few large steel, oil and chemical (munitions) companies. The U.S. federal government placed much of the textile production for the domestic economy in the hands of their chief munitions maker, DuPont.

The processing of nitrating cellulose into explosives is very similar to the process for nitrating cellulose into synthetic fibers and plastics. Rayon, the first synthetic fiber, is simply stabilized guncotton, or nitrated cloth, the basic explosive of the 19th century.

"Synthetic plastics find application in fabricating a wide variety of articles, many of which in the past were made from natural products," beamed Lamot DuPont (Popular Mechanics, June 1939, pg. 805).

"Consider our natural resources," the president of DuPont continued, "The chemist has aided in conserving natural resources by developing synthetic products to supplement or wholly replace natural products."

DuPont's scientists were the world's leading researchers into the processes of nitrating cellulose and were in fact the largest processor of cellulose in the nation in this era.

The February, 1938 Popular Mechanics article stated "Thousands of tons of hemp hurds are used every year by our large powder company for the manufacture of dynamite and TNT." History shows that Dupont had largely cornered the market in explosives by buying up and consolidating the smaller blasting companies in the late 1800s. By 1902 they controlled about two-thirds of industry output.

They were the largest powder company, supplying 40% of the munitions for the allies in WWI. As cellulose and fiber researchers, DuPont's chemists knew hemp's true value better than anyone else. The value of hemp goes far beyond the fibers; although recognized for linen, canvas, netting and cordage, these long fibers are only 20% of the hemp's weight. 80% of the hemp is in the 77% cellulose part, and this was the most abundant, cleanest resource of cellulose (fiber) for paper, plastics and even rayon.

The empirical evidence in this book shows that the federal government—through the 1937 Marijuana Tax Act—forced this munitions maker to supply synthetic fibers for the domestic economy without competition. The proof of a successful conspiracy among these corporate and governing interests is simply this: In 1991 DuPont was still the largest producer of man-made fibers, while no citizen has ever harvested a single acre of textile grade hemp in over

almost unlimited tonnage of natural fiber and cellulose would have become available to the American farmer in 1937, the year DuPont patented nylon and the polluting pulp paper sulfide process. All of hemp's potential was lost.

Simple plastics of the early 1900s were made of nitrated cellulose, directly related to DuPont's munitions-making processes. Celluloid, acetate and rayon were the simple plastics of that era, and hemp was well known to cellulose researchers as the premier resource for this new industry to use. Worldwide, the raw material of simple plastics, rayon and paper could be best supplied by hemp hurds.

Nylon fibers were developed between 1926-1936 by the noted Harvard chemist Wallace Carothers, working from German patents. These polyamides are long fibers based on observed natural products. Carothers, supplied with an open-ended research grant from DuPont, made a comprehensive study of natural cellulose fibers. He duplicated natural fibers in his labs and polyamides—long fibers of a specific chemical process—were developed.

Coal tar and petroleum based chemicals were employed, and different devices, spinnerets and processes were patented. This new type of textile, nylon, was to be controlled from the raw material stage, as coal, to the completed product a patented chemical product. The chemical company centralized the production and profits of the new "miracle" fiber.

The introduction of nylon, the introduction of high-volume machinery to separate hemp's long fiber from the cellulose hurd, and the outlawing of hemp as "marijuana" all occurred simultaneously.

The new man-made fibers (MMF's) can best be described as war material. The fiber making process has become one based on big factories, smokestacks, coolants and hazardous chemicals, rather than one of stripping out the abundant, naturally available fibers.

Coming from a history of making explosives and munitions, the old "chemical dye plants" now produce hosiery, mock linens, mock canvas, latex paint and synthetic carpets. Their polluting factories make imitation leather, upholstery and wood surfaces, while an important part of the natural cycle stands outlawed.

The standard fiber of world history, America's traditional crop, hemp, could provide our textiles, paper and be the premier source for cellulose. The war industries—DuPont, Allied Chemical, Monsanto, etc.—are protected from competition by the marijuana laws. They make war on the natural cycle and the common farmer. —Shan Clark

Sources:

Encyclopedia of Textiles 3rd Edition by the editors of American Fabrics and Fashions Magazine, William C. Legal, Publisher Prentice-Hall, Inc. Englewood Cliffs, N.J. 1980; *The Emergence of Industrial America Strategic Factors in American Economic Growth Since 1870*, Peter George State University, NY; DuPont (a corporate autobiography published periodically by E.I. DuPont De Nemours and Co., Inc. Wilmington, Del.); *The Blasting Handbook*, E.I. DuPont De Nemours & Co. Inc., Wilmington, DE; *Mechanical Engineering Magazine*, Feb. 1938; *Popular Mechanics*, Feb. 1938; *Journal of Applied Polymer Science*, Vol. 47, 1984; *Polyamides, the Chemistry of Long Molecules* (author unknown) U.S. Patent #2,071,250 (Feb. 16, 1937), W.H. Carothers., *DuPont Dynasties*, Jerry Colby; *The American Peoples Encyclopedia*, the Sponsor Press, Chicago, 1953.

cial reorganization."*

(DuPont Company, annual report, 1937, emphasis added.)

In *The Marijuana Conviction* (U. of Virginia press, 1974), Richard Bonnie and Charles Whitebread II detailed this process:

"By the fall of 1936, Herman Oliphant (general counsel to the Treasury Department) had decided to employ the taxing power [of the federal government], but in a statute modeled after the National Firearms Act and wholly unrelated to the 1914 Harrison [narcotics] Act. Oliphant himself was in charge of preparing the bill. Anslinger directed his army to turn its campaign toward Washington.

"The key departure of the marijuana tax scheme from that of the Harrison Act is the notion of the prohibitive tax. Under the Harrison Act, a non-medical user could not legitimately buy or possess narcotics.

"To the dissenters in the Supreme Court decisions upholding the act, this clearly demonstrated that Congress' motive was to prohibit conduct rather than raise revenue. So in the National Firearms Act, designed to prohibit traffic in machine guns, Congress permitted anyone to buy a machine gun, but required him to pay a \$200 transfer tax* and carry out the purchase on an order form.

"The Firearms Act, passed in June 1934, was the first act to hide Congress' motives behind a 'prohibitive' tax. The Supreme Court unanimously upheld the anti-machine gun law on March 29, 1937. Oliphant had undoubtedly been awaiting the Court's decision, and the Treasury Department introduced its marijuana tax bill two weeks later, April 14, 1937."

Thus, DuPont's decision to invest in new technologies based on "forcing acceptance of sudden new ideas of industrial and social reorganization" makes sense.

* About \$4,000 in 1993 dollars.

A QUESTION OF MOTIVE

This prospect was alluded to during the 1937 Senate hearings by Matt Rens, of Rens Hemp Company:

Mr. Rens: Such a tax would put all small producers out of the business of growing hemp, and the proportion of small producers is considerable... The real purpose of this bill is not to raise money, is it?

Senator Brown: Well, we're sticking to the proposition that it is.

Mr. Rens: It will cost a million.

Senator Brown: Thank you. (Witness dismissed.)



HEARST, HIS HATRED & HYSTERICAL LIES

Concern about the effects of hemp smoke had already led to two major governmental studies. The British governor of India released the *Report of the Indian Hemp Drugs Commission 1893-1894* on heavy bhong smokers in the subcontinent.

And in 1930, the U.S. government sponsored the Siler Commission study on the effects of off-duty smoking of marijuana by American servicemen in Panama. Both reports concluded that marijuana was not a problem and recommended that no criminal penalties apply to its use.

In early 1937, Assistant U.S. Surgeon General Walter Treadway told the Cannabis advisory subcommittee of the League of Nations that, "It may be taken for a relatively long time without social or emotional breakdown. Marihuana is habit-forming... in the same sense as...sugar or coffee."

But other forces were at work. The war fury that led to the Spanish American war in 1898 was ignited and fanned by William Randolph Hearst through his nationwide newspaper chains, marking the beginning of "yellow journalism"* as a force in American politics.

* Webster's dictionary defines "yellow journalism" as the use of cheaply sensational or unscrupulous methods in newspapers and other media to attract or influence the readers.

In the 1920s and 30s, Hearst's newspaper chain led the deliberate new yellow journalism campaign to have hemp outlawed. From 1916 to 1937, as an example, the story of a car accident in which a marijuana cigarette was found would dominate the headlines for weeks, while alcohol-related car accidents (which outnumbered marijuana-connected accidents by more than 1,000 to 1) made only the back pages.

This same theme of marijuana-related car accidents was burned into the minds of Americans over and over again (1936-1938) by showing marijuana related car accident headlines in movies such as "Reefer Madness" and "Marijuana—Assassin of Youth."

BIGOTRY AND APARTHEID

Starting with the 1898 Spanish American War, the Hearst newspaper had denounced Spaniards, Mexican-Americans and Latinos.

After the seizure of 800,000 acres of Hearst's prime Mexican timberland by the "marihuana" smoking army of Pancho Villa,* these slurs intensified.

* The song "La Cucaracha" tells the story of one of Villa's men looking for his stash of "marihuana por fumar!" (to smoke!)

Non-stop for the next for three decades, Hearst painted the picture of the lazy pot-smoking Mexican—still one of our most insidious prejudices.

He e
again

Hec
bi

Hear
jority
direct
Hearst
raping
Negro

Hear
cal hea
Mexica
mariju
music
onto th
Crow
white
the eye
woman

For si
cans a
years i
segrega
the 19

A R

This i
laws

MAR
BOY
GO

Physi
All
So

-7-

the over
narcotic
the over
under a
to a fact
to over

HOOD
OF J.

Better P
Big Ne

He also did a similar racist smear campaign against the "Yellow Peril" of the Chinese.

Hearst, through pervasive and repetitive use, brought the word 'marijuana' into English.

Hearst papers from 1910 to 1920 would say the majority of Negroes raping white women could be traced directly to cocaine. This continued for 10 years until Hearst decided it was not cocaine crazed Negroes raping white women—it was now marijuana crazed Negroes raping white women.

Hearst and other sensational tabloids ran hysterical headlines atop stories portraying Negroes and Mexicans as frenzied beasts under the influence of marijuana, who played anti-white "voodoo-satanic" music (jazz) and heaped disrespect and "viciousness" onto the predominantly white readership. This Jim Crow (apartheid) "crime wave" included: stepping on white men's shadows, looking white people directly in the eye for three seconds or more, looking at a white woman twice, laughing at a white person, etc.

For such "crimes," hundreds of thousands of Mexicans and Negroes spent, in aggregate, millions of years in prisons and on chain gangs, under brutal segregation laws in effect throughout the U.S. until the 1950s and 60s. Hearst, through pervasive and

repetitive use, pounded the obscure Mexican slang word 'marijuana' into the English-speaking American consciousness. 'Hemp' was discarded. 'Cannabis,' the scientific term, was ignored or buried.

The actual Spanish word for hemp is 'cáñamo.' But using a Mexican Sonoran colloquialism—marijuana, often Americanized as 'marihuana'—guaranteed that no one would realize the world's chief natural medicine and premier industrial resource had been outflanked, outlawed and pushed out of the language.

THE PROHIBITIVE MARIJUANA TAX

In the secret Treasury Department meetings conducted between 1935 and 1937 prohibitive tax laws were drafted and strategies plotted. 'Marijuana' was not banned outright; the law called for an "Occupational excise tax upon dealers, and a transfer tax upon dealings in marijuana."

Importers, manufacturers, sellers and distributors had to register with the Secretary of the Treasury and pay the occupational tax. Transfers were taxed at \$1 an ounce; \$100 an ounce if the dealer was unregistered. Sales to an unregistered taxpayer were prohibitively taxed. At the time, "raw drug" cannabis sold for one dollar an ounce.² The year was 1937. New York State had exactly one narcotics officer.*

* Now it has a network of thousands of officers, agents, spies and paid informants—and 20 times the penal capacity.

A Roundup of Hearst's Hysterical Headlines:

This is what current hemp laws are based on.

MARIHUANA MAKES FIENDS OF BOYS IN 30 DAYS; HASHEESH GOADS USERS TO BLOOD-LUST

Physicians Called On to Urge Harding Bid All Nations Meet to Throttle Dope At Its Source; United States Laws Too Lenient

"The Federal Government, operating under the Harrison Act, and the amending Jones-Miller bill, employs one hundred and seventy-three narcotic enforcement agents. For their year's labor Congress appropriates the sum of \$750,000. The country is divided into thirteen districts under as many district chiefs, and their agents must cover the country. It is a feeble appropriation and a woefully light brigade."—Sidney Howard in several issues of Hearst's International.

In the mid-1930s, Harry Anslinger went around the country giving his speeches to judges, police, unions, etc., on the evils of marijuana.

Circled here is one of his favorite marijuana metaphors which, he assured his naive, supportive audiences, was not an overstatement

Crusade Against Marihuana

A NATIONWIDE crusade of American women against the menace of marihuana smoking has been launched by the Women's National Exposition of Arts and Industries in New York City. H. J. Anslinger, head of the Federal Narcotics Bureau, explained to the group the urgent necessity of NATIONAL ACTION.

Declaring that marihuana smoking is "taking our youth into a madhouse," Mr. Anslinger said: "If the hideous monster Frankenstein came face to face with the monster marihuana he would drop dead of fright." "It is not overstatement," he added, "that thousands of Americans are committing a large percentage of the atrocious crimes blotting the daily picture of American life. It is reducing thousands

of them to CRIMINAL INSANITY.

And ONLY TWO STATES have effective laws to protect their people against it.

The marihuana weed, according to Mr. Anslinger, is grown, sold, and USED in every State in the Union.

He charged, and rightly, that this is not a responsibility of one State, but OF ALL—end of the Federal Government.

American women, aroused to this DANGER, will GET ACTION.

In New York State organized groups of women are GETTING ACTION by demanding enactment of the McNaber bill creating a State Narcotics Bureau. That Bureau would replace the existing one—end Narcotics Division, which is powerless to cope with the fact that eighty per cent of New York's criminals are narcotic addicts.

HOOVER SEES END NEW DOPE LURE, JAZZ DANCING SOON TO PASS, MARIJUANA, HAS MANY VICTIMS SAYS COOLIDGE

Better Programmes Held Big Need at Present.

Kind "Silly Smoke," Winitrad as After Kynolds Pa. President's Photo.

Hotel Clerk Identifies Marihuana Smoker As 'Wild Gunman' Arrested for Shootings

A hungry-looking transient picked off the street was linked Friday to the strange shooting two weeks back in a row of two elderly hotel clerks.

He was identified as John Kelly Stephens, 29, a native state hospital inmate and admitted marihuana user.

He was held on two charges under \$1,000 bail; assault with intent to rob and assault with intent to kill.



Stephens, 29, is not to mention all his crimes.

A fast patrolman, Fred McArthur, picked Stephens off the street Thursday afternoon in a hotel in the at the moment being Wednesday night. Power & Long drug store, 124 E. Washington street.

Stephens had directed in was returned to the state hospital in St. Louis, Mo. Stephens was in the hospital for several months.

After the Supreme Court decision of March 29, 1937, upholding the prohibition of machine guns through taxation, Herman Oliphant made his move.

"This bill is too all inclusive. This bill is a world encircling measure. This bill brings the activities—the crushing of this great industry under the supervision of a bureau—which may mean its suppression."

On April 14, 1937 he introduced the bill directly to the House Ways and Means Committee instead of to other appropriate committees such as food and drug, agriculture, textiles, commerce, etc.

The reason may have been that Ways and Means is the only committee to send its bills directly to the House floor without the act having to be debated upon by other committees.

Ways and Means Chairman Robert L. Doughton,* a key DuPont ally, quickly rubber-stamped the secret Treasury bill and sent it sailing through Congress to the President.

* Per Jerry Colby, author of *DuPont Dynasties*, Lyle Stewart, 1984.

"DID ANYONE CONSULT THE A.M.A.?"

However, even within his controlled Committee hearings, many expert witnesses spoke out against the passage of these *unusual* tax laws.

Dr. James Woodward, for instance, who was both a physician and an attorney, testified on behalf of the American Medical Association (AMA).

He said in effect, the whole fabric of federal testimony was tabloid sensationalism! No real testimony was being used in its passage! This law could possibly in ignorance deny the world a potential medicine, especially now that the medical world was just beginning to find which ingredients in cannabis were active.

He stated to the committee that the whole reason the AMA hadn't come out against the marijuana tax law sooner was that marijuana had been described in the press for 20 years as "killer weed from Mexico."

The AMA doctors had just realized "two days before" these Spring, 1937 hearings, that the plant Congress intended to outlaw was known medically as cannabis—the benign substance used in scores of illnesses, for 100 years in America, with perfect safety.

"We cannot understand yet, Mr. Chairman, why this bill should have been prepared in secret for two years without any intimation, even to the profession," protested Woodward, "that it was being prepared."

He and the AMA* were quickly denounced by Anslinger and the entire congressional committee, and curtly excused.³

* The A.M.A. and the Roosevelt administration were strong opponents in 1937.

When the Marijuana Tax Act bill came up for report, discussion, and vote on the floor of Congress only one pertinent question was asked from the floor: "Did anyone consult with the AMA and get their opinion?"

Representative Vinson answering for the Ways and Means Committee replied, "Yes, we have, and Wharton [mistaken pronunciation of Woodward?] [the AMA] are in complete agreement!"

With this memorable lie, the bill passed, and came law in December, 1937. A federal police force was created, able to demand millions of wasted years in jail and even the deaths of individual Americans in order to save poison, polluting industries, and to force some white politicians' policies of racial hatred.

(Mikuriya, Tod, M.D., *Marijuana Medical Papers*, 1972; Slovic, Larry, *Reefer Madness*, Grove Press, 1979; Lindsmith, Alfred, *Addict and the Law*, Indiana U. Press; Bonnie & Whitebread, *Marijuana Conviction*, U. of VA Press; U.S. Cong. Records; et al.)

OTHERS SPOKE OUT, TOO

Also lobbying *against* the Tax Act with all its energy was the National Oil Seed Institute, representing the high quality machine lubrication producers as well as paint manufacturers. Speaking to the House Ways and Means Committee in 1937, their general counsel, Ralph Loziers, testified eloquently about hemp seed oil that was to be, in effect, outlawed:

"Respectable authorities tell us that in the Orient, at least 200 million people use this drug; and when we take into consideration that for hundreds, yes, thousands of years, practically that number of people have been using this drug. It is significant that in Asia and elsewhere in the Orient, where poverty stalks abroad every hand and where they draw on all the plant resources which a bountiful nature has given that domain—it is significant that none of those 200 million people has ever, since the dawn of civilization, been found using the seed of this plant or using the oil as a drug.

"Now, if there were any deleterious properties or principles in the seed or oil, it is reasonable to suppose that these Orientals, who have been reaching out in the poverty for something that would satisfy their morbid appetite, would have discovered it...."

"If the committee please, the hemp seed, or the seed of the cannabis sativa L., is used in all the Oriental nations and also in a part of Russia as food. It is grown in the fields and used as oatmeal. Millions of people everywhere are using hemp seed in the Orient as food. They have been doing that for many generations, especially in periods of famine...."

"The point I make is this—that this bill is too all inclusive. This bill is a world encircling measure. This bill brings the activities—the crushing of this great industry"

under the supervision of a bureau—which may mean its suppression. Last year, there was imported into the U.S. 62,813,000 pounds of hemp seed. In 1935 there was imported 116 million pounds....”

PROTECTING SPECIAL INTERESTS

Testimony before Congress in 1937 for the purpose of outlawing hemp consisted almost entirely of Hearst's and other sensational and racist newspaper articles read aloud by Harry J. Anslinger,* director of the Federal Bureau of Narcotics (FBN). (This agency has since evolved into the Drug Enforcement Administration [DEA]).

* Harry J. Anslinger was director of the new Federal Bureau of Narcotics from its inception in 1931 for the next 31 years, and was only forced into retirement in 1962 by President John F. Kennedy after Anslinger tried to censor the publications and publishers of Professor Alfred Lindsmith (*The Addict and the Law*, Washington Post, 1961) and to blackmail and harass his employer, Indiana University.

Anslinger had come under attack for racist remarks as early as 1934 by a U.S. senator from Pennsylvania, Joseph Guffey, for such things as referring to “ginger-colored niggers” in letters circulated to his department heads on FBN stationery.

Prior to 1931, Anslinger was Assistant U.S. Commissioner for Prohibition. Anslinger, remember, was hand-picked to head the new Federal Bureau of Narcotics by his uncle-in-law, Andrew Mellon, Secretary of the Treasury under President Herbert Hoover. The same Andrew Mellon was also the owner and largest stockholder of the sixth largest bank (in 1937) in the United States, the Mellon Bank in Pittsburgh, one of only two bankers for DuPont* from 1928 to the present.

* DuPont has borrowed money from banks only twice in its entire 170 year history, once to buy control of General Motors in the 1920s. Its banking business is the prestigious plum of the financial world.

In 1937, Anslinger testified before Congress saying, “Marijuana is the most violence causing drug in the history of mankind.”

This, along with Anslinger's outrageous racist statements and beliefs, was made to the Southern-dominated congressional committee and is now an embarrassment to read in its entirety.

For instance, Anslinger kept a “Gore File,” culled almost entirely from Hearst and other sensational tabloids—e.g., stories of axe murders, where one of the participants reportedly smoked a joint four days before committing the crime.

Anslinger pushed on Congress as a factual statement that about 50% of all violent crimes committed in the U.S. were committed by Spaniards, Mexican-Americans, Latin Americans, Filipinos, Negroes and Greeks, and these crimes could be traced directly to marijuana.

(From Anslinger's own records given to Pennsylvania State University, Li Cata Murders, etc.)

Not one of Anslinger's marijuana “Gore Files” of the

1930s is believed to be true by scholars who have painstakingly checked the facts.¹

SELF-PERPETUATING LIES

In fact, F.B.I. statistics, had Anslinger bothered to check, showed at least 65% to 75% of all murders in the U.S. were then—and still are—alcohol related.

As an example of his racist statements, Anslinger read into U.S. Congressional testimony (without objection) stories about “coloreds” with big lips, luring white women with jazz music and marijuana.

He read an account of two Negro students at the University of Minnesota doing this to a white coed “with the result of pregnancy.” The Congressmen of 1937 gasped at this and at the fact that this drug seemingly caused white women to touch or even look at a “Negro.”

Virtually no one in America other than a handful of rich industrialists and their hired cops knew that their chief potential competitor—hemp—was being outlawed under the name “marijuana.”

That's right. Marijuana was most likely just a pretext for hemp prohibition and economic suppression.

The water was further muddied by the confusion of marijuana with Loco Weed (Jimson Weed). The situation was not clarified by the press, which continued to print the disinformation into the 1960s.

At the dawn of the 1990s, the most extravagant and ridiculous attacks on the hemp plant draw national media attention—such as a study widely reported by health journals in 1989 that claimed marijuana smokers put on about a half a pound of weight per day. Now in 1993 they just want to duck the issue.

(American Health, July/August 1989.)

Meanwhile, serious discussions of the health, civil liberties and economic aspects of the hemp issue are frequently dismissed as being nothing but an “excuse so that people can smoke pot”—as if people need an ‘excuse’ to state the facts about any matter.

One must concede that, as a tactic, lying to the public about the beneficial nature of hemp and confusing them as to its relationship with “marijuana” has been very successful.

Footnotes:

1. Dewey & Merrill, *Bulletin 404*, US Department of Agriculture 1916; “Billion-Dollar Crop,” *Popular Mechanics*, 1938; U.S. Agricultural Indexes, 1916 through 1982; *New Scientist*, November 13, 1980.

2. Uelmen & Haddox, *Drug Abuse and the Law*, 1974.

3. Bonnie, Richard & Whitebread, Charles, *The Marijuana Conviction*, Univ. of Virginia Press, 1974; Congressional testimony, 1937 (See full testimony in Appendix); et al.

4. Sloman, Larry; *Reefer Madness*, 1979; Bonnie and Whitebread, *The Marijuana Conviction*, Univ. of Virginia Press, 1974.

MARIJUANA PROHIBITION

Anslinger got his marijuana law...

"Should we believe self-serving, ever-growing drug enforcement/drug treatment bureaucrats, whose pay and advancement depends on finding more and more people to arrest and 'treat'?"

"More Americans die in just one day in prisons, penitentiaries, jails and stockades than have ever died from marijuana throughout his:ory. Who are they protecting? From what?"

—Fred Oerther, M.D., Portland Oregon, September, 1986.

MOVING TO CRUSH DISSENT

After the 1938-1944 New York City "LaGuardia Marijuana Report" refuted his argument, by reporting that marijuana caused no violence at all and citing other positive results; Harry J. Anslinger, in public tirade after tirade, denounced Mayor Fiorella LaGuardia, the New York Academy of Medicine and the doctors who researched the report.

Anslinger proclaimed that these doctors would never again do marijuana experiments or research without his personal permission, or be sent to jail!

He then used the full power of the United States government, illegally, to halt virtually all research into marijuana while he blackmailed the American Medical Association (AMA)* into denouncing the New York Academy of Medicine and its doctors for the research they had done.

* Why, you ask, was the AMA now on Anslinger's side in 1944-45, after being against the Marijuana Tax Act in 1937? Answer: since Anslinger's FBN was responsible for prosecuting doctors who prescribed narcotic drugs for what he, Anslinger, deemed illegal purposes, they (the FBN) had prosecuted more than 3,000 AMA doctors for illegal prescriptions through 1939. In 1939, the AMA made specific peace with Anslinger on marijuana. The results: Only three doctors were prosecuted for illegal drugs of any sort from 1939 to 1949.

The 1938-1944 New York City "LaGuardia Marijuana Report" refuted the idea that marijuana caused violence, and cited other positive results.

To refute the LaGuardia report, the AMA, at Anslinger's personal request, conducted a 1944-45 study showing that 34 Negro GI's (and one white GI for statistical "control") who smoked marijuana became disrespectful of white soldiers and officers in the segregated military. (See Appendix, "Army Study

of Marijuana," Newsweek, Jan. 15, 1945.)

This technique of biasing the outcome of a study is known among researchers as "gutter science."

POT & THE THREAT OF PEACE

However, from 1948 to 1950, Anslinger stopped feeding the press the story that marijuana was violence causing and began "Red Baiting," typical of the McCarthy era.

Now the frightened American public was told that this was a much more dangerous drug than he originally thought. Testifying before a strongly anti Communist Congress in 1948—and thereafter continually in the press—Anslinger proclaimed that marijuana caused its users to become so peaceful—and pacifistic!—that the Communist could and would use marijuana to weaken our American fighting men's will to fight.

This was a 180-degree turnaround of the original pretext on which "violence causing" cannabis was outlawed in 1937. Undaunted, however, Congress now voted to continue the marijuana law—based on the exact opposite reasoning they had used to outlaw cannabis in the first place.

It is interesting and even absurd to note that Anslinger and his biggest supporters—Southern congressmen and his best senatorial friend, Senator Joseph McCarthy* of Wisconsin—from 1948 on, constantly received press coverage on the scare.

* According to Anslinger's autobiographical book, *The Murderers* and confirmed by former FBN agents, Anslinger had been supplying morphine illegally to a U.S. senator—Joseph McCarthy—for years.

The reason given by Anslinger in his book? So the communist would not be able to blackmail this Great American Senator for his drug-dependency weakness. (Dean Latimer, *Flowers In The Blood*; Harry Anslinger, *The Murderers*.)

The communists had the potential to sell marijuana to American boys to sap their will to fight—to make us a nation of zombie pacifists. Of course, the communists of Russia and China ridiculed this American marijuana paranoia every chance they got—in the press and at the United Nations.

In 1943, marijuana extracts were discontinued by Anslinger's group as America's first truth serum because it didn't work all the time. People being interrogated would often giggle or laugh hysterically at their captors, get paranoid, or have insatiable desires for food.

Unfortunately, the idea of pot and pacifism got so much sensational world press for the next decade that eventually Russia, China, and the Eastern Bloc communist countries (who grew large amounts of cannabis) outlawed marijuana for fear that America would sell or give it to their peoples to make their soldiers pacifists.

This was strange because Russia, Eastern Europe, and China had been growing and ingesting cannabis as a medicinal drug, relaxant and work tonic for hundreds and even thousands of years, with no thought of marijuana laws.

(The J.V. Dialogue Soviet Press Digest, Oct., 1990 reported a flourishing illegal hemp business, despite the frantic efforts by Soviet law enforcement agencies to stamp it out. "In Kirghizia alone hemp plantations occupy some 3,000 hectares." In another area Russians are traveling three days into the "one of the more sinister places in the Mciyn-Kumy desert," to harvest a special high grade, drought resistant variety of hemp or known locally as anasha.)

A SECRET PROGRAM TO CONTROL MINDS & CHOICES

Through a report released in 1983 under the Freedom of Information Act, it was discovered (after 40 years of secrecy) that Anslinger was appointed in 1942 to a top-secret committee to create a "truth serum" for the OSS, Office of Strategic Services, which evolved into the CIA, the Central Intelligence Agency. (*Rolling Stone*, August 1983.)

Anslinger and his spy group picked, as America's first truth serum, "honey oil," a much purer, almost tasteless form of hash oil, to be administered in food to spies, saboteurs, military prisoners and the like, to "spill the truth," without their knowledge.

Fifteen months later, in 1943, marijuana extracts were discontinued by Anslinger's group as America's first truth serum because it was noted that they didn't work all the time:

"The people being interrogated would often giggle or laugh hysterically at their captors, get paranoid, or have insatiable desires for food (the munchies?). Also, the report noted that American OSS agents and other interrogation groups started using the honey oil illegally themselves, and would not give it to the spies. In Anslinger's OSS group's final report on marijuana as a truth-serum, there was no mention of violence caused by the drug! In fact, the opposite was indicated. The OSS and later the CIA continued the

search and tried other drugs as a truth serum; psilocybe or amanita mushrooms and LSD, to name a few.

The CIA secretly tested these concoctions on American agents for 20 years.

THE BUSH/QUAYLE/LILLY PHARMACEUTICAL SELL OUT

In America, marijuana's most outspoken opponents are none other than former first lady Nancy Reagan (1981-1989) and former President George Bush (1989-1992), former Director of the CIA under Gerald Ford (1975-1977) and past director of President Reagan's "Drug Task Force" (1981-1988).

After leaving the CIA in 1977, Bush was made director of Eli Lilly by none other than Dan Quayle's father and family, who owned controlling interest in the Lilly company; and the *Indianapolis Star*. Dan Quayle later acted as go-between for drug kingpins, gun runners and government officials in the Iran-Contra scandals.

The entire Bush family were large stockholders in Lilly, Abbott, Bristol and Pfizer, etc. After Bush's disclosure of assets in 1979, it became public that Bush's family still has a large interest in Pfizer and substantial amounts of stock in the other aforementioned drug companies.

In fact, Bush actively lobbied illegally both within and without the Administration as Vice President in 1981 to permit drug companies to dump more unwanted, obsolete or especially domestically-banned substances on unsuspecting Third World countries.

While Vice President, Bush continued to illegally act on behalf of pharmaceutical companies by personally going to the IRS for special tax breaks for certain drug companies (e.g. Lilly) manufacturing in Puerto Rico. In 1982, Vice President Bush was personally ordered to stop lobbying the IRS on behalf of the drug companies by the U.S. Supreme Court itself. (See Appendix, page 147.)

He did—but they (the pharmaceuticals) still received a 23% additional tax break for their companies in Puerto Rico who make these American outlawed drugs for sale to Third World countries.

(Financial disclosure statements; Bush 1979 tax report; "Bush Tried to Sway A Tax Rule Change But Then Withdrew" *NY Times*, May 19, 1982; misc. corporate records; Christic Institute "La Penca" affidavit; Lilly 1979 Annual Report.)

Unsuspecting subjects jumped from buildings, or thought they'd gone insane.

Our government finally admitted to doing all this to its own people in the 1970s—after 25 years of denials: drugging innocent, non-consenting, unaware citizens, soldiers and government agents—all in the name of national security, of course.

These American "security" agencies constantly threatened and even occasionally imprisoned individuals, families and organizations that suggested the druggings had ever occurred.

Anslinger supplied illegal morphine to U.S. Senator Joseph McCarthy for years.

It was three decades before the Freedom of Information Act forced the CIA to admit their lies through exposure on TV by CBS's 60 Minutes and others. However, on April 16, 1985 the U.S. Supreme Court ruled that the CIA did not have to reveal the identities of either the individuals or institutions involved in this travesty.

The court said, in effect, that the CIA could decide what was or was not to be released under the Freedom of Information Act, and that the courts could not overrule the agency's decision.

As an aside, repealing this Freedom of Information Act was one of the prime goals of the Reagan/Bush/

Quayle Administration.

(L.A. Times, The Oregonian, etc. editorials 1984; The Oregonian, January 21, 1985, Lee, Martin & Shlain, Bruce, *Acid Dreams*, G. Press, NY, 1985.)

CRIMINAL MISCONDUCT

Before Anslinger started the pacifist zombie-marijuana scare in 1948, he publicly used jazz music, violence, and the "gore files" for five to seven more years (1943-50) in the press, at conventions, lectures, and Congressional hearings.

We now know that on the subject of hemp, disguised as marijuana, Anslinger was a bureaucrat police liar.

For over 50 years now Americans have been growing up with and accepting Anslinger's statements the herb—from violence to evil pacifism and finally the corrupting influence of music.

Whether this was economically or racially inspired or even because of up-beat music or some kind of synergistic (combined) hysteria; it is impossible to know for sure. But we do know the U.S. Government, e.g. DEA, information disseminated on cannabis was then, and continues to be, a deliberate deception.

As you will see in the following chapters, the weight of empirical fact and large amounts of corroborative evidence indicate that the Bush/Quayle administration, along with their unique pharmaceutical connections (see "Bush/Quayle/Lilly Pharmaceutical Sellout" sidebar in this chapter), have probably conspired at the highest levels to withhold information and to disinform the public, resulting in the avoidable and needless deaths of tens of thousands of Americans.

And they did it, it seems, intending to save their own investment—and their friends'—in the pharmaceutical, energy and paper industries; and to give these poisonous, synthetic industries an insane advantage over natural hemp and protect the billions of dollars in annual profits that they stood to lose if the hemp plant and marijuana were not prohibited!

As a result, millions of Americans have wasted millions of years in jail time, and millions of lives have been and continue to be ruined by what started out as Hearst's, Anslinger's and DuPont's shameful economic lies, vicious racial libels and bigoted musical taste.

Footnotes:

1. Abel, Ernest, *Marijuana, The First 12,000 Years*, Plenum Press NY, 1980, pp. 73 & 90.
2. Sloman, Larry, *Reefer Madness*, Grove Press, Inc., New York 1979, pp. 40.
3. Ibid, pp. 196, 197.
4. Research of Dr. Michael Aldrich, Richard Ashley, Michael Horowitz, et al.; *The High Times Encyclopedia of Recreational Drugs*, pp. 138.

MARIHUANA

THE ASSASSIN OF YOUTH



THE LEAF

Essential component of the plant, the leaf is composed of seven serrated leaflets. Each leaflet from five to six inches long, pointed at the tip, and with a long petiole. The leaflets are arranged in an opposite, pinnate pattern. The leaflets are green above and silvery beneath. The leaflets are the source of the drug. They are dried and smoked or brewed into tea. They are also used for medicinal purposes.



A TYPICAL FIELD OF MARIHUANA



THE PLANT

Annual or biennial, with a woody stem. The plant is 3 to 6 feet tall. The leaves are green above and silvery beneath. The plant is the source of the drug. It is dried and smoked or brewed into tea. It is also used for medicinal purposes.

Physiological Reaction

The effects of marijuana are most pronounced in the respiratory system. When the drug is smoked, it is inhaled into the lungs. It is then absorbed into the bloodstream. The drug is then carried to the brain, where it acts on the central nervous system. The effects are most pronounced in the brain, where it causes a feeling of euphoria and relaxation. It also causes a decrease in heart rate and blood pressure. The effects are most pronounced in the brain, where it causes a feeling of euphoria and relaxation. It also causes a decrease in heart rate and blood pressure.

Test for Marijuana

The substance is most readily detected in the urine. It is also found in the blood, sweat, and hair. The test is most accurate when the substance is found in the urine. The test is most accurate when the substance is found in the urine.

IT IS A CRIME for any person to plant, cultivate, possess, sell or give away Marijuana.

It is a felony to plant, cultivate, possess, sell or give away Marijuana. The penalty is imprisonment for up to five years. The penalty is imprisonment for up to five years.

Division of Narcotics Enforcement

PAUL S. HARRIS, CHIEF

STATE BUILDING

San Francisco, California

STAMP IT OUT

THE BODY OF MEDICAL LITERATURE ON CANNABIS MEDICINE

Our authority here is the 'Body of Literature,' starting with ancient materia medica: Chinese and Hindu pharmacopoeias and Near Eastern cuneiform tablets, and continuing all the way into this century, including the 1966-76 U.S. renaissance of cannabis studies—some 10,000 separate studies on medicines and effects from the hemp plant.

Comprehensive compendia of these works are designated as the prime sources for this medical chapter, as well as ongoing interviews with many researchers.

AFFORDABLE, AVAILABLE HERBAL HEALTH CARE

For more than 3,500 years, cannabis/hemp/marijuana has been, depending on the culture or nation, either the most used or one of the most widely used plants for medicines. This includes: China, India, the Middle and Near East, Africa and pre-Roman Catholic Europe (prior to 400 A.D.)

Dr. Raphael Mechoulam, NORML, High Times and Omni magazine (September 1982) all indicate that, if marijuana were legal it would immediately replace 10% to 20% of all pharmaceutical prescription medicines (based on research through 1976). And probably, Mechoulam estimates, 40% to 50% of all medicines, including patent medicines, could contain some extract from the cannabis plant when fully researched.

(Read the U.S. government sponsored research as outlined by Cohen & Stillman, *Therapeutic Potential of Marijuana*, 1976; Stillman, Roger, *Marijuana as Medicine*, 1980; Mikuriya, Tbd, M.D., *Marijuana Medical Papers*, 1972; Also, the work of Dr. Norman Benberg; Dr. Andrew Weill; Dr. Lester Grinspoon; and the U.S. Government's Presidential Commission reports [Shafer Commission] from 1969 through 1972; Dr. Raphael Mechoulam, Tel Aviv/Jerusalem Univ., 1964-64; W.B. O'Shaughnessy monograph, 1839; and the long-term Jamaican studies I & II, 1968-74; Costa Rican studies through 1982; U.S. Coptic studies, 1981; Ungerlieder; U.S. military studies since the 1950s and 60s.)

SUPERSTAR OF THE 19TH CENTURY

Marijuana was America's number one analgesic for 60 years before the re-discovery of aspirin around 1900. From 1842 to 1900 cannabis made up half of all medicine sold, with virtually no fear of its high.

The 1839 report on the uses of cannabis by Dr. W.B. O'Shaughnessy, one of the most respected members of the Royal Academy of Science, was just as important to mid-19th century Western medicine as the discov-

eries of antibiotics (like penicillin and Terramycin) were to mid-20th century medicine.

The Committee on Cannabis Indica for the Ohio State Medical Society concluded, "the gall and vinegar, or myrrhed wine, offered to our Saviour immediately before his crucifixion was, in all probability, a preparation of Indian hemp."

From 1850 to 1937, cannabis was prescribed as the prime medicine for more than 100 separate illnesses or diseases in American U.S. pharmacopoeia.

In fact, the Committee on Cannabis Indica for the Ohio State Medical Society concluded that "High Biblical commentators [scholars]" believe "that the gall and vinegar, or myrrhed wine, offered to our Saviour immediately before his crucifixion was, in all probability, a preparation of Indian hemp."

(Transcripts, Ohio State Medical Society 15th annual meeting, June 12-14, 1860, pg. 75-100.)

During all this time (pre-1000 B.C. to 1940s A.D.), researchers, doctors and drug manufacturers (Lilly, Parke-Davis, Squibb, etc.) had no idea what the active ingredients were in cannabis until Dr. R. Mechoulam discovered THC in 1964.

20TH CENTURY RESEARCH

As outlined in the previous chapters, the American Medical Association (AMA) and drug companies testified *against* the 1937 Marijuana Tax Act because cannabis was known to have so much medical potential and had never caused any observable addictions or death by overdose.

They argued the possibility existed that, once the active ingredients in cannabis (such as THC Delta-9)

were isolated and correct dosages established, cannabis could become a miracle drug.

Research revealed positive indications when using cannabis for asthma, glaucoma, nausea from chemotherapy, anorexia, and tumors, as well as a general use antibiotic; epilepsy, Parkinson's disease, anorexia, multiple sclerosis, dystrophy, and tumors—all these merited further clinical studies.

Twenty-nine years, however, would pass before American scientists could begin to even look into cannabis medicine again.

THC Delta-9 was isolated by Dr. Raphael Mechoulam at the University of Tel Aviv in 1964. His work confirmed that of Professor Taylor of Princeton, who had lead the research and identification of natural THC Delta-9 precursors in the 1930s. Kahn, Adams and Loewe also worked with the structure of cannabis' active ingredients in 1944.

Since 1964, more than 400 separate compounds have been isolated in cannabis from over a thousand suspected compounds. At least 60 of the isolated compounds are therapeutic. The United States, however, forbade this type of research through the bureaucratic authority of Harry Anslinger until 1961, when he was forced to retire. (Omni magazine, Sept., 1982.)

GROWING ACCEPTANCE

By 1966, millions of young Americans were using marijuana. Concerned parents and government, wanting to know the dangers their children were risking, started funding dozens and later hundreds of marijuana health studies.

Entrenched in the older generation's minds were 30 years of Anslinger/Hearst scare stories: Murder, atrocity, rape, and even zombie pacifism.

Federally sponsored research results began to ease Americans' fears of cannabis causing violence or zombie pacifism, and hundreds of new studies suggested that hidden inside the hemp plants' chemistry lay a medicinal array of incredible therapeutic potential. The government funded more and more studies.

Soon, legions of American researchers had positive indications using cannabis with asthma, glaucoma, nausea from chemotherapy, anorexia, tumors, and epilepsy, as well as a general use antibiotic. Cumulative results showed evidence or favorable anomalies occurring, for Parkinson's disease, anorexia, multiple sclerosis and muscular dystrophy; plus thousands of anecdotal stories all merited further clinical study.

Prior to 1976, reports of positive effects and new therapeutic indications for cannabis were almost a weekly occurrence in medical journals and the national press.

NATIONAL CONFERENCE PRAISED CANNABIS THERAPY POTENTIAL

In November 1975, virtually all of America's leading researchers on marijuana met at Asilomar Conference Center, Pacific Grove, California. Seminars were sponsored by the National Institute of Drug Abuse (NIDA) to address a compendium of studies from their earliest to most recent findings.

When the seminars were over, practically all the participants (scientists) concluded that the federal government, with the hard evidence collected so far on the therapeutic potential of marijuana, should be rushing to invest tax money into more research.

They felt the taxpayers should be informed that there was every legitimate reason for the field of public health to continue large scale research on cannabis medicine and therapies. All the participants, it seems, believed this. Many of them (such as Mechoulam) believed that cannabis would be one of the world's major medicines by the mid-1980s.

MARIJUANA RESEARCH BANNED

However, in 1976, just as multi-disciplined marijuana research should have been going into its second-third- and fourth-generation studies (see *Therapeutic Potential of Marijuana* and NORML federal files), a "surprise" United States government policy again forbade all promising federal research into marijuana's therapeutic effects.

This time, the research ban was accomplished when American pharmaceutical companies successfully petitioned the federal government to be allowed to finance and judge 100% of the research.

The previous 10 years of research had indicated a tremendous promise for the therapeutic uses of natural cannabis, and this potential was quietly turned over to corporate hands—not for the benefit of the public, but to suppress the information.

This plan, the drug manufacturers petitioned, would allow our private drug companies time to come up with patentable synthetics of the cannabis molecules at no cost to the federal government, and a promise of "no highs."

In 1976, the Ford Administration, NIDA and the DEA said, in effect, no American independent (read: university) research or federal health program would be allowed to again investigate natural cannabis derivatives for medicine. This agreement was made

without any safeguards guaranteeing integrity on the part of the pharmaceutical companies; they were allowed to regulate themselves.

Private pharmaceutical corporations were allowed to do some "no high" research, but it would be only Delta-9 THC research, not any of the 400 other potentially therapeutic isomers in cannabis.

Why did the drug companies conspire to take over marijuana research? Because recent US government research (1966-1976) had indicated or confirmed through hundreds of studies that even "natural" crude cannabis was the "best and safest medicine of choice" for many serious health problems.

1988: DEA JUDGE RULES THAT CANNABIS HAS MEDICAL VALUE

The DEA's own conservative administrative law judge, Francis Young, after taking medical testimony for 15 days and reviewing hundreds of DEA/NIDA documents posed against the evidence introduced by marijuana reform activists concluded in September, 1988 that "marijuana is one of the safest therapeutically active substances known to man."

But despite this preponderance of evidence, DEA Director John Lawn ordered on December 30, 1989 that cannabis remain listed as a Schedule One narcotic—having no known medical use. His successor, Robert Bonner, who was appointed by Bush and kept in office by Clinton, was even more draconian in his approach to hemp/marijuana as medicine.

WELL, IF IT'S KNOWN ALL THIS SINCE 1975, WHAT'S THE GOVERNMENT WAITING FOR?

PROTECTING PHARMACEUTICAL COMPANIES' PROFITS

NORML, High Times and Omni (September, 1982) indicate that Eli Lilly Co.; Abbott Labs; Pfizer; Smith, Kline & French; and others would lose hundreds of millions to billions of dollars annually, and lose even more billions in Third World countries, if marijuana were legal in the U.S.*

* Remember, these drug companies, at their own insistence, specifically by lobbying, got the Federal Government to prevent all positive research into medical marijuana in 1976, the last year of the Ford Administration.

PUTTING THE FOX INTO THE HEALTH CARE CHICKEN COOP

The drug companies took over all research and financing into analogs of synthetic THC, CBD, CBN, etc., promising "no high" before allowing the products on the market. Eli Lilly came out with Nabilone and later Marinol; synthetic second cousins of THC

Delta 9 and promised the government great results.

Omni magazine, in 1982, stated that after nine years, Nabilone was still considered virtually useless when compared with real, home-grown THC-rich cannabis buds, and Marinol works in only 13% of patients.

Some 500,000 people are poisoned each year in Third World countries by drugs, pesticides, etc. that are sold to them by American companies, but which are banned from sale in the U.S.

Marijuana users agree, they do not like the effects of Lilly's Nabilone or Marinol. Why? You have to get three or four times as high on Marinol to get the same benefits as smoking good cannabis bud.

Omni 1982 also states (and it's still true in 1993) that after tens of millions of dollars and nine years of research on medical marijuana synthetics, "these drug companies are totally unsuccessful," even though raw, organic cannabis is a "superior medicine" which works so well naturally, on so many different illnesses.

Omni also suggested the drug companies petition the government to allow "crude drug extracts" on the market in the real interest of public health. The government and the drug companies, to date, have not responded. Or rather, they have responded by ignoring it. However, the Reagan/Bush/Quayle Administration absolutely refused to allow resumption of real (university) cannabis research, except under synthetic pharmaceutical studies.

Omni suggests, and NORML and High Times concur, the reason the drug companies and Reagan/Bush/Quayle wanted only synthetic THC legal is that simple extractions of the hundreds of ingredients from the cannabis crude drug would be enjoyed without pharmaceutical company patents which generate windfall monopolized profits.

UNDERMINING THE NATURAL MEDICINES' COMPETITION

Eli Lilly, Pfizer and others stand to lose a third of their entire, highly profitable, patent monopoly on drugs including Darvon; to take losses in their Tuinal and Seconal lines (as well as other patent lines ranging from muscle ointments to burn ointments, to thousands of other uses already known in 1966-1976) from a plant anyone can grow: cannabis hemp.

Isn't it curious that American drug companies and pharmacist groups* supply almost half the funding for the 4000 "Families Against Marijuana" type organizations in America? The other half is supplied by Action (a federal VISTA agency) and by tobacco companies, and liquor and beer makers like Anheuser

AN UNFAIR RAP FOR HEMP

After 20 years of study, the California Research Advisory Panel (RAP) in 1989 broke with the state Attorney General's office (A.G.), under which it works, and called for the re-legalization of cannabis.

"There is no point to continuing unmodified, much less intensified, the policies and laws that have so obviously failed to control the individual and societal damages associated with drug use," summarized Vice Chairman Frederick Meyers, M.D., in a letter released with the group's recommendations after the attorney general had suppressed the report and panel members elected to publish it at their own expense.

This was a complete turnaround from the RAP's long history of suppressing medical usage. The long term impact of this shift remains to be seen.

Chairman Edward P. O'Brien, Jr, appointed by the A.G., who dissented from the panel's conclusions, had for years dominated this group, rigidly controlling what research could be performed—and limiting those applications to control of nausea and vomiting that is secondary to cancer chemotherapy.

Under O'Brien, the panel systematically welshed on its mandate to provide compassionate medicinal access to cannabis. Any applications for using cannabis including the control of pain, spastic neurological disorders, etc., have been rejected. Cannabis used to be the treatment of choice for vascular or migraine headache. (Osler, 1916; O'Shaugnessey, 1839)

Cannabis has the unique characteristic of affecting the vascular circulation of the covering of the brain—the meninges. The reddened eyes of the marijuana user are a reflection of this action.

Unlike other drugs, however, cannabis has no apparent affect on the vascular system in general, except for a slight speeding up of the heart during the onset of the effects of the drug.

RAP has discouraged the use of smoking cannabis in favor of synthetic Delta-9 THC capsules, despite crude cannabis' favorable comparative results reported to the Food and Drug Administration.

This has been frankly misrepresented in their reports to the legislature and testimony in the NORML vs. DEA case. Additionally, these memoranda favorably comparing smoked marijuana to oral THC have been buried in appendices to their reports—available in only four locations in the entire state of California!

On September 30, 1989, the medical marijuana program quietly expired, based on the staff's assessment that not enough people had been treated to justify its extension.

—*Tod Mikuriya, M.D.*
Berkeley, CA, 1990

Busch, Coors, Philip Morris, etc., or as a 'public service' by the ad agencies who represent them.

* Pharmacists Against Drug Abuse, etc. See appendices

POISONING THE THIRD WORLD

Colombia's largest newspaper, *Periodico el Tiempo* (Bogota) reported in 1983—and was not disputed by the U.S. government or American pharmaceutical companies—that these same anti-marijuana crusading American pharmaceutical companies are guilty of a practice known as "product dumping," wherein they "sell on the over-the-counter markets of Colombia, Mexico, Panama, Chile, El Salvador, Honduras and Nicaragua, over 150 different illegal, dangerous drugs."

Some of these drugs have been forbidden by the FDA for sale or use in the U.S. or its counterpart in Europe because they are known to cause malnutrition, deformities and cancer. Yet they are sold over the counter to unsuspecting illiterates!

The World Health Organization backs up this story with a conservative estimate: they say that some 500,000 people are poisoned each year in Third World countries by items (drugs, pesticides, etc.) sold by American companies but which are banned from sale in the U.S.

Mother Jones magazine, 1979, "Unbroken Circle" June, 1988
The Progressive, April, 1991; et al.

DESTROYING THE PUBLIC RECORD

Some 10,000 studies were done on cannabis, 4,000 in the U.S., and only about a dozen have shown any negative results and these have never been replicated. The Reagan/Bush Administration put a soft "feeler" out in September of 1983, for American universities and researchers to destroy all 1966-76 cannabis research work, including copies in libraries.

Scientists and doctors so ridiculed this unparalleled censorship move that the plans were dropped...for the moment.

However, we know that large amounts of information have since disappeared, including the original copy of the USDA's own pro-marijuana film *Hemp for Victory*. Worse yet, even the mere mention of the film was removed from the official record back to 1958, and has had to be painstakingly re-established as part of our national archives. Many archival and resource copies of *USDA Bulletin 404* have disappeared.

How much more irreplaceable knowledge has already been lost?

"THE MOST TALKED ABOUT UNDERGROUND BOOK OF THE LAST DECADE," HAS BEEN TRANSFORMED INTO THE GUIDEBOOK FOR THE FUTURE.

A \$10,000* CHALLENGE TO THE WORLD TO PROVE US WRONG

If all fossil fuels and their derivatives, as well as the deforestation of trees for paper and agriculture are banned from use in order to save the planet and reverse the greenhouse effect: Then there is only one known renewable natural resource able to provide the overall majority of our paper, textiles and food, meet all the world's transportation, home and industrial energy needs, reduce pollution, rebuild the soil and clean the atmosphere—all at the same time—our old stand-by that did it all before: **Cannabis Hemp ... Marijuana!**

* Contact H.E.M.P. for details.

Written by Jack Herer • Editors: Chris Conrad, Lynn & Judy Osburn

- Ways To Use Hemp for Medicine, Food, Fuel, Fiber, Paper & To Replace Plastic
- Just the Facts About Marijuana Smoking & Its Effect on People
- How & Why Cannabis Prohibition Began and What It Has Meant to America
- Who Profits From Keeping It in Place & How We're Going To Bring It to an End
- What You Can Do To Speed Up the Process & Profit From the Coming Changes

For more information on Herer's organization, write to Help End Marijuana Prohibition, 5632 Van Nuys Blvd., #310, Van Nuys CA 91401 • 310/392-1806

HOW DANGEROUS IS MARIJUANA... IN COMPARISON TO OTHER SUBSTANCES?

NUMBER OF AMERICAN DEATHS PER YEAR that result directly or primarily from the following selected causes nationwide, according to World Almanacs, Life Insurance Actuarial (death) Rates, and the last 20 years of U.S. Surgeon Generals' reports. (Figures are for 1988 from the federal government's Bureau of Mortality Statistics and the National Institute on Drug Abuse, et al.—the last complete year at the time of this writing.)

TOBACCO	340,000 to 425,000
ALCOHOL (Not including 50% of all highway deaths and 65% of all murders)	150,000+
ASPIRIN (Including deliberate overdose)	180 to 1,000+
CAFFEINE (From stress, ulcers and triggering irregular heartbeats, etc.)	1,000 to 10,000
'LEGAL' DRUG OVERDOSE (Deliberate or accidental) from legal, prescribed or patent medicines and/or mixing with alcohol—e.g., Valium/alcohol	14,000 to 27,000
ILLICIT DRUG OVERDOSE (Deliberate or accidental) from all illegal drugs	3,800 to 5,200
THEOPHYLLINE (Pharmaceutical drug legally prescribed for asthma).....	50

Theophylline is also responsible for 6,500 Emergency Room admits and 1,000 cases of permanent brain damage per year.

MARIJUANA **0**

Marijuana users also have the same or lower incidence of murders and highway deaths and accidents than the general non-marijuana using population as a whole. Cancer Study, UCLA; U.S. Funded (\$6 million), First & Second Jamaican Studies, 1968 to 1974; Costa Rican Studies, 1980 to 1982; et al.

ISBN 1-878124-00-1

EMPEROR WEARS NO CLOTHE
S 1995 HERER J
559574 QP 110894 B0PT 3421



701

1055 214 7 01

LOWEST TOXICITY

100% of the studies done at dozens of American universities and research facilities show pot toxicity does not exist. Medical history does not record anyone dying from an overdose of marijuana (UCLA, Harvard, Temple, etc.).