ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4606 HHES SB 32 (FILE 7)

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STATE (Territory)	PERSONAL USE POSSESSION		POSSESSION		SALE, DISTRIBUTION, DELIVERY	
	Max. Imprisonment	Max. Fine	Max. Imprisonment	Max. Fine	Max Imprisonment	Max. Fine
MASSACHUSETTS	6 mos	$500	6 mos	$500	2 yrs	$5,000
					2 1/2 - 15 yrs (50-100 lbs)	$10,000
					3-15 yrs (100-2,000 lbs)	$25,000
MICHIGAN	1 yr	$1,000	1 yr	$1,000	4 yrs	$2,000
MINNESOTA	(small amount)	$100 and drug education	3 yrs	$5,000	5 yrs	$30,000
MISSISSIPPI	(1 oz or less)	min $100 max $250	3 yrs (1 oz to 1 kilo)	$3,000	3 yrs (1 oz or less)	$3,000
			20 yrs (1 kilo or more)	$1,000,000	20 yrs (1 oz to 1 kilo)	$30,000
					30 yrs (over 1 kilo)	$1,000,000
MISSOURI	1 yr (35 grams or less)	$1,000	5 yrs (over 35 grams)	$1,000	5 yrs to Life	

STATE (Territory)	PERSONAL USE POSSESSION		POSSESSION		SALE, DISTRIBUTION, DELIVERY	
	Max. Imprisonment	Max. Fine	Max. Imprisonment	Max. Fine	Max Imprisonment	Max. Fine
NEW YORK	(less than 25 grams)	$100	3 mos (25 grams - 2 ozs)	$500	1 yr (25 grams or less)	$1,000*
			1 yr (2-8 ozs)	$1,000	4 yrs (25 grams - 4 ozs)	$5,000*
			4 yrs (8-16 ozs)	$5,000	7 yrs (4-16 ozs)	$5,000*
			7 yrs (16 ozs - 10 lbs)	$5,000	15 yrs (over 16 ozs)	$5,000*
			15 yrs (over 10 lbs)	$5,000	* Fine can be double the pecuniary gain from crime.	
NORTH CAROLINA	(1 oz or less)	$100	5 yrs (1 oz - 50 lbs)	discretion of Judge	5 yrs	set by Judge
			min 5 yrs (50-100 lbs)	$5,000 min. Max up to Judge		
			min 7 yrs (100-2,000 lbs)	$25,000 minimum		
			min 14 yrs (2,000-10,000 lbs)	$50,000 minimum		

STATE (Territory)	PERSONAL USE POSSESSION		POSSESSION		SALE, DISTRIBUTION, DELIVERY	
	Max. Imprisonment	Max. Fine	Max. Imprisonment	Max. Fine	Max Imprisonment	Max. Fine
SOUTH CAROLINA	30 days (oz or less)	$100 min $200 max	6 mos	$1,000	5 yrs	$5,000
			10 yrs (10-100 lbs)	$10,000		
			mandatory 25 yrs (100-2,000 lbs)	$25,000		
			mandatory 25 yrs (2,000-10,000 lbs)	$50,000		
SOUTH DAKOTA	30 days (1 oz or less)	$100	1 yr (1 oz - 1/2 lb)	$1,000	min 15 days to 1 year (sale 1 oz or less)	$1,000
			2 yrs (1/2 - 1 lb)	$2,000	2 yrs (1 oz - 1/2 lb)	$2,000
			5 yrs (1-10 lbs)	$5,000	5 yrs (1/2 - 1 lb)	$5,000
			10 yrs (over 10 lbs)	$10,000	10 yrs (over 1 lb)	$10,000
TENNESSEE	11 mos 29 days	$1,000	11 mos 29 days	$1,000	min 1-5 yrs (1/2 oz - 10 lbs	$3,000
					min 4-10 yrs (10-70 lbs)	$10,000
					min 10 yrs to Life (over 70 lbs)	$200,000

STATE (Territory)	PERSONAL USE POSSESSION		POSSESSION		SALE, DISTRIBUTION, DELIVERY	
	Max. Imprisonment	Max. Fine	Max. Imprisonment	Max. Fine	Max Imprisonment	Max. Fine
VIRGIN ISLANDS	1 yr	$5,000	1 yr	$5,000	5 yrs	$15,000
					mandatory 3 yrs (50-100 lbs)	$25,000
					mandatory 5 yrs (200-1,000 lbs)	$50,000
					mandatory 15 yrs (over 1,000 lbs)	$200,000
VIRGINIA	30 days	$500	30 days	$500	1 yr (1/2 oz or less)	$1,000
					1-10 yrs (1/2 oz - 5 lbs)	$1,000
					min 5-30 yrs (over 5 lbs)	
WASHINGTON	90 days (40 grams or less)	$1,000	5 yrs	$10,000	5 yrs	$10,000
WEST VIRGINIA	min 90 days max 6 mos	$1,000	min 90 days max 6 mos	$1,000	min 1 yr max 5 yrs	$15,000
WISCONSIN	5 yrs	$15,000	5 yrs	$15,000	5 yrs	$15,000
WYOMING	6 mos	$1,000	6 mos	$1,000	10 yrs	$10,000

STATEWIDE ACTIVITIES

January 1, 1986
thru
June 30, 1987

DRUG SEIZURES

Type of Drug	Quantity	Street Value
Cocaine	87.2 pounds	$8,573,326
Marijuana	626 pounds	2,527,950
Marijuana plants	3,649	866,190
Hashish	520 grams	9,912
Amphetamines	622 tablets	9,394
Mushrooms	137 grams	1,470
Heroin	90 grams	50,642
Dilaudid	697 tablets	54,180
Look-a-likes	807 dosage units	1,986
LSD	4,595 dosage units	26,580
Other Drugs		63,530
TOTAL		$12,185,160

$3,404,052

NON-DRUG SEIZURES

Cash	$393,076
Vehicles (13)	101,845
Property	496,720
TOTAL	$991,641

SOURCE: State of Alaska Department of Public Safety/Scientific Crime Detection Laboratory. George M. Taft, Jr., Laboratory Director. 5500 East Tudor Road, Anchorage, Alaska, 99507; (907) 269-5740.

ANNUAL REPORT OF OFFENSES REPORTED AND ARRESTS

Juneau Police Department Year Ending: December 1986

CLASS I OFFENSES:	Offenses Reported		Unfound Reports		Actual Offenses		Adult Arrests		Juvenile Arrests	
	1985	1986	1985	1986	1985	1986	1985	1986	1985	1986
1. Criminal homicide	2				2		2			
2. Forcible rape	3	2			3	2	1	1		
3. Robbery	3	3	1		2	3				
4. Aggravated assault	11	6			11	6	9	6		1
5. Burglary	67	118	3	5	64	113	8	6	5	15
6. Larceny	492	660	8	15	484	645	27	46	29	31
7. Motor vehicle theft	38	45	3	6	35	39	1			6
8. Arson	1				1					
TOTAL CLASS I OFFENSES:	617	834	15	26	602	808	48	59	34	53

CLASS II OFFENSES:										
9. Other assaults--simple	155	161	5	4	150	157	52	61	6	5
10. Forgery	5	24			5	24				
11. Fraud	63	50	3	2	60	48	6	1		1
12. Embezzlement	1	3			1	3				
13. Receiving/concealing stolen property		4				4				
14. Vandalism	188	312	2	3	186	309		16	3	1
15. Weapons violation	20	29	2	3	18	26	7	11		
16. Prostitution	1				1					
17. Sex offenses (except 2 & 16)	38	6	3	3	35	43	3	2	1	
18. Drug laws Marijuana	70	71	4	6	66	65	15	14	31	77
19. Gambling Cocaine, etc.	2				2					
20. Family and children	35	60	1	5	34	55				
21. Driving under influence	250	266	14	14	236	252	193	193	3	1
22. Liquor laws Alcohol	245	301	4	15	241	286	109	118	110	148
23. Disorderly conduct	418	721	9	8	409	713	64	87		3
24. Vagrancy										
25. All other	537	814	2	6	535	808	233	313	16	21
TOTAL CLASS II OFFENSES	2028	2862	49	69	1979	2792	682	816	172	197
TOTAL CLASS I & II OFFENSES	2645	3696	64	95	2581	3601	730	875	206	250

Rev. 1/85

ALASKA CONTROLLED SUBSTANCES

DRUG	PROHIBITED ACT	CLASS OF OFFENSE
		Felony
III Depressants Narcotics Codeine Hashish	Delivery of any amount to anyone under 19 and 3 years younger	Unclassified-1° 11.71.010(a)(2)
	Manufacture or delivery or possession with intent to manufacture or deliver any amount	B-3° 11.71.030(a)(1)
	Possession of 3 grams or more	C-4° 11.71.040(a)(3)(B), (C)
	Defendant 18 or older, possession on school grounds, etc.	C-4° 11.71.040(a)(4)
		Misdemeanor
	Possession of less than 3 grams	A-5° 11.71.050(a)(3)(A), (B)

FEDERAL CONTROLLED SUBSTANCES ACT

Marijuana		
Schedule I	Defendant - 18, distribution to person under 21	First Offense 0-30/$50,000 Second Offense 0-45/$75,000
	Distribution	First Offense 0-15/$25,000 Second Offense 0-30/$50,000 If distribution is for small amount with no renumeration, see penalty below
	Possession	First Offense 0-1/$5,000 Second Offense 0-2/$10,000

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APP

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APR 27 1993

DDP # 3 —

Lead Editorial in the Economist - Not usually thought of as a liberal mag.

Jim - File

PHG

Getting gangsters out of drugs

YOUNG men in the gh[illegible]es and millionaires' daughters up [illegible] Oxford die horribly of it. Wherever it spreads, crime rates soar. Policemen are murdered for it, politicians suborned for it. Central Americans buy whole governments through it. Lebanese and Afghans nourish their feuds with it. The traffic in illegal drugs—partly in mildish marijuana and worse cocaine, but most dreadful in heroin— has become a main tragedy of this age. The trade was created in its present worst-possible form because democratic politicians fell into a well-meant confusion of policy 20 years ago.

Governments decided then to threaten long terms of imprisonment against the suppliers and pushers who were making your daughter a junkie, but to treat her possession of a little marijuana and cocaine as much less of an offence. Supply was made highly illegal, some demand was not—exactly as during America's prohibition of alcohol in the 1920s, and thus with the same results. Gangsters market the stuff to people who feel no guilt about buying from them. The expert criminal organisations that were so enriched by the attempts of earlier American governments to prohibit alcohol and gambling (another addictive practice) are applying Capone's old murderous skills to the international narcotics business.

Subsistence peasants in wretched places are glad to take cash for poppies and coca leaves which, after simple processing, are marked up by 5,000 times for sale to final consumers. This distributors' margin—turning $1m of raw material into $5 billion of revenue—makes drug smuggling the world's most profitable business. Drugs are very-high-price and light goods, easily transported in hand-baggage or even inside people. The most prudent smugglers get big organisations to launder the money and make unrefusable offers to politicians and policemen and rival salesmen in the way. A small group of criminals now probably launders tax-free sums of over $100 billion a year, more than the GNPs of 150 of the 170 nations of the world. If these huge mark-ups went to governments in tax, as a big slice of profits from drugs like alcohol and tobacco does, they would use it for better purposes, including reducing addiction. Is that the right way?

There have been escapes from tragedies as great as today's narcotics trade, significantly almost all along this same road. America's effective answer to Capone's bootleg gangs was not gang-busting but the legalised, taxed and regulated sale of quality-controlled liquor. The best enemy of the numbers racket is the state lottery and the off-course, licensed, taxed betting shop. The British coped similarly with the main drug scourge of the first industrial revolution. Gin Lane sold cheap rot-gut to the not-quite-destitute, who drank themselves out of misery into inefficiency. So the government brought the sale of spirits under local licensing courts, forced the distillers to sell only liquor of approved quality and strength, and raised prices by excise duties as high as the market would bear without driving drinkers to poisonous cheap intoxicants like methylated spirits. People got less drunk less damagingly, initially on untaxed beer (the brewers were delighted). The distillers, forced to sell better hooch, grew rich and respectable on exports of Scotch whisky and London and Plymouth gin.

Drugs are not a "disease of affluence", or any such glib slogan. Some big British companies founded their fortunes on the officially sponsored sale of Indian dope to the poorest people the world has ever known, the Victorian Chinese. Bhang and hashish and coca and kola-nuts and qat are the opiums of their respective poor peoples. None is good for them, but nor is alcohol for rich countries.

Legalise, control, discourage

Today there are four big recreational drugs on the market in most of the world's big cities. Two of them (alcohol and tobacco) are legal, two (marijuana and cocaine) illegal. People have been attacking their brains with the first of these poisonous chemicals since Noah had vines (Genesis ch 9, 20). Christianity uses alcohol in its central rite, as does most of mankind (outside the strict Muslim nations) in its social relations. Yet in countries like Britain lawful alcohol directly kills some 10,000 people a year, and is instrumental in about half of the country's violent crime. Cigarettes in Britain kill 100,000 a year. Marijuana, one of the illegals, has hardly killed anybody yet; but the toll from it will rise because it is a poison with the defects of both the legal drugs. Tobacco and marijuana give you lung cancer; alcohol and marijuana make you run over pedestrians in your car.

In the United States marijuana is now virtually tolerated, because tens of millions of Americans have smoked it or eaten it in cookies. They think it about as befuddling per dollar as alcohol, as bad for their health as cigarettes, and less habit-forming than either. The great extra worry about marijuana is that, while the addict gets his tobacco and whisky from a law-abiding and taxpaying publican, he gets his joint from a sinner who sometimes sells adulterated poison, pays no tax and—this is important—is often keen to lead his customers on to much more harmful drugs.

A sensible public policy might be to treat all three—alcohol, tobacco, marijuana— the same, with licensing, taxes and

quality control. Since all are bad for you, it may be right to plaster them with larger health warnings than those that are at last helping to cut smoking. Wary governments might stop the pub culture spreading to the communal joint culture by restricting marijuana sales to boringly uncongenial premises, like the glum state liquor-stores of Sweden or New Hampshire; or give monopolies to state shops like the post office, which has perfected the art of driving customers away. But a main weapon should be tax: high enough to deter consumption, and varied enough to move people from the worst drugs. Today's worst are possibly cocaine and certainly heroin.

Cocaine came back into high fashion only recently. It is more stimulating than alcohol, less addictive than tobacco. It may be worse for you than either, including being eventually more likely to poison you. What is certain is that it is causing more murders than any commodity ever before. Because it is newish and illegal, its supply is in the hands of the worst illegals. About 80% of American supply is channelled through one group of Colombian gangsters (see page 62) who kill the law-enforcers whom they cannot suborn. Cocaine most needs to be brought under the aegis of controlled and thus legal suppliers, either by treating it like alcohol, tobacco and marijuana (see above) or like heroin (see below), depending on how statistically awful it proves to be.

How present law hooks people on heroin

Heroin is different. It is more addictive than tobacco, and damages the health far more rapidly. It can enslave the mind, so addicts want more to satisfy a craving that obsesses them so that they cannot work. Without work, they have two ways of affording more: stealing or, more easily, dealing. Encouraged by their supplier, they buy a little more than they want, and sell it on at a profit by recruiting new users, whose supplier they become. The furtive illegality of this trade increases its danger, since by the time an addict realises that he needs help he is likely to have started supplying others, so that he cannot seek outside help without risking big trouble with the law. Illegality locks people into addiction.

Legislation pretends that heroin is not significantly more dangerous than marijuana or cocaine. Since dealing in all three is a crime, the same criminal gangs handle them all. Customers for the milder drugs are therefore exposed to salesmen of the really dangerous one. So marijuana (but not alcohol) gets blamed for leading its users on to hard stuff.

Recent developments in the market for heroin give clues to how its use might eventually be curbed. Increased demand in the early 1980s led to increased production (in, among other places, lawless Burma and Afghanistan), just as the publicity about AIDS began to deter new users from experiments with sticking filthy needles into themselves. Demand and prices are falling. The evidence, scant as it is in this mysterious world, is that most long-term heroin users want to break their addiction, although probably then to destroy themselves with some other drug, usually alcohol. Since alcoholics do not recruit fresh heroin users, this is sadly to be encouraged.

So the best policy towards existing heroin users might be to bring them within the law, allowing them to register for the right to buy strictly limited doses. Taxes should be high enough to help deter consumption, but low enough to put illicit dealers out of business. To get addicted to heroin you have to be crazy, or weak-willed, or young and foolish. It is a problem of mental health, treated as one of crime and therefore made worse. If some extra stick is wanted, then in America registered heroin and cocaine users could be disqualified from driving cars. They might then have an incentive to get listed as cured.

Even if the present narcotics trade could be beaten, self-destroyers will seek other ways to bend their minds. Calming pills from respected multinational companies produce doped-up addicts when doctors prescribe them for non-medical ills such as poverty or unhappiness. Backroom chemists find and market new drugs. The LSD of the "psychedelic" 1960s was followed in the violent early 1980s by PCP, or angel-dust. There will be more nasty successors. But these drugs, cheaply produced close to their markets, do not spawn the sort of international racketeering that today's narcotics do. They go through brief cycles of fashion, newspaper scares and oblivion. They are destructive teenage fashions, rather than social menaces, which might also be reduced by discriminatory tax.

If there were a lasting answer to drug abuse, it would lie beyond all this, in the chemists' dream of the good drug, the soma, driving out bad poisons by its controllable merits. It may lie close in the future, if research for it can be brought into the open. That is another reason why the worst policy is the present one of making the supply of noxious drugs illegal, so that only dreadful illegals engage in their supply.

Jackson power

Jesse Jackson's success mainly reflects the narrowing base of the Democratic party

ANDREW JACKSON occupied the White House from 1829 to 1837, and conventional wisdom says he is the only man Americans will refer to as President Jackson for a long time to come. The Rev Jesse Jackson does not believe in conventional wisdom. Nor do the blacks who have been voting for him in large numbers in Democratic primary elections and caucuses across America this year, most recently in Michigan on March 26th. They think he can be president. Few whites do, but some have been voting for him because they like what he says, and the way he says it. As a result, with more than half the delegates to the Democratic convention now selected, Mr Jackson has about as many as Mr Michael Dukakis, hitherto the front-runner. Mr Dukakis has yet to win in a large industrial state. And the Democratic party faces the choice of either giving Mr Jackson his due, and thus losing the presidential election in November, or denying him his due

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LIFE

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THE RICHEST FIND SO FAR: MEL FISHER'S HOARD OF SPANISH GOLD AND SILVER

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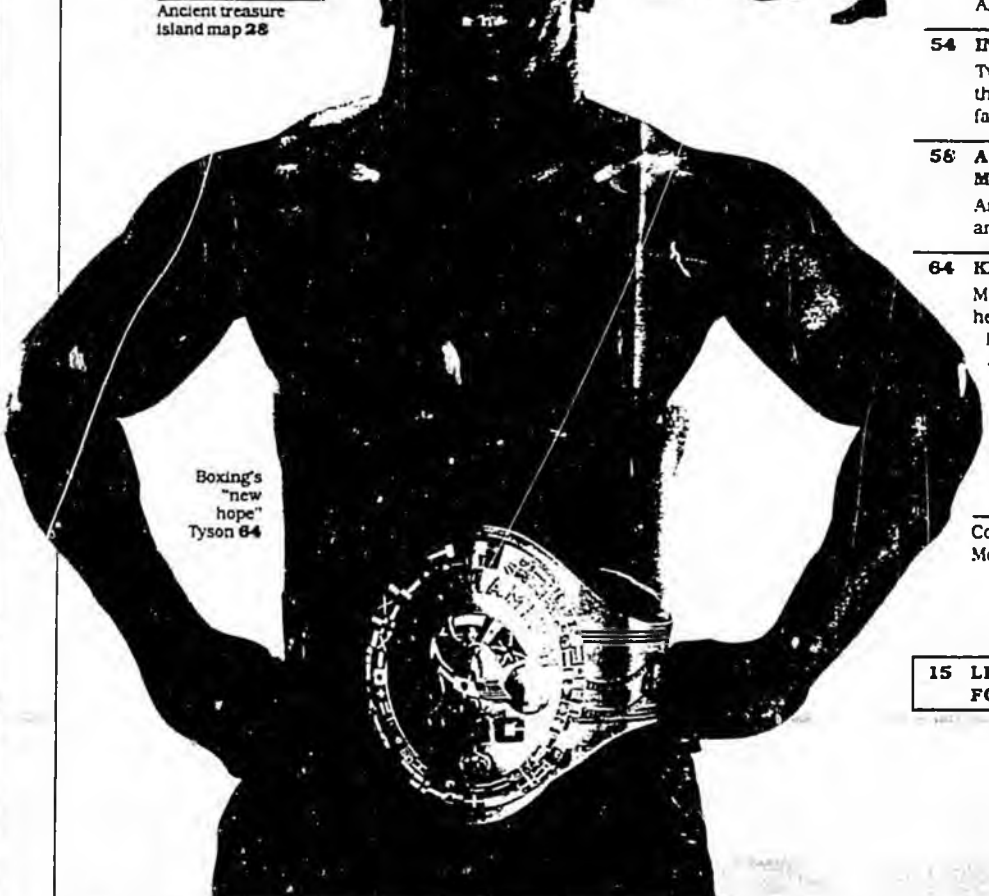


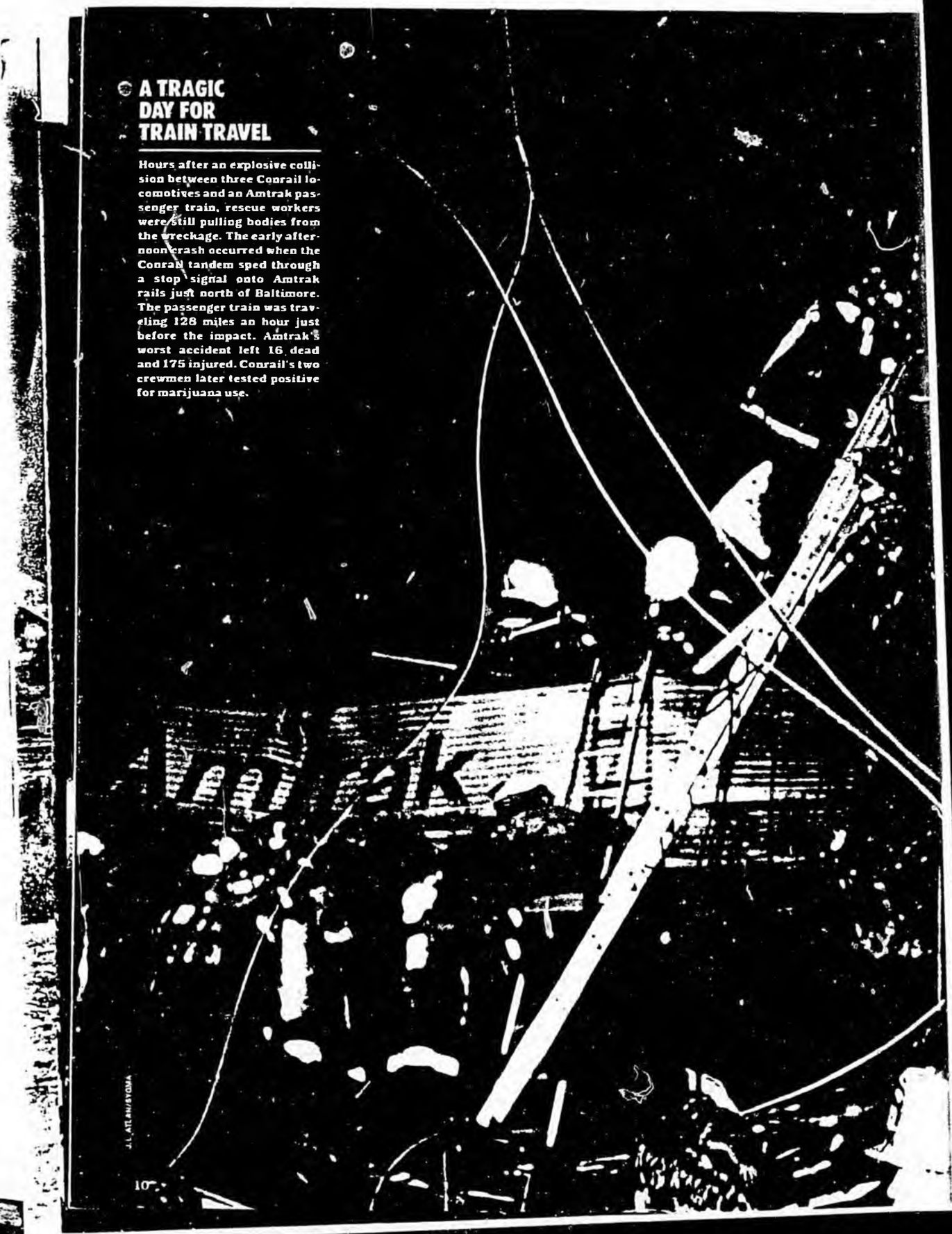
Boxing's "new hope" Tyson **64**

Cover photograph by Michael Melford/Wheeler Pictures

Picture sources are listed by page. 3: Dolly—Enrico Ferorelli/DOT, soldiers—Harry Benson; Tyson—Walt Hart; map—National Maritime Museum, Greenwich ("Waggoner of the South Sea," by William Hack, 1680). 24: illustration—copied by Jon Blumb. 31: top right—ctsy. Lee Spence. 34-35: lower left—copied by Guanciano Costa, ctsy. Bibliotena Trivulziana, Milan; lower right—*Treasure Island*, ctsy. of Charles Scribner's Sons. 36: top left—ctsy. Franklin D. Roosevelt Library; bottom—photo # 86319-122, Maritime Resource Management Service-Amherst, Nova Scotia. 38: four travels—ctsy. The Dons, Arizona. 77: top right—from *Virginia Woolf: A Biography* by Quentin Bell. © 1972 by Quentin Bell. By permission of Harcourt Brace Jovanovich, Inc. LIFE (ISSN 0024-3019) is published monthly except for two (2) issues in August at the subscription price of $32.50 per year by Time Inc. Time Inc. Principal Office: Time & Life Building, Rockefeller Center, New York, NY 10020-1393 U.S.A. Nicholas J. Nicholas Jr., President; Glenn A. Britt, Treasurer; William M. Guzman, Secretary. Second-class postage paid at New York, NY, and additional mailing offices. Authorized as second-class mail by the Canada Post Corp., Ottawa, Canada, and for payment of postage in cash. Vol. 10 No. 3 © 1987 Time Inc. All rights reserved. Reproduction in whole or in part without permission is prohibited. "LIFE" is a registered trademark of Time Inc. POSTMASTER: Send address changes to LIFE, Time Inc., 541 N. Fairbanks Court, Chicago, IL 60611-3333

A TRAGIC DAY FOR TRAIN TRAVEL

Hours after an explosive collision between three Conrail locomotives and an Amtrak passenger train, rescue workers were still pulling bodies from the wreckage. The early afternoon crash occurred when the Conrail tandem sped through a stop signal onto Amtrak rails just north of Baltimore. The passenger train was traveling 128 miles an hour just before the impact. Amtrak's worst accident left 16 dead and 175 injured. Conrail's two crewmen later tested positive for marijuana use.



CORRECTION

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TO ASSURE LEGIBILITY


BEGINNER'S GUIDE TO GROW ROOMS
HIGH TIMES
POT STING IN HAWAII
THE 10 WORST THINGS THAT HAPPENED TO POP MUSIC
BY JAMES MARSHALL
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NO. 144 ● AUGUST 1987

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COVER PHOTOGRAPHY:
ELISABETSKY
MODEL:
SHARON M.
LIGHTS:
CAPTAIN WHIZZO

ON THE COVER: Sharon M. is the lead singer of *Black Light Chameleons*, a New York-based psychband (**pictured left**). Captain Whizzo's light show is visible to the naked eye at NYC's *Mind's Eye* Events (**see feature**).

FIGHT FOR LEGAL WEED LIVES!

NORML Bigwigs Meet

by Steven Hager

COURTESY NORML

● Jon Gettman—National Director of NORML

OMI didn't pass, but 270,000 Oregon voters agreed to let residents grow ALL the pot they wanted.

The legendary Keith Stroup, founder of the National Organization for the Repeal of Marijuana Laws (NORML), made a rare appearance at the organization's annual convention on May 8th and 9th in Washington, D.C. Although the conference was sparsely attended, morale was high.

It's no secret that NORML has weathered a decade of apathy and financial difficulty. However, thanks in large part to the indoor gardening revolution, NORML seems to be entering a more stable and productive period in its lobbying effort to legalize marijuana.

In his first appearance as National Director, Jon Gettman released figures for NORML's annual crop report for 1986. Apparently, even NORML has been underestimating the number of marijuana smokers in America. "Since it is believed 30 million pounds of marijuana are consumed annually in this country, the number of pot-smokers must be over 50 million," said Gettman. "The government wants it both ways: They want more money for eradication budgets based on consumption, but at the same time, they pretend the 'problem' isn't so widespread they can't control it."

Gettman also spoke on the effort in Alaska to criminalize marijuana use. (Growing in Alaska for personal use has been legal since 1975. See "Normlizer," p. 25.) "Only the facts can combat hysteria and ignorance in the war on drugs," said Gettman. "The most ridiculous claim is that marijuana has become stronger, so all the studies done in the '70s that said it was harmless are no longer valid." Gettman asserted that THC content has always varied. "Potent varieties have always been available," he said, "but the drug itself is unchanged."

Another important address was delivered by John Sajo, director of the Oregon Marijuana Initiative (OMI). After collecting 85,000 signatures, OMI managed to place a referendum on the ballot legalizing "private" use of marijuana. Run by a tiny group of dedicated volunteers, OMI suddenly found itself pitted against all the resources the Reagan administration could muster, including a personal visit by Vice President George Bush, who campaigned against the initiative.

Sajo admitted the initiative (which was supported by only 23% of the voters) suf-

continued on page 30

SEXIST, RACIST ART SCUM

NEW YORK ART MUSEUMS—non-profit, tax-exempt organizations that receive government funds—have been charged with racial and sexual discrimination by a subversive, underground protest group. At a recent informational show called **The Guerilla Girls Review the Whitney** at the **Clocktower Gallery** in downtown New York, the Girls offered statistics showing that, from 1973 to 1987, 71% of the artists selected for the prestigious **Biennial** shows sponsored by the **Whitney Museum of American Art** were white males. While 24% of the artists were white females, only a shocking 4% were non-white males, and an infinitesimal .30% were non-white females. The **Biennial** exhibited **no works** by any Hispanic, black, or Indian women.

In addition to exhibitions like the Clocktower show, the **Guerilla Girls** have been attacking the sexist and racist policies of all major New York museums and galleries with incriminating street posters. "We feel that what the Guerilla Girls have to say is important," Tom Finklepearl, the Clocktower director, told the **New York Daily News**.

That's obvious. And the Guerilla Girls' efforts should be applauded. But it would be nice if somebody would also mention that museums and galleries should stop discriminating against artists who produce small paintings, drawings, cartoons, pottery, or anything else the art establishment doesn't understand. Art is not just big paintings on canvas.

NORML—IZER

THE BIG CHILL:
Alaska's Proposed Pot Law

By JON GETTMAN, NORML Director

(The following testimony was given to the Senate Judiciary Committee on May 1, 1987 during a public hearing on Senate Bill #32, which if passed would recriminalize marijuana use in the state of Alaska.)

Mr. Chairman, members of the committee, citizens of **Alaska:** My name is Jon Gettman and I am the National Director of **NORML**, the National Organization for the Reform of Marijuana Laws. Founded in 1970, **NORML** is an educational organization dedicated to the review and study of marijuana use, marijuana laws, and their effect on our society.

The **Marijuana Tax Act of 1937** marked the beginning of federal attempts to deter marijuana use by making it illegal. And here we are, **50 years later**, living proof of prohibition's ineffectiveness, still discussing whether criminal penalties are appropriate for marijuana use.

Alaska has the respect and admiration of people around the world for its integrity on the matter of marijuana use. They are impressed by your dedication to the principle of privacy, which Justice Brandeis once remarked is the cornerstone of all our freedoms. We are impressed by Alaska because we know that your dedication to privacy is founded on a deep conviction to the ethic of personal responsibility.

Others, though, respect your laws because they are practical. They envy you in that respect, wishing the political climate in which they work would allow them to devote their time to more serious matters than debating adult marijuana use at home.

There have been repeated challenges to the policy of arresting marijuana users over the last 25 years that have discredited many of the old excuses justifying prohibition. The emotional voices calling for the imprisonment of marijuana users come up with some new excuse every few years. The latest is that because marijuana is, on average, more potent today than ten years ago, it is somehow more dangerous; more subtle is the implication that this increase in its potency renders previous research irrelevant.

The claim is that the more potent marijuana of the '80s is a new, different drug than the one many adults tried in the '60s and early 70s. First of all, as with alcohol, marijuana smokers compensate for a higher potency by simply using less. Secondly, high potency marijuana has been on the market, so to speak, for thousands of years under the name hashish. Though hashish is manufactured from the resins of oils of marijuana, pharmacuetically it has a high level of THC .This claim is part of a long historical trend of believing that despite the discrediting of previous scare stories about marijuana, new evidence emerging from research will finally prove that marijuana really is as bad as **"they"** said it was. It is this historical context that causes me to treat these claims with more than a bit of skepticism.

The National Academy of Sciences conducted a review of all the literature about marijuana. The study was chaired by Arnold S. Relman, editor of the **New England Journal of Medicine**. Their report, **Marijuana & Health**, was published in 1982. There have been no new developments since that time to contradict their findings. Just as in a court of law, there are rules of evidence by which to evaluate research claims. Without exception, the "dangers" of marijuana fail to satisfy those rules of evidence to the satisfaction of the National Academy of Sciences.

Let me address this bill pointedly. It is based on several "findings" that are without foundation. First of all, THC, the drug's active ingredient, does not, I repeat, **does not** lodge in the fatty tissues of the body for 30 days, as Finding Number One reports. Findings Number One and Number Two (which claims that this buildup cause "loss of sleep," "moociness," and "restlessness") are simply wrong. THC is broken down by the body in a few hours, when the high associated with it wears off. It is the by-products of this chemical breakdown that lodge in the fatty tissues for several weeks. **These have no effect on the body whatsoever and there is not a single study that proves otherwise.** So there is no "buildup" of THC.

Finding Number Three, which claims "it is possible for a human being to overdose from marijuana," is also factually incorrect. Marijuana is one of the least toxic drugs known. You can not overdose from smoking marijuana. Furthermore, marijuana does not interact with alcohol, as other drugs do, and increase its potency. Any toxicologist familiar with marijuana will confirm this fact.

To the extent that marijuana and alcohol are both intoxicants, their use in conjunction, and to excess, would be irresponsible, and in some circumstances, dangerous.

Finding Number Four concerns the accusation that marijuana is more dangerous today because it is more potent. The "finding" also claims that marijuana averages a THC potency of 10 percent; actually, the average potency of marijuana these days is closer to 3.5

continued on page 28

NORML-IZER

continued from page 25

percent. A slight digression will further underscore its irrelevance.

Experts are now realizing that the key to understanding drug related problems is to focus on addictive personalities rather than arguing about the relative addictiveness of different drugs. Present theory holds that, for a variety of reasons, some people are prone to abuse drugs, any drugs, legal or not. The potency of the drug is irrelevant for these people. An alcoholic is no less off the wagon for drinking beer than he or she would be for drinking vodka. The increased potency of marijuana makes it no less and no more dangerous than it was ten years ago, which is, relatively speaking, not dangerous at all.

Marijuana does not cause schizophrenia, illusions, or hallucinations (as Finding Number Five claims) and the only pain it can dull is that of headaches, muscle soreness, or cramps—which by the way is why urinalysis tests confuse the metabolites of marijuana with those of ibuprofen, the active ingredient in Advil. The possibility that marijuana makes the body unresponsive to severe pain, as the finding claims, is just not so.

There is no doubt that long-term marijuana smoking will increase someone's likelihood of lung disease or lung cancer, as in the case of smoking tobacco. Our lungs, it seems, are not made for smoke.

The claim that one marijuana cigarette a day for three years will cause cancer is preposterous. Millions of people have smoked far more marijuana than this for far longer, including, I admit, myself, and there are not millions of cases of lung cancer to prove this claim. As with the rest of the findings this bill is based on, this claim is contradicted by the Relman report.

Furthermore, examinations commissioned by the British government in 1894, by Mayor LaGuardia in New York in 1944, by President Nixon in 1972, by the LeDain Commission in Canada in 1974, by the Australian Royal Commission in 1977, by the National Academy of Sciences in 1982, and also by a British Advisory Council Report to the Home Secretary in 1982 have all concluded that these claims about the "dangers" of marijuana use are without foundation. Marijuana has been around for thousands of years, and it has not essentially changed during the last ten.

The simple fact is that marijuana users have found it to be relatively harmless. It is also clear that many other people just don't like this fact. Rather than leave this matter of choice to the individual as an issue of personal responsibility, some would rather have the state make that decision and intervene in the private lives of its citizens. This is what the invasion of privacy is all about, and if that is the intent of your law then you should be honest and change your findings to this simple statement: We find that many Alaskans don't like marijuana use by their fellow citizens because they are afraid of it.

And before I continue, let me share with you what my organization tells the public about marijuana use. It's bad for the lungs, and a waterpipe should be used to filter out some of the tars. It raises the blood pressure in some people, and should be avoided for that reason by people with cardivascular problems. The use of marijuana during pregnancy may contribute to a slightly smaller birth weight for the fetus, similar to alcohol or tobacco use during pregnancy; NORML advises women to cease marijuana use during pregnancy, as well as alcohol and tobacco. Marijuana causes short-term impairment and should not be used in conjunction with work, driving, and/or the use of heavy machinery, or under any circumstances by adolescents. And yes, gentlemen, it is true that marijuana slightly suppresses sperm production. However, this has no effect on fertility or chromosomes, as the Relman report confirms, and as do the several married couples of my acquaintance.

Arresting pot smokers is ineffective —and it costs too much money.

Ladies and gentlemen, we don't need to examine the works of experts to decide if marijuana causes this massive complex of adverse effects cited by its opponents. Marijuana has been used by over 75 million people, yet there is no prevalance of case histories (epidemiological or longitudinal studies) that prove a single one of these findings. There are no deformed babies on account of marijuana use, no overdoses, no lung cancer patients, and no brain-damaged patients either. The burden of proof, then, is with the accuser. I, for one, would like to know about the individuals whose cases would prove these findings, for I don't believe they exist. If it really caused genetic defects, surely out of the millions and millions of people who have used marijuana in the last 25 years, there would be some clear proof of deformed babies? Yet there is not. And there is almost certainly no indication that millions of young men are walking around with protruding breasts. This, I neglected to mention earlier, was one of the scare stories circulated during the '70s, that marijuana, by way of affecting hormonal production, caused breast development in young males.

And how about Alaska's fellow pioneer, The Netherlands, which has long had a tolerant attitude toward marijuana? Officials there, reported an April 18th article in the New York *Times*, have concluded that their noncriminal approach to marijuana is working, that marijuana use did not lead to harder drugs, and that the number of marijuana users has remained steady (at 36 percent) during the last ten years. Several years ago Spain decriminalized marijuana. Last fall a committee of members of the European parliament recommended that marijuana smokers caught with cannabis for their own use should be cautioned, not prosecuted.

Of even greater interest are domestic developments. In the last few years Columbia, Missouri, almost passed a decriminalization bill by referendum, a bill cleared the Milwaukee City Council, and another cleared the New Hampshire House by consent. Though neither measure became law, the town of Hickory Hills, Illinois, has enacted a decriminalization bill. And, one recently passed the House in Iowa by a wide vote, and awaits action in their Senate.

The alternative to arresting marijuana smokers is to drop criminal penalties, or, as in Alaska, to respect personal use and cultivation of marijuana as a matter of individual privacy. This approach is being studied by others, not so much because of a noble respect for privacy, or, I'm sorry to say, justice and credibility, but for two other very understandable reasons.

1) Arresting marijuana smokers in ineffective. And 2) it costs too much money. Many experts share the opinion, voiced for example by Dr. William J. Kinnard Jr., Dean of the School of Pharmacy at the University of Maryland at Baltimore, that "legal control of marijuana is almost impossible and our limited resources should be directed to the control of the more toxic illicit substances," that is, cocaine and heroin.

Finally, if the legislature adopts these findings they will be challenged. Certainly the issue will end up in court, but that is not the arena that threatens the well-being of your communities the most. No, these findings will be challenged by the inquiring minds of your children. If these fears and distortions are adopted as fact, they will constitute a lie, and a lie easily contradicted by common sense, history, and scientific review. It is in the arena of credibility that this bill will damage the state of Alaska. If you want to send a message to your kids, tell them what we tell them: When you are old enough to accept responsibility for yourself you are old enough to make your own decisions. Alcohol, marijuana, and tobacco can all be harmful, though many people seem to enjoy using them in moderation. Some people have a tendency to abuse drugs, and unfortunately, we don't always know in advance who they are. Furthermore, young people lack the maturity to use and not abuse these drugs (as do many adults). These principles, a good, credible education, and a keen interest in development will keep your children from having drug problems.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

February 9, 1988

MEMORANDUM

TO: Representative Randy Phillips

ATTN: Bill Stoltze

FROM: Karla Hart
Legislative Analyst

RE: Marijuana and Controlled Substances Tax
Research Request 88.162

You requested information on the taxation of marijuana and controlled substances. As noted in the Anchorage Times article that you forwarded to us, Illinois and Minnesota have imposed taxes on marijuana and controlled substances (Attachment A). Copies of the Illinois "Cannabis and Controlled Substances Tax Act" (Public Act 85-663) and the Minnesota "Marijuana and Controlled Substances Taxation" law (Chapter 297D) are Attachment B. Additional information has been requested from both states and will be forwarded to your office as soon as possible.

Allan Sorley, Special Taxes Division, Minnesota Department of Revenue, said that the tax law has been upheld in four district courts. He said that he expects the law will also be upheld in a case scheduled to go before the Minnesota Supreme Court.

I hope this information is helpful. If you have questions, please call.

Attachments

ATTACHMENT A
Illinois and Minnesota Taxes

ATTACHMENT A

Illinois adopts 'grass tax' against dealers

SPRINGFIELD, Ill. (AP) — The state has imposed a tax on marijuana, cocaine and other illegal drugs, but expects that most of the revenue from the new law will come from stamp collectors.

The law requires drug dealers to purchase tax stamps, featuring either a marijuana leaf with a slash through it or a skull and crossbones, and affix them to drug packages.

The stamps cost $5 per gram for marijuana, $250 per gram for other drugs and $2,000 for each dose of drugs not sold by weight.

However, no drug dealers bought stamps when they went on sale Monday, said Helen Adorjan of the state Department of Revenue. She thinks stamp collectors will be the most frequent buyers, although they would have to pay the same price as a drug dealer.

Other states have also levied taxes on illegal drugs — not to raise money, but to provide another legal weapon against dealers.

Major drug dealers without the stamps would be hit the hardest. A violator would be subject to four times the amount of the tax, a $10,000 fine and three years in prison.

"An immediate reaction is, 'Why tax something illegal?' But as you look at it more closely, it makes more sense," said Sen. David Barkhausen, R-Lake Bluff.

Barkhausen, the law's chief sponsor, modeled the "grass tax" after a similar law in Minnesota, which has sold about 150 stamps so far and collected $13 million in fines since its inception about 18 months ago.

The law provides that dealers cannot incriminate themselves by buying the stamps, Adorjan said. Employees will not even ask for names, she said.

Only those who order stamps by mail will be required to give their names and addresses for return mail, she said.

Illinois State Police spokesman Bob Fletcher said the department is stronlgy in favor of the new law.

"People can say the taxes and the law are ridiculous, but they should think back a little bit and remember how Al Capone was convicted," he said.

Capone was convicted of tax evasion.

ATTACHMENT B
Illinois "Cannabis and Controlled Substances Tax Act"
(Public Act 85-663) and Minnesota "Marijuana and Controlled
Substances Taxation" law (Chapter 297D)

such purpose, be deposited in escrow with a banking corporation, or national banking association, located in and doing business in the State of Illinois, with power to accept and execute trusts, or any successor thereto, which is also a member of the Federal Deposit Insurance Corporation and of the Federal Reserve System to be held in an irrevocable trust solely for and until the payment and redemption of the bonds so to be refunded, and any balance remaining in such escrow after the payment and retirement of the bonds shall be returned to the Commission to be used and held for use as revenues pledged for the payment of such refunding bonds; or

(v) for any combination thereof.

(d) The bonds shall be authorized by resolution of the Commission and may be issued in one or more series, may bear such date or dates, may be in such denomination or denominations, may mature at such time or times not exceeding 20 years from the respective dates thereof, may mature in such amount or amounts, may bear interest at such rate or rates not exceeding 8% per annum payable semi-annually, may be in such form either coupon or registered as to principal only or as to both principal and interest, may carry such registration privileges (including the conversion of a fully registered bond to a coupon bond or bonds and the conversion of a coupon bond to a fully registered bond), may be executed in such manner, may be made payable in such medium of payment, at such place or places within or without the State, and may be subject to such terms of redemption prior to their expressed maturity, with or without premium as such resolution or other resolutions may provide. Proceeds from the sale of the bonds may be invested as such resolution or resolutions and as the Commission from time to time may provide. All bonds issued under this Act, except refunding bonds as provided for in this Section, shall be sold in such manner as the Commission may deem to be in the best interest of the public, but such bonds shall be sold at such price that the interest cost of the proceeds therefrom will not exceed 8% per annum computed to maturity according to standard tables of bond values. Such resolution may provide that the bonds be executed with one manual signature and that other signatures may be printed, lithographed or engraved thereon.

The Commission shall not be authorized to create and the bonds shall not in any event constitute State debt of the State of Illinois within the meaning of the Constitution or statutes of the State of Illinois and the same shall be so stated upon the face of each bond. The source of payment for the bonds shall be stated on the face of each bond.

Section 2. This Act takes effect upon its becoming a law.

[S.H.A. ch. 122, ¶ 30-15.18 note]

APPROVED: September 20, 1987 EFFECTIVE: September 20, 1987

ILLINOIS

CANNABIS AND CONTROLLED SUBSTANCES TAX ACT

PUBLIC ACT 85–663

SENATE BILL 1154

AN ACT to impose a tax on cannabis and controlled substances.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

[S.H.A. ch. 120, ¶ 2151]

Section 1. This Act shall be known and may be cited as the "Cannabis and Controlled Substances Tax Act".

Section 2. As used in this Act:

[S.H.A. ch. 120, ¶ 2152]

"Cannabis" has the same meaning specified in Section 3 of the Cannabis Control Act.[1]

"Controlled Substance" means a drug, substance, or immediate precursor specified in Article II of the Illinois Controlled Substances Act[2] and includes counterfeit substance as defined in Section 102 of the Illinois Controlled Substances Act.[3]

"Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other entity.

"Department" means the Department of Revenue.

"Director" means the Director of the Department of Revenue.

"Dealer" means a person who in violation of the Illinois Controlled Substances Act[4] or the Cannabis Control Act[5] manufactures, produces, ships, transports, imports, sells or transfers or possesses with intent to deliver to another person more than 30 grams of cannabis or more than 5 grams of any controlled substance or 5 or more dosage units of a controlled substance.

[1] Chapter 56½, ¶ 703.
[2] Chapter 56½, ¶ 1201 et seq.
[3] Chapter 56½, ¶ 1102.
[4] Chapter 56½, ¶ 1100 et seq.
[5] Chapter 56½, ¶ 701 et seq.

[S.H.A. ch. 120, ¶ 2153]

Section 3. The Director shall administer this Act. Payment of taxes and penalties required by this Act must be made in the form and manner required by the Department. The Department shall collect all taxes and penalties imposed by this Act.

[S.H.A. ch. 120, ¶ 2154]

Section 4. The Department shall promulgate rules necessary to enforce this Act. The Department shall adopt a uniform system of providing, affixing, and displaying official stamps, official labels, or other official indicia for cannabis and controlled substances on which the tax is imposed pursuant to this Act.

[S.H.A. ch. 120, ¶ 2155]

Section 5. No dealer may possess any cannabis or controlled substance upon which a tax is imposed by this Act

ATTACHMENT B

riority, all liens established at the hearing as being bona fide and existing without the enor having any notice or knowledge at the time the lien was created that the vehicle conveyance was being used or was intended to be used in connection with any olation as specified in the order of the court, and shall pay the balance of the proceeds to the state treasury. A sale under the provisions of this section frees the vehicle or nveyance sold from all liens, and appeal from order of the district court lies to the preme court as in other civil actions. At any time after seizure and before the hearing e vehicle or conveyance must be returned to the owner or person having a legal right its possession on execution by that person of a valid bond to the state of Minnesota, ith corporate surety, in the sum of not less than $100 and not more than double the alue of the vehicle or conveyance seized, to be approved by the court in which the case triable, or a judge thereof, conditioned on obeying any order and the judgment of the ourt, and to pay the full value of the vehicle or conveyance at the time of seizure.

History: *1985 c 305 art 2 s 12; 1Sp1986 c 3 art 1 s 82*

297C.13 VIOLATIONS.

Subdivision 1. Felonies. It is a felony for a holder of an alcoholic beverage license o:

(1) evade or attempt to evade the excise tax on intoxicating liquor and nonintoxicating malt liquor;

(2) fraudulently neglect or fail to keep complete accounts in book or books of ccount, or to make true and exact entries in them as required by the rules of the ommissioner of public safety and the commissioner of revenue, or by law;

(3) conspire to violate a provision of this chapter;

(4) fail to do or cause to be done anything required by law;

(5) refill or cause to be refilled a bottle or other container of intoxicating liquor in rder to evade tax; or

(6) sell intoxicating liquor or nonintoxicating malt liquor on which the excise tax as not been paid and thereby evade the tax.

Subd. 2. Gross misdemeanors. Any other violation of this chapter is a gross isdemeanor except where a different penalty is specified.

History: *1985 c 305 art 2 s 13*

MINNESOTA

ENACTED 1986
AMENDED 1987

CHAPTER 297D

MARIJUANA AND CONTROLLED SUBSTANCE TAXATION

297D.01 DEFINITIONS.

Subdivision 1. "Marijuana" means any marijuana, whether real or counterfeit, as defined in section 152.01, subdivision 9, that is held, possessed, transported, transferred, sold, or offered to be sold in violation of Minnesota laws.

Subd. 2. "Controlled substance" means any drug or substance, whether real or counterfeit, as defined in section 152.01, subdivision 4, that is held, possessed, transported, transferred, sold, or offered to be sold in violation of Minnesota laws. "Controlled substance" does not include marijuana.

Subd. 3. "Dealer" means a person who in violation of Minnesota law manufactures, produces, ships, transports, or imports into Minnesota or in any manner acquires or possesses more than 42-1/2 grams of marijuana, or seven or more grams of any controlled substance, or ten or more dosage units of any controlled substance which is not sold by weight. amended

Subd. 4. "Commissioner" means the commissioner of revenue.

History: *1986 c 470 s 4*

297D.02 ADMINISTRATION.

The commissioner of revenue shall administer this chapter. Payments required by this chapter must be made to the commissioner on the form provided by the commissioner. The commissioner shall collect all taxes under this chapter.

History: *1986 c 470 s 5*

297D.03 RULES.

The commissioner may adopt rules necessary to enforce this chapter. The commissioner shall adopt a uniform system of providing, affixing, and displaying official stamps, official labels, or other official indicia for marijuana and controlled substances on which a tax is imposed.

History: *1986 c 470 s 6*

297D.04 TAX PAYMENT REQUIRED FOR POSSESSION.

No dealer may possess any marijuana or controlled substance upon which a tax is imposed by section 297D.08 unless the tax has been paid on the marijuana or other controlled substance as evidenced by a stamp or other official indicia.

History: *1986 c 470 s 7*

297D.05 NO IMMUNITY.

Nothing in this chapter may in any manner provide immunity for a dealer from criminal prosecution pursuant to Minnesota law.

History: *1986 c 470 s 8*

1987 AMENDMENTS

CHAPTER 297D

MARIJUANA AND CONTROLLED SUBSTANCE TAXATION

297D.01 DEFINITIONS.

[For text of subds 1 and 2, see M.S.1986]

Subd. 3. "Dealer" means a person who in violation of Minnesota law manufactures, produces, ships, transports, or imports into Minnesota or in any manner acquires or possesses more than 42-1/2 grams of marijuana, or seven or more grams of any controlled substance, or ten or more dosage units of any controlled substance which is not sold by weight. A quantity of marijuana or other controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the dealer's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

[For text of subd 4, see M.S.1986]

History: *1987 c 330 s 2*

297D.02 ADMINISTRATION.

The commissioner of revenue shall administer this chapter. Payments required by this chapter must be made to the commissioner on the form provided by the commissioner. Dealers are not required to give their name, address, social security number, or other identifying information on the form. The commissioner shall collect all taxes under this chapter.

History: *1987 c 268 art 17 s 35*

297D.07 MEASUREMENT.

For the purpose of calculating the tax under section 297D.08, a quantity of marijuana or other controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the dealer's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

History: *1987 c 268 art 17 s 36; 1987 c 330 s 3; 1987 c 384 art 3 s 48*

297D.09 PENALTIES; CRIMINAL PROVISIONS.

Subdivision 1. **Penalties.** Any dealer violating this chapter is subject to a penalty of 100 percent of the tax in addition to the tax imposed by section 297D.08. The penalty will be collected as part of the tax.

Subd. 1a. **Criminal penalty; sale without affixed stamps.** In addition to the tax penalty imposed, a dealer distributing or possessing marijuana or controlled substances without affixing the appropriate stamps, labels, or other indicia is guilty of a crime and, upon conviction, may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than $10,000, or both.

Subd. 2. **Statute of limitations.** Notwithstanding section 628.26, or any other provision of the criminal laws of this state, an indictment may be found and filed, or a complaint filed, upon any criminal offense specified in this section, in the proper court within six years after the commission of this offense.

History: *1987 c 268 art 17 s 37*

297D.10 STAMP PRICE.

Official stamps, labels, or other indicia to be affixed to all marijuana or controlled substances shall be purchased from the commissioner. The purchaser shall pay 100 percent of face value for each stamp, label, or other indicia at the time of the purchase.

History: *1987 c 268 art 17 s 38*

297D.12 ALL ASSESSMENTS ARE JEOPARDY.

Subdivision 1. **Assessment procedure.** An assessment for a dealer not possessing valid stamps or other official indicia showing that the tax has been paid shall be considered a jeopardy assessment or collection, as provided in section 270.70. The commissioner shall assess a tax and applicable penalties based on personal knowledge or information available to the commissioner; mail the taxpayer at the taxpayer's last known address or serve in person, a written notice of the amount of tax and penalty; demand its immediate payment; and, if payment is not immediately made, collect the tax and penalty by any method prescribed in chapter 270, except that the commissioner need not await the expiration of the times specified in chapter 270.

[For text of subds 2 and 3, see M.S.1986]

History: *1987 c 268 art 17 s 39*

297D.13 CONFIDENTIAL NATURE OF INFORMATION.

Subdivision 1. **Disclosure prohibited.** Notwithstanding any law to the contrary, neither the commissioner nor a public employee may reveal facts contained in a report or return required by this chapter or any information obtained from a dealer; nor can any information contained in such a report or return or obtained from a dealer be used against the dealer in any criminal proceeding, unless independently obtained, except in connection with a proceeding involving taxes due under this chapter from the dealer making the return.

Subd. 2. **Penalty for disclosure.** Any person violating this section is guilty of a gross misdemeanor.

Subd. 3. **Statistics.** This section does not prohibit the commissioner from publishing statistics that do not disclose the identity of dealers or the contents of particular returns or reports.

History: *1987 c 268 art 17 s 40*

100TH CONGRESS
2D SESSION

S. 2205

To enact the Omnibus Antidrug Abuse Act of 1988, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 23 (legislative day, MARCH 21), 1988

Mr. DECONCINI (for himself, Mr. D'AMATO, Mr. DIXON, Mr. MOYNIHAN, Mr. GRAHAM, Mr. DOMENICI, Mr. DOLE, Mr. WILSON, Ms. MIKULSKI, Mr. KERRY, Mr. SPECTER, Mr. MURKOWSKI, Mr. ROCKEFELLER, Mr. BENTSEN, Mr. HATFIELD, Mr. PRESSLER, Mr. HEINZ, Mr. COCHRAN, Mr. REID, Mr. HEFLIN, Mr. WEICKER, Mr. GRASSLEY, Mr. RUDMAN, Mr. STEVENS, Mr. INOUYE, Mr. TRIBLE, Mr. BINGAMAN, Mr. BREAUX, Mr. SARBANES, Mr. DANFORTH, Mr. STENNIS, Mr. MCCONNELL, Mr. HELMS, Mr. PELL, Mr. THURMOND, Mr. KARNES, Mr. NICKLES, Mr. DURENBERGER, Mr. HECHT, and Mr. CRANSTON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To enact the Omnibus Antidrug Abuse Act of 1988, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Omnibus Antidrug Abuse Act of 1988".

SEC. 2. ORGANIZATION OF THE ACT.

This Act is organized as follows:

TITLE I—DRUG ENFORCEMENT AND PERSONNEL ENHANCEMENT

Subtitle A—Asset Forfeiture Fund Amendments Act of 1988

SEC. 101. SHORT TITLE.

This subtitle may be cited as the "Department of Justice and Department of Treasury Assets Forfeiture Fund

IN THE SUPREME COURT FOR THE STATE OF ALASKA

IRWIN RAVIN,

Petitioner,

vs.

STATE OF ALASKA,

Respondent.

Supreme Court No. 2135

ON PETITION FOR REVIEW FROM THE DISTRICT AND SUPERIOR COURTS OF THE THIRD JUDICIAL DISTRICT

BRIEF OF THE PETITIONER

R. Collin Middleton
Robert H. Wagstaff
Attorneys for Petitioner and
The American Civil Liberties
Union

Filed this 11th day of June, 1974 in the Supreme Court of the State of Alaska

J. M. McPHETRES, Clerk

By: Betty H. Barker
Deputy Clerk

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

CONSTITUTIONAL AND STATUTORY PROVISIONS RELIED ON

United States Constitution

First Amendment guarantees freedom of religion, association, speech and the press.

Third Amendment guarantees that "No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law"

Fourth Amendment guarantees freedom from unreasonable searches and seizures

Eighth Amendment is a guarantee against cruel and unusual punishments

The Fourteenth Amendment makes applicable to the states many of the first ten Amendments

Alaska Constitution

Article I, Section 1 is fully set forth on page 16 and is a basic guarantee to Alaskans of liberty, life and the pursuit of happiness

Article I, Section 12 is a guarantee for Alaskans against cruel and unusual punishments

Article I, Section 22 states

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

Alaska Statutes Relied Upon

AS 11.55.050 prohibits flourishing, pointing or discharging a firearm in a public place and provides a punishment

AS 11.55.060 prohibits shooting at buildings and provides a punishment

AS 11.55.070 prohibits possession of a firearm while under the influence of liquor and provides a punishment

AS 11.15.230 prohibits assault and battery and provides a punishment

AS 11.20.140 prohibits larceny of money and provides a punishment

AS 11.40.480 prohibits cruelty to animals and provides a punishment

AS 17.12.010 is set forth on page 9 of this brief and prohibits the private possession of any stimulant depressent or hallucinogenic drug. Petitioner was charged under this statute.

AS 17.12.150 defines marihuana (Cannabis Sativa L) as one of the drugs prohibited above and is set forth on page 9 of this brief.

AS 28.35.030 prohibits driving under the influence of intoxicating liquor and provides a punishment.

JURISDICTIONAL STATEMENT

Petitioner was arrested for possession of marihuana on December 11, 1972. He moved to dismiss his complaint for the unconstitutionality of the statute under which he was arrested in February of 1973 and a bifurcated hearing was held commencing on May 2, 1973, running for five days of testimony and again on June 20, 1973 for an additional five days. Judge Tyner denied petitioner's motion on November 16, 1973. Review was granted by the Superior Court and Judge Tyner's decision affirmed on December 19, 1973. This Court granted review of Judge Tyner's decision on April 8, 1974, directing petitioner to file this supplemental brief. Jurisdiction was found by the order of April 8, 1974 where this petition for review was granted.

ISSUES PRESENTED FOR REVIEW

I. Is the prohibition against possession of marihuana for personal use an unconstitutional invasion of the privacy and liberty of petitioner?

A. Is the possession of marihuana for personal use a "fundamental" right protected by the Constitutions of the State of Alaska and the United States as a right to privacy and liberty?

B. Was a compelling state interest shown to contravene petitioner's fundamental rights to privacy and liberty?

II. Is the prohibition against possession of marihuana for personal use an unconstitutional unequal application of the laws?

A. Is the prohibition against possession of marihuana for personal use when alcohol and tobacco are not prohibited the unequal application of the laws?

B. Is marihuana misclassified as a dangerous drug denying persons possessing it the due process of law and the equal protection of law?

III. Is the prohibition against possession of marihuana for personal use and resulting penalties for arrest a cruel and unusual punishment?

STATEMENT OF THE CASE

Irwin Ravin is an Alaskan who was arrested for having in his pocket, for his own personal use a small amount of marihuana. He moved to dismiss the criminal complaint on the grounds that it was unconstitutional to arrest him for possessing marihuana. This case is before this Court on a Petitioner for Review (see jurisdictional statement) from the denial of his motion by the District Court.

Irwin Ravin is not the only person in Alaska who has possessed marihuana for personal private use. Much of the hearing on the motion to dismiss was related to marihuana in Alaska and the non danger it was for the public health of Alaskans.[1] Doctor Carolyn Brown, a board certified physician in preventive medicine (Brown Tr. p. 13) has been an epidemiologist (. . ." a qualified person whose major concern deals with the cause and distribution of perameters relating to a certain problem" (id. at 21)) for three years at the Alaska Native Health Service. She has participated in a study of marihuana use by

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1/ As goes Alaska so go the United States. Our experience is not different from that of the rest of the country or the world as was demonstrated by the outside experts who testified. Assembled before the District Court werethe experts of the country as well as all the scientific and anecdotal information on marihuana. That information is parsed in Argument II of the brief. In State v. Kantner, 493 P.2d 306 (Hawaii 1972), cert. denied 409 U.S. 948 (1972) few-witnesses testified; however, the court divided two for affirming conviction, one for affirming on procedural groudns and two dissenting essentially on the strength of books by Kaplan and Grinspoon, neither of whom testified. In Commonwealth v. Leis, 243 N.E. 2d 898 (Mass. 1969) no where near the documentation was available for the harm-

school children in the Greater Anchorage Area Borough (exhibit J.), a use study by lawyers in the Third Judicial District (id. at 41), and doctors statewide (id. at 40). She has been a physician at the Open Door Clinic (id. at 58). Additionally she has spoken with may physicians in Alaska and many Alaskans.

Q. As an epidemiologist have you an opinion as to the amount of usage of marihuana in the state of Alaska?

A. Yes. I do.

Q. And what is that opinion?

A. An awful lot of people are smoking marihuana.

Brown Tr., pps 27, 28. In fact of 15,634 borough school children in grades six through twelve, 24% had used marihuana at least once. id. at 35. Of grades twelve and eleven 46% had used marihuana. ibid. The study was (exhibit J.) published, "Drug Use in Anchorage, Alaska," 223 J. Amer. Med. Ass. 657 (1971) (exhibit N.). Significant numbers of the lawyers and doctors polled, but fewer of the League of Women Voters, used marihuana. (Exhibits C and 5). However,

Q. Doctor, do you have an opinion as to whether or

1/ (cont'd) lessness of marihuana as is before this Court. Admitted into evidence by their authors in favor of petitioner's position are Fort, The Pleasure Seekers (1969), Grinspoon, Marihuana Reconsidered (1971), and the two reports of the National Commission on Marihuana and Drug Abuse, Marihuana: A Signal of Misunderstanding and Drug Use in America: Problem in Perspective as well as the two volume appendix.

not marihuana use, as you have described it, for the last hour and a half, in Anchorage, poses a public health problem?

A. Marihuana, as it is currently used in Anchorage, is a relatively tremendously insignificant problem in terms of public health and public interest, relative to other problems which exist in this town.

Q. You said "relatively tremendously" and I don't know if it's a relative problem or a tremendously small problem.

A. It's a very small insignificant problem.

Q. O.K. What do you mean by insignificant problem?

A. The number of people who have bad things happen to them, either economically, morbidity; mortality, sociologically, from the use of marihuana as it's currently used in Anchorage, is insignificant, when one compares the bad things that happen to people, given those parameters, when one uses Seconal, Darvon, librium, alcohol.

Q. All those are used in Anchorage?

A. Tremendously. They kill people every day.

id., pps 46-47.

Of 380 some odd cases coming to the attention of the Poison Control Center each year since 1965 none was caused by marihuana. Of ten admissions per day to the ANS energency room since 1965 only one was for "acute anxiety" and "it was alleged that he may have come in contact with marihuana. No marihuana was found on him." (Dr. Brown, Tr. p. 47). Of 40,000 outpatients seen at ANS per year since 1965 only the case reported above was ever admitted with a primary, secondary or tertiary diagnosis of marihuana. (id., p. 57). Of 1,593 ou.patient consultations at the Open Door Clinic two persons had conjunct vitis and ten to twenty had bronchitis possibly secondary to either marihu:ne use or cigarette smoking. id., p. 58. Of 180 admissions for drug usage in a six month period at Community Hospital one was admitted for marihuana (Heesch transcript, p. 87) although even that admission was suspect. (exhibit Z, testimony of Keller, p. 4).

Doctor J. Ray Langdon, whose psychiatric clinic has seen 13,000 - 15,000 persons for mental health help has never seen a person suffering from an organic brain syndrome or damage due to marihuana ingestion (Langdon transcript, p. 17) (although he has seen such conditions resulting from alcohol and bromo-seltzer (id. at 18)), nor has he ever treated anyone suffering from any mental problem caused by the ingestion of marihuana. (id. at 19-20).

Q. Based on the persons whom you have seen (including court referral forensic cases) and based on the other

material which you know is the, as the, as being on the staff and consultant to three hospitals, now, do you have an opinion as to whether or not marihuana is a public mental health problem?

A. I, it's my opinion that the use of marihuana, per se, is not a public mental health problem. . . .

id. at 20-21. Similarly Doctor Aron Wolf as Chief of Psychiatric Services at the Elmendorf Mental Health Clinic saw no one with a mental health problem caused by the ingestion of marihuana.

A. To my knowledge, no one came to that clinic specifically because of marihuana as a medical problem. There were several cases in which someone was being court martialed for the use of marihuana. It was no problem to the person other than he had gotten caught by the Air Force authorities. . . .

Wolf transcript (May 2) p. 98.

Q. (by Mr. Weight) You've never seen a case where marihuana contributed in some respects, more than marginally to a mental disease or defect?

A. No, I have not.

Wolf transcript (May 2 -- should be May 3) p. 25. Marihuana has not caused impediments to the maturation of adolescents sent to McLaughlin (id. at 38), does not lead to heroin (id. at 14), and of three hundred psychiatric emergencies at Providence Hospital over a six month period only one was related to marihuana where a person with a chronic mental condition was admitted suffering anxiety after drinking wine and smoking marihuana. id. at 10.

Of the witnesses testifying about Alaska not one found any potential or present danger to the health of the large numbers of persons from all strata of Alaskan society who used marihuana. (Dr. Wolf id. at 8; Dr. Langdon, supra, Dr. Brown, supra, Mr. Heesch, supra at 105). Indeed the Alaska State Medical Society voted that marihuana is of so little danger to health it be legalized for personal possession (exhibit A) and the Alaska Bar Association voted it be fully legalized both for possession and sale (exhibit BBB). There is, however, one major danger which is present from the private possession of marihuana, a danger manifestly harmful and of potentially tragic consequences. That danger is arrest. 156 persons of which petitioner is one were arrested for simple possession of marihuana in 1972 (exhibit BB) up from 81 in 1971 ibid.; see Tr. 15 (May 5).

Simply put there is no mental, medical or moral harm from the private use of marihuana in Alaska. The only harm is its illegality, and it is that harm to which this brief is addressed.

ARGUMENT

I. INTRODUCTION

Petitioner asks that this Court declare as unconstitutional AS 17.12.010[2] as that statute is defined by AS 17.12.150.[3] Petitioner seeks from this Court a determination that the possession and use of marihuana by an adult is not a crime, cannot be made a crime by the legislature, and that the legislature in enacting the above statutes as they relate to the possession and use of marihuana exceeded the power granted it by the Constitutions of the United States and the State of Alaska. Seeking judicial redress of unconstitutional legislation is not novel; indeed, it is the purpose of this introduction to show that such redress is the vital function of judiciary within our system of government. That the judiciary may declare unconstitutional an act of the legislature was aptly defined as a constitutional duty upon the judiciary by Chief Justice John Marshall when he wrote:

> It is emphatically the province and duty of the judicial department to say what the law is.

Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803). The rationale was within

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2/ AS 17.12.010 provides in pertinent part:

> ". . .it is unlawful for a person to . . . possess (or) have under his control . . . in any manner, a depressant, hallucinogenic or stimulant drug."

3/ AS 17.12.150 provides in pertinent part:

> "Definitions. In this chapter. . . .
> (3) 'depressant, hallucinogenic or stimulant drug' means:

the system of checks and balances which is the American and Alaskan form of government.

> . . .The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten the Constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between the government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation. It is a proposition too plain to be contested that the Constitution controls any legislative act repugnant to it; or, that the legislature may alter the Constitution by an ordinary act.

Marbury v. Madison, supra, at 177.

The power of this court to set right that which is wrong is clear. This court must be vigilant against James Madison's observation that "the most rational government will not find it a superfluous advantage, to have the prejudices of the community on its side." The Federalist, #49 at 349 (Wright Ed. 1969). Madison's words touch all branches of government, but it applies most tellingly to the legislative branch, where public decisions of elected lawmakers are necessarily colored by the passions and prejudices of those who elect them. The judicial branch of government and the power of the judiciary as affirmatively recognized by Chief

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3/ (cont'd) (A) cannabis. . .

(4) 'cannabis' includes all parts of the plant, Cannabis Sativa L., whether growing or not; the seeds of this plant; the resin

Justice Marshall are above and divorced from community passion.

The United States Supreme Court has indicated continual acceptance of Marshall's words and declared that courts have the power and the duty to inquire into the facts behind a stat . In Mugler v. Kansas, 123 U.S. 623, 661 (1887) the court stated:

> The Courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty -- indeed, under a solemn duty -- to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute proporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of the rights secured by the fundamental law, it is the duty of the Courts to so adjudge, and thereby give effect to the Constitution.

This principle was restated in Abie State Bank v. Bryan, 282 U.S. 765, 772 (1931), as follows:

> (E)ven though a police power enactment may have been or may have seemed to be valid when made, later events or later-discovered facts may show it to be arbitrary and confiscatory.

See also United States v. Carolene Products Co., 314 U.S. 144, 153-54 (1938):

3/ (cont'd)

> extracted from any part of this plant; and every compound, manufacture, salt, derivative, mixture, or preparation of this plant, its seeds or resin. . . ."

> (W)e recognize that the constitutionality of a statute valid on its face, may be assailed by proof of facts tending to show that the statute as applied to a particular article is without support in reason because the article, although within the prohibited class, is so different from others of the class as to be without the reason for the prohibition.

Such determinations have been recently applied to statutory proscriptions against marihuana. As Justice Levinson of the Supreme Court of Hawaii recently stated in State v. Kantner, 493 P.2d 306, cert. denied, 409 U.S. 948 (1972):

> Any criticism which attempts to deter courts from inquiring into the constitutionality of laws must distinguish between legislation which seeks to regulate economic and social relationships and that which intrudes into the purely private sphere of human life. In the former instance courts rightfully grant the legislature wide latitude for experimentation in the promotion of the general good. But, where the State endeavors to intrude into the individual's private life and regulate conduct having no public significance, it is the duty of the courts to offer a haven of refuge where the individual may secure vindication of his right to be let alone.

State v. Kantner, supra, (493 P.2d at 317-18.)

In the same case, Justice Kobayashi indicated, 493 P.2d at 320:

> Until legitimate research indicates otherwise, the harm created by placing a criminal sanction on the activity of a significant percentage of our population who would otherwise be law abiding citizens far outweighs any present benefit to be derived from the effects of classifying marijuana as a narcotic. There is no logical or otherwise rational reason for our society, on the basis of a law that has little or no merit in its application, to continue to make criminals out of and consequently alienate the youth of today.

> The use of marijuana does not cause the social ills that the legislature has attempted to guard against. It is the present status of the law classifying marijuana as a narcotic and proscribing its use as a narcotic that is responsible for the social harm created.

Nowhere has the judicial duty to investigate legislation for its conformance to constitutional mandates, been more clearly stated than in Alaska. In Breese v. Smith, 501 P.2d 159, 174 (Alaska 1972) this Court stated in declaring invalid a school regulation regarding student hair length:

> Even if such a regulation were arrived at and promulgated by a more democratic process, a student's claim to liberty would remain undiminished for this court is held to a standard of vigilance in the matter of the protection of an individual's constitutional liberties. Protection of personal liberty cannot be left to depend upon the will of the majority for those are antithetical concepts.

In Baker v. City of Fairbanks, 471 P.2d 386, 402 (Alaska 1970), this Court found the right to jury trial in misdemeanor cases a basic constitutional right under the Alaska Constitution.

> . . . (W)e 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.

Baker v. Fairbanks, supra, 471 P. 2d at 402.

Indeed this Court has frequently found constitutional obligations for the protection of Alaskans that the United States Supreme Court has not found

mandated under the United States Constitution. Specifically in Roberts v. State, 458 P.2d 340, 342-343 (Alaska 1969), this court said:

> (W)e are not limited by decisions of the United States Supreme Court or the United States Con- s n when we expound our state constitution; th iska Constitution may have broader safe- guar than the minimum federal standards.

And again in Baker, supra, 471 P.2d at 401 this Court stated:

> (W)e have recognized that we are at liberty to make constitutional progress in Alaska by our own interpretations, as long as we measure up to the national standards which are required by the United States Supreme Court. It is our duty to move forward in those areas of constitutional progress which we view as necessary to the development of a civilized way of life in Alaska.

See also, State v. Browder, 486 P.2d 925, 936 (Alaska 1971); R.L.R. v. State, 487 P.2d 27 (Alaska 1971).

It is against this firm judicial backdrop that petitioner presents his arguments that the statutes under which he was charged are unconstitutional. It is with this firm constitutional and judicial committment that the legislation questioned in in the light of scientific knowledge must be viewed, and it is because of this commitment by this Court that petitioner requests in the following arguments reversal of the decisions by the courts below, and that the legislation be struck down.

II. THERE IS NO COMPELLING STATE INTEREST IN THE PROHIBITION OF MARIJUANA

A. THE RIGHT OF LIBERTY AND PRIVACY

This Court has stated that

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

Breese v. Smith, supra, 501 P.2d at 171. [4]

The first question to be determined, then, is whether a fundamental constitutional right is involved in this case. The District Court so found,

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Griswold v. Connecticut, 381 U.S. 479 (1965) was the first case in which the United States Supreme Court established the right of privacy as an independent constitutional right, and based its decision squarely upon that right. Griswold set forth a number of principles for privacy cases which have been followed and reaffirmed by the most recent Supreme Court decisions involving the right of privacy. Foremost among these principles is the rule that if the challenged statute invades rights or liberties which are considered "fundamental", then the government must justify the statute by demonstrating an overriding and compelling state interest. As the Court stated in Griswold, 381 U.S. at 497:

> In a long series of cases this Court has held that where fundamental personal liberties are involved, they may not be abridged by the States simply on a showing that a regulatory statute has some rational relationship to the effectuation of a proper state purpose. 'Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a sub-

opinion page 4.

Article I, Section 1 of the Constitution of Alaska provides:

> This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.

Article I, Section 22 of the Alaska Constitution provides: "the right of the people to privacy is recognized and shall not be infringed". That privacy and liberty are fundamental and their abridgment is possible only by a compelling state interest is explicit in Alaska. Petitioner advances that the possession of marijuana for private use is fundamental is implicit in the above, based upon this record.

4/ (cont'd) ordinating interest which is compelling,' Bates v. Little Rock, 361 U.S. 516, 524, 4 L.Ed.2d 480, 486, 80 S. Ct. 412. The law must be shown 'necessary, and not merely rationally related, to the accomplishment of a permissible state policy.' McLaughlin v. Florida, 379 U.S. 184, 196, 13 L.E.d 2d 222, 231, 85 S. Ct. 283.

See also Stanley v. Georgia, 394 U.S. 557 (1969) (right to private possession of obscene materials); Roe v. Wade, 410 U.S. 113 (1973) (right to abortion).

A second, but related principle established in Griswold was that legislation in areas of legitimate state interests cannot sweep unnecessarily broadly and stifle fundamental freedoms: "(A) governmental purpose to control or prevent

The two most important zones of privacy and liberty involved are the sanctity of areas of expectation of privacy and the right to be let alone by government to develop and use one's faculties as one sees fit.

The issue of whether the private possession and use of marijuana involves fundamental liberties has, surprisingly, received little detailed attention in the cases decided to date. As one recent law review article has indicated: "Only one court has come close to giving the issue thoughtful treatment." Comment, "On Privacy: Constitutional Protection For Personal Liberty",: 48 N.Y.U. L. Rev. 670, 756 (1973). The case referred to is State v. Kantner, 493 P.2d 306 (Hawaii 1972), cert. denied, 409 U.S. 948 (1972). In Kantner, the five justices of the Hawaii Supreme Court issued four separate opinions on the constitutionality of the marijuana prohibition. Two justices voted to affirm the convictions, two dissented, holding possession of marijuana was protected by the right of privacy, and the fifth justice voted to affirm because he did not believe that the issue had properly been raised.

There are at least two aspects of the private possession and use of marihuana which involve "fundamental" interests. The first aspect is that the activity engaged in is the privacy of the home or other areas of expectation of privacy. In Stanley v. Georgia, 392 U.S. 557 (1969), the Supreme Court held that the pos-

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4/ (cont'd) activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." 381 U.S. at 485.

session of obscene materials in a person's home involved fundamental values. The Court's opinion appears to rely upon two bases for its decision -- the First Amendment right to receive information, and the privacy of the home. The Court states, 392 U. S. at 564:

> It is now well established that the Constitution protects the right to receive information and ideas. . . . This right to receive information and ideas, regardless of their social worth. . . is fundamental to our free society. Moreover, 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.

In cases subsequent to Stanley, however, the Supreme Court has emphasized that Stanley did not involve the First Amendment so much as it did the privacy of the home. See, e.g., United States v. 12 200-FT.Reels of Super 8MM Film, 413 U.S. 123, 126 (1973). In the recent case of Paris Adult Theatre I v. Slaton, ____U.S. ____, 41 U.S.L.W. 4935 (1973) Chief Justice Burger, speaking for the Court, indicated that "the privacy right encompasses and protects the personal intimacies of the home," and indicated that Stanley was decided upon this ground "which was hardly more than a reaffirmation that 'a man's home is his castle.'" Id., at 4940.

Stanley and these subsequent cases should therefore be interpreted as holding that the privacy of the home, in and of itself, is a "fundamental" value, and that the state must show an overriding and compelling interest to

justify criminalizing any activity in the privacy of the home or other Fourt Amendment areas in which one has an expectation of privacy.

In a number of different contexts, the United States Supreme Court has indicated that the privacy of the home, in and of itself, is a fundamental value. In Wolf v. Colorado, 338 U.S. 25 (1949), one issue was whether the Fourth Amendment was "basic to a free society" and "implicit in the concept of ordered liberty" so that it was applicable to the states through the Due Process Clause of the Fourteenth Amendment. The Court stated, 232 U.S. at 27-28:

> The security of one's privacy against arbitrary intrusion by the police -- which is at the core of the Fourth Amendment -- is basic to a free society. It is therefore implicit in "the concept of ordered liberty" and as such enforceable against the States through the Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking peoples.

Even though the Court held that the Fourth Amendment was applicable to the states, the court also held that the exclusionary rule was not binding on state courts. This portion of the Court's decision was overruled in Mapp v. Ohio, 367 U.S. 643 (1961). Mapp held that illegally siezed evidence was not admissible in state courts, and, of course, Mapp reaffirmed the holding in Wolf that the privacy of the home is "basic to a free society," and was "no less important

than any other right carefully and particularly reserved to the people." 367 U.S. at 656. See also Boyd v. United States, 116 U.S. 616, 630 (1886):

> The principles laid down in this opinion affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case then before the court, with its adventitious circumstances; they apply to all invasions on the part of the government and its employes of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers; but it is the invasions of his indefeasible right of personal security, personal liberty and private property. . . .

See also, Weeks v. United States, 232 U.S. 383, 390-91 (1914).

In Moreno v. U.S. Dept. of Agriculture, 345 F. Supp. 310 (D.D.C. 1972), aff'd., 93 S.Ct. 2821 (1973), a three-judge court in the District of Columbia Circuit granted a declaratory judgment invalidating a statute which denied eligibility in the food stamp program to households composed of unrelated individuals (the so-called "hippie communes"). The Court stated:

> Recent Supreme Court decisions make it clear that even the states, which possess a general police power not granted to Congress, cannot, in the name of morality infringe the rights of privacy and freedom of association in the home. 345 F. Supp. at 314 (emphasis in original).

See also, Powel v. Texas, 392 U.S. 514 (1968), where the Court, in holding that the states may make public intoxication a criminal offense, intimated that the state could not prohibit such activity in the privacy of the home. 392 U.S. at 532.

The privacy of a person's home is also an area about which people entertain legitimate expectations of privacy. As Justice Powell indicated in his concurring opinion in United States v. Robinson, ___ U.S. ___, 42 U.S.L.W. 4055, 4070 (1973):

> The Fourth Amendment safeguards the right of 'the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures. . .' These are areas of an individual's life about which he entertains legitimate expectations of privacy.

The privacy of the home is also "so rooted in the collective conscience of the people" as to be ranked as "fundamental." Few values in America are so widely shared as the belief that "a man's home is his castle." The privacy of the home, is related to, and emanates from, a number of specific guarantees in the Bill of Rights, including the Third Amendment ("No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner. . . ."); the Fourth Amendment ("The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated. . . ."); and the concept of Liberty embodied in the Fourteenth Amendment.

For all the above reasons, the privacy of the home, in and of itself, is a "fundamental" right.

The Supreme Court has also indicated, in a number of different contexts, that the right to be let alone by government (liberty) is a "fundamental" right.

In Union Pacific Railway Co. v. Botsford, 141 U.S. 250, 251 (1891), the Court stated:

> No . . . t is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. As well said by Judge Cooley, "'the right to one's person may be said to be a right of complete immunity: to be let alone'".

In Stanley v. Georgia, supra, the Court quoted with approval the now famous dissent of Mr. Justice Brandeis in the Olmstead case, 394 U.S. at 564.

> The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfaction of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the right to be let alone -- the most comprehensive of rights and the right most valued by civilized men. (emphasis added)

See also, Meyer v. Nebraska, 262 U.S. 390, 392 (1922):

> (W)e should not overlook the fact that the spirit of America is liberty and toleration - the disposition to allow each person to live his own life in his own way, unhampered by unreasonable and arbitrary restrictions.

See also Eisenstadt v. Baird, 405 U.S. 438, 453-54 (1972); Allgeyer v. Louisiana, 165 U.S. 578, 589 (1897) ("right of the citizen to be free in the enjoyment of all his faculties"); Bishop v. Colon, 450 F.2d 1069, 1077 (8th Cir. 1971)

("toleration of individual differences is basic to our democracy, whether those differences be in religion, politics, or life-style"). In the more recent case of Roe v. Wade, 410 U.S. 113 (1973), the Supreme Court held that a woman's right to decide for herself whether she should have an abortion cannot be infringed upon by a state requirement that bears no rational relationship to the state's compelling interest to protect the health of pregnant women. The majority of the court held, in a lead opinion by Mr. Justice Blackmun, that the right of a woman to control her own pregnancy is included within the general right of privacy which is itself part of the liberty protected by the Fourteenth Amendment's Due Process Clause and in the penumbra of the Ninth Amendment.

The right to be let alone by government also emanates from a number of specific guarantees in the Bill of Rights, including the First Amendment freedom of expression, and the Ninth and Tenth Amendments.

A number of the Western Philosophers have discussed this right to be let alone. John Stuart Mill, in Principles of Political Economics, Vol. II, pp. 560-61 (1848), stated:

> There is a circle around every individual human being, which no government, be it that of one, of a few, or of the many, ought to be permitted to overstep; there is a part of the life of every person who has come to years of discretion, within which the individuality of that person ought to reign uncontrolled either by any other individual or by the public collectively. That there is, or ought to be, some space in human existence thus entrenched around and sacred

> from authoritative intrusion, no one who professes the smallest regard to human freedom or dignity will call in question.

The Archbishop of Canterbury, quoted in Chesser, Live and Let Live 58 (1958), stated:

> (T)here is a sacred realm of privacy for every man, where he makes his choice and decisions, fashions his character and directs his desires; a realm of his own essential rights and liberties, including, in the providence of God, liberty to go to the devil, into which the law, generally speaking, must not intrude.

See also, R. Clark, "The Erosion of Civil Liberty," in The Center Magazine, Vol. 3, No. 4 at p. 56 (July, 1970):

> I don't think we have ever really examined what privacy is. I think that privacy is the foundation of individual character. I think it is the way you come to know who you are and what you are and how you make value judgments as to what is right and what is wrong. If that kind of personal, private judgment goes, then everything will become instinctive or group reaction. I think one's character develops over a long period of time through private reflection, by being by oneself and thinking about oneself, so that when we tamper with privacy we tamper with the foundations of individual integrity.

B. COMPELLING STATE INTEREST.

District Court Judge Tyner found that while possession of marijuana for private personal use involved a fundamental right to privacy, there nevertheless was a compelling state interest. Opinion, p. 12.

Judge Tyner applied the correct test, in essence identified the correct

facts, but inexplicably arrived at the wrong conclusion. The facts that were misstated in her opinion are:

1. Meaningful research about marihuana was not conducted until the late 1960's (page 2).

2. The synthesis of THC was relevant to effective research. (page 5)

3. A. Hashish is now entering the United States.

   B. Some literature states tolerance develops and lung impairment has been noted with marihuana.

   C. Polarmetabolites of THC are stored for weeks or months in the brain.

   D. The immune system may be affected.

   E. Chromosomal breakage has been noted (page 7).

Judge Tyner stated that the above "results are far from conclusive and defense witnesses tended to rebut" and then, erroneously, stated that because these might be potential harms and were not fully explored by the National Commission on Marijuana and Drug Abuse that a compelling state interest existed. The burden of proof is upon the state to show a compelling state interest - a "potential" of "unexplored" harm cannot be enough. In fact, the "potentials" noted by Judge Tyner do not even rise to that status. Most were in fact considered by the National Commission and rejected. See infra.

> Black's Law Dictionary (4th ed.) defines "compell" as "to force. . . to oblige". A com-

> pelling state interest therefore must be one which the state is forced or obliged to protect.

Coleman v. Coleman, 291 N.E. 2d 533 (Ohio 1972) (upholding residence requirement for divorce).

> The "compelling state interest" standard, or the standard of "active review" calls upon the state to show more than a link of reasonableness. The state must demonstrate the pressing importance of the classification in the context of some necessary governmental objective.

Dunham v. Pulsifer, 312 F. Supp. 411, 417 (D.C. VT. 1970) (finding unconstitutional a school clothing regulation).

It could be contended that the states and Federal government have a right to prohibit any activity which may, in some way, have an adverse effect on the public welfare. It could be argued that a police power enactment is valid if it protects the public from harm, no matter how rare or remote. For example, Congress or the states could pass statutes requiring every person to be in bed by 10:00 p.m. or brush their teeth three times a day, in order to promote the public health. Similarly, statutes could be passed to prohibit persons from listening to Beethoven or playing bridge because these activities may cause certain persons to become agitated or even violent. These statutes would have a rational relationship to the public health and safety, in the narrowest sense of that term. However, can there be any doubt that these laws would be invalid? Government in the United States was never given such broad powers over the lives of its citizens.

As the Court stated in People v. Carmichael, ____N.Y.____, 53 Misc. 2d 584, 588-89 (1967):

> If a statute required every person to refrain from smoking there could be no serious argument that many persons would be spared crippling illness that cause premature disability and death. If a statute required every person to retire to bed by 10:00 p.m. every evening it would probably benefit the general health of many citizens.
>
> The police power traditionally has not included the power to make a citizen protect his own physical wellbeing. To hold that a citizen may be required to protect his health alone would be an enlargement of the police power beyond traditional limits; it would introduce a novel basis for government power, a new principal upon which to authorize the regulation of the lives of the citizen in a manner and to an extent hither to unknown.

There are numerous cases in which statutes similar to the marihuana prohibitions have been struck down for violation of the right of privacy, liberty, or other fundamental constitutional guarantees.

In People v. Woody, 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964), the Supreme Court of California held that the use of peyote by an Indian religious organization, the Native American Church, was Constitutionally protected. The Court found that the use of peyote was an integral part of the Church's activities, and that the state of California had not shown any compelling and overriding interest to justify infringing the church members' rights. The Court stated, 394 P.2d at 817:

> In a mass society, which presses at every point toward conformity, the protection of self-expression, however unique, of the individual and the group becomes ever more important. The varying currents of the subcultures that flow into the mainstream of our national life give it depth and beauty.

There have been a number of recent Circuit Court decisions in which school dress and groomirg codes have been invalidated because they violated the rights of privacy or liberty. See, e.g., Bishop v. Colon, 450 F. 2d 1069 (8th Cir. 1971); Arnold v. Carpenter, 459 F. 2d 939 (7th Cir. 1972); Anderson v. Laird, 437 F. 2d 912 (7th Cir. 1971), cert. denied, 404 U.S. 865 (1971). Contra: Stull v. School Bd., 439 F. 2d 339 (3rd Cir. 1972).

There are two interesting cases from the early years of this century dealing with the right to smoke cigarettes. In 1911, the Supreme Court of Kentucky considered the validity of an ordinance prohibiting the smoking of cigarettes within the corporate limits of the city. Hershberg v. City of Barbourville, 142 Ky. 60, 133 S.W. 985 (1911). The Court held the ordinance to be an unreasonable interference with personal liberty, stating, 142 Kt. at 61, 133 S.W. at 986:

> The ordinance is so broad as to prohibit one from smoking a cigarette in his own home or on any private premises in the City. To prohibit the smoking of cigarettes in the citizen's own home or on other private premises in an invasion of his right to control his own personal indulgencies. . . .(Government) may not unreasonably interfere with the right of the citizen to determine for himself such personal matters.

The Illinois case involved an ordinance which prohibited smoking "in any street, alley, avenue, park, . . . or (other) public place." City of Zion v. Behrens, 262 Ill. 510, 104 N.E. 836 (1914). In striking down the statute, the Court stated, 262 Ill. at 513, 104 N.E. at 837-38:

> In the broad language in which the ordinance is enacted it is apparently an attempt on the part of the municipality to regulate and control the habits and practices of the citizens without any reasonable basis for so doing. The ordinance is an unreasonable interference with the private rights of the citizen. . . .

Cases dealing with the Constitutional right to possess alcoholic beverages are also relevant to the instant case. As pointed out by Bonnie and Whitebread in their law review article, supra., 56 U.Va.L.Rev. at 999:

> Until 1915 the weight of authority was that it was beyond the police power to prohibit mere possession of alcoholic beverages unless the quantity justified an inference that they were held for sale. A few cases so held; many courts so stated in dictum, while holding the laws either in conflict with particular constitutional provisions regarding the "sale" of liquor or in excess of the power of municipal corporations; and many contemporary commentators so stated. (Footnotes omitted)

The U.S. Supreme Court in 1917 ruled that the states could prohibit the private possession of alcoholic beverages. Crane v. Campbell, 245 U.S. 304 (1917). The Court based its decision, in part, on the harmfulness of alcohol:

> It must now be regarded as settled that on account of their well known noxious qualities and the extraordinary evils shown by experience commonly to be

> consequent upon their use, a State has the power absolutely to prohibit manufacture, gift, purchase, sale or transportation of intoxicating liquors within its borders without violating the guarantees of the Fourteenth Amendment.

Crane v. Cambell, 245 U.S. at 307.

A few comments are necessary on Crane v. Campbell. First, the right of privacy has evolved enormously in recent years, and it is not unforseeable that the Crane decision in 1917 would prove to be an anachronism in the law if the issue were litigated today. Second, the Court in Crane reasoned that the right to possess alcohol would necessarily imply the right to procure it, and the Court noted that it had previously rejected Constitutional arguments dealing with the right to procure and transport alcohol.

This reasoning was explicitly rejected by the Supreme Court in Stanley v. Georgia, where the Court enunciated a right to private possession of obscene materials, see 394 U.S. at 567-68, and in Paris Adult Theatre I v. Slaton, 41 U.S.L.W. 4935 (June 21, 1973), where the Court reaffirmed Stanley but refused to extend this right to the transportation or procurement of obscene materials.[5]

5/ This is not to suggest that an argument could not be made for the right to receive marihuana, especially small amounts distributed not-for-profit. These cases are cited above to indicated only that the right to possess does not necessarily imply the right to receive. Cf. Baird v. Eisenstadt, 405 U.S. 438, 445-46 (1972).

Finally, the Court in Crane held that possession of alcoholic beverages could be made illegal because of the "well known noxious qualities and the extraordinary evils" associated with its use. It is obvious from the transcripts and exhibits in this case that marijuana use does not have these harmful effects. Whatever the continuing validity of Crane v. Cambell with respect to possession of alcohol, surely it would not foreclose consideration of the right to possess marihuana if marihuana is shown to involve no substantial danger to the public health, safety, or welfare.

C. NO COMPELLING STATE INTEREST WAS SHOWN AT PETITIONER'S HEARING FOR A PROHIBITION AGAINST PRIVATE PERSONAL USE AND POSSESSION BY ADULTS OF MARIHUANA

Defendant assembled for the District Court, and now for this Court's consideration, what is unquestionably the most comprehensive presentation ever made to a court concerning the issue of whether or not a state has a legitimate interest in criminally proscribing the use and possession of marihuana for adults. There are no known facts concerning marihuana that were not presented to the court and which are not contained in the transcript and record. The issue presented to this Court is a technical and a scientific one. The brief synopsis of testimony and exhibits to follow cannot approach a full understanding of the testimony and what marihuana is and what marihuana is not. The transcript itself is inadequate; it has many misspellings, phonetic interpretations, and outright mistakes. Fortunately a complete video transcript was made and it undoubtedly will be

necessary for this Court to view it especially for the cross-examination of Gabriel Nahas and the testimony of Sanford Feinglass who used three-dimensional molecular models, drawings and physical evidence in portions of his testimony.

The Testimony

Dr. Joel Fort

The first witness of international repute called by petitioner was Dr. Joel Fort of San Francisco whose qualifications to speak on marihuana are well known.

Joel Fort described marihuana as a unique drug which has been used for over four thousand years and which is presently being enjoyed by 300,000,000 persons in the world. 26,000,000 persons in the United States have tried marihuana and 13,000,000 are enjoying its use on a continuing basis. (Tr. Fort p. 21-22). Dr. Fort described the history of the adoption of the marihuana Tax Stamp Act in the 1930's at the insistence of Harry Anslingler, a person who reappears again and again throughout testimony of the witnesses and the documentary evidence. Prior to that time the possession and use of marihuana was not a crime. Anslinger's testimony before the Congressional Committee was unrebutted for reasons later amplified in the testimony of Dr. Lester Grinspoon. (Tr. Fort p. 22-28). Even prior to that hearing an excellent study on the subject by the Indian Hemp Commission had been relegated to obscurity. Since the work of Anslinger there have been several studies of the subject, the LaGuardia Report the Canadian Commission (LeDain Report) and the most recent definitive report of the National Commission

on Marihuana and Drug Abuse of 1972. (Tr. Fort p. 31-34). Dr. Fort testified that there were no negative physical effects from the use of marihuana (Tr. Fort p. 35). He found barbituates and amphetamines to be much more harmful and dangerous. (Tr. Fort p. 36). He stated that the user of marihuana does not develop a tolerance to the drug. (Tr. Fort p. 40). He found that marihuana was not addicting nor was the concept of "psychological dependence" meaningful. (Tr. Fort p. 43). He noted that in fact a reverse tolerance has been associated with marihuana and a user tends to take less and less to achieve the desired effect. Morever, due to the phenomenon of auto-titration, (a user is able to control by himself the intake of the drug to achieve the desired effect) the relative strength of the marihuana being used does not make much difference to the user. (T . Fort p. 41, p. 47). Dr. Fort stated that it was unreasonable to classify marihuana with other dangerous drugs as defined and proscribed by AS 17.12.150(3). Dr. Fort stated that alcohol is a much, much more dangerous drug and in fact the most dangerous in terms of problems to individual and society. (Tr. Fort pp 42-43). Dr. Fort stated there was no known fatality resulting from the use of marihuana. (Tr. Fort p. 50), no genetic damage (Tr. Fort p. 51), no psychosis (Tr. p. 52), and that marihuana did not lead to the use of other drugs (p. 55) nor did it lead to any amotivational syndrome.

Dr. Fort cirticized the Kolansky and Moore studies (exhibit KK) relied upon by the State. Neither Mr. Kolansky nor Mr. Moore testified. Dr. Fort be-

lieves that the criminal prohibition against the possession and use of marihuana by adults will result only in the criminalization of society. He noted that between two and three hundred thousand persons are arrested in the United States each year for possession of marihuana (Tr. Fort p. 65-67).

On cross-examination Dr. Fort refuted the Campbell Cerebral Atrophy Studies (exhibit II) discussed periodically throughout the trial. He also answered and effectively dealt with many of the questions raised by the Hollister Temporal Disintegration Studies (exhibit JJ) (Tr. Fort p. 45-46). He discussed the chief architects of the State's case, Hardin Jones (Tr. Fort p. 38) and refuted the "second" Kolansky and Moore study (Tr. Fort p. 39). Doctor Campbell and Doctor Hollister also did not testify and surprisingly, although present, Hardin Jones did not testify.

Dr. Lester Grinspoon

Petitioner's second eminent Outside expert was Dr. Lester Grinspoon author of, at the time of its publication in 1971, the single most comprehensive work on the subject, Marihuana Reconsidered (exhibit S). Much of his work was incorporated within the National Commission report "Marihuana: A Signal of Misunderstanding. (exhibit DDD). Dr. Grinspoon, after first being qualified, also related the history of marihuana and marihuana legislation (Tr. Grinspoon p. 8) noting modification in the Bureau of Narcotics' rhetoric and rationale for prohibition throughout the years as the facts change. Dr. Grinspoon's testimony

also included the very interesting history of the American Medical Association's activities with respect to marihuana (Tr. Grinspoon p. 16). Dr. Grinspoon also, as did Dr. Fort, noted the significance of the Indian Hemp Commission's report of last century and cited the recent important reports concerning marihuana. (Tr. Grinspoon p. 24). Dr. Grinspoon believes that true scientific interest in marihuana in the United States only occured after marihuana, initially a drug associated with undesirable black communities, appeared in the white neighborhoods. (Tr. Grinspoon p. 28).

Dr. Grinspoon noted the effects of marihuana use were minimal on the user with no organic damage. (Tr. Grinspoon p. 30). Dr. Grinspoon also examined in some detail the Campbell Cerebral Atrophy studies (exhibit II), once used by "anti marihuana crusaders" and which is also the subject of a New England Journal of Medicine review by Dr. Grinspoon (Tr. Grinspoon p. 31). Dr. Grinspoon compared marihuana to tobacco, noting that there was no nicotine present (Tr. Grinspoon p. 32); and he noted that there were no significant adverse mental effects from the use of marihuana (Tr. Grinspoon p. 34). He also testified that the study of temporal disintegration by Hollister (exhibit JJ) only concerned short term memory during the period of the marihuana high and actually was one of the pleasurable aspects of the high (Tr. Grinspoon p. 36). He discounted the amotivational syndrome (Tr. Grinspoon p. 38) and noted that seventy percent of all Harvard students used marihuana with no known adverse effect (Tr. Grinspoon p. 40) also

citing the studies of Halprin and the Jamaican studies of the National Commission which rejected the concept of amotivational syndrome. Dr. Grinspoon noted that toxic psychosis in marihuana was rare (Tr. Grinspoon p. 41) as was induced paranoia. (Tr. Grinspoon p. 48). He noted the setting of marihuana use was important. (Tr. Grinspoon p. 49) and that the reverse tolerance phenomenon, when noted, was probably due to psychological conditioning (Tr. Grinspoon p. 43).

Dr. Grinspoon then defined the relationship and distinctions between addiction, tolerance and physical dependence (Tr. Grinspoon p. 54) and noted that most people in his opinion simply smoke marihuana because it's fun (Tr. Grinspoon p. 58). Dr. Grinspoon noted that alcohol was much more dangerous than marihuana by any perameters of measure (Tr. Grinspoon p. 59). Dr. Grinspoon compared marihuana to other dangerous drugs, as defined by the Alaska statutory scheme, finding that those cited are much more dangerous in terms of addiction, tolerance, risk of lethal dose, tissue damage, and induced psychoses. (Tr. Grinspoon p. 61). Dr. Grinspoon stated that marihuana was not a true hallucinogenic drug. He stated that autotitration is the ability that users have to regulate the dose to achieve the desired effect. He also noted that there is a part of the ego that always seems to remain outside of the high of the marihuana intoxication and that is able to override further ingestion when necessary (Tr. Grinspoon p. 67). Dr. Grinspoon noted that not only does marihuana not induce anti-social acts but there is a strong indication that it inhibits them due to its tranquilizing effect (Tr. Grinspoon p. 68). Dr. Grinspoon noted the medical possibilities and uses for mari-

huana, (Tr. Grinspoon p. 71) discounted any theories of genetic damage, discounted the stepping stone theory that marihuana leads to harder drugs, discounted the Kolansky and Moore studies (exhibit KK) and stated that the real problem with marihuana was its illegality. Dr. Grinspoon stated there was no known lethal dose (Tr. Grinspoon p. 84), that it was not an aphrodisiac (Tr. Grinspoon p. 85). He saw no significance in terms of adverse effects of the fact that carbon tagged polymers of THC remain in fatty tissues. Dr. Grinspoon noted that marihuana had been used much longer than alcohol (Tr. Grinspoon p. 110) and discussed the Chopra India studies in detail, frequently mentioned at trial.

Dr. Sanford Feinglass I

The defense called Dr. Sanford Feinglass, as psychopharmacologist and consultant to the National Commission. Dr. Sanford Feinglass' testimony during defendants's case in chief was helpful in understanding the nature of marihuana. He also testified as to the inappropriateness of marihuana being classified with other dangerous drugs (Tr. p. 31) and in what ways marihuana was different (Tr. p. 41). He also compared the molecular structures of various drugs to that of marihuana demonstrating the differences in that spectrum (Tr. Feinglass p. 47). He testified that the therapeutic index of marihuana (the relation of desired dose to lethal dose) was almost impossible to determine since no deaths have occured.

Dr. Feinglass also testified there were greater dangers in thirty-four various drugs found on the shelves of a local drug store (Tr. Feinglass, et seq.)

including Sleepeze, Nite-all, Alka Seltzer and Lydia Pinkim's Solution (see video tape).

In comparing marihuana to alcohol Dr. Feinglass testified about pharmacological reinforcement, the opposite of auto titration. In pharmacological reinforcement the user keeps wanting to take more and more; alcohol is the worst offender. Dr. Feinglass further compared the differences between marihuana and other drugs and narcotics (Tr. p. 77). Dr. Feinglass described his Commission work (Tr. p. 77) and stated that he had only heard of one adverse reaction to marihuana and this was probably caused by excessive pepperoni pizza (Tr. Feinglass p. 103). Dr. Feinglass stated no genetic defects were caused by marihuana use; for the four thousand years marihuana has been used no deformed offspring have been born because of marihuana use by their parents (Tr. Feinglass p. 12--121).

Dr. Gabriel Nahas

The person upon whom the State most relies and upon whom the District Court most relied, in finding a compelling State interest for making criminals out of marihuana users was the testimony of Gabriel Nahas. Through his testimony, and his book, Marihuana Deceptive Weed (exhibit 9), Gabriel Nahas, in the words of Doctor Ungerleider of the National Commission, and the Journal of the American Medical Association (Underleider transcript pp 256-261) is revealed as a "fanatic" and "scientific prostitute" who is not only not above distortion, deletions and misquotations, but rather uses these techniques as the basis for all of his opinions. Petitioner contends he is a man without integrity who is not worthy of belief and a

person upon whose judg ment we cannot rely in determining whether or not we are going to make a large segment of our population criminals. It is urged that this Court read carefully his book, and his recent "discoveries" relating to the effects of marihuana on the immune system and the criticism of both his book and his recent study (appendix to this Brief).

Compelling state interests cannot be made from the unfounded statements of unbelievable witnesses anymore than they can be made from the thin air of precatory legislative language and unfounded legislative findings. Since it is Nahas who alone keeps burning the fires of compelling state interest in the proscription of marihuana through the courts to date, his testimony deserves considerable attention, more especially since no reputable scientist agrees with him.

Nahas is an anthesiologist (Tr. Nahas p. 4) interested primarily in the historical and social aspects of marihuana (Tr. Nahas p. 8). Contrary to all findings in the field Dr. Nahas believes that the marihuana user develops tolerance to the drug and must increase the dosage in order to obtain the desired high (Tr. Nahas p. 11). He classifies marihuana as a stupifying drug, the same as an opiate, (Tr. Nahas p. 14) and believes that it disintegrates mental function. Dr. Nahas states that his opinion is based on the "fact" that marihuana is harmful to the body (Tr. Nahas p. 16) and describes his own studies that "have shown that the immune system is impaired". (Tr. Nahas p. 19) Dr. Nahas made this revelation in Anchorage, Alaska for the first time and his "studies" became the subject of a highly controversial Science Magazine article in January of 1974. The article has been examined

and condemned by all scientists reviewing it. (Nahas Tr. p. 21 and see appendix to this brief). This was the first time that anyone had ever been permitted to ask him any questions about his work and the first time Dr. Nahas ever testified in court. (See Tr. Nahas p. 21).

Throughout his discussion of his studies Dr. Nahas attempted to infer that if the immune system is impaired then cancer may result (Tr. Nahas p. 23) a rather unscientific appeal to passion and prejudice. Dr. Nahas, also contrary to most scientific study, stated that there are marked chromosome breaks in the users of marihuana (Tr. Nahas p. 25). Dr. Nahas engaged in a deliberate and blatant distortion of the Egyptian Nasser studies of cannabis users to suit his own end. Apparently no one had ever brought this to his attention before. Citing the Nasser studies, Nahas stated that the findings of a man named Soueif demonstrated that these studies conclusively show that marihuana causes social harm (Tr. Nahas p. 35), marihuana causes inefficiency of production, and marihuana users can't quit once they start. (Tr. Nahas p. 35). When the article in question is examined, (exhibits CC and 8) it is evident that Soueif does not in fact make these statements and that in fact the Egyptian study dealt with marihuana users in a prison population and concluded that there was basically little danger in its use. Soueif did not note that the marihuana user oscillates between anxiety and gratification as Nahas claims he did (Tr. Nahas p. 39). He cites the study of Tennant, (Exhibits NN and OO) stating that Tennant found anatomical proof of cellular damage

from the smoking of marihuana and the presence of pre-cancerous lesions in the lungs. As can be seen from this study the lesions referred to were due to extremely heavy smoking and not attributed to the presence of THC. This apparent distortion by Nahas was pointed out by Dr. Ungerleider in his testimony (See infra).

Nahas cites the Boston Free Access Study conducted by the National Commission as an example of how marihuana users will tend to smoke more and more in order to achieve the desired effect. However, that was not the finding of the Boston Free Access Study. The Boston Free Access Study was in fact set up to encourage the use of marihuana in order to observe its effects. The conclusion was that there was no evidence that a tolerance developed. Compare Marihuana: A Signal of Misunderstanding 52 with Tr. Nahas p. 45. Nahas then quotes the Commission as saying that if hashish becomes available in the United States there will be a major health problem here. (He is unable to find this passage when asked to do so (Tr. Nahas p. 170, 171)).

The cross-examination of Nahas commenced with an examination of his book. It was demonstrated that Nahas' approach was hardly objective and in reality was a social treatise directed to the decaying Western values and loss of the Puritan Ethic in the face of the rise of permissiveness (see appendix 2 to this brief). Nahas notes our eroding religious values (Tr. Nahas p. 60). He states that society regresses from the use of marihuana (Tr. Nahas p. 62) but he claims that his views

are based only on objective information. He sees the real danger of marihuana use upon the lower classes who are doing all of the work (Tr. Nahas p. 64) and a general erosion of our society (Tr. Nahas p. 68) and Puritanical beliefs of hard work. Nahas also claims that the "summary" of the Commission report contained in the publication Marihuana A Signal of Misunderstanding are not the actual findings of the National Commission, but rather the views and interpretations of one man (Tr. Nahas p. 75-77). Doctor Underleider characterizes this as another example of the misstatement by Nahas that can only be politely categorized as a distortion of the truth (See testimony of Thomas Ungerleider). Nahas again returned to the Soueif studies which have also formed the basis for many of his political statements (See exhibit QQ). He states that this study shows a positive association between marihuana users and opiate users (Tr. Nahas p.88). Nahas cited a particular graph which appears on page 282 of his book as establishing this relationship. Nahas in fact changed this graph from that which appeared in Soueif's study, changing the word "habitue" (defined by Soueif as a person who uses hashish at least once a day) to the word "user", meaning user of marihuana. (Tr. Nahas p. 85-93 and p. 115 and see page 21 of exhibit 8 for Soueif's original). As a matter of fact Soueif's study only noted that heavy users of hashish in prison also tended to use opiates - a far cry from the causal relationship of marihuana leading to heroin. Nahas criticizes the cerebral atrophy study as not having been duplicated yet apparently he believes that his studies are not subject to the same standards (Tr. Nahas p. 107) nor are those of Stencheever (Tr. Nahas p. 197)

whose "studies" of chromosome breakage made ephemeral headlines but were never published. Nahas criticizes Wiel and Zinberg (exhibit MM) stating that they used subthreshold amounts of marihuana even though he admits that he does not know what a normal dose is.

Nahas admits that the polar metabolites of THC, which are retained in fatty tissues in the body, are not the psychoactive substances of THC but does not and cannot explain exactly why they would then cause a reverse tolerance effect. (Tr. Nahas p. 117-120). Nahas claims that tolerance is a fact. Significantly, Nahas did admit that contrary to his statements, there is no causal relationship between marihuana and other drugs (Tr. Nahas p. 127) although he does make that statement that 30% of all marihuana users out of a random sample of 100 will be using stronger drugs within a few years again misrelying upon the Soueif study. Such propaganda can only exist because it is what some people wish to hear; once again, an examination of Soueif's papers will show no basis whatsoever for this statement.

The actual "study" shown for the first time in Anchorage, Alaska and proudly asserted as the compelling state interest is the subject of critical comment in the appendix 1. Dr. Nahas gathered around him persons who claimed they smoked marihuana and claimed that they were in good health before they smoked marihuana and compared blood samples of these persons with a "control group", who did not smoke marihuana. Nahas then said that he noted some changes in their lymphocytes which are associated with the immune system. That was the study.

This is what is claimed to be the compelling state interest. Nahas admitted that he had already concluded that marihuana was harmful even before making the study. (Tr. Nahas p. 137) and that several persons had diseases prior to the beginning of the test (Tr. Nahas p. 133). He admitted that he relied only on self-diagnosis of the subject (Tr. Nahas p. 139). He had no idea what people were taking and how much, taking only their word (Tr. Nahas p. 140). Dr. Nahas admitted that this was not proof marihuana caused disease although that is what he constantly states (Tr. Nahas p. 141). He admitted that the test group also used alcohol and tobacco both known to affect health. Dr. Nahas stated he did not know which, in the case of cancer, came first, the cancer or a change of lymphocytes. Dr. Nahas admitted that he did not even know what the average dose of the user of marihuana was in his test or normally (Tr. Nahas p. 151).

Dr. Nahas stated that he agreed with the Kolansky and Moore studies, which, as Dr. Ungerleider points out in his testimony, have generally been rejected by the scientific community. On page 161 of the transcript Dr. Nahas states that he believes (erroneously) the Axelrod study (exhibit 22) showed that the psychoactive properties of marihuana remain behind. (Tr. Nahas p. 163). On page 163 he discusses the Tennant studies (exhibits NN and OO). However, comparing this testimony with the studies themselves shows Dr. Nahas to be incorrect.

Dr. Nahas stated that marihuana users developed the same tolerance to marihuana as does a barbituate user (Tr. Nahas p. 176) all contrary to scientific

fact. Dr. Nahas claims that marihuana causes actual tissue damage, also contrary to scientific fact. Finally Dr. Nahas claims that the National Commission report intentionally tries to confuse the issue.

Dr. Harvey Powelson

The other State's witness to testify in support of a compelling State interest for the criminalization of marihuana was Harvey Powelson. Harvey Powelson is a psychiatrist from Berkeley, California who is presently an employee of Hardin Jones (Tr. Powelson p. 14, 33), a person discussed elsewhere in the record who accused the National Commission of being stoned. Powelson apparently was at one time the head of Student Psychiatric Health Services at the University of California at Berkeley until members of the staff, according to him, conspired with the students to get him to resign (Tr. Powelson p. 14). Dr. Powelson maintains that even small amounts of marihuana affect thinking for as long as 48 hours and impairs memory, judgment and accentuates pathological thinking causing irreversible changes in the brain. Dr. Powelson testified that his opinion about marihuana was the result of his experience with one patient, "S" who used alcohol, LSD and marihuana (Tr. Powelson pps 25 and 18-19). From this anecdotal information, Dr. Powelson asserted that marihuana induces paranoia, affects memory and judgment claiming to be able to identify marihuana users by their "fixed face" and claiming also that it induces delirium (Tr. Powelson p. 31-36). Dr. Powelson endorses the views of Dr. Nahas, Ko-