



As a mother I want my 14 year old daughter to know the difference between risks associated with marijuana and "harder" more addictive and life-threatening drugs such as cocaine, heroin, methamphetamine and the broad, poorly defined class of inhalants.

(5) a high percentage of adults arrested in this state for domestic violence test positive for marijuana at the time of arrest;

Marijuana intoxication reduces incidence of violence (Hoaken and Stewart, 2003) so a causal relationship is unlikely. Marijuana persists in fatty tissues and consequently plasma where the half-life for elimination varies between 20 to 57 hours (Grotenhermen, 2003). To interpret the relationship between positive tests for marijuana and arrests for domestic violence one would need to know, first, what analytical tests were used to detect THC or its metabolites and second, if these individuals also tested positive for alcohol.

Grotenhermen, 2003, *Drug Disposition*, 42(4), 327-360.

Hoeken and Stewart, 2003, *Addictive Behaviors*, 28, 1533-1554.

(7) marijuana consists of over four hundred different chemicals and can affect almost every organ and system in the body, including the lymph system, the heart, and the lungs; marijuana can disrupt memory, attention, judgment, and other cognitive functions and can impair motor coordination, time perception, and balance, especially in children;

Marijuana contains a large number of chemicals because it consists of the leaf and flowers of plants. Plants are complex mixtures of chemicals. Tobacco, for example is equally as complex, however, nicotine is the primary active ingredient in tobacco. Similarly, delta-9-tetrahydrocannabinol (THC) is the primary active ingredient in marijuana. THC is a chemical that affects the body by interacting with receptors. Receptors are specialized docking sites on cells and drugs bind to these receptors. Receptors that recognize THC are called cannabinoid receptors. There are two types of cannabinoid receptors, CB1 and CB2. Marijuana or THC will have effects wherever these receptors are located. Distribution of these receptors in the brain explains why marijuana intoxication is associated with effects on memory and motor function. Recently, it was found that activation of cannabinoid receptors on immune cells (microglia) in the brain prevents Alzheimer's disease pathology (Ramirez et al., 2005). Activation of CB1 receptors is also known to have therapeutic potential in Parkinson's disease and stroke.

Two other chemicals found in marijuana are cannabidiol and cannabivarin. These compounds have some properties similar to THC, but cause less psychoactive effects. These chemicals do, however have beneficial effects because they, like THC, are antioxidants (Hampson et al., 2000). We consume complex mixtures of chemicals in the foods we eat everyday, and sometimes, worry that they may cause cancer or other adverse effects. Most evidence on marijuana, however, is pointing to positive effects. Like the complex mixture of chemicals in blueberries, red wine and chocolate, the mixture of chemicals in marijuana may have beneficial effects on health. Research is

ocused on identifying the key beneficial components so that these may be isolated and developed as drugs. Most evidence suggests that THC, the ingredient that causes the high also causes positive effects elsewhere in the body through activation of CB1 receptors.

Ramirez et al., 2005, *J. Neuroscience*, 25(8), 1904-1913

Hampson et al., 2000, *Ann N Y Acad Sci.* 2000;899:274-82

(8) marijuana smoke contains more carcinogenic hydrocarbons than tobacco smoke and a person who smokes several marijuana cigarettes a week may be taking in as many cancer-causing chemicals as someone who smokes a full pack of tobacco cigarettes every day;

The real health risks associated with chronic marijuana use may include chronic bronchitis, impaired lung function and increased risks of some types of cancers of the respiratory tract (Moore et al., 2005). Prohibition may be the greatest barrier in identifying these real health risks because prohibition interferes with accurate reporting of marijuana use.

Moore et al., 2005, *J Gen Intern Med.*,20(1), 33-7

(9) the potency of marijuana in the 1960s and 1970s was very low compared to the potency in 2005; the average amount of delta-9-tetrahydrocannabinol (THC), the main psychoactive ingredient, nationwide, was less than one percent in the 1960s and 1970s, but has increased steadily in the 1980s and especially the 1990s, and by 2003 was more than six times that level, at 6.4 percent; in addition, marijuana grown in this state is often more potent than national averages, and has been tested with THC levels of over 20 percent; marijuana of the potency generally available in 2005 is a strong hallucinogenic drug that can command hundreds of dollars per ounce on the illegal market; the increasing potency of marijuana corresponds to an increase in the number of persons seeking emergency medical care for marijuana-related incidents.

Increased potency does not mean that increased amounts are consumed. People (and animals) typically take less drug if the drug is more concentrated. This means that more potent marijuana will likely cause people to smoke less and this will decrease risk of respiratory complications. When research animals are enticed to self-administer THC (Justinova et al., 2003) the number of self-administered injections decreases as concentration is increased until animals stop taking the drug at all, presumably because the high concentrations produce unpleasant side-effects.

Justinova et al., 2003, *Psychopharmacology*, 169(2):135-40.

(11) Alaska consistently ranks in the top 10 states, and occasionally in the top five states, nationwide, in the amount of marijuana illegally grown indoors, and large amounts of marijuana grown in this state are sold throughout the state and exported to other parts of the

United States; the price of high-quality marijuana is hundreds of dollars per ounce and thousands of dollars per pound; testimony received by the legislature in 1999 and confirmed in 2005, shows that marijuana often sells for \$500 or more per ounce;

The cost of marijuana seems irrelevant to the public health risks unless high costs are driving users to crime to pay for marijuana. In contrast to heroin, cocaine and methamphetamine abusers, no evidence exists to suggest that a significant proportion of marijuana users resort to crime to pay for the drug. This is consistent with a low addictive potential of marijuana.

(12) a large percentage of persons arrested in this state, including adults and juveniles who commit violent offenses, have marijuana in their system at the time of arrest;

Marijuana intoxication is known to decrease violent behaviors (Hoeken and Stewart, 2003) suggesting that other drugs, like alcohol, are involved (Parker, 2004)

Hoeken and Stewart, 2003, *Addictive Behaviors*, 28, 1533-1554.
Parker, 2004, *J Psychoactive Drugs*, Suppl 2, 157-63.

(13) marijuana use by a parent has been, and will continue to be, a major contributing factor to children having easy access to and using marijuana;

Research shows that legal and financial hardship incurred on parents as a result of penalties for possessing marijuana may have as many detrimental consequences on families as increased risk of marijuana use by children (Robertson et al., 1996).

Robertson et al., 1996, *Br J Gen Pract.*, 46(412), 671-4.

Summary and Conclusions:

In summary, evidence does not support the assertion that marijuana poses a threat to public health that justifies prohibiting its use and possession in this state, especially by adults in private. Issues regarding access to children warrant further investigation into the impact of access through illicit channels. As a mother, I want my daughter to know the difference between drugs such as methamphetamine and marijuana.

Final note: Given the growing presence of methamphetamine in Alaska, my personal and professional opinion is that it would be irresponsible to put time and money into persecuting marijuana users when resources are inadequate to respond to the growing threat of methamphetamine in our community. I hope you as legislatures can look beyond moral judgment of marijuana users and address real health risks associated with far more dangerous drugs.

My name is Jim Welch. I have lived in Eagle River since 1978. For almost 20 years now I have had MS. MS is a disease which short-circuits nerve pathways. It can thus affect anything that depends upon nerve messages getting through, whether it be the functioning of a limb or an organ, or sensation, be it numbness or pain. There is no cure for it, so as things deteriorate doctors try to treat symptoms. One of the problems with this however, is that many of the drugs used to treat the symptoms have side effects worse than the symptoms they are supposed to treat.

Over the years I've tried many prescription drugs for many different reasons, usually with limited success and often with unpleasant side effects. In 1998 I was active in the campaign to pass the initiative legalizing medical marijuana. I found that for two or three years marijuana was the only thing that allowed me to get through most nights without wracking muscle spasms or headaches that would not allow me to sleep and still allow me to function the next day.

Passing this proposed legislation will make it even more difficult for medical marijuana users to obtain the marijuana they are theoretically allowed to have. You can legally have it, but you can't legally get it.

I applaud what the Legislature has tried to do with crystal meth. That's a drug everyone can agree has no redeeming qualities. But further demonizing marijuana is engaging in the wrong battle. Comparing marijuana to heroin is like comparing aspirin to morphine. Saying that marijuana today is stronger than it was in the 70s and therefore dangerous is like saying Alleve is stronger than Tylenol, that you only have to take one pill instead of two.

To me that seems a good thing because it means you have to put less smoke into your lungs. I've never smoked tobacco and if I never had to put any more smoke in my lungs or take another drug in my life it would be fine with me.

This is not the 40s era of "Reefer Madness" or even the Nancy Reagan 80s of "just say no." This is the 21st century and in the last election 44% of Alaskans voted to legalize marijuana. You may have the power of the majority to make criminal penalties more severe, but it is a slap in the face to a very large portion of the Alaskan populace who believe that marijuana is okay and who just a few years before voted by a substantial majority to legalize the use of medical marijuana.

I don't know why the Governor has chosen to make marijuana the bad boy of his drug campaign. It doesn't make any sense to me. I know it's not addictive. I smoked marijuana several times a week for three years. When it was no longer effective I stopped. I experienced no withdrawal, no craving, no side effects, no problem.

Unlike tobacco or alcohol no one has ever died from marijuana. I would argue that at worst it's innocuous and at best it has some significant medical benefits.

As for its connection to violent criminals, anyone who has ever used marijuana knows the effects last only a few hours, whereas it can be detected as having been used up to 30 days ago. That's like blaming a DWI on a beer someone drank a month before.

In the last World Cup soccer matches in Portugal, Security checked the persons and all bags being brought into the stadium. Any alcohol was immediately seized, but any

marijuana that fans were bringing into the game was not even confiscated. That tells you what kind of behavior the people in charge of security thought resulted from people using marijuana. They worried about the notoriously rowdy soccer fans, but not the ones using marijuana.

I don't expect you to become proponents of legalizing marijuana. Nobody's asking you to do that. I do however, ask you to recognize the folly of harsher criminalization penalties. It means putting more nonviolent offenders in jail, devoting more time and money resources of our police to what amounts to a low-priority use of their time. I ask you to put your anti-drug energies against something like crystal meth. Fighting marijuana is the wrong battle in any war on drugs. You have bigger issues to deal with.

What's especially frustrating to me testifying before you is knowing that nothing anyone says here will change your minds. My testimony is from my personal experience. Medical marijuana even now is impossible to obtain legally and will be even harder to get with the passage of this law. But harder to swallow is how easily you ignore or dismiss the testimony from expert witnesses who present you with hard data and evidence refuting every premise of the preamble to this. It is frustrating to me that you seem to listen but cannot be persuaded by reason, by evidence or expertise. That you have already made up your mind and it has nothing to do with the facts. Marijuana is not more dangerous than it used to be. Marijuana is not addictive. It does not make people more violent. Listen to the substance of what these experts have told you. Vote on the basis of reason and evidence, if you dare. I dare you.

STATEMENT REGARDING ALASKA SB 74 AND HB 96

Debbie Soule, medical marijuana patient

My name is Debbie Soule. I live in Wasilla. I am married, 55 years old, a grandmother and own my own business.

Seven years ago, my husband and I had a near fatal car accident. I broke everything from my neck down and then lost my right leg. The doctors had me on nine different medications. None of them worked. I was slowly being killed by all the medications they had to give me after our accident. And all of this after they insisted on keeping me alive. Now I have a life of pain and loss.

I found out from my doctor that I might get some relief from some of the pain by using marijuana. I thought about this for over two years before I tried it and found it worked better than any medication I had tried. I also found that it didn't leave me doped up and unable to function like all of the medication they had prescribed.

The problem I have found is that although Alaska supposedly has a medical marijuana law, the State of Alaska has made it impossible to find a doctor who will sign the paper work. When I wanted to try smoking pot to relieve my pain, my husband had to buy it illegally and feel like a criminal. Alaska's medical marijuana law simply doesn't help anybody. Even if I could find a doctor to sign my forms, what good does it do if there's no legal way for me to get it? I know the law allows me to grow up to 6 plants, but that's just not practical for a lot of patients, including me. Unless you fix the medical marijuana law in this state, patients will have to buy it the same way everybody else does. That's why keeping the protection for personal use under the Ravin decision is so important to me.

If this new law is passed, the situation for people who use medical marijuana will go from bad to worse. At least now, if I got arrested for having it without a doctor's signature, I would have some protection in the eyes of the courts. You want to take that away from me. Of course I understand you want to keep marijuana out of the hands of kids—everybody wants that. But you have to admit that when marijuana possession was made illegal in 1990, teenagers went on smoking it anyway. Why do you think going back to that kind of law will make any difference now? This new law won't do anything to help kids, but it will make it tougher for plenty of people in wheelchairs, like me, to get the one medicine that helps us the most.

I find it odd that our good senators don't have anything better to do with their time than to attack and try to outlaw my medication. Why aren't you doing anything about the panhandlers on every street corner in Anchorage? Why aren't you doing anything about our alcohol problem? Why don't you spend a week in a wheelchair and see what a problem your so called handicap accessibility is? If you really want to do some good for our great state, as you say you do, then why don't you spend your time on our horrific alcohol and domestic violence problems, on unemployment, on decent roads, homelessness, and out of control children? In fact, if you pass this law and tell the police to go back to arresting every marijuana user, they will have less time to spend on these other things that are far more important. Thanks a lot.

The doctors are willing to give me any medication I need to keep me comfortable and turn me into a drug addict until it finally kills me, but they won't sign for medical marijuana. I feel I will now live longer and be much healthier and in a lot less pain because I have chosen to smoke pot.

STATE OF ALASKA, SENATE BILL No 74 –“An Act making findings relating to the use and possession...”

EXPERT WITNESS STATEMENT:

PROFESSOR LESLIE LARS IVERSEN, PhD, FRS, University of Oxford, England

Professor Leslie Iversen. PhD, FRS Brief Curriculum Vitae:

Visiting Professor of Pharmacology, University of Oxford 1999-

Director of the Wolfson Centre for Research on Age Related diseases at Kings College London (1999-2004).

Director of the Neuroscience Research Centre for Merck & Co Inc in the UK (1983-1995)

Director of the Medical Research Council Neurochemical Pharmacology Unit in Cambridge, England (1970-1983)

Well known for his research on how drugs interact with chemical messengers in the nervous system and has published more than 300 scientific papers on this topic. Fellow of the Royal Society of London, and Foreign Associate Member of the US National Academy of Sciences.

Acted as Scientific Advisor to the UK House of Lords Select Committee on Science & Technology review of Cannabis (1998-2000)

Author of “The Science of Marijuana” Oxford University Press, 2000

Member of the UK Government “Advisory Council on the Misuse of Drugs”

Member of the UK Royal College of Physicians Working Party on medicinal cannabis 2004-2005

Statement:

As a scientist with expert knowledge of the medical and scientific literature on cannabis (marijuana) I feel that the statements in Senate Bill No 74 give an inaccurate picture of the scientific data about marijuana. I wish to make the following comments:

Increased potency of modern marijuana:

It is frequently stated that modern-day marijuana is 10-20-times more potent than that available in the 1960's or 1970's. But the available evidence does not support this conclusion. Scientists at the University of Mississippi Potency Monitoring project in the USA have been measuring the THC content of marijuana seizures since the 1970's. They have reported an increase of approximately 3-fold in the potency of herbal marijuana in the past 3 decades, and this is still by far the most widely used product. The European Monitoring Centre for Drugs and Drug Addiction published an overview of cannabis potency in Europe in July 2004, and reached similar

conclusions in Europe. Some samples originating from Cannabis plants grown under optimal conditions indoors may contain as much as 15-20% THC but these remain relatively rare and account for only a minority of marijuana use.

Addictive nature of marijuana:

It is recognized that some frequent heavy users of marijuana can become psychologically dependent on the drug, but few scientists would rate this in the same category of addictiveness as heroin, cocaine or amphetamines. Unlike heroin addiction, dependence on marijuana affects a minority of regular users (approximately 10%) and most dependent marijuana users are able to quit. I would rate marijuana as more similar to alcohol than to heroin in addictive potential.

Association of marijuana use with domestic violence:

This is an unusual allegation; in most instances intoxication with marijuana is not associated with violent aggressive behavior – although this may occur in rare examples. The abuse of alcohol is far more likely to be a cause of public and domestic violence.

Marijuana contains more than 400 different chemicals:

All plant derived foods or drugs contain complex mixtures of chemicals. Tomato juice, for example, contains more than 400 different chemicals – but this does not make it harmful. The leaves and flowers of the Cannabis plant (marijuana) contain more than 70 complex organic chemicals known as cannabinoids. But of these only one –delta-9-tetrahydrocannabinol (THC) - is capable of activating the cannabinoid receptor in human brain. The other cannabinoids have no known pharmacological activities and are generally regarded as harmless.

Marijuana impairs higher brain functions:

Marijuana temporarily impairs memory and other aspects of cognitive brain function, but this is no different from any other intoxicant drug – for example, alcohol. There is no evidence that marijuana use leads to significant long term damage to the brain.

Marijuana smoke is carcinogenic:

Marijuana smoke contains a similar mixture chemicals to that found in tobacco smoke, including some known carcinogens. Although a single marijuana joint delivers more tar to the lungs than a tobacco cigarette it is very difficult to see how someone smoking several marijuana joints a week could be thought to equate to a cigarette smoker consuming a full pack each day. The arithmetic simply does not add up. Furthermore, although there is a hypothetical risk of lung cancer from marijuana smoke, there is no evidence for such a relationship in fact.

Summary and Conclusions:

Marijuana contains an intoxicant drug (THC) that has modest dependence liability; the smoke can irritate the lungs and there is a potential risk, as yet unproven, of lung cancer. Nevertheless, I conclude that the medical risks associated the marijuana use do not equate to those of "harder" drugs such as heroin, cocaine or amphetamines. In my view marijuana is a relatively safe drug, and its use does less medical/social harm than alcohol or tobacco.

References:

Iversen.L (2000)"The Science of Marijuana", *Oxford University Press*, New York

Iversen L (2003) Cannabis and the Brain, *Brain*, **126**: 1252-1260 .

Iversen L (2004) Long term effects of exposure to cannabis. *Current Opinion in Pharmacology*, **5**: 69-72

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My name is Robert Melamede, Ph.D. I am submitting the following testimony regarding Senate Bill NO. 74. I am the Chairman of the Biology Department at the University of Colorado in Colorado Springs. Additionally, I am an active scientist involved in cancer research and I am a founder of a new biotechnology company that is developing novel approaches to treat cancers. I am also the father of four and grandfather of two.

The stated purpose of Bill 74, "The purpose of this Act is to protect the health and safety of persons in this state, and to provide legislative findings concerning this Act regarding marijuana and its effects in this state" is a valuable pursuit for any state to embark on. Unfortunately, the findings stated in the bill are, for the most part, in direct contradiction to those that would have been arrived at had modern peer reviewed science determined the bill's findings.

Finding 1 is correct. Marijuana is the most commonly used illegal drug in the United States.

Finding 2 is largely correct. While marijuana has some adverse affects on health, its benefits far out weight its harm. Regarding Finding 8, while smoking anything is a respiratory irritant, there is no evidence that smoking marijuana causes lung cancer. Recent peer-reviewed scientific findings clearly demonstrate that the nicotine found in tobacco causes cancer by preventing genetically damaged cells from dieing. **Cannabis does not contain nicotine, hence cells genetically damaged by the carcinogens in the smoke are insufficient to cause cancer in the absence of nicotine.** If the intent of Bill 74 is to protect the health of Alaskans it should be directed towards tobacco products that kill over 400,000 Americans yearly from respiratory and cardiovascular illnesses, including lung cancer.

In contrast to tobacco cannabis has many health benefits. Regarding Finding 7, the reason that the cannabinoid compounds exert multitudinous effects on the body is that they mimic the way our bodies function. **Current science shows that we all produce marijuana-like compounds that regulate all of our body systems (cardiovascular, neurological, immunological, respiratory, excretory, digestive, muscular-skeletal). Age related biochemical imbalances in these systems lead to diseases such as autoimmune diseases (diabetes, arthritis, ALS, Crohn's, and multiple sclerosis), cardiovascular disease (heart attacks and strokes), neurological diseases (Alzheimer's, Parkinson's) and cancers. Again, modern science indicates that cannabinoids that we produce or consume can delay the onset and reduce the severity of many of these illnesses.**

How can cannabis have so many positive health effects and yet be viewed as so dangerous? Again, the benefits come from how it mimics the way our bodies try to counter these illnesses by making marijuana-like compounds (endocannabinoids). The



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reason public policy has been contrary to the above scientific findings is due to the lag in widespread knowledge of these facts. For example, the Institute of Medicine report was released in 1998 and contained data that was a few years old. The bulk of the exploding level of research on cannabinoids has occurred since then. For example, the Institute report examined cannabis as an anti nausea agent potentially useful for cancer suffers. **We now know that cannabinoids kill a variety of cancer cells including those from breast, prostate, leukemia, lymphoma, glioma, and skin cancers.**

Regarding Finding 9, a recent article describes a new animal model for self-administration of marijuana (a measure of addictive behavior). The paper showed **that a monkey would self-administer THC only to a point and then would stop.** When extrapolated to equivalent human doses the study indicated that **a human would take a few drags and no more.**

The above experiment has important implications for current concerns regarding higher THC levels in current marijuana. Regardless of THC concentration, only a particular level of effect is desirable. Too much is avoided. Hence a logical conclusion is that the availability of strong cannabis means less would be consumed. It should be remembered that there is no achievable lethal dose of cannabis and consuming too much results in sleep.

Finding 10, regarding the increased number of individuals seeking treatment for cannabis use is a pathetic example of sacrificing the truth for an agenda. Persons arrested for marijuana possession are often given a choice between treatment or prison. Even with marijuana use, these persons are capable of making the logical decision in favor of treatment instead of incarceration.

The old Nahas studies referred to in Bill 74 do not reflect modern immunological knowledge. They were done with very high doses, beyond what anyone would use. His work has largely been discredited by the scientific community. The immune system has two arms to it, a pro-inflammatory TH1 response that is balanced by an anti-inflammatory Th2 response. Endocannabinoids, that we all produce, shift the immune response to TH2. Depending on circumstances this effect could be good or bad. We need a strong Th1 response to fight certain infections such as tuberculosis, Legionnaire's disease and leishmania infection. However, in a modern society most death occurs from age related diseases that are in fact exacerbated by an excessive TH1 response. Hence, as mentioned above, cannabis is good for autoimmune diseases such as diabetes, multiple sclerosis, arthritis and Crohn's disease, neurological diseases such as stroke and Alzheimer's disease, cardiovascular disease, as well as cancer. **THC has been show to directly kill a number of different cancer cells including breast, prostate, leukemia, lymphoma, glioma and skin cancer.**



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Cannabinoids regulate the biochemistry of our male and female reproductive systems. Excess consumption can impair sperm maturation and prevent the implantation of a fertilized egg into the uterine wall. These effects are not permanent and are readily reversed. In fact the uterus cannabinoid levels go down during ovulation to allow implantation but then are necessary for normal fetal development. **Keep in mind that cannabinoids are found in mother's breast milk where they are important for feeding and probably other functions such as sleep and stress relief in infants.**

Mother nature uses cannabinoids. Remember, every time every member of the legislature gets hungry, it is because they are giving themselves the munchies with the cannabinoids that they make. Every time they feel pain, the pain is less that it would be if they were not making cannabinoids to turn down the pain. When they are feeling relaxed and free of stress it is because cannabinoids that they make are helping them to feel better.

I have provided you with an article, Harm Reduction--The Cannabis Paradox. The article was peer reviewed and has been approved for publication in the Harm Reduction Journal. It contains references that verify the facts that I have testified to.

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STATEMENT ON ALASKA SB 74 & HB 96

TIMOTHY HINTERBERGER, ASSOCIATE PROFESSOR, UNIVERSITY OF ALASKA

I am an Associate Professor in the Biomedical Program and the Department of Biological Sciences at the University of Alaska Anchorage. I have been the chair of the Nervous System course in the medical school curriculum of the WWAMI Program at UAA since 1992, with an affiliate appointment in the Department of Biological Structure at the University Of Washington School Of Medicine. I mention my university affiliations only to establish my credentials; my statements are not intended to represent the official positions of the University of Alaska or the University of Washington, their administrations, or their boards of regents.

Although I have not personally conducted research on the health effects of marijuana use, I am well acquainted with the current literature on this topic. More importantly, I do have first-hand experience in the process of scientific peer review, and I understand of how consensus is established among biomedical researchers.

One of the University of Washington courses I have taught to medical students in the Alaska WWAMI program is about how to critically read and evaluate the medical literature. Besides emphasizing the most recent data, we emphasize that different sorts of papers carry different weight. A well-designed review of many experimental studies is more valuable than any single experimental study alone. When you look at the information cited by the State in support of SB 74 and HB 96, it turns out that those papers are predominantly not review articles. My 1st-year medical students would easily be able to find their way to the latest, thoroughly reviewed literature on marijuana's health effects, such as the article by Dr. Iversen in the February 2005 issue of Current Opinions in Pharmacology that we have included in the written testimony for this hearing.

In the hierarchy of scientific opinions contributing to a consensus position, the most authoritative conclusions are those from expert panels and commissions, since they conduct the most extensive review. A large number of independent commissions, both in this country and abroad, have investigated the effects of marijuana. I won't attempt to discuss all of them, but one of the best known is the 1972 National Commission on Marijuana and Drug Abuse, appointed by President Richard Nixon. After reviewing the scientific evidence, they were "of the unanimous opinion that marijuana is not such a grave problem that individuals who smoke marijuana, and possess it for that purpose, should be subject to criminal prosecution." Most importantly, nothing we have learned since 1972 about brain function, brain development, or marijuana's effects on the brain and other organs has changed that consensus position. In 1999, the Institute of Medicine, part of the National Academy of Sciences, looked at the possible medical use of marijuana. They concluded that the health and social risks of marijuana use were not so great as to rule it out as a medical treatment. Since then, expert commissions established by the British Parliament and the Canadian Senate have conducted reviews that included even more recent evidence and have reached essentially the same conclusions as did the U.S. National Commission in 1972. As a result of the British study, England has actually reduced its penalty for possession of small amounts of marijuana, exactly the opposite of what the Alaska Legislature is currently

considering.

One of the State's witnesses before Senate HES, Dr. David Murray of the ONDCP, has suggested that a small number of recent experimental studies on possible psychological effects of marijuana use by young people should, because they were published in prestigious medical journals, outweigh this long-standing consensus on marijuana's relatively low potential for harm. It is essential to remember that these new studies have not been replicated, and their conclusions are still the subject of substantial debate among psychologists and epidemiologists. Moreover, the implication that marijuana use may frequently cause psychological problems is at odds with the fact that the incidence of such problems in the general public has not risen with marijuana use over the past few decades. Therefore, these new data, while interesting and worthy of further study, are at this point insufficient to reshape the consensus.

The scientific consensus is quite clear, and it has not changed since 1972, when President Nixon's National Commission concluded that, while marijuana is not entirely safe, its dangers have been grossly overstated. Unfortunately, many of the 19 findings in these bills perpetuate this history of overstatement. I will comment briefly on Findings #1 through #14, as they deal with the health and social effects of marijuana use.

"(1) marijuana has been for many years and continues to be the most commonly used illegal controlled substance in the United States"

While certainly true, this statement is largely irrelevant to this bill. To the extent that it is relevant, it emphasizes the need to take carefully into account any unintended consequences of increasing the penalties for marijuana possession, because they will affect many, many Alaskans.

"(2) marijuana has many adverse health and social effects, and there is evidence that it has addictive properties similar to heroin and other similar illegal controlled substances:"

Instead of "addiction" psychologists now speak of "dependence". The issue of dependence is addressed in the testimony from other experts including Dr. Iversen, who rates marijuana more similar to alcohol than to heroin. Other pharmacologists have rated marijuana's dependence potential more similar to that of caffeine (Zimmer & Morgan, 1997, p. 29). Epidemiological surveys indicate that the large majority of people who try marijuana do not become long-term frequent users. As Earleywine has noted (2002, p. 231), "No one hocks their possessions or turns to prostitution to support a cannabis habit."

"(3) in addition to concerns about marijuana use generally, the legislature is particularly concerned with the rates of use of marijuana by young people and Alaska Natives, which exceed national averages"

This statement, linking use by "young people" (adolescents? young adults?) with use by Alaska Natives, strikes me as revealing a paternalistic attitude towards Native people of all ages.

"(4) early exposure of children to marijuana increases the likelihood of lifelong health and social problems, and makes it much more likely that the person will go on to use more potent illegal controlled substances:"

I am unaware of any studies clearly demonstrating that early exposure to marijuana increases health and social problems throughout life—indeed, what is meant by "exposure," and how

“early”? As noted above, studies showing a correlation between adolescent marijuana use and later psychological problems remain controversial and certainly have not demonstrated a cause-and-effect relationship. Another very recent study (van den Bree & Pickworth, 2005) looked at a group of more than 13,000 teens over 2 years, examining risk factors for experimenting with marijuana, for moving from experimental to regular use, and for continuing to use. Consistently, three factors emerged as the most consistent *predictors* of starting as well as of continued or increased use: involvement of the students or their peers with substances, delinquency, and trouble in school (including poor grades, skipping class, trouble paying attention, feeling unsafe in school). In other words, teen marijuana use is likely not the cause of these problems, but rather, may simply be another symptom of an underlying personality or family dysfunction.

The second part of this finding appears to refer to the now discredited “gateway theory”. According to the Institute of Medicine (1999, p. 6), “In the sense that marijuana use typically precedes rather than follows initiation of other illicit drug use, it is indeed a gateway drug. But because underage smoking and alcohol use typically precede marijuana use, marijuana is not the most common, and is rarely the first, gateway to illicit drug use. There is no conclusive evidence that the drug effects of marijuana are causally linked to the subsequent abuse of other illicit drugs.” What the gateway theory presents as a causal explanation is a statistical association between common and uncommon drugs. People who have used less common drugs, such as heroin, cocaine and LSD, are likely to have also used marijuana. Most marijuana users never use any other illegal drug. Indeed, for the large majority of people, marijuana is a *terminus* rather than a gateway drug (Zimmer & Morgan, 2002, p. 32).

“(5) a high percentage of adults arrested in this state for domestic violence test positive for marijuana at the time of arrest;”

This would be a meaningful statement only if the percentage of people arrested for domestic violence who test positive for marijuana metabolites were significantly higher than the percentage of people of similar age and socioeconomic status in the general population who would test positive. Another meaningful comparison might be between domestic violence arrestees and people arrested for other types of offenses. But in the absence of any appropriate comparison, this statement conveys essentially no information. To suggest that marijuana use causes violence is completely contradicted by a large body of research, addressed in more detail by others testifying today, showing that marijuana *decreases* rather than *increases* aggression.

“(6) marijuana use by children is associated with an increased risk of attempting suicide;

A statistical association is not, by itself, evidence that marijuana *caused* the harm. In its testimony, the State has offered that “Teens engaging in risk behaviors, such as use of drugs including marijuana, are at increased odds for depression, suicidal ideation, and suicide attempts.” citing Hallfors et al (2004). This study only identified a correlation between risk behaviors and depression or suicidal behavior. The authors even state, “causal direction has not been established.” There is no evidence that marijuana use actually increases depression or suicide. Only a longitudinal study that randomly assigns people to either smoke marijuana or not smoke it can produce evidence of causation. Obviously that has not been done, so we’re forced to try and draw conclusions from retrospective association studies, which is much more difficult.

“(7) marijuana consists of over four hundred different chemicals and can affect almost every organ and system in the body, including the lymph system, the heart, and the lungs; marijuana can disrupt memory, attention, judgment, and other cognitive functions and can impair motor coordination, time perception, and balance, especially in children;”

Finding #7 is an interesting example of the way the authors of this bill play fast and loose with the facts. The statement that “marijuana... can impair motor coordination, time perception, and balance, especially in children” sounds consistent with what we know about the short-term effects of marijuana in adults—but in fact, no study has ever been conducted in which children were given marijuana and tested for motor function, etc.! The mention of children can only have been added to the bill text in order to sensationalize.

“(8) marijuana smoke contains more carcinogenic hydrocarbons than tobacco smoke and a person who smokes several marijuana cigarettes a week may be taking in as many cancer-causing chemicals as someone who smokes a full pack of tobacco cigarettes every day;”

This assertion, that marijuana smoke contains approximately 20 times the concentration of carcinogenic hydrocarbons found in tobacco smoke, appears to me to be a gross exaggeration—the source would be interesting to learn. It has long been established that, except for their active ingredients (nicotine and cannabinoids), tobacco smoke and marijuana smoke are similar (Busch et al., 1979; Huber et al., 1991). While it is relatively easy to look at the chemical composition of smoke, determining the effects on actual humans is far more complicated. Even the researchers who have published the largest number of papers on marijuana’s effects on the lungs admit that “Additional well designed epidemiological and immune monitoring studies are required to determine the potential causal relationship between marijuana use and the development of respiratory infection and/or cancer” (Tashkin et al., 2002).

“(9) the potency of marijuana in the 1960s and 1970s was very low compared to the potency in 2005; the average amount of delta-9-tetrahydrocannabinol (THC), the main psychoactive ingredient, nationwide, was less than one percent in the 1960s and 1970s, but has increased steadily in the 1980s and especially the 1990s, and by 2003 was more than six times that level, at 6.4 percent; in addition, marijuana grown in this state is often more potent than national averages, and has been tested with THC levels of over 20 percent; marijuana of the potency generally available in 2005 is a strong hallucinogenic drug that can command hundreds of dollars per ounce on the illegal market; the increasing potency of marijuana corresponds to an increase in the number of persons seeking emergency medical care for marijuana-related incidents;”

I know that other experts deal thoroughly with the issue of marijuana potency in their testimony. I would like to add only that there is absolutely no basis for assuming that higher concentrations of THC make marijuana “a strong hallucinogenic drug”. Even the highest doses of THC rarely produce hallucinatory effects, whereas drugs such as LSD, mescaline and psychoactive mushrooms readily do so. Increasing the concentration of THC in marijuana does not change the basic characteristics of its effects, any more than being drunk on whiskey is fundamentally different than being drunk on beer.

In its testimony, the State cites Compton (2004) in saying, “Nationally, among past year marijuana users, overall rates of past year abuse or dependence have increased while the approximate number of users has remained steady. This indicates that the increased potency of marijuana may be to blame.” To put this into perspective, the past-year prevalence of DSM-IV

marijuana abuse or dependence identified in large national surveys increased from 1.2% in 1991-1992 to 1.5% in 2001-2002, not a large amount. Rates did not increase among whites, only among certain age groups of blacks and Hispanics. If the increase were due to pharmacological properties of marijuana, it should have been seen in all demographic groups. This suggests that sociological factors are responsible instead.

In his written testimony, Dr. Earleywine also addresses the purported emergency medical care for marijuana-related incidents. Those who raise this issue deceitfully distort the statistical data compiled by the Drug Abuse Warning Network (DAWN) to convey the incorrect impression that marijuana is responsible for a large number of hospital emergency department cases and even for drug-abuse deaths. It all comes down to a gross misrepresentation of what DAWN terms "drug mentions." When a patient mentions marijuana during questioning by the hospital staff, it does not mean that marijuana *caused* the hospital visit. For every drug-related hospital visit—what DAWN calls a "drug abuse episode"—hospital staff lists up to five drugs that the patient reports having used recently. This includes illicit drugs, prescription drugs, and over-the-counter medications. "Therefore, not every reported substance is, by itself, necessarily a cause of the medical emergency," as is noted in each report that DAWN releases. It is impossible to imagine that experienced professionals like the authors of this bill misread the DAWN data accidentally.

"(10) several hundred adults and children in this state are admitted into treatment each year for marijuana abuse, with more than half of the admissions being children under the age of 18 and more than a third of the admissions being Alaska Natives; youth and Alaska Natives made up a disproportionate number of the total statewide treatment admissions for marijuana abuse in 2003;"

It is true that there has been a surge in the numbers entering marijuana treatment. But almost 60 per cent of those admissions in the U.S. last year were ordered by judges (Gardner, 2005), and the proportion of people entering treatment as a result of a court order has risen substantially. This reflects a sea-change in U.S. criminal justice. Since 1990, there has been an explosion in the number of "drug courts" which allow individuals charged with some drug offences to avoid jail if they follow a carefully supervised treatment program. At the same time, the idea of "therapeutic justice," as it is sometimes called, has been widely adopted by regular courts. As a result, Americans charged with marijuana possession today are routinely given a choice between punishment and treatment. Not surprisingly, most choose treatment. Add to this the numbers of high school students required to seek treatment as part of school disciplinary action and workers directed into treatment programs as a result of workplace drug testing, and the increase is readily accounted for. What must be emphasized is that in the vast majority of these cases, treatment occurs *without* there having been a clinically valid diagnosis of marijuana abuse.

Regarding the disproportionate number of treatment admissions among Alaska Natives, the foregoing should make it clear that it would be readily explained by a higher arrest rate for marijuana possession among Natives. Data by ethnicity are not available for Alaska marijuana arrests, but generally speaking, it appears that the rural arrest rate for marijuana is higher than that for the Anchorage census area. That in turn suggests a disproportionately higher marijuana arrest rate for Alaska Natives.

“(11) Alaska consistently ranks in the top 10 states, and occasionally in the top five states, nationwide, in the amount of marijuana illegally grown indoors, and large amounts of marijuana grown in this state are sold throughout the state and exported to other parts of the United States; the price of high-quality marijuana is hundreds of dollars per ounce and thousands of dollars per pound; testimony received by the legislature in 1999 and confirmed in 2005, shows that marijuana often sells for \$500 or more per ounce;”

The most prominent effect of the prohibition of any popular commodity is inflated pricing. Interestingly, marijuana use has been found to be extremely unresponsive to price (Pacula et al., 2001). The elasticity of demand with respect to price is -0.06 . That is, a 1% increase in price results in only a 0.06 percent decline in demand. Another way of saying this is that a 16.67% increase in price is required to reduce demand by just 1%. The most recent study available (DeSimone & Farrelly, 2003) found that “adult marijuana demand was not related to its own price” and that for juveniles, price was also irrelevant. This is further demonstration that increased criminal penalties are not an effective means of reducing consumption.

“(12) a large percentage of persons arrested in this state, including adults and juveniles who commit violent offenses, have marijuana in their system at the time of arrest;”

Exactly the same comments apply to this finding as to Finding #5: it would be a meaningful statement only if the percentage of people arrested for violent offences who test positive for marijuana metabolites were significantly higher than the percentage of people in the general population who would test positive. Furthermore, it contradicts the vast literature showing no association between marijuana use and aggression.

“(13) marijuana use by a parent has been, and will continue to be, a major contributing factor to children having easy access to and using marijuana;”

The intended meaning of this statement is entirely unclear--does it refer to current use by a parent, or to prior use before that person became a parent? Does it mean to imply that large numbers of children are given marijuana by their parents, or that the children steal their parent's marijuana? I don't see how any discussion of this “finding” can even be attempted.

“(14) criminal penalties for marijuana possession and education efforts are effective in reducing marijuana use and limiting its access by children;”

There are several separate points to address here. Are criminal penalties for marijuana possession effective in reducing use? As noted above for Finding #11, there is no good evidence that this is true. Indeed, if Finding #1 is true, as everyone agrees, it is *prima facie* evidence that criminal penalties are ineffective. In a recent cost/benefit analysis of the criminal penalties for marijuana possession in Alaska, Bates (2004) writes:

After reviewing the empirical work regarding marijuana prohibition, we must conclude that it is an ineffective means of reducing marijuana use. We cannot even state positively that prohibition decreases consumption *at all*. There are mixed results, but even those studies reporting an effect of prohibition find one so small as to leave room for debate. *Prohibition does not achieve its principal objective in any meaningful way.*

Are education efforts effective in reducing marijuana use? There is every reason to believe that properly designed education efforts, especially in an environment of regulation rather than of

prohibition, would be effective in reducing adolescent marijuana use. The success of education efforts to reduce adolescent tobacco use show this to be possible. It does not mean that *current* marijuana education efforts are effective, as the widely used DARE program illustrates. In the 20 years since DARE began, studies have consistently shown it has no significant effect on students' use of drugs. The General Accounting Office of the US Government found "no significant differences in illicit drug use between students who received DARE...and students who did not" (GAO, 2003). Of course, the issue of education is irrelevant to this hearing, since SB 74 and HB 96 only increase criminal penalties and do nothing towards education.

Summary and Conclusions:

I find it extremely troubling that SB 74 and HB 96 attempt to disregard the existing scientific consensus on the health, social, and economic effects of our current marijuana policy and replace it with so-called "findings" that have little or no basis in fact. If the Alaska Legislature passes into law Section 2 of these bills, it will demonstrate to the world that it has no regard for the scientific process nor, frankly, for a systematic and methodical legislative process. These hearings present an opportunity for the Legislature to take a step back, to look seriously at the evidence, and to reconsider whether it wishes to enact legislation that is so completely at odds with the scientific consensus.

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LEGISLATIVE RESEARCH REPORT

APRIL 8, 2005



REPORT NUMBER 05.237

COSTS OF DEFENDING UNCONSTITUTIONAL LAWS

PREPARED FOR REPRESENTATIVE LES GARA

BY CHUCK BURNHAM, LEGISLATIVE ANALYST

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You asked for an analysis of HB 96, which relates to the use, possession, and criminality of marijuana in Alaska. Specifically, you wanted to know how this bill differs from the provision of AS 11.71.060(a)—regarding marijuana possession—that was recently found unconstitutional by the Alaska Court of Appeals. In addition, you asked about the costs to the state for mounting legal defenses for certain laws found to be unconstitutional. Specifically, you asked that we determine the costs for attorneys, support staff, and other significant expenses associated with defending the statutes and regulations that were found by the courts to be unconstitutional in the following cases:

- *Noy v. State of Alaska*; and
- *Department of Health and Social Services, Karen Purdue Commissioner v. Planned Parenthood of Alaska, Inc., et al.*

SUMMARY

In 1975 and 2003 Alaska courts issued rulings that found the possession of small amounts of marijuana—under four ounces—to be protected by privacy provisions of the state constitution. Nonetheless, both bodies of the Alaska Legislature are currently considering bills that would decrease the marijuana possession thresholds for the criminal charges of misconduct involving a controlled substance in the fourth, fifth, and sixth degrees, respectively. To the extent that the governor's bills, HB 96 and SB 74, seek to criminalize the possession of less than four ounces of marijuana in private homes for personal use, the bills appear to contravene the rulings of Alaska's courts.

The significant measurable costs to the state of defending AS 11.71.060(a) in *Noy v. Alaska* were approximately \$7,600. Because *Noy* began as a relatively routine misdemeanor case, the costs were relatively low. By contrast, the total costs to the state upon the 2001 final ruling in the civil case *Department of Health and Social Services, Karen Purdue Commissioner v. Planned Parenthood of Alaska, Inc., et al* were about \$452,000.

In the remainder of this report we provide further information on state court rulings regarding marijuana possession, a brief analysis of HB 96, and details of the costs of defending the state's position in the *Noy* and *Planned Parenthood* cases.

BACKGROUND: LANDMARK ALASKA COURT RULINGS ON MARIJUANA POSSESSION

In 1975, the Alaska Supreme Court ruled in *Ravin v. State* that the privacy clause of the Alaska Constitution (Article 1, Section 22) protects the possession of marijuana in one's home for personal use. The court's decision is summarized in *Lexis* online as follows:

The court held that privacy in the home was a fundamental right under both constitutions. However, the right had to yield when it interfered in a serious manner with the health, safety, or rights of others, or with the public welfare. The state had to meet a substantial burden of showing that proscription of possession of marijuana in the home was in the interest of public welfare. It did not meet that burden because the evidence presented did not prove that marijuana as presently used in the country was generally a danger to the user or others. The privacy of the home could not be breached absent a persuasive showing of a close and substantial relationship of the intrusion to a legitimate governmental interest. However, possession at home of amounts of marijuana indicative of intent to sell rather than for personal use was unprotected.¹

Following the *Ravin* decision, Alaska laws were changed to allow possession of less than four ounces of marijuana by adults in their homes. Fifteen years later, in the 1990 general election, however, Alaska voters approved Ballot Measure 2, which criminalized possession of marijuana in any amount.² The initiative amended AS 11.71.060(a) to read as follows:

¹ *Ravin v. State of Alaska*, No. 2135, Supreme Court of Alaska; 537 P.2d 494; 1975 Alas. LEXIS 334.

² Initiative No. 88MARI: Marijuana Law Amendments, appeared on the November 6, 1990, general election ballot.

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the sixth degree if the person

(1) uses or displays any amount of a schedule VIA [including marijuana] controlled substance or possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one-half pound containing a schedule VIA controlled substance; or

(2) refuses entry into a premise for an inspection authorized under AS 17.30.

The amended law effectively made possession of even very small amounts of marijuana a Class B misdemeanor punishable by up to ninety days in jail and a one-thousand dollar fine.³

In *Noy v. State of Alaska* (2003), however, the Alaska Court of Appeals, looking to the Supreme Court's decision in *Ravin*, determined neither the legislature nor the voters have the power to enact laws that criminalize possession of small amounts of marijuana. The court, therefore, found AS 11.71.060(a) to be unconstitutional to the extent that it prohibits possession of less than four ounces of marijuana in one's home for personal use.⁴

CHANGES TO POSSESSION LAWS PROPOSED IN HB 96

In the transmittal letter accompanying HB 96, Governor Murkowski identified the primary purposes of the bill as follows:

This bill would provide a forum for the Legislature to hear expert testimony on the effects of marijuana and to make findings that the courts can rely on in cases where marijuana is an issue. In addition to educating the Legislature, courts, and the public about the harmful effects of marijuana, this bill would deter possession and use of marijuana by increasing criminal penalties for certain types of possession. It also would provide a fair and efficient process for determining the usable weight of live marijuana plants in criminal prosecutions.

Section 6 of the bill would amend AS 11.71.060(a)—the section found unconstitutional by the Alaska Court of Appeals—as follows (bolded, underlined text has been added; text in brackets is deleted):

Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the sixth degree if the person

(1) uses or displays any amount of a schedule VIA controlled substance;

(2) [OR] possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one ounce [ONE-HALF POUND] containing a schedule VIA controlled substance; [OR]

(3) manufactures, delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one-half ounce containing a schedule VIA controlled substance;

(4) possesses one or more preparations, compounds, mixtures, or substances containing a schedule VIA controlled substance while a passenger in a motor vehicle, aircraft, or motorized watercraft;

³ Maximum fines for Class B misdemeanors were subsequently increased to \$2,000.

⁴ *Noy v. State*, 79 P.3d 1201, 2003 Alas. App. LEXIS 209 (Alaska Ct. App., 2003).

(5) being the driver or operator of a motor vehicle, aircraft, or motorized watercraft, knowingly permits a passenger to possess one or more preparations, compounds, mixtures, or substances containing a schedule VIA controlled substance; or

(6) [(2)] refuses entry into a premise for an inspection authorized under AS 17.30.⁵

As you can see, the second provision of this section decreases the amount of marijuana required to justify a charge of misconduct involving a controlled substance in the sixth degree—a Class B misdemeanor. Amendments proposed in Sections 4 and 5 of the bill also decrease possession thresholds for the charges of misconduct with a controlled substance in the fourth and fifth degree, respectively. It appears that in criminalizing the possession of less than four ounces of marijuana in the privacy of one's home, Sections 5 and 6 of HB 96 may contravene the Courts' decisions in *Ravin* and *Noy*. Table 1 shows current possession thresholds and those proposed by HB 96, the criminal charges for those levels of possession, and the maximum punishment allowed for each charge.

Table 1: Current Statutory Language and Proposed Crimes of Marijuana Possession					
Statute / HB 96 Section	Level of Crime	Possession Threshold		Maximum Sentence	
		Current	Proposed: HB 96	Imprisonment	Fine
AS 11.71.040 / Section 4	Class C Felony	One pound or more	Four ounces or more	Five years	\$50,000
AS 11.71.050 / Section 5	Class A Misdemeanor	One-half pound or more	One ounce or more	One year	\$10,000
AS 11.71.060 / Section 6	Class B Misdemeanor	Less than one-half pound	Less than one ounce	Ninety days	\$2,000

Notes: More serious charges involving marijuana are generally restricted to crimes involving selling the drug. In its ruling in *Ravin v. State*, the Alaska Supreme Court determined that selling marijuana, unlike possessing small amounts for personal use in the home, is not afforded constitutional protection.
Source: Alaska Statutes (2004), HB 96 (2005).

LEGAL COSTS OF DEFENDING CERTAIN LAWS DETERMINED TO BE UNCONSTITUTIONAL

Kathryn Daughhete, Administrative Services Director, Alaska Department of Law provided cost figures including salaries for attorneys and other staff and fees awarded by the court, where applicable.⁶ Other costs, such as witnesses' fees and travel costs, which Ms. Daughhete estimated to be relatively minimal, are not included. It is important to note that the primary attorneys representing the state in both of the cases were Department of Law staff. The Department does not consider the salaries of these attorneys and their support staff to be strictly associated with these cases. That is, had the attorneys and staff not been working on the cases

⁵ We include, as Attachment A, a copy of HB 96.

⁶ Ms. Daughhete can be reached at (907) 465-3673.

in question, they would have, nonetheless, been drawing the same salaries while working on other cases. Nonetheless, for the purposes of this report, Department of Law staff salaries are included in the state's costs for these cases.

NOY V. STATE OF ALASKA

As we mentioned, *Noy* was a criminal case involving a misdemeanor charge of marijuana possession. Following a two-day trial in the Fourth District Court in Fairbanks, the defendant was convicted. On appeal, the Alaska Court of Appeals found that Mr. Noy was entitled to a new trial because the trial judge had incorrectly instructed the jury on how to determine the weight of marijuana plants. The Court of Appeals held unconstitutional the marijuana possession statute under which Mr. Noy was convicted, AS 11.71.060(a), because the state did not show a sufficient governmental interest in limiting Alaskans' right to privacy under the state constitution by criminalizing marijuana possession.⁷

The Criminal Division of the Alaska Department of Law does not track attorney and staff time by case. Nonetheless, the Department estimates that a total of 77.5 "billable" hours were dedicated to the case at an average rate of \$98 per hour for attorney and staff salaries. The total of these costs to the state, therefore, was approximately \$7,600.

*DEPARTMENT OF HEALTH AND SOCIAL SERVICES, KAREN PURDUE COMMISSIONER V.
PLANNED PARENTHOOD OF ALASKA, INC., ET AL.*

In 1998, Planned Parenthood of Alaska and two private practice physicians brought this civil suit challenging 7 AAC 43.140, which relates to Medicaid funding for abortions. Under the regulation, Medicaid funds could be used for abortions only in cases where the life of the mother was in danger or where the pregnancy was the result of rape or incest. In 2001, the Third District Superior Court found, and the Alaska Supreme Court affirmed, that the state, having undertaken a program to provide health care for poor Alaskans, was required to adhere to neutral criteria in distributing that care. It could not deny medically necessary services to eligible individuals based on criteria unrelated to the purposes of the public health care program. Moreover, the courts found that the regulation discriminatorily burdened the exercise of constitutional rights by poor Alaskan women by denying funding solely on political disapproval of a medically necessary procedure. In the view of the courts, this selective denial of medical benefits violated Alaska's constitutional guarantee of equal protection.⁸

The state was represented in the case by the Attorney General's office. In addition, the Legislature contracted with the Anchorage law firm of Brena, Bell & Clarkson to file an amicus brief in support of the regulation. Further substantial costs were incurred because, having

⁷ We include, as Attachment B, a copy of the decision in *David S. Noy v State of Alaska*, Court of Appeals No. A-8327, No. 1906, November 14, 2003; 83 P.3d 545; 2003 Alas. App. LEXIS 234

⁸ We include, as Attachment C, a copy of the decision in *Department of Health and Social Services, Karen Purdue Commissioner v. Planned Parenthood of Alaska, Inc., et al.*, Supreme Court No. S-9109, No. 5443; 28 P.3d 904; 2001 Alas. LEXIS 97.

prevailed against the state, the plaintiff was awarded full attorney's fees.⁹ The total costs of attorneys, staff, fees, and the contracted amicus brief in this case was approximately **\$452,000**. The components of this total amount are as follows:

- Department of Law costs \$158,000
- Plaintiff's fees \$269,000
- Contract for amicus brief \$25,000

Please note, however, the Department of Law does not consider the costs for its attorneys and staff to have been incurred strictly due to this case because salaries for those positions would be paid regardless of the existence of this particular case.

If you would like a legal opinion of the chances of HB 96 or SB 74 passing constitutional muster, please contact Legal Services.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

⁹ The criteria the court uses in weighing a plaintiff's private motivation against the extent of public interest involved appear among the annotations to Civil Rule 82 as follows: (1) Is the case designed to effectuate strong public policies? (2) If the plaintiff succeeds will numerous people receive benefits from the lawsuit? (3) Can only a private party have been expected to bring the suit? (4) Would the purported public interest litigant have sufficient economic incentive to file suit even if the action involved only narrow issues lacking general importance?

DAVID S. NOY, Appellant, v. STATE OF ALASKA, Appellee.

Court of Appeals No. A-8327, No. 1906

COURT OF APPEALS OF ALASKA

83 P.3d 545; 2003 Alas. App. LEXIS 234

November 14, 2003, Decided

PRIOR HISTORY: [**1] Appeal from the District Court, Fourth Judicial District, Fairbanks, Jane F. Kauvar, Judge. Trial Court No. 4FA-01-3003 Cr.

Noy v. State, 79 P.3d 1201, 2003 Alas. App. LEXIS 209 (Alaska Ct. App., 2003).

DISPOSITION: Rehearing denied

LexisNexis(R) Headnotes

COUNSEL: Appearances: William R. Satterberg, Jr., Fairbanks, for the Appellant.

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

JUDGES: Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges.

OPINIONBY: MANNHEIMER

OPINION: [*545] ON REHEARING

MANNHEIMER, Judge.

In *Ravin v. State*, 537 P.2d 494 (Alaska 1975), the Alaska Supreme Court held that the privacy clause of the Alaska Constitution (Article I, Section 22) protects the possession of marijuana in one's home for personal use. In 1990, the voters of Alaska enacted AS 11.71.060(a), [*546] which purports to criminalize the possession of any amount of marijuana, even when the marijuana is possessed in one's home for personal use. In our initial opinion in this case [**2] -- *Noy v. State*, Alaska App. Opinion No. 1897 (August 29, 2003) n1 -- we held that this statute is unconstitutional because it conflicts with

the right of privacy recognized in the *Ravin* decision. However, we concluded that the statute could be preserved to the extent that it prohibits possession of four ounces or more of marijuana.

n1 80 P.3d 255, 2003 Alas. App. LEXIS 167, 2003 WL 22026345.

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

In our initial decision in this case, we read the *Ravin* opinion to say that the privacy clause of the Alaska Constitution restricts the legislature's (and the voters') authority to enact laws prohibiting the possession of marijuana in one's home for personal use. The State [**3] contends that this view of *Ravin* is fundamentally flawed -- that *Ravin* did not announce a constitutional restriction on the government's law-making power.

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

The State argues that this defense is similar to a claim of entrapment or selective prosecution, in that it does not rest on a claim that the defendant is innocent of wrongdoing, but rather on a claim that the government violated constitutional guarantees when it singled out this particular defendant as the target of prosecution.

According to the State, *Ravin* stands for the proposition that, in any prosecution for possession of marijuana in one's home, the defendant can assert that the possession was of a small amount for personal use. If the defendant raises such a claim, the matter [**4] is decided (before trial) by a judge, not a jury. To defeat the proposed defense, the State would have to prove either (1) that the marijuana was not for personal use, or (2) that the government had a sufficient interest in prohibiting the possession of that particular amount of marijuana under the specific circumstances of that defendant's case.

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

The State's proposed interpretation of the *Ravin* decision would seemingly put us on the road to legal chaos. Under the State's proposal, dozens of judges across the state would be required to issue potentially inconsistent rulings as to whether, under the facts of a particular defendant's case, the State had sufficient justification to criminalize the defendant's possession of 3.0 ounces, or 2.2 ounces, or [**5] 1.4 ounces, or 0.6 ounces of marijuana.

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

The *Ravin* decision does not speak of an affirmative defense of the type proposed by the State in its petition for rehearing, nor does the *Ravin* opinion describe itself as establishing case-specific limits on the State's enforcement of marijuana statutes. Rather, in the opening sentence of *Ravin*, the Alaska Supreme Court described the issue before them as "the constitutionality of Alaska's statute prohibiting possession of marijuana". n2 [*547] Later in the opinion, after the supreme court held that Article I, Section 22 of our state constitution guarantees a right of privacy in one's home n3, the court declared that two major questions remained:

n2 *Ravin*, 537 P.2d at 496.

n3 *Id.* at 504.

Whether the State has demonstrated sufficient justification for [**6] the prohibition of possession of marijuana in general ... and ... whether the State has met the greater burden of showing a close and substantial

relationship between the public welfare and control of ingestion or possession of marijuana in the home for personal use.

Ravin, 537 P.2d at 504.

The supreme court then proceeded to analyze the scientific data concerning the uses and effects of marijuana. The court did not attempt to analyze the particular facts of Irwin *Ravin's* case; rather, the court assessed the legislature's overall justification for regulating any person's possession of marijuana in their home. n4

n4 *See id.*, 537 P.2d at 504-511.

And when the *Ravin* court announced its conclusion, the court did not frame that conclusion in terms of whether the State had an interest in prohibiting the possession of marijuana under the particular facts of the case before it. Instead, the court framed its conclusion as a general restriction on the government's authority [**7] to legislatively control this aspect of people's personal behavior:

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

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

Ravin, 537 P.2d at 511.

In the years since *Ravin* was decided, there has been no suggestion (until now) that *Ravin* was something [**8] other than normal constitutional litigation in which the supreme court adjudicated the constitutionality of a particular category of criminal statute. For example, six months after *Ravin*, in *Belgarde v. State*, the supreme court referred to *Ravin* as "[a] case [in which] we held that the state may not prohibit possession of [marijuana] by an adult in [their] home for personal consumption".

n5 In 1978, in *State v. Erickson*, the supreme court again declared that *Ravin* represented a restriction on the state's power to legislate:

n5 543 P.2d 206, 207 (Alaska 1975).

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

574 P.2d 1, 21 (Alaska 1978) (footnote omitted). And more recently, in *Luedtke v. Nabors Alaska Drilling, Inc.*, the supreme court declared that "*Ravin* addressed the issue of whether the state could prohibit the use of marijuana in the home. We held that it could not." n6

n6 768 P.2d 1123, 1135 (Alaska 1989).

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

Accordingly, we reject the State's suggestion that *Ravin* [*10] left Alaska's marijuana statutes intact but created an affirmative defense to be litigated in each individual case.

Although this is not a factor in our interpretation of *Ravin*, we note that the Alaska Legislature took this same view of *Ravin* when they refashioned this state's drug laws twenty years ago. As we described in *Walker v. State* n7, the legislature responded to *Ravin* in 1982 by enacting a statute -- former AS 11.71.060(a)(4) -- that prohibited possession of four ounces or more of marijuana, even if the marijuana was possessed in one's home for personal use. In the commentary that accompanied this statute, the legislature declared:

N7 991 P.2d 799 (Alaska App. 1999).

This legislation is intended to clarify the law in Alaska concerning possession of marijuana, in light of the decision of the Supreme Court of Alaska in *Ravin v. State*, 537 P.2d 494 (Alaska 1975). *Ravin* held that Alaska's constitutional right to privacy protects the possession and use [*11] of marijuana by an adult, in the home, in amounts indicative of personal use in a purely personal, non-commercial context. The approach taken in this Act is to define, for purposes of the decision in *Ravin*, an amount which is indicative of personal use, and to provide a clear line of demarcation of four ounces, so that citizens of this state will know precisely what conduct is prohibited.

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

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

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

In our original decision in this case, we stated that because [*12] the jury acquitted Noy of the charge of possessing eight ounces or more of marijuana, the State is barred from asserting, in any future litigation, that Noy did indeed possess eight ounces or more of marijuana. The State argues that this conclusion is mistaken for two reasons.

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

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

Second, the State argues that the jury's acquittal should not be considered conclusive because the jury was misinstructed on [**13] how to calculate the weight of marijuana. The State asserts that, given the evidence presented at Noy's trial, it is obvious that Noy possessed at least eight ounces of marijuana, and therefore the jury's verdict of acquittal must have been the fruit of the flawed jury instruction.

But as we explained in our initial opinion, the State did not introduce the marijuana itself; instead, the State relied on photographs and testimony concerning the marijuana. The photographs showed that the marijuana contained stalks, not just leaves [*549] and buds. Even if the jury had been correctly instructed, they would have been told that stalks are not to be considered when assessing the weight of harvested marijuana. Although there may be a substantial possibility that the erroneous weight-calculation instruction influenced the jury's thinking when they assessed the weight of the marijuana, it is also possible that the jurors were not convinced beyond a reasonable doubt that the harvested marijuana, minus the stalks, weighed eight ounces or more. Thus, we must apply the collateral estoppel rule of *Ashe v. Swenson*. See our discussion of a related point in *State v. McDonald*, 872 P.2d 627, 660 (Alaska App. 1994) [**14] .

Moreover, even if we assume that the erroneous jury instruction played an instrumental role in the jury's decision to acquit Noy of possessing eight or more ounces of marijuana, the State would still be bound by the jury's verdict. The law on this point is summarized in

Wayne R. LaFave, Jerold H. Israel, and Nancy J. King, *Criminal Procedure* (2nd ed. 1999):

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

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

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

Finally, the State argues for the first time that if we adjudicate the constitutionality of AS 11.71.060(a) in Noy's case, our decision will unfairly preclude the State from attempting to prove that *Ravin* should [**15] be overruled or limited -- *i.e.*, preclude the State from attempting to prove that there is sufficient justification for a criminal statute prohibiting any and all possession of marijuana, ever possession of marijuana by adults in their home for personal use.

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

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

Attachment C

Department of Health and Social Services, Karen Purdue Commissioner v. Planned Parenthood of Alaska, Inc., et al., Supreme Court No. S-9109, No. 5443; 28 P.3d 904; 2001 Alas. LEXIS 97

**STATE OF ALASKA, DEPARTMENT OF HEALTH & SOCIAL SERVICES,
KAREN PERDUE, Commissioner, Appellant, v. PLANNED PARENTHOOD OF
ALASKA, INC., JAN WHITEFIELD, M.D., and SUSAN LEMAGIE, M.D.,
Appellees.**

Supreme Court No. S-9109, No. 5443

SUPREME COURT OF ALASKA

28 P.3d 904; 2001 Alas. LEXIS 97

July 27, 2001, Decided

PRIOR HISTORY: **[**1]** Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Sen K. Tan, Judge. Superior Court No. 3AN-98-7004 CI.

DISPOSITION: The manner in which the State allocates public benefits is subject to constitutional limitation under Alaska's equal protection provision. The State, having undertaken to provide health care for poor Alaskans, must adhere to neutral criteria in distributing that care. It may not deny medically necessary services to eligible individuals based on criteria unrelated to the purposes of the public health care program. Moreover, the DHSS regulation in this case discriminatorily burdens the exercise of a constitutional right. Because we conclude that denial of Medicaid assistance to poor women who medically require abortions violates equal protection, we **AFFIRM** the decision of the superior court.

LexisNexis(R) Headnotes

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JUDGES: Before: Fabe, Chief Justice, Matthews, Eastaugh, Bryner, and Carpeneti, Justices.

OPINIONBY: FABE

OPINION: **[*905]**

FABE, Chief Justice.

I. INTRODUCTION

Alaska's Medicaid program funds virtually all necessary medical services for poor Alaskans -- "regardless of race, age, national origin, or economic standing" **n1** -- but it denies funding for medically necessary abortions. Alone among

Medicaid-eligible Alaskans, women whose health is endangered [**3] by pregnancy are denied health care based solely on political disapproval of the medically necessary procedure. This selective denial of medical benefits violates Alaska's constitutional guarantee of equal protection. Our conclusion is supported by the majority of jurisdictions that have considered comparable restrictions on state funding of medically necessary abortions: these state courts have concluded that, under their state constitutions, government health care programs that fund other medically necessary procedures may not deny assistance to eligible women whose health depends on obtaining abortions. n2

n1 AS 47.07.010.

n2 See *Committee to Defend Reprod. Rights v. Myers*, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (Cal. 1981); *Moe v. Secretary of Admin. & Fin.*, 382 Mass. 629, 417 N.E.2d 387 (Mass. 1981); *Women of Minnesota v. Gomez*, 542 N.W.2d 17 (Minn. 1995); *Right to Choose v. Byrne*, 91 N.J. 287, 450 A.2d 925 (N.J. 1982); *New Mexico Right to Choose/NARAL v. Johnson*, 1999 NMSC 5, 975 P.2d 841, 126 N.M. 788 (N.M. 1998), cert. denied, 526 U.S. 1020, 143 L. Ed. 2d 352 (1999); *Women's Health Ctr. of W. Va., Inc. v. Panepinto*, 191 W. Va. 436, 446 S.E.2d 658 (W. Va. 1993); but see *Renee B. v. Florida Agency for Health Care Admin.*, 750 So. 2d 1036, 2001 Fla. LEXIS 1396, 2001 WL 776533 (Fl. 2001); *Doe v. Department of Soc. Servs.*, 439 Mich. 650, 487 N.W.2d 166 (Mich. 1992); *Rosie J. v. North Carolina Dep't of Human Resources*, 347 N.C. 247, 491 S.E.2d 535 (N.C. 1997); *Hope v. Perales*, 83 N.Y.2d 563, 634 N.E.2d 183, 611 N.Y.S.2d 811 (N.Y. 1994); *Fischer v. Department of Pub. Welfare*, 509 Pa. 293, 502 A.2d 114 (Pa. 1985).

A number of lower state courts have also found that funding restrictions similar to those challenged today violated their state constitutions. See *Simat Corp. v. Arizona Cost Containment System Admin.*, [slip op.], No. CV1999014614 (Ariz. Super. May 23, 2000); *Doe v. Maher*, 40 Conn. Supp. 394, 515 A.2d 134 (Conn. Super. 1986); *Roe v. Harris*, [slip op.], NO. 96977 (Idaho Dist. Feb. 1, 1994); *Doe v. Wright*, [slip op.], No. 91-CH-1958 (Ill. Cir. Dec. 2, 1994); *Clinic for Women v. Humphreys*, [slip op.], No. 49D12-9908-MI-1137 (Ind. Super. Oct. 18, 2000); *Jeannette R. v. Ellery*, [slip op.], No. BDV-94-811 (Mont. Dist. May 19, 1995); *Planned Parenthood Ass'n v. Department of Human Resources of Oregon* 63 Ore. App. 41, 663 P.2d 1247 (Or. App. 1983), aff'd on other grounds, 297 Ore. 562, 687 P.2d 785 (Or. 1984) (declining to reach constitutional issue); *Low-Income Women of Texas v. Bost*, 38 S.W.3d 689 (Tex. App. 2000); *Doe v. Celani*, [slip op.], No. S81-84CnC (Vt. Super. May 23, 1986); but see *Doe v. Childers*, [slip op.], No. 94CI02183 (Ky. Cir. Aug. 7, 1995).

[**4]

This case concerns the State's denial of public assistance to eligible women whose health is in danger. It does not concern State payment for elective abortions; nor [**906] does it concern philosophical questions about abortion which we, as a court of law, cannot aspire to answer. We join the California Supreme Court in clarifying that "this case does not turn on the morality or immorality of abortion, and most decidedly does not concern the personal views of the individual justices as to the wisdom of the legislation itself or the ethical considerations involved in a woman's individual decision whether or not to bear a child." n3 Indeed, as the California Supreme Court emphasized, "similar constitutional issues would arise if the Legislature . . . funded [Medicaid] abortions but refused to provide comparable medical care for poor women who choose childbirth." n4 The constitutional issue in this case therefore "does not involve a weighing of the value of abortion as against childbirth, but instead concerns the protection of either procreative choice from discriminatory governmental treatment." n5 As the California court recognized, the issue presented is "not whether [**5] the state is generally obligated to subsidize the exercise of constitutional rights for those who cannot otherwise afford to do so." n6 Rather, the issue is whether the State, having enacted a benefits program, may discriminate between recipients in the manner attempted by the Department of Health and Social Services (DHSS) today. We hold that it may not. Once the State undertakes to fund medically necessary services for poor Alaskans, it may not selectively exclude from that program women who medically require abortions.

n3 *Myers*, 625 P.2d at 780.

n4 *Id.*

n5 Id.

n6 Id.

Although the State argues that courts may not enjoin unconstitutional use of the legislative appropriations power, this proposition is unsupported by case law from any jurisdiction. The legislature's spending power does not create license to disregard citizens' constitutional rights. In rejecting this part of the State's argument, we concur with every state and federal court [**6] that has considered this issue.

II. FACTS AND PROCEEDINGS

Alaska provides medical services for poor Alaskans primarily through the Medicaid program. n7 Medicaid is a comprehensive health care program designed to provide medical assistance for all eligible poor per [*907] sons in the state. n8 But a DHSS regulation, 7 Alaska Administrative Code (AAC) 43.140, imposes a limit on the state's health care funding: It denies Medicaid assistance for medically necessary abortions unless a pregnant woman is at risk of dying or her pregnancy resulted from rape or incest. n9 Because DHSS offers no other funding source for abortions, 7 AAC 43.140 ensures that a woman who medically requires an abortion will receive no assistance from the state.

n7 See AS 47.07; see also 42 U.S.C. § 1396-1396v (1997).

A second program, Chronic and Acute Medical Assistance (CAMA) complements Medicaid by providing some medical care for Alaskans who are poor but ineligible for Medicaid. See AS 47.08.150. CAMA's predecessor, the General Relief Medical program (GRM), funded abortions for eligible women when the procedure was necessary to protect their health or when pregnancy resulted from sexual assault, sexual abuse of a minor, or incest. See 7 AAC 47.200(a)(4)(F) (2000); 7 AAC 47.290(8) (2000). In 1998, after nearly 30 years of government support for medically necessary abortions through GRM, the legislature stopped funding the program and enacted CAMA as a replacement. CAMA covers essentially the same services as GRM, except that it does not fund any abortions. Compare AS 47.08.150 with 7 AAC 47.200. [**7]

n8 See AS 47.07.010. Medicaid relies on joint state-federal funding, with the federal government paying a portion of the state's costs. See 42 U.S.C. §§ 1396b(a), 1396d(b). The "Hyde Amendment" limits federal Medicaid contributions for abortions: Federal funding is available for abortions in cases of rape or incest or where the woman's life is in danger, but not for abortions necessary to protect a woman's health. See Pub. L. No. 106-554, §§ 508-509, 114 Stat. 2763 (2000); *Right to Choose v. Byrne*, 91 N.J. 287, 450 A.2d 925, 928-29 (N.J. 1982) (discussing history of Hyde Amendment).

n9 7 AAC 43.140 (2000) provides in part:

(a) Payment for an abortion will, in the department's discretion, be covered under Medicaid if the physician services invoice is accompanied by certification that the

- (1) life of the mother would be endangered if the pregnancy were carried to term; or
- (2) pregnancy is the result of an act of rape or incest.

The range of women whose access to medical care is restricted [**8] by the regulation is broad. According to medical evidence provided to the superior court, some women -- particularly those who suffer from pre-existing health problems -- face significant risks if they cannot obtain abortions. Women with diabetes risk kidney failure, blindness, and preeclampsia or eclampsia -- conditions characterized by simultaneous convulsions and comas -- when their disease is complicated by pregnancy. Women with renal disease may lose a kidney and face a lifetime of dialysis if they cannot obtain an abortion. And pregnancy in women with sickle cell anemia can accelerate the disease, leading to pneumonia, kidney infections, congestive heart failure, and pulmonary conditions such as embolus. Poor women who suffer from conditions such as epilepsy or bipolar disorder face a particularly brutal dilemma as a result of DHSS's regulation --

medication needed by the women to control their own seizures or other symptoms can be highly dangerous to a developing fetus. Without funding for medically necessary abortions, pregnant women with these conditions must choose either to seriously endanger their own health by forgoing medication, or to ensure their own safety but endanger **[**9]** the developing fetus by continuing medication. Finally, without state funding, Medicaid-eligible women may reach an advanced stage of pregnancy before they can gather enough money for an abortion; resulting late-term abortions pose far greater health risks than earlier procedures.

In June 1998 the plaintiffs -- two medical doctors and Planned Parenthood of Alaska -- filed a complaint against DHSS. They sought to enjoin enforcement of 7 AAC 43.140 and also sought a judgment declaring that the State's denial of funding for medically necessary abortions violates Alaska's Constitution. Superior Court Judge Sen K. Tan granted summary judgment in favor of Planned Parenthood. Based on this court's holding that "reproductive rights are fundamental . . . [and] include the right to an abortion," **n10** the superior court concluded that 7 AAC 43.140 impermissibly interferes with Medicaid-eligible women's constitutional rights to privacy. Because the State failed to articulate a compelling state interest for this interference, the superior court permanently enjoined DHSS from enforcing the regulation "so as to deny coverage for medically necessary abortions." The State now appeals. **n11 [**10]**

n10 *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice*, 948 P.2d 963, 969 (Alaska 1997).

n11 For part of the time that this appeal was pending, DHSS continued to withhold funding for medically necessary abortions, despite the superior court's injunction. On Planned Parenthood's motion, the superior court held a show cause hearing to determine whether the Department was in contempt of court. The court heard DHSS's claim that funding was unavailable, and determined, after a "struggle", not to hold the agency in contempt. However, the court issued a new injunction to reiterate the terms of the first injunction and explicitly direct that, while DHSS retained discretion over its use of resources, it should consider state Medicaid funds available to pay for medically necessary abortions. The parties on appeal presented records from these proceedings and additional related briefing.

[*908] III. STANDARD OF REVIEW

We review a grant of summary judgment de novo, exercising our independent **[**11]** judgment to "determine whether the parties genuinely dispute any material facts and, if not, whether the undisputed facts entitle the moving party to judgment as a matter of law." **n12** On questions of constitutional law, we also apply our independent judgment. **n13** We may affirm the superior court on any ground supported by the record. **n14**

n12 *M.C. v. Northern Ins. Co. of N.Y.*, 1 P.3d 673, 674-75 (Alaska 2000).

n13 See *Rollins v. State, Dep't of Revenue, Alcoholic Beverage Control Bd.*, 991 P.2d 202, 206 (Alaska 1999).

n14 See *James v. McCombs*, 936 P.2d 520, 523 n.2 (Alaska 1997); see also *Dixon v. Dixon*, 747 P.2d 1169, 1175 n.5 (Alaska 1987).

IV. DISCUSSION

A. The Challenged Regulation Violates Equal Protection.

By providing health care to all poor Alaskans except women who need abortions, the challenged regulation violates the state constitutional guarantee of "equal rights, opportunities, **[**12]** and protection under the law." **n15** The State, having established a health care program for the poor, may not selectively deny necessary care to eligible women merely because the threat to their health arises from pregnancy. Because we decide this case on state constitutional equal protection grounds, we do not review the superior court's privacy-based ruling. We do note, however, that our analysis today closely parallels that applied by many of the fifteen courts that have rejected similar restrictions. **n16** Although other courts' decisions have rested on a variety of state constitutional provisions, including equal protection, **n17** constitutional equal-rights-for-women clauses, **n18** due process, **n19** and privacy, **n20** the underlying logic has

been the same in decision after decision: "When state government seeks to act for the common benefit, protection, and security of the people in providing medical care for the poor, it has an obligation to do so in a neutral manner so as not to infringe upon the constitutional rights of our citizens." n21 As the Massachusetts Supreme Judicial Court observed, the constitutional principle at issue is straightforward: [**13] "It is elementary that 'when a State decides to alleviate some of the hardships of poverty by [*909] providing medical care, the manner in which it dispenses benefits is subject to constitutional limitations.'" n22 The State's spending discretion is limited by the constitution -- "while the State retains wide latitude to decide the manner in which it will allocate benefits, it may not use criteria which discriminatorily burden the exercise of a fundamental right." n23

n15 Alaska Const. art. I, § 1.

n16 See supra note 2.

n17 See, e.g., *Doe v. Maher*, 40 Conn. Supp. 394, 515 A.2d 134, 157-59 (Conn. Super. 1986); *Right to Choose v. Byrne*, 91 N.J. 287, 450 A.2d 925, 934-37 (N.J. 1982); *Planned Parenthood Ass'n v. Department of Human Resources of Oregon*, 63 Ore. App. 41, 663 P.2d 1247, 1257-61 (Or. App. 1983), aff'd on other grounds, 297 Ore. 562, 687 P.2d 785 (Or. 1984); see also *Committee to Defend Reprod. Rights v. Myers*, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (Cal. 1981). [**14]

n18 See, e.g., *New Mexico Right to Choose/NARAL v. Johnson*, 1999 NMSC 5, 975 P.2d 841, 850-57, 126 N.M. 788 (N.M. 1998); *Doe v. Maher*, 515 A.2d at 159-62.

n19 See, e.g., *Moe v. Secretary of Admin. & Fin.*, 382 Mass. 629, 417 N.E.2d 387, 398-99 (Mass. 1981); *Doe v. Maher*, 515 A.2d at 146-57.

n20 See, e.g., *Women of Minnesota v. Gomez*, 542 N.W.2d 17, 26-32 (Minn. 1995); *Women's Health Ctr. of W. Va., Inc. v. Panepinto*, 191 W. Va. 436, 446 S.E.2d 658, 664-66 (W. Va. 1993).

n21 *Panepinto*, 446 S.E.2d at 667; see also *Myers*, 625 P.2d at 781 (addressing the narrow question "whether the state, having enacted a general program to provide medical services to the poor, may selectively withhold such benefits from otherwise qualified persons because such persons seek to exercise their constitutional right of procreative choice in a manner which the state does not favor and does not wish to support" and holding that it may not); *Gomez*, 542 N.W.2d at 28 (defining the "relevant inquiry" as "whether, having elected to participate in a medical assistance program, the state may selectively exclude from such benefits otherwise eligible persons solely because they make constitutionally protected health care decisions with which the state disagrees," and concluding that the state may not); *Byrne*, 450 A.2d at 937 ("We hold that the State may not jeopardize the health and privacy of poor women by excluding medically necessary abortions from a system providing all other medically necessary care for the indigent."); *Johnson*, 975 P.2d at 856 ("Courts very rarely require the government to fund its citizens' exercise of their constitutional rights. . . . But that is not to say that when the Department elects to provide medically necessary services to indigent persons, it can do so in a way that discriminates against some recipients on account of their gender."). [**15]

n22 *Moe*, 417 N.E.2d at 401 (quoting *Maher v. Roe*, 432 U.S. 464, 469-70, 53 L. Ed. 2d 484, 97 S. Ct. 2376 (1977)).

n23 *Id.*

Alaska's constitutional equal protection clause mandates "equal treatment of those similarly situated;" n24 it protects Alaskans' right to non-discriminatory treatment more robustly than does the federal equal protection clause. n25 In analyzing a challenged law under Alaska's equal protection provision, we first determine what level of scrutiny to apply, using Alaska's "sliding scale" standard. n26 The "weight [that] should be afforded the constitutional interest impaired by the challenged enactment" is "the most important variable in fixing the appropriate level of review." n27

Second, we examine the State's interests served by the challenged regulation. n28 If the burden placed on constitutional rights by the regulation is minimal, then the State need only show that its objectives were legitimate for the regulation to survive an equal protection challenge. n29 But if "the objective [**16] degree to which the challenged legislation tends to deter [exercise of constitutional rights]" n30 is significant, the regulation cannot survive constitutional challenge unless it serves a compelling state interest. n31 Finally, if the State shows that its interests justify burdening the rights of citizens, for the regulation to survive constitutional challenge the State must demonstrate that the means it has chosen to advance those goals are well-fitted to the ends, and that its goals could not be accomplished by less restrictive means. n32

n24 *Alaska Pacific Assurance Co. v. Brown*, 687 P.2d 264, 271 (Alaska 1984).

n25 See *State v. Anthony*, 810 P.2d 155, 157 (Alaska 1991).

n26 See *Matanuska-Susitna Borough Sch. Dist. v. State*, 931 P.2d 391, 396 (Alaska 1997).

n27 *Id.* (quoting *Alaska Pacific Assurance Co.*, 687 P.2d at 269).

n28 See *id.*; *State v. Ostrosky*, 667 P.2d 1184, 1192 (Alaska 1983).

n29 See *id.*

n30 *Alaska Pacific Assurance Co.*, 687 P.2d at 271. [**17]

n31 See *Matanuska-Susitna Borough Sch. Dist.*, 931 P.2d at 396 (quoting *Alaska Pacific Assurance Co.*, 687 P.2d at 269-70).

n32 See 931 P.2d at 396-97.

The regulation at issue in this case affects the exercise of a constitutional right, the right to reproductive freedom. n33 Therefore, the regulation is subject to the most searching judicial scrutiny, often called "strict scrutiny." n34 We have explained in the past that such scrutiny is appropriate where a challenged enactment affects "fundamental rights," including "the exercise of intimate personal choices." n35 This court has specified that the right to reproductive freedom "may be legally constrained only when the constraints are justified by a compelling state interest, and no less restrictive means could advance that interest." n36

n33 See *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice*, 948 P.2d 963, 968-69 (Alaska 1997).

n34 See *State v. Ostrosky*, 667 P.2d 1184, 1192 (Alaska 1983). [**18]

n35 *Id.*

n36 *Valley Hosp.*, 948 P.2d at 969.

Judicial scrutiny of state action is equally strict where the government, by selectively denying a benefit to those who exercise a constitutional right, effectively deters the exercise of that right. In *Alaska Pacific Assurance Co. v. Brown*, we held the State to a "very high" burden to justify a statute that reduced workers' compensation benefits paid to workers who exercised their constitutional right to leave the state. n37 We concluded that the challenged regulation did not meet this high standard and thus violated equal protection. n38 Like the regulation at issue today, [**910] the challenged statute in *Alaska Pacific Assurance Co.* did not forbid individual exercise of constitutional rights; rather, it limited the government benefits distributed to the class of individuals who exercised that right. n39 As we explained in that case, we look to the real-world effects of government action to determine the appropriate level of equal protection

scrutiny: "The suspicion with which this court will [**19] view infringements upon [constitutional rights] depends upon . . . the objective degree to which the challenged legislation tends to deter [the exercise of those rights]." n40

n37 687 P.2d at 273-74.

n38 See *id.* We have since applied more relaxed scrutiny where "the infringement on [the] right to travel is relatively small and would not be likely to deter a person from traveling." *Church v. State, Dep't of Revenue*, 973 P.2d 1125, 1131 (Alaska 1999). In this case the likelihood of deterring exercise of the right is very high: The State's own statistics and the findings of the superior court indicate that, under the challenged regulation, some women "will have no choice but to go forward with the pregnancy." We therefore follow *Alaska Pacific Assurance Co.* in applying strict scrutiny.

n39 See 687 P.2d at 266-67.

n40 *Id.* at 271.

We reached a similar conclusion in *Alaska Gay Coalition v. Sullivan*, [**20] holding that the Municipality of Anchorage could not constitutionally withhold a public benefit based on a potential recipient's beliefs and public expression. n41 The municipality had undertaken to publish a guidebook to public and private organizations in Anchorage, but excluded the Alaska Gay Coalition from the book. n42 We held that this exclusion violated the Coalition's constitutional rights to equal protection under the law. n43 We explained:

n41 578 P.2d 951, 960 (Alaska 1978).

n42 *Id.*

n43 *Id.*

When the Municipality decided to publish a limited informational guide to public and private local resources, it did not thereby assume the obligation of providing space to every possible group. . . . Had the Municipality deleted groups at random or used criteria not related to the nature of the particular organizations, constitutional violations may not have resulted. In deleting the Alaska Gay Coalition . . . however, appellees denied that group [**21] access to a public forum based solely on the nature of its beliefs. In so doing, they violated appellant's constitutional rights to . . . equal protection under the law.[n44]

n44 *Id.*

Similarly, in the instant case, the State's obligations do not depend on whether the State has undertaken to provide limitless health care services to all poor Alaskans. Rather, DHSS is constitutionally bound to apply neutral criteria in allocating health care benefits, even if considerations of expense, medical feasibility, or the necessity of particular services otherwise limit the health care it provides to poor Alaskans.

The State argues in this case that it does not provide all necessary medical care to indigent Alaskans. For support, it cites 7 AAC 43.385, a regulation that excludes from Medicaid coverage such services as medically unnecessary inpatient treatment, n45 beautifying cosmetic surgery, n46 and transplants of organs other than kidney, cornea, skin, and bone marrow. n47 This [**22] regulation has not been challenged, and the issue has not been thoroughly briefed by the parties, but the restrictions appear to relate to medical necessity, cost, and feasibility -- all politically neutral criteria. Such spending limits are irrelevant to the constitutional issue raised by the State's denial of coverage for medically necessary abortions. As the United States Supreme Court noted in *Shapiro v. Thompson*:

We recognize that the State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens.[n48]

n45 7 AAC 43.385(2), (6), (9), (11) & (12).

n46 7 AAC 43.385(4).

n47 7 AAC 43.385(17).

n48 394 U.S. 618, 633, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969).

[**23]

Like Alaska Pacific Assurance Co., Alaska Gay Coalition establishes that under Alaska's equal protection provision the government [*911] may not allocate state benefits so as to deter citizens' exercise of constitutional rights.

In this case, it is undisputed that 7 AAC 43.140 deters women from obtaining abortions. The State itself stated that eliminating public assistance for medically necessary abortions would cause about thirty-five percent of women who would otherwise have obtained abortions to instead carry their pregnancies to term, despite the associated threat to their health. Under Alaska Pacific Assurance Co., such a restriction warrants the highest degree of judicial scrutiny.

In the seminal Shapiro v. Thompson decision, the United States Supreme Court also strictly scrutinized -- and ultimately held unconstitutional -- state programs that denied benefits to citizens based on their exercise of constitutional rights. n49 Shapiro invalidated state laws that denied welfare benefits to persons who had moved into the jurisdiction within the past year. n50 The Court found that "the prohibition of benefits . . . creates a classification which constitutes [**24] an invidious discrimination denying [new residents] equal protection of the laws." n51 The Court held that states could not constitutionally tailor their benefits programs to deter immigration from other states: "If a law has no other purpose . . . than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional." n52

n49 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), partly rev'd on other grounds, *Edelman v. Jordan*, 415 U.S. 651, 670-71, 39 L. Ed. 2d 662, 94 S. Ct. 1347 (1974).

n50 See 394 U.S. at 621.

n51 *Id.* at 627.

n52 *Id.* at 631 (internal quotations omitted) (alteration in original) (quoting *United States v. Jackson*, 390 U.S. 570, 581, 20 L. Ed. 2d 138, 88 S. Ct. 1209 (1968)). This precedent was not discussed in the U.S. Supreme Court's later decision, in *Harris v. McRae*, that the Hyde Amendment was permissible under the federal constitution. 448 U.S. 297, 100 S. Ct. 2671, 65 L. Ed. 2d 784 (1980). But in *Valley Hospital*, we explained that Alaska's broader constitutional protection at times mandates parting ways with federal precedent. See 948 P.2d at 969. In that case, we rejected the plurality opinion of *Planned Parenthood v. Casey*, 505 U.S. 833, 877-78, 120 L. Ed. 2d 674, 112 S. Ct. 2791 (1992), in order to declare that a woman's right to an abortion is fundamental. See *Valley Hosp.*, 948 P.2d at 969. We now join the majority of state courts in concluding that the federal Supreme Court's decision in *McRae* provides inadequate protection under our state constitution.

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Although Shapiro and Alaska Pacific Assurance Co. applied strict scrutiny to reject restrictions like the one at issue in this case, 7 AAC 43.140 would fail equal protection analysis under any standard. Under the regulation, the State grants needed health care to some Medicaid-eligible Alaskans, but denies it to others, based on criteria entirely

unrelated to the Medicaid program's purpose of granting uniform and high quality medical care to all needy persons of this state. n53 Thus, even if 7 AAC 43.140 did not affect constitutional privacy rights and we applied our most deferential standard of review, the regulation still could not withstand equal protection challenge. Under Alaska's rational basis standard, n54 differential treatment of similarly situated people is permissible only if the distinction between the persons "rests upon some ground of difference having a fair and substantial relation to the object of the legislation." n55 DHSS provides necessary medical care to all Medicaid-eligible Alaskans except women who medically require abortions. This differential treatment lacks a fair and substantial relation to the object of the Medicaid program, [**26] and therefore violates equal protection. n56

n53 In the "Purpose" section of the Medicaid statute, the legislature "declares as a matter of public concern that the needy persons of this state receive uniform and high quality medical care, regardless of race, age, national origin, or economic standing." AS 47.07.010.

n54 See *Sonneman v. Knight*, 790 P.2d 702, 705 (Alaska 1990) (using term "rational basis" to describe lowest standard of review under Alaska's sliding scale).

n55 *Isakson v. Rickey*, 550 P.2d 359, 362 (Alaska 1976) (quoting *State v. Wylie*, 516 P.2d 142, 145 (Alaska 1973)). *Isakson* establishes that Alaska's rational basis review is more rigorous than that of the United States Supreme Court. *Id.*

n56 We note that the United States Supreme Court reached the opposite conclusion regarding the analogous federal regulation in *Harris v. McRae*, 448 U.S. 297, 65 L. Ed. 2d 784, 100 S. Ct. 2671 (1980). However, as noted above, federal rational basis review is a less rigorous standard than Alaska's rational basis review. See *Isakson*, 550 P.2d at 362. We have explained that Alaska's broader constitutional protection at times mandates parting ways with federal precedent. See *Valley Hospital*, 948 P.2d at 969. The United States Supreme Court in *Harris v. McRae* did not consider the discriminatory allocation of government benefits cases, *Shapiro v. Thompson*, 394 U.S. 618, 22 L. Ed. 2d 600, 89 S. Ct. 1322 (1969) and *United States Department of Agriculture v. Moreno*, 413 U.S. 528, 37 L. Ed. 2d 782, 93 S. Ct. 2821 (1973), discussed in this opinion.

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[*912] The United States Supreme Court reached a similar conclusion in *Shapiro*: although the Court invalidated states' differential treatment of similarly situated welfare recipients under strict scrutiny, it also noted that the differentiation would be deemed "irrational and unconstitutional" even under federal rational basis review. n57 In *United States Department of Agriculture v. Moreno*, the United States Supreme Court invalidated a similar restriction under rational basis scrutiny alone. n58 The Court found no rational basis for a statute denying food stamps to unrelated persons who shared a household; it therefore concluded that the statute violated equal protection. n59

n57 *Shapiro*, 394 U.S. at 638.

n58 413 U.S. at 538.

n59 See *id.* The Court noted legislative history indicating congressional intent to exclude "so[-]called 'hippies' and 'hippie communes'" from the food stamp program. *Id.* at 534. But it concluded:

The challenged classification clearly cannot be sustained by reference to this congressional purpose. For if the constitutional conception of "equal protection of the laws" means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate government

interest. As a result, [a] purpose to discriminate against hippies cannot, in and of itself and without reference to [some independent] considerations in the public interest, justify the [challenged] amendment.

Id. at 534-35 (internal quotations omitted, third alteration added).

[**28]

Lower court decisions have applied this principle to states' allocation of health care benefits, and concluded that "classification [among recipients] must be based upon some difference between the classes which is pertinent to the purpose for which the legislation is designed." n60 A California court found that the state violated equal protection by paying for attendant services by spouses of elderly and blind aid recipients, but denying payment for the same services by the spouses of otherwise disabled aid recipients. n61 And New York's highest court held that equal protection was violated by a statute that "effectively provided . . . that the aged, disabled, and blind are entitled to less public assistance than other needy persons." n62

n60 *Vincent v. State*, 22 Cal. App. 3d 566, 572, 99 Cal. Rptr. 410 (Cal. App. 1971).

n61 See *id.*

n62 *Lee v. Smith*, 43 N.Y.2d 453, 373 N.E.2d 247, 248, 402 N.Y.S.2d 351 (N.Y. 1977); see also *White v. Beal*, 555 F.2d 1146, 1149-50 (3d Cir. 1977) (finding equal protection issue sufficient to support jurisdiction, but not deciding on equal protection grounds, where remedial eye-care was available only if a person's visual impairment resulted from eye disease or pathology); *County of Orange v. Ivansco*, 67 Cal. App. 4th 328, 337-38 (Cal. App. 1998) (finding equal protection violation where parents supporting noncustodial children received different benefits depending on the children's eligibility for AFDC); but see *Moreno v. Draper*, 70 Cal. App. 4th 886, 888-89 (Cal. App. 1999) (analyzing same regulation as in County of Orange and finding no equal protection violation).

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DHSS's differential treatment of Medicaid-eligible Alaskans violates equal protection under rational basis review as surely as it does under strict scrutiny. Under any standard of review, "the State may not jeopardize the health and privacy of poor women by excluding medically necessary abortions from a system providing all other medically necessary care for the indigent." n63

n63 *Right to Choose v. Byrne*, 91 N.J. 287, 450 A.2d 925, 937 (N.J. 1982).

Because 7 AAC 43.140 infringes on a constitutionally protected interest, the State bears a high burden to justify the regulation. n64 Unless the State asserts a compelling state interest, the statute will necessarily fail constitutional scrutiny. n65 The State has failed to demonstrate such an interest in this case. It primarily defends 7 AAC 43.140 on [*913] the grounds that "medical and public welfare interests . . . are served by the legislature's decision to fund childbirth." But the regulation does not relate to funding for [**30] childbirth, and the State's decision to fund prenatal care and other pregnancy-related services has not been challenged. Indeed, a woman who carries her pregnancy to term and a woman who terminates her pregnancy exercise the same fundamental right to reproductive choice. Alaska's equal protection clause does not permit governmental discrimination against either woman; both must be granted access to state health care under the same terms as any similarly situated person. The State's undisputed interest in providing health care to women who carry pregnancies to term has no effect on the State's interest in providing medical care to Medicaid-eligible women who, for health reasons, require abortions.

n64 See *Matanuska-Susitna Borough School Dist.*, 931 P.2d 391, 396-97 (Alaska 1997) (outlining State's burden for justifying regulations); *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice*, 948 P.2d 963, 971 (Alaska 1997) ("Since the right is fundamental, it cannot be interfered with unless the interference is justified by a compelling state interest.").

n65 See *Matanuska-Susitna Borough Sch. Dist.*, 931 P.2d at 396-97.

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The State also asserts an interest in minimizing health risks to mother and child, and submits that these interests are often closely aligned. But those interests are not aligned in precisely the situation contemplated by 7 AAC 43.140's Medicaid exclusion: when pregnancy threatens a woman's health. Under the U.S. Supreme Court's analysis in *Roe v. Wade*, the State's interest in the life and health of the mother is paramount at every stage of pregnancy. n66 And in Alaska, "the scope of the fundamental right to an abortion . . . is similar to that expressed in *Roe v. Wade*." n67 Thus, although the State has a legitimate interest in protecting a fetus, at no point does that interest outweigh the State's interest in the life and health of the pregnant woman. n68

n66 410 U.S. 113, 163-64, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973).

n67 *Valley Hospital*, 943 P.2d at 969.

n68 Accord *Byrne*, 450 A.2d at 935 (holding, based on *Roe*, that "at no point in pregnancy may [the state's interest in protection of potential life] outweigh the superior interest in the life and health of the mother").

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Because the State has not asserted an interest sufficiently compelling to justify denying medically necessary care to women who need abortions, we need not consider the means-ends fit of the challenged regulation. We conclude that 7 AAC 43.140 violates equal protection under the Alaska Constitution.

B. The Separation of Powers Doctrine Cannot Shield Unconstitutional Legislation.

The State argues that by holding the Medicaid program to constitutional standards, the superior court effected an appropriation of funds in violation of the separation of powers between branches of government. We disagree. Under Alaska's constitutional structure of government, "the judicial branch . . . has the constitutionally mandated duty to ensure compliance with the provisions of the Alaska Constitution, including compliance by the legislature." n69 The superior court had not only the power but the duty to strike the challenged restriction and any underlying legislation if it found them to violate constitutional rights; the same duty mandates our decision today.

n69 *Maione v. Meekins*, 650 P.2d 351, 356 (Alaska 1982); see also *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.").

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The separation of powers doctrine and its complementary doctrine of checks and balances are implicit in the Alaska Constitution. n70 In light of the separation [**914] of powers doctrine, we have declined to intervene in political questions, which are uniquely within the province of the legislature. n71 But under the same doctrine, we "cannot defer to the legislature when infringement of a constitutional right results from legislative action"; legislative intent is not paramount when that intent conflicts with the constitution. n72 And the mere fact that the legislature's appropriations power underlies Medicaid funding cannot insulate the program from constitutional review. As the California Supreme Court observed in rejecting nearly identical restrictions on abortion funding, the State's claim would remove all constitutional restraints from legislative exercise of the spending power:

n70 See *State v. Dupere*, 709 P.2d 493, 496 (Alaska 1985), modified, 721 P.2d 638 (Alaska 1986) ("The separation of powers doctrine must be considered along with the complementary doctrine of checks and balances."); *Alaska State-Operated Sch. Sys. v. Mueller*, 536 P.2d 99, 103 (Alaska 1976); *Public Defender Agency v. Superior Court*, 534 P.2d 947, 950 (Alaska 1975).

The United States Supreme Court recently discussed the division of powers within the federal system of government. See *United States v. Morrison*, 529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658 (2000). It reiterated the duty of courts to limit acts of legislation when those acts conflict with rights guaranteed by the Constitution, explaining that the framers of the Constitution divided power among the three branches of government so that the Constitution's provisions would not be defined solely by the political branches nor the scope of legislative power limited only by public opinion and the legislature's self-restraint. It is thus a permanent and indispensable feature of our constitutional system that the . . . judiciary is supreme in the exposition of the law of the Constitution.

120 S. Ct. at 1753 n.7 (internal quotations and citations omitted). [**34]

n71 See *Aboud v. League of Women Voters*, 743 P.2d 333, 338 (Alaska 1987); *Malone*, 650 P.2d at 356-57.

n72 *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice*, 948 P.2d 963, 972 (Alaska 1997).

There is no greater power than the power of the purse. If the government can use it to nullify constitutional rights, by conditioning benefits only upon the sacrifice of such rights, the Bill of Rights could eventually become a yellowing scrap of paper.[n73]

n73 *Committee to Defend Reprod. Rights v. Myers*, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (Cal. 1981).

Legislative exercise of the appropriations power has not in the past, and may not now, bar courts from upholding citizens' constitutional rights. Indeed, constitutional legal rulings commonly affect state programs and funding. Many of the most heralded constitutional decisions [**35] of the past century have, as a practical matter, effectively required state expenditures. In *Green v. County School Board*, the United States Supreme Court ordered effective desegregation of public schools; n74 in *Gideon v. Wainwright*, it required funding of counsel for indigent criminal defendants; n75 and in *Shapiro v. Thompson*, it required states to give newcomers to the jurisdiction equal welfare benefits. n76 In each of these cases, a judicial decision upholding constitutional rights required state expenditures to support those rights. As appellee doctors and Planned Parenthood point out, the funding implications and separation of powers issue in this case would be identical if the State relied on other suspect criteria, such as race, to deny Medicaid benefits. Following the State's argument, the exclusion of one ethnic group -- or inclusion only of other specified groups -- within legislative Medicaid appropriations would be immunized from constitutional review, merely because the legislature had exercised its spending power. We emphatically reject such a claim. Like the Supreme Court decisions listed above, today's holding is squarely within the [**36] authority of the court, not in spite of, but because of, the judiciary's role within our divided system of government.

n74 391 U.S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968).

n75 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963).

n76 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), partly rev'd on other grounds, *Edelman v. Jordan*, 415 U.S. 651, 670-71, 39 L. Ed. 2d 662, 94 S. Ct. 1347 (1974).

Our conclusion that the separation of powers doctrine supports today's decision is firmly supported by twenty-one other courts that have considered a state's exclusion of medically necessary abortions from state-funded health care programs. n77 The State has not identified a single state or federal case holding that the separation of powers precludes a court from ordering the state to provide equal funding for women whose health is endangered by pregnancy. n78 Courts that have explicitly consider the separation of powers challenges to holdings like the one we reach today have dismissed the challenges in no uncertain [**37] terms. The Massachusetts Supreme Judicial Court, for example, wrote:

n77 See supra note 2.

n78 A single justice in a concurring opinion stated that the judiciary may not, under the equal protection clause of Michigan's constitution, require legislative funding for medically necessary abortion. *Doe v. Department of Soc. Servs.*, 439 Mich. 650, 487 N.W.2d 166, 182-83 (Mich. 1992) (Levin, J., concurring). To our knowledge, his is the sole dissenting voice on this issue.

We have never embraced the proposition that merely because a legislative action involves an exercise of the appropriations power, it is on that account immunized against judicial review. [We reject] the [*915] argument that either the doctrine of separation of powers or the political question doctrine requires that result. Without in any way attempting to invade the rightful province of the Legislature to conduct its own business, we have a duty, certainly since *Marbury v. Madison*, to adjudicate a claim that a [**38] law and the actions undertaken pursuant to that law conflict with the requirements of the Constitution. "This," in the words of Mr. Chief Justice Marshall, "is of the very essence of judicial duty." [n79]

n79 *Moe v. Secretary of Admin. & Fin.*, 382 Mass. 629, 417 N.E.2d 387, 395 (Mass. 1981) (internal citations omitted); see also *Committee to Defend Reprod. Rights v. Cory*, 132 Cal. App. 3d 852, 183 Cal. Rptr. 475, 478 (Cal. App. 1982) ("When there is an unconstitutional restriction in an existing appropriation, it offends no constitutional principle to direct that the disputed payments be made from funds already appropriated for the same general purpose."); *Clinic for Women, Inc. v. Humphreys*, No. 49D12-9908-MI-1137, Slip Op. at 12 (Ind. Super., Oct. 18, 2000) ("If the challenged enactments violate the state Constitution, the Court can grant relief even if doing so means that state funds will be spent in a manner not explicitly approved by the Legislature. The Court has the power to shape appropriate remedies and the Legislature has a duty to appropriate funds to meet its constitutional obligations."); *Low-Income Women v. Bost.*, 38 S.W.3d 689, 702 (Tex. App. 2000) ("The relief sought by Low-Income Women -- funding medically necessary abortions -- cannot be characterized as a new appropriation. They do not ask for a new appropriation of funds to the Medical Assistance Program. Rather, they seek declaratory and injunctive relief against unconstitutional restrictions placed on the use of funds already appropriated pursuant to a pre-existing law authorizing funds to be used for health care under the program.").

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We agree with this articulation of the court's fundamental powers and duties.

A federal case, *State of Georgia v. Heckler*, also directly supports our conclusion. n80 In that case, the state of Georgia sought reimbursement from the federal Department of Health and Human Services (HHS) for money spent by the state to fund medically necessary abortions. Although the Court of Appeals for the Eleventh Circuit ultimately denied Georgia's claim, it emphatically rejected HHS's argument that because Congress had not appropriated money for medically necessary abortions, a district court could not compel HSS to pay the claims. n81 As the Eleventh Circuit court noted, the statute could preclude payment only if an interpreting court so determined. n82 "There is no doubt," the Heckler court concluded, "that if this Court decided that these payments were legally required, HHS would be authorized to make them." n83

n80 768 F.2d 1293 (11th Cir. 1985).

n81 See *id.* at 1295-96.

n82 See *id.* at 1296. [**40]

n83 *Id.*

We agree with the Eleventh Circuit: It is legally indisputable that a trial court order requiring state compliance with constitutional standards does not violate the separation of powers doctrine.

V. CONCLUSION

The manner in which the State allocates public benefits is subject to constitutional limitation under Alaska's equal protection provision. The State, having undertaken to provide health care for poor Alaskans, must adhere to neutral criteria in distributing that care. It may not deny medically necessary services to eligible individuals based on criteria unrelated to the purposes of the public health care program. Moreover, the DHSS regulation in this case discriminatorily burdens the exercise of a constitutional right. Because we conclude that denial of Medicaid assistance to poor women who medically require abortions violates equal protection, we **AFFIRM** the decision of the superior court.

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Judiciary Standing Committee
House Bill 96

April 11, 2005

Madam Chair, representatives of the standing committee I appreciate your allowing me to speak from the practical view of a constituent regarding House Bill 96. I am Steve Andison and have lived in Alaska for more than 30 years. I do not use marijuana and had almost lost touch with its potency and prevalence until my wife needed relief from her Multiple Sclerosis. We had tried every medication, including Marinol. Her pain was chronic and a method for relief had eluded her doctors and me. I encourage this committee to ask me questions that are not "soft-balled".

Since I am not an "expert" on marijuana, I cannot speak authoritatively about the biochemical interactions of this exogenic substance at the molecular level. That specificity is best provided by experts like whose knowledge, studies and baseline data I greatly appreciate. Now I better understand the progression of cannabis horticulture, and the almost geometrically increasing levels of THC per gram of product that is present on the streets today. I am very scientific in my approach to using chemicals in natural, concentrated, or synthesized forms. Knowledge is simply truth and wise people incorporate it into their thinking. I have not used marijuana for nearly thirty years. I do, however, purchase it for medicinal use by my wife.

I found the discussion of this issue very interesting last Friday even though some underlying agenda's and biases were evident. I was greatly encouraged to hear that some open minded scientists are simply documenting knowledge to explore and document both the potential usefulness of this powerful plant and possible risks as well. Marijuana and its components will be studied for many years; but how do we control its use until all of the facts are in? Indeed, pharmacological history indicates that people tend to weigh potential risks versus potential benefits both by personal experience as well as scientific data. The data regarding cannabis is far from comprehensive or conclusive and thus far has not persuaded me that it is either addictive or harmful to the average periodic user. It is not universally addictive, but I understand that it is to some. Because a statistically insignificant number of people become addicted does not negate its potential benefits or appropriate use.

I would like to address 5 basic issues with you this afternoon: 1) The likelihood that HB 96 will have the opposite effect that its sponsors and advocates intend, and would be impossible to enforce. 2) The availability of marijuana to children and inexperienced young people. 3) Effects of marijuana in rural areas. 4) Legal use of Medicinal Marijuana is a sham in Alaska. 5) What we, the public, expect of our legislative bodies.

1) This attempt at marijuana prohibition would likely backfire on its proponents. Some younger people will be afraid to purchase marijuana, bolder ones will step up to the plate to help distribute and will want a cut to support their own recreational use. Higher risks in handling illegal volume will develop new methodologies and the extra risks and costs will be incorporated into higher prices. Higher prices will encourage competition to provide the "best bang for the buck" (more potent marijuana). To gain greater market share dealers will have to prove that you get more "high" for your money buying from them, because the same high will be achieved with half the quantity of product. You will encourage "new and improved" super-pot, and you will stimulate the marijuana economy.

This bill is aimed at arresting growers and distributors of the cash crop to reduce if not eliminate its availability. We don't have enough investigators, our judiciary caseload is already overburdened, and the monetary burden of imprisoning many additional non-violent newly created criminals will be born by the general citizenry while there will be no discernable improvement in the situation. It will require more troops than have been estimated, and will be much more lengthy and expensive than we are initially led to believe.

2) Regarding the availability of marijuana to children and inexperienced young people; I understand and appreciate the problem and concern. The problem, however, cannot be legislated away. Many young people experiment with alcohol. They go through a learning curve in doing so. Unfortunately many terminal cases of alcohol poisoning will occur every year. We don't make it illegal to have alcohol in the home, but there is enough legal alcohol to cause lethal ingestion by youth in millions of homes with children. Everclear mixed with punch will go down smoothly without the bight of alcohol. Junior high school and even college aged students die from this harmless thrill seeking. The answer is education. And yes, experienced pot users take "test-tokes" fifteen or twenty minutes apart to see how potent the new source of marijuana is and are fully aware of delayed effects. Young people can overdose on anything mind-altering while enjoying the euphoria of the moment if they are not educated about delayed and undesirable effects.

We want freedom and privacy in our homes; but even that sacrosanct right is not without limits. While Michael Jackson may be able to serve wine-coolers to under aged youth in his home, we know that we cannot. The law should come down hard on anyone who provides or allows open access to alcohol, marijuana, guns, and prescription drugs to children and under aged adults in their homes or elsewhere.

3) The effects of marijuana in rural communities are of great concern to me. I have lived in rural communities where the rate of alcoholism, suicide, and drug abuse was well above the urban rate in Alaska, and far above the national average. I think that we all want to do what we can to ease the situations for our rural citizenry and cultures; but here again it would be a noble but empty gesture if we try to legislate away those problems. While it would be a very handy item to target and demonize, those of us who have been there know that these problems are caused by boredom, hopelessness, unachievable expectations and poor self esteem issues. A negative outlook on the present and future combined with greater expectations than can be delivered has a greater correlation to drug and alcohol abuse than does the availability of marijuana.

It is very difficult to stimulate and diversify sustainable rural economies. It is much easier to pick marijuana and alcohol as causal agents rather than recognizing and attempting to address the real issues. This law would change nothing in our villages. Believe me, when other escape mechanisms and altered states are unavailable through marijuana, I have seen sniffing of many kinds of solvents, glues, cleaning agents and other easily obtained chemicals in the absence of more conventional and expensive forms. If young people are bored and hopeless, they will seek out a chemical escape regardless of unknown dangers and possibly suffer permanent and severe damage.

4) Legal use of Medicinal Marijuana is a sham in Alaska. Please, correct me if I am wrong or am missing something. I've heard it said that this bill would not affect the medicinal use of marijuana and in no way affects the rights and confidentiality between doctors and patients. How many doctors are encouraged to explore the medicinal use of marijuana? If I found a doctor, would he not be irresponsible if he wrote a prescription for an unknown percentage of active ingredients from an unknown source? The fact is that marijuana is so demonized and so few doctors are familiar with its benefits that they would not risk their professional reputation by writing such a prescription. The pharmaceutical manufacturers send their representatives out to push their patented drugs, but doctors are not taught much about herbal medicine, dietary affects on disease, about beneficial use of marijuana.

If I could find a doctor who was confident about writing a prescription, where would I take the prescription to be filled?

You may tell me that you support my wife's right to have a small amount of marijuana for medicinal use; but then government and law enforcement add fine-print caveats. You can buy the marijuana as long as you have a prescription and purchase from a certified medicinal grower (the existence of which is virtually nill). You can buy it, but all sources are illegal to purchase from. You can possess it, but you can't find a legal source to purchase it from. If your retailer grows or possess enough cannabis that it is commercially viable, they are illegal drug dealers.

IF my wife gets a prescription, there is no quality control and I am buying unknown quality and concentrations of her medicine. If someone possesses a permit for growing medicinal marijuana, they are not allowed to reach scales of economy that warrant the manufacturing of the product. As Alaska has set up this situation, it is virtually impossible to find a prescribing doctor or legitimate and dependable source of this drug. If I care about my wife, I must still buy her medicine off the street.

You can't legitimize the use of a drug without also legitimizing a source for it. If you legitimize a source, government should inspect and have licensing requirements. In addition, you must allow the growers and retailers an adequate volume of production and sales to justify their time and effort.

5) What we, the public, expect of our legislative bodies.

I admire those who step up and offer their skills as public servants. I know that the legislature is trying to read the scientific data and public opinion at the same time. I also know that many of you just want to get it right. If you do, if you are not trying to just to read the political wind, some things will become simpler. One size shoe will not fill all. One overall broad sweeping law will not be fair to everyone. What do we, the public, want? We basically want freedom, privacy, safety, and fairness. If you view the marijuana initiatives in this light many things become simpler.

We do not want ANYONE driving on the road under the influence of ANYTHING. If it impairs your judgment, motor skills, or reaction time you do not belong behind the wheel. We think this is a good blanket rule; alcohol, antidepressants, sedatives, cough syrup, antihistamines, or pot; WE DON'T CARE! Under the influence is under the influence; period.

We don't want to support crack, cocaine, heroin or other addictive substances that are destructive; especially if they are popular with our youth who are long on thrill seeking and short on judgment of consequences and mortality.

We will not tolerate adults distributing any substances that may be dangerous to our children or underage adults. Adults may have rights to privacy in their homes, but not if it involves our children. Adults that are able to competently make their own choices may drink alcohol, may take legally prescribed drugs, and may smoke pot or cigarettes. But we will not tolerate distribution to our children in the homes of adults on the streets, or from a point of sale.

In my personal opinion there is a great deal of difference between legalizing marijuana and regulating it. Putting our heads in the sand and ignoring uncontrolled growth, use, and increasing potency would be irresponsible; especially when it relates to our young people, their learning abilities, and their safety. Outlawing cannabis by prohibition (whether by straight-up legislation, or back door squeezing out the supply) is not yet warranted by science or by scare tactics. Read the labels of most any prescribed drug, magnify insignificant statistics, and you can scare anyone out of using most any medication.

April 11, 2005

We need government to vertically integrate the legal and controlled use of marijuana from the licensed growing source, to the licensed wholesaler, to the licensed distributor. Regulate the age of legal use or possession, determine appropriate or inappropriate use in public. By regulation, require testing for safe and consistent percentage of THC for prescription titration rates of standardized product. Then go after the outlaws and black market dealers that deal death in any form for a dollar. Protect us, but respect us and our freedom. Punish those that cross reasonable lines set by enforceable laws, while preserving our rights, freedom, and privacy. At all times, share education, new science, and adjust statutes according to the preponderance of evidence that has a high level of statistical confidence regarding our risks.

Sincerely,



Steve Anderson

HB 96, NO! SB 74, NO!
REGULATE CANNABIS AND SPREAD THE WEALTH, YES!

My name is Aaron Mattley, I'm a registered voter and I've smoked marijuana for the past 8 years. During this time I have excelled in many aspects of life including: division two varsity cross country and varsity soccer, I'm not saying that it is a performance enhancer, but it is simply managed in ones life according to their goals. My fastest time in cross country was 5 miles in 28 min and 30 seconds. I've climbed 14,000 foot peaks, I'm a former president of a college music organization who was featured at a formal University President's dinner. I have a design patent in process, I'm a woodcrafter, outdoorsman, I have released 3 music cds, I assisted in the releasing of a full featured film, I have a steady lady friend of two years who does not smoke pot, I have my Bachelors degree in professional accounting and I currently work for the State of Alaska as a Junior Auditor in Legislative Audit, but for the record I have made arrangements not to be at work this morning so that I may testify representing myself, it is costing me money to be here right now, and I think democracy is weakened when people have to decide between participating in a democratic process or paying rent and putting food on the table. I am here on my own time and am fortunate that I can make that sacrifice. My expertise credentials that allow me to speak on HB 96 and SB 74 root from my direct involvement with the cannabis culture in the lower 48 and the great AK, a culture of millions of people that have been demonized by government propaganda that seeks cultural domestication and drug war profiteering.

I am all for regulation of marijuana in order to keep children under the age of 18 from using it and adults under 21 from using it. Lets regulate it!

However, I am strongly opposed to HB 96 and SB 74. These bills are not about keeping marijuana away from children or increasing the wellness of society, they only create disharmony and are part an on going effort to oppress a natural resource that undermines Big Money and special interests(i.e fossil fuels, timber, petrochemicals/nylon, and oil based plastics, pesticide consumption by GE food companies with 10,000 seed patents). There is more money being made in pretending that you're stopping marijuana use than there is selling it. Quick example: Myself and two friends were fined \$3,500 for a \$35 bag of weed. Plus there are privatized prisons knocking on Alaska's door for that per prisoner revenue amount, while Alaska SB 56 gives judges the ability to increase felony sentencing i.e non-violent marijuana activists. There is more money being made in pretending that you're stopping it than there is selling it. SHAME ON THE POLITICAL FUEL OF THESE BILLS.

All the information and research needed to support the legalization of marijuana has already been presented countless times before despite independent-unmarginalized marijuana research being barred from Universities as the Federal government produces propaganda from "White House Experts" or "contracted" research studies from universities, when in court this marijuana legalization information and research places the burden of proof on the proponents of these desecrated bills. The facts stand why marijuana should be legalized lets start out with some Patriotic facts:

"Benjamin Franklin started one of America's first paper mills with cannabis. This allowed America to have a free colonial press without having to beg or justify paper and books from England."

"Make the most of hemp seed, sow it everywhere." George Washington

"Any prohibition is a strike against liberty." Abraham Lincoln

(Refer to "Whale Song" Article stating uses of hemp given in verbal testimony):

1. Textiles and Fabrics- The word "canvas" is the Dutch pronunciation (twice removed, from French and Latin) of the Greek word "Kannabis."
2. Fiber & Pulp Paper
3. Rope, Twine, and Cordage
4. Art Canvas
5. Paints and Varnishes
6. Biomass Energy
7. Medicine
8. Lighting Oil
9. Food Oils and Protein
10. Building Materials and Housing
11. Smcking, Leisure & Creativity
12. Economic Stability, Profit & Free Trade

When debating a bill that stated it would be a criminal offense for a government official to act in their government position/capacity and line their pockets with more than \$5,000 dollars. Juneau Republican Legislative representative Bruce Weyhrauch stated "why \$5,000, why not \$4,000" then he voted to no on the bill, keeping the option to line his pockets with money as a government official acting in government capacity, legislative profiteering. So with marijuana, why 4 oz of marijuana = felony? Legislative profiteering!

The challenge to the world and this legislature is this: Try to prove the facts wrong:

"If all fossil fuels and their derivatives, as well as the deforestation of trees for paper and agriculture, are banned from use in order to save the planet and reverse the greenhouse effect:
Then there is only one known renewable natural resource able to provide the overall majority of our paper, textiles and food, meet all the world's transportation, home and industrial energy needs, reduce pollution, rebuild the soil and clean the atmosphere-all at the same time-or old stand by that did it all before: Cannabis Hemp ...Marijuana!"

HOW DANGEROUS IS MARIJUANA...IN COMPARISON TO OTHER SUBSTANCES?

NUMBER OF AMERICAN DEATHS PER YEAR that result directly or primarily from the following selected causes nation wide, according to World Almanacs, Life Insurance Actuarial (death) Rates, and the last 20 years of U.S. Surgeon Generals' reports. (Figures are for 1988 from the federal governments Bureau of Mortality Statistics and the National Institute on Drug Abuse, et al.-the last complete year at eh time of this writing.)

TOBACCO = 340,000 TO 425,000 DEATHS!

ALCOHOL (Not including 50% of all highway deaths and 65% of all murders) = 150,000+ DEATHS!

ASPRIN(Including deliberate overdose) = 180 to 1,000+ DEATHS!

CAFFEINE(From stress, ulcers and triggering irregular heartbeats, etc.) =
1,000 TO 10,000 DEATHS!

'LEGAL' DRUG OVER DOSE (Deliberate or accidental) from legal, prescribed
or patent medicines and or mixing with alcohol-e.g., Valium/alcohol =
14,000 to 27,000 DEATHS!

ILLICIT DRUG OVERDOSE (Deliberate or accidental) from all illegal drugs =
3,800 to 5,200 DEATHS!

THEOPHYLLINE (Pharmaceutical drug legally prescribed for asthma) = 50 DEATHS!
Theophylline is also responsible for 6,500 Emergency Room admits and
1,000 cases of permanent brain damage per year.


MARIJUANA = 0 DEATHS!

Reference(Where further extended references are noted):

"The Emperor Wears No Clothes"
-Jack Herer

Politics, from pg. 4

That "growth," in light of our red-ink economy, is about as shallow as the almost heretical attacks on John Kerry's Vietnam War heroism by members of the draft-evading experts in the entire Bush Administration. Whereas Kerry fought for his nation in medaled honor, even reenlisting knowing full well in his heart this was an unjust war yet one in which American men and women were being killed—killed by actual enemy fire and not by military mishaps or friendly fire which is happening all too often in Iraq. This didn't stop the "Republican attack dogs" who were shameless enough to publish the prevarication Kerry had acted insubordinate in Vietnam. The Iraq mistake, tax cuts for the wealthy railroaded through Congress, a ballooning debt for our children on top of a "February surprise" for Social Security benefactors (as the ranking house Democrat Nancy Pelosi forewarned last month), lying to voters for private gain and public-purse giveaways like the "taking of our (im)permanent fund and the Halliburton-Bechtel mismanagement charade, are all in store with another term for G.W.

Let's show both these supercilious administrations we can't be so easily duped by the Bush-oholic—Murkowski oilism scam next month. Vote for the real heroes. Vote a straight "Democrat ticket." 

Marijuana plant's historical roots reach far

By Thane Kelly
WHALESONG REPORTER

With the upcoming November elections, it is wise to explore the larger context of ballot initiative two from a historical and utilitarian perspective. There are many moral arguments for and against cannabis, as well as human rights issues around prohibition in general. However, there is not much focus on the utility of Cannabis Sativa, and the extent to which it was once used on a worldwide scale.

The best reference book available is Jack Herer's book, *The Emperor Wears No Clothes*, which is often referred to as the cannabis bible due to its wealth of historical information, all completely documented and referenced. Herer writes, "All of my information about CANNABIS/HEMP/MARIJUANA has been taken from Federal and State Department of Agriculture reports, articles from Popular Mechanics, Popular Science, Pulp & Paper Magazine, Scientific American, entries from encyclopedias and pharmacopoeias, and studies from all over the world during the last 200 years. This is all public information".

A few interesting points:


- Cannabis used to make over 25,000 products before it was outlawed in 1937.
- 125 years ago, 70 to 90 percent of all rope, twine, cordage, ship sails, canvas, fiber, cloth, etc., was made out of hemp fiber. In 1937, it was replaced by DuPont's newly discovered petrochemical fiber, known as nylon.
- Cannabis was the number one annually renewable natural resource for 80 percent of all paper, fiber, textiles and fuel, from 6,000 years ago until about 125 years ago.
- Cannabis was used for 5 to 50 percent of the food, light,

land and soil reclamation, and even 20 percent or more of all medicine.

- Prior to the 1800s, hempseed oil was the number one source for lighting oil throughout the world.
- Until 1937-38, even paints and varnishes were 80 percent hempseed oil.
- Hempseed oil is non-toxic and has been used to make high-grade diesel fuel, oil, aircraft and precision oil.
- The pulp from hemp is the most efficient sustainable source of plant pulp for biomass fuel to make charcoal, gas, methanol, gasoline and electricity in a natural way.
- Nutritionally, hempseed is the most perfectly balanced and highest source of omega-3 and omega-6 fatty acids.
- Cannabis can be cultivated anywhere in the world, and is the healthiest plant for the soil, due to its root system, which penetrates up to six feet deep, aerating the soil and leaving a large amount of organic matter to recycle nutrients back into the land.

As it fertilizes the soil, it also increases soil stability. In fact, cannabis was used for land reclamation until 1915.

- Cannabis cloth is 4 times softer than cotton, 4 times warmer, 4 times more water absorbent, has 3 times the strength, is much more durable, and flame retardant.
- Fifty percent of all pesticides are used on cotton, yet cotton uses only 1 percent of the farmland in the U.S. Cannabis requires no pesticides or herbicides for cultivation.
- There have been 13 million arrests for Cannabis within the last 30 years in the United States.

For more facts and references, visit: <http://www.jackherer.com/> 

Police should leave pot users alone

Letter to the editor

Marijuana relieves many of my multiple sclerosis symptoms. What we do in our own homes is our own business. MS gives me enough challenges as it is.

If Gov. Frank Murkowski wants to amend the constitution, he shouldn't try to do it behind our backs.

Supporters of Senate Bill 74 and House Bill 96 argue that marijuana is more potent now than it used to be; therefore, it's more dangerous. First, they offered no legitimate proof for this. Second, potent marijuana doesn't equal dangerous marijuana. If anything, people who use more potent marijuana need to use less of it. This means they ingest less smoke, tar, and other irritants.

Under the new laws, possession of four ounces of marijuana would become a class C felony - the same punishment faced by a father who commits incest or indulges in child pornography.

The Alaska Public Defender Agency says that half of the 500 marijuana-related misdemeanors they handle a year would be felonies under the new law. These new laws will fill Alaska prisons with hundreds of nonviolent offenders.

I want my police getting violent criminals off the street, not chasing marijuana users.

Nancy Andison

Juneau



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Cultural myopia

Letter to the editor

In considering whether or not to criminalize cannabis and get some patently outrageous "findings" about cannabis on the record, please think deeply about this question: How can a substance capable of killing its users in one sitting be legal and ubiquitous, while another substance with no known lethal dose is illegal and its users persecuted and prosecuted?

Alcohol, especially in its super-potent distilled form, is a lethal drug. If anyone doubts this fact, simply Google "alcohol poisoning deaths." The attentive searcher will find many people, especially college age young people, die each year as a direct result of alcohol consumption. Yet, no one is demanding the killer drug alcohol be criminalized. Can you imagine the hue and cry if even one young person died as the direct result of cannabis consumption? How do you explain this stupefying double standard? Cultural myopia? Perhaps quid pro quo between the alcohol industry (and other legal drug pushers) and elected representatives? Does any elected public official accept money from the alcohol, tobacco or pharmaceutical industries? We need full disclosure, please.

For anyone knowledgeable about cannabis, its prohibition is the most bogus scam to be foisted on the U.S. citizenry by its elected representatives during the past century. To illustrate the absurdity of allowing alcohol to be legal and widely available while criminalizing a relatively benign plant, I pose this challenge to Messrs. Guaneli, Murkowski, Bobo, and all elected state representatives of Alaska: Let us meet at a public place of your choosing. Let this meeting be televised. I will consume a "bong hit" of the most potent unadulterated organic sinsemilla cannabis available every three minutes. You will consume a shot (one fluid ounce) of the distilled alcohol of your choice (minimum 90 proof) every three minutes. We will continue in this way for six hours. I think this televised experiment will clarify the discussion of the relative dangers of cannabis and alcohol once and for all.

John Colman-Pinning

Waldport, Ore.

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HEMP

& THE MARIJUANA CONSPIRACY:

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Including the Schlichten / Scripps Letters &
the American and German "Hemp for Victory"



THE EMPEROR WEARS NO CLOTHES

*The Authoritative Historical Record
of the Cannabis Plant, Marijuana Prohibition, &
How Hemp Can Still Save the World.*

By
**Jack
Herer**

Editors: Chris Conrad, Lynn & Judy Osburn, Ellen Komp

A BRIEF SUMMARY OF THE USES OF HEMP

OUR CHALLENGE TO THE WORLD: TRY TO PROVE US WRONG

If all fossil fuels and their derivatives, as well as the deforestation of trees for paper and agriculture, are banned from use in order to save the planet and reverse the greenhouse effect:

Then there is only one known renewable natural resource able to provide the overall majority of our paper, textiles and food, meet all the world's transportation, home and industrial energy needs, reduce pollution, rebuild the soil and clean the atmosphere—all at the same time—our old stand-by that did it all before: Cannabis Hemp ... Marijuana!

1. SHIPS AND SAILORS

Ninety percent* of all ships' sails (since before the Phoenicians, from at least the Fifth Century B.C. until long after the invention and commercialization of steam ships [mid- to late-19th century]) were made from hemp. (See picture.)

* The other 10% were usually flax or minor fibers like ramie, sisal, jute, abaca.

(Abel, Ernest, *Marijuana: The First 12,000 Years*, Plenum Press, 1980; Herodotus, *Histories*, 5th century B.C.; Frazier, Jack, *The Marijuana Farmers*, 1972; U.S. Agricultural Index, 1916-1982; USDA film, *Hemp for Victory*, 1942.)

The word "canvas" is the Dutch pronunciation (twice removed, from French and Latin) of the Greek word "Kannabis."*

* Kannabis—of the (Hellenized) Mediterranean Basin Greek language, derived from the Persian and earlier Northern Semitics (Quanuba, Kanabosm, Cana?, Kanah?) which scholars have now traced back to the new-found dawn of the 6,000-year-old, Indo-Semitic-European language family base of the Sumerians and Accadians. The early Sumerian/Babylonian word K(a)N(a)B(a), or Q(a)N(a)B(a) is one of man's longest surviving root words. (KN means cane and B means two--two reeds or two sexes.)

In addition to the canvas sails, virtually all of the rigging, anchor ropes, cargo nets, fishermen's nets, flags, shrouds, and oakum (the main sealant for ships against salt water for use between loose or green beams) were made from the stalk of the marijuana plant until this century.

Even the sailors' clothing, right down to the stitching in the seamen's rope-soled and (sometimes) "canvas" shoes were crafted from cannabis.*

* An average cargo, clipper, whale-, or naval ship of the line, in the 16th, 17th, 18th, or 19th centuries carried 50 to 100 tons of cannabis

hemp rigging, not to mention the sails, nets, etc., and needed it all replaced every year or two, due to salt rot. (Ask the U.S. Naval Academy, or see the construction of the USS Constitution, a.k.a. "Old Ironsides," Boston Harbor.)

(Abel, Ernest, *Marijuana, The First 12,000 Years*, Plenum Press, 1980; Ency. Britannica; Magoun, Alexander, *The Frigate Constitution*, 1928; USDA film *Hemp for Victory*, 1942.)

Additionally, the ships' charts, maps, logs, and Bibles were made from paper containing hemp fiber from the time of Columbus (15th century) until the early 1900s in the Western European/American World, and by the Chinese from the first century A.D. on. Hemp paper lasted 50 to 100 times longer than most preparations of papyrus, and was a hundred times easier and cheaper to make.

Nor was hemp use restricted to the briny ~~ss~~ deep.

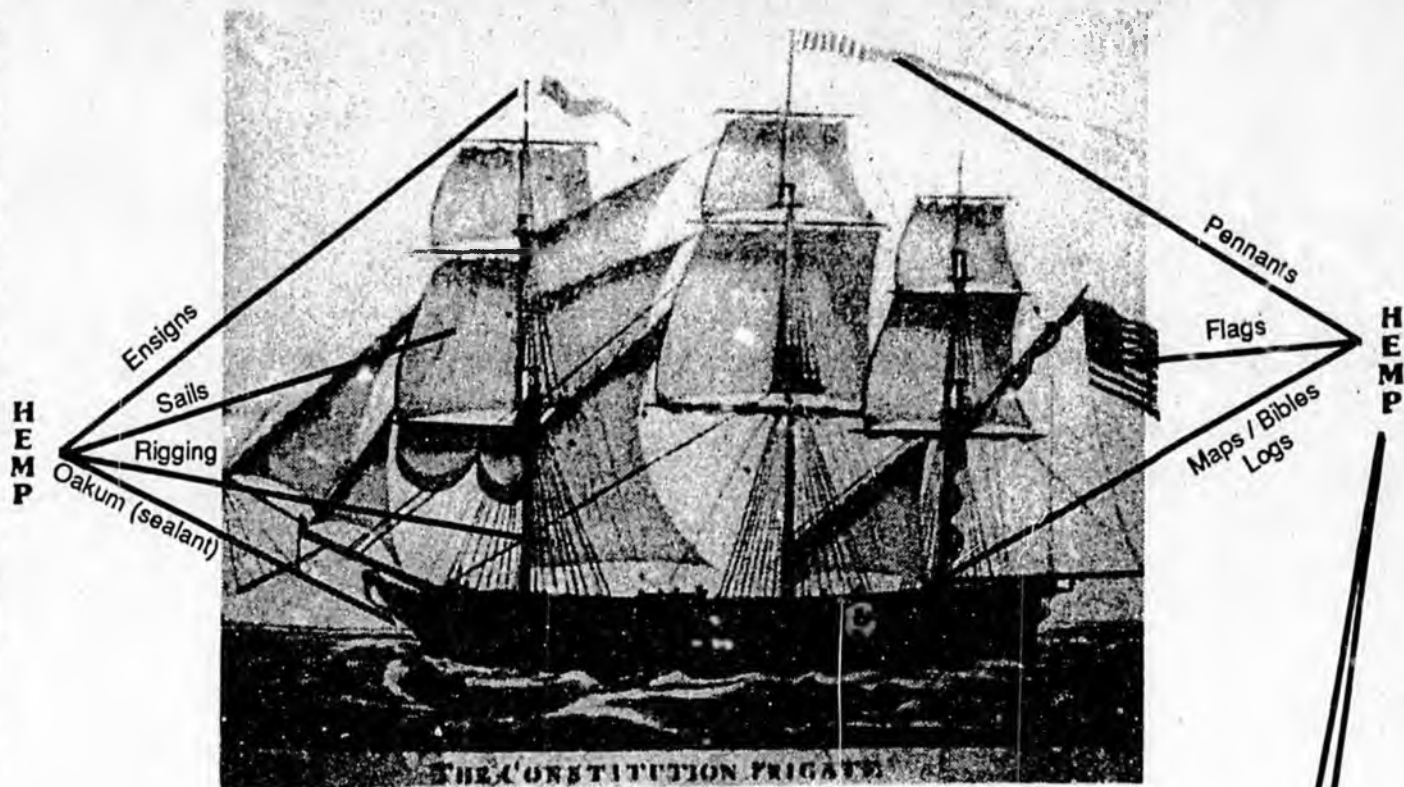
2. TEXTILES AND FABRICS

Eighty percent of all mankind's textiles and fabrics for clothes, tents, linens,* rugs, drapes, quilts, bed sheets, towels, diapers, etc., including our flag, "Old Glory," were made principally from cannabis fibers until the 1820s in America and until the 20th century in most of the rest of the world.

For hundreds, if not thousands of years (until the 1830s) Ireland made the finest linens and Italy made the world's finest cloth for clothing with hemp.

* The 1893, 1910 Encyclopaedia Britannicas indicate—and in 1938, *Popular Mechanics* estimated—that at least half of all the material that has been called linen was not made from flax, but from cannabis. Herodotus (c. 450 B.C.) describes the hempen garments made by the Thracians as equal to linen in fineness and that "none but a very experienced person could tell whether they were of hemp or flax."

THERE WERE AT LEAST 60 TONS OF HEMP ON THE U.S.S. CONSTITUTION ALONE.



(A.K.A. "Old Ironside")

Partial list of rigging (rope) required for the 1927 restoration of the U.S.S. Constitution and other Historic Ships", by F. Alexander Magoun, S.B., S.M. The Southworth Press ©1928 by The Marine Research Society, Boston, Massachusetts. Pgs 96 and 97

Each mast (fore, mizen, main, etc.) required lifts, braces, reefs, jiggers, tackles, etc. The Constitution carried well over four miles of hemp rope.

Standing Rigging, Hard Laid Hemp

Item	Circumference
Mainstay	12 inches
Forestay	12 "
Pendants	9 1/4 "
Fore and main shrouds	9 1/4 "
Mizen shrouds	7 "
Topmast backstays	9 "
Topmast stays	8 "
Topgallant backstays	5 "
Topgallant stays	4 "
Royal stays	2 1/4 "

Running Rigging, Soft Laid Hemp

Item	Circumference	Gross Length
Truss tackles	2 1/4 inches	260 Feet
Jeer fall	4 1/4 "	350 "
Pendant tackles	3 1/4 "	1200 "
Lifts	3 1/4 "	470 "
Braces	4 "	608 "
Tacks	4 "	400 "
Sheets	4 1/4 "	400 "
Clew garnets	3 "	400 "
Main Bowline	3 1/4 "	120 "
Reef tackles	3 1/4 "	350 "
Buntlines	2 1/4 "	530 "
Leechlines	2 1/4 "	432 "
Clew jiggers	2 "	520 "
Top burlins	3 "	1060 "
Topsail tye halliards	3 1/4 "	1440 "
Topsail lifts	4 1/4 "	360 "
Topsail braces	3 1/4 "	600 "
Best power anchor cable	22 1/4 "	720 "
Messenger	14 "	600 "
Gun breeching (each)	7 "	24 "
Out-haul tackles (each)	2 1/4 "	60 "

Clothes / Uniforms



Papers

CONTINENTAL SOLDIER

The fact that hemp is softer than cotton, warmer than cotton, more water absorbent than cotton, has three times the tensile strength of cotton and is many times more durable than cotton was well known to our forebearers.

Homespun cloth was almost always spun from the family hemp patch into the early 1900s.

In fact, when the patriotic, real life, 1776 mothers of our present day blue-blood "Daughters of the American Revolution" (the D.A.R. of Boston and New England) organized "spinning bees" to clothe Washington's soldiers, the majority of the thread was spun from hemp fibers. Were it not for the historically forgotten (or censored) and currently disparaged marijuana plant, the Continental Army would have frozen to death at Valley Forge, Pennsylvania.

The common use of hemp in the economy of the early republic was important enough to occupy the time and thoughts of our first U.S. Treasury Secretary Alexander Hamilton, who wrote in a Treasury notice from the 1790s, "Flax and Hemp: Manufacturers of these articles have so much affinity to each other, and they are so often blended, that they may with advantage be considered in conjunction. Sailcloth should have 10% duty."

(Herndon, G.M., *Hemp in Colonial Virginia*, 1963; D.A.R. histories; Able, E, *Marijuana, the First 12,000 Years*; also see the 1985 film *Revolution* with Al Pacino.)

The covered wagons went west (to Kentucky, Indiana, Illinois, Oregon, and California*) covered with sturdy hemp canvas tarpaulins,² while ships sailed around the "Horn" to San Francisco on hemp sails and ropes.

* The original, heavy-duty, famous Levi pants were made for the California '49ers out of hempen sailcloth and rivets. This way the pockets wouldn't rip when filled with gold panned from the sediment.³

Homespun cloth was almost always spun from the "family" hemp patch until after the Civil War, and into the early 1900s, by Americans and people all over the world.*

* In the 1930s, Congress was told by the Federal Bureau of Narcotics that many Polish-Americans still grew pot in their backyards to make their winter "long johns" and work clothes, and greeted the agents with shotguns for stealing their next year's clothes.

The age and density of the hemp patch influences fiber quality. If a farmer wanted soft linen-quality

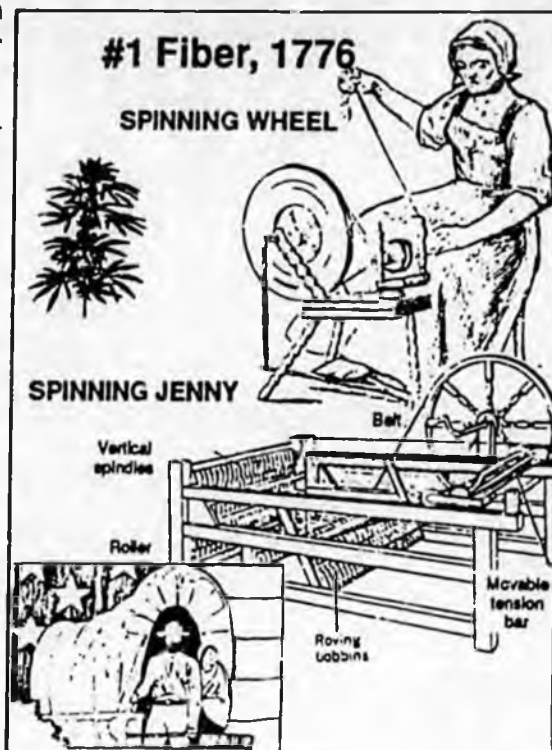
fibers he would plant his cannabis close together.

As a rule of thumb, if you plant for medical or recreational use, you plant one seed per five square yards. When planted for seed: four to five feet apart.

(Univ. of KY Ag. Ext. leaflet, March 1943.)

Two hundred seeds to the square yard are planted for rough cordage or coarse cloth. Finest linen or lace is grown up to 900 plants to the square yard and harvested between 80 to 100 days.

(Farm Crop Reports, USDA international abstracts. CIBA Review 1961-62 Luigi Castellini, Milan Italy.)



Were it not for the marijuana plant, the Continental Army would have frozen to death at Valley Forge.

By the late 1820s, the new American hand cotton gins (invented by Eli Whitney in 1793) were largely replaced by European-made "industrial" looms and cotton gins ("gin" is just short for engine), because of Europe's primary equipment-machinery-technology (tool and die making) lead over America.

For the first time, light cotton clothing could be produced at less cost than hand retting (rotting) and hand separating hemp fibers to be handspun on spinning wheels and jennys.⁴

However, because of its strength, softness, warmth and long-lasting qualities, hemp continued to be the second most used natural fiber* until the 1930s.

* In case you're wondering, there is no THC or "high" in hemp fiber. That's right, you can't smoke your shirt! In fact, attempting to smoke hemp fabric—or any fabric, for that matter—could be fatal!

After the 1937 Marijuana Tax law, new DuPont "plastic fibers" under license of 1936 German I.G. Farben Corporation patents (with patent surrenders as part of Germany's reparation payments to America from World War I) replaced natural hempen fibers. (Some 30% of Hitler's I.G. Corps, e.g., Farben, were owned and financed by America's DuPont.) Dupont also introduced Nylon (invented in 1935) to the market when they patented it in 1938.

(Colby, Jerry, *DuPont Dynasties*, Lyle Stewart, 1984.)

Finally, it must be noted that approximately 50% of all chemicals used in American agriculture today are used in cotton growing. Hemp needs no chemicals and has few weed or insect enemies—except for the U.S. government and the DEA.

3. FIBER & PULP PAPER

From 75-90% of all paper in the world was made with cannabis hemp fiber until 1883: books, Bibles, maps, paper money, stocks and bonds, newspapers, etc., including the Gutenberg Bible (15th century); Pantagruel and the Herb Pantagruelion, Rabelais (16th century); King James Bible (17th century); Thomas Paine's pamphlets, "The Rights of Man," "Common Sense," "The Age of Reason" (18th century); the works of Fitz Hugh Ludlow, Mark Twain, Victor Hugo, Alexander Dumas, Lewis Carroll's "Alice in Wonderland" (19th century); and just about everything else was printed on hemp paper.

The first draft of the Declaration of Independence (June 28, 1776) was written on Dutch [hemp] paper, as was the second draft completed on July 2, 1776. This was the document actually agreed to on that day and announced and released on July 4, 1776. ...On July 19, 1776, Congress ordered the Declaration be copied and engrossed on parchment (a prepared animal skin) and this was the document actually signed by the delegates on August 2, 1776.

What we (the colonial Americans) and the rest of the world used to make all our paper from was the discarded sails and ropes sold by ship owners as scrap for recycling into paper.

The rest of our paper came from our worn-out clothes, sheets, diapers, curtains and rags* sold to scrap dealers made primarily from hemp and sometimes flax.

* Hence the term "rag paper."

Rag paper, containing hemp fiber, is the highest quality and longest lasting paper ever made. It can be torn when wet but returns to its full strength when dry. Rag paper is stable for centuries, barring extreme conditions. It will almost never wear out.

Our ancestors were too thrifty to just throw anything away, so, until the 1880s, any remaining scraps and clothes were mixed together and recycled into paper. Many U.S. government papers were written, by law, on hempen "rag paper" until the 1920s.⁶

It is generally believed by scholars that the early Chinese knowledge, or art, of hemp paper making (First Century A.D.—800 years before Islam discovered how, and 1,200 to 1,400 years before Europe) was one of the two chief reasons that Oriental knowledge and science were vastly superior to that of the West for 1,400 years. Thus, the art of long-lasting hemp papermaking allowed the Orientals' accumulated knowledge to be passed on, built upon, investi-

gated, refined, challenged and changed, for generation after generation (in other words, cumulative and comprehensive scholarship).

Hemp paper lasted 50 to 100 times longer than most preparations of papyrus, and was a hundred times easier and cheaper to make.

The other reason that Oriental knowledge and science sustained superiority to that of the West for 1,400 years was that the Roman Catholic Church forbade reading and writing for 95% of Europe's people; in addition, they burned, hunted down, or prohibited all foreign or domestic books—including their own Bible!—for over 1,200 years under the penalty and often-used punishment of death. Hence, many historians term this period "The Dark Ages." (476 A.D.—1000 AD, or even until the Renaissance). (See chapter 10 on Sociology.)

4. ROPE, TWINE, AND CORDAGE

Virtually every city and town (from time out of mind) in the world had an industry making hemp rope.⁶ Russia, however, was the world's largest producer and best-quality manufacturer, supplying 80% of the Western world's hemp from 1740 until 1940.

Thomas Paine outlined four essential natural resources for the the new nation in *Common Sense* (1776): "cordage, iron, timber and tar."

Chief among these was hemp for cordage. He wrote, "Hemp flourishes even to rankness, we do not want for cordage." Then he went on to list the other essentials necessary for war with the British navy: cannons, gunpowder, etc.

From 70-90% of all rope, twine, and cordage was made from hemp until 1937. It was then replaced mostly by petrochemical fibers (owned principally by DuPont under license from Germany's I.G. Corporation patents) and by Manila (Abaca) Hemp, with steel cables often intertwined for strength—brought in from our "new" far-Western Pacific Philippines possession, seized from Spain as reparations for the Spanish American War in 1898.



5. ART CANVAS

"Hemp is the perfect archival medium."⁷

The paintings of Rembrandt, Van Gogh, Gainsborough, etc., were primarily painted on hemp canvas, as were practically all canvas paintings.

A strong, lustrous fiber, hemp withstands heat, mildew, insects and is not damaged by light. Oil paintings on hemp canvas have stayed in fine condition for centuries.

6. PAINTS AND VARNISHES

For thousands of years, virtually all good paints and varnishes were made with hemp seed oil and/or linseed oil.

For instance, in 1935 alone, 116 million pounds (58,000 tons*) of hemp seed were used in America just for paint and varnish. The hemp drying oil business went principally to DuPont petro-chemicals.*

*National Institute of Oilseed Products congressional testimony against the 1937 Marijuana Transfer Tax Law. * As a comparison, consider that the U.S. Drug Enforcement Agency (DEA), along with all America's state and local police agencies, claim to have seized for all of 1988, 651.5 tons of American-grown marijuana—seed, plant, root, dirt clump and all.

Congress and the Treasury Department were assured through secret testimony given by DuPont in 1935-37 directly to Herman Oliphant, Chief Counsel for the Treasury Dept., that hemp seed oil could be replaced with synthetic petro-chemical oils made principally by DuPont.

Oliphant was solely responsible for drafting the Marijuana Tax Act that was submitted to Congress.* (See complete story in chapter 4, "The Last Days of Legal Cannabis.")

(National Narcotics Intelligence Consumers' Committee, NNICC Report, 1988 DEA office release, El Paso, TX, April, 1989.)

7. LIGHTING OIL

Until about 1800, hemp seed oil was the most consumed lighting oil in America and the world. From then until the 1870s, it was the second most consumed lighting oil, exceeded only by whale oil.

Hemp seed oil lit the lamps of the legendary Aladdin, Abraham the prophet and in real life, Abraham Lincoln. It was the brightest lamp oil.

Hemp seed oil for lamps was replaced by petroleum kerosene, etc., after the 1859 Pennsylvania oil discovery and "Rockefeller's" 1870-on national petroleum stewardship. (See chapter 9 on "Economics.")

In fact, the celebrated botanist Luther Burbank stated, "The seed of [cannabis] is prized in other countries for its oil, and its neglect here illustrates the same wasteful use of our agricultural resources."

(Burbank, Luther, *How Plants Are Trained To Work For Man, Useful Plants*, P. F. Collier & Son Co., NY, Vol. 6, pg. 48.)

8. BIOMASS ENERGY

In the early 1900s, Henry Ford and other futuristic organic, engineering geniuses, (as their intellectual scientific heirs still do today) recognized an important

point—that up to 90% of all fossil fuel used in the world today (coal, oil, natural gas, etc.— should long ago have been replaced with biomass such as: corn stalks, cannabis, waste paper and the like.

Biomass can be converted to methane, methanol or gasoline at a fraction of the current cost of oil, coal, or nuclear energy—especially when environmental costs are factored in—and its mandated use would end acid rain, end sulfur-based smog and reverse the green house effect on our planet—right now!*

* Government and oil and coal companies, etc., will insist that burning biomass fuel is no better than using up our fossil fuel reserves, as far as pollution goes; but this is patently untrue.

Why? Because, unlike fossil fuel, biomass comes from living (not extinct) plants that continue to remove carbon dioxide pollution from our atmosphere as they grow, through photosynthesis. Furthermore, biomass fuels do not contain sulfur.

This can be accomplished if hemp is grown for biomass and then converted through pyrolysis (charcoalizing) or biochemical

composting into fuels to replace fossil fuel energy products.*

* Remarkably, when considered on a planet-wide, climate-wide, soil-wide basis, cannabis is at least four and could be many more times

WHEN HEMP SAVED GEORGE BUSH'S LIFE

One more example of the importance of hemp: Five years after cannabis hemp was outlawed in 1937, it was promptly re-introduced for the World War II effort in 1942.

So, when the young pilot George Bush bailed out of his burning airplane after a battle over the Pacific, little did he know:

- Parts of his aircraft engine were lubricated with cannabis hemp seed oil;
- 100% of his life-saving parachute webbing was made from U.S. grown cannabis hemp;
- Virtually all the rigging and ropes of the ship that pulled him in were made of cannabis hemp;
- The firehoses on the ship (as were those in the schools he had attended) were woven from cannabis hemp; and,
- Finally, as young George Bush stood safely on the deck, his shoes' durable stitching was of cannabis hemp, as it is in all good leather and military shoes to this day.

Yet Bush has spent a good deal of his career eradicating the cannabis plant and enforcing laws to make certain that no one will learn this information—possibly including himself....

(USDA film, *Hemp for Victory*, 1942; U. of KY Agricultural Ext. Service Leaflet 25, March, 1943; Galbraith, Gatewood, *Kentucky Marijuana Feasibility Study*, 1977.)

richer in sustainable, renewable biomass/cellulose potential than its nearest rivals on the planet—cornstalks, sugarcane, kenaf, trees, etc. (Solar Gas, 1980; Omni, 1983; Cornell University; Science Digest, 1983; etc.). Also see chapter 9 on Economics.

One product of pyrolysis, methanol, is today used by most race cars and was used by American farmers and auto drivers routinely with petroleum/methanol options starting in the 1920s, through the 1930s, and even into the mid-1940s to run tens of thousands of auto, farm and military vehicles until the end of World War II.

Methanol can even be converted to a high-octane lead-free gasoline using a catalytic process developed by Georgia Tech University in conjunction with Mobil Oil Corporation.

9. MEDICINE

From 1842 and through the 1890s, extremely strong marijuana (then known as cannabis extractums) and hashish extracts, tinctures and elixirs were routinely the second and third most-used medicines in America for humans (from birth, through childhood, to old age) and in veterinary medicine until the 1920s and longer. (See chapter 6 on "Medicine," and chapter 13 on the "19th Century.")

As stated earlier, for at least 3,000 years, prior to 1842, widely varying marijuana extracts (buds, leaves, roots, etc.) were the most commonly used real medicines in the world for the majority of mankind's illnesses.

However, in Western Europe, the Roman Catholic Church forbade use of cannabis or any medical treatment, except for alcohol or blood letting, for 1200-plus years. (See chapter 10 on "Sociology.")

The U.S. Pharmacopoeia indicated cannabis should be used for treating such ailments as: fatigue, fits of coughing, rheumatism, asthma, delirium tremens, migraine headaches and the cramps and depressions associated with menstruation. (Professor William EmBoden, Professor of Narcotic Botany, California State University, Northridge.)

Queen Victoria used cannabis resins for her menstrual cramps and PMS, and her reign (1837-1901) paralleled the enormous growth of the use of Indian cannabis medicine in the English-speaking world.

In this century, cannabis research has demonstrated therapeutic value—and complete safety—in the

treatment of many health problems including asthma, glaucoma, nausea, tumors, epilepsy, infection, stress, migraines, anorexia, depression, rheumatism, arthritis and possibly herpes. (See chapter 7, "Therapeutic Uses of Cannabis.")

10. FOOD OILS AND PROTEIN

Hemp seed was regularly used in porridge, soups, and gruels by virtually all the people of the world up until this century. Monks were required to eat hemp seed dishes three times a day, to weave their clothes of it and to print their Bibles on paper made with its fiber.

(See Rubin, Dr. Vera, "Research Institute for the Study Of Man," Eastern Orthodox Church; Cohen & Stillman, *Therapeutic Potential of Marijuana*, Plenum Press, 1976; Abel, Ernest, *Marijuana, The First 12,000 Years*, Plenum Press, NY, 1980; Encyclopaedia Britannica.)

Hemp seed can be pressed for its highly nutritious vegetable oil, which contains the highest amount of essential fatty acids in the plant kingdom. These *essential* oils are responsible for our immune responses and clear the arteries of cholesterol and plaque.

The byproduct of pressing the oil from the seed is the highest quality protein seed cake. It can be sprouted (malted) or ground and baked into cakes, breads and casseroles. Marijuana *seed* protein is one of mankind's finest, most complete and available-to-the-body vegetable proteins. Hemp seed is the most complete single food source for human nutrition. (See discussion of edistins and essential fatty acids, Chapter 8.)

Hemp seed was—until the 1937 prohibition law—the world's number-one bird seed, for both wild and domestic birds. It was their favorite* of any seed food on the planet; four million pounds of hemp seed for song-birds were sold at retail in the U.S. in 1937. Birds will pick hemp seeds out and eat them first from a pile of mixed seed. Birds in the wild live longer and breed more with hemp seed in their diet, using the oil for their feathers and their overall health. (More in chapter 8, "Hemp as a Basic World Food.")

* Congressional testimony, 1937: "Song birds won't sing without it," the bird food companies told Congress. Result: sterilized cannabis seeds continue to be imported into the U.S. from Italy, China and other countries.

The hemp seed produces no observable high for humans or birds. Only the most minute traces of THC are in the seed.

(Frazier, Jack, *The Marijuana Farmers*, Solar Age Press, New Orleans, LA, 1972)

CANNABIS, U. S. P. (American Cannabis):
Fluid Extract No. 598.. (Alcohol 80%).. 5.00



11. BUILDING MATERIALS AND HOUSING

Because one acre of hemp produces as much cellulose fiber pulp as 4.1 acres of trees,* hemp is the perfect material to replace trees for pressed board, particle board and for concrete construction molds.

* Dewey & Merrill, *Bulletin #404*, U.S. Dept. of Ag., 1916.

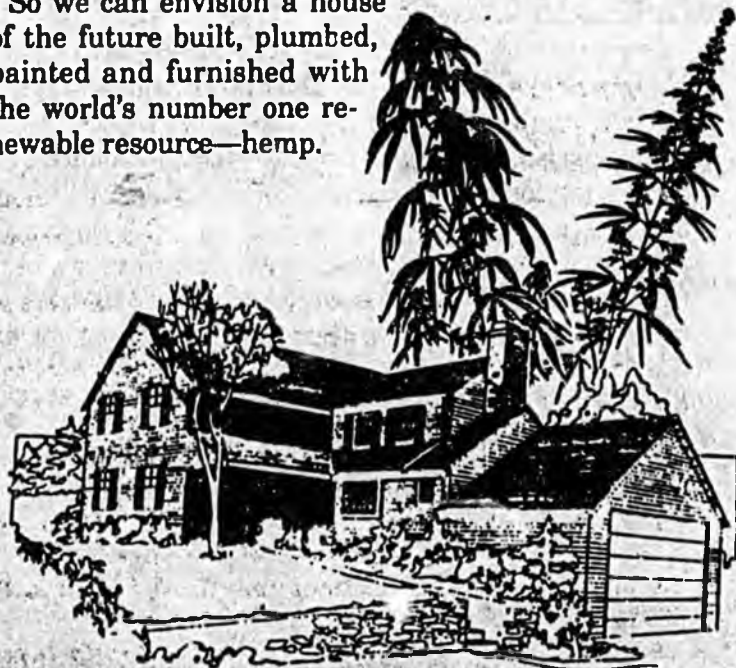
Practical, inexpensive fire-resistant construction material, with excellent thermal and sound-insulating qualities, is made by heating and compressing plant fibers to create strong construction paneling, replacing dry wall and plywood. C&S Specialty Builder's Supply near Eugene, OR, in conjunction with Washington State University (1991-1993), has demonstrated the superior strength, flexibility, and economy of hemp composite building materials compared to wood fiber, even as beams.

Isochanvre, a rediscovered French building material made from hemp hurds mixed with lime, actually petrifies into a mineral state and lasts for many centuries. Archeologists have found a bridge in the south of France, from the Merovingian period (500-751 A.D.), built with this process. (See Chènevotte Habitat of René, France in Appendix I.)

Hemp has been used throughout history for carpet backing. Hemp fiber has potential in the manufacture of strong, rot resistant carpeting—eliminating the poisonous fumes of burning synthetic materials in a house or commercial fire, along with allergic reactions associated with new synthetic carpeting.

Plastic plumbing pipe (PVC pipes) can be manufactured using renewable hemp cellulose as the chemical feedstocks, replacing non-renewable petroleum-based chemical feedstocks.

So we can envision a house of the future built, plumbed, painted and furnished with the world's number one renewable resource—hemp.



12. SMOKING, LEISURE & CREATIVITY

The American Declaration of Independence recognizes the "inalienable rights" of "life, liberty and the pursuit of happiness." Subsequent court decisions have inferred the rights to privacy and choice from this, the U.S. Constitution and its Amendments.

Many artists and writers have used cannabis for creative stimulation—from the writers of the world's religious masterpieces to our most irreverent satirists. These include Lewis Carroll and his hookah smoking caterpillar in *Alice in Wonderland*, plus Victor Hugo and Alexander Dumas; such jazz greats as Louis Armstrong, Cab Calloway, Duke Ellington and Gene Krupa; and the pattern continues right up to modern day artists and musicians such as the Beatles, the Rolling Stones, the Eagles, the Doobie Brothers, Jefferson Airplane, Willie Nelson, Buddy Rich, Country Joe & the Fish, Joe Walsh, David Carradine, David Bowie, Iggy Pop, Lola Falana, Hunter Thompson, Peter Tosh and the Grateful Dead, Cypress Hill, Sinead O'Connor, Black Crowes, etc.

Of course, smoking marijuana only enhances creativity for some and not for others.

But throughout history, various prohibition and "temperance" groups have attempted and occasionally succeeded in banning the preferred relaxational substances of others, like alcohol, tobacco or cannabis.

Abraham Lincoln responded to this kind of repressive mentality in December, 1840, when he said:

"Prohibition...goes beyond the bounds of reason in that it attempts to control a man's appetite by legislation and makes a crime out of things that are not crimes.... A prohibition law strikes a blow at the very principles upon which our government was founded."

13. ECONOMIC STABILITY, PROFIT & FREE TRADE

We believe that in a competitive market with all facts known, people will rush to buy long-lasting, biodegradable Pot Tops or Mary Jeans.

It's time we put capitalism to the test and let the unrestricted market of supply and demand as well as "Green" ecological consciousness decide the future of the planet.

A cotton shirt in 1776 cost \$100 to \$200; while a hemp shirt cost \$.50 to \$1. By the 1830s, cooler, lighter cotton shirts were on par in price with the warmer, heavier, hempen shirts, providing a competitive choice.

People were able to choose their garments based

WHY NOT USE HEMP TO REVERSE THE GREENHOUSE EFFECT & SAVE THE WORLD?

In early 1989, Jack Herer and Maria Farrow put this question to Steve Rawlings, the highest ranking officer in the U.S. Department of Agriculture who was in charge of reversing the Greenhouse Effect, at the USDA world research facility in Beltsville, MD.

First, we introduced ourselves and told him we were writing for Green political party newspapers. Then we asked Rawlings, "If you could have any choice, what would be the ideal way to stop or reverse the Greenhouse Effect?"

He said, "Stop cutting down trees and stop using fossil fuels."

"Well, why don't we?"

"There's no viable substitute for wood for paper, or for fossil fuels."

"Why don't we use an annual plant for paper and for biomass to make fuel?"

"Well, that would be ideal," he agreed. "Unfortunately there is nothing you can use that could produce enough materials."

"Well, what would you say if there *was* such a plant that could substitute for all wood pulp paper, all fossil fuels, would make most of our fibers naturally, make everything from dynamite to plastic, grows in all 50 states and that one acre of it would replace 4.1 acres of trees, and that if you used about 6% of the U.S. land to raise it as an energy crop—even on our marginal lands, this plant would produce all 75 quadrillion billion BTUs needed to run America each year? Would that help save the planet?"

"That would be ideal. But there is no such plant."

"We think there is."

"Yeah? What is it?"

"Hemp."

"Hemp!" he mused for a moment. "I never would have thought of it.... You know, I think you're right. Hemp could be the plant that could do it. Wow! That's a great idea!"

We were excited as we outlined this information and delineated the potential of hemp for paper, fiber, fuel, food, paint, etc., and how it could be applied to balance the world's ecosystems and restore the atmosphere's oxygen balance with almost no disruption of the standard of living to which most Americans have become accustomed.

In essence, Rawlings agreed that our information was probably correct and could very well work.

He said, "It's a wonderful idea, and I think it might work. But, of course, you can't use it."

"You're kidding?" We responded. "Why not?"

"Well, Mr. Herer, did you know that hemp is also marijuana?"

"Yes, of course I know, I've been writing about it for about 40 hours a week for the past 17 years."

"Well, you know marijuana's illegal, don't you? You can't use it."

"Not even to save the world?"

"No. It's illegal," he sternly informed me. "You cannot use something illegal."

"Not even to save the world?" we asked, stunned.

"No, not even to save the world. It's illegal. You can't use it. Period."

"Don't get me wrong. It's a great idea," he went on, "But they'll never let you do it."

"Why don't you go ahead and tell the Secretary of Agriculture that a crazy man from California gave you documentation that showed that hemp might be able to save the planet and that your first reaction is that he might be right and it needs some serious study. What would he say?"

"Well, I don't think I'd be here very long after I did that. After all, I'm an officer of the government."

"Well, why not call up the information on your computer at your own USDA library. That's where we got the information in the first place."

He said, "I can't sign out that information."

"Well, why not? We did."

"Mr. Herer, you're a citizen. You can sign out for anything you want. But I am an officer of the Department of Agriculture. Someone's going to want to know why I want all this information. And then I'll be gone."

Finally, we agreed to send him all the information we got from the USDA library, if he would just look at it.

He said he would, but when we called back a month later, he said that he still had not opened the box that we sent him and that he would be sending it back to us unopened because he did not want to be responsible for the information, now that the Bush administration was replacing him with their own man.

We asked him if he would pass on the information to his successor, and he replied, "Absolutely not."

In May, 1989, we had virtually the same conversation and result with his cohort, Dr. Gary Evans of the U.S. Department of Agriculture and Science, the man in charge of stopping the global warming trend.

In the end, he said, "If you really want to save the planet with hemp, then you (hemp/marijuana activists) would find a way to grow it without the narcotic (sic.) top—and then you can use it."

This is the kind of frightened (and frightening) irresponsibility we're up against in our government.

THE BATTLE OF BULLETIN 404

OR HOW WORLD WAR I COST US HEMP & THE FORESTS

In 1917, the world was battling World War I. In this country, industrialists, just beset with the minimum wage and graduated income tax, were sent into a tailspin. Progressive ideals were lost as the United States took its place on the world stage in the struggle for commercial supremacy.

It is against this backdrop that the first 20th-century hemp drama was played.

The Players

The story begins soon after the release of Bulletin 404. Near San Diego, California, a 50-year-old German immigrant named **George Schlichten** had been working on a simple yet brilliant invention. Schlichten had spent 18 years and \$400,000 on the decorticator, a machine that could strip the fiber from nearly any plant, leaving the pulp behind. To build it, he had developed an encyclopedic knowledge of fibers and paper making. His desire was to stop the felling of forests for paper, which he believed to be a crime. His native Germany was well advanced in forestry and Schlichten knew that destroying forests meant destroying needed watersheds.

Henry Timken, a wealthy industrialist and inventor of the roller bearing, got wind of Schlichten's invention and went to meet the inventor in February of 1917. Timken saw the decorticator as a revolutionary discovery that would improve conditions for mankind. Timken offered Schlichten to grow 100 acres of hemp on his ranch in the fertile farmlands of Imperial Valley, California, just east of San Diego, so that Schlichten could test his invention.

Shortly thereafter, Timken met with the newspaper giant **E. W. Scripps**, and his long-time associate **Milton McRae**, at Miramar, Scripps' home in San Diego. Scripps, then 63, had accumulated the largest chain of newspapers in the country. Timken hoped to interest Scripps in making newsprint from hemp hurds.

Turn-of-the-century newspaper barons needed huge amounts of paper to deliver their swelling circulations. Nearly 30 percent of the four million tons of paper manufactured in 1909 was newsprint; by 1914 the circulation of daily newspapers had increased by 17% over 1909 figures to over 28 million copies.¹

By 1917, the price of newsprint was rapidly rising, and McRae, who had been investigating owning a paper mill since 1904,² was concerned.

Sowing the Seeds

In May, after further meetings with Timken, Scripps asked McRae to investigate the possibility of using the decorticator in the manufacture of newsprint.



E. W. Scripps

McRae quickly became excited about the plan. He called the decorticator "a great invention. . . [which] will not only render great service to this country, but it will be very profitable financially. . . [it] may revolutionize existing conditions." On August 3rd, as harvest time neared, a meeting was arranged between Schlichten, McRae, and newspaper manager Ed Chase.

Without Schlichten's knowledge, McRae had his secretary record the three-hour meeting stenographically. The resulting document, the only record of Schlichten's voluminous knowledge found to date, is reprinted fully in Appendix I.

Schlichten had thoroughly studied many kinds of plants for paper, among them corn, cotton, yucca, and *Espina baccata*. Hemp seemed to be his favorite:

"The hemp hurd is a practical success and will make paper of a higher grade than ordinary news stock," he stated.



Milton McRae

His hemp paper was even better than that produced for USDA Bulletin 404, he claimed, because the decorticator eliminated the retting process, leaving behind short fibers and a natural glue that held the paper together.

At 1917 levels of hemp production Schlichten anticipated making 50,000 tons of paper yearly at a retail price of \$25 a ton. This was less than 50% of the price of newsprint at the time! And every acre of hemp turned to paper, Schlichten added, would preserve five acres of forest.

McRae was very impressed by Schlichten. The man who dined with presidents and captains of industry wrote to Timken, "I was to say without equivocation that Mr. Schlichten impressed me as being a man of great intellectuality and ability; and so far as I can see, he has created and constructed a wonderful machine." He assigned Chase to spend as much time as he could with Schlichten and prepare a report.

Harvest Time

By August, after only three months of growth, Timken's hemp crop had grown to its full height—14 feet!—and he was highly optimistic about its prospects. He hoped to travel to California to watch the crop being decorticated, seeing himself as a benefactor to mankind who would enable people to work shorter hours and have more time for "spiritual development."

Scripps, on the other hand, was not in an optimistic frame of mind. He had lost faith in a government that he believed was leading the country to financial ruin over the war, and that would take 40% of his profits in income tax. In an August 14 letter to his sister, Ellen, he said:

"When Mr. McRae was talking to me about the increase in the price of white paper that was pending, I told him I was just fool enough not to be worried about a thing of that kind." The price of paper was expected to rise 50%, costing Scripps his entire year's profit of \$1,125,000! Rather than develop a new technology, he took the easy way out: The Penny Press Lord simply planned to raise the price of his papers from one cent to two cents.

The Demise

On August 28, Ed Chase sent his full report to Scripps and McRae. The younger man also was taken with the process: "I have seen a wonderful, yet simple, invention. I believe it will revolutionize many of the processes of feeding, clothing, and supplying other wants of mankind."

Chase witnessed the decorticator produce seven tons of hemp hurds in two days. At full production, Schlichten anticipated each machine would produce five tons per day. Chase figured hemp could easily supply Scripps' west coast papers, with leftover pulp for side businesses. He estimated the newsprint would cost between \$25 and \$35 per ton, and proposed asking an east-coast paper mill to experiment for them.

McRae, however, seems to have gotten the message that his boss was no longer very interested in making paper from hemp. His response to Chase's report is cautious: "Much will be determined as to the practicability by the cost of transportation, manufacture, etc., etc., which

we cannot ascertain without due investigation." Perhaps when his ideals met with the hard work of developing them, the semi-retired McRae backed off.

By September, Timken's crop was producing one ton of fibre and four tons of hurds per acre, and he was trying to interest Scripps in opening a paper mill in San Diego. McRae and Chase travelled to Cleveland and spent two hours convincing Timken that, while hemp hurds were usable for other types of paper, they could not be made into newsprint cheaply enough. Perhaps the eastern mill at which they experimented wasn't encouraging—after all, they were set up to make wood pulp paper.

By this time Timken, too, was hurt by the wartime economy. He expected to pay 54% income tax and was trying to borrow \$2 million at 10% interest to retool for war machines. The man who a few weeks earlier could not wait to get to California no longer expected to go West at all that winter. He told McRae, "I think I will be too damn busy in this section of the country looking after business."

The decorticator resurfaced in the thirties, when it was touted as the machine that would make hemp a "Billion Dollar Crop" in articles in *Mechanical Engineering* and *Popular Mechanics*.^{*} (Until this edition of *The Emperor*, the decorticator was believed to be a new discovery at that time.) Once again, the burgeoning hemp industry was haulted, this time by the Marijuana Tax Act of 1937.

— Ellen Komp

A full account of the story, with reproductions of the letters that reveal it,³ is in the Appendix.

^{*}See pp. 16-20.

Footnotes:

1. World Almanac, 1914, p. 225; 1917
2. *Forty Years in Newspaperdom*, Milton McRae, 1924 Bretano's N.
3. Scripps Archives, University of Ohio, Athens, OH; and Ellen Browning Scripps Archives, Denison Library, Claremont College, Claremont, CA

San Diego, Calif.,
August 28, 1917

Mr. E. W. Scripps
Mr. Milton A. McRae
Gentlemen:

I have spent many hours with G. W. Schlichten, the inventor of the decortivating machine. Friday and Saturday last I spent with him at the Timken Ranch in Imperial Valley, while a portion of his first crop of hemp was being run through his machine. I have seen a wonderful, yet simple, invention. I believe it will revolutionize many of the processes of feeding, clothing and supplying other wants of mankind.

Heretofore, before the fiber could be extracted from hemp, the hemp stalks had to lie on the ground for months to be rotted. The fiber is then extracted by hand or by certain crude machines. To make a long story short, the fiber from rotted hemp is of a poorer quality as to strength and so expensive to set into proper shape, that Kentucky hemp is quoted in the *Fiber Trade Journals* at 150 per lb. (\$320.00 per ton). The fiber has been extracted from hemp, the residue consists chiefly of "hurds." Hemp hurds are the woody, inner portion of the hemp stalk broken into pieces, turn out only small amounts of fiber and small and scattered heaps of hurds. The old machines, handling rotted hemp, turn out only small amounts of fiber and small and scattered heaps of hurds. Only about seven thousand tons of these hurds have been available in the United

Chapter Three:

FEBRUARY 1938: POPULAR MECHANICS MAGAZINE:

"NEW BILLION DOLLAR CROP"

FEBRUARY 1938: MECHANICAL ENGINEERING MAGAZINE:

"THE MOST PROFITABLE & LESIREABLE CROP THAT CAN BE GROWN"

Modern technology was about to be applied to hemp production, making it the number one agricultural resource in America. Two of the most respected and influential journals in the nation, Popular Mechanics and Mechanical Engineering, forecast a bright future for America's hemp. Thousands of new products creating millions of new jobs heralded the end of the Great Depression. Instead hemp was persecuted, outlawed and forgotten at the bidding of W. R. Hearst who branded hemp the "Mexican killer weed, marijuana."

As early as 1901 and continuing to 1937, the U.S. Department of Agriculture repeatedly predicted that, once machinery capable of harvesting, stripping and separating the fiber from the pulp was invented or engineered, hemp would again be America's Number One farm crop. The introduction of G. W. Schlichten's decorticator in 1917 (See facing pages and Appendix I) nearly fulfilled this prophesy.

The prediction was reaffirmed in the popular press when Popular Mechanics published its February, 1938 article "Billion-Dollar Crop." The first reproduction of this article in over 50 years was in the original edition of this book. The article is reproduced here exactly as it was printed in 1938.

Because of the printing deadline, this article was prepared in the Spring of 1937, when cannabis hemp for fiber, paper, dynamite and oil was still legal to grow and was, in fact, an incredibly fast growing industry.

Also reprinted on these pages is an excerpt from the Mechanical Engineering article about hemp, published the same month. It originated as a paper presented a year earlier at the Feb. 26, 1937 Agricultural Processing Meeting of the American Society of Mechanical Engineers, New Brunswick, New Jersey.

Reports from the USDA during the 1930s and Congressional testimony in 1937 showed that cultivated hemp acreage had been doubling in size in America almost every year from the time it hit its bottom acreage, 1930—when 1,000 acres were planted in the U.S.—to 1937—when 14,000 acres were cul-

tivated—with plans to continue to double that acreage annually in the foreseeable future.

As you will see in these articles, the newly mechanized cannabis hemp industry was in its infancy, but well on its way to again becoming America's largest agricultural crop. And, in light of subsequent developments (e.g., biomass energy technology, building

materials, etc.), we now know that hemp is potentially the world's largest industry and most important ecological tool.

The Popular Mechanics article was the very first time in American history that the term "billion-dollar"* was ever applied to any U.S. agricultural crop.

* Equivalent to \$20-\$40 billion now.

Experts today conservatively estimate that, once fully restored in America, hemp industries will generate \$500 billion to a trillion dollars per year, and will save the planet and civilization from fossil fuels and their derivatives—and from deforestation!

If Anslinger, DuPont, Hearst and their paid-for (know it or not) politicians had not outlawed hemp—under the pretext of marijuana (see chapter 4, "Last Days of Legal Cannabis")—and suppressed hemp knowledge from our schools, researchers and even scientists; the glowing predictions in these articles would already have come true by now—and more benefits than anyone could then envision—as new technologies continue to develop.

As one colleague so aptly put it: "These articles were the last honest word spoken on hemp's behalf for over 40 years..."

KENTUCKY HEMP FIELDS

For a fascinating delineation of hemp's role during the period 1782-1900, read *The Reign of Law: A Tale of the Kentucky Hemp Fields*, James Lane Allen, published by McMillan & Co., 1900.*

* Pay special attention to pages 1 through 23 and the picture on page 25. These pages are entirely reproduced in our appendix.

NEW



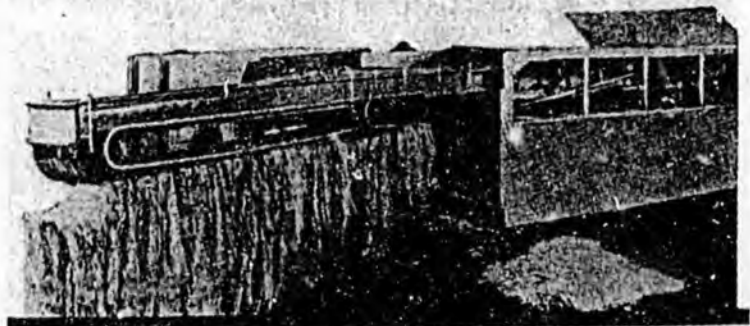
AMERICAN farmers are promised a new cash crop with an annual value of several hundred million dollars, all because a machine has been invented which solves a problem more than 6,000 years old. It is hemp, a crop that will not compete with other American products. Instead, it will displace imports of raw material and manufactured products produced by underpaid coolie and peasant labor and it will provide thousands of jobs for American workers throughout the land.

The machine which makes this possible is designed for removing the fiber-bearing cortex from the rest of the stalk, making hemp fiber available for use without a prohibitive amount of human labor.

Hemp is the standard fiber of the world. It has great tensile strength and durability. It is used to produce more than 5,000 textile products, ranging from rope to fine laces, and the woody "hurds" remaining

after the fiber has been removed contain more than seventy-seven per cent cellulose, and can be used to produce more than 25,000 products, ranging from dynamite to Cellophane.

Machines now in service in Texas, Illinois, Minnesota and other states are producing fiber at a manufacturing cost of half a cent a pound, and are finding a profitable market for the rest of the stalk. Machine operators are making a good profit in com-



Top, sailing the seas with sails and rope made of hemp. Bottom, hemp fiber being delivered from machine ready for baling. Pile of pulverized hurds beside machine is seventy-seven per cent cellulose

February, 1938

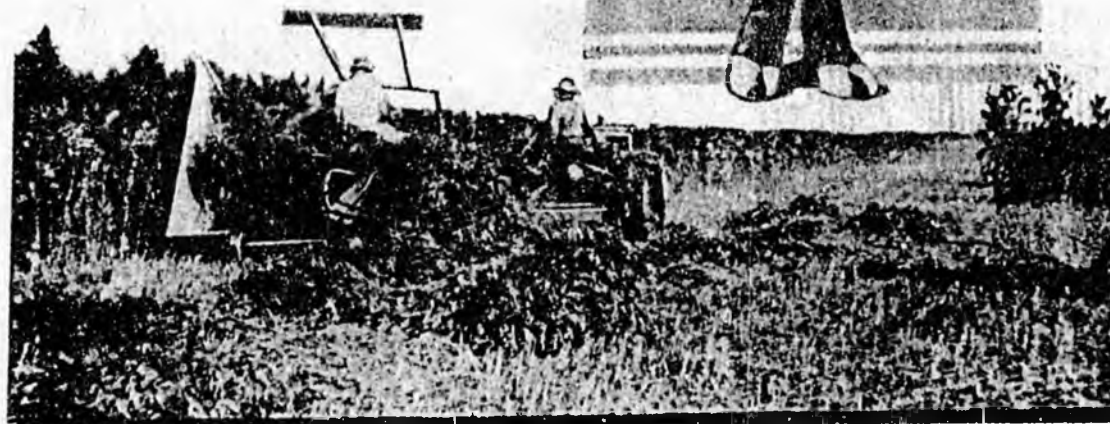
BILLION-DOLLAR CROP

petition with coolic-produced foreign fiber while paying farmers fifteen dollars a ton for hemp as it comes from the field.

From the farmers' point of view, hemp is an easy crop to grow and will yield from three to six tons per acre on any land that will grow corn, wheat, or oats. It has a short growing season, so that it can be planted after other crops are in. It can be grown in any state of the union. The long roots penetrate and break the soil to leave it in perfect condition for the next year's crop. The dense shock of leaves, eight to twelve feet above the ground, chokes out weeds. Two successive crops are enough to reclaim land that has been abandoned because of Canadian thistles or quack grass.

Under old methods, hemp

(Continued to page 144A)



Top, modern version of linen duster made from hemp. Bottom, harvesting hemp with a grain binder. Hemp grown luxuriously in Texas

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New Billion-Dollar Crop

(Continued from page 239)

was cut and allowed to lie in the fields for weeks until it "retted" enough so the fibers could be pulled off by hand. Retting is simply rotting as a result of dew, rain and bacterial action. Machines were developed to separate the fibers mechanically after retting was complete, but the cost was high, the loss of fiber great, and the quality of fiber comparatively low. With the new machine, known as a decorticator, hemp is cut with a slightly modified grain binder. It is delivered to the machine where an automatic chain conveyor feeds it to the breaking arms at the rate of two or three tons per hour. The hurds are broken into fine pieces which drop into the hopper, from where they are delivered by blower to a baler or to truck or freight car for loose shipment. The fiber comes from the other end of the machine, ready for baling.

From this point on almost anything can happen. The raw fiber can be used to produce strong twine or rope, woven into burlap, used for carpet warp or linoleum backing or it may be bleached and refined, with resinous by-products of high commercial value. It can, in fact, be used to replace the foreign fibers which now flood our markets.

Thousands of tons of hemp hurds are used every year by one large powder company for the manufacture of dynamite and TNT. A large paper company, which has been paying more than a million dollars a year in duties on foreign-made cigarette papers, now is manufacturing these papers from American hemp grown in Minnesota. A new factory in Illinois is producing fine bond papers from hemp. The natural materials in hemp make it an economical source of pulp for any grade of paper manufactured, and the high percentage of alpha cellulose promises an unlimited supply of raw material for the thousands of cellulose products our chemists have developed.

It is generally believed that all linen is produced from flax. Actually, the majority comes from hemp—authorities estimate that more than half of our imported linen fabrics are manufactured from hemp fiber. Another misconception is that burlap is made from hemp. Actually, its source is usually jute, and practically all of the burlap we use is woven by laborers in India

who receive only four cents a day. Binder twine is usually made from sisal which comes from Yucatan and East Africa.

All of these products, now imported, can be produced from home-grown hemp. Fish nets, bow strings, canvas, strong rope, overalls, damask tablecloths, fine linen garments, towels, bed linen and thousands of other everyday items can be grown on American farms. Our imports of foreign fabrics and fibers average about \$200,000,000 per year; in raw fibers alone we imported over \$50,000,000 in the first six months of 1937. All of this income can be made available for Americans.

The paper industry offers even greater possibilities. As an industry it amounts to over \$1,000,000,000 a year, and of that eighty per cent is imported. But hemp will produce every grade of paper, and government figures estimate that 10,000 acres devoted to hemp will produce as much paper as 40,000 acres of average pulp land.

One obstacle in the onward march of hemp is the reluctance of farmers to try new crops. The problem is complicated by the need for proper equipment a reasonable distance from the farm. The machine cannot be operated profitably unless there is enough acreage within driving range and farmers cannot find a profitable market unless there is machinery to handle the crop. Another obstacle is that the blossom of the female hemp plant contains marijuana, a narcotic, and it is impossible to grow hemp without producing the blossom. Federal regulations now being drawn up require registration of hemp growers, and tentative proposals for preventing narcotic production are rather stringent.

However, the connection of hemp as a crop and marijuana seems to be exaggerated. The drug is usually produced from wild hemp or locoweed which can be found on vacant lots and along railroad tracks in every state. If federal regulations can be drawn to protect the public without preventing the legitimate culture of hemp, this new crop can add immeasurably to American agriculture and industry.

☐ Popular Mechanics Magazine can furnish the name and address of the maker of, or dealer in, any article described in its pages. If you wish this information, write to the Bureau of Information, inclosing a stamped, self-addressed envelope.

MECHANICAL ENGINEERING

February 26, 1937

"Flax and Hemp: From the Seed to the Loom" was published in the February 1938 issue of Mechanical Engineering magazine. It was originally presented at the Agricultural Processing Meeting of the American Society of Mechanical Engineers in New Brunswick, NJ of February 26, 1937 by the Process Industries Division.

FLAX AND HEMP: FROM THE SEED TO THE LOOM

by George A. Lower

This country imports practically all of its fibers except cotton. The Whitney gin, combined with improved spinning methods, enabled this country to produce cotton goods so far below the cost of linen that linen manufacture practically ceased in the United States. We cannot produce our fibers at less cost than can other farmers of the world. Aside from the higher cost of labor, we do not get as large production. For instance, Yugoslavia, which has the greatest fiber production per acre in Europe, recently had a yield of 883 lbs. Comparable figures for other countries are Argentina, 749 lbs.; Egypt 616 lbs.; and India, 393 lbs.; while the average yield in this country is 383 lbs.

To meet world competition profitably, we must improve our methods all the way from the field to the loom.

Flax is still pulled up by the roots, retted in a pond, dried in the sun, broken until the fibers separate from the wood, then spun, and finally bleached with lye from wood ashes, potash from burned seaweed, or lime. Improvements in tilling, planting, and harvesting mechanisms have materially helped the large farmers and, to a certain degree, the smaller ones, but the processes from the crop to the yarn are crude, wasteful, and injurious. Hemp, the strongest of the vegetable fibers, gives the greatest production per acre and requires the least attention. It not only requires no weeding, but also kills off all the weeds and leaves the soil in splendid condition for the following crop. This, irrespective of its own monetary value, makes it a desirable crop to grow.

In climate and cultivation, its requisites are similar to flax and, like flax, should be harvested before it is too ripe. The best time is when the lower leaves on the stalk wither and the flowers shed their pollen.

Like flax, the fibers run out where leaf stems are on the stalks and are made up of laminated fibers that are held to-

THE MOST PROFITABLE AND DESIREABLE CROP THAT CAN BE GROWN

gether by pectose gums. When chemically treated like flax, hemp yields a beautiful fiber so closely resembling flax that a high-power microscope is needed to tell the difference — and only then because in hemp, some of the ends are split. Wetting a few strands of fiber and holding them suspended will definitely identify the two because, upon drying, flax will be found to turn to the right or



Early International Harvester mule drawn mechanical hemp reaper provided a tremendous savings in human labor. Mechanical harvesting was a major step in making American hemp a competitive natural fiber.

clockwise, and hemp to the left or counterclockwise.

Before [World War I], Russia produced 400,000 tons of hemp, all of which is still hand-broken and hand-scutched. They now produce half that quantity and use most of it themselves, as also does Italy from whom we had large importations.

In this country, hemp, when planted one bu. per acre, yields about three tons of dry straw per acre. From 15 to 20 percent of this is fiber, and 80 to 85 percent is woody material. The rapidly growing market for cellulose and wood flour for plastics gives good reason to believe that this hitherto wasted material may prove sufficiently profitable to pay for the crop, leaving the cost of the fiber sufficiently low to compete with 500,000 tons of hard fiber now imported annually.

Hemp being from two to three times as strong as any of the hard fibers, much less weight is required to give the same yardage. For instance, sisal binder twine of 40-lb. tensile strength runs 450 ft. to the lb. A better twine made

MECHANICAL ENGINEERING

February 26, 1937

of hemp would run 1280 ft. to the lb. Hemp is not subject to as many kinds of deterioration as are the tropical fibers, and none of them lasts as long in either fresh or salt water.

While the theory in the past has been that straw should be cut when the pollen starts to fly, some of the best fiber handled by Minnesota hemp people was heavy with seed. This point should be proved as soon as possible by planting a few acres and then harvesting the first quarter when the pollen is flying, the second and third a week or ten days apart, and the last when the seed is fully matured. These four lots should be kept separate and scutched and processed separately to detect any difference in the quality and quantity of the fiber and seed.

Several types of machine are available in this country for harvesting hemp. One of these was brought out several years ago by the International Harvester Company. Recently, growers of hemp in the Middle West have rebuilt regular grain binders for this work. This rebuilding is not particularly expensive and the machines are reported to give satisfactory service.

Degumming of hemp is analogous to the treatment given flax. The shards probably offer slightly more resistance to digestion. On the other hand, they break down readily upon completion of the digestion process. And excellent fiber can, therefore, be obtained from hemp also. Hemp, when treated by a known chemical process, can be spun on cotton, wool, and worsted machinery, and has as much absorbance and wearing quality as linen.

Several types of machines for scutching the hemp stalks are also on the market. Scutch mills formerly operating in Illinois and Wisconsin used the system that consisted of a set of eight pairs of fluted rollers, through which the dried straw was passed to break up the woody portion. From there, the fiber with adhering shards -- or hurds, as they are called -- was transferred by an operator to an endless-chain conveyor. This carries the fiber past two revolving single drums in tandem, all having beating blades on their periphery, which beat off most of the hurds as well as the fibers that do not run the full length of the stalks. The proportion of line fiber to tow is 50 percent each. Tow or

short tangled fiber then goes to a vibrating clear-shakes out some of the hurds. In Minnesota and another type has been tried out. This machine consists of a feeding table upon which the stalks are placed horizontally. Conveyor chains carry the stalks along until they are grasped by a clamping chain that grips them and carries them through half of a scutching machine.



International hemp harvester cut the hemp and laid it out in thin layered rows to begin the natural dew retting process near Mason City, Iowa.

A pair of intermediate scutching machines of the lawnmower-type are placed at a 45-degree angle to the feeding table. The first machine breaks the hemp over the sharp edge of a steel plate, the object being to break the woody portion of the straw and whip the hurds from the fiber. On the other side and slightly beyond the first machine is another set, which is placed at 90-degrees from the first pair and whips out the hurds.

The first clamping chain transfers the stalks to another machine which scutches the fiber that was under the clamp at the beginning. Unfortunately, this type of scutcher makes even more tow than the so-called Wisconsin type. This tow is difficult to separate because the hurds are broken into long slender pieces which tenaciously adhere to the fiber.

Another type passes the stalks through a series of geared fluted rollers. This breaks up the woody portion of the hurds about 3/4 inch long, and the fiber then passes through a series of reciprocating slotted plates worked between stationary slotted plates.

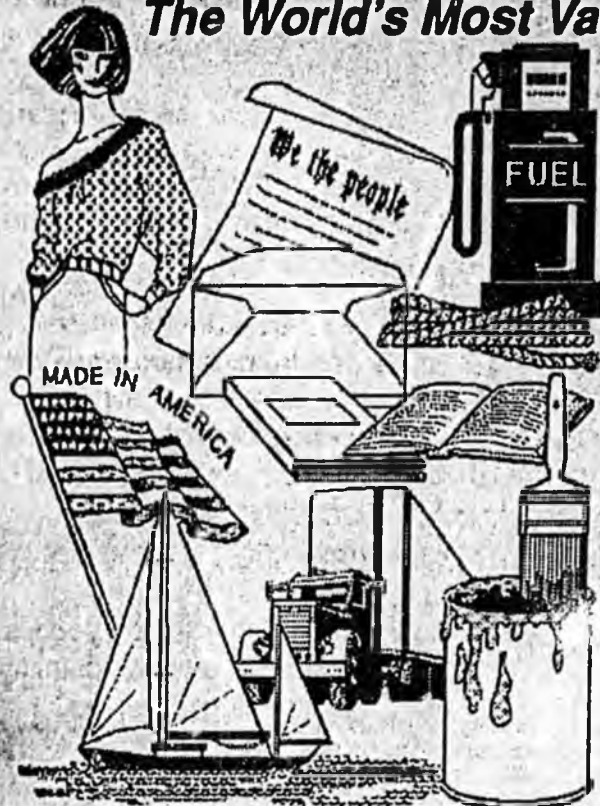
Adhering hurds are removed from the fiber which then continues on a conveyor to the baling press. Because no rubbing of the fiber against the grain occurs, this type of scutcher makes only line fiber. This is then processed by the same methods as those for flax.

Paint and lacquer manufacturers are interested in hempseed oil which is a good drying agent. When machinery has been developed for the products now being wasted, seed and hurds, hemp will prove, both for the farmer and the public, the most profitable and desirable crop that can be grown, and one that can make American mills independent of importations.

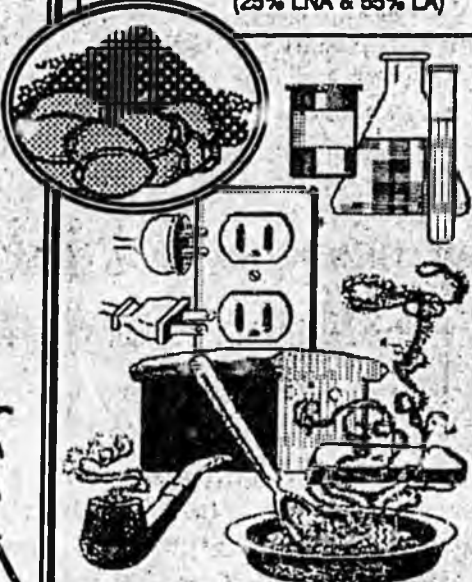
Recent floods and dust storms have given warning against the destruction of timber. Possibly, the hitherto waste products of flax and hemp may yet meet a good use of that need, especially in the plastic field which is growing by leaps and bounds.

THE MANY USES OF HEMP

The World's Most Valuable & Versatile Natural Resource



SEEDS FOR FOOD & OIL: Hemp seeds contain complete, easily digestible protein and are the highest source of *essential* fatty acids in the plant kingdom. (25% LNA & 55% LA)



FLOWERS FOR HEALING & RELAXATION: Hemp has long-recognized medical value for easing pain, relieving stress and treating illnesses from glaucoma to asthma to nausea and beyond. Cannabis flowers and leaves are also smoked or eaten for many therapeutic, religious and relaxational purposes.



STEMS FOR FABRIC, FUEL, PAPER & COMMERCIAL USE. Hemp is dried and broken down into two parts: threadlike fibers and bits of "hurd," or pulp. Each of these products has its own distinct applications:



The fiber strands are spun into thread, which is either made into rope or woven into durable, high quality textiles and made into clothing, sails, fine linens and fabrics of all types and textures.

The fragments of dried stalk that remain are hurds—77% cellulose—that can be made into tree-free, dioxin-free paper; non-toxic paints and sealants; industrial fabrication materials; construction materials; plastics; and much, much more! Hemp is the best source of plant pulp for biomass fuel to make gas, charcoal, methanol, gasoline or even produce electricity.

ROOTED IN AMERICA: Even hemp roots play an important role: they anchor and invigorate the soil to control erosion and mudslides. Hemp can save family farms, create jobs, reduce acid rain and chemical pollution, and reverse the Greenhouse effect.

BACH Presented as a public service by the
BUSINESS ALLIANCE FOR COMMERCE IN HEMP
 P.O. Box 71083, L.A. CA 90071-0083
 810/288-4152

Recommended Reading: *The Emperor Wears No Clothes* by Jack Herer

This bulletin is printed on paper manufactured from hemp hurds
run No. 143, which is recorded on page 30

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UNITED STATES DEPARTMENT OF AGRICULTURE



BULLETIN No. 404

Contribution from the Bureau of Plant Industry
WM. A. TAYLOR, Chief



Washington, D.C.

PROFESSIONAL PAPER

October 14, 1916

HEMP HURDS AS PAPER-MAKING MATERIAL

By LYSTER H. DEWEY, *Botanist in Charge of Fiber-Plant Investigations*, and
JASON L. MERRILL, *Paper-Plant Chemist, Paper-Plant Investigations*.

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In preparing the report on the manufacture of paper from hemp hurds it became evident that a short discussion of the agricultural aspects of this material should be included in the publication. Such an article was prepared, therefore, and the two reports are here presented together.

THE PRODUCTION AND HANDLING OF HEMP HURDS.

By LYSTER H. DEWEY, *Botanist in Charge of Fiber-Plant Investigations*

WHAT HEMP HURDS ARE.

The woody inner portion of the hemp stalk, broken into pieces and separated from the fiber in the processes of breaking and scutching, are called hemp hurds. These hurds correspond to shives in flax, but are much coarser and are usually softer in texture.

When the USDA published Bulletin 404 in 1916, it used for the first time hemp pulp paper (as opposed to hemp fiber paper) to demonstrate the outstanding qualities of using hemp hurds for pulp instead of using tree pulp; not only to reduce the cutting of trees but also to reduce the need for sulphuric acid compounds to break down the plant for the making of paper.

The frontal piece over the cover of the bulletin (reproduced above) tells you that the document is printed on hemp pulp paper, although the frontal piece itself was *not* printed on hemp pulp.



One acre
of hemp
equals
4.1 acres
of
forest land.

Cannabis Sativa (L.)
at three months.

THE LAST DAYS OF LEGAL CANNABIS

As you now know, the industrial revolution of the 19th century was a setback for hemp in world commerce, due to the lack of mechanized harvesting and breaking technology needed for mass production. But this natural resource was far too valuable to be relegated to the back burner of history for very long.

By 1916, U.S.D.A. Bulletin 404 predicted that a decorticating and harvesting machine would be developed, and hemp would again be America's largest agricultural industry. In 1938, Popular Mechanics, Mechanical Engineering and others introduced a new generation of investors to fully operational hemp decorticating devices, bringing us to this next bit of history:

BREAKTHROUGH IN PAPERMAKING

If hemp was legally cultivated using 20th-Century technology, it would be the single largest agricultural crop in the United States and world today.

(Popular Mechanics February 1938; Mechanical Engineering, February 1938; U.S. Department of Agriculture Reports 1903, 1910, 1913.)

In fact, when the preceding two articles were prepared early in 1937, hemp was still legal to grow. And those who predicted billions of dollars in new cannabis businesses did not consider income from medicines, energy (fuel) and food which would now add another trillion dollars or more annually to our troubled economy. Relaxational smoking would add only a relatively minor amount to this figure.

The most important reason that the 1938 magazine articles projected billions in new income was hemp for "pulp paper" (as opposed to fiber or rag paper). Other reasons were its fiber, seed and many other pulp uses.

This remarkable new hemp pulp technology for papermaking was invented in 1916 by our own U.S. Department of Agriculture chief scientists, botanist Lester Dewey and chemist Jason Merrill.

This technology, coupled with the breakthrough of O. W. Schlichten's decorticating machine, patented in 1917, made hemp a viable paper source at less than half the cost of tree-pulp paper. The new harvesting machinery, along with Schlichten's machine, brought the processing of hemp down from 200 man-hours per acre to just a couple of hours.* Twenty years later, advancing technology—the building of

roads, for example—made hemp even more valuable. Unfortunately, by then, opposition forces had gathered steam and acted quickly to suppress hemp cultivation.

*See Appendix I.

A PLAN TO SAVE OUR FORESTS

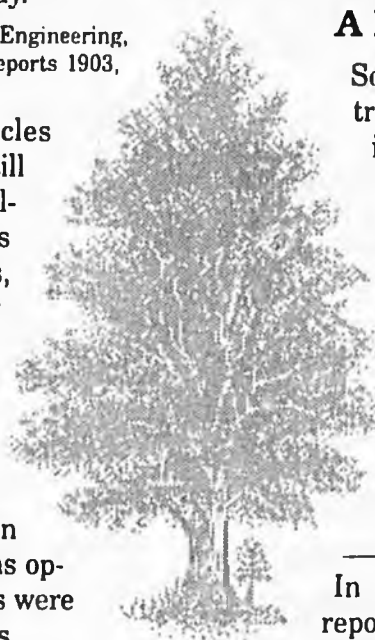
Some cannabis plant strains regularly reach tree-like heights of 20 feet or more in one growing season.

The new paper process used hemp "hurds"—77% of the hemp stalk's weight, which was then a wasted by-product of the fiber stripping process.

If the hemp pulp paper process of 1916 were in use today, it could replace 40 to 70% of all pulp paper, including corrugated boxes, computer printout paper and paperbags.

In 1916, USDA Bulletin No. 404 (see picture), reported that one acre of cannabis hemp, in annual rotation over a 20-year period, would produce as much pulp for paper as 4.1 acres of trees being cut down over the same 20-year period. This process would use only 1/4 to 1/7 as much polluting sulfur-based acid chemicals to break down the glue-like lignin that binds the fibers of the pulp, or even none at all using soda ash. The problem of dioxin contamination of rivers is avoided in the hemp paper making process, which does not need to use chlorine bleach (as the wood pulp paper making process requires), but instead substitutes safer hydrogen peroxide in the bleaching process.

All this lignin must be broken down to make pulp.



Hemp pulp is only 4-10% lignin, while trees are 18-30% lignin. Thus hemp provides four times as much pulp with at least four to seven times less pollution.

As we have seen, this hemp pulp-paper potential depended on the invention and the engineering of new machines for stripping the hemp by modern technology. This would also lower demand for lumber and reduce the cost of housing, while at the same time helping re-oxygenate the planet.¹

As an example: If the new (1916) hemp pulp paper process were legal today, it would soon replace about 70% of all wood pulp paper, including computer printout paper, corrugated boxes and paper bags.

Pulp paper made from 60% to 100% hemp hurds is stronger and more flexible than paper made from wood pulp. Making paper from wood pulp damages the environment. Hemp papermaking does not.

(Dewey & Merrill, *Bulletin #404*, U.S.D.A., 1916; New Scientist, 1980; Kimberly Clark production from its giant French hemp-fiber paper subsidiary De Mauduit, 1937 through 1984.)

CONSERVATION & SOURCE REDUCTION

Reduction of the source of pollution, usually from manufacturing with petrochemicals or their derivatives, is a cost-cutting waste control method often called for by environmentalists.

Whether the source of pollution is CFCs (chloro-flouro-carbons) from spray cans, computers and refrigeration, or tritium and plutonium produced for military uses, or the sulfuric acids used by paper-makers, reducing the source of pollution is the goal.

In the supermarket when you are asked to choose paper or plastic for your bags, you are faced with an environmental dilemma: paper from trees that were cut, or plastic bags made from fossil fuel and chemicals. With a third choice available—hemp hurd paper—one could choose a biodegradable, durable paper from an annually renewable source—the hemp plant.

The environmental advantages of harvesting hemp annually—leaving the trees in the ground!—make papermaking from hemp hurds crucial for source reduction of pollution, along with using hemp to replace fossil fuel as an energy source.

A CONSPIRACY TO WIPE OUT THE NATURAL COMPETITION

When mechanical hemp fiber stripping machines and machines to conserve hemp's high-cellulose pulp finally became state-of-the-art, available and affordable in the mid-1930s, the enormous timber acreage and businesses of the Hearst Paper Manufacturing Division, Kimberly Clark (USA), St. Regis—and virtually all other timber, paper and large newspaper holding companies—stood to lose billions of dollars

and perhaps go bankrupt.

Coincidentally, in 1937 DuPont had just patented processes to make plastics from oil and coal, as well as new sulfate/sulfite processes to make paper from wood pulp which would, according to their own corporate records and historians,* account for over 80% of all its railroad carloadings for the next 50 years.

* Author's research & communications with DuPont, 1985.

If hemp had not been made illegal, 80% of DuPont's business would never have come to be; nor would the great majority of the pollution which has been inflicted on our Northwestern and Southeastern regions have ever occurred.

In an open marketplace, hemp would have saved the majority of America's vital family farms which would probably have boosted their numbers, despite the Great Depression of the 1930s.

Competing against the environmentally-friendly hemp-paper and natural plastic technology would have jeopardized the lucrative financial schemes of Hearst, DuPont and DuPont's chief financial backer, Andrew Mellon of the Mellon Bank of Pittsburgh.

"SOCIAL REORGANIZATION"

A series of secret meetings were held.

Mellon, in his role as Hoover's Secretary of the Treasury, in 1931 appointed his future nephew, Harry J. Slinger, to be the newly organized Federal Bureau of Narcotics and Dangerous Drugs (FBN) in a post he held for the next 31 years.

These industrial barons and financiers knew that machinery to bale, decorticate (to separate fiber from high-cellulose hurd), and process

hemp into paper or plastics was becoming available in the mid-1930s. Cannabis hemp would have to

In DuPont's 1937 Annual Report to its stockholders the company strongly urged continued investment in its new, but not readily accepted, petrochemical synthetic products. DuPont was anticipating "reforms" from "the revenue raising power of government. . . converted into an instrument for the acceptance of sudden new ideas of industrial



**THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES**

MAN-MADE FIBER ... THE TOXIC ALTERNATIVE TO NATURAL FIBERS.

The late 1920s and 1930s saw continuing consolidation of power into the hands of a few large steel, oil and chemical (munitions) companies. The U.S. federal government placed much of the textile production for the domestic economy in the hands of their chief munitions maker, DuPont.

The processing of nitrating cellulose into explosives is very similar to the process for nitrating cellulose into synthetic fibers and plastics. Rayon, the first synthetic fiber, is simply stabilized guncotton, or nitrated cloth, the basic explosive of the 19th century.

"Synthetic plastics find application in fabricating a wide variety of articles, many of which in the past were made from natural products," beamed Lamot DuPont (Popular Mechanics, June 1939, pg. 805).

"Consider our natural resources," the president of DuPont continued, "The chemist has aided in conserving natural resources by developing synthetic products to supplement or wholly replace natural products."

DuPont's scientists were the world's leading researchers into the processes of nitrating cellulose and were in fact the largest processor of cellulose in the nation in this era.

The February, 1938 Popular Mechanics article stated "Thousands of tons of hemp hurds are used every year by our large powder company for the manufacture of dynamite and TNT." History shows that Dupont had largely cornered the market in explosives by buying up and consolidating the smaller blasting companies in the late 1800s. By 1902 they controlled about two-thirds of industry output.

They were the largest powder company, supplying 40% of the munitions for the allies in WWI. As cellulose and fiber researchers, DuPont's chemists knew hemp's true value better than anyone else. The value of hemp goes far beyond the fibers; although recognized for linen, canvas, netting and cordage, these long fibers are only 20% of the hemp-stalk's weight. 80% of the hemp is in the 77% cellulose part, and this was the most abundant, cleanest resource of cellulose (fiber) for paper, plastics and even rayon.

The empirical evidence in this book shows that the federal government—through the 1937 Marijuana Tax Act—forced this munitions maker to supply synthetic fibers for the domestic economy without competition. The proof of a successful conspiracy among these corporate and governing interests is simply this: In 1991 DuPont was still the largest producer of man-made fibers, while no citizen has ever harvested a single acre of textile grade hemp in over 50 years.

Almost unlimited tonnage of natural fiber and cellulose would have become available to the American farmer in 1937, the year DuPont patented nylon and the polluting pulp paper sulfide process. All of hemp's potential was lost.

Simple plastics of the early 1900s were made of nitrated cellulose, directly related to DuPont's munitions-making processes. Celluloid, acetate and rayon were the simple plastics of that era, and hemp was well known to cellulose researchers as the premier resource for this new industry to use. Worldwide, the raw material of simple plastics, rayon and paper could be best supplied by hemp hurds.

Nylon fibers were developed between 1926-1936 by the noted Harvard chemist Wallace Carothers, working from German patents. These polyamides are long fibers based on observed natural products. Carothers, supplied with an open-ended research grant from DuPont, made a comprehensive study of natural cellulose fibers. He duplicated natural fibers in his labs and polyamides—long fibers of a specific chemical process—were developed.

Coal tar and petroleum based chemicals were employed, and different devices, spinnerets and processes were patented. This new type of textile, nylon, was to be controlled from the raw material stage, as coal, to the completed product a patented chemical product. The chemical company centralized the production and profits of the new "miracle" fiber.

The introduction of nylon, the introduction of high-volume machinery to separate hemp's long fiber from the cellulose hurd, and the outlawing of hemp as "marijuana" all occurred simultaneously.

The new man-made fibers (MMF's) can best be described as war material. The fiber making process has become one based on big factories, smokestacks, coolants and hazardous chemicals, rather than one of stripping out the abundant, naturally available fibers.

Coming from a history of making explosives and munitions, the old "chemical dye plants" now produce hosiery, mock linens, mock canvas, latex paint and synthetic carpets. Their polluting factories make imitation leather, upholstery and wood surfaces, while an important part of the natural cycle stands outlawed.

The standard fiber of world history, America's traditional crop, hemp, could provide our textiles, paper and be the premier source for cellulose. The war industries—DuPont, Allied Chemical, Monsanto, etc.—are protected from competition by the marijuana laws. They make war on the natural cycle and the common farmer. —Shan Clark

Sources:

Encyclopedia of Textiles 3rd Edition by the editors of American Fabrics and Fashions Magazine, William C. Legal, Publisher Prentice-Hall, Inc. Englewood Cliffs, N.J. 1980; *The Emergence of Industrial America Strategic Factors in American Economic Growth Since 1870*, Peter George State University, NY; DuPont (a corporate autobiography published periodically by E.I. DuPont De Nemours and Co., Inc. Wilmington, Del.); *The Blasting Handbook*, E.I. DuPont De Nemours & Co. Inc., Wilmington, DE; *Mechanical Engineering Magazine*, Feb. 1938; *Popular Mechanics*, Feb. 1938; *Journal of Applied Polymer Science*, Vol. 47, 1984; *Polyamides, the Chemistry of Long Molecules* (author unknown) U.S. Patent #2,071,250 (Feb. 16, 1937), W.H. Carothers., *DuPont Dynasties*, Jerry Colby; *The American Peoples Encyclopedia*, the Sponsor Press, Chicago, 1953.

cial reorganization."*

(DuPont Company, annual report, 1937, emphasis added.)

In *The Marijuana Conviction* (J. of Virginia press, 1974), Richard Bonnie and Charles Whitebread II detailed this process:

"By the fall of 1936, Herman Oliphant (general counsel to the Treasury Department) had decided to employ the taxing power [of the federal government], but in a statute modeled after the National Firearms Act and wholly unrelated to the 1914 Harrison [narcotics] Act. Oliphant himself was in charge of preparing the bill. Anslinger directed his army to turn its campaign toward Washington.

"The key departure of the marijuana tax scheme from that of the Harrison Act is the notion of the prohibitive tax. Under the Harrison Act, a non-medical user could not legitimately buy or possess narcotics.

"To the dissenters in the Supreme Court decisions upholding the act, this clearly demonstrated that Congress' motive was to prohibit conduct rather than raise revenue. So in the National Firearms Act, designed to prohibit traffic in machine guns, Congress permitted anyone to buy a machine gun, but required him to pay a \$200 transfer tax* and carry out the purchase on an order form.

"The Firearms Act, passed in June 1934, was the first act to hide Congress' motives behind a 'prohibitive' tax. The Supreme Court unanimously upheld the anti-machine gun law on March 29, 1937. Oliphant had undoubtedly been awaiting the Court's decision, and the Treasury Department introduced its marijuana tax bill two weeks later, April 14, 1937."

Thus, DuPont's decision to invest in new technologies based on "forcing acceptance of sudden new ideas of industrial and social reorganization" makes sense.

* About \$4,000 in 1993 dollars.

A QUESTION OF MOTIVE

This prospect was alluded to during the 1937 Senate hearings by Matt Rens, of Rens Hemp Company:

Mr. Rens: Such a tax would put all small producers out of the business of growing hemp, and the proportion of small producers is considerable... The real purpose of this bill is not to raise money, is it?

Senator Brown: Well, we're sticking to the proposition that it is.

Mr. Rens: It will cost a million.

Senator Brown: Thank you. (Witness dismissed.)



HEARST, HIS HATRED & HYSTERICAL LIES

Concern about the effects of hemp smoke had already led to two major governmental studies. The British governor of India released the *Report of the Indian Hemp Drugs Commission 1893-1894* on heavy bhang smokers in the subcontinent.

And in 1930, the U.S. government sponsored the Siler Commission study on the effects of off-duty smoking of marijuana by American servicemen in Panama. Both reports concluded that marijuana was not a problem and recommended that no criminal penalties apply to its use.

In early 1937, Assistant U.S. Surgeon General Walter Treadway told the Cannabis advisory subcommittee of the League of Nations that, "It may be taken for a relatively long time without social or emotional breakdown. Marihuana is habit-forming... in the same sense as...sugar or coffee."

But other forces were at work. The war fury that led to the Spanish American war in 1898 was ignited and fanned by William Randolph Hearst through his nationwide newspaper chains, marking the beginning of "yellow journalism"* as a force in American politics.

* Webster's dictionary defines "yellow journalism" as the use of cheaply sensational or unscrupulous methods in newspapers and other media to attract or influence the readers.

In the 1920s and 30s, Hearst's newspaper chain led the deliberate new yellow journalism campaign to have hemp outlawed. From 1916 to 1937, as an example, the story of a car accident in which a marijuana cigarette was found would dominate the headlines for weeks, while alcohol-related car accidents (which outnumbered marijuana-connected accidents by more than 1,000 to 1) made only the back pages.

This same theme of marijuana-related car accidents was burned into the minds of Americans over and over again (1936-1938) by showing marijuana related car accident headlines in movies such as "Reefer Madness" and "Marijuana—Assassin of Youth."

BIGOTRY AND APARTHEID

Starting with the 1898 Spanish American War, the Hearst newspaper had denounced Spaniards, Mexican-Americans and Latinos.

After the seizure of 800,000 acres of Hearst's prime Mexican timberland by the "marihuana" smoking army of Pancho Villa,* these slurs intensified.

* The song "La Cucaracha" tells the story of one of Villa's men looking for his stash of "marijuana por fumar!" (to smoke!)

Non-stop for the next for three decades, Hearst painted the picture of the lazy pot-smoking Mexican—still one of our most insidious prejudices.

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He also did a similar racist smear campaign against the "Yellow Peril" of the Chinese.

Hearst, through pervasive and repetitive use, brought the word 'marijuana' into English.

Hearst papers from 1910 to 1920 would say the majority of Negroes raping white women could be traced directly to cocaine. This continued for 10 years until Hearst decided it was not cocaine crazed Negroes raping white women—it was now marijuana crazed Negroes raping white women.

Hearst and other sensational tabloids ran hysterical headlines atop stories portraying Negroes and Mexicans as frenzied beasts under the influence of marijuana, who played anti-white "voodoo-satanic" music (jazz) and heaped disrespect and "viciousness" onto the predominantly white readership. This Jim Crow (apartheid) "crime wave" included: stepping on white men's shadows, looking white people directly in the eye for three seconds or more, looking at a white woman twice, laughing at a white person, etc.

For such "crimes," hundreds of thousands of Mexicans and Negroes spent, in aggregate, millions of years in prisons and on chain gangs, under brutal segregation laws in effect throughout the U.S. until the 1950s and 60s. Hearst, through pervasive and

repetitive use, pounded the obscure Mexican slang word 'marijuana' into the English-speaking American consciousness. 'Hemp' was discarded. 'Cannabis,' the scientific term, was ignored or buried.

The actual Spanish word for hemp is 'cáñamo.' But using a Mexican Sonoran colloquialism—marijuana, often Americanized as 'marihuana'—guaranteed that no one would realize the world's chief natural medicine and premier industrial resource had been outflanked, outlawed and pushed out of the language.

THE PROHIBITIVE MARIJUANA TAX

In the secret Treasury Department meetings conducted between 1935 and 1937 prohibitive tax laws were drafted and strategies plotted. 'Marijuana' was not banned outright; the law called for an "Occupational excise tax upon dealers, and a transfer tax upon dealings in marijuana."

Importers, manufacturers, sellers and distributors had to register with the Secretary of the Treasury and pay the occupational tax. Transfers were taxed at \$1 an ounce; \$100 an ounce if the dealer was unregistered. Sales to an unregistered taxpayer were prohibitively taxed. At the time, "raw drug" cannabis sold for one dollar an ounce.² The year was 1937. New York State had exactly one narcotics officer.*

* Now it has a network of thousands of officers, agents, spies and paid informants—and 20 times the penal capacity.

A Roundup of Hearst's Hysterical Headlines:

This is what current hemp laws are based on.

MARIHUANA MAKES FIENDS OF BOYS IN 30 DAYS; HASHEESH GOADS USERS TO BLOOD-LUST

Physicians Called On to Urge Harding Bid All Nations Meet to Throttle Dope At Its Source; United States Laws Too Lenient

"The Federal Government, operating under the Harrison Act, and the amended Jones-Miller bill, employs one hundred and seventy-three narcotic enforcement agents. For their year's labor Congress appropriates the sum of \$750,000. The country is divided into thirteen districts under as many district chiefs, and their agents must cover the country. It is a feeble appropriation and a woefully light brigade."—Sidney Howard in several issues of Hearst's International.

In the mid-1930s, Harry Anslinger went around the country giving his speeches to judges, police, unions, etc., on the evils of marijuana.

Circled here is one of his favorite marijuana metaphors which, he assured his naive, supportive audiences, was not an overstatement

Crusade Against Marihuana

A NATIONWIDE crusade of American women against the menace of marihuana smoking has been launched by the Women's National Exposition of Arts and Industries in New York City. H. J. Anslinger, head of the Federal Narcotics Bureau, explained to the group the urgent necessity of NATIONAL ACTION.

Declaring that marihuana smoking is "taking our youth into the gutter," Mr. Anslinger said: "If the hideous monster Frankenstein came face to face with the monster marihuana he would drop dead of fright."

This is not overstatement. Every day thousands of women are committing a large percentage of the atrocious crimes blotting the daily picture of American life. It is reducing thousands

of them to CRIMINAL INSANITY.

And ONLY TWO STATES have effective laws to protect their people against it.

The marihuana weed, according to Mr. Anslinger, is green, soft, and UREED in every State in the Union.

He charges, and rightly, that this is not a responsibility of one State, but OF ALL—end of the Federal Government.

American women, aroused to this DANGER, will GET ACTION.

In New York State organized groups of women are GETTING ACTION by demanding enactment of the McNaber bill creating a State Narcotics Bureau. That Bureau would replace the existing one—end Narcotics Division, which is powerless to cope with the fact that eighty per cent of New York's criminals are narcotic addicts.

HOOVER SEES END NEW DOPE LURE, JAZZ DANCING SOON TO PASS, MARIJUANA, HAS MANY VICTIMS SAYS COOLIDGE

Better Programmes Held Big Need at Present

Kind "Silly Smoke," Winitrad as After Kynolds Pa. President's Photo

Hotel Clerk Identifies Marihuana Smoker As 'Wild Gunman' Arrested for Shootings

A hungry-looking transient picked off the street was linked Friday to the strange shooting two weeks back in a row of two elderly hotel clerks.

He was identified as John Kelly Stephens, 29, a native state hospital inmate and admitted marihuana user.

He was held on two charges under \$1,000 bail; assault with intent to rob and assault with intent to kill.

Even Bob McKeown and Joseph Shewitt, Stephens admitted he had been drinking heavily, used



marihuana, and so he had to surrender all his arms.

A fast patrolman, Fred McArthur, picked Stephens up on the street Thursday afternoon at a hotel, arrested in the so-called holdup Wednesday night. Power & Long drug store, 124 E. Washington street.

Stephens' last directions in was returned to his family in New York City in a letter from his mother.

After the Supreme Court decision of March 29, 1937, upholding the prohibition of machine guns through taxation, Herman Oliphant made his move.

"This bill is too all inclusive. This bill is a world encircling measure. This bill brings the activities—the crushing of this great industry under the supervision of a bureau—which may mean its suppression."

On April 14, 1937 he introduced the bill directly to the House Ways and Means Committee instead of to other appropriate committees such as food and drug, agriculture, textiles, commerce, etc.

The reason may have been that Ways and Means is the only committee to send its bills directly to the House floor without the act having to be debated upon by other committees.

Ways and Means Chairman Robert L. Doughton,* a key DuPont ally, quickly rubber-stamped the secret Treasury bill and sent it sailing through Congress to the President.

* Per Jerry Colby, author of *DuPont Dynasties*, Lyle Stewart, 1984.

"DID ANYONE CONSULT THE A.M.A.?"

However, even within his controlled Committee hearings, many expert witnesses spoke out against the passage of these *unusual* tax laws.

Dr. James Woodward, for instance, who was both a physician and an attorney, testified on behalf of the American Medical Association (AMA).

He said in effect, the whole fabric of federal testimony was tabloid sensationalism! No real testimony was being used in its passage! This law could possibly in ignorance deny the world a potential medicine, especially now that the medical world was just beginning to find which ingredients in cannabis were active.

He stated to the committee that the whole reason the AMA hadn't come out against the marijuana tax law sooner was that marijuana had been described in the press for 20 years as "killer weed from Mexico."

The AMA doctors had just realized "two days before" these Spring, 1937 hearings, that the plant Congress intended to outlaw was known medically as cannabis—the benign substance used in scores of illnesses, for 100 years in America, with perfect safety.

"We cannot understand yet, Mr. Chairman, why this bill should have been prepared in secret for two years without any intimation, even to the profession," protested Woodward, "that it was being prepared."

He and the AMA* were quickly denounced by Anslinger and the entire congressional committee, and curtly excused.³

* The A.M.A. and the Roosevelt administration were strong opponents in 1937.

When the Marijuana Tax Act bill came up for report, discussion, and vote on the floor of Congress only one pertinent question was asked from the floor: "Did anyone consult with the AMA and get their opinion?"

Representative Vinson answering for the Ways and Means Committee replied, "Yes, we have, and Wharton [mistaken pronunciation of Woodward?] [the AMA] are in complete agreement!"

With this memorable lie, the bill passed, and came law in December, 1937. A federal police force was created, able to demand millions of wasted years in jail and even the deaths of individual Americans in order to save poison, polluting industries, and to force some white politicians' policies of racial hatred.

(Mikuriya, Tod, M.D., *Marijuana Medical Papers*, 1972; Slovic, Larry, *Reefer Madness*, Grove Press, 1979; Lindsmith, Alfred, *Addict and the Law*, Indiana U. Press; Bonnie & Whitebread, *Marijuana Conviction*, U. of VA Press; U.S. Cong. Records; et al.)

OTHERS SPOKE OUT, TOO

Also lobbying *against* the Tax Act with all its energy was the National Oil Seed Institute, representing the high quality machine lubrication producers as well as paint manufacturers. Speaking to the House Ways and Means Committee in 1937, their general counsel, Ralph Loziers, testified eloquently about hemp seed oil that was to be, in effect, outlawed:

"Respectable authorities tell us that in the Orient, at least 200 million people use this drug; and when we take into consideration that for hundreds, yes, the thousands of years, practically that number of people have been using this drug. It is significant that in Asia and elsewhere in the Orient, where poverty stalks abroad every hand and where they draw on all the plant resources which a bountiful nature has given that domain—it is significant that none of those 200 million people has ever, since the dawn of civilization, been found using the seed of this plant or using the oil as a drug.

"Now, if there were any deleterious properties or principles in the seed or oil, it is reasonable to suppose that these Orientals, who have been reaching out in the poverty for something that would satisfy their morbid appetite, would have discovered it...."

"If the committee please, the hemp seed, or the seed of the cannabis sativa L., is used in all the Oriental nations and also in a part of Russia as food. It is grown in the fields and used as oatmeal. Millions of people everywhere are using hemp seed in the Orient as food. They have been doing that for many generations, especially in periods of famine...."

"The point I make is this—that this bill is too all inclusive. This bill is a world encircling measure. This bill brings the activities—the crushing of this great industry"