MARIJUANA AT ISSUE

Written by Lee Berton

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"Let the punishment fit the crime." That is the fundamental plea being sounded in courtrooms in many states on a subject often as emotional as abortion or birth control—marijuana. Civil liberties-minded lawyers are undertaking broad challenges of the laws governing its use, sale and possession.

The U.S. Constitution, particularly the Eighth Amendment forbidding "cruel and unusual punishments," is at the heart of these defenses, and the attorneys involved hope that the Supreme Court eventually will overturn the state laws they oppose.

But the courtroom activity is just one symptom of a legal and regulatory debate engaging law enforcement officers, educators and other public officials across the nation, not to mention the members of respectable families whose sons or daughters face fines or prison sentences on marijuana charges.

DISSENSION WITHIN THE GOVERNMENT

The controversy over "pot" is reaching into high circles of the Government, and two Federal agencies are on collision course. The Treasury Department's Federal Narcotics Bureau, which regulates the drug, continues to support present or even stronger controls on it.

But the thinking is different at the Food and Drug Administration, an arm of the Department of Health, Education and Welfare. A confidential memorandum recently circulated among top HEW officials over the signature of Dr. James L. Goddard, FDA commissioner, advocates such radical changes as removal of legal penalties for possession of marijuana when it is intended for personal use only.

"Legalize Pot" is a popular button and banner slogan among hippie demonstrators, but that is far from Dr. Goddard's intent, and no one expects complete legalization. But pressure is
mounting for reexamination of marijuana laws and of the purported perils of the drug on which the laws are based.

Obviously, marijuana use has spread. Thirty years ago marijuana circulated mainly among criminals and their associates; now it can be bought on Main Street. Also, medical evidence reaching the public casts doubt on the dangers of marijuana—particularly the long-held notion that it leads to addiction to such drugs as heroin. But many observers see another major reason for the marijuana debate: Pot has climbed the social ladder.

THE DOCTOR AND THE LAWYER

"Nobody worried very much when police sent thousands of ghetto dwellers to languish in prison for years for puffing on one joint (marijuana cigaret)," asserts Alfred R. Lindesmith, an Indiana University sociologist and author of The Addict and the Law. "But now that the doctor, the lawyer, the teacher and the business executive and their children are facing the same fate, marijuana has become a cause celebre."

Some of the most vocal protests against marijuana laws are coming from professionals. In San Francisco, 1,952 persons, including physicians, college professors and other highly educated citizens, have signed affidavits calling marijuana a harmless drug. An elementary school principal in California, a 58-year-old woman, volunteered publicly that she had used marijuana for 18 years—whereupon she was suspended indefinitely from her job.

The Federal Narcotics Bureau, which says annual marijuana arrests have almost doubled since 1964, to about 15,000 a year, acknowledges that many of the new users are in the "upper and middle strata of society."

No one disputes that the penalties written into the marijuana laws are severe. A Federal statute enacted in 1937 provides for prison penalties ranging from 2 to 40 years, and it served as the pattern for state laws around the nation. In Georgia, a second conviction for selling to a minor can result in a death sentence.
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THE PERILOUS DRUG

These are sentences ordinarily meted out for the most heinous felonies. How did this happen? Civil liberties lawyers and others point to the Federal Narcotics Bureau. When Congress was considering legislation in 1937, Harry J. Anslinger, the zealous former commissioner of the bureau, testified that marijuana was a "menace" leading to rape, homicide and other crimes and possibly to insanity as well.

That posture hasn't changed. In a Narcotics Bureau booklet entitled Living Death: The Truth About Drug Addiction, the current commissioner, Henry L. Giordano, writes, "Never let anyone persuade you to smoke even one marijuana cigaret. It is pure poison." Elsewhere in the booklet, he writes, "... it cannot be too strongly emphasized that the smoking of the marijuana cigaret is a dangerous first step on the road which usually leads to enslavement by heroin."

Such assertions to the contrary, many thousands of Americans can testify that a marijuana smoke hasn't led to their ruin.

"I'm not a hippie or a fringie, and I get along well with my parents," says a 22-year-old student at Harvard University's law school who occasionally smokes marijuana at parties with friends. "And I'm not taking pot for rebellion. It just happens to be a pleasant experience that heightens my perceptions. After one smoke, for instance, I heard for the first time the bass part in a piece of classical music, though I had listened to the selection many times before without pot."

But there has been no discernible agitation among state legislators or executives to change the laws. The reason seems clear: The subject of marijuana holds political peril. The FDA's Dr. Goddard discovered this some weeks ago when he suggested that marijuana was no more dangerous than alcohol.

The FDA chief soon qualified his statement, saying that both were dangerous, alcohol for its damage to mind and body, and marijuana for its legal consequences and possible long-term physical dangers yet unknown. But the reaction in Congress was stormy; Rep. Dan Kuykendall (D., Tenn.), among others, called for Dr. Goddard's resignation.
THE CONFIDENTIAL MEMO

The FDA commissioner has since been circumspect in public, although he did suggest that penalties for possession might be relaxed. However, the confidential FDA memo obtained by the Wall Street Journal shows that Dr. Goddard's position indeed is sharply divergent from the stand long taken on marijuana within the Government.

The most radical suggestion in the memo is the proposal to end penalties for possession when the marijuana clearly is intended for personal use. It would simply be seized, as is the far more dangerous hallucinogen LSD under Federal law (many state laws now classify LSD possession as a crime).

Dr. Goddard also would transfer jurisdiction over marijuana from the Narcotics Bureau to the FDA, where it could be classified as a mild hallucinogen and regulated under the Drug Control Abuse Act.

The present Federal law would be repealed under Dr. Goddard's recommendations. Illegal sale, manufacture and distribution of marijuana would remain felony violations—but without mandatory sentencing provisions such as those in the present Federal law.

HEW hasn't indicated what its public stance in the developing marijuana dispute will be. The Narcotics Bureau declines comment on the recommendations of the FDA memo. But Mr. Giordano made clear his position on some aspects of the controversy in testimony last Wednesday before the House Government Operations subcommittee.

"If there is no criminal sanction against possessing marijuana," he said, "many people will regard this as tacit approval of its use." Without stern penalties, he declared, marijuana use will "go through the roof."

Dr. Goddard has noted that LSD users don't face prosecution. But Mr. Giordano said
Congress should be thinking of imposing penalties for possession of LSD, rather than relaxing penalties for possession of marijuana.

About 30 legal actions challenging state marijuana laws are under way or pending. The most publicized is a Boston case involving the Massachusetts statute that provides prison sentences ranging up to 25 years for marijuana violations.

"The marijuana menace is 85% myth, and I aim to dispel it," says Joseph S. Oteri, the defense attorney. He is representing two Philadelphia men charged with possession of the drug.

A county Superior Court judge in Boston is weighing a decision on Mr. Oteri’s motion to rule the Massachusetts law unconstitutional. But an Albuquerque, N.M., defense based on the Oteri brief already has produced a sentence considered lenient by the attorney, Gerald D. Fowlie.

A CRACK IN THE WALL

Mr. Fowlie represented a 25-year-old college dropout "from a good family" caught selling marijuana. The judge imposed a sentence of four months imprisonment but suspended an additional three-year sentence.

A "new court climate concerning marijuana" is developing, Mr. Fowlie says. And he declares, "There are going to be a lot more defendants in marijuana cases trying to upset the laws now that it appears there's a crack in the legal wall."

One chief ingredient in the dispute over regulating marijuana is the acknowledged "information gap" on the drug's true effects. Dr. Roger Meyer, acting chief of the Center for Studies of Narcotic and Drug Abuse in Chevy Chase, Md., a National Institute of Mental Health facility, comments:
“On one hand, Federal enforcement officials insist marijuana stirs up hazardous mental aberrations, while many more liberal sociologists maintain many of its new users are intellectually bright youngsters who become more contemplative, relaxed and tranquilized after smoking it.”

In addition to the medical questions, there is the Narcotics Bureau's contention that marijuana is associated with serious crime. Both issues got something of a full-scale airing in the 11-day hearing in Boston on Mr. Oteri's constitutionality motion. He produced 10 expert witnesses for the defense.

Dr. Joel Fort, a respected psychiatrist and drug consultant who has worked at the Federal Narcotics Hospital in Lexington, Ky., testified that he knew of no one who had been admitted to mental hospitals in this country "solely because of problems associated with marijuana use."

And Dr. Fort suggested that marijuana might even be useful for some agitated persons, "in that the tension they live under, the depression that they might suffer from, would be relieved or alleviated by a certain pattern of marijuana use." A pharmaceutical chemist said marijuana might have therapeutic value in medicine.

But Dr. Donald B. Louria, president of the New York State Council on Drug Addiction, testifying for the prosecution, said, "There is evidence from Morocco, where kif (a form of marijuana) is commonly smoked in excess of 10 cigarettes a day, that heavy consumption is associated with a marked increase in mental derangement."

The crime question came into dispute too. A Greek police official and a physician from India said marijuana use in their nations was associated with violent crimes, dishonesty and vagrancy. But a New York sociologist, citing a three-year study of marijuana users in this country, said there was no evidence that the drug is associated with violent behavior, criminal acts or sexual promiscuity.

While the dispute over marijuana rages, enforcement of present laws is getting stiffer. The Federal Narcotics Bureau will sponsor 22 two-week seminars on narcotics and marijuana for local and state officials in 1968, double the number this year. And the trainees are going to work at home.
A $1,000 FINE

In the suburban community of Bridgewater, N.J., Det. Sgt. James Hoffman says he has arrested eight youths aged 17 to 24 in the past year on marijuana charges. One of them, an 18-year-old boy charged with possession, was fined $1,000 and put on five years probation. A second conviction could put him in jail for up to five years.

Sgt. Hoffman says he is investigating 50 students in a local high school. Much of his information, he says, comes from other students "who owe the police a favor." The sergeant adds: "A lot more are going to be picked up in the future unless parents begin cracking down on drug abuse."

Critics accuse the Narcotics Bureau of bearing down heavily on occasional users such as students who may be experimenting with the drug. But Donald Miller, counsel for the Narcotics Bureau, says only 8 of 667 persons arrested under the Federal law in 1966 were students.'

"We're after the pusher, the trafficker, not the young school boy," he insists.