Chapter 1: On the Legalization of Marijuana

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CHAPTER 1

On the Legalization of Marijuana

HON. G. JOSEPH TAURO

§1.1. Introduction. A number of "letters to the editor" published in Boston newspapers within the past several months clearly exemplify the prevailing confusion about the nature, use and effects of marijuana. Similar letters, I am sure, appear daily in other metropolitan newspapers throughout the United States.

In one, a suburban high school senior posed and at the same time attempted to answer the rhetorical question, "Why is youth turning to harmful drugs?" She wrote:

... The problems driving American youth to drug abuse are basic. Drugs are an escape! Look around you. What do you see? Air pollution, water pollution, war, racism, discrimination, segregation, graft, corruption, police brutality, dishonest politicians.

Drugs are the only way for the lower socio-economic groups to forget their poverty; the only way for the middle class to forget that inflation is pinching them harder than anyone else; the only way left for the upper socio-classes to get their kicks; the only way for the black man to exist with discrimination; the only way for us all to forget the terror of losing our sons and our brothers and our fathers in a war which is so utterly purposeless. Drugs are the only escape hatch out of the personal and social dilemma in which American youth live.

The Honorable G. Joseph Tauro is Chief Justice of the Supreme Judicial Court of Massachusetts. These are the remarks of Chief Justice Tauro, then Chief Justice of the Massachusetts Superior Court, before the National Drug Conference of the National District Attorney's Association in Chicago, Illinois, on April 14, 1970. The views expressed are those of the Chief Justice and do not necessarily represent the position of the Annual Survey of Massachusetts Law or its publisher, Little, Brown & Company.
In the same paper, on the same day, another letter appeared nearly side by side on the same page. Its author, in expressing his opposition to the legalization of marijuana, wrote:

... Many drug users begin with marijuana, and then work up to the more harmful heroin and LSD. This fact in itself should be enough to stop the legalization notion. But once it is legal for someone to use marijuana, what is going to stop him from smoking it in public, especially while driving. Look what happens every year when people drive while intoxicated! Can we afford to have another type of potential killer behind the wheel of an automobile? After all, this is America, where people are screaming about the 40,000 men killed in Vietnam over the past 10 years. Why don't they say anything about the more than 52,000 people killed and more than 3,000,000 injured or disabled annually in automobile accidents? This slaughter is much more senseless than Vietnam, which is at least serving a purpose. How much larger will these figures be if marijuana is legalized?

The same newspaper several days later published yet another letter whose author blandly asserted:

... In reality, grass is a harmless weed which most authorities claim is less harmful than tobacco and alcohol.

... Legalizing marijuana would cause the grass users to have no contact with hard drugs, marijuana could then be sold in stores, such as existing liquor stores.

This series of letters succinctly points up the nature and scope of the problem whose unrelenting growth has brought us here today.

Without any intended parochialism but rather to put our common problem in a manageable frame of reference, I would like to review briefly with you the recent Massachusetts experience with marijuana.

During the first week of January, a draft copy of an unapproved report of the Special Legislative Commission on Drug Abuse was prematurely leaked to the news media before the full membership of the commission had had an opportunity to vote on it. Those segments of the unofficial draft which purportedly found marijuana to be less harmful than alcohol and which called for the legalized possession of up to two ounces of marijuana received considerable circulation and publicity. The commission's chairman, State Representative Jack Backman, also seized upon this opportunity to propound his views which coincided with these proposals. A week later, the commission met to consider these proposals and defeated them overwhelmingly, the chairman being the sole member to vote in favor of them.

Shortly thereafter, another letter writer argued that the members of the commission opposed to marijuana

... seem not to comprehend that if pot is not harmful then it
should not be banned and who cares how many people use it? If it's harmful then keep it banned, but for heaven's sake don't keep it illegal merely because so many people want to use it! That makes no sense at all.

In fact it makes sense in just the opposite way: since multitudes have already used it (12 to 16 million and growing fast) and many more would like to, the government has no business at all handing out 10 year jail sentences or even fines for misdemeanors. Despite these harassments millions of people continue to smoke and there isn't a thing the government can do to stop it, except perhaps tax it.

The views expressed in these letters and other contemporaneous editorials and articles parallel and reflect in a commingled fashion those of large segments of our population — the adolescent and the adult, the poor and the affluent, the educated and the illiterate, the logical and the nonsensical, the confused and the pedantic, the sincere and the axe-grinders. The debate goes on and on in our newspapers, radio talk shows, on television, at civic conferences, in schools and family living rooms.

Intervening developments in Massachusetts and elsewhere, however, indicate the urgency of the situation now confronting us. Widespread marijuana use has been uncovered among pre-teenagers. Heroin use is spreading on college campuses, in the suburbs and among junior high school students. Youngsters, twelve and younger, have been arrested for using and selling narcotics. Some have died as a result of overdoses of heroin. Testimony before congressional committees has disclosed a disquieting prevalence of drug use among our youth here at home and in the armed forces overseas. Drug deaths from heroin and LSD overdoses have risen 900 percent in Massachusetts in a year. In the same year, drug prosecutions have risen 100 percent in the district courts of Massachusetts. Drug prosecutions in the Boston Municipal Court have risen 700 percent since 1966.

On March 28, 1970, 85 local and state police staged a number of raids on a Massachusetts college campus with the cooperation of college officials. In defending the administration's actions, a college spokesman asserted that the drug problem on campus had progressed to such a point, both with regard to the number of students involved and the nature of the drugs used, that it felt compelled, in the absence of effective self-policing by the students, to cooperate with the police. In the raids the police, who arrested 16 persons, including four nonstudents, were reported to have seized quantities of LSD, marijuana, hashish, amphetamines and other drugs.

Subsequently, a small minority of students staged a "mill-in" at the main administration building, demanded that the college pay the legal fees for those arrested in the raids and accused the administration of a violation of trust "by supplying information to outside forces."
Many observers have characterized this conduct as the height of arrogance.

I suppose that our discussions at this national conference are, to a certain degree, a continuation of the debate. We can, however, contribute greatly towards the eventual resolution of this complex problem by being factual rather than emotional, by uncovering the areas of general agreement and, as to the areas of disagreement, exposing those arguments which are nonfactual, fallacious and untenable. If we proceed with objectivity, we may make substantial progress towards the ultimate resolution of a problem which is of deep and growing concern to the entire nation.

§1.2. The Leis and Weiss case. My qualifications to speak with some objectivity on the problems generated by the growing use of marijuana are not those of a doctor, scientist, or pollster. Whatever knowledge and insights I have regarding the use of drugs have come mainly from five years of continuous service as the presiding judge in the First Criminal Session of the Superior Court in Boston. During that period, 1963 to 1968, which coincided with the development of drug abuse as a major social problem, I disposed of nearly 4000 serious criminal cases, including more than 250 cases of specific violations of the narcotic and harmful drug laws. Many of the other cases, while not specifically designated drug cases, disclosed, however, a significant involvement or history of drug abuse as well. Of necessity, this required me to review many hundreds of case histories and probation and medical reports.

My judicial education with regard to marijuana was enhanced in 1967 when I presided over a two-week hearing in the so-called marijuana case, Commonwealth v. Leis. This case is no longer pending before the courts and I may, with propriety, discuss some of its aspects as I believe this will serve a useful purpose in our discussions. The crucial issue was the constitutionality of the Massachusetts Narcotic Drug Act as applied to marijuana, but central to the resolution of this issue was a factual determination of the nature and effects of marijuana.

During this proceeding, I heard the examination and cross-examination by prosecution and defense counsel of 18 expert witnesses from this country, Great Britain, Greece and India who represented such diverse fields as medicine, botany, pharmacology, psychiatry, psychology, philosophy, religion and law enforcement.

The cross-examination phase of this hearing should not be underestimated. It is one thing for an expert to state his opinions, written or oral, without fear of immediate confrontation or contradiction. It is quite another thing when such opinions are open to the scrutiny of the judicial process and subjected to searching cross-examination. In

§1.2. 1 355 Mass. 189, 243 N.E.2d 898 (1969). [Commonwealth v. Leis was tried with five companion cases, two against Leis and three against one Ivan Weiss.—En.]
such an adversary procedure, truth and logic are more apt to surface over preconceived notions and opinions unfounded in fact or logic.

After weeks of careful consideration of the evidence and the applicable law, I concluded that the pertinent statute, as applied, suffers from no constitutional impairment and, further, that marijuana is in fact a harmful and dangerous drug. Upon appeal, my decision was sustained without dissent by the full bench of the Supreme Judicial Court of Massachusetts. Of equal importance, the detailed opinion of the Supreme Judicial Court is in substantial agreement with my decision as to the harmful and dangerous qualities of marijuana.

As an interesting aside, defense counsel in a similar case with identical issues before the Florida Superior Court, by stipulation and with the prosecutor’s assent, presented to the trial judge the complete record of the Leis and Weiss hearing, including the transcripts of several thousand pages of testimony and my findings, rulings and order. No other evidence was presented. The trial judge found marijuana to be a harmful drug and, on appeal, was upheld by the Supreme Court of Florida. In effect, this constitutes an affirmation by the highest courts of both Massachusetts and Florida not only of the constitutionality of related marijuana statutes but also of my factual determination on the issues of harm and danger. Neither case has been appealed to the United States Supreme Court.

During the Leis and Weiss hearing, eight expert witnesses testified for the prosecution on various aspects of marijuana use. They were:

Dr. Donald Lauria, Fellow in Psychiatry at Cornell Medical School
Dr. Constantinos Miras, a pharmacologist from the University of Athens, Greece
Dr. Henry Brill, a member of the American Medical Association’s Committee on Drug Dependency and a consultant to the National Institute of Mental Health
Dr. John Ball, a sociologist involved in studying opiate addicts at the Lexington and Fort Worth Hospitals
Dr. Ishwar Chopra, educated in Britain and engaged in drug research in his native India since 1939
Mr. Matthew O’Connor, Supervising Agent of the California Bureau of Narcotics Enforcement
Dr. Dana Farnsworth, Director of Harvard University’s Health Service
Dr. Harris Isbell, Professor of Pharmacology and former Director of the Lexington Addiction Research Center.

For over three decades, these eight witnesses have observed criminals, drug addicts, emotionally unstable persons and students who have used marijuana and its derivatives in various circumstances on three continents. On the basis of their studies and observations, they unanimously

2 Ibid.
categorized marijuana as a harmful and dangerous drug. The following is a brief summary of their testimony which, in my view, remained unshaken by cross-examination.

They stressed the unpredictability of marijuana's effects on the user, results which vary with the dosage and strength of the drug, the emotional disposition of the user and the circumstances surrounding its use.

They further testified that marijuana, as customarily used, is an intoxicant smoked specifically to induce a state of euphoria or to produce hallucinations; that it is a “mind-altering” or “mood-exaggerating” drug; that it causes, in varying degrees, intellectual disorientation and confused perception of time and space which, in turn, affect speed, accuracy and reaction timing; that it induces a tendency to concentrate on trivia and an alteration of judgment; that there is, however, no significant diminution of muscular strength or the apparent ability to perform simple physical tasks but that the user may simultaneously experience an exaggerated sense of his own power and competence; that the user under the influence of marijuana may become passive, introverted or indolent; that he may also experience a loss of inhibition or sense of self-restraint; and that, in circumstances perceived as unpleasant or threatening, he may react violently and explode emotionally.

The Commonwealth's witnesses generally agreed that, in a few instances, the effects of marijuana have been more severe and include: acute panic reaction, acute intoxication, acute confusion, anxiety, paranoia, psychotic episodes and acute or subacute psychosis. Also, while these reactions are more likely to appear in emotionally unstable and therefore particularly vulnerable individuals, it was emphasized that an estimated 10 to 25 percent of our population fall in this category.

These experts noted that, among habitual users, marijuana can become the focal point of their lives, leading to a psychological dependence on it, and that there is some tendency to seek out the more potent forms such as hashish and to experiment with physically addictive drugs. Dr. Louria testified that 80 percent of heroin addicts and 50 percent of LSD users studied at Bellevue Hospital had first used marijuana. Dr. Ball testified that 70 percent of opiate addicts studied at Lexington, Kentucky, had previously smoked marijuana. Mr. O'Connor testified that a backrun study of the records of California heroin addicts disclosed that nearly one-quarter had been arrested within the preceding five years for marijuana offenses.

The defense presented ten witnesses:

Dr. Howard Becker, Professor of Sociology at Northwestern University
Dr. Herbert Blumer, Professor of Sociology and Criminology at the University of California (Berkeley)
Dr. Sanford Feinglass, Pharmaceutical Chemist, consultant on drug abuse to Marin County (California) Schools
Dr. Joel Fort, former Director of San Francisco Center for Special Problems; former consultant on drug abuse to the World Health Organization
Dr. John Hooker, Senior Psychiatrist at the Medfield (Massachusetts) State Hospital
Dr. Bruce Jackson, Assistant Professor at the State University of New York (Buffalo)
Dr. David Lewis, specialist in internal medicine, Chief Medical Resident, Beth Israel Hospital (Boston), instructor at Harvard Medical School
Dr. Nicholas Malleson, Director of the University of London Health Service
Dr. Richard Schultes, Curator of Harvard Botanical Museum, specialist in toxic plants
Dr. Houston Smith, Professor of Philosophy (Comparative Religion) at Massachusetts Institute of Technology.

They, on the other hand, stressed that some persons use marijuana without manifesting adverse effects; that there is no conclusive proof that marijuana use necessarily leads to crime, hard-core narcotic addiction, permanent physical disability or sexual promiscuity; and that the evils attributed to marijuana can also be attributed to alcohol, which is regulated rather than prohibited.

Here it is important to note that all of the expert witnesses—defense and prosecution—stated that they would not recommend the use of marijuana.

§1.3. Undisputed aspects. In March of 1969, I was privileged to address the Massachusetts Drug Dependency Conference. At that time, I emphasized that the public—especially the impressionable younger generation—is subjected to conflicting and confusing theories of marijuana. Today this confusion persists and has, if anything, been intensified. Primarily it stems from the concentration of the debaters and propagandists upon the relatively unknown long-range effects of marijuana use and their disregard of those harmful qualities which are known and about which there is no significant disagreement. Compounding this is the tendency of the news media, at least until the most recent drastic turn of events, to give greater publicity to the unknown factors which await long-range studies than to the presently known dangers of marijuana use.

In order to place the entire problem in its proper perspective and for the purpose of our discussion, I believe that it is of much importance to place greater emphasis on those areas where there is substantial agreement concerning the effects of marijuana use. These I delineate largely from the testimony of the experts who testified before me in the Leis case.

First, marijuana is universally recognized as a mind-altering drug
which, in varying degrees and with unpredictable results, produces a state of intoxication sometimes referred to as “euphoria.”

Second, again in varying and unpredictable degrees, this state of intoxication or euphoria may cause a lessening of psychomotor coordination and a distortion of the ability to perceive time, distance and space. However, there is usually no accompanying diminution of muscular strength.

Third, the habitual use of marijuana is particularly prevalent and dangerous among, though not limited to, individuals with marginal personalities and exhibiting feelings of inadequacy, anxiety, disaffiliation, alienation and frustration or suffering from neuroses, psychoses or other mental disorders. Such persons who number in the millions are more susceptible to psychological dependence upon drugs in order to perform in society and, in self-defense, tend to delude themselves about the supposed benefits of marijuana.

Fourth, chronic marijuana users exhibit a marked tendency to proselytize and recruit other users.

Fifth, marijuana has no accepted modern medical use and, as commonly used, serves no other purpose than to induce varying degrees of intoxication.

Last, but probably most significant, although there is presently no conclusive scientific proof that habitual use of marijuana will eventually cause permanent physical or mental injury, no one can guarantee that it will not.

§1.4. Disputed aspects. Given the growing attraction of youth to marijuana, the point which requires continual emphasis is that on the basis of these known and undisputed qualities, irrespective of any other disputed or as yet scientifically unproven attributes, marijuana is harmful and dangerous to the user and to society.

Much harm is done when this phase of the problem is ignored by those who use their access to public forums to emphasize, in the main, those areas where there is some measure of disagreement or where conclusive scientific proof is lacking. Basically, these areas are:

(1) Does marijuana necessarily cause psychological addiction?
(2) Does it necessarily cause permanent physical injury as opposed to temporary functional disorder?
(3) Does it necessarily lead to hard-core drugs?
(4) Does it necessarily contribute to crime?

None of these questions can be answered with the scientific proof presently available. In my opinion, with the exception of its relationship to permanent physical or organic injury, they may never be answered with scientific precision regardless of studies.

Furthermore, assuming that future studies establish scientifically that the answer to each of these questions is in the negative, this will not
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eliminate the serious elements of harm and danger presently known and associated with marijuana use.

By concentrating on these scientifically unproven areas and at the same time disregarding those harmful qualities which are generally recognized, apologists, unwittingly or otherwise, actually encourage experimentation with marijuana and even its habitual use, especially on the part of young people. It is this negative approach — the suggested lack of scientific proof — which appeals to the young. Unaware of the known dangers, they seize upon it as persuasive evidence that without such positive proof they may safely smoke marijuana.

Examples of such gravely injurious statements appear with distressing regularity in the news media. In a letter to the editor, a clinical instructor in psychiatry at Harvard Medical School, in part, had the following to say:

... Marijuana is a mild drug, capable of giving many people mildly pleasant experiences. [H]undreds of thousands of our bright and talented youth . . . occasionally use it in a way essentially comparable (except legally) to having a beer. [W]hat is known puts it [marijuana] in a category comparable to those other mild but not harmless drugs about which our society is ambivalent but far more tolerant: alcohol, tobacco, caffeine. [Emphasis added.]

In fairness to the writer, while delivering himself of this rhetorical splurge, he did concede that marijuana is capable of “doing some social and psychological harm to some users, probably especially to those teenagers who use it in ways that help avoid the necessary anxieties and tasks of growing up.”

In the December, 1969, issue of Scientific American, the same writer, Dr. Lester Grinspoon, noted marijuana’s history as an intoxicant and that the principal interest in it is precisely as an “agent for achieving euphoria.” He also reported that the use of marijuana may lead to feelings of anxiety, with paranoid thoughts and temporary psychosis, heightened sensitivity to external stimuli and distortion of the sense of time. Thus, Dr. Grinspoon has clearly classified marijuana as an intoxicant, a mind-altering, not “harmless” drug. How many of the kids who read his letter also read Scientific American?

Yet, a young Boston newspaperman earlier this month blithely wrote that Dr. Grinspoon’s “article demonstrates that the most common claims about marijuana’s ill effects [that it is physically or psychologically addictive, that it leads to heroin use, that it leads to violent behavior] are false.”

Consequently, the harm caused by his unguarded newspaper statement cannot be underestimated, especially because of his medical status and his association with a prestigious university. As a psychiatrist, he should have realized that the greatest impact on teenagers would be his characterization of marijuana as a “mildly pleasant experience”
and "essentially comparable . . . to having a beer." Very few of these kids will consider themselves to be in the category of those using marijuana to avoid the "necessary anxieties and tasks of growing up" or subject to those forms of personality disorder which might aggravate the effects of marijuana. Many will construe his statement to mean that it is okay to "light up" "just like drinking beer" or, as Margaret Mead has said, no different from having a cocktail.

I am sure that Dr. Grinspoon was well-intentioned and meant to be objectively critical of marijuana laws in general. The manner of his approach and his choice of words indicated, however, that he was unmindful of the harm his public statement could cause the adolescent, predisposed to accept unequivocally any ostensibly authoritative statements sympathetic to marijuana smoking.

Dr. James L. Goddard, former commissioner of the Federal Food and Drug Administration, and Dr. Joel Fort, former director of the San Francisco Center for Special Problems, have been reported as considering marijuana no more dangerous than alcohol. By some convoluted reasoning process, this is construed as an endorsement rather than a condemnation.

What responsible person is prepared to say that alcohol is not a dangerous drug, especially with regard to adolescent use?

Dr. Roger O. Egeberg, Assistant Secretary for Health and Scientific Affairs, has been quoted as saying that marijuana is in the same category as alcohol and that the penalties for its possession and use are too stringent — specifically he said:

... If you send some guy to the penitentiary for two years because he's got a couple of sticks of marijuana on him, and then let an alcoholic go through a revolving door, there's something mixed up in our system. . . . Alcoholism remains our most serious problem . . . and there is a need for continuing study to determine long-range effects of marijuana.

Here again, by stressing the need for a study to determine long-range effects and at the same time ignoring the presently known dangers of marijuana, Dr. Egeberg has committed a disservice to the public. His casual assessment of the problem is extremely unfair to the youngsters who need and are entitled to help and guidance. The real emphasis should be placed upon his equation of marijuana with alcohol, a universally recognized harmful drug. Furthermore, Dr. Egeberg lends credence to the false but oft-repeated assertion that youthful possessors of "a couple of sticks" are customarily sent to the penitentiary, thus widening the so-called credibility or generation gap.

The British Government has introduced legislation into Parliament that would distinguish between the penal sanctions imposed upon the possession of heroin and marijuana but, nevertheless, would not legalize the possession of marijuana. In following this course of action, the
British have subscribed to the approach of the 1968 Wootton Report which, in part, concluded:

... The subjectivity of the mental effects of cannabis makes it particularly difficult to measure the total effect of cannabis experience on any individual, or to assess what changes even a moderate and seemingly responsible habit might bring in the smoker's relationships with family and friends, study or work. We think too little is known about the patterns of use to predict that in western society it will produce social influences similar to those of alcohol. It was significant that even those of our witnesses who saw least danger in the drug were concerned to discourage juveniles from using it.

In the same vein, a British narcotics expert has remarked:

... For all its apparent — and, probably in most of its usage, real — innocence, marijuana is nevertheless a "psychoactive" or "psychotropic" drug and we better know a good deal more about it before we lift all controls from its traffic and use.

It would seem that the British in proposing lack of knowledge as a cause for caution and restraint rather than a license for indulgence are following a more sensible course than are some of our fellow countrymen.

Considering the growing evidence that initial experimentation with marijuana is beginning at increasingly lower ages, persons in positions of authority and responsibility should utilize all their powers and influence to protect these youngsters from exposure to this or any other mind-altering substance. No one can question the personal and social danger inherent in the use of any mind-altering substance by youngsters whether it be alcohol, marijuana or glue.

My own opinion, based on the cases I have heard, is that marijuana can and does, in some cases, lead to criminal activity, although it need not necessarily do so. To the scientist, the two words "not necessarily" makes my conclusion unscientific. In the classical sense of pure logic, it may not be possible to prove scientifically an inevitable causal relationship between marijuana and crime. Nevertheless, on the basis of my own empirical observations, I am convinced that the relationship is much more than coincidental. Similarly, with regard to the progression from marijuana to the hard-core narcotics, I cannot ignore the case histories of criminal defendants appearing before me. Very recently, six cases were reported to me from another Massachusetts county in which the defendants had been committed as narcotic addicts. In each case, by their own admission, their drug involvement had begun with marijuana. Of course, these cases do not statistically and conclusively prove that marijuana use necessarily leads to heroin addiction. Yet, they do, at the very least, indicate that marijuana use may be the initial step in the sequence leading to heroin addiction.
To determine more accurately the correlation of marijuana use to crime and addiction, our Superior Court probation service is currently compiling comprehensive statistics on all criminal cases in which investigation indicates probable drug involvement. I predict, however, that when the survey has been completed the results will not be accepted as scientific proof because it will lack the magic word "necessarily."

§1.5. Known harmfulness and danger. Let us now examine the issue whether marijuana, on the basis of what is presently known, is a dangerous and harmful drug. The most ardent advocates of marijuana's legalization compare it to alcohol. On this premise they, of course, explicitly agree that marijuana is an intoxicant. Let us, therefore, evaluate and judge marijuana only as an intoxicant, giving due consideration to the manner and purpose of its use as compared to alcohol, the possible harm and danger it may cause, not only to the smoker but to the public as well, and the inherent difficulties in its regulation, if legalized, especially as this relates to its surreptitious use by minors.

Consumption of alcohol is associated with 50 percent of our crimes of violence. Tens of thousands of deaths and substantially over a million serious injuries on the highways annually are directly traceable to alcohol. In addition, alcoholism results in billions of dollars of economic losses annually. We can only speculate as to the extent of industrial accidents caused by drinking. The Federal Aviation Administration's leading expert on the matter believes that as many as 200 of the nation's 692 fatal private plane accidents in 1968 were caused by pilots numbed by the effects of alcohol. There are reliable estimates that losses from industrial absenteeism due to alcohol consumption amount to $4 billion per year. Alcohol has reduced many thousands of our fellow citizens to the status of mere vegetables and has wrecked countless homes and careers. One quarter of the admissions to our mental hospitals involve alcohol. Yet, its use cannot be eliminated and its abuse cannot be effectively controlled. The reason? Generations of use have made alcohol part of our culture—irreversibly and permanently.

From colonial times, alcohol in various forms has been socially accepted in this country in accordance with the transplanted customs of the settlers. Moreover, alcohol quickly became an important item of our national economy. Many New Englanders grew rich on the Triangle Trade. The Whiskey Rebellion posed the first major test of Washington's administration. Successive waves of immigrants brought their drinking habits to our shores. In the process, brewing and distilling became major industries and an integral part of our economy.

Thus, when Prohibition was attempted, the United States had a 300-year history of social tolerance and economic exploitation of alcohol. In such circumstances, Prohibition was foredoomed to failure.

Irrespective of possibly inaccurate or exaggerated speculation as to
the extent of *habitual* marijuana use in the United States, it is safe to say that it is infinitesimal compared to alcohol and tobacco consumption. As a nation, we annually spend approximately $25 billion on these products. Incidentally, the magnitude of these industries in our economy is clearly apparent by comparison to the annual expenditures for all our courts—federal, state and local—which total less than $1 billion.

It would be extremely irresponsible and dangerous at this juncture to risk by legalization the popular acceptance and general use of marijuana and, thus, permit big business to create another giant industry rivaling liquor and tobacco. The foreseeable results would eventually prove irreversible. The lesson we have learned from our experience with alcohol and Prohibition makes this proposition irrefutable.

A marijuana culture superimposed on alcohol would create additional problems for our society of huge and devastating proportions.

There is an increasing body of considered opinion that marijuana is causally related to many accidents of every description but goes undetected. Many judges everywhere are aware of this problem in connection with criminal activity. On many occasions police have testified before me that the accused did not look or act right but that he didn't stagger or smell of liquor. Dr. Grinspoon has reported that the effects of marijuana are such that a person may *appear* to be sober while actually "highly intoxicated." Dr. Louria and Mr. O'Connor both testified before me that for this reason the marijuana-smoking driver is a serious menace on the highways.

The customary use of alcohol, by the glass or bottle, is conspicuous and thereby susceptible to some degree of reasonable regulation regarding time, place, quantity and the age of the user. The influence of liquor on a person can usually be detected by his physical appearance and his conduct. The abuse of alcohol can readily be observed and definitely ascertained by blood or breath analysis. The public has no such protection from one who acts under the influence of marijuana. Consequently, the extent to which automobile accidents, criminal activity, industrial accidents and a myriad of other casualties are caused by persons under the influence of marijuana is not known. Parenthetically, cost-minded insurance companies and the public they serve might give this phase of the problem serious consideration.

The legalization of marijuana and the task of developing and enforcing the requisite regulations concerning its manufacture, licensing, transportation, sale and distribution would present prodigious and perhaps insurmountable difficulties, particularly with regard to the protection of the young.

The problem we face with the regulation of alcohol would become insignificant compared to those which would be encountered with the legalization of marijuana. Consider the possibilities for the illicit manufacturing, bootlegging, smuggling and counterfeiting of brands as well
as the case of its illegal use. Once the American appetite is fully developed by making its manufacture, sale and use legal, then most assuredly organized crime would move in.

Of all the potential dangers inherent in the accelerating use of marijuana, I am fully persuaded that the greatest danger lies in the possibility of its being legalized and supposedly regulated. There can be no doubt that the pressures are mounting to achieve this goal. For instance, the U.S. Tobacco Journal, a trade magazine, has editorially advocated its legalization according to the Wall Street Journal, for obvious reasons.

Recently, as noted previously, the chairman of a special commission of the Massachusetts legislature studying the drug problem received headline publicity as favoring the legalized possession of two ounces or less of marijuana. Just think for a moment as to what could happen if this Massachusetts legislator and others who think like him had their way. Everyone could legally carry on his person at all times 40 marijuana cigarettes. In an affluent nation such as ours, we could expect the manufacturers to produce a more potently refined product equivalent to 100-proof liquor. In our society, the best-selling marijuana cigarette would assuredly be the most potent brand, a fact not likely to be overlooked by our competitive economic system. The experience in India, as reported by Dr. I. C. Chopra, substantiates this position. Witness also the premium attached in this country to "Acapulco Gold" compared to the milder native product and also the recent interception in Vermont of $400,000 worth of hashish which is reported to have eight times the potency of marijuana currently in use.

Getting "high" or intoxicated would be then possible for every man, woman and child — at any time — anywhere — by simply lighting up. That is, unless we enact a constitutional amendment allowing the police to conduct warrantless examinations of cigarettes. It would not be necessary to go home or to a bar. The ingredients for intoxication could be carried unobtrusively in every pocket or purse to be used at schools and colleges, on the streets, behind the wheel of a car, in the cockpit of a plane, at the instruments of a control tower, in the cab of a subway train, at an emergency switchboard, in a pharmacy, at the helm of a ship, on an assembly line, at the controls of a crane, a bulldozer, an X-ray machine and on ad infinitum. By the nature of its customary use, marijuana is more susceptible to surreptitious use than is alcohol.

Relying on reports such as that published after an experiment by Boston University faculty members last year to the effect that marijuana is a "relatively mild intoxicant" and focusing on the words "relatively mild" to the exclusion of "intoxicant," the public may be deluded into believing that the widespread use of legalized marijuana might not be so dangerous after all. Bear in mind, however, that this conclusion was reached after studying the reaction of a few college students who smoked relatively weak marijuana under pleasant, con-
'trolled conditions. Under such circumstances, other researchers might well find alcohol to be harmless. No attempt was made to include submarginal, emotionally disturbed individuals or those prone to violence, criminal activity and misconduct. There is almost universal agreement that these are precisely the persons who are most susceptible to serious and adverse effects. And yet, there are many who are willing to accept wholeheartedly the results of such inadequate and inconclusive experiments, while simultaneously ignoring the warnings of world-famous Dr. Chopra, who journeyed all the way from India to testify in the Leis case.

Why is it that so little public attention is focused on Dr. Chopra, who has the benefit of India’s centuries of unfortunate experience with use of marijuana, as opposed to flip comments by Dr. Mead, the no doubt sincere but short-sighted minority position of Massachusetts Representative Backman, the adherents of the “Playboy” philosophy or those who stand to profit from its legalization? Dr. Chopra and his father before him have spent their lives in studying the evil effects of marijuana on their country, but their admonitions based on solid evidence accumulated from centuries of marijuana use involving millions of people received scant notice as compared to the results of studies carried out in antiseptic surroundings and involving a few people under controlled conditions.

Some contend that the problem lies with the user and not with the drug. No doubt this is partially true; but the same might also be said of alcohol. Many well-balanced persons drink in moderation without adverse effects. Some persons, primarily the immature, the frustrated, the despondent and the insecure, drink to excess. Yet, for this very reason, alcohol has caused great harm to society and poses a potential threat to every drinker. Therefore, even if the only danger from the legalization of marijuana stems from its potential abuse by the emotionally unstable, it still represents a considerable danger to individuals and to society because of the difficulties inherent in regulating its use and distribution.

Others have argued that the legalization of marijuana will actually alleviate this situation. They maintain that the availability of marijuana will actually cause a decrease in liquor consumption. They assert that youths who know the nature of marijuana, who can regulate their use of it, and who appreciate the grave dangers of alcohol and heroin will use marijuana in lieu of and to the exclusion of these other drugs. However, from my judicial experience, I must draw an inference to the contrary. Furthermore, in India, where both drugs have been used extensively, the experience has been that marijuana use has been superimposed upon alcohol use without any diminution in the use of alcohol. Most recently, some proponents of marijuana’s legalization have inconsistently argued that the cutting off of the Mexican marijuana supply was driving users to more dangerous and addictive drugs. In this regard, a Massachusetts police officer has
stated that he can measure the availability of marijuana in his town by plotting sales of substitute and admittedly harmful drugs such as codeine and paregoric.

Another point for emphasis is that many reports on the degree of marijuana's harmfulness concentrate on the properties of marijuana in the abstract or in relation to some other drug. On this theory, they also classify beer or even wine as "mild intoxicants." Yet, we all know that many persons do get drunk on these. Marijuana cannot be judged in so superficial a manner. We must consider the variables which necessarily enter into any incident of marijuana use—the dosage and strength of the drug, the age, personality, physical and emotional state of the user and the external circumstances surrounding its use.

Some contend that parents who imbibe alcohol are hypocritical when they condemn the use of marijuana by their children. Would not the legalization of marijuana for adults instill the same feelings of resentment in youngsters below the proposed age limit for marijuana, or is it proposed that there be no such limitation? Would we not be faced with the same problem all over again but among a younger segment of our population? Would Margaret Mead propose to resolve the problem by offering a twelve-year-old the choice of a martini or marijuana?

The anguished father of a heroin addict recently chronicled his son's involvement with drugs in a Boston newspaper. He wrote:

... Marijuana was thick in the air of our town and county in the summer of 1968. Mark had admitted one experiment with it, and the line was drawn clearly in the house. Marijuana was out, pills or LSD were out, anything that rattled the mind was out no matter how many kids were using them. (Heroin was something grown on another planet, beyond fearing, and in retrospect this was foolish because I knew two other families in town whose sons had become addicted. One of them died of an overdose last year.)

I know that such an eminent authority as Margaret Mead tells Congress that marijuana can be safely taken by teenagers as young as 16. I didn't think then and I don't think now that Margaret Mead knows what she's talking about on the subject. An adolescent has enough griefs and glories to handle as he tries to make the grade to adulthood without drugs blunting or distorting his experience.

Ignoring the tragic experience of such families, a staff writer wrote in the same newspaper four days later:

... The laws against marijuana were passed in 1930s by frightened men possessing misinformation. No good reason exists for
continuing its prohibition. There is a compelling reason for making it legal: it would be a first step toward re-establishing the credibility needed to combat smack.

On the very same day in another Boston newspaper, Alfred J. Murphy, chief inspector of the Food and Drugs Division of the Massachusetts Department of Public Health, reported that in 1965 there were 68 known drug addicts undergoing treatment in Massachusetts. A year later there were 216; in 1969, 792; and in 1970, 386 were reported during the first three months of the year.

Mr. Murphy, who has had twenty years of experience in drug-use control, was reported as particularly disturbed by the “experts without expertise.” “These are the do-gooders,” he elaborated, “the people who say there is nothing addictive about marijuana and that it does not lead to heroin or other drugs. Well, the cities and towns in the state which had marijuana problems four or five years ago have heroin problems today.”

§1.6. Law revision. One of the most persistently advanced arguments for the legalization of marijuana amounts not to an apologia for marijuana but rather an attack on existing prohibitory laws and their enforcement. There are undoubtedly extremely isolated instances of the imposition of unduly harsh sentences on marijuana users. In general, however, I believe that the vast majority of sentences imposed in such cases are fair and reasonable, ordinarily consisting of suspended sentences and probation. The arguments proffered by propagandists usually are based upon the maximum permissible sentences as though they are commonly imposed, which is not so. By and large, these alleged sentences are nonexistent in our courts. The irresponsible reference to them, more than the actual administration of the law, contributes to disrespect for the law.

I testified to this effect before the Select Committee on Crime of the United States House of Representatives last September in Boston. The committee’s report was released only last week. While the committee has in part attributed the rapid undermining of respect for law to the growing drug culture and also has rejected “savagely repressive and punitive laws” as a solution, it found supposedly documented reports of numerous jailings of marijuana users to be false. Indeed, the committee found that judges seldom jail young people even for selling marijuana.

Without in any way altering my strong opposition to the legalization of marijuana, I do believe that some of our marijuana laws could profitably be amended by substantially lowering the maximum sentence for mere possession of marijuana for personal use by first offenders. The real threat of a mandatory one-to-sixty-day sentence for a first offender would, in my opinion, be far more effective than the remote threat of a sentence of several years which is hardly, if ever, imposed
on a user. On the other hand, I believe judges would do well to impose heavy sentences, without suspension, on pushers of marijuana and other drugs.

Furthermore, I would also support legislation which would permit a judge to expunge the criminal record of a first-time possessor or user — not a pusher — who successfully completes a specified period of conditional probation. Such a procedure and a substantial revision of statutory sentences as suggested would, I believe, reduce the so-called generation or creditibility gap and would, I believe, also provide an incentive to avoid further contact with marijuana and marijuana users.

§1.7. Conclusion. In conclusion, may I pose a rhetorical question? Does anyone seriously question whether we could survive the intolerable conditions that a marijuana culture would inflict upon society?

The answer should be obvious. And yet it is doubtful whether the best brains on Madison Avenue could plan a better campaign to develop such a culture than one which would start by brainwashing our youth.

Whether they realize it or not, Representative Backman, Doctors Mead, Grinspoon, Fort, Goddard and Egeberg and others who have publicly minimized the dangers of marijuana are definitely traveling this most dangerous path. Perhaps they should reflect on a statement contained in the September 26, 1969, issue of Time magazine quoting a tobacco company executive as saying “A cigarette concern would have to be pretty stupid if it weren’t looking into marijuana.” Once marijuana is embraced by big industry and added to the business giants involved with liquor and tobacco, can we ever hope for its subsequent prohibition?

Exhibits one and two, namely alcohol and tobacco, are conclusive proof that if we permit the widespread use of marijuana through legalization, this irrational step will be permanent, irreversible and disastrous.