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REPORT
ON
LEGAL SANCTIONS OF MARIJUANA

The Committee: Ernest Bonyhadi, Fred M. Buchwalter, Phillip D. Chadsey,
William Gittelsohn, Frederick A. M. Kingery, M.D., George D. Leonard and
Charles M. Grossman, M.D., *Chairman.*

For the Majority

A. Leighton Platt and Donald W. Green, III.

For the Minority

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**REPORT
ON
LEGAL SANCTIONS OF MARIJUANA**

To the Board of Governors,
The City Club of Portland:

I. INTRODUCTION

Because of the apparent wide-spread use of marijuana, particularly by young people, and the consequent public interest in and need for information about the subject, the Board of Governors, upon the recommendation of the Project Planning Board, established a research committee to study and report on the legal sanctions imposed upon the possession, use and sale of marijuana in Oregon, including in its consideration the appropriateness of the sanctions.

The Committee has limited its research to public information available from medical, law enforcement, and other private and government sources and did not attempt to develop its own independent body of data.

II. THE LEGAL ASPECTS OF MARIJUANA USE

A. Oregon Law

Prior to January 1, 1972, under Oregon Law, conviction of use or possession or sale of marijuana could be treated within the discretion of the court as either a felony punishable by a maximum of ten years in prison, or a misdemeanor. The possession of it was also subject to a fine of not more than \$5,000.

In the new Oregon Criminal Code, effective January 1, 1972, the felony-misdemeanor dichotomy as it relates to marijuana is substantially retained, but with refinement. Conviction for possession or sale (now called "furnish") carries with it a term of imprisonment of up to one year in the case of a misdemeanor, or up to ten years in the case of a felony. Additionally or alternatively, a fine may be levied upon conviction up to a maximum of \$2,500 if a felony is involved or up to \$1,000 for a misdemeanor violation.

Under the new law, the courts will no longer have the discretion to treat several marijuana offenses as either misdemeanors or felonies. For example, simple use of the drug is classified as only a misdemeanor. Also, if the conviction is for a first offense and less than one ounce of marijuana is involved, the penalty upon conviction must be that for a misdemeanor. However, if a person over 18 furnishes marijuana to a person under 18, and there is at least three years' difference in their respective ages, the penalty upon conviction of the furnisher must be that specified for a felony with an enhanced maximum term of imprisonment of up to twenty years.

B. Federal Law

Federal legislation concerning marijuana has recently been substantially revised. (Comprehensive Drug Abuse Prevention and Control Act of 1970, P.L. 91-513, 91st Congress, approved October 27, 1970.) This Act represents the latest piece of major legislation controlling manufacture and distribution of illegal drugs including marijuana. It repeals most of the prior federal legislation dealing with this subject.

This Act introduces major changes in the legislative control of marijuana. The general tenor of the new Act is to relax the severity of penalties for possession and use. All mandatory minimum sentences are eliminated except for the engaging in "a continuing criminal enterprise". In the case of a first offense for simple possession (not for distribution) the court may place the offender on probation, and if the probational conditions have not been violated during the term of probation, the proceedings may be dismissed without a determination of guilt on

the first offense. If, in the previous instance, the offender is under 21, the court can order expunging of all official records relating to the crime. Penalties for use, possession and distribution of narcotic drugs draw more severe sentences than for similar acts involving non-narcotic drugs. Distributing "a small amount of marijuana for no remuneration" is treated as a case of simple possession with the possibility of expungement of all criminal records relating to the offense as previously stated. (The Department of Justice agreed to inclusion of this provision stating that the intended meaning was "to cover the type of situation where a college student makes a quasi-donative transfer of one or two marijuana cigarettes and receives \$.50 or \$1 in exchange to cover the cost of marijuana".)

Federal legislation for the first time has not included marijuana as a narcotic drug and thereby follows the pharmacological dictionary definition of marijuana as a non-narcotic. The new Oregon law, on the other hand, still defines marijuana as a narcotic.

A more severe penalty is called for where a person over 18 sells to a person under 21, the first offense calling for twice the punishment otherwise prescribed. Subsequent convictions call for three times the punishment otherwise prescribed.

C. Single Convention on Narcotic Drugs, 1961

The United States became a signatory to this Convention by ratifying it in 1967. It obligates the Federal Government to pass laws preventing any state from having a licensing system for the sale of marijuana. Article 36 provides that each signatory country shall adopt such measures as will ensure that the cultivation, production, distribution, possession, et cetera, of marijuana, except for medical and scientific purposes, shall be punishable offenses.

D. Summary

The trend under both Oregon and federal law is to relax the penalties involving the possession and use of marijuana and to make more severe the offenses involving the sale of the drug to young persons. Before the present proscriptions could be abolished and the use of marijuana legalized, the United States may either have to withdraw unilaterally from the Single Convention on Narcotic Drugs or seek appropriate amendments to its binding provisions.

III. THE MEDICAL ASPECTS OF MARIJUANA USE

The report to Congress by the Secretary of Health, Education and Welfare on "Marijuana and Health" (January 31, 1971) noted that it is relatively free from unusual hazard as compared to most drugs. However, there is an apparent variation in the effects which result from smoking the plant *Cannabis sativa*, or Indian hemp, which depends on the preparation of the material, the way it is smoked, the social setting, and the attitude of the user. The pharmacological activity depends on the content of a chemical called tetrahydrocannabinol (THC), which is found mostly in the flowering parts and upper leaves of the plant. Numerous other factors, such as the way it is cultivated, the soil, the time of harvesting, the heat, and the humidity may affect the THC content of the final product. The stems and seeds are virtually inactive, and marijuana prepared from the whole plant has relatively little activity. If only the leaves and tops are used, activity is apt to be much greater. Marijuana available on the street may also contain mescaline, methamphetamine, LSD, or other drugs as additives to make it more potent.

A stronger form of marijuana is hashish. Hashish is a brownish resin collected from the leaves of the marijuana plant and has a far higher content of THC. Although not widely available in the United States at the present time, its use has been increasing recently.

Marijuana is usually smoked by deep inhalation and retention. Its effect is noticed within a few minutes and lasts for several hours. It can also be taken orally with a similar although delayed effect.

A. Pharmacological properties

THC in the amounts used during smoking a marijuana cigarette may produce conjunctival injection (reddening of the eyes), impaired coordination, drowsiness, hunger, and slurring of speech. Tolerance or addiction is generally not believed

to occur. Contrary to the common understanding, marijuana is not medically a narcotic. There is no convincing evidence that repeated use of cannabis derivatives leads to use of harder drugs such as heroin or other opiates, although most heroin addicts have used marijuana in the past. There is no evidence that there is any more casual connection between the use of marijuana leading to the use of heroin, than the prior use of alcohol and tobacco leading to the use of heroin. Alcohol appears to be far more dangerous pharmacologically than does marijuana. The marijuana smoker in our present society, however, is often exposed to harder drugs through sellers and groups oriented to the use of harder drugs. Presumably long-term marijuana smoking can contribute to chronic bronchitis and emphysema. The potential of marijuana to induce lung cancer is not known.

B. Psychological effects

A feeling of euphoria and relaxation is common. Changes in time sense have definitely been shown to take place during marijuana intoxication. There is a tendency to overestimate the passage of time particularly while engaged in some activity. Memory, both immediate and short-term, may also be impaired while under the influence of the drug. More complex functions involving learning and comprehension are adversely affected even at the moderate levels of typical American social usage. As with the use of alcohol, the loss of inhibition commonly occurs. Marijuana has no known aphrodisiac properties. Occasionally there is a feeling of anxiety, suspiciousness, or confusion. Except in high doses marijuana is not usually associated with delusions, hallucinations, or psychoses, although adverse mental reactions have been reported from the Far East, where the THC content of marijuana is higher than in this country. Acute psychotic episodes precipitated by marijuana intoxication have been reported. These appear to occur infrequently except in cases of high dosages. Even at levels of social usage, psychosis, depression, promiscuity, and anti-social behavior may appear in particularly susceptible individuals.

The long-term physical and psychological effects of heavy marijuana use are not fully known. Strong cannabis preparations have been available for centuries in some countries, and descriptions of psychoses and apathy as a result of such use are abundant. Unfortunately the available information is anecdotal in nature.

C. Genetic effects

The search for evidence of harmful effects in infants born of marijuana-smoking mothers has yielded negative results. As in the case of the use of other drugs, pregnant women and nursing mothers are cautioned against its use.

D. Summary

The undesirable psychological and physical effects of smoking small amounts of marijuana as it is done currently in this country are relatively mild in most instances. The effects of long-term use, or the use of stronger cannabis preparations, such as hashish, are not known. The possibility of "lacing" marijuana with other drugs, as well as the exposure of the marijuana smoker to other more dangerous drugs, provides an added hurdle to an objective evaluation. Most medical authorities, however, agree that marijuana has relatively mild physiological effects and that the current penalties regarding its use are out of line with the potential danger. Like any drug, it is undoubtedly subject to abuse but less so than the most commonly used drug: alcohol.

IV. THE SOCIOLOGICAL ASPECTS OF MARIJUANA USE

When Congress initially outlawed marijuana in 1937, it did so largely on the basis of statements made by officials of the Federal Bureau of Narcotics that users of the drug commit violent crimes while under its influence. The present literature published by the Federal Government no longer supports that view. Further, although the witnesses interviewed by the Committee included a number of law enforcement officials, no witness stated that the use of marijuana either directly or indirectly results in violent or anti-social behavior. In fact, contrary to the original premise for the proscription, the evidence today shows that a person under the influence of the drug tends to become passive rather than violent or aggressive.

Also, because marijuana is neither addictive nor expensive to obtain, it does not indirectly lead the marijuana user to commit other crimes to finance his purchase and use of the drug.

At the time the drug was first made unlawful, its use was limited to a small segment of our society which for various other reasons had a high incidence of delinquency. It was for this reason that the original advocates of the proscription assumed a cause and effect relationship between incidence of violent crime and users of the drug.

Today the use of marijuana is neither confined to a small segment of our society nor limited to groups which have a high incidence of delinquency. Both nationally and locally the use of marijuana is widespread, especially among youth. At the present, 30 to 40 percent of high school students in the Portland area have tried marijuana. The educators interviewed by the Committee did not feel that marijuana use led to delinquency, but they did associate it with poor scholarship resulting from a lack of interest in academic pursuits. It is becoming increasingly popular with youth from upper and middle class economic backgrounds, and is especially popular with today's college students. Its use at the college level is casual, however, and usually does not evoke response from either college administrators or police.

Some law enforcement officials feel that marijuana is a social problem and should not be subject to legal sanctions. Most others feel that the limited resources available for fighting crime can better be spent on prosecuting other offenses. A substantial portion of time and resources of local law enforcement agencies is currently being expended on prosecuting "sellers" and "suspected sellers" for marijuana violations.

There is reason to believe that the source of marijuana being sold in Portland is no longer limited to enterprising youth supplementing their income with occasional trips to Mexico for the purpose of acquiring marijuana for their own use and for sale to friends. Two witnesses interviewed by the Committee, one a law enforcement officer and the other a person close to the youth culture, stated that there is an indication that organized crime is becoming involved in the black market distribution of marijuana in the Portland area. They stated that there are times during the year when marijuana will suddenly become scarce in this area and the price of heroin drops at the same time, thus encouraging marijuana users to try the more dangerous drug.

The use today, however, is not restricted to the young. It is becoming more popular with their elders in the same middle and upper economic strata of our society. Thus, the present law is being broken by an increasing number of persons who come from those segments of our society which have been thought of traditionally as the most law-abiding because of their economic interest in maintaining order.

V. ARGUMENTS IN FAVOR OF AND AGAINST THE PRESENT LAWS

The arguments put forth by the witnesses interviewed by the Committee who do not favor legalizing marijuana at the present time were fourfold.

1. Until the full extent of psychological and physiological effects of marijuana are known we should not make legal a substance which may be permanently damaging to the user.

2. Society already has such a large scale problem resulting from the use of alcohol that it should not legalize another drug and create a second social problem of similar magnitude.

3. Marijuana adversely affects the individual by taking away his motivation, initiative and inhibitions. If its use is allowed to become more widespread by legalization the whole character of our American society and the free enterprise system on which it is based will be altered and possibly eventually be destroyed.

4. To legalize marijuana would make its use more widespread. Further, even though marijuana itself is not addictive, it could lead to greater use of truly dangerous drugs as new users, after having legally tried the drug, may go on to seek greater "kicks" from more potent dangerous drugs or narcotics.

A number of arguments were put forth in favor of abolishing the present laws proscribing the use of marijuana.

1. Marijuana does not lead to anti-social conduct. Since any harm resulting from the use is to the individual user and not to society in general, it is not a proper subject for criminal sanctions. The enforcement of the present laws diverts the already overtaxed resources of our law enforcement agencies from their more important job of protecting society from anti-social conduct.

2. The current widespread violation of the present laws regarding the use of marijuana creates disrespect for law in general. First, a person violating the present marijuana laws tends to rationalize his position on the basis that he is required to obey only "good laws" and not those that are, in his opinion, "bad laws." Second, this disrespect for the law is not limited to those persons directly breaking the marijuana laws but has spread to those charged with the enforcement of laws proscribing its use. Critics of the present law point out that in the case of all victimless crimes, law enforcement officials, in their zeal to build a case against the violator, often resort to unconstitutional and illegal methods of gathering evidence in order to obtain a conviction.

Third, such present state laws which treat marijuana as a narcotic, when in fact it is not, in the pharmacological or scientific concept of the word, are a major factor in creating a credibility gap which separates and alienates many of our young people from their elders. Because much of the information which has been disseminated in the past, concerning the dangers of marijuana, is false, it is more difficult to educate young persons concerning the actual dangers of using true narcotics, such as heroin, or dangerous drugs such as LSD.

3. Because marijuana can only be purchased illegally, it necessarily exposes the user and society to a number of adverse side effects of the illicit sale of the drug. Often the user does not know what he is purchasing from an illegal dealer and thus he may be getting something more harmful than marijuana. Since the dealer is likely also to be selling narcotics or other truly dangerous drugs, the buyer is exposed to other substances which have been proven physically harmful or which may cause true anti-social conduct on the part of the user. The fact that a black market exists also creates a climate favorable to organized crime and the evils that go with it.

4. The present law subjects the convicted marijuana user to the possibility of having a felony record. A conviction, and its associated possible incarceration, may cause more social and psychological damage to the individual and society than the use of the drug itself.

5. The argument that the casual use of marijuana takes away the user's motivation, initiative or inhibitions to the extent that its legalized use would jeopardize our current American society and the free enterprise system is based on a false premise. Marijuana is not the cause of much of the current dissatisfaction with our society so much as it is a symptom of that dissatisfaction. Although marijuana is commonly associated with long-haired unmotivated youth, its use is no longer uncommon among highly motivated business and professional members of our society.

The report of the National Commission on Marihuana and Drug Abuse (Shafer Report) became available after your Marijuana Committee report had been submitted to and while it was being considered by the Board of Governors. The Shafer Report is a comprehensive, in-depth review of the status of marijuana with recommendations that include the first recommendation unanimously approved by your Committee.

VI. RECOMMENDATION RELATING TO THE USE AND POSSESSION OF MARIJUANA

Based on available medical and sociological data, legal sanctions governing the use and possession of marijuana are inappropriate.

The Committee, therefore, unanimously recommends that there be no criminal or legal sanctions for personal use or possession of marijuana.

VII. RECOMMENDATIONS RELATING TO THE LEGALIZED SALE AND DISTRIBUTION OF MARIJUANA

A. Majority Opinion and Conclusion

In a free society, criminal laws can only be justified on the basis that they proscribe some form of anti-social conduct. The present laws proscribing both the use and sale of marijuana are not justified on that basis.

The Minority report concurs that there should be no legal sanctions for the personal use and possession of marijuana, but members of the Minority do not feel that the sale of marijuana should be legalized.

The use of marijuana is already widespread. There is no evidence that its use will be any more widespread if the sale of it is legalized. If the Minority's view were adopted, the black market for marijuana with all of its attendant evils would still exist. The marijuana user would still be purchasing from an illicit seller who also may be selling truly dangerous drugs. The buyer would still have no way of knowing that the "marijuana" he was buying was mixed with something more harmful; the failure to legalize the sale of marijuana could present a greater health hazard than the legal marketing of the drug subject to proper quality controls. So long as there is a profit to be made in the illegal sale of marijuana, it is an invitation to organized crime to expand its activities in the black market. Because the user would still be forced to purchase from an illegal source, the disrespect for law that the present marijuana laws foster would still exist.

The Shafer Report adopted the position of discouraging the use of marijuana. Your Committee unanimously agrees with this position. However, the Shafer Report takes the position that legalization of sale will aggravate the current situation by giving the impression that it is approving the use of marijuana. They argue that they *think* marijuana use may be a passing fad and to take steps which might seemingly approve the use of marijuana would be undesirable. There is certainly no evidence that the use of marijuana is a "passing fad". There is significant experience to show that the illegal sale of marijuana contributes to organized crime and to the exposure of the purchaser to hard drugs. Unfortunately, the Shafer Report did not consider this argument at all.

The Majority of the Committee is of the opinion that the present evils resulting from the black market sale of marijuana can only be avoided by legalizing its sale under appropriate quality controls. Sales of marijuana could then be taxed and the money used to educate the public against all forms of drug abuse.

B. Majority Recommendation

The majority recommends that the manufacture and sale of marijuana be legalized and controlled by the state.

Respectfully submitted,
Ernest Bonyhadi
Fred M. Buchwalter
Phillip D. Chadsey
William Gittelsohn
Frederick A. M. Kingery, M.D.
George D. Leonard *and*
Charles M. Grossman, M.D., *Chairman*
for the Majority

C. Minority Opinion and Conclusions

The Minority of your Committee is concerned with the impact of widespread legalized marijuana use on the productivity and material well-being of society. It is the Minority's judgment there is no compelling personal or social reason for legally effecting broader consumption of yet another intoxicant by members of society. For, in the final analysis, marijuana is nothing more or less than an escapist commodity. It is imperative that the traditional values that made this country great are preserved, and those evils and values that undermine its progress are discouraged. Keeping in mind that there is no legitimate use for marijuana, involvement and motivation—not escapism—need to be encouraged.

For the first time in history exhaustive and heavily funded research into the medical aspects of marijuana is being undertaken. While the medical evidence is conflicting at this point, it is generally agreed that the typical amount of marijuana taken in the United States (1 to 1½ cigarets about twice a week) is not physiologically harmful. However, medical consensus is that marijuana, the drug, poses some danger for the individual user, either physically or psychologically. The only major disagreement in the medical community is about the degree of such danger¹. Recurrently, almost every authority, society or commission in the field of medicine presently advocates the need for more research into the effects of marijuana use.

Heretofore, most medical studies have only covered a short-term use experience. But what of chronic or protracted use by the individual? Dr. Louis J. West, Chairman of the Department of Psychiatry at University of California at Los Angeles, states: "It is my belief that a percentage of regular users—I don't know what percentage and I don't know how to identify them in advance—will be adversely affected in terms of mental health by continued use of the drug"². Why then rush to judgment on the question of legalizing marijuana? First let the results of the important medical research being done be known and let the Report of the National Commission on Marihuana and Drug Abuse (Shafer Report)³, released this past month, be analyzed and commented upon by the experts.

Medically, then, the fact that presently there are few indications marijuana is seriously harmful when taken in moderate amounts does not mean that on-going research may not in the future reveal reasons for avoiding it completely. For if time and such research bear out Dr. West's belief that marijuana slowly exerts a personality or behavior change in some users, it will be by far the strongest argument yet against marijuana use—at least for those who hold the traditional values of motivation and achievement.

In discussing the legal aspects of marijuana use, the Majority states that . . . "Before the present proscriptions could be abolished and the use of marijuana legalized, the United States may either have to withdraw unilaterally from the Single Convention on Narcotic Drugs or seek appropriate amendments to its binding provisions". Suffice it to say that, because this would have to be done and the whole federal statutory scheme relative to the use and possession of marijuana amended before the drug could be legalized in this country, the practical — and political—likelihood that this would ever occur seems remote. To your Minority the recommendation that marijuana be legalized is not realistic.

According to the Shafer Report, 41 percent of the adults and 45 percent of the youths who have ever used marijuana reported in the National Survey authorized by the Marijuana Commission that they no longer use the drug. It is suggested that the present interest in marijuana is faddish and transient and will diminish in time of its own accord.

But the adoption of a regulatory scheme at this time legalizing marijuana would signify approval of its use and would institutionalize the availability of the drug. Your Minority believes use of marijuana should be discouraged.

Further, your Minority rejects a total prohibition scheme as it exists in the country today. The Minority does not view marijuana use as such a grave problem

¹"Marihuana: A Signal of Misunderstanding", First Report of the National Commission on Marihuana and Drug Abuse, Raymond P. Shafer, Chairman, March 1972, p. 119.

²"Marijuana: Does it change personality, conduct of user?", Los Angeles Times, January 10, 1972, article by Harry Nelson, Times Medical Writer.

³National Commission Report, *supra*.

that individuals who smoke it, and possess it for that purpose, should be subject to criminal procedures. No sufficiently compelling social reason, predicated on existing knowledge, justifies intrusion by the criminal justice system into the private lives of individuals who use marijuana. This is primarily why the Minority concurs with the Majority of your Committee on the first recommendation.

On the other hand, it also rejects at this time the regulatory or legalization scheme offered by the Majority because it would institutionalize availability of the drug which has uncertain long term effects and which may be of transient social interest. It is submitted that, based on present knowledge, current legal sanctions relating to social use of marijuana are inappropriate, but temporal considerations dictate that a decision be deferred on full legalization of the drug. In a word, to decriminalize the mere use of marijuana is one thing, but to recommend its complete legalization at this time is quite another.

D. Minority Recommendation

The Minority of your Committee rejects the second proposal of the Majority and recommends as follows: the cultivation or sale or possession for sale of marijuana (in amounts of more than one ounce) be treated as either a felony or a misdemeanor, within the discretion of the court.

Respectfully submitted,

A. Leighton Platt

Donald W. Green, III

For the Minority

Approved March 3, 1972 by the Research Board for transmittal to the Board of Governors.

Received by the Board of Governors March 27, 1972, and ordered printed and distributed to the membership for discussion and action on April 21, 1972.

**APPENDIX A
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APPENDIX B

NEW ORS NUMBERS AND "LEAD LINES"

Senate Bill 40 Section Numbers	became ORS NUMBERS	LEAD LINE
76	161.625	Fines for Felonies
77	161.635	Fines for Misdemeanors and Violations
83	161.705	Reduction of Class C Felony or Criminal Activity in Drugs to Misdemeanor
274	167.207	Criminal Activity in Drugs
276	167.217	Criminal Use of Drugs
313	51.050	Criminal Jurisdiction in Counties With or Without District Courts

APPENDIX C**INTERVIEWS**

The following persons were interviewed by the Committee (titles indicate positions held at the time of the interview):

Dr. Paul Blachly, Department of Psychiatry, University of Oregon Medical School
Dennis Brand, Chief of Detectives, Multnomah County
Donald Clark, Commissioner, Multnomah County and former Sheriff, Multnomah County
Desmond D. Connall, District Attorney, Multnomah County
Dr. A. C. Germann, Professor of Criminology, California State College at Long Beach
George Van Hoomissen, District Attorney, Multnomah County
Gene Horn, Director, Charix Coffee House
Dr. Samuel Irwin, University of Oregon Medical School
Lee Johnson, Attorney General, State of Oregon
Sidney I. Lezak, United States Attorney in Oregon
Dr. William Proppe, Principal, Jefferson High School
Leonard W. Schmurr, Special Investigation, Portland Public Schools
Dr. Edwin Schneider, Principal, Lincoln High School
Dr. Charles Spray, Director, Outside-In Clinic
G. Raymond Steed, Assistant Superintendent, Portland School District
Robert L. Steel, Deputy Police Chief, Portland Police Department
Barbara Strauder, Nurse, Jefferson High School
Students from several high schools