Pushing Drugs Through The Courts

The following report was prepared by the staff of the Labor Organizers' Defense Fund.

The Carter Administration's policy of "decriminalizing" and legalizing narcotic drugs will result in the willful destruction of American labor power if it is not stopped. This pro-drug policy, which has been supported by Peter Bourne, Carter's candidate for chairman of the Drug Abuse Council, and the National Organization for the Reform of Marijuana Laws, is suitable only for a society which is committed to destroying its most valuable resource, creativity, in labor-intensive work.

A basic feature of American society has been the assimilation of higher levels of technological advancements and the corresponding up-grading of education of the population as a whole. Our Founding Fathers intended the policy of the federal government to foster this Idea of Progress, which they embodied in the U.S. Constitution. Carter's current drug campaign would scrap the principles of the Constitution, substituting in their place

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>
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the lawless hedonism and mental stupefaction of a Clockwork Orange society.

The National Organization for the Reform of Marijuana Laws (NORML), in coordination with top advisors in the Carter Administration, is involved in a planned national effort to legalize marijuana through carefully staged court cases and controlled legislative debates. NORML is the chief organizer for the Carter Administration's decriminalization drive and has chapters in all 50 states plus the District of Columbia, Puerto Rico and the Virgin Islands. NORML has filed numerous lawsuits challenging the constitutionality of the marijuana laws. State court actions are filed in Arizona, California, Florida, Illinois, Missouri and Pennsylvania with federal court actions filed in the District of Columbia and Tennessee. Lawsuits are in preparation in New York and Washington. While initiating these lawsuits, NORML has recently adopted an amicus curiae (friend of the court) strategy to intervene into already existing cases.

The present debate on decriminalization is a *controlled* debate. Since approximately 1971-1972, the state and federal courts have been used as a vehicle to legalize marijuana, with two main topics at issue. On the one hand, the courts have ruled that an individual has the constitutionally protected right to destroy his mind using drugs. According to the courts, this is a fundamental personal liberty guaranteed under the U.S. Constitution. The second topic under discussion is the classification of marijuana as a non-dangerous drug. Overflowing with "expert" testimony, court records appear to contain "proof" that marijuana is not dangerous and that in fact, it is less harmful than tobacco and alcohol. There is no adequate scientific data to substantiate this argument. Drug use, through social practice, has a qualitatively different effect on society than alcohol. One look at countries such as China and Turkey reveals the devastating effect drugs have on society and the intellectual advancement of its people. In fact, using the harmful effects of tobacco and alcohol as a metric for marijuana is comparable to a neurotic using a paranoid-schizophrenic as a metric for his own sanity. The question is not whether marijuana is less harmful than tobacco and alcohol but what effect any substance has on the mind.

Right to Privacy

In 1975 Alaska became the first state to legalize the private use of marijuana, through its Supreme Court, thereby setting a powerful precedent for decriminalization. Chief Justice Rabinowitz in his opinion (*Ravin v State*, 537 P.2d 494) stated that no adequate justification existed for states' intrusion into citizens' right of privacy by prohibition of possession of marijuana by an adult for personal consumption in the home. Thus, possession of marijuana by adults in the privacy of their own home for personal use is a constitutionally protected right. The decision was based upon the Right of Privacy contained in the Alaskan Constitution rather than the federal Constitution. Under the principle of dual sovereignty a state has the right to make and enforce its own laws separate from those of the federal government. This case was intentionally filed in state court, where the Department of Justice could not intervene, rather than federal court, and so, *Ravin v State* could not be appealed to the U.S. Supreme Court.

Chief Justice Rabinowitz's opinion declared:

> It appears that the use of marijuana, as it is presently used in the U.S. today, does not constitute a public health problem of any significant dimensions. It is, for instance, far more innocuous in terms of physiological and social damage than alcohol or tobacco.

He added:

> Tenet to a basic free society is that the state cannot impose its own notions of morality, propriety or fashion on individuals when the public has no legitimate interest in the affairs of those individuals.

The Court also stated that there was "no firm evidence" that marijuana use was harmful to the user or to society, and that "mere scientific doubts" cannot justify government intrusion into the privacy of the home. This court decision established a foot-in-the-door for other states' action — using the same arguments — to legalize marijuana possession and use, with the door open to legalize cocaine and other hard drugs in the future.

In *People v Sinclair* (387 Mich. 91, 17N.W. 2d 878 (Sup. Ct., 1972)), Justice T.G. Kavanagh's opinion rested squarely on the basic right of an individual to be free from government intrusions. He found the marijuana possession statute to be "an impermissible intrusion on the fundamental rights to liberty and the pursuit of happiness and to an unwarranted interference with the right to possess and use private property" ("private property": marijuana— ed.).

In *State v Kanter* (493 P. 2d 306, 311-312 (Sup. Ct. Hawaii, 1972)), Justice Abe, in his concurring opinion, applied the issues of state's control over a private individual to the issue of marijuana:

> . . . and that the state may regulate the conduct of a person under pain of criminal punishment only when his actions affect the general welfare, that is, where others are harmed or likely to be harmed . . . the finding that marijuana is harmful to the user does not authorize the State under its police power to prohibit its use under the threat of punishment . . . . *the State must prove that the use of marijuana is not only harmful to the user, but also to the general public before it can prohibit its use.* (emphasis added)

Cocaine Next?

The court issues are now branching out to encompass the decriminalization of cocaine as a non-dangerous drug, using the same arguments (from *Ravin v State*) that there is no proof that cocaine endangers the individual or society in any significant way. Justice Elwood McKenney's decision in the *Commonwealth of Massachusetts v Miller* determined that cocaine was irrationally and erroneously classified as a narcotic drug and that classification "results from generations of ignorance, from myths connected with the drug, and from blatantly racist attacks on cocaine users, all of which are now destroyed by reliable scientific data." (This "racist" accusation against science appears in numerous court cases.) The scientific data presented at this trial (brainwashing expert and methadone pusher Joel Fort was one of five people to give "expert" testimony) was a total sham. No witnesses were called by the prosecution to refute the testimony alleging that "scientific" research showed cocaine not to be harmful. Included in the case was the judge's own "scientific" test of cocaine. McKenney took some cocaine into his chambers to test (presumably he snorted it) and then declared he had found nothing wrong with it!

Besides finding that people have "racist" attitudes toward cocaine, the court determined that cocaine and marijuana are acceptable recreational drugs. The court findings also said the state did not demonstrate that there was a reasonable relation between cocaine prohibition and any colorable public interest. The court suggested that "it would be less restrictive to treat cocaine separately from hard drugs and to use controlling mechanisms comparable to those used for alcohol consumption," i.e. age limit, etc. (The Massachusetts Supreme Court has recently reversed this lower court's decision).

NORML's 'Cover Story'

NORML's rationalizations for the legalization of marijuana are centered around four main arguments: (1) there are millions of people using marijuana despite the strict penalties involved; (2) last year over 1,000,000 people were arrested for possession of marijuana and this is an unnecessary burden on the courts and judicial system; (3) decriminalization of marijuana will "prioritize" police work toward areas of violent crimes and crimes against property; and (4) marijuana is not dangerous. Subsumed in these rationalizations are the notions of "victimless crimes" and the anarchist's right to his own folly as long as it doesn't harm another individual.

Jeremy Bentham was the originator of the notion of crimes without victims. Bentham, an English bankers' agent who can be considered a member of the first monetarist think-tank, wrote in the 18th century that a person who committed a crime against himself did not need to be punished because the person, after he accomplished the act, had already received pain and thereby punishment. Bentham's "philosophy" was that society has no interest in the development of an individual within society.

Directly associated with such arguments is manipulation of law enforcement officials. The courts using state laws have purposefully imposed harsh sentences for possession of a small amount of marijuana (at times harsher than those given for robbery, rape, etc.) thus creating the conditions which enable the Carter Administration and NORML to "enlighten" the population as to the "true properties and effects" of marijuana and other drugs. The propaganda against imposition of harsh sentences has justified severe austerity measures; the narcotics division of urban police departments throughout the country have been cut back to the bare bones, and local policy officials are now being channeled into accepting this phony notion of going after "real crime" instead of "arresting some pot-head" (whom a police officer otherwise instinctively dislikes for various sound reasons).

Other Proponents of Decriminalization

The push for decriminalization is also expressed in the Ted Kennedy-John McClellan "Criminal Code Report Act of 1977" to the U.S. Senate. This clean police-state S-1

rewrites the entire Title 18 U.S.C., the federal criminal code. This bill calls for the decriminalization of marijuana and calls for removing cocaine from the Schedule 1 (high criminal penalty) list of drugs.

Senate Bill 1 was reintroduced May 2 into the U.S. Senate for debate. McClellan is using the marijuana decriminalization section as a bargaining chip to win liberal support for the death sentence and generally tougher sentencing policies. This amoral debate is set up to pull conservative layers into accepting various provisions of the bill which they would normally reject, such as decriminalization, "in return" for harsher penalties for other crimes.

The most explicit push for decriminalization can be seen in the National Governors' Conference report of March, 1977. This three-volume study entitled: *Marijuana: A Study of State Policies and Penalties* was prepared for the NGC's Center for Policy Research and Analysis by the firm of Peat, Marwick, Mitchell and Co. The study was funded by the Law Enforcement Assistance Administration. The direction of the research was guided by an advisory panel which, in part, consisted of Professor Richard Bonnie of the University of Virginia School of Law and former Associate Director of the National Commission on Marijuana and Drug Abuse (Bonnie was responsible for most of the legal aspects of this study) and Peter Bourne, Special Advisor to the President on Drug Abuse (Bourne was responsible for the medical and scientific research contained in this report).

The study, proposed by Gov. Brendan Byrne (N.J.) in 1975, is for state policymakers. It purports to "review the medical, legal and historical dimensions of marijuana use and examines the range of policy approaches toward marijuana possession and use which state officials have considered." In actuality this report is a "how to" manual for state governors and legislators to begin marijuana decriminalization procedures.

Since the majority of the U.S. population is against decriminalization and "current political realities preclude enactment of a regulatory approach toward the availability of marijuana . . . in the immediate future" the report furnishes the state legislators and governors with a list of "dos and don'ts" on how to sneak marijuana decriminalization in the back door before anyone realizes what took place.

In Volume 2, chapter 5, "Guide to Policy Decision-making," is a "drafter's guide" for policymakers to decriminalize marijuana the quickest and easiest way possible. This chapter is the real guts of this "how to" manual. It discusses *all* the pitfalls other states had in their drive to decriminalize marijuana; every conceivable approach that has been taken so far, what the issues have been and how successful the arguments for decriminalization have been.

Carter himself has not only publicly advocated a reduction in the penalties of personal use but has also suggested that individual states, rather than the federal government, are the appropriate jurisdiction to consider change. Carter proposes this to get the decriminalization measures through the back door and to sidestep the U.S.'s international obligations to control drugs.

In 1967 the U.S. signed the 1961 Single Convention on Narcotic Drugs which is the only international law regulating marijuana. Its purpose is to limit the use and international traffic of marijuana and other specified drugs to medical and scientific pruposes. Therefore, all traffic for purposes other than medical or scientific research is outlawed. As a result of this the U.S. government is obligated to prohibit cultivation and distribution of marijuana for non-medical purposes. The Carter Administration gets around the Convention by explaining "the Convention does *not* obligate a signatory to impose any sanction, criminal or civil, on consumption-related behavior, including possession for personal use." This rationalization may not hold up very well under attack so the report also explaines that "even assuming that the Convention does require its signatories to make simple possession a crime, the individual states of the U.S. are not bound by the Convention to punish possession."

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> —Massachusetts Justice McKenney

Therefore, the key to decriminalization of marijuana, due to international obligations, federal law, and current political realities, is through the back door via the courts and the state legislatures. This approach not only covers all the bases necessary to decriminalize marijuana but it gives the Carter Administration a credible cover by not *publicly* committing the federal government to the legalization of drugs.

Two quotes will suffice to show the totality of the court-state legislation operation. In Byrne's preface to the NGC report he says, "Even governors who have no intention of initiating action with their legislatures in this area may have to anticipate a court-mandated reevaluation of the situation."

Elsewhere in the legal section of this report, referring to the successful privacy argument in *Ravin v State*, "This solicitude for personal autonomy has gained enough adherents in the lower courts to make other *Ravin*-like decisions a distinct possibility if the legislatures fail to take action on their own."