# marihuana: a signal of misunderstanding

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apprehended by law enforcement authorities, may be detained for purposes of treatment and rehabilitation.

Whatever the merits of such an argument for the opiates and alcohol, such an argument does not apply to marihuana. Only a very small percentage of marihuana users are drug-dependent or are in need of treatment. Their dependence is generally upon multiple drug use, not on marihuana. In any event, the existence of such a small population does not justify retention of the possession offense as a detection device.

### *6. International Obligations Do Not Require Maintenance of a Possession Penalty*

Some have raised the possibility that removal of simple possession criminal penalties would contravene this country's obligations under the Single Convention on Narcotic Drugs (1961), to which it became a signatory in March, 1967. We do not believe the provisions of that Convention compel the criminalization of possession for personal use.

Nowhere in the Convention are its Parties expressly required to impose criminal sanctions on possession for personal use. Article 4 requires Parties to "take such legislative and administrative measures as may be necessary . . . . to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs." Penal sanctions are not necessarily included in this formulation.

Article 36, which deals specifically with penal provisions, requires each party to adopt "such measures as will ensure" that the listed activities, including possession, "shall be punishable offenses." Some have argued that this provision requires prohibition of personal use.

However, from a comprehensive study of the history of the Convention, the Commission has concluded that the word "possession" in Article 36 refers not to possession for personal use, but to possession as a link in illicit trafficking. This interpretation is bolstered also by the failure to include "use" in Article 36 even though it has been included in Article 4.

Finally, we must consider Article 33, which provides that "the Parties shall not permit the possession of drugs except under legal authority." This Article also does not require the imposition of any sanctions on possession for personal use. Experts consulted by the Commission have indicated that this Article may, nevertheless, require that the Parties to limit possession and use to medical and scientific purposes. To affirmatively allow drugs to remain in the possession of persons for non-medical use would in this view contravene Articles 4 and 33 to read together. From this perspective our international obligations may require the classification of marihuana as contraband. For this reason, together with a desire to symbolize our dis-

couragement policy in a clear way, we have included the contraband feature in our legal implementation scheme.

In conclusion, our reading of the Convention is that a Party may legitimately decide to deal with non-medical use and possession of marihuana through an educational program and similar approaches designed to discourage use.

### *7. No Potency Distinction is Necessary at the Present Time*

Following the approach taken in the Comprehensive Drug Abuse Prevention and Control Act of 1970, we have drawn a line between the natural cannabis plant and the synthetic tetrahydrocannabinols. "Marihuana" is defined as any and all parts of the natural plant. That we choose this approach for purposes of statutory implementation does not mean that we are unaware of the difference between the less potent and more potent preparations of the natural plant.

As noted in Chapters II and III, the highest risk of cannabis use to the individual and society arises from the very long-term, very heavy use of potent preparations commonly called hashish. No such pattern of use is known to exist in the United States today.

The predominant pattern of use in the United States is experimental or intermittent use of less potent preparations of the drug. Even when hashish is used, the predominant pattern remains the same. In addition, whatever the potency of the drug used, individuals tend to smoke only the amount necessary to achieve the desired drug effect.

Given the prevailing patterns of use, the Commission does not believe it is essential to distinguish by statute between less potent and more potent forms of the natural plant. Reinforcing this judgment are the procedural and practical problems attending an effort to do so.

If the criminal liability of an individual user is dependent on the THC content of the substance, neither he nor the arresting officer will know whether he has committed a crime until an accurate scientific determination is made. Even if such accurate determinations were feasible on a large scale, which is not now the case, such after-the-fact liability is foreign to our criminal laws.

Under present circumstances, then, a statutory line based on potency is neither necessary nor feasible. We emphasize also that any legal distinction is an artificial reflection of the Commission's major concern: the heavy use of the drug over a long term. The most emphatic element of official policy should be to discourage such use, especially of the more potent preparations. Unfortunately precise legislative formulations regarding the amount of the drug presumed to be for personal use do not assist this effort at all. Whether it is lawful to possess one ounce of hashish or a proportionate amount based on potency (for example, one-fourth ounce), an individual prone to use the drug heavily will do so. Society's resources should be committed to the