

late or interpret. Rather than informing the public, much of the data disseminated has produced frustration and misinterpretation of the information presented.

Adult society, including parents and policy-makers, finds it difficult to comprehend and account for many of the attitudes and behavior of the young, including the use of marihuana. In many cases the adults are still influenced by the myths of an earlier period which overstated the dangers of the drug. At a time of great social change and turbulence, the tendency to depend on the "traditional wisdom," and its moral justification, is a strong one.

Just as youth must try to understand and appreciate the strengths of the institutions of our society, adults must try to understand the times through the eyes of their children. Where marihuana is concerned, society must try to understand its role in the lives of those who use it. The key to such understanding lies in the changes which have taken place in society within recent years and the effects these changes have had on succeeding generations of youth. The increased use of marihuana is only one of these effects.

One focal point in discussion between generations is the contrast between the use of marihuana and the use of alcohol. Many young people perceive that marihuana is less dangerous than alcohol in terms of its addiction potential and long-term physical and psychological consequences. Many believe also that marihuana and other psychoactive drugs make it possible to expand their perceptions and see this as a perfectly legitimate objective.

Viewed against the background of the profound changes of recent years in the fields of economics, politics, religion, family life, housing patterns, civil rights, employment and recreation, the use of marihuana by the nation's youth must be seen as a relatively minor change in social patterns of conduct and as more of a consequence of than a contributor to these major changes.

When the issue of marihuana use is placed in this context of society's larger concerns, marihuana does not emerge as a major issue or threat to the social order. Rather, it is most appropriately viewed as a part of the whole of society's concerns about the growth and development of its young people.

In view of the magnitude and nature of change which our society has experienced during the past 25 years, the thoughtful observer is not likely to attribute any of the major social problems resulting from this change to marihuana use. Similarly, it is unlikely that marihuana will affect the future strength, stability or vitality of our social and political institutions. The fundamental principles and values upon which the society rests are far too enduring to go up in the smoke of a marihuana cigarette.

IV social response to marihuana use

"I find the great thing in this world is not so much where we stand, as in what direction we are moving: To reach the port of heaven, we must sail sometimes with the wind and sometimes against it—but we must sail and not drift, nor lie at anchor."

—Oliver Wendell Holmes,
The Autocrat of the Breakfast Table (1858)

A general interpretation of the National Survey indicates that roughly one-quarter of the American public is convinced that criminal sanctions should be withdrawn entirely from marihuana use. Another fourth of the public is equally convinced that existing social and legal policy is appropriate, and would ordinarily jail possessors, with the exception of young first offenders. Approximately half of the citizenry is confused about what marihuana means and ambivalent about what society ought to do about its use. This half of the population is unenthusiastic about classifying the marihuana user as a criminal, but is reluctant to relinquish formal control over him.

In considering social and legal policy alternatives, the Commission has analyzed the pattern of social response to marihuana use.

The Initial Social Response

As we noted in Chapter I, the initial social reaction to marihuana use was shaped by the narcotics policy adopted by the Federal Government. In the early legislation, marihuana was officially character-

ized as a narcotic on the basis of the widely shared assumption that it was a habit-forming drug, leading inevitably to a form of dependence. Although the medical community was aware that marihuana was distinguishable from the opiates in that it did not produce physical dependence, no functional distinction was drawn; it was assumed that most users were psychologically compelled to continue using the drug. As one psychiatrist noted in 1934, the marihuana "user wants to recapture over and over again the ecstatic, elated state into which the drug lifts him . . . The addiction to cannabis is a sensual addiction: it is in the services of the hedonistic elements of the personality."

The notion of psychological dependence is still ill-defined, and was understood even less in the early days of American marihuana use. The Commission has concluded that the automatic classification of marihuana as "addictive" was derived primarily from an underlying social perception of the substrata of society which used the drug: aliens, prostitutes, and persons at the bottom of the socioeconomic ladder.

Additional characteristics of the opiates were also transferred to marihuana. Particularly important in this regard was the association of marihuana with aggressive behavior and violent crime. One district attorney in New Orleans, where marihuana use was particularly common, wrote in 1931:

It is an ideal drug to cut off inhibitions quickly . . . At the present time the underworld has been quick to realize the value of this drug in subjugating the will of human derelicts to that of a master mind. Its use sweeps away all restraint, and to its influence may be attributed many of our present day crimes. It has been the experience of the Police and Prosecuting Officials in the South that immediately before the commission of many crimes the use of marihuana cigarettes has been indulged in by criminals so as to relieve themselves from the natural restraint which might deter them from the commission of criminal acts, and to give them the false courage necessary to commit the contemplated crime.

By 1931, those states in which marihuana use was at all common had formally responded with a total eliminationist policy. They generally amended the preexisting narcotics legislation to include marihuana. Meanwhile, in 1929, the Federal Government already had classified marihuana officially as a "habit-forming drug," along with the opiates and cocaine, in the legislation which established two federal "farms" for treating narcotics addicts in Fort Worth, Texas, and Lexington, Kentucky.

During the 1930's, the remaining states criminalized marihuana use by adopting the Uniform Narcotic Drug Act, in which the drug was included (optionally) in the definition of narcotic drugs. Then, in

1937, Congress adopted the Marihuana Tax Act, completing the initial period of official response to marihuana use.

A difference of opinion among historians still exists as to why policymakers thought national legislation was necessary at that time. Whatever the reason, however, Congress responded swiftly, without much attempt to learn the facts about the drug and its use. The assumptions underlying that legislation were summarized in the Report of the House Ways and Means Committee:

Under the influence of this drug the will is destroyed and all power of directing and controlling thought is lost. Inhibitions are released. As a result of these effects, it appeared from testimony produced at the hearings that many violent crimes have been and are being committed by persons under the influence of this drug. Not only is marihuana used by the hardened criminals to steel them to commit violent crimes, but it is also being placed in the hands of high-school children in the form of marihuana cigarettes by unscrupulous peddlers. Cases were cited at the hearings of school children who have been driven to crime and insanity through the use of this drug. Its continued use results many times in impotency and insanity.

When Congress escalated penalties for narcotics offenses in 1951 and again in 1956, marihuana was included, with the following effects:

Possession	
Minimum sentence	
First offense	2 years
Second offense	5 years
Third and subsequent offense	10 years
Fine	\$20,000
Sale	
Minimum sentence	
First offense	5 years
Second and subsequent offense	10 years
Sale to minor by adult	10 years

Parole or probation were made unavailable to all except first offenders in the possession category.

The perceptions of 1937 were perpetuated in the comments of Senator Price M. Daniel, Chairman of the Senate subcommittee considering the 1956 Act, although by now an important new factor had been added:

Marihuana is a drug which starts most addicts in the use of drugs. Marihuana, in itself a dangerous drug, can lead to some of the worst crimes committed by those who are addicted to the habit. Evidently, its use leads to the heroin habit and then to the final destruction of the persons addicted.

The Change

With the adoption of marihuana use by middle and upper class college youth in the mid-60's, the exaggerated notion of the drug's dangers and the social tension so widespread during this period combined to reopen the question of the impact of marihuana use. But governmental policy held to the appropriateness of existing law.

Arrests, prosecutions, convictions and sentences of imprisonment all increased at both the federal and state levels. Marihuana arrests by the U.S. Bureau of Customs increased approximately 362% from fiscal year 1965 to 1970. Arrests by the Bureau of Narcotics and Dangerous Drugs, an agency which concerns itself primarily with sale, rose 80% from 1965 to 1968. Because major responsibility for enforcing the possession laws lies at the state level, state arrests rose dramatically (1,000%) during the five years from 1965 to 1970. Although the data compiled by the Federal Bureau of Investigation are not comprehensive, the FBI sample tracks the continuing increase of state arrests (Table 6).

Table 6.—STATE MARIHUANA ARRESTS

Year	Arrests	Percentage Increase
1965.....	18,815	
1966.....	31,119	65.39
1967.....	61,843	98.73
1968.....	95,870	55.02
1969.....	118,903	24.02
1970.....	188,682	58.68

In the wake of this upsurge in marihuana arrests, the criminal justice system faced a far from usual "criminal" population. Nonetheless, judging from federal figures, the number of people prosecuted, convicted, and incarcerated did rise substantially as prosecutors and judges attempted to carry out the law.

Beginning in 1966, however, the proportion of defendants ultimately convicted declined gradually, as did the percentage of defendants who were incarcerated, and the average length of their sentences. This response reflected an attempt to mitigate the harshness of the law as applied to this new user population. By 1968, the trend toward leniency seemed to have temporarily leveled off, before it accelerated again in 1969 (Table 7).

Paralleling the vigorous law enforcement effort between 1965 and 1968 was a punitive reaction in the schools and large numbers of students using marihuana were suspended, expelled or referred to

the police. Similarly, the military's first reaction to the surge of marihuana use took the form of court-martial, administrative punishment, or discharge from the service.

Table 7.—DISPOSITION OF FEDERAL MARIHUANA ARRESTS

Year	Total defendants	Percent convicted	Percent incarcerated	Average length of sentence (in months)
1964.....		85	49	
1965.....	523	90	52	58.2
1966.....	746	87	45	53.7
1967.....	941	80	38.5	51.0
1968.....	1,433	79	39.4	51.2
1969.....	2,189	76	34.3	52.6
1970.....	2,082	73	27.4	46.7
1971.....	3,323	60	28.5	39.9

The family, however, suffered the most from the sudden conflict between accepted norms and this expression of youthful independence. The use of drugs, particularly marihuana, became a significant barrier between parent and child. Many young people adopted marihuana as a symbol of their uneasiness with society's prevailing norms.

As noted in Chapter I, the sudden increase in marihuana use precipitated extensive research by the medical and scientific communities. By 1969, a consensus emerged holding that many of the earlier beliefs about the effects of marihuana were erroneous. Available U.S. data seemed to indicate that dependence on the drug was rare, as was the incidence of psychosis among marihuana users. Particularly important was the recognition that there was little, if any, convincing proof that marihuana caused aggressive behavior or crime. As such findings accumulated, public attention was drawn increasingly to the consequences of existing policy: soaring arrests, convictions and in some states, lengthy sentences.

Policy-makers, in social institutions and government, as well as the public began to believe that the harshness of the criminal penalties was far out of proportion to the dangers posed by the drug. As users were incarcerated, newspapers and television stations often brought the matter to public attention, particularly when the arrested youngster came from a prominent family.

Official response to this development was twofold: a trend toward leniency in marihuana cases within the legal system, and a recognition by policy-makers of widespread uncertainty regarding the effects of marihuana.

Reflecting the first response, the courts, prosecutors and police applied existing law more leniently, and the law-makers in most states

and at the federal level changed the letter of the law, reducing the penalties for possession of marihuana, generally to a misdemeanor (up to a year in jail). In the process, they repealed the mandatory minimums which had been of major concern to the judiciary.

By June 1970, 24 states and the District of Columbia had reduced the penalties, although 34 states and the District still classified marihuana as a narcotic. Meanwhile, on the federal level, Congress had been considering the Nixon Administration's comprehensive proposal to overhaul the national government's patchwork of drug legislation.

Since the passage of the Harrison Narcotics Act in 1914, federal drug laws had taken the form of tax measures, an approach compelled for constitutional reasons. The Marihuana Tax Act of 1937 followed the same format. The result, however, was a complex set of offenses involving order forms and registrations. When the Supreme Court declared certain aspects of the Tax Act unconstitutional in 1969, revision of the law became essential. Taking up the challenge, the Administration proposed a major piece of legislation which tightened control over pharmaceutical distributions and also reappraised the penalty structure for narcotics and dangerous drug offenses.

Possession of all drugs, including marihuana, was reduced to a misdemeanor. Special treatment for first offenders was provided, allowing expungement of the record upon satisfactory completion of a probationary period. Casual transfers of marihuana were treated in the same manner as possession. After a series of wide-ranging hearings, Congress passed the Comprehensive Drug Abuse Prevention and Control Act, and on October 27, 1970, the President signed it into law.

After passage of the new federal drug law, the Conference of Commissioners on Uniform State Laws adopted a Uniform Controlled Substances Act, conforming in structure and emphasis to the federal law. Although the Uniform Act specifies no penalties, the Commissioners recommended that possession of all drugs be a misdemeanor.

At this writing, 42 of the states and the District of Columbia classify possession as a misdemeanor or have adopted special provisions so classifying possession of small amounts of marihuana. In half of the remaining eight jurisdictions, the courts have discretion to sentence possessors as misdemeanants.

In 11 jurisdictions, casual transfers are treated in the same manner as possession, and in 27 jurisdictions, conditional discharge is available to certain classes of offenders.

The second characteristic of the 1969-70 official response was its acknowledgment of uncertainty. No longer perceived as a major threat to public safety, marihuana use had now become primarily an issue of private and public health. Scientific researchers were asked to

define the nature and scope of the health concern. In a sense, lawmakers took the minimum official action dictated by social and scientific realities, but were uncertain where to go from there. The need to know more about the effects of the drug, particularly its chronic, long-term effects, became the core of official response.

Many states appointed special task forces and commissions to report on marihuana and drug abuse in general. Congress directed the Department of Health, Education and Welfare to file annual Reports on Marihuana and Health and, in the Comprehensive Drug Abuse Prevention and Control Act of 1970, established this Commission.

The Current Response

In addition to an objective appraisal of the effects of marihuana use, this Commission was directed to evaluate the efficacy of existing law. The marihuana laws were and still are the focus of much public debate. We have recognized from the outset that a meaningful evaluation of the law is dependent upon an understanding of objectives and the social context in which the law operates. Particularly important in this connection are the attitudes and practices of society's non-legal institutions and the general direction of public opinion.

In order to comprehend the entire range of contemporary social response, the Commission launched a threefold inquiry. First, we designed a series of projects designed to ascertain opinion and behavior within the criminal justice system. Included were an analysis of all marihuana arrests during the last six months of 1970 in six metropolitan jurisdictions, a similar study of all federal marihuana arrests during 1970, an opinion survey of all local prosecuting attorneys, and a similar survey of attitudes among a representative sample of judges, probation officers, and court clinicians.

We next focused on the practice and opinion of the medical, clerical, educational, and business communities. To this end, we solicited written responses from representative groups, invited various spokesmen to testify before us, made numerous field visits to secondary schools, colleges and universities and surveyed opinion in free clinics and university health services. We also launched a study of drug use and abuse in industry which will be covered in our second Report on drug abuse.

Finally, we commissioned the National Survey of public opinion about marihuana to which we have previously referred.

THE CRIMINAL JUSTICE SYSTEM

How does the criminal justice system respond when an enormous increase in an illegal conduct, of a primarily private nature, makes full enforcement of the law impossible, and when there is widespread doubt about the rationale for making the conduct illegal? This ques-

tion guided our analysis of the responses and opinions from members of the criminal justice system.

Law Enforcement Behavior

On the basis of a detailed study of all federal marihuana arrests during 1970 and of a sample of state arrests during the last half of 1970 in Cook County, Illinois; Dallas, Texas; Omaha, Nebraska; Tucson, Arizona; San Mateo County, California; and the Washington, D.C. Metropolitan Area, we present the following findings.

Federal

The federal authorities make little or no effort to seek out violators of laws proscribing possession of marihuana. The Federal Government ceded primary responsibility for enforcement of possession laws to the states several years ago. However, in the course of general enforcement activity, the federal authorities do make possession arrests. If a person is arrested at the federal level for possession or casual transfer of small or moderate amounts of marihuana, the case generally is either dropped or turned over to the states for prosecution.

The Bureau of Narcotics and Dangerous Drugs does not concentrate much of its energy on marihuana. By its own estimate, approximately 6% of its investigative efforts are directed at marihuana offenses. Most BNDD marihuana arrests occur as a result of the agency's general investigation into the commercial distribution of all drugs.

The overwhelming majority of all federal marihuana arrests occur at or near the borders, as the Bureau of Customs, sometimes in cooperation with the Border Patrol of the Immigration and Naturalization Service, attempts to interdict the importation of the drug.

State

At the state level, where enforcement of the possession laws is focused, about 93% of the arrests in our sample were for this offense. Yet, there was little formal investigative effort to seek out violators of the possession laws. Instead, 69% of all marihuana arrests arose from spontaneous or accidental situations where there had been no investigation at all. Well over half of these spontaneous arrests occurred when police stopped an automobile and saw or smelled marihuana. The remaining spontaneous arrests occurred when police stopped persons on the street or in a park and discovered marihuana.

In an additional 16% of the cases, the marihuana arrest resulted from police follow-up of a phoned tip or similar lead. In less than 11% of all the cases was there any significant police involvement. (Scope of investigation was unknown in about 4% of the cases).

Because of this enforcement pattern, arrests were concentrated among the young. Typically the arrestee was a white male, in school or employed in a blue collar job, without a prior record. Of those arrested at the state level:

- 58% were under 21; 30% were between 21 and 26; 10% were over 26 (2% unknown)
- 85% were male; 15% were female
- 77% were white; 21% were black; 2% were Spanish speaking
- 27% were students, 2% were military; 28% were employed in blue collar jobs; 15% were employed in white collar jobs; 11% were unemployed (16% unknown)
- 44% had not been arrested previously; 31% had been arrested previously (in 25% of the cases, the extent of prior contact was unknown); only 6% of the arrestees had been previously incarcerated

Such arrestees generally possessed only small amounts of marihuana. Of our entire sample of 3,071 arrests:

- 67% were for possession of less than one ounce (18% were for less than one gram; 23% were for between one and 5 grams; 26% were for between 5 and 30 grams)
- 7% were for possession of between one ounce and 4 ounces
- 8% were for possession of over 4 ounces
- 13% were for possession of unknown quantities
- 3% were for transfer of less than one ounce
- 3% were for transfer of over one ounce*

Offenders at the state level were generally arrested in groups.

- 29% were arrested alone
- 24% were arrested with one other person
- 43% were arrested with two or more other persons (4% unknown)

Faced with this population of offenders, the criminal justice system responded often by dismissing or diverting to a non-criminal institution the young first-offense possessor of small amounts.

Adult Cases

At least 48% of the cases were terminated in the defendant's favor:

- The police themselves disposed of 10% of the cases, refraining from filing charges, or diverting the case to some other institution.
- The prosecution declined to file complaints in an additional 7% of the cases.
- An additional 28% of the cases were dismissed in the course of pretrial judicial proceedings.
- In 3% of the cases, the defendant was acquitted at trial.

*Because the figures have been rounded off, the total is not always 100%.

Juvenile Cases

At least 70% of the cases were terminated in the youth's favor:

- The police themselves disposed of 21% of the cases, refraining from referring the youth to juvenile authorities or diverting the case to some other agency.
- An additional 48% of the cases were dismissed either because the juvenile officer responsible for filing a delinquency petition refused to do so, or because the judge dismissed the case prior to trial.
- In 1% of the cases, the juvenile was found innocent.

Of the entire sample of arrests, both adult and juvenile, 33% of those apprehended were ultimately sentenced, after pleading guilty or being found guilty. (Since 11% of the 3,071 cases were still pending at the time of our study, and disposition was unknown in 2% of the cases, the figure may be as high as 40% of all arrests).

Of those convicted for possession of marihuana, 24% were incarcerated, usually for a year or less. Most of the remaining persons were put on probation, although some were fined only. By comparison, of those convicted of sale (5% of the convicted individuals), 65% were incarcerated, usually for over a year.

In short, in the 2,610 cases where disposition was final and was available to us, 6% of those apprehended were ultimately incarcerated. From this analysis of enforcement behavior, it appears that the law enforcement community has adopted a policy of containment.

Although effort is sometimes expended to seek out private marihuana use, the trend is undoubtedly to invoke the marihuana possession laws only when the behavior (possession) comes out in the open. We were told by police officials in some cities, for example, that arrests are made only when marihuana use is flaunted in public. The salient feature of the present law has become the threat of arrest for indiscretion. The high percentage of cases which, after arrest, are disposed of by dismissal or informal diversion attests to the ambivalence of police officials, prosecutors and judges about the appropriateness of existing law. Anyone processed through the entire system does run a risk of incarceration, especially when the individual had a prior record and the offense was sale or possession of a significant amount.

Law Enforcement Opinion

Prosecutorial opinion toward the existing system suggests both a containment objective and a flexible response. As to prosecution policy:

- 31% of the prosecutors state that they would not prosecute anyone arrested at a private social gathering of marihuana users who are passing a cigarette

- Large numbers of prosecutors admit that they consider factors other than strength of the evidence in deciding whether or not to prosecute a possession case; 41% cite age, 38% cite lack of prior record, 36% consider the amount of marihuana seized and 26% take into account the family situation of the accused; 31% thought one or another of these non-legal factors was *most* important in his decision
- 29% of the prosecutors acknowledge that they use informal probation in lieu of prosecution in some cases

As to the efficacy of existing law, a majority of the prosecutors agree that the marihuana laws do not deter, or deter only minimally:

- Persons under 30 from initiating use (53%)
- Users from using regularly (56%)
- Users from transferring small amounts for little or no remuneration (55%)

From the studies made by the Commission of enforcement practices, we consider this to be a realistic assessment.

Conversely, however, the prosecutors agree that the laws have a significant effect in deterring users from smoking marihuana openly (63%) and persons over 30 from initiating use (44%).

We also asked the district attorneys for their views on an appropriate legal policy concerning marihuana use. Their opinions tend to fall in three groups. One group, representing about 25% of the prosecutors, favors the status quo, and does not want any further reduction in penalties. A fifth of the prosecutors conclude, on the basis of their experience, that possession of marihuana, and perhaps sale of the drug, should be removed entirely from the criminal justice system.

The remaining prosecutors, a majority, is willing to consider mitigation of the harshness of the law either by legislation or by benign exercise of discretion, but is reluctant to relinquish formal, criminal control. These prosecutors doubt the deterrent value of the law and are willing to be lenient in appropriate cases, but they believe some use of the legal system is necessary to prevent an increase in marihuana use.

Underlying these opinions are diverse attitudes about marihuana use and the efficacy of existing law. For example, prosecutors who doubt the efficacy of existing law and reject the "escalation" and "aggressive behavior" hypotheses, are generally willing to modify the laws by their enforcement policies and by legislative reform (Table 8).

The same general pattern of practice and opinion emerges at the judicial and dispositional level. Only 13% of the responding judges would jail an adult for possession of marihuana and only 4% said they would incarcerate a minor. Lesser proportions of probation officers and clinicians would imprison adults (8% and 1%) and minors (2% and

1%). Conversely, 11% of the judges, 15.5% of the probation officers and 63.5% of the clinicians noted that they would assess *no penalty* for possession by adults. For minors, the proportions are 3%, 5%, and 33% respectively.

Table 8.—DISTRICT ATTORNEYS' OPINIONS

Change favored	Percent who believe marihuana leads to hard drug use	Percent who believe marihuana leads to aggressive behavior	Percent who believe the marihuana laws do not deter persons under 30 from initiating use	Percent who believe the marihuana laws do not deter persons under 30 from initiating use
None.....	87.1	47	51.3	28.5
Reduction of possession penalties.....	68.8	35.1	63.2	34.3
Preclusion of incarceration.....	64.7	33	59	33.2
Decriminalization of possession of small amounts.....	41.5	21.9	67.2	37.4
Legalization of marihuana.....	32.2	11.1	69	37.8

How to read table: 87.1% of the prosecutors who favor no change in existing law believe that marihuana leads to the use of hard drugs; in contrast, 32.2% of the prosecutors who favor legalization believe that marihuana leads to the use of hard drugs.

With regard to appropriate legal policy, the judges exhibit the same inclination as the prosecutors to look for alternatives within a formal control system which would avoid the use of criminal penalties. We asked essentially the same question in two ways and received similar responses (Table 9).

The judges, as a group, are less enthusiastic about criminal control than the prosecutors, but are equally unwilling to relinquish formal control. By contrast, the probation officers and clinicians, who have more personal contact with these offenders and are perhaps more intensively aware of the control potential of the criminal justice system, are highly skeptical about formal control (Tables 10, and 11).

In conclusion, as one proceeds through the criminal justice system, from district attorneys to court clinicians, the people responsible for the functioning of that system seem to be decreasingly enthusiastic about the appropriateness of criminal control and decreasingly insistent on any technique for formal control.

Table 9.*—JUDGES' OPINIONS

Types of control	Means of control for adult users	Percent who favored	Statutory schemes for possession	Percent who favored
Informal control	Personal choice Informal social control	11 22	Control outside criminal justice system	24.3
Non-criminal formal control	Required treatment Other	21 11	Expungement of criminal record	57.9
Criminal control	Criminal law	25	Control within criminal justice system	11.5

*Because of a small percentage of non-responses, figures do not always total 100%.

How to read table: When asked to identify the appropriate means of control for adult users, 33% of the judges opted for informal control (11% would rely on personal choice and 22% would rely on informal social control). Similarly, when asked about the appropriate statutory scheme for possession, 24.3% of the judges preferred control outside the criminal justice system, a functional equivalent of "informal control."

Table 10.*—PROBATION OFFICERS' OPINIONS

Types of control	Means of control for adult users	Percent who favored	Statutory schemes for possession	Percent who favored
Informal control	Personal choice Informal social control	21 32.7	Control outside criminal justice system	35.5
Non-criminal formal control	Required treatment Other	11.8 10	Expungement of criminal record	54.5
Criminal control	Criminal law	15.5	Control within criminal justice system	9

*Because of a small number of non-responses, the figures do not always total 100%.

To supplement our survey of behavior and opinion within the criminal justice system, we also solicited the views of the American Bar Association. The President of the ABA in turn urged the respective Committees of the Association to submit their views to us. The two Committees directly concerned with the drug area, the Committee on Alcoholism and Drug Reform of the Section on Individual Rights

Table 11.*—CLINICIANS' OPINIONS

Types of control	Means of control for adult users	Percent who favored	Statutory schemes for possession	Percent who favored
Informal control	Personal choice Informal social control	61.7 21	Control outside criminal justice system	74
Non-criminal formal control	Required treatment Other	1 10	Expungement of criminal record	22.6
Criminal control	Criminal law	3.5	Control within criminal justice system	0

*Because of a small number of non-responses, the figures do not always total 100%.

and Responsibilities, and the Committee on Drug Abuse of the Section on Criminal Law, were in essential agreement regarding the appropriate course of action.

Both Committees expressed doubt about the wisdom and legitimacy of existing policy and about the capacity of the criminal justice system to deal with marihuana use. They both urged the Commission to recommend the removal of criminal penalties from possession of the drug for personal use and casual non-profit transfers. Both Committees suggested that a regulatory approach to distribution of the drug be given serious consideration.

THE NON-LEGAL INSTITUTIONS

Law enforcement authorities, given available and prospective resources, cannot possibly enforce the existing marihuana laws fully. The best they can do is keep marihuana use contained and out of sight. In addition, many officials within the criminal justice system are reluctant to enforce the marihuana laws, being either uncommitted to the usefulness of this particular law or opposed to the law itself. The net result is for the legal system to leave much of the responsibility for social control to other social institutions such as family, schools, churches, and the medical profession. Since these other institutions themselves have relied heavily on the legal system for control, caution and confusion now dominate the social response to marihuana use.

The diminishing severity of the law enforcement response may not have occurred if the other institutions of society had continued to regard the marihuana user as a criminal. However, many of these institutions have come to view the marihuana user primarily in social

or medical terms, and to recommend a form of social control in accord with their respective self-interests or orientations. In many cases, the attitudes of these other institutions mirror that of the criminal justice system: uncertainty about the proper role of formal legal control.

The Family

The most important institution for instilling social norms is the family. Parental attitudes generally parallel public opinion, and specific responses in our National Survey suggest an inclination among parents and non-parents to deal with youthful marihuana users through discussion and persuasion rather than harsh or punitive measures. When asked what action they would take upon discovering that one of their teenage children was smoking marihuana with friends, 47% of the adults responded that they would use persuasion and reason. Twenty-three percent favored a punitive approach. Interestingly, 9% of the latter group felt so strongly about the matter that they were willing to report their own child to the police. A considerable number, 35%, indicated that they were uncertain about what to do, or failed to respond to this multiple response question.

The non-punitive trend was also apparent when the adults were asked what they would do if their teenage child was arrested for a marihuana offense. A substantial number (58%) indicated they would attempt to extricate their child from the situation, many not wishing their child to have a police record, while 34% expressed the sentiment that the child's arrest would help him learn a lesson.

The Schools

Marihuana use continues to increase among high school and college students. The National Survey reveals that 30% of the high school juniors and seniors have used marihuana. The National Survey also reveals that 44% of those currently attending college at the graduate or undergraduate levels have used it, while other surveys indicate this figure is significantly higher in some major universities.

Not surprisingly, there has been, during the last two years, an appreciable change in the attitudes of school administrators, faculty and even of the boards of education and college levels are generally use. Administrators at the secondary and college levels are generally more relaxed and tolerant toward marihuana use than they were during the mid-1960's, when support for a punitive response was common. After the initial shock of widespread use dissipated, many school officials came to believe that strong disciplinary action, including suspension and arrest, was counterproductive. In addition, as the evidence accumulated that marihuana was not as dangerous as had once been thought, parental and community pressures were sometimes

brought to bear on school administrators to be less punitive and more understanding of marihuana use.

At the secondary level, the policies very somewhat from state to state and even within states. Nevertheless, school boards generally seem to have become less enthusiastic about suspension and arrest as an appropriate response to marihuana use. One school administrator in Philadelphia noted sarcastically that if all users were suspended or arrested, the high schools would become empty cells, with their entire clientele turned out onto the streets.

A West Coast official emphasized that student alcohol use was a much more serious problem than marihuana use; he even suggested that legalization of marihuana might reduce alcohol use among the young. The Commission ascertained that no suspensions for marihuana use had occurred during 1971 in the entire school system of a southern metropolitan area. Although security officers in that system did make 20 arrests, they were all for selling marihuana and other drugs.

At the secondary level, then, increased reliance is being placed on persuasion rather than discipline, as a means of discouraging marihuana use. Drug education programs, now being instituted in almost every school system, often include information about alcohol and tobacco. We will explore the various pedagogical techniques employed in such programs and will attempt to evaluate them in our next Report.

At the college level, the response is even more lenient. In many cases official neutrality or even protection against police intervention substitutes for the restraint common at the secondary level. Under formal or informal arrangements with local law enforcement officials, many schools bar on-campus arrests for marihuana use. Apparently they have concluded that enforcement of the marihuana laws causes more harm than does use of the drug. In some cases, college authorities have substituted their own policy for society's official policy. The Commission learned at one of its hearings in Chicago, for example, that a major Midwestern university explicitly declared that students would be subject to university disciplinary action if they were found in possession of more than one week's supply of marihuana.

Control at the college level is usually considered a medical concern and is handled either through the university health centers or free clinics. The trend toward leniency is also apparent in the policy responses of the representative sample of university health service and free clinic physicians, whose profession presumably brings them into contact with the population most at risk from marihuana. Among personnel of the free clinics, 62% of the respondents favor legalization; 5% would continue the present policy, and the remainder would either reduce penalties (11%) or await further research (22%).

Even among the "establishment-oriented" health service personnel, similar attitudes prevail. Nineteen percent would continue the present policy, and 16% would legalize. Of the remaining 55% (10% did not respond), 38% would reduce penalties and 17% would await further research. This pattern of views bears a striking resemblance to that of the prosecuting attorneys, and indeed of the public at large. The large majority indicates uneasiness with the present system and opposition to legalization, but is uncertain about exactly what to do.

The Churches

The nation's churches play a major role in the process by which society's norms and values are transmitted to the young. Moral education, through individual and family counseling by church personnel, is influential in the process of social control, particularly for adolescents. Consequently, the Commission sought to learn the attitudes, responses and recommendations of the clergy.

The larger societal uncertainty about the social and moral implications of marihuana use is also reflected in the attitudes of religious institutions. For example, Dr. Thomas E. Price, speaking for the National Council of Churches of Christ in the U.S.A. before the Commission, referred to marihuana as a "tightly drawn moral knot." This uncertainty has led many religious groups to minimize a punitive and repressive response to marihuana use in their official statements and formal programs. Instead, they have concentrated on educational and rehabilitative programs.

Many church spokesmen have urged a reconsideration of social and legal policy. The range of their suggestions for change reflects, once again, widespread uncertainty. Some ask for some form of "adequate" punishment or supervision so as to discourage marihuana use. Others say "reform or elimination" of penalties for possession would be appropriate. And there are those who suggest legalization with some government regulation. Some church spokesmen have defended existing policy, recommending only that the law be more strictly and uniformly enforced.

The Medical Community

In contrast to the mixed opinions of other segments of society, the medical profession has a rather broad consensus at the present time. In a series of responses from various medical societies, associations and committees, we found certain recurrent themes. Every medical group emphasized the need for more research into the effects of marihuana. There was uniform emphasis on how marihuana, as a "drug," affects heart, head, blood, brain and so on, but not on how it affects society as a behavior. The consensus was that marihuana, the drug,

poses some danger for the individual, physically or psychologically. The only major disagreement is about the degree of such danger.

The second recurrent theme was that marihuana should definitely not be legalized. Legalization would imply sanction, medical groups said, with a probable increase in use as a result. One doctor compared legalization with the failure of Prohibition: "The fact [that] Prohibition was a failure doesn't make alcoholism a good thing and the six million or so (alcoholics) we have are no bargain. Therefore, since there is no legitimate use for marihuana it seems rather silly to legalize its use to initiate a second headache." Another reason commonly given by physicians for opposing legalization is that such a step should be taken if and when it is proven that marihuana is *not* dangerous.

The third common theme of medical opinion was a call for a more lenient approach toward users, again a position reflected in almost every quarter of society. One officer of a public health association told a convention: "(Our committee) deprecates the strong punitive measures suggested by some because we feel that a jail sentence for the offense of smoking marihuana is not likely to solve the problem of eliminating marihuana use. On the contrary, a prison sentence is likely to do great damage to a young person's personality as well as to his future career." Another group called for prosecutors to use discretionary powers in handling youthful first offenders.

When discussing penalties, the medical community begins to take a look at marihuana use as a form of social behavior rather than simply a drug which produces certain physical and psychological effects. One doctor wrote: "Because marihuana in present patterns of use is, by and large, a relatively innocuous drug and because its use has many motivations from simple curiosity to symbolism of hostility to the 'establishment', the legal penalties in many jurisdictions throughout the United States are excessively punitive."

Summary

Social institutional spokesmen now commonly recognize that control of marihuana is only partially a law enforcement problem. Opinions cluster around the propositions that society should not be punitive on the one hand, but should not make the drug available, at least for now. Beyond these points, however, uncertainty prevails. There is no common vision of an appropriate social control policy.

Each institution is going about the business of control in its own way. Parents emphasize mutual communication. The secondary schools emphasize health education. The colleges recognize personal freedom so long as it does not jeopardize the educational enterprise. Churches emphasize uncertainty about the moral implications of marihuana use. The medical fraternity stresses the need for further research into

the health consequences of marihuana use. Uncertainly is the common denominator.

THE PUBLIC RESPONSE

For most Americans marihuana use is not an abstract phenomenon. Fifteen percent of the adult population, the National Survey revealed, has tried the drug and 44% of the non-trying adults personally know someone who has used the drug. Fourteen percent of the youth have tried the drug and 58% of the non-tryers personally know someone who has used the drug. Indeed, six percent of the non-trying youth indicated that half or more of their friends used marihuana.

The public is also aware of the consequences of the existing system and concerned about its impact. Ninety-seven percent of the adults know that selling marihuana is against the law. Only a few less, 94%, know that possession is against the law. In fact, one fourth of the adults know someone who has been arrested on a possession charge. Ninety-two percent of the youth know that sale is prohibited, and four out of five know that possession is against the law. Fifty-three percent of the 16- and 17-year-olds actually know someone who has been arrested for possession.

Acutely aware of the legal consequences of use, the public is also cognizant of the difficulties encountered by the criminal justice system in its attempt to enforce a widely-violated law. Adults were asked whether they mostly agreed or mostly disagreed with a series of 12 selected propositions regarding the desirability of maintaining or altering the present system of marihuana control. The two propositions which received the most support relate to problems inherent in the existing laws.

Eighty-three percent of the adults mostly agreed with the statement that "because of marihuana a lot of young people who are not criminals are getting police records and being put in jail." And 76% agreed that "laws against marihuana are very hard to enforce because most people use it in private."

Marihuana use is more personal than most public issues, but it is also more confusing. Bombarded in recent years with contradictory "findings" and statistics about the effects of marihuana, and with conflicting arguments about public policy, the public tends to believe everything, whether pro or con. Particularly important in this regard is the widespread acceptance of beliefs which have little basis in fact.

Approximately half of the adult public believes that "many crimes are committed by persons who are under the influence of marihuana," and that "some people have died from using it." Seven of every 10 adults believe that "marihuana makes people want to try stronger things like heroin." Although the probability that a person believes

these statements increases with age, a significant percentage of all groups are represented.

The underlying confusion is strongly indicated in the contradictory attitudes toward various reasons for maintaining or changing the law. For example, 43% of the adults thought, in the context of an argument for making marihuana legal, that "it should be up to each person to decide for himself, like with alcohol or tobacco." Yet 75% of the adults agreed, in the context of an argument for keeping the laws the way they are, that "there are already too many ways for people to escape their responsibilities. We don't need another one."

Youth tend to be less convinced than adults that marihuana use may be fatal to the user, or cause him to commit crime or lead him to use other drugs; but young people as a group also are noticeably more uncertain about these matters. One of every four young people indicated that they were unsure whether marihuana caused death or crime, and one of every six expressed uncertainty regarding the progression to other drugs. Similarly, young people were more than twice as likely as adults to have "no opinion" about the various propositions regarding the need for legal change.

Public attitudes toward marihuana exhibit both doubt and tension. On the one hand, we note an acute awareness of the legal consequences of marihuana use and an appreciation of the adverse impact of processing users through the criminal justice system. On the other hand, we note some misconceptions about the dangers of marihuana and confusion about the consequences of changing or maintaining the present system.

Public responses on the basic questions of social and legal policy reflect the underlying ambivalence. The overwhelming majority of the public does not want to treat the marihuana user harshly. This attitude appeared repeatedly through the entire Survey. When asked "For the good of the country, which of the following courses of action would be the best thing to do about [marihuana use]?" the public responded in the following manner:

	Adults*	Percentage Youth 12-17
Handle the problem mostly through the police and courts: the process of arrest, conviction, punishment	37	20
Handle the problem mostly through medical clinics: the process of diagnosis, treatment, care	51	48
Don't worry about the use of marihuana, but spend time and money on preventing and solving other crimes	11	11
No opinion	5	20

*Some adults gave more than one answer.

Adults and youth were also asked to look at marihuana use from the perspective of the system, and to identify the appropriate penalty for possession of marihuana. Both groups were reluctant to put users in jail, especially for a first offense. Eighty-three percent of the adults and 64% of the youth would not incarcerate a youthful first offender; 54% of the adults and 41% of the youth would not even give the young offender a police record (Table 12).

Table 12.—ADULTS' VIEWS ON POSSESSION PENALTIES

Penalty	If defendant is teenager			If defendant is adult		
	First offense (percent)		Previous conviction (percent)	First offense (percent)		Previous conviction (percent)
	Total	20		Total	13	
No penalty	83	34	6	64	28	7
Fine (no police record)	29	29	11	23	6	6
Probation			20		11	11
Jail sentence						
Up to a week		8				
Up to a year		3				
More than a year		2				
No opinion		4	7		4	6

YOUNG PEOPLES' (age 12-17) VIEWS ON POSSESSION PENALTIES

Penalty	If defendant is teenager			If defendant is adult		
	First offense (percent)		Previous conviction (percent)	First offense (percent)		Previous conviction (percent)
	Total	13		Total	11	
No penalty	64	28	6	50	21	7
Fine (no police record)	23	23	9	18	9	13
Probation			20			
Jail sentence						
Up to a week		8				
Up to a year		6				
More than a year		5				
No opinion		17	14		14	14

Interestingly, the youth population as a whole was less lenient than the adult population as a whole. Within each group, however, the older teenagers and young adults were the most tolerant in all respects.

These statistics suggest that the public generally prefers leniency when responding to questions specifically directed to marihuana use. But when asked about "control" or "the law" in general, the response often appears quite harsh. For example, when asked to consider a range of five alternative control schemes, most adults tended to resist change.

Thirty-one percent of the adults thought that making marihuana legally available through regulated channels (like alcohol) was acceptable; but 67% thought it was unacceptable. Although 23% thought the removal of criminal sanctions from possession was acceptable, 74% thought this approach was unacceptable. On the other hand, 56% of the adults thought that the existing laws were acceptable; yet 41% found the present law unacceptable. Finally, 72% thought "stricter laws" would be acceptable, while only 26% thought such a change would be unacceptable. Indeed 43% thought stricter laws were the "ideal solution" and 62% thought this was the best of the alternatives.

These responses seem to be contradictory. We are puzzled about what the respondents thought they meant when they expressed a preference for stricter laws.

They probably did not mean stricter penalties for possession. Such an interpretation would be entirely inconsistent with responses to questions aimed directly at appropriate policy toward users. Under existing law some states still treat first offenders as felons and most states treat multiple offenders as felons. But, only a third of the adult respondents would put an adult multiple offender in jail for more than a year.

The preference for stricter laws might be interpreted to mean heavier penalties for sale, or better enforcement of existing proscriptions against trafficking. Two-thirds of the adults did indicate that they preferred heavier penalties for sale than for possession. But penalties for selling for profit are already quite heavy in every jurisdiction.

We suspect that a majority of the public, including many of those favoring "stricter laws," is actually disturbed about the increase in marihuana use and would like a system which would work better than the existing system to discourage use. A majority of the adult public seeks a better system of control, albeit one which is not punitive toward the user. Apparently uneasy about the individual and social consequences of the present system, the large center of public opinion is nonetheless reluctant to relinquish formal control.

This insistence on maintenance of formal controls over the user rests upon two interrelated factors: respect for law and faith in the efficacy of legal control. First, the public does not believe the legal order should wither away simply because many people choose to violate the laws against marihuana use. Obedience of the law is highly valued in our society.

This factor is illustrated clearly by the widespread public disagreement with the following arguments for changing the law: 76% of the adults disagreed with the statement that "young people would have more respect for the law if marihuana were made legal;" and four out of five adults disagreed with the statement that "so many people are using marihuana that it should be made legal."

Second, most adults believe that legal remedies, even though not punitive, are necessary to discourage use of the drug. This belief is tied largely to their understanding of the effects of the drug and is reflected in the response to the question about "the best way" to handle the use of marihuana. As we noted earlier, 51% of the public thought that marihuana use ought to be handled as a medical problem.

Also, the substantial majority of people who are reluctant to incarcerate possessors do prefer the imposition of fines without a police record or probation. Both of these alternatives retain formal control over the user and indicate faith in the deterrent value of the law. The public responses in this respect bear a striking resemblance to those of the judges and probation officers, who repeatedly indicated a preference for non-punitive formal control.

This interpretation of dominant opinion was drawn from ostensibly inconsistent responses to a long series of questions on appropriate social and legal policy. A substantial minority of the public, however, exhibited a consistent pattern of response to all questions. About a quarter of the public is convinced that the criminal sanction should be withdrawn entirely from marihuana use. Another quarter of the public prefers the criminal approach, even for the user.

In sum, the existing system is not supported by the consensus of public opinion that once existed. There is a consensus that punitive measures are generally inappropriate. There is also a predominant opinion that the legal system should not abandon formal control.