



Department of Justice

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STATEMENT
OF
ATTORNEY GENERAL JOHN N. MITCHELL

BEFORE THE
SUBCOMMITTEE ON JUVENILE DELINQUENCY
OF THE
SENATE COMMITTEE ON THE JUDICIARY

ON

S. 2637, "CONTROLLED DANGEROUS SUBSTANCES
"ACT OF 1969".

SEPTEMBER 15, 1969

It is a pleasure to appear before you today to discuss S. 2637, which is this Administration's bill to protect the public health and safety of the American people by amending the current federal drug laws on narcotics, depressants, stimulants and hallucinogenic drugs.

As you recall, last July 14, President Nixon sent a ten-point program to Congress which constitutes an aggressive and comprehensive program to combat the national problem of drug abuse.

In that message, President Nixon said:

"Within the last decade, the abuse of drugs has grown from essentially a local police problem into a serious national threat, to ... millions of Americans.

"A national awareness of the gravity of the situation is needed.

"A new urgency and concentrated national policy is needed at the federal level to begin to cope with this growing menace to the general welfare of the United States."

I cannot overestimate to you the threat that narcotics and dangerous drugs pose to the mental and physical health of the nation--especially to our young people who are, in frighteningly increasing numbers, turning to marihuana, hard narcotics and other dangerous drugs as a way of life.

OVER

Our young people look to drugs for various reasons: for excitement, for experimentation, for physical escape. All sections of the country are affected: the suburbs and the inner cities, the colleges and high school campuses.

While public concern appears mainly concentrated on the more well-known substances, such as heroin and marihuana, there is a rising abuse of other dangerous drugs such as the barbiturates and amphetamines.

The reported facts on drug abuse and crime more than substantiate our current fears.

The FBI Uniform Crime Reports show that the total number of narcotic and marihuana arrests in states increased from 9,863 in 1958 to 162,177 in 1968.

By age classification, the FBI reports show that 3.8 percent of the persons arrested in 1958 for marihuana and narcotics violations were under 18; 14.7 percent were under 21 and 35.1 percent were under 25.

A decade later, in 1968, narcotics and drug arrests showed that 26.6 percent were persons under 18; 56.5 percent were under 21 and 76.6 percent were under 25.

In 1958, there were virtually no reported drug arrests of persons under 15, while in 1968, three percent of those arrested were children 15 years or younger.

While it is believed that the majority of this increase stems from the widespread use of marihuana, there are also increasing reports of high school and college students using other dangerous drugs, including heroin.

In an effort to reverse this dangerous trend, the Department of Justice sent to the Congress, pursuant to the President's message, the Controlled Dangerous Substances Act of 1969, which is before this Subcommittee, as S. 2367, for its consideration. We consider this bill a vital step in the battle to control the production, distribution and use of narcotics and other dangerous drugs in light of the current scientific knowledge and law enforcement problems.

The over-all purpose of this bill is to consolidate and rationalize the patchwork of existing legislation and to bring about much needed change so that our basic federal statutory tool is as effective and up-to-date as possible.

Currently, there are two completely separate bodies of legislation dealing with these problems, and each legislative concept has differing authorizations for administrative control, law enforcement and penalties.

The Harrison Narcotic Act, which is the primary law controlling narcotic drugs, was passed in 1914 based on a complex

regulatory and prohibitive scheme employing the Government's power to tax. This body of law was administered by the former Bureau of Narcotics of the Treasury Department. It was added to in 1937 by the passage of legislation controlling marihuana. Like the Harrison Narcotic Act, the marihuana laws are also based on the taxing power.

During the post-war years, the abuse of new classes of drugs--the barbiturates, amphetamines and hallucinogens--became a national problem. Recognition of this problem resulted in the creation of a new agency for the purpose of enforcing a new set of drug laws.

This agency was the former Bureau of Drug Abuse Control within the Department of Health, Education and Welfare. It administered a body of law based upon the power of the Federal Government to regulate interstate commerce. In 1968, as a result of a governmental reorganization, these two agencies were merged into a single Bureau within the Department of Justice, known as the Bureau of Narcotics and Dangerous Drugs.

At the present time, the new Bureau still administers these two distinct systems of legislation inherited from its predecessor Bureaus. This has resulted in a great deal of confusion in the regulation of the lawful manufacture of controlled drugs and in inconsistencies in the punishment of illicit drug activities. Under the existing regime, the lawful

manufacturers and distributors of drugs and the scientific and medical community must comply with two dissimilar regulatory schemes, thus imposing undesirable and unnecessary burdens.

One system of regulation is based on the alternatives of either the treaty power or an informal administrative proceeding.

The other system, based on the Drug Abuse Control Amendments of 1965, provides a much more formal administrative proceeding to contest government promulgated regulations to control dangerous drugs.

For example, morphine, a drug which induces physical dependency, has different regulatory, administrative and record keeping requirements from barbiturates which also produce physical dependency.

Also, the current regulatory scheme has certain loopholes. For example, under the Drug Abuse Control Amendments persons who wish to conduct research need not register, while those wishing to do research in marihuana and narcotics must.

In addition, there are a number of cases in which penalties for essentially similar violations are vastly different.

OVER

For example, the penalty provided for the first illicit sale of LSD carries no minimum but carries a maximum of five years in prison with an opportunity for probation, suspension and parole.

But the penalty for the first illicit sale of marihuana carries a mandatory minimum of five years in prison and a maximum of 20 years with no provision for suspension or probation.

And yet, LSD appears to be more dangerous to the user than the common forms of marihuana which are customarily available.

The proposed law is aimed at eliminating the present inconsistencies which exist in regard to the administrative control of drugs. The drugs which are currently controlled under both sets of statutes have been divided into four separate Schedules on the basis of: (1) the need for legitimate access to them and, (2) the relative dangers and extent of abuse of them.

This is a plan which is considerably more rational than that which we presently have. Other substantial improvements have been made by providing for more effective regulation of legitimate sources of controlled drugs.

Existing laws, particularly with regard to stimulants and depressants, have proven inadequate for this purpose and there is evidence that substantial diversions from legitimate sources have occurred in the past. The basic goal of the Controlled

Dangerous Substances Act is, therefore, to strengthen law enforcement efforts, not just against the illicit traffic in drugs, but also by providing more meaningful regulation over the legitimate sources of supply.

The proposed law is also aimed at eliminating some present inconsistencies which exist in regard to criminal penalties. In our covering letter to the Speaker of the House and to the Vice President, we suggested that the Congress study proposals for additional changes in the sentencing structure and I will address myself to this topic later in my testimony.

It has long been realized that the problems of drug abuse cannot be overcome by good law enforcement alone. The Bureau of Narcotics and Dangerous Drugs feels that an effective effort must also include education and research into the specific dangers of abuse.

The Administration strongly supports this view of the problem. Our proposed legislation will place additional duties on the Attorney General and the Department of Justice to undertake education and research programs.

In this legislation, however, we have not sought to incorporate all of the Government's research and educational efforts, but only those which relate to the functions of the Department of Justice. Crucial areas, such as the provision for

treatment and rehabilitation of addicts and abusers, have not been included. It is believed that these are subjects which should be handled as separate and distinct legislative efforts.

The Department of Health, Education and Welfare has the primary functions of providing for research, education and treatment in the field of drug abuse. To have placed all of these programs in one package would have been unwieldy and confusing.

The Controlled Dangerous Substances Act is divided into eight titles.

Title I: Under current law, there are several different bases for federal jurisdiction over various narcotics and other dangerous drugs. They are the ability to tax, to control interstate commerce and to protect the national health and welfare.

Title I uses the power to control interstate commerce as the fundamental Congressional authority over the entire drug picture. It eliminates completely the tax power which has been primarily used for marihuana and heroin but which was never authorized for barbiturates and amphetamines.

Since the scope of the drug problem is essentially interstate in nature, with the intrastate activities bearing quite heavily on national traffic, it was decided to place all of these laws within the framework of the commerce laws.

I believe this will simplify our entire approach and will eliminate many technical arguments which arise as a result of differing federal jurisdictional powers.

Under current law, there is enormous confusion about the fundamental statutory requirement as to who should register and in what categories.

For example, while importers are clearly required to register, there is a question as to whether transfer agents are exempt.

Under our proposal, we have broken down all drug traffic into three major categories--manufacturer, distributor and dispenser. This will greatly simplify existing registration requirements and will eliminate registration loopholes.

Title II: Under existing law, marihuana, narcotics and other dangerous drugs are controlled by separate laws with different administrative requirements.

In each case the law is inflexible and only subject to minor administrative modification. Our proposal would reorganize the whole drug regulation and penalty scheme by eliminating the more than one dozen laws on drug abuse and substituting for these laws four major Schedules. They are:

Schedule I drugs have no recognized medical use in this country. They are mainly heroin, marihuana and LSD. The bill prohibits all manufacture, distribution and dispensing of these drugs except for legitimate research.

Schedule II includes drugs which tend to be highly addictive and which have some medical use but which have been shown to be subject to widespread abuse. They include cocaine, morphine and methadone.

Schedule III drugs normally lead to moderate dependency. These are drugs which have widespread medical uses but which are also subject to increasing abuse. These include amphetamines, barbiturates and lesser narcotics.

Schedule IV drugs are drugs which present the least potential for abuse and which induce only a limited amount of physical or psychological dependency. Generally, Schedule IV drugs are combination drugs such as common cough medicines.

The main distinctions between these four categories are increasingly tough levels of federal registration requirements and administrative control, such as the use of detailed order forms and the establishment of quotas.

For example, in the handling of prescriptions, no one except certified researchers may dispense Schedule I drugs.

Physicians, hospitals and specialists may prescribe Schedule II drugs but prescriptions cannot be automatically renewed by the patient. Physicians, hospitals and other specialists may prescribe Schedule III drugs which may be renewed by the patient not more than five times in six months.

Schedule IV combination drugs do not require prescriptions.

Perhaps the greatest advantage to this approach is that drugs may be moved from one Schedule to another as scientific information and law enforcement problems come to light. The moving of a drug from Schedule III, for example, to Schedule I, will only be done by the Attorney General upon advice in writing of a Scientific Advisory Committee and of the Secretary of the Department of Health, Education and Welfare.

By giving the Attorney General this discretion, the Congress will permit a quick response to the ever-changing drug problem based upon relative harm and relative abuse potential of existing drugs and newly discovered drugs.

The present system requires new legislation to meet every major new drug problem.

Considering the complexity of the drug problem, it would appear advisable for Congress to give the Attorney General the

authority to quickly tailor the federal approach to the then existing threat.

Title III basically provides new uniform record keeping requirements. It also gives the Attorney General the administrative right to deny, revoke or suspend a registration to manufacture, distribute or dispense drugs.

Under current law, there is no provision, either administrative or jurisdictional, for the revocation of a registration once it has been granted. Among the criteria which we have used to revoke a registration are conviction for a felony, the material falsification of an application form and the revocation or suspension of a state license.

Title IV of the proposed bill is designed to more carefully monitor and control the importation and exportation of controlled dangerous substances.

One important feature of the bill is to give to the Attorney General the discretion to authorize the importation of narcotic drugs if he finds the prices of such drugs presently sold to the consumer to be unreasonable. Currently, only certain domestic companies are permitted to participate under a complicated quota formula. Title IV would modify this formula aimed at insuring a reasonable price for these drugs to the consumer. We do not anticipate authorizing any additional importers at this time. But we also need authority in case of an emergency shortage.

Under current law, we have no statutory export control for amphetamines, barbiturates, hallucinogens, and other classifications of dangerous drugs.

Our proposal will establish an advance notification procedure for exports which will permit us, for the first time, to know the scope of the traffic in certain drugs leaving the country. As to the narcotic drugs covered by our proposal, advance authorization will be required by the Attorney General.

Title V. There is perhaps no area of the dangerous drug field which has aroused more controversy than the dispute over criminal penalties.

This debate is not new. It has risen in intensity with each amendment to the various federal drug acts. While there is no ultimate or absolute answer to what is a fair and reasonable penalty structure, the Department bill followed, in most instances, the existing penalty structure previously enacted by Congress. This does not mean that there are not other equally reasonable alternative approaches.

As I stated in my letter of transmittal to the Speaker of the House and to the Vice President, we hope that the Congress will devote special attention to sentence structure.

There are many alternatives available for study. I wish to make it quite clear that the Department of Justice favors

exploring some of these alternatives with the Subcommittee.

For example, under current law, there is a distinction made between LSD and marihuana, both which are hallucingens. As I pointed out previously, the penalty provided for the first illicit sale of LSD carries no minimum sentence but carries a maximum of five years in prison with provision for probation, suspension of the sentence, and parole. But the penalty for the first illicit sale of marihuana carries a mandatory minimum of five years in prison and a maximum of 20 years, with no probation for suspension and probation.

The medical profession believes that LSD is a much more dangerous drug than marihuana.

For the second illicit sale of LSD, the maximum is still five years with no minimum sentence. With marihuana, a conviction for the second illicit sale carries a minimum of 10 years and a maximum of 40 years in prison, with no provision for probation, suspension of sentence, or parole. This penalty structure is higher than the federal sentence for manslaughter or sabotage which carries no minimum and a maximum of 10 years in prison. Similarly, conviction for simple possession of LSD carries a maximum of one year in prison, whereas conviction for a simple possession of marihuana carries a minimum sentence of two years and a maximum sentence of 10 years; and upon the second conviction, a minimum of five years and a maximum of 20 years.

I personally believe in sentences which are reasonably calculated to be deterrents to crime and which also will give judges sufficient flexibility to tailor the sentences to the requirements of the drug violator or narcotics addict.

Prison is not the only logical alternative. In some cases, it may be advisable to use federal rehabilitation programs, halfway houses and private medical treatment while on probation or parole. Perhaps the most promising alternative is to approach the narcotics violator in relation to his function; the professional trafficker who should be given as severe a sentence as possible; the casual and intermittent user who is perhaps only experimenting out of curiosity; or the mentally or physically ill addict who, without additional help, cannot break a confirmed habit.

This category of penalties refers only to illicit traffic and use. We have also included in our bill two other classifications of penalties: one for violation of the regulatory aspects of the bill and the other for fraud.

Title VI deals with administrative provisions of the Act. The Title also creates a Scientific Advisory Committee which will assist and advise with regard to controlling dangerous substances within the purview of the four Schedules of this Act. As previously mentioned, there are also provisions for educational

and research efforts to be conducted by the Department, as well as cooperative arrangements between this Department, other federal agencies and departments, and state and local agencies.

I consider this a necessary concomitant to effective law enforcement and regard it as an indispensable approach towards eradicating the causes of the drug problem in the United States.

We consider education and research an integral part of our program and the Bureau of Narcotics and Dangerous Drugs has taken several significant steps in this direction.

Title VII is an extremely important portion of the Act and deals with law enforcement implementation. Within this Title, the law enforcement powers of the agents of the Bureau of Narcotics and Dangerous Drugs are expanded. Further, carefully delineated provisions are established within this Title that will permit us to conduct administrative inspections, to handle forfeitures more effectively, and when necessary, to obtain injunction to prevent illegal activities from continuing. Also, there is a provision for "no-knock" authority under a judicial warrant which will allow Bureau agents to enter places where drugs are illegally sold or stored without knocking, but only when given advance authority by a magistrate. All too frequently, violators are able to destroy contraband drugs while officers executing a search warrant are going through the presently required process of knocking and announcing their authority and purpose.

I feel that these provisions will give law enforcement the necessary tools with which to more effectively deal with the criminal elements engaged in the illicit drug traffic. I am convinced they are needed if we are to meet the challenge presented by the increase in criminal activity.

Title VIII is a miscellaneous Title which repeals laws superseded by this Act.

This is an outline of the Controlled Dangerous Substances Act of 1969 which the Administration supports. I feel it is extremely necessary that swift action be taken by the Congress in passing this Act. In many respects it is a novel, innovative step forward that will be of great value to efficient law enforcement. I recommend its passage as soon as possible.

At this point, I should also mention that the Congress has before it other drug legislation. Senator Dodd has introduced a comprehensive bill, designated as S. 1895, which is similar to the Administration's proposals in a number of respects. Senator Moss has introduced a bill, designated as S. 2590, for the specific purpose of establishing a commission to study the marihuana problem. These are measures which also merit your consideration and on which the Department of Justice will be prepared to comment extensively.

OVER

I have designated Mr. John E. Ingersoll, the Director of the Bureau of Narcotics and Dangerous Drugs, to represent the Department of Justice in aiding this Committee in its deliberations. I think you will find him to be extremely knowledgeable in the area of drug law enforcement, and I am convinced that he will be able to supply you with much of the data and perspective needed to consider this important piece of legislation. Mr. Ingersoll and his staff have provided much of the effort which went into the formulation of the Act and the Bureau possesses a reservoir of expertise which the Congress will find most helpful.