

DOCUMENT WITHDRAWAL RECORD [NIXON PROJECT]

DOCUMENT NUMBER	DOCUMENT TYPE	SUBJECT/TITLE OR CORRESPONDENTS	DATE	RESTRICTION
N-1	Memo	John E. Ingersoll to Dean, re: Petition of NORML to Declassify Marihuana or Place it in Schedule V of CSA [2 copies]	8/9/72	C (Nixon)
N-2	Memo	Donald E. Miller to Director re: Action on Marihuana Petition Attachment: Memo, Miller to Krogh, re: Petition to Remove Marihuana from Control or Place in Lowest Schedule, 8/4/72	8/7/72	C (Nixon)
N-3	Memo	Grasty Crews II to Krogh, re: Proposed BDD action on petition to reschedule marihuana [attached to N-2 case file] Attachment: Memo, Candace L. Coward to Joffe, re: Petition to Reschedule Marihuana - BDD Proposed action, 8/13/72	8/4/72	C (Nixon)
N-4	Letter	Warren J. Sliff to Dean, re: Chester Bryant [attached to withdrawal sheet #17]	12/20/71	C (Nixon)

FILE GROUP TITLE

JOHN DEAN

BOX NUMBER

26

FOLDER TITLE

Administration Drug Bill

RESTRICTION CODES

- A. Release would violate a Federal statute or Agency Policy.
- B. National security classified information.
- C. Pending or approved claim that release would violate an individual's rights.
- D. Release would constitute a clearly unwarranted invasion of privacy or a libel of a living person.

- E. Release would disclose trade secrets or confidential commercial or financial information.
- F. Release would disclose investigatory information compiled for law enforcement purposes.
- G. Withdrawn and return private and personal material.
- H. Withdrawn and returned non-historical material.

DOCUMENT WITHDRAWAL RECORD [NIXON PROJECT]

DOCUMENT NUMBER	DOCUMENT TYPE	SUBJECT/TITLE OR CORRESPONDENTS	DATE	RESTRICTION
N-1 [Doc # 295]	Memo	John E. Ingersoll to Dean, re: Petition of NORML to Decontrol Marihuana or Place it in Schedule V of CSA [2 copies]	8/9/72	C (Nixon)
N-2 [Doc # 296] [Doc # 297]	Memo	Donald E. Miller to Director re: Action on marihuana Petition Attachment: Memo, Miller to Krogh, re: Petition to Remove Marihuana from Control or Place in Lowest Schedule, 8/14/72	8/7/72	C (Nixon)
N-3 [Doc # 298] [Doc # 299]	Memo	Gusty Crews II to Krogh, re: Proposed BND action on petition to reschedule marihuana [attached to N-2 case file] Attachment: Memo, Candace L. Coward to Jaffe, re: Petition to Reschedule Marihuana - BND Proposed action, 8/13/72	8/4/72	C (Nixon)
N-4 [Doc # 300]	Letter	Warren J. Shiff to Dean, re: Chester Bryant [attached to withdrawal sheet #17]	12/20/71	C (Nixon)

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 G. Withdrawn and return private and personal material.
 H. Withdrawn and returned non-historical material.

Presidential Materials Review Board

Review on Contested Documents

Collection: John W. Dean III

Box Number: 26

Folder: Administration Drug Bill

<u>Document</u>	<u>Disposition</u>
295	Retain Open
296	Retain Open
297	Retain Open
298	Retain Open
299	Retain Open
300	Retain Open

NATIONAL ARCHIVES AND RECORDS SERVICE
WITHDRAWAL SHEET (NIXON PROJECT)

DOCUMENT NUMBER	DOCUMENT TYPE	SUBJECT/TITLE OR CORRESPONDENTS	DATE	RESTRICTION
1	memo w/ attachments	From Pete Kinsey to John Dean, covering letter from Warren J. Little to John Dean and resume (No 2, below)	January 5, 1972	D
2	resume	Resume and attachments, accompanying above		D

FILE GROUP TITLE *WHSE Staff Member and Office Files - John Dean* BOX NUMBER *23 26*

FOLDER TITLE *Administration Doug Bill [1]*

Restriction Codes

- | | |
|---|---|
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| (B) National security classified information. | (F) Release would disclose investigatory information compiled for law enforcement purposes. |
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| (D) Release would constitute a clearly unwarranted invasion of privacy or a libel of a living person. | (H) Withdrawn and returned non-historical material. |

Montgomery Consultants

8416 GEORGIA AVENUE
SILVER SPRING, MARYLAND 20910

February 3, 1973

Dear Mr. Dean:

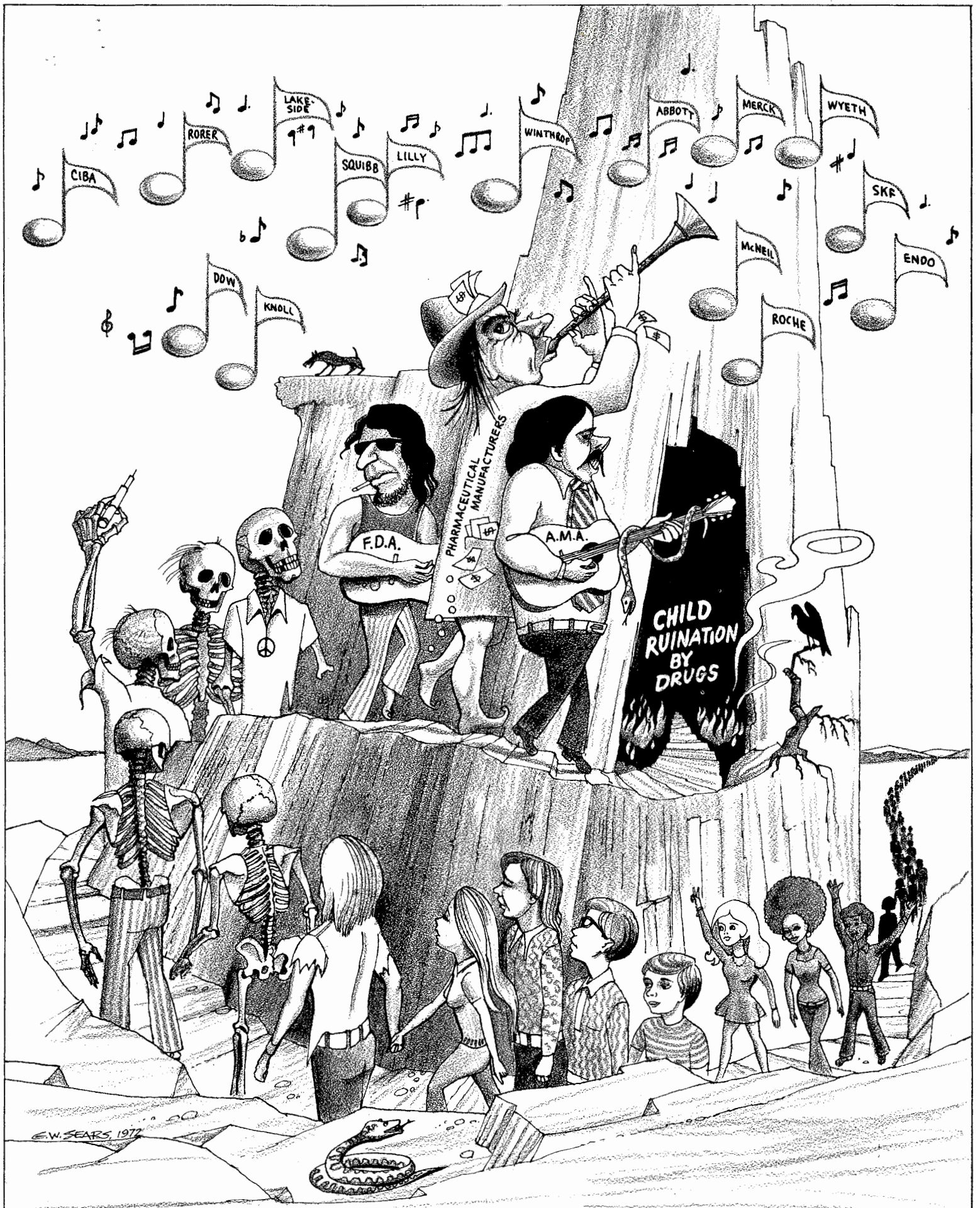
Jack Anderson report incredible! No human being would want to impede the Select Committee on Crime in efforts to halt the ruination of our children by domestic drugs. Please scotch this ugly report and help us all.

Sincerely yours,



Edward C. Kienle

eck/eg
enc.



Modern Pied Piper

Reproduced at the Richard Nixon Presidential Library

REPRODUCTION URGED

Montgomery Consultants

2529 ROSS ROAD
SILVER SPRING, MARYLAND 20910



John Dean 111, Esq.
The White House
1600 Pennsylvania Avenue
Washington, D. C.

DEPARTMENT OF JUSTICE

ROUTING SLIP

TO:	NAME	DIVISION	BUILDING	ROOM
1.	Mr. John Dean			
2.	Counsel to the President			
3.				
4.				

☐ SIGNATURE	☐ COMMENT	☐ PER CONVERSATION
☐ APPROVAL	☐ NECESSARY ACTION	☐ AS REQUESTED
☐ SEE ME	☐ NOTE AND RETURN	☐ NOTE AND FILE
☐ RECOMMENDATION	☐ CALL ME	☐ YOUR INFORMATION
☐ ANSWER OR ACKNOWLEDGE ON OR BEFORE _____		
☐ PREPARE REPLY FOR THE SIGNATURE OF _____		

REMARKS

Attached is the revised list of BNDD
foreign training schools.

FROM:	NAME	BUILDING & ROOM	EXT.	DATE
	Perry A. Rivkind			2/9

FOREIGN SCHOOLS FY 1973

1. BRIDGETOWN, BARBADOS

a. DATE: July 10 - 21, 1972

b. Number of students: 50

2. BALBOA, CANAL ZONE (Joint BNDD & U.S. Customs)

a. DATE: August 14 - 23, 1972

b. Number of students: 20 Canal Zone Customs Officers
30 Canal Zone Police Officers

3. CRISTOBAL, CANAL ZONE

a. DATE: August 21 - 30, 1972

b. Number of students: 20 Canal Zone Customs Officers
30 Canal Zone Police Officers

4. BELGRADE, YUGOSLAVIA

a. DATE: September 11 - 22, 1972

b. Number of students: 60

5. CARACAS, VENEZUELA

a. DATE: October 2 - 13, 1972

b. Number of students: 50

6. BOGOTA, COLOMBIA

a. DATE: October 4 - 6, 1972

b. Number of students: 75

7. VIENNA, AUSTRIA

a. DATE: October 16 - 25, 1972

b. Number of students: 50

8. BUENOS AIRES, ARGENTINA

a. DATE: November 1 - 3, 1972

b. Number of students: 100

9. MEXICO CITY, MEXICO

a. DATE: November 6 - 17, 1972

b. Number of students: 60

10. MADRID, SPAIN

a. DATE: NOVEMBER 13 - 24, 1972

b. Number of students: 60

11. RABAT, MOROCCO

a. DATE: November 21 - 23, 1972

b. Number of students: 50

12. JORDAN - WASHINGTON, D.C.

a. DATE: November 27 - December 8, 1972

b. Number of students: 14

13. BUENOS AIRES, ARGENTINA

a. DATE: December 4 - 8, 1972

b. Number of students: 60

14. CURACAO, NETHERLAND ANTILLES
 - a. DATE: December 4 - 15, 1972
 - b. Number of students: 60
15. ANKARA, TURKEY
 - a. DATE: December 4 - 8, 1972
 - b. Number of students: 40
16. QUITO, ECUADOR
 - a. DATE: December 11 - 16, 1972
 - b. Number of students: 60
17. LA PAZ, BOLIVIA
 - a. DATE: January 22 - 27, 1973
 - b. Number of students: 75
18. BOGOTA, COLOMBIA
 - a. DATE: February 5 - 16, 1973
 - b. Number of students: 60
19. VIENTIANE, LAOS
 - a. DATE: February 19 - March 2, 1973
 - b. Number of students:
20. BUENOS AIRES, ARGENTINA
 - a. DATE: March 19 - 30, 1973
 - b. Number of students:

21. BANGKOK, THAILAND

a. DATE: March 12 - 23, 1973

b. Number of students:

22. BANGKOK, THAILAND

a. DATE: March 12 - 16, 1973

b. Number of students:

23. SAO PAULO, BRAZIL

a. DATE: April 9 - April 20, 1973

b. Number of students:

24. SEOUL, KOREA

a. DATE: April 16 - 27, 1973

b. Number of students:

25. SAO PAULO, BRAZIL

a. DATE: April 23 - May 5, 1973

b. Number of students:

26. BANGKOK, THAILAND

a. DATE: May 14 - 25, 1973

b. Number of students:

27. OBERAMMERGAU, GERMANY

a. DATE: May 28 - June 8, 1973

b. Number of students:

28. ANKARA, TURKEY

a. DATE: June 11 - 15, 1973

29. ANKARA, TURKEY

a. DATE: June 11 - 23, 1973

JWD - FYI

February 9, 1973

An Open Letter for the Montgomery County (Md.) Council

Concerning the Rape of Our People by Degenerative Drugs

William Sher, President
The Montgomery County Council
County Office Building
Rockville, Maryland

Dear Bill:

This letter could go to any county in the land - maybe it will.

As you can see, we must all be on a good course. The drug lobby is trying to bust Claude Pepper's Select Committee on Crime (they have got too near the truth), the FDA is running real scared and trying, belatedly, to appear useful, and AMA is stuttering and stumbling all over each other in a grand show of rats departing a sinking ship. Jack Anderson and Morton Mintz are being nominated by us for Pulitzer Prizes and Senator Gaylord Nelson and Chairman Pepper should get the Congressional Medal of Honor. There are others, of course, many of them. After all these years, it is great to watch the things crawl out of the woodwork. They can't stand light, you know. Estes Kefauver has sent word that he's mightily pleased and the eight student nurses who were murdered by Seconal-crazed Richard Keck in Chicago in 1967 wish us well. Seconal is a leading barbiturate by Eli Lilly in stiff competition for the illicit dollar with Nembutal, one Abbott entry in the drug ruination sweepstakes, along with scores of others. But, more of that hereunder.

Lest any noses tend to disjointment by what follows, let everyone remember that our entire nation has been royally suckered for years by the rapacious pharmaceutical industry, the corrupt and pusillanimous AMA (notably the charlatan shrinks aided by not a few allopaths), and their compliant handmaiden and servant, the Food and Drug Administration. A certain credit for obfuscation must redound to Dr. Jaffe of the President's Committee for eternally directing attention to heroin while completely disregarding the greater menace of domestic drugs. He should be bounced; the President owes it to himself and those who are wishing for success in these endeavors.

The strategy we promulgated after almost two solid years of research is working very well. We see no reason to alter it:

1. Switch the nation's focus from heroin and hash, etc., to the domestic drugs and "debunk hard vs. soft drug sophistry." There is no choice between stinking fish.

2. Relentlessly attack PMA-AMA-FDA as the unholy trinity, primary progenitors by commission and omission of our cruel drug agony. Put another way, if they could be brought to book, the curse of our nation would virtually disappear. We have all the facts to prove it.
3. Whittle AMA by exposing their widespread avarice, scandalous hospital irregularities, mediocre medical care for top dollar, 2 million needless operations a year with 24,000 patient murders, extortionate plunder of public programs and, above all, challenge their capacity for self-regulation. We don't allow the Mafia to choose our Attorney General or leave them on the honor system.
4. Attack all doctors, make them clean their own house. The public should not be obliged to find good ones by trial and error. Let them deserve the noble image they covet but do not work to merit. Don't let "charlatan shrink" stick in your craw - the shoe won't fit the few who aren't.
5. Blue Cross-Blue Shield serves the medical racketeers, not the people who foot their outrageous bills and premiums.
6. Narrow the broad drug spectrum to the demonstrable offenders, don't let the makers forever hide behind one or two truly efficacious ones, like Salk vaccine which they did not invent, anyway.
7. Put so-called drug education and alleged rehabilitation in their proper perspectives. Both are fraudulent at worst, ineffective at best - refuges for sinecurists who prefer self-perpetuation to problem-solving. Rehabilitation centers, like the over-rated Synaron, are akin to holding AA meetings in Joe's bar and grill.
8. Don't get sucked into the pot trap. All mind-altering substances are harmful; they play Russian roulette with genetics. "That hasn't been proven," they'll say. All evidence and commonsense favors our side; they have not proven the contrary contention so why take chances?
9. Insist that the 2,500 barbiturate, amphetamine, and combination drugs serve no indispensable medical purpose and are primarily made for the abuse market - more than one ton a day. They have a stable of subsidized shrinks who claim the opposite but pay not attention to them. Whores will always be with us.
10. Pillory the deceit that kids who get sucked into drugs have lousy parents. It is the tired solecism of all agencies of presumed concern whose record without exception has been failure. They know that peer influence is about 100% among pubescents and early adolescents, about nil for parents who seldom understand the problem until too late. Pushers thrive on this bull.

Focus on Montgomery County

Emphasis: This is not an attack on anyone; it seeks only to disparage what our research and experience suggests to be fallacious concepts and points of departure. We'd like to keep our friends, if possible, in the circumstances. Where there may be honest disagreement, we believe that healthy and open discussion can easily reconcile the differences, if any.

We are of two distinct minds concerning our hapless and unhappy situation here. The two minds:

1. After playing ostrich for years, we finally got around to admitting that the County is being plagued by drugs, even if only on a "little pregnant" basis; while ignoring the fact that every other county in the nation was similarly afflicted. As if by mutual consent, our unintended conspiracy of silence merely served and emboldened our exploiters. They found that they could safely extort the pin and lunch money of hundreds of kids so they moved onto thousands and still more thousands. We also, to our shame and until too late, comforted ourselves by kidding ourselves that drugs were a ghetto phenomenon. We did this long after the evidence had the pushers on mortgage hill, where the money is, anyway. Then, we took the pap that parents of the neighbor kids who got hooked must surely be deficient; or, the stuff was in the medicine chest all the time, etc., ad nauseum. All of that nonsense also served the drug barons and their execrable pushers. Despite all of the evidence, there still are many who treat the thing as if it were akin to the secret that old Aunt Agatha had got the clap.

Anyway, when we finally got around to timidly and not too loudly confessing to ourselves that something was very wrong in our Denmark, what did we do? What every other jurisdiction did: (1) established a bureaucracy which creates an illusion of imminent action and thus reassures everyone that the problem is about to be licked; (2) funded it in large round numbers without any relation to a concrete and factually based plan; began the process of coordinating which can become endless, and usually is; (3) engage in endless dialogue with the other agencies that have no anti-drug program either as more months (and money) are wasted; print and circulate drug education materials which almost no one reads to understand, and recruit a staff with more chiefs than Indians until the staff equals the caseload. And child ruination by drugs goes on apace and probably increases.

Then, before you know it the time has arrived to ask for more funding, probably on a grander scale. Meanwhile, the Drug Action Coalition (whatever that may be but it comes up a lot) reconstitutes itself and announces plans for (1) grant-funding, (2) retention of fund-raising counsel, (3) ditto publicity services - all without a word about why or what for. We are told that their primary accomplishment to date has been the building of one helluva bibliography, but the lady who did the job is no longer with them.

The Drug Control Office also presses the fiction that only kids with lousy parents get hooked as the County Executive takes to the public prints to warn that we will get nowhere if the people keep resisting the establishment of communes under the guise of rehabilitation centers in their neighborhoods. So, we all emerge not only as lousy parents but lousy neighbors and citizens, as well. Reminds us of the swain who was going to ditch his girl: "She just sits on my lap and bawls all the time," he complained.

Our considered opinion holds that our present approach was and is foredoomed. First, it is not grounded on dispassionate fact arising from a precise measure of the nature and extent of the problem it purports to resolve. Second, this unsound omission involves sending more good County money after bad. We oppose such and we believe the Council will be derelict if it again succumbs to the pretension. It should demand and get a scientific survey and plan and only then act.

There is a more serious aspect, however. It is the fiction that abuse drugs are a fact of modern life, they're here to stay, so let's make the most of it. We say "nutz." The 2,500 domestic substances that curse our children and our people need be no more inevitable than unlimited heroin or hash; many of them are far worse. Our group has worked and waited for a long time to read this in print: "We need not look for a Mafia or organized criminal element for the cause of . . . drug abuse in this country. The fault lies squarely with our pharmaceutical manufacturers, drug wholesalers and retailers." We add the charlatan shrinks and the quacks who prescribe for money or simply because they don't know any better. Anyway, who said that? It was Claude Pepper, chairman of the House Select Committee on Crime, after a seven month, six-city investigation by his staff. We did it for him in Montgomery County.

2. The second mind. There is an ugly alternative which we resist without disqualifying. As the GNP factor arising from our national drug agony increases along with the burgeoning problem, more and more folks are being cemented into sinecures and status. A clear and final termination of the drug scourge, which is within our grasp, would just as clearly force them out of work. Just as the shrinks and a lot of physicians would hate to lose this lucrative business, so, too, do social workers oppose the Guaranteed Annual Income proposals, and ambulance-chasers fight "no-fault" auto insurance. Or, by chance, are some of them on the take? There's an awful lot of money involved in the drug traffic. We certainly hope not, but the possibility is always there.

Or, some may now realize, after much costly trial and error, that they have led us and themselves down the primrose path and don't know how gracefully to reverse course. If our efforts in the County are based on drug inevitability they will be pointed to amelioration, not to basic, hard-nosed elimination. We appear to have an Office of Drug Control with no mechanism for the control of drugs. There is no pharmacologist on their advisory committee to tell them the difference between 2-methyl-2-n-propyl-1,3-propanediol dicarbamate which our children know as Miltowns, and goofballs which our children don't

know as amphetamine sulfate although they ask their pusher for and get "bennies." A lot of kids go to death and destruction without ever knowing how to spell the stuff that did them in - thousands a year. The plan is no plan that admits whim, hunches, status identification, untested theory or petty politics. The problem is too important, the cost too great to suffer a by gosh and by golly, trial and error evolution. Anyone who contests this fact must be challenged.

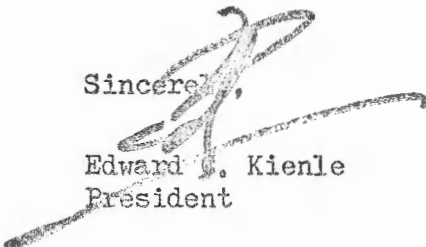
Saving our children, our family life and our very country is the name of the game and so far we have been the Redskins at the Super Bowl. We seem to have lost sight of the goal if, indeed, we ever really defined it.

Let's take off the kid gloves; it was later than you think ten years ago! Remember, 98.63% of the nation's drug curse stems from about 140 drug manufacturers and bootleggers right here in America - not Asia.

Kindest regards,

eck/eg
enc.

Sincerely,


Edward G. Kienle
President

Copies:

The White House
Hon. Spiro Agnew
Dr. John S. Aird
Speaker Carl Albert
Mr. Jack Anderson
Sen J. Glenn Beall, Jr.
Dr. Horace Bernton
Ms. LaBarbara Bowman
✓ John Dean, III
Mrs. Paul Drury
Dr. C. C. Edwards
Dr. Homer O. Elseroad
Judge Philip M. Fairbanks
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FTC
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Mr. James P. Gleason
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Hon. Gilbert Gude
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James D. Hawkins, R. Ph.
Mr. John E. Ingersoll
Richard M. Kleindienst, Esq.

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Proj. on Corp. Responsibility
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Andrew L. Sonner, Esq.
Mr. John Streu
Judge John C. Tracy
Col. Kenneth W. Watkins
Mr. Caspar W. Weinberger
Rep. Charles Wiggins
Rep. William Keating

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UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : Mr. John W. Dean, III
Counsel to the President
The White House

DATE: AUG 9 1972

FROM : John E. Ingersoll
Director
Bureau of Narcotics & Dangerous Drugs

SUBJECT: Petition of NORML to Decontrol Marihuana
or Place it in Schedule V of CSA

There is enclosed material relating to a legal dispute as to the manner we should proceed under Section 201 of the Controlled Substances Act of 1970. I am bringing the matter to your attention in view of your participation at the time the Act was going through the Congress.

Although I doubt that any of the Committees had this specific question before them, even in executive session, I am convinced that had they considered it, the only alternative would have been to resolve it in the same manner we have proposed.

If we are now required to submit the petition through the regular control provisions of Section 201(a) and (b) of the Act, and give the Secretary of HEW an absolute veto power over the Attorney General to control marihuana, we will be in the middle of a serious predicament.

AUG 9 1972

Mr. John W. Dean, III
Counsel to the President
The White House

John E. Ingersoll 
Director
Bureau of Narcotics & Dangerous Drugs

Petition of NORML to Decontrol Marihuana
or Place it in Schedule V of CSA

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UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : Director

DATE: August 7, 1972

FROM : Donald E. Miller *DM*
Chief Counsel

SUBJECT: Action on Marihuana Petition

On July 27th, Bob Rosthal completed all the work in response to the petition filed by NORML et al, which seeks to either remove marihuana from the controls of CSA or, in the alternative, place it in the lowest schedule (V).

Our decision went directly to the point and rejected the petition entirely on the grounds that the regular scheduling provisions of Section 201(a) and (b) are not applicable in the case of substances controlled pursuant to our treaty obligations. Our rejection was based on the clear intent of Congress that subsection (d) of Section 201 imposes the exclusive responsibility on the Attorney General in deciding when the United States is in compliance with our treaty obligations. The result was that the petitioner has simply asked for relief (to refer the matter to the Secretary of HEW) that is not provided by the law. We did not say that there is no other relief; we only said that the relief requested could not be allowed.

Mr. Rosthal explained the matter to Mr. Tartaglino, who signed the order. Mr. Rosthal also furnished a copy of the order to Miss Cowan of SAODAP after he had sent the order to the Federal Register. He also called other offices, such as Mr. Kinsey at the White House and Mr. Lindenbaum at Justice, to let them know what was coming.

At 6:45 p.m. that evening, I received a call from Miss Cowan who stated she had just spoken to Walter Minnick, who had doubts about whether the petition

should be handled our way. Early in the morning of July 28th, I spoke with Mr. Minnick, and after a long conversation I thought I had him convinced; although he was noncommittal, he said he needed to give it some thought, and would talk to Mr. Krogh.

Later that day, Mr. Rosthal received a call from Grasty Crews, the General Counsel of SAODAP, who explained that on orders of Mr. Krogh he had called the Federal Register and stopped our order. I called Mr. Crews and expressed considerable displeasure over the matter. He began to cite chapter and verse of the SAODAP law (P.L. 92-255). We debated, with neither of us changing our positions. I called for an early meeting.

On August 1st, I met with Mr. Crews, and Miss Cowan and Mr. Pinco of his staff. My observation was that SAODAP attorneys will not accept our ruling that the Attorney General has the authority to make the final decision as to whether we are in compliance with our treaty obligations, and that the decision can be made unilaterally without input from SAODAP or HEW.

On August 2nd, I received a call from Walter Minnick, who directed me to prepare a memo to Mr. Krogh setting out our views on the matter. On August 4th, I forwarded the enclosed material to Mr. Krogh. I again discussed the matter with Mr. Crews, and he has not backed off an inch from his initial stand. He, too, has sent a memo to Mr. Krogh.

So, the position now is that a legal matter has been taken over by the White House, and another agency has been allowed to challenge our legal conclusions. While I do not mind the aggravation of them having input into this matter, the final decision is one that must be resolved by the Attorney General (his delegate, the Director of BNDD). Under 28 U.S.C. 516 and 519, we must supervise this litigation.

It simply boils down to whether or not the Department of Justice will make the legal decisions in matters of

controlling drugs or whether we will abide by SAODAP's legal conclusions. I am sure this will come up in your next conversation with Mr. Krogh. While I cannot envisage the White House resolving a legal dispute, Mr. Krogh may want to ask for an Attorney General's decision under 28 U.S.C. 511.

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : Mr. Egil Krogh
Deputy Assistant to the President
for Domestic Affairs
The White House

FROM : Donald E. Miller
Chief Counsel
Bureau of Narcotics & Dangerous Drugs

DATE: Aug. 4, 1972

SUBJECT: Petition to Remove Marihuana From Control
or Place in Lowest Schedule

On May 18, 1972, BNDD received a petition from the National Organization for the Reform of Marijuana (sic) Laws, petitioning the Director, as the delegate of the Attorney General, to initiate proceedings under 21 U.S.C. 811 (the Controlled Substances Act) to remove marihuana from all controls or in the alternative place it in the lowest schedule.

The alternatives available to us were as follows:

1. We could have argued that we need more time to consider the petition. We have already had the petition for two and one-half months, and the petitioners have dropped hints that they are about to file a mandamus action against the Attorney General and the Director of BNDD. Besides, we have already acted on one or two other matters that were submitted by other petitioners since May 18th.
2. We could have argued that the petitioner has no standing as an "interested party" to submit the petition. It is questionable as to whether the Circuit Court of Appeals would rule in the Government's favor. Apparently, "Nader's Raiders" have not lost a case on this point. We may still raise the point of no standing, but it is not something we can rely on completely, and we could not deceive the courts by using it as a delay tactic knowing that if we lose, we will be back later with our real

reason for rejecting the petition. If we use the point at all, we should do so as a part of the complete pleading.

3. We could rule that the Attorney General does not have the authority to grant the request of the petitioner under section 811(d), title 21, U.S. Code.
4. The final possibility is really not an alternative at all. In order to grant the petitioner's request, we would have to waive the clear intent of the Congress and initiate proceedings under section 811(a) and (b), title 21, U.S. Code. Since section 811(d) provides that all controls relating to our existing treaty obligations shall be decided by the Attorney General without adhering to the classification and hearings procedures in subsections (a) and (b) of section 811, we determined that we could not accept the petition.

There are attached two memorandums that should be read for further elaboration of why we cannot accept the petition.

The first memorandum clearly indicates that the Congress placed absolute decision-making responsibilities on the Attorney General in regard to making the determination of which schedule of the Act appropriately controls a substance controlled under our treaty obligations. Subsection (d) of section 811 specifically states that the Attorney General shall make this determination without referring the matter to the Secretary of HEW, without findings as to a drug's effects, and without opportunity for a hearing under the Administrative Procedures Act. In other words, Congress decided that since treaties are the law of the land, the Attorney General is in the best position to interpret what controls are necessary to comply with the treaty obligations.

Subsection (d) of section 811 does not specify that the Attorney General has this authority only in the

event of a new drug brought under international control by a treaty. The authority extends to any control required by our treaty obligations, and the term "control" is defined in the Act to include rescheduling of substances.

Having established that the responsibility is vested exclusively in the Attorney General to decide what schedule satisfies our treaty obligations in regard to any substance controlled by a treaty, we turn to our obligations under the Single Convention.

The other attached memorandum relates to our treaty obligations. Without going into detail, it is sufficient to say only that marihuana is controlled by the treaty, that we must limit its use for medical and scientific purposes only, that there presently is no currently accepted medical use of marihuana in treatment in the United States, and we would be in violation of our treaty obligations if we were to accept the petitioner's request to decontrol or place marihuana in Schedule V of the Act. It is in light of these obligations and the state of the medical arts that Congress placed marihuana in Schedule I -- for the same reasons, the Attorney General must keep it there until the appropriate circumstances warrant change.

Therefore, we concluded that the only alternative was to reject the petition. The Attorney General simply has no powers to grant the petitioner's request.

The argument will be made that the authority of the Attorney General under section 811(d) is limited to newly controlled substances under the Single Convention, and that if an interested person seeks to transfer a treaty-controlled drug to a lower schedule, or to decontrol it completely, the regular control mechanism of subsections (a) and (b) of section 811 are applicable.

This could be disastrous. Subsections (a) and (b) do not authorize the Secretary of HEW to consider our treaty obligations -- his recommendations must be restricted to medical and scientific factors. Subsection (b) goes on to say that "if the Secretary recommends that a drug or other substance not be controlled, the Attorney General shall not control the drug or substance."

In other words, if subsection (d) is not overriding, the Secretary has the authority to decontrol marihuana completely, and the Attorney General could do nothing about it even though we would be in violation of our treaty obligations. Congress surely could not have intended such a dilemma, and from a policy standpoint we cannot decide on a course that could lead to the embarrassment of the United States for failure to abide by a drug treaty.

EXECUTIVE OFFICE OF THE PRESIDENT
SPECIAL ACTION OFFICE FOR DRUG ABUSE PREVENTION
WASHINGTON, DC 20506

August 4, 1972

MEMORANDUM TO: Egil Krogh, Jr.
THROUGH: Jerome H. Jaffe, M.D. 
FROM: Grasty Crews, II
SUBJECT: Proposed BNDD action on petition
to reschedule marihuana

BNDD proposes to issue an order refusing to accept for filing the May 18 petition to deschedule or reschedule marihuana.

The crucial issue is whether the procedure provided in sections 201(a), 201(b), and 201(c) of the Controlled Substances Act is applicable to rescheduling a substance which is listed both in section 202 of the Act and in the Single Convention. This procedure provides, among other things, for findings to be made by HEW with respect to the substance's actual and potential abuse and its physiological and psychological effects.

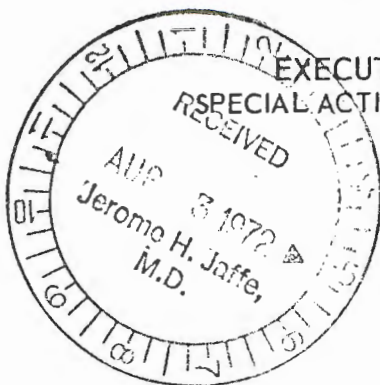
BNDD contends that this procedure is inapplicable to any substance scheduled in the Single Convention and that the Attorney General, acting solely upon his own motion and with no right of petition by interested parties, has sole discretion, [guided by no statutory standards, to determine when and where any such substances are to be scheduled or rescheduled.] The difficulty with this argument is that it renders a carefully thought-out administrative procedure a nullity with respect to nearly all the substances in the Act, because nearly all of them are in the Convention as well.

Criteria for scheduling vs. criteria for control

I think that section 201(d) was intended to apply to substances newly added to the Single Convention, in order to permit the United States to promptly discharge its obligations under the agreement. To apply this section in the case of a petition for rescheduling seems unnecessary as a matter of law and unwise as a matter of policy. It would bring about an immediate and acrimonious reopening, both in the press and in Congress, of the Justice vs. HEW controversy. It is my judgment that such a ruling by BNDD would probably be overturned in the end by the courts.

It is therefore my recommendation that the petition be accepted for filing and the issue be referred to HEW for medical and scientific findings in accordance with sections 201(b) and 201(c). This may subject the Administration to some criticism from extreme partisans of the Department of Justice, but I believe the end result will be the same, and that in the interim, this course will be far less costly in terms of adverse publicity and far more beneficial in terms of Congressional relations.

I do not believe that this would empower HEW to disregard U. S. treaty obligations.



EXECUTIVE OFFICE OF THE PRESIDENT
SPECIAL ACTION OFFICE FOR DRUG ABUSE PREVENTION
WASHINGTON, DC 20506
August 3, 1972

MEMORANDUM FOR: Jerome H. Jaffe, M.D., and
Paul L. Perito

FROM: Candace L. Cowan *CFC*

THROUGH: Grasty Crews, II *GC*

SUBJECT: Petition to Reschedule Marihuana -
BNDD Proposed Action.

The Bureau of Narcotics and Dangerous Drugs has proposed rejecting for filing the petition to decontrol or reschedule marihuana. The primary reason given for the rejection is one of procedure: the Controlled Substances Act (CSA) in Section 201(d) makes a specific exception for control of substances controlled by the Single Convention. The BNDD interpretation of the CSA language is that only the Attorney General may control such substances, no party other than the Attorney General may initiate such control or a consideration of a rescheduling, and the Attorney General may control substances under this Section without applying any of the criteria listed to determine choice of scheduling in other cases. The conclusion is that the petitioners have no procedural right granted by law to require the Attorney General to consider rescheduling of marihuana, and therefore their petition must be rejected for consideration.

A strict construction of the language of the CSA will support the BNDD position. However, the construction certainly can be argued, and if taken up by an appellate court, unquestionably the legislative history of the Act will be taken into consideration.

The legislative history of the CSA clearly reflects the decision by the Congress that the administrative procedure to be used in the future to determine how drugs would be controlled was to be flexible. The Congress intended for the procedure for rescheduling to replace the necessity of returning to the Congress each time it became necessary to add, reschedule, or decontrol a drug. But throughout the debates it was evident that Congress desired an administrative procedure that would permit significant medical and scientific input to the decision-making process, and would permit a fair hearing process. To reject that procedure for a reconsideration of a substance already under control seems to fly in the face of Congressional intent and will undoubtedly cause a considerable amount of anger in Congressional quarters.

Section 201(d) which provides for the exception for controlling a substance because of treaty obligations, was intended to cover only those substances added to or rescheduled in the Single Convention. If a new substance is added to the Convention, all Parties must immediately place that drug under control. Therefore a procedure had to be designed into the CSA to provide for such an occurrence.

However, in this instance, the control of Cannabis (marihuana) has not been altered in the Single Convention. There is no reason to utilize the unilateral procedure of Section 201(d). Petitioners have requested an administrative review of the domestic controls on marihuana, and the Congressional design for such a procedure is set forth in Section 201 in some detail. It is easy to interpret that the drafting of language to provide for changes in international controls was not intended to apply to a request for a change in domestic controls. Certainly such an interpretation seems to be more palatable and acceptable to the overall concept of reasonable, fair drug control, and the special necessity for a medical and scientific evaluation by the United States Government of the effects and dangers of marihuana.

By accepting the petition and referring it to HEW for review, the Administration has not made a determination concerning rescheduling the substance, or even reducing the criminal

penalties. Neither will it create a "bad" precedent which will limit the Attorney General in future cases when immediate control of a new substance (or newly rescheduled substance) is required by international treaty obligations. If a new drug is added or rescheduled in the Single Convention, Section 201(d) may be used as it was intended. However, if any "interested party," the Attorney General, or the Secretary of HEW wishes to initiate a review of any substance in the Controlled Substances Act, to determine if it should be rescheduled, the administrative procedure will not be barred by a procedure intended only for special circumstances. This interpretation will make the administrative procedure available to any responsible petitioner for every substance under control in the CSA. Permitting the petition to be referred to HEW will not bar an eventual rejection of a proposed rescheduling or decontrol for social reasons, legal reasons, abuse potential, lack of safety, risk to public health or international treaty reasons. This procedure will only open the door to an administrative review for any reasonable request for a re-examination of U.S. domestic control of specific controlled substances.

Perhaps if the petition is referred to HEW, a reasonable grant or contract for a medical study of the effects of the drug, in all its forms, on humans can be granted. Such a review might very well take a number of months, but perhaps many of the public's questions concerning the safety or dangers of the drug can be answered. Certainly it would seem to be a reasonable action for the Administration to take especially in view of the recent recommendations of the National Commission on Marihuana and Drug Abuse. If precedent is created which would open the administrative procedure for a review of controlled substances at the request of reasonable petitioners, even if those substances are also controlled by an international treaty to which the United States is party, it is difficult to conceive of any serious harm that this could cause.

Memorandum Regarding the Decision-Making Responsibilities
of the Attorney General Under 21 U.S.C. 811(d), and the
Control of Marihuana.

The decision of the Attorney General to control substances under section 811(d), title 21, United States Code, in accordance with treaty obligations in force on October 27, 1970, is exclusive. The treaty obligations of the United States require marihuana to be controlled to such an extent that the Attorney General cannot delete it from controls or place it in Schedule V of 21 U.S.C. 812 at this time. Having made these conclusions, the following discussion makes each point quite clear.

Section 811(d), title 21, United States Code, provides:

"If control is required by United States obligations under international treaties, conventions, or protocols in effect on the effective date of this part, the Attorney General shall issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, without regard to the findings required by subsection (a) of this section or section 202(b) of this title and without regard to the procedures prescribed by subsections (a) and (b) of this section."

An examination of the legislative history of this provision verifies that the Congress knew very well it was providing this exclusive decision-making responsibility on the Attorney General. In House Report No. 91-1444 (Part 1), the report of the Committee on Interstate and Foreign Commerce on H.R. 18583, the Committee stated on page 36 --

"Under subsection (d), where control of a drug or other substance by the United States is required by reason of its obligations under an international treaty, convention, or protocol which is in effect on the effective date of

part B of the bill (i.e., the date of its enactment), the bill does not require that the Attorney General seek an evaluation and recommendation by the Secretary of Health, Education, and Welfare, or pursue the procedures for control prescribed by the bill but he may include the drug or other substance under any of the five schedules of the bill which he considers most appropriate to carry out the obligations of the United States under the international instrument, and he may do so without making the specific findings otherwise required for inclusion of a drug or other substance in that schedule. The reference to treaties, conventions, or protocols in effect upon enactment of the bill is intended to refer to the Single Convention on Narcotic Drugs, 1961, and to those predecessor conventions or protocols as to which the United States may still have an obligation. This would include any obligations of the United States that might arise after enactment of the bill by reason of changes in the schedules of the Single Convention by the international organs specified in the convention under the authority of the provisions of the convention in effect as to the United States on the date of enactment of the bill."

Although there was not a great deal of elaboration on subsection (d) during the floor debates on section 201 of the Act, the authority of the Attorney General to decide

what controls should apply to bring or retain the United States in line with our treaty obligations was discussed on two occasions.

On September 23, 1970, at page H-9105 of the Congressional Record, Representative Ray J. Madden made the following observation during his discussion of how he perceived the control mechanism to be:

"Procedure is established for classification of future drugs which create abuse problems, whereby the Attorney General will gather data and request an evaluation by the Secretary of Health, Education, and Welfare determines that the drug should not be controlled. If the Secretary of Health, Education, and Welfare determines that the drug should not be controlled, the Attorney General may not control the drug; otherwise, the Attorney General may proceed in accordance with rulemaking procedures, which provide notice and opportunity for a hearing, to list the drug for control. However, if a drug is required to be controlled pursuant to an international treaty, convention, or protocol in effect on the enactment of the bill, the drug will be controlled by conformity with the treaty or other international agreement obligations." (Emphasis added).

On this same day, at page H-9117 of the Congressional Record, Congressman James Hastings made a similar statement in giving his interpretation of the control process:

"Of key importance are the provisions authorizing the Attorney General to administratively add or remove substances from the schedules,

or to transfer substances between the various schedules, provided that the characteristics of the substance satisfy the criteria established for the schedule in which the substance is to be placed. I might point out here that there are two exceptions to this requirement that a substance satisfy the criteria of the schedule in which it is to be placed. One is the situation where control of a drug is required by U.S. obligations under international treaties, protocols, or conventions. In this case, the Attorney General may control the substance and list it in the appropriate schedule, without regard to the findings required by the schedule ..." (Emphasis added).

Review of both the House report and the floor debates show that Congress thoroughly discussed the provisions in section 811(b) and (c) relating to the control of substances outside the scope of our treaty obligations. There is no question but that the Congress decided two procedures for controlling substances: The first relates to non-treaty controlled substances; the second relates to treaty controlled drugs.

In order to learn the meaning of the word "control" as used in section 811(d), we turn to the definitions in section 802 where the following language is provided:

"(5) The term 'control' means to add a drug or other substance, or immediate precursor, to a schedule under Part B of this subchapter, whether by transfer from another schedule or otherwise." (Emphasis added).

It is true, therefore, that in giving the authority to the Attorney General to "control" a substance under the schedule most appropriate to carry out our treaty, Congress

was fully aware that this authority was not restricted to new substances being placed under international control, but also extended to "transfer from another schedule."

It is also apparent that Congress knew the United States was a Party to various treaties. One need only look at the findings and declarations in section 801, title 21, United States Code, where it is recognized that "The United States is a party to the Single Convention on Narcotic Drugs, 1961, and other international conventions designed to establish effective control over international and domestic traffic in controlled substances."

The total impact of the above-cited matters indicates that the Congress, in giving the responsibility to the Attorney General to schedule drugs in conformity with our treaty obligations, granted as complete discretion to him as it could possibly give. Congress was aware of our treaty obligations; it knew that we could not conform with our treaty obligations by applying the regular control procedures; and it specifically gave a separate and distinct authority to the Attorney General to decide what measures are necessary to fulfill treaty obligations.

The point has been raised that the authority of the Attorney General under section 811(d) is limited only to making decisions as to new substances placed under control of the Single Convention, and does not apply in a case where an interested person is seeking to transfer a drug to a lower schedule or to remove controls completely.

This proposition is squarely in opposition to the clear reading of section 811(d). It is difficult to imagine how Congress could have made it any clearer.

If the provisions of subsections (a) and (b) were applicable, here is one example of what could occur. The marihuana issue could be referred to the Secretary of HEW for evaluation, and the Secretary could recommend that the drug should no longer be controlled. It should be pointed out that the Secretary is not obligated under his evaluation responsibilities to take into consideration the treaty obligations of the United States. In fact, it is even doubtful that the Secretary has the legal authority to con-

we

sider the question of whether/are required to maintain controls because of our treaty obligations. There is not a word in subsections (a), (b) or (c) that requires the Secretary to look at anything other than scientific and medical matters. The language in subsection (b) even goes so far as to say that in considering the factors delegated to the Attorney General, i.e., paragraphs (1), (4) and (5), the Secretary is required to consider the medical and scientific aspects. Subsection (b) then goes on to say that "if the Secretary recommends that a drug or other substance not be controlled, the Attorney General shall not control the drug or substance."

This then, leads to the definite conclusion that if subsections (a) and (b) are applicable in the present case, the matter could be referred to the Secretary of HEW and a decision could be made by him that no controls should apply as to marihuana. This being the case, the Attorney General could not control marihuana under the Act at all even though the United States clearly would be in violation of its treaty obligations.

In view of the intent of Congress to place the burden on the Attorney General to make certain that we are always in compliance with our treaty obligations, it is hard to believe that at the same time it would create a provision that would allow another Cabinet Officer to decontrol marihuana notwithstanding our treaty obligations. Such a dilemma could not have been in the minds of the legislators.

The Attorney General is the top lawyer in Government and he should be relied upon to make the proper interpretations of treaty obligations and apply those interpretations against interpretations of our domestic controls. While it is fully anticipated that necessary input must come from the Secretary of HEW, the fact remains that the final decision must be a legal one.