

DEPARTMENT OF  
HEALTH, EDUCATION, AND WELFARE  
OFFICE OF THE SECRETARY

June 4, 1969

*Main HEW  
5238 N  
#*

TO: Mr. Hugh M. Durham  
FROM: L. Patrick Gray, III

Secretary Finch asked that this  
be forwarded to you.

Any further work should be done  
with Mr. Creed Black, Assistant  
Secretary for Legislation,  
on Code 13, ext. 37868.

JUSTICE DEPARTMENT OMNIBUS DRUG ABUSE BILL: Major Problems

*rele  
at bit*

1. Decisions to Control

*Can we give  
HEW. none of a  
role?*

The bill authorizes the Attorney General to control any substance which he determines to have a "high potential for abuse." He would have the advice of an Advisory Committee but would not be obliged to follow the Committee's advice. The Committee would include two consultants (not members) from DHEW.

We believe that the decision to control a substance is essentially a medical decision and should rest with DHEW. Alternatively, the Attorney General should be required to obtain the scientific advice and consent of the Secretary in making decisions to control.

2. Drug Abuse Potential

*Not in  
Bill*

The bill requires manufacturers to submit to the Attorney General information about the abuse potential for any drug which is the subject of a New Drug Application. This would create a duplicative situation and since, again, it is a medical problem, it should remain within DHEW.

3. Licensing of Researchers

*Can we not  
give this  
authority to  
HEW & require  
notice to H.G. &  
give H.G. power  
to revoke*

The bill would authorize the Attorney General to license practitioners who wish to conduct research on "Schedule I substances (e.g. marijuana, LSD) and Schedule II substances (therapeutically useful narcotics). Again, this is a medical function and DHEW already has the expertise necessary to evaluate the qualifications of researchers. We would not object to a requirement that such investigators report the use of these substances to Justice, or to be subject to dual authority to revoke registration (Justice from abuse standpoint, and HEW from health standpoint.)

4. Research and Education

*Can we limit  
this to R/E  
as relates  
to law/E  
and carry  
out the  
purpose of this*

The bill would authorize Justice to conduct broad programs to drug abuse research, education, and public information. It is clear in the Reorganization Plan No. 1 of 1968, that only enforcement provisions, not research and education, were being transferred to Justice. To create a special competence in Justice for medical and scientific research on drug abuse would be not only duplicative, it would be contrary to the intent of Congress.

## (1) Decision to Control

- HEW QUESTIONS Re Org Plan which transferred both regulatory and investigative functions

### NOTES

- # Reorg plan sought to place drug control problem in the agency with law/enf responsibilities - D/S. [It would be politically unwise for DN to take a softer position on drugs than CBS]
- # Much of the Republican opposition to the reorganization focused on giving Ramsey Clark control - it was felt that Treas. was a hard line agency and this would be lost under Clark
- # The 1/2 nature of the problem is suggested by the pre-existing structure of FBN & BOAC. FBN had 475 employees - 304 were enforcement people. BOAC had 460 employees - 300 were enforcement people & 20 admin personnel focused the link to other HEW activities relating to drug problems.
- # Public (& Congress) look at the problem of drugs as an enforcement problem.



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

May 1, 1969

Mr. John W. Dean  
Associate Deputy Attorney General  
Department of Justice  
Washington, D.C.

Dear John:

Enclosed is a copy of a letter sent to the Budget Bureau today by the Under Secretary in order to expedite staff discussion on the Justice Department's draft, "Controlled Dangerous Substances Act of 1969". While I am enclosing a copy of this Department's comments on the draft Message, I am not enclosing a copy of the draft report on the bill because I have already sent you that. A copy, however, is going to Mr. Kleindienst from the Under Secretary.

Sincerely,

Theodore Ellenbogen  
Assistant General Counsel  
for Legislation

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

May 1, 1969

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Sincerely,

S/ Theodore Ellenbogen  
Assistant General Counsel  
for Legislation



MAY 1 1969

Dear Mr. Mayo:

This is in response to your request for a DHEW reaction to the draft bill "Controlled Dangerous Substances Act of 1969."

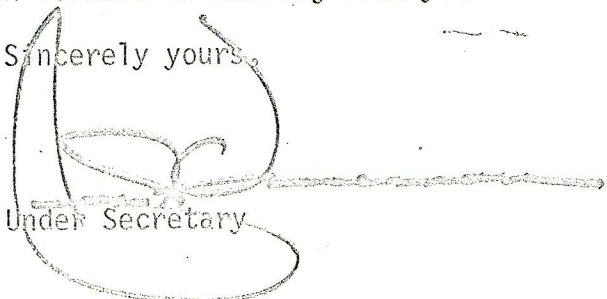
Enclosed is a copy of our staff reaction to the bill. Secretary Finch has not seen this paper.

Since time is very short, we would like to start staff discussions with the Bureau of the Budget and the Department of Justice on the basis of:

1. The draft comments (enclosed)
2. The Department's position on the draft message, transmitted by Secretary Finch to the President on April 18, 1969, which outlines the spirit of our differences with the proposed legislation (enclosed).

We would like to ensure, through the staff discussions suggested above, that we have coordinated input to the content of the draft message and the draft bill. Hopefully these discussions can begin immediately. I look forward to hearing from you.

Sincerely yours,



Under Secretary

Honorable Robert P. Mayo  
Director, Bureau of the Budget  
Washington, D. C. 20503

Enclosures

CONFIDENTIAL - ADMINISTRATIVE

MEMORANDUM FOR THE PRESIDENT

Subject: Reaction to Draft Message to Congress (4/14/69):  
Narcotics and Dangerous Drugs

While I fully support the encouragement of far greater law enforcement efforts against the importation, interstate trafficking, and local selling of drugs and narcotics, I believe this message could be greatly improved if it encompassed both law enforcement and rehabilitation. Further, the message should display an understanding of distinctions among the narcotics and dangerous drugs.

I suggest that the message be restructured into four major sections:

- I Law Enforcement
- II Distinctions Among Narcotics and Dangerous Drugs
- III Treatment and Rehabilitation of Addicts
- IV Public Education

Within the section on Law Enforcement, it should be stated that the effectiveness of law enforcement depends upon improving communications between concerned communities and law enforcement agencies. By "improving communications", I mean:

--make known that users of narcotics will be regarded as sick people, which should make it easier for individuals within communities to cooperate with law enforcement officials;

--urge local law enforcement agencies to encourage users to turn themselves in without fear of criminal prosecution;

--increase the visibility of law enforcement agencies and improve access to them; and

--encourage law enforcement people to work with the people in their communities on this problem.

In Section II, Distinction Among Narcotics and Dangerous Drugs, we want to note that marijuana, LSD, and the opiates pose three separate problems. Marijuana is probably the most complex because anyone can grow it in his backyard, because of the publicity, and because hard data on the deleterious effects is not presently available.

Among the young, marijuana is looked upon as no worse than the use of alcoholic beverages by adults. We should point out that marijuana has a similar effect to alcohol on vision and reactions, and could become as much a cause of automobile fatalities and injuries as alcohol, which presently accounts for more than 50% of the traffic fatalities in the United States.

LSD effects have been more carefully described, the effects are more severe (apparently) than those of marijuana, and publicity on these effects has reduced use somewhat. However, while it can't be grown in every yard, those with a good knowledge of chemistry can make it, and, therefore, like marijuana it will be difficult to control access to the drug through law enforcement; public education will have to play a strong role. Moreover, LSD users are probably better educated than marijuana users, so that the educational thrust will have to vary between these two.

The opiates constitute the worst problem, and it has been obscured by the publicity about marijuana and LSD. The central purpose of this message should be to focus far greater energy and resources on the hard narcotics.

In Section III, Treatment and Rehabilitation of Addicts, we should draw attention to the fact that the use of narcotics is fundamentally a social and health problem, not a criminal problem (although users may be driven to crime to pay for their supplies). Our objective should be the mental, social, and physical rehabilitation of users.

In this connection the message should ask the National Institute of Mental Health to focus all possible resources on the development of adequate treatment facilities easily accessible to drug users.

Recognizing that whole communities suffer from the problems of the addicts, we should encourage communities to assist in efforts to help prevent and control the abuse of drugs and narcotics. This will be most difficult if this problem is approached solely in terms of crime and law enforcement.

Within this section should be included comments now in the message on increasing our research on the effects of narcotics and drugs and on the discovery of new means of treatment.

Finally, in Section IV, on Public Education, in addition to the words now contained in the message on this subject, we should also encourage understanding among employers of the productive possibilities of the rehabilitated addict. It is within the power of employers to assist the rehabilitated addict in his search for social acceptance, and to prevent him from back-sliding into addiction.

We should also call for the strengthening of the present campaign which the National Institute of Mental Health has undertaken to reach youth and others through TV and radio spots.

W. J. Wirth  
Secretary

TEWirth:rw--4/18/69

cc: HEM  
Mrs. Byers  
Mr. Gray  
Mr. Wirth ✓

UNITED STATES GOVERNMENT

# Memorandum

CONFIDENTIAL - ADMINISTRATIVE

TO : John W. Dean  
Associate Deputy Attorney General  
Department of Justice

DATE: April 30, 1969

FROM : Theodore Ellenbogen  
Assistant General Counsel  
for Legislation, HEW

SUBJECT: Issues involved in Justice Department draft "Controlled Dangerous Substances Act of 1969".

As requested, I am transmitting herewith, on a confidential basis, a copy of the draft report (tab C) on the Justice Department's draft bill which I mentioned to you, together with summaries of the draft report (tab B) and of the bill (tab A). I should like to emphasize that the material has not as yet been reviewed by the Secretary. I look forward to meeting with you for an explanatory discussion of the issues.



Summary of Draft "Controlled Dangerous Substances Act of 1969"I. Coverage of bill.

To be subject to control, at any given time, a drug or other substance would at that time have to be listed on one of 4 "Schedules" (I, II, III, IV). To a large extent, the degree of control, and penalties for violations, would depend on the schedule in which a substance appears. At the outset, each schedule would be set forth in the bill. The Attorney General would be authorized, after obtaining the non-binding advice of a scientific advisory committee, 1/ to transfer substances between schedules, add a previously unlisted substance to any schedule, or decontrol a substance (i.e., take it completely out of the schedules). Any substance (except liquor, wine, beer, and tobacco) could thus be put under control, provided that the Attorney General found, after considering certain factors, 2/ that it had a "potential for abuse" (or that control was required by treaty) and that it met the criteria specified for a particular schedule. 3/

II. Licensure.

Every person who manufactures, distributes, or dispenses controlled substances (including practitioners) would have to obtain an annual license from the Attorney General. A practitioner would be entitled to a license for Schedules II through IV substances if licensed under State law and not convicted of a felony with regard to a controlled substance under Federal or State law. For Schedule I substances, a practitioner would be treated as a "distributor" and denied a license if "not consistent with the public interest". Secondly, if research

1/ HEW could designate two persons as consultants to the committee, not to the Attorney General.

2/ Actual or relative potential for abuse, and history, current pattern, scope, duration, and significance of abuse; any known pharmacological effect; current scientific knowledge as to the substance; any public health risk; psychic or physiological dependence liability of the substance; controls required by treaty; and whether the substance is an immediate precursor of a previously controlled substance.

3/ For Schedule I, high abuse potential, no accepted U.S. medical use, and lack of "accepted safety for use under medical supervision"; for Schedule II, high abuse potential, currently accepted U.S. medical use (with or without severe restrictions), and risk of severe psychic or physical dependence from abuse; for Schedule III, less abuse potential, well documented and approved medical use in U.S., and risk of moderate or low physical dependence or high psychic dependence from abuse; and for Schedule IV low abuse potential and limited physical or psychic dependence liability as compared with Schedule III substances, and currently accepted medical use in U.S.

(even animal research) is to be conducted with the substance, as would be true in virtually every Schedule I case, the Attorney General, after obtaining the non-binding advice of HEW as to the applicant's qualifications for the particular research, would grant the license only if he considered the research "consistent with the public health and safety".

If licensed for research, and if authorized by the Attorney General to withhold the names and other identifying characteristics of persons who are subjects of the research, a researcher could not be compelled to disclose this information in any Federal or State proceeding of any kind. Secondly, if the Attorney General authorized possession and distribution of a controlled substance by a researcher, the researcher would be exempt from Federal, State, or local prosecution for such possession and distribution "to the extent authorized by the Attorney General."

### III. Production quotas.

For each Schedule I and II substance, the Attorney General would annually determine national production requirements to provide for the medical, scientific, and industrial needs of the United States, and for exports and reserve stocks, and would assign production quotas to individual manufacturers which they may not exceed.

### IV. Record-keeping, reporting, order form, and prescription requirements.

1. All licensees for controlled substances, except practitioners who administer but do not otherwise dispense such substances, would have to maintain complete and cumulative records, and take biennial inventories, of controlled substances in accordance with regulations and would, if required by the Attorney General, have to make reports necessary to conform to treaty obligations of the United States.

2. Order forms. Schedule I and II substances could be distributed only pursuant to an order form prescribed by the Attorney General, except that this would not apply to the administration or other dispensing of a drug by a physician to a patient, or to the dispensing of a drug by a pharmacist on written prescription.

3. Prescriptions. Except when dispensed directly by a practitioner, or "in emergency situations as prescribed by the Attorney General by regulation," a Schedule II substance could be dispensed only on written prescription (which could not be refilled), and a Schedule III substance could be dispensed only on written or oral prescription which could not be refilled more than five times or more than 6 months after the date of

prescription. Schedule IV substances could be distributed or dispensed only for medical purposes.

#### V. Imports and Exports.

The bill provides for pervasive regulation of imports and exports by the Attorney General.

Schedule I and II substances, or any narcotic drug in Schedules III and IV, would be barred from importation except pursuant to such exceptions as the Attorney General may by regulation provide as necessary for medical, scientific, or other legitimate purposes. Non-narcotic Schedule III substances could be imported for medical and other legitimate uses only, pursuant to notification requirements prescribed by the Attorney General.

Narcotic drugs listed in Schedules I, II, and III and non-narcotic Schedule I and II substances could be exported only on certain conditions and pursuant to an export permit issued by the Attorney General in each instance, and in the case of narcotics only to countries that are parties to the Single Convention or certain other treaties.

Special safeguards are also provided for exports of other controlled substances for which no export permit is required.

#### VI. Penalties.

Trafficking in narcotic drugs, including possession with intent to distribute, is treated more severely than trafficking in other drugs listed on the same schedule, but the bill is, as to narcotics, less harsh than existing law.

For a first offense of trafficking, even in the case of narcotic drugs, the bill does not require a minimum term of imprisonment but provides that, in addition to any term of imprisonment, a special parole term of at least three years in the case of narcotic, and of at least two years in the case of other substances, shall be imposed.

A first offense of trafficking in a Schedule IV substance, or of possession for one's own use in the case of any controlled substance, would be a misdemeanor punishable by a maximum prison term of one year. In the case of a first offense of mere possession of any controlled substance, provision is made for up to a year's probation and thereafter discharging the defendant and dismissing the proceeding without a record of correction. (Similar provisions already apply to nonnarcotic drugs.)

Unlawful distribution of a controlled substance by a person 18 years or older to a person under 18 who is at least 3 years his junior

would be punishable by imprisonment of up to twice that otherwise authorized.

In the case of second or subsequent offenses of trafficking, a mandatory minimum prison term is provided for, suspension of the sentence or placement on probation is prohibited, and, if the offense is a third or subsequent offense, parole under 18 U.S.C. 4202 is prohibited. Special sentencing provisions are included for persons substantially engaged in organized crime ("continuing criminal enterprises").

#### VII. Education and Research.

1. The Attorney General would be authorized and directed "to carry out educational programs designed to prevent and deter misuse of controlled dangerous substances." In connection therewith he would be authorized to promote better recognition of the problems of misuse and abuse of such substances within the regulated industries and among other interested groups and organizations; assist them in contributing to reduction of drug misuse and abuse; consult with interested groups and organizations to aid them in solving administrative and organizational problems; evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on drug abuse; disseminate the results of research to promote a better understanding of the problems and what can be done to combat them; and conduct and assist in training of local, State, and Federal law enforcement personnel.

2. The Attorney General would be authorized and directed to encourage research on misuse and abuse of controlled dangerous substances. In connection therewith, and in furtherance in enforcement of the bill, he could (1) establish methods to assess effects of controlled substances and identify and characterize those with abuse potential; and (2) undertake research programs to develop new or improved enforcement techniques and devices, determine patterns of misuse and abuse of controlled dangerous substances "and the social effects thereof", improve methods for preventing, understanding, and dealing with the misuse and abuse of controlled substances, and enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of "conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled dangerous substances."

#### VIII. Statistics and Roster of Addicts.

The Attorney General would be authorized to maintain in the Bureau of Narcotics and Dangerous Drugs a unit that will accept, catalogue, file, and otherwise utilize all information and statistics, including records of dangerous substance addicts and other dangerous substance law offenders, which may be received from

Federal, State and local agencies, and make such information available for Federal, State and local law enforcement purposes.

IX. Enforcement Powers. The bill provides broad authority for enforcement of the bill, including subpoena power, administrative inspection authority, provision for forfeiture of seized substances, equipment, and vehicles, etc., and specific provision for judicial warrant for administrative inspections.

X. Repealers, etc.

Title VIII of the bill would repeal a number of existing statutes which would be superseded by the bill. In attempting to repeal the amendments to the Food and Drug Act made by the Drug Abuse Control Amendments of 1965, the bill is technically defective. Also, the draftsman overlooked the recently enacted penalty amendments to the Food and Drug Act.

**CONFIDENTIAL - ADMINISTRATIVE**

TAB B

Summary of draft of report to Budget Bureau on  
Justice Department's "Controlled Dangerous  
Substances Act of 1969".

1. Recommends that the bill be changed to vest all basic regulatory functions (including licensure), as distinguished from law enforcement and related investigative functions, in HEW instead of Justice Department, or to require the Attorney General to delegate these functions to HEW<sup>1/</sup> (because more appropriate to, and involving primarily those disciplines within the special competence of, HEW's missions than the mission of a law enforcement agency. This would be in line with the 1963 report of the Prettyman Commission (President's Commission on Narcotic and Drug Abuse) in 1963. In this connection, the draft report confronts and questions in this regard the soundness of Reorganization Plan No. 1 of 1968 which transferred both the regulatory and investigative functions under existing law to Justice under the narcotic laws and the Drug Abuse Control Amendments of 1965 (to the Food and Drug Act).

2. Questions requirement of Federal licensure of physicians and researchers, but states that we would not oppose a simple registration requirement. (Raises no question as to licensure of manufacturers and distributors, though the associations representing these interests will presumably do so.) States that any control over research should be vested in this Department, which already exercises

<sup>1/</sup> The Hoover Commission, in 1949, recommended that the Bureau of Narcotics be transferred from the Treasury Dpt. to the Justice Dpt. At that time the Drug Abuse Control Amendments of 1965, controlling psychotropic drugs other than narcotics and marihuana, had, of course, not yet been enacted.

pervasive surveillance and control over drug research in the context of the new-drug provisions of the Food and Drug Act, and states that any additional desired control, such as jurisdiction over research with psychotropic drugs of intrastate origin, could and should be added by simple amendment of that Act.

3. Suggests deletion of research and educational functions from the bill (except for authority to train Federal, State, and local law enforcement personnel) because, to the extent it is intended as merely in aid of other functions conferred by the bill, such authority would necessarily be implied and, if intended to be more comprehensive as suggested by its language, it would inappropriately and inefficiently duplicate HEW functions and activities.

4. Expresses qualified approval of penalty scheme as moving in the direction of a proposal under consideration by National Commission on Reform of Federal Criminal Laws and away from the excessively punitive approach of the narcotics laws, but suggests that, inter alia, consideration be given to (a) deleting disqualification of recidivists for parole, especially in the case of nonnarcotic offenses where parole is authorized under existing law, and (b) making drug addiction a defense in cases of possession of a drug for one's own use.

5. Suggests that coverage of the bill, for substances not listed by the bill itself, be more closely circumscribed than by the words "potential for abuse" standing alone, e.g., by requiring a finding that the abuse potential be due to the substance's effect on the central nervous system, as now required under Drug Abuse Control Amendments of 1965.

6. Mentions that Dr. Yolles, Director of NIMH, is to arrange establishment of an interagency committee on research in this field, but suggests establishment (not necessarily by statute) of a broader intergovernmental coordinating committee on drug abuse, perhaps along the lines of the long dormant Interdepartmental Committee on Narcotics.

7. Encloses a staff paper making supplementary suggestions. The staff paper recommends--

(a) that substances to be regulated under the bill be called "controlled substances" rather than "controlled dangerous substances", and that the short title of the bill be "Drug Abuse Control Act" or "Drug Abuse Control Code", because the term "dangerous" is hyperbolic and unduly alarmist as applied to many substances that are or will be within the scope of the bill;

(b) that the Congressional findings to be set forth in the bill be revised to reflect the fact that the need for special controls is due to the detrimental effect on health and general welfare caused by the misuse and abuse of the drugs and substances involved for nonmedicinal and nonscientific purposes;

(c) points out that the requirement of the bill that a manufacturer filing a new-drug application with HEW for a depressant, stimulant, or hallucinogenic drug submit information on the drug's abuse potential to the Justice Dept's. Bureau of Narcotics and Dangerous Drugs for review by the Scientific Advisory Committee would in effect provide for duplicate new-drug review by the two

departments and would put an intolerable burden on the advisory committee (as well as manufacturers) because the requirement would involve virtually every "new drug" submitted to HEW;

(d) states that the lists of substances in the bill under the various schedules should be perfected before submission to Congress, rather than thereafter as suggested in the summary accompanying the draft bill;

(e) recommends that the bill follow existing law so as to require that, in the case of "depressant or stimulant drugs" as defined in the Food and Drug Act, the drug be exempted from the controls under the bill if, under the provisions of that Act, it is an over-the-counter (rather than prescription) drug, or if it is an ingredient of a mixture that vitiates the depressant, stimulant, or hallucinogenic potential of that ingredient;

(f) objects to vesting in the Attorney General, rather than HEW, authority for determining when or whether a drug may be sold only on prescription;

(g) recommends a broad provision that nothing in the bill shall in any way modify, repeal, supersede, or otherwise affect provisions of the Food and Drug Act (instead of the bill's narrower provision that a license granted under the bill does not relieve a licensee from any obligation imposed by the Food and Drug Act);

(h) states that HEW does not object to the bill's provision for maintaining in BNDD records of addicts and offenders against

Federal, State, or local drug abuse control laws and other statistical information, for making such information available for law enforcement purposes at Federal, State, and local levels, on the understanding that Justice Dpt. should have no authority to require from any treatment or research source information identifying individual addicts, patients, or research subjects; and points out that statistical reporting for law enforcement purposes would not fully serve HEW's needs or the need for a national reporting system as outlined in the Prettyman Commission's report;

(i) recommends that the procedural provisions for judicial warrants for administrative inspections under the bill be deleted on the ground that only uniform across-the-board authorizing legislation for such warrants, for all Federal regulatory programs under which periodic administrative inspections are made, rather than piecemeal legislation, should be submitted to Congress, and that the Justice Department has already developed a first draft of such legislation, on which HEW has commented at staff level; and

(j) states that HEW staff, in reviewing the drug bill, have noted a number of drafting problems. (These could be taken up informally with Justice Department at staff level.)