UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : Mr. John W. Dean, III
Associate Deputy Attorney General

DATE: December 4, 1969

FROM : Hugh M. Durham

HMD

SUBJECT: Executive Session of the House Ways and Means Committee to Consider H.R. 14799 (Amendment to the Marihuana Tax Act to Cure the Leary Defect)

This morning the full House Ways and Means Committee considered in executive session our marihuana stop-gap legislation (H.R. 14799) which would overcome the defects noted by the Supreme Court in the Leary and Covington cases. The Committee had previously, on November 17 and 18, considered the bill in executive session and had requested an expression of the Department's views regarding what changes in current marihuana penalties were recommended by the Department. In response to this request, by letter of November 26, 1969, we stated that the Department strongly supported the comprehensive drug bill (S. 2637) and feared that piecemeal adoption of the penalty structure contained in that bill would delay its consideration and passage. We did note that, if the Committee nevertheless determined to include marihuana penalty changes in H.R. 14799, the Department would not oppose penalties consistent with the penalty structure stated by Director Ingersoll in his Senate testimony on October 20, 1969. We, at the Committee's request, furnished a draft amendment which would accomplish the foregoing.

This morning I represented the Department and was accompanied by John Finlator and Bill Lenck of BNDD and Philip Wilens of the Criminal Division. I restated the position put forward in the letter of November 26 regarding our strong preference for prompt consideration of the comprehensive drug bill and then explained the marihuana sanctions which the Department is advocating. These sanctions appeared to be well received by the Committee members present. The hearing then turned to the question of whether H.R. 14799 should be reported out and passed this session by the House. Chairman Mills specifically attempted to get a commitment that we would press for the legislation's passage in the Senate if he obtained quick House passage. I reiterated our position that the prime consideration was the earliest possible passage of the comprehensive drug bill and that decisions concerning H.R. 14799 would undoubtedly be based upon its likely effect on the progress of the major legislative item. Chairman Mills indicated that he might not be able to get to his part of the major bill until next summer because of other pressing legislative items before his Committee. Several members of the Committee, particularly Congressmen Corman and Ullman, expressed views that the Committee should not hurry its action on the marihuana penalties. Chairman Mills appeared to feel that the Committee was obligated to cure the loophole in the current marihuana law and that an appropriate modification of the marihuana penalties would have to be part of the package. He finally decided, however, that the matter should be and will be deferred until after the first of the year. In the meantime, he has asked us to work with his counsel in producing a smooth and mutually agreeable draft bill.

Mr. Richard G. Kleindienst
Deputy Attorney General
Mr. George H. Revercomb
Associate Deputy Attorney General

May 23, 1969

John Dean
Associate Deputy Attorney General

BNDD Memorandum on Narcotic and Dangerous Drug Institute

I would counsel you against encouraging Senator Cook to call for the establishment of a National Narcotic and Dangerous Drug Institute. It appears that most of the operations of such a proposed institute are adequately covered by existing operations and the creation of such an institute would involve a bitter fight to extract those operations from other agencies. This appears to be an idea that sounds good to those who are unfamiliar with the actual operations presently being undertaken by the federal government but which is, in fact, merely another potential bureaucratic quagmire.

I also believe that LEAA has authority to accomplish many of the things which this institute might get involved in.

If you want any additional research into the subject, I will be happy tocommence it.

MAY 13 1969

Mr. Richard G. Kleindienst
Deputy Attorney General

John E. Ingersoll, Director
Bureau of Narcotics and Dangerous Drugs

Narcotic and Dangerous Drug Institute

The Office of Senator Marlow Cook called the BNDD Training Division and expressed an interest in our educational and training programs.

Mitch McConnell, an aide to Senator Cook, toured our facility and discussed training needs. He stated that the Senator was interested in the national narcotic and dangerous drug problem and wishes to sponsor legislation in the field of education and training.

Subsequently Senator Cook requested a meeting with me to discuss the establishment of a National Narcotic and Dangerous Drug Institute. It is his desire to sponsor legislation to create such a facility. He estimated the cost at approximately $5 million with a $2.5 million operating budget. The Institute would be used as a training facility for those government and private agencies involved in the drug abuse problem. (See attached list.)

The Senator is enthusiastic about his proposal but stated he will not initiate legislation without full approval of the Department of Justice. I would like your feelings on this matter.

Attachment

J E Ingersoll

SPECIAL

Congressional

file
Drug file

October 27, 1969

Dear Mac:

The President appreciated very much receiving your letter concerning the drug abuse problem and suggesting that a White House Conference on Drugs be convened in the near future.

Your very thoughtful letter will certainly be carefully considered as it certainly does point out the need for education in this area. I have been asked to send you the complete transcript on the White House meeting on October 23 concerning the Administration's Control Dangerous Substances Act. This will give you a complete picture of Administration proposals and action in this area in which you are so vitally interested. Please let us know if you have further suggestions on this very important matter.

With warm regard,

Sincerely,

Kenneth E. BeLieu
Deputy Assistant to the President

Honorable Charles McC. Mathias
United States Senate
Washington, D.C.

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DEPARTMENT OF JUSTICE
27 OCT 30 1969
R.A.D.
RECORD
1. DEPUTY ATTORNEY GENERAL
2. LEGISLATIVE SEC.

KEB:EF:VO:vo

Enclosure - 10/23 Press Release

bcc: w/incoming to Justice Department (John Dean) FYI
bcc: w/inc[illegible]

THE WHITE HOUSE

The Honorable

Attorney General of the United States

STOP 219

✓ 10-23

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

October 18, 1969

Pmk 10/21

B.K

The Honorable Richard M. Nixon
President of the United States
The White House
Washington, D.C.

Dear Mr. President:

The problem of drug abuse has reached the point of major national concern. One aspect of the problem which is particularly troubling is the fact that too many people directly concerned -- parents, youth, teachers, doctors, judges and policemen -- know too little about drugs and the consequences of their use.

As you wrote in your message to Congress on drugs on July 14:

> "Proper evaluation and solution of the drug problem in this country has been severely handicapped by a dearth of scientific information on the subject -- and the prevalence of ignorance and misinformation."

The public education and research programs which you outlined in your ten-point program should be most helpful in filling the voids in scientific knowledge and public understanding of the physical and psychic effects of various hard and soft drugs. I feel it would be useful to provide a national focal point for these efforts, and therefore wish to propose that you convene a White House Conference on Drugs in the near future.

Such a conference could bring together representatives of all of the sectors of the nation touched by drugs: educators, law enforcement officers, parents, youth, the medical profession, and inner-city spokesmen. The conference could give national impetus to educational programs and could plan a coordinated assault on the unknown about drugs. It could recommend ways to marshal all of our public and private resources, and to make available throughout the nation information about drug control efforts which have proved effective in various communities.

As you stated on July 14, "the abuse of drugs has grown from essentially a local police problem into a serious national threat to the personal health and safety of millions of Americans." I feel that a White House Conference on Drugs would be an appropriate and constructive step in response to this threat.

With high regard.

Sincerely,

Charles McC. Mathias, Jr.
United States Senator

CM/cj

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510
OFFICIAL BUSINESS

WASHINGTON D.C. OCT 21 AM 1969 8

Charles McC. Mathias, Jr.
U.S.S.

The Honorable Richard M. Nixon
President of the United States
The White House
Washington, D.C.

OCT 23 '69
AM

Form DJ-150
(Ed. 4-26-65)

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : Mr. John W. Dean, III
Associate Deputy Attorney
General

DATE: Sept. 24, 1969

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

SUBJECT: Automobile forfeiture policy

Here is the latest correspondence regarding Congressman Wiggins' concern over the Department's vehicle remission policy. Basically, we have given the petitioner encouragement, postponed final ruling, and pointed out that we are reconsidering our guidelines.

Also, there is attached a letter from Bill Ryan to a Treasury Department official asking for comments on the Department of Justice proposed guidelines. Probably, this letter will find its way to the General Counsel of Treasury, since I doubt that the Internal Revenue Service would presume to speak for the whole Department.

Today, I spoke with Congressman Wiggins' Administrative Assistant, Mr. Patrick Rowland, and indicated that a conference would not be productive until our policy statement has been decided, Mr. Rowland agreed, provided this would not take very long. I assured him I would follow the matter closely, and be back to him within two weeks.

Mr. John W. Dean, III
Associate Deputy Attorney
General

Sept. 24, 1969

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

Automobile forfeiture policy

Here is the latest correspondence regarding Congressman Wiggins' concern over the Department's vehicle remission policy. Basically, we have given the petitioner encouragement, postponed final ruling, and pointed out that we are reconsidering our guidelines.

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SEP 22 1969

The Honorable
Charles E. Wiggins
House of Representatives
Washington, D.C. 20515

Dear Mr. Wiggins:

This is in response to your letter of September 3, 1969, and in furtherance of my letters to you of August 14, 1969, and September 5, 1969, concerning the policy applicable to the remission or mitigation of forfeitures in narcotic cases. This Bureau and the Department of Justice are currently making a complete review of the policy applicable to vehicle forfeitures. Particular review is being made of the policy concerning denials based on a record or reputation for "commercial crime". Consideration is being given to altering the policy so that petitions would only be denied for a record or reputation for "related crime", which would include only those prior offenses of the same type for which the vehicle involved was seized. I have instructed our Chief Counsel, Mr. Donald E. Miller, to arrange a meeting with you, or members of your staff, to discuss this matter fully.

The vehicle involved in this case, because of its mileage of 67,300, was not deemed suitable for official use and was sold by the General Services Administration for $1700. This sum of money will be retained by this Bureau, and in the event that the applicable policy is changed to only deny relief based on 'related crime' the $1700 will be paid to the lienholder as a result of their request for reconsideration.

As we explained in our letter of August 14, 1969, only one inquiry of a law enforcement agency is required under the policy in order that a lienor be eligible for relief in the event the vehicle is subsequently seized. It should

CC Chron

be noted that an appropriate inquiry in satisfaction of the feature imposed by Congress in 18 U.S.C. 3617(b) relating to liquor violations, will also serve to satisfy the requirements of the Department's policy relating to narcotic violations. Since the policy applicable to such forfeitures has been applied since 1939, lending institutions in the United States are most familiar with the policy and the requirements of making inquiry as to criminal record. Most prospective lenders follow the practice of making inquiry only on marginal or high risk type borrowers, other lenders make inquiry on every person to whom credit is extended.

This Bureau recognizes that active competition exists between lending institutions, and therefore, as a practical matter prompt response is required to inquiries from lending institutions. Our Bureau offices strive to provide same day response to such inquiries. For example, a recent survey in our Chicago office revealed that clerks spend an average of ten hours each day answering inquiries from lending institutions concerning prospective borrowers.

It is true that some large banks and finance companies, being fully aware of the policy regarding inquiry of law enforcement agencies, have concluded that because of the relatively few vehicles that are seized for narcotic violations, and the fact that administrative relief is granted to lienholders in about one-half of such seizures, it is not profitable to make such inquiries. However, it is our position that such larger institutions have clearly assumed the risk that the policy will result in the lienholder having lost the security for its loan. Moreover, we would also emphasize that the lienholder may in many instances have recourse to the seller of the vehicle under the financing arrangement, and in every instance the lienholder retains his legal remedies to recover on the obligation from the borrower.

The forfeiture features operate as a deterrence to persons engaged in narcotic drug trafficking. Also, the statute imposes a responsibility upon owners of a beneficiary or security interest to take extra precautions to assure that their acts do not contribute to making easier any violations of the narcotic laws. Both the liquor law provision in 18 U.S.C. 3617(b) and the Department's policy contemplate that the advantages in keeping vehicles out of the hands of traffickers exceeds the disadvantages to lenders in making a police check prior to extending credit.

We believe that if the policy is altered by legislation to grant relief to all holders of security interests, the result could be a complete abandonment of due care by lending institutions as to the criminal record and reputation of prospective borrowers. Indeed, if such a change in policy is adopted, there would be nothing to prevent a lienor from returning a seized vehicle to a narcotics violator after the vehicle was released to the lienholder under the policy. If the violator used the vehicle in violation of the law again, it would be seized, and the entire process would be repeated.

Thank you for this opportunity to be of assistance to you.

Sincerely,

John E. Ingersoll
Director

Enclosure

D
CC/WMLenck/rcb/5295/9-16-69
cc: ADMA-F
CC Chron

WER:WFOB:jlm

September 22, 1969

Mr. John F. McCarren, Director
Alcohol, Tobacco and Firearms
Legal Division
Internal Revenue Service
Washington, D. C.

Re: Proposed Regulations Relative to Remission or Mitigation of Civil Forfeitures

Dear Mr. McCarren:

Reference is made to the recent telephone call to you by Mr. William F. O'Brien of this office relative to the above subject.

Pursuant to your request, there is enclosed a draft copy of proposed regulations governing this Department's policies and procedures in connection with its actions on petitions for remission or mitigation of forfeiture of property seized for violations of the internal revenue laws, customs laws, and the federal narcotics laws in cases within the Department's jurisdiction.

As presently drafted, the regulations set forth the policies and procedures (with minor exceptions) currently followed by the Treasury Department and this Department in considering and acting on petitions within their respective jurisdiction. However, consideration is being given to changing the requirement that a petitioner, in other than a case which arose under the liquor laws, in applicable situations would be bound by the existence of a person's record or reputation for "commercial crimes" absent an inquiry. The proposed change would make an inquiry necessary if the person had a record or reputation for crimes similar in nature or related to the violation which give rise to the seizure.

In straw purchase cases, consideration is being given to requiring a lienholder to establish compliance with the inquiry condition respecting the actual purchaser only if it is shown that the lienholder knew or had information before it from which it should have known that such a purchase was involved.

The effect of such changes, if made, would be to bring the Department's policy in acting on petitions within the provisions of 18 U.S.C. 3617(b), which is used as a guide in other cases, and the Supreme Court's decision in United States v. One 1936 Model Ford V-8 DeLuxe Coach, etc., 307 U.S. 219 which also governs the policy of both the Treasury Department and this Department in liquor law forfeiture cases.

Before making a final determination as to such changes, we would like to receive your views as to the possible impact they would make upon the Treasury Department's policies in these respects. We also solicit your views as to whether the Treasury Department, providing it has no substantial objection to the proposals under consideration, would care to amend its policy along the lines suggested and join in a joint publication of such amendments and this Department's regulations.

The favor of a reply within fifteen days would be appreciated as there are several reasons for seeking an early publication of our Regulations.

Sincerely,

WILLIAM E. RYAN, Chief
Narcotic and Dangerous Drug Section
Criminal Division

By:
WILLIAM F. O'BRIEN
Attorney

Enclosure

JAN 16 1969

MEMORANDUM

Re: Section 409 of the proposed Controlled Dangerous Substances Act of 1969.

Title IV of the proposed legislation consists of the penalty provisions relating to violations involving controlled dangerous substances. Section 409 of that Title would authorize the imposition of extended penalties for any felony violation of the Act committed by a person involved in a continuing criminal enterprise (*i.e.*, organized crime). The inclusion of this penalty provision raises complex legal and policy problems and thus merits special discussion.

I. Philosophical Basis

The concept of authorizing special penalties for persons involved in organized crime or otherwise considered specially dangerous to society has been recommended by the National Crime Commission, the American Bar Association Project on Minimum Standards for Criminal Justice, and the Advisory Council of Judges of the National Council on Crime and Delinquency. The concept is viewed as a desirable alternative to the present system of establishing maximum penalties with a view toward the most serious offender, thus exposing the average offender to a far higher penalty than would ordinarily be justified by his offense. It is argued that it would be more rational and equitable to fix penalties with a view toward the average offender, allowing special extended penalties for the more dangerous offender where warranted.

This rationale finds support in the realities of the present federal sentencing structure. Penalties are, for the most part, fixed far higher than is warranted in the case of the average offender. Accordingly, courts have a wide range of discretion in imposing sentence and there are few if any criteria to guide a court's discretion within this range. One judge may assume that the statutory maximum is called for unless mitigating circumstances are shown to his satisfaction. Another judge, imposing sentence for the same offense, may presuppose that only a light sentence is called for unless aggravating factors are demonstrated. The result may well be severe and unwarranted discrepancies in sentencing.

This disparity of sentences is especially acute in the area of narcotic and dangerous drug offenses. For this reason, proposed Title IV provides a generally lower penalty structure than existing law, and makes special provision through first offender treatment for the drug experimenter who is more a threat to himself than to society. At the same time, recognition must be given to the interest of organized crime in drug traffic. Accordingly, provision is made for imposing more severe penalties on those who violate the Act as a part of their organized crime activities.

II. Legal Issues

Whatever the merits of the philosophical justification for extended penalties, it must be recognized that this concept involves complex constitutional issues as yet unresolved. While there is a substantial body of scholarly opinion in the groups who have supported this concept that it is constitutional, it is pertinent to highlight some of the challenges which may be raised, focusing particular attention on the proposal under consideration.

1. Crime of Status. The proposal under consideration provides a potential doubled penalty for a person convicted of a felony under the Act who is found to be involved in a continuing criminal enterprise. This could be viewed as the traditionally harsher penalty for an aggravated offense, long accepted as constitutional, or as a second penalty for being a "professional criminal", a concept of very doubtful constitutionality.

It is virtually impossible to predict how a court would approach a provision such as section 409. Specific penalties for aggravated offenses, such as crimes committed while armed, while in custody, etc. have long been accepted as constitutional. Likewise, courts have accepted the constitutionality of longer penalties for habitual or multiple offenders, at least as long as due process is afforded in the procedures. E.g. Oyler v. Boles, 368 U.S. 448 (1962). If viewed as an aggravated offense, a court might well be willing to impose a higher penalty for a drug offense committed as part of a continuing criminal enterprise.

If viewed as a second punishment for being a professional criminal, it is less clear that a court would be willing to uphold a provision such as section 409. Robinson v. California, 379 U.S. 660 (1962), held that the status of addict could not constitutionally be the basis for a criminal penalty. On the other hand, it is suggested in Specht v. Patterson, 386 U.S. 605 (1967), that the status of being a dangerous sex offender may be a proper basis for longer incarceration following conviction if the conviction is only the basis for a second proceeding justifying the longer incarceration. However, the court held that the second proceeding was subject to more stringent due process requirements that an ordinary sentencing procedure.

It is not at all clear that an extended sentence such as is proposed would be viewed by courts as an unconstitutional punishment of status. Indeed, strong arguments can be made to support the position that it is punishment for the aggravating factor of committing the offense as part of a broader criminal enterprise. Nevertheless, it is important to recognize that such an extended penalty provision is likely to be challenged as a punishment of status.

2. Due Process. There are actually two due process issues inherent in the proposal: (a) the certainty of the statutory language, and (b) the procedural safeguards afforded to the defendant.

a. The proposal offers alternate criteria for determining whether the offender is engaged in a continuing criminal enterprise: (1) whether he played a substantial role in a continuing criminal enterprise involving any violations of the Act in concert with at least five others and occupied an organizational, supervisory or managerial position; or (2) whether he played a substantial role in a continuing criminal enterprise involving any violations of the Act and has or has had substantial income or resources not demonstrably derived from legitimate sources. These are, admittedly, lacking in precision and are thus subject to the challenge that they are unconstitutionally vague.

The first criterion in the proposal under discussion combines various elements of other similar proposals although it differs in some degree from all of them. The National Crime Commission's recommendation for extended penalties suggested, "* * * that a felony was committed as part of a continuing illegal business in which the convicted offender occupied a supervisory or other management position." Challenge of Crime in a Free Society, p. 203. Section 5 of the Model Sentencing Act (Advisory Council of Judges of the National Council on Crime and Delinquency) specifies that the particular crime was "committed as part of a continuing criminal activity in concert with one or more persons." Section 7.03(2) of the Model Penal Code uses a slightly different concept: "(a) the circumstances of the crime show that the defendant has knowingly devoted himself to criminal activity as a major source of livelihood;".

The second criterion follows closely the language of section 6 of the Model Sentencing Act and is quite similar to the language of section 7.03(2)(b) of the Model Penal Code.

None of the criteria proposed to date is entirely satisfactory. All who have considered the problem recognize the difficulties in drafting adequate and precise criteria. The drafters of the Model Penal Code recognized this difficulty (see Comment on Tentative Draft No. 2, p. 24) but were unable to formulate anything more precise. Others have likewise recognized the difficulty in drafting criteria relating to the professional criminal. See, Challenge of Crime in a Free Society, p. 143 and Task Force on the Courts, pp. 14-28; American Bar Association Project on Minimum Standards for Criminal Justice, "Sentencing Alternatives and Procedures," p. 93.

Absent more definite criteria, this proposal and others of a similar nature are open to challenge on the ground of vagueness. Nevertheless, it must be recognized that widely varying sentences have been and are being imposed with no criteria whatever and courts may be willing to accept even imprecise statutory criteria as a guide to judicial discretion in lieu of the present absence of any criteria.

b. The procedural safeguards which must surround an extended penalty provision pose an even more complex problem.

Under existing law, normal sentencing procedures do not present serious problems. A court may request a presentence report to assist it in determining what penalty to impose, within the statutory range, and may impose sentence on the basis of that report without furnishing it to the defendant or providing any formal sentencing hearing. Williams v. New York, 337 U.S. 241 (1949). However, while reaffirming Williams, the Court in Specht, supra, held that far more elaborate procedures are required when the defendant is to be committed for an indefinite term under the Sex Offender law. "Due process, in other words, requires that he be present with counsel, have an opportunity to be heard, be confronted with witnesses against him, have the right to cross-examine, and to offer evidence of his own. And there must be findings adequate to make meaningful any appeal that is allowed." 386 U.S. at 610.

While it is not entirely certain that all of these procedures would be required prior to the imposition of an extended penalty for a specific crime (as distinguished from a sex offender commitment that is triggered by, but separate from, the conviction for a crime), it is probable that more is required before imposing an extended sentence than is necessary to ordinary sentencing procedures.

It is doubtful that eligibility for the extended penalty must be made an element of the offense to be tried to the jury and established beyond a reasonable doubt. This was not even suggested in Specht, supra, in connection with the commitment of a sex offender. And in Oyler, supra, the Court noted that to raise habitual offender status at the beginning of the trial might well prejudice the offender on the basic issue of guilt for the particular crime. Except in capital cases, sentencing is now a court not a jury function. It is left to the court so that considerations, not admissible within the strict limits of the rules of evidence, may be used to tailor the sentence to the individual offender. To depart from this would be to depart from one of the basic premises of our correctional philosophy.

Short of full jury trial, it is not clear what the procedural requirements for extended sentencing are.

The proposal under consideration affords notice and hearing and would require furnishing the defendant a copy of the Attorney General's report with the names of confidential sources deleted where necessary. It guarantees the right to counsel and compulsory attendance of witnesses and authorizes cross-examination of any witnesses who may be presented by the Government. It does not require public hearing or adherence to the strict rules of evidence and it permits imposition of the sentence on the basis of a preponderance of the evidence. It requires the court to state the basis for imposition of extended sentence, but the court would not be obligated to explain its reasons for imposing any particular length of sentence. No special review procedure is authorized since the utilization of extended penalty (as distinguished from discretionary length of sentence) could almost certainly be challenged through existing appeal procedures or by habeas corpus.

The lack of direct precedent makes it virtually impossible to predict whether these procedures would survive constitutional challenge. On balance they seem fair and consistent with the due process requirements outlined in Specht, supra, and it is certainly arguable that they meet the necessary constitutional requirements.

III. Policy Issues

The basic policy issue concerning extended penalties is its desirability. For the reasons outlined in Part I, the use of extended penalties, coupled with a generally lower penalty structure related to the average offender, seems desirable in the interest of justice. However, the desirability of the concept must be measured against its feasibility.

The concept of extended penalty is feasible only if it can be implemented constitutionally. This, of course, includes the drafting of criteria sufficiently precise to withstand constitutional challenge. Section 409 may be sufficient for this purpose, but it would certainly be desirable to formulate more precise criteria if possible.

A proposed extended penalty provision must also meet the necessary procedural requirements. The procedural requirements once determined must then be judged from a practical standpoint. If the defendant has a right of confrontation and can compel discovery of documents, might not broader investigations of organized crime be jeopardized? Is the longer sentencing of one individual worth the risk of disclosure of confidential information? The proposal has been drafted to minimize these risks, but should a court find a defendant constitutionally entitled to broad rights of discovery against the Government, the desirability of an extended penalty provision would have to be re-examined.

On balance, an extended penalty provision such as section 409 appears both desirable and feasible. Nevertheless, further analysis both of the concept and of the specific provision would be helpful.

Form DJ-150
(Ed. 4-26-65)

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : Mr. John W. Dean, III
Associate Deputy Attorney General

DATE: June 24, 1969

FROM MRS : Michael R. Sonnenreich
Deputy Chief Counsel

SUBJECT: Recommendations by the Treasury Department concerning the Attorney General's authority under the proposed "Controlled Dangerous Substances Act of 1969."

As per your request, attached is a listing of those recommendations made by the Treasury Department that would limit the Attorney General's authority under the new proposed Controlled Dangerous Substances Act. Many of these matters were resolved by compromise; however, some of them have remained in the bill as a result of compromises. Please note that the first point in the attachment, relating to 26 U.S.C. 7607, now raises some difficult policy decisions for the Attorney General which are outside the scope of this bill and affect the existing memorandum of understanding between the Bureau of Customs and the Bureau of Narcotics and Dangerous Drugs which was transferred under the Reorganization Plan No. 1 of 1968.

Attachment

TO
~~JD~~
RGK
6/30/69

Changes Recommended by the Treasury Department

Affecting the Powers of the Attorney General

1. 26 U.S.C. 7607 was retained in Title VIII of the new bill (subsection (r)), to allow the Bureau of Customs to make arrests without warrants as to any offenses under the laws of the United States relating to narcotic drugs and marihuana. That portion of section 7607 that relates to the Bureau of Narcotics and Dangerous Drugs was repealed and replaced by section 701 of the new bill. This sweeping authority was continued for the Bureau of Customs on the understanding that the Memorandum of Understanding between the two Bureaus would be maintained in force and enforced. Without a clear delineation of functions, such a repealer would never have been contemplated from the view point of the Attorney General since, without a restrictive Memorandum of Understanding, such authority would give the Secretary of Treasury theoretical co-equal powers with the Attorney General in the field of narcotic drug and marihuana enforcement. This theoretical equality was never contemplated by the drafters of the bill, and the removal of existing guidelines now creates the possibility of parity.

2. In the preamble to the bill, the Treasury Department wanted a statement as to its role in the enforcement of those laws "affecting all importations" and the laws against smuggling. Such a statement would tend to freeze the Attorney General out of this area which is somewhat illogical since, as chief law enforcement officer, there would be times when the Attorney General would want to supervise investigations, not only internationally and domestically, but also at the ports and borders of the United States. This language was deleted and a compromise was made (see point 3 below).

3. The Treasury Department was insistent about including in the bill the following statement: "Nothing in this Act shall derogate from the authority of the Secretary of the Treasury under the customs and related laws." With great reluctance the term "and related laws" was inserted in the bill as a compromise measure. This phraseology is nebulous and does not carefully delineate the authority of the Secretary of the Treasury. The intent of the Treasury Department was clear as they suggested other language which would limit the Attorney General's authority by subtracting from his general law enforcement

authority those activities handled by the Secretary of Treasury under the customs and related laws (emphasis supplied). This language was included as a compromise only with the understanding that the Attorney General could direct investigations of the narcotic and dangerous drug laws wherever they occur within and without the jurisdiction of the United States including ports and borders, when, in his judgement, such investigations were necessary.

4. The Treasury Department would not accept a recommendation that their authority be limited to the ports and borders of the United States. They insist on the authority to conduct international and internal investigations if they relate to smuggling. This would detract from the Attorney General's authority in that there would exist two organizations involved in international intelligence gathering and domestic investigations, one of which is not controlled by the Attorney General. This situation is far different from the Memorandums of Understanding which were promulgated by the Federal Bureau of Investigations. In those understandings the authority of the Attorney General was paramount and other investigative agencies were given a sphere of investigation, not as a matter of right, but rather as a matter of comity.

5. The Treasury Department has also recommended that the Secretary be given equal authority with the Attorney General to conduct conferences with law enforcement executives from the various states regarding the drug abuse problem. This recommendation was stricken from the President's message as it would usurp the traditional role of the Attorney General as the principal Federal law enforcement officer. This does not mean that the Treasury Department as well as other departments such as Health, Education and Welfare, and Defense would not be consulted by the Attorney General. However, the focus and the initiative must center on the Attorney General.

6. The Treasury Department recommended an expansion of its law enforcement school to service law enforcement personnel other than the Bureau of Custom's agents in the narcotics and dangerous drug area. This recommendation was also deleted from the message as it would be duplicative of the training schools being conducted by the Bureau of Narcotics and Dangerous Drugs and would create unnecessary competition at the State level.

7. The Treasury Department's redraft of the President's message would have restricted the Attorney General's drug strike forces to internal operations only. This recommendation was deleted from the message as the Attorney General has the authority to use such strike forces anywhere in the United States, as well as overseas when appropriate. In this regard, the Treasury Department also sought to establish its own strike forces. This was deleted also from the message as there is no apparent need, given the role of the Bureau of Customs, for such a specialized force. It is superfluous to the major work of that Bureau and would duplicate the Attorney General's efforts. Further, the Bureau of Customs does actively participate on the Organized Crime Task Forces which are under the supervision of the Attorney General.

of the President's Message

8. The Treasury Department's redraft sought to include the Secretary of Treasury with the Secretary of State and the Attorney General in the area of international cooperation and liaison. The rubric used by Treasury in justifying its inclusion into this area was its enforcement of the smuggling laws. This recommendation was rejected on the basis that the Secretary of State, as our principal liaison with foreign governments, and the Attorney General, as our principal law enforcement official sufficiently cover our needs in this delicate area and the roles should not be muddied by the interjection of a third party in any negotiations.

Form DJ-150
(Ed. 4-26-65)

UNITED STATES GOVERNMENT DEPARTMENT OF JUSTICE

Memorandum

TO : Mr. John W. Dean, III
Associate Deputy
Attorney General

DATE: August 26, 1969

FROM: MRS Michael R. Sonnenreich
Deputy Chief Counsel
Bureau of Narcotics
and Dangerous Drugs

SUBJECT: Proposed provision establishing a Committee on Marihuana to be inserted into Title VI of the Controlled Dangerous Substances Act of 1969.

Enclosed is a proposed addition to Section 604 of the Controlled Dangerous Substances Act of 1969 establishing a Committee on Marihuana to investigate and report on all aspects of marihuana use. The proposed insertion is for the most part a consolidation of the marihuana provisions in Title III of the Dodd bill, S.1895, and the Marihuana Commission established under the Moss bill, S.2590, but tailored in such a manner as to correspond to the language of the Controlled Dangerous Substances Act of 1969. The basis for this proposed addition arose out of a consultation with members of Senator Dodd's staff, and copies of the provision are being forwarded to them, pending your approval.

The new provision will be designated as Section 604(b) and the present Section 604(b) will be redesignated Section 604(c).

Mr. John W. Dean, III
Associate Deputy
Attorney General

August 26, 1969

Michael R. Sonnenreich
Deputy Chief Counsel
Bureau of Narcotics
and Dangerous Drugs

Proposed provision establishing a Committee on Marihuana to be inserted into Title VI of the Controlled Dangerous Substances Act of 1969.

Enclosed is a proposed addition to Section 604 of the Controlled Dangerous Substances Act of 1969 establishing a Committee on Marihuana to investigate and report on all aspects of marihuana use. The proposed insertion is for the most part a consolidation of the marihuana provisions in Title III of the Dodd bill, S.1895, and the Marihuana Commission established under the Moss bill, S.2590, but tailored in such a manner as to correspond to the language of the Controlled Dangerous Substances Act of 1969. The basis for this proposed addition arose out of a consultation with members of Senator Dodd's staff, and copies of the provision are being forwarded to thempending your approval.

The new provision will be designated as Section 604(b) and the present Section 604(b) will be redesignated Section 604(c).

604(b) The Attorney General and the Surgeon General shall appoint a committee of experts to advise them with respect to all aspects of marihuana use.

(1) The Committee on Marihuana is authorized and directed to execute a plan of research, to be carried out on both an intramural and extramural basis, covering all aspects of marihuana use.

(a) The research shall include -

(1) identification of existing gaps in our knowledge of marihuana;

(2) an intensive examination of the important medical and social aspects of marihuana use;

(3) surveys of the extent and nature of marihuana use;

(4) studies of the pharmacology and effects of marihuana;

(5) studies of the relation of marihuana use to crime and juvenile delinquency; and

(6) studies of the relation between marihuana and the use of other drugs.

(2) The study shall be completed within 24 months from the effective date of this Act, at which time the Committee shall submit to the Congress a comprehensive report on its research findings and, in addition, its recommendations with respect to the degree of control to be exercised over marihuana use. The Committee shall cease to exist 30 days after such report is submitted.

(3) The Committee on Marihuana shall be composed of persons selected by the Attorney General and the Surgeon General from a list drawn by the National Academy of Sciences. Such persons shall be qualified as experts and have diversified professional backgrounds. If the National

(5) studies of the relation of marihuana use to crime and juvenile delinquency; and

(6) studies of the relation between marihuana and the use of other drugs.

(2) The study shall be completed within 24 months from the effective date of this Act, at which time the Committee shall submit to the Congress a comprehensive report on its research findings and, in addition, its recommendations with respect to the degree of control to be exercised over marihuana use. The Committee shall cease to exist 30 days after such report is submitted.

(3) The Committee on Marihuana shall be composed of persons selected by the Attorney General and the Surgeon General from a list drawn by the National Academy of Sciences. Such persons shall be qualified as experts and have diversified professional backgrounds. If the National Academy of Sciences is unable or refuses to act, the Attorney General and Surgeon General shall select the membership of the Committee from other sources. The

size of the Committee may be determined by the Attorney General and the Surgeon General but shall not be less than five persons.

(4) Members of the Committee shall be entitled to receive compensation at the rate now or hereafter provided for a grade GS-18 of the General Schedule for employees for each day (including travel time) during which they are engaged in the actual performance of duties for the Committee, members of the Committee shall be allowed expenses of travel, including per diem instead of subsistence, in accordance with subsection (i) of chapter 57 of Title 5, United States Code. The Attorney General and Surgeon General shall furnish the Committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the Committee.

(5) The Committee may procure, in accordance with the provisions of section 3109 of Title 5, United States Code, the temporary or intermitant services of experts or consultants. Persons so employed may be entitled to receive compensation at the rate now or hereafter provided for a grade GS-18 of the General Schedule for employees for each day (including travel time) during which they are engaged in the actual performance of duties. While traveling on official business in the performance of duties for the Committee such persons so employed shall be allowed expenses of travel, including per diem instead of subsistence, in accordance with subsection (i) of

chapter 57 of Title 5, United States Code. The Attorney General and Surgeon General shall furnish the Committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedure to be followed by the Committee.

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TENTATIVE LIST AS OF 9/11/69

WITNESSES SCHEDULED TO APPEAR DURING THE 1969 NARCOTIC HEARINGS ON S. 1895, S. 2590, AND S. 2637 before the SENATE SUBCOMMITTEE TO INVESTIGATE JUVENILE DELINQUENCY

September 15, 1969

John N. Mitchell, Attorney General
John Ingersoll, Director, Bureau of Narcotics and Dangerous Drugs

September 16, 1969

Eugene P. Rossides, Assistant Secretary for Enforcement and Operation, Treasury Department
Thomas Lynch, Attorney General, California

September 17, 1969

Dr. Stanley Yolles, Director, National Institute of Mental Health
Dr. Sidney Cohen, Director, Division of Narcotic Addiction and Drug Abuse, National Institute of Mental Health

September 18, 1969

Hugh Curran, Mayor, Bridgeport, Connecticut
Samuel Tedesco, Judge, Superior Court, Bridgeport, Connecticut

September 19, 1969

Richard Daley, Mayor, Chicago
John Lindsay, Mayor, New York
Sam Yorty, Mayor, Los Angeles

September 24, 1969

Dr. Henry Brill, Chairman, American Medical Association Committee on Alcoholism and Drug Abuse
William Ford, Executive Vice President, National Wholesale Druggists Association
Dr. Robert E. Gould

September 25, 1969

Bruce Brennan, Vice President, Pharmaceutical Manufacturers Association
Fred T. Mahaffey, Executive Director, National Association of Boards of Pharmacy
Michael Perhac, President, National Association of Retail Druggists

September 26, 1969

Bard Grosse, National Student Association
Dr. Vincent Dole, Rockefeller University
Robert J. Bolger, President, National Association of Chain Drug Stores, Inc.