

Science and the End of Marijuana Prohibition  
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The basic purpose of this short presentation is to explain why marijuana is presently a prohibited schedule 1 drug and to explain how the rescheduling process is being used to change this.

There are three secrets to the success of marijuana prohibition.

- 1) They made the fine print deceptive and difficult to understand.
- 2) They make it take forever to even attempt to change it.
- 3) They made sure there was a fall guy to deflect responsibility from the key decision-makers.

All three of these secrets provide the basis for various traps waiting for anyone who dares to challenge this established order. For example -- I could spend all my time here today trying to explain the fine print. Instead I'm going to read you an August 14, 1970 letter from the Nixon Administration to Congress that explains why marijuana was originally placed in Schedule 1 in 1970.

"Dear Mr. Chairman: In a prior communication, comments requested by your committee on the scientific aspects of the drug classification scheme incorporated in H.R. 18583 were provided. This communication is concerned with the proposed classification of marihuana.

"It is presently classed in schedule I(C) along with its active constituents, the tetrahydrocannabinols and other psychotropic drugs.

"Some question has been raised whether the use of the plant itself produces "severe psychological or physical dependence" as required by a schedule I or even schedule II criterion. Since there is still a considerable void in our knowledge of the plant and effects of the active drug contained in it, our recommendation is that marihuana be retained within schedule I at least until the completion of certain studies now underway to resolve the issue. If those studies make it appropriate for the Attorney General to change the placement of marihuana to a different schedule, he may do so in accordance with the authority provided under section 201 of the bill.

"Sincerely yours, (signed) Roger O. Egeberg, M.D."

The reference to "certain studies" is to the then-forthcoming National Commission on Marihuana and Drug Abuse. This commission recommended the decriminalization of marijuana, and also advised that the arbitrary distinctions between licit and illicit drugs be dropped.

It was clear in 1970 that marijuana did not have the high potential for abuse required for Schedule 1 status, and it was even more clear after the Commission's reports were released. However no Attorney General has ever taken steps to remove marijuana from schedule 1, and most people assume it was placed there because it satisfied the required criteria. Instead it was the old con job called the bait and switch.

The second secret is that it takes forever to even try to change marijuana's status. The previous time an attempt was made took 22 years. The present challenge actually is about 5 years old and will likely take another 2 to 5 years to resolve depending on the ethics of the scientists on the government payroll's. One of the traps here is the difficulty to focus and maintain support for such a challenge for so long a period of time.

That was going to be the topic of my presentation today, until I remembered the third secret of prohibition. I never get to talk about this one because of all the time required by the first two. However you can read a lot about the legal and scientific doctrine of the petition on-line -- at [www.hightimes.com](http://www.hightimes.com) and at [www.norml.com](http://www.norml.com) -- you will find full text versions of the rescheduling petition, additional articles about the challenge, and several exhibits.

The third secret behind the success of marijuana prohibition is that they made sure there was a fall guy to deflect responsibility from the key decision-makers.

The Drug Enforcement Administration had a conference last year and during his remarks Thomas Constantine, the present administrator of DEA, rejected the assertion that alcohol and tobacco are gateway drugs. "[T]hat argues in the face of logic. Because from my era everybody smoked and everybody drank and there was no drug use."

But, as DEA told CNN when they referred the petition to HHS in 1997, "We are not scientists over here." That is correct, instead the public servants over at DEA are the fall guys . . . and gals . . . who deflect responsibility from key decision makers.

As I've introduced and discussed these three secrets of prohibition I've kept referring to "they". Who are they, you might wonder? It really doesn't matter so much as it does that "they" are not the key decision makers in the public policy process used to reschedule marijuana.

I want to talk about a man named Alan Turing for just a minute. This may seem like a digression but it is, in fact, the whole point of my remarks today. I don't know a lot about this man, indeed what I do know of him I learned just yesterday from a wonderful book entitled "Frontiers of Complexity" by Peter Coveney and Roger Highfield.

Along with John von Neumann, Alan Turing devised "the mathematical, logical, and physical foundations of the electronic digital computer." Turing also

helped break the German's secret codes during World War 2, is considered a pioneer in the study of complex systems and is the father of artificial intelligence. Alan Turing was an Englishman whose life work has made profound contributions to the betterment of society. In 1950 someone broke into his apartment, and in the police investigation that followed Turing had to confess that he was gay. Well, in that time and place this too was prohibited activity. Alan Turing was convicted of "gross indecency" in Great Britain, forcefully subjected to unnecessary medical treatment, denied a visa to visit the United States to collaborate with von Neumann and other scientists (in part because as a homosexual he was presumed to be a security risk), and in June 1952 Alan Turing committed suicide at age 41 by taking several bites from an apple he had laced with cyanide.

There are individuals in society, any society, that seek to impose their will on others at any cost. Even at the cost of a national treasure like Alan Turing.

This is certainly a good time to draw a parallel between this story and marijuana prohibition today. Certainly prohibition is a policy that is pursued and supported by individuals as a great crusade that must be won at any cost, even at the cost of 700,000 or more arrests per year, because in their opinion this is required for the moral betterment and/or cleansing of society.

However there is more than this that makes Alan Turing worth thinking about. A lot of people do not think that marijuana prohibition is all that great of an injustice, or that the costs are not unbearable for society. Many people who support prohibition believe it is worth any cost to maintain, even breaking the law itself. Because marijuana's schedule 1 status is against the law, the law that requires that a drug has to have the highest potential for abuse to justify a prohibition under the laws of the United States. The supporters of prohibition have found it convenient to ignore this small but important detail. They want to get the rest of the country to support their moral crusade against marijuana use even at the expense of equal treatment under the law -- the most precious value of our society. Turing is also one of the key pioneers in a field that is now called "complexity". In formal discussion complexity represents the magnitude of problem solving required to reach a desired solution. One of my professors often uses an example of the modern self-focusing camera as an example of complexity. It contains 7 fundamental technologies and it is beyond the capacity of a single repair-person to learn and understand them all.

There are problems in this world that are beyond the comprehension of any individual and must be solved by communities of intellect. Drug policy problems, I believe, fall into this category - and one of the lessons I want to emphasize is that we must continue to function as a community working on different facets of a common problem.

However scientists are the current focus. John von Nuemann, Turing's American colleague, helped build one of the first computers in order to solve the complex calculations required to make the first hydrogen bomb. The making of the atomic and hydrogen bombs is a classic example of how science functions as a community to solve complex problems, in this case discovering the secrets of the atom.

Scientists who work for governments sometimes must make ethical choices between following orders or following scientific principles. Even today we hear about the conflicts faced by scientists at the Los Alamos laboratory between the need to participate in open scientific exchange with international colleagues and the need to maintain security for classified information. This conflict permeates every aspect of scientific activity, and the question of the hour is how much they influence the scientific work at the Department of

Health and Human Services when it comes to marijuana prohibition.

So now I want to talk about the Department of Health and Human Services (HHS), the aforementioned and mysterious key decision makers. HHS calls the shots when it comes to marijuana prohibition, and the cops at DEA and the general over at ONDCP take the heat. That's how the process is set up, and it is amazing that HHS gets away with it.

For example HHS must produce a medical and scientific evaluation for any drug subject to the scheduling process, and scheduling is based on this document. However this key document is not even made available to the public -- it is only available by way of a Freedom of Information Act request. If you called DEA today and asked to see ANY scheduling evaluation provided for them by HHS, you will be told that DEA can not release another agency's work product and that a FOIA request is required.

That's another way of saying the documents are classified, or too sensitive for wide public circulation. However we're not talking about the atomic bomb, we're talking about evaluations of controlled substances that determine, in the case of marijuana, whether or not millions of people will be subject to criminal prosecution or not. One of the defining characteristics of scientific output is that it is subject to public review, that it be made available to the community -- both to other scientists and indeed to the general public.

This example should set off alarm bells within the scientific community -- it is a procedural technicality, but procedural technicalities are what scientific ethics are all about.

Now I will cut to the chase, as they say. Here is the point of the petition, in a nutshell. If the federal government wants to keep marijuana in schedule 1, or if they believe that placing marijuana in schedule 2 is a viable policy, then we're going to cross-examine under oath and penalty of perjury every HHS official and scientist who claims that marijuana use is as dangerous

as the use of cocaine or heroin. Scheduling is based on scientific analysis, not DEA policy or preference. They hide the evaluations from public critique to obscure this fact, and to make sure that criticism of scheduling decisions falls on DEA and not HHS. This process allows HHS to escape public accountability for their decisions. They are not scientists at DEA. HHS findings on scientific and medical issues are binding on DEA. So it is fairly clear who's in control of this process - HHS is.

Here is another important aside. Until 1988 no scientist in the world knew how marijuana caused its characteristic effects. The discovery of the cannabinoid receptor system revolutionized understanding of marijuana. Research findings from 1988 to 1994 provide the key scientific basis for marijuana's rescheduling. In correspondence Thomas Constantine stated in 1995 that DEA did not know of any information that would require new proceedings. After receiving my petition and studying it for 30 months DEA admitted in December 1997 that it provided sufficient grounds for the removal of marijuana and all cannabinoid drugs from schedules 1 and 2. It turns out that there was sufficient information on record, and I conclude that DEA just wasn't aware of its significance. After all, they're not scientists over there, are they?

But they are scientists over at HHS. They knew about these new research findings; a few of the most important were discovered in the labs at the National Institute of Mental Health. Federal law requires HHS to summarize and publish marijuana research findings every three years, yet this process ground to a halt as soon as Donna Shalala took office as the Secretary of Health and Human Services, just as the key receptor discoveries occurred. I want to be very clear about this. These discoveries were well publicized in the press and in scientific journals -- but they were never summarized in the triennial reports to Congress and the people that are required by law.

Now the law also requires that marijuana have a high potential for abuse to be a schedule 1 drug, or even a schedule 2 drug. Why, when it comes to marijuana, is it okay for the federal government to ignore the laws we the people passed in our democratically elected legislature? Why is it that they seek to maintain marijuana prohibition at any cost? At a cost to the rule of law, and at the cost of over 700,000 arrests per year?

Why is it that the scientists at HHS have known that marijuana does not belong in schedule 1 or schedule 2 and have never acted to remove it? It seems logical that if High Times and I could file a rescheduling petition that HHS could too. In fact the CSA states that HHS can begin proceedings itself, without waiting for an interested party to file a petition. I suggest that one of the reasons the rescheduling petition is currently stalled over at HHS is that several scientists on the public payroll over there are wrestling with their consciences over these very issues. Will the loss of scientific integrity become another casualty to maintaining marijuana prohibition at all costs?

I stated earlier that marijuana's rescheduling will take 2 to 5 years to resolve depending on the ethics of the government's scientists. If they acknowledge that marijuana does not have the same abuse potential as heroin, than marijuana prohibition in the United States will have to end. And in another aside I don't have time to explain more completely, if prohibition ends in the US it must also end world-wide because US law requires that we amend international drug control treaties to correspond with our own findings on scientific and medical issues.

I have raised these three secrets to prohibition's success for another reason, so I'll repeat them once again.

- 1) They made the fine print deceptive and difficult to understand.
- 2) They make it take forever to even attempt to change it.
- 3) They made sure there was a fall guy to deflect responsibility from the key decision-makers.

Another advantage this strategy provides for supporters of prohibition is that it makes it easy for them to change the subject or confuse the issues of debate.

Over the last ten years the marijuana policy debate has shifted from whether or not marijuana arrests are justified to whether or not marijuana has medical use. The rescheduling petition is based solely on the abuse issue. If accepted medical use was as relevant as DEA and its public supporters argue, than DEA would not have accepted the Gettman/High Times petition for filing in July 1995 or referred it to HHS for review in December, 1997. The medical marijuana issue is important because therapeutic users bear the greatest injustice as a result of DEAs flawed interpretations of the Controlled Substances Act, however legally it is only relevant if marijuana has a high potential for abuse. As the petition argues, as the recent Institute of Medicine report confirms, and as I have stated repeatedly here today - marijuana does not have the high potential for abuse required for Schedule 1 or Schedule 2 status. While public debate has shifted to the issue of marijuana's medical use there has been an unprecedented increase in arrests for marijuana possession and sales offenses. It may very well be that this shift in public debate has removed a historic constraint on marijuana arrests, and that this lack of public condemnation has encouraged law enforcement to make as many arrests for marijuana use as possible.

By accepting medical use as the primary reference point for debate the reform movement implies that we are willing to concede the legal validity of the federal government's interpretation of the Controlled Substances Act. Surely this has not been the intent of the reform movement, but it is

nonetheless an appearance we must, in my opinion, work harder to correct.

Ethan Nadlemann long ago raised the following point - just what is the drug problem he asked? Is it a health problem, is it a law enforcement problem, what is it? The drug problem is that the federal government of the United States won't follow the law when it comes to marijuana's regulation, and they never have.

That's it. That's the problem. It is my hope that with rescheduling proceedings on marijuana we can finally focus the country's attention on the ultimate root cause of this injustice we call marijuana prohibition.

Thank you.  
Jon Gettman