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Illicit Narcotics and the Law

by John R. McGinness*

THE REGULATION AND CONTROL of the use of narcotic drugs has long been recognized as the joint responsibility of the State and Federal governments, and co-operation between the two is specifically directed in the Federal Act.¹ The purpose of the Uniform Narcotic Drug Acts of the states is to parallel and supplement the Federal Narcotic Laws.² Federal officials, in theory, concentrate on interstate traffickers, and state officials on intrastate violations.³ In reality, however, state and federal agents both co-operate in policing the illicit traffic.

The Federal Bureau of Narcotics consists of a force of about 260 men,⁴ with which it must guard a border of approximately 9,000 miles. It is evident, therefore, that the states and municipalities should assume the burden of enforcement, and thus permit the federal force to concentrate on the broader aspects of the national and international problem.

Brief Summary of Facts Concerning Illicit Narcotics

Principal illicit narcotics—heroin, morphine, cocaine, cannabis (marihuana).

Most insidious habit-forming drug—heroin, a derivative of opium; probably over 95 percent of American addicts are users.⁵ Few users of this drug have ever been completely cured.⁶

*Illicit Traffic*⁷—smuggled into the United States from Mexico,

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¹ Application of Palmer, 87 N. Y. S. 2d 655 (1949).

² *People v. Gennaro*, 26 N. Y. S. 2d 336 at 340; *aff'd* 287 N. Y. 657, 39 N. E. 2d 283 (1941).

³ Commissioner of Narcotics, Uniform Drug Act 4 (1932).

⁴ *Traffic in Opium and other Dangerous Drugs*, year ending Dec. 31, 1953, p. 26, U. S. Government Printing Office, Washington (1954).

⁵ Senate Report No. 725, 82d Cong., 1st Sess. (1951); 62 Yale L. Rev. 751, at 752.

⁶ *Principles of Internal Medicine*, p. 748, ed. T. R. Harrison, M. D., The Blakiston Co., New York-Toronto (1953).

⁷ Anslinger and Tompkins, *The Traffic in Narcotics*, pp. 10, 76-96, Funk and Wagnalls Co., New York (1953), in which appears a reproduction of remarks of the U. N. Representative at the Eighth Session of the U. N. Commission on Narcotics, April 15, 1953. (Mr. H. J. Anslinger, the co-author, is U. S. Commissioner of Narcotics); *Traffic in Opium and other Dangerous Drugs*, op. cit., pp. 14-15.

Lebanon, Iran, India, and Communist China. The latter source enters the United States via Hong Kong and Mexico.

Cocaine—scarce, because international movement of coca leaves is strictly controlled.⁸

Cannabis (Marihuana)—destroys will power, releases inhibitions, resulting in debauchery, sexuality and crime; leads to insanity, and is one of the most dangerous drugs known.⁹

Morphine—a derivative of opium, and about one-fifth the potency of heroin.

Therapeutic uses—neither heroin nor marihuana have any rational therapeutic uses.¹⁰

Tragedy of Addiction—all normal drives and instincts are subordinated to the necessity of obtaining more drugs. Saps the moral fiber, resulting in lying, cheating, stealing, and heinous crimes.¹¹ The male addict is a thief, a burglar, a robber; the woman addict is a prostitute or a shop-lifter.¹²

Upsurge of Addiction—there has been a constant increase since the end of World War II, especially among minors.¹³

Classification of Narcotic Drugs

A review of the state narcotics acts reveals that few states are in agreement as to what should be classified as a habit-forming narcotic drug. Synthetics, and offsprings of the basic narcotics are appearing constantly, and attempts to enumerate them from time to time has become a confusing and endless task for legislators. Presidential proclamations as to new drugs are constantly supplementing the federal acts.¹⁴ It has been suggested that the states incorporate by reference the federal definitudes into their respective narcotics acts,¹⁵ as such are promulgated by the President, or as they appear in the federal acts.

New Jersey relies on a simple definition of a narcotic drug. In that State it means, coca leaves, opium, marihuana, and every

⁸ *Id.*, pp. 16-18.

⁹ *Blakiston's New Gould Medical Dictionary*, p. 459, ed. Jones, Hoerr, and Osol, The Blakiston Co., Philadelphia-Toronto (1951).

¹⁰ *Id.*

¹¹ *Principles of Internal Medicine*, *op. cit.*, p. 747.

¹² *Anslinger and Tompkins*, *op. cit.*, p. 170.

¹³ *Id.*, pp. 16-18.

¹⁴ Title 26, Sec. 3238, U. S. C. A. (1953).

¹⁵ *Narcotics*, U. S. A., p. 179, ed. Paul B. Weston, Greenberg, New York (1952).

substance not chemically distinguished from them,¹⁶ and defines a drug as articles recognized in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, or official national Formulary, or any supplement of them.¹⁷

Some Aspects of the Problem in Ohio

In the larger cities of Ohio, especially in the industrial centers, there has been an increasing number of narcotics arrests, with a spiral upward each year.¹⁸ The problem is clearly a community one, and close-in combat at the source is clearly indicated. Municipal as well as State police should receive practical instruction in the subject, which should not be confined to the narcotics squads alone. Detection of narcotics by sight and odor should be emphasized. New Jersey school teachers, who are required to teach the evils of narcotics to their children, were recently questioned by State of New Jersey officials. None of them knew what the various narcotic drugs looked or smelled like.

While students of the narcotics problem are generally aware that Ohio is a soft center, surrounded by a periphery of tough-penalty states, there is a general unawareness that sanctions under Ohio Revised Code Section 3719.99 are seldom invoked in Ohio, and but few sections of the Uniform Narcotic Drug Act have ever been construed by Ohio Appellate Courts. A question is therefore presented as to whether Ohio is not more dependent on the Federal Courts for the prosecution of its illicit vendors than the Federal Act contemplates.

Ohio Revised Code Section 3719.02 provides that no person shall manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized. This statute fails to differentiate between the seller and the buyer. An addict with a single marihuana cigarette in his possession could be convicted under this statute as readily as a vendor with a plentiful supply on his person. New York, on the contrary, under a recently enacted law,¹⁹ specifies the

¹⁶ New Jersey Statutes, 24:18-2.

¹⁷ *Id.*, 24:1-1 (e).

¹⁸ Jordan, Howard W., *Does Ohio Encourage Narcotic Violations?* p. 3. (1953) (Reproduced from a typewritten copy in the Cleveland Municipal Reference Library, the City Hall, Cleveland).

¹⁹ New York Penal Law, Sec. 1751 (1954).

amount of drugs in a person's possession which will presumptively establish an intent to vend, with a more realistic view of the addict who has committed no other crime, by providing for his commitment to a hospital maintained in whole, or in part, by the State, for the purpose of rehabilitation.²⁰ The New York Penal Code further provides that only the seller shall be guilty of a felony, not the buyer.²¹ Under the Federal Act addiction is not a federal crime, but possession alone is deemed sufficient to convict, unless the defendant can explain the possession to the satisfaction of a jury.²² Likewise, under the Federal Act the surgeon general is authorized to provide for the confinement, care, protection and treatment of addicts who voluntarily submit themselves for treatment, and also of addicts who have been convicted of crimes against the United States.²³ Ohio has no provision for the rehabilitation of the habitual user, whether he be minor or adult.

New York has a provision for non-criminal confinement of addicts under the age of twenty-one on North Brother's Island.²⁴ Under this law a special narcotics court was organized on May 1, 1952. Any interested person may present information to this court that a youth is a narcotics user, and the magistrate will order him into this hospital. The cost is shared by the State and New York City.

Under a recent law enacted by Congress for the District of Columbia, while providing for the rehabilitation of addicts, states that, "The Congress intends that Federal Criminal Laws shall be enforced against drug users as well as against other persons, and this Act shall not be used to substitute treatment for punishment in cases of crimes committed by drug users."²⁵ This disposed adequately of any "pollyanna" approach to the problem. The rationale indicates, however, that there should exist a distinction between the addict who is guilty of no other offense than addiction, and the illicit vendor, with the former classed as a mentally-ill patient to be rehabilitated, and the latter as a criminal.

²⁰ New York Public Health Law, Sec. 3341, par. 2 (1954).

²¹ New York Penal Law, *op. cit.*

²² Title 21, U. S. C. A., Sec. 174.

²³ Title 42, U. S. C. A., Sec. 257.

²⁴ New York Public Health Law, Sec. 439 a (1954).

²⁵ Public Law No. 76, 83d Cong., Ch. 149, 1st Sess.; H. R. 3307, approved June 24, 1953.

Ohio has no requirement that attending or consulting physicians report promptly to the State Department of Health, or to anyone else, the name and address of any person under treatment, where it appears that such person is an addict. Obviously a provision of this kind would aid in the detection of vendors, assist police in checking on crime, assist in the enforcement of the "good faith" provision of Revised Code Section 3710.06(A), and result in the isolation of the habitual user, so that he may not infect others with his habit. Certainly, the names and addresses of addicts should be furnished the Department of Motor Vehicles for the purpose of suspending the operator's license, and perhaps his license plates also. Ohio provides that drug addicts' operator's licenses be denied them, but who will admit he is an addict?

Medical authorities are of the opinion that the treatment of addicts by a physician is ineffective unless the patient is isolated from the community.²⁶ Unless so confined, he becomes easy prey for the illicit vendor, especially where, in the withdrawal or reduction method of treatment, his requirements are not completely satisfied by the treating physician. Moreover, it has been repeatedly emphasized that narcotic addiction is socially contagious. It is a respecter of neither rich nor poor, brilliant nor stupid. All are its victims.²⁷

Narcotics Education

The United States Public Health Service advocates educational programs on the subject of narcotics, with particular emphasis on instruction in the schools. There is ample testimony by addicts that they would not have taken their first dose if they had been warned of its consequences. Ohio's control over its public school system places on the State the principal burden of promoting education among its youth. New York,²⁸ Illinois,²⁹ Pennsylvania,³⁰ and New Jersey³¹ have laws which require instruction on the evils of narcotics, and require teachers to pass

²⁶ Kessler, Henry H., M. D., *Principles and Practice of Rehabilitation*, p. 176, Lea and Febiger, Philadelphia (1950).

²⁷ Overholser, Winfred, and Richmond, Winifred V., *Handbook of Psychiatry*, p. 101, J. B. Lippincott Co., Philadelphia (1947).

²⁸ New York Education Law, Sec. 804 a (1954 Supp.)

²⁹ Illinois School Code, Sec. 27-10, Ch. 122.

³⁰ Pennsylvania Code, Title 24, Sec. 15-1513.

³¹ New Jersey Statutes, Anno., Secs. 18:13-4, and 18:14-86.

a satisfactory examination in the subject before they are deemed qualified for a teacher's certificate. Recent testimony before Congress indicates that state educational laws on narcotics education are either inadequate or unobserved.³²

Penalties

For the purpose of comparison, a panoramic view of penalties currently in effect in Ohio and neighboring states is presented:

*Ohio*³³—The penalty for vending is identical with the penalty for addiction. For a first offense, not over \$500, or imprisonment for not more than five years, or both. For each subsequent offense, not over \$1,000, or imprisonment for not more than five years, or both. There is a patent inconsistency in Ohio Revised Code Section 3719.32 which provides for a fine of not less than \$10 nor more than \$50 for sale or delivery to a minor under 16 years of age without the written consent of an adult, any preparation of * * * opium, or * * * cannabis indica (marihuana). A preparation of opium might well be heroin, and as stated *supra*, marihuana is one of the most insidious drugs known. Neither has any therapeutic use. If the preparation of opium means paregoric, or an equivalent, such should be described.

*Illinois*³⁴—Imprisonment for not less than one year, nor more than five, and a fine of not over \$5,000, or both. For subsequent offenses, imprisonment for any term from two years to life. For selling to a minor, whether a first or subsequent offense, imprisonment from two years to life. The addict is not punished in Illinois, but must register and receive a registration card which he must carry.

*Michigan*³⁵—For a first offense, imprisonment for not more than ten years, and a fine of not more than \$5,000. For a second offense, imprisonment for not more than twenty years, and a fine of not more than \$5,000. For subsequent convictions, imprisonment for not less than twenty years, and not more than forty years, with a fine not in excess of \$5,000. Addicts in Michigan

³² Crime Committee Hearings, pt. 14, pp. 244-6 (1951).

³³ Ohio Revised Code, Secs. 3719.02, 3719.99 (A), and 3719.32.

³⁴ Illinois Criminal Code, Title 38, Sec. 192.23.

³⁵ Michigan Health and Drug Law, Sec. 335.152-154; 5A Mason's Michigan Supplement 620.

are charged with a misdemeanor, and are ordered into an institution for psychiatric and medical treatment.

*Indiana*³⁶—For a first offense, not less than two years, nor more than five, and a fine of not more than \$1,000. For a second offense, not less than five years, nor more than ten, and a fine of not more than \$5,000. For a third or subsequent offense, not less than ten years, nor more than twenty, and a fine of not more than \$10,000. Except in the case of a conviction for a first offense in Indiana, the imposition or execution of sentence shall not be suspended, and probation or parole shall not be granted until the minimum imprisonment provided for the offense shall have been served.

*West Virginia*³⁷—Penalties are similar to those of Indiana.

*Kentucky*³⁸—Not less than two years and not more than five for a first offense, with a fine of not less than \$1,000, nor more than \$5,000. For each subsequent offense, not less than five years, nor more than twenty, with a fine not in excess of \$5,000. Kentucky has an additional and more drastic penalty for sales to minors, providing for imprisonment for not less than twenty years, or for life, with a fine of not more than \$5,000. The courts of Kentucky, by statute, are without authority to postpone, suspend judgment or sentence, or probate a defendant who has been convicted of supplying a minor with narcotics.

*Pennsylvania*³⁹—For a first offense, not less than two years, and not more than five, with a fine not exceeding \$5,000. For a second offense, not less than five years, and not more than ten, with a fine of not more than \$5,000. For subsequent offenses, not less than ten years, and not more than thirty, with a fine of not over \$7,500.

There is a provision in Pennsylvania law for no suspended sentence, probation or parole, except for a first offense.

*New York*⁴⁰—Imprisonment for an indefinite term, the minimum of which shall be not less than five years for sale to a minor. If the buyer is over twenty-one, the minimum is not less than two years, and not more than fifteen. No fine is provided for in New York.

³⁶ Indiana Criminal Code, Sec. 10-3538 (1951 Amd. in which the Indiana Legislature declared an emergency existed).

³⁷ West Virginia Public Health Code, Sec. 1385 (23).

³⁸ Kentucky Uniform Narcotic Drug Act, R. S. 218.210.

³⁹ Pennsylvania Health and Safety Laws, Title 35, Sec. 865 (1951).

⁴⁰ New York Penal Law, Sec. 1751 (1954 Supp.).

*New Jersey*⁴¹—For sale to one under eighteen, imprisonment for not less than two years, with a maximum of life, and a fine of not less than \$2,000, and not more than \$10,000. For each first offense, not less than two years, nor more than fifteen, with a fine not exceeding \$2,000. For each second offense, not less than five years, nor more than twenty-five, and a fine of not more than \$5,000. For each third offense, and each subsequent offense, not less than ten years, and a maximum of life, with a fine not exceeding \$5,000. In the event any person shall have been previously convicted of a violation of the laws of the United States, or the laws of any other state or territory relating to narcotic drugs or marihuana, such previous conviction shall be deemed a first or second offense, as the case may be. The fingerprinting of all addicts is required in New Jersey.⁴² New Jersey is considered by experts to have perhaps the most efficient type of laws pertaining to illicit narcotics. It has a model narcotic-control system, including adequate legislation, efficient personnel, and vigorous enforcement. All states would do well to copy its narcotic enforcement machinery.⁴³

*Federal Penalties*⁴⁴—For a first offense, not less than two years, nor more than five, with a fine of \$2,000. For a second offense, not less than five years, nor more than ten, with a fine of \$2,000. For a subsequent offense after the second, not less than ten years, nor more than twenty, with a fine of not less than \$2,000. No suspension of sentence shall be granted upon conviction for a second or subsequent offense. The Federal Act is one of the few laws that defines an addict. He is described as one who habitually uses any habit-forming narcotic drug so as to endanger the public morals, health, safety or welfare, or who is, or has been so far addicted to the use of such habit-forming narcotic drugs as to have lost the power of self-control with reference to his addiction.⁴⁵

⁴¹ New Jersey Statutes, Sec. 24:18-47 (1953).

The usual provision found in the Ohio Act (Revised Code, Sec. 3719.19), and in the laws of other states, to the effect that no person shall be prosecuted for a violation of any provision of the Uniform Narcotic Drug Act, if such person has been acquitted or convicted under the federal narcotic laws of the same act or omission which, it is alleged, constitutes a violation of the State Act, has been repealed in New Jersey (See New Jersey Statutes, Anno., 24:18-49, Supp.).

⁴² *Id.*, 53:1-18.1.

⁴³ Anslinger and Tompkins, *op. cit.*, p. 282; Traffic in Opium and Other Dangerous Drugs, *op. cit.*, pp. 10-11.

⁴⁴ Title 21, U. S. C. A., Sec. 174 (1951).

⁴⁵ Title 42, U. S. C. A., Sec. 201 (j).

The United States Commissioner of Narcotics has suggested that the states adopt, as a minimum at least, the federal penalties, and the following States have already done so: Alabama, Colorado, Delaware, Georgia, Indiana, Iowa, Kentucky, Maryland, Minnesota, Nebraska, New Jersey, Pennsylvania, Tennessee, Virginia, West Virginia, Wyoming, and the Territory of Alaska. The recent amendments adopted by the States of Connecticut, Illinois, Louisiana, Michigan, New York, Utah, Washington, and Wisconsin, provide rather severe penalties, but the provisions are not uniform nor identical with the penalty provisions now applicable under the Federal narcotic and marihuana laws.⁴⁶

There are excellent narcotic laws in existence in the United States, and Ohio should have no difficulty in extracting the advantages of each to provide adequate legislation and vigorous enforcement.

⁴⁶ Traffic in Opium and Other Dangerous Drugs, *op. cit.*, p. 9.

