The first assertion of federal authority over marijuana use was the Marihuana Tax Act, passed in 1937. The obvious question, from a historical point of view, is why such legislation was thought to be necessary, especially after the brushfire passage of the Uniform Act and related legislation in every state in the previous few years. Enforcement difficulty and public hysteria are two reasons which have been propounded for the federal action. We subscribe to a third, one which we rejected with respect to the uniform acts-Congress was hoodwinked by the Federal Bureau of Narcotics.

A. State Enforcement of the Uniform Law

One of the primary arguments in support of the Marihuana Tax Act was that the legislation was required to permit and facilitate adequate enforcement of the Uniform Narcotic Drug Act. Initial examination of enforcement statistics after passage of the Uniform Act suggests that marijuana seizures and arrests in most states rose dramatically.

However, we should be careful to note at the outset the inadequacies of most drug statistics, which, especially during this period, do not permit conclusive analysis regarding the extent of enforcement.

Reporting officials frequently do not differentiate among the drugs. Different jurisdictions employ different measures of enforcement-number of arrests, convictions, kilograms of the drug seized, or number of seizures; even where the same measures are used, statistics are often compiled for different time frames. In addition, changes in the definitions in the laws-such as a change from considering cannabis as only the flowering top of the plant to considering it the whole plant-can wildly distort the statistics from year to year. To add to the confusion, enforcement agencies can manipulate the data for their own uses; if they must appear to be attacking the drug problem or to need more resources, they can change radically the statistical appearance of the enforcement problem by using, for example, arrests as their enforcement measure. Finally,
the mere passage of prohibitive legislation will in itself be reflected in the enforcement data. This is especially important for our study of enforcement patterns in the states before passage of the Marihuana Tax Act. As one commentator has explained:

A point that should be obvious but that is sometimes overlooked is that there are no official statistics relating to violations of a drug, law until the drug law is enacted. To compare official preenactment and postenactment data is to compare nothing to something, and naturally drug use will appear to rise.2

For all these reasons, the drug statistics from the period of the 1930's must be used somewhat hesitantly to support any contention about the extent of state enforcement before the enactment of Marihuana Tax Act. With this caveat in mind, we shall proceed, nevertheless, to do so.

Although Commissioner Anslinger testified at the hearings on the Tax Act that state officials frequently asked for federal assistance 3 it appears from the Federal Bureau's own statistics that state and municipal agencies were proceeding with vigor to stamp out marijuana use.4 We do not have fully accurate data, but there are indications that both New York and Louisiana were moving against marijuana use. In 1934, the New York police discovered a large field of marijuana growing near the Brooklyn Bridge. In making a related raid, the police also seized 1,000 marijuana cigarettes.5 In 1935, the police burned a marijuana crop found growing on the grounds of the Welfare Island penitentiary.6 Throughout 1936, the narcotics division of the New York police found and destroyed several marijuana crops growing in and around the city.7 Fragmentary figures are available on law enforcement in Louisiana which indicate there were 219 arrests on marijuana charges in New Orleans alone from 1930 until April of 1936.8 In Louisiana as a whole for 1936 over 1,195 pounds of bulk marijuana were seized.9

This evidence suggests that state authorities in areas where marijuana use had become common at all were dealing fairly effectively with the trade in the drug. Although some states may have hoped that passage of a federal law dealing with marijuana would reduce the enforcement burden on state and local police and bring additional federal services and money,10 the law cannot really be justified as filling an enforcement void. Nevertheless, this was one of the most effective arguments advanced by Commissioner Anslinger in the halls of Congress.
B. Public Hysteria or Continued Public Ignorance?

Some observers have attributed passage of the Tax Act to public hysteria. In support of this contention they show that there was a marked increase in the number of titles dealing with marijuana in the Readers' Guide to Periodical Literature from 1936 until 1939, compared with the total absence of articles on this subject in preceding years. It should be noted, however, that only seven articles treating marijuana or hashish appeared from 1920 to August 1937, when the Tax Act was passed. With respect to medical opinion, the AMA Journal presented an article opposing the enactment of the Tax Act and arguing, as did their representative at the Tax Act hearings, that existing state laws were sufficient if properly enforced.

It seems the national media and medical opinion were far from hysterical at the time the Tax Act passed. There were a few local newspaper campaigns against the drug, but they tended to peak about two years before the passage of the Act and were isolated instances of public support for the Uniform Narcotic Drug Act. Moreover, these atypical state scares did not draw national attention.

In fact, whatever publicity the "marijuana problem" received during this period was attributable to Commissioner Anslinger and his office, who conducted an active educational campaign for federal legislation. They prepared press stories on the dangers of the drug and traveled around the country disseminating propaganda. Despite these efforts, however, public knowledge of the marijuana proposals was minimal at best. The New York Times contained nine references to marijuana from January 1936 until it reported on August 3, 1937, "President Roosevelt signed today a bill to curb traffic in the narcotic, marihuana, through heavy taxes on transactions."

As in prior years, marijuana was still not a matter of public attention, and the so-called "problem" and the federal proposal to cure it went virtually unnoticed by most of the American public. At the same time, however, the "educational" campaign conducted by the Bureau to inform the Congress of the dimensions of the "problem" was highly successful. In this sense, the Bureau itself created the "felt need" for federal legislation; the Bureau-and not public hysteria which it was unable to arouse-was the major force behind the Tax Act. We assign to the Bureau the instrumental role with respect to passage of the Tax Act even though we did not do so with respect to the Uniform Act. So successful were the Commissioner's efforts in the Congress that the hearings before the House Ways and Means Committee and the floor debate on the bill are near comic examples of dereliction of legislative responsibility.
C. The Tax Act Hearings

Note from Cliff Schaffer: Interested readers may refer to the full text of the hearings for the Marihuana Tax Act, and related documents, also on this site.

Although the Marihuana Tax Act was modeled after the Harrison Act, marijuana was not simply included in the earlier act primarily for three reasons. First, the importation focus of the Harrison Act was inappropriate for marijuana because there were domestic producers.20 Second, since cannabis had been removed from the United States Pharmacopoeia and had no recognized medicinal uses, the variety of medical exceptions in the Harrison Act were inapplicable.21 Third, even though the Supreme Court had upheld the Harrison Act's prohibition against purchase by unregistered persons of the designated drugs, there was some uncertainty whether the earlier 5-4 decision22 would be followed. Accordingly, the Marihuana Tax Act imposed a prohibitive tax of $100 an ounce on the designated transactions, rather than prohibit the purchases directly.23

The brief three days of hearings on the Act24 present a case study in legislative carelessness. At no time was any primary empirical evidence presented about the effects of the drug, and the participating congressmen seem never to have questioned the assumed evils. Furthermore, the only real concerns seem to have been that farmers would be inconvenienced by having to kill a plant which grew wild in many parts of the country, and that the birdseed, paint and varnish, and domestic hemp industries would be damaged by passage of the law.25 Finally, the one witness appearing in opposition to the bill, Dr. William C. Woodward, legislative counsel of the American Medical Association and an early and respected participant in the drafting of the Uniform Narcotic Drug Act,26 was roundly insulted for his audacity in daring to question the wisdom of the Act.

We reproduce in the following few pages some of the dialogue from the hearings, to give the
reader the flavor of these ramshackle proceedings, and to allow him to understand more fully
the pyramiding of absurdity represented by the amendments of the 1950's. From the hearings
we extract contemporary perception of use patterns and harmful effects of marijuana, the quality
of medical and other evidence presented, and a short glimpse at how the witnesses were
treated by the committee.

1. Who Were Users?

The record of the hearings indicates quite clearly that the Federal Narcotics Bureau was
anxious for the committeemen to believe marijuana use was a relatively new phenomenon that
was on the increase in America.27 Once again, marijuana use and the Mexican minority were
closely linked: "The Mexican laborers have brought seeds of this plant into Montana and it is
fast becoming a terrible menace, particularly in the counties where sugarbeets are grown."28
Again, also, marijuana was presented as the agent by which the underworld class hoped to
enslave American youth.29 The youth of the marijuana users was contrasted with the increasing
age of the usual opiate addict. Perhaps most interestingly for later developments, Commissioner
Anslinger succinctly noted that heroin addicts and marijuana users came from totally different
classes and that the use of one drug was unrelated to use of the other:

Mr. Anslinger. This drug is not being used by those who have been using heroin and
morphine. It is being used by a different class, by a much younger group of people. The age of
the morphine and heroin addict is increasing all the time, whereas the marihuana smoker is
quite young.

Mr. Dingell. I am just wondering whether the marihuana addict graduates into a heroin, an
opium or cocaine user.

Mr. Anslinger. No sir; I have not heard of a case of that kind. I think it is an entirely different
class. The marihuana addict does not go in that direction

The hearings shed no more light on who was using the drug and in what numbers.
2. What's Wrong with Marijuana?

If the proceedings did not shed light on the patterns of usage, this in no way was an obstacle to unanimity on the evils of the drug-insanity, criminality and death. Three major sources were relied on to support this consensus (1) a variety of horror stories from newspapers cited by Mr. Anslinger and others about atrocious criminal acts committed by individuals under the influence of the drug;31 (2) studies by Eugene Stanley, the District Attorney of New Orleans, linking the drug and the population of the Louisiana jails;32 and (3) some inconclusive experimentation on dogs.33 As we noted earlier, the newspaper stories about crimes committed under the influence of marijuana have two things in common: The reports are unsubstantiated, and many of the accused invoked their use of marijuana as a defense to the charge.34

The New Orleans report concluded: "After an exhaustive research on marijuana from its earliest history to the present time, this drug is in our judgment the one that must be eliminated entirely." 35 What was this exhaustive research? It appears to have been nothing but quotations from the most hysterical series of newspaper articles to appear at that time36 and reports of the number of marijuana addicts to be found in the prison population.37 The relation of these figures to the conclusion that the drug must be regulated was never established.

The Stanley study was even less well documented and even more outrageous in its description of the effects of marijuana use. "It is an ideal drug to quickly cut off inhibitions." 39 For this proposition Stanley relied on the story of the Persian "Assassins" who allegedly committed acts of terror while under the influence of hashish. Although Stanley included in his list of references the Indian Hemp Drugs Commission Report, it is clear he made little effort to catalogue the then available data but contented himself with a number of bold and undocumented assertions. In reading the hearings, one continues to expect some report of a medical or scientific survey, and instead one finds these two reports by New Orleans law enforcers. The contrary conclusions of the Canal Zone studies were not even mentioned.

Finally, a scientific study of the effects of marijuana was presented, but, in keeping with the overall tone of the hearings, this was the most preposterous evidence of all. The Treasury Department presented a pharmacologist who had tested the effects of the cannabis drugs on dogs. 40 He concluded that "[c]ontinuous use will tend to cause the degeneration of one part of the brain." 41
One paragraph later, however, this scientist stated: "Only about 1 dog in 300 is very sensitive to the test."42 Later in the doctor's testimony, after he had stated over and over the potential evils found from the testing on dogs, he was unable to make the crucial link between a dog's response to the drug and the human response. More incredibly, as the following exchange points out, the doctor really had no knowledge of what effect the drug had on the dogs, since he was not familiar with the psychology of dogs:

**Mr. McCormack.** Have you experimented upon any animals whose reaction to this drug would be similar to that of human beings.

**Dr. Munch.** The reason we use dogs is because the reaction of dogs to this drug, closely resembles the reaction of human beings.

**Mr. McCormack.** And the continued use of it, as you have observed the reaction on dogs, has resulted in the disintegration of the personality?

**Dr. Munch.** Yes. So far as I can tell, not being a dog psychologist .... 43

Dr. Woodward, the sole witness representing the American Medical Association, noted the inadequacy of these medical statistics. We include his statement on that point in full:

That there is a certain amount of narcotic addiction of an objectionable character no one will deny. The newspapers have called attention to it so prominently that there must be some grounds for their statements. It has surprised me, however, that the facts on which these statements have been based have not been brought before this committee by competent primary evidence. We are referred to newspaper publications concerning the prevalence of marihuana addiction. We are told that the use of marihuana causes crime.
But yet no one has been produced from the Bureau of Prisons to show the number of prisoners who have been found addicted to the marihuana habit. An informal inquiry shows that the Bureau of Prisons has no evidence on that point.

You have been told that school children are great users of marihuana cigarettes. No one has been summoned from the Children's Bureau to show the nature and extent of the habit among children.

Inquiry of the Children's Bureau shows that they have had no occasion to investigate it and know nothing particularly of it.

Inquiry of the Office of Education—and they certainly should know something of the prevalence of the habit among the school children of the country, if there is a prevalent habit—indicates that they have had no occasion to investigate and know nothing of it.

Moreover, there is in the Treasury Department itself, the Public Health Service, with its Division of Mental Hygiene. The Division of Mental Hygiene was, in the first place, the Division of Narcotics. It was converted into the Division of Mental Hygiene, I think, about 1930. That particular Bureau has control at the present time of the narcotics farms that were created about 1929 or 1930 and came into operation a few years later. No one has been summoned from that Bureau to give evidence on that point.

Informal inquiry by me indicates that they have had no record of any marihuana or Cannabis addicts who have even been committed to those farms.
The Bureau of the Public Health Service has also a division of pharmacology. If you desire evidence as to the pharmacology of Cannabis, that obviously is the place where you can get direct and primary evidence, rather than the indirect hearsay evidence. 44

Dr. Woodward's testimony clearly manifests the deficiencies of the hearings, for at no time did the congressional committee hear primary sources of competent medical evidence before labeling cannabis the producer of crime and insanity.

3. How Dare You Dissent!

Following the testimony of the Treasury Department and its witnesses, the only witnesses who came forward were representatives of legitimate industries that feared the Tax Act would damage their businesses, because manufacture of their products required some part or parts of the cannabis plant.45 These witnesses were assured that the Tax Act would have little if any impact on their operations .46

The one witness who opposed the adoption of the Act was roundly accused of obstructionism and bad faith. Dr. Woodward, one of the chief drafters of the Uniform Narcotic Drug Act, appeared on behalf of the AMA to suggest that, if there was to be any regulation of the cannabis drugs at all, it should be added to the Harrison Act and not be the subject of this separate, and he felt inadequately considered, legislative proposal.47 We have already examined Dr. Woodward's skepticism on the dangers of the drug. He added to this a thinly veiled attack on the lack of cooperation the AMA had received from the Federal Bureau of Narcotics.48 Finally, he advocated either assisting state enforcement of their existing laws dealing with the drug or at most including marijuana as a regulated and taxed drug under the Harrison Act.

Either because of antipathy to the AMA or because of the audacity of these suggestions, the Committee members savagely attacked both Dr. Woodward and the AMA. Witness the following exchange, starting with the doctor's answer to questions why, he had not proposed marijuana legislation
Dr. Woodward. In the first place, it is not a medical addiction that is involved and the data do not come before the medical society. You may absolutely forbid the use of Cannabis by any physician, or the disposition of Cannabis by any pharmacist in the country, and you would not have touched your Cannabis addiction as it stands today, because there is no relation between it and the practice of medicine or pharmacy. It is entirely outside of the those two branches.

The Chairman. If the statement that you have made has any relation to the question that I asked, I just do not have the mind to understand it; I am sorry.

Dr. Woodward. I say that we do not ordinarily come directly to Congress if a department can take care of the matter. I have talked with the Commissioner, with Commissioner Anslinger.

The Chairman. If you want to advise us on legislation, you ought to come here with some constructive proposals, rather than criticism, rather than trying to throw obstacles in the way of something that the Federal Government is trying to do. It has not only an unselfish motive in this, but they have a serious responsibility.

Dr. Woodward. We cannot understand yet, Mr. Chairman, why this bill should have been prepared in secret for 2 years without any intimation, even, to the profession, that it was being prepared.

After accusing Dr. Woodward of obstruction, evasion and bad faith, the Committee did not even thank him for his testimony.

D. Congressional "Deliberation" and Action
We noted earlier that the marijuana "problem" and the proposed federal cure were virtually unnoticed by the general public. Unable to arouse public opinion through its educational campaign, the Bureau of Narcotics nevertheless pushed the proposed legislation through congressional committees. The Committee members were convinced by meaningless evidence that federal action was urgently needed to suppress a problem that was no greater and probably less severe than it had been in the preceding six years when every state had passed legislation to suppress it. The Committee was also convinced, incorrectly, that the public was aware of the evil and demanded federal action.

The debate on the floor of Congress shows both the low public visibility of the legislation and the nonchalance of the legislators. The bill passed the House of Representatives in the very late afternoon of a long session; many of the members were acquainted neither with marijuana nor with the purpose of the Act. When the bill first came to the House floor late on June 10, 1937, one congressman objected to considering the bill at such a late hour, whereupon the following colloquy occurred:

Mr. DOUGHTON. I ask unanimous consent for the present consideration of the bill (H.R. 6906) to impose an occupational excise tax upon certain dealers in marihuana, to impose a transfer tax upon certain dealings in marihuana, and to safeguard the revenue therefrom by registry and recording.

The Clerk read the title of the bill.

Mr. SNELL. Mr. Speaker, reserving the right to object, and notwithstanding the fact that my friend, Reed, is in favor of it, is this a matter we should bring up at this late hour of the afternoon? I do not know anything about the bill. It may be all right and it may be that everyone is for it, but as a general principle, I am against bringing up any important legislation, and I suppose this is important, since it comes from the Ways and Means Committee, at this late hour of the day.

Mr. RAYBURN. Mr. Speaker, if the gentleman will yield, I may say that the gentleman from North Carolina has stated to me that this bill has a unanimous report from the committee and
that there is no controversy about it.

**Mr. SNELL.** What is the bill?

**Mr. RAYBURN.** It has something to do with something that is called marihuana. I believe it is a narcotic of some kind.

**Mr. FRED M. VINSON.** Marihuana is the same as hashish.

**Mr. SNELL.** Mr. Speaker, I am not going to object but I think, it is wrong to consider legislation of this character at this time of night.51

On June 14 when the bill finally emerged on the House floor, four representatives in one way or another asked that the proponents explain the provisions of the Act. Instead of a detailed analysis, they received a statement of one of the members of the Ways and Means Committee repeating uncritically the lurid criminal acts Anslinger had attributed to marijuana users at the hearings. After less than two pages of debate, the Act passed without a roll call.52 When the bill returned as amended from the Senate, the House considered it once again, and adopted as quickly as possible the Senate suggestions, which were all minor.53 The only question was whether the AMA agreed with the bill. Mr. Fred Vinson not only said they did not object when in fact their committee witness had dissented strenuously, but he also claimed that the bill had AMA support. After turning Dr. Woodward's testimony on its head, he also called him by another name, Wharton.54

In summary, the Act passed the Congress with little debate and even less public attention. Provoked almost entirely by the Federal Bureau of Narcotics and by a few hysterical state law enforcement agents hoping to get federal support for their activities, the law was tied neither to scientific study nor to enforcement need. The Marihuana Tax Act was hastily drawn, heard, debated and passed; it was the paradigm of the uncontroversial law.
E. Provisions of the Act

Except for the three differences noted above, the Marihuana Tax Act is modeled directly after the earlier federal tax act regulating the opiates - the Harrison Act. As with that Act, the enforcement of the new marijuana tax was left to the Bureau of Narcotics in the Treasury Department. Thus, as a result of the 1937 statute, the jurisdiction of the Bureau was increased substantially.55

The Marihuana Tax Act deals specifically with the seeds, resin and most other parts and derivatives of the plant Cannabis Sativa L. The Act requires persons importing, producing, selling or in any other way dealing with the drug to pay an occupational tax and to register with the Internal Revenue Service. In addition, all transferees of marijuana are required to file a written order form and to pay a transfer tax, $1 per ounce if registered and a prohibitive $100 per ounce if not registered. 57 Possession of the drug without a written order form constitutes presumptive evidence of noncompliance with the Act. It is also unlawful for a transferor to transfer the drug to a person who has not secured the order form and paid the tax. As originally enacted, section 12 of the Act assessed a fine of not more than $2,000 and/or imprisonment for not more than five years for violation of each provision of the Act.

Footnotes and References

1 The best example of this argument is contained in Commissioner Anslinger's statement to the congressional committee hearings on the Marihuana Tax Act:

STATE LAWS

All of the States now have some type of legislation directed against the traffic in marijuana for improper purposes. There is no legislation in effect with respect to the District of Columbia dealing with marijuana traffic. There is unfortunately a loophole in much of this State legislation because of a too narrow definition of this term. Few of the States have a special narcotic law
enforcement agency and, speaking generally, considerable training of the regular peace officers will be required together with increased enforcement facilities before a reasonable measure of effectiveness under the State laws can be achieved.

**NEED FOR FEDERAL LEGISLATION**

Even in States which have legislation controlling in some degree the marijuana traffic, public officials, private citizens, and the press have urged or suggested the need for national legislation dealing with this important problem. A partial list of States wherein officials or the press have urged the need for Federal legislation on the subject are Colorado, Kansas, New Mexico, Louisiana, and Oklahoma.

The uniform State narcotic law has now been adopted by some 35 States, many of these including cannabis or marijuana within the scope of control by that law. However, it has recently been learned that the legislative definition of cannabis in most of these laws is too narrow, and it will be necessary to have the definition amplified in amendatory legislation in most of the States, to accord with the definition in the pending Federal bill. As is the case at present with respect to opium, coca leaves, and their respective alkaloids, the uniform State law does not completely solve the enforcement problem with respect to marijuana but it will provide the necessary supplement to the Federal act and permit cooperation of State and Federal forces, each acting within its respective sphere, toward suppression of traffic for abusive use, no matter in what form the traffic is conducted. The Bureau of Narcotics, under the Marijuana Taxing Act, would continue to act as an informal coordinating agency in the enforcement of the Uniform State law, exchanging information as between the respective State authorities in the methods of procedure and attempting to secure true uniformity in the enforcement of the act in the various States which have adopted it.

*Tax Act Hearings* 31.

2 Mandel, Problems with Official Drug Statistics, 21 STAN. L. REV. 991, 1002 (1969). This article is the most complete discussion of the present inadequacies of all official drug statistics.

3 Tax Act Hearings 26-27.
4 The FBN statistics for 1935 through 1937 on quantities (in pounds) of harvested marijuana seized by state and municipal authorities in the major states are as follows:

<table>
<thead>
<tr>
<th>State</th>
<th>1935</th>
<th>1936</th>
<th>1937</th>
</tr>
</thead>
<tbody>
<tr>
<td>Louisiana</td>
<td>20</td>
<td>1,196</td>
<td>30</td>
</tr>
<tr>
<td>Mississippi</td>
<td>5</td>
<td>1,309</td>
<td>*</td>
</tr>
<tr>
<td>New York</td>
<td>372,000</td>
<td>1</td>
<td>*</td>
</tr>
<tr>
<td>Ohio</td>
<td>17,314</td>
<td>431</td>
<td>86</td>
</tr>
<tr>
<td>Texas</td>
<td>216</td>
<td>463</td>
<td>20</td>
</tr>
<tr>
<td>All other states</td>
<td>2,232</td>
<td>1,972</td>
<td>120</td>
</tr>
<tr>
<td>TOTALS</td>
<td>391,787</td>
<td>5,372</td>
<td>256</td>
</tr>
</tbody>
</table>

BUREAU OF NARCOTICS, U.S. TREASURY DEP’T, TRAFFIC IN OPIUM AND OTHER DANGEROUS DRUGS 63 (1935) [hereinafter cited as TRAFFIC IN Opium]; id. at 90 (1936); id. at 81 (1937); Part of the erratic quality of these figures may stem from failure to weigh only the dried flowering tops of the plants seized. For example, 256 pounds seized in 1937 may represent a larger quantity of total plants than 391,787 pounds seized in 1935. See Mandel, supra note 2, at 999.

5 N.Y. Times, Oct. 18, 1934, at 4, col. 4. The article goes on to refer to "marijuana [sic], or loco weed, which produces a pleasant, relaxed sensation when smoked, and eventually drives the habitual user insane

6 Id., July 17, 1935, at 8, Col. 8.


8 See Tax Act Hearings 3 S.

9 TRAFFIC IN OPIUM 90 (1936).
V. PASSAGE OF THE MARIHUANA TAX ACT OF 1937

Written by Administrator
Tuesday, 08 December 2009 00:00 - Last Updated Tuesday, 04 January 2011 19:38


14 See text at notes 47-50 infra.


17 See, e.g., N.Y. Times, Jan. 3, 1937, S 6, at 6, col. 4. The article reported a meeting between Anslinger and the chairwoman of the New York Federation of Women's Clubs. After the meeting, the chairwoman started an all out campaign against marijuana, focusing on lobbying for the nationwide passage of state legislation, and on an educational program aimed at educating high school students on the dangers of the drug. Another New York Times article described the appearance of a representative of the Federal Bureau of Narcotics at a meeting of the national Parents and Teachers Association held in Richmond, Virginia, urging the members of the association to help fight the menace of marijuana which produced in its users "a temporary sense of complete irresponsibility which led to sex crimes and other 'horrible' acts of


19 Id., Aug. 3, 1937, at 4, col. 5.

20 Compare Tax Act Hearings 13-14 (testimony of Clinton Hester, Office of the General Counsel of the Treasury Department) with State v. Bonoa, 172 La. 955, 136 So. 15 (1931). It should be asked whether the information at congressional disposal changed so drastically between 1937 and 1956 as to justify the statutory presumption enacted at that time, 21 U.S.C. 5 176a (1964), providing that possession of marijuana was presumptive evidence of knowing concealment of illegally imported marijuana.

21 Tax Act Hearings 13-14. Earlier state statutes, particularly Virginia’s, had taken great pains to outline medical exemptions from the marijuana prohibition. See p. 1040 supra.


24 The hearings, including all material not actively discussed but merely read into the record, cover only 124 pages.

26 See pp. 1030-32 supra.


28 Id. at 45.

29 Quoting Dr. Walter Bromberg, Mr. Anslinger stated:

Young men between the ages of 16 and 25 are frequent smokers of marihuana; even boys of 10 to 14 are initiated (frequently in school groups); to them as to others, marihuana holds out the thrill. Since the economic depression the number of marihuana smokers was increased by vagrant youths coming into intimate contact with older psychopaths.

Tax Act Hearings 24. See also id. at 32-35, 39, 45.

30 Id. at 24.

31 Id. at 22-23.

32 Id. at 32-37.

33 Id. at 50-52.

34 See id. at 22-23. It is entirely likely that some of these particularly lurid stores were the product of desperate defendants, who, upon being caught red-handed in the commission of crime, sought mitigation of their penalties by claiming to be under the influence of the drug. See

35 Tax Act Hearings 35.

36 A good example is the series run by the St, Louis Star-Times in early 1935 which featured such articles as the one entitled "Young Slaves to Dope Cigaret Pay Tragic Price for Their Folly" on Jan. 18, 1935.

37 See Gomila & Gomila, Marihuana-A More Alarming Menace to Society Than All Other Habit-Forming Drugs, quoted in Tax Act Hearings 32, 34. Mr. F. R. Gomila was public safety director of New Orleans.

38 Stanley, Marihuana as a Developer of Criminals, 2 Am. J. Police Sci. 252 (1931), quoted in Tax Act Hearings 37-42, is based on, and indeed is nearly a word-for-word paraphrase of, Fossier's article in the New Orleans Medical journal, supra note 91 at P. 1044. As we have seen, Fossier, in reaching his conclusions, overlooked the Panama Canal Zone study.


40 One assumes the drug was thought to be too dangerous to risk experimentation on people.

41 Tax Act Hearings 48.

42 Id.
V. PASSAGE OF THE MARIHUANA TAX ACT OF 1937

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43 Id. at 51.

44 Id. at 92.

45 Thus, the following witnesses appeared: Hon. Ralph E. Lozier, General Counsel of the National Institute of Oilseed Products; Raymond G. Scarlett of the birdseed industry; and Joseph B. Hertzfeld, Manager, Feed Department, The Philadelphia Seed Co.

46 See id. at 74.

47 Id. at 87-121.

48 Id. at 87-88 ("During the past 2 years I have visited the Bureau of Narcotics probably 10 or more times. Unfortunately, I had no knowledge that such a bill as this was proposed until after it had been introduced").

49 Id. at 116.

50 See id. at 121. There is sonic indication in Fred Vinson's questioning of Dr. Woodward that one cause of the hostility directed at the witness was the growing disfavor with which the New Deal Congress viewed the fairly conservative AMA. Vinson was particularly pointed when he said that the AMA was trying to obstruct here as it had with the Health Care provisions of the Social Security Act, Id. it 102-04.

51 81 CONG. REC. 5575 (1937).

52 Id. at 5689-92.
53 Id. at 7624-25.

54 Id. at 7625.

55 See Dickson, Bureaucracy and Morality: An Organizational Perspective an a Moral Crusade, 16 SOCIAL PROD. 143 (1968) (relating this expansion of the Bureau's area of enforcement to their solid support for the need of such federal legislation).

56 Section 4 (b) of the Act (now INT. REV. CODE Of 1954, § 4755 (a) (2) ) gives rise to a presumption that one is a producer of marijuana within the terms of the Act if marijuana is found growing on his property.

57 The Act does not prohibit possession or purchase of marijuana per se.