

# Reflections on the Controlled Substances Act 50 Years Later

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## As I see it...

- ▶ Enactment of the CSA and accompanying legislation was a key feature of what then appeared to be a promising period of transition of U.S. drug policy from an enforcement-centered approach to a comprehensive public health approach.
- ▶ This period, with roots in the 1950s, lasted roughly from the mid-60s until the late 70s, when it was erased by repressive and misguided policies for which we are still paying a very heavy price in 2020

## How do I know?

- ▶ Associate Director, National Commission on Marijuana and Drug Abuse (1971-73)
- ▶ Advisor, White House Special Action Office for Drug Abuse Prevention (1973-75)
- ▶ Special Assistant to Attorney General and co-author of Ford Administration White Paper on Drug Abuse (1975)
- ▶ Secretary, National Advisory Council on Drug Abuse (1975-80)
- ▶ Participation in drafting Federal Drug Strategy reports during this period

## PLEASE ....

- ▶ “Controlled Substances Act” should not be used as a synonym for “drug policy”
- ▶ Drug policy during the 1970s should not be conflated with the disastrous drug policies and criminal justice policies that were embraced in the 1980s and 1990s

## General Policy Context in 1960s (as I recall it)

- ▶ Growing dissatisfaction with mandatory minimum sentences from the 1950s
- ▶ Growing criticism of “overcriminalization” in general
- ▶ Growing support for “medical”/rehabilitative approaches to drug addiction
- ▶ Growing support for “therapeutic leverage” in the CJS

# Legal Context of CSA

- ▶ Statutory structure (Harrison Act, 1914 and Marihuana Tax Act, 1937) was anachronistic and awkward: use of taxing power rather than commerce clause distorted offense definition and enforcement.
- ▶ Responsibility for enforcement scattered among many agencies.
- ▶ Pressure for congressional action intensified with development of new psychoactive drugs and growing institutional tensions in law enforcement
  - ▶ Initial steps on regulatory side taken in DACA in 1965 - enforcement authority given to new FDA Bureau of DAC
  - ▶ Reorg. by Exec Order in 1968—Move FBN and BDAC to DOJ (BNDD)
- ▶ Process of drafting CSA began in LBJ Administration
- ▶ Nixon sent proposal to Congress in July, 1969
- ▶ Enacted in October, 1970

# Key Achievements of the CSA

- ▶ Clarifying constitutional foundation of federal drug regulation
- ▶ Consolidation of drug law enforcement authority
- ▶ Repeal of most mandatory minimum sentences
- ▶ Substantial reduction of penalties for [first-offense] possession for personal use and accommodation transfer
  - ▶ Misdemeanor
  - ▶ Conditional discharge
- ▶ Laid foundation for 1972 SAODAP Act
  - ▶ Initial investment in state/local treatment capacity
  - ▶ Assignment of public health surveillance and oversight to DHEW
- ▶ Created Commission on Marijuana and Drug Abuse with 2-year assignment

# Drug Abuse Office and Treatment Act of 1972

- ▶ June, 1971: SAODAP in White House established by exec action.
- ▶ Nixon Message to Congress declared that:
  - ▶ Drug abuse “has assumed the dimensions of a national emergency”
  - ▶ “Supply reduction alone will not solve problem.” We also must invest in policies that reduce demand (prevention and treatment)
  - ▶ Federal policies must be coordinated at all levels
  - ▶ DHEW [now HHS] must undertake aggressive PH surveillance, program evaluation and research
- ▶ SAODAP bill enacted March, 1972 (same month as Marijuana Commission’s first report, recommending “decriminalization” of marijuana use)



# Drug Abuse Office and Treatment Act (2)

1972 Act also:

- ▶ Required annual national strategy
- ▶ Increased funding and reach of state and local formula grants under Mental Health Center Act (1970), as well as additional federal treatment facilities.
- ▶ Extraordinary protection of patient treatment records\*\*
- ▶ Created NIDA and NIDA Advisory Council

## Markers of Emerging Public Health Approach (1970-76)

- ▶ Controlled Substances Act (1970). Overall, it was a step in the right direction by reducing penalties and establishing rational regulatory structure. Criticisms should be directed at DEA, not at the statute itself.
- ▶ Drug Abuse Office and Treatment Act (1972)
- ▶ National Commission on Marijuana and Drug Abuse (1971-73) - note widespread support for decriminalization and enactment by 12 states by 1977
- ▶ SAODAP coordination and leadership - aggressive increase in funding and federal oversight for treatment
- ▶ Creation of NIDA (1974)
- ▶ Ford Administration White Paper (1975)
- ▶ Federal funding began to decline in 1976 and intensity of federal oversight decreased reflecting economic woes and different priorities in Carter administration.

# What Happened Next is Another Story ....

- ▶ Unfortunately, this progress was fragile.. And was not preserved by subsequent federal administrations with different priorities
- ▶ Huge, bi-partisan policy mistakes which we will hear much about over the next 2 days
- ▶ Erosion of treatment infrastructure and declaration of drug wars leading to mass imprisonment
- ▶ For a thoughtful and scathing assessment, see NAS Report, Informing America's Policy on Illegal Drugs (2001)
- ▶ One might even imagine that the opioid epidemic of the 21<sup>st</sup> century would have been avoided if the public health infrastructure had been fully developed and had remained in place

## Three Brief Observations about Current Drug Policy

- ▶ The 21<sup>st</sup> century opioid epidemic has finally driven us to create (and, I hope, sustain) a public health infrastructure with capacity for surveillance and monitoring of drug use and related behavior and for ongoing assessment of effectiveness and cost of interventions
- ▶ We also seem to be making a permanent commitment to assure access to addiction treatment for all who need it, together with harm reduction
- ▶ Another top priority is to design and implement regulatory approach to cannabis without commercialization. Ideally, this would be grounded in federal statute that identifies necessary conditions for state policies.