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 21st 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 21st 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.