

The Drug Hang Up, America's Fifty-Year Folly

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Chapter 16

The Narcotic Control Act of 1956

EVEN TO THOSE who did not expect much of it, the way the Daniel Subcommittee wound up its work after the marathon hearings, was remarkable. In January 1956 it produced a document of nine pages, submitted as its findings on the illicit narcotics traffic, and in April, a twenty-one-page report dealing with treatment and rehabilitation. The United States had more addicts than any other Western nation, the Subcommittee concluded, with an alarmingly large percentage under twenty-one. The problem was growing at a startling rate, with incalculable cost "in human lives shortened or destroyed."

Addiction was causing half the crimes committed in metro-politan areas, and a quarter of all reported in the entire nation. Drug use was found to be "contagious" and addicts at large were spreading the habit "with cancerous rapidity."

With only 20 per cent of the known addict population in custody, the Subcommittee found it inevitable that "this con-tagious problem" would grow unless all addicts were removed from society for compulsory treatment, and if they could not be cured, "placed in a quarantine type of confinement or isolation." International smuggling activities aimed at the United States were declared to be increasing by leaps and bounds, and sub-ersion through drug addiction was found to be an established aim of Communist China, which was officially pushing the exportation of Chinese-manufactured heroin to enslave Ameri-cans at home and U.S. servicemen elsewhere in the free world, American addicts were entering and leaving the country brazenly ("emphasized in the sworn testimony of one female addict who told the Subcommittee that she hid \$1,000 worth of heroin in her vagina and smuggled it across the border at Nuevo Laredo each week for nearly a year").

The Subcommittee accused the Supreme Court of permitting major dope traffickers to escape trial by its too-liberal interpre-tation of constitutional safeguards; it found the Narcotics Bureau could not fight the traffic effectively without being freed to tap telephones; the allowance of bail in narcotics cases was intensify-ing the flow of drugs into the country; and Bureau agents ought to have statutory authority to carry weapons. Existing maximum penalties (five, ten, and twenty years for succeeding offenses) were, according to the Subcommittee, too low-wherever penal-ties were increased, it was

claimed, the incidence of drug addiction and offenses like smuggling dropped proportionately.

The treatment and rehabilitation report devoted ten of its twenty-one pages to a diatribe against so-called clinic proposals, which, according to the Subcommittee, contemplated setting up centers all over the country to hand out free drugs indiscriminately to addicts; the mere discussion of such a program, the report claimed, was stirring up controversies that seriously impeded existing law-enforcement efforts. Addicts could only be dealt with in "hospitalization or other confinement"; physicians agreed that any other treatment procedure would be "absolutely impractical"; and, according to a Public Health Service spokesman (this time the Subcommittee is doing the quoting in its report):

Suppose we did try to set up a narcotic "bar" and run this service. Certainly, we are not going to give the addicts the drugs to take themselves, for they might sell them. We have to have the drugs and administer them, which means that one of these narcotic barrooms will have to be set up at spots around the large cities; they would have to be manned 24 hours a day, seven days a week. The addict requires drugs four or five times a day, otherwise he will become ill. Therefore, he is going to spend all of his time waiting in the so-called clinic lineup to get his drugs. In my opinion, it is an utterly unworkable thing.

To settle the question once and for all, the Subcommittee devoted one of its score of pages to this:

One of the Nation's outstanding law-enforcement officers, Sheriff Owen W. Kilday, of Bexar County, Tex., testified that he, at one time, had strongly approved of the clinics as a possible means of destroying the drug peddler's market and, ultimately, the illicit narcotics traffic. However, due to an investigation in San Antonio which showed that a peddler had systematically enticed 40 to 50 boys and girls of high-school age to begin using narcotics, he came to the conclusion that ". . . if you did away with the market, they would create another one and I am opposed to it all the way. I don't believe there ought to be any clinic whatsoever."

The report further concluded that no such approach to the problem could be undertaken because it would be unreasonable to expect employers to give jobs to addicts. Besides which, as another PHS doctor stated:

It is important, particularly in people who are married, that one of the things wives tell us about the addicted man is that he is sexually impotent and that he, therefore loses his function as a male. Let us take the woman. If she is addicted and physically dependent, she becomes sterile and unable to have any children. This sometimes has great significance to the husband.

Even experimenting with drug therapy for addicts would, as the Subcommittee had learned from Commissioner Anslinger, oblige the United States to withdraw from all its treaty commitments, require major changes in the federal statutes, and conflict with the

laws of all the states. The 1920 experience proved -according to the report-that drug clinics were all crime breeders and total failures; and finally, any such notion would be unthinkable because it would give a stamp of respectability to "the heinous habit" and because in the opinion of the Sub-committee "it would be absolutely immoral to give in to drug addiction and help perpetuate such pitiful conditions for the individual human being."

The Senate was urged to adopt resolutions pushing Commissioner Anslinger's pending international projects: urging recalcitrant nations to ratify the U.S.-sponsored protocol of 1953 limiting cultivation of the poppy plant; pressing the U.N. to move faster on the proposed Single Convention; pushing countries like Belgium, France, and Great Britain, whose medical professions still esteemed heroin, to follow the U.S. lead and outlaw it; and even urging that the U.N. Division of Narcotic Drugs, which had recently been moved to Geneva, be returned to the U.N. headquarters in New York, "where the full force of wide public opinion can be brought to bear in the fight against illicit narcotics traffic."

On the domestic scene, the Subcommittee called for sharp increases in maximum and minimum penalties for drug offenses, with capital punishment for smuggling and sales involving heroin, "the most deadly of all."

Heroin smugglers and peddlers are selling murder, robbery, and rape, and should be dealt with accordingly. Their offense is human destruction as surely as that of the murderer. In truth and in fact, it is "murder on the installment plan," leading not only to the final loss of one life but to others who acquire this contagious infection through association with the original victim.

The Subcommittee proposed that ordinary limitations on the right of federal drug agents to search and seize be abrogated, and that Anslinger's men be authorized to tap telephones, carry firearms, and arrest without warrants. Persons accused of drug offenses should be held on higher bail than other defendants and convicted more swiftly by the courts lest they commit new offenses while awaiting trial. The Bureau's reporting system to list all addicts coming to the attention of any public authority should of course be made a mandatory requirement for all affected agencies. And the Bureau itself should be enlarged and given bigger appropriations.

The Subcommittee's final recommendation in the illicit-traffic report was that addicts and marijuana users, and anyone who had been convicted of any drug violation, should be forbidden to travel outside the continental limits of the United States except under special procedures approved by the Secretary of State and the Bureau of Narcotics.

Regarding treatment and rehabilitation, the Subcommittee recommended that no one be admitted to any drug program on a voluntary basis; that, instead, procedures be set up for "civil commitment requiring a mandatory period of treatment." The report urged that federal facilities be made available to receive addicts committed under state laws provided the state court ordered mandatory incarceration. Once released after confine-

ment, addicts should be kept under supervised probation for at least three years, with periodic examinations so that they could be immediately returned to custody in the event of a relapse. Any addict caught more than three times should be designated "habitual" and committed "to an indeterminate quarantine-type of confinement at a suitable narcotics farm."

Lest anyone mistake any of these latter proposals for tender-heartedness, the Subcommittee concluded:

It should be noted that these recommendations for treatment and rehabilitation are not intended as a substitute for criminal confinement of those addicts who are convicted of law violations. They should pay their debt to society the same as non-addicts, and proper law enforcement and confinement in such instances will do much toward minimizing the narcotics traffic and addiction in the United States.

While the Daniel Subcommittee was coming to these conclusions on the Senate side, Congressman Boggs, sponsor of the original mandatory-minimum penalties in 1951, moved into the play again in the House. He soon turned up as chairman of a Ways and Means Subcommittee on Narcotics, and his hearings were supposed to deal primarily with barbiturates and amphetamines (an eventual winner for the politicians, but not until a few years later). Boggs's loyalty to the Bureau continued, and he found ample opportunities to parrot the Anslinger call for stiffer penalties, curtailment of probation and parole, and more agents, more money, and more power for the T-men.

The Boggs Subcommittee even repeated some of the official line from which Anslinger himself had retreated in the interim:

Recommendations were presented during the public hearings that an educational program be instituted in the schools to make students aware of the evils of narcotics. However, careful consideration by the Subcommittee of the efficacy of such an educational program has led to the conclusion that it would tend to arouse undue curiosity on the part of the impressionable youth of our Nation unless undertaken with extreme caution. Many young persons, once their curiosity is aroused, may ignore the warnings and experiment upon themselves with disastrous consequences. The Subcommittee is, therefore, opposed to direct routine education of our youths and we are supported in our view by the United Nations Commission on Narcotic Drugs and by Narcotics Commissioner Harry J. Anslinger, who recommends against any such educational program.

So-called clinic operations also came in for more thrashing in Boggs's report:

To permit a governmental institution to engage in the ghastly traffic in narcotics is to give the Government the authority to render unto its citizens certain death without due process of law. The most effective weapon against the spread of addiction and the elimination of existing addiction is severe punishment in the form of mandatory sentences which effectively deter traffickers. It is your Subcommittee's view, therefore, that trafficking in dope and the murderous consequences that attend such trafficking should not be undertaken under Government auspices and that instead the Federal and State

Governments should proceed in the opposite direction and make the illicit traffic an increasingly hazardous business.

Out of all this came the Narcotic Control Act of 1956, signed by President Eisenhower on July 18, 1956. In one package, rushed through Congress with virtually no questions or dissent, this Act brought into the law exaggerated new presumptions as to possession of marijuana (which the Supreme Court recently knocked out on constitutional grounds in Timothy Leary's case); increased the minimum and maximum penalties for all drug offenses to two-to-ten years, five-to-twenty years, and ten-to-forty years for succeeding convictions; increased the fine in all categories to \$20,000; and imposed five-to-twenty years upon first conviction for any smuggling or sale violation, and ten-to-forty years thereafter, with a separate penalty of ten-to-forty years for any sale or distribution by a person over eighteen to a minor, and from ten years to life, or death when a jury so recommended, if the drug was heroin. All discretion to suspend sentences or grant probation, and all parole eligibility—generally available to anyone convicted under any other federal criminal law—were prohibited except for first offenders convicted of possession only.

Narcotic agents and, for good measure, customs officers were given authority to carry guns, to serve warrants, and to arrest without warrant. A new compounding offense was added to allow an extra charge and added sentence in prosecuting federal drug cases—making use of any interstate communication facility in connection with a drug violation, carrying a separate two-to-five-year term and \$5,000 fine.

The extraordinary suggestion that no addict, drug user, or drug offender should be allowed to enter or leave the United States without registering at the border gave Congress no pause. (This Act was, incidentally, an early instance of the objectionable congressional practice, now standard in crime legislation, of throwing disparate provisions, good, bad, and fatuous alike together under a press-agent title.) Not only anyone who had ever been convicted of any drug violation but anyone who was currently an addict or user was required to register and obtain a special certificate when leaving the United States, surrendering the same on his re-entry. The penalty for failure to comply with this ludicrous requirement was, however, no joking matter: upon conviction the offender was subject to minimum imprisonment of one year and as much as three years, plus a discretionary fine of \$1,000.

The 1956 Act simultaneously amended the immigration laws to make narcotic offenses grounds for the exclusion or deportation of aliens, and to preclude courts from recommending against deportation in proceedings involving convicted narcotic offenders. At the outset Commissioner Anslinger even got most of his desired addict-reporting system to compel exposure of known addicts whenever they came to the attention of any federal, state, or local law enforcement agency; but since other powerful bureaucracies in Washington rebelled at being obliged thus to report to a minor Treasury unit, this was changed to a permissive provision.

Elsewhere in this narrative we shall have a more extensive look at heroin, which is only one among numerous opium derivatives and not possessed of any unique quality which sets it notably apart from, say, morphine, or synthetics like demerol and methadone. But its allegedly arch-evil nature has been played up by official propagandists for so many years that lawmakers stampede at the mere mention of it. In 1924 Congress outlawed all importation of opium for the manufacture of heroin, thus in effect making production illegal in the United States. Now, besides singling it out for the death-penalty provisions, the drafters of the 1956 Act wrote in another compounding heroin offense: anyone who had somehow contrived to keep a pre-1924 supply lawfully in his possession until 1956 was required to turn it in to the Secretary of the Treasury within 120 days, and thereafter any heroin possessed by anyone would automatically be contra-band. Further, the drug could not thereafter be distributed for any purpose whatsoever except scientific research (that is, it could not be dispensed for medical use), and even then special approval had to be obtained from the Secretary of the Treasury and was, of course, never thereafter given.

To conclude this painful chapter, it must be recorded that the legislators who enacted the 1956 law, and the enforcers who campaigned so hard for it, soon had their first exemplary case. Within a year, an epileptic Mexican-American named Gilbert Zaragoza, with an IQ in the low seventies and a pathetic record of minor brushes with the law, was trapped, at the age of twenty-one, selling heroin to a seventeen-year-old addict-in-former who worked for the Narcotics Bureau in Los Angeles. Both Zaragoza and the Bureau's "special employee" were addicts, and Zaragoza's selling activity was the easiest, and perhaps the only, way for him to obtain his own supply. It has been suggested that the Treasury agents were really trying to trap the peddler for whom Zaragoza worked, and that it was only on account of the ineptitude of the seventeen-year-old stool pigeon that near-moron Gilbert became enmeshed as principal instead of intermediary.

But in any event, he was charged and prosecuted under the new sale-to-minors section, and when the jury balked at recommending death he received a life term from a federal judge who told him that society was going to use his life "to set an example for others." And that ominous comment was literally true. Other offenders --even the worst imaginable perpetrators of vicious crimes- who walked the prison compounds with Zaragoza could at least look forward to a chance of parole. Not he. According to the mandatory terms of the law and his sentence (which the judge steadfastly refused to reconsider) he became an inmate of the federal prison system, hopelessly and irrevocably, for the rest of his natural life.

Zaragoza and the stream of thirty-, forty-, and fifty-year in-mates who followed him into the federal institutions, who were barred from parole and therefore had no incentive to take part in rehabilitative programs, played havoc with enlightened prison administration throughout the federal system. But in the eyes of lawmakers that was seemingly a trifling price for the political benefits that are always believed to flow from posturing as relentless warriors in the battle against dope. (It should be noted that in 1962 President Kennedy quietly used the pardon power to release several dozen of the most hapless victims of the 1956 Act.)

The final wry note is that constructive suggestions which had crept into the Daniel Subcommittee's proceedings got nowhere. For instance, it would have been a step forward for Congress to have thrown open the federal narcotics hospitals to addicts referred there for treatment by state authorities, even if only on a criminal-commitment basis. Authorization for such an arrangement was proposed separately, in joint resolutions, offered in both houses in the same Congress, but these died of neglect. Likewise, though the Bureau had receded from its adamant position against educational efforts concerning drugs, bills and resolutions proposing federal efforts in this direction were stifled in the committees where they landed. No attention was paid to providing supervision or follow-up assistance for addicts once discharged from prison, and the Subcommittee's specific call for expanded research on the causes of addiction and the rehabilitation of addicts evoked no responses on Capitol Hill.

Passage of the Narcotic Control Act of 1956—a result of part of the American Bar Association's optimistic resolution asking Congress to review the field—stands as the most abject surrender to police-mindedness in all the span between Mr. Harrison's law in 1914 and the efforts of Messrs. Nixon and Mitchell in 1970. Let the Daniel Subcommittee itself conclude this episode for us:

It is to be hoped that the facts produced by our Subcommittee, together with the evidence adduced by a House Ways and Means Subcommittee . . . will result in the enactment of legislation and provide the basis for appropriations necessary to remove the illicit narcotics cancer from our society. If the Congress fails to act, it must accept a great part of the responsibility for the continuation and possible increase of the problem in the future. . . .

If the Congress acts, partially as a result of this investigation, this experience will have been the most satisfying of our public service, because Congress will have performed a great service to humanity. If the illicit drug traffic of our country can be cut to the irreducible minimum, we will have saved many of our citizens of today and tomorrow from the worst type of moral and human degradation.