

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

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Chapter 28

The 1970 Act: Don't Sit There, Amend Something

THOSE WHO ASSUME liberal and enlightened motives on the part of Ramsey Clark as Attorney General-an assumption acceptable to many-might explain his support of the 1968 Executive Order which brought federal drug policies under his control in the Department of justice as a move to wind down excitement and modify enforcement excesses. It had of course always been true that top-level federal policy makers could have changed the picture overnight. A no-nonsense order from any incumbent Secretary of the Treasury to Mr. Anslinger, directing him really to concentrate on big-time smugglers and traffickers instead of bullying little people in the street, would have done it. A forthright ruling by an Attorney General that the Supreme Court meant what it had said in the Linder case, so medical authorities could resume active control of the addict population might have sufficed. Even pressure to bring the quality of Federal drug-law enforcement up toward the incomparably high standards of the FBI would have made a great difference over the years.

Attorney General Clark had guiding authority for such moves, in some of the recommendations of the 1962-63 White House Conference, in the 1967 findings of the President's Commission on Law Enforcement and Administration of Justice, and in the good work then being done by the National Commission on Reform of Federal Criminal Laws (commissioned by Congress in 1966 to develop a new federal penal code).

In any event, the contemporary picture would certainly have been different if Clark had carried over, or if more moderately oriented leadership had come to Washington in 1969. The nation's addict population was then officially tallied at 63,000, new patterns in marijuana use and the abuse of other substances were not yet firmly set, rehabilitation efforts and experimental programs such as methadone maintenance hung in the balance, and, in short, the situation was characterized by much fluidity and little panic. Even the Supreme Court had intervened again, in Dr. Leary's appeal, to invalidate most of the basis for federal possession penalties in marijuana cases.

But Clark was immobilized from the beginnings of the 1968 campaign as one of the major targets for attack. When his mentor in the White House announced that he was not going to seek re-election, Clark was left to stand virtually alone against Nixon and Mitchell in resisting their blandishments about law and order, and combatting their

simplistic theme that the former should be mainly an instrument for imposing the latter by force.

When Attorney General Mitchell assumed control of the Department of justice, and hence of federal drug policies, something like a renaissance-in-reverse was predictable. He was soon talking about drug offenders in the metaphors of war:

The battle against narcotics is an integral part of the Administration's anti-street crime program. A narcotics addict may need \$70 or \$80 a day to satisfy his habit. Thus, he turns to robbery, mugging and burglary in order to obtain money. It was recently estimated that in New York City alone \$2 billion a year is stolen by narcotics addicts and that a substantial proportion of violent crimes are committed by narcotics addicts.

. . . persons who live in ghetto areas, which have substantial numbers of narcotics addicts, literally bar the doors of their apartments at night. They are attacked in broad daylight on the streets. They are terrorized by the knowledge that the 1@eroin addict who needs a fix will commit the most vicious crime in order to obtain a TV set for resale or a few dollars. Even our high school children are beginning to use hard narcotics. . . .

Finally, and perhaps most importantly, we cannot succeed with this war on drug abuse until we enlist the active assistance of every citizen. Young people themselves can and must play a key role in' this war. It is a time for synthesis between the generations, a time to harness the dynamism and energy of youth and the experience of their elders for the tasks that lie ahead.

Mitchell's second in command for criminal enforcement, former Texas Attorney General Will Wilson, put it baldly:

Clark's trouble was that he was philosophically concerned with the rights of the individual. Our concern is more an orderly society through law enforcement. Clark put too many restraints on the law-enforcement agencies. He was like a football coach warning his players not to violate the rules, when he should have been telling them to go in there and win. I'm not opposed to civil liberties, but I think they come from good law enforcement.

In July 1969 the President himself moved into the limelight, warning that drug abuse had recently grown from "essentially a local police problem" into a "serious national threat to the personal health and safety of millions of Americans." He said the general welfare of the United States was menaced, that the number of addicts in the United States had grown to where it had to be estimated in hundreds of thousands, and that several million American college students were involved with other substances like marijuana, hashish, LSD, amphetamines, and barbiturates: "It is doubtful that an American parent can send a

son or daughter to college today without exposing the young man or woman to drug abuse. Parents must also be concerned about the availability and use of such drugs in our high schools and junior high schools."

To deal with this alarming situation, the President proposed a ten-point program. Eight of the items were rhetorical exhortation: more international cooperation, better work by the Bureau of Customs ("a major new effort"), suppression of national trafficking (with "special forces" and "action task forces"), and more education, research, rehabilitation, training, and liaison with local enforcers. But in the other two points the President sought to arouse federal and state lawmakers, announcing that the Attorney General was preparing a comprehensive new measure 'to more effectively meet the narcotic and dangerous drug problems at the Federal lever by combining all existing federal laws in a single new statute, and also revealing that the Department of justice would draft a comprehensive model law for adoption by all the fifty states. Referring to the federal proposal, the President concluded: "I am confident that Congress shares with me the grave concern over this critical problem, and that Congress will do all that is necessary to mount and continue a new and effective Federal program aimed at eradicating this rising sickness in our land."

In thus proposing a single statute to restate what was already in federal laws, President Nixon borrowed an Anslinger stratagem: it will be recalled that when the Commissioner seemed to be running out of new moves on the international front in the 1950's, he launched the Single Convention, a combination of all prior drug treaties and conventions with the double advantage of trapping nations that had theretofore refused to ratify some, while at the same time slipping in new terms that would never have been accepted alone, such as the universal undertaking to outlaw marijuana. The so-called Controlled Dangerous Substances Act, which the Nixon forces sent to Capitol Hill in July 1969, pulled together everything Congress had done in the drug field since the opium-smoking curbs of 1887, and it, too, provided cover for some highly dubious innovations. (One of these was noted in the marijuana chapters-the neat reverse twist of tying U.S. federal law directly to international treaty obligations, so that marijuana is now illegal, regardless of anything else about it, precisely because of the Single Convention ban.)

The two cardinal precepts of good statutory drafting are simplicity and precision. With respect to criminal laws, moreover, the Constitution itself gives every citizen a right to know exactly what conduct may be penalized; vague criminal enactments have often been struck down by the courts on this ground. The monumental Lindbergh Kidnapping Act, as a fair example, was written into the federal Penal Code in only seventeen lines. Even the Mann Act, which pioneered a new field in 1910 to outlaw trafficking in females, stands on the books in a scant two pages. By contrast, the administration drug bill, as introduced by Senator Dirksen, ran to ninety-one pages. A dozen statutes and more than a score of code sections were repealed or radically altered. The entire tax basis for federal authority was scrapped, and in its place the bill opened with elaborate findings that all aspects of trafficking in all potentially dangerous drugs adversely affected interstate commerce, thus arrogating to Uncle Sam the broadest conceivable hold on everything from- the manufacture of "Precursors," which are raw materials capable of

being made into prohibited drugs, to ultimate personal possession of any disapproved substance.

As just noted, the federal authority was also expressly based on international treaty obligations of the United States, and this highly unusual statutory recitation, besides locking marijuana into the pattern, may have the further result (depending on an ambiguity that crept into the final version) of tying future drug classifications arbitrarily to whatever may be done hereafter, at U.S. instigation or otherwise, under international instruments like the Single Convention.

Everything about this new measure focused on repression. The Attorney General told Congress:

The passage of this bill will greatly aid the Federal Government in its determined efforts to protect our citizens-particularly our youths-from the physical and psychological tragedies of drug addiction and abuse. Passage of this bill will especially benefit our poorer citizens who may be induced to use drugs as a temporary escape from the bleakness of ghetto life.

It was promised that under the Act the Department of Justice would be able forthwith to launch an enforcement program to bring about the conviction of the "top ten" narcotics wholesalers in each major metropolitan area, provided the Bureau of Narcotics and Dangerous Drugs was also given more agents (increased from a total of 760 in 1969 to 900 in 1970 and 1,150 by 1971).

It was during the ensuing year, as the administration measure worked its way through the legislative processes with steady pressure from Mitchell and the White House, that Senator Hughes and others made their unsuccessful fight for a moderate approach stressing education and rehabilitation, the episode noted in the opening chapter. The signing ceremony at BNDD headquarters on October 27, 1970, signaled total victory for the proponents of repression and set a pattern which gives federal enforcers unassailable control of the whole field.

The final enactment was entitled Comprehensive Drug Abuse Prevention and Control Act of 1970. The token concessions made to Senator Hughes were added as a four-page Title I, called "Rehabilitation Programs Relating to Drug Abuse" and consisting of amendments to the Community Mental Health Centers Act and the Public Health Service Act to broaden small-scale programs already under way by adding "drug abuse and drug dependence" to the definition of "narcotic addiction." Additional funds were authorized to be appropriated for the latter programs, and the National Institute of Mental Health was directed to become a focal point to act as coordinator and technical adviser on health aspects and to develop educational and teacher-training projects, with authorized funding of \$3 million, \$12 million, and \$14 million for 1971, 1972, and 1973 respectively.

The bouquet of powers conferred on the Attorney General and the Department of justice was unlike anything official Washington could remember, even recalling bureaucratic

czardoms of World War II. Regulatory provisions and criminal penalties were keyed to an elaborate drug-classification system in which, remarkably, the Attorney General makes decisions on whether each substance has an actual or relative potential for abuse," whether there is "scientific evidence of its pharmacological effect," the state of current scientific knowledge about it, whether it involves any risk to the public health, and what its "psychic and physiological dependence liability" may be.

The Secretary of Health, Education, and Welfare must be consulted on classifications, and he is given a cumbersome veto on bringing new substances under control (if he makes his recommendation in writing and "within a reasonable time"). But all rules, regulations, and controls governing registration, record keeping, and disciplinary actions involving manufacturers, distributors, and dispensers are left to the Attorney General, including power to deny and revoke registration. The Linder holding was wiped out; prerogatives of the medical profession are permanently subordinate to political control by a provision that "appropriate methods of professional practice" are to be determined by the HEW Secretary "after consultation with the Attorney General.

Manufacturing and import quotas are set by the Attorney General. Order forms are prescribed and issued by him. He has authority to impose marking and packaging requirements, and the issuance of export permits are left to his discretion. Not only is the shipment of drugs in specified categories restricted to countries which have adhered to the Hague, Geneva, and Single Conventions, but even then they may only be shipped if the Attorney General 'deems adequate" the system of import controls maintained by the destination country.

Senator Dirksen's original version gave the Department of Justice control over educational and research programs necessary for the effective enforcement of this Act." This was slightly modified by an amendment confining the Attorney General's jurisdiction to six general categories, but the categories are so broad that in effect the nation's chief law enforcer still ends up in possession of most of the education and research terrain.

The classification system itself is set forth in five schedules, spelled out in some thirteen pages of lists and text. By this device, factors appropriate in classifying for regulatory purposes and quota fixing, but irrelevant in grading penalties, are applied indiscriminately to both. For example, a drug substance falls in Schedule I (the most restricted and penalized) or Schedule II (the next classification downward) depending on whether or not it has "currently accepted medical use in treatment in the United States" and whether it has or lacks "accepted safety for use . . . under medical supervision." Other criteria are so vague as to be virtually meaningless: a "high potential for abuse" rates Schedules I or II, while "less" potential falls in Schedule III and "low" goes to IV or V; substances which are safe under medical supervision (a criterion having little to do with safety in illicit misuse) fall in Schedule II if they lead to "severe" dependence, in Schedule III if dependence is "moderate or low," and in Schedules IV or V if dependence liability is "limited."

But if the schedules call to mind Alice and her Wonderland, the enforcement provisions, accounting for eleven pages, suggest Kafka and de Sade.

In the Department of justice draft as it was sent to Senator Dirksen, the most objectionable penalty features of the old laws mandatory minimums and ineligibility for suspended sentences, probation, or parole-were retained in exaggerated form. Unauthorized transactions at any level with Schedule I or Schedule II substances (and remember that marijuana was locked into Schedule I) were to be punished by not less than five years' imprisonment, up to a maximum of twenty years, with a fine up to \$25,000, and no suspension or probation. Mere possession in these categories called for a two-to-ten-year sentence and a fine of up to \$20,000. Transactions involving persons under eighteen could draw ten to forty years, and repeated offenses doubled the penalties in some circumstances, making possible a minimum of twenty years (and maximum eighty) for a single act, with no suspension, probation, or parole. Even violations of regulatory provisions in the bill were punishable by up to three years and a \$30,000 fine.

But although Mitchell continued to make tough-sounding public statements, he passed the buck when he addressed himself to Congress:

Title V sets forth criminal violations and sanctions which parallel as closely as possible penalties available under existing Federal law. Provision for lengthy sentences is retained in the penal structure as a deterrent to the illicit drug trafficking. However, the determination of the optimum sentence structure for drug offenses involves many complex and often conflicting considerations. . . . I expect the Congress, in considering this proposed bill, to devote special attention to the sentence structure and to seek and receive the valuable assistance of the National Commission on Reform of Federal Criminal Laws, the American Bar Association, the American Law Institute, and others.

With the onus thus placed on them, the lawmakers made substantial changes, while introducing some new complexities. In the final version, mandatory minimums were removed from most categories, subdivisions were added to adjust penalties within the system of schedules, and something called a "special parole term" was added. Thus any transaction (and mere possession if it is with intent to manufacture, distribute, or dispense), and any activity involving a counterfeit drug, draws a maximum sentence of fifteen years and a fine of up to \$25,000 for a first offense, which double for succeeding offenses, if the substance involved is a narcotic classified in Schedule I or Schedule II. For the same offenses in the same schedules if the substance is not a narcotic drug, the penalties are maximum five years and \$15,000, again doubling for repetitions.

The special parole term, required to be added to whatever term of imprisonment is imposed under the above provisions, is three years for a first offense in the first category with six years for repetitions, and two and four years, respectively, in the second category. In case of a parole revocation during the special parole term, the parolee must serve the balance as if it had been part of the original sentence. For substances in

Schedules III, IV, and V the degrees of punishment descend: five years/\$15 '000; three years/\$10,000; and one year/\$5,000.

For any infraction of a regulation by a registrant, civil penalties of up to \$25,000 for each occurrence may be imposed on top of any applicable criminal sentence and fine. Anyone who uses the mails or a communication facility such as a telephone or a radio in the commission of a felony offense under the Act thereby commits a separate, additional offense, carrying a penalty of four years and \$30,000 (doubling to eight years and \$60,000 for repetitions) for every such separate use. If a transaction involves one person under eighteen and the other is at least three years older, the penalties for the latter, including special parole terms, double for the first offense and treble for any subsequent repetition.

To these more or less straightforward provisions Congress added two new sanctions that verge on fantasy. If the government can prove that a felony defendant was engaging in "a continuing criminal enterprise" involving drugs, the penalty jumps to a minimum of ten years and a maximum of life with a fine of up to \$100,000 plus forfeiture of "the profits obtained by him" and any interest, claim, property, or contractual right "affording a source of influence" over such enterprise. No suspension, probation, or parole is possible with this conviction, and in case of a repetition, the penalties jump to a minimum of twenty years, a maximum fine of \$200,000, and the same forfeitures. In order to engage in a continuing criminal enterprise one must be an organizer, supervisor, or manager of a group including at least five other persons and must obtain "substantial income or resources" from it.

The second special penalty category is called "Dangerous Special Drug Offender," and takes five pages to spell out. This is a status offense, imposed as a special sentence following a felony conviction, and provable by the government on a mere preponderance of evidence instead of in compliance with the usual criminal requirement of proof beyond a reasonable doubt. If the prosecution does not like the outcome, the prosecution may appeal. Defendants who are curious whether they might fall into this category have only to glance through the following:

(e) A defendant is a special drug offender for purposes of this section if-

(1) the defendant has previously been convicted in courts of the United States or a State or any political subdivision thereof for two or more offenses involving dealing in controlled substances, committed on occasions different from one another and different from such felonious violation, and punishable in such courts by death or imprisonment in excess of one year, for one or more of such convictions the defendant has been imprisoned prior to the commission of such felonious violation, and less than five years have elapsed between the commission of such felonious violation and either the defendant's release, on parole or otherwise, from imprisonment for one such conviction or his commission of the last such previous offense or another offense involving dealing in controlled

substances and punishable by death or imprisonment in excess of one year under applicable laws of the United States or a State or any political subdivision thereof; or

(2) the defendant committed such felonious violation as part of a pattern of dealing in controlled substances which was criminal under applicable laws of any jurisdiction, which constituted a substantial source of his income, and in which he manifested special skill or expertise; or

(3) such felonious violation was, or the defendant committed such felonious violation in furtherance of, a conspiracy with three or more other persons to engage in a pattern of dealing in controlled substances which was criminal under applicable laws of any jurisdiction, and the defendant did, or agreed that he would, initiate, organize, plan, finance, direct, manage, or supervise all or part of such conspiracy or dealing, or give or receive a bribe or use force in connection with such dealing.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the defendant has been pardoned on the ground of innocence shall be disregarded for purposes of paragraph (1) of this subsection. In support of findings under paragraph (2) of this subsection, it may be shown that the defendant has had in his own name or under his control income or property not explained as derived from a source other than such dealing. For purposes of paragraph (2) of this subsection, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and fifty-week year, without reference to exceptions, under section 6(a) (1) of the Fair Labor Standards Act of 1938 for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the defendant's declared adjusted gross income under section 62 of the Internal Revenue Code of 1954. For purposes of paragraph (2) of this subsection, special skill or expertise in such Hearing includes unusual knowledge, judgment or ability, including manual dexterity, facilitating the initiation, organizing, planning, financing, direction, management, supervision, execution or concealment of such dealing, the enlistment of accomplices in such dealing, the escape from detection or apprehension for such dealing, or the disposition of the fruits or proceeds of such dealing. For purposes of paragraphs (2) and (3) of this subsection, such dealing forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.

(Congress has recently matched this in other nightmarish 'Omnibus' enactments in the crime field, likewise consisting mostly of old measures warmed over with catchy public relations titles.)

The 1956 requirement that anyone addicted to drugs, and everyone having a past conviction for a drug offense, must register and report upon crossing a border into or out of the United States, was repealed. But this was not much of a concession in view of the discretion conferred on the Attorney General to promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the effective execution of his functions. And a new provision which is in some ways even more severe and unusual was written in: it is now a crime for anyone, anywhere in the world, to manufacture, grow, or sell Schedule I and Schedule II substances, such as the opiates, cocaine, and marijuana, either intending or knowing that they are to be imported unlawfully into the United States. Congress explains: "This section is intended to reach acts of manufacture or distribution committed outside the territorial jurisdiction of the United States." To be punished under this provision, a person would have to be caught in U.S. territory or in some special situation (such as traveling on an American flag carrier or being kidnapped by foreign-based BNDD agents); but if caught and convicted he would face a possible fifteen-year/\$25,000 punishment, if the substance was a narcotic, and five years/\$15,000 for nonnarcotic drugs-in either case with the additional "special parole term" innovated in this Act.

Slightly offsetting the severity of these provisions, which purport to show Congress' firm resolve to scare traffickers out of business, the penalty for simple possession of any drug, on first conviction, was reduced in the final version to a mere one year, with a fine not exceeding \$5,000 (both doubling for any subsequent conviction). In the case of a first-offense defendant, moreover, the sentencing judge may, in his discretion, impose up to a year's probation, and if the terms of the probation are complied with no final judgment of guilt is entered. If the first offender was less than twenty-one years old at the time of his offense and fulfills probation terms, all records of the matter (except a nonpublic file in the Department of Justice to be used only if the offender later commits another crime) are expunged.

The latter provisions may be availed of only once, and as a practical matter this seeming concession (and the 600-word section that sets it out) is mostly window dressing, because a year's imprisonment in the sole discretion of the convicting judge is still an awesome threat and disproportionate penalty, and, besides, a prosecutor who wants to upgrade the charge can still invoke the fifteen-year/\$25,000 provisions (when narcotics are involved) merely by alleging that the possession was coupled with an intent to distribute or dispense.

So although Congress used some of the savagery of Attorney General Mitchell's original punishment proposals, the Act which finally emerged is still one of the most exaggerated composites of overlapping criminal sanctions ever written into a federal law. Nor is that all, because on top of the naked penalty provisions Congress piled virtually every enforcement power and supplementary civil sanction ever entrusted to a federal official.

The Attorney General is given all the policing options developed for the Food and Drug Administration. His BNDD agents are also designated "inspectors." He may hold administrative hearings, subpoena witnesses to testify, and compel the production of

documents. He may confer impunity in order to overcome pleas of Fifth Amendment privilege. He is given authority to conduct administrative inspections, execute inspection warrants, seize and impound materials, and demand access to books and records (though in the latter connection, hypersensitive drug lobbyists exacted the same concession they always insist upon that no inspection may extend to financial data or anything pertaining to their sales figures or the pricing of their products).

As in the case of anti-trust laws and security regulations, the Attorney General may enforce provisions of the Act by civil proceedings for injunctions or the imposition of civil fines (assessed separately from criminal fines and not mutually exclusive). An unusual device borrowed from the Food and Drug Act permits the Director of BNDD to notify any person against whom he is about to start criminal Proceedings and Live him "an opportunity to present his views," thus extending to the maximum the Director's power to intimidate, and, if he feels like it, to bluff.

The Department of justice may use Treasury funds to hire informers, pay for incriminating information, and make purchases of contraband substances, with any sum or sums the Attorney General "may deem appropriate." All property connected in any way with a violation of the Act (including, it will be recalled, merely counterfeiting someone else's trademark), such as raw materials, processed substances, factory and laboratory equipment packing and shipping containers, and aircraft, vehicles, or vessels used for transportation, are subject to seizure by the Attorney General and forfeiture to the United States. And in addition to the powers usually conferred on federal law enforcers, drug agents may act as compliance inspectors, make arrests for any offense against the United States, seize on sight any property they regard as contraband or forfeitable, and execute search warrants at any time of the day or night, with the controversial new "no-knock" procedure if a judge has authorized it.

The purpose of the no-knock warrant is to let searching agents smash their way in without identifying themselves, and the rationale is that such entry is necessary when there may be danger that contraband substances will be concealed or destroyed before they can be seized. As a practical matter, from the very nature of drug substances this danger is indisputably present in connection with virtually every drug raid, so no-knock entries are becoming standard procedures But breaking into people's homes without warning or identification in gun-happy America is so dangerous that the agents tend to go in shooting. There have already been dozens of tragedies and near-tragedies on this account, including raids at wrong addresses and cases of mistaken identities-enough to suggest the possible need for a new category in compiling statistics on "drug-related" deaths.

Finally, the Attorney General and his men are given power and authority to prowl about the countryside looking for poppies, coca bushes, and marijuana plants (any plant from which any Schedule I or Schedule II substance may be derived), and to cut, harvest, carry off, or destroy such plants wherever they may be found.

In short, passage of this comprehensive federal drug law in 1970 overreaches Commissioner Anslinger's furthest aspirations. Where he manipulated drug prohibition for so many years from his minor tax-collecting bureau in the Treasury Department, his cause has now become a major commitment of the nation's chief law enforcer. His old bureau is well on its way to catching up with the FBI in notoriety and power if not in size, proponents of "soft" attitudes toward drug abuse have been routed, and the new federal drug police force has been given every armament and prerogative that could conceivably be conferred on a peacetime domestic agency. Small wonder that in loosening this assault Congress felt obliged to write a rattling disclaimer into the definition of "controlled substance": "The term does not include distilled spirits, wine, malt beverages, or tobacco."

While the comprehensive federal law was being pushed on Capitol Hill the Department of Justice also pushed the other project promised in President Nixon's 1969 message, drafting a virtually identical measure for adoption by the states and pressuring the National Conference of Commissioners on Uniform State Laws to sponsor it. The Commissioners are an independent and prestigious body of delegates from each state who have traditionally rendered great service in preparing "uniform" and "model" laws in areas where the states have common interests. In eighty years they have produced nearly 150 Acts, many of which have been universally accepted by state lawmakers.

It will be recalled that a Uniform Narcotic Drug Act was promulgated by the Commissioners in 1932, approved by the American Bar Association the same year, and quickly adopted all over the nation. Subsequently, this Act was modified from time to time by innovations such as the addition of a prohibition against marijuana, and in 1966 the Commissioners sponsored a separate Model State Drug Abuse Control Act to bring local jurisdictions into line with the then-new federal campaign against so-called dangerous drugs.

These measures have long been the backbone of state statutory patterns. To scrap them in toto and push the administration's federal bill down the throats of both the Conference of Commissioners and its constituency of state legislators was an ambitious undertaking. But it has been substantially accomplished already. A draft Uniform Controlled Substances Act, based on the Dirksen bill, was prepared by the Department of justice in the fall of 1969 and widely circulated with vigorous administration sponsorship. BNDD spokesmen lobbied for their project in meetings and conferences set up to reach representatives of the Commissioners, state officials, and interested groups such as the American Bar Association. When the Commissioners, following their usual practice, set up a committee to prepare the official text and commentary, a BNDD counsel who had done most of the actual drafting in the Department of justice became its reporter.

This was another case where Proponents of repression were able to use both the tactic of overwhelming their opposition with the claim that they alone were "experts" and the bootstrap stratagem of using two parallel agencies to generate pressure on each other: the Commissioners were urged to rush their deliberations on the justice measure to keep in step with Congress, while the federal lawmakers were asked to hurry passage of Senator

Dirksen's bill for the reason, among others, that the states were about to revise their enforcement patterns. In August 1970 the Commissioners approved and recommended the new Uniform Act (the federal Counterpart had passed the Senate in ' January, cleared the House in September, was settled in conference in October, and was signed by the President on October 27, 1970). The American Bar Association officially approved the state measure in February 1971.

An unusual power conferred on the Attorney General by the federal Act, along with a provision making it the "duty" of all federal agencies and instrumentalities to render assistance at his request, is authority to "cooperate in the institution and prosecution of cases . . . before the licensing boards and courts of the several states." This contemplates continuation of the long-standing practice under which federal enforcement officials have made use of state prosecutors and state courts in drug cases whenever circumstances suggest things may go harder for the defendant if they do so. To the same end, the prefatory note approved with the uniform state measure recites:

This Uniform Act was drafted to achieve uniformity between the laws of the several States and those of the Federal government. It has been designed to compliment the new Federal narcotic and dangerous drug legislation and provide an interlocking trellis of Federal and State law to enable government at all levels to control more effectively the drug abuse problem.

Because, as has been noted, President Nixon and Attorney General Mitchell wanted no expansion in rehabilitation programs, the justice draft for the uniform state act had no equivalent of even the meager rehabilitation provisions that emerged in the final version of the federal law (although preliminary drafting of a new uniform rehabilitation measure for the states has since been undertaken). Similarly, the functions of education and research were merely brushed over in exhortative paragraphs.

It would be imposing too much on my readers to analyze the state act as carefully as we went through the federal law. It is drafted with notably more skill and restraint (running, nonetheless, to approximately thirty pages of text), but it follows the federal provisions and subordinates state activities to federal policies at every important juncture. The same cumbersome system of schedules is prescribed (with marijuana similarly locked into Schedule 1), and it is provided that the state authorities must designate, reschedule, or delete substances whenever notified of such federal action unless they invoke an elaborate notice-and-hearing procedure to resist the federal ruling-and even then the state act stipulates that a decision to disagree "shall be final unless altered by statute," an invitation to state lawmakers to meddle if state authorities ever presume to act independently.

Registration, record keeping, prescription practices, and special order procedures are spelled out, in each instance with a provision that appropriate compliance with federal requirements shall be deemed sufficient under the state act. The commentary explains: "Since the criteria for Federal and State registration are virtually identical nothing would

be served by requiring a registrant under Federal law to go through a similar procedure in registering under the State law. Wasteful duplication would be the only result." But this being so, the only other result is a duplication of enforcement powers and penalties.

Criminal sanctions are elaborated in a complex structure similar to the federal pattern. Forfeitures are provided, as well as authority to seek injunctions, make civil seizures, and conduct administrative inspections. The innovation of punishing producers of "counterfeit" substances is included: even mere possession of . any punch, die, plate, stone, or other thing" designed to reproduce the trademark or identifying mark of a competitor falls into one of the more serious felony categories.

Twenty states, Guam, and the Virgin Islands have already adopted the new Uniform Act. President Nixon has personally pressed for it at his White House Governors' Conferences. The Department of justice sends emissaries to lobby for it with attorneys general and lawmakers in state capitols during legislative sessions. With no substantial opposition, the measure is likely to be adopted throughout the U.S. sooner or later.

There has always been overlapping and duplication among federal, state, and local drug-law enforcers. But this new pattern, conceived by Mr. Mitchell's justice Department and thus firmly set as America enters the 1970's, promises to carry the trend further than ever before. It seems safe to predict that the federal forces will not be pushing to expand their empire for a while.

There is simply not much left on any frontier for them to conquer.