

MARIJUANA

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A SHORT HISTORY

FOUR RICHARD NIXON FIRES THE OPENING SHOTS IN THE WAR ON DRUGS

WHILE LYNDON JOHNSON at times acknowledged treating drug use and addiction as a public health problem, Richard Nixon believed drugs to be a criminal element and a scourge on society—their use to be punished, their existence to be stamped out.

President Nixon was a man riddled with fear and paranoia and one who often vented his frustration toward “otherness”—on blacks, Jews, foreigners, women, Democrats, Congress, even his own staff, and whomever else he perceived as a threat. Drugs and drug users were one such threat, as was the counterculture movement, which Nixon despised. Nixon inherited from Johnson a war and a “drug-fueled” hippie movement, and he sought to end both. Within those efforts is an irony. The president who

ultimately extracted the United States from one of its most protracted wars would launch the nation on its longest, most enduring conflict: the War on Drugs.

Richard Nixon often framed the War on Drugs as a policy-driven effort to root drug abuse out of American society. The reality was much more complex. No doubt Nixon saw drugs as a problem and a threat. His own battles with alcoholism perhaps offered him familiarity with the ills of substance abuse. However, the War on Drugs also fit into Nixon's broader political strategy. Nixon's well-known Southern Strategy sought to vilify out-groups in society, particularly racial minorities and members of the counterculture. It capitalized on white Americans' fears of a changing society and sought to shift blame for these changes onto the integration of schools, crime, drug use, urban unrest, and the quest for civil rights. In fact, Nixon's White House counsel, John Ehrlichman, has been quoted as explicitly stating that Nixon's drug policies were racially motivated.¹

These political efforts were a pushback against Johnson administration policies and the social upheaval of the 1960s. Drug use both created fears and gave Nixon fuel to further stoke those fears. It also intertwined with long-term government rhetoric that drug use, especially marijuana use, had been introduced to the United States by Asian and Mexican immigrants and that the use was predominantly among black populations. That targeting of use and scapegoating allowed Nixon to paint an effective "us versus them" scenario that could be extended to electoral arenas, particularly by peddling the worry that *those* groups could infect innocents with such drugs. The War on Drugs was as much about getting Richard Nixon

reelected in 1972 as it was about eliminating drugs from American society. Of course, no armistice was signed at the start of Nixon's second term, nor as he exited the presidency in disgrace two and a half years later.

WAR PLANNING AND STRATEGY Even before President Nixon officially declared a war on drugs, his drug policy shifted in dramatic ways, in part rhetorical and in part statutory. In his first year in office, Nixon discussed combatting drug use on numerous occasions—in speeches, messages to Congress, and executive actions. On July 14, 1969, Nixon told Congress that drug abuse was "a serious national threat to the personal health and safety of millions of Americans."² With the commonplace rhetoric of drug policy, he went on to put the consequences into a horrifying yet digestible context for Congress and the public: "Street robberies, prostitution, even enticing of others into addiction to drugs—an addict will reduce himself to any offense, any degradation in order to acquire the drugs he craves."³ Nixon's address included a ten-point plan, focused largely on empowering law enforcement and expanding punishment. Only one plank of the plan addressed rehabilitation of addicts, but with the explicit caveat that "this sickness cannot excuse the crimes they commit."⁴

Nixon's actions went beyond rhetoric. The first shot in what would become Nixon's new War on Drugs began in response to a court case. On May 19, 1969—less than four months into the Nixon presidency—the United States Supreme Court handed down a decision in *Leary v. United States*.⁵ The case was significant for the future of drug policy and likely had a substantial effect on

what would become Nixonian activism on the issue. Timothy Leary, a Harvard professor, was arrested at the U.S.-Mexico border for possessing marijuana, and was charged with violating the Marijuana Tax Act. He sued, claiming that the law violated his Fifth Amendment right against self-incrimination, as it required him to admit possessing an illegal substance because he had an obligation to pay taxes on it under the act. Ultimately the Court agreed and ruled the Marijuana Tax Act of 1937—one of the country's most significant pieces of marijuana legislation—unconstitutional.

Just a few months later, in September 1969, Nixon and John Ingersoll, the head of the new Bureau of Narcotics and Dangerous Drugs (the successor to the Bureau of Narcotics), authorized Operation Intercept, a multiday effort to shutter the U.S.-Mexico border to search vehicles for illegal drugs. The expensive operation yielded relatively little in terms of seizures of contraband, led to an aggressive counteroperation by the Mexican government, and was widely considered a failure—except within the White House.⁶ On October 23, 1969, President Nixon organized the Bipartisan Leadership Meeting on Narcotics and Dangerous Drugs, and after delivering opening remarks, he introduced Ingersoll and offered him an opportunity to heap praise upon Operation Intercept. Nixon explained, "Operation Intercept was very, very successful. While it was in effect, and even to this day, the flow of narcotics and marihuana from Mexico into this country was substantially curtailed. Marihuana is still in short supply in the United States, and in most places where it is available, at least the Mexican form, the prices have doubled and in some cases tripled."⁷ Contemporary and historical

accounts of Operation Intercept suggest that in making these comments Nixon was divorced from reality.⁸

ARMING GENERAL NIXON AND HIS CONSCRIPTS Besides his rhetorical efforts to put the drug problem into his preferred context and his cheerleading for the administration's drug control efforts, the president also sought legislative paths toward expanded federal power to control drugs. In 1970 he took up the cause of bringing the United States into line with the United Nations Single Convention on Narcotic Drugs. Working with Congress, the president signed the Comprehensive Drug Abuse Prevention and Control Act of 1970, more commonly known as the Controlled Substances Act (CSA).⁹

This law formalized the drug scheduling construct prescribed in the Single Convention. Under CSA, there would be five drug schedules ranging from Schedule I to Schedule V. Schedule I would be reserved for what Congress and subsequently regulatory agencies would deem the most dangerous, most heavily regulated substances (conversely, Schedule V substances would receive the lowest level of control). Under Schedule I, substances were given a label that would become the trifecta of prohibition. Under CSA's section 202(b)(1), a Schedule I substance:

- A) . . . has a high potential for abuse,
- B) . . . has no currently accepted medical use in treatment in the United States, and
- C) . . . there is a lack of accepted safety for use of the drug or other substance under medical supervision.

Rather than leaving the classifications of drugs up to the FDA or the scientific and medical communities post-passage, Congress sorted drugs into the five categories itself. It placed marijuana in Schedule I, along with opium, LSD, and methamphetamines. Notably, and because of widespread use and entrenched political interests, alcohol and tobacco did not fall under the jurisdiction of CSA. The lack of control occurred despite both substances being highly addicting and have no medical value. Both substances were left to be regulated under their own separate systems, despite significant overlap in characteristics with controlled substances.

The CSA dramatically expanded government power over and regulation of drugs. The law set up processes to deal with adding and removing substances as well as recategorizing a substance in a different schedule (re-scheduling). It was the most comprehensive prohibition of substances in American history.

No one was more pleased with the passage of this law than President Richard Nixon. At a White House ceremony on October 27, 1970, he issued a signing statement on the Controlled Substances Act in which he did not mince words about what CSA would mean for drug abuse:

We can deal with it. We have the laws now. We are going to go out and enforce those laws. But in order for those laws to mean anything they must have public support. . . . And therefore, I hope that at the time the Federal Government is moving, as we are moving very strongly in this field, that the whole Nation will join with us in a program to stop the rise in the use of

drugs and thereby help to stop the rise in crime; and also save the lives of hundreds of thousands of our young people who otherwise would become hooked on drugs and be physically, mentally, and morally destroyed.¹⁰

In this signing statement, Richard Nixon accomplished multiple goals. He wanted the CSA to change America's drug policy in dramatic ways. First, he lauded the legislation, signaling the substantial White House support not just for its passage but for ensuring it would be applied. Second, he explicitly sought to sway public support in favor of what would come to be America's aggressive effort to control drugs in unprecedented ways. Third, he framed the discussion of drug abuse not as an isolated issue in big cities or among suspect groups of people but instead spoke of the widespread threat that drugs posed to all of America's youth and offered the CSA as an antidote to this threat and a savior of the children.

Ultimately, much of what Richard Nixon wanted would come to fruition. Public opinion would rally behind the effort to control drugs and drug abuse, and the CSA would dramatically change the nature of drug policy in the United States. This legislation has influenced public policy to this day.

A "DECLARATION" OF WAR ON DRUGS The CSA gave President Nixon the statutory means to begin a broad-based, long-term effort to rid the nation of drugs, drug abuse, and drug users through regulation, criminalization, and (a low priority) treatment. The president was on a mission.

This mission would not be isolated or concentrated. It would not be a surgical strike or a special ops mission. It would be a war.

Under Article I Section 8 of the United States Constitution, Congress has the power to declare war. Of course, it is hard to declare war on a plant or a cigarette or a bottle of pills or a group of users within the borders of the United States. Yet to President Nixon and many in Congress, drugs such as marijuana were as dangerous as any foreign enemy, putting at risk the lives and well-being of millions of Americans.

Nixon declared his War on Drugs on June 17, 1971, less than eight months after the passage of the Controlled Substances Act. On that day, President Nixon also announced the appointment of Jerome Jaffe as special consultant to the president for narcotics and dangerous drugs and issued Executive Order No. 11599, which established the Special Action Office for Drug Abuse Prevention, created the new position of director to lead the office, and outlined the mission and jurisdiction of the office.

Even though the declaration of war was informal, the way the War on Drugs was waged—the funding, organization, planning, strategy, and missions—looked at times like the waging of war in Vietnam, Korea, and other foreign conflicts. And Nixon used language to match. His words dripped with the language of war—as if the Pentagon had punched up these messages to Americans. In his remarks at a White House Press briefing in June 1971, Nixon stated,

America's public enemy number one in the United States is drug abuse. In order to fight and defeat this enemy, it is necessary to wage a new, all-out offensive.

I have asked the Congress to provide the legislative authority and the funds to fuel this kind of an offensive. . . . If we are going to have a successful offensive, we need more money. . . . Finally, in order for this program to be effective, it is necessary that it be conducted on a basis in which the American people all join in it.¹¹

This phrase “drug abuse” could have been replaced with “Nazis” and the message easily confused with a World War II-era statement sent from the FDR White House. It combined a focus on an enemy, a request for money—the equivalent of an emergency war supplemental—and a rallying of Americans to a cause reminiscent of exhortations to purchase war bonds and cultivate victory gardens.

In his “Special Message to Congress on Drug Abuse Prevention and Control,” Nixon claimed that the new Controlled Substances Act was insufficient to the broader task and made an emotional appeal to rally Congress to approve his war funds:

Narcotics addiction is a problem which afflicts both the body and the soul of America. It is a problem which baffles many Americans. In our history we have faced great difficulties again and again, wars and depressions and divisions among our people have tested our will as a people—and we have prevailed. We have fought together in war, we have worked together in hard times, and we have reached out to each other in division—to close the gaps between our people and keep America whole. The threat of narcotics among

our people is one which properly frightens many Americans. It comes quietly into homes and destroys children, it moves into neighborhoods and breaks the fiber of community which makes neighbors. . . . The final issue is not whether we will conquer drug abuse, but how soon. Part of this answer lies with the Congress now and the speed with which it moves to support the struggle against drug abuse.¹²

President Nixon identified the enemy, laid out a plan of attack, and asked for the support to accomplish the task, but also built in a strategic effort the help guarantee his success. He immediately distinguished himself as a leader, ready to fight an insidious enemy, and shifted responsibility for fighting this enemy (and prospective blame in the case of failure) to Congress.

Ultimately, Richard Nixon's efforts were resoundingly successful. Less than a year after Nixon declared his War on Drugs, Congress approved his war supplemental. On March 16, 1972, the House and Senate approved the Drug Abuse Office and Treatment Act of 1972. The House vote was 366-0; the Senate's, 92-0.¹³ The appropriations contained in this legislation gave Nixon the additional funding he needed to prosecute the war as he saw fit. And so the United States entered an unprecedented War on Drugs—one that historically was a series of smaller-scale battles. President Nixon ramped up the campaign and ultimately handed the war off to his successors, who as commanders-in-chief would strategize and prosecute this war in their own ways.