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## RACIAL MYTHS OF THE CANNABIS WAR

GEORGE FISHER\*

### ABSTRACT

*Modern histories of the drug war coalesce around the premise that early antidrug laws took rise from racial animus. Lawmakers banned opium, the theory goes, because Chinese miners and railroad workers brought it here; cocaine because African Americans made it their drug of choice; and marijuana because migrant Mexicans cast its seeds north of the border.*

*Close study of the earliest American laws against all these substances proves this premise misguided. Race does play a role in the history of the American drug war, but not the role commonly claimed. For our earliest antidrug laws were not about the Chinese, African Americans, or Mexicans sometimes linked with opium, cocaine, and marijuana. These were laws about Whites. The lawmakers who erected America's earliest drug bans acted first and foremost to protect the morals of their own racial kin. And because the morals of most importance to White lawmakers were those of their own offspring, they acted fastest and most forcefully when a drug took White youth in its clutches.*

*This essay, drawn from a larger project that traces the history of early laws against opium, cocaine, and cannabis, focuses on the early cannabis war. This war, begun in the states, long predates the much-studied federal assault on marijuana led by Harry J. Anslinger, America's first drug czar. Here too modern histories often go astray. For they draw from evidence of Anslinger's personal racism the conclusion that he deployed race when propagandizing in favor of the first federal assault on marijuana. Yet Anslinger likewise had learned that the most potent weapon against the drug trade was the fear among White voters and lawmakers that their own youth would fall prey. And he exploited that fear with devastating effect.*

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\* Judge John Crown Professor of Law, Stanford Law School. This Essay is excerpted from *Euphoria Taboo: The Moral Roots and Racial Myths of America's War on Drugs*, now under submission. Far too many students, librarians, and colleagues have aided this project to list them here. I will give them proper thanks in the book's acknowledgments. Here I thank only Isabel Burlingame, her fellow editors of the *Boston University Law Review*, and Jay Wexler, who organized the Symposium that prompted this Essay.

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## INTRODUCTION

“The sprawled body of a young girl lay crushed on the sidewalk . . . .”<sup>1</sup> With this frightful image Harry J. Anslinger opened his 1937 anticannabis screed, “Marijuana: Assassin of Youth.”<sup>2</sup> The overheated essay appeared in *The American Magazine*’s summertime issue, featuring on its cover a gap-toothed lad in cap and pinstripes, his bat poised for the next pitch.

Having commenced with a corpse, Anslinger fingered the killer. The girl had fallen from the fifth floor of a Chicago apartment house.<sup>3</sup> “Everyone called it suicide,” he wrote, “but actually it was murder. The killer was a narcotic known to America as marijuana, and to history as hashish.”<sup>4</sup> “[U]sed in the form of cigarettes,” it’s “as dangerous as a coiled rattlesnake.”<sup>5</sup>

And having led with suicide, Anslinger followed with murder—and then murder after murder, a total of ten homicides in a six-page essay.<sup>6</sup> “In Chicago, two marijuana-smoking boys murdered a policeman.”<sup>7</sup> In Los Angeles, “a boy of seventeen killed a policeman.” Asked why, the boy replied, “I don’t know . . . . He was good to me. I was high on reefers.”<sup>8</sup> And to murder Anslinger added sexual assaults, for “peddlers preached also of the weed’s capabilities as a ‘love potion.’”<sup>9</sup> He wrote of “a young male addict . . . hanged in Baltimore for criminal assault on a ten-year-old girl. His defense was that he was temporarily insane from smoking marijuana. In Alamosa, Colo., a degenerate brutally attacked a young girl while under the influence of the drug.”<sup>10</sup>

Such tales of rape and slaughter by marijuana-crazed rogues were the stuff of this master anti-pot propagandist and justly maligned Commissioner of the Federal Bureau of Narcotics. Having steered the Bureau from its founding in 1930 till John F. Kennedy ushered him from power in 1962, Anslinger earned the scorn of modern drug-war historians, who tag him with inciting anti-pot panic.<sup>11</sup> His round head plopped neckless atop a fireplug torso, Anslinger

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<sup>1</sup> H.J. Anslinger with Courtney Ryley Cooper, *Marijuana: Assassin of Youth*, AM. MAG., July 1937, at 18, 18.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 18-19, 150-53 (describing several instances of homicide that Anslinger attributes to marijuana).

<sup>7</sup> *Id.* at 150.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> RICHARD J. BONNIE & CHARLES H. WHITEBREAD II, *THE MARIHUANA CONVICTION: A HISTORY OF MARIHUANA PROHIBITION IN THE UNITED STATES* 51, 65-67 (1974) (describing popular perception of Anslinger’s role in criminalizing marijuana use and his appointment as acting commissioner of the Federal Bureau of Narcotics on July 15, 1930, and confirmation by the Senate on December 18, 1930); DAVID F. MUSTO, *THE AMERICAN DISEASE: ORIGINS OF NARCOTIC CONTROL* 235, 238 (Oxford Univ. Press, 3d ed. 1999) (1973) (noting Anslinger’s

seemed die-cast to play the villain—and earned the part. His sneering prose brewed racial code words with armchair moralisms vilifying society’s castaways.<sup>12</sup> As an architect and vocal promoter of the Marihuana Tax Act of 1937 (or “Tax Act”) and its attempt to squelch nonmedical sales of the drug,<sup>13</sup> he deployed tales of deranged addicts to stoke public fear and whip up support.<sup>14</sup> “Assassin of Youth” appeared just as Congress neared final consideration of the Tax Act and supplied a strident weapon in this campaign. Lest readers miss the point, Anslinger alerted them, “As this is written a bill to give the federal government control over marijuana has been introduced in Congress.”<sup>15</sup>

His punning title, “Assassin of Youth,” nodded not merely to pot’s purported power to spur suicides and killing sprees but also to the asserted etymology of the word *assassin*. “Marihuana is the same as Indian hemp, hashish,” Anslinger told a congressional committee during hearings on the Tax Act in April 1937.<sup>16</sup> “In Persia, a thousand years before Christ, there was a religious and military order founded which was called the Assassins, and they derived their name from the drug called hashish . . . .”<sup>17</sup> Here Anslinger botched the oft-told tale of a medieval band of Islamic killers whose name, the *Haschischin* (variously spelled), supposedly derived from the drug that emboldened their acts and gave rise to the English *assassin*.<sup>18</sup>

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1962 retirement); John C. McWilliams, *Unsung Partner Against Crime: Harry J. Anslinger and the Federal Bureau of Narcotics, 1930-1962*, 113 PA. MAG. HIST. & BIOGRAPHY 207, 231-33 (1989) (describing the circumstances of his retirement).

<sup>12</sup> See *infra* note 52 and accompanying text.

<sup>13</sup> Marihuana Tax Act of 1937, Pub. L. No. 75-238, 50 Stat. 551 (imposing tax on various marijuana-related transactions), *invalidated by* Leary v. United States, 395 U.S. 6 (1969).

<sup>14</sup> See *Taxation of Marihuana: Hearings on H.R. 6385 Before the H. Comm. on Ways & Means*, 75th Cong. 19 (1937) [hereinafter *Ways and Means Hearings*] (statement of H.J. Anslinger, Comm’r of Narcotics, Bureau of Narcotics, Dep’t of the Treasury) (testifying that marijuana “is entirely the monster Hyde, the harmful effect of which cannot be measured”).

<sup>15</sup> Anslinger with Cooper, *supra* note 1, at 153.

<sup>16</sup> *Ways and Means Hearings*, *supra* note 14, at 18.

<sup>17</sup> *Id.*

<sup>18</sup> See *Assassin*, OXFORD ENG. DICTIONARY, <https://www.oed.com/view/Entry/11728?rkey=eAECep&result=1#eid> [https://perma.cc/EEM2-FS8H] (last updated Dec. 2020) (describing apparent etymological link between *assassin* and *hashish*). For a few of the many American retellings of this etymological tale (or a similar one), see *Narcotics*, 95 N. AM. REV. 374, 379-81 (1862) (book review) (linking etymology of *assassin* to criminal sect of “haschisch” users called *Haschischins* or *Hashasheens*); “Do You Smoke Hemp?,” BOS. DAILY GLOBE, June 24, 1893, at 12 (describing “a secret society established at Cairo for the purpose of exterminating all enemies”); and *Greek Hashish Drug*, SPRINGFIELD DAILY REPUBLICAN, Jan. 28, 1908, at 13 (describing hashish as “that strange drug which has given our language its word assassin”). For a generally skeptical account, see Jerry Mandel, *Hashish, Assassins, and the Love of God*, 2 ISSUES CRIMINOLOGY 149, 150-56 (1966) (presenting various versions of *assassin* etymology, but concluding that “[r]eligion leads to assassinations, not hashish”). And for a fuller account of the assassins story and its origins, see Adam Rathge’s excellent dissertation. Adam R. Rathge, *Cannabis Cures: American Medicine, Mexican Marijuana, and the Origins of the War on Weed, 1840-1937*, at 289-95

Of all the rogues in Anslinger's assassins' gallery, the one who claimed and retains the tightest hold on the public imagination was Victor Licata, one of at least four siblings in a Tampa home of no known distinction.<sup>19</sup> Anslinger spoke of Licata elsewhere but nowhere as fully as in "Assassin of Youth":

It was an unprovoked crime . . . . An entire family was murdered by a youthful addict in Florida. When officers arrived at the home they found . . . the youth staggering about in a human slaughterhouse. With an ax he had killed his father, his mother, two brothers, and a sister.<sup>20</sup>

Asked why he did it, "[t]he boy said he had been in the habit of smoking something which youthful friends called 'muggles,' a childish name for marijuana."<sup>21</sup>

For these and other tales of cannabis carnage, Anslinger has suffered the contempt of modern historians, who allege he ignored prominent studies refuting the notion that cannabis stokes violence.<sup>22</sup> Professors Richard Bonnie and Charles Whitebread point to the Indian Hemp Drugs Commission of 1893 to 1894, which concluded after extensive study that "for all practical purposes it may be laid down that there is little or no connection between the use of hemp drugs and crime."<sup>23</sup> And the Panama Canal Zone study of 1925 revealed that despite American troops' rampant use of locally grown marijuana, the Judge Advocate had attributed only seven cases of insubordination or violence in three years to cannabis use.<sup>24</sup>

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(May 2017) (Ph.D. dissertation, Boston College) (ProQuest) (describing development of "assassin myth" from the European Crusades to twentieth-century United States).

<sup>19</sup> *Taxation of Marihuana: Hearing on H.R. 6906 Before a Subcomm. of the S. Comm. on Fin., 75th Cong. 12* (1937) [hereinafter *Fin. Subcomm. Hearing*] (statement of H.J. Anslinger, Comm'r of Narcotics, Bureau of Narcotics, Dep't of the Treasury) (briefly reporting Licata's killing spree); *Ways and Means Hearings, supra* note 14, at 23 (same). In a 1934 report to the Cannabis Subcommittee of the League of Nations Advisory Committee on Traffic in Opium and Other Dangerous Drugs, Anslinger briefly related the Licata murders: "[A] young boy who had become addicted to smoking marihuana cigarettes, in a fit of frenzy" he explained, "while still under the marihuana influence, a number of people were trying to cut off his arms and legs, seized an axe and killed his father, mother, two brothers and a sister." BONNIE & WHITEBREAD, *supra* note 11, at 148 (quoting *Advisory Committee on Traffic in Opium and Other Dangerous Drugs, The Abuse of Cannabis in the United States (Addendum)* League of Nations Doc. O.C. 1542(L) (1934) [hereinafter *League of Nations Report*]).

<sup>20</sup> Anslinger with Cooper, *supra* note 1, at 19, 150.

<sup>21</sup> *Id.* at 150.

<sup>22</sup> Professor Rebecca Carroll found copies of reports among Anslinger's papers indicating marijuana was not harmful. She posited Anslinger "editorialized" one of the reports "to reflect his own beliefs." Rebecca Carroll, *A Rhetorical Biography of Harry J. Anslinger, Commissioner of the Federal Bureau of Narcotics, 1930 to 1962*, at 28-33 (Mar. 29, 1991) (Ph.D. dissertation, University of Pittsburgh) (ProQuest).

<sup>23</sup> BONNIE & WHITEBREAD, *supra* note 11, at 130-32 (quoting MARIJUANA: REPORT OF THE INDIAN HEMP DRUGS COMMISSION 1893-1894, at 263 (Thomas Jefferson Publishing Co. 1969) (1894)).

<sup>24</sup> *Id.* at 132-35 (citing Letter from Edgar A. Bocock to Major Meriwether Smith, J. Advoc.

Faulting Anslinger on a different score, Professor John Kaplan exhumed the facts about young Mr. Licata and questioned the connection between his crimes and marijuana.<sup>25</sup> Yes, there was evidence he used the drug: Tampa's chief detective reported after the killings that Licata had been under investigation for his "addict[ion] to smoking marijuana cigarettes," and a state narcotics inspector said he was poised to file charges against Licata when word of the murders came down.<sup>26</sup> Still, Kaplan wrote, it was far from clear the drug impelled the crime. Police disclosed they had filed a lunacy petition to commit Licata the year before the killings, but his family's protests kept the boy free.<sup>27</sup> A psychiatric exam conducted after the murders yielded a diagnosis of criminal insanity, likely inherited. Committed to a state hospital, Licata hanged himself in 1950.<sup>28</sup> "It is obviously difficult," Kaplan concluded, "to show whether Licata was under the influence of marijuana at the time of the killings or . . . whether it was the drug, rather than any underlying schizophrenia, that could be said to have caused the killings."<sup>29</sup>

If Anslinger's retellings of the Licata murders spurned medical evidence and ignored inconvenient facts, they abstained from another sin often laid to the commissioner: race-baiting. Anslinger had in his files a mugshot of Victor Licata depicting a rather dark-skinned young man.

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(Apr. 8, 1923)) (reviewing findings in Panama Canal Zone Report).

<sup>25</sup> JOHN KAPLAN, MARIJUANA—THE NEW PROHIBITION 94-96 (1970) (concluding there was "strong indication that [Licata's] crime resulted from a long-lasting psychosis rather than from any drug effect").

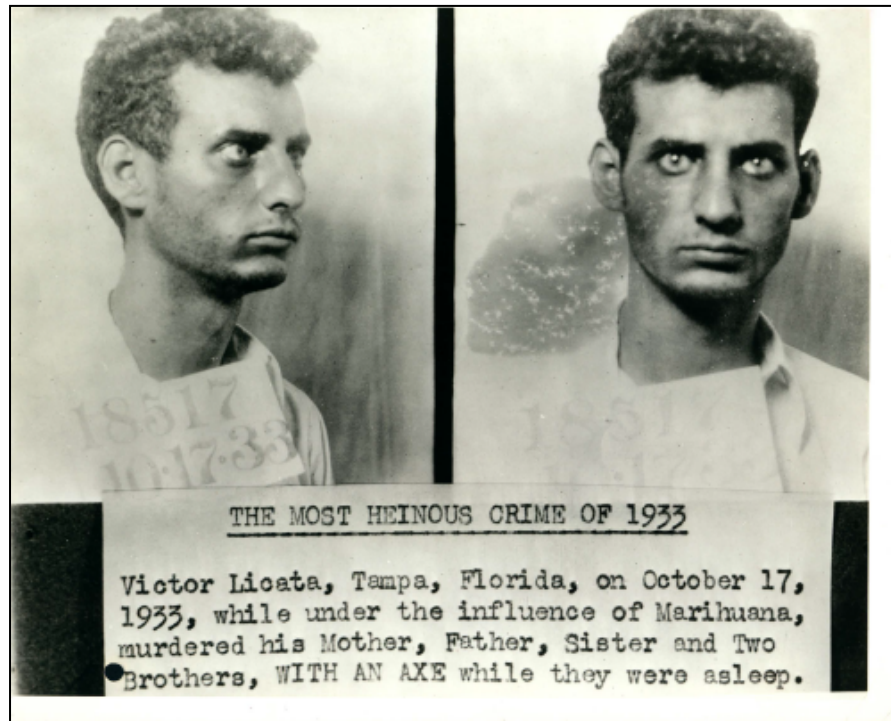
<sup>26</sup> *Id.* at 94-95 (quoting local newspaper's report of statements by Tampa detective chief and state drug and narcotic inspector).

<sup>27</sup> *Id.* at 96.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* There has been some confusion about Kaplan's sources, but it appears he drew the facts from several newspaper articles and a letter from the clinical director of the Florida State Hospital. *Alienist Says Licata Insane*, TAMPA DAILY TIMES, Nov. 2, 1933, at 5 (describing evidence of Licata's criminal insanity); *Crazed Youth Kills Five of Family with Ax in Tampa Home*, TAMPA MORNING TRIB., Oct. 18, 1933, at 1; *Report Shows Ax Slayer of Family Insane*, TAMPA MORNING TRIB., Oct. 31, 1933, at 1 (describing effect of criminal insanity finding on Licata trial); Letter from Dr. C.A. Rich, Clinical Dir., Florida State Hosp., to John Kaplan (Dec. 30, 1968) (on file with author). Though sources differ on Licata's age, the most accurate source is likely his family's household record from the 1930 census, which lists his age as sixteen but supplies no date of birth. BUREAU OF THE CENSUS, DEP'T OF COM., *Florida, Hillsborough County, Precinct #26, Tampa City, Ward 9, ED 29-74, in 29 15TH CENSUS POPULATION 1930 13A* (1930) [hereinafter 1930 UNITED STATES CENSUS] (listing "Victor" as sixteen years old). As his crime took place on October 16 or 17, 1933, he could not have been more than twenty years old. I thank Uncle Mike for his very valuable website and source citations on the Licata case, which sadly no longer seem accessible online.

**Figure 1.** Victor Licata.<sup>30</sup>



Though apparently of Italian descent, Victor Fiorito Licata bore a name many might mistake as Mexican.<sup>31</sup> Yet Anslinger apparently never called Licata by name or displayed his mugshot. In various renditions of the affair, Licata was merely “a youthful addict,” “the youth,” a “young man,” “[t]he boy,”<sup>32</sup> “a young

<sup>30</sup> MUG SHOT, *microformed in* H.J. Anslinger Papers, collection 1875, series 9, box 14, folder 3 (Eberly Fam. Special Collections Libr., Pa. State Univ.).

<sup>31</sup> 1930 UNITED STATES CENSUS, *supra* note 29, at 12B-13A (noting that Licata’s mother and four grandparents were born in Italy). At L’Unione Italiana Cemetery in Tampa, the site of the Licata family mausoleum, the registry includes Joseph, Michele, Philip, Providence, and Rosalia Licata, all with a death date of October 17, 1933. *L’Unione Italiana Cemetery Memorials*, FIND A GRAVE, <https://www.findagrave.com/cemetery/1979335/memorial-search?firstname=&lastname=licata&cemeteryname=&page=1#sr-26630032> [https://perma.cc/G7XP-GBQM] (last visited Apr. 13, 2021). The mugshot of Victor Licata reproduced in Figure 1, apparently taken after his arrest on suspicion of murdering his family, lies among Anslinger’s papers housed in the Eberly Family Special Collection Library, Pennsylvania State University Libraries. My thanks to Alex Bainbridge of the Penn State University Libraries for supplying a copy of the image. Victor Licata’s middle name, Fiorito, appears in the lunacy decree issued by a Hillsborough County judge after the murders.

<sup>32</sup> Anslinger with Cooper, *supra* note 1, at 19, 150.

boy,”<sup>33</sup> “a 20-year-old boy,”<sup>34</sup> or “a 21-year-old boy.”<sup>35</sup> Nor was Licata unusual on this score. Of the eighteen pot-smoking assailants and thieves Anslinger marshaled to his cause in “Assassin of Youth,” not one carried a racial or ethnic label or even a name or physical description.<sup>36</sup> Yet all but one, called simply “a degenerate,” bore some marker of youth: “boy,” “young,” “youth,” or “nineteen-year-old.”<sup>37</sup>

Of course, in an essay titled “Assassin of Youth” in a magazine picturing the gap-toothed lad, readers would expect a focus on the dreaded drug’s youthful victims. But even the featured pot *purveyors* largely lacked ethnic badges. Of more than two dozen marijuana peddlers mentioned in the essay, only two—“a hot tamale vendor” and “a hot-tamale salesman”—wore any ethnic cast.<sup>38</sup> Two other passing mentions of marijuana as having been “introduced into the United States from Mexico” and of “the Mexican border” as an area rich in marijuana-smoking musicians round out Anslinger’s references to Mexico or Mexicans in “Assassin of Youth.”<sup>39</sup> His sole other ethnic label fell on the father of “an Italian family” who grew carloads of marijuana on his Louisiana farm and allowed his children to smoke it.<sup>40</sup>

Rather than vilify sellers for their race, Anslinger scorned them for selling to youth. He wrote of an Ohio garage owner arrested for supplying “school kids.”<sup>41</sup> He wrote of a fifteen-year-old runaway found in a Detroit den run by a married couple: “How many children had smoked there will never be known.”<sup>42</sup> Again in St. Louis, an investigation uncovered “marijuana ‘dens,’ all frequented by

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<sup>33</sup> BONNIE & WHITEBREAD, *supra* note 11, at 148 (quoting League of Nations Report, *supra* note 19).

<sup>34</sup> *Fin. Subcomm. Hearing*, *supra* note 19, at 12.

<sup>35</sup> *Ways and Means Hearings*, *supra* note 14, at 23.

<sup>36</sup> Anslinger with Cooper, *supra* note 1, at 18-19, 150-52 (describing various acts of violence and theft attributed to marijuana usage).

<sup>37</sup> *Id.* Anslinger did call one “young” man, the alleged murderer of a Michigan lawman, a “desperado” and a “bandit.” *Id.* at 150. But as the accused, “Alcide (Frenchy) Benoit,” was apparently of French descent, it is doubtful Anslinger meant those terms as ethnic markers. *Trail of Ex-Convict in Michigan Police Killing*, CHI. DAILY TRIB., Jan. 21, 1937, at 3. For perceptive discussions of Anslinger’s focus on marijuana’s threat to youth, see JEROME L. HIMMELSTEIN, *THE STRANGE CAREER OF MARIHUANA: POLITICS AND IDEOLOGY OF DRUG CONTROL IN AMERICA* 59-60, 65-67, 93, 141 (1983) (discussing perception of marijuana as “Mexican” and a danger to American youth). See also Rathge, *supra* note 18, at 302-07 (“Anslinger believed the dangers marijuana presented to the nation’s children represented a unique and existential threat.”).

<sup>38</sup> Anslinger with Cooper, *supra* note 1, at 19, 151.

<sup>39</sup> *Id.* at 150-51.

<sup>40</sup> *Id.* at 153.

<sup>41</sup> *Id.* at 150-51 (reporting that an officer asked where the other school kids were getting marijuana).

<sup>42</sup> *Id.* at 151.



children of high-school age.”<sup>43</sup> And again in Colorado, Louisiana, Ohio—“in fact, from coast to coast.”<sup>44</sup>

Testifying before the House and Senate Committees that vetted the Marihuana Tax Act, Anslinger followed the same playbook. He refrained almost pristinely from ethnic coding of addled criminals while slathering the record with references to youth. He told the House Ways and Means Committee of at least thirteen marijuana-smoking assailants and thieves<sup>45</sup> and told a Senate Finance Subcommittee of at least seven, with overlap between the two groups.<sup>46</sup> To all but one of these smokers Anslinger applied some label of youth, either “boy” or “young man.”<sup>47</sup> In general, he told the House Committee, “the marihuana smoker is quite young,” and the drug “is low enough in price for school children to buy it.”<sup>48</sup> Whereas “[t]he opium user is around 35 to 40 years old,” he said in the Senate, “[t]hese [marijuana] users are 20 years old.”<sup>49</sup> Only once did he apply to any of these young miscreants a racial or ethnic stamp. Even then Anslinger did not speak in his own voice but instead read into the record a letter sent by a New Jersey prosecutor: “[L]ast January,” the correspondent wrote, “I tried a murder case for several days, of a particularly brutal character in which one colored young man killed another, literally smashing his face and head to a pulp.”<sup>50</sup>

Anslinger’s private writings, it is true, betrayed no such reticence around race. Popular drug-war historians have unearthed his “gore file,” where Anslinger apparently kept stories of pot-hued crimes and sex acts worthy of government propaganda campaigns.<sup>51</sup> It’s a tawdry collection laced with lurid, race-tinged plotlines, as two snippets suggest:

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 153 (noting that similar reports of marijuana vendors targeting children originated in several states).

<sup>45</sup> *Ways and Means Hearings*, *supra* note 14, at 22-23 (referring to various crimes committed under influence of marijuana).

<sup>46</sup> *Fin. Subcomm. Hearing*, *supra* note 19, at 11-12 (summarizing various crimes committed under influence of marijuana).

<sup>47</sup> See, e.g., *id.*; *Ways and Means Hearings*, *supra* note 14, at 22-23.

<sup>48</sup> *Ways and Means Hearings*, *supra* note 14, at 24, 28.

<sup>49</sup> *Fin. Subcomm. Hearing*, *supra* note 19, at 15.

<sup>50</sup> *Id.* at 11 (quoting Letter from Richard Hartshorne, Member, Interstate Comm’n on Crime, to Charles Schwarz (Mar. 18, 1937)). Though Anslinger identified his source, Richard Hartshorne, as a “prosecutor at a place in New Jersey,” see *id.*, other sources suggest Richard Hartshorne was a judge of the Essex County Court of Common Pleas. See *Guide to the Hartshorne Family Papers 1840-1979 (Bulk 1950-1967)*, N.J. HIST. SOC’Y (2005), <https://jerseyhistory.org/guide-to-the-hartshorne-family-papers-1840-1979bulk-1950-1967/> [<https://perma.cc/G6AE-RMAN>] (noting that Hartshorne became a judge in 1931).

<sup>51</sup> JOHN C. MCWILLIAMS, *THE PROTECTORS: HARRY J. ANSLINGER AND THE FEDERAL BUREAU OF NARCOTICS, 1930–1962*, at 52 (1990) (“Anslinger . . . had a collection of horror stories . . . , in which offenders were usually racially identifiable, either black or Hispanic.”).

Colored students at the Univ. of Minn. partying with female students (white) smoking and getting their sympathy with stories of racial persecution. Result pregnancy.

. . . Two Negroes took a girl fourteen years old and kept her for two days in a hut under the influence of marihuana. Upon recovery she was found to be "suffering from" syphilis.<sup>52</sup>

Even in public forums Anslinger sometimes slurred race with drug policy, but in a low-profile way. Though his 1937 congressional testimony made almost no reference to race or ethnicity, it seems he placed in the House Committee's record two statements by local observers who trucked in ethnic shout-outs. A Colorado newspaper editor told Anslinger's office of "a sex-mad degenerate, named Lee Fernandez, [who] brutally attacked a young Alamosa girl. . . . I wish I could show you what a small marihuana cigaret can do to one of our degenerate Spanish-speaking residents."<sup>53</sup> And two New Orleans officials cited reports from Colorado that "the Mexican population there cultivates on an average of 2 to 3 tons of the weed annually. This the Mexicans make into cigarettes, which they sell at two for 25 cents, mostly to white school students."<sup>54</sup>

These statements, if popularized at the time, could justify allegations that Anslinger conjured racial imagery to win passage of the Marihuana Tax Act. But the words of the Colorado editor and New Orleans officials lay buried within vast congressional records, and no evidence I have seen suggests that legislators, citizens, or journalists took much note of them at the time.<sup>55</sup> The same is true of three other statements traced by modern historians to Anslinger. Bonnie and

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<sup>52</sup> *Id.* at 53 (quoting ARRESTS AND CONVICTIONS, 1938-1962, *microformed in* H.J. Anslinger Papers, collection 1875, series 4, box 8, folder 10 (Eberly Fam. Special Collections Libr., Pa. State Univ.)).

<sup>53</sup> *Ways and Means Hearings*, *supra* note 14, at 32 (quoting Letter from Floyd K. Baskette, City Ed., Alamosa Daily Courier, to Bureau of Narcotics, Dep't of the Treasury (Sept. 4, 1936)).

<sup>54</sup> *Id.* at 32-33 (prepared statement of Dr. Frank R. Gomila, Comm'n of Pub. Safety & Madeline C. Gomila, Assistant Chief Chemist). Toward the conclusion of his House testimony, Anslinger said, "I would like to put in the record the statement of the district attorney that I referred to. I also have a statement showing the seizures of marihuana . . ." *Id.* at 28. Anslinger made no mention of the items I have quoted in the text. At the conclusion of his transcribed testimony, however, the clerk wrote that "[t]he following statements were submitted by Mr. Anslinger" and then printed the quoted statements. *Id.* at 29.

<sup>55</sup> The only other contemporary reference I have seen to the Colorado account appeared more than nineteen months later in the *San Antonio Light*. In a general broadside against marijuana, the paper reported that "a sex-mad degenerate brutally attacked a young Alamosa girl." Mrs. William Dick Sporborg, *Marihuana War Urged Throughout the United States to Save Youth from Dope*, SAN ANTONIO LIGHT, Dec. 11, 1938, at 63. The article identified the attacker as "Fernandez," but it made no other reference to ethnicity. *Id.* I thank my research assistant Abbee Cox for locating this article. Anslinger referred to the Colorado incident in "Assassin of Youth," but he did not name the attacker or suggest his ethnicity. Anslinger with Cooper, *supra* note 1, at 150. I have seen no contemporary reference to the statement by New Orleans officials placed in the Congressional Record.

Whitebread point to a 1934 report submitted by the United States to the League of Nations Advisory Committee on Traffic in Opium and Other Dangerous Drugs.<sup>56</sup> They attribute to Anslinger, an American representative to the Cannabis Subcommittee, the report's claim that American narcotics officers estimated that "fifty per cent of the violent crimes committed in districts occupied by Mexicans, Turks, Filipinos, Greeks, Spaniards, Latin-Americans and Negroes, may be traced to the abuse of marihuana."<sup>57</sup> Though this statement sadly was made in the name of the United States, I have found no evidence that the mainline press reported it to the American people.<sup>58</sup>

Bonnie and Whitebread point as well to a 1936 letter from Anslinger to two former Wisconsin prosecutors relating a Baltimore case in which "a twenty-five-year-old Puerto Rican charged with criminally assaulting a ten-year-old girl, entered a plea on grounds of temporary insanity caused by smoking marihuana cigarettes."<sup>59</sup> Far from exposing Anslinger as a race-baiter, these words show how reticent he was to deploy race when stumping for the Marihuana Tax Act. Testifying in support of the Tax Act before the House Ways and Means Committee, Anslinger called the Baltimore assailant simply "a young man."<sup>60</sup> Before the Senate Finance Committee he spoke again of "a young man."<sup>61</sup> And again before the public in "Assassin of Youth," Anslinger ignored ethnicity and labeled the Baltimore rapist "a young male addict."<sup>62</sup> I have seen no evidence Anslinger called him a Puerto Rican in public.

A third statement threatened to cost Anslinger his job. On December 4, 1934, he issued to all his district supervisors a memo warning them an informant

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<sup>56</sup> BONNIE & WHITEBREAD, *supra* note 11, at 145-46 (citing League of Nations Report, *supra* note 19).

<sup>57</sup> *Id.* at 146 (quoting League of Nations Report, *supra* note 19).

<sup>58</sup> Bonnie and Whitebread say this "fifty per cent" claim was reprinted in the *Union Signal*, a publication of the Woman's Christian Temperance Union. *Id.* at 106. They offer two different dates for this publication—February 1936 and April 1935. *Id.* at 106, 320 n.41. My own search of the *Union Signal* of these dates, assisted by Hai Jin Park and Kevin Rothenberg, did not turn up the "fifty per cent" claim or anything similar.

<sup>59</sup> *Id.* at 149 (quoting Letter from H.J. Anslinger to Otto Schlabach & Rudolph Schlabach (Apr. 14, 1936)). Otto M. Schlabach was identified as district attorney of La Crosse County in *State ex rel. Johnson v. Bd. of Supervisors*, 161 N.W. 356, 356 (Wis. 1917) (*per curiam*) (identifying Schlabach as respondents' counsel), and as a former district attorney in *From Factory and Salesroom*, 78 TELEPHONY, no. 12, 1920, at 36, 38, 40. On Rudolph Schlabach, who served as district attorney of La Crosse County from 1928 to 1932, see THE WIS. LEGIS. REFERENCE LIBR., THE WISCONSIN BLUE BOOK, 1944, at 37 (Howard F. Ohm & Hazel L. Kuehn eds., 1944) (listing Rudolph M. Schlabach's political activities).

<sup>60</sup> *Ways and Means Hearings*, *supra* note 14, at 23 (statement of H.J. Anslinger, Comm'r of Narcotics, Bureau of Narcotics, Dep't of the Treasury) ("[I]n Baltimore a young man was sent to the electric chair for having raped a girl while under the influence of marihuana.").

<sup>61</sup> *Fin. Subcomm. Hearing*, *supra* note 19, at 12.

<sup>62</sup> Anslinger with Cooper, *supra* note 1, at 150.

named Edward Jones was not trustworthy.<sup>63</sup> Describing his complexion, Anslinger said Jones “might be termed a ‘ginger colored n—.’”<sup>64</sup> Somehow the memo went public. Within two weeks Robert L. Vann, a Black special assistant to Attorney General Homer Cummings, warned President Roosevelt’s secretary that “an avalanche of protest against Mr. Anslinger is headed toward the White House.”<sup>65</sup> The *Baltimore Afro-American* reported that Treasury Secretary Henry Morgenthau Jr. had been “bombarded with numerous protests and demands for Anslinger’s dismissal.”<sup>66</sup> Yet the reaction of the mainline press was silence. The *New York Times*, *Washington Post*, and *Chicago Tribune* all lavished glowing coverage on Anslinger’s nationwide crackdown on drug offenders, staged less than a week after he issued the offending memo, but none of them said a word of the Edward Jones affair.<sup>67</sup> Still, the blowback from this episode perhaps prompted Anslinger’s reticence around race when hawking the Marihuana Tax Act.

Though Anslinger’s private racial attitudes may have fed the ferocity of his assault on marijuana, it seems the Commissioner never played voters or lawmakers as racist chumps. Instead he appealed to people’s intense concern for the morals and wellbeing of youth. “That youth has been selected by the peddlers of this poison,” he wrote in “Assassin of Youth,” “makes it a problem of serious concern to every man and woman in America.”<sup>68</sup> Or as he told a magazine reporter when the fight for the Marihuana Tax Act was long behind him, “People get a bit hysterical about reports of narcotics sales around school children.”<sup>69</sup>

A discerning view of the history of early anticannabis lawmaking in the states would have taught Anslinger this lesson: it was not the race of the drug’s source or even fear of crime in the community that moved the earliest lawmakers to act.

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<sup>63</sup> Memorandum from H.J. Anslinger, Comm’r, Bureau of Narcotics, Dep’t of the Treasury, to District Supervisors & Others Concerned (Dec. 4, 1934) (on file with author).

<sup>64</sup> *Id.*

<sup>65</sup> Letter from Robert L. Vann, Dep’t of Just., to Louis McH. Howe, Sec’y to the President, White House (Dec. 17, 1934) (on file with author). My thanks to Kirsten Strigel Carter of the FDR Presidential Library in Hyde Park, New York, who kindly supplied copies of Anslinger’s memorandum and Vann’s response. They are housed in Official File 21x—Department of the Treasury—Narcotic Bureau (1933-1937 correspondence).

<sup>66</sup> *Treasury Recalls Snooty Letter*, BALT. AFRO-AM., Jan. 26, 1935, at 1.

<sup>67</sup> See, e.g., *765 Jailed, U.S. Plans New Drive on Drug Traffic*, WASH. POST, Dec. 10, 1934, at 1 (reporting on Anslinger’s announcement of the results of “the greatest Nationwide narcotics haul in history”); *Narcotic Seizures Go On, Reach 765*, N.Y. TIMES, Dec. 10, 1934, at 2 (reporting on “largest raid by the government in its war against [narcotics] traffic”); *U.S. Launches Nation-Wide War on Dope Traffic*, CHI. DAILY TRIB., Dec. 9, 1934, at 9 (describing orders from Anslinger that prompted nationwide crackdown, and reporting that eleven of 125 local arrestees were Chinese).

<sup>68</sup> Anslinger with Cooper, *supra* note 1, at 18.

<sup>69</sup> *Teen-Age Dope Addicts: New Problem?*, U.S. NEWS & WORLD REP., June 29, 1951, at 18, 19. My thanks to Kevin Rothenberg of the Robert Crown Law Library for hunting tirelessly for evidence of Anslinger’s deployment of race in advocating for the Marihuana Tax Act.

Perhaps in later times and other places the belief that “Chicanos in the Southwest were . . . incited to violence by smoking marihuana” gave rise to anticannabis laws.<sup>70</sup> But this theorem of David Musto, echoed by so many others,<sup>71</sup> finds almost no support in the histories of the earliest state laws against cannabis. Rather what drove most intensely early lawmaking in the states was the desire to keep cannabis from the hands of White youth.

#### I. THE PATTERN OF STATE ANTICANNABIS LAWMAKING

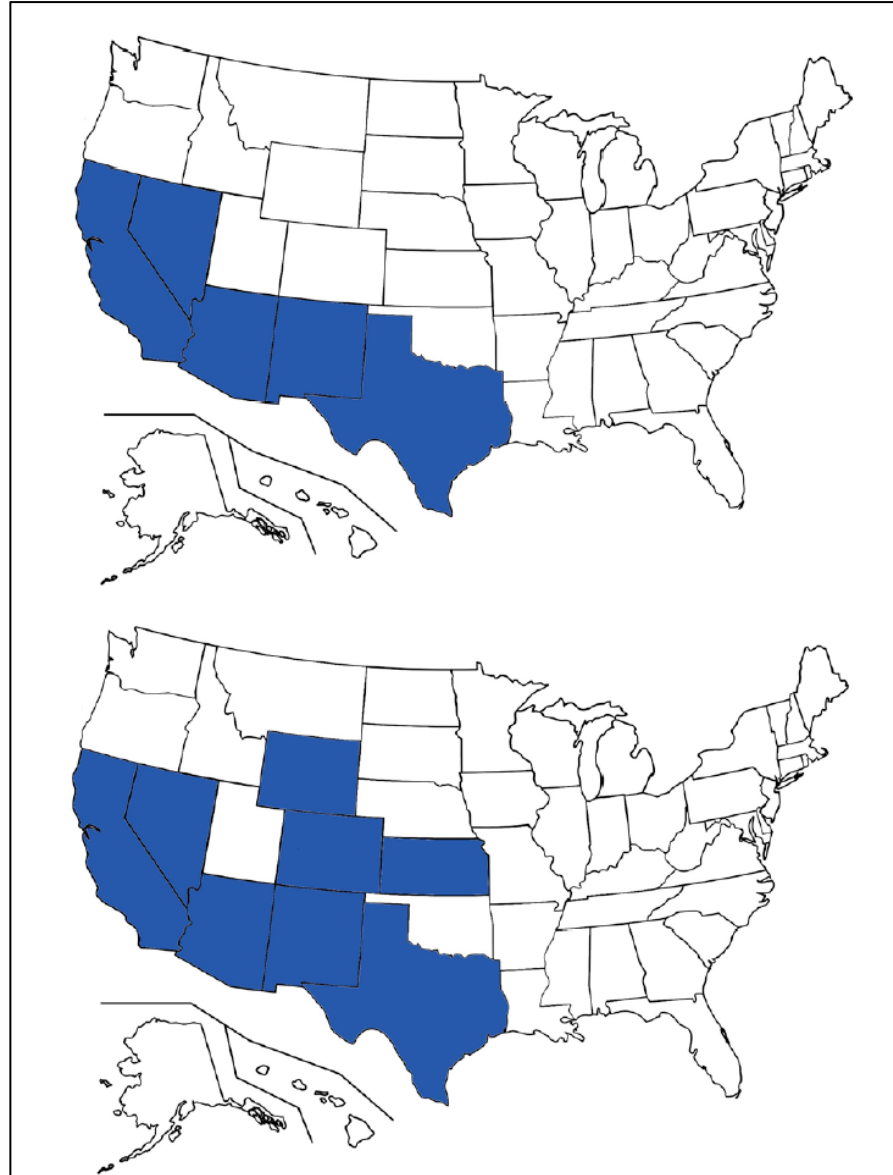
It is in the states we must begin, for anticannabis legislation arose there two decades before Harry Anslinger conceived his campaign to incite public panic around pot. By the time Anslinger took the helm of the newly launched Federal Bureau of Narcotics late in 1930, twenty-seven states and territories already had criminalized sales of cannabis absent a doctor’s prescription. By the time he helped secure passage of the Marihuana Tax Act in 1937, *all fifty* states and future states had forbidden unprescribed sales. Like the federal Harrison Act of 1914, which effectively outlawed opium and cocaine only after thirty-five states and territories had banned opium and forty-six had banned cocaine, the Marihuana Tax Act claimed center stage far too late to explain why lawmakers sought to drive the drug from the nonmedical marketplace.

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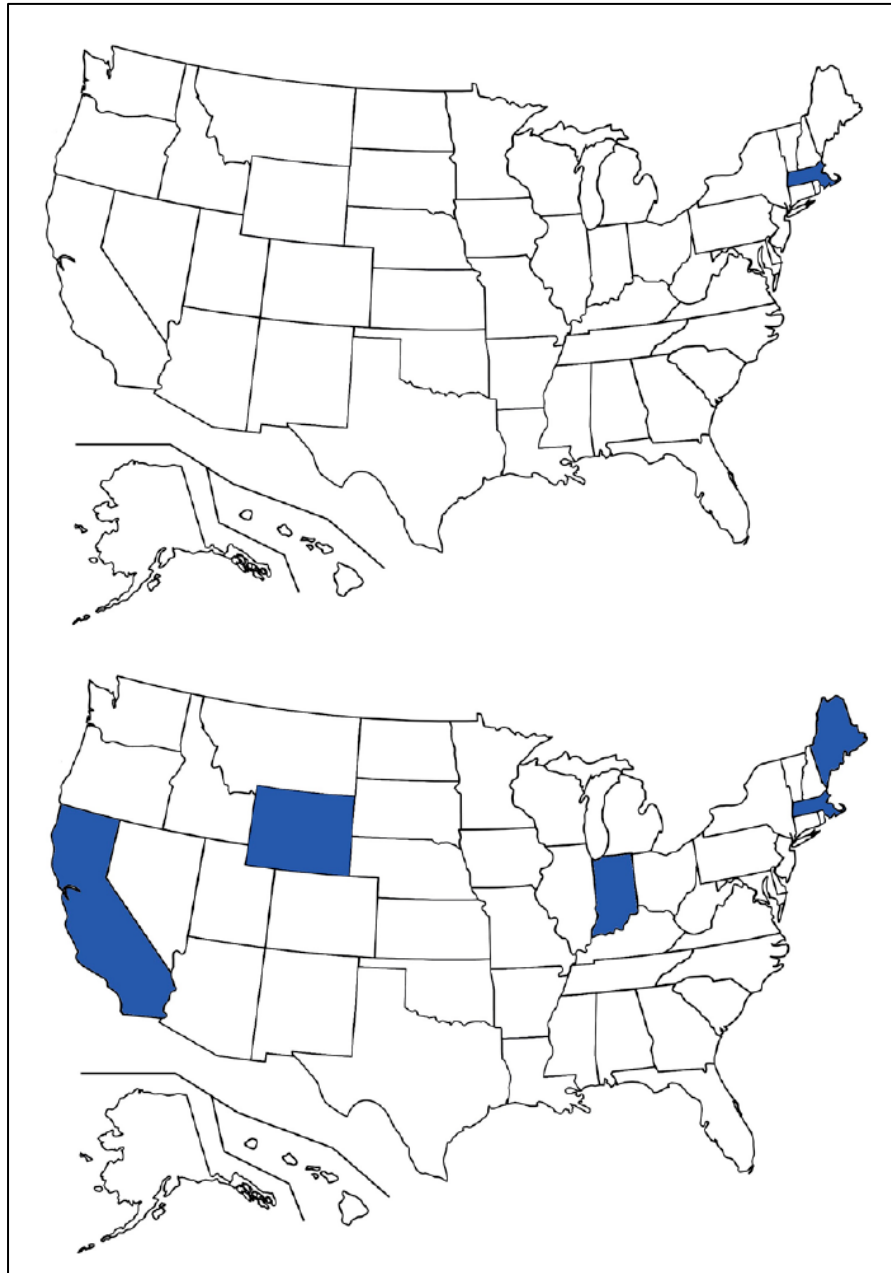
<sup>70</sup> MUSTO, *supra* note 11, at 295.

<sup>71</sup> BONNIE & WHITEBREAD, *supra* note 11, at 153 (“The excising of marihuana use from the social organism was seen quite clearly as a means of rooting out idleness and irresponsibility among deviant minorities.”); *see also* DAVID T. COURTWRIGHT, FORCES OF HABIT: DRUGS AND THE MAKING OF THE MODERN WORLD 171 (2001) (identifying one source of opposition to nonmedical drug use as “the association of a particular drug with deviant or disliked groups”); STEVEN B. DUKE & ALBERT C. GROSS, AMERICA’S LONGEST WAR: RETHINKING OUR TRAGIC CRUSADE AGAINST DRUGS 83 (1993) (“This early American [antidrug] legislation superficially appears to have been motivated by white communities’ fears that use of specific drugs might inspire minority males to act violently . . .”); LISA MCGIRR, THE WAR ON ALCOHOL: PROHIBITION AND THE RISE OF THE AMERICAN STATE 253 (2016) (“Other narcotic drugs were . . . more closely associated [than was alcohol] with minority populations—Chinese in the west, African-Americans in the south, Mexicans in the southwest—making a broad consensus for their criminalization . . . easier to maintain.”).

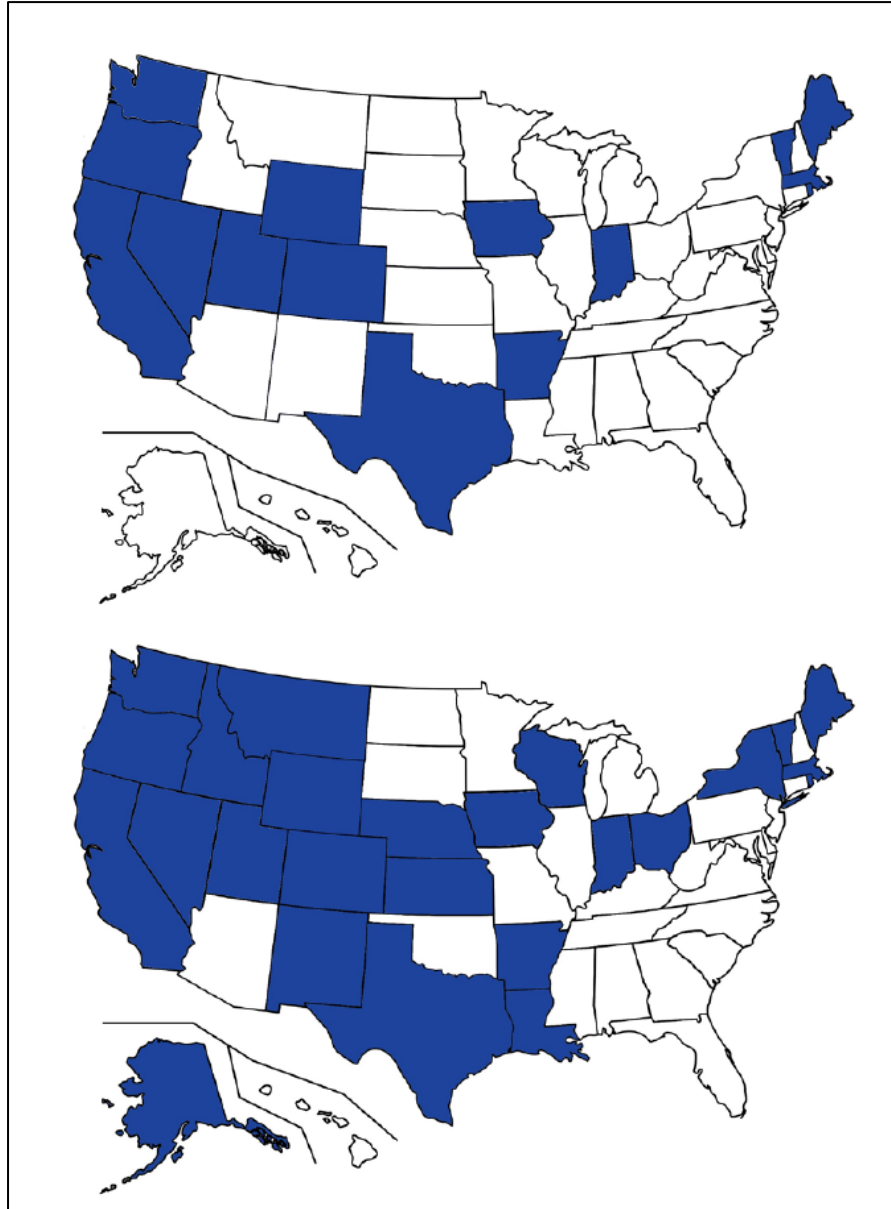
**Figure 2.** Top Five and Top Eight States in Proportion of Mexican-American Population in 1920.



**Figure 3.** First State and First Five States to Ban Unprescribed Cannabis Sales.



**Figure 4.** First Fifteen and First Twenty-Five States or Future States to Ban Unprescribed Cannabis Sales.



States lined up against the cannabis threat in no predicted order. Defying expectations that those states nearest the supposed source of the offending drug would act first, Southwestern states largely trailed a Northern and Western



anticannabis crusade. The maps in Figures 2 through 4 reveal a lawmaking course almost random but for the unexpected leadership of several New England states. Massachusetts acted first in 1911,<sup>72</sup> two years ahead of California, Indiana, Maine, and Wyoming.<sup>73</sup> Vermont edged out Utah in 1915,<sup>74</sup> Colorado joined Nevada in 1917,<sup>75</sup> and Rhode Island trailed closely in 1918.<sup>76</sup> In seven years, ten states had joined the fray—and three of the first six lay in New England. These three New England states must lead our analysis, for by taking action without a brown-skinned “threat” to fuel them, they expose a different force driving these new laws.

## II. THE NORTHERN VANGUARD

A notable omission marked the pathbreaking laws of the three New England states that caught the early anticannabis wave: these laws said not a word about “marijuana,” “pot,” “Mary Jane,” or any other slang for the drug; instead, they banned *Cannabis indica* and sometimes also *Cannabis sativa*.<sup>77</sup> Both terms applied to the hemp plant. Though meanings have drifted over time and remained unsettled even as these laws took shape, it seems that *Cannabis sativa* denoted at the time a broader botanical category that embraced *Cannabis indica*—or Indian hemp—as one variety and native *Cannabis Americana* as another.<sup>78</sup>

<sup>72</sup> An Act Relative to the Issuance of Search Warrants for Hypnotic Drugs and the Arrest of Those Present, ch. 372, 1911 Mass. Acts 359 (criminalizing possession of cannabis, among other drugs, without a doctor’s prescription).

<sup>73</sup> Act of August 10, 1913, ch. 342, 1913 Cal. Stat. 692; Act of March 6, 1913, ch. 118, 1913 Ind. Acts 306; An Act to Regulate the Sale of Morphine and Other Hypnotic or Narcotic Drugs, ch. 211, 1913 Me. Laws 300; Act of February 26, 1913, ch. 93, 1913 Wyo. Sess. Laws 101.

<sup>74</sup> An Act to Regulate the Sale of Opium, Morphine and Other Narcotic Drugs, ch. 197, 1915 Vt. Acts & Resolves 336; Act of March 17, 1915, ch. 66, 1915 Utah Laws 74.

<sup>75</sup> Act of March 30, 1917, ch. 39, 1917 Colo. Sess. Laws 120; Act of February 20, 1917, ch. 24, 1917 Nev. Stat. 27.

<sup>76</sup> An Act Relative to the Sale and Distribution of Certain Narcotic Drugs, ch. 1674, 1918 R.I. Acts & Resolves 145.

<sup>77</sup> 1913 Me. Laws at 300-03 (criminalizing unprescribed sales or possession of *Cannabis indica* or *Cannabis sativa*, or their salts, compounds, or preparations); 1911 Mass. Acts at 359-60 (criminalizing possession of “cannabis indica or cannabis sativa” without a doctor’s prescription); § 1, 1915 Vt. Acts & Resolves at 336-37 (banning unprescribed sales of “cannabis indica [or] cannabis sativa,” or their salts, compounds, or preparations).

<sup>78</sup> In his 1912 “Essay on Hasheesh,” Victor Robinson, a Columbia University pharmaceutical chemist, explained: “[T]he intoxicating hemp-plant [is] scientifically known as *Cannabis sativa* and popularly famed as Hasheesh . . . [I]ts botanical name is *Cannabis sativa*, with *Cannabis indica* as one variety, just as *Cannabis americana* is another variety.” VICTOR ROBINSON, AN ESSAY ON HASHEESH, INCLUDING OBSERVATIONS AND EXPERIMENTS 12, 14 (1912). Dr. Charles E. Terry and Mildred Pellens agreed: “[T]he genus of *cannabis sativa* . . . includes the two species *cannabis indica* and *cannabis americana*.” CHARLES E. TERRY & MILDRED PELLENS, THE OPIUM PROBLEM 809 (1928). Harry Anslinger collapsed the

*Cannabis indica* commonly took the form of hashish, a product not of Mexico but of India, Turkey, Egypt, and parts east.<sup>79</sup> Made from resin pressed from the plant's flowering top, hashish was a denser, more potent cannabis preparation than marijuana.<sup>80</sup> Then as now marijuana consisted of the dried leaves and flowering tops of the cannabis plant.<sup>81</sup> At times it took the specific name *Cannabis Americana*, and authorities commonly traced its origins to Mexico.<sup>82</sup> Hashish and marijuana are biological twins, differing in their preparation and sometimes their potency but not greatly in their euphoric effects.<sup>83</sup> Hence observers and lawmakers sometimes used *Cannabis indica* or even *Indian hemp* to embrace marijuana.<sup>84</sup> Still, the failure of these New England laws to mention "marijuana," "*Cannabis Americana*," or any other term clearly distinguishing marijuana from hashish is some evidence lawmakers did not have marijuana or Mexicans on their minds when enacting them.

Nor did news accounts hint that lawmakers in these states feared marijuana or the Mexican "desperados" who sometimes smoked it. Broad searches spanning decades have turned up no sign of *any* local use of marijuana before each state's ban, at least none that local papers thought worthy of mention. These states had among them hundreds of newspapers, and much may have slipped my gaze. Yet nothing in the sometimes rich, sometimes sparse, journalistic and legislative histories of these three anticannabis laws betrays wariness of Mexican newcomers or the marijuana some Mexicans favored.

Of course tales of marijuana use in Mexico, Arizona, California, or Texas sometimes filtered east. Several reports printed in New England claimed pot-crazed Mexicans in the distant Southwest had ravaged or killed. Still, it seems no such concern prompted these Eastern states to ban cannabis. In Maine and Vermont I have found not one news account even mentioning marijuana before each state banned cannabis. I found only a handful in Massachusetts, the latest

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categories of *Cannabis indica* and *Cannabis sativa*, casting the difference one of local custom: "Marijuana is a weed of the Indian hemp family, known in Asia as *Cannabis Indica* and in America as *Cannabis Sativa*." Anslinger with Cooper, *supra* note 1, at 19.

<sup>79</sup> See Rathge, *supra* note 18, at 27.

<sup>80</sup> See BONNIE & WHITEBREAD, *supra* note 11, at xiii ("'[M]arihuana' now refers primarily to a loose mixture of leaves, stems, and tops . . . and not to the more potent resinous mixtures ('hashish') . . .").

<sup>81</sup> *Id.*

<sup>82</sup> See Anslinger with Cooper, *supra* note 1, at 150.

<sup>83</sup> BONNIE & WHITEBREAD, *supra* note 11, at xiii (indicating that hashish and marijuana are both prepared from *Cannabis sativa*).

<sup>84</sup> *Id.*; cf., e.g., *Stamping Out New Drug*, ST. ALBANS DAILY MESSENGER (Vt.), Sept. 16, 1915, at 1 [hereinafter *Stamping Out New Drug*] ("Marihuana, or Indian hemp . . . is secured from a plant common to northern Mexico"); see also Act of February 27, 1930, ch. 13, 1930 Miss. Laws 13 (banning smoked products containing "Cannabis Indica, commonly known as Mari Juana").

dated 1905.<sup>85</sup> As Massachusetts did not ban cannabis until 1911,<sup>86</sup> none of these stories likely prompted legislators to act. And all these accounts told of faraway events. Of all the pre-1920 news reports I found in these states mentioning marijuana, not one spoke of a Mexican encroaching closer to home than Texas. Any mention of nearby Mexicans was rare, and if anyone feared a future influx of Mexican migrants, the press did not say so. The legislative histories of these states' laws likewise betray no fear of lurking Mexican pot smokers or of a gathering wave of Mexican newcomers.

That is not to say Mexicans went missing from the day's press. Coverage of the unending Mexican Revolution pockmarked and sometimes blanketed newspapers throughout the 1910s.<sup>87</sup> Many accounts told of violence by Mexican rebel armies.<sup>88</sup> Mexican bandits sometimes targeted rich American expatriates, reportedly seizing them for ransom or sexually assaulting the women.<sup>89</sup> These stories might have prompted some readers to fear all Mexicans, including those Mexicans far from the fighting and living nearby. But *very* few Mexicans lived nearby. Of the three New England states that enacted early anticannabis laws, only Massachusetts had enough Mexican-American residents to mention—a grand total of twenty-nine by 1910 census figures, or 0.001% of the state's population.<sup>90</sup> Though that figure almost doubled to an estimated fifty-seven Mexican-American residents by 1920, the average rate of increase was fewer than three newcomers per year.<sup>91</sup> Maine and Vermont *together* had precisely four Mexican-American residents according to 1910 census figures and only three in 1920.<sup>92</sup> Even if census counters missed some immigrants, their presence likely did not spur these states' anticannabis laws.<sup>93</sup>

More evidence that fears of Mexican marijuana “fiends” did not fuel passage of these Northern anticannabis laws emerges from news accounts of Mexican

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<sup>85</sup> *Dangerous Mexican Plants*, GAZETTE & COURIER (Greenfield, Mass.), Jan. 28, 1905, at 9.

<sup>86</sup> An Act Relative to the Issuance of Search Warrants for Hypnotic Drugs and the Arrest of Those Present, ch. 372, 1911 Mass. Acts 359.

<sup>87</sup> See, e.g., *Bandits Besiege Dying Americans*, KENNEBEC J. (Me.), July 24, 1913, at 12; *Local Intelligence: Insurrection in Mexico*, SPRINGFIELD DAILY REPUBLICAN (Mass.), Dec. 26, 1910, at 2; *Rebels Rob and Burn Train*, LOGANSPORT PHAROS-TRIB., Dec. 5, 1912, at 7; *Trouble in Juarez Feared*, N.Y. TIMES, Aug. 10, 1913, at 2.

<sup>88</sup> See, e.g., *Rebels Rob and Burn Train*, *supra* note 87, at 7.

<sup>89</sup> *Trouble in Juarez Feared*, *supra* note 87, at 2.

<sup>90</sup> Campbell Gibson & Kay Jung, *Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Division, and States* 153 (U.S. Census Bureau, Working Paper No. 56, 2002). Gibson and Jung explain that persons of Mexican ancestry were separately tabulated only in the 1930 census. *Id.* The 1930 census reports estimated the Mexican population in 1910 and 1920 based largely on places of birth. *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> See *id.*

marijuana printed shortly *after* lawmakers acted. Maine presents the most striking case. The state's anticannabis law was just twelve days old when the *Kennebec Journal*, on April 24, 1913, ran the eye-catching story, "Plants Cause Madness."<sup>94</sup> The recent "degradation of the social conditions of [Mexican] soldiers," the article said, traced to "the habit of smoking marihuana, a deadly native plant of Mexico" that "makes the smoker wilder than a wild beast."<sup>95</sup> Sometimes prompting "wild orgies," sometimes stilling "all control of . . . mental faculties," marijuana charges users with bravado and "superhuman strength" and drives them finally to murder.<sup>96</sup> Yet even while warning that Americans living in Mexico had smoked the drug with violent results, the *Journal* never thought to reassure readers that Maine had banned the substance less than two weeks before.<sup>97</sup> It appears the editors did not link the law's passage with tales of violence from Mexico.<sup>98</sup>

So too in Vermont, where I saw no press account of marijuana before mid-September 1915, six months after the state banned *Cannabis indica* and *Cannabis sativa*. Datelined San Francisco, a report in the *St. Albans Daily Messenger* warned that a "new drug to replace opium . . . has gained an alarming foothold" in California.<sup>99</sup> "The new 'dope' is Marihuana, or Indian hemp," the author continued, "and it is secured from a plant common to northern Mexico."<sup>100</sup> Nowhere did the *Messenger* say this exotic Mexican varietal was banned in Vermont.

So, for all that appears, neither Mexican newcomers nor fear of their smoked leaves triggered anticannabis lawmaking in these three New England states. What then drove these bans?

### III. THE NEW ENGLAND WATCH AND WARD SOCIETY

Let us begin in Boston, for Massachusetts was the first state to act. Today, "banned in Boston" seems a cliché for every puritanical crusade against life's small pleasures. But the phrase first referred to Anthony Comstock and the New England Watch and Ward Society's book-banning efforts. That story took rise on May 28, 1878, when the famed Comstock, founder of New York's Society for the Suppression of Vice, addressed Bostonians gathered at their city's storied Park Street Church.<sup>101</sup> Though billed as a public meeting and attended by 400 to 500 men, the event was closed to women, for organizers deemed the topic too coarse for feminine ears.<sup>102</sup>

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<sup>94</sup> *Plants Cause Madness*, KENNEBEC J. (Me.), Apr. 24, 1913, at 5.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *See id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Stamping Out New Drug*, *supra* note 84, at 1.

<sup>100</sup> *Id.*

<sup>101</sup> *The Society for the Suppression of Vice*, BOS. DAILY GLOBE, May 25, 1878, at 1.

<sup>102</sup> *Id.*; *see also Anniversary Week*, BOS. DAILY ADVERTISER, May 29, 1878, at 1

As godfather of an 1873 law that criminalized mailing or delivering “obscene, lewd, or lascivious” material, as well as contraceptives or information about them, Comstock turned on the Boston stage to a favorite topic: pornographers.<sup>103</sup> They were, he said, at work in Boston. “One method of conducting the business was to secure the names of the pupils in the schools, private and public, and then to send them the advertisements of the infamous matter . . . .”<sup>104</sup> Such practices in Boston and its environs had led to the arrests of sixteen persons and convictions of thirteen.<sup>105</sup>

The meeting concluded with a series of resolutions. One “declar[ed] the circulation of sensational and demoralizing literature among the young a national evil calling for . . . suppression.”<sup>106</sup> Another “recommend[ed] the formation of a New England society for the suppression of vice.”<sup>107</sup> Such a group promptly took form, first as a branch of Comstock’s New York society and four years later as a separate organization. Claiming among its officers the presidents of Amherst, Brown, Dartmouth, and Yale and boasting patrons named Cabot, Eliot, Lodge, and Lowell, the New England Society for the Suppression of Vice marched forth with all the cachet and moral gravitas Boston’s starched-collared Brahmins could give it.<sup>108</sup>

Later renamed the New England Watch and Ward Society, a nod to the old Watch and Ward constabulary, the group turned for day-in, day-out guidance not to the listed luminaries but to two men of a less exalted family named Chase.<sup>109</sup> Serving for twenty-five years as the society’s first agent and administrator, Henry Chase advanced the Watch and Ward’s moralizing mission, which he defined as “the removal, by both moral and legal means, of those agencies which corrupt the morals of youth.”<sup>110</sup> On his watch, the society launched prosecutions against pornographers, brothel keepers, and bookmakers. Aiding Chase in that fight were laws of his own design, banning not only what was obscene but also what “manifestly tend[ed] to the corruption of the morals

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(describing Comstock’s address and its reception).

<sup>103</sup> *Anniversary Week*, *supra* note 102, at 1.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*; Act of Mar. 3, 1873, ch. 258, § 2, 17 Stat. 598, 599.

<sup>106</sup> *Anniversary Week*, *supra* note 102, at 1.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*; see also PAUL S. BOYER, *PURITY IN PRINT: BOOK CENSORSHIP IN AMERICA FROM THE GILDED AGE TO THE COMPUTER AGE* 7-8 (2d ed. 2002) (identifying the Society’s prominent officers and contributors); NEIL MILLER, *BANNED IN BOSTON: THE WATCH AND WARD SOCIETY’S CRUSADE AGAINST BOOKS, BURLESQUE, AND THE SOCIAL EVIL* 3, 11-13, 47 (2010) (describing the society’s efforts); Allan Carlson, *Pure Visionary: The Life & Times of Anthony Comstock, Moral Crusader*, TOUCHSTONE, June 2009, at 16, 20 (identifying the Society’s prominent officers and contributors).

<sup>109</sup> For evidence of the family connection between the two Chases, see *Our Mid-Year Reunion*, 4 CHASE CHRON. 18, 18-19 (1913).

<sup>110</sup> Henry Chase, *America*, in *THE WHITE SLAVE TRADE: TRANSACTIONS OF THE INTERNATIONAL CONGRESS ON THE WHITE SLAVE TRADE* 154, 154-56 (1899).

of youth.”<sup>111</sup> By the end of his tenure, he could claim credit for extending the society’s work to all six New England states.<sup>112</sup>

After Henry Chase passed from the scene in 1907, his distant kinsman Jason Franklin Chase, a Methodist minister turned moral vigilante, shepherded the Watch and Ward for nearly two decades longer.<sup>113</sup> Young and hale, with a “wellknit body” and “bull-dog jaw,” Frank Chase cut a commanding figure on the Boston streetscape.<sup>114</sup> Though nominally the Watch and Ward’s secretary, he swapped inkwells for gumshoes and stood shoulder to shoulder with cops and sheriffs, busting brothels and drug dens, shuttering lottery shops, and haunting hotel lounges to spy out women for hire.<sup>115</sup>

His lust for the trenches perhaps traced to his working-class roots. “[B]orn with a clinched fist” in the factory town of Chelsea north of Boston, Chase fought for sport.<sup>116</sup> “There was a time,” he later reminisced, “when I had licked every red-headed man in Chelsea.”<sup>117</sup> Even after bettering himself and entering Wesleyan with the help of a church loan, he quit his college gridiron only after breaking two ribs and fracturing a collarbone.<sup>118</sup> His vaunted pugnacity—“I’ve got plenty of red blood and I like to fight”—belied his calling to the ministry, which he abandoned on joining the Watch and Ward.<sup>119</sup> He never lost his thirst for combat.<sup>120</sup> “Nowadays when I go into a raid,” he told a reporter in 1916, “I always take my glasses off and fight with my fists first.”<sup>121</sup>

Though sometimes mocked for his righteous fervor, Chase drew admiring support from Boston’s clergy and found respect on the national stage. Four times President Wilson named him a delegate to the International Congress of the World’s Purity Federation, a group dedicated to “the annihilation of the white-slave traffic [and] the suppression of public vice.”<sup>122</sup> Yet his enduring fame traces not to like-minded admirers but to contemptuous adversaries and most notably H. L. Mencken, who branded Chase a “Pecksniff” who savored the smut

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<sup>111</sup> Act of Mar. 13, 1880, ch. 97, 1880 Mass. Acts 64.

<sup>112</sup> Details of Chase’s life appear in Professor Neil Miller’s study of the Watch and Ward Society and various Chase profiles and obituaries. MILLER, *supra* note 108, at 7, 10, 15, 41.

<sup>113</sup> *Id.* at ix-xi, 40-45, 56-57, 63-64, 87-96.

<sup>114</sup> John W. Hawkins, *J. Frank Chase, The Clean-Up Specialist*, NEW BEDFORD SUNDAY STANDARD, July 16, 1916, at 21.

<sup>115</sup> TWENTY-NINTH ANNUAL REPORT OF THE NEW ENGLAND WATCH AND WARD SOCIETY FOR THE YEAR 1906-1907, at 5 (1907) [hereinafter TWENTY-NINTH ANNUAL REPORT] (reporting J. Frank Chase’s 1907 accession as secretary).

<sup>116</sup> Hawkins, *supra* note 114, at 21.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> ATLEE POMERENE, NINTH INTERNATIONAL CONGRESS OF THE WORLD’S PURITY FEDERATION, S. REP. NO. 63-822, at 1-2 (1914).

he suppressed.<sup>123</sup> Mencken goaded Chase into banning a Mencken publication, then beat him in court, humiliating Chase and scarring his legacy only months before his death in 1926 at just fifty-four.<sup>124</sup>

#### IV. FRANK CHASE'S ANTIDRUG CAMPAIGN

Before Frank Chase took charge of the Watch and Ward Society in 1907, dirty books, betting, and brothels absorbed almost all its law-enforcing zeal. Drug busting absorbed almost none. The group's annual report for 1908 to 1909 claimed Watch and Ward agents had secured convictions that year in twenty-two pornography cases, forty-eight gambling cases, and seven "miscellaneous" cases.<sup>125</sup> Drug sales and abuse merited not one line of text.<sup>126</sup>

That soon changed. In the first paragraph of the next year's report, Chase announced the Watch and Ward had inaugurated a "new department" focused on "suppression of habit-producing drugs."<sup>127</sup> It was, he said, "the notable work of the year."<sup>128</sup> Second only to obscene pictures, "the vices of the habit-producing drugs seem to be the most demoralizing in their effects, stultifying both body and soul."<sup>129</sup> Behind the society's newfound focus lay a familial tale: "It originated in the complaint of a parent that her boy, still a minor, had contracted a habit that had become a curse to him. . . . [S]he begged us to co-operate in preventing him from securing the drug which had proven his downfall."<sup>130</sup> Of this young man, addicted to cocaine, Chase tells us nothing else.<sup>131</sup> It seems likely from Chase's silence he was White.

Spurred perhaps by the boy's plight, the Watch and Ward launched its new antidrug assault with vigor. An accounting of narcotics cases brought by the Society shows a stunning year-over-year change.<sup>132</sup> Having commenced not a single narcotics case in 1908 to 1909, Watch and Ward agents lodged forty-one drug prosecutions the next year, most involving cocaine.<sup>133</sup> And the Society's

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<sup>123</sup> H.L. Mencken, *The "Hatrack" Case*, in THE EDITOR, THE BLUENOSE, AND THE PROSTITUTE: H.L. MENCKEN'S HISTORY OF THE "HATRACK" CENSORSHIP CASE 37, 151 (Carl Bode ed., 1988); see also *Hatrack*, TIME, Apr. 19, 1926, at 24.

<sup>124</sup> A.L.S. Wood, *Keeping the Puritans Pure*, AM. MERCURY, Sept. 1925, at 74, 74 (mockingly profiling Chase); *Milestones*, TIME, Nov. 15, 1926, at 32, 33; *Rev. Jason Frank Chase*, CHASE CHRON., Oct.-Dec. 1926, at 52; *Vice Crusader Dead*, LOWELL SUN, Nov. 4, 1926, at 8.

<sup>125</sup> THIRTY-FIRST ANNUAL REPORT OF THE NEW ENGLAND WATCH AND WARD SOCIETY FOR THE YEAR 1908-1909, at 18 (1909) [hereinafter THIRTY-FIRST ANNUAL REPORT].

<sup>126</sup> *Id.*

<sup>127</sup> THIRTY-SECOND ANNUAL REPORT OF THE NEW ENGLAND WATCH AND WARD SOCIETY FOR THE YEAR 1909-1910, at 5 (1910) [hereinafter THIRTY-SECOND ANNUAL REPORT].

<sup>128</sup> *Id.* at 26.

<sup>129</sup> *Id.* at 15.

<sup>130</sup> *Id.* at 26-27.

<sup>131</sup> *Id.* at 5, 15, 26-27.

<sup>132</sup> *Id.* at 27.

<sup>133</sup> *Id.* at 20.

antidrug unit achieved a crucial legislative milestone. Though Massachusetts had banned opium dens in 1885<sup>134</sup> and became the first Northeastern state to ban unprescribed cocaine sales in 1898,<sup>135</sup> it proved a slacker in the fight against eaten opium and related drugs. Only in March 1910, after twenty-three states and territories had outlawed sales of opium and related drugs, did Massachusetts finally tag along, banning unprescribed sales of opium, morphine, heroin, and codeine.<sup>136</sup>

Legislative records reveal Frank Chase's unmistakable hand in crafting this new law. In January 1910 Chase and Delcevare King, treasurer of the Watch and Ward Society,<sup>137</sup> petitioned the legislature for the new act and supplied a complete proposed text.<sup>138</sup> As Chase recalled several years later, "In 1910 the Secretary of this Society [Chase] introduced a law against opium and its products which was as thoroughgoing and drastic as the present Federal law" against unprescribed sales of opiates and cocaine.<sup>139</sup> Chase's proposal lost some bite, however, in its course through the legislature. Wiser voices counseled him that his "drastic . . . ideal could be reached only by slow steps," and a "compromise bill" instead prevailed.<sup>140</sup> As enacted, the 1910 law banned unprescribed sales of several opiates but made no mention of *Cannabis indica*, which Chase and King's original draft had included in the list of banned substances.<sup>141</sup>

Another year would pass before Massachusetts adopted the nation's first anticannabis law, perhaps Chase's most notable legacy.<sup>142</sup> Again legislative records expose the new law as his handiwork in whole or greater part.<sup>143</sup> On January 14, 1911, Representative John J. Conway of West Roxbury, Chase's home district, presented a petition signed by Chase and the Reverend Frederick Baylies Allen, president of the Watch and Ward Society.<sup>144</sup> Calling for antidrug

<sup>134</sup> An Act Forbidding the Sale and Use of Opium for Certain Purposes, ch. 73, 1885 Mass. Acts 549.

<sup>135</sup> An Act Relative to the Sale of Poisons, ch. 192, 1898 Mass. Acts 127.

<sup>136</sup> An Act to Regulate the Sale of Morphine and Other Narcotic Drugs, ch. 271, 1910 Mass. Acts 207.

<sup>137</sup> THIRTY-SECOND ANNUAL REPORT, *supra* note 127, at 3 (identifying Delcevare King as treasurer).

<sup>138</sup> H. JOURNAL, 131st Gen. Court, Reg. Sess., 111, 116 (Mass. 1910) (noting Chase's petition for the 1910 legislation banning opium, morphine, and related drugs).

<sup>139</sup> THIRTY-SEVENTH ANNUAL REPORT OF THE NEW ENGLAND WATCH AND WARD SOCIETY FOR THE YEAR 1914-1915, at 12 (1915) [hereinafter THIRTY-SEVENTH ANNUAL REPORT] (presenting Chase's memories of the 1910 legislative process).

<sup>140</sup> *Id.*

<sup>141</sup> H.B. 416, 131st Gen. Court, Reg. Sess. (Mass. 1910) (presenting Chase and King's proposed text of the 1910 act). I thank my research assistant Gabriel Schlabach, who tracked down the legislative records of the 1910 act and several other law changes mentioned in this chapter.

<sup>142</sup> See An Act Relative to the Issuance of Search Warrants for Hypnotic Drugs and the Arrest of those Present, ch. 372, 1911 Mass. Acts 359.

<sup>143</sup> Mass. Legislative Record of H.B. 1321 (1911) (on file with author).

<sup>144</sup> *Id.*



legislation “substantially as per annexed bill,” Chase and Allen appended another fully drafted antinarcotics law.<sup>145</sup> Their text proposed to ban unprescribed possession of a range of drugs, including “cannabis indica” and “cannabis sativa,” and threatened violators with six months’ confinement or a fine of up to \$100. The bill made it through the legislature largely unchanged. On March 28 the Committee on Public Health considered “the petition of J. Frank Chase and another” and amended their proposal by adding registered nurses to a list of persons permitted to possess the banned drugs. The proposal underwent other changes, but these too were small. Six weeks after its passage the *Lowell Sun* declared simply, “The law was framed by the Watch and Ward society.”<sup>146</sup>

With a two-year head start on the anticannabis law of any other state, the Massachusetts act of 1911 set the national standard. In March 1915 the founder of New York’s Big Brother movement, Ernest Coulter, “congratulate[d] the New England Watch and Ward Society on the splendid campaign which it ha[d] conducted in the past five years.”<sup>147</sup> Even before passage of the federal Harrison Act of 1914, Coulter noted, Massachusetts had adopted an antidrug law that “was in almost every respect as high as the National ideal.”<sup>148</sup> Indeed the Massachusetts law outstripped the Harrison Act, which effectively outlawed opium and cocaine but failed to ban cannabis.<sup>149</sup> And Chase persisted in refining the Massachusetts ban. He returned to the legislature in 1912, 1914, and 1915 with more prescribed proposals that won fast passage, sometimes in barely altered form, strengthening his original act and easing its enforcement.<sup>150</sup> In

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<sup>145</sup> *Id.*

<sup>146</sup> *An Opium Raid*, *LOWELL SUN*, June 14, 1911, at 12. I am grateful to Alethea Sargent for her admirable resourcefulness in assembling the legislative record. Adam Rathge addresses Frank Chase’s role in crafting the Massachusetts anticannabis law of 1911 as well as 1914 substitute legislation in Rathge, *supra* note 18, at 157-61.

<sup>147</sup> *Advocates Segregation*, *BOS. DAILY GLOBE*, Mar. 29, 1915, at 10 (quoting Ernest K. Coulter, *The Drug Bondage*, in *THIRTY-SEVENTH ANNUAL REPORT*, *supra* note 139, at 30, 40). The “[s]egregation” mentioned in the *Daily Globe* article’s headline referred to Chase’s recommendation that drug-using inmates at Boston’s Deer Island prison be separated from other inmates for medical treatment. *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Harrison Narcotics Tax Act*, ch. 1, 38 Stat. 785, 786 (1914)

<sup>150</sup> *An Act Relative to Certain Hypnotic Drugs*, ch. 283, 1912 Mass. Acts 191 (providing that possession of cannabis or other banned narcotics “shall be presumptive evidence that such possession was in violation of law,” and requiring trial judges to order forfeiture and destruction of illegally possessed drugs); *Mass. Legislative Record of H.B. 1852* (1912) (showing that Chase led a list of four petitioners who presented a fully scripted act to the legislature with a petition seeking its adoption); *An Act to Regulate the Sale of Opium, Morphine, and Other Narcotic Drugs*, ch. 694, 1914 Mass. Acts 704 (forbidding drugstores to refill prescriptions of opium, morphine, heroin, *Cannabis indica*, and *Cannabis sativa*, except on the written or in-person order of the prescriber); *Massachusetts Legislative Record of Senate Bill 372* (1914) (showing Chase among three petitioners who presented a fully scripted act to the legislature with a petition seeking its adoption); *An Act Relative to Search Warrants*

1916 he told a news reporter that he “regard[ed] the dope clean-up as the greatest constructive work of his career.”<sup>151</sup>

Among Chase’s backers in his antidrug campaign was Dr. William F. Boos, a Massachusetts General Hospital toxicologist and for years a member of the Watch and Ward’s board of directors.<sup>152</sup> Boos addressed the Society in Boston on March 5, 1911,<sup>153</sup> as Chase’s bill was wending its way through the legislature. Notably Boos spoke of hashish, a preparation of *Cannabis indica* targeted, together with *Cannabis sativa*, by Chase’s bill.<sup>154</sup> “Hasheesh is being introduced lately, by foreigners,” Boos warned, “and its use is growing. It is 1000 times more harmful than either morphine or opium and is the favorite drug of murderers in India.”<sup>155</sup> As quoted in the *Lowell Sun*’s brief account, Boos never said which “foreigners” he feared, though his reference to India is some hint. And he never expanded on his mention of murderers, likely a reference to the derivation of *assassin* from *Haschischin* cited by Harry Anslinger decades later when testifying in support of the Marihuana Tax Act.

So if we may judge from Boos’s remarks, the nation’s first cannabis ban had nothing to do with marijuana. It was instead *hashish*, the newly insurgent cannabis preparation of the East, that roused warnings from Boos and action by J. Frank Chase and the Watch and Ward Society. Hence the cannabis they feared had not slipped northward from Mexico and did not carry in tow a despised immigrant population. Even if hashish too hailed from abroad, I have seen no evidence that those who brought it here prompted loathing in the Bay State in the early 1910s.

Nor did Chase and Boos soon drop hashish from their sights. In December 1915, more than four years after Chase’s anticannabis bill became law, Bostonian Charles Costis faced charges after having passed hashish to an agent of the Watch and Ward Society.<sup>156</sup> Boos’s testimony that the seized substance

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Under the Law Relating to Certain Drugs, ch. 159, 1915 Mass. Acts 146 (consolidating provisions governing warrants to search for illegally held narcotics); Massachusetts Legislative Record of Senate Bill 326 (1915) (showing that Chase presented prescribed act).

<sup>151</sup> Hawkins, *supra* note 114, at 21.

<sup>152</sup> Boos’s name first appeared among the Watch and Ward’s directors in the annual report for 1910-1911, and it remained there every year until at least 1920. See THIRTY-THIRD ANNUAL REPORT OF THE NEW ENGLAND WATCH AND WARD SOCIETY FOR THE YEAR 1910-1911, at 3 (1911) [hereinafter THIRTY-THIRD ANNUAL REPORT]; FORTY-SECOND ANNUAL REPORT OF THE NEW ENGLAND WATCH AND WARD SOCIETY FOR THE YEAR 1919-1920, at 3 (1920) [hereinafter FORTY-SECOND ANNUAL REPORT].

<sup>153</sup> William F. Boos, Address at the Thirty-Third Annual Meeting of the New England Watch and Ward Society (Mar. 5, 1911), in THIRTY-THIRD ANNUAL REPORT, *supra* note 152, at 27, 27.

<sup>154</sup> *Id.*

<sup>155</sup> *Smoking Opium*, LOWELL SUN, Mar. 6, 1911, at 3.

<sup>156</sup> *Dr Boos Found It Was Hasheesh*, BOS. DAILY GLOBE, Dec. 16, 1915, at 9.

proved on chemical analysis to be “Indian hemp or hasheesh” figured critically in Costis’s conviction.<sup>157</sup>

#### V. THE WATCH AND WARD’S MISSION

Why then did the Watch and Ward Society and its leaders launch their drug-fighting crusade, striking at hashish, opium, morphine, and cocaine? Chase’s tale of the young addict’s distressed mother supplies a clue. Even if more fictive than real, the mother’s plea offered a parable of the Watch and Ward’s mission. Statements of that mission varied in their precision. At one extreme was Chase’s request, godlike in breadth, printed on the flyleaf of almost every annual report between 1907 and at least 1920: “We ask any person aware of evils that require correction to notify the Secretary, MR. J. FRANK CHASE . . . .”<sup>158</sup> With more refinement, longtime president and cofounder Frederick Allen portrayed the society’s mission as fighting “those who are coining money out of the weaknesses of humanity.”<sup>159</sup> Time and again, Allen and Chase insisted their targets were not vice’s “weak and wretched victims,” as Allen put it, but its purveyors—“those who for money carry on an organized system of exploitation.”<sup>160</sup> Pointing to his record, Chase assured a reporter in 1916, “We have never arrested any of the victims unless they were engaged in the traffic.”<sup>161</sup>

The victims the Society most sought to protect were youth. Early in 1909, on the eve of the Watch and Ward’s entry in the drug war, Allen looked backward: “For nearly a third of a century our little Society has stood like a sentinel between our boys and girls, our young people, the weak, the foolish, the unwary, and those who for money would tempt and corrupt them.”<sup>162</sup> The next year, with the Watch and Ward’s antidrug campaign in gear, Chase compared the Society to a father struggling to save his sons from twin serpents, vice and crime: “We might have [chosen] . . . as a Society motto the words written upon the father’s agonizing face:—‘For God’s sake, save the boys.’”<sup>163</sup> That same year, the

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<sup>157</sup> *Id.*

<sup>158</sup> TWENTY-NINTH ANNUAL REPORT, *supra* note 115; FORTY-SECOND ANNUAL REPORT, *supra* note 152.

<sup>159</sup> Rev. Frederick B. Allen, President, New Eng. Watch & Ward Soc’y, Address at the Thirty-Sixth Annual Meeting of the New England Watch and Ward Society (Apr. 5, 1914), in THIRTY-SIXTH ANNUAL REPORT OF THE NEW ENGLAND WATCH AND WARD SOCIETY FOR THE YEAR 1913–1914, at 18, 20 (1914) [hereinafter THIRTY-SIXTH ANNUAL REPORT].

<sup>160</sup> Rev. Frederick B. Allen, President, New Eng. Watch & Ward Soc’y, Address at the Fortieth Annual Meeting of the New England Watch and Ward Society (Apr. 14, 1918), in FORTIETH ANNUAL REPORT OF THE NEW ENGLAND WATCH AND WARD SOCIETY FOR THE YEAR 1917–1918, at 19, 19 (1918) [hereinafter FORTIETH ANNUAL REPORT].

<sup>161</sup> Hawkins, *supra* note 114, at 21.

<sup>162</sup> Rev. Frederick B. Allen, Speech at the Annual Meeting of the New England Watch and Ward Society (Mar. 21, 1909), in THIRTY-FIRST ANNUAL REPORT, *supra* note 125, at 23, 23.

<sup>163</sup> J. Frank Chase, Sec’y, New Eng. Watch & Ward Soc’y, Remarks at the Annual Meeting of the New England Watch and Ward Society (Apr. 3, 1910), in THIRTY-SECOND ANNUAL REPORT, *supra* note 127, at 29, 29.

Reverend Francis H. Rowley congratulated the Watch and Ward on its success in this mission.<sup>164</sup> The society's efforts, Rowley said, had helped make Boston "a better city in which one's children might grow up, a safer city—safer from many of the temptations that lure so often the best of childhood and of youth into evil."<sup>165</sup>

Chase was less sure of success. Two years after Rowley's hopeful words, Chase fretted, "During the past year we have seen boys from respectable homes in the suburbs made victims of these dread [drug] habits in the space of a few months by nightly visits to the city."<sup>166</sup> He therefore recommitted himself to the struggle. In 1916, with the Watch and Ward's drug war at full tilt, Chase assured the press that the Society's resolve had not wavered: "The one thing we are trying to do is to make the environment of the community such that boys and girls can grow up decent if they want to: so they will not be forced to see on every side the guide-posts to the road of iniquity."<sup>167</sup>

Alongside repeated vows to guard the morals of victimized youth stands a notable silence: neither the society's records nor its leaders said much about the race or ethnicity of vice's purveyors or victims. Though Protestant through and through—the Watch and Ward's board of directors included only an occasional Catholic or Jew—the society mostly abstained from the anti-immigrant invective common among moral enterprises of the day.<sup>168</sup> It is true Chase often alleged that pornography had an "Italian," "French," or "South America[n]" source.<sup>169</sup> And he wrote in 1910: "All the opium illegally sold in Boston this year, concerning which we were able to secure any evidence, was sold by

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<sup>164</sup> Rev. Dr. Francis H. Rowley, Address at the Thirty-Second Annual Meeting of the New England Watch and Ward Society (Apr. 3, 1910), in *THIRTY-SECOND ANNUAL REPORT*, *supra* note 127, at 21, 22.

<sup>165</sup> *Id.* at 23.

<sup>166</sup> J. Frank Chase, Wm. F. Boos, & Lyman F. Kebler, *The Dope Evil*, reprinted in *AMERICAN PERCEPTIONS OF DRUG ADDICTION: FIVE STUDIES, 1872-1912* (Gerald N. Grob ed., 1981).

<sup>167</sup> Hawkins, *supra* note 114, at 21.

<sup>168</sup> MILLER, *supra* note 108, at 11-12 (noting Watch and Ward's Protestant makeup and absence of anti-immigrant rhetoric). Catholic layman Bernard J. Rothwell served as one of the Watch and Ward's many vice presidents from 1915 to at least 1920, social reformer Meyer Bloomfield served on the board from 1906 to 1908, and Rabbi Harry Levi of Boston's Temple Israel served from 1918 to at least 1920. See *TWENTY-EIGHTH ANNUAL REPORT OF THE NEW ENGLAND WATCH AND WARD SOCIETY FOR THE YEAR 1905-1906*, at 4 (1906); *THIRTY-EIGHTH ANNUAL REPORT OF THE NEW ENGLAND WATCH AND WARD SOCIETY FOR THE YEAR 1915-1916*, at 43 (1916) [hereinafter *THIRTY-EIGHTH ANNUAL REPORT*] (quoting President Allen boasting of a Catholic director of many years' standing); *FORTIETH ANNUAL REPORT*, *supra* note 160, at 3.

<sup>169</sup> *THIRTY-SECOND ANNUAL REPORT*, *supra* note 127, at 6-7; J. Frank Chase, Sec'y, New Eng. Watch & Ward Soc'y, Remarks at the Annual Meeting of the New England Watch and Ward Society (Apr. 3, 1910), in *THIRTY-SECOND ANNUAL REPORT*, *supra* note 127, at 23, 25.

Chinese.”<sup>170</sup> Moreover, the Watch and Ward’s annual report for 1914 to 1915 printed an essay by Ernest Coulter decrying the “fearful havoc” wrought by cocaine in the South, “especially among the negroes.”<sup>171</sup> Generally, however, the Watch and Ward’s records and Chase’s other writings lacked racial or ethnic coding and never linked cannabis with any specific group.

Instead, over and over, the drug purveyors Chase called out were doctors. He wrote in his annual report for 1915 to 1916 of the “problem of the corrupt physician.”<sup>172</sup> The danger was in those “unscrupulous physicians” who perpetuate addicts’ habits, “profiting by their misfortune.”<sup>173</sup> Again the next year he wrote: “The great task of the year . . . has been the struggle to curb the practice on the part of certain physicians of issuing prescriptions for large amounts of narcotic drugs, when not medically or morally justified.”<sup>174</sup> With some satisfaction he reported that the Watch and Ward had prosecuted four doctors that year. “The first prosecution of a physician under our State law was initiated by this Society,” Chase boasted, adding that public officials brought such cases only after the Watch and Ward had marked the way.<sup>175</sup> Another year later he remained on theme, condemning the “fraudulent prescribing of large quantities of drugs under the pretext of a medical treatment by some unscrupulous physicians” and relating with pride the society’s prosecution of several such offenders.<sup>176</sup>

I have seen no evidence that the doctors Chase hauled to court trafficked in cannabis-laced cures. The Watch and Ward’s focus on corrupt physicians matters for a different reason: in vilifying doctors, the Society underscored its general indifference to the ethnicity of a drug’s purveyor and its readiness to regard users as victims. And though sources shed little light on the demographics of cannabis users in Massachusetts, we have seen already from Harry Anslinger’s writings and testimony—and will see again—that the perceived victims of the cannabis trade commonly were youth.

## VI. FRANK CHASE AND MAINE’S ANTICANNABIS LAW

Two years after Massachusetts launched the American war against cannabis, four more states took up arms. In 1913 California, Indiana, Maine, and Wyoming

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<sup>170</sup> THIRTY-SECOND ANNUAL REPORT, *supra* note 127, at 17; *see also* THIRTY-THIRD ANNUAL REPORT, *supra* note 152, at 13 (“This drug is sold almost exclusively by the Chinese in the Chinese quarters of the city.”).

<sup>171</sup> Coulter, *supra* note 147, at 35-36.

<sup>172</sup> THIRTY-EIGHTH ANNUAL REPORT, *supra* note 168, at 9-10.

<sup>173</sup> *Id.*

<sup>174</sup> THIRTY-NINTH ANNUAL REPORT OF THE NEW ENGLAND WATCH AND WARD SOCIETY FOR THE YEAR 1916-1917, at 8-9 (1917) [hereinafter THIRTY-NINTH ANNUAL REPORT].

<sup>175</sup> J. Frank Chase, Sec’y, New Eng. Watch & Ward Soc’y, Report at the Thirty-Ninth Annual Meeting of the New England Watch and Ward Society (Apr. 1, 1917), in THIRTY-NINTH ANNUAL REPORT, *supra* note 174, at 20, 21.

<sup>176</sup> FORTIETH ANNUAL REPORT, *supra* note 160, at 12-13.

all banned unprescribed cannabis.<sup>177</sup> Though scattered across the American landscape with nothing to unite them, these four states acted almost in concert. Lawmakers introduced the relevant measures on three successive Tuesdays—January 28 in California, February 4 in Maine and Indiana, and February 11 in Wyoming.<sup>178</sup> As timing does not distinguish these laws, let us instead proceed geographically, moving north and then west from our natural starting point, first-in-the-nation Massachusetts.

This plan follows Frank Chase's declared strategy. In 1912, still tasting his legislative triumph in Massachusetts the year before, Chase proclaimed he would seek to convert other New England states to his antidrug cause. In a pamphlet memorably titled *The Dope Evil*, he announced the "earnest hope" of a "group of earnest people in Boston . . . that their experience may be fruitful in placing upon the statute books of all states of New England at least laws which shall be effective in properly regulating the sale of these [habit-forming] drugs and in suppressing their illegal sale."<sup>179</sup> Indeed Chase succeeded in putting anticannabis laws on the books in Maine in 1913<sup>180</sup> and Vermont in 1915,<sup>181</sup> though a 1913 campaign in New Hampshire fell short.<sup>182</sup> His labors therefore explain in greater part why New England contributed three of the first six anticannabis states.

Hence we go first to Maine. Having been part of Massachusetts until 1820,<sup>183</sup> Maine often looked to its southern parent for legislative guidance, and the parent state sometimes looked north. Their filial bond proved especially tight in the realm of recreational intoxicants. The younger state proved precocious in banning alcohol: Maine pioneered statewide prohibition in 1851,<sup>184</sup> while Massachusetts trailed in 1852.<sup>185</sup> But the elder acted first against other drugs. After Massachusetts led the Northeast in forbidding unprescribed cocaine sales

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<sup>177</sup> Act of Aug. 10, 1913, ch. 342, 1913 Cal. Stat. 697; Act of Mar. 6, 1913, ch. 118, 1913 Ind. Acts 306-07; An Act to Regulate the Sale of Morphine and Other Hypnotic or Narcotic Drugs, ch. 211, 1913 Me. Laws 300; Act of Feb. 26, 1913, ch. 93, 1913 Wyo. Sess. Laws 101.

<sup>178</sup> ASSEMB. JOURNAL, 40th Assemb., Reg. Sess., at 285-88 (Cal. 1913); H. LEGIS. REC., 76th Legis. 270 (Me. 1913); H. JOURNAL, 68th Gen. Assemb., at 667-70 (Ind. 1913); H. JOURNAL, 12th Legis., at 261, 265 (Wyo. 1913).

<sup>179</sup> Chase, Boos & Kebler, *supra* note 166, at 1 (author's page count).

<sup>180</sup> 1913 Me. Laws at 300-03.

<sup>181</sup> An Act to Regulate the Sale of Opium, Morphine, and Other Narcotic Drugs, ch. 197, 1915 Vt. Acts & Resolves 336.

<sup>182</sup> See H. JOURNAL, Jan. Sess. 1913, at 592 (N.H. 1913) (noting the Public Health Committee's verdict that Chase's bill was "inexpedient to legislate").

<sup>183</sup> *The Pine Tree State*, LIBR. OF CONG., <https://www.loc.gov/item/today-in-history/march-15#the-pine-tree-state> [<https://perma.cc/4MKW-YA8W>] (last visited Apr. 13, 2021) (describing how Maine got its statehood from Massachusetts).

<sup>184</sup> An Act for the Suppression of Drinking Houses and Tippling Shops, ch. 211, 1851 Me. Laws 210.

<sup>185</sup> An Act Concerning the Manufacture and Sale of Spiritious or Intoxicating Liquors, ch. 322, 1852 Mass. Acts 257.

in 1898,<sup>186</sup> Maine followed with almost identical language in 1899.<sup>187</sup> And after Massachusetts banned opium, morphine, heroin, and codeine in 1910<sup>188</sup> and cannabis in 1911,<sup>189</sup> Maine banned all five drugs in 1913.<sup>190</sup>

Behind Maine's 1913 narcotics act lay the heavy hand of Frank Chase and the New England Watch and Ward Society. Though the state's laconic legislative documents divulge no secrets of the law's passage, clear evidence of Chase's role lies squirreled in several corners of the historical record. The local press offers the first clue. Tucked at the bottom of page ten of the *Kennebec Journal* of March 5, 1913, just after an update on "the bill regulating hatpins and other decorative utilities," the *Journal* reported in tiny type what appears to have been the only testimony taken by the Maine legislature on the 1913 antinarcotics bill.<sup>191</sup> On March 4 the House Committee on Public Health heard from a sole witness in favor and a sole witness opposed. The state's chemist, Henry Evans, stood opposed—not to the wisdom of banning the named drugs but to his being slated with the task of testing for them. Evans offered "[t]he only opposition," the *Journal* reported: he complained "that the State laboratories were not at present equipped for the work."<sup>192</sup>

As for supporters of the bill, the *Journal* mentioned only one: "J. Frank Chase, secretary of the New England Watch and Ward Society, appeared in favor . . ."<sup>193</sup> We never learn what Chase said. But his 150-mile trek to a wintry northern capital suggests he was passionate about the bill. And his view prevailed. In deference to chemist Evans's concerns, the Committee apparently altered the original bill and reassigned the task of drug testing to the Maine Agricultural Experiment Station. Then, three days after Chase's visit, the Committee reported that the bill "ought to pass."<sup>194</sup>

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<sup>186</sup> An Act Relative to the Sale of Poisons, ch. 192, 1898 Mass. Acts 127.

<sup>187</sup> An Act to Prevent Incompetent Persons from Conducting the Business of an Apothecary, ch. 96, 1899 Me. Laws 107.

<sup>188</sup> An Act to Regulate the Sale of Morphine and Other Narcotic Drugs, ch. 271, 1910 Mass. Acts 207-08.

<sup>189</sup> An Act Relative to the Issuance of Search Warrants for Hypnotic Drugs and the Arrest of Those Present, ch. 372, 1911 Mass. Acts 359-60.

<sup>190</sup> An Act to Regulate the Sale of Morphine and Other Hypnotic or Narcotic Drugs, ch. 211, 1913 Me. Laws 300.

<sup>191</sup> *Appoints Frank J. Ham*, KENNEBEC J., Mar. 5, 1913, at 1 (reporting testimony before House Committee on Public Health).

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> H. LEGIS. REC., 76th Legis., at 698 (Me. 1913). On the change made in response to chemist Evans's concerns, compare the bill as first proposed on February 4, 1913, with the version reported out of the Committee on Public Health on March 7. Compare H.B. 134, 76th Leg. § 9 (Me. 1913) (calling for testing by "[t]he state board of health"), with H.B. 449, 76th Leg. § 9 (Me. 1913) (calling for testing by "[t]he director of the Maine Agricultural Experiment Station"). I thank Micah Myers and Alethea Sargent for their careful and detailed reconstruction of the legislative record.

A second exhibit linking Chase to Maine's anticannabis law appears not in the legislative record or local press but in the Watch and Ward Society's papers. At the outset of the society's annual report for 1912 to 1913, Chase offered a detailed roundup of the year's activities. The group's work in Massachusetts consumed fifteen pages. Then followed two sentences about Maine's new law: "We have introduced laws uniform with that of Massachusetts on the regulation of habit-forming drugs, into the Legislatures of Maine, New Hampshire and Vermont. We have thus far obtained success in Maine only."<sup>195</sup>

Here Chase magnified his role, for neither he nor the Watch and Ward Society had "introduced" the Maine legislation. That step was the work of Representative Seth Clark of Portland, who offered the relevant bill on February 4, 1913.<sup>196</sup> Perhaps Clark, a traveling salesman, knew Chase, but no connection has emerged. Nor was Chase's claim of "success" quite accurate, at least not yet. His annual report was dated March 1, 1913, three days *before* his testimony in Augusta and almost six weeks before Maine's new law won the governor's signature on April 12. Perhaps what Chase deemed "success" on March 1 was that Clark had introduced the bill and prospects for passage looked good.<sup>197</sup>

No doubt Chase was proud, for the Watch and Ward Society and its collaborators had written almost every word of Maine's act. Proof of the Society's hidden handiwork lies in a largely forgotten 1912 tract bearing the Society's imprint. I have mentioned this pamphlet already. Titled *The Dope Evil*, it largely rehashed and repackaged old material as a collection of views on the drug scourge. The first twenty-eight pages presented essays by Chase, Dr. Boos, and Dr. Lyman F. Kebler, Chief of the Drug Division of the U.S. Department of Agriculture.<sup>198</sup> Offering "a Reformer's Point of View," Chase reprinted almost word for word an address called "The Dope Vice" he had given at the Watch and Ward Society's annual meeting of February 25, 1912.<sup>199</sup> Dr. Boos, who delivered "a Physician's Point of View," likewise recycled almost verbatim the address he gave before the society on March 5, 1911.<sup>200</sup> Dr. Kebler's

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<sup>195</sup> THIRTY-FIFTH ANNUAL REPORT OF THE NEW ENGLAND WATCH AND WARD SOCIETY FOR THE YEAR 1912-1913, at 20 (1913) [hereinafter THIRTY-FIFTH ANNUAL REPORT].

<sup>196</sup> H. LEGIS. REC., 76th Legis., at 270 (Me. 1913) (reporting Rep. Clark's introduction of Maine's anticannabis bill); *The 76th Maine Legislature: Stenographic Reports of Yesterday's Sessions of the Senate and the House of Representatives: House*, KENNEBEC J., Feb. 5, 1913, at 2 (same).

<sup>197</sup> *The Biographies: Sketches of the Men Who Form the 76th Legislature*, KENNEBEC J., Jan. 1, 1913, at 11, 13.

<sup>198</sup> Chase, Boos & Kebler, *supra* note 166.

<sup>199</sup> J. Frank Chase, Sec'y, Watch & Ward Soc'y, Address at the Thirty-Fourth Annual Meeting of the New England Watch and Ward Society: The Dope Vice (Feb. 25, 1912), in THIRTY-FOURTH ANNUAL REPORT OF THE NEW ENGLAND WATCH AND WARD SOCIETY FOR THE YEAR 1911-1912, at 19 (1912).

<sup>200</sup> Boos, *supra* note 153, at 27.



“Statistician’s Point of View” excerpted the results of a physician survey Kebler first published in 1910.<sup>201</sup>

It is the fourth part of the 1912 pamphlet, unsigned and titled simply “Model Law,” that most concerns us. A decade before the American Medical Association first debated a uniform state anti-narcotics act and almost two decades before Harry Anslinger committed the Federal Bureau of Narcotics to framing a uniform state act,<sup>202</sup> Chase and his cohort embraced this approach, producing a polished and comprehensive model anti-narcotics act.<sup>203</sup> In breadth and boldness, it far outstripped James H. Beal’s brief and comparatively modest uniform law of 1903. Beal’s model act banned only distribution of opium, cocaine, and chloral hydrate and their analogues and derivatives. It said nothing of cannabis and left simple drug possession unpunished. And beyond threatening violators with a notably forgiving schedule of penalties, Beal’s scheme offered nothing to guide its enforcement.<sup>204</sup>

Spanning almost nine pages, the Watch and Ward Society’s model law had bigger ambitions. Crucially it added *Cannabis indica* and *Cannabis sativa* to the roster of banned substances, and it punished possession along with distribution.<sup>205</sup> Reflecting Chase’s concern with “corrupt physicians,”<sup>206</sup> the law forbade doctors to dispense the named drugs “except in good faith as medicines for diseases indicated.”<sup>207</sup> Violators of these provisions—whether doctors, dealers, or users, and even on a first offense—faced up to a year’s imprisonment, a \$1,000 fine, or both.<sup>208</sup> Again reflecting Chase’s interests, the model law empowered private persons—and therefore such groups as the Watch and Ward Society—to trigger police searches and arrests. On any person’s sworn complaint supported by probable cause, the law compelled judges to command police officials to search premises and arrest any person found possessing narcotics unlawfully.<sup>209</sup> Finally there was the provision that prompted chemist Evans’s objection in Maine, which required the state board of health to analyze suspected drugs at the request of any county prosecutor and made the chemist’s certificate presumptive evidence of the substance’s makeup.<sup>210</sup>

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<sup>201</sup> Chase, Boos & Kebler, *supra* note 166 (citing LYMAN F. KEBLER, U.S. DEP’T OF AGRIC., THE PRESENT STATUS OF DRUG ADDICTION IN THE UNITED STATES (1910)).

<sup>202</sup> On the development of a uniform state anti-narcotics act by the American Medical Association and Federal Bureau of Narcotics, see BONNIE & WHITEBREAD, *supra* note 11, at 67, 76-91.

<sup>203</sup> Chase, Boos & Kebler, *supra* note 166.

<sup>204</sup> James H. Beal, *Draft of an Anti-Narcotic Law*, 51 PROC. AM. PHARM. ASS’N 485, 485-86 (1903).

<sup>205</sup> Chase, Boos & Kebler, *supra* note 166, at 29-38 (presenting model anti-narcotics act).

<sup>206</sup> See THIRTY-EIGHTH ANNUAL REPORT, *supra* note 170, at 9-10.

<sup>207</sup> *Id.* at 35.

<sup>208</sup> *Id.* at 36.

<sup>209</sup> *Id.* at 36-37.

<sup>210</sup> *Id.* at 37-38.

Within four months of its publication,<sup>211</sup> this model act, almost unaltered, became the law of Maine.<sup>212</sup> Of the 1,644 words in Maine's 1913 antidrug law, 1,560 came straight from the Society's model act. A single sentence added to Maine's law accounted for most of the rest.

Who then wrote this model act? An unsigned preface says the act was "drafted from the laws now on the statute books of Massachusetts."<sup>213</sup> Those laws of course were largely the work of Chase and the Watch and Ward Society.<sup>214</sup> Chase and Delcevere King, treasurer of the Society, personally presented to the legislature a draft of the 1910 Massachusetts law banning unprescribed sales of opium, morphine, and heroin. Chase and Frederick Allen, president of the Society, sponsored and apparently drafted the 1911 act banning unprescribed possession of cannabis. And Chase led the list of four petitioners who in 1912 tendered a Massachusetts act strengthening certain enforcement provisions. Parts of all these laws, sometimes largely word for word, found their way into the 1912 model act. Moreover, Chase held the copyright to the 1912 pamphlet containing the model act, and his signed introduction opens the volume. So there is a weighty case to conclude Chase drafted, or at least commissioned, the 1912 model act and therefore Maine's nearly identical 1913 law.

But whatever its similarities to Massachusetts law, the model act presented a cleaner, more streamlined piece of lawmaking, perhaps surpassing Chase's legislative craft. In hunt of more practiced legislative hands behind the drafting, we find likely suspects on *The Dope Evil*'s title page. At the top are listed the three essayists whose work consumes most of this slim volume—Chase, Boos, and Kebler.<sup>215</sup> At the bottom appears without explanation a three-person "Advisory Legislative Committee for the State of Vermont."<sup>216</sup> It was a distinguished committee, composed of the presidents of the Vermont Board of Health and the University of Vermont as well as S. Hollister Jackson, a lawyer, former state representative, and future lieutenant governor.<sup>217</sup> Their listing here is curious. The Boston-based Watch and Ward Society published *The Dope Evil*, and nothing in this small volume explains the Vermont connection. Yet it seems plain the Vermont Legislative Committee compiled the model act. The Committee's designation as "Legislative" suggests its lawmaking function. And

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<sup>211</sup> 10 U.S. COPYRIGHT OFF., LIBR. OF CONG., CATALOGUE OF COPYRIGHT ENTRIES 10 (1913) (showing that Chase registered *The Dope Evil* with Library of Congress Copyright Office in Washington on December 16, 1912). My thanks to Leizel Ching and Sonia Moss of the Robert Crown Law Library, who confirmed the date of *The Dope Evil*'s publication.

<sup>212</sup> An Act to Regulate the Sale of Morphine and Other Hypnotic or Narcotic Drugs, ch. 211, 1913 Me. Laws 300.

<sup>213</sup> Chase, Boos & Kebler, *supra* note 166.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*; see also Hollister Jackson, FIND A GRAVE (Feb. 24, 2006), <https://www.findagrave.com/memorial/13429124/hollister-jackson> [<https://perma.cc/Q4ZB-6C2Y>].

its listing on *The Dope Evil*'s title page after the names of the pamphlet's three essayists hints at the Committee's hand in shaping Part IV of the pamphlet—the otherwise unsigned model anti-narcotics act.

The role of these three Vermonters in drafting what became Maine's 1913 anti-narcotics law turns our investigation slightly westward. For in 1915 Vermont became the third state in New England and the sixth in the nation to ban cannabis. It also became the third state to act at least in part under the sway of the New England Watch and Ward Society.

## VII. ON TO VERMONT

Though Vermont enlisted early in the anticannabis campaign, it lagged every other state in the larger war on drugs. In banning cannabis in 1915, the legislature for the first time forbade opium and cocaine too.<sup>218</sup> Only thirteen states waited longer to ban opium; only Alaska and Hawaii waited longer to ban cocaine. *No* state waited longer to launch antidrug lawmaking.

So it is striking that in 1912, after Vermont's long reign as a drug war laggard, lawmakers took up—and took seriously—what could have become the most far-reaching antidrug law in the nation. On November 11 Senator Herbert H. Blanchard, a Springfield lawyer, introduced “[a]n act to regulate the sale of morphine and other hypnotic or narcotic drugs.”<sup>219</sup> The bill would have conditioned both sales and possession of most major mind-altering drugs, including *Cannabis indica* and *Cannabis sativa*, on a doctor's prescription, refillable only on the doctor's written order.<sup>220</sup> Had the bill passed, it would have become the nation's second anticannabis act, trailing only the pathbreaking Massachusetts law of 1911. And unlike the Massachusetts law, which banned only unauthorized *possession* of cannabis, Blanchard's bill would have banned unprescribed sales too.<sup>221</sup>

Though sponsored by Senator Blanchard, the bill apparently was the work of the three-man Vermont Legislative Committee discussed above. *The Dope Evil* appeared in print barely a month after Blanchard introduced his bill. The model anti-narcotics act that consumed the last quarter of this pamphlet must have circulated earlier, for it supplied the full text of Blanchard's bill.<sup>222</sup> Blanchard

<sup>218</sup> An Act to Regulate the Sale of Opium, Morphine, and Other Narcotic Drugs, ch. 197, 1915 Vt. Acts & Resolves 336.

<sup>219</sup> S. JOURNAL, Biennial Sess. 1912, at 151 (Vt. 1912) (recording bill's introduction); see also S. 94, Biennial Sess. 1912 (Vt. 1912).

<sup>220</sup> Vt. S. 94.

<sup>221</sup> For the text of Blanchard's bill, see *id.* I am grateful to the reference staff of the Vermont State Library, which kindly supplied a copy of the bill. On Blanchard, see THE AMERICAN BAR: CONTEMPORARY LAWYERS OF THE UNITED STATES AND CANADA 674 (James Clark Fifield ed., 1918) (providing details on Blanchard's legal practice); and 2 NEW ENGLAND FAMILIES: GENEALOGICAL AND MEMORIAL 870-72 (William Richard Cutter ed., 1915) (summarizing Blanchard's accomplishments).

<sup>222</sup> As I mentioned in the last paragraph and *supra* notes 211 and 221, Blanchard introduced his bill on November 11, 1912, and Chase registered *The Dope Evil* with the

borrowed all but nine words of his seven-page bill directly from *The Dope Evil*'s script.

Coursing through the legislature, the bill at first won substantial support. On January 14, 1913, after adopting three minor amendments proposed by Blanchard, the Senate passed a substitute bill that still tracked *The Dope Evil*'s model act and sent it to the House.<sup>223</sup> There it ran aground. Seemingly routine amendments failed passage and took the bill down with them.<sup>224</sup> Ten days later a dejected Chase recorded this defeat in the Society's annual report: "We have introduced laws uniform with that of Massachusetts on the regulation of habit-forming drugs, into the Legislatures of Maine, New Hampshire and Vermont. We have thus far obtained success in Maine only."<sup>225</sup>

Indeed, the news in New Hampshire was no better. On January 15, 1913, just as Senator Blanchard's bill reached the Vermont House, New Hampshire Representative Levin J. Chase introduced "[a]n act to regulate the sale of morphine and other hypnotic or narcotic drugs."<sup>226</sup> Chase, a distant cousin of J. Frank Chase, acted under the Watch and Ward Society's unmistakable influence.<sup>227</sup> His bill, like Blanchard's in Vermont, was a near carbon copy of *The Dope Evil*'s model act. The New Hampshire bill added one sentence, dropped one section, and made smaller additions and deletions but otherwise matched the Society's model act word for word, comma for comma. Like the model act, the New Hampshire bill proposed to ban sales and possession of opium, cocaine, *Cannabis indica*, *Cannabis sativa*, and various related drugs.<sup>228</sup>

As in Vermont, the bill failed. Apparently New Hampshirites had no humor for a full-throttle antidrug regime. Though their state had outlawed cocaine in 1909,<sup>229</sup> it retained lawful opium sales till 1917<sup>230</sup> and banned cannabis only in

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Library of Congress Copyright Office on December 16, 1912.

<sup>223</sup> Vt. S. JOURNAL, at 434, 455 (recording introduction of substitute bill and passage). For the text of the January substitute bill, see Vt. S. 94.

<sup>224</sup> Vt. S. JOURNAL, at 848; see also *Official Record of Day: House—Morning*, BURLINGTON FREE PRESS & TIMES, Feb. 20, 1913, at 2.

<sup>225</sup> THIRTY-FIFTH ANNUAL REPORT, *supra* note 195, at 20.

<sup>226</sup> H. JOURNAL, Jan. Sess. 1913, at 105 (N.H. 1913).

<sup>227</sup> My thanks to Gabriel Schlabach, who retrieved the legislative papers documenting Levin J. Chase's failed anti-narcotics bill, and Michael Morillo, who gathered news coverage of Chase and noted his family connection to J. Frank Chase. My thanks as well to Brett Diehl, who consulted various genealogical publications and websites, together with Chase family records, in confirming this family connection. Levin Chase's lineage traces to Aquila (I) Chase (ca. 1580-?) of Chesham, England, whose son Aquila (II) (1618-1670) died in Newbury, Massachusetts. J. Frank Chase's American lineage traces to William Chase (ca. 1605-1659), who first settled in Roxbury, Massachusetts. William and Aquila (II) were most likely either brothers or cousins, making Levin and J. Frank Chase either eighth or ninth cousins.

<sup>228</sup> H.B. 88, 1913 Leg., Jan. Sess. (N.H. 1913).

<sup>229</sup> An Act to Prohibit the Manufacture and Sale of Cocaine and Articles Containing Cocaine, ch. 162, 1909 N.H. Laws 544.

<sup>230</sup> Act of Mar. 8, 1917, ch. 61, 1917 N.H. Laws 518.

1935,<sup>231</sup> lagging all but three other states. Against the state's live-free spirit, Levin Chase's sweeping anti-narcotics bill perhaps stood little chance. Or perhaps Chase, having introduced the bill as a favor to his Boston cousin, was content to watch it die of neglect. At all events the bill died on March 12, when the House Public Health Committee declared it "inexpedient to legislate."<sup>232</sup>

#### VIII. TURNING THE VERMONT TIDE

Back in Vermont it took two more years and three new laws in neighboring jurisdictions to overcome lawmakers' aversion to waging a drug war. In 1914 Vermont's southern and western neighbors and the federal government all enacted tighter anti-narcotics statutes. To the south, the Massachusetts legislature repaired a deficiency in the state's antidrug laws that long irked Chase. In petitioning the legislature for the law change, Chase and two other Watch and Ward Society leaders explained that "the use of habit forming drugs is still extensive" and that a leading cause was "the custom of the refilling of prescriptions on the part of certain drugstores."<sup>233</sup> Elsewhere Chase condemned druggists who refilled prescriptions "as many as four times in one night."<sup>234</sup> The legislature decreed that as of January 1, 1915, prescriptions of opium, morphine, heroin, *Cannabis indica*, and *Cannabis sativa* "shall not again be filled" except on the written or in-person order of the original prescriber.<sup>235</sup>

Likewise in New York, where the Smith Act of 1907 had outlawed cocaine,<sup>236</sup> the Boylan Act of 1914 extended the ban to opium, morphine, and heroin.<sup>237</sup> Effective July 1, 1914, sales of all these drugs required a doctor's prescription, to "be filled but once."<sup>238</sup> And the federal Harrison Act, which gained passage in December 1914 and took effect the next March, followed the lead of Massachusetts, New York, and thirty-one other states in effectively banning both cocaine and opium except by prescription.<sup>239</sup>

<sup>231</sup> An Act Relating to Narcotics, ch. 156, 1935 N.H. Laws 334.

<sup>232</sup> See H. JOURNAL, Jan. Sess. 1913, at 592 (N.H. 1913).

<sup>233</sup> Mass. Legislative Record of S.B. 372 (1914).

<sup>234</sup> THIRTY-SIXTH ANNUAL REPORT, *supra* note 159, at 9. On Chase's agitation about the failure of past laws to ban refills of drugs other than cocaine, see THIRTY-FIFTH ANNUAL REPORT, *supra* note 195, at 15 ("Prescriptions for morphine, opium and heroin, however, can be refilled, unlike those for cocaine.").

<sup>235</sup> An Act to Regulate the Sale of Opium, Morphine, and Other Narcotic Drugs, ch. 694, § 1, 1914 Mass. Acts 704, 704; Mass. Legislative Record of S.B. 372 (1914). Refills of cocaine prescriptions had been banned since 1906. See An Act Relative to the Labelling of Certain Patent or Proprietary Drugs and Foods, ch. 386, § 4, 1906 Mass. Acts 362, 363 ("[The] prescription shall be retained by the druggist filling the same and shall not again be filled.").

<sup>236</sup> Smith Act, ch. 424, 1907 N.Y. Laws 879-.

<sup>237</sup> Boylan Act, ch. 363, § 1, 1914 N.Y. Laws 1120, 1120.

<sup>238</sup> *Id.* at sec. 1, § 246, at 1121.

<sup>239</sup> Harrison Narcotics Tax Act, ch. 1, § 2(b), 38 Stat. 785, 786 (1914) (allowing for prescriptions by a physician, dentist, or veterinary surgeon).

Even before the Harrison Act took effect, Vermonters felt the impact of toughened antidrug regimes in Massachusetts and New York. On January 14, 1915, Representative Arthur E. Hollister introduced the legislation that would become Vermont's first ban on unprescribed sales of opium, morphine, cannabis, and cocaine.<sup>240</sup> Reporting the proposal a few days later, the *St. Albans Weekly Messenger* offered a rationale:

This measure is considered a timely one. With the state of New York enforcing a strict law against traffic in these drugs, it is claimed that a considerable trade in them has sprung up on the western side of the state, the customers being drug fiends of the Empire state who come over to Vermont to lay in a stock.<sup>241</sup>

The *Rutland News* agreed the problem was cross-border addicts from states with tougher statutes:

In Massachusetts and New York there are stringent laws concerning the sale of these habit-forming drugs. The enforcement of these laws in neighboring States has driven a great many "dope fiends" to this State, and every Vermont druggist can attest to a large demand upon the part of non-residents for these deadly drugs.<sup>242</sup>

The solution, the *News* continued, was that "Vermont should have a law equally as stri[n]gent in its regulations. This State desires no unenviable notoriety as being the mecca for those addicted to the opium and morphine habits."<sup>243</sup>

We cannot know for sure that the editors of the *Messenger* and *News* channeled Representative Hollister's motives in proposing his anti-narcotics act. I have found no record of his views. But Hollister hailed from Bennington<sup>244</sup> in the southwest corner of the state, about five miles from New York and about twelve from Massachusetts—a likely destination for cross-border addicts seeking a fix. If this was his worry, the news soon confirmed his fears. On March 2, a day after the Harrison Act took effect and less than two weeks before Hollister's anti-narcotics bill became law, the *Burlington Free Press* ran a story datelined Bennington, March 1. Police had arrested William Cummings of North Adams, Massachusetts, and charged him with the brazen theft of cocaine and several hundred heroin tablets from a Bennington drugstore.<sup>245</sup> "[A]s strict laws have been in effect in the neighboring States of Massachusetts and New York for some time," the *Free Press* explained, "the fiends have been haunting

<sup>240</sup> H. JOURNAL, Biennial Sess. 1915, at 67 (Vt. 1915) (recording introduction of "act to regulate the sale of opium, morphine and other narcotic drugs").

<sup>241</sup> *House Kills Hedgehog Bill*, ST. ALBANS WKLY. MESSENGER (Vt.), Jan. 21, 1915, at 6.

<sup>242</sup> *Vermont Should Have Stringent Drug Law*, MIDDLEBURY REG. (Vt.), Jan. 22, 1915, at 2 (reprinting item from the *Rutland News*).

<sup>243</sup> *Id.*

<sup>244</sup> Vt. H. JOURNAL, at 67.

<sup>245</sup> *This Vermonter Hit Hard by the New Drug Law*, BURLINGTON FREE PRESS, Mar. 2, 1915, at 2.

Bennington and purchasing supplies in expectation that it will be more difficult to secure the narcotics in the future.”<sup>246</sup>

Even before New York banned opiates and Massachusetts toughened its law, the problem of cross-border drug traffic had infected Vermont. “Dope Bought Here?” asked the *St. Albans Daily Messenger* in August 1912, about ten weeks before Senator Blanchard introduced his failed antidrug bill.<sup>247</sup> Montreal police had announced that after “several round-ups of ‘fiends,’” officers at last had identified and arrested the source of their dope.<sup>248</sup> Frank Bailey, nabbed in Montreal after his arrival from St. Albans in far-northern Vermont, was carrying “a quantity of morphine and opium” and a receipt reflecting purchase in St. Albans.<sup>249</sup> Though Bailey’s stateside drug buy was lawful, his Canadian sales were not, as Parliament had banned unprescribed sales of opium in 1908 and of morphine and cocaine in 1911.<sup>250</sup> The Montreal police chief declared his belief that “most of the opium and morphine being peddled around [Montreal’s] red light district was purchased across the line.”<sup>251</sup>

With Vermont serving as a duty-free drugstore for narcotic tourists from three abutting jurisdictions, the state’s lawmakers at last felt compelled to act. On March 10, 1915, less than two months after Representative Hollister laid his proposal before the House, they embraced his act with no recorded opposition or debate.<sup>252</sup> That cross-border drug trafficking supplied the chief motive for the law seems likely. But three other lessons emerge from the history of the Vermont act: Frank Chase and the Watch and Ward Society had extended their considerable influence to Montpelier; the law’s inclusion of *Cannabis indica* and *Cannabis sativa* as banned substances owed little or nothing to whatever racial or ethnic cast those substances may have had; and the welfare of White youth proved a weightier concern.

A brief investigation reveals the Society’s fingerprints on Hollister’s original bill. Hollister cribbed the first five of his bill’s seven sections directly from the Massachusetts anti-narcotics act of June 1914, which for the first time in that

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<sup>246</sup> *Id.*

<sup>247</sup> *Dope Bought Here?*, ST. ALBANS DAILY MESSENGER (Vt.), Aug. 29, 1912, at 1. Months later, a follow-up article suggested Bailey’s Canadian cache also included cocaine. See “*Dope King*” *Is Insane*, ST. ALBANS WKLY. MESSENGER (Vt.), Nov. 7, 1912, at 5.

<sup>248</sup> *Dope Bought Here?*, *supra* note 247, at 1.

<sup>249</sup> *Id.*

<sup>250</sup> See An Act to Prohibit the Importation, Manufacture and Sale of Opium for Other than Medicinal Purposes, S.C. 1908, c 50 (Can.); The Opium and Drug Act, S.C. 1911, c 17 (Can.) (banning sale of morphine and cocaine for other than scientific or medicinal purposes).

<sup>251</sup> *Dope Bought Here?*, *supra* note 247, at 1.

<sup>252</sup> S. JOURNAL, Biennial Sess. 1915, at 366 (Vt. 1915) (recording bill’s passage in concurrence); *Referendum Bill to Third Reading by Big Majority*, BURLINGTON FREE PRESS, Mar. 11, 1915, at 1; *Vail’s Gift Favored*, ST. ALBANS WKLY. MESSENGER (Vt.), Mar. 4, 1915, at 6; *Woman Suffrage Killed in House; Vote Is 129 to 100*, BURLINGTON FREE PRESS, Feb. 25, 1915, at 2 (“The House ordered to a third reading the Hollister bill prohibiting the sale of narcotic drugs, without any discussion.”).

state had made prescriptions for opiates and cannabis nonrefillable.<sup>253</sup> Frank Chase helped engineer that law with a trademark petition to the Massachusetts legislature attaching the text he wanted enacted. At the Watch and Ward Society's annual meeting that April, a speaker referred to the pending bill as "the outcome of the work of this Society for the last year or two."<sup>254</sup> Indeed the 1914 Massachusetts law drew most of its substance and much of its language from the 1912 model act printed in Chase's jointly authored *The Dope Evil*. Hollister's 1915 bill tracked the Massachusetts law word for word in banning sales of all common opiates and *Cannabis indica* and *Cannabis sativa* absent a doctor's nonrefillable prescription.<sup>255</sup> Other parts of his bill took their text straight from the Watch and Ward Society's 1912 model act. All told, Hollister contributed exactly eight words to his six-page bill, while the Watch and Ward Society wrote much of the rest.<sup>256</sup>

Set against clear signs of the Society's influence, no evidence suggests that in banning cannabis in March 1915, Vermonters acted out of racial animus. I have seen no mention of non-Whites selling or using cannabis and no evidence Vermonters linked the drug to any racial group before the new law's passage. Instead the evidence suggests that in pondering anti-narcotics legislation in 1912 and adopting it in 1915, Vermont lawmakers responded to the artful lobbying of the Watch and Ward Society, the fear of cross-border traffic, *and* the desire to guard their youth from euphoric drugs and the ravages they wrought.

Consider the evidence from October 1912, less than three weeks before Senator Blanchard introduced his failed anti-narcotics bill seeking to ban cannabis together with opiates and cocaine. Cautioning that parents addicted to cocaine and opiates were neglecting their offspring, the *Rutland News* urged passage of "legislation that shall make dope-producing less easy in Vermont[.] Nothing could carry more benefit to the children who need the state's care."<sup>257</sup>

Sixteen months later, after Blanchard's bill met defeat and as the next legislative session loomed, the *St. Albans Weekly Messenger* took up the antidrug banner and the theme of protecting youth. Under the heading "The Drug Evil," the editor lamented that it "make[s] the blood boil" to hear accounts of

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<sup>253</sup> An Act to Regulate the Sale of Opium, Morphine, and Other Narcotic Drugs, ch. 694, 1914 Mass. Acts 704.

<sup>254</sup> Rev. Alexander Mann, Rector, Trinity Church, Address at the Thirty-Sixth Annual Meeting of the New England Watch and Ward Society (Apr. 5, 1914), in THIRTY-SIXTH ANNUAL REPORT, *supra* note 159, at 32, 37.

<sup>255</sup> Compare 1914 Mass. Acts at 704, with An Act to Regulate the Sale of Opium, Morphine and Other Narcotic Drugs, ch. 197, 1915 Vt. Acts & Resolves 336.

<sup>256</sup> See 1915 Vt. Acts & Resolves at 336 (providing exception for written prescriptions); 1914 Mass. Acts at 704; Mass. Legislative Record of S.B. 372 (1914). I am grateful to Paul Donovan of the Vermont State Library, who kindly supplied the original text of Hollister's 1915 bill.

<sup>257</sup> Editorial, *Uniform State Laws*, ST. ALBANS WKLY. MESSENGER (Vt.), Oct. 24, 1912, at 9.



men and women who make their living selling cocaine and heroin to boys and girls and adults. . . . There is no crime that can compare with the deliberate starting of a boy or a girl in the practice of taking drugs, for to do so is to make criminals and murderers.<sup>258</sup>

The solution was to “bring down upon the heads of these spoilers of human life a quick and severe punishment.”<sup>259</sup> The editor said nothing of the race or ethnicity of sellers or users but laid blame on one group in particular: prescribing physicians. “The doctor has a heavy responsibility resting on his shoulders. It is easy to quiet pain at the start by the use of drugs; it is almost impossible to stop the craving once the habit is formed.”<sup>260</sup>

As Representative Hollister’s anti-narcotics bill neared final passage in mid-March 1915, the Vermont press pointed more directly to *White people’s* role in the drug trade. “One of the appalling facts in connection with the drug traffic,” wrote the *Messenger*, “is that our immigrants are not drug users. The drug fiend is essentially American, as in China he is essentially Chinese.”<sup>261</sup> An “American” in the demographic jargon of 1915 was a native-born White. Not only were addicts White, they were largely respectable working people: “[S]ubstantially half the habitues who sought [doctors] for relief [from addiction] were persons who pursued professions or arts and one-eighth were housewives or women engaged in occupations that called for technical skill and long and careful training.”<sup>262</sup> And physicians, pharmacists, and nurses “are frequently trapped” by addiction.<sup>263</sup>

Three months later, reflecting on passage of the federal Harrison Act, the *Brattleboro Reformer* returned to the theme of guarding vulnerable youth. “The framers of the Harrison law aimed more than all else to save the next generation by putting beyond the reach of the boys and girls of to-day the drugs that will injure them.”<sup>264</sup> The Vermont anti-narcotics law, passed two weeks after the Harrison Act took effect, likely shared in this motive to save youth. The specter of marijuana-crazed Mexicans seems far more remote, for very little marijuana had caught the eye of the New England press, and very few Mexicans were in view.

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<sup>258</sup> *The Drug Evil*, ST. ALBANS WKLY. MESSENGER (Vt.), Feb. 19, 1914, at 1.

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> *Uncle Sam After Drug Users*, ST. ALBANS WKLY. MESSENGER (Vt.), Mar. 4, 1915, at 12.

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> Editorial, *Results of the Harrison Law*, ST. ALBANS WKLY. MESSENGER (Vt.), June 3, 1915, at 9. I am grateful to my research assistant Alisa Philo, who painstakingly reconstructed the course of anticannabis lawmaking in Vermont.

## IX. REEFER MADNESS

There is sadly no space in this Essay to analyze the course of lawmaking in the remaining three of the nation's first six anticannabis states—Indiana, Wyoming, and California. For those accounts, I must refer the reader to the book that gave rise to this Essay.<sup>265</sup> The stories of these states' earliest anticannabis laws play out in different ways but converge on one point: no sound evidence (in Indiana or Wyoming)—or only a single prominent exhibit of uncertain influence (in California)—suggests fear of pot-crazed Mexicans moved lawmakers to act.<sup>266</sup> Instead fear of cannabis use among White people (in California) and especially White youth (in Indiana) figured more prominently.<sup>267</sup> As Adam Rathge has shown, concern for the welfare of youth continued to drive anticannabis lawmaking in cities and states scattered across the country into the 1920s and 1930s.<sup>268</sup>

For now, let us skip over these other stories and return to our starting point, the era of Harry Anslinger and the Marihuana Tax Act of 1937. There we find one last historical artifact spotlighting how fear for youthful morals—not of run-amok Mexicans—helped fuel anticannabis lawmaking. In 1939, two years after the Tax Act committed the federal government to warring against the cannabis trade, G&H Productions of Beverly Hills released the feature film *Tell Your Children*. Now better known as *Reefer Madness*, a source of midnight guffaws for toked-up collegians, *Tell Your Children* offered the nation's parents a portent of pot's perils to their youth.<sup>269</sup>

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<sup>265</sup> GEORGE FISHER, EUPHORIA TABOO: THE MORAL ROOTS AND RACIAL MYTHS OF AMERICA'S WAR ON DRUGS (forthcoming 2021) (on file with author).

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> Rathge, *supra* note 18, at 203-05, 209, 221-28, 231, 240-43, 245, 250-52, 255, 261-63 (discussing such concerns in various states).

<sup>269</sup> See Samantha Brandfon & Brian Perron, *Movies*, in 3 ENCYCLOPEDIA OF DRUGS, ALCOHOL & ADDICTIVE BEHAVIOR 83, 86 (Pamela Korsmeyer & Henry R. Kranzler eds., 3d ed. 2009) (supplying basic production information). Though Brandfon and Perron trace the film to 1936, it likely was not released until 1939. A scene in the film shows a movie marquee featuring "Terry Rooney in 'Any Old Love.'" Classic Hollywood Movies, *Reefer Madness (Tell Your Children) (1936)*, YOUTUBE, at 25:25 (June 23, 2020), <https://www.youtube.com/watch?app=desktop&v=pv1w2uAsIAo>. The marquee was a prop made for the film *Something to Sing About*, shot in mid-1937. And an item from the June 15, 1938, edition of *Variety* reported that producer George Hirliman "is readying 'Tell Your Children' for an early start." *Hammons Still Mulling GN Takeover*, VARIETY, June 15, 1938, at 2. The March 25, 1939 edition of *Boxoffice* said the film was completed some "four months ago." *Demand Exceeds Supply for "Sex," Sensational Films*, BOXOFFICE, Mar. 25, 1939, at 68, 68. Broad searches of U.S. newspapers show no other trace of the film until late July 1939, when it appeared in widely separated cities almost in tandem. See *Mission*, ALBUQUERQUE J., July 28, 1939, at 12 (announcing showing of "Tell Your Children"); "Outside These Walls" Coming to Paramount, LOGANSPOUT PHAROS-TRIB. (Ind.), July 29, 1939, at 7 (same). I thank Kevin Rothenberg for his ingenious sleuthing in dating the film's release. A screenplay is online at *Reefer Madness (1936)*, DRUG POL'Y CENT. (Feb. 24, 2009, 4:34 PM),

The film's scrolling prologue warned of "the frightful toll of the new drug menace which is destroying the youth of America."<sup>270</sup> Among the drug's ominous effects was "the loss of all power to resist physical emotions."<sup>271</sup> Then came "acts of shocking violence," calling to mind the murderous rampages Anslinger conjured in his 1937 "Assassin of Youth."<sup>272</sup> "[T]he dread *Marihuana*," the prologue concluded, "may be reaching forth next for your son or daughter . . . or *yours* . . . or *YOURS!*"<sup>273</sup>

What followed was a marijuana melodrama set in Anytown, USA, where the scrub-faced youth of Lakeside High shuttled from malt shop to tennis courts to backyard courtships over cookies and cocoa. Boys and girls fell into impromptu readings of *Romeo and Juliet* and snuck kisses behind mom's back. Then a criminal duo lured the youth to a nearby flat and hooked them on hand-rolled reefers. The first symptom was giggling, even in class. Then came sex and murder, suicide, and insanity. At last two children lay dead; two others had blood on their hands. Assessing the carnage, the high school principal delivered the film's moral peroration: "We must work untiringly," he intoned, "so that our children are obliged to learn the truth. Because it is only through knowledge that we can safely protect them. Failing this, the next tragedy may be that of your daughter. Or your son. Or yours, or yours, or *YOURS.*"<sup>274</sup>

*Tell Your Children* committed many sins. Overacting was one, overwriting another, sermonizing a third. More gravely, the film lied in charging rampant murder and insanity against marijuana's moral ledger. Marijuana is likelier to soothe than incite, likelier to tranquilize than derange.<sup>275</sup> Allegations of social separation and sexual licentiousness had better footing in fact. They are after all the source of the moral unease that greets recreational intoxicants. A tuned-out toker is a fugitive from the very real trials and travails of modern existence. And

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[http://drugpolicycentral.com/bot/pg/propaganda/reefer\\_madness\\_movie\\_script.htm](http://drugpolicycentral.com/bot/pg/propaganda/reefer_madness_movie_script.htm)  
[<https://perma.cc/ZP5H-R4BM>].

<sup>270</sup> *Reefer Madness (Tell Your Children)*, *supra* note 269, at 1:34.

<sup>271</sup> *Id.* at 2:07.

<sup>272</sup> *Id.* at 2:10.

<sup>273</sup> *Id.* at 2:46.

<sup>274</sup> *Id.* at 1:05:23.

<sup>275</sup> As this Essay goes to press in 2021, there is no scientific consensus that marijuana causes mental illness. Dr. Ziva Cooper, a coauthor of a widely cited 2017 report by a committee of the National Academy of Sciences, Engineering, and Medicine, explained that the report documented only an association between marijuana use and schizophrenia, not causation: "We do not yet have the supporting evidence to state the direction of this association," she said, meaning the association might result from a tendency toward cannabis use among persons suffering from or predisposed to schizophrenia. Aaron E. Carroll, *The Reasonable Way to View Marijuana's Risks*, N.Y. TIMES (Jan. 14, 2019), <https://www.nytimes.com/2019/01/14/upshot/the-reasonable-way-to-view-marijuanas-risks.html> (citing COMM. ON HEALTH EFFECTS OF MARIJUANA, BD. ON POPULATION HEALTH, NAT'L ACADS. SCIS., ENG'G & MED. & PUB. HEALTH PRAC., THE HEALTH EFFECTS OF CANNABIS AND CANNABINOIDS (2017), [https://www.ncbi.nlm.nih.gov/books/NBK423845/pdf/Bookshelf\\_NBK423845.pdf](https://www.ncbi.nlm.nih.gov/books/NBK423845/pdf/Bookshelf_NBK423845.pdf) [<https://perma.cc/J74N-VWW7>]).

sex is both template and metaphor for the reasonless pleasure that defines this class of substances. A horny toker has abandoned the empire of reason and surrendered to base appetites. It is this aspect of *Tell Your Children*, as Figure 5 suggests, that promoters thought worth flogging. Marijuana “[s]ows the seeds of lust in youthful brains,” a movie promotion proclaimed, and “[t]akes the brakes off young morals . . .” Or as another promo put it, “Inhaling Desire, Exhaling Lust.”<sup>276</sup>

Figure 5. *Tell Your Children* Advertisement.<sup>277</sup>

**PARAMOUNT**

**TODAY and THURSDAY**

Passions  
Unleashed by  
"Innocent Fun"

**MARIHUANA!**

Sows the seeds of lust in youthful brains . . . Takes the brakes off young morals . . . Demands a terrible price for a thrill.

**"Tell Your Children"**

The scourge of the nation's youth . . . take a puff . . . then have a fling! Wild parties . . . weird happenings while in a sub-conscious state.

**ADULTS ONLY**

**25c** All Seats

<sup>276</sup> Civic, LINN CNTY. BUDGET-GAZETTE (Iowa), Aug. 30, 1939, at 4.

<sup>277</sup> "Tell Your Children" (Advertisement), LOGANSPOUT PHAROS-TRIB., Aug. 2, 1939, at 6.

Yet there's one sin *Tell Your Children* did not commit: the film did not engage in race-baiting. The evil duo of "Mae Coleman" and "Jack Perry," who plied the youth of Lakeside High, were White—indeed, Mae looked blond. The "boss" who supplied their wares and delivered their marching orders likewise was White. All the child addicts were White. In fact it seems everyone onscreen was White. Only the malt shop piano player, with his olive skin and dark hair and habit of sneaking out between sets for a toke, roused ethnic suspicion. But his name, Hot-Fingers Pirelli, suggests Italian heritage, not Mexican. And though his demonic laugh hinted at evil intent, he played no part in the drama and never spoke. Rather it seems he represented the dread drug itself. That drug, we learn, sometimes was brought "into the country," though we are not told from where.<sup>278</sup> As the drug—so we are taught—"grows wild in almost every state in the Union," nothing suggested a Mexican provenance.<sup>279</sup>

That G&H Productions allied with the Federal Bureau of Narcotics in making *Tell Your Children* seems doubtful. At least one source, citing no authority, claims the Bureau produced the film, while other sources with seeming expertise attribute the film vaguely to religious backers.<sup>280</sup> In 1944 the Federal Trade Commission announced the film's producer had agreed to stop claiming—falsely—"that the Bureau [of Narcotics] cooperated in producing it."<sup>281</sup> Still, the film marched in cadence with Anslinger's "Assassin of Youth." The school principal recalled the case of "a young boy. Under the influence of the drug, he killed his entire family with an axe."<sup>282</sup> And the film concluded precisely where "Assassin of Youth" began: a young girl, tormented by the guilt of having hooked her friends on pot, hurled herself through a window to her death, her body sprawled on the sidewalk below.

Such deaths never haunted the lawmakers who wrote the nation's earliest anticannabis laws. But concern for youthful morals—for the clarity of their minds and purity of their bodies—weighed heavily on their thoughts. *Tell Your Children* was guilty of melodrama, but as a reflection of the motives that drove state lawmakers, it told a good measure of truth.

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<sup>278</sup> *Reefer Madness (Tell Your Children)*, *supra* note 269, at 4:27.

<sup>279</sup> *Id.* at 27:42.

<sup>280</sup> DUKE & GROSS, *supra* note 71, at 285 ("Reefer Madness . . . [was] produced by the Federal Bureau of Narcotics."); Kevin Murphy & Dan Studney, *Reefer Madness History*, REEFER MADNESS MOVIE, <http://web.archive.org/web/20060328163318/http://www.reefer-madness-movie.com/history.html> (last visited Apr. 13, 2021) ("Reefer Madness . . . was financed by a small church group . . .").

<sup>281</sup> On the FTC's 1944 order, see *Reefer Pic Be-Fogs Public; FTC's Edict*, VARIETY, Jan. 19, 1944, at 11, 11. My thanks to Kevin Rothenberg for finding this article.

<sup>282</sup> *Reefer Madness (Tell Your Children)*, *supra* note 269, at 28:41.