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The Hunt Institute for Botanical Documentation, a research division of Carnegie Mellon University, specializes in the history of botany and all aspects of plant science and serves the international scientific community through research and documentation. To this end, the Institute acquires and maintains authoritative collections of books, plant images, manuscripts, portraits and data files, and provides publications and other modes of information service. The Institute meets the reference needs of botanists, biologists, historians, conservationists, librarians, bibliographers and the public at large, especially those concerned with any aspect of the North American flora.

Hunt Institute was dedicated in 1961 as the Rachel McMasters Miller Hunt Botanical Library, an international center for bibliographical research and service in the interests of botany and horticulture, as well as a center for the study of all aspects of the history of the plant sciences. By 1971 the Library's activities had so diversified that the name was changed to Hunt Institute for Botanical Documentation. Growth in collections and research projects led to the establishment of four programmatic departments: Archives, Art, Bibliography and the Library.

*Done*



CENTRO INTERNACIONAL DE INVESTIGACIONES PARA EL DESARROLLO  
INTERNATIONAL DEVELOPMENT RESEARCH CENTRE  
CENTRE DE RECHERCHES POUR LE DEVELOPPEMENT INTERNATIONAL

SEP 24 1974  
OFICINA REGIONAL  
AMERICA LATINA  
Apartado Aéreo 53016  
Bogotá, D. E., Colombia  
Cables: RECENTRE

September 20, 1974

Dr. David Rogers  
Department of Environmental  
Population & Organismic Biology  
University of Colorado  
Boulder, Colorado

Dear David:

Your own writings on the origin of cassava use have led to my developing an interest in this subject. By a remarkable coincidence my next door neighbour is Dr. G. Reichel-Dolmatoff who is also particularly interested in this subject.

Dr. Reichel-Dolmatoff and his wife have just concluded a new dig near to Cartagena in a site that dates between 2,000 and 3,000 years B.C. I believe that this is an important dig for several reasons amongst them being the fact that they have some fairly firm indications of a settled non-maize agriculture. The type of tools found would serve a root crop culture and the possibility of manioc obviously comes to mind. We discussed this before Dr. Reichel started his dig and he has gone to some trouble to prepare rather crude soil flotation material with a view to trying to see whether any cassava pollen could be found. The problem now is to find who could look at this material to possibly identify the pollen.

I don't know whether this is something that interests you or whether with all your many other commitments you would be able to look at it. The only literature references to pollen studies which readily come to mind are some of the work at Trivandrum in India and some papers by Derek Jennings. Jennings is now on a sabbatical at IITA and might be prepared to look at material but I have some doubts about India since following the departure of Magoon there is no senior geneticist working on cassava at the Trivandrum Station.

Dr. Reichel has also pointed out to me that the map in your monograph, on page 113, which shows the distribution of *M. carthaginenses* fits very closely with the distribution of the human cultures along the North Coast of Colombia and Venezuela which he and others have studied and where he believes manioc

Dr. David Rogers  
September 20, 1974  
Page 2

played an important role. He has asked me just what is the significance of *M. carthaginensis* today and whether there is any evidence of it being cultivated 'per se'.

If you can spare a moment to giving me your thoughts on these two points I would be most appreciative.

Kindest regards.

Yours sincerely,



Barry L. Nestel  
Associate Director  
Agriculture, Food and  
Nutrition Sciences

yil.

*David J. Rogers*

UNIVERSITY OF COLORADO  
Department of Biology  
Boulder, Colorado 80302  
(303) 492-8598

January 3, 1975

Dr. Barry L. Nestel  
Associate Director  
Agriculture, Food and Nutrition Sciences  
International Development Research Centre  
P. O. Box 8500  
Ottawa, Canada

Dear Barry:

On 20 September 1974 you wrote with the interesting information that Dr. Reichel-Dolmatoff is working on some digs in Cartagena and that he and his wife are extracting pollen samples from the digs. I personally am no palynologist and could not identify any large numbers of pollens. We do have a young man on campus, Dr. Harvey Nichols, who is such an individual. His address is The Institute of Arctic and Alpine Research, on this campus. He, however, is a specialist in Northern Canadian and other arctic pollens and probably would not be knowledgeable of tropical types. However, he might have some idea of who could identify the pollens.

You further asked what is the significance of M. carthaginenses today. The significance of this species is simply that it is well adapted to the very arid zones immediately adjacent to the Caribbean Sea. It is an extremely poisonous species with some enlarged roots. It might have possibly been a source of food in drought times, but it does not constitute any relation of specific importance to the cultigen M. esculenta.

I hope that these points are interesting to you and I am very sorry for the great delay in answering your letter of the 20th. You must know that we have just been awarded a contract from the new International Board for Plant Genetic Resources (IBPGR) to forge a global information system for genetic resources. This keeps us very busy and we have had very little time for pursuit of Manihot studies, although I trust that we will get back into it when I can hire a young man to assist in this purpose.

With best wishes for the New Year,

Sincerely,

David J. Rogers  
Professor of Biology

DJR:hfr

January 3, 1975

Mr. R. C. Hartland  
South Pacific College  
of Tropical Agriculture  
P. O. Box 890  
Western Samoa

Dear Mr. Hartland:

Please forgive me for not responding to your letter of 11 June 1974 any sooner. I am sorry if this has inconvenienced you in any way. You may recall that you wrote a letter of inquiry concerning some aspects of my work on the classification of Manihot esculenta. The paper that you read from, Proceedings of the Second International Symposium on Tropical Root & Tuber Crops, was an incomplete summary of our work. We have in the meantime completed a monograph of Manihot esculenta, a copy of which is being sent to you in a separate package.

Many of the answers to the questions you posed in your letter will be answered in that monograph. As a further explanation, however, I will say that the characters and the character states implied in that study were those that would be generally available across a large number of samples, and we had to exclude some important data simply because the observations were not sufficiently available from something over one thousand samples.

We are continuing our development of both computer systems for classification as well as their application to the studies of cassava. We are doing this in cooperation with several institutions, one of which is C.I.A.T. Our endeavor not only includes further applications of our computer systems to Manihot classification, but further investigations into the improvement of the crop. At the moment C.I.A.T. has not adopted our set of characteristics, primarily because their endeavors are not in systematic analysis. It is my hope that through our cooperative endeavors we can expand the list of characteristics and get a generally agreeable set of standard definitions that can be used by all workers.

Once again, I apologize for the lateness of this letter. I trust that the information contained in this letter and in the above mentioned paper that I am sending will be of use to you.

Sincerely yours,

David J. Rogers  
Professor of Biology

DJR:hf



SOUTH PACIFIC  
REGIONAL COLLEGE OF TROPICAL AGRICULTURE  
ALAFUA . APIA . WESTERN SAMOA

Principal: Dr F.S.Wendt

Telephone 677  
P.O. Box 890

Our Ref:  
Your Ref:

11 June 1974

Dr H.S. Fleming & D.J. Rogers,  
Taximetrics Laboratory,  
University of Colorado,  
Boulder,  
Colorado, 80302,  
UNITED STATE OF AMERICA.

Dear Sirs,

I was interested in your paper "A Classification of *Marihot esculenta* using the information carrying content of a character as a measure of its classificatory rank". (Proceedings of the Second International Symposium on Tropical Root & Tuber Crops, 1970), however I find one or two points in your list of characters and character states are confusing :

viz.

- a) K4 - no provision is made for a predominance of green in stem color.
- b) K5 - 'Storey length', in botanical terms I am unable to identify exactly what is meant.
- c) K8 - overlapping ranges often give rise to inaccuracy in field scoring.
- d) K10 - These classifications are confusing as pandurate(1) describes the nature of sinuosity whereas 2,3 refer to the degree of sinuosity.

I would be most grateful if you could expand on the above points. Certainly there is great scope in compute character correlations in plant taxonomy as indeed there must be in mycology, bacteriology etc. and I wish you good progress in your work.

In Samoa cassava is not grown systematically and the origin of the few cultivars present is unknown. I thought it would be an interesting exercise to use your 'coded list of cultivar states' in categorizing each cultivar. Has C.I.A.T. adopted your information assembly method to cover their collection?

Yours sincerely,

(R.C. Hartland)

LECTURER IN CROP PROTECTION

January 3, 1975

Mr. Thomas B. Croat  
Curator of Phanerogams  
Missouri Botanical Garden  
2315 Tower Grove Avenue  
St. Louis, Missouri 63110

Dear Tom:

I am sorry not to have responded to your letter of 2nd July, requesting my identification of 20 to 30 sheets of Manihot. If you send them along now, we should be able to take care of it within the next couple or three months.

Sincerely,

David J. Rogers  
Professor of Biology

DJR:hf

Missouri  
Botanical  
Garden



July 2, 1974

Dr. David Rogers  
Department of Botany  
University of Colorado  
Boulder, Colorado

Dear Dave:

We have here 20-30 sheets of Manihot which we would like to have you identify if you would be able to. Nearly all of them have duplicates which you could keep, if you want them. Please let us know if you are willing to do this, and we will send them off to you right away.

Sincerely yours,

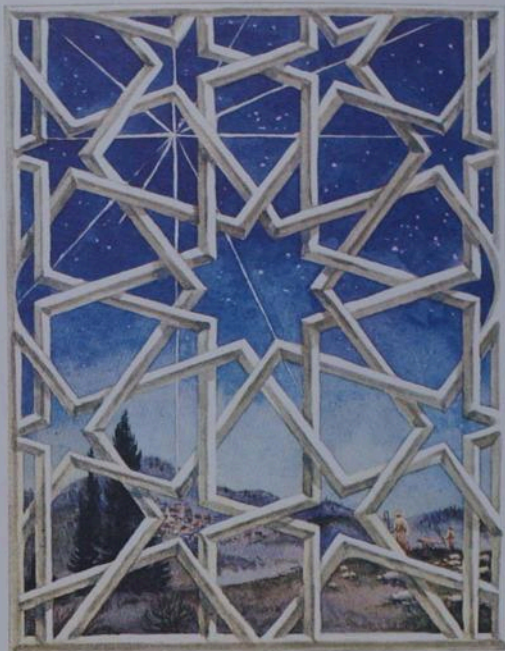
A handwritten signature in blue ink that reads "Tom".

Thomas B. Croat  
Curator of Phanerogams

TBC/pb

2315 Tower Grove Avenue  
St. Louis, Missouri 63110  
Tel: 314 865-0440

Misc - Conseq



世 Peace on Earth  
界 Paix sur la Terre  
和 Paz en la Tierra  
平 Мир на Земле

*Wishing you a Blessed Christmas*

*Betty Zipp*

BioSciences Information Service  
of Biological Abstracts

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11/13

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		<u>Initial</u>
April	_____	_____
Abbott	_____	_____
Bailey	_____	_____
Hersh	_____	_____
Hanley	_____	_____
Rogers, Dave	1	DR
Rogers, Connie	_____	_____
Louis	_____	_____
McArthur	_____	_____
von Borstell	_____	_____
Jose Saldana	_____	_____
Secretary	_____	_____
<u>Slater</u>	✓	_____

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Fiscal/Contract

Organization

Project

Proposal

COMMENTS:

put cc in  
DGR personal  
copy

Any ideas, Chuck?

9 November 1974

Professor Rogers,

I don't know if you will remember me. I contacted you last year (around this time) with regard to a program in Biological Modeling at Colorado. Subsequent to our exchange, I spoke with Gil Hersh about a feasible course of entry into the academic stream at the University. Shortly thereafter, I received word that I had been granted a full tuition fellowship (plus stipend) to pursue graduate study in Operations Research at Case Western Reserve University. I accepted the fellowship and have since completed 1 1/2 semesters in the MS program. (Recall that I already have an MBA in Operations Research from Columbia University.) As I will receive the MS in May, I must again face the prospect of selecting an appropriate Ph.D. program.

My interests have remained quite broad (I am taking courses in Physiological and Biophysical modeling within the Department of Biomedical Engineering.), and thus I would still like very much to consider Colorado as a prospect for completion of the Ph.D. degree. Is this a tenable posture? If so, what is my best mode of entry into the work which is being done at the Taximetrics Laboratory? If it is through the Business School, can you give me some idea of the degree requirements -- in view of the fact that I have both an MBA and MS, as well as three years of solid work experience -- which I would face?

I am anxious to hear from you again.

Sincerely,

Barry Richmond

Barry Richmond

Dave - per Howard

Joan & Judy - Please help  
me decide where this goes.

TO: *Dave*

September 27, 1974

FROM: R.C. Johnson

We have introduced a new course, Ch.E. 501, Environmental Modeling. It is being taught for the first time this fall, with class meetings on Tuesdays from 3-5, in EC CR 1-7 (or in the Ch.E. conference room OT 2-1, when available). A second meeting time of 3-4 on Thursdays will be replaced by individual conferences with class members.

While bearing a graduate chemical engineering course number, the plan is to keep this course open to students at any level and in any discipline, making individual assignments to match the students' interests and levels. In particular, I wanted to attract a cross section of international students as part of our program to identify and/or create courses for this purpose. This fall's class is small, only about 6 or 7 students, mostly senior and graduate engineers, with one pre-med international student; thus I didn't get the clientele I wanted, but what I did get looks good, so we'll proceed from there.

I do not intend to teach much in this course. I have set up an extensive library for the students. I hope to introduce them to many people in the community who have much to say about our total environment. Projects of independent-study type will form the bulk of the work expected.

I am writing you to ask whether you would be available to meet with this class on a Tuesday afternoon from 3-5? I will call soon to discuss your interest and availability, topic, and timing. Most of these students are good, or budding, mathematical modelers--most of the people I have contacted, can help bring the broad picture of the total human environment into perspective.

*Would you, Chuck, Jay, & Gil be  
willing to come en masse to a  
class to discuss info. retrieval sys.*

RCJ/tr

*and sys. analyses of food, ag, &  
econ.?*

*Curt*

*P.S. Open dates, as of this moment, are Oct 15,*

*and Nov 12, 19, 26.*

OCT 22 1974

HAFNER PRESS  
A DIVISION OF MACMILLAN PUBLISHING CO., INC.  
866 Third Avenue, New York, N. Y. 10022

October 17, 1974

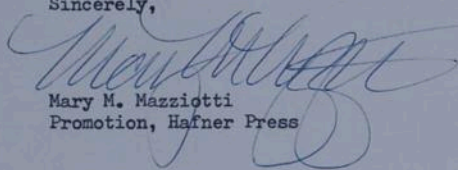
Mr. David J. Rogers  
Department of Environmental, Organismic,  
and Population Biology  
University of Colorado  
Boulder, Colorado 80302

Dear Mr. Rogers:

As I mentioned in our telephone conversation of 10/17, Hafner Press is publishing the MANUAL OF TROPICAL AND SUBTROPICAL FRUITS by Wilson Popenoe. We would very much like to use a quotation from your review of the book. I am enclosing a card with the quotation for you to sign and return to us at your earliest convenience. I am also sending you, under separate cover, a copy of the book. I hope that you enjoy it.

Thank you very much.

Sincerely,



Mary M. Mazziotti  
Promotion, Hafner Press

October 23, 1974

Career Services Center  
Colorado State University  
Fort Collins, Colorado 80521

To Whom it May Concern:

I write to support the candidacy of Mrs. Geneva Metcalf. I knew Mrs. Metcalf as our administrative assistant in a scientific endeavor which employed the talents of ten scientists and several assorted staff positions. She was with us from 1967 to 1969, when the work was completed. I have known her as a friend since that time.

In all her activities, Mrs. Metcalf was clearly one of the best that I have had the opportunity to work with in nearly 25 years of scientific endeavor. She managed all the office work, coordinated the staff activities, and was the general manager for all the functions of writing, publication, and communication. Her work was always done with a flair, on time, and accurately. Her background experience in many other endeavors made her particularly suitable for the work.

It is difficult to pick a single outstanding trait--she is very intelligent, patient, and above all, understanding of human needs. Working as she did with a group of quite sensitive scientists, she always seemed to understand the situation, no matter how unpleasant or difficult the scientists might be. Her quiet humor was a great advantage in overcoming otherwise difficult personal relations.

We (my wife and I) have had the opportunity since her employment to get to know her much better as a friend. She has persevered through a rather difficult period, and has come out a better person than when she was first exposed. Her warmth and genuine humanity clearly show through, and we admire her for her return to school, at the same time taking care of her youngest child, and getting a very high academic rating.

Her chosen area, to instruct parents and preparents in the best methods of child care, from birth to age five or six, is one of critical importance today, and one where her talents can be of maximum benefit to those whom she wishes to serve. I believe that she would work best in situations with a relatively small number of individuals, because she comes through best on a one-to-one basis. Her capabilities in mental health, in behavior, and adjustment should give her the capacity to do an outstanding job.

I cannot recommend Mrs. Metcalf too highly. She is outstanding.

Sincerely yours,

David J. Rogers  
Professor of Biology

DJR:js

FLORA OF CEYLON  
Botanical Garden,  
PERADENIYA  
SRI LANKA (CEYLON)

16th July, 1974.

Dr. David P. Rogers,  
Dept. of Biology,  
University of Colorado,  
Boulder, Colorado,  
U. S. A.

Dear Dr. Rogers,

Did you receive from me a specimen of Manihot  
which I sent a couple of months ago?

Now that I have returned to Ceylon in the  
hope of completing the Euphorbiaceae, I need a name  
for the plant sent you as it is commonly cultivated  
(for shade)

If you need further information about the  
plant including photographs, let me know. If you  
request photographs please let me know the collection  
number of the collection which I sent as I may be  
able to photograph the same tree if it's the same  
one from Doluwa.

Yours sincerely,

*Louis C. Wheeler*

LCW:cf

L. C. Wheeler.

Aug. 23, 1974

Dear Mr. Lowenstein

Your letter of July 24 has been forwarded to me here. I have no substantiation for the statement in the article I wrote on the addictive nature of cocaine, other than what might have been "contemporary wisdom" at the time the paper was presented. and while from a legal standpoint, the statement looks very positive, it should be read in context with the remaining part of the sentence which indicates very little knowledge at all about most aspects of use of the leaf, which was the basis for the article.

Don't take me out of context and use me as an "authority", which I am not. I have no real judgement of the document you enclosed.

David J. Rogers  
Prof. of Biology

FEDERAL PUBLIC DEFENDER

DISTRICT OF NEW JERSEY  
976 BROAD STREET  
NEWARK, NEW JERSEY 07101  
(201) 645-6347

VN 2/29

ROGER A. LOWENSTEIN  
FEDERAL PUBLIC DEFENDER

July 24, 1974

Dr. David J. Rogers, Consultant  
Crop Ecology & Genetic Resources Unit  
Plant Production & Protection Division  
Food & Agricultural Organization (FAO)  
Via delle Terme di Caracalla  
Rome, Italy 00100

Dear Dr. Rogers:

The enclosed brief was written by me in support of the first major test case in federal court which challenges the classification of cocaine as a narcotic drug. As you will see on page 8, I refer to your article in the Natural History Magazine.

Early in your article you say that "we do know that an extract from the leaves of coca . . . , cocaine, can be a habit-forming narcotic when used intemperately, but we do not know that the leaf itself, when used as the Indians use it, is habit forming."

Since the scientific authorities which I have come across indicate that cocaine is neither physiologically addicting nor narcotic, I am curious as to your source of information. Since so little research has been done concerning cocaine until recently, perhaps your contemporary opinion is somewhat different.

I would appreciate hearing from you concerning this matter, as well as to benefit from your impression of the enclosed brief.

Thank you for your cooperation.

Very truly yours,

*Roger A. Lowenstein*  
ROGER A. LOWENSTEIN

RAL:JS  
Encl.

PLANT PRODUCTION	
R'd:	13 AUG 1974
REFERRED TO:	Initials
<i>Dr. Rogers</i>	

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. 577-73
	:	
LAWRENCE BROOKINS	:	
	:	
-----	:	
	:	
UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. 74-3
	:	
ANDRES GUECHE	:	

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BRIEF AND APPENDIX IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS AND/OR FOR AN EVIDENTIARY  
HEARING

---

ROGER A. LOWENSTEIN  
Federal Public Defender  
343 United States Courthouse  
Newark, New Jersey 07101  
(201)645-3034

ATTORNEY FOR DEFENDANTS

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## I. INTRODUCTION AND STATEMENT OF FACTS

Lawrence Brookins and Andres Gueche are accused in separate indictments of selling small amounts of cocaine to a government agent. Federal statute classifies cocaine as a "narcotic" drug, alongside heroin and the other opiates. 21 U.S.C. 802(16). Because cocaine has been misclassified as a "narcotic" drug, the defendants face a possible fifteen years in jail, and a fine of not more than \$25,000, or both. 21 U.S.C. 841 (6) (1) (A). A person accused of distributing a non-narcotic drug subjects himself to five years in prison, a fine of not more than \$15,000, or both. 21 U.S.C. 841(6) (1) (B).

Cocaine is not a narcotic drug. No reputable physician in the country would testify that cocaine is a narcotic drug. Nor does cocaine carry with it the potential for social harm which is inherent in the true narcotic drug. The erroneous classification of cocaine results from generations of ignorance concerning the drug, myths concerning the drug, often with blatantly racist undertones, which only recently have been destroyed by accurate pharmacological and sociological data.

This motion is in three sections. The first section is simply a description of the drug cocaine,

drawing upon the information provided in the annexed affidavits. The second section is an attempt to explain how cocaine became over-criminalized, placing the federal statute in its historical context. The third section is the argument of law, demonstrating that the arbitrary misclassification of cocaine as a narcotic drug invidiously discriminates against the defendants and violates their constitutional rights.

II. IN TERMS OF THE DRUG'S IMPACT UPON  
THE INDIVIDUAL AND UPON SOCIETY,  
COCAINE CANNOT RATIONALLY BE  
CLASSIFIED IN THE SAME CATEGORY AS  
THE OPIATES.

The myths and misconceptions which led to the severe criminalization of cocaine will be discussed in the following section. It is enough to say, however, at this point that the drug was never fully discussed in any legislative hearing by scientists or clinicians with first hand information concerning the drug. Once the myths are cleared away, the expert opinion as exemplified in the attached affidavits is strikingly uniform. Typical is the following statement from Dr. Robert G. Newman,

Assistant Commissioner for Addiction Programs for the  
City of New York:

Cocaine is quite definitely not a narcotic. It is a central nervous system stimulant, similar to the amphetamines, although the amphetamines appear to have a greater potential for harm than does cocaine.

Cocaine does not cause physical dependence, even when used repeatedly and in large doses. Withdrawal symptoms do not result when a heavy user abruptly discontinues cocaine intake. Physical dependence and the related abstinence syndrome are key characteristics of addiction, and always result from the frequent repetitive use of narcotics.

Cocaine use tends to be intermittent, in sharp contrast to the use of heroin and other narcotics which is characteristically constant and recurrent. Compulsive and uncontrolled use of cocaine is extremely rare.

I have seen no reliable evidence of a causal relationship between cocaine use and criminal activity.

There is a very low incidence of medical complications attendant to the use of cocaine, again in sharp contrast to the use of narcotics which commonly causes numerous such complications.

Dr. Newman's experience with cocaine users has been first hand. Of the several thousand drug users he has had contact with in a clinical situation, several

hundred have been cocaine users.

Dr. Paul Lowinger has also had contact with approximately one hundred cocaine users in a clinical setting. Dr. Lowinger is also on the faculty of the Medical School at Wayne State University. Comparing cocaine use to heroin use, he says:

Cocaine use is characteristically related to social contact and availability. This periodic, infrequent typical use is in sharp contrast to heroin use which creates a steady physiological need.

In my experience, there is no correlation between cocaine use and criminal and violent behavior. Heroin use in our society, on the other hand, almost invariably involves the addict in criminal activity necessary to obtain more heroin.

Dr. James J. Thorpe is a psychiatrist who had been employed by the United States Public Service Hospital for Drug Addicts in Lexington, Kentucky, and has since been in private practice in Alexandria, Virginia. He says:

In my twenty five years as a psychiatrist I have observed several thousand cocaine users in a clinical setting. During that period of time I have never seen any people with a "cocaine habit." Cocaine is not a narcotic and there is no evidence that it is physically addicting. It is commonly used intermittently and rarely injected. There are no physical withdrawal symptoms upon termination of use. Cocaine use causes no physical or mental damage;

although psychotic states sometimes are attributed to cocaine, actually they appear to be a result of a predisposition of the user rather than from the use of the drug itself.

I have seen no relationship between cocaine use and criminal activity or violent behavior. I know of no case in which cocaine has been the cause of death.

Dr. Norman Zinberg is on the faculty at the Harvard Medical School. He has done extensive research concerning cocaine, both in this country and in Colombia, South America, where the coca plant is widely used by the Indians who live on the slopes of the Andes Mountains.

Dr. Zinberg says:

It is estimated that 90 percent of the Andean Indians use cocaine daily, sometimes in relatively pure form and sometimes in the form of coca leaves to the extent of 6-8 grams per day. I interviewed a number of those people who had moved to coastal cities. None of them reported any significant discomfort upon giving up cocaine when they moved to town. They talked about it much more in the same vein that many Americans I talked to in Colombia felt about not being able to get hold of an American newspaper. It was sorely missed but it was not catastrophic.

It is my further impression that not only are the significant deleterious effects of cocaine enormously exaggerated but so are the positive effects. The effects of the

drug last for a short time, and the high is variable among different people. Like a marijuana high, it is probable that many people have to learn to appreciate a cocaine high, so subtle is the effect. It has often been erroneously compared with the amphetamines which are stronger, harsher drugs whose chemical effects are profoundly conscious to the user. Cocaine, on the other hand, seems to merely accentuate everyday feelings of clarity and wakefulness.

I know of no verifiable deaths attributable to cocaine. In my opinion, cocaine is a relatively minor drug of abuse and is not comparable to narcotic drugs, such as heroin for example.

Dr. Richard Kunnes is a Consultant with the United States Drug Enforcement Administration and has recently testified on behalf of the Bureau of Narcotics and Dangerous Drugs in April of 1973 at Senate hearings on drug abuse and juvenile delinquency. He is a former faculty member at the University of Michigan School of Medicine and is the author of a book entitled, The American Heroin Empire. He says:

Based on my research in the field of drugs and drug abuse and my direct clinical observations over the past four years of approximately 500 cocaine users and thousands of persons using heroin, amphetamines, barbiturates, and other drugs, I can unequivocally state cocaine is not a narcotic.

It is a euphoria producing, non-narcotic central nervous system stimulant. As normally used in our society, cocaine is a safe, non-addicting chemical. As with all drugs, legal and illegal, it has a potential for abuse when used in extreme quantities; but cocaine's abuse potential is no greater than that of aspirin. Its use does not lead to tolerance; the user is not required to increase his intake of the drug to obtain the same effects. Except in rare cases of extreme abuse, the cocaine user is able to stop taking the drug at any time without suffering physical withdrawal symptoms. Moreover, cocaine itself does not create psychological dependency; any problems of habituation are not due to cocaine itself, but to the user's state of mind.

All the attached affidavits reflect a similar conviction that cocaine has been arbitrarily misclassified, both as to its physiological impact upon the body of the user and the sociological impact of the drug's use. All the affidavits commend themselves to a careful reading. They are the product of experts in the field who have had first-hand experience in observing users of the drug, as opposed to the myth and misinformation which has resulted in the statute presently under attack.

III. THE OVERCRIMINALIZATION OF COCAINE  
IS THE RESULT OF YEARS OF MYTH AND  
TRAGIC MISINFORMATION

Cocaine is produced from the leaves of the coca bush, primarily from a erythroxyton coca, a species of flowering plant indigenous to the Western Hemisphere. Rogers, Divine Leaves of the Incas, 72 Nat. Hist. 33 (Jan. 1963). Coca leaf chewing by indians in the Andean Mountains area of South America is a practice which dates back for thousands of years. The leaves of the coca plant are chewed not only as a stimulant but also as an antidote for hunger and fatigue which results from working at high altitudes. It has been estimated that 90% of the Indians in the Andes use coca. R. Lingeman, Drugs From A to Z: a Dictionary 43 (1969); see also Zinberg affidavit.

Cocaine is the psychoactive ingredient in the coca leaf, and was successfully isolated by European laboratory technicians in the later part of the 19th century. In 1883, a Bavarian military surgeon named Aschenbrandt claimed a remarkable effect of cocaine on soldiers, enabling them to better endure hunger, strain, fatigue and heavy burdens. In 1880, writers in both the Louisville Medical News and in the Detroit Therapeutic Gazette describe the use of coca in the successful treatment of morphine addiction. The Louisville

Medical News said in its editorial comment "one feels like trying coca with or without the opium habit. A harmless remedy for the blues is imperial." Holmstedt, "Historical Survey", in the Ethnopharmacologic Search for Psychoactive Drugs (N.I.M.H. 1967) at 17.

In 1884 Sigmund Freud wrote to his fiance that he had been experimenting with "a magical drug". After dazzling success in treatment of a case of gastric catarrh, he continues "if it goes well I will write an essay on it and I expect it will win its place in therapeutics by the side of morphium, and superior to it . . . . I take very small doses of it regularly against depression and against indigestion, and with a most brilliant success". E. Jones, I The Life and Work of Sigmund Freud, Chap. VI, pp. 1-3 (New York 1956). Freud wrote several articles on the effects of cocaine and the potential of the drug for treatment of depression, gastric catarrh, and various other ailments. In one article he described in detail the effects of small doses of cocaine on his own depression. These included "exhilaration and lasting euphoria, which in no way differs from the normal euphoria of the healthy person . . . . you perceive an increase of self control and possess more vitality and capacity for work. . . . in other words, you are simply normal, and it is soon hard to believe that you are under the influence of any drug. . . .

long intensive medical and physical work is performed without any fatigue. . . .this result is enjoyed without any of the unpleasant after-effects that follow exhilaration brought about by alcohol. . . .absolutely no craving for the use of cocaine appears after the first, or even after repeated taking of the drug; one feels rather a certain curious aversion to it." Jones, supra, Vol. 1 pp. 82-83.

Although Freud and others eventually became disillusioned with cocaine as a general panacea, one of Freud's contemporaries, Carl Koller, discovered that cocaine was of considerable value as a local anesthetic. Cocaine is still used as a local anesthetic and is manufactured by three pharmaceutical companies in this country, although it has been largely supplanted in medical usage by synthetic products such as novocaine. The central actions of cocaine as a stimulant and euphoriant are responsible for the drug's great popularity and, eventually, its inclusion in the Harrison Narcotics Act of 1914.

In the 19th Century in Europe, various drinks made from coca leaves were introduced, notably Mariani's wine, a red wine or elixir which became extremely popular. "Among his clients were Gounod, Massenet, and Pope Leo XIII, who for years was supported in his ascetic retirement by Mariani's product." W. G. Mortimer, Peru History of Coca, The Divine Plant of the Incas, (New York 1901) at 179. A product similar to Mariani's wine was introduced in the United States in 1885 by

a resident of Atlanta, Georgia named John Styth Pemberton. The next year he added yet another coca product, a syrup that he called Coca-Cola. The fascinating story of Coca-Cola is recounted in E. G. Kahn, The Big Drink; The Story of Coca-Cola (New York 1960). From time to time Coca-Cola was advertised as "a remarkable therapeutic agent" and as a "sovereign remedy" for a long list of ailments, including melancholy and insomnia.

Coca-Cola was by no means the only product sold which contained cocaine. "In the United States the exhilarating properties of cocaine made it a favorite ingredient of medicine, soda pop, wines, and so on. The Parke Davis Company, an exceptionally enthusiastic producer of cocaine, even sold coca-leaf cigarettes and coca cheroots to accompany their other products, which provided cocaine in a variety of media and routes such as a liqueurlike alcohol mixture called Cocacordial, tablets, hypodermic injections, ointments and sprays." Musto, The American Disease (1973). According to Musto, the neurologist William Hammond, former Surgeon General of the Army, was a great advocate of cocaine use and took a wine glass of it with each meal. Hammond was proud to announce cocaine as the official remedy of the Hay Fever Association. Hammond, Remarks on Coca, Trans. Med. Soc. Virginia, 213-26 (1887), cited by Musto, supra, at 7.

The widespread use of cocaine in popular medicines, tonics, and soda was perhaps encouraged by the growing movement

in the early 20th Century towards prohibition of alcohol consumption. Furthermore, cocaine was cheap and readily available. As Musto describes the situation, "since cocaine was by no means limited to physicians' prescriptions, the 'lower classes', particularly in 'dry' states, found they could get a jolt which took the place of hard liquor. Bars began putting a pinch of cocaine in a shot of whiskey and cocaine was peddled door to door." Id. at 8.

One further reason for cocaine's popularity is the use of the drug by employers who found that their laborers could work more efficiently and for longer hours with little food if only a small amount of cocaine were provided to them from time to time. As Musto points out, "this value of cocaine had been first discovered by the Spanish in 16th-century Peru and was put to work among the native slaves who mined silver." Id. at 8. Cocaine was cheap, readily available and had a stimulating and euphoric effect. It allowed people to work long hours under the hot sun without needing food. It was inevitable that cocaine use would be associated with the lower classes, and in the South this meant the black population. This was also the population which instilled the greatest fears in the white middle classes; thus it was inevitable as well that cocaine use would be associated not only with Blacks and the lower classes but with crime and antisocial conduct.

Dr. Musto describes the unfortunate racist mythology which accompanied the popularity of cocaine:

"The association of cocaine with the Southern Negro became a cliché a decade or more before the Harrison Act. See W. Scheppegrell, "The Abuse and Dangers of Cocaine," Med. News 73: 417-22 (1898), esp. p. 421. In June 1900 the JAMA (34:1637) editorially reported that "the Negroes in some parts of the South are reported as being addicted to a new form of vice -that of 'cocaine sniffing' or the 'coke habit'. In February 1901 the JAMA (36:330) called attention again to this new vice. See also in the New York Tribune, 21 June 1903, an extended statement by Col. J. W. Watson of Georgia on how cocaine sniffing 'threatens to depopulate the Southern States of their colored population.' Atlanta seemed particularly affected, and legal action was urged against the sale "of a soda fountain drink manufactured in Atlanta and known as Coca-Cola." The Colonel was satisfied that 'many of the horrible crimes committed in the Southern States by the colored people can be traced directly to the cocaine habit,' and that the habit was also present among many whites. Examination of the Atlanta Constitution (27 Dec. 1914) also reveals a frequently claimed association between cocaine use and the Negro; by 1914, the Atlanta police chief was blaming '70% of crimes' on drug use." Id. at 254.

The popular literature of the day was filled with racist myths concerning cocaine use. A member of the Pennsylvania State Pharmacy Board, Dr. Christopher Koch, was quoted in the Literary Digest of March 28, 1914, as follows: "most of the attacks upon white women of the South are the direct result of a cocaine-crazed negro brain". Id. at 687. An article in the February 8, 1914 New York Times quoted a Dr. E. H. Williams who portrayed a lurid and fearful picture of "the negro cocaine fiends" who terrorized the South.

In an article in the popular Hampton's Magazine of May, 1914, entitled Rx Cocaine by Cleveland Moffatt, the following comments are made concerning crimes of violence:

"Such crimes require a certain kind of courage that cocaine gives; it may be a fictitious temporary courage, but it is very real while it lasts. It is a matter of common knowledge in police circles that yegg men, pickpockets, sneak thieves, and sometimes safe-blowers are habitual users of cocaine, nerving themselves up with a 'sniff of the flake' before attempting their coups.

Even greater crimes than these may be laid at the door of cocaine. Only a few weeks ago the slayer of little Marie Smith at Asbury Park, New Jersey, confessed himself a victim of the cocaine habit, and no less a person than the assistant chief of the Chicago police force told me of an unsolved murder mystery (the Cleghorn case, January, 1910,) where suspicion pointed to cocaine.

"It was a Whitechapel case in our red light district," he said, "head missing, body mutilated, evidently the work of a maniac and some of us thought, a dope fiend. Judging by the skillful dissection we came to the conclusion that the murderer was a medical student or a doctor."

In writing of the evils of the cocaine habit, it is impossible to avoid mention of one that is of grave importance; I mean the stimulation of negroes, who are as a race largely addicted to this drug, to a certain class of crimes.

"Most attacks upon white women of the South," declares Christopher Koch, "are the direct result of a coke-crazed negro brain." Id. at 604.

Also in 1914, Dr. Harvey W. Wiley, the federal official most responsible for the ultimate passage of the Food and Drug Act in 1906, asserted in Good Housekeeping Magazine that "negroes. . .fall ready victims to this drug and its exhilarating power. Old colored men, presumably selling roots, barks, and

herbs, concealed the drug beneath their wares, and sell it in white envelopes or twisted dirty newspaper packages." 58 Good Housekeeping, 393, 394 (Mar. 1914).

1914 was also the year of the passage of the Harrison Narcotics Act, the first federal legislation which criminalized cocaine. It is not surprising that at the Congressional Hearings immediately prior to the passage of the Act, the popular racist mythology concerning cocaine carried over to the government witnesses and members of Congress. The role of Dr. Hamilton Wright in this process cannot be underestimated. Wright had been the American delegate to the International Opium Commission held at Shanghai in 1909. This was the first international conference, at the instigation of the American Government, which discussed the possible means by which international opium traffic could be controlled, and with particular regard to the importation of opium into China. Wright wanted Congress to live up to its international obligations by passing a strong federal narcotics law which would govern domestic drug traffic, as an example of American initiative in the area. It is for this reason that the primary thrust behind the passage of a federal narcotic statute came from the State Department, and not some other government agency concerned with internal affairs. In transmitting Dr. Wright's report to Congress following the Commission

meeting at Shanghai, Secretary of State Knox included the following paragraph concerning cocaine:

"A new drug problem appeared about twenty years ago, growing out of the discovery and surgical use of cocaine, which has proved to be a creator of criminals and of unusual forms of violence and has been a potent incentive in driving the primitive classes of the community all over the country to abnormal crimes." 58 Senate Documents 377 (61st. Congress 2nd Sess. 1909-1910).

The report which was written by Dr. Wright went one step further than the letter of transmittal by the Secretary of State. In it Dr. Wright says:

"It is the unanimous opinion of every state and municipal body having to do with the enforcement of state and municipal antipoison acts that the misuse of cocaine is a direct incentive to crime, that it is perhaps of all factors a singular one in augmenting the criminal ranks. Quite apart from the criminal classes it converts the useful, orderly citizen who has become a habitue into a dangerous character. It wrecks him individually and jeopardizes the position of all who depend on him, and in the end drives him to crime. The illicit sale of the drug is the most difficult to cope with, and the habitual use of it temporarily raises the power of a criminal to a point where in resisting arrest there is no hesitation to murder. It is more appalling in its effects than any other habit-forming drug used in the United States.

In the report of the President's Homes Commission, 1909, Senate document No. 644, this question of the misuse of cocaine has been partially discussed and brought to the attention of the Government. But there is a phase of it that has not received due attention; that is the encouragement of the use of the drug among the humbler ranks of the negro population of the South. It has been stated on very high authority that the use of cocaine

by the negroes of the South is one of the most elusive and troublesome questions which confront the enforcement of the law in most of the Southern States; and that it seems almost impossible to get at the facts when prosecutions are undertaken. Even after the police feel certain that they have facts on which to proceed they find it next to impossible to prove them by reliable witnesses. The cocaine seller and buyer are equally anxious to conceal their transaction; and, as the vendors of the drug usually put it up in small amounts, it is an easy matter to distribute it without detection. It would seem on first sight that much of what is known about the abuse of cocaine by the negroes of the South is based on gossip or irresponsible statements. But this is largely because of the difficulty experienced in tracing the sources of the drug.

It is certain, however, that the use of cocaine among the lower order of working negroes is quite common. This class of negroes is not willing, as a rule, to go to much trouble or send to any distance for anything, and, for this reason, where he is known to have become debauched by cocaine, it is certain that the drug has been brought directly to him from New York and other Northern States where it is manufactured. It is current knowledge throughout the South that on many public works, levee and railroad construction, and in other working camps where large numbers of negroes congregate, cocaine is handled among them by some method largely obscure. Undoubtedly many irresponsible local druggists are to blame, but the main supply of the drug for a particular construction camp is procured from wholesale dealers and jobbers in another State, and distributed to the working gangs by peddlers, commissary clerks, and even contractors. There is an enormous profit by this method of handling the drug. It can be bought for from \$2.25 to \$2.75 an ounce, and it is the custom of the panders to this vice to dispense it in 1 or 2 grain packages, for which they charge 25 cents. When divided into small packages, it can be carried without detection and sold from the pocket of a vagrant negro man or woman who passes among

the construction camps and other places where negroes are employed.

. . . . It has been authoritatively stated that cocaine is often the direct incentive to the crime of rape by the negroes of the South and other sections of the country. . . .

. . . . A new drug problem appeared about twenty years ago, and had grown with a rapidity that marked the avidity of our criminal classes in acquiring a new vice; latterly it had exhibited a strong tendency to spread, corrupt, and ruin many who belonged to the higher ranks of society. This new vice, the cocaine vice, the most serious that has to be dealt with, has proved to be a creator of criminals and unusual forms of violence, and it has been a potent incentive in driving the humbler negroes all over the country to abnormal crimes. Thoughtful persons in every walk of life, not the least important of whom are the importers and manufacturers of these habit-forming drugs, had come to the conclusion that the time had arrived for a strict federal control of the importation, manufacture, and distribution of such drugs in "interstate commerce." Wright, Report on the International Opium Commission, 58 Senate Documents 377 (61st. Congress 2nd. Sess. 1909-1910) pp. 48-51.

It was clear what Wright's strategy was with Congress.

In order to get effective federal narcotics legislation, he and other narcotics legislation lobbyists had to overcome the fears of Southern legislators that this was a local matter which the States should handle as an aspect of State's rights. Raising the specter of the "cocaine-crazed southern negro", enabled the lobbyists to gain southern white support for federal narcotics control. As Dr. Musto relates:

"thus the problem of cocaine proceeded from an association of negroes in 1900, when a massive repression and disfranchisement were under way in the South, to a convenient

explanation for crime waves, and eventually Northerners used it as an argument against Southern fear of infringement of States' rights. For example, Wright wrote the Editor of the Louisville Journal Courier that 'a strong editorial from you on the abuse of cocaine in the South would do a great deal of good [but] do not quote me or the Department of State'. . . .in each instance there were ulterior motives to magnify the problem of cocaine among negroes, and it was to almost no one's personal interest to minimize or portray it objectively. As a result, by 1910 it was not difficult to get legislation almost totally prohibiting the drug." Musto, supra at 255.

The Congressional Hearings before the House Ways and Means Committee were predictably riddled with racist preconceptions and popular myths concerning cocaine. Dr. Hamilton Wright was, of course, the star witness. He repeated the statements which he had earlier made regarding cocaine in his report to Congress following the Shanghai Commission Meetings. In response to a question by Congressman Clark, Wright said:

"The conditions in this country today are just as bad as were found in China when the great opium evil was discovered in 1799; and although a large amount of the use of the morphine is confined to the criminal classes and the lower orders of society, it is creeping into the higher circles of society. The cocaine habit is greatly increasing in the South. I have most reliable information that the crime of rape in the South is largely due to the cocaine habit. I have it from trial judges and from all sorts of responsible people. It is the common practice of contractors in some of those States to have cocaine distributed among the lower order of their workers, with the idea that it stimulates

them, and that they can get more work out of them. I have most reliable evidence that the crime of rape has largely been caused by the use of cocaine among the Negroes in the South in the last ten or fifteen years."

Importation and Use of Opium, Hearings before the House Committee on Ways and Means, 14 Dec. 1910, 61st Cong. 3rd Sess. (G.P.O. 1910), pp. 82-83.

Dr. Christopher Koch, the president of the Philadelphia Association of Retail Druggists, and the vice-president of the Pennsylvania State Pharmacy Examining Board, followed his friend Dr. Wright. He testified that "a great many of the crimes that are committed in Pennsylvania (and from information received from other states, a great many of the crimes committed there as well) are traced directly to cocaine." Id. at p. 72. When questioned by Congressman Longworth as follows, "is not that true more as to the colored population?", Dr. Koch replied:

"Yes Sir; the colored population in Philadelphia is full of it, or was. We have cleaned it up. The colored people seem to have weakness for it. It is a very seductive drug, and it produces extense(sic) exhilaration. Persons under the influence of it believe they are millionaires. They have an exaggerated ego. They imagine they can lift this building, if they want to, or can do anything they want to. They have no regard for right or wrong. It produces a kind of temporary insanity. They would just as leave rape a woman as anything else and a great many of the southern rape cases have been traced to cocaine." Id.

Dr. Charles West was a witness on behalf of the National Wholesale Druggists Association. When the hearings on the Harrison Act were resumed on January 11, Dr. West was questioned by representative Francis Burton Harrison. "What about this material they call Coca-Cola?", he asked Dr. West, "Isn't it a habit-forming drink?". Dr. West testified that it was a habit-forming drink and that perhaps Pepsi-Cola was in the same class. Representative Harrison then stated that coca leaves should be included in the Bill. The following colloquy occurred at the conclusion of Dr. West's testimony:

"Representative Harrison. Is it not desirable in your opinion, to include these habit-forming drugs with others against which this bill is aimed, Coca-Cola and Pepsi-Cola and all those things that are sold to Negroes all over the South." Mr. West. I never thought of Coca-Cola being included in this bill, but if Coca-Cola is made from coca leaves, it would be another article we would have to keep track of, and we would have to report on."

Importation and Use of Opium, Hearings before the House Committee on Ways and Means, 11 Jan. 1911, 61st Cong., 3rd Sess. (G.P.O. 1911).

While the passage of the Harrison Narcotics Act had to wait for the Democratic majority of the Wilson Administration in 1914, the mythology which was the underlying motivating force in the heavy criminalization of cocaine was never challenged in a subsequent legislative hearing. In 1915,

an "Act to Regulate the Practice of Pharmacy and the Sale of Poison in the Consular District of the United States in China" was passed. That Act prohibited the sale of cocaine, opium and morphine to "habitual users" of the drugs. An exception written into that statute permits any doctor to furnish "in good faith for any habitual user of narcotic drugs who is under his professional care, such substances as he may deem necessary for their treatment. . .". (38 Stat. 817, 820). The wording of the statute indicates how far back the erroneous linking of cocaine and opium dates.

In 1922, cocaine was defined as a narcotic drug in an amendment to the Narcotic Drugs Export and Import Act, which banned the importation of ~~co~~aine absolutely.(42 Stat. 596).  
There was no Congressional hearing/<sup>or</sup>finding regarding cocaine. The Act concerned itself primarily with the opiates and with the loopholes in the Harrison Act which allowed for reshipment without regulation of drugs manufactured in this country. The House Report which accompanies the 1922 Act states that the amendment is needed in order to correct the easy

. . .violation of our own import laws and evasion of the Harrison Act, for the protection of residents of the United States; and it has also resulted in affecting China's purchasing power to the serious injury of our trade in China, and tending to place China politically under foreign control. The injury to China's purchasing power is brought about by the consumption lessening the productive power

of the nation and causing wasteful expenditures which comprised the profit of the Japanese and other foreign importers upon the resale of our manufactures of narcotic drugs. (House Report No. 852, 67th Cong., 2nd Sess., p. 6, March 27, 1922)

The comment on the productive power of the Chinese being adversely affected by the consumption of narcotic drugs once again reflects the common prejudice and misclassification of cocaine in the same category as the opiates. The chewing of coca leaves is a common phenomenon in Latin American countries in order to, if anything, increase productivity of agricultural workers. (See Zinberg affidavit)

Nothing has occurred in the intervening years since 1922 to correct the misclassification of cocaine as a narcotic drug. The 1970 statute which is the basis of the present prosecutions divides drugs into various categories according to quality. (See next section of brief.) But the definition of narcotic and the corresponding penalty section cuts across the various schedules and places a possible 15 year jail sentence upon all narcotic drug offenses, regardless of schedule. There were no hearings or scientific evidence presented to justify this result concerning cocaine. It was simply assumed from past misinformation that the drug was a narcotic and presented a physiological and social danger corresponding to that evil presented by heroin addiction.

IV. THE PENALTY STRUCTURE FOR  
DISTRIBUTION OF COCAINE VIOLATES  
THE DEFENDANTS' DUE PROCESS  
RIGHTS; THE INDICTMENTS MUST BE  
DISMISSED.

Defendants are charged with distribution of a small quantity of cocaine, purportedly in violation of 21 U.S.C. §841(a), and threatened with punishment under 21 U.S.C. §841(b) (1) (A). Because the application of this section to the defendants involves a criminal classification without a sufficient rational basis, a conviction under these statutes would deprive the defendants of liberty without due process of law, in violation of the Fifth Amendment to the United States Constitution. The indictments must therefore be dismissed.

The Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §§801-966, classifies certain "controlled substances" into five "schedules." These substances are grouped according to their potential for abuse, their medical usefulness, and the consequences of their use or abuse. 21 U.S.C. §812(b). Cocaine is a Schedule II substance. 21 U.S.C. §812(c), Schedule II (a) (4). Placement of a substance on one schedule or

another determines the regulatory scheme applicable to that substance, see, e.g., 21 U.S.C. §§823-827, 842-843. Criminal sanctions, however, sometimes vary within schedules and across schedule lines. Section 841(b) (1) divides Schedule II substances into two groups for criminal purposes: those which are "narcotic drugs," 21 U.S.C. §841(b) (1) (A) and those which are not, 21 U.S.C. §841(b) (1) (B). The maximum penalty for violations involving the former is imprisonment for 15 years and a fine of \$25,000; for the latter the maximum penalty is far less: imprisonment for 5 years and a \$15,000 fine. The term "narcotic drug," as defined in 21 U.S.C. §802(16) includes opium and the opiates, coca leaves, and their derivatives, compounds and chemical analogs. With the sole exception of cocaine, all these substances are true narcotics. See Appendix. The only Schedule II substance which is not a "narcotic drug" within the meaning of §802(16) is injectable methamphetamine (methedrine or "speed"). Methedrine, like cocaine, is a central nervous system stimulant. See Appendix. Other stimulants besides cocaine and methedrine are listed in Schedule III,

21 U.S.C. §812(c), Schedule III(a).

- A. Classification Of Cocaine With The Opiates As A "Narcotic Drug" Is Arbitrary And Irrational. The "Facts" Relied On By Congress Are Demonstrably Incorrect, And No Other Rationale Supports The Classification. Conviction Under This Provision Would Deprive The Defendants Of Their Liberty Without Due Process Of Law.

When Congress first classified cocaine as a "narcotic" for criminal purposes, it relied on certain supposed "facts" and attitudes commonly believed in that era. This original classification has been carried forward to the present law without critical examination or review, and no presently credible factual justification can be advanced to support it. The defendants do not challenge this classification simply because heroin and cocaine are grouped together for penalty purposes.\* Certainly, Congress may decree that different or even

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\* Thus, this case differs markedly from the many cases attacking the very criminalization of marijuana based on its inaccurate classification as a "narcotic." See, e.g., English v. Virginia Probation & Parole Board, 481 F.2d 188 (4th Cir., 1973); United States v. Kiffer, 477 F.2d 349 (2d Cir.), cert. denied, 414 U.S. 831 (1973); Rener v.

(Fn. continued)

dissimilar crimes may be punished alike. But the classification must be rational and not arbitrary. Where the reasonableness of the classification cannot be supported in fact, as here, the statute must fall. United States v. Smaldone, 484 F.2d 311, 320 (10th Cir. 1973); cf. Police Dept. of Chicago v. Mosley 408 U.S. 92 (1972).

The Appendix to this brief show that cocaine is utterly unlike the true narcotics or opiates. It is not physically addictive, not ordinarily medically dangerous to the user, and produces a sensation of energy and alertness rather than lethargy and inattention. Cocaine, unlike heroin, has an accepted medical use as an anaesthetic. It is not a drug of mass use or of frequent use; rather, it is a luxury and specialty drug of recreational choice for a small number of persons. Most important, because there are no painful withdrawal symptoms, cocaine users are not compelled to

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(Fn. continued from preceding page)

Beto, 447 F.2d 20 (5th Cir. 1971), cert. denied, 405 U.S. 1051 (1972). At least two state supreme courts, however, have invalidated marijuana statutes in part because of its irrational classification as a "narcotic." People v. Sinclair, 387 Mich. 91, 194 N.W.2d 878 (1972); People v. McCabe, 49 Ill.2d 338, 275 N.E.2d 407 (1971).

commit crimes to obtain money for the purchase of perpetual and ever-increasing doses. The heroin addict, on the other hand, can become a one-man crime wave due to the physiological demands of the drug. None of these facts was considered by Congress when it defined cocaine as a "narcotic" under the Harrison Act, nor did they come to the fore in the enactment of the criminal provisions of the 1970 Act.

When Congress legislates in reliance on supposed facts which subsequently are revealed to be incorrect, the law which necessarily depends on those facts is unconstitutional. In Turner v. United States, 396 U.S. 398, 418-19 (1970), the Supreme Court reversed a conviction for possession of cocaine under the law superseded by the one in question here. "Based on our own examination of the facts now before us," the Court said, the Congressional determination that all cocaine could be presumed imported, on which the convictions depended, was "more-likely-than-not" incorrect. Id. at 419.

Even if the necessary, underlying facts are true when the legislation was passed, but subsequently become

untrue, the conviction must be overturned. In Leary v. United States, 395 U.S. 6 (1969), the Court reversed a conviction for transportation of illegally imported marijuana. In Leary, Congress had legislated a presumption of knowledge of importation based on "facts" once valid, but no longer true at the time of trial. The Court declared:

"[We] have considered more recent information, in order both to obtain a broader general background and to ascertain whether the intervening years have witnessed significant changes which might bear upon the presumption's validity.

[Fn.] A statute based upon a legislative declaration of facts is subject to constitutional attack on the ground that the facts no longer exist; in ruling upon such a challenge a court must, of course, be free to re-examine the factual declarations.

Id. at 38, n. 68. See also, Abie State Bank v. Bryan, 282 U.S. 765, 772 (1931); cf. Brown v. Board of Education, 347 U.S. 483, 494-95 (1954). As shown by the legislative history discussed above, Congressional error in the original and unchanged penal classification of cocaine was not limited to the realm of science. Another element was racial myth and fear founded on exaggerated or untrue accounts of violent crimes committed against white women by

drug-crazed black men. Although racially neutral on its face, the law was partly designed for discriminatory application, condemned by the Fifth Amendment. Cf. Loving v. Virginia, 388 U.S. 1 (1967); Yick Wo v. Hopkins, 118 U.S. 356 (1886).\* Even where the law might otherwise be valid, a demonstrably invidious legislative intent will militate against the law's validity. See United States Dept. of Agriculture v. Moreno, 413 U.S. 528 (1973). Racially-motivated differences in penalty provisions cannot be tolerated. Cf. Furman v. Georgia, 408 U.S. 238, 242-57 (Douglas, J., concurring, 364-66 (Marshall, J., concurring) (1972).

Although Congress carefully, thoroughly and commendably reorganized the controlled substances law in 1970, it did not reexamine or reform the criminal classification of cocaine at that time or at any other time. No present rationale supports the classification

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\* While the Fifth Amendment contains no equal protection clause, it affords the same protection against racially discriminatory Congressional action by its due process guarantee that the Fourteenth Amendment secures against the States. Schneider v. Rusk, 377 U.S. 163, 168 (1964); Bolling v. Sharpe, 347 U.S. 497 (1954).

of the cocaine user with the hard core narcotic addict. Because the classification of cocaine as a "narcotic drug" is arbitrary, and discriminates against the defendants invidiously and without a rational basis in fact, the defendants' indictment based upon the classification must be dismissed.

- B. The Imposition Of A Harsher Penalty For Offenses Involving Cocaine Than For Those Involving Other Stimulants Is Arbitrary And Irrational. Conviction Under 21 U.S.C. §841(a) and (b) (1) (A) Would Deprive The Defendants Of Their Liberty Without Due Process Of Law.

Cocaine is a central nervous system stimulant, more similar in characteristics and effects to the amphetamines than to any other controlled substances. Criminal offenses involving cocaine, however, are more severely punished than those involving the other stimulants. Under 21 U.S.C. §841(b) (1) (B) certain offenses involving the controlled central nervous system stimulants are punishable by "imprisonment of not more than 5 years, a fine of not more than \$15,000, or both." By virtue of 21 U.S.C. §841(b) (1) (A), however, the same offenses when involving cocaine are penalized far more harshly: by a maximum penalty of 15 years' imprisonment and a \$25,000 fine.

It is axiomatic that no different punishment may be imposed on one offender than is statutorily available for imposition on all similarly situated. See, e.g., Hodgson v. Vermont, 168 U.S. 262, 273 (1897); Moore v.

Missouri, 159 U.S. 673, 678 (1895); Ex parte Converse, 137 U.S. 624 (1891); Barbier v. Connolly, 113 U.S. 27, 31 (1885). This guarantee of equal protection of the laws is an essential element of the due process law guaranteed to the defendants by the Fifth Amendment to the United States Constitution. Schneider v. Rusk, 377 U.S. 163, 168 (1964); Bolling v. Sharpe, 347 U.S. 497 (1954).

In Skinner v. Oklahoma, 316 U.S. 535 (1942), the Supreme Court invalidated a penalty imposed on some offenders but not on others essentially alike. Under the Oklahoma statute, third offenders, including chicken-thieves, such as the appellants, were liable to be sterilized, but similarly situated embezzlers were explicitly exempted. The Court invalidated the differential penalty.

In Skinner, the Court relied heavily on the threat to the fundamental right to procreate in its analysis of the validity of the challenged statutory classification. In the instant case, it is also a fundamental right that is threatened: liberty of the person

from physical penal coercion for a possible 10 years in excess of the period faced by members of the favored class, amphetamine abusers. The Supreme Court has recognized that this right is not merely "fundamental," it is primary: "Although the Court has not assumed to define liberty, that term is not confined to mere freedom from bodily restraint." Bolling v. Sharpe, 347 U.S. 497, 499 (1954). Furthermore, where the liberty involved in the criminal process is involved, classifications not otherwise "suspect" are nevertheless treated as such. See, e.g., Griffin v. Illinois, 351 U.S. 12 (1956) (criminal process; poverty); In re Gault, 387 U.S. 1 (1967) (criminal process; age). For these reasons, this discriminatory classification of cocaine and its distributors compared to other controlled stimulants and their distributors must be carefully scrutinized: "There are limits to the extent to which the presumption of constitutionality can be pressed, especially where the liberty of the person is concerned." Skinner v. Oklahoma, supra at 544 (Stone, C.F., concurring).

The discrimination cannot survive such scrutiny. There is no compelling justification for treating alleged

cocaine distributors differently from alleged amphetamine distributors. Cocaine is, if anything, less dangerous to the user and to his or her community. Its use is necessarily less widespread, because it is legitimately manufactured in far lesser quantities and so is not often diverted to illicit use from legitimate channels, as are the amphetamines. It is no more psychologically addictive than methedrine and has no greater a potential for abuse. The deterrent effect, if any, of an additional 10 year penalty cannot be justified.

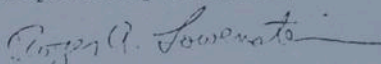
By placing cocaine in Schedule II rather than in Schedule I, Congress has recognized its analogy with methedrine (and difference from heroin) in important respects. By penalizing methedrine offenses together with those involving Schedule III substances, Congress recognized that control of all the stimulants involves essentially similar factors. The differential penalty scheme that selectively removes cocaine from the punishment otherwise applicable, 21 U.S.C. §841(b) (1)(B), is arbitrary and irrational. It punishes like offenders differently without justification. To apply the classification would deprive the defendants of their liberty without due process of law. The indictments must be dismissed.

## V. CONCLUSION

In one of the landmark treatises on drugs and the law, sociologist Alfred Lindesmith says that: "We are concerned primarily in this book with addiction to opiate drugs and their equivalents. These drugs are so completely different from such substances as marihuana and cocaine that they cannot intelligently be discussed together with them." Lindesmith, The Addict and the Law (1965), p. ix. Former U.S. Attorney Whitney North Seymour explains: "Because it primarily flows through the black market, cocaine has been classified as a narcotic in Federal law, and is viewed as a hard drug. In fact, however, cocaine is a powerful stimulant and is not addictive in itself, which is the usual determinant factor for a narcotic drug." Seymour, The Young Die Quietly (1972), pp. 150-51. In a publication by the Drug Enforcement Administration entitled, "Fact Sheets," the following statement appears in the section entitled "Narcotic Drugs": "Federal law classifies the coca leaf and a chemical derived from it, cocaine, as narcotics but these drugs are stimulants and medical science does not consider them narcotics."

DEA Fact Sheets (GPO 1973 0-507-933), p. 31. The annexed affidavits from experts in the field have already been quoted at length. Of course the law will not be changed by the Legislature, despite its irrationality, while a drug phobia persists. There is no cocaine lobby in Congress. Only the plight of those defendants, faced with a gratuitous ten additional years in jail, must inspire this Court to sweep aside years of myth and misinformation, and strike down the irrational classification of cocaine. For all the foregoing reasons, the indictments in these cases must be dismissed. In the alternative, the defendants respectfully move this Court for a hearing at which the claims presented here may be more fully set forth and proved.

Respectfully submitted,



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August 25, 1974

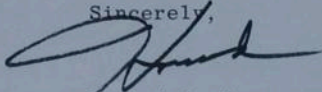
Dr. David Rogers  
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Boulder, Colorado 80302

Dear Dave:

About two years ago when we were conspiring to get Julia Morton an honorary doctorate, I believe you mentioned an institution in Paris that offered "external" (non-residence) doctorates that involved presentation of formal dissertations. If I am recalling correctly and you know of such an institution, I would appreciate hearing.

I hear that you are (or were) in Rome with FAO. I hope it goes (went) well.

Sincerely,



Howard J. Teas  
Professor of Biology