

Senator PROWSE: Let us take LSD and let us suppose it is an ounce and let us suppose it is the case of a university major in chemistry who has manufactured a quantity of it himself, which is the way most of the LSD presently being used in the universities is obtained. The explanation could well be that due to inexperience in dealing with quantities that are measurable he could not produce less than an ounce. This is a perfectly reasonable explanation, and I would think would be true.

The CHAIRMAN: Where we differ, senator, is only as to how to reach that goal. You seem to think that it is perfectly all right as long as the man is in a position where he can give evidence to show that while he may have been illegally in possession, he was not in possession for the purpose of trafficking. All I am saying is that I want to reach the same goal but not on the basis of violating a principle of long standing in the law, namely innocence until proven guilty. The procedure I have suggested would enable the same result, and we would not, first of all, be registering a conviction against a man for possession on which he has not been charged.

Senator PROWSE: He is always liable; there is always included in the major offence the included offences. How could he be trafficking in a drug unless he is in possession and has an element of control? It is the same with rape. A man charged with rape can find that there are six or nine included offences, without stretching it, and boring people with the details.

The CHAIRMAN: But a man can traffic without having statutory possession of the drug.

Senator PROWSE: I doubt it. He might promote it without being in possession, but I doubt if he could traffic.

The CHAIRMAN: Trafficking includes selling.

Senator PROWSE: But how can he sell without having it in his possession and being in a position to deliver?

The CHAIRMAN: We had cases covering this situation back in 1936 and 1937, and we put the men in jail. We never did trace any drug to these people, because they kept far, far away from it, but we convicted them.

Senator KINLEY: Senator Macdonald (Cape Breton) made a strong speech on the liberty of the subject in the house. He said that this legislation puts the liberty of the subject in the hands of the police and of the Government. And I think that is very important.

The CHAIRMAN: I would suggest that we adjourn until 1.30, and maybe we can get some further information on this question I have raised, as well as on the drafting.

Senator DESCHATELETS: Is it possible to find out if there is any jurisprudence on this? I ask that because this is identical to the provision in the legislation of 1961.

The committee adjourned until 1.30 p.m.

Upon resuming at 1.30 p.m.

The CHAIRMAN: I call the meeting to order. During the adjournment the departmental officials has considered the question of promotion as an offence and has redrafted section 41 so as to include that. While this draft includes what is presently in section 41, I will read it all so that the committee can follow it. It is proposed that this will replace the present section 41 in the bill. It reads as follows:

(1) No person shall traffic in a restricted drug or any substance represented or held out by him to be a restricted drug.

That is as it is at present.

(2) No person shall have in his possession any restricted drug for the purpose of trafficking.

That is the same as the present subsection 2.

(3) Except as authorized in this part or the regulations, no person shall promote the use of or trafficking in a restricted drug.