

# The Mouthpiece

Fifth Estate Collective

1970

**Editors' Note:** At long last, here is the legal column we have been promising for several issues. "The Mouthpiece" will be a regular feature of the Fifth Estate and is in keeping with our motto of Serve The People.

However, no one should have any illusions about the law and its majesty; its function is solely to maintain the property and social relationships of capitalist society. Its so-called system of justice is not blind, but rather sees its way clearly to discriminate against the poor, the minorities and the politically active.

This column is an attempt to inform people that although justice is corrupt it does provide some basic guarantees of civil liberties and equal treatment under the law. We can best fight that system if we know its weaknesses and our strengths.

Send questions to: The Mouthpiece, c/o The Fifth Estate, 1107 W. Warren, Detroit 48201.

Q. Is it true that you cannot be prosecuted for possession of marijuana if you have less than three joints in your possession?

A. No. Some States have taken the position that you can not be prosecuted for possession of dope unless the quantity which you have in your possession is sufficient to be used, and to give the effect of the drug. There is only one case in Michigan that touches on the issue of amount, and it seems to hold that any quantity is sufficient to support a prosecution. I personally saw one case being prosecuted in Oakland County where the actual quantity of marijuana involved was estimated at six one hundredths of a gram or less.

Q. Is sodomy illegal and how can someone be prosecuted for doing something where both the parties agree to do it?

A. As to the first part of the question, not only is sodomy illegal but it carries a fifteen year penalty. The Michigan law is worth reading: "Any person who shall commit the abominable and detestable crime against nature either with men, or with any animal shall be guilty of a felony, punishable by imprisonment in the State prison for not more than fifteen (15) years or if such person was at the time a sexually delinquent person, may be punished by imprisonment in the State prison for an indeterminate term, the minimum of which shall be one (1) and the maximum of which shall be life."

"It shall not be necessary to prove emission, and any sexual penetration, however slight, shall be deemed sufficient to complete the crime specified."

As one might guess, courts have some trouble dealing with these crimes in a straightforward fashion, and so you find their opinions sprinkled with Latin phrases. Thus, some of the older opinions claim that the crime can be committed only per anum and not per os. This is, however the older rule, and it seems nowadays that either per anum or per os will get you up to fifteen years.

Just two weeks ago six Wayne County Jail inmates were convicted of the crime and sentenced to terms ranging from three to fifteen years in prison. The sentencing judges were George Crockett and Frank Schemanske. All of those convicted were black, were awaiting trial and were all under 20 except for one.

As to the second part of the question, the Courts have not adopted John Stuart Mill's philosophy that the State cannot justifiably punish conduct not harmful to others. However, the United States Supreme Court has recently

held it to be unconstitutional for the State to seek to punish the mere possession of obscene material by an individual in the privacy of his home. The logical extension of this rule should cover sodomy and dope as well.

In the proposed revision to the Michigan Criminal Code, it is recommended that private consensual homosexual acts be no longer punishable as crimes. So while the law is subject to change, and hopefully soon, the present penal code still punishes conduct violative of the biblical admonition "Thou shalt not lie with mankind as with womankind" LEV. XVIII. 22.

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