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When the Dead Were Political: The Raid on 710, the Law, and the Statement

ANDREW R. McGAAN

Bob Weir was nineteen years old and Ron “Pigpen” McKernan barely twenty-two when they were arrested along with several of their friends and charged with felony marijuana possession. On October 2, 1967, police raided their home at 710 Ashbury Street in San Francisco and confiscated approximately one pound of marijuana (enough to roll over 400 joints) and some hashish. The whole affair was front-page news because Weir and Pigpen were members of the Grateful Dead. The next day, above the banner on page one, the *San Francisco Chronicle* shouted, “The Grateful Dead: Rock Band Busted.”

What followed the arrests was a highly unusual event in the history of the Grateful Dead. The band issued a statement—really an informal press release—and held a press conference to complain about the law, politics, and culture. They never again did anything quite like that, preferring instead to eschew social controversies and political issues altogether, a commitment they repeatedly expressed. As Phil Lesh put it, the Dead “had no morality of its own—it made no judgments, took no positions—it merely opened valves for music to pour through” (2005, 333). Weir agreed:

With the Grateful Dead, we never felt it was our entitlement, if you would, or our duty.... We never felt we had any place promoting any particular political views Our stage is a stage

for art. It is a stage, it's not a podium or lectern or anything like that. (Fricke 2009)

Their reaction to the arrests at 710 Ashbury, however, reflected pent-up frustration over how their community, the hippies, and their neighborhood, the Haight-Ashbury, were being treated. Expressing their pique, they succinctly addressed the searing issue of the harshness of marijuana penalties and framed that outrage in the time-honored language of artists yearning to pursue their version of the American dream without interference from conventional society. Consistent with their uneasiness over mixing politics with their music, once the press conference concluded and well before the legal jeopardy confronting them was resolved, the band not only retreated from politics but also from the Haight-Ashbury itself.¹ The details of the raid are discussed in Nicholas Meriwether's essay in this volume; this essay focuses on the legal context and implications of the arrests and the band's response, particularly their remarkable statement.

If the Dead's statement was unusual, the police raid on 710 Ashbury was not. That same day, officers from the San Francisco Police Department and the California Narcotics Bureau also raided four other residences in the Haight (Raudebaugh 1967a, 14). Indeed, the *Chronicle* cited San Francisco police as having made 2,298 narcotic arrests in the first nine months of 1967, double the number over the same period in 1966. This level of activity reflected the escalating public concern over the growing popularity of marijuana. Its use had rapidly increased in the 1960s, especially among middle- and upper-class college students. Despite the fact that reports of its risks were often lurid, more and more users were having largely benign experiences. Marijuana was particularly popular in the counterculture youth movement, including campus protestors, anti-war activists, hippies, and other drop-outs from conventional society, and the Haight-Ashbury was a visible and influential center of the counterculture. Fueled by media attention, the Haight's notoriety had made it not only a magnet for young people across the country but also a target of scrutiny by authorities looking to curtail an avowedly outsider movement.

Heightened marijuana enforcement became an important tool in the attack against the growing youth movement. It included the imposition

of increasingly severe penalties for use and possession, enforcement techniques that often seemed to skirt Constitutional guarantees against unreasonable searches, and what arrestees argued in vain were selective prosecutions.² The day after the 710 Ashbury raid, referring to wealthy San Francisco neighborhoods not far from the Haight, the Dead's lawyer complained to the *Chronicle*, "If [the Dead] lived on Russian Hill, they wouldn't be busted. If they lived in Pacific Heights, no officer would go near the house" (Raudebaugh 1967b).

The consequences of a pot bust at that time could be severe. Under California's Health and Safety Code, a first-time conviction for marijuana possession was a felony punishable by a mandatory jail term of one to ten years, two to twenty years for a second offense, and five years to life for a third offense.³ Given the seriousness of the penalties, anyone charged with possession would have been advised to say nothing to the authorities and to begin planning a strategy to avoid or deflect responsibility.⁴ The Dead did neither. Shortly after the arrests, the band issued an unofficial press release and then held a press conference at 710 Ashbury to read the statement aloud and answer reporters' questions. If this was a strategy—their lawyer, Michael Stepanian, sat with them so they were not lacking for pugnacious legal advice—it was a strategy pursuing something other than exoneration or mercy.

Indeed, the statement offered no viable legal defense to the pending charges. It did not deny much less address whether marijuana had been present in the house or, if it had been, who owned it. It is difficult to imagine, for example, that almost a dozen people all could have been in possession of the same marijuana, particularly when one or more of the arrestees did not live in the residence, as the *Chronicle* reported (Raudebaugh 1967a, 14). The statement ignored those concerns in favor of addressing "the meaning of this action," or more precisely the legal and social issues implicated by the arrests (Rifkin and Shearer 2023, 92). The statement made three broad points. One, despite the state of scientific awareness, the law had wrongly classified marijuana as a dangerous drug (California considered it a "narcotic," even though marijuana is not), resulting in unfairly harsh possession penalties. Two, in "an even greater evil," the police were discriminatorily targeting young people in

the Haight, ignoring widespread marijuana use among “lawyers, doctors, advertising men, teachers, and political office-holders.” And three, the media abetted this troubling state of affairs by creating a pejorative—“the drug-oriented hippie”—that was all the easier for police to attack.

The truth was simpler, according to the Dead. Young people living in the Haight wanted nothing more than to be left alone to explore “new ways of living freely.” For themselves, the Dead wanted to pursue their art. They did not preview legal defenses or mitigating factors such as claiming the search was illegal, that the police lacked evidence of possession, or even that some of the arrestees (such as McKernan and Veronica Barnard) were not marijuana users at all. Their overriding concern was that the arrests had “interrupted” their “creative effort in the musical field.”

The Dead’s broad legal and political complaints, however, were well grounded, even if the last overplayed their hand. The term “hippie” was certainly used critically even mockingly by some the media, but the term was hardly a “lie” concocted by reporters in San Francisco to demean the youth movement. As historian W. J. Rorabaugh notes, the roots of the term “hippie” are deeper, dating to Black jazz culture well before the 1960s as a way of distinguishing a group sympathetic to but different from the Beats: though both “despised materialism, their attitudes varied” (1989, 133). The term was also routinely used by members of the Dead themselves as well as by sympathetic observers identifying a subgroup within the counterculture.⁵ It even came in handy to distinguish hippies from the more politically-oriented New Left of the time, as sociologist Todd Gitlin noted in his study of the era.⁶ Still, the media’s focus on the youth invasion of the Haight during the Summer of Love in 1967 certainly made it seem as if hippies were a new kind of zoo animal, as Carol Brightman observed:

Not much resistance was heard from city fathers and merchants to the “Hippie Hop Tour,” whose Gray Line buses clogged the already-crowded streets. Billed as the “only foreign tour within the continental limits of the United States,” the Gray Line bonanza treated gaping tourists to a running commentary on the natives’ “recreational activities...parading and demonstrating, soul-searching,” and smoking marijuana, “a household staple.” The Dead’s house at 710 Ashbury was a featured stop along the way. (Brightman 1998, 120)

During the Dead's post-arrest press conference, Rifkin alluded to *Time* magazine's similarly bemused coverage of the hippies and their drug culture, which called them "a bizarre permutation of the middle-class American ethos" ("Youth" 1967, 18). But *Time* echoed the Dead's larger point about the targeting of young people in their neighborhood, noting that within the Haight alone "more than 25 undercover narcotics agents ... arrest an average of 20 hippies a week, usually for possession of marijuana" (1967, 19). Clearly, regardless of etymology or motive, the hippies as a group were convenient targets for drug arrests.

The Dead's statement correctly griped that the law had no sound basis to classify marijuana as a dangerous drug worthy of felony-level punishment. In 1970, leading scholars of American marijuana regulation concluded that it reflected a "public policy conceived in ignorance" of the health risks associated with marijuana use (Bonnie and Whitebread 1970, 974). Beginning in the early 1900s, laws penalizing marijuana possession were simply grafted onto existing narcotics laws without Congress or state legislatures examining what was known scientifically about the marijuana and its effects. The disconnect between legal policy and scientific knowledge was so great that for a time in California, LSD possession was classified as a misdemeanor while marijuana possession was felonious (Town 1968, 758).

By 1968, there were only four studies in the United States on the effects of marijuana in humans (Bonnie and Whitebread 1970, 1101). Though policy makers and the public lacked a solid scientific basis for understanding marijuana's risks, it had been widely identified as the cause of any number of social pathologies, including addiction, insanity, violent criminality, and harder drug use (Bonnie and Whitebread 1999, 252–54). As marijuana use grew dramatically in the 1960s, some medical doctors and public health authorities began to concede that the claimed risks had not been substantiated. In the same month as the raid at 710 Ashbury, FDA Commissioner Dr. James Goddard testified in Congress that marijuana was less dangerous than alcohol (Weston 1968, 9–10). The data were equivocal at best regarding marijuana causing or leading to the use of other drugs, and there was no evidence that marijuana caused users to commit crimes. The Dead's statement therefore fairly captured the

state of scientific knowledge regarding marijuana use in the late 1960s: it seemed to be the “least harmful chemical used for pleasure and life enhancement...[and] particularly less harmful than alcohol.”

There also seemed to be no serious debate that the police were targeting the Haight to crack down on hippies and drum up drug arrests. Willy Sutton is reputed to have said he robbed banks “because that’s where the money is,” which is how the police viewed the neighborhood: as a ready source of easy marijuana arrests. Lieutenant Norbert Currie of the San Francisco Narcotics Bureau, who led the 710 Ashbury raid, explained, “we make a lot of arrests in the Haight-Ashbury because a lot of marijuana is smoked there” (Raudebaugh 1967b). The meteoric rise in marijuana arrests in California from the early to mid-1960s reflected this intensifying enforcement activity. Marijuana arrests nationally had reached an “all-time low point in 1960,” but by 1964 in California they had tripled (Bonnie and Whitebread 1970, 1096; Town 1968, 758; 760). In a marijuana possession case handed down in 1968, the court noted that one Los Angeles police officer had made approximately 1,000 marijuana arrests.⁷

At the same time, some in law enforcement acknowledged, however begrudgingly, that marijuana prosecutions were indeed focused on “hippies, long-hairs and draft-card burning college students” (Bonnie and Whitebread 1970, 1120). But even if enforcement statistics bear out the Dead’s claim that they were being targeted because of who they were and who they associated with, there was little any defense lawyer could have done with that information in a courtroom. The selective prosecution defense is difficult to sustain generally, and on the facts of the 710 Ashbury raid in particular it would have certainly failed.⁸

The 710 Ashbury arrestees appeared to have had no viable defense to the possession charges. Stepanian acknowledged in a recent podcast that there had been “pot all over the place” at 710 Ashbury Street and he made no pretense of his former clients’ innocence (Potter 2022). For the Dead to have issued their statement, with their lawyer sitting next to them at the press conference, seems puzzling. Given the risk of felony charges and imprisonment, why would the band invite attention to the arrests by attacking the motives of the police and prosecutors? It turns out Stepanian

had other cards up his sleeve. He and his partner Brian Rohan staffed the Haight Ashbury Legal Organization (HALO), which conveniently had its offices on the first floor of 710 Ashbury and provided pro bono legal services to the neighborhood. As such, the lawyers and local police knew each other quite well. At times, they even helped each other, Stepanian calling it a “symbiotic relationship” (Potter 2022).

For example, the police advised the lawyers themselves to avoid keeping pot in any of HALO’s legal files, something Stepanian implied may have been happening. It is notable that neither of the HALO lawyers was arrested in the 710 Ashbury raid, although one account stated that their files had been confiscated (Jackson 1999, 140). At the behest of the police, HALO posted in its office photos of young people reported lost by their families. According to Jerry Garcia, the home operated as a community center for the neighborhood: “Anybody could stand on the street and watch dozens of people going in and out of the house all the time” (Grateful Dead 1967). Years later, Bob Weir recalled, “I had the front room at 710 Ashbury and people were coming through my front window with fair regularity” (Selvin 2007). To help the police, HALO lawyers would ask the many locals coming through the house to help find the missing. This strange *détente* allowed lawyers well acquainted with the Haight’s culture and the local police to cut deals. For their part, it appeared the police enjoyed raiding houses like 710 Ashbury. No one inside was ever going to shoot them, and they often found money to swipe—cash allegedly went missing during the raid on 710 as well (McNally 2002, 226).

What Stepanian describes was no alliance between police and drug users, nor does he suggest the police were fair-minded. Quite the opposite: he called police tactics “frankly ugly,” particularly those targeting hippies, whom he saw as “naïve children” resembling a “clown-like Romanian dance troupe” (Stepanian 1972, 7; Potter 2022). Still, savvy lawyers build relationships with their adversaries because it helps in negotiating deals. This strategy seems to have paid off for the 710 Ashbury arrestees. While the police sought to make as many marijuana possession arrests as possible, prosecutors willingly dismissed cases in exchange for one or two fall guys. Stepanian admiringly recalls Rock Scully stepping up to help the others (Potter 2022).

After the raid, each of the arrestees was arraigned and released on bail. Eight months later, on June 28, 1968, all of them pled guilty to greatly reduced misdemeanor charges. Most, including Weir and Pigpen, paid \$100 fines (approximately \$1,000 today) and were sentenced to one year of probation for violating the prohibition against being present in “any room or place” where marijuana is being “unlawfully smoked” (“The Very Grateful Dead” 1968). Defendants charged with felony possession and facing significant jail time had a great incentive to plead to lesser charges. The misdemeanor charge of being present in a place with marijuana gave defendants just such an escape hatch while still allowing prosecutors to chalk up convictions (Town 1968, 761n31). Scully, Stepanian’s fall guy, along with Bob Matthews, pled to added charges of maintaining a residence where marijuana was used, which prescribed much higher penalties, but they were assessed only \$200 fines and also put on probation.

Interestingly, the 710 Ashbury arrestees claimed that they never felt they were at much risk of being convicted of felonies or serving jail time. Photographs of them leaving the house in handcuffs show them smiling, though that was for their friends and neighbors who had gathered outside to watch (Hartlaub 2017). Though he showed his annoyance at the press conference, Rifkin downplayed arrests as an “inconvenience,” and Stepanian remembers the whole affair with remarkable insouciance. Still, for an avowedly apolitical band, issuing a statement and hosting a press conference was a moment of rare political engagement, if not bravado.

Still, the Dead were not signaling any willingness to join, much less lead, a movement or even continue agitating to change drug laws, even though they could command front-page attention from the media. Indeed, earlier in 1967 Garcia emphasized the band’s overriding commitment to their project in terms that distanced themselves from any message or agenda:

We’re trying to make music in such a way that it doesn’t have a message for anybody. We don’t have anything to tell anybody. We don’t want to change anybody. We just want to give people a chance to feel a little better. That’s the absolute most we want to do with our music. The music that we make is something that’s an act of love, an act of joy. We really like it a lot. If it

says something, it says it in its own terms at the moment we're playing it ... we're not telling people to go get stoned, or drop out. (Groenke and Cramer 1985, 27)

That stance, shared by the entire band, makes their willingness to hold a press conference denouncing drug laws difficult to explain. At the press conference, after Rifkin read the statement, reporters probed what precisely the Dead intended to do about their complaints. Scully quickly rebuffed any effort to link them to any political program, focusing solely on how the arrests hindered their music: "We are involved in what we feel to be a creative process and we only wish to be or remain a free people and we feel that the police invasion of this house ... curtails our work and makes it very difficult for us to continue that work" (Grateful Dead 1967). Stepanian, never shy about denouncing society's hypocritical moralizing over marijuana use, took an equally restrained approach. His one point of emphasis at the press conference was that a felony conviction could impede the band's ability to travel abroad to perform. Rifkin explicitly rejected any notion that the Dead wanted to pursue a "test case" challenging the political-legal marijuana culture. "If marijuana is as widely used as your statement implies it is," one reporter asked, was there "a chance of any organized movement to get the restrictions against its use taken off the books?" Rifkin quickly responded, "I don't participate in movements" (Grateful Dead 1967).

It was a stance the Dead largely maintained for the rest of their career. Years later, Garcia elaborated how they had seen the political ferment of the 1960s, musing, "Why enter this closed society and make an effort to liberalize it when that's never been its function? Why not just leave it and go somewhere else? ... Just turn your back on it and split—it's easy enough to find a place where people will leave you alone" (Carroll 1982, 20). Go somewhere else is precisely what the Dead did. Within months of the raid on 710, the members of the Dead began moving out, abandoning the Haight-Ashbury and decamping for Marin County, north of San Francisco, where no one arrested them for living as they chose to live or making the music they wanted to make. They also stayed true to their apolitical stance, though they continued to have occasional scrapes with the law.

That makes their statement a singular gesture. It remains a concise but fair summary of the contemporary debate over marijuana use, anchoring the Dead squarely in a pressing social and political issue. Truer to the Dead's legacy, however, the Statement's more lasting plea to live as "free Americans—endowed with certain unalienable rights—among which somebody once said, are life, liberty, and the pursuit of happiness," foreshadowed a body of work that ceaselessly affirmed that fundamentally American belief, and tirelessly championed those timeless ideals.

Notes

1. Aside from occasional comments in interviews, the band refused almost all overt political engagement or activity for the remainder of their career with the notable exception of two high-profile environmental causes, lobbying Congress on behalf of Amazonian rainforest conservation and advocating for preserving the Northern California Headwaters old growth redwoods. For the former, Garcia was explicit: "We've never called on our fans to align themselves with one cause or another, and we've always avoided making any political statements," he commented when he asked fans to help preserve the rainforests ("Grateful Dead Plans ..." 1988). In 1994, band members also made clear their distaste for mandatory minimums for nonviolent drug offenders, although they did not use the band's name to actively lobby for that cause. That stance extended to marijuana legalization: although individual band members were outspoken about their own beliefs, the band did not make official statements or endorse efforts by activists.
2. The Fourth Amendment bars the government from searching one's home absent good cause, consent, or a warrant. Courts have held that a resident may consent to a warrantless search "once removed" by allowing an informant to enter. This is a risk the Dead's lawyer emphasized in a book he later wrote to educate drug users on protecting their rights (Stepanian 1972, 78). The full scope and continued viability of this reading of the Fourth Amendment may be under some question; see *U.S. v. Rivera*, 817 F.3d 339 (7th Cir. 2016).
3. Cal. Health & Safety Code §11530 (1967): "Every person who...possesses any marijuana...shall be punished by imprisonment in the state prison for not less than one year...and shall not be eligible for release upon completion of sentence, or on parole, or on any other basis until he has served not less than one year in prison" (Town 1968, 758); for sentence lengths, see Bonnie and Whitebread (1970, 971; 1183).

4. Stepanian, like any experienced criminal defense lawyer, in his book about “how to stay safe” from marijuana arrests and convictions, cautioned that the accused should “*never waive any right*. Not one,” including the right to remain silent (1972, xi; 112. Emphasis in original). The Dead’s statement and press conference waived that right.

5. Kreutzmann notes that the section of Haight Street directly below the band’s house was called “hippie central, a phenomenon, a time and place that has since made it into the history books. We really became entrenched in that scene if not synonymous with it” (2015, 63). Timothy Leary used the term in his interview with the *Southern California Oracle* (1967, 5; 24), which historian Theodore Roszak quoted in his *The Making of a Counter Culture*: “We’re trying to tell the youngsters that the psychedelic movement is nothing new ... the hippies and the acid heads and the new flower tribes are performing a classic function” (1969, 168).

6. Gitlin was born in 1943, a year younger than Jerry Garcia. He participated directly in the political agitation of the 1960s in ways the Dead and the hippies (or in Gitlin’s phrase “the freaks of the Haight-Ashbury”) declined to do (1987, 5).

7. Bonnie and Whitebread (1970, 1110n1), citing *People v. Patton*, 264 Cal. App. 2d 637, 640 (Ct. App. 1967).

8. Because all police enforcement is at some level discretionary—not every criminal can be caught despite law enforcement’s best intentions, nor can every speeding car be pulled over—it is extremely difficult to avoid a conviction on this ground. Arguing, for example, that the police were ignoring well-to-do pot smokers in Pacific Heights or Russian Hill, even if true, would not refute any element of the criminal possession statute, as Bonnie and Whitebread note: “the courts can do little to remedy this state of affairs” (1970, 1120). Also, selective prosecution claims are only viable if, among other things, it can be shown that the state was discriminating against a Constitutionally-protected class, a proviso that has never included hippies; see *U.S. v. Armstrong*, 517 U.S. 456, 463–64 (1996).

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