

## Joint Commentary

Revised March 15, 2013

### *Washington's Double Failure:*

#### *Failure of Department of Justice to Enforce Federal Law, Failure of Senate Judiciary Committee to Hold DOJ Accountable*

The silence of the United States Department of Justice (DOJ) following the passage of state-based legalization of marijuana in Colorado and Washington is unconscionable. These state laws are in direct conflict with long-established federal law and specific U.S. international treaty obligations. No nation in the world has legalized the production, distribution and possession of marijuana as have these two states. Despite its mandate to uphold the law of the land, the DOJ has failed to enforce federal law in CO or WA. On March 6, 2013 the Senate Judiciary Committee failed to hold DOJ accountable at an oversight hearing at which Attorney General Eric Holder testified. This hearing provided a unique opportunity for both Republican and Democratic Senators to insist that Attorney General Holder uphold federal law. Instead of seizing that opportunity, the subject was brushed aside by the Committee Chairman, and ignored by other Committee members.

In preparation for the hearing, a joint statement released by Save Our Society from Drugs, Inc. strongly urged members of the Senate Judiciary Committee to ask Attorney General Holder why the DOJ is not enforcing federal drug laws in CO and WA. Among the signers of the statement were all nine former heads of the Drug Enforcement Administration (DEA) – appointed by both Democratic and Republican Presidents – who received widespread media attention in the U.S. and overseas and met with Senate Judiciary staff from both Democratic and Republican parties. Other signers among this impressive list included a former Assistant Secretary of State, a former U.S. Ambassador, and four former U.S. Drug Czars as well as over thirty prevention, treatment and professional societies and organizations. The statement was provided to every member of the Senate Judiciary Committee in advance of the scheduled hearing.

The potential for discussion of this important issue did not go unnoticed by the press. Prior to the hearing there was considerable media speculation about whether the topic of marijuana legalization would be raised.<sup>1</sup> Moreover, in its 2012 annual report, a serious concern was expressed by the United Nations International Narcotics Control Board (INCB) regarding the conflict of marijuana laws in WA and CO with international drug treaty obligations.<sup>2</sup> “The [INCB] Board stresses the importance of universal implementation of the international drug control treaties by all States parties and urges the Government of the United States to take necessary measures to ensure full compliance with the international drug control treaties in its entire territory.”<sup>3</sup>

Despite the information provided prior to the hearing to members of the Senate Judiciary Committee, their staff and to the media on the importance of addressing the issue of marijuana legalization at the hearing, this serious constitutional issue was dismissed in a brief interchange. Senator Patrick Leahy, Chairman of the Senate Judiciary Committee, suggested to Attorney General Holder that he not waste DOJ resources on policing “small amounts” of marijuana, implying that the radical marijuana laws of CO and WA were unworthy of his attention. In response to an offer to comment, the Attorney General stated that the DOJ is currently examining the issue and “will report back.” During three hours of testimony, not a single member of the Committee asked the Attorney General about the DOJ’s position on state marijuana laws. The communications from the Save Our Society coalition of individuals and organizations, including all former DEA Administrators, and the INCB went unanswered.

The supremacy of federal law over state law is established by the U.S. Constitution (Article VI) and was reaffirmed in 2005 by the U.S. Supreme Court in *Gonzales vs. Raich*. Instead of providing much-needed leadership, the Senate Judiciary Committee and the DOJ ducked the issue, avoiding any discussion about marijuana laws and U.S. drug policy. Is it out of fear of retaliation from the powerful and well-funded pro-drug lobby which outspent those opposing legalization in 2012 by more than 12 to one?<sup>4</sup> Or is it out of fear of losing the support and the future votes of young people who largely support permissive marijuana drug laws? Do these government leaders anticipate a backlash of ill-informed voters who perceive the use of marijuana to be harmless?

This silence has consequences. Following the Senate Judiciary hearing, Joshua Sharfstein, M.D., Secretary of the Maryland Department of Health and Mental Hygiene, announced that his state now is going forward with the implementation of the medical marijuana law passed last year by the state legislature and signed into law by the Governor. This law was not implemented immediately after passage because of concern that state officials implementing the law would be subject to federal prosecution. Secretary Sharfstein said the absence of federal action to enforce the Controlled Substances Act signaled that Maryland state employees would not be prosecuted if involved in the distribution of medical marijuana.<sup>5</sup>

Scientific research clearly shows that marijuana negatively impacts public health and public safety. Early and persistent marijuana use is linked to loss in IQ (an average of eight points) by adulthood,<sup>6</sup> psychosis, school dropout and addiction.<sup>7</sup> Marijuana produces impairment which can be particularly long lasting for chronic users.<sup>8</sup> It is no surprise that marijuana is the most prevalent drug among impaired drivers and drivers involved in serious injury and fatal crashes each year.<sup>9</sup> Nationally, marijuana is the drug used by over 63% of all Americans suffering from a substance use disorder (abuse or dependence) related to drugs other than alcohol.<sup>10</sup> In a study of seriously injured drivers taken to a level-1 shock-trauma center in Maryland, 27% of the drivers tested positive for marijuana, second only to alcohol which was identified in 32% of drivers.<sup>11</sup> Among drivers under the age of 21, half were positive for marijuana while one third were positive for alcohol.

The public health and safety implications of state-based marijuana legalization are far-reaching. These laws will dramatically increase the use of marijuana and the many negative consequences of that use, including but not limited to higher health care and substance abuse treatment costs,

increased prevalence of addiction, more impaired driving on the nation's roads and problems in the workplace. Ironically, the Department of Justice, which has not ruled on these new state laws legalizing marijuana, itself maintains a federal drug-free workplace program and does not permit its agencies to hire applicants who test positive for marijuana.<sup>12</sup>

It is reprehensible for our public leaders to turn their collective backs on this important issue. We demand that they do better, beginning by enforcing the laws that they are sworn to uphold.

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Former Director, National Institute on Drug Abuse (1973-1978)  
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<sup>1</sup> Tarm, M. (2013, March 5). Ex-DEA heads, UN panel urge US to nullify pot laws. *Associated Press*. Available: <http://www.boston.com/news/nation/2013/03/05/dea-heads-feds-should-nullify-state-pot-laws/78X04Y8mjYzvZV8muxn3EK/story.html>

<sup>2</sup> Travis, A. (2013, March 5). Relaxation of US cannabis laws 'violates UN drug conventions.' *The Guardian*. Available: <http://www.guardian.co.uk/society/2013/mar/05/relaxation-cannabis-laws-us-un>

<sup>3</sup> International Narcotics Control Board. (2013). Report of the International Narcotics Control Board for 2012. New York: United Nations. Available: <http://www.incb.org/incb/en/publications/annual-reports/annual-report-2012.html>

<sup>4</sup> Colorado's Amendment 64: funding in favor totaled \$2,539,986.60; funding in opposition \$706,820.76. Washington's I-502: funding in favor through New Approach WA totaled \$6,171,534.95; funding in opposition through No on I-502 totaled \$6,828.89, see [http://www.pdc.wa.gov/MvcViewReports/Committee/initiative\\_committees?year=2012&form=ALL](http://www.pdc.wa.gov/MvcViewReports/Committee/initiative_committees?year=2012&form=ALL)

<sup>5</sup> Witte, B. (2013, March 8). Maryland medical marijuana bill backed by Joshua Sharfstein, state's health secretary. *Associated Press*. Available: [http://www.huffingtonpost.com/2013/03/09/maryland-medical-marijuana\\_n\\_2843531.html?utm\\_hp\\_ref=politics](http://www.huffingtonpost.com/2013/03/09/maryland-medical-marijuana_n_2843531.html?utm_hp_ref=politics)

<sup>6</sup> Meier, M. H., Caspi, A., Ambler, A., Harrington, H., Houts, R., Keefe, R. S., et al. (2012). Persistent cannabis users show neuropsychological decline from childhood to midlife. *Proceedings of the National Academy of Sciences of the United States of America*, 109(40), E2657-E2664.

<sup>7</sup> Visit [www.PreventTeenDrugUse.org](http://www.PreventTeenDrugUse.org) for summaries of marijuana research. Among other studies see:

Ellickson, P. L., Bui, K., Bell, R., & McGuigan, K. (1998). Does early drug use increase the risk of dropping out of high school? *Journal of Drug Issues*, 28(2), 357-380; Center for Substance Abuse Research (2010, October 25). Early marijuana use related to later illicit drug abuse and dependence. *CESAR Fax*, 19(11); Large M, et al. (2011). Cannabis use and earlier onset of psychosis: a systematic meta-analysis. *Archives of General Psychiatry*. 68(6), 555-561.

<sup>8</sup> Bosker, W. M., et al. (2013). Psychomotor function in chronic daily cannabis smokers during sustained abstinence. *PLoS One*, 8(1), e53127. doi: 10.1371/journal.pone.0053127

<sup>9</sup> Center for Substance Abuse Research. (2010, December 20). One-third of fatally injured drivers with known test results tested positive for at least one drug in 2009. *Cesar Fax*, 19(49). Available: <http://www.cesar.umd.edu/cesar/cesarfax/vol19/19-49.pdf>

<sup>10</sup> Substance Abuse and Mental Health Services Administration. (2012). *Results from the 2011 National Survey on Drug Use and Health: Summary of National Findings*, NSDUH Series H-44, HHS Publication No. (SMA) 12-4713. Rockville, MD: Substance Abuse and Mental Health Services Administration.

<sup>11</sup> Walsh, J. M., Flegel, R., Cangianelli, L. A., Atkins, R., Soderstrom, C. A., & Kerns, T. J. (2005). Epidemiology of alcohol and other drug use among motor vehicle crash victims admitted to a Level-1 trauma center. *Traffic Injury Prevention*, 37(5), 254-260.

<sup>12</sup> Presidential Executive Order 12564 – Drug-free federal workplace. Federal Register. National Archives. Available: <http://www.archives.gov/federal-register/codification/executive-order/12564.html>. For example policy, see Department of Justice Drug Testing Policy Statement for the Office of the United States Attorney, District of Maryland (2005), available: <http://www.justice.gov/usao/md/Employment/Forms/DrugTestPolicyStatement.pdf>