

Legalized Marijuana and the Suburban Patrol Officer



By

Bradley L. Davis

Orange Police Department

California Commission on Police Officer Standards and Training

Command College Class 37

July 26, 2005

Legalized Marijuana and the Suburban Patrol Officer

It's the year 2012, and an early evening summer breeze has warmed downtown Maplewood, a mythical, but representative, suburban community in affluent Orange County, CA. Two police officers ride electric bicycles through a downtown filled with antique stores, restaurants, jazz clubs and coffee houses. The officers pay special attention to the pedestrian traffic in and around the local coffee and smoking houses. The pair encounters two college students, one who managed to stumble from the door of the local "smoking lounge" into the path of the approaching officers. The officers smell the odor of burning marijuana, and quickly note that one is clutching a "joint" in his right hand. The officers express impatience with the young man's behavior; for he should know marijuana use in public remains a violation of a local ordinance.

Neither officer wants to have to enter the bar, for they are without the smoke filters that have been issued to patrol personnel and simply don't want to get their uniforms cleaned again. They scold the young scofflaw, who quickly returns the cannabis to his "pot purse" hanging from his belt. The officers warn the offender he could be cited for violation of the "S.I.P." (smoking in public) ordinance, then ride away toward the local gun store, where many are gathering to protest the pending handgun control bill before the Governor.

A similar scenario might take place today in Amsterdam, and the local police officer, "de politieagent," may be well accustomed to such encounters. Given our history with drugs in America, though, how would legalized marijuana impact the daily duties of a patrol officer serving a mid-sized community in California?

The Netherlands offers some clarity, but the picture would not be completely consistent, for marijuana and hashish are still officially illegal (but widely tolerated) in the Netherlands. It is very evident in the United States, however, the specter of a marijuana “Marlboro Man” or “Buds McKenzie” attracting our youth and other populations at highest risk for drug abuse into using marijuana, remains frightening for most citizens.

This is not intended to be an “advocacy piece” for the legalization of marijuana or other drugs. Nor is it an expose’ on the futility of the continued criminalization of the drug. As we in California approach a future that is unclear, those within the law enforcement community and other concerned parties may find some benefit from forecasting the impacts of a possible future where cannabis is legalized.

Background

Marijuana has been used throughout the country since the early 1800’s and it is clearly not a passing fad that will ebb with time. History has taught us that whether legalized or not, marijuana will continue to be a burden on the criminal justice system. A suburban police officer working in this alternative future may not be aware that history tells us the trend of legislation has come full circle since harsh criminal sanctions were enacted for a drug thought (during the “Roaring Twenties”) to cause insanity and death. The first break in this trend came in 1969 with the Dangerous Drug Act, which was followed by the liberal use of cannabis during the seventies, when simple possession shifted from a felony to a misdemeanor. The century came to an end with the medical marijuana initiatives throughout the West.

Effective November 2, 2004, California has been joined by eleven other states allowing marijuana to be used when certain medical conditions are present. On this same date, 43 percent of Alaskan voters approved an initiative to legalize marijuana possession and use by those over the age of twenty-one. In 2003, Alaska's Court of Appeals set the stage for the pro-legalization movement when they unanimously ruled that, "Alaska citizens have the right to possess less than four ounces of marijuana in their home for personal use." The judges' ruling cites a 1975 Alaska Supreme Court decision (*Ravin v. Alaska*), that the Alaskan constitution's privacy provisions protect the personal possession and use of marijuana in the home. After this 1975 court decision, the Legislature had passed a law, which deemed possession of four ounces of the drug was legal in Alaska.¹

Although this trend towards tolerance of the drug exists mostly in the western states, such political movements typically start in the western states and slowly move east due to the relative ease with which with which residents west of the Rockies can bypass their legislators and put issues directly before the voters. Twenty-four states allow citizens to bypass their legislators and put issues on the ballot by petition. Eleven of those states are in the West, and historically, California has been at the forefront of such measures. In 1996, voters in California approved proposition 215, the Compassionate Use Act, which legalized the use of medical marijuana. Since that time, seven states have passed similar medical marijuana initiatives, including three states on the East coast. Some have asserted the language of these initiatives was misleading, or that the authors of the proposals appealed to voter's compassion for the ill. These accusations may have some substance, since a common tread in most of these initiatives was language very

¹ Chambers, Mike A.P: Some Marijuana in Home is Legal, accessed at <http://alaskalegislature.com/stories/083103/potrul.html>

similar to, "...marijuana *may* be of benefit to seriously ill patients who possess written documentation from their physician advising that they *might* benefit from the medical use of marijuana." ²

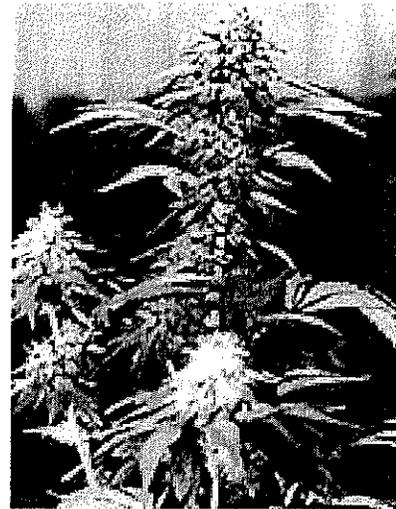
In California, law enforcement has become concerned about its ability to take action or seize marijuana under the restrictions imposed by Proposition 215. Since the passage of that measure, there have been a growing number of so-called "cannabis buyers clubs" operating in California communities under the pretext of providing marijuana to seriously ill people. Although the activities of these clubs are unlawful under federal law, officers in California have been placed in the unenviable position of ignoring one level of laws while trying to appropriately enforcing another. Although this is the most prominent example of the current conflicts in the law, it is by no means the only choice facing the police as they interpret and enforce drug laws.

Several related issues have tipped the balance in favor of the marijuana legalization movement. Compassion for the ill, frustration with drugs, apathy, an increase in the acceptance of marijuana and confusing or misleading language in initiatives have all been cited as contributors to the success of the pro-legalization lobbies. It was not long ago that most Californians would not consider legalizing medical marijuana; the scales have now tipped strongly in favor of a concept felt unthinkable. For those who say marijuana is less dangerous than cigarettes, and less intoxicating than alcohol, why should we worry, anyway?

"Yes, Marijuana is a Drug"

² "Active State Medical Marijuana Programs", accessed at NORML Website at www.norml.org on June 27, 2005

Marijuana is the most commonly used illicit drug in the United States. It is a dry shredded green and brown mix of flowers, stems, seeds and leaves from the hemp plant *cannabis sativa*. It is usually smoked as a cigarette (joint, nail), or in a pipe (bong). It is also smoked in blunts, which are cigars that have been emptied of tobacco and refilled with marijuana, often in combination with another drug. Use also might include marijuana with food or drink, as it is commonly brewed as a tea. The concentrated form, hashish, is a sticky black liquid, or a solid dark brown solid. There are countless street names for the drug including pot, weed, grass, widow, and ganja. To the surprise of some, several trademark names have recently arisen, such as, bubblegum®, Northern Lights®, Juicy Fruit®, Afghani®, and a number of skunk varieties.³



Flowering buds of cannabis plant.

The main active chemical in marijuana is THC (delta-9-tetrahydrocannabinol). The membranes of certain nerve cells in the brain contain protein receptors that bind the THC. Once securely in place, THC kicks off a series of cellular reactions that ultimately results in the high users experience when they use marijuana.⁴

The short-term effects of marijuana have been found in studies to include problems with memory and learning, distorted perception, difficulty in thinking and problem solving, loss of coordination, inability to divide one's attention, and increased

³ National Institute for Drug Abuse: Information-Facts on Marijuana Use (Aug, 2004) accessed Nov. 2004 accessed at www.nida.nih.gov/Infrofax/marijuana.html

⁴ *ibid*

heart rate.⁵ Specific to the heart, one study has indicated that a user's risk of heart attack more than quadruples in the first hour after smoking marijuana.⁶

A study of 450 non-tobacco smoking individuals found that people who smoke marijuana frequently have more health problems and miss more days of work than non-smokers.⁷ Many of the extra sick days among the marijuana smokers in the study were for respiratory illnesses. The study also found that someone who smokes marijuana regularly may have many of the same respiratory problems that tobacco smokers do.⁸

Depression, anxiety, and personality disorders have been associated with marijuana use. Research clearly demonstrates that marijuana has potential to cause problems in daily life or make a person's existing problems worse. Because marijuana compromises the ability to learn and remember information, the more a person uses marijuana, the more he or she is likely to fall behind accumulating intellectual, job, or social skills. Moreover, research has shown that marijuana's adverse impact on memory and learning can last for days or weeks after the acute effects of the drug wear off.⁹

Additionally, research has revealed that students who smoke marijuana get lower grades and are less likely to graduate from high school, compared to their non-smoking peers.¹⁰ A study of 129 college students found that, for heavy users of marijuana (those who smoked the drug at least 27 of the preceding 30 days), critical skills related to

⁵ National Institute for Drug Abuse: Information-Facts on Marijuana Use (Aug, 2004) accessed Nov. 2004 accessed at www.nida.nih.gov/Infobox/marijuana.html

⁶ Mittleman MA, Lewis RA, Maclure M, Et al: Triggering Myocardial Infarction by Marijuana. *Circ* 103: 2805-2809, 2001

⁷ Polen, MR, Sidney S, Tekawa IS, et.al: Health Care Use by Frequent Marijuana Smokers who do not Smoke Tobacco. *West J Med* 158: 596-601, 1993

⁸ Zhang ZF, Morgenstern H, Splitz MR, et al: Marijuana Use and the Increased Risk of Squamous Cell Carcinoma of the Head and Neck. *Cancer Epidemiology, Biomarkers & Prevention* 6 1071-1078, 1999.

⁹ Ibid ref 8

¹⁰ Lynsky M, Hall W: The Effects of Adolescent Cannabis use on Education Attainment: a review. *Addiction* 95 (11) 1621-1630, 2000

attention, memory, and learning were significantly impaired even after they had not used the drug for at least 24 hours. The heavy marijuana users in the study had more trouble sustaining and shifting their attention. They experienced difficulty in registering, organizing, and using information than did the study participants who had used marijuana no more than 3 of the previous 30 days. As a result of this and similar research, someone who smokes marijuana every day may be regularly functioning at a reduced intellectual level.¹¹

Workers who smoke marijuana are more likely than their coworkers to have problems on the job. Several studies associate workers' marijuana smoking with increased absences, tardiness, accidents, workers' compensation claims, and job turnover. A study of municipal workers found that those who used marijuana on or off the job reported more "withdrawal behaviors," such as leaving work without permission, daydreaming, spending work time on personal matters, and shirking tasks that adversely affect productivity and morale.¹² In another study, marijuana users reported that use of the drug impaired several important measures of life achievement including cognitive abilities, career status, social life, and physical and mental health.¹³

The National Highway Traffic Safety Administration (NHTSA) funds training for traffic officers, and develops programs to increase the effectiveness of the Nation's DUI efforts. NHTSA's DRE (Drug Recognition Expert) program trains law enforcement officers in advanced impaired driving detection techniques. The DRE process is a

¹¹ Pope HG, Yurgrum-Todd D: The Residual Cognitive Effects of Heavy Marijuana use in College Students. *JAMA* 272 (7):521-527, 1996

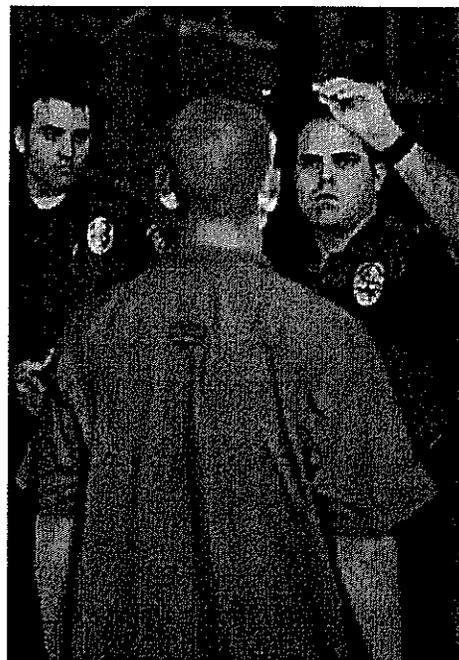
¹² Lehman, WE, Simpson DD: Employee Substance Abuse and Job Behaviors. *Journal of Applied Psychology* 77 (3):309-321, 1992

¹³ Gruber AJ, Pope HG, Hudson HI, Yurgelun-Todd D: Attributes of Long-Term Heavy Cannabis Users: A case control study. *Psychological Medicine* 33:1415-1422, 2003

systematic, standardized, post arrest procedure used to determine whether a driver is impaired by one or more categories of drugs, including cannabis. As of November 2004, 33 states have DRE officers trained in the process.

In addition to funding such training, NHTSA also funds research regarding traffic safety matters, including impaired driving studies. Such research was conducted by a NHTSA sponsored study in 1996, where 129,560 students in grades 6-12 were provided a self-administered questionnaire. When senior high school students were asked if and where they smoke marijuana, 15.9 percent of the respondents stated they smoked marijuana in a car. Of the remaining seniors, 23.9 percent smoked at a friend's house, 11.6 percent used at home, 6.5 percent smoked at school, and 19.5 percent used at other places.¹⁴

Data from road arrests and fatalities indicate that after alcohol, marijuana is the most frequently detected psychoactive substance among driving populations. Credible studies have established that marijuana has been shown to



UTPD Officers administer a field sobriety test to a 20-year old in Austin, Texas
*Media Credit: Shaun Stewart, The Daily Texan
July 27, 2005*

impair performance on driving simulator tests, on open and closed driving courses for up to three hours. Decreased car handling performance, increased reaction times, impaired distance and time estimation, inability to maintain headway, lateral travel, sleepiness,

¹⁴ National Highway Traffic Safety Administration: Youth & Generation X Planner, Drug Impaired Driving. Accessed Nov 2004 at nhtsa.dot.gov/people/outreach/safesobor/15qp/web.html

motor in- coordination, and impaired sustained vigilance have all been reported¹⁵. The greater the demands placed on the driver, the more critical the likely impairment.

Marijuana is reported to impair prolonged driving. Decision times to evaluate situations and determine approximate responses increases.

In 2001, Dr. James O'Hanlon conducted a study focused on marijuana and driving in the Netherlands. The three major issues in the study were to:

- Determine the amount of the THC dose, its time of use and driving performance degradation.
- Develop and or confirm the relationships between dose effect and driving performance degradation.
- Establish the interactive effect of alcohol combined with marijuana and driving performance degradation.

Using the Netherlands as the test location allowed researchers to use strong marijuana samples, and allowed test subjects to operate dual control vehicles on regular roads in normal driving scenarios. The following conclusions were drawn:

- Marijuana impaired drivers tend to drive slower while alcohol impaired drivers tend to drive faster.
- Low doses of marijuana combined with low doses of alcohol (.04 BAC) produced impairment similar to that of a .09 BAC impaired driver.
- A moderate concentration of marijuana, combined with the same low dose of alcohol, produced impairment similar to that of a .12 BAC impaired driver.

¹⁵ ibid ref 12

- A high concentration of marijuana, combined with the same low level of alcohol, impaired the subjects to the point where they could not stand up.

The impairment did not diminish for up to three hours regardless of the subject's age or use experience.¹⁶

Back to the Future - Legalized Marijuana and the Maplewood Police

Department

Although several alternative futures may be conjectured, the following represents the results of the research that includes the involvement of a nominal group technique (NGT) panel. To provide the considered perceptions of those with knowledge or involvement in the issue, the panel consisted of representatives from law enforcement, social services, drug treatment, drug use management, probation, school administration, county and city prosecutors, psychology and the pro-marijuana legalization lobby.¹⁷ In the possible future where marijuana is legalized, a police officer will work in an environment where their duties will be impacted by the:

- ❑ Projected increase in marijuana use by all age groups.
- ❑ Escalation of marijuana related calls for police service.
- ❑ Rise in the incidents of driving under the influence of cannabis.
- ❑ Need to regulate the retail sales of marijuana.
- ❑ Growth in medical aid calls following marijuana related complications or injuries.

¹⁶ ibid ref 12

¹⁷ NGT panel convened by the author on October 12, 2004; unpublished, however, results are available from the author at bdavis@orangepd.org.

- Requirement to ferret out those violating state tax code by “bootlegging” marijuana.

A prominent issue that will impact the duties of the Maplewood officer is how the legalized drug will impact youth ages 13-18. The officer will most probably find that marijuana use by this age group will increase since, according to the National Center on Addiction and Substance Abuse at Columbia University, marijuana use starts early, between 12 and 17 years old. Usually because of peer pressure and curiosity, kids will try it.¹⁸ Furthermore, urges to experiment will increase as the unlawful stigma of marijuana is eliminated, and as parents “come out of the closet” and reveal their use. Those opposed to legalization will fuel the increase in calls for police service by remaining hyper-vigilant in reporting any underage use, disturbances, or code violations.

Marijuana Use and School Performance

Research has demonstrated that students who use marijuana will experience performance problems in school, function at a reduced intellectual level and their skills related to attention, memory, and learning will be impaired. School officials will probably respond by summoning law enforcement to the schools to enforce Maplewood’s municipal codes related to under-age smoking or use of cannabis. With such a strong emphasis on intervening with at-risk youth, the school district will most likely request intervention by trained school resource officers (SROs).

Based upon the risks related to alcohol and marijuana being used together, the NGT panel recommended that Maplewood enact municipal codes outlawing marijuana

¹⁸ Simpson, Carol: Should Medical Marijuana be Legal? Accessed July 2005 at abcnews.go.com/US/print?id=837512

sales from establishments that sell alcohol. These codes should be modified to include restricting the advertisement or promotion of marijuana. All marijuana sales should be restricted to businesses that agree to certain restrictions, most important being the absence of any sales of alcoholic beverages.

Driving, Workplace Injuries and a Drop in Violent Crimes?

The police department will also see an increase in funds dedicated to training officers in the specifics of marijuana-impaired driving. Driving studies strongly suggest that impaired driving incidents will increase by 15-20 percent, and the Maplewood Police Department will face community pressure to reduce the number of marijuana-related traffic collisions.

As a result of increased Marijuana use, Maplewood business and manufacturing companies will also probably find a small percentage of workers are more accident-prone and productivity may suffer. Research indicates that public safety will be responding to an increase in industrial medical aides generated from at-work accidents. Productivity within the industrial, manufacturing and retail communities may suffer somewhat from the decrease in worker productivity and the increase in hours lost to employees using sick time. Although the impact may be indiscernible on a day-to day basis, this trend may have a negative impact on the economy, and worker's compensation claims will most likely increase.

From an optimistic perspective, some alcohol users will shift to using cannabis. Marijuana, when used by itself and not in conjunction with alcohol, brings about a "high" that differs greatly from the depressive nature of alcohol, which can cause aggressive

behavior in some. Research has demonstrated that marijuana is not a catalyst for this aggressive behavior. As a result, Maplewood may experience fewer violent crimes committed by those (mostly males) whose aggressive behavior is now fueled by alcohol.

A Taxing Argument

A spokesperson for the California Board of Equalization said that if an eight percent sales tax were levied on a \$4 billion marijuana crop, the state would take in an extra \$317 million a year. Even if regulated, the sales of legal marijuana products will lead to an increase in tax revenue, which can, in turn, be used to offset a portion of the funds allocated to local law enforcement and schools for marijuana related enforcement or education. The available data supports this increase in tax revenue, although it will not completely fund the economic demands placed upon the city from public safety or Maplewood's schools.¹⁹

A portion of the tax revenue generated from the sales of marijuana will need to be diverted to counties, where public funds will be required for the development of added drug treatment centers. The National Center on Addiction and Substance Abuse at Columbia University reports that since 1992, California has experienced a 142 percent increase in the number of minors seeking treatment for purported marijuana addiction. This fact runs contrary to the pro-legalization lobby's pre-election stance that marijuana is "rarely" an addictive drug.

¹⁹ Lazarus, David: State's untapped pot of gold (September 2004) accessed September 19 2004, available sfgate.com-Cronicle/Business

One Future Divided

Research on the subject reveals Maplewood's future would probably be comprised of two definable time periods. Social scientists and both the pro- and anti-legalization lobbies agree that upon the initiative becoming law, there will most likely be an initial surge of marijuana use by all age groups living in Maplewood, including minors. The negative social stigma currently attached to the drug's use will be detached, and the many curious and closeted users will be more inclined to either try the drug, or reveal their use. Those who clandestinely use the drug today will be more apt to visit those first few locations where the drug can be legally used, like Maplewood's version of the Dutch "coffeehouse."

As the community becomes more accustomed to the law, the upward trend of marijuana related "tribulations" would eventually become constant. Maplewood's field operations will realize this second time period, when marijuana related incidents peak, then stabilize. The energy of the police department can now be turned to improving various systems, resources and altering regulations. As an example, allocation of resources directed to minors and the local schools can be better evaluated and the department's goals and objectives refined to meet this more consistent reality. Officer competency in detecting the marijuana impaired driver and related training efforts for field officers can be analyzed and improved. This second time period will provide the police department with the opportunity to evolve beyond the "read and react" mode to an environment where programs and efforts can be accessed, graded and reprioritized.

Maplewood's police executives will be tasked with developing a strategic plan and navigating their department's personnel and resources through a rather tenuous

political environment. In this new future, Maplewood's City Council along with Federal and State legislators should develop relationships with various interest groups on both sides of the issue.

During times of such social upheaval and change, the police department may get wedged between entities with opposing views. Political pressure may be applied on the law enforcement executive to transition the organization to a desired structure with specific goals that may differ from those goals resonant with the desires of the community.

Conclusion

The dynamic environment that follows marijuana being legalized will be trying for police leaders, their staffs and field forces. As such, command and management teams will be challenged by their communities to provide a safe environment, while those in influential positions exert pressure on the law enforcement executive. Pressure will be applied on the police by parents and school support groups, who may visualize their young congregating in public areas, smoking dope and wasting away their lives like lizards basking in the warm sun.

While remaining steadfast in his or her endeavor to navigate through this rough sea, the police executive will need to remind field officers that the citizens of the state have decided through the initiative process that marijuana is to be legally available to adults. They should ensure officers understand it is not law enforcements' mission to punish those who elect to engage in legal activity, or to disregard the limits of the law created by the majority. The police will be tasked with protecting the rights of all

citizens, for they are not responsible for creating such law, but are charged with fairly enforcing the state law, along with the local ordinances developed to protect their communities.

The most dangerous future is that for which one is unprepared. The law enforcement professional would be foolish to ignore an emerging reality simply because he or she does not like where it may lead. Doing so with regard to the legalization of certain drugs is not only foolish; it sets the stage for failure in our basic mission to protect those we serve. There is still ample time for the police profession to add their voice to those who are shaping our future; however, no matter where the electorate leads us, we are compelled to follow.