

LEGALIZE DRUGS...ARE YOU HIGH?

By

**Dennis B. Smith
Claremont Police Department**

May 2011

COMMAND COLLEGE CLASS 49

The Command College Futures Study Project is a FUTURES study of a particular emerging issue of relevance to law enforcement. Its purpose is NOT to predict the future; rather, to project a variety of possible scenarios useful for strategic planning in anticipation of the emerging landscape facing policing organizations.

This journal article was created using the futures forecasting process of Command College and its outcomes. Defining the future differs from analyzing the past, because it has not yet happened. In this article, methodologies have been used to discern useful alternatives to enhance the success of planners and leaders in their response to a range of possible future environments.

Managing the future means influencing it—creating, constraining and adapting to emerging trends and events in a way that optimizes the opportunities and minimizes the threats of relevance to the profession.

The views and conclusions expressed in the Command College Futures Project and journal article are those of the author, and are not necessarily those of the CA Commission on Peace Officer Standards and Training (POST).

LEGALIZE DRUGS...ARE YOU HIGH?

Do you have a constitutional right to consume illegal drugs? Yes, I know, how can you have the legal right to do something that is illegal? And, consider this: if drugs were legalized, how will this affect the way we do our jobs as law enforcement officers? Should we as protectors of the peace advocate changing the laws to make the use and sales of drugs legal or be the leading proponents in making sure the use of illegal drugs remain illegal? Some governments have found ways to make the consumption of drugs viable, while many countries have concluded the social and economic costs are not worth the idea of protecting personal liberties.

Conflicts between civil libertarians and law enforcement over the legalization of controlled substances are evolving in our country at an alarming pace. “Our jails are bursting at the seams with prisoners serving massive sentences for non-violent, first time offenses,” said Laura W. Murphy, Director of the ACLU Washington Legislative Office. “Our judges have their hands unfairly tied by mandatory minimum sentencing and are forced to give one-size-fits-all sentences to individuals regardless of circumstance. It’s tragically clear that we need a new and effective drug policy that protects our citizens’ constitutional rights from an overzealous, ineffective and misguided policy” of what citizens do in the privacy of their own homes. (Murphy, L. 2010).

In opposition to civil libertarians are some conservative government officials who argue drugs are the driving force of rampant crime and violence in our communities. Former New York City Mayor Ed Koch once described drug legalization as “the equivalent of extinguishing a fire with napalm” (Murphy, L. 2010). Koch acknowledges that the so-called war on drugs has had mixed success, but believes the alternative would

have catastrophic effects on the nation. He believes the legalization of drugs would increase use, lead to more experimentation by youth and exacerbate the existing deleterious effects that drugs have on society. His opinion is government subsidization of addicts would have crippling effects on the economy.

Edmund Hartnett, Deputy Chief and Executive Officer, Narcotics Division, New York City Police Department, points out drug dealers and hardcore addicts would not suddenly become productive, law-abiding members of society. Dealers will still be involved in crime and violence, and users will still need to support themselves by engaging in criminal activity. The legalization of drugs would lead to increases, not reductions, in crime and an undue burden on police (Hartnett, E. 2010).

Opponents of legalization often cite statistics that show that drug prevention initiatives, drug awareness curricula in schools and drug treatment programs are working. They point to the fact that there are fewer addicts today than there were 20 years ago (Hartnett, E. 2010). For example, the Substance Abuse and Mental Health Services Administration report an estimated 12.8 million Americans, about 6 percent of the household population aged twelve and older, use illegal drugs on a current basis (within the past thirty days). This number of "past-month" drug users has declined by almost 50 percent from the 1979 high of twenty-five million -- a decrease that represents an extraordinary change in behavior (Shockney).

Some reasons for this decline in drug use are mandatory drug treatment programs for drug using criminals, pre-employment drug screenings, post employment random drug testing, employee assistance programs for chemical dependent workers, loss of

driving privileges for drug violators, and less glamorous views of drug use depicted in movies and in television.

Déjà vu All Over Again?

So what are we in law enforcement to do, crack down on use or back off and let the user light up? We need only look to the past for the answer. Some states and countries have legalized drugs; here are the findings:

Alaska: After the 1975 State Supreme Court ruling, [Ravin v. State, 537 P;.2d 494 (Alaska 1975)] which stated that personal marijuana possession and use was part of a fundamental state constitutional right to privacy, marijuana use among adolescents rose rapidly and the age of first use moved lower. Those who were smoking marijuana stood at more than twice the national average (Demers). In 1990, an Alaskan grass-roots parent movement successfully re-criminalized marijuana use through the ballot initiative process.

Australia: In 1985, Australia changed its public policy on marijuana, focusing on public health and so-called harm-reduction policies. Following that change, some states adopted marijuana decriminalization laws and some eventually ‘medicalized’ marijuana use - all leading to marijuana being the most commonly used drug in Australia (Child). In Australia, there is growing concern over the strong links between marijuana use and mental illnesses. Those who use cannabis have been shown to have higher levels of depression and depressive symptoms than those who do not use cannabis. Evidence suggests that cannabis may somehow trigger schizophrenia in those who are already at risk of developing the disorder (NCPIC).

After years of a 'soft' approach to marijuana, Prime Minister John Howard is now criticizing health experts for adopting what he terms a "relaxed" attitude to marijuana and is calling on states and territories to abandon decades of decriminalization and to introduce tougher laws to deter marijuana users (Vermeer).

Italy: In April 1993, Italian citizens voted to de-criminalize the use of drugs for personal use. By 2003, then Prime Minister Gianfranco said it was virtually impossible for law enforcement to distinguish between personal use and trafficking. In just ten years after legalization, Italy's government adopted a proposal making it a crime to possess and use even the smallest quantities of narcotics. The vote reflected the social reality of a country in which consumption of mild drugs has become increasingly common. Italy has recriminalized all drugs (Barber).

Netherlands: The revised Dutch drug policy, often held up as an example by U.S. drug-legalization organizations, de-penalized the possession of 30 grams of marijuana, enough to meet an average smoker's needs for three months. The Dutch legalized the public sale of cannabis products, under certain restraints, and adopted a much more lenient policy toward all forms of drug use and abuse based on a philosophy of harm reduction. The country also authorized the use of marijuana for medical purposes (Collins).

As a direct result, the Netherlands is now considered Europe's drug supermarket and the drug capital of Western Europe. As the coffee shops boomed between 1984 and 1996, marijuana use among Dutch youths aged 18 to 25 leapt by well over 200 percent. In 1997, there was a 25 percent increase in the number of registered cannabis addicts receiving treatment for their habit, as compared to a mere 3 percent rise in cases of

alcohol abuse. 1995-1999 data shows that these same areas have witnessed a skyrocketing growth in juvenile crime and the number of youths involved in acts of violence. Sixty-five percent of the persistent rise in criminality is due to juvenile drug users (Collins).

A 1997 Netherlands report on drug use by the government-financed Trimbos Institute, acknowledged that "drug use is considered to be the primary motivation behind crimes against property"—[more than] 23 years after the Dutch policy was intended to stop such crimes (Trimbos). The proportion of new cocaine and cannabis clients among all drug clients applying for medical help for the first time is even more pronounced (32% in 2003 and 41% in 2004). Because of the rise in drug use and drug related crimes, top government officials are tightening Holland's current policy on cannabis, including the closing of many of the drug selling coffee shops. Holland once had 1500 coffee shops; currently, just over 700 still exist (Hoogervorst).

Pros and cons

In California, the great divide over legalizing marijuana for medical purposes can be illustrated through the recently passed Proposition 215 ballot initiative. Ivan Silverberg, M.D, argues in favor of Proposition 215 since it allows seriously and terminally ill patients to legally use marijuana with the approval of a licensed physician. He claims doctors and researchers have found that marijuana is effective lowering internal eye pressure associated with glaucoma, slowing the onset of blindness; reducing the pain of AIDS patients, and alleviating muscle spasticity and chronic pain due to multiple sclerosis, epilepsy, and spinal cord injuries. Today, physicians are allowed to

prescribe powerful drugs like morphine and codeine. It doesn't make sense that they cannot prescribe marijuana too (Conrad).

Those opposed to medical marijuana legalization in California include The American Cancer Society and Sheriff Brad Gates, past President, California State Sheriffs' Association, who says: "Marijuana is not a substitute for appropriate anti-nausea drugs for cancer chemotherapy and vomiting. There is no reason to support the legalization of marijuana for medical use." The FDA has not approved smoking marijuana as a treatment for any illness.

Prescriptions for easily abused drugs such as morphine and codeine must be in writing, and in triplicate, with a copy sent to the Department of Justice so these dangerous drugs can be tracked and kept off the streets. Proposition 215 requires absolutely no written documentation of any kind to grow or smoke marijuana. It will create legal loopholes that would protect drug dealers and growers from prosecution. The proponents of this deceptive and poorly written initiative want to exploit public compassion for the sick in order to legalize and legitimize the widespread use of marijuana in California (Conrad).

The National Institute of Health conducted an extensive study on the medical use of marijuana in 1992 and concluded that smoking marijuana is not a safe or more effective treatment than Marinol or other FDA approved drugs for people with AIDS, cancer or glaucoma. The American Medical Association, the American Cancer Society, the National Multiple Sclerosis Society, the American Glaucoma Society have not accepted smoking marijuana for medical purposes. Attorney General Dan Lungren says that Proposition 215 will provide new legal loopholes for drug dealers to avoid arrest and

prosecution (Conrad). In conflict however, a Mervin Field poll conducted April 30, 2009 found 56% of Californians support legalizing marijuana (NORMAL). However on November 2, 2010 California voters defeated a ballot initiative to legalize marijuana for personal adult possession and consumption with of 53.5% against legalization (Ballot, 2010).

Present Day

Confusion in the enforcement of current drug laws in California continues. Recently, California's medical marijuana law survived its most serious legal challenge when the U.S. Supreme Court denied appeals by two counties that argued they were being forced to condone violations of federal drug laws. The justices, without comment, denied a hearing to officials from San Diego and San Bernardino counties, who challenged Proposition 215. The counties specifically objected to legislation requiring them to issue identification cards that protect holders from arrest by state or local police for possessing small amounts of marijuana for medical use. The cards are objectionable because "the state law authorizes individuals to engage in conduct that the federal law prohibits," said Thomas Bunton, a lawyer in the San Diego County counsel's office. "We are disappointed that the court did not take the case to resolve what we believe was a conflict between federal and state law."

"This was the most threatening case to state medical marijuana laws, the only one that tried to invalidate state laws," said attorney Graham Boyd of the American Civil Liberties Union, which represented patients and advocacy groups in the case. "No longer will local officials be able to hide behind federal law and resist upholding California's

medical marijuana law," said Joe Elford, lawyer for Americans for Safe Access, which also took part in the case.

In contrast, the Supreme Court has ruled that the federal government can enforce its laws against marijuana to prosecute users and suppliers of the drug in California. The Obama administration has said it will target only traffickers who violate state as well as federal laws, although it has not stopped U.S. attorneys from raiding dispensaries that operate with local government approval.

Prop. 215 remains in effect despite federal enforcement efforts that began as soon as it passed. In the counties' case, the court left intact a state ruling last year that said California remains free to decide whether to punish drug users under its own laws. "The purpose of the (federal law) is to combat recreational drug use, not to regulate a state's medical practices," the Fourth District Court of Appeal in San Diego said in the July 31 decision. (*San Diego County vs. San Diego NORML*, 08-887, and *San Bernardino County vs. California*, 08-897: Elgeko).

Legal rulings, however, do not relieve law enforcement and other authorities of the obligation to respond to the public's outcry for help. For example, City officials in Dana Point pointed to medical marijuana as one of the top drug problems at Dana Hills High School, describing a "drug situation" in their City. "It's become a right of passage in California that when you turn 18, you go get medical marijuana cards," City Manager Doug Chotkevys told the Dana Point Civic Association, a group that meets monthly at Dana Point Harbor to talk about city issues. Dana Point has been engaged in a legal brawl with several medical marijuana dispensaries in town for almost two years. At one point, there were at least six dispensaries operating in the city of about 33,000. Currently there

are none open, and in the last month, the City won nuisance lawsuits against two - Beach Cities Collective and Point Alternative Care.

The City has long maintained that its battle was not against Proposition 215, the 1996 law that allows Californians to use medical marijuana, but rather the dispensaries' alleged illegal sale of marijuana for profit. Under state law, marijuana can only be distributed by non-profit collectives. City officials pointed to Proposition 215 as one reason marijuana use is so prevalent at high schools in Orange County. They say medical marijuana is all about old people in walkers and cancer," Chotkevys said. "I took the council members to a dispensary and had them sit and watch the kids run up the stairs with their hats on sideways."

Dispensary owners deny illegal activity and say they provide medicine to sick patients. Malinda Traudt, 29, received her medical marijuana from Beach Cities, which is now closed. She filed a lawsuit in 2010 against the city claiming she was denied her right to access marijuana. In July an Orange County Superior Court judge sided with the city, saying there was no constitutional right to obtain pot and Proposition 215 did not override the city's ability to ban dispensaries.

What's a Cop to Do? (possible futures /possible solutions)

No one denies the importance of drug prevention, education and treatment. The real issues are:

- Whether society and government have the authority to protect the public from the harmful acts of drug abusers -- or other persons who would do the public harm either intentionally or otherwise;
- Whether society should protect an individual from himself; and

- What measure, or combination of measures, is acceptable in terms of diminished individual rights to promote the common welfare?

Certain aspects of drug abuse (violence to others, for example) pose a significant threat to our society. In these cases, society does have a fundamental right to protect itself from danger. Societies take appropriate measures to protect people from their own unwise actions. For example, we have established mandatory seat belt laws, child labor laws, motorcycle helmet laws, and hundreds of other similar regulations specifically designed to keep people out of harm's way.

America's tradition of government and social policy is based on the recognition that individuals are responsible for the consequences of their actions. It follows that we should not excuse the actions of a person under the influence of drugs because their actions were based upon free will. No society would last long if individual actions were allowed to endanger the well-being of its members. This is true in a family, within a tribe or village, within a military unit, or any size organization dependent on the responsible actions of its members for the groups' security and safety. Court decisions in these cases have always hinged on the impact that the extension of rights will have on the population. If the extension of rights is deemed harmless to society, then the right is extended. If, however, the extension of a particular right is deemed injurious to the greater rights of the community, then the extension is denied. A strong argument of proponents is they should be able to have the freedom to have the lifestyle of their choice – as long as it is “in the privacy of their dwelling.” In the case of drug abuse, however, it is difficult to accept the argument that individuals not be held accountable for their lifestyles (Tully).

Court decisions of drug using criminals committing robberies and burglaries, thus far, held strong that the law was not wrong, unjust or an unacceptable infringement of individual rights. The courts have consistently said that an individual must be held responsible for his/her acts. The court decisions of today reaffirm what common sense, scholars, theologians and our founding fathers have told us for centuries -- individual rights have limits. Clearly, drug abuse can never be viewed by a healthy society as an individual right (Tully).

The unclear, divided opinion of drug legalization by the public we pledge to serve is likely to drive any cop to drink, or take a bong hit! Some want legalization; others modified regulation or outright prohibition. The research shows that countries and states that have tried legalization have had mixed results and the burden on the police increased, not decreased. Law enforcement spent more time responding to intoxicated people creating disturbances and issues related to the using and distribution of drugs. We work for the public and are charged with providing public safety within the law. We educate the public on crime prevention, so too should we educate the public now to what other countries have already learned about drug legalization.

Clearing the Air on Drug Legalization

In most countries that have relaxed drug laws, significant increases in crime, violence, and drug dependency were realized. The United States Constitution does not guarantee its citizens the right to do bong rips, snort lines of coke, smoke crystal meth or slam heroin. Nor does an individual have the legal right to use drugs to the point the rest of a free society pays increased health insurance rates, is victimized by more thefts,

incidents of drug induced violence, and the additional burden on the mental health system from long-term habitual drug use.

Just as the pro-legalization movement uses well funded and organized groups like NORML, Americans for Safe Access, and Drug Policy Alliance, law enforcement must use the power of partnerships with like-minded groups that may include church organizations, law enforcement, mental health, victims rights groups, drug recovery, medical and insurance groups, parent /teacher organizations, and conservative political groups to educate, publicize, and lobby lawmakers to stop and reverse the relaxing and legalization of controlled substances. In addition, professional marketing should be strongly considered to help determine when, where, and how to best promote our message to be most effective at influencing the public we are sworn to protect.

Financing for such an endeavor can source from medical insurance groups, who will certainly see the value in investing in drug prevention education as a less costly option to the severe long term fiscal burden they bear caring for the chronically ill drug user. Additional funding may be from law enforcement organizations such as CNOA, CPOA, DARE, CalChiefs, CalGangs (to name a few) that would benefit from the positive publicity and long term benefits of reduced drug abuse.

It is incumbent, therefore, for each of us in law enforcement to be ambassadors to educate the public and influence the political process to ensure legislators and voters alike are truly aware of the ramifications legalized drug use, and lobby the legal system to hold firm with criminal penalties and mandatory drug rehabilitation for those who abuse their bodies and the civil rights of others by using illegal drugs.

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