

MAPS Medical Marijuana Hearing Before DEA Administrative Law Judge Underway, But Second Round Postponed Until December

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As those of you who saw an article by Professor Lyle Craker, Ph.D. in a previous issue of the MAPS bulletin and who faithfully read MAPS' monthly news updates know, MAPS is currently engaged in hearings before a DEA Administrative Law Judge (ALJ) seeking permission for Professor Lyle Craker to grow marijuana at U. Mass Amherst for use in MAPS-funded, government-approved studies with the goal of developing marijuana into a legal, prescription medicine. The American Civil Liberties Union's (ACLU) National Drug Law Reform Project is representing the professor, Lyle Craker, *pro bono*, along with lawyers from the Washington D.C. firms of Jenner & Block and Steptoe & Johnson.

The hearing was originally scheduled to last three weeks, spread out over August, September and December. The ALJ granted a DEA request to postpone the second week, however, so the hearing will not resume until December 12.

This hearing represents one of the latest fronts in the ongoing legal battle over medical marijuana. The U.S. Supreme Court held in June of this year, in *Gonzales v. Raich*, that the federal government can enforce federal marijuana laws against patients even in states where medical use of marijuana is legal under state law. During the *Raich* oral arguments, however, Justice Breyer signaled the way forward, stating that patients should ask the FDA to reclassify marijuana. Justice Breyer noted, "... medicine by regulation is better than medicine by referendum."

We'd like to take Justice Breyer up on his suggestion on behalf of the nearly 80 percent of Americans who support medical marijuana. Unfortunately, the federal government has set up a classic Catch-22: They say "we need more research," yet at the same time obstruct that very research. Under the current regulatory scheme, the only legal supply of marijuana for research in the U.S. is grown at the University of Mississippi under contract with NIDA.

No other controlled substance—including LSD, MDMA (ecstasy), heroin, and cocaine—is subject to this absurd NIDA monopoly. All can be procured by scientists from any number of DEA-licensed laboratories. Yet with marijuana, even after the FDA approves a research protocol and grants permission for a study to go forward, NIDA maintains virtually sole discretion over the provision of marijuana. And NIDA has refused, time and again, to provide marijuana for legitimate, FDA-approved research, bowing, instead, to the politics of the "war on drugs."

The only realistic way that scientists will be able to conduct the research necessary to take marijuana through the FDA-approval process so that it can be legally available as a prescription medicine is to develop an alternative source to NIDA. That is what Professor Craker seeks to do, barred only by DEA's refusal to grant him a license—a license the DEA is legally obligated to issue if so doing would be in the public interest. We're using this hearing to prove through expert testimony (including that of former senior policy analyst for the White House Office of National Drug Control Policy, Barbara

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Roberts) that it is, without question, in the public interest to grant Professor Craker's application.

Transcripts from the hearing thus far are available on both the MAPS and the ACLU websites (<http://www.maps.org/mmj/> and <http://www.aclu.org/medicalmarijuana/#profiles>). You have to read them to believe the lengths to which DEA will go to block medical marijuana research.

For instance, we called former California state Senator John Vasconcellos to testify about his state's Center for Medicinal Cannabis Research and his support for Dr. Craker's application. DEA lawyers on cross examination sought to discredit the Senator with questions about legislation he introduced over 15 years ago establishing a task force to set up curricula in public schools designed to improved students' self-esteem, and about him being featured in a conservative author's book titled "One Hundred People Who Are Screwing Up America." (Other evil-doers included in the book are Jimmy Carter and Barbara Walters). DEA tactics got even nastier when they cross-examined MAPS President Rick Doblin, pressing him about his personal use of marijuana. (See a Sacramento newspaper article about these DEA tactics at <http://www.maps.org/weblogs/rick/index.php?archives/II-Clash-over-pot-research-gets-personal-Sacramento-Bee.html>).

DEA refused to grant immunity to another witness we planned to call. An AIDS patient wanted to testify about his being forced to drop out of a California medical marijuana study due to bronchitis he developed from the low-quality marijuana NIDA provided for the study, but was concerned about testifying under oath to his use of medical marijuana. That use is legal under California law but, after the Supreme Court's decision in *Raich*, illegal under federal law. We requested immunity from DEA to ensure that this patient could tell his story to the ALJ without fear of being arrested and prosecuted in federal court. DEA refused and our witness understandably decided not to testify. After DEA's cross-examination of Rick Doblin, that decision not to testify made even more sense.

The ACLU welcomes the opportunity to work with MAPS in representing Professor Craker. We believe that scientists and doctors should be free to pursue the truth about all drugs and to conduct legitimate research without government obstruction or censorship rooted in the politics of the drug war. We believe that the public has a right to know the truth about the drugs and medicines they consume. And we believe that sick people have a right to safely access the medicines their doctors say they need to save their lives or alleviate pain without risking prosecution and imprisonment and without resorting to the black market. The time has come for DEA to hear the call of science and approve Professor Craker's application to grow medical marijuana for this critically necessary research.

Allen Hopper is a Senior Staff Attorney at the ACLU Drug Law Reform Project, where he leads the Project's marijuana law reform litigation efforts.

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Allen Hopper speaks at a rally for the Wo/Men's Alliance for Medical Marijuana in California.