

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.

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Marijuana Pipe Dreams

John Tierney

When the Supreme Court ruled in June that states could not legalize marijuana for medical uses, Justice Stephen Breyer voted with the majority. But during oral arguments, he suggested an alternative way for patients to get it: let the federal Food and Drug Administration decide if marijuana should be a prescription drug.

“Medicine by regulation is better than medicine by referendum,” he said. In theory, that sounds reasonable. But what if the officials doing the regulation are afflicted with a bad case of Reefer Madness?

If you doubt this possibility, you should have been at a hearing that began this week at the Drug Enforcement Administration’s headquarters. Lyle Craker, a professor of plant and soil sciences at the University of Massachusetts, asked an administrative judge to overrule the agency so he could grow marijuana for F.D.A.-approved research projects by other scientists.

Dr. Craker is a well-regarded agronomist who’s being supported by the American Civil Liberties Union and both of his senators, Edward Kennedy and John Kerry. But for four years he’s been stymied by the D.E.A., which first stalled and then finally denied his request for a permit.

There are precedents for his request, because researchers already get supplies of other drugs—like heroin, LSD and Ecstasy—from independent laboratories licensed to make them. But researchers who want marijuana have only one legal source: a crop grown in Mississippi and dispensed by the National Institute on Drug Abuse.

Scientists say they need an alternative partly because the government’s marijuana is of such poor quality—too many seeds and stems—and partly because the federal officials are so loath to give it out for research into its medical benefits.

Discovering benefits, after all, would undermine the great anti-marijuana campaign that has taken hold in Washington. Marijuana is deemed to be such a powerful “gateway” to other drugs that it’s become the top priority in the federal drug war, much to the puzzlement of many scientists, not to mention the police officers who see a lot of worse drugs on the streets.

People with glaucoma and AIDS have sworn by the efficacy of marijuana, and there have been studies by state health departments showing that smoking marijuana is especially good at controlling nausea. Scientists would like to test these effects, but they can’t do good studies until they get good marijuana.

Critics of medical marijuana say that it’s unnecessary because patients can obtain the benefits of its active ingredient, THC, through a drug that’s already available, Marinol. But many patients say it doesn’t work as well. They point to the case of the writer Peter McWilliams, who said smoking marijuana was the only way to control the nausea brought on by the mix of drugs he took for AIDS and cancer.

He was forced to switch to Marinol after a D.E.A. investigation led to his conviction for violating federal laws against marijuana. In 2000, several weeks before he was to be sentenced, he was found dead in his bathroom. He had choked on his own vomit.

Phillip Alden, a writer living in Redwood City, Calif., told me that marijuana was a godsend for him in dealing with the effects of AIDS. He said it eased excruciating pains in his fingertips, controlled nausea and enabled him to avoid the wasting syndrome that afflicts AIDS patients who are unable to eat enough food.

But Mr. Alden said only some kinds of marijuana worked—not the weak variety provided by the federal government, which he smoked during a research study.

“It was awful stuff,” he said. “They started out with a very low-grade plant, rolled it up with stems and seeds, and then freeze-dried it so that they probably ruined any of the THC crystals. All it did was give me headaches and bronchitis. The bronchitis got so bad I had to drop out of the study.”

Mr. Alden was scheduled to testify at this week’s hearing, but he told me he had to withdraw because the D.E.A. refused to give him legal immunity if he admitted using marijuana not from the government. It’s a shame the judge will be making a decision without hearing him, but I can understand Mr. Alden’s hesitancy.

D.E.A. officials have already shown they’re quite capable of persecuting someone who uses marijuana to deal with AIDS, and they may well be even more eager to go after someone who encourages research into their least favorite drug. When it comes to marijuana research, the federal policy is “Just Say Know-Nothing.”