

**MIXED SIGNALS: THE ADMINISTRATION'S POLICY
ON MARIJUANA, PART III**

HEARING

BEFORE THE
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
OF THE
COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS

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MIXED SIGNALS: THE ADMINISTRATION'S POLICY ON MARIJUANA, PART III

Friday, May 9, 2014

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT OPERATIONS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:09 a.m., in Room 2154, Rayburn House Office Building, Hon. John Mica [chairman of the subcommittee] presiding.

Present: Representatives Mica, Turner, and Massie.

Also Present: Representatives Fleming, Jordan, Cohen, and Norton.

Staff Present: Melissa Beaumont, Assistant Clerk; Will L. Boyington, Deputy Press Secretary; Molly Boyd, Deputy General Counsel and Parliamentarian; David Brewer, Senior Counsel; Drew Colliatie, Professional Staff Member; John Cuaderes, Deputy Staff Director; Christopher D'Angelo, Staff Assistant; Howard A. Denis, Senior Counsel; Adam P. Fromm, Director of Member Services and Committee Operations; Linda Good, Chief Clerk; Tyler Grimm, Senior Professional Staff Member; Christopher Hixon, Chief Counsel, Oversight; Michael R. Kiko, Legislative Assistant; Mark D. Marin, Deputy Staff Director of Oversight; Emily Martin, Counsel; James Robertson, Senior Professional Staff Member; Katy Rother, Counsel; Laura Rush, Deputy Chief Clerk; Andrew Shult, Deputy Digital Director; Peter Warren, Legislative Policy Director; Courtney Cochran, Minority Press Secretary; Adam Koshkin, Minority Research Assistant; Katy Teleky, Minority Staff Assistant; and Cecelia Thomas, Minority Counsel.

Mr. MICA. Good morning, I'd like to welcome everyone and call to order this Subcommittee on Government Operations. It is one of the key subcommittees of the House Oversight and Reform Committee. The title of today's hearing is Mixed Signals, the Administration's Policy on Marijuana, and this is the third in a series of hearings that we have been conducting in the subcommittee to look at some of the changes in the law, and also some of the practices that we're seeing across the country in regards to the use and enforcement of law relating to marijuana.

The order of business is we will start with some opening statements, myself and other members that wish to be recognized. When we finish with that, well, we have two panels is this morning, and we have the delegate from the District, Ms. Norton, who we'll hear from first, and then we have a panel of four witnesses that we will hear from in the second panel.

We gather today, and I will start out by saying with an opening statement in fulfilling an important responsibility of the Congress, and that is the investigative and oversight role of this committee. We are sent here by the people, not only to legislate on some matters, but also to conduct the most important investigative and oversight role in the House of Representatives, and this is a long-standing committee. I'm pleased to be the senior member having served here longer than anyone else, I think, on the committee, but it does fulfill an important role in, again, keeping government accountable and responsible.

As today's hearing relates to the District of Columbia, I know there have been some public pronouncements about what is the committee doing looking at the District's law. Let me just start out by saying, first of all, the District of Columbia is not a State. It's not a territory. It's not a possession. In fact, it is a Federal District. It's provided for under the Constitution in a specific statute. And let me just say that the law that we are talking about will impact, and that the District has passed, will impact not only the people of the District, but the people of the United States, and we have millions and millions of people visiting us each year. It is a law that is in conflict with some Federal laws, and I think we have an important responsibility to review its implications.

Am I singling out the District of Columbia for examination of the impact of changes in marijuana laws? Absolutely not. And we have held two previous hearings in which we specifically looked at the impact in Colorado, which has gone beyond the statute in the District; and we're looking at other States, too. More than 20 States have authorized and changed the legal framework of marijuana for medical use; and so this is, again, directed to our responsibility under the Constitution and laws, a particularly unique responsibility of the Congress over and in response to its responsibility over the District of Columbia.

So, again, on March 4, we did a hearing with a Colorado U.S. attorney, and we had found out actually on that date, and I think that's the date that the D.C. Council voted to decriminalize the possession of marijuana. The impact is significant. More than 20 percent—can we put that little slide up here—more than 20 percent of D.C. is Federal land, and it is, in fact, unclear as to how the D.C. Criminalization will affect marijuana possession and consumption on Federal land like the Mall. I'm color blind, but they tell me that the green you see, there's a great deal of territory that, in fact, is Federal land. I asked the question of staff what if I'm standing on the Mall which adjoins, I guess its Independence Avenue with one foot on each, this side of the roadway there, what the impact of enforcement would be, and no one could tell me.

There are many questions that have been raised by the District's adoption of a bill that reduces the penalty for marijuana possession from a criminal offense punishable by jail time to a civil offense punishable by a \$25 fine. And, again, it is in conflict with some of the Federal statutes.

Currently, we have marijuana as a Schedule 1 narcotic. Currently we have different levels of enforcement and penalty for its use on Federal property of which you can see we have a great deal in the District of Columbia. So that's one of the reasons we're here.

Again, I've had some people, including our witness, question our authority. Let me just review the authority under the Constitution of the United States. Do you want to bring that up? Article 1, Section 8, it's very evident to exercise the exclusive legislation in all cases whatsoever over the District, and our authority, in this regard, stems from the Constitution.

As you know, the District was created by an act of Congress in 1790, and subsequently we have a 1973 law. Do you want to put that up. Home Rule Act of 1973, and it says the Congress of the United States reserves the right at any time, and this is one of those times, to exercise its Constitutional authority as legislature for the District. So we do have very clear authority in that regard.

And then we are here in the House Oversight Government and Reform Committee that dates back to the early 1800s because the Congress wanted not only the authorizers to conduct oversight and the appropriators, those who created agencies or the District of Columbia, but also who appropriated, they wanted them to conduct oversight, but they wanted a third party, and we happen to be that third party, the House of Representatives Committee on Oversight and Government Reform, and clearly the laws, Rule 10 Clause 1, point out that this is our responsibility. So with that, we will fill our Constitutional and statutory responsibility and conduct this hearing.

I'm not here to debate the merits or demerits of the criminal law. We're here to examine its impact. We're here to examine the enforcement questions. We're here to examine a host of questions. This is not the last hearing. We started out with the Deputy Director of the White House Policy on Drugs, and he testified to a number of items in conflict with statements we have heard from the President, in fact, even from the President of the United States about, again, the impact of the current marijuana that we see in the marketplace, its physical impact, also its impact on the performance and even intelligence of individuals again, sat at this table and told us some reasons why we should not lessen penalties and why we should, again, look at what's being done around the United States, much in conflict with some agencies of the administration who are now in turmoil trying to figure out how they comply with changes in, albeit the District of Columbia or Colorado or some 20 States laws that have been passed.

In fact, with many local and Federal law enforcement agencies, and I'd ask the staff, have we got a list of the—in the District of Columbia we have this pretty extensive list of enforcement agencies in the District, starting with the United States Capitol Police, the United States Secret Service, Supreme Court Police, the United States Park Police. Even the Smithsonian have police. We have a whole host here of agencies that are charged with enforcing the law within the District of Columbia and also have different sets of penalties that they must enforce that may be in conflict with the law that has been proposed by the District for the District.

So, again, we have issues that relate not only to the District but to law enforcement with other multiple agencies within the District of Columbia and that have a legitimate law enforcement role in the District.

So, again, we are here to look at some of these issues, to explore the implications of this new law's impact on the District, millions of people who will visit here, and we hope to do so in a responsible manner. Whether or not we will make any further recommendation, I'm not going to prejudge. We haven't heard all the testimony. I invited the District to also send a representative from the District council, and I think they chose not to do that. I'm disappointed that they are not sending someone who actually adopted the policy, but we do want to provide an opportunity for the representative of the District, Ms. Norton, to testify and have her position stated on the record as we'll do in just a minute.

Are there further members that would seek recognition? Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chair. I just want to thank you for holding this hearing and for having the hearings you've previously had. I think that the statements in the previous hearing of the drug czar's representatives and the DEA Deputy Director that came here spoke for themselves, and they speak for the need for the President to replace those people and have people in positions that reflect the values of America in 2014, and the values that President Obama has espoused, and the values that the people have espoused in voting in States throughout this country where 21 States have medical marijuana and two have recreational marijuana.

This particular case, one of the things that I really liked about the States adopting this is Louis Brandeis, my favorite Supreme Court Justice, said that States are the laboratories of democracy, and that's the wonderful thing, and then there were 48. The States could try things. The others could learn and see what's good and what's bad. D.C., while not a State, is a separate jurisdiction and can be a laboratory of democracy just as Brandeis envisioned, and no better laboratory of democracy than right here where the Members of the House of Representatives are situated to where they can see and be around and experience in their homes and their home area, second home area, how this law affects the populace. It has a disparate impact upon African Americans, 8-1 in arrests, and it has a big effect on the D.C. Budget and incarcerations and police time. It takes away from other priorities that could be people spending on human issues that need to be addressed. I'm sure Delegate Norton who does such a wonderful job representing the District will bring these issues up, but I am a strong supporter of D.C.'s having the autonomy to address the issues as they did by a 10-1 vote and appreciate the opportunity to discuss these issues in this forum.

Thank you, Mr. Mica.

Mr. MICA. Thank you. And I should have asked for unanimous consent, since you're not on this specific committee or subcommittee, to participate; and without objection, we have granted you the ability to participate.

At this time, I also want to ask unanimous consent that our colleague from Louisiana, Dr. Fleming, be allowed to also participate in the hearing; and without objection, so ordered.

So let me recognize further members of the subcommittee first. Mr. Massie, did you want to be heard? Okay. Mr. Jordan? Okay. Then we'll go to Dr. Fleming. Welcome, and you're recognized.

Mr. FLEMING. Well, I want to thank you, Mr. Chairman, today for allowing me to sit in on this and other members of this committee. I'd like to speak for a moment not so much specifically about the law and the advisability of relaxing laws on marijuana, but just to speak as a physician and as a father, a family physician who's been a alcohol and drug medical director twice, someone who wrote a book about preventing addiction in children back in 2007, and what the impact of marijuana is today in America and also changing attitudes.

You know, it was back about 20 years ago, I believe, that there was identified some theoretical value of the use of marijuana medicinally in the case of dying cancer patients. It gave them some comfort, and, of course, no one has any problem with attending to the needs of a dying patient, someone with a terminal illness.

Somehow this has morphed, though, into claims that marijuana actually cures cancer, that it is necessary to treat nausea, and many other claims that have been completely disputed by the medical community. There is nothing that marijuana treats today that can't be provided by other medications that are much safer.

Now, let's talk about the safety of marijuana. Marijuana is an addicting substance. Again, there's a myth out there that it's not. The most common diagnosis for young people admitted to rehab centers today is for marijuana addiction. Make no mistake about it. Now, there's also discussion about marijuana is a gateway drug, and I'll tell you what drug addicts tell me, and that is that every addicting substance is a gateway drug to another addicting substance. Marijuana is not excluded. I would even include alcohol and perhaps tobacco in that category.

So any exposure of an addicting substance oftentimes leads to worse addictions. What else do we know science? We have learned, we have many studies now that confirm this, that the human brain does not fully mature until almost age 30. Yet the average age of a child who has first exposure to alcohol, tobacco, or marijuana, is around 11. And what we have learned is that these drugs, these addicting substances, actually modify the brain and its chemical pathways, the biochemical pathways and the neurotransmitters, and sets the stage for addiction later in life. In fact, children who are exposed to such addicting substances prior to age 15 have a five times greater risk of future addiction than those who are not. So there's no question that the rate of addiction goes up with exposure in young people.

Two very recent studies have come out that have important impact that came out just this month. One is being published in Neuroscience where they did MRI scans of people who used marijuana only once or twice a week. And what they found was profound changes in two aspects of the brain, areas that confirm what we have believed all along, and that is something called Amotivational Syndrome that occurs in regular marijuana users.

Also, the incidence of psychiatric diseases, particularly schizophrenia, is higher among chronic users. Heart disease, we're seeing a spike in heart disease among marijuana users as well. Now,

there's also a Libertarian argument on this that why should government stand in the way of people utilizing a substance if they wish to do so? And theoretically, that makes plenty of sense, but the problem is you never hear libertarians make the claim that when I'm unable to get or keep a job and I can no longer support my family, that I will also tell the government not to take care of us through our growing entitlement system. So, again I would always challenge those who argue on a Libertarian basis, you can't have it both ways. If you can do whatever you want with your body, that is, ride a motorcycle without a helmet or whatever, don't expect society and taxpayers to take care of you when you're suffering from those circumstances.

So, again, I want to be sure that we have the facts in front of us. We're getting reports now in States like Colorado where marijuana has recently been made legal, where children in the fourth grade are now dealing the drug. It's finding its way into food, and now we have a spike in poisonings in emergency rooms where children have actually ingested marijuana and become quite ill.

So these are all important things I want to be sure we have out on the table, Mr. Chairman. And, once again, I thank you for the opportunity to join everyone today, and I yield back.

The CHAIRMAN. Thank you. Do you other members wish to make opening statements. Mr. Massie?

Mr. MASSIE. With all due respect, I just want to clarify the Libertarian position is not to have the government take care of you if bad luck befalls you or you make poor decisions.

Mr. FLEMING. Would the gentleman yield on that?

Mr. MASSIE. Absolutely.

Mr. FLEMING. I would agree that should be the Libertarian, but I interact with people every day on this subject because of my stance on it; and I can tell you, and I would actually say that there's kind of a faux Libertarian group out there who make the claim on the basis you say, but they never come with the second part.

So I agree with you, if you were to take a libertarian stance on this, if I were to choose myself for instance, to ride a motorcycle without a helmet, or to use marijuana and tell the government to stay out of my life, then like you, we should also demand that government not provide us benefits to the charge of taxpayers to take care of us when that happens. So we agree philosophically. I'm just saying there are many who make the claim under the umbrella of Libertarianism, and it's not Libertarianism at all, as you well state.

Mr. MASSIE. Yeah, I agree.

Mr. FLEMING. Thank you.

Mr. COHEN. Mr. Chair, can I ask a question of my colleagues?

The CHAIRMAN. Well, Mr. Massie had time. Did you wish to yield to Mr. Cohen?

Mr. MASSIE. I will yield time.

Mr. COHEN. I just wonder with your argument, Doctor, should we outlaw alcohol so we don't have to pay for the alcoholics who can't get a job and who we have to pay for for rehabilitation and for DWIs and for assaults and murders when they're drunk and those types of things? Should we get rid of alcohol?

Mr. FLEMING. Would the gentleman yield?

Mr. COHEN. I yield.

Mr. FLEMING. I'd be happy to respond. Great question. You know, alcohol has been an accepted part of our culture and even our religious practices for centuries. We did try even with an amendment to the Constitution to prohibit the use of it, and it just was not culturally accepted. It is very problematic, but I would also say that on a medical basis, that moderate amounts of ingestion of alcohol actually have positive health effects. That is, again, not to diminish what it can do. There's no question that it too can damage the brain, the liver and many other organs, but that it's not realistic given the cultural acceptance of alcohol to prohibit it.

The same is true of tobacco. We used it for 400 years without realizing that it was a problem. And, in fact, as recently as the 1950s, doctors actually recommended smoking, at least on commercials, for health, and we found out, or course, in 1969 when the Surgeon General came out and said that it causes lung cancer and many other problems. But we have done a lot of things to mitigate the use of it and the damage of it. But marijuana is different. The public has never accepted marijuana as a part of our culture. I know that that seems to be changing, but I think we can turn it back in time to prevent that from inculcating itself into our culture and damaging more young people and ultimately causing severe health care problems later in life.

Mr. MASSIE. I'll yield back my time so as not to derail this committee meeting.

Mr. MICA. I thank the gentleman. And as you can see, there's a lot of debate, not only among various groups, but among Members of Congress from both sides of the aisle and within the parties themselves. And what's happening is raising many questions across the United States, both the change in the law in the District. But it does have implications. I'm going to yield to Ms. Norton in just a second. I do want to provide at this point in the proceedings, the penalties for marijuana possession starting with Federal Law 21 U.S.C. Code, Section 844, which has simple possession that can provide for 1 year of imprisonment or a fine of not less than \$1,000. That's the Federal law. The new D.C. Law is \$25 penalty, civil penalty. Federal Parkland penalties, in fact, are a fine or jail term up to 6 months. There are 26 agencies that are responsible for law enforcement.

Now, I have this joint here—okay. Don't get too excited out there, some of you. This is not a real one. It's a mock one, but I am told by staff that this joint, Ms. Norton, that the penalty is, let's see, you have up to 1 ounce or less. 1 ounce is 28 grams. Is that correct? And each joint has about 1 gram, so over 20 joints you could be in possession of in the District of Columbia. Here is the list of penalties which I'm submitting to the record. I can't submit this. This as I said is a faux joint. But for the record, I will submit this list.

Mr. COHEN. Did you roll that?

Mr. MICA. No, I had staff do it. They have more experience. But all kidding aside, there are very serious implications, Ms. Norton, to the step the District has taken. We want an open, honest airing of what's going to happen, how this is going to be enforced, and the implications. And that's why we brought in Federal and District

and other officials to discuss this in an open and honest manner. With that, I welcome our delegate, and recognize her.

**STATEMENT OF THE HON. ELEANOR HOLMES NORTON, A
DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA**

Ms. NORTON. I want to thank you very much, Chairman Mica for the opportunity to testify, and I just want to say that under the Attorney General's policy, I think you are safe with that joint because the policy is not to enforce marijuana laws here in the District of Columbia, and I think even in the Capitol.

Mr. Chairman, before I say a few words and summarize my testimony, I do have to say I think it's almost quaint to hear a jurisdiction of 650,000 American citizens referred to as a Federal District. Not since the 1973 Home Rule Act when Congress realized it was wrong to have a Nation's Capitol where people could not govern themselves, that people refer to my district as a Federal district. I, of course, recognize that the Congress kept unto itself ultimate power over the Nation's Capitol while granting the citizens of this city the right to govern themselves and to make their own local laws in the same way as the members of the panel in their local jurisdictions, have those laws made.

Mr. Chairman, notwithstanding that ultimate power, I do note with great pleasure that this full committee on which I serve has, in fact, respected home rule. This is the first time that I can remember that there has been a hearing in Congress on a purely local matter, notwithstanding the power of Congress over the District of Columbia. It simply has the good sense and fails to violate its own principles of local control most of the time by almost always not interceding into our local affairs as American citizens.

As to the 20 percent of the District of Columbia that is Federal land, Mr. Chairman, six or seven States in the United States have most of their land to be Federal land. And yet we do not claim, this committee does not claim that that presents any particular problem when it comes to the enforcement of local laws which may differ from Federal laws.

As to the location of a number of police forces here, Mr. Chairman, they will be enforcing Federal law under the Attorney General's memorandum, which means that they will not interfere with local law in the District of Columbia as it has been passed with respect to marijuana decriminalization.

Mr. Chairman, though I appreciate the opportunity to testify here this morning, I must say I come as much in protest as in the normal, the usual sense of testimony because the subcommittee has singled out the District of Columbia on its marijuana decriminalization law as it has not singled out any of the other 18 jurisdictions who have similar laws. In fact, the subcommittee in two prior hearings has gone out of its way, although it was investigating exactly what it is investigating here, the conflict between Federal and local law, to observe its often cited adherence to the Tenth Amendment by not calling any local officials, even when it looked at Colorado in particular, which along with Washington, of course, has gone much further in decriminalization but has legalized marijuana.

Still, no local official was called to Washington to be cross-examined, as it were, by the national legislature about what that local official was doing in its local jurisdiction. That, too, Mr. Chairman, is at the root of our Constitution. The ultimate authority of the District of Columbia came because Congress devolved that authority in 1973 in its landmark law, except for a few enumerated exceptions and plainly, marijuana decriminalization was not among them.

Mr. Chairman, almost 40 years ago, the first State decriminalized marijuana. That was Alaska. Since then red and blue States alike have decriminalized marijuana from California to New York, from Mississippi to Nebraska. Nothing, nothing is similar about these States except they have taken this particular step in keeping with what their local residents desired. Yet the District of Columbia is the only jurisdiction that has gotten a full-fledged hearing on its local decriminalization law. Nothing distinguishes the District of Columbia's decriminalization law from those 18 States, except the illegitimate power of the national government to do what would make the Framers turn over in their graves, and that is to overturn the laws of locally elected officials in their own jurisdiction, in contravention of every American principle of local control of local affairs.

This hearing stands out because it does not—it flies in the face of what my Republican colleagues often preach about devolving power back to local States and jurisdictions. This hearing does just the opposite, tries to snatch power by making the District of Columbia vindicate its local power and its local policy before the State legislature.

I just want to go on the record to say we will defend this city's marijuana decriminalization bill against any and every attempt to block it or to change it. There will be as a courtesy, a city police department official here today, but the mayor of the District of Columbia has informed me that he objects to this hearing, and he has refused to provide, as has the Council, any official who has had anything to do or will have anything to do with devising or carrying out the marijuana decriminalization law in the District of Columbia.

I am also pleased to note that two majority members of this subcommittee, Representatives Justin Amash and Thomas Massie, carried out the principle of local control of local affairs by last week voting for the Blumenauer amendment to prohibit local funds being used to implement the veterans health administrative directive that forbids a VA provider from completing forms seeking recommendations or options regarding a veteran's participation in a State marijuana program.

Mr. Chairman, it took me 11 years to remove a marijuana, a medical marijuana amendment from the District's appropriation. Now, today 21 States have medical marijuana.

Mr. Chairman, the most important reason I am here today is to make it clear to the committee what really propelled the District to pass its own decriminalization law. Even though blacks and whites in the United States use marijuana at the same rate, a recent study showed that African Americans in our country are four

times more likely, are almost four times more likely, to be arrested for mere possession.

Mr. Chairman, it was interesting to note that in your own State of Florida you have, you are number three in the nation for marijuana possession arrests, and blacks in Florida are arrested for marijuana possession at a rate four times that of whites. But here, even in the progressive, District of Columbia where half of the population is black, we found an even worse record, that African Americans were eight times more likely to be arrested for mere possession than whites in our city, and 91 percent of all marijuana arrests were of African Americans. These arrest rates are extremely troubling because in our city, and across the country, they have ruined the lives of African Americans, especially young African American men who start in life surrounded by a host of stereotypes, regardless of who they are or where they live, just because they are black. A marijuana possession arrest, particularly for these young men from low income areas, will almost surely wipe out the opportunity to find a legitimate job. That, in turn, can lead to the underground economy, even selling drugs. Who is paying that price, Mr. Chairman? It is the black community itself.

Mr. MICA. I would like, if you could, to conclude. Now we're 6-1/2 minutes over what we allot. But I would also like to invite the gentlelady to come up and join the panel, and you'll have time here both to ask questions and submit additional information for the record.

Ms. NORTON. Mr. Chairman, I do want to say, particularly given the concern, I will simply lead with the rest of my testimony, but the concern that a member has indicated about the use of marijuana himself. That is a very legitimate concern, and he can be assured that the District of Columbia, a big city which has experienced real drug problems, usually heroin and cocaine, very, very clear about the problem of people smoking marijuana, has gone out of its way to make sure that decriminalization does not lead to more smoking of marijuana. In fact, ironically, I think decriminalization is going to start up, for the first time, an understanding of the risks that may be associated with smoking marijuana, whereas we haven't heard much about those until decriminalization took hold. In a free society, of course, Mr. Chairman, we must respect the liberty of Americans to use such substances. Rather than simply punishing use, the District of Columbia has a substance abuse prevention and treatment fund which will be used, it will be engaged in preventative actions.

Mr. Chairman, I'm asking that the city, in any further action within this committee, not be unfairly targeted and that the members of this committee give the people who live in the District of Columbia the same respect for their local decisions as they would certainly demand for their own constituents and jurisdiction.

[Prepared statement of Ms. Norton follows:]

“Mixed Signals: The Administration’s Policy on Marijuana, Part Three”
Committee on Oversight and Government Reform Subcommittee on Government Operations
May 9, 2014

Chairman Mica and Ranking Member Connolly, I appreciate the opportunity to testify today, but I regret that the subcommittee has singled out the District of Columbia and its local government for a hearing on the District’s locally passed marijuana decriminalization legislation, the *Marijuana Possession Decriminalization Amendment Act of 2014*. During this Congress, the subcommittee has held two prior hearings on the conflict between federal and local marijuana policy, but has been scrupulous in observing the 10th Amendment of the Constitution (so often cited by the majority) by not having any local officials testify (only the U.S. Attorney for the District of Colorado, the Deputy Director for the Office of National Drug Policy and the Deputy Administrator for the Drug Enforcement Administration testified). Those hearings appropriately examined how the Obama Administration will enforce the federal prohibition on marijuana in jurisdictions that have legalized or decriminalized cannabis.

Congress has ultimate authority over the District of Columbia, but it devolved responsibility for local matters to a locally elected District of Columbia government in the Home Rule Act of 1973. That landmark law requires that the District be treated like states and other jurisdictions except for a small number of enumerated exceptions. Plainly, the District’s marijuana policy is not such an exception, and is no more inconsistent with federal law than similar laws in the 17 states that decriminalized marijuana before the District did. Beginning in 1975, when Alaska was the first state to decriminalize marijuana, red and blue states alike have done the same—from California and New York to Mississippi and Nebraska—and two states, Colorado and Washington, have legalized marijuana. Yet the District of Columbia is the only jurisdiction called before Congress. In fact, there is nothing that distinguishes the District from the states that have decriminalized marijuana except for the illegitimate power of Congress to overturn the democratically enacted local laws of the District, in contravention of every American principle of local control of local affairs. Republicans say they support limiting the federal government’s power and devolving that power to states and localities. This hearing does the opposite. This hearing does not practice what Republicans preach, and we do not intend to allow the violation of their own principles at our expense. We will defend the city’s marijuana decriminalization bill against any and all attempts to overturn or block it.

The Mayor of the District of Columbia has informed me that he objects to this hearing as a violation of the rights of District residents to be treated equally with citizens of other jurisdictions. He therefore has declined to send any District official to testify who is charged with advising on or carrying out policies related to the District’s marijuana decriminalization bill. As a courtesy, a deputy from the city’s police department, the Metropolitan Police Department, will testify only concerning D.C.’s enforcement of the D.C. marijuana decriminalization bill as passed by the D.C. Council and signed by the mayor.

I would like to thank the Obama Administration for indicating in its written testimony that it supports home rule for the District of Columbia, and will treat D.C. in the same manner as every other jurisdiction concerning the enforcement of federal marijuana laws. I appreciate that DOJ’s testimony states that the U.S. Attorney for the District of Columbia, who enforces local

criminal law in the District, would enforce the D.C. marijuana decriminalization bill under the D.C. Code. I also note that two Republican members of this subcommittee, Representatives Justin Amash and Thomas Massie, carried out the principle of local control of local affairs by voting for the Blumenauer Amendment to H.R. 4486, which would prohibit funds made available under the bill from being used to implement Veterans Health Administration Directive 2011-004, which forbids “VA providers from completing forms seeking recommendations or opinions regarding a Veteran’s participation in a state marijuana program.” It took me 11 years to get Congress to remove an amendment that kept the city from implementing its local medical marijuana law after it was approved by D.C. voters in a 1998 initiative. Now, 21 states have legalized medical marijuana.

The primary reason the city’s local officials passed the District’s marijuana decriminalization legislation underscores why state and local jurisdictions insist upon the local control guaranteed by the Constitution. An abundance of research shows that the enforcement of marijuana laws in the District of Columbia and throughout the rest of the country has long had an unfairly disproportionate effect on African Americans. D.C. residents and elected officials were stunned by two recently released studies. A July 2013 study by the American Civil Liberties Union of the Nation’s Capital found that, even though blacks and whites use marijuana at comparable rates, African Americans are 3.73 times more likely to be arrested for possession of marijuana than Whites in the United States. The Chair may be interested to know that in 2010, Florida was number three in the nation for marijuana possession arrests and that Blacks in Florida were arrested for marijuana possession at a rate four times higher than that of Whites.

The study found that arrests for marijuana possession of Blacks in the progressive District of Columbia, however, are far higher than arrests nationwide. In the District of Columbia, where about half the residents are Black, African Americans are eight times more likely to be arrested for marijuana possession than non-Blacks, and in 2010, 91% of all marijuana arrests in D.C. were of African Americans. The Washington Lawyers’ Committee for Civil Rights and Urban Affairs found that from 2009-2011, almost 90% of people arrested for drug possession in the District were African American, and despite urban drug markets typical of big cities, six out of 10 drug arrests were for simple possession. The effect of arrests for mere possession of marijuana has been to ruin the lives of countless African Americans in our city, particularly Black men, who, regardless of income, start out in life surrounded by a host of stereotypes, regardless of who they are or where they live in D.C. An arrest or conviction for marijuana possession often condemns African Americans, particularly those from low-income neighborhoods, to joblessness. Losing the ability to find legitimate work can lead a person to the underground economy, even to selling drugs, rather than mere possession. The Black community itself pays the price because men without the prospect of employment often do not form stable families.

In response, the District has taken a responsible and modest step to address racial disparities in our city by passing its marijuana decriminalization bill. Under the bill, smoking marijuana in public would still be a criminal offense, consistent with federal law and with the regulations that prohibit smoking marijuana on National Park Service land. The primary change to the District’s current law would be that possession or transfer of up to one ounce of marijuana would be a civil violation, punishable by a \$25 fine, instead of a criminal misdemeanor

punishable by up to six months in jail and up to a \$1,000 fine. The bill also expressly prohibits law enforcement from using the odor or smell of marijuana as grounds to stop and search someone. These changes would directly address some of the inequities apparent in the enforcement of marijuana laws in the District of Columbia, and we will fight to protect the District's bill.

The District's experience with drugs has left it well aware of the risks associated with smoking marijuana, and the District is taking steps to make clear that the intent in changing marijuana possession laws is not to encourage youth to smoke marijuana any more than the intent of Prohibition was to encourage the consumption of alcohol. The full risks of smoking marijuana are yet to be determined, but what we do know is that the effects on overall health, including brain health, are negative. Frequent smoking of marijuana may prove to be as bad as or worse than smoking traditional cigarettes. However, in a free society that respects liberty, government should help reduce the risk of use and abuse, not punish use. The D.C. bill requires revenue collected from civil violations for marijuana possession to be placed in the Substance Abuse Prevention and Treatment Fund, administered by the D.C. Department of Behavioral Health, for substance abuse treatment and prevention programs. Four D.C. Prevention Centers, funded by the Department of Behavioral Health, serving all eight wards in the city, will provide education and outreach to residents, particularly young people, about the risks of marijuana use for non-medical purposes. The District is taking these preventive steps even though research indicates that penalties for marijuana use are not a key factor in determining whether teenagers will decide to use marijuana and in spite of a Pew Research Center poll that found that "there is no significant difference in lifetime or recent use between people in states with some form of legalized marijuana and those in other states."

The District, like many other jurisdictions, has taken a very practical step to reduce the outsized arrest and incarceration rates of minorities, who are unfairly targeted for marijuana possession in this country. My hope is that my colleagues, regardless of their views or those of their constituents on marijuana, will respect the decisions of all jurisdictions that have decriminalized marijuana, including the District of Columbia.

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Mr. MICA. I thank the gentlelady, and we also welcome her to the panel and appreciate her testimony. We are going to go ahead and have the second panel seated. And if we could go ahead and do that, Ms. Norton, if you'd join us here, we had appreciate it.

I'd just say while they're doing that, let me put a unanimous consent request in the record, and this relates to marijuana, Federal marijuana prosecutions. In August of 2013, the Department of Justice issued a memo stating that the Department of Justice will not enforce marijuana laws in States that have legalized it and maintained a robust regulatory scheme. However, the Department of Justice listed eight priority areas for which they intend to focus marijuana-related prosecutions. One of those eight areas, "preventing marijuana possession or use on Federal property" is one of those exceptions.

Under these policies it seems the Federal District Court would prosecute marijuana possession on Federal land. This is contrary to what we just heard, and that's one of the reasons. No one is here to negate the District law. We are looking at the implications and the enforcement regime with 26 Federal agencies responsible for enforcing different penalties. So with that, do we have all of our witnesses, if they'd step forward.

We have Mr. Peter Newsham is the Assistant Chief of Metropolitan Police. We have Robert D. MacLean is the acting chief of the United States Park Service; we have Mr. David O'Neil is the acting Assistant Attorney General of the Criminal Division at the U.S. Department of Justice; and we have, our fourth witness is Ms. Seema, Sadanandan, Director of the American Civil Liberties Union of the National Capitol.

If you could remain standing, we do swear in all of our witnesses. If you would raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give before this subcommittee of Congress is the whole truth and nothing but the truth?

Let the record reflect that all of the witnesses answered in the affirmative. Please be seated. We try to get you to limit your testimony to 5 minutes. We'll be glad through a request of the chair to add to the record additional information, data or testimony that you would like made part of the record and welcome you.

Mr. MICA. Let's start out and we'll start with Peter Newsham who is the Assistant Chief of Metropolitan Police. Welcome, sir, and you're recognized.

If you could turn that up, and I'm only a lowly congressman.

WITNESS STATEMENTS

STATEMENT OF PETER NEWSHAM

Mr. NEWSHAM. Good morning, Chairman Mica, other members of the committee, and members of the public. I am Peter Newsham, Assistant Chief of the District of Columbia Metropolitan Police Department. I'm pleased to be here today to discuss the District of Columbia's recent legislation to decriminalize small amounts of marijuana. The Marijuana Possession Decriminalization Amendment Act of 2014, D.C. Act 20-305, which is projected to become effective law in approximately mid-July, amends the District of Columbia's

criminal code to decriminalize the possession of 1 ounce or less of marijuana. Instead of facing a misdemeanor charge punishable by up to 6 months in jail, up to \$1,000 fine or both, once the act goes into effect, individuals will be subject to a \$25 civil fine. The Metropolitan Police Department officers can seize any visible marijuana.

The use of marijuana on public space will remain a criminal penalty punishable by up to 60 days in jail or a fine of up to \$500. The act defines public space as any street, alley, sidewalk, park, or parking area. A vehicle on any street, alley, park or parking area, and any place to which the public is invited.

Public attitudes about marijuana use have changed significantly in recent years with many accepting it to be no more harmful or addictive than alcohol or tobacco. Decriminalizing marijuana may help reduce the number of people with arrest records for possession of small amounts of marijuana which may enable them to more easily find gainful employment. The act maintains criminal penalties for selling marijuana and public usage of marijuana, which is important to combat drug dealing and to ensure neighborhoods' quality of life.

Even though the District of Columbia will decriminalize possession of small amounts of marijuana, we will continue to send the message, especially to our young people, of marijuana's danger and effects, just as we do with alcohol and tobacco, to discourage them from using it. Due to the District's unique status, some Federal law enforcement agencies such as the U.S. Park Police, have concurrent jurisdiction in the District of Columbia and can enforce District or Federal law anywhere in the city. Although MPD officers will enforce the act, the local act, Federal law enforcement agencies are not bound by the act so long as the possession or use of marijuana remains a Federal criminal offense.

I thank you again for the opportunity to appear before you today. I'd be happy to answer any questions you have.

Mr. MICA. Thank you, and we'll hold the questions to the end.
[Prepared statement of Mr. Newsham follows:]

Good morning, Chairman Mica, Ranking Member Connolly, Members of the Committee, and members of the public. I am Peter Newsham, Assistant Chief of the District of Columbia Metropolitan Police Department (MPD). I am pleased to be here today to discuss the District of Columbia's recent legislation to decriminalize small amounts of marijuana.

The Marijuana Possession Decriminalization Amendment Act of 2014 (D.C. Act 20-305) (the Act), which is projected to become effective law in mid-July, amends the District of Columbia's criminal code to decriminalize the possession of one ounce or less of marijuana. Instead of facing a misdemeanor charge punishable by up to six months in jail, up to \$1,000 fine, or both, once the Act goes into effect, individuals will be subject to a \$25 civil fine and MPD officers can seize any visible marijuana.

The use of marijuana on public space will remain a criminal penalty, punishable by up to 60 days in jail or a fine of up to \$500. The Act defines public space as: 1) any street, alley, sidewalk, park, or parking area; 2) a vehicle on any street, alley, park, or parking area; and 3) any place to which the public is invited.

Public attitudes about marijuana use have changed significantly in recent years, with many accepting it to be no more harmful or addictive than alcohol or tobacco. Decriminalizing marijuana may help reduce the number of people with arrest records for possession of small amounts of marijuana, which may enable them to more easily find gainful employment. The Act maintains criminal penalties for selling marijuana and public usage of marijuana, which is important to combat drug dealing and to ensure neighborhoods' quality of life.

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Due to the District's unique status, some federal law enforcement agencies, such as the U.S. Park Police, have concurrent jurisdiction in the District of Columbia and can enforce District or federal law anywhere in the city. Although MPD officers will enforce the Act, federal law enforcement agencies are not bound by the Act so long as the possession or use of marijuana remains a federal criminal offense.

I thank you again for the opportunity to appear before you today. I would be happy to address any questions you may have.

Mr. MICA. Let's now hear from and recognize Robert MacLean, and he's the acting chief of the United States Park Police. And you're recognized.

STATEMENT OF ROBERT MACLEAN

Mr. MACLEAN. Thank you, sir. Chairman Mica and members of the committee, thank you for the invitation to appear before you today to discuss the Federal Government's response to the potential decriminalization of the District of Columbia's marijuana possession laws. My name is Robert MacLean. I'm the acting chief of the United States Park Police. I'd like to submit the Department's full statement for the record and summarize those views here.

Mr. MICA. Without objection, the entire statement will be made part of the record.

Mr. MACLEAN. The U.S. Park Police is one of the Nation's oldest uniformed Federal law enforcement agencies. The Park Police have enjoyed a long history of partnership with the citizens of the District of Columbia and cooperation with the Metropolitan Police Department. The Park Police is responsible for safety and crime prevention in all parklands administered by the National Park Service. In the District of Columbia, the Park Police have primary jurisdiction over Federal Parkland which comprises approximately 22 percent of the District of Columbia, including the National Mall, East and West Potomac Parks, Rock Creek Park, Anacostia Park, McPherson Square, and many of the small triangle parks.

The Park Police is a law enforcement unit of the National Park Service within the Department of the Interior, and our jurisdiction is usually set by congressional legislation. Officers of the U.S. Park Police are authorized under Federal law to make arrests without warrant for any offense against the United States committed in their presence within areas of the national park system. Further, two additional acts of Congress provide that Park Police officers have the same powers and duties as the Metropolitan Police Department officers within the District of Columbia. Park Police enforcement is left to the sound discretion of the individual officer on the ground depending on the circumstances.

If an individual is arrested for simple possession of marijuana by one of our officers within the District, the arrestee can be currently charged under D.C. Code. Under existing D.C. Law, simple possession of marijuana is a misdemeanor with a penalty of incarceration of up to 6 months and a fine of not more than \$1,000. If the violation occurs on Federal Parkland, the arrestee can be charged under the National Park Service regulation at Title 36, CFR, resulting in a misdemeanor with a possible penalty of incarceration of up to 6 months, and a fine of not more than \$5,000.

Finally, marijuana is a Schedule 1 controlled substance under Title 21, United States Code, the possession of which is a misdemeanor, and in the event of a conviction, the sentence is determined by the court.

Between 2010 and 2012, approximately 55 percent of the Park Police arrests for marijuana charges in the Washington metropolitan area occurred on Federal Parkland within the District of Columbia. The majority of these arrests were for simple possession,

with a few arrests for possession with intent to distribute. We understand the District of Columbia's Marijuana Possession Decriminalization Amendment Act of 2014 would only amend District law and would not alter the National Park Service regulation or Federal law on marijuana. We also understand that the D.C. Act would still make it a misdemeanor to smoke marijuana in a public space or park.

If the D.C. Act becomes law, then we will work closely with the United States Attorneys Office for the District of Columbia to determine our future enforcement options especially if the person is on Federal Parkland.

Mr. Chairman, this concludes my statement. I will be pleased to respond to any questions you may have.

Mr. MICA. Thank you, Mr. MacLean. We appreciate your testimony.

[Prepared statement of Mr. MacLean follows:]

STATEMENT OF ROBERT MACLEAN, ACTING CHIEF, UNITED STATES PARK POLICE, BEFORE THE SUBCOMMITTEE ON GOVERNMENT OPERATIONS, OF THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM, CONCERNING THE FEDERAL GOVERNMENT'S RESPONSE TO THE POTENTIAL DECRIMINALIZATION OF THE DISTRICT OF COLUMBIA'S MARIJUANA POSSESSION LAWS.

MAY 8, 2014

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the United States Park Police (USPP) response to the potential decriminalization of certain marijuana possession laws in the District of Columbia.

The United States Park Police, established in 1791, is the oldest uniformed Federal law enforcement agency in the United States. The USPP has enjoyed a long history of partnership with the citizens of the District of Columbia and the Metropolitan Police Department. In addition to performing the normal crime prevention, investigation, and apprehension functions of an urban police force, the USPP is responsible for safety and crime prevention in all parklands administered by the National Park Service (NPS), including its famous monuments and memorials. In the District of Columbia, USPP have primary jurisdiction over Federal parkland, which includes the National Mall, East and West Potomac Parks, Rock Creek Park, Anacostia Park, McPherson Square, and many of the traffic circles and smaller triangle parks throughout the District. Together, Federal parkland comprises approximately 22% of the District of Columbia.

The USPP is a law enforcement unit of the National Park Service, Department of the Interior. The USPP jurisdiction is usually set by Congressional legislation. In that regard, officers of the USPP are authorized under 16 U.S.C. § 1a-6(b)(1) to "make arrests without warrant for any offense against the United States committed in [their] presence" within areas of the National Park System. Further, two Acts of Congress (22 Stat. 243 and 41 Stat. 364) now codified at D.C. Code § 5-201, provide that USPP officers have the same powers and duties as Metropolitan Police Department officers in the District of Columbia.

With regard to violations of marijuana laws dealing with simple possession, USPP enforcement is left to the sound discretion of the individual officer on the ground, depending on the individual circumstances he or she encounters. In the event that an individual is arrested for simple possession of marijuana by a USPP Officer within the District of Columbia, the arrestee can be currently charged under D.C. Code § 48-904.01. Under the current D.C. law, simple possession of marijuana is a misdemeanor with a penalty of incarceration of up to six months and a fine of not more than \$1,000. If the violation occurs on Federal parkland, the arrestee can be charged under the NPS's regulation at 36 C.F.R. § 2.35(b), which is a misdemeanor with a possible penalty of incarceration of up to 6 months and a fine of not more than \$5,000. Finally, marijuana

is a Schedule I controlled substance under 21 U.S.C. § 812(c), the possession of which is a misdemeanor under 21 U.S.C. § 844(a). In the event of a conviction, the sentence is determined by the court.

Between 2010 and 2012, about 55% of the USPP arrests on marijuana charges in the Washington Metropolitan area occurred on Federal parklands within the District of Columbia. The majority of these arrests were for simple possession, with a few arrests for possession with intent to distribute.

We understand that the District of Columbia Marijuana Possession Decriminalization Amendment Act of 2014 would amend only District law. It would not alter the NPS regulation or Federal law on marijuana. We also understand that the D.C. Act would still make it a misdemeanor to smoke marijuana in a public space or park, with a penalty of incarceration for not more than 60 days or a fine. If the D.C. Act becomes law, then we will work closely with the U.S. Attorney's Office for the District of Columbia to determine our future enforcement options, especially if the person is on Federal parkland and acts in violation of NPS regulation.

Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions you or the other members of the subcommittee may have.

Mr. MICA. We will now turn to David O'Neil, the acting Assistant Attorney General of the Criminal Division of the United States Department of Justice. Welcome, sir, and you are recognized.

STATEMENT OF DAVID A. O'NEIL

Mr. O'NEIL. Thank you Chairman Mica and distinguished members of the subcommittee. I appreciate your invitation to testify on behalf of the U.S. Department of Justice. My testimony today will focus on our marijuana enforcement program nationwide and the guidance the Department has issued to all United States Attorneys regarding our program. As you know, the Controlled Substances Act of 1970 makes it a Federal crime to possess, grow or distribute marijuana. Financial transactions involving proceeds generated by marijuana-related conduct can also form the basis for Federal prosecution under money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act.

Starting with California in 1996, several States have authorized the cultivation, distribution, possession, and use of marijuana for medical purposes under State law.

In 2012, voters in Colorado and Washington approved initiatives legalizing marijuana use under State law and establishing State regulatory systems for marijuana use. In 2010, the Council of the District of Columbia authorized use of marijuana for medical purposes, and following congressional review of that legislation, it became law in the District of Columbia. The Council has now enacted broader decriminalization legislation, which is currently under congressional review.

The Administration will treat D.C. in the same manner as every other jurisdiction with respect to the enforcement of Federal marijuana laws. In the District of Columbia, the U.S. Attorney's Office will also continue to enforce drug offenses under the D.C. Code.

For decades and across administrations, Federal law enforcement has targeted sophisticated drug traffickers and organizations, while State and local authorities generally have focused their enforcement efforts under their State laws on more localized drug activity. Since medical marijuana laws and decriminalization laws have been enacted, the Department of Justice has continued to work with its State and local partners to target dangerous drug trafficking organizations. At this point, more than ever, we will maintain strong partnerships and coordination among Federal and State and local law enforcement.

On August 29, 2013, the Department issued a guidance memorandum to all United States Attorneys directing our prosecutors to continue to fully investigate and prosecute marijuana cases that implicate any one of eight Federal enforcement priorities. This memorandum applies to all of our Federal prosecutors, and it guides the exercise of prosecutorial discretion against individuals and organizations that violate any of our stated Federal interests, no matter where they live or what the laws in their State permit. Using our prosecutorial discretion, U.S. Attorneys' Offices have historically devoted resources to cases involving these eight Federal enforcement priorities and will continue to do so in the future. For example, we have targeted enforcement actions against marijuana

businesses and residential grow sites near schools. We also actively investigate and prosecute cases involving international smuggling and interstate shipment of marijuana, marijuana grows where firearms and violence are involved, marijuana grows on public lands, and cases with potential organized crime involvement in marijuana businesses.

In addition, in February 2014, the Department issued guidance to all Federal prosecutors regarding marijuana-related financial crimes. That guidance seeks to mitigate the public safety concerns created by high-volume cash-based businesses without access to banking and the financial system, while at the same time, ensuring that criminal organizations, gangs, and drug cartels do not have access to the financial system to launder criminal proceeds. The guidance states clearly that the provisions of the money laundering statute, the unlicensed money remitter statute, and the Bank Secrecy Act remain in effect with respect to marijuana-related conduct. The guidance advises Federal prosecutors to assess marijuana financial crimes under the eight Federal enforcement priorities laid out in the August 29th memorandum. The Department expects financial institutions to continue to apply appropriate risk-based anti-money-laundering policies, procedures, and controls sufficient to address the risks posed by these customers. This includes conducting customer due diligence consistent with any guidance issued by FinCEN. The Department of Justice is committed to enforcing the Controlled Substances Act in all States and the District of Columbia, and we're grateful for the dedicated work of our Drug Enforcement Administration and Federal Bureau of Investigation agents, our Federal prosecutors, and our State and local partners in protecting our communities from the dangers of illegal drug trafficking. Our goal is to ensure that we are effectively focused on the eight Federal enforcement priorities outlined in the August 2013 and February 2014 guidance from the Department.

Ultimately the achievement of that goal requires cooperation among law enforcement agencies at every level. I look forward to taking your questions.

Mr. MICA. Thank you. And I appreciate your testimony.

[Prepared statement of Mr. O'Neil follows:]

Statement of David A. O'Neil
Acting Assistant Attorney General for the Criminal Division
Before the Committee on Oversight & Government Reform
Subcommittee on Government Operations
May 8, 2014

Good afternoon Chairman Mica, Ranking Member Connolly, and distinguished Members of the Committee. I am pleased to speak with you about the guidance that the Department has issued to all United States Attorneys regarding marijuana enforcement efforts and marijuana-related financial crimes. The marijuana enforcement guidance issued on August 29, 2013 (August 29th memorandum) advises federal prosecutors in the exercise of their prosecutorial discretion to focus on and continue enforcement of eight federal priorities, such as preventing sales of marijuana by criminal enterprises, preventing violence and the use of firearms in the cultivation and distribution of marijuana, preventing distribution to minors, preventing marijuana possession or use on federal property, and preventing the cultivation of marijuana on public lands. These are the same priorities that have guided federal enforcement efforts for many years. The guidance also notes that, as we have historically done, we will continue to rely on state and local authorities to effectively enforce their own drug laws as we work together to protect our communities. The Department also issued recent guidance regarding marijuana-related financial crimes on February 14, 2014 (February 14th memorandum).

In the U.S. Attorney's Office for the District of Columbia, the Criminal Division of the U.S. Attorney's Office represents the United States government in federal criminal matters before the U.S. District Court for the District of Columbia. The Superior Court Division of the U.S. Attorney's Office prosecutes violations of the District of Columbia Code, including drug offenses, in the Superior Court for the District of Columbia.

I. Introduction

As you know, the relevant federal statute, the Controlled Substances Act of 1970 (CSA), among other prohibitions, makes it a federal crime to possess, grow, or distribute marijuana, and to open, rent, or maintain a place of business for any of these purposes. Financial transactions involving proceeds generated by marijuana-related conduct can form the basis for prosecution under money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act (BSA).

For many years, all 50 states and the District of Columbia had uniform drug control laws or similar provisions that reflected the CSA with respect to the treatment of marijuana and made the possession, cultivation, and distribution of marijuana a state criminal offense. With such overlapping statutory authorities, the federal government, the states, and the District of Columbia have worked as partners in the field of drug enforcement. Federal law enforcement has targeted large-scale drug traffickers and organizations, while state and local authorities generally have focused their enforcement efforts, under their state or local laws, on more localized drug activity.

Starting with California in 1996, several states have authorized the cultivation, distribution, possession, and use of marijuana for medical purposes, under state law. In 2010, the

Council of the District of Columbia authorized the use of marijuana for medical purposes, and following Congressional review of that legislation, it became law in the District of Columbia. The Council of the District of Columbia recently enacted broader decriminalization legislation, which is currently under Congressional review. Seventeen states have currently decriminalized marijuana to some degree. Typically, decriminalization replaces criminal penalties with a monetary fine for first-time offenders who possess marijuana in a quantity below a specified amount. The legislation passed by the D.C. Council would remove criminal penalties for possession of up to an ounce of marijuana and replace them with a civil fine of \$25. In addition to decriminalization, today, twenty-one states and the District of Columbia have authorized marijuana use for medical purposes under state law. And in 2012, voters in Colorado and Washington approved state ballot initiatives legalizing marijuana use under state law and establishing state regulatory systems for marijuana use.

Throughout this period, the Department of Justice has continued to work with its state and local law enforcement partners, and also has continued its own efforts on the same priorities that have always been particularly important to the federal government's role in protecting the public. The eight priorities that have guided our efforts are:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Examples of our efforts have included cases against individuals and organizations that use the state laws as a pretext to engage in large-scale trafficking of marijuana to other states; enforcement against those who operate marijuana businesses near schools, parks, and playgrounds; and enforcement against those who wreak environmental damage by growing marijuana on our public lands. In these instances and historically, the Department has not devoted our finite resources to prosecuting individuals in federal court whose conduct is limited to possession of marijuana for personal use on private property.

The Department is committed to enforcing the Controlled Substances Act by focusing its resources on the key federal priorities noted above and by working closely with our state and local law enforcement partners. The Department does not take a position on the merits of the bill but the Administration supports home rule generally. The Administration will treat D.C. in the same manner as every other jurisdiction with respect to the enforcement of federal marijuana

laws. In the District of Columbia, the U.S. Attorney's Office will also continue to enforce drug offenses under the D.C. Code.

II. The Department's Updated Marijuana Enforcement Guidance

On August 29, 2013, the Department issued a guidance memorandum to all United States Attorneys directing our prosecutors to continue to fully investigate and prosecute marijuana cases that implicate any one of our eight federal enforcement priorities. This memorandum applies to all of our federal prosecutors and guides the exercise of prosecutorial discretion against individuals and organizations that violate any of our stated federal interests, no matter where they live or what the laws in their states may permit. Outside of these enforcement priorities, or additional circumstances where investigation and prosecution otherwise serves an important federal interest, the Department will continue to rely on state and local authorities to address marijuana activity through enforcement of their own drug laws. The updated guidance is consistent with our efforts to maximize our investigative and prosecutorial resources and with the more general message the Attorney General has delivered to all federal prosecutors, emphasizing the importance of quality priorities for all cases we bring, with an eye toward promoting public safety, deterrence, and fairness.

III. Conclusion

The Department of Justice is committed to enforcing the CSA in all states and the District of Columbia, and we are grateful for the dedicated work of our Drug Enforcement Administration and Federal Bureau of Investigation agents, our federal prosecutors, and our state and local partners in protecting our communities from the dangers of illegal drug trafficking. Our goal is to ensure that we are effectively focused on the eight federal enforcement priorities outlined in the August 2013 and February 2014 guidance from the Department. Ultimately, the achievement of that goal requires cooperation among law enforcement agencies at every level.

I look forward to taking your questions.

Mr. MICA. We'll go now to Ms. Sadanandan, and she is the Program Director at the American Civil Liberties Union here in the Nation's Capitol. Welcome, ma'am, and you're recognized.

STATEMENT OF SEEMA SADANANDAN

Ms. SADANANDAN. Chairman Mica, Ranking Member Connolly, and distinguished members of the subcommittee, thank you for this opportunity to address D.C.'s overwhelmingly popular decision to decriminalize small amounts of marijuana. My name is Seema Sadanandan, and I am the Program Director of the ACLU of the Nation's Capitol.

We work to protect civil liberties and civil rights in Washington, D.C., through public education, legislative advocacy and litigation. In 2013, the ACLU published a nationwide study of the widespread racial disparities in marijuana arrests from 2001 to 2010. The report documented arrest rates for marijuana possession by race for all 50 States and the District of Columbia. The ACLU of the Nation's Capitol soon thereafter issued a shadow report entitled Behind the D.C. Numbers, the War on Marijuana in Black and White, focusing on racial disparities in marijuana arrests here in the District.

While the ACLU's nationwide study found black people to be 3.7 times more likely to be arrested for marijuana possession than whites, in the District of Columbia, black people were a staggering eight times more likely, despite roughly equal usage rates among black and white populations.

Ms. SADANANDAN. These reports catalyzed several months of high profile public debate about police enforcement practices here in the District. There emerged a public consensus that the aggressive enforcement of marijuana possession did not make our communities any safer.

In the face of increasing public pressure, in March 2014 members of the D.C. Council passed by a margin of 10–1 the Marijuana Decriminalization Amendment Act of 2014. Prior to the passage of the act, adult possession of marijuana was a misdemeanor punishable by up to 6 months in jail or up to a \$1,000 fine. The act of decriminalizing marijuana makes marijuana possession of one ounce or less a civil offense under D.C. law subject to a \$25 fine. In passing this act, the District joined 11 other States which had already instituted similar legislation.

In 2010, as you can see the graph here, black and white populations in the District were nearly equal, yet nearly 91 percent of all arrests for marijuana-related offenses were of black people. In 2010 alone, 5,393 arrests for marijuana-related offenses. Approximately three-quarters of those arrests were for marijuana possession.

In 2010 law enforcement officers in the District of Columbia were making approximately 15 marijuana arrests per day. Usage rates do not explain this glaring racial disparity in the enforcement of the District's marijuana laws, particularly where time and time again studies have shown that black and white populations use marijuana at remarkably similar rates.

This is a 2010 nationwide survey by the National Household Survey on Drug Abuse and Health. We have the 2001 and 2010 sur-

veys here which show that based on self-reported usage rates between black and white populations you have near equal rates. In addition, studies have consistently indicated that drug markets, like American society in general, reflect our Nation's racial and socioeconomic boundaries. For example, university students tend to sell to one another.

Here we have a map of all the marijuana arrests in the District of Columbia. The yellow points indicate the arrests of black individuals and the blue points indicate arrests of white people. This map demonstrates that the vast majority of the arrests in the District of Columbia took place east of 16th Street. And for anyone who lives here in the District, you know that these are the neighborhoods where the overwhelming majority of black residents live and far from the four major universities that lie west of 16th Street.

When faced with the question of what to do about these disparities, the council considered several key factors in support of marijuana reform. The cost of marijuana enforcement was a huge factor. The District spends more per capita on marijuana enforcement than any of the 50 States. By a conservative estimate, D.C. in 2010 spent approximately \$26 million on marijuana enforcement.

Second, focusing valuable police time and resources on marijuana enforcement reduced police ability to respond to and solve more serious crime.

And finally, saddling thousands of primarily black men in the District with convictions for marijuana possession year after year with negative consequences for employment, education, and housing did not serve the interests of public safety and had a corrosive effect on the relationship between police and the community.

Based on these factors, the policy choice was clear: The council overwhelmingly decided to remove criminal penalties under D.C. law for marijuana possession.

Before I close, I will briefly address the issue of Federal versus local marijuana enforcement. According to our data, which we obtained through a FOIA request from the Metropolitan Police Department, 93 percent of all marijuana arrests in 2010 were made by the Metropolitan Police Department. Less than 3 percent of all the arrests in the District of Columbia for marijuana-related offenses were made on Federal land. According to our estimates, approximately 99 percent of all arrests were made under the D.C. Code.

Accordingly, we do not predict a significant tension between Federal and local marijuana enforcement in the wake of reform. We urge this committee to respect this local and widely supported measure to address racial disparities in marijuana enforcement in the District of Columbia.

Thank you.

[Prepared statement of Ms. Sadanandan follows:]

The American Civil Liberties Union (ACLU) welcomes this opportunity to submit testimony to the United States House of Representatives Committee on Oversight and Government Reform, Subcommittee on Government Operations for the hearing on the federal government's response to the District of Columbia's overwhelmingly popular decision to decriminalize small amounts of marijuana. The ACLU is a nationwide, nonprofit, non-partisan organization with more than half a million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of liberty and equality embodied in our Constitution and our civil rights laws. The ACLU of the Nation's Capital (ACLU-NCA) works to protect civil liberties and civil rights in Washington, D.C. through public education, legislative advocacy and litigation.

In 2013, the ACLU published an unprecedented nationwide study on the significant and widespread racial disparities in marijuana arrests from 2001-2010 ("ACLU report").¹ The report documented arrest rates for marijuana possession by race for all 50 states (and the District of Columbia) and their respective counties. Shortly after the publication of the national report, the ACLU-NCA released a shadow report entitled, "Behind the D.C. Numbers: The War on Marijuana in Black and White," ("ACLU-NCA report")² focusing on racial disparities in marijuana arrests here in the District of Columbia. As detailed further below, the report found that Black people in the District of Columbia are 8 times more likely than whites to be arrested for marijuana possession, notwithstanding that these two groups use marijuana at roughly equal rates.

The ACLU-NCA report cast a spotlight on racial disparity in marijuana arrests and selective enforcement of the District's marijuana laws, and it catalyzed several months of high-profile public debate about the root causes of those disparities. Soon after the release of the report, in the face of increasing public pressure to act, members of the D.C. Council signaled their intention to prepare legislation to address the problem. In March 2014, after months of careful deliberation, the D.C. Council passed, by a margin of 10-1, the Marijuana Possession Decriminalization Amendment Act of 2014 ("the Act"). The Act has been cited as among the first marijuana reform efforts primarily aimed at addressing racially biased enforcement of drug laws and a necessary step to move smart, fair, and compassionate drug policy in the District.³ We urge the Committee and its members to respect this local and widely supported measure to address problems related to racial disparities in arrests by the Metropolitan Police Department.

¹ ACLU, *The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests* (2013) (hereinafter ACLU report), available at <https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf>.

² ACLU of the Nation's Capital, *Behind the D.C. Numbers: The War on Marijuana in Black and White* (2013) (hereinafter ACLU-NCA report), available at <http://aclu-nca.org/sites/default/files/docs/2013/ACLU%20Marijuana%20in%20Black%20and%20White%20Behind%20the%20DC%20Numbers%207%202013.pdf>.

³ S.A. Hughes, *D.C.'s Marijuana Decriminalization Bill Heads to Congress after Being Signed*, DCist, March 31, 2014, available at http://dcist.com/2014/03/marijuana_decriminalization_bill_si.php; *Washington, D.C. City Council Voted to Decriminalize Marijuana Possession*, Huffington Post, March 3, 2014, http://www.huffingtonpost.com/the-washington-dc-city-council_b_4900223.html.

Prior to the passage of the Act, adult possession of any amount of marijuana was a misdemeanor punishable by up to six months in jail and/or up to a \$1,000 fine.⁴ The Act was introduced as Bill 20-409 in July 2013 by D.C. Council members Tommy Wells, Marion Barry, Kenyon McDuffie, Jack Evans, Anita Bonds, David Grosso, Jim Graham, and Mary Cheh, and cosponsored by Chairman Phil Mendelson and Council member David Catania.

The Act states that the possession of one ounce or less of marijuana is no longer a criminal offense under the laws of the District, but is instead a civil offense subject to a \$25 fine. Law enforcement officers enforcing the Act will issue a Notice of Violation, and are authorized to seize all marijuana and paraphernalia visible to the officer at the time the Violation is issued. In passing the Act, the District joined 11 states that had already instituted similar legislation.⁵ At present, there are 13 states where marijuana possession has become a civil offense under state law, and two states that have passed measures to tax and regulate the production, sale and possession of marijuana. In addition, 21 states and the District of Columbia allow certain seriously ill patients to access marijuana for medical purposes.⁶

Extreme Racial Disparities in D.C. Marijuana Enforcement

The ACLU and ACLU-NCA reports demonstrated, with hard data, that the District of Columbia has a higher per capita arrest rate, greater racial disparities in marijuana possession arrests, and spends more money on marijuana enforcement than almost any state or county in the country.⁷ The average national disparity is already stark: Black people are 3.73 times more likely than white people to be arrested for marijuana possession.⁸ In the District, this number is considerably worse. Black people here are a stunning 8 times more likely to be arrested for marijuana possession despite near equal usage rates in Black and white populations.

Additional statistics provide context for this troubling fact. In 2010, slightly more than half the District's population was Black, yet a staggering 91 percent of all marijuana arrests that year were of Black people.⁹ In 2010, law enforcement officers in the District made a total of 5,393 marijuana arrests amounting to nearly 15 arrests per day.¹⁰

The racial disparities illustrated by this data affirm the collective experience of Black communities in the District, which have long understood that there is a selective application of the War on Drugs. Indeed, the impetus to study marijuana in the District in depth came amidst dozens of reports received by the ACLU-NCA that Metropolitan Police Officers were regularly

⁴ D.C. Code § 48-904.01.

⁵ At present, 13 states have decriminalized the adult possession of small amounts of marijuana. This total number includes one state that decriminalized marijuana through case law and one state that passed decriminalization legislation after the District of Columbia did. Those 13 states are as follows: Alaska, California, Colorado, Connecticut, Maine, Maryland, Massachusetts, Nebraska, New York, Oregon, Rhode Island, Vermont, and Washington state.

⁶ Since 1996, 22 U.S. jurisdictions have enacted medical marijuana laws: Alaska, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, Vermont and Washington.

⁷ See ACLU-NCA report, *supra* n. 2, at 4.

⁸ ACLU, *supra* n. 1, at 47.

⁹ See ACLU-NCA report, *supra* n. 2, at 4.

¹⁰ *Id.* at 4.

stopping young people based solely on the alleged odor of marijuana and initiating searches that in many cases failed to find any contraband. Accordingly, the marijuana arrest data, with its extreme racial disparities, is just the tip of the iceberg. Behind this data are likely thousands of other police encounters that use marijuana as pretext to stop and search people in the District. Unfortunately we cannot analyze these stops empirically, as the Metropolitan Police Department (“MPD”) does not systematically document them.

Following the release of the ACLU-NCA report, there was a dramatic shift in the already-evolving public opinion regarding marijuana prohibition in the District.¹¹ The ACLU-NCA’s data mapping¹² showed that the vast majority of marijuana possession arrests take place east of 16th street, where the overwhelming majority of the District’s African American residents live and far from the numerous colleges scattered across the western part of the District. This trend made clear that marijuana enforcement was a police priority only in certain parts of the District. D.C. Council members who previously had been skeptical of marijuana reform rallied around the need for change in the face of this powerful data.

Considerations Beyond Racial Disparities

Although racial disparities were a key problem driving marijuana reform in the District, other considerations also played a significant role. First, the Council was concerned that the investment of police time and other resources in marijuana enforcement was lowering the force’s ability to prevent and solve more serious crimes. After any arrest, the District incurs costs related to processing and sometimes incarcerating arrestees, providing legal representation for indigent defendants and, ultimately, prosecuting those who have been formally charged. Indeed, in 2010, the District spent more per capita on marijuana enforcement than any of the 50 states, totaling between an estimated \$9 million and \$43 million for police enforcement, judicial and legal fees, and incarceration expenses.¹³

Second, the Council was concerned about burdening so many citizens with the consequences of a conviction for marijuana possession, which may include loss of employment, loss of housing, inability to get educational loans, and other serious and debilitating consequences. This legal discrimination against people, disproportionately Black people, for an activity that a majority of the country thinks should be legal, has become politically intolerable in the District.¹⁴ The Council recognized that these consequences take a toll on District residents and entire neighborhoods, which limits the growth and flourishing of the city.

¹¹ In 2010, District residents were split on legalizing small amounts of marijuana for personal use, with 46 percent in favor and 48 percent opposed. Whites were more likely to support legalization than Blacks (60 percent vs. 37 percent). A.C. Davis & P.M. Craighill. *In Major Shift, D.C. Residents Strongly Support Legalizing Marijuana*, Washington Post, January 15, 2014, available at: http://www.washingtonpost.com/local/dc-politics/in-major-shift-dc-voters-strongly-support-legalizing-marijuana/2014/01/15/9fcc6d04-7d6a-11e3-93c1-0e888170b723_story.html.

A new Washington Post poll, released January 15, 2014, found that 63 percent of District residents—of every age, race, and ethnicity—supported legalization. Of the 34 percent who oppose, nearly half of them support decriminalization. *Id.*

¹² Available at <http://aclu-nca.org/billions-of-dollars-wasted-on-racially-biased-arrests-behind-dc-numbers>

¹³ See ACLU-NCA report, *supra* n. 2, at 5.

¹⁴ A.C. Davis & P.M. Craighill, *In Major Shift, D.C. Residents Strongly Support Legalizing Marijuana*, Washington Post, January 15, 2014, available at http://www.washingtonpost.com/local/dc-politics/in-major-shift-dc-voters-strongly-support-legalizing-marijuana/2014/01/15/9fcc6d04-7d6a-11e3-93c1-0e888170b723_story.html.

Third, there were serious concerns about the necessity and efficacy of a criminal justice approach to limiting the consumption of marijuana. Studies have dispelled the belief that marijuana acts as a gateway drug¹⁵ and have found that criminal penalties for possession of small amounts of marijuana do not deter marijuana use.¹⁶

The Implications of the New Civil Penalty

The Act removes the criminal penalty for marijuana possession of one ounce or less and replaces it with a civil Notice of Violation and a \$25 fine. The purpose of this fine—which is lower than fines in other decriminalization jurisdictions—is to lessen the burden on individuals and families for whom a larger fine could be devastating financially, while still providing a mechanism to discourage marijuana use. For the many individuals and families in the District living below the poverty line, who, based on arrest patterns, are more likely to face the Act’s civil penalty, the \$25 marijuana possession fine will constitute a significant proportion of their available income.¹⁷

The Act does not include any requirement that individuals who are found to possess marijuana show some form of identification to law enforcement. Under District law, law enforcement has no authority to compel someone to identify himself or herself after the alleged commission of a civil offense, unless it is tied to a specific licensing or regulatory structure such as a driver’s license or vehicle registration. Indeed, the D.C. Circuit has explained that pedestrians do not need to carry identification: “That citizens can walk the streets, without explanations or formal papers, is surely among the cherished liberties that distinguish this nation from so many others.” *Gomez v. Turner*, 672 F. 2d 134, 143 n.18 (D.C. Cir. 1982). Under existing D.C. Code § 50- 2303.07, a person who commits a civil offense must give the officer his or her true name and address (or face a misdemeanor for the failure to do so), but is not required to “possess or display any documentary proof” of that information.

Finally, reducing the penalty for marijuana possession raises important questions about the potential impact on use and abuse of marijuana by young people under the age of 18. A growing body of data suggests that severity of penalties for marijuana possession bears no causal relationship to teen usage. Using state-by-state data from the Centers for Disease Control and Prevention’s High School Youth Risk Behavior Survey, increases in high school marijuana

¹⁵ Ralph E. Tarter et al., *Predictors of Marijuana Use in Adolescents Before and After Licit Drug Use: Examination of the Gateway Hypothesis*, 12 *American Journal of Psychiatry* 163, 2134-40 (2006).

¹⁶ C. Thies and C. Register, *Decriminalization of marijuana and demand for alcohol, marijuana and cocaine*, *The Social Sciences Journal* 30, 385-399 (1994).

¹⁷ For a household of four that has yearly income equal to the federal poverty line (\$23,550), the \$25 fine is comparable to nearly 10% of that family’s monthly food budget (based on budget allocations from the Massachusetts Institute of Technology living wage calculator for DC, available at <http://livingwage.mit.edu/counties/11001>).

The burden is even greater for larger families and households with incomes that fall short of the federal poverty line. The cost of the fine is especially burdensome considering that more than half of those arrested for marijuana offenses in Police District 6, the Police District with the highest number of arrests in 2010, were unemployed at the time of their arrest.

usage were compared between states with marijuana decriminalization and those without.¹⁸ Between 2009 and 2011 in states without decriminalization measures in place, marijuana use increased by 1.2% on average. In states with decriminalization laws on the books for the entire period, marijuana use decreased by 1.3% on average.¹⁹ Therefore, national trends that cite the overall increase in teen marijuana use cannot be attributed solely to the relaxation of marijuana laws. Moreover, contrary to popular perception, most marijuana possession arrests in the District are of adults, not juveniles. In 2010, young people under the age of 18 made up just 3.8 percent of the total arrests in the District for marijuana related offenses.

Enforcement of Federal Marijuana Laws in the District of Columbia

As many commentators have recognized, the 40-year War on Drugs, waged on our own citizens, has been a deeply flawed and failed effort.²⁰ A key component of its failure has been the total prohibition of marijuana, which has resulted in the expenditure of vast amounts of money prosecuting and incarcerating countless people whose potential is decimated by wasted time behind bars and complex webs of collateral consequences that obstruct their ability to succeed in society.²¹ Worse still, the burden of marijuana prohibition falls disproportionately on Black

¹⁸ Centers for Disease Control and Prevention, *1991-2011 High School Youth Risk Behavior Survey Data*, available at <http://nccd.cdc.gov/YouthOnline/ServerRedirect.aspx>. The ACLU-NCA compared all state data that was made available through the study for 34 states in which marijuana has not been decriminalized and 6 states (AK, CO, ME, MA, NE, NY) where marijuana was decriminalized for the entire period between 2009 and 2011.

¹⁹ Centers for Disease Control and Prevention (CDC). *1991-2011 High School Youth Risk Behavior Survey Data*. Available at <http://nccd.cdc.gov/YouthOnline/ServerRedirect.aspx>. Data was unavailable for 10 states including California, Iowa, Minnesota, Montana, Nevada, Ohio, Oregon, Pennsylvania, Virginia, and Washington.

²⁰ For example, the number of sentenced prisoners under state jurisdiction for drug offenses increased 52 percent between 1990 and 2010. See Allen J. Beck & Paige M. Harrison, U.S. Dep't of Just., Bureau of Just. Statistics, *Prisoners in 2000*, 1, 12 (2001), available at <http://bjs.gov/content/pub/pdf/p00.pdf> (reporting the state prison population at 708,370 in 1990 and that 22 percent of that population, or 155,843 people, were incarcerated for drug offenses); E. Ann Carson & William J. Sabol, U.S. Dep't of Just., Bureau of Just. Statistics, *Prisoners in 2011*, 9 (2012), available at <http://www.bjs.gov/content/pub/pdf/p11.pdf> (reporting the state prison population sentenced for drug offenses at 237,000 in 2010).

Despite the increase of people incarcerated for drug offenses, drug use not only failed to decline, but instead increased. In 2011, an estimated 22.5 million Americans aged 12 or older—8.7 percent of the population—reported using drugs in the past month. *Drug Facts: Nationwide Trends*, Nat'l Inst. on Drug Abuse (2012), available at <http://www.drugabuse.gov/publications/drugfacts/nationwide-trends>. This is an 8.3 percent increase from 2002. *Id.*

On the 40th anniversary of the drug war, President Jimmy Carter called for an end to the global drug war, noting that global drug consumption and the prison population explosion have increased since it started. Jimmy Carter, Op-Ed., *Call Off the Global Drug War*, N.Y. Times, June 16, 2011, available at <http://www.nytimes.com/2011/06/17/opinion/17carter.html>. President Carter called for the United States to adopt the reforms laid out by the Global Commission on Drug Policy, which recommends substituting treatment for imprisonment for nonviolent drug offenders, and a shift toward combating violent criminal organizations rather than going after nonviolent, low-level drug offenders. *Id.*

²¹ The ACLU estimates that states spent \$3.6 billion enforcing marijuana possession laws in 2010 alone. See ACLU, *supra* n.1, at 75 fig.24. Meanwhile, there are dire collateral consequences that accompany a marijuana arrest and conviction, both for society and the individual. For example, public safety is affected: studies have shown that “marijuana arrests in particular, do not lower criminal activity, and may actually increase crime.” See Katherine Beckett & Steve Herbert, ACLU of Wash., *The Consequences And Costs Of Marijuana Prohibition*, 31 (2008), available at http://www.aclu-wa.org/library_files/BeckettandHerbert.pdf (citing Bernard E. Harcourt & Jens Ludwig, *Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests in New York City, 1989-2000*, U. of Chi. L. & Econ., Working Paper No. 317, 173 (2007), available at <http://www.econ.brown.edu/>

Americans who, across the country, are arrested, prosecuted, and convicted of marijuana offenses at rates that far exceed their rates of offending behavior as compared to whites.²²

As is the case nationwide, there is concurrent federal and local jurisdiction in D.C. What sets D.C. apart is that significant pockets of the city are federally owned land and buildings.²³ The removal of criminal penalties under D.C. law for possession of small amounts of marijuana will have no impact on the applicability of federal law in D.C., which may be enforced by both MPD and federal law enforcement agencies.²⁴

However, if past patterns continue, there is not likely to be much enforcement of the federal marijuana possession law. Prior to passage of the Act, more than 99 percent of marijuana possession arrests by MPD and federal officers in the District were made under D.C. law, not federal law.²⁵ In addition, based on an analysis of all marijuana related arrests by all law enforcement agencies in D.C. in 2010, the ACLU-NCA found that only about 1 percent of marijuana arrests occurred on Federal land and approximately 3 percent of marijuana arrests occurred within a one block radius of a federally owned or leased building.²⁶

Of course, law enforcement may choose to increase federal marijuana law enforcement for minor possession cases in order to fill the gap left by the changed D.C. law, although whether the U.S. Attorney's office for D.C. and the Federal District Court of D.C. will support expansion of federal charging of marijuana offenses in the wake of D.C. law reform remains to be seen. In any event, while the Act will limit the risk of arrests for marijuana possession of one ounce or less of marijuana, there is still a risk of arrest under federal law, which will be assumed by any individual who chooses to possess it.

Conclusion

The War on Drugs and the racially disparate policing practices that have characterized the War on Drugs have devastated communities in the District. Despite nearly equal usage rates between Black and white people and comparable populations, nearly 91 percent of all marijuana arrests in the District in 2010 were of Black people. To address this staggering racial disparity the D.C. Council took an appropriate and well-considered step to address the harms of marijuana enforcement in the District under local law. Using mid-range figures, the ACLU estimates that D.C. spent in 2010 nearly \$18 million on police enforcement of marijuana laws, more than \$6 million in judicial and legal costs related to marijuana arrests and more than \$2 million

fac/glenn_loury/louryhomepage/teaching/Ec%20222/marijuana-arrests-Ludwig.pdf). In addition, the financial costs to the individual can include lawyer's fees, missed or lost work, and bail, fines or court costs. *Id.* at 33-34. Perhaps most serious are the costs that are impossible to quantify such as emotional stress, familial tensions and disruptions, and loss of faith in the legal system. *See id.* at 32.

²² Blacks, on average, are 3.7 times more likely than whites to be arrested for marijuana possession despite using marijuana at comparable rates. *See* ACLU, *supra* n. 2, at 47 fig. 9.

²³ *See* Exhibit A, below.

²⁴ The District of Columbia Police Coordination Act of 2011, H.R. 2199, 107th Congress (2001) (enacted.) Print.

²⁵ In 2010, the MPD made the most marijuana arrests on federal land of any law enforcement agency, but these arrests constituted less than 1 percent of all marijuana arrests made by MPD. The U.S. Park Police was the only other police agency to make marijuana arrests on federal land. These arrests amounted to about 5 percent of all marijuana arrests made by the U.S. Park Police. *See* Table 1, below.

²⁶ *See* Table 1, below.

incarcerating individuals convicted of violating marijuana-related laws. This money is better invested in our community to enhance public health and safety and police-community relations. We urge the Committee and its members to respect this local and widely supported measure to address problems related to racial disparities in arrests by the Metropolitan Police Department. The ACLU looks forward to measuring the effectiveness of this bill in addressing racial disparities in law enforcement and is prepared to advocate further in this arena.

APPENDIX

The exhibits below analyze the entire universe of marijuana related arrests occurring in the District in 2010. This data was obtained from the Metropolitan Police Department through an ACLU Freedom of Information Act Request. The data set includes the arrest address for all 5,393 arrests for marijuana related offenses that occurred in DC in 2010. These addresses were geocoded to points using the ArcGIS World Geocoding Service. The locations of federal lands and federal buildings were acquired from the DC GIS Data Clearinghouse/Catalog.

Marijuana Arrests on Federal Land	56
Total Marijuana Arrests	5393
Percentage of Arrests Occurring on Federal Land	1.04%
Marijuana Arrests Occurring within 1 block of a federal building	172
Percentage of Arrests Occurring within 1 block (est .1 mi) of a federal building	3.19%

	MPD	US Park Police	Metro Police	Capitol Police	All Others
Offender Race: Black	91.85%	78.46%	93.59%	70.37%	71.88%
Offender Race: White	7.45%	20.00%	5.13%	25.93%	28.13%
Offender Sex: Male	89.31%	85.77%	93.59%	74.07%	84.38%
Arrest Charge: Possession	73.34%	84.23%	87.18%	88.89%	78.13%
Possession Arrests where Possession was Sole Charge	55.13%	42.47%	44.12%	33.33%	40.00%
Arrest Charge: Distribution	4.80%	0.38%	0.00%	0.00%	3.13%
Arrest Charge: PWID	21.86%	15.38%	12.82%	11.11%	18.75%
Arrests Charge: Multiple - Other Criminal Charges	44.24%	55.00%	57.69%	62.96%	59.38%
Arrests on Federal Land	0.88%	4.62%	0.00%	0.00%	0.00%
Arrests Under Federal CSA Statute	0.18%	0.38%	0.00%	0.00%	0.00%
Total Marijuana Arrests	4996	260	78	27	32

Exhibit A 2010 DC Marijuana Arrests on Federal Land

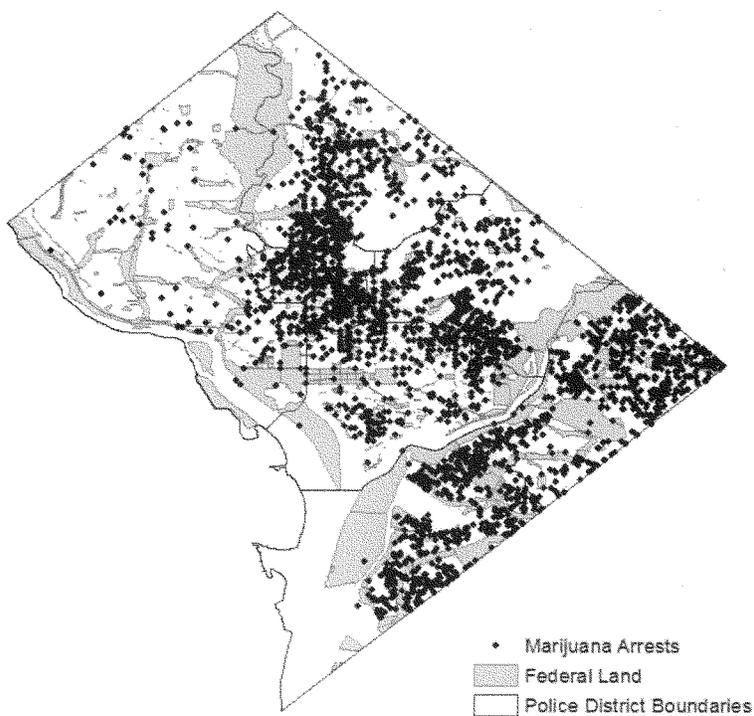
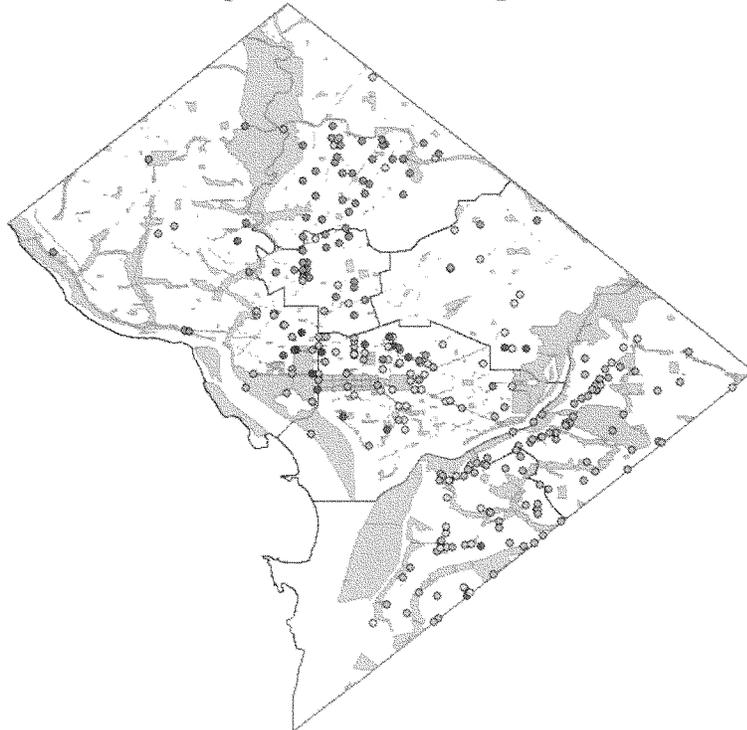


Exhibit B 2010 DC Marijuana Arrests By Non-MPD Agencies



- Arresting Agency**
- Bureau Engraving
 - DC Protective Services
 - DEA
 - FBI
 - Federal Protective Service
 - GPO Police
 - Metro Transit Police
 - National Zoological Park
 - Other
 - Smithsonian Police
 - Supreme Court Police
 - U.S. Capitol Police
 - U.S. Park Police
 - U.S. Park Police (Rock Creek)
 - White House Secret Service
- Federal Land
- Police District Boundaries

Exhibit C 2010 DC Marijuana Arrests by U.S. Park Police

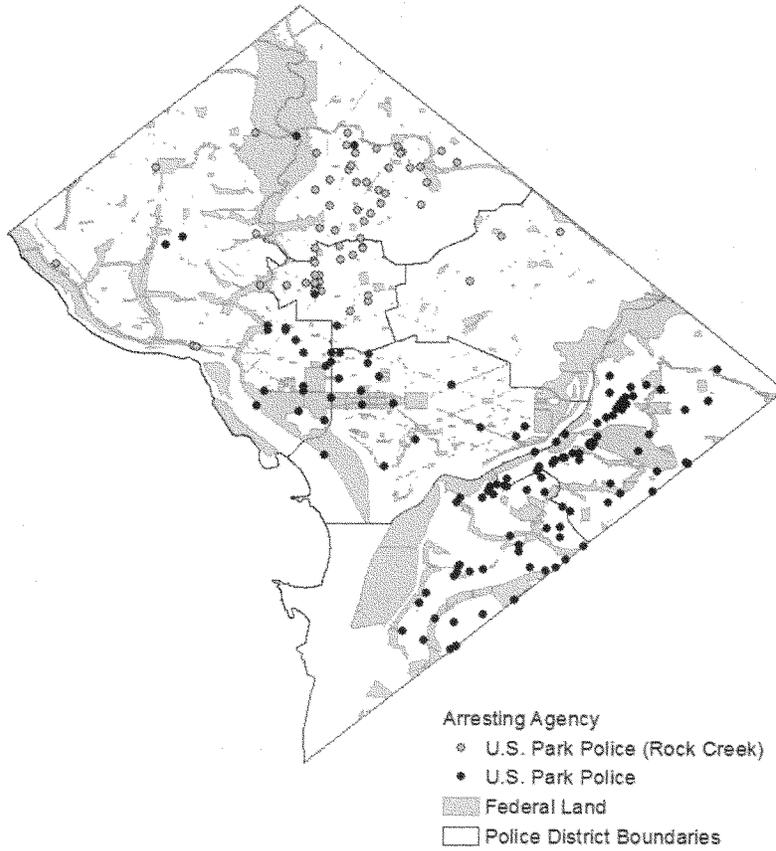
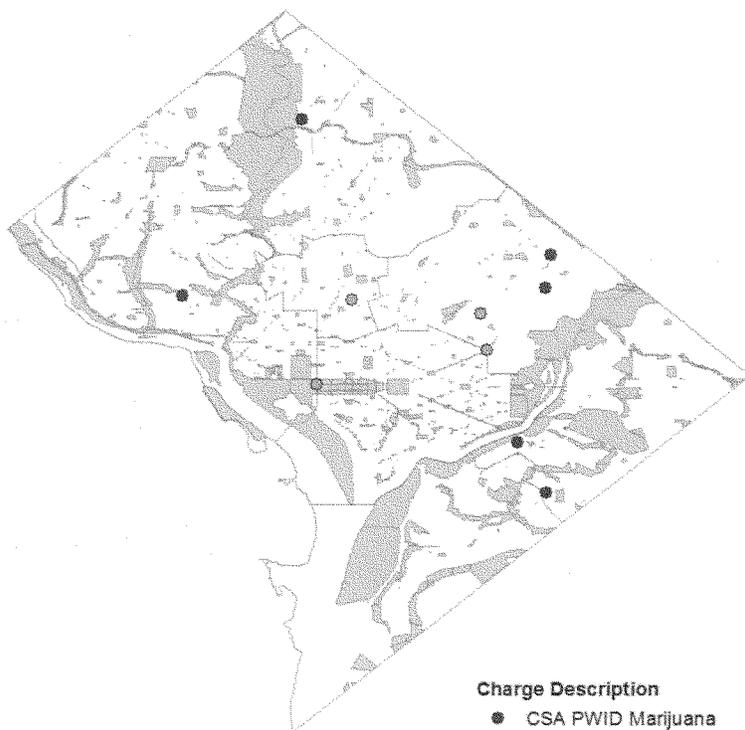
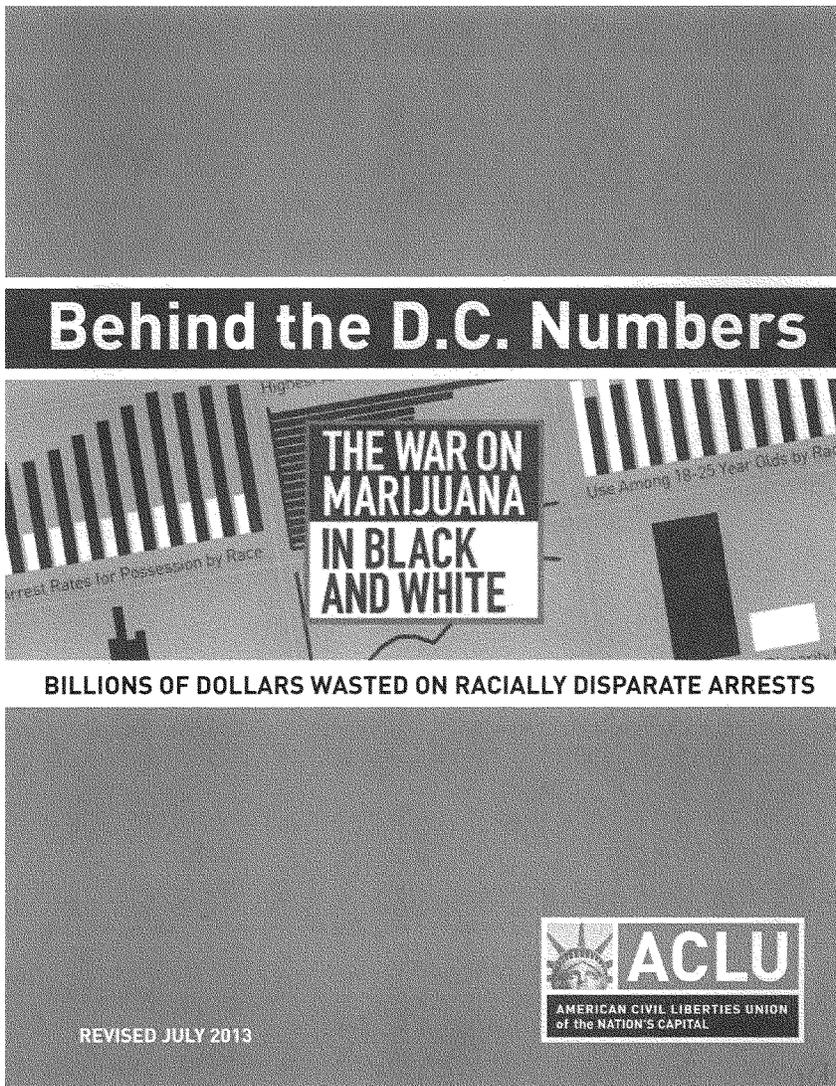


Exhibit D 2010 DC Marijuana Arrests Under Federal Statute



- Charge Description**
- CSA PWID Marijuana
 - CSA Possession Marijuana
 - Federal Land
 - Police District Boundaries



**Behind the D.C. Numbers:
The War on Marijuana in Black and White**

June 2013; revised July 2013



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Behind the D.C. Numbers

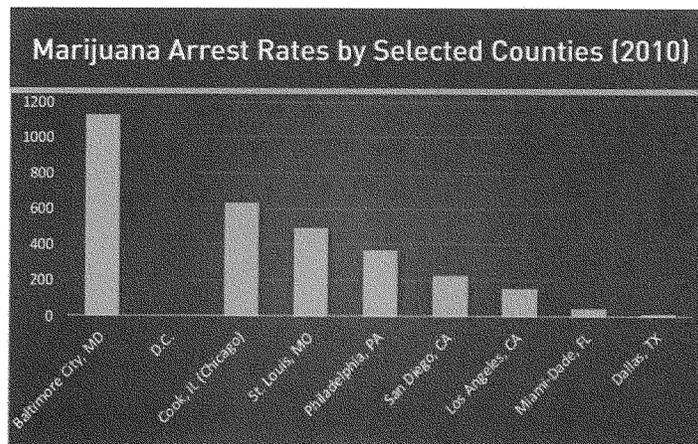
Nationwide, police departments are making arrests for possession of marijuana at a startling rate, according to a new report by the American Civil Liberties Union. Data obtained by the ACLU show glaring racial disparities in marijuana arrests during the past decade as well as an inordinate amount of public funds spent on over-policing. These data are highly suggestive of racial bias, and they affirm the collective experience of Black communities, which have long known that there is a selective application of the War on Drugs in the United States.

Sadly, the District of Columbia is among the worst offenders in these national trends. The District has a higher per capita arrest rate, greater racial disparity in marijuana possession arrests, and spends more money in marijuana

enforcement than almost any other state or county in the country.

Our analysis of arrest data provided by the Metropolitan Police Department (MPD) raises several red flags: What evidence are police officers using to obtain probable cause or reasonable suspicion to stop and search these people? Why are arrest rates highest in "gentrifying" neighborhoods? Are there financial incentives, in the form of federal funding, which reward high volumes of arrests for minor crimes?

This report represents the start of a renewed inquiry by the ACLU of the Nation's Capital into the impact of the War on Marijuana on both Black and white communities in the District of Columbia.



HIGH RATES OF ARRESTS

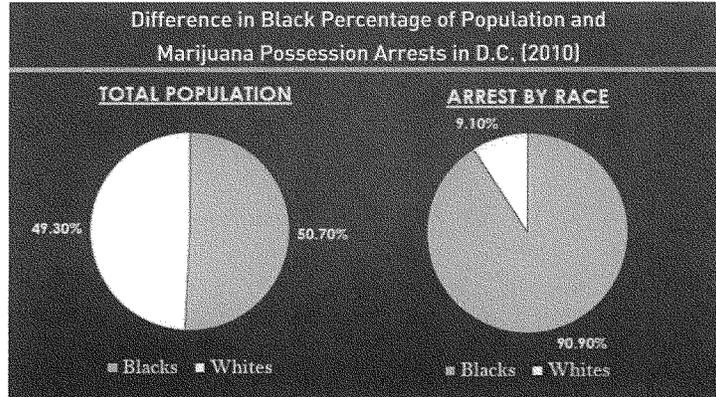
Nationally, while overall drug arrests have dropped, marijuana arrests have risen by 18 percent since 2001. In the District marijuana arrests have risen by 61.5 percent between 2001 and 2010. According to data produced by the Metropolitan Police Department, law enforcement officers in the District of Columbia made a total of 5,393 marijuana arrests in 2010 —

nearly 15 arrests a day. In 2010, D.C. had a higher marijuana arrest rate than any state, at 846 arrests per 100,000 people. On a county level, D.C. ranked as number seven out of 945 counties examined in the National ACLU's report — far outranking counties such as Los Angeles, Miami-Dade and Philadelphia. Overall, marijuana arrests account for nearly half, 46.9 percent, of all drug arrests in the District.

HIGH RACIAL DISPARITY

As the number of marijuana arrests has increased, so have racial disparities. While the white arrest rate nationwide has remained fairly constant between 2001 and 2010, at about 192 arrests per 100,000 people, the Black arrest rate has jumped from 521 per 100,000 in 2002 to 716 per 100,000 in 2010. Thus, despite roughly equal marijuana usage rates, nationally Blacks are 3.73 times more likely than whites to be arrested for marijuana possession. In the District, Black people are a full eight times more likely than non

-Blacks to be arrested for marijuana possession. Indeed, in D.C. slightly more than half the population is Black, yet in 2010 a staggering 91 percent of all marijuana arrests were of Black people. The Black marijuana arrest rate in the District is 1,489 per 100,000, more than twice the national Black arrest rate of 716 per 100,000. This rate is an increase from 2001, when the rate of Black marijuana arrests in D.C. was 770 per 100,000. By comparison, the white marijuana arrest rate in the District is 185 per 100,000, which is below the national rate of 192 per 100,000.



4 Behind the D.C. Numbers

SELECTIVE ENFORCEMENT

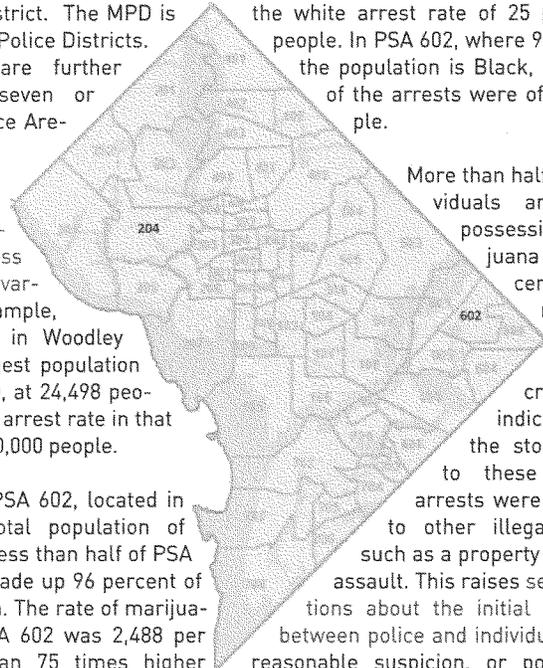
These arrests are not distributed evenly throughout the District. The MPD is divided into seven Police Districts. Those Districts are further subdivided into seven or more Police Service Areas (PSAs).

The ACLU's analysis found that arrest rates across Districts and PSAs varied greatly. For example, PSA 204, located in Woodley Park, had the largest population of any PSA in 2010, at 24,498 people. The marijuana arrest rate in that PSA was 33 per 100,000 people.

Compare that to PSA 602, located in Anacostia. The total population of PSA 602 is 9,647, less than half of PSA 204, and Blacks made up 96 percent of the PSA population. The rate of marijuana arrests for PSA 602 was 2,488 per 100,000, more than 75 times higher than PSA 204. When broken down by race, though Black people accounted for only

4.5 percent of the total population in PSA 204, the Black arrest rate in 2010 was 181 per 100,000 people, compared to the white arrest rate of 25 per 100,000 people. In PSA 602, where 96 percent of the population is Black, 100 percent of the arrests were of Black people.

More than half of the individuals arrested for possession of marijuana — 54 percent — were not charged with any other crime, which indicates that the stops that led to these marijuana arrests were not related to other illegal behavior, such as a property crime or an assault. This raises serious questions about the initial interactions between police and individuals and the reasonable suspicion, or possible lack thereof, that led to the initial stop and subsequent searches.



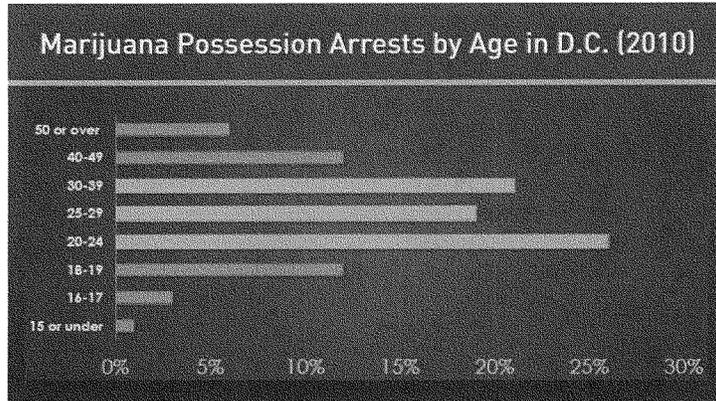
WASTED RESOURCES

D.C.'s high arrest rates, and the enforcement practices that lead to those arrests, don't come without a cost. The ACLU estimates that the District in 2010 spent between \$9 million and \$43 million on marijuana possession enforcement — more per capita on marijuana enforcement than any state. Using mid-range figures, the ACLU estimates that D.C. spent in 2010

nearly \$18 million on police enforcement of marijuana laws, more than \$6 million in judicial and legal costs related to marijuana arrests and more than \$2 million incarcerating individuals convicted of violating marijuana-related laws. This money could otherwise be invested in our community to enhance public health and safety, for drug treatment programs and police-community relations, or for many other purposes.

NOT JUST YOUTH

Unlike national trends, in 2010 there were more people arrested for marijuana aged 30-39 than aged 25-29 or aged 16-19. Finally, contrary to popular perception, marijuana arrests in D.C. aren't just focused on teenagers and young people.



TIME FOR A CHANGE

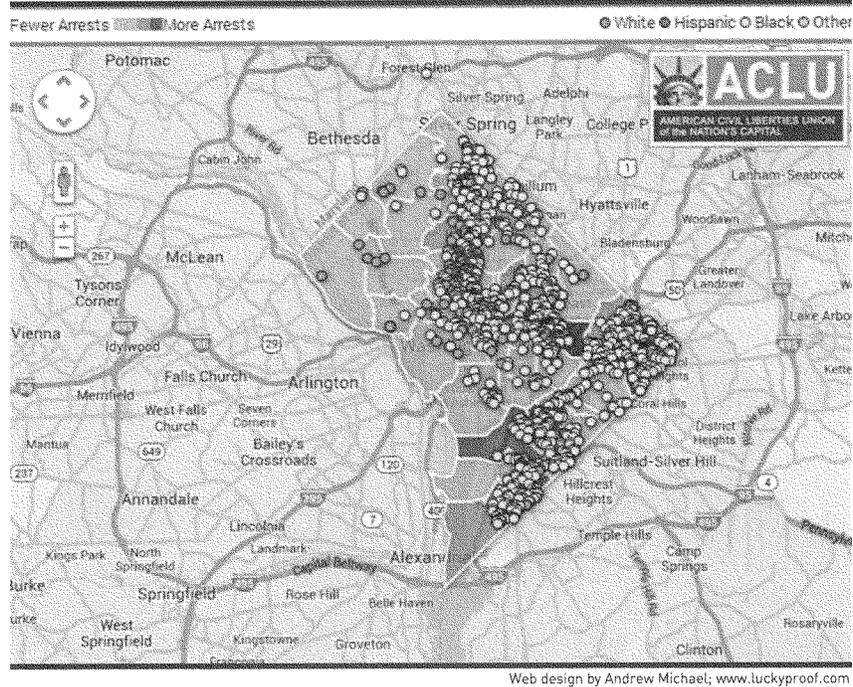
D.C.'s drug laws and polices need to be drastically revised to make them fairer, more compassionate, and better designed to reduce drug dependency and improve public health and safety. The ACLU of the Nation's Capital recommends that D.C. eliminate criminal penalties for low-level possession and use of marijuana. This is the only way to eliminate the extreme racial disparity in the enforcement of marijuana laws.



NOTES:

Population data is based on 2010 Census data. Though D.C. is not a state or a county, comparisons of arrest rates, meaning the number of arrests per 100,000 people, are illustrative and take into account differences in overall population. For example, Los Angeles county has a marijuana possession arrest rate of 159 per 100,000 people. Though the county made many more overall arrests due to its significantly larger population, D.C.'s arrest rate, at 846 per 100,000, is much higher than the arrest rate in Los Angeles county because a larger proportion of the D.C. population has been arrested for marijuana. Financial calculations and arrest data from other jurisdictions come from the National ACLU report, *The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests*, available at www.actu.org/marijuana.

MAPPING THE DATA



Each dot on the map above represents a marijuana-related arrest in 2010. Yellow dots indicate the arrestee was identified in arrest data provided by MPD as Black. Blue dots indicate the arrestee was identified as white. The map is divided into PSAs. The PSA boundaries in this map reflect boundaries as revised in January 2012. The data provided by MPD retroactively changed the PSA of

each 2010 arrest to reflect these new boundaries. Each PSA is assigned a color based on the absolute number of arrests. This map is available in interactive form on our website, at <http://aclu-nca.org>. The website map allows viewers to zoom in to street level, to sort the data by race, PSA, District, police department, and to see data on each individual arrest.

Mr. MICA. Well, thank each of our witnesses for their testimony and participation. Also, failed to say at the opening, thank you again. We have had to change the scheduling of this hearing at least twice, and yesterday, in deference to our departed Member, the late Mr. Jim Oberstar, Ms. Norton and I and many other members were at his funeral. So that is the reason, and I appreciate so much your complying.

Let me start with some quick questions. I cited, in fact, Mr. O'Neil, that there are 26 Federal law enforcement agencies. You issued and you cited the August 29th, 2013, memo that the U.S. Attorneys wouldn't be going after some of the laws in these States, at least you wouldn't be going after as far as Federal prosecution some of the laws. You did cite eight exceptions, and the eighth one I have here, which I put in the record, was preventing marijuana possession or use on Federal property. Is that correct? Is that part of what was issued?

Mr. O'NEIL. Chairman Mica, I guess I would characterize the memo slightly differently. I think it was not an indication that we would not prosecute Federal marijuana laws except where those exceptions or where those areas are indicated. I think what I would say is that that memo indicated that those are the areas where we are going to focus our priorities. So we have instructed Federal prosecutors to focus on those areas.

Mr. MICA. Right. And one would be preventing marijuana possession or use on Federal property.

Mr. O'NEIL. That is correct.

Mr. MICA. That is correct.

Mr. O'NEIL. That is one of our priorities.

Mr. MICA. In conflict to some comments that have been made about what the Department of Justice has said and what they would do.

We have also looked, and we called in your U.S. Attorney from Colorado because that is one of two States that have—now, we have 20 States that have gone in for the medical marijuana, but we have the penalties basically eliminated for possession, I believe, in Colorado; the other one Washington. So we are not picking on the District, we are looking at the implications from Federal prosecution.

Mr. MacLean, you cited, too, that you will be enforcing Federal law on Federal property. Is that correct?

Mr. MACLEAN. That is correct, sir.

Mr. MICA. As far as possession. Which are you going to enforce, the District law or Federal law on Federal property? If I have got this little old joint here, just possession, what are you going to do, and I am on Federal property, Park Service, and you told me all the area that you cover, what law are you going to enforce if this goes into effect in a few more weeks here?

Mr. MACLEAN. The current law over National Park Service land in the District of Columbia is title 36 Code of Federal Regulations.

Mr. MICA. So you will enforce the Federal law in conflict to the—in deference, too, to what the District has passed, right?

Mr. MACLEAN. That is correct. We also have available to use the authority under—

Mr. MICA. And you would prosecute that. I guess the prosecutorial agency would either be—well, the District has a different law, so it would end up in the Federal courts. Is that right?

Mr. O'NEIL. The U.S. Attorney's Office for the District of Columbia has authority in the District for prosecuting cases or offenses under the D.C. Code. And so to the extent an arrest was made under the D.C. Code, that would be prosecuted in Superior Court. To the extent a case was brought to us in violation of Federal law, then, yes, that would be prosecuted in Federal District Court.

Mr. MICA. And MacLean just testified 55—was it 55 percent of your—give us exactly, I don't want to change the words, but the marijuana possession were 55 percent of offenses, or what was that number?

Mr. MACLEAN. Of the specific year, 55 percent of the arrests made for marijuana possession by the United States Park Police occurred on Federal parkland.

Mr. MICA. On Federal parkland.

Mr. MACLEAN. Correct.

Mr. MICA. So we could have an increased number, given the disparity.

I am not here to negate the District law. We are here to review what the District passed, and there have been precedents for that, and I am not here to just review its implications in the District. We have at least two States, and we have had one hearing on one of the States and the U.S. Attorney, to see how this would be administered and executed under the law.

So, again, and I have already put this in the record, we would have Federal prosecution. It would be at a higher. But we still have the issue, and I think you brought it up, Chief Newsham, of this being a Schedule I Federal narcotic, too, even though the District has again reduced the penalty, and you have jurisdiction on all of the non-Federal land. So you would prosecute it under the new statute. Is that correct?

Mr. NEWSHAM. Yes, that is correct.

Mr. MICA. Okay. Well, again, it isn't a purely local matter, particularly given the relationship between the District of Columbia. And, again, it is a unique status in the scheme of political and enforcement jurisdictions.

There is no question there is disparity in the prosecution when it comes to blacks. Our prisons probably, I don't know the current number, but probably half the population of the prisons, State and local jails, are filled with African Americans. The number of people in jail for various penalties, there is probably a larger population of African Americans in jail and prosecuted for a whole host of crimes. And that is wrong, and in many cases it is wrong that they find themselves in that situation in the beginning. But I am not certain that again changing the penalty in the District of Columbia is going to benefit that population that much.

Unfortunately, marijuana, Ms. Sadanandan, becomes a gateway narcotic, and that is what we had testify the Office of National Drug Control Policy Director under the—the Deputy Director—under the President of the United States, who brought up some of this topic by comparing the use of marijuana equivalent to alcohol.

So, again, it is not a question, but a response to some of your comments, there are inequities that need to be resolved.

I appreciate each of you coming. We are trying to sort through this, its implications. I don't know what the administration will do on the categorization. Do you have any recommendation, Mr. O'Neil? Probably not.

Mr. O'NEIL. In terms of scheduling of marijuana?

Mr. MICA. Yes.

Mr. O'NEIL. No. There is a process for considering that which would begin with a petition to the DEA, which then would be referred to the Department of Health and Human Services for a study and a recommendation.

Mr. MICA. And we plan to bring in people from the scientific area to see what is out there and again review that whole process. And right now with the laws changing, as you testified to, and we all see across the land, we need to see where we are going with this.

I thank both of you, you are both law enforcement officers, for the job you are doing, and I hope you see the problems that we are trying to sort through as a committee.

Ms. NORTON. I am going to try to stick to the 5, Ms. Norton, because we do have 5 votes scheduled soon.

Ms. NORTON. Thank you, Mr. Chairman. Just to clarify, Mr. Chairman, on parkland and Federal property, nothing I said was meant, and I heard nothing that said that Federal law would be any different on Federal property, Federal Park Service property, Federal buildings. I joked about how you wouldn't be arrested here.

Mr. MICA. Even up here.

Ms. NORTON. Yeah. This is Federal property. You may be in some jeopardy up here, Mr. Chairman.

But what I was pointing out is that parkland and Federal property is to be treated the same way here as in other parts of the United States. Isn't that true Mr. MacLean and Mr. O'Neil?

Mr. O'NEIL. That is correct.

Mr. MACLEAN. Yes, ma'am.

Ms. NORTON. I mentioned when the chairman pointed out 20 percent of the land was Federal parkland or Federal property that there were any number of States—staff has given me some of them, Nevada, Utah, Alaska—where the entire State virtually is owned by the Federal Government. Does that create any particular difficulty with respect to the—for example, in Alaska where they have decriminalized marijuana, has the fact that so much of Alaska is Federal land created any particular difficulties enforcing Federal law on Federal land.

Mr. O'Neil?

Mr. O'NEIL. I am not aware of any particular difficulty arising from the high percentage of Federal land in a State like Alaska. As you pointed out, we are going to approach marijuana enforcement in the District of Columbia just as we do in States like Colorado, Washington, and other jurisdictions that have chosen to amend their laws in this way.

Ms. NORTON. I just want to note for the record that the Federal Government owns 81 percent of the land in Nevada, 66 percent in Utah, and 61 percent in Alaska.

Mr. Newsham, does the District's marijuana bill change D.C. law regarding the sale and distribution of marijuana or intent to distribute marijuana?

Mr. NEWSHAM. That would still be an arrestable offense.

Ms. NORTON. What about notification of parents and guardians if you find marijuana in the hands of a youth?

Mr. NEWSHAM. The youth would be issued, for less than an ounce, would be issued a notice of violation. And then again with regards to distribution it would be an arrestable offense and parents would be notified.

Ms. NORTON. Ms. Sadanandan, you noted that where there are a great many young people, because this is a college town, west of 16th Street there are almost no arrests, but there are in that map that showed high numbers in many areas where African Americans live. Why do you think? How come there are so many arrests for mere possession there? How do they come about?

Ms. SADANANDAN. Well, the study that we did was a descriptive study, so we looked purely at sort of the arrest data. But based on anecdotal evidence there are a number of different reasons that have to do with the way in which marijuana enforcement is prioritized by various law enforcement agencies. And I think that you can look, even with the number of various law enforcement agencies here in the District, you see more than 93 percent of the arrests are happening through the Metropolitan Police Department.

Ms. NORTON. Are these youngsters or people, whatever their age, picked up, do you think, because of the smell or odor of marijuana?

Ms. SADANANDAN. According to reports from young people in the District, it was under the alleged smell of marijuana that they were being singled out for stops and searches. But what we found in our data is that the majority of people who were actually arrested were not young people at all. In fact, juveniles made up less than 4 percent of actual arrests for any type of marijuana.

Ms. NORTON. I don't mean juveniles, Ms. Sadanandan. I mean young people.

Ms. SADANANDAN. Yeah, absolutely. So the pretext of odor was definitely being used, according to anecdotal evidence, to stop and initiate contact.

Ms. NORTON. What is the reason for the low fine?

Ms. SADANANDAN. The reason for the low fine is because the majority of the areas of the District where people were being arrested are areas with high rates of low-income individuals, and the implication for a \$25 fine is very different for a person who is living at or below the poverty line than, say, for example, a person who is middle class or upper middle class. And so the \$25 fine is more likely based on the arrest patterns we see now to be levied against someone of low income. And so we wanted a fine that was a deterrent for engaging in possession, but it was also manageable and realistic and didn't saddle someone with an additional burden which would be unrealistic for them to actually pay.

Ms. NORTON. Thank you.

And thank you, Mr. Chairman.

Mr. MICA. Thank the gentlelady.

Mr. Massie.

Mr. MASSIE. Thank you, Mr. Chairman.

I find the racial disparity aspect of the enforcement and prosecution of these laws very disturbing, but it does strike me that the answer might not be just to ignore the law when we find a problem like this.

Ms. Sadanandan, did you find racial disparity in distribution crimes as well as possession, or have you looked at that?

Ms. SADANANDAN. Our report didn't look specifically at distribution, but what I can say is this. Based on just a survey, a general survey of the number of, for example, distribution crimes in an area like District Seven of the Metropolitan Police Department, which is a largely African American section of the District versus District Two, we did find that in District Seven, for example, there were 276 arrests for distribution in a given year. In District Two there were approximately between 20 and 30 arrests. Yet the yield for marijuana was much, much higher in District Two than in District Seven.

Mr. MASSIE. What I am trying to find out is do you anticipate—so there are still going to be arrests for intent to distribute, that really hasn't changed in the D.C. law—do you anticipate a racial disparity continuing in the enforcement of this law?

Ms. SADANANDAN. We anticipate that there will be less arrests, but, yes, the disparity will continue. It just won't continue on the scale that we are seeing now.

Mr. MASSIE. Mr. Newsham, two of the witnesses have testified that there is a racial disparity in the application of this law. In your opinion, why are blacks arrested at a higher rate than whites for marijuana and what are you doing about that? I mean, it is not up to you to set the laws, but the enforcement of it is. What can you do and what have you done to address that disparity?

Mr. NEWSHAM. I don't know if I heard folks say that it was the enforcement of the law that was causing the disparity. I think that when you take a look at something like this, if you are looking at race for a particular crime where arrests are being made, I think other factors have to be considered before you draw any conclusions as to what the cause is. One of the things that we looked at as a department, because we're very sensitive to the allegation that laws are being biasedly enforced, obviously—

Mr. MASSIE. Understood. So I wanted to give you a chance to answer that.

Mr. NEWSHAM. Yeah. So we looked at calls for service. And if you talk about that study where they talked about two separate areas of the city, we call them patrol service areas, one was in the Second District and one was in the Seventh District, and this just is one of the things that we saw, is that in PSA 204, which is in the Second District, which is a predominantly white neighborhood, there were 12 drug calls for service and we had 12 marijuana arrests. Then in PSA, I believe it was 602, which is in Anacostia, which is a predominantly black neighborhood, we had 518 calls for service and we had 249 marijuana arrests.

So the calls for service are drawing the police to these areas, and the calls for service are the community. It is the community that calls the police to come and take enforcement action. So I guess I say all that to say is I don't want anybody here to leave with the

impression that the Metropolitan Police Department or any law enforcement agency in the city is—it is law enforcement tactics that are causing that. I think we need to take a closer look at the causes.

Mr. MASSIE. Thank you.

Mr. O'Neil, who determines the prosecution priorities at the Department of Justice?

Mr. O'NEIL. Ultimately the Attorney General and the Deputy Attorney General, and then in each of the districts—

Mr. MASSIE. So it is the Attorney General, Eric Holder, who determines ultimately the priorities?

Mr. O'NEIL. Yes, the Attorney General, though as I said in any particular district the U.S. Attorney also has discretion about how to enforce the law based on the particular circumstances of that area.

Mr. MASSIE. So have you had any directive. I heard you say earlier that you would enforce the laws in D.C. on Federal property the same way you would in Colorado or Washington, but are you going to be any more or less diligent about prosecuting arrests on Federal property in States that have more lenient marijuana laws than in other States?

Mr. O'NEIL. No. We are going to approach it—that was really the point of the August 2013 guidance, is that this is the enforcement priorities of the Department across the entire country regardless of what the State law is.

Mr. MASSIE. So there would be no deference to State law on Federal property in those States?

Mr. O'NEIL. I think our enforcement of marijuana laws on Federal property will be the same regardless of what the applicable State law is.

Mr. MICA. Thank the gentleman.

Mr. MASSIE. Thank you.

Mr. MICA. I need to recognize Mr. Jordan.

Mr. JORDAN. I thank the chairman.

Mr. O'Neil, tomorrow, May 10th, will mark 1 year since Lois Lerner went to a bar association here in town and disclosed that the Internal Revenue Service was targeting conservative groups. Four days later the Attorney General announced, after saying that this activity was outrageous and unacceptable, announced that there would be a criminal investigation.

A month into that investigation we had then FBI Director Mueller in front of the committee. He was asked three questions: Who is the lead agent on the investigation? How many agents have you assigned? And have you interviewed any of the victims groups? Mr. Mueller's responses to those questions were I don't know, I don't know, I don't know. But what he also said was I will get back with you, implying that we were able to—we should in fact know some of that basic information.

So I would like to know a couple things. We know Ms. Bosserman is involved. She has interviewed many of the witnesses because those same witnesses we have interviewed and they told us she has been interviewing them. She is in the Civil Rights Division. But the Attorney General has told us the Public Integrity Section is involved, too. Is that accurate?

Mr. O'NEIL. Both the Civil Rights Division and the Criminal Division of the Department of Justice are involved, as are career agents at the Federal Bureau of Investigation and the Treasury Inspector General.

Mr. JORDAN. Can you tell me some of the basic information about the questions I asked Mr. Mueller almost a year ago? Who in fact is the lead agent on this investigation?

Mr. O'NEIL. I am sure that we can provide that information to you.

Mr. JORDAN. Well, we have asked you seven times. We have sent seven different inquiries to the Department of Justice and each time they can't tell us anything. They just say it is an ongoing investigation.

Now, Mr. Mueller didn't say that. He told us he would get back with us and give us the information.

Now, Mr. O'Neil, you're Acting Assistant AG for the Criminal Division, so you manage the Public Integrity Section?

Mr. O'NEIL. I oversee the Public Integrity Section.

Mr. JORDAN. Are you involved in the investigation of targeting of conservative groups by the Internal Revenue Service?

Mr. O'NEIL. I would disagree with the characterization. I don't—

Mr. JORDAN. Are you involved?

Mr. O'NEIL. Am I involved in the investigation?

Mr. JORDAN. The investigation.

Mr. O'NEIL. I oversee the Public Integrity Section, so, yes.

Mr. JORDAN. Do you know an attorney named J.P. Cooney?

Mr. O'NEIL. I am not familiar with that name.

Mr. JORDAN. Mr. Cooney is in the Public Integrity Section. We understand he is involved in the investigation. Do you know if he is lead agent?

Mr. O'NEIL. As I said, I am not familiar with the names.

Mr. JORDAN. Can you tell me who is leading the investigation? There has got to be someone in charge. Who is the point person on the investigation in the targeting of the Internal Revenue Service of conservative groups?

Mr. O'NEIL. Congressman, obviously this is far afield of the subject of the hearing that we are—

Mr. JORDAN. But you oversee the Public Integrity Section, the Criminal Division that is involved. I just want to know who—you don't know who—this is one of the biggest cases you got. You don't know who is leading the investigation?

Mr. O'NEIL. There are numerous career Federal prosecutors that are on that investigation.

Mr. JORDAN. Can you tell me how many? I have been trying to get this answer now for 11 months.

Mr. O'NEIL. How many prosecutors in total? I can't tell you that answer sitting here today.

Mr. JORDAN. Is this an important case for the Justice Department, finding out how people's First Amendment rights were violated and they were targeted by the Internal Revenue Service. Is this an important case?

Mr. O'NEIL. Again, I would disagree with the characterization of the investigation. But, yes, this is an important case to the Department.

Mr. JORDAN. And you don't know how many agents are involved. You don't even know how many agents are involved from your division?

Mr. O'NEIL. Well, agents would be involved from the Federal Bureau of Investigation—

Mr. JORDAN. How many attorneys from your division?

Mr. O'NEIL. I can't give you a precise number.

Mr. JORDAN. Let me ask you this.

Mr. O'NEIL. I don't want to give you a precise number and have that be incorrect.

Mr. JORDAN. Let me ask you this. This week, earlier this week, in a bipartisan majority, 26 Democrats joined Republicans, joined every single Republican, 26 Democrats said that we should have a special counsel take over this investigation. So 26 Democrats joined with us saying things like this, "The statements and actions of the IRS and the Department of Justice and the Obama administration in connection with the matter have served to undermine the Department of Justice investigation." That was part of the resolution. Twenty-six Democrats agreed with that quote.

Do you think we need a special counsel to take over this investigation, that no one seems to know how many agents are involved, how many attorneys are involved, no one can tell me who is leading it. FBI Director Mueller couldn't tell me, you can't tell me, even the people, the number involved from your division. Do you think we need a special counsel? Do you agree with the 26 Democrats who agreed with us with that resolution?

Mr. O'NEIL. You know, I think that the Attorney General, the Deputy Attorney General, and others in the Department have answered that question. I think the answer is that, no, a special counsel is not warranted.

Mr. JORDAN. So you not going to recommend a special counsel?

Mr. O'NEIL. No.

Mr. JORDAN. You don't think the Attorney General is going to even consider that question at all, even though 26 Democrats, a bipartisan majority in the House of Representatives said what is going on at the Justice Department, it is not the kind of investigation we want, we think it is time for a special prosecutor?

Mr. O'NEIL. Again, I think that that suggestion has been made and I think that the leadership—

Mr. JORDAN. It wasn't a suggestion. It wasn't a suggestion. It was a vote of the United States House of Representatives with 26 Democrats joining Republicans saying what is going on in the Justice Department is not a real investigation. When the person leading the investigation, Barbara Bosserman, gave \$6,750 to the President's campaign and the Democrat National Committee, even 26 Democrats agree something else has to happen, someone else should be in charge.

Mr. O'NEIL. Again, Congressman, I think that the prosecution here is being led and managed by career prosecutors in the Criminal Division, the Civil Rights Division, with assistance from career agents in the FBI and the Treasury Inspector General.

Mr. JORDAN. I hope, Mr. Chairman—

Mr. O'NEIL. And I think the Attorney General and the Department have confidence—

Mr. JORDAN. Mr. Chairman, I hope the Attorney General will listen to what 26 fellow Democrats in the United States House of Representatives had to say earlier this week when they voted and said we need a special counsel.

Mr. MICA. Thank the gentleman.

Here is what is going to happen. We have less than a minute now remaining in a vote. So I am going to recess the hearing until 12:15. We will try to conclude it by about 12:30, 12:35. We have at least a few more questions to be asked, though.

The subcommittee will stand in recess to 12:15.

[Recess.]

Mr. MICA. I will call the subcommittee back to order. Thank everyone for their indulgence, a couple minutes over, and once again, appreciate your patience in accommodating the subcommittee. We have at least one more member who wanted to ask questions, and we want to give everyone time to ask those questions.

In the meantime, one of the questions that I would pose as we wait for the other members is, looking at the effective penalties relating to marijuana that lead to an increased rate of drugged driving, it is my understanding we don't really have a standard, and this is something I am going to look at nationally, to determine the level of narcotic in the bloodstream. And I think also that marijuana can be detected in the bloodstream for some time after its use, but the whole question of driving impaired is raised.

Do you see any—this is to Chief Newsham, do you see any problem with increased use of marijuana, again, with the lowering of the penalties and also the inability to come up with a test that would indicate the level of intoxication by marijuana?

Mr. NEWSHAM. I don't think—I guess we are going to assume that there is going to be an increase in use based on the decriminalization. I guess there is not going to be any change in the way that we currently enforce people who are driving under the influence of either alcohol or—

Mr. MICA. But we don't have—we don't have a test that is administered and we have no standard nationally or within the District for the amount of marijuana that is tolerated, do we?

Mr. NEWSHAM. No. The way that a driver would be tested on the scene for law enforcement purposes would they would be given a road test as to their ability to perform certain functions, and if they are unable to perform those functions, there is going to be an assumption they are impaired.

Mr. MICA. You do blood tests though, too?

Mr. NEWSHAM. We can do blood tests if necessary.

Mr. MICA. Okay. Well, that is another question probably for another hearing, because we see that issue across the United States as far as enforcement.

Let me yield now, if I may, to Dr. Fleming.

Mr. FLEMING. Well, once again, thank you, Mr. Chairman. And I want to welcome our panel here today.

First of all, it seems, in listening to your testimony today, the justification for decriminalizing marijuana is made on the basis of

racial disparity. That is the only real argument I heard. So I would like to ask our two police professionals here today, can you give me just a rough estimate of the white versus non-white numbers among your officers in the field, the ones who would actually make arrests? Both of you, if you could have any—just a range would be fine.

Mr. NEWSHAM. I am not sure you are—how many—what is the—

Mr. FLEMING. Your police officers who are in the field who would be the ones making arrests.

Mr. NEWSHAM. About 60 percent of the Metropolitan Police Department is African American.

Mr. FLEMING. Okay. So the majority of the officers making the arrests are African American.

Mr. NEWSHAM. In the District of Columbia.

Mr. FLEMING. In the District of Columbia.

Mr. NEWSHAM. For our department, yes.

Mr. FLEMING. Right. Mr. MacLean, how about you?

Mr. MACLEAN. So I don't have an approximate number on the breakdown by race.

Mr. FLEMING. Okay. You would say it was evenly balanced, perhaps, that there is certainly—you are well represented by both African American and white police officers?

Mr. MACLEAN. Correct. Well, we have geographic responsibility in D.C., New York City and in San Francisco, and we have a very diverse workforce.

Mr. FLEMING. Okay. So one would—if you accept these numbers of 1-4 or 1-8 ratios, I don't doubt those as overall numbers, but the implication one infers from that, Ms. Sadanandan, is that the police officers are actually racially biased. So how do you explain that in the case of D.C., you have a majority of officers who are actually African American? Certainly you don't think that they are racially biased against their own race?

Ms. SADANANDAN. I think that is an excellent question. And I think that what we are really seeing is the phenomenon of community-based profiling, that certain communities are treated and policed in a certain kind of way, and those same strategies and tactics aren't necessarily applied in other communities.

And with regards to drug law enforcement, I can give you a specific example. One of the reports that we heard from across African American communities had to do with drug interdiction units, otherwise known as the jump-out car, the police officers riding up on pedestrian and jumping out to stop and search them, in which people consented to searches, which sometimes revealed small amounts of marijuana.

Mr. FLEMING. But you would concede that it is not a racial bias, that this is not—because, again, you have got the same African American officers who are actually arresting African-Americans. It sounds like what you are saying is that certain communities have a higher density of police officers or police enforcement.

Ms. SADANANDAN. No, I wouldn't concede that it is not a racial bias. I don't think that the race of the police officer necessarily determines whether or not there is an institutional bias in which communities on the basis of race are policed. I don't think that just

because a police officer is black, that that police officer doesn't carry implicit bias that is carried throughout our society through—across all races due to a number of different factors, which we don't have to get into here today.

Mr. FLEMING. Okay. Well, let me shift a little bit here. So what about other crimes, grand theft auto, murder? Do you think that we should reduce enforcement or penalties, because there are also found to be racial disparities there. Would you would also recommend that we reduce, or perhaps even not sentence someone who has committed murder to prison simply because there is a potential racial bias?

Ms. SADANANDAN. I think that what we can say with certainty about marijuana is that the criminalization of marijuana has not had an impact on either the—

Mr. FLEMING. Well, I—but that is not—that is an answer to a different question. My question is what about other crimes? Would you diminish those sentences and enforcement based on racial disparity?

Ms. SADANANDAN. Well, I think we definitely need to look at whether or not our criminal justice approach to public safety issues is, in fact, making us safer. And when we measure the efficacy of those approaches, we need to look at more than just how many people we arrest. We need to look at whether or not communities—

Mr. FLEMING. But just yes or no. Do you think we should diminish enforcement and penalties for those other crimes that are far more serious that may have racial disparities?

Ms. SADANANDAN. Well, I think that if there are racial disparities and the approach to criminal justice is found not to be effective, then we should seriously consider examining the types of sentences and approaches that we take to dealing with those public safety issues.

Mr. FLEMING. Okay. So I will take that as sort of a yes.

Well, again back to our police officers, do you agree that perhaps there is some racial bias or bigotry perhaps that leads to these rates of arrests that seem to be disparate?

Mr. NEWSHAM. I mean, I would hope that people wouldn't draw that conclusion based on an analysis that is just based on race alone. I think you have to look at other factors that may be causing that, and I brought up one of the factors that we have considered, which are calls for service where the community calls the police to a particular area. So if there are more police in the area, there are likely to be more arrests.

So I think that, you know, it is something—it is definitely an issue that needs to be looked at. I think it needs to be looked at carefully. I have worked on the Metropolitan Police Department for almost 25 years. The folks that I work with in that agency would, you know, obviously be very upset to hear that they are being accused of a biased enforcement, and that is one of the things that we work very hard to prevent.

Mr. FLEMING. Sure. And again to reiterate a statement you have made twice, you are saying that you are not affirmatively going into communities seeking out criminals. You are getting calls, you are getting a higher density, a higher frequency of calls, and obvi-

ously your officers are responding to those calls and certainly responding and reacting to the laws that are in force.

Mr. NEWSHAM. That is—that is one of the factors, I think, that needs to be looked at.

Mr. FLEMING. Right. One thing that I might also suggest in this is a drug counselor told me back in the 1980s that if you see a pure alcoholic, take a picture, because that is probably the last one you will see.

Now, what he meant by that was that nowadays when it comes to chemical addiction, it is a poly-pharmacy issue, that you rarely see someone use just marijuana if they have an addiction problem. I am not suggesting everyone that uses marijuana uses other drugs. What I am saying is that those who do use drugs frequently, those who are addicted to drugs oftentimes use many different drugs, and so it certainly would seem to me, and I would love to get your response to this, that while you may find marijuana on the person of that individual, that person could have been using other drugs to which it could have created a behavior that generated that call to service.

Mr. NEWSHAM. I mean, I think I would respond like this, is that, you know, we—on the Metropolitan Police Department, we enforce the laws that are in place, the local laws that are in place, and, you know, to suggest that, you know, a person's using one drug or another is really not what we do. We enforce the laws that are in place. And I don't think anyone has said that there isn't going to be a consequence for marijuana possession in the District of Columbia; it is just the consequence has changed. It has changed from a notice of violation for less than an ounce from an arrest situation. So I think the enforcement is still there. I think there is still—at least the laws want there to be enforcement, enforcement action, and we are going to continue to enforce those laws.

Mr. FLEMING. Right. I yield back, Mr. Chairman.

Mr. MICA. Thank the gentleman.

Ms. Norton, did you have additional questions?

Ms. NORTON. Just to clarify, because that was, I think, an informative answer that you gave, Mr. Newsham, this time and before about high crime areas. We call them high crime areas. You said we receive a large number of calls. And here is where I want to speak about the consequence of the law. You receive a large number of calls before this law was passed, and marijuana possession is, in fact, against the law, and you have reason to believe a person is in possession of marijuana. Then whether you are a black or a white policeman or Hispanic or an Asian policeman, you will, in fact, enforce the law, because possession of marijuana in the District of Columbia is against the law. So—yes. I am—

Mr. NEWSHAM. Yeah. I agree. I am shaking my head. I agree, yes.

Ms. NORTON. Yes. So African American policemen would not be inclined to give a pass to African Americans if this was the law of the land, because they enforce the law in the same way that our white officers do. Would that not be the case?

Mr. NEWSHAM. I think that is accurate.

Ms. NORTON. So if the law changes and you get the same number of calls, particularly in areas where there may be more crime than

others, and the officer believes that someone may possess marijuana, that same officer, black or white, will act the opposite of how he acts today when marijuana decriminalization—when marijuana possession is against the law?

Mr. NEWSHAM. I think the action will be different. I don't know if it is necessarily opposite.

Ms. NORTON. Well, how would he behave today? For example—

Mr. NEWSHAM. He would issue a notice of violation as opposed to making an arrest. That is—so there is still an enforcement action that will be taken.

Ms. NORTON. Yes. The person still is subject to a—

Mr. NEWSHAM. A fine.

Ms. NORTON. —a fine. He does not get a record. The council's bill says that the odor of marijuana, the smell of marijuana is not enough. Do you believe, therefore, for mere possession of marijuana, there would be a decrease in the number of people arrested?

Mr. NEWSHAM. There will certainly be a decrease in arrests, but if you are talking about situations where enforcement action is taken, there—

Ms. NORTON. Well, for mere possession of marijuana.

Mr. NEWSHAM. Right.

Ms. NORTON. In other words, these were people arrested for possession only. Now, I can understand you are being arrested and you are being—you are looking for a number of different offenses, but where the officer suspects that the person possesses marijuana only.

Mr. NEWSHAM. Yeah. The arrests most definitely will decrease, absolutely. Enforcement—

Ms. NORTON. And how about—

Mr. NEWSHAM. I think enforcement action, whether enforcement action will be taken, it is hard to say.

Ms. NORTON. Yeah. Because there is some enforcement action that is still possible.

Mr. NEWSHAM. It is a civil—

Ms. NORTON. For example, the—and it would—I suspect it would be more likely if the person were smoking openly the marijuana. In that case, I would expect enforcement action to be taken. Is that not the case?

Mr. NEWSHAM. There will be, yes. Smoking marijuana in public will—there will still be an arrest.

Ms. NORTON. And I would expect that our African American police officers would be as likely to arrest for smoking marijuana openly as our white officers or officers of other backgrounds.

Mr. NEWSHAM. I think that is fair to say, yes.

Ms. NORTON. Thank you very much. That is all, Mr. Chairman.

Mr. MICA. Well, thank you. And I want to thank each of our witnesses for appearing today and for their testimony and participation. As we sort through some of these issues, we are seeking answers. No decision has been made yet whether Congress will contest or overturn—or attempt to overturn the District law that has been passed.

It is very clearly our responsibility, one under the Constitution, one under the creation of the District Act in 1790, one under the Home Rule Act of 1973 that gave us specifically 60 legislative days

to review these laws. Now, that may not be that common that this is done, but this particular change in law does, as we have heard, affect, again, a number, in fact, 26 Federal agencies in the District of Columbia that are charged with the responsibility of law enforcement. There are other factors, and we are trying to sort through the position of the administration and the U.S. attorney and others who will help determine policy.

We will continue this series. In our next hearing, as I said, we will look at some of the other implications as far as changing the status of this particular level of narcotic, which is now a Schedule I narcotic, which has been pointed out again in this hearing, some of the contradictions between policies as enumerated or possible changes in policy as enumerated by the President, conflicting statements by the Drug Enforcement Agency, the Office of National Drug Policy, ONDCP, the office under the President of the United States.

So it is an important issue, it is a change in society's perception of the use and abuse of a narcotic, and we will sort through this in an organized and focused manner and everyone will have an opportunity to participate.

I thank the gentlelady from the District for coming to participate both as a witness and also from the dais today.

Without objection, the record will be left open for 10 days for additional statements or questions that may be posed to the witnesses who are here today.

Again, I thank our witnesses.

And there being no further business before this subcommittee, this hearing is adjourned. Thank you.

[Whereupon, at 12:43 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Penalties for Marijuana Possession

Federal Law (21 U.S.C. §844)	A conviction of simple possession (1 st offense) of marijuana may be punished with up to one year imprisonment and/or fined not less than \$1,000.
New D.C. Decriminalization Law	A person in possession of an ounce or less of marijuana would be subject to a civil penalty of \$25.
Federal Park Land	National Park Police have the discretion to lessen the amount of the fine, based on federal regulations. They may issue a citation for less than \$50 if possession is less than one ounce.

List of Federal Law Enforcement in D.C.

- United States Capitol Police
- United States Secret Service
- Supreme Court Police
- United States Park Police
- Smithsonian Police
- National Zoological Park Police
- United States State Department Diplomatic Security Service
- United States Naval Criminal Investigative Service
- United States Army Criminal Investigative Command
- United States Air Force Office of Special Investigations
- United States Coast Guard Investigative Service
- United States Pentagon Police
- United States Department of Defense Police
- United States Mint Police
- Bureau of Engraving and Printing
- Federal Bureau of Investigation Police
- Federal Protective Service (Homeland Security Buildings Federal Police)
- Government Printing Office Uniformed Police Branch
- Bureau of Alcohol, Tobacco, Firearms and Explosives
- Federal Bureau of Prisons
- Drug Enforcement Administration
- United States Department of Veterans Affairs Police
- Amtrak Police
- Armed Forces Retirement Home
- Military Police Corps (United States Army)
- U.S. Federal Reserve Police