

Statement of Senator Dianne Feinstein

Senate Caucus on International Narcotics Control

“Is the Department of Justice Adequately Protecting the Public from the Impact of State Recreational Marijuana Legalization?”

April 5, 2016

As Delivered

Thank you, Mr. Chairman. I must say I agree with your comments, and I might say so in a slightly different way.

In June 2012, Colorado and Washington became the first states to legalize recreational marijuana.

In response, as was said, the Justice Department issued the “Cole Memo” in August 2013.

That memo outlined eight federal priorities related to marijuana and reserved the right to challenge a state if its enforcement efforts are not sufficient.

Following this, Senator Grassley and I asked the GAO to produce a report on the Justice Department’s process for monitoring these priorities and evaluating state regulatory practices.

So, we’re here today, we are here to discuss this report and how to better shape federal policies to protect public health and safety going forward, regardless of one’s stance on recreational legalization.

The report essentially found that the Justice Department has collected very little accurate data and has not documented a process to monitor the effects of marijuana legalization.

And, this is very concerning. It is an issue we have repeatedly raised with the Department since 2013.

Separately, the Cole Memo does not define what constitutes a “robust regulatory structure” or what would cause the Justice Department to step in. Two big omissions.

Consider the following from the Rocky Mountain High Intensity Drug Trafficking Area:

- In 2014, there were 360 seizures of marijuana from Colorado bound for 36 other states, compared to the pre-commercialization annual average of 52. What does that tell you? Marijuana is highly commercialized.
- When comparing the two-year average before and after legalization, current marijuana use among 12 to 17 year olds increased by 20 percent – that’s 12 to 17 year olds – while

the national average decreased by 4 percent. In my book, that's a very big statistic, and tells you a lot.

- As the Chairman has said, in 2014, 20 percent of traffic deaths in Colorado were marijuana-related, double what it was five years prior. This is something that I have greatly feared and has come to pass, at least in this state.

What should trigger federal enforcement action? Must a specific threshold be met before the Justice Department challenges a state's regulatory structure?

Frankly, we don't know, because much of the Cole Memo is subjective, creating a gray area that could lead to ineffective regulation.

While I understand the need to maintain prosecutorial discretion, this lack of clarity is really a problem.

It is also concerning that the little data the Department does collect is unreliable, not aggregated to show overall effects, and not made publicly available in one place. This must change.

Absent reliable data and a clear process to review it, the Justice Department cannot accurately determine if its marijuana policy sufficiently protects public health or if states have robust regulatory structures.

There is nearly universal agreement that accurate data is critical to making informed decisions. And candidly, we don't have it.

This year, as many as nine states may consider recreational marijuana legislation – either decriminalization or legalization. These states must be able to draw upon lessons learned from existing laws.

And the Department has been asked to provide that, but hasn't. So, continued failure to collect accurate data and share it with the public in a way that is understandable is quite simply unacceptable.

I was therefore pleased that the Department agreed with the report's recommendations that it should document its process to monitor state marijuana legalization and share this with appropriate components.

I also want to say, that while I am happy that United States Attorney Wagner is here, and I'd like to thank him for his work, I am disappointed that the Justice Department chose not to send a witness that is directly responsible for monitoring the effects of legalization or shaping the Department's overall marijuana policy.

In my view, it appears the Department is simply trying not to live up to what its responsibility is.

So, despite this, I look forward to hearing from each of the witnesses today and learning about how Justice plans to implement the report's recommendations moving forward.

And, Mr. Chairman, my suggestion is, if it takes legislation, we should do legislation. But, if you have the huge increase in traffic deaths, and you have the huge increase in the 12 to 17 year olds using marijuana, it seems to me we need to get some accurate data so that these nine states know what they're doing when they consider legalization.

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