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MARIJUANA LEGALIZATION: ARE THERE ALTERNATIVES TO
STATE-FEDERAL CONFLICT?

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P R O C E E D I N G S

MR. RAUCH: Good afternoon, everyone. My name is Jonathan Rauch. I'm a guest scholar in the Governance Studies Division of The Brookings Institution.

Thank you all very, very much for coming today to the second in a substantial series we've launched here at Brookings on issues raised by marijuana legalization in two states and where that's headed. We're grateful to all of you for being here. We're grateful to our donors on this project, including Peter Lewis. And we're especially grateful to our panelists, some of whom have come from across the country to join us today, a remarkable group of people.

The format, if you've been to these things, you know how they work, we'll have brief comments from panelists, 5 to 10 minutes, and then we're going to discuss. And we're going to try to keep it, with your help, as lively and interesting as we possibly can. We do this at a very opportune moment. Probably most of you are well aware. It's an extraordinary group of credentials in the room here. We've got some real experts and people from foreign governments and so on.

You all know the two states -- Washington and Colorado State -- legalized marijuana last November by a very substantial popular vote in plebiscites and did so in the teeth of a very strict federal prohibition called the Controlled Substances Act of 1970, although more technically it's probably more strictly accurate to say that they partially legalized marijuana because both states have rather intricate regulatory requirements for legal marijuana. This is legal for

consumption and recreational use as opposed to medical marijuana, which has now been done by about 19 jurisdictions. And this is, in my opinion, the most dramatic state-federal conflict we have seen yet in an escalating series of state-federal conflicts. I think this is a more direct conflict and, in many ways, legally a harder one to manage than, say, gay marriage or Obamacare or immigration, all of which have taken state-federal tensions to a new level.

Today we are asking four people from different levels of government and different points of view whether a legal collision can be avoided and how. We had an earlier panel discussion back in January where we had some folks talk about, well, actually we don't necessarily need to avoid a collision. It might be best if the two levels of government just went about their business and did what they want to do. We're using a different starting point today and posing the question, okay, suppose you decide you don't want to have a state-federal confrontation. Why would that be important and how would you arrange it? And it turns out it's not necessarily all that easy or obvious how you avoid having a confrontation. It's going to take some hard work and some creative thinking, and that's why we're here, to talk about that might entail. The answer will ramify, in my opinion, well beyond marijuana itself to a series of other issues that are coming down the pike, including the ones that I've already mentioned.

The panel here is extraordinary, could not be better. We'll begin with Stuart Taylor, who is the author of a major paper released last Friday, which most of you, I hope, have a copy of. If not, you can get it online. It's called

“Marijuana and Presidential Leadership: How to Avoid a State-Federal Train Wreck.” It is, in my opinion, by far the most comprehensive coverage and detailed coverage of that issue that we’ve yet seen. Stuart is a nonresident fellow here, a senior fellow here at Brookings. He teaches at Stanford Law School. He practices law on rare occasion when he cannot avoid it. He covered the Supreme Court and legal affairs for, among other places, *National Journal* and *New York Times*, *Newsweek*, *American Lawyer*, *Legal Times*. I could go on. He’s won various journalism awards. He has appeared on all major TV and radio networks. His most recent book is *Mismatch: How Affirmative Action Hurts Students It’s Intended to Help and Why Universities Won’t Admit It*.

Speaking after Stuart is Mark Kleiman, who knows about as much about crime policy and about drug policy as it’s possible to know. He’s a professor of public policy at UCLA, leading scholar and author on crime policy and drug policy and public decision-making. He’s the author or co-author of many books, including most recently *Marijuana Legalization: What Everyone Needs to Know*, which was published last year. But also, his experience on this is long and deep. He goes back to at least 1989 when he published the book *Marijuana: Costs of Abuse, Costs of Control*. He edits the *Journal of Drug Policy Analysis*. And not least significantly from where we sit today, although we didn’t know that this would happen when he accepted the invitation to be here today, the company he heads, a consulting company called Botec, is the lead consultant that is supporting Washington State’s regulatory design effort. They are running the models, crunching the numbers, and answering the questions, so

he is right in the thick of this effort.

Talk about a guy with the inbox from hell, our next speaker, Bob Ferguson, who comes all the way from Washington State to see us -- thank you very much for that -- is the newly elected attorney general of the state of Washington, elected on the same day that the voters of Washington approved legalized recreational marijuana. And talk about a headache to have on the first day at work on your desk. He was elected AG in November; before that was a lawyer and a council member of King County for 10 years. He is also -- and this I guarantee him is a skill that's going to come in very handy over the course of his term -- he is an internationally rated chess master. (Laughter)

Speaking, finally, of people with arcane and adroit skills, our final speaker, Representative Earl Blumenauer, among the reasons I'm particularly eager to have him is that he's an expert on agricultural policy and for many years has been attempting to reform the federal farm programs, something very few people in Washington have the courage to try to do. He's shifting focus slightly to a somewhat different crop today. He's a Democrat from Portland, Oregon. He's been in Congress since 1996, but he's been active on drug and marijuana policy since his days in the State Legislature. And, in fact, tells me that he was a legislator in Oregon when it voted in 1973 to be the first state to decriminalize marijuana, so he has long, long experience in this field, not just on Capitol Hill. He is also the co-sponsor of a number of bills in this area, but of two of them which are worth mentioning because I think we'll want some perspective on them. One would remove the federal ban on marijuana and leave the decision-

making to the states and the other bill, taking a slightly different approach, would simply prevent the federal government from preempting state reforms.

We have a Twitter hashtag for those of you who are watching or who are seeing this online or who are Tweeting it. We're following the Twitter stream. The hashtag is #mjlegalization. That's #mjlegalization.

And with that, I'll ask Stuart Taylor to give us the lay of the land on what the options are and what we ought to do.

MR. TAYLOR: Thanks very much to Jonathan for that exceptionally kind introduction. Thanks to Brookings and the Washington Office on Latin America for hosting this event. Thanks to all of you for coming. Thanks in advance to those who will speak after me, who are real experts on this subject and thereby can correct any mistakes that I made in my effort to become an instant expert since instant experts can be a dangerous thing.

The question on the table as I put it is how should the federal government and the two states that have now partially legalized recreational marijuana, as well as the 16 other medical marijuana states, approach the tensions between state and federal law? I think that reasonable people should be able to agree on the answer to that question even if they disagree strongly about whether legalization is a good or a bad idea.

Of course, to supporters of legalization it may seem obvious that the federal government should declare a safe harbor for marijuana suppliers as well as users who comply with state laws and regulations. On the other hand, if you oppose legalization your first instinct might well be to hope for a federal

crackdown on the marijuana suppliers that Colorado and Washington plan to license. They haven't done it yet; they're in the process of creating the regulations right now.

My main purpose is to try to persuade opponents of legalization that a federal crackdown of that kind would backfire against the federal interest in protecting public health, both in the legalizing states and elsewhere. How would it backfire? By producing an atomized, anarchic, state-legalized, but unregulated marijuana market that federal drug enforcers could neither contain nor force the states to contain. The best way, therefore, for opponents of legalization to minimize whatever harm to public health may come from the Colorado and Washington initiatives, at least from their perspective, that would be for Congress or, more realistically, the Obama administration to do two things.

Number one, declare a safe harbor for state-licensed marijuana suppliers who comply with properly enforced state laws. And that could be done through a state-federal agreement, which would also, number, two, pressure the states to use their regulatory powers to protect the federal and state interests in minimizing exports across state lines; minimizing sales outside the regulated system; minimize sales of unduly large quantities, which is part of the regulation; minimize sales of adulterated or dangerously potent products, at least without labels; sales to minors; organized crime involvement; and other abuses.

It's to be remembered that an awful lot of things about marijuana are still illegal in every state under state law. There's been a limited change in that in these states, dramatic but still limited. And, therefore, the state and

federal interests in controlling the harm that marijuana might do are operating very much in sync.

The logic underlying my assertions is fairly simple. Let's stipulate for the sake of argument that the reduction of price and increase in consumption that will no doubt be caused by the new Colorado and Washington laws present greater dangers to the public health, especially that of young people, than does the current legal regime. And let's focus for the moment on the operation of the new state amendment to the Colorado constitution that the voters adopted in November. It's important to recognize that it creates both state-regulated and largely unregulated marijuana sectors. In this regard it's different than the Washington law, as you'll hear later.

In the state-regulated sector in Colorado, marijuana growers and distributors will have to obtain licenses to do business, sort of like liquor licenses. Unless destroyed by the federal government, they will pay many millions of dollars in state and local taxes and licensing fees and will be regulated to protect the federal and state interests that I mentioned. The unregulated sector, which is already operating in Colorado, comes from the initiative's repeal of all penalties for growing small quantities of marijuana, a certain number of plants, at home under certain cover -- you're not supposed to do it in your garden out in the open -- and for giving away up to an ounce at a time to others.

Now, it's reasonable to expect that if the Obama administration allows the state-regulated marijuana market in Colorado to operate without federal interference, that's where most users will get their marijuana, as in the

case of liquor. In this scenario the state-legalized but unregulated, grow-your-own-and-share market will probably remain very small, which is a good thing I think. But if the Obama administration decides to put Colorado's state-regulated marijuana sector out of business, as it could probably do since that sector would consist of a limited number of easily identified operations -- just send them all letters saying we're coming after you unless you shut down right away or don't start up -- if the Obama administration goes after them, the grow-your-own-and-share market might well expand to huge proportions. And where there is -- and there is no federal solution in sight to the public health dangers posed by this grow-your-own-and-share market, especially considering the ease with which criminals could bend this market to their own purposes. In a nation with only 4,400 drug agents, DEA agents I should say, federal drug agents, 1 for every 3,000 regular marijuana users, 1 for every 170 state and local police officers, it would be virtually impossible for the federal government acting on its own to do anything about more than a random handful of the people who grow their own.

In addition, under the Supreme Court's Tenth Amendment precedence, the federal government has no legal power at all, either to prevent states from simply repealing their own marijuana penalties or to require states to help enforce federal law. They could crush the state regulatory regime, that they could do, but they cannot force the states to help them fight against marijuana.

The states can, in other words, simply stand aside and let the feds wage war on marijuana alone, which the feds lack the manpower to do effectively. So the result of an Obama administration attack on state-regulated

marijuana -- I'm sorry, state-legalized marijuana in Colorado would be to let millions of unregulated, unlicensed, untaxed, homegrown marijuana plants bloom with no state controls on quality, potency, or purity. Individual growers and users could be fairly confident that the feds have too few troops to enforce the harsh penalties provided by federal law for growing and distributing marijuana. And sales by home-growers into the black market and thus to kids and across state lines would likely proliferate.

An Obama administration attack would also spur leaders of the legalization movement in other states to give up on state regulation. These would include Washington State whose new law currently bans all marijuana growing and distribution outside the regulated system. Washington and other states might, in this scenario where the Obama administration goes after the state-regulated sector, might then emulate Colorado's grow-your-own-and-share provisions or simply repeal state penalties for small-scale marijuana cultivation and distribution as well as possession.

The path of federal-state cooperation, I submit, is much more promising. And as it happens, the main federal drug law, the Controlled Substances Act, contains a statutory directive that the attorney general "shall cooperate" with the states on controlled substances. It also authorizes the attorney general "to enter into contractual agreements to provide for cooperative enforcement and regulatory activities." This is a standing statutory invitation for the Justice Department and partially legalizing states to hammer out clear contractual cooperation agreements that would both tell state-regulated

marijuana businesses what they can and cannot safely do and formalize the state's obligation to protect federal interests.

My paper in Appendix A criticizes Attorney General Holder and, to some extent, the President for a policy on medical marijuana that I say has been inconsistent at best and chaotic at worst. At first it sounded permissive, then there were crackdowns by U.S. attorneys here and there on marijuana entrepreneurs who had relied on the permissive rhetoric. But in fairness to the administration, and some will think I've been unfair to them in what I've said already, in fairness to the administration sales of supposedly medical marijuana to recreational users have in some states, most notably California, seem to spin out of control due the vagueness of those states' medical marijuana laws and the ineffectiveness of their regulatory regimes.

The new recreational marijuana laws in California [*sic*] and Washington present the administration with a bigger challenge in one sense, but it's also a more manageable challenge. It will be easier to police whether state-licensed suppliers are complying with state regulations of quality, purity, potency, limits on quantities, exports, distribution to children. It will be easier to police those things than to police the extent to which marijuana is being used only for medical purposes.

So there are reasons to hope that the President and the attorney general may see a large political advantage as well as a major policy advantage in seizing the opportunity to bring some order to the chaos that has so far characterized the state-federal relationship on medical marijuana. In any event,

the time for presidential leadership on marijuana policy is now.

Thank you.

MR. RAUCH: Thank you, Stuart. And particularly thank you for rectifying an error on my part, which was my oversight in failing to mention that this program is very much a partnership that Brookings is doing with the Washington Office on Latin America, which we also gratefully thank and acknowledge. Sorry about that, guys.

Stuart, one of the things your paper does that's very interesting, I think, is expand the lens to put two states' legalization in the larger context of everything else that's gone before it. That's decriminalization and medical marijuana. Am I right to understand part of the point you're making is that cooperative agreements are a chance not just to deal with the two states, but to deal with the whole bundle and try to rationalize policy?

MR. TAYLOR: That's right. I think the two states would be a good place to start because working out a cooperative state-federal agreement on something as complicated and contentious as this is a big project. It could be a full-time job for the attorney general and he has some other things to do. But I think they could start with Colorado and Washington, work out cooperative agreements with them, and then the 16 other medical marijuana states would, hopefully, be in line saying, hey, can we have a similar deal?

And I'm not sure it's necessary to have cooperative agreements with the handful of other states that have decriminalized without legalizing. There are all kinds of gradations here, but I think certainly the more state-federal

cooperation agreements we have the better. And the way to break the ice would be to get over the hump of the federal government being willing to say there are sometimes when we won't enforce federal law if the states have regulated things in a way we find agreeable and here's what they are.

MR. RAUCH: One of the things you and others suggest, we'll talk about this, is the critical importance of controlling the flow of marijuana across state lines. Suppose it turns out the states either cannot or will not do that effectively? What's the fallback position? Are we back where we started?

MR. TAYLOR: I think we may be back where we started, I mean, unless the legalization surge in public opinion just sweeps aside the federal restrictions themselves. But the federal government, as the law stands now, has a very legitimate interest in making sure that Colorado and Washington don't become -- replace, say, Mexico or wherever as medical suppliers to the other states. All of the things -- you know, they're not -- and nobody's expecting the federal government to throw up its hands and say we're not going to regulate marijuana anymore. So I think it's vital that the states, if they want the federal government to take an accommodating response, it's vital for the states to demonstrate that they can prevent exports.

And also, it's vital -- you know, there's a certain state interest in exporting. I mean, it'd bring a lot of money into Colorado if Colorado became the central export point for marijuana across the country, tax money as well as money for marijuana businesses. And, therefore, you can expect the federal government would look with a skeptical eye on whether the states were, A, trying

hard enough and, B, succeeding well enough at preventing leakage across state lines.

MR. RAUCH: Now, if I understand, you are saying this is not just the federal government giving a free ride to the states. The states very much have to be very proactive and serious about regulating this. No kidding, guys, is essentially your message to the states.

MR. TAYLOR: The only way one can imagine the federal government doing what I've suggested it should do is if the states show that they can be trusted to do their part.

MR. RAUCH: Mark Kleiman, you're in the thick of this. Give us your view.

MR. KLEIMAN: I am and thank you. (Laughter) And thank you to my friend John Walsh of WOLA for helping to set this up.

Just a word of clarification, not that Jonathan wasn't clear, but just to be double clear, I am not the pot czar of Washington State. (Laughter) And my opinions are my opinions and not the opinions of the Liquor Board. They have not asked us to tell them what to do. They've asked us to predict the likely consequences of different things they might do. So nothing I say should be attributed to the state.

There's a story, and maybe somebody can tell me who wrote it down, there's a story about a king who proposed a prize to the philosopher who could write down a sentence that would be true of all things at all times. And the winning entry in the context was, "This, too, will pass." (Laughter) If such a

contest were held to write a sentence that was true of every policy question I think the sentence would be, "It's more complicated than that." (Laughter)

So I want to suggest that Stuart Taylor's very able exposition of the problem isn't quite as complicated as the actual problem. It reflects exactly what I believed before I started working on the Washington State problem, that Colorado had passed this weird two-tiered system with a sort of liquor-style control on a taxed and regulated market and a Wild West grow-your-own. The grow-your-own is six plants per person at any one time. A plant can probably yield about 1,000 doses a year. So every individual in Colorado who has a locked and closed space can grow 6,000 doses. That's more than most people can smoke. And they can give it away, but they can't sell it. And as a friend of mine said, all right, I'll sell you this really keen Ziploc baggie for 100 bucks and I'll throw in the green stuff because I'm a nice guy. (Laughter)

By contrast, Washington's much more buttoned down. The only cannabis that's legal to grow in Washington State is going to be on licensed grower premises and it has to be processed by licensed processors and retailed by licensed retailers. But Washington has a medical marijuana law.

Roughly speaker, there are 18 states that have medical marijuana laws and they break pretty neatly into two groups. Colorado and the West Coast have Wild West medical marijuana and the rest of the country has medical medical marijuana. In Washington State any physician, any naturopath, any osteopath, any physician's assistant, any naturopath's assistant, any osteopath's assistant, and any nurse practitioner can write a recommendation for any

condition. The person writing the recommendation does not have to have physically examined or been in the same room as the patient. The patient does not have to register with the state, so we do not know how many people are medical marijuana patients in Washington. And if you have a medical marijuana recommendation, I'm told the going price is about 100 bucks, not only can you possess the stuff and use it, you can grow up to 15 plants at any one time and you can join a collective garden.

Now, you can't sell the stuff, but if you're a member of a collective garden different people can contribute different things to the collectivity. Some people can contribute cannabis and some people can contribute their labor and some people can contribute, for example, money. They're not selling this, you understand. They're just contributing the collective. And the people who are contributing the marijuana can't be paid for it, but they can be reimbursed for their expenses. And there can't be any more than 10 members of the collective except that the State Supreme Court decided in a criminal case that the collective operator who said, well, yes, we collected contributions from 115 different members on the same day, an average of \$75 per contribution, but we never had more than 10 members at any one time. Because as soon you leave the garden, you're no longer a member and the new -- well, it's a criminal statute. It's got to be construed narrowly, and the State Supreme Court said that that operator was not on sufficient notice to go to prison for that what he did was against the law and, therefore, that's now legal in the state of Washington.

So Washington as much as Colorado is a threat to become the

national supplier of cannabis, as California, somebody is under its quasi-medical marijuana system. But not because of Initiative 502 which legalized the commercial system, which will be fairly tightly regulated and fairly heavily taxed. It's, in fact, the medical system which preexisted this legislation that's unregulated and untaxed. And, in fact, one of the issues for the Liquor Control Board is whether the taxed and regulated system will be able to compete with either the fully illicit system or the untaxed and unregulated medical system. It's an interesting fact about the politics of cannabis legalization that the advocates of I-502 are now thinking about, whoa, maybe we need some rules. Maybe there needs to be a regulatory authority over this medical system because, after all, they promised the voters a lot of revenue and they're not going to get any if you can simply go to your collective garden and get your cannabis for much less than it's likely to sell for in the state stores. So it's going to be an interesting journey.

And it's not fully clear to me that simply entering into a cooperative enforcement agreement is going to solve the problem unless the states are prepared to do what their voters were promised they wouldn't have to do. One of the premises of these legalization issues was let's take law enforcement resources out of the cannabis sector and start enforcing the laws we really care about. But it seems to me, at least in the first few years, it's going to require more law enforcement to support a taxed and regulated market in the face of untaxed and unregulated threats to it, then it's taken up till now. And whether the states will actually enter into that agreement seems to me an interesting question. Whether they have the capacity to keep it given -- it's true that most

law enforcement is federal -- I'm sorry, state and local rather than federal, but most state and local law enforcement is very distinctly local. It's not obvious to me that the Washington State Police, even if they wanted to, could shut down what goes on.

So if a cooperative enforcement agreement were entered into, and I think it's a serious idea, it'd still be somewhat unsatisfactory because it would leave people doing what's legal under state law committing felonies under federal law. And there could be a published policy that that particular federal felony is a low enforcement priority, but that's not a legal defense.

MR. RAUCH: Is there a better approach? What's your first choice?

MR. KLEIMAN: Well, the first choice might be to legalize the substance nationally. I don't think the country's ready for that, but if I had to guess, I've been predicting for a couple of years now that we'd have full national cannabis legalization sometime in Hillary Clinton's second term. (Laughter) And that still seems to me like about the right guess. Not plausible now.

An alternative, again, I think not plausible now, but the right thing to do now, would be to have statutory authority not merely to enter into a cooperative enforcement agreement, but to actually legalize at the federal level what's done under state law for a state which has presented to the federal government a plan for how it's going to keep its cannabis in state rather than becoming a national supplier. So this would be the cannabis equivalent of the welfare reform waiver policy.

MR. RAUCH: And why is that better than doing it through a contract between the AG and the states?

MR. KLEIMAN: Because then the grower and the seller would be legal rather than merely hoping they didn't get busted.

MR. RAUCH: So you have a clear, safe harbor, which gives you a stronger incentive to stay in the legal market and out of the gray market.

MR. KLEIMAN: And then the bank that you want to deposit your money in wouldn't have to worry about whether its teller was going to get a 20-year sentence for violating the money laundering laws.

MR. RAUCH: And that requires congressional action.

MR. KLEIMAN: That would require congressional action. We have an expert on congressional action here.

MR. RAUCH: And we have someone who knows something about that. Let's say if we're not going to get congressional action in the next two years, if you're Eric Holder, what do you do?

CONGRESSMAN BLUMENAUER: I either --

MR. RAUCH: And you want a good policy outcome, you know.

CONGRESSMAN BLUMENAUER: I either do what Professor Taylor said, which is enter into a cooperative enforcement agreement and hope for the best, and swallow a little bit hard about whether essentially agreeing with the state, it's not quite in so many words, that you're going to let them run a legal, in state terms, production and distribution system for a commodity that we are under treaty obligation to ban at every level, sort of swallow a little hard about

whether I just violated a treaty. I do that or I do what Stuart Taylor criticized, which I'd say, buh-buh-buh-buh-buh. (Laughter)

I'm not sure I can come up with a sentence that's more intelligent than buh-buh-buh-buh-buh that the attorney general can actually say. (Laughter) And, you know, they'll be criticized for chaos, and chaos will be the case. And it may be possible to do informally things that aren't done formally.

But, yes, I think if I were advising both the states and the attorney general I would take Section 873, is that it, of the Controlled Substances Act as the starting point for the negotiations.

MR. RAUCH: Well, Mr. Attorney General --

CONGRESSMAN BLUMENAUER: Oh, that's right. Let me say one more thing.

MR. RAUCH: Yeah.

CONGRESSMAN BLUMENAUER: Because this seems to be the key sentence in all of this. We don't know anything about what legal cannabis looks like. We've had some hints from quasi-legal cannabis under medical guise in California and Colorado and Washington and Oregon. We have not seen a full-fledged legal commercial market with advertising and sports team sponsorship and sub rosa attempts to entice as many 12-year-olds as possible into becoming potheads. We don't know what that looks like. We don't know how to regulate it. We're going to learn a lot if the federal government gets out of the way. It'll learn a lot in Washington and Colorado. We'll know a lot more three years from now than we know today about whether legalization's actually a good

idea.

In particular, we'll know something about whether making cannabis legally available leads people to do more or less heavy drinking. Right? The number one drug problem in the country is alcohol. We don't know the impact of cannabis legalization on alcohol consumption, particularly heavy drinking. It could come out either way. I think people who have a strong prediction about that are bluffing.

So both at the state level and at the federal level our objective over the next three years should not be to have the perfect policy, but to learn and to be prepared to learn and not to pretend when Washington issues its first set of regulations that those are the last set of regulations. And I'm glad to say the officials I've been dealing with in Washington are fully aware of this (inaudible).

MR. RAUCH: Speaking of officials --

CONGRESSMAN BLUMENAUER: One of the few states that might actually be able to do this successfully.

MR. RAUCH: Speaking of officials in Washington, Mr. Attorney General, have we just solved your problems for you? Please say yes.

MR. FERGUSON: Not quite. Not quite.

MR. RAUCH: Almost, though, right?

SPEAKER: That close.

MR. FERGUSON: Yeah, yeah. Thanks so much for the invitation for being part of this panel. And my name's Bob Ferguson. I'm a new attorney

general in Washington State, so one thing I really do want to emphasize is I took office about three months ago. And so unlike the three folks who are on this panel with me who have been thinking about the issue of marijuana legalization and voting on it for many years, if not decades, I'm brand new to it. I was a local elected official before becoming attorney general. I was on the King County Council. And so I've been dropped into it three months ago.

And one thing I want to put some larger perspective on, we're talking in general about, also, sort of federal-state conflicts that arise legally. And just to give you a sense of this being one big issue I'm tackling, but, you know, marriage equality: Washington State legalized marriage equality; of course, voted for marriage equality strongly last November. Of course, we're in conflict with Defense of Marriage Act.

In Washington State we have the nuclear waste site, Hanford, largest nuclear waste site in Western Hemisphere. I won't give you a history background on that, but it's a huge challenge, the cleanup there. And there's been ongoing litigation between the federal government and the state of Washington regarding the cleanup and deadlines for cleanup. So this is one more of a series of very important, large issues to people of my state, the state of Washington, in regards to the federal government.

So do I spend a lot of times thinking about the legal issues on these details? Of course, from time to time I think about the large implications, not just on this issue, but those as well. And I spoke recently at Washington State University about the issue generally of federal-state tension on legal

matters.

Also, before I just go through a few points, just to get my perspective as well, that I view my job and my responsibility in Washington State to defend the will of the voters on legalized marijuana. So that's the perspective I take, that that's my job. Our office in the Office of the Attorney General understands that, that that's our purpose. Whatever we may think personally of it is irrelevant. Our job is to defend the will of the voters.

And to the specific question of how to avoid the conflict with the federal government and are there alternatives, there are six very quick points I'll just make in brief, some of it touched on already. But here's at least the way I think about it.

So number one, having a carefully crafted initiative in the first place, Initiative 502 in Washington State. And I think whatever folks think about legalizing marijuana, my sense is that most folks agree that Washington State put forward a pretty thoughtful approach in terms of the initiative itself, Initiative 502. It passed about 56 percent of the vote in Washington State, so quite popular.

Individuals like John McKay, former U.S. attorney for the Western District of Washington, was a big supporter, helped craft it. There's a TV ad with John McKay. Again, former U.S. attorney, leading law enforcement person in Washington State, expressing his strong support for legalizing marijuana. I think that was critical.

Number two, it was mentioned the Liquor Control Board that you'll

be working with, that you are working with, the rulemaking that goes forward as we go forward with licensing, now that's a complex system, as you might imagine. Our job is to give legal advice to the Liquor Control Board as they go forward, but having a thoughtful rulemaking approach that makes sure we reinforce that buttoned-down approach that was referred to earlier for Washington State. That's number two.

Number three, direct conversations. It may seem obvious, but, you know, as a lawyer and as an elected official I often find that direct face-to-face communications help when there is a conflict, right? And that can be easily overlooked, particularly when we're on one side of the country and Eric Holder and other folks are in Washington, D.C. But Governor Jay Inslee, who's new, like myself, we both flew back to meet with Eric Holder directly a few weeks after taking office, and those conversations help, right, to get a chance to answer questions and speak directly about what's going on.

Number four, the point I made earlier, I think it's important that in the case of Washington State to make clear that we'll defend our law. Right? That one way to avoid the conflict, I think, is to make clear, hey, we're prepared to defend ourselves if it comes to that. We want to avoid litigation. I made that point to Eric Holder, we want to avoid it. I think any good lawyer wants to avoid litigation. But to make clear, we're prepared to defend the state and the will of the voters if it comes to that.

Number five, understanding that the alternatives may be worse. And I think, Stuart, you spoke about this at some length today as well as in your

paper, which I thought was a really good point, that it's important to distinguish between decriminalizing something and legalizing something. Washington State and Colorado, of course, have legalized something, but an alternative to legalizing if we're not allowed to go forward is you lose all the regulations that surround that effort once you legalize. And in Washington State, again, I think it's fair to say we are working extremely hard, our governor, our leaders working very hard to make sure we have a tightly regulated system. And the federal government should want to support that as we go forward.

And lastly, and really the trickiest part we've touched on as well, hey, how do you actually come together to an agreement, whether that's the agreement through the Controlled Substances Act and to actually putting together an agreement between the federal government and the state, whether it's congressional action that frees up the states to go forward. I think that remains to be seen how those play out. But I think those are the six key points at a high level that I see coming forward.

Lastly, just the last point I'll make is that I think it was Justice Brandeis who talked about states being the laboratories of democracy. And I do believe in a case like this, whether it's marriage equality, whether it's legalizing marijuana, that there is a place, a very useful place, for states to be those laboratories of democracy where other states can view or the federal government can view how a different state goes forward on a complex and difficult issues, like the ones I've mentioned. And I think in Washington State we're doing our best to be one of those laboratories of democracy, to move forward in a thoughtful way,

to work with the federal government, answer their questions, and hope to reach a resolution that avoids the kind of conflicts we're talking about today.

MR. RAUCH: So clearly, your door is open to the administration in terms of something like cooperative enforcement agreements?

MR. FERGUSON: I mean, let's put it this way, I think it's fair to say that we've made clear to the federal government we want a solution. Right? We want to avoid litigation. And as the attorney general for the state I'm always looking for any possibility that avoids a very costly, expensive, and uncertain legal dispute. And so I was interested in what Stuart had to write in his article about that as well. That's something we're very much aware of.

Obviously I don't want to get into specific conversations we're having with the federal government, but, yes, any solution that allows us to go forward and still meeting the federal government's legitimate concerns they may have. Right? Make sure marijuana stays in the state of Washington. Those concerns are legitimate. And we want to make sure we're meeting those concerns in a thoughtful way. Anything that gets us there would be something I'd be looking at.

MR. RAUCH: In terms of the process, is there ongoing communication with the federal government, a channel, a red phone, anything?

MR. FERGUSON: Sure.

MR. RAUCH: Bat phone?

MR. FERGUSON: I'm not sure if it's a red phone, but, of course, there's communication. And we want to make sure we're answering thoughtful

questions that the federal government has. I can just tell you without getting into the details of the conversation with Eric Holder, he was very interested in what we're doing in Washington State. How is it different than Colorado, for example? What are the nuances? What are we thinking about in terms of moving forward to make sure marijuana doesn't go beyond our borders, that the right people are getting the licenses? Those are all very reasonable questions. In fact, I appreciate the fact that he's asking all those questions. He's working hard. The federal government, I feel, is genuinely interesting in understanding our initiative, what we're doing to have a buttoned-down approach to it from a regulatory framework.

MR. RAUCH: So, Mr. Congressman, you've been at this a long time, and the one thing everyone seems to be saying is congressional action any time soon? Forget it. Do you agree with that?

CONGRESSMAN BLUMENAUER: No. I think we are entering the end stage of this. In part, Bob's point about states being the laboratories of democracy, we're seeing this going on with guns, transportation, marriage equality, ways to sort of push through the paralysis. Left to our own devices we wouldn't touch this for another 40 years. But we're not left to our own devices.

And you are right, I voted to decriminalize marijuana 40 years ago, when Oregon was the first state to do that. We actually at that time had a two-plant bill that was carried by a friend of mine who was -- he seemed old to me at the time, he must have been 62 or something. (Laughter) Hog farmer from Eastern Oregon, conservative Republican, who gave what I still think is one of

the best political or any other speeches I've ever heard where he went through the various legal and illegal substances. This is a cigarette, said the guy, who didn't smoke or even drink coffee, this is a fifth of Jack Daniels, and talked about the addictive practices -- qualities, the damage that was done to society right through to waiving a joint on the floor of the House. And the legislation actually got 22 votes. I was told that those of us who voted for it, if we had been joined by those who voted no but smoked dope, that it would have passed overwhelmingly. (Laughter)

And Oregon has been involved with this. We were one of the first states to deal with medical marijuana. And if we had had 502 on the ballot instead of kind of a goofy proposal, you would have had three states that were in this arena.

On one level, I've seen aspects of this movie before. And I really appreciated Stuart's paper. I think it's terrific and it's -- I'm going to have some fun passing it around on Capitol Hill. Oregon, in its own quirky way, was the first state to legalize Death with Dignity. And we were in these conflicts with Attorney General Ashcroft, with the Republicans in Congress, with the Bush administration to try and have the federal government supersede what the voters of Oregon approved and then reaffirmed even more overwhelmingly in terms of scope of practice, for example, for physicians. And so these tensions I've seen in the past, I don't think it's going to be -- it should be any more successful for a whole host of reasons for this administration.

We are -- although I am not quite as harsh as Stuart on the

administration. I mean, they have had, I think, some unequal application. The President, notwithstanding him saying that he has bigger fish to fry, there are lots of people in the federal bureaucracy who are more than willing to fry those fish, and so there have been problems.

But for me, it's a problem of congressional inertia. I mean, the Controlled Substances Act doesn't make any sense anyway. No medicinal characteristics properties for marijuana? It's more dangerous than meth or cocaine? I mean, give me a break. I mean, this has been -- on its face is nonsensical.

But Congress needs to take the Department of Justice off the hook. We can do this in a series of ways and I hope we do. I've been working -- I put out a little report. It's available online. It's open source. I'm giving it to any of my colleagues who want to use any of it or all of it for their purposes, trying to capture -- I wrote it for my own purposes just because memory's dim. I've given speeches on it over the years, but wanted to go back and look at where we are and I invite you to look at it and critique it. We want to make it better in terms of how we rethink federal marijuana policy.

We've been working -- in the past, the two leads in Congress were Barney Frank and Ron Paul. I mean, it doesn't come any better than that in terms of -- but they were very busy. I mean, Barney Frank was saving capitalism and Ron Paul was trying to reinvent capitalism. (Laughter) And they both left, but there are a number of us who are trying to step up to provide some assistance for that.

We have, I think, a pretty comprehensive framework, and I can make this matrix available for all the pieces of legislation that we are working on; working with an informal working group, bipartisan, to try and make sense out of policies that don't make sense. I suspect that we will see one this Congress will pass will be dealing with the insanity surrounding hemp. I mean, hemp products are perfectly legal in the United States. It's just that a Kentucky tobacco farmer can't grow the hemp. It's got to be imported from Canada or Europe or Mexico. Even Mitch McConnell has signed on this puppy. And we've got I think 10 or 11 states that are teed up once the federal prohibition goes forward, and I think that will happen.

And the lead person on this is a very conservative Republican, a one-and-a-half-term member from Kentucky, Tom Massie. And there were a number of Republicans that co-sponsored that quickly. I mean, it's an example of how goofy our policies are. And I think not only can we pass it, even in the Republican House, but I think it's a way to start engaging people in terms of what our policies are and should be.

My friend Ed Perlmutter is very likely to drop very quickly legislation that deals with the insanity that you can't have a bank account with a federally chartered financial institution. Okay. If you care about money laundering, tax evasion, robbery, what better way than to have an all-cash business that are legal under state law in 19 states and the District of Columbia? I think we can move forward on that.

So we've got a series of things that would go at it in different

ways. I've got legislation dealing just with the medical marijuana aspect. We have over a million people who are legally medicating themselves with marijuana. It's hard to get the exact numbers because, as you've referenced, the regulations are a mess in a number of states, but I think it's safe to say over a million. And who knows how many covertly that train has left the station?

Maryland, I don't know if Governor O'Malley signed it, but that's moving forward. And, in fact, there are people who want to do work dealing with the impacts potentially on our veterans with some of their physical and emotional damage using marijuana.

One of the things I'm trying to do with the medical marijuana legislation is repeal the stupid prohibition on research that limits it just dealing with the drug addiction aspects rather than deal with research on the therapeutic. It's illegal. You don't know what all it could do. That's stupid. So we're dealing with medical marijuana.

We have legislation that would, with Jared Polis and I, that would essentially legalize it and tax it. There's a -- don't get a heart attack over the tax level. That's a placeholder. I'm perfectly willing to learn what that should be. One of the problems is that this is all a shadow industry right now. We have no idea the volume of the market, how much it'll raise. I think at a minimum that we talked over the next 10 years of probably making in the order of \$100 billion difference when we're not arresting two-thirds of a million people, we're not spending a little bit incarcerating, prosecuting the sort of the failed policy, and funneling money to cartels that are involved with other things, destabilizing our

neighbors in Latin America because we can't control our drug problem.

I am hopeful that we're going to be able to move forward on the federal level piece by piece and keep track of what's going on on the state level. I hope that the administration avoids the train wreck that Stuart mentioned. I think it's a perfectly logical approach. Give us time. Do a little studying. And in that period there will be two or three other states that will legalize. I think California either 2014, 2016; Oregon, a good proposal will go 2014, 2016. I mean, this is moving forward. We already have a majority of Americans that think it should be legal. And when you put in the framework should it be treated like alcohol and allowing the states to regulate management, I think that number is much, much higher and is growing.

But the main problem here is that we have failed policies. I think we don't have any meaningful law enforcement because we have a scattershot approach to a stupid policy.

MR. RAUCH: So it sounds like --

CONGRESSMAN BLUMENAUER: Just one more sentence. I just want to say, you know, people are concerned about, for example, this opening the door and kids getting it. I am deeply concerned about young people getting access to marijuana. But what we have now is because there is no meaningful management of it, because there is no legal drug, so it's all shadow undercover. There is no community that I have met where a junior high student can't get a joint in five and a half minutes. And if we actually provide a framework, provide a license, hold businesspeople accountable, I mean, it's

harder at least to get illegal alcohol sold to you because you lose your license.

I don't want to overstate this, but I look at what we have now that is a failure in keeping it out of the hands of kids, the hypocrisy, the lack of research, the lack of money for meaningful drug treatment. And I think this is an opportunity for us to move forward to make some real progress. And I think this is the last decade. I won't make 50 years. It'll be over before then.

MR. RAUCH: And it sounds like the plan is you can't do a head-on revision of the CSA, the Controlled Substances Act, in the near future, but what you can do is bite off these chunks of it that buy some time to improve the policy at the state level. That's basically what we're talking about in terms of what Capitol -- the limits of logical action on Capitol Hill.

It's time to go to the audience. We have half an hour. One thing I would love to do and we ask for all of you and everyone up here to cooperate on is, let's try not to re-litigate the argument about drug policy. We're not going to solve that and we all know where we stand on whether -- which drugs should be legal or illegal or decriminalized. Let's see if we can focus a bit more specifically on this question of can a confrontation be constructively avoided? What does that mean? What if it's not? What can the policymakers appear to do about it?

I'll take moderator's role and lead off while Miriam, who has a microphone, gets ready to work her way around the room. But I have a question for the attorney general. Suppose the administration goes with the buh-buh-buh-buh-buh route. (Laughter) And the policy is simply not to clarify the policy. Can you guys live with that?

MR. FERGUSON: Well, I mean, can we live with it is a difficult question. I guess here's what we're planning on doing. I think I can say that, that as the attorney general we're moving forward on legalizing marijuana. We're doing that. We would like to have the federal government's support in doing that. We'd like to have their clear, unequivocal support. Now, if that means, hey, we're working out some understandings of how that goes forward, wonderful. But I think our message is unified, myself and the governor who has provided some excellent leadership on this, Governor Inslee, that we're moving forward. And we want to hear feedback from the federal government, but each day that goes by without any guidance is another day that we're further down that path of getting closer to issuing licenses and setting up that buttoned-down regulatory framework, so.

And I guess the last thing I'll just say that I didn't say earlier, but I think it's worth mentioning, is I think now it's been five months since the election. I'm losing track of the months, but I think it's been five months since the election. And I, frankly, appreciate the fact that the federal government's taking their time thinking this through. I think that's worth mentioning. Right? They had a lot of time to think about what might happen if a state legalized marijuana. Washington State and Colorado went forward. They're clearly taking their time thinking this through and I appreciate that. I feel we've had a chance to answer questions about how we're doing it to make sure they understand our framework.

MR. RAUCH: When you hear the congressman say that you can get some incremental legislative changes done in the near term, but it'll take a

while to move the big ball, are these kinds of incremental changes helpful to Washington State particularly?

MR. FERGUSON: I think, frankly, any kind of changes will be helpful, right. No question about it. So, I mean, to be honest, from my perspective, just to be honest, I don't spend a whole lot of time. I greatly appreciate the efforts in Congress to provide greater clarity. My folks on the legal side, right, and moving forward and trying to reach an understanding with the federal government, that's where my focus is actually.

MR. RAUCH: All right. Anyone and everyone, I'm going to try to gang up two or three at a time for the sake of efficiency. Why don't we start with the gentleman in the plaid and then come to the woman just in front of him?

MR. BORDEN: Hi.

MR. RAUCH: Oh, I'm sorry, let me interrupt long enough to remind our Twitter audience, our online audience you can Tweet us at the handle #mjlegalization. Is that right? #Mjlegalization. So have it.

Yes, sir?

MR. BORDEN: David Borden with StopTheDrugWar.org and the Drug War Chronicle newsletter. My question is for Mark.

You commented that California's medical marijuana industry, if I understood you correctly, has the potential to become the next big supplier for black market marijuana around the country. My question is, you know, have things moved in that direction? Has California's or Colorado's medical marijuana industry moved substantially, taken on some share that's progressing? If not, my

question is, you know, I certainly think it's prudent to look at the possibility of substantial out of state exports from Colorado and Washington, but Prop 215 was passed in 1996, so.

MR. RAUCH: Sure. Let's also get the lady just in front of you.

SPEAKER: You don't want to answer his question first?

MR. RAUCH: We'll gang them up. We'll get there, don't worry.

SPEAKER: Okay, that's fine.

MR. RAUCH: We do ask people to keep them brief so everyone has a chance.

SPEAKER: I'll do my best. This is for Mr. Ferguson.

I am a licensed clinical social worker who's lived in Seattle for 15 years and understand the issues that you were dealing with and have known about even when you were on the King County Council. Now, Washington State, which is the Pacific Northwest, not the West Coast, is famous for having initiatives overturned by the voters. And I'm glad that Washington State passed this. I think you take the profit mode out of drugs or marijuana and just think of all the revenues the state's going to get.

However, should Eric Holder and this current administration not agree with Washington State's plan -- and I thank the congressman from Oregon; they've been very progressive and I also work with the Death with Dignity Initiative in Seattle -- should Eric Holder and the current administration say no to Washington State's initiative that has passed, how will you handle this? Because whenever we did pass stuff -- term limits, whatever -- they'd bring in top-notch

attorneys who overturn the voters' vote. So how will you deal with this? How will you handle it? I agree with it. I think it's important, too, that you don't have the numbers because the licensing laws in Washington State are loosey-goosey for docs, whomever. And if you don't have the docs on board or people who may be prescribing medical marijuana -- and I've worked with oncology patients -- how are you going to handle this?

MR. RAUCH: Thank you.

SPEAKER: I know it's a mixed-up question, but you've got a lot of regulations that need to be clarified and things that need to be changed and voters.

MR. RAUCH: Thank you.

SPEAKER: Thank you.

MR. RAUCH: Thank you, yes. So we've got two very good questions there. The first was to Mark Kleiman about what we know about spillover in California and Colorado.

MR. KLEIMAN: Shortly after Prop 215 passed in 1996, somebody who follows this issue in California said to me, you know, I don't know anybody who's growing marijuana in California anymore. They're all growing medical marijuana. (Laughter)

California is certainly the number one cannabis-producing state in the U.S. How it ranks with respect to Mexico and Canada, with respect to volume, probably not very high; with respect to value, probably reasonably high. And it's not possible to say how much of that is medical since anybody who

grows and gets caught is going to say I'm growing medical.

So the main thing about California is that the wholesale prices have started to fall, but the retail prices have remained high. And so it's not now possible to buy cannabis at a dispensary in California and profitably take it to Chicago. If it's legal to produce and legal to sell, even with relatively high taxes, the prices are likely to fall dramatically and that's the point where you might get a substantial problem.

And in Colorado, of course, where you've got unregulated, untaxed grow-your-own, that's going to be quite cheap. So it would surprise me if unregulated growing didn't lead to price decreases, and if price decreases didn't lead to arbitrage.

MR. RAUCH: And arbitrage means these kinds of interstate flows.

MR. KLEIMAN: Yeah, I mean, if --

MR. RAUCH: A lot of economic pressure in that direction.

MR. KLEIMAN: If the dealer in New York's currently paying a couple of thousand dollars a pound and can get for a few hundred dollars a pound, then he's likely to switch his supply. No, it wouldn't be a terrible thing if Colorado displaced Mexico. But if the result were that cannabis cost half what it costs now, then you'd expect a substantial increase in the number of heavy users.

One thing that gets lost in this conversation is everybody -- I think if we took a poll in this room the median years of education would be somewhere

between 16 and 20. And it's folks like us who discuss cannabis policy. It's not folks like us who smoke the bulk of the country's cannabis.

Sixty percent of the days of use of cannabis in the U.S., according to the National Household Survey, the person using does not have a high school diploma. And so the argument that's currently going on between people who remember when they were on the football team in college and people who remember when they were in SDS in college, which of them was right about the war in Vietnam, is pretty irrelevant to the actual issue of marijuana consumption. And I think we need to keep focused on that.

MR. RAUCH: Mr. Attorney General, I'm sure a lot of people are asking the question you just heard, which is, well, you know, what if they stomp in on you and overturn you? Then what? What's the plan? How do you deal with that?

MR. FERGUSON: I think the question was how are we preparing for a potential lawsuit, as I understood it.

SPEAKER: No.

MR. RAUCH: Well, we'll take that question, too, though. We want to hear that.

SPEAKER: You can take that, but also I said if Eric Holder and the current administration may come -- thank you. What will you do if Eric Holder and the administration comes in and tells Washington State we're coming in and we're not going to allow you to do medicinal marijuana?

MR. FERGUSON: Yes.

SPEAKER: How are you going to handle it? Because Washington State, I know, I lived there 15 years, is famous for caving into voters and what the voters want.

MR. RAUCH: Let's get to the answer of that.

MR. FERGUSON: Yes. I've got it. So to be clear, and I've communicated this directly to Eric Holder and the federal government, that if there's a lawsuit from the federal government that says, hey, Washington State, you can't go forward with legalizing marijuana, we'll defend the will of the Washington State voters. That's my job. That's what we're going to do. So trust me, there won't be any just acceptance of the federal government's decision.

If they choose to go that route, which we hope to avoid, but if they choose to take an approach that says -- they file some injunctive relief seeking to stop us from going forward, we will fight that. I want to be very, very clear about that. I won't make any predictions on how that's going to go. Those legal issues are extremely complex and I've avoided getting in those for all sorts of obvious reasons, but I've been very clear to every group I've spoken to throughout the state of Washington that our job is to defend that.

And you mentioned they have top-notch lawyers in the federal government. I can assure you we have top-notch lawyers in the other Washington as well. (Laughter) And we want to avoid the legal fight, but we're prepared for it.

And, frankly, we have a lot of experience for the reason you mentioned. For the other folks in the audience, Washington State, as you know,

Washington State has long populace tradition. Our initiative process is a robust one. We routinely have matters of all sorts that go before the voters on restricting the ability to raise taxes, you name it. We have a very healthy, robust initiative process. So this really is no exception. It's very much in keeping with that.

So in the Office of the Attorney General we have an office that's very used to lawsuits like this, accustomed to them and accustomed to defending the will of the voters. Sometimes we're successful, sometimes we're not. In my life in private practice I did some of this work, so I appreciate that.

One thing I'll say that in preparing for that is, you know, I was a lawyer in private practice. A partner in my law firm who was a mentor to me gave me two pieces of advice on my first week. And he said, first of all, in any case that you get, assume you're going to trial. Yes, 99 percent of our cases settle out, we know that, right? But assume you're going to trial from day one and prepare for that. Okay, that's number one.

Number two, he said prepare for the worst. Prepare for the worst. And that's the advice that I've given to my legal team is the first day I took office and we had a meeting I said assume -- be prepared to go all the way with this, number one. Number two, prepare for the worst. It's my job to try and work with our governor and others to avoid that confrontation. But if it comes to that and we don't totally control that, I want to make sure we're prepared for that and we've been working hard to be ready for it. So we have a good legal team in place and we'll be ready.

MR. RAUCH: Stuart?

MR. TAYLOR: Attorney General Ferguson's appropriately cautious of predicting what would happen if the government sued. I threw caution to the wind --

MR. FERGUSON: You did.

MR. TAYLOR: -- when I became --

MR. RAUCH: You have no such compunction.

MR. FERGUSON: I wasn't going to quote on that.

MR. TAYLOR: I would just say to Attorney General Holder go ahead, make our day. (Laughter) We're going to clean your clocks, not only because you can't touch -- you don't even claim you can force us to make it illegal, you don't even claim you can force us to in federal laws. And if you think you can stop us from regulating it, well, there's a clause right there in the Controlled Substances Act -- I assume your people have told you about it -- that's kind of an anti-preemption clause that basically says federal law does not preempt state law in this area unless they're utterly incapable of standing together at the same time, and they're not.

MR. KLEIMAN: But it seems to me if I were advising the attorney general and they made what I think would be the unwise decision to shut this down, I wouldn't bother with a preemption suit. I'd simply wait until the applications are filed with the Liquor Board, all of which are public record under Washington's very sunshiney -- I mean, the only thing about Washington State that's sunshiney is the public record law. (Laughter)

MR. FERGUSON: Careful now. Careful. (Laughter)

MR. KLEIMAN: And go into Federal District Court and say here's a set of applications to commit federal felonies. We'd like all the applicants enjoined from picking up their license, and then there would be nothing legal you could do in Washington State.

MR. TAYLOR: You're quite right about that. They could stop the regulated sector that way and I'd fall back then on my earlier remarks, saying they would only make the federal problem worse, not better if they did that.

MR. KLEIMAN: Right.

MR. RAUCH: Could you not then have a state lawsuit against the federal injunction and have the whole same train of arguments work their way through the courts?

MR. TAYLOR: As I heard Mark, he's not talking about a federal injunction. He's talking about --

MR. RAUCH: Oh, federal enforcement.

MR. TAYLOR: -- a threat (inaudible) federal prosecution.

MR. KLEIMAN: No, no, I'm saying that the federal government could attempt to enjoin not the states from issuing licenses, but the license applicants from picking up their licenses to violate a federal law. And I'm not a lawyer, but it seems to me any federal district judge issues that injunction tomorrow.

MR. TAYLOR: And whether or not they enjoin it, and I think Attorney General probably knows more than he's willing to tell us about how

these options play out, they could certainly send a letter to every licensee or would-be licensee saying we're going to prosecute you and put you in federal prison if you go through with this, and the states could prevent that.

MR. RAUCH: I'm only asking could the states then litigate under the CSA and say you're effectively occupying the field? The CSA doesn't give you that much authority.

MR. TAYLOR: I don't think they could do that successfully.

MR. RAUCH: They cannot do that. Okay. We've got a bunch of questions now. Let's go over here to the other side. We're going to take these three that are over here on the right: the gentleman in the back, the gentleman with the beard, and I think Mr. Wallach. Please keep them short.

SPEAKER: My question's for the congressman and for the attorney general. Have you talked to law enforcement and can you talk about what they say about marijuana being legalized in their community? Support it? Deny it? And what can you say about the conversations you may have with local law enforcement?

MR. RAUCH: Great. Thank you.

SPEAKER: Somehow I don't think that an administration that's trying to see its future in the youth vote is going to be very aggressive. But my question is, to put it kind of glibly, is what is marijuana?

And what I mean by this is that, though I can't speak from any firsthand experience, my understanding is that the marijuana today is far more potent than the marijuana of my youth. And I also expect that if it's legalized

there may be further steps taken to make it yet more potent as part of competition to get sales. And with modern genetic engineering I expect that one might be able to do things like put in genes to create nicotine and make it even more addictive, if it's addictive as it is. So to what extent are these various regulations taking account of the potency and the possible changes in this plant that may look pretty much the same and perhaps go by the same name regardless of what its implications are for addiction, health, and the like?

MR. RAUCH: Good. Thank you.

SPEAKER: I'm just curious about the learning, the sort of institutional learning that Mark Kleiman talked about, sort of the opportunities here. And I'm wondering if you could comment about what Congress could do to help facilitate that other than making it legal to study the medical aspects, but what they could do to help social scientists try to sort of be on the job more effectively in understanding what unfolds.

MR. RAUCH: Well, let's take that in reverse order because I think Congressman Blumenauer has got just the answer you're looking for. The question what can Congress do to make it easier to get some knowledge on marijuana?

CONGRESSMAN BLUMENAUER: Well, that's part --

MR. RAUCH: That's your bill, right? It's one of your bills.

CONGRESSMAN BLUMENAUER: I may have mentioned the medical marijuana bill would eliminate the prohibition on actually doing some serious research. I think that's long overdue.

As far as the law enforcement, my experience is that it's split. A lot of people think it's stupid to be engaged in something that they can't really fight. There are others in law enforcement who are against legalization. I don't think there's any consensus in my community on that.

As to the potency of the drug, if we actually legalize and regulate we have an opportunity to have some standards for the product. Alcohol, you can tell what the proof is for that bottle of wine, the beer. There are ways that we can have regulations so people know what they get. Right now the kid who's buying it on the street has no idea what they're getting, so you have the worst of both worlds.

MR. RAUCH: Mr. Ferguson, what do you hear from law enforcement, state law enforcement about all this?

MR. FERGUSON: Sure. Just one preliminary comment is that I enjoyed the conversation on the legal side of that. I just want to make sure my silence wasn't viewed as an agreement necessarily with that conversation. And although I appreciate the quote from Clint Eastwood, which I haven't used with Eric Holder yet, but I appreciate that. (Laughter)

But the legal issues are complex and for obvious reasons I'm not getting involved in those, but at the appropriate time you'd be more than welcome to come back and speak about those, if that gets to that place.

With law enforcement, similar to the congressman, has been what I've heard. Although more specifically, since the initiative, we had a healthy conversation in our state, as you might imagine, over many, many months. At

that point there were strong views on both sides. But I think like any initiative, once it's approved with 56 percent of the vote, the majority of folks move forward towards, hey, we're moving forward, how does this happen, how does this get implemented? So from my work as attorney general in giving legal advice to our clients and law enforcement, to be perfectly honest I've not heard grumblings about it. It's been all, hey, how do we move forward on the legalization? What do I, a law enforcement person, need to be aware of as we move forward with legalization? And that's really been where the focus has been since the initiative process has been approved. During the campaign, of course, strong views on both sides.

MR. RAUCH: Mark Kleiman, you know something about potency, I reckon.

MR. KLEIMAN: Just a word about potency. The increase in potency has happened under illegality, so it's not clear to me that legality is going to accelerate it. It might reverse it. Remember that two-thirds of the alcohol consumed in the U.S. is consumed as beer. At the moment in the illicit cannabis market potency and quality are regarded as more or less the same thing: the more potent, the better. Nobody regards Ripple as a higher-quality wine than Chateau (inaudible) just because it has 50 percent more alcohol in it. (Laughter)
It is possible --

CONGRESSMAN BLUMENAUER: Careful, speak for yourself.

MR. RAUCH: You've hit a bit of a sore point with the congressman.

MR. KLEIMAN: Yeah, that's right. If we test and label, it's entirely possible that the market could be nudged in the direction of using less dangerous forms of the product. I don't know if that's true, but it might be true. But there's a complexity here. With alcohol you put the proof on the label or, you know, 12-1/2 percent alcohol by volume. That's the end of the psychoactivity activity discussion. Now we can get into wine snobbery about what it smells and tastes like.

Cannabis has at least 3, probably 40, maybe 100 different active agents, all of which interact with each other. You need at least a label that says THC content and a label that says the ratio of THC to cannabidiol. And then you have to communicate it to this mass market, much of which is not a very highly educated market. And it's a problem I hope to have some of my very smart friends work on to figure out how you could put something on the label that the consumer can actually compute.

MR. RAUCH: Can you get your hands around that problem in the timeframe available in Washington State?

MR. KLEIMAN: We can make a good cut at it and then we can find out whether it works or not. That's why I say this is going to be a learning process all the way down.

MR. RAUCH: You don't think you'll automatically get it right the first time?

MR. KLEIMAN: I do not think we'll get it right the first time, but we'll have a reasonable cut. I mean, we'll probably try -- I don't know because

I'm not going to be running this task, but I think we'll probably invent six or eight labels and have focus groups of consumers and say, all right, here's a label. What does that say to you? And see if some of them say what we intend them to say.

MR. FERGUSON: If I could just add, I just want to say that we're committed to getting it right the first time. I just want to (inaudible) that perspective. (Laughter) I mean, I --

SPEAKER: Let's have an argument about it.

MR. FERGUSON: In all seriousness, right, in all seriousness, a lot of our conversation is it's not easy, it's complex, I get that. But that's really our commitment.

MR. RAUCH: Stuart, I have a question for you. Then we'll go back over here, but suppose that the administration were to follow your advice and go with cooperative enforcement agreements? And the next thing that happens is generic conservative Republican in Congress files the impeachment resolution saying they don't have the authority under the law. And then the very next thing they do is conservative advocacy groups decide to file suit against the administration. Who has standing to force the administration to take a stronger, not weaker, position against state initiatives than it would like?

MR. TAYLOR: I doubt that anyone would have legal standing. That's a tricky question to answer on the fly, but it's hard for me to think of any individual who could advance the sort of arm to me from what you're doing to map marijuana that would pass muster with the Supreme Court.

As for the impeachment resolution, whatever the politics of it, I think it would be legally frivolous. There's such a thing as prosecutorial discretion. The federal government never prosecutes the millions of people -- or almost never -- the millions of people who violate federal law on marijuana every month by consuming it. Federal law makes that a crime. They don't prosecute it. In states that have for many years, since Oregon started it, decriminalized marijuana, they don't go after people who get the traffic ticket form. They don't go after medical marijuana patients anywhere. They don't go after medical marijuana suppliers in some states, although they do go after them in others. And, therefore, the idea that they just have to prosecute everybody to the fullest all the time is at war with history and at war with commonsense and at war with the law.

MR. RAUCH: So if their policy is cooperative enforcement agreements, if that's what they want to do, they can probably make that stick as a matter of law.

MR. TAYLOR: As a legal matter, they can. Now, whether they will get so much political flack for it that it costs them more than they think it's worth is a more complicated question, which Mark may know more than I do.

MR. RAUCH: Let's go to the left side of the room. We've got a nice triangle here. First the woman in the sweater, the gentleman in front of her.

SPEAKER: Hi. I was wondering, taking it back to medical marijuana, if there's been any more discussion about that tension between the federal government and the states on medical marijuana, if there's anything new

that might discourage or encourage states to move forward with medical marijuana? Specifically, there's efforts in Florida, I believe, you know, more efforts in the South to move forward with medical marijuana. So just curious about that.

MR. RAUCH: Great question. Thank you. The gentleman here.

SPEAKER: Thank you. I'm (inaudible) student from the Czech Republic. And I'm curious, there's been a lot of talk between state and federal levels of conflict, but my question is, are there international ramifications to that? Is the United States signatory to treaties, U.N.-wide treaties that might eventually run into a (inaudible) Washington and Colorado go ahead? And how would that be considered, how that plays out? Because I think, from my perspective, it's a big factor to be a signatory to a binding international treaty. Thank you.

MR. RAUCH: And which country were you from again?

SPEAKER: Czech Republic.

MR. RAUCH: Czech Republic. Thank you. We have one more here.

MR. KENNEY: Hi. I'm Richard Kenney, retired CIA economic analyst, who got interested in marijuana policy in grad school in 1971. Look forward to trying it myself when it becomes legal. (Laughter) I have a question for Mark.

As you know, I have a very high regard for your work. I disagree on the issue that increased marijuana use could led to increased alcohol use or, in economist jargon, that they are complementary goods. I think it's implausible

now and would be even more implausible if marijuana were legal because then you could provide honest information to the consumers. Like imagine the drugs are running a public service ad that said the best choice is not to use either one of these drugs, but if you've got choose one of them, you know, put down the booze and pick up a joint. (Laughter)

MR. RAUCH: Three good questions there. Anyone want to take a crack at the international dimension? We have not in the paper Stuart's written. It's just too much to bite off in one chunk. There are three, depending on how you count, there are three international treaties, if not more, that affect this, and that's clearly a concern for the administration. And it's not an easy conundrum, but I'm not sure this panel -- Congressman, do you have any point to make on that? I'm not sure we're the best people today to begin grappling with that question. Do we have any volunteers? I don't think we're going to step up to it.

CONGRESSMAN BLUMENAUER: Well, the one thing I'd mention is that the prosecutorial discretion, which is very broad under U.S. law, when we entered the treaties it was subject to the understanding by everybody who understands how U.S. law works that not all crimes defined in the Federal Code are prosecuted every time they occur. I expect that's true in the other countries of the world, too. So I think it becomes more a diplomatic problem than a treaty violation problem. If our treaty partners think that we're violating the treaty, that's a problem that our government needs to address with them. In terms of whether we're technically violating the treaty, I think it would probably be

fairly easy for the government to construct an argument that says we're not, even if we have an accommodating policy towards state legalization. Also, treaties don't bind the states by and large.

MR. RAUCH: Yeah, that makes it very interesting. Your state is not bound by the international Convention on Narcotics, right?

MR. FERGUSON: I guess (inaudible) I think the question's a very good one. I mean, in all seriousness. I don't mean -- I will be dodging the question, okay? (Laughter) But I do want to say I know enough to be dangerous about this. I think it's an important question. It's one I'm very much aware of. And I just don't think I'm in the right position right now to be able to answer, to be perfectly honest.

MR. RAUCH: Yeah, I think that's the answer.

MR. FERGUSON: I'm sorry, but yeah.

MR. RAUCH: How about the effects of this on further medical marijuana policies, which our first questioner asked about? What might we expect to see there?

MR. KLEIMAN: Well, one thing to say is that -- and if Washington goes ahead and if the board decides to adopt regulations requiring labeling for both testing for impurities and adulterants and labeling for chemical content, that will make tested and labeled product available for the first time, a much more appropriate medical product it seems to me. I mean, it's now available under medical guise in the state of Washington, which is largely untested and unregulated. Some of the medical providers have labs, which the labs are

uncertified.

So it seems to me from a patient's point of view that commercial legalization could actually be a substantial medical advance (inaudible) that you're getting. I mean, no physician would say to you take some oxycodone. He would say take 5 milligrams every 4 hours as needed for pain. There's no -- all the medical recommendations that people are writing are for cannabis generically, which could cover an order of magnitude range of variation in the actual chemical content. So in that sense I think this is all in the direction of having something that's more medically usable.

MR. RAUCH: One of, to me, most interesting points that arises kind of between the lines in Stuart's paper, though it's teased out a bit in the end and in your comments today, is that what might actually arise as a result of what the states are doing is not more of a Wild West medical marijuana program, but, in fact, further impetus to regularize that market in order to bring it more in line with the legal market so that they both make some more sense, which isn't the most intuitive outcome, but it would be interesting if that's the way the policy goes.

MR. KLEIMAN: Any physician who wrote a prescription for oxycodone or Xanax with the wild abandon that medical marijuana recommendations are now being handed out in some states would lose his license and might go to federal prison for drug dealing.

MR. TAYLOR: Well, so, John, as I was working on this, I was puzzled that the federal government was cracking down hard in some states --

California -- and not so much --

MR. RAUCH: On medical marijuana.

MR. TAYLOR: On medical marijuana, and not so much in other states, such as New Mexico and Colorado. And finally, someone who had been in this zone longer than I had pointed out to me that the states in which they're cracking down are the ones where state regulation of medical marijuana, there's no statewide regulation, there's not very effective regulation. It's pretty chaotic in California. In other states, such as New Mexico and perhaps Colorado, although I think you said it's pretty wild in Colorado, the federal government has not been cracking down, which the pattern is, although as far as I know it's never been articulated by the administration, is when the state regulation seems to be working reasonably well they've left it alone. When state regulation does not seem to be working well, they've cracked down.

MR. RAUCH: So you might actually get some incentives here to improve regulation, not just deregulate, which (inaudible).

CONGRESSMAN BLUMENAUER: Powerfully so. I think powerfully so. I mean, when people start moving into this space, when it is regulated, taxed, there will be competing state interests to try and get everybody on the same page. It does rationalize the situation vis-à-vis the federal government. And right now medical marijuana in some cases is de facto legalization. I mean, you look at the patterns of prescription that vary. I mean, I've met an awful lot of people who desperately need this, for whom it really is medicinal. And there's no doubt in some of these states it really goes past that. I

think when you start moving in this direction you get to -- you're going to align both policies.

MR. RAUCH: It's now 3:29 and I'm going to take a minute to bring us to a close; to thank you all for coming; to thank our panel for an extraordinary discussion; to once again thank WOLA, the Washington Office on Latin America, which I should have done in the first place; and above all to hope that you all will leave the room, as I have, understanding how deeply complex this problem is and how much effort it's going to take on the part of our political class to get it right. So I give them all our best luck with that and thank you all very much for coming.

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