

**Persecution of the Ill and Disabled who use Cannabis as Medicine –
Health and Human Rights Cases in the American-led ‘War on Marijuana’**

We’ve struggled to be comprehensive about how to best realize the human right to health so that we can stay true to our stated goal of achieving the “highest attainable level of physical and mental health” for all. We saw how the peculiar and stigmatizing ‘war on drug users’ abuses the human rights of people who put into their bodies certain plants or modified plant extracts, among other substances. Specifically, this quarter we addressed some of the egregious health consequences of American-style zero-tolerance ‘war on drug users’ policies, esp. as they affected the injection drug-using population of the Downtown Eastside in Vancouver. We discussed how stigma and shame motivate official denials and abject mistreatment of this population in Eastern Europe and other places—policies that continue to fuel the transmission of the HIV and HCV viruses. I know that in our class this quarter we did not focus that much on health and human rights violations in the United States and North America, but, in looking at the human rights violations inherent in the ‘war on drug users and their associates’, it is critical to take a look at consequences in the United States. In America, the war on drugs is to a large extent, a war on marijuana/cannabis. In this paper, I will count the ways that the United States’ zero-tolerance (i.e., intolerant) policy on cannabis, especially the medicinal use of cannabis, violates human rights and puts this country’s government in violation of its obligations to respect, protect, and fulfill the fundamental human right to health. While this also goes on in other countries, with its 2.3 million prisoner population, America

leads the world in punishment and incarceration related to the ‘war on drugs’...it also is the originator, drafter, and most vociferous lobbyist for an ongoing international ‘war on drug users’ at the UN. I will illustrate the human rights violations with several case studies.

‘Marijuana’ is the Mexican-Spanish word for the flowering tops of the cannabis plant, a traditional medicinal herb that has been used cross-culturally. States in the mid 20th century, through extra-procedural steps and a disinformation campaign, took ideological control over this traditional medicinal plant through exaggerating its psychoactive properties. This prohibition has done little to eliminate the plant or stem its use. The UN Office of Drug Control estimates that 40,000 metric tons of cannabis were produced in 2003 around the world. They also estimate that cannabis is the most commonly used ‘illicit’ substance in the world, with ~161 million users in 2003—about 4% of the world population aged 15-64. In the United States, ~47 percent of the population admits to having used marijuana. Since its ‘war on marijuana’ began, there have been ~17 million cannabis arrests. Over the past decade, this ‘war on marijuana’ has been escalating. A paper published in the *Harm Reduction Journal* last month argues that about half of all drug arrests are for marijuana (1 arrest every 45 sec). Currently, the United States spends roughly \$4 billion dollars per year on the arrest, prosecution and incarceration of marijuana offenders. There are 27,900 persons in state and federal prison serving a sentence for which a marijuana violation is the controlling (or most serious) offense, and ~75,000 persons in total currently under correctional supervision for a marijuana offense (prison, jail, probation, parole). Clearly, this is a massive and extensive bureaucracy. What I will discuss later are some of the human rights

consequences of the collision between this massive, entrenched law enforcement bureaucracy focused on an ideologically-driven zero-tolerance policy of enforcement of cannabis laws and those sick and disabled individuals who are users of cannabis as a medicine.

I will now turn to the relevant human rights instruments and definitions that bear on medicinal cannabis use and regulation. The most important human right to consider is the right to health. This right, which is enshrined in Article 12 of the ICESCR, was further elucidated in General Comment No. 14 (2000) on The Right to the Highest Attainable Standard of Health; Committee on Economic, Social, and Cultural Rights; UN doc.E/C.12/2000/4, 4 July 2000 and also in a number of reports by Paul Hunt, the UN Special Rapporteur for the Right to Health. In particular, his first report from 2003: 59th session CHR, E/CN.4/2003/58, is important to examine. In these documents, we find that the right to health contains both freedoms and entitlements. “Freedoms include the right to control one’s health and body...and the right to be free from interference, such as the right to be free from torture...Entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.” The freedom to control one’s health and body presumably encompasses the freedom to ingest whatever medicinal herbs you so choose in order to control your health. The entitlement to a system of health protection that is equal opportunity means that the system should not be skew or distort health risks of herbs, and it also means that all should equally enjoy the benefits of a medicinal herb (Shockingly, the US government provides 8 ill patients in the US with a monthly supply of medical cannabis. This is clearly not an ‘equality of opportunity’ situation.)

The right to health also entails state obligations of respecting, protecting, and fulfilling the right to health. Three relevant clauses to consider here are:

34. In particular, States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners and detainees, minorities, asylum seekers, and illegal immigrants, to preventative, curative, and palliative health services;...obligations to respect include a State's obligation to refrain from prohibiting or impeding traditional preventative care, healing practices and medicines

37. The obligation to fulfill (facilitate) requires States inter alia to take positive measures that enable and assist individuals and communities to enjoy the right to health...Such obligations include: (i) fostering recognition of factors favoring positive health results, e.g., research and provision of information...(iv) supporting people in making informed choices about their health

27. Indigenous peoples / The vital medicinal plants, animals, and minerals necessary to the full enjoyment of health of indigenous peoples should also be protected.

In the context of American medical cannabis policy, the State's obligation to respect, protect, and fulfill the right to health are all compromised leading to the undercutting of freedoms and entitlements. In the case of its obligation to respect the right to health, the State shirks this obligation because the 'war on marijuana' forbids "traditional preventative care, healing practices and medicines" that involve cannabis—practices that the state must respect. It should be noted that cannabis was part of the United States Pharmacopoeia from 1850 until 1942 and was widely used in Western medicine around the turn of the 20th century. The obligation to protect the right to health is also undermined because the vital medicinal plant cannabis is not protected for use. This is more germane in other countries such as China, India, Pakistan, and Sri Lanka where cannabis has a long history of use in indigenous medicine. The obligation to fulfill the

right to health is undermined by the ‘war on marijuana’ because clinical research and provision of information relevant to the therapeutic properties of cannabis is stalled and withheld. This was an important issue in the 2005 US Supreme Court case in which an Amicus Curare brief filed with the Court stated: “The lack of FDA-approval of cannabis as a prescription medicine is due, in large part, to the systematic hindrance of scientific research by governmental agencies over the last several decades.” A critical violation of the state’s obligation to respect the right to health is specifically enumerated in General Comment 14: “the deliberate withholding or misrepresentation of information vital to health protection or treatment; the suspension of legislation or the adoption of laws or policies that interfere with the enjoyment of any of the components of the right to health.” This, as I will next show, is one of the most significant and fundamental right to health violations of the ‘war on marijuana.’

Under United States federal law, cannabis is perhaps deliberately misrepresented in the following way: (1) Schedule I. – “drug or other substance” = “cannabis”

- (A) Cannabis has a high potential for abuse.
- (B) Cannabis has no currently accepted medical use in treatment in the United States.
- (C) There is a lack of accepted safety for cannabis under medical supervision

In 1971, immediately after this Schedule I classification was instated, a re-scheduling bid was put in by US citizens—a procedure that the law allows. The re-scheduling bid was continuously stalled for 14 years (!) until finally in 1986 when a ruling by a DEA Administrative Law Judge was made. After a lengthy and extensive hearing, the judge (Francis Young) concluded: Marijuana is the safest therapeutically active substance known to man...The evidence clearly shows that marijuana is capable of relieving the

distress of great numbers of very ill people, and doing so with safety under medical supervision. It would be unreasonable, arbitrary, and capricious for the DEA to continue to stand between those suffers and the benefits of this substance.” This finding was unreasonably, arbitrarily, and capriciously rejected by the DEA head. Further evidence that the Schedule I classification of cannabis is unfounded comes from the fact that 11 states in the United States now allow for the medical use of cannabis. In addition, several countries—Spain, UK, Holland, Belgium, India, and others—recognize this. The Dutch have set up an Office of Medicinal Cannabis and there is now an International Association for Cannabis as Medicine and an International Cannabinoid Research Society. A tremendous number of studies and extensive patient experience has shown that the cannabis herb is a very effective palliative, preventive, and complementary botanical medicine. It has proven to be beneficial for severe pain, nausea and vomiting, wasting syndrome, spasticity, and other conditions. Constituents of the resin act on the body’s endocannabinoid system which modulates analgesia, inflammation, sleep induction, muscle relaxation, analgesia, tumor surveillance, etc. That this information is not reported and publicized by the US but instead ignored and distorted is the most egregious violation of the United State’s obligation to respect the right to health. (Of course, the US has not ratified the ICESCR). Imagine how many more people could benefit from this therapy if it was more widely known...

In the United States, as I mentioned before, 11 states now allow for the medical use of cannabis. In California, an estimated 150,000 patients have obtained medical exemptions. In Oregon, ~11,000. In fact, in King County, WA >5000 medical cannabis patients reside. It should be noted that all of these patients are using cannabis illegally

under federal law and therefore are at risk of prosecution/persecution. And that is precisely what happened to the following individuals whose medical cannabis use stood in defiance of the entrenched, ideologically driven 'war on marijuana'. Their cases illustrate the needless pain, suffering and right to health violations come from zero-tolerance enforcement of this policy. I had the opportunity to witness first-hand some of this.

The first case to consider is Steven Tuck, an age 39 US Army veteran and long-term chronic pain patient (19+ years). Mr. Tuck sustained significant bodily traumas (parachute malfunction, major motor vehicle accident) and has undergone 13 back surgeries in his lifetime, some of which were performed at the Walter Reed Army Center. Mr. Tuck, a sufferer of "Failed Back Surgery Syndrome", discovered the therapeutic benefits of cannabis. It provided significant relief from his pain (potentiated the morphine) and allowed him to relax his bladder to urinate. It also helped to control the nausea that accompanies chronic opiate therapy. Mr. Tuck says that cannabis therapy allowed him to walk again. He lived in Holland for several years and then moved to California after the 'medical marijuana' law passed. In Northern California, he and his wife started a cannabis co-op/dispensary to help other sick patients who could benefit from cannabis. He operated it above ground and with due diligence. Entrenched blackmarket and law enforcement forces were unhappy about Tuck's medical marijuana operations. He was constantly harassed by law enforcement officers (including numerous episodes of vandalism), and he even successfully defeated in court charges that were brought against him regarding cultivation of cannabis. Eventually, more charges were brought against Mr. Tuck, and he was threatened with time in jail without access to his

usual pain medicines. Based on legal advice, Mr. Tuck decided to flee for his life to Canada where he was freely allowed to use medical marijuana. He lived there for a few years and attempted to claim refugee status. Canada denied him, and in October of 2005, Mr. Tuck was taken from a gurney at a Vancouver hospital where he was being treated for prostatitis. He was forcibly removed from the hospital (with his Foley catheter still in place!) and transferred to US Marshals at the US-Canada border. The Marshals took him to Whatcom County jail where Tuck was forced to withdraw from his 10+ ydaily opiate pain management regime. He was also forced to withdraw from his benzodiazepine therapy. When I saw Mr. Tuck at the Seattle Federal Courthouse on 10/11/05, he was in excruciating pain and extreme distress. He was having extreme urethral burning pain, was having difficulty voiding his bowels due to pain, and he feared becoming permanently crippled. His lawyer and I pleaded with the Judge to release Mr. Tuck for emergency care, and our request was granted.

A second (and related case) is that of Steven Kubby, an age 59 former California Gubernatorial candidate who has suffered from a rare form of adrenal cancer, malignant pheochromocytoma, for 30+ years that he has controlled with daily cannabis use under a physician's recommendation. An official Canadian legal document states: "Mr. Kubby's tumour releases, in excess quantities, hormones normally found in the adrenal gland that are called catecholamines. Excessive levels of catecholamines in Mr. Kubby's blood cause a range of separate symptomatic problems including paroxysmal headaches, sudden flushing or pallor of the skin, palpitations (rapid and irregular beating of the heart), hypertension (sudden dangerous rise in blood pressure), excessive sweating, sudden abdominal cramps and diarrhea, chest pain, shortness of breath, nausea, sudden

severe weakness and anorexia (loss of appetite). If not controlled, Mr. Kubby's symptoms could evolve further to the point where a myocardial infarction (heart attack) or cerebral vascular accident (stroke) could occur." Mr. Kubby was facing time in jail in the US for charges that stemmed from a marijuana investigation. He was acquitted of the marijuana charges but a prohibited mushroom stem and peyote cactus buttons found in his house during the same investigation led to the jail sentence. Fearing that he would die if he was not able to use cannabis while in prison, Kubby fled to Canada to seek refugee protection. His refugee claim was denied, and Kubby spent the last two months in a jail cell in Placer County, California. According to an article released yesterday by the *LA Times*, in the course of his imprisonment, Mr. Kubby lost 25 pounds, suffered from hematuria (blood in the urine), and experienced life-threatening hypertensive crises (at one point his BP was 170/120 (while at baseline his BP is 120/80)). Kubby still faces further legal problems.

In another case, a man with crippling rheumatoid arthritis who clandestinely used cannabis for therapy was given a 93 year sentence in Oklahoma for marijuana cultivation charges. In another case, a paraplegic was given a life sentence for possessing a small quantity of marijuana that he used to treat his pain and muscle spasms. While his jail term was reduced, one of his legs required amputation following incarceration. In yet another case, a man who suffered from AIDS and Non-Hodgkin's Lymphoma died by asphyxiating on his vomitus after a Judge forbade him from using medical marijuana that allowed him to control his extreme nausea. And, if it can't get any crazier, a young man who is quadriplegic died in custody while he was serving a 10 day sentence for possession of marijuana that he used to make himself 'feel better.'

In the cases above, we see how the unbelievable politics of ‘cannabis’ play out violently and painfully on human bodies. It goes without saying that international principles such as a 1982 UN resolution—Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment—forbids this kind of treatment. Who knows how many such cases exist? There is no solid or comprehensive data on this population. Forcing this population to choose between arrest and medicine is unconscionable. The American penal system is no place for sick and disabled individuals. In 1997, the UN Special Rapporteur on violence against women released a damning report about violence against women in US prisons. These are not safe places for sick people. The bottom line is this: ‘War on Marijuana’ policies have allowed for a violation of the United States’ obligation to respect, protect, and fulfill the right to health by (1) the deliberate withholding or misrepresentation of information vital to health protection or treatment; the suspension of legislation or the adoption of laws or policies that interfere with the enjoyment of any of the components of the right to health; (2) Denying equal access by allowing only 8 patients safe access to a therapy; (3) extra-procedurally taking ownership of the traditional medicinal plant Cannabis. The way to change this is to repeal zero-tolerance prohibition laws against cannabis at the national and international levels. The Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind (1975) calls for this. The medical and public health sectors must vociferously call for this.