Marijuana & Drug Policy Reform in New York: The LaGuardia Report at 70
CONFERENCE SUMMARY (5/14-5/2/14)

Conference overview: When the LaGuardia Commission released its final report on marijuana in 1944, it was in the midst of a national debate about marijuana, and prohibition was still new. Now, seventy years later, a national discussion is again underway about our marijuana policies. From the recent passage of a medical marijuana bill in Albany, to the recent declaration by the Brooklyn District Attorney that he will no longer prosecute low level marijuana possession arrests, to the calls by former U.S. Supreme Court Justice Stevens to end marijuana prohibition, there is a growing consensus that our current state and federal marijuana policies are broken. The LaGuardia Conference brought together leading academics, elected officials, policy experts and activists to discuss where we are with respect to marijuana policies and how we got here, and explore where New York and the nation might go to achieve drug policies grounded in science, compassion, and equity.

The conference, Marijuana & Drug Policy Reform in New York: The LaGuardia Report at 70, was held in May of 2014 and was co-hosted by the Drug Policy Alliance and The New York Academy of Medicine. It brought together elected officials, historians, medical professionals, researchers, people in recovery, people who currently use drugs, activists, and more. Like the original LaGuardia Commission report itself, the conference was supported in part by the New York Foundation.

Conference objectives:
- Provide a historical context for the LaGuardia report and the drug wars, generally, as a way of understanding contemporary debates about marijuana and drug policy reform
- Review the research agenda and evidence that helps shape and inform current policy proposals and explore that ways that politics drives this research
- Facilitate discussion about the current cannabis policy reform proposals currently under debate in New York and how they are connected to broader drug policy reform efforts

Thursday May 1st, 2014

Panel Discussion: Seventy Years After the LaGuardia Commission Report

Moderator: gabriel sayegh, Drug Policy Alliance
Sunil Aggarwal, MD, PhD New York University
Alexandra Chasin, PhD, The New School
David Herzberg, PhD, University of Buffalo
Maurice Lacey, LMSW, MS Ed., Executive Director, Faith Mission Crisis Center

Alexandra Chasin:
- Drug prohibition in the U.S. depends on the links between particular drugs and particular immigrant and ethnic/racial groups, beginning with anti-Chinese sentiments centered on opium use in 1875 in San Francisco
  - Role of forced assimilation & ethnocentrism is central to our drug policies
- The Marijuana Tax Act didn’t appear out the blue; it was preceded by the Harrison Act of 1914 and alcohol prohibition
- Federal Bureau of Narcotics begins in 1930’s under leadership of Anslinger and attempts to create a uniform system of laws across states
• Because marijuana was fresh and relatively unknown drug, it was easy to cast it in particular way in the media, and Anslinger did just that working to place stories that it leads to madness and violence, especially among racial minorities

• The historical context for the LaGuardia report also included sociologists in the 1920’s conducting research in Chicago and in the 1930’s East Harlem describing “problems” of the inner city
  ▪ The ideologies associated with alcohol prohibition still existed; they just needed to be attached to a new drug -- marijuana
  ▪ Harry J. Anslinger used his media contacts to create propaganda about marijuana, a fairly unknown substance at the time, as a driver of violent behavior

• Alcohol prohibition ends in 1933, but the prohibition idea needed a new object and prohibition officers needed new jobs and marijuana was the unregulated drug

**Sunil Aggarwal:**

• First efforts to control drugs began with the colonial occupation of the Philippines in 1870’s; missionaries were concerned about use of opium among indigenous population

• Predecessors to marijuana prohibition included border towns criminalizing marijuana use in the early 1900’s in Texas and alcohol prohibition beginning in the 1920’s
  ▪ Border towns were the first to criminalize marijuana – this is largely about immigrant control.

• After the Marijuana Tax Act, sensational ideas about insanity by the usage of marijuana emerged
  ▪ James Munch testified dogs would go insane if they used marijuana, and then went on to become a federal expert

• LaGuardia opposed alcohol prohibition based on ideas of human freedom, and he and Anslinger did not see eye-to-eye on this or marijuana policy

**David Herzberg:**

• Whites were the main users of opiates before the Harrison Act, but they were seen by reformers to be suffering from a different problem (a health problem) as other racialized groups. Hence, began differential drug policies based on race
  ▪ Perceptions of drug users were then and are now different based on the racial/ethnicity group in question

• In the case of marijuana, there were lots of reasons to want to control the Mexican population and prevent them from becoming politically powerful

• Public health concerns are only one thing driving drug policy
  ▪ Drugs include a lot of complexity, but drug policy is driven by simple morality tales

• Drugs for medicinal usage vs. recreational use generate two different sentiments

**Maurice Lacey:**

• Once a backward drug policy is systematized, it’s very hard to undo; it’s a political and a social battle
• Fear, politics win out over science
• Current marijuana policy has had a devastating impact on men of color in NYC
  ▪ creation of fear via propaganda

• We in the treatment community have been disorganized incoming together to advocate for those directly impacted

• People in the drug treatment field in some ways have been helpers in injustice because of the profit motive; many people in treatment would be better served if we helped them get an education or a job
Welcoming Remarks
Melissa Mark-Viverito, Speaker, New York City Council

- 70 years ago NYAM commissioned LaGuardia report to determine effects of marijuana
- The findings of that report contradicted contemporaneous claims that marijuana causes insanity, crime and was gateway drug
- Though circumstances and viewpoints have changed since “reefer madness” in 1936, propaganda and scare-tactic campaigns still overshadow science today
- We must continue to fight for reform
  - Although arrests are down, still not low enough (~30,000 last year)
  - 98% were charged with lowest possible charge
- 70 years ago, NYC led the way in drug policy, hopefully we can do that once again

Richard J Bonnie, law professor, advisor on drug policy to Nixon and Carter Administrations, member of the Shafer Commission

- 1972 Schaefer Commission report (commissioned by Nixon) recommended marijuana decriminalization
  - Schaefer Commission’s charge was to spend a year thinking about marijuana policy
  - They issued a marijuana report in 1972 and recommended decriminalization of possession of small amounts of marijuana and associated consumption-related behavior
  - Recommended a conservative, cost-benefit rationale, NOT legalization, because we don’t know enough about marijuana
    - No indication that moderate use is harmful, but we must consider the effects on young people and the effects of chronic long term use
    - We also didn’t know enough about regulatory alternatives; how to regulate substances to the benefit of public health – alcohol and tobacco were disasters.
  - Prohibition also ineffective, but we were unsure of a more productive regulatory scheme
  - Written from public health point of view: focus on demand reduction and addiction prevention
  - Emphasized the need to stop referring to “the drug problem” as a singular problem- but rather think about the various nuances of different drugs and different contexts
  - In response to report, Nixon basically said “I don’t care what they say”
- After the Schaefer Commission report, there was tremendous success in terms of changing the nature of the conversation about marijuana
  - Editorial support, national organizations and public health associations (ABA, AMA…)
  - 12 states decriminalized marijuana between 1973-77
- The gradual unraveling of marijuana prohibition was interrupted by an effort to reconsolidate prohibition
  - Hit a wall in 1977-78: worries about adolescent use
  - Grassroots parents movements activated in opposition
  - National drug use surveys showed increase in use
  - Nancy Reagan took up the cause -- Just Say No, zero tolerance, opposite of commission recommendations
- 20 year dark period in our nation’s history: over-incarceration, over-criminalization
- Meanwhile, we have some experience with trying to regulate legal drugs
Questions of how to effectively use the regulatory space to reduce tobacco use; prohibition is not an alternative

- 1993/4: Emphasis on youth as age of initiation of drug use (therefore the focus of prevention)
- 2003-4 Congress mandated Institute of Medicine to do report on underage drinking
  - Found methods of prevention through utilization of laws; in particular related to commercial promotion
- During the current era, we see marijuana prohibition’s unraveling
  - Medical use has evolved; however this is entirely separate from full legalization
    - 1999 IOM Report asked the question “is there a basis for legitimate medical use, and what should we do if there is?”
    - Legalization for medical marijuana helped create political, social and economic conditions that were conducive for recreational legalization & use
- Support for decriminalization has revived
  - In part, because of the escalating arrests
    - When the commission studied arrests nation-wide in 1973, determined that there were 200,000 arrests nation wide. Felt financial costs/numbers were much too high
    - Today arrests ~900,000
- Colorado and Washington (legalization of recreational marijuana) entirely changed context of marijuana policy
- Why the change in marijuana views?
  - Demography (generational differences), increase in libertarian thinking, reactions to the excesses of criminal justice policies/over-incarceration, fiscal pressures, recalibration of federalism in our country (e.g., a growing sense that we should let the states figure this out?)
- Schaefer Commission said: “no matter how tightly controlled, legalization would signify approval of use and, by doing so, inevitably substantially increase prevalence.”
- Do we have better regulatory models today?
  - Alcohol, NO (Youth use has increased, millions of addicts and huge social costs)
  - Tobacco story is more encouraging than alcohol: Policy levers → excise taxes, youth access restrictions, transformation of advertising/retail environment, more regulation of distribution have all decreased use
- Summary of lessons learned:
  - Over-reliance on prohibition and criminalization for illegal drugs to achieve our objectives
  - For legal drugs (alcohol and tobacco), under-utilization of regulatory mechanisms o protect the public health
  - Must closely craft and monitor regulatory programs moving forward

Panel: Drug Wars in the US (Past and Present)

Moderator: Paul Theerman, Ph.D., The New York Academy of Medicine
Jeffrion Aubry, Speaker Pro Tempore, New York State Assembly
Jason Glenn, Ph.D., University of Texas Medical Branch, Galveston
Sam Roberts, Ph.D., Columbia University
Deborah Small, J.D., Executive Director, Break the Chains
Bobby Tolbert, Community Leader and Board Member, VOCAL-NY

Samuel K. Roberts
- NYS began mandatory minimum sentences with the 1973 Rockefeller drug laws
- Medicalization and criminalization historically walk hand in hand
  - Must acknowledge inability to ‘cure all’ and avoid the risk of over-medicalization
• Idea that heroin has jumped from the ghetto to the suburbs is false
  ▪ Jump is really from prescription pills to heroin
  ▪ Geographical factors haven’t changed, must be careful not to allow racial undertones to guide hype
• Medicalization has its limits- must think more broadly about how to address treatment, must re-conceptualize addiction

**Jeffrion Aubry**
• Face of drug use for general society has been historically brown and black
• White drug users weren’t seen as the problem/threat
• Crack-cocaine laws: accepted as criminal justice policy that was protecting everyone
  ▪ Crack addict viewed as a detriment to everyone’s life (the public’s and their own)
• Time for a more sane look at what substance use issues were historically: their origins and who was criminalized and why
• Rockefeller laws were REFORMED but not ELIMINATED
• We have political tools in our hand if we choose to use them
• We are sacrificing an entire generation of young people to the criminal justice system in an attempt to protect young people from drugs
  ▪ The criminal justice burden impacts families for generations

**Jason Glenn**
• The War on Drugs has been one of the most innovative political technologies that our society has ever had
  ▪ Drug prohibition has allowed for a malleable vilification narrative to be applied to any stigmatized group in order to raise hysteria and increase public consent for increasing government reach and helping politicians get elected
  ▪ Rape of white women is central to the hysteria around drug policy
• Examples of how the war on drugs is sued for political ends include:
  ▪ 1950s: Drugs seen as a tool by which to ripen America for communist takeover
  ▪ Reagan: Drug use supports terrorism and the terrorist enterprise
  ▪ Marijuana turned into a symbol of a culture of permissiveness and lack of work ethic (1960-70’s)
• We are currently cycling back towards relaxation of laws but are still susceptible to political rehashing of history
• Must think proactively about preventing narrative of “problem people” and prevent “us vs. them”
• War on Drugs has been innovative in turning large segments of law enforcement into a for-profit business enterprise

**Bobby Tolbert**
• There has never been a war declared on an inanimate object before. This is a war on people.
• War on Drugs is fueled by racism and classism, and we must address these issues in order to create policies that eliminate such situations
• Stigma around use of marijuana has traumatized communities and led to detrimental effects upon the most vulnerable (e.g., youth).
  ▪ The current public narrative is quick to condemn marijuana use, instead of elevating components that promote wellness
  ▪ Imposing police presence causes individuals to feel that they are living in a police-state rather than a democracy
Deborah Small

- LaGuardia’s report from 70 years ago told us marijuana was not particularly harmful, not related to violent crime, does not cause social problems. Why then are we still saying more information is needed to develop good policy?
- Drug War framed to protect children and women, but Drug War supporters are the same individuals who oppose reproductive rights, minimum wage etc.
- The conversation about how to protect children from drugs is a ruse
  - We don’t/can’t pass laws that protect children from gun restrictions, over-prescription of other drugs (used at far higher rates than marijuana), poverty, environmental dangers, educational insufficiency
  - These are all far more dangerous – if we want to protect children we should address these
- We don’t discuss the punitive nature of these policies in black community or the fact that one of the biggest groups that opposed criminalization were black clergy
- Drug War based upon an idea of maintaining a moral standard (set by white people) that white people themselves don’t follow
- Racism supports profitable ventures for others: It’s all about who’s making money, and making sure that those people continue to make money while the rest never question the status quo

Panel: The Contemporary Research Agenda for Drug Use and Abuse

Moderator: Julie Netherland, Ph.D, Drug Policy Alliance
Helena Hansen, Ph.D., M.D., New York University
Julie Holland, M.D., psychiatrist and author
Amanda Reiman, Ph.D., Drug Policy Alliance, San Francisco
Maia Szalavitz, journalist

Julie Holland

- In terms of the state of current marijuana research, our country hasn’t come far – there are lots of roadblocks in research, especially when looking at therapeutic use and benefits of marijuana.
  - Currently impossible to get therapeutic research going, particularly because of NIDA monopoly and their directive to look at harms of drug use; they have no desire to look at health benefits
  - To do a heroin study only need FDA approval. With marijuana research, exists an extra level of scrutiny via need for NIDA approval
  - There is a single supplier for ALL mj studies. Product is very old and not very good.
  - PTSD studies needs a high CBD strain of marijuana which NIDA doesn’t have access to.
- Biggest myth is linking of marijuana use with mental illness (schizophrenia, brain damage, etc.)

Amanda Reiman

- We are fighting the idea of reefer madness. Propaganda has perpetuated that myth, eliciting emotional responses based on fear, not facts
- Our drug policies are formed based on the following ideas: 1) drug use means loss of control over behavior, and 2) who’s using the drug
- Americans now waking up to the fact that criminalization has perpetuated excessive harms
  - Small signs of change:
    - POTUS statement that maybe marijuana is not as bad as alcohol
    - NIDA – approval of one study
- Progressive drug researchers face fear losing funding due to one’s ‘activism’ in a way that isn’t true for other disciplines
- E.g., a social worker can easily be at a child abuse rally and not be accused of being biased, but if you are involved in marijuana advocacy, you’ll be labeled as biased, hurting your chances for funding
- There’s not a lot of funding, especially for social scientists. Tenure positions are extremely competitive and difficult to get
- In general, academics believe it’s best to stay as ‘objective’ as possible and not engage in advocacy

Maia Szalavitz
- In a recent study regarding marijuana and the brain, neuroscience study took one set of images at one point in time; they showed no correlation or causation and yet this study has been cited as linking drug use and brain deficiencies
  - NIDA has been seeking evidence of marijuana’s harm for 40 years, and this recent study was the best they can do
- Media buys into and perpetuates the racial stereotypes that drive drug policy
- Media will continue to spout propaganda and misconstrue science. We need educated, responsible journalists to interpret and call into question misreading of the science as well as bad science.

Helena Hansen
- “Science as politics” is enabled and motivated by a political structure which by definition will be heavily racialized
  - US drug research has managed to de-criminalize another drug – prescription opioids
  - The research program started in the 90s, and it reinforced racialization of opioids versus heroin
  - Methadone heavily racialized by Nixon
- Starting with Bush, funding increased to NIDA for neural imaging to establish biological basis of addiction – a political program. Some well meaning scientists saw this as an opportunity to de-stigmatize addiction and assert as biological, physiological disorder.
- 1990’s had white middle class burgeoning and heroin chic – opened up new markets of poppy cultivation; real ascendance of prescription opioids – approval by FDA as minimally addictive painkiller with time release
  - Congress – utilized racially coded language in record – people who were not “hard users” were not appropriate for methadone maintenance treatment
- The argument for buprenorphine based on what was touted as scientific breakthrough – 1) low overdose potential; 2) manufactured with opioid antagonist - a built in punitive feature to work against opioid use
  - Neuroscience brought a biological model of addiction to justify pharmacological intervention rather than social interventions
  - Private practice limited patient access and made legislators more comfortable with a tiered treatment system
  - Example of racialized and class based tiers of treatment

Moderator: Kassandra Frederique, M.S.W., Drug Policy Alliance
Richard Gottfried, New York State Assembly, 75th District
Hakeem Jeffries, United States Congress, 8th District
Harry Levine, Ph.D., Queens University
Art Way, J.D., Drug Policy Alliance, Denver
Vanessa L. Gibson, Chairperson, Committee on Public Safety, New York City Council
Harry Levine
- See NY Marijuana Slide show
- BE MORE RADICAL! Decriminalization isn’t enough. No arrests. No tickets. No fines.

Congressman Hakeem Jeffries
- Judiciary Committee has traditionally been strongly partisan in terms of ideological conflicts over civil rights issues, reproductive rights, gun control. However, criminal justice reform and cracking down on the over-criminalization that obviously has occurred in America is increasingly bipartisan
  - Judiciary committee constructed a bipartisan task force on sentencing reform
  - Many parties have concluded you must deal with the failed war on drugs and the role that marijuana plays in that
- Though Republicans might not approach marijuana policy reform from a racial inequality standpoint, there are still places to find common ground
- Regarding medical marijuana in Congress, individuals in the Senate and the House have concluded that this is the right thing to do, and the ‘states’ rights’ argument creates a lot of momentum

Assemblyman Richard Gottfried
- In 1977, NY PTA was the number one lobby group for decriminalization – most arrests were young white kids
- Republicans in NY pander to the tiny percentage of people who would not vote for them on drug issues because they tend to be swing votes

Art Way
- In Colorado- Citizens’ initiatives have gotten marijuana on ballots
- Strong libertarian groups in Colorado also played a key role
- People responded to criminal justice reform argument

Presentation: “Where We’ve Been and Where We’re Going: Four U.S. Drug Policy Reform Traditions”
David T. Courtwright, Ph.D., Presidential Professor of History, University of North Florida
*See attached slides: Four US Drug Policy Reform Traditions

US drug policy reform traditions: Progressivism, Liberalism, Drug War, End the Drug War. Each reform tradition immediately prompted by the one that preceded it. Policy has been reactionary therefore causing reform to move in a pendulum fashion. Looking forward, should expect pendulum to swing again.
- First tradition: Progressivism
  - Reformers targeted vice. Feared commercialism of drugs
  - All ‘progressives’ agreed drugs needed to be de-commodified but didn’t agree on the means – regulation vs prohibition - or on which drugs
  - Soft progressive - Bishop Charles Henry Brent
    - More than any person was the guiding spirit of narcotic control
    - Parted from evangelical brethren on issue of alcohol control with his opposition to the Volstead Act (alcohol prohibition)
    - Political context was the Great War, resurgent nativism, and single issue politics
  - 1919- Hard Progressives won in Supreme Court on issues of prohibition. Persuaded 15 states to ban sale, and in some cases, manufacture and use, of cigarettes. Ban of marijuana came in the 1920’s
    - Harry Anslinger epitomized hard line on marijuana and narcotics
Mandatory minimums began
Barbiturates and methamphetamine caught on in medicine

Liberalism
LaGuardia report noted with disapproval the prevalence of cigarette use among children (little marijuana use among school children)
Liberals wanted medicalization and liberalization – argued drugs didn’t always lead to addiction; and when it did, people need treatment. Argued that marginalized Americans should be mainstreamed. Against the black market and in favor of maintenance treatment
Series of reports released over years:
The Opium Problem
La Guardia Report
ABA-AMA Committee on Narcotic Drugs (1958)
Lindesmith – The Addict and the Law
Lawrence Kolb – face of liberalism. Thought addiction and alcoholism to be manifestation of mental illness; patients ought to be supervised rather than oppressed. Flatly declared “this country suffers less from the disease than the misguided frenzy to support it”
Liberalism had a division on issue of maintenance vs. abstinence
Early 70s – double standard of progressivism led into public health liberalism
Beginning of the drug war & golden age of medicalization due to Nixon who made disparate policies to suit his political purposes. Policies ranged from progressivism to liberalism to drug war
Nixon: Introduction of scheduling (supported by both hard and soft liberals). Created new money streams for research. Reduced mandatory minimums. Backed methadone. Called for death penalty of drug traffickers with multiple convictions
Nixon tapes as useful reference
1973 – proposed national mandatory minimums including life without parole for drug traffickers with priors (Watergate stalled the proposal)
Late 70s/early 80s – waning liberal consensus: increasingly attacked for acceptance of dependency. Cocaine becoming more fashionable; increase in drug use among HS seniors

DRUG WAR
Reagan wanted marijuana re-stigmatized, more law enforcement, abstinence treatment
1989 - Bush implemented crack seizures; Congress introduces punitive, anti-drug bills.
2nd Bush: More prisons, law enforcement, etc. Drug policy became partisan bidding game.
End drug war – momentum in early 1990s
HIV/AIDS raised the stakes: increased advocacy for syringe exchange & treatment including methadone assisted treatment
Harm Reduction in ascendancy; Medical marijuana acceptance rising; Support by fiscal conservatives
Holder announces clemency policy
Legalization undercuts black markets but not grey markets
Addiction still a public health concern
Increase in opioid use and overdose, predict a pendulum shift and increase in crackdowns
To the extent that legalization increases drug use there will be a political push back
Basic historical problem – commercialization and refinement of potentially unhelpful products