



ALBANY LAW SCHOOL

GOVERNMENT LAW CENTER

WARREN M. ANDERSON LEGISLATIVE BREAKFAST SEMINAR SERIES



Challenges in Legalizing Marijuana: *Insights from the Anderson Legislative Breakfast Seminar*

by Richard Rifkin

Richard Rifkin is Consultant to the New York State Bar Association and a member of the Government Law Center's Advisory Board. He organized and moderated the program summarized here.

On February 12, the Government Law Center held its first Anderson Breakfast of the 2019 legislative session, presenting a program entitled "Challenges in Legalizing Marijuana." Rather than presenting a debate between those supporting and opposing legalization, the Center offered a program identifying the issues that policymakers will be facing in attempting to legalize a long-

prohibited substance and the difficulties that they will find in trying to resolve those issues.

The panelists for the program were David Soares, the District Attorney of Albany County and current President of the New York State District Attorneys Association (speaking for himself, not for the Association); Julie Steiner, who teaches cannabis law and policy at the Western New England School of Law; and Sara Payne, who heads the cannabis practice at the firm of Barclay Damon. Thus, the audience was offered the thoughts of a law enforcement official, an academic, and a practicing

lawyer. While all of them believed that the time had come for legalization, their perspectives varied.

Ms. Steiner opened the program by raising what she said was the need for social equity. She noted that the marijuana prohibition, which was part of the “war on drugs” of the latter part of the twentieth century, has had a disproportionate impact in our society, with communities of color having suffered significantly. Arrests and incarceration in these communities have far exceeded those in other sectors of our society. She argued that whatever laws and regulations are adopted should address these long-standing inequities.

Her fundamental proposal was that as the new marijuana industry developed, preferences should be given to those who had been the victims of the previous prohibition. They should be targeted for the granting of licenses that will be needed to enter the field. Ownership of retail shops should be encouraged in these disadvantaged communities. Larger operators in the industry should be required to submit diversity plans. As she put it, past drug convictions should be seen as a plus in the selection of licensees. And, finally, newly generated revenues should be used to properly capitalize all of these efforts.

David Soares opened his remarks by saying that he agreed with Ms. Steiner. However, as a long-time prosecutor, he then moved into some of the public safety concerns. Even in these remarks, he noted the importance of focusing on the communities that have long suffered. Illegal drugs have been a significant problem in those communities, and he noted that care must be taken to make sure that the networks of

people who have been, up to this point, producing and distributing marijuana on the black market do not switch to producing more harmful drugs, such a fentanyl.

He then spoke about the sealing or expungement of prior convictions of crimes that will have been repealed. A difficult question is how this is to be done. He suggested that prosecutorial review be part of the legal process so that those who remain a danger to the public not be given relief from their prior convictions. There will be a large number of individuals who are going to be affected by the granting of this type of relief.

The District Attorney further noted the need for additional resources to be dedicated to criminal justice, especially to enable the effective enforcement of motor-vehicle laws. Additional technology and human resources would be needed to detect those driving while impaired by marijuana.

The District Attorney concluded by urging that the state go beyond just ending the war on marijuana. There needed to be a plan to restore the damage, as he compared the situation to the need for the Marshall Plan after World War II, which led to the restoration of countries devastated by the war.

Sara Payne concluded the discussion by focusing on some of the practical problems that will be faced should marijuana be legalized. A number of these problems would result from the continued prohibition of sales by the federal government. This prohibition limits the role of lawyers in assisting clients. It also precludes operators from taking the usual tax deductions because they would be engaging in a business unlawful under federal law. While

she sympathizes with the need to help those with prior convictions, she noted that they are likely to have difficulty obtaining a license or financial assistance from a bank or insurance. These issues need to be faced in any state program.

Ms. Payne was also concerned with the ability of those with limited income or business skills to be licensed as operators. While she understood the goal, the risk is that we would probably be setting them up for failure. She suggested that a staggered licensing system might be created, with those who fairly should be given an opportunity first serve some sort of

apprenticeship before being licensed. She noted that operations in states where legalization had been adopted have shown this to be a tough industry with a significant number of failures.

During the question period, other issues were raised, several of which dealt with tax revenues. The role of local governments was also raised.

In sum, the panel made clear that there were some extremely difficult and complex issues that need to be resolved if an effective marijuana legalization program is to be adopted by the state.