

FORTUNE

Commentary: Jeff Sessions Is Just Wasting Time Cracking Down on Marijuana

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Last week, U.S. Attorney General Jeff Sessions rescinded previous Justice Department guidance, known as the “Cole Memo,” that instructed federal prosecutors to limit the types of marijuana prosecutions they pursue in states that have legalized cannabis in some form.

Sessions’ justifications for rescinding the Cole Memo make perfect sense—to keep the Cole Memo in place.

The Obama-era guidance was developed to respond to the increasing number of states that decriminalized or legalized marijuana for medical or recreational purposes. To date, 29 states and the District of Columbia have allowed marijuana to be possessed or distributed under certain circumstances without criminal consequences. Those states are now in conflict with federal law, which, under the Controlled Substances Act, does not provide for similar exceptions.

To navigate this inconsistency, the Obama DOJ set forth clear enforcement priorities that focused federal resources on the most serious activities related to marijuana: for example, prosecution of marijuana distribution to minors, marijuana-related activity to support cartels or as cover for other illegal activity, or the use of firearms in connection with the cultivation and distribution of marijuana. This focus was necessary in part, according to the Cole Memo, because DOJ must use its “limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way.”

Sessions acknowledges—and almost parrots—the reasoning of the Cole Memo, but remarkably comes to a different conclusion. He agrees that the Justice Department has “finite resources.” He understands that DOJ prosecutors cannot prosecute every crime and must “decide” which cases to bring forward. And, in making those determinations, Sessions realizes that federal prosecutors must take into account “all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community.”

But by positioning DOJ to pursue more marijuana prosecutions, Sessions himself did not factor in all relevant considerations. The fact that nearly three-fifths of the states have legalized marijuana in some form explicitly shows that marijuana activity is not considered to be a serious crime, much less one that should be deterred through criminal prosecution. And, Sessions may believe that marijuana is only slightly less awful than heroin and that there is a link between marijuana and violence, but organizations across the ideological spectrum have definitely concluded otherwise.

The Drug Policy Alliance has been pushing back on this theme for years. And recently, the Cato Institute has stated, “Marijuana liberalizations (decriminalization, medicalization, and legalization) have generated none of the negatives asserted by Sessions; in fact, the evidence shows minimal impact on use, health, traffic safety, education, or crime.”

In the end, the only consideration that seems to matter is the decades-old priorities of Attorney General Sessions, regardless of whether the public or his former colleagues in Congress from both sides of the aisle excoriate his harmful decisions.

Attorney General Sessions is right when he says the Justice Department should be focused on addressing serious crimes. Marijuana just isn't one of them.