"MEDICAL" MARIJUANA, FEDERAL DRUG LAW AND THE CONSTITUTION'S SUPREMACY CLAUSE

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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"MEDICAL" MARIJUANA, FEDERAL DRUG LAW AND THE CONSTITUTION'S SUPREMACY CLAUSE

TUESDAY, MARCH 27, 2001

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:42 p.m., in room 2154, Rayburn House Office Building, Hon. Mark E. Souder (chairman of the subcommittee) presiding.

Present: Representatives Souder, Weldon, Barr, Jo Ann Davis of Virginia, and Cummings.

Staff present: Chris Donesa, staff director; Sharon Pinkerton, chief counsel; Charley Diaz, congressional fellow; Conn Carroll, clerk; Tony Haywood, minority counsel; Denise Wilson, minority professional staff member; Ellen Rayner, minority chief clerk; Earley Green, minority assistant clerk; and Lorran Garrison, minority staff assistant.

Mr. SOUDER. The subcommittee will come to order. Good afternoon and thank you all for coming.

We hear repeatedly that one of the keys to an effective and meaningful drug policy is to reduce demand in the United States, whether it be in hearings or meetings with government officials and drug victims, more popular sources like "Traffic," the "West Wing," or last week's series on "Nightline," or even from foreign leaders. I expect the subcommittee will aggressively explore demand reduction issues during this Congress, beginning with today's hearing examining one of the most troubling demand reduction and law enforcement issues we face today, the effect of so-called "medicinal" marijuana initiatives on attitudes toward drugs and on Federal law enforcement.

It should be obvious that one of the cornerstones of even a basic demand reduction strategy is to tell our citizens not to use illegal drugs. Eight States and the District of Columbia, however, have adopted State laws which have the effect of encouraging their citizens to use illegal drugs for medicinal purposes. These initiatives are wholly contrary to Federal statutes, which have explicitly stated by law that marijuana, "has no currently accepted medical use in treatment in the United States." In addition, they sent even more confusing and contradictory messages to our already confused children at a time when their attitudes about marijuana use may

be open to bad influences and they may be led to even harder drugs.

Let me be very clear here. The critical issue here is not whatever medicinal benefits smoked marijuana may or may not have. Federal law has established proper procedures to review that question, which have not been followed. The issue is a more fundamental one that goes to the heart of our Federal Government and Federal law enforcement. In our Federalist system, even strong advocates of States rights, among which I would count myself, have to agree that States simply cannot pass their own laws contrary to Federal law whenever they disagree with the Federal law. The result would be anarchy. And we have literally seen symptoms of anarchy with respect to marijuana enforcement as a result of these State initiatives.

In California, Federal and State agents have told subcommittee staff that the initiative there, proposition 215, has led to uncertainty on the part of State and local law enforcement and has had the practical effect of curtailing most marijuana enforcement in the State. The city of Oakland has repeatedly declared, "a public health emergency," because citizens cannot obtain marijuana. State judges have ordered local police to return seized marijuana to its owners, forcing the DEA to detail agents to seize very small amounts of marijuana held by local officers. About a week ago I received a briefing from the DEA in San Francisco, that marijuana growers are attempting to claim that large crops are medicinal in purpose and have threatened to hold Federal agents personally liable for the cost of the plants. The fundamental relationship between the Federal and State and local law enforcement relies on a vigorous marijuana enforcement by States and localities. That relationship has now been called into question.

I believe that this hearing is important for several reasons. First, we will have an opportunity to review serious issues of Federal law enforcement and public attitude. The Supreme Court will also consider related issues tomorrow when it hears oral argument in the Oakland Cannabis case, which will consider whether State initiatives or other authority provides a medical necessity defense to the clear Federal law against marijuana use for any stated purpose. I commend the Justice Department and the Solicitor General for their advocacy in this case and hope that the court is able to swiftly bring some clarity to the field.

Second, we will have an opportunity to review concerns that these issues fundamentally are not about sick people, but instead about backdoor efforts at outright legalization of marijuana. And third, we will obtain some long-term perspective from respected veterans in the field.

We have some excellent witnesses with us today, and I thank you all for coming. On our first panel we have concerned citizens. Betty Sembler is the founder and Chair of Drug Free America Foundation, and Joyce Nalepka is the President of America Cares. Both are tireless and unwavering advocates for our families and children, and it is a real pleasure to work with them and have them here today. We also have Rob Kampia from the Marijuana Policy Project, who is an advocate of medicinal marijuana initiatives and medical marijuana use.

On our second panel, we have from the DEA Laura Nagel, who is Deputy Assistant Administrator for Diversion Control. We will hear from two former Members of Congress, both of whom have been extremely active on this issue. I would like to welcome back Bill McCollum, former chairman of the Subcommittee on Crime and author of the legislation regarding the State initiatives which passed the House 310 to 93, and Dan Lungren of California, who is also the former Attorney General of California and in that role has had substantial experience with proposition 215. I thank you both for traveling here today and for sharing our perspectives. We also have Dr. Janet Joy, of the Institute of Medicine of the National Academy of Sciences, who edited an IOM study on the potential uses of marijuana.

We look forward to all your testimony. I would now like to recognize Mr. Cummings for an opening statement.

[The prepared statement of Hon. Mark Souder follows:]

Opening Statement
Chairman Mark Souder

'Medical' Marijuana, Federal Drug Law
and the Constitution's Supremacy Clause

Subcommittee on Criminal Justice, Drug Policy,
and Human Resources
Committee on Government Reform

March 27, 2001

Good afternoon and thank you all for coming. We hear repeatedly that one of the keys to an effective and meaningful drug policy is to reduce demand in the United States, whether it be in hearings and meetings with government officials and drug victims, more popular sources like "Traffic," the "West Wing," or last week's series on "Nightline," or even from foreign leaders. I expect that the Subcommittee will aggressively explore demand reduction issues during this Congress, beginning with today's hearing examining one of the most troubling demand reduction and law enforcement issues we face today -- the effect of so-called "medical" marijuana initiatives on attitudes toward drugs and on federal law enforcement.

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Mr. CUMMINGS. Thank you very much, Mr. Chairman. I want to join you in welcoming our witnesses here this afternoon, and I want to thank them, particularly Mr. Kampia and Dr. Joy, who had to come on very short notice, but I thank you for making yourselves available. The diversity of perspectives represented here today ensures that we will hear the full spectrum of views on the very contentions subject of this hearing, and I wanted to commend you for your willingness to be inclusive.

Mr. Chairman, this hearing's subject is not only contentious, it is also a bit more complicated than the title of the hearing lets on. As we all know, the Supreme Court is poised to hear argument for the first time on the constitutionality of State laws making legal under State law conduct that is expressly prohibited under Federal statutory law; namely, the possession and use of marijuana for medicinal purposes. No doubt because of this impending event today's hearing has been cast in terms of the constitutional question presented to the court, broadly speaking whether the supremacy clause will allow the State laws to operate in the context of a Federal Constitution.

One thing we are certain not to accomplish this afternoon, however, is the resolution of that question. We will hear many of the arguments that the court will hear tomorrow. But it will be the court's job, not ours, to evaluate them and issue a definitive ruling. The constitutional question raised by the State ballot initiatives and the legislation that have been passed is but one of several dimensions to the debate over medical marijuana in Congress. And by and large the members on this panel and the witnesses we are about to hear expound about the constitutional merits of the State ballot initiatives question do not come by their position solely on the basis of jurisprudential philosophy. Inescapable among the issues raised is the fundamental question of whether the medical use of marijuana should be legal under any statutory scheme; that is, does marijuana offer medical benefits that outweigh its harmful attributes such that its legalization for the purposes of treating certain medical conditions is justified.

Some of my colleagues believe absolutely that it does not. Others are convinced that it does. Between these two camps are those who support rigorous scientific investigation to determine the safety and efficacy of marijuana in the treatment of conditions in which its effectiveness may be indicated. Even among those in the latter group there is disagreement on the question of whether the terminally ill who might benefit and for whom the long-term harms may be irrelevant should have immediate access to medical marijuana while studies on its effect are pending.

Separate from the health ramifications of medical marijuana initiatives is the question of process. Should State's have the authority in effect to establish separate standards and do the contrasting State laws pose an undue obstacle to the effective enforcement of the Federal drug laws in the States that have adopted them? Does the current controversy suggest flaws in the process for scheduling drugs under the Controlled Substances Act?

As I have noted, the Supreme Court will soon resolve whether the State laws can provide a valid defense to Federal defendants charged with criminal possession and distribution. Whatever the

outcome of the pending legal controversy might be, it will not provide the last words on any answer to many of these questions. Congress will inevitably be left with policy decisions to make.

I look forward to hearing the perspective of our witnesses today and I thank them for being here.

Mr. SOUDER. Before proceeding, I would like to take care of some procedural matters. I first ask unanimous consent that all Members have 5 legislative days to submit written statements and questions for the hearing record, that any answers to written questions provided by the witnesses also be included in the record. Without objection, it is so ordered.

We will now begin our first panel, which is made up of citizens who have expressed concerns regarding the issue before us today. I would like to welcome Betty Sembler, Joyce Nalepka and Rob Kampia. As an oversight committee, it is our standard practice to ask all our witnesses to testify under oath. If the witnesses will stand and raise their right hands, I will administer the oath.

[Witnesses sworn.]

Mr. SOUDER. Let the record show the witnesses have all answered in the affirmative.

We will now recognize the witnesses for their opening statements. I would like to thank you for being here today. We would like you to summarize your testimony in 5 minutes. You will see the lights. There is a yellow with 1 minute to go, and you may put your full statement in the record.

Mrs. Sembler, do you have an opening statement?

STATEMENTS OF BETTY SEMBLER, FOUNDER AND CHAIR, DRUG FREE AMERICA FOUNDATION; JOYCE NALEPKA, PRESIDENT, AMERICA CARES; AND ROB KAMPIA, EXECUTIVE DIRECTOR, MARIJUANA POLICY PROJECT

Mrs. SEMBLER. Thank you very much. Good afternoon and thank you very much for the opportunity to speak before you today. As you said, I am the president and founder of Drug Free America Foundation, Inc., an organization whose mission is to expose the hidden agenda of those who wish to legalize all Schedule I drugs in our country.

Their agenda includes subverting Federal supremacy, manipulating public opinion, and perpetrating a fraudulent marketing campaign touted as compassion for the sick. We have all witnessed this campaign, some of us agape at the blatant untruths used to convince voters in eight States and the District of Columbia that smoked crude marijuana is really medicine, quote-unquote, dressed up to look like a weed.

These drug pushers in coat and tie are intent on using any means possible to market addictive, unsafe, life threatening substances to our children. In a clear violation of Federal drug laws and the Constitution's supremacy clause, these business men disguised as medical experts, using tactics worthy of the Goebbels award, Hitler's Propaganda Chief, distort truth, eschew legitimate research, manufacture facts and bombard the public with disinformation.

For example, they continually say the war is lost, that our prisons are overflowing with nonviolent drug offenders, no use edu-

cation is to be replaced with so-called responsible use instructions. Examples abound.

It is a feckless endeavor to look any further for explanations that would adequately illuminate their motivations. We already know what their motivation is. It is documented by their own words and certainly their own actions. The only thing standing in their way is the Constitution of the United States of America.

To sweep away the protection offered by that august document, the money bags have employed wordsmiths so they can hide behind the first amendment, and therefore cleverly use the word "recommend" as a euphemism for "prescribe."

If you read the fine print on any of the initiatives or examine the tactics that are being used in States that have no initiative process, it becomes very clear that this is not about compassion and it is certainly not about medicine. It is about softening public opinion without regard for truth to promote the acceptance that to chemically alter one's mind is an inherent right.

The premise is that old excuse about a victimless crime. There is no such thing as a victimless crime. The parents of this Nation are helpless without you as our elected representatives stepping up to the plate and telling the people the truth, "you have been misled."

We cannot afford to tear up our constitution in order to provide inordinate profits to those who ignore the safeguards intended to protect us.

Thank you very much. May I yield the rest of my time to my colleague Joyce Nalepka?

Mr. SOUDER. Yes.

[The prepared statement of Mrs. Sembler follows:]

STATEMENT OF

Mrs. Betty S. Sembler

President/Founder

Drug Free America Foundation, Inc.

March 27, 2001

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We cannot afford to tear up our Constitution in order to provide inordinate profits to those who would ignore the safeguards intended to protect us.

Thank you.

Mrs. NALEPKA. Thank you. Good afternoon, Chairman Souder and members of the committee. I am Joyce Nalepka, president of Drug Free Kids: America's Challenge. I was also a founder and former president of Nancy Regan's National Federation of Parents for Drug Free Youth during the Reagan administration. On behalf of parents and grandparents across America, I appreciate your invitation to testify and your willingness as a committee to take on this difficult issue.

Our most important job is preventing kids from getting involved in drugs, and the second most important job is exposing the underground drug culture represented by groups working to legalize drugs for their own pleasure. These are the groups that have passed initiatives in nine States already because an unsuspecting, compassionate public wasn't informed on the motives behind the legalizers' scam.

As a 25-year veteran in the parents anti-drug movement, I can testify that some of the most dangerous traffickers are those trafficking in misinformation. They have been for years telling young people marijuana is a harmless giggle and now they are attempting to convince a compassionate public that marijuana cigarettes or joints are medicine. Legalizers were helped substantially, in my opinion, by the government-funded Institute of Medicine study.

I was one of the few who testified against the issue when one of the public hearings was held in Washington, DC. I noted that the audience was filled with folks that I recognized for years as legalizers. Finally, in 1999, Dr. John Benson, one of the coprincipal investigators, wrote, "It is true that a pro-legalization group, the Marijuana Policy Project, organized the attendance of many of the patients." It must also be noted that Kenneth Shine, IOM president, serves on one of George Soros boards or committees.

High Times, a drug glamorizing magazine, reported in September 1993 that the Marijuana Policy Project receives funding from George Soros. MPP was the brainchild of Eric Sterling, we were told, formerly of the Drug Policy Foundation. DPF's idea of drug prevention was to develop a safe crack smoking pipe so users could smoke crack without burning their lips.

Representing the concern of parents and grandparents, students and teachers, I am here to tell you that people are looking to you congressional leaders for help. They want results and they really need them now. From the experience of the numerous anti-drug parent groups throughout America, we have a plan that, if implemented on a fast track basis, could reduce student drug use by 50 to 90 percent and also significantly reduce school violence by the end of the next school term in June 2001 through 2002.

The key ingredient in this is finding the necessary leadership in Congress and the administration to adopt and implement the plan. These expectations of early success are based upon hard data from previously tried and proven anti-drug efforts.

Our plan involved the following as a package. The elimination of any one element could lead to a continued failure to protect America's kids from drug dealers and traffickers. We need a national anti-drug leadership to be established at the highest level of government. Nancy Reagan's leadership attracted financial support to the parents' anti-drug movement so we could hire staff and hold

national conferences, disseminating valid scientific information to drug-besieged parents across America. Our efforts resulted, according to NIDA, in a 50 percent drop in child drug use during the Reagan-Bush years.

The recently introduced bill, S. 304, authorizes Federal funding specifically for identification and treatment of drug involved kids, 18 and younger. If this could be fast tracked to early enactment, rescue of drug involved kids could begin at an early age. The S. 304 bill needs to be amended to authorize and encourage local school districts to fully utilize drug testing programs as an effective means of identifying drug using kids in need of treatment. Also needed is legislation requesting the Supreme Court to expedite appeals from several existing conflicting U.S. Appeal Court rulings on student drug testing.

Money should be redistributed from the current public service program to provide funding for anti-drug parents organizations. We must expedite the appointment of a new White House drug czar with specific instructions to work with parents groups. Of critical importance is the reintroduction and expedited enactment of Congressman Souder's former bill, H.R. 4802, or express preemption to block drug traffickers' attempts to legalize drugs by tricking a naive public into voting in favor of harmful but attractive, sounding State referendum initiatives for medical marijuana cigarettes and legalizing hemp.

We understand the Drug Enforcement Administration is eager to work with you to expedite the bill's passage. We urge you to call them and to enlist the White House. We promise you that we will be the wind beneath your wings to get this passed.

The parents' movement is a potent but underutilized force in America today. In less than 2 weeks we organized over 50 parents anti-drug groups and like-minded individuals to voluntarily collaborate on a Friend of the Court brief for tomorrow's Supreme Court hearing on whether a smoked marijuana joint can be classified as medicine. That absurd proposition would never have reached the Supreme Court if it weren't for massive pro-drug funding in the absence of parent organizations to rebut that silly idea.

I have in my hand a copy of our amicus brief in that case, *United States* v. *Oakland Cannabis Buyers Cooperative.* We are making an attempt to put a face on the numbers that people tell us of kids that are on drugs and we have parents coming in from across America bringing pictures of their dead children that we believe will put a face on this. After the vigil and the Supreme Court hearing, we will hold a strategy meeting from 2 to 5 p.m., at the nearby Hyatt Regency Hotel to discuss effective government actions, as suggested herein, to eliminate drugs from America's schools and communities in order to lecture safety and peace to the citizens.

We parents are alive and well and ready to take on the drug traffickers, but we need effective legislation to help us. We now have new leadership and you have the ability to provide us that help by your urgent consideration and adoption of the program we have outlined. We have access to technical, legal and managerial experts in the anti-drug field and we have a long established network of involved anti-drug leadership to make the programs work and work quickly. We are willing and able to work with your leadership to

work out any problems. If we move quickly, these measures could be implemented by next school term.

We feel there are absolutely no excuses. There are 16,000 young people dying every year and if we don't get started soon on a major fast track basis, students' drug use and drug shootings will continue unabated to the everlasting shame of those who failed to recognize this great opportunity to move forward. And I also have, which I will leave for the committee, a manual that we have put together making the case for Federal school drug testing, which has been very, very successful, one particularly in Texas where in 2 years not only did they have a drug free school but a long list of parents waiting to get their kids into the school. And it is said if we don't know history we are destined to repeat it.

Yet as Jill Jones points out in a book, "Hep Cats, Narcs and Pipe Dreams," the scientific and medical communities generally failed to sound an alarm to the American public about cocaine's devastating effect in the early 1900's and the impact it could have with its return in the 1970's. We have experienced the same problems with getting marijuana research disseminated. The only scientist of this "we love cocaine" era to inveigh vocally and publicly against cocaine and marijuana was Dr. Gabriel Nahas, pharmacologist and professor of anesthesiology at Columbia University, an outspoken critic of those who said marijuana was a harmless giggle. Even then, Nahas was attacked constantly. His paper is in the packet of information I gave you and just one final comment.

I have before me what may look strange to some of you. This container contains 450 some M&M's, illustrating the number of chemicals that are in a marijuana joint or cigarette before it is lighted. The other two jars each have 1,000 M&M's in them, demonstrating what happens when you light this joint with 450. They begin to act synergistically with each other and then you have 2,400 and I believe it is some 50 odd chemicals and I suspect that none of us would be happy if we walked into our doctor's office and said, here, you take these. Yet, that is exactly what these kids are smoking.

The most clear damage from marijuana seems to be from the immune system. And NIH has made a statement that, "People with HIV and others whose immune systems are impaired should avoid marijuana use." I will close with that, and I wish we had 2 days.

[The prepared statement of Mrs. Nalepka follows:]

TESTIMONY OF

JOYCE D. NALEPKA

DRUG-FREE KIDS: AMERICA'S CHALLENGE

MARCH 27, 2001

COMMITTEE ON GOVERNMENT REFORM, DRUG POLICY AND HUMAN RESOURCES

"Federal Drug Law and the Constitution's Supremacy Clause"

1805 Tilton Drive ★ Silver Spring, MD 20902 ★ 301-681-7861

Good afternoon Chairman Souder, members of the committee and members of the media. My name is Joyce Nalepka, I am president of Drug-Free Kids:America's Challenge. I was also a founder and president of the National Federation of Parents for Drug-Free Youth when Nancy Reagan was its chairwoman. On behalf of parents and grandparents across America, I appreciate your invitation to testify to the effect which state laws and initiatives purporting to permit so-called "medicinal" use of marijuana cigarettes/joints and other Schedule I controlled substances have had on the enforcement of federal narcotics law.

Since Mrs. Sembler has testified on the overall picture of the legalizers' efforts to mislead the public, let me just say briefly that the solution to the state initiatives and the "medical" marijuana cigarette hoax is within our grasp.

In fact, Congressman Souder first introduced the bill last session. It was HR 4802 or an express preemption to the Controlled Substances Act specifically preempting any state from passing laws that violate the Federal Controlled Substances Act. We ask that this bill be reintroduced and passed as soon as possible. We understand the Drug Enforcement Administration is eager to work with you. We urge you to contact each other. The express preemption bill will be #1 on our agenda when we meet tomorrow with parents and grandparents from across America who are here to attend the Supreme Court hearing and hold a memorial vigil in front of the court to remember the tens of thousands of young people who have died as a result of a drug incident. We invite you and all members of Congress to join us, from 10 am to 1 pm, in that vigil.

As an example of why we need express preemption legislation, Maryland legislators recently had a "medical" marijuana cigarette bill before the Judiciary Committee. The legalizers were there in force to testify that marijuana cigarettes were somehow "medicine." Of critical importance to members of this committee and to Congress, is the testimony delivered by law professor, Byron Warnken, University of Baltimore and University of Maryland. He was there to testify for the legalizers.

Speaking in favor of the "medical" marijuana cigarette bill, Professor Warnken said, repeatedly, to the Maryland legislators, "you have absolutely nothing to fear in passing this bill. Because there is NO EXPRESS PREEMPTION and the Feds will never touch you." (I have a tape of his statement.)

As a 25-year-veteran in the anti-drug parents' movement, I have had the opportunity to discuss this issue with law enforcement officers from several of the states affected. California has been particularly harmed because this is where the major proponents of drug legalization have become entrenched. Law enforcement officers have told us they observed kids as young as 12 coming into the Cannabis Buyers' Cooperative there with a note written on restaurant napkins saying, "My doctor recommended pot." You see, the legalizers are very careful not to use the word prescription because no self-respecting physician would recommend smoked leaves for anything.

There are solutions to the adolescent drug epidemic. They are so simple, most don't want to take the time to listen and certainly no one has been willing to adequately fund the effort. I'm referring to the parent group movement of the early 80's. I have included a graph produced by the Center for Substance Abuse Prevention showing a 50% decline in illicit drug use during the time when parent groups were well organized and actively involved in exposing the drug legalizers.

These parents groups, chaired by former first lady Nancy Reagan, centered around the friendship circle of their children. They worked to help schools get rid of programs that taught "pro-drug" or "responsible use" messages. They worked in courtwatching. They worked with their local broadcasters who, in the 80's did PSA's for free with the help of the ad council. Today, we've put $195 million into ad campaigns that are not always helpful. In fact, the recipients have repeatedly refused to do even one ad scientifically explaining why pot is not "medicinal." NIDA has also neglected to tell the public of new marijuana research out of Columbia University that proves IRREVERSIBLE damage to the immunity system.

I bring it up because not only have voters in 9 states been misled to believe marijuana cigarettes are "medicine," this issue comes up before the U.S. Supreme Court tomorrow. Since I am not a scientist, I don't feel qualified to answer many questions about this research but have included a copy of a paper issued by three doctors and a lawyer for submission into the record. I encourage you to study it carefully and consider a full hearing on the damage marijuana, alone, does to the human system. Briefly, the paper says,

"It is critical that the court considers that THC, the active ingredient of marijuana has the property to impair IRREVERSIBLY the formation of DNA in sperm cells and in lymphocytes (cells of the immunity system). DNA is the chemical molecule that makes up the genome that carries and transmits life. Decreases in sperm production and increases in abnormal forms caused by THC have been recently attributed to a biological phenomenon known as "apoptosis" of the cell.

Apoptosis is the process of programmed cell death occurring over hours and days, in successive stages, resulting in the fragmentation of DNA and the disintegration of the cell. It is a fundamental process emphasized in the first report on the human genome in 2001. Apoptosis is controlled by an important cluster (homeobox) of genes, which order the self-destruction, or suicide, of the cell." Dozens of studies reported the damaging effects of THC on DNA formation in sperm cells and lymphocytes. The studies are assembled in the book "Marihuana and Medicine." (Humana Press. Totowa, NJ, 1999)

I am enclosing for the record an NIH Publication stating "Patients with HIV and others whose immune system is impaired should avoid marijuana use."(95-4036, P. I7)

We want to know why NIDA is not shouting this information from the rooftops. AIDS patients are being victimized by the legalizers who are using them to promote their "Pot is medicine" scam as a treatment for AIDS patients. Logically, it makes no sense to me for AIDS patients to smoke marijuana which attacks the same immunity system that the HIV virus attacks.

Not only is this a travesty against AIDS patients, it is sending a wrong message to young people which they interpret as "Pot is harmless or may even be good for you."

I will be attending the Supreme Court hearing tomorrow. Knowing the medical evidence is critical for the justices, we organized over 50 groups and filed a friend of the court brief explaining the medical evidence against pot. I feel a wrong decision in this case would be devastating to the future of this country. Personally, I will consider anything less than a unanimous vote against allowing Cannabis Buyers' Clubs as a failure of our system. These medical decisions must be under the scientific direction of the Food and Drug Administration-not voters.

I suggest Congress hold a full hearing on both the scientific evidence on marijuana's effects and the phenomenon of the parent group successes of the 80's. We must find the money to rebuild the parent movement and institutionalize it so that it does not die out every 5 years or so. Enclosed in my testimony is another NIDA/NIH brochure stating, "We need to rebuild the parents' movement...to get concerned parents involved again and give them the information needed...the most up-to-date information about what drugs do to people." (97-4212)

Though we can't improve the past, I think it's important to understand it. Otherwise, we can't avoid making the same mistakes in the future. I COULDN'T HELP SMILING today when I watched a C-Span program of a hearing and heard a prominent senator ask a witness, "Tell us in 60 seconds or less how bad the drug problem is and how to solve it."

I'm afraid that's part of the problem. We haven't taken the time to really listen since Maryland Senator Charles Mathias held two days of hearings for us in 1980. It was these hearings that ignited and united the parent movement that reduced teen drug use by 50%.

It was in 1979, during our campaigns to rid our communities of drug paraphernalia shops, that we first encountered the drug legalization underground culture. In these shops, we also discovered pro-drug magazines like HIGH TIMES, a magazine that I can best describe as the "HUSTLER" of drugs.

In the September, 1979 issue of HIGH TIMES, Keith Stroup, the founder of one of the most tenacious pro-drug groups called the National Organization for the Reform of Marijuana Laws (NORML) wrote in a letter to the editor "....there is no particular evidence that even those few young people who smoke a great deal of marijuana necessarily hurt themselves or reduce their level of performance academic or otherwise." The magazine had a reported readership of 30,000 at that time.

In the same year, Stroup told a group of Emory University students, "we're trying to get marijuana reclassified medically. If we do that, we'll be using the issue as a red herring to give marijuana a good name." It took them a while but once billionaire George Soros and three other millionaires signed on to fund their cause, parents' efforts began being run over by a scam movement that we must stop. We can only succeed with the help of Congress.

In NORML's 10th Anniversary magazine, Stroup says, "Most drug sellers today are decent people; they should not be treated like violent criminals." I suggest to you, ladies and gentlemen, that mind destruction is a violent crime.

In March 1977, Stroup testified before Congress that he wanted a "completely open market with no age controls and no street controls." (SCNAC-95-1-8)

Stroup is but one of the leaders of this march across America ruining children's lives and trafficking in misinformation -- especially about marijuana. They have placed a whole generation at risk. I submit to you ladies and gentlemen that Stroup is, in my opinion the FATHER OF THE TEEN MARIJUANA EPIDEMIC IN AMERICA AND RESPONSIBLE, IN MY OPINION, FOR TENS OF THOUSANDS OF DEAD KIDS who believed him when he said there was "no evidence that pot would hurt them." Many died in accidents or went on to poly drug use. We firmly believe that marijuana and other drugs are responsible for the bulk of school violence, school dropouts, teen pregnancy and sexually transmitted diseases, including AIDS.

We have come full circle now with infants and children dying as a result of parental drug use that causes neglect or murders of their own babies.

I call your attention to the September 20, 1998 Washington Post story of Baby Chaulette. Baby Chaulette was found in a crack house at age 4 months weighing only10 pounds. Her skin was raw and rotted. Doctors found 2 pounds of fecal matter in her diaper. In Philadelphia, the medical examiner declared 10 baby deaths due to secondhand crack smoke.

These babies, could have been any one of our grandchildren—had our children been drug users because young people in treatment tell us they would sell their bodies to anyone who had enough cash for their next high.

Our schools are halls of nightmares for all kids—users and non-users who cannot learn either because of fear in the case of non-users or because, in the case of users,—they're stoned or high.

In an effort to re-establish drug-free schools, we are preparing to have a non-punitive universal school drug testing bill introduced. I have a copy of our manual to be inserted into the record. We cannot allow our children to be unsafe in the very place where, next to their home, they should feel confident they will be protected.

Thank you. **For more information:**

Drug-Free Kids:
America's Challenge

March 27, 2001

History of Attempts to Legalize Marijuana
Why Express Preemption Legislation Is Imperative

Thirty years ago, Congress enacted the Federal Controlled Substances Act or "CSA" to deal in a comprehensive fashion with the growing menace of drug abuse in the United States. The CSA strengthened the nation's drug laws and ensured increased efforts in drug abuse prevention, by providing more effective methods for law enforcement officials to control drug abuse, and by providing appropriate penalties for drug traffickers.

For most of the 30 years that have now passed since that time, pro-legalization groups such as the National Organization for the Reform of Marijuana Laws (NORML) have tried every method they could think of to obliterate the nation's marijuana laws.

Two former congressman, one a Republican and one a Democrat presented a letter to a former Director of the National Institute on Drug Abuse stating:

"So there we are: NORML not only stands for the legalization of marijuana but for the ultimate legalization of all drug use. But it is not just a matter of having some wrongheaded convictions about the absolute right of the individual to use whatever drugs his fancy turns him to. By every meaningful standard, NORML has to be considered a militant organizational arm of the drug culture in this country, working in close collusion with the paraphernalia industry, the drug culture magazines and, to a certain extent, even the traffickers. There is public evidence that NORML receives the bulk of its ... annual budget from sources like HIGH TIMES MAGAZINE and paraphernalia dealers." Today, it is rumored George Soros, etal are a major funding source.

First, in the 1970's, NORML and other drug-legalization groups asked the Drug Enforcement Administration to remove marijuana from the list of drugs subject to control under the CSA. NORML tried to claim that marijuana use was *not* drug abuse—a claim they still cling to. When that claim was shown to be baseless, NORML and the pro-drug groups, changed tactics. In the 1980's, they argued that smoking marijuana—and inhaling the hundreds of burning chemical constituents in marijuana—should be considered "medicine"—even though the Food and Drug Administration has never approved marijuana cigarettes for ***any*** medical use. NORML's "medical use" of marijuana cigarettes argument was likewise proven to be utterly lacking in scientific merit. The DEA Administrator concluded: "By any modern scientific standard, marijuana is no medicine." In 1994, the United States Court of Appeals for the District of Columbia Circuit upheld DEA's denial of the NORML petition. The Court of Appeals declared:

"Our review of the record convinces us that the DEA Administrator's findings are supported by substantial evidence...The Final Order canvasses the record at length. It recites the testimony of numerous experts that marijuana's medicinal value has never been proven in sound scientific studies.

P. O. Box 60865, Washington, D. C. 20039 FAX & Phone: 301-592-9100 Phone: 301-681-7861

The Administrator reasonably accorded more weight to the opinions of these experts than to the anecdotal testimony of laymen and doctors on which petitioners relied..."

"The judges concluded, "...none of these (doctors) could identify under oath the scientific studies they swore they relied on. Only one had enough knowledge to discus the scientific technicalities involved. Eventually, each one admitted he was basing his opinion on anecdotal evidence, on stories he heard from patients, and on his impressions about the drug."

Final Order: "These findings are consistent with the view that only rigorous scientific proof can satisfy the CSA's currently accepted "medical use" requirement.

Conclusion: "For the foregoing reasons, the petitions for review are: ***Denied."***

One year later, in 1995, the marijuana legalization groups tried yet another tactic. Jon Gettman and High Times Magazine submitted a petition to DEA again asking DEA to remove marijuana from the list of illicit drugs in Schedule I of the CSA. This time, the legalizers were not arguing that marijuana is medicine. Instead Mr. Gettman and High Times Magazine claimed that marijuana does not have a "high potential for abuse" and therefore asked that it no longer be classified as an illicit drug under the CSA. By the way, if this sounds similar to what I said earlier, it is. The claim that Mr. Gettman and High Times Magazine made in their 1995 petition to DEA was basically the same claim that NORML made to DEA in the early 1970's ...that smoking marijuana is ***not drug abuse.***

NORML'S claim that marijuana does not have a high potential for abuse is quickly and easily refuted by looking around us at our schools and the young people in our communities, however, the following statements from the University of Maryland Center for Substance Abuse Research validate our anecdotal evidence:

June 2000 "Marijuana-Related Emergency Department Visits Now as Common as for Heroin"

March 1999 "Greatest Increases in D.C. Juvenile Pretrial Arrestee Drug Positives Have Occurred Among Youth 12 or Younger"

November 1998 "Practitioners Should Be Aware of Co-Occurring Marijuana Use and Delinquent/Depressive Behaviors Among Youth"

October 1998 "Forty Percent of Juvenile Detainees in Maryland Need Treatment—Primarily for Marijuana Abuse/Dependence

October 1997 "Record Percentage of D.C. Juvenile Arrestees Test Positive for Marijuana"

July, 1995 "Drug Positives Among Washington, D. C. Juvenile Arrestees Highest Since Testing Began in 1986"

Just one week ago (on March 20, 2001), the Drug Enforcement Administration announced that the petition filed by Mr. Gettman and High Times Magazine was being rejected following a

thorough scientific review by FDA and the Department of Health and Human Services. FDA, HI and DEA found that the evidence remains overwhelming that marijuana has a high potential fo abuse. Further, FDA and HHS reaffirmed that, based on the latest assessment of medical and scientific data, marijuana cigarettes continue to have no accepted medical use and cannot be u safely under medical supervision.

But the legalizers did not need to hear the latest word on marijuana from the Federal Government to realize that they needed yet another new approach. It has become evident to legalizers that as long as Federal drug laws remain grounded in science and medicine—and cor sense—marijuana will never be legalized under Federal law. Armed with this realization, the legalization movement in 1996 found what seemed to them like the perfect solution: "Forget a working within the bounds of Federal law," they said. "We'll just change state law." Backed by money of billionaire George Soros and millionaires Peter Lewis and John Sperling, they launche media campaign to convince voters to enact ballot initiatives that had nothing to do with scienc everything to do with winning the battle of the airwaves.

Legalizers crafted their ballot initiatives to change state law as follows. Anyone who g oral or written *"recommendation"* from a doctor—notice I didn't say *"prescription"—would have get-out-of-jail-free card entitling the holder to grow and smoke marijuana. The legalizers were careful not to change state law such that doctors could prescribe marijuana. They knew legitir doctors would not prescribe marijuana anyway since it is a blatant violation of federal law for a doctor to prescribe marijuana, because it is a Schedule I drug.* So they chose the word *"recommendation"*. In this way, legalizers could say "My doctor recommended pot." without ris prosecution.

Notice also that this ballot initiative approach completely bypasses the federal drug ap process. To the legalization movement, waiting for scientific evidence to justify FDA approval a DEA rescheduling is an unnecessary annoyance. Besides, they figured, with their slick media campaign financed by Soros, etal, it would never occur to the voters that FDA approval and DE rescheduling are essential to protect the public health and safety.

Voters in the state of California in 1996 were the first to pass this type of ballot initiati California, the initiative was called "Proposition 215." Since then, the Soros-financed campaign succeeded in passing these laws in eight other states: Alaska, Colorado, Hawaii, Maine, Nevad Oregon, and the State of Washington. The Soros, etal-financed campaign is continuing right n all-out efforts to get every state to enact such a law in the near future.

It is a sad commentary that Soros, etal's financed campaigns have hoodwinked voters state legislators into abandoning the federal drug approval process. Going back to the 1920's California passed Proposition 215 in 1996) every state made sure that its drug laws worked in cooperation and conformity with federal drug laws so that the dual federal and state drug laws complimented—not fought with one another.

As troubling as is this latest chapter in the legalization movement, the answer is quite The answer lies in the bill that Representative Souder introduced last year: HR 4802. Under t Supremacy clause of the United States Constitution, federal law is—and must remain—the "sup

law of the land." No state may enact a law that interferes with, or frustrates the purpose of, federal law. When a state does so, Congress may enact legislation that *expressly preempts* such a contrary state law.

There can be no doubt that California Proposition 215 and the laws passed in seven other states modeled on Proposition 215 are in direct contradiction to federal law. Indeed, the very purpose of these laws is to encourage persons to smoke and grow marijuana in violation of the federal drug approval process. Yet, in a positive sense, this makes it easier for Congress to preempt such laws.

Consistent with HR 4802, Drug-Free Kids: America's Challenge and the parents, grandparents, educators, law enforcement organizations and the 50 amici signed on to our amicus curiae brief urge Congress to enact legislation that expressly preempts – and declares void – any state law that authorizes any act with a Schedule I drug that is prohibited by the CSA. With the passage of such a law, we will thankfully return to the days when science and medicine—not slick well-financed medial campaigns pushing smoked weeds—determine what drugs are safe and effective for the public.

Joyce Nalepka, President, Drug-Free Kids: America's Challenge

For more information: w w w . o u r d r u g f r e e k i d s . c o m (Use no spaces)

THE CASE FOR FEDERAL SCHOOL DRUG TESTING LEGISLATION

"Nearly six years after the U. S. Supreme Court legalized student drug testing on health-protection grounds, only one of over 15,000 school districts in America has been able to successfully extend the "equal protection of that law" to their general secondary schoolchild population without challenge."

A public policy advocacy document produced by the National Institute of Citizen Anti-drug Policy

January 26, 2001

THE SUMMARIZED CASE FOR SCHOOL DRUG TESTING (SDT)

- ONE-THIRD OF SECONDARY SCHOOL STUDENTS NOW USE DRUGS, LEADING TO SCHOOL DISRUPTION AND VIOLENCE
- HEALTH-RELATED DRUG TESTING STOPS DRUG USE PER THE EXPERIENCE OF MILITARY, BUSINESS, AND MANY SCHOOLS
- SUPREME COURT APPROVED SDT FOR SCHOOLS 6 YRS AGO
- NOT WIDELY USED YET (500 OF 15,000 SCHOOL DISTRICTS)
- **MASSIVE OBSTRUCTION BY PRO-DRUG CULTURE INHIBITS PUBLIC KNOWLEDGE OF SDT LEGALITY AND VIABILITY**
- NEED FEDERAL LEGISLATION TO SUPPORT LOCAL ATTEMPTS TO USE SDT-- FRAGMENTED LOCAL EFFORTS ARE TOTALLY INSUFFICIENT TO CURE AMERICA'S YOUTH DRUG PROBLEM
- FEDERAL SDT LEGISLATION IN S.254 ALMOST MADE IT IN THE 106th CONGRESS AFTER PASSING BOTH HOUSES
- **NEW SENATE BILL S.304 PROVIDES FOR KIDS' *TREATMENT*, BUT NEEDS SDT PROVISIONS ADDED FOR *DIAGNOSTIC* USE**
- NEED TOP LEVEL LEADERSHIP TO MAKE IT HAPPEN SOON ENOUGH TO SEE RESULTS DURING THIS 107TH CONGRESS
- **COULD DROP STUDENT DRUG USE 50 TO 90%, REDUCE SCHOOL VIOLENCE, AND CURE DEFECTIVE "EDUCATION"**
- GOOD RESULTS WOULD BE GREAT CAMPAIGN ISSUE FOR SDT SUPPORTERS TO RUN ON IN FUTURE ELECTIONS
- FAITH BASED EFFORT GOT IT THIS FAR-- WILL KEEP PRAYING AND FIGHTING TO RESCUE KIDS FROM DRUGS THROUGH SDT
- WRITTEN DOCUMENTATION AVAILABLE UPON REQUEST

National Institute of Citizen Anti-drug Policy (NICAP)
DeForest Rathbone, Chairman, (703) 759-2215, DZR@prodigy.net

3/15/01

A PROPOSAL FOR FEDERAL SCHOOL DRUG TESTING LEGISLATION

Approximately one-third of secondary school students in the U. S. use illegal drugs. Drug testing is a known way to substantially reduce drug use. Nearly six years after the U. S. Supreme Court legalized student drug testing on health-protection grounds, **only about three percent** of U.S. school districts (nearly 500 of about 15,000) have attempted some form of student drug testing. And **only one school district** has been able to successfully apply it to their general secondary student population without challenge. The main reasons for such low percentages are:

- Lack of knowledge by parents and educators of the existence and effectiveness of these programs.
- Lack of technical and legal information necessary to institute the program.
- Lack of funds to conduct testing and treatment.
- Lack of funds to defend against lawsuits obstructing local attempts to institute student drug testing.

It is obvious that **federal legislation will be needed to authorize, fund and encourage student drug testing.**

Proposed federal legislation should include, at a minimum, reintroduction of amendments to the existing *Elementary and Secondary Education Act of 1965* (ESEA) to **authorize local school authorities to spend federal funds for student drug testing.** A sizable bipartisan majority in both House and Senate previously approved these amendments in the 106th Congress. However, they died in conference committee due to problems with unrelated parts of the much larger Juvenile Justice bill of which they were a minor part.

The following excerpts are from the existing **ESEA law, Section 7116**, with wording from the previously passed amendments in *italics*:

"Sec. 7116. Local drug and violence prevention programs

A local educational agency shall use (federal) funds received under this subpart to adopt and carry out a comprehensive drug and violence prevention program which shall... be designed... for all students... to prevent the use, possession and distribution of... tobacco, alcohol, and illegal drugs by students... prevent violence and promote school safety: and create a disciplined environment conducive to learning...

A comprehensive drug and violence prevention program carried out under this subpart may include... programs of drug prevention, comprehensive health education, early intervention, pupil services, mentoring, or rehabilitation referral... (and) *consistent with the fourth amendment to the Constitution of the United States,* ***testing a student for illegal drug use****... if the local educational agency elects to so test..."*

We hope that creative and compassionate members of Congress will consider adding some of the following suggested provisions that would strengthen the bill and increase its usefulness to parents and educators.

(1) Provide federal funding specifically for student drug testing programs to supplement **treatment funding in S.304.**
(2) Requesting Supreme Court resolution of conflicting lower court decisions on student drug testing to extend equal protection of student drug test programs to all drug-endangered students instead of select groups (like athletes, etc.).
(3) Making federal drug prevention funding contingent upon state adoption of student drug testing programs.
(4) Tasking of the Department of Justice to develop model school-drug-test legislation for potential use by states.
(5) Requesting that congressional oversight committees insure that the federal agencies that deal with student substance abuse will have drug testing as a high priority. The federal agencies are: The Office of National Drug Control Policy, SAMHSA in HHS, the Department of Education, the DEA, and the Department of Labor.
(6) Requesting that the relevant oversight committees schedule hearings on student drug testing.

When such legislation becomes adopted as law and student drug testing becomes widely used, the **current high levels of student drug use and school violence will plummet** just as they did in the military, in industry and in schools that currently use student drug testing.

See details in the 100 page student drug test manual titled, **"The Case for Federal School Drug Testing Legislation,"** available at $40.00 a copy (cost of duplication, handling and mailing). Order from:
NICAP, 1044 Springvale Rd., Great Falls, VA 22066, (703) 759-2215 or DZR@prodigy.net

NICAP 3/26/01

Mr. SOUDER. Thank you very much. Mr. Kampia.

Mr. KAMPIA. Thank you, Mr. Chairman and members of the committee. I am going to use the outline of my testimony that was submitted as sort of a talking points document.

The Marijuana Policy Project believes that sick people as well as healthy people should not be arrested and put in prison for using marijuana. We are the largest membership based marijuana policy organization in the country. Most recently we have submitted an amicus brief for the U.S. Supreme Court in the case that is going to be heard tomorrow, and we are also responsible for drafting legislation that is being debated in the States to remove criminal penalties for medical marijuana use. We were instrumental in helping to pass the law in Hawaii, which was signed by the Governor in June 2000, which removes criminal penalties for patients who have their doctor's approval to use medical marijuana.

It seems that we are all familiar with what the State initiatives do, so I will skip over the part of my testimony which explains that the initiatives allow functioning doctors to recommend the use of marijuana to patients who have certain specified conditions, who are then able to possess a certain amount or grow a certain amount of marijuana. They do not allow for-profit distribution of marijuana. They do not allow people to grow hundreds of marijuana plants and then to claim it is for medical use. They do not protect dealers on the streets who are selling marijuana to anyone, including patients.

I would like to spend a minute or two clarifying what the issue is before the Supreme Court. The issues in Federal law that are already resolved in this area are, first, that it is quite clear that patients who are using and growing medical marijuana legally under State law are still in fact violating Federal law. No one disputes that, and if the DEA and other Federal law enforcement officials are upset about that, then they still retain the authority to sweep up and down the West Coast arresting AIDS and cancer patients if they so desire. They have the authority to do that, and if the committee is concerned about State medical marijuana laws subverting Federal law, I would encourage you to encourage the DEA to arrest a large number of cancer and AIDS patients on the West Coast under Federal law.

Another issue that is not debatable is that physicians clearly may not prescribe marijuana. That is clearly prohibited under Federal law, which then leads to the initiatives to allow doctors to recommend medical marijuana. This is protected by the first amendment. Doctors who recommend marijuana are engaged in free speech, and this was found to be the case in a court case that was ruled on last year in *Conant* v. *McCaffrey*.

Now I think the issue before the committee is primarily that of preemption, and in fact when proposition 215 passed in California in 1996 the Justice Department and other Federal officials were pulling out their hair trying to figure out a way to subvert the will of the voters, and they came to the conclusion they could not challenge the State medical marijuana law in court. It stands to reason given the hostility of those in Congress and on the Federal level in the Clinton administration and now in the Bush administration that if there was a way to challenge the State medical marijuana

laws by using the supremacy clause that they would have already done it. It has been 4½ years now and there is no legal case there. And in fact this was found to be the case in a finding in *Wayne Turner* v. *D.C. Board of Elections and Ethics.* This is the court case that required the local D.C. government to release the results of the local medical marijuana initiative here, and in that court case the Federal judge found that there is nothing in the Constitution of the United States that prevents States from reducing penalties for medical marijuana use.

So what is the case before the court tomorrow? Quite simply, the question is whether you can use a medical necessity defense in Federal court to avoid Federal marijuana distribution charges. That is all. That is not challenging the validity of State law at all.

With 30 seconds left, I would just like to try to shift gears here. I think it would be more helpful if the committee would not focus on the State medical marijuana law, which I consider good, and instead focus on its own bad Federal policies. Under Federal law, seriously ill people are treated the same as recreational marijuana abusers. They face up to 1 year in prison and a $10,000 fine. Under Federal law, cocaine and morphine are deemed to have more medical value than marijuana. I think that sends a bad message to the children and it makes no distinction whatsoever between the medical and nonmedical use. I think if Congress wanted to do something proactive in this area, it would pass a law saying marijuana when used for medical purposes should be treated less severely than in those cases when people are using marijuana recreationally or otherwise abusing it.

Thank you very much.

[The prepared statement of Mr. Kampia follows:]

Marijuana Policy Project

P.O. Box 77492 ■ Capitol Hill ■ Washington, D.C. 20013
phone 202-462-5747 ■ fax 202-232-0442 ■ e-mail MPP@MPP.ORG

Testimony of Robert D. Kampia
Executive Director of the Marijuana Policy Project

before the House Committee on Government Reform
Subcommittee on Criminal Justice, Drug Policy and Human Resources

"Federal Drug Law and the Constitution's Supremacy Clause"

March 27, 2001

OUTLINE OF ORAL TESTIMONY

1. Introduction of the witness.

   • MPP's mission and membership

   • MPP's involvement in U.S. Supreme Court case and state legislative activities

2. What has happened in the eight states that have enacted medical marijuana laws since 1996?

   • California passed an initiative in 1996. Alaska, Oregon, and Washington state passed initiatives in 1998. Maine passed an initiative in 1999. The Hawaii legislature enacted a law in June 2000. And, finally, Colorado and Nevada passed initiatives in November 2000. No statewide medical marijuana initiative has ever failed.

   • What is allowed under these initiatives?

      - Doctors may recommend (but not prescribe) medical marijuana.

      - Patients may legally possess and grow their own medical marijuana.

   • What is not allowed under these initiatives?

      - For-profit distribution centers are not explicitly protected under state law.

      - Growing hundreds of marijuana plants for personal use is not permitted.

      - Dealers who sell marijuana on the streets are not protected by state law.

3. What issues of federal law are already resolved?

   • Patients may not legally possess or cultivate medical marijuana under existing federal law, and the DEA and other federal law enforcement officials are free to arrest such patients.

"Stop arresting patients for medicinal marijuana."

• Physicians may not "prescribe" marijuana for medicinal use under federal law, and any physicians who do so are subject to criminal penalties, the loss of their licenses to prescribe medications, and disqualification to participate in the Medicaid and Medicare programs.

• Physicians may "recommend" marijuana or otherwise discuss its risks and benefits, which is protected by the First Amendment, as found in Dr. Marcus Conant v. Barry R. McCaffrey.

• State medical marijuana laws are not preempted by federal law, as the U.S. Department of Justice determined in December 1996 just after California enacted Proposition 215. This finding was corroborated in the federal court case that required the D.C. Board of Elections and Ethics to release the results of the November 1998 medical marijuana initiative in District of Columbia. (Wayne Turner v. D.C. Board of Elections and Ethics)

4. What is the nature of the case that will be heard before the U.S. Supreme Court tomorrow?

• The Court will hear oral argument in a case addressing whether or not medical marijuana distributors may offer a "medical necessity" defense in federal court. The Court's ruling in U.S. v. Oakland Cannabis Buyers' Cooperative cannot overturn state laws allowing seriously ill people to possess and grow their own medical marijuana.

5. Federal drug enforcement practices are working as Congress intended. Let's look at the states that the members of the subcommittee represent:

• Vermont and Virginia have laws that allow physicians to "prescribe" marijuana for medicinal use, yet physicians are not doing so because that would violate federal law.

• Georgia and New York have laws that authorize the state government to conduct FDA-approved clinical trials into marijuana's therapeutic uses, and both did so in the early 1980's.

• Illinois and Texas also have laws that authorize clinical trials, yet those state governments have not appropriated any funding to conduct such research.

• California and Maine permit patients to use medical marijuana legally under state law, and nothing is preventing the federal government from arresting such patients under federal law.

• Florida, Indiana, and Maryland have no state-level medical marijuana laws, so cancer patients and AIDS patients in those states continue to be arrested just as Congress prefers.

6. MPP opposes the position that Congress has taken on medical marijuana.

• Under federal law, a seriously ill patient who uses marijuana for medical purposes is subject to one year in federal prison and a $10,000 fine. Growing just one marijuana plant can subject a patient to up to five years in federal prison.

• Under federal law, morphine and cocaine are deemed to have more medical value than marijuana. What kind of message does that send to the children?

• Federal law makes no distinction between the medical and non-medical uses of marijuana; an AIDS patient who uses marijuana under her doctor's supervision is subject to the same penalties as someone who abuses marijuana in a recreational setting every weekend.

• In the fall of 1998, 1999, and 2000, Congress has blocked the medical marijuana initiative in the District of Columbia from taking effect, despite the fact that it received 69 percent of the popular vote in November 1998.

7. The FDA drug-approval process is not working as Congress intended.

• Under the Controlled Substances Act of 1970, Congress envisioned that marijuana would be treated like any other potential medicine under federal law, in that marijuana's therapeutic applications should be researched in the same manner as other potential medicines.

• Unfortunately, the Clinton administration's Department of Health and Human Services implemented guidelines on December 1, 1999, which make it more difficult to conduct research into marijuana's therapeutic uses than any other drug.

8. MPP is making two recommendations to the members of the subcommittee:

• Direct HHS, through either legislation or a sign-on letter, to provide marijuana to all FDA-approved clinical trials, so that it is no more difficult to conduct research on marijuana than any other drug.

• At your next town meeting, ask your constituents whether they believe patients should be arrested and put in prison for using marijuana for medical purposes under the supervision of their physicians. MPP predicts that a large majority of constituents who are surveyed in this manner will oppose current federal law.

ATTACHMENTS FOR WRITTEN TESTIMONY

• MPP's amicus brief before the U.S. Supreme Court

• MPP's report on state medical marijuana laws

• Analysis of Byron Warnken, a professor at the University of Baltimore School of Law, on the interplay between federal law and state medical marijuana laws

• Memo from Kelly Paige, manager of the Oregon Department of Human Services' Medical Marijuana Program

• Memo from Katrina Pflaumer, U.S. attorney for the Seattle area

Mr. SOUDER. Thank you. Before we start our questioning we have been joined by additional Members. I wanted to see if Congressman Weldon had an opening statement and then Congressman Barr.

Mr. WELDON. Thank you, Mr. Chairman. I want to commend you for calling this hearing, and I did want to say a few words. First of all, let me apologize. I have another hearing going on in the Financial Services Committee and I am trying to bounce between both locations. I do consider this issue very important.

As many of you know, I have practiced medicine for about 15 years before I was elected to the U.S. House of Representatives, and I had the opportunity to take care of a lot of cancer patients. Indeed as well, I also was partners with an infectious disease specialist and for many years he and I were the only people in a county of 400,000 people seeing AIDS patients. So I have a lot of experience taking care of cancer patients and AIDS patients. As well, I was in a large medical group, we had 35 members total. We had a 500-bed hospital, and at that hospital typically, we had half the patients in the hospital and I was on call on a regular basis. And so I have accumulated a large degree of experience taking care of cancer and AIDS patients, and I just want to say that I have never seen a case where there was a medical indication for the use of marijuana.

Marijuana is purported to be useful in controlling nausea. I will just point out that if you open up the Physicians Desk Reference you will see many, many drugs that do not have nearly the side effects of marijuana for the control of nausea. Marijuana is also purported to have other beneficial properties or qualities in terms of enhancing a sense of well-being, and I would like to also point out there are many legal drugs that are much safer for that purpose. And I have seen two cases where people who did not smoke cigarettes develop lung cancer who admitted to being chronic marijuana abusers. And so I just want to let the record reflect that I don't in my clinical experience recall ever seeing an indication, a medical indication for marijuana and that the drug, when smoked as recommended, probably causes lung cancer.

So in my opinion, it is virtually lunacy to talk about a medical indication for the use of marijuana and that the efforts on the part of some people to legalize this drug for medication is really just a veiled attempt to legalize another substance for abuse. And let me just close, and I thank you, Mr. Chairman, for yielding to me by pointing out that every day in America there are many people who die from the ravages of cigarette smoking and alcohol abuse. And why on Earth would this Nation want to unleash another dangerous substance on our population. There are thousands and thousands of people who will not use marijuana because it's illegal who will start using it if it is ever made legal. And to contend that there are medical indications for this drug is in my opinion patently absurd. Let me finally close by also pointing out that Marinol is a substance that you can prescribe. It is tetrahydrocannabinol. It is available in pill form. It is legal. I can write a prescription for Marinol, if I have that rare unusual case. By the way, I never saw it once, but if you have a rare unusual case, if you have someone intolerant to every single anti-medic drugs in the book, and I have

never seen it happen, and if you have to resort to this you can actually prescribe it in pill form.

What's really going on is people are trying to legalize the smoking of marijuana and they are trying to use cancer victims and AIDS victims as their prop to enable them to get it through. And in my opinion it is shameful and for that reason your hearing is very timely, Mr. Chairman, and I want to thank you for your indulgence.

Again, I want to apologize. I am going to try to come back. I am very anxious to hear the second panel's testimony and engage in a question and answer time. Thank you, sir.

Mr. SOUDER. Thank you. Congressman Barr, do you have an opening statement?

Mr. BARR. I do, and I would like to ask unanimous consent that my full statement be included in the record, Mr. Chairman.

Mr. SOUDER. So ordered.

[The prepared statement of Hon. Bob Barr follows:]

Opening Statement of Congressman Bob Barr
"Federal Drug Law and the Constitution's Supremacy Clause"
Subcommittee on Criminal Justice, Drug Policy and Human Resources
March 27, 2001

Thank you, Mr. Chairman, for holding this very important and timely hearing today.

As we are all aware, the Supreme Court is scheduled to hear oral arguments tomorrow in the case of *United States v. Oakland Cannabis Buyers Cooperative*, to consider whether a "medical necessity" defense to violation of federal law exists for drug use under the California law. I am confident the Supreme Court will decide that federal law does preempt the state law in this case.

We have heard from those on the left trumpeting states' rights and calling Republicans hypocrites for abandoning our beliefs in federalism.

Nothing could be further from the truth.

The growth, distribution and possession of marijuana - or any federally controlled substance - is not an issue for the states to decide. Congress has classified marijuana as a Schedule I controlled substance; defined as having a high potential for abuse, no currently accepted medical use, and a lack of accepted safety for use. The Supremacy Clause of the United States Constitution clearly wins out in this case. Indeed, Congress intended to preempt a state law such as this.

The issue of states' rights is a red herring; devised by the pro-drug legalization movement, desperate to find ways to legalize drugs, and unfortunately, meeting with some success in recent years.

What I find truly disturbing are accounts from state and local law enforcement in California telling us the passage of Proposition 215 has had the practical effect of curtailing enforcement of marijuana laws in the state. With state judges returning seized marijuana to its owners, how are state law enforcement officers to proceed when they uncover large-scale pot farms or those caught in possession of marijuana? Are they to assume that criminal statutes pertaining marijuana no longer hold? Or, are they to proceed with their cases, only to see their time wasted, and lives endangered by confused or purposeful judges throwing their cases out?

Even more frightening are the law enforcement implications in states such as Arizona, where *all* Schedule I drugs, including heroin and LSD, were approved to treat "patients." How damaging would this be to law enforcement efforts with regard to these, most-deadliest of drugs?

Thankfully, the Arizona Legislature acted in accordance with federal law and suspended enactment of the legalization provisions, pending approval from the Food & Drug Administration. I suspect -- and hope --we won't hear from the FDA anytime soon about the health benefits of heroin.

Law enforcement cannot proceed effectively in such a state of uncertainty. Day-to-day drug enforcement must be a priority if we are to have any success in ridding our streets of mind-altering drugs. I am committed to doing everything in my power to ensure that local, state and federal law enforcement agencies have all the tools necessary to combat drugs in our communities, despite well-funded and seemingly benign efforts by drug legalizers to begin the process of unraveling our drug laws using the wedge "medical use."

I thank the Chairman and look forward to hearing from both panels on this issue.

Mr. BARR. I think that Dr. Weldon hit the nail on the head, at least insofar as claiming that marijuana has medicinal value and is a medicine. Whenever I write about the topic, I always put medicinal use in quotes prefaced by the face, so-called, because that's what this is. This is a so-called medicinal use but it is really simply an effort by the druggies to legalize mind altering drugs. And even though I doubt that we are going to hear anything new from drug legalization advocates today, I think it is important to hold this hearing for a couple of reasons, Mr. Chairman.

One is the timeliness of it in light of the Oakland-Cannabis Buyers Corp. case coming up this week in the Supreme Court. I think it's important to draw attention to this and get the story out. I think it is also important for America to see the face of drug legalizers. They have learned a lot over the last several years. They don't so much bring people forward with glazed eyes and blood shot eyes that look shabby and dress poorly. They know that doesn't work, so they send forward people with legal degrees that dress very nice, that speak very eloquently, that speak very quietly, but their message is the same. It is death and destruction.

I think it is important for the American people to see this movement for what it is despite the benign face that they put forward. And it is important to remind ourselves, Mr. Chairman, that they are having some success. Young people are starting to ask the question why shouldn't we be allowed to smoke marijuana, after all it is a medicine? Why shouldn't people be allowed to smoke marijuana, after all it helps people? It doesn't help people. It kills people. It has very serious medical effects on the reproductive system, as Dr. Nahas has written extensively, it has very deleterious effects on other, both psychiatric and physiological functions of the body, such as memory loss. It is a mind altering drug, the same as those other substances on the Federal controlled substances list.

So I think it is important to remind people through this and other hearings, Mr. Chairman, of what the real problem is, to show these people for what they are, and to remind the American people not to be taken in by their siren song of so-called medicinal use, and despite the nice neckties and nice dress and eloquent words and soft spoken manner of people that their message is still very much the same.

I appreciate this hearing, Mr. Chairman, and I appreciate all of witnesses being here, both those that will tell America the truth and those that won't. I think it is important for the American people to see the difference. Thank you.

Mr. SOUDER. Thank you, and I will start with the first round of questioning. Mrs. Sembler or Mrs. Nalepka have made allegations and have crusaded for a long time on this issue, wherein that the medicinal use of marijuana is actually a front. Mr. Kampia, today you said in fact you were focused on medicinal use but you had a letter published in the Los Angeles Times in 1998, where you said the marijuana prohibition creates dangerous criminal markets and takes police resources away from violent crime. It is time to stop arresting adults who grow and consume their own marijuana at home.

Now in that statement you didn't limit it to medicinal use of marijuana, yet today you only talked about the medicinal use. Could you explain the difference?

Mr. KAMPIA. Yes, at the outset of my testimony today I also said that the Marijuana Policy Project believes that sick people as well as healthy people should not be arrested and put in prison for using or growing marijuana. So I have been consistent in that.

Mr. SOUDER. So your consistent position is that people shouldn't be arrested at all. And you said in July, you were quoted in USA Today on proposition 215 in California, "it is working great. Patients right now can possess and use marijuana in the privacy of their homes and don't have to worry about the police." Can you explain "working great," and once again you did not use medicinal. Are you saying there is no enforcement of marijuana laws in California by State and local police.

Mr. KAMPIA. I think the word "patients" was used in the quote that you just read.

Mr. SOUDER. Yes.

Mr. KAMPIA. So I was referring to the fact that proposition 215 is working well, it is protecting patients from having their doors kicked in by local cops.

Mr. SOUDER. Do you know of any case where a door was kicked in by a local cop who was a cancer patient using marijuana previously?

Mr. KAMPIA. Sure.

Mr. SOUDER. Where the door was kicked in—you are under oath.

Mr. KAMPIA. Yes.

Mr. SOUDER. The door was kicked in by local police because they were using marijuana for the cancer?

Mr. KAMPIA. I don't know what was in the minds of the police when they kicked in the door, but after the door was kicked in the police found the person was in fact using marijuana for medicinal purposes. I would be happy to provide newspaper articles tomorrow if you'd like.

Mr. SOUDER. Was this after proposition 215 passed or prior?

Mr. KAMPIA. The case I am thinking about occurred in Washington State after the initiative passed in Washington State.

Mr. SOUDER. Also, when you were at Penn State you were arrested for growing marijuana plants and you spent 3 months in the county prison and were kicked out of school for more than a year, which delayed your graduation and engineering science degree. Why did you tell this story to the newspaper and are you proud of that record? Are you, I mean you don't seem ashamed at all by saying that you not only were an advocate of marijuana use, you grew the plants and used it yourself?

Mr. KAMPIA. I think it is an instance of how our government has gone too far. I was a straight A student in physics and engineering. I had a full scholarship. The police invaded my privacy, took my plants, and put me in prison for 3 months. I think it is an example of how marijuana prohibition doesn't actually dissuade people from using marijuana.

Mr. SOUDER. But you knew it was a violation of law.

Mr. KAMPIA. Yes.

Mr. SOUDER. And you still went ahead and did that. Why would you do that and put your education at risk and your health at risk?

Mr. KAMPIA. Let's just say it was foolish youthful experimentation.

Mr. SOUDER. So you currently would not use marijuana?

Mr. KAMPIA. I currently do not.

Mr. SOUDER. May I ask you, Mrs. Sembler and Mrs. Nalepka, clearly as a prime advocate he at least has a very consistent position on the use of marijuana generally as well as medicinal. Is this the pattern that you have seen in those you have battled in the different State referendums? That they say it is about medicinal but in fact they have a broader agenda?

Mrs. NALEPKA. We have information that as far as 1979, where one of the groups that are their colleagues, the National Organization for the Reform of Marijuana Laws, said they would try to get marijuana reclassified medically and use the issue as a red herring to get back at us like we got at them for closing their drug paraphernalia shops. And later on there was a continuing message. Particularly, NORML was one of the first and one of the most tenacious of the drug legalizing groups, and I hold Keith Stroup, who was the founder, to be the father of the teenage drug epidemic in this country and responsible for I believe tens of thousands of deaths or kids in treatment or lost because he continued to make statements telling them—there was no particular evidence that even those few young people who used a great deal of marijuana necessarily hurt themselves academically and otherwise. And that was established in High Times Magazine, September 1997, that had an estimated pass on readership of as many as 30,000 kids. And later on he testified before Congress that he wanted to completely open the market. No age controls, no street controls. And that next they need to decriminalize traffickers because most drug sellers are not violent criminals, are nice folks. They shouldn't be treated like violent criminals. And my experience over the years is that mind destruction is a violent crime. They have been very, very out front about wanting to legalize marijuana, and there is a whole network of the groups, of whom we have videotapes of many of their meetings saying—Dennis Peron, the leader in California, for instance, made a comment to me, he said, all marijuana use is medical. And chuckled and an attorney, one of their colleagues, earlier on said that we have found the chink in the armor. We get medical marijuana, we will have full legalization, and he is also the same attorney who said that to him drugs—all law is drugs and mechanics. This is not an exact quote. But he said you kill a cop and I'll defend you for free.

This is the type—we are not talking about the AMA here pushing medical marijuana. The Timothy Leary era continues. Even though he has been sprinkled into the atmosphere, his colleagues continue to push for legalization of these disruptions that are causing an incredible amount of damage to kids in our country, and it is a mystery to me as the mother of two young sons, one just about Rob's age and I have looked at his curriculum vitae and saw he was valedictorian of his high school and he did very well in college. And I want to ask him why? As a mother you want to take them home and say, look, let me show you what's wrong here. But we're

having a very tough time standing up against them, quite frankly, because we are doing it mostly on our grocery funds and George Soros, John Sperling, Peter Lewis, George Zimmer seem to be pouring endless funds in there. When I first discovered that Soros was putting money into it I was sure he did not know who he was funding and he was speaking at Georgetown and there was an open mic and I went to hear him speak, and there were about 450 businessmen waiting to hear him, and at the end I took the microphone and asked him. I said I know that variety is the spice of life and you invest in a lot of things, but did you know these things and I itemized, you know, their statement about legalization and no age controls and no street controls, and he turned rather ashen but it certainly didn't stop him. He continued to do that. Now we know that he knows exactly what he's doing because he's been told with 400 witnesses.

Mr. SOUDER. Mr. Cummings.

Mr. CUMMINGS. Thank you very much. First of all, I want to say to all of our witnesses I really do appreciate your being here and I want to make it very, very clear that I don't consider anybody a druggie. This is the Congress of the United States of America. And it does concern me when we ask witnesses to come, I think, we, and I speak for myself and I hope I speak for all of my colleagues, respect everybody that comes here and that we assume you come here because you believe in what you are talking about and you are not coming here lying to us. You are under oath. And I respect each one of you for your positions.

You know, I was just sitting here, I was just thinking there is nobody in this room whose area or places that they live is more effected by drugs than yours truly. And you know I was just wondering, and again I think about it, I looked at these States that have passed these initiatives and voters aren't stupid. I'm trying to figure out what kind of arguments are made to voters who, No. 1, see the effects of drugs every single day, every day. They have seen it. They have seen it on the 6 o'clock news, they have seen it in the morning, they see it in the newspapers. They have heard about shootings that may be drug involved. How do you, what kind of arguments are made to the public to get them to vote for something like this?

I mean, you can't convince me that people, I mean, I just can't, I'm trying to figure out is it the people are just being bombarded with information. And when you think about people and their children, people, when you think about your children and you think about—and I have been watching a series on 60 Minutes last week, and one of the interesting things that one kid said is that Koppel kept asking him could your parents have stopped this. And I was just waiting, you know, anxiously to see what the answer would be and just about all of the kids said I don't think their parents could have stopped them. As a parent, I felt pretty bad about that.

I am just trying to figure out what was being said to the public, and any of you all can answer this question, that convinced them. And I am looking at these States. These aren't the most liberal States, necessarily, to legalize marijuana. I'll start either way. We'll come across.

Mr. KAMPIA. I think it's the same way Congress looked at cocaine and morphine when Congress said cocaine and morphine should be available by prescription in 1970. Those drugs are available for prescription even though they never intended for those drugs to be wildly available for abuse on the streets. I think the voters are at least as smart as Members of Congress and the voters have said we understand the medicine and drug of abuse and we don't see any reason to get involved in the doctor-patient relationship. We think doctors and patients should be able to make these decisions, and it will have no impact upon drug trafficking in the streets. In fact I will go one step farther, by allowing patients to grow their own marijuana at home so they don't have to go out on the street and buy it, you are actually reducing drug trafficking. So those of you who are concerned about that, I say allow nonviolent individuals, particularly patients, to grow their own for the specific purposes of reducing the purchase of marijuana on the streets.

Mr. CUMMINGS. Yes.

Mrs. SEMBLER. I would like to bring to your attention though—this is for the State of Florida and, as you know, I'm a Floridian. We have a petition that's been going around the State now, this is the third time. I won't go into what our laws are but this is the last chance they would have to pass this. The title of it is of course Sign for Medical Freedom. What you hear from people who advocate smoked marijuana, smoked marijuana as medicine, has several components to that. First of all, the petition itself calls it Sign for Medical Freedom. There is no such thing as medical freedom. But the diseases and conditions that are outlined are never brought to public attention. This is what the public sees, right here. And unless you actually request it, you don't see the bottom part and you don't read it. But I will read it to you. It says each natural person has the right to obtain and use marijuana for medical purposes when a licensed physician has certified the following: That the use of marijuana is medically appropriate for that person in the professional judgment of that physician, and, two, that the person's health may benefit from use of marijuana in the treatment of cancer. Notice treatment of cancer, HIV, AIDS, anorexia, glaucoma, arthritis, chronic pain, spasticity, migraine or other specified medical conditions or illnesses.

I could continue, but I can assure you that there is no place in here for a physician who would actually say that this person has glaucoma and he should be smoking marijuana in order to relieve the pain. They do say that, by the way. But incidentally I work with physicians all over the country and I am also on the board of the Brain Institute of the University of Florida Medical School, and I have been assured by experts who have studied this for years and years and people who I respect that are not—who are also physicians, glaucoma has no pain. So you can sell things if you say it long enough, loud enough, if you hide the other parts of it.

You won't see anything on these ads that show people smoking. Now you might see something on an ad for a pill, somebody swallowing it, but they never advertise the fact that this is smoking, and we all know that we have spent time, effort, money, sweat and tears trying to get people to stop smoking. Why should we promote smoking? We should not. If there is medicinal value to a plant that

we can extract, which has already been noted by Dr. Weldon, we can also point to foxglove, from which we get digitalis, as we have pointed out, we can get other medicines from plants such as poppies. There is no secret to that. But to promote the smoking of medicine, that is a lie. It is not a medicine. And I don't care how you put it or how you say it, it is not a medicine. But what it does do is it softens the idea of the use of drugs to which I have just had a very terrible experience in my own family and I have been in this for almost 30 years, and I can tell you that young people hear that and what they hear is that if it's a medicine it's not so bad. And then they begin to use more.

So, the responsibility once again as parents, as grandparents, as Congressmen, as citizens of this United States is to stand up and say what the truth is. This is not the truth. What this man is saying is not the truth. This is not for people who have cancer. I don't want to go on and on, but I will tell you one more little vignette.

I have questioned people whose parents have died of cancer, one gentleman out in California. I asked him before the passage of 215 if he was going to vote for it. And he said yes. And I said why. And he said because my mother died of cancer, and it might have helped her. I said I want to ask you a couple of questions. Did she smoke? He said no. I said, was she conscious? He said no. I said, well, how are you going to get her to smoke marijuana if she had never smoked and she wasn't conscious? Did she need it? He says, no, I think I'll vote against it.

So all you need is a grain of truth and that's what we're asking you for, a grain of truth. Thank you.

Mrs. NALEPKA. A very similar——

Mr. SOUDER. Mrs. Nalepka, we need to keep the questioning going. I have been generous with the red light, but I need to make sure we stay within range.

Congressman Barr.

Mr. BARR. Thank you, Mr. Chairman. Let me be perfectly clear, I do appreciate all the witnesses coming here today and I will treat all of them with civility. But I don't respect Mr. Kampia. I don't agree with him. I have no regard for him whatsoever. What he's trying to do needs to be told to the American people for what it is, and that means not coming up here and saying you are a wonderful person and we disagree with you. You are not a wonderful person. You are doing something that is absolutely despicable in a way that makes it even more despicable because you put a face on it that appears to be very different from what it is that you're selling.

What you're selling to the American people, and particularly to young people, that's the real heart of the matter here, is a mind altering substance. And one can argue over the extent to which marijuana is a mind altering substance, but it is a mind altering substance. It alters one's mind. It does do permanent damage. There are very, very well-documented and extensive research studies by very learned individuals, much more learned than yourself, and you are a learned individual, that established beyond any reasonable doubt that there are very serious permanent effects, particularly long-term marijuana usage, but even short-term marijuana usage. And to say that this is a medicine is just—I think it's just beyond the pale.

But I do admire you all's ability, drug legalizers that is, to do so with a straight face. You have become very adept at that and that is perhaps why you all have been successful in recent years in this score.

Turning though, Mr. Kampia, to the specific issues that the Supreme Court will be taking up this week, I know it would be easy to draw analogies to saying that the U.S. Constitution should not in the case of the so-called Medical Necessity Defense act as a prohibition or what not on the supremacy clause; in other words, there should be no prohibition of the supremacy clause. I know it would be easy to say, well, what about murders and other types of behavior in which you have two sovereigns; that is, the Federal Government exercising its sovereign power and outlawing certain types of behavior and the State doing the same, and the one being—the Federal effort being supreme. But where do you draw the line? You obviously would like to see the effort in California under the so-called medicinal exception be supreme over the Constitution I suppose, however you want to put it. But you would have to be consistent with that argument. Where would you draw the line? Would it be child pornography, be something in which if you have a conflict within the two and you have somebody coming in and claiming, which I have—as a prosecutor have heard them say it helps them psychologically to traffic and use child pornography, is that something that would fall within the same category of activity here that makes you believe and argue that California ought to be able to with impunity vis-a-vis Federal law use mind altering drugs?

Mr. KAMPIA. You and I talked about this on TV a few months ago when this was first announced, and I will say now what I said before is that my understanding of the case before the court tomorrow is the narrow question of whether patients in any State can cite medical necessity in order to avoid Federal prosecution for marijuana distribution. It is not really hinged upon the text of the California law. This is a kind of claim that could have gone into Federal court in Georgia, and the question then becomes can you sort of finagle Federal law to justify medical necessity exceptions to the marijuana laws. There is a lot of people who think the good guys, meaning us, are going to lose this case that is before the court because Congress has been pretty clear that it wants to allow no medical use whatsoever for marijuana. That is a separate issue. All of that is a separate issue of whether or not the court could overturn proposition 215.

Let's look at it this way. If the court decides that the States are not allowed to reduce the penalties associated with medical marijuana use, that is going to open a whole can of worms because then what do you do about the other penalties in different States that don't match the penalties on the Federal level? There are some States that don't give jail time for recreational marijuana use. Like in Ohio, you don't go to jail if you are caught with a bag of pot in Ohio. So how does that jibe with the fact that Federal law prohibits the recreational use of marijuana?

So I think it is 99.9 percent sure that the Supreme Court is going to allow States to have their own medical marijuana policies even if the majority Members of Congress don't like that decision.

Mr. BARR. Will we have a second round, Mr. Chairman?

Mr. SOUDER. Yes.

Mr. BARR. OK. Thank you.

Mr. SOUDER. We have been joined by Congresswoman Davis of Virginia. Do you have any questions?

Mrs. JO ANN DAVIS OF VIRGINIA. Thank you, Mr. Chairman. I apologize for being late. I was at another meeting. I guess I am just curious, Mr. Kampia, do you support recreational use of marijuana?

Mr. KAMPIA. I don't support the use of any drugs. But our organization believes that it should not be a criminal offense to use marijuana.

Mrs. JO ANN DAVIS OF VIRGINIA. Do you believe that marijuana may be a gateway to stronger drugs?

Mr. KAMPIA. I believe that the laws of our society cause marijuana to be a gateway to other drugs. For those who are interested in purchasing marijuana, they are oftentimes introduced to LSD, cocaine, and other drugs through the criminal market. And if we would regulate marijuana like we do alcohol, then those who buy marijuana would not be exposed to cocaine and LSD. So I think that the very laws of this Congress create marijuana as—sort of put marijuana in the position of being a gateway drug.

Mrs. JO ANN DAVIS OF VIRGINIA. The only statement I will make, Mr. Kampia, is that I am the mother of two sons, one who is 24. I will tell you that I disagree with you. I think that marijuana is the gateway to other drugs, even when it is not purchased. Thank you, Mr. Chairman.

Mr. SOUDER. I am going to yield to Mr. Cummings next.

Mr. CUMMINGS. I just wanted to ask the ladies, one of you had said that—were talking about the plan that could reduce drug usage by 50 to 90 percent. Was it with regard to teenagers?

Ms. NALEPKA. Yes, it was.

Mr. CUMMINGS. Tell me a little bit about that.

Ms. NALEPKA. Junior and senior high school students. We were referring to organizing parent groups centered around the parents of their own children's friends. And this is what we did in the 80's, instructed parents to get to know the parents that are the parents of your children's friends. Get together, set guidelines for them according to their age group. Make sure they have a good time. Chaparone their parties. And go to your school and offer your help. Tell them you are not there to blame them, but you want to find ways to get drugs out of the schools. And what happened then, many of our parents found that schools were teaching responsible use messages and the parents were able to get those out. And then we discovered drug paraphernalia shops and we went after them. And then began networking with parents around our own State and, finally, around the Nation.

But the thing currently that we were discussing is the potential that we feel universal, nonpunitive drug testing can have in schools. And in two situations that I am most familiar with, one in Sundown, TX, and one in New Orleans, the New Orleans school was a parochial school and they claim that—my recollection is that they announced that they were going to do drug testing in the schools, announced to all the kids and said look, if anyone has a problem now, you come to us. This is not going to be a punitive program. We want to help you. The next day something like 52

kids came in and asked for help. And at the end of 2 years of universal drug testing with parental permission, they claim to have a drug-free school.

And a very similar situation happened in Sundown, TX. The principal called the parents and said, the conditions are these: you must sign to have this happen. We are not going to have the ACLU chasing us all over Texas. It is going to be parental permission. And they started testing the kids and the result has been after again approximately 2 years they claim to have a drug-free school. The ACLU has not been able to get a single person to complain. And finally there is, we are told, a waiting list for parents who want to get their kids in those schools. And from my own parental experience, I think that once those kids know that they are going to be tested, they are looking to us as adults to hold them accountable and help them.

Most kids who get into drugs I'm sure wish there were some adults there strong enough to stop everyone from using them rather than allowing them to be at risk.

Mr. CUMMINGS. The second school, was that a public school?

Ms. NALEPKA. The Texas school was a public school, yes, sir.

Mr. CUMMINGS. So they just did it in one of the public schools? Is that it?

Ms. NALEPKA. In that particular case, but there are about 500 schools nationwide out of, I think, 15,000 schools. There are 500 schools now using some form of drug testing.

Mr. CUMMINGS. Did you have something to say?

Ms. SEMBLER. Yes, I have in my possession a fax, or e-mail that was sent—as far as I know, it was sent to every single legislator in the State of Florida. I was told that it was also sent to every legislator in the entire United States, State legislators. I don't know that that is true, but I can tell you this was sent by the Marijuana Policy Project, signed by Mr. David Nolan in November 1999 to every single legislator in my State.

Fortunately, one of them works for me on his off-time and the purpose of this—which I did not include in my documents, supporting documents, but will be glad to give you a copy of it—is asking that you write a letter to then the Secretary of Health and Human Services, Donna Shalala. Included in that was—there were two things that they were emphasizing. One of them, the second one says, and I would read it to you: There should be no prohibition on single-patient clinical trials. That's just the opening statement.

What they're trying to do is they're trying to get Members of Congress to sign it. A few of them did. Here's the list of them that did. And that should be what we consider "research." In other words——

Mr. CUMMINGS. Let me—I just want to get to Mr. Kampia before my time runs out, if you don't mind. Your movement has been basically accused of trying to—it is a farce—saying that it is a false movement. That you are really not—this is not about medicine, it is about legalizing drugs. Could you answer that for me? Mrs. Sembler, I might have the chance to ask you a question. Sorry.

Ms. SEMBLER. That's perfectly all right.

Mr. KAMPIA. That's a good question, because that is sort of the most often used accusation these days, because our opponents

know they have totally lost the medical marijuana debate. They know that we're going to be passing initiatives in any States that we choose to, and that we are going to continue to work with legislatures to remove criminal penalties. So now they are trying to scare people by saying well, really it is not just about medical marijuana, it is about this broader agenda.

And in fact that is not the case. We're always quite honest about what our agenda is. We don't want to see people go to jail for marijuana. And if we can keep sick people out of jail in the short run, then, by God, we're going to do it. Because right now—I will be cordial with Congressman Barr, but I must say I don't respect him either. Because he is supportive of a policy that criminalizes seriously ill people who have their doctors's approval to use what is a legitimate medicine. That to me is way beyond the bounds of what the Federal Government should be doing. This should be a decision that is made between doctors and patients, and jail should not be the solution to the medical problems that an AIDS patient or a cancer patient is undergoing.

In sum, there is no master plan here. There is no disguised agenda. We're always honest about our goal, which is to keep as many people out of jail as possible. And if this country is only able, only ready to keep cancer parents and AIDS patients and MS patients out of jail that use medical marijuana with their doctors's approval, then we are going to do our best to see that that happens.

Mr. SOUDER. Before yielding to Mr. Barr, I want to make a brief statement, if you will put the clock on me too. Because these hearings challenge the nature of civility when they are hearings where we have disagreements. Because I deeply believe that advocacy from your group has put my kids at risk, has resulted in additional deaths in my community.

And I believe in having a fair hearing and having the debate, but when somebody protects and provides a shield for things that are so damaging to our families and children, it is hard for us not have to strong statements about each other. I understand the argument that you are making about us locking up criminals, because—although apparently, it is based on one case that you had in the media where you weren't sure why they went in the House and you weren't sure of exactly the date, you did not name a bunch of cases relating to going in and getting cancer patients.

There are procedures where you can go to HHS—and we're going to have far more experienced people than you on the next panel to answer the questions on the criminal questions and the medical questions that we will pursue this question. But you can get waivers and you have not anywhere in your testimony, or for that matter, in most of the documents, your organization made the exclusive case of any medicinal qualities of marijuana that are not elsewhere. The only question we have really debated—and I have debated on this on television over the years as well with different advocates and different cancer patients—is whether or not it alleviates vomiting, and whether Marinol works as well with that.

And as that has advanced, we still have the problem—in fact, in California, you have a tension in law enforcement. You cannot come in, because this is an official place, an official cannabis center raising marijuana for so-called medicinal purposes where you have

all sorts of clear evidences in the State of going around and hiding behind; where you have referendums that are predominantly backed by people with huge amounts of money that have a far broader agenda which speaks for itself. In other words, it isn't a matter of you just saying I am concerned about cancer patients. It is that you are concerned about the broader marijuana issue. I am not saying you aren't concerned about the cancer patients, but I am saying they are a convenient shield with which to argue a broader case.

And so some of us, while it may not sound courteous, because you are an articulate advocate for an evil position in my position. And I understand the argument you are making, but I have kids dying. It is ridiculous to say that the only reason people move to marijuana and other things is who they are exposed to. It may exaggerate the problem. In other words, some of those people who move to harder drugs might not have if it had been legal. But it is not true in the Netherlands, in Vancouver, in Alaska, in other places where they attempted the legalization that they did not have an even greater move to harder drugs.

We debate that statistic all the time too, but in fact, we are seeing, for example, our methamphetamine problem and the ecstasy drugs coming from the very countries that supposedly were eliminating the problem by legalizing.

We are going to continue to have deep disagreements. It is important to have you here today to have the debate. At the same time, we are trying to be civil and at the same time, I think the record—I want the record to show that I have a deep, deep offense caused by the type of arguments you have made on television and how you are attacking my own family and other families in my community because of the advocacy of your position. If you would like to make a brief comment in my remaining minute and a half here.

Mr. KAMPIA. Two comments. The first is that the policies of this Nation are responsible for arresting 700,000 marijuana users a year.

Mr. SOUDER. The actions of the individuals.

Mr. KAMPIA. Say again?

Mr. SOUDER. The actions of the individuals are responsible. We are legislators who respond to voters. If individuals get arrested, it is not our responsibility. They violated the laws of the land. That is like saying people who are locked up on pornography are somehow innocent and we just locked them up.

Mr. KAMPIA. OK. The laws of this land have defined certain behaviors as such that 700,000 marijuana users get arrested every year.

Thousands of those—of course, there is no hard numbers on this but I think most of us who have worked in this field for a few decades understand that at least 1 percent of marijuana users actually use for medicinal purposes. I don't want to debate that point. It is just sort of a feeling that I have——

Mr. SOUDER. That is not cancer. That is all medicinal purposes; right?

Mr. KAMPIA. Right. At least 1 percent. Let's just say conservatively——

Mr. SOUDER. That is arthritis and other things?

Mr. KAMPIA. Possibly rheumatoid arthritis, but I'm talking about MS, epilepsy, what we call legitimate conditions. If you say that 1 percent of these conditions, 1 percent of those who are arrested are arrested for medical use, that is still 7,000 a year and those numbers are increasing. So I did not mean to say that because I knew of one patient in Seattle, that that man was the only person in the entire country who had ever been arrested for medical marijuana. That would be an absurd statement. I could open up my files to you and show you example after example where patients with their doctors's approval have actually been arrested for medical marijuana use.

Second of all, I would like to respond just briefly to the other point.

Mr. SOUDER. But that was a fair analysis, because if I mischaracterized your earlier position, I apologize.

Mr. KAMPIA. That's fine. And the second is that there is no process in HHS that allows patients to go and be able to get permission to use medical marijuana. If I was hearing you correctly, you might have been alluding to the program that was opened up in 1978 and which was closed in 1992, which currently allowed eight patients in the country—eight, to legally use medical marijuana where they are smoking 300 marijuana cigarettes a month each.

That program has not been opened for the past decade. So there is no witness here who will tell you today that it is possible to get some sort of Federal waiver. That Federal waiver is impossible. And, in fact, if you are interested in creating a Federal waiver system, I would be able and happy to work with you to pop open that program so that the most ill of the ill could maybe squeak in and get some sort of Federal shipment of medical marijuana.

Mr. SOUDER. I'm sure that over time, we are going to be looking at ways to deal with the most ill of the ill. Not necessarily, however, through marijuana, but through the content, the substance, Marinol. The substance inside the marijuana. We certainly need to look at ways to alleviate the suffering. We may still have a problem with the marijuana.

Mr. Barr, do you want to go next in the questions?

Mr. BARR. Thank you. Over the last couple of years, we've had an issue that comes up every time with the District of Columbia Appropriations bill. And my opposition to efforts in the District of Columbia to move in the direction of so-called medicinal use sometimes are mischaracterized as an effort to do the same with the States, and that is not my goal or intention.

This is an issue that each State has to address by itself. The District of Columbia, as I know you are aware, is different. Congress does have a direct constitutional, very explicit responsibility and authority over the District of Columbia. Therefore we have jurisdiction.

It's not my goal to tell the voters in California or New Mexico or any other State what to do. I do think it is a very important issue that the citizens of each State have to decide. But that being said, I am still a little bit curious as to how you can almost sort of cavalierly get around the supremacy clause of the Constitution. If you accept the fact, which is one of the basic precepts of our Fed-

eral system of government, that you cannot have two sovereigns with an interest in certain behavior, have different laws, how can you really maintain that you have respect for our Federal system of government if you say that in any one, and if you say in any one, then you have to open the door to all sorts of other instance, a particular State cannot trump the supremacy clause?

And again I go back to—granted it is a hypothetical, but I think it is one that ought to be addressed, and I pose it to you again—if you have individuals come in and tell the court and convince a court in, say, California that exposing themselves, being able to use child pornography has a therapeutic effect on them, and you find some doctors that substantiate that, why would not the same logic prevail? Why should not that also provide a medical necessity for the people in California who might, in their so-called wisdom, decide that they want to make a decision to allow pornography for—child pornography for medical purposes? I mean, to be consistent wouldn't you have to say, well, yes they should do that? They should be able to?

Mr. KAMPIA. I guess, first I'd just like to read something from the court decision that overturned your amendment that tried to prevent the D.C. government from counting the votes of our medical marijuana initiative. The quote is, this is from the judge: Whatever else initiative 59 purports to do, it proposes making local penalties for drug possession narrower than the comparable Federal ones. Nothing in the Constitution prohibits such an action.

So, don't take my word for it, take the Federal judge's word for it. There is nothing in the Constitution that prevents States from having, or even the District of Columbia from having, penalties on the marijuana or other drugs that are lower than on the Federal level. But as a former prosecutor, you know that the penalties in Georgia on a State level don't match the penalties for drugs in the U.S. Code. There are disparities all the time, drug to drug. So this is just yet one more example of how there is a disparity in penalty.

The penalty in California for possession of medical marijuana is now zero. The penalty in California for the possession of marijuana for recreational use is——

Mr. BARR. I am not talking about a disparity in sentencing. That is another issue. We are talking here about carving out a trump card. In this case, medical necessity. Would not your position have to be, in order to be consistent and credible, in answer to my hypothetical that, yes, the medical necessity argument should be allowed in that hypothetical to allow the people of California who have passed a referendum or whatever to say that we think that people that benefit psychologically from exposing themselves to child pornography ought to be able to do so, and the Federal Government should not be able to prosecute them?

Mr. KAMPIA. Let's be clear here. My understanding—and tell me if this is not your understanding—is that this medical necessity argument that is currently pending before the U.S. Supreme Court is predicated upon common law. It is not predicated upon proposition 215. It is a common law question——

Mr. BARR. It really doesn't matter what it is predicated on. What I am talking about is the end result of it, and whether or not we are going to have a supremacy clause or not. It doesn't matter what

you base the medical necessity on. Let's say that, however, it is based that the same situation is presented to the court in the hypothetical. But rather than marijuana being used for medical so-called medical necessity, it is child pornography. Wouldn't the same argument that you posit have to prevail in that hypothetical also?

Mr. KAMPIA. I don't know. It is getting too hypothetical for me. Maybe I will have a better answer for you after I hear the court argue this tomorrow. I just don't know. I mean, quite frankly, I find the argument on just the medical necessity of marijuana before the court to be perplexing, because of the fact, as I said, Congress has been pretty clear on not wanting to allow any medical use of marijuana under any conditions. To reach into common law or whatever to say that there is some medical necessity for marijuana distribution under Federal law is to me, it sort of requires a lot of thinking to see how that could be possible. So that is as qualified of an answer that I can give you at this point. I'm sorry that I can't give you more.

Mr. BARR. I wasn't quite sure earlier, did you say that you thought the Supreme Court would rule to uphold the Ninth Circuit or to overturn it?

Mr. KAMPIA. I guess I'm not trying to make a prediction on what the court would do——

Mr. BARR. I thought you had earlier.

Mr. KAMPIA [continuing]. I could see how there could be a reasonable argument to be made that the Ninth Circuit decision would be overturned because Congress has been clear on the question of whether or not marijuana has medical value. I am also more sure that the court is not going to overturn State medical marijuana initiatives in a blanket way. That is not even before the court, and I can't imagine that the court would——

Mr. BARR. In other words, what they would probably wind up doing is, on narrow grounds, overturning or remanding the case?

Mr. KAMPIA. Yes. In terms of what could be argued in Federal court, yes.

Mr. BARR. All right. Thank you.

Mr. SOUDER. We have been joined by Congressman Gilman of New York, vice chairman of the committee, who has an opening statement.

Mr. GILMAN. Thank you, Mr. Chairman. And I regret I was delayed and I am being called now to another meeting. I do want to thank you for holding today's hearing on medical marijuana, Federal drug laws, and the Constitution supremacy clause. I know that tomorrow there is going to be a hearing before the Supreme Court and hopefully we will get some good advice out of that opinion.

I'd like to thank our witnesses who have agreed to appear before us today to offer their insight on these important issues. The last 5 years have seen a number of initiatives in several States to relax or overturn restrictions on the possession on the sale and use of marijuana. And since 1996, eight States and the District of Columbia have enacted primarily through voter initiatives provisions that permit under State law the use of marijuana for medicinal purposes. The general looseness of such provisions however has resulted in de facto decriminalization of marijuana use in those States.

These new State provisions appear to run counter to Federal law, which classifies marijuana as a scheduled controlled substance. In essence, Congress has explicitly stated in statute that there is no accepted medicinal use for marijuana and has criminalized its possession and use.

Many of us who have been active on the drug issue for a number of years here that these recent voter initiatives were designed to provide a back-door method to legalize marijuana usage. The broad language in a number of those provisions, particularly California's, underscores that fear. Moreover the media bears some responsibility in shaping this debate. By and large, a majority of news reports on medicinal marijuana have focused on the supposed benefits of the drug and the compassion in permitting the terminally ill to smoke it, rather than on the dangers of marijuana use or the fact that the scientific evidence shows that the beneficial components can be provided synthetically independent of marijuana. And I have read recently that there was competent medical information that there is a good synthetic use of the pain killer.

It is my view and many on our committee that Federal law preempts local law on this issue by virtue of the supremacy clause of the Constitution. The Supreme Court is due to hear those arguments, as I noted, tomorrow, and I am confident the court will reach an appropriate decision in due course and lay this matter to rest. Marijuana is a gateway drug that is cheaper, more readily available, and stronger than ever before. The sooner we end this latest attempt to legalization, the better.

Thank you, Mr. Chairman I regret that I'm being called to another meeting.

Mr. SOUDER. Thank you, Congressman Gilman. Congresswoman Davis, do you have any further questions?

Mrs. JO ANN DAVIS OF VIRGINIA. Yes, I do, of Mr. Kampia. I believe I heard you state that you think medical marijuana should be used for cancer and AIDS. Yet I heard Mrs. Sembler say in the petition that she mentioned anorexia. And I heard you say that in these eight cases, they were using 300 a month, which is 10 a day. Anorexia in itself is a sickness which you can be cured of, I believe. I am not a doctor. I am not sure. But what happens when you get these people hooked on marijuana? What is your answer to that? You put them on marijuana for medicinal purposes and then you have another problem. How do you respond to that?

Mr. KAMPIA. I'm not familiar with that particular petition, but to answer your question directly, it ultimately should be left up to the doctor and the patient. Doctors prescribe drugs every day that are far more addictive and give the patient a far easier chance of overdosing than marijuana. I am hoping that Congressman Weldon could verify what I just said.

There has never been an overdose death from marijuana in the history of our country. There are legal medicines that are prescribed every day by doctors where patients have a very real chance of overdosing or becoming physically addictive. What we're saying is treat marijuana like any other medicine. Allow doctors and patients to make the determination as to whether or not it should be used. And yes, marijuana isn't free or devoid of negative side effects, but the Institute of Medicine found, and you will hear

more about it in the next panel, that the negative health effects of marijuana are certainly within the realm of reason, given the drugs that are already available by prescription in our society.

Mrs. JO ANN DAVIS OF VIRGINIA. I apologize in being late in hearing your testimony, but these other drugs you are talking about that the doctors prescribe, they do just that. They prescribe and tell you how much of a dosage you can take and they wean you off. Maybe I'm misunderstanding it, but on medical marijuana, it is not necessarily prescribed but recommended. And you can grow it in your own backyard, so the dosage is not controlled by the doctor. It is controlled by you. And the doctor doesn't wean you off, you wean yourself off if you can. Am I correct in that?

Mr. KAMPIA. The State laws in most cases specify an upper quantity limit that you are allowed to possess. Then you use whatever you need to use in order to treat your condition, similar to a doctor prescribing you a big bottle of pills. If you wanted to you could eat all the pills in 1 day. But if you are smart and you want to treat your condition, you would take half a pill a day or one pill a day.

Mrs. JO ANN DAVIS OF VIRGINIA. Who controls the amount that you can grow?

Mr. KAMPIA. The only way that patients can get access to a safe supply of marijuana is to grow their own. So, that's the best that we can do. If you are not happy with that scenario and you want to work with us——

Mrs. JO ANN DAVIS OF VIRGINIA. Don't want to work with you. Don't misunderstand me.

Mr. KAMPIA. You don't want to work with us. I don't know if it is protocol to ask a question. Maybe I'll rephrase it as a statement.

Mrs. JO ANN DAVIS OF VIRGINIA. Fine by me.

Mr. SOUDER. It is not protocol, but if you would like to put a general comment in the record.

Mr. KAMPIA. I think one thing that the committee might be interested in knowing is that right now it is more difficult to do clinical trials on the medical uses of marijuana than any other drug in our society. And I have always been working under the assumption that Congress intended for marijuana to be treated like any other potential medicine. Do the clinical trials. If the FDA buys it, sure. Approve it. But let's not have these voter initiatives deciding what is medicine.

If that is really where Congress is on this issue and you want to see clinical trials move forward, I would point out that the Clinton administration released guidelines in 1999 which make it much more difficult to do research on marijuana. So if you don't want to work with me, perhaps work among yourselves to try to ask the Bush administration to make those guidelines different so that legitimate researchers who have FDA approval can actually get a quantity of marijuana to study in a clinical trial and not have it be any more difficult than studying any other potential medicines in our society.

Mrs. JO ANN DAVIS OF VIRGINIA. I think the scary part is watching our children study it.

Mr. SOUDER. Thank you. I thank the first panel for coming. I know that many of you travelled from a long distance. We have ad-

ditional written questions that we may ask each of you for additional answers. Once again, I thank each you for coming.

I would just like to say for the record that as a person who has opposed some of those research studies, I do not favor looking at illegal narcotics for the medicinal value. I am encouraged to find alternatives to illegal narcotics to address the problem.

If the next panel could come forward.

We have distinguished witnesses with us on our second panel and I very much appreciate all of you joining us today and we look forward to your testimony as well.

From the administration we will hear from Laura Nagel, who is the Deputy Assistant Administrator for diversion control at the Drug Enforcement Agency. We're also joined by two of our distinguished former colleagues, Bill McCollum of Florida and Dan Lungren of California who has not been invited just because he is a Notre Dame grad, but it is an extra bonus that we get today. And also testifying will be Dr. Janet Joy from the Institute of Medicine from the National Academy of Sciences.

Again, as an oversight committee, it is our standard practice to ask all of our witnesses to testify under oath. If the witnesses will rise—and Congressman Lungren, if you want to just sit there and hold your hand up, that is just fine. Raise your right hands and I will administer the oath.

[Witnesses sworn.]

Mr. SOUDER. Let the record show that the witnesses have all answered in the affirmative.

We will now recognize the witnesses for their opening statements. Again, we ask to you summarize in the 5 minutes and include any fuller statements you may wish to make in the record.

Ms. Nagel, to you. Do you have an opening statement?

STATEMENTS OF LAURA NAGEL, DEPUTY ASSISTANT ADMINISTRATOR, DIVERSION CONTROL, DRUG ENFORCEMENT ADMINISTRATION; BILL MCCOLLUM, FORMER CHAIRMAN, U.S. HOUSE SUBCOMMITTEE ON CRIME; DAN LUNGREN, FORMER CALIFORNIA STATE ATTORNEY GENERAL; AND JANET JOY, SENIOR PROGRAM OFFICER, DIVISION OF NEUROSCIENCE AND BEHAVIORAL HEALTH, INSTITUTE OF MEDICINE

Ms. NAGEL. Thank you, Chairman Souder and members of the subcommittee. Good afternoon and thank you for the opportunity to address this subcommittee on the effects certain State laws have had on the enforcement of Federal narcotic laws.

Mr. Chairman, on behalf of Administrator Marshall, I would like to thank you and the subcommittee for the unwavering support you have given to the Drug Enforcement Administration and drug law enforcement in general.

Let me begin with a discussion of the Controlled Substance Act and the scheduling process. The CSA was passed to minimize the quantity of abusable substances available while providing for legitimate medical, scientific, and industrial needs for those substances in the United States. The CSA places legitimate and illicit substances with a substantial potential for abuse into one of five schedules. This placement is based on the substance's accepted medical use, safety, potential for abuse and/or dependence liability.

Schedule 1 is the most restrictive and schedule 5 is the least restrictive schedule. The act also provides a mechanism for substances to be controlled, added to a schedule, decontrolled, or removed from a schedule and rescheduled or transferred from one schedule to another.

In 1995, DEA received a petition to transfer marijuana from schedule 1 control. This petition was based on the assertion that marijuana has lower abuse potential than other substances in schedule 1. The accepted medical use issue was not addressed in the petition. Following the administrative scheduling process, exhaustive reviews, and evaluations of the scientific and medical literature and other data were conducted independently by the Department, Health and Human Services, and DEA. On March 20, 2001, DEA denied the petitioner's request to reschedule marijuana on both legal and scientific grounds.

I would like now to address the impact State laws have had on Federal law enforcement. These State laws purport to legalize marijuana for medical use. These so-called medical marijuana laws work as follows: If a doctor recommends, no prescription is required, that a patient use marijuana for any ailment, then it is legal for the patient to grow and use marijuana. However, "medical marijuana" is a misnomer since marijuana is in fact a schedule 1 drug.

The situation has been viewed as a green light for many marijuana growers and distributors who recognize that State and local officials are looking the other way. State judges have ordered law enforcement officials to return marijuana seized from criminal defendants who claim to be handling the drug for medical reasons. Even when local police have made arrests and seizures, there have been numerous instances where district attorneys have been unwilling to prosecute because the defendants complied with the spirit of the State law. In essence, allowing traffickers to carry on with impunity in this manner undercuts the enforcement of the CSA and allows an unproven and potentially dangerous drug to be sold to the public as medicine.

Two pending lawsuits have developed from law enforcement efforts to keep this situation in check. In *United States* v. *Oakland Cannabis Buyers Cooperative,* the United States sought an injunction ordering this cannabis club to stop growing and distributing marijuana in violation of Federal law. The club claimed a medical necessity defense. The U.S. Supreme Court will hear argument on this case tomorrow.

In *Conant* v. *ONDCP,* a group of Californians sued the government claiming that doctors have a free speech right to recommend that their patients use marijuana in violation of Federal law. The Federal District Court agreed and issued an injunction which prohibits DEA from investigating doctors who recommend marijuana, or from revoking their DEA registrations.

Last, I would like to point out that the United States is a party to several international treaties to control international and domestic traffic in controlled substances. Congress and the CSA expressly recognize these treaties. Most of the provisions of the CSA must be enforced in order for the United States to meet its obligation under these treaties. There is no doubt that proposition 215 and similar

State initiatives provide an obstacle to the United States meeting its obligations under these treaties. In addition, these State marijuana initiatives to remain in force potentially undermines diplomatic efforts by other countries, like Mexico and Colombia, to enact and vigorously enforce their drug laws.

In conclusion, I would like to thank the subcommittee for the opportunity to comment on this highly controversial but important topic and look forward to answering questions.

[The prepared statement of Ms. Nagel follows:]

Statement of
Laura M. Nagel
Deputy Assistant Administrator
Office of Diversion Control
Drug Enforcement Administration
Before the
House Committee on Government Reform:
Subcommittee on Criminal Justice,
Drug Policy and Human Resources
March 27, 2001

Chairman Souder, Ranking Member Cummings, and Members of the Subcommittee, good afternoon and thank you for the opportunity to address this subcommittee on the effects certain state laws have on the enforcement of federal narcotics laws. Mr. Chairman, on behalf of Administrator Marshall, I would like to thank the subcommittee for its unwavering support of the DEA in carrying out our mission of enforcing the nation's drug laws.

Let me begin with a discussion of the Controlled Substances Act (CSA) and the scheduling process. The CSA, Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, is the legal foundation for the United States' fight against abuse of drugs and other substances. The CSA was passed to minimize the quantity of abuseable substances available to those likely to abuse them, while providing for legitimate medical, scientific and industrial needs of those substances in the United States. The Drug Enforcement Administration (DEA) is the agency within the Department of Justice primarily responsible for the administration and enforcement of the provisions of the CSA.

The CSA places substances with a substantial potential for abuse into one of five schedules. Both legitimately produced drugs and clandestinely manufactured substances are included in the list of substances controlled under the CSA. This placement is based on the substance's accepted medical use, safety, potential for abuse, and/or dependence liability; Schedule I is the most restrictive and Schedule V is the least restrictive schedule. The Act also provides a mechanism for (1) substances to be controlled or added to a schedule, (2) decontrolled or removed from a schedule, and (3) rescheduled or transferred from one schedule to another. Proceedings to add, change, or remove a substance from the schedules listed in the CSA can be initiated either (1) by the Attorney General or Administrator of DEA (after reports from DEA field offices, state control authorities, treatment clinics, or other sources regarding the diversion or abuse problems associated with a substance), (2) at the request of the Secretary of Health and Human

Services (HHS), or (3) by petition from any interested party (including a pharmaceutical company, advocacy group, or private citizen).

The CSA, and its subsequent amendments, establishes several procedures for the control of substances that create or have the potential to create significant abuse problems. Specific procedures to administratively control or decontrol substances under the CSA include (1) traditional scheduling, (2) temporary (emergency) scheduling, (3) the scheduling of immediate precursors, and (4) the control actions required by international treaty obligations. Additionally, Congress may add, delete or transfer substances under the CSA by legislative process. I am going to restrict my statement to the traditional administrative scheduling procedures.

The CSA provides roles for both the law enforcement and scientific and medical communities in making drug scheduling decisions pursuant to the traditional scheduling provisions (21 U.S.C. 811-812). The Administrator of the DEA, by authority of the Attorney General, has the ultimate authority for the decision as to whether or not a substance should be controlled under this provision of the CSA. The DEA Administrator's decision, however, must be based on all available evidence and can be made only after a scientific and medical evaluation of those data are received by DEA from the Assistant Secretary for Health of HHS, who is the Federal government's representative of the scientific and medical community. Recommendations of the Secretary of HHS regarding the scientific and medical aspects of scheduling are binding on DEA; in cases where a substance is not controlled, if the Secretary of HHS recommends that a substance cannot be controlled, the DEA Administrator may not control the substance. Ultimately, DEA decides the appropriate schedule of a controlled substance.

The administrative scheduling process relies on scientifically sound, legally-defensible and timely data relevant to each substance considered for placement into one of the five schedules. One of the responsibilities of the DEA in this process is to collect the necessary data and write a comprehensive review that documents all aspects of a drug or substance, including data regarding its abuse and dependence liability, pattern, history and significance of its actual abuse, its pharmacology, chemistry, and legitimate medical use. This document is sent to the HHS along with a request for a scientific and medical evaluation and a scheduling recommendation. The request is sent to the Assistant Secretary for Health of HHS, who solicits information from the Commissioner of the Food and Drug Administration (FDA), evaluations and recommendations from the National Institute on Drug Abuse (NIDA), and occasionally from the scientific and medical community. The Assistant Secretary for Health, by authority from the Secretary, compiles these data and transmits back to DEA a scientific and medical evaluation regarding the drug or other substance, a recommendation as to whether the substance should be controlled, and in what schedule it should be placed.

Once DEA has received the scientific and medical evaluation from HHS, the Administrator evaluates all available data and makes a final decision whether to propose that a drug or substance be controlled and into which schedule it should be placed.

The threshold issue for determining scheduling is whether the drug or substance has potential for abuse. If a substance does not have potential for abuse then it cannot be controlled. Although the term "potential for abuse" is not defined in the CSA, there is much discussion in the legislative history of the Act and its predecessor laws. The indicators that a drug or other substance has a potential for abuse include evidence that individuals are taking the drug or other substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or to the community, evidence of significant diversion of the drug or other substance from legitimate channels, evidence that individuals are taking the drug or other substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs; or the substance is new and is related to a substance already listed and likely to have the same potential for abuse as the listed substance. In fact, the evidence of actual abuse of a substance indicates that the drug has a potential for abuse.

In order to determine in which schedule a drug or other substance should be placed, or whether a controlled substance should be decontrolled, or rescheduled, certain factors must be considered. These eight factors are listed in Section 201(c) of the CSA (21 U.S.C., Section 811 (c)) and include data on the drug's actual or relative potential for abuse, the scientific evidence and knowledge of abuse, the scope, duration, and significance of abuse, its risk to the public health, the drug's psychic or physiological dependence liability, and whether it is an immediate precursor of a substance already controlled.

Once the above listed eight factors are evaluated by DEA and HHS and a scheduling recommendation is received from the Secretary of HHS, the DEA Administrator must make specific findings concerning the drug or other substance. This will determine into which schedule the drug or other substance should be placed. The criteria for each schedule are established by the CSA and involve making findings on those criteria.

For Schedule I substances, the criteria that need to be considered are whether the substance has a high potential for abuse, has no currently accepted medical use in treatment in the United States, and has a lack of accepted safety for use under medical supervision.

For substances in Schedule II, the criteria that need to be considered are its high potential for abuse, whether it has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions and whether abuse of the substances may lead to severe psychological or physical dependence.

A substance is placed in one of Schedules III through V based on its potential for abuse relative to substances in other schedules, whether it has a currently accepted medical use in treatment in the United States, and its relative potential to produce physical or psychological dependence.

If the DEA Administrator determines that a substance meets the criteria for control in one of the five schedules of the CSA or that it should be decontrolled or transferred into another schedule, a proposal to do so is published in the *Federal Register*. The proposal invites all interested persons to comment on the proposed action. Relevant comments must be considered by DEA and addressed in the final order. Affected parties may also request a hearing with DEA. If no hearing is requested, DEA will publish a final order in the *Federal Register*. The final order will set the effective dates for imposing the various requirements of the CSA.

If a hearing is held, it is held before an Administrative Law Judge (ALJ). The ALJ takes evidence on factual issues and hears arguments on legal questions regarding the control of the substance. The ALJ prepares findings of fact and conclusions of law and a recommended decision which is submitted to the DEA Administrator. The DEA Administrator is not required to follow the recommendations of the ALJ. The Administrator reviews the entire record, including documents and legal briefs submitted, background materials, and the recommendations of the ALJ, then publishes his decision as a final rule in the *Federal Register*.

Once the final order is published in the *Federal Register*, interested parties have 30 days to appeal to a U.S. Court of Appeals to challenge the order. Findings of fact of the Administrator are deemed conclusive if supported by "substantial evidence." The order imposing controls is not suspended during the appeal, unless so ordered by the Court.

The DEA has used the administrative scheduling process to place substances under control and to transfer substances among schedules. Specifically, the DEA has also transferred two tetrahydrocannabinol (THC) related substances (the natural psychoactive ingredient found in marijuana) from Schedule I to Schedule II. In 1985, the FDA approved a new drug application for a product called Marinol, which contains specific amounts of a synthetic THC called dronabinol suspended in sesame oil. Marinol was approved for use in treatment of nausea and vomiting produced by cancer chemotherapy. Also in 1985, the FDA approved a new drug application for another synthetic cannabinoid-like substance called Nabilone. The Nabilone product Cesamet was approved for use in treatment of nausea and vomiting produced by cancer chemotherapy, however, this product has never been marketed in the United States. These products were approved for marketing by the FDA and found to have an accepted medical use in treatment in the United States. Therefore, Nabilone and the Marinol product were transferred from Schedule I to Schedule II.

In 1999, the Marinol product was transferred from Schedule II to Schedule III in response to a company's petition to the Administrator. Following the administrative scheduling procedure, the Administrator evaluated all the available data and found that Marinol met the criteria for inclusion in Schedule III. The decision was based on a scientific and medical evaluation from HHS and DEA's independent evaluation that demonstrated that the specific product formulation reduced the potential for abuse of the THC contained in the product, and thus met the criteria for inclusion in Schedule III.

In 1995, DEA received a petition to transfer marijuana and THC from Schedule I control, and Marinol and Nabilone from Schedule II control. This petition was based on the assertion that these substances had lower abuse potentials than other substances in Schedules I or II. The accepted medical use issue was not addressed in the petition. Following the administrative scheduling process, exhaustive reviews and evaluations of the scientific and medical literature and other data were conducted independently by HHS and DEA. On March 20, 2001, the DEA denied the petitioner's request for rulemaking on marijuana on both legal and scientific grounds.

Research can be and has been successfully conducted using Schedule I controlled substances. Currently DEA has registered 577 researchers to handle Schedule I substances. Of these, 158 are registered to conduct research using marijuana or THC. DEA also has registered 157 researchers conducting studies with LSD, 105 researchers are registered to conduct studies with MDMA, and 44 researchers are registered to conduct studies with GHB.

There are instances when Schedule I substances remain in Schedule I while products containing them are placed in Schedule II or III. In these cases the specific product is formulated in such a way that it has a lower abuse potential than the substance, and it has accepted medical use. The synthetic THC substance dronabinol remains in Schedule I while the dronabinol-containing product, Marinol, was transferred to Schedule II and subsequently to Schedule III. Diphenoxin is in Schedule I while combination products containing diphenoxin are in Schedules IV and V. The most recent example of this type of scheduling is gamma hydroxybutyric acid (GHB). Congress directed DEA to place the substance GHB in Schedule I, but if or when the FDA approves the drug for marketing, Congress directed that only the FDA approved product will be placed in Schedule III. There are ongoing clinical studies of this Schedule I substance to support a company's FDA submission.

There are also a number of other substances that were placed in Schedule I while clinical studies were ongoing to determine their accepted medical use. Once these substances were approved for marketing and found to have accepted medical use the substances were transferred to Schedule II. Examples of these transfers include the narcotic treatment drug LAAM, and the narcotic analgesics sufentanil and alfentanil.

It should be noted that the majority of controlled substances are in Schedules II through V. Some drug substances were placed in Schedule I by Congress in 1970 and others added in subsequent years because of their high potential for abuse and lack of medical safety and use in the United States. These actions have withstood the test of time and scientific scrutiny and remain there today. These control actions have saved an indeterminable number of lives within the United States. However, the CSA has proved to be a dynamic law that has allowed for the evolution of science and technology to progress to the point in which some Schedule I substances have been developed for medical use and the CSA has been modified from its original listings to bring new drug products to the general medical community.

I would now like to address the impact state laws such as California's Proposition 215 have had on federal law enforcement. These state laws purport to legalize marijuana for "medical" use. These so-called "medical marijuana laws" work as follows: If a doctor "recommends" that a patient use marijuana for any ailment, then it is legal for the patient to grow and use marijuana. At present, Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon, and Washington have passed such laws. Arizona has passed a law that allows doctors to prescribe any Schedule I drug. Contrary to these laws, marijuana remains an illegal drug under federal law. Actually "medical" marijuana is actually a misnomer since marijuana is in fact a Schedule I drug. As such, it has not been scientifically proven safe and effective in accordance with the Food, Drug, and Cosmetic Act and cannot be used except in research approved by the FDA and registered with DEA. Under federal law, there is really no basis to distinguish "medical" marijuana trafficking from marijuana trafficking generally.

Historically, DEA has directed its investigative resources at major trafficking organizations without regard to whether the traffickers might claim to have a "medical" excuse for violating the law. This is not to say that these current state laws have not caused conflict and confusion throughout the law enforcement community. California's Attorney General publicly announced his unwillingness to enforce the state's drug laws against traffickers who claim to be involved with "medical" marijuana. He has left it to the individual counties and municipalities to arrive at their own criteria for implementation of Proposition 215. The California localities that have taken a public position on Proposition 215 have issued vague guidelines, all of which send a clear message that anyone who has a "recommendation" from a doctor is permitted to grow and possess certain amounts of marijuana. The City of Oakland for example allows each person to possess up to six pounds of marijuana. Since there is a complete lack of state government oversight, each grower is on his or her honor not to exceed these vague guidelines.

California has now become the home of several "cannabis" clubs that openly distribute marijuana to anyone who the club owners decide has a "medical" need for the drug. In some jurisdictions, local sheriffs have given groups advance permission to grow marijuana while state judges have ordered law enforcement officials to return marijuana seized from criminal defendants who claim to be handling the drug for "medical" reasons. Even where local police have made arrests and seizures, there have been numerous instances where local district attorneys have been unwilling to prosecute because the defendants supposedly complied with the "spirit" of Proposition 215.

An example of how marijuana trafficking is occurring under the guise of medicine is illustrated in one particular case in 1999. A local television station in New Orleans informed law enforcement officials that it had discovered an Internet web site advertising the sale of "medical" marijuana. The web site was established by an individual who distributed marijuana from his home in Anaheim, California. After the United States Attorney's Office for the Eastern District of Louisiana advised DEA that it would prosecute the case, DEA undercover agents placed orders which resulted in marijuana

being shipped to the agents in New Orleans. In September 1999, agents from the DEA and IRS together with the Anaheim Police Department executed a search warrant at the defendant's home. During the execution of the warrant, the defendant advised that he had been selling "medical" marijuana for nearly three years. Records revealed that he had distributed more than 50 pounds to 149 different customers in 35 different states. On February 11, 2000, the defendant was indicted by a federal grand jury in New Orleans on charges of distribution of marijuana and advertising the distribution of a Schedule I controlled substance. During the execution of the search warrant, agents also seized numerous "recommendation" letters that appear to have been issued by doctors in various states to customers. .

The resulting dilemma has been further viewed as jeopardizing the historical cooperation between federal, state, and local drug enforcement officials. For example, local officers assigned to a federally funded task force might find themselves in the situation of having to seize marijuana in order to enforce federal law, knowing that the local prosecutor will refuse to prosecute or the local judge will order the marijuana returned to the grower. In essence, allowing traffickers to carry on with impunity in this manner simply undercuts enforcement of the Controlled Substances Act and allows an unproven and potentially dangerous drug to be sold to the public as "medicine".

Two pending lawsuits have developed from law enforcement efforts to keep this situation in check. In United States vs. Oakland Cannabis Buyers' Cooperative the U.S. sought an injunction ordering this "cannabis club" to stop growing and distributing marijuana in violation of federal law. The club claimed a "medical necessity" defense that allowed it to distribute marijuana. The Ninth Circuit Court of Appeals recognized that this was a legally cognizable defense. The United States Supreme Court will hear argument on this case on March 28th, 2001. In Conant vs. ONDCP, DOJ, DEA, and HHS a group of Californians sued the Government claiming that doctors have a "free speech" right to "recommend" that their patients use marijuana in violation of federal law. The federal district court agreed and issued an injunction that prohibits DEA from investigating doctors who "recommend" marijuana or revoking their DEA registrations.

Lastly, I would like to point out that the United States is a party to several international treaties to control international and domestic traffic in controlled substances. These are expressly recognized by Congress in the Controlled Substances Act. Most notable are: the 1961 Single Convention on Narcotic Drugs; the 1971 Convention on Psychotropic Substances; and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Most of the provisions of the CSA must be in force in order for the United States to meet its obligations under these treaties. Treaty obligations that are relevant are as follows: the United States must enact and carry out legislation disallowing the use of Schedule I drugs outside of research; make it a criminal offense, subject to imprisonment, to traffic in illicit or to aid and abet such trafficking; and prohibit cultivation of marijuana except by persons licensed by, and under the direct supervision of the federal government.

There is no doubt that Proposition 215 and similar state initiatives provide an obstacle to the United States meeting its obligations under these treaties. In addition, allowing these state marijuana initiatives to remain in force potentially undermines diplomatic efforts by the United States to persuade other countries like Mexico and Colombia to enact and vigorously enforce their drug laws.

In conclusion, I would again like to thank this committee for the opportunity to comment on this highly controversial but very important topic and look forward to addressing any questions.

Mr. SOUDER. Thank you, and I again want to welcome our former colleague, Congressman McCollum, who was a leader in the Crime Subcommittee and a leader in the drug task force. We miss you very much. You were a very articulate spokesman in the antidrug effort. Hopefully, you can continue to stay involved in this administration.

Mr. MCCOLLUM. Thank you, very much, Mr. Chairman for letting us come and talk about this subject.

Mr. Chairman, marijuana is not a medicine, it is an illegal drug. Smoked marijuana is a highly dangerous narcotic. In addition to its addictive qualities, it is known to cause cancer and harm the body's immune system. The American Medical Association and many other medical groups oppose the use of smoked marijuana for medicinal purposes, citing the fact that its addictive qualities and health hazards far outweigh any medical value. The AMA points out that what medicinal value there is in a marijuana plant has been approved by the Food and Drug Administration and been available in prescription pill form for a long time.

Nonetheless, the State initiative movement to "legalize" smoked marijuana for medicinal purposes has resulted in eight States legalizing the possession of certain amounts of marijuana for so-called medicinal purposes.

As one might expect, prosecution of trafficking or possession of marijuana in these States under State law has become much more difficult, and where there is a recommendation from a doctor, virtually nonexistent. In turn, this has made the job of Federal law enforcement, especially that of the Drug Enforcement Administration, much more difficult. The Controlled Substances Act is a Federal law that prohibits trafficking in marijuana anywhere in the United States. Trafficking in marijuana recommended for medicinal purposes in the eight States that have passed marijuana initiatives is still a crime under the Controlled Substances Act. DEA is rightfully concerned that the absence of any prosecution for these activities in the given States will send a message not only in those States, but throughout the country and the world that undermines the moral foundation for controlling trafficking in marijuana generally and undermines the deterrent effect of the Controlled Substances Act.

In the case being heard tomorrow in the Supreme Court, the Ninth Circuit Court of Appeals ruling effectively nullifies Federal law in medical marijuana cases. This being challenged there. Technically, it involves, as you have heard other witnesses say, a narrow matter of the government's burden of proof in seeking injunctive relief under the Controlled Substances Act, but has a broad implication for Federal prosecutions as well.

Congress, in making marijuana a schedule 1 drug and prohibiting its sale, distribution, and possession under the Federal Controlled Substances Act determined by that act, by passing that law and making that schedule, that it had—that marijuana had no medical utility. In addition, the Food and Drug Administration has never approved it as a medication and no drug can be prescribed without approval.

The supremacy clause of the United States Constitution nullifies any State act to contradict these Federal laws. Although one can

never be certain of the constitutionality of a law under challenge until the Supreme Court rules, I believe in all likelihood that the results of the court ruling tomorrow will be injunctive relief and the prosecution of marijuana traffickers will prevail, regardless of the protections of State initiatives in question. And I also believe that the medical necessity argument will be thrown out.

The more pertinent question then is whether and under what conditions Federal prosecution should be undertaken. In my view, Federal prosecution should be undertaken only in the context of a new broader policy initiative by the Bush administration to educate the American public on the dangers of smoked marijuana and the dangers of initiatives such as proposition 215. Until such a policy and plan of action to go with it are developed and adopted, confrontational Federal prosecutions of marijuana trafficking protected under State laws are likely to engender more harm than good.

It is obvious from the fact that these initiatives have passed in the affected States that those proposing them have been successful in persuading the public of the alleged benign nature of these inititatives. Many, if not most of the residents of these States, seem to have no comprehension of the true dangers of smoked marijuana. Neither do they seem to appreciate that the effect of how these initiatives have been drafted is to undermine efforts to control marijuana trafficking in the affected States and elsewhere. Federal prosecution of these trafficking crimes, given the current climate of a poorly informed public, could well cause a political backlash.

We need the concerned mothers and fathers of America to rise up in their communities all across this country and educate their friends and neighbors and the public opinion makers on the dangers of smoked marijuana, the importance to our children of not legalizing marijuana, and the perils of the course these initiatives are taking us on. The President and the Office of National Drug Control Policy need to develop and implement a plan to educate, motivate and organize parents across the Nation to bring about a state of public opinion that will sustain a policy in opposition to medical marijuana initiatives. A policy of enforcement of Federal law against all trafficking in marijuana, regardless of its intended use, and the policy that discourages rather than encourages teen use of marijuana and other narcotics.

As a part of this effort, at some point enforcement of Federal criminal laws against marijuana traffickers in the medical marijuana States would be appropriate. The promoters of medical marijuana and the legalization of marijuana must be confronted. Appeasement will only make them more aggressive and more successful. But again, such prosecution should only be undertaken in the context of a larger national policy.

Just last week, two teenagers appearing before a Senate committee hearing on ecstasy told the Senators that ecstasy was not the first drug they used, marijuana was. Not only is marijuana dangerous in its own right; it is the gateway drug to cocaine, heroin, ecstacy, methamphetamines and many more.

Any message that says to our children that it is OK or acceptable to smoke marijuana is dangerous. And that is just a fact. The mes-

sage being sent by medical marijuana initiatives that have been passed in California and other States is precisely such a dangerous message. We must find a way to counter it and rally public opinion to do so. Thank you, Mr. Chairman.

[The prepared statement of Mr. McCollum follows:]

TESTIMONY of BILL McCOLLUM
Former Chairman, U.S. House Subcommittee on Crime
on
"FEDERAL DRUG LAW AND THE CONSTITUTION'S SUPREMACY CLAUSE"
before the
House Committee on Government Reform
Subcommittee on Criminal Justice, Drug Policy and Human Resources
Washington, D.C.

March 27, 2001

Mr. Chairman:

Thank you for holding this hearing and allowing some of us to try to put in context tomorrow's U.S. Supreme Court hearing on federal law and the California medical marijuana initiative (United States v. Oakland Cannabis Buyers' Cooperative).

Smoked marijuana is a highly dangerous narcotic. In addition to its addictive qualities, it is known to cause cancer and to harm the body's immune system. The American Medical Association and many other medical groups oppose the use of smoked marijuana for medicinal purposes citing the fact that its addictive qualities and health hazards far outweigh any medical value. And the AMA points out that what medicinal value there is in a marijuana plant has been approved by the Food and Drug Administration and been available in prescription pill form for a long time.

Nonetheless, a state initiative movement to "legalize" smoked marijuana for medicinal purposes has resulted in eight states legalizing the possession of certain amounts of marijuana for so-called medicinal purposes. As one might expect, prosecution of trafficking or possession of marijuana in these states under state law has become much more difficult, and where there is a "recommendation" from a doctor, virtually nonexistent. In turn, this has made the job of federal law enforcement, especially that of the Drug Enforcement Administration (DEA) much more difficult.

The Controlled Substances Act (CSA) is a federal law that prohibits trafficking in marijuana anywhere in the United States. Trafficking in marijuana "recommended" for medicinal purposes in the eight states that have passed marijuana initiatives is still a crime under CSA. While those who traffic in marijuana for medicinal purposes in the affected states usually are involved with amounts that fall below threshold requirements for prosecution set by United States Attorneys' Offices, DEA is rightfully concerned that the absence of any prosecution for these activities in the given states will send a message not only in those states, but throughout the country and the world that undermines the moral foundation for controlling trafficking in marijuana generally and undermines the

deterrent effect of CSA. It also is contrary to America's international agreements on controlling narcotics trafficking. For these reasons in addition to using injunctive relief DEA has urged the Office of the Attorney General to direct U.S. Attorneys in the affected states to prosecute trafficking in medical marijuana in certain cases below the current threshold standards to set examples.

In the case being heard in the U.S. Supreme Court tomorrow, the Ninth Circuit Court of Appeals ruling that effectively nullifies federal law in medical marijuana cases is being challenged. Technically it involves a narrow matter of the government's burden of proof in seeking injunctive relief under CSA but has broad implications for federal prosecutions as well. Although one can never be certain of the constitutionality of a law under challenge until the United States Supreme Court rules, I believe that in all likelihood federal injunctive relief and prosecution of marijuana traffickers under CSA regardless of the protection afforded by the state initiatives in question will be upheld as constitutional and the "medical necessity" argument thrown out. The more pertinent question is whether and under what conditions federal prosecution should be undertaken.

In my view, federal prosecutions should be undertaken only in the context of a new, broader public policy initiative by the Bush Administration to educate the American public on the dangers of smoked marijuana and the dangers of initiatives like Proposition 215, passed in California. Until such a policy and a plan of action to go with it are developed and adopted, confrontational federal prosecutions of marijuana trafficking protected under state laws are likely to engender more harm than good. It is obvious from the fact that these initiatives have passed in the affected states that those proposing them have been successful in persuading the public of the alleged benign nature of these initiatives. Many, if not most, of the residents of these states seem to have no comprehension of the true dangers of smoked marijuana. Neither do they seem to appreciate that the effect of how these initiatives have been drafted is to undermine efforts to control marijuana trafficking, in the affected states and elsewhere.
Federal prosecution of these trafficking crimes, given the current climate of a poorly informed public, could well cause a political backlash that aids the cause of those who want to see more initiatives like these passed and those who want to legalize marijuana for all purposes.

We need the concerned mothers and fathers of America to rise up in their communities all across this country and educate their friends and neighbors and public opinion makers on the dangers of smoked marijuana, the importance to our children of not legalizing marijuana and the perils of the course these initiatives are taking us on. The President and the Office of National Drug Control Policy (ONDCP) need to develop and implement a plan to educate, motivate and organize parents throughout the nation to bring about a state of public opinion that will sustain a policy in opposition to medical marijuana initiatives, a policy of enforcement of federal law against all trafficking in

marijuana regardless of its intended use, and a policy that discourages rather than encourages teen use of marijuana and other narcotics.

As a part of this effort, at some point enforcement of federal criminal laws against marijuana traffickers in the medical marijuana states would be appropriate. The promoters of medical marijuana and the legalization of marijuana must be confronted. Appeasement will only make them more aggressive and more successful. But again, such prosecutions should only be undertaken in the context of a larger, national policy. Only when this national effort has been implemented should such federal prosecutions be undertaken – and then, they should be selective and designed to conform with achieving the objectives of the overall policy.
Just last week two teenagers appearing before a Senate Committee hearing on ecstasy told the Senators that ecstasy was not the first drug they had used. Not only is marijuana dangerous in its own right, it is the gateway drug to cocaine, heroin, ecstasy, methamphetamines, and many more. Any message that says to our children that it is o.k. or acceptable to smoke marijuana is dangerous. And it's dangerous for one basic reason: Because it will result in more kids smoking dope. And that's not a prescription for a stronger America. The message being sent by the medical marijuana initiatives that have been passed in California and the other states is precisely such a dangerous message. We must find a way to counter it and rally public opinion necessary to do so.

The effort to combat the marijuana initiatives and to educate, motivate and organize concerned parents on marijuana and these initiatives should be viewed as a part of the President's overall drug strategy promulgated by ONDCP -- a part of the bigger policy and plan directed at drug education, prevention, treatment and law enforcement throughout the nation. Community anti-drug coalitions, the Drug Free America Foundation, the Partnership for a Drug-Free America, and the many other effective drug education and treatment organizations across the country need to be utilized and coordinated in this effort. In short, we need to get everybody pulling on the oars in the same direction, and pulling together. And we need more energized parents and community leaders in every city and town in America speaking one consistent message: That drugs are a one way ticket to mediocrity. It can be done. It must be done.

Mr. SOUDER. Thank you again, Mr. McCollum. And I want to say that one of the more moving testimonies that we had in this subcommittee was in a hearing that we had done jointly with you in Orlando on the heroin question where we had a young boy and his dad who was a local elected official. They went public together and the young boy talked about how he started on the marijuana habit and how it evolved and how his dad had wanted to wish the best, and his dad cried in public, said—and I didn't want to acknowledge what was going on with my family, and I am coming forward today because I want to warn other parents. That was moving testimony of the interrelationships. I want to thank you again for your leadership.

Dr. Joy.

Ms. JOY. Good afternoon, Chairman Souder and members of the committee. In 1996, I think it was—I am forgetting my date—the Institute of Medicine was asked by the Office of National Drug Control Policy to conduct an independent scientific review of the medical benefits of marijuana. And I served as the study director on that report and that's what I'll be talking about today is that report.

We were asked to review the scientific evidence—it's not a legal review. The report makes no—takes no position on the legal status of medical marijuana. And I should add that we were also asked to look at the—examine the evidence of the gateway effect of marijuana.

As such, this report represents the views and inputs of the Nation's leading scientists whom we assembled to provide the panel with information and so forth. What was striking about the study was the level of consensus on the scientific evidence of the therapeutic potential of medical marijuana and its constituent components I should add. And I'm going to move from there to just reviewing the recommendations for you.

The committee concluded that canabinoids—and that's the category of drug of which THC is a part. There are other canabinoids in marijuana. Not all of them are strongly linked to therapeutic benefits. Canabinoids also exist naturally in the human body. The panel concluded that canabinoids likely have a control in pain modulation, control of movement and memory.

Canabinoids affect the body in very different ways, not all of which is known, but a tremendous amount of new information has been learned from research in the past 10 years. And as a result of this new information, coupled with lack of information, the committee recommended that research should continue into the physiological effects of synthetic as well as plant-derived canabinoids, as well as the natural functions of canabinoids found in the body.

The second recommendation concerned clinical trials. The committee did, in fact, recommend clinical trials. These are clinical trials of canabinoid drugs, meaning chemically defined drugs, meaning the standard pharmaceutical development pathway.

This was derived from the committee's conclusion that there are scientific data that indicate the potential therapeutic value of canabinoid drugs, primarily THC, for pain relief, control of nausea and vomiting, and appetite simulation. They further noted that smoked marijuana, however, is a crude THC delivery system that

also delivers harmful substances. And I will take an aside to note here that Marinol is not an equivalent for smoked marijuana, "marijuana" being the legally available THC. There is an important pharmacological difference between smoking a substance versus swallowing it, and that is rapid onset of action. So the committee recommended developing systems for delivery that permitted rapid onset of action.

OK. Recommendation 3 concerned the multiple effects of canabinoid drugs which includes marijuana. The psychological effects of canabinoids, which include anxiety reduction, sedation and euphoria can influence their potential therapeutic value. This may be positive or negative; potentially undesirable for certain patients in certain situations and beneficial for others. One complication is that the euphoria can mask the perceived benefit. So the committee recommended that the psychological effects of canabinoids should be evaluated in any clinical trial.

The fourth recommendation is based on the conclusion that numerous studies suggest that marijuana smoke is an important risk factor in the development of respiratory disease. Note that the committee did not say that it has been proven. It has not been proven, although it is true that marijuana smoke contains many of the same substances as tobacco. And the committee thus recommended studies to define the individual health risks of smoking marijuana to be conducted, particularly among populations in which marijuana use is prevalent. This is a safety issue, not a recommendation that these people use it, but an acknowledgment that there are many, many people smoking marijuana, and we know very little about the negative physiological health effects.

OK. The committee was also asked to address the gateway drug. They made no recommendations about this. But they did note that in the sense that marijuana use typically precedes rather than follows initiation of other illicit drug use, it is indeed a gateway drug. But because underage smoking and alcohol use typically precede marijuana use, marijuana is not actually the most common and is rarely the first gateway to illicit drug use. There is no conclusive evidence that the drug effects of marijuana are causally linked to the subsequent abuse of other illicit drugs. That doesn't mean they don't precede them, but the causal link has not been established by any scientific studies.

OK. So to summarize, the committee concluded that present data on drug use progression neither support nor refute the suggestion that medical availability would increase drug abuse. However, this question is beyond the issues normally considered for medical uses of drugs and should not be a factor in evaluating the therapeutic potential of marijuana or canabinoids. The committee discussed some of the scientific data on gateway drugs and I'll come back to that later in questioning. I don't think I have time to elaborate.

The second to last recommendation which was the fifth recommended clinical trials of marijuana use for medical purposes being conducted, but only under limited circumstances. Trials should involve only short-term marijuana use, less than 6 months. They should be conducted only in patients with conditions for which there is reasonable expectation of efficacy. They should be

approved by institutional review boards and should collect data about efficacy.

Now an important point here is that the goal of these clinical trials would not be to develop marijuana as a licensed drug, but rather to serve as a first step toward the possible development of nonsmoked, rapid onset canabinoid delivery systems.

And the last recommendation—in the meantime, there are patients with debilitating symptoms for whom smoked marijuana might provide relief. The use of smoked marijuana for those patients should weigh both the expected efficacy of marijuana and ethical issues in patient case, including providing information about the known and suspected risks of smoked marijuana.

So the last recommendation then states, smoked short-term of marijuana use, less than 6 months, for patients with debilitating symptoms such as intractable pain or vomiting must meet the following conditions: first, failure of all approved medications to provide relief has been documented; the symptoms can reasonably be expected to be relieved by rapid onset canabinoid drugs; such treatment is administered under medical supervision in a manner that allows for assessment of treatment effectiveness; and last, involves an oversight strategy comparable to an institutional review board process that could provide guidance within 24 hours of submission by a physician to provide marijuana to patient for specified use.

And I'll point out that this is considerably narrower than any of the State ballot initiatives, but it does acknowledge the fact that, although the panel recommends traditional pharmaceutical development for the active ingredients and whatever synthetics can be manufactured, there remains the problem of people with debilitating and devastating conditions for whom none of our medications have proven effective. And that ends my comments.

Mr. SOUDER. Thank you. It is great to have you with us, Congressman Lungren.

Mr. LUNGREN. Thank you, Mr. Chairman. The way my back feels and as long as I waited to testify, I may be voting for medical marijuana before we leave here. Just a joke. I'm sorry.

The subject of today's hearing, "Medical Marijuana Federal Drug Law and the Constitution Supremacy Clause" may at first blush appear to be overly legalistic and sometimes antiseptic, but upon reflection, goes to a core question which emerges with greater and greater vitality, and which if ignored, threatens to overwhelm society's appropriate concern about the drug problem itself.

Variously stated, it boils down to this: Has the war on drugs trampled on our constitutional framework and our constitutional rights? While I would vigorously answer this in the negative, the very fact that we are having this inquiry today compelled by various State initiatives purporting to liberalize or liberate the use of marijuana and other schedule 1 controlled substances needs to be addressed.

It is a fact that an uncertainty of approach has been allowed to develop throughout this country. Real doubt about the chances for success has taken hold. Wealthy advocates of partial or total decriminalization or legalization of drugs, such as George Soros, have effectively manipulated this doubt using their wealth to succeed

with various schemes to legitimize the use of illegal drugs under certain circumstances.

In California, for instance, Mr. Soros and his allies outspent the opposition 100 to 1 in gaining passage of the medicinal marijuana initiative. What is most important to understand is that they are succeeding increasingly to undermine our society's previously consistent opposition to drug use, particularly among our youth. This assault on the common distaste for drug use, and all that it causes, has attracted partial support of many common sense individuals who have become confused about the purposes of our government's response to the problem.

I think we need to acknowledge that some of this has occurred as a result of a perceived refusal on the part of government leaders to at least reexamine some parts of the war on drugs to see if and where we may have made mistakes. With the new administration comes a unique opportunity to review, reform and reinvigorate the campaign against drug abuse, and I truly believe that President Bush's philosophy of compassionate conservatism can address this problem in a special way, since within its parameters there is no need to apologize for being both tough and loving.

It seems to me we have to recognize that drug abuse has lost its place on the national stage. We have to reassert the fact that it is a national problem or, more precisely, a national tragedy, which touches every part of our social fabric. Hollywood has finally reawakened to this. The movie Traffic is an example of that. I give Traffic high marks for illustrating the reach of this problem, the magnitude of the problem. I give it lower marks, however, for the conclusion, which I suggest suggests to us that there is no answer. That this is an insoluble problem. It is solvable, we just have to put our minds to it.

But as one who has participated in this fight on both the Federal and State levels, as well as interfaced with the private sector, I believe that discordant messages which we have seen for the last 8 years at least, and divided leadership are the ingredients for failure, if not disaster. I have seen what happens when there is a major policy cleavage in law enforcement at the Federal and State levels.

I can go into that specifically if you would like to talk about that, or at State and local levels. Not only does the failure to agree render cooperation impossible for the task at hand, it also tends to make cooperation on associated or related activities difficult as well.

At the very least, inertia is often a by-product. The drive to create many different laws concerning illegal drugs throughout the country will only exacerbate the problem, and in the process, confuse the citizens that our laws are supposed to serve. I would suggest there are few things more debilitating to a representative democracy than a failure to make clear what is criminally prohibited and what is not. This is particularly true of a subject as serious and pervasive as drug abuse.

As the legal analysis for this question reaches its zenith in the U.S. Supreme Court considerations, suffice it to say that the supremacy clause of the Constitution makes it clear that to whatever extent Congress has exercised its legitimate powers, any inconsist-

ent State powers are prohibited. It is hornbook law that a State law would be held void if it would retard, impede, burden, or otherwise stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting the Federal law.

But whatever decision is ultimately rendered, my hope is that the importance of congressional decisions commenced some 90 years ago and their progeny to protect the public from health charlatans and flim-flam artists selling their special elixirs will be recognized. A successful effort in the wholesale overturning of the FDA and allied enforcement mechanisms would be disastrous for the country. Yet as important as the question about the supremacy clause may be, an equally important question looms. Does the Federal Government and various State governments, for that matter, stand the chance of being repudiated by the public on the matter of drug legalization? I suggest here we might take a healthy dose of humility in the political sector. While I have strong doubts about the efficacy of marijuana for medical purposes, I have discovered, at least in California, that the public believes this is a question that should be seriously considered.

The reluctance of most in government to permit a full-scale medical and scientific testing of the possible medical uses of marijuana and its constituent parts has created an environment in which the citizenry at large opts for the only proposals presented to them. While such initiatives, and I think this goes to the question you asked Congressman Cummings, why are people voting for them? I don't think they're stupid. There's a reason. I think they're wrong in California because such initiatives result in putting the cart before the horse. That is approving marijuana for medicinal purposes before it is ever proven to be safe and effective in such circumstances.

But why do they do that? I think they vote for compassion or sympathy over law enforcement concerns. This growing movement has the potential of dramatically altering the Federal presence in the drug battles. While I can recite the past studies on marijuana, I know they are falling presently on deaf ears. That's why I support a full-blown study in California. In order for it to be effective, the Federal Government needs to grant the proper waivers. I would suggest that would be an appropriate thing. And I think we all should agree that we will abide by the scientific decisions that are made. Treat it as we would treat other studies of drugs. I don't think that they are going to be successful, but if they are, we will allow that to direct our decisionmaking.

Mr. Chairman, one of the things I learned through the experience of prop 215 in California is how voters will be willing to upset long established enforced law schemes if they are convinced of a compassionate necessity. The argument which drove the proposition's electoral success in California was simple, and this is the way it was stated. People with chronic pain should have marijuana as a medical option if all else fails to alleviate terrible pain, and if the underlying provable facts support the proponents, who could be against it? It is difficult to be able to analyze that, though, in the heat of a campaign.

It occurs to me that as the medical community has begun to more fully appreciate the reality of pain and concomitant need to address it effectively, the medical regulatory nexus needs to adjust accordingly. Use of controlled substances under proper medical indication should not be denied in pain management circumstances for fear of possible abuse and other scenarios. Greater recognition by HMO's and insurance companies of the appropriate and efficacious applications of pain management and treatment are in order.

In a similar vein, I would suggest we should reexamine the role of mandatory minimum sentences in certain types of drug cases, and honestly determine, for instance, whether the treatment of crack cocaine within the criminal justice system has had a fairly disproportionate impact on minority youth. I remember being on the subcommittee that wrote that law in the 80's. And I remember we responded to cries from the minority community that crack cocaine was killing the community. That's why we went so hard on the penalties involved with crack cocaine. We did it for a good purpose.

If, in fact, there's been a disproportionate impact, if, in fact, it has disproportionate impact on the community and make it look like we treat different races or different groups differently, then we ought to take a look at it. I know what we did and why we did it, but I think we ought to recognize, or at least I recognize now, at least in my State, that in many ways we are losing, you might call it the public relations, or I would call it the public opinion battle. And in order to get it back and get us back onto what we need to do, which is to have a single message on drugs from the top to the bottom having us all working together, government and nongovernment, all parts of our culture together.

I think some of us who believe very, very strongly in this ought to at least have an open mind toward considering some of these things that I suggested. I thank you very much, Mr. Chairman, for your time.

[The prepared statement of Mr. Lungren follows:]

Dan Lungren
Attorney at Law
Roseville, California
(916) 784-9811
(916) 784-8657 fax

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Mr. Chairman, Ranking Member, Members of the Subcommittee:

Thank you for convening this hearing and thank you for inviting me to testify before you this afternoon. I respect and appreciate the qualifications of, and perspectives presented to you by my colleagues on the panels today. In some ways, my role can be seen as somewhat of a segue between your two panels. There are those here who have been involved in the trenches of our national effort to deal with the scourge of drug abuse for much longer periods; there are those who are still in law enforcement and other government positions at both the state and federal levels.

I am not a medical doctor nor an academician; although still affiliated with some national organizations on this subject, I do not represent them here today. Rather, I come before you as a former member of Congress—a federal legislator—and a former state attorney general, but most of all, as a citizen concerned about the health and well being of our society—particularly our young people—and the continuing problem of illegal drugs in our midst.

The subject of today's hearing "federal drug law and the Constitution's supremacy clause" may, at first blush, appear to be overtly legalistic and antiseptic. But, upon reflection, it goes to a core question which has emerged with greater and greater vitality and which, if ignored, threatens to overwhelm society's appropriate concern about the drug problem itself.

Variously stated, it boils down to this: "Has the war on drugs trampled on our Constitutional framework and our Constitutional rights?" While I would answer vigorously in the negative, the very fact that we are having this inquiry today—impelled by various state initiatives purporting to "liberalize" or liberate the use of marijuana and other Schedule I controlled substances needs to be addressed.

Much has been said and written about the uncertain message which emanated from the White House during the past eight years. To say that General McCaffrey's outstanding efforts were not aggressively backed up by his Commander in Chief would be an understatement. But more significant is the fact that an uncertainty of approach has been allowed to develop throughout the country. Real doubt about the changes for success has taken hold. Wealthy advocates of partial or total decriminalization or

legalization of drugs such as George Soros have effectively manipulated this doubt, using their wealth to succeed with various schemes to legitimize the use of illegal drugs under certain circumstances. In California, Soros and his allies outspent the opposition 100 to 1 in gaining passage of the medicinal marijuana initiative. What is most important to understand is that they are succeeding increasingly to undermine our society's previously consistent opposition to drug use—particularly among our youth. This assault on our common distaste for drug use and all that it causes has attracted the partial support of many common sense individuals who have become confused about the purposes of our government's response to the problem. We need to acknowledge that some of this has occurred as a result of a perceived refusal on the part of government leaders to at least re-examine some part of the "war on drugs" to see if and where we may have made mistakes.

With a new Administration comes a unique opportunity to review, reform and reinvigorate the campaign against drug abuse. I believe that President Bush's philosophy of compassionate conservatism can address this problem in a special way—since within its parameters there is no need to apologize for being both tough and loving.

To be honest and successful, any review, reformation and reinvigoration of the campaign against drug abuse by our society must include all of our society--governmental, private, national, state and local. And it must start with first principles. In other words, what is this battle all about?

To understand my perspective, permit me to reiterate a message I gave as one of two dissenting presenters in a daylong conference entitled "Beyond Prohibition: An Adult Approach to Drug Policies in the 21st Century" sponsored by the CATO Institute in October 1999.

I am not a libertarian. I realize there are libertarian strains in the conservative movement, but I consider myself a full throated *conservative,* which means I am dedicated to a society of ordered liberty, i.e., a society dedicated to freedom with responsibility, not unfettered freedom. Such a society as envisioned by our founding fathers understands that there are some limits to freedom. Therefore, the question--especially for politicians elected to make tough public policy decisions, is: "Where do you draw the line?" While your current review seems to ask, constitutionally, "has the line been drawn in the wrong place?", other queries are inextricably bound to it, such as "is the war on drugs a failure?" and "is it such a failure that we need to get rid of it?"

There are several directions that such a debate can take. For instance, if one is dedicated to the idea of unfettered freedom and liberty and believes either that using drugs has no negative social effects, or, if it does have negative social effects, they are outweighed by one's dedication to unfettered freedom, then, by definition, that person does not care about the consequences of changing our approach to drugs. To him or her, the question of possible deleterious effects would not be instructive, much less persuasive.

There are those--liberals and conservatives among them--who believe that while there are negative impacts on society as a result of drug use, nonetheless the approach that we are now taking is unsuccessful. For them the argument registers on different levels. Many times, there is the mere economic model: "What are the social costs?" I always worry when people talk about the term "social cost." I talk about human beings, flesh and blood human beings. I talk about mothers and fathers and brothers and sisters.

I talk about people in my generation whose lives were ruined by the drug scourge of the 1960s when we had de facto decriminalization of drugs in terms of attitude. I saw the lives of too many people of my generation ruined by the lure of drugs and by a society that urged them to "go ahead and use it; if it feels good, do it." Some people from my high school and college years are still wandering the streets, their minds dulled by drug use... Some message.

I suppose some will say that that is just one of the breaks in a free society...that we will always have those among us who submit to temptation...that that is the price of freedom. Yet I would argue that a society dedicated to ordered liberty has an obligation to investigate whether the policies it implements through its laws encourage or discourage such conduct. More fundamentally, we need to ask whether we, as a society, have an obligation to assist people. I hope the answer is yes. People sometimes need assists in life, particularly young people. Indeed, it might be said that the mark of a mature society is that as adults we are willing to give up some things in the interest of our children.

Therefore, I look upon the question posed by this debate in major part as "what is the likely impact of legalization on the young people of America?" Here we are informed by prior experience. For example, we had a de facto legalization of marijuana in Alaska, as a result of a ruling by its state Supreme Court interpreting the right of privacy in its constitution. Basically the decision decriminalized marijuana for private use by adults only. Yet. a doubling of the use of marijuana by young people in Alaska followed almost immediately. And it remained at twice the level of marijuana use by young people the same age in the rest of the country.

Now some suggest marijuana is not so harmful that we should worry about it. But I do worry about it, particularly in terms of its impact on young people. One of the difficulties of life is getting through adolescence; it is part of the maturing process. You are met with obstacles. You are met with setbacks. You are met with failures. And you have to work through that. Yet, marijuana has the effect of causing young people to passively avoid rather than confront those problems. In this way, it interferes with the maturing process. It is a serious question, one that I continue to take seriously even though I am no longer an elected official or the chief law enforcement officer of my home state.

Then when you consider the real life implications to our youth of legalizing drugs such as cocaine, heroin or ecstasy, the prospect becomes truly frightening. I don't think you can argue against the fact that homelessness, school dropouts, poverty, child abuse and child neglect would all increase if we actually legalized drugs. Similarly, one would expect increases in unemployment, welfare, lost productivity, disability payments, lawsuits, chronic mental illness and medical costs.

As much as I appreciate the sincerity of many who have given up on the so-called "war on drugs" because they believe it has failed, the reality of the abysmal consequences of legalization or decriminalization is too great to ignore.

So where do we go from here, how do we get there, and what does or should the federal government have to do with it?

First, we have to recognize that drug abuse is a national problem—or, more precisely—a national tragedy which touches every part of our social fabric. One part of that fabric is the entertainment industry which at times, has received some justified

criticism for its sometimes glamorization of drug use. Yet, to be fair, they often merely mimic or mirror society's already established attitude.

Hollywood has finally reawakened to the scourge of this social disease in its recently released film "Traffic." (The movie earns high marks for increasing awareness of the magnitude of the problem; nonetheless, its confusing conclusion suggesting that the problem is largely insoluble deserves much lower marks.) Nevertheless, we should welcome this contribution to the cultural debate. For nearly a decade, the attention of many of the "elite" in our country has been directed away from this problem; yet, its effects have continued unabated, ruining far too many families and far too many lives. Paradoxically, the fact that some of "the elite" are now challenging the status quo on drugs may provide an opportunity for renewed interest in this problem on the part of the public at large. We must be honest with them—telling them that the problem is enormous—but also providing some hope.

I recall well some fifteen years ago participating on a panel at the first ever conference sponsored by the U.S. Department of Justice that attacked the demand side of this problem. At that time, we were confronted by some who asked why the law enforcement community should be concerned with the demand side—including efforts to address education, prevention and rehabilitation. Quite simply, those of us who were then involved had come to realize that any successful approach must be comprehensive. Indeed the much-vaunted "Just Say No" message by First Lady Nancy Reagan championed just such an approach. While simply stated, it was profound in its full meaning.

Recall that in the 1980s we saw a reduction in drug use in this country. Every survey showed it among both adults and young people. We saw a 50 percent decrease in drug use by those of high-school age. Then at the mid 1990s we saw a doubling of drug use, particularly marijuana, by people of high-school age. We waged a "war on drugs" in both decades, so what happened? The "war on drugs" we had in the 1980s was a consistent policy package. The rubric of Nancy Reagan's campaign may have been scoffed at by some but the particular philosophy encapsulated by that slogan was consistent from top to bottom. There was no question about it.

The message delivered by many to and in Hollywood was: "You are glamorizing drug use. You are embarrassing yourself and harming the country." And Hollywood rid itself of its glamorization of drugs, actually assisted with some public service announcements and did other things to help deglamorize drugs.

But what happened at the beginning of the '90s? As a society, we developed moral flab. Hollywood fell off the wagon. They began once again to permit the glamorization of drug use. Worse than that, they were largely absent from the activity of creating anti-drug messages. From top to bottom in our society the message was, "Hey, its not that important." Some at high levels laughed about so-called "soft drug use." To me that was an embarrassing tragedy. The message was very clear: "What we said in the '80s really isn't true. It's not that bad; why don't you try it?" And a lot of kids did. Thank God now we have now seen a leveling off of that abuse escalation.

Individual segments of our society have shown a capacity to face the drug problem squarely and retain the urgency of their initial commitment. It almost seems like ancient history to recite the post-Vietnam War drug problem within our Armed Forces. Surveys revealed unacceptably high levels of regular drug use among our troops. We

turned that problem around with consistent leadership—fashioned around a strong zero tolerance program. While no one would suggest that drug abuse has been entirely eradicated in the military, it is no long the out of control phenomenon it once was.

In the 1980s we got the private business sector to become involved in the anti-drug effort. Once convinced or prodded the business sector remained involved. Why? Because they have seen that they have fewer days off from their workers, less disability, greater productivity, and fewer problems at the work site because fewer people are drugged out or influenced by drugs at the work site. We need to recall that prior to our effort in the 1980s we were known as the most drugged working society in Western civilization. Not any more—too many in American business learned their lesson well. All of us need to re-learn that lesson.

Without a doubt, particular actions for detecting and dealing with drug use cannot always be transferred from one part of society to another—i.e., what is appropriate for the military may not be appropriate for the civilian world or what a private employer may do may be impermissible for a public employer. Yet, the overall strategy of a condemnation of drug use, responsibility and accountability for all (including the user), applied consequences for actions, incentives for seeking treatment, expanded treatment programs and effective deterrents must be shared.

As one who has participated in this fight on both the federal and state levels as well as interfaced with the private sector, I believe that discordant messages and divided leadership are the ingredients for failure, if not disaster.

I have seen what happens when there is a major policy cleavage in law enforcement at the federal and state levels or at the state and local levels. Not only does the failure to agree render cooperation impossible for the task at hand, it also tends to make cooperation on associated or related activities difficult as well. At the very least, inertia is often a by-product.

The drive to create many differing laws concerning illegal drugs throughout this country will only exacerbate this problem and—in the process—confuse the citizens that our laws are supposed to serve. There are few things more debilitating to a representative government than a failure to make clear what is criminally prohibited and what is not. This is particularly true of a subject as serious and pervasive as drug abuse.

As the legal analysis of this question reaches its zenith in a U.S. Supreme Court consideration, suffice to say that the Supremacy Clause of the Constitution (Article VI, Section II) makes it clear that, to whatever extent Congress has exercised its legitimate powers, any "inconsistent" state laws are prohibited. It is hornbook law that a state law will be held void if it would retard, impede, burden or otherwise stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting the federal law [see McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819)]. While the primary objective of this Constitutional clause is to delineate the powers of the federal government vis-à-vis the states, one cannot ignore the importance of its effect on guiding individual conduct.

In whatever decision is ultimately rendered, my hope is that the importance of the Congressional decisions some ninety years ago (and their progeny) to protect the public from health charlatans and flim flam artists selling their special "elixirs" will be recognized. A successful effort in a wholesale overturning of the FDA and allied enforcement mechanisms would be disastrous for the country.

Yet, as important as the question about the Supremacy Clause may be, an equally important question looms. Does the federal government (and various state governments for that matter) stand the chance of being repudiated by the public on the matter of drug legalization? Perhaps this an apt place to introduce the concept of humility-- an unfortunately rare word in political public discourse. I have thought often of the need for humility in our drug fight. California's experience in the area of medicinal marijuana may be particularly instructive.

While I have strong doubts about the efficacy of marijuana for medical purposes, the public believes this is a question that should be seriously considered. The reluctance of most in government to even permit a full scale medical and scientific testing of the possible medical uses of marijuana or its constituent parts has created an environment in which the citizenry at large opts for the only proposals presented to them. While such initiatives result in putting the cart before the horse—i.e., approving marijuana for "medicinal purposes" before it has been proven to be safe and effective in such circumstances—the public has voted for "compassion or sympathy" over law enforcement concerns. This growing movement has the potential of dramatically altering the federal presence in the drug battles. While I can recite the past studies on marijuana, I know they are falling on deaf ears. That is why I supported a full-blown study in California. The federal government should, with a real sense of urgency, direct such medical trials with the same type of scrutiny applied to other drugs. We should be guided by the scientific results and allow the chips to fall where they may.

Mr. Chairman, one of the things I learned through the experience of Proposition 215 in California was how voters will be willing to upset a long established law enforcement scheme if they are convinced of a "compassionate necessity." The argument which drove the Proposition's electoral success was simple—people with chronic pain should have marijuana as a medical option if all else fails to alleviate terrible pain. If the underlying provable facts support the proponents, who could be against it? It occurs to me that as the medical community has begun to more fully appreciate the reality of pain—and the concomitant need to address it effectively—the medical-regulatory nexus needs to adjust accordingly. Use of controlled substances—under proper medical indications—should not be denied in pain management circumstances for fear of possible abuse in other scenarios. Greater recognition by HMO's and insurance companies of the appropriate and efficacious applications of pain management and treatment are in order.

In a similar vein, we should reexamine the role of mandatory minimum sentences in certain types of drug cases and honestly determine whether the treatment of crack cocaine within the criminal justice system has had an unfairly disproportionate impact on minority youth. (As one who voted in the Congress to increase penalties for such offenses in response to cries from the inner-city communities that they were being destroyed by this drug, I believe we need to have the courage to determine whether our governmental actions have had any serious unintended adverse consequences.)

Thank you, Mr. Chairman.

Mr. SOUDER. I thank you, Congressman Lungren, Attorney General Lungren. Let me say, I think we will be forced into this reevaluation whether we want to or not because the general public is demanding changes and we need to figure out, for example, in the penalties on differentials on powder and crack whether we lower one or raise the other, but there ought to be an equivalency, and we do have to look at unintended consequences and we need to be willing to look at variables.

But I want to come back to a couple of things, a couple of questions for Dr. Joy here. I want to make sure we have in the record a couple of key quotes. In 1997, Surgeon General David Satcher wrote that there is no scientific sound evidence that smoked marijuana is medically superior to currently available therapies, including an oral prescription medication containing the active ingredient in marijuana. Now your statement, I understood in the recommendations to say, that the primary things was speed in smoked. Is that how you would reconcile this statement which is somewhat contrary?

Ms. JOY. I wouldn't even want to say what the primary difference is, but there is an important pharmacological difference in the onset of the drug effect depending on how it is delivered. If you take it in a pill form it's longer, and in the case of Marinol it is much more variable. If it is inhaled the effect is within minutes.

Mr. SOUDER. Why would the surgeon general have said there is no scientific sound evidence that that is medically superior?

Ms. JOY. I didn't say medically superior. I said it's very different. Personally, you can imagine if you were suffering severe nausea, you might like a rapid onset. I am not going to say what he's thinking, though.

Mr. SOUDER. Yeah, but I would assume relief is part of that, but it's not necessarily. Now he also wrote that the Center for Disease Control also supports HHS Secretary Donna Shalala, who stated California's proposition 215 and Arizona's proposition 200 are particularly dangerous and misguided efforts, and I oppose them in the strongest possible terms.

You made it pretty clear that the guidelines, particularly your sixth point, have nothing to do really with California because you said they had to work under close supervision, there was, I think, limited quantities, you had to have exhausted all other remedies, none of which are in the California law or Arizona.

Ms. JOY. You are correct in stating that the IOM panel's recommendations are different from California law and more strict. The IOM recommendations say nothing about quantity.

Mr. SOUDER. OK. I misspoke. Sorry. In 1999, ONDCP Deputy Director Donald Vereen reviewed the study in congressional testimony concluded, there is little future in smoked marijuana, a medically approved medication. This is because long term harms of smoking made it a poor delivery system and because cannabis plants contain a variable mixture of biological compounds and don't meet the modern expectation for consistency.

Can you comment on those two things? The delivery system and the consistency question, and then respond also to this question. Do you know of any approved medicine in smoked form?

Ms. JOY. I can't think as fast as you can talk. What you said were quoting Don Vereen saying was almost a verbatim quote from the report itself. So yes, we would concur with that. Then you said something about the harms, did you?

Mr. SOUDER. I said do you know any approved medicine in smoked form.

Ms. JOY. No.

Mr. SOUDER. So there would be no reason—how could—why wouldn't you have—I don't believe in her testimony, she went through all this, but Ms. Nagel has an extensive—in the written testimony how the FDA tried to isolate the components in marijuana into other forms. Why wouldn't that be the logical way to do it if there is no smoked alternative in any form of authorized drugs? Why wouldn't the goal rather than study, the impact of marijuana, why wouldn't the goal be to isolate the subcomponent of marijuana?

Ms. JOY. That is the goal.

Mr. SOUDER. So Marinol, Nabilone, Cesamet, I think that's one of the——

Ms. JOY. The name is Nabilone.

Mr. SOUDER. Is that brand name for it?

Ms. JOY. Yeah.

Mr. SOUDER. That in one of those, it's moved from schedule 1 to 2. Marinol went to schedule 3. The goal here is not to—in fact, it isn't marijuana that's medicinal. It's a component in marijuana that can be isolated and turned into therapeutic drugs.

Ms. JOY. What I said is the goal is the development of rapid onset cannabinoids drugs, which would include THC, but not be restricted to it. There are a number of synthetic compounds that are much more effective.

Mr. SOUDER. So shouldn't the research be focussed on how these alternatives that don't have downsides as smoking other dangers as gateway drugs, why wouldn't the focus, if the mere question was how to address the health aspect, why wouldn't the focus be on how to get more of an immediate delivery system?

Ms. JOY. That was recommendation No. 2. Should I read it again?

Mr. SOUDER. No.

Ms. JOY. That's exactly what the recommendation is. There is a number of layers to the recommendation. One is recognition of the fact that there are a lot of sick people out there, and I'm not talking mentally, I am not trying to make a judgment. I am talking about people in poor health who smoke marijuana. We have very little information about what the physiologic effects are. Many believe that the data on the immune system are highly inconsistent. So that's the basis of that recommendation. Some of the recommendations are where to go forward and some of the recommendations are how to cope with the situation as it stands.

Mr. SOUDER. Congressman Cummings.

Mr. CUMMINGS. I have been listening and I tell you, Mr. Lungren, I want to thank you for your testimony. You are the first person since I have been here that explained to me why there is such a difference between the penalties of crack cocaine and powder cocaine, the first one.

Mr. LUNGREN. I was here when we did it.

Mr. CUMMINGS. It is incredible because Black people are being locked up big time, and we don't hear any cries so much about that and there is such a big difference in the sentencing, it is phenomenal. And I think you are right, we definitely need to send a message, whatever it is, and I think the chairman just mentioned it too, there needs to be a consistent message whatever it is that if you are going to penalize the use of drugs, you ought to penalize it wherever they're found and not base it upon what form they come in. Were you getting ready to say something?

Mr. LUNGREN. One of the things I thought worked very well in the 1980's was criticized by some as being inelegant. It was Nancy Reagan's "just say no" campaign, but that "just say no" rhetoric or rubric stood for an overall consistent policy that was understood. And believe me, we came from somewhere else because we didn't have it before and I am not making any political aspersions.

We got Republicans and Democrats to work together in the Congress along with the administration. We got Hollywood to work on it. Hollywood took out the glamorization. Then we seem to all fall off the wagon. We thought we solved the problem. Hollywood went back to glamorizing drugs. They're not making public service announcements. And I will tell you in that vacuum began the rebirth of the efforts we see in initiatives. And look, I know some very sincere people who opposed me when I was opposing proposition 215 in California who truly wanted it only for medicinal purposes. I know others who want it as a Trojan horse. I know others have been talking about it for years and years about the red herring. And I fought all those battles.

But frankly we lost in California. If I had $2 million as the other side—that's all they spent was $2 million. We had $20,000, that's all we could raise against it. And yet the message is very simple. I have people come up to me all the time now who are common sense folks, who are overall against drugs, and they say what's wrong with a little marijuana if we are going to help people?

We are losing that battle and what I see is the experience you have in Alaska, that you have the 10 year experiment brought about by the Supreme Court decision in Alaska where marijuana was OK, was allowed for private use, not medicinal use, private use by adults but not for kids.

And what happened during that 10-year period of time? The marijuana use by kids in Alaska doubled from what it had been and remained doubled. It was in the rest of the country. So consistency is important. In terms of the minority community, obviously, I don't speak for the minority community, but I have tried to watch it and work with it and deal with it, and I see the distrust there and I see the questioning there. And when people say to me by God, it's unfair. You're locking people up in the African American community for having crack cocaine. It's no different than powder cocaine, I have to come back and remember, I remember the subcommittee when we were meeting in the Judiciary Committee, and one of the members came in and represented—a part of his community was African American, poor inner city, and he said this is killing the community. We got to do something about it. We got to get these people off the street. We got to have the toughest laws we

got. Frankly, that is why we did it. We didn't do it to punish the community. We thought we were responding in an appropriate fashion because we heard the testimony, which was it's far more potent. It's having a disastrous impact. And frankly, I think it would have been unfeeling of us not to have responded. What I'm saying now is if we've had the chance to look at it after 10 or 12 years and we say hey, we did it with some good intentions, it's had some unintended consequences.

Mr. CUMMINGS. Big time, big time.

Mr. LUNGREN. Let's look at that so we don't lose the support of that part of our community which we need for consistent anti drug policy.

Mr. CUMMINGS. But just as important, losing all of these young people who are spending time in jails when white folks with more cocaine aren't spending that kind of time in jail.

Mr. LUNGREN. Of course. Let's recognize the difficulty at times. Where are the buys taking place?

Mr. CUMMINGS. I understand that. I am talking about powder cocaine and crack cocaine.

Mr. LUNGREN. I understand.

Mr. CUMMINGS. It's not just getting more people on your side. It is the fact that so many African American young people are sitting and rotting in jails and that's—and you know it's so interesting. But going to you, Mr. McCollum, former Congressman Lungren states in his testimony that the use of controlled substances under proper medical indications should not be denied in pain management circumstances for fear of possible abuse in other scenarios. He also supports Federal medical trials to determine whether marijuana for medicinal purposes are safe and effective. How do you feel about that? Is that accurate? Don't let me misquote you.

Mr. LUNGREN. I didn't want—if I misstated and said we should all use illegal drugs, what I'm saying is those classified scheduled drugs that are available for prescription but that many doctors, at least in my experience, are fearful of using, or have not been educated, understand that they can be used now, need to be done. Pain management is a relatively recent development in the area as a specialty in the medical community. And I think we ought to make sure our doctors are trained such that they understand the uses of these. And the other thing, well, I think I will stop right there.

Mr. MCCOLLUM. If I can respond. I don't think anybody is opposed to the scientific study and development of remedies for pain or for disease in whatever form. We just want to see, and I want to see the process followed legally. If the Food and Drug Administration approves a prescription or direction or we have guidance from the American Medical Association on the proper efficacy of marijuana compound, then I think all of us would be happy with that. But right now that's not the case, and a lot of people are stretching that.

I would like to make one comment, too, because I happen to share a lot of what Mr. Lungren said, a lot of people don't know that I served in that same Congress with him when the crack powder issue came along, and I also served as chairman of the Subcommittee on Crime for the last 6 years, and prior to that, with Mr. Hughes when he was chairman.

We tried both when the Democrats had control of the Congress as well as the Republicans, quite a number of us, to put the two together, to find a common denominator. We had those numbers for a while and we couldn't get the votes for them. And I certainly would encourage those who continue to have an interest in it to work on that because you could raise the powder and lower the crack penalties and come up with a number. It's quite possible that you can do that. You can argue over what they should be, but they shouldn't be as different as they are now.

Mr. CUMMINGS. Thank you.

Mr. BURTON. Congressman Barr.

Mr. BARR. Thank you Mr. Chairman. Ms. Nagel, thank you for being here, and please convey our support and admiration for the work that you and your colleagues at DEA do, and we appreciate your work on behalf of our country.

Ms. NAGEL. Thank you, sir.

Mr. BARR. On page 5 of your statement at the very beginning, you say in 1995 the DEA received a petition to transfer marijuana and THC from schedule 1 control, etc. At the end of that paragraph, you say on March 20, 2001 the DEA denied the petitioner's request for rulemaking marijuana on both legal and scientific grounds. Was the work that DEA put into its decision here, was it fairly extensive or was it very cursory?

Ms. NAGEL. No, sir, it took several years. We relied on the government scientists and medical experts at Health and Human Services, exhaustive reviews at the same time that the scientists worked for me, our medical people did a review. And what's important, the petition never addressed the medical uses of marijuana, the petition only addressed the abuse because you're in schedule 1 for two reasons, medical use and the potential for abuse. This petition only addressed the abuse potential, and that's what everyone did research on, exhaustive 4 years, I have read it. There was no evidence based on abuse to move marijuana out of schedule 1, none.

Mr. BARR. Are there any petitions pending to transfer marijuana out of schedule 1 on medical grounds?

Ms. NAGEL. No, sir.

Mr. BARR. Have you had such petitions presented to you?

Ms. NAGEL. I believe several years ago we had one under two or three administrators ago, and at this point, until we get the scientific and medical basis to act, we can't, we can't move it out of schedule 1 without that.

Mr. BARR. Thank you. Thank you. I yield to the gentleman from Florida.

Dr. Weldon.

Mr. WELDON. I thank the gentleman for yielding. I had a question for you, Dr. Joy. You referred to the report where it stated that more research was needed, possible use of cannabinoids in a clinical situation where all available drugs had been exhausted, I think is the term that you used. Did the Institute of Medicine study at all how often that clinical situation actually occurs?

Ms. JOY. No.

Mr. WELDON. OK. I had a feeling that was the case.

Ms. JOY. It would be difficult to get that kind of data.

Mr. WELDON. Well, just from my clinical experience, I never saw it. I only saw one case where a person was smoking marijuana. It was a young man who had lymphoma and he was not particularly experiencing a lot of pain, he was getting chemotherapy for his lymphoma, but it was pretty obvious he was getting high, at least based on my clinical assessment of the patient. And as I stated in my opening statement, I just never saw that. And frankly I was a little disappointed in the Institute of Medicine's report for even making that statement, because it implied there is some validity to the arguments being put forward by those who are advocating the legalization of marijuana because you know, really, when you think about it, there are a lot of countries in the world and there are a lot of pharmaceutical companies all over the world, and if there was some real potential for this drug, I would think that somewhere it would be researched and studied and demonstrated scientifically.

The Trojan horse issue which Dan Lungren brought up, I think, is clearly operative in this whole marijuana debate. And I think George Soros has made no bones about it, that he wants to see marijuana legalized and he is the one funding a lot of these initiatives.

I had another question, you also, in the Institute of Medicine report, you talk about the development of a rapid delivery system to study this. There again it relates to my other question, why would you need this if there's really no real clinical need for the drug?

Ms. JOY. Can I interject, because I'm having trouble tracking all your questions. The committee does feel that there are certain unmet needs. The treatment of pain is notoriously difficult, especially neuropathic pain. So the committee does see an unmet need. It is very difficult to assess the breadth of that need.

Mr. WELDON. If I could just comment, my experience, and I took care of a lot of chronic pain patients usually in coordination with an anesthesiologist, and my experience with chronic pain is that it's usually the clinicians don't know how to manage it and that's why these patients have chronic pain, including people with things like peripheral neuropathies and reflex sympathetic dystrophies, things that are notoriously very, very hard to manage.

But in the course of the research, was there any scientific evidence that you unearthed at that point? Marijuana was useful in those clinical situations?

Ms. JOY. Well, one of the members of our panel was a leading neurologist in the treatment of pain, and he presented a different scenario than you're describing. It's not really my position to speak to who said what. Your experience was different.

Mr. WELDON. Please forgive me. We've been beating you up.

Ms. JOY. I'm OK with that.

Mr. WELDON. You were the staff person, and you put together the report, but you were not personally responsible for the scientific opinions in the report or am I mistaken?

Ms. JOY. The Institute of Medicine is responsible for the scientific opinions. I know the report probably better than anyone else. It's a little unfair of me to speak outside the report since I am here representing the report. But I can say that one of the panel members was a neurologist who specializes in pain. I can say

that very recent scientific data are extremely compelling in terms of cannabinoids acting, and this is in animal studies, on different pain pathways than the traditional morphine, and also in a way that might decrease the need for morphine in the treatment of pain. So scientifically, there are—well.

Mr. WELDON. Those are animal studies that showed cannabinoids that acted on different pathways. There have been no clinical trials of marijuana demonstrating that marijuana is useful in the treatment of pain, correct?

Ms. JOY. You are absolutely right, and I think there's one being started in California on the treatment of neuropathic pain, and that wasn't available at the time of the report.

Mr. WELDON. The only clinical trials I know of are for marijuana being used as an antiemetic, correct?

Ms. JOY. There were clinical trials in the 70's as an antiemetic. There were small clinical trials. They weren't all, in fact, they weren't all terribly wonderful. You may already know this, this is in the report—a lot of people——

Mr. WELDON. It was not very effective?

Ms. JOY. A lot of people in those clinical trials in the cancer patients in the 70's, the dropout rate, I'm forgetting now, is 25 percent.

Mr. WELDON. They didn't like the effect on their level of consciousness?

Ms. JOY. Right.

Mr. WELDON. The mind altering properties?

Ms. JOY. Right.

Mr. WELDON. The Institute of Medicine referred to the gateway issue, and you made some statements about that. If you could just elaborate a little bit. The reviewers, or the members of panel, acknowledge that most people who go on to use other drugs start with marijuana, but then they go on from there to sort of conclude there's no cause and effect conclusion there. You can't—but were they not really talking about a scientific process?

It's very hard to scientifically prove that marijuana leads to heroin, but you can clearly demonstrate by just interviewing heroin users that a significant percentage of them start with marijuana, and therefore it is reasonable to conclude it's a gateway drug. But the IOM report seemed to imply that we can't prove that. But that's because it would require a large scientific study where you would have to take people and give them marijuana and see how many of them go on to heroine.

Ms. JOY. Well, there have been large epidemiological studies. If I may, I'll read something about the gateway effect story. It's a little confusing because now, as I read before, the report does state that in the sense that it precedes the use of cocaine and heroin, it is a gateway drug. In the sense that it causes a person to use those substances, there's no data.

Mr. WELDON. There's no scientific evidence to back that up, is that not what they have concluded?

Ms. JOY. There's scientific evidence to back it up, that marijuana precedes cocaine and heroin uses. It also adds what precedes marijuana use is usually underage alcohol and tobacco. That is the first step in the pathway to abuse.

Most of the gateway studies, and I'm thinking of Denise Kandel, who has done really extensive studies out of Columbia, are about one-time-only use, and they don't address what we call abuse. So that included, in that study, people that tried it only once as opposed to who abused it, understanding that for some, you might say even once-only use is abuse, but abuse in the definition of the DSM IV, which is the diagnostic and statistical manual for psychiatric disorders.

The trick about the gateway issue, I will read from the report now, "the gateway analogy evokes two ideas that are often confused, the first more often referred to as the stepping-stone hypothesis, is the idea that progression from marijuana to other drugs arises from pharmacological properties of marijuana itself." And there's no evidence to that particularly—well, OK I'll go on.

"The second is that marijuana serves as gateway to the world illegal drugs in which youths have greater opportunity and are under greater social pressure to use illegal drugs." That is the one that is most often used in the scientific literature, and that's where the sequence comes from.

Mr. SOUDER. Dr. Joy, one concern I have that you have raised earlier, you don't address what most of us say, and that is, most of us don't maintain that there is necessarily a physical relationship or physiological relationship necessarily, although there is some certain causal relationship about the people that you are with, but in fact it's an experiential or psychological relationship, was that addressed? For example, you want to get high, the high kind of goes dead after a while, and you want to get a further high. You didn't address that in either of those.

Ms. JOY. That's a social——

Mr. SOUDER. Social, the implication was, in our earlier panel, was is that the social was because you're involving illegal, and you used this earlier in your testimony as well, illegal alcohol, illegal tobacco, therefore you're in a circle where you're getting exposed to an illegal drug.

Ms. JOY. In my earlier statement, I did not say anything about social and physiological. Here what I wanted to do is make a distinction between the idea that you somehow changed your brain or something, making it want more stimulation of a stronger nature. I might not be quite understanding what you were saying, but I did want to show you how the panel had separated the two and what they were talking about.

Mr. SOUDER. I think there is a distinct third that you didn't address there. There is a social pressure, which you alluded to, and a physiological addiction which would say that marijuana may physiological—it's much what we argue about the other habits in your life, that is the habit an actual physical addiction, for example, alcohol for many people becomes a physical condition, to some degree it becomes a psychological dependency. And that's not social. A social would be arguing that you're at a party and you're a social drinker merely to fit in. That's merely a different category, and if that's not in there, that's the one we argue most about.

Ms. JOY. You know, I feel like I'm going to be stepping out of bounds if I start talking about what substance abuse researchers talk——

Mr. SOUDER. You have read the results.

Ms. JOY. But that's not in the report, and I'm not comfortable going beyond that.

Mr. SOUDER. Do you have anything?

Mr. WELDON. I just had a couple of questions for Ms. Nagel. I just wanted to clarify there was a court case you referred to where the DEA was going to go after doctors who recommended marijuana where it is not approved. It is a schedule 1 substance. And the court ruled that you could not do that. It was a district court, I think you said.

Ms. NAGEL. It's the Federal District Court in California. It's an injunction against the DEA.

Mr. WELDON. Is that part of case that's being heard tomorrow?

Ms. NAGEL. No, sir, it's totally separate.

Mr. WELDON. Is that case being appealed by the DEA?

Ms. NAGEL. The Department of Justice, I believe, has filed a notice for appeal, but has not, in fact, filed its appeal yet.

Mr. WELDON. When did the Department of Justice file its notice for appeal?

Ms. NAGEL. It has been some time.

Mr. WELDON. Was it the previous administration, the Clinton administration?

Ms. NAGEL. Yes.

Mr. WELDON. Thank you, Mr. Chairman.

Mr. SOUDER. I have a couple of additional things I want to put in for the record, and then we may give you some each additional written. Congressman McCollum, your resolution that passed Congress saying that we should not move marijuana off of schedule 1 and not medicinal is not one of the main arguments in the solicitor general's case tomorrow. Could you explain what your view of the effect and meaning of that provision was for the record?

Mr. MCCOLLUM. For the record, Mr. Chairman, my view and I believe it is the congressional view, it should be very clear that marijuana is indeed intended by Congress to be a schedule 1 drug. It would not have been done had we thought there would be medical utility, because obviously schedule 1 drugs prohibit that. It also is a fact that we didn't have any evidence then any more than we have today that any official body that we condone at the Federal level, like the Food and Drug Administration, to make decisions on medical efficacy of use of properties like this had come forward to anything like this to suggest we should alter this schedule. So the resolution was pretty straightforward in its restatement of the basic law and our support for the Controlled Substances Act in the keeping of the marijuana on schedule 1.

Mr. SOUDER. And I wanted to ask Congressman Lungren, proposition 215, understanding the—I agree with your fundamental premise that the reason we're losing these referendums is the compassion question. And we have to figure out how we're going to deal with this politically, because it's undermining the broader question, but in proposition 215, you describe that there were multiple different types of people who supported it. If it was really for medicinal use, why would it have not contained the close restrictions that were outlined in that report? And in California, or another way to say this is, in California, do you believe this is, for

the most part, being used in narrow things where everything else has been exhausted, where it's under controlled prescriptions, where the people are under observation, that it's guaranteed for a short-term period or any of those type of limitations? Because we certainly have heard new stories and seen things on TV of clubs and all sorts of things.

Mr. LUNGREN. Well, there's a couple of different questions there, and a lot of people confuse it. I moved to close down the Cannabis Buyers Club in San Francisco prior to the passage of 215. They claimed they were operating only for medical necessity, yet we had undercover operations there that showed them selling to teenagers, showed exposed secondhand marijuana smoke to infants. They tried to show how they were following what the law would be by only giving it to people for an expressed medical purpose. And I'm not making this up.

One of the reasons given was for treatment of yeast infection. And you have to—the minds boggles how that could be relevant whatsoever. But the law was written with some specificity. Not as much as you suggested. And we argued when we tried to then enforce the law—which is a limitation on law enforcement.

People don't understand, it basically is stated as an affirmative defense for someone who is charged with the continuing prohibition against marijuana possession and use in the State of California. So it's a limited affirmative defense to an individual who uses it. And it is also supposed to be a limited defense to someone who possesses it for his or her own personal use for medical purposes, or is a caretaker of someone else that went through the definitions of caretaker. But as you can imagine, some of those who supported it tried to expand it beyond that.

This whole argument about this Cannabis Buyers Club out of Oakland and so forth, the law does not change, the underlying law in California with respect to operation of something like a Cannabis Buyers Club. They claimed after the law passed, after the proposition 215 passed, that it's impossible if you give someone the right to have this medical marijuana, and then don't give them the ability to buy it somewhere.

You have created an inconsistency in the law. We all know there are inconsistencies in the law. The fact of the matter is that wasn't part of it. And I think those who frankly wrote the law didn't put it in because they knew the voters would probably vote against it if they knew that was part of it. But what's happened is you have different counties interpreting the law differently, some allowing cannabis clubs, some not, some allowing growing in their counties. In other counties prosecutions are taking place right now, even though the defense is hey, we're only growing it for sale on a cost basis to a cannabis cooperative.

And so if you think there is a disconnect between Federal and State law enforcement, we also have a disconnect between State and county or county to county in the State of California. It is not written with the specificity that you speak to, and that was one of the arguments I made in fighting against it. The commercials and all of the public statements on behalf of it focussed on as was focussed on by a previous panel member here today, the chronically ill, the AIDS patients, the wasting AIDS patient, the cancer pa-

tient, and I think people responded to that, but the law does not limit it to that.

Mr. SOUDER. This is the last question for you, and also Ms. Nagel, if you could address this. My understanding basically in how law enforcement is working and our ability—we've given more flexibility as we have brought a DEA office into my home area of Fort Wayne, IN to have, in effect, major cases kind of move up the chain because Federal law can be tougher in enforcement. And in fact, because of a more, there isn't any other way to say it, a more general tolerant approach to marijuana usage in the United States, that the bulk of smaller cases in law enforcement on marijuana have fallen to the local county level, to some degree the State level rather than at the Federal level. And if State law then undermines the beginning cases at the marijuana level at the local level, and if in fact, to add one additional variation of this, as you said, if it varies by county, then certain counties can become conduits for other counties that are choosing to interpret the law differently.

For example, a major case in California right now is turning out to be a provider of marijuana to much of the United States and are coming up with unusual protections, which is why we have national law. I want to ask for the record, is it true that, in fact, we move marijuana—have moved marijuana enforcement mostly to the local and State level, and the DEA other than major bust cases on interdiction, will tend to deal with cocaine and heroin, and does this not, then, at the State level and medicinal marijuana, things not defined tightly, put at risk our entire enforcement process on marijuana?

Mr. LUNGREN. Mr. Chairman, I will just answer it in a couple ways. No. 1, it has always been the case that you have more law enforcement officers at the local and State level than you have at the Federal level, even with the specialized expertise of the DEA. And so DEA, in other words, is spread more thinly across the country than local agencies. So the primary jurisdiction for marijuana busts of individuals has been in the past at the local level, except when you get to larger quantities.

We have also had, in the past, some U.S. attorneys limitations on the prosecutions they were taking had to be a huge amount, what I thought were huge amounts before they would have prosecutions.

Second, I would say in some areas, there's been very good cooperation with the DEA and locals. But I can tell you a particular experience I had in California in which DEA was one of the first ones involved in a major operation we had against a marijuana club. In fact, one of those that invited us in and worked very hard on them, and then when it came down to making the final decision, somehow they were called off.

And so you can see the difficulty you have when you have very different standards approaching a very serious problem that goes across State boundaries. I mean, there's just no doubt about it. It is a recipe for disaster.

Mr. SOUDER. Mrs. Nagel.

Ms. NAGEL. DEA's primary responsibility is the largest international, largest growers, trying to go with the highest level violators we can. With the laws, particularly in California, have created

confusion county to county, and it's strained our relationships with our partners because they have turned to us, and when I spoke to the people in California, they're telling me they get phone calls from sheriffs begging us to come to take marijuana because they've been ordered to give it back, and they just can't bring themselves to do it.

They want us to step in and pick up what they are unable to do right now, because the State laws won't permit it. And we can't step in and take care of everything for them. So to a great extent it's not being done. The laws are not being enforced at the State level, and the Federal Government cannot and should not be responsible for doing it. It's created havoc with particularity in California.

Mr. SOUDER. I thank you all for your testimony today and for taking the time to come. Clearly we have—we're entering a very difficult period and a very critical period with the new administration of how to focus on the battles, whether you refer to it as a drug war or as a cancer, and we need to make sure we have a national focus.

Many of us remain very concerned that because of difficulty of our dealing with pain and suffering, we have, in fact, seen something that particularly in this last question, we have seen could, in fact, result in the de facto legalization of marijuana if, in fact, you can't enforce it at the local level, because the Federal Government in no way can step in what local law enforcement has been doing. And in Indiana, we can hardly battle our Indiana problems yet alone if it starts coming as it seems to in larger quantities from California.

With that, I thank you all again, and our hearing stands adjourned.

[Whereupon, at 5:25 p.m., the subcommittee was adjourned.]

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