

11/14/96 Meeting of Federal, State & Local Government representatives  
Confirmed Attendee List - (as of 12:30pm 11/14/96)

Federal

Barry McCaffrey	ONDCP
Ricia McMahon	ONDCP(Office of CoS)
Patricia Seitz	ONDCP(OLC)
Bob Sloane	ONDCP(Public Affairs)
Thomas Constantine	DEA
David Lutweiler	DEA
Catherine Shaw	DEA
John Emerson	WH IGA, Deputy Director
Christa Robinson	WH DPC
Jon Schwartz	DOJ
Nicholas Gess	DOJ
Janice Innis-Thompson	DOJ
Peggy Grove	DOJ
Joe Graupensperger	DOJ
Bill Corr	HHS
Renee Landers	HHS(GC)
Dr. Franklin Sullivan	HHS/SAMHSA
Dr. Don Goldstone	HHS/SAMHSA
Bill Modjeleski	Education
Ken Edgell	Transportation
Susan Ginsburg	Treasury
Dr. Karen Hein	NAS/IOM, Exec. Officer
Dr. Constance Pechura	NAS/IOM, Director, Neuroscience & Behavior Health
Carolyn Fulco	NAS/IOM, Neuroscience & Behavior Health
Catharyn Liverman	NAS/IOM, Neuroscience & Behavior Health

Congressional

Pat Murphy	Sen. Hatch's Office
Chris Putala	Sen. Biden's Office
Tom Alexander	Sen. Kyl's Office
Neil Quinter	Sen. Feinstein's Office

State - Arizona

Richard Romley	Maricopa County DA (AZ delegation lead)
Barnett Lotstein	Special Assistant, Maricopa County Attorney Office
Gary Butler	Navaho County Sheriff
Alex Romero	Arizona Drug Watch
Barbara Zugor	TSAC - Executive Director
Ralph Ogden	Yuma County Sheriff, President, AZ Sheriff Assoc.

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State - California

Bob Ellsberg	California Peace Officers Assoc.
Tom Gade	Special Assistant to the AG
Brad Gates	Orange County Sheriff
John Gordiner	Attorney General's Office(CA delegation lead)
Tom Gorman	California Narcotics Officers Assoc.
George Kennedy	California District Attorneys Assoc. (Santa Clara DA)
Bill Stern	California Chiefs of Police Assoc. (Seal Beach PD)
Jim Thomas	California Sheriffs Assoc. (Sheriff, Santa Barbara County)
Less Weidman	California Sheriffs Assoc. (Sheriff, Stanislaus County)

Public Interest Groups

Richard Bonnette	President, Partnership for a Drug Free America
Mike Townsend	Exec.VP, DPFA
Alvah Chapman	Founding President, CADCA(Former publisher Miami Herald)
Marni Vliet	CADCA, President
Jim Copple	CADCA, Executive Director
Margaret Garikes	American Medical Association
Kimberly Jennings	CASA
Kevin McAnaney	CASA Pro Bono Attorney (Dewey, Ballentine)

**ONDCP Meeting on Impact of Propositions 200/215 and Expanding Legalization Effort**  
**2:30 pm to 5:30 pm, November 14, 1996**  
**Location: ONDCP, 5th Floor, 750 17th Street NW, Washington, D.C.**

- 2:30 - 3:00 Welcome and introduction of General (Ret.) Barry McCaffrey, Director, Office of National Drug Control Policy by Patricia A. Seitz, Director, Office of Legal Counsel, ONDCP.  
Remarks by Director McCaffrey -- A National Strategy in Face of the Expanding Legalization Effort.  
Pat Seitz introduces Tom Constantine, Director, DEA.
- 3:00 - 3:15 Brief overview of California Proposition 215, including California-based political, legal and enforcement options. Presentation Lead: Tom Gede, California Attorney General's office, Mike Bradbury, Ventura County DA and Brad Gates, Orange County Sheriff.
- 3:15 - 3:20 Q & A
- 3:20 - 3:35 Brief overview of Arizona Proposition 200, including Arizona-based political, legal and enforcement options. Presentation Lead: Richard Romley, Maricopa County DA and Ralph Ogden, Yuma County Sheriff.
- 3:35 - 3:40 Q & A
- 3:40 - 4:00 Break
- 4:00 - 4:35 Community's Response to Propositions' Impact and National Legalization Trend. Discussion of options by CADCA, CASA and Partnership for a Drug Free America representatives. Lead: Marni Vliet, President, CADCA
- 4:35 - 4:40 Q & A
- 4:40 - 5:30 Roundtable discussion, summarize consensus on next steps and timetable moderated by Pat Seitz.
- 5:30 Meeting adjourned.

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To: California Peace Officers Association  
California Chief's of Police Association

From: Robert S. Elsberg  
Associations Representative

Subject: Meeting with ONDCP on Impact of Proposition 215 in Washington D.C.

On November 14, 1996, the California Contingency met with the Arizona Contingency in Washington D. C. to review each State's situation as a result of the passage of Propositions 200 and 215. We then agreed as to our strategy and format of presentations that would be made to the federal agencies in the afternoon.

The California Contingency consisted of:

- Brad Gates, Sheriff, Orange County
- Jim Thomas, Sheriff, Santa Barbara County [representing the Sheriff's Assn.]
- Les Weldman, Sheriff, Stanislaus County [representing the Sheriff's Assn.]
- Michael Bradbury, District Attorney, Ventura County [representing the DA's Assn.]
- Tom Gade, Special Assistant to Attorney General Dan Lungren
- John Gordnier, Sr. Assistant Attorney General, [California Delegation Lead]
- Robert Elsberg [representing CPOA/Cal Chiefs]
- Thomas Gorman [representing CNOA]

The major topics consisted of:

1. California and federal law enforcement policy as a result of Proposition 215.
2. Potential legal and legislative challenges to Proposition 215.
3. How to fight the new political war against drug legalization in America.

The California delegation was attempting to have the federal government sue the State of California since we felt federal law preempts State's authority to make something a medicine. We requested to have the federal government give California law enforcement a written document authorizing us to seize marijuana under federal authority and for DEA to take a greater role in marijuana enforcement in California. We also asked for federal thresholds on marijuana for federal prosecution.

The contingencies met the federal government representatives at the ONDCP building at 2:30 p.m. The federal government had representatives from ONDCP, DEA, DOJ, HHS, Transportation, Education, Treasury, and other departments, in addition to representatives from

Senators Hatch, Biden, Kyl and Feinstein's office. See attachment 1 for the agenda of this meeting as prepared by ONDCP. See attachment 2 for the working document which the federal agencies had prepared prior to the meeting suggesting action and time frames.

The following is a summary of presentations made by some speakers at the ONDCP meeting:

#### General McCaffery

Opened up the meeting by stating that he wanted to watch and see what happens as a result of the passage of Arizona and California's Propositions. He inferred that by waiting approximately one year we could sort through and think through the issues. The federal government will support federal law to protect the process by which drugs are made medicine in the Nation. President Clinton will be presented with options by Donna Shalala and General McCaffery. General McCaffery stated that it was a national issue. General McCaffery did not think that the passage of these Propositions would result in seeing kids start massively using of drugs, nor did he believe that doctors would start recommending pot for illnesses.

#### DEA Administrator Tom Constantine

Constantine felt that Congressional Hearings are valuable and that we may want to have Hearings in California to air the issues. DEA will use the federal Grand Jury and prosecute the major suppliers of marijuana and remove doctor's licenses where appropriate. The removal of a doctor's license may be a deterrent. DEA will look at how it spends its funds when State's do foolish things.

#### Brad Gates [spoke for the California Law Enforcement Component]

Sheriff Gates stated that a National organization, non-profit, needed to be form to educate the public. We supported the legitimate research for marijuana as a medicine and that perhaps the federal government could fund and undertake the project. California needed to know the United States Attorneys thresholds for what they will prosecute as far as marijuana violations. Sheriff Gates asked if the federal government will continue to fund the HIDA's and Marijuana Eradication in California and requested a partnership between federal, state and local government.

#### Tom Gade [Special Assistant to Dan Lungren]

Gade indicated reasons why the federal government has standing to intervene and file a law suit in federal court to invalidate parts of the California law that conflict with federal law. He indicated that there was a sense of urgency because we need guidelines for law enforcement, the public and doctors. He requested a memo from the federal government [DEA] to allow us to seize marijuana for them and perhaps cross designate attorneys and some peace officers. Lastly that CADFY should educate the public on the law.

Jim Cople [CADCA, Executive Director]

They have 4,000 members and are privately funded. He stated that we should first get people to understand the new problems before government takes any action to prevent a backlash. General McCaffery agreed.

Richard Bonnette [President, Partnership for a Drug Free America]

He stated that we lost the battle and now we did to reorganize. We should learn from our mistakes and move forward through education. The drug czar wants to put more money into drug education.

Representative for Donna Shalala

The representative stated that they needed to sort through a wide variety of options available and do it quickly. The Proposition undercuts the message we need to get to our kids. A suit in federal court by the federal government is novel. If we decide to we need to determine where we will file. We will also look at FDA action, cross deputization and thresholds for prosecuting in federal court.

Summations:

David Lutweiller [Deputy Administrator DEA], DEA Administrator was absent at this point.

Usually when DEA goes after a doctor's license, the State proceeded first and made the case, and then DEA came in afterwards. They need to look at this area further. DEA can not respond to all of the State's marijuana cases due to lack of resources. DEA will not change their strategy and therefore won't change resource allocation. Also, the US Attorneys have their limits as to how many cases they can prosecute. He's not sure what will happen to the federal government's contributions to such areas as HIDA's and Marijuana Eradication. He stated that there was a lot to think about, but it would be done quickly.

General McCaffery:

The Propositions in Arizona and California created a great dilemma through misinformation to the public. He doesn't want federal government to lead on the State and federal issues. Federal laws have not changed, only local ones. General McCaffery wants the State to proceed and not wait for a coordinated action. General McCaffery will be the central point of contact representing the federal government and the date of December 5, 1996, will be used as the next milestone as to what the federal government has been able to do.

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Working Document for Discussion Only

Timeline for Consideration

**PURPOSE.** To suggest a possible timeline that portrays actions that might be taken to respond to the challenges to the nation's drug control policy by propositions 200 & 215.

<u>Suggested Action</u>	<u>Possible Lead</u>	<u>Timeframe</u>
Federal-State Conference	ONDCP	November 14
Develop state guidelines for doctors (consequences)	AZ & CA	Dec '96
Form inter-agency team to review legal issues (USAs/State AGs)	DOJ	Dec '96
Form federal-state team to develop educational/ preventive responses	HHS/Ed & states	Dec '96
Complete legislative analysis of both propositions	AZ & CA	Dec '96
- consider state-sponsored challenges/litigation		
Conduct review of all state marijuana laws	DOJ	Dec '96
Establish base-line of marijuana usage (nationwide & in both states)	HHS & both states	Jan '97
Review medical efficacy of marijuana	HHS	Jan '97
- consider additional research		
Review public health implications of both propositions	HHS & states	Jan '97
Update <i>Therapeutic Marijuana Policy</i>	HHS	Feb '97
<del>Conduct poll of America's attitudes towards marijuana</del>	<del>HHS</del>	<del>Feb '97</del>
Develop appropriate anti-marijuana PSAs & campaign	PDFA/CACDA	Feb '97
Federal-State Conference in California	CA	Feb '97
Federal-State Conference in Arizona	AZ	Feb '97
National Marijuana Conference	ONDCP	Apr '97
Update Federal Marijuana strategy	ONDCP	May '97
- consider actions against states that fail to enforce federal laws		
Issue state anti-drug strategy	AZ & CA	Jun '97

**NOTE.** This suggested timeline is not directive. It is intended as a starting point document to foster discussion about a strategic and coordinated response to these and other drug legalization challenges. This timeline should be finalized by December 6th.

Working Document for Discussion Only



- Create a permanent funding base from foundations, corporations and individual donors.
- Educate the corporate community and motivate business leaders to become actively involved in the fight against drug legalization.
- Build a broad based, dues paying membership.
- Monitor legislation and initiatives in all 50 states and on the federal level.
- Oppose legislation or initiatives to legalize or medicalize illegal drugs.
- Promote and support legislation and initiatives to fight illegal drugs and to provide increased government resources for this purpose.
- Fight drug legalization laws in the courts.
- Expose the true agenda of the drug legalization lobby and the people behind it.

### Organization Structure

- The National Campaign Against Legalizing Drugs should be formed consisting of two organizations: A lobbying organization and a "supporting foundation."
- The foundation can receive funding from other foundations. It will be primarily responsible for funding "non-political activities" including: administration, litigation, public opinion and issues research, community organization, fundraising and recruitment of a nationwide, broad based, dues-paying membership.
- The lobbying organization can receive funds from corporations, individuals and fundraising mailings to the small donors of the foundation. This organization will engage in legislative lobbying at the state and federal level and will become directly involved in initiative campaigns.

### Action Steps

- Prepare a start-up budget and organization plan.
- Identify initial funding sources.
- Recruit a board of directors, national chairman and president.

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Notes by writing RABBLE  
meeting ~~for~~ 10/10/10

Gates - This is a national issue now. CA & AZ have a murky situation, believe federal law is very clear. Need leadership from federal government for the officer on the street ASAP.

Anecdotal info that challenges are already underway against enforcement officials. Will lend support to federal officials who respond.

In CA, we had effective grass roots campaign, but no money. Our experts say that if we had \$2M, we would have won.

Legalizers are going national. We need to get orgs Americans for Compassionate Use.

FROM  
CONANT  
DISCOVERY.

Concur with calls for legitimate scientific research  
If there is a legitimate medical use for MJ, let it  
conditions w/close MD supervision.

1.

Asks DEA to set uniform trigger level for federal enforcement. Right now, each US Atty sets own level for what qualifies for federal prosecution.

What do we do with mandatory testing of public safety employees? Does Dr recommendation to use pot override?

What about international treaty effects of 215?

What about prescriptions from out of state and out of the country? Dr's need guidance ASAP.

We are here to be helpful and to work with you as a partner.

(Pat then discussed the handouts we provided to all)

(Video of pro-215 advertisements)

Tom Gede AG Lungren must enforce the law. Problem is that this law did nothing but w/hold the penalty for "medical use."

Our analysis says Fed law 21 USC 841 that holds possession/use of Sched I drug illegal is still in force.

Looking to DOJ on an urgent basis to resolve the preemption issue. We see a positive conflict between Fed law and new state law.

Vent DA We invite Fed govt to sue, since AG can't ask. the CA association of DA's will.

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Gede Initiative does permit enforcement of non-medical use of MJ. and for medical use if driving for example.

Romley (couldn't hear - discussion )

Gates Stressed no age limit of proposition.

Gede Agency problem created by trying to distinguish who and who can't distribute

Pat asked what happens if a suit is brought against the state.(and second Q I didn't hear)

Gede No constitutional impediment to Fed govt. suing state. No idea as to answer to second question.

Pat asked question about a lawsuit from CA

Vent DA Research indicates lack of standing (didn't hear all of the response.)

Gede More beneficial for a direct Federal resolution than a lawsuit attacking it collaterally thru a prosecution by state for a vio of the new state law.

Substantial Federal interest is at issue. Interstate commerce issues, national commitments thru treaty obligations are also compromised.

(Discussion w/several participants regarding history of decriminalization, unclear)

Gede Question as to what is appropriate medical care. What are Drs.'s supposed to do? In our view, no difference between recommendation and prescription when the end result is the same. Isn't recommendation the practice of medicine, and aren't the Dr.'s who recommend dispensing a Sched I drug?

Corr Seems that recommendation is the same as to prescribe.

Vent DA Enforcement officials concerned about civil liability for enforcing law. Need Federal-state partnership to avoid civil lit. Wants DEA to reassure state that CA should still enforce Federal law. Biggest problem is no one knows at what point medical MJ becomes illegal for distribution MJ. Can't wait 6 months for an answer.

Romley Director was right to say these props were an act of stealth legalization.

(Watched AZ pro-200 spots)

Romley Must send a strong message. Need to send medical community strong signal that if they prescribe in vio of law, they will be prosecuted. AZ will be proactive,

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but we need Fed govt support.

We need guidance from Fed govt. On liability issue. We want a memo from DEA protecting us when we seize contraband on their behalf.

Anticipates cottage industry for forged prescriptions on/over Mex border. Hope we aren't going to "live" with this new law.

Ogden New situation very confusing, but AZ will remain aggressive enforcement Posture. Need clarification from Fed govt. HIDTA may be compromised. Do we have to provide medical marijuana to prisoners? Lawsuits will certainly arise from our enforcement. Will officers be protected?

No way to gauge intox level with MJ. Whole situation unfair to our citizens, as we can't tell them just what they can or can't do.

Romley Even though CA & AZ are different props, the strategy of proponents is the same. It will expand throughout the nation if we all don't react.

Gates Message of national strategy is compromised. Wants congressional hearings.

Pat asks about action on state legislative side.

Romley Our law allows for a change, because less than 50% of eligible voters voted. We are aggressively promoting a special session to change the measure.

Pat - how can we help?

Romley Get high level officials out to AZ to support the call for a special session. It will take political will.

Romero New law further complicated by older AZ licensing law.

Gede Our legislature can't pass a law to change. Can only happen by another initiative.

Romley Education is the key here. Maybe CADCA could fund a new initiative.

(Sloane - unintelligible comment)

Gede In addition to fear of tort liability from seizing medical MJ, our officers fear suit if they don't seize MJ that later is proximate cause of actionable harm.

(someone asked if AZ gov can sue)

Romley He thinks he can; others in legislature do not agree.

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(Someone asks how can Dr's get MJ to prescribe?)

DEA They can't. DEA registers Sched II-V only. Also, you have all asked good Q's that I just don't have the answer to.

Wants to get a US Atty meeting together ASAP to resolve issues on enforcement policy.

DEA normally doesn't act against Doc's until the state board disciplines

Romley But state med board normally won't act until DEA acts. We have catch 22.

Need resolution of Federal law regarding seizure of contraband.

DEA Taking all state cases into Fed system as way around 215/200 would grind Fed system to a halt. Not enough resources.

Break

General Glad to be back. Had opportunity to talk to AG, she is with us.

Romley What about FDA's role. Are they going to participate in this process?

AZ will lose drug courts. Having MJ alluded to as medicine solidifies positive conflict.

General FDA must go slow on this. MJ remains a Sched I drug, period. States can't supersede CSA.

Marni These initiatives have brought issue back up on the radar. CADCA remains very much opposed.

Copple Must protect other 48 states, and rollback in CA & AZ. Have launched re-education campaign in 27 states which are potential next targets. "Say it Straight" is the title of the first effort. using video downlink from Nat Guard.

Did not expect onslaught of money & effort by pro-215/200 forces in CA/AZ. No funds available in time to separate compassion from legislation.

CASA, CADCA and RWJ Foundation have \$\$ & expertise to respond now, and will. We are taking it very seriously.

McAnamey RWJ Foundation has funded CASA study showing voters didn't know what they were really voting for.

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- Biden rep Can't defeat use of terminally ill by pro-MJ forces. it's a winning political issue.
- Copple We need to retool how we address this issue. Must separate compassion for terminally ill from larger policy issue.
- General Jim is right, medicine is the easy answer. Problem is for NIDA/AMA to decide. If MJ is medicine, no problem. If its not, then no further discussion of medical issue.
- Biden rep. What if med evidence shows no medical use for terminally ill, but people believe it works?
- Romley Must educate and show the lies put forth by the proponents.
- Jellineck Other side would be salivating if they could hear prospect of Feds going against the will of the people. It is a political problem. You need a Federal response but can't be viewed as outside interference.
- General Agrees with above, but Feds have simple task. We will enforce Fed law.
- Gede Reminds us of legislative history in CA. Must resolve terminally ill problem before we proceed.
- Gorman Day after election, media turned to us and asked, how could you have allowed this to happen. They have woken up.
- Romley Legislative solution can't succeed w/o political solution.
- Bonnette We lost first round of communications battle. No coordinated plan.
- Must agree on overall coordinated strategy, considering medical/law enf/treatment issues. We learned a lesson in CA.

The Federal agencies represented at the meeting were given the opportunity to summarize their positions.

HHS - Interested in increased consultation with the State and local governments and the public interest groups. Because the initiatives undercut the drug strategy, recommended acting quickly.

DEA - Very interested in the tort issue and sympathetic to the concerns of the officers in the field. Commented on the role DEA plays in the licensing of M.D.s. Indicated DEA doesn't intend to change its enforcement strategy.

DOJ - Referred to the difficulties of bringing a §903 action. Concerned that CA and AR

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would have to defend it. Also referred to prosecution guidelines that would have to be changed to permit greater Federal enforcement.

DOE - Recommended increased coordination with school leaders nation wide.

Alvah Chapman - Stressed the fact that each state must develop its own strategy to keep these initiatives off the ballot.

Concluding comments by the Director. He made six points:

ONDCP will be the Federal POC.

ONDCP will monitor the issues and work to move resolution of them forward.

ONDCP will coordinate the establishment of milestones and issue them by December 6.

ONDCP will try to coordinate the other Federal agencies.

ONDCP will support community initiatives of the anti-drug public interest groups.

ONDCP will press the issue.

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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF NATIONAL DRUG CONTROL POLICY  
Washington, D. C. 20503

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FAX TRANSMITTAL

**FROM:** Pat Seitz, Director, Office of Legal Counsel, ONDCP  
(202) 395-6621, fax 395-5543

<b>TO:</b>	<b>Agency</b>	<b>Name</b>	<b>Tel. #</b>	<b>Fax#</b>
	DOJ	Jon Schwartz	(202) 514-4375	616-1239
	Education	Bill Modzeleski	(202) 260-3954	260-7767
	HHS	Bill Corr	(202) 690-7694	690-6960
	Treasury	Susan Ginsburg	(202) 622-1496	622-7301
	DOT	Mary Bernstein	(202) 366-3784	366-3897
	WH	Dennis Burke	(202) 456-5568	456-5581
	DEA	Dave Lutweiler	(202) 307-8003	307-7335
	DEA	Donnie Marshall	(202) 307-7340	307-7334
	FBI	Steven Martinez	(202) 324-2821	324-2959
	FBI	Tom Kneir	(202) 324-4262	324-3012
	DOD	Jim McAtamney	(703) 693-1920	697-8176
	NRC	Loren Bush	(301) 415-2944	415-2279
	Orange Co.	Brad Gates	(714) 647-1800	550-9223
	CA Atty Gen	John Gordnier	(914) 324-5169	324-2960
	CA Atty Gen	Tom Gede	(916) 323-7355	322-0206
	MCDAtty AZ	Rick Romley	(602) 506-7650	506-8102

**DATE:** December 5, 1996

**PAGES:** 6 (including cover)

**SUBJ:** Prop 200/215 Interagency Meeting, December 6, 1996

Have attached the Agenda and an Information Update for tomorrow's IWG meeting.



AGENDA  
200/215 Interagency Working Group  
December 6, 1996

10:00 - 10:05 Introduction

10:05 - 10:50 Information Exchange: matters under consideration; actions taken; pros and cons.  
(5-10 minutes each)

- ONDCP
- DOTrans
- DOJ/DEA
- DOTreas
- HHS
- DOE
- NRC
- Arizona
- California

10:50 - 11:10 Discussion

11:10 - 11:15 Closing Remarks/Adjourn

## POST- ADOPTION OF AZ 200/CA 215: INFORMATION UPDATE

### I. Proponents' Goal and Strategy:

- legitimize illicit drug use through "medicalization" approach
- take AZ and CA successes nationwide using
  - coalition of legalizers, libertarians, compassionate and recreational users
  - the MAP (Internet) communications network
  - "compassionate use" message
  - substantial financial resources from a small group
  - initiatives where legislative approach is unsuccessful

### II. Propositions' Impact:

- gives children wrong message -- "drugs are good"
- balkanizes the nation's "national" drug strategy
- subverts FDA's science-based designation of medicinal substances
- increases taxpayers' burden to litigate medical proof issues, potential for conflicting results and additional litigation costs
- creates law enforcement conflicts -- limited federal prosecution and enforcement resources, impact on prosecution thresholds, case targeting procedures, investigative authority, deputization and immunity issues, contraband seizure authority/immunity
- pits federal government against the states -- 10th Amendment issues
- contradicts U.S. international treaty obligations -- 1961 and 1972 treaties
- causes confusion for drug-free workplace entities and medical profession
- raises federal resource allocation issues -- should federal block grant funds for law enforcement and treatment be tied to supporting the national drug strategy to discourage inconsistent or conflicting individual state policies which undermine that strategy?

### III. Proposition Opponents' Goals and Needs

#### Goals

- prevent passage of "medicinal marijuana" or similar provisions in other states;
- blunt the negative consequences, including obtaining the repeal, of Propositions 200 and 215 and other "medicinal marijuana" or similar provisions already passed in other states.

#### Needs

- reframe issue: threat of drugs to developing children; to by-standees (fellow-workers, responsible drivers, school environments, on economically struggling families, and in domestic violence situations, etc.); follow example of secondary smoke issue which

energized non-smokers to focus on their rights to a pollution-free environment; public hides, often enables and often does not understand addiction and its impact physically, emotionally, environmentally; put human face on the issue such as MADD did

- ensure existence of a national drug strategy given interstate mobility and international treaty obligations
- provide guidance and assistance to law enforcement in California and Arizona
- protect the FDA protocol for the scientific based designation of "medicines"
- develop and implement national communications strategy (based on the re-framed issue) with a rapid response element similar to the proponents' MAP Internet approach.
- involve the medical community (which defeated the mid-80's attempt to use heroin medically); at present appears a sizable faction supports marijuana for the terminally ill, why? Tension between individual treatment issues and developing a common good public policy need to be resolved).
- broaden the community involvement, particularly the business community given the negative impact of drugs on business profitability and funding needs.
- identify lead national group to mobilize and coordinate interested state and local groups -- legislatures, chambers of commerce, CADCA, PDFFA, Lions, Parents groups etc., to be the first line of defense against formal or stealth efforts to legalize illicit drugs.

**IV. Considerations to Date:**

**Federal Agencies --**

- ONDCP -- (1) Drug Cabinet Council meeting 12/12, issue on the agenda; (2) funding for medical research literature review; (3) lead government's message development; (4) Model State Drug Law Alliance monitoring and development of laws with national strategy; (5) assist in developing medical information clearing house; (6) determine what impact the initiatives have on federal funding to states which do not cooperate in a national drug strategy.
- DOJ/DEA -- (1) Determine whether the state ballot initiatives may be preempted, in whole or in part, through a federal lawsuit or through new federal legislation; (2) outline DEA enforcement strategy and review prosecution guidelines for U.S. Attorneys' offices; (3) Provide guidance and support to state and local law enforcement agencies regarding their officers' ability to seize federal contraband and make arrests for violation of federal

law; (4) Develop strategy for taking administrative action against medical practitioners who do not comply with applicable federal law; (5) Consider whether to send a letter to DEA physician registrants and/or medical associations regarding physicians' continuing obligations under federal law; (6) Analyze whether states other than California and Arizona have similar medical use provisions.

- HHS (1) Effectively communicate data in the five Institutes of the NIH fact sheets reflecting their scientific assessment of smoked marijuana; (2) Analyze all available data on drug use, especially marijuana, and expand ongoing drug use surveys to determine current levels of drug use in California and Arizona and to track changes in these states in drug use; (3) participate in efforts by all affected parties to develop a more effective "message" for each relevant constituency (preteens, teens, parents physicians, public health officials, etc.,) about the use of marijuana; (4) participate in appropriate efforts in California and Arizona to educate all relevant constituents about the use of marijuana; (4) participate in discussions in all other states (where needed) to educate key public and private health leaders about the problems with the two initiatives; and (5) strengthen our drug abuse prevention efforts directed at preteens and teens (specifically for marijuana) through a new, coordinated Federal/State/community initiative.
- DOEd Develop new, multi-dimensional educational (for parents, teachers, and students) program regarding the physical danger of marijuana and other illicit drugs.
- DOTrans (1) Re-assert and enforce the standards applicable to a alcohol and drug-free transportation industry. (2) Giving guidance to transportation employers and employees that precludes medical use of marijuana except marinol (when prescribed by a physician) and the ingestion of hemp based products by safety sensitive workers.
- NRC Re-assert and enforce the standards applicable to a drug and alcohol free nuclear industry.
- Treasury U.S. Customs will (1) conduct an analysis on what the impact will be on border enforcement in the affected areas; (2) assist DOJ in developing enforcement guidelines as they relate to the border; (3) continue to enforce the Controlled Substances Act to the fullest extent authorized by law and Federal policy; (4) continue to seize any controlled substance and consult with the U.S. Attorney's office concerning prosecution of the violator; and (5) as appropriate, issue penalties and fines for attempted importation of a controlled substance.

States –

- California –
- Sheriff Brad Gates/California Narcotics Officers Association –

(1) met with George Dunn, Governor Pete Wilson's office in forming the state-wide comprehensive plan, including special election to repeal Prop 215;

(2) retained the law firm of Rutan and Tucker to examine prop 215 (and Prop 200, should Arizona care to join) to determine what, if any, type of litigation could be initiated to challenge the effectiveness of Prop 215;

(3) beginning the process for repeal proposition in 1998, including collection of signatures;

(4) working with democratically controlled legislature to look at other legislation which would minimize the negative effects of prop 215 (has limited potential given legislature's prior history with "medical" marijuana);

(5) Governor Wilson to propose a meeting with Governor Symington of Arizona, and legislative leadership of the two states to work on mutual issues arising from the impact of these two propositions and their shared border;

(6) met with California Medical Association (Steve Thompson) to reaffirm their commitment that the designation of a "medicine" must be within the FDA protocols and that the appropriate research should be conducted on the question of marijuana's "medicinal value;"

(7) met with California chamber of Commerce (Kirk West in L.A.) which has assigned two staff attorneys (Martin and Simberg) to work on the issue;

(8) Stu Mollich is submitting to Jim Copple (CADCA) and Rick Bonnette (PDFA) a proposed strategy for the next 60 days for establishing a national organization to ensure the legalization effort goes no further.

- California Attorney General's Office -- John Gordinar

- (1) examining pre-emption issue

- (2) California law enforcement Roundtable meeting in January

- (3) results of All-Zone meeting

- Arizona --

- Rick Romely, Maricopa County Attorney --

- (1) There is a question as to whether the Governor has the ability to veto Prop. 200. It hasn't been signed as of 12/5/96.

- (2) There have been a number of meetings with legislators, law enforcement leaders and others to discuss legislative remedies. Options include: (a) repeal of the initiative; (b) dramatic changes including restoring jail as a sentencing option, limiting the inmates eligible for release from prison and repealing/limiting drug medicalization provisions.

- (3) Arizona County Attorneys and Sheriffs Association met. There is consensus to work for legislative changes. The Association has taken the position to aggressively oppose release from prison.

- (4) Arizona Prosecuting Attorneys Advisory Council will meet and address these issues this week.

- (5) A Roundtable has been researching the legal implementation issues regarding Prop 200.

### Nongovernmental Organizations

#### CADCA – Jim Copple

(1) Discussions with Stu Molrich of Citizens for a Drug-free California re options and timetable

#### Partnership for a Drug Free America – Rick Bonnette

#### Drug Watch International -- David Evans

#### American Medical Association – Margaret Garikes

#### CASA -- Kevin McAnaney

(1) Hosted a meeting November 22 in New York of interested private sector parties on structuring national and state strategies which will be as effective in organizing and communicating as the proponents. Roger Posani preparing a summary of meeting.

(2) Califano Op-ed piece December 4 (Washington Post)

#### Robert Wood Johnson Foundation – Paul Jellinek

#### Institute for a Drug-Free Workplace – Mark DeBernardo (202) 842-7400

(1) Examining litigation options

#### Alliance Model State Drug Law Conferences -- Atty Gen of MS. Mike Moore/ Sherrie Green, ex director

(1) Discussion with Mike Moore

#### • Other Options For Consideration

Working Document for Discussion Only

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Timeline for Consideration

**PURPOSE.** To suggest a possible timeline that portrays actions that might be taken to respond to the challenges to the nation's drug control policy by propositions 200 & 215.

<u>Suggested Action</u>	<u>Possible Lead</u>	<u>Timeframe</u>
Federal-State Conference	ONDCP	November 14
Develop state guidelines for doctors (consequences)	AZ & CA	Dec '96
Form inter-agency team to review legal issues (USAs/State AGs)	DOJ	Dec '96
Form federal-state team to develop educational/ preventive responses	HHS/Ed & states	Dec '96
Complete legislative analysis of both propositions - consider state-sponsored challenges/litigation	AZ & CA	Dec '96
Conduct review of all state marijuana laws	DOJ	Dec '96
Establish base-line of marijuana usage (nationwide & in both states)	HHS & both states	Jan '97
Review medical efficacy of marijuana - consider additional research	HHS	Jan '97
Review public health implications of both propositions	HHS & states	Jan '97
Update <i>Therapeutic Marijuana Policy</i>	HHS	Feb '97
Conduct poll of America's attitudes towards marijuana	HHS	Feb '97
Develop appropriate anti-marijuana PSAs & campaign	PDFA/CACDA	Feb '97
Federal-State Conference in California	CA	Feb '97
Federal-State Conference in Arizona	AZ	Feb '97
National Marijuana Conference	ONDCP	Apr '97
Update Federal Marijuana strategy - consider actions against states that fail to enforce federal laws	ONDCP	May '97
Issue state anti-drug strategy	AZ & CA	Jun '97

**NOTE.** This suggested timeline is not directive. It is intended as a starting point document to foster discussion about a strategic and coordinated response to these and other drug legalization challenges. *This timeline should be finalized by December 6th.*

(28)

**CONFIDENTIALITY NOTE**

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and attorney work-product privileges

**MEMORANDUM**

**PREPARED FOR:** Community Anti-Drug Coalition of America  
**PREPARED BY:** Rutan & Tucker, LLP  
Paul Marx, Esq.  
Doug Dennington, Esq.

**DATE:** January 21, 1997

**RE:** Congressional Power to Preempt Proposition 200 and Proposition 215

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**QUESTION:**

Does Congress have the power to expressly preempt the provisions of California's Proposition 215 and Arizona's Proposition 200?

**Conclusion**

Congress cannot compel states to enact or administer federal programs, nor does Congress have the power to force states to legislate. Congress may, however, expressly preempt any state law which regulates an area occupied by federal law, provided that the federal law was enacted pursuant to Congress' powers under the Constitution. Alternatively, Congress may offer states the choice of regulating the activity according to federal standards or having state law preempted by federal law.

**Background**

On November 5, 1996, the voters of California and Arizona adopted Proposition 215 and Proposition 200, respectively, which purport to decriminalize the possession of Schedule I



substances for certain "medical" purposes. The federal Controlled Substances Act embodied in 21 U.S.C. § 801 *et seq.* provides that there is no currently accepted medical use for Schedule I substances and makes it a federal crime to possess or prescribe such substances. The federal Controlled Substances Act acknowledges the validity of consistent state regulation of controlled substances, and preempts only those state laws presenting a positive conflict with federal law. (21 U.S.C. § 903.) The following analysis addresses the ability of Congress to expressly preempt the provisions of the Propositions.

Analysis

Congress cannot compel states to "enact or enforce" federal programs. (New York v. United States (1992) 120 L.Ed.2d 120, 144.)

[E]ven where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts. (Id. at 144.)

Where, however, Congress has enacted legislation within its constitutional limits, it has the power to expressly preempt any state law regulating within that same field, regardless of whether the state law is consistent with the federal law. (Rice v. Santa Fe Elevator Corp. (1947) 331 U.S. 218, 237.) In lieu of expressly preempting all state law in the given field, Congress may "simply condition state involvement in a pre-emptible area on consideration of federal proposals." (FERC v. Mississippi (1982) 456 U.S. 742, 765.)

[W]here Congress has the authority to regulate private activity under the Commerce Clause, we have recognized Congress' power to offer States the choice of regulating that activity according to federal standards or having state law preempted by federal regulation. (New York, supra, 120 L.Ed.2d at 144-145.)

Congress enacted the federal Controlled Substances Act embodied in 21 U.S.C. §801 *et seq.* pursuant to its power to regulate interstate commerce under the Commerce Clause of the United States Constitution. (See 21 U.S.C., §801(3)-(5); see also, U.S. v. Lopez (5th Cir.

1972) 459 F.2d 949, cert. denied 409 U.S. 878.) Accordingly, Congress could have expressly preempted any state laws regulating in the field of controlled substances. (See Hillsborough County v. Automated Med. Labs. (1985) 471 U.S. 707, 713.)

To encourage the states to work with the federal government in preventing the illicit diversion of controlled substances and drug abuse, Congress expressly provided that the federal laws would not preempt state laws regulating controlled substances except to the extent that the state laws presented a "positive conflict" with federal laws. (21 U.S.C., §903.) Whether the provisions of Proposition 200 and Proposition 215 present a positive conflict sufficient to invoke the preemption doctrine rooted in the Supremacy Clause is a question of first impression and any court challenges to the Propositions may be met with significant hurdles. Congress, of course, has the power to amend 21 U.S.C. Section 903 to expressly preempt all state laws regulating in the field of controlled substances.<sup>1</sup>

Alternatively, Congress could amend section 903 to provide that the federal Controlled Substances Act establishes minimum standards for the regulation of controlled substances. (See New York v. United States, supra, 120 L.Ed.2d at 144 [stating that Congress has authority to offer the states the choice of regulating in accordance with federal standards or having state laws preempted by federal laws].) Congress has previously enacted similar legislation in the Clean Air Act. (42 U.S.C. § 7543(a); see also, The Motor Vehicle Manufacturers Ass'n of the United States v. New York (2d Cir. 1996) 79 F.3d 1298, 1302 [acknowledging that the federal Clean Air Act preempts any state regulation of automobile tailpipe emissions other than California

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<sup>1</sup> Such an amendment would probably not serve federal interests. The federal policies embodied in the Controlled Substances Act are to share with the state the responsibility of controlling drug abuse. To expressly preempt all state laws regulating controlled substances would strip the states of any power to police substance abuse. This would require the federal government to expend astronomical resources to enforce its laws in those areas previously regulated by the states.

regulations (which were more stringent than the federal regulations) and those state regulations adopted by other states which are identical to California's].)

Congress thus has the power to preempt any state laws regulating in the same area as that which is regulated under the federal Controlled Substances Act. Congress may alternatively condition continued state regulation in the area of controlled substances by providing that all state laws regulating in the same field be at least as restrictive, or more restrictive, than the federal Act.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF NATIONAL DRUG CONTROL POLICY

Washington, D.C. 20503

December 20, 1996

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DHH

HIGHLIGHTED PASSAGES DROPPED FROM FINAL DRAFT 406

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: DIRECTOR, OFFICE OF NATIONAL DRUG CONTROL POLICY

SUBJECT: Administration Strategy to Address Recent Drug Legalization Efforts

1. Purpose: The purpose of this memorandum is to recommend approval of the Federal strategy to blunt the negative consequences of the recent "medicinal marijuana" Propositions in California and Arizona. These Propositions purport to allow doctors to prescribe or recommend marijuana and other Schedule I drugs notwithstanding that, under the Federal Controlled Substances Act, Schedule I drugs have no accepted medical use. As you stated to the Drug Policy Council, there is a need for swift and focused Federal action to preserve the National Drug Control Strategy.

2. General: Under your leadership, the Administration has strongly opposed the California and Arizona drug legalization measures. These measures contradict Federal law and complicate the national drug strategy. They violate the medical-scientific process by which our nation evaluates and approves safe and effective medicines for use in the United States. They send the wrong message to our children. They undermine the concerted efforts of parents, educators, businesses, elected leaders, community groups and countless others to achieve a healthy, drug-free society.

3. Objectives: The interagency working group consisting of ONDCP, the Departments of Treasury, Defense, Justice, Labor, Health and Human Services, Housing and Urban Development, Transportation, and Education, the Postal Service, and the Nuclear Regulatory Commission met five times in November and December. We have developed the following strategic objectives for our coordinated Federal response:

A. Maintain effective enforcement efforts within the framework created by the Federal Controlled Substances Act and the Federal Food, Drug, and Cosmetic Act.

B. Ensure the integrity of the medical-scientific process by which substances are approved as safe and effective medicines in order to protect public health.

C. Preserve Federal drug-free workplace and safety programs.

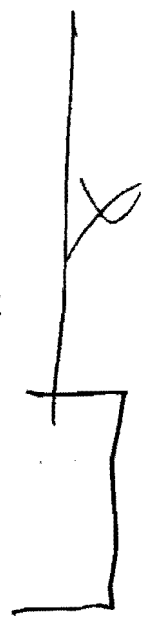
D. Protect children from increased marijuana availability and use.


4. **Courses of Action:** In developing our strategy, we gave due consideration to two key principles: federal authority vis-a-vis that of the states, and the need to ensure that American citizens have access to safe and effective medicine. To attain the four objectives, ONDCP and Federal drug control agencies have formed a partnership to undertake the following coordinated courses of action:

**A. Objective 1 - Maintain effective enforcement efforts within the framework created by the Federal Controlled Substances Act and the Federal Food, Drug, and Cosmetic Act**

- Department of Justice will publicly take the position that a practitioner's action of recommending or prescribing Schedule I controlled substances is not consistent with the "public interest" (as that phrase is used in the Controlled Substances Act) and will lead to administrative action by the Drug Enforcement Administration to revoke the practitioner's registration to handle controlled substances.
- DOJ and Department of Health and Human Services will send a letter to national, state, and local practitioner associations and licensing boards stating unequivocally that DEA will seek to revoke the DEA registrations of physicians who recommend or prescribe Schedule I controlled substances. This letter will also outline the authority of the Inspector General of HHS to exclude individuals or entities convicted of criminal offenses relating to controlled substances from participation in the Medicare and Medicaid programs. For felony convictions, the law provides for a mandatory exclusion of a minimum of five years, and for misdemeanor convictions, there is a permissive exclusion of three years with the period of exclusion being reduced or increased depending upon mitigating or aggravating circumstances.
- **DOJ** will expand current enforcement programs to pursue appropriate investigations and prosecutions for their deterrent impact against physicians and others in cases involving: (a) the absence of a bona fide doctor-patient relationship; (b) a high volume of prescriptions or recommendations of Schedule I controlled substances; (c) the accumulation of significant profits or assets from the prescription or recommendation of Schedule I controlled substances; (d) Schedule I controlled substances being provided to minors; and/or (e) special circumstances, such as when death or serious bodily injury results from drugged driving. The five U.S. Attorneys in California and Arizona will review cases for prosecution using these criteria even if the amount of the drugs involved is below the general threshold drug weight amounts that are contained within their respective prosecution guidelines.

DEA will adopt seizures of Schedule I controlled substances made by state and local law enforcement officials following an arrest where state and local prosecutors must decline prosecution because of the Propositions. Once in DEA's possession the drugs can be





summarily forfeited and destroyed by DEA. State and local law enforcement officials will be encouraged to continue to execute state law to the fullest extent by having officers continue to make arrests and seizures under state law, leaving defendants to raise the medical use provisions of the Propositions only as a defense to state prosecution.

- Department of the Treasury and the Customs Service will continue to protect the nation's borders and take strong and appropriate enforcement action against imported or exported marijuana and other illegal drugs. The Customs Service will: (a) seize unlawfully imported or exported marijuana and other illegal drugs; (b) assess civil penalties against persons violating federal drug laws; (c) seize conveyances facilitating the illegal import or export of marijuana and other illegal drugs; and (d) arrest persons committing Federal drug offenses and refer cases for prosecution to the appropriate Federal or state prosecutor.
- Treasury and the Internal Revenue Service will continue the enforcement of existing Federal tax laws which discourage illegal drug activities.
- IRS will continue to enforce existing Federal tax law as it relates to the requirement to report gross income from whatever source derived, including income from activities prohibited under Federal or state law.
- Treasury will recommend that the IRS issue a revenue ruling, to the extent permissible under existing law, that would deny a medical expense deduction for amounts expended for illegal operations or treatments and for drugs, including Schedule I controlled substances, that are illegally procured under Federal or state law.
- IRS will continue to enforce existing Federal tax law as it relates to the disallowance of expenditures in connection with the illegal sale of drugs. To the extent that state laws result in efforts to conduct sales of controlled substances prohibited by Federal law, the IRS will disallow expenditures in connection with such sales to the fullest extent permissible under existing Federal tax law.
- U.S. Postal Service will continue to pursue aggressively the detection and seizure of Schedule I controlled substances mailed through the U.S. mails, particularly in California and Arizona, and to arrest those using the mail to distribute Schedule I drugs.
- DEA together with other Federal, state, and local law enforcement agencies will work with private mail, parcel, and freight services to ensure continuing compliance with internal company policies dictating that these companies refuse to accept for shipment Schedule I controlled substances, and that they notify law enforcement officials of such activities. Federal investigations and prosecutions will be instituted consistent with appropriate criteria.

**B. Objective 2 - Ensure the integrity of the medical-scientific process by which substances are approved as safe and effective medicines in order to protect public health**

- The Controlled Substances Act embodies the conclusion of the Congress, affirmed by DEA and HHS, that marijuana, as a Schedule I drug, has "high potential for abuse" and "no currently accepted medical use in treatment in the United States." To protect the public health, all evaluations of the medical usefulness of any controlled substance should be conducted through the Congressionally established research and approval process managed by the National Institutes of Health and the Food and Drug Administration. Currently there are a few patients who receive marijuana through FDA approved investigations.
- HHS, to ensure the continued protection of the public health, will: (a) examine all medical and scientific evidence relevant to the perceived medical usefulness of marijuana; (b) identify gaps in knowledge and research regarding the health effects of marijuana; (c) determine whether further research or scientific evaluation could answer these questions; and (d) determine how that research could be designed and conducted to yield scientifically useful results.
- HHS will undertake discussions with medical organizations throughout the nation: (a) to address the "compassionate use" message; and (b) to educate medical and public health professionals by underscoring the dangers of smoked marijuana and explaining the views of NIH that a variety of approved medications are clinically proven to be safe and effective in treating the illnesses for which marijuana is purported to provide relief, such as pain, nausea, wasting syndrome, multiple sclerosis, and glaucoma.
- HHS and DOJ will identify scientific experts who could be available as needed to help inform the judicial and legislative processes on the findings and status of research on marijuana and to inform the public debate on policy issues related to marijuana.

**C. Objective 3 - Preserve Federal drug-free workplace and safety programs**

- **Transportation Workers:** Department of Transportation has issued a formal advisory to the transportation industry that safety-sensitive transportation workers who test positive under the Federally-required drug testing program may not under any circumstance use state law as a legitimate medical explanation for the presence of prohibited drugs. DOT is encouraging private employers to follow its example.
- **Federal Contractors and Grantees:** Under the Drug-Free Workplace Act, the recipients of Federal grants or contracts must have policies that prohibit the use of illegal drugs. Each Federal agency will be directed to issue a notice to its grantees and contractors to remind them: (a) of their responsibilities; (b) that the "medical" use of

marijuana or other Schedule I controlled substances remains a prohibited activity; and (c) that the failure to comply with this prohibition will make the grantee or contractor subject to the loss of eligibility to receive Federal grants and contracts. Further, Federal agencies will be instructed to increase their efforts to monitor compliance with the provisions of the Act, and to institute suspension or debarment actions against violators -- with special priority given to states enacting drug medicalization measures.

- **Federal Civilian Employees:** HHS will issue policy guidance to 130 Federal Agency Drug-Free Workplace program coordinators, the 72 laboratories certified by HHS to conduct drug tests, and trade publications that reach medical review officers. This policy guidance will state that the Propositions do not change the requirements of the Federal Drug-Free Workplace Program, which will continue to be fully enforced for federal civilian employees nationwide. Medical Review Officers will not accept physician recommendations for Schedule I substances as a legitimate explanation for a positive drug test.
- **DoD and the Military Services:** The Department of Defense will instruct civilian employees and military personnel in the active, reserve and National Guard components, that DoD is a drug-free organization, a fact that is not changed by the Propositions. The requirement that all DoD contractors maintain drug-free workplaces will be enforced.
- **Nuclear Industry Workers:** The Nuclear Regulatory Commission will continue to demand drug-free employees in the nuclear power industry, and is developing a formal advisory to emphasize that its drug free workplace regulations continue to apply.
- **Public Housing:** The Propositions will not affect the Department of Housing and Urban Development's continued aggressive execution of the "One Strike and You're Out" policy to improve the safety and security of our nation's public housing developments. HUD's principal tool for implementing "One Strike" will be the systematic evaluation of public housing agencies screening and evictions efforts through the Public Housing Management Assessment Program. This program will give HUD a standard measurement of the progress of all public housing authorities in developing effective law enforcement, screening, and occupancy policies to reduce the level of drug use, crime, and drug distribution and sales in their communities.
- **Safe Work Places:** Department of Labor will continue to implement its Working Partners Initiative, providing information to small businesses about workplace substance abuse prevention programs, focusing specific attention on trade and business organizations located in California and Arizona. DOL will accelerate its efforts to post its updated Substance Abuse Information Database (SAID) on the Internet. SAID will provide information to businesses about workplace substance abuse and how to establish workplace substance abuse prevention programs. DOL will give priority to its efforts in California and Arizona.



- **DOL's Occupational Safety and Health Administration** will send letters to the California and Arizona Occupational Safety and Health Administrations reiterating the dangers of drugs in the workplace and providing information on programs to help employers address these problems.
- **DOL's Mine Safety and Health Administration** will strictly enforce the prohibition on the use of alcohol and illegal drugs notwithstanding these Propositions.

**D. Objective 4 - Protect children from increased marijuana availability and use**

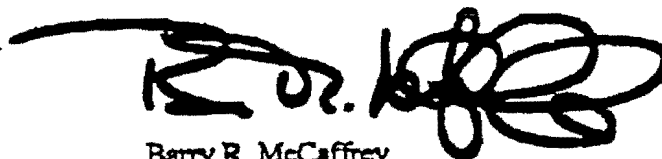
- **HHS and the Department of Education** will continue to educate the public in both Arizona and California about the real and proven dangers of smoking marijuana, using a message that will be tailored for proteens, teens, parents, educators, and medical professionals. Research demonstrates that, marijuana: (a) harms the brain, heart, lungs, and immune system; and (b) limits learning, memory, perception, judgment, and the ability to drive a motor vehicle. In addition, research shows that marijuana smoke typically contains over 400 carcinogenic compounds and may be addictive. The message will remind the public there is no medical use for smoked marijuana and will educate the public about strategies to prevent marijuana use. The message will also remind the public that the production, sale, and distribution of marijuana for medical uses not approved by DEA violates the Controlled Substances Act and the Federal Food, Drug, and Cosmetic Act.
- **HHS** will analyze all available data on marijuana use, expand ongoing surveys to determine current levels of marijuana use in California and Arizona, and track changes in marijuana use in those states.
- **HHS** will develop the survey capacity to assess trends in drug use in all states on a state-by-state basis.
- **ED** will use provisions of the Safe and Drug Free Schools Act to reinforce the message to all local education agencies receiving Federal Safe and Drug Free School funds that drug possession or use will not be tolerated in schools. This affects approximately 95% of school districts. Notwithstanding the passage of the two Propositions, local education agencies must continue to: (a) develop programs which prevent the use, possession, and distribution of tobacco, alcohol, and illegal drugs by students; (b) develop programs which prevent the illegal use, possession, and distribution of such substances by school employees; and (c) ensure that programs supported by and with Federal Safe and Drug Free Schools funds convey the message that the illegal use of alcohol and other drugs, including marijuana, is wrong and harmful.

- ED will review with educators in Arizona and California the effect Propositions 200 and 215 will have on drug use by students. They will also communicate nationally with school superintendents, administrators, principals, boards of education, and PTAs about the Arizona and California Propositions and the implications for their states.
- ED will develop a model policy to confront "medical marijuana" use in schools and outline actions educators can take to prevent illicit drugs from coming into schools.
- ED will develop model drug prevention programs to discourage marijuana use. These models will be disseminated to the states at a Spring 1997 conference.
- ONDCP and DOT will provide recommendations pursuant to your October 19, 1996 directive to deter teen drug use and drugged driving through pre-license drug testing, strengthened law enforcement and other means. The recommendations will underscore the point that the use of marijuana for any reason endangers the health and safety of the public.

5. Legislative Enactments: HHS and DOJ will work with Congress to consider changes to the Federal Food, Drug, and Cosmetic Act and the Controlled Substances Act, as appropriate, to limit the states' ability to rely on these and similar medical use provisions. The Administration believes that working with Congress is the course of action that will affirm the national policy to control substances that have a high potential for abuse and no accepted medical use. The objective is to provide a uniform policy which preserves the integrity of the medical-scientific process by which substances are approved as safe and effective medicines. We will also continue to consider additional steps, including conditioning Federal funds on compliance with the Controlled Substances Act and the National Drug Control Strategy.

6. Recommendation: That the President approve the actions and recommendations provided in this strategy to send a clear message to the legalization movement that we will continue to enforce Federal law and work to prevent similar Propositions from passing in other states.

1/1/97



Barry R. McCaffrey  
Director

POTUS Approval: \_\_\_\_\_



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF NATIONAL DRUG CONTROL POLICY  
Washington, D.C. 20503

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December 30, 1996

HIGHLIGHTED PASSAGES - ADDED - TO FINAL DRAFT.

STATEMENT RELEASED BY BARRY R. McCAFFREY  
DIRECTOR OF THE OFFICE OF NATIONAL DRUG CONTROL POLICY

THE ADMINISTRATION'S RESPONSE TO THE PASSAGE OF CALIFORNIA  
PROPOSITION 215 AND ARIZONA PROPOSITION 200.

**General:** The recent passage of propositions which make dangerous drugs more available in California and Arizona poses a threat to the National Drug Control Strategy goal of reducing drug abuse in the United States. At the direction of the President, the Office of National Drug Control Policy developed a coordinated administration strategy with the other agencies of the Federal Government to minimize the tragedy of drug abuse in America.

**Objectives:** An interagency working group chaired by ONDCP included the Departments of Justice, Treasury, Defense, Health and Human Services, Transportation, and Education, the Postal Service, and the Nuclear Regulatory Commission. This group met four times in November and December. It developed the following strategic objectives for our coordinated Federal response:

- a. Maintain effective enforcement efforts within the framework created by the Federal Controlled Substances Act and the Food, Drug, and Cosmetic Act.
- b. Ensure the integrity of the medical-scientific process by which substances are approved as safe and effective medicines.
- c. Preserve Federal drug-free workplace and safety programs.
- d. Protect children from increased marijuana availability and use.

**Courses of Action:** In developing this strategy, the inter-agency group gave due consideration to two key principles: federal authority *vis a vis* that of the states, and the requirement to ensure American citizens are provided safe and effective medicine. ONDCP and Federal drug control agencies have formed a partnership to undertake the following coordinated courses of action.



December 30, 1996

**A. OBJECTIVE 1 - MAINTAIN EFFECTIVE ENFORCEMENT EFFORTS WITHIN THE FRAMEWORK CREATED BY THE FEDERAL CONTROLLED SUBSTANCES ACT AND THE FOOD, DRUG, AND COSMETIC ACT**

- Department of Justice's position is that a practitioner's action of recommending or prescribing Schedule I controlled substances is not consistent with the "public interest" (as that phrase is used in the federal Controlled Substances Act) and will lead to administrative action by the Drug Enforcement Administration to revoke the practitioner's registration.
- DoJ and Department of Health and Human Services will send a letter to national, state, and local practitioner associations and licensing boards which states unequivocally that DEA will seek to revoke the DEA registrations of physicians who recommend or prescribe Schedule I controlled substances. This letter will outline the authority of the Inspector General for HHS to exclude specified individuals or entities from participation in the Medicare and Medicaid programs.
- DoJ will continue existing enforcement programs using the following criteria: (a) the absence of a bona fide doctor-patient relationship; (b) a high volume of prescriptions or recommendations of Schedule I controlled substances; (c) the accumulation of significant profits or assets from the prescription or recommendation of Schedule I controlled substances; (d) Schedule I controlled substances being provided to minors; and/or (e) special circumstances, such as when death or serious bodily injury results from drugged driving. The five U.S. Attorneys in California and Arizona will continue to review cases for prosecution using these criteria.

DEA will adopt seizures of Schedule I controlled substances made by state and local law enforcement officials following an arrest where state and local prosecutors must decline prosecution because of the Propositions. Once in DEA's possession the drugs can be summarily forfeited and destroyed by DEA. ~~State and local law enforcement officials will be encouraged to continue to execute state law to the fullest extent by having officers continue to make arrests and seizures under state law, leaving defendants to raise the medical use provisions of the Propositions only as a defense to state prosecu~~

Department of the Treasury and the Customs Service will continue to protect the nation's borders and take strong and appropriate enforcement action against imported or exported marijuana and other illegal drugs. The Customs Service will continue to: (a) seize unlawfully imported or exported marijuana and other illegal drugs; (b) assess civil penalties against persons violating federal drug laws; (c) seize conveyances facilitating

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AFFIRMATIVE  
DEFENSE -

December 30, 1996

the illegal import or export of marijuana and other illegal drugs; and (d) arrest persons committing Federal drug offenses and refer cases for prosecution to the appropriate Federal or state prosecutor.

- **Treasury and the Internal Revenue Service** will continue the enforcement of existing Federal tax laws which discourage illegal drug activities.
- **IRS** will enforce existing Federal tax law as it relates to the requirement to report gross income from whatever source derived, including income from activities prohibited under Federal or state law.
- **Treasury** will direct the **IRS** to issue a revenue ruling, to the extent permissible under existing law, that would deny a medical expense deduction for amounts expended for illegal operations or treatments and for drugs, including Schedule I controlled substances, that are illegally procured under Federal or state law.
- **IRS** will enforce existing Federal tax law as it relates to the disallowance of expenditures in connection with the illegal sale of drugs. To the extent that state laws result in efforts to conduct sales of controlled substances prohibited by Federal law, the **IRS** will disallow expenditures in connection with such sales to the fullest extent permissible under existing Federal tax law.
- **U.S. Postal Service** will continue to pursue aggressively the detection and seizure of Schedule I controlled substances mailed through the US mails, particularly in California and Arizona, and the arrest of those using the mail to distribute Schedule I controlled substances.
- **DEA** together with other Federal, state and local law enforcement agencies will work with private mail, parcel and freight services to ensure continuing compliance with internal company policies dictating that these companies refuse to accept for shipment Schedule I controlled substances and that they notify law enforcement officials of such activities. Federal investigations and prosecutions will be instituted consistent with appropriate criteria.

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**B. OBJECTIVE 2 - ENSURE THE INTEGRITY OF THE MEDICAL-SCIENTIFIC PROCESS BY WHICH SUBSTANCES ARE APPROVED AS SAFE AND EFFECTIVE MEDICINES IN ORDER TO PROTECT PUBLIC HEALTH**

The Controlled Substances Act embodies the conclusion of the Congress, affirmed by DEA and HHS, that marijuana, as a Schedule I drug, has "high potential for abuse" and "no currently accepted medical use in treatment in the United States." To protect the public health, all evaluations of the medical usefulness of any controlled substance should be conducted through the Congressionally established research and approval process managed by the National Institutes of Health and the Food and Drug Administration.

~~Currently there are a few patients who receive marijuana through FDA approved investigations.~~

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HHS to ensure the continued protection of the public health will: (a) examine all medical and scientific evidence relevant to the perceived medical usefulness of marijuana; (b) identify gaps in knowledge and research regarding the health effects of marijuana; (c) determine whether further research or scientific evaluation could answer these questions; and (d) determine how that research could be designed and conducted to yield scientifically useful results.

HHS will undertake discussions with medical organizations throughout the nation: (a) to address the "compassionate use" message; and (b) to educate medical and public health professionals by underscoring the dangers of smoked marijuana and explaining the views of NIH that a variety of approved medications are clinically proven to be safe and effective in treating the illnesses for which marijuana is purported to provide relief, such as pain, nausea, wasting syndrome, multiple sclerosis, and glaucoma.

**C. OBJECTIVE 3 - PRESERVE FEDERAL DRUG-FREE WORKPLACE AND SAFETY PROGRAMS**

**Transportation Workers:** Department of Transportation has issued a formal advisory to the transportation industry that safety-sensitive transportation workers who test positive under the Federally-required drug testing program may not under any circumstance use state law as a legitimate medical explanation for the presence of prohibited drugs. DOT is encouraging private employers to follow its example.

**Federal Contractors and Grantees:** Under the Drug-Free Workplace Act, the recipients of Federal grants or contracts must have policies that prohibit the use of illegal drugs. Each Federal agency will issue a notice to its grantees and contractors to remind them: (a) of their responsibilities; (b) that any use of marijuana or other Schedule I

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controlled substances remains a prohibited activity; and (c) that the failure to comply with this prohibition will make the grantee or contractor subject to the loss of eligibility to Federal grants and contracts. Further, Federal agencies will increase their efforts to monitor compliance with the provisions of the Act, and to institute suspension or debarment actions against violators -- with special priority given to states enacting drug medicalization measures.

- **Federal Civilian Employees:** HHS will issue policy guidance to all 130 Federal Agency Drug-Free Workplace program coordinators, the 72 laboratories certified by HHS to conduct drug tests, and trade publications that reach medical review officers. This policy guidance states that the Propositions do not change the requirements of the Federal Drug-Free Workplace Program, which will continue to be fully enforced for federal civilian employees nationwide. Medical Review Officers will not accept physician recommendations for Schedule I substances as a legitimate explanation for a positive drug test.

- **DoD and the Military Services:** The Department of Defense will instruct civilian employees and military personnel in the active, reserve and National Guard components, that DoD is a drug-free organization, a fact that is not changed by the Propositions. The requirement that all DoD contractors maintain drug-free workplaces will continue to be enforced.

- **Nuclear Industry Workers:** The Nuclear Regulatory Commission will continue to demand drug-free employees in the nuclear power industry, and will develop a formal advisory to emphasize that its drug free workplace regulations continue to apply.

- **Public Housing:** The Propositions will not affect the Department of Housing and Urban Development's continued aggressive execution of the "One Strike and You're Out" policy to improve the safety and security of our nation's public housing developments. HUD's principal tool for implementing "One Strike" will be the systematic evaluation of public housing agencies screening and evictions efforts through the Public Housing Management Assessment Program. This program will give HUD a standard measurement of the progress of all public housing authorities in developing effective law enforcement, screening, and occupancy policies to reduce the level of drug use, crime, and drug distribution and sales in their communities.

- **Safe Work Places:** Department of Labor will continue to implement its Working Partners Initiative, providing information to small businesses about workplace substance abuse prevention programs, focusing specific attention on trade and business organizations located in California and Arizona. DOL will accelerate its effort to post its updated Substance Abuse Information Database (SAID) on the Internet. SAID will provide information to businesses about workplace substance abuse and how to establish

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workplace substance abuse prevention programs. DOL will give priority to its efforts in California and Arizona.

DOL's Occupational Safety and Health Administration will send letters to the California and Arizona Occupational Safety and Health Administrations reiterating the dangers of drugs in the workplace and providing information on programs to help employers address these problems.

DOL's Mine Safety and Health Administration will continue to strictly enforce the prohibition on the use of alcohol and illegal drugs notwithstanding these Propositions.

**D. OBJECTIVE 4 - ~~PROTECT CHILDREN FROM INCREASED MARIJUANA AVAILABILITY AND USE~~**

HHS and the Department of Education will educate the public in both Arizona and California about the real and proven dangers of smoking marijuana. A message will be tailored for preteens, teens, parents, educators, and medical professionals. Research demonstrates that, marijuana: (a) harms the brain, heart, lungs, and immune system; and (b) limits learning, memory, perception, judgment, and the ability to drive a motor vehicle. In addition, research shows that marijuana smoke typically contains over 400 carcinogenic compounds and may be addictive. The message will remind the public there is no medical use for smoked marijuana and will educate the public about strategies to prevent marijuana use. The message will also remind the public that the production, sale, and distribution of marijuana for medical uses not approved by DEA violates the Controlled Substances Act and the Federal Food, Drug, and Cosmetic Act.

HHS will analyze all available data on marijuana use, expand ongoing surveys to determine current levels of marijuana use in California and Arizona, and track changes in marijuana use in those states.

HHS will develop the survey capacity to assess trends in drug use in all states on a state-by-state basis.

The Department of Education (ED) will use provisions of the Safe and Drug Free Schools Act to reinforce the message to all local education agencies receiving Federal Safe and Drug Free School funds that any drug possession or use will not be tolerated in schools. This affects approximately 95% of school districts. Notwithstanding the passage of the two Propositions, local education agencies must continue to: (a) develop programs which prevent the use, possession, and distribution of tobacco, alcohol, and illegal drugs by students; (b) develop programs which prevent the illegal use, possession,

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and distribution of such substances by school employees; and (c) ensure that programs supported by and with Federal Safe and Drug Free Schools funds convey the message that the illegal use of alcohol and other drugs, including marijuana, is wrong and harmful. ED will review with educators in Arizona and California the effect Propositions 200 and 215 will have on drug use by students. They will also communicate nationally with school superintendents, administrators, principals, boards of education, and PTAs about the Arizona and California Propositions and the implications for their states.

- ED will develop a model policy to confront "medical marijuana" use in schools and outline actions educators can take to prevent illicit drugs from coming into schools.
- ED will develop model drug prevention programs to discourage marijuana use. These models will be disseminated to the states at a Spring 1997 conference.
- ONDCP and DOT will provide recommendations pursuant to the October 19, 1996 Presidential directive to deter teen drug use and drugged driving through pre-license drug testing, strengthened law enforcement and other means. The recommendations will underscore the point that the use of marijuana for any reason endangers the health and safety of the public.

5 **Legislative Enactments:** ONDCP, HHS and DOJ will work with Congress to consider changes to the Federal Food, Drug, and Cosmetic Act and the Controlled Substances Act, as appropriate, to limit the states' ability to rely on these and similar medical use provisions. The Administration believes that working with Congress is the course of action that will affirm the national policy to control substances that have a high potential for abuse and no accepted medical use. The objective is to provide a uniform policy which preserves the integrity of the medical-scientific process by which substances are approved as safe and effective medicines. We will also consider additional steps, including conditioning Federal funds on compliance with the Controlled Substances Act and the National Drug Control Strategy.

