NLWJC - Kagan

DPC - Box 015 - Folder 013

Drugs - Medical Marijuana

Drugs - medical marijuana

FOR INTERNAL USE ONLY

DRAFT--11:00 a.m. 5/5/99

Q&As on HHS Guidance on Procedures for the Provision of Marijuana for Medical Research

Background

Advisors to both the National Institutes of Health (in a specially convened 1997 workshop) and the Institute of Medicine (IOM) of the National Academy of Sciences have concluded that further research into the potential medical uses of marijuana is warranted, and have urged the Department of Health and Human Services to facilitate such research. Moreover, the IOM report emphasized that since marijuana in its smoked form is fundamentally unhealthy, ultimately, any substantial medical use of marijuana would likely involve one or more of its constituents delivered via another vehicle. The IOM recommended that short-term studies (less than 6 months) of smokeable marijuana be conducted, but also recommended the development of alternative delivery systems for any discovered applications.

Q1: What are you doing and why are you doing it?

A1: To facilitate additional research into the question of whether marijuana is useful as a medicine, we are creating a new mechanism to provide research-grade marijuana not only for NIH-funded research, but also for sound research that is funded by other sources. This will enable more research to be done. This does not signal any change in our overall view of the efficacy of marijuana. We've always said that there currently is no scientifically sound data base suggesting that smoked marijuana is a viable alternative to available therapies. However, we do believe additional research is warranted, and we are making this change to encourage that additional research.

Q2: What are the changes in current HHS procedures that are being announced?

A2: NIH has already funded new research into medical uses of marijuana since its workshop's report was issued in 1997. Now, HHS will take two new steps to help enable responsible research:

First, we will make research-grade marijuana available for approved research projects other than those directly reviewed and funded by NIH. Such projects would be reviewed by an ad hoc Public Health Service committee and assessed both for scientific quality of the clinical investigations and for the likelihood that the investigations will yield data capable of meeting standards for drug approval. The ad hoc committee would draw expertise from appropriate PHS agencies, such as the NIH institutes, FDA, AHCPR, and SAMHSA, as needed to review research proposals for different medical conditions. If determined by the committee to be scientifically valid, such projects may be eligible to receive research-grade marijuana from NIDA's contractor.

Any non-NIH-funded research projects would also have to meet the guidelines recommended by the IOM.

Second, to facilitate this additional research, we will begin providing research-grade marijuana on a reimbursable basis. Researchers will be required to reimburse the government's contractor for the costs of growing and producing marijuana for research purposes. In this way, we will be able to produce and supply sufficient marijuana for a variety of additional clinical studies. Reimbursement requirements would apply to marijuana provided to projects funded by NIH institutes other than NIDA and to projects that do not have NIH funding.

Q3: How do these new procedures differ from previous procedures?

A3: Previously, NIDA provided marijuana only to those researchers receiving NIDA or other NIH Institute research support, and to a very small number of modest projects supported by others. These studies were primarily related to the study of addiction and were viewed as appropriate NIDA expenditures. With the expanded interest in potential medical applications of marijuana, the new procedures were developed to provide expanded access for other types of bona fide clinical research studies that may not be funded by NIDA. Determination of the appropriateness and merit of those studies for this program will be made by a committee with appropriate representation from PHS agencies to determine relevance and merit within the larger context of research on potential medical applications of marijuana for a variety of diseases and conditions. This does not signal any change in our overall view of the efficacy of marijuana. We've always said that there currently is no scientifically sound database suggesting that smoked marijuana is a viable alternative to available therapies. However, we do believe additional research is warranted, and we are making this change to encourage that additional research. Any research projects funded would also have to meet the guidelines recommended by the IOM.

Q4: By establishing these new procedures to encourage further research on medical marijuana, aren't you validating the medical marijuana initiatives recently passed in a number of states?

A4: Science, not the ballot box, should determine the practice of medicine. The recent IOM report on medical marijuana makes clear that there is little future for smoked marijuana as a medically-approved medicine. The report concludes that because of the health risks involved smoked marijuana should not generally be recommended for long-term use. The state ballot initiatives recently passed do not in any way alter our federal drug laws or the current FDA drug approval process.

Our position continues to be that these ballot measures send the wrong message to our youth -- too many of whom do not recognize the dangers of marijuana and continue to experiment with it -- and that they are inconsistent with our efforts to ensure that approved medications have undergone rigorous scientific scrutiny. Smoking marijuana has not been demonstrated to be effective in treating disease, and our laws should not be changed -- or our drug approval process circumvented -- to allow the use of medical marijuana.

Q5: What will the procedures be for requesting and obtaining marijuana?

A5: Applicants typically will apply to either NIDA or the FDA, in which case the PHS review process will be initiated. The applicant will submit a description of the research protocol to be reviewed by the ad hoc PHS committee. Approved applicants will then apply for an Investigational New Drug (IND) license from the Food and Drug Administration (FDA) and obtain a Drug Enforcement Administration (DEA) registration for Schedule I substances before final shipment of marijuana. Information on this program is provided in the Guidance to be published in the NIH Guide. Priority for receiving marijuana for research purposes will be assigned according to criteria outlined in the Guidance, with NIH-supported research receiving the highest priority. Any research projects funded would also have to meet the guidelines recommended by the IOM.

Q6: How will the PHS review process work in practice?

A6: A researcher will approach either NIH or FDA with a research proposal. If it is a proposal for NIH funding support, the project will be referred to an appropriate NIH peer review committee. The results of this review will be forwarded to the PHS committee for further consideration. If it is not a proposal submitted through the usual NIH review process, the project will be immediately referred to the PHS committee for review. The PHS committee will include appropriate expertise from any of the PHS agencies. For example, research involving AIDS would call upon expertise from agencies such as NIH or CDC. The specific criteria to be used by the ad hoc PHS committee is contained in the guidelines published in the NIH Guide to Grants and Contracts.

Q7: Why has HHS decided to charge for the product it grows and provides to researchers?

A7: The growing and provision of research grade marijuana requires substantial resources. Currently, the National Institute on Drug Abuse (NIDA) of the National Institutes of Health is the only legal provider of marijuana for research purposes. NIDA's authorization provides for expenditure of resources only in support of research on addiction. Obtaining reimbursement for marijuana will enable NIDA to make marijuana available to investigate possible therapeutic uses for a variety of diseases and conditions when sound research projects are funded by other sources.

Q8: How much will the marijuana cost for non-NIDA researchers?

A8: NIDA is currently assessing the total costs of growing, producing, storing, and shipping marijuana cigarettes and will have information regarding these costs prior to the implementation of the policy on October 1, 1999.

Q9: How will the new procedures affect the "compassionate use" INDs for smoked marijuana, which were terminated in 1992? Will the individuals who currently receive marijuana under the "compassionate" single patient IND also be charged?

A9: We do not envision that patients currently receiving marijuana under "compassionate" INDs would be charged.

The revised procedures will not affect the decision to end the compassionate use or single subject IND program. As stated previously, the new procedures are intended to facilitate the research needed to evaluate pending public health questions by making research-grade marijuana available for well-designed studies on a cost-reimbursable basis. Such studies are the most likely to yield high quality, scientifically valid data on the safety and effectiveness of cannabinoids. The goal of

this program must be to determine whether smoked marijuana, or cannabinoid components of marijuana, administered through an alternative delivery system, can meet the standards enumerated under the Federal Food, Drug, and Cosmetic Act for commercial marketing of a medical product.

The PHS has previously determined that, unlike multi-patient clinical studies, the single patient IND process would not produce the type of scientific information needed to address the public health questions on the effectiveness and safety of cannabinoids. Accordingly, we do not contemplate that they would be supported under this program.

Q10: What is the purpose of the farm, how long has NIDA had it, and how much does it grow?

A10: Based on implementation of the Single Convention on Narcotic Drugs of 1961, NIDA is the only legal source for cannabis for research purposes in the U.S. NIDA performs this function under contract to the University of Mississippi and the Research Triangle Institute. These contracts were first awarded in 1968. Varying amounts of marijuana are grown each year, and in 1998 approximately 1.5 acres of marijuana plants were grown.

Q11: What research is underway in this area now? Only the Abrams study, or more as well?

A11: NIH currently supports four studies relevant to the potential medical benefits of smoked marijuana use. They include:

Donald Abrams, University of California, San Francisco (NIDA, NIMH, NIAID, NIDDK, NCRR). This is a two-year study to examine the safety/toxicity of marijuana in persons with HIV infection and AIDS. The study will also examine metabolic interactions between cannabinoids and protease inhibitors, and the effects on appetite. (Approx. $500k in FY99, total costs for two years $978k)

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NIDA also provides marijuana to several other researchers conducting research on the behavioral, psychological, and physiological effects of marijuana. Several of these studies include measures of marijuana's effects that could have relevance to potential medical applications of smoked marijuana. These studies do not focus on therapeutic effects, and are conducted with healthy volunteers rather than patients, but include some measures relevant to possible therapeutic benefits within a broader set of research questions on the effects of smoked marijuana:

Billy Martin, Medical College of Virginia (NIDA). Study of the effects of smoked marijuana and oral THC on pain and to assess patient acceptability (Approx. $100K in FY99. Total costs over 2 years is $298K).

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Also relevant is a study that NCI is conducting to compare the appetite-stimulating properties of megestrol acetate (Megace) to the oral form of THC (dronabinol, prescribed as Marinol) in cancer patients. This study, however, does not involve smoked marijuana.

Q12: How many applications have been received since the February 1997 NIH workshop? Why so few?

A12: Few (approximately five) applications proposing to study the potential medical benefits of smoked marijuana have been received. Clinical research in this area is complex and the lack of applications may reflect some lack of interest or reluctance on the part of the research community to conduct this type of research.

Q13: Has NIH taken any steps to invite research in this area? (Does NIH do the equivalent of RFPs?)

A13: NIH has published the report from the 1997 workshop that outlines areas of research opportunity (the full report is available on the Internet at *http://www.nih.gov/news/medmarijuana/MedicalMarijuana.htm*). NIH has also stated publicly that it would review grant applications on the medical utility of marijuana and is prepared to fund those applications that meet the accepted standards of scientific design and that, on the basis of peer review, are competitive with other applications that qualify for funding. Although no specific RFAs have been issued, there are a number of existing Program Announcements under which applications could be submitted.

Q14: Is there research going on outside of NIH-supported channels? Why isn't it getting NIH support?

A14: We are unaware of any non-NIH supported clinical trials ongoing at this time, although we understand that there are some being planned in other countries.

Q15: Is NIH encouraging the development of alternative delivery systems for THC?

A15: Dronabinol (prescribed as Marinol), a synthetic form of THC, was developed for oral administration with NIH support. There are no specific initiatives at this time for other delivery systems, including "inhalers," but NIH would be receptive to grant applications in this area.

Drugs - medical marijuana

Office of the Assistant Secretary for Health
and
Surgeon General
Office of Public Health and Science
Department of Health and Human Services

200 Independence Ave., S.W., Rm 716G
Washington, D.C. 20201
Phone: (202) 690-7694
Fax: (202) 690-6960

FAX TRANSMISSION COVER SHEET

Date:

To: Kagan

Fax:

Re:

From: D'Hara

Bruce -

Would you take a quick look at this? It's been sitting on my desk for some time, + I promised Tim an answer this morning. I don't think we have much choice but to go along - with the caveat that HHS emphasize, more than it does here, that current research doesn't support ~~[redacted]~~ medical uses of marijuana. Elena

EK -
OK by me,
w/your caveat.
- BR

YOU SHOULD RECEIVE ____ PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (202) 690-7694.

DRAFT

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DRAFT

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must emphasize more + earlier

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Drugs - medical marijuana

Jose Cerda III 10/22/98 02:23:19 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Leanne A. Shimabukuro/OPD/EOP, Laura Emmett/WHO/EOP
Subject: Medical Marijuana Update (and bullet for tomorrow's senior staff)

BR/EK:

ONDCP, WH Counsel and DOJ are still pushing for a press conference next week condemning the various medical marijuana state ballot initiatives. I understand that the tentative plan is to have McCaffrey or his deputy, Reno and Shalala give comments on why voters should reject pending state ballot initiatives on medical marijuana (i.e., smoked marijuana not proven to be helpful, research on marijuana components not conclusive and still underway, and drug laws should not be changed until the medical facts are in) -- and release a supportive letter by the past Presidents. A statement by the President would follow a day or two later (see attached).

WH Counsel has spoken to Toiv and Begala, and they seem to be okay w/a statement. Barry suggested that the event take place Tuesday, before the Columbia state visit on Wednesday, and Paul thought the statement should be released separately from the event. .Shalala has still not bought in to the event, but was going to be speaking to Reno this afternoon, who seems to be supportive and believes Shalala should be present.

Jose'

MARYJANE.ME

PROPOSED STATEMENT ON MEDICAL MARIJUANA

"This election day, voters in several states are considering ballot initiatives on medical marijuana. I urge voters to reject these initiatives. Smoked marijuana has not been demonstrated to be effective in treating disease, and there is only anecdotal evidence that marijuana components may help some patients. Before rushing to change our drug laws, scientific research must first confirm that the benefits of medical marijuana outweigh the risks. The federal government is currently funding such research, and I encourage voters to oppose the pending initiatives until the medical facts are in."

Drugs - medical marijuana

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

April 1, 1998

The Honorable Thomas A. Daschle
Democratic Leader
United States Senate
Washington, D.C. 20510

Dear Mr. Leader:

The purpose of this letter is to voice support for amendment number 2180 to S. Con. Res. 86. This amendment, offered by Senators Gordon Smith and Chuck Grassley, expresses the sense of the Senate that federal funds should not be used to fund the use of marijuana as medicine. We at the Office of National Drug Control Policy (ONDCP) urge the Senate to send a clear signal to those who advocate for legalization of marijuana by voting in favor of the amendment.

We applaud the Senate for addressing the issue of medicinal use of marijuana, particularly in light of pending state ballot initiatives that would legalize such use of marijuana. Ballot initiatives that define marijuana as a "medicine" fail to address the negative impact such legislation would have on the health of our youth or the nation's scientific process of approving medications. Designating medicine through ballot initiatives would undermine the long-established process which ensures that substances provided to the American public as medicines have undergone rigorous scientific scrutiny. This procedure protects Americans from unproven, ineffective, or dangerous treatments. Making an exception for marijuana would create a dangerous precedent. Medicine must be based on science rather than ideology, and the amendment as modified recognizes this by permitting Federal funds to be used for Federally-sponsored research.

Proponents of marijuana initiatives present marijuana as a benign substance. However, the latest scientific evidence demonstrates that marijuana is not. Smoked marijuana damages the brain, heart, lungs, and immune system. It impairs learning and interferes with memory, perception, and judgment. Smoked marijuana contains cancer-causing compounds and has been implicated in a high percentage of automobile crashes and workplace accidents.

Marijuana is also associated with behavior leading to more extensive drug use. Legalization of marijuana as medicine sends a confusing message to America's children at a time when drug use by young people has increased at an alarming rate. The increase in youth marijuana use has been fueled by a measurable decrease in the proportion of young people who perceive marijuana as dangerous.

Some Americans are unclear about what the scientific research shows about the effects of marijuana. To clarify this issue, ONDCP has commissioned a comprehensive study of the medical uses of marijuana by the National Academy of Science's Institute of Medicine, research that would be permitted by the amendment. It is crucial that America tell the truth to our children about the dangers of drug use. Toward that end, we congratulate the sponsors and supporters of amendment number 2180.

Respectfully,

Barry R. McCaffrey
Director

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

Petitions

March 17, 1998

The Honorable Newt Gingrich
Speaker of the House
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

The Office of National Drug Control Policy (ONDCP) applauds the House for its contribution to the nation's drug policy through H. Res. 372, a resolution expressing the sense of the House that marijuana is a dangerous and addictive drug and should not be legalized for medicinal use. We at ONDCP offer our support for this important resolution and urge the House to send a clear signal to those who advocate for legalization of marijuana when the resolution comes to the Floor for a vote this week.

State ballot initiatives that define marijuana as a "medicine" fail to address the negative impact such legislation would have on the health of our youth or the nation's scientific process of approving medications. Designating medicine through ballot initiatives would undermine the long-established process which ensures that substances provided to the American public as medicines have undergone rigorous scientific scrutiny. This procedure protects Americans from unproven, ineffective, or dangerous treatments. Making an exception for marijuana would create a dangerous precedent. Medicine must be based on science rather than ideology.

Proponents of marijuana initiatives present marijuana as a benign substance. However, the latest scientific evidence demonstrates that marijuana is not. Smoked marijuana damages the brain, heart, lungs, and immune system. It impairs learning and interferes with memory, perception, and judgment. Smoked marijuana contains cancer-causing compounds and has been implicated in a high percentage of automobile crashes and workplace accidents.

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Respectfully,

Barry R. McCaffrey
Director

AMENDMENT NO. ____ Calendar No. ____

Purpose: To clarify Federal law with respect to the use of marijuana.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. CON. RES. 86

AMENDMENT Nº 2180

By Smith (OR) + Gorley

Bill/Res. No. S Con Res 86

Setting Gov... and ... bud... tates ... 002, ... the

Referred ____

2 Page(s)

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SMITH of Oregon

Viz:

At the end of title III, add the following:

SEC. ____. GENERAL PROHIBITION ON THE USE OF MARIJUANA FOR MEDICINAL PURPOSES.

It is the sense of the Senate that no funds appropriated by Congress should be used to provide, procure, furnish, fund or support, or to compel any individual, institution or government entity to provide, procure, furnish, fund or support, any item, good, benefit, program or serv-

the provisions of this resolution assume that

ice, for the purpose of the use of marijuana for medicinal purposes.

S.L.C.

AMENDMENT NO. ____ Calendar No. ____

Purpose: To provide an exception for Federally sponsored research.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. CON. RES. 86

Setting forth the congressional budget for the United States Government for fiscal years 1999, 2000, 2001, 2002, and 2003 and revising the concurrent resolution on the budget for fiscal year 1998.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____ to the amendment (No. 1280) proposed by Mr. SMITH of Oregon

Viz:

On page 2 of the amendment, line 2, insert before the period the following: ", except that this section shall not apply to Federally sponsored research".

hinted at drug benefits rather than specifying them. The new policy announced today is effective immediately, although the FDA will accept public comment on the rules for 60 days, after which they could be modified. The FDA also said it would re-examine the policy every two years. Print advertising must still carry all the fine-print warnings of side effects, but the FDA is examining that policy as well.

- **Holbrooke Secures Agreement To Divide Bosnia Ambassadorships**. US envoys Richard Holbrooke and Richard Gelbard secured an agreement today among Bosnian leaders on dividing up ambassadorships. The Dayton peace agreement called for Bosnia's 33 foreign ambassadorships to be divided equally between Muslims, Croats and Serbs. The three factions argued over the assignments, particularly over who would get the US posting. US Embassy spokesman Tom Leary said today's agreement was reached after more than 10 hours of meetings with Bosnia's three-man presidency. The solution reportedly calls for the US posting going to the Serbs. Muslims would name the UN ambassador and Croats would appoint the envoy to Japan. The meetings were to continue on the remaining issues. There were reportedly no breakthroughs in any of the other key areas under discussion, including the surrender of suspected war criminals and designing a common currency.

- **Conservative Group Warns Conservatives On Stranded Costs.** Citizens for State Power -- a coalition of conservative organizations that supports deferring to states in the electricity deregulation debate – today warned conservative groups against using the Federal Government to enact policy on stranded cost recovery in the ongoing electricity deregulation debate. CSP Director Craig Shirley, reacting to yesterday's press conference attended by conservative free-market groups like the Heritage Foundation, Citizens for a Sound Economy, and the Competitive Enterprise Institute, said, "Washington-based conservatives shouldn't fall for the 'siren song' of big-government action when it suits their beliefs." Shirley added, "When the Federal Government overreaches, regardless of intent, conservatives must raise a red flag and insist that the delicate balance between the Federal Government and the states that the Founding Fathers created, be honored." Shirley concluded, "States, if they so decide, should not be constrained from offering assistance to recover stranded costs. Neither should they be mandated to do so. Federal mandates don't work in electric deregulation just like they didn't work in welfare or educational issues."

  Adam Thierer, a Heritage Foundation scholar who has written extensively on the topic -- and who participated in yesterday's press conference -- said in response today, "The general point we were making was not one about any sort of Federal issue. We were making a point more about the morality of bailing out companies at all." Thierer added, "Whether it's at the Federal or state level or local level, it doesn't make a difference. We, as conservatives, should stand against the general proposition of bailing out companies." Thierer concluded, "We were talking about what is good public policy, regardless of who exercises that policy."

- **Report On Medical Marijuana Supports Further Research.** An overdue report on medical marijuana, released today by the Clinton Administration, calls for further research on the issue. Dr. Alan Leshner, head of the National Institute on Drug Abuse, in February sought a report from a panel of experts selected by the National Institutes of Health to review the issue of medical marijuana. Leshner gave the expert panel a one-month period in which to produce the report, which has now been completed five months past that deadline.

  Referring to the report's call for "more and better studies" on the "potential utility of marijuana in various therapeutic areas," NIH Director Harold Varmus released a statement today, saying that NIH "is open to receiving research grant applications for studies of the medical efficacy of marijuana. We will put the applications through our normal scientific review and we are prepared to fund applications that meet the accepted standards."

  However, a Varmus aide said that Varmus is currently out of town, and NIH's review of the experts' study will take an "undetermined" amount of time. The aide said Varmus has not fully read the report, adding: "There were ten institutes involved in the February meeting, like the cancer institute, the neurology institute, and on down the line. Each of those institutes will be looking at the report, and Dr.

Varmus will be meeting with them and deciding what they will do."

Meanwhile, the Marijuana Policy Project -- a group lobbying for reform of marijuana laws -- said the call for further research is likely to be used as a stall tactic by the Administration. According to a statement released by the MPP: "The report's new spin, that 'more and better studies would be needed' jibes perfectly with drug czar Barry McCaffrey's strategy to defeat ballot initiatives by denying the existing evidence." The statement added that the report "does not represent what the NIH panel said back in February," when most of the panel's members reportedly made remarks indicating that marijuana has been shown to have medical benefits.

The text of the report is available on the Internet, in the "news" section of NIH's Website, at: http://www.nih.gov

o **Ashcroft Will Meet With Buchanan Supporters On First NH Trip.** Missouri Sen. John Ashcroft, having recently signalled his interest in running for president in 2000, is traveling to New Hampshire this weekend, where he will meet with a group of activists that one local reporter described as "Conservative with a capital 'C.'" Ashcroft, while not well known, is intriguing to some observers because he has credibility among Christian conservatives as well as a history of support among economic conservatives and moderates in the party. But in New Hampshire, where even the party leadership doesn't know much about him, Ashcroft is for the moment shunning the establishment in favor of the kind of activists who helped Pat Buchanan win the state in 1996.

New Hampshire GOP chairman Steve Duprey noted that Ashcroft has "impeccable conservative credentials and that should give him a good base to start from in New Hampshire. The first question is [whether] he runs and Pat Buchanan runs. If that happens, I think Ashcroft probably comes out on the short end of the stick because Pat has a very loyal following here." If Buchanan doesn't run, said Duprey, Ashcroft will still "have to show that he's got the serious fundraising, that he's got the message, and I think a lot of Buchanan loyalists want a winner. ... They're going to give a real hard look at whoever they consider to make sure they've got more potential than Pat. ... I think these people are starting to wake up and say, we better pick somebody who can win."

Despite Ashcroft's reputation nationally as a conservative who can reach out to moderates, his itinerary for this weekend sent the opposite message to moderate Republicans, Duprey said. "This is his first visit up here and he's new and we take no offense at that. ... But I think his next visit, if he's smart, he'll meet with the leadership of the party and that isn't just me, that's the five vice-chairmen, the assistant chairman, the county chairmen and the executive committee, because those people have all been elected by Republican activists and they're on a broad base, the most potent vote-getting force in the state." Duprey continued: "The people he's meeting with are all the hardcore right. And all are pro-life, and there's nothing wrong with that. But he'll never reach out to the moderates in this state if he doesn't start reaching out with the pro-choice. ... And in his first visit, he's not visiting the national committeewoman Ruth Griffin, who's considered a moderate, the national committeeman, the state chairman, [or] any of the party hierarchy." Duprey denied a recent Manchester *Union Leader* report that he was offended because he read about Ashcroft's visit in the paper, rather than hearing about it from the Senator himself. "I didn't take any umbrage," he said.

Meanwhile, Kansas City Star political reporter Steve Kraske, who wrote one of the first reports of Ashcroft's presidential ambitions, said Ashcroft "has been one of the most successful politicians in state history," because of his support across ideological lines, not in spite of it. "He has an undeniable history in Missouri of appealing to people across the political spectrum," Kraske told the Bulletin. "And he's just been very good at it."

o **Edgar Will Announce 1998 Decision Week Of August 18th.** Illinois Gov. Jim Edgar said this morning he will announce during the week of August 18th whether he will run for reelection or for Senate in 1998. The speculation had been that Edgar would make his announcement at the Illinois State Fair, which opened today and runs through next weekend. Edgar opened the State Fair this morning, where "he told reporters here who were asking him about his decision that he's going to enjoy the Illinois State Fair this week, and indicated that he'd have announcement the week of the 18th," said spokesman Tom Hardy.

File: Drugs - medical marijuana

cc: Tom/Leanne -
This is the brief DOJ is thinking of filing to clarify its position re medical marijuana. Let me know if you have any views. I'm not DRAFT all that happy with it.
Elena

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO HEADQUARTERS

DR. MARCUS CONANT, et al., Plaintiffs, v. BARRY R. McCAFFREY, et al., Defendants.	No. C97-0139 FMS **EX PARTE APPLICATION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM AMPLIFYING DEFENDANTS' RESPONSES TO THE COURT'S QUESTIONS AT THE APRIL 11, 1997 HEARING ON THE MOTION TO DISMISS AND MOTION FOR PRELIMINARY INJUNCTION**

Pursuant to Local Rule 7-3(e), defendants respectfully request permission to file a memorandum that amplifies defendants' responses to some of the questions raised by the Court at the April 11, 1997 hearing on defendants' motion to dismiss and plaintiffs' motion for preliminary injunction.

This is a case of national importance, and defendants would like the Court to have the benefit of a complete statement of the government's views prior to ruling on the pending motions.

In the oral argument on April 11, the Court raised several serious questions concerning the scope of the government's enforcement policy concerning physicians who recommend that their patients use marijuana as treatment. After reviewing the transcript of the argument, defendants decided it might be helpful to the Court for defendants to file a short memorandum to amplify their responses to the Court's questions. However, defendants thought it would be inappropriate to seek leave to file this memorandum while the parties were engaging in settlement negotiations before Judge Eugene Lynch. The settlement negotiations ended on Tuesday, April 29, 1997, when the parties were unable to reach a settlement.

Defendants are now seeking leave to file the supplemental memorandum and requesting that the Court consider it before issuing a ruling on defendants' motion to dismiss and plaintiffs' motion for a preliminary injunction. Defendants recognize that the Temporary Restraining Order ("TRO") initially entered on April 11, 1997, is due to expire on May 1, 1997. Due to the exigencies of the situation, defendants have attached a copy of the supplemental memorandum that they would like permission to file. In order to give plaintiffs time to respond to, and the Court an opportunity to consider defendants' supplemental memorandum, defendants are willing to consent to a further continuance of the TRO for whatever time the Court deems necessary.

Plaintiffs' counsel was notified of defendants' intention to seek leave to file a supplemental memorandum on April 29 and advised defendants' counsel that plaintiffs objected to the

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government's filing of any supplemental memorandum.

Respectfully Submitted,

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO HEADQUARTERS

DR. MARCUS CONANT, et al.,

Plaintiffs,

v.

BARRY R. McCAFFREY, et al.,

Defendants.

No. C97-0139 FMS

MEMORANDUM AMPLIFYING DEFENDANTS' RESPONSES TO THE COURT'S QUESTIONS AT THE APRIL 11, 1997 HEARING ON THE MOTION TO DISMISS AND MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

At the hearing held on April 11, 1997, the Court entered a Temporary Restraining Order and also ordered the parties to attend a settlement conference before the Honorable Eugene F. Lynch, United States District Judge. After two days of negotiations before Judge Lynch, on April 17 and 29, 1997, the parties were unable to reach a settlement. Defendants submit this

memorandum to amplify their responses to questions the Court posed at the April 11 hearing regarding the government's enforcement policy.

II. THE LINE BETWEEN DISCUSSIONS AND RECOMMENDATIONS

At the April 11 hearing, the Court asked the government what the line is between discussions and recommendations that are subject to enforcement action under the Controlled Substances Act ("CSA"). 4/11/97 Tr. at 35. The Court further inquired whether the government would be willing to endorse the guidelines that have been suggested by the California Medical Association ("CMA"). Id. at 41. Below, the government seeks to clarify the line and to emphasize that the CMA guidelines are consistent with the government's policy concerning physicians who discuss marijuana with their patients.

A. DISCUSSIONS

As the defendants have previously acknowledged, nothing in the CSA prohibits physicians from merely providing patients with information about marijuana or discussing the risks and benefits of the use of marijuana to relieve pain or alleviate symptoms. In this regard, the government agrees that a physician would not violate federal law if, when engaging in a physician-patient conversation, he or she follows the CMA's proposed bullet guidelines in good faith:

- The physician provides the patient with any scientific evidence of which the physician knows that reflects upon the possible health risks and therapeutic benefits of marijuana for use in the patient's condition.
- The physician attempts to answer any questions and/or inquiries the patient may have about the potential risks and benefits of marijuana, including informing the patient that those potential risks and benefits have not been fully tested in, or even fully identified by, properly-controlled clinical trials.
- The physician describes (without identifying information) his or her knowledge of the experiences of other patients with the same condition who have used marijuana for therapeutic purposes.
- The physician provides (particularly upon the patient's request) the physician's professional expertise concerning the possible balance of risks and benefits in the patient's particular case, but advises the patient that the physician cannot lawfully recommend that the patient obtain it for medical use.
- The physician advises the patient that, notwithstanding Proposition 215, the

> cultivation, possession and use of marijuana, even for medical purposes, is illegal under federal law. The physician should further state that he or she cannot take any action for the purpose of enabling the patient 1) to obtain marijuana -- such as by the physician's cooperating in any way with a cannabis buyers' club -- or 2) to cultivate marijuana and retain the homegrown product free of state prosecution -- such as by the physician's issuing a written "recommendation" whose ostensible purpose is to provide the patient with a defense against state prosecution or by voluntarily offering to testify on the patient's behalf in court.

Attachment to Letter from Jack E. McCleary and Daniel H. Johnson to Graham A. Boyd and Kathleen Mueller, dated March 14, 1997, pp. 4-5 ("CMA bullet guidelines") (footnotes omitted; copy attached).[1] Furthermore, the government agrees that a physician may also document the relevant conversation in the patient's medical record in accordance with standard medical practice, as long as the physician is not creating the medical record in order to facilitate the patient's acquisition of marijuana. Finally, even a failure to conform to the CMA bullet guidelines would subject a physician to enforcement proceedings only under the circumstances discussed below in Section II.B.

B. RECOMMENDATIONS

The government believes that physicians who go beyond the type of informational discussion outlined in the CMA bullet guidelines, and recommend that their patients use marijuana, are, under the circumstances discussed below, subject either to an administrative enforcement proceeding or a criminal prosecution under the CSA. At the outset, it is worth noting that the word "recommend" has no particular meaning or operation under the CSA.

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[1]The government believes that the CMA bullet guidelines provide constitutionally sufficient guidance for physicians who endeavor to practice their profession responsibly within the bounds of the law. Cf. Miller v. California, 413 U.S. 15, 27-28 n.10 (1973) ("The Constitution does not require impossible standards; all that is required is that the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." (internal quotation marks and citations omitted)); Adult Video Ass'n v. Department of Justice, 71 F.3d 563, 568 (6th Cir. 1995) (declining to decide whether plaintiffs could be convicted under obscenity statute if they were to distribute a particular "adult" video while recognizing that plaintiffs "will necessarily incur some risks concerning the legality of their conduct").

Accordingly, the government is willing to apply the common, literal meaning of the word "recommend" from any standard dictionary to determine whether a physician recommended marijuana to a patient.

1. Recommendations That May Lead To Administrative Sanction

In the CSA, Congress established five schedules of controlled substances. These schedules are designed to protect the public health and welfare by establishing a system of control of dangerous substances that is uniform throughout the United States. Congress placed marijuana in Schedule I of the CSA, the most restrictive schedule, because: (I) it has a "high potential for abuse"; (ii) it has "no currently accepted medical use in treatment in the United States"; and (iii) there is no "accepted safety for [its] use under medical supervision." 21 U.S.C. § 812(b)(1). In these respects, marijuana is no different than heroin or LSD, which also are Schedule I controlled substances. DEA may revoke the controlled substance registration of a physician who engages in conduct which is "inconsistent with the public interest." 21 U.S.C. §§ 823(f), 824(a)(4). In making this "public interest" determination, DEA must consider a variety of factors, including whether the physician has violated federal laws relating to controlled substances or engaged in other conduct that "may threaten the public health and safety." Id.

Under this statutory regime (which is not challenged by the plaintiffs), the government may, in the exercise of its enforcement discretion, initiate administrative actions against physicians who recommend marijuana to their patients. It is beyond dispute that physicians generally intend that their patients follow their recommendations as to appropriate medical treatments, and patients generally defer to their physicians' medical knowledge and expertise. Given marijuana's status as a Schedule I controlled substance under the CSA, any recommendation by a physician to a patient to use marijuana may threaten the public health and safety, since such a recommendation has the natural consequence of causing the patient to acquire and use substances that, under current federal law, have no currently-accepted medical use. To prevail in an administrative action, the government must, of course, meet its burden of proof with regard to the elements of

the action as defined by the CSA and the applicable regulations.[2]

2. Recommendations That May Lead To Criminal Prosecution

The CSA makes it unlawful for anyone to "manufacture, distribute, or dispense" marijuana or any other Schedule I controlled substance. 21 U.S.C. §§ 822, 829, 841(a)(1). The CSA also makes it unlawful for anyone to possess marijuana or any other Schedule I controlled substance. 21 U.S.C. § 844. As with other criminal prohibitions, it is also unlawful to aid and abet (18 U.S.C. § 2) or conspire to commit (21 U.S.C. § 846) these offenses.

Under this statutory regime (which, again, is not challenged by the plaintiffs), the government may, in the exercise of its enforcement discretion, initiate criminal prosecutions against physicians who recommend marijuana to their patients with the intent to facilitate their patients' obtaining marijuana. In other words, it remains illegal under federal law for a physician (or anyone else, for that matter) to aid and abet a patient in obtaining marijuana. To give but two examples, a doctor who confirms a recommendation to a marijuana cultivator or distributor with the intent that the distributor provide the drug to the patient may, in an appropriate case, face criminal sanction, as will a doctor who provides his or her patient with a written or oral statement with the intent that the statement serve the same function.[3]

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[2]Physicians do not have a constitutional right to recommend or advise their patients to use a controlled substance that may not lawfully be used as medicine in the United States. See 4/11/97 Tr. at 43-44, 60-61. When a physician, in the course of a legitimate physician-patient relationship, recommends that a patient use a particular type of treatment, the physician is not engaging in pure speech that is entitled to heightened First Amendment protection. Rather, the physician's speech is "part of the practice of medicine," which may be subject to reasonable licensing requirements and regulations designed to protect public health and safety. Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 884 (1992) (plurality opinion); see also id. at 968 (Opinion of Rehnquist, C.J.). Therefore, administrative sanctions may constitutionally be imposed against physicians who recommend that their patients use a controlled substance in violation of federal law.

[3]The courts have long held that the First Amendment does not extend to speech or writing used as an integral part of conduct in violation of a valid criminal statute. Consequently, physicians have no constitutional right to give oral or written recommendations intended to

III. THE PUBLIC INTEREST

Without in any way challenging the CSA, which was enacted over 25 years ago, the plaintiffs effectively seek from this Court an explicit roadmap as to how the government will exercise its administrative and criminal discretion in enforcing the CSA in the State of California. The government respectfully submits that no court has the authority to grant such relief, especially in the absence of a case (presenting concrete facts and circumstances) arising out of a specific enforcement action undertaken by the government.

The government must be able to ensure that it fulfills its constitutional obligation under Article II to take care that the laws, including the CSA, are faithfully executed. If the Court were to enter an injunction or enter a decree against the government, stating (necessarily in the abstract) which cases the government could and could not bring, the government would be subject to the contempt powers of the Court anytime a defendant believed that the government had possibly overstepped its authority under the CSA. In practical terms, the Court would likely be asked to opine on the legitimacy of every marijuana-related enforcement action initiated by the federal government against physicians in the State of California. The Court would then find itself involved in the day-to-day enforcement determinations that are properly made by the Executive Branch, not an Article III court.

Furthermore, the government seeks to underscore the harm that will result if it is enjoined from initiating enforcement actions against physicians whose actions violate the CSA. In short, Congress has devoted an entire section of the United States Code – Title 21 – to maintain the health and welfare of the American people by, among other things, establishing a process of federal drug approval based on rigorous scientific testing, and a system for regulating controlled substances that is uniform throughout the United States. Enjoining the government from initiating enforcement actions in the State of California under the CSA would necessarily significantly

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facilitate their patients' acquisition or possession of illegal controlled substances.

impair the government's ability to prevent the "improper use of controlled substances," which Congress has found to have a "substantial and detrimental effect on the health and general welfare of the American people." 21 U.S.C. § 801(2).

To be sure, the plaintiffs have very strongly held views about the medical efficacy of marijuana.[4] For the purposes of this lawsuit, however, those views are simply irrelevant. The indisputable fact is that marijuana remains a Schedule I drug under current federal law. If, as is apparent, the plaintiffs disagree with the classification of marijuana as a Schedule I controlled substance, and their consequent inability lawfully to prescribe or dispense it to their patients, they may petition the DEA to reschedule marijuana, with judicial review of any denial thereof in a United States Court of Appeals. Adhering to these procedures will ensure the integrity of the congressionally mandated medical-scientific process by which substances are determined to be safe and effective medicine. Additionally, plaintiffs can seek appropriate federal legislative relief. Unless and until marijuana is rescheduled, however, it remains a substance that cannot lawfully be

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[4] Although plaintiffs claim to be in the mainstream of medical practice regarding marijuana, it is worth noting that the CMA "opposes the 'medicalization' of marijuana unless and until there is objective proof that such use is scientifically justifiable. CMA does not believe that such proof is currently available." Attachment to Letter from Jack E. McCleary and Daniel H. Johnson to Graham A. Boyd and Kathleen Mueller, dated March 14, 1997, p. 7.

administered for medical treatment in the United States.

Respectfully Submitted,

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April 30, 1997

Drugs
~~Coca~~ - medical marijuana

- **Lautenberg Amendment:** On May 5, Judge Henry L. Hupp dismissed as moot "with leave to amend" the complaint in Association for Los Angeles Deputy Sheriffs v. Block (C.D. CA), a challenge to the constitutionality of the new federal firearms disability that prohibits persons convicted of misdemeanors of domestic violence from possessing firearms. An association of deputy sheriffs claimed that its members who are disabled under the new prohibition are threatened with loss of their jobs. However, the three individual plaintiffs all had their domestic violence misdemeanor convictions expunged and their rights to possess firearms restored.

- **CA Proposition 215:** On April 30, Judge Fern M. Smith denied the government's motion to dismiss and granted plaintiffs' motion for a preliminary injunction in Conant v. McCaffrey (N.D. CA), in which a group of CA physicians and patients challenged the government's announcement that it would enforce the federal Controlled Substances Act against physicians who recommend that their patients use marijuana pursuant to CA Proposition 215. If the physician's conduct does not constitute a criminal offense, the preliminary injunction enjoins the government from either threatening to revoke or revoking the physician's controlled substance registration for recommending, approving or discussing the personal use of marijuana with bonafide patients.

- **Campaign Contributions:** Next week, the House Judiciary Subcommittee on Commercial and Administrative Law is planning to hold a hearing on the Apprehension of Tainted Money Act of 1997, which adds new responsibilities to DOJ and the FEC with regard to returned federal campaign contributions. Deputy Assistant Attorney General Bob Litt of the Criminal Division will testify.

- **Flag Desecration:** Last week, the House Judiciary Subcommittee on the Constitution reported out a proposed constitutional amendment that would expressly authorize Congress to prohibit the desecration of the U.S. flag. During the last Congress, then Assistant Attorney General Dellinger testified against a similar amendment on the grounds that it would constitute an unprecedented modification of the Bill of Rights and that it would raise a host of interpretive difficulties in deciding just how much of the First Amendment was intended to be displaced. The proposed amendment in the current Congress differs from the prior version in that it would give the specified legislative power only to Congress, not to the states.

- **Affirmative Action:** Last week, proposed regulations that will revise the structure of affirmative action in federal procurement were published in the *Federal Register*. The proposed regulations, published by the Federal Acquisition Regulation Council but prepared in consultation with DOJ, are now open for comment for 60 days. In recent weeks, OLA and the Civil Rights Division have conducted outreach to interested Senators and Members of Congress, notifying them that the publication of the proposed regulations was imminent.

Drugs
~~Crime~~ - medical marijuana

Elena -

The Exec. Director of the California Medical Association, Jack Lewin, is a very close ally of the Administration & has been a strong proponent of our position on marijuana. If you need him for anything you might want to do, give me a call. He is very charismatic & gets lots of press. CJ

Drugs - medical marijuana

an established percent of their annual sales represents renewable energy sources." Minimum requirements begin with 2.5 percent in 2000, increasing to 20 percent by 2020. The bill also ends the mandatory purchases by utilities of certain qualifying facilities' electricity, ending PURPA's mandatory purchasing requirements.

– Emissions Standards. The bill requires all "generation facilities with a 15 megawatt or greater nameplate capacity and which employ a combustion device in the generation of electricity will function under a single national standard for emissions on certain pollutants."

– Information Disclosure. The bill requires companies selling electricity to disclose information regarding generation source, emissions and price.

The plan was praised by the Natural Resources Defense Council.

o **Expansion Of MSA Program Sought.** House Education and Workforce Committee Chair Bill Goodling is today kicking off an effort to expand the Medical Savings Account pilot program established under the new Kassebaum-Kennedy insurance reform law. According to an aide, Goodling and at least 21 cosponsors are introducing a measure that "would lift all restrictions on MSAs." Added the aide: "Currently, MSAs can only be purchased in companies of 50 people or less. We would lift that restriction. The program now expires in 2000, and we would eliminate that end date. Also, the current program maxes out at 750,000 policies, and we would lift that cap to make MSAs available to any number of people who want to buy them."

Goodling is seeking expansion of the MSA program, the aide said, because "it can control health care cost inflation. And Secondly, it empowers patients to control their own health care destiny. It puts them back in charge of the care they can get, and it encourages preventive care." In addition, the limits set in the Kassebaum-Kennedy law "are completely arbitrary and political," the aide said, adding: "There were no policy reasons for setting the limits in the bill. It was all just part of the negotiation process last fall."

The aide said House Ways & Means Committee Chair Bill Archer "has been very supportive of MSAs over the years, so we're very hopeful. ... Things look good for some movement, because Chairman Archer is a leader on this issue." A similar measure has reportedly been introduced on the other side of Capitol Hill by GOP Sen. Wayne Allard.

o **Administration Still Forming Opinion On Medical Marijuana Ruling.** The Clinton Administration today reacted hesitantly to yesterday's ruling in California on the treatment of doctors who recommend marijuana for patients with AIDS, cancer and other diseases considered debilitating. In San Francisco, US District Court Judge Fern Smith ruled that the Administration's policy of taking legal action against doctors who recommend marijuana is a violation of the First Amendment, as well as the patient-physician relationship.

Issuing an order to prevent punishment of doctors until the matter is resolved in Federal court, Smith said restraints are not justified by "the government's fear that frank dialogue between physicians and patients about medical marijuana might foster drug use." Smith said that "the First Amendment allows physicians to discuss and advocate medical marijuana, even though use of marijuana itself is illegal," adding that the court will "draw the line at criminal conduct."

The suit was brought by a group of California doctors, who sued when the Clinton Administration announced its new policy, shortly after passage of California's medical marijuana initiative, Proposition 215.

Asked today whether the Justice Department will appeal Smith's ruling "that the Federal Government can't penalize doctors who recommend marijuana for their patients," Acting Deputy Attorney General Seth Waxman told a reporter: "Well, I don't agree with your characterization of Judge Smith's ruling, but she did only issue it yesterday. It's 50 pages long, it's sitting on my desk, and I intend to review it right after this press availability." Waxman said the decision whether to appeal "will be made by the Solicitor General, consistent with our normal procedures. And in my other role as Deputy Solicitor General, I anticipate advising him what decision he should make." Added Waxman: "I think it's important to recognize that Judge Smith, in her opinion, stated that she was not in any way preventing the government

-- and now I'm quoting from her opinion -- quote, 'from threatening or prosecuting physicians, revoking their licenses or excluding them from Medicare or Medicaid participation based upon conduct relating to medical marijuana that rises to the level of a criminal offense.' To that extent, we certainly agree with the judge's ruling, but any other comments on this pending matter, I think, ought to at least await my review of the decision."

- **Teen Sex Declines, HHS Finds; Shalala Announces New Programs.** HHS said today its research shows the percentage of teenagers who have had sexual intercourse is declining after a steady rise over the preceding 20 years. The findings are part of a study of childbearing and family planning, covering women age 15-44. The 1995 National Survey of Family Growth, conducted by HHS's National Center for Health Statistics and to be released in full later this month, found that 50 percent of women 15-19 years of age had ever had intercourse, the first decline ever recorded by the periodic survey. In 1990, the survey previously found that 55 percent of 15-19 year old women had ever had intercourse. Additional research sponsored by HHS's National Institute of Child Health and Human Development shows a similar trend for teenage males. The percentage of never-married males between 15 and 19 who have ever had sexual intercourse declined from 60 percent in 1988 to 55 percent in 1995, reversing a trend which goes back to 1979. The latest survey also found an increase in the use of contraceptives at the time of first intercourse. Among women of all ages, approximately 76 percent of all those who began having intercourse in the 1990s used contraception at first intercourse, up from 64 percent in the late 1980s.

  HHS Secretary Donna Shalala said, "We welcome the news that the long term increase in teenage sexual activity may finally have stopped. But this news should encourage us to do more, not lull us into doing less. We need to change the cultural messages that have been accepted too long." Speaking in Los Angeles today at a conference on girls and the media, Shalala announced two new community grant programs to prevent teen pregnancy and promote responsible behavior, one program aimed at girls and the other at boys. Said Shalala: "These grants will help communities develop innovative and comprehensive approaches to preventing teen pregnancy, especially by promoting all the activities and achievements that boys and girls should be saying 'yes' to."

  In a White House ceremony tomorrow, First Lady Hillary Rodham Clinton will honor 12 organizations and individuals who are working in their communities to prevent and reduce teen pregnancy.

- **There Is "Some Interest" In Parker CoS As Reed Successor.** The search for Ralph Reed's successor is underway and one name apparently on the list is Mississippi Rep. Mike Parker's (R) chief of staff, Arthur Rhodes. Rhodes would not comment on the contact he has had with the Christian Coalition, but he did confirm that "there has been some interest" in him as the Coalition's new executive director.

  Christian Coalition legislative director Brian Lopina stressed to the Bulletin that his group is in no rush to name a successor, as Reed will not depart until September 1. "We have a lot of time to work with," said Lopina. "The time frame is basically, sooner will be better than later, but it's best to take your time and get it done right. So we have several months to work with. I don't imagine we're going to use all that time, but the structure's in place to find the best person."

  The Christian Coalition's search is being watched closely by conservatives and others. Most observers agree that whoever takes the job will be hard-pressed to match Reed's political skill in guiding the organization.

LAST LAUGHS:

Conan O'Brien: "Earlier today -- this is interesting -- Chelsea Clinton, she made her decision. She announced that next year she's going to attend Stanford University in California. It's true, yeah. She said, 'I'm looking forward to starting college and getting away from the frat house atmosphere of home.'"

Conan O'Brien: "I'm gonna show a series of successive patterns, and Andy and people at home, you try and figure out what the pattern is, okay? ... A few dollars. A ponytail. A Kennedy: these are all increasingly likely

Drugs - medical marijuana

- **Community Policing:** On April 30, COPS Director Brann announced the release of the Advancing Community Policing solicitation at the Police Executive Research Forum Annual Conference in Washington, D.C. Under this program, $35 million will be available to agencies highly committed to community policing to support organizational change efforts or to establish Community Policing Demonstration Centers.

- **Medical Marijuana:** On April 11, District Judge Fern Smith found that plaintiffs in Conant v. McCaffrey (N.D. CA) had raised "serious questions as to the constitutionality" of the federal government's policy of advising doctors that they risk federal prosecution or revocation of their controlled substance registrations if they provide their patients with oral or written recommendations to use marijuana pursuant to CA Proposition 215. On April 21, the court denied a motion for clarification on this point without comment, and extended the TRO until May 1. The parties are currently engaging in settlement negotiations that were mandated by the court. Negotiations are expected to conclude shortly and the court will issue a ruling on the motion to dismiss and plaintiffs' pending motion for a preliminary injunction.

- **CT Fair Housing:** On April 24, DOJ filed a Fair Housing Act complaint against the City of Milford, CT, arising out of the City's withdrawal from a subsidized scattered site housing program that HUD had already funded and that the City had already commenced. The complaint alleges that the City violated the Fair Housing Act when it took steps to terminate the housing program in response to neighborhood opposition that itself was motivated by fears that the subsidized housing would be occupied by persons from the largely minority neighboring cities of Bridgeport and New Haven.

- **LA Redistricting:** On April 24, the district court in Theriot v. Parish of Jefferson, LA (E.D. La.) upheld the constitutionality of a majority-black parish council district that had been drawn to remedy a violation of Section 2 of the Voting Rights Act. DOJ participated as a defendant-intervenor in support of the plan that resulted in the creation of the majority-black district.

- **TN Federal Affirmative Action Case:** On April 18, the jury in Safeco Insurance Co. v. City of White House (M.D. Tenn.) ruled that an insurance carrier was liable under a performance bond for damages to a TN city for the failure of the carrier's insured, a prime contractor on an EPA-funded contract with the city, to engage in good faith outreach and recruitment efforts to solicit minority and women-owned businesses pursuant to an EPA affirmative action program. EPA declined to approve the project as a result of the contractor's failure to comply with the requirements. Previously, the judge had ruled that the requirements were constitutional on their face, rejecting the insurer's argument that they were invalid under Adarand. The Justice Department participated in the case on behalf of EPA, which was a co-defendant.