

PART I

STATEMENT OF FACTS

OVERVIEW

1. On July 29, 1997 the Applicant, Renee Boje, and various others, including principals Todd McCormick and Peter McWilliams, were arrested by the Los Angeles County Sheriff's Department at or near a residence at Stone Canyon Road, Belair, California. It was alleged that they were involved in the manufacture of marijuana and possessed it with intent to distribute and conspired to do so. The Applicant and the others were taken into custody until released on bail. Ms. Boje was subjected to a number of indignities throughout the period of time that she was in custody, until her release. The specific allegations against Ms. Boje involved a relatively minor role in aiding and abetting the principals. The U.S. Government sought Ms. Boje's cooperation in the prosecution of the other defendants and she declined to do so. Fearing that her refusal to cooperate with the U.S. Government would result in a devastatingly prejudicial prosecution which could result in many years of imprisonment for his client her U.S. counsel, Kenneth Kahn, recommended, in the absence of a formal indictment against her, that she leave and go to Canada.
2. At the time of Ms. Boje's arrest, the State of California had passed, as a result of Proposition 215 (a State referendum), the *Compassionate Use Act* of 1996 which permitted patients authorized by their doctors to grow and use marijuana for medical purposes. Mr. McCormick and Mr. McWilliams both suffered debilitating diseases, cancer and HIV respectively, and asserted that they were growing the plants for personal use to determine the appropriate strains for appropriate illnesses and to write and publish a book on how to grow medical marijuana.
3. On or about May 20, 1998, Ms. Boje left California and came to British Columbia, Canada. Ultimately, she began staying at a house in Sechelt, British Columbia.
4. On June 30, 1998, the First Superseding Grand Jury Indictment was filed in the Central District of California and a warrant was issued for Ms. Boje's arrest.
5. On February 15, 1999, Ms. Boje was arrested at a house in Roberts Creek, British Columbia. The residence contained a marijuana grow operation producing marijuana for medical purposes for the B.C. Compassion Club Society, a distributor of medical marijuana to patients

- holding a prescription or a letter of recommendation from their physician. Ms. Boje was charged along with others in connection with that operation. Ultimately, those charges against her were stayed when the principal behind that operation, William Small, pled guilty. Mr. Small pled guilty before His Honour, Judge McGee in the Provincial Court of British Columbia to production of cannabis (marijuana) and was sentenced to a fine in the amount of \$3,000 plus 12 months probation on March 10, 2000. A sentence appeal has been filed to the British Columbia Court of Appeal.
6. Upon being advised of the outstanding warrant for her arrest in the State of California and that she would be returned to the United States, Ms. Boje asserted a refugee claim. The United States of America then sought her extradition in connection with the charges outstanding in California. Ms. Boje was released on bail in relation to the refugee claim and the extradition request on February 19, 1999, and has remained on bail ever since.
 7. On June 17, 1999, the new *Extradition Act* for Canada came into force and, at the same time, the *Immigration Act* was amended to provide that when a refugee claimant is also subject to an extradition offence that carries a maximum term of imprisonment in Canada of 10 years or more, then that person loses their right to a refugee hearing before the Convention Refugee Determination Division of the Immigration and Refugee Board. Further, that if that person is ordered surrendered in the extradition process, then that order is deemed to be a decision of the Convention Refugee Determination Division of the Immigration and Refugee Board to the effect that that person is excluded from the Convention, for the reason of there being reasonable grounds to believe that the person had committed a serious non-political crime. The refugee claim now falls to be determined by the Minister of Justice in consultation with the Minister of Immigration.
 8. On September 13, 1999, the Minister of Justice, pursuant to section 15 of the *Extradition Act* issued an "Authority to Proceed" against Renee Boje.
 9. The extradition hearing proceeded in Vancouver, British Columbia on November 1 – 3 and December 15 & 21, 1999.
 10. On February 9, 2000, the Honourable Mr. Justice Catliff of the Supreme Court of British Columbia ordered Ms. Boje's surrender on all counts. On the same day, a Notice of Appeal was filed from that decision and Ms. Boje was released by the Court of Appeal on bail pending the decision of the Minister of Justice. That Appeal has been deferred pending the decision of the Minister on the Refugee and extradition issues pursuant to Sections 43, 44 and 46 of the *Extradition Act*.

A. THE ADJUDICATIVE FACTS

The following is a summary of the materials, information and evidence presented in the judicial phase pursuant to the *Extradition Act* at the Extradition Hearing, including evidence adduced by Renee Boje, pursuant to section 32(1)(c).

(i) The Case Against Ms. Boje as presented by the United States of America

11. Drug Enforcement Administration (DEA) officer, Anthony J. Zavacky, deposed that on July 28th, 1997, while conducting surveillance at a residence at 1605 Stone Canyon Road, Belair, California, he saw an unidentified blond female moving trays of plants around a patio area adjacent to the top floor of the residence.

Affidavit of Anthony J. Zavaky, Exhibit 1 D, Appeal Book, Volume One, p. 115.

12. Deputy Sheriff John Cater of the Los Angeles County Sheriff's Department (LASD) deposed that on July 29th, 1997, he was conducting surveillance on the residence at Stone Canyon Road, Belair, California and that over a one and one-half hour period he saw two women, including Ms. Boje, on the south side patio area moving and watering numerous plants which he identified as marijuana plants. He further claimed to have seen four individuals in the residence, including Ms. Boje, smoking from a large glass bong, while a cannabis internet website was displayed on a large screen television set.

Affidavit of John W. Cater, Exhibit 1 E, Appeal Book, Volume One, p. 117.

13. Deputy Sheriff Edward Nordskog with the Los Angeles County Sheriff's Department deposed that on July 29th, 1997, Ms. Boje admitted to him that she had been watering and moving the marijuana plants, knowing them to be such and that she was a regular visitor and helper to Mr. McCormick, having met him at a "headshop" approximately two months previously. Further, that Mr. McCormick told her that his actions were legal because they were for the purpose of medical research. He also said that he had a prescription to cultivate and smoke marijuana, that he had prescriptions in at least one other state and two other countries and that he had a California licence to cultivate marijuana. He also said that he had lawyers that protected his operation. Deputy Sheriff Nordskog asserted that Ms. Boje had said that she was paid a small amount but was willing to do what

she did for free for Mr. McCormick. A co-defendant, Alexandra Evanguelidi, was arrested at the same time as Ms. Boje and, according to Deputy Sheriff Nordskog, made the same admissions although Ms. Evanguelidi claims she was not paid and admitted that she occasionally smoked marijuana, some of which was available at the “castle”. Ms. Boje denied smoking marijuana.

Affidavit of Edward M. Nordskog, Exhibit 1 F, Appeal Book, Volume One, p. 121.

14. Deputy Sheriff Edward Nordskog sought, obtained and assisted with the execution of a search warrant for the Belair residence on July 29th, 1997. During the search, DEA agents and LASD deputies seized approximately 4,116 marijuana plants growing indoors and outdoors, including several hundred marijuana plant “clones”. They also seized cultivation equipment, including halogen lights, hoods, exhaust fans and ballasts, cultivation diagrams, expenditure sheets regarding the marijuana grow, log books, catalogues for cultivation supplies and equipment, documents related to cultivation techniques, address books, billing statements and telephone records, ziplock baggies with marijuana residue, scales, approximately ten sifters of varying sizes with hash residue, approximately four glass “hash pipes” and an Apple MacIntosh laptop computer and numerous computer discs. Agents also located a copy of the lease agreement for the residence revealing that Mr. McCormick leased the property for two years as of March 1, 1997, at a monthly rate of \$6,000.00. Agents also found numerous employee pay schedules for the co-defendants Dyjine and Evanguelidi reflecting hours worked, wages owed and monies or marijuana paid.

Affidavit of Edward M. Nordskog, Exhibit 1 F, Appeal Book, Volume One, pp. 123 – 124.

15. Ms. Boje was a visitor at the Stone Canyon Road residence and did not reside there but resided at 2968 ¼ Veteran Avenue, Los Angeles, California with co-defendant, Alexandra Evanguelidi.

First Superseding Indictment, Attachment to the Information, Appeal Book, Volume One, p. 12, paragraph 8.

16. On June 30th, 1998, a Federal Grand Jury sitting in the Central District of California returned and filed the First Superseding Grand Jury Indictment against all of the defendants, including Renee Boje. Ms. Boje was specifically charged with (a) Conspiracy to Manufacture, Distribute and Possess with Intent to Distribute Marijuana; (b) Manufacturing Marijuana; and (c) Aiding and Abetting the Manufacture of Marijuana, in violation of Title 21, United States Code, sections 846 and 841(a)(i), and Title 18,

United States Code, section 2. Marijuana is a Schedule 1 controlled substance under Title 21, United States Code, section 812.

Affidavit of Fernando L. Aenlle-Rocha, Assistant United States Attorney, Exhibit 1, Appeal Book, Volume One, p. 57 at p. 60 at lines 1 – 11.

17. Ms. Boje is charged in the Superseding Indictment in Count 1 with Conspiring to Manufacture, Distribute and Possess with Intent to Distribute Marijuana, a controlled substance, in violation of Title 21, United States Code, Section 846. A violation of this provision of the statute constitutes a felony under the laws of the United States of America.

Grand Jury Charge (The First Superseding Indictment), Exhibit 1 B, Appeal Book, Volume One, p. 73;

Affidavit of Fernando L. Aenlle-Rocha, Assistant United States Attorney, Exhibit 1, Appeal Book, Volume One, p. 57 at p. 60 at lines 16 & 17 and p. 61 at lines 19 – 23.

18. Under the laws of the United States of America, a conspiracy is simply an agreement to violate another criminal statute, in this instance the laws prohibiting the manufacture, distribution and possession with intent to distribute marijuana. Under United States law, the act of combining and agreeing with one or more persons to violate United States law is a crime in and of itself. The agreement need not be formal and may be simply a verbal understanding. Conspiracy is deemed to be a partnership for criminal purposes in which each member or participant becomes the agent or partner of every other member. A person may become a member of a conspiracy without full knowledge of all of the details of the unlawful scheme or the names and identities of all of the other alleged conspirators. If a defendant has an understanding of the unlawful nature of a plan and knowingly and wilfully joins in on that plan on one occasion, that is sufficient to convict that person of conspiracy even if that person had not participated previously and even if that person played only a minor role in the offence. In order to convict Ms. Boje of the felony offence charged in Count 1 of the First Superseding Indictment, the United States Government will have to prove at trial that she came to an agreement with one or more persons to accomplish a common and unlawful plan, as charged in the Indictment, and that she knowingly and wilfully became a member of such conspiracy.

Information of Cst. Mike Gouin, Exhibit B, Appeal Book, Volume One, p. 1 – 5;

Affidavit of Fernando L. Aenlle-Rocha, Assistant United States Attorney, Exhibit 1, Appeal Book, Volume One, p. 57 at p. 61at lines 23 - 27 and p. 62 at lines 1 – 21.

19. The maximum penalty for a violation of Title 21, United States Code, Section 846, is a term of life imprisonment, a fine of \$4,000,000.00 and a term of supervised release of five years. The minimum penalty for the offence where one thousand or more marijuana plants, regardless of weight, are involved is not less than ten years for a first offender and without eligibility for any form of parole during the term of imprisonment.

Title 18, United States Code, Exhibit 1 A, Appeal Book, Volume 1, p. 68at p. 70 at lines 20 – 27 and p. 71 at lines 1 – 3 and 25 – 27.

20. Ms. Boje is also charged in Count 2 of the First Superseding Indictment with manufacturing marijuana, a controlled substance, in violation of Title 21, United States Code, Section 841(a)(i), and aiding and abetting the manufacture of marijuana, in violation of Title 18, United States Code, Section 2.

Affidavit of Fernando L. Aenlle-Rocha, Assistant United States Attorney, Exhibit 1, Appeal Book, Volume One, p. 62 at lines 22 – 26.

21. In order to convict Ms. Boje of the offence charged in Count 2, the United States must prove that she knowingly and intentionally manufactured a controlled substance, namely marijuana, which includes the “production” of a drug which, in turn, includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance. Title 18, United States Code, Section 2, provides that whoever commands, procures, assists in, or causes the commission of a crime shall be held accountable and punished in the same manner as the principal, or the person who actually carried out the tasks. This means that the guilt of Ms. Boje may also be proved even if she did not personally perform every act in the commission of the crime charged, namely the manufacture of marijuana. The law recognizes that, ordinarily, anything a person can do for herself may also be accomplished through the direction of another person as an agent, or by acting together with, or under the direction of another person or persons in a joint effort. If the acts or conduct of an agent, employee or other associate of Ms. Boje were wilfully directed or authorized by her, or if Ms. Boje aided and abetted another person by wilfully joining together with that person in the commission of a crime, then the law holds Ms. Boje responsible for the conduct of that other person just as though she had engaged in such conduct herself.

Affidavit of Fernando L. Aenlle-Rocha, Assistant United States Attorney, Exhibit 1, Appeal Book, Volume One, p. 63 at lines 9 – 26.

22. The maximum penalty for violation Title 21, United States Code, section 841(a)(i) is a term of life imprisonment, a fine of \$4,000,000.00 and a term of supervised release of five years. Where the offence involves one thousand or more marijuana plants, regardless of weight, the minimum sentence is not less than ten years imprisonment for a first offender and without eligibility for parole during the term of imprisonment.

Affidavit of Fernando L. Aenlle-Rocha, Assistant United States Attorney, Exhibit 1, Appeal Book, Volume One, p. 63 at line 27 and p. 64 at line 1 – 2;

Title 18, United States Code, Exhibit 1 A, Appeal Book, Volume One, p. 68 at p. 70 at lines 24 – 27 and p. 71 at lines 1 – 3 and 25 – 27.

23. The First Superseding Indictment contains a total of nine counts and Ms. Boje is only charged in the first two counts. She is not charged in any of the others. The First Superseding Indictment contains an introduction comprising nine paragraphs and Ms. Boje is only referred to in paragraph 8, along with co-defendant Alexandra Evangelidi, as residing at 2968 ¼ Veteran Avenue, Los Angeles, California.

Grand Jury Charge, Exhibit B, Appeal Book, Volume One, p. 73, specifically paragraph 8, p. 74 at lines 20 – 21.

24. With respect to Count 1, the Superseding Indictment sets out the objects of the conspiracy and refers generally to all of the defendants alleging that from an unknown date but commencing no later than December 1996, and continuing to on or about December 14, 1997, in Los Angeles and San Bernadino Counties within the Central District of California and elsewhere, the defendants wilfully and knowingly conspired and agreed with each other to commit the offences of knowingly and intentionally manufacturing marijuana, knowingly and intentionally possessing with intent to distribute marijuana, and knowingly and intentionally distributing marijuana.

Grand Jury Charge, Exhibit B, Appeal Book, Volume One, p. 75.

25. The Superseding Indictment contains twelve paragraphs setting out the means by which the objects of the conspiracy were to be accomplished and asserts in paragraph 6 that the defendant, Todd McCormick, would hire and compensate with money or marijuana certain defendants, including Ms. Boje, to assist with the cultivation and harvest of marijuana. In paragraph 10, it alleges that various defendants, including Ms. Boje, would water and tend marijuana plants.

Grand Jury Charge, Exhibit B, Appeal Book, Volume One, specifically paragraph 8, p. 76 at lines 23 – 26 and paragraph 10, p. 77 at lines 9 – 11.

26. The Superseding Indictment lists 182 overt acts alleged in furtherance of the conspiracy to accomplish its objects. Apart from a general allegation against Ms. Boje and all of the defendants in paragraph 99, asserting that between, in or about March of 1997 and on or about July 29, 1997, they manufactured approximately 4,116 marijuana plants including hundreds of marijuana plant clones, harvested marijuana and marijuana seeds, the only other reference to Ms. Boje is in paragraph 91, asserting that on or about July 29, 1997 she, along with co-defendant Alexandra Evanguelidi watered numerous marijuana plants at the Stone Canyon residence.

Grand Jury Charge, Exhibit B, Appeal Book, Volume One, paragraph 99, p. 92 at lines 13 – 19 and paragraph 91, p. 91 at lines 9 – 11.

27. Due to the absence of any evidence in the possession of the United States Government indicating knowledge on the part of Ms. Boje of any plan to distribute or possess with intent to distribute the marijuana in question and to join in a conspiracy to that effect, the United States of America, in the extradition proceedings before the Honourable Mr. Justice Catliff in the Supreme Court of British Columbia, tendered Detective Constable Cinda Lose from the Vancouver Police Department as an expert qualified to give opinion evidence with respect to the “trafficking element” and, specifically, with respect to the cultivation, the use, distribution, price and sale of marijuana in Canada as of July 1997.

British Columbia Supreme Court Transcript of Proceedings, December 15, 1999 at p. 1, lines 19 – 43;

Curriculum Vitae of Detective Cinda Lose, Exhibit 3, Appeal Book, Volume One, p. 129.

28. While Cst. Lose had some expertise in the areas for which she was tendered, she admitted that she was not familiar with the provisions of the *Controlled Drugs and Substances Act* and Regulations with respect to exemptions from the law by the Minister of Health nor the provisions with respect to licence dealers and manufacturers or the prescription of controlled drugs by doctors. Further, she had no expertise with respect to genetics or botany nor with marijuana grow operations intended to produce seeds. She had no experience with medical marijuana grow operations.

British Columbia Supreme Court Transcript of Proceedings, December 15, 1999 at pp. 5 – 8.

29. Detective Constable Lose testified that if a person was found to be in possession of 4,116 marijuana plants, this quantity would be consistent with the marijuana being held for the purpose of sale. She had very little

information with respect to the marijuana plants, having not actually seen them nor any photographs of them. She simply assumed that they were all female plants and would yield marijuana bud. She estimated conservatively that they would each produce two ounces of marijuana bud per plant based on her experience in British Columbia, explaining that she would normally estimate the yield of a plant by looking at it, its size of pot, the amount of light it receives, the lumen to plant ratio, none of which she was able to consider in this circumstances here.

British Columbia Supreme Court Transcript of Proceedings, December 15, 1999 at pp. 8 & 9.

30. She was then told that the officer also discovered the quantity of marijuana together with halogen lights, hoods, exhaust fans, ballasts and ziplock baggies with marijuana residue, as well as scales and was asked how that would affect her opinion. She responded that this would indicate that the person had a fairly good grasp of what was required to grow marijuana and that the presence of the scales and baggies would indicate that the product was being packaged for commercial distribution.

British Columbia Supreme Court Transcript of Proceedings, December 15, 1999 at pp. 10 & 11.

31. She was asked if the presence of several hundred clones among the 4,116 plants would have any impact on her opinion and she testified that marijuana growers would only take clones from female plants because they want to propagate females as the male plants for commercial use are fairly useless because they do not produce any bud.

British Columbia Supreme Court Transcript of Proceedings, December 15, 1999 at pp. 11 & 12.

32. In cross-examination, Cst. Lose confirmed that she had very little information with respect to this marijuana grow operation because she didn't see it, in fact, or any photographs of it. She had no description of the plants other than the number and the fact that there were several hundred clones. She did not know whether they were male or female plants or whether the clones were male or female. She had no experience with people growing male plants for seed although was aware of that from literature. She was not familiar with the report of the Institute of Medicine, 1999, entitled, "Marijuana and Medicine: Assessing the Science Base" and was unaware of how different cannabinoids affect different illnesses in terms of medical use.

British Columbia Supreme Court Transcript of Proceedings, December 15, 1999 at pp. 12 – 14.

33. Cst. Lose said that she had glanced at the affidavit of Peter Durovic sworn November 1, 1999, filed in these proceedings on behalf of Ms. Boje, pertaining to genetics but confirmed that she had assumed that the plants were mostly female even though she had not been told that. She agreed that one might grow a plant from seed to develop different strains for medical use. She said that was possible.

British Columbia Supreme Court Transcript of Proceedings, December 15, 1999 at p. 14.

34. While referring to the presence of scales or baggies as an indicia of packaging for distribution, she conceded that she was not told that there were packages of baggies but simply that there were baggies with marijuana residue and that there could have been as few as two. She said that two ziplock bags with marijuana residue would be no big deal but, if all the plants were females grown from clones, they would add some weight to her opinion in concert with the other factors. She did not think that it was odd that the bags only contained residue if the purposes for the bags were to put marijuana in them for distribution. She did not know why one would have bags with residue only in them in a grow operation.

British Columbia Supreme Court Transcript of Proceedings, December 15, 1999 at p. 16.

35. She said that she couldn't even imagine a grow where the plants would be all male plants and had never experienced that or talked to any other experts about that. She had never seen all male plants in any of the grows that she had investigated.

British Columbia Supreme Court Transcript of Proceedings, December 15, 1999 at p.16.

36. With respect to the scales, she conceded that there were many different types of scales and she did not know what types of scales were found. She assumed that she would not have been told about the existence of the scales if they weren't significant to the grow, conceding that if they were bathroom scales, she wouldn't connect them to the grow.

British Columbia Supreme Court Transcript of Proceedings, December 15, 1999 at p. 16 – 18.

37. She conceded that one would require all of the equipment found in order to grow marijuana plants whether for a commercial or medical purpose and, in other words, that the presence of such equipment would be consistent with both or either types of operations.

**British Columbia Supreme Court Transcript of Proceedings,
December 15, 1999 at p. 19.**

38. She testified that this operation would definitely fit into a commercial distribution category because she didn't have any experience with people growing marijuana for a different purpose and was influenced by the amount of equipment and its value.

**British Columbia Supreme Court Transcript of Proceedings,
December 15, 1999 at pp. 19 & 20.**

39. While she had heard of the names Todd McCormick and Peter McWilliams, and knew that Mr. McCormick had cancer, she was not familiar with their situation.

**British Columbia Supreme Court Transcript of Proceedings,
December 15, 1999 at p. 20 & 29.**

40. Cst. Lose confirmed that she essentially had a total lack of expertise in relation to the genetics of growing marijuana nor any experience in the growing of medical marijuana and did not know that Mr. McCormick had, in fact, published a book on how to do so.

**British Columbia Supreme Court Transcript of Proceedings,
December 15, 1999 at pp. 27 & 28.**

41. Cst. Lose admitted that given her lack of experience with respect to the growing of marijuana for medical purposes, her inability to make observation of the plants or at least photographs and being provided with other information might have led her to consider other alternatives but she did not have that opportunity. She concluded that it was a commercial grow operation because that was her experience but she had no experience with medical grow operations or research and still could not conceive of somebody growing male plants.

**British Columbia Supreme Court Transcript of Proceedings,
December 15, 1999 at pp. 30 & 31.**

42. Cst. Lose was not told whether the plants were all in one location or various different locations.

**British Columbia Supreme Court Transcript of Proceedings,
December 15, 1999 at p. 31.**

43. Cst. Lose conceded that for someone to be guilty of "possessing" marijuana, they would have to know that the plants were present and what

they were and would have to have some kind of custody or control or consent.

British Columbia Supreme Court Transcript of Proceedings, December 15, 1999 at p. 31.

44. She conceded that her calculation of a two ounce per plant yield was speculative and based solely on her experience in grow operations in British Columbia and, specifically, in Vancouver, B.C.

British Columbia Supreme Court Transcript of Proceedings, December 15, 1999 at p. 32.

45. Cst. Lose testified that if she was investigating a grow operation and the person produced a licence or permit, she would continue to fully investigate the offence and then forward all of the information to Crown counsel to let them make the determination as to the validity of the permit or licence. She conceded that she was not familiar with the various provisions of the *Controlled Drugs and Substances Act* relating to permits and licences.

British Columbia Supreme Court Transcript of Proceedings, December 15, 1999 at pp. 34 & 35.

46. Cst. Lose testified that she had not been told that this particular medical grow operation was purportedly under the provisions of the *Compassionate Use Act* of the State of California and she was only vaguely aware of the existence of such an Act.

British Columbia Supreme Court Transcript of Proceedings, December 15, 1999 at pp. 35 & 36.

47. Cst. Lose testified that, in the past, she had never been asked to express an opinion as an expert based upon a hypothetical. She had always been able to speak to the members in the field and either observe the grow operation or photographs. She admitted that she had been asked to give such an opinion in this case based on a hypothetical. She said that even if she had the additional information about the *Compassionate Use Act* and was able to do a further investigation, her opinion would remain that the bulk of the marijuana was probably for commercial distribution simply due to the value of marijuana and, in particular, its value in the United States of America. She conceded that this estimated value was based on the fact that the plants were female even though she had not been told that as part of the hypothetical. She assumed they were simply based on her own experience in investigating commercial grow operations. She conceded that if she had been told that the person had a prescription or licence to grow, she would have considered it, but still that the number of

plants was such that she could not see somebody not taking advantage of the situation and selling some for monetary gain. She thought that it was human nature, that it was hard to not make money if it was available.

British Columbia Supreme Court Transcript of Proceedings, December 15, 1999 at pp. 37 – 39.

(ii) **The Case for Ms. Boje as presented pursuant to Section 29 & 32 of the Extradition Act**

48. Ms. Boje deposed that on July 29th, 1997, she did visit the residence at 1605 Stone Canyon Road, Belair, California and that upon leaving the premises at approximately 5:45 p.m. with her friend, co-defendant Alexandra Evangelidi, they were pulled over by the police at the bottom of the hill on Stone Canyon Road. She says that as she got out of the truck, she was thrown against the truck very roughly by one of the officers and her hands were brought up behind her back and she was handcuffed and frisked. She was told she was under arrest for the cultivation of marijuana and her rights were read to her. She said she was thrown in the back of the police car and an officer pointed at her and yelled at her to sit there and shut up, and told her and Alexandra Evangelidi that they were not to say a word to each other.

Affidavit of Renee Boje, filed November 1, 1999, Appeal Book, Volume II, paragraphs 2 – 4, pp. 1 & 2.

49. She further deposed that she watched them search Ms. Evangelidi's truck and return with a tin containing a bud of marijuana. The officer asked where it came from and Ms. Boje declined to say anything without first speaking to a lawyer. She says that the officer responded that he could play rough with her and said "don't piss me off" but she remained silent. The other officer started the vehicle and proceeded to drive in a fast and chaotic manner, causing the two prisoners to bounce around in the back of the car while the officers laughed and made sarcastic remarks. They were taken to the Belair Fire Department on Sunset Boulevard where there were 60 or more very large male officers, armed and dressed in full riot gear with breastplates, large boots and big guns. They were made to stand in front of this group who were told that they had watered marijuana plants all day at Mr. McCormick's home. Some of the men laughed and others made them very apprehensive and fearful. They were told that the "castle" was going to be stormed and to tell where the guns were. Ms. Boje and Ms. Evangelidi said there were no guns or weapons and that the people in the house were peaceful and passive. They were told that the people in the house were drug traffickers and asked where

the drugs were and it was suggested that there was cocaine in the house. Ms. Evanguelidi said that there was not. An officer referred to the marijuana plants and how it was illegal to cultivate them. Ms. Boje referred to Proposition 215, which she understood to make the cultivation of marijuana for medicinal purposes legal in California and explained that Mr. McCormick was a cancer patient with two prescriptions from a physician for medical marijuana. The officer's acted as if no such law existed in the United States and said that they had been observed watering plants in Mr. McCormick's home and yard. The officer was intimidating and said they should start talking and not anger them and that they knew they were working for Mr. McCormick and had been observed at his home for some time. He said they were going to be charged and that it was a serious crime and that if they didn't want to go to prison until they were 50 years old, they better start talking. Ms. Evanguelidi said that they were probably watering house plants.

Affidavit of Renee Boje, filed November 1, 1999, Appeal Book, Volume II, paragraphs 5 - 8, pp. 2 & 3.

50. The officers were becoming impatient and said they were going to shoot the guard dogs if they didn't give the layout of the house. Ms. Boje and Ms. Evanguelidi told them that the dogs were friendly and were pets and they were quite willing to tell them the layout of the house and asked them not to use violence. They then answered the officers' questions with respect to the layout of the house. Ms. Boje and Ms. Evanguelidi were told that if they cooperated and told the truth, they might be released that night but if they didn't, they would be going to prison for a long time. When they explained that it was a medical marijuana grow operation because Todd McCormick had cancer and that he was entitled to do so under Proposition 215, it was apparent this was not the answer that the officers were looking for.

Affidavit of Renee Boje, filed November 1, 1999, Appeal Book, Volume II, paragraphs 9 & 10, pp. 3 & 4.

51. They were then taken to a prison in the Los Angeles area. En route, the officers continued to act as if Proposition 215 didn't exist and that marijuana was a dangerous drug. At the prison, Ms. Boje was subjected to a strip search and put in a holding cell where she remained for two to three hours. She was then fingerprinted and photographed along with the others. She heard Mr. McCormick tell the officers that Ms. Boje and Ms. Evanguelidi cleaned his house and did odd jobs for him but had nothing to do with the marijuana plants and they should be released.

Affidavit of Renee Boje, filed November 1, 1999, Appeal Book, Volume II, paragraphs 11 – 13, pp. 4 & 5.

52. Ms. Boje was put back in her cell and then taken out to be interviewed by Drug Enforcement Administration agents. She was told that it was her last chance to cooperate and that her friends had answered their questions and would be getting out soon and that if she didn't, she would be locked up for a long time. She was told that Ms. Evangelidi had said that they were both being paid in marijuana. Ms. Boje said that she didn't want to talk to them but wanted to speak to a lawyer and was entitled to a phone call. She was told that she was not entitled to anything, was in big trouble and was going to be locked up for a long time. When asked who told her to water the marijuana plants, she replied that she had not watered any plants. She admitted to watering house plants. She said she wouldn't answer any more questions until she spoke to a lawyer. She was grabbed by the back of her arms which were still handcuffed and aggressively thrown back into her cell.

Affidavit of Renee Boje, filed November 1, 1999, Appeal Book, Volume II, paragraph 14, p. 5.

53. A few hours later, she was taken out again and, along with the others, was taken to a federal prison in downtown Los Angeles arriving at approximately 4:00 a.m. She was then subjected to another strip search, given prison clothing and put in a holding cell. Over the next few days, she was moved from cell to cell and separated from the others from time to time and then put back in with them. Each time that cells were switched, she was strip searched. During two of such strip searches, she could see male officers looking through the window as the female officer conducted the search. The male officers saw that she had seen them and made lewd gestures towards her. When Ms. Boje complained to the female officer, she was simply told to face the wall and that there were no men around. Throughout her stay, the same men made lewd gestures and remarks towards her every time she walked past them.

Affidavit of Renee Boje, filed November 1, 1999, Appeal Book, Volume II, paragraphs 15 – 16, p. 6.

54. She was examined by a nurse and given certain options as to where she would be housed and told that she would get a call to a lawyer the next morning. The next morning, she was taken to a prison where all the other women prisoners were and assigned to a room. Approximately an hour later, she was shackled with a heavy metal waistband connected with chains to handcuffs and anklecuffs and taken to a garage. She was taken towards an armoured police truck in shackles and paraded past a line of male prison guards who made lewd and threatening gestures and remarks. One said that "I can't wait to finish you off" as she walked past him. She was taken to the Federal Courthouse.

Affidavit of Renee Boje, filed November 1, 1999, Appeal Book, Volume II, paragraphs 17 – 18, pp. 6 & 7.

55. At the Courthouse, she was strip searched once again and put into a separate cell. She was once again confronted by a man who told her that this was her last chance to talk and cooperate. She said she wanted to speak to a lawyer. She was told it was too late for that and she was going to be before the judge soon. The man left the room, slamming the door. Another man attended on her and remarked that it was too bad that she hadn't cooperated because her friends had and would be getting out soon and she would not. When she complained that she hadn't been able to speak to a lawyer yet, she was told that the previous man simply wanted her identity and address but, due to her rudeness, would not support her for bail. Ms. Boje apologized for offending the previous man and said she would be happy to answer questions not related to the case. She was told that it was too late, that she would be taken before a judge soon and that even if granted bail, there was no one to post it and she would remain in a federal prison until her trial. She was returned to her cell and subjected to another strip search. She asked to make a phone call and was denied. She was strip searched again by another male guard. Ultimately, after she pleaded with him, he handcuffed her to a phone and she was allowed to make a brief call to friends to try and raise bail.

Affidavit of Renee Boje, filed November 1, 1999, Appeal Book, Volume II, paragraph 19, pp. 7 & 8.

56. She was then placed in another cell and then taken to the courtroom where she was told that she was to be released on a \$10,000.00 bond. A friend posted bail for her of which it was a condition of her bail not to leave Los Angeles County and she had to report to the Federal Courthouse upon demand for urinalysis testing and handwriting samples. She was released later that day.

Affidavit of Renee Boje, filed November 1, 1999, Appeal Book, Volume II, paragraph 21, p. 8.

57. As a result, Ms. Boje lost her job. She complied with her conditions and submitted to urinalysis on a couple of occasions and provided handwriting samples. Ms. Boje felt that she was followed extensively while on bail and was frequently pulled over and asked questions. She believed her telephone was being tapped.

Affidavit of Renee Boje, filed November 1, 1999, Appeal Book, Volume II, paragraphs 22 – 24, pp. 8 & 9.

58. Ms. Boje entered a not guilty plea at her pretrial hearing. In October of 1997 her lawyer, Mr. Kenneth Kahn, told her that the charges against her

had been dropped. She then moved out of the house that she was sharing with Ms. Evangelidi and two other women and moved into a different house and did some work, including organizing a benefit for Mr. McCormick. In May of 1998, Mr. Kahn advised her that there was a likelihood that the charges would be reinstated and, if convicted, she would be required to serve a mandatory minimum of 10 years in prison, up to a maximum of life. He told her she was just a pawn in the case against Mr. McCormick and that they would probably look for a reason to put her back in prison in order to harass her because she was not prepared to testify for the Government against Mr. McCormick. He told her that in his opinion the Government would not grant her any kind of immunity in any event and would likely want to see her in prison. Fearing for her persecution by the U.S. Government and by the Drug Enforcement Administration specifically, Ms. Boje left the United States on or about May 23rd, 1998, and went to the Sunshine Coast just outside Vancouver, British Columbia, Canada. She travelled across Canada to Montreal and into New York, returning to British Columbia in October of 1998 where she remains.

Affidavit of Renee Boje, filed November 1, 1999, Appeal Book, Volume II, paragraphs 25 – 27, pp. 9 & 10;

See also the Affidavit of Kenneth Kahn, sworn April 12, 2000, addressed to the Honourable Anne McLellan, Minister of Justice and Attorney General of Canada.

59. On February 15, 1999, Ms. Boje was arrested in Sechelt, British Columbia in a house that had a medical marijuana garden in its basement. She understood that the marijuana was being produced for the B.C. Compassion Club in Vancouver, British Columbia, that supplies medical marijuana to patients who have prescriptions or a letter from their physician recommending its use and to no others. She understood that Canadian law authorized physicians to prescribe controlled drugs, including cannabis. She was fingerprinted and photographed and it was determined that there were outstanding charges against her from the United States of America. Consequently, she was taken to a prison in Vancouver, given prison attire and told that she was going to be returned very soon to the United States of America. She was held in an immigration cell and had an opportunity to speak to counsel.

Affidavit of Renee Boje, filed November 1, 1999, Appeal Book, Volume II, paragraphs 28 – 30, pp. 10 & 11.

60. Subsequently, when a guard came to take her from her cell she, Ms. Boje, announced that she was not going back to the United States because she feared for her person and her life, if that should happen, and wanted to apply for refugee status in Canada. She was put in a cell and interviewed

by an Immigration officer. She repeated her refugee claim. The officer appeared to be surprised and sceptical. He left, slamming the door. He returned approximately 1/2 hour later, saying that he wanted to ask her some questions and that she was going to be returned to the United States. He told her that she didn't have a right to make a refugee claim and she was upsetting him and that she was going to be sent back to the United States that day. As he let her out of the room, Ms. Boje loudly announced to others within earshot that she was making a refugee claim and feared for her life and understood it was her right to make such a claim. The officer attending on her became angry and put her back in the cell forcefully and slammed the door. Another officer attended shortly thereafter and told her not to worry and that she would be allowed to make a refugee claim. Shortly thereafter, a female officer advised her of her situation and asked her a number of questions and she was told that she would receive a hearing before a Refugee Inquiry Board on February 19th.

Affidavit of Renee Boje, filed November 1, 1999, Appeal Book, Volume II, paragraphs 31 – 33, pp. 11 & 12.

61. On February 19th, she was taken by two R.C.M.P. officers and told that she was going to be fast-track extradited back to the United States that day. She was handcuffed and shackled and taken to the Supreme Court on Vancouver. She was released on a \$5,000.00 surety bail.

Affidavit of Renee Boje, filed November 1, 1999, Appeal Book, Volume II, paragraph 34, p. 12.

62. Ms. Boje further deposed that Todd McCormick told her that when he was a young boy between the ages of 5 and 8, he was diagnosed with bone marrow cancer. He had received a recommendation for the use of marijuana from two doctors, one certified to practice medicine in the State of California and one certified to practice medicine in the Netherlands.

Affidavit of Renee Boje, filed November 2, 1999, Appeal Book, Volume II, paragraph 2, p. 13.

63. Ms. Boje said that Mr. McCormick told her that he was growing marijuana at his residence for the purpose of relieving the symptoms of his serious illness and the side effects of his chemotherapy and was, therefore, not subject to criminal prosecution or sanction. He said that he was also doing it for the additional purposes of conducting plant breeding research to find out which strains of marijuana were most suited to his specific needs as a medical marijuana user. He wrote about the results of his research in a book entitled, "How to Grow Medical Marijuana" which was published by Peter McWilliams. Ms. Boje agreed to create the artwork and illustrations for the book but, because of her arrest, did not have an

opportunity to do so. Ultimately, the book was published without her artistic contributions.

Affidavit of Renee Boje, filed November 2, 1999, Appeal Book, Volume II, paragraph 3 & 4, p. 13 & 14.

64. Copies of the letters and prescriptions pertaining to Todd McCormick were obtained by Ms. Boje on November 2, 1999 through the offices of one of Mr. McCormick's lawyers, Mr. David Michael, Esq., in San Francisco, California, U.S.A. Mr. Michael's office provided these exhibits directly to the Criminal Registry at the Supreme Court of British Columbia in Vancouver on November 2, 1999 and Ms. Boje identified them as follows:

(a) A letter of October 25, 1997 from Dr. William S. Eidelman, M.D. of 1434 E. Ojai Avenue, Ojai, California.

Exhibit "A", Affidavit of Renee Boje, filed November 3, 1999, Appeal Book, Volume II, p. 17.

(b) Dr. Eidelman summarized Mr. McCormick's situation and notes that his well documented, complex medical history dates back to when he was 18 months old. He was then diagnosed with a type of cancer that was treated with surgery and chemotherapy. The cancer recurred at ages 3, 4, 5, 6, 7, 8, 9, 10, 12, and 15. Each time, he was treated with surgery and either radiation or chemotherapy and experienced many of the typical side effects associated with these therapies. As a result of the multiple surgeries and spinal fusions, Mr. McCormick's chief problem over the past 15 years has been pain resulting from these interventions. He was originally treated with narcotic pain medications which caused a variety of side effects. He had to take larger and larger doses to relieve the pain. He suffers from pain in his neck, upper back, lower back and hips. He also suffers from the fear of reoccurrence of the cancer. He can't sleep and wakes up throughout the night with neck pain. His appetite has decreased, secondary to fatigue from lack of sleep and he is depressed.

Exhibit "A", Affidavit of Renee Boje, filed November 3, 1999, Appeal Book, Volume II, p. 17.

(c) Dr. Eidelman noted that his primary way of dealing successfully with the pain was to smoke marijuana, which he had been doing since the age of twelve. He was forced to stop doing so at age 15 and this was followed by a recurrence of his cancer. He receive a prescription for medical marijuana from Dr. R.T. Trossel of Rotterdam, Holland on July 31, 1995 and a letter from Dr. John P.

Morgan of the City University New York Medical School supporting his use of medical marijuana.

Exhibit "A", Affidavit of Renee Boje, filed November 3, 1999, Appeal Book, Volume II, p. 17.

- (d) Dr. Eidelman examined him and noted multiple surgical scars, a tenderness to palpitation in the cervical region and lower back and a diminished range of motion in the neck, head and legs, all of which caused him pain. He diagnosed Mr. McCormick as having post-recurrent Histiocytosis with chronic pain, secondary to surgery and depression secondary to pain. In his prognosis, he indicated that it was poor for relief of his pain and guarded as to the recurrence of the cancer. Dr. Eidelman planned that given the decreasing effectiveness of narcotic medications over the years, given the severe pain that was relieved by the use marijuana, that it was rationale for Mr. McCormick to use marijuana under the guidance of a physician in line with the California Compassionate Use Act;

Exhibit "A", Affidavit of Renee Boje, filed November 3, 1999, Appeal Book, Volume II, p. 17.

- (e) On August 18, 1995, Dr. John P. Morgan, Professor of Pharmacology at the CUNY Medical School, Department of Pharmacology in New York wrote a letter to Judge Anthony L. Gretick of Williams County in the Court of Common Pleas in Bryan, Ohio on behalf on Mr. McCormick.

Exhibit "B", Affidavit of Renee Boje, filed November 3, 1999, Appeal Book, Volume II, p. 18.

- (f) After setting out his credentials, experience and interests, Dr. Morgan set out his knowledge of Mr. McCormick's background, including his medical background and the letters from others and goes on to state that he agrees with the treatment prescribed by Dr. Trossel from the Netherlands and expresses his opinion that it is medically correct. More importantly, Dr. Morgan expresses the opinion based on speaking with U.S. Government officials that the use of marijuana by Mr. McCormick in the United States was legal under a Federal Drug Administration policy permitting the use by Americans of drug products approved abroad under a Compassionate Exemption Rule. Dr. Morgan supported Mr. McCormick's use of marijuana under supervision of Dr. Trossel and repeated that he thought it was entirely medically appropriate;

Exhibit “B”, Affidavit of Renee Boje, filed November 3, 1999, Appeal Book, Volume II, p. 18.

- (g) On August 18, 1998, Dr. Lester Grinspoon of the Harvard Medical School wrote to Judge Anthony L. Gretick. After setting out his credentials and referring to his book with James P. Bakalar entitled “Marijuana, the Forbidden Medicine”, Dr. Grinspoon related how he had met Mr. McCormick and had reviewed his medical use of cannabis for the relief of the symptoms secondary to his cervical lesions and fusions. He noticed that Mr. McCormick suffered from chronic pain and muscle spasm which often accompanies damage to nerves and muscles. He describes how these patients suffer chronic unremitting pain for which they are usually prescribed one or more of three classes of drugs: (1) Synthetic opiates, to which they often develop a tolerance to or dependence upon (addiction); (2) Non-steroidal anti-inflammatories (N.E.A.I.D.S.) which, over the long haul, invariably lead to gastro-intestinal problems and often to liver toxicity; (3) Acetaminophen (Tylenol), which according to a recent study published in the New England Journal of Medicine led to end stage renal disease (E.S.E.D.) in an alarming proportion of people who must regularly take the drug for pain relief. Dr. Grinspoon went on to say that he had seen a number of patients who suffer from this kind of pain and believed that by far the best approach for this particular pain is cannabis. In his opinion, it is safer and more effective than any of the other classes of drugs. He advised that when he reviewed the treatment of Mr. McCormick’s pain with him, he shared with him the belief that the use of cannabis was the most effective approach.

Exhibits “C” and “D”, Affidavit of Renee Boje, filed November 3, 1999, Appeal Book, Volume II, pp. 19 & 20.

- (h) Dr. Grinspoon indicated that he completely agreed with Dr. Trossel’s assessment and said that if Mr. McCormick was his patient and it was legally possible for him to write a prescription for cannabis for the relief of his pain, he would not hesitate in doing so.

Exhibits “C” and “D”, Affidavit of Renee Boje, filed November 3, 1999, Appeal Book, Volume II, pp. 19 & 20.

- (i) Dr. Tod H. Mikuriya of Berkeley, California, a former director of marijuana research for the National Institute of Mental Health Centre for Narcotics and Drug Abuse Studies, among many other experiences, wrote a letter to Mr. Don Wirtshafter, one of Mr. McCormick’s attorneys.

Exhibits “E” and “F”, Affidavit of Renee Boje, filed November 3, 1999, Appeal Book, Volume II, p. 21 & 22.

- (j) He indicated that he had personally interviewed Mr. McCormick who suffers from a rare auto-immune illness and Histiocytosis and related how Mr. McCormick described significant relief from cannabis which he self-administers through the smoking process. Dr. Mikuriya points out that while cannabis is little utilized through the smoking route, it was routinely prescribed for certain types of pains and muscles spasms for a hundred years before it was removed from the prescriptive availability in 1937 by the *Marijuana Tax Act*.

Exhibit “E”, Affidavit of Renee Boje, filed November 3, 1999, Appeal Book, Volume II, p. 21.

- (k) He expresses his clinical opinion that Mr. McCormick has independently “rediscovered” the medical utility of cannabis for himself personally, despite widespread ignorance among the medical profession secondary to a disuse / atrophy of knowledge that sadly exists today. Dr. Mikuriya relates how he personally conducted detailed interviews of 57 members of the Cannabis Bias Club in San Francisco and found that a significant number were medicating themselves for similar symptoms.

Exhibit “E”, Affidavit of Renee Boje, filed November 3, 1999, Appeal Book, Volume II, p. 21.

- (l) He expresses the clinical opinion that Mr. McCormick is using medication consistent with what is known about the medicinal properties of cannabis based upon scientific fact. He is in agreement with, Dr. Trossel, the Dutch physician who prescribed cannabis for him.

Exhibit “E”, Affidavit of Renee Boje, filed November 3, 1999, Appeal Book, Volume II, p. 21.

- (m) On July 31, 1995 Dr. R. T. H. M. Trossel, a medical doctor in Rotterdam in the Netherlands confirmed in writing that he had been treating Mr. McCormick as a severe cancer case from December 13, 1994 onwards.

Exhibit “G”, Affidavit of Renee Boje, filed November 3, 1999, Appeal Book, Volume II, p. 23.

- (n) He notes that his condition had resulted in many cancer operations, including spinal and cervical scul-lesions. He has also been treated

with severe chemotherapy and radio-therapy. Dr. Trossel describes the treatment as consisting of ortho-molecular food supplements and diet advice, vitamin B12 injections and melatonin before sleeping. He notes that he also uses cannabis sativa on Dr. Trossel's prescription and delivered by the pharmacy in Rotterdam as the only effective muscle relaxant and pain reliever. Dr. Trossel notes that although it is not commonly prescribed as herbal medicine, he does not see that this is the only drug having an effective result on his present condition. Consequently, he says that he is willing to extend his prescription of 10 grams of medical cannabis sativa for 6 weeks, eventually extended to 12 week periods.

Exhibit "G", Affidavit of Renee Boje, filed November 3, 1999, Appeal Book, Volume II, p. 23.

- (o) Dr. Trossel expresses the hope that it will be possible through international law and also through the Federal Drug Administration rulings on personal use of foreign prescribed drugs to continue his therapy which he needs very urgently.

Exhibit "G", Affidavit of Renee Boje, filed November 3, 1999, Appeal Book, Volume II, p. 23.

- (p) On July 19, 1995, Dr. Trossel completed a medical statement and on December 13, 1994 he actually wrote out a prescription for Mr. McCormick.

Exhibit "H", Affidavit of Renee Boje, filed November 3, 1999, Appeal Book, Volume II, p. 24.

65. Peter Durovic, a lawyer with an undergraduate degree in Biochemistry and a Doctorate degree in Genetics from the University of British Columbia, provided an affidavit in support of Ms. Boje, dated November 1, 1999. He attached as Exhibit "A" certain excerpts from the prepublication copy of the Report of the Institute of Medicine, 1999 entitled "Marijuana and Medicine: Assessing the Science Base" by Janet E. Joy, Stanley J. Watson, Jr. and John A. Benson, Jr., Editors from the Division of Neuroscience and Behavioral Health with the Institute of Medicine, published at the National Academy Press in Washington, D.C. in 1999.

Affidavit of Peter Durovic, filed November 3, 1999, Appeal Book, Volume II, paragraph 1, p. 97;

Exhibit "A", Affidavit of Peter Durovic, filed November 3, 1999, Appeal Book, Volume II, p. 101.

66. The Institute of Medicine study was supported by the Executive Office of the President, through the Office of the National Drug Control Policy. It was approved by the Governing Board of the National Research Council, whose members are drawn from the Council of the National Academy of Science, the National Academy of Engineering and the Institute of Medicine. The Institute of Medicine was chartered in 1970 by the National Academy of Sciences to enlist distinguished members of the appropriate professions in the examination of policy matters pertaining to the health of the public. It acts under both the Academy's 1863 Congressional Charter responsibility to be an advisor to the Federal Government and on its own initiative in identifying issues of medical care, research and education.

Exhibit "A", Affidavit of Peter Durovic, filed November 3, 1999, Appeal Book, Volume II, p. 101.

67. The excerpt attached as Exhibit "A" to Mr. Durovic's affidavit essentially sets out the fact that marijuana is the common name for cannabis sativa, a hemp plant that grows throughout temperate and tropical climates and that a most recent review of the constituents of marijuana lists 66 cannabinoids and describes in detail their effects or interactions. The excerpt states that each Cannabis marijuana plant produces 66 related but unique cannabinoids that fall into 10 groups of closely related compounds. Each cannabinoid is the result of the expression of at least one gene. It is, in effect, a genetic trait.

Exhibit "A", Affidavit of Peter Durovic, filed November 3, 1999, Appeal Book, Volume II, p. 101.

66. As deposed to by Mr. Durovic, cannabis marijuana is a dioecious plant, having male and female organs on separate plants. This physiological fact imposes the requirement on any breeding program that twice as many plants need to be cultivated as for a monoecious, self-fertilizing plant (those having both sets of sexual organs on the same plant).

Affidavit of Peter Durovic, filed November 1, 1999, Appeal Book, Volume II, paragraph 2, p. 97.

67. As deposed to by Mr. Durovic, sex determination in Cannabis marijuana begins at the moment of fertilization, and the seeds produced are capable of growing into either a male or a female plant. Because both genders are required for successful propagation in subsequent generations, the farmer or breeder must ensure that seed of both sexes are planted. Since there are no distinguishing markings on the seed to indicate sex, a sufficient number of seeds must be planted to ensure that at least one member of each sex is present during flowering. Planting only two seeds results in a 50% probability that the two plants will be of the same gender, and thus incapable of generating offspring. In order to reduce the risk of such

failure below 10%, five seeds would need to be planted. To reduce the risk of failure below 1%, eight seeds would need to be planted. Thus, while breeders of self-fertilising monoecious plants can propagate their plants successfully from just one seed, breeders of dioecious plants must sow eight times as many seeds in order to reduce their risk of failure to less than 1% per generation. Sowing a greater number of seeds reduces the risk of failure even further.

Affidavit of Peter Durovic, filed November 1, 1999, Appeal Book, Volume II, paragraph 3, p. 98.

68. As deposed to by Mr. Durovic, the monk Gregor Mendel, the father of classical genetics, developed the first rational, mathematical understanding of the heritability of genetic traits in plants. Trained in mathematics and theology, he spent years of his life in a monastery cultivating the common garden pea, a monoecious plant, and studying its visible traits (flower colour, stem length, pod shape, etc.) using the mathematical tools of statistics. In order to generate scientifically valid data, he crossed hundreds of plants, tracking thousands of offspring.

Affidavit of Peter Durovic, filed November 1, 1999, Appeal Book, Volume II, paragraph 4, p. 98.

69. Apparently, as verified through Dr. Eve Stringham, professor of genetics and biochemistry at Trinity Western University, Gregor Mendel's original notebooks are preserved and indicate that he bred between 580 and 1081 pea plants for each of the seven traits that he was studying (average 923). In the result, his breeding study required 6,498 plants to be cultivated.

Affidavit of Peter Durovic, filed November 1, 1999, Appeal Book, Volume II, paragraph 5, p. 98.

70. As deposed to by Mr. Durovic, cannabinoids are the class of chemical compounds produced by the cannabis marijuana plant. Different cannabinoids are thought to have different physiological effects, such as reducing pain, stimulating appetite, and lowering the intra-ocular pressure that caused blindness in glaucoma patients. The optimal therapeutic use of marijuana for a given disease will depend on the relative ratios of the component cannabinoids. Each cannabis marijuana strain produces cannabinoids in a unique, or "signature" ratio, and anecdotal evidence from medical marijuana users confirms that those patients afflicted with the same disease (such as fibromyalgia) find optimal relief using the same strain of marijuana (such as Kush).

Affidavit of Peter Durovic, filed November 1, 1999, Appeal Book, Volume II, paragraph 6, p. 99.

71. As deposed to by Mr. Durovic, if a marijuana breeder were to conduct breeding experiments to the same vigorous scientific standards employed by Gregor Mendel in his analysis of the common garden pea, the scope of the project would be as follows. Assuming that the breeder can treat the breeding problem as the study of 10 genetic traits rather than of 66, then at an average of 923 plants per trait, the project would require approximately 9, 230 producing plants. Since male plants are required for the biological function of reproduction, but do not yield a significant amount of cannabinoids, the project would require twice as many, or approximately 18,460 marijuana plants.

Affidavit of Peter Durovic, filed November 1, 1999, Appeal Book, Volume II, paragraph 8, p. 99.

72. In addition, a search was conducted to determine the current state of the law relating to the medical use of marijuana within the member United States of America. A summary of the results of that search are as follows:

- (a) **The State of California** “Proposition 215 *Compassionate Use Act* of 1996” states that no physician in the State shall be punished for recommending marijuana use to a patient and that, subject to medical approval, State laws prohibiting cultivation or possession of marijuana shall not apply to patients or their primary caregivers. This Act exempts from the California Health and Safety Code patients or a patient’s primary caregiver who possesses or cultivates marijuana for the personal medical purpose of the patient upon the written or oral recommendation or approval of the physician.

Exhibit “A”, Affidavit of Peter Durovic, filed November 1, 1999, Appeal Book, Volume II, p. 30.

- (b) In 1998, State ballot initiatives were approved in Alaska, the District of Columbia, Oregon, Nevada and Washington and reaffirmed in Arizona. Each of the approved ballot initiatives exempts patients from State criminal penalties when they use marijuana for medicinal purposes.

Exhibit “B”, Affidavit of Peter Durovic, filed November 1, 1999, Appeal Book, Volume II, p. 32.

- (c) A ballot initiative failed in Colorado although voters in that State strongly favoured allowing patients access to medical marijuana. Just days prior to the election, the Secretary of States office announced that the sponsoring petitioners had failed to gather the necessary number of signatures required to qualify for the ballot. Consequently, the citizens of Colorado proposed to vote again in

November 2000. The Colorado Medical Marijuana Initiative stipulates that, subject to medical approval, a patient or primary caregiver will be deemed to have established an affirmative defence to charges of violating the State's criminal laws relating to the patient's medical use of marijuana.

Exhibit "C", Affidavit of Peter Durovic, filed November 1, 1999, Appeal Book, Volume II, p. 38.

- (d) In the State of Alaska, the "Bill Allowing Medical Use of Marijuana" stipulates that, subject to medical approval, no patient or primary caregiver may be found guilty of, or penalized in any manner for, a violation of any provision of law relating to the medical use of marijuana.

Exhibit "D", Affidavit of Peter Durovic, filed November 1, 1999, Appeal Book, Volume II, p. 44.

- (e) In the District of Columbia the "Legalization of Marijuana for Medical Treatment Initiative of 1998" states that, subject to medical approval, all seriously ill individuals have the right to obtain and use marijuana for medical purposes, and that neither they nor their primary caregivers violate the District of Columbia *Uniform Controlled Substances Act* of 1981. State voters seemingly approved this legislation on November 3, 1998, but a federal budget amendment forbade the expenditure necessary to count the votes and the results were unconfirmed at the end of that year. It was later determined that the Congressional ban on the counting of the medical marijuana initiative votes on November 3, 1998, in the District of Columbia was invalid and the results were finally returned on September 17, 1999, and the initiative passed by a margin of 69%.

Exhibit "E", Affidavit of Peter Durovic, filed November 1, 1999, Appeal Book, Volume II, p. 53.

- (f) In Oregon, the "Oregon Medical Marijuana Act", sponsored by the Oregonians for Medical Rights, provides that, subject to medical approval, a person engaged in or assisting in the medical use of marijuana is exempt from the criminal laws of that State.

Exhibit "G", Affidavit of Peter Durovic, filed November 1, 1999, Appeal Book, Volume II, p. 58.

- (g) In the State of Nevada, an amendment to Article 4 on the Constitution of the State of Nevada provides that, subject to

medical approval, the legislature shall provide by law for the use by a patient of marijuana for the treatment of specified illnesses.

Exhibit “H”, Affidavit of Peter Durovic, filed November 1, 1999, Appeal Book, Volume II, p. 70.

- (h) In Washington State, the “*Washington State Medical Use of Marijuana Act*”, sponsored by the Washington Citizens for Medical Rights, provides that, subject to medical approval, qualifying patients with terminal or debilitating illnesses shall not be found guilty of a crime under state law for the possession and limited use of marijuana.

Exhibit “I”, Affidavit of Peter Durovic, filed November 1, 1999, Appeal Book, Volume II, p. 72.

- (i) At the time that the research was conducted, it was indicated that in the State of Maine, polls were indicating that 70% of the residents of the State of Maine supported the medicinal use of marijuana and were scheduled to vote on the matter on November 2, 1999. That initiative subsequently passed.

Exhibit “J”, Affidavit of Peter Durovic, filed November 1, 1999, Appeal Book, Volume II, p. 79.

- (k) Mr. Todd McCormick did, in fact, publish a book entitled, “How to Grow Medical Marijuana” and it is available on the Internet. The book reports on Mr. McCormick’s lifelong struggle with cancer, his use of medical marijuana and his attempts to identify which strains of marijuana treat which illnesses.

Exhibit “K”, Affidavit of Peter Durovic, filed November 1, 1999, Appeal Book, Volume II, p. 82.

- (l) On July 29, 1998, the other principal in the case involving Ms. Boje, Peter McWilliams, made a statement from federal custody, a summary of which is as follows:
- (i) That he had never sold the drug in his life, nor asked nor authorized anyone to sell the drug and had never profited from any drug deal ever;
 - (ii) That he used medical marijuana to treat the nausea caused by his AIDS’ medications and that if he did not keep the medications down he would not live. In other words, that medical marijuana for him was a matter of life and death;

- (iii) That he had not used marijuana or any other illegal drug for decades prior to March of 1996 when he was diagnosed with AIDS and cancer (Non-Hodgkins lymphoma);
- (iv) That as of August 5, 1998 he was 49 years old and a writer and publisher with more than 30 books to his credit and 5 appearances on the New York Time Bestseller List. His titles include How to Survive the Loss of a Love, Hypericum & Depression, How to Heal Depression, You Can't Afford the Luxury of a Negative Thought, DO IT, Life 101 and Ain't Nobody's Business If You Do (a book openly critical of the drug war and the DEA). That is how Mr. McWilliams' made his living;
- (v) Mr. McWilliams says that he paid his co-accused, Todd McCormick, to write a book, not to grow and sell medical marijuana. He admits to being the money behind the Belair "medical marijuana mansion" and made this admission on the same day that Sheriff Block told a press conference in July of 1997, upon Todd McCormick's arrest, that the mansion had been bought with drug money;
- (vi) Mr. McWilliams said that because he came forward and told the truth so quickly in July of 1997, he found himself in federal custody in July of 1998 and has now been labelled a "Drug King Pin";
- (vii) Mr. McWilliams says that Mr. McCormick's book, "How to Grow Medical Marijuana", was scheduled to be on-line in July of 1998, had it not been for Mr. McWilliams' arrest on July 23, 1998;
- (viii) On December 17, 1997, nine Drug Enforcement Administration and Internal Revenue Service agents went to Mr. McWilliams' home, handcuffed him and went through every piece of paper that he owned. They took away his computer containing almost two years worth of work on medical marijuana. William F. Buckley, Jr. described this in his column as "it is as though they carried off the printing presses of the New York Times";
- (ix) Mr. McWilliams' describes himself as a vocal and, occasionally, effective proponent of medical marijuana and that that is why he is in jail. He is the publisher of The Medical Marijuana Magazine Online (<http://www.marijuanamagazine.com>) and had discussed medical marijuana on ABC, CNN, MSNBC, CBS Radio

Network, TIME, Los Angeles Times and dozens of others. He has testified before the National Academy of Sciences and before Senator John Vasconcellos' 1998 Medical Marijuana Committee;

- (x) Mr. McWilliams' addressed The Libertarian National Convention on July 4, 1998, and made a plea for medical marijuana to be available to all who need it;
- (xi) At no time did Mr. McWilliams violate Proposition 215, the *California Compassionate Use Act* on 1996, also known as California Law, 11362.5. Consequently, Mr. McWilliams asserts that the case against him is not The United States of America vs. Peter McWilliams but, rather, The United States of America v. The People of California, whose political will is being trampled on by the Federal Government;
- (xii) The Attorney General of California, Dan Lungren, has not upheld his oath of office to defend the laws and the citizens of California against all comers – including the Federal Government. On the contrary, it appears as if he aided and abetted the Federal forces;
- (xiii) While in federal custody, Mr. McWilliams was denied his AIDS medication - which must be taken without fail 6 times a day, a regimen he has followed scrupulously for 28 months – for more than 5 days. Already, a mutation of the AIDS virus may be replicating within his body, one that science cannot treat, one that may kill him. In other words, the United States Federal Government has already taken his life for the crime of treating his life-threatening illness – a treatment approved by four physicians and 56.4% of the California electorate;
- (xiv) Mr. McWilliams admits that he attempted to cultivate his own medical marijuana in his own home for his own use, using seeds purchased from a staff member of the Los Angeles Cannabis Buyers Club. Immediately after Mr. McCormick's arrest in July of 1997, the first Federal California medical marijuana arrest since the passage of Proposition 215 eight months earlier, Mr. McWilliams dismantled his indoor marijuana grow and donated the equipment to the Los Angeles Cannabis Buyers' Club;
- (xv) In other words, the moment the Federal Government actually did something about medical marijuana in California, Mr. McWilliams was out of the growing business – the first such

attempt in his life – and he has not returned to doing so. He donated (not sold) all of his equipment to the only seemingly federally approved marijuana growing operation in California – The Los Angeles Cannabis Buyers Club, now The Los Angeles Cannabis Cultivators Club. That Club is still in business and is still using Mr. McWilliams’ lights and harvesting more marijuana per month than he ever attempted to grow in his life;

- (xvi) Mr. McWilliams says that any sales that he planned were to be legal sales, through a non-profit organization that he had established before Mr. McCormick’s arrest – The Medical Botanical Foundation. That Foundation lies dormant, waiting for the Federal Government to come to its senses and waiting for the voters of California to tell Washington “We voted, and we mean it”.

Exhibit “L”, Affidavit of Peter Durovic, filed November 1, 1999, Appeal Book, Volume II, p. 94.

73. On June 14, 2000, Peter McWilliams died. He was only 50 years old. He apparently choked on his own vomit in his bathroom. He used to use marijuana to stem the nausea from the other drugs that he had to take and to prevent vomiting. The terms of his bail conditions forbade him to do so and he had to submit to weekly urine tests to confirm that he was living up to the terms of his bail. He was to be sentenced in a few weeks by Judge King. He had pled guilty to collaborating in the growing in the marijuana plants at the Bel Air mansion because Judge King had ruled that he could not present a medical necessity defence to the jury nor that Proposition 215 in California authorized his conduct. He was not going to be permitted to mention to the jury that he suffered from AIDS and cancer and got relief from the use of marijuana. With no defence left and facing the prospect of a mandatory minimum 10 years to life in a U.S. prison, he accepted a plea bargain and was facing up to 5 years imprisonment. Unlike co-defendant, Todd McCormick, his plea was not conditional reserving the right to appeal the judge’s ruling to the 9th Circuit Court of Appeal. The United States Libertarian Party pointed out that because Mr. McWilliams was prohibited from using medical marijuana and was denied access to the drugs anti-nausea properties, that that almost certainly caused his death. To quote William F. Buckley, Jr., “Is it being said, in plain language, that the judge’s obstinacy resulted in killing McWilliams? Yes.” On Monday, July 17th, 2000, U.S. District Court Judge Charles Breyer following a U.S. 9th Circuit Court of Appeal decision ordering him to consider an exemption for patients who face imminent harm and have no effective legal alternative to marijuana use, modified an injunction that he issued in 1998 against the Oakland Buyers Club that shut down that Club and five others. In recent ruling, he cleared the way for the Oakland Club

to distribute marijuana for medicinal purposes, indicating that the Government had not proven why seriously ill patients should be denied the drug. This decision, coming just over one month after the death of Mr. McWilliams, will allow the Oakland Cannabis Buyers' Cooperative to provide cannabis to members who face imminent harm from a serious medical condition and who have found that legal alternative to marijuana do not work or cause intolerable side effects.

74. When Ms. Boje was initially arrested, the U.S. Government sought her cooperation in the prosecution of the other defendants and she declined to do so. Once the charges were dropped, she fled to Canada fearing that her refusal to cooperate with the U.S. Government would be held against her. The charges were re-instituted, she was arrested in Canada and is facing extradition to the U.S. and a minimum of 10 years to life without parole for her minor role in attempting to assist seriously ill people. Todd McCormick is serving five years, pending his 9th Circuit appeal which will likely order a new trial. Peter McWilliams is dead. The other co-defendants have all negotiated plea bargains to avoid the minimum 10 years to life with parole. Efforts to obtain copies of their plea agreements to determine the extent to which they have been required to cooperate with the U.S. Government against Ms. Boje have been unsuccessful. Since coming to Canada, Ms. Boje has been a strong, outspoken critic of the U.S. War on Drugs, particularly as it relates to marijuana use and, more particularly, medical marijuana use. The United States Government is very unhappy, not simply because of her minor role in this entire matter, but because of her outspokenness and her criticisms of her own Government. It is believed that all of the other co-defendants, except Mr. McCormick, have been required to agree to testify against Ms. Boje if she is returned to the United States. The U.S. Government is attempting to stifle her freedom of speech and to persecute her for her political opinion.

All of which is respectfully submitted.

Dated: August 25th, 2000.

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