IV Drug Prohibition and the U. S. Marijuana Laws

i) The History of the Marijuana Laws

244. The most authoritative sources on the history of the non-medical use of drugs in the United States of America are **Profs. Charles Whitbread**, a professor of law at the University of Southern California Law School and **Prof. Richard J. Bonnie** of the faculty of law at the University of Virginia. In 1970, they wrote the article in the Virginia Law Review entitled, "**The Forbidden Fruit and the Tree of Knowledge – The Legal History of Marijuana in the United States**" and, subsequently, Prof. Bonnie was named **Deputy Director of the National Commission on Marijuana and Drug Abuse** and Prof. Whitbread was appointed a consultant to that Commission. In this 1971 – 1972 Commission, the two of them had unrestricted access to both open and closed files of the Bureau of Narcotics and Dangerous Drugs, formerly the Federal Bureau of Narcotics and known today at the Drug Enforcement Agency. As a result of that experience, they wrote a book entitled, "**The Marijuana Conviction – The Legal History of Drugs in the United States**". What follows is a summary of that work taken from a speech by Prof. Whitbread to the California Judges' Association in 1995.

The 1900's

245. In 1900, there were far more people addicted to drugs in the United States of America than there are today. Apparently, between 2% and 5% of the entire adult population was addicted to drugs at that time.

246. There were apparently 2 principal causes for the dramatic level of drug addiction at that time. Firstly, the use of morphine and various derivatives in legitimate medical practice and, secondly, the growth and development of the "patent medicine" industry. The use of morphine in conjunction with medical operations was widespread. It's use in battlefield operations during the civil war was extensive and many Union veterans became addicted. The popular press dubbed this addiction as "soldiers' disease". In so far as the patent medicine industry is concerned, it was common at the turn of the century for salesmen to roam the country offering potions and elixirs of all sorts. What purchasers were not told and was only discovered some time later, was that many of these "medicines" contained up to 50% morphine by volume. In the result, the rural middle-aged white woman was the common addict, and not the young, urban male member of a minority group, like today. As people consumed these medicines, they understandably felt much better and thought that they worked and purchased more. For some reason, these medicine were more appealing to women than men at that time. In further contrast to today, almost all addiction

was accidental and not deliberate. Most people did not know what they were taking and how it would impact upon them.

"The History of the Non-Medical Use of Drugs in the United States", by Prof. Charles Whitebread, A Speech to the California Judges Association 1995 annual conference, www.druglibrary.org/schaffer/History/whiteb1.htm, pp. 2 and 3.

The Pure Food and Drug Act (1906)

247. Apparently, this statute did more to reduce the level of drug addiction than any criminal laws. This law created the **Federal Food and Drug Administration** that must approve all food and drugs for human consumption. Patent medicines were not approved once they were tested. Secondly, the Act provided that certain drugs could only be sold on prescription. Thirdly, the Act required that drugs that could be potentially habit forming were required to specify that on the label. This law put the patent medicine industry out of business and substantially reduced accidental addictions.

"The History of the Non-Medical Use of Drugs in the United States", by Prof. Charles Whitebread, A Speech to the California Judges Association 1995 annual conference, www.druglibrary.org/schaffer/History/whiteb1.htm, pp. 3 and 4.

The Harrison Act (1914)

248. This was the first federal criminal law in the United States of America to criminalize the non-medical use of drugs. This was the beginning of the United States' experiment in using prohibition and the criminal law in this regard. Initially, it applied to none of the drugs with which we are concerned today. It did apply to opium, morphine and their derivatives and the derivatives of coca, like cocaine. However, there was no reference to amphetamines, barbiturates, marijuana, hashish or any hallucinogenic drugs. Further, it had a strange or peculiar structures but, nevertheless, became a model for subsequent federal legislation right through to 1969. The law itself was entitled, "**The Harrison Tax Act**". In its intent, it was to regulate the medical use of drugs and criminalize the non-medical use. However, 1914 was the high water mark of the Constitutional doctrine entitled, "State Rights". Consequently, it was widely thought that the United States Congress did not have the power to regulate a particular profession or to pass general criminal law. Consequently, in the face of constitutional opposition, Congress came up with the novel idea of masquerading the Act as a taxing statute. Under the Act, doctors paid taxes and this enabled them to obtain a stamp from the Government allowing them to prescribe drugs

for their patients, in accordance with the Regulations pursuant to the statute. A second tax was imposed on every single non-medical exchange of these drugs. This tax was deliberately made very high, thereby amounting in effect to a criminal prohibition. The tax grossly exceeded the value of the drugs themselves. In the result, a person found in possession of a scheduled drug without having paid the tax was charged with tax evasion, not possession of a prohibited substance. The statute was administered by the Treasury Department.

"The History of the Non-Medical Use of Drugs in the United States", by Prof. Charles Whitebread, A Speech to the California Judges Association 1995 annual conference, www.druglibrary.org/schaffer/History/whiteb1.htm, pp. 4 and 5.

The Early U.S. State Marijuana Laws

249. Between 1915 and 1937, 27 States passed criminal laws against the use of marijuana. The motivation to pass these laws fell into three categories.

250. The **first group** or category of States were the **Rocky Mountain** and **south western States**, **Texas**, **New Mexico**, **Colorado** and **Montana**. These States passed these laws just after 1914 when there was a substantial migration of Mexicans that had come across the border in search of better economic conditions and worked heavily as rural labourers, beet field workers, cotton pickers and other similar occupations. They brought marijuana with them. In contrast, "white people" knew nothing about marijuana. The legislative records from that time illustrate the position of the proponents of marijuana prohibition. For example, one proponent made the following statement on the floor of the **Texas Senate**:

> "All Mexicans are crazy, and this stuff (referring to marijuana) is what makes them crazy".

251. Another example is the statement of a proponent of **Montana's** first law made the following comment on the floor of the **State legislature**:

> "Give one of these Mexican beet field workers a couple of puffs on a marijuana cigarette and he thinks he's in the bull ring at Barcelona".

Obviously, the reason for these marijuana laws was not hostility towards the drug but hostility towards the newly arrived Mexicans that used it.

252. The **second group** or category of States were those in the **north east**, namely, **Connecticut**, **Rhode Island, New York** and **New Jersey**. The genesis for these laws were, not the Mexicans as there was no substantial migration to these States by Mexicans, but rather the "fear of substitution". This concept is best illustrated by **a New York Times editorial** from 1919 which provided as follows:

> "No one here in New York uses this drug, marijuana. We have only just heard about it from down in the south west, but, we had better prohibit its use before it gets here otherwise all the heroin and hard narcotic addicts cut off from their drug by the *Harrison Act* and all the alcohol drinkers cut off from drugs by the 1919 alcohol prohibition will substitute this new and unknown drug, marijuana, for the drugs they used to use".

Apparently, this "fear of substitution" coupled with the anti-Mexican sentiment in the south west and Rocky Mountain areas accounted for 26 of the 27 States.

253. The **third category** consisted of the one remaining State, namely **Utah**, which was the first State to ever enact a criminal law against the use of marijuana. Utah did not have in the past and does not now have a substantial Mexican-American population. Utah is associated with the Mormon Church and the history of the first marijuana law in the United States is connected to the history of Utah and Mormonism. In its early days, the Mormon Church permitted polygamy. In 1876, the U.S. Supreme Court in ***Reynolds v. The United States*** held that the Mormons were free to believe what they wanted but were not free to practice polygamy in the United States of America. The State and local police, however, did not enforce this law. However, in 1910, the Mormon Church in Synod in Salt Lake City decreed that polygamy was a religious mistake and banned it as a matter of the Mormon religion. There followed a crackdown which led a large number of Mormons to leave the **State of Utah** and the United States and they moved to north west **Mexico**. Their plan was to convert Indians and Mexicans to Mormonism. However, by 1914, they had very little luck in this regard and most of the Mormons were not happy in northwestern Mexico and, consequently, decided to go back to Utah. However, the Indians in Mexico had given them marijuana and they took this back to Utah with them. The Mormon Church has always been opposed to the use of euphoriants of any kind and when they saw that this had occurred, the Synod in August of 1915 decreed the use of marijuana as being contrary to the Mormon religion. In October of 1915, the State legislature met and enacted every religious prohibition as a criminal law. This is how the first criminal marijuana occurred in the United States of America.

"The History of the Non-Medical Use of Drugs in the United States", by Prof. Charles Whitebread, A Speech to the California Judges Association

1995 annual conference, www.druglibrary.org/schaffer/History/whiteb1.htm, pp. 5 – 7.

The Marijuana Tax Act of 1937

254. This was the **first federal marijuana law**, modeled on the *Harrison Act* as a tax statute. As part of the new deal era in Washington in the late '30's, Congress decided to hold hearings on this question. Unlike other Congressional hearings that go on at great length, these hearings on national marijuana prohibition were very brief. They lasted one hour on each of two mornings. There were three bodies of testimony. The first came from Commissioner **Harry Anslinger**, the then newly named Commissioner of the Federal Bureau of Narcotics. Mr. Anslinger was the Commissioner for Federal Bureau of Narcotics from 1930 until 1962, when **J. Edgar Hoover** was the Commissioner of the FBI. Mr. Anslinger, quoting from the works of a New Orleans District Attorney by the name of Stanley, told the Congressional hearings that:

> "Marijuana is an addictive drug which produces in its users insanity, criminality and death".

255. The next group or body of testimony came from businessmen who represented **the hemp industry**. Hemp was used to make rope, its resins as bases for paints and varnishes and its seeds for birdseed. The representative **from the rope industry** testified that that industry did not care because, while hemp had been the principal crop at **Mount Vernon**, the secondary crop at **Monticello** and it was the principal cash crop in **North Virginia** and **south Maryland** at the time of the Revolutionary War, nevertheless by about 1820 it got cheaper to import hemp from the Far East and so by 1937, the United States did not grow hemp anymore. This representative did not foresee that 5 years later, by 1942, when all sources of hemp from the Far East were cut off and the United States needed a lot of hemp to outfit its ships for World War II, the Federal Government would go into the business of growing hemp on gigantic farms throughout the mid-west and the south. To this day, hemp grows all along the railroad tracks because of the huge farms that existed during World War II.

256. **The paint and varnish representatives** said that they didn't care either because they could use something else. Only **the birdseed representatives** complained. They were asked if they couldn't use a different seed. In reply, they told Congress that they couldn't because they had never found another seed that made birds' coats so lustrous and made them sing so much. This is what led to the **exemption** in the *Marijuana Tax Act* that continues to this day for so-called "**denatured seeds**".

257. The third body of testimony came from the **medical profession**. Two pieces of medical evidence were introduced at the hearing. The first from a pharmacologist at Temple University who claimed that he injected the active ingredient in marijuana into the brains of 300 dogs and that 2 of those dogs had died. When asked by the Congressman if he had chosen dogs for their similarity of their reactions to that of humans, the pharmacologist answered, "I wouldn't know, I am not a dog psychologist". **Professor Whitbread** points out that the active ingredient in marijuana was not synthesized until after World War II so we will never know what the pharmacologist actually injected into the dogs, but it was almost certainly not the active ingredient in marijuana.

258. The other piece of medical evidence came from **Dr. William C. Woodward** who was both a lawyer and a doctor and was chief counsel to the **American Medical Association**. He testified on behalf of the American Medical Association as follows:

> "The American Medical Association knows of no evidence that marijuana is a dangerous drug".

259. However, the immediate response from one of the Congressmen was as follows:

> "Doctor, if you can't say something good about we are trying to do, why don't you go home?".

Another Congressman said:

> "Doctor, if you haven't got something better to say than that, we are sick of hearing you".

260. **Professor Whitbread** was fascinated to determine why counsel to the most prestigious group of doctors in the United States was treated in this high-handed way by Congress. He concluded that "the history of drugs in this country perfectly mirrors the history of this country". In 1936, **President Franklin Roosevel**t was re-elected in the largest landslide election in the history of the United States. He brought with him two Democrats for every Republican and almost all of them pledged to the package of economic and social reform legislation today called "The New Deal". The American Medical Association from 1932 to 1937 had systematically opposed every single piece of New Deal legislation. In 1937, the Congressional Committee was made up of New Deal Democrats who were sick of hearing from the doctors.

261. Consequently, over the objections of the American Medical Association, the *Marijuana Tax Act* passed out of the Congressional Committee and onto the floor of Congress. The debate on the floor of Congress lasted 1 minute and 32 seconds. The Bill was brought to the floor of the **House of Representatives** without any Senate debate at 5:45 on a Friday afternoon, August 20th. This was in pre-air conditioning Washington and there were very few people on the floor of the House. The Speaker called for the Bill to be passed on "tellers". The vast bulk of U.S. legislation is not by recorded vote but by more people walking past this point than walked past that point. The House was apparently about to pass the Act on "tellers" without discussion, without a recorded vote, when one of the few Republicans left in Congress, a Representative from upstate **New York**, stood up and asked 2 questions which constituted the entire debate on national marijuana prohibition. He asked, "Mr. Speaker, what is this Bill about?". Mr. Speaker, **Mr. Sam Rayburn** replied, "I don't know. It has something to do with a thing called marijuana. I think it's a narcotic of some kind". The Representative from upstate New York in his second question, which was important to the Republicans but not the Democrats – "Mr. Speaker, does the American Medical Association support this Bill?". Apparently, in response to this question, a member of the House, who later became a Supreme Court Justice, leapt to his feet and said:

> "Their Dr. Wentworth (sic) came down here. They support this Bill 100%."

This, obviously, wasn't true and was supposed to be a reference to Dr. William C. Woodward, but that statement was apparently good enough for the Republicans and the Bill passed, on "tellers" without a recorded vote. As previously mentioned, there was never any debate or recorded vote in the Senate and the Bill went to President Roosevelt's desk and he signed it, leading to national marijuana prohibition.

"The History of the Non-Medical Use of Drugs in the United States", by Prof. Charles Whitebread, A Speech to the California Judges Association 1995 annual conference, www.druglibrary.org/schaffer/History/whiteb1.htm, pp. 711.

1938 to 1951

262. Shortly after the passage of *Marijuana Tax Act* of 1937, Commissioner Anslinger held a conference purportedly of all the people who knew something about marijuana. He invited 42 people. On the first morning of the conference, 39 of them got up and asked why they had been asked to come to the conference because they claimed to know nothing about marijuana. This left 3 other people, which included Dr. Woodward of the American Medical Association and his assistant and a pharmacologist from Temple University – the guy with the dogs.

In the result, Commissioner Anslinger named the pharmacologist from Temple University **the official expert of the Federal Bureau of Narcotics on Marijuana**. That person held that post until 1962. In other words, the only person who agreed with Commissioner Anslinger was named official expert in their quest to determine, after prohibition, what the drug actually did.

263. In addition, Commissioner Anslinger found out that people were violating the national marijuana prohibition in using marijuana and that most of these people fell into an identifiable occupation group, namely **jazz musicians**. In 1947, Anslinger sent out a letter asking various police agents to prepare cases in their jurisdiction involving these musicians so they could have a great national roundup arrest of all such persons in a single day. There wasn't a single police agent who didn't have reservations about this idea. Nearly all of them wrote providing one excuse or another for the fact that they could not carry out his request. Commissioner Anslinger would ignore these letters and continued to press for his national roundup. Some jazz musicians were, in fact, arrested in the late '40's. However, when Commissioner Anslinger was testifying before a **Senate Committee in 1948** and asked for more agents and was asked why, he said that the marijuana laws were being violated and when asked by whom, he said, "musicians". He then looked up and apparently went on to say, "And I don't mean good musicians, I mean jazz musicians". As Professor Whitbread points out, this single line provoked the greatest response in the country's history about the non-medicinal use of drugs. A torrent ensued. Within 24 hours, 76 newspaper editorials slammed Anslinger, including special editions of the then blooming trade press of the jazz music industry. Within 3 days, the Department of the Treasury received 15,000 letters. Typically, they would applaud Mr. Anslinger for his efforts to rid America of the scourge of narcotics addiction but would point out that if he was as ill informed about that as he was about his music, he would never succeed. Shortly thereafter, Commissioner Anslinger had an appointment with the Secretary of the Treasury and after that, no further mention was ever made of the plan of the national roundup and arrest of musicians.

264. To adults growing up in the '30's and '40's, the reputation given to marijuana was incredible. It was routinely referred to as the "killer drug", "the assassin of youth" and, of course, "reefer madness". Some of this reputation came from Commissioner Anslinger in trying to compete with J. Edgar Hoover in their empire building. However, apparently a large part of marijuana's reputation stemmed from Anslinger's statement that "marijuana is an addictive drug which produces in its users insanity, criminality and death". The word "insanity" was the magic word. In the '30's and '40's, it became common for defendants in murder trials to present as their sole or most significant defence that they were not guilty by reason of insanity because they had used marijuana prior to the commission

of the crimes. To run this defence, they needed an expert witness. They turned to the man from Temple University – the guy with the dogs.

265. In one of the most famous trials, this pharmacologist was qualified for the defence as an expert on the marijuana insanity defence and admitted that he had not only experimented with the dogs and written about it, but had said that he had used the drug himself. When he was asked what happened, his exact response was:

> "After two puffs on a marijuana cigarette, I was turned into a bat".

He went on to say that he flew around the room for 15 minutes and then found himself at the bottom of a 200 foot high inkwell. This is a true story from **Newark**, **New Jersey** in **1938**. The headline in the **Newark Star Ledger** the following day, October 12, 1938, was "Killer drug turns doctor to bat!". These stories sold a lot of newspapers.

266. This trial involved 2 women who had jumped on a Newark, New Jersey bus and had shot and killed and robbed the bus driver. Naturally, to support the defence, they took the stand and testified that essentially the smoking of marijuana made them crazy. One of the women testified that "after two puffs on a marijuana cigarette my incisor teeth grew six inches long and dripped with blood".

267. Apparently, every one of these so called marijuana insanity defences was successful. In one **New York** case, the mere presence of a bag of marijuana in the room without it being consumed was sufficient to give off "homicidal vibrations" that caused the accused to start killing dogs, cats, and ultimately 2 police officers.

268. While these trials, and the defences and the media attention that they garnered, created quite a reputation for marijuana, nevertheless Commissioner Anslinger was concerned about the success of these defences and wrote to the pharmacologist telling him that if he didn't stop testifying for the defence, his status as official expert for the Federal Bureau of Narcotics would be revoked. Because the pharmacologist didn't want to lose his status, he stopped testifying and the defences and therefore the acquittals stopped.

"The History of the Non-Medical Use of Drugs in the United States", by Prof. Charles Whitebread, A Speech to the California Judges Association 1995 annual conference, www.druglibrary.org/schaffer/History/whiteb1.htm, pp. 11 – 15.

The Boggs Act, 1951

269. This legislation reflects the formula for drug legislation in the United States of America. The formula is that someone, usually the media, perceives an increase in drug use and, in the result, a new criminal law is passed with harsher penalties in every single offence category. In 1951, there was this perception that young people in high school were starting to use drugs. Consequently, the *Boggs Act* of 1951 quadrupled the penalties in every single offence category and provided a whole new rationale for marijuana prohibition.

270. In the Congressional hearings in relation to this Act, a doctor who ran for the Government, the **Lexington Kentucky Narcotics Rehabilitation Clinic**, testified just before Commissioner Anslinger that the medical community knew that marijuana was not an addictive drug, didn't produce death or insanity and instead of producing criminality, probably produced passivity. Consequently, Commissioner Anslinger had the rug pulled out from under him in relation to the old rationale that he had put forward at the 1937 hearings. Consequently, Commissioner Anslinger to avoid the mistakes of the past, testified that the doctor was right and that marijuana was not an addictive drug and didn't produce insanity or death but, on the other hand, it was "the certain first step on the road to heroin addiction". This was the beginning of the notion that marijuana was the **stepping stone** to heroin which, from 1951 on, became the sole rationale for the national marijuana prohibition. It was the first time that marijuana was lumped in with all other drugs and not treated separately and the penalties for every offence category were multiplied.

271. Contextually, it should be born in mind that in 1951 the **Korean War** and the **Cold War** were in full swing. The media reported this perceived drug use among high school kids as "foreign enemies" using drugs to subvert the American young. Cartoons regularly appeared in the media showing pictures of the Chinese people labelled "Oriental communism" and having a big needle in their arms marked "dope" and an American kid lying on the ground marked "free world". Once again, the threat of an external enemy was used to garner public support for this law.

"The History of the Non-Medical Use of Drugs in the United States", by Prof. Charles Whitebread, A Speech to the California Judges Association 1995 annual conference, www.druglibrary.org/schaffer/History/whiteb1.htm, p. 15.

1956 and the Daniel Act

272. This new drug law, named after **Senator Price Daniel** of **Texas**, reflected the formula once again. In 1956, we had the first set of televised Senate hearings. They were the hearings of **Senator Estes Kefauver** of **Tennessee** about organized crime in America. These hearings, which were presented on television, disclosed that there was such a thing as "organized crime" in America and that it made money selling drugs. That was all the perception that the public needed and the ***Daniel Act*** was passed with increased penalties in every offence category. They had just been increased 4 times in the ***Boggs Act*** and now they were increased by 8 times.

273. While each of these Federal statutes were being passed, individual States were passing similar versions and in the period of 1958 to 1969, these State Acts typically made possession of marijuana or any other drug the most heavily penalized crime. Mandatory minimum sentences of 20 years without parole or probation or without eligibility for any type of suspension developed. In **Virginia**, for example, the crime of first degree murder carried a mandatory minimum sentence of 15 years, rape the mandatory minimum of 10 years but possession of marijuana, the mandatory minimum of 20 years and if you sold it, a mandatory minimum of 40 years.

"The History of the Non-Medical Use of Drugs in the United States", by Prof. Charles Whitebread, A Speech to the California Judges Association 1995 annual conference, www.druglibrary.org/schaffer/History/whiteb1.htm, pp. 15 – 18.

The Dangerous Substances Act, 1969

274. This was the first new drug law that didn't follow the formula. For the first time in the country's history, the perception of increased drug use during the '60's led to a lowering of the penalties instead of an increase in them. It was also the first time that the "taxing" methodology was abandoned. In this Act, the Federal Government took all of the drugs, except nicotine and alcohol, and classified them by **2 criteria** namely, its **medical use** and its **potential for abuse**. The drugs were put into schedules and then assigned to the offences of possession, possession with intent to sell, sell and selling to minors. **Schedule 1** drugs were drugs that had little or no medical use and high potential for abuse. LSD, marijuana and hashish were placed in this Schedule. **Schedule 2** were for drugs that had some medical use but still a high potential for abuse. They inserted barbiturates and amphetamines into this category. The **next Schedule** was the one where there was high medical use and high potential for abuse. This included morphine and codeine. Codeine was being used in almost every single

prescription cough medicine and is very addictive. The **next Schedule** included antibiotics.

275. But then along came the "**War on Drugs**". Once again, there was a perception that there was an increase in drug use. This was followed by a great dramatic decision to declare war on drugs and predominately a war on drug users. One law after another was introduced raising the penalties so that by 1990, 30% of the minority group population in the **City of Baltimore** who are males and between the ages of 20 and 29 are under Court supervision for drugs. The addition of forfeiture statutes helped to defray the cost of the fight.

"The History of the Non-Medical Use of Drugs in the United States", by Prof. Charles Whitebread, A Speech to the California Judges Association 1995 annual conference, www.druglibrary.org/schaffer/History/whiteb1.htm, pp. 16 – 18.

ii) Prohibition – A Failed Policy

276. Professor Whitbread describes the iron law of prohibition. Prohibitions are always enacted by the U.S. Government to govern the conduct of "them". **Alcohol prohibition** is the best example. Everyone who has ever written about it agrees on why it collapsed**. Large numbers of people supported the idea of prohibition who are not themselves opposed to drinking**. For example, in 1919 if you were a Republican in upstate New York, you would support alcohol prohibition because it would close the licensed saloons in the **City of New York**, which you viewed to be corrupt patronage and a power base for the Democratic Party in New York. Therefore, every Republican in **New York** was in favour of national alcohol prohibition. But as soon as it passed, they went for a drink to toast their success. These people supported alcohol prohibition but were not opposed to drinking.

"The History of the Non-Medical Use of Drugs in the United States", by Prof. Charles Whitebread, A Speech to the California Judges Association 1995 annual conference, www.druglibrary.org/schaffer/History/whiteb1.htm, p. 18.

277. Between 1840 and 1888 in England, the consumption of **gin** was banned. Not drinking alcohol but only gin. This was because the rich people drank whisky and the poor people drank gin.

"The History of the Non-Medical Use of Drugs in the United States", by Prof. Charles Whitebread, A Speech to the California Judges Association 1995 annual conference, www.druglibrary.org/schaffer/History/whiteb1.htm, p. 18.

278. **Gambling prohibition** is another example. California's prohibition on gambling is intended to control the poor people because they are presumed to not know how to handle their finances. The law is not intended for the well off who are presumed to be able to handle their finances and control them.

"The History of the Non-Medical Use of Drugs in the United States", by Prof. Charles Whitebread, A Speech to the California Judges Association 1995 annual conference, www.druglibrary.org/schaffer/History/whiteb1.htm, p. 19.

279. Again, every criminal prohibition always regulates the conduct of "them" or the conduct of an identifiable "them". Consequently, if the law comes back to bother "us" then we move to get rid of it. Alcohol prohibition, once again, is the perfect example.

"The History of the Non-Medical Use of Drugs in the United States", by Prof. Charles Whitebread, A Speech to the California Judges Association 1995 annual conference, www.druglibrary.org/schaffer/History/whiteb1.htm, pp. 18 and 19.

280. **Marijuana prohibition** is another example. Of the 650,000 arrested in 1993 for violating the marijuana laws, they were not all minority group members. Some of them were very identifiable children of the middle class or "us". When the law comes back to penalize the children of "us" who enacted it, then we move to change it. We will not maintain a law that penalizes the sons and daughters of the wealthy class.

"The History of the Non-Medical Use of Drugs in the United States", by Prof. Charles Whitebread, A Speech to the California Judges Association 1995 annual conference, www.druglibrary.org/schaffer/History/whiteb1.htm, p. 19.

281. Consequently, the "War on Drugs" will continue until everyone sees its patent bankruptcy. However, the United States is in love with prohibition. It loves to solve difficult medical, economic and social problems by the simple enactment of criminal law. Once the criminal law is passed, the Government takes the position

that it has solved the problem and turns it over to the police and judiciary and the criminal justice system to work out. In Professor Whitbread's opinion, the next prohibition will be in relation to **tobacco.** The Surgeon General has determined that the smoking of cigarettes will kill you. What is needed is that this intractable difficult social, economic or medical problem must also divide by social or economic class between "us" and "them". As a result of the Government spending a lot of money since 1968 trying to persuade us not to smoke, the large numbers who have quit are college educated and the largest number of smokers that continues to exist are those that regularly appear in the criminal court rooms across the United States of America. As Professor Whitbread points out, it is not the movers and kickers that will be penalized but those that are to be "moved and kicked". He predicts that as the divisions between these 2 groups increases, that ultimately we will have a criminal statute that forbids the manufacture, sale or possession of tobacco, cigarettes or tobacco products. In his view, the tobacco companies have seen this coming and are moving their operations out of the United States and are diversifying. They are going to sell their cigarettes overseas to places like **China**. Once the criminal statute is enacted, the prices will escalate, smokers will have to hide, tobacco products will remain available as they will be sold by organized crime. American is in love with the idea of prohibition and cannot live without it. A new criminal law with harsher penalties in every category for everybody is the favourite solution for difficult social, economic and medical problems.

"The History of the Non-Medical Use of Drugs in the United States", by Prof. Charles Whitebread, A Speech to the California Judges Association 1995 annual conference, www.druglibrary.org/schaffer/History/whiteb1.htm, p. 20.

iii) Medical Marijuana in the U.S.A.

a) The Medical Evidence

282. In January of 1997, the **United States White House Office of National Drug Control Policy (ONDCP)** asked the **Institute of Medicine** of the **Royal Academy of Sciences** to conduct a review of the scientific evidence to assess the potential health benefits and risks of marijuana and its constituent cannabinoids (hereafter referred to as the "**IOM Report**").

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 4, Exhibit "A".

283. According to the IOM Report and various other sources, marijuana has been demonstrated to be safe and effective in the treatment of numerous medical conditions. Conditions for which marijuana has to date been shown to be effective include **muscle spasms** and **tremor**, **pain**, **migraine headaches**, **nausea** and **vomiting**, and **loss of appetite**, all of which arise in illnesses ranging from **multiple sclerosis** to **AIDS Wasting Syndrome** and **epilepsy** and in the chemotherapy treatments for **cancer**. It has also been found to reduce intraocular pressure and is effective in slowing the progression of **glaucoma**.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7(a) and the references cited therein, including Exhibit "A";

Affidavit of Rick Bayer, sworn the 18th day of November 1999, Exhibit "B", "Is Marijuana the Right Medicine For You?: A Factual Guide to Medical Uses in Marijuana" by Bill Zimmerman, Rick Bayer and Nancy Crumpacker;

See also "Medical marijuana in a time of prohibition", Lester Grinspoon, International Journal of Drug Policy, 10 (1999) 145 – 146.

284. With respect to **AIDS**, the IOM Report states that the effects of cannabinoids indicate that they are promising for the treatment of **Wasting Syndrome** in AIDS patients and that nausea, appetite loss, pain and anxiety are all afflictions of Wasting that can be mitigated by marijuana use. While some other medications may be more effective than marijuana, they are not equally effective in all patients. The question was not whether marijuana or cannabinoid drugs would be superior to other drugs but whether some groups of patients might obtain added or better relief from marijuana or cannabinoid drugs. The report acknowledged that there was no clear alternative for people suffering from chronic conditions that might be relieved by smoking marijuana, such as pain or AIDS Wasting, until a non-smoked rapid onset drug delivery system is available.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 and the references cited therein, including Exhibit "A".

285. Marijuana is non-toxic and in its natural form has been found to be one of the safest therapeutically active substances known to man. Nearly all other medicines have toxic and potentially lethal effects but marijuana does not. There is no record of a cannabis induced fatality. This is so, notwithstanding 5,000 years of human experience with the drug and the now daily use by enormous numbers of people throughout the world. It has been estimated that 20 to 50 million Americans routinely use the drug. By contrast, **aspirin** which is

commonly used as an over the counter medicine, causes 100 deaths each year. Drugs used in medicine are given what is called a "**LD-50**" which is a rating that indicates at what dosage 50% of test animals receiving a drug will die as a result of drug induced toxicity. Researchers have attempted to determine marijuana's LD-50 rating in test animals without success. In other words, they have been unable to give them enough marijuana to induce death. Presently, marijuana's LD-50 is estimated to be around 1:20,000 or 1:40,000. This means that to induce death, a marijuana smoker would have to consume 20,000 to 40,000 times as much marijuana as is contained in 1 marijuana cigarette. If using a NIDA supplied marijuana cigarette weighing 0.9 grams, a smoker would have to consume nearly 1,500 lbs of marijuana within about 15 minutes to induce a lethal response. Consequently, practically speaking marijuana cannot induce a lethal response as a result of drug related toxicity.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (b) and his reference to Young, J., *Opinion and Recommended Ruling, Findings of Fact, Conclusion of Law and Decision of Administrative Law Judge in the Matter of Marijuana Rescheduling Petition*, Docket No. 86–22, U.S. Department of Justice, Drug Enforcement Administration (1988), hereinafter referenced as Judge Young Ruling;

See also "Medical marijuana in a time of prohibition", Lester Grinspoon, International Journal of Drug Policy, 10 (1999) 145 – 156;

"Marijuana Myths Marijuana Fact – a review of the scientific evidence" by Lynn Zimmer and John Morgan, The Lindesmith Center, New York and San Francisco, 1997, ch. 2.

286. Drug safety is also determined by something called the "**therapeutic ratio**". This ratio defines the difference between a therapeutically effective dose and dose which is capable of inducing adverse effects. If you use **aspirin** as the example, once again, it has a therapeutic ratio of 1:20. Two aspirins are the recommended dose for adult patients. 20 times this dose, or 40 aspirins, may cause death in some patients and would certainly cause gross injury to the digestive system, including extensive bleeding. The therapeutic ratio for most prescribed drugs is around 1:10 or lower. For example, **valium**, a commonly used prescription drug, may cause very serious biological damage if patients use 10 times the recommended therapeutic dose. The lower the therapeutic ratio, the more dangerous the drug. Many of the drugs used to treat patients with **cancer**, **glaucoma** and **multiple sclerosis** are highly toxic. The therapeutic ratio for drugs used in atineoplastic therapies, for example, are regarded as extremely poisonous and their therapeutic ratio may fall below 1:1.5. These drugs also have very low LD-50 ratios that can result in toxic or lethal reactions even when the correct dose is used. By contrast, marijuana's therapeutic ratio, like its LD-

50, is impossible to quantify because it is so high. Consequently, in strict medical terms, **marijuana is far safer than many foods that we commonly consume and in its natural form is one of the safest therapeutically active substances known to man**. By any rational analysis, it can be safely used within a supervised routine of medical care.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (b) and his reference to Young, J., *Opinion and Recommended Ruling, Findings of Fact, Conclusion of Law and Decision of Administrative Law Judge in the Matter of Marijuana Rescheduling Petition*, Docket No. 86–22, U.S. Department of Justice, Drug Enforcement Administration (1988), hereinafter referenced as Judge Young Ruling;

See also "Medical marijuana in a time of prohibition", Lester Grinspoon, International Journal of Drug Policy, 10 (1999) 145 – 156.

287. In 1990, researchers identified nerve receptors in the brain that are stimulated by tetrahydrocannabinol (THC), one of the active ingredients in marijuana and they cloned the gene that gave rise to those receptors. In 1992, a natural body chemical that binds to those receptors was identified. It was named "**anandamide**," after the sanskrit word meaning "bliss". The receptors for anandamide are located mainly in the cerebral cortex and in the basal ganglia and cerebellum, which are parts of the brain associated with body movement. The receptors in the cortex may explain the cognitive effects of cannabis and those in the basal ganglia and cerebellum may account for the ameliorative effects of THC and other cannabinoids on muscle spasms and other body movement disorders. **Anandamide** is naturally produced by the body to modulate pain, regulate immune system functioning, enhance balance and perform a variety of other functions which are still being studied. Consequently, the therapeutic products in marijuana act through natural pathways in the brain to produce healing effects.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (c).

288. **Marijuana is a plant, not a drug**. Its chemistry is complex and varies from plant to plant and is incapable of reproduction in standardized dosages, something which is common to all plants. A "drug", on the other hand, is a scientifically established chemical compound capable of being reproduced and standardized dosages. The marijuana plant contains more than 400 known compounds of which more than 60 are cannabinoids. Studies on the effects of these compounds individually and synergistically has just begun. Consequently, to classify marijuana as a "drug" or a "narcotic" is arbitrary and without scientific

merit. The use of medical marijuana is no different than the use of dietary supplements such as **aloe vera**, **chamomile**, **echinecea**, **garlic**, **ginger**, **gingko**, **ginseng**, or **golden seal**.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (d);

Also see "Medical marijuana in a time of prohibition", Lester Grinspoon, International Journal of Drug Policy, 10 (1999) 145 – 156, pp. 146 – 147.

b) <u>The Early History, Current Support and Issues in the Health Community</u>

289. Marijuana has been used as medicine for thousands of years. Doctors in the United States officially recognized its therapeutic value as early as 1840. It was included in the United States pharmacopeia from 1850 through to 1942. The U.S. Government accepted and encouraged the medicinal uses of marijuana between 1915 and 1935 by providing instructions on growing cannabis sativa for medical pharmaceutical purposes in its **U.S. Department of Agriculture Farmers' Bulletin No. 663**. Between 1840 and 1900, European and American medical journals published more than 100 articles on the therapeutic uses of cannabis. In the second half of the 1800's, fluid extracts of cannabis were marketed by **Park Davis**, **Squibb**, **Lilly** and **Burroughs Wellcome**. **Grimault and Sons** manufactured cannabis cigarettes as an asthma relief. At least 28 medicinal products containing marijuana were on the market in 1937 and it was recognized then as medicine in good standing by the **American Medical Association**.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (e);

Also see "Medical marijuana in a time of prohibition", Lester Grinspoon, International Journal of Drug Policy, 10 (1999) 145 – 146.

290. Support for medical marijuana now exists from various prestigious medical organizations, including the following:

i) **<u>The American Academy of Family</u>**

In its 1996 – 1997 reference manual – selected policies on health issues, this organization indicates its support for the use of marijuana under medical supervision and control for specific medications.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (f)(i).

ii) **The American Cancer Society**

On July 24, 1997, California State **Senator**, **John Vasconcellos**, received a letter from the **American Cancer Society** indicating that the Society supported California Senate Bill 535 because it is consistent with the Society's long-held position of supporting research of any agent or technique for which there may be evidence of a therapeutic advantage. The Bill focused on medical marijuana research.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (f)(ii).

iii) **The American Medical Association**

In its report, "**Council on Scientific Affairs Report #10: Medical Marijuana**", in December of 1997, the AMA recommend that adequate and well-controlled studies of smoked marijuana be conducted in patients who have serious conditions for which preclinical, anecdotal, or controlled evidence suggests possible efficacy including AIDS wasting syndrome, severe acute or delayed emesis induced by chemotherapy, multiple sclerosis, spinal cord injury, dystonia and neuropathic pain.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (f)(iii).

iv) **American Preventive Medical Association**

On December 8, 1997, this organization published a policy statement entitled "**Medicinal Use of Marijuana**" and in it stated that marijuana should be available for appropriate medicinal purposes in accordance with state law, and went on to indicate that physicians who recommend and prescribe marijuana for medicinal purposes in States where such use is legal, should not be censured, harassed, prosecuted or otherwise penalized by the federal government.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (f)(iv).

v) **The American Public Health Association (APHA)**

In 1995, this Association, which is the oldest and largest organization of public health professionals in the United States with more than 50,000 members, adopted a **specific resolution, 9513 on Access to Therapeutic Marijuana/Cannabis**. The preamble to this resolution points out that 36 States have passed legislation recognizing marijuana's therapeutic value, that it has an extremely wide acute margin of safety under medical supervision and cannot cause lethal reactions and, among other things, that it was wrongly placed in Scheduled I of the *Controlled Substances Act* (1970) thereby depriving patients of its therapeutic potential. This organization concluded that greater harm was caused by the legal consequences of marihuana prohibition then possible risks of medicinal use. They recommended further research but also urged the administration and Congress to expeditiously make cannabis available as legal medicine where it is shown to be safe and effective and to immediately allow access to therapeutic cannabis through the **Investigational New Drug Program (IND)** that has been closed by the Secretary of Health and Human Services since 1992.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (f)(v).

vi) **American Society of Addiction Medicine (ASAM), The British Medical Association (BMA)**

On April 16th, 1997 the **ASAM** Board of Directors in its "**Statement on Marihuana**" took the position that cannabis should be administered under the supervision of a knowledgeable physician and to prove medical uses should be carefully controlled and called for increased research for funding and access. But also recommended that physicians should be free to discuss the risks and benefits of medical use of marihuana.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (f)(vi).

vii) **British Medical Association**

In a document entitled "**Therapeutic Uses of Cannabis**" in November 1997 it concluded that the evidence indicates that cannabinoids are remarkably safe drugs with less side effects then other drugs used for the same illnesses. It urged the government to change the *Misuse of Drugs*

Act and to allow the prescription of cannabinoids to patients in certain circumstances. It also urged that information be provided to the police, the courts and other prosecuting authorities about medicinal reasons for use of cannabis.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (f)(vii).

viii) **The California Academy of Family Physicians**

The California Academy of Family Physicians this organization's had its position statement adopted by the **Academy's Congress of Delegates** in February of 1994. It supported the medical use of marihuana initiative Proposition 215 in keeping with its policy to expedite access to cannabinoids for use under the direction of a physician.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (f)(viii).

` ix) **California Medical Association**

By **resolution #107a – 97**: Medical Marihuana, the CMA in April 1997 urged that carefully designed and controlled clinical trials on the effectiveness of inhaled marihuana be allowed to proceed and that the Government initiate efforts at the federal level to facilitate the availability of such marihuana for use in conducting research to determine its efficacy.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraphs 7(f)(ix).

x) **California Nurses Association**

By letter dated September 21, 1995, CNA **President Kurk Laumann** RN wrote a letter to **Governor Peter Wilson** of California indicating it support for Assembly Bill 1529 which would eliminate California's prohibition against possessing marihuana or growing marihuana for medical purposes. It described the measures as a compassionate alternative for patients suffering from certain diseases that must break the law to use marihuana to relieve their symptoms.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (f)(x).

xi) **California Society on Addiction Medicine**

In the spring of 1997 in the CSAM news, this organization published an article entitled "**Position on Medical Use of Marihuana in California**" supporting controlled studies of the medical usefulness of marihuana. It urged the District Attorney to remove cannabis from Schedule I.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (f)(xi).

xii) **Congress of Nursing Practice**

By motion passed May 31st, 1996, this Congress supported education for RN's regarding current evidence based therapeutic uses of cannabis in support of its further investigation.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (f)(xii).

xiii) **French Health Minister, Bernard Kouchner**

In December of 1997 the Health Minister for France was quoted in the ***Independent on Sunday*****,** December 7th, 1997 to have stated that it should obviously be possible for a physician to prescribe cannabis.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (f)(xiii).

xiv) **Health Canada Spokesman, Dann Michols**

Mr. Michols is quoted in the ***Ottawa Citizen*** December 19th, 1997 indicating that there is no problem basically with marihuana as medicine but there has to be a process whereby it can be said that doctors have undertaken the right experiments and produced results that show the benefits are greater than the risks to the patients.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (f)(xiv).

xv) **"Marijuana Use and Mortality" by Kaiser Permanente**

In April 1997 in the **Kaiser Permanente** study entitled "**Marihuana Use and Mortality**" it was recommended that medical guide lines regarding marihuana's use should be established and noted how clinical research on potential therapeutic uses for marihuana had been difficult to accomplish in the United States despite reasonable evidence of the efficacy of THC and marihuana in various circumstances.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (f)(xv).

xvi) **"Deglamorising cannabis", The Lancet**

November 11th, 1995 Editorial in *The Lancet* entitled "Deglamourising cannabis" this prestigious medical journal declared that the smoking of cannabis, even long term, was not harmful to health. It called for controls similar to tobacco.

"Deglamorising cannabis", The Lancet, Volume 346, Number 8985, November 11, 1995, Canadian Foundation for Drug Policy at www.cfdp.ca;

See also "Dangerous habits", The Lancet, Volume 352, Number 9140, November 14, 1998.

xvii) **National Institutes of Health**

In August 1997 this Institute concluded in a report entitled "***Workshop on the Medical Utility of Marihuana: Report to the Director*** " that marihuana looked promising to recommend new controlled studies. It described the levels of interest and indicated that it should consider relevant administrative mechanism to facilitate grant applications.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (f)(xvii).

xviii) **National Nurses Society on Addictions**

This society published a paper entitled "**Position Paper: Access to Therapeutic Cannabis**" approved by its Board of Directors on May 1st, 1995. It concluded that cannabis had been used medicinally throughout

the world for centuries. It reviewed the illnesses and diseases for which it had found to be effective. It then went on to indicate that as nurses there was an obligation to advocate for optimal health care for all individuals and that medicine which enhances quality of life for persons suffering from life and sense threatening illnesses should not be prohibited from access to medicine that have therapeutic value and a wide margin of safety. It is recommended that practitioners have the right to prescribe cannabis to patients when the potential benefits are past the health risk. It urged the Federal Government to remove marihuana from Schedule I immediately and to make it available for physicians to prescribe.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 7 (f)(xviii).

xix) **"Federal Foolishness and Marijuana", The New England Journal of Medicine**

In an editorial on January 30, 1997 entitled "**Federal foolishness on Marihuana**" the editor **Dr. Jerome Kassirer** took the position that federal authorities should rescind the prohibition of medical use of marihuana for seriously ill patients and allow physicians to decide which patients to treat. It urged the government to change its classification from Schedule I to Schedule II.

"Federal Foolishness and Marijuana" by Jerome P. Kassirer, M.D., The New England Journal of Medicine, January 30, 1997.

xx) **Vice President Al Gore**

In a recent **Town Hall Meeting** in **Derry**, **New Hampshire**, **Vice President Al Gore** made a break with Clinton Administration by advocating "flexibility" regarding policy toward the medical use of marijuana. Gore responded to questions stating that doctors and patients "ought to have the option" to use marijuana to relieve suffering. "Where alleviation of pain in medical issues is concerned, we have not given doctors enough flexibility to help patients who are going through acute pain. Many of us have seen that ourselves."

Affidavit of Valerie A. Leveroni Corral, sworn the 12th day of May, 2000, p.3.

xxi) **Physician Leadership on National Drug Policy (PLNDP)**

Physician Leadership on National Drug Policy (PLNDP), a Brown University-based group of national leaders in the field of medicine, has spoken out on the issue of readjusting priority with respect to substance abuse. Such a shift would move the focus from the arena of law enforcement into health care. Many states are attempting to create new avenues of regulation in order to allocate monies from the state general fund, to move support of the state prison system to support of treatment. In **California**, the **Campaign for New Drug Policy** strives to establish a ballot measure allocating $120,000,000 for just such a measure. A member of Drug Czar McCaffrey's staff, **Robert Weiner** of the **Office of the National Drug Control Policy**, made this statement, "Treatment is tough on crime because it prevents crime".

Dr. David S. Greer, Professor of Community Health and Dean of Medicine Emeritus at Brown University School told the *Brown Daily Herald* the PLNDP advocates important changes in American drug policy. In 1998, a study group reached a consensus on making a statement that calls for the replacement of enforcement-based policies with public health strategies. Members of the Physician Leadership on **National Drug Policy** include **Louis Sullivan, MD**, **former Commission of the Food and Drug Administration** under President Clinton. This commission is comprised of other prestigious individuals of various medical backgrounds including a former Surgeon General, a Nobel laureate and the editors of both the *American Medical Journal* and the *New England Journal of Medicine*.

Affidavit of Valerie A. Leveroni Corral, sworn the 12th day of May, 2000, p.3.

xxii) **British Medical Journal**

On December 23 – 30, 1995, the above editorial appeared in the British Medical Journal essentially calling for a look at decriminalization and legalization as being more likely than prohibition to succeed in minimizing the harm from drug abuse. This article notes that British policy is essentially prohibitionist and yet about 7 million people have taken cannabis at some time in their lives. It also documents the reduction in cannabis use in the Netherlands among young people between 1976 and 1985, showing the rates of use to be substantially below those of the United States where prohibition is at its strongest.

"The war on drugs: Prohibition isn't working – some legalisation will help", British Medical Journal, Volume 331, 23 – 30 December 1995.

xxiii) **Canadian Journal of Public Health**

In the March – April 1997 edition of the Canadian Journal of Public Health, the Honorary Scientific Editor, Richard G. Mathias, reviews the numbers of deaths in British Columbia from illicit narcotic overdoses and the total in Canada of 732 in 1992 and the consequences of drug prohibition. He strongly argues that decriminalization should occur and the drug use issue transferred from the criminal law to a health issue.
"**Just Say Yes: How Are We Doing in the War Against Illegal Drug Use?" by Richard G. Mathias, MD, FRCPC, Canadian Journal of Public Health, March – April 1997.**

291. It contrast, physicians in the United States are now entitled to prescribe opium, morphine, amphetamines, phencyclidine, (PCP or "angel dust"), and barbiturates. All of these are far more harmful and addicting than marihuana. Consequently the extensive documentation of therapeutic uses from marihuana demonstrates irrationality on the part of the United States of America in failing to allow for its controlled use by individuals with a particular medical need.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraphs 7 (g) and (h).

292. Because "**smoking**" is an effective way to rapidly deliver the therapeutic compounds in marihuana into the blood stream the IOM Report recommends that clinical trials of smoked marihuana be conducted for the treatment of numerous medical conditions. Other methods of delivering drugs to the body include invasive drug delivery methods such as **intravenous injection**, **injection into muscle or other tissue**, **implanted pumps** and others or by **absorption through tissue** such as the abdominal tract, the skin (transdermal), nasal tissue, sublingual, suppository, pulmonary, and others. Invasive drug delivery methods risk infection in the patient. This is particularly true and a grave danger for AIDS patients. Intravenous injection also risks introduction of air into the blood stream. The absorption through tissue method depends on the particular tissue and the particular drug molecule involved. Cannabinoids have very low diffusion rate except in the case of the alveoli of the lung. The alveoli of the lungs enable the most efficient absorption of cannabinoids into the blood stream. Consequently the lungs are the ideal entry point for the rapid non-invasive introduction of cannabinoids into the body. The lungs are very robust and according to the American Conference of Governmental Industrial Hygienist a person can inhale about 30 mg per day of nuisance dust into the lungs day after day for years without effects. It is likely that humans have developed a resistance to breathing smoke through the evolutionary process of natural selection. While research

shows that regular tobacco smoking is associated with greater annual rates of decline and lung function compared to non-smoking the same results have not been obtained in relation to marihuana smoking. Even heavy habitual marihuana smoking does not cause an accelerated decline in lung function with age. There is no conclusive evidence that marihuana smoking causes cancer in humans including the types of cancer associated with tobacco use. Well-designed case control epidemiological studies are required.

Affidavit of Paul David Wolfe, sworn the 8th day of May, 2000, paragraphs 8 (a) to (h), The Institute of Medicine Report, pp, 7, 8 and 119 - Exhibit "A";

Also see "Medical marijuana in a time of prohibition", Lester Grinspoon, International Journal of Drug Policy, 10 (1999) 145 – 156, pp.148 – 149;

Also see Affidavit of Keith Stroup, sworn March 21, 2000, para. 6.

293. There are 4 types of pulmonary drug delivery devices on the market. They are **metered dose inhalers**, **dry powder inhalers**, **nebulizers** and **vaporizers**. This type of drug delivery is common and widely accepted in the world. There are more than 500 million metered dose inhalers used annually worldwide and are used by 80% of all asthma patients. While primarily used for asthma at this time clinical trials are ongoing for inhalable insulin and it is likely that they will be used for other medicines in future. There are problems with these devices however. The draw back of the **metered dose** and **dry powder inhalers** is that most of the drug is deposited in the upper respiratory tract around the mouth were it is moved to the throat and swallowed. This is inefficient and adds variability to the dosage delivered to the patient. There are various problems involving particle size, close coordination between triggering of the device and inhalation. The US Food and Drug Administration has set out guidelines for these devices and they describe many of the difficulties associated with developing and manufacturing metered dose and dry powdered inhalers.

Further, the devices produce fixed dosages and therefore doctors wishing to titrate the doses based on a patient's body weight or metabolism cannot do so with an inhaler. Consequently it is believed that taking into account these draw backs it will still take many years before one of these devices is developed to deliver cannabinoid drugs. In the meantime there are patients with debilitating symptoms who have determined that the smoking of marihuana provides relief.

Affidavit of Paul David Wolfe, sworn the 8th day of May, 2000, paragraphs 8 (i) to (l) and (m) – (n), Exhibit "B";

See also "Medical marijuana in a time of prohibition", Lester Grinspoon, International Journal of Drug Policy, 10 (1999) 145 – 156, p. 154.

294. Another type of device used to deliver drugs to the lungs is the **nebulizers**. In a nebulizer a drug solution is aerosolized by either passing high velocity air over a liquid surface (a jet nebulizer) or by subjecting the solution to ultrasonic vibration (an ultrasonic nebulizer). While the patient does not have to coordinate inspiration with dose generation, these devices are not portable and consequently the patient has to go to a hospital or keep one at home. Use of these devices are not common. Another problem in terms of the delivery of cannabinoids is the solubility of cannabinoids in water. It is very low and perhaps too low to be practical. The fourth device is the **vaporizer** which delivers the drugs to the lungs as vapors in a gaseous form. Vaporizers are components in anesthesia machines, delivering anesthetic agents for general anesthesia. Marihuana can be "vaporized". It is heated to a temperature at which the volatile cannabinoids are given off as vapors, but below a temperature which would cause the plant to ignite. Patients can inhale the vapor without smoke. It appears to be an ideal delivery method. Dr. Lester Grinspoon, recommended vaporization in his review, for the Institute of Medicine.

Affidavit of Paul David Wolfe, sworn the 8th day of May, 2000, paragraphs 8 (o) to (p), The Institute of Medicine Report, Exhibit "A".

295. In addition there exists synthetic marihuana, **Dronabinol**. It is sold in capsules sesame oil for oral use and is marketed under the brand name **Marinol**. It is used in the treatment of emesis (vomiting). Doctors are authorized to prescribe it. It is the only drug in the US scheduled under its brand name rather than its medical name. In 1989 physicians prescribed nearly 100,000 doses and in 1991 the Federal Food and Drug Administration expanded its uses to treat weight loss in patients with AIDS. Once this synthetic drug became available, marihuana should have been transferred from Schedule I of the *Control Drugs and Substances Act* to Schedule II just like coca and opium, which are the sources of Schedule II medications cocaine and morphine. There are problems with **Marinol** because of its poor solubility in aqueous solutions and it high first-pass metabolism in the liver. Only 10 – 20% of an oral dose reaches the systemic circulation. Its onset is slow, as peak plasma concentrations are not attained until two to four hours after dosing. When compared to inhaled marihuana which is rapidly absorbed or to intravenous use where plasma concentrations peak instantaneously, oral administration takes a 1-hour to 1 ½. **Consequently this drug is not an adequate substitute for smoked marihuana**. Obviously it cannot be given to a vomiting patient. Its single concentrated dose is apparently overwhelming causing a sense of mental confusion and anxiety in some patients. The delay of 2 – 4 hours before full effects is problematic. The fact that it is solely THC ignores the fact that there are other medicinally beneficial ingredients in the whole marihuana plant including all the other cannabinoids. There is a lot of variation in individual responses to this drug compared to smoked marihuana.

Patient acceptance and compliances is necessary in determining therapeutic efficacy. Patients with prescriptions for Marinol still risk arrest and incarceration for smoking marihuana. Consequently objections to the introduction of cannabinoids by smoking or vaporizing whole marihuana on grounds of inaccuracy of dosing are not reasonable particularly when there are no known cause of death by toxic overdose from smoking, eating or otherwise ingesting any amount of marihuana. Further, in the case of acutely or terminally ill patients, it is unreasonable to object to their smoking marihuana on grounds that smoking may have long term adverse effects on their respiratory system. These persons are acutely or terminally ill any event.

Affidavit of Paul David Wolfe, sworn the 8th day of May, 2000, paragraphs 8 (q) to (v);

Also see "Medical marijuana in a time of prohibition", Lester Grinspoon, International Journal of Drug Policy, 10 (1999) 145 – 156, pp. 153 – 155.

296. As **Dr. Grinspoon** points out in his article entitled "**Medical marijuana in a time of prohibition**" the medical value of marijuana is now clear to many physicians and patients for 3 reasons. Firstly, it is remarkably non-toxic, like most medicines and has never caused an overdose death and has minimal short term and long term side effects compared to the other medicines for which it may well be substituted. Secondly, once it is no longer prohibited and, therefore, it will be less expensive than the medicines that it replaces. Thirdly, it is very versatile as case histories and clinical experience suggests, it is useful in the treatment of more than 2 dozen symptoms and syndromes. As evidence of its efficacy and safety accumulates and its value is accepted, the major questions will how it should be made available. When Dr. Grinspoon first considered this issue in the '70's, he felt that the solution was to simple move the drug from Schedule I to Schedule II of the *Comprehensive Drug Abuse and Control Act* of 1970. Now, 25 years later, it is his view that it should simply be made fully available as medicine on a general legalized basis.

"Medical marijuana in a time of prohibition", Lester Grinspoon, International Journal of Drug Policy, 10 (1999) 145 – 156.

297. Dr. Grinspoon points out that cannabis was legally accepted as medicine until 1941 when it was dropped from the passage of the ***Marijuana Tax Act***. It had been listed in the **U.S. Pharmacopeia** and if it hadn't been removed, it would have been grandfathered under the ***Comprehensive Drug Abuse and Control Act*** as a prescription drug just like cocaine and morphine. Furthermore, in the late '70's and early '80's cannabis was used medically by hundreds of patients, mostly in the synthetic form in many projects conducted in several states for the

treatment of nausea and vomiting in cancer and chemotherapy. Also, the U.S. Federal Government approved its use as medicine in 1976 by instituting the **Compassionate IND program** under which physicians could obtain an individual investigational new drug application (IND) for a patient to receive cannabis. It was closed in 1992 and only 8 remaining patients are receiving cannabis through the Federal Government. According to Grinspoon, simply transferring marijuana to Schedule II would not be enough to make it available as a prescription drug at this time. The rigorous expense of the time consuming tests required by the Food and Drug Administration would make it unlikely that someone would fund the process. Grinspoon doubts whether the FDA rules should apply to cannabis. He says:

> "There is no question about its safety. It is one of humanity's oldest medicines, used for thousands of years millions of people with very little evidence of significant toxic effects. More is known about its adverse effects than about those of most prescription drugs. The American government has conducted a decades-long multimillion-dollar research program in a futile attempt to demonstrate toxic effects that would justify the prohibition of cannabis as a non-medical drug. Should time and resources be wasted to demonstrate for the FDA what is already so obvious?"

"Medical marijuana in a time of prohibition", Lester Grinspoon, International Journal of Drug Policy, 10 (1999) 145 – 156 at p. 147.

298. While a debate continues with respect to the efficacy of cannabis because most of the evidence of its useful is based on case reports and clinical experience but does not have the imprimatur of the science by being subjected to rigorous double-blind controlled studies. Grinspoon argues that case reports and clinical experience is often underestimated as they are the source of much of our knowledge of synthetic medicines, as well as plant derivatives. He points to the fact that controlled experiments were not needed to recognize the therapeutic potential of **chloral hydrate**, **barbiturates**, **aspirin**, **curare**, or **lithium**. How the therapeutic value of **penicillin** was widely recognized after it had been given to only 6 patients. How similar evidence revealed the use of **propranolol** for hypertension, **diazepam** for status epilepticus and **imipramine** for childhood enuresis. These drugs had originally been approved by regulators for other purposes. Similarly, as early at 1976, several small and imperfect studies showed that an **aspirin** a day could prevent a heart attack. In 1988, a large scale experiment demonstrated these effects dramatically and the study was stopped to make the life saving results available. Had the medical community acted more quickly in this regard, it is arguable that many deaths would have been prevented in the mid-'70's and late '80's. Grinspoon suggested that the lesson is that marijuana, like aspirin, as a substance known to be unusually safe

and with enormous potential medical benefits. While it is impossible to be sure about the effect of aspirin on heart attacks without a long term study, innumerable reports show that cannabis often brings immediate relief from suffering that can be measured in a single person. He notes that case histories are a known experimental method, known as the N-of-1 clinical trial, or the single patient randomized trial. Many patients carry out such experiments on themselves and there is now widespread consensus around the world as to its beneficial effects.

"Medical marijuana in a time of prohibition", Lester Grinspoon, International Journal of Drug Policy, 10 (1999) 145 – 156 at p. 148.

299. Grinspoon points to other problems with subjecting marijuana to the FDA approval process. He notes that marijuana is a plant material containing many chemicals and that it is chiefly taken by smoking unlike any other drug in the current pharmacopeia. Further, many are getting relief from cannabis now and should not be required to wait for the lengthy FDA process to be completed. He points to two inframodels arising out of cannabis clubs or cooperatives that make marijuana available. The **first model**, followed by the **Oakland Buyers Club**, is similar to the conventional delivery system for medicine. The patient who needs medicinal cannabis goes to the Club and presents a note from a physician which certifies that the patient has a condition for which the physician recommends cannabis and the staff at the buyers club fill the prescription. The patient takes the medicine away and is not expected to consume it on the premises. In the **second model** epitomized by the **San Francisco Cultivators' Club**, the club is more of a social club where the people obtain the medicine and smoke it on the premises and become involved in other activities along the lines of a hospice or medical support group. While most people support the Oakland Club approach, Grinspoon points to the fact that the importance of the social aspect cannot be underestimated as emotional support for the patients is often important and plays an important role in battling their illness.

"Medical marijuana in a time of prohibition", Lester Grinspoon, International Journal of Drug Policy, 10 (1999) 145 – 156 at p. 149.

300. Referring once again to the FDA approval process and the problems that would be engendered, he points out that:

> "Generally speaking, the more dangerous a drug is, the more serious or debilitating must be the symptom or illness for which it is approved. Conversely, the more serious the health problem, the more risk is tolerated. If the benefit is very large and the risk very small, the medicine is distributed over the counter (OTC). OTC drugs are considered so

> useful and safe that patients are allowed to use their judgment without a doctor's permission or advice. Thus, today anyone can buy and use aspirin for any purpose at all. This is permissible because aspirin is considered so safe; it takes "only" 1000-2000 lives a year in the United States."

"Medical marijuana in a time of prohibition", Lester Grinspoon, International Journal of Drug Policy, 10 (1999) 145 – 156 at p. 151.

301. Grinspoon points to other drugs, such as **Ibuprofen** and other NSAIDS drugs that can be purchased over the counter because they too are considered very safe because "only" 7000 Americans lose their lives to these drugs annually. The same is true with respect to many herbal remedies whose dangers have not been determined and which may only have placebo effects. To compare these drugs with marijuana supports the finding of **Administrative Judge Francis L. Young** who said it was "**among the safest therapeutic substances known to man**". According to Grinspoon, if it was now in the official pharmacopeia, it would be a "**serious contender for the title of least toxic substance in that compendium**". Nevertheless, government schemes for its medical use continue to suggest that it is too dangerous to be used except under most stringent limitations.

"Medical marijuana in a time of prohibition", Lester Grinspoon, International Journal of Drug Policy, 10 (1999) 145 – 156 at p. 151.

302. In conclusion, Grinspoon points to a worrisome downside with respect to the isolation of extracts or the creation of analogue and how they may be marketed. He notes that patients have generally not found **dronabinol** (**marinol**) to be nearly as useful as the whole smoked plant. Also, these drugs are much more expensive than the easily accessible and less expensive plants. The benefits from whole smoked marijuana are extraordinarily high compared with the risks and this may not be true with respect to analogue. In Grinspoon's view, the distinction between medical and non-medical use may be incompatible with the realties of human needs. He believes that once the era of prohibition has been brought to a de facto end, it will then be possible to realize the full potential of this remarkable substance and its medical potential in particular.

"Medical marijuana in a time of prohibition", Lester Grinspoon, International Journal of Drug Policy, 10 (1999) 145 – 156 at pp. 155 and 156.

c) Legal and Political Issues – the Feds vs. the States, the People and the Sick

303. In 1970 the US Congress enacted the ***Controlled Substances Act*** **(CSA)**, which was designed to rationalize federal control over dangerous drugs. The Act contains five categories of controlled substances designated as Schedules I – V and defined in terms of dangers and benefits. The control mechanisms imposed on the manufacturing, acquisition, and distribution of substances depends upon which schedule they are in. Schedules I and II are the most severely restricted and Schedule V the least severe. Marihuana is listed in Schedule I. According to the Act a drug or substance is not to be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The three finding required to list a drug or substance in Schedule I are that it must have **high potential for abuse**, its must have **no currently accepted medical use** in the treatments in the United States, and there must be a **lack of accepted safety for use** of the drug or other substance under medical supervision. **Unless all three are present the substance is not supposed to be listed in Schedule I. None of these requirements are met in the case of marihuana** and yet it remains in Schedule I. Since 1984 the Secretary of Health and Human services has required by law to submit a report to Congress every three years, describing current research findings made with respect to drug abuse, including current findings on the health effects of marihuana. The first report was filed in 1984. The second report covering research from 1983 – 1986 was filed in 1987. The third report summarizing research from 1986 – 1989 was filed in 1991. No report has been filed since 1991.

Affidavit of Paul David Wolfe, sworn the 8th day of May, 2000, paragraph 9 (a) & (b), *Controlled Substances Act* (21 U.S.C. Paragraph 812).

304. In **1972 President Richard Nixon** appointed a panel of experts lead by former **Pennsylvania Governor Raymond Shafer** entitled **The National Commission on Marihuana and Drug Abuse**. This panel and its report entitled "**Marihuana: A Signal of Misunderstanding**" (**1972**) concluded that marihuana prohibition posed significantly greater harm to the user than the use of marihuana itself. It is recommended that state and federal laws be changed to removed criminal penalties for possession of marihuana for personal use and for the casual distribution of small amounts

Affidavit of Paul David Wolfe, sworn the 8th day of May, 2000, paragraph 9 (c).

305. In 1972, a petition was submitted to the US Bureau of Narcotic and Dangerous Drugs (now the DEA) to reschedule marihuana as a prescribable medicine. It was not until 1988 that the **DEA's Chief Administrative Law Judge Francis L. Young** gave his ruling, after hundreds of hours of testimony and numerous Court battles in the intervening 16 years. He concluded that:

> "The evidence in this record clearly show that marihuana has been accepted as capable of relieving the distress of great numbers of very ill people, and doing so with safety under medical supervision. It would be unreasonable, arbitrary and capricious for the DEA to continue to stand between those sufferers and the benefits of this substance in light of the evidence in this record."

Affidavit of Paul David Wolfe, sworn the 8th day of May, 2000, paragraph 9 (d).

306. Nevertheless, the DEA administrator **Jack Lawn** overruled Judge Young's order to transfer marihuana to Schedule II, which would have allowed doctors to prescribe it. Mr. Lawn did this he said because "the chemistry, toxicology, and pharmacology of marihuana is not established". Mr. Lawn's decision was upheld by the courts in **Alliance for Cannabis Therapeutics** vs. **Drug Enforcement Administration**, 930 F.2d 936 (D.C. Cir. 1991). In 1992 the DEA issued a final rejection for all requests for reclassification. All of the questions raised by Administrator Lawn have now been answered by detailed research in favour of marihuana's medical effectiveness, mild addictive potential and relative safety for use under medical supervision.

Affidavit of Paul David Wolfe, sworn the 8th day of May, 2000, paragraph 9 (d).

307. In **1976 Robert Randall of Washington D.C.** was afflicted with glaucoma and grew marihuana to assist him. He was charged and defended himself using the Common Law doctrine of "necessity". On November 24th, 1976 **Judge James Washington** ruled that his use of marihuana constituted a "medical necessity". He concluded in part as follows:

> "While blindness was shown by competent medical testimony to be the otherwise inevitable result of defendant's disease, no adverse effects from the smoking of marihuana have been demonstrated. ..Medical evidence suggest that the medical prohibition is not well-founded".

and;

> "It is unlikely that [marihuana's] slight, speculative and undemonstrable harm could be considered more important than defendant's right to sight".

Affidavit of Paul David Wolfe, sworn the 8th day of May, 2000, paragraph 9 (e) and [*U.S. v. Randall*, D.C. Superior Court, D.C. Crim. No. 65923-75] referred to therein.

308. In May of 1976 Randall petitioned the Federal Government and in response began receiving FDA approved access to government supplies of medical marihuana. He was the first American to receive marihuana for the treatment of a medical disorder. In 1978 these federal agencies disquieted by his outspoken oppositions sought to silence him by disrupting his legal access to marihuana. President Carter's drug advisor, **Peter Bourne** went so far as to threaten him. The June 6th, 1977 letter to Randall, Bourne said "Publicity in this case has forced consideration of tightening up the dispensing of your supplies". In response Randall brought suit against the FDA and DEA, the **National Institute on Drug Abuse (NIDA)**, the **Department of Justice** and the **Department of Health, Education and Welfare**. An out of court settlement was requested within 24 hours after the suit was filed. That settlement provided Randall with prescriptive access to marihuana through a federal pharmacy located near his home. This settlement became the legal basis for the **FDA's Compassionate IND program**. It was initially limited to patient afflicted with marihuana-responsive disorders and some orphan drugs. In the mid 1980's it was expanded to include HIV –positive people seeking legal access to drugs which had not yet received FDA marketing approval. In 1992, in response to a flood of new applications from AID patients, the Bush administration closed the IND program to all new applicants. It remains in operation today for only eight surviving recipients approved prior to 1992.

Affidavit of Paul David Wolfe, sworn the 8th day of May, 2000, paragraph 9 (e).

309. In **1978**, the **State of New Mexico** set up a program to make marihuana available to cancer patients pursuant to an Act of the State legislature. The legislature overwhelmingly passed this legislation to make marihuana available not only for research, but also for therapy. Marihuana was given to patients in the form of cigarettes obtained from the Federal government. The program operated from 1979 – 1986, when funding was terminated. During those seven years 250 cancer patients in New Mexico received either marihuana cigarettes or THC. Twenty to 25 physicians in New Mexico sought and obtained marihuana cigarettes or THC for their patients during this period. All oncologist in New Mexico accepted marihuana as effective for some of their patients. At least ten hospitals were involved in the program. Voluminous reports filed by participating

physicians make it clear that marihuana was highly effective as a anti-emetic substance. It was found to be a far superior to the best available conventional anti-emetic drugs, such as compazine, and is clearly superior to synthetic THC pills. More than 90% of the patients in the program reported significant or total relief from nausea and vomiting. Most of these patients had been doing this before the program and had told their physicians that they were doing so.

Affidavit of Paul David Wolfe, sworn the 8th day of May, 2000, paragraph 9 (f).

310. Also in **1978**, the legislature of the **State of Louisiana** became one of the first State legislatures in the United States to recognize the efficacy of marihuana in controlling emesis by enacting legislation intending to make marihuana available by prescription for therapeutic use by chemotherapy patients. **The State Marihuana Prescription Review Board** was established, but it became apparent that because of Federal restrictions, marihuana could only be obtained legally for use in cumbersome formal research programs. Eventually the State entered into a research program using synthetic THC, but without much enthusiasm, because most of the professionals who had wanted it for treating their patients did not have the time, resources or inclination to get involved in the research and study. Consequently the original purpose of the legislation was frustrated by Federal authorities. Patients who had hoped to obtain it under the legislation went outside the law and obtained it illicity.

Affidavit of Paul David Wolfe, sworn the 8th day of May, 2000, paragraph 9 (g)

311. In **1979**, the **Michigan State Legislature** enacted legislation with a view to making marijuana available therapeutically for cancer patients and others. The State Senate passed the Bill 29 to 5. The House of Representatives passed Bill 100 to 0. In March of 1982, the Michigan State Legislature passed a resolution asking the Federal Congress to try and alter the Federal policies which prevent physicians from prescribing marijuana for legitimate medical marijuana applications and prohibiting its use in medical treatment.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (h)

312. In **1981**, **Sam Diana** who suffered from multiple sclerosis (MS) was arrested and charged with possession of marijuana. At **trial**, he raised the defence of medical necessity. The Court refused to hear the evidence and convicted him. The **Washington State Court of Appeals** overturned the verdict and sent it back for retrial. The Appeals Court ruled that medical necessity was a valid defence and

instructed the lower Court to consider evidence of Mr. Diana's medical needs. On retrial, Mr. Diana presented testimony from numerous medical experts, his treating physicians, his family and other MS patients who endorsed marijuana's medical value in relieve severe muscle spasms. The Court concluded that he was not guilty by reason of medical necessity.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (i);

W*ashington v. Diana*, Superior Court, Spokane Washington, March 4, 1981.

313. In **1989**, **Elvy Musikka** who was afflicted with glaucoma was arrested for growing 6 marijuana plants. She had already lost the sight of one eye as a result of failed surgical interventions by the time she came to trial. She argued medical necessity. Her treating physician, a noted ophthalmic researcher at Miami's famous **Bascom-Palmer Eye Institute** testified that if marijuana was legal, he would have prescribed it for her medical use in the treatment of her glaucoma. He further testified that without it, she would go blind. The Court, after hearing all of the evidence and experts concluded that she was protected by the common law defence of medical necessity and found her not guilty. In reaching his verdict, **Judge Mark E. Pollin** concluded as follows:

> This is an intolerable, untenable legal situation. Unless legislators and regulators heed these urgent human needs and rapidly move to correct the anomaly arising from the absolute prohibition of marijuana which forces law abiding citizens into the streets - and criminality - to meet their legitimate medical needs, cases of this type will become increasingly common in coming years. There is a pressing need for a more compassionate, humane law which clearly discriminates between the criminal conduct of those who socially abuse chemicals and the legitimate medical needs of seriously ill patients whose welfare and very lives may depend on the prudent therapeutic use of those very same chemical substances.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (j);

***Florida v. Musikka*, 17th Judicial Circuit, Broward County Florida, Case No. 68 4395 CFA 10, *The Florida Law Weekly*, 14 FL W 1 (January 27, 1989);**

"Shattered Lives – Portraits From America's Drug War", by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 90.

314. In March of 1990, **Kenny Jenks**, a hemophilic and his wife, Barbara, were arrested for growing 2 marijuana plants. At **trial**, they both revealed that they

were infected with AIDS and argued medical necessity to control nausea, vomiting and weight loss. The Court refused to heed the medical testimony from their treating physician and other experts and they were convicted of the felony counts. In April of 1991, the **Florida Court of Appeals** reversed, overturned the convictions and ruled that their marijuana use was by medical necessity and in the treatment of AIDS. In October of 1991, the **Florida Supreme Court** upheld the Appeals Court verdict and ordered the prosecutor to file no further appeals.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (k);

***Jenks v. State of Florida*, No. 90-2462, District Court of Appeal of Florida, First District, June 18, 1991;**

"Shattered Lives – Portraits From America's Drug War", by Chris Conrad, Mikki Norris and Virginia Resner, 1998 Creative Xpressions, p. 66.

315. In 1990, a random survey was taken of members of the **American Society of Clinical Oncology**. A thousand Oncologists responded and about half said that they would prescribe marijuana if it was legal. Almost all of those 50% said that they had done so anyway. Those who believed that they had enough information to compare marinol with smoked marijuana was more effective (44%) and only 13% believed marinol (dronabinol) was more effective.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (l) and Doblin R., Kleiman M., 1991. "Marijuana as antiemetic medicine: A survey of oncologists' experiences and attitudes," *Journal of Clinical Oncology* 9:1314-1319.

316. On November 5, 1996, the voters of the **State of California** passed Proposition 215, ***The Compassionate Use Act*** of 1996, also known as the Medical Marijuana Initiative. It was then enacted as section 11362.5 of the **California Health and Safety Code** effected November 6, 1996. *The Compassionate Use Act* was intended to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician. A patient must secure the recommendation or approval of a physician. The physician must examine the patient in the context of a genuine physician – patient relationship and determine whether the individual is seriously ill and whether the person's health would benefit from the use of marijuana such that the physician is able to recommend or approve its use as a treatment option. Without the clinical recommendation or approval, patients and their primary caregivers are unable to invoke the provisions of the Act's protections from criminal prosecution or sanction under

State laws. The Act provides that patients and physicians are not to be punished or denied any right or privilege for conduct relating to the medical use of marijuana. In considering and interpreting the provisions of Proposition 215, **United States District Court Judge** for the **Northern District of California**, **Judge Charles R. Breyer**, found that the California voters wanted to exempt medical marijuana from prosecution under Federal as well as State laws.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraphs 9 (m) and (n) Charles R. Breyer, United States District Judge, United States District Court for the Northern District of California, *Memorandum and Order* issued May 13, 1998; in the case *United States of America v. Cannabis Cultivators Club*, No. C 98-0085 CRB.

317. In November of 1996, voters of the **State of Arizona** passed Proposition 200, ***The Drug Medicalization, Prevention, and Control Act***. It legalized the medical use of all Schedule 1 controlled substances, including marijuana. Consequently, by **1996**, **California** and **Arizona** joined **Connecticut**, **Louisiana**, **New Hampshire**, **Ohio**, **Vermont**, **Virginia** and **Wisconson** which already had laws permitting physicians to prescribe marijuana for medical purposes or to allow the medical necessity defence.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraphs 9 (o) and (p) Herstek J. 1998. *Behavioral Health Issue Briefs. Medical Marijuana.* Washington D.C.: Health Policy Tracking Service, National Conference of State Legislatures.

318. As noted by the Institute of Medicine report, public support for patient access to marijuana for medical use appeared to be substantial based on public opinion polls taken during 1997 and 1998 which generally reported 60% to 70% of the respondents in favour of allowing medical uses of marijuana. A brief summary of these polls and their results are as follows:

i) September, 1994, Boston Globe Reader Feedback Poll - 98.6% of respondents said they favoured legalizing marijuana for medical use.

Boston Globe Call-In Poll as reported by *The Boston Globe*, September 15, 1994 (Sample size: 1,320).

ii) March 31 - April 5, 1995 Belden & Russonello Poll – 85% of respondents favoured making marijuana legally available for medical uses where it has been proven effective for treating a problem and 55% of respondents favoured making marijuana legally available for medical uses even though testing has not been completed.

Questionnaire and Topline Results from a [National] Poll Regarding Marijuana for the American Civil Liberties Union, conducted by Belden & Russonello Research and Communications: March 31 - April 5, 1995 (Sample size: 1,001).

iii) February 5 - 9, 1997, Lake Research Poll - 68% of respondents said that the Federal Government should not punish doctors who prescribe marijuana, and 60% said that doctors should be able to prescribe it for medical purposes.

Nationwide poll of Americans, conducted by Lake Research for The Lindesmith Center: February 5 - 9, 1997 (Sample size: 1,002).

iv) May 27, 1997, ABC News National Poll – 69% of respondents favoured legalizing [the] medical use of marijuana.

ABC News National Poll, conducted by Chilton Research Company: May 27, 1997 (Sample size: 517).

v) June 1997, CBS News National Telephone Poll – 66% of Independent respondents, 64% of Democrat respondents, and 57% of Republican respondents said that doctors should be allowed to prescribe small amounts of marijuana for patients suffering serious illnesses.

CBS News national telephone poll as reported by *The New York Times*, June 15, 1997 (Sample size: unknown).

vi) September 7 - 21, 1997, Luntz Research National Poll – 62% of respondents favoured legalizing marijuana strictly for medical use.

Digital Citizen Survey, conducted by The Luntz Research Companies for Merrill Lynch and *Wired Magazine*: September 7 - 21, 1997 (Sample size: 1,444).

vii) October 23 - 28, 1997, Angus Reid Poll – 83% of respondents supported legalizing medical marijuana in Canada.

As reported by the *Globe and Mail*, November 4, 1997 (Sample size: 1,515).

viii) January 5, 1998, New Yorker Magazine Poll – 85% of respondents supported permitting doctors to prescribe marijuana.

The Narcissus Survey, conducted by Penn, Schoen & Berland for the *New Yorker Magazine*, as reported January 5, 1998 (Sample size: 1,400).

iv) March 17, 1998, Journal of the American Medical Association (JAMA) Poll – 60% of respondents supported allowing physicians to prescribe medical marijuana.

JAMA poll, conducted by Harvard School of Public Health, as reported by *Reuters News Service*, March 17, 1998 (Sample size: unknown).

v) July 7, 1998, British Broadcasting Network (BBC) Poll – 96% of respondents said marijuana should be legalized for medical purposes.

BBC Watchdog Healthcheck online telephone poll, July 7, 1998, as reported by the *Independent* on Sunday, August 2, 1998 (Sample size: 42,000).

vi) March 18, 1999, Morningline Telephone Poll – 90% of respondents said the Federal Government should approve the use of marijuana for medical purposes.

Morningline telephone poll, as conducted for and reported by the *Chicago Sun-Times*, March 18, 1999 (Sample size: unknown).

vii) March 21, 1999, Gallup Poll – 73% of respondents said they would vote for making marijuana legally available for doctors to prescribe.

Gallup Poll News Service, March 21, 1999, as reported in the *National Journal*, April 10, 1999 (Sample size: unknown).

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (q).

319. In one of his rulings in the *United States of America v. Cannabis Cultivators Club* (The Oakland Cannabis Buyers Club case), Judge Charles R. Breyer in a memorandum and order of May 13, 1998, concluded that there could be no debate that when Congress passed the *Controlled Substances Act*, it was primarily concerned with traditional for-profit drug dealing and not the not-for-profit supply of medical marijuana to seriously ill patients in accordance with State law.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (r)

Charles R. Breyer, United States District Judge, United States District Court for the Northern District of California, *Memorandum and Order* issued May 13, 1998, in the case *United States of America v. Cannabis Cultivators Club*, No. C 98-0085 CRB.

320. Notwithstanding all of these developments and support, on October 28, 1996, **United States drug czar, Barry MacCaffrey**, stated on national television that the Federal Government would prosecute any physicians who recommended marijuana for medical use. In November of 1996, **Thomas Constantine**, the **Administrator of the U.S. Drug Enforcement Administration**, warned members of the press that the DEA would take very serious action against doctors who recommended medical marijuana. Federal law enforcements under **Attorney General, Janet Reno**, threatened to use surveillance and informers to identify physicians recommending marijuana to their patients. On December 30, 1996, MacCaffrey issued a statement entitled "**The Administration's Response to the Passage of California's Proposition 215 and Arizona's Propositions 200**" setting out U.S. Administration Policy. It represented the consensus of several Federal departments and agencies, including the **Office of National Drug Control Policy, the Drug Enforcement Administration** and the **Department of Health and Human Services**. The Policy includes a series of specific threats to doctors that can be summarized as follows:

i) **<u>Threats to revoke physicians' license to prescribe drugs</u>**

To prescribe in the U.S., doctors have to be registered and to obtain a licence from the D.E.A. The Policy says that a doctor who prescribes a Schedule I drug is not acting consistently with the "public interest" and that it will lead to administrative action revoking their registration. This would effectively prevent a doctor from prescribing medicine.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (s)(i);

"Medical marijuana in a time of prohibition", Lester Grinspoon, International Journal of Drug Policy, 10 (1999) 145 – 156 at pp. 151 and 152.

ii) **<u>Threats of criminal prosecution</u>**

The Department of Justice will continue its existing enforcement programs regarding criminal possession or conspiracy to possess marijuana. The enforcement criteria include the absence of a bona fide doctor – patient relationship, a high volume of recommendations of marijuana, significant profits from such recommendations, providing marijuana to minors, and/or

special circumstance such as when a death or serious bodily injury results from drunk driving.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (s)(ii)

iii) **Threats to bar Medicare and Medicaid**

Doctors rely on such participation for a significant portion of their income. The Policy says that the authority of the Inspector General for HHS is to exclude specific individuals who prescribe Schedule 1 drugs from participation in Medicare and Medicaid programs.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (s)(iii)

iv) **Threats to encourage State licensing boards participation to revoke physicians' licences**

The Administration policy says that the Department of Justice would send a letter to licensing boards indicating that the DEA will revoke any registrations of physicians who recommend or prescribe Schedule 1 substances. This implicitly threatens these doctors with loss of State licences.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (s)(iv)

Federal officials made at least 15 separate statements verifying the Government's intent to prosecute physicians for recommending marijuana to patients within the months following the 1996 election.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (s) Judge Fern M. Smith, April 30, 1997, in *Contant v. Mccaffrey, Order Granting Plaintiffs Motions for Preliminary Injunction, Class Certification; Denying Defendants' Motion to Dismiss,* Case No. C97-1239 FMS referred.

321. On September 15, 1998, the U.S. Congress passed **Joint Resolution 117** expressing their opposition to the medical marijuana initiatives. This Resolution became part of the *Omnibus Consolidated and Emergency Supplemental Appropriations Act*, 1999.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (t)

322. On October 28, 1998, at the solicitation of drug czar, General Barry McCaffrey, former U.S. Presidents **Gerald Ford**, **Jimmy Carter** and **George Bush** signed a letter expressing their disapproval of the medical marijuana initiatives.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (u)

323. **On October 21, 1998,** the U.S. Congress passed a **1999 *District of Columbia Appropriations Act*** as part of the ***Omnibus Consolidated and Emergency Supplemental Appropriations Act* of 1998** and President Clinton signed it the same day. Section 171 of that Act (also known as the **Barr Amendment**) provided that none of the funds contained in the Act could be used to conduct any ballot initiative which sought to legalize or otherwise reduce penalties associated with the possession, use and distribution of any Schedule 1 substance or any THC derivative. This amendment was named after Representative **Robert L. Barr, Jr.,** its sponsor. The purpose of this Amendment was specifically to target **Initiative 59**, **the Legalization of Marijuana for Medical Treatment Initiative of 1998**. Despite the Barr Amendment, the Initiative appeared on the November 3rd ballot because it had already been printed on absentee ballots and the election law prevented changing it after that. However, while the residents of Washington, D.C. voted on the medical marijuana question, the **District of Columbia Board of Elections** interpreted the Barr Amendment as preventing them from releasing the results of the votes. Significantly, in passing the Barr Amendment, the U.S. Congress intentionally sought to deprive the District of Columbia voters of any opportunity to consider a viewpoint that it disfavoured. It is believed that this amendment marked the first time in the history of the United States that the results of an election had been suppressed. A lengthy legal battle ensued with the American Civil Liberties Union prevailing in ***Turner v. Board of Elections and Ethics***. **Judge Richard Roberts** ordered the results of the medical marijuana vote to be released and on September 20, 1999, it was revealed that the measure had the support of 69% of the voters, namely a landslide. Representative Barr also introduced a similar amendment in the ***Fiscal Year 2000 Appropriations Act*** for the District of Columbia. This amendment was intended to prevent the District from enacting Initiative Measure 59 by prohibiting any of the funds provided for in the Act to be used for such a purpose of reducing penalties associated with the possession or distribution of a Schedule 1 substance or THC derivative. In the past, President **Clinton** has vetoed bills containing this sort of provision citing “social riders” as his primary reason for the vetoes.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (v)

324. In November of 1998, the voters of the States of **Alaska**, **Colorado**, **Nevada**, **Oregon**, **Washington** and the **District of Columbia** all voted overwhelmingly in

favour of medical marijuana initiatives on their respective ballots. In November of 1999 the **State of Maine** passed a medical marijuana ballot initiative. Every medical marijuana initiative which has been put to a vote has passed by a wide margin.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (w)

325. As of May, 2000, at least 12 U.S. States have medical marijuana laws on their statute books. In addition, the voters in **Maine**, **Nevada**, **Colorado** and the **District of Columbia** have approved medical marijuana measures but they have yet to be enacted.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (x)

326. **The Oakland Cannabis Buyers Cooperative (OCBC)** in Oakland, California distributes marijuana to patients who have recommendations from their physicians in accordance with the ***Compassionate Use Act*** **or Proposition 215**. Its Executive Director is **Jeff Jones**. On May 19, 1998, U.S. District Judge **Charles S. Breyer** by injunction enjoined Jones and the OCBC from engaging in the distribution of marijuana and from conspiring to violate the U.S. *Controlled Substances Act*. The OCBC continued to operate in the good faith belief that no violation existed because the Federal law excluded from the definition of "distribution" the joint purchase and sharing of a controlled substance by patients. The OCBC has been consistently supported in its operations by the City of **Oakland**. In July of 1999, the City council adopted a liberal medical marijuana policy and later passed an ordinance that attempted to protect the OCBC by making its workers agents of the City. The intent was to extend to the OCBC workers the same immunity from prosecution afforded law enforcement personnel under the ***Controlled Substances Act***. However, at subsequent Court hearings, neither the immunity defence nor the medical necessity defence were successful. On October 20, 1998, the OCBC was closed by Federal agents pursuant to Judge Breyer's ruling. Oakland City Council promptly condemned the Federal action and declared that a public health emergency existed for many of the City patients due to the OCBC closure.

327. On September 13, 1999, the **9th Circuit U.S. Circuit Court of Appeals** remanded the matter back to the Federal District Court ruling that medical marijuana centres maybe allowed to distribute cannabis if they can prove that the drug is needed to protect patients from imminent harm. In effect, the Court ruled that a medical necessity defence is available under Federal law and that it applies not only to patients but also to people who provide marijuana to those in

need. Consequently, the medical necessity defence applies not only to patients who need to use marijuana but also to people who recommend marijuana to them or provide marijuana to them since by recommending or providing marijuana, they reduce the harm done to those individuals by their illnesses by helping them obtain the medicine that they need. Consequently, it is necessary to commit a lesser evil to avoid a greater evil when there are no other legal reasonable alternatives.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 9 (y)

328. On August 29, 2000, the United States Supreme Court on an emergency Clinton Administration request, postponed the effect of the Federal Court rulings that would have allowed the California Club to distribute marijuana for medical purposes upon the recommendation of a doctor. The Court voted 7 –1 with Justice John Paul Stevens dissenting and Justice Stephen G. Breyer disqualifying himself because his brother, Charles, was the trial judge in the Oakland Buyers Club case.

"Medical Marijuana Distribution Nixed", Associated Press, 29 August 2000.

329. Meanwhile, the United States Federal Government and its agents continue to mercilessly punish and harass medical patients who use marijuana. Some examples are as follows:

a) In **1993**, a **California** drug squad arrested a 70 year old man for cultivating marijuana used by his 58 year old companion for chronic pain relief and avoided the side effects of prescription drugs. Because she was not married to her companion, she was told by the authorities that she would be forced to testify against him. Rather than harm him through her testimony, she committed suicide. Given the circumstances, the Court ruled that the elderly man need serve only 9 months in prison.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 10 (a) and *F.E.A.R. Chronicles*, Nov. 1993, p. 15.

b) A paralysed **Oklahoma** man began smoking marijuana to relieve muscle spasms on the recommendation of a doctor. The police raided his house and found enough marijuana to indict him as a presumed drug dealer. He had 2 ounces. He was wheelchair bound and had 2 pistols in his bedroom so he was charged as an armed drug offender. An Oklahoma jury gave him life imprisonment plus 16 years. The judge reduced the sentence to 10 years and the paralysed man was sent to prison.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 10 (b), *Leaflet* (NORML newsletter) March 1993, p. 5, *Drug Policy Newsletter*, Spring 1995, p. 17.

c) A 61 year old terminal prostrate cancer patient who was using marijuana to relieve his suffering had an **Idaho** drug squad SWAT team descend on his residence. They found 8 plants in his house and 8 ounces of dried marijuana so they indicted him as a felony drug violator and tax evader. He had failed to purchase tax stamps that Idaho requires for illegal cultivation of marijuana. The drug squad confiscated his van which was his only means of transportation to hospital, 270 miles, where he would receive his cancer treatments.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 10 (c) *Pittsburg Press*, Aug. 11 – 16, 1991, reprint p. 7.

d) On September 27, 1991, a person's home was raided by a "no-knock" search for a marijuana cultivation operation. This individual had no left leg, his hips had been replaced along with his knees, left shoulder and elbows. He also had a kidney transplant. He smoked marijuana for nausea which was a side effect from the other prescribed drugs. They put him on the floor and tore his home apart. They found a bong, a copy of *High Times* and U.S. NORML information. They gave him a citation and walked out. They ripped the door off his home and left him on the floor. It took him 40 minutes to find a way to get off the floor.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 10 (d) *Leaflet* (NORML newsletter) Fall 1991, p. 2.

e) Dr. David E. Smith of the Haight Ashbury Free Medical Clinic in San Francisco reported in June of 1971 that among the psychiatrict patients served by his clinic were 25 young men with serious psychosis. All of them were in prison for possession of marijuana and all of them suffered psychiatrict breakdowns following homosexual rape while they were incarcerated.

Affidavit of Paul David Wolf, sworn the 8th day of May, 2000, paragraph 10 (f) E. M. Brecher, *Licit and Illicit Drugs*, 1972, p. 471.

f) After the success of the California Proposition 215, which resulted in the Compassionate Use Act of 1996, Mr. McWilliams, a publisher of best selling poetry and self help books, photographer, medical marijuana activist and AIDS patient and cancer survivor, decided to publish a book about the plant that had saved his life. He hired medical marijuana activist, Todd McCormick, to write the book and to experiment to see

which strains worked the best. This led to the medical marijuana grow operation at Belair, California, in which Mr. McWilliams and Mr. McCormick were charged along with others, including Ms. Boje. Although Mr. McWilliams was not a flight risk, he was held for 2 months until he could raise $250,000 bail. Mr. McWilliams was arrested July 23, 1998, and was released on August 19, 1998, on bail secured by his mother and his brother's house. When his elderly mother pledged her house, she was telephoned by prosecutors and told that if McWilliams smoked marijuana, she would lose her home. His bail conditions specifically prohibited him from using marijuana for medical or any other use or purpose. He had used marijuana under doctors' supervision for 2 years as an anti-nausea medication and it was a critical component to his AIDS treatment regiment. The other medication caused severe nausea and vomiting. By October, 1998, his T-cell count had dropped substantially and his viral load had risen. His doctors told him that his viral load had increased by a factor of more than 5,000 since August of 1998. His doctors were concerned. Mr. McWilliams sought an emergency motion to review his bail in November of 1998 and this was dismissed in December of 1998. Review in the U.S. District Court was similarly denied in March of 1999. Notwithstanding the publication of the Institute of Medicine report thereafter, the Federal prosecution simply could not agree on the use of medical marijuana. In September of 1999, Mr. McWilliams again petitioned the District Court but his application was denied once again. His appeal to the 9th Circuit was filed in October of 1999. In addition, the Federal Government prosecution took the position that he could not mention cancer and AIDS or make any reference to medical marijuana or the defence of medical necessity at his trial. In other words, they took away his defence. Consequently, he made a "plea bargain" to receive a sentence of 0 to 5 years and to avoid a minimum of 10 years at a trial where his defence would have been precluded. In July of 2000, while awaiting sentencing, he was found dead in his bathroom having apparently choked to death on his own vomit. The Federal Government deliberately deprived him of his medicine that could have saved his life. Others involved in such conduct would be charged with murder. The U.S. Federal Government has shown that it will stop a nothing.

***U.S.A. Inc. v. Peter McWilliams, Todd McCormick et al.*, Memorandum and Order, CR 97-997(A)-GHK, Central District of California, Nov. 5, 1999;**

***Peter McWilliams v. U.S.A.,* Motion for Review, by Thomas J. Ballanco, Ninth Circuit, United States Court of Appeal, October 14, 1999.**

"The Murder of Peter McWilliams – The feds killed McWilliams as surely as if they had put a gun to his head", by Richard Cowan, Cannabis Culture, #27, Sept/Oct 2000, p. 26.

g) Mr. McCormick, Mr. McWilliams and Ms. Boje's co-accused, was placed in much the same situation as Mr. McWillaims. Denied access to marijuana for his cancer that he had been using under a doctor's supervision for many years, in his defence to the charges, he too made a "plea bargain" and made a conditional plea that will enable him to argue the deprivation of his defence issue in the Ninth Circuit Court of Appeals. Meanwhile, he is serving a 5 year sentence and his medical condition is deteriorating. When he went to the medical office seeking a prescription for Marinol, which had been prescribed prior to his incarceration, he was denied access to the drug. He is enduring extreme pain in his neck and back. He suffers from a spinal fusion whereby the top 5 vertebra were fused when he was 2 years old. A tumor completely ate the second vertebra and the old fusion is now carving grooves in the base of his skull, prompting severe headaches. His left hip stopped growing when he was 9 years old as a result of radiation treatments from childhood cancer. He has severe scoliosis and nerve damage in his upper back, shoulders and neck and severe muscle spasms in his lower back. He has received no medical treatement since January. The day after he requested Marinol, he was subjected to a drug test and the results came back positive for marijuana. He was placed in solitary confinement. He is currently being held in a concrete room with a small bunk and vinyl mattress with no sheets or pillows. He is not allowed to have his specially shaped density pillow that he requires for his back and neck. He is not even allowed a regular pillow. There is a 3" by 16" window which allows for very little light or air. The room is oppressively hot and stifling.

330. **Steven Kubby** is a legally disabled American, qualified since 1980 under the **Americans with Disabilities Act**. His disability, malignant pheochromocytoma, causes an overproduction of the hormone norepinephrin, and results in explosive elevations in blood pressure which in turn produces blinding headaches, heart attacks, and potentially lethal strokes anytime he is not protected by medical marijuana. Because the disease is malignant and has spread through his body, complete surgical removal of the offensive gland cells is impossible, and they do not respond to either chemotherapy or to radiation. The use of medical marijuana results in an inhibition of hormone release from pheochromocytoma cells. Because of Steve Kubby's work as an activist for Proposition 215, *The Compassionate Use Act* 1996, the **Libertarian Party** voted unanimously to select him as their 1998 candidate for **the Governor of California**. In the course of his gubernatorial campaign – during which he made no secret of his need for medical marijuana – he helped unseat then Attorney General Daniel Lungren by

opposing Lungren's policies relating to medical marijuana and Proposition 215. Immediately after the election, the Placer County Sheriffs Department began an investigation of Steve Kubby based on the contents of an anonymous letter, the contents of which proved to be entirely false. A few days after the sheriff's investigation opened, Steve Kubby received an off-the-record tip from a fellow politician that he was a political target of narcotics agents who wanted revenge against him for his role in unseating Lungren. Aware of the investigational tactics employed by the sheriff's department, including video surveillance through the Kubby residence windows and examination of the contents of the household trash, Steve Kubby sent notes in the garbage, entitled "ATTENTION LAW ENFORCEMENT" advising them of the medical nature of his marijuana use and of his compliance with the 3½ pound limit for smokeable marijuana, an amount allocated by the government every six months to some recognized medical marijuana patients. Nonetheless, in the early morning hours of January 19, 1999, twenty SWAT members from four agencies, armed with laser guides assault rifles, body armour and a battering ram stormed the Kubby home, and confiscated almost everything of value, including the computer publishing equipment, thus effectively killing the family's on-line publishing business and forcing them into bankruptcy. The criminal trial commenced on September 6, 2000.

"Complaint and Redress of Grievance: A Civil Rights Complaint to the Placer County Grand Jury", filed electronically January 25, 2000, Section II: Background, paragraph 1 and 2; and Section V: Attachment 1: Political Perspective; Attachment 5: Cannabinoid Inhibition of Noradrenaline Release, and Attachment 6: Cannabinoids Found to Suppress Pheochromocytoma;

A Special Message from the Kubby Family, www.kubby.com/00-intro.html.