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# Cultivating Reform: Richard Nixon's Illicit Substance Control Legacy, Medical Marijuana Social Movement Organizations, And Venue Shopping

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## Abstract

*Over the course of the last two decades, organizations representing the medical marijuana social movement have campaigned for, proposed state level legislation, and supported numerous legal arguments that challenge and attempt to reform U.S. federal illicit substance policies. This set of social regulatory policies, commonly known as the Controlled Substance Act of 1970 (CSA), were drafted, promoted, and implemented by the Nixon Administration then subsequently entrenched by multiple presidents with acquiescent congresses adopting supplemental supply-side resource allocating legislation. My dissertation research uncoils the convoluted history and institutional dynamics of path dependent U.S. illegal drug control policies to answer the question of how social movement organizations (SMOs) challenge and reform executively entrenched policies. First, I examine the Nixon Administration's decision-making process via archival materials in order to understand why and how the CSA was "framed," introduced, and ratified. Second, two presidential illicit substance control case studies (Ronald Reagan and George H.W. Bush) are presented to demonstrate how U.S. illicit substance control is executively entrenched. Third, periodical challenges prior to the first state-level medical marijuana law are presented as antecedent and instructional to contemporary SMO institutional mobilization. Last, through interviews, media portrayals, and institutional rulings I demonstrate how medical marijuana SMOs have "reframed" the drug's definition then "shopped" institutional venues for the purpose of reforming existing policies.*

CULTIVATING REFORM:  
RICHARD NIXON'S ILLICIT SUBSTANCE CONTROL LEGACY, MEDICAL  
MARIJUANA SOCIAL MOVEMENT ORGANIZATIONS AND VENUE SHOPPING

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## Chapter One: Introduction

At a March 1971 White House Rose Garden event, Richard M. Nixon declared America's entry into the "War on Drugs." That same day special invitees and members of the media also witnessed Nixon announce congressional passage of the Controlled Substance Act of 1970 (CSA)-the first comprehensive piece of federal illicit substance control legislation in over thirty years. Four months later, in July of 1971, Nixon again invoked a conception of war when he addressed Congress in an alarmist tone, declaring drug use to now have assumed the dimensions of a "national emergency" warranting Congress to allocate \$84 million for such "emergency measures."<sup>1</sup> In two short years, the Nixon Administration had generated a war without clear objectives or precise enemies.<sup>2</sup> In order to further his administration's reorganization and uniformity of drug control policies, resources, and personnel, Nixon, via Executive Order 11727, directed transformation of an anemic Bureau of Narcotics and Dangerous Drugs (BNDD) into the Drug Enforcement Administration (DEA) while shifting auspice from the Treasury Department to the Department of Justice. Thus, U.S. drug control operations were guided by law enforcement-first dictates within a punitive paradigm while health initiatives were categorized as a secondary set of priorities. Moreover, CSA statutes drew on authority so inclusive as to give DEA officers, at times, jurisdictional reach beyond America's borders, sentencing guidelines for different degrees of trafficking, and a "Schedule" of drugs that weighed the severity of potential danger a given substance held to society and any medical

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<sup>1</sup> Ed Vulliamy, "Nixon's 'War on Drugs': began 40 years ago and the battle is still raging." The Guardian July 23, 2011.

<sup>2</sup> See Massing, Michael. 2000. "The Fix." Berkeley, CA: University of California Press.

worth a given substance might hold. As the centerpiece of the CSA and at the urging of Nixon, marijuana prohibition stood as stalwart against traffickers and users of illicit substances. As an unintended consequence, marijuana's prohibitive status would also constitute a continuous impediment to drug control reformers.

Fast forward to the mid-1990s, the advent and escalation of America's AIDS epidemic produced a new populous suffering from the physically and socially corrosive disease while seeking pain-relief alternatives to over-the-counter or prescription-based pharmaceuticals. One of the sufferers, Jonathan West along with his life-partner, Dennis Peron believed marijuana to be the best bet against the pain induced by the ravages and complications of AIDS.<sup>3</sup> Mr. Peron, acting as impetus for reform, spearheaded a 1996 California ballot initiative process for the medical use of cannabis in California; as if "tilting against windmills," Peron and his followers moved forward in the face of over thirty-five years of executively driven entrenchment of the substance's prohibitive status. The result presented federal marijuana prohibition with a state-based affront when Peron successfully achieved his goal of helping partner legally and more easily acquire marijuana, when the Golden State's electorate favored passage and implementation of the first Compassion Use Law by a 54% to 46% vote. Though passage of Proposition 215 can be considered a catalyst for a reform movement, 215's passage gave little foretelling of the litany of successful medical marijuana campaigns transpiring after the

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<sup>3</sup> While many suffering from AIDS and its associated ailments compose a large percent of medical marijuana patients beginning in 1990s and until the present, the increase of cancer detection and treatments also contributed to an increase of medical marijuana usage. Specific statistical data regarding AIDS related illness and chemotherapy treatment for cancer are discussed in Chapter Five: *Venue Shopping, Patients' Rights, and The Medical Marijuana Project (MPP)*. For preliminary evidence of this topic see: Chapkis, Wendy and Richard Webb. 2008. *"Dying to Get High: Marijuana as Medicine."* New York, NY: New York University Press. Also, Wo/mens Alliance for Medical Marijuana website: [www.wamm.org](http://www.wamm.org) offers evidence of a proliferation of private cultivation operations for the express purpose of selling to medical marijuana dispensaries.

milestone initiative's passage. The willingness of electorates, at the state and local levels of government to even consider, and then affirm illicit substance control reforms, has constituted a pattern of intensified efforts by medical marijuana Social Movement Organizations (SMOs) to create and campaign for alternative drug policies. To raise the saliency of medical marijuana beyond common myth so as to legitimate medical marijuana's status as worthy of political and policy agenda consideration is of substantial scholarly significance. SMOs mobilized their members by disseminating innovative "frames" or messages into public discourse for legislative, electoral, and judicial contemplation. Each endeavor to bring legal use of medical marijuana stoked criticism and controversy with defeats and victories for medical marijuana advocates littering the political landscape. Yet to date, passage of seventeen state medical marijuana laws, numerous municipal alterations to law enforcement directives concerning drug control statutes and national lobbying campaigns to stop federal prosecution of medical marijuana patients since 1996 demonstrates public acceptance and political viability of marijuana reform along with a rethinking of prohibitive means.

A groundswell of promotion and mobilization by illicit substance control policy reformers has transpired away from the direct purview of federal lawmakers who prescribe to the punitively-based CSA prohibition of cannabis. SMO's have "reframed" or shifted perspective by promoting their alternative policy options which include medical use, decriminalization and legalization of marijuana within state and local policymaking venues. To describe and articulate the change in marijuana's definition from the prohibited "public enemy number one" to physician prescribed or suggested pain reliever is to present a historical development of illicit



substance control means.<sup>4</sup> Therefore, my overarching research inquiry assesses, *how can social movements challenge and reform policy paradigms that have been deeply entrenched at the national level?* In turn, demonstrating how path dependent federal illicit substance control policies, particularly marijuana prohibition, have been diffused throughout state and local governing institutions is necessitated. In a highly organized and mobilized fashion, SMOs have successfully reframed marijuana's public and political legacy by eschewing the direct targeting of federally-crafted definitions of cannabis, which emphasized negative target populations such as criminal or counterculture segments of the citizenry. By disseminating and submitting their medically, sympathy, and scientifically-based frames at the forefront of institutional debate, SMOs have been able to garner public and policymaker acceptance. Additionally, venue shopping legislative, electoral, and judicial policymaking arenas has enabled SMOs to advantageously apply their innovative frames of reform, causing institutional opportunities for passage of medical marijuana laws.

To answer the primary inquiry as well as secondary research questions generated from an "parsing" of the complexity of illicit substance control laws and debate, I reference and "interlock" three conceptual underpinnings- framing, path dependency, and venue shopping- for the purpose of contributing to the fledging research milieu of Drug Policy studies. Particular emphasis and focus is given to framing, dissemination of governmental and SMO messages as well as public acceptance of new paradigms around which marijuana has been contained or

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<sup>4</sup> Nixon commonly termed illicit substances, narcotics, or illegal drugs as "public enemy number one." His crime analogy use is possibly due to the over-employed rhetorical practice of conflating crime and drugs during the thirty two year Bureau of Narcotics leadership of Harry J. Anslinger (1930-1962) See Massing, Michael. 1998. *"The Fix."* London, England: University of California Press.

reformed. Without a “shift” from governmentally disseminated status quo frames conflating crime, counterculture, and more insidious substances with marijuana to messages supported by scientific studies and professional testimony of the substances medical worth, reform of marijuana would be but a promising thought holding on the shelves of the Marketplace of Ideas. Frames or definitions and in turn categories of illicit substances crafted by the federal government serve as a point of origin when contrasting new frames created and disseminated by medical marijuana SMOs, following passage of California’s Proposition 215 in 1996. Though there were periodical organizational and individual challenges made against the CSA prohibition of marijuana before the mid-1990s, I argue that executive obstructionism kept those seeking reform via bureaucratic and legal processes at bay and without resolution, while the executive branch also entrenched policy dictates and resource allocations undergirding the “War on Drugs.” A path dependency of punitive measures spawned policies, politics, and rhetoric averse to alternative health-based reforms of illicit substance control ossified. The crux of my research is to demonstrate a divergence from the status quo by describing and analyzing SMO models of recourse to reform via multiple governing institutions-primarily at the state and local levels of government. Thus, the political, legal, and policy making processes SMOs navigate by operating numerous campaigns for reform are illuminated.

First, framing is integral to defining, garnering appreciation of one’s message so as to create a viable premise for policy debate, and subsequent application of a new policy option. One of the first scholars to identify the presence and employment of framing was Irving Goffman (1974, 21) who termed the concept “schemata of interpretation,” enabling citizens to “locate, perceive, identify, and label” events and happenings in their lives. Moreover, collective

action frames not only give definition to an issue but also create an image of the advocacy groups who create, promote, and disseminate them. When considered in this light, "social movements are not viewed merely as carriers of extant ideas and meanings that grow automatically out of structural arrangements, unanticipated events, or existing ideologies. Rather, movement actors are viewed as signifying agents actively engaged in the production of maintenance of meaning for constituents, antagonists, and bystanders or observers" (Snow & Benford 1988). Indeed, Medical Marijuana SMOs, alone and as collaborators within coalitions, craft messages of dissent, innovation, and challenge. Worth note is also the distinction of frame presentation and audience. In other words, at times there is exclusiveness to particular frames; messages for the voting public can (and should strategically) differ from the formation of frames directed specifically toward legislative and judicial actors. Though frames of reform should stand on their own veracity, manipulation for tactical cause is indicative of institutional or public settings. This is exemplified by Social Movement scholars recognizing the creation and dissemination of legal and rights-based frames by SMOs through media outlets enabling their respective causes to garner public opinion favorability and alliance from policymakers (Handler 1978; McCann 1994; Haltom & McCann 1998).

Speaking specifically to legal frames, Michael Paris defines the messages, definitions, or "legal translations" created by SMOs, and other advocacy groups as "the conceptual and rhetorical processes through which reformers translate their values and goals into plausible legal claims and arguments. Legal translation involves, simultaneously, an appeal to legal authority and the selection and representation of "facts" and evidence (Paris 2010, 3)." Of course, judicial arenas account for only a single institutional or formal venue of policy

opportunity. However, attempt to reform via judicial ruling along with legislative, electoral, and executive arms of government present opportunities to “test” out reform-orientated frames with respect and customization to a particular institution. Introduction of frames is not exclusive to institutional settings when considering issue presentation, definition, and saliency debut in the marketplace of ideas or as infused into public discourse which brings about the measurement of reform offerings via public opinion means. Therefore, Paris emphasizes the importance of applying alternative messages, especially legally-based frames within “broader political arguments and mobilizing strategies” (Paris 2010, 4). Most likely, this is the initial stage for SMOs or any advocacy organization to attempt a counter strike against status quo policies without facing governmental rejection and possible retribution.

To speak of framing as nothing more than a set of political opportunities for challengers of the status quo is to dismiss the wielding of authority allowed by those institutions and actors due to their “ownership” or management of policy definitions. Continued control of policy frames insulates institutional actors or “members” from confrontation by advocacy groups in their creation and dissemination of alternative frames. An obvious disproportionate relationship in voice and institutional access between challengers and members also facilitates an entrenchment of status quo policies leading to path dependency. Such is the case with federal illicit substance regulatory schemes and medical marijuana advocacy. Though the last fifteen plus years are scattered with successful state-based medical marijuana legislative and electoral campaigns, SMO inroads toward redefining and rescheduling marijuana within a federal policy rubric are sparse. Throughout Chapter Two, Nixon’s framing via a conflation of marijuana with criminal and counterculture elements as well as more insidious substances

including LSD, heroin, and cocaine is evinced. Employing Nixon's reorganization of illicit substance resources serves as historical antecedents to Chapter Three's central theme and data presentation evincing a path dependency of America's "War on Drugs," particularly proscription of marijuana.

The monolithic definition and categorization of marijuana within federal statutes can be contributed to a deeply entrenched set of policies termed the "War on Drugs" with prohibition of the substance securely positioned as the centerpiece policy. Broad and substantial evidence of inactivity regarding introduction and debating of innovative frames by national law makers is identified by Bertram, Blachman, Sharpe, and Andreas' (1996) conceptualization of "Drug War Politics" which is based on law maker reliance and promotion of the punitively-based illicit substance control paradigm. Diverging from the status quo or entrenched illicit substance control policies would lead to negative consequences for those continuously seeking public approval for reelection ends. Over a forty year continuance of marijuana prohibition and other CSA tenets without serious consideration of reform options exemplifies a unwavering policy path facilitated by what Paul Pierson asserts, "as social actors make commitments based on existing institutions and policies, their cost of exit from established arrangements generally rises dramatically (Pierson 2005)." Indeed, path dependency of America's drug war greatly diminishes the odds of reform measures being submitted and advocated by policy makers. Therefore, the more deeply entrenched drug war policies became, the more alternative policies were kept at bay, marginalized, or immediately discredited. As such, drug policy reform represents a "least likely case" for social movement organizations to reframe an existing policy. Thus, a reframing and dissemination of alternative definitions, conceptualizations, and policies

surrounding marijuana present a contestation to the punitively-based status quo paradigm. Therefore, the legal, political, and social implications of path dependency must be practically and institutionally confronted, including, “starting from similar conditions, a wide range of social outcomes may be possible; large consequences may result from relatively “small” or contingent events; particular courses of action, once introduced, can be virtually impossible to reverse; and consequently ,political development is often punctuated by critical moments or junctures that shape the basic contours of social life” (Pierson 2000, 251).

One integral process by which framing and reframing occurs is the identification and employment of target populations associated with particular policies. Nixon’s “War on Drugs” defined marijuana traffickers and users alike as criminals and deviant from mainstream American culture while successful reframing of cannabis by Medical Marijuana SMOs has played to AIDS and cancer sufferers garnering significant empathy. The social construction of “Target Populations” as claimed by Helen Schneider, Anne Ingram, and Peter deLeon (2007) not only label, but also prescribe policy resources by restricting perception, definition, and normative qualities of given portions of a population. Policymakers, especially those espousing a continuation of the status quo recognize how target groups can be “important political attributes that often become embedded in political discourse and the elements of policy design. Policymakers respond to and manipulate social constructions in building their political base” (Schneider, Ingram, and deLeon 2007, 94). In turn, resource allocation or deprivation is rationalized, even justified within institutional settings with policy makers subscribing to the defining and targeting of a certain demographic aiding in satisfactory policy development and resource implementation. Thus, sustainment and agreement of a given policy is due to “social

constructions of target populations becom[ing] important in the policy effectiveness calculus because elected officials have to pay attention to the logical connection between the target groups and the goals that might be achieved” (Schneider and Ingram 1993, 336).

Another integral element in the social construction and manipulation of policies based on target populations is the specific language employed. Rhetoric as a step toward justification of policy limitations allows, according to Murray Edelman, “those who focus upon specifically political language are chiefly concerned with its capacity to reflect ideology, mystify, and distort....The critical element in political maneuver for advantage is the creation of meaning: the construction of beliefs about the significance of events, of problems, of crises, of policy changes, and of leaders...such accounts are vulnerable to criticism; but succeed repeatedly in sustaining disbelief, retaining political support, or marshaling opposition regardless of consequences that might call the accounts into question” (Edelman, 1985). Rhetoric originating from the executive and other prominent policymakers certainly has resonated and retained public support along with political belief for determining marijuana’s categorization as a proscribed illicit substance. However, rhetoric and reinforcement of vernacular, specific of policies, are but a portion of sustaining and reaffirming the identity of target groups. Thus, framing is but an initial and reiterated force while subsequent implementation and practice of policy dictates by politicians and bureaucrats qualify as equal and needed steps in guaranteeing public acceptance of definitions, identities, and associations.

Therefore, Medical Marijuana SMOs utilize frame presentation as a weapon of contestation within policy making arenas. At the center of SMO political opportunity is where to promote their innovative definitions bringing about “venue shopping.” The societal and

political profundity of marijuana as a detriment to society calls for a systematic and multi-institutional strategy employment by SMOs. As Sarah Pralle (2003) notes, venue shopping represents, “the activities of advocacy groups and policymakers who seek out a decision setting where they can air their grievances with current policy and present alternative policy proposals.” Regarding Pralle’s latter assertion, many times “alternative policy proposals” do not exist, offering challengers such as reform-minded SMOs political opportunities to present their counter-status quo frames, test the strength of fledging coalitions their organizations are contributors to, and specific to illicit substance control, judge the degree of entrenchment of marijuana prohibition. By “combining” or coupling a reframing of marijuana and venue shopping as an overall strategy of reform, Medical Marijuana SMOs are, as the authors of the *Decline of the Death Penalty* note, “defining an issue along a particular dimension at the exclusion of alternative dimensions. Framing is a natural part of the political process, but rarely does framing result in a near-complete overhaul of an issue debate” (Baumgartner, DeBoef, and Boydston 2008, 4). Framing for anti-prohibitive organizations, therefore is the primary portion of a comprehensive endeavor to enact medical marijuana laws in conjunction with mobilizing concerted challenges in various policymaking venues.

I begin the inquiry of this unique policy area by surveying the historical antecedents of federal marijuana prohibition. Therefore, Chapter Two is dedicated to discerning the various frames, policies, and political factors that defined marijuana as an insidious substance worthy of national prohibition. How frames or governmental definitions were disseminated throughout the polity resulting in an entrenchment of “drug war” rhetoric and policies strikes at the core of Chapter Three’s “path dependency” argument. The Presidencies of Ronald Reagan and George



H.W. Bush are the focus of two case studies of executively driven drug war path dependency that ossified marijuana prohibition and presented a bulwark against reform. Chapter Four introduces organizational and institutional reframing and innovative marijuana frames offered for public and institutional consumptions prior to successful Medical Marijuana SMO challenging of the status quo. Prior to the passage of Proposition 215, several pro-marijuana organizations, including the National Organization for the Reform of Marijuana Laws (NORML), contributed to vigorous reform efforts yet were mostly unsuccessful in transferring their arguments for decriminalization, legalization or medical allowance to enacted statutes. Efforts made by such groups in the 1970s and 1980s to change public and political perception of marijuana to a viable, safe medicine, though varied and articulated, were politically marginalized and impeded. Case Studies of fledging anti-prohibition organization and individuals are presented which identify foundational alternative frames and arguments against federal illicit substance control policies. A demonstration of applicable, public accepting and politically viable framing via venue shopping is presented in Chapter Five. More specifically, the construction of patients' rights and states' rights messages are disseminated and promoted by The Marijuana Policy Project (MPP) and Americans for Safe Access (ASA), two of the leading SMOs are examined as to their strategies and ability to mobilize members and allies in federal, state and local medical marijuana campaigns.

## Chapter Two: Development of Contemporary American National Controlled Substances Policies: Richard Nixon's Foundational Illicit Substance Control Frames and Target Populations

*"I have read the report. It is a report which deserves consideration and it will receive it. However, as to one aspect of the report, I am in disagreement. I was before I read it and reading it did not change my mind. I oppose the legalization of marihuana and that includes its sale, its possession, and its use. I do not believe you can have effective criminal justice based on the philosophy that something is half legal and half illegal. This is my position, despite what the Commission has recommended."*

-President Richard M. Nixon in response to the (Shafer) Commission on Marihuana and Drug Abuse as mandated in the Controlled Substance Act of 1970 (PL 91-153). April 3, 1972

Prior to medical marijuana SMO development and mobilization, reconsideration of federal statutes transpired only from and within governing institutions serving to further support the drug war. Alternations to federal illicit substance control were not driven by external reformers but rather by executively promulgated reorganization. In turn, reorganization consisted of increases in resource largesse, sustainable frames conflating crime, counterculture, and marijuana. Marijuana frames targeting criminals and counterculture elements facilitated a reconstituted emphasis on punitive means that were diffused into illicit substance control policies and the federal bureaucracy. In their comprehensive treatment of America's intensified illicit substance control campaigns, *"Drug War Politics,"* Eva Bertram and co-authors identified this punitively-based model, "The ideas, values, and symbols of the punitive paradigm persist not simply because they have become part of our political culture but because they are embodied in political institutions, from the DEA down to local police forces. The routine enforcement of drug war laws based on the punitive paradigm pushes drug dealers and users...into the underworld and exacerbates crime and violence. When stories and images

of this drug war are carried by nightly newscasts, the drug war strategy and the paradigm that informs it are reinforced; they seem plausible, indeed, necessary” (1996, 259-260). The sustainability of Nixon Era illicit substance control statutes, particularly marijuana prohibition, is predicated not only on dissemination of information framing marijuana as a criminally insidious substance but also by constructing via conflated means a “target’ population deserving of punishment not medical focus. Marijuana prohibition was set in public policy as an absolute labeling of all who trade or partake of the substance as criminals, leading to a status quo of what Anne Schneider and Helen Ingram describe as, “public officials commonly inflict[ing] punishment on negatively constructed groups who have little or no power, because they need fear no electoral retaliation from the group itself and the general public approves of punishment for groups that it has constructed negatively” (Schneider and Ingram 1993, 336).

The acceptance and perpetuation of drug war politics, specifically marijuana prohibition, is part of a systematic reaction originating from Richard Nixon’s creation, promotion, and implementation of the Controlled Substance Act of 1970 (CSA). As part of the omnibus Comprehensive Drug Abuse Prevention and Control Act of 1970, the CSA would be enforced by the Drug Enforcement Administration, under the auspice of the Department of Justice some three years later with Nixon’s signing of Executive Order 11727 “*Drug Law Enforcement.*” How did laying such policy and agency groundwork lead to the entrenchment of the “War on Drugs” with marijuana proscription as that legislation’s centerpiece? This line of inquiry is intended to find support for understanding how foundational institutional and political arrangements impede Social Movement Organizational challenges to federal marijuana proscription. Public acceptance and political normality of the drug war can be attributed to executively introduced

status quo frames and policies. Successful reform means, produced by medical marijuana SMOs, are a result of parsing the messages or "frames" disseminated and promoted by the federal government over the course of the last forty years, in turn countering with innovative frames obfuscating from criminal connotations. Until the mid-1990s, the arduous task of "redefining" or exposing those messages had been taken up by organizations dedicated to infusing alternative drug policy options into public discourse however impeded by the national government's bureaucratic labyrinth of dictates, petitioning, institutional arrangements, and political rhetoric. Indeed, this chapter stands as evidence of a federally created and ensured process of retaining all "ownership" and control of the illicit substance control policy milieu while bureaucratic agencies under the charge of the executive practiced obstructionism in answer to organized requests to reschedule marijuana to a category of substances less dangerous and affording broader opportunities for usage.

The endurance of federal marijuana prohibition speaks as much to a record of stumbling futility of collective action endeavors aimed at reform prior to the proliferation of state-level reforms in the late 1990s as to the creation, passage, and implementation of national illicit substance policies under Richard Nixon. Nixon's initiation of the War on Drugs has been facilitated in its sustainability through emphasizing and enforcing the Controlled Substance Act of 1970's (CSA) prohibitive and punitive means by subsequent presidents. The purpose of this chapter is to articulate and analyze the foundational steps taken to ensure national marijuana prohibition during Richard Nixon's tenure as President of the United States. This portion of the research also serves as a reflection on how and why present day medical marijuana SMOs pursue their courses of reform by turning away from federal proscription of marijuana, thus

removing their immediate policy goals from impediments instituted by executive agencies and congressional committees. Institutionalized barriers to reform have been ossified, to some degree, by rhetorical conflation of marijuana with crime, counterculture elements, and more insidious substances. Specifically, ratification and promotion of the CSA, a centralization of illicit substance resources and personnel beginning with the establishment via executive order of the Drug Enforcement Administration (DEA), and implementation of a punitive paradigm with marijuana proscription as centerpiece are the overarching subjects of examination and analysis of this chapter.

The CSA brand of marijuana prohibition equates to a reconstituted and refined form of federal regulatory absolutism of a pre-Nixon era ban forged upon bedrock of sparsely inlaid tolerance to dissent and divergence. In large part, why over thirty five years passed before (1996) a significant electoral portion of the American population chose to counter federal marijuana proscription amounts to acknowledging extreme political and policy potency of the Nixon Administration's conveyance of anti-marijuana messages during the early 1970s. Somewhat ironic, Nixon's solidifying and assuring a sustained bulwark against future reform, adhered to bureaucratic principles past presidents, including Franklin Roosevelt, employed in reorganization of the executive branch which left open public voice for the airing and contemplation of citizen concerns.<sup>5</sup> No matter if promoted as "reform," innovative, or efficient,

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<sup>5</sup> In 1936 Franklin Roosevelt establishes the "President's Committee on Administrative Management" led by Louis Brownlow, Charles Merriam, and Luther Gulick with the purpose of examining organizational structures of the executive branch. The "Brownlow" Committee was the last such reporting body prior to the Nixon initiated Ash and Malek Committees/ Reports established in 1968 and 1973 respectively.

Nixon's stamp on national illicit substance policy contained and sustained a proscription for marijuana.

I posit that federal marijuana prohibition became well accepted by the polity, challenged in futility, and entrenched from the Nixon Administration's crafted frames depicting and categorizing the drug as adverse to legal and societal stability. By "associating" cannabis with issues of criminal deviance, countercultural elements, and events perceived as dangerous to the public, Nixon was able to keep marijuana proscription publically and politically favorable, thus marginalizing voices of dissent and alternative policy options. Obviously, deriding the adverse nature of crime and offering political solutions plays well to the public ear, especially during election cycles, yet Nixon took added advantage of the negative construct of criminals as a target population. By employing marijuana as a "fastener" between counterculture elements as well as drug addicts to the existing negative perception of the criminal target group, Nixon amplified the force of CSA prohibitive dictates to produce a public belief in his administration's illicit substance control policies commonly known and promoted as the "War on Drugs." Demonstrating a relationship between law abiding counterculture participants and individuals in the throngs of substance addiction with drug criminals amounted to a composite or aggregated population negatively portrayed as underserving of policy benefits. Further solidifying public belief that marijuana was a corrosive social element was accomplished by keeping marijuana framed, thus defined, as an equal among more insidious and harmful substances including heroin, LSD, and other insidious, more harmful substances. In turn, marijuana's definition(s) lacked a parsing from negatively constructed target populations, reinforcing the supposed need for the banning of cannabis underpinned by punitive means..

Enveloping marijuana with more dangerous substances as well as labeling counterculture, crime, and addicts as similarly negative constructs persuaded public sentiment from swaying from the punitive avenues of resolve that Nixon's policies entailed. Leading up to the presidential elections of 1968 and 1972, Nixon's campaign calculus was infused with "blaming the criminal" so as to garner the appreciation of voters who believed it evident that America suffered from an epidemic of illegal behaviors. An abundance of research demonstrates that few safer campaign tactics exist besides targeting negatively perceived groups for the exact purpose of producing public policies that resonate with the electorate (Schneider and Ingram 1993; Arnold 1990; Kelman 1987; Kingdon 1984). Anticipation on the behalf of public officials regarding how target populations will react to policies aimed directly at their demographic along with how others will willingly agree with negative defining of target populations is the underpinning for many a successful campaign formula. The public consents to allowing public officials to deem who *should* benefit and who *should* be punished via policy definitions (Wilson 1986).

Keeping alternative policy options minimized and unknown to public scrutiny allowed Nixon to cache any debate strictly to the confines of his administration's framing of marijuana and the drug's users. Keeping the scope of contestation limited to definitions justifying prohibition allowed Nixon to avoid the consequences of Schneider and Ingram's assertion that, "political debates may lead elected officials to make finer and finer distinctions, thereby subdividing a particular group into those who are deserving and those who are not" (Schneider and Ingram 1993, 336). Throughout this chapter various examples of Nixon's executively led campaign to incorrectly define marijuana are examined including coupling military use of illicit

substances in Vietnam as evidence of his administration “fixing” America’s drug problems in U.S. metropolitan areas; rhetorically conflate and, in turn, aggregate marijuana in policy with more insidious illicit substances such as heroin and LSD; promote cannabis as an agent of counterculture elements “attacking” traditional American values; and while promoting the need for health and educational endeavors regarding illicit substance use, eventually attenuating resources allocated toward scientific and health-based research on the subject.<sup>6</sup>

Nixon endowed his master or meta-frame with an easy to comprehend and alarmist moniker of the “War on Drugs.” Simple as the label reads, its political complexity laid a canyon of opportunity for subsequent presidents to preserve and entrench prohibitive measures regarding marijuana cultivation, distribution, and use. Why Nixon never diligently considered decriminalization, legalization, and/or medical use options for marijuana is tangential to how he was able to propose, receive congressional ratification, and continue a punitive paradigm in the form of law enforcement-first dictates with prohibitive means as a quasi-omphalus for the drug war. Therefore, understanding the political and policy development of marijuana prohibition begins with a set of ideas, assessment of events and actors extending to policy debate and adoption. On the bureaucratic front, Nixon presented the future of federal illicit substance control by tending to what he believed were bureaucratic shortcomings his administration inherited and challenging a historical path based on the autonomy of one administrative chief. In an aggressive public and legislative campaign, the Nixon Administration framed marijuana with criminal and counterculture elements. However, possibly the most striking achievement of

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<sup>6</sup> In 1970, marijuana was “scheduled” or categorized as one of the most dangerous illicit substances with little or no medicinal potential along with heroin and LSD and 117 other illicit substances. As of this writing, marijuana is still held within that category.



Nixon's reorganization of illicit substance control definitions and resources lay at his administration's ability to frame marijuana without differentiating or parsing marijuana from more insidious substances such as heroin, LSD, and opium in rhetoric, public perception, and policy. The creation and ratification of the Controlled Substance Act of 1970 certainly gave clear definitions and codification to illicit substances, leaving little room for dissent. Though evidence of framing as an "artificial" controlling mechanism is present, Baumgarnter, De Boef, and Boydston's (2008, 4) asserts "framing is a natural part of the political process, but rarely does framing result in a near-complete overhaul of an issue debate"; Nixon's version of marijuana prohibition was a political, social, and legal endeavor to finish the debate.

### **Nixon Crafts His Own Brand of Illicit Substance Policy: From Harry J. Anslinger to Reorganization**

Often overlooked and under-valued in regards to indoctrinating Americans as to prohibition's belief system and policy worth was one Harry J. Anslinger a bureaucrat with no contemporary as equal, save J. Edgar Hoover (Gravestock 2000; Galliher, Keys, and Elsner 1998; Winder and Kinder 1986).<sup>7</sup> Anslinger's federal career began as a bureaucratic underling with the enforcing of a nationwide liquor ban though the aim of his administrative duties was quickly

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<sup>7</sup> Harry J. Anslinger held a federal bureaucratic appointment from 1930-1962. For most of his nearly thirty-three year tenure, Anslinger was the Director of the Federal Bureau of Narcotics (FBN). Citing the three sources, though from differing disciplines (Gravestock-Film Studies, Kinder and Walker-History, Galliher, Keys, and Elsner-Criminology) is meant to emphasize the consensus across academic research fields regarding Anslinger's autonomous authority and ideological weaving of illicit substance control and anti-communism.

See Gravestock, Steve. 2000. Grass: Homegrown Truths. Ron Mann's Grass Lights a Torch for Reefer Sanity. *Take 1*. 8, no. 26: 12-11. Galliher, John F, David P Keys, and Michael Elsner. 1998. Lindesmith V. Anslinger: An Early Government Victory in the Failed War on Drugs. *Journal of Criminal Law and Criminology*. 88, no. 2: 661. Kinder, Douglas Clark and William O. Walker. 1986. Stable Force in a Storm: Harry J. Anslinger and United States Narcotic Foreign Policy, 1930-1962. *The Journal of American History*. 72, 908-941

altered as the “noble experiment” ended and he was elevated to Director of the FBN under Franklin Delano Roosevelt.

In the latter part of the long and near autonomous career of Director Anslinger, illicit narcotics were interwoven with the ideological clash that constituted the “Cold War.” Under Anslinger’s leadership, the FBN targeted criminal elements whether traffickers, distributors, or users domestically while trafficking was the focus internationally. The basis of Anslinger’s aggressive claims of communist insurgents corrupting Americans with the lure of drug money and eventual addiction, hinged on Congress, the President, and the public believing communist nations including the Soviet Union, Cuba, and China oversaw the distribution of narcotics from production centers to the United States, thus weakening American fortitude and amplifying the “Red Scare” (Walker and Kinder 1986). Meshing ideology and “insurgent” elements with drugs would also serve Nixon as he rhetorically and policy-wise challenged counterculture figures. Nixon’s cultural fixation of “hippies,” anti-war protesters, and free speech advocates substituted for Anslinger’s coupling of the narcotic trade and the Cold War. However, just as Anslinger had accomplished, most of Nixon’s anti-drug pronouncements were linked with his anti-hippie campaign promises to “Get Tough on Crime.” For Anslinger, organized crime was the baggage handler for illicit substances while criminal activities served Nixon as a regulatory manifestation produced from a decade of social and political turbulence of radical uproars such as race riots in several metropolitan areas and university campuses beleaguered with student discontent (Ibid). While the FBN went on without Anslinger’s leadership, President Johnson did little to intensify law enforcement vigor for a coming drug war or conflation of drugs and crime.

Nixon took advantage of a downturn in domestic punitive policy means by resurrecting the connections between legal transgressions and drug use.

Harry J. Anslinger had captured near total control of illicit substance policies by emphasizing a law enforcement first vision. In 1968, some six years following the de facto Drug Czar's mandatory retirement from federal service, Anslinger's vision and manipulation were not only fully entrenched in substance control statutes and directives, but with Richard M. Nixon campaigning for president on a few core promises and explanations for inner-city plight that targeted liberal shortcomings, the future of illegal drug policy seemed to pose little risk of deviating from a punitive paradigm. The absence of Anslinger from federal policy circles in 1968 allowed Nixon to face little, if any, bureaucratic impediments as he ventured into the drug control policy area. This was particularly true preceding a paucity of executive emphasis on that issue area. Nixon tied crime, young people "lost" to drugs due to counterculture elements, and a need for public embracement of his messages and policies in a parental-like fashion following the signing of the CSA, "I hope the whole nation will move with us to save the lives of thousands of our young people who would otherwise be hooked on drugs and physically, mentally, and morally destroyed."<sup>8</sup> Attempts to control the forces of illicit substances by way of conflating other issues was not a tactic invented by Nixon's Administration, but contemporizing those forces was essentially a "reframing" conducted in a short period of time while effectively

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<sup>8</sup> Taken from The American Presidency Project, University of California-Santa Barbara, document number 389 for 1970 entitled: *"Remarks on Signing the Comprehensive Drug Abuse Prevention and Control Act of 1970."* October 27, 1970  
<http://www.presidency.ucsb.edu/ws/index.php?pid=4159>  
 Last taken on June 12, 2009.

and concurrently promoting legislative alternations of policy dictates and jurisdictions concerning illicit substances.

Therefore, creating and proposing an omnibus illicit substance bill was an offshoot of Nixon's campaign hyperbole and focus on crime consistent with what many target population researchers claim regarding why public officials feel compelled to explain and justify their policy stances to the electorate via presentation of an articulated vision and how proposed policies are congruent with strongly held public values (Schneider and Ingram 1993; Arnold 1990; Offe 1985; Habermas 1975). Conflation of definitions pertaining to illegal drug trafficking and abuse with criminal and counterculture elements served as an "overhaul," and, at times, a reinvention of illicit substance policies and agencies. When Nixon proposed marijuana prohibition as one of the CSA's dictates he essentially infused the public's belief in the need for prohibition that was so well sustained by Anslinger. The citizenry was "reminded" of why marijuana was dangerous via a trumped up association with negative target populations. In early 1971, as he reveled in the passage of the CSA and a presidential approval rating of well over 65%, Nixon readied his administration for a shift in authority concerning enforcement of federal illicit substance control policies.<sup>9</sup> Nixon's fixation-cum-policy conflation of counterculture and drugs gave solace to mainstream Americans worried by marginalized groups threatening their value system and safety. Specifically, coinciding with Americans coming to terms with alterations in cultural attitudes and norms was Nixon pushing for the shell of the Bureau of Narcotics and Dangerous Drugs (BNDD) under the auspice of the Treasury Secretary to be swept away by his

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<sup>9</sup> Presidential Approval Ratings in Historical Perspective Gallup Polls taken from website <http://www.gallup.com/poll/116677/presidential-approval-ratings-gallup-historical-statistics-trends.aspx> Last taken on March 23, 2010.

Reorganization Plan Number 2, subtitled “*A Unified Command for Drug Enforcement.*” The War on Drugs would have leadership combining policy, law enforcement, and legal expertise with the founding of the Drug Enforcement Administration as enforcer of CSA dictates ultimately housed within the Department of Justice (DOJ). Efforts to find permanent and more legally-based housing for illicit substance resources and the BNDD began in earnest during John Kennedy’s time as President, then marginalized following his assassination. Once elected in 1964, Lyndon Johnson reinitiated an executive branch reconfiguring of federal illicit substance control resources for the first time since Anslinger’s retirement in 1962. However, Johnson’s refusal to seek his party’s nomination for office once again sidelined an overhaul of domestic drug control. To his credit, Nixon would hold true to his campaign vows to bring a comprehensive institutional arrangement for federal drug control.

Specifically, three prominent shifts in authority transpired: new illicit substance policies were being structured and draped in a call to answer increased crime; a health branch of drug control was being explored in answer to sharp spikes in drug abuse amongst military personnel returning from duty in Southeast Asia; and while continuing to promote a law enforcement directive in the field of drug control, Nixon’s comprehensive illicit substance policy proposal (S 2637) called for the Secretary of the Treasury to absolve that department’s charges from all BNDD duties and objectives of illicit substance control which were given over to the yet to be named DEA. All three shifts in authority were contained in the grander scope of the most pronounced critical juncture in American federal drug policy since the passage of 18<sup>th</sup> Amendment and its accompanying legislation, the Volstead Act of 1919. Reorganization and reform of drug control forces was a manifold endeavor for the new president. First, this policy

area was but one part of the Nixon administration's audit and restructuring of the federal bureaucracy. Second, such action demonstrated Nixon's commitment to reorganization as a means to mending national ills, namely increased crime rates. Institutional maneuvering of legal and enforcement arms of illicit substance policy were essentially answering what Jonathon Simon assesses as unrest in poor areas, mostly urban settings, and Americans' fear and personal security being put on the table. Nixon could tout a rigorous drug control scheme as practical implementation while symbolically quelling a national anxiety over the widespread invidiousness of illicit substances.<sup>10</sup>

Transforming rhetoric to policy was tantamount to Richard Nixon reorganizing executive agencies and establishing uniform federal standards regarding narcotic control. Speaking to the former, Nixon believed the Bureau of Narcotics and Dangerous Drugs had outlived its master-policy architect Harry Anslinger's aims, and, absent an autonomous figure to lead the agency, Nixon could act in an opportunistic fashion to centralize agency control to his tastes, while portraying a more decentralized federal policy network fitting his brand of reorganization. Nixon turned to John Ehrlichman, his lead domestic advisor, to select individuals responsible for CSA implementation, DEA organization, and crafting master frames pertaining to illicit substances. Ehrlichman tagged Egil "Bud" Krogh as the "point man" for drug policy reorganization. Krogh was an innovative, yet die-hard loyalist and aide to Ehrlichman, Nixon's top domestic policy advisor. Young Krogh, but twenty-nine when handpicked by Ehrlichman, had a personal interest in drug use, as Journalist Dan Baum notes, "at the age of eleven he'd

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<sup>10</sup> See Jonathan Simon *"Governing Through Crime: How the War on Crime Transformed American Democracy and created a Culture of Fear."* 2007 Oxford Press and Interview with Jonathan Simon [www.presstv.com](http://www.presstv.com)

made a deal with his father: if Dad would stop drinking alcohol and smoking tobacco-both of which he did heavily-"Bud," as junior was called, would never touch either. His father stopped drinking and smoking, and Bud embarked on a life, a total life of abstinence from alcohol or drugs of any kind." So when Krogh, holding an internal distaste for drugs and a possible affinity for prohibitive means, was pulled aside by Ehrlichman in December of 1968 because, "the president-elect wants some ideas on crime, and some recommendations on how to handle the antiwar demonstrations," a new set of illicit substance control policies within a punitive paradigm was to take shape (Baum 1996, 13-14). Though exemplifying young Krogh's familial experience might be a case of inductive reasoning, "turning away" from a life of alcohol and drug use is positively perceived not only because it connotes a beneficial change but also demonstrates a negative association between individuals and any substance. What the story of Krogh's father does indicate is that the elder Krogh, like many Americans, did not want to be perceived as a substance abuser and fall into a negative target population. Ultimately, those experiencing problems due to substance use are framed within a "deviant" group conceptualized as criminals, sex offenders, spies, computer hackers along with drug dealers and users, as less deserving, resulting in not attaining the status of a positive social construction, and thus politically disadvantaged those groups (Ingram, Schneider, and deLeon, 2007). For Krogh, as policy surrogate to Nixon, criminals and those taking part in counterculture activities served as their primary accusatory groups.

The identification of two negatively portrayed populations allowed Nixon's team to corral most of the problems and those causing the problems into a tight-knit conceptualization most agreeable with the general public. While criminals are infinitely labeled as detrimental to

society, those in the counterculture could claim to possess some public empathy and understanding for many of them were college students-“somebody’s kids.” In regards to public policy making and resources allocation, a substantial portion of the counterculture warranted being marked as “Contenders.”<sup>11</sup> However, as Ingram, Schneider, and deLeon’s astutely suggest such groups are “likely to receive benefits because of their political power, but these benefits are often *sub rosa*, that is, buried in the details of legislation and difficult to identify. Benefits to contenders are hidden because no legislators want to openly do good things for shady people. Contenders may receive burdens in legislation, especially harsh rhetoric about their shortcomings and burdensome regulations, but, because of the political power, such burdens are difficult to enforce and easily challenged during implementation or in court action” (Ingram, Schneider, and deLeon 2007, 102). Nixon’s anti-counterculture rhetorical campaign was most evident and policy burdens became increasingly difficult for even organized members of the counterculture to challenge due to conflation-in rhetoric and policy practice-with criminal elements. Benefits were extended to returning military personnel addicted to narcotics who may have garnered public empathy and can be regarded as a positive group yet held “low” political power. If placed on a continuum of negativity and positivity, criminals could be firmly positioned as a target population facing policy burdens by Nixon’s punitively weighed illicit substance control policies while counterculture members would be conceptually situated between that group and addicted military personnel. Returning drug addict veterans could be

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<sup>11</sup> Ingram, Schneider, and deLeon further define “contenders” within the rubric of social construction of target populations as having “substantial political resources but are negatively regarded as relatively selfish, untrustworthy, and morally suspect. Contender groups have long including major labor unions, although organized labor is losing its once unquestioned political power. Polluting industries, gun manufacturers, “big oil,” Washington lobbyists, and radical conservative activists are generally regarded as politically powerful but underserving” (Ingram, Schneider, and deLeon in Sabatier 2007, 102).



categorized many “degrees” toward benefiting from federal illicit substance control policies, thus evading a significant amount of burden.<sup>12</sup> The potential political worth of framing target populations lent to Nixon’s election victories but not until taking office were the effects played out in policy formation. By itself, defining the traffickers and users of marijuana was an incomplete policy endeavor. Targeting particular populations created a political arsenal to publically attack marijuana proponents, codifying substances evinced creation of a legal and social strategy for containing future narcotic traffickers, users, and reform advocates. The “workings” of the CSA gave authoritative direction demonstrating to the public, bureaucrats, and policymakers an articulated, though many times lacking scientific reasoning, front in the “War on Drugs.” Therefore, restructuring federal illicit substance control accounted for an integral political and policy portion of Nixon’s reorganization of the larger federal bureaucracy.

In August of 1969, just seven months after taking the presidential oath and as only the second Republican to hold the Oval Office in over thirty five years, Richard Nixon brought forth a hint of what Americans could expect from him regarding domestic policies. The proposal of an omnibus illicit substances reform bill aggregated illegal narcotics by categorizing their “danger to society” and “medical potential.” Beginning “at the top” of the categorization ladder or “Schedule” of illicit substances, a Schedule I substance held no medical potential and the greatest severity or risk of danger to society. A drug’s medical use and possible detriment decreased in descending order of the Schedule with a Schedule V substance having regular medical employment and posing but a faint threat to society. Marijuana was initially placed

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<sup>12</sup> See Ingram, Schneider, and deLeon’s “Social Construction” figure which depicts placement of positive, negative, advantaged, contender, dependent, deviant, as well as low and high power target populations (Ingram, Schneider, and deLeon Figure 4.2 in Sabatier 2007, 102).

within Schedule I in August of 1970 and has retained that dubious placement ever since. While marijuana prohibition as a federal standard existed prior to Nixon's presidency, "scheduling" cannabis demonstrated the policy viability of prohibition as a political instrument wielded in a more "knowing" manner than Federal Bureau of Narcotics Director Harry J. Anslinger had from 1930 to 1962. Nixon was not, at least in totality, imitating Anslinger's model of illicit substance control, rather, the new president was making good on his campaign promise to "Get Tough on Crime" well beginning the first stem to stern Executive Branch reorganization since the Roosevelt Administration's Reorganization Act of 1939. Impetuses for Nixon's reorganization of the executive branch and departure from the policy status quo including illicit substance control are articulated by Paul Light:

"Reorganization and reform of existing drug policy and agencies seemed politically natural for Nixon since, "Nixon had little choice but to present new initiatives. To adopt modifications of old Democratic programs would have been contrary to his political goals. One way to explore the Nixon paradox is to ask the inverse question, Why did Kennedy, Johnson, and Carter concentrate on more old programs than Nixon? Simply stated, given the legislative success of Roosevelt's New Deal, Kennedy, Johnson, and Carter experienced less pressure to produce new programs. As one Kennedy aide noted, "our job was to extend the New Deal into the 1960s. We wanted to expand the programs and revise their impact. We wanted to complete some of the unfinished business. "The answer also involves the Democrats' greater success in Congress. In 1968, most of Johnson's "old" requests focused on programs he had initiated, so he could focus on amending his previous successes. The Democrats did not have to present a full set of new programs to accomplish their program ends. Given the nature of the federal system, most Democratic suggestions for change could be easily tied to past initiatives; most Republican request for change would be for substantial redirections of the status quo. The Republican Presidents were in the unenviable position of trying to change the system while dealing with an opposition Congress. By the early 1970s the status quo had become increasingly a Democratic animal" (Light 1982, 123-124).

Instituting new policy directions seemed intuitive for Nixon due to the executive branch being under Democratic control for the last thirty-two out of thirty-six years. Yet, Republicans had

railed against New Deal programs as too costly and overly intervening in the lives of the American populace; government had grown too large to be accepted within the variance of Jeffersonian (Republican co-opted) institutional design of “the government that governs the least, governs the best.” Nixon’s answer was to employ reorganization as innovation in leadership, in essence challenging exiting welfare-state policies and agencies with regulatory structure. Unlike Reagan’s limited government of the 1980’s, the Nixon administration did not emphasize the size or growth of the bureaucracy but rather control of bureaucratic personnel and resources. Tightly held reigns, of course, ensured that Nixon could drive the coach of bureaucracy toward a horizon of his own solutions. Though Nixon trimmed his messages of illicit substance control reorganization as new endeavors to combat trafficking, use, and addiction, straying too far from well-founded frames could cause public misperceptions and misunderstandings. Examination of presidential predecessors elucidates Anslinger’s legacy of influence as well as Nixon’s ploy to emphasize illicit substance control as primarily a domestic issue via reorganization rather than a peripheral policy concern.

Extreme divergence or explicit compliance with existing federal illicit substance statutes placed Nixon's administration as either upsetting the status quo or failing to act. Keeping marijuana prohibition as a staple within U.S. illicit substance control means would be a political failsafe and centerpiece for the new president as he crafted the CSA and carried through on campaign promises. Reorganization was not an inhibiting factor to the conceptualization of prohibition; no tolerance before 1970 was still no tolerance post-CSA passage. However, accepting political reality necessitated bringing innovation to the table. In regards to marijuana prohibition, Nixon did just that in rhetoric and conflation, yet in practice he straddled little from

prohibition's rigid lines. By embracing a punitive paradigm for drug control, and intimating initiating health programs, Nixon believed he had found a successful compromise. A December 1969 New York Times article summed up Nixon's prerogative for a new manner of readdressing drug control through a crime-fighting lens:

“President Nixon, who confesses that he used to think the “answer” to the nation's growing drug abuse problem was “simply enforce the law” and increase the law's penalties, has commendably changed his mind. His new view, as expressed at a conference on narcotics attended by most of the nation's governors, is that when the use of drugs is so widespread, when the young and very young are so deeply involved, the answer cannot be a mere crackdown but rather “information” and “education.” This is the view that most narcotics experts also hold. It is the view that President Johnson's Crime Commission expressed in its landmark 1967 report: “Since early in the century we have built our drug control policies around the twin judgments that drug abuse was an evil to be suppressed and that this could most effectively be done by the application of criminal enforcement and penal sanctions. Pointing out that such a policy had not worked, the report compared drugs to alcohol, warned against any repetition of Prohibition and urged “gradations as to the seriousness of the offense, an invitation to ease penalties for marijuana, along with greater emphasis on drug research and education.”<sup>13</sup>

Nixon gave a half-hearted embrace to the existing drug control policies put forth by his predecessor by publically acclaiming and vowing to continue the recommendations of Johnson's Crime Commission Report. Such actions served the new president's image, while demonstrating to Congress and the rest of the federal government, especially bureaucratic managers, that his administration's reorganization plans were not radically divergent from the status quo yet of *his command*.

First, the little change Lyndon Johnson had brought to illicit substance control was not drastically ideologically distant from the eventual initial direction Nixon expressed prior to the

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<sup>13</sup>Editorial *New York Times* December 8, 1969 “The ‘Answer’ on Drugs.”

CSA submission. Second, Nixon, a first term president, as Historian Joseph Zentner assesses, was “locked-in” by his predecessor to the extent that he found status quo policies such as prohibition politically viable [and feasible] along with not being too divergent from Johnson’s intentions. If Richard Nixon, in the post-inaugural period, appeared to move cautiously in rejecting even the most vulnerable of Lyndon Johnson's programs, he did so because of the political realities. Nixon had not garnered a pronounced mandate from the people to move in particular directions (domestic affairs-wise), and was forced to work with a Democratically controlled Congress” (Zentner 1972, 9). Third, Johnson's existing illegal drug policies were the continuation of a well-accepted trend within the broader milieu of domestic policy, à la focusing on urban plight, thus serving Nixon's intention of proposing new crime fighting legislation. Speaking to illicit substance control specifically, America had walked a punitive paradigm path of marijuana since the repeal of alcohol prohibition in 1933. Even the fledgling Federal Bureau of Narcotics (FBN) had been led by former Prohibition Agency administrators.

Enactment of the CSA cannot be understated as to its political and policy implications. Establishing the CSA was the first time a President had taken the reins of crafting an overarching federal drug control scheme. Nixon's public commitment to reorganization in the form of hiring clinicians to study potential remedies to drug addiction and structure educational models for the purpose of deterring substance users was a fundamental improvement over past drug control measures. The seeming shift in policy direction was duly noted by the Shafer Commission, the very commission Nixon mandated within the language of the CSA,

“In 1932, the National Conference of Commissioners on Uniform State Laws included an optional marihuana provision in the Uniform Narcotic

Drug Act, and by 1937 every state, either by adoption of the Uniform Act or by separate legislation, had prohibited marihuana use. In late 1937, the Congress adopted the Marihuana Tax Act, superimposing a, federal prohibitory scheme on the state scheme. Not once during this entire period was any comprehensive scientific study undertaken in this country of marihuana, or its effects.”<sup>14</sup>

Political incentive and grabbing at bureaucratic power were significant forces driving Nixon’s proclivity to readjust federal drug laws and forces.<sup>15</sup> Coordinating and implementing new bureaucratic standards and agency responsibilities defined Nixon’s institutional commitment to reorganization, public acceptance and policy-makers “buying-in” to the drug war necessitated creation, dissemination, and reiteration of negative, punitively-based messages regarding illegal substances. Evidence of Nixon’s Executive Branch reorganization developing into an entrenchment of drug war tenants is articulated in Chapter Three. CSA prohibitive mandates augmented or updated Anslinger’s version of marijuana prohibition by tapping into a politically reliable and sustained negative Target Population, criminals. Linking the need for bureaucratic reorganization and counterculture elements to criminal properties evinces Ingram, Schneider, and deLeon’s (2007, 107) claim that “legislators do not want to get caught doing things very favorable to groups easily constructed as deviants or, in many cases, contenders. They are anxious to be seen as burdening deviant groups because they believe the voters will reward them for punishing negatively constructed groups.” Manufacture and promotion of “Getting

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<sup>14</sup> *National Commission on Marihuana and Drug Abuse Report* commissioned by President Richard Nixon via mandate in the Controlled Substance Act of 1970, issued on March 22, 1972.

<sup>15</sup> The political impetus can easily be evinced by Nixon’s numerous campaign speeches and administratively Nixon expressed a dislike and distrust of agency chiefs. However, specific to voter-based concerns, the White House, even in Nixon’s early days in office and up until leaving office, received substantial amount of letters, telegraphs, and phone calls asking for greater attention to drug trafficking and use. Archival materials from *The Nixon Papers*-College Park, Maryland February 2009 archival search.

Tough on Crime” policies demonstrated Nixon as attacking the issue, transferring much of the political burden to congressional legislators, and reaffirming negativity of marijuana users. During America’s “Great Experiment” conflation of crime, policy, and seemingly innocent populations transpired, as noted by Michael A. Lerner, “the simple act of drinking a glass of wine now not only made one a criminal, but also called into question one’s patriotism and fitness to be an American.” Just as ardent alcohol prohibition supporters conflated crime and Catholics (a portion of their targeted population) Nixon blurred the lines between leisure or experimental marijuana smokers and punishable deviants.”<sup>16</sup>

Defining illicit substances exclusively as criminal guided legislators and voters to perceive the drug war as dichotomous; those involved with marijuana as traffickers, users, or understanding of the drug’s actual effects warranted suspicion. Even as substantiated and not fear-driven information regarding marijuana was coming to light, there were no positive target populations or federally sympathized groups save veterans. However, veterans were of a “transitional” population, needing public and governmental understanding as victims overcoming a regrettable collateral ailment from the Vietnam War. Though a myriad of resources offered veterans opportunities to defeat an enemy they could not geographically escape, drugs, whether marijuana, heroin, or opiates were of a sinister, invasive element. The promotion of illicit substances as an insidious element rotting the lives of young people began in earnest within the bitterly contested 1968 presidential campaign with Nixon referring to narcotic use as the “modern curse of the youth,” and without a stop gap measure, Massing notes, the path of “decimating a generation of Americans” would continue unimpeded.

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<sup>16</sup> See Lerner, Michael A. 2007. *Dry Manhattan: Prohibition in New York City*. Cambridge, MA: Harvard University Press.

Sentiment of this type served a larger against the source of those drugs” (Massing1998, 97).

Proposal and subsequent ratification of the CSA promised a swift return on the new president’s “honeymoon” period efforts for several reasons. First, it gave him a political and policy triumph against the Democratically controlled Congress while struggling to manage the ever-increasing mortality statistics produced by the Vietnam War. Beyond diverting public attention from Southeast Asia, passage of an omnibus narcotics bill sent a message to bureaucratic managers that the President was taking a “hands-on” approach to reigning in career bureaucrats, especially agency chiefs, who he believed were so inclined to challenge his policymaking and implementation mettle. Nixon’s believed, politically and personally, that the bureaucracy was infused with adversarial partisan and ideological personnel. When attempting to forge relations with bureaucrats, especially career managers, there existed a foreboding that Nixon countered with “guerrilla warfare.”<sup>17</sup> By decreeing the need to reorganize the Executive Branch, Nixon was sending a political message to well-entrenched department directors and their charges. In essence, he was claiming command of executive agencies in a manner that pricked the ears of those he neither trusted nor hid his disdain from- career bureaucrats.

Therefore, Nixon directed his closest advisors that centralizing control could tame any dissenting bureaucrats, going so far as to have Special Assistant to the President Fred Malek issue the “Malek Report,” a series of directives to bureaucratic managers as to the President’s

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<sup>17</sup> Nixon’s aggressive inclination toward the federal bureaucracy was well known. Reorganization gave the President another reason to demonstrate his volatile temperament toward agencies under his charge. One quote that was widely circulated has Nixon demonstrating more than a hint of paranoia and distrust of bureaucratic managers, “96% of the bureaucracy are against us, they’re bastards who are here to screw us.” See Lammers, William W. 2000. *The Presidency and Domestic Policy: Comparing Leadership Styles, FDR to Clinton*. Washington, D.C.: CQ Press.



desired path of agency operations and command procedures.<sup>18</sup> The product Malek delivered to executive agencies was, as Michael Genevose (1990, 30) notes, in part, an answer to and warranted by Nixon's paranoia, "the president had to shift the centers of power from the bureaucracy to the White House" and this called "for bullying unresponsive bureaucrats into submission." As part of his reorganization efforts drug control policy reform and bureaucratic commandeering went hand in hand, offering Nixon the chance at a twofold windfall by addressing a pressing domestic need while being demonstrative in his application of administrative authority. For Nixon, restructuring, centralizing, and shifting national illicit substance control resources was helped in securing law enforcement-first dictates of federal drug policies.

While the CSA was a successful and forceful initial step in fulfilling one of his major campaign promises, the legislation contained more than just guidelines to understanding the various illicit substances plaguing America. While promotion of reorganization and groundbreaking legislation was at hand, reevaluation and demise of the Bureau of Narcotics and Dangerous Drugs (BNDD) was all but inevitable. In addition to corralling bureaucratic leaders, disassembling the BNDD was more than a supplemental measure to enactment of the CSA; rather Nixon's ability to act with vigor and decisiveness was evident in his Executive reorganization. Some three years following the CSA's passage, Nixon established his bureaucratic bastion in the "War on Drugs" with the founding of the Drug Enforcement Administration (DEA) contained in the Department of Justice (DOJ). Location of the DEA inside

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<sup>18</sup> Fred Malek served in the Nixon administration from 1970-1974, first as Special Assistant to the President and then as Deputy Director of the Office of Management Budget. Though it is well documented that Nixon harbored a loathing of bureaucrats in general, Nixon called for the Malek Report due to his suspicion of Jewish bureaucrats.

the halls of the Justice Department was a departure from the BNDD's site of operations at the Treasury Department and was seemingly driven by the very dictates of the CSA, which emphasized continuing the federal government's law enforcement-first tactics of a punitively underpinned "War on Drugs." DOJ overseeing drug enforcement was affirmed and heralded in force by Nixon's own rhetoric and symbolic direction of the drug war, giving validity to *New York Times* reporter James Naughton's assessment of the fledging relationship between the new president and federal attorneys, "in its first year under Attorney General John N. Mitchell, the Department of Justice seems to have taken on the look of the strong right arm of the White House."<sup>19</sup>

The final step in institutional rearrangement and an interlocking bureaucratic scheme to contain drugs to a legal corridor was for Nixon to employ direct executive authority by founding an agency with punitive vitality, the Drug Enforcement Administration. From the motion of Nixon's hand to the flow of ink streaming from one of many "Presidential" ceremonial pens, Executive Order 11727 was issued "giving birth" to the Drug Enforcement Administration (DEA). Executive Order 11727 completed *Reorganization Plan Number 2* and served as a capstone for a series of other Executive Orders which dismantled the existing drug control federal bureaucratic network. Under the auspice of the Department of Justice, the formative years of the DEA was initially led by Administrator John R. Bartels, Jr. Superficially, illicit substance control policies were compartmentalized as two separate concepts, bureaucratic reorganization and criminal culpability. A more profound examination unveils a cause and effect or

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<sup>19</sup> James M. Naughton Special to the New York Times "Justice Department's New Image: Nixon's Right Arm." New York Times December 25, 1969.

reciprocation of influence. Constructing marijuana frames defining all users as criminals identified supposed socially corrosive elements while driving bureaucratic response to Nixon's aggressive leadership of the executive branch and shifting of illicit substance control resources.

### **Conflating Marijuana Frames: Vietnam, the Counterculture, Crime, and More Insidious Substances**

Proposal and passage of the CSA served political, cultural, and administrative directives for Nixon. First, during his election campaign in 1968, Nixon had repeatedly promised in numerous stump speeches reiterations to "Get Tough on Crime." This call to arms was the cornerstone of Nixon's domestic policy, and for the most part, stood absent of any holistic answers. Lack of a comprehensive answer to high rates of crime in urban settings was played off of the continued military obligations in Southeast Asia and a professional proclivity for international affairs; therefore, Nixon limited his campaign appeals to issues that found general resonance and agreement within the electorate (Schell 1976). Nixon, the candidate, angled to create an advantageous situation out of what, at first glance, might seem as an overly sensitive set of domestic and foreign circumstances.

In late January of 1968, the North Vietnamese Army carried out the "Tet Offensive" changing the course of the overall conflict as well as swaying and holding media and voter attention on two prominent problematic policy areas: Vietnam and urban affairs. The escalation of conflicts in Southeast Asia brought pause to American strategy regarding whether to become further entrenched in battling Communist insurgency or to slowly drawback into complete withdrawal. With many questioning a greater commitment to pledging American resources

overseas, the need to attenuate resources to domestic issues was weighed. At home, social conditions in urban areas was transforming into a “Pandora’s Box” with wisps of hope being steadily evicted by infection and cure that included riots in metropolitan areas, continued racial disharmony, and Lyndon Johnson's “War on Poverty.” As many scholars and journalists alike have noted, Nixon was behooved to explain Military entanglements in Southeast Asia in part by crafting a message that could be accepted by a wide range of voters and promising a “peace with honor” result (Reeves 2002). Though Nixon would emphasize illegal drug issues plaguing American urbanites, soldiers serving and returning from Vietnam held a tie-in with illicit substance policy. Heroin and marijuana use amongst “in-country” military personnel was, to understate the problem, offsetting to the U.S. government and public. *The New York Times*, *Time magazine*, and *Washington Post* were among the large scale publications carrying stories of a swirling G.I. drug epidemic. Various reports depicted heroin, marijuana, and other state-side illicit substances as “common as chewing gum” with addiction rates as high as 50%, and returnees bringing large quantities of contraband into the country for the purpose of turning a profit while staying “hooked.”<sup>20</sup> Therefore, Nixon pointed toward Vietnam as another reason for the federal government to harness the ravaging drug problem, giving him added fodder to fuel public concern over drugs and obfuscate media focus from the accruing death count in Southeast Asia. The President even sent legal advisor, Egil “Bud” Krogh on a multi-Asian nation tour, for the purpose of expressing America’s drug war intentions, with Vietnam as the last stop. While on tour, Krogh investigated how the drug testing of returning soldiers was working and if “positive” testing personnel had decreased since urinalysis procedures were

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<sup>20</sup> Reeves, Richard. 2001 *President Nixon: Alone in the White House* New York, NY: Simon and Schuster, p. 323

implemented. Much of Krogh's review of the drug testing and counseling of soldiers was rooted in the halls of the National Institutes of Mental Health and National Institute for Drug Abuse. In early 1971, Jerome Jaffee, a leading research clinician of methadone treatment for heroin addiction, was recruited by Nixon advisors to handle health-based initiatives overseen by the NIMH and NIDA.

Nixon's brand of illicit substance control also focused on detrimental effects of drug abuse both domestically and in regards to practical enforcement of the legal underpinnings of the punitively-based policies. These overarching policy areas presented Nixon with a justification toward his initial step in development and shifting authority so as to centralize illicit substance control policies within the executive branch. Therefore, in an act of anticipating congressional acceptance of the CSA, Nixon called for the formation of a drug use and abuse task force. One month before the CSA was to be debated in Congress, Egil Krogh, with the help of Bud Wilkinson, Ken Cole, Jerry Warren, and Jim Atwater, formulated a list of possible members of the Task/Working Group on Narcotics Education.<sup>21</sup> In a month's time the task force which included department chiefs from the BNDD, NIMH, Education, Economic Opportunity, Labor, and a representative from the Armed Forces announced their marijuana conviction and sentencing focused report would be disseminated by the Treasury Department. However, as a possible sign of institutional rearrangements to come, the announcement and discussion of the committee's report was given at the Department of Justice in Attorney General Richard

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<sup>21</sup> Memorandum for Ken Cole. From: Bud Krogh "*Task Force Re: Drug Use and Abuse*" National Archives and Records Administration (College Park, MD) documents contained within the "Nixon Presidential Papers" dated August 27, 1969 and September 8-9, 1969. File and Box number: Acquired on February 11-13, 2009.

Kleindienst's office.<sup>22</sup> The crux of the report indicated a consensus between the Treasury Department and committee members existed for "the present penalty structure for marijuana convictions [being] counterproductive." Bud Krogh's response was direct yet hinted at trepidation: "It may well be that as soon as we form our working group on educational efforts on drug use and abuse that we should make this report mandatory reading. I'm afraid that the views contained herein are going to be received as the view of the Administration."<sup>23</sup> One month later, Nixon submitted the CSA for congressional consideration with a mandate for creating a committee to research the feasibility of alternatives to marijuana proscription, one of many "innovative" and somewhat divergent policy options within the national illicit substance control plan. Very little need to lobby the general wording and direction of the CSA's policies was existed, however, articulation of who and why the CSA would target held promise of the new legislation being unquestioned by either institutional or public opponents.

Nixon's disdain for Northeast blue-blood intellectuals and bureaucrats were some of his more well-publicized aversions.<sup>24</sup> However, a group he also publically and loathed was that which constituted the "counterculture." He perceived those creating and perpetuating lifestyles alternative to mainstream America as the primary cause of the nation's moral compass being thrown off. Rick Perlstein (2008, 258) recalls a Chicago Tribune editorial from the day after Martin Luther King, Jr.'s assassination, epitomizing how many Americans, especially those

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<sup>22</sup> Memorandum for Jerry Warren. From: Bud Krogh "Task Force Report: Narcotics, Marijuana and Dangerous Drugs." National Archives and Records Administration (College Park, MD) documents contained within the "Nixon Presidential Papers" dated September 9, 1969 File and Box number: Acquired on February 11-13, 2009.

<sup>23</sup> Ibid.

<sup>24</sup> See Genovese, Michael. 1990. *Nixon Presidency: Power and Politics in Turbulent Times*. Westport, CN: Greenwood Publishing Group.

leaning in a conservative fashion and favoring Nixon's stance on crime, felt about the present state of the younger generation on the cusp of the 1968 elections, "Yes, this nation and people need a day of mourning," Americans should mourn, but not for King. They should mourn because "moral values are at the lowest level since the decadence of Rome...Drug addiction among the youth is so widespread that we are treated to the spectacle at great universities of faculty-student committees solemnly decreeing that this is no longer a matter for correction...We are knee-deep in hippies, marijuana, LSD, and other hallucinogens. We do not need any of these: we are self-doped to the point where our standards are lost..." The political opportunity for Nixon's campaign team and eventually his administration to move on crime, drugs, and the straying of youth was at hand. A political ferment was a swirl and fertile for blame to shed a negative light on those stoking social discontent.

Therefore, the primary wave of conflation framed crime and marijuana as well negatively stereotyping the drug's users through rhetoric and policy making while a second line of the "War on Drugs" braided drug war principles and definitions with counterculture elements rising from the rancor of the 1960s. Social and political upheaval spawned from radical activism attributed, by Nixon, to college campus-based organizations such as Students for a Democratic Society (authors of the *"Port Huron Statement"*), Free Speech Movement and groups possessing pronounced racial identities including the Black Panthers, constituting competing cultural forces against Nixon's advocacy of the cultural and political status quo (Perlstein 2008). Proposing up-to-date and scientifically researched data heralding the need for reorganization and reform of existing federal drug control policies, Nixon attempted to quell citizen concerns arising from counterculture activities. Conflating the most prominent and widely used drug,

marijuana, with crime, other more lethal as well as undefined substances including LSD, and non-traditional elements of society that “by chance” contained politically dissenting voices, Nixon corralled a multitude of his “opponents” while impressing upon the public the forging of new solutions. Perception of marijuana as a “dangerous” drug capable of stealing adolescent innocence, personal will, and desire to achieve was instilled in the American public consciousness and political spirit, thus simultaneously joining a composite of federally defined frames that positioned marijuana as detrimental. Issuing policy statements and campaign speeches served to inform the public as to administrative directives, however, such actions were supplemental to defining marijuana within policy formation and criminal statutes as a criminal element due to social disruption by those taking part in the drug’s trafficking and use. In this way, Nixon was fabricating a sociology backed by institutional structure, thus “layering” his administration’s definitions and concerns constituting more than issuing frames rather practicing the “production of meaning,” or “framing.” Transference of symbols, definitions, and policies were intended to blame and, in turn sustain or entrench federal framing of marijuana.

Marijuana became as synonymous with counterculture activities as the word “hippies,” the peace sign or “free love.” Well through the Twentieth Century and up until the 1960s, use of the drug was associated with racial minorities and alternative subcultures including Mexican farm workers, inner-city African Americans, the “Beat” community, and the jazz scene (Polsky 1967; Bonnie & Whitebread 1970; Morgan 1980). All of these groups were perceived as “threatening” to mainstream values and lifestyles. Historian Arnold Toynbee characterized hippies as “a red warning light for the American way of life,” thus labeling part of the counterculture with an extremist label. Therefore, tying marijuana use to suspect behavior as



well as the need to clamp down on criminal activity was an easy policy choice (Toynbee in Morone 2003). While criminals were the primary target population, counterculture members, many musicians, immigrants, and various minority groups became constructed secondary or as “satellite” populations labeled with the same negativity. Profiling the typical marijuana smoker as a criminal menace who could lead younger people down an ill-fated path not only through drug usage but also with the playing of “groovy” music, having long hair and wearing colorful clothing, infused Nixon’s rhetorical campaigns against criminals and the counterculture while legitimating all connotations of negative and underserving target populations. Even though Nixon’s framing of these subgroups has some accurate characteristics, in what amounts to a marginalized piece of journalistic research aptly entitled *The Marijuana Smokers*, Erich Goode (1970) presents evidence that average marijuana users in 1970 were of a changed face in comparison to those getting high earlier in the century. As the 1970s approached, marijuana smokers were likely to be urban dwellers as well as college graduates in their early 20s. Survey responses collected in the latter part of the 1970s found that 60% of 18-25 year olds partook of marijuana, 69% of users were white, and 73% of college-trained interviewees had sampled the drug.<sup>25</sup> Just as the CSA and DEA were executively driven foundations of the U.S. “War on Drugs,” Nixon was leading a conceptualized front in the drug war which targeted dissenting, outspoken and known users of marijuana. “Knowing your enemy” is based on ideas of differences, not necessarily actions. Earlier research by John Noakes concerning anti-communist definitions and perspectives crafted and disseminated by the Federal Bureau of Investigation in

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<sup>25</sup>Abelson and Fishburne 1977 in DiChiara and Galliher “Dissonance and Contradictions in the Origins of Marijuana Decriminalization” *Law & Society Review* 28 1, 41-77

the 1940s that drew on “resurrected” Red Scare frames from earlier in the century, offers insight into Nixon’s ability to frame counterculture, crime, and marijuana use as one. Noakes (2005, 101) suggests, “that state managers, like many social movement entrepreneurs, may draw on familiar repertoires of interpretation to construct official frames.” While under Anslinger’s leadership in the 1940s and 1950s, the FBN weaved crime, immigrants, and marijuana together; Nixon called upon similar framing in the 1970s “familiar repertoires of interpretation.”

Nixon forged conceptualizations of why marijuana should be prohibited based on cultural references not science. The behemoth of policy resources coupled with inaccurate depictions of enemies economically understood by the public was attractive and laid the groundwork for future presidents. Connecting with younger generations was a problem for Nixon both within the electorate and those who chose to consider the words of counterculture icon Dr. Timothy Leary by “tuning out, tuning in, and dropping out.”<sup>26</sup> On election night 1968, in an attempt to reach Humphrey supporters or those repelled by the established order, Nixon supplemented many of this campaign promises by adding a new theme to his pending presidency: “Bring Us Together.” According to the presidential hopeful, this idea would be “the great objective of his administration at the outset: to bring American people together. This will be an open administration, open to new ideas...open to the critics as well as those who support us. We want to bridge the generation gap. We want to bridge the gap between races. We want

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<sup>26</sup> Though a common mantra or calling of America’s counterculture, the quote is also the title of a book by Dr. Leary in which he promotes the idea of finding God within oneself instead of socially constructed religion. Too long to review in this work more articulation can be found by referencing the following: Leary, Timothy, Ph.D. 1965. *“Turn On, Tune In, Drop Out.”* Oakland, CA: RONIN Publishing. *“Turn On, Tune In, Drop Out”* “was formerly published as *“Politics of Ecstasy,”* chapter 12-22.

to bring America together.”<sup>27</sup> This coalescing sentiment would service Nixon’s yet to be structured and implemented “War on Drugs” by attacking those “who did not belong” and by welcoming back individuals lost within a counterculture of protest, experimental drug use, and anti-governmental fervor.<sup>28</sup> Winning in 1968 was impetus for Nixon’s reorganization and establishment of a “War on Drugs” with the counterculture and crime in executively driven policy crosshairs. The 1972 presidential elections allowed Nixon to fire a reenergizing salvo of anti-marijuana rhetoric and bureaucratic directives so as to continue the drug war unimpeded.

Due to the pervasiveness of drug abuse in America during the 1960s, neither Nixon, nor his 1972 presidential competitor George McGovern, could ignore “free loving” hippies smoking pot in public parks or military personnel returning from Southeast Asia addicted to a number of mind-altering substances. A clear difference between Nixon and McGovern’s policy intentions regarding illegal drugs was Nixon’s ability to attribute the problems of illicit substances to groups that American voters were either typically endeared to, such as military personnel, or despised, including criminals. The former group warranted medically-based research while the latter fringe elements invoked a clarion call for federal crime fighting efforts. Efforts to reform the moral mind-set concerning drug use amongst America’s youth began by attempting to discredit the counterculture influences resonating with younger citizens. Nixon was attempting to rewrite how younger generations perceived drug use; his conception was something like

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<sup>27</sup>For origins of Nixon’s November 1968 election night speech “*Bring Us Together*” see Public Broadcasting System American Experience <http://www.pbs.org/wgbh/americanexperience/features/transcript/nixon-transcript/> *Part One: The Quest*

<sup>28</sup> Alluring newly franchised teenage and twenty-something voters became a focus of novelty proportion for Nixon and his advising team so much so that they recorded and released “Young Voters for the President,” an album addressing how the President and younger people could find common ground. The recording also included a souvenir poster.

bringing forth a renovated status quo with an identity forged from his own administration's creative imagery and rhetoric pertaining to cultural symbols of drug addiction and crime. By attempting to redirect the trajectory of drug use amongst the youth of America, culturally divergent forces were weakened. Not only had Nixon declared a war on drugs, he was directing his administration in a contestation of perception of social and political alternations within American life. In policy and practice, illicit substance control policy under Nixon fits with Schneider and Ingram's findings (1997, 75) that social constructions of target populations can be so perceived as "hegemonic" by institutional actors and the public alike that such populations are "natural" and rarely questioned. Adding to this explanation of how authoritative and politically utilitarian social constructions are estimated to be are the later scholarly conclusions of Schneider, Ingram, and deLeon that "there may also be competing constructions based on different belief systems, experiences, or anticipated consequences. In politics, then, there is a continuing struggle to gain acceptance of particular constructions and their consequences" (in Sabatier 2007, 95).

For Nixon, his reorganization plans for illicit substance control resources guaranteed that the 1970s would not possess a cultural, and hopefully political, residual effect from the 1960s. Beliefs and practices anathema to the 1950's status quo not only needed to be quieted but if possible eradicated. Nixon aimed "to erase the grim legacy of Woodstock, [because] we need a total war against drugs."<sup>29</sup> The "Hippies," the most pronounced sect of the American Counterculture, being an aggregate, were framed by many politicians as degenerative and at odds with a progressive society. This movement or defiant-group depending on one's

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<sup>29</sup>Richard Nixon interview with *Time Magazine*, July 7, 1967m, 18-22

perspective, according to Historian Jesse Pitts, stood in opposition to how institutional governance influenced public thought and could be subcategorized into four units, the commune, the drug culture, the music culture and the political youth movement” (Pitts 1972, 128). As mentioned, much of the music culture carried implications of wild abandonment regarding drug use which produced an easy target for Nixon’s criticisms of the counterculture while the political youth movement provided juxtaposition for Nixon’s policy intentions of addressing drug use amongst younger people.

Even though dabbling in marijuana use was not mutually exclusive to voices of dissent or commune inhabitants, referring to those groups in a similar vein to inner city criminals evoked images of shadow-dwelling felons preying on innocent citizens. Thus, associating the drug with counterculture elements struck a visceral and threatening chord with many Americans. Nixon discovered that citing illegal drugs as a calling card of the counterculture signaled immorality for many Americans and according to Michael Massing, “Nixon held a reflexive disgust for illegal drugs and the people who used them. Marijuana, hashish, and LSD were, in his view, turning a generation of Americans into “long-haired, love-beaded, guru-worshipping peaceniks.” Either forgetting or ignoring a growing generational divide regarding military policy in Southeast Asia, and just months removed from the Tet Offensive, the soon-to-be president-elect twisted and cinched marijuana together with the apparent degradation of younger Americans into a nicely, contained frame. During a campaign stop in conservative stronghold Anaheim, California, Nixon went so far as to refer to narcotics as the “modern curse of the youth...decimating a generation of Americans. Promising to move against the source of those drugs” (Massing 1998, 97).

However, within Nixon's framing of a "war," moving against the source of drugs denoted more than actual criminal forces. As an act in the service of clarification, public information, and in support of marijuana prohibition as policy Nixon *seemingly* sought to draw clear lines of demarcation between myths and facts. Fact presentation for Nixon was hyper-focused on who was using cannabis, not scientific data regarding the substance's chemical composition, medicinal properties, or actual detriment to society. The "selling" of drug war frames for Nixon, with emphasis on marijuana, constituted illusions presented as reality in order to produce a state legitimating policy.<sup>30</sup> To further guarantee public acceptance of his policy pronouncement for the continuance of marijuana prohibition and identifying those responsible for cannabis' trafficking and use, Nixon looked to employ institutional rigor and scrutiny by way of a thorough examination of marijuana the drug and social phenomenon. Nixon was noncommittal in offering specific reform measures and especially averse to acknowledging policy suggestions from health professions premised on cannabis being a less harmful substance compared to heroin, opium, or LSD.<sup>31</sup> Doing so would concede some degree of toleration of those in the counterculture and their habits, namely drug experimentation. Nixon's presentation of illicit substances via CSA classification resembled a "piling" or composition of illicit substances, grouped as one in a meta-frame of unhealthy and criminal behavior. The President's policy and rhetorical framing of marijuana made promotion of any

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<sup>30</sup> See Jonathan Schell. 1976. *The Time of Illusion: An Historical and Reflective Account of the Nixon Era.* New York, NY: Vintage Books. Schell argues that many of Nixon's policies and presidential activities were generated for the sake of carrying out a "hidden" and possibly extra-constitutional agenda.

<sup>31</sup> Seem Morgan, David. *Drugs in the United States: A Social History.* Syracuse, NY: Syracuse University Press 1981. The American Medical Association had expressed a willingness to support the decriminalization of marijuana prior to World War II. However, AMA leaders succumb to the political pressures brought on by Director Anslinger of the Federal Bureau of Narcotics and his adamant directive of marijuana proscription.

normative claim divergent of his administration nearly impossible to defend. This point was not lost during congressional debate and testimony of the CSA.

When called by Congress on February 17, 1970 to offer his assessment of the proposed CSA, chairman of the American Medical Association's committee on Alcoholism and Drug Dependence urged Congress to reevaluate the CSA's classification of illicit substances which he believed were "confused and inaccurate [because] drugs holding considerably different degrees of danger are lumped together." Poor categorization and in totality this bill would "place unnecessary restrictions on doctors."<sup>32</sup> Similar concerns were iterated by the American Psychiatric Association's task force on drug abuse chairman Dr. Daniel X. Freedman who believed, "an attempt to codify all drugs which might be abused is legally difficult and diverts effort from the tools already available." Freedman followed up by offering keen and prophetic testimony regarding law enforcement's prominent position and lack of social services within the Nixon's Administration's legislative proposal, "Congress should give HEW (Housing, Education, and Welfare Department), which has been backing away from its duties, the funds it needs for the authority it already had over drug abuse, and then HEW should get to work." The Administration's drug control proposal is unwieldy, untimely and regressive." Freedman's last assertion identifies the use of Anslinger's conflation and ignorance about marijuana. Subsequently, Nixon's policy intentions for marijuana as a prohibitive substance could be defined as static, even considering the passage and implementation of the CSA's innovative categorization or "scheduling" as well as the special appointment of a commission which aimed

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<sup>32</sup> 1970 *Congressional Quarterly Almanac* p. 534

at carrying out a lengthy inquisitive expedition pertaining to the sociological, cultural, legal, scientific, and political history of marijuana in America.

Nixon's special committee to review and assess the "marijuana issue" was given the formal moniker of "*National Commission on Drug Abuse*." Following a slew of press releases, photo opportunities, and political posturing, the commission went to work recruiting the testimonial insight of academics, health professionals, community leaders, and drug control "experts." Eventually led by former Pennsylvania Governor Raymond Shafer, the appropriately named Schafer Commission issued two separate reports and amounted to an investigative task force aimed at determining the social feasibility of federal decriminalization or legalization of cannabis.<sup>33</sup> In the Spring of 1972, Shafer and colleagues issued their first report entitled, *Marihuana: A Signal of Misunderstanding* which agreed with the President's continued haranguing of counterculture participants but undermined Nixon's insistence that marijuana was as dangerous as other Schedule I substances: "The threat which marihuana use is thought to present to the dominant social order is a major undercurrent of the marihuana problem. Use of the drug is linked with idleness, lack of motivation, hedonism and sexual promiscuity. Many see the drug as fostering a counter-culture which conflicts with basic moral precepts as well as with the operating functions of our society. The 'dropping out' or rejection of the established value system is viewed with alarm. Marihuana becomes more than a drug; it becomes a symbol

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<sup>33</sup> See *Congressional Quarterly Almanac* 1969. Under the CSA, marijuana prohibition mandated state uniformity of prohibition bringing the varying regulatory schemes and sentences for marijuana possession amongst the states in line with federal standards. To satisfy this requirement, Nixon sought definitive findings on marijuana as a social phenomenon. Therefore, Public Law 91-53 was enacted with the congressional passage of the CSA. PL 91-53 called for a presidentially appointed committee to independently investigate marijuana use and otherwise.



of the rejection of cherished values."<sup>34</sup> This report went on to suggest legal sanctions less severe than their sociological pronouncements by claiming marijuana posed only minor health risks, be decriminalized, subject only to confiscation, and that public use remain a criminal offense punishable by a \$100 fine.<sup>35</sup> Nixon's refusal to accept any of the commission's recommendations served as reaffirmation and reinforcement of his supercilious inclination towards counterculture lifestyle. However, with the urgency to decrease the nation's crime rate being one of Nixon's primary political touts and holding the potential for garnering political capital for the still reorganizing new executive, marijuana was an advantageous target for Nixon's policy-framing. Nixon and his advisors could not control the dress, music, and/or vernacular of those participating in counterculture lifestyle, but Nixon could politically and legally attempt to contain their most "popular" drug by applying a federal proscription against the possession, cultivation, and use of marijuana.

The Commission initially convened in early 1971, issued their first report in March 1972, and subsequently issued a final report almost exactly one year later in March of 1973. Beyond commenting on the implementation of CSA policy mandates, Shafer's team was to be portrayed as institutional contrarians by suggesting decriminalization of cannabis with their recommendation that "no criminal penalties for possession, use and small casual sales of

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<sup>34</sup> National Commission on Marihuana and Drug Abuse, *Marihuana: A Signal of Misunderstanding*, (Washington, D.C.; GPO, 1973), 8.

<sup>35</sup> In their 1974 comprehensive work *The Marijuana Conviction: A History of Marijuana Prohibition in the United States*, Bonnie and Whitebread note that in an attempt to be perceived as understanding contemporary, "hip," vernacular a memo was circulated within the Nixon White House mandating that the letter 'j' be substituted for any use of the letter 'h' when spelling marijuana.

marihuana.”<sup>36</sup> Nixon immediately acknowledged the Commission’s aggressive pursuit of new information regarding the drug while adamantly declining their suggestions. As to the reasoning behind his rejection only conjecture exists. However, in an inter-office memo directing a meeting between Shafer’s commission and the President, Bud Krogh hinted that any divergence from the two year old CSA marijuana prohibition would be politically combustible, “these recommendations, too little for liberals and too much for conservatives, will generate substantial controversy. It is very important for the President to see Shafer and receive report on a low key basis before press builds speculation on Presidential reaction. Krogh held so much apprehension regarding Shafer’s suggestions that his memo gave the “Objective” of the meeting as “to diffuse press instigated controversy over Commission recommendations by publicly accepting report and thanking men for their effort.”<sup>37</sup> The eventual meeting between a post-investigative commission and Nixon ended with Nixon declining the Commission’s insight by sternly admitting “I am in disagreement. I was before I read it and reading it did not change my mind. I oppose the legalization of marihuana and that includes its sale, its possession, and its use.”<sup>38</sup> Though the road less traveled in the form of national decriminalization had been thoroughly vetted as a viable alternative to prohibition, Nixon stayed his own course. The only “reform” or concession the president was willing to make was a willingness to allow some play

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<sup>36</sup> “*Marihuana: A Signal of Misunderstanding*” National Commission on Drug Abuse. March 22, 1972 United States Government Printing Office as called for per PL 91-153

<sup>37</sup> Nixon Presidential Papers, “*Schedule Proposal: March 15, 1972. From: Bud Krogh. Meeting: With Chairman Raymond P. Shafer of Marihuana Commission.*”

<sup>38</sup> Presidential Press Conference March 24, 1972 and later quoted in an inter-office memo from Michael B. Smith (Staff Assistant) to Indiana State Representative Erwin Walsh.

at the margins of prohibition and target populations in regards to drug use amongst military veterans.

Referencing G.I. drug addiction amongst in-country and returning military personnel was another side note for Nixon to process and one not initially warranting attention due to DOD and BNDD internal estimated reports in early 1969 telling of illicit substance use by military personnel as “under control” (Reeves 2001, 223). However, returning to the problem of drug trafficking and addiction amongst military personnel allowed Nixon to seemingly focus on illicit drugs with a “health-“centered regard. Yet, the drug addiction susceptibilities of Vietnam Veterans hindered a faster, more focused frame development and dissemination tying illegal drug abuse and trafficking to urban plight, which would have served Nixon's domestic agenda by depicting his administration as actively aggressive in his campaign promises to reduce crime rates. Nixon, an illusionist of issue defining, was able to project “Getting Tough on Crime” as a narrowed issue of drug abuse to somehow being entangled with G.I. addiction halfway around the world away from any American urban setting (Dallek; Massing 1998). Augmenting the public’s perception of Veterans as drug addicted sympathetic figures risked overlapping target populations as his administration constructed a definition of soldiers as a “transitioning” group, normally thought of as positive but in need of policy benefits in order not to be trapped as a negative, criminal population. Although negative and positive populations differ in how much political advantage they possess, it should be remembered that historical context matters when discussing Vietnam Era veterans. Military personnel returning from Southeast Asia faced public scorn, thus a potential negative categorization. Being perceived as drug addicts altered any possible public backlash military duty associated with Vietnam might have placed on returning

personnel. Essentially, those seeking help with their drug problems *could* “shed” negative connotations associated with Vietnam, but not necessarily garnering policy benefits. With Vietnam as an exception, U.S. Military Veterans are typically categorized as a positive target population, thus advantaged regarding allocation and reception of policy benefits. Such definitions clearly kept counterculture members as drug addicts or a negative population, disadvantaged and receiving punishment-based policy results. Military personnel were considered unburdened by prohibitive illicit substance control policies with various avenues of policy benefits.<sup>39</sup> However, tailoring benefits to only positive target populations limited Nixon’s application of the CSA and a broad treatment of a reorganized illicit substance control scheme. Therefore, Nixon also leaned toward shifting other groups suffering from drug addiction into a positive political and policy light.

Rates of addiction amongst inner-city populations and military personnel spurred the development of a health paradigm to be incorporated within the traditional punitive model directing federal illicit substance control policies (Hunt and Chambers 1976; Brodsky 1985; Musto and Korsmeyer 2002). Though addiction rates of non-military citizens alone warranted reconsideration of federal allocation of substance controlling funds, shifting federal policy and resources to supply-side or health directives was an incremental activity in comparison to the full board commitment given to law enforcement programs. Also, as both academic and journalistic research has shown, Nixon’s half-hearted investigative foray into physical and mental addiction of street drugs was short-lived, possessing neither the resource base nor

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<sup>39</sup> See Schneider and Ingram, “Social Construction of Target Populations: Implications for Politics and Policy.” *American Political Science Review* 87 2, June 1993 Figure 2 “Variations in How Policy Treats Target Populations: Allocation of Benefits and Burdens.”

sustaining political elements infused into the punitive paradigm of national drug control policies (Massing 1999; Bertram 1996). Publicized or not, the hiring of clinicians and appropriating funds for health concerns allowed promotion of a frame conflating marijuana with heroin, LSD, cocaine, and a litany of opiates. In this sense one can grasp how Nixon tied rhetoric, germane to health initiatives, to crime, illicit substance control reorganization or a combination of those policy areas by officially categorizing or casually intimating marijuana as a drug associated with highly addictive substances. By incorrectly aggregating marijuana in definition and description with LSD, heroin, and opiates an inherent association between cannabis and users transitioning to those more insidious substances suggested marijuana as having a possible “gateway” characteristic. While target populations are just that, groups framed and manipulated positively and negatively as to their relationship with given public policy, marijuana was being framed as inseparable from more dangerous narcotics, thereby guaranteeing a damaging reputation for cannabis users. Without scientific evidence either supported by institutional actors or promoted by advocates, marijuana’s organic composition was being overlooked; rather, the Nixon Administration identified and defined the substance as harmful then closely associated cannabis’ production, distribution, and use with negative target populations. Identification of marijuana onto itself as a harmful substance was integral to the Nixon Administration’s Schedule I status rationale; marijuana as indiscernible from more noxious substances was necessitated in order to place the drug in the enemy camp within the meta-framing of the “War on Drugs.” Government framing of a war on drugs, cancer (also initiated by Nixon), or terror, evoke symbols and historical images iconic to literal war. While Nixon’s rhetoric served to inflame citizen disdain of marijuana, war was the “umbrella” concept with drugs as the primary

enemy with constructed negative target populations “filling in” the landscape of adversarial forces America’s governing institutions faced in battle. In such a framing, we see the conflation of drugs with crime and the counterculture, then war as a “holding” or enveloping ideal or political implement. In reality, Nixon was not reinventing the wheel of conceptualized war but rather refining a malleable foundation he inherited within the contemporary context.

Even prior to Nixon’s efforts, marijuana had been coupled with or aggregated within a litany of drugs, sometimes even packaged in a convoluted fashion with societal elements perceived as ideologically alien and threatening to the “American way of life.” In many instances, politicians in their anti-drug fervor promoted an image of America straying from the righteous path, instead following a road composed of moral vicissitudes infused with an intolerance of immigrants, minorities, and counterculture (Bonnie and Whitebread 1970; Morone 2003). For example, the BNDD distributed federally produced public service posters depicting marijuana users walking hand-in-hand with crime (in the form of a skeleton representing death complete with sickle and cloak) down the path of self-destruction. Various narratives described how politicians in the southwest tied illegal immigrants to marijuana importation, a portrayal containing but an iota of veracity while serving to conquer mass worry about two separate issues, immigration and drug trafficking, with problematic implications for the national government. Targeting immigrants as a cause of illicit substance trafficking and abuse was politically reasoned during the 1950s and 1960s because of the scare of communist insurgency stoked by Anslinger’s version of McCarthyism while undocumented workers could also be (incorrectly) given the moniker of “illegals” (Walker and Kinder, 1986). Thus, criminal intent was driving the transference of drugs. In crafting illicit substance control policies anew in

1969, Nixon took full advantage of existing negative target groups, anti-marijuana frames, and the electorate's hyper-focus on rising crime rates as well as social unrest in many of America's major metropolitan areas.

The wording of the CSA had a pragmatic, informative, and instructional basis. Signed into law on October 17, 1970, the bill's creation, debate, and passage took but fifteen months to come to fruition, and less time for implementation of the legislation to begin. Such an omnibus piece of legislation lent to Nixon's reorganization scheme through centralization of authority and composing negative marijuana populations. Thoughts of answering all possible concerns by unifying them in a single piece of legislation is evinced by John Ehrlichman's recall of a conversation he had with Nixon seven months after the CSA's passage and indicative of the president's desires of keeping any talk of decriminalization of marijuana regulation at bay, "marijuana was part of a larger tapestry...the people who were demonstrating against what he was doing in Vietnam, the wearing of long hair, and the smoking of dope were all part of a picture. They were people he had no use for." Michael Massing assesses Ehrlichman's conversation with Nixon in May of 1971 by noting how the president was cognizant of ensuring implementation of the CSA with bureaucratic support,, "Yet as with China and the environment, Nixon's ideological convictions on drugs were tempered by a strong dose of pragmatism. While helping to build up the Bureau of Narcotics and Dangerous Drugs, for instance, Nixon had few illusions about its effectiveness" (Massing, 109). Deciding to "cut a wide swath" of concerns associated with drug use within a punitive paradigm was his administration's initial strike in a domestically-based and bureaucratically-centered conception of a war. While institutional

design and rearrangement stands as practical governing, a rhetorical campaign aided in convincing the citizenry for a need to be vigilant.

In 1973 during his formal introduction of the Drug Enforcement Administration, which amounted to the second half of his administration's overhaul of federal drug control agency arrangements, Nixon, seemingly attempted to evoke sinister characters lurking with the use of symbolism: "certainly the cold-blooded underworld networks that funnel narcotics from suppliers all over the world into the veins of American drug victims are no respecters of the bureaucratic dividing lines that now complicate our anti-drug efforts. On the contrary, these modern-day slave traders can derive only advantage from the limitations of the existing organizational patchwork."<sup>40</sup> Employing such language opened the door for targeting other groups of unknown quality and quantity whose actions were confusing to mainstream Americans. All of the subsequent policy creation, personnel hiring, and agency development was, in part, according to Eva Bertram, fueled by Nixon's own verbiage, "under President Nixon a fierce, rhetorical campaign was launched to define drugs as a major source of crime in America and to make a war on drugs and crime a national priority" (Bertram 1996, 4-5). In rhetoric as well as policy creation and explanation, the drug war took on a dichotomous face.

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<sup>40</sup> Taken from The American Presidency Project, University of California-Santa Barbara, document number 96 for 1973 entitled: *"Message to United States Congress Transmitting Reorganization Plan 2 of 1973 Establishing the Drug Enforcement Administration."* March 28, 1973 <http://www.presidency.ucsb.edu/ws/index.php?pid=4159>  
Last taken on July 22, 2011.



This approach became typical when formulating innovative ways to educate younger Americans to the dangers illicit substances held. For example, during a telephone conference call with educators and students attending a drug education seminar in Monroe, Louisiana organized by Congressman Otto Pressman, Nixon articulated his version of what drug war vigilant citizens needed to exhibit in their evitable battles with illegal drugs: “When we look at the vicious, destructive effects that drugs have on individual lives, on society as a whole, there is no question but that drug abuse is “public enemy number one” in the United States today. What we must do is to wage an all-out offensive [which] is underway right now. Government is playing a large part, educators are, scientists and doctors are. But these efforts, by themselves, will not be enough. The only way we can conquer public enemy number one is by meeting it with public defender number one.”<sup>41</sup> Inculcating young people with drug war tenets assured discourse would be tilted toward punishment-based ends and thereby garner public agreement with prohibitive standards, perceiving drug users (target populations) as negative, and transference of policy frames over the course of individual development and generational contours. Illicit substances and groups associated with drug use, particularly marijuana, were rivals for America’s health and continuance. “Defender number one” was a cooperative between Washington, D.C. based public servants and the American people. Just as Anslinger employed rhetorical conflation associated with syndicated crime in crafting his version of drug lore, Nixon was conceiving a war where drugs were framed as the threatening aggressor. His administration continuously coupled mention of marijuana with criminal indictments and

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<sup>41</sup>Taken from The American Presidency Project, University of California-Santa Barbara, document number 321 for 1971 entitled: “Telephone Remarks to Students and Educators Attending a Drug Education Seminar in Monroe, Louisiana.” October 4, 1971 <http://www.presidency.ucsb.edu/ws/index.php?pid=4159>

Last taken on December 1, 2010.

suggestions of punitive action, leaving many to wonder if his health-based initiatives for addicts were nothing more than placation of those demanding medical answers for drug woes (Massing 1999; Bertram, et al. 1996). Conflating criminal elements with drugs was akin to a novelty whose ephemeral talents and rewards would not diminish. If instilling a perception of all drugs as crime-inducing did not hold enough rhetorical fodder to sway the public (voters in most cases), conflation of those pursuing alternative lifestyles with drug trafficking and use could easily be utilized. Thus, individuals and groups concentrating life ventures outside of “mainstream” America would have two options: become new targets in Nixon’s “War on Drugs” (and be defeated) or come back to what Nixon peddled as America’s more traditional ways. Taking a moment to pause regarding the identification of Nixon’s active role in defining those participating in the “drug culture” is warranted for two reasons. First, much of the framing literature makes clear that state agencies are “active contestants in the struggle for cultural supremacy,” yet “official frames are constructed in reaction to attempts by social movements to reframe particular issues” (McAdam and Snow 1997; Noakes 2005). Reform challenges by any type of pro-marijuana organized movement allowed Nixon to further his administration’s illicit substance control policies, namely marijuana prohibition. Thus, the belief that drug usage, and many other behaviors by members of the counterculture necessitated marijuana’s prohibitive status and stood as “good policy” and juxtaposed with counter culture values was “culturally supreme.” Marijuana prohibition as well as other CSA tenets and protocols, was not challenged by either organized advocates or institutional actors until Nixon had left office.

### Chapter III: Executively Driven Path Dependency, Drug War Politics and The Punitive Paradigm

*“From the beginning of our administration, we’ve taken strong steps to do something about this horror. Tonight I can report to you that we’ve made much progress. Thirty-seven Federal agencies are working together in a vigorous national effort, and by next year our spending for drug law enforcement will have more than tripled from its 1981 levels. We have increased seizures of illegal drugs. Shortages of marijuana are now being reported. Last year alone over 10,000 drug criminals were convicted and nearly \$250 million of their assets were seized by the DEA, the Drug Enforcement Administration.”* President Ronald Reagan, Address to the Nation regarding the latest efforts in fighting the “War on Drugs” September 14, 1986

The political and public acceptance of America’s drug war has been perpetuated by policy and personnel shifts proposed and dictated by the Executive Office of the President. Centralization, thus concentration, of authority has transpired with the Director of the Office of National Drug Control wielding domestic illegal narcotic control directives and advising international drug war campaigns to the extent of being named a member of the National Security Council. Though innovations to the Nixon Administration’s illicit substance control model have been enacted, however, substantial alterations to the overall supply-side strategy have been met with institutional and political opposition. Top-down mandates, programs, and agency development has spurred on successive federal resource allocations dedicated to prohibitive statutes, law enforcement-first dictates, and drug epidemic trepidation riddled campaigns intended to deter younger generations from illegal drug use (Miron 2004; MacCoun and Reuter 2001; Bertram, Blachman, Sharpe, and Andreas 1996). All of these practical steps have reinforced the framing of federal illicit substance control as a “war” pitting criminally insidious factions against law-abiding citizens. As a centerpiece policy, marijuana prohibition has

been a staple in the federal government's illicit substance control scheme littered with erroneous and misleading information.

In turn, a presidentially driven supply-side punitive paradigm has been the model of American illicit substance control policies over the course of the last forty years. In his seminal work regarding agenda-setting, John Kingdon acknowledges the prominence and effectiveness of presidentially initiated and directed policy preferences. His analysis of policy timing and development suggests that presidents, due to the centralized nature of the office, have the first say on what tops the policy agenda but lack dominance over "seriously considered" alternatives (Kingdon 1995, 25-31). Such a discernment between legislative proposals originating from the executive branch and policy options external of the Executive Office of the President (EOP) holds a good deal of pertinence for understanding the path dependent route of American illicit substance control policies such as marijuana prohibition. Presidential prerogative coupled with the lack of any punctuated change to the tenets of the Controlled Substance Act and other law enforcement dominated anti-drug practices had led to the establishment of what Eva Bertram and her co-authors term "Drug War Politics." Not necessarily dictated by partisan views, scientific evidence, or public outrage, Drug War Politics consists of paradoxical messages, budgetary largesse producing squandered opportunities to decrease drug trafficking and abuse as well as marginalization of many alternatives to the status quo.

The last forty years of America's federal illicit substance control policies have, in the view of many political and legal analysts, failed in bringing relief to the societal ailments caused by illegal drug use (Nadelman 2003; Bertram, Blachman, Sharpe, and Andreas 1996; Zinberg 1989). Alternatively, presidential directives, congressional acquiesce, and bureaucratic timidity in

advising the executive to examine alternatives to a supply-side process produced patterns of institutional arrangements favoring law enforcement directives, and reliance on punitively-based policies and practices. Though some enactment studies have shed light on the decision making processes, a lacuna of telescopic, trend-capturing research exists. By identifying critical junctures, missed opportunities, and continued acceptance of the status quo, this chapter aims to answer why “drug war politics” have dominated America's institutional history and policy development regarding illicit substance control policy.

In essence, what Nixon initiated, then maintained and perpetuated by the Reagan and Bush administrations constitutes federal illicit substance control measures contained within an historical trajectory most agreeable with Paul Pierson’s theoretical assessment of path dependency:

“the notion of path dependence is generally used to support a few key claims: Specific patterns of timing and sequence matter; starting from similar conditions, a wide range of social outcomes may be possible; large consequences may result from relatively “small” or contingent events; particular courses of action, once introduced, can be virtually impossible to reverse; and consequently ,political development is often punctuated by critical moments or junctures that shape the basic contours of social life” (Pierson 2000, 251).

The continued employment of drug war rhetoric, incrementally increasing budgetary allotment toward prohibitory metrics and the proliferation of anti-drug non-profits gives credence to Pierson’s assessment of policy development that “suggests the considerable prospects for thinking not just about what grand policy enactments may occur at a moment in time, but about how those policies develop-whether they are or are not likely to become sustaining elements of a durable policy regime or...initiatives that have a much more fleeting impact on

patterns of governance” (Pierson 2005, 39). Second, the path dependent route carved out and sustained within the federal illicit substance control arena brings light to presidential influence and direct control of institutional arrangements. To begin, the continued executive drug war investment might be the political purchase garnered by the executive branch. As an authoritative “tool,” drug control conveys command of the bureaucracy and a clear direction concerning one avenue of domestic social (regulatory) policy reaffirming presidential dominance and presence within inter-branch relations. However, as this analysis presents, holding to American governing structure, the president can exert pressure and a line of order by expanding and extending a policy paradigm throughout the bureaucracy.

Path dependency can be easily mistaken for “lasting power” acclaimed by policy advocates as evidence of necessity of resources being acknowledged by those served and facilitated through a policy theme. Whether the outcome is path dependency or a high degree of dynamism is secondary to sustainability of a policy taking place-social security and illicit substance control stand to illustrate this assertion. Any public dissent, or institutionally pursued reform, is immediately juxtaposed against a set of entrenched status quo policies (historically) framed and delivered as government acting to cure societal ills. This type of standoff is surmised by John Skrentny as when “enough perceived strong agreement among the relevant audience, a third-rail political issue and discourse many be created: racial supremacy, gay rights in the military, socialized medicine, anti-Semitism, and drug legalization are some examples” (Skrentny 1996, 12). Focusing on path dependency and policy entrenchment particular to the “War on Drugs,” garners an insightful approach to understanding how shifts in policy authority and subsequent entrenchment transpire over time. Presidential maneuvering is instrumental in

changing policy trends toward a self-reinforcing manner due to the inherent authoritarian nature of the office. Perceived in this way, Pierson claims, “actors may use political authority to change the rules of the game (both formal institutions and various public policies) to enhance their power. These changes may not only shift the rules in their favor, but may increase their own capacities for political action while diminishing those of their rivals. And these changes may result in adaptations that reinforce these trends, as undecided, weakly committed, or vulnerable actors join the winners or desert the losers” (Pierson 2005, 46).

More evidence of path dependent policy consequences emerge from America’s drug war, particularly prohibitive measures, when Bertram, Blachman, Sharpe, and Andreas (1996) identify two critical “flaws” along with political and policy stalemate caused by the federal government’s perpetuation of the “War on Drugs.” The first flaw termed “*the profit paradox*” results from law enforcement mandates concerning arrests and seizures of illegal drug traffickers so as to cause a scarcity of product, in turn higher prices for heroin, cocaine, and marijuana; the ultimate goal being pricing illegal narcotics out of the monetary range of most consumers. Though prices rose, the unintended consequence was a higher demand and an increase in consumer spending while illegal narcotic use climbed. In essence, the federal government had increased the profits of drug cartels, importers, and street-level pushers while financially burdening those experimenting with, casually using, and/or addicted to illicit substances. Defined as the *hydra-effect*, the second flaw is a manifestation of increased illegal drug prices garnering narcotic profiteers’ greater returns. Marijuana, heroin, and cocaine are relatively simple to produce, especially for those already in the business of cultivation and processing the drug (Bertram, Blachman, Sharpe, and Andreas 1996). Though peripheral to my

argument, the authors' claims of collateral or secondary effects from the drug war contribute evidence to claims of path dependency fortified by punishment-based policies.

A punitive paradigm with a centerpiece of law enforcement-first directives is maintained while health concerns remain a policy afterthought at the margins of viable policy options.

Politicians can claim, just as Richard Nixon had throughout his 1968 presidential campaign, to be "tough on crime" while being rather ineffectual in curtailing drug use and trafficking.

Effectiveness and efficiency, two of the cornerstones of measuring the "worth" and return of policy choice are projected or fabricated in image and promotion by federal authorities more than meaningful social outcomes. Messages, especially those from governing officials play an integral role in sustaining drug war resources, programs, and personnel. Through dissemination of arrest and confiscation statistics, media portrayals, and popular thought, the Drug War has, until recently, been crafted and presented in a dichotomous fashion between two metaframes translating to "good versus evil." Political discourse, legislative debate, and presidential rhetoric has unfortunately mirrored public discourse in the way of less facts, the better; more extreme views equate to fortified stances by those opposing or supporting the federal government's illicit substance policies. As Bertram and her co-authors ascertain, "the debate is polarized and simplistic, often phrased in terms of...prohibition versus a free market, individual blame versus social causation. Politicians look for quick-fix solutions; *many seem addicted to the idea of the drug war itself*...there is a tendency to shoot the messenger rather than to analyze the message carefully. At home and abroad, the official response to failure has commonly been one of more



fear, with calls from more force and more punishment” (Bertram, Blachman, Sharpe, and Andreas 1996, x).<sup>42</sup>

Ignore for the moment that simply enacting prohibitive statutes creates new crimes to be committed. The political triumphs resulting from instituting such measures are all but guaranteed. Though open to debate, law enforcement can target a larger pool of “criminals” who may actually be addicts in need of medical and psychological treatment. The upswing in criminal drug cases can also be attributed to Nixon’s prohibition of the most widely used illicit substance, marijuana, and Reagan’s “no tolerance” narcotic policies which made stable, socially productive, or experimental drug users criminals instead of being categorized as violators of a minor infraction or as alcohol users are neatly pigeon-holed with monikers associated with their respective degrees of consumption: drunks, social-drinkers, teetotalers, etc. However, keeping illegal drug traffickers and users aligned in policy and popular definitions equates to a micro-level tactic aiding federal sustainment of macro-level dominance of drug control message dissemination and discourse (See Table 1). Employment of simple, dichotomous messages with policies targeting law enforcement-first answers to the problematic circumstances produced by illegal drug use, as well as executive prerogatives or “innovations” within the federal illicit substance control policy arena would serve to continue public and political acquiescence throughout subsequent presidencies. Combining a fabricated necessity to increase law enforcement resources in an effort to decrease drug trafficking and use has contributed to sustaining public acceptance of the federal government’s tactics within the drug war (Musto and Korsmeyer 2002). Therefore, a punitive paradigm rather than a health treatment focus has

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<sup>42</sup>Emphasis added. Also see MacCoun and Reuter, *“Drug War Heresies”* Cambridge, UK: Cambridge University Press, 2001.

served as the initial and overriding strategy for policymakers in their efforts to combat what has been to a great degree a presidentially constructed enemy commonly known as the “War on Drugs” (Morgan 1980; Morone 2003; Simon 2007; Ferraiolo 2007).

The first case study consists of a description and analysis of Ronald Reagan’s political reenergizing of the Nixon initiated “War on Drugs.” Through increases in DEA, Office of National Drug Policy, and DOJ funding dedicated to illicit substance control endeavor as well as a bureaucratic centralization of authority, the Reagan Administration created well-rutted and stable “trenches” for a sustained drug war. However, exuberant funding and administrative maneuvering were harnessed with sometimes vitriolic anti-drug rhetoric to garner public support for punitive means guiding illicit substance control agencies and personnel. Such public agreement can be further evinced when the number and collaboration of private, citizen-founded anti-drug organizations during the presidential tenures of Reagan and Bush are examined.

**Table 1: Presidential Entrenchment of Drug War Policies and Programs (Examples)**

President	Conflation of Crime campaigns and legislation	Prohibitive Metrics, programs, and policies	Centralization of Personnel and Resources dedicated to the “War on Drugs”	Law Enforcement-First Means	Rhetorical sampling
Nixon	-“Get Tough on Crime”	-Schedule of Drugs -Refusal to enact Shaffer Commission recommendations	-DEA established -Controlled Substance Act of 1970	-DOJ auspice of DEA	-Press releases during reorganization of illicit substance policies formation
Reagan	-1986 Anti-Drug Abuse Act	-“No Tolerance” -“Just Say No Clubs” -Paraquat spraying ban lifted	-Proposal and later appropriation of Drug Czar position	-partnering FBI, CIA, and DOJ with state, county, and local drug control “teams”	-Television speeches, news conferences, surrogates, and anti-drug organization collaboration
Bush	-National Drug Control Strategy established in first year of office	-Plan Colombia -“Andean” Initiative	-ONDCP resources significantly increased -First “Drug Czar” named	-Promoting use of block grants for local law enforcement drug control	-Praising South American Presidents for their Drug War efforts

**Ronald Reagan's Contributions to Path Dependency: No Tolerance, Extending the Fight to Federal Agencies, and the Drug-Free America Act of 1986.**

In 1987-some seventeen years after passage of Richard Nixon's foundational omnibus anti-drug legislation, the Reagan Administration in collaboration with the *Partnership for a Drug-Free America* aired what can possibly be considered the most well-quoted public service announcement regarding drug use. Exemplifying the tone and course of federal illicit substance control policies inexhaustibly woven into Reagan Administration's "No Tolerance" approach to drugs, *"This is Your Brain on Drugs"* featured a young woman cracking an egg and dropping it into a hot frying pan while a voiceover compared the egg to a human brain and the frying of the egg's ferment to the detrimental result an individual's drug use could cause. Two years short of his exit from office, this commercial epitomized the manner in which Ronald Reagan had shaped the manner in which the federal government communicated to the citizenry regarding illegal narcotics. Through blatant attempts at demonizing illicit substances with the creation and dissemination of frames depicting marijuana (and other more dangerous substances) as insidious, therefore not possessing any redeeming qualities, Reagan was able to lay the tracks of drug war path dependency. Executively directed, the drug war stands as a prime example of "elite framing" which allows, argues Public Opinion researcher Jeffery Koch, a frame to become "a central organizing idea from making sense of an issue or conflict and suggesting what is at stake" (Koch 1998, 210 in Ferraiolo 2009, 342). In short, Reagan's, and subsequent, messages concerning illegal drug use were buttressed by "no tolerance" of illicit substances and their users. Though this PSA is well-remembered, even parodied from time to time, its intended effect of saving young Americans from drug use probably was not achieved; and while subsequent, similar PSAs were produced and disseminated through federal drug control

agencies and their contracted media consultants, the “War on Drugs” maintains. Particularly, marijuana prohibition has endured as a federal guidon in America’s march toward a series of narcotic battles within the “War on Drugs.”

Many of the Baby-Boomer and immediate subsequent generations came of age with “facts,” myths, slogans, and federally endorsed information concerning illicit substances the genesis of which was not necessarily only the Nixon Administration, medical professionals, or the nearest corner block; rather, they owe much of their “knowledge” concerning marijuana, cocaine, heroin, and other illicit substances to Ronald Reagan’s calculated intensification and further entrenchment of the “War on Drugs.” Due to the ubiquity of anti-drug pronouncements and anti-drug program endorsements by Reagan and political surrogates, including First Lady Nancy Reagan, most Americans might have believed that his administration initiated what Nixon enacted in the way of illicit substance control policies. Even well-respected New York Times Investigative reporter and author of *Reefer Madness*, Eric Schlosser wrote an opinion piece in 2004, in which he elevated Reagan to the top of anti-marijuana leadership by crediting the GOP icon with beginning the war on marijuana in 1982.<sup>43</sup> Indeed, the fervor and immediacy of the Reagan Administration’s all-out assault on illegal substances signified more of a “birth” of policies than a new stage of implementation. Reagan’s escalation of federally manufactured drug war rhetoric, policies, and resource allocation stands as a “critical juncture” in the grander scheme of control substance policy development, the emphasis and emphatic declarations of “no tolerance,” omnibus “Drug-Free America” Act of 1986 along with continued prohibitive

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<sup>43</sup>See Eric Schlosser *“Make Peace with Pot,”* New York Times April 26, 2004.

metrics across federal and state agencies bring cause to further defining Reagan's anti-drug fervor as a reinvigoration of or a new era in the drug war.

What perpetuated America's drug war during Ronald Reagan's tenure and thereafter were not only fear-inducing commercials but rather a tailored conflation of crime and drugs within a punitive paradigm, reiterated in a "no tolerance" campaign," incremental centralization of drug policy authority, and expansion of drug control measures throughout the bureaucracy, steered in near totality by the Executive Office of the President (EOP). Reagan borrowed Richard Nixon's political penchant for rhetorically melding crime and drugs, pushed for legislation that garnered his office's developmental and administrative control of drug policy resources and promoted small government while escalating bureaucratic responsibility of implementing drug control programs. Between Nixon's premature exit from office in 1974 and Reagan's ascendancy to the Presidency in 1981, pocketed and under-resourced challenges were made against institutional arrangements and legal practices of America's drug war policies, statutes, and political attitudes; however, very little, if any, sustained paradigmatic changes to the policies and agencies Nixon had set in motion transpired.<sup>44</sup> Ronald Reagan, standing as an ambitious occupant of the Oval Office declared illegal drugs to be a "menace to society," echoing Nixon repeated tagging of illicit narcotics with the moniker "public enemy number one."<sup>45</sup> Such language served as garnish for law enforcement-first directives and promotion of legislation

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<sup>44</sup> In Chapter IV, President Carter's initiation of the Investigative New Drug (IND) Program is discussed. As part of the IND, medical marijuana services including cultivation and distribution of cannabis to qualified patients was established and practiced. Also presented in that same chapter is a case study of President Clinton's attempts to reform federal illicit substance control policies so as to balance supply-side programs with demand-side (health-based) federal agency resources.

<sup>45</sup> In various presidential press releases and news conferences Nixon was prone to invoke the phrase "public enemy number one" within his drug war rhetoric even though he had also coined the all too familiar term "War on Drugs."

toward stiffening sentences for drug trafficking and possession. Employing another Nixon tactic of “corralling” bureaucratic control and promising severe punishment for drug traffickers and users, Reagan spirited a course of intensification and path dependency for America’s “War on Drugs.”<sup>46</sup>

Reagan’s aggressive calls for Americans to fight a drug war, for the formation of a national drug control strategy, and increase federal resource allocation for fighting illegal narcotic use in his presidential campaign of 1980 earned him the unofficial title of “Drug War Warrior,” and laid the groundwork for acting on those intentions early in his first term. Reagan’s vision and eventual actualization of the “War on Drugs” would ramp up and enable exponential advancements in monetary and personnel dedication to drug war tenets. Upon entering office in 1981, Reagan had access to a federal annual budget for DEA staff and resources reportedly amounting to over \$220 million. In totality, federal illicit substance control consumed \$1 billion with state and local agencies spending nearly two to three times that amount while approximately 50,000 drug law violators occupied prison cells. The “snow ball” effect or legacy of the Reagan years is evinced with a drug war budget that by 1995 had jumped to \$16 billion with two-thirds committed to law enforcement-first dictates along with drug related incarceration rates lying at nearly 400,000 individuals. DEA allocations alone accounted for over \$1 billion (See Table 2). Reagan’s “no tolerance” tactics and inclination to carry on illicit substance control while paying little attention to the dearth of health-based initiatives evoke a

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<sup>46</sup> Jimmy Carter had called on Congress to decriminalize and allow for the medical use of marijuana. Congress balked at even debating the issue of decriminalization, but Carter was able to enact the “Compassionate Investigational New Drug (IND) Program” on May 8, 1978. Under the close control of the Food and Drug Administration, this program allowed for limited use of medical marijuana by a small number of patients. In March 1992, the Bush Administration closed the program to new applicants but allowed existing patients continued supply and use.

myriad of commentaries similar to drug policy expert Ethan Nadelman's: "these are the results of a drug policy over reliant on criminal justice "solutions," ideologically wedded to abstinence-only treatment, and insulated from cost-benefit analysis" (Nadelmann 1998 112). Sustaining as well as infusing federal illicit substance programs so as to meet punitive paradigm and prohibitive metrics seemingly called for a close-armed approach to keep narcotic control policies within executive command.

<b>Table 2: DEA Staffing and Appropriations FY 1972-2005 (All Sources)<sup>47</sup></b>				
<b>YEAR</b>	<b>Total Employees</b>	<b>Special Agents</b>	<b>Support Staff</b>	<b>Budget (\$ in Millions)</b>
<b>1972</b>	2,775	1,470	1,305	65.2
<b>1973</b>	2,898	1,470	1,428	74.9
<b>1974</b>	4,075	2,231	1,844	116.2
<b>1975</b>	4,286	2,135	2,151	140.9
<b>1976</b>	4,337	2,141	2,196	161.1
<b>1977</b>	4,439	2,141	2,298	172.8
<b>1978</b>	4,440	2,054	2,386	192.3
<b>1979</b>	4,288	1,984	2,304	200.4
<b>1980</b>	4,149	1,941	2,208	206.7
<b>1981</b>	4,167	1,964	2,203	219.5
<b>1982</b>	4,013	1,896	2,117	244.1
<b>1983</b>	4,013	1,896	2,117	283.9
<b>1984</b>	4,093	1,963	2,130	326.6
<b>1985</b>	4,936	2,234	2,702	362.4
<b>1986</b>	4,925	2,440	2,485	393.5

<sup>47</sup> Taken from the Drug Enforcement Administration website on February 20, 2010:  
<http://www.justice.gov/dea/agency/staffing.htm>



<b>1987</b>	5,710	2,879	2,831	773.6
<b>1988</b>	5,740	2,899	2,841	522.9
<b>1989</b>	5,926	2,969	2,957	597.9
<b>1990</b>	6,274	3,191	3,083	653.5
<b>1991</b>	7,096	3,615	3,481	875.0
<b>1992</b>	7,264	3,696	3,568	910.0
<b>1993</b>	7,266	3,518	3,748	921.0
<b>1994</b>	7,049	3,611	3,438	970.0
<b>1995</b>	7,389	3,889	3,500	1,001.0
<b>1996</b>	7,369	3,708	3,661	1,050.0
<b>1997</b>	7,872	3,969	3,903	1,238.0
<b>1998</b>	8,452	4,214	4,238	1,384.0
<b>1999</b>	9,046	4,527	4,519	1,477.0
<b>2000</b>	9,141	4,566	4,575	1,586.6

On June 24, 1982 a significant shift in American federal illicit substance control took place, centralizing, to a large degree, federal drug abuse prevention and policy functions. Instead of the Drug Enforcement Administration under the auspice of the Department of Justice holding policy jurisdiction save oversight contact from the Oval Office, the Executive Office of the President (EOP) would harness a good portion of drug control authority vested within The Office of Policy Development (OPD). Reagan as a supplement to congressional legislation issued Executive Order 12368 directing the OPD “to assist the President in the performance of the drug abuse policy functions contained in Section 201 of Title II of the Drug Abuse Prevention, Treatment, and Rehabilitation Act.”<sup>48</sup> The order also stipulated that the Director of the Drug

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<sup>48</sup>Executive Order 12368 signed June 24, 1982 entitled “*Drug Abuse Policy Functions*. ”All Executive Orders and Signing Statements selected from the University of California Santa Barbara’s “The American Presidency Project” website: <http://www.presidency.ucsb.edu/index.php>

Abuse Policy Office be primarily responsible for assisting the President in this policy area, thus Reagan's version of the "War on Drugs" inched administratively closer to elevating his policy general to a cabinet level position. Essentially, this order stood as a precursor to establishing the Office of National Drug Control Policy (ONDCP) to be housed not within any law enforcement agency as with the DEA's hierarchical relationship with the Department of Justice, but rather under the bureaucratic guidance of the Executive Office of the President. Executive Order 12368 concentrated illicit substance control direction by centralizing drug control policies and resources, garnering the President a firmer grip on what the federal government promoted as its existing and newest anti-drug programs. With the founding of the Office of National Drug Control Policy some six years from this executively dictated shift in policy development, Reagan aimed at building on existing anti-drug governmental forces without pronouncing any type of growth in the size of the federal government.

The birth of any new agency could be seen as contradictory to his greater political tenet of bringing the federal government down to "manageable" size.<sup>49</sup> Therefore, Reagan made small gains in the coming years before his administration crafted the "Drug-Free America" Act of 1986. Contained within the 1983 State, Justice, and Commerce Appropriations bill H.R. 6957 was \$127.5 million for a Reagan proposed policy council within the EOP and an innovative anti-drug program partnering federal law enforcement agencies responsible for illicit substance control policies with a set of twelve newly formed "teams" stationed in various locations

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<sup>49</sup>See Gil Troy, *The Reagan Revolution: A Very Short Introduction*. On a March 29, 1981 The New York Times article entitled "The Nation; Moving Briskly; On Deregulation," "Few campaign vows drew more cheers than Ronald Reagan's promise to make Big Government smaller. And in few areas has the Administration moved faster - from January's freeze on the 172 regulations written in the Carter Administration's final days to last week's initial report of the Task Force on Regulatory Relief."

throughout the United States. In a DOJ memo distributed shortly after the program's appropriations were initiated, the FBI, DEA, and Customs Service were directed to contribute personnel to these teams and make their top priority "to disrupt the intricate distribution and sales network set up by organized criminal enterprises engaged in drug trafficking throughout the nation...[and] report to Congress each year on the progress of the task forces" (CQ Almanac 1982, 247). "Stationing" federal personnel in varying locations throughout America gave a literal federal presence to state and local communities while promoting the idea that law enforcement, a positive target population benefiting greatly from the punitive paradigm, was the solution. Inversely, the absolute nature of the drug war innocuously defined all users, whether suffering from addiction or part of a trafficking syndicate, as criminals or "deviants" thereby, positioning such individuals as a negative target population framed as the enemy in the drug war worthy of punishment.

Expounding on the different avenues of combating illegal drug trafficking and use during Reagan's tenure points out how his administration's handling of the drug war was paradoxical, not only regarding the larger issue of fighting illegal narcotics but also within Reagan's Administration. While championing a governing strategy often attributed to Thomas Jefferson, "government is best that governs the least," Reagan's repeated calls for federal institutions, programs, and bureaucrats to be planed were matched by aggressive speeches mandating a buildup of bureaucratic forces to assuage public fears of "insurgent" illicit substances.<sup>50</sup> Also, as he molded his presidential image as an outspoken proponent of downsizing the federal

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<sup>50</sup>Though commonly and incorrectly attributed to Jefferson, the quote is rightly credited to the Editor of *The United States Magazine and Democratic Review*, appearing in an 1837 issue of that publication.

government, privatizing many federal services, and cutting bureaucratic “waste,” the Drug Enforcement Administration’s budgetary and personnel numbers increased over the course of his eight years (See Table 2). New agencies and actors were directed to focus on anti-drug missions; presidential proclamations were issued for the purpose of bringing the EOP increasing centralized command over this policy domain, thus sustaining an intensification of America’s drug war which further solidified path dependency of federal illicit substance control standards.

The contradiction between Reagan’s engendering new federal illicit substance programs, while continuously hoisting the banner of crafting a smaller, less wasteful government did, however, sustain his ideological veracity to some measure. As law enforcement agencies received political and financial support from the White House, the same piece of legislation included a rider to abolish more “liberal” programs. Reagan directed congressional allies to eliminate or “severely restrict” the Legal Services Corporation, a derivative of federal agencies aiding states in mitigating juvenile delinquency and other programs perceived to be unneeded expenditures of the welfare state. Included in the slashing of “liberal” programs were the Economic Development Administration and certain Public Telecommunications grants. By removing these and other like-minded programs from the federal dole, Reagan stood on political and ideologically consistent ground while simultaneously creating a sinew of drug control policies throughout various federal agencies, some of which had previously been uninvolved with illicit substance control. While Reagan promoted a White House-based drug control policy development council, he balked at creating a post within the EOP that matched the prominence of cabinet members. Publically, Reagan demonstrated agreement with the majority congressional sentiment that a “Drug Czar” not be named, even though law

enforcement-first advocate and ideological compliant William Bennett anticipated being named to the post.<sup>51</sup> Bureaucratic personnel appointments aside, Reagan directed the entrenchment and acceptance of punitive means through a constant “upgrade” in legislation to shore-up drug war tenets including marijuana prohibition.

A second piece of legislation promoted by Reagan was H.R. 3963, dubbed by House Judiciary Crime Subcommittee chairman William J. Hughes (D-N.J.) as “a useful anti-crime package.” However, fellow subcommittee member Thomas N. Kindness (R-OH) perceived the bill as “a pitiful dribble of legislation,” mainly due to the omission of a revised, more stringent federal sentencing scheme that would abolish parole for some drug convictions. Drawing back or lessening punitive means could offer opportunity to reexamine if individuals not deserving of punishment were being adversely affected or if Reagan’s full frontal assault was bringing beneficial results. In essence, those improperly grouped as criminals-within a negative target population-could be “splinted” from that population and redefined as warranting sympathy and policy benefits not burdens. Evading political or policy any divergence from the punitive paradigm fueled a path dependency of the existing tenets and results. House Resolution 3963 served as a possible guarantee in an impeded continuance of America’s belief and participation in the drug war.

Specifically, Title III of H.R. 3963 called for a new grant program be sanctioned aimed at aiding states fight crime, increase fines for drug traffickers, provide federal officers with the authority to confiscate property belonging to those operating illegal drug enterprises, allowing for some repeat drug offenders to be tried in federal court, and establishment of the Office of

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<sup>51</sup> See *Congressional Quarterly Almanac 1982*.

National and International Operations and Policy under EOP supervision. All of those provisions lent to a crime orientated model with no divergence or contribution to health treatments for drug-related illnesses. Reagan, with congressional collaboration, drove U.S. drug control policies toward an entrenchment of a supply-side dependence both conceptually and in bureaucratic structure. Reagan's proliferation of bureaucratic and state-based law enforcement drug control programs were crafted so as to make the EOP an omphalos with multiple agencies serving as "spokes" for which there existed an punitive parametric for all possible illicit substance issues. Title III's last provision directed ONIOP to facilitate a reduction in separation between agencies responsible for drug control and the executive office essentially erasing jurisdictional lines existing with past administrations. Removal of bureaucratic "seams" concerning drug control collaboration also engendered centralized authority for the presidency while leaving a crime/drug conflation unquestioned. Superficially, bureaucratic reorganization, rhetoric, and conceptualization of drugs seems disconnected and even possibly irrelevant to one another. Yet, the "binding" of all three by Reagan to ensure the sustainment of drug war policies and the marginalizing of alternative models of illicit substance control schemes agrees with the findings of many policy scholars promoting an understanding of policy construction on how public acceptance is anchored to preexisting normative claims regarding drugs, social welfare, or a litany of other policy areas. Value-laden claims regarding marijuana were tied not only to past government framing (See Chapter I: Nixon's reliance on BNDD Director Anslinger's policies) but also policy goals or "structuring the world so you can win." Reiteration of rhetoric and policy submission by the executive is politically and governing-wise well-reasoned and reaffirms public belief while threatening reform-minded individuals. Seemingly, the public is not left to allow

bureaucrats to implement and direct policy rather part of an executive calling to action for the coalescing of public good, bureaucratic agencies, and presidential leadership (Ferraiolo 2007; Krebs and Jackson 2007; Riker 1996). Due to the multiple roles and duties of the U.S. president, a bureaucratic manager or committee, as surrogate to the president, would oversee drug war directives.

The ONIOP Director was appointed by the President and face Senate confirmation unlike the contemporary process of “drug czar” selection which allows the president’s choice to enter office with little inquiry or questioning of the candidate's credentials.<sup>52</sup> With or without Senate inquiry, this last dictate of Title III drew the ire of departmental managers whose agencies already engaged in drug enforcement policies and programs. Opposition from varying bureaucratic entities was due to the perception that establishing a cabinet-level “drug czar” directly under the president’s command threatened the authority of other cabinet secretaries. Placing a Drug Czar in the midst of cabinet secretaries would extend and possibly reaffirm the President’s commitment to escalating the “War on Drugs,” but would also bring attention and heightened criticism to the president's selection, and in turn possibly curtail centralization of executive administration of drug control. Also, if congressionally authorized as a cabinet position, the ONIOP Director would be enabled to order those existing and traditionally more influential Cabinet members to follow ONIOP priorities and prerogatives regarding narcotic control (CQ Almanac 1982, 421). In the end, the recommended shift of authority was too

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<sup>52</sup> See Marijuana Policy Project Spring 1997 Report [www.mpp.org](http://www.mpp.org) and United States Government Accountability Office Report “ONDCP Media Campaign: Contractor’s National Evaluation Did Not Find that the Youth Anti-Drug Media Campaign was Effective in Reducing Youth Drug Use.” <http://www.gao.gov/products/GAO-06-818> Many congressional members and media editorials have criticized several Drug Czar appointees for being under-qualified and their appointments being determined by ideological compatibility rather than issue experience and knowledge.

controversial and threatened excepted institutional arrangements. Centralization facilitates a narrowly tailored, then disseminated, set of frames focused on negatively construed target populations which meet public agreement. For example, even if casual marijuana users are not faced with public abhorrence, the conflation of crime and marijuana with policy ramifications is cast as to gather all, thus resulting in “no room at the margins” or acceptable accommodations existing for even leisure or medical users.

Even as Reagan conveyed an anti-drug czar message to Congress, citing the possibility that the establishment of such a post would impede existing drug control agency endeavors, he employed a more immediate, yet incremental methodology to increasing the authority of the White House centered Drug Abuse Policy Office. On June 24, 1982, Reagan issued Executive Order 12133 mandating the Assistant Director of the Drug Abuse Policy Office to directly answer to the president concerning progress in the drug war. The barely four paragraph issuance achieved two objectives consistent with carrying on Nixon's path: (1) a stronger centralization of drug policy resources and (2) extending the Reagan Administration's illicit substance policies from domestic to international arenas. Early in Nixon's first term he attempted to reach an international consensus regarding restricting drug smuggling routes and cooperation between nations to contain the transfer of illegal narcotics (Block and McCoy 1992; Massing 1998).

Reagan's efforts in this avenue of drug control can be seen as putting Nixon's international efforts on its head. Instead of practicing congenial diplomacy as Nixon had with France and Turkey, Reagan- in his “cowboy” political persona- did not seek foreign assistance or agreement, rather, he implemented drug fighting procedures preemptively and on his



administration's unilateral terms. That left the DEA, DOJ, and ONDCP to produce stunning results that were easily discernible by the public and policymakers as defeating the enemy in the form of curtailing drug trafficking and use. Such returns not only justified the punitive paradigm but the drug war's massive largesse as well. While he advocated for increases to the budgets for the DEA and fledgling ONDCP, Reagan knew all too well, from his days as California's governor and battling the Free-Speech movement on the campus of UC Berkley, that a politically charged campaign framed as the government keeping the public safe was advantageous for his administration.<sup>53</sup> Therefore, Reagan began to methodically implement a set of anti-drug legislation servicing the entire course of his eight years in office and further attempted to garner favorable public opinion of drug war escalation by drawing the media's attention to increased arrests, stepping up mandatory sentences for illegal drug offenses, and allowing the DEA to parade confiscated illicit substances on the front pages of leading newspapers and national television. Showcasing arrest and convictions of drug traffickers gave a sanguine impression of how drugs, their users, and traffickers of the substances were interlocked in the same negative social construction, deserving of similar fates. Intensifying sentencing (mandatory terms, increasing prison time, etc.) for drug offenders further entrenched policy practices, unquestioning path dependency. DEA procurements of illegal drugs demonstrated bureaucratic force and competency.

Another demonstration of a heightening level of aggression between his predecessors' approach to controlling the "marijuana market" and how Reagan envisioned the drug war is

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<sup>53</sup>See Cohen, Robert and Reginald E. Zelnik. *"Free Speech Movement: Reflections on Berkeley in the 1960s"* Berkeley, CA: University of California Press 2002

illustrated by his attempts at source or supply-side ablation. Just as Nixon pitched crime and drugs as one in the same during his presidential campaigns and throughout his truncated tenure, one of Reagan's initial policy arrangements and promotions fostered schemata of information that presented a frame or message of criminal activity and drug usage as inseparable. Unlike Nixon (at least in the early stages of his tenure), Reagan did not solicit ideas about how to contain illegal narcotic distribution from international voices, rather, he acted unilaterally and via a domestic policy outward lens. However, in a Nixon-like drug policy perspective, Reagan was inclined to "cast a wide net" concerning measures to curb illegal drug trafficking and importation with particular attention paid to marijuana cultivation in foreign countries. Though it would be George H.W. Bush some ten years later formulating a well-developed diplomatic, military deployment, and eradication strategy focused on cocaine production in South America, it was Reagan's administration in 1981 that sought expansion of the traditionally defined domestic problem of drug use by finding answers in an international milieu. As part of a larger foreign aid legislative package and with political support from congressional representatives of "drug smuggling" states including Florida and Louisiana, Reagan called for the repeal of the 1978 ban on the use of U.S. foreign aid for spraying the herbicide paraquat in order to eradicate large scale marijuana grow fields. This policy provision also included an earmark of \$100,000 for "research on substances that would leave a mark on marijuana or other illicit crops if sprayed on those crops along with herbicide" (CQ Almanac 1981, 164). Most of these congressionally authorized resources went to counter marijuana trafficking emanating from South and Central American nations with particular focus given to Mexican producers. Reagan's bureaucratic restructuring, visceral rhetoric, and increased funding

stoked the drug war fires, yet it would be some five years after he took the presidential oath of office that a major legislative girding would be orchestrated in the entrenchment of drug war policies.

### **Drug-Free America Act of 1986**

Nearly one and half years into his second term as president, Ronald Reagan once again sought an omnibus anti-drug legislation that would lay the groundwork for a “drug-free” generation of Americans. A convergence of public events and Reagan’s on-going parlaying of illicit substance control as a policy panacea that could cure multiple societal ills were funneled into a politically charged endeavor that Reagan, as executive, could doggedly confront and assert varying solutions. While possibly not the exogenous shock the Reagan Administration could point to as a direct enemy attack, the deaths of two aspiring athletes, University of Maryland basketball standout Len Bias and professional football player Don Rogers, became fodder for anti-drug organizations to call on federal authorities to make illegal drugs less accessible to younger people, a measure of public sentiment the Reagan Administration employed to bring pressure on Congress to follow the executive’s lead.

The cocaine induced deaths of Bias on June 19, 1986 and Rogers nine days later galvanized public attention regarding illicit substance abuse. Fatalities of celebrities overemphasized how “good” people could become entangled in the insidious world of drugs. All drugs, cocaine, marijuana, heroin, and others were cast as lending to social detriment within the CSA’s Schedule as well as the construction of negative populations. According to federal categorizing of illicit substances and results of drug use depicting addicts or those “experimenting” as disastrous, negative conceptualization was reinforced. The deaths of Bias

and Rogers were exaggerated and presented as typical of all drug users, lending to how, as Ingram, Schneider, and deLeon point out, “People tend to exaggerate the positive and negative traits of groups and create myths and rationales that justify the domination of some groups over other. In time these myths become inculcated in the culture and embodied in policies or that their authenticity is unquestioned, and they are accepted as fact” (Ingram, Schneider, and deLeon in Sabatier 2007, 107). As professional athletes, Bias and Rogers could easily be portrayed as individuals who experimented with a substance in a lone experience or for just few times yet could not escape the possible death typically associated with illicit substance use. Such occurrences raise the flag of attack for proponents of the punitive paradigm, enabling them to “strike when the iron’s hot,” feeding public acceptance of drug war politics and practices.

If the deaths of two prominent professional athletes were not enough of a cause for media to refocus their coverage of drugs to cocaine in particular, a July 11, 1986 report prepared and issued by the National Institutes of Health called for an increase in public knowledge concerning cocaine use accompanied with statistics demonstrating surges in crime and deaths associated with the drug. Within a concentrated period of two months the Reagan Administration had enough public relations ammunition to wage a full-scale reengagement and request for cooperation from Americans to wage a frontal assault on the “War on Drugs.”<sup>54</sup> In a nationally televised address on August 4, Reagan again intensified the drug war debate as if fulfilling his Commander-in-Chief role by rallying troops for battle with the urging of the

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<sup>54</sup> National Institutes of Health report NEED TITLE issued July 11, 1986. See New York Times “*Special to the New York Times, U.S. Says Cocaine-Related Deaths Rising.*” Joel Brinkley

American public to ally with his administration in order “to help us create an outspoken intolerance to drug use” (Woods 1993, 57). His request contained a “mobilization” of federal, state, and local resources to achieve “what we hope will be the final stage in our national strategy to eradicate drug abuse.”<sup>55</sup>

Five weeks later in a message to Congress, Reagan reasserted his administration's commitment to solving America's thirst for illicit substances and to retaining the drug war's punitive paradigm:

“From the beginning of my Administration, I pledged to make the fight against drug abuse one of my highest priorities. We have strong steps to turn the tide against illegal drugs. To reduce the supply of drugs available in our country, we moved aggressively against the growers, producers, transporters, smugglers, and traffickers. Our spending for drug law enforcement has nearly tripled since 1981. To reduce demand, we plotted a course to encourage those who use drugs to stop and those who do not, never to begin. I am especially pleased at the success that the military has experienced, reducing drug usage by over 67 percent among our Armed Forces. And as a direct result of Nancy's leadership and commitment, over 10,000 “Just Say No” clubs have been formed throughout the United States over the past few years to discourage drug use among our youth...Our law enforcement and interdiction efforts must be increased as well. I will propose substantial increased funding—approximately \$400 million in 1987—for a major new enforcement initiative along our southwest border. A similar initiative will be proposed for our southeast border, involving at least \$100 million in added funds.”<sup>56</sup>

Analogous to Henry IV calling his troops to go “once more into the breach,” Reagan primed the America public and Congress for that last decisive battle against the insidious enemy generically known as “drugs.” Politically, culturally, and in codified policies Reagan had dug his trenches and

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<sup>55</sup>Taken from the University of Texas online Ronald Reagan Presidential Speech Library Archives on October 15, 2009: [www.reagan.utexas.edu/archives/speeches/1986/091586b.htm](http://www.reagan.utexas.edu/archives/speeches/1986/091586b.htm) Televised speech from the Oval Office.

<sup>56</sup>Ibid., *Message to the Congress Transmitting Proposed Legislation to Combat Drug Abused and Trafficking*, September 15, 1986.

now sought to finish off the nation's mind-altering adversaries with his latest legislative weapon, The Drug-Free America Act of 1986 (H.R. 5484). This would be Reagan's "finest hour" concerning domestic social regulatory policy.

The "Drug-Free" America Act of 1986 (HR 5484) incorporated diverse political and policy desires including stepping up enforcement of existing drug statutes, increasing penalties for narcotics trafficking, improving drug education, and answering the health related ramifications of drug abuse by invigorating prevention and treatment programs. The bill's composition was a cavalcade of illicit substance concerns yet what Reagan did not have, due to several points of contestation, was a consensus for this omnibus piece of legislation. Again, demonstrating how little party or ideology played a part in the drug war, appropriations of health and welfare subcommittee chairman Lowell Weicker (R-CT) stubbornly balked at allowing H.R. 5484 to pass until it was guaranteed that funding would not be siphoned from programs within his subcommittee's jurisdiction. Legislators also came to loggerheads regarding how involved military personnel would be in containing the trafficking of illegal drugs in and out of the U.S. Many, including Armed Services committee member Sam Nunn (D-GA) thought employing the armed forces to seal the borders from narcotic smuggling was futile, while Alan Dixon (D-IL), a committee colleague of Nunn's, advocated a more practical approach, permitting the military to contain and seize aircraft and ships suspected of carrying contraband cargoes. A compromise was reached via Dennis DeConcini's Amendment requiring the Secretary of Defense to "complete an inventory of military equipment, intelligence and personnel that could be made available to civilian drug agencies for interdiction efforts and develop a plan for making such assistance available" within a 90 day period of the bill's passage. By far, this was one of the more

difficult hurdles the Senate overcame as they eventually easily adopted H.R. 5484 97-2 (CQ Almanac 1986, 92-100). Reagan signed the milestone drug control legislation on October 17, 1986, the same day the Senate endorsed it and three weeks before mid-term elections. The separation in timing between adoption and Election Day as well the overriding costs evoked suspicions of playing to “drug war politics,” prompting Patricia Schroeder (D-CO) to comment, “I think we're seeing political piling on right before the election.”

Gaining political clout went hand-and-hand with Reagan Era drug war efforts including divisive issue and multiple dictates of the legislation that struck directly at fortifying the punitive paradigm. Though the death penalty is the most extreme punishment possible, seemingly the drug war’s punitive paradigm held no limits for office holders promoting intensification of drug war policies. In attempts to have their name associated with President Reagan’s omnibus anti-drug legislation, some congressional members sought extreme means to garner a “coattail” effect from Reagan’s bill. One example is George Gekas, a Republican from Pennsylvania, attempting to erase any hesitancy other congressional members might have by arguing that the death penalty was an appropriate measure and “natural extension of the war on drugs we are waging.” The “Gekas Amendment,” as it was known, would have matched the sentencing of some types of drug convictions with first degree murder and treason. The death penalty, unlike drug war politics, is ideologically divisive and House Judiciary Committee members were able to defeat Gekas’ legislative suggestion. Advocates for comprehensive drug control legislation outnumbered those inducing a stalemate on the grounds of a mandatory death penalty for any category of drug trafficking. The ideological divisiveness was short-lived with several moderate Republicans along with 25 Democrats threatening to filibuster any bill that included a Death

Penalty proviso. In order to meet the President's expectations (and possibly public perception of narcotic insidiousness), H.R. 5484 made its way to the Senate and onto Reagan's desk with a litany of increased penalties for manufacturing, possessing, organized distribution, "serious crimes" involving drug transactions, and international trafficking. However summarily dismissed, discussion of the death penalty as a punishment within illicit substance control couples two negatively perceived target groups.

Both drug traffickers and murders (those most likely to be on death row) are categorized as "deviants" deserving of the law's worst punishments. Of course legally, the death penalty would have been reserved for large-scale, repeat traffickers while those convicted of small amounts of illicit substances would not face such a penalty. However, inclusion of the death penalty in substance control policy debate demonstrates how vagueness and lack of parsing substance effects from drug to drug is a prevalent and coercive manner in which punitive means become a staple of drug control policy and enable the public to economically cogitate. Also, promoters of the drug war's punitive foundation lost little by not having a death penalty proviso. Just as Nixon had pushed for a "no-knock" rule to be included in the CSA's language, only to be denied by congressional civil rights advocates, the Reagan and Bush Administrations were able to continue the punitive paradigm of federal illicit substance control policies unimpeded. The focus of all legislative, political, legal, and social discussion was honed to punishment, not straying into the realm of demand-side policy, thus not contemplating the fate of disadvantaged groups (addicts, those seeking alternative medicine). Continuing with supply-side, punitive measures contributed to a path dependency of the Drug War through the employment of disadvantaged, negative target populations and agreeing with Schneider and



Ingram, “The dominant tools for deviants are expected to be more coercive and often involve sanctions, force, and even death...At best, they will be left free but denied information, discouraged from organizing, and subjected to the authority of others-including experts-rather than helped to form their own self-regulatory organizations” (Schneider and Ingram 1993, 339). Reagan’s 1986 contribution to a continuance of America’s drug war ensured a punitively infused model of attempting to deter citizens from drug profits or effects.

The Drug-Free America Act also extended drug control policies throughout the bureaucracy with several provisions mandating drug testing of federal employees. Implementation of drug testing for federal government employees mirrored the actions of anti-drug organizations attempting to preempt any questioning of drug testing of public school students, parents administering store-bought urinalysis kits to their children, and advocating for private companies to institute drug testing in the workplace. In essence, instituting drug testing throughout the bureaucracy sent a message to the public that Reagan was “leading by example” in the drug war effort. A little more than a month before the omnibus legislation passed through Congress, Reagan issued an Executive Order entitled, “*Drug-Free Federal Workplace*,” outlining why teasing out drug users in government service was necessary. Again, in an attempt to reflect how the federal government was exemplar and presenting the American public with “the truth” regarding illicit substances, Reagan “called out” the federal government in his Executive Order, “the use of illegal drugs, on or off duty, by Federal employees is inconsistent not only with the law-abiding behavior expected of all citizens, but also with the special trust placed in such employees as servants of the public; Federal employees who use illegal drugs, on or off duty, tend to be less productive, less reliable, and prone to greater

absenteeism than their fellow employees who do not use illegal drugs; the use of illegal drugs, on or off duty, by Federal employees impairs the efficiency of Federal departments and agencies, undermines public confidence in them, and makes it more difficult for other employees who do not use illegal drugs to perform their jobs effectively.” The order went on to lay out time expectations for implementing the drug testing of federal employees holding “sensitive positions,” how the head of each agency would be responsible for establishing a plan suitable for their respective sector of the federal bureaucracy, and ramifications of positive test results.<sup>57</sup> Statutory prohibitive means were therefore incorporated into administrative law via a “mimicking” of policy dictates and penalties fitting for that respective arena. The framing of the Drug War held a consistency from citizen to office holder and negative target populations would add “members” if bureaucrats were drug tested and found “dirty.” Such a comprehensive strategy of the punitive paradigm administered by the Reagan Administration agrees with Ferraiolo’s assessment of “elite framing,” “Stability or change in policy image can affect the dominance and destruction of policy monopolies, and issue frames...Frames are not benign tools that aid the public in processing information, but are strategic resources that allow political actors to exercise control over policy discourse and achieve a political or electoral advantage” (Ferraiolo 2009, 343 expounding on Freedman 2000).

### **Presidential Attention turns International: George H.W. Bush’s Continued Centralization, the “Andean Initiative,” and Sunk Costs**

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<sup>57</sup> Executive Order 12564-*Drug-Free Federal Workplace* issued September 15, 1986.

Seemingly, for every multi-programmed or greatly pronounced innovation in a policy's life there are a multitude of lesser known, yet influentially “smaller” institutional rearrangements and even exogenous events that collectively contribute to the grander collage and contour of policy development, in turn lending to path dependency (Collier and Collier 1991; Ikenberry 1994; Krasner 1989). The shifts in the relationship between the president and drug control advisors, a more direct communication line between drug control agencies and the EOP- mostly due to the establishment of the ONDCP and its precursor ODAP-, substantial increases in DEA budget and personnel numbers, along with the diffusion of anti-drug policies and programs throughout the bureaucracy “cured” a foundation for George H.W. Bush in which to lay new, similar courses of federally led illicit substance controls in line with his predecessor’s policy course of action.

**Table 3: Anti-Drug Organizations Established from 1977 to 1992**

<u>Anti-Drug National Organization</u>	<u>Established</u>	<u>Primary Purpose/ Mission</u>
National Families in Action	1977	“To help families and communities prevent drug use among children by promoting policies based on science.”
American Council for Drug Education	1977	“To ensure that the public has access to scientifically-based, compelling prevention programs and materials.”
D.A.R.E. (Drug Abuse Resistance Education)	1983	“Provide children with the information and skills they need to live drug and violence free lives.”
Family Research Council	1983	“Dedicated to the promotion of marriage and family and the sanctity of human life in national policy.”
Center for	1985	“To provide national leadership in the

Substance Abuse Prevention (federal agency)		development of policies, programs and services to prevent substance abuse.”
Partnership for a Drug-Free America	1986	“To reduce demand for illegal drugs in America. Through its national advertising campaign and other forms of media communication... works to decrease drugs by changing societal attitudes which support, tolerate or condone drug use.”
Drug Watch International	1991	“To help assure a healthier and safer world through drug prevention efforts by: providing accurate information on both illicit and harmful psychoactive substances; promoting sound drug policies based on scientific research; and opposing efforts to legalize or decriminalize drugs.”
The Community Anti-Drug Coalitions	1992	“To create and strengthen the capacity of new and existing coalitions to build safe, healthy and drug-free communities. The organization supports its members with technical assistance and training, public policy, media strategies and marketing programs, conferences and special events.”

America had been delivered into an era of illicit substance control riddled with war defining characteristics: an identified enemy, presidential leadership, military involvement and congressional funding without having any major troop deployment or specified geographical enemy. Adding to the layers of drug war enactments was the necessity of the newly inaugurated President to act immediately on formulating a national drug control strategy. The urgency to purpose an adamant stance on drug control was exasperated due to Congress’ 1988 Anti-Drug Legislation being “driven by presidential politics as both parties accused the other of not doing enough to combat drugs...[and] Bush [going] on the defensive over the administration’s

negotiations to drop drug charges against Panamanian Gen. Manuel Antonio Noriega” (Congressional Quarterly 1989, 85-86). Eventually Bush claimed victory over a major contributor of drug trafficking by ordering the invasion of Panama, containment of President Antonio Noriega within the Managua-based Papal residence, and the despot’s subsequent rendition. Later, while waiting for his trial to begin, the former Central American leader depicted himself as a victim of the drug war by claiming he had been illegally brought to the U.S. and repudiating the Bush Administration’s assertions that he accepted bribes from drug cartel leaders in exchange for allowing Panama to become a conveyor belt for cocaine flow into the United States.<sup>58</sup> In essence, Noriega became the “poster child” of deviant behavior perpetrated by traffickers and users of all drugs. Through the internationalization of the drug war, Bush was able to broaden inclusion in the social construction of a negative target population that further entrenched belief and practice in drug war tenets.

Crafting a career reputation within the field of international intelligence procurement seemingly played to Bush’s advantage when his administration forged new drug war endeavors. Targeting Noriega was the first step and supplemental measure in a supply-side eradication operation already existing in Colombia. Therefore, there should be little surprise that either primary or peripheral attention of foreign relations were incorporated into the policy designs of diverse issue areas, the drug war being no exception. Narcotic trafficking became an automatic target for the Bush Administration’s practice of dedicating federal resources and attention toward an international bent. While Reagan’s contributions to the drug war can easily be

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<sup>58</sup> See *New York Times* January 6, 1990 Richard L. Berke Special to the *New York Times*, “*The Noriega Case: Defense Strategy; Noriega and Lawyers Meet for 2 Hours.*”

thought of as holding emphasis toward domestic needs with “no tolerance” campaigns, extending illegal drug control initiatives throughout the federal bureaucracy, and guaranteeing the EOP held a greater degree of illicit substance policy manipulation, Bush's strategy was to have one prominent avenue of a supply side solution emphasizing western hemisphere trafficking-dismantling production stations and severing South American trafficking routes- while domestically, he would delegate presidential authority to and through the Director of the ONCP. The former was reliant on an image of the federal government attenuating their efforts toward the suppliers of illegal narcotics. Eradication of coca plants, cocaine producing stations, poppy fields, heroin trade routes, and acreage dedicated to marijuana cultivation in various central and South American nations allowed Bush to utilize his intelligence experience and military commander authority simultaneously.<sup>59</sup> The latter, a less visible and promoted tier, was a continuance of Reagan's nuanced sidling of illicit substance control centralization and promotion of a line of undeviating communication from agency directors to the president.

Just as his immediate predecessors had advocated law-enforcement-first dictates to battle the insurgency of illicit substances, George H.W. Bush coveted a punitive paradigm for waging his version of America's drug war, thereby employing a double pronged assault of international and authoritative centralization. The ability to focus attention on supply side eradication endeavors while allowing ONDCP Director William Bennett to act with near total autonomy were examples of removing political pressure and focus from the presidency while continuing the law enforcement-first direction of federal illicit substance control.

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<sup>59</sup>Seemingly, the Andean Initiative and all other South American illicit substance programs involving U.S. military deployment inherently included intelligence operations either conducted prior to the deployment of military advisors, DEA, and CIA personnel. While “aiding” the Colombian, Peruvian, and Bolivian governments in eradication programs intelligence was also garnered pertaining to drug cartels.

Bush's goals of undergirding drug policy with punitive measures finds agreement in Jonathan Simon's assessment of governing through crime-based authority: "Bush...defined his executive power in the posture of a prosecutor more than any other previous chief executive of the United States. Whether addressing drug dealers or the unnamed group interests" (Simon 2007, 58). The ex-CIA Director's presidential disposition and institutional arrangement desires pertaining to drug control efforts were justified and illustrated via increasing DEA arrests and confiscations, conviction rates of drug traffickers, and wide-ranging media access to eradication projects in Bolivia, Peru, and Colombia. Publicizing the "Andean Initiative" and presidential pronouncement of drug war "successes" laid alternative policy options to the margins of public and political consideration stymieing various reform illicit drug control policy reform efforts.<sup>60</sup>

Bush garnered an almost immediate advantage to centralizing authority of drug control resources and direct command of domestic policy operations for his soon to be Drug Czar William Bennett due to what his administration had inherited from the Reagan Administration. In late 1988, Reagan had managed to establish the Office of National Drug Policy and soon after the ONDCP's Director received additional duties, resources, and authority. Debate concerning making the "Drug Czar" a cabinet level position during Reagan's tenure lingered close to Bush's transition to the presidency. Partly delayed due to Reagan's recalcitrant posturing as an opponent of elevating the EOP's director to bureaucratic "royalty," the title of "Drug Czar" had already been attached to William Bennett but not in the capacity called for in House Resolution

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<sup>60</sup> Continuation of any policy depends on demonstrative "success" or beneficial results. Allowing media outlets to disseminate photographs of large amounts of confiscated drugs, issuing press releases highlighting the weight and monetary value of narcotics taken from traffickers that were confiscated as part of eradication missions and Coast Guard interventions projected an message of law enforcement-first (punitive paradigm) directives as correct policy, substantiating presidential assertions of a winnable drug war. Therefore, health-based, demand-side alternatives were staved off.

5210. Signed by Reagan on November 18, 1988, HR 5210 consolidated and coordinated federal illicit substance control by creating the Office of National Drug Control Policy (ONDCP) to be housed within the EOP with Bennett, as the initial director, advising and answering directly to the President.<sup>61</sup> The ONDCP provision also granted Bennett two deputies, one to hold the charge of demand reduction while the second would oversee mitigating narcotic supply. There were substantial differences in the number of full-time members each president assigned to his National Drug Policy Board. Whereas Reagan created eighteen permanent positions ranging from the Attorney General to his Chief of Staff with a caveat to allow “such other members as the President may, for time to time, designate,” Bush seizing on the success of Bennett’s appointment to head the ONDCP increased the size of his “advisory” council to thirty full-time members. Because of the ONDCP’s new found authority that included William Bennett’s new status within bureaucratic ranks along with an increase of the President’s Drug Advisory Council members (though containing many of the same staff), Bennett, as Bush’s domestic drug control “General” possessed the needed bureaucratic resources to focus on domestically-based drug control ventures without needing to apply direct presidential oversight.

As the first executive to have such personnel and agency at his disposal, Bush give carte blanch to the ONDCP regarding domestic anti-drug program propagation throughout the bureaucracy. While Reagan had set the stage for the ONDCP to be a presidential surrogate of sorts by centralizing presidential control of illicit substance control authority via the creation of the ONDCP, Bush heightened the degree of autonomy the Director of national drug control

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<sup>61</sup> William Bennett was the initial “Drug Czar” due to H.R. 5210, but did not take the post until George H.W. Bush took office in January of 1989.



policy could operate and in turn freely engage with other cabinet members. On November 13, 1989, Bush issued his first executive proclamation concerning drug control policy as President-Executive Order 12696. This proclamation held many similarities to Reagan's Drug Advisory Council structure yet was distinctly attributable to the new president and added another building block to his predecessor's model and development of illegal drug policy centralization. Whereas Reagan had advocated and fostered the proliferation of anti-drug organizations and private interest in the drug war, Bush administratively called for his Drug Advisory Council to develop "methods and means to explain national drug policies to the American people... encourage the private sector to implement national drug control policies...solicit the views and advice of various members of the media and communications field [to] provide advice in coordinating efforts of the private sector to inform the public of the dangers of illegal drug use."<sup>62</sup>

The basis for ONDCP Director to not only advise but also issue drug policy dictates for cabinet members to implement, such as drug testing for their respective departmental employees, was instituted by Reagan. Section 4 (a) of Bush's executive order went so far as to delegate presidential authority to the Drug Czar "notwithstanding the provision of any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Council, shall be performed by the Director of National Drug Control Policy."<sup>63</sup> Both the congressional

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<sup>62</sup>Executive Order 12696, "*President's Drug Advisory Council*" issued by President George H.W. Bush on November 13, 1989: Section 2 "Functions" subsets (a), (b), (c), (d), and (e). Carter had issued a Drug Advisory Council order with a termination period of twenty-four months. Reagan, Bush, and Clinton all issued subsequent orders extending their council's existence.

<sup>63</sup> Executive Order 12696-President's Drug Advisory Council issued November 13, 1989.

sanctioning of a Drug Czar post within a consolidation of agencies (ONDCP) responsible for illicit substance control policy creation and implementation then designating the initial director, William Bennett, with hierarchical command without oversight concerns of an official cabinet member enabled Bush to employ his Commander-in-Chief focus to military activities in South America while delegating domestic drug control containment to Bennett. Left at his presidential threshold, Bush broadened the scope of the ONDCP's mission by extending their goals beyond the capabilities of federal agencies with a continuation of Reagan's privatization route and leaving domestic drug abuse causes to hand-chosen bureaucrats allowing him to obviate and focus his executive attention to foreign affairs of a drug policy nature. Yet even prior to any formal directive to expand the drug war toward eradication efforts in Colombia, Peru, and Bolivia or garner the newly founded ONDCP authority, Bush offered what Reagan had failed to accomplish in his first term, a National Drug Control Strategy led by the ONDCP and a newly named Drug Czar. William Bennett would now handle the framing and direction of drug war policies as well as the social constructions of those the policies punished.

Operations of the ONDCP under Bennett constituted the domestic "prong" in Bush's iteration and continuance of drug war policies. The "second prong" consisted of the military focused "Andean Initiative" to halt the flow of narcotics emanating from and through Colombia, Peru, and Bolivia which evinces a direct contribution by Bush to executively driven path dependency of marijuana prohibition and other staples of America's war on drugs. The progression of institutional actions in the latter part of 1989 and early 1990 speaks to the "timing and sequence" premise of path dependency and how a particular order of events matters in regards to development of policy; whether the road of a given policy is static or

volatile depends much on the political climate and other policy priorities of contributing institutions, in turn, the feasibility of changing paths can be estimated. Reagan had left a legacy of fighting communist insurgency in Latin American nations, integrating his own vision of the drug war into America's ideological goals of that region which held promise of simultaneously fighting a supply-based drug war while continuing to "stabilize" democratic nations. During Reagan's tenure, U.S. troops were deployed to Nicaragua and El Salvador as "advisors" for the purpose of ameliorating the strife associated with those countries civil disputes setting the stage for Bush to escalate. Ideological battles in Central America, as an internationalized branch of the drug war, gave Bush necessity to facilitate such a relationship into South America with Colombia as the United States' primary partner. Nearly all of the cultivation and production of coca, and its highly addictive derivative cocaine, originated in two South American nations: Bolivia and Colombia, with the latter standing as the main clearinghouse and organizational stronghold for the substance's producers.<sup>64</sup>

Initializing the Andean Initiative, also known as "Plan Colombia," was fiscally and militarily daunting. The "International Narcotics Control Act of 1989" (H.R. 3611) asked Congress to authorize \$115 million for international narcotics control assistance and an additional \$125 million for military and law enforcement assistance divided between Colombia, Peru, and Bolivia. These congressional allotments targeted coca plantations and cocaine processing stations along with diminishing the effectiveness and efficiency of trafficking routes used and maintained by drug cartels. Bush's call for this bill was swiftly answered by

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<sup>64</sup>*Statement on Signing the International Narcotics Control Act of 1989* issued on December 13, 1989: "This assistance to the three Andean nations, where most of the world's cocaine is produced and which form the front lines of the struggle against the drug cartels, is designed to help reduce the flow of illegal drugs into our country."

congressional leaders with some contention and alteration but with the final version holding to most of what the president had requested. Besides the financial commitments, laws prohibiting U.S. Aid to foreign police forces were lifted, \$115 million was given to the State Department for their International Narcotics Bureau operations, and the Brooke-Alexander amendment was waived which would have prevented nations lagging in loan repayment to the United States from receiving any monetary aid to collaborate in drug war exercises. Colombia, Peru, and Bolivia were given special consideration regarding their debt, with Bush promising to authorize a waiver of those nations' debt-repayment obligations altogether, allowing they were "beginning programs to reduce the flow of drugs into the United States."

Seemingly, all of the beneficial stipulations and funding included in H.R. 3611 were not enough to satisfy the President in what, at least in the bill's text, amounted to a bilateral attempt to crimp the supply line of illegal narcotics coming out of South America. Just a few hours following the signing of H.R. 3116 into law, Bush issued an accompanying signing statement expressing some dissatisfaction regarding the lack of preventative attention paid to the supply of cocaine from Andean nations. He followed the legislation up by lauding Colombian President Barco's "courageous decision to wage a full-scale war against the Andean drug traffickers." Bestowing accolades of that sort were indicative of the rhetoric and immediacy associated with nature of presidentially driven U.S. Illicit substance control policy and the Bush Administration's belief in continuing the drug war via a multi-nation effort bore through. Inclusion of an international element with the domestically-borne "War on Drugs" allowed "allies" to be identified which added "enemies" making a clearer conceptualization or framing of a two-sided conflict. What was at risk was confusing the public by expanding federal drug war

efforts, Bush's immediate labeling of new comrades-in-arms and origins of drug production in association that laid out an exchange between nations kept any "blurring" lines of alliance can cause. Just as Baumgartner, De Beof, and Bodystun articulate how public belief in the death penalty was not only sustained but perpetuated by a "self-reinforcing" process generated greater and greater acceptability of the death penalty for almost thirty years as America become more and more accustomed to capital punishment" (Baumgartner, De Beof, and Bodystun 2008, 10). Relating to the death penalty, the authors' "self-reinforcing" mechanisms are highly dependent on death row inmates "getting what they deserved," "justice being done" and mandatory death penalties handed down for multiple offenders. However, just as the public became "accustomed to capital punishment," drug war acquiescence by the public was due to institutional reinforcement of CSA tenets including prohibitive means, eradication efforts between nations, mandatory sentences for drug traffickers, and government fed media promotions of "drug busts." Bush expedited such reinforcing processes in formal and informal ways.

To further illustrate executive dominance and control of policy framing, Bush pulled institutional rank by publically expressing disfavor with congressional measures meant to contain his international overtures for drug war collaborations between the U.S. and "willing" South American nations. In response to the legislation mandating that the Secretary of State submit reports to either congressional houses' evaluating committees, Bush immediately let his disfavor with that mandate as well as the text of H.R. 3116 stipulating that "no security assistance shall be delivered to such country except as may thereafter be specifically authorized by law from such country unless and until [the report] is submitted." Sourcing the Constitution's

Article I, Section 7, “every legislative act must be presented to the president” and the Supreme Court's ruling in *INS v. Chadha* (1983),<sup>65</sup> Bush proclaimed the congressional reporting requirement for funding his offensive front in South America as “unconstitutional” and to be treated as “severable from the rest of this legislation, and therefore they will not endanger the provision of necessary assistance in our war on drugs.”<sup>66</sup> Again, any institutional message that he perceived as an affront to his drug war efforts were easily countered even if presidential authority did not expend to terminating congressional activity to curtail Bush’s internationalization plans. Framing begins with conceptualization and ends with affirming messages demonstrating the means being employed. As America’s drug war policy route has developed, Bush and other executives have had to “redirect” their messages and the meta-frame by disparaging opposing views. Bush was not only containing the public understanding of his illicit substance control efforts but also those foundational messages allowing for the entrenchment of policy and rhetorical drug war tenets.

Institutionalization and implementation of Plan Colombia along with other eradication programs all but guaranteed the continuance of past policy choices and the persistence of path dependency within the Bush Administration’s illicit substance control model. The feasibility of changing paths was greater prior to Reagan taking office as evidenced by Carter’s endeavors to

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<sup>65</sup> *INS v. Chadha* 462 U.S. 919 (1983)- The Supreme Court was asked: Did the immigration and Nationality Act, which allowed a one-House veto of executive actions, violate the separation of powers doctrine? The Court held that the particular section of the Act in question did violate the Constitution. Recounting the debates of the Constitutional Convention over issues of bicameralism and separation of powers, Chief Justice Burger concluded that even though the Act would have enhanced governmental efficiency, it violated the “explicit constitutional standard” regarding lawmaking and congressional authority.

<sup>66</sup>28 *Statement on Signing the International Narcotics Control Act of 1989* December 13, 1989: referring to Section 3 (g) of H.R. 3116 and the Foreign Assistance Act of 1961 Section 502B(c) Bush claimed that issuing the reports to only one House of Congress was unconstitutional because doing so would subvert the legislative process.

shift federal drug control focus away from a punitive to a federally endorsed health conscious paradigm. However, well before Reagan had finished his initial term as president, the amount of fiscal and personnel resources dedicated to the “War on Drugs” had already demonstrated what many economists were claiming in regards to sunk costs. Fiscal and personnel resource largesse dedicated to DEA, ONDCP, and other illicit substance fighting agencies along with long held political commitments to the Nixon enacted punitive, supply focused paradigm of the drug war deterred policymakers from debating alternatives. Each step toward sustaining a punitive paradigm of drug control pushed health-based initiatives to the margins of political and budgetary feasibility. Analysis of early welfare state development and growth by Huber and Stephens captures the transformation and development of American illicit substance policy as part of the overall explanation of this chapter, particularly pertaining to critical junctures, “as each policy is put into place it transforms the distribution of preferences; as the regime increasingly entrenches itself, it transforms the universe of actors. The economic and political costs of moving to another regime become greater” (Huber and Stephens 2001, 32). Not only do preferences at the decision making and implementation stages of the policy process become limited and forced, but the marketplace of ideas, in turn public discourse, becomes thinned to faint voices of dissent drowned out by presidentially led, state produced legislation, public service announcements demonstrating agreement from citizen-based anti-drug organization, thus reaffirming the status quo.

Domestically, Bush had been “hands off” especially in contrast to Reagan. However, pointing to more evidence of path dependency, Bush continued out on the same domestic “branch” as Reagan by promoting the use of drug fighting block grants to state governments,

much to the consternation of congressional Democrats. Many of those block grants designated for state-level drug programs operated through the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) with the National Institutes of Health, National Institutes on Drug Abuse, and National Institute on Alcohol Abuse and Alcoholism being the primary physical and mental treatment drug research centers; ADAMHA's state services were administered by the Substance Abuse and Mental Health Services Administration (SAMSA). On the SAMSA or state side, the impasse between Bush and Congress pertained to changing grants from block to categorical. That stated, many Democratic congressional members, including the bill's House sponsor Henry Waxman (D-Ca.) attempted to make states more accountable as to how federal money was being spent (CQ Almanac 1992, 422). Bush would not yield on the form of grants being offered to states and his Senate allies halted the legislation until a compromise was struck that kept SAMSA funding as block grants and removed federal support for "needle exchange" programs. Bush's opposition to experimental, street-level programs was so adamant that the same day, July 10, 1992, the ADAMHA legislation was adopted by Congress, he issued a signing statement denouncing needle exchanges by declaring, "There is no evidence that such programs reduce the incidence of HIV infection, and distributing free needles to drug users only encourages more drug use."<sup>67</sup> In return for those concessions to the President, specific instructions about how states should spend drug war block grants as well as splitting state funds into two distinct policy areas-drug abuse and mental health-oversaw entirely by the Alcohol, Drug Abuse and Mental Health Administration were included in the final draft of H.R.

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<sup>67</sup> *Presidential Statement on Signing the ADAMHA Reorganization Act*-July 10, 1992. Taken from University of California- Santa Barbara Presidency Project website last on June 19, 2011: <http://www.presidency.ucsb.edu>



3698. Adoption of the legislation entitled Alcohol, Drug Abuse and Mental Health Administration Reorganization (S 1306/ H.R. 3698) totaled \$1.4 billion.

Passage of H.R. 3698 signaled the Bush Administration's unwillingness to diverge from the drug war path Reagan had paved while placating opponents of the status quo and demonstrating more evidence of tactful articulation of drug frames and policies. To start, fervently refusing to allow federal money to reach experimental programs such as needle exchanges was tantamount to refusing to recognize the fiscal, health, and moral toll drug abuse took on desperate city and county governments while not recognizing the need to formulate new practical means to mitigating narcotic abuse. The detrimental effects of street drugs were so severe in many municipalities, that their governments were turning to volunteer-based non-profit groups to administer programs alternative to federally sanctioned, fiscally established, and publically accepted programs. Second, focusing on block grants dedicated to treating the physical and mental health of drug users, Bush once again “stayed the course” by refusing to allow federal funds to be spent directly on those types of issues, instead relying on standardized messages to the public that doing so would be to give up on defeating “the enemy.”

Bush’s request for consolidation of the various federal health institutional drug programs was seemingly part of a larger plan to downsize federal contributions to health initiatives. Because block grants were never reclassified as categorical and left with only “special” instructions, states could channel their funds to law enforcement needs and circumvent a shift in policies toward a health paradigm. Institutionally, federal drug war policies were mimicked by state and local governments dependent on national funding. Framing the issue in a punitive, law-

enforcement first fashion became a “natural” reflection to policy dictates being generated by national authorities and relied to those in state and local government.

As with the branch method employed by economists, Bush had sidestepped or avoided altering the drug war's path due to expensive start-up costs expected with moving in a new policy direction. Taking money out of the equation for a moment, start-up costs can also be defined in the way of presenting and convincing the public as well as legislators on a new model infused with a different set of solutions. Politically, such an endeavor could be disastrous evinced by Gerald Ford's balancing approach of implementing both supply and demand side programs. Subsequently, Jimmy Carter's attempt to decriminalize marijuana also exemplifies a short-lived executively-led illicit substance control idea that failed due to a lack of public backing. Endeavoring to diverge from the status quo usually leads to fleeting political and public acceptance that Bertram, et al assesses as, “deeply rooted institutional interests creat[ing] centers of resistance in the bureaucracy and Congress. Equally tenacious were the widely shared assumptions about the nature of the drug problem, its links to crime, and the need for a tough enforcement response led by the government. Not surprisingly, the same institutional and ideological framework that inhibited change made escalation easy for Ronald Reagan and his successor, George Bush” (Bertram, et. al, 110).

Various underlying reasons exist for Bush's adherence to a law enforcement-first policy agenda while demonstrating aversion to altering drug war policy and committing more presidential support to health initiatives. 1992 was an election year with his consultants readying a campaign highlighting Bush's innovative of new piece of domestic anti-drug legislation, which emphasized state autonomy of federal money and seemingly enhanced his

chances at reelection and possibly create a “coattail” effect for congressional candidates facilitating the bill's passage. His administration was in need of a domestic victory, of sorts, due to massive resources allocated to the Iraq/ Kuwait conflict transpiring in early 1991.

Reorganizing drug policy agencies could balance the President's image as fighting the drug war at home coupled with a victory overseas. Either explanation is ancillary to discerning why Bush refused to explore new avenues of the drug war when wartime presidents had fared well in reelection bids and the economy was the top domestic concern amongst voters, not drug trafficking and use.

Returning to path dependency anchored in economic theory, Bush's situation is again consistent with sunk costs and the inability of social and institutional actors to exit a tried policy route without incurring loss. The “War on Drugs” had large start-up costs, both politically and financially, for Richard Nixon. He based much of his 1968 campaign on “fighting crime” by curtailing illicit substance availability. As shown, Reagan's reinvigoration and expansion of drug war politics and economics placed George H.W. Bush in a rigid position concerning this set of policies. Though Bush claimed victory over Saddam Hussein's invasion force of Kuwait, he also had the viable option of doing the same in South America regarding the “Andean Initiative.” The transcendent nature of presidential illicit substance control activities is illustrative of Paul Pierson's treatment of Douglas North's assessment of institutional constraints placed on leaders regarding entrenchment: “Institutions and policies may encourage individuals and organizations to invest in specialized skills, deepen relationships with other individuals and organizations, and develop particular political and social identities. These activities increase the attractiveness or existing institutional arrangements relative to hypothetical alternatives. As social actors make

commitments based on existing institutions and policies, their cost of exit from established arrangements generally rises dramatically.”<sup>68</sup>

Though the focus of this research is neither efficiency-based nor assertive of a budgetary only causation for the ongoing political, cultural, and administrative structure of the drug war, it should be noted that the absorbent amount of expenditures invested in the “War on Drugs” toward illicit substance control programs during the Bush years contribute to an evaluation based on sunk costs. A comparison (See Table 2) of DEA budget and staffing during Reagan’s eight year tenure (1981-1989) to Bush’s four year term (1989-1993) reveals evidence of monetarily-based path dependency with the federal government allotting the DEA nearly identical budgetary disbursements (\$378.4 million to \$ 326.6 million) over the course of half the amount of budgets ratified by Congress while Reagan was president. Much of the increase in spending during Bush’s presidential tenure can be attributed to the DEA’s involvement with military coordinated eradication projects in South America.

Through executive order and declarations made in Signing Statements, Bush was able to continue and expand the executively led “War on Drugs.” All of the CSA’s tenets, including marijuana prohibition, were sustained while new legislation added mandatory sentencing to the list of punitive means for dealing with illicit substance traffickers and users of varying persuasion. Expansion of the drug war was a two-prong strategy governing scheme with the newly instituted Drug Czar position leading domestic programs and Bush, as Commander-in-Chief, spearheading military infused projects in South America that relied on collaborating

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<sup>68</sup>Paul Pierson “Increasing Returns, Path Dependence, and the Study of Politics.” *The American Political Science Review*, 94 2, 258. Douglas North “A Transaction Cost Theory of Politics.”

governments of several nations including Colombia and Peru. Little to no reform-minded advocates, political officials or otherwise, made inroads toward questioning and altering the path dependent direction America's illicit substance control policy has been routed in since Nixon; Bush was able to bring to fruition and implement his version of institutional development pertaining to drug control through the authority garnered by the ONDCP and international agreements adding credence to Elisabeth Clemens and James Cook's assertion that "formal political institutions have great capacities for eliminating alternatives"(Clemens and Cook 1999). The insight of those authors should be augmented to represent how a continuance of the same path or entrenchment of policy direction eliminates alternative policy options while adding multiple "stratification" of framing via conceptualization, bureaucratic rearrangements, and resource allocation.

## Chapter Four: Periodic Challenges to Federal Marijuana Prohibition

*"It was a singular moment. I immediately drew the connection between the use of marijuana and the now absent haloes. Indeed, parts of my brain absorbed the connection so quickly and so assuredly that I was certain I must be stoned, which of course I was. I tried to follow the exploding synaptic spasm but was quickly left behind...Marijuana beneficial? A delicious thought perhaps, but nothing to hang your sight on."*

- Robert C. Randall attorney, medical marijuana advocate, legal reformer, and author of *"Marijuana Rx: the Patient's Fight for Medicinal Pot"*

Whereas the prior chapter contained evidence of executively driven entrenchment of CSA tenets with emphasis on marijuana prohibition, this portion of the research offers three separate narratives of institutional challenges initiated by fledging marijuana advocacy organizations to the CSA prior to passage of California's Proposition 215. Both external challenges Litigation filed by Robert C. Randall and the National Organization for Reform of Marijuana Laws (NORML), are analyzed. Though NORML and Randall's reform efforts are disparate in timing and sequencing to contemporary SMO campaigns, their institutional supplications for reform of federal illicit substance policies are instructional to the present day movement. Last, a case study of executively led reform is presented in which I claim then president William Jefferson Clinton proposed, much like Richard Nixon in 1969, pronounced changes to federal illicit substance control policies and resource pools. Unlike Nixon, Clinton felt the sting of political backlash as a bulwark for the continuance of "Drug War" politics and policies. . Proper for this chapter is a touchstone sentiment in order to understand why the following episodes of illicit substance reform, though failing institutionally, planted seeds of possibilities for medical marijuana SMOs during the late 1990s and on into this century. Therefore, as employed by numerous public policy scholars is an invocation of Victor Hugo's

belief that “Greater than the tread of mighty armies is an idea whose time has come” (Quoted in Kingdon 1984; Baumgarnter, De Boef, and Boydstun 2008). While that quote holds testament to any actor or organization bringing innovation to the political and social landscapes, those words surely can be applied to reform challenges spurned by institutional stalwarts yet hold a rippling effect for future advocates to prosper. In short, the following case studies necessitate a caveat to be considered: while mobilization and organization typically go hand-in-hand during institutional reform endeavors brought about by external movement forces, during the 1970s the federal government held a decisive edge in continuing the status quo by avoiding challengers. The absence of clarity regarding the federal administration process to “reschedule” illicit substances and the inability of NORML to garner public and political legitimacy in their organizational attempts to reframe marijuana, as well as Randall’s legal victory being limited to the District of Columbia’s jurisdiction, figured in keeping the diffusion of reform policies at bay. Integral to the federal government’s affront against reformers was a continued dissemination of negative target populations via policy implementation of marijuana prohibition. In short, NORML or any other pro-marijuana advocacy group faced an aggressive adversary in the federal government framing not only the issue of marijuana use but promoters of reform as deviants squaring off against national efforts to defeat the menacing force of narcotics in the “War on Drugs.”

While NORML was the first nationally established and leading pro-marijuana advocacy organization, Randall stands as the only petitioner to have federal courts rule in favor of a “medical necessity” defense. In order to overturn his conviction for marijuana cultivation and possession Randall argued that the crime of cultivating and possessing marijuana was

outweighed by his personal need to use the drug to alleviate the pain he suffered from due to glaucoma. Moreover, Randall's court victory, though rare in request and result, seems banal in comparison to NORML's litigation which can be categorized as unusual or atypical considering how that group's legal quest pitted the Environmental Protection Agency against the punitively driven DEA in order to terminate the latter regulatory agency's support of Mexican herbicide spraying of marijuana crops (*NORML v. U.S. Department of State* 452 Fed. Supp. 1226 1978). The final micro-history is essentially a direct juxtaposition of presidential attempts to infuse federal drug control with health-based programs for the purpose of altering the political force of the heavily resourced based "War on Drugs." Bill Clinton's 1994 Omnibus Anti-Crime bill garnered political support and accolades from law enforcement organizations around the nation yet was initially intended to enact innovative policy answers to drug addiction. Each study presents antecedents to MPP and ASA tactics of venue shopping, frame dissemination, and state-level campaigning while also identifying lacunas of mobilization taking place prior to those SMOs waging state level campaigning and lobbying.

Note: the following examples of challenging the CSA and DEA enforcement of federal illicit substance policies are conducted in and against federally based institutions opposing MPP's continuing obfuscation from the presidentially controlled bureaucracy. In an attempt to demonstrate path dependency of federal marijuana prohibition and other drug war tenets, a descriptive account is given as to what advocacy organizational challenges were made against the CSA prior to SMO development in the late 1990s. Why challenges to entrenched policies secured by defining particular target populations, fail offers those attempting pathways to reform tactical instruction to institutional impediments. Several substantiated reasons exist as



to why reforms fail. Those targeted positively defined and advantaged populations receive a high yield regarding policy resources and are seen as “deserving” of those resources. Thus, such groups will strive to keep their status and allotted benefits. When the perception of these groups changes from “deserving” to “getting more than they deserve” or “greedy” policy focus will shift to either positively defined but not advantaged groups or a reexamination of those negatively defined groups. When the latter populations are reexamined, a reconstruction of definition must transpire in order to induce mobilization for the purpose of gaining public belief, elite patronage or institutional favor (deLeon 2005; DiAlto 2005).

Court rulings, legislative votes, and electoral results can also spur shifts in perception and reconsideration of negative target populations. For medical marijuana advocates they faced the challenge of “removing” marijuana as an element associated with so many negatively, disadvantaged target populations (criminals, drug addicts, etc.) and reconstructing or transferring cannabis to a coupling with positively constructed groups deserving of policy benefits (patients in need of alternative pain relief). This chapter offers analysis of external challenges by advocacy groups and internal actions of institutional actors. First, two court rulings are examined which directly confronted federal reasoning and practices regarding marijuana prohibition. Second, a case study is presented detailing the Clinton Administration’s attempts to reform illicit substance control by advantaging convicted drug traffickers and users, a target population traditionally perceived as negative. Whether via litigious, legislative, or electoral means reconstructing target populations usually faced a less than successful outcome due to entrenchment of drug war policy tenets and historically defined target populations.

**Taking the First Hit: the National Organization to Reform Marijuana Laws (NORML)  
Petitions for Rescheduling of Marijuana while Robert C. Randall claims “Medical Necessity”**

Dr. Timothy Leary’s 1969 constitutional contestation of the Marijuana Stamp Tax in *Leary v. U.S* 395 U.S. 6 (1969) stands as a precursor to Nixon’s proposal of the CSA and identified the inherent flaw of the Marijuana Stamp Tax Act as an infringement of an individual’s Fifth Amendment right against self-incrimination. Such a landmark strike against federal prohibition seemingly enticed social activists by serving as valid fodder for reforming the marijuana’s federal prohibitive status. There was a paucity of organized challenges leading up to O’Leary’s litigation against the Marijuana Tax Act and its umbrella legislation, the Harrison Act. This lack of institutional contestation is ironic considering the proliferation of social and political questioning, disturbance, and anti-state mobilization emerging during the 1960s. However, less than two years following the Controlled Substance Act’s passage and over a year before the Drug Enforcement Administration formally replaced the Bureau of Narcotics and Dangerous Drugs (BNDD), the National Organization for the Reform of Marijuana Laws (NORML) petitioned the BNDD for the “rescheduling” of marijuana. In May 1972, NORML sought to remove marijuana from absolute prohibitory status as a Schedule I substance and recategorize cannabis as a Schedule II substance, allowing the drug’s medical properties to be more fully explored.

In a familiar reasoning of denial, the BNDD initially refuted claims advanced by NORML Chief Counsel Peter Myers that marijuana held medical potential, subsequently citing a U.S. agreement with the “*United Nations Single Convention on Narcotic Substances*” treaty as grounds for a continuance of marijuana’s classification as a Schedule I illicit substance.<sup>69</sup> However, the BNDD’s rebuttal came without legally mandated public hearings on the matter, thus offering NORML cause to file suit in the matter to the U.S. Court of Appeals, Washington, D.C. (*NORML v. Ingersoll* 1974). Just six months after Richard Nixon executively ordered the establishment of the DEA (July 1973) and in what was one of the last bureaucratic matters directly involving the BNDD, D.C. Circuit Court Judge Harold Leventhal ruled against the federal government by remanding NORML’s petition request back to the BNDD, just prior to that agency’s “rebirth” as the Drug Enforcement Administration. Leventhal distinctly ordered the transitioning agency to discontinue the delay of public hearings. The BNDD’s overseers at the Treasury Department were further criticized by the D.C. Circuit Court, “It is not the kind of Agency action that promotes the kind of interchange and refinement of views that is the lifeblood of a sound administrative process.”<sup>70</sup> Effectually, the Court’s remand and judicial lashing did little to deter the DEA from mimicking their predecessors’ institutional behavior as nearly twenty years passed before NORML representatives received a formal answer from DEA Administrators, through FDA channels, addressing the possibility of rescheduling marijuana. In

<sup>69</sup> See Schaffer Drug Library on line: [http://www.druglibrary.org/schaffer/library/studies/aus/can\\_ch3\\_7.htm](http://www.druglibrary.org/schaffer/library/studies/aus/can_ch3_7.htm) “*Cannabis in Context: History, Laws, and International Treaty.*” United States House of Representatives Code Controlled Substance Act of 1970 review January 7, 2011 <http://uscode.house.gov/download/pls/21C13.txt>

<sup>70</sup> The National Organization for the Reform of Marijuana Laws (NORML), The Institute for the Study of Health and Society, The American Public Health Association, Petitioners v. John E. Ingersoll, Director Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, Respondents. No. 72-1854 United States Court of Appeals for the District of Columbia Circuit 497 F. 2d 654; 162 U.S. App.D.C. 67 Judges: McGowan, Tamm, and Leventhal with Leventhal writing the opinion. All emphasis original

the interim between NORML's petitioning request and a judicially-forced response from the DEA, several pieces of evidence regarding the difference between the federal government's definitions of marijuana were aggressively disseminated by the Nixon Administration that supported a continued prohibitive status of the drug, while sparse scientific findings of marijuana's medicinal worth were presented to DEA investigators. On January 29, 1975 narcotic expert and acting representative for NORML, Dr. Joel Fort, gave pointed testimony at a DEA hearing concerning a possible reclassification of marijuana. Historically, according to Dr. Fort, marijuana had been employed by physicians, shamans, and healers in their treatment of ailments ranging from glaucoma, cancer, asthma, alcoholism, and drug addiction. Adding to documented centuries of use, Fort emphasized the need for further research of the drug's medical capabilities through reclassification by acknowledging his professional experience with marijuana as "certainly justify[ing] its legal availability for research and prescribing."<sup>71</sup> Dr. Fort's testimony along with existing evidence of marijuana's medical benefits certainly laid the groundwork for new contemplation amongst DEA and FDA administrators regarding NORML's rescheduling request.

In what amounts to a rare, yet well-needed articulation of rescheduling potential and limits, the DEA Administrator conceded, according to R.C. Randall's account, that "marijuana could be rescheduled in compliance with U.S. Treaty obligations." The Administrator then ruled marijuana must remain in Schedule I until administrative consideration of the evidence of Dr. Fort and others presented. The DEA Administrator's declaration caused NORML to return to the

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<sup>71</sup> Dr. Joel Fort testifying before the Drug Enforcement Administration's Hearings on Federal Legal Controls of Marijuana, January 29, 1975. See New York Times, "*Drug Experts Recommend Marijuana as a Medicine.*" January 30, 1975.

Court of Appeals in order to challenge the DEA's failure to comply with provisions stipulated in public hearings of the CSA and prior court rulings. On April 26, 1977, the U.S. Court of Appeals remanded the NORML petition to federal authorities for a second time (*NORML v. DEA*, 559 F.2d 735 D.C. Cir., 1977). Five years passed and NORML was no closer to having their rescheduling petition properly reviewed, federal agency efforts to delay were effectively engaged and executive obstructionism was initiated constituting the first in a pattern of such presidentially led bureaucratic (non)-responses.<sup>72</sup> Though the acrimony and stalemate instigated by the BNDD, then DEA, tested the financial largesse of NORML, the organization's membership resiliently mobilization and demonstrated. Two examples of NORML's resistance to federal neglect and impeding of rescheduling requests served as impetuses for organizational redirection of continued reform endeavors and stopping federal raids on marijuana fields.

First, following multiple sets of administrative petitioning applications and adjudication endeavors, thirteen individuals being represented by NORML while suffering from diseases including glaucoma, cancer, multiple sclerosis, quadriplegia, and asthma filed a petition on the same day, May 26, 1977 the Circuit Court again remanded NORML's petition to the DEA. Led by Robert Randall and Alice O'Leary, the thirteen filing "patient petitions" became the nebulas of another medical marijuana advocacy organization, the Alliance for Cannabis Therapeutics (ACT), which eventually supplemented NORML's resources for reform. Randall had filed for and received a "medical necessity" exception to the Controlled Substance Act by the District of Columbia District Court in 1976. If a judge was to find favor with a medical necessity defense,

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<sup>72</sup> In numerous amicus curiae briefs filed by the Marijuana Policy Project and Americans for Safe Access for respondents in *U.S. v. OCBC* and *Gonzales v. Raich*, MPP and ASA emphatically noted the delays in research and reexamination of the CSA's prohibitory tenets due to "presidential obstructionism."

such a finding flew in the face of several judicial and political standards. To start, establishing such a loophole to the Controlled Substance Act of 1970 would need to be based on common law, not statute, passed and prescribed by legislative means as punishment to adverse acts against community expectations.

According to Judge James A. Washington, criminally-based dangers stood as impetus for continued aversion to similar legal arguments, “the necessity defense may not be raised unless the actor was reasonably compelled by circumstances to commit the proscribed act. It is unfair to excuse one who has brought the compelling situation upon himself, and it is violative of public policy to grant an exemption from punishment for behavior more detrimental to society than the consequences the actor seeks to avoid, or for alternative. The application of these principles is well illustrated by the case law.”<sup>73</sup> Identifying a medical exception to a neophyte piece of reorganizational set of policies could also been perceived as usurpation of Congress’ lawmaking authority by the judiciary. In this case, the D.C. Superior Court also seemed focused on not raising the individual above societal protective (within a punitive paradigm) measures the Nixon Administration had gone to such great lengths to implement. Though the late 1960s and early 1970s serve as an example in the rise of recognized individual liberty within American constitutional law, judges were hesitant to rule against “compelling governmental interests” as precautions against criminal activity-a reason Nixon had heralded as a political answer to one of that era’s questions of public and governmental preoccupation with marijuana use.<sup>74</sup>

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<sup>73</sup> Judge James A. Washington District of Columbia Superior Court Judge *United States v. Randall* 1976

<sup>74</sup>See Jonathan Simon “*Governing Through Crime*.” Also, Justice Stevens uses the “compelling governmental interest” rationale in his majority opinion for *Gonzales v. Raich* (03-1454) 545 U.S. 1 (2005)

In his opinion, Judge Washington found a medical necessity claim appealing by determining that Randall “established a defense of necessity...The evil he sought to avert, blindness, is greater than that he performed [cultivating cannabis]....requir[ing] a balancing of the interests of this defendant against those of the government. While defendant’s wish to preserve his sight is too obvious to necessitate further comment, the government’s interests require a more detailed examination.” Washington went on to favor Randall’s request and, most likely, unintentionally countered Nixon’s long-held and illicit substance control anchoring tenet of marijuana prohibition. Jurist Washington went so far as to cite data produced by the Executive branch: “medical evidence suggests that the prohibition is not well founded. Reports from the President’s Commission and the Department of Health, Education and Welfare have concluded that there is no conclusive scientific evidence of any harm attendant upon the use of marijuana. According to the most recent HEW study, research has failed to establish any substantial physical or mental impairment cause by marijuana.”<sup>75</sup> Though Washington sent a contrarian message regarding the underpinning reasons for federal prohibition of marijuana, he refused to diverge from the “company or institutional line” concerning any possible medical worth marijuana might hold leaving cannabis users in a negative light and continued disadvantage.

Indeed, as recent as 1994 the courts have been unwilling to give credence to any advocacy group’s promotion of marijuana’s possible medicinal worth. The United States Circuit Court of Appeals for the District of Columbia reiterated an anti-medical marijuana sentiment in

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<sup>75</sup> Judge James A. Washington District of Columbia Superior Court Judge *United States v. Randall* Superior Court District of Columbia 65923-75 1976

one of NORML's later attempts to have marijuana rescheduling hearings take place on the basis of an on-going agency bias towards marijuana as having medicinal value: "In support of their bias claim, petitioners point to what they describe as a long history of the Drug Enforcement Administration's anti-marijuana prejudice as evidenced by this court's need to remand their petition on four occasions and what they describe as the prior Administrator's "unusually strident decision" rejecting the administrative law judge's recommendation that the drug be rescheduled. They (NORML) also cite various statements by the present Administrator [of the DEA] in the Final Order of evidence of a lack of objectivity. We are not impressed. The need to remand a case several times is not evidence per se of agency prejudice. Nor do we think the statements cited by petitioners show that the Administrator was unfair, especially when considered in the context of a reasonable preference for rigorous scientific proof over anecdotal evidence, even when reported by respected physicians."<sup>76</sup> Refusal by the courts to concede marijuana's medicinal value did not inhibit social movement growth, primarily to the continued remanding of NORML and ACT's litigation that attempted to induce DEA sanctioned rescheduling hearings. Those advocacy groups targeted administratively-based endeavors so as to change marijuana's policy classification, essentially circumventing public opinion and political perception of target populations. NORML and ACT were working as challengers in an "inside-out" institutional manner rather than trying to direct reform exclusively as an external force a la contemporary SMOs conducted campaigns.

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<sup>76</sup> *Alliance for Cannabis Therapeutics v. Drug Enforcement Administration, Drug Policy Foundation v. Drug Enforcement Administration* 92-1168, 92-1179 Both NORML and ACT in their various legal battles against the DEA cite a possible "long history of the Drug Enforcement Administration's anti-marijuana prejudice as evidence." The organizations also cite statements by DEA officials as illustrating this bias. See *Alliance for Cannabis Therapeutics v. DEA* and *NORML v. DEA* 92-1168 and 92-1179 (1993) respectively.



Therefore, ACT's collaboration with NORML in the summer of 1977 demonstrated an organizational cohesion amongst medical marijuana advocates rather than spotty individual requests more inclined to be dismissed by federal regulators. Though NORML served (and is contemporarily directed) as an "umbrella" organization- promoting all facets of marijuana legality and debate- the collective dynamic and potential hinted at by ACT's establishment and collaboration with NORML is consistent with two prominent claims regarding the process of policy reform challenges by social movement organizations. The first pertains to relations between social movements attempting to reform policy and publically accepted governmentally framed policy. State produced frames are not to be thought of as static regarding state maintenance and defense of their messages. Though state promoted frames could be considered legitimate due to public acceptance of governmental voice in general, public agreement with state sponsored messages does not guarantee sustainability of frames, messages, and definitions emanating from governing institutions. Some messages or frames do not win out over others, as Krebs and Jackson note, "not because its grounds are "valid" in the sense of satisfying the demands of universal reason or because it accords with the audience's prior normative commitments or material interests, but because its grounds are socially sustainable" (Krebs and Jackson 2007, 47 in Ferraiolo 2009, 343). The need to update or counter challenges to their messages as McAdam and Snow suggest, state agencies are "not merely...carriers of existing ideas and meanings, but...signifying agents actively engaged in producing and maintaining meaning for their constituents, antagonists, and bystanders" (McAdam and Snow 1997, 232). The DEA, as a non-responsive agency, to NORML's rescheduling petition stood counter to typical bureaucratic activities regarding challenges to state-sponsored

and endorsed status quo policy. However, delayed or court-ordered response by the DEA only helped to sustain belief in prohibition. Bureaucratic refusal to manage external requests for reform policy was seemingly in accord with “typical” bureaucratic behavior of taking especially long periods of time to act. Also, the FDA and DEA had the advantage of operating a relatively new set of policy processes. When the CSA was ratified the built-in rescheduling did not contain time dictates for agency response.

Ignoring, impeding, or delaying NORML’s appeal of the rescheduling process by the DEA does however, identify a tactic illustrating how, as Noakes asserts “state agencies are active contestants in the struggle for cultural supremacy...To date, however, we know much about collective action frames than official frames, or elite frames of any type for that matter; the struggle for cultural supremacy remains poorly understood” (Noakes 2005, 101). The latter portion of Noakes comment aids in explaining the DEA’s laggard behavior in the petitioning process. Though possibly more of a motherly answering of over anxious children-“ignore the problem and it will go away”-identifying DEA inaction could constitute the finding of a new bureaucratic tactic in dealing with reform-minded organizations. Within the realm of public policy language crafting, according to social-health researcher A.M. Brandt, there seems to be too much allowance of subjective application regarding what groups are targeted as deserving of benefits or punishment, to “promote or reward, ignore, or punish or discourage the behavior of its citizens. The exact response of public social policy relative to behavior should be dependent upon the public good or back, of that behavior. That is why murder is punished, home ownership is rewarded, etc., etc. In America, the trend of recent decades has been to base public policy not on common interest, but on special interest” (Brandt in Walters 1997,

91). Robert Randall, in essence, “removed” or extrapolated the special interest of medical marijuana from NORML’s wide swath of pro-marijuana policy promotions, namely the repeal of prohibition via rescheduling. Such specialized categorization of cannabis from a counterculture staple to health aid was a necessary step in scientifically assessing the drug rather than allowing federal government frames continuing to be unquestioned and generationally transferred without contestation. It should be remembered that marijuana’s definition as detrimental had been sustained but neither the federal government’s framing of cannabis nor those groups targeted for blame regarding the drug’s proliferation and use.

The strength of public belief in why marijuana need be thought of as a negative element associated with traditionally disadvantaged populations attributed to what agencies were given charge of the illicit substance control policy largesse and implementation. Housing punishment-based policies for illegal drug transgression with the Department of Justice reemphasized and sustained public acceptance of marijuana proscription which finds concurrence in comparison to Schneider’s findings concerning prison policies, “When private prisons became part of the policy domain, criminal justice scholars expressed concern that adding this more powerful and positively viewed institution to the policy arena would provide even more incentive for increasing the severity of scope of punishment policy” (Schneider 1999, in Ingram, Schneider, and deLeon 2007, 110). New institutional arrangements gave reconstructed credence and authority to punitively-based marijuana proscription, creating a more formidable bulwark against reformers such as NORML and ACT.

Though under Randall's direction, ACT's efforts to establish a medical exception served the greater cause of marijuana advocates in the mid-1970s and on into the 1980s, the discernment between medical marijuana and leisure use of the drug his legal victory caused would be a burden to later NORML reform efforts. While Randall's original argument for a medical exception had by the early 1990s extended to AIDs patients. While people suffering from that disease, along with the originally intended glaucoma patients, were made eligible for inclusion on the federal government's medical marijuana registrar, Randall lamented that, "seriously ill Americans are caught in the crossfire of drug warriors on both sides of the cultural divide try to turn the sick into cannon fodder." Effectively, allowing for a medical necessity exception gave the federal government a legal "plateau" to fend off future challenges to decriminalize, legalize, and/or contradicting policies later disseminated by MPP and ASA to reform illicit substance policy state by state. The special interest in this case is not marijuana users, as NORML was perceived, rather, it was patients (empathically looked upon) in need of an innovative pain reliever, yet possibly conflated with recreational users. In other words, MPP, ASA, or any other medical marijuana SMO need not fight against the common suspicion that their organizations will eventually advocate for the legalization of all illicit substances in order to bring relief to cancer or glaucoma sufferers, but rather are "fronting" the medical narrative to ultimately marijuana and possibly all illicit substances legalized. Such a tactic refocuses the policy's effects, in this case a punishment-based prohibition, away from negatively perceived groups and onto a sympathetic target population deserving of policy benefits and serving to reframe the drug control policies as health or demand-side based.

Second, though Randall's litigation served as impetus and rational reasoning for the federal government's IND program to accept medical marijuana patients, essentially carving out a niche within a punitive paradigm reinforced by the CSA's brand of marijuana prohibition and the entry of several individuals to use cannabis for pain relief, no long term SMO goals were met by the ruling handed down by the D.C. Superior Court in 1976. This brings to point legal symbolism as a tool or to invoke Michael McCann's terminology a "club" within legal contestation for activists to employ and essentially reconfigures the structural opportunities that I further articulate in the following chapter. Specific to medical marijuana, Randall's litigious triumph served as a symbolic success for advocates and in the social movement polemic stands as what McCann offers as, "creative legal mobilization activity deserves separate discussion: that of providing resources for structuring policy-making processes in ways favorable to social reform activists and disadvantaged groups generally. In other words, legal symbols are not only useful as a blunt club for compelling institutional opponents to negotiate needed reform measures, but they also can provide reform activists a variety of more refined tools-procedures, standards, practices-useful in the struggle to win effective policy agreements and implementation from those negotiations" (McCann 2006, 244). Specifically to court rulings, the club, as McCann articulates, weighs heavier or with more influence toward an overall frame altering, thus agreeing with Paris' claim that "legal translation is required to apprehend the ideological content of legal claims and the key question of how that content fits with (or does not fit with) broader political arguments and mobilizing strategies" (Paris 2010, 4).<sup>77</sup>

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<sup>77</sup> See Paris, Michael 2010. *"Framing Equal Opportunity: Law and the Politics of School Finance Reform."* Legal Translation equates to the socio-legal definition of framing with added qualifiers: "the conceptual and rhetorical processes through which

Randall's legal battle and ACT's subsequent formation stands as distinct juncture in the mobilization of medical marijuana advocacy and later organizational aggregation into a social and political movement. Though less discernible than a "critical juncture," Randall's divergence from NORML's bureaucratic process model is more telling of a contribution to legal advocacy in the grander scheme of social reform as well as an integral step on the historical path toward the contemporary state-by-state model MPP promotes and operates. Most pertinent to this chapter is how NORML's challenge was only superficially a failure in efforts to force the DEA and FDA to adhere to CSA rescheduling dictates; rather a "fracture" or vulnerability of federal prohibition was demonstrated via Randall's activism that produced the IND program.

This fissure in policy was leveraged later as a political and institutional opportunity by more resourced and mobilizing social movement organizations including MPP and ASA. Therefore, ACT's founding along with NORML's willingness to mobilize toward continued bureaucratic and legal battles were ephemeral yet sustained long enough to create a precedent for future medical marijuana campaigns in various venues of reform opportunity; their resources and resilience, in retrospect, engendered political opportunities within governmentally imposed prohibition. Conceptually, a set of circumstances at odds with one another or an institutional paradox which had one federal agency, the FDA, cultivating and distributing medical marijuana to patients while another, the DEA, carried on eradication programs, apprehension of traffickers, and supporting local law authorities in efforts to stop the exchange and use of marijuana by citizens of their communities. Seemingly, the variance of

prohibition had widened to allow a concentrated regulation of federal medical marijuana. NORML, however, did not redraft or augment their rescheduling petitions in light of Randall's medical necessity victory and subsequent entry into the IND program. NORML, unlike contemporary SMOs, were not focused on proving the medicinal value of marijuana but rather decriminalization of cannabis. In retrospect, Randall's victory transpired in a vacuum while NORML promoted consistent public and institutional campaigns aimed at changing perception of marijuana and its users. Once Randall's litigation was parlayed into the IND program, the federal government had seemingly contained or co-opted the issue from public consideration.

NORML's broad campaigns to legalize or decriminalize failed to focus on the medicinal use of marijuana, thus offered federal officials framing the drug as dangerous an unimpeded road to a continuous promotion of marijuana prohibition as a weapon in the "War on Drugs." Integral to framing marijuana use as a criminal endeavor was emphasizing how negative target populations were contributing to the social ills associated with the illicit substance trade. Marijuana users continued to be socially constructed as a disadvantaged negative population receiving a great degree of punishment-based policy results. The negative construction of marijuana proponents as "deviants" was perpetuated due in part to federal efforts to sustain CSA standards and keep new frames marginalized, sometimes even demonized as with the Reagan Administration (see Chapter Three). The inability to alter this social construction is due, in part, to the CSA's policy designs that aimed to reinforce such definitions of marijuana users as a population deserving of punishment. Well established social constructions and policies seemingly possessed all of the necessary answers and understandings for citizens as well as governing officials (Ingram, Schneider, and deLeon 2007; Frantz 2002; Hacker 2002). Facing

federal conceptualization and policy, supported the undeterred federal thrust to promote and sustain marijuana prohibition, directing NORML to return to their attempts in administratively altering marijuana's status via rescheduling.

Though NORML's 1977 petition request was once again summarily dismissed by the DEA, the D.C. Circuit Court of Appeals remanded NORML's inquiry a second time citing the actions of federal administrators as "not consistent with the intent of the CSA" then further criticized through chastisement the DEA's "failure to consult with the Department of Health, Education, and Welfare (DHEW)."<sup>78</sup> Executive obstructionism based on drug war politics directed bureaucratic agency leaders to delay their formal response of NORML's request following Nixon's resignation and continuing throughout the Reagan and Bush Administrations. As if impeding reform challengers was an official administrative option, the DEA employed such a strategy by first blatantly refusing to answer NORML's requests, and then following a court order to proceed with the rescheduling petitioning process, referred all requests to FDA administrators. All of which lacked proper bureaucratic protocol. The absence of alacrity substituted with recalcitrance to fully comply with CSA dictates concerning rescheduling inquires engendered more than judicial ire and repeated calls from Circuit and District judges to carry out hearings on the matter.

While NORML waited out DEA and FDA administrative posturing, Robert Randall and Alice O'Leary went forward with their "medical necessity" defense as legal justification for using marijuana, upping the political and public relations ante by forming their own medical

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<sup>78</sup> United States Court of Appeals *NORML v. DEA*, 559 F. 2d 735 D.C. Circuit, 1977. Taken from R.C. Randall, editor. 1988. *"Marijuana, Medicine, and the Law."* Washington, D.C. Galen Press



marijuana advocacy organization. In 1981, shortly after winning their medical necessity defense, the Alliance for Cannabis Therapeutics (ACT) Randall and O’Leary established ACT. The organization’s first action was not to petition the DEA or FDA for rescheduling of marijuana but rather to bring suit against the Department of Health and Human Services for a “medical exception” to marijuana’s prohibitive status. Beyond a legal circumvention of CSA Schedule I restrictions on marijuana’s medical use, Randall and O’Leary sought allowance of experimental marijuana research in the form of scientifically controlled cultivation, distribution, and use within the federal government’s IND or “Independent New Drug” Program operated under the auspice of HHS but directly supervised by the National Institutes of Drug Abuse (NIDA).

Over the course of 1977 and 1978, NORML’s directors and members had their patience tested against the DEA’s unwillingness to either communicate with the organization or set a timeline for rescheduling hearings. However, Randall, while at the developmental helm of the fledgling ACT, was more successful when the FDA, via President Carter’s authorization, contracted the University of Mississippi to begin cultivation of marijuana for research purposes. Under federal auspice, coordination of cultivation, packaging, and distribution of medical marijuana went forward with Randall and twelve other patients enlisting in the program. Though Nixon had repudiated and discarded the Schafer Commission’s recommendation for the scientific community to partner with federal authorities to find and examine alternative forms of marijuana’s active chemical compound tetrahydrocannabinol (THC) for therapeutic employment, the Carter Administration welcomed innovation in the way of new vehicles of ingestion for patients seeking marijuana’s pain-relieving benefits without the adverse effects smoking was thought to have inherently contain. In 1975, as Harold Schmeck informed New

York Times readers, “doctors in Boston reported promising nausea prevention effects in cancer patients given pills of tetrahydrocannabinols....before and during course of treatment for anticancer drugs.” Seemingly, a precursor to Marinol, the pill form of THC and what many anti-marijuana voices heralded as a “safe” alternative to smoking cannabis, the findings in Boston encouraged the federal government to sanction clinical testing of Marinol. Schmeck’s article on the subject was published in March of 1977 naming three federal agencies involved in the groundbreaking study. The National Cancer Institute, the National Institute of Mental Health, and the National Institute on Drug Abuse planned to screen patients for physical, mental, and emotional affects resulting from the use of marijuana in a pill form. The hope of Marinol was short-lived, but is worth note because production of the pharmaceutical industry-sponsored drug offered those seeking the effects of THC a dismissal from being included in a negatively connoted social construction. Rather, being known as “potheads” or “criminals,” patients would be perceived as innocently seeking a federally-endorsed pain reliever. However, framing Marinol as a safe alternative to marijuana was nearly impossible due to the entrenched institutionally produced and maintained frames that disparaged cannabis users. Even the testing and approval of Marinol was convoluted and entangled with obstructionism similar to that faced by NORML in their rescheduling supplication.

Just as NORML and ACT, as reform-intended organizations, were forced to wade through time and contend with institutional recalcitrance, so too would NCI, NIMH, and NIDA have to demonstrate bureaucratic patience by waiting on FDA and DEA responses to marijuana research petitions originating from their offices; federally controlled institutes were not granted exploratory research allowance until the early 1980s. On their agency website, DEA

administrators exhibit a type of bureaucratic pride in asserting a claim to the progress made in Marinol research and a movement away from smoking marijuana for patients to reap THC's medical benefits, "there are no FDA-approved medications that are smoked... the harmful chemicals and carcinogens that are byproducts of smoking create entirely new health problems. The DEA helped facilitate the research on Marinol. The National Cancer Institute approached the DEA in the early 1980s regarding their study of THC's in relieving nausea and vomiting. As a result, the DEA facilitated the registration and provided regulatory support and guidance for the study."<sup>79</sup> Marinol, as a viable alternative to smoking cannabis, has since been criticized primarily due to patient complaints of continued nausea, their appetites not being stimulated via the oral ingestion of the pharmaceutical version of marijuana, and lack of accurate dosage. Smoking the drug seems to allow patients not only to self-administer but also keeps regulation of personal dose out of their control (Chapkis 2008). However, particular to policy development and the DEA's assertion that their agency "recognizes the importance of listening to science," in the mid to late 1970s, administrators were apparently listening to the pharmaceutical industry more attentively than medical marijuana advocates who were requesting DEA and FDA follow policy protocol by offering a legitimate path to rescheduling. This marked divergence in perspective between medical marijuana SMOs and federal authorities is consistent with the latter's adamant belief in sustaining prohibitive status of marijuana and the former's challenging that status along by desiring a shift in the government's position away from "Drug War" policy standards such as "no tolerance" and conflating cannabis with crime and social decay.

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<sup>79</sup> United States Department of Justice website: <http://www.justice.gov/dea/ongoing/marinol.html>  
Last taken June 12, 2010

### **NORML opens up a second front in their War: “Litigating Down Mexico Way” and Ending Paraquat Spraying of Marijuana fields**

The second “front” in NORML’s enduring war with federal authorities dealt with tactics employed by the DEA via collaboration with the Department of State. As expectations for the IND program to graduate from a pilot project to more encapsulating national public policy heightened amongst medical marijuana advocates, NORML turned their organizational attention to federal action intended to decrease marijuana importation from Mexico. Since the DEA and FDA had put up a bureaucratic bulwark in the form of stalling the rescheduling process, NORML attempted to bypass bureaucratic decision makers and appeal directly to the Executive Branch for the purpose of implementing a ban on paraquat spraying of marijuana fields in Mexico. However, the Carter Administration inherited bureaucratically widespread anti-drug projects whose specifics were either not known to the new administration or suggested results beneficial enough for Carter to initially support. When questioned in July of 1978 about the financial obligation America had committed to Mexico in regards to paraquat spraying of opium and marijuana fields, Carter fully endorsed (and demonstrate ignorance) by bluntly stating during a presidential press conference, “I favor this program very strongly.” This comment, according to *New York Times* reporter Jesse Kernbluth evoked a chorus of boos from White House staff members who were watching the president interact with journalists on the television. Carter’s naivety was not due to his staff’s collective opinion which harbored resistance to loaning helicopters to the Mexicans not being shared with the President but most likely Carter had not been briefed to the fact of that NORML had filed suit against the State

Department in protest of DEA's involvement in paraquat spraying one month prior to the President expressing public favor with the eradication program. Also, though Carter and his staff were naïve to the specific dangers possibly being caused by paraquat spraying of marijuana fields, it was well known that American military resources were being employed by Mexican drug control personnel to destroy opium. However, seven month earlier, in another presidential news conference, Carter acknowledged the downing of an American helicopter in the Mexican military's charge that had been actively engaged in south of the border poppy eradication efforts. Continued employment of U.S. helicopters and financial assistance for the purpose of marijuana eradication was theretofore officially given a "not favored" status by Carter's drug control advisors.

In June of 1978, NORML sought an injunction against the State Department's "support and participation" of the Mexican government's spraying of marijuana and poppy fields with the herbicide paraquat. NORML's legal action sought to curb the DEA's involvement by invoking another federal agency's requirements pertaining to the distribution of pollutants or herbicides. Ironically, the National Environmental Policy Act of 1969-another of Nixon's reorganizational regulatory innovative measures-mandated the State Department, the DEA, and the Department of Agriculture to prepare and submit an environmental impact statement. Without the statement, NORML claimed, the defendants could not dedicate or expend any funds or loan helicopters to the Mexican Government for eradication purposes. NORML was not content to expose covert DEA and American military operations that lent to the poisoning of marijuana exported to U.S. Border States and subsequently used for recreational purposes by American citizens. NORML also alleged that the Mexican spraying was "endangering the health of

plaintiff's numbers through their support of and participation in the Mexican spraying of marijuana and poppy plants...[and] that United States participation in the Mexican spraying program constitutes a "major Federal actions[s] significantly affecting the quality of the human environment."<sup>80</sup> This portion of NORML's legal argument is of particular significance due to how the organization framed the government's supposed transgression. NORML shifted the focus to health-related issues rather than a political argument or attempt to define marijuana as something else other than a known illicit substance. Therefore, framing also played to removing the focus from negatively defined populations and transferring the premised problem on the general health of Americans. While marijuana buyers and users in the U.S. would be the most likely to experience the detrimental effects of paraquat poisoning but via legal translation, NORML presented the spraying of herbicide of an imported product being delivered directly to Americans, albeit an illegal product. NORML's refocusing of the issue for litigation offered an alternative perspective and set of ideas than has been traditionally accepted, agreeing with Paris' premise of why reframing matters, "First, speaking one way rather than another within law can either help or hinder reformers in their efforts to mobilize supporters outside of court. Second, because the legal claims will have different meanings for different audiences, speaking...within law can either neutralize or countermobilize interested third parties and potential opponents...[and] provides courts with specifically framed "opportunities for decision"" (Paris 2010, 3). Filing the lawsuit NORML garnered attention from those sympathetic to reconsidering marijuana's legal acceptance and some would find the poisoning of any import

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<sup>80</sup> See 452 F. Supp. 1226 91978 *National Organization for the Reform of Marijuana Laws (NORML) v. United States Department of State et al.*, United States District Court, District of Columbia Civ. A. No. 78-0428

nocuous. Therefore, Paris' initial claim regarding legal translation or framing is exemplified while redirecting the focus from a negatively constructed target population to the general, more policy advantaged, population is secondary.

The DEA's involvement with Mexican eradication programs is not surprising when considering how international agreements played to the degree of cooperation between nations for the purpose of controlling illicit substance trafficking, thus vital to Nixon's overall plan to combat and stem American demand of marijuana. In his first term he reached out to nations already collaborating for the purpose of cutting off international drug trade routes including France and Turkey, but diverted from those efforts due to an unwillingness of those countries to infuse their strategies within his own vision of curtailing the global trade of narcotics.<sup>81</sup> Instead, federal authorities sought pacts with their closest and more acquiescing neighbors. Joining forces with Mexico could be streamlined and demonstrated as easily alleviating the problems of combating illegal drug cultivators and couriers. By the time of Ford's sixth month mark in office, the North Americans' agreement guaranteed their newly formed anti-narcotic trafficking pact with a transfer of \$15 million a year from the U.S. State Department to the Mexican Government to be employed in opium and marijuana eradication endeavors. However, litigation brought by NORML pitted EPA regulations against DEA paraquat spraying in the northern states of Mexico, in turn attracting attention from numerous

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<sup>81</sup> See Musto, David and Pamela Korsmeyer. *The Quest for Drug Control: Politics and Federal Policy in an Age of Increasing Substance Abuse, 1963-1981*. New York, NY: Edward Brothers. 2002. Musto and Korsmeyer offer detailed explanation of what international illicit substance control agreements and domestic policies Nixon inherited from his predecessors. The authors discuss the aggressive nature of the Nixon Administration in trying to persuade European and Asian nations to agree to Nixon's innovations in international trafficking control.

Also, see Morgan, David. *Drugs in the United States: A Social History*. Syracuse, NY: Syracuse University Press. 1981. Historian Morgan surveys U.S. illicit substance control models both domestically and internationally from the 1930s until the late 1970s.

mainstream media outlets, eventually contributing to the calling of a Senate subcommittee investigation.<sup>82</sup>

A November 1978 inflammatory *New York Times* article aptly entitled, “*Poisonous Fallout from the War on Marijuana*” not only identified NORML’s legal battle to terminate herbicide spraying of marijuana crops but also gave credence to the counterculture which Nixon had simultaneously targeted along with drug traffickers in the early days of illicit substance control reorganization. Craig Copetas, an investigative reporter with the then fledgling publication *High Times* broke the story detailing the possibility that the American federal government was contaminating and injuring their own citizens by lacing marijuana with the deadly herbicide paraquat. Though the U.S. was not actually lacing the U.S.-bound marijuana or directly supporting the project, in the way of financial assistance or military personnel, Mexican authorities were given the green light to equip U.S. Army helicopters with tanks and spray nozzles. The helicopters were originally on loan to the Mexican Government for numerous eradication sorties had met that government’s curtailing of opium production. As former Director of White House Office of Drug Abuse Policy Dr. Peter Bourne recalled in a Public Broadcasting System interview, the paraquat project was somewhat serendipitous because “it became one of these sort of non-issues that took on a life of its own. The Mexicans said, “When we’re not using US-donated helicopters to spray opium fields, can we spray marijuana? Because that’s a problem to us.” And we said, “Yes, we don’t provide you the chemicals for doing it,

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<sup>82</sup> *High Times*, and then *The New York Times*, published reports that financial assistance given to the Mexican Government for fighting opium, heroin, and marijuana cultivation was upwards of \$15 million a year while legal document filed in NORML’s case against the DEA (*NORML v. U.S.* 452 F. Supp. 1226) state that “The United States provides approximately \$12 million each year to assist Mexican operation[s].”



because it's not that high a priority for us. But if you want to purchase the herbicide paraquat with Mexican funds to spray marijuana, you're welcome to use the helicopters to spray marijuana when they're not being used to spray opium.”<sup>83</sup> In retrospect, Bourne went on to call the paraquat spraying episode a “non-issue that took on a life of its own” yet relied some type of contrition for his agency's lackadaisical inclination by expanding on his evaluation, “I suppose there are no phony issues in the political arena, because perception, rather than reality, is everything.” Bourne's last statement drips of irony due to the framing or perception manipulation first Nixon, then subsequent administrations, crafted regarding marijuana trafficking, dangers, and use. Though years after the fact NORML impeded federal propensity to label marijuana users with a negatively constructed moniker or connotation through litigious avenues. More telling of governmental tactics is found in Bourne's admittance of crafting a perception of marijuana users as needing punishment rather than implementing policy with the purposive mission of stopping marijuana trafficking. While seemingly a tactic guarantee exists that negative rhetoric and imagery produces public alienation of the respective groups being labeled as targeted with only a favorable social construction necessary to counter NORML was able to garner judicial imposition of DEA activities without reframing the issue or marijuana users as needing policy benefit.

Essentially, the frames disseminated and promoted by federal authorities had escaped their immediate political containment because the issue appeared relevant, if not repellent, to groups besides marijuana users. Such an example contributes to an increasing agreement

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<sup>83</sup> Dr. Peter Bourne from Frontline: interview Peter Bourne taken from Public Broadcast System website [www.pbs.org/wgbh/pages/frontline/shows/drugs/interviews/bourne.html](http://www.pbs.org/wgbh/pages/frontline/shows/drugs/interviews/bourne.html) Taken last on August 22, 2011.

amongst state-centered and social movement researchers that state institutional structures and frames can directly influence political meanings, methods, and opportunity (Noakes 2005; Oroff and Skocpol 1985). The dangers of marijuana use were, many times, exaggerated by conflating crime and cannabis or disseminating falsehoods such as marijuana causes mental illnesses and communist insurgents were importing marijuana as well as other drugs in order to lower Americans' Cold War vigilance. Bourne's assessment of the paraquat spraying was ill-perceived. EPA regulations concerning herbicide application, media coverage of the topic, and NORML's litigation had created a health issue of a very real happening. Judge Waddy, ruling for the U.S. District Court, Washington, D.C., also believed the DEA's lending of helicopters for drug eradication was a legitimate issue for adjudication when in his finding he clearly chastised the DEA for transgressing an EPA regulatory mandate without forethought of possible environmental and health concerns.<sup>84</sup>

Waddy went so far as to acknowledge the inherit health dangers of paraquat dissemination by citing an Office of Drug Abuse Policy press discloser, telling of NIDA studies soon to be commissioned that warned against the herbicides usage: "paraquat is highly toxic, can be fatal if swallowed in concentrated form, and has no known antidote." NORML's immediate intention was to have an injunction placed on DEA cooperation with Mexican anti-drug forces thereby preempting any future paraquat spraying of marijuana intended for American markets. The injunction would stay in effect at least until an environmental impact

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<sup>84</sup> *National Organization for the Reform of Marijuana Laws (NORML) v. United States Department of State* 452 Fed. Supp. 1226 1978

analysis could be conducted, presented to EPA officials, approved, and published. The order of the District court favored NORML's request in that an impact statement with a focus on an "environment analysis" (not human health) was ordered yet without an injunction against DEA involvement with the Mexican Government's spraying. In citing Justice Thurgood Marshall's opinion in an earlier NEPA case, Judge Waddy noted the inability of judicial means to meet requests such as NORML's from being met, "in NEPA cases such as this one,..."the courts have had to content themselves with the largely unsatisfactory remedy of enjoining the proposed federal action and ordering the preparation of an adequate impact statement. This remedy is insufficient because, except by deterrence, it does nothing to further early consideration of environmental factors (*Kleppe v. Sierra Club*, 427 U.S. 390 (1976), Justice Marshall dissenting in part). Therefore, U.S. partnering with Mexican marijuana eradication efforts was curtailed only to the degree that an environmental impact analysis and statement be issued while paraquat usage by the Mexican Government continued unimpeded though without U.S. military aid.<sup>85</sup>

Seemingly, while forming his argument, Judge Waddy had neglected to consider the results of federally funded and endorsed scientific testing of paraquat to determine if human lungs were susceptible to injury the smoking of paraquat laced cannabis. In early 1977 at the request of the Peter Bourne-led Office of National Drug Abuse, laboratory analysis of paraquat was conducted and in November of that year Bourne's office received the initial findings. As Kernbluth reported, "Dr. Bourne received the first reports that some paraquat had survived the

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<sup>85</sup> The National Environmental Protection Act (NEPA) ratified in 1969 mandated the filing of Environmental Impact Statements. Interestingly, NEPA like the CSA was precursor to the establishment of a regulatory agency. Subsequent to NEPA the Environmental Protection Agency (EPA) was founded while Nixon's regulatory scheme induced the DEA's "birth" three years after CSA passage.

combustion tests and that preliminary studies indicated damage to the lungs of laboratory rats. It was not until December 9, 1977, had these tests confirmed what critics of the program had long contended, that the Carter Administration broke its 10 month silence, and, in effect, acknowledged both the spraying and the possibility of lung damage.” The firm belief and practice of perceiving marijuana users as “deviants” is consistent with Carter’s delay in taking action such as a formal investigation. Following federal reports that paraquat tainted marijuana might injure, if not kill, American citizens spurred on governmental action to clarify the dangers of the drug heightened. Within the context of the mid-1970s, the aftermath of a presidential resignation, and newly (seven years old) ratified national illicit substance control model NORML stood as the “original” contenders facing the burdens instituted via the CSA. Opposing the prohibition’s punishments or endeavoring to halt the practices of prohibition speak to Schneider and Ingram’s claim that, “Contenders have sufficient control to blunt the imposition of burdens but not enough power to gain much in terms of visible benefits. Statues directed toward these contending groups will be complex and vague...context will become especially important. For example, policy characteristics for contending groups may depend on the extent of media and public attention, as well as variation in the cohesiveness and activity of the target group” (Schneider and Ingram 1993, 338). While NORML was not a “contending” group in terms of policy benefits, they certainly were understood to be contenders for policy structure and dictates. The individuals that NORML represented received the means (legal punishments) of marijuana prohibition, but were underserving of punishment in the way of being poisoned through the actions taken by the DEA, State Department, or collaborating international partners of the U.S. to ensure prohibition. Therefore, NORML could promote sympathy for marijuana

users, if not illegality on the part of the federal government, in order to “blunt the imposition” of policy burdens forced on those partaking of Mexican imported cannabis. Even within the context of 1977-little scientific evidence as to marijuana’s health benefits or detriment- federal scheduling of marijuana holds “high potential for substance abuse has no currently accepted medical use in treatment in the United State [and] there is a lack of accepted safety for use of the drug or other substance under medical supervision”.<sup>86</sup>-NORML, and Randall to a lesser degree, raised public awareness for the purpose of questioning the federal government’s means to policy ends. Media attention was most likely intensified due to calls for HEW to investigate and report on paraquat’s possible health risks.

Four months after NORML filed litigation aimed at forcing the stoppage of U.S. involvement in Mexican paraquat spraying of American bound marijuana, HEW Secretary Joseph Califano publically announced his department’s investigative results with an added twist. According to Califano’s preliminary findings, if an individual ate “between 32 and 320 pounds of poisoned brownies (made with paraquat sprayed cannabis) in a short time” the toxic effect would be fatal. The point of smoking paraquat poisoned marijuana had been missed, and possibly on purpose as to sway attention from suspicious and injurious military facilitated activities to eating marijuana as an alternative to smoking the drug. Pausing for a moment, at first, Califano’s statement might seem trivial; however consider the absurdity of that toxicity level juxtaposed with all marijuana users as criminals. The negative target population does not

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<sup>86</sup> Schedule I illicit substances are the only category that contain the last descriptor per wording of the U.S. Department of Health and Human Service-Food and Drug Administration webpage “Regulatory Information.”

<http://www.fda.gov/regulatoryinformation/legislation/ucm14872.htm#cntlsbb>

Last taken on July 22, 2012

match the suggested leisurely use of marijuana. Nobody actually ingests the amount of cannabis Califano stated, therefore where is the criminal activity (other than a law exist that creates a societal subgroup of criminals out of marijuana use). Marijuana prohibition as a flagship policy contains inherently incorrect and overly-severe premises and enforcement procedures. What does that insinuate regarding the whole of CSA dictates?

As to NORML's request that the DEA use their "best efforts" to convince the Mexican Government to terminate their marijuana spraying program, Judge Waddy again modeled his ruling from a Supreme Court opinion, this time *Flast v. Cohen* (1968) which questioned a citizen's right to sue the federal government for inappropriate spending of tax revenue. Waddy's constitutional insight suggested issuing an injunction against what were essentially U.S. military operations and was beyond the scope of the Judiciary's authority, "While defendants, of course, are free to so request of the Mexican Government if they see fit, the relief which plaintiff requests present a non-justiciable political question beyond the Article III powers of this Court. Ordering such relief would infringe upon the President's constitutional authority to conduct foreign relations....Defendants will be directed forthwith to prepare, circulate, and consider such an environmental impact statement...In all other respects relief will be denied plaintiff, and judgment will be entered in favor of defendants." From the perspective of judicial assistant to social movement reform desires, Judge Waddy presumed a position of Gerald Rosenberg's (1991) "constraint" court, and was not able to give NORML a victory or edge in their fight against federal prohibitive means.<sup>87</sup> Another reason this episode should be of importance in understanding the overall scheme of the medical marijuana movement hinges on NORML

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<sup>87</sup> See Rosenberg, Gerald. 1991. *"Hollow Hope."* Chicago, Illinois: University of Chicago Press.

demonstrating their willingness and ability to maneuver, with a notable degree of success, through institutional discourse, dictates, and demands. Though the injunction request failed, the media and public had a light shown upon a questionable military/ DEA operation while the DEA's own rescheduling process was demonstrated to be layered in unnecessary delay and obstructionism. Impeded as NORML was, the pro-marijuana organization was successful in garnering an empathetic ear from some congressional members even prior to the courts resolving the paraquat spraying issue. In regards to target populations, NORML was unsuccessful in shifting or entirely removing marijuana users from a negative, punishable category to those deserving of policy benefits. Waddy's decision provided environmental concerns a position of protection while the EPA garnered a notch in their institutional belt.

A year prior to Judge Waddy's ruling, Senator Charles Percy (R-Ill.) submitted an amendment to The Foreign Military Aid Bill to "ban the use of any funds in the bill to spray Mexican marijuana fields with the chemical paraquat if the spraying was likely to cause serious harm to persons who might use the sprayed marijuana." Though the amendment easily passed within a larger military aid package via voice vote, a nearly identical amendment entered by House Representative Harry Waxman (D-Ca.) was blocked<sup>88</sup>. The next congressional session brought success regarding NORML's goals when Percy once again offered up an amendment, this time attached to the Security Assistance Act banning dictating a ban on paraquat spraying going into effect.<sup>89</sup> No matter Judge Waddy's stipulated a temporary hold on DEA or DOD loaning of helicopters for Mexican executive eradication, EPA overriding regulations, or Center

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<sup>88</sup> *Congressional Quarterly Almanac*. 1978 and 1979. Washington, D.C.: Congressional Quarterly, Inc.

<sup>89</sup> *Congressional Quarterly Almanac* 1978 and 1979, 129; 420

for Disease Control data indicating a direct relationship between respiratory maladies of some Americans and the Mexican weed they had smoked, Congress issued the final institutional installment of what can be considered an illegal and shameful set of circumstances perpetuated to ensure a victory in the broadening war on drugs.<sup>90</sup> Congress' ban on future use of paraquat came to fruition partially due to the urging of the Carter Administration, though after Carter had naively endorsed the program shortly after taking office. In answer to Randall's medical necessity case and the public uproar over the paraquat fiasco, instigated by NORML's awareness campaign, Carter moved to reexamine and remodel marijuana's usages.

Carter's Compassionate Investigational New Drug (IND) program which could be considered the first federally endorsed demand-side illicit substance control policy was instituted in 1978 on the brink of a conservative "revolutionary" wave crashing upon American electoral shores and bringing with it a new era of social regulatory policy, including escalated anti-drug rhetoric and dictates. The IND began accepting qualified recipients to use federally grown and distributed marijuana to relieve optical pressure brought on by glaucoma, needed relief from chronic pain, and other severe alignments that were not served by existing legal pharmacopeia. For Carter to verge toward a demand-side paradigm would be to interrupt the policy path Nixon had set in place and founded on omnibus legislation subsequently reinforced by agency birth (DEA), and legally fortified by DOJ legal arguments. Diminishing the prominence

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<sup>90</sup> See Deborah Blum *"The Chemists War"* Two other "poisonings" of illicit substances by federal governments should be considered in comparison to the paraquat episode. During American alcohol prohibition (1920-1933), when thousands of gallons of "industrialized" or "renatured" alcohol (wood grain) was released onto the black market by federal officials. In turn, according to Blum, fatalities reached into the thousands from drinking false spirits. The New York Times reported in 1976 that the pre-Taliban government in Afghanistan, driven by anti-alcohol tenets of Islam, poisoned caches of liquor they had found then allowed the "criminals" to return and drink their deadly concoctions.



of the punitive paradigm would did not bring about an abrupt end to the supply-side perspective due to the protracted prohibition of marijuana and other illegal narcotics dating back to the 1930s.

However, the development of anti-drug rhetoric, bureaucratic agencies, statutes, and mandates delivered to state and local government pertaining to illicit substance containment was a significant shift of federal policy and symbolized Nixon's contribution to nation-state building via creation and promotion of negative target populations. One could suggest that fending off the counterculture, answering increasing crime indicators, and personifying drugs through rhetoric in order to set new "pylons" of illicit substance policy and agencies were part-and-parcel to Nixon's new governmental structure that answered New Deal themed federal policies and programs which were inherently part of Carter's ideology and policy tendencies.<sup>91</sup> Any reproach upon Nixon's less than ten year old "innovations" by President Carter marked a potential drastic divergence from the CSA's tenets and the American understanding of how illicit substances need be defined. Legal allowance of medical marijuana allowance by the national government would reconfigure drugs and their users from criminals to sufferers of fatal illnesses in need of pain-relief treatment. Though Carter's minimum divergence from a supply-side or punitive-based model of illicit substance control had few lasting policies, the IND and eventual termination of paraquat spraying did amount to shifting policy direction from focusing in totality on negative target populations to more sympathetic positively defined groups causing an inconsistency to the grander framing of the "War on Drugs." Yet federal distribution of

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<sup>91</sup> See Skowronek, Stephen. 1993. *The Politics Presidents Make: Leadership from John Adams to George Bush*. Cambridge, Ma.: Belknap Press of Harvard University Press. Skowronek argues that some presidents are holding to the policy paths instituted by their preceding ideological brethren.

marijuana for health sustaining purposes transpired without the bureaucratic development and largesse Nixon had dedicated to “fighting drugs.”

As cabinet level officials diagnosed and attempted to quell Middle East tussling between Israel and Egypt along with assuaging public anxiety heightened by the 1970s fuel shortages, creating new agencies, appointing personnel, or apportioning funds for marginalized programs such as medicinal marijuana research held the potential of confusing the public and an image of poor prioritization of Executive duties. However, the recent decision in Robert Randall’s medical necessity defense did spur enough attention and made a legitimate claim for the federal government to reexamine underdeveloped health-based initiatives the Nixon Administration had vaulted, then systematically defunded when reorganizing illicit substance control policies, personnel, and agencies.<sup>92</sup> Carter made few public announcements concerning transitioning marijuana from a “street” drug to medicine. Instead of leading the charge for reviewing not only marijuana but also heroin and cocaine reclassification Carter assigned Dr. Peter Bourne to be Special Assistant to the President on health issues. Though Bourne was brought aboard to answer medical questions in light of growing politically daunting times, he served as a transitional actor, connecting Carter’s inclination toward demand-side and health based policies with the publically well-received and accepted supply-side, punitively-based paradigm programs of the Nixon Administration. While serving as deputy to Director Jaffe of the Special Action Office for Drug Abuse Prevention, Bourne advocated Jaffe’s plan to make treatment for drug addiction available to any citizen. As he reflected on the issue in a 2010 television interview,

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<sup>92</sup> See Massing, Michael. *The Fix*. Berkeley, Ca: University of California Press, 2000.

part of Bourne's plan played to recategorizing many cannabis users as those needing sympathy and treatment, "the fundamental philosophy was that no drug addict could say, "I want treatment, but there's no place I can get it."<sup>93</sup> Indeed, in part, Jaffe had accepted Nixon's request for him to first brief domestic advisors in 1970 and then become Director of the Special Action Office of Drug Abuse Prevention in 1971 because Nixon and Bud Krogh had led him to believe they were willing to examine the demand side of drug addiction.

However, even Jaffe's professional mettle succumb to the actuality of federal spending and attention on health initiatives "rather than the law enforcement approach, [being] a transient phenomenon."<sup>94</sup> In the midst of Nixon's intensification of punitive, law enforcement-first-means of curtailing illegal narcotic use and trafficking, Jaffe resigned from his post, too disillusioned and frustrated with Nixon's fiscal cutbacks in health-based initiatives to research non-criminal and political problems associated with drug use. Following Jaffe's resignation, demand-side initiatives, funding, and personnel numbers declined while supply-side (punitively enforced) means continued to exponentially increase. Though not enough evidence to claim causation, recommitment to the punitive paradigm not only kept demand-side concerns at bay but also further marginalized the introduction of policies intended to focus on and benefit positive target populations. Thus, federal marijuana policies remained as disadvantaging a negative target population. Whereas, Ingram and Schneider (1993, 339) identify how "sanctions

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<sup>93</sup> Public Broadcasting, "Interview Peter Bourne" for Frontline: Drug Wars WGBH Boston. Taken on June 30, 2010 from PBS website: <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/interviews/bourne.html>

<sup>94</sup> Public Broadcasting, "Interview Jerome Jaffe" for Frontline: Drug Wars WGBH Boston. Taken on June 30, 2010 from PBS website: <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/interviews/jaffe.html>

and force are not likely to be used in connection with powerful, positively viewed groups,”

marijuana users were contained to being cross-referenced as disadvantaged and negative.

Federal investment and development of illicit substance control from 1970 to 1980 infused governmental agencies with substantial monetary and personnel resources, in turn serving as a “calling” to private citizens. Beginning with the DEA’s founding in 1973 to Ronald Reagan’s initial year as President in 1981, DEA budget and personnel largesse snowballed from a meager \$74.9 million with an employee dole of 2,898 Special Agents and Support Staff to a personnel population of over 4100 with nearly a \$220 million budget (see below Table 4).

<b>Table 4: DEA Staffing and Appropriations FY 1972-2005 (All Sources)<sup>95</sup></b>				
<b>YEAR</b>	<b>Total Employees</b>	<b>Special Agents</b>	<b>Support Staff</b>	<b>Budget (\$ in Millions)</b>
<b>1972</b>	2,775	1,470	1,305	65.2
<b>1973</b>	2,898	1,470	1,428	74.9
<b>1974</b>	4,075	2,231	1,844	116.2
<b>1975</b>	4,286	2,135	2,151	140.9
<b>1976</b>	4,337	2,141	2,196	161.1
<b>1977</b>	4,439	2,141	2,298	172.8
<b>1978</b>	4,440	2,054	2,386	192.3
<b>1979</b>	4,288	1,984	2,304	200.4
<b>1980</b>	4,149	1,941	2,208	206.7
<b>1981</b>	4,167	1,964	2,203	219.5

<sup>95</sup> Taken from the Drug Enforcement Administration website on February 20, 2010:  
<http://www.justice.gov/dea/agency/staffing.htm>

While Nixon's actions in the field of narcotic control can be perceived as fulfilling campaign promises and shifting a good amount of media and public attention away from the Vietnam War, the interim between his administration's early exit from office and Reagan's revitalization of the drug war brought on a generation of citizen-generated anti-drug organizations. Comprised of parent and community based networks, National Families in Action and the American Council for Drug Education were both founded in 1977, the same year Robert Randall sought succor from federal marijuana prohibition via a "medical necessity" exception and one year prior to the Investigative New Drug (IND) program being implemented. Eventually, the establishment of numerous private, citizen-generated anti-drug organizations that partnered with federal authorities overshadowed the scientific and medical communities giving credence to Randall's now judicially sustained claim that marijuana possessed beneficial medical worth (see below Table 5). Though seemingly the results of Randall's case have been relegated to an obscure and irrelevant corner of the drug war, a medical anthropology was forming in regards to marijuana, demarcating a separation of public and governing discourse from informal definitions of marijuana to scientifically and medically scrutinized understandings. As this separation or transformation-breaking from common knowledge, myth-based, and popular culture- was transpiring federal standards concerning marijuana were being questioned as to their epistemological soundness and reasoning. A hint of relying on valid, tested information rather than popular accounts or political inclination for policing illegal drugs was evinced with then-Drug Czar Barry McCaffrey who asserted in 1997 that, "Drug policy must be based on science, not ideology."<sup>96</sup> However, such an acceptance and redirection in federal

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<sup>96</sup> Geoffrey Cowley. 1997. "Can Marijuana Be Medicine?" *Newsweek*, February 3: 27.

defining of illicit substances has been retarded due to the well-entrenched and politically advantageous drug war politics and negative connotations associated with marijuana (Chapkin and WebbBertram, et. al 1996).

**Table 5: Anti-Drug Organizations Established from 1977 to 1992**

Anti-Drug National Organization and Year Established	Mission
National Families in Action-1977	"To help families and communities prevent drug use among children by promoting policies based on science."
North American Council for Drug Education-1977	"To ensure that the public has access to scientifically-based, compelling prevention programs and materials."
Drug Abuse Resistance Education (D.A.R.E.)-1983	"Provide children with the information and skills they need to live drug and violence free lives."
Family Research Council-1983	Dedicated to the promotion of marriage and family and the sanctity of human life in national policy."
Center for Substance Abuse Prevention-1985	"To provide national leadership in the development of policies, programs and services to prevent substance abuse."
Partnership for a Drug-Free America-1986	"To reduce demand for illegal drugs in America. Through its national advertising campaign and other forms of media communication... works to decrease drugs by changing societal attitudes which support, tolerate or condone drug use."
Drug Watch International-1991	"To help assure a healthier and safer world through drug prevention efforts by: providing accurate information on both illicit and harmful psychoactive substances; promoting sound drug policies based on scientific research; and opposing efforts to legalize or decriminalize drugs."
The Community Anti-Drug Coalitions-1992	"To create and strengthen the capacity of new and existing coalitions to build safe, healthy and drug-free communities."

### **Digging a Deeper Row: Clinton reacts to Political Criticism, Returning to the Crime/Marijuana Conflation as a Guise, and Garnering the Drug Czar Authority**

When then presidential candidate William Jefferson Clinton admitted he had smoked, *sans* inhaling, marijuana during his college days, some within the illicit substance reform community might have believed a new examination of marijuana laws in America was on the political horizon. Though Clinton's campaign staff were able to deflect any type of substantial inquiry regarding the veracity of their candidate's "confession", the future executive did leave the discourse door ajar, creating an opening not only for causal discussion concerning illicit drug reform, but also institutional questioning of the federal government's continued refusal to allow clinical research on the medical application of marijuana as well as state and local governments' long-held adherence to the Controlled Substance Act of 1970.<sup>97</sup> Whereas Nixon attempted to push back against and contain what he considered "counter-culture" behavior prevalent during the 1960s, including the political and social activism of Baby-Boomers, Clinton represented the ascendancy of that generation to the summit of federal government along with history, practices, and desires for reforming status quo policies.<sup>98</sup> This analysis does recognize Clinton's initial inclination at examining and contemplating demand-side alternatives to the drug war, punitive paradigm status quo his administration had inherited. Yet, within a year following

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<sup>97</sup>On Sunday March 19, 1992, when asked by in a television interview whether he had ever violated international law Clinton responded, "When I was in England (as a Rhodes Scholar) I experimented with marijuana a time or two, and didn't like it. I didn't inhale and I didn't try it again." *New York Times* March 20, 1992 "*Clinton Tried Marijuana as a Student, He says.*"

<sup>98</sup>See King, James D. and James W. Riddlesperger, "Presidential Management and Staffing: An Early Assessment of the Clinton Presidency" *Presidential Studies Quarterly* 26 2: The authors discuss how the Clinton Administration promoted a "team approach" to presidential advising and how Baby Boomer Clinton appointees employed such a decision-making model in comparison to past presidents.



Clinton's inauguration, reality set in and a reinventing of federal illicit substance control policies toward health-based/ demand-side policies was marginalized by political pressure and entrenched institutional practices standing as stalwarts against any significant shift in policy development.

In 1996, while campaigning for reelection, Clinton touted his presidency as one that offered the American people a "bridge to the future," yet some two years earlier his administration proposed an omnibus crime bill reminiscent of and tied to illegal drug control measures taken by the federal authorities of the past and more in line with the Nixon and Reagan presidencies than a prospective of change.<sup>99</sup> Reliance on existing, proven target populations served as a political cushion for Clinton following his failed attempts to infuse national illicit substance control policies with funding and programs advantageous to individuals arrested from drug charges. The arduous task of the shifting of target populations proved too difficult for Clinton as he and his advisors fought against entrenched policy designs. However, the inclusion, and eventually congressional ratification of Clinton's drug legislation was a compromise between stable, politically-accepted illicit substance control framing and disadvantaged target populations and elements toward "transforming" those same negatively defined target groups. The 1996 Omnibus bill held what Ingram, Schneider, and deLeon term, "putative (or stated) goals to be achieved or problems to be solved, the tools that are intended to change behavior, rules for inclusion or exclusion, rationales that legitimate the policy and

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<sup>99</sup> William J. Clinton's Presidential Nomination Acceptance Speech-Democratic National Convention August 29, 1996. Taken last from University of California Santa Barbara Presidency Project on November 1, 2011 <http://www.presidency.ucsb.edu/ws/index.php?pid=53253#axzz1evnGmpEf> "Remarks Accepting the Presidential Nomination at the Democratic National Convention in Chicago."

provide an internal cause and effect logic connecting means to ends, and the implementation structure” (Ingram, Schneider, and deLeon in Sabatier 2007, 95). Indeed, the final version of Clinton’s legislation incorporated “drug courts”<sup>100</sup> and alternative sentences including state-sponsored rehabilitation stints and drug war staples including federal funds dedicated to the hiring of local police and collaborative anti-drug task forces between federal, state, and local law enforcement.<sup>101</sup> While the final version of Clinton’s omnibus legislation contained the tools to change the negative status of illicit substance control target populations, the political and social forces as well as years of legislative reliance on drug war framing (with negative target population being emphasized) proved too much of an entrenched bulwark for Clinton to not embrace in policy and publically. Though hesitant to enter the drug war through example, Clinton’s choice of illicit substance control direction took on an all too familiar path and *raison d’être*; politics prevailed over executively driven reform.

Evidence of the Clinton Administration’s steadfastness in the belief of illicit substance policies enacted and implemented prior to their control of the Executive Branch is found in the ONDCP’s 1996 *National Drug Control Strategy*:

*A Reaffirmation of Anti-Legalization Sentiments.* ONDCP helped to reaffirm the sentiments of millions of American who oppose the legalization of drugs. In May 1995, ONDCP, in coordination with other

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<sup>100</sup> “Drug Courts” vary from jurisdiction to jurisdiction. Bertram, Blachman, Sharpe, and Andreas give a general account of how the avenues of resolution available to drug court judges differ from more traditional court rulings and sentencing for convicted illicit substance offenders, “diversion-to-treatment programs, in which drug offenders who have committed nonviolent crimes are given the option of choosing a court-monitored treatment program instead of prison: if they successfully complete the program they serve no time and may have the charges against them dismissed; if they do not complete the program they face the threat of incarceration” (Bertram, et.al. *Drug War Politics: The Price of Denial*. 1996. Berkley, CA: University of California Press, 250-251) For insight as to the success of drug courts also see Judge Gray, James. 2001. *How Our Drug Laws have Failed and What We Can Do About It: A Judicial Indictment of the War on Drugs*. Philadelphia, Pa.: Temple University Press.

<sup>101</sup> See *Congressional Quarterly Almanac*. 1994. Washington, D.C.: Congressional Quarterly, Inc., pages 289; 408.

Federal agencies, cosponsored the 1995 “American Cities Against Drugs” conference in Atlanta, Georgia. Officials representing dozens of American cities, large and small, signed a declaration of resolute opposition to the legalization of illicit drugs.

In an accompanying presidential transmittal letter, Clinton gave his administrative (rubber) stamp of approval regarding the ONDCP’s stance on legalization, “And we will continue to oppose resolutely calls for the legalization of illicit drugs.”<sup>102</sup> Some argued that Clinton took a liberal line on illicit substance policy and was attempting to guide the federal government around the next corner toward a demand-side model. In reviewing the Clinton years, drug control policies and programs remained, by and far, prone to law enforcement-first dictates infused with prohibitive standards. Any shift away from a punitive paradigm during Clinton’s tenure was left to linger and possibly best captured in his reelection theme song, *“Don’t stop thinking about tomorrow.”* For federal drug control was solidly positioned in yesterday and offering reformists no means to their vision of a new day in drug control. When one considers the seeming fundamental change in leadership direction that transpired in the U.S. due to the tentative policy stances concerning illicit substance treatment Clinton expressed, the often cited path dependent tenets of “large consequences” resulting from “relatively small or contingent events” and “particular courses of action, once introduced, can be virtually impossible to reverse” become evident. The former staying as contingent while the latter sustained.

Even though Clinton did not embrace Reagan’s “no tolerance” or Bush’s international approach so vigorously, his administration did connect with past presidential illicit substance

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<sup>102</sup>Office of National Drug Control Policy 1996 *National Drug Control Strategy (NDCS)*. Taken from MacCoun and Reuter *“Drug War Heresies: Learning from Other Vices, Times, and Places.”* Cambridge, UK: Press Syndicate of the University of Cambridge, 2001, 41.

control schemes by revisiting Nixon's executive tenet of conflating crime fighting with drug abuse and trafficking. Clinton utilized such skills as he navigated the political vicissitudes of federal illicit substance policy and decision making; while his detractors negatively critiqued his administration's lack of drug control policy vision, he pushed for a massive increase in law enforcement funding, recruitment, and training. In another major avenue of what can be considered Clinton's drug war fronts, his administration continued Ronald Reagan and George H.W. Bush's concentration of bureaucratic centralized control of illicit substance policies and resources.

The hesitancy Clinton exhibited in presenting a National Drug Control Strategy could be perceived as a new president "testing the waters" as to how much innovation Congress was willing to tolerate. In 1993, as part of his administration's much heralded Omnibus Anti-Crime legislation (HR 3355/ S1488) Clinton advocated drug treatment as an alternative sentence for prisoners serving time for narcotic offenses, coupling gang and drug task forces, and cutting back on mandatory sentences for those convicted of drug related crimes. All of those "innovations" were attempts to piece together a comprehensive crime bill and acknowledge Democratic policymakers who sought "new approaches to reduce crime" much of which fell within Clinton's clarion call to "reinvent government."<sup>103</sup> While relying on a Nixonesque illicit substance model of conflating crime and drug use to pass key legislation, Clinton looked to garner the ONDCP's Director additional authority by proposing the "Drug Czar" be given

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<sup>103</sup> National Partnership for Reinventing Government (NPRG) website: <http://govinfo.library.unt.edu/npr/whoweare/history2.html> . As stated in the NPRG's mission statement: The National Partnership for Reinventing is the Clinton-Gore Administration's initiative to reform the way the federal government works. Our mission is to create government that "works better, costs less, and gets results Americans care about." Begun in the early days of the Administration, with Vice-President Al Gore at its helm, our task force is the longest running reform effort in U.S. history." Last taken from NPRG website on October 10, 2011.

membership on the National Security Council (NSC). The White House publicly promoted ONDCP involvement with NSC as a means of reconciling ongoing interagency disputes that had been hampering the effectiveness of drug war programs.<sup>104</sup> However, with more attention paid to narcoterrorism and alleviating border tensions with Mexico, marrying the two agencies was actually a desired institutional rearrangement declared in Reagan's Drug-Free America Act of 1986 and never achieved during Bush's time in office. At the time, Congress suggested Reagan urge NATO along with other security organizations to join in a collaborative endeavor concerning international trafficking.<sup>105</sup>

Instead of turning to foreign affairs for the constituting of tougher measures for controlling narcotic trafficking, Clinton relied on a more pointed route of policy via bureaucratic manipulation and for that his executive branch intuition guided to another of past presidential inclination to increase centralized authority of illegal drug policy and ONDCP oversight. The ONDCP Director's endowment of authority came in incremental and, for the most part, relatively unnoticed enactment of administrative positions and agency development. Thus, the continuance of centralizing illicit substance control authority, an administrative trait replicated in theme from the Reagan and Bush presidential tenures, allowed the unimpeded employment of drug war frames that folded negative target populations into what had become a traditional employment of punitive means along with a lack of any pronounced shift from a supply to demand (health-based) policies. Weaving criminal statutes and programs as part of the drug

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<sup>104</sup> Memorandum for John Ehrlichman from Bud Krogh. Subject: *"Jurisdictional Dispute—Bureau of Narcotics and Dangerous Drugs vs. Bureau of Customs. July 19 and 28, 1969."* Interagency disputes had also hampered Nixon's initial steps in reforming drug control policy and programs. Archival memos pulled from the Nixon Papers in College Park, Maryland tell of Customs agents and the Office of Drug Abuse Law Enforcement (ODALE) having "words" and threatening each other with guns.

<sup>105</sup> See *Congressional Quarterly Almanac 1986* page 101

war composition, thus improving the policy leverage of the ONDCP Director, inherently lent to and fit the definition of path dependent tenets, but a more political impetus plagued the Clinton Administration in their effort to showcase how the President through the ONDCP was at the forefront of fighting the drug war. Endowing drug control administrators with a multiplicity of authority and demanding law enforcement needs in a milestone piece of legislation seemingly deemphasized the fervor in which drug war tactics were employed by past administrations. Though the omnibus crime bill of 1993 was the Clinton Administration's commitment to fund and increased law enforcement personnel numbers from small town police forces to the DEA, the proposed legislation omitted or reduced many of the typical law enforcement-first dictates associated with the drug war while introducing "alternative" policies and programs including Drug Courts, rehabilitation options for convicted defendants who were also addicts, and health-based substance education projects. Posturing his version of the "War on Drugs" as obviating away from a punitive paradigm would be to doubt America's illicit substance control policy convention and tenets, leaving many congressional members and anti-drug organizations to doubt Clinton's dedication to fighting the "War on Drugs," <sup>106</sup>

The White House on Sept. 27 again turned down a request for documents from House Republicans. This time the subject was the administration's conduct of the war on drugs. On Sept. 17, the Government Reform and Oversight Committee requested a memo from FBI Director Louis Freeh and DEA Administrator Thomas A. Constantine, which the GOP contended was critical of the way the Clinton administration, had run the war against drugs. The panel then voted to subpoena the document. White House counsel Quinn responded Oct. 1 with a letter executive privilege. In response, Clinger accused President

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<sup>106</sup>See *Congressional Quarterly Almanac* 1994 and Johnston, David as well as Weiner, "Seizing Crime Issue, Clinton Blurs Party Lines." *New York Times* August 1, 1996

Clinton of using executive privilege to “to bury politically damaging information” (1996 Congressional Quarterly Almanac, 1-49).

Inquiry and criticism of this nature seemingly backed Clinton into a politically vulnerable corner, allowing little room for diverging from any prior drug war executive stance and further enabling illicit substance control policy to continue on an entrenched course.

Negative assessment of how the Clinton Administration initially addressed the drug war was not limited to adversarial rhetoric emanating from right-wing quarters. In a editorial dated April 22, 1993, *The New York Times* pondered if Clinton was altering the federal government’s long held targeting of supply side arguments and law enforcement-first tactics by posing Clinton as slow to react in crafting a national drug control policy, putting budgetary resources on “automatic pilot,” and denouncing the new president by categorizing his attention to DEA and ONDCP supplemental funds as “low priority.” The same editorial doubted any substantial change to the overarching illegal drug control model since Clinton had not urged Congress to allot supplemental funds for demand-side policies. In an August 1995 *American Journal of Public Health* article authors Peter Reuter and Jonathan Caulkin found favor with Clinton’s rumored inclination to shift federal illicit substance policy to a demand-side by investing in health based programs with the inclusion of preventative means to juvenile drug use while others, including a group of sitting and former judges, supported revamping the drug courts and treatment in lieu of jail time for many of those convicted of drug offenses. Reuter and Caulkin also asked whether Congress could ever have a “rational” debate regarding issues including medical use of marijuana, decriminalization, legalization, and/or allow more scientific evidence into legislative output. Published before congressional hearings and debate began on Clinton’s bill, Reuter and

Caulkin also suggested higher levels of scientific and sociological “scrutiny” when determining the beneficial and detrimental health effects of many drugs, including marijuana. Besides erroneous “scheduling” of some substances, Reuter and Caulkin addressed the necessity to recalculate national drug policy goals for the purpose of finding out which substances were actually “high-risk” for addiction. As more evidence of path dependency, the Bush Administration was chided for carrying on a supply-side paradigm. Regarding policy direction, the authors argue Clinton’s 1994 strategy “expands the focus away from casual and intermittent drug use and places it more appropriately on the most difficult and problematic drug-using population-hardcore drug users” (Reuter and Caulkin 1995, 1060).

Clinton’s initial step was neither to answer his critics by proposing an overhaul of existing drug war policies nor turning his administration’s resources to an international framework as Bush had with the “Andean Initiative” in 1991. Clinton did, however, decide to follow another of his predecessors’ drug war tendencies: appointment of a Drug Czar and authoritative foundation. Former New York City Police Commissioner Lee Brown, a prominent detractor of Bush’s attempts at curtailing illegal narcotic importation by adhering to a supply-side strategy, accepted the Drug Czar post in April of 1993. Brown’s emergence as Drug Czar found little criticism due mainly to his credentials as law enforcement administrator for the largest policy force in the U.S. His appointment stood as an assertive and immediate response for those who had lambasted Clinton’s inability to produce a national drug control strategy since taking office. Six months after being named Drug Czar, Brown released a thirty one page report on how the Clinton Administration planned to fight drug trafficking and abuse. Director Brown’s issuance of a new national drug control strategy was an affirmation of those predicting a change in policy



direction due to the proposal calling for, as Joseph Treaster in *The New York Times* reported, “treatment of hard-core drug users and on dampening drug-inspired violence.” Another surprise regarded the ONDCP’s intent to investigate many of the contributing social ills contributing to drug abuse, such as housing, education, employment opportunities, and health care. With the hopes of demand-side drug control advocates in the balance, Brown termed the plan as a “new direction,” giving few specifics of the plan and then making it explicitly clear by expressing that the Clinton Administration was still relying on a tried and true touchstone of federal narcotic control by stating, “we want to make clear we are not going to downplay law enforcement.”<sup>107</sup>

The downplaying of law enforcement, whether in rhetoric, policy language, or funding, was tantamount to edging away from the entrenched “War on Drug” framing of illicit substance control issues. Yet, the broader frame, most likely, would have been unquestioned with the more integral and advantaged target populations (law enforcement) being perceived as secondary to funding via the policies of traditionally negative target populations (drug addicts and criminals). Reinforcing law enforcement as the primary actors in illicit substance control policies exhibited Clinton as another in a line of executive “Drug War Warriors” while social constructions of target populations were also kept at the standard of the drug war status quo. Seven months later, the ONDCP was given congressional reauthorization with a bureaucratic enhancement. The Legislative branch granted more authoritative resound and bureaucratic reach to the Drug Czar by consenting to Clinton’s earlier request for the ONDCP Director to be given membership in the National Security Council. In retrospect, extending ONDCP administrative might met two goals: (1) centralization of EOP drug control personnel and

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<sup>107</sup>Treaster, Joseph. “Clinton Altering Nation’s Tactics in Drug Battle.” *New York Times* October 21, 1993.

programs was now tangentially attached to several more agencies outside of the president's immediate purview and control; (2) as a concession to downsizing ONDCP personnel from 112 to 40 employees and a budget reduction request from the White House that would drop funding for the ONDCP from \$101.2 million to \$5.8 million.<sup>108</sup>

Examination of Clinton's first year/ term personnel and budget numbers is insightful when one considers his overall strategy of the drug war. While he was outspoken for the need to reallocate drug control resources, specifically by calling for ONDCP cuts and attempting to redirect funds to health related agencies (demand-side), trajectory of the DEA's focus and finances bared a striking resemblance to the ONDCP's budgetary allowances twelve years prior to Clinton being elected President. Within all of bargaining between the executive and Congress, Clinton had managed to negotiate and then strike a balance with national legislators that cut EOP drug control resources, but increased DEA, state level, and health related programs. As the Congressional Quarterly Almanac reported, "The bulk of the nation's anti-drug efforts were financed outside of the drug czar's office; appropriators reshuffled the programs that fell under the Treasury-Postal bill, creating a new appropriations account titled "Federal Drug Control Programs" that included the following: **High Intensity drug Trafficking Areas Program.** This program directed federal money to federal, state and local law enforcement entities operating in areas where drug trafficking was particularly severe.....**Special Forfeiture Fund.** The 1988 anti-drug law created a special forfeiture fund of anti-drug efforts. Spending on programs authorized under the law was expected to total \$52.5 million..." For the fiscal year

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<sup>108</sup>Source: *Congressional Quarterly Almanac 1993*, page 688. Clinton had recommended that ONDCP staff be cut to 25 full-time employees, Congress found agreement at 40.

1993-94 the punitive paradigm guided by law enforcement-first dictates was sustained with only a symbolic diminishing of EOP drug control authority. Any type of overall shift to a demand-side model would have to wait.<sup>109</sup> Sustaining or increasing the rate of law enforcement funding as a legislative priority in ratifying these budgetary allotments lent to supporting advantaged positive target populations. Whereas drug courts and alternative sentencing for convicted drug offenders would “reshape” those negatively defined target groups, law enforcement held as the primary advantaged groups with the former continuing to be disadvantaged. According to Schneider and Ingram, keeping punitive or authoritative means within a policy meant to benefit disadvantaged groups is a typical tactic in redirecting policy goals. Thus, more emphasis on law enforcement with what can be considered concessions to the disadvantaged became a rationale for the legislation’s passage and evinces the authors’ argument that “Rationales are important elements of policy design because they serve to legitimate [and]... justify the agenda, policy goals, selection of target populations, and the tools chosen” (Schneider and Ingram 1993, 339).

Clinton’s version of the EOP’s illegal drug control measures did project an image of government being reinvented with fundamental shifts in authority and policy but only within the high-profile milieu of the executive. While consistent with Reagan and Bush dictates in his overall policy message, Clinton called for \$100 billion for drug courts, forming federal/ state/ local gang-drug task forces, federalism based “High Intensity Drug Trafficking Areas” program, an infusion of \$100 million for the recruitment and training of DEA agents as well as mandatory drug treatment programs for federal prisoners depicting the former Arkansas governor as an iteration of Nixon with charisma. However, Clinton’s contribution to the age of entrenched drug

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<sup>109</sup> Emphasis added by *Congressional Quarterly Almanac*.

war battles did not deviate in any extreme fashion from his predecessors. Health initiatives and resources dedicated to drug abuse treatments including methadone clinics, needle exchanges, and research into the validity of medicinal marijuana stayed, for the most part, either under the guidance of state and local government or in a state of prohibition. Sustaining a crime focused model allowed Clinton to seek drug policy reforms by asking Congress for funds to facilitate mandatory drug treatment for federal prisons, new prisons/treatment centers for “serious drug offenders who were serving the last two years of their sentences”; and recognizing the vehicle for domestic drug trafficking, the final piece of anti-crime legislation (H.R. 3353) authorized \$200 million over the course of two years aiding in state-based efforts to diminish the social depravity of juvenile gangs and drug distribution. Clinton also sought some more traditional infusions of drug control/ punitive paradigm based resources by requesting \$100 million for the recruitment and hiring of DEA agents and narcotic interdiction in rural areas.

Enactment of the 1993 omnibus crime bill demonstrated the Clinton Administration’s ability to firmly answer many of its critics regarding narcotic control. Confirmation of Clinton’s dependency on past executives was also exemplified. By continuing to employ military forces to fight portions of the drug war while reaffirming the federal government’s commitment to the punitive paradigm through law enforcement-first policies, Clinton had succumb to the leverage of drug war politics. When Congress demanded budgetary and personnel cuts to EOP staff, Clinton failed to render an immediate policy response. However, Clinton sustained a vision of institutional reform regarding by requesting the ONDCP outline and send legislation to Capitol Hill asking for \$1 billion toward a six year grant program for the institution of “drug courts.” The bill’s language directed judicial officers toward “rehabilitating nonviolent drug

offenders...intensive probation, including drug testing, treatment and job training, in place of conventional incarceration. Anyone who violated the program's terms faced alternative punishment such as community service, electronic monitoring or boot camp.<sup>110</sup> H.R. 3355 also consisted of new sentencing guidelines that played to punitive hardliners by enhancing sentences for drug traffickers conducting business inside drug-free school zones and federal prisons.<sup>111</sup> Though post-congressional wrangling of the bill sustained many of status quo punitive means Clinton had attempted to reform, his administration lauded the legislation as a milestone in U.S. illicit substance control policy.

The tail end of the bill gave some political solace for the Clinton Administration by answering some of his most fierce drug control cynics. Labeled "*Drug Control Strategy*," the last category of H.R. 3353 mandating Section 2 of executive order 12880 noted: "The Director shall provide, by July 1 of each year, budget recommendations to the heads of departments and agencies with responsibilities under the National Drug Control Program. The recommendations shall apply to the second following fiscal year and address funding priorities developed in the annual "National Drug Control Strategy" and be codified by congressional agreement to this legislation. The Drug Czar was also directed to assess federal drug control efforts for the past year within each annual Drug Control Strategy, taking account of drug availability, levels of drug use and access to drug treatment. This caveat can be perceived in two distinct ways with one

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<sup>110</sup> See Congressional Quarterly Almanac. 1994. Washington, D.C.: Congressional Quarterly, Inc., page 290

<sup>111</sup> Drug-Free School Zones (DFSZs) dictate longer and more server sentencing for those convicted of illicit substance offenses within a given distance of an educational institution. Typically distances are 500 and 1000 yards while each community can authorize a given distance. A federal standard was set by Congress in 1989 via the "Drug-Free School Zones Act," 20 U.S.C. Section 7116

underlying conclusion. Whereas the initial months of his first term had brought criticism for lagging in the creation of a national drug control strategy, by 1994 Clinton had produced a national strategy and answered his detractors by welcoming congressional oversight. Much of the criticism regarding the Clinton Administration's tardiness in crafting a National Drug Control Strategy and lack of forcefulness in fighting the drug war could be put to rest. Clinton's answer contained a triad of drug control goals: reduce domestic illicit substance manufacturing and distribution, improve federal law enforcement efficiency, and decrease drug related crime, especially those involving violent acts. A second point of significance points to a fracture in the drug war as bulwark against reform via a willingness on the behalf of national legislators to allow reform as a means toward policy compromise. Both Clinton and congressional leaders could hail the legislation as successful because drug treatment programs, alternative sentencing, and presidential determination of certain specialized areas of drug trafficking and use (i.e. direct federal agency resources to state and local areas deemed "Violent Crime and Drug Emergency Areas") were balance with rigid budgetary confirmation and congressional watchdogs. The overriding result: no firm reforms to the punitive paradigm as driving path dependency of the drug war. In short, those negatively constructed target populations were given policy benefits through authoritarian means, thus continuing to be burdened by the punitive paradigm. While a "chipping away" of the drug war frame was being accomplished with the implementation of drug courts and alternative sentencing, illicit substance control policy design was still fortified with negative target populations being disadvantaged and positively constructed groups sustaining a beneficiary status. Thus, the status quo suffered little agitation

and threat from reforms due to policy tenets being reinforced by policy makers' reaffirmed belief in the tried social constructions which had traditionally framed the drug war.

In a similar and broader vane, Clinton, though well known for possessing great acumen regarding political maneuvering and manipulation, fell victim to the restraints of institutional and policy practices founded in statutes and reinforced by the force of the state's coercive nature. Limitations are structured by authority and not discourse, debate, exchange, or trade-off of ideas and measures of benefit those the policies supposedly serve. In short, institutional and political arrangements lend to a given policy's durability (Pierson 2000; Rose 1990). In the case of drug control policies instituted by Nixon, reinvigorated by Reagan, and extended by Bush, the trend of increasing returns-politically and socially acceptable-shut the door on Clinton's alternative framework and redirected his administration to the well-laid, rutted path of drug war policies. Many policy scholars have concluded that "policy affects politics." As long as a policy endures, is publically-accepted, and supporting political allies (interest groups, political parties, and governing institutions), a policy becomes rationale for the politics underlying its resource allotment and allocation (Pierson 2004; Baumgarnter and Jones 1993, Lowi 1979). Though cyclical in reasoning and process, social constructions act as a policy "tool" for the maintenance and perpetuating of a given policy. Illicit substance control or drug war policies are no exception, however, identifying social construction of target populations enables policy makers to rationalize, as Laswell (1936) stated decades ago, "who gets what, where, and how?" Those advantaged and benefiting groups are constructed as positive, deserving groups while the opposite holds as well. In drug policy, criminals are a negatively perceived population. Any drug user-from heroin addict to experimenters of marijuana- therefore becomes a portion of that

population. In attempting to alter how drug users had been defined (deviants, criminals, counterculture members) Clinton faced a herculean task of not only changing policy but the seed of politics that had been germinated from those policies eventually flowering into America's "War on Drugs."

The subsequent chapter examines how Medical Marijuana Social Movement Organizations eschewed the Clinton path of attempting to alter social construction definitions and dictates of benefits and burdens. Instead, highly-mobilized SMOs have demonstrated reform success by "switching out" or reframing marijuana's use from a criminal endeavor of opportunity and responsibility on the behalf of government to allow physically suffering individuals (typically positive target populations endowed with policy benefits) access to marijuana as a pain-relieving option.



## Chapter Five: Venue Shopping, Patients' Rights, and the Marijuana Policy Project

*"The Raich ruling does not alter our work at all—we anticipated a loss, but the loss didn't change anything. In other words, the decision doesn't give the feds powers they didn't have before, it simply restates the status quo, which we have been and will continue fighting to change. In fact, the immense media coverage on medical marijuana because of this case only helped our work. Dozens if not hundreds of newspapers nationwide spoke out in editorials, calling for Congress to allow medical use of marijuana, and the story dominated the news for much of the week the decision was issued. The Court's decision specifically called on medical marijuana patients to seek redress through the legislative process, which was only a shot in the arm to our efforts---now we can almost think of our efforts as having been endorsed by the Supreme Court. The challenge by Raich and others in the past to the Controlled Substance Act evokes questions of federalism."*

-Krissy Oechslin (former) Assistant Director of Communications of *The Marijuana Policy Project* (MPP) in response to whether MPP's involvement in Raich should be perceived as a defeat to the Medical Marijuana Movement or offering opportunity to "enter" multiple policy making venues.

Though contemporarily, the political and social medical marijuana movement is perpetuated by individual and group contributions amounting to multi-million dollar resourced, highly tactical campaigns, initialization of the reform-based mobilization can be boiled down to a personal calling to sustain the very basic human desire to honor a loving, caring relationship. Marijuana's legal acceptance as a pain reliever, at least in California, can be traced to Dennis Peron. A self-admitted marijuana dealer for over 25 years, Peron returned from duty in Vietnam challenging the newly enacted CSA prohibition on marijuana by cultivating, distributing, selling, and using cannabis while living the hippy way by promoting the substance's benefits and living in communal surroundings. Though Peron's lifestyle seems to live on the edge of legality and public acceptance, residing in the San Francisco bay area throughout the 1970s and 1980s allowed him to enjoy less risk of facing penalties incurred from partaking in the marijuana culture and without the degree of hostility feared by those of Peron's sexual orientation,

homosexuals. Seemingly, Peron's knowledge and practice of all things marijuana, mystically or otherwise, would intersect with two of the major health dilemmas in American history-the AIDS/ HIV epidemic and a drastic rise in chemotherapy cancer treatment.<sup>112</sup>

In 1981, the first cases of Auto Immune Deficiency Syndrome or AIDS in the United States were diagnosed, by 1990 AIDS/HIV had become a household phrase associated with homosexual as well as promiscuous sexual behavior. Between 1981 and 1992, the Center for Disease Control estimated newly diagnosed AIDS patients rose from 318 to over 75,000 while the estimated death toll rose from 451 to over 50,000 nationwide.<sup>113</sup> In 1990, Dennis Peron's life-partner Jonathan West unfortunately joined those statistics by fatally succumbing to AIDS related illnesses. The death of his lover and comrade galvanized Peron to a broader awareness and practice of life, "at that point I didn't know what I was living for. I was the loneliest guy in America. In my pain, I decided to leave Jonathan a legacy of love. I made it my moral pursuit to let everyone know about Jonathan's life, his death, and his use of marijuana and how it gave him dignity in his final days."<sup>114</sup> Similar life experiences of Peron and West, unfortunately, were played out by hundreds of thousands of AIDS victims while waiting for a cure to AIDS and related illnesses. Marijuana, in its essence, an "old-world" herb employed in leisure, medical, and culturally practices for centuries was only illegally available to those suffering from what

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<sup>112</sup> See Malott, Michael. *Medical Marijuana: The Story of Dennis Peron, The San Francisco Buyers Club and the ensuing road to legalization.* 2010. San Francisco, CA: Michael Malott Publishing

<sup>113</sup> Center for Disease Control. 2001. *"HIV and AIDS---United States, 1981-2000."* Reported by: Surveillance Bureau, Division of HIV/AIDS Prevention, National Center for HIV, STD, and TB Prevention, Center for Disease Control. <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5021a2.htm> Taken last on September 13, 2012.

<sup>114</sup> Quote and Peron's biographical information taken from *"Force Behind Proposition 215 Says His Push Began as 'Legacy of Love': Marijuana: Dennis Peron is a cast as a hero, villain in successful California effort to legalize pot for medicinal use."* Article and interview conducted by Mark Evans-Associate Press.

can be considered the largest world health epidemic to strike since Europe waded through the Black plague. To bring pain relief to AIDs patients or those searching for succor from other diseases, using marijuana legally would be a trial of enduring the legal landscape of illicit substances and the speed of SMO reform efforts.

Marijuana's transformative narrative from illicit to medicine constitutes a viable reform policy, therefore presenting a genesis of an individual's idea and efforts, evolving into a proliferation of mobilization, then becoming a procedurally processed state and local codification of medically allowed marijuana use. As mentioned in Chapter One, the relationship between the American populace and marijuana equates to a paradox of a broad portion considering Americans, either at one time or another, either tried marijuana or passively condoned the substance while simultaneously holding a firm belief in federal prohibition. However, Peron, as impetus for reform, intersected in time and opportunity with the politics of California which allows for alternative policies usually thought too marginal for national acceptance to gain political viability at the state and local policy levels. Peron's initiative played to a willingness of the California electorate, and tradition of Progressive thought, to experiment. His version of a medical marijuana law also mimics the course of development of other successful medical marijuana ballot initiatives. The origins of Proposition 215 equates to multiple examples of trial and error within multiple venues of policy making. For if California SB 1364, co-sponsored by State Senator Milton Marks (D-San Francisco) and State Assemblyman Gil Ferguson (R-Newport Beach), would have gained gubernatorial approval from then-state executive Pete Wilson (R) following legislative passage in 1994, Peron would not have needed to

energize a statewide ballot campaign.<sup>115</sup> Alone, Peron's actions are noble and demonstrate how democratic institutions offer answers to some very personal problems. However, broad application of a reform policy usually stems from a far-reaching set of problems, many times reaching troubling circumstances in a relatively quick amount of time. San Francisco county and other areas with a concentrated populace of homosexuals allowed for a much needed hyper-focus on the rise of AIDS/HIV cases. Answering another, longer existing, medical crisis possibly lent to public willingness to discern between marijuana, the criminal element, and marijuana, alternative pain-reliever. In this sense, a specific political culture lent to challenging and refuting existing, well-accepted target population construction of a negative connotation. Such a mass political predisposition existing, typically marginalized policy options could be debated, and possibly enacted.

While beneficial inroads toward treating and curing cancer became expansive and accessible to a broader patient base, one of the most common treatments for nearly all cancers, chemotherapy, has contributed to popular outcry and scientific investigations regarding pain caused by the treatment's adverse effects along with the escalating costs of those treatments ranging, according to one *New York Times* account, up to \$250,000 a year per patient.<sup>116</sup> To combat the pain and appetite suppression associated with chemotherapy many physicians typically, and without consideration to non-pharmaceutical means, prescribe one of numerous

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<sup>115</sup> California Senate Bill 1364 would have amended California's Controlled Substances Act to allow for the medical use of marijuana, affectively rescheduling the drug so as to allow upon physician authorized suggestion patients to cultivate and use marijuana for medical purposes. SB 1364 passed the State Assembly 46-21 and the State Senate 21-14. Governor Pete Wilson vetoed SB 1364 in September of 1994. Legislative failure either by Executive veto or otherwise does not guarantee a terminus result for medical marijuana laws as evidenced by California and later in this chapter Rhode Island and Michigan.

<sup>116</sup> Kolata, Gian. 2005. "Slowly, Cancer Genes Tender Their Secrets," *New York Times*, December 27.

options made available via pharmacopeia. However, portions of that patient base reported ill-effects from synthetically formulated pain relievers or further suppression of their appetites. So, while recuperating from cancer treatment patients fail to garner the proper nutrients to energize their healing bodies and are drawn into ancillary sicknesses. Long known to produce the “munchies” effect, ingesting marijuana aided many cancer patients in regaining their appetites, thus allowing for consistent strength throughout the recovery process. Marijuana also has a naturally calming effect which can ease the patient’s anxiety brought on by the disease, treatment, and pain. While AIDS/HIV victims sought pharmaceutical “cocktails,” cancer patients relied mostly on chemotherapy. However, due to lack of appetite and detrimental side-effects brought on by chemotherapy and radiation treatments, patients sought CAM or “complementary and alternative medicines.” Driven by the ravages of cancer and chemotherapy combined, CAM treatment instilled greater belief in marijuana pain relief properties. By the late 1990s, according to one medical marijuana advocate “The industry as a whole seemed to be having a harder and harder time coming up with breakthrough drugs-drugs that were significantly different from what was already on the market, that worked better, that had fewer side effects that targeted ailments that had had no cure before this.”<sup>117</sup> While the first and only “medical necessity” defense for the legal use of marijuana was argued for the suppression of pain caused by glaucoma, the drastic increase in AIDS/ HIV, cancer rates and subsequent treatments contributed to a new belief in and reframing, amongst patients and non-suffering advocates, of marijuana use.

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<sup>117</sup> Hawthorne, Fran. 2003. *The Merck Druggernaut*. Hoboken, NJ: Wiley, 5-6

One year prior to Proposition 215 appearing on the November 1996 ballot, California's medical marijuana experiment was operating in a de facto manner primarily due to the founding of the Wo/mens Alliance for Medical Marijuana (WAMM) in 1993 and a thriving contribution from that state's illegal cannabis market system. In 1995, an American Civil Liberties Union public opinion poll found 84% of respondents favored "making marijuana legally available for medical uses where it has been proven effective for treating a problem."<sup>118</sup> Yet even with an acquiescent citizen voice and an elaborate, articulated cultivation and delivery system in place, medical marijuana users-patients suffering from a variety of maladies-still faced detention, arrest, conviction and punishment for simple possession along with more severe punitive measures for growing as little as one plant. However, legalizing medical use of the drug via the electoral arena would eliminate, at least at a state-level, the absolute nature of prohibition, the need for any future "medical necessity" argued litigation, and as a pointed tribute to Peron's deceased life partner, stop the persecution and prosecution of patients. Peron set out to shift marijuana's public and legal definition from "illicit" to a category of legality by maneuvering through California's institutional reform procedures.<sup>119</sup>

Peron set about gathering signatures from registered California citizens that had voted in the prior California election. Today, the expected cost of a signature gathering endeavor is close to \$1,000,000. Therefore, Peron faced a financial as well as political battle to put medical

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<sup>118</sup> American Civil Liberties Topline Poll issued November 1995 taken last on April 15, 2012 from <http://norml.org/library/item/favorable-medical-marijuana-polls>

<sup>119</sup> See Chapkis, Wendy and Richard J. Webb. 2008. *"Dying to Get High: Marijuana as Medicine,"* Chapter Two: "Set and Setting." New York, NY: New York University Press. In that chapter the authors describe WAMM's founding and cannabis partners.

marijuana on the November 1996 ballot. Again, California's history of marijuana cultivation and use was well rooted, allowing Peron allies in most, if not all, areas of the Golden State. Over 8,665,000 Californians cast ballots in 1994, mandating Peron to collect 433,269 verified signatures. His efforts garnered over 750,000 unverified signatures while leaving enough variance to easily eclipse the mandated number.<sup>120</sup> Though the California electorate recently rejected an all-out marijuana legalization ballot initiative (Proposition 19), the medicinal framing of cannabis proved to be a reform policy too alluring to reject with nearly 55.6% (5,382,915 yes votes) of voters agreeing with what was once only a sentiment in Dennis Peron's mind.

The following case studies demonstrate what was once a "hardest case" of policy entrenchment and "weakest case" for reform transformed via Social Movement Organizations reframing marijuana's uses by shifting the focus of target populations. As a lesson in applied politics, SMO campaigns disseminated their messages throughout governing institutions offering opportunities for policy reform. Also within this chapter, I expound on the ability of Medical Marijuana SMOs to directly and in association with local affiliates challenge and reform status quo illicit substance control policies. Again, the following case studies present evidence supporting the practice of venue shopping, thus potential success for policy reformers. Instead of offering multiple alternative frames or directly challenging status quo definitions, Medical Marijuana SMOs "shifted" the focus of marijuana's use by replicating and supplicating messages of "patients'" rights within multiple governing venues. Analysis, therefore, is focused on what

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<sup>120</sup> State of California Secretary of State's website: <http://www.sos.ca.gov/elections/sov/1996-general/1996-general-sov.pdf>  
Taken last on April 9, 2012

groups or populations are depicted through the dissemination of patients' needs frames, eventually offering findings of a detailed analysis pertaining to the operating of a venue shopping strategy. Medical Marijuana SMOs act in accord with Waltenburg's (2002, 1-2) claim that "Where groups decide to locate their energies...has a significant effect on the actions of our political institutions... [also], where groups decide to act has an obvious bearing on policy outcomes," yet knowing and understanding of what populations pro-marijuana SMOs feature in their frames seemingly offers more research and applicable purchase than simply "tracking" SMO institutional travels.<sup>121</sup>

By venue shopping "alternative" frames SMOs redirect public and institutional awareness of marijuana's medical potential from negative to positive target populations. This chapter's analysis focuses on reconciling historical antecedents with contemporary events pertaining to the Medical Marijuana movement's leading organization, the Marijuana Policy Project (MPP).<sup>122</sup> As demonstrated in Chapter Two, the Nixon Administration employed frames of deviant target populations, including criminal and counterculture groups, to promote the continuance of marijuana prohibition and a punitively-based model for federal illicit substance control policies. Representation of SMO development, reform endeavors, and change in

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<sup>121</sup> For another explanation of transforming a "hardest case" see Baumgartner, Frank R., Suzanna L. De Boef, and Amber R. Boydstun. 2008. *The Decline of the Death Penalty and the Discovery of Innocence*. New York, NY: Cambridge University Press, Pages 11-16

<sup>122</sup> MPP has financially supported, in full or partially, over twenty state and local campaigns along with helping to co-author congressional legislation introduced by Representatives Frank and Hinchey. Americans for Safe Access (ASA) are a prominent patients' rights and consultation SMO headquartered in Oakland, Ca. with offices in Los Angeles Ca, and Washington, D.C. MPP was the first SMO to station a full-time lobbying firm in Washington, D.C. with an Executive Boards divided into the following categories: Executive Director (Rob Kampia-also Founder), Director of Government Relations, Director of State Policies, Director of on line research, Director of IT, and Media Director. MPP, as unofficial, leader of the medical marijuana institutional movement coordinates and collaborates with ASA, and other less-resourced SMOs. However, ASA has their own agenda while sharing the same mission regarding the legalization and protection of medical marijuana patients' rights.



institutional status is presented and analyzed in order to demonstrate how, as Meyer has identified, “activists’ prospects for advancing particular claims, mobilizing supporters, and affecting influence are context-dependent” (Meyer 2004, 126). SMO presence and advancement of their respective causes is highly dependent on the ability of SMO directors to maneuver through the political process and constraints of policies, governing venues, and defined discourse. As identified by Ingram, Schneider, and deLeon (2007, 108), “social constructions are inherently resistant to change. Policy designs contain elements that can powerfully reinforce the social constructions of target groups and build up, reinforce, and undercut target groups’ attempts to change their situations” hindering what Medical Marijuana SMO are ultimately endeavoring, to shift long held and institutionally reinforced perception of cannabis users.

Altering or supplanting existing definitions within politics, law and discourse is integral to defining why a policy, namely marijuana prohibition, was established and sustains public and political support. In short, venue shopping-submitting policy options within multiple institutions for the purpose of identifying the most advantageous opportunity for success-is the strategy Medical Marijuana SMOs apply as they endeavor, as Gamson (1975) categorizes, to become “members” rather than “challengers.” SMOs challenge the status quo by essentially presenting their respective organizations as proprietors of reform policies. Only when SMO frames and policy options are debated and subsequently sustained can SMOs be categorized as respected forces or “members” with institutional present and prominence. The installation of pro-medical marijuana frames in electoral, legislative, judicial, and media milieus by SMOs serve to present what Goffman (1974) terms “schemata of interpretation” enabling citizens to “locate, perceive,

identify, and label" events and happenings in their lives." Frames, language, and placement of messages move beyond mere tactical choices for transforming SMO resources toward institutional change. First, the introduction of SMO frames redefine or "ignite" new ideas amongst the collective mind of the citizenry, transferring that belief in SMO produced frames to an outpouring of support resulting in legislative and electoral approval. SMO directed institutional challenges. Indeed, this researcher's reflection regarding interviews of institutional actors and SMO officials conducted for this research agrees with Kathleen Ferraiolo's experience (and hopefully that of many more scholars), "During my conversations with policy entrepreneurs, it was clear that public opinion and the availability of resources and spokesperson were paramount in their minds as they crafted policy images" (Ferraiolo 2009, 338-339). Though Ferraiolo was centrally concerned with how public opinion aided in medical marijuana frame crafting, this research takes a step "further" with examination of those featured in SMO frames and if public empathy is gained with the portrayal of patients seeking marijuana for medical use.

Moreover, collective action frames not only possess the ability to redefine an issue but also create an identity for SMOs as they craft, promote, and disseminate policy options alternative to the status quo. When considered in this light, Benford and Snow (1988) note framing's integral relationship in contributing to reform success, "social movements are not viewed merely as carriers of extant ideas and meanings that grow automatically out of structural arrangements, unanticipated events, or existing ideologies. Rather, movement actors are viewed as signifying agents actively engaged in the production of maintenance of meaning for constituents, antagonists, and bystanders or observers." In the last chapter, less systematic

and disparate periodical challenges to the federal government's illicit substances control policies were identified; however, since the mid-1990s numerous contemporary medical marijuana SMOs have emerged, challenged, and sustained alternative definitions, uses, and policies to federal prohibition of marijuana (Ferraiolo 2007). In Chapter Four, the reform efforts of NORML were properly showcased due to that organization's zeal in directly attacking status quo frames and bureaucratic hypocrisy pertaining to policy reform dictations mandated by the federal government. NORML, nobly, attempted to put marijuana in a positive light via public opinion, bureaucratic, and litigation campaigns while target populations underpinning the regulatory schemes of illicit substance control were put aside in favor of attempting to change cannabis' image.

Over time, marijuana's definition has been conflated with societal and political elements deemed detrimental with federal policy makers and authorities emphasizing marijuana's association as a criminal or counterculture influence. "Removing" cannabis from its federally generated association with crime, politically unacceptable counterculture elements, and other more harmful illicit substances enables SMO challenges and creates viable political opportunities for those groups to present reform options within institutional structures (Eisinger 1973). Tilly's advancement of Eisinger's seminal theoretical underpinnings pertaining to "opportunity," articulates and expands tactical importance of recognizing change over time and selection by political and social activists of a "repertoire of contention," which easily translates to challenging within multiple venues including electoral, legislative, judicial, media, and public discourse (Tilly 1978). As David Meyer notes, "for Tilly, tactical choice reflects activists optimizing strategic opportunities in pursuit of particular claims at a particular time."

Capitalizing on political and/or social opportunities is instrumental for SMOs presentation and campaigning of reform policies. When connecting opportunities to a historical narrative, “critical junctures” are illuminated, defining events in time that policy development and shifts of authority hinge on. The following chapter offers analysis of medical marijuana SMO challenges within governing institutions post-passage of California’s Compassionate Use ballot initiative in 1996, and over the course of the next ten years. Each attempt at reform by medical marijuana SMOs via electoral, legislative, or litigious means is presented in narrative form with accompanying analysis.

A closer examination of MPP strategies-framing and venue shopping- illustrate an agreement with Edwin Amenta and Yvonne Zylan’s assertion that “political opportunity theories expect challenges to flourish when and where openings are provided by members of the polity or by related challenges” (Amenta and Zylan 1991, 250). Medical marijuana SMOs have operated in a counter-intuitive manner by presenting their challenges first at the state level in what can be seen as “turning away” from the historical and governing point of origin regarding federal illicit substance control, the Executive Office of the President. MPP then focused the crux of their organizational framing toward reforming policy so as to create focus and understanding of medical marijuana legalization of a “contending” and “deserving” group, namely, the health-related concerns of patients; a population traditionally advantaged and benefited through the use of target populations within policymaking processes.<sup>123</sup> Though MPP established a full-time lobbying presence in Washington, D.C. , the organization’s success and

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<sup>123</sup> See Ingram, Helen, Anne L. Schneider, and Peter deLeo in Paul A. Sabatier *“Theories of the Policy Process.”* 2007. Boulder, CO: Westview Press, 102, Figure 4.2.

rapid alliance with localized illicit substance reform groups stands counter to Constantelos' (2010, 462) assertion as to where and who SMOs institutionally challenge, "lobbying patterns should be strongly correlated with the organizational structure of interest associations. National associations were established to influence federal policy, while subnational associations focus on lower levels of government." MPP, seemingly, is keeping vigilant by posting its national headquarters and Director on Massachusetts Ave in D.C., right around the corner from the Capitol Building. While "working" national representatives, MPP is involved with local/state groups and existing foundations which this researcher claims stand as better predictors of their campaign targets than a high profile national campaign. Alone, challenging in a non-intuitive manner neither guarantees success nor opportunity for reform minded SMOs; however, exposing weaknesses in government sponsored policies subsequent to shifts in political opportunity is foundational for social movements or any insurgent element in attempting to place their alternatives within public discourse and political agendas. Though political researchers continue to differ in their findings regarding the "best" structures of opportunity or strategies SMOs should follow, sociologists, maybe more removed from political norms, assert parallel claims regarding SMO driven reform. In short, identifying or causing such shifts enables SMOs to become aware and take advantage of a disruption in the political status quo (Eisinger 1973).

The Marijuana Policy Project (MPP) in conjunction with other like-minded collectives, attempt to change public policy not *only* by means of heightening public awareness of the issue and winning over policymakers but also by "shopping" or competing for policy more favorable to their aims in various political and social venues. Pralle (2003, 233) defines selection of

institution or venue shopping as "the activities of advocacy groups and policymakers who seek out a decision setting where they can air their grievances with current policy and present alternative policy proposals." Therefore, framing an issue becomes analogous to selling one's wares to many buyers. SMOs compete across political and social milieus with multiple frames in search of a productive fit between a given venue and their numerous frames that offers a political process most receptive to their policy desires. My line of reasoning follows, amongst others, the assertion of Petracca (1992), that "how an issue is defined or redefined, as the case may be, influences.... the probability of a policy outcome favorable to advocates of the issue" and Hilgarnter and Bosk's (1988) propose that different public arenas-legislatures, courts, bureaucracies, the media--have different "selection principles" that are satisfied more or less by different problem definitions. Indeed, medical marijuana SMOs do not restrict their cognitive approaches to a single frame or to participating in but a few venues of reform for risk of failure. During the nebulous days of pro-marijuana advocacy, or honed to only litigious efforts, NORML and other organizations disseminated multiple messages of why marijuana prohibition was a federal refusal of rights. However, contemporarily, both MPP and ASA have contained reform frames to the needs of a specific target population.<sup>124</sup> While ASA had always been focused on laws and medical allowances benefiting patients, MPP's broadening of campaign endeavors can be juxtaposed with a attenuating of pro-medical marijuana frames with a varying nuance of "patients" rights messages (see below Table 6). Politically and policy-wise, MPP's frame

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<sup>124</sup> Though the Marijuana Policy Project (MPP) is easily the most prominent medical marijuana lobbying group and campaign coordinators, having a full-time office in Washington, D.C and contributing to over forty medical marijuana campaigns nationwide, MPP also advocates a range of pro- marijuana reforms including legalization, decriminalization, and medical use. [www.mpp.org](http://www.mpp.org)

specification of patients' rights and resources clarifies, according to Wendy Chapkis and Richard Webb any public misunderstanding or distrust regarding SMO intentions, "Tensions between medical and social users of marijuana are unavoidable in a political context in which nonmedical use is at once widespread, formally prohibited, and often severely punished. Because of the social and legal penalties associated with recreational use, it is reasonable that some consumers would attempt to acquire a measure of legitimacy and protection by identifying a medical need for marijuana" (Chapkis and Webb 2008, 86). Politically tactical as MPP's focus is, reform efforts are better received by advocating for the demographic the reform would serve and when not presented as an extreme answer to an extreme policy means (prohibition). In this vein, SMO are tailoring and practicing a two-pronged strategy of frame dissemination. First, by reframing marijuana as a patient "need" or resource, an organizational challenge of institutional status quo is made. Second, affronting tradition target populations, marijuana users as criminals/deviants, is accomplished by parsing patients from those leisurely using cannabis. The former tactic is instrumental in achieving a reconsideration of the drug when submitting rescheduling petitions, legal frames, and focusing public attention. In essence, the status quo frames and policies crafted by federal authorities are not directly attacked which spares MPP a defense political posture.

**Table 6: Medical Marijuana Social Movement Organization Proliferation**

<u>Social Movement Organization</u>	<u>Year Established</u>	<u>Primary Purpose</u>
S.A.F.E.R.	2004	University based organization supporting policies that legalize substances as substitutes to alcohol use. <sup>125</sup>
Americans for Safe Access	2002	Patients' Rights Defense
Green Aid	2002	Marijuana Legal Defense
Drug Policy Alliance	2000	Health Policy of various substances
Marijuana Policy Project (MPP)	1995	Marijuana Rights
Multidisciplinary Association for Psychedelic Studies	(1986) Began Funding medical marijuana efforts in 1995	Research and Education of alternative drugs
Harm Reduction Coalition	1994	Creation and Enactment of alternative drug policies

<sup>125</sup> Though S.A.F.E.R. is a state (Colorado), not nationally based SMO, I include this group because MPP parented with S.A.F.E.R. in several local ballot initiatives. 2004 is S.A.F.E.R.'s year of establishment, but their resources are mobilized in mass specifically for election year activities.



Drug Reform Coalition Network	1993	End Drug Prohibition
Wo/Men's Alliance for Medical Marijuana <sup>126</sup>	1993	Cultivation and Distribution of medical marijuana at no cost

Perception of medical marijuana, “disrupting” the status quo can be attributed to an inconsistency and abundance of ballot initiatives, legislative submissions, and litigious opportunities. Direct democratic means are inconsistent due first to the fact that only twenty eight states offer such opportunities, yet prevalent enough because of quickly reoccurring election cycles. The ballot initiative process alone does not act as impetus for mobilization of reform-inclined SMOs. Though medical or leisure use of marijuana is federally illegal, the cultural acceptance of the drug beneficially influences SMO progress to move from challenger to member status. In essence, on a national basis, institutional acceptance of marijuana’s medicinal worth lags in contrast to public opinion.<sup>127</sup> Intrinsic to the history of American marijuana use is a secretive public acceptance of the drug pertaining to its private use while a public (until the last two decades) agreement with federal standards banning the trafficking and use of the drug (Morgan 1980; Reuter & McCann 2000). Seemingly, such a paradoxical relationship suggests that the door of political opportunity is consistently being “knocked” on,

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<sup>126</sup> While conducting interviews with several Santa Cruz, Ca. officeholders I was informed that this organization was the primary impetus for Proposition 215 as well as being responsible for medical marijuana distribution prior to California’s legalization. Valerie and Mike Corral are the founders of WAMM and are well known in the medical marijuana community, though they keep a low political profile in comparison to MPP and ASA.

<sup>127</sup> Public opinion statistics taken from Gallup.com as published in the Marijuana Policy Project’s *Spring 1998 Report* V 4, I, p. 17

just waiting to be fully opened in the form of institutional reform. Yet, what institutional door should Medical Marijuana SMOs knock on to acquire opportunity and reform?

For all the talk of political institutions, opportunities, and processes pertaining to social movement endeavors, the political status quo is more resilient to insurgents than to allow such groups unfettered entry and disruption of the established order. Referring back to Eisinger's comments concerning political shifts and disruption of the political status quo, medical marijuana SMO growth, development, and reform successes would be severely impaired if not for what McAdam's (1982) terms "events and processes likely to prove disruptive [including] wars, industrialization, international political realignments, prolonged unemployment, and widespread demographic changes." For the cause of medical marijuana, the passage of California's 1996 Compassionate Use Act can be perceived as a "disruptive" force to illicit substance control status quo. However, the AIDs epidemic of the 1980s and the inability of the pharmaceutical industry to produce a pain reliever attenuated to aftereffects of cancer treatments is probably a more plausible force to identify as triggering public agreement with medical marijuana laws. Such prolonged health crises coupled with the aforementioned commonality of American leisure activity of marijuana use aids advocate reform efforts from a public discourse and agenda setting perspective.<sup>128</sup>

Though 1996 can be easily perceived as a critical juncture in illicit substance control policy, California's Compassionate Use law does little to explain the proliferation of illicit substance reform driven SMOs aligned with MPP and the succession of medical marijuana laws

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<sup>128</sup> For all significant periodical challenges to the Controlled Substance Act of 1970 marijuana prohibition and Schedule I status see detailed accounts in Chapter Four.

adopted by sixteen additional states and the District of Columbia (See Tables 6 and 7).<sup>129</sup> Many SMO reform victories subsequent to Proposition 215's passage are explained through an analytical lens honed to how medical marijuana SMOs facilitated, in whole or part, public awareness, reframing, and differing campaign strategies within varying policy making contexts. Mobilization of SMO members and resources cannot be explained by coincidence or entirely by foundational social movement theoretical models. What follows are five case studies of medical marijuana SMO venue shopping activities covering a variety of reform opportunities including state ballot initiatives, legislative lobbying, and litigious pursuits. Each case study differs in institutional process and SMO contribution. In Michigan, MPP spearheaded a ballot initiative which amounted to a series of failed legislative attempts at enacting a medical marijuana law. By transferring venues and delivering frames of patients' rights supported by Michigan-based medical professionals, MPP employed existing political backing to make Michigan the thirteenth state to enact a medical allowance for marijuana. In Hawaii, MPP worked in parallel and cooperation with that state's governor to produce competing, yet complimenting medical marijuana bills. The Hawaiian campaign is noteworthy for being the first time MPP sought out the challenge of a legislative debate by offering up their organization's "model" bill for state legislatures willing to contemplate a break with federal prohibition. The last state-based effort demonstrates the resiliency of MPP's politically "recuperative" powers by continuing to fight for patients' marijuana rights following Rhode Island's governor vetoing legislative passage of a

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<sup>129</sup> Briefly defined by Ruth Berins Collier and David Collier in Chapter One of their work *"Shaping the Political Arena: Critical Junctures, the Labor Movement, and Regime Dynamics"* a "critical juncture" has "three components: the claim that a significant change occurred within each case, the claim that this change took place in distinct ways in different cases, and the explanatory hypothesis about its consequence" (Collier and Collier 1991, 27). For more applied understanding of critical junctures with American policy development see Karen Orren and Stephen Skowronek. 2004. *"The Search for American Political Development."* New York, NY: Cambridge University Press.

medical marijuana bill. Forming a legislative coalition for introduction, debate, and voting of reform measures is a daunting task for MPP, as a then-barely ten-year old SMO. Maintaining that same coalition then recruiting new legislative support for a veto override called for MPP to extend their campaign strategy and associations to narrowly accomplish their ultimate goal. The last case study explains through a merged analysis of two United States Supreme Court rulings from *United States v. Oakland Cannabis Buyers' Cooperative* (2001) and *Gonzales v. Raich* (2005) constitutional and institutional policy barriers to federal acceptance of marijuana's medical worth. Though MPP was on the periphery of litigation in *OCBC* with their submission of an amicus brief in collaboration with Rick Doblin, Ph.D. a leading illicit substance researcher, insights into venue shopping are garnered with inspection of what MPP claimed in comparison to other pro-medical marijuana amicus filers. Some four years later, Angel Raich attempted to parlay a U.S. 9<sup>th</sup> Circuit Court of Appeals decision favoring her 10<sup>th</sup> Amendment arguments into an affirmation by the U.S. Supreme Court. Led by Federalist Society member and constitutional scholar Randy Barnett, Raich's legal team was aided with input from ASA and MPP legal counsel. Though MPP again contributed an amicus brief with researcher Doblin, the medical marijuana SMO's involvement only included updating Raich's plight and campaigning for public acceptance of medical marijuana via internet and mailing campaigns well before oral arguments were heard. In earnest, my research is exploratory with sanguine intentions of demonstrating how a sampling of SMO venue shopping varies from arena to arena, thus contributing to a broader understanding of SMO advocacy reform pursuits, failures, and successes.

**Table 7: States with Medical Marijuana Laws and Enactment Means**

State and Year	Means and Vote
California-1996	Ballot Initiative-56%
Alaska-1998	Ballot Initiative-58%
Oregon-1998	Ballot Initiative-55%
Washington-1998	Ballot Initiative-59%
Maine-1999	Ballot Initiative-61%
Colorado-2000	Ballot Initiative-54%
Hawaii-2000	Legislative-32-18 H/ 13-12 S
Nevada-2000	Ballot Initiative-65%
Montana-2004	Ballot Initiative-62%
Vermont-2004	Legislative-H 82-59/S 22-7*
Rhode Island-2006	Legislative-H 52-10/S-33-1
New Mexico-2007	Legislative-H-36-31/ S-32-3
Michigan-2008	Ballot Initiative-63%
Arizona-2010	Ballot Initiative-50.13%**
District of Columbia-2010	Ballot Initiative and congressional adopted amendment (13-0)***
New Jersey-2010	Legislative-H-48-14/ S-25-13
Delaware-2011	Legislative-H-27-14/ S-17-4

## Changing Institutional Lanes: From Legislative Failure to Ballot Initiative Victory in Michigan

By allocating personnel and monetary resources, MPP and ASA intended to achieve several political and policy goals. Either as primary or secondary directors, MPP and ASA lent to a proliferation of illicit substance reform policy campaigns including non-binding “lowest priority” measures, localized legalization, or statewide medical marijuana laws mandating dispensaries, quality control of marijuana as a medical product, caretaker limitations, and cultivation allowances.<sup>130</sup> While “step one” on the policy process might be to infuse public discourse with alternative frames regarding marijuana, existing frames and past institutional acceptance or refusal of reform proposals are not dismissed as deterrents but rather learning and adapting tactics taken from those institutional arrangements impeding reform. The ultimate objective of SMO driven reform being passage of medical marijuana laws legitimately served intended clients through a framing of the issue with a target population deserving of policy benefits-physically and mentally ailing individuals. Of course, any and all of these state and local laws still stand contrary to federal prohibition while in practice developing a belief by non-federal public officials that illicit substance policies have developed as to shift authority of that policy milieu. Exact contributions by MPP and ASA are determinant on what political opportunities were allotted within each state and institution of reform.

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<sup>130</sup> “Lowest-priority” laws are, for the most part, county, city, and town-based policies obligating law enforcement to make marijuana possession arrests and/or citations their lowest-priority amongst their various duties. Most of these laws have been instituted via local referenda. See The Marijuana Policy Project website for list of communities that have adopted such laws: [www.mpp.org](http://www.mpp.org)

Seemingly, many political opportunities for MPP and ASA arose from passage of California's Proposition 215. However, Proposition 215 should be considered as framework, tangentially germane to successful ballot and legislative campaigns operated or supplemented by MPP and ASA, thus research and analysis of contemporary SMO establishment, mobilization, and success lay separate. While public advocacy (garnering needed signatures and monetary resources) and electoral backing (54% of California voters approved of the measure) is evident, little evidence suggest 1996 served as any more as symbolic beyond 1996. Subsequent to Proposition 215's passage, legalization, decriminalization, and medical marijuana advocates were confronted with a line of inquiry reminiscent of the 1972 cinematic depiction of a senatorial campaign entitled "*The Candidate*" where the title character offers up his last utterance following an unexpected victory, "what do we do now?" Instead of movement or organizational paralysis being allowed to set in, MPP diverged from their broad marijuana legalization advocacy and organizationally focused on promotion of cannabis as possessing medical potential for those seeking alternative pain relief remedies. Such a strategy allowed organizational leaders to collaborate with other medical marijuana SMOs specializing in the medical properties and patient needs regarding marijuana. Policy analysis and preparation by MPP then favored a population traditionally garnering public and policy maker empathy. Just as Nixon had employed the social construction of "veterans" to persuade congressional members to commit funding toward medical treatment for American military personnel returning from duty in Southeast Asia addicted to various substances, MPP was "shifting" illicit substance reform to favor "advantaged" groups. This constituted a divergence from typical punitively-based created policies shaped from "deviants" including drug addicts and criminals (Schneider

and Ingram 1993). However, policy creation and debate would have to wait until MPP and their brethren SMOs could organize and mobilize with definitive direction.

With no definitive path and obvious leaders, the medical marijuana cause was further shaped and expanded via mobilization in various political and social directions. Americans for Safe Access (ASA), driven by the need to sustain and reinforce patients' rights in medical marijuana states, established itself six years after California voters found favor with the Compassionate Use Initiative. MPP, already promoting marijuana decriminalization and legalization with their founding in 1995, devised another "spoke" in their advocacy wheel by sponsoring medical marijuana campaigns and legislation even though one of the long-range goals of medical marijuana SMOs remains the re-categorization of cannabis from a prohibitive status to a position on the CSA's Schedule of Drugs so as to federally acknowledge the medical worth of marijuana. Thus, what emerges equates to a shift of states and localities from a law enforcement-first model of their illicit substance control resources redirected toward health-based programs. Informing and indoctrinating the public sector of illegal drug use as a health-based set of problems, thereby altering cultural and political definitions of illicit substances, reshapes attitudes about reform measures and introduces the possibility that federal prohibition is neither the lone nor most beneficial regulatory solution for public contemplation and institutional implementation. SMO framing enables public and policy debate a substitute for federally crafted and propagated definitions possibly "removing" criminal conceptualizations of marijuana as a public focus and replaced as Koch claims with a, "a central organizing idea for making sense of an issue or conflict and suggesting what is at stake" (Koch 1998, 210). What is at stake equates to marijuana's medical and economic worth being transformed from Nixon Era



germinated criminal and counterculture connotations (which Reagan intensified) then to the Bush Administration's fixation on international traffickers to the health of patients suffering from the effects of cancer treatments, glaucoma, or a litany of other possibly fatal illnesses. At stake, is the transformation of marijuana policy status from a myth-based, punitively-dependent paradigm and politically driven set of regulatory dictates to scientifically substantiate governing, correctly targeted policy beneficiaries, and a federal regulatory scheme based on fact-finding and scientific results.

Essentially, SMO dissemination of patients' rights, states' rights, and other alternative frames contribute to a new public discourse including a nuance of marijuana use, asking the public if they accept the legalization of marijuana for medical use rather than just presenting a dichotomous prohibitive message that often is conflated with deviant intent and behavior. Public reconsideration of marijuana's medical worth is due not only to SMO venue shopping at multiple levels of government but also a proliferation of pro-cannabis messages within various democratic institutions and media outlets. Diffusion, media attention, and institutional debate of new, pro-medical marijuana frames suggest cause for public opinion polls to demonstrate a rise in favorability for marijuana statute reform.<sup>131</sup> The relationship between SMOs and the media is, as many scholars have asserted, a reciprocal one in which SMOs desire that their message be the preferred frame reporters employ, while the media look to SMO activities as generating news (Molotch 1979; Gitlin 1980; Paletz & Entman 1981; Ryan 1991). In this way

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<sup>131</sup> Both Harris and Gallup polling as of 2009 report amongst all U.S. adults asked: *"Should the use of marijuana be made legal?"* 44% of Gallup participants responded in the affirmative while 42% of Harris participants in the same. When asked: *"Should marijuana be legalized for medical use?"* nearly 75% responded in the affirmative for both polling organizations. Gallup.com and Harris.com Taken last on September 1, 2011

SMOs gain free publicity, mobilizing power, validation, and scope of the problem is enlarged. The last point is significant because it heightens the conflict, debate, and the possibility for change leading to criticism and advocacy (Schattschneider 1960; Gamson & Wolfsfeld 1993). Thus, citizens are exposed to an SMO's frames through a third party acting as a conduit that the public has traditionally accepted, and most likely respects in regards to what constitutes news. This process also allows for public skepticism to be reduced stemming from frame bias developed by the creation and promotion by federal prohibitionists and against reform-driven SMOs. One could conceptualize this process as "leveling the playing field" between government/ status quo frames and SMO alternatives. In short, SMO press releases and interviews with the media is another avenue for garnering public support and frame shifting.

Though unrelated simultaneous shifts in public opinion and successful medical marijuana political and legal campaigns are possible, the concurrent rise in issue saliency with institutional submission of alternative frames is consistent with policy process models which are given more detailed analysis later in the research.<sup>132</sup> Convergence of state and local campaigns with congressional debate, inquiry of presidential candidates and the occasional judicial rulings of existing legal parameters produces fertile policy debate all the while MPP and ASA apply tactical schemes for reform. Primarily, MPP and ASA have "inserted" target populations within institutional messages as impetus for reform campaigns. Political opportunities, either existing as institutional structures or manifested through SMO strategies emerged from a ferment of institutional avenues and SMO associations with governing officials. Such a coalescing of SMO

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<sup>132</sup> E.E. Schattschneider 1960. *"Semi-Sovereign People: A Realist's View of Democracy in America."* Chicago, IL: Holt, Rinehardt, and Winston Publishing. The author discusses why "broadening the scope of conflict" via public discourse can raise issue saliency due to potential threat a policy option or issue presents to the status quo.

organizers, governing authorities, and public acceptance due to a “transformation” of frames is evinced within this research. Each of the following case studies of a SMO state-based reform campaign constitute a successful employment of positively perceived and politically advantaged target populations (patients) who are defined as traditionally benefiting recipients of public policy resources. As a reference marker, I remind the reader that direct democracy in the form of California’s Proposition 215 was the initial post beam in constructing a medical marijuana social movement. Indeed, ballot initiatives represent the majority of SMO reform campaigns. However, ballot campaigns are neither self-generating nor perpetuate without SMO collaboration with waiting advocates ready to publicize why the time for reform is at hand. Beginning with Michigan, I describe and analyzed the framing strategies primarily generated through The Marijuana Policy Project’s endeavors to legalize marijuana for medical use.

#### Framing Patients’ Rights with Homegrown Support: The Marijuana Policy Project Transforms Legislative Failure to Initiative Success in Michigan

Why Michigan? The successful passage of Michigan’s Proposal 1 stands unique within the collective of seventeen medical marijuana states. Michigan was a departure for MPP investment and venue opportunity. That is to state, successful ventures in western states were consistent with affiliating reform with those states “Progressive” heritage and ballot initiative process. Michigan, though known for union strongholds (Detroit) and university settings (Ann Arbor), also includes an electorate with favoritism toward Gun Owners’ rights and electing Republican governors. Enacting medical marijuana allowances seemed a long shot at best.<sup>133</sup>

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<sup>133</sup> For a detailed history of ideological voting tendencies of the Michigan electorate see *Michigan in Brief*, an online, peer-reviewed document sponsored by The Michigan Nonprofit Association and the Michigan Historical Society <http://www.michiganinbrief.org/edition06/text/> Taken last taken on June 22, 2012. Also for an understanding of the

Yet, MPP held an advantageous foundation from which to mobilize and build. In 2004, municipal voters in Detroit and Ann Arbor, ratified medical marijuana allowances for their respective cities. Two election cycles later the voters in Travers City and Ferndale also agreed to enact the use and distribution of medicinal cannabis. All four of those municipal referenda had winning margins of over twenty percent.<sup>134</sup>

Aside from localized medical marijuana inroads being made and perhaps taking advantage of reform momentum, Michigan state Representative Lamar Lemmons' introduced HB 5470 during the 2005-2006 legislative session. HB 5470 would grant all Michiganders with a physician's written certification access to medical marijuana. Representative Lemmons' legislative proposal preempted MPP's testing of initiative waters. However, Lemmon's attempt to build on city-based medical marijuana successes failed to garner acceptance from his fellow assembly representatives, failing as had numerous other drug control reform-minded submissions prior to Lemmon's. This case study examines a classic back and forth between "experts" opposed and supporting, then public enactment of a "Compassionate" care law in the form of medical marijuana allowance. MPP played the part of both legislative lobbyist and campaign organizers. How MPP "built" upon an existing foundation of public and political support contributes to identifying why SMOs, NGOs, unions, and other advocacy groups venue shop as well as why they choose the institutional arenas as most opportunistic. By tapping into existing legislative belief in medical marijuana as a viable, beneficial public policy for Michigan,

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foundations and ideological preferences of the American voters see Converse, Phillip E. and Michael S. Lewis-Black. 2008. *"American Voter Revisited"*. Ann Arbor: MI, University of Michigan Press

<sup>134</sup> Ballot initiative voting results taken from [www.mpp.org](http://www.mpp.org) and Secretary of State for Michigan "Elections in Michigan" website: <http://www.michigan.gov/sos/> Taken last on July 22, 2012

MPP repressed some amount of political backlash during the ballot initiative campaign, garnered existing sponsors in and out of the legislature, and brought together “pieces” of a coalition in-waiting.

Michigan’s initiative process offers added political and policy complexity not present in any of the other state-based medical marijuana statutes. While MPP allocated the monetary means for the signature gathering process from their state campaign largesse, as well as recruiting volunteers and paid campaign workers then canvassing for and garnering nearly 500,000 signatures, a last legislative hurdle existed. Legislators had a final veto point subsequent to signature certification. Therefore, the issue became whether representatives would vote against medical marijuana, as had been the case on several occasions, or vote against the “peoples” voice to determine if medical marijuana should be instituted. By engaging multiple policy making arenas, MPP broke new ground in venue shopping by circumventing direct responses from the assembly, causing a situation that put the onus of voter reprisal on state representatives. The few supporters MPP had within the Michigan Assemblies guaranteed a reframing of the issue from drug reform (in essence, breaking prohibition) to placing anti-medical marijuana as political opposition or impediment to direct democracy. Offering up what could be labeled as controversial, immoral, or impractical was decided by a faction of the mobilized polity-the electorate.

While the legislative process eventually played out in favor of endorsing the signatures for placement on the next ballot, MPP began to frame the issue not in states’ rights or individual freedoms, rather a variant of patients’ rights messages the SMO had disseminated and

promoted in states where medical marijuana laws has already been enacted. Parsing out California's Proposition 215 official title of "Compassionate Use Act," MPP attacked anti-medical marijuana advocates by claiming they were denying patients "compassionate care." Through the crafting and dissemination of several biographical vignettes, MPP publicized individuals who depended on the use of marijuana to relieve pain due to chronic illness and/or cancer treatment. These messages focused not on the possibility of marijuana possessing medical relief or remedy; rather, public attention was drawn to law enforcement and prosecutorial zeal in arresting needing patients which was then presented as tantamount to impeding access to medicinal relief and causing additional pain to already suffering individuals. In short, prohibition and those enforcing a seemingly absolute law were themselves committing an injustice. The frame was intended to evoke empathy from voters while chastising law enforcement as acting in a manner seemingly antithetical to their professional mission. Television, print media, and internet campaigns employed direct quotes from patients using medical marijuana or relatives of deceased patients who were forced by prohibition to terminate the use of cannabis. The first set of MPP produced and disseminated Michigan-based advertisements featured Deb Brink, an oncology nurse, and George Wagner, a physician whose wife passed away while being denied marijuana's "alternative" pain relief. In the ad, Dr. Wagner urges Michigan voters to draw a new conclusion on marijuana and vote in favor of medical use of cannabis by defining prohibition as a policy set manifest with injustices, such as impeding a patient's right to seek medical advice on the subject. His plea is simplistic in nature, yet identifies the status quo as a legal and possible ethical travesty for those desiring medical marijuana, "It shouldn't be a crime to follow

a doctor's advice."<sup>135</sup> Reminiscent of, but converse to, Nixon, Reagan, and Bush's conflation of crime and marijuana use, MPP "deconstructed" the federal social construction of marijuana users as a target population and "reconstructed" a new, more proper image of medical marijuana by attempting to generate voter sympathy as to patient access to alternative medicines. Though marijuana users are typically a disadvantaged group, MPP was essentially realigning that demographic with frames intended to relieve them of policy mandated punishment in exchange for policy benefits.

Beyond the intrinsic personal sentiment Wagner expresses is an indication to voters of authoritative expertise regarding the issue. Conceptually, the testimonials of Wagner, a doctor and Brink, a nurse while expressing the need to reexamine marijuana as benefiting a vulnerable group, also exposes the ill-reasoned and detrimentally practiced policy of prohibition. Not only was MPP reframing how marijuana use perceived, but also drawing medical marijuana and its messengers in from the margins to more of a "mainstream" position within discourse and onto the political agenda. In a broader analysis of medical marijuana research and while MPP operated their various reframing political campaigns, a battle waged regarding the need to define and write illicit substance policy, particularly marijuana, focused on scientific findings versus conjecture extrapolated from popular myths, morality-based reasoning, and rhetorical conflagrations. Medical marijuana SMOs crafted and disseminated messages similar to what Baumgartner, De Boef, and Boydstun identify as the "innocence frame," anti-death penalty

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<sup>135</sup> *Detroit Free Press*. 2008. Editorial "Yes on Proposition 1: Allow Seriously Ill People the Relief Marijuana May Offer." October 2.

advocates “pushed aside” traditional schemata of the death penalty (morality, constitutionality, or cost) to emphasize innovative frames including innocence and fairness along what the authors see as “along a particular dimension” for public reconsideration of the issue. One of reasons or properties beyond the innocence frame is “new scientific technologies such as DNA testing, which provides overwhelming evidence of innocence in particular criminal cases” (Baumgartner, De Boef, and Boydston 2008, 4-5). Employing a target population “more deserving” of policy benefits than punishments also necessitated composing a third layer of reasoning of support to underpin patients’ rights frames infused with an empathy evoking population. The “third” component or layer would be nonpartisan and, likely, universally accepted.

By scientifically basing frames, MPP was first “repositioning” patients’ rights along the illicit substance control policy issue dimension. Second, and ironically enough, concurring with one-time Drug Czar Barry McCaffrey’s call for “Drug policy must be based on science, not ideology.” McCaffrey’s ignorance, though nobly balanced with calls for scientific findings, is countered by public opinion polls demonstrating that legalization of medical marijuana is not emphatically divided along ideological lines. A significant difference between federal urging to “reassess the science base” of cannabis and SMO focus on patients’ directed policy are the wanted results. While MPP was obviously promoting scientific studies to claim marijuana as a safe pain-relief alternative, Chapkis and Webb note that federal government intentions are intended to further marginalize marijuana from the spectrum of legitimacy as in federally-endorsed studies to find pharmaceutical synthetically-based substitute for marijuana, “The development of Marinol provided federal drug prohibitionists with an important-if



contradictory-argument against the rescheduling of marijuana for medical use: not only does cannabis have no medicinal value, but also all its important medicinal effects are better delivered in the form of a pill than a plant.” In a study examining cannabis effects on AIDA patients specifically, the authors note institutional bias, “NIDA demanded that the study be transformed into an assessment of the risks of cannabis use by AIDS patients” (Chapkis and Webb 2008, 66-67).<sup>136</sup> In a more “genuine” effort, the federal government endeavored to link scientific findings to original drug war frames crafted by Nixon, then recycled by Reagan, Bush, and Clinton. Their own findings purged a bit more legitimacy from already hollowing prohibitive frames.

While MPP featured Dr. Wagner’s and Nurse Brink’s testimonials in the run-up to the 2008 election, earlier passage of municipally-based medical marijuana ordinances in four Michigan cities, including Detroit and Ann Arbor, offered the SMO a foundation from which to criticize Michigan law enforcement and promote patients’ rights. In essence, MPP was tapping into a popular conservative vein of governmental intrusion that resonated with Michigan voters. Executing strategy that builds on an existing ideological base agrees with Constantelos’ (2010, 462) assertion that “In addition to the institutional factors, there are many economic, organizational, and political variables that may affect which government level interest groups will target.” Though suggestive, MPP failed to intensify or increase their level of resource and

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<sup>136</sup> The authors cite Rick Doblin, Ph.D. 2004. Amicus Curiae brief in U.S. Supreme Court case of *Ashcroft v. Raich*: 4. Doblin is the founder and director of the Multidisciplinary Association for Psychedelic Studies (MAPS), a nonprofit research and educational organization and pharmaceutical company working to develop cannabis and other Schedule I drugs into FDA-approved prescription medicines. See <http://www.maps.org>

personnel mobilization following legislative rejection of several medical marijuana bills, instead reserving full financial and personnel support for the ballot initiative process that allowed for direct appeal to voters. It is also worth noting that this type of frame presentation distanced MPP and their local affiliates without being given the moniker of “extremists.” MPP was not advocating a marginalized issue rather promoting an issue that had been repressed by governmental forces. Again, the issue and those espousing alternative policy options run the risk of initially being perceived as foreign elements or “challengers” to the status quo and face a formidable path. By connecting their frames to existing, well-accepted ideologies, philosophies, and policy positions, MPP enabled a legitimacy of issue and presence within governing institutions. Appealing directly to the citizenry by presenting messages from medical experts challenged the denial of state policy makers to pass medical marijuana legislation. Public discourse was also infused with a rearticulated version or “new frame” of the issue and eventually into the electoral arena for voter consideration.

In May of 2001, Gallup produced public polling evinces a slow increase in public approval of medical marijuana, most which likely encouraged MPP efforts and aided in fundraising, however, a history of legislative submissions prior to launching a ballot initiative campaign should not be discounted. MPP and local advocates were not starting out “cold,” but rather from an existing foundation of public and political awareness of their cause.<sup>137</sup> At first glance, odds for MPP’s success seem low due to what Karch (2009) identifies as a diffusion of power within and throughout American institutions, thus the decentralized structure (initially)

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<sup>137</sup> <http://www.gallup.com/poll/2902/Americans-Support-Legalization-Marijuana-Medicinal-Use.aspx> Last taken on June 12, 2012.

impedes the adoption of social policies because it gives opponents of policy initiatives multiple opportunities to block them. However, even though there are numerous veto points, each of these settings allows access for supporters. Frustrated in one venue, reform minded advocates can try to achieve their goals in another setting. Intuitively, MPP's efforts would be directed away from a venue of denial as with their divergent approach to federal lobbying; yet, a history of medical marijuana legislative submissions and debate presented MPP's electoral campaign an opportunity to reframe medical marijuana. Though each venue is a substantial determinant for choice of frame, timing of dissemination, and sequencing of issue presentation, MPP capitalized on unsuccessful legislative framed in "patients' right" without nuance. Remember also that the bills submitted by Representative Lemmons and others were rejected by politicians, not patients or their advocates. Clearly, MPP efforts were based on issue saliency stemming from public discourse and agenda not the political or legislative agenda.

Many studies concentrated on venue shopping as an SMO, NGO, or union mobilization *only* strategy while countermovement activity, organized or promoted via prominent individuals is neglected. MPP's Michigan campaign endeavor would be no more than a "cold call" or "testing of the waters" if it were not for the prior mentioned legislative submission of Representative Lemmons and co-sponsored by several other Michigan assembly members. However, just as MPP had recruited those in the medical field to give testimony regarding marijuana's alleviating properties, health professionals employed by public institutions pushed back, speaking out against Proposal 1. Less than a week before the election, on October 29, 2008, Janet Olszewski, Director of the Michigan Department of Community Health declared, "Just as cigarette smoke can produce serious illnesses such as lung cancer, marijuana smoke is

detrimental to a person's health. It alters the functions of the central nervous system, the brain and the brain stem. It also changes how a person thinks and feels." Director Olszewski can be seen as truly attempting to protect the health of patients contemplating the use of marijuana, thus employing the same social construction of marijuana users (patients) as SMO frames. However, she fails to cite any scientific study to substantiate her claims. Again, the reliance on "common" sense, popular myth, or "trusted" federally disseminated frames are shown to be wanting in facts.<sup>138</sup>

Director Olszewski's assault on the intake of carcinogens is well taken and factual, however the director's argument claims amount to a secondary or indirect argument against medical marijuana due to the various existing vehicles and digestive possibilities with cannabis. In the next paragraph of her editorial, she targets THC (the active ingredient in marijuana) by stating, "It is true that THC, the primary cannabinoid in marijuana plants, has demonstrated medical value. It is currently available in the prescription drug, Marinol."<sup>139</sup> Director Olszewski's stance is not surprising considering her thirty plus years in the service of Michigan government, therefore toeing the state policy line of prohibition is in her best interest, however lacking of definitive data.<sup>140</sup> Marinol has not been successful due to an inability on the part of pharmaceutical companies to control dosage along with symptom application for patients

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<sup>138</sup> A 2006 peer-reviewed published study conducted by University of California at Los Angeles with funding from the National Institutes on Drug Abuse and led by pulmonologist Dr. Donald Tashkin concluded there was no causation between marijuana smoking and lung cancer. Dr. Tashkin conveyed the study's goals and findings to Washington Post reporter Marc Kaufman, "We hypothesized that there would be a positive association between marijuana use and lung cancer, and that the association would be more positive with heavier use," he said. "What we found instead was no association at all, and even a suggestion of some protective effect." Kaufman, Marc. *Washington Post* May 26, 2006. "Study Finds No Cancer-Marijuana Connection."

<sup>139</sup> THC is the acronym for "delta-9-tetrahydrocannabinol" the active, "brain-altering" ingredient possessed in marijuana.

<sup>140</sup> See Director Olszewski's biographic history at: [http://www.michigan.gov/mdch/0,1607,7-132-3150\\_52918-210214--,00.html](http://www.michigan.gov/mdch/0,1607,7-132-3150_52918-210214--,00.html) Last taken on August 30, 2011.

seeking relief from pain and appetite suppression. As a public official, Olszewski's participation in a countermovement against reform is both fascinating and atypical in regards to policy studies research due to the lack of public organization and mobilization against the drug. Seemingly, the strongest countermovement against Proposal 1 following MPP's announced ballot endeavors has come from physicians and other health-related professionals in concert with an existing anti-marijuana political alignment. Michigan State Medical Society House of Delegates Speaker and neurosurgeon Daniel Michael teamed with Judge William Schutte to write an October 15, 2008 editorial which condemned Proposal 1 as containing, "Vague language, careless loopholes and dangerous consequences [that] place Michigan communities and kids at risk." Michael and Schutte, in a primer to Olszewski's anti-marijuana message, denounced marijuana use by noting, "It not only relies on but promotes smoking as a delivery mechanism. And Proposal 1 could result in costly lawsuits over such things as whether doctors and hospitals must allow patients to smoke marijuana in a doctor's office or hospital room, despite every other law banning smoking."

The subtext here is too coincidental and suggestive to ignore or excuse as happenchance-smoking marijuana, though cannabis has never been shown to enhance or increase chances of cancer, is like cigarettes-an unhealthy and possibly fatal habit. Essentially, Schutte and Olszewski's editorial is countering MPP's positive target population by associating that group with another negative, non-benefiting population, cigarette smokers. Instead of conflating marijuana users with crime or counterculture, the language employed by these government officials places marijuana using patients in another negative social construction by analogizing them to cigarette smokers. Cigarettes, scientifically proven vehicles for the

transmission of carcinogens are framed and nearly aggregated with marijuana. Such framing is reminiscent to Nixon's avoidance in parsing marijuana from other, more insidious substances including heroin and cocaine. Smoking, as a means to the effects of marijuana, becomes the last vestige of anti-marijuana proponents with no discussion of the versatility regarding marijuana's digestive options (eating the plant, incorporating cannabis into baked goods or butter). Between anti-marijuana actors in Michigan and MPP's framing, we see a clear line of refusal to acknowledge science-based information regarding marijuana then obfuscating from any of the factual evidence presented in either framing scheme.

One of the last points in the tandem's letter clearly showcases a countermovement policy stance and implies institutional rearrangements if medical marijuana is to become a reality in Michigan. The anti-medical marijuana proponents drew on prior criticisms of state-based medical marijuana laws such as California's which had omitted specifics regarding possession limitations and regulations pertaining to how the drug would be distributed, "Proposal 1 is many things, but above all else it is a law of unintended consequences. The dangerous implications of its flaws and loopholes have brought together Michigan's doctors, hospitals, sheriffs, police chiefs, prosecutors, family groups, and taxpayer advocates to urge voters to say no to Proposal 1." Of course, the unintended consequences the good doctors speak of are speculative and could even be driving at identifying long term intentions of illicit substance reforms, specifically legalization of marijuana. However, Dr. Michael's claims also have historical validity and example. When California voters enacted a compassionate use law very few realized the loopholes and unlimited nature of the law due to vague language. So, California legislators had no comparison to base the development of medical marijuana cultivation,

distribution, and use in their state. In short, Proposition 215 had survived the voters vetting but stood as a policy suffering from a paucity of regulation. Even today, California legislators, law enforcement, the business sector, and local officials deal with the Compassionate Use law in an *ad hoc* fashion. Was Michigan entering an era of such undetermined policy avenues?

To a legislator, vague language is an easy target for criticism and reason for rejection. The continued repudiation of medical marijuana bills introduced by Representative Lemmons and others might owe their downfall to such a shortcoming. When comparing Lemmon's 2006 and 2007 submissions, the authors refine their description of medical marijuana, patient caregivers, "doctor's" suggestion, marijuana's federal classification along with all other illicit substances in that category (Schedule I), and possession of medical marijuana that could bring harm to individuals not seeking the drug's benefit. Contrasting the Lemmons bill with Proposal I also demonstrates a more articulated potential policy along with a litany of definitions including but not limited to: "primary caregiver," "usable marijuana," "qualifying patient," "registry identification card," and "written certification" (see below Table 5.3) Though voters only received a summarized definition of the policy's intent when gazing upon their ballot, the full-length initiative gave specific instructions as to the limits regarding caregivers' possession, patient responsibilities, use of registry cards, defense against arrest for possession, and illegal sale of medical marijuana.<sup>141</sup>

A lacuna of detailed language tells us something about MPP's choice of venue. Yes, MPP had success with ballot initiatives in western states but Michigan and the Midwest was

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<sup>141</sup> See Michigan Proposition 1 ballot initiative language in Appendix: "*Michigan Proposition 1.*"

unfamiliar territory for the reform-minded organization. However, direct democracy allows SMOs to present information of an issue with a framed message most appealing to a broad set of voters not a group of legislators with more slivered issue preferences. In short, voters are not policy makers and will tend to agree with frames (policies) less nuanced yet in line with their personal views steeped in presuppositions. Also, the ballot initiative process, unlike candidate elections and legislative debate, typically offers the views of only the two opposing sides along with few detailed objective accounts of policy implications (Ferraiolo 2009; Pierce and Miller 2001; Witt and McCorkle 1997). Though MPP had successfully lobbied other state legislatures prior to Michigan, the multiple failures by state legislators was a signal of sorts to MPP to redirect their resources to voter “will” as well as to salvage a portion of their fledging coalition from those state representatives previously supporting medical marijuana. Furthermore, MPP enhanced their campaigning acumen and knowledge when facing critics of existing medical marijuana laws. Michigan’s medical marijuana initiative was more detailed than California’s, thereby dismissing several editorials criticizing the potential law as containing vague, dubious, and ambiguous language in line with rhetoric employed in a “smear” campaign based on older federally disseminated frames. MPP’s stern campaign directive of placing the patient first seemingly overshadowed, thereby politically trumping the possible dangers medical marijuana engendered including Judge Bill Schuette’s liability-laden hypothetical that, “a legal analysis of Proposal 1 outlines a situation where the worker next to you on the assembly line or the driver of a delivery van could smoke marijuana on the job and your employer could do nothing about it. In fact, if that delivery van driver, or any other driver under the influence of “medical” marijuana for that matter, hits another car and injures someone, Proposal 1 may allow



marijuana use as a defense in court.” Again, Judge Schuette was countering MPP frames by relying on a traditional negative, punishment-facing target population consisting of drunk drivers, substance neglectful individuals, and others that use drugs inappropriately instead of focusing on needing patients. Fear-inducing as jurist Schuette’s scenario is, the language of Proposal 1 may not allow for such a defense unless a registered medical marijuana patient or caregiver in the possession of cannabis (and the legally allowable amount) is detained by law enforcement and accused of illegally possessing marijuana then, and only then may the accused caregiver claim the language of Proposal 1 protects them from prosecution. However, lawyers are, on the norm, argumentatively creative and may craft such a defense Judge Schuette portends-granting the argument legal validity, however, would be to place onus of validity on a judge or judges who should know the legal limits of laws within their respective jurisdictions.

Much of the analysis regarding venue shopping expounds on groups, individual actors, and what ideological inclination reform minded organizations are allied with, thus offering them an existing foundation from which to work by coalescing with local actors and advocacy groups (Krach 2009; Kollman 1997). For MPP, this somewhat typical scenario definitely existed; however, much of my description and analysis of MPP engagement of Michigan’s reform circumstances also depended on opposing factions, some of which were publically and politically well-respected, making for a formable set of opposition. Therefore, forum choice can take place without directly answering or “challenging” acclimated members. In Michigan, as they had on the national level, MPP Executive Director Rob Kampia and his campaign chiefs presented relevant, reasoned, and resonating messages, primarily an “access to medicine” frame within the more vague patients’ rights schema. MPP, like a presidential candidate, kept

with a stump speech mentality by repeating without diverging from that message and allowed opposing critiques of Michigan’s ballot proposal that included “vague language,” and “smoking marijuana is dangerous” go by the wayside. When considering that presidential and other candidate-based choices rely on voter decision and not legislative vote, MPP’s choice of targeting Michigan’s direct democratic means is consistent with such a campaign strategy and frame tactics.

**Table 8: Michigan Medical Marijuana Ballot Initiative and Legislative Activity**

Action/ Venue	Result
2003-04: H.R. 0226: Resolution to express opposition to efforts to circumvent the federal drug approval process for the consideration of medical uses for marijuana.	Adopted: June 2004
2005-06: H.B. 5470 To amend public health code to allow for the legal allowance of medical marijuana	Introduced by Representative Lamar Lemmons; Died in Committee
2007-08: HB 4308 To amend public health code to allow for the legal allowance of medical marijuana	Introduced by Representative Lamar Lemmons; not voted on
2007: Medical Marijuana Ballot Initiative Process begins	Signatures gathered
4/2008 Medical Marijuana Ballot Initiative Signatures submitted	Result: Michigan Board of Canvassers certifies 8/2008 and places Medical Marijuana initiative on 2008 general election ballot
11/2008 Medical Marijuana Ballot Initiative Passes	Vote: 63%-37%

## Aloha means SMO legislative success: MPP finds Executive Collaboration in Hawaii

Sandwiched in time between passage of medical marijuana ballot initiatives in Maine and Colorado, Hawaiian legislators endorsed a reform of marijuana prohibition (see below Table 9). Being the first state legislature to enact a medical marijuana law nearly guaranteed more precise language, a greater degree of scrutiny as well as a “built-in” consideration and responses to potential backlash of dissent and dispute as to the bill's implications. Due to the inherent nature of the legislative process, a back-and-forth between lobbyists, proponents, and opponents was anticipated by MPP. Venue shopping for MPP or any reform-intended organization seemed odd to have Hawaii as a first choice due to the absence of a ballot initiative process. However, just as Michigan exemplified, a foundation of support existed prior to MPP’s campaign directors making their way to the Aloha State. First, Hawaii has a history of progressive thought and legislation being produced from its state assembly. Promotion of Hawaii's medical marijuana bill can also be seen as experimental venue shopping when considering the lack of national media attention medical marijuana was receiving in 2000 compared to later medical marijuana campaigns carried out in Rhode Island and Michigan (2005 and 2008 respectively). Additionally, controversy surrounding marijuana reform legislation was absent possibly due to Governor Cayetano's endorsement and sponsorship of his own bill and supporters in the Hawaiian Senate and House. Also, both versions of medical marijuana policies forwarded by MPP and Cayetano were being legislatively contemplated in the shadow of a whirlwind of social dissent attached to Hawaii's same-sex marriage laws that were concurrently pending. The latter drew public ire while allowing the medical marijuana bill to make relatively “quiet” progress through the legislative process. Employing legislative means to

pass such a reform was a multi-pronged and momentum garnering victory for the medical marijuana social movement, allowing MPP an example of their handiwork to showcase in future campaigns.

Second, a Hawaiian-centered illicit substance reform group, The Drug Policy Forum of Hawaii (DPFH), was diligently stoking public discourse and legislative circles by infusing public and political debate on the islands along with heightening the saliency of medical marijuana with their lobbyists pressed state representatives for support. Though Hawaii's road to medical marijuana began very "native," with local advocacy organizational lobbying, then the larger MPP, maybe demonstrating too little patience in waiting for the governor to endorse the idea of medical marijuana, then somewhat co-opted DPFH inroads.<sup>142</sup> In January of 1999, MPP introduced, for the first time in any state legislature, their "model marijuana bill" to the Hawaii House of for consideration. According to a MPP media release, the organization's model bill (recognized as H. B. 2403) included "the best provisions for past state bills, Proposition 215 in California [and]... would remove state civil and criminal penalties for patients along with primary caregivers who possess and grow marijuana for medical purposes. Additionally, the medical necessity defense would be available in court for those who are arrested by overzealous law enforcement."<sup>143</sup> MPP's model bill was met with resistance from lawmakers, mostly in the Senate (S. B. 2438) who feared, "ending the state's prohibition on marijuana would somehow

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<sup>142</sup> According to the Marijuana Policy Project produced newsletter "*Marijuana Policy Report*"-Winter/ Spring 1999 5, 1/2, 4-8 MPP state campaign representative Chuck Thomas met and appeared on local television with Governor Cayetano on December 10, 1998. Cayetano had already publically endorsed Hawaiian adoption of medical marijuana.

<sup>143</sup> "Medicinal Marijuana Bills debated in Five States." *Marijuana Policy Project Marijuana Policy Report* V 4 1, Spring 1998.

break federal law.”<sup>144</sup> Moving swiftly in their model bill endeavor resulted in a rebuke by Hawaiian lawmakers who cited the lack of detailed language, dearth of “local” institutional knowledge, or not emphasizing any differences between what MPP officials were presenting and medical marijuana in other states. Putting the reasons for anti-marijuana advocates aside, MPP again acted quickly and decisively by teaming with DPFH and authoring a second legislative submission. The second time around MPP designated legislative leadership to DFPH, featuring the local mobilization organization on the bill’s list of official supporters along with five other island-based groups and an array of concerned citizens. MPP was not represented when H.B. 1157 was submitted to the Hawaii House Committee on Judiciary and Hawaiian Affairs with the ACLU as the only national organization mentioned.

The last segment in Hawaii’s existing pro-medical marijuana triad was reserved for the willing executive, Governor Ben Cayetano. Cayetano’s executive actions toward developing medical marijuana legislation were, according to MPP Executive Director Rob Kampia, “the first time in memory that a sitting governor of any state actually introduced his or her own medicinal marijuana bill.”<sup>145</sup> The Governor’s involvement accomplished more than creating an alliance between Hawaii’s executive office and MPP directors, it also answered those critics citing other states with medically enabling marijuana laws ratified with the inclusion of vague or “loose” language, as Cayetano’s bill was by MPP state campaign Director Chuck Thomas’ assessment “more restrictive than MPP’s model bill.” Cayetano’s involvement is in direct contrast with executive involvement at the federal level where obstructionism tended to be the result of a

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<sup>144</sup> Ibid.

<sup>145</sup> “Thirteen States Debate Medicinal Marijuana Legislation.” *Marijuana Policy Project: Marijuana Policy Report* Volume 5, ½ Winter/Spring 1999 page 8.

prescribed process. In Hawaii the governor was hands on, not easily excused or explained as merely having an interest or association with a given issue, policy, or advocacy; rather, legislation originating from the governor's office demonstrates an intimate knowledge of the issue along with a direct oversight of the policy process. Moreover, because reform is endorsed by a prominent institutional actor, public and/or legislative acceptance of positive target population framing of a policy was expedited. MPP's willingness to "set aside" their own timeline of policy introduction and lobbying by deferring to Cayetano lends to legitimating their cause in the public's eyes as well as endearing the SMO to legislative members. Essentially, as the focus of one target population (negative-criminals, addicts) fades and another emerges (positive-patients), framing becomes inexhaustibly tied to practical political activity.

As is discussed in a later part of this chapter, executive commitment or rejection of medical marijuana reform proposals allows SMOs to identify allies, adversaries, present innovative frames, confront existing messages, and venue shop an executive's office at the most advantageous times. Superficially, when SMO's questioned presidential and gubernatorial candidates on the campaign trail, candidate willingness or aversion to medical marijuana constituted a "testing" of the policy waters in regards to candidate stances toward reform. Though there is paucity of theoretical or empirical studies pertaining to SMO venue shopping while aligned with an executive, Hawaii offers an example of how soliciting governors facilitates opportunity for reform advocates during the preparation and priming stage of legislation creation and submission. Specifically, working with Governor Cayetano allowed MPP and DPFH to offer up another piece of legislation in the 2000 legislative year following MPP's futile effort twelve months prior. Cayetano's "more restrictive" bill (H.B. 1157) contained definitive

language to thwart critics comparing all medical marijuana legislation with the vague wording of California's Proposition 215.<sup>146</sup> Politically, MPP and DPFH can be perceived as acquiescing to local and anti-marijuana citizenry sentiment while openly deferring to the governor's version of a medical marijuana bill. In the end, deferment to the executive gave MPP the sought after goal of enacting a medical marijuana law. Of note, is how a prominent institutional actor advocated for illicit substance reform policy not targeting populations for punishment but rather benefit. In short, Cayetano's sponsorship of medical marijuana served a twofold goal: patients were the focus with their rights as the primary message and MPP had allied (as they would in Michigan) with a prominent state-based institutional actor.

H. B. 1157 resembled Arizona's first attempt at a medical marijuana (an omnibus initiative on illicit substance reform) allowance more so than California's Proposition 215 because of broad inclusion of cultivation, distribution, and caregiver provisions as well as the removal of criminal penalties for medical cannabis cultivation (up to seven plants).<sup>147</sup> Such an addendum held a twofold favorable feature for MPP: though the amount still seemed arbitrary, decriminalizing cannabis "grow operations" opened the door to future debate concerning marijuana use not germane to healthcare needs while letting caregivers or patients cultivate

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<sup>146</sup> MPP made a practice of having an organizational representative follow the campaign and new conference stops of presidential candidates of the Republican and Democratic Parties. MPP's representative would ask candidates whether they were in favor of terminating federal prosecution of state medical marijuana patients then question each candidate's response was posted on the SMO's website and disseminated to organizational members and donors. This tactic allowed MPP to "track" candidate stances regarding marijuana-related issues and identify those favoring MPP policy stances.

<sup>147</sup> California's Proposition 215 received considerable criticism due to vague language regarding caregivers, number of plants a patient or their caregiver could cultivate, and physician approval and authorization. Medical marijuana campaigners have had to fend off inquiries as to how their proposed law would not fall suspect to such shortcomings. Subsequently, advocates and lobbyist attempted to avoid this problematic situation by specifying to those issues. Each state can differ as to amount of medical marijuana allowed to be cultivated and possessed along with source.

cannabis without fear of legal reprisal. Also, unlike California's Compassionate Use and other subsequent ballot initiatives, Hawaiian physicians were held to more stringent standards due to a caveat written into the Island state's medical marijuana legislation mandating, "a physician must certify that the patient has a debilitating condition for which the potential benefits of the medical use of marijuana would likely outweigh the health risks."<sup>148</sup> The latter portion of this stipulation along with legal protection of caregivers emphasizes policy benefits for these newly dubbed health workers, further engraining positive target populations within policy dictates; patients are the primary group being served while caregivers, as a secondary population, are positively portrayed and benefit. MPP's choice of Hawaii demonstrates an "evolution" in medical marijuana laws and serves as a milestone in reform. Essentially, Hawaii became the next tier in state medical marijuana laws while employing California's Compassionate Care initiative as a foundation then ameliorating the shortcomings and sightedness of that state's law. Such a progression in policy language was engendered through a coalition of MPP, as national SMO leader, DPFH's local associations with Hawaiian policy makers, and institutional legitimacy provided by Governor Cayetano. Coalition building relieved MPP of being a full-time participant, thus belying extensive organizational resources and vagueness within policy language while keeping political backlash from countermovements at bay. MPP's teaming with

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<sup>148</sup>By this author's understanding and estimation, Hawaii essentially codified what would qualify as the standard "medical necessity" defense criteria. See Footnote 114. However, many organizations opposed to medical marijuana legalization had time and time again criticized California's Compassionate Use Act as containing vague language regarding a physician's discretion in suggesting patient usage of cannabis. At passage, California's medical marijuana law allowed for marijuana to be dispensed for "any illness for which marijuana provides relief." Admittedly, numerous understandings of "any illness" could be discerned. The mandating of a physician's suggestive "prescription" seemingly acts as a safeguard against abuse and corruption of the policy. Source: *"Medical Marijuana Referenda Movement in America."* Hearing before the Subcommittee on Crime of the Committee on the Judiciary-House of Representatives: One Hundred Fifth Congress, First Session. October 1, 1997. Serial No. 110 United States Government Printing Office: 1999, 2.



a local SMO and institutional actors is demonstrative of Ellen Reese's findings that, "the implementation structures of policy threats also affect opportunities to form successful movements. Policy designs determine how much time activists have to mobilize, the pace of activities, and their choice of political aims" (Reese 2006, 279 in Ingram, Schneider, and deLeon 2007, 110). By following Governor Cayetano's pace as well as submitting legislation similar but not challenging the governor's independently crafted medical marijuana bill, MPP avoided potential impediments in the form of executive disagreement and gubernatorial allies.

Writing and submitting reform policies was primary to MPP Director of Communications Chuck Thomas' visit to the Hawaii, yet investing in organizational association, structure, and arrangement between MPP and DPFH warrants discussion in regards to social movement mobilization as well as their ability to expand institutional and political opportunities through framing of positive target populations. Absence of the ballot initiative excludes one option for policy entrepreneurs with designs on venue shopping and gives new perspective when identifying the versatility of American governing institutions as policy reform venues. Venue shopping takes place within a range of institutions-legislative, electoral, and judicial-as well as within national structures-federal, state, county, and city. Medical marijuana advocacy exemplifies and gives credence to Pralle's assertion that, "a political system with multiple policy venues also promotes change because it offers opportunities for outsiders to advance a new definition of a policy problem and promote new solutions. Much depends on the strategies and resources of the groups who are seeking policy change." In totality, Pralle's claim captures the advocacy reform spirit medical marijuana SMOs exhibit. Specifically, MPP aggressively sought out the Hawaii legislature because of the advantageous circumstances existing in the Aloha

State prior to their organizational mobilization, concurring again via experience with another of Pralle's theoretical propositions that, "venue shopping strategies are the key variable linking policy venues to policy stability or change" (Pralle 2003, 237). "Going at it alone" would have placed MPP at a distinct disadvantage regarding intimate knowledge of Hawaii's representatives, legislative protocol, and in turn chances of getting a medical marijuana bill submitted then subsequently debated, voted on, and passed (see below Table 5.4). Partnering with DPFH allowed MPP directors to enter as supporting members of a reform collaborative rather than being perceived as carpetbaggers attempting to impose their "alternative" policies on Hawaiians.

Two points of interest concerning MPP's association with DPFH warrant examination. First, Hawaii held futile political ground for drug reform. Being a major node or transfer location for global drug trade Hawaii's citizens and policymakers have come to terms with the vast amounts of illicit substances transferred through and produced on their islands (remember: the climate and locale of Hawaii are ideal for marijuana cultivation). Second, there was little, if any, ideological or moral divide to impede a healthy public discourse regarding the failed "War on Drugs" and alternatives to federal policies. MPP organizers played to this by not spearheading an initial movement toward reform via application of their state model but rather by first employing inter-organizational skills by giving support to DFPH, then leading policy talks with Hawaii's governing institutions. This allowed for native influences to take credit and associate with policymakers as their own entity.

Political party differences never allowed for the issue to be divisive which played to MPP's ability to stay clear of being labeled as a "liberal" organization disrupting Hawaiian politics, morality, or policy process. As *New York Times* reporter James Sterngold noted, "As in other states, the policy was hotly debated in Hawaii, but the divide did not follow party lines in the overwhelmingly Democratic state. Both Republican members of the Senate voted in favor of the bill."<sup>149</sup> Even though several opportunities existed in states offering a path to reform via the ballot initiative, Hawaii held more promise of a route to reform built on coalition building and legislative lobbying. Seemingly, the well-prepared DPFH welcomed MPP's involvement and was able to quickly mobilize, which gave the island-based smaller SMO national recognition as MPP's partner. The cooperation between the two SMOs generated political opportunities for both along with mobilizing a larger base of supporters including the Hawaii Nurses Association, Advocates for Consumers Rights, Citizens Advocating Responsible Education, and Hawaii's chapter of the ACLU.

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<sup>149</sup> Sterngold, James. *The New York Times* "Hawaii Lawmakers Approve Bill on Medical Use of Marijuana." U.S. Section April 26, 2000

**Table 9: Hawaiian Medical Marijuana Legislation Activity**

Action/ Venue	Result
1/1999 H. B. 1157 Introduced and referred to relevant committees	Carried over to next legislative year
MPP Hawaii state Director Chuck Thomas, DPFH representatives, and Governor Cayetano meet to discuss submission of medical marijuana bill	Decision reached to submit MPP model bill and Governor Cayetano's "more restrictive" bill; Governor Cayetano's version eventually promoted by both MPP and Governor
1/2000-MPP and DFPH Introduce Model State bill (H.B. 1341); referred to Health and Human Welfare committee	Health Human Welfare forwards without recommendation
1/2000-Governor Cayetano Introduces bill (H.B. 1157)	Referred to House Judiciary and Hawaiian Affairs committee; committee recommends passage
1/2000-Governor Cayetano's bill (H.B. 1157) sent to relevant committees	2/2000: Health and Human Welfare, Public Safety, and Military Affairs Committees recommend combining the "best" elements of both bills and forwards to JHA; committee recommends passage
3/2000 Sent to Ways and Means Committee	Joint Hearings-recommend passage
4/2000 Sent to Judiciary Committee	Judiciary Hearings-recommend passage
4/2000-Hawaii State House SB 862	Vote: 30-20
4/2000-Hawaii State Senate SB 862	Vote: 15-10-Transmitted to Governor
6/2000-Governor approves	Enacted

## Making Waves in the Ocean State: Overriding the Executive Veto in Rhode Island

Over the course of eighteen months, from January 2005 to June 2006, the smallest state in the union offered a large victory for MPP and all medical marijuana advocates. Confronted early on, and reminded continuously until the Rhode Island legislature overrode Governor Carcieri's veto, MPP waged a campaign in the face of executive rejection. Therefore, from the beginning of frame dissemination and legislatively lobbying for medical marijuana allowance, MPP mobilization was energized in opposition of the Republican Governor's refusal to except that medical marijuana, as a viable policy option, had moved beyond political discourse of the drug that had exhaustively linked it with criminal and other deviant elements. Crafted and accepted as given for decades, some of these antiquated frames served as anti-marijuana political rhetoric well before Nixon's inception of the "War on Drugs." Many status quo frames relied on by Governor Carcieri associated marijuana use with various forces detrimental to societal development. Seemingly, the believability of continuously using such messages as the governor's rhetorical counter and anti-drug groups in their resistance to reform had waned, weakening the stance of pro-drug war policy makers and leaving the doors of political dialogue open for MPP to manipulate frames featuring Governor Carcieri as a threat to the lives of those seeking alternative pain relief. MPP and affiliates were able to stem the tide of typical target population employment that engender "The political advantages," as Schneider and Ingram posit, "for inflicting punishment upon powerless, negatively viewed groups are so great that this area also will become oversubscribed and extended to ever-larger segments of the population. It is likely that certain kinds of behavior, such as the use of alcohol or other drugs, will be

proscribed simply because the groups who are heavy users are negatively constructed and lack sufficient power to oppose the policies” (Schneider and Ingram 1993, 343). Though marijuana users, regardless of purpose, had already been categorized with Alcoholics, heroin addicts, and the like, the MPP led coalition in Rhode Island essentially replaced the negative social construct with a positive, deserving group consisting of fatally ill and recovering individuals.

In its broad measure, this case study is a picture in time of a MPP led legislative campaign during the midst of the larger movement endeavoring to legalize marijuana for medical use. In closer examination of the institutional lawmaking processes, this analysis equates to a brief narrative regarding how MPP leadership of a coalition consisting of pro-medical marijuana SMOs disseminated patients’ rights messages at a time public opinion in Rhode Island was tilting in favor of medicinal marijuana use so as to turn a typically conservative legislature against the executive and rendering Rhode Island a neophyte medical marijuana state. Specific to this chapter, MPP’s choice of Rhode Island to wage a legislative campaign was based on and facilitated by an existing coalition of reform directed SMOs. Without favorable public opinion polls to tout, existing localized medical marijuana SMOs to coordinate with, and a staunch detractor in the form of Governor Carcieri, odds of an MPP victory would have been lessened a great deal.<sup>150</sup> Why an adamant anti-marijuana opponent was needed is seemingly counterintuitive. However, MPP employed the governor’s opposition as opposition to legislative or the people’s will and “anti-patient.”

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<sup>150</sup> Harris Public Opinion polling from 2005 reported that nationwide 78% of respondents favored the legalization of marijuana for medical reasons while 80% of respondents living in the Northeast (New England states, New York, New Jersey, Pennsylvania, and Delaware) region answered “yes” to the following question: “Certain states are discussing the idea of legalizing marijuana. Would you support or oppose the legalization of marijuana for the following purposes in your state? Medical treatment?”

Though MPP and their associated SMOs, eschewed direct debate of “anti” messages regarding marijuana, thereby focusing on innovative frames, namely nuances of patients’ rights, directly answering hackneyed drug war sentiments from the governor and countermovement groups was at times necessitated. In comparison to aiding in the passage of Hawaii’s medical marijuana bill in 2000, MPP neither found a political ally nor legislative comrade from Rhode Island’s executive office. MPP’s Rhode Island campaign also marked a foray into the more conservative and traditional East Coast politics, a discernible difference between western state ballot initiatives and Hawaii’s “forward” thinking political arena. Research rationale is, therefore, founded on a notable juxtaposition between the legislative processes of Hawaii and Rhode Island as well as illuminating a stage of growth for SMO reform development. With political and governmental support sparse, MPP looked to make the arena of public opinion a venue their organizational resources could best be successfully employed, then transfer public opinion approval ratings onto legislative lobbying. However, to reach public acceptance to the point of legislative change, MPP would need state-based allies from respected fields pertinent to their primary message and garnering public trust. By promoting pro-medical marijuana sentiment messages crafted within testimony of medical professionals from Rhode Island, MPP was able to directly pit executive defiance against patients’ rights and demonstrate a greater level of authority on the issue. Embracing the medical community was an overarching goal of MPP, indicative of a consistent strategy to enhance the odds of legislative passage in Rhode Island. Linking up with the medical community inherently binds MPP with scientific evidence regarding the safety of using marijuana as a pain reliever and according to MPP Media Director Mike Meno allows MPP, medical professionals, and scientists to seek a “better legal option [while]

finding allies based on compassion and medical research.”<sup>151</sup> Intuitively, though not assuredly, endorsement of Rhode Island’s medical community increased MPP’s odds of successfully securing ratification and implementation of medicinal cannabis however reticent that professional sector might be to political gambles. With an adversarial element in Governor Carcieri and the need to win over assemblymen rooted in socially conservative values (also revolutionary thought), MPP began a public discourse campaign emphasizing Ocean State favorability for allowing the medical use of marijuana due to scientifically produced facts. Much of MPP’s promotion of public favorability with medical marijuana was reinforced with scientific findings reinforced by a moral obligation of Rhode Island’s government to allow needing patients access to safe medicines.

Since the Controlled Substance Act of 1970’s inception and thoroughly periodical reinforcement, the federal government with state and local authorities following in lock-step, ironically enough, adamantly staved off reform by adamantly calling for the continuation of marijuana prohibition premised on the reasoned belief that , “science must prevail over ideology [thus]...ensuring that any substance purporting to be a medicine must undergo the rigorous evaluation of the scientific process...To exempt any substance from this time-honored procedure will undermine the established process that has long protected the American public so well.”<sup>152</sup> Recruitment of medical professionals based in the Ocean State gave MPP’s frames scientific credibility while the SMO disseminated research findings indicative of marijuana’s

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<sup>151</sup> See Appendix Three: Interview Protocols. Taken from research generated interview with The Marijuana Policy Project’s Media Director Mike Meno conducted in June 2010.

<sup>152</sup> Source: “*Medical Marijuana Referenda Movement in America*.” Hearing before the Subcommittee on Crime of the Committee on the Judiciary-House of Representatives: One Hundred Fifth Congress, First Session. October 1, 1997. Serial No. 110 United States Government Printing Office: 1999, 14.



purported medical worth rigorous scrutiny. In turn, messages of Governor Carcieri acting in an immoral fashion for denying patients access to pain-relieving cannabis were also tactically submitted into public discourse. Science and morality were combined in MPP frames as to shift the target population of patients to along a line of issue dimension toward public approval.

On the heels of a 2004 legislative submission being voted down, MPP ratcheted up their reform efforts with a 2005 legislative campaign highlighting a March 2004 Zogby International Poll evincing overwhelming support for the legalization of medical marijuana by Rhode Islanders. According to the poll, 69% of the Rhode Island adults favored legislation “protecting medical patients and caregivers” from being arrested and prosecuted. Such a focus tapped into a Rhode Island political tradition of “morally” invested governing officials. Many favoring the introduction of a medical marijuana law may have come to their views based on MPP’s dissemination of messages promoting cannabis as a “compassionate” alternative for those seeking pain relief and/or appetite stimulus. Winning over Rhode Island’s citizenry with compassionate frames served to heighten MPP’s chances of navigating the legislative process as well as keeping commitments from state representatives from fading while the governor adamantly vowed to veto any bill allowing marijuana to be legalized for medical necessity or any other reason. Such political adversity held a unique challenge to MPP Director of State Policies Neal Levine. Levine enthusiastically pitted the executive’s adamant refutation of medicinal cannabis against the patient needs and the “people’s will,” “the momentum for compassionate medical marijuana legislation in Rhode Island is tremendous...Rhode Island moved another giant step toward protecting its most vulnerable citizens today. Hopefully, the governor will follow the lead of the people, the legislature, and the state’s leading medical organizations and

support this bill.”<sup>153</sup> The threat of an executive veto extended MPP’s knowledge and experience of legislative protocol while forcing the SMO to fight a “double front” war. First, battling both Governor Carcieri’s stern refutation of such legislation seemingly disadvantaged an organization with origins outside of Rhode Island. Coalescing with Ocean State-based SMOs would educate MPP officials while shoring up a lobbying team to submit and promote medical marijuana legislation. Second, public perception of what type of regulatory trajectory enacting a medical marijuana policy would create had to be peculiarly presented and reiterated. Though dealing with executive backlash held a twofold impediment for MPP (public opinion and legislatively), of considerable note was numerous endorsements from Rhode Island and nationally- based medical organizations that held considerable advocacy currency for MPP.

Public backing from state-based health care professionals allowed MPP to present their frames and overall argument in a manner belying any public distrust generated from citizen perception of MPP as “out-of-towners” attempting to change the state’s laws or medical marijuana as radically altering the status quo without first being properly vetted as a valid policy option. Key endorsements from AIDS Project Rhode Island, Rhode Island Nurses Association, the Rhode Island Medical Society, and Rhode Island Patients Advocacy Coalition allowed MPP’s messages of patients’ rights to be substantiated by publically respected associations. In essence, MPP could speak to the public without confronting their representatives within a formal public milieu yet still educate legislators during lobbying sessions through legislative voices. By attempting to aggressively win over public opinion, MPP lobbyists could dedicate much more

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<sup>153</sup> Marijuana Policy Project Press Release June 13, 2006 *“After Landslide Victory, Bill Makes Giant Leap Toward Governor Carcieri’s Desk.”*

time, money, and political tactics to the more difficult legislative process, particularly the governor's firm anti-marijuana stance. Infusing public discourse with new frames and definitions is one stage of a progressive, systematic process to agenda adoption of medical marijuana. MPP's collaboration with local lobbying groups expedited the process by addressing the general public and legislators concurrently, even finding legislative allies willing to espouse the benefits of Rhode Island instituting a medical marijuana law. Representative Thomas Slater, suffering from cancer while advocating for medical marijuana, made his personal and political feelings known shortly after the bill's ratification, "It's been a long wait and a lot work, but this law will grant mercy and relief to the sick and suffering. Finally Rhode Island will stop denying sick people a proven means of relief from their pain." MPP had managed to collaborate with local advocates, who prior to MPP's entrance into Rhode Island legislative lobbying, had successfully recruited prominent political authorities (in Slater's case a medically invested member of a disadvantaged target population).

MPP's broad policy assault on Rhode Island's legislative means was more than just lobbying as usual or finding local SMOs to coalesce for the purpose of gaining familiarity with state political processes and protocol. MPP also sought to couple their organization's resources with a demographic traditionally favorable to leisure marijuana use-college students. Students for Sensible Drug Policy (SSDP-a national organization with local affiliates on university campuses nationwide) stoked the flames of activism within a populace typically inclined to mobilize for issues deemed "marginal," alternative, or as even of the "counterculture." Three years prior to passage of S710, members of Brown University's SSDP chapter began laying a foundation of support for MPP so as to allow the national SMO's entry into and energize a larger

discussion within the medical marijuana movement for medical marijuana within Rhode Island.

As Brown SSDP communications Director Tom Angell notes,

Students at Brown had organized a medical marijuana symposium earlier that spring (2003), and we brought in legislators who had previously introduced legislation that hadn't gone anywhere. We introduced them to medical professionals, drug policy advocates, as well as student and patients who wanted to see a medical marijuana bill become law...Brown SSDP student Nathaniel Lepp and I applied for a grant from MPP to build a grassroots coalition in the fall of 2003.<sup>154</sup>

More than coalition building is evinced by SSDP spearheading a meeting of pro-marijuana factions. SSDP's coalescing activities also created an environment that facilitated MPP involvement within the legislative venue; MPP's rapport with Rhode Island legislators was beneficially served by SSDP's "priming" of Ocean State legislators empathetic to the cause. Becoming acquainted and policy-allied with legislators via a local SMO or advocacy groups in Rhode Island was conducted much like MPP's legislative foray in Hawaii. Venue shopping, multiple frame presentation, and target population shifting all evince the decentralized nature of American policy making institutions. Localized surrogates not only prime MPP or other lead SMOs but also have a hyper-focused attention and knowledge of their respective bailiwick. The "homegrown" political insight and maneuvering of DPFH in Hawaii and SSDP in Rhode Island "massage" legislators and voters with messages most conducive to how accepting those members of the polity are to marijuana reform. In these cases patients' access to medicine and not states' rights (the latter being more inclined as a national frame). Therefore, SMO operations can be considered protracted in organization and aims. While lead SMOs stand contemporarily

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<sup>154</sup> "Rhode Island Overrides Governor's Veto to Become 11<sup>th</sup> State Okaying Medical Marijuana" The Drug War Coordination Network (DRCNet) website article. <http://stopthedrugwar.org> Taken last on September 27, 2011.

as the “charismatic” leader that Eldon Morris and others identified from the Civil Rights Movements, MPP as such is also the flagship group regarding national debate with geographic and issue specific organizations surveying reform opportunity at lower levels of government exemplifying Coleman and Grant’s claim that, “Association structures tend to be very sensitive to, and probably provide a good indicator or, the actual distribution of power in a policy area in a given state (Coleman and Grant 1989, 54).

At times, venue shopping has been depicted as happenchance or spontaneous with little evidence of SMOs following a systematic process toward reform. Venue shopping, in the case of medical marijuana advocates, rested largely on associations between national MPP and local SMOs which pointed toward venues most receptive to challenge and reform. The decision for MPP to allocate resources to Rhode Island, where the only realistic institutional option for their cause was the legislature, therefore, hinged greatly on their organization’s leadership belief of local SMO mobilization, voice, and ability to keep legislative allies spirited and sway fence- sitters. Of course, creating a beneficial advocate to legislator relationship strengthens the chances of continued introduction of medical marijuana legislation for debate and possible vote. However, without citizen support, a la constituents voicing their feelings on the issue to their state representative, the potential of a medical marijuana bill being ratified diminish substantially.

By disseminating literature, writing opinion pieces, and mobilizing supporters via email alerts and television commercials claiming “medical marijuana patients in Rhode Island are inches away from receiving protection from arrest and prison” and “this kind of grassroots

action is needed to help pass the bill” [if Governor Carcieri’s veto is to be nullified through an override by the Rhode Island House]. Inducement to write, email, or call their state representative was further promoted with moral rhetoric portraying seriously-ill individuals at peril unless “the House leadership doesn’t’ call an override vote, the 2005 bills will die, leaving patients at risk.”<sup>155</sup> Tactically, the use of “die” to describe the legislation’s possible termination of the bill juxtaposed with patient risk equates to a mental linkage of symbols which readers will resonate. The framing of “patients” rights and call to act served to advance a message neither playing on ideology nor directly countering the prohibitive or crime conflated frames of the federal government. Rather, mobilization, through the choice of emailing an MPP or Rhode Island House representative, letter writing, or phoning, tapped existing and potential members of MPP along with those straddling the issue. Also, in regards to the coalescing of MPP with several local SMOs, MPP’s foray into Rhode Island politics might have seemed limited to one governmental institution, thereby presenting a superficial picture of a straightforward or myopic path to reform. The various advocacy groups offered greater voice and was much needed in order to rebuff, for public opinion effect and politically, an adamant anti-medical marijuana front from Governor Carcieri. Thus, MPP, in actuality, managed public opinion, legislative, and executive campaigns by collaborating with local SMOs. While MPP avoided direct engagement or confrontation at the federal level, Rhode Island saw MMP break with that pattern by challenging Carcieri’s intentions and the detrimental effect his unwillingness to sign a medical marijuana bill would have on patients.

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<sup>155</sup> Taken last from MPP archives <http://www.mpp.org/states/rhode-island/alerts/take-action-to-make-rhode-island-the-next-medical-marijuana-stat.html> Marijuana Policy Project press release December 5, 2005. “*Take Action to Make Rhode Island the Next Medical Marijuana State.*”

Pitting patients' rights frames directly against Carcieri paid off in three ways. First, on June 9, 2005 the Rhode Island Assembly voted approvingly to enact a medical marijuana law for their state which gave MPP a victory conveying a concentrated message of public opinion, policy, and even possibly electoral ramifications to the Governor's office. Second, immediately after receiving the approval measure from the assembly, Governor Carcieri vetoed Rhode Island's medical marijuana law. Therefore, the adversarial relationship MPP had fostered in order to refute the executive's anti-marijuana rhetoric as a public opinion measure and stoked legislator cooperation during assembly debate and vote could now be employed in a campaign to override his veto. The third trident of MPP's framing against the executive speaks to their national campaign momentum toward future state campaigns. Rhode Island was only the third state where MPP had legislative success and first where executive resistance in the official manner of veto was found.<sup>156</sup> Being able to challenge and defeat executive actions within formal institutions is of notable development for SMO challenges toward reform and holds potential for advocacy venue shopping.

For MPP, ASA, and other medical marijuana SMOs to sustain public and institutional belief in a "patients" rights frame necessitated more than public opinion campaigns or mobilization of membership. In their concluding segment on the a declining trend in public support of the death penalty, Baumgartner, De Boef, and Boydstun acknowledge the impact of "innocence" SMOs or movement affiliates across America as well as how "innocence" frames

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<sup>156</sup> In Hawaii, Governor Cayetano favored, promoted and even offered up his own version of a medical marijuana bill. In Vermont, MPP received little dissent from Governor Jim Douglas "made negative comments" regarding medical marijuana legislation, he never threatened to veto. Instead, Douglas allowed the bill to become law by waiting the mandatory period without signing it.

had supplanted the once dominant “constitutionality” and “morality” reasoned arguments. However, ultimately development and institutional acceptance of death penalty reforms can be boiled down to “A self-reinforcing dynamic thus created a strong momentum pushing public policy in the same direction year after year. Politicians, prosecutors, jurors, and defense attorneys all can see the same trends simultaneously and are all affected by them” (Baugartner, De Boef, and Boydston 2008, 218). Though those authors’ work is largely based in the milieu of adjudication while MPP had generated success in electoral and legislative arenas, MPP sought an SMO presence in medical marijuana litigation as well. Could MPP’s patients’ rights frame supplant the enduring “criminal” frame that illicit substance law had been laden with over the course of the last four decades? Would a “self-enforcing” mechanism perpetuated by public opinion state acceptance of medical marijuana create enough momentum to carry over into the judicial arena? In early 2001, MPP and the rest of the medical marijuana advocacy community would find out.

Of particular importance regarding SMO resilience in connection to MPP’s victory in Rhode Island was the timing. Three days before Rhode Island’s Senate formalized the lawmaking process, the medical marijuana movement received news of a possible setback in the form of the Supreme Court’s ruling in *Gonzales v. Raich*. Arguing for marijuana user/ patient Angel Raich was legal scholar Randy Barnett who framed a states’ rights premise against federal assertion of Commerce clause authority. In a 6-3 vote, the Court deflated the policy desires Raich and Barnett along with an expanding hope of nationalized medical marijuana. Less than a week following the *Raich* decision, Governor Carcieri made good on his promise to veto the assembly endorsed medical marijuana legislation. MPP’s organizational reaction was to move forward



with a second legislative battle, this time to overturn Carcieri's veto. With the Rhode Island House tabling a possible overriding vote until the next year's session, MPP was able generate enough legislative support to officially refute Carcieri's veto a year later in June of 2006 (see below Table 10). The Raich decision in close chronological proximity to Carcieri's executive veto seemingly did little to deter MPP from forging new avenues of opportunity as witnessed by their continued efforts in Rhode Island, other states, and venues. This spirit of resiliency was expressed by Jason Fein, a spokesman for Director Rob Kampia:

The Raich ruling does not alter our work at all—we anticipated a loss, but the loss didn't actually change anything. In other words, the decision doesn't give the feds powers that they didn't have before, it simply restates the status quo, which we have been and will continue fighting to change....The Court's decision specifically called on MMJ patients to seek redress through the legislative process, which was only a shot in the arm to our efforts---now we can almost think of our efforts as having been endorsed by the Supreme Court.<sup>157</sup>

**Table 10: Rhode Island Medical Marijuana Legislation Activities**

Action/ Venue	Result
2/2004 HB 7588 Introduced by Representatives Slater, Moura, Costantino, Handy, and Ajello	Referred to House Health, Education, and Welfare Committee recommended to House Finance committee; Scheduled for Hearings; Committee Recommends passage in part
2/2004 SB 2357 Introduced	Referred to Senate Judiciary Committee; scheduled for hearings and recommended measure be held for further study
1/2005 S 710 Introduced	Referred to Senate Judiciary committee; scheduled for hearings, committee recommends passage; Referred to House H.E.W., committee recommends passage; Governor Carcieri threatens veto

<sup>157</sup> In the last paragraph of his majority opinion of *Gonzales v. Raich*, Justice Stevens does seem to give instruction to supporters of medical marijuana reform, "But perhaps even more important than these legal avenues is the democratic process, in which the voices of voters allied with these respondents may one day be heard in the halls of Congress. Under the present state of the law, however, the judgment of the Court of Appeals must be vacated."

6/2005 S710 House Vote	House Passes
6/ 2005 S 710 Senate Vote	Senate Passes and transmits to Governor; Governor Carcieri vetoes
6/2006 H.E.W. votes to recommend override of Governor's veto	Passes, 10-2 and sent to House for full vote
6/2006 Veto of S 710 Overridden in House	Vote: 59-13
6/2006 Veto of S 710 Overridden in Senate	Vote: 34-2
6/2006 Senate Votes on S 710 companion bill HB 6051	Vote: 28-6 Attached to this piece of legislation was a resolution "calling on Congress to stop federal persecution of patients in medical marijuana states."

Now Entering the Court: MPP files Amicus Briefs in *United States v. Oakland Cannabis Buyers' Cooperative* (2001) and *Gonzales v. Raich* (2005)

While MPP pressed on with electoral and legislative campaigns in several states, the organization's legal team assisted the Oakland Cannabis Buyers Cooperative in mounting a medical necessity exception to the Controlled Substance Act. After much maneuvering through the federal legal system, the Supreme Court issued a writ of certiorari for *United States v. Oakland Cannabis Buyers' Cooperative* (2001). Just short of three months following ONDCP Drug Czar General (Ret.) Barry McCaffrey resigning from his post, the Justices heard oral arguments in the first medical marijuana case to come before the Court and MPP mobilized. In their Winter 2001 Policy Report, MPP Director Rob Kampia expressed hope that McCaffery's resignation for the ONDCP would allow for a public and policy discourse with greater veracity as to marijuana definition and uses, "MPP often served as a reality check, exposing McCaffery's dishonesty and pointing out the harm his policies were actually causing....even McCaffrey's new release announcing his retirement is riddled with lies."<sup>158</sup> Attacks on a retiring McCaffery were opportunistic in regards to timing and the emphasizing of a patients' rights frame; any

<sup>158</sup> Marijuana Policy Project: *Marijuana Policy Report* V 7 1, Winter 2001 "Drug Czar McCaffrey Resigns."

perceived void in the ONDCP's leadership presented MPP with a political and discourse opportunity. The state's monopolistic hold on illicit substance framing was showing wear, giving MPP a potential avenue within the marketplace of ideas to showcase their innovative messages while simultaneously participating in institutional reform.

Venue selection of this Supreme Court case therefore held two inviting elements for MPP inclusion: MPP was not the primary participant rather only filing an amicus brief and the Office of National Drug Control Policy (ONDCP) while control of the ONDCP, the leading federal anti-medical marijuana voice, was in a state of leadership transition. Participating as a secondary player keeps costs low while garnering organizational experience and association with practitioners on the "frontline" of litigation. MPP stood ready as a legal advisor to OCBC while promoting McCaffrey's exit from appointed office a time to showcase the need for a Drug Czar with practical illicit substance control experience as well as one willing to facilitate institutional discourse with reform groups. Again, keeping with their modus operandi of "turning away" from federal anti-marijuana rhetoric and policies, MPP did not become the primary legal advisor, financial supporter, or leader of a publicity campaign regarding the OCBC case. Rather, MPP played a political role with their deriding of General McCaffrey's operations and leadership of the ONDCP, thus serving as a backdrop to the OCBC driven Supreme Court case. The practical, potential effect of identifying federal ignorance of marijuana's medicinal worth through the dissembling of Drug Czar McCaffery's credentials lent to "pushing" negative target populations to the margins while managing the implementation of the positive, typically disadvantaged yet deserving population of patients into institutional discourse and reform consideration.

Unlike *Conant v. McCaffery* (1997) in which the 9<sup>th</sup> Circuit Court of Appeals only contemplated the First Amendment guarantee of physician/ patient confidentiality in regards to marijuana use, the *OCBC* case held promise for the scribing on a *tabula rasa* of legal understanding regarding federal/ state relations of medical marijuana laws. The Supreme Court decided not to accept the government's request of writ of cert based on the strength of Conant's argument and the Circuit Court's ruling. An OCBC victory would carve out an exception to federal prohibition while not directly challenging national institutional authority and constitutional supremacy over state governments. Even though medical necessity claims are rarely argued, even more uncommon would be for a court to find favor with such a defense, OCBC's legal counsel, in part, relied on precedent. Their precedential parcel contained Robert C. Randall's 1978 medical necessity defense for his conviction of marijuana cultivation and possession by the Washington, D.C. police. Unfortunately for OCBC, Randall's victory did not stand as a judicial statement against the CSA's prohibition on marijuana but rather a localized exception as well as an impetus for the federal government's 1978 implementation of the Compassionate IND Program.<sup>159</sup> Though Randall's nearly twenty-five year old precedent was, at best, a secondary argument for OCBC to premise their case on, many in the medical marijuana movement envisioned a judicial victory to go along with several state-level passages that had taken place in the prior four years. MPP's involvement in the OCBC case focused on the availability of the drug at the state level by prohibiting federal arrests and prosecutions of medical marijuana patients. MPP also promoted the willingness of the federal government, via

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<sup>159</sup> In *U.S. v. Randall*, the Federal District Court of Washington, D.C. contemplated a medical necessity and exception defense of a Federal statute not state-based law as an exception in Randall's case.

the FDA, DEA, HHS, and National Institute of Drug Abuse, to loosen their regulatory grip on marijuana research by approving a greater number of research requests and allow for the growth of medical quality cannabis because scientific analysis would demonstrate a substantial (and marketable) therapeutic value of the drug.<sup>160</sup> Their hopes were heightened by the Ninth Circuit Court of Appeals finding favor with OCBC's medical exception argument preceding the Supreme Court's evaluation of the case.

This being MPP's initial foray into federal judicial legalities, Director Kampia decided to team with Harvard trained Rick Doblin, Ph.D., founder and director of Multidisciplinary Association for Psychedelic Studies (MAPS) (see below Table 5.6). Doblin's organization sought expansion of government sanctioned cannabis research so as to develop a marketable medicinal version of the Schedule I illicit substance. As MPP and MAPS entered the judicial milieu, the OCBC case was developing into a legal challenge holding potential to be redefined beyond what federal authorities had contained to their own prescription of regulations and rescheduling processes. Any medical exception or waiver to Schedule I dictates were open to petition but only at the FDA's discretion and with a bureaucratic process of duration more akin to adopting a child: long, drawn out and without the guarantee of a positive return. As part of their formal preface to their amicus brief MPP pointed out the difficulty in acquiring FDA cooperation: "the lack of FDA-approval of cannabis as a prescription medicine is due, in large part, to the systematic hindrance of scientific research by governmental agencies over the last several decades. The Court should not rule against a medical necessity defense based on the

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<sup>160</sup> One of MPP and Rick Doblin's complaints pertained to the lack of research facilities, both operating on a contractual basis with the federal government and at federal laboratories. The only sanctioned medical marijuana cultivation and experimentation facility, at the time of OCBC's filing, was located on the campus of the University of Mississippi.

illusion of a well-functioning FDA-approval process.” Posing a high-profile legal dispute with the federal government simultaneously emphasizing the problematic process of requesting research on a drug controlled by government prohibitive measures identified another flaw of the CSA rescheduling protocol. However, contrary to their overarching strategy (until 2004) of obfuscating their resources away from the origins of marijuana prohibition, MPP issued a press release expressing what they believed was the underlying reason marijuana research had not progressed beyond mere petitioning and developed into a pharmaceutical form, “executive branch obstructionism has made it necessary for the medical necessity defense to serve as a “safety net” for a limited number of patients.”<sup>161</sup>

Seemingly, MPP, as leading SMO, chose to “chip away” at federally enforced and presidentially driven prohibitive measures by demonstrating the inadequacies and policy transgressions perpetrated by the executive branch. The tendency for the executive branch to “overreach” by either impeding or coercively influencing a bureaucratic process of reform is neither novel nor necessarily unexpected. As an analogy, a comparison to presidential influence upon the National Labor Relations Board operations by Eric Waltenburg explains how ideological differences between presidents can affect board decisions but “ultimately, though, it is the board’s administration of the act that determines the winners and losers” (Waltenburg 2002, 20). Ideological differences play little in petitioning the FDA for rescheduling of illicit substances; however, just as the Labor Board’s discretion plays to dispute resolution, essentially standing as presidential prerogative, impeding and delay of rescheduling of marijuana hearings

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<sup>161</sup>Originally written for and taken from Number 00-151 Supreme Court of The United States of America: *“On Writ of Certiorari To The United States Court of Appeals Ninth Circuit Amicus Curiae Brief of The Marijuana Policy Project and Rick Doblin Ph.D., and Ethan Russo, M.D. in support of respondents in United States v. Oakland Cannabis Buyers’ Cooperative*

by bureaucrats acts as presidential surrogate on the matter. Such political and administration behavior fares less in challenging the reserve of MPP and other medical marijuana SMOs as much as such action redirects SMO venue choice and reallocation of resources. Pertinent to framing, executive obstructionism sustains focus on those populations the federal government deems the correct target of punishment, not policy benefits. Sustaining the portrayals of all marijuana users, as criminals, and marijuana as a substance empty of medical application with bureaucratic refusal to consider marijuana's rescheduling, ultimately serves to reinforce political and public belief in the absence of positive target populations deserving of a reform policy's benefits.

Referring back to the noted implications of keeping alternative messages out of the policy arena Ingram, Schneider, and de Leon note, "Policy designs become institutionalized over time, and as policy consequences "feedback" (or forward) to discourage the political participation of negatively constructed groups and encourage the participation of positively constructed groups, policy designs come to exert a powerful reinforcement of social constructions, prevailing power relationships, and institutional cultures. Elected leaders respond to policy just as do other policy actors and strengthen prevailing images" (Ingram, Schneider, and deLeon 2007 in Sabatier 2007, 106). Certainly, criminals or legal representatives of those being punished for drug crimes do not constitute integral voices in policy evaluation. However, positively portrayed individuals seeking legal use of marijuana have been marginalized away from benefiting from illicit substance control reform until recent dissemination of medical marijuana frames focused on patient access to alternative medicines.

**Table 11: Noted Medical Marijuana Cases reaching the Circuit and Supreme Court with SMO amicus curiae brief filings**

Case/ Year	Premise	Court/Decision	Prevalent Frame(s)/ Legal Argument	SMO Filing Amicus Curiae
(Formerly <i>Conant v. Walters</i> ) <i>Conant v. McCaffrey</i> 309 F.3d 629 (2002)	First Amendment- “Physicians free speech/ advising of patients	Decided by Ninth Circuit Court of Appeals U.S. Supreme Court refuses to issue writ of certiorari	Physicians’ and Patients’ rights	ASA
<i>United States v. Oakland Cannabis Buyers’ Cooperative</i> (00-151) 532 U.S. 483 (2001)	Medical Necessity/ Exception to CSA (based on common law) marijuana prohibition	U.S. Supreme Court 8-0	Patients’ rights	MPP
<i>Marijuana Policy Project v. District of Columbia</i> (2002)	First Amendment- Core Political Speech/ Voting Rights	Circuit Court of Appeals for the District of Columbia	Voters’ rights	MPP was petitioner, no SMO amicus filed
<i>Gonzales v. Raich</i> (03-1454) 545 U.S. 1 (2005)	congressional commerce clause authority	U.S. Supreme Court 6-3	States’ rights	MPP and MAPS



Executive impediments had been established in the nebulous days of CSA debate and passage, and then strengthened during Nixon's tenure. Further entrenchment and fortification had taken place during Reagan, Bush, and Clinton's presidencies via centralization of drug war resources including EOP controlled agencies and personnel. Yet, the Executive branch was not occluding the flow of petitioning reform as much as bureaucratic agencies designated as gatekeepers refused to answer formal petitioning requests, and adding to the frustration expressed by the National Organization for the Reform of Marijuana Laws (NORML) in the 1970s then expressed by MPP and Doblin in their amicus filing. The National Institutes of Drug Abuse (NIDA), as one of the three federal agencies involved with approving or disapproving CSA Schedule petitioning, held the obligation of delegating research and testing of cannabis, and other illicit substances for "harmful consequences." Once testing was completed and the results analyzed, NIDA was mandated to recommend or deny a rescheduling of a given substance- FDA final approval pending. Assessment by NIDA was a cyclical process of futility enacted and enabled for the purpose of denying rescheduling petitions. According to the MPP legal defense, "sponsor of research into the medical uses of cannabis cannot at present manufacture their own supplies of research material but must instead petition to purchase federal supplies at cost from NIDA. However, NIDA's institutional mission is to sponsor research into the understanding and treatment of the harmful consequences of the use of illegal drugs and to conduct educational activities to reduce the demand for and use of these illegal drugs. NIDA's mission makes it a singularly inappropriate agency to be responsible for expeditiously stewarding scientific research into potential *beneficial* medical uses of cannabis. Furthermore, as with many

monopolies, the quality of its product is low, and access is restricted.”<sup>162</sup> MPP, as advocate and now influential “challenger” of the institutional status quo regarding marijuana prohibition was operating on a “two-track” strategy: shift the focus of framing by invoking positive target populations while demonstrating the inadequate bureaucratic structure and response built into the federal petitioning processes.

Attaching the question of medical marijuana legality or constitutionality specifically to the arena of rescheduling allowed MPP to enter a democratic institution or venue of change stealthily as possible while garnering experience and knowledge of the courts, and thus achieving three immediate ends. First, the fact that FDA/ NIDA petitioning process held so many impediments including bureaucratic refusal to respond was exposed. DEA Administrators even failed to meet court-ordered response timeframes.<sup>163</sup> Second, entering into legal contestation equates to the “flanking” of anti-marijuana/ pro-prohibition bureaucratic structures by medical marijuana SMO legal experts. Circumventing federal agencies as a route to reform and as an alternative to FDA petitioning is evinced along with an understanding of feasible political strategy on the part of MPP. Though NORML’s reaction to bureaucratic delays were appropriately challenged, explaining FDA and DEA refusal to act in the CSA prescribed timeframe as only “executive obstructionism” gives short shrift to understanding the ability of federal institutions to maintain the status quo. “Obstructionism” in regards to marijuana reform constitutes a “transitional” behavior of institutional actors. While many times presidential

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<sup>162</sup>Ibid, p. 5-6

<sup>163</sup> For a detailed account including federal committee records see Randall, R.C. and Alice O’Leary. 1998. *Marijuana Rx: The Patients’ Fight for Medicinal Pot* New York, NY: Thunder Mouth Press

leadership fueled drug war practices, FDA, DEA, and DOJ personnel can be characterized as the “sentries” of marijuana prohibition-lasting through multiple administrations while keeping CSA tenets as a stalwart against reform fronts. Continual impeding of rescheduling requests by bureaucratic leaders fits with a conceptualization forwarded by advocates of “new institutionalism,” “in structuring institutional arrangements, actors may be motivated more by what they believe to be appropriate than by conceptions of what be effective( Miller and Taylor 1996 in Pierson 2004, 110-111)”<sup>164</sup> Certainly, delaying, for whatever reasons, proper responses to reformers was less than effective yet in-line with executive determination for holding to marijuana as a prohibitive substance. MPP’s amicus briefs in *OCBC* and *Raich* also underline how executively driven policy not only acts as an impediment to reform but quite possibly a set of standards crafted to be an intentional institutional blockade that can plausibly be excused as an intended consequence..

Third, MPP identified and employed what was for their organization and other medical marijuana SMOs, a new political and institutional opportunity in the form of amicus filing along with a dysfunctional bureaucratic process. OCBC based their argumentative premises on the established legal concept of medical necessity exception; however, the lacking of a second constitutional question based on 10<sup>th</sup> Amendment protection left OCBC vulnerable to criticism

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<sup>164</sup> Pierson is not, by all accounts, a follower of “new institutionalism” but gives an insightful critique to that school of thought promoted by some sociological, public administration, and political theorists versus the more traditional assessment of institutional arrangements. The latter would terminate their evaluation of seemingly inappropriate bureaucratic behavior by claiming certain institutional features hold significance due to holding purchase in helping actors achieve their goals (Pierson 2004, 110). Further explanation of is summarized by Hall and Taylor: “Many of the institutional forms and procedures used by modern organization were not adopted simply because they were most efficient for the tasks at hand, in line with some transcendent “rationality.” Instead, they should be seen as culturally-specific practices, akin to the myths and ceremonies devise by many societies, and assimilated into organizations, not necessarily to enhance their formal means-end efficiency, but as result of the kind of processes associated with the transmission of cultural practices more generally” (Miller and Taylor 1996, 946-947 in Pierson 2004, 110-111).

that their argument was anchored with tangential constitutional principles against a forty year old set of federal statutory laws anchored by Supreme Court rulings upholding an authoritatively potent commerce clause. With only Randall's federally-based medical necessity victory as precedent, OCBC was left without a principled plea to any of the Justices' 10<sup>th</sup> Amendment protective sympathies. If the Court had been limited to ruling on California law as a contest between "the binding voice of the people" and the CSA as a set of federal policies with sustained legislative and public approval inspired by an erroneous foundation of criminal/ cannabis conflation that the citizenry fears, a majority of the Justices constitutional interpretation might have leaned toward Chief Justice Rehnquist's well-noted support for the constitutional force of states' rights.<sup>165</sup> However, OCBC's request for a "medical necessity" exception to the Controlled Substance Act as a states' rights argument was not an option due to their being, as Justice Thomas noted in his majority opinion, "no currently accepted medical use" for cannabis.<sup>166</sup> Interestingly enough, in concurring with federal prohibitive standards, thus sustaining the crime/ cannabis conflation, Justice Thomas seemingly lacked consultation with contemporary scientific evidence demonstrating marijuana's pain and stress relieving properties. Referencing the "science base" regarding marijuana had been adamantly promoted

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<sup>165</sup> See Rehnquist's opinions in any of the following: *Printz v. United States* (95-1478) 521 U.S. 898 (1997) *United States v. Lopez* (93-1260) 514 U.S. 549 (1995), and *United States v. Morrison*, 529 U.S. 598 (2000). For a broad and articulated telling of Rehnquist's states' rights tendencies see Keck, Thomas M. 2004. *"The Most Activist Supreme Court in History: The Road to Modern Judicial Conservatism."* Chicago, IL: Chicago University Press.

<sup>166</sup> The medical necessity exception counter argument to CSA prohibition had initially been forwarded and successfully argued by Robert Randall, a glaucoma patient seeking to use marijuana to alleviate ocular pressure caused by the disease. The "compelling need" or "necessity" defense is based on four general principles: 1) there is no adequate or legal alternative to the commission or act, 2) the harm to be prevented is greater than the harm caused by the illegal activity, 3) the harm to be prevented is imminent, and 4) that it is reasonable to believe that the illegal action will be effective in abating the harm. *U.S. v. Randall*. 1976. District of Columbia Superior Court, 104 Wash. Daily L. Rep. 2249.

by former Drug Czar General (retired) Barry McCaffery upon his retirement from the ONDCP ten years prior to Justice Thomas' ruling.

The problematic circumstances and ill-conceived scheduling identified by OCBC, MPP, or any of the other amicus brief filers, illuminated policy deficiencies; yet states' rights held more promise for medical marijuana advocates with a less than majority collective of the Justices, namely Rehnquist, Thomas, and O'Connor having written or joined such opinions in the past.<sup>167</sup> States' rights arguments would have to wait until *Gonzales v. Raich* some five years later. Though in their amicus brief MPP and Doblin had recognized the dubious grounds on which the federal government had reasoned and framed marijuana's prohibitive status, OCBC failed to stigmatize the CSA as a policy based on assumptions, not scientific findings. The continuance of underlying marijuana's definition, therefore justifying prohibition, with crime and insidious drug conflation evinces a heavy reliance by pro-drug war advocates on "deviants" so as to keep marijuana users as a negative social construction worthy only of legal punitive means and not policy benefits. No matter how stinging MPP and Dr. Doblin's articulation of NIDA's inappropriate process for change was considered by the Supreme Court, the Clinton Administration had already presented their own response to California's Compassionate Use law and Arizona's blanket reform of illicit substance policy which included a medical marijuana allowance.<sup>168</sup> Clinton's late calendar 1996 objection was adamant and swift, claiming federal supremacy and authority over the domain of illicit control policies. Compounding the difficulty OCBC faced with the

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<sup>167</sup> This grouping of Justices had written majority opinions or concurred in various "states' rights" cases including *Printz v. U.S.*, *U.S. v. Lopez*, and *Morrison v. U.S.*

<sup>168</sup> Arizona voters passed an overall of illicit substance policies in 1996 including a medical marijuana law. In less than two years following passage of the ballot initiative it was rescinded by the Arizona legislature. The bill was not medical marijuana-centric but rather included in grander illicit substance control scheme.

President's immediate reaction to the passage of Compassionate Use laws in the two western states were announcements by a variety of federal law enforcement agencies warning Californians that Proposition 215's tenets were null and void in comparison to federal prohibition of marijuana. The arduous nature of positing illicit substance policy reform intensified for MPP due to congressional action transpiring at the midway point between the Proposition 215's passage and the Court issuing their opinion in *U.S. v. OCBC*.

Federal impediments to illicit substance policy reform, whether at the national or state level, were formidable but in retrospect amounted to a staving off of mobilization. Taken as threats or policy repercussions, such institutional dictates constituted impediments to reform, mirroring and supplemented by conceptualized social constructions depicting marijuana users as “deviants.” Most commonly, “deviants” were politically manifested as criminals or addicts. The Court’s 8-0 ruling against OCBC’s request for a medical necessity for cultivation and distribution of medical marijuana was no surprise and institutionally appropriate when considering the petitioning process built-in to the CSA’s Schedule of Drugs, no matter how much the process was inhibited by executive delay and impediment. None of the Justices were willing to override statutory standards with the establishment of a new precedent which would create a loophole for circumventing a federal regulatory policy that had developed into a political bulwark for drug war advocates. To carve out a medical exception to a substance clearly categorized as a hindrance to law enforcement efforts could easily be perceived as judicial activism and possibly breaching separation of powers between the judicial and legislative branches. Even though the Supreme Court’s interpretation of the CSA defined prohibition as an absolute, allowing no medical use of cannabis, seemingly, public opinion polls reflected a view

less rigid than the Court's legal holdings regarding marijuana prohibition. A 2003 Gallup survey registered 75% of respondents as agreeing with making medical marijuana available to patients seeking pain relief, an increase from the 73% who approved of medical marijuana legalization two years before the Court's ruling in *OCBC*.<sup>169</sup>

At the Circuit Court of Appeals (9<sup>th</sup> Circuit-*Raich v. Gonzalez* 03-15481 ) level, Raich's attorneys, including 10<sup>th</sup> Amendment advocate and legal scholar Randy Barnett, successfully argued for an injunction against the federal government's authority to act against Raich and her co-petitioner, Diane Monson, in their use of cannabis as pain relief. Based on CSA tenets, Attorney General John Ashcroft had license to order Drug Enforcement Agents to raid and confiscate Raich's marijuana plants and private inventory of the drug. On appeal to the Supreme Court, Ashcroft initially, and then Alberto Gonzales argued that CSA prohibition of marijuana allowed the federal government to terminate medical marijuana cultivation and distribution based on Congress' interstate commerce authority. By the time the Justices decided to grant a writ of certiorari, Raich's legal plight had gained notoriety amongst the general public, advocates, and detractors alike. Due to a federal argument poised against a 10<sup>th</sup> Amendment defense, states' rights advocates celebrated a new cause to claim state sovereignty which, for the most part, had been shunned by those holding "mainstream" beliefs extrapolated from federal marijuana frames. From those framed messages ferried through generations of silent believers, marijuana users had been conceptualized as, amongst other negative idealizations, lazy, free-loaders, criminally-associated, and taking part in derelict-like behaviors. Also, for those

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<sup>169</sup> Gallup surveyors asked 1004 participants the following question: "Would you favor or oppose making marijuana legally available for doctors to prescribe in order to reduce pain and suffering?" between November 10-12, 2003 <http://www.gallup.com/poll/10126/Medicinal-Marijuana-What-Doctor-Ordered.aspx> Taken last on July 9, 2011.

seeking decriminalization or even to the more extreme or marginalized “legalization” proponents, Raich’s case offered hope to their respective political and legal aims.

ASA’s legal team assisted Barnett in promoting legal frames of “medical necessity” in the name of “patients’ rights” along with “states’ rights.” States’ rights, though a rallying cry of modern day advocates of populism, including Libertarians and the Federalist Legal Society, held a predictable impediment for Barnett’s legal translation, particularly the differentiate between “intrastate” and “interstate” commerce.<sup>170</sup> The latter being constitutionally legitimated by numerous Supreme Court rulings while the former found in dispute concerning congressional jurisdiction. When analyzing Barnett’s states’ rights argument as a lone force toward reform within the framework of *legalism* or “myth of right,” a deficiency of the greater medical marijuana political movement is discerned. Borrowing from Michael Paris, Raich’s cause, as the “only cause,” is an example of:

Legalistic actors both believe in and trade on the broader optimistic hope in American politics that law has the capacity to rationalize (in the good sense) political debate and to render substantive justice...Whether legal doctrine is taken to be relatively determinate or indeterminate, legalists believe that well-formed doctrinal argument shape judicial decision making. It takes talented lawyers immersed in the legal culture to make persuasive, principled arguments, perhaps with a

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<sup>170</sup> On their official website The Federalist Society lists three areas of “our purpose.” The second encapsulates their ideological base: The Federalist Society for Law and Public Policy Studies is a group of conservatives and libertarians interested in the current state of the legal order. It is founded on the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be. The Society seeks both to promote an awareness of these principles and to further their application through its activities. <http://www.fed-soc.org/aboutus>



supporting role for social scientific experts...In its pure form, legalism is unconcerned with questions of broader political mobilization to produce change and problems of implementation after a court victory is obtained (Paris 2010, 22-23).

Labeling Barnett a “legal realist” is neither my objective nor need; rather, Barnett’s legal triumphing of states’ rights was limited when considering MPP’s prior state ballot and legislative campaigns that were based mostly on the promotion of patients’ rights. Seemingly and appropriately, Barnett, as Raich’s legal director, was acting in a solo effort by finding a federalism exception to CSA prohibition. Juxtaposing the amicus brief filed by MPP and Doblin with Raich’s legal proceedings, one finds a disjointed relationship in the medical marijuana movement between the states’ rights treatment Barnett fashioned and the executive obstructionism identified in MPP’s brief. Remember, MPP and Doblin noted how bureaucratic impediments of rescheduling requests had transpired since the 1970s. Those rescheduling requests had been based on patient access to marijuana as a medicine not on authoritative jurisdictions between federal and state entities. Though a Supreme Court ruling in Raich’s favor would have advanced the legal and political fortunes of medical marijuana advocates, asserting state-based arguments is seen by Raich and Barnett as “going at it alone.”

However, returning to why the Court agreed with U.S. Attorney General Alberto Gonzales and rendered an expected roadblock to Barnett’s 10<sup>th</sup> Amendment claim. The Court’s majority rested most of their constitutional reasoning on a sixty-two year old precedent pertaining to questions of intrastate commerce authority, *Wickard v. Filburn* (317 U.S. 111, 1942) In his opening statements, Attorney Barnett fashioned the World War II era ruling as extreme, warning a similar ruling in *Raich* would “replace *Wickard v. Filburn* as the most far-

reaching example of Commerce Clause authority over intrastate activity.”<sup>171</sup> With the *Wickard* ruling as a possible negation to Barnett’s states’ rights premise, MPP attacked what their directors believed was a lacuna in constitutional consideration of allowing marijuana as medicine. By promoting what neither Justice Thomas in his *OCBC* opinion nor Justice Stevens in his concurrence had considered, MPP laid a new foundation of constitutional contestation with a publication release concurrent to the Raich case entitled the “*Overview and Explanation of MPP’s model state Medical Marijuana Bill.*”

In their model state treatment, MPP researchers referenced an omission from *U.S. v. OCBC* and offered Barnett a supplement to his pending argument: “Although the Supreme Court ruled on May 14, 2001, that the medical necessity defense cannot be used to avoid a federal conviction for distributing marijuana, the Court did not question a state’s ability to allow patients to grow, possess, and use medical marijuana under state law.”<sup>172</sup> MPP’s close examination of the Court’s words attempts to tie the limitations of congressional commerce clause authority to interstate trade, specifically commercial “intercourse” not contained within intrastate commerce. MPP also notes that “of course, the model bill only provides protection against arrest and prosecution by state and local authorities. State laws cannot offer protection against the possibility of arrest and prosecution by federal authorities. Even so, because 99 percent of all marijuana arrests are made by state and local-not federal-officials, properly

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<sup>171</sup> *Alberto R. Gonzales, Attorney General, et al v. Angel McClary Raich, et al* Monday, November 29, 2004. Argued in oral argument by Paul D. Clement, Acting Solicitor General, Department of Justice Washington, D.C. and Randy E. Barnett, Boston, Massachusetts.

<sup>172</sup> Marijuana Policy Project State Model Medical Marijuana Bill taken last on October 4, 2011 [http://docs.mpp.org/pdfs/general/MODEL\\_BILL\\_EXPLANATION\\_2006.PDF](http://docs.mpp.org/pdfs/general/MODEL_BILL_EXPLANATION_2006.PDF)

worded state laws can effectively protect 99 out of every 100 medical marijuana users who would otherwise face prosecution at the state level.”<sup>173</sup> When pressed in by Justice Scalia in oral arguments Barnett’s attempted to detach or disassociate California’s Compassion Use law from federal law enforcement prosecution regarding congressional Commerce Clause Authority extending to “fungible” products including marijuana. Thereby, arguing beyond the precedent in *Wickard*, Scalia noted that Congress had applied the theory of controlling fungible commodities in other contexts including, “the protection of endangered species...unlawful to possess ivory...eagle feathers, the mere possession of it, whether you got it through interstate commerce or not. And Congress’ reasoning is, “We can’t tell whether it came through interstate commerce or not, and to try to prove that is just beyond our ability; and, therefore, it is unlawful to possess it, period.”” In applying or extending commerce clause authority to that “class of activities,” Justice Scalia had also limited frame consideration to definitions the federal government had produced and promoted for well over thirty-five years. Barnett’s counter argument simply relied on the fact that Angel Raich’s marijuana was within “this class of activities (outside of congressional control)—because it’s been isolated by the State of California, and is policed by the State of California, so that it’s entirely separated from the market.” Arguing to contain medical marijuana use to state jurisdictional was integral to MPP and ASA strategies. Obviating public and politicians’ attention toward reform and away from federal framers of illicit substance message and policy, though counterintuitive, attenuated public opinion to possibly favoring medical marijuana. This overall strategy was served in part by Barnett’s states’ rights argument limiting congressional authority to the more narrowly defined

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<sup>173</sup> Ibid.

concept of interstate “commerce.” In essence, Raich’s rights as a patient became highly dependent on Barnett’s framing of states’ rights thus bringing together two of the social movement’s most compelling, adherent capturing, and aggressive “schemata of information.” Instead of “braiding” or coupling the patients’ rights messages disseminated and emphasized by MPP, Barnett’s legal translation paralleled SMO tactical direction in eschewing direct responses to entrenched crime and addict conflation forwarded by the federal government. However, in retrospect, Raich’s legal team had diverged from the road to reform MPP and other medical marijuana SMOs delivered to various policy venues. Legally and rightfully, Barnett demonstrated an intensely competent argument yet failed to muster enough interest from Justices in the way of considering state experimentation of medical marijuana as worthy of holding an elevated status to warrant striking down a federal policy as unconstitutional. Institutionally, the Court, intentionally or otherwise, preemptively denied accusation in the form of judicial activism, unintentionally or otherwise, by positioning the national bench well off of the political “radar” as an institution willing to strike down congressional authority, thereby affixing positive target populations deserving of reform policy benefits as a new definition for marijuana users.

SMO collaboration with Barnett for the purpose of consulting marijuana patient Angel Raich at the District and Circuit courts gave prominence to those SMO involvement within the judicial arena along with adding to a wave of political opportunities (courts, public opinion, and mid-term elections) availed to reform minded organizations. A series of medical marijuana campaigns saturated local, state, and federal governing milieus equating to an expansive venue insurgency by organizations promoting a cause seemingly solidified as marginalized and its advocates per Gamson’s categorization as quintessential “challengers.” Underwriting, either

partially or in totality, reform campaigns inherently promoted a states' rights frame. Raich's cause went beyond state or regionally-based dissemination of Tenth Amendment issues. The Ninth Circuit Court's agreement with Barnett's federalism arguments not only drew an appeal to the Supreme Court by the Department of Justice and the Drug Enforcement Administration, but the possibility of congressional commerce clause authority expanding acted as a siphon for endorsement and support from state Attorney Generals not agreeing with medical marijuana allowance. Louisiana, Alabama, and Mississippi state AGs, all fervent opponents of marijuana use-evincing by their respective states criminal and sentencing codes-filed amicus briefs in favor of Raich's legal plight. Emphasis of an apparent paradox in supporting Raich's argument and holding prohibitive lines for law enforcement were emphasized by the Southern States' AGs: "The Court should make no mistake: The States of Alabama, Louisiana, and Mississippi do not appear here to champion (or even to defend) the public policies underlying California's so-called "compassionate use" law. As a matter of drug-control policy, the amici States are basically with the Federal Government on this one." Filing of amicus by these states underlies an increasing disfavor with federal prohibition as an affront to state-based policy experimentation but not necessarily negative frames. Louisiana, Alabama, and Mississippi were respectively disagreeing with existing federal jurisprudence regarding interpretation of federalism tenets while not offering commentary regarding how prohibition was negatively constructed against marijuana users, patients or otherwise.

Adding further concurrence to federal standards, Alabama's AG detailed the allied states adamant adherence regarding belief in continuing the federal route of conducting an energized process of investigation, arrest, and handing down of the most severe punishments for illegal

drug traffickers. Additionally, the amicus offer ups social commentary consistent with federal rhetoric by recognizing illicit substances as ruinous elements of “family” stability, an on-going health problem, and “undercutting traditional values and threatening the very existence of....communities, and government institutions.”<sup>174</sup> That sentiment holding, the AG’s amicus brief veers from a drug control rant to undergirding right of California voters to enact a compassionate use law: “from the amici States’ perspective, however, this is not a case about drug-control policy or fundamental rights. This is a case about “our federalism” which “requires that Congress treat the States in a manner consistent with their status as residuary sovereigns and joint participants in the governance of the Nation.”<sup>175</sup> The Government apparently does not view the federalism issue in this case as a serious one. And, just as individual States have intervened to challenge laudatory (and popular) congressional statutes on federalism grounds before, the amici States perceive a need to do so here...the amici States...support their neighbors’ prerogative....the point is that, as a sovereign member of our federal union, California is entitled to make for itself the tough policy choices that affect its citizens. By stepping in here, under the guise of regulating interstate commerce, to stymie California’s “experiment,” Congress crossed the constitutional line.”<sup>176</sup> Relevant to the broader movements’ patients’ rights frames, if the Court would have granted Raich a litigious victory based on 10<sup>th</sup> Amendment grounds, patients’ rights would have received an underpinning of constitutional authority. However, disagreement with Barnett and the amicus filing states positioned the Court as walking a line of excessive precedential constitutional limits regarding interstate and

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<sup>174</sup> *Brief of the States of Alabama, Louisiana, and Mississippi as Amici Curiae in Support of Respondents*. Troy King-Attorney General, State of Alabama. Filed with the Supreme Court of the United States October 13, 2004.

<sup>175</sup> Citing *Alden v. Maine*, 527 U.S. 706, 748 (1999).

<sup>176</sup> *Brief of the States of Alabama, Louisiana, and Mississippi as Amici Curiae in Support of Respondents*. Troy King-Attorney General, State of Alabama. Filed with the Supreme Court of the United States October 13, 2004.

intrastate authority while directing medical marijuana advocates, individual, SMO, and state governments in a cyclical (and fallible) route back to CSA petitioning or the constitutional amendment process.

Another set of state AGs also reminded the Court of their institutional history in supporting a firm pylon of states' rights within federalism. Citing Justice Brandeis, the collective AGs of California, Maryland, and Washington reminded the Court of state sovereignty and ability to craft legislation most fitting for their citizens, "The essence of federalism is that the state must be free to develop a variety of solutions to problems and not be forced into a common, uniform mold."<sup>177</sup> The AGs go a step further in providing evidence that states have continued their legacy of being "laboratories of democracy" by demonstrating the antiquated (federally defined) notion that marijuana is not medicinally useful, "On its face, the CSA does not purport to regulate medical usage of marijuana. Indeed, in 1970, as Congress found, marijuana had "no currently accepted medical use in treatment in the United States," and there was "a lack of accepted safety for use of the drug or other substance under medical supervision. These legislative findings must be understood in the context of their time. The word "currently" suggests not a broad, medical absolute, but recognition that the future may provide other information bearing on that description. Congress's findings properly address the integrated interstate trade in *illicit* drugs....The findings are completely silent regarding lawfully enacted,

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<sup>177</sup> Justice Brandeis (in dissent) *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932).

state authorized, intrastate cultivation, distribution, possession and use of medicinal cannabis.”<sup>178</sup>

The inclusion of Alabama, Mississippi, and Louisiana as part of a state sponsored and promoted illicit substance policy amicus brief countered the status quo via the model of American federalism. Such actions gave strength to MPP and ASA’s inclusion in the amicus filing and reached beyond a states’ rights front and framing of medical marijuana. Though the three southern states clearly stated an anti-marijuana stance in their group amicus, the right of California to enact, implement, and enforce such a law was emphasized, identified common ground against federal prohibition as well as infusing the drive to increase public awareness of marijuana’s medical applicability. Having states’ rights advocates couple with medical marijuana SMOs promoted a mobilization not based on ideology, geography, politics, or morality; rather, messages within the Raich case forwarded by MPP, ASA, and other SMOs infused public and institutional discourse so as to raise issue saliency. Demonstrating how the federal government was holding a firm grip on marijuana prohibition via restricting state sovereignty was instrumental to medical marijuana SMOs in their quest to burn through electoral barriers, “drug war politics,” and garnering new members to mobilize. Even a subtle ring or echo of Reagan’s call for “smaller government” could be heard by Raich proponents in demonstrating how commerce clause authority would be expanded one more time if the Justices were to agree with Attorney General Gonzales. By directing judicial endeavors down the route of federalism

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<sup>178</sup>*John Ashcroft, Attorney General, et al., Petitioners v. Angel McClary Raich, et al., Respondents*. No. 03-1454 Amicus Curiae Brief of the States of California, Maryland, and Washington in Support of Angel McClary Raich, Et Al. Bill Lockyear, Attorney General, State of California. Richard M. Frank, Chief Deputy Attorney General, Legal Affairs. Manuel M. Medeiros, State Solicitor. Taylor S. Carey, Special Assistant Attorney General (Counsel of Record).



contestation Barnett failed to compliment MPP and ASA political campaigns firmly grounded in patients' rights. However, the difference in frames between policy venues speaks to the creation and evolution of a comprehensive social and political force for reform. The SMO led medical marijuana movement in practice concurs with Paris' assertions that, "Legal translation (framing) should be seen as a central activity within legal mobilization... [and] legal strategies work best when used in conjunction with broader political mobilization and coalition building" (Paris 2010, 3-4). In turn, SMO ventures into various institutional policymaking arenas and participating in the status quo challenging processes manifests as political opportunities either in the form of heuristic experience, public discourse, or ultimately, reform policy being enacted.

Analysis of amicus briefs filed by MPP, Rick Doblin, and various states finds a tangential frame to states' rights consistent with MPP and ASA's overarching strategy of challenging federal illicit substance policy metrics by "removing" discourse and reform from the milieu controlling the status quo (Executive) and focusing mobilization efforts at the state and local tiers of government. "Executive Obstructionism," or impeding petitioning for marijuana's rescheduling via the FDA and NIH was presented and articulated by MPP and Dr. Rick Doblin in their joint amicus curiae submitted in *U.S. v. Oakland Cannabis Buyers' Cooperative* some four years earlier. Doblin and MPP had also iterated that frame in *Conant v. McCaffrey* when that suit was filed in 1997. Now, just one month prior to the 2004 presidential election, California, Maryland, and Washington moved beyond a states' rights premise and lashed out at presidential ignorance of medical marijuana's solely intrastate effect, "Amici respectfully submit that the Executive Branch's naked assertion that wholly local, state-regulated personal medicinal marijuana usage affects interstate commerce does not make it so." The aggregate of states' Attorney Generals

went on to cast further doubt on presidential command of contemporary knowledge of the marijuana trade by suggesting a delimiting of national legislative authority “Congress’s findings regarding the scope of the CSA must be interpreted in their proper context. At the time of its enactment no state had instituted a regulated statutory scheme authorizing the medicinal use of marijuana under a physician’s care. All trade in marijuana was illicit, but that is no longer the case and the Executive Branch’s attempt to cast state authorized medical use in the same light goes beyond the scope of the CSA.”<sup>179</sup>

Venue shopping, in the case of MPP’s embarking into arenas of litigation, provided the organization with evidence of FDA and DEA unwillingness to draw their practices from the same set of rules those agencies mandate reformers abide by. Identifying executive obstructionism in the FDA petitioning process for the rescheduling of cannabis by medical marijuana SMOs credits these organizations with innovatively attacking status quo manipulation by the federal government. Whereas the states’ rights, patients’ rights, and medicinal value frames were forward thinking-not relying on the ineffective results and criticism drawn by presidentially endorsed federal messages-casting doubt on the willingness of the EOP and drug control agencies under its charge presented an offensive front. Seemingly, once MPP and ASA had saturated public discourse with innovative frames, their legal-turned media tactic was to return to messages reminiscent of NORML’s plight of facing indefinite delays and petition denials by the FDA in the late 1970s and early 1980s. This is not to state that NORML perpetuated such frames but rather that contemporary SMOs anticipate a federal government response, if not legal argument, dictating the necessity to follow the CSA’s petitioning process. Such a

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<sup>179</sup> Ibid.

preemption of sorts places MPP as the aggressor, yet in a political light respectful of policy making institutions when attempting reform in judicial venues.

## Chapter Six: Findings of each Chapter

### Chapter Two:

Transforming marijuana from its prohibitive status either through rescheduling of the Controlled Substance Act or state-based legal processes was tantamount to transforming marijuana as a “weakest case” for policy reform to holding reform possibility. Due in part to institutional and political entrenchment leading to path dependency of America’s “War on Drugs,” medical marijuana Social Movement Organizations were behooved to reframe and subsequently disseminate innovative messages regarding marijuana’s medicinal potential. Reframing, thus diverging from status quo policy messages was integral to garnering governmental and public acceptance of medical marijuana cultivation, distribution, and use. Reframing the conceptualization of marijuana also necessitated eschewing a “fleeting” political and citizenry purchase of “new” ideas. Therefore, institutional consideration of marijuana as possessing medical worth was dependent upon a wedding of framing tactics and SMOs participation in the practical act of coalition building. The former was infused with messages of “patients’ rights” and “states’ rights” emphasizing positive target populations deserving of policy benefits. However, prior to analysis regarding the arduous nature of SMO-driven policy reform, calls for the historical accounting of marijuana’s “transformation” from a societal menace to benefiting substance was necessitated.<sup>180</sup> Intuitively, research was initiated at the intersection of issue framing and policy creation.

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<sup>180</sup> From the time of Richard Nixon’s initiation of the “War on Drugs” and throughout the continuance of rhetorical and punitive campaigns aimed at terminating marijuana cultivation, distribution, and use cannabis was commonly given the moniker of

Richard Nixon's political and policy efforts regarding his self-proclaimed "War on Drugs" centered on framing marijuana as contributing to crime rates and detrimental to individual health. Seemingly, though an absolute concept, proscription as public policy leaves a wide berth from which to entrench an extended resource base, lending to a manifestation of path dependency. Pertinent to SMO opportunities toward petitioning federal institutions for medical marijuana allowance, CSA language and petitioning processes for rescheduling were created to be so securely tied to executive discretion so as to make national marijuana reform untenable.

Nixon brought a new luster to an old coin by waging a "two-pronged" front in his "War on Drugs." First, a rhetorical campaign conflating of marijuana with crime, counterculture elements, and more insidious substances was initiated during Nixon's 1968 Presidential campaign and subsequently reiterated throughout his abbreviated tenure. The second focused on Nixon's "Reorganization" plans for what the president perceived as an adversarial bureaucracy. By "relocating" illicit substance resources under Department of Justice auspice, Nixon modified and augmented America's existing, yet fallible path of marijuana prohibition so as to drive enforcement by punitive means. Defining marijuana use as a criminal endeavor deserving of punishment served as a bulwark against future reform campaigns aimed toward legitimating marijuana's medicinal worth. In short, the Nixon Administration's defining and categorization of marijuana as a drug possessing a "high potential for abuse" and "no currently accepted medical use in treatment in the United States" demonstrates a dearth of analysis regarding marijuana's "science base" perspective while conflating cannabis with other social ills

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"Public Enemy Number One." The promoted and believed physical and mental detriment marijuana caused was also "evidence" to reason the substance as hindering to beneficial societal development.

as well as bypassing any substantial consideration of the drug's benefits within federal regulatory interdict.<sup>181</sup>

Considering conflation with counterculture elements, Nixon quickly attributed increases in marijuana use with pockets of that subculture on American campuses and urban areas. Nixon's presentation and manipulation of illicit substance control policies can be characterized as Janus in nature. His recruitment of world- renowned substance abuse clinicians to investigate and treat Vietnam veterans-cum-addicts is evidence that his administration was tacitly shifting U.S. federal drug control practices. This trend toward more supply-side or health demands of the drug war was short-lived due to resource cuts, lack of illicit substance research along with a refusal on the part of illicit substance researchers to bow to the drug war's politically driven policy limitations and dictations.<sup>182</sup> Once inaugurated as the 37<sup>th</sup> President, Nixon targeted members of the counterculture as to demonstrate how younger people were introduced to illicit substances, then addicted and removed from traditional American values and practices. As president, Nixon had a direct conduit to media and various bureaucratic agencies in disseminating frames depicting not only the counterculture as insidious drug dealers poisoning younger Americans but also the ability to meld those leading lifestyles alternative to mainstream lives with criminal elements. Conflating marijuana and counterculture elements allowed Nixon to interchangeably invoke crime and the

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<sup>181</sup> Section 812. Schedule of Controlled Substances (1) (A) and (B). Controlled Substance Act of 1970. Drug Enforcement Administration website <http://www.deadiversion.usdoj.gov/21cfruse/812.htm> Last taken on September 12, 2012.

<sup>182</sup> Post CSA ratification, all medical and botanical research on cannabis would be sanctioned by the federal government. Any research institution could only be granted federal authorization. Contained in authorization was a caveat to strictly adhere to FDA scientific guidelines prior to and during research activities.

counterculture as one or of the same ilk while infusing definitions of those social elements with connotations of illicit substances. Ergo, drug use by any segment of the population, particularly alternative lifestyle groups, equated to criminal conduct. The entrenchment of marijuana prohibition was laid via policy language and practice, rhetorical supplementation, and the employment of negative (criminals, counterculture) target populations not deserving of policy benefits such as health-driven concerns but rather punitive means. Such definitions became status quo standards while also acting as bulwarks against future reform-based policy options.

Nixon constructed a layered fortification of political and policy defenses against reform advocates. Defining marijuana as “most dangerous to society” and “without medicinal worth” was a policy bulwark; allowing a petitioning process for recategorization of substances was part and parcel to the reorganization of bureaucratic agencies at the executive’s command, yet in reality petitioning for rescheduling was a futile endeavor due to executive obstructionism. Attaching, in rhetoric and policy, marijuana to domains usually considered suspect infused the definition of marijuana with trepidation and fear. According to federal messages, Tetrahydracannabinol (THC), the active chemical compound in cannabis, contained more than a euphoric “high,” THC fueled deviant and corrupt behavior.

Institutionally, Nixon’s rearrangement of illicit substance policy responsibilities amongst executive agencies and establishment of the DEA under the DOJ’s auspice included a diffusion of resources and significant alternations in the structure of federal illicit substance control. Nixon’s new centralized administrative arterial scheme forever changed the lines of agency communication, dictation, and collaboration. If one were to “map” out flow charts of command

for pre-CSA and post-CSA eras, they would diverge many times over. However, centralization under Nixon replaced localized, ad hoc policy carried out by the DEA's predecessor the Bureau of Narcotics and Dangerous Drugs (BNDD). Nixon's rearrangement, agency name changing, and bureaucratic centralization lent to enforcement of the punitive paradigm. Placing law enforcement at the forefront of federal policy implementation aided Nixon in delivering frames of crime, justifying the continuation of marijuana prohibition as well as superficial assurance and credibility to his pledges to decrease crime rates. Reorganization of legal resources and personnel pertaining to drug control became analogous to Matryoshka or Russian "nesting" dolls. Each dedicated branch or agency fit neatly into the broader jurisdictional holder. The interlocking of enforcement with legal experts demonstrated a telescopic view of U.S. illicit substance policies and procedures erasing Harry J. Anslinger's autonomy and President Johnson's ad hoc, temporary reflective answer to bureaucratic uncertainty regarding the BNDD. To offset a dominance of law enforcement control of CSA authority, the Food and Drug Administration was granted review of all petitions for rescheduling of a given illicit substance. Though FDA leadership was instrumental in organizing the Investigative New Drug Program in 1976, that agency held but a trace of influence regarding illicit substance policies. Executive allowance of DEA impeding of FDA review of rescheduling requests is an inconsistency seemingly structured to confuse and delay any strident rescheduling attempt and demonstrates a lack of responsiveness and adherence to policy protocol. In short, Nixon created and received congressional authorization of regulatory policies and agencies insusceptible to reform, centralized for executive obstructionism, and encased in punitive means with reticent institutional actors.



### Chapter Three: Path Dependency via Executively Driven Entrenchment

Path Dependency defines U.S. federal illicit substance control policies, marijuana prohibition specifically, as crafted by the Nixon Administration, revised and implemented by Ronald Reagan, and internationalized by George H.W. Bush. The means of prohibition can dictate the types of allowances “built-in” or packaged within policies. By means, I am including monetary resources, personnel designation (law enforcement, prosecutorial, and judicial), and political conceptualization (“War on Drugs” and entailing frames). Therefore, reoccurring and reemployment without divergence from drug war ideals and practices further engrained the sustainability of drug war policies creating a bulwark and marginalizing policy options such as medical use of marijuana. The sustainability of the drug war effectively determined medical marijuana as a “weakest case” for reform. Why federal institutions resisted divergence, either drastically or incrementally from prohibition to either allowing medical marijuana or a decriminalization model begins to ask what Bertram, Blachman, Sharpe, and Andreas describe as “collateral” effects of the drug war including economic, racial, and political divisions. In part, positive feedback generated from the forty-plus year drug war has perpetuated continuance. As each new administration either “re-subscribed” to drug war tenets, political employment of drug war rhetoric, funding, and messages were “easy sells” for public consumption, demanding quick answers to the inherent complexity of drug crime and addiction. Brian Arthur’s summarization pertaining to *Inflexibility* caused by positive feedback captures the path dependency of marijuana prohibition as well as the larger umbrella policy topic of illicit substance control, “The farther into the process we are, the harder it becomes to shift from one path to another. In application to technology, a given subsidy to a particular technique will be

more likely to shift the ultimate outcome if it occurs early rather than late. Sufficient movement down a particular path may “lock in” one solution” (Arthur 1994 in Pierson 2004 18). Within America’s “War on Drugs,” prohibition constitutes the one solution for marijuana trafficking and use.

Though probation of substances was not innovative to American national regulatory policies, continuing the proscription of marijuana via the Controlled Substance Act’s “Schedule” of drugs equates to more than window dressing of an existing regulatory structure. Redefining the constraints and punishments associated with marijuana trafficking demonstrates Pierson’s (2000) path dependency claim that “large consequences may result from relatively “small” or contingent events.” Sustaining marijuana’s status as a prohibitive narcotic under CSA dictates allowed for intensification of law enforcement pursuit of traffickers and users. Thus, the punitive paradigm was reinforced without alteration to the basic policy.<sup>183</sup> “Keeping the status quo” regarding marijuana proscription seemingly facilitated the “No Tolerance” and centralization schemes of the Reagan and Bush Administrations. Along with the executive actions of Reagan and Bush, Clinton’s failure (though a focus of Chapter Four) to incorporate many of the health initiatives into federal drug control also evinces how a “particular courses of

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<sup>183</sup> In relation to marijuana, “punitive paradigm” refers to punishment-based answers to marijuana “crimes” whether for cultivation, distribution, and/or possession. Whereas only punitive means are employed for federal prohibition infringement, decriminalization would allow for paying fines without incarceration or criminal status of individuals found guilty of marijuana possession. Bertram, et al conclude, “The punitive paradigm plays a critical role in shaping the nation’s debate, strategy, and policies on drugs. As the dominant paradigm, it informs the conventional wisdom about drugs. It tells a story that provides a particular definition of the drug problem (how to stop all use of illicit drugs), posits the source of the problem (drugs are too cheap and easily available), and suggests the appropriate solution (coercion and punishment). By fashioning conventional wisdom, the paradigm also shapes the drug war strategy adopted by national leaders” (Bertram, Blachman, Sharpe, and Andreas 1996, 57).

action, once introduced, can be virtually impossible to reverse"-another consequence of path dependency.<sup>184</sup>

Reagan's continued employment of drug war rhetoric, incrementally increasing budgetary allotment toward the sustainment of prohibitory metrics and proliferation of anti-drug non-profits gives credence to Pierson's assessment of policy development that , "suggests the considerable prospects for thinking not just about what grand policy enactments may occur at a moment in time, but about how those policies develop-whether they are or are not likely to become sustaining elements of a durable policy regime or...initiatives that have a much more fleeting impact on patterns of governance" (Pierson 2005, 39). Collaboration between federal agencies and public organizations constitutes a stage of development indicative of entrenchment, moving beyond governmentally enforced regulation and into citizen campaigns "shap[ing] the basic contours of social life" (Pierson 2000, 251). Indeed, the proliferation of citizen-based anti-drug organizations initiated during Reagan's tenure and continued into Clinton's presidency solidified cultural and political adherence to drug war tenets, namely drugs as "enemies" warranting eradication without consideration of alternative uses and policy arrangements. Just as executively-led entrenchment relied on institutional shoring and increases in resource largesse, prohibition was sustained without significant challenge by a cooperative relationship between citizen and government, thus "feeding" the drug war as a policy "belief-system" and stalwart against alternative policy options.

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<sup>184</sup> Pierson, Paul. "Increasing Returns, Path Dependence, and the Study of Politics." *The American Political Science Review*, 94 2, 258.

In a macro sense, Reagan and Bush maintained and further developed a two branch illicit substance policy scheme: one path was to reach out to citizen groups willing to participate in federal prohibitive policies with the aid of government supplement funds, subsequently promoting frames created and disseminated by federal agencies. Therefore, digging deeper drug war trenches via path dependency was also accomplished by securing both public acceptance and participation. Several, Reagan initiated, public/private anti-drug organizations contracted with or served on White House-based advising committees. Several of the fifteen plus national anti-drug organizations established during the Reagan and Bush eras (1981-1991) either contracted directly with federal agencies, received federal funds, and/or seated members on EOP-based committees. Speaking strictly to policy sustainability, collective mobilization of private citizens as advocates of federal messages and practices ossified public support, amounting to an exchange of governmental resources for citizen agreement with drug war tenets. An encapsulation of federal and public “oneness” pertaining to drug war tactics can be seen with the “Just Say No” campaigns which served as cultural shorthand for belief in the necessity of marijuana’s prohibitive status.<sup>185</sup> Public collaboration with federally sponsored policies lessened the likelihood of alternative options becoming any more than trivial discursive ideas, ultimately failing to heighten issue saliency, mobilize reform advocates, or submission of reform policies for institutional consideration. Therefore, entrenchment of drug war punitive frames within the federal bureaucracy and public arena “shuttered” windows of opportunity for

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<sup>185</sup> Bertram, et al offers extended insight regarding “Just Say No,” “A campaign for total abstinence-Nancy Reagan’s “Just Say No” drive-not only appealed to parents’ groups that had organized to do something about drugs in schools but was a powerful symbolic attack on the left, the counterculture, and permissive liberal humanism. And the antidrug campaign promised to win even broader support when joined with an anticrime platform” (Bertram, Blachman, Sharpe, and Andreas 1996, 111).

reformers, thus marginalizing conceptualization and codification of positive target populations further distancing deserving groups from beneficial return of policies.

Little doubt exists that both the Reagan and Bush Administrations were ardent opponents of diverging from the tenets of the prohibitive-laced punitive paradigm. While under their command, bureaucratic alternations reinforced prohibition, in turn those same agencies undergirded drug war politics. In a word, centralization of illicit substance control policy strengthened prohibition by making rescheduling petitions or other reform measures counter to the status quo be directly engaged and denied by White House personnel. Several EOP committees established via executive order including the Office of National Drug Control Policy, then subsequently the appointment of the first Drug “Tsar” by the Bush Administration were the most effective of centralizing agents. Each EOP committee pertaining to drug trafficking and use was either chaired by the president, executive surrogate, or processed through the ONDCP under the auspice of the EOP. Once the ONDCP was founded with William Bennett as the initial “Drug Tsar,” messages or frames originating from the executive were enforcing or supplemental of the punitive-based mission of the DEA and DOJ. In this case, establishment of the ONDCP constructed a policy tether from the White House to DEA activities. One can conceive of the ONDCP as the president’s drug policy messengers while the DEA were carrying out punishment for those not heeding the warnings of EOP produced frames and policies.

Executive efforts toward bureaucratic centralization of illicit substance control resources and agencies stretched to Reagan’s inclusion of the FBI and CIA garnering the EOP a hardened tie to drug policy enforcement. Each agency “linking” the President in closer relations to illegal

drug control, arrest, and conviction jurisdictions assured compliance, direction, and communication with the Oval Office. On a small scale, U.S. Army personnel were employed as consultants to Mexico and several Central American nations in hopes of bringing a subsidence to marijuana production. In an odd revisiting of NORML's challenge to marijuana eradication sponsored by the DEA, Reagan threatened to ask Congress to lift the ban on paraquat spraying of marijuana crops in and around the U.S./ Mexican border. Committee and agency centralization continued under Bush with an increase in budgetary allocations to the DEA and DOJ as well as intensified inclusion of military branches via the Andean Initiative and Plan Colombia. Military "advisors" were deployed to Bolivia, Colombia, and Chile with the intent of aiding native efforts to eradicate cocaine production and transportation originating in those countries and adjacent areas. Domestically, both the Reagan and Bush administrations promoted the use of the U.S. Coast Guard to seize, confiscation, and impound property and finances of alleged drug traffickers.<sup>186</sup> Systematically, Reagan's "extending" drug war policies to the FBI and military branches along with Bush's internationalization implied a complexity threatening to exclude the president from direct knowledge and ordering. However, oversight from Congress, federal courts, and/or public entities was absent in the many bureaucratic mandates handed down by the president, creating single lines of policy pronouncement, communication, and actions between the EOP and a given agency. Therefore, centralization is identified as a facilitating tool of path dependency. Attaining more stringent and direct ties to

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<sup>186</sup> For nearly 100 years prior to Reagan's presidency, the Posse Comitatus Act had outlawed military involvement in civilian law enforcement. Reagan successfully lobbied Congress to amend the act so as to lift the ban. The president also issued an executive order directing all federal-intelligence agencies to actively participate in the "War on Drugs." From 1981-1992 illicit substance control funding for military involvement drastically increased from \$4.9 million to over \$1 billion. See Wisotsky, *"Beyond the War on Drugs"*, 250; Office of National Drug Control Policy, *"National Drug Control Strategy: Budget Summary."* Washington, D.C.: United States Government Printing Office 1994, 23, 184-185.

law enforcement from the EOP leaves little room for institutionally initiated reform while reaffirming status quo directives. Such arrangements left little, to no opportunity for divergence from a set of policies and practices that reinforced, bureaucratically compiled, and demonstrated almost uncontested commitment to a continued policy path to entrenchment. Political dissent becomes perceived as averse to solving problematic situations; in essence, reform efforts, even new avenues of discourse are connoted as negative elements, enemies within the constructed “War on Drugs.”

A superficial evincing of path dependency within governmental agencies is the identification of consistent and abundant monetary allocations. Under Reagan and Bush, personnel pools dedicated to illicit substance control programs enlarged at nearly the same rate as DEA and DOJ fiduciary allowances. A common, yet cynical, quip regarding drug war congressional practice is to “throw more money at the problem.” However trite and shortsighted that sentiment, most federal authorities believed exponentially increasing the drug war’s dedicated budget was to act in a sound and operable manner. Whether the direct or collateral crime associated with drug trafficking and abuse decreased was secondary to parading budgetary growth of the drug war in order to feed the publically held belief the “war” could be won.

Evidence taken from Executive Orders and Signing Statements demonstrates several entrenchment tactics, some suggestive while others identify causes lending to centralization. Reagan’s naming of Carlton Turner as the first unofficial “Drug Czar” while refusing to neither issue an executive order or lobby Congress to establish the Office of National Drug Control

maybe just a function of time constraints and the troubles Reagan dealt with pertaining to the Iran-Contra affairs toward the end of his second term. In a harried expression of expedited centralization and an oddity in bureaucratic development, Turner was appointed without official designation and prior to formal agency “birth.” Bush completed the coupling of administrator and agency with his formal founding of the ONDCP within the first few months of his presidency. Subsequently, a cementing of domestically based centralization occurred with Republican zealot William Bennett was named the first official ONDCP Director or “Drug Tsar.” In another unconventional maneuver to centralization, Bush “spilt” the drug war by internationalizing efforts with the establishment of major fronts (Andean Initiative and Plan Colombia) then employed Bennett as his domestic surrogate. Nearly replicating Reagan’s first term ONDCP accomplishments, Bush issued a series of executive orders mandating that an array of agencies with missions non-germane to drug control answer to policies enforced by the Bennett led ONDCP.

#### Chapter Four: Periodical challenges to the Controlled Substance Act of 1970

Following Nixon’s premature departure from office, reform challenges against federally-mandated marijuana prohibition emerged from a ferment of fledging pro-marijuana organizations mobilized against neophyte CSA statutes. In an effort to “uproot” CSA mandated marijuana prohibition before the punitive paradigm becoming further entrenched, The National Organization for the Reform of Marijuana Laws (NORML) stood as the first reform advocacy group to submit a petition for the rescheduling of marijuana from a Schedule I to Schedule II substance. However, NORML’s rescheduling petitions fell victim to executive obstructionism



impeded by FDA and DEA refusal to respond to that organization's properly filed administrative rescheduling requests resulting in a twenty-two year (1972-1994) drawn out refusal to hold rescheduling hearings. NORML's seemingly futile attempts at rescheduling stand as antecedent and evidence for the entrenchment capabilities latent in federal marijuana prohibition policy. NORML also endeavored to terminate DEA (via the State Department) loaning of helicopters to Mexican authorities for herbicide spraying of U.S.-bound marijuana.

As an individually-driven affront to marijuana prohibition, Robert C. Randall received a District Court approval of his medical necessity defense which, in turn, initiated the federal government's medical marijuana registrar, cultivation, and distribution program. Randall's 1978 court victory is the only exception to federally imposed marijuana prohibition granted by the courts. In turn, the District Court's ruling and Randall's Alliance for Cannabis Therapeutics (ACT) organization amounted to jump-starting an ephemeral federal medical marijuana program with an accruing registry until President George H.W. Bush's imposed moratorium on new patients in 1991.<sup>187</sup> Randall's legal triumph stands as a monolithic milestone for reformers, yet amounting to a Pyrrhic victory holding instruction for SMOs in the future while the federal medical marijuana program was truncated.

Remember, MPP and ASA's contributions to individually filed court challenges of the CSA amount to amicus briefs and legal consultation, evincing a "testing of the waters," or

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<sup>187</sup> According to ProCon.org, a reporting and advocacy organization specializing in drug reform policy, as of September 2010, ten patients remain as listed recipients of federal medical marijuana associated with the Investigative New Drug Program (IND). This information was garnered by directly contacting those individuals or contacts serving as surrogates. Only eight out of the ten allowed their names, illnesses, and doses to be released. Neither the FDA nor NIDA would confirm the listings with NIDA limiting their responses to issues of vehicalization and delivery of federally cultivated marijuana to the FDA. The FDA cited policy procedure as limiting their personnel to only answer to patient requests. Last taken on November 7, 2011 from ProCon.org <http://medicalmarijuana.procon.org/view.answers.php?questionID=257>

incremental venue shopping. However, NORML's willingness to test the enforcement authority of EPA regulations as leverage in terminating DEA eradication hints at Pralle's recognition of venue shopping as a secondary effect on policy, "Since policy reform often requires the involvement of several institutions, or at least their tacit assent, those opposed to change need only impede policy development in one venue to prohibit significant alterations in policy" (Pralle 2003, 235). Access to institutions of policy change, whether to evoke policy rulings or raising issue saliency warrants SMO investment while not necessarily demanding a resource-draining campaign. Venue shopping can, therefore, lend to disseminating alternative frames focused on positive target populations deserving of policy benefits not punishment and political scorn.

In early 2006, ASA Media Director Kris Hermes in early 2006, anticipated the Supreme Court rejecting Raich's 10<sup>th</sup> Amendment argument, but revealed in a forthright manner his organization's acceptance of the *Raich* ruling favoring then expressed belief that litigation-based advocacy might next be premised on a 9<sup>th</sup> Amendment argument. Hermes's admission eyes marijuana framed as an "undefined" right on the reform horizon. Though this demonstrates a resiliency on the part of SMO legal teams, in no way would victory-in-the-face-of-defeat weaken SMO focus on executive obstructionism and bureaucratic delinquency as questionable impediments to rescheduling.<sup>188</sup> Bertram's treatment of "drug war politics" paints a picture of inevitability and futility regarding the reforms advanced by SMOs and institutional actors. Particular to the latter group political backlash and inability the President can face in

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<sup>188</sup> Original Interview with Americans for Safe Access (ASA) Media Director Kris Hermes conducted by author circa February 2006. See Interview Protocols Appendix.

trying to redirect federal drug control policies. Put another way, the executive branch has been shown to be ineffectual when attempting to redirect or diverge from status quo drug war policy dictates. Clinton's ill-fated attempt to reframe illicit substance control policies so as to include a significant application of health remedies or alternative punishments was attacked by members of Congress and guaranteed a rejection unless resubmitted with considerable redirection of resources. Though the then neophyte national executive pledged aggressive efforts in decreasing criminal activity, Clinton's answer attempted to be of institutional change than politically consequential. Monetary dedications to the recruitment and training of an additional 100,000 state and local law enforcement officers became Clinton's talking point rather than Drug Courts, alternative sentencing, including rehabilitation plus incarceration, as well as harm reduction methods.

#### Chapter Five: Venue Shopping, Patients' Rights, and the Marijuana Policy Project

At Examination, MPP carefully selected forums or jurisdictions most conducive to their patients' rights frames resonating in states where latent public support for their cause existed; therefore issue saliency is heightened and the shifting of marijuana reform from "weakest case" to a viable political agenda item becomes tenable. A second basis for MPP selection seems to be the existence of an institutional actor coalition favoring medical marijuana or an existing prominent policy maker who had introduced such a bill only to have their attempts fail due to lack of institutional support. The former reason speaks to existing support amongst a prominent individual legislator or group of policymakers still needing a stronger coalition to pursue passage of a medical marijuana law as in Michigan and Rhode Island. Legislative

supplicants of medical marijuana often bring their cause to light by allowing media attention to focus on politics and not the issue. In Michigan State Representative Lemmons had submitted multiple failed pieces of legislation but gained prominence as the barer of the medical marijuana torch, aiding MPP in their attempts to raise medical marijuana's issue saliency. In Hawaii, the leading institutional advocate was Governor Cayetano while coalitions were established by one or two promoters of the issue in both houses of the Hawaiian Assembly. In Rhode Island, MPP formed a coalition with prominent state assembly members as well as student-run organization including *Students for Sensible Drug Policies* (SSDP) on the campuses on Brown and the University of Rhode Island. Having multiple allies in multiple institutions made MPP's choice of venues in Michigan, Hawaii, and Rhode Island much more appealing than ballot initiative processes in states without localized medical marijuana advocacy groups. Whereas "context matters" has become a quick explanation or premise for understanding why campaigns seemingly are destined to fail or succeed, MPP's experience indicate that "composite (of coalition) matters."

Also, though MPP established the first medical marijuana full-time lobbying presence in Washington, D.C., organizational activities were primarily attuned to either total or supportive campaign roles with local SMOs in various states, counties, and cities. MPP's national lobbying team promoted congressional consideration of medical marijuana legislation that would ease federal prosecution of those states where the SMO had either campaigned or litigated to sustain medical marijuana laws. Therefore, organizational structure can be a considered "two-tiered" system: national and state/local-facilitating policy creation and direction at each tier. Federally, MPP usually allied with Barney Frank (D-Ma) and Maurice Hinchey (D-NY) to submit

legislation mandating federal prosecutors terminate their practice of arresting and prosecuting medical marijuana patients. However, advocacy and lobbying for a national medical marijuana policy or removal of marijuana from Schedule I categorization was not a prominent agenda item for MPP personnel. State-based campaigns, whether legislative or ballot initiative best served MPP's goals of instituting medical marijuana laws. The passage of California's Proposition 215 symbolized a clarion call to medical marijuana advocates while demonstrating a viable path to reform. Indeed, ten out of the sixteen states instituting such laws did so via the ballot process. The initiative process also signals existing state-based support for medical marijuana, not needing immediate support in the form of political and financial contributions from MPP.

MPP's model of challenge and reform is remarkable when considering their leadership in the legislative arena. Passage of medical marijuana legislation in states not of similar histories, geographical areas, or of one prominent ideology supplements what Constatelos identified regarding the federalism structure of America and venue shopping. Forum selection in the U.S. can transpire in a tiered manner. This research has identified how the legislative milieu necessitates unique combinations of allies within and external of governing institutions. Just as executive obstructionism delayed and prematurely terminated advocacy petitioning at the federal level, executive cooperation or rejection at the state and local levels of policy making emerged as a defining indicator of potential resiliency and success. Though MPP submitted a medical marijuana bill to Hawaii's legislature that was less rigid than Governor Cayetano's submission, the SMO was not positioning their messages or goals as politically adversarial to executive-driven legislation. Instead, MPP exhibited political and policy reverence

to the existing institutional leaders by removing their bill for consideration and endorsing the Cayetano driven legislation. Though MPP was in mutual agreement with Hawaii's executive, passage of either medical marijuana bill was due to an existing coalition of legislators, mostly in the State Senate internally lobbying for ratification. Seemingly, MPP had faced difficulties not with executive rejection, as in Rhode Island, but rather garnering house assembly votes without committee recommendations regarding legislative stipulations of how medical marijuana could "best" work for Hawaii. Therefore, indication of the bill's passage was not premised on obliging the executive, breaking a legislative bloc, or quelling public dissent; rather, adopting a "modified" piece of legislation with articulated language allied concerns of policies vagaries and loopholes other medical marijuana had encountered. Also, the varied committees that took consideration and votes on the bill indicated a desire to avoid institutional "gaps." Hawaii legislators were comprehensive in mandating policy infrastructure so as to allow well communicated and practical implementation that would limit backlash to suggestive modifications in regulatory schemes and not repeal of policy.

MPP's experience in Hawaii stands in direct contrast to the legislative process they encountered in Rhode Island concerning executive objection and eventual veto. The Ocean State's governor was publically anti-medical marijuana, threatening to veto any type of pro-cannabis legislation approved by his state's assemblies and in turn placed on his desk; again, executive obstructionism was visited upon MPP. However, the necessity of coalescing with local SMOs prior to a forceful legislative crusade, paid dividends for MPP's fate. We see this external coalition between local SMOs, resource strength, and individual legislative members as a successful combination in all three states examined. Michigan offered MPP similar associations

with the multiple session submission by Representative Lemmons and patients' rights advocacy by local physicians. Two elements of fertile reform ground existed in Michigan before MPP entered the electoral forum or hinted at mobilizing a campaign: nascent advocacy amongst medical professions and repeated, yet rejected, medical marijuana legislation. The former make for nearly automatic partners for MPP, and give legitimated voices to MPP's patients' rights framing of the issue.

Choosing to allocate monetary and personnel resources in a state with a more favorable public opinion of medical marijuana, having a ballot initiative process, and/or a cooperating executive enhanced coalescing between SMO and state actors. Hawaii, Rhode Island, and Michigan evince three prominent components of reform success. First, public opinion served as a non-jurisdictional, policy venue which could be stoked by the coalition of pro-marijuana organizations.<sup>189</sup> Second, legislative allies did well to promote this in the same frame as MPP advocated, with "patients'" rights as the pivotal message. MPP's allies in the Rhode Island House of Representatives continuously portrayed the governor as an agent of impediment between patients and medicinal marijuana. MPP's activities and experiences in dealing with state-level executives points to credibility and legitimacy in their continued model of avoiding direct confrontation with federal bureaucratic chiefs as surrogates to the President. More evidence of SMOs needing an amicable relationship with either governors or executive

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<sup>189</sup> Pralle defines three different types of venues: *Decision*, *Policy*, and *Jurisdiction*. "*Decision venues* are governmental and quasi-government institution where authoritative decision about policy are made... *Policy arenas* differ from decision venues in that they are non-authoritative locations where policy debates and conflicts emerge and play out...*jurisdiction* refers to the issues, or aspects of issues, that decision venues have authority over at any particular time. The jurisdictions of decision venues can expand, contract, and/or grow more blurry over time." Pralle, Sarah in Prakash and Gugerty 2010, 179-180. All emphasis within quote original.

agents at the federal level to succeed for the purpose of instituting reform is garnered from NORML's futile efforts in rescheduling supplication to FDA and DEA administrators in the 1970s. Failure to even hold hearings on marijuana's medical worth guaranteed by CSA dictates is indicative of a presidential stronghold on the status quo; policy options are marginalized by lack of executive cooperation or amicable exchange.

MPP's judicial forays, though limited to submission of supplemental materials, marked a reintroduction and reinvigoration for pro-marijuana SMOs on the federal litigation front, a policy venue not visited by such reformers since the late 1970s. NORML's efforts to thwart DEA eradication of marijuana fields in Mexico amounted to enforcing EPA environmental impact statement prerequisite statutes while discerning which regulatory agency takes precedent. In *EPA v. DEA* 1977, NORML conducted an accurate and alighting public and administrative awareness campaign. By disseminating Center for Disease Control data regarding illnesses of marijuana smokers due to herbicide spraying of marijuana corps facilitated by DEA and Department of State loaning of U.S. military helicopters to Mexican authorities, NORML forced the Carter Administration to levy a ban on paraquat use in eradication programs, domestic or foreign. Whereas in *NORML v. Ingersoll* (1974), the pro-marijuana organization was a primary actor by seeking legal leverage to initiate the administrative process of rescheduling hearings, not definitive reform but worthy of identifying if only for the fact that NORML was shown to be unrelenting in forcing the federal agencies to follow CSA prescribed processes. MPP selection of judicial arenas was low risk to their organization's reputation and ultimate goal of allowing marijuana's medical use.



In *U.S. v. Oakland Cannabis Buyers' Cooperative* (2001,) MPP perpetrated a media divergence from any “bad” publicity OCBC could encounter. By issuing press releases during Supreme Court deliberation of the case that derided then Drug Czar Barry McCaffery for his ignorance and misinforming the public as to the actualities of cannabis. Thus, MPP’s indirect involvement in OCBC’s plight was reminiscent of NORML’s urging federal courts to rule for EPA oversight of environmental concerning related to DEA involvement with Mexican eradication projects. While the OCBC argued in court, MPP framed federal authority as incompetent and unwilling to entertain alternative policies which fields an example of “policy arenas” as defined by Pralle. These arenas shape decisions but are not authoritative compared to judicial venues which render decisive binding decisions (Cobb and Elder 1983; Pralle 2010). Therefore, MPP’s initial litigious organizational foray was conducted outside of the courtroom and as an appendage to OCBC’s direct engagement with and challenge of federal marijuana prohibition. Identification of MPP’s secondary, supplemental, and simultaneous activities to OCBC is innovative to the choices SMOs can arrange and implement without being directly involved. In essence, MPP worked a two-tiered strategy concerning litigation, relieving them of any liability or setback.

*Gonzales v. Raich* probably held the greatest opportunity for federal defeat and medical marijuana advocates the opportunity to garner a legal campaign victory. To start, ASA assumed the SMO lead by supporting Raich in media portrayals and ASA’s legal team offering consultation in her District and Circuit court appearances. By submitting an amicus brief in *Raich*, MPP was able to clarify to the Court why Raich was petitioning the judiciary and not the FDA for rescheduling. Assisted by medical marijuana expert Rick Doblin, Ph.D., (MAPS-Director),

MPP's amicus informed the Court of executive obstructionism as an insurmountable obstacle to the possibility of FDA and DEA conducting timely rescheduling hearings in good faith. The *Raich* case also held two frames, patients' and states' rights. Therefore, MPP used the Supreme Court as a potential decision-making arena by clarifying why marijuana should be medically allowed by federal regimes.

## Appendix One: Methodology and Data

This research relied on a variety of qualitative data including media depictions, academic publications, biographical materials, government documents including statistical collections, original interviews, originally created data sets vetted from larger projects, Social Movement Organizational website and listserv disseminated materials, and institutional reports as well as rulings. Each chapter contains a unique composite of those data directed toward analysis and presentation of a given chapter's respective topic. For example, constructing an original history of Nixon's conceptualization, proposal, and lobbying of the CSA necessitated history of legislative debates and votes while also incorporating journalistic treatments of the "War on Drugs." In comparison, bring forth insightful, first-hand knowledge of venue shopping was extracted from a pool of interviews conducted with SMO personnel and collaborating governmental officials. The following chapter by chapter description articulates how and why each sources was employed.

### Chapter Two:

In order to reconstruct the political, legal, and policy foundation of American Federal marijuana proscription, acquiring documents relevant to Richard Nixon's proposal of the Controlled Substance Act of 1970 was necessary. What was also of needed consideration was Nixon's perception of America's drug trafficking and use. Internal documents were collected and analyzed including memos, dictates, committee minutes, and agency mandates served to demonstrate daily, weekly, and monthly transformation and creation of the CSA and DEA. Therefore, two visits in February of 2009 were made to the United States National Archives at

College Park, Maryland to garner copies of several documents from the Nixon Presidential Papers. Documents from each of year of Nixon's presidential tenure were vetted in order to locate those detailing how and for what reasons the Controlled Substance Act of 1970 was proposed. In turn, papers post CSA ratification was reviewed for information pertaining to the Drug Enforcement Administration's founding in 1973. Documents were categorized in a chronological and topical manner. Yearly accounts of the following subject headings were collected and kept: documents from the President, documents answering or advising the President, meetings for the consideration of legislation creation, meetings for reorganizing executive agencies receiving illicit substance control policy resources, correspondence between the President and bureaucratic administrators, public correspondence with the executive office, answers to public concerns, directives to bureaucratic chiefs, and committee creations information. Multiple historical and journalistic depictions of the Nixon Administration's creation and implementation of the Controlled Substances Act were referenced: Rick Perlstein's *"Nixonland,"* Richard Reeve's *"Alone in the White House,"* Jonathan Schell's *"Time of Illusion,"* Michael Massing's *"The Fix,"* and others.

In order to incorporate institutional processes pertaining to legislative debate, votes, and ratification a legislative history was reconstructed from Congressional Quarterly volumes from the years 1969-1974. This allowed for a correct chronology. Introduction of the CSA, amendment's to the bill-both adopted and failed, hearings including testimony from expert witnesses, and votes were garnered and distilled to applicability of the Chapter's presentation.

### Chapter Three:

Path Dependency relies on continued and extended resource allocation as well as public acceptance of those policies being entrenched. To evince executively driven entrenchment of illicit substance control policies of the “War on Drugs” I created an original data set of Executive Orders and Signing Statements pertaining to federal drug control measures during the Reagan, Bush, and Clinton Administrations. All documents were procured from the University of California Santa Barbara’s Presidency Project with Clinton’s portion of the data set employed for Chapter 4: *Periodical Challenges to the Controlled Substance Act of 1970*. The Reagan Administration issued four executive orders and two signing statements pertaining to illicit substance control while the Bush Administration tendered two executive orders and five signing statements ADD CLINTON. Keeping in mind that most large scale or pronounced shifts in agency direction or resource allocation were made on a yearly budgetary fashion; therefore, presidentially exclusive directives were supplements, EOP specific, and/or noted disagreements or non-binding augmentations of congressional legislation. With that in mind, research for this chapter is also reliant on legislative histories, presidential speeches, and private sector materials for the articulation of how presidential have implemented, directed, or denied drug war resources.

Each executive order and signing statements were categorized by president, specific agency mentioned (ONCP, DEA, DOJ, State Department), program or project, and if the document included information demonstrating centralization of drug war resources. Though speeches and announcements regarding federal illicit substance control efforts were not a

primary point of investigation and analysis, presidential speeches serving as supplements or clarifiers to congressional legislation were employed. Bureaucratic directives emanating directly from the President to agencies allowed for substantial changes in resource and program control to be illuminated. An example would be Bush's public announcement detailing the ONDCP's creation and William Bennett's appointment as that agency's initial director or "Drug Czar." Though but a small portion of UC Santa Barbara's voluminous internet accessible information archives, the following is a nuance of presidential activity pertaining to illicit substance control and hopefully can be used in future research:

*Signing Statements of:*

Ronald Reagan.

*"The Aviation Drug-Trafficking Control Act."* Signed October 19, 1984.

*"The Anti-Drug Abuse Act of 1986."* Signed October 27, 1986.

George H.W. Bush.

*"The Drug-Free Schools and Communities Act Amendments of 1989."* Signed December 12, 1989.

*"The International Narcotics Control Act of 1989."* Signed December 13, 1989.

*"The International Narcotics Control Act of 1990."* Signed December 21, 1990.

*"The ADAMHA Reorganization Act."* Signed July 10, 1992.

*"The Housing and Community Development Act of 1992. Signed October 28, 1992."*

*Executive Orders of:*

Ronald Reagan.

*"12291-Federal Regulation."* Signed February 17, 1981.

*“12368 - Drug Abuse Policy Functions.”* Signed June 24, 1982.

*“12564-Drug-Free Federal Workplace.”* Signed September 15, 1986.

*“12590-National Drug Policy Board.”* Signed March 26, 1987.

George H.W. Bush.

*“12696- President’s National Drug Policy Board.”* Signed November 13, 1989

*“12756-Continuance of the President’s Drug Advisory Council.”* Signed March 18, 1991

#### Chapter Four:

Contemporary practice of archiving mobilization efforts facilitated a “piecing” together of advocacy organization histories. Specifically, the National Organization for the Reform of Marijuana Laws (NORML) and Alliance for Cannabis Therapeutics (ACT) maintenance their websites well enough to extract information of a firsthand and indirect nature that depicted their institutional challenges along with press releases and mission statements. NORML’s website includes a chronological listing of litigation filed by that organization as petitioners or amicus contributors. Unfortunately, ACT kept poor maintenance of their website with their last website updated conducted in August of 2001. Such a lacuna inhibited data collection of their activities post Robert C. Randall’s founding of the group with several other glaucoma patients in 1981, some four years following the U.S. District Court of Washington, D.C. ruled in favor of his medical necessity defense to marijuana cultivation and possession conviction. Marijuana Laws, written by Randall was instrumental in discerning the chronology of Randall’s legal fight for a medical necessity and NORML’s petitioning request for rescheduling. Witness testimony, administrative responses, and court dictates were also garnered from Randall’s account.

The Lexis-Nexis search engine rendered several legal documents from the Law Reporter, U.S. District, Circuit, and Supreme Courts. Each case ruling gave accounts of arguments forwarded by NORML (*NORML v. U.S Department of State.*; *NORML v. DEA*) and Randall. DEA, State Department, and EPA regulations were also gleaned in connection to NORML's assertion that the DEA had not filed an environmental impact statement when they aided Mexican authorities in the paraquat spraying of marijuana fields.

The final example of less than successful challenges to CSA tenets examined Bill Clinton's legislative attempt to infuse health-based programs into the broader texture of federal illicit substance control via the 1994 omnibus Anti-Crime Legislation. Seemingly, the Clinton Administration proposed health-centered initiatives unilaterally, that is without sound public support from advocacy groups or internally from a legislative bloc. Therefore, collection of communications and directives for the eventual law enforcement resource rich omnibus legislation were limited to Clinton press releases, drafts of legislation, congressional votes (committee and adoption tallies). The Clinton Presidential Library, University of California Santa Barbara Presidency Project, and New York Times coverage of inter-branch requests and responses were integral for analysis. Press releases from the Office of National Drug Control Policy, Drug Enforcement Administration, and Department of Justice were also analyzed. The UC Santa Barbara Presidency Project was utilized just as in Chapter Three. Executive Orders and Signing Statements germane to illicit substance control were filtered from the larger pool of those documents.



## Chapter Five:

First-hand information, SMO organizational strategies, legal documents, and legislative and ballot histories were employed so as to “reconstruct” the path to marijuana reform. Original interviews were conducted with official representatives from MPP, ASA, and the City of Santa Cruz, California. Between June of 2006 to June of 2010, I interviewed Mayor Michael Rotkin of Santa Cruz, California, Kris Hermes Media Director of *Americans for Safe Access*, Krissy Oechslin (former) Assistant Director of Communications and Michael Meno, Director of Communications for *The Marijuana Policy Project* (please “Interview Protocols”-Appendix Four). Each interview produced insightful information as to framing, venue selection, and policy implementation.

Each case study of state medical marijuana laws, be they legislative or ballot initiative-based, necessitated the collection of evidence so as to describe and analyze the various processes holding opportunities to develop the ideas of patients, SMOs, and public officials into laws. Internet and archival materials were garnered, including official legislative records, accounts from local media outlets, state-issued election returns, and policy outputs (language of the laws-see Bibliography and Appendix Three). For drawing forth the various judicial arena battles medical marijuana SMOs engaged in, I retrieved court rulings, amicus curiae briefs, and memos pertaining to litigious matters from SMOs, state officials, and legal parties.

## Appendix Two: Language of State Medical Marijuana Laws Presented in Chapter Five (original copies)

### Text of Proposition 215-State of California

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This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure adds a section to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

#### PROPOSED LAW

SECTION 1. Section 11362.5 is added to the Health and Safety Code, to read:

*11362.5. (a) This section shall be known and may be cited as the Compassionate Use Act of 1996.*

*(b)(1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:*

*(A) 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 who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.*

*(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.*

*(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.*

*(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.*

*(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.*

*(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.*

*(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.*

SEC. 2. If any provision of this measure or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

### Text of Hawaii Senate Bill 862

#### A BILL FOR AN ACT

#### RELATING TO MEDICAL USE OF MARIJUANA.

#### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1       SECTION 1. The legislature finds that modern medical  
2 research has discovered a beneficial use for marijuana in  
3 alleviating certain serious illnesses. Medical usage of  
4 marijuana has been permitted in California, Arizona, Oregon,  
5 Washington, and Alaska.

6       The legislature further finds that allowing the medical use  
7 of marijuana could promote Hawaii as being an international  
8 center for medical treatment and research.

9           The legislature further finds that although federal law  
10 prohibits marijuana use, states are not required to enforce  
11 federal law and the State is not precluded from passing its own  
12 laws.

13           The purpose of this Act is to ensure that seriously ill  
14 people are not penalized for the use of marijuana for strictly  
15 medical purposes when the patient's treating physician provides a  
16 professional opinion that marijuana is medically beneficial to  
17 the patient.

18           SECTION 2. Chapter 329, Hawaii Revised Statutes is amended  
19 by adding a new part to be appropriately designated and to read

1 as follows:

2 "PART .

3 MEDICAL USE OF MARIJUANA

4       **§329-A Definitions.** As used in this part:

5        "Adequate supply" means an amount of marijuana that is not  
6 more than is necessary to assure, throughout the projected course  
7 of treatment, the uninterrupted availability for purposes of  
8 alleviating the symptoms or effects of a qualifying patient's  
9 debilitating medical condition.

10 "Debilitating medical condition" means:

- 11           (1) Cancer, glaucoma, positive status for human  
12           immunodeficiency virus, acquired immune deficiency  
13           syndrome, or the treatment of these conditions;

- 14       (2) A chronic or debilitating disease or medical condition  
15           or its treatment that produces one or more of the  
16           following: cachexia or wasting syndrome; severe pain;  
17           severe nausea; seizures, including those characteristic  
18           of epilepsy; or severe and persistent muscle spasms,  
19           including those characteristic of multiple sclerosis;  
20           or  
21       (3) Any other medical condition approved by the department  
22           of health pursuant to administrative rules in response  
23           to a request from a physician or qualifying patient.

1       "Marijuana" shall have the same meaning as provided in  
2 section 329-1.

3       "Medical use" means the acquisition, possession,  
4 cultivation, use, distribution, or transportation of marijuana or  
5 paraphernalia relating to the administration of marijuana to  
6 alleviate the symptoms or effects of a qualifying patient's  
7 debilitating medical condition.

8       "Parent" means the custodial mother or father, the legal  
9 guardian, or any other person having legal custody of a  
10 qualifying patient under the age of eighteen years.

11       "Physician" means a person who is licensed under  
12 chapter 453.

13       "Primary caregiver" means a person, other than the

14 qualifying patient and the qualifying patient's physician, who is  
15 eighteen years of age or older and has significant responsibility  
16 for managing the well-being of the qualifying patient.

17 "Qualifying patient" means a person who has been diagnosed  
18 by a physician as having a debilitating medical condition.

19 "Written documentation" means a statement signed by a  
20 qualifying patient's physician or medical records of the  
21 qualifying patient stating that in the physician's professional  
22 opinion, the potential benefits of the medical use of marijuana  
23 would likely outweigh the health risks for the qualifying

1 patient.

2 **§329-B Medical use of marijuana; permitted when.**(a)

3 Notwithstanding any law to the contrary, the medical use of  
4 marijuana by a qualifying patient, or the furnishing of marijuana  
5 for medical use by the qualifying patient's primary caregiver, as  
6 appropriate, shall be permitted, if that qualifying patient has  
7 been diagnosed by a physician as having a debilitating medical  
8 condition; provided that the physician shall have written  
9 documentation pertaining to that qualifying patient; and further  
10 provided that the amount of marijuana does not exceed an adequate  
11 supply.

12 (b) Subsection (a) shall not apply to a qualifying patient  
13 under the age of eighteen years, unless:

- 14       (1) The qualifying patient's physician has explained the  
15           potential risks and benefits or the medical use of  
16           marijuana to the qualifying patient and to at least one  
17           of the qualifying patient's parents; and  
18       (2) At least one of the qualifying patient's parents  
19           consents in writing to: the qualified patient's  
20           medical use of marijuana; serve as the qualifying  
21           patient's primary caregiver; and control the  
22           acquisition of the marijuana and the dosage and  
23           frequency of the medical use of marijuana by the

1           qualifying patient.

2       (c) This section shall not apply to:

- 3       (1) Medical use of marijuana that endangers the health or  
4           well-being of another person;  
5       (2) Medical use of marijuana in a school bus or public bus;  
6           on any school grounds; or at any public park, public  
7           beach, public recreation center, recreation or youth  
8           center, or other place open to the public; and  
9       (3) Use of marijuana by a qualifying patient, parent, or  
10           primary caregiver for purposes other than medical use.

11       **§329-C Insurance not applicable.** This part shall not be  
12       construed to require insurance coverage for the medical use of  
13       marijuana.

14       **§329-D Absence of written documentation.** The failure of a  
 15 physician to provide written documentation under section 329-B  
 16 shall not:

17       (1) Constitute a cause of action against the physician for  
 18           professional malpractice;

19       (2) Affect the physician's licensure under chapter 453; or

20       (3) Subject the physician to criminal proceedings."

21       SECTION 3. Chapter 453, Hawaii Revised Statutes, is amended  
 22 by adding a new section to be appropriately designated and to  
 23 read as follows:

1       "§453-     **Medical use of marijuana.** No physician shall be  
 2 subject to arrest or prosecution, penalized in any manner, or  
 3 denied any right or privilege, for providing a professional  
 4 opinion or written documentation to a person whom that physician  
 5 has diagnosed as having a debilitating medical condition, as  
 6 defined in section 329-A, about the potential risks and benefits  
 7 of the medical use of marijuana, as defined in section 329-A;  
 8 provided that the professional opinion or written documentation  
 9 is based upon the physician's assessment of the person's medical  
 10 history and current medical condition made in the course of a  
 11 bona fide physician-patient relationship."

12       SECTION 4. Chapter 712, Hawaii Revised Statutes, is amended  
 13 by adding a new section to part IV, to be appropriately

14 designated and to read as follows:

15       "§712-     Marijuana.   (1) No provision of this part that  
16 applies to marijuana shall be construed to be violated due to the  
17 medical use of marijuana in accordance with part           of  
18 chapter 329.

19       (2) Marijuana subject to part           of chapter 329 and any  
20 property used in connection with the medical use of marijuana  
21 shall not be subject to search or seizure. Marijuana,  
22 paraphernalia, or other property seized from a qualifying patient  
23 or primary caregiver in connection with claimed medical use shall

1 be returned immediately upon the determination by a court that  
2 the qualifying patient or primary caregiver is entitled to the  
3 protections of part           of chapter 329, as evidenced by a  
4 decision not to prosecute, dismissal of the charges, or an  
5 acquittal.

6       (3) A person shall not be subject to arrest for being in  
7 the presence or vicinity of the medical use of marijuana.

8       (4) It shall be an affirmative defense for prosecution  
9 involving marijuana under this part that there was compliance  
10 with part           of chapter 329; provided that the qualifying  
11 patient's physician, in the context of a bona fide  
12 physician-patient relationship, has stated that in the  
13 physician's professional opinion, the potential benefits of the



14 medical use of marijuana would likely outweigh the health risks  
15 for the particular qualifying patient.

16       (5) Misrepresentation of any fact or circumstance relating  
17 to subsection (1), (2), or (3) to avoid prosecution under this  
18 part shall be subject to imprisonment of up to thirty days and a  
19 fine of \$500, in addition to any other penalties that may apply  
20 for the non-medical use of marijuana.

21       (6) In any criminal proceeding under this part in which a  
22 physician is called to testify, testimony by the physician shall  
23 be in private in chambers. Upon request of the physician who

1 testifies, if the testimony is subsequently used in a public  
2 proceeding, whether criminal or civil, the name of the physician  
3 shall not be disclosed.

4       (7) For the purposes of this section:

5       "Marijuana" shall have the same meaning as provided in  
6 section 712-1240.

7       "Medical use" shall have the same meaning as provided in  
8 section 329-A.

9       "Physician" shall have the same meaning as provided in  
10 section 329-A."

11       SECTION 5. Section 453-8, Hawaii Revised Statutes, is  
12 amended by amending subsection (a) to read as follows:

13       "(a) In addition to any other actions authorized by law,

14 any license to practice medicine and surgery may be revoked,  
15 limited, or suspended by the board at any time in a proceeding  
16 before the board, or may be denied, for any cause authorized by  
17 law, including but not limited to the following:

- 18       (1) Procuring, or aiding or abetting in procuring, a  
19             criminal abortion;
- 20       (2) Employing any person to solicit patients for one's  
21             self;
- 22       (3) Engaging in false, fraudulent, or deceptive  
23             advertising, including, but not limited to:

- 1             (A) Making excessive claims of expertise in one or  
2                more medical specialty fields;
- 3             (B) Assuring a permanent cure for an incurable  
4                disease; or
- 5             (C) Making any untruthful and improbable statement in  
6                advertising one's medical or surgical practice or  
7                business;
- 8       (4) Being habituated to the excessive use of drugs or  
9             alcohol; or being addicted to, dependent on, or a  
10            habitual user of a narcotic, barbiturate, amphetamine,  
11            hallucinogen, or other drug having similar effects;
- 12       (5) Practicing medicine while the ability to practice is  
13             impaired by alcohol, drugs, physical disability, or

- 14           mental instability;
- 15       (6)   Procuring a license through fraud, misrepresentation,  
16           or deceit or knowingly permitting an unlicensed person  
17           to perform activities requiring a license;
- 18       (7)   Professional misconduct, hazardous negligence causing  
19           bodily injury to another, or manifest incapacity in the  
20           practice of medicine or surgery;
- 21       (8)   Incompetence or multiple instances of negligence,  
22           including, but not limited to, the consistent use of  
23           medical service which is inappropriate or unnecessary;
- 1       (9)   Conduct or practice contrary to recognized standards of  
2           ethics of the medical profession as adopted by the  
3           Hawaii Medical Association or the American Medical  
4           Association;
- 5       (10)  Violation of the conditions or limitations upon which a  
6           limited or temporary license is issued;
- 7       (11)  Revocation, suspension, or other disciplinary action by  
8           another state or federal agency of a license,  
9           certificate, or medical privilege for reasons as  
10          provided in this section;
- 11       (12)  Conviction, whether by nolo contendere or otherwise, of  
12           a penal offense substantially related to the  
13           qualifications, functions, or duties of a physician,

- 14           notwithstanding any statutory provision to the  
15           contrary;
- 16       (13) Violation of chapter 329, the uniform controlled  
17           substances act, or any rule adopted thereunder[;]  
18           except as provided in section 329-B;
- 19       (14) Failure to report to the board, in writing, any  
20           disciplinary decision issued against the licensee or  
21           the applicant in another jurisdiction within thirty  
22           days after the disciplinary decision is issued; or
- 23       (15) Submitting to or filing with the board any notice,

1           statement, or other document required under this  
2           chapter, which is false or untrue or contains any  
3           material misstatement or omission of fact."

4       SECTION 6. This Act shall not affect rights and duties that  
5       matured, penalties that were incurred, and proceedings that were  
6       begun, before its effective date.

7       SECTION 7. If any provision of this Act, or the application  
8       thereof to any person or circumstance is held invalid, the  
9       invalidity does not affect other provisions or applications of  
10      the Act which can be given effect without the invalid provision  
11      or application, and to this end the provisions of this Act are  
12      severable.

13      SECTION 8. In codifying the new sections added by this Act,

14 the revisor shall substitute the appropriate section numbers for  
 15 the letters used in designating the new sections of this Act.

16 SECTION 9. Statutory material to be repealed is bracketed.

17 New statutory material is underscored.

18 SECTION 10. This Act shall take effect upon its approval.

Text of Michigan Proposal 1

NOVEMBER  
 2008  
 BALLOT PROPOSAL 08-1

An Overview  
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On November 4, 2008, Michigan voters will decide whether to adopt legislation allowing the use and cultivation of marijuana for certain medical conditions. The result of a petition drive, Proposal 08-1 will appear on the ballot as follows:

***A LEGISLATIVE INITIATIVE TO PERMIT THE USE AND CULTIVATION OF MARIJUANA FOR SPECIFIED MEDICAL CONDITIONS***

*The proposed law would:*

- *Permit physician approved use of marijuana by registered patients with debilitating medical conditions including cancer, glaucoma, HIV, AIDS, hepatitis C, MS and other conditions as may be approved by the Department of Community Health.*
- *Permit registered individuals to grow limited amounts of marijuana for qualifying patients in an enclosed, locked facility.*
- *Require Department of Community Health to establish an identification card system for patients qualified to use marijuana and individuals qualified to grow marijuana.*
- *Permit registered and unregistered patients and primary caregivers to assert medical reasons for using marijuana as a defense to any prosecution involving marijuana.*

*Should this proposal be adopted?*

If a majority of the electors vote "yes", Proposal 08-1 will enact the "Michigan Medical Marihuana Act".

Current Statutory Provisions

Under Article 7 (Controlled Substances) of the Public Health Code, marijuana is listed as a Schedule 1 controlled substance, which means that it has high potential for abuse and has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

Manufacturing, creating, or delivering marijuana or possessing it with intent to manufacture, create, or deliver is a felony. Knowingly or intentionally possessing marihuana, or using it, is a misdemeanor. The violations are punishable as shown in the table below. Offense	Amount	Max. Imprisonment and/or Fine*
Manufacturing, creating, or delivering...	45 kg or more; or 200 plants or more	15 years; \$10 million
Manufacturing, creating, or delivering...	5 kg or more but less than 45 kg; or 20-199 plants	7 years; \$500,000
Manufacturing, creating, or delivering...	Less than 5 kg; or fewer than 20 plants	2 years; \$2,000
Knowingly or intentionally possessing	Any Amount	1 year; \$2,000
Using	Any Amount	90 days; \$100
*The maximum term is double for an individual convicted of a second or subsequent offense, or for an individual who is at least 18 and delivers or distributes marijuana to someone who is three or more years younger.		

If the ballot proposal is approved, a "qualifying patient" who has been issued and possesses a "registry identification card" will not be subject to penalty for the medical use of marijuana if the amount does not exceed 2.5 ounces of "usable marihuana" (dried leaves and flowers) and 12 marijuana plants kept in an enclosed, locked facility. A "primary caregiver" who has a registry ID card will not be penalized for assisting a qualifying patient in the medical use of marijuana, subject to the same maximum quantities per patient. A physician will not be subject to penalty solely for providing a "written certification" for a patient who, in the physician's professional opinion, is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with it.

Any registered qualifying patient or registered primary caregiver who sells marijuana to someone who is not allowed to use it for medical purposes under the Act will have his or her registry identification card revoked and will be guilty of a felony punishable by up to two years' imprisonment and/or a maximum fine of \$2,000, in addition to any other penalty for the distribution of marijuana.

If enacted, the Act also will do all of the following:

- Establish requirements for the Department of Community Health (DCH) to issue registry identification cards to qualifying patients and primary caregivers.
- Allow a registered primary caregiver to receive compensation for costs associated with assisting a registered qualifying patient.
- Specify that a person is not subject to penalty solely for being in the presence or vicinity of the medical use of marijuana in accordance with the Act, or for providing marijuana paraphernalia to a registered qualifying patient or primary caregiver.
- Require the DCH to allow for petition by the public to include additional medical conditions and treatments.

- Make it a misdemeanor, punishable by up to six months' imprisonment and/or \$1,000, to disclose confidential information.
- Prescribe an additional \$500 fine for making a fraudulent representation to a law enforcement official regarding medical use of marijuana.
- Prohibit a person from being denied custody or visitation of a minor for acting in accordance with the Act.
- Provide that a registry identification card issued by another state would have the same force and effect as a card issued by the DCH.

The Act defines "qualifying patient" as a person who has been diagnosed by a physician as having a "debilitating medical condition", i.e., one or more of the following:

- Cancer, glaucoma, positive HIV status, AIDS, hepatitis C, ALS, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of those conditions.
- A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including those characteristic of epilepsy; or severe and persistent muscle spasms, including those consistent with multiple sclerosis.
- Any other medical condition or its treatment approved by the DCH.

A primary caregiver must be at least 21 years old and must never have been convicted of a felony involving illegal drugs.

#### Views on Proposal 08-1

Proponents of legalizing medical use of marijuana contend that patients battling cancer, AIDS, ALS, and other debilitating medical conditions should be allowed to use marijuana to relieve pain and alleviate the symptoms of their disease and/or treatment. Many believe, for example, that

marijuana use can help treat nausea that often is a side effect of chemotherapy treatment in cancer patients. Proposal 08-1 cites a 1999 report by the National Academy of Sciences' Institute of Medicine (IOM) that "discovered beneficial uses for marihuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions". Advocates of the proposal also point to a 2008 American College of Physicians (ACP) position paper, which they claim supports giving seriously ill patients access to medical marijuana.

The Michigan Coalition for Compassionate Care, a grassroots organization devoted to passing a medical marijuana initiative in Michigan, includes on its website information about a March 2008 poll indicating that 67% of Michigan voters support removing criminal penalties for the medical use of marijuana.

Opponents of Proposal 08-1 question supporters' reliance on the 1999 IOM report and the 2008 ACP position paper, and suggest that the use of Marinol (a prescription pill form of THC, the main psychoactive element in marijuana) renders the cultivation and use of marijuana unnecessary for patients seeking relief from pain and other symptoms. In addition, many painkillers and anti-nausea medications are available and can be effective, if prescribed and administered appropriately.

The IOM's recommendations focused on the need for continued research and clinical trials on the effectiveness of marijuana for symptom management; the physiological and psychological side effects of medicinal marijuana use; and the development of rapid, reliable, and safe delivery systems. The report suggested that any treatment involving smoked marijuana should be "administered under medical supervision in a manner that allows for assessment of treatment effectiveness". Similarly, the positions adopted by the ACP's recent paper support increased and rigorous scientific research and encourage the use of nonsmoked forms of THC that have proven therapeutic value.

Another issue that is raised in this discussion is whether legalizing medical use of marijuana will lead to increased recreational use of this substance or other illicit drugs, which still will be illegal

under State and Federal law if Proposal 08-1 is approved. In addition, if the proposed law is enacted, the medical use of marijuana will remain illegal under Federal law.

Fiscal Impact of Proposal 08-1

If the proposal is approved by the voters, the responsibilities required of the Department of Community Health will result in an increased administrative burden and the likelihood of increased costs for the DCH. To the extent that the DCH already regulates the dissemination and use of controlled substances, these additional duties represent an extension of ongoing activities. To offset the costs associated with the establishment of a patient registry and ID card system, other states have instituted application fees for individuals wishing to obtain marijuana registry ID cards. These fees range from \$25 in Alaska to \$150 in Nevada, with significant discounts available for individuals eligible for Medicaid or Federal Supplemental Security Income. Proposal 08-1 permits the DCH to establish an application or renewal fee of this nature.

If approved, the Act also will have an indeterminate fiscal impact on State and local corrections costs. There are no data to indicate how many registered qualifying patients or primary caregivers would be convicted of selling marijuana to someone not allowed to use it for medical purposes, or how many offenders would be convicted of disclosing confidential information in violation of the Act, or fraudulently representing to law enforcement any fact or circumstance relating to the medical use of marijuana. To the extent that the Act increases convictions or incarceration time, local governments will incur increased costs of misdemeanor probation and incarceration in local facilities, which vary by county. The State will incur increased costs of incarceration in State facilities at an average annual cost of \$32,000. Additional penal fine revenue will benefit public libraries.

There are no data to indicate how many offenders have been convicted of a misdemeanor for possessing or using marijuana. In 2007, 128 offenders were convicted of a felony for manufacturing, creating, or delivering 45 kg of marijuana or more and six were convicted of attempting the offense. An offender convicted of the Class C offense receives a sentencing guidelines recommended minimum sentence range of 0-11 months to 62-114 months. In 2007, nine offenders were convicted of an offense involving 5 kg to less than 45 kg of marijuana and one was convicted of attempt. An offender convicted of the Class D offense receives a sentencing guidelines recommended minimum sentence range of 0-6 months to 43-76 months. In 2007, 3,190 offenders were convicted of this offense for less than 5 kg of marijuana, and 480 were convicted of attempt. An offender convicted of the Class F offense receives a sentencing guidelines recommended minimum sentence range of 0-3 months to 17-30 months.

Of the total offenders convicted of a marijuana felony in 2007, 330 were sentenced to prison, 713 to jail, and 2,206 to probation; 565 received other sentencing (such as a delayed or suspended sentence or Holmes Youthful Trainee Act probation).

To the extent that the Act decreases convictions, the State and local governments will incur reduced costs of probation and incarceration, and public libraries will receive reduced penal fine revenue.



Text of Rhode Island Senate Bill 710

**S T A T E O F R H O D E I S L A N D**  
**IN GENERAL ASSEMBLY**  
**JANUARY SESSION, A.D. 2005**

A N A C T

RELATING TO FOOD AND DRUGS -- THE RHODE ISLAND MEDICAL MARIJUANA ACT

Introduced By: Senators Perry, Polisena, Damiani, McCaffrey, and Sosnowski

Date Introduced: February 17, 2005

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 21 of the General Laws entitled "Food And Drugs" is hereby amended  
 2 by adding thereto the following chapter:

3 CHAPTER 28.6

4 THE RHODE ISLAND MEDICAL MARIJUANA ACT

5 21-28.6-1. **Short title.** – This chapter shall be known and may be cited as “The Rhode  
 6 Island Medical Marijuana Act.”

7 21-28.6-2. **Legislative findings.** – The general assembly finds and declares that:

8 (1) Modern medical research has discovered beneficial uses for marijuana in treating or  
 9 alleviating pain, nausea and other symptoms associated with certain debilitating medical  
 10 conditions, as found by the National Academy of Sciences’ Institute of Medicine in March 1999.

11 (2) According to the U.S. Sentencing Commission and the Federal Bureau of  
 12 Investigation, ninety-nine (99) out of every one hundred (100) marijuana arrests in the United  
 13 States are made under state law, rather than under federal law. Consequently, changing state law  
 14 will have the practical effect of protecting from arrest the vast majority of seriously ill people  
 15 who have a medical need to use marijuana.

16 (3) Although federal law currently prohibits any use of marijuana, the laws of Alaska,  
 17 California, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Vermont, and Washington  
 18 permit the medical use and cultivation of marijuana. Rhode Island joins in this effort for the  
 2

1 health and welfare of its citizens.

2 (4) States are not required to enforce federal law or prosecute people for engaging in  
 3 activities prohibited by federal law. Therefore, compliance with this chapter does not put the state  
 4 of Rhode Island in violation of federal law.

5 (5) State law should make a distinction between the medical and nonmedical use of  
 6 marijuana. Hence, the purpose of this chapter is to protect patients with debilitating medical  
 7 conditions, and their physicians and primary caregivers, from arrest and prosecution, criminal and  
 8 other penalties, and property forfeiture if such patients engage in the medical use of marijuana.

9 (6) The general assembly enacts this chapter pursuant to its police power to enact  
 10 legislation for the protection of the health of its citizens, as reserved to the state in the Tenth  
 11 Amendment of the United States Constitution.

12 21-28.6-3. **Definitions.** – The purposes of this chapter:

13 (1) “Debilitating medical condition” means:

14 (i) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired

15 immune deficiency syndrome, Hepatitis C, or the treatment of these conditions;  
 16 (ii) A chronic or debilitating disease or medical condition or its treatment that produces  
 17 one or more of the following: cachexia or wasting syndrome; severe or chronic pain; severe  
 18 nausea; seizures, including but not limited to, those characteristic of epilepsy; or severe and  
 19 persistent muscle spasms, including but not limited to, those characteristic of multiple sclerosis  
 20 and Crohn's disease; and agitation of Alzheimer's Disease; and  
 21 (iii) Any other medical condition or its treatment approved by the department, as  
 22 provided for in section 21-28.6-5.

23 (2) "Department" means the Rhode Island department of health or its successor agency.

24 (3) "Marijuana" has the meaning given that term in section 21-28-1.02(26).

25 (4) "Medical use" means the acquisition, possession, cultivation, manufacture, use,  
 26 delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of  
 27 marijuana to alleviate a registered qualifying patient's debilitating medical condition or  
 28 symptoms associated with the medical condition.

29 (5) "Practitioner" means a person who is licensed with authority to prescribe drugs  
 30 pursuant to chapter 37 of title 5.

31 (6) "Primary caregiver" means a person who is at least eighteen (18) years old, and who  
 32 has agreed to assist with a person's medical use of marijuana. A primary caregiver may assist no  
 33 more than five (5) qualifying patients with their medical use of marijuana.

34 (7) "Qualifying patient" means a person who has been diagnosed by a physician as

3  
 1 having a debilitating medical condition.

2 (8) "Registry identification card" means a document issued by the department that  
 3 identifies a person as a qualifying patient or primary caregiver.

4 (9) "Usable marijuana" means the dried leaves and flowers of the marijuana plant, and  
 5 any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.

6 (10) "Written certification" means the qualifying patient's medical records, or a statement  
 7 signed by a practitioner, stating that in the practitioner's professional. Opinion the potential  
 8 benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying  
 9 patient. A written certification shall be made only in the course of a bona fide practitioner-patient  
 10 relationship after the practitioner has completed a full assessment of the qualifying patient's  
 11 medical history. The written certification shall specify the qualifying patient's debilitating  
 12 medical condition or conditions.

13 **21-28.6-4. Protections for the medical use of marijuana.** – (a) A qualifying patient  
 14 who has in his or her possession a registry identification card shall not be subject to arrest,  
 15 prosecution, or penalty in any manner, or denied any right or privilege, including but not limited  
 16 to, civil penalty or disciplinary action by a business or occupational or professional licensing  
 17 board, for the medical use of marijuana; provided, that the qualifying patient possesses an amount  
 18 of marijuana that does not exceed twelve (12) marijuana plants and two and one-half (2.5) ounces  
 19 of usable marijuana.

20 (b) No school, employer or landlord may refuse to enroll, employ or lease to or otherwise  
 21 penalize a person solely for his or her status as a registered qualifying patient or a registered  
 22 primary caregiver.

23 (c) A primary caregiver, who has in his or her possession, a registry identification card  
 24 shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or  
 25 privilege, including but not limited to, civil penalty or disciplinary action by a business or  
 26 occupational or professional licensing board or bureau, for assisting a qualifying patient to whom  
 27 he or she is connected through the department's registration process with the medical use of  
 28 marijuana; provided, that the primary caregiver possesses an amount of marijuana which does not

29 exceed twelve (12) marijuana plants and two and one-half (2.5) ounces of usable marijuana  
30 through the department's registration process.

31 (d) There shall exist a presumption that a qualifying patient or primary caregiver is  
32 engaged in the medical use of marijuana if the qualifying patient or primary caregiver:

33 (1) Is in possession of a registry identification card; and

34 (2) Is in possession of an amount of marijuana that does not exceed the amount permitted

4

1 under this chapter. Such presumption may be rebutted by evidence that conduct related to  
2 marijuana was not for the purpose of alleviating the qualifying patient's debilitating medical  
3 condition or symptoms associated with the medical condition.

4 (e) A primary caregiver may receive reimbursement for costs associated with assisting a  
5 registered qualifying patient's medical use of marijuana. Compensation shall not constitute sale  
6 of controlled substances.

7 (f) A practitioner shall not be subject to arrest, prosecution, or penalty in any manner, or  
8 denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by  
9 the Rhode Island Board of Medical Licensure and Discipline or by any another business or  
10 occupational or professional licensing board or bureau solely for providing written certifications  
11 or for otherwise stating that, in the practitioner's professional opinion, the potential benefits of the  
12 medical marijuana would likely outweigh the health risks for a patient.

13 (g) Any interest in or right to property that is possessed, owned, or used in connection  
14 with the medical use of marijuana, or acts incidental to such use, shall not be forfeited. A law  
15 enforcement agency that seizes and does not return usable marijuana to a registered qualifying  
16 patient or a registered primary caregiver shall be liable to the cardholder for the fair market value  
17 of the marijuana.

18 (h) No person shall be subject to arrest or prosecution for constructive possession,  
19 conspiracy, aiding and abetting, being an accessory, or any other offense for simply being in the  
20 presence or vicinity of the medical use of marijuana as permitted under this chapter or for  
21 assisting a registered qualifying patient with using or administering marijuana.

22 (i) A registry identification card, or its equivalent, issued under the laws of another state,  
23 U.S. territory, or the District of Columbia to permit the medical use of marijuana by a qualifying  
24 patient, or to permit a person to assist with a qualifying patient's medical use of marijuana, shall  
25 have the same force and effect as a registry identification card issued by the department.

26 **21-28.6-5. Department to issue regulations.** – (a) Not later than ninety (90) days after  
27 the effective date of this chapter, the department shall promulgate regulations governing the  
28 manner in which it shall consider petitions from the public to add debilitating medical conditions  
29 to those included in this chapter. In considering such petitions, the department shall include  
30 public notice of, and an opportunity to comment in a public hearing, upon such petitions. The  
31 department shall, after hearing, approve or deny such petitions within one hundred eighty (180)  
32 days of submission. The approval or denial of such a petition shall be considered a final  
33 department action, subject to judicial review. Jurisdiction and venue for judicial review are  
34 vested in the superior court. The denial of a petition shall not disqualify qualifying patients with

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1 that condition, if they have a debilitating medical condition. The denial of a petition shall not  
2 prevent a person with the denied condition from raising an affirmative defense.

3 (b) Not later than ninety (90) days after the effective date of this chapter, the department  
4 shall promulgate regulations governing the manner in which it shall consider applications for and  
5 renewals of registry identification cards for qualifying patients and primary caregivers. The  
6 department's regulations shall establish application and renewal fees that generate revenues  
7 sufficient to offset all expenses of implementing and administering this chapter. The department

8 may vary the application and renewal fees along a sliding scale that accounts for a qualifying  
 9 patient's income. The department may accept donations from private sources in order to reduce  
 10 the application and renewal fees.

11 **21-28.6-6. Administration of regulations.** – (a) The department shall issue registry  
 12 identification cards to qualifying patients who submit the following, in accordance with the  
 13 department's regulations:

14 (1) written certification that the person is a qualifying patient;

15 (2) application or renewal fee;

16 (3) name, address, and date of birth of the qualifying patient; provided, however, that if  
 17 the patient is homeless, no address is required;

18 (4) name, address, and telephone number of the qualifying patient's practitioner; and

19 (5) name, address, and date of birth of the qualifying patient's primary caregiver, if any.

20 (b) The department shall not issue a registry identification card to a qualifying patient  
 21 under the age of eighteen (18) unless:

22 (1) The qualifying patient's practitioner has explained the potential risks and benefits of  
 23 the medical use of marijuana to the qualifying patient and to a parent, guardian or person having  
 24 legal custody of the qualifying patient; and

25 (2) A parent, guardian or person having legal custody consents in writing to:

26 (i) Allow the qualifying patient's medical use of marijuana;

27 (ii) Serve as one of the qualifying patient's primary caregivers; and

28 (iii) Control the acquisition of the marijuana, the dosage, and the frequency of the  
 29 medical use of marijuana by the qualifying patient.

30 (c) The department shall verify the information contained in an application or renewal  
 31 submitted pursuant to this section, and shall approve or deny an application or renewal within  
 32 fifteen (15) days of receiving it. The department may deny an application or renewal only if the  
 33 applicant did not provide the information required pursuant to this section, or if the department  
 34 determines that the information provided was falsified. Rejection of an application or renewal is

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1 considered a final department action, subject to judicial review. Jurisdiction and venue for  
 2 judicial review are vested in the superior court.

3 (d) The department shall issue a registry identification card to the primary caregiver, if  
 4 any, who is named in a qualifying patient's approved application, up to a maximum of two (2)  
 5 primary caregivers per qualifying patient.

6 (e) The department shall issue registry identification cards within five (5) days of  
 7 approving an application or renewal, which shall expire one year after the date of issuance.

8 Registry identification cards shall contain:

9 (1) Name, address, and date of birth of the qualifying patient;

10 (2) Name, address, and date of birth of the qualifying patient's primary caregiver, if any;

11 (3) The date of issuance and expiration date of the registry identification card;

12 (4) A random registry identification number; and

13 (5) A photograph, if the department decides to require one.

14 (f) Persons issued registry identification cards shall be subject to the following:

15 (1) A qualifying patient who has been issued a registry identification card shall notify the  
 16 department of any change in the qualifying patient's name, address, or primary caregiver; or if the  
 17 qualifying patient ceases to have his or her debilitating medical condition, within ten (10) days of  
 18 such change.

19 (2) A registered qualifying patient who fails to notify the department of any of these  
 20 changes is responsible for a civil infraction, punishable by a fine of no more than one hundred  
 21 fifty dollars (\$150). If the person has ceased to suffer from a debilitating medical condition, the

22 card shall be deemed null and void and the person shall be liable for any other penalties that may  
23 apply to the person's nonmedical use of marijuana.

24 (3) A registered primary caregiver shall notify the department of any change in his or her  
25 name or address within ten (10) days of such change. A primary caregiver who fails to notify the  
26 department of any of these changes is responsible for a civil infraction, punishable by a fine of no  
27 more than one hundred fifty dollars (\$150).

28 (4) When a qualifying patient or primary caregiver notifies the department of any  
29 changes listed in this subsection, the department shall issue the registered qualifying patient and  
30 each primary caregiver a new registry identification card within ten (10) days of receiving the  
31 updated information and a ten dollar (\$10.00) fee.

32 (5) When a qualifying patient who possesses a registry identification card changes his or  
33 her primary caregiver, the department shall notify the primary caregiver within ten (10) days.  
34 The primary caregiver's protections as provided in this chapter shall expire ten (10) days after

7  
1 notification by the department.

2 (6) If a registered qualifying patient or a primary caregiver loses his or her registry  
3 identification card, he or she shall notify the department and submit a ten dollar (\$10.00) fee  
4 within ten (10) days of losing the card. Within five (5) days, the department shall issue a new  
5 registry identification card with new random identification number.

6 (g) Possession of, or application for, a registry identification card shall not constitute  
7 probable cause or reasonable suspicion, nor shall it be used to support the search of the person or  
8 property of the person possessing or applying for the registry identification card, or otherwise  
9 subject the person or property of the person to inspection by any governmental agency.

10 (h) Applications and supporting information submitted by qualifying patients, including  
11 information regarding their primary caregivers and practitioners, are confidential. The  
12 department shall maintain a confidential list of the persons to whom the department has issued  
13 registry identification cards. Individual names and other identifying information on the list shall  
14 be confidential, exempt from the provisions of Rhode Island Access to Public Information,  
15 chapter 2 of title 38, and not subject to disclosure, except to authorized employees of the  
16 department as necessary to perform official duties of the department.

17 (i) The department shall verify to law enforcement personnel whether a registry  
18 identification card is valid solely by confirming the random registry identification number.

19 (j) It shall be a crime, punishable by up to one hundred eighty (180) days in jail and a one  
20 thousand dollar (\$1,000) fine, for any person, including an employee or official of the department  
21 or another state agency or local government, to breach the confidentiality of information obtained  
22 pursuant to this chapter. Notwithstanding the provisions, the department employees may notify  
23 law enforcement about falsified or fraudulent information submitted to the department.

24 (k) The department shall report annually to the legislature on the number of applications  
25 for registry identification cards, the number of qualifying patients and primary caregivers  
26 approved, the nature of the debilitating medical conditions of the qualifying patients, the number  
27 of registry identification cards revoked, and the number of practitioners providing written  
28 certification for qualifying patients. The department shall not provide any identifying information  
29 of qualifying patients, primary caregivers, or practitioners.

30 (l) Any state or local law enforcement official who knowingly cooperates with federal  
31 law enforcement agents to arrest, investigate, prosecute, or search a registered qualifying patient  
32 or a registered primary caregiver or his or her property for acting in compliance with this chapter  
33 shall have his or her employment suspended or terminated.

34 **21-28.6-7. Scope of chapter.** – (a) This chapter shall not permit:

1 (1) Any person to undertake any task under the influence of marijuana, when doing so  
2 would constitute negligence or professional malpractice;  
3 (2) The smoking of marijuana:  
4 (i) In a school bus or other form of public transportation;  
5 (ii) On any school grounds;  
6 (iii) In any correctional facility; or  
7 (iv) In any public place; and  
8 (3) Any person to operate, navigate, or be in actual physical control of any motor vehicle,  
9 aircraft, or motorboat while under the influence of marijuana. However, a registered qualifying  
10 patient shall not be considered to be under the influence solely for having marijuana metabolites  
11 in his or her system.  
12 (b) Nothing in this chapter shall be construed to require:  
13 (1) a government medical assistance program or private health insurer to reimburse a  
14 person for costs associated with the medical use of marijuana; or  
15 (2) an employer to accommodate the medical use of marijuana in any workplace.  
16 (c) Fraudulent representation to a law enforcement official of any fact or circumstance  
17 relating to the medical use of marijuana to avoid arrest or prosecution shall be punishable by a  
18 fine of five hundred dollars (\$500) which shall be in addition to any other penalties that may  
19 apply for making a false statement for the nonmedical use of marijuana.  
20 **21-28.6-8. Affirmative defense and dismissal.** – (a) Except as provided in section 21-  
21 28.6-7, a person and a person's primary caregiver, if any, may assert the medical purpose for  
22 using marijuana as a defense to any prosecution involving marijuana, and such defense shall be  
23 presumed valid where the evidence shows that:  
24 (1) The person's medical records indicate, or a practitioner has stated that, in the  
25 practitioner's professional opinion, after having completed a full assessment of the person's  
26 medical history and current medical condition made in the course of a bona fide practitioner<sup>27</sup>  
27 patient relationship, the potential benefits of using marijuana for medical purposes would likely  
28 outweigh the health risks for the person; and  
29 (2) The person and the person's primary caregiver, if any, were collectively in possession  
30 of a quantity of marijuana that was not more than was reasonably necessary to ensure the  
31 uninterrupted availability of marijuana for the purpose of alleviating the person's medical  
32 condition or symptoms associated with the medical condition.  
33 (b) A person may assert the medical purpose for using marijuana in a motion to dismiss,  
34 and the charges shall be dismissed following an evidentiary hearing where the defendant shows  
9  
1 the elements listed in section 21-28.6-8.  
2 (c) Any interest in or right to property that was possessed, owned, or used in connection  
3 with a person's use of marijuana for medical purposes shall not be forfeited if the person or the  
4 person's primary caregiver demonstrates the person's medical purpose for using marijuana  
5 pursuant to this section.  
6 **21-28.6-9. Enforcement.** – (a) If the department fails to adopt regulations to implement  
7 this chapter within one hundred twenty (120) days of the effective date of this act, a qualifying  
8 patient may commence an action in a court of competent jurisdiction to compel the department to  
9 perform the actions mandated pursuant to the provisions of this chapter.  
10 (b) If the department fails to issue a valid registry identification card in response to a  
11 valid application submitted pursuant to this chapter within twenty (20) days of its submission, the  
12 registry identification card shall be deemed granted and a copy of the registry identification  
13 application shall be deemed valid registry identification card.  
14 **21-28.6-10. Repealer.** – All laws and parts of laws in Rhode Island that are in conflict

15 with this chapter are hereby repealed.

16 **21-28.6-11. Severability.** – Any section of this act being held invalid as to any person or  
17 circumstances shall not affect the application of any other section of this act that can be given full  
18 effect without the invalid section or application.

19 SECTION 2. This act shall take effect upon passage.

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## Appendix Three: Definition of Controlled Substance Schedules I-V

### Definition of Controlled Substance Schedules I-V

The drugs and other substances that are considered controlled substances under the CSA are divided into five schedules. A listing of the substances and their schedules is found in the [DEA regulations, 21 C.F.R. Sections 1308.11 through 1308.15](#). A controlled substance is placed in its respective schedule based on whether it has a currently accepted medical use in treatment in the United States and its relative abuse potential and likelihood of causing dependence. Some examples of controlled substances in each schedule are outlined below.

**NOTE:** Drugs listed in schedule I have no currently accepted medical use in treatment in the United States and, therefore, may not be prescribed, administered, or dispensed for medical use. In contrast, drugs listed in schedules II-V have some accepted medical use and may be prescribed, administered, or dispensed for medical use.

#### *Schedule I Controlled Substances*

Substances in this schedule have a high potential for abuse, have no currently accepted medical use in treatment in the United States, and there is a lack of accepted safety for use of the drug or other substance under medical supervision.

Some examples of substances listed in schedule I are: heroin, lysergic acid diethylamide (LSD), marijuana (cannabis), peyote, methaqualone, and 3,4-methylenedioxymethamphetamine ("ecstasy").

#### *Schedule II Controlled Substances*

Substances in this schedule have a high potential for abuse which may lead to severe psychological or physical dependence.

Examples of single entity schedule II narcotics include morphine and opium. Other schedule II narcotic substances and their common name brand products include: hydromorphone (Dilaudid®), methadone (Dolophine®), meperidine (Demerol®), oxycodone (OxyContin®), and fentanyl (Sublimaze® or Duragesic®).

Examples of schedule II stimulants include: amphetamine (Dexedrine®, Adderall®), methamphetamine (Desoxyn®), and methylphenidate (Ritalin®). Other schedule II substances include: cocaine, amobarbital, glutethimide, and pentobarbital.

#### *Schedule III Controlled Substances*

Substances in this schedule have a potential for abuse less than substances in schedules I or II and abuse may lead to moderate or low physical dependence or high psychological dependence.

Examples of schedule III narcotics include combination products containing less than 15 milligrams of hydrocodone per dosage unit (Vicodin®) and products containing not more than 90 milligrams of codeine per dosage unit (Tylenol with codeine®). Also included are buprenorphine products (Suboxone® and Subutex®) used to treat opioid addiction. Examples of schedule III non-narcotics include benzphetamine (Didrex®), phendimetrazine, ketamine, and anabolic steroids such as oxandrolone (Oxandrin®).

#### *Schedule IV Controlled Substances*

Substances in this schedule have a low potential for abuse relative to substances in schedule III.

An example of a schedule IV narcotic is propoxyphene (Darvon® and Darvocet-N 100®).

Other schedule IV substances include: alprazolam (Xanax®), clonazepam (Klonopin®), clorazepate (Tranxene®),



diazepam (Valium®), lorazepam (Ativan®), midazolam (Versed®), temazepam (Restoril®), and triazolam (Halcion®).

### *Schedule V Controlled Substances*

Substances in this schedule have a low potential for abuse relative to substances listed in schedule IV and consist primarily of preparations containing limited quantities of certain narcotics. These are generally used for antitussive, antidiarrheal, and analgesic purposes.

Examples include cough preparations containing not more than 200 milligrams of codeine per 100 milliliters or per 100 grams (Robitussin AC® and Phenergan with Codeine®).

## Code of Federal Regulations

### Section 1308.11 Schedule I.

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of paragraph (b)(34) only, the term isomer includes the optical and geometric isomers):

(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide)	9815
(2) Acetylmethadol	9601
(3) Allylprodine	9602
(4) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM)	9603
(5) Alphameprodine	9604
(6) Alphamethadol	9605
(7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine)	9814
(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4- piperidinyl]-N-phenylpropanamide)	9832
(9) Benzethidine	9606
(10) Betacetylmethadol	9607
(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4- piperidinyl]-N-phenylpropanamide)	9830

(12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidiny]-N-phenylpropanamide	9831
(13) Betameprodine	9608
(14) Betamethadol	9609
(15) Betaprodine	9611
(16) Clonitazene	9612
(17) Dextromoramide	9613
(18) Diampromide	9615
(19) Diethylthiambutene	9616
(20) Difenoxin	9168
(21) Dimenoxadol	9617
(22) Dimepheptanol	9618
(23) Dimethylthiambutene	9619
(24) Dioxaphetyl butyrate	9621
(25) Dipipanone	9622
(26) Ethylmethylthiambutene	9623
(27) Etonitazene	9624
(28) Etoxidine	9625
(29) Furethidine	9626
(30) Hydroxypethidine	9627
(31) Ketobemidone	9628
(32) Levomoramide	9629
(33) Levophenacymorphan	9631
(34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide)	9813
(35) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidiny]-N-phenylpropanamide)	9833
(36) Morpheridine	9632
(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine)	9661
(38) Noracymethadol	9633
(39) Norlevorphanol	9634
(40) Normethadone	9635
(41) Norpipanone	9636
(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidiny] propanamide	9812
(43) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine	9663
(44) Phenadoxone	9637
(45) Phenampromide	9638
(46) Phenomorphan	9647

(47) Phenoperidine	9641
(48) Piritramide	9642
(49) Proheptazine	9643
(50) Properidine	9644
(51) Propiram	9649
(52) Racemoramide	9645
(53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide	9835
(54) Tilidine	9750
(55) Trimeperidine	9646

(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine	9319
(2) Acetyldihydrocodeine	9051
(3) Benzylmorphine	9052
(4) Codeine methylbromide	9070
(5) Codeine-N-Oxide	9053
(6) Cyprenorphine	9054
(7) Desomorphine	9055
(8) Dihydromorphine	9145
(9) Drotebanol	9335
(10) Etorphine (except hydrochloride salt)	9056
(11) Heroin	9200
(12) Hydromorphenol	9301
(13) Methyldesorphine	9302
(14) Methyldihydromorphine	9304
(15) Morphine methylbromide	9305
(16) Morphine methylsulfonate	9306
(17) Morphine-N-Oxide	9307
(18) Myrophine	9308
(19) Nicocodeine	9309
(20) Nicomorphine	9312
(21) Normorphine	9313
(22) Pholcodine	9314
(23) Thebacon	9315

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains

any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

(1) Alpha-ethyltryptamine	7249
Some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET.	
(2) 4-bromo-2,5-dimethoxy-amphetamine	7391
Some trade or other names: 4-bromo-2,5-dimethoxy--alpha-methylphenethylamine; 4-bromo-2,5-DMA	
(3) 4-Bromo-2,5-dimethoxyphenethylamine	7392
Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus.	
(4) 2,5-dimethoxyamphetamine	7396
Some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA	
(5) 2,5-dimethoxy-4-ethylamphet-amine	7399
Some trade or other names: DOET	
(6) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7)	7348
(7) 4-methoxyamphetamine	7411
Some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine, PMA	
(8) 5-methoxy-3,4-methylenedioxy-amphetamine	7401
(9) 4-methyl-2,5-dimethoxy-amphetamine	7395
Some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP"	
(10) 3,4-methylenedioxy amphetamine	7400
(11) 3,4-methylenedioxymethamphetamine (MDMA)	7405
(12) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA	7404
(13) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA	7402
(14) 3,4,5-trimethoxy amphetamine	7390
(15) 5-methoxy-N,N-dimethyltryptamine	7431
Some trade or other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT	
(16) Alpha-methyltryptamine (other name: AMT)	7432
(17) Bufotenine	7433
Some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-	

dimethyltryptamine; mappine	
(18) Diethyltryptamine	7434
Some trade and other names: N,N-Diethyltryptamine; DET	
(19) Dimethyltryptamine	7435
Some trade or other names: DMT	
(20) 5-methoxy-N,N-diisopropyltryptamine (other name: 5-MeO-DIPT)	7439
(21) Ibogaine	7260
Some trade and other names: 7-Ethyl-6,6 beta;, 7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepino [5,4-b] indole; Tabernanthe iboga	
(22) Lysergic acid diethylamide	7315
<b>(23) Marihuana</b>	<b>7360</b>
(24) Mescaline	7381
(25) Parahexyl--7374; some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl.	
(26) Peyote	7415
Meaning all parts of the plant presently classified botanically as <i>Lophophora williamsii</i> Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts (Interprets 21 USC 812(c), Schedule I(c) (12))	
(27) N-ethyl-3-piperidyl benzilate	7482
(28) N-methyl-3-piperidyl benzilate	7484
(29) Psilocybin	7437
(30) Psilocyn	7438
(31) Tetrahydrocannabinols	7370
<p>Meaning tetrahydrocannabinols naturally contained in a plant of the genus <i>Cannabis</i> (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:</p> <ul style="list-style-type: none"> <li>-1 cis or trans tetrahydrocannabinol, and their optical isomers</li> <li>-6 cis or trans tetrahydrocannabinol, and their optical isomers</li> <li>-3,4 cis or trans tetrahydrocannabinol, and its optical isomers</li> </ul> <p>(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)</p>	
(32) Ethylamine analog of phencyclidine	7455
Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-	

phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, PCE	
(33) Pyrrolidine analog of phencyclidine	7458
Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP	
(34) Thiophene analog of phencyclidine	7470
Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP	
(35) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine	7473
Some other names: TCPy	

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) gamma-hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate)	2010
(2) Mecloqualone	2572
(3) Methaqualone	2565

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Aminorex (Some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine)	1585
(2) N-Benzylpiperazine (some other names: BZP, 1-benzylpiperazine)	7493
(3) Cathinone	1235
Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone	
(4) Fenethylamine	1503
(5) Methcathinone (Some other names: 2-(methylamino)-propionophenone; alpha-(methylamino)propionophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR1432), its salts, optical isomers and salts of optical isomers	1237
(6) (+/-)cis-4-methylaminorex ((+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine)	1590
(7) N-ethylamphetamine	1475
(8) N,N-dimethylamphetamine (also known as N,N-alpha-trimethyl-	1480

benzeneethanamine; N,N-alpha-trimethylphenethylamine)	
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(g) *Temporary listing of substances subject to emergency scheduling.* Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: CP-47,497)	7297
(2) 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: cannabicyclohexanol and CP-47,497 C8 homologue)	7298
(3) 1-Butyl-3-(1-naphthoyl)indole, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: JWH- 073)	7173
(4) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: JWH-200)	7200
(5) 1-Pentyl-3-(1-naphthoyl)indole, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: JWH- 018 and AM678)	7118

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### Section 1308.12 Schedule II.

(a) Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the Controlled Substances Code Number set forth opposite it.

(b) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextrophan, nalbuphine, nalmeferine, naloxone, and naltrexone, and their respective salts, but including the following:

(i) Codeine	9050
(ii) Dihydroetorphine	9334
(iii) Ethylmorphine	9190

(iv) Etorphine hydrochloride	9059
(v) Granulated opium	9640
(vi) Hydrocodone	9193
(vii) Hydromorphone	9150
(viii) Metopon	9260
(ix) Morphine	9300
(x) Opium extracts	9610
(xi) Opium fluid	9620
(xii) Oripavine	9330
(xiii) Oxycodone	9143
(xiv) Oxymorphone	9652
(xv) Powdered opium	9639
(xvi) Raw opium	9600
(xvii) Thebaine	9333
(xviii) Tincture of opium	9630

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in **paragraph (b) (1)** of this section, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves (9040) and any salt, compound, derivative or preparation of coca leaves (including cocaine (9041) and ecgonine (9180) and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy), 9670.

(c) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted:

(1) Alfentanil	9737
(2) Alphaprodine	9010
(3) Anileridine	9020



(4) Bezitramide	9800
(5) Bulk dextropropoxyphene (non-dosage forms)	9273
(6) Carfentanil	9743
(7) Dihydrocodeine	9120
(8) Diphenoxylate	9170
(9) Fentanyl	9801
(10) Isomethadone	9226
(11) Levo-alpha-acetylmethadol [Some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM]	9648
(12) Levomethorphan	9210
(13) Levorphanol	9220
(14) Metazocine	9240
(15) Methadone	9250
(16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane	9254
(17) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid	9802
(18) Pethidine (meperidine)	9230
(19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine	9232
(20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate	9233
(21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid	9234
(22) Phenazocine	9715
(23) Piminodine	9730
(24) Racemethorphan	9732
(25) Racemorphan	9733
(26) Remifentanil	9739
(27) Sufentanil	9740
(28) Tapentadol	9780

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers	1100
(2) Methamphetamine, its salts, isomers, and salts of its isomers	1105
(3) Phenmetrazine and its salts	1631
(4) Methylphenidate	1724
(5) Lisdexamfetamine, its salts, isomers, and salts of its isomers	1205

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system,

including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital	2125
(2) Glutethimide	2550
(3) Pentobarbital	2270
(4) Phencyclidine	7471
(5) Secobarbital	2315

(f) Hallucinogenic substances.

(1) Nabilone	7379
[Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo[b,d]pyran-9-one]	

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(i) Phenylacetone	8501
Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;	

(2) Immediate precursors to phencyclidine (PCP):

(i) 1-phenylcyclohexylamine	7460
(ii) 1-piperidinocyclohexanecarbonitrile (PCC)	8603

(3) Immediate precursor to fentanyl:

(i) 4-anilino-N-phenethyl-4-piperidine (ANPP)	8333
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### Section 1308.13 Schedule III.

(a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under <a href="#">Sec. 1308.32</a> , and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances	1405
(2) Benzphetamine	1228
(3) Chlorphentermine	1645
(4) Clortermine	1647
(5) Phendimetrazine	1615

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture or preparation containing:	
(i) Amobarbital	2126
(ii) Secobarbital	2316
(iii) Pentobarbital	2271
or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.	
(2) Any suppository dosage form containing:	
(i) Amobarbital	2126
(ii) Secobarbital	2316
(iii) Pentobarbital	2271
or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.	
(3) Any substance which contains any quantity of a derivative of barbituric acid	2100

or any salt thereof	
(4) Chlorhexadol	2510
(5) Embutramide	2020
(6) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act	2012
(7) Ketamine, its salts, isomers, and salts of isomers	7285
[Some other names for ketamine: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone]	
(8) Lysergic acid	7300
(9) Lysergic acid amide	7310
(10) Methypylon	2575
(11) Sulfondiethylmethane	2600
(12) Sulfonethylmethane	2605
(13) Sulfonmethane	2610
(14) Tiletamine and zolazepam or any salt thereof	7295
Some trade or other names for a tiletamine-zolazepam combination product: Telazol Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrzapon	

(d) Nalorphine 9400.

(e) Narcotic Drugs. Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(i) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium	9803
(ii) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts	9804
(iii) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium	9805
(iv) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more	9806

active nonnarcotic ingredients in recognized therapeutic amounts	
(v) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts	9807
(vi) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts	9808
(vii) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts	9809
(viii) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts	9810

(2) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:

(i) Buprenorphine	9064
(ii) [Reserved]	

(f) Anabolic Steroids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any quantity of the following substances, including its salts, esters and ethers:

(1) Anabolic steroids (see Sec. 1300.01 of this chapter)	4000
(2) [Reserved]	

(g) Hallucinogenic substances.

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved product	7369
[Some other names for dronabinol: (6a <i>R-trans</i> )-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6 <i>H</i> -dibenzo [ <i>b,d</i> ]pyran-1-ol] or (-)-delta-9-( <i>trans</i> )-tetrahydrocannabinol]	

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### Section 1308.14 Schedule IV.

(a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit	9167
(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane)	9278

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam	2882
(2) Barbital	2145
(3) Bromazepam	2748
(4) Camazepam	2749
(5) Chloral betaine	2460
(6) Chloral hydrate	2465
(7) Chlordiazepoxide	2744
(8) Clobazam	2751
(9) Clonazepam	2737
(10) Clorazepate	2768
(11) Clotiazepam	2752
(12) Cloxazolam	2753

(13) Delorazepam	2754
(14) Diazepam	2765
(15) Dichloraphenazone	2467
(16) Estazolam	2756
(17) Ethchlorvynol	2540
(18) Ethinamate	2545
(19) Ethyl loflazepate	2758
(20) Fludiazepam	2759
(21) Flunitrazepam	2763
(22) Flurazepam	2767
(23) Fospropofol	2138
(24) Halazepam	2762
(25) Haloxazolam	2771
(26) Ketazolam	2772
(27) Loprazolam	2773
(28) Lorazepam	2885
(29) Lormetazepam	2774
(30) Mebutamate	2800
(31) Medazepam	2836
(32) Meprobamate	2820
(33) Methohexital	2264
(34) Methylphenobarbital (mephobarbital)	2250
(35) Midazolam	2884
(36) Nimetazepam	2837
(37) Nitrazepam	2834
(38) Nordiazepam	2838
(39) Oxazepam	2835
(40) Oxazolam	2839
(41) Paraldehyde	2585
(42) Petrichloral	2591
(43) Phenobarbital	2285
(44) Pinazepam	2883
(45) Prazepam	2764
(46) Quazepam	2881
(47) Temazepam	2925

(48) Tetrazepam	2886
(49) Triazolam	2887
(50) Zaleplon	2781
(51) Zolpidem	2783
(52) Zopiclone	2784

(d) Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

(1) Fenfluramine	1670
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(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Cathine ((+)-norpseudoephedrine)	1230
(2) Diethylpropion	1610
(3) Fencamfamin	1760
(4) Fenproporex	1575
(5) Mazindol	1605
(6) Mefenorex	1580
(7) Modafinil	1680
(8) Pemoline (including organometallic complexes and chelates thereof)	1530
(9) Phentermine	1640
(10) Pipradrol	1750
(11) Sibutramine	1675
(12) SPA ((-)-1-dimethylamino- 1,2-diphenylethane)	1635

(f) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:



(1) Pentazocine	9709
(2) Butorphanol (including its optical isomers)	9720

## Code of Federal Regulations

### Section 1308.15 Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) *Narcotic drugs.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

(1) [Reserved]

\* \* \* \* \*

(c) *Narcotic drugs containing non-narcotic active medicinal ingredients.* Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(d) *Stimulants.* Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any

quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Pyrovalerone	1485
(2) [Reserved]	

(e) *Depressants*. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

- (1) Lacosamide [( *R* )-2-acetoamido- *N* -benzyl-3-methoxy-propionamide]—2746
- (2) Pregabalin [(*S*)-3-(aminomethyl)-5-methylhexanoic acid]—2782

Appendix Four: Interview Protocol: Social Movement Organizational Directors-Marijuana Policy  
 Project Media Director Michael Meno and Kris Hermes of Americans for Safe Access  
 Conducted on August 10, 2010

Interview Protocol: Social Movement Organizational Directors

Marijuana Policy Project (MPP) and Americans for Safe Access (ASA)

- 1) What was the impetus for establishing your organization? According to your website MPP was founded in 1995. At the time, NORML was a prominent organization in regards to marijuana reform, use of marijuana-both medically and leisurely- was on the upswing. Even public opinion polls indicated that most Americans agreed with medical use of the drug and/or had experimented with marijuana. What was your reasoning, inspiration, motivations for beginning your "mission?" In short, why then? (Follow-up if necessary: it wasn't until 1996 that the first medical marijuana law was passed seemingly acting as impetus for other drug reform organizations to be established).
- 2) Concerning your political campaign messages or "frames," did your organization craft their messages with the existing understanding of marijuana (i.e. the federal government's "gateway" and "no tolerance" messages)? What are the justifications/ rational as to why medical marijuana should be allowed when for the last forty years it has been categorized as a "Schedule I" drug?
- 3) What cultural, political, and/or social impediments did your organization encounter when presenting pro-marijuana arguments and laws to the public? I ask due not only to the illegality of marijuana but also the connotations associated w/ the drug (counterculture, stereotypes, gateway arguments).
- 4) Do you believe your organization's strategies-framing messages that resonate with institutional actors (policymakers), voters of states with direct democratic means, and certain legal arenas serve as a model that other, non-medical marijuana, SMOs will replicate in order to achieve reform or is your cause so unique that your strategies would not apply?
- 5) What institutions-elections, courts, legislatures-has your organizations found most receptive to your cause(s)?

5A-what governmental and social institutional arrangements/ personnel are best suited to address the reform your organization is attempting to trigger and achieve? (I will have to elaborate in order to demonstrate the difference between question 3 and 3A).

5B-Concerning state initiative campaigns (elections), how much customization of cause, message, or organizational mission are needed or are there general guidelines that can be applied? In short, does a pattern already exist for what your organization wants to achieve via initiative campaigns?

5C-Concerning legislative attempts at reform (representative debated and voted on): what differences have you encountered between the electoral and legislative process, whether rule-based or de facto, when it comes to delivering your organization's messages to state representatives?

5D- Do you have messages created for the general public on the one hand, and on the other, for policymakers? If so, what is the reasoning behind that?

5E- Let's talk some about your organizational resources dedicated for the purpose of judicial challenges to marijuana prohibition.

5F-In relation to state and legislative campaigns, how much priority/ percentage of time and resources are dedicated to legal battles held within the court system?

5G-What is the perspective your organization holds concerning the court system. Is it as adversarial, benefit, or neutral? Why?

5H-How would you describe the level of belief your organization has in the court system? Meaning does MPP/ ASA harbor enough faith in the courts to perceive it as a venue that would be receptive to MPP / ASA returning to present multiple arguments or a "one-shot" means to reform?

6) In following your organization's tactics through listserv messages, I noticed that your aim during the last two presidential elections was to get all of the candidates, regardless of party and ideological leanings, to commit to a stance on medical marijuana, especially how the federal government should deal with patients using the drug. Why was it seemingly so important to get future presidents to take a policy stance when organizations like yours have already made so many inroads toward reform at the state and local levels of government?

7) Some have noted, especially in the early days of challenges to marijuana prohibition, that state and local medical marijuana laws were policies "set up to fail." Have officers of your organization ever addressed this sentiment? If so, what did the discussion include?

8) Since 1995, House Representatives Barney Frank (D-MA) and Maurice Hinchey (D-NY) have adamantly promoted congressional legislation to discontinue prosecution and raiding of medical marijuana patients. How have your organization's relationships with policymakers, especially federal representatives, been forged? In other words, did your organization reach out to them, visa-versa, or was there an intermediary?

9-What are your organization's long-term plans regarding congressional passage of such legislation and would you some day look to those congressmen to sponsor legislation that would establish federal medical marijuana statutes?

10) Will your organization continue down the same institutional path that has brought success in the way of reform or will your resources be reallocated as to emphasis those institutions, strategies, and public relations methods that have shown promise but with new tactics applied?

10A-Given the successes at the state and court levels as well as introduction of debate concerning marijuana use in Congress, what is the growth and policy trajectory of your organization? In other words, where does MPP/ASA go next?

## DATE SPECIFIC QUESTIONS:

11) In 2001 the Supreme Court ruled that there was “no medical exception to marijuana’s Schedule I prohibitive status.” In 2005, the Supreme Court in a much closer vote (6-3) than *U.S. v. OCBC*, ruled against 10<sup>th</sup> Amendment arguments presented in *Gonzales v. Raich*. Now, much of your organization’s resources are geared toward state-based policies and statutes, how does your [MPP or ASA] reconcile or “bridge” the opinion in *Raich* w/ organizational goals? Does it deter you from pursuing reform at the federal level?

12) (Specific to Americans for Safe Access): Your organization has presented or sponsored some compelling constitutional arguments at various levels of the legal system with varying degrees of success. Do you anticipate new arguments, such as a “Due Process” based reasoning for future litigation?

13) Both MPP and ASA have “teamed up” with the private sector and celebrities for fundraising and to bring awareness to the plight of medical marijuana patients. What returns, in the way of reform, have these associations garnered your cause?

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<http://www.gallup.com/poll/150149/Record-High-Americans-Favor-Legalizing-Marijuana.aspx> "Do you think the use of marijuana should be made legal, or not?"

<http://www.gallup.com/poll/116677/presidential-approval-ratings-gallup-historical-statistics-trends.aspx> Presidential Approval Ratings in Historical Perspective Gallup Polls taken from website

<http://www.freep.com> (Detroit Free Press)

Michigan: [www.legislature.mi.gov](http://www.legislature.mi.gov)

Michigan: <http://www.michigan.gov/sos/>

Rhode Island: [http://www.rilin.state.ri.us/gen\\_assembly](http://www.rilin.state.ri.us/gen_assembly)

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[www.newyorktimes.com/archives](http://www.newyorktimes.com/archives)

[www.presstv.com](http://www.presstv.com) Interview with Jonathan Simon

[www.safeaccessnow.org](http://www.safeaccessnow.org)

[www.thomas.gov](http://www.thomas.gov)

## Interviews

Assistant Director of Communications Krissy Oechslin, Marijuana Policy Project July 2005-written and delivered via email

City Council Member City of Santa Cruz, California Ryan Coonerty July 2006-in person

Mayor, City of Santa Cruz, California Michael Rotkin July 2006-in person

Media Specialist, Americans for Safe Access Kris Hermes January 2006-phone

Media Director, Marijuana Policy Project Michael Meno August 2010-phone

## Court Cases and Amicus Curiae Briefs

*Alden v. Maine*, 527 U.S. 706, 748 (1999).

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## EDUCATION

Present: Ph.D. Candidate (defended March 1, 2012-December 2012 Graduation Date)

Political Science- Subfields: American Politics/ Public Policy-Administration

Maxwell School of Citizenship and Public Affairs  
 Syracuse University

2005-M.A. Political Science

Maxwell School of Citizenship and Public Affairs  
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2002-B.A. History

Minors: Political Science/ Geography  
 California State University-Bakersfield

*Dissertation Abstract: Over the course of the last fifteen years, organizations representing the medical marijuana social movement have campaigned for, proposed state level legislation, and supported numerous legal arguments that challenge and attempt to reform U.S. federal illicit substance policies. This set of social regulatory policies, commonly known as the Controlled Substance Act of 1970 (CSA), were drafted, promoted, and implemented by the Nixon Administration then subsequently entrenched by multiple presidents with acquiescent congresses adopting supplemental supply-side resource allocating legislation. My dissertation research uncoils the convoluted history and institutional dynamics of path dependent U.S. illegal drug control policies to answer the question of how social movement organizations (SMOs) challenge and reform presidentially entrenched policies. First, I examine the Nixon Administration's decision-making process via archival materials in order to understand why and how the CSA was "framed," introduced, and ratified. Second, three presidential illicit substance control case studies (Ronald Reagan and George H.W. Bush) are presented to demonstrate how U.S. illicit substance control is executively entrenched. Third, through interviews, media portrayals, and institutional rulings I demonstrate how medical marijuana SMOs have "reframed" the drug's definition then "shopped" institutional venues for the purpose of reforming existing policies.*

## Professional Positions

Full-time Lecturer: Humboldt State (California) University

Visiting Lecturer: Political Science Xavier University of Louisiana Fall 2011-2012

Adjunct Faculty: State University of New York-Oswego American Politics/ Public Law Courses Fall 2010/ Spring 2011

Instructor: Modern American Political Thought-University College, Syracuse University Spring 2009

Instructor: Introduction to American Politics-University College, Syracuse University Fall 2008

Instructor: Constitutional Law I-University College, Syracuse University  
 Spring 2007

Instructor: American Politics: Special Topics, "Campaigns, Candidates, and Cinema" University College, Syracuse University-Summer 2007



### Awards/ Fellowships

Course Portfolio Work Group-Scholarly Teaching Project Grant-Xavier University 2011-2012  
 Roscoe-Martin Research Grant-Spring 2009  
 Maxwell School/ Political Science Department Summer Research Grant-2008  
 Institute for the Study of the Judiciary, Politics, and the Media Fellow-2007/08  
 Maxwell School Dean's Summer Research Assistantship -Summer 2007  
 Syracuse University Political Science Department Summer Mentor/ Research Assistantship -2006

### Courses Taught

Public Policy  
 Introduction to Public Administration  
 Introduction to Political Science  
 Introduction to American Government and Politics  
 Constitutional Law I  
 Civil Liberties (Constitutional Law II)  
 Supreme Court  
 Judicial Process in America  
 Drugs and the Law  
 Law and Society  
 Modern American Political Thought  
 Campaigns/ Elections

### Research Experience

Research Assistant for Thomas M. Keck, Ph.D. Summer 2006 –Spring 2010  
 Research Assistant for Keith Bybee, Ph.D. Summer 2007 “Reform of New York State Town and Village Courts” INTERCOM Project  
 Research Assistant for Sarah Pralle, Ph.D. Summer 2005 and Spring 2009 “Canadian Pesticides Regulation Policy” and “State Attorneys General-Global Warming” research

### Conference Papers

Speaker: “*Of Green Institutions and Incremental Policies: What Legalization of Marijuana Means*”  
 Humboldt Interdisciplinary Institute for Marijuana Research-Speaker Series November 27, 2012  
 Dissertation Research: “*Cultivating Reform: Nixon’s Illicit Substance Control Legacy, Medical Marijuana Social Movement Organizations, and Venue Shopping.*”  
 (Pending Submission) “*Drug War Trenches Deepen: Executively Driven Path Dependency of the Reagan and Bush Administrations*”  
 June 2011: Alcohol and Drug History Society Conference Buffalo, New York “*Early Litigious Challenges to the Controlled Substance Act of 1970: NORML, DEA herbicide spraying of Mexican Marijuana, and Environmental Impact Statements*”  
 June 2010: Policy History Conference Columbus, Ohio “*Executive Entrenchment of Illicit Substance Policies and the War on Drugs: Reagan, Bush, and Clinton.*”  
 Institute for the Study of the Judiciary, Politics, and the Media Fellowship Paper May 2008: “*Gaining Traction toward Reform: Interplay between California Print Media and Medical Marijuana Social Movement Organizations*”  
 March 2006: Law, Culture, and the Humanities Conference: “*Moving Beyond Federalism in Search of a Conservative Agenda: Gonzales v. Raich (2005)*” Syracuse, New York

Sawyer Law and Politics Program Paper November 2006: *"Of Economic Nationalism and Equality Marginalized: Reconsidering the Supreme Court's Role in American Political Development in the Late 1800's"*

April 2005: New York State Political Science Association Annual Conference: *"Social Security Reform and Political Time."* Co-Presenter with Hector Ortiz, Ph.D. Candidate -Niagara, New York

Sawyer Law and Politics Program Paper January 2005: *"Moving Beyond Federalism in Search of a Conservative Agenda: Gonzales v. Raich (2005)"*

#### Professional Memberships/University Service

Faculty Member-Humboldt Interdisciplinary Institute for Marijuana Research (2012-Present)

Advisor Student Chapter National Organization to Reform Marijuana Laws (NORML)-Humboldt State University 2012-Present

Advisor Public Policy Club 2011-2012-Xavier University of Louisiana

Advisor Tau Kappa Epsilon Fraternity-Syracuse University 2006-2011

Law and Society Association 2008-Present

Alcohol and Drugs History Society 2010-Present

American Political Science Association 2002-Present

Phi Alpha Theta (History Honor Society) 2001-Present

Phi Sigma Alpha (Political Science Honor Society) 2002-Present

Sawyer Law and Politics Program Research Workshop (Syracuse University) 2005-2008: Paper Presenter and Discussant

Information and Communications Technology Advisory Committee-Maxwell School of Citizenship and Public Affairs 2008-2009