

UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

NO. 98-177044

OAKLAND CANNABIS BUYERS'
COOPERATIVE and JEFFREY JONES,

Appellants/Defendants,

v.

UNITED STATES OF AMERICA

Appellee/Plaintiff.

Appeal from Order Denying Motion to Modify Preliminary Injunction
Appeal From Order Modifying Injunction by the United States District Court
for the Northern District of California
Case No. C 98-0088 CRB
entered on October 13, 1998, by Judge Charles R. Breyer.

**EXCERPTS OF RECORD
VOLUME II**

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1 FURTHER APPEARANCES:

2 ALSO FOR THE PLAINTIFF: DANIEL DORMONT, ATTORNEY
3 DRUG ENFORCEMENT
4 ADMINISTRATION
5 U.S. DEPARTMENT OF JUSTICE
6 700 ARMY-NAVY DRIVE
7 ARLINGTON, VIRGINIA
8 20537

9 FOR DEFENDANT OAKLAND WILLIAM G. PANZER AND JAMES
10 BUYERS' COOPERATIVE; SILVA, ESQS.
11 JEFFREY JONES; MARIN 370 GRAND AVENUE, SUITE 3
12 ALLIANCE FOR MEDICAL OAKLAND, CALIFORNIA 94610
13 MARIJUANA; AND LYNNETTE AND
14 SHAW: ROBERT A. RAICH, ESQ.
15 1970 BROADWAY, SUITE 940
16 OAKLAND, CALIFORNIA 94612

17 FOR DEFENDANTS CANNABIS SERRA, LICHTER, DAAR,
18 CULTIVATORS' CLUB AND BUSTAMANTE, MICHAEL & WILSON
19 DENNIS PERON: PIER 5 NORTH
20 THE EMBARCADERO
21 SAN FRANCISCO, CALIFORNIA
22 94111
23 BY: J. TONY SERRA AND BRENDAN
24 R. CUMMINGS, ESQS.

25 FOR DEFENDANTS FLOWER CARL SHAPIRO, ESQ.
26 THERAPY MEDICAL MARIJUANA 404 SAN ANSELMO AVENUE
27 CLUB; JOHN HUDSON; MARY SAN ANSELMO, CALIFORNIA
28 PALMER AND BARBARA SWEENEY: 94960

29 FOR DEFENDANT GERALD M. VISSE & YANEZ
30 BUHRZ: ONE DANIEL BURNHAM COURT
31 SUITE 220-C
32 SAN FRANCISCO, CALIFORNIA
33 94109-5460
34 BY: JESS P. YANEZ, ESQ.

ER0201

1 APPEARANCES CONTINUED:

2 FOR DEFENDANTS UKIAH
3 CANNABIS BUYERS' CLUB;
4 CHERRIE LOVETT; MARVIN
5 LEHRMAN AND MILDRED
6 LEHRMAN:

SUSAN B. JORDAN, ATTORNEY AT
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515 SOUTH SCHOOL STREET
UKIAH, CALIFORNIA 95482
AND
LAURETTA MARIE ORAVITZ,
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15 BOARDMAN PLACE, SECOND
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SAN FRANCISCO, CALIFORNIA
94103-4727

8 FOR DEFENDANTS SANTA CRUZ
9 CANNABIS BUYERS' CLUB:

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SANTA CRUZ, CALIFORNIA
95060

13 AMICUS:

14 FOR CITY AND COUNTY OF
15 SAN FRANCISCO:

TERENCE HALLINAN, DISTRICT
ATTORNEY, CITY AND COUNTY OF
SAN FRANCISCO
850 BRYANT STREET
SAN FRANCISCO, CALIFORNIA
94103

17
18
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22
23
24
25

1 MARCH 24, 1998

2:30 O'CLOCK P.M.

2
3 P R O C E E D I N G S

4 THE CLERK: CALLING CIVIL 98-0085, AND ALL RELATED
5 CASES, UNITED STATES VERSUS CANNABIS CULTIVATORS, ET AL.

6 I WOULD NEED APPEARANCES, PLEASE, COUNSEL.

7 MR. YAMAGUCHI: GOOD AFTERNOON, YOUR HONOR.

8 MICHAEL YAMAGUCHI FOR THE GOVERNMENT. AND WITH ME IS
9 MR. MARK QUINLIVAN, MR. ART GOLDBERG AND MR. DAN DORMONT.

10 THE COURT: THANK YOU, MR. YAMAGUCHI. WELCOME.

11 MR. PANZER: GOOD AFTERNOON, YOUR HONOR.

12 WILLIAM PANZER, APPEARING ON BEHALF OF THE OAKLAND
13 CANNABIS BUYERS' COOPERATIVE, DEFENDANT JEFFREY JONES, THE
14 MARIN ALLIANCE FOR MEDICAL MARIJUANA AND DEFENDANT
15 LYNNETTE SHAW.

16 AND WITH THE COURT'S INDULGENCE I WOULD ASK OTHER
17 COUNSEL TO INTRODUCE THEMSELVES. I'M NOT SURE I COULD GET
18 ALL THE NAMES RIGHT NOW, AND I DON'T WANT TO MISS ANYONE.

19 MR. SHAPIRO: I'M CARL SHAPIRO. I REPRESENT
20 FLOWER THERAPY, JOHN HUDSON AND BARBARA SWEENEY.

21 THE COURT: GOOD AFTERNOON, MR. SHAPIRO.

22 MR. SERRA.

23 MR. SERRA: GOOD AFTERNOON, YOUR HONOR.

24 I'M J. TONY SERRA. I, ALONG WITH CO-COUNSEL,
25 BRENDAN CUMMINGS, REPRESENT THE SAN FRANCISCO BUYERS'

1 COLLECTIVE, SPECIFICALLY DENNIS PERON, WHO IS HERE PRESENT
2 BEFORE THE COURT.

3 MR. YANEZ: GOOD MORNING (SIC), YOUR HONOR. THIS
4 IS JESS YANEZ FROM VISSE & YANEZ. I'M HERE REPRESENTING
5 MR. GERALD BUHRZ.

6 MS. JORDAN: GOOD AFTERNOON, YOUR HONOR.
7 SUSAN JORDAN ON BEHALF OF THE UKIAH BUYERS' CLUB
8 WITH THE INDIVIDUAL DEFENDANTS. MILDRED AND MARVIN LEHRMAN
9 ARE HERE AND CHERRIE LOVETT IS NOT.

10 THE COURT: THANK YOU.

11 MR. UELMEN: GOOD AFTERNOON, YOUR HONOR.
12 GERALD UELMEN APPEARING ON BEHALF THE SANTA CRUZ CANNABIS
13 BUYERS' CLUB.

14 THE COURT: GOOD AFTERNOON, PROFESSOR.

15 MS. ORAVITZ: GOOD AFTERNOON, YOUR HONOR. I'M
16 CO-COUNSEL WITH MS. JORDAN FOR THE UKIAH CANNABIS BUYERS'
17 CLUB.

18 THE COURT: AND YOUR NAME IS?

19 MS. ORAVITZ: LAURETTA ORAVITZ.

20 THE COURT: ALL RIGHT.

21 MS. WELLS: KATE WELLS REPRESENTING SANTA CRUZ
22 CANNABIS BUYERS' CLUB.

23 MR. RAICH: GOOD AFTERNOON, YOUR HONOR.

24 I'M ROBERT RAICH SPECIALLY APPEARING ON BEHALF OF
25 THE OAKLAND CANNABIS BUYERS' COOPERATIVE AND JEFFREY JONES.

1 THE COURT: OKAY.

2 MR. SILVA: GOOD AFTERNOON, YOUR HONOR.

3 JAMES SILVA OF COUNSEL TO BILL PANZER AND REPRESENTING THE
4 MARIN ALLIANCE FOR MEDICAL MARIJUANA AND LYNNETTE SHAW, WHO
5 IS PRESENT.

6 THE COURT: GOOD AFTERNOON.

7 MR. HALLINAN?

8 MR. HALLINAN: AND I'M DISTRICT ATTORNEY
9 TERENCE HALLINAN HERE AS A FRIEND OF THE COURT, YOUR HONOR.

10 THE COURT: GOOD AFTERNOON, MR. HALLINAN.

11 MR. HALLINAN: GOOD AFTERNOON.

12 THE COURT: WELL, THERE. THAT TOOK ALMOST PART OF
13 THE AFTERNOON, DIDN'T IT?

14 LET ME TELL YOU, LADIES AND GENTLEMEN, WHAT I HAVE
15 BEFORE ME SO WE CAN FOCUS. FIRST OF ALL, MAKE SURE THAT I
16 HAVE RECEIVED THE PAPERS THAT YOU HAVE SUBMITTED, AND THEN
17 HAVE A DISCUSSION AS TO HOW I WOULD LIKE THE AFTERNOON
18 PROCEEDINGS TO GO FORWARD.

19 I HAVE, OF COURSE, RECEIVED A COMPLAINT FOR
20 DECLARATORY RELIEF, A PRELIMINARY AND PERMANENT INJUNCTION
21 AND RELIEF RELATED TO THAT FROM THE GOVERNMENT, AS WELL AS
22 THE SUPPORTING DECLARATIONS.

23 I HAVE RECEIVED, AS WELL, A MEMORANDUM IN SUPPORT
24 OF THE RELIEF THAT IS SOUGHT. AND, OF COURSE, I HAVE
25 RECEIVED A REPLY MEMORANDUM. I HAVE ALSO RECEIVED AND I

1 ASSUME OPPOSING COUNSEL HAS RECEIVED, AS WELL, A STATEMENT
2 OF A RECENT DECISION IN THE CASE OF UNITED STATES VERSUS
3 MCCORMICK OUT OF THE CENTRAL DISTRICT OF CALIFORNIA, WHICH
4 WAS DECIDED ON MARCH 16, 1998.

5 SO THAT'S WHAT I'VE RECEIVED FROM THE GOVERNMENT
6 BY WAY OF SUBMISSION.

7 FROM THE DEFENDANTS I'VE RECEIVED THE OPPOSITION
8 TO THE GOVERNMENT'S MOTIONS. I'VE RECEIVED YOUR MOTION TO
9 DISMISS THE COMPLAINT BASED UPON LACK OF SUBJECT MATTER
10 JURISDICTION. I'VE RECEIVED A MOTION TO DISMISS UNDER THE
11 DOCTRINE OF ABSTENTION. AND ALONG WITH THAT I HAVE
12 RECEIVED SUPPORTING DECLARATIONS.

13 I HAVE RECEIVED FROM MR. SHAPIRO AND JOINED IN THE
14 MEMORANDUM SUBMITTED BY COUNSEL ON BEHALF OF HIS CLIENT,
15 FLOWER THERAPY AND OTHER DEFENDANTS, AND AS WELL FROM
16 MR. SHAPIRO, A MEMORANDA IN RESPONSE TO THE ISSUE THAT WAS
17 POSED BY THE COURT AT THE LAST PROCEEDING.

18 WITH RESPECT TO AMICUS I HAVE RECEIVED A REQUEST
19 FROM THE DISTRICT ATTORNEY OF THE CITY AND COUNTY OF SAN
20 FRANCISCO, MR. HALLINAN, TO FILE AN AMICUS BRIEF. ON THE
21 DAY THAT I RECEIVED THAT BRIEF I GRANTED THE DISTRICT
22 ATTORNEY PERMISSION, SO I'VE RECEIVED THAT BRIEF.

23 IN ADDITION, I HAVE RECEIVED A LETTER OF SUPPORT
24 FILED BY THE CITY OF OAKLAND JOINING IN THE POSITION TAKEN
25 BY THE DISTRICT ATTORNEY OF THE CITY AND COUNTY OF SAN

1 FRANCISCO.

2 I'VE ALSO RECEIVED AN AMICUS BRIEF FROM THE TOWN
3 OF FAIRFAX. I RECEIVED THAT TODAY. THEY HAVE ASKED
4 PERMISSION TO FILE THE AMICUS BRIEF, AND PERMISSION IS
5 GRANTED.

6 SO THOSE ARE ESSENTIALLY THE DOCUMENTS THAT I HAVE
7 BEFORE ME TO CONSIDER IN CONNECTION WITH THIS MATTER.

8 I SHOULD ALSO POINT OUT THAT I HAVE RECEIVED
9 NUMEROUS LETTERS FROM MEMBERS OF THE COMMUNITY. AND WHILE,
10 OF COURSE, I APPRECIATE THE INTEREST THAT PEOPLE HAVE IN
11 THE OUTCOME OF THIS LITIGATION AND HOW IT IMPACTS UPON THEM
12 AND UNDERSTAND HOW IT MAY IMPACT UPON THEM, I CANNOT
13 CONSIDER ANY LETTERS THAT I HAVE RECEIVED.

14 I HAVE NOT READ THOSE LETTERS. I HAVE SIMPLY
15 PLACED THEM IN A FILE. IF, IN FACT, THEY ARE MATTERS THAT
16 I SHOULD CONSIDER THEN THEY HAVE TO BE PRESENTED THROUGH
17 COUNSEL, AND BOTH SIDES HAVE TO HAVE AN OPPORTUNITY TO
18 DISCUSS THE PROPRIETY OF OTHER VIEWS.

19 BUT AS TO THOSE DOCUMENTS I SIMPLY HAVE THEM.
20 COUNSEL ON EITHER SIDE IS INVITED TO LOOK AT THEM SHOULD
21 THEY SO CHOOSE. BUT THEY DO NOT CONSIDER -- THEY ARE NOT
22 BEING CONSIDERED BY ME IN CONNECTION WITH THIS MATTER.

23 I MEAN, WHAT I'M CONSIDERING, QUITE SIMPLY, ARE
24 THE PAPERS BEFORE ME; THE LAW AS IT'S BEEN PROMULGATED;
25 AND, I HOPE, GOOD COMMON SENSE.

1 WELL, WITH THAT I WOULD LIKE TO TURN TO THE
2 ARGUMENT IN THE CASE. I'D LIKE TO HEAR FROM THE GOVERNMENT
3 FIRST. AND I HAVE SOME SPECIFIC QUESTIONS THAT I WOULD
4 LIKE THE GOVERNMENT IN CONNECTION WITH THEIR PRESENTATION
5 TO DISCUSS. AND LET ME READ THEM TO YOU.

6 I OBVIOUSLY HAVE READ -- OR MAYBE IT'S NOT
7 OBVIOUS, BUT I HAVE ACTUALLY READ EVERYTHING THAT HAS BEEN
8 SUBMITTED TO ME AND THOUGHT ABOUT IT. AND IN DOING SO,
9 A NUMBER OF QUESTIONS HAVE COME TO MIND.

10 I DON'T THINK YOU SHOULD OR ANYBODY IN HERE SHOULD
11 NECESSARILY DRAW INFERENCES ONE WAY OR THE OTHER BY THE
12 QUESTIONS THAT ARE ASKED EXCEPT WHEN THEY ARE SUBJECTS THAT
13 I WOULD LIKE SOME FURTHER INFORMATION ABOUT.

14 SO WITHOUT ANYMORE PREAMBLE LET ME GET TO THE
15 QUESTIONS.

16 FIRST, I WOULD LIKE TO KNOW FROM THE GOVERNMENT --
17 AND, OBVIOUSLY, IF THE DEFENSE WANTS TO COMMENT ON THESE
18 QUESTIONS AT THE APPROPRIATE TIME THEY MAY DO SO.

19 I WOULD LIKE TO KNOW FROM THE GOVERNMENT IS THERE
20 ANY EVIDENCE THAT CONGRESS, WHEN IT ENACTED THE CONTROLLED
21 SUBSTANCE ACT OF 1970, CONSIDERED THE MEDICAL USE OF
22 MARIJUANA?

23 NUMBER TWO: CAN THE GOVERNMENT ARTICULATE HOW
24 INTERSTATE COMMERCE, INTERSTATE COMMERCE IS AFFECTED BY
25 THESE PARTICULAR INTRASTATE ACTIVITIES WHICH ARE PROSCRIBED

1 BY THE CONTROLLED SUBSTANCE ACT?

2 THREE: DO THE INTRASTATE ACTIVITIES HAVE SUCH A
3 CLOSE AND SUBSTANTIAL RELATION TO INTERSTATE COMMERCE THAT
4 THEIR CONTROL IS ESSENTIAL OR APPROPRIATE TO PROTECT THAT
5 WHICH CAN BE REGULATED?

6 FOUR: HAS THE FEDERAL GOVERNMENT EVER BEFORE
7 UTILIZED SECTION 882, THE INJUNCTION PORTION OF THE
8 CONTROLLED SUBSTANCE ACT, TO ENJOIN CONDUCT, WHICH UNDER
9 STATE LAW, IS LEGAL?

10 FIVE: IF THE STATE CLOSES THESE FACILITIES, IS
11 THERE A CASE OR CONTROVERSY BEFORE ME GIVING ME
12 JURISDICTION TO PROVIDE ANY TYPE OF RELIEF?

13 SIX: ASSUMING THAT CONDUCT -- WELL, LET ME START
14 IT THIS WAY. IN THIS PARTICULAR CASE, THE GOVERNMENT HAS
15 ALLEGED THAT CERTAIN ACTIVITIES OCCURRED IN VIOLATION OF
16 STATE INITIATIVE PROPOSITION 215.

17 IF THE CONDUCT WAS WITHIN 215, THEN WHAT WOULD THE
18 UNITED STATES GOVERNMENT DO WITH RESPECT TO THE ENFORCEMENT
19 OF THE INJUNCTION PROCEEDING -- PROVISIONS OF THE
20 CONTROLLED SUBSTANCE ACT?

21 LET ME PUT IT ANOTHER WAY. IF IT'S CLEAR BY
22 READING THROUGH THE PAPERS THAT IN THE STATE OF CALIFORNIA
23 56 PERCENT OF THE VOTERS ENACTED A MEASURE WHICH PROVIDED
24 THAT THERE SHOULD NOT BE CRIMINAL PROSECUTION UNDER CERTAIN
25 CIRCUMSTANCES OF PEOPLE WHO USE MARIJUANA FOR MEDICAL

1 REASONS.

2 SO THE PUBLIC, THAT IS THE CITIZENS OF THE STATE,
3 HAVE ACTUALLY ENACTED AN INITIATIVE ADDRESSED TO THIS
4 PROBLEM. IT'S ALSO CLEAR THAT THE CHIEF LAW ENFORCEMENT
5 OFFICER OF SAN FRANCISCO, AS HAS BEEN JOINED IN BY OTHER
6 MUNICIPALITIES, HAVE TAKEN THE POSITION THAT THE FEDERAL
7 GOVERNMENT OUGHT NOT TO PROSECUTE OR OUGHT NOT TO PROCEED
8 IN A CIVIL INJUNCTION PROCEEDING UNDER THESE CIRCUMSTANCES.

9 AND MY QUESTION TO THE FEDERAL GOVERNMENT IS THAT
10 IF THE ACTIVITIES OF THE INDIVIDUALS WERE ACTIVITIES THAT
11 WERE WITHIN 215, WHAT, THEN, WOULD THE POLICY OF THE UNITED
12 STATES GOVERNMENT BE IN CONNECTION WITH WHETHER OR NOT THEY
13 WOULD WANT TO GO FORWARD WITH THIS PROCEEDING?

14 QUESTION SEVEN: WHAT EFFORTS, IF ANY, ARE BEING
15 MADE TO EVALUATE THE QUESTION AS TO WHETHER OR NOT
16 MARIJUANA OUGHT TO BE RECLASSIFIED AS A SCHEDULE TWO
17 CONTROLLED SUBSTANCE?

18 SO, NOW, THOSE ARE MY EASY QUESTIONS FOR THE
19 GOVERNMENT. AND I DON'T WANT TO STEP ON ANYONE'S TOES IN
20 THE SENSE THAT IF YOU WANT TO ADDRESS OTHER ISSUES YOU'RE
21 MORE THAN WELCOME TO ADDRESS THOSE ISSUES.

22 AND, AS WELL, IF THE GOVERNMENT FEELS THAT IT
23 WOULD BE APPROPRIATE TO SPEND SOME TIME AND SUBMIT
24 SUPPLEMENTAL BRIEFS ON SOME OF THESE QUESTIONS, I WILL
25 CERTAINLY GIVE YOU THAT OPPORTUNITY. I GIVE BOTH SIDES

1 THAT OPPORTUNITY.

2 SO I DON'T WANT YOU TO THINK THAT YOU HAVE TO
3 ANSWER. YOU DIDN'T KNOW WHAT MY QUESTIONS WERE. AND DON'T
4 FEEL THAT YOU'RE UNDER OBLIGATION TO ANSWER THOSE QUESTIONS
5 TODAY IF WHAT YOU -- ESPECIALLY THOSE RELATED TO POLICY,
6 IF, IN FACT, YOU WANT TO CONSULT AND THEN ARTICULATE A
7 POSITION.

8 SO WITH THAT IN MIND, I WOULD LIKE TO HEAR FIRST
9 FROM THE GOVERNMENT, AND THEN I WOULD HEAR FROM THE
10 DEFENDANT.

11 MR. SHAPIRO: MY QUESTION IS: COULD YOU REPEAT
12 THAT FOR US SLOW LEARNERS?

13 THE COURT: I MYSELF AM A SLOW LEARNER, BUT I WILL
14 GO THROUGH THE QUESTIONS PERHAPS LATER. LET'S PERHAPS SEE.

15 MR. SERRA: ARE YOU GOING TO HAVE QUESTIONS FOR
16 THE DEFENSE? MAYBE YOU WANT TO GIVE THEM TO US NOW SO WE
17 CAN BE THINKING ABOUT THEM.

18 THE COURT: NO. I WANT TO HEAR WHAT THE
19 GOVERNMENT HAS TO SAY.

20 AND WOULD COUNSEL PLEASE STATE YOUR NAME LOUDLY SO
21 WE GET THAT AS PART OF THE RECORD?

22 MR. QUINLIVAN: YES. THANK YOU, YOUR HONOR.
23 AGAIN, MY NAME IS MARK QUINLIVAN, AND I'M FROM THE UNITED
24 STATES DEPARTMENT OF JUSTICE. AND I'M COUNSEL OF RECORD
25 FOR THE UNITED STATES IN THESE ACTIONS.

1 YOUR HONOR, I'M GOING TO TURN TO YOUR -- THE
2 QUESTIONS WHICH YOU HAVE POSED TO US TODAY. BUT BEFORE I
3 DO SO --

4 MR. YANEZ: I'M SORRY.

5 MR. QUINLIVAN: I WOULD LIKE TO TAKE UP ONE QUICK
6 HOUSEKEEPING MATTER WITH MR. YANEZ.

7 THE COURT: YES.

8 MR. QUINLIVAN: EARLIER TODAY THE GOVERNMENT
9 ENTERED INTO A JOINT STIPULATION OF DISMISSAL WITH RESPECT
10 TO THE DEFENDANT GERALD BUHRZ IN THE CASE OF UNITED STATES
11 VERSUS FLOWER THERAPY MEDICAL MARIJUANA CLUB.

12 IT WAS FILED EARLIER TODAY WITH THE COURT, AND WE
13 HAVE PROVIDED COUNSEL WITH COPIES, AS WELL. AND WE HAVE A
14 COPY FOR YOUR HONOR.

15 THE COURT: OKAY. SO IS THERE ANY ACTION FOR ME
16 TO TAKE WITH RESPECT TO IT?

17 MR. QUINLIVAN: NO, YOUR HONOR.

18 THE COURT: IF THE GOVERNMENT HAS THE A RIGHT --

19 MR. QUINLIVAN: IT'S A STIPULATION PURSUANT TO
20 RULE 41 (A) (1) (2). BOTH PARTIES HAVE SIGNED THE
21 STIPULATION.

22 MR. YANEZ: THAT'S CORRECT, YOUR HONOR. I JUST
23 WANTED TO MAKE SURE THAT IT REFLECTED IT ON THE RECORD SO
24 THAT WE DON'T SEE EACH OTHER AGAIN HERE.

25 THE COURT: IT WAS THAT UNPLEASANT?

1 MR. YANEZ: NO. BEING BEFORE YOU IS PLEASANT
2 ENOUGH, YOUR HONOR. I'LL LET SOMEBODY TAKE CARE OF THIS.
3 THANK YOU.

4 THE COURT: THANK YOU VERY MUCH.

5 MR. QUINLIVAN: THANK YOU, YOUR HONOR.

6 THE COURT: THANKS FOR COMING IN.

7 MR. QUINLIVAN: I WILL TURN TO YOUR HONOR'S
8 QUESTIONS. BUT I'D LIKE TO, FIRST, JUST FOCUS A LITTLE
9 ATTENTION ABOUT WHAT THIS CASE IS ABOUT AND WHAT IT ISN'T
10 ABOUT, BECAUSE IT REALLY DOES GO TO YOUR HONOR'S SIXTH
11 QUESTION, WHICH IS: ASSUMING THAT THE CONDUCT THAT THE
12 DEFENDANTS ARE ENGAGED IN FALLS WITHIN THE SCOPE OF
13 PROPOSITION 215, WHAT WOULD BE THE FEDERAL GOVERNMENT'S
14 RESPONSE?

15 AND, YOUR HONOR, WHAT THIS CASE IS ABOUT, MAKE NO
16 MISTAKE ABOUT IT, IS THE UPHOLDING OF FEDERAL LAW. BECAUSE
17 WHEN CONGRESS PASSED THE CONTROLLED SUBSTANCES ACT, IT DID
18 PLACE MARIJUANA IN SCHEDULE ONE, WHICH, BY DEFINITION,
19 MEANS THAT IT HAS NO CURRENTLY-ACCEPTED MEDICAL VALUE.

20 AND AS SUCH, YOUR HONOR, UNDER SECTION 841 (A) (1)
21 OF THE CONTROLLED SUBSTANCES ACT, IT IS UNLAWFUL FOR ANYONE
22 TO DISTRIBUTE, CULTIVATE OR POSSESS WITH THE INTENT TO
23 DISTRIBUTE OR CULTIVATE MARIJUANA OUTSIDE OF A RESEARCH
24 PROJECT THAT HAS BEEN AUTHORIZED WITH THE SECRETARY OF
25 HEALTH AND HUMAN SERVICES AND REGISTERED WITH THE DEA.

1 AND THE DEFENDANTS IN THIS CASE ARE NOT ACTING
2 PURSUANT TO ANY SUCH RESEARCH PROJECT NOR DO THEY PURPORT
3 TO BE.

4 AND UNDER THESE CIRCUMSTANCES THEIR ACTIVITIES
5 CONSTITUTE PLAIN AND UNAMBIGUOUS VIOLATIONS OF THE FEDERAL
6 LAW.

7 IN THE CONVERSE, YOUR HONOR, IS WHAT THIS CASE IS
8 NOT ABOUT, BECAUSE WHAT THIS CASE IS NOT ABOUT IS
9 PROPOSITION 215. WHAT PROPOSITION 215 DID WAS TO
10 DECRIMINALIZE CERTAIN CONDUCT PURSUANT TO STATE LAW. IT
11 DID NOT, BY ITS TERMS, SERVE TO AFFECT THE APPLICATION OF
12 FEDERAL LAW, NOR COULD IT. BECAUSE UNDER OUR SYSTEM OF
13 FEDERALISM LAWS WHICH ARE PASSED BY CONGRESS CANNOT BE
14 SUPPLANTED BY STATE LAW.

15 AS SUCH, YOUR HONOR, PROPOSITION 215 HAS NO EFFECT
16 ON THE APPLICATION OF FEDERAL LAW.

17 AND, YOUR HONOR, I WOULD POINT OUT IN THIS
18 RESPECT -- AND WE POINTED THIS OUT IN OUR REPLY BRIEF AND
19 IT'S SET FORTH IN THE FIRST DISTRICT CALIFORNIA COURT OF
20 APPEALS DECISION IN THE PEOPLE VERSUS PERON CASE. THAT THE
21 VERY PROPONENTS OF PROPOSITION 215 IN THE OFFICIAL BALLOT
22 PAMPHLET WHICH WAS ISSUED TO THE VOTERS THEMSELVES
23 RECOGNIZED THAT A STATE INITIATIVE COULD NOT CHANGE THE
24 FEDERAL LAWS GOVERNING THE DISTRIBUTION OF MARIJUANA.

25 AS SUCH, YOUR HONOR, NOT WITHSTANDING HOW THE

1 DEFENDANTS ARE ENGAGING IN THE ACTIVITIES WHICH THEY ARE
2 ENGAGING IN OR HOW THEY ATTEMPT TO MODIFY THEIR ACTIVITIES
3 TO MEET THE CALIFORNIA COURT OF APPEALS DECISION IN THE
4 PEOPLE VERSUS PERON CASE, UNLESS THEY HAVE REGISTERED WITH
5 THE DEA AND ARE ACTING PURSUANT TO A RESEARCH PROGRAM
6 APPROVED BY THE SECRETARY OF HEALTH AND HUMAN SERVICES,
7 THEIR ACTIVITIES ARE UNLAWFUL UNDER FEDERAL LAW.

8 AND I'D LIKE TO --

9 THE COURT: WELL, IN THEIR BALLOT INITIATIVE, AND
10 AS I READ IT IN PERON, IT APPEARS IN PEOPLE VERSUS PERON ON
11 PAGE 1393, THEY SAY AS I -- AND I HAVEN'T SEEN THE BALLOT
12 INITIATIVE, BUT I HAVE, OF COURSE, READ THE PERON CASE.

13 SAYS: "PROP 215 ALLOWS PATIENTS TO CULTIVATE
14 THEIR OWN MARIJUANA, SIMPLY BECAUSE FEDERAL LAWS
15 PREVENT THE SALE OF MARIJUANA, AND A STATE
16 INITIATIVE CANNOT OVERRULE THOSE LAWS."

17 AND THAT'S WHAT THE BALLOT ARGUMENT SAID.

18 MR. QUINLIVAN: THAT'S RIGHT, YOUR HONOR.

19 THE COURT: AND WHAT THEY SAY, I MEAN, IF YOU'RE
20 DEALING WITH NOW THE GLOBAL PROBLEM, THAT IS, IF THEY DID
21 FOLLOW 215 -- AND I KNOW YOU ALLEGE -- I KNOW YOU ALLEGE IN
22 THE DECLARATIONS THAT THEY DON'T. I UNDERSTAND THAT. BUT
23 YOU'RE NOT GOING TO GET INTO -- TODAY INTO A FACTUAL ISSUE.

24 MR. QUINLIVAN: THAT'S RIGHT.

25 THE COURT: BUT I'M TRYING TO JUST FOLLOW YOUR

1 ARGUMENT. THE ARGUMENT THAT WAS GIVEN TO THE VOTERS ON
2 215, AS I UNDERSTAND IT, IN TERMS OF THE SUPREMACY CLAUSE,
3 RELATED TO THE SALE OF MARIJUANA, NOT TO THE CULTIVATION OF
4 MARIJUANA; ISN'T THAT CORRECT?

5 MR. QUINLIVAN: WELL --

6 THE COURT: SO THEY DIDN'T QUITE SAY THAT THEY
7 RECOGNIZED THAT THE FEDERAL LAW WOULD PREVENT THE
8 CULTIVATION OF MARIJUANA.

9 MR. QUINLIVAN: THAT'S RIGHT, YOUR HONOR.

10 AND I WOULD SAY THIS, THAT IN THAT VERY -- ON THAT
11 VERY PAGE, I BELIEVE, IN A FOOTNOTE THE CALIFORNIA COURT OF
12 APPEALS RECOGNIZED THAT THAT MAY NOT OR THAT ARGUMENT,
13 PERHAPS, WAS NOT A CORRECT STATEMENT OF THE APPLICATION OF
14 FEDERAL LAW.

15 THE COURT: RIGHT. FOOTNOTE SIX.

16 MR. QUINLIVAN: THAT'S RIGHT.

17 THE COURT: SO THAT THEY ACTUALLY -- YOUR ARGUMENT
18 THERE IS THAT PERHAPS THE BALLOT ARGUMENT WAS MISLEADING IN
19 THAT REGARD.

20 MR. QUINLIVAN: WELL, I THINK, YOUR HONOR, YOU
21 KNOW, I DON'T REALLY WANT TO GET INTO A -- I DON'T THINK
22 IT'S APPROPRIATE FOR US TO GET INTO A DISCUSSION OF WHAT
23 THE PARAMETERS OF THE STATE LAW WAS.

24 BUT, CERTAINLY, IT'S CLEAR THAT WITH RESPECT TO
25 THE SALE OR DISTRIBUTION OF MARIJUANA THAT WAS THE ARGUMENT

1 THAT WAS REPRESENTED TO THE VOTERS BY THE VERY PROPONENTS
2 OF PROPOSITION 215.

3 THE COURT: WELL, YOU SAY -- YOU SAY AT THE
4 OUTSET, YOU SAY:

5 "LOOK. THIS IS NOT A CASE ABOUT 215.

6 THIS IS A CASE ABOUT INDIVIDUALS WHO ARE VIOLATING
7 FEDERAL LAW."

8 MR. QUINLIVAN: THAT'S RIGHT.

9 THE COURT: THAT'S BASICALLY YOUR ARGUMENT. THAT
10 THE 215 IS IRRELEVANT.

11 AND THEN, ONE OF THE QUESTIONS I HAVE AND WHAT
12 MAYBE I DIDN'T SAY IT ARTFULLY ENOUGH, IS THAT THE DECISION
13 OF WHETHER OR NOT TO PROSECUTE OR ENJOIN INDIVIDUALS WHO
14 MAY BE VIOLATING LAW ARE DECISIONS THAT ARE PECULIARLY LEFT
15 TO THE DISCRETION OF THE PROSECUTOR OR THE GOVERNMENT.

16 AND THE QUESTION WHEN YOU START TALKING ABOUT
17 DISCRETION IS: HOW DO YOU EXERCISE YOUR DISCRETION?

18 AND IN THIS PARTICULAR CASE, THE DEFENDANTS ARE
19 MAKING THE ARGUMENT, I THINK, THAT AMONG OTHER ARGUMENTS
20 THEY ARE SAYING:

21 "LOOK. IN A CASE WHERE 56 PERCENT OF
22 THE CITIZENS SAY THAT IT OUGHT TO BE EXERCISED A
23 PARTICULAR WAY, IN WHICH THE DISTRICT ATTORNEY
24 SAYS IT OUGHT TO BE DONE A PARTICULAR WAY, IN
25 WHICH" -- AND I BELIEVE -- I DON'T KNOW THAT I CAN

1 TAKE NOTICE OF THIS, BUT I UNDERSTAND THAT A NUMBER OF
2 MAYORS HAVE WRITTEN TO THE ADMINISTRATION OF THE JUSTICE
3 DEPARTMENT AND URGED THE GOVERNMENT NOT TO PROCEED IN THIS
4 PARTICULAR PROCEEDING.

5 ALL THAT MEANS TO ME AS A JUDGE SITTING HERE IS
6 THAT THE GOVERNMENT HAS THE DISCRETION AS TO HOW TO
7 PROCEED. IF YOU'RE TELLING ME THAT THE GOVERNMENT IN EVERY
8 CASE WOULD EXERCISE ITS DISCRETION TO GO AHEAD AND PROCEED
9 WHERE THERE'S A VIOLATION OF LAW, THEN THAT MAY BE YOUR
10 POSITION. BUT BASED UPON MY EXPERIENCES, AND I'M SURE YOUR
11 EXPERIENCES, THAT DOESN'T ALWAYS HAPPEN.

12 WHAT HAPPENS IS, FOR EXAMPLE, I WOULD FIND IT
13 DIFFICULT TO BELIEVE THAT THE GOVERNMENT WOULD PROSECUTE AN
14 INDIVIDUAL WHO HAD A TERMINAL ILLNESS, A SHORT TIME TO
15 LIVE, WHO IS IN A HOSPITAL AND WHOSE DOCTOR RECOMMENDED
16 THE -- IN ORDER AS RELIEF OF PAIN THE CONSUMPTION OF A
17 MARIJUANA CIGARETTE.

18 NOW, THEY MAY. THEY MAY. AND THAT MAY BE A
19 VIOLATION OF THE LAW. BUT THE QUESTION IS: IN ORDER TO DO
20 SO, THE GOVERNMENT HAS TO EXERCISE ITS DISCRETION. AND SO
21 THE QUESTION I HAVE IS ALMOST ONE OF RIGHTNESS IN A
22 THEORETICAL SENSE. THAT IS, IF, IN FACT -- AND THIS TIES
23 IN WITH ALL THE OTHER QUESTIONS.

24 BUT IF, IN FACT, THE CLUBS ARE CLOSED, IF, IN
25 FACT, THE DISPENSATION OF MARIJUANA IS DONE IN A VERY

1 TIGHTLY-CONTROLLED AND REGULATED WAY THAT COMPORTED IN ALL
2 RESPECTS TO 215 AND TO LAW ENFORCEMENTS CONCERNS, IN THAT
3 CASE, ARE YOU TELLING ME THAT THE GOVERNMENT, NEVERTHELESS,
4 THAT IS, THE FEDERAL GOVERNMENT, NEVERTHELESS, WOULD
5 INSTITUTE PROCEEDINGS AGAINST THAT INDIVIDUAL WHO HAD A
6 TERMINAL ILLNESS AND WAS INGESTING ONE, OR WHATEVER THEY
7 CONSUME, INGESTING ONE MARIJUANA CIGARETTE? OR DO YOU KNOW
8 THE ANSWER TO THAT?

9 OR IS THAT AN ANSWER THAT HAS TO BE DISCUSSED IN
10 THE JUSTICE DEPARTMENT?

11 MR. QUINLIVAN: WELL, YOUR HONOR, WITH RESPECT TO
12 THE INDIVIDUAL, THE GOVERNMENT, THE FEDERAL GOVERNMENT DOES
13 HAVE GUIDELINES WHICH GOVERN THE AMOUNTS OF MARIJUANA UNDER
14 WHICH A PARTICULAR U.S. ATTORNEY'S OFFICE WOULD BRING A
15 CRIMINAL PROSECUTION.

16 SO IN THE EXAMPLE YOU'VE GIVEN IT MAY VERY WELL BE
17 THAT THE AMOUNTS AT ISSUE WOULD NOT FALL WITHIN THE
18 PROSECUTORIAL GUIDELINES OF A PARTICULAR U.S. ATTORNEY'S
19 OFFICE.

20 THE COURT: AND IF IT DIDN'T, AND IF IT DIDN'T, IF
21 IT DIDN'T, I WOULDN'T HAVE A CASE, WOULD I, UNDER THAT SET
22 OF FACTS?

23 MR. QUINLIVAN: IF THE GOVERNMENT HAD NOT BROUGHT
24 A CASE THAT CERTAINLY IS TRUE, YOUR HONOR. BUT I WOULD
25 POINT OUT THAT --

1 THE COURT: THAT'S NOT THIS CASE.

2 MR. QUINLIVAN: AND IT CERTAINLY IS NOT THIS CASE.

3 THE COURT: RIGHT. I UNDERSTAND.

4 MR. QUINLIVAN: BECAUSE THIS IS NOT A POSSESSION
5 CASE. THIS IS A DISTRIBUTION AND CULTIVATION CASE. IT IS
6 FUNDAMENTALLY DIFFERENT FROM AN INDIVIDUAL'S POSSESSION
7 CASE.

8 AND WITH RESPECT TO YOUR QUESTION: IF THE
9 DEFENDANT CLUBS WERE ACTING PURSUANT OR FULLY WITHIN THE
10 CONFINES OF PROPOSITION 215, WOULD THE GOVERNMENT BE TAKING
11 ACTION? THE ANSWER IS: YES. AND THE REASON IS THIS.
12 BECAUSE THE LAWS OF CONGRESS GOVERN THIS AREA. IT IS
13 NOT -- A STATE INITIATIVE CANNOT SUPPLANT THE WILL OF THE
14 PEOPLE OF THE UNITED STATES, WHICH IS REPRESENTED THROUGH
15 THE SENATORS AND REPRESENTATIVES OF THE UNITED STATES
16 CONGRESS.

17 AND WHAT THE CONGRESS HAS DONE IN THIS CASE IS
18 SAID THAT, A: MARIJUANA HAS BEEN PLACED IN SCHEDULE ONE OF
19 THE CONTROLLED SUBSTANCES ACT MAKING THE DEFENDANTS'
20 CONDUCT UNLAWFUL. BUT THEY HAVE ALSO GIVEN THE OPPORTUNITY
21 FOR, IF SOMEONE BELIEVES THAT MARIJUANA HAS A MEDICAL
22 VALUE, THEY HAVE GIVEN CERTAIN REMEDIES WHICH THOSE
23 INDIVIDUALS CAN PURSUE.

24 ON THE ONE HAND, AS I'VE INDICATED, A PERSON CAN
25 PURSUE A RESEARCH PROJECT WHICH HAS BEEN APPROVED BY THE

1 SECRETARY OF HEALTH AND HUMAN SERVICES AND HAS BEEN
2 REGISTERED WITH THE DRUG ENFORCEMENT ADMINISTRATION.

3 AND PURSUANT TO THAT, WE WOULD HAVE THE
4 INVOLVEMENT OF THE FOOD AND DRUG ADMINISTRATION TO
5 DETERMINE, USING THE SAME SCIENTIFIC STANDARDS THAT GOVERN
6 ALL OTHER DRUGS, WHETHER MARIJUANA HAS A MEDICAL VALUE OR
7 NOT.

8 AND, INDEED, YOUR HONOR -- AND THIS GOES TO, I
9 THOUGHT, ONE OF YOUR OTHER QUESTIONS, AND I THINK THAT'S
10 YOUR SEVENTH QUESTION, THERE ARE, IN FACT, RESEARCH
11 PROJECTS OF THIS NATURE ONGOING. THE NATURAL INSTITUTE FOR
12 HEALTH HAS SUCH A RESEARCH PROJECT ONGOING.

13 AND I BELIEVE THAT A RESEARCHER HERE IN SAN
14 FRANCISCO HAS FILED AN APPLICATION TO PURSUE SUCH A
15 RESEARCH PROGRAM.

16 SO THAT IS ONE AVAILABLE REMEDY FOR THOSE WHO
17 BELIEVE THAT MARIJUANA HAS A MEDICAL VALUE TO SEEK TO
18 OBTAIN THE SUBSTANCE.

19 AND, SECONDLY, YOUR HONOR, CONGRESS HAS
20 ESTABLISHED A FRAMEWORK WHEREBY UNDER SECTION 811 OF THE
21 ACT ANY PARTY CAN PETITION THE DRUG ENFORCEMENT
22 ADMINISTRATION TO RESCHEDULE MARIJUANA. AND PURSUANT TO
23 THAT AUTHORITY, THE DRUG ENFORCEMENT ADMINISTRATION
24 CONSULTS WITH THE SECRETARY OF HEALTH AND HUMAN SERVICES,
25 AGAIN, ACTING THROUGH THE FOOD AND DRUG ADMINISTRATION TO

1 OBTAIN THE FOOD AND DRUG ADMINISTRATION'S REASONED JUDGMENT
2 AS TO WHETHER OR NOT MARIJUANA HAS MEDICAL VALUE.

3 NOW, THE FEDERAL COURTS HAVE UNIFORMLY HELD THAT
4 THIS IS THE STATUTORY SCHEME THAT THOSE WHO BELIEVE THAT A
5 PARTICULAR SUBSTANCE HAS MEDICAL VALUE MUST FOLLOW.

6 AND THAT'S WHAT THE MAGISTRATE JUDGE IN THE UNITED
7 STATES VERSUS MCCORMICK CASE RECOGNIZED JUST THIS PAST WEEK
8 IN THE CENTRAL DISTRICT OF CALIFORNIA, IN A CASE THAT ALSO
9 INVOLVED MARIJUANA.

10 AND SO, YOUR HONOR, WHAT THESE COURTS HAVE HELD IS
11 THAT THERE IS AVAILABLE REMEDIES AND THERE ARE AVAILABLE
12 OPTIONS FOR A PARTY SEEKING TO HAVE A GIVEN SUBSTANCE BE
13 DECLARED TO HAVE MEDICAL VALUE TO PURSUE.

14 BUT WHAT THE DEFENDANTS CANNOT DO IS SIMPLY ENGAGE
15 IN THE DISTRIBUTION AND CULTIVATION OF MARIJUANA OUTSIDE OF
16 EITHER OF THESE STATUTORY FRAMEWORKS. THAT IS A VIOLATION
17 OF FEDERAL LAW, AND THAT IS WHY WE'RE ENTITLED TO THE
18 INJUNCTIONS WHICH WE SEEK.

19 I'D ALSO POINT OUT, YOUR HONOR, THAT THIS IS NOT
20 THE FIRST TIME THAT CLAIMS OF THIS SORT HAVE BEEN PRESENTED
21 TO THE FEDERAL COURTS. JUST OVER 10 OR 20 YEARS AGO, THE
22 FEDERAL COURTS WERE CONFRONTED WITH A NUMBER OF CASES BY
23 THE PROPONENTS OF LAETRILE WHICH WAS THEN PURPORTED TO BE A
24 CURE-ALL FOR VARIOUS FORMS OF CANCER. AND THESE ARGUMENTS
25 ARE VIRTUALLY IDENTICAL TO THOSE ADVANCED BY THE DEFENDANTS

1 HERE.

2 LIKE THE DEFENDANTS HERE, THE PROPONENTS OF
3 LAETRILE SAID THAT THE GOVERNMENT HAD WRONGFULLY CONCLUDED
4 THAT LAETRILE HAD NO MEDICAL VALUE. AND LIKE THE
5 DEFENDANTS HERE THE PROPONENTS OF LAETRILE ARGUED THEY HAD
6 A FUNDAMENTAL RIGHT AND A MEDICAL NECESSITY TO USE
7 LAETRILE.

8 AND LIKE THE DEFENDANTS HERE THE PROPONENTS OF
9 LAETRILE ARGUED THAT THEY SHOULD NOT HAVE TO GO THROUGH THE
10 SAME ADMINISTRATIVE PROCESS REQUIRED OF EVERY OTHER DRUG.
11 AND IN A SERIES OF DECISIONS THE SUPREME COURT AND THE
12 NINTH CIRCUIT TURNED AWAY EACH AND EVERY ONE OF THESE
13 CLAIMS.

14 AND THE REASON THEY DID SO WAS, FIRST OFF, FINDING
15 AS THE NINTH CIRCUIT DID IN THE CARNOHAN CASE THAT THERE IS
16 NO SUBSTANTIVE DUE PROCESS RIGHT OR FUNDAMENTAL RIGHT TO
17 ENGAGE IN ANY -- TO HAVE ANY PARTICULAR FORM OF TREATMENT
18 OR MEDICATION.

19 BUT ON A BROADER LEVEL, WHAT THEY SAID WAS --
20 THE COURT: WELL, LET ME ASK YOU THAT. THERE
21 POSSIBLY, IN LIGHT OF THE -- NOW THE NAME IS SLIPPING.
22 IT'S THE RIGHT-TO-DIE CASES WHERE I THINK JUSTICE REHNQUIST
23 ARTICULATED THAT THERE MAY BE A CONSTITUTIONAL RIGHT TO BE
24 FREE FROM PAIN, I DON'T KNOW, FREE FROM EXTREME PAIN AND SO
25 FORTH.

1 NOW, IS IT YOUR VIEW THAT A PERSON DOESN'T HAVE
2 THE RIGHT TO A PARTICULAR CHOICE OF MEDICATION, MAY HAVE A
3 CONSTITUTIONAL RIGHT TO RECEIVE MEDICATION AND THAT THEREIN
4 LIES THE DIFFERENCE?

5 MR. QUINLIVAN: THAT'S EXACTLY RIGHT, YOUR HONOR.

6 THE COURT: AND THEN, THEY WOULD COME BACK AND
7 THEY WOULD SAY: BUT IF THE DRUG THAT WE ARE TALKING ABOUT
8 IS REALLY THE EFFECTIVE DRUG AND THE ONLY PROVEN TO THEIR
9 WAY OF THINKING -- AND MAYBE THAT'S THE PROBLEM RIGHT
10 THERE -- IS TO THEIR WAY OF THINKING, THAT IT'S THE ONLY
11 EFFECTIVE MEDICATION, TO DENY THAT MEDICATION IS TANTAMOUNT
12 TO DENYING ANY MEDICATION AT ALL.

13 ISN'T THAT THEIR ARGUMENT?

14 MR. QUINLIVAN: IT IS THEIR ARGUMENT, YOUR HONOR.

15 THE COURT: WELL, WHAT'S WRONG WITH THAT ARGUMENT?

16 MR. QUINLIVAN: WELL, I THINK, YOUR HONOR, THERE
17 ARE A NUMBER OF REASONS. THERE ARE A NUMBER OF PROBLEMS
18 WITH IT. THE FIRST IS, IS THAT -- I MEAN, IT HAS BEEN
19 ANSWERED BY THE NINTH CIRCUIT IN THE CARNOHAN CASE. I
20 MEAN, FIRST OF ALL, THAT AUTHORITY IS CLEARLY --

21 THE COURT: AND I'M BOUND BY -- OBVIOUSLY, BOUND
22 BY THE NINTH CIRCUIT.

23 MR. QUINLIVAN: BUT, YOUR HONOR, ON A BROADER
24 LEVEL, WHAT THAT ANALYSIS ASKS YOUR HONOR TO DO IS
25 BASICALLY CIRCUMVENT THE STATUTORY PROCESSES WHICH I'VE

1 JUST DISCUSSED, BECAUSE AS I'VE SAID, EVERY COURT OF
2 APPEALS THAT HAS CONSIDERED THE ISSUE HAS HELD THAT A
3 DISTRICT COURT CANNOT ENGAGE IN THE DETERMINATION OF
4 WHETHER MARIJUANA HAS MEDICAL VALUE.

5 THAT'S A DETERMINATION THAT MUST BE MADE IN THE
6 CONTEXT OF A SECTION 811 -- SECTION 811 PETITION. SO THE
7 DEFENDANTS CERTAINLY WOULDN'T BE SUGGESTING THAT, I
8 BELIEVE, THAT TO AVOID PAIN THEY WOULD HAVE A RIGHT TO TAKE
9 LSD OR HEROIN OR SOME OTHER SCHEDULE ONE CONTROLLED
10 SUBSTANCE.

11 SO AT BOTTOM WHAT THEY MUST BE SAYING IS THAT
12 BECAUSE THEIR MARIJUANA TO THEIR WAY OF THINKING HAS
13 MEDICAL VALUE, IT FALLS WITHIN THE FUNDAMENTAL RIGHT.

14 AND, AGAIN, YOUR HONOR, WHAT THAT ASKS YOUR HONOR
15 TO DO IS IN A DIFFERENT CONTEXT, TO DO THAT WHICH THE COURT
16 OF APPEALS HAS SAID THAT A COURT IS NOT ABLE TO DO, TO
17 SECOND GUESS OR TO CONDUCT, IN EFFECT, A JUDICIAL
18 RULE-MAKING AS TO THE MEDICAL EFFICACY OF MARIJUANA.

19 THAT IS RESERVED TO THE DEA AND TO THE SECRETARY
20 OF HHS THROUGH A SECTION 811 PETITION WITH A REVIEW IN THE
21 COURT OF APPEALS.

22 BUT IT IS NOT SOMETHING THAT SHOULD BE THE SUBJECT
23 OF THIS COURT'S ANALYSIS.

24 AND I'D ALSO POINT OUT, YOUR HONOR, THAT THERE IS
25 A FURTHER PROBLEM WITH THEIR ARGUMENT ON THE FUNDAMENTAL

1 RIGHT. AND THAT IS THAT REALLY THE PERSON WHO WOULD HAVE
2 STANDING TO RAISE SUCH A CLAIM, AS YOUR HONOR SUGGESTED
3 WITH RESPECT TO ONE OF YOUR EARLIER QUESTIONS, WOULD BE AN
4 INDIVIDUAL PATIENT SUFFERING FROM A PARTICULAR ILLNESS
5 WHO -- WHERE THERE WOULD BE RECORD EVIDENCE: WHAT KIND OF
6 PAIN THAT PERSON WAS SUFFERING, WHETHER OR NOT THERE WERE
7 ALTERNATIVE MEDICAL TREATMENTS AVAILABLE, ET CETERA.

8 AND THAT IS NOT THIS CASE, BECAUSE THE DEFENDANTS
9 IN THIS CASE ARE THE OPERATORS OF THE DEFENDANT CLUBS AND
10 THE CLUBS THEMSELVES. SO THERE IS NO INDIVIDUAL PLAINTIFF
11 WHO IS SO BEFORE THE COURT OR INDIVIDUAL PATIENT WHO IS SO
12 BEFORE THE COURT.

13 AND SO THEY HAVE NO STANDING TO EVEN RAISE THAT
14 CLAIM.

15 THE COURT: AND I SHOULDN'T REACH OUT AND DECIDE
16 THAT. IS THAT THE GOVERNMENT'S POSITION?

17 MR. QUINLIVAN: I THINK BECAUSE THERE IS NO
18 STANDING, I THINK THAT YOUR HONOR DOES NOT NEED TO REACH
19 THAT ISSUE. I THINK THAT'S RIGHT.

20 BUT LET ME TAKE THAT A STEP FURTHER, TOO, YOUR
21 HONOR, BECAUSE SINCE WE DO NOT HAVE ANY SUCH INDIVIDUAL
22 PATIENT BEFORE THE COURT THERE WOULD HAVE TO BE FACIAL
23 CHALLENGE TO THE APPLICATION OF THE CONTROLLED SUBSTANCES
24 ACT IN THE SCENARIO.

25 THERE COULD NOT BE AN AS APPLIED CHALLENGE BECAUSE

1 WE HAVE NO INDIVIDUAL PATIENT. AND, AS SUCH, UNDER THE
2 SUPREME COURT'S DECISION IN THE UNITED STATES VERSUS
3 SALERNO CASE THE DEFENDANTS WOULD HAVE TO SHOW THAT THERE
4 IS NO SET OF CIRCUMSTANCES UNDER WHICH THE CONTROLLED
5 SUBSTANCES ACT COULD BE CONSTITUTIONALLY APPLIED TO THEM.
6 AND THEY CANNOT MAKE THAT SHOWING.

7 IN THEIR OWN OPPOSITION PAPERS THEY RECOGNIZE OR
8 THEY STATE THAT SOME OF THEIR PATIENTS HAVE PAIN, SOME OF
9 THEM HAVE LIFE-THREATENING ILLNESSES. BUT THEY DO NOT
10 ASSERT THAT ALL OF THEIR PATIENTS ARE IN SUCH CONDITIONS.

11 AND THAT'S WHAT THEY WOULD HAVE TO DO TO MAKE A
12 FACIAL CHALLENGE IN THIS INSTANCE.

13 YOUR HONOR, LET ME TURN TO YOUR QUESTION REGARDING
14 INTERSTATE COMMERCE BECAUSE THAT DOES GO TO THE
15 JURISDICTION OF THE COURT. AND THAT IS, OF COURSE, AN
16 ISSUE THAT MUST BE TAKEN UP PRELIMINARILY.

17 WHAT THE SUPREME COURT HAS SAID IN CASES WHERE
18 THERE IS AN EXPRESS LEGISLATIVE FINDING THAT A PARTICULAR
19 INTRASTATE CLASS OF ACTIVITIES AFFECTS INTERSTATE COMMERCE
20 IS THAT THE ONLY QUESTION RELEVANT TO A COURT'S INQUIRY IS
21 WHETHER OR NOT CONGRESS WAS WITHIN ITS POWERS TO REGULATE
22 THAT CLASS OF ACTIVITIES AS A WHOLE.

23 AND THAT IS WHY IN THE CONTROLLED SUBSTANCES ACT
24 IN THE ANNALS OF FEDERAL CASE LAW AND THE THOUSANDS, IF NOT
25 TENS OF THOUSANDS OF DRUG PROSECUTIONS THAT HAVE OCCURRED

1 OVER THE YEARS, THAT THERE HAS NEVER BEEN AN INDIVIDUALIZED
2 FACTUAL INQUIRY INTO WHETHER PARTICULAR DRUGS WERE
3 MANUFACTURED INTRASTATE OR DISTRIBUTED INTRASTATE.

4 COURTS DON'T GET INTO THAT ANALYSIS. AND THE
5 REASON IS IS BECAUSE WHEN IT PASSED THE CONTROLLED
6 SUBSTANCES ACT, CONGRESS MADE THE EXPRESS LEGISLATIVE
7 FINDING THAT AS A CLASS OF ACTIVITIES, THE INTRASTATE
8 TRAFFICKING OF CONTROLLED SUBSTANCES AFFECTS INTERSTATE
9 COMMERCE.

10 AND SO THE ONLY QUESTION, YOUR HONOR, IS WHETHER
11 OR NOT CONGRESS'S REGULATION OF THE CLASS AS A WHOLE WAS
12 REASONABLE. AND THAT, THE NINTH CIRCUIT HAS DECIDED, IN
13 ANY NUMBER OF CASES, AND WE'VE CITED THEM IN OUR BRIEFS.

14 BUT I THINK THAT THE VISMAN CASE IS REALLY THE
15 BEST EXAMPLE, BECAUSE IN THAT CASE THE DEFENDANT ARGUED
16 THAT HIS CULTIVATION OF MARIJUANA IN HIS BACKYARD COULD NOT
17 POSSIBLY AFFECT INTERSTATE COMMERCE, AND THEREFORE
18 JURISDICTION WAS DEFEATED.

19 AND THE NINTH CIRCUIT TURNED THAT ARGUMENT AWAY
20 SAYING THAT CONGRESS HAD REGULATED THE CLASS OF ACTIVITIES,
21 AND, AS SUCH, IT FELL -- IT WAS WITHIN CONGRESS'S POWER.

22 SO THERE IS NO ARGUMENT HERE THAT CONGRESS'S
23 COMMERCE CLAUSE AUTHORITY IS IN ANY WAY DEFEATED.

24 YOUR HONOR, I WOULD POINT OUT THAT FOR THE
25 DEFENDANTS EVEN TO MAINTAIN THIS CLAIM THEY WOULD HAVE TO

1 SHOW THAT NONE OF THEIR ACTIVITIES OCCURRED INTERSTATE.

2 AND ALTHOUGH THEY ASSERT IN THEIR OPPOSITION
3 PAPERS THAT THEY CAN MAKE SUCH A SHOWING, THERE'S BEEN NO
4 EVIDENCE SUBMITTED WHATSOEVER REBUTTING OUR SHOWING THAT
5 EACH OF THE SIX CLUBS SELLS MARIJUANA THAT THEY PURPORT TO
6 BE GROWN IN MEXICO.

7 SO FOR THEM TO EVEN MAINTAIN THAT CLAIM THEY WOULD
8 HAVE TO GET BEYOND THAT BARRIER WHICH THEY HAVE FAILED TO
9 DO.

10 THE COURT: WELL, IF I UNDERSTAND THAT, AND I
11 UNDERSTAND THE ALLEGATIONS WHICH ARE JUST ALLEGATIONS, BUT
12 THE ALLEGATIONS THAT ARE IN THE DECLARATIONS SHOW
13 ACTIVITIES THAT ARE MUCH BROADER THAN THAT WHICH WOULD BE
14 PERMITTED EVEN UNDER 215.

15 MR. QUINLIVAN: THAT'S RIGHT, YOUR HONOR.

16 THE COURT: PEOPLE WITHOUT PRESCRIPTIONS OR PHONY
17 PRESCRIPTIONS OR ANY NUMBER OF PEOPLE WHO CLAIM THAT THEY
18 PURCHASED MEXICAN MARIJUANA, NOT LOCALLY-GROWN MARIJUANA.
19 I UNDERSTAND THAT THOSE ARE JUST ALLEGATIONS.

20 I ASSUME THAT IF IT GOT TO THAT TEST THEY WOULD
21 WANT TO HAVE THE OPPORTUNITY OF REBUTTING THOSE
22 ALLEGATIONS.

23 MR. QUINLIVAN: BUT I GUESS WHAT I AM SAYING, YOUR
24 HONOR, IS IT DOESN'T EVER GET TO THAT POINT.

25 THE COURT: BUT WHAT IF THEY CAME IN AND THEY

1 SAID:

2 "BUT, LOOK, YOU KNOW. WE THINK THAT MAY
3 BE AN ERROR," AND SO FORTH, "BUT TAILOR THE
4 INJUNCTION, TAILOR THE INJUNCTION JUST SO IT
5 RELATES TO FOREIGN, OR THAT IS, OUT-OF-STATE
6 MARIJUANA, OR TAILOR THE INJUNCTION JUST SO IT
7 RELATES ONLY TO INTRASTATE ACTIVITIES RATHER THAN
8 INTERSTATE ACTIVITIES."

9 MR. QUINLIVAN: YOUR HONOR?

10 THE COURT: YOU WOULDN'T BE CHANGING YOUR
11 POSITION?

12 MR. QUINLIVAN: NO, WE WOULDN'T, YOUR HONOR. AND,
13 IN FACT, THAT IS AN ARGUMENT THAT THEY, THE DEFENDANTS,
14 WITH ALL DUE RESPECT, SHOULD BE PRESENTING TO CONGRESS AND
15 NOT THIS COURT, BECAUSE IT IS NOT FOR THIS COURT TO CHANGE
16 THE APPLICATION OF FEDERAL LAW. IT IS FOR CONGRESS TO
17 CHANGE THE PARAMETERS OF FEDERAL LAW.

18 AND THAT IS THE EXPRESS WILL OF THE PEOPLE OF THE
19 UNITED STATES THAT THE DISTRIBUTION AND CULTIVATION OF
20 MARIJUANA, AGAIN, OUTSIDE OF A RESEARCH PROJECT UNDER
21 SECTION 823 IS UNLAWFUL UNDER ANY SET OF CIRCUMSTANCES.

22 THAT IS FEDERAL LAW, AND THAT IS WHAT MUST BE
23 UPHELD IN THESE CASES.

24 YOUR HONOR, LET ME TURN TO -- ON THE COMMERCE
25 CLAUSE THEY HAVE A RELATED ARGUMENT WHICH IS -- AGAIN, IT

1 DOES GO TO PROPOSITION 215, AND THAT IS THAT THIS IS A
2 DIFFERENT ISSUE. AND I THINK IT IS, ACTUALLY, YOUR HONOR'S
3 THIRD -- WELL, ONE OF YOUR HONOR'S QUESTIONS WHICH IS:
4 DOES THE INTERSTATE COMMERCE ANALYSIS CHANGE WHERE THE
5 CONDUCT HAS BEEN IN SOME WAY LEGALIZED UNDER STATE LAW?

6 AND THE ANSWER TO THAT QUESTION, YOUR HONOR, I
7 THINK IS SIMPLY ANSWERED BY THE NINTH CIRCUIT'S DECISION IN
8 THE ROSENBERG CASE, BECAUSE THERE, LIKE HERE, THE DEFENDANT
9 ARGUED THAT HIS CONDUCT WAS CONSISTENT WITH THE STATUTORY
10 GUIDELINES AND CALIFORNIA STATE LAW.

11 AND I THINK THAT THE NINTH CIRCUIT'S DECISION WAS
12 VERY SUCCINCT ON THIS POINT: VIOLATIONS OF FEDERAL
13 CRIMINAL LAW ARE FEDERAL ISSUES TO BE DECIDED IN FEDERAL
14 COURT. AND THAT IS THE COMPLETE ANSWER TO THAT ARGUMENT,
15 YOUR HONOR.

16 YOUR HONOR ASKED: HAS THE FEDERAL GOVERNMENT USED
17 THE INJUNCTIVE RELIEF PROVISIONS TO ENJOIN -- THIS IS A
18 RELATED ANSWER -- TO ENJOIN THE CONDUCT WHICH MAY BE LEGAL
19 UNDER A STATE LAW? AND THE ANSWER IS: YES.

20 AGAIN, YOUR HONOR, FIRST OFF, THERE ARE A NUMBER
21 OF AVENUES WHICH THE UNITED STATES MAY USE TO ENFORCE THE
22 CONTROLLED SUBSTANCES ACT: CRIMINAL PROSECUTION, SECTION
23 882 (A), CIVIL FORFEITURE, CRIMINAL FORFEITURE. THERE ARE
24 A NUMBER OF AVENUES.

25 AND THE UNITED STATES IN ITS DISCRETION CHOOSES TO

1 USE ALL OF THOSE AVENUES UNDER A GIVEN SET OF
2 CIRCUMSTANCES. BUT, YOUR HONOR, I CAN POINT TO ONE VERY
3 EXPRESS EXAMPLE, AND IT IS AGAIN THE ONE THAT I MENTIONED
4 TO THE COURT WHEN WE WERE LAST HERE AT THE SCHEDULING
5 CONFERENCE. AND THAT IS THE UNITED STATES VERSUS CHEMICALS
6 FOR RESEARCH AND INDUSTRY CASE WHICH IS IN THIS VERY
7 DISTRICT.

8 AND IN THAT CASE THE FEDERAL GOVERNMENT HAS
9 BROUGHT AN INJUNCTIVE RELIEF SUIT AND CIVIL PENALTIES SUIT
10 FOR CONDUCT WHICH IS UNLAWFUL UNDER FEDERAL LAW, BUT WHICH
11 THERE MAY NOT BE A PARALLEL STATE LAW MAKING THE CONDUCT
12 UNLAWFUL.

13 AND THE UNITED STATES HAS OBTAINED ONE INJUNCTION
14 IN THAT CASE, AND THE JUDGE HAS INDICATED THAT SHE WILL BE
15 ENTERING A SECOND IN THE SHORT NEAR FUTURE, AS WELL.

16 THE COURT: THAT IS JUDGE SMITH OR JUDGE ILLSTON?

17 MR. QUINLIVAN: THAT'S JUDGE ILLSTON, YOUR HONOR.

18 YOUR HONOR, THE QUESTION ABOUT: IS THERE ANY
19 EVIDENCE CONGRESS CONSIDERED THE MEDICAL USE OF MARIJUANA
20 WHEN IT PASSED THE CONTROLLED SUBSTANCES ACT?

21 THE BEST ANSWER TO THIS QUESTION, YOUR HONOR, IS
22 TO POINT TO THE U.S. COURT OF APPEALS FOR THE DISTRICT OF
23 COLUMBIA'S DECISION IN ONE OF THE NORMAL CASES WHICH IS 559
24 FEDERAL REPORTER, SECOND SERIES, BECAUSE IN THAT CASE, WHAT
25 THE D.C. CIRCUIT SAID WAS THAT YOU IF YOU LOOK AT THE

1 SCHEDULE ONE CONTROLLED SUBSTANCES CONGRESS HAD TAKEN THAT
2 WHICH THE FDA HAD REGULATED PRIOR AND PLACED THOSE IN WHICH
3 THE FDA HAD FOUND NO MEDICAL USE FOR THE SUBSTANCE IN
4 SCHEDULE ONE.

5 AND I BELIEVE THAT THE COURT, IN FACT, STATED THAT
6 THEY WERE NOT AWARE OF ANY SUBSTANCE IN SCHEDULE ONE IN
7 WHICH THE FDA UP TO THAT POINT HAD FOUND A MEDICAL USE.

8 AND I POINT OUT, YOUR HONOR, THAT, AGAIN, IF THE
9 DEFENDANTS DISAGREE WITH CONGRESS'S PLACEMENT OF MARIJUANA
10 IN SCHEDULE ONE, THEY CAN PURSUE A SECTION 811 PETITION
11 WHEREBY THE DRUG ENFORCEMENT ADMINISTRATION MUST CONSULT
12 WITH THE SECRETARY OF HEALTH AND HUMAN SERVICES AND ASK THE
13 FOOD AND DRUG ADMINISTRATION TO CONDUCT SCIENTIFIC TESTS
14 GOVERNING WHETHER A DRUG HAS A MEDICAL VALUE, THE SAME TEST
15 IT USED TO GOVERN EVERY OTHER DRUG THAT IS MARKETED IN THE
16 UNITED STATES.

17 AND UP TO THIS POINT, YOUR HONOR, WHAT THE FDA HAS
18 HELD USING THE SAME STANDARDS IT APPLIES TO EVERY OTHER
19 DRUG IS THAT MARIJUANA HAS NO MEDICAL VALUE.

20 AGAIN, IF THE DEFENDANTS DISAGREE, THERE IS AN
21 AVAILABLE REMEDY FOR THEM TO PURSUE. BUT THEY CANNOT
22 SIMPLY ENGAGE IN THE DISTRIBUTION AND CULTIVATION OF
23 MARIJUANA AS THEY ARE NOW, IN OPEN VIOLATION OF FEDERAL
24 LAW.

25 YOUR HONOR, YOU HAVE ASKED WHETHER IF THE STATE

1 COURT CLOSES THE MARIJUANA CLUBS, WHETHER OR NOT THERE
2 WOULD BE A CASE OR CONTROVERSY IN THIS ACTION.

3 AND I THINK THE ANSWER IS THAT CERTAINLY, IF EACH
4 AND EVERY ONE OF THESE CLUBS WAS CLOSED AND THERE WAS NO
5 HINT OR THERE WAS NO POSSIBILITY THAT ANY WOULD REOPEN,
6 THEN YOUR HONOR WOULD NOT HAVE A CASE OR CONTROVERSY.

7 BUT WE ARE FAR FROM THAT POINT. EACH OF THE CLUBS
8 AT ISSUE HERE IS, TO OUR KNOWLEDGE, IS EITHER ENGAGED IN
9 THE ONGOING CONDUCT OR IS PURSUING TO OBTAIN A NEW
10 RESIDENCE TO ENGAGE IN THE CONDUCT, AS WELL.

11 AND BEYOND THAT, YOUR HONOR, I THINK, AGAIN, THE
12 NINTH CIRCUIT'S DECISION IN THE ROSENBERG CASE PROVIDES THE
13 FULL ANSWER. VIOLATION OF FEDERAL CRIMINAL LAWS ARE
14 FEDERAL ISSUES TO BE DECIDED IN FEDERAL COURTS.

15 AND, AGAIN, WHETHER OR NOT THIS CONDUCT MAY BE
16 DECLARED UNLAWFUL PURSUANT TO STATE LAW IS AN ISSUE THAT
17 MAY BE LITIGATED FURTHER. AND WE DON'T KNOW WHAT THE
18 OUTCOME WILL BE.

19 BUT IT IS CLEAR HERE THAT THE DEFENDANTS ARE
20 ENGAGED IN UNAMBIGUOUS VIOLATIONS OF FEDERAL LAW. AND FOR
21 THAT REASON, WE ARE ASKING THE COURT TO ENTER THE REQUESTED
22 INJUNCTIONS.

23 YOUR HONOR, I'D LIKE TO SAVE THE REMAINDER OF MY
24 TIME TO RESPOND TO THE REBUTTAL ARGUMENTS.

25 THE COURT: SURE.

1 MR. QUINLIVAN: IF I CAN ANSWER THE REST OF YOUR
2 QUESTIONS.

3 THE COURT: AND I'M GOING TO GIVE BOTH SIDES,
4 BASICALLY -- I KNOW I'M GOING TO REGRET THIS -- BUT I'M
5 GOING TO GIVE BOTH SIDES AS MUCH TIME AS THEY NEED IN A
6 REASONABLE FASHION.

7 I'VE SET ASIDE THE AFTERNOON, AND NOBODY HAS TO
8 FEEL THAT YOU HAVE TO MAKE ALL THE ARGUMENTS AT ONE TIME,
9 AND YOU CAN'T RESPOND TO THE OTHER SIDE'S ARGUMENT.

10 I WANT TO HAVE A MEANINGFUL EXCHANGE OF VIEWS ON
11 THESE SUBJECTS SO --

12 MR. QUINLIVAN: LET ME JUST MAKE ONE FINAL
13 CONCLUDING POINT, YOUR HONOR. AND THAT IS THIS: THE
14 ARGUMENTS THAT THE DEFENDANTS ADVANCED HERE LARGELY ARE
15 EITHER ARGUMENTS THAT EITHER SHOULD BE PRESENTED TO THE
16 CONGRESS OF THE UNITED STATES OR THEY ARE ARGUMENTS THAT
17 SHOULD BE PRESENTED TO THE DEA AND THE FOOD AND DRUG
18 ADMINISTRATION.

19 POLITICAL ARGUMENTS SHOULD BE MADE TO THE CONGRESS
20 AND MEDICAL ARGUMENTS SHOULD BE MADE TO THE FOOD AND DRUG
21 ADMINISTRATION.

22 THERE ARE AVAILABLE REMEDIES FOR THE DEFENDANTS IF
23 THEY BELIEVE THAT MARIJUANA HAS A MEDICAL VALUE. BUT WHAT
24 THEY CANNOT DO AND WHAT THEY ARE DOING IS OPENLY AND
25 FLAGRANTLY VIOLATING FEDERAL LAW. AND FOR THAT REASON, WE

1 RESPECTFULLY REQUEST THAT THE COURT ENTER THE PROPOSED
2 INJUNCTIONS.

3 THANK YOU.

4 THE COURT: THANK YOU, MR. QUINLIVAN.

5 LET ME ASK SOME QUESTIONS OF THE DEFENSE.

6 OBVIOUSLY, I THINK YOU CAN RESPOND TO WHAT MR. QUINLIVAN
7 HAS SAID. BUT SOME ADDITIONAL QUESTIONS HAVE OCCURRED TO
8 ME IN READING THE PAPERS. THE DEFENSE HAS SUGGESTED THAT I
9 ABSTAIN, THAT I FOLLOW THE DOCTRINE OF ABSTENTION, AND
10 ITS -- INITIALLY, THERE WAS A DISCUSSION OF A PULLMAN
11 DOCTRINE, AND THEN IT BECAME THE COLORADO RIVER DOCTRINE,
12 AND SO FORTH, OTHER VARIOUS DOCTRINES WHICH, PERHAPS
13 PROPERLY OR NOT PROPERLY ARE CALLED ABSTENTION DOCTRINES.

14 BUT WHAT THEY SIMPLY SAY, IN EFFECT, IS YOU DON'T
15 HAVE TO DECIDE THIS NOW, JUDGE. WAIT. THE STATE IS GOING
16 TO DO SOMETHING OR THE STATE IS WORKING ON SOMETHING.

17 AND I THINK, BASICALLY, THAT PRETTY MUCH IS THE
18 DISTRICT ATTORNEY'S POSITION IN THIS, IN PART, AND JOINED
19 IN BY OTHERS.

20 THE QUESTION IN MY MIND IS: WHAT IS IT THAT I,
21 GAIN -- NOT "GAIN." BUT WHAT IS IT THAT I -- THAT WOULD BE
22 THE BENEFIT, THE REASON FOR ABSTENTION?

23 WOULD IT BE A CLARIFICATION OF THE LAW? AND IN
24 THAT REGARD, THAT IS A STATE LAW. BUT ISN'T THE STATE LAW
25 CLEAR ON THIS SUBJECT, AS CLEAR AS IT APPEARS TO BE IN THE

1 PERON CASE AND THE FACT THAT THE SUPREME COURT DECLINED
2 REVIEW, SO THERE'S SOME ENUNCIATION OF THE STATE LAW?

3 AND EVEN IF THERE WERE A FURTHER DESCRIPTION OR
4 CLARIFICATION OF THE STATE LAW, WHY WOULD THAT IMPACT UPON
5 THE FEDERAL LAW? SO WHAT PURPOSE IS SERVED BY ABSTENTION,
6 WHETHER OR NOT IT FALLS WITHIN A PARTICULAR DOCTRINE OF
7 ABSTENTION? IS IT MORE THAN SIMPLY COMITY? IS IT MORE
8 THAN THE FEDERAL GOVERNMENT SHOULD HOLD THAT, SEE WHAT THE
9 STATE IS DOING, AND THEN SEE WHETHER OR NOT UNDER WHAT THE
10 STATE ULTIMATELY DOES IS THERE A PROBLEM THAT MERITS
11 FEDERAL INTERVENTION?

12 IS THAT WHAT YOU ARE SUGGESTING? BECAUSE THEY
13 ANSWERED THAT AT LEAST IN PART. THEY SAID YOU NEED SOME
14 ANSWER TO THAT. BUT, AGAIN, THAT'S WHAT I WANT TO
15 CONSIDER. I WANT TO HAVE A BETTER IDEA OF WHAT YOU'RE
16 TALKING ABOUT WHEN YOU URGE THE COURT TO ABSTAIN. THAT'S
17 THE FIRST QUESTION.

18 SECOND QUESTION DEALS WITH THE LOPEZ DECISION.
19 AND THERE HAVE BEEN A NUMBER OF CASES FROM THE NINTH
20 CIRCUIT AFTER LOPEZ. LOPEZ SAID, AMONG OTHER THINGS, THAT
21 THEY WEREN'T DEALING WITH COMMERCE IN LOPEZ. THAT WAS ONE.

22 THEY SAID THEY WEREN'T DEALING WITH COMMERCE.
23 AND, TWO, THAT THERE WERE NO FINDINGS -- AS I READ LOPEZ,
24 THERE WERE NO CONGRESSIONAL FINDINGS THAT IT DID, IN FACT,
25 IMPACT UPON INTRASTATE COMMERCE.

1 IF I'M WRONG IN THAT REGARD YOU CAN POINT THAT OUT
2 TO ME, BUT I THINK THAT WHAT THEY SAID IN LOPEZ -- LET ME
3 GET IT -- IN THE APPELLATE COURT --

4 MR. PANZER: WE'LL SAVE THE COURT SOME TIME. I
5 CAN TELL THE COURT, IN FACT, THE LOWER COURT DID STATE THE
6 FACT THAT THERE WERE NO CONGRESSIONAL FINDINGS MADE IN THAT
7 AREA.

8 THE COURT: ALL RIGHT. SO THAT'S DIFFERENT; IS IT
9 NOT, FROM WHAT WE HAVE HERE? WE DO HAVE SOME CONGRESSIONAL
10 FINDINGS. WE CAN TALK ABOUT THOSE. BUT WE HAVE
11 CONGRESSIONAL FINDINGS.

12 SO IF YOU RELY ON LOPEZ, YOU HAVE -- YOU HAVE TO
13 EXPLAIN TO ME HOW THE DIFFERENCES IN LOPEZ DON'T MAKE ANY
14 DIFFERENCE HERE OR THEY CAN BE DISTINGUISHED AWAY, AND YOU
15 HAVE TO ALSO DEAL WITH THE NUMBER OF NINTH CIRCUIT CASES
16 THAT HAVE COME DOWN POST-LOPEZ WHERE THEY SAY IT DOESN'T
17 THROW OUT THE REGULATORY SCHEME OF THE CONTROLLED SUBSTANCE
18 ACT. THAT'S WHAT THE GOVERNMENT IS SAYING.

19 OKAY. THREE: UNDER ANY DEFINITION OF WHAT OF THE
20 ACTIVITIES THAT ARE OCCURRING HERE ISN'T IT COMMERCE?
21 ISN'T IT A BUSINESS WHETHER IT'S A -- IT'S A NONPROFIT
22 BUSINESS, WHETHER IT'S A BUSINESS THAT HAS THE HIGHEST
23 CHARITABLE MOTIVES, ISN'T IT STILL COMMERCE?

24 AND THEN, I WOULD LIKE SOME DISCUSSIONS -- AND I
25 THINK THAT IT'S BEEN HIGHLIGHTED BY THE GOVERNMENT -- ABOUT

1 A PATIENT'S RIGHT TO BE FREE FROM PAIN AND WHETHER THAT
2 MEANS THAT IF THAT PATIENT, IN CONSULTATION WITH THE
3 DOCTOR, CHOOSES A MEDICATION THAT THE FEDERAL GOVERNMENT
4 PROHIBITS, WHETHER OR NOT THAT CHOICE IS OF -- WHETHER THAT
5 CHOICE SUPERSEDES OR PREEMPTS OR IT MUST BE GIVEN GREATER
6 WEIGHT THAN THE REGULATORY SCHEME THAT WAS ESTABLISHED BY
7 CONGRESS IN THE APPROVAL OF DRUGS.

8 SO THOSE ARE THE QUESTIONS THAT I WOULD LIKE SOME
9 SPECIFIC ANSWERS, AND, OF COURSE, ANYTHING ELSE THAT WAS
10 RAISED BY THE GOVERNMENT.

11 SO WHO WANTS TO GO FIRST? MR. PANZER.

12 MR. PANZER: GOOD AFTERNOON, YOUR HONOR.

13 THE COURT: GOOD AFTERNOON.

14 MR. PANZER: FIRST OF ALL, I WOULD VERY MUCH LIKE
15 TO THANK THE COURT FOR THE OBVIOUS THOUGHT AND EFFORT THE
16 COURT HAS PUT INTO THIS CASE. I WOULD NOT WANT TO BE IN
17 YOUR SHOES FOR ANYTHING.

18 THE COURT RIGHT NOW SITS IN THE CENTER OF A STORM
19 THAT'S BEEN BREWING FOR SOME 60 YEARS THAT PUTS EL NINO TO
20 SHAME.

21 THE COURT: WELL, I MEAN, IT'S THE JOB OF THE
22 COURT TO DECIDE THESE THINGS AND TO TRY TO WORK OUT A
23 RESOLUTION OF PROBLEMS, ACCORDING TO THE LAW. SO, I MEAN,
24 I THINK THAT WHETHER I DID IT OR ONE OF MY FELLOW JUDGES
25 DID IT, IT'S OUR RESPONSIBILITY TO DECIDE THESE ISSUES.

1 MR. PANZER: WELL, I GUESS WHAT I'M SAYING, YOUR
2 HONOR, IS BETTER YOU THAN ME.

3 UNLIKE THE GOVERNMENT, WE'RE GOING TO BE PARSING
4 THIS OUT.

5 THE COURT: SURE.

6 MR. PANZER: WE HAVE ATTEMPTED TO LIST OUT THE
7 SUBJECTS THAT WE'LL BE COVERING WITH A DIFFERENT ATTORNEY
8 COVERING EACH SUBJECT. WE'LL TRY NOT TO GO OVER 10 OR 12
9 MINUTES PER PERSON, GIVE THE COURT A REVIEW. AND IT'S
10 GOING TO BE A LITTLE DIFFICULT TO, BUT WE'LL TRY, I GUESS,
11 AS WE GO ALONG TO ANSWER THE COURT'S QUESTIONS.

12 BUT I'LL BE SPEAKING REGARDING THE QUESTION OF THE
13 GOVERNMENT'S CHARACTERIZING MARIJUANA AS A NONUSEFUL
14 MEDICINE AND DANGEROUS DRUG AND HOW THAT AFFECTS THIS CASE.

15 AND THEN, MR. SHAPIRO WILL BE SPEAKING REGARDING
16 THE CONFLICT OF LAWS BETWEEN THE FEDERAL LAW AND STATE LAW,
17 AND PARTICULARLY UNDER SECTION 903 OF THE CONTROLLED
18 SUBSTANCES ACT.

19 THEN, LAURETTA ORAVITZ, FROM SUSAN JORDAN'S
20 OFFICE, WILL BE SPEAKING REGARDING THE SUBSTANTIVE DUE
21 PROCESS AND ANSWERING THE COURT'S QUESTIONS REGARDING THE
22 PATIENT'S RIGHT TO BE FREE FROM PAIN.

23 KATE WELLS WILL BE SPEAKING REGARDING THE COMMERCE
24 CLAUSE AND ADDRESSING THE COURT'S QUESTIONS IN THAT AREA.

25 AND PROFESSOR UELMEN WILL BE SPEAKING REGARDING

1 THE NECESSITY DEFENSE AND ENTRAPMENT DEFENSE AS RELATES TO
2 THE NECESSITY DEFENSE AND ALSO THE ISSUE OF JOINT
3 PURCHASERS AND ULTIMATE USERS.

4 MR. SERRA WILL BE SPEAKING REGARDING UNCLEAN
5 HANDS.

6 AND BRENDAN CUMMINGS WILL SPEAK REGARDING THE
7 STANDARDS INJUNCTIVE RELIEF.

8 AND MR. RAICH, REPRESENTING THE OAKLAND CLUB, WILL
9 BE SUMMING EVERYTHING UP.

10 AND, ALSO, WE HAD NOT PLANNED ON COVERING
11 ABSTENTION IN THIS POINT, BUT THE COURT SEEMS TO BE
12 INTERESTED IN IT. AND SO WITH THE COURT'S PERMISSION, AND
13 WITH ULTIMATELY HIS PERMISSION, WE WOULD ASK MR. SILVA TO
14 SPEAK BRIEFLY ON THE ABSTENTION ISSUE, ALTHOUGH HE WASN'T
15 PREPARED TO.

16 YOUR HONOR, THE COURT'S VERY FIRST QUESTION TO THE
17 GOVERNMENT WAS WHETHER CONGRESS CONSIDERED MEDICAL USE IN
18 1970. AND I THINK, IN FACT, THAT IS VERY ILLUSTRATIVE OF
19 WHAT THE PROBLEM REALLY IS HERE. BECAUSE WHEN CONGRESS
20 PASSED THE CONTROLLED SUBSTANCES ACT IN 1970, WHILE I CAN'T
21 STAND HERE AND REPRESENT TO THE COURT THEY SPECIFICALLY
22 CONSIDERED MEDICAL USE, THEY DID SPECIFICALLY CONSIDER THE
23 QUESTION OF MARIJUANA AND MARIJUANA'S PLACEMENT IN THE
24 SCHEDULING AND WHETHER SCHEDULE ONE WAS THE PROPER PLACE.

25 AND SO WHEN THE CONTROLLED SUBSTANCES ACT WAS

1 PASSED, CONGRESS ALSO MANDATED THAT THE NATIONAL COMMISSION
2 ON MARIJUANA AND DRUG ABUSE BE FORMED, WHICH BECAME KNOWN
3 AS THE SHAFER COMMISSION, TO, IN FACT, STUDY THE MEDICAL
4 EVIDENCE ON MARIJUANA AND DETERMINE HOW IT SHOULD BE
5 TREATED UNDER THE CONTROLLED SUBSTANCES ACT.

6 PRESIDENT NIXON APPOINTED THE MEMBERS OF THE
7 COMMISSION. THE COMMISSION STUDIED IT FOR TWO YEARS, AND
8 IN 1972, CAME OUT WITH ITS REPORT WHICH ESSENTIALLY SAID
9 MARIJUANA WAS A SAFE DRUG THAT HAD MEDICAL -- THAT HAD
10 POTENTIAL MEDICAL USES.

11 THE ADMINISTRATION AND CONGRESS CHOSE TO IGNORE
12 THAT REPORT. THEY CHOSE TO SWEEP IT UNDER THE RUG. AS
13 THEY HAD CHOSEN TO IGNORE EVERY SCIENTIFIC STUDY THAT HAS
14 EVER BEEN DONE ABOUT MARIJUANA GOING BACK TO 1894, THE
15 INDIAN HEMP DRUGS COMMISSION, PANAMA CANAL ZONE REPORT IN
16 1925, THE LAGUARDIA COMMISSION REPORT IN 1944, THE BRITISH
17 WOOTTEN REPORT IN 1969, THE CANADIAN LEDAIN COMMISSION
18 REPORT IN 1970, THE SHAFER REPORT IN '72, THE DUTCH BAAN
19 COMMISSION IN 1972, THE COMMISSION OF THE AUSTRALIAN
20 GOVERNMENT IN 1977, THE NATIONAL ACADEMY OF SCIENCES REPORT
21 IN 1982, THE WORLD HEALTH ORGANIZATION REPORT IN 1982, ALSO
22 THE INSTITUTE OF MEDICINE REPORT IN 1982 AND THE DUTCH
23 GOVERNMENT REPORT IN 1995.

24 ALL SCIENTIFIC STUDIES AND ALL CONCLUDED THAT
25 MARIJUANA WAS NOT A DANGEROUS DRUG AND THAT MARIJUANA HAD

1 MEDICAL BENEFITS.

2 THE GOVERNMENT'S ARBITRARILY AND CAPRICIOUSLY
3 IGNORED THIS EVIDENCE. WHEN MR. QUINLIVAN STANDS HERE AND
4 TELLS THIS COURT THAT MARIJUANA HAS NO MEDICINAL VALUE, HE
5 MIGHT AS WELL STAND AND TELL THIS COURT THAT THE WORLD IS
6 FLAT. AND THAT CONGRESS HAS DETERMINED THE WORLD IS FLAT,
7 AND BECAUSE CONGRESS HAS DETERMINED IT, THIS COURT MUST
8 ACCEPT THE WORLD IS FLAT.

9 I PROPOSE TO YOUR HONOR WE'RE IN EQUITY HERE. AND
10 IF THIS COURT CHOOSES TO HEAR THE EVIDENCE THAT THE WORLD
11 IS ROUND, THIS COURT HAS THE AUTHORITY TO DECLARE THE WORLD
12 IS ROUND.

13 THE COURT: LISTEN, BUT OTHER THAN THAT, LET ME
14 ASK YOU THIS QUESTION. HE IS SAYING SOMETHING MORE THAN
15 THAT, THOUGH. HE IS SAYING THAT IF YOU ARE RIGHT, IF THESE
16 REPORTS ARE RIGHT OR IF YOU'RE RIGHT IN YOUR ASSERTION THAT
17 IT HAS MEDICINAL VALUE, IT'S A SAFE AND EFFECTIVE DRUG AND
18 IT'S BEEN CAPRICIOUSLY, OR SOME OTHER REASON, IGNORED,
19 THESE FINDINGS HAVE BEEN IGNORED BY CONGRESS OR BY THE FDA,
20 THE REMEDY FOR THAT IS TO SEEK RELIEF IN THE COURTS.

21 THE COURT BEING IN THIS PARTICULAR CASE THE D.C.
22 CIRCUIT. AND, IN FACT, IT WAS CHALLENGED; THAT THE
23 FINDINGS OF THE DIRECTOR, I GUESS IT WAS THE DIRECTOR, WAS
24 CHALLENGED BY NOT INCLUDING IT ON A SUBSTANCE TWO SCHEDULE.

25 AND THAT WAS ADJUDICATED BY THE COURTS. AND THE

1 COURTS HAVE SUSTAINED THE DIRECTOR'S FINDINGS THAT IT
2 SHOULD BE ON SCHEDULE ONE, OR THAT HE WASN'T REQUIRED TO
3 PUT IT ON SCHEDULE TWO.

4 SO MY QUESTION IS: ISN'T HE SAYING -- ISN'T THE
5 GOVERNMENT SAYING THAT THERE WAS ANOTHER REMEDY? THERE IS
6 ANOTHER REMEDY AVAILABLE. THAT REMEDY WAS PURSUED, AND
7 THAT WAS AN UNSATISFACTORY REMEDY FROM YOUR POINT OF VIEW,
8 BUT I'M BOUND BY THAT.

9 MR. PANZER: YES, THE GOVERNMENT IS SAYING THAT,
10 BUT THE GOVERNMENT MISCHARACTERIZES THAT CASE. IN THAT
11 CASE IT WAS NOT PUT BEFORE THE D.C. CIRCUIT, MEDICAL
12 EFFICACY OF MARIJUANA, THE GOVERNMENT'S TREATMENT OF
13 MARIJUANA. WHAT THAT CASE HAD TO DO WITH IS THE HEARINGS
14 THAT HAD PREVIOUSLY BEEN HELD IN FRONT OF JUDGE
15 FRANCIS YOUNG, THE ADMINISTRATIVE LAW JUDGE FOR DEA.

16 JUDGE YOUNG HELD TWO OR THREE YEARS OF HEARINGS
17 AND ISSUED AN EXTENSIVE RULING FINDING THAT NOT ONLY DID
18 MARIJUANA CLEARLY HAVE ACCEPTED MEDICAL USES, BUT, IN FACT,
19 IT WAS ONE OF THE SAFEST SUBSTANCES KNOWN TO MANKIND.

20 WHAT HAPPENED WAS JOHN LONG, THE DEA HEAD AT THE
21 TIME, DECIDED TO IGNORE THE FINDINGS OF JUDGE
22 FRANCIS YOUNG.

23 AND THE QUESTION THAT WAS BEFORE THE D.C. CIRCUIT
24 WAS WHETHER JUDGE YOUNG'S FINDINGS WERE BINDING ON THE DEA
25 OR JUST ADVISORY.

1 AND IN THAT CASE THE D.C. CIRCUIT FOUND THAT JUDGE
2 YOUNG'S RULING WAS ONLY ADVISORY, AND IT WAS NOT BINDING ON
3 THE DEA.

4 WHAT WE HAVE HERE, YOUR HONOR, IS A CONCERTED
5 EFFORT BY THE GOVERNMENT GOING BACK ALMOST AT LEAST 30
6 YEARS TO IGNORE THE TRUTH, TO CLOSE THESE DOORS. IF THERE
7 IS AN AVENUE, AS MR. QUINLIVAN SAYS, AS THE GOVERNMENT
8 ALLEGES, BY WHICH THESE DEFENDANTS CAN PETITION THE
9 GOVERNMENT, IF, IN FACT, THAT AVENUE IS NOT AN EFFECTIVE
10 AVENUE, IF IT'S BEEN DELIBERATELY CLOSED, IF AN AVENUE HAS
11 CLOSED EARS AND BLINDERS OVER ITS EYES AND REFUSES TO
12 ACCEPT THE TRUTH, IF THAT AVENUE IS ONE THAT SAYS:

13 "THE WORLD IS FLAT. NO MATTER WHAT YOU
14 TELL US, WE'RE GOING TO COME BACK WITH 'THE WORLD
15 IS FLAT,' " THEN THAT IS NO AVENUE AT ALL.

16 FURTHERMORE, FOR MANY OF THESE PATIENTS THEY WILL
17 BE DEAD OR BLIND LONG BEFORE ANYONE EVER LISTENS TO THEIR
18 TROUBLES.

19 AND I WOULD POINT THE COURT TO EXAMPLES. FOR
20 INSTANCE, PRESIDENT CLINTON ON OCTOBER 24, 1994, SAID:

21 "EVERY SINGLE SCIENTIFIC STUDY THAT HAS
22 BEEN DONE IN THE LAST SEVERAL YEARS SHOWS ALARMING
23 INCREASES IN THE TOXICITY AND DANGER OF USING
24 MARIJUANA."

25 WE ARE PREPARED TO OFFER EVIDENCE TO THIS COURT

1 THAT THAT IS ENTIRELY FALSE. THAT THAT IS A LIE TOLD BY
2 THIS GOVERNMENT.

3 GENERAL MCCAFFREY OVER AND OVER DURING THE
4 CAMPAIGN FOR 215 SAID THERE WERE OVER 10,000 DOCUMENTED
5 STUDIES AVAILABLE THAT CONFIRM THE HARMFUL PHYSICAL AND
6 PSYCHOLOGICAL EFFECTS OF SMOKING MARIJUANA.

7 THAT IS A LIE, AND WE CAN PROVE THAT.

8 THE DEA IN 1994 ISSUED A STATEMENT THAT:

9 "THERE IS NO EVIDENCE TO PROVE
10 MARIJUANA'S USE IN CHEMOTHERAPY. THERE ARE
11 NUMEROUS ALTERNATIVE DRUGS THAT OBTVIATE THE NEED
12 TO EVEN PURSUE RESEARCH ON THE SUBJECT."

13 THAT IS A LIE.

14 THE GOVERNMENT IS ENGAGED IN AN ARBITRARY AND
15 CAPRICIOUS CONSPIRACY TO BAN THE USE OF MARIJUANA FOR
16 WHATEVER REASON AT ALL COSTS, THOUGH THE SCIENCE IS OUT
17 THERE, THE STUDIES ARE THERE.

18 IN FACT, MARIJUANA IS THE MOST STUDIED DRUG IN THE
19 PHARMAPOEIA. ALMOST ANY OTHER DRUG THAT WE HAVE
20 AVAILABLE TO US THROUGH PHARMACIES TODAY HAS NOT BEEN
21 STUDIED TO THE EXTENT THAT MARIJUANA HAS BEEN STUDIED.

22 AND YET, WE HEAR THAT THERE NEED TO BE REAL
23 STUDIES.

24 MR. QUINLIVAN TALKED ABOUT THAT THERE IS THE
25 ABILITY TO APPLY TO DEA TO DO STUDIES. AND HE MENTIONED

1 THAT THERE'S SOMEONE IN SAN FRANCISCO DOING ONE. WELL,
2 THAT'S A VERY ILLUSTRATIVE POSITION TO TAKE BECAUSE, IN
3 FACT, I BELIEVE HE WAS TALKING ABOUT DONALD ABRAMS AT UC
4 MED CENTER, ONE OF THE NATION'S LEADING AIDS RESEARCHERS.

5 THE TRUTH IS THAT DR. ABRAMS ATTEMPTED TO DO HIS
6 RESEARCH ON THE USE OF MARIJUANA FOR THE WASTING SYNDROME
7 IN AIDS FOR MANY YEARS.

8 THE COURT REPORTER: EXCUSE ME. "ATTEMPTED TO
9 DO"?

10 MR. PANZER: HIS RESEARCH ON THE WASTING SYNDROME
11 ASSOCIATED WITH AIDS FOR MANY YEARS; WAS DENIED THE ABILITY
12 TO DO THAT RESEARCH.

13 THE COURT: BY "THE WASTING SYNDROME," YOU MEAN
14 THE LACK OF NUTRITION. WHAT IS "WASTING SYNDROME"?

15 MR. PANZER: THE WASTING SYNDROME. MANY PEOPLE
16 WITH AIDS HAVE NO APPETITE AND HAVE LITERALLY WASTED AWAY.

17 THEY CAN'T EAT. WHEN THEY TRY AND FORCE
18 THEMSELVES TO EAT, THEY THROW IT UP. AND IT HAS BEEN NOTED
19 BY MANY RESEARCHERS AND MANY PATIENTS AND MANY DOCTORS THAT
20 THE USE OF MARIJUANA WILL GIVE THEM AN APPETITE AND ALLOW
21 THEM TO KEEP FOOD DOWN, TO EAT, TO GAIN WEIGHT AND TO LEAD
22 A BETTER QUALITY OF LIFE.

23 WHEN DR. ABRAMS ATTEMPTED TO STUDY THIS, HE WAS
24 TURNED DOWN CONSISTENTLY. FINALLY, HIS APPLICATION WAS
25 APPROVED BY DEA. AND THEY SAID:

1 "GO TO THE NATIONAL INSTITUTE OF HEALTH
2 TO GET YOUR MARIJUANA."

3 HE WENT THERE, AND THEY SAID:

4 "NO, YOU CAN'T HAVE IT."

5 IT WAS ONLY DURING THE 215 CAMPAIGN WHEN
6 DR. ABRAMS ESSENTIALLY BECAME A POSTER BOY WHEN THE PUBLIC
7 FOUND OUT ABOUT WHAT WAS GOING ON, ONLY IN THE WAKE OF THAT
8 DID THE GOVERNMENT THEN KIND OF QUIETLY SAY:

9 "OKAY. NOW, YOU CAN HAVE YOUR
10 MARIJUANA. NOW, YOU CAN DO YOUR STUDY."

11 LEAVING IT UP TO THEM IT'S NEVER GOING TO HAPPEN.

12 GOING THROUGH THE GOVERNMENT'S RESPONSE TO OUR
13 OPPOSITION, I JUST WANTED TO GENERALLY ADVISE THE COURT THE
14 GOVERNMENT HAS MISCHARACTERIZED NUMEROUS ELEMENTS OF OUR
15 OPPOSITION. THE GOVERNMENT ALSO MISCHARACTERIZED THE
16 EVIDENCE.

17 THEY SAY THAT IN EACH CLUB THERE IS MARIJUANA THAT
18 WAS PURCHASED THAT WAS REPRESENTED BY THE CLUB TO HAVE BEEN
19 GROWN IN MEXICO. THAT'S FALSE.

20 IN FACT -- AND WE WILL BE ABLE TO ESTABLISH WHILE
21 THERE WAS ADMITTEDLY SOME MARIJUANA AT SOME OF THE CLUBS
22 THAT WAS LABELED "MEXICAN, MEXICAN" IS A GENERIC TERM
23 MEANING A LOW GRADE OF MARIJUANA.

24 IT IS THE GOVERNMENT'S CHARACTERIZATION THAT IT IS
25 GROWN IN MEXICO.

1 THE GOVERNMENT ALSO CLAIMED THAT THESE DEFENDANTS
2 WERE SELLING TO ANYONE, NOT JUST TO PEOPLE WITH SERIOUS OR
3 LIFE-THREATENING ILLNESSES. THAT IS FALSE.

4 FIRST OF ALL, EVERY SINGLE UNDERCOVER BUY WAS
5 ACCOMPLISHED BY AN AGENT WHO OBTAINED A MEMBERSHIP IN THE
6 CLUB OR USED A FALSE MEMBERSHIP IN THE CLUB.

7 THE GOVERNMENT POINTS TO A SECTION OF PROPOSITION
8 215, THE CLAUSE THAT SAYS ANY DISEASE FOR WHICH MARIJUANA
9 PROVIDES RELIEF AS PROOF THAT THIS IS DISTRIBUTION FOR ANY
10 ILLNESS, NOT JUST SERIOUS ILLNESSES.

11 I'M VERY FAMILIAR WITH THAT ARGUMENT. AS ONE OF
12 THE COAUTHORS OF 215, I DEBATED NUMEROUS LAW ENFORCEMENT
13 OFFICERS DURING THE CAMPAIGN WHO ALSO USED THAT ARGUMENT.

14 AND AS I TOLD THEM THEN AND AS I TELL THE COURT
15 NOW, YOU CAN'T JUST TAKE A DEPENDENT CLAUSE OUT OF A
16 SENTENCE AND READ IT. YOU HAVE TO LOOK AT THE WHOLE
17 SENTENCE. AND THAT CLAUSE COMES FROM A SENTENCE THAT
18 STARTS:

19 "THE PURPOSE OF THE STATUTE IS TO ENSURE
20 THAT SERIOUSLY-ILL CALIFORNIANS HAVE ACCESS TO
21 MEDICAL MARIJUANA FOR AIDS, CANCER, GLAUCOMA,
22 ANOREXIA NUMEROUS OTHER ILLNESSES, OR ANY OTHER
23 ILLNESS FOR WHICH IT PROVIDES RELIEF."

24 AND WHAT'S INTERESTING IS AS SOON AS 215 PASSED
25 THE VERY LAW ENFORCEMENT OFFICERS WHO WERE RUNNING AROUND

1 SAYING:

2 "OH, THIS COULD BE FOR ANY ILLNESS. IT
3 COULD BE FOR DANDRUFF. IT COULD BE FOR INGROWN
4 TOENAILS," AS SOON AS IT PASSED SAID:

5 "NO. IT HAS TO BE A SERIOUS ILLNESS."

6 AND, IN FACT, I REPRESENTED THE FIRST 215 PATIENT
7 IN THIS STATE WHO SUFFERED FROM EPILEPSY. AND THE D.A.
8 TOOK THE POSITION THAT THE EPILEPSY WASN'T COVERED UNDER
9 215 BECAUSE EPILEPSY WASN'T A SERIOUS ILLNESS.

10 SO WE WILL PROVE TO THIS COURT THAT ALL OF THESE
11 PATIENTS SERVED BY THESE DISPENSARIES, ALL THE MEMBERS OF
12 THESE COOPERATIVES ARE, IN FACT, SERIOUSLY-ILL PERSONS.

13 AS FAR AS THE MEDICAL RESEARCH QUESTION, YOUR
14 HONOR, THE FEDERAL GOVERNMENT DID FUND MEDICAL RESEARCH IN
15 THE 1970'S. IN 1976, 1977 AND 1980, THE NATIONAL INSTITUTE
16 OF DRUG REPORT ISSUED REPORTS TO CONGRESS RECOMMENDING
17 FURTHER EXPLORATION OF THE MEDICAL USE.

18 AND IN 1980, WHEN RONALD REAGAN WAS ELECTED, ALL
19 OF A SUDDEN NIDR CHANGED ITS COURSE AND REVERSED ITSELF AND
20 SAID RATHER SYNTHETIC ANALOGUES OF MARIJUANA SHOULD BE
21 PURSUED, NAMELY MARINOL.

22 ALSO VERY INTERESTING IN 1980 WHEN THE REAGAN
23 ADMINISTRATION TAKES OVER, MARIJUANA RESEARCH CHANGES. UP
24 UNTIL THEN IT WAS RESEARCH ON HUMAN BEINGS. AND WHAT THE
25 GOVERNMENT FOUND IN DOING RESEARCH ON HUMAN BEINGS WAS TWO

1 THINGS.

2 ONE: MARIJUANA HAD MANY MEDICAL USES.

3 TWO: MARIJUANA HAD VERY LITTLE, IF ANY,
4 DETRIMENTAL EFFECT.

5 THEY REALIZED THAT WASN'T GOING TO WORK, SO IN
6 1980 THEY CHANGED THE RESEARCH AND THEY STARTED FOCUSING ON
7 ANIMAL AND CELL STUDIES. AND THESE ANIMAL STUDIES
8 ESSENTIALLY CONSISTED OF EXPERIMENTS WHERE THEY WOULD
9 INJECT BETWEEN 100 AND 1,000 TIMES THE HUMAN DOSAGE OF THC
10 INTO A MOUSE OR A RAT.

11 NOW, EVEN THAT IS VERY INTERESTING BECAUSE A
12 REVIEW OF SCIENCE WILL SHOW THAT THESE TYPE OF STUDIES HAVE
13 NOT BEEN PERFORMED WITH ALMOST ANY OTHER DRUG. WHY? YOU
14 TAKE ALMOST ANY OTHER DRUG AVAILABLE IN THE PHARMACOPOEIA
15 TODAY AND GIVE A MOUSE OR A RAT 100 TO 1000 TIMES THE HUMAN
16 DOSAGE, IT WILL KILL THE RODENT.

17 THC IS ONE OF THE ONLY DRUGS KNOWN THAT YOU CAN
18 GIVE TO A RODENT IN THAT AMOUNT, AND IT WON'T KILL IT. AND
19 THEY HAVE DONE THESE RIDICULOUS STUDIES OF PUMPING RATS
20 FULL OF THOUSAND TIMES THE HUMAN DOSAGE AND THEN WATCHING
21 IT TWITCH A LITTLE BIT AND SAY:

22 "THAT PROVES MARIJUANA IS BAD."

23 WE CAN PROVIDE EVIDENCE THAT THIS IS NOT SCIENCE.
24 THIS IS THE GOVERNMENT TRYING TO FIND ANYTHING IT CAN DO TO
25 PUT THE PROPAGANDA OUT ON THE STREETS WHILE SWEEPING THE

1 TRUTH UNDER THE RUG.

2 AND, IN FACT, THE RESEARCH BUDGET FOR THESE KIND
3 OF STUDIES STEADILY INCREASED: \$3 MILLION DOLLARS IN 1982;
4 \$15 MILLION IN 1987; \$26 MILLION IN 1990, ALL TO INJECT
5 MICE WITH INCREDIBLE AMOUNTS OF THC AND TRYING TO FIND
6 SOMETHING BAD ABOUT MARIJUANA.

7 IN 1992, THE BUSH ADMINISTRATION SHUT DOWN THE
8 INVESTIGATIVE NEW DRUG PROGRAM. THERE HAD BEEN A DRUG
9 PROGRAM PUT IN PLACE TO ALLOW FOR THE MEDICAL USE OF
10 MARIJUANA BECAUSE SO MANY PEOPLE WERE CLAMORING FOR IT. AT
11 ITS HEIGHT I BELIEVE IT HAD 13 PATIENTS.

12 IN 1992, THE PROGRAM STARTED RECEIVING A MYRIAD OF
13 APPLICATIONS FROM PERSONS WITH AIDS.

14 RATHER THAN PROVIDE MEDICAL MARIJUANA TO PEOPLE
15 WITH AIDS, THE BUSH ADMINISTRATION CHOSE TO SHUT THE
16 PROGRAM DOWN AND NOT ALLOW ANY NEW APPLICANTS. HOWEVER,
17 THERE ARE STILL EIGHT PEOPLE ON THAT PROGRAM.

18 THE GOVERNMENT SITS HERE AND TELLS THIS COURT
19 "MARIJUANA HAS NO MEDICINAL VALUE," AND YET THE GOVERNMENT
20 PROVIDES MARIJUANA TO EIGHT PEOPLE, ONE OF WHOM I KNOW WAS
21 HERE EARLIER TODAY. I DON'T KNOW IF SHE'S IN THE COURTROOM
22 NOW.

23 THE GOVERNMENT, AS I SAID, DID NOT FUND ANY
24 STUDIES, DID NOT ALLOW MARIJUANA TO GET TO ANY SCIENTISTS
25 UNTIL THE WAKE OF 215 AND PROPOSITION 200. AND WHAT

1 HAPPENED WHEN 215 WAS PASSED? THE CLINTON ADMINISTRATION
2 THROUGH BARRY MCCAFFREY THREATENED DOCTORS, THREATENED
3 DOCTORS WITH CRIMINAL PROSECUTION IF THEY DISCUSSED A
4 MEDICAL CHOICE WITH THEIR PATIENTS, THREATENED DOCTORS WITH
5 LOSING THEIR DEA REGISTRATION.

6 THE COURT: THAT'S BEEN ENJOINED, HASN'T IT?

7 MR. PANZER: THAT HAS BEEN ENJOINED.

8 THE COURT: IT'S BEEN ENJOINED. JUDGE SMITH
9 ENJOINED IT, ENJOINED IT ON FIRST AMENDMENT GROUNDS. HER
10 OPINION IS VERY CAREFULLY CRAFTED, I THINK, IN DISCUSSING
11 WHAT SHE'S DOING AND WHAT SHE IS NOT DOING.

12 AND SHE SAID IN GREAT DETAIL SHE'S NOT PASSING ON
13 ANY CONDUCT THAT WOULD BE SUBJECT TO CRIMINAL PROSECUTION.
14 SHE WAS SAYING THAT DOCTORS HAVE A FIRST AMENDMENT RIGHT TO
15 DISCUSS WITH THEIR PATIENTS DIFFERENT FORMS OF TREATMENT.

16 I THINK IT'S PRETTY NARROWLY CRAFTED. I TRIED TO
17 LOOK AT IT CAREFULLY BECAUSE I THOUGHT IT MIGHT BE
18 INSTRUCTIONAL ON THIS PARTICULAR ISSUE.

19 BUT I THINK HERE WE ARE TALKING ABOUT CRIMINAL
20 PROSECUTIONS AND ENJOINING THE ACTIVITIES THAT FALL WITHIN
21 CRIMINAL CONDUCT AND NOT FIRST AMENDMENT DISCUSSIONS.

22 MR. PANZER: YES. BUT I BELIEVE JUDGE SMITH ALSO
23 SAID DOCTORS CAN GO FURTHER THAN JUST DISCUSSING IT WITH
24 THEIR PATIENTS. THEY CAN RECOMMEND OR APPROVE, NOTATE THAT
25 RECOMMENDATION OR APPROVAL IN THE MEDICAL RECORDS AND CAN

1 TESTIFY IN COURT ALL WITHOUT FEAR OF REPRISAL FROM THE
2 FEDERAL GOVERNMENT.

3 BUT THE KEY IS, YOUR HONOR, THESE WERE SANCTIONS
4 THAT THE FEDERAL GOVERNMENT FRAMED. AND LET ME JUST -- I
5 KNOW THE GOVERNMENT IN ITS PAPERS STATED THAT NO MEDICAL
6 ORGANIZATIONS HAVE COME OUT FOR MEDICAL MARIJUANA. IN
7 FACT, YOUR HONOR, MANY ORGANIZATIONS HAVE COME OUT AGAINST
8 THE GOVERNMENT'S PROHIBITIONIST POLICY REGARDING MEDICAL
9 MARIJUANA.

10 EXAMPLES INCLUDE THE AMERICAN PUBLIC HEALTH
11 ASSOCIATION, THE FEDERATION OF AMERICAN SCIENTISTS, THE
12 PHYSICIANS' ASSOCIATION FOR AIDS CARE, THE LYMPHOMA
13 FOUNDATION OF AMERICA, FORMER U.S. SURGEON GENERAL,
14 JOCELYN ELDERS, THE NATIONAL ASSOCIATION OF ATTORNEYS
15 GENERAL, THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE
16 LAWYERS, AND THE NEW ENGLAND JOURNAL OF MEDICINE.

17 AND, IN FACT -- AND I'LL CLOSE MY PORTION BY
18 QUOTING FROM AN EDITORIAL THAT APPEARED IN 1982 IN THE
19 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION.

20 AND IN THAT EDITORIAL THE PERSON WROTE THAT:

21 "THE OUTDATED FEDERAL PROHIBITION OF
22 MEDICAL MARIJUANA WAS CORRUPTING THE INTENT OF
23 STATE LAWS AND DEPRIVING THOUSANDS OF GLAUCOMA AND
24 CANCER PATIENTS OF THE MEDICAL CARE PROMISED THEM
25 BY THEIR STATE LEGISLATURES."

1 THAT WAS WRITTEN BY NEWT GINGRICH, WHO WENT ON TO
2 STATE THAT:

3 "THE HYSTERIA OVER MARIJUANA'S SOCIAL
4 ABUSE AND BUREAUCRATIC INTERFERENCE BY THE FEDERAL
5 GOVERNMENT HAD PREVENTED A FACTUAL AND BALANCED
6 ASSESSMENT OF MARIJUANA'S USE AS A MEDICAMENT."
7 FIFTEEN YEARS LATER THAT OBSERVATION IS STILL
8 ACCURATE, YOUR HONOR.

9 AND AT THIS POINT, I WOULD TURN IT OVER TO
10 MR. SHAPIRO TO ADDRESS THE COURT ON THE CONFLICT OF LAWS
11 ISSUE.

12 MR. SHAPIRO: FOR THE RECORD I AM CARL SHAPIRO.
13 I'M HERE ON BEHALF OF FLOWER THERAPY, ON BEHALF OF BARBARA
14 SWEENEY, ON BEHALF OF JOHN HUDSON. I WAS SOMEWHAT
15 DISCONCERTED BY THE UNDERLYING ASSUMPTION OF YOUR QUESTIONS
16 TO THE GOVERNMENT AND CERTAINLY DISCONCERTED BY THE
17 GOVERNMENT'S RESPONSE, BECAUSE I FELT THAT IN BOTH THE
18 QUESTION AND THE ANSWER, SUCH AS IT WAS, ASSUMED SOMETHING
19 WHICH I THINK IS BEFORE THIS COURT TO PROVE.

20 LET ME JUST POINT OUT THAT THE FEDERAL GOVERNMENT
21 HAS A CONTROLLED SUBSTANCE ACT WHICH PURPORTS TO REGULATE
22 MARIJUANA IN ITS DISTRIBUTION AND SALES, MAYBE EVEN ITS
23 POSSESSION.

24 THE STATE GOVERNMENT HAS A STATUTE WHICH PROVIDES
25 FOR THE CONSUMPTION, THE DISTRIBUTION AND THE MANUFACTURE

1 OF MARIJUANA AND DETERMINES THAT IT'S LEGAL. IMMEDIATELY,
2 WE HAVE CALLED INTO PLAY THE SECTION WHICH CONGRESS WROTE
3 INTO THE CONTROLLED SUBSTANCE ACT WHICH GOVERNED THIS VERY
4 SITUATION, NAMELY WHERE YOU HAVE CONCURRENT STATUTES, ONE
5 FEDERAL AND ONE STATE. AND I AM REFERRING, OF COURSE, TO
6 SECTION 903 OF TITLE 21. AND IF I MAY PRESUME ON THE COURT
7 AND EVERYBODY HERE I'D LIKE TO READ IT BECAUSE I THINK IT
8 HAS AN EXCEEDINGLY STRONG BEARING ON THIS CASE.

9 "NO PROVISION OF THIS TITLE SHALL BE
10 CONSTRUED AS INDICATING AN INTENT ON THE PART OF
11 THE CONGRESS TO OCCUPY THE FIELD IN WHICH THAT
12 PROVISION OPERATES, INCLUDING CRIMINAL PENALTIES
13 TO THE EXCLUSION OF ANY STATE LAW ON THE SAME
14 SUBJECT MATTER, WHICH WOULD OTHERWISE BE WITHIN
15 THE AUTHORITY OF THE STATE, UNLESS THERE IS A
16 POSITIVE CONFLICT BETWEEN THE PROVISIONS OF THIS
17 TITLE AND THE STATE LAW SO THAT THE TWO CANNOT
18 CONSISTENTLY STAND TOGETHER."

19 NOW, I SUBMIT TO THE COURT THAT WHEN WE LOOK AT
20 THE QUESTION WHICH CONGRESS POSED FOR YOU TO ANSWER, NAMELY
21 IS THERE A POSITIVE CONFLICT SO THAT THESE TWO STATUTES
22 CANNOT STAND TOGETHER, WE'RE VISITING -- AS LAWYERS WHO
23 LIKE TO SHOW OFF, AS I DO, SAY -- WE'RE VISITING TERRA
24 INCOGNITA. WE'RE IN STRANGE TERRITORY IN WHICH THERE IS NO
25 LIGHT TO SHINE, NO JUDICIAL PRECEDENT TO HELP US.

1 BUT WE DO KNOW THAT CONGRESS, WHEN IT ADOPTED THE
2 STATUTE, DID NOT ADDRESS THE ISSUE WHICH THE STATE LAW
3 ADDRESSED. AND UNLESS THIS COURT CAN FIND A POSITIVE
4 CONFLICT SO THAT THE CONTROLLED SUBSTANCE ACT CANNOT STAND
5 WITH THE MEDICAL MARIJUANA LAW, THEN OUR LAW IS -- OUR
6 ACTIVITIES ARE ILLEGAL.

7 THE TESTS WHICH THE LAW AND THE CASES HAVE USED TO
8 DETERMINE WHETHER OR NOT THERE IS A CONFLICT WHICH
9 PRECLUDES THE JOINT LIVING TOGETHER APPLIES A TEST OF:
10 WHAT ARE THE INTERESTS OF THE STATE WHEN IT PASSED ITS LAW
11 AS COMPARED TO THE INTERESTS OR INTENT OF THE FEDERAL
12 GOVERNMENT WHEN IT ADOPTED IN 1970 THE MARIJUANA
13 PROHIBITION?

14 IT IS ONLY REASONABLE AS WELL AS IN THE DIRECT
15 LANGUAGE OF THE STATUTE THAT CONGRESS'S INTENT IN ADOPTING
16 THE CONTROLLED SUBSTANCE LAW WAS TO PREVENT THE TRAFFICKING
17 OF DRUGS AND ENCOURAGING THE ADDICTION OR DESTRUCTION WHICH
18 DRUGS CAN CREATE WHEN THERE IS AN ABUSE OR AN INABILITY TO
19 CONTROL THE DISTRIBUTION.

20 ON THE OTHER HAND, WHAT ARE THE INTERESTS OF THE
21 STATE WHEN IT ADOPTED 215? AND THOSE INTERESTS OF THE
22 STATE WHICH SHOW THAT IF THE INTERESTS OF THE STATE ARE MET
23 THEY DO NOT CONFLICT WITH THE FEDERAL STATUTE ARE:

24 ONE, THERE IS A SPECIAL NEED IN THIS STATE AND
25 MAYBE OTHER STATES, A SPECIAL NEED BECAUSE OF THE HIGH

1 INCIDENCE OF AIDS. THERE'S A HIGH INCIDENCE OF CANCER IN
2 THIS STATE, AND CANCER IS ONE OF THE THINGS WHICH
3 MARIJUANA -- OF WHICH MARIJUANA ALLEVIATES THE SYMPTOMS.

4 THIS STATE HAS DECIDED THAT IT WILL PROVIDE
5 PAINKILLING, WASTE-KILLING MEDICATION UPON A DOCTOR'S
6 PRESCRIPTION. THAT, IN NO WAY, THAT IN NO WAY, AFFECTS THE
7 INTENT OF CONGRESS IN PASSING THE CONTROLLED SUBSTANCE LAW.

8 SO I SAY THAT IF YOUR QUESTIONS ASSUME THAT UNDER
9 SOME CIRCUMSTANCES THE ACTIVITIES OF THESE CLUBS OR THESE
10 CLUB MANAGERS ARE ILLEGAL, YOU HAVE BYPASSED --

11 THE COURT: YES.

12 MR. SHAPIRO: -- THE FINDING OF 903.

13 THE COURT: AND I THINK YOUR ARGUMENT'S HELPFUL.
14 I THINK YOU HAVE A VALID POINT. BUT I DIDN'T UNDERSTAND --
15 I DIDN'T UNDERSTAND 903 TO MEAN THAT THE FEDERAL GOVERNMENT
16 COULDN'T PROSECUTE INDIVIDUALS IN THE STATE NOT
17 WITHSTANDING A STATE DECISION TO NOT PROSECUTE THOSE
18 PEOPLE.

19 AS I UNDERSTAND 903, WHEN I LOOKED AT IT, IT WAS
20 SAYING THAT CONGRESS WAS NOT PREEMPTING THE FIELD, THAT IS
21 THAT THEY WOULD PERMIT BY THE ENACTMENT OF THE CONTROLLED
22 SUBSTANCE ACT, THEY WOULD PERMIT STATES TO ENACT THEIR OWN
23 LAWS WITH RESPECT TO -- WITH RESPECT TO THE USE OR
24 TRANSPORTATION OF DRUGS, EXCEPT IF THERE WAS A POSITIVE
25 CONFLICT BETWEEN THE STATE LAW AND THE FEDERAL LAW.

1 AND AS I READ THIS STATUTE -- AND I'LL GO BACK AND
2 LOOK AT IT IN LIGHT OF YOUR ARGUMENT, MR. SHAPIRO. BUT AS
3 I LOOK AT THAT STATUTE I INTERPRETED THAT TO MEAN THAT THE
4 STATE OF CALIFORNIA MAY DECIDE NOT TO BRING CRIMINAL
5 PROSECUTIONS AGAINST INDIVIDUALS WHO FOLLOW THE PRECEPTS OF
6 215. AND THAT'S OKAY WITH THE FEDERAL GOVERNMENT. THAT'S
7 ALL RIGHT WITH THE FEDERAL GOVERNMENT.

8 BUT THAT'S NOT THE SAME THING AS SAYING THAT THE
9 FEDERAL GOVERNMENT ITSELF, USING THE AUTHORITY OF THE
10 FEDERAL GOVERNMENT, WON'T BRING A PROSECUTION FOR A
11 VIOLATION OF FEDERAL LAW.

12 THAT'S AS I READ THAT STATUTE. NOW, I'LL GO BACK
13 BECAUSE I UNDERSTAND WHAT YOU'RE SAYING. I UNDERSTAND
14 YOU'RE SAYING THAT YOU HAVE TO LOOK AT THE PURPOSES. THERE
15 MAY BE SPECIAL PURPOSES FOR THE STATE OF CALIFORNIA. WE
16 HAVE SPECIAL NEEDS. LAW ENFORCEMENT TRADITIONALLY IS
17 LOOKED UPON AS A LOCAL CONCERN ADDRESSING LOCAL INTERESTS
18 AND BEING SENSITIVE TO LOCAL DEMANDS.

19 AND AS I UNDERSTOOD IT THAT'S WHAT THAT LAW WAS
20 SAYING. BUT I DIDN'T UNDERSTAND IT TO MEAN THAT THE
21 FEDERAL GOVERNMENT WAS, IN EFFECT, CEDING THE AUTHORITY OF
22 THE ISSUE OF PROSECUTIONS TO THE STATE, BUT I'LL TAKE A
23 LOOK AT IT. AND I APPRECIATE YOUR ARGUMENT IN THAT.

24 MR. SHAPIRO: WHEN YOU GO BACK AND LOOK AT IT,
25 WOULD YOU DO ME A FAVOR?

1 THE COURT: YES.

2 MR. SHAPIRO: AND REMEMBER THAT THERE ARE THREE
3 KINDS OF PREEMPTION?

4 THE COURT: YES.

5 MR. SHAPIRO: THIS IS A PREEMPTION STATUTE. THERE
6 ARE THREE KINDS OF PREEMPTION. ONE, WHERE CONGRESS SAYS:

7 "YOU MAY NOT PASS A LAW CONTRARY TO THIS
8 LAW," WHATEVER IT IS. THAT'S A SPECIFIC
9 PREEMPTION STATUTE. THERE'S A SECOND KIND OF PREEMPTION
10 WHICH SAYS:

11 "WE ARE GOING TO TAKE CONTROL. WE, THE
12 UNITED STATES GOVERNMENT, IS GOING TO CONTROL THE
13 ENTIRE FIELD."

14 YOU FIND THAT TRUE IN AVIATION LAW. STATES CAN'T
15 CONTROL THE AVIATION LAW AS A GENERAL RULE.

16 THAT IS NOT PART OF THIS.

17 THE COURT: OCCUPY THE FIELD.

18 MR. SHAPIRO: THAT FIELD PREEMPTION IS SET FORTH
19 IN THE STATUTE.

20 THE THIRD PREEMPTION IS WHAT WE HAVE HERE WHERE
21 THERE'S A CONFLICT. AND CONGRESS HAS SAID THE LAW HAS SAID
22 THAT IT IS CONSISTENT WITH THE ARTICLE SIX THAT YOU WEIGH
23 THE EQUITIES, YOU WEIGH THE EQUITIES AND YOU SEE WHETHER OR
24 NOT IT'S MORE IMPORTANT TO RESPECT, LIKE THE NINTH AND
25 TENTH AMENDMENTS TELL YOU TO RESPECT, TO RESPECT THE RIGHTS

1 AND CONCERNS AND SPECIAL INTERESTS OF THE STATE AS AGAINST
2 THE SPECIAL INTERESTS OF THE FEDERAL GOVERNMENT.

3 AND THEN, I THINK YOU'LL REALIZE THAT 903 ISN'T
4 JUST -- ISN'T JUST WORDS. IT'S A MEANINGFUL STATUTE WHICH
5 CONGRESS DELIBERATELY PUT IN THERE TO PROTECT THIS VERY
6 SITUATION, WHERE A STATE WITH SPECIAL NEEDS HAS COME ALONG
7 AND SAID:

8 "WE NEED OUR SPECIAL NEEDS TO BE
9 RESPECTED AND PROTECTED."

10 I BELIEVE THAT JUDGE SMITH DID ADD SOMETHING TO
11 OUR ARGUMENT WHEN SHE SAID THAT THIS WAS A DISCRETE, SMALL
12 SEGMENT WHICH NEED NOT CONCERN THE FEDERAL GOVERNMENT.

13 AND I BELIEVE THAT'S A FOOTNOTE, AS I REMEMBER, IN
14 THE DECISION. AND I'M SURE YOU'RE CLOSER TO IT THAN I. I
15 BELIEVE THAT WHEN SHE SAID THAT SHE HAD IN MIND THAT
16 PURSUANT TO THE MANDATE OF 903, 215 IS NOT GOING TO
17 REPRESENT A SERIOUS CONFLICT WITH THE INTENT OF CONGRESS IN
18 PASSING THE CSA.

19 I GUESS I'LL -- I HAVE NO MORE TO SAY ON THIS
20 ISSUE. I FEEL THAT IT IS A MISTAKE TO ASSUME AT THE OUTSET
21 THAT THE ACTIVITIES OF THE CLUBS ARE ILLEGAL.

22 I BELIEVE THAT CONGRESS IN 903 HAS SAID THAT THE
23 STATES CAN CARVE OUT OF THE JURISDICTION OF THE CONTROLLED
24 SUBSTANCES ACT A PORTION OF THAT ACTIVITY WHICH IS
25 ESPECIALLY NEEDED FOR THEM. AND THAT CARVED OUT SECTION,

1 UNLESS IT SPECIFICALLY AFFECTS THE INTENT AND PURPOSE OF
2 THE LAW, WILL BE RESPECTED.

3 AND I THINK THE SAME THING IS TRUE IF CONGRESS HAD
4 DRAWN AN EXCEPTION TO THE CONTROLLED SUBSTANCE ACT AND IF
5 CONGRESS HAD SAID THE SAME THING THAT 215 HAD SAID THAT
6 WOULD NOT BE A CONFLICT UNDER 903.

7 SO WHEN THE STATE DID IT, THE STATE WAS PERFORMING
8 OR ACCEPTING AN INVITATION FROM CONGRESS TO PROVIDE FOR ITS
9 OWN SPECIAL NEEDS AND ITS SPECIAL PEOPLE.

10 AND I DO NOT BELIEVE THAT UNLESS YOU FIND THERE IS
11 A SPECIFIC CONFLICT YOU CAN ACCEPT THE GOVERNMENT'S
12 ARGUMENT THAT THE ACTIVITY IS ILLEGAL.

13 THANK YOU.

14 MR. SILVA: GOOD AFTERNOON, YOUR HONOR. MY NAME
15 IS JAMES SILVA, AND I WILL BE ADDRESSING THE ISSUE OF
16 ABSTENTION BEFORE THE COURT.

17 ALTHOUGH THE ISSUE OF ABSTENTION, YOUR HONOR, IS A
18 DRAMATICALLY DISPOSITIVE ISSUE IN THAT IT WILL DETERMINE
19 WHETHER OR NOT THIS COURT WILL CONTINUE TO OBTAIN
20 JURISDICTION OVER THIS CASE, IT IS ALSO A REMARKABLY
21 CONCISE ONE.

22 WHAT WE ARE ASKING THE COURT TO DO IN THIS MATTER
23 IS TO ABSTAIN FROM HEARING THIS CASE IN ORDER TO ALLOW THE
24 STATE COURTS AND THE STATE LEGISLATURE AND, IN FACT, THE
25 STATE AUTHORITIES TO TAKE THE DISCREPANCIES WHICH HAVE BEEN

1 NOTED IN THE STATE LAW AND TRY AND HAVE THEM COMPORT WITH
2 THE FEDERAL LAW.

3 AS YOU HEARD MR. SHAPIRO SAY, THERE IS SECTION 903
4 IN THE CONTROLLED SUBSTANCES ACT. AND THAT, AS YOU STATED
5 YOURSELF, YOUR HONOR, DEMONSTRATES THAT THERE ISN'T, IN
6 FACT, A COMPLETE FIELD PREEMPTION. SO THERE IS SOME
7 LATITUDE FOR THE STATE TO, IN FACT, LEGISLATE OVER POLICIES
8 AND CONCERNS THAT ARE IMPORTANT TO THE CITIZENS OF THE
9 STATE OF CALIFORNIA.

10 THE COURT: WELL, LET ME ASK YOU ON THAT. I
11 HADN'T QUITE THOUGHT OF IT THAT WAY. YOU'RE SAYING THAT I
12 OUGHT TO ABSTAIN BECAUSE THERE IS A, WHAT? A LIKELIHOOD
13 THAT THE FEDERAL GOVERNMENT WILL REACH AN ACCOMMODATION OF
14 STATE AUTHORITIES THAT WOULD PERMIT THE DISPENSING MEDICAL
15 MARIJUANA UNDER CERTAIN CIRCUMSTANCES? I MEAN, IS THAT --
16 IS THAT WHAT IS HAPPENING? BECAUSE I DIDN'T QUITE GET THAT
17 ANSWER FROM THE GOVERNMENT. SO --

18 MR. SILVA: I UNDERSTOOD, YOUR HONOR. WHAT I
19 WOULD SAY, YOUR HONOR, IS THAT IN LIGHT OF THE CONTINUED
20 RECALCITRANCE WHICH MR. PANZER SAID TO YOU THAT WE COULD
21 DEMONSTRATE UPON A TRIAL OF THIS MATTER, AND IN LIGHT OF
22 THE GOVERNMENT'S ARGUMENTS THAT THERE ARE ALTERNATE AVENUES
23 AVAILABLE TO US, WHICH WOULD INCLUDE PETITIONING THE
24 GOVERNMENT, WHERE THOSE TWO ISSUES ARE AT ODDS, AND WHERE
25 THERE'S A STATE LAW ON THE BOOKS RIGHT NOW WHICH ENTITLES

1 THE PEOPLE OF CALIFORNIA TO USE MARIJUANA IN A FIELD THAT
2 THE GOVERNMENT HAS ADMITTEDLY NOT COMPLETELY PREEMPTED,
3 THEN IT WOULD BE WISE OF THIS COURT TO ABSTAIN IN HEARING
4 THIS MATTER UNTIL THE -- UNTIL THE PEOPLE OF CALIFORNIA CAN
5 DEMONSTRATE TO THE GOVERNMENT THAT THAT WIGGLE ROOM THAT IS
6 PRESENT IN THE CONTROLLED SUBSTANCES ACT ALLOTS FOR THE
7 MEDICINAL USE OF MARIJUANA AS SOMETHING SEPARATE AND APART
8 FROM THE ILLICIT USE OF MARIJUANA, WHICH IS MOSTLY THE
9 REASON WHY MARIJUANA IS CONTAINED IN THE SUBSTANCE SCHEDULE
10 ONE.

11 AND IT'S FOR THAT REASON, YOUR HONOR, THAT THE
12 DEFENDANTS WOULD ASK THIS COURT TO WEIGH HEAVILY THE AMICUS
13 DOCUMENTS THAT HAVE BEEN PRESENTED TO THE COURT AS INDICIA
14 OF A ZEALOUS EFFORT ON BEHALF OF LOCAL AUTHORITY IN ORDER
15 TO TRY AND RECONCILE WHAT WOULD OTHERWISE BE CONSIDERED
16 OUTSIDE OF THE CSA TO BE SOMETHING THAT WOULD BE PERMITTED
17 UNDER THE CSA TO EXIST WITHIN THE CSA.

18 THE COURT: I UNDERSTAND THAT ARGUMENT. I MEAN,
19 THAT STRUCK ME AS A CONCERN. THAT IS, THAT MAYBE THERE
20 COULD BE SOME ACCOMMODATION. BUT WHAT I'M HEARING,
21 ACTUALLY HEARING FROM MR. PANZER, THERE'S BEEN YEARS OF
22 ATTEMPTING TO ADDRESS THIS PROBLEM, AND IT'S BEEN
23 UNSUCCESSFUL FOR OTHER REASONS, BUT IT'S BEEN VERY, VERY
24 UNSUCCESSFUL.

25 THE GOVERNMENT CAME IN HERE THIS AFTERNOON AND

1 THEY SAID:

2 "LOOK. NOT WITHSTANDING THAT, 56
3 PERCENT OF THE POPULATION VOTE ONE WAY, NOT
4 WITHSTANDING THAT FOUR MAYORS OF CALIFORNIA
5 CITIES, NOT WITHSTANDING THAT THE DISTRICT
6 ATTORNEY, NOT WITHSTANDING THAT THE CITY OF
7 OAKLAND, NOT WITHSTANDING THE SUBMISSION BY THE
8 COUNTY OF FAIRFAX, NOT WITHSTANDING ANY OF THOSE
9 CONSIDERATIONS THE FEDERAL GOVERNMENT IS NOT GOING
10 TO CHANGE ITS POSITION."

11 THAT'S WHAT I'M HEARING THIS AFTERNOON. IF I
12 THOUGHT, IF I THOUGHT THAT A MEANINGFUL DIALOGUE WAS GOING
13 TO TAKE PLACE ON THAT ISSUE, AND THAT WAS REPRESENTED TO ME
14 BY BOTH SIDES, THEN THAT IS, I UNDERSTAND, A REASON FOR
15 ABSTENTION. THAT IS, I DON'T KNOW WHETHER IT'S TECHNICALLY
16 ABSTENTION OR WHETHER IT IS A COMMON SENSICAL APPROACH TO
17 TRYING TO AVOID A CONFRONTATION, IF, IN FACT, A
18 CONFRONTATION CAN BE AVOIDED.

19 BUT I HEAR THAT PEOPLE ARE CALLING FOR THAT, FROM
20 THE CITIZENS, OR FROM ONE SIDE, AND THE GOVERNMENT IS
21 TAKING A DIFFERENT POSITION. THAT'S WHAT I UNDERSTAND.

22 MR. SILVA: I HEAR YOU, YOUR HONOR.

23 THE COURT: AND IF AS LONG AS THEY TAKE A
24 DIFFERENT POSITION, THEN I DON'T KNOW THAT I CAN JUST SIT
25 BACK AND SAY:

1 "OH, WELL, I ABSTAIN UNTIL THEY CHANGE
2 THEIR POSITION."

3 I DON'T THINK THAT'S A RESPONSIBLE WAY TO ACT. I
4 THINK THAT I HAVE TO COME TO A CONCLUSION HERE. I THINK
5 THAT THAT'S WHAT COURTS ARE SUPPOSED TO DO.

6 MR. SILVA: OF COURSE, YOUR HONOR.

7 THE COURT: BUT THEY ARE NOT SUPPOSED TO REACH OUT
8 AND GRAB CASES. AND IF CASES CAN BE RESOLVED THROUGH THE
9 POLITICAL PROCESS BECAUSE AT SOME LEVEL THE GOVERNMENT
10 WORKS THROUGH THE POLITICAL PROCESS. IT DECIDES WHAT IS
11 IMPORTANT. IT MAKES DECISIONS. BUT I DON'T HEAR THAT.

12 AND ANYTHING I'VE HEARD THIS AFTERNOON HASN'T
13 SUGGESTED THAT.

14 MR. SILVA: I WOULD SUBMIT TO THE COURT, YOUR
15 HONOR, THAT THE GOVERNMENT IS IN A POSITION RIGHT NOW WHERE
16 THEY ARE SITTING BACK ON THAT VERY BROAD CUSHION OF
17 RECALCITRANCE THAT'S NEVER BEEN CHALLENGED BEFORE.

18 AND IN THEIR SHOES RIGHT NOW THEY FEEL VERY
19 COMFORTABLE WITH THE POSITION THAT THEY WOULDN'T CHANGE
20 POSITION. AND, UNFORTUNATELY, I FEEL THAT THAT LEAVES THE
21 GOVERNMENT IN A POSITION WHERE THEY WOULD ULTIMATELY HAVE
22 TO LOSE FACE SOMEWHERE DOWN THE LINE.

23 AND WHAT WE'RE ASKING THIS COURT TO DO IS TO LOOK
24 AT THE GOVERNMENT AND SAY:

25 "WE'RE NO LONGER GOING TO AFFORD YOU THE

1 AVENUE HERE TO PROSECUTE AND PUT PEOPLE THROUGH --
2 PEOPLE WHO USE MARIJUANA FOR MEDICAL PURPOSES
3 THROUGH THE COURT SYSTEMS. WE'RE GOING TO CLOSE
4 OUR DOORS TO YOU TODAY AND FORCE YOU TO A
5 DIALOGUE, RECOGNIZING THAT THERE HAS BEEN THIS
6 LONG, OUTSTANDING HISTORY OF RECALCITRANCE
7 DEMONSTRATED BY THE GOVERNMENT WHICH WOULD
8 ESSENTIALLY PROHIBIT OR INHIBIT PATIENTS WHO WOULD
9 OTHERWISE HAVE A LAWFUL AVENUE."

10 THE COURT: MR. SILVA, LET ME ASK YOU: DO YOU
11 HAVE ANY AUTHORITY? IS THERE ANYTHING THAT YOU CAN POINT
12 TO ME IN THE CIRCUITS THAT HAVE SUGGESTED THAT THAT'S AN
13 APPROPRIATE ROLE FOR A DISTRICT COURT JUDGE TO TAKE?

14 MR. QUINLIVAN: WELL, YOUR HONOR, I WOULD POINT TO
15 THE BUFORD DOCTRINE WHERE WHEN THERE IS A STATE COURTS --
16 STATE CASES THAT ARE CONCENTRATED INVOLVING THE LOCAL
17 ISSUES, PARTICULAR ISSUE, AND THERE ARE FEDERAL ISSUES THAT
18 ARE NOT EASILY SEPARABLE FROM COMPLICATED STATE LAW ISSUES
19 WITH WHICH STATE COURTS HAVE SPECIAL COMPETENCE, AND
20 FEDERAL VIEW MIGHT DISRUPT EFFORTS TO ESTABLISH COHERENT
21 POLICY. AND THAT'S ALSO REITERATED IN THE CASE OF TUCKER
22 V. FIRST MARYLAND SAVINGS AND LOAN, 942 F. 2D 1401, YOUR
23 HONOR, AT 1404 AND 1405.

24 I WOULD SUBMIT TO THE COURT THAT, IN PARTICULAR,
25 ON THE THIRD PRONG THAT THE FEDERAL VIEW MIGHT DISRUPT

1 STATE EFFORTS TO ESTABLISH A COHERENT POLICY, THE BELL
2 RINGS RATHER STRONG HERE, IN THAT WHERE THE PEOPLE OF
3 CALIFORNIA HAVE SPOKEN ON THIS ISSUE, KNOWING THAT THE
4 CONTROLLED SUBSTANCES ACT IS IN EXISTENCE, IT'S INDICIA
5 THAT THE PEOPLE OF CALIFORNIA, AS OPPOSED TO THE LAETRILE
6 CASES THAT THE GOVERNMENT BROUGHT UP BEFORE, HAVE RAISED
7 THEIR HAND HIGH AND SAID:

8 "WE NO LONGER WILL PUT UP WITH THE
9 PROPOSITION THAT THE GOVERNMENT CAN, IN FACT,
10 DECLARE THE WORLD IS FLAT WITHOUT SAYING SOMETHING
11 DIFFERENT."

12 AND WHERE THE FEDERAL GOVERNMENT NOW ASKS THIS
13 COURT TO ADJUDICATE THAT ISSUE, THEY ARE ASKING THIS COURT
14 TO IGNORE THE FACT THAT THERE HAS, IN FACT, BEEN A
15 LONGSTANDING POLICY OF RECALCITRANCE ON THEIR PART AND
16 IGNORE THE FACT THAT THE PEOPLE OF CALIFORNIA ARE, IN FACT,
17 CRYING OUT: "FOUL."

18 WITH RESPECT TO THE SECOND PRONG, YOUR HONOR, THAT
19 THE FEDERAL ISSUES ARE NOT EASILY SEPARABLE FROM
20 COMPLICATED STATE ISSUES, IT'S OBVIOUS HERE THAT,
21 ESPECIALLY WITH RESPECT TO SECTION 903 THAT MR. SHAPIRO
22 DISCUSSED, THAT THE FIELD ISN'T COMPLETELY PREEMPTED. AND
23 THAT THE WAR ON DRUGS IS PARTICULARLY CALCULATED TO STOP
24 THE ILLICIT USE OF DRUGS.

25 AND I DON'T THINK THE GOVERNMENT WOULD EVER

1 CONTEND THAT THE BENEFICIAL MEDICINAL USE OF MARIJUANA IS
2 SOMETHING THAT THE FEDERAL GOVERNMENT INTENDS TO PROHIBIT.

3 WHERE THAT'S THE CASE YOUR HONOR, IT WOULD BE WISE
4 FOR THIS COURT TO ALLOW THE STATE AUTHORITIES TO DEVELOP
5 POLICY TO DEMONSTRATE AND PROVIDE ADEQUATE ASSURANCES TO
6 THE FEDERAL GOVERNMENT THAT THIS IS WHOLLY MEDICAL AND ALSO
7 ALLOWABLE UNDER THE CONTROLLED SUBSTANCES ACT.

8 AND IF THIS COURT WOULD CLOSE ITS DOORS ON THIS
9 CASE TO THE FEDERAL GOVERNMENT TODAY IT WOULD FORCE THEM TO
10 A DIALOGUE WHERE THEY WOULD HAVE TO -- WHERE THEY WOULD BE
11 IN A POSITION WHERE THEY WOULD NEED TO RECONCILE ILLICIT
12 USE VERSUS MEDICINAL USE.

13 THANK YOU, YOUR HONOR.

14 THE COURT: THANK YOU.

15 WHO'S NEXT?

16 I WOULD JUST SAY MAYBE I CAN GIVE YOU A LITTLE BIT
17 OF GUIDANCE HERE ON THE ARGUMENT, THOUGH I OBVIOUSLY WOULD
18 LIKE TO HEAR FROM ANYBODY WHO WANTS TO SPEAK. BUT THE
19 ISSUE OF NECESSITY, THE ISSUE OF JOINT POSSESSION, I'M NOT
20 PREPARED TO REACH AND DISCUSS THOSE ISSUES TODAY, BECAUSE I
21 TRIED TO -- I TRIED TO APPROACH THE PROBLEM FROM A
22 DIFFERENT POINT OF VIEW.

23 I UNDERSTAND THAT THEY ARE ISSUES THAT MAY BE
24 RELEVANT AT SOME POINT. I DON'T KNOW THAT THEY ARE REALLY
25 RELEVANT TO MY CONSIDERATION TODAY, BUT I'M WILLING -- MORE

1 THAN WILLING TO HEAR ARGUMENT AS TO WHY THEY WOULD BE
2 RELEVANT TODAY, TO HEAR IT TODAY.

3 I DON'T WANT TO DENY A LAW PROFESSOR THE
4 OPPORTUNITY TO COME INTO A COURTROOM AND LECTURE A JUDGE.

5 MR. UELMEN: THANK YOU.

6 THE COURT: SO PLEASE PROCEED FREELY.

7 MR. UELMEN: ALSO, THE ARGUMENTS I'M GOING TO
8 PRESENT TO YOUR HONOR FALL RIGHT WITHIN THE MANDATE OF
9 SECTION 903, BECAUSE WE ARE TALKING ABOUT WHETHER THERE IS
10 A WAY THAT WE CAN CONSTRUE THE STATE LAW AND THE FEDERAL
11 LAW SO THAT THE TWO IN THE LANGUAGE OF SECTION 903 CAN
12 CONSISTENTLY STAND TOGETHER.

13 AND WE BELIEVE THAT THEY CAN, BECAUSE THE
14 OPERATIONS OF THE CANNABIS CLUBS FALL SQUARELY WITHIN TWO
15 RECOGNIZED DEFENSES UNDER THE FEDERAL LAW, TO A CHARGE OF
16 DISTRIBUTION OR POSSESSION FOR DISTRIBUTION OF MARIJUANA.

17 AND THOSE DEFENSES ARE THE DEFENSE OF MEDICAL
18 NECESSITY AND THE DEFENSE OF SHARING BY JOINT PURCHASERS.
19 AND LET ME JUST FIRST SAY A FEW WORDS ABOUT THIS DEFENSE OF
20 MEDICAL NECESSITY.

21 THIS IS SIMPLY A SPECIALIZED APPLICATION OF THE
22 COMMON LAW DEFENSE OF NECESSITY WHICH IS AVAILABLE IN ALL
23 FEDERAL CRIMINAL PROSECUTIONS. AND THIS DEFENSE RECOGNIZES
24 THAT WHEN FACED WITH THE CHOICE OF EVILS A VIOLATION OF THE
25 LAWS MAY BE A LESSER EVIL THAT IS JUSTIFIED UNDER THE

1 CIRCUMSTANCES.

2 AND THE EVIL TO BE AVOIDED HERE IS, OF COURSE, THE
3 PAIN AND DISCOMFORT OF MANY DEBILITATING DISEASES SUCH AS
4 AIDS AND CANCER. THE LOSS OF APPETITE AND THE NAUSEA THAT
5 MANY AIDS AND CANCER PATIENTS SUFFER IS RELIEVED BY THE USE
6 OF MARIJUANA.

7 THE COURT: WELL, LET ME TELL YOU WHY I DIDN'T
8 APPROACH THAT. THE REASON I DIDN'T IS THAT IT SEEMED TO ME
9 THAT IN THE EVENT I ISSUED AN INJUNCTION, AND IN THE EVENT
10 IT IS DETERMINED BY THE GOVERNMENT TO PROCEED WITH A
11 CONTEMPT PROCEEDING FOR A VIOLATION OF THE INJUNCTION, THEN
12 UNDER THOSE FACTS, IF -- AND I SAY "IF" BECAUSE I DON'T --
13 I'M CERTAINLY NOT GOING TO GIVE AN OPINION AS TO WHETHER OR
14 NOT THERE IS A DEFENSE OF NECESSITY OR WHETHER THAT DEFENSE
15 WOULD BE APPROPRIATE UNDER THE CIRCUMSTANCES.

16 BUT IT WOULD APPEAR TO ME THAT THAT'S THE TIME
17 THAT DEFENSE WOULD BE RAISED. NOW, IF YOU THINK THAT I
18 HAVE TO CONSIDER THAT ON A BLANKET BASIS, YOU SEE, THEN AT
19 THIS POINT I CAN. BUT, AGAIN, IF THE GOVERNMENT IS TAKING
20 THE POSITION:

21 "LOOK, WE'RE NOT TALKING ABOUT
22 INDIVIDUALIZED" -- ALTHOUGH, I THINK AT SOME
23 LEVEL WE ARE. I MEAN, I'M NOT NAIVE. AT SOME LEVEL WE ARE
24 TALKING ABOUT PEOPLE WHO ARE PATIENTS. BUT IN TERMS OF WHAT
25 THEY ARE SEEKING IN TERMS OF THE SCOPE OF THE INJUNCTION

1 THAT THEY ARE SEEKING, IT'S AGAINST THE CLUBS, AS I
2 UNDERSTAND IT.

3 AND IF THE CLUBS HAVE A DEFENSE OF NECESSITY, THEN
4 THEY WOULD RAISE THAT DEFENSE, AS I UNDERSTAND IT, IN A
5 CONTEMPT PROCEEDING, SHOULD, ONE, THEY RUN AFOUL OF THE
6 ORDER; TWO, IF THE GOVERNMENT DECIDES THAT THIS IS WORTHY
7 OF SEEKING A CITATION FOR CONTEMPT.

8 SO I THOUGHT IT WAS PREMATURE. BUT IF I SHOULD
9 LOOK AT IT DIFFERENTLY, I WILL.

10 MR. UELMEN: WELL, I WOULD SUGGEST LOOKING AT IT
11 FROM THIS PERSPECTIVE: WHY ARE WE ISSUING AN INJUNCTION IF
12 EVERY PERSON SUBJECT TO THE INJUNCTION, THE PATIENTS AND
13 THE CLUB MEMBERS, ALL WOULD HAVE THIS VALID DEFENSE TO
14 ASSERT?

15 WE'RE, OF COURSE, MAINTAINING THAT WE HAVE A RIGHT
16 TO A JURY DETERMINATION OF THIS DEFENSE. I THINK THERE'S A
17 QUESTION WHETHER THE ISSUANCE OF AN INJUNCTION WOULD
18 INTERFERE WITH THE FULL RIGHT TO JURY TRIAL THAT WOULD
19 APPLY IN A CRIMINAL PROSECUTION.

20 AND THAT MAY ITSELF BE A REASON NOT TO ISSUE AN
21 INJUNCTION BECAUSE IT WOULD INTERFERE WITH THE DEFENDANTS'
22 RIGHT TO A JURY TRIAL IN ANY CASE WHERE THEY WERE
23 PROSECUTED FOR A VIOLATION OF THE CONTROLLED SUBSTANCES
24 ACT.

25 I KNOW THERE IS A PROVISION WHERE IN PROSECUTING

1 SOMEONE FOR CONTEMPT THE GOVERNMENT CAN PUT INTO THIS
2 CONTEMPT ORDER THAT THEY ARE NOT SEEKING IMPRISONMENT FOR
3 MORE THAN SIX MONTHS, AND THEREBY FORECLOSED THE NORMAL
4 RIGHT TO A JURY TRIAL.

5 ALTHOUGH 982 ITSELF PRESERVES THE RIGHT TO A JURY
6 TRIAL PURSUANT TO THE CIVIL RULES -- THE RULES OF CIVIL
7 PROCEDURE, WHATEVER THAT MEANS, I THINK THERE IS A RISK
8 HERE THAT THE DEFENDANTS' RIGHT TO A JURY TRIAL ON THIS
9 ISSUE OF MEDICAL NECESSITY MAY BE PUT IN ISSUE BY AN
10 INJUNCTION.

11 BUT THE REAL POINT IS THAT IF THE CLUBS THEMSELVES
12 AND ALL OF THE MEMBERS OF THE CLUBS HAVE THIS DEFENSE, THEN
13 THEIR ACTIVITIES SHOULD NOT BE ENJOINED.

14 NOW, CLEARLY OUR POSITION IS THAT THE CLUBS
15 THEMSELVES CAN ASSERT THIS DEFENSE OF MEDICAL NECESSITY.
16 THAT THERE IS A WELL-RECOGNIZED DOCTRINE OF THIRD-PARTY
17 NECESSITY. AND THE LEAD CASE THAT I WOULD CALL TO THE
18 COURT'S ATTENTION ON THIS ISSUE IS UNITED STATES VERSUS
19 NEWCOMB. IT'S NOT CITED IN OUR BRIEFS.

20 IT'S AT 6 FED. 3RD 1129. IT'S A 1993, SIXTH --

21 THE COURT: I'M SORRY. 6 FED. 3RD?

22 MR. SERRA: 1129.

23 THE COURT: NEWCOMB.

24 MR. QUINLIVAN: NEWCOMB. NEWCOMB CLEARLY HOLDS IN
25 LIGHT OF THE FACT AND I'M QUOTING:

1 "THAT THE PHILOSOPHICAL UNDERPINNING OF
2 THE JUSTIFICATION DEFENSE IS THE AVOIDANCE OF THE
3 GREATER EVIL. IT IS FUNDAMENTAL THAT THE DEFENSE
4 MUST APPLY EQUALLY TO A CHOICE OF EVILS CASE WHEN
5 THE EVIL IS TO A THIRD PARTY AS TO THE CASE WHERE
6 THE EVIL IS TO ONESELF."

7 AND NEWCOMB TRACKS ALL OF THE OTHER FEDERAL
8 AUTHORITY THAT SUPPORTS THAT POSITION, INCLUDING THREE
9 NINTH CIRCUIT CASES THAT THEY CITE.

10 SO CLEARLY, THIS IS A DEFENSE THAT THE CLUBS
11 THEMSELVES CAN ASSERT.

12 NOW, THE ONLY ELEMENTS OF THE MEDICAL NECESSITY
13 DEFENSE THAT THE GOVERNMENT ACTUALLY DISPUTES HERE IS
14 WHETHER A REASONABLE LEGAL ALTERNATIVE TO AVOID THE HARM IS
15 AVAILABLE.

16 AND IT'S DIFFICULT TO BELIEVE THAT THIS ARGUMENT
17 IS BEING MADE WITH A STRAIGHT FACE. IT IS CERTAINLY BEING
18 MADE WITH DIRTY HANDS.

19 BECAUSE FOR MANY YEARS WHEN SOMEBODY ASSERTED THIS
20 DEFENSE OF MEDICAL NECESSITY, THE GOVERNMENT WOULD COME
21 INTO COURT AND SAY:

22 "WELL, THERE'S A REASONABLE ALTERNATIVE.
23 WE HAVE THIS INVESTIGATIVE NEW DRUG PROGRAM, AND
24 YOU CAN GO TO THE GOVERNMENT AND APPLY TO ENROLL
25 IN THAT PROBLEM -- IN THAT PROGRAM, AND THE

1 GOVERNMENT WILL GIVE YOU MARIJUANA."

2 AND BASED ON THAT, MANY COURTS SAID:

3 "WELL, ALL RIGHT. THERE'S A REASONABLE
4 ALTERNATIVE, SO YOU CAN'T ASSERT A DEFENSE OF
5 MEDICAL NECESSITY."

6 WELL, IN 1992, THE GOVERNMENT SHUT DOWN THAT
7 PROGRAM. AND IT IS NOW LIMITED TO EIGHT PATIENTS. AND THE
8 DECISION TO SHUT DOWN NEW APPLICATIONS WAS A CALLUS AND
9 CALCULATED DECISION IN WHICH POLITICAL EXPEDIENCY TRIUMPHED
10 OVER COMPASSION.

11 NOW, THEY COME INTO COURT AND SAY:

12 "WELL, WE'RE NOT GOING TO GIVE YOU
13 MARIJUANA ANYMORE, BUT YOU CAN FILE A PETITION TO
14 HAVE THE DEA RECLASSIFY MARIJUANA."

15 AND THE LAST TIME THAT A PETITION WAS FILED TO
16 RECLASSIFY MARIJUANA WAS IN 1972. AND THAT PETITION WAS
17 DECIDED IN 1994.

18 SO THE GOVERNMENT PROPOSES TO SAY TO SOMEONE DYING
19 FROM AIDS OR SUFFERING FROM A NAUSEA ASSOCIATED WITH CANCER
20 CHEMOTHERAPY:

21 "GO HIRE SOME LAWYERS. GO TO WASHINGTON
22 AND FILE A PETITION, AND MAYBE IN 22 YEARS YOU'LL
23 GET AN ANSWER."

24 WELL, YOUR HONOR, THAT SIMPLY IS NOT A REASONABLY
25 AVAILABLE LEGAL ALTERNATIVE.

1 AND WE BELIEVE THAT WE HAVE A RIGHT TO A JURY
2 DETERMINATION OF WHETHER THAT'S A REASONABLY LEGAL,
3 AVAILABLE OPPORTUNITY OR ALTERNATIVE.

4 AND EVEN THE CASES CITED BY THE GOVERNMENT MAKE IT
5 CLEAR THAT YOU CAN WITHHOLD THIS ISSUE FROM THE JURY ONLY
6 IF YOU FIND THAT THERE IS SIMPLY NO CREDIBLE EVIDENCE FROM
7 WHICH A JURY COULD DETERMINE THAT THERE IS A REASONABLY
8 LEGAL AVAILABLE ALTERNATIVE.

9 AND LOOK, PLEASE, VERY CAREFULLY AT THE AUTHORITY
10 THEY CITE FOR THE PROPOSITION THAT FILING A PETITION TO
11 RECLASSIFY THE DRUG IS A REASONABLY AVAILABLE LEGAL
12 ALTERNATIVE.

13 THE CASE THEY CITE IS UNDER STATES VERSUS
14 RICHARDSON. RICHARDSON WAS A DRUG MANUFACTURER WHO WAS
15 CONVICTED OF SMUGGLING LAETRILE INTO THE UNITED STATES FROM
16 HIS TIJUANA MANUFACTURING PLANT.

17 AND AT THE TIME, AT THE TIME RICHARDSON WAS BEING
18 PROSECUTED, A PROCEEDING FOR FDA RECLASSIFICATION OF
19 LAETRILE WAS PENDING AFTER A LOWER COURT HAD HELD THAT
20 TERMINALLY-ILL PATIENTS HAD A RIGHT TO USE LAETRILE.

21 SO AT THAT POINT ADMINISTRATIVE RECLASSIFICATION
22 APPEARED TO BE A REASONABLY AVAILABLE LEGAL ALTERNATIVE.

23 BUT THAT IS SIMPLY NOT THE CASE ANYMORE WITH
24 RESPECT TO RECLASSIFICATION OF MARIJUANA, ESPECIALLY IN THE
25 SITUATION IN WHICH THESE PATIENTS FIND THEMSELVES. TO SAY

1 TO THEM:

2 "THAT'S YOUR ALTERNATIVE. INSTEAD OF
3 GETTING IMMEDIATE RELIEF FROM THE SYMPTOMS OF YOUR
4 DEBILITATING DISEASE, GO TO WASHINGTON AND FILE A
5 PETITION."

6 THE OTHER DEFENSE THAT I WANTED TO CALL TO YOUR
7 HONOR'S ATTENTION, THE SHARING BY JOINT PURCHASERS, I THINK
8 MAKES PERFECT GOOD SENSE IN THIS CONTEXT IN TERMS OF THE
9 COURT LOOKING FOR A WAY TO RECONCILE THE STATE LAW AND THE
10 FEDERAL LAW SO THAT THEY CAN CONSISTENTLY BE READ TOGETHER.

11 AS EXPLAINED IN THE LEAD CASE DEFINING THIS
12 DEFENSE, THE SWIDERSKI CASE, THE FEDERAL CONTROLLED
13 SUBSTANCES ACT MAKES A DRAMATIC AND FUNDAMENTAL DISTINCTION
14 BETWEEN DRUG TRAFFICKERS AND DRUG CONSUMERS. AND EACH
15 TRANSACTION IN THE DISTRIBUTION CHAIN IS HEAVILY PENALIZED
16 BECAUSE IT INCREASES THE RISK THAT WE WILL EXPAND THE
17 MARKET OF ILLICIT USERS.

18 BUT WHEN DISTRIBUTION REACHES THE END OF THE
19 DISTRIBUTION CHAIN AND THE DRUG IS IN THE HAND OF THE USER,
20 THAT RISK HAS ENDED. AND THAT'S WHY UNDER THE CSA SIMPLE
21 POSSESSION OF THE DRUG IS A MISDEMEANOR.

22 SO IF USERS JOINTLY PURCHASE THE DRUG AND THEN
23 SHARE IT AMONG THEMSELVES, THEY ONLY COMMIT THE OFFENSE OF
24 POSSESSION, NOT POSSESSION WITH INTENT TO DISTRIBUTE.

25 NOW, THAT'S PARTICULARLY RELEVANT HERE BECAUSE

1 YOU'LL RECALL MR. QUINLIVAN AT THE OUTSET OF THESE
2 PROCEEDINGS SAID:

3 "THIS IS NOT A POSSESSION CASE. THE
4 GOVERNMENT ONLY SEEKS TO ENJOIN POSSESSION WITH
5 INTENT TO DISTRIBUTE, NOT SIMPLE POSSESSION."

6 THE COURT: BUT HE DID SAY -- BUT I UNDERSTAND
7 THAT. BUT I ASKED HIM WHETHER OR NOT IT WAS MORE THAN
8 THAT. THAT IS TO SAY WHETHER OR NOT IF, IN FACT, YOU
9 FOLLOWED ALL THE STRICTURES OF 215, WHETHER OR NOT THAT
10 WOULD STILL BE A CASE THAT WOULD BE INTERESTING TO THE
11 FEDERAL GOVERNMENT TO ATTEMPT TO ENJOIN.

12 AND I'LL ASK HIM AGAIN SO THAT THERE'S A
13 CLARIFICATION OF IT.

14 MR. UELMEN: WELL, NOW, THE GOVERNMENT IN THIS
15 CASE, YOUR HONOR, HAS MADE A SPECIAL POINT OF ASSURING THE
16 PRESS AND THE PUBLIC THAT THEY AREN'T GOING AFTER PATIENTS
17 WHO GET SOME RELIEF FROM MARIJUANA. THAT THEY ONLY SEEK TO
18 ENJOIN THE CLUBS THAT DISTRIBUTE THE MARIJUANA TO THESE
19 PATIENTS.

20 NOW, IT'S CURIOUS THAT THEY ARE DOING THIS IN THE
21 NAME OF CONTROLLING DRUG TRAFFICKING BECAUSE THEY ARE
22 CLOSING DOWN THE ONE SAFE AND SECURE AND SUPERVISED SOURCE
23 WHERE SICK PEOPLE CAN GET A CLEAN AND SAFE AND ECONOMICAL
24 SUPPLY OF MARIJUANA.

25 AND THEY ARE TELLING THEM:

1 "GO OUT AND BUY IT ON THE STREETS FROM
2 ILLCIT DEALERS."

3 AND THAT DOESN'T MAKE A LOT OF SENSE, AS AMICUS
4 POINTS OUT, AND ONLY COMPOUNDS THE PROBLEM THAT LOCAL LAW
5 ENFORCEMENT IS GOING TO HAVE TO DEAL WITH IN TERMS OF
6 ILLICIT STREET SALES OF DRUGS.

7 BUT WHAT THEIR POSITION OVERLOOKS IS THAT THE
8 PATIENTS AND THE CLUBS ARE ONE COOPERATIVE ENTERPRISE TO
9 JOINTLY PURCHASE THE DRUGS AND TO SHARE THE DRUG THAT GIVES
10 THEM RELIEF.

11 NOW, THE GOVERNMENT RESPONDS TO THIS ARGUMENT
12 SIMPLY BY SAYING:

13 "WELL, OTHER COURTS HAVE GIVEN A VERY
14 LIMITED READING TO SWIDERSKI."

15 BUT NONE OF THE CASES THAT THEY CITE DEAL WITH THE
16 UNIQUE CIRCUMSTANCES PRESENT IN THIS CASE, WHERE THE USERS
17 ARE A DISCRETE LIMITED CLASS OF PERSONS ACTUALLY DEFINED BY
18 STATE LAW WHO MEET THE QUALIFICATIONS LAID DOWN IN THE
19 STATE LAW FOR MEDICAL USE.

20 THERE IS NO DANGER THAT THE SHARING OF DRUGS AMONG
21 THESE USERS IS GOING TO EXPAND THE ILLICIT DRUG MARKET.
22 THE CASES THAT THEY CITE ARE ALL CASES INVOLVING ILLICIT
23 MARKET ACTIVITIES IN HEROIN, SUCH AS THE WRIGHT CASE, OR
24 COCAINE, THE SPEER CASE, 30 GRAMS OF COCAINE, THE
25 WASHINGTON CASE, ANOTHER COCAINE CASE.

1 THE ONLY MARIJUANA CASE THEY CITE IS THE TAYLOR
2 CASE WHERE THERE WAS NO CLAIM OF MEDICAL USE. IN FACT, THE
3 FIRST CIRCUIT REFERRED TO THE CASE AS AN ADDITION TO THEIR
4 COLLECTION OF, QUOTE:

5 "TALL TALES CONCOCTED BY DRUG SMUGGLERS
6 ON THE COAST OF MAINE."

7 NOW, WHATEVER JUDICIAL HOSTILITY TO SWIDERSKI HAS
8 EMERGED IS SIMPLY HOSTILITY TO ITS USE AS A PRETEXT BY
9 ILLICIT DRUG TRAFFICKERS. AND THAT IS NOT WHAT IS GOING ON
10 IN THIS CASE.

11 SO IF THE COURT IS LOOKING FOR A WAY TO ALLOW THE
12 STATE LAW AND THE FEDERAL LAW TO CONSISTENTLY STAND
13 TOGETHER, THE DOCTRINE OF SHARING BY JOINT PURCHASERS
14 PROVIDES AN IDEAL SOLUTION. I SUGGEST WE SIMPLY TAKE THE
15 GOVERNMENT AT THEIR WORD.

16 THEY SAY THEY DON'T SEEK TO ENJOIN MERE POSSESSION
17 BY THOSE WITH MEDICAL NEED. SIMPLY BECAUSE THESE PATIENTS
18 JOIN TOGETHER TO SECURE AN SAFE AND ECONOMICAL SUPPLY OF
19 MARIJUANA THAT THEY CAN SHARE, THEY DON'T BECOME
20 DISTRIBUTORS. THERE IS NO RISK THAT THEIR ACTS OF SHARING
21 WILL INCREASE THE NUMBER OF USERS.

22 THE NUMBER OF USERS IS DETERMINED BY THE MEDICAL
23 PROFESSION WHICH MUST APPROVE THE USE FOR COMPASSIONATE
24 MEDICAL PURPOSES UNDER PROPOSITION 215.

25 YOU SHOULD ALSO TAKE THE CLUBS AT THEIR WORD,

1 ALLOWING THEM TO OPERATE AS TRULY COOPERATIVE ENTERPRISES
2 WHOSE ONLY PURPOSE IS TO SHARE MARIJUANA WITH MEMBERS WHO
3 QUALIFY FOR MEDICAL USE UNDER THE LAW OF THE STATE OF
4 CALIFORNIA.

5 AND IF THEY OPERATE OUTSIDE THAT PARAMETER, THEN
6 THEY ARE ENGAGED IN DISTRIBUTION. SO IF THE GOVERNMENT
7 WINS AN INJUNCTION AGAINST DISTRIBUTION OF MARIJUANA, AND
8 THE STATE WINS THEIR RULING THAT DISTRIBUTION DOES NOT
9 INCLUDE LEGITIMATE JOINT PURCHASERS AND SHARING BY
10 COOPERATIVE VENTURES THAT ARE FORMED AMONGST PATIENTS WHO
11 QUALIFY UNDER PROPOSITION 215.

12 AND I WOULD SAY: WHAT BETTER WAY TO MEET THE
13 MANDATE OF SECTION 903 TO CONSTRUE THE STATE AND THE
14 FEDERAL LAW SO THAT THE TWO CAN, QUOTE:

15 "CONSISTENTLY STAND TOGETHER"?

16 THANK YOU.

17 MS. ORAVITZ: GOOD AFTERNOON, YOUR HONOR. I'M
18 LAURETTA ORAVITZ. I'M HERE WITH SUSAN B. JORDAN'S OFFICE
19 REPRESENTING THE UKIAH CANNABIS CLUB. AND I'LL BE
20 ADDRESSING THE ISSUE OF THE SUBSTANTIVE DUE PROCESS
21 ARGUMENT.

22 AS WE STATED IN OUR INITIAL BRIEF THE SUBSTANTIVE
23 DUE PROCESS ANALYSIS AS FURTHERED BY JUSTICE REHNQUIST IN
24 THE GLUCKSBERG OPINION AS WELL AS THE PRIOR OPINIONS IN
25 SUBSTANTIVE DUE PROCESS CASES INVOLVES AN ANALYSIS WHERE

1 YOU FIRST DETERMINE WHETHER -- WHETHER THERE'S A
2 FUNDAMENTAL INTEREST INVOLVED. AND IF A FUNDAMENTAL
3 INTEREST IS ESTABLISHED WHETHER THE GOVERNMENT HAS A
4 NARROWLY TAILORED -- HAS NARROWLY TAILORED TO SERVE
5 APPELLEE GOVERNMENTAL INTEREST.

6 THE SECOND STANDARD IS THAT THE SUBSTANCE -- THE
7 SUBSTANTIAL FUNDAMENTAL INTEREST HAS TO BE NARROWLY
8 DEFINED.

9 THE DEFENDANTS HERE DO NOT PRESENT THAT THE RIGHT
10 IS A RIGHT, GENERALLY, TO MEDICAL MARIJUANA FOR ANY
11 PURPOSES. THE RIGHT THAT THEY ARE PRESENTING IS THE RIGHT
12 TO PAIN-RELIEVING MEDICAL -- PAIN-RELIEVING MEDICINE,
13 MEDICAL MEDICINE THAT CAN CURE BLINDNESS, MEDICINE THAT CAN
14 PRESERVE THEIR LIVES. AND THEY ALSO ASSERT A RIGHT TO
15 PROVIDE ONESELF WITH THEIR OWN MEDICAL CARE.

16 THE ANALYSIS THAT JUSTICE REHNQUIST USES DISCUSSES
17 THE TRADITIONS AND HISTORY IN OUR NATION. AND THE RIGHT TO
18 PROTECTION FROM PAIN AND IMPOSITION OF PAIN IS AS LONG AS
19 PART OF THIS HISTORY AS WELL AS PART OF THE ENGLISH HISTORY
20 OF COMMON LAW. THERE IS A --

21 THE COURT: LET'S SAY I DON'T DISPUTE THAT. BUT I
22 ASK THE QUESTION: IS THAT A RIGHT TO SELECT A PARTICULAR
23 KIND OF MEDICATION OVER SOME OTHER KIND OF MEDICATION? IS
24 THERE A CONSTITUTIONAL RIGHT TO CHOOSE THE MEDICINE THAT
25 YOU WISH TO TAKE?

1 MS. ORAVITZ: I DON'T THINK --

2 THE COURT: AND IN THAT REGARD, IF I DECIDE I WANT
3 TO TAKE LAETRILE OR X OR Y OR Z, EVEN THOUGH THOSE
4 SUBSTANCES MAY BE ILLEGAL -- LET'S SAY I DECIDE I WANT TO
5 TAKE HEROIN. DO I HAVE A CONSTITUTIONAL RIGHT TO SELECT
6 THE MEDICATION OF MY CHOOSING?

7 MS. ORAVITZ: I THINK THAT THE ISSUE THAT IS
8 PRESENTED HERE IS NOT A CONSTITUTIONAL RIGHT TO SELECT
9 MEDICINE, BUT A CONSTITUTIONAL RIGHT TO SELECT THE
10 EFFECTIVE MEDICINE THAT'S BEEN PRESENTED. AND THAT THE
11 DOCTOR AND THE PATIENT HAVE DISCUSSED THAT THERE ARE NOW
12 ALTERNATIVES TO THIS MEDICINE; THAT THERE'S A WASTING
13 SYNDROME, THERE IS GLAUCOMA. AND THAT THIS IS THE
14 EFFECTIVE DRUG.

15 I HOPE THAT ANSWERS YOUR QUESTION.

16 THE COURT: WELL, I THINK IT DOES. AND THAT'S
17 WHAT I ANTICIPATED EARLIER. THE POSITION YOU ARE TAKING IS
18 THAT MARIJUANA IS -- I GUESS YOU'RE SAYING -- IS THE ONLY
19 DRUG THAT WILL RESPOND TO PARTICULAR TYPES OF AILMENTS.

20 MS. ORAVITZ: WELL, I THINK --

21 THE COURT: AND THE AILMENTS ARE OF A SERIOUS,
22 PAINFUL NATURE.

23 MS. ORAVITZ: I THINK WHAT WE'VE STATED IN OUR
24 BRIEF AND WHAT WE ARE PREPARED TO PROVE IF THE COURT ASKED
25 US TO PROVE THAT IS THIS IS THE DRUG THAT IS EFFECTIVE FOR

1 THE MEMBERS OF THE CANNABIS CLUBS. AND THIS IS THE DRUG
2 THAT WILL CURE THEIR BLINDNESS, IN SOME CASES WILL SAVE
3 THEIR LIVES.

4 AND IN OTHER CASES IS THE ONLY DRUG THAT THEY CAN
5 USE TO STIMULATE THEIR APPETITES TO PREVENT THE WASTING
6 AWAY SYNDROME, WHICH IS ESSENTIALLY STARVATION.

7 I WANT TO GET BACK TO MY -- THE ORIGINAL ARGUMENT
8 IN THAT THE ONLY REALLY NEW ISSUE THAT WE PRESENTED TO THE
9 COURT IN TERMS OF WHETHER THERE IS A FUNDAMENTAL INTEREST
10 IS WHETHER THERE'S A FUNDAMENTAL INTEREST TO BE FREE OF
11 PAIN. AND THERE'S A LONG STRING OF CASES THAT HAVE
12 ESTABLISHED THAT PAIN IS A DETERMINATIVE IN WHETHER --
13 WHETHER THERE IS A SUBSTANTIAL INTEREST.

14 IN GRAHAM V. WRIGHT WHICH WE CITED IN OUR BRIEF,
15 THE SUPREME COURT FOUND THAT SCHOOL CHILDREN HAD A RIGHT TO
16 BE FREE FROM CORPOREAL PUNISHMENT BECAUSE THEY WERE IN WHAT
17 WAS CONSIDERED APPRECIABLE PAIN.

18 THERE WERE A NUMBER OF OTHER CASES CITED IN OUR
19 BRIEF, INCLUDING THE CRUZAN CASE AND THE DOE CASE AND THE
20 ROE CASE WHICH ALL EVALUATE WHETHER PAIN -- WHETHER THE
21 PERSON IN PAIN HAS THE FUNDAMENTAL LIBERTY INTEREST.

22 MOST RECENTLY IN WASHINGTON V. GLUCKSBERG, THE
23 COURT CONSIDERED -- THE COURT CONSIDERED WHETHER DYING
24 DEFENDANTS HAD THE RIGHT TO DOCTOR-ASSISTED SUICIDE.

25 IN THAT CASE, HOWEVER, THE DYING DEFENDANTS ALL

1 PASSED AWAY BEFORE THE COURT HAD THE OPPORTUNITY TO REVIEW
2 THE CASE. AND A FACIAL CHALLENGE WAS BROUGHT
3 CHALLENGING -- CHALLENGING THE FEDERAL -- OR CHALLENGING
4 THE STATE'S RIGHT TO OUTLAW DOCTOR-ASSISTED SUICIDES.

5 WHAT THE ARGUMENT IS HERE, AND I THINK WE CAN
6 INCORPORATE THE ARGUMENTS OF PROFESSOR UELMEN, THAT THIS IS
7 NOT A FACIAL CHALLENGE. THIS IS A CHALLENGE BY INDIVIDUAL
8 DEFENDANTS WHO ARE A DISCRETE CLASS OF PERSONS THAT ARE
9 SUFFERING, ARE DYING, ARE GOING BLIND.

10 ALTHOUGH THE JUSTICES IN GLUCKSBERG DIDN'T HAVE
11 THE OPPORTUNITY TO DIRECTLY ADDRESS WHETHER SOMEONE HAD A
12 RIGHT TO BE FREE OF PAIN, A NUMBER OF THE JUSTICES TOOK IT
13 ON THEIR OWN IN DICTA TO DISCUSS THE ISSUE.

14 JUSTICE O'CONNOR FOUND THAT THE FACT THAT THE
15 DEFENDANTS -- THAT THE PATIENTS IN GLUCKSBERG WERE NO
16 LONGER LIVING WAS A DETERMINATIVE ISSUE.

17 JUSTICE GINSBERG JOINED IN THAT OPINION, AND
18 JUSTICES SOUTER, STEVENS AND BREYER ALSO FILED THEIR OWN
19 OPINIONS WHICH SUGGESTED THE SAME.

20 AND IF I COULD JUST READ TO YOU THE LANGUAGE OF
21 JUSTICE STEVENS' OPINION WHICH I BELIEVE WAS THE STRONGEST
22 WHICH HE SAYS:

23 "AVOIDING INTOLERABLE PAIN AND THE
24 INDIGNITY OF LIVING ONE'S FINAL DAYS INCAPACITATED
25 AND IN AGONY IS CERTAINLY AT THE HEART OF LIBERTY

1 TO DEFINE ONE'S OWN CONCEPTS OF EXISTENCE, OF THE
2 MEANING OF THE UNIVERSE AND OF THE MYSTERY OF
3 LIFE."

4 I WOULD POINT OUT IN RESPONSE TO THE GOVERNMENT'S
5 ARGUMENT THAT THEY CLAIM THAT THE ONLY CHALLENGE WE COULD
6 MAKE WAS A FACIAL CHALLENGE TO THIS STATUTE. THAT'S NOT
7 WHAT IS GOING ON HERE. THIS IS INDIVIDUALS WITH STANDINGS
8 THAT ARE HERE THAT ARE SICK AND NEED MEDICAL MARIJUANA NOW.

9 I ALSO WANTED TO ADDRESS SOME OF THE GOVERNMENT'S
10 CASES THAT THEY CITED IN THEIR BRIEF. AND ALTHOUGH THEY
11 DIDN'T DISCUSS IT HERE THE ARGUMENTS PRESENTED IN THEIR
12 BRIEFS RELIED ON THE CASE OF SEELEY V. STATE, WHICH IS A
13 WASHINGTON STATE SUPREME COURT DECISION.

14 ALTHOUGH THERE WAS A BASIC FACTUAL SIMILARITY IN
15 THAT CASE WHERE THE DEFENDANT OR THE PLAINTIFF WAS AN
16 INDIVIDUAL WHO USED MEDICAL MARIJUANA, THERE WAS A NUMBER
17 OF DISTINCTIONS THAT I THINK WE SHOULD DRAW.

18 ONE: IT WAS AN ISSUE -- IT WAS A CASE WHERE THE
19 STATE OF WASHINGTON WAS IN ACCORD WITH THE GOVERNMENT. IT
20 WAS A VIOLATION OF STATE LAW. HERE WE HAVE A FEDERAL
21 AGENCY AGAINST THE STATE, AS WELL AS THE DEFENDANTS THAT
22 ARE PRESENTED HERE, AND 56 PERCENT OF CALIFORNIANS WHO HAVE
23 ENDORSED THE MEDICAL USE OF MARIJUANA.

24 THE OTHER DISTINCTION WITH THAT CASE IS THAT THAT
25 CASE RAISED AN EQUAL PROTECTION CHALLENGE.

1 IT RAISED THE ISSUE THAT THE DEFENDANT THERE WAS
2 NOT IN A SUSPECT CLASS AND, THUS, THE COURT APPLIED THE
3 RATIONALLY-RELATED STANDARD OF THE DEFENDANTS HERE PRESENT
4 THEIR ARGUMENTS UNDER THE SUBSTANTIVE DUE PROCESS CLAUSE.

5 AND IF THEY HAVE ESTABLISHED THE FUNDAMENTAL
6 RIGHT, THEN THE STRICT SCRUTINY STANDARD APPLIES. AND THEY
7 NEED NOT SHOW A SUSPECT CLASS. AND RELIANCE ON THAT
8 OPINION IN THIS CASE I JUST DON'T THINK IS WORTHY OF THAT.

9 THE OTHER TWO CASES THAT QUITE A BIT OF RELIANCE
10 IS PLACED ON IS THE CASE OF RUTHERFORD AND CARNOHAN. IF I
11 COULD JUST POINT OUT TO THE COURT THAT EACH OF THESE CASES
12 WERE SUMMARY OPINIONS ONE PAGE LONG.

13 AND THAT THE FIRST CASE OF RUTHERFORD CITED THE
14 CASES THAT WE HAVE CITED IN OUR BRIEF AGAINST THE SAME
15 PROPOSITION THAT WE HAVE CITED. IT'S A SUMMARY CITATION,
16 AND NO DISCUSSION. AND THAT THE COURT'S PROBABLY FAMILIAR
17 WHEN THE SUBSTANTIVE DUE PROCESS ANALYSIS IS APPLIED IT
18 INVOLVES LENGTHY OPINIONS AND A VERY INTENSE ANALYSIS OF
19 THE HISTORY AND THE TRADITIONS THAT ARE AT STAKE IN THE
20 ASSERTED LIBERTY INTEREST.

21 THE OTHER ISSUE REMAINING WITH THE RUTHERFORD CASE
22 IS THAT -- THAT'S THE NINTH CIRCUIT CASE -- IS THE COURT
23 DIDN'T EVEN REACH THE ISSUE OF CONSTITUTIONAL RIGHT TO THE
24 LAETRILE WHERE THE COURT HELD THAT THE DEFENDANT HADN'T
25 EXHAUSTED ALL OF HIS REMEDIES.

1 HERE, I THINK MR. PANZER AND ALSO PROFESSOR UELMEN
2 HAVE GONE TO GREAT LENGTHS TO EXPRESS TO THE COURT THAT THE
3 DEFENDANTS HERE HAVE TRIED EVERY AVENUE POSSIBLE TO OBTAIN
4 LEGAL MARIJUANA. AND, IN FACT, THE STATE HAS JOINED IN
5 THEIR EFFORTS.

6 AND IF THE VOTERS OF THE STATE OF CALIFORNIA HAVE
7 JOINED IN THOSE EFFORTS, AND STILL THEY ARE UNABLE TO GET
8 MARIJUANA THROUGH ANY OTHER AVENUE, THEN THE RULING OF
9 RUTHERFORD SIMPLY DOESN'T APPLY HERE WHERE THE DEFENDANTS
10 HAVE EXHAUSTED THEIR REMEDIES.

11 THERE WAS THE REMAINING CASES THAT WERE CITED IN
12 THE GOVERNMENT'S BRIEF. AND I DO JUST WANT TO TOUCH ON
13 THEM BECAUSE I THINK THEY INVOLVE A MISHMASH OF SOME
14 SCENARIOS THAT AREN'T REALLY RELEVANT TO THE INQUIRY HERE.

15 THE VITAL HEALTH PRODUCTS CASE WAS A CASE WHERE
16 THE HOME REMEDY COMPANY WANTED TO MARKET UNPROVEN DRUGS
17 WITHOUT FDA APPROVAL.

18 HOWEVER, THOSE DRUGS WERE -- AND THEN I'LL JUST
19 CITE THEM HERE -- WERE THE PEROXIGEL, THE WHITE BIRCH
20 MINERAL WATER, LYMPH SYSTEM LIQUORICE ROOT TEA.

21 NONE OF THESE HAD ANY PROVEN BENEFITS, LET ALONE
22 THE ALLEVIATION OF PAIN TO TERMINALLY-ILL OR A CURE FOR
23 BLINDNESS.

24 IN KULSAR V. AMBACH, A SECOND CASE CITED BY THE
25 GOVERNMENT, THE PATIENTS IN THAT CASE WISH TO AVAIL

1 THEMSELVES OF AN UNPROVEN TREATMENT CALLED NUTRITIONAL
2 HORMONAL TREATMENT.

3 HOWEVER, THE COURT FOUND THAT THERE WAS ONLY ONE
4 PHYSICIAN IN THE ENTIRE COUNTRY WHO UTILIZED THAT
5 TREATMENT, AND THAT IT WAS PROPERLY CLASSIFIED AS AN
6 EXPERIMENTAL TREATMENT BY THE FDA.

7 I THINK THAT THAT IS EASILY DISTINGUISHED FROM THE
8 CIRCUMSTANCES HEREIN WHERE THE STATE OF CALIFORNIA,
9 NUMEROUS MEDICAL STUDIES, 30 YEARS OF HISTORY OR LONGER
10 HAVE DEMONSTRATED THAT THERE IS -- AND THAT WE ARE WILLING
11 TO PRESENT TO THIS COURT IF FURTHER NEEDED -- THAT THERE IS
12 A MEDICAL BENEFIT IN MARIJUANA.

13 THE LAST TWO CASES CITED BY THE GOVERNMENT IN
14 THEIR BRIEF ARE MITCHELL AND SAMMON. AND EACH OF THOSE
15 CASES I JUST WANTED TO DISTINGUISH BECAUSE THEY INVOLVE
16 EQUAL PROTECTION CHALLENGES BY THE PRACTITIONERS ON -- ONE
17 SET INVOLVE THE PRACTITIONERS IN MIDWIFERY AND THE OTHER
18 ONE WAS ACPUNCTURE.

19 AND THE CHALLENGE THERE WAS THAT THE DOCTORS OR
20 THE PRACTITIONERS OF THESE ALTERNATIVE MEDICINES CHALLENGED
21 UNDER THE EQUAL PROTECTION CLAUSE THAT THEY DID NOT -- THEY
22 WERE RESTRAINED FROM PRACTICING BECAUSE THE STATE REQUIRED
23 THEM TO OBTAIN MEDICAL LICENSES.

24 I DON'T THINK THAT'S RELEVANT TO THE ISSUES HERE.
25 AND ALSO IN THE GOVERNMENT'S BRIEF, THERE WAS AN ASSERTION

1 THAT IT IS INAPPROPRIATE FOR THIS COURT TO CONSIDER THE
2 MEDICAL EFFECTIVENESS OF MARIJUANA WHERE THERE IS A
3 CONGRESSIONAL -- THERE ARE CONGRESSIONAL DECISIONS ON THAT.

4 AND I THINK THAT THAT'S REALLY MISSING THE POINT
5 OF WHAT SUBSTANTIVE DUE PROCESS IT. ON SUBSTANTIVE DUE
6 PROCESS INVOLVES A CHECK ON THE GOVERNMENT'S ABILITY TO
7 RESTRAIN -- TO RESTRAIN INDIVIDUALS' LIBERTIES. AND IT'S
8 NOT FOR THE GOVERNMENT TO DICTATE TO THIS COURT WHAT
9 COMPRISES A FUNDAMENTAL LIBERTY.

10 AND IF THIS COURT DECIDES THAT THE MEDICAL USE OF
11 MARIJUANA COMPRISES THAT, THEN THAT'S WHAT THIS COURT
12 SHOULD DECIDE AND NOT BE BOUND BY THE LEGISLATIVE
13 DECISIONS.

14 AND PUT VERY BASICALLY CONGRESS SIMPLY CAN'T
15 LEGISLATE SUBSTANTIVE -- SUBSTANTIVE DUE PROCESS RIGHTS.

16 THE SECOND ISSUE THAT IS PRESENTED BY THE
17 REHNQUIST ANALYSIS OF SUBSTANTIVE DUE PROCESS IS WHETHER
18 THE DEFENDANTS HERE ARE IN A NARROWLY-DEFINED CLASS -- NOT
19 A NARROWLY DEFINED CLASS, BUT FIRST OF ALL WHETHER IT'S A
20 NARROWLY-DEFINED RIGHT.

21 AND I THINK THAT THE REFERENCE TO JUDGE SMITH AND
22 ALSO SOME OF THE REFERENCES MADE HERE EARLIER IS THAT WE
23 ARE TALKING ABOUT A DISCRETE CLASS OF PERSONS WHO HAVE A
24 SERIOUS MEDICAL CONDITION, WHO HAVE DOCTOR-APPROVAL TO
25 UTILIZE THIS DRUG FOR THEIR CONDITION, AND HAVE NO OTHER

1 AVENUE OR MEANS OF OBTAINING THIS TREATMENT.

2 AND I THINK IT'S A VERY BASIC MEANING OF WHAT
3 SUBSTANTIVE DUE PROCESS IS. AND WHEN THE GOVERNMENT FIRST
4 STOOD UP HERE, THEY SAID:

5 "THIS IS AN ISSUE ABOUT THE UPHOLDING OF
6 FEDERAL LAW."

7 BUT FEDERAL LAW IS MORE THAN JUST A SET OF
8 STATUTES. THE MOST BASIC PART OF FEDERAL LAW AND THE MOST
9 RESPECTED TRADITION WE HAVE IS THE PROTECTION OF INDIVIDUAL
10 LIBERTIES. AND WHAT WE HAVE HERE ARE A GROUP OF
11 INDIVIDUALS WHO ARE ASKING THIS COURT SIMPLY TO BE FREE
12 FROM EXCRUCIATING PAIN, TO BE FREE FROM BLINDNESS, AND TO
13 SAVE THEIR LIVES IN SOME OF THE INSTANCES.

14 GOVERNMENT DOESN'T FOCUS ON WHETHER THIS DRUG
15 SAVES PEOPLE'S LIVES. IT DOESN'T ACKNOWLEDGE THAT THERE'S
16 MEDICAL BENEFITS. BECAUSE WHEN THAT HAS TO BE BALANCED, IF
17 THIS COURT CHOOSES TO APPLY A SUBSTANTIVE DUE PROCESS
18 ANALYSIS, IT'S VERY HARD TO JUSTIFY LOSING ONE'S LIFE TO
19 WHATEVER THE GOVERNMENT INTERESTS COULD BE HERE.

20 THE RIGHT TO BE FREE FROM ARBITRARY PAIN, PHYSICAL
21 PAIN, ALONG WITH THE RIGHT TO PRESERVE ONE'S LIFE SIMPLY
22 CAN'T BE OUTWEIGHED BY A PROFESSED INTEREST TO CONTROL A
23 DRUG TRADE.

24 THANK YOU.

25 THE COURT: THANK YOU.

1 MR. PANZER: YOUR HONOR, MAY I HAVE ONE MOMENT TO
2 CONSULT WITH COUNSEL?

3 THE COURT: SURE. WHY DON'T WE TAKE JUST A FIVE
4 MINUTE RECESS TO GIVE OUR COURT REPORTER A BREAK HERE?
5 WE'LL CONTINUE AT -- LET'S CONTINUE -- LET'S TAKE 15
6 MINUTES.

7 MS. WELLS: YES, YOUR HONOR. I HAVE A CAR PARKED
8 IN A LOT THAT SAYS HE'S GOING TO CLOSE IT AT 5:30. AND I
9 NEED TIME TO AT LEAST GET DOWN TO MOVE MY CAR. SO 15
10 MINUTES WILL PROBABLY BE ENOUGH.

11 THE COURT: 5:15.

12 (WHEREUPON, A SHORT RECESS WAS TAKEN.)

13 THE COURT: ALL RIGHT.

14 OKAY. WHO WOULD LIKE TO SPEAK NEXT?

15 MR. PANZER: YOUR HONOR, JUST ONE VERY BRIEF POINT
16 I JUST WANT TO BRING TO THE COURT'S ATTENTION ON
17 SUBSTANTIVE DUE PROCESS.

18 THE COURT DID NOTE THAT THERE'S NO CONSTITUTIONAL
19 RIGHT FOR PARTICULAR TREATMENT. AND WHILE THAT IS TRUE, AS
20 THE GOVERNMENT IN THEIR BRIEF ADMITS WHEN THE GOVERNMENT
21 TRIES TO RESTRICT ANY PARTICULAR TREATMENT THEY HAVE TO
22 SHOW A REASONABLE OR RATIONAL BASIS FOR THAT.

23 AND WE SUBMIT THAT WE CAN PUT ON EVIDENCE TO SHOW
24 THAT THE GOVERNMENT HAS NO REASONABLE OR RATIONAL BASIS TO
25 LIMIT THE PARTICULAR TREATMENT OF MEDICAL MARIJUANA.

1 I JUST WANTED TO MAKE THAT POINT. AND THEN, I
2 BELIEVE NOW THAT MS. WELLS IS GOING TO SPEAK NOW ABOUT
3 COMMERCE LAWS.

4 MS. WELLS: I GUESS IT WOULD BE GOOD EVENING NOW,
5 YOUR HONOR.

6 THE COURT: ALMOST.

7 MS. WELLS: JUSTICE KENNEDY STATED IN HIS
8 CONCURRING OPINION IN LOPEZ:

9 "AS IN ALL CASES DEALING WITH CONGRESS'S
10 AUTHORITY UNDER THE COMMERCE CLAUSE, WE START WITH
11 THE ASSUMPTION THAT THE HISTORIC POLICE POWERS OF
12 THE STATE ARE NOT DISPLACED BY A FEDERAL STATUTE
13 UNLESS THAT WAS THE CLEAR AND MANIFEST PURPOSE OF
14 CONGRESS."

15 THE DEFENDANTS BEFORE YOU SUBMIT THAT IT WAS NOT
16 THE MANIFEST INTENT OF CONGRESS TO REACH THE CLASS OF
17 ACTIVITIES THAT HAVE BEEN CARRIED OUT BY THE DEFENDANTS.

18 AND THAT WOULD BE SHARING MEDICAL CANNABIS FOR THE
19 RELIEF OF SERIOUSLY-ILL AND TERMINALLY-ILL PATIENTS WHO
20 HAVE OBTAINED A RECOMMENDATION AND/OR APPROVAL OF A
21 PHYSICIAN ALL COMPLETELY LEGAL UNDER CALIFORNIA LAW.

22 AND, IN FACT, IN THE FINDINGS OF CONGRESS UNDER
23 THE CONTROLLED SUBSTANCE ACT AT 21 U.S.C. SECTION 801 SUB.
24 ONE, CONVENIENTLY OMITTED FROM THE GOVERNMENT'S BRIEF, THE
25 CONGRESS STATES:

1 "MANY OF THE DRUGS INCLUDED WITHIN THIS
2 SUBCHAPTER HAVE A USEFUL AND LEGITIMATE MEDICAL
3 PURPOSE AND ARE NECESSARY TO MAINTAIN THE HEALTH
4 AND GENERAL WELFARE OF THE AMERICAN PEOPLE."

5 NOW, IN SUBSECTION TWO, CONGRESS DESCRIBES THE
6 ACTIVITIES WHICH THEY INTEND TO PROSCRIBE. AND THEY STATE
7 THEREIN:

8 "THE ILLEGAL IMPORTATION, MANUFACTURE,
9 DISTRIBUTION AND POSSESSION AND THE IMPROPER
10 USE OF CONTROLLED SUBSTANCES HAVE A SUBSTANTIAL
11 AND DETRIMENTAL EFFECT ON THE HEALTH AND GENERAL
12 WELFARE OF THE AMERICAN PEOPLE."

13 NOW, I WOULD LIKE TO USE AN ILLUSTRATION FOR THE
14 COURT TO SHOW THE DIFFERENCE BETWEEN WHAT WE THINK IS THE
15 CLASS OF ACTIVITIES THAT THESE DEFENDANTS ARE TAKING PART
16 IN AND THE CLASS OF ACTIVITIES THAT CONGRESS INTENDED TO
17 PROSCRIBE.

18 LET'S TAKE CHILD PORNOGRAPHY. CONGRESS INTENDED
19 TO MAKE ILLEGAL THE TAKING OF LASCIVIOUS PICTURES OF
20 CHILDREN WHO ARE NAKED. NOW, THE SEARS PHOTOGRAPHER WHO
21 TAKES THE PICTURE OF THE NAKED BABY ON THE BEARSKIN RUG,
22 ALTHOUGH HE IS TAKING PICTURES OF A NUDE CHILD, THIS IS NOT
23 THE SORT OF ACTIVITY THAT WAS PROSCRIBED UNDER THE CHILD
24 PORNOGRAPHY ACT.

25 SO WE HAVE ONE TAKING PICTURES OF A NUDE CHILD,

1 ANOTHER TAKING PICTURES OF A NUDE CHILD, BUT THEY ARE
2 ENTIRELY DIFFERENT SITUATIONS.

3 SAME SITUATION WITH WHAT YOU CALL A CHOP SHOP
4 WHERE THEY STEAL CARS AND BREAK THEM DOWN. THAT DOESN'T
5 MEAN THAT YOU CAN'T HAVE A PERFECTLY VALID DISMANTLING
6 OPERATION THAT IS LEGAL AND VALID UNDER THE LAW.

7 SO I SAY THAT UNDER 801, SUB. ONE, IS THE CLASS OF
8 ACTIVITIES THAT THESE DEFENDANTS ARE PARTICIPATING IN. AND
9 THE 801 SUBSECTION TWO IS THE REALLY IMPROPER, ILLEGAL,
10 IMPORTATION AND TRAFFICKING IN ILLICIT DRUGS.

11 NOW, I ALSO WANT TO ADDRESS THE QUESTIONS THAT YOU
12 MADE -- THAT YOU GAVE US ABOUT THE COMMERCE CLAUSE. I
13 BELIEVE ONE OF THEM WAS:

14 "UNDER ANY DEFINITION, ISN'T THIS

15 COMMERCE?"

16 WELL, THAT'S CERTAINLY AN ARGUABLE SITUATION AS A
17 COOP WHETHER OR NOT IT IS COMMERCE. HOWEVER, SO IS THAT
18 MAN WHO'S TAKING PICTURES OF THE BABY ON THE BEARSKIN RUG.
19 THAT'S COMMERCE. BUT IT'S NOT PROSCRIBED. IT WAS NOT THE
20 INTENT OF THE CONGRESS TO PROSCRIBE THAT CLASS OF ACTIVITY.

21 AND THEN, YOU ALSO WANTED TO KNOW SINCE IN THIS
22 CASE THERE ARE FINDINGS WHETHER OR NOT THAT WOULD MAKE IT A
23 DIFFERENT SITUATION.

24 WELL, I JUST GAVE YOU THE FINDINGS, AT LEAST TWO
25 OF THE FINDINGS. AND ONE OF THEM SAID THAT THESE DRUGS

1 ARE -- SERVE A USEFUL AND LEGITIMATE MEDICAL PURPOSE. THAT
2 IS ONE OF THEIR FINDINGS. THAT'S THESE DRUGS IN THIS
3 SUBSECTION. THIS IS A CASE OF FIRST IMPRESSION AS FAR AS
4 THE CONGRESS APPLIES IT.

5 THE COURT: WE'LL LET'S GO TO THAT. CODEINE,
6 WHICH IS A DERIVATION -- AND I MAY BE WRONG. I THINK IT'S
7 A COCAINE DERIVATION. BUT MAYBE IT'S NOT.

8 BUT TAKE A DRUG THAT SEEMS TO BE THAT IS A
9 DERIVATION OF A CONTROLLED SUBSTANCE, OF AN ILLEGAL
10 SUBSTANCE, OKAY? THAT COULD BE CONTROLLED BY CONGRESS EVEN
11 THOUGH IT MAY HAVE A VERY BENEFICIAL EFFECT. I MEAN, YOU
12 COULD STILL HAVE IT CONTROLLED, CAN'T YOU?

13 MS. WELLS: WELL, AS FAR AS --

14 THE COURT: YOU SEE WHAT I'M SAYING? I'M TRYING
15 TO LOOK AT YOUR ARGUMENT IN SUBDIVISION ONE WHICH SAYS
16 THERE ARE VERY WORTHY --

17 "MANY OF THE DRUGS INCLUDED IN THIS
18 SUBCHAPTER HAVE A USEFUL AND LEGITIMATE MEDICAL
19 PURPOSE AND ARE NECESSARY TO MAINTAIN THE HEALTH
20 AND GENERAL WELFARE OF THE AMERICAN PEOPLE."

21 WELL, RIGHT. BUT THEY ARE STILL BEING CONTROLLED,
22 IS MY POINT, UNLESS I'M WRONG ON THAT.

23 MS. WELLS: RIGHT. WHAT I'M TRYING TO DO IS,
24 AGAIN, GIVE ANOTHER POSSIBILITY THAT THERE CAN BE PEACEFUL
25 COEXISTENCE WITH THE CONTROLLED SUBSTANCE ACT AND THE

1 ACTIVITIES OF THE DEFENDANTS, IN KEEPING WITH THIS FINDING
2 IN 801, SUBSECTION ONE THAT THAT -- THAT THE FINDINGS DON'T
3 BLANKETLY PROSCRIBE. IN FACT, THE ILLEGAL IMPORTATION AND
4 IMPROPER USES ARE THE TERMS THAT ARE USED BY CONGRESS IN
5 THAT SUBSECTION TWO.

6 AND THIS IS ACTUALLY THE FIRST CASE, I BELIEVE --
7 WE HAVEN'T FOUND ANOTHER ONE, AT LEAST POST-LOPEZ ALONG
8 WITH ITS PROGENY IN THE NINTH CIRCUIT -- WHERE THE
9 ACTIVITIES THAT HAVE BEEN -- THAT THE DEFENDANTS ARE TAKING
10 PART IN IS ACTUALLY LEGAL UNDER CALIFORNIA LAW.

11 U.S. VERSUS KIM, ILLEGAL DRUG DISTRIBUTION.
12 VISMAN WAS A LOCAL CRIMINAL CULTIVATION OF MARIJUANA.
13 THESE WERE ALL CASES IN WHICH THERE WERE -- THIS WAS
14 ILLEGAL UNDER STATE LAW.

15 NOW, JUST BECAUSE CONGRESS SAYS THAT AN ACTIVITY
16 HAS A SUBSTANTIAL EFFECT ON INTERSTATE COMMERCE DOES NOT
17 MAKE IT SO.

18 THE COURT: RIGHT.

19 MS. WELLS: OKAY? AND IN LOPEZ THEY STATED THAT:

20 "WHETHER PARTICULAR ACTIVITIES AFFECT
21 INTERSTATE COMMERCE SUFFICIENTLY TO COME UNDER THE
22 CONSTITUTIONAL POWER TO REGULATE THEM IS
23 ULTIMATELY A JUDICIAL, RATHER THAN A LEGISLATIVE,
24 QUESTION AND CAN BE SETTLED FINALLY ONLY BY THIS
25 COURT."

1 IN OUR BRIEF WE HAVE PRETTY MUCH COVERED
2 EXHAUSTEDLY, I THINK, PAGES 16 TO 20. WE HAVE COVERED ALL
3 OF THE AREAS WHERE THE FINDINGS OF CONGRESS AND HOW WE
4 DON'T AFFECT, SUBSTANTIALLY AFFECT THE INTERSTATE COMMERCE.

5 I WANTED TO REITERATE SOMETHING THAT MR. PANZER
6 STATED.

7 THE COURT: LET ME ASK A QUESTION IN THAT REGARD.

8 MS. WELLS: YES.

9 THE COURT: IF PEOPLE HAVE TERMINAL ILLNESSES,
10 VERY SERIOUS ILLNESSES AND THEY LIVE IN NEVADA, AND PROP
11 215 PROVIDES, AS IT DOES, FOR USE OF DRUGS HERE OR USE OF
12 MARIJUANA HERE, IS THERE A LIKELIHOOD OR A POSSIBILITY THAT
13 PEOPLE FROM NEVADA WILL COME OVER TO CALIFORNIA TO GET
14 DRUGS?

15 MS. WELLS: NO. I THINK THAT PROBABLY THE
16 LIKELIHOOD IS THAT THEY WILL START A MOVEMENT IN NEVADA
17 WHICH WILL PARALLEL WHAT'S HAPPENED IN CALIFORNIA, WHICH
18 IS, I THINK, ONE OF THE THINGS THAT THE FEDERAL GOVERNMENT
19 IS CONCERNED ABOUT.

20 BUT WE'RE SAYING THAT THAT WOULD BE THEIR CHOICE
21 TO ENACT --

22 THE COURT: BUT IF THEY DO CROSS STATE LINES FOR
23 MEDICAL TREATMENT --

24 MS. WELLS: WELL --

25 THE COURT: -- ISN'T THAT AN IMPACT ON INTERSTATE

1 COMMERCE?

2 MS. WELLS: WELL, RIGHT. PROP 215 DEFINITELY
3 REQUIRES THAT THE PATIENT BE A CALIFORNIA RESIDENT.

4 THE COURT: OH, IT DOES?

5 MS. WELLS: SO THAT IS PART OF THE PROPOSITION.
6 ALSO, THE RESULT, THE ANOMALOUS RESULT OF THE GOVERNMENT --
7 AND THIS HAS BEEN POINTED OUT TO THE COURT TWO OR THREE
8 TIMES, SO I WON'T BELABOR THE POINT. BUT THE ANOMALOUS
9 RESULT OF CLOSING DOWN THE CLUBS WOULD, OF COURSE, BE TO
10 EXPAND THE ILLICIT DRUG POPULATION.

11 SO IF WE WANTED TO TALK ABOUT ANOMALOUS RESULTS
12 THAT'S KIND OF RIDICULOUS AS THE GOVERNMENT POSITION.

13 THE COURT: YOU'RE SAYING THE IMPACT ON COMMERCE
14 ACTUALLY WORKS IN REVERSE.

15 MS. WELLS: ABSOLUTELY. ABSOLUTELY. THAT IT WILL
16 AFFECT --

17 THE COURT: IF WHAT YOU WANT TO DO IS CONTROL
18 ILLICIT TRAFFIC THE LAST THING YOU DO IS MAKE THE DEMAND
19 FOR ILLICIT DRUGS HIGHER.

20 MS. WELLS: PRECISELY. PRECISELY. AND I WOULD
21 LIKE TO CLOSE, FINALLY, WITH A QUOTE FROM CONANT VERSUS
22 MCCAFFREY.

23 AND SEVERAL PEOPLE HAVE TOUCHED ON THIS, BUT I
24 WOULD ACTUALLY LIKE TO READ THE QUOTE BECAUSE I THINK IT IS
25 VERY, VERY -- IT BEARS ON THIS COMMERCE CLAUSE QUESTION.

1 "THE GOVERNMENT'S FEARS IN THIS CASE ARE
2 EXAGGERATED AND WITHOUT EVIDENTIARY SUPPORT. IT
3 IS UNREASONABLE TO BELIEVE THAT THE USE OF MEDICAL
4 MARIJUANA BY THIS DISCRETE POPULATION FOR THIS
5 LIMITED PURPOSE WILL CREATE A SIGNIFICANT DRUG
6 PROBLEM."

7 HAVE I ADDRESSED THE ISSUES THAT YOU --

8 THE COURT: YES, YOU HAVE.

9 MS. WELLS: THANK YOU, YOUR HONOR.

10 MR. SERRA: GOOD AFTERNOON, SLASH, EVENING, YOUR
11 HONOR.

12 THE COURT: GOOD AFTERNOON, MR. SERRA.

13 MR. SERRA: THIS IS TONY SERRA WHO SPEAKS
14 GENERALLY FOR THE CANNABIS CULTIVATION CLUB OF SAN
15 FRANCISCO AND SPECIFICALLY FOR DENNIS PERON.

16 THEY SAY THAT PATIENCE IS AN ATTRIBUTE OF THE
17 COURT AND THAT PATIENCE IS A VIRTUE. AND WE COLLECTIVELY
18 SIGNAL TO THE COURT BECAUSE OF THE HOUR THAT WE PRONOUNCE
19 YOU DULY VIRTUOUS TODAY.

20 THE COURT: WELL, I THINK THE ISSUES HERE ARE
21 SERIOUS, AND I THINK THAT IT MERITS CAREFUL CONSIDERATION.
22 IT MERITS -- SOME THINGS, YOU KNOW, I HAVE FOUND, I HAVE
23 FOUND THAT THINGS THAT APPEAR SO CLEAR TO ME AS A LAWYER
24 AND AN ADVOCATE ARE SOMETIMES LESS CLEAR AS A JUDGE.

25 YOU HAVE TO TAKE YOUR TIME. YOU HAVE TO THINK

1 ABOUT WHAT PEOPLE ARE SAYING. SO PLEASE TAKE YOUR TIME AND
2 DON'T BE CONCERNED.

3 MR. SERRA: IT WAS ILL-SAID, BUT IT WAS SINCERE,
4 AND WE RESPECT THE FACT THAT YOU HAVE -- YOU ARE GIVING US
5 TIME TO COVER EVERY ISSUE.

6 THE COURT: TAKE YOUR TIME.

7 MR. SERRA: MY ISSUE IS NARROWLY-CIRCUMSCRIBED SO
8 HOPEFULLY I WILL BE DIRECT AND BRIEF.

9 I WANTED TO START WITH THIS AS A PROPOSITION. WE,
10 IN THIS CASE AT THIS MOMENT, AND HEREINAFTER WHEREVER THERE
11 BE A HEARING OR A MATTER CALLED, ARE NOT IN A COURT OF LAW.
12 REPEAT: WE'RE NOT HERE IN A COURT OF LAW.

13 AS YOU KNOW, YOU SIT TODAY IN THIS CASE AND
14 HEREINAFTER AS A COURT OF CONSCIENCE. YOU ARE THE EQUITY
15 SIDE OF THE SYSTEM OF JUSTICE. AND THAT IS A UNIQUE
16 CALLING BECAUSE IT'S ONE OF THE FEW OPPORTUNITIES YOU HAVE
17 TO BALANCE, TO EVALUATE THE MORAL COMPONENTS, THE ETHICAL
18 ISSUES, THE ETHICAL DIMENSIONS OF LITIGATION.

19 THE GOVERNMENT HERE IS NOT PROSECUTING. THEY HAVE
20 NOT CHARGED ANY CRIMES. THEY SPEAK, AND FOR AWHILE WE
21 FORGET THAT THERE IS NO CRIMINAL INDICTMENT.

22 THEY SPEAK OF POSSESSION WITH INTENT TO
23 DISTRIBUTE, DISTRIBUTION, CULTIVATION, CLEARLY ALL
24 CRIMINAL.

25 BUT HERE, YOUR HONOR, THEY ARE ASKING FOR A FORM

1 OF EXTRAORDINARY RELIEF, UNUSUAL, UNCONVENTIONAL. THEY ARE
2 ASKING FOR INJUNCTION. THAT MEANS TO STOP, TO ENJOIN
3 ACTIVITY WHICH THEY HAVE CHOSEN NOT TO PROSECUTE.

4 AND BEYOND THAT, THEY ARE ASKING FOR SPEEDY
5 REMEDY, TO-WIT: THEY WANT PRELIMINARY INJUNCTION. THEY
6 DON'T WANT A TRIAL, BUT TO ASK FOR PRELIMINARY INJUNCTION
7 TO PROCEED TO EXTRAORDINARY RELIEF, THEY ASK.

8 THEY WANT TO DO, IN ESSENCE, SUCCINCT AND DIRECT,
9 AND WITHOUT, AS HAS BEEN ARGUED, FULL EVIDENTIARY
10 POTENTIAL, CASE THAT WOULD GO TO A JURY.

11 AND WHEN THEY ASK FOR THAT, THEY HAVE TO BE IN A
12 VERY PECULIAR DIMENSION THEMSELVES. THEY HAVE TO BE
13 WITHOUT BLEMISH. THEY HAVE TO BE IMPECCABLE.

14 THE GOVERNMENT, TO ASK FOR EQUITY, MUST GIVE
15 EQUITY. THEY MUST COME TO YOU FIRSTLY WITH OPEN HANDS AND
16 THEN, MOST SIGNIFICANTLY, WITH CLEAN HANDS.

17 AND WHAT I AM GOING TO ADDRESS IN VERY SYNOPTIC
18 FORM IS THE CLEAN HANDS DOCTRINE. AND FROM EVERY FASHION,
19 I THINK, FROM EVERY ARGUMENT PRESENTED YOU KNOW WHAT WE
20 PROFFER. WE PROFFER THAT IN ALL OF THE GERMANE, ALL OF THE
21 ELEMENTAL AREAS OF ALLEGATION THEY COME TO YOU WITH UNCLEAR
22 HANDS. THEY HAVE DIRTY HANDS. THEY ARE BLEMISHED. THEY
23 ARE TAINTED.

24 THEY DO NOT, AS OUR GOVERNMENT SHOULD, STAND IN AN
25 IMPECCABLE STATUS. LET ME JUST FIRST, YOU KNOW, LIST SOME

1 OF THEM. AND THEY ARE OUTLINED ALL IN OUR PAPERS. AND
2 MOST REMARKABLY THEY WERE NEVER ADDRESSED BY THE GOVERNMENT
3 IN THEIR RESPONSE TO OUR CONSOLIDATED MOTION.

4 FIRST PRINCIPLE -- AND THESE ARE WHAT I'M GOING TO
5 CALL MANIFESTATIONS OF UNCLEAN HANDS. FIRST PRINCIPLE YOU
6 HAVE TO ASK IS JUST VERY GERMANE TO A COURT OF EQUITY: IS
7 THERE ADEQUATE LEGAL REMEDY?

8 WELL, THEY SAY, AS I'VE ARGUED, THERE'S CRIMES.
9 WELL, LET THEM THEN INDICT. IF THERE BE CRIME, THE MOST
10 DIRECT AND APPROPRIATE REMEDY IS TO BRING A CRIMINAL
11 CHARGE. WHY DON'T THEY DO THAT?

12 WHY HAVE THEY CLOSED THE FRONT DOOR SO THEY CAN
13 ENTER THE BACKDOOR?

14 THE COURT: WELL, WOULD YOU LIKE YOU TO ADDRESS
15 THAT? MAYBE I READ THE SITUATION DIFFERENTLY FROM THE WAY
16 YOU READ IT.

17 I THOUGHT -- BECAUSE THAT OCCURRED TO ME,
18 ACTUALLY, FROM BACK IN LAW SCHOOL IT OCCURRED TO ME.

19 MR. SERRA: CERTAINLY IT'S OCCURRED TO
20 DENNIS PERON.

21 THE COURT: AND I'M SURE IT OCCURRED TO
22 MR. YAMAGUCHI. BUT MY SENSE WAS THAT THE GOVERNMENT CHOSE
23 THIS AVENUE OF REDRESS BECAUSE THEY THOUGHT IT WAS -- AND
24 THEY MAY BE WRONG IN THIS REGARD -- THEY THOUGHT IT WAS
25 MOST HUMANE, AND THEY THOUGHT IT WAS THE LEAST OBTRUSIVE.

1 THEY THOUGHT THAT IT WAS BETTER.

2 AND I'M -- THERE HASN'T BEEN ANY RESPONSE BY THE
3 GOVERNMENT. BUT, I MEAN, LIKE YOU DO, I THINK ABOUT IT.

4 AND I THOUGHT THAT THEY HAD TAKEN THIS APPROACH
5 BECAUSE THEY THOUGHT THAT RATHER THAN ARRESTING PEOPLE AND
6 SUBJECTING THEM TO CRIMINAL PROSECUTION, AND THEN THE
7 PEOPLE WOULD BE OBLIGATED TO DEFEND THEMSELVES UNDER THE
8 THREAT -- UNDER ACTUALLY THE REALITY OF A CRIMINAL
9 PROSECUTION AND ALL THAT THAT MEANS.

10 AND WE KNOW THAT IT MEANS A GREAT DEAL AND IS A
11 TERRIBLE BURDEN ON PEOPLE. THAT IT WOULD BE BETTER TO TEST
12 THE LEGAL ISSUES THAT WERE INVOLVED IN THE CONTEXT OF A
13 CIVIL INJUNCTIVE PROCEEDING RATHER THAN THE CRIMINAL
14 PROCEEDING.

15 SO, YOU KNOW, WHILE IT WOULD BE EASIER FOR THE
16 COURT, PERHAPS, AND MAYBE EASIER FOR COUNSEL ALL THE WAY
17 AROUND TO SAY:

18 "OH, LOOK. IF YOU WANT TO GO PROSECUTE
19 SOMEBODY, GO PROSECUTE SOMEBODY. MAYBE YOU WILL.
20 MAYBE YOU WON'T. I'LL DEAL WITH THAT WHEN THE
21 CASE ACTUALLY WALKS IN THE DOOR."

22 AND THAT MAY BE AN ANSWER. BUT ACTUALLY, HERE I
23 DID THINK THAT THE GOVERNMENT PURPOSELY CHOSE THIS
24 PROCEDURE FOR THIS REASON.

25 NOW, YOU MAY DISAGREE WITH THAT. I'D LIKE TO HEAR

1 YOU ON THAT.

2 MR. SERRA: YES, LET ME BE HEARD.

3 THE COURT: BUT THAT'S AT LEAST AS IT HIT ME WHEN
4 I SAW IT.

5 MR. SERRA: I TRULY BELIEVE THERE IS GREAT
6 GOODNESS IN YOU, AND IN THIS INSTANCE YOUR GOODNESS HAS
7 BLINDED YOU.

8 YOU THINK IT'S BETTER TO BOYCOTT CUBA AND LET THEM
9 STARVE TO DEATH? CUBANS WOULD RATHER BE BOMBED.

10 YOU THINK THAT IT IS AN ACT OF COMPASSION ON THE
11 GOVERNMENT TO ALLOW PEOPLE WHO ARE DYING, WHO ARE IN, SOME
12 OF THEM -- AND YOU KNOW IF THERE EVER WAS AN EVIDENTIARY
13 ISSUE YOU WOULD SEE THEM, BECAUSE MANY OF THEM WEREN'T
14 ALLOWED IN THE COURT TODAY. BUT THESE PEOPLE ARE DYING.
15 THESE PEOPLE ARE CLOSE TO DEATH.

16 YOU THINK THAT IT'S MORE COMPASSIONATE TO TAKE
17 AWAY THE ONLY MEDICINE, THE REFUGE THAT THEY HAVE IN
18 MEDICINE AND LET THEM PARISH? IS THAT BETTER, THE SLOW,
19 YOU KNOW, DEATH BY AIDS, BY LACK OF NUTRITION, BY WASTING
20 SYNDROME, BY SLEEPLESSNESS, BY DEPRESSION, BY ALL OF THE
21 THINGS THAT WE HAVE PROFFERED THROUGH OUR PAPERS THAT
22 MARIJUANA PECULIARLY MEDICATES? IS THAT MORE
23 COMPASSIONATE? NO.

24 LET ME TELL YOU WHAT THE REAL REASON IS. THEY
25 KNOW DARN WELL THEY COULD NEVER CONVINCED A JURY, ESPECIALLY

1 IN SAN FRANCISCO AREA IN THIS DISTRICT THAT THESE, YOU
2 KNOW, ACCUSED HAVE COMMITTED FELONY. NEVER.

3 THEY WELL KNOW THAT. AND THAT IS A FORM OF
4 MANIPULATION. THAT IS A FORM OF GUILTY. THAT IS A FORM OF
5 GOVERNMENT DECEPTION. AND THAT IS THE FIRST BLEMISH ON
6 THEIR ALLEGED OUTSTRETCHED HANDS.

7 THEY DEPRIVE US OF A JURY TRIAL. THEY DEPRIVE US
8 OF THE COMMUNITY ETHIC WHICH WOULD BE MANIFEST IN THE JURY
9 WHICH IS THE COLLECTIVE CONSCIENCE OF THE JURY.

10 THEY DEPRIVE US OF OUR ARGUMENT. THEY DEPRIVE US
11 OF THE COMPASSION OF THE COMMUNITY THAT SUPPORTED 215.
12 THEY DO IT WELL-UNDERSTANDING THAT THEY COULD NOT
13 SUCCESSFULLY PROSECUTE. AND THAT IS OUR ASSERTION. AND
14 YOU LOOK AT IT FOR A MINUTE THAT WAY, AND YOU CAN SEE THAT
15 THAT CERTAINLY IS A VIABLE INTERPRETATION OF THEIR TACTIC.

16 SO THAT'S ONE. SO THAT'S A DIRTY FINGER.

17 NEXT, THEY ARE ASKING FOR RELIEF THAT, IN ESSENCE,
18 IS WITH GREAT SPEED, WITH GREAT DISPATCH, WITH, YOU KNOW,
19 NOT THE NORM. THERE'S ALL KINDS OF MOTIONS AND, YOU KNOW,
20 ULTIMATELY A TRIAL ON THE MERITS.

21 THEY WANT A PRELIMINARY INJUNCTION. WELL, LACHES
22 IS A FORM OF, I WILL ARGUE, UNCLEANLINESS IN THE MORAL,
23 WHOLESOME CRITERIA SENSE.

24 THESE CLUBS HAVE BEEN OPERATING, SOME OF THEM, FOR
25 MORE THAN TWO YEARS. WHY HAVE THEY SAT ON THEIR HANDS ALL

1 OF THIS TIME? WHY HASN'T THE LITIGATION BEEN BEGAT
2 LOCALLY?

3 WHY DO WE HAVE OUR WASHINGTON, YOU KNOW,
4 COLLEAGUES IN A SENSE IMPOSING THEIR NATIONAL VIEW? WHY
5 HAVE THEY WAITED?

6 SO I SUGGEST TO YOU THAT THE WAIT, THE DELAY, THE
7 ALLOWING OF THE 215, YOU KNOW, PREMISES TO BE TESTED AND
8 EXPERIMENTED WITH, TO BE ANALYZED, TO BE SHIFTED, SENSING
9 THAT THE DISTRICT ATTORNEY OF THIS COUNTY AND MAYOR OF THIS
10 CITY AND MAYORS OF OTHER CITIES AND AMICUS CURIAE COMING IN
11 FROM ALL DIRECTIONS, SENSING THAT THE COMMUNITY SWELLS WITH
12 RESPECT TO ITS ENDORSEMENT OF THE 215 THEME, THAT IS
13 MARIJUANA AS MEDICINE: LET THOSE SICK, DYING PEOPLE HAVE
14 THEIR MEDICINE. SENSING THAT THAT IS ONLY IN LARGER,
15 BELATEDLY AND, FROM MY PERSPECTIVE, IN A SERPENTINE MANNER,
16 THAT IS A MANNER THAT IS NOT DIRECT OR HONEST OR OPEN.
17 THEY COME HERE WITH THEIR INJUNCTIVE PROCESS AND WAVE IN
18 FRONT OF YOU, YOU KNOW, CRISES.

19 THEN, ANOTHER DIRTY HAND THING IS, YOU KNOW, YOU
20 MUST BALANCE THE EQUITIES. THAT'S WHAT A COURT OF
21 CONSCIENCE DOES. YOU BALANCE EQUITIES.

22 SO WE SAY TO YOU, YOU KNOW, LOOK INTO THE
23 AUDIENCE. LOOK BEYOND HERE, THE COURTROOM. LOOK, YOU
24 KNOW, INTO THE VARIOUS DISTRICTS WHERE PEOPLE HAVE DYING,
25 GLOBAL EPIDEMIC THAT HAS, YOU KNOW, A PROPORTION LARGER

1 THAN CAN BE IMAGINED.

2 YOU LOOK AT THOSE PEOPLE WHO ARE DYING. FOR THEM
3 MARIJUANA AS MEDICINE IS, YOU KNOW, NOT A MATTER OF -- HOW
4 WOULD I CALL IT -- CHOICE. IT'S A MATTER OF NECESSITY.
5 IT'S A MATTER OF LIFE OR DEATH. IT'S A MATTER OF HOPE OR
6 DESPAIR.

7 IT'S A MATTER THAT PROTRACTS AND PROLONGS LIFE SO
8 THAT MAYBE A CURE, YOU KNOW, WILL OCCUR AND THEY WILL LIVE.

9 YOU KNOW, PUT THAT ON ONE SIDE, BECAUSE YOU HAVE
10 GOT TO BALANCE. YOU HAVE TO BE A COURT OF CONSCIENCE.
11 THIS IS A MORAL ISSUE. YOU HAVE TO BALANCE THE HARDSHIP.
12 PUT THAT OVER THERE.

13 AND THEN, LOOK WHAT THEY HAVE ON THE OTHER SIDE OF
14 THE SCALE. OH, THEY PUFF THEIR CHEST UP AND THEY QUOTE
15 CASES THAT SAY:

16 "YOU KNOW, THERE IS PRESUMED, YOU KNOW,
17 DAMAGE PREJUDICE. IT'S A PER SE PRESUMPTION."

18 AND THEY REST ON THE PRESUMPTION. THEY DON'T
19 SKETCH ANYTHING OUT. THEY DON'T SAY:

20 "OH, THERE'S BLOODY MURDER GOING ON IN
21 SAN FRANCISCO, CALIFORNIA. AND DENNIS, YOU KNOW,
22 PERON IS THE MASTER MIND OF A VICIOUS CRIME:
23 LARGE SCALE -- I DON'T KNOW WHAT -- DRUG DEALING,
24 PROFITEERING, WHATEVER."

25 THEY SAY NOTHING. THEY REST, YOU KNOW, BOLDLY,

1 BLANDLY ON THEIR LITTLE PER SE PRESUMPTION.

2 WELL, THAT PRESUMPTION IS A REBUTTABLE
3 PRESUMPTION, AND OUR PROFFERS ARE VALID.

4 THEREFORE, YOUR HONOR, THAT IS AT LEAST TWO OR
5 THREE FINGERS THAT ON THE HANDS THAT ARE DIRTY.

6 YOU HAVE TO BALANCE THE HARDSHIPS. THEY HAVE
7 NONE. THEY HAVE WAITED TOO LONG. THEY HAVE SHOWN NO
8 CRISES. THEY HAVE SHOWN NO BENEFIT. THEY ARE NOT GOING TO
9 TAKE OUT ORGANIZED CRIME FIGURES. THERE'S NO IMPOSING,
10 IMPENDING DEATH THREATS. THERE'S NOTHING OVER THERE BUT
11 THEIR NAKED PRESUMPTION.

12 AND WE SHOW PAIN AND AGONY AND DEATH ON THE OTHER
13 SIDE.

14 SO THEY ARE NOT ENTITLED TO THEIR EQUITABLE RELIEF
15 BECAUSE THEY ARE NOT EQUITABLE.

16 NEXT, LET'S GO INTO THEIR DUPLICITIES. OH, THEY
17 SAY:

18 "IT'S BEEN ARGUED ABLY, YOU KNOW.
19 THERE'S A PROCESS BY WHICH YOU CAN OBTAIN
20 MARIJUANA LEGALLY THROUGH THE GOVERNMENT. OH,
21 IT'S BEEN GOING ON 10 YEARS. IT'S BEEN ARGUED."
22 YOU KNOW, THERE'S EIGHT PEOPLE THAT THE DEA AND
23 THE OTHER PROGRAM HAVE ALLOWED MARIJUANA CIGARETTES.

24 SO ON ONE HAND THEY SAY IT'S THERE, BUT THAT'S
25 FALSE. THAT'S DECEITFUL. IT'S NOT THERE AT ALL.

1 THAT'S JUST THERE IN ORDER TO OBSTETRICATE AND TO
2 DELAY AND TO DECEIVE. IT'S NOT VIABLE. BUT WHEN YOU
3 ANALYZE THAT, WHAT THEY HERE SEEK TO FORECLOSE THEY TELL
4 YOU THAT THEY ARE DOING.

5 THAT'S DUPLICITOUS. THAT'S FALSE. THAT'S
6 DECEPTIVE. THAT HERE IS ANOTHER MANIFESTATION OF WHAT I'LL
7 CALL DIRTY HANDS THAT PRECLUDES THEM FROM ASKING YOU FOR
8 THIS REMEDY THAT IS UNUSUAL. THAT IS A REMEDY MAINLY
9 CALCULATED TO OBTAIN CRISIS, SOMETHING, YOU KNOW, LIKE
10 IMPENDING DOOM, DISASTER IN SOME SENSE. THERE'S NOTHING
11 LIKE THAT.

12 I THINK WE'VE MADE A STRONG SHOWING AND HAS BEEN
13 ARGUED ABLY THAT THERE HAVE BEEN OVER THE YEARS A
14 MULTIPLICITY OF RECOGNIZED SCIENTIFIC STUDIES THAT TALK TO
15 THE EFFICACY OF MARIJUANA. I THINK THAT THERE HAS BEEN
16 SHOWN THAT THERE WAS NOT A RATIONAL BASIS FOR INCLUDING IN
17 SCHEDULE ONE AND, IN FACT, IF THERE WAS A BONA FIDE
18 EXAMINATION OF THE SO-CALLED BASES FOR INCLUSION IN
19 SCHEDULE ONE, THAT IT WOULD BE RESCHEDULED.

20 THEY, THE GOVERNMENT, THEIR HANDS ARE DIRTY
21 BECAUSE THEY HAVE DELAYED IT, AND THEY HAVE DETERRED IT,
22 AND THEY HAVE, IN ESSENCE, SHOUTED IT INTO DECEPTION, AND
23 DOUBLE SPEAK IN THE ORWELLIAN SENSE.

24 SO, YOUR HONOR, THEY STAND -- THEY STAND BEFORE
25 YOU, YOU KNOW, WITH A LITANY OF DEFENSE ACCUSATIONS FROM

1 WHICH, FROM WHICH THEY CANNOT EXTRICATE THEMSELVES. THEY
2 ARE NOT INCLUDED, THEY, IN THAT CATEGORY THAT IS ENTITLED
3 TO THE EXTRAORDINARY RELIEF OF A COURT OF EQUITY.

4 RECALL IN THE LAST ANALYSIS THAT IF THEIR PROSPECT
5 IN THIS LITIGATION DOES NOT CLEARLY CONVINCING YOU THAT IT'S
6 MERITORIOUS AND THEY'LL WIN -- AND THIS COULD BE AT THE
7 CONTEMPT STAGE, SINCE YOU HAVE HYPOTHESIZED THAT, THEN
8 THAT'S AN UNSURMOUNTABLE IMPEDIMENT TO GETTING EQUITABLE
9 RELIEF.

10 AND CLEARLY, AS HAS BEEN ARGUED BY THE PROFESSOR,
11 THE NECESSITY DEFENSE IS BONA FIDE. THAT ANY IMPARTIAL
12 FINDER OF FACT WILL DIGNIFY THAT DEFENSE, ALONG WITH THE
13 JOINT POSSESSION AND JOINT SHARING AND JOINT PURCHASE
14 DEFENSE.

15 SO THEIR LIKELIHOOD OF SUCCEEDING ON THE MERITS
16 FROM OUR PERSPECTIVE IS NIL, FROM THE PERSPECTIVE OF THE
17 COMMUNITY IS NIL. AND WITHOUT THAT LIKELIHOOD YOU CAN'T
18 GRANT INJUNCTIVE RELIEF. THAT IS ONE OF THE MAJOR
19 CRITERIA.

20 I WANT TO CLOSE BY SHOWING YOU EXAMPLES THAT OCCUR
21 EVEN TODAY. EVEN AS THIS COURT WAS PREPARING TO COMMENCE
22 THIS HEARING AND CONTINUING THEREAFTER, THAT MANIFEST THE
23 BIAS, THE BLEMISH OF GOVERNMENT ATTITUDE TOWARD THESE
24 PEOPLE.

25 YOU KNOW, WE ARE NOT LEPERS. WE ARE NOT

1 SECOND-CLASS CITIZENS, YET WE HAVE BEEN TREATED TODAY LIKE
2 WE WERE. I WAS PART OF THE LITIGATION OF THE FLOWERS CASE
3 THAT WAS TRIED IN THIS BUILDING. I WAS PART OF THE
4 LITIGATION OF THE OLD HELL'S ANGELS CASE WHICH WAS TRIED IN
5 THIS BUILDING.

6 THE DEFENDANTS IN THOSE CASES ALLEGEDLY HAD
7 REPUTATIONS FOR VIOLENCE. THEY WERE AGGRESSIVE,
8 ASSAULTIVE, AND SOME ALLEGED, HOMICIDAL IN THEIR
9 PROPENSITIES.

10 AND I DARE SAY THAT IN THOSE LONG TRIALS THERE WAS
11 LESS LAW ENFORCEMENT PRESENT, LESS MARSHALS, LESS
12 HARASSMENT THAN I WITNESSED TODAY.

13 WE'RE OUT THERE IN THE HALL. AND THESE PEOPLE
14 THAT WE REPRESENT COLLECTIVELY ARE GOOD PEOPLE. THEY ARE
15 NOT -- YOU KNOW, THEY ARE NOT PEOPLE WHO ARE CHARGED WITH
16 CRIME. THEY ARE LAW-ABIDING, DYING PEOPLE WHO HAVE COME IN
17 HERE BECAUSE THEY HAVE A CRITICAL INTEREST IN THE OUTCOME
18 OF THE CASE, AND THIS IS A PUBLIC COURT.

19 THEY WERE TREATED LIKE DIRT TODAY. WE ARE OUT
20 THERE, YOU KNOW. IN COMES, I DON'T KNOW, THE LAW
21 ENFORCEMENT. IN COMES THE PROSECUTION TEAM. IN COMES THE
22 MEDIA. IN COMES THE LAWYERS. IN COMES THE DEFENDANTS.
23 AND THEN, THE REST ARE TREATED LIKE CATTLE.

24 THERE'S LAW ENFORCEMENT LINED UP IN THE HALL, YOU
25 KNOW, ALMOST DEFYING THEM, YOU KNOW, LIKE CHALLENGING THEM

1 IN SOME FASHION FOR CONFRONTATION.

2 THERE WAS NO CONFRONTATION. NOTHING AMISS WENT.
3 THE COURT FILLED UP, FROM MY PERSPECTIVE, WITH THE
4 FUNCTIONARIES RATHER THAN, YOU KNOW, THE TRUE INTERESTED
5 PARTIES HERE. SO THEY ARE LEFT OUT IN THE HALL, MANY STILL
6 IN WHEELCHAIRS.

7 THEN, THE COURT'S CLOSED. WE COMMENCE OUR
8 ARGUMENT. SOME OF THESE PEOPLE, THEY HAVE TO GO TO THE
9 BATHROOM REGULARLY. THEY HAVE TO DRINK WATER REGULARLY.

10 I TALKED WITH ONE LAST NIGHT AT THE CLUB. HE HAS
11 TO TAKE 33 PILLS A DAY. 33 PILLS SO HE CAN LIVE. AND HE
12 SMOKES MARIJUANA SO THAT HE CAN LIVE.

13 THEY WOULDN'T LET HIM OUT OF THE COURT.

14 "IF YOU GO OUT OF THE COURT, YOU CAN'T
15 COME BACK IN," THEY SAY.

16 "OH," BUT THEY SAY, "THE LAWYERS ARE
17 GOING OUT. THE MEDIA IS GOING OUT. THE
18 DEFENDANTS ARE GOING OUT, THE LAW ENFORCEMENT.

19 SO WHY CAN'T WE GO OUT?"

20 AND YOU HAVE SEEN THAT THEY HAVE TO REVERSE THEIR
21 SHIRTS. ALL RIGHT. THERE'S AN AMERICAN FLAG ON A SHIRT.
22 MAYBE THERE'S SOME KIND OF A CANNABIS SLOGAN. BUT I THINK
23 A LITTLE LATITUDE IN FIRST AMENDMENT COULD HAVE BEEN
24 ALLOWED.

25 SO WHAT I'M SAYING IS THAT EVEN AS WE SIT, THEY,

1 THE GOVERNMENT, HAS DIRTY HANDS. THEY HAVE BIAS. THEY
2 HAVE UNWHOLESOME INTEREST IN THIS LITIGATION. THEY DO NOT
3 COME BEFORE YOU GIVING EQUITY. YOU SHOULD NOT REWARD THEM
4 WITH EQUITY.

5 THE COURT: OBVIOUSLY, I REGRET ANY -- I REGRET
6 THE INCONVENIENCIES THAT YOU'VE IDENTIFIED, MR. SERRA. THE
7 PURPOSE IN TODAY'S HEARING WAS TO MAKE SURE THAT WE COULD
8 ACCOMMODATE NOT ONLY CLIENTS, BUT THE LARGER COMMUNITY IN
9 THIS. AND I REGRET THAT THAT WASN'T BROUGHT TO MY
10 ATTENTION EARLIER. I UNDERSTAND WHAT YOU'RE SAYING.

11 OBVIOUSLY, IF ANYBODY NEEDS TO GO OUTSIDE IN THE
12 HALL THEY CAN. AND THEY CAN ALSO COME BACK WITHOUT ANY
13 PROBLEM.

14 NOW, LET'S MOVE ON.

15 MR. CUMMINGS: I'M BRENDAN CUMMINGS REPRESENTING
16 THE CANNABIS CULTIVATORS' CLUB AND DENNIS PERON. I'M GOING
17 TO SPEAK BRIEFLY ABOUT A COUPLE OF ISSUES THAT HOPEFULLY
18 THIS COURT WILL NOT FIND NECESSARY TO REACH TODAY, WHICH IS
19 THE INJUNCTIVE STANDARDS THAT THE GOVERNMENT MUST MEET FOR
20 AN INJUNCTION TO ISSUE.

21 THE REASON THAT I'M SPEAKING IS THE GOVERNMENT
22 CLAIMS THAT JUDICIAL EQUITABLE PRINCIPLES DO NOT APPLY WHEN
23 THE GOVERNMENT SEEKS TO ENFORCE A STATUTORY PROCEEDING.

24 THE SUPREME COURT, HOWEVER, HAS STATED THAT UNLESS
25 A STATUTE IN SO MANY WORDS OR BY NECESSARY INESCAPABLE

1 INFERENCE RESTRICTS THE COURT'S JURISDICTION IN EQUITY THE
2 FULL SCOPE OF THAT JURISDICTION IS TO BE RECOGNIZED AND
3 APPLIED.

4 THAT'S FROM WEINBERGER VERSUS ROMERO-BARCELO. AND
5 WHY I RAISE THIS IS BECAUSE SECTION 882 STATES THAT
6 DISTRICT COURTS IN THE UNITED STATES EXERCISE GENERAL
7 JURISDICTION AND SHALL CARRY ON INJUNCTIVE PROCEEDINGS IN
8 ACCORDANCE WITH THE FEDERAL RULES OF CIVIL PROCEDURE.

9 THEREFORE, SINCE THE FEDERAL RULES OF CIVIL
10 PROCEDURE ARE THE NORMAL RULES UNDER WHICH EQUITABLE
11 PROCEEDINGS ARISE, THERE IS NO EXPLICIT STATEMENT IN 882
12 THAT THE GOVERNMENT MUST NOT MEET ITS NORMAL BURDEN UNDER
13 EQUITY.

14 THE GOVERNMENT HAS STATED THAT THE CASES OF ODESSA
15 UNION AND ABLE ARE -- STAND FOR THE PROPOSITION THAT IT
16 NEED NOT PROVE IRREPARABLE INJURY.

17 HOWEVER, THE NINTH CIRCUIT SITTING EN BANC IN
18 MILLER VERSUS CALIFORNIA PACIFIC MEDICAL CENTER NARROWED
19 THE HOLDINGS OF THOSE CASES AND SAID:

20 "THE GOVERNMENT NEED NOT PROVE
21 IRREPARABLE INJURY, ONLY WHEN THE STATUTORY
22 VIOLATION IS CONCEDED."

23 AND AS THE PAST THREE HOURS OF ARGUMENT HAS
24 CLEARLY SHOWN STATUTORY VIOLATIONS TODAY ARE NOT CONCEDED
25 BY ANY PARTY -- BY DEFENDANTS.

1 GIVEN THAT THERE IS NO CONCESSION OF THE FEDERAL
2 STATUTE BEING VIOLATED BY THE DEFENDANTS, GIVEN THAT THE
3 GOVERNMENT HAS NOT PROVEN THE PROBABILITY OF SUCCESS ON THE
4 MERITS, IT MUST PROVE IRREPARABLE INJURY TO MEET THE OTHER
5 STANDARD TESTS FOR INJUNCTIVE RELIEF.

6 THE NINTH CIRCUIT HAS THAT FOUR-PART TEST:
7 PROBABLE SUCCESS, THE IRREPARABLE INJURY, BALANCE OF
8 HARDSHIPS AND FAITH OF PUBLIC INTEREST.

9 I JUST WANTED TO CLARIFY THAT THAT STANDARD IS THE
10 ONE BEFORE THE COURT TODAY. AND BEFORE ANY INJUNCTION CAN
11 ISSUE OR AND MAY ISSUE BY THE COURT, THE GOVERNMENT HAS TO
12 SHOW IRREPARABLE INJURY. GOVERNMENT HAS TO SHOW HARDSHIP
13 AND THE GOVERNMENT HAS TO SHOW THE PUBLIC INTEREST FAVORS
14 AN INJUNCTION.

15 AND GIVEN THAT THE STATUTORY VIOLATION IS DISPUTED
16 BY THE PARTIES, THE GOVERNMENT MUST PROVE THAT. THEY HAVE
17 NOT PROVED THAT. AND, THEREFORE, WITHOUT FURTHER
18 EVIDENTIARY SHOWING BY THE GOVERNMENT, NO INJUNCTION CAN
19 ISSUE TODAY.

20 MR. PANZER: LAST ONE.

21 MR. RAICH: YOUR HONOR, I'M ROBERT RAICH. YOU
22 HAVE HEARD TODAY AND SEEN IN THE BRIEFS A NUMBER OF REASONS
23 WHY THE RELIEF WHICH THE DEFENDANTS SEEK SHOULD BE GRANTED
24 ON CONSTITUTIONAL BASES, ON STATUTORY BASES, ON A COMMON
25 LAW BASIS AND, OF COURSE, IN EQUITY.

1 NOW, FAR FROM SUING THESE DEFENDANTS, SEEKING
2 SANCTIONS AGAINST THEM AND HARASSING THESE DEFENDANTS, THE
3 FEDERAL GOVERNMENT SHOULD BESTOW UPON THEM THE MEDAL OF
4 HONOR.

5 THEY STAND FOR WHAT IS BEST IN THE AMERICAN
6 SPIRIT: COURAGE AND COMPASSION IN THE FACE OF REPRESSION,
7 TO AID THE SICK AND DYING LIVE LONGER AND MORE MEANINGFUL
8 LIVES.

9 AND, INDEED, THESE DEFENDANTS MAY YET RECEIVE THE
10 MEDAL OF HONOR WHICH THEY SO DESERVE AS SOON AS THE
11 PROSECUTORS GET A NEW BOSS, ONE WHO NO LONGER FEELS HE
12 NEEDS TO RUN FROM THE STATEMENTS HE MADE SIX YEARS AGO
13 ABOUT NOT INHALING.

14 THE FEDERAL GOVERNMENT WOULD HAVE THESE DEFENDANTS
15 CEASE THEIR ACTIVITIES EVEN DURING THE PENDENCY OF THIS
16 ACTION AND PERMANENTLY. BUT IF THE GOVERNMENT GETS ITS
17 WAY, HOW MANY PEOPLE WILL DIE? HOW MANY PEOPLE WILL GO
18 BLIND? HOW MANY PEOPLE WILL SUFFER CHRONIC INTRACTABLE
19 PAIN DURING THAT PERIOD, AND SO ON?

20 NOW, IF POLL AFTER POLL DEMONSTRATES THAT A HUGE
21 MAJORITY OF AMERICANS RECOGNIZE WHAT SCIENCE PROVES AND
22 WHAT THESE DEFENDANTS ARE DOING. BUT IT'S THE FEDERAL
23 POLITICIANS WHO ARE AFRAID TO RECOGNIZE THAT FACT. THE
24 FACT IS THAT CANNABIS IS A SAFE AND EFFECTIVE MEDICINE THAT
25 SHOULD BE AVAILABLE TO PATIENTS WHO NEED IT.

1 THAT'S SIMPLY WHAT THE DEFENDANTS HERE ARE
2 PROVIDING. AND AS THEY SAY IN THE ONLY POLL THAT COUNTS,
3 AS YOUR HONOR HAS MENTIONED, THE BIG MAJORITY OF
4 CALIFORNIANS SUPPORT THE POSITION OF THE DEFENDANTS. AND
5 THE VAST MAJORITY OF VOTERS IN THE NORTHERN DISTRICT
6 SUPPORT THAT POSITION AND RECOGNIZE THAT FACT.

7 YOU MENTIONED EARLIER ABOUT WHETHER THE CONTROLLED
8 SUBSTANCES ACT CONSIDERED MEDICAL MARIJUANA WHEN IT WAS
9 PASSED. IN FACT, I HAVE LOOKED AT THE LEGISLATIVE HISTORY
10 OF IT. IT APPEARS THAT CONGRESS DID NOT EVEN CONSIDER ANY
11 KIND OF DISTINCTION BETWEEN THE MEDICAL CANNABIS WE HAVE ON
12 ONE HAND VERSUS THE ILLICIT MARIJUANA ON THE OTHER.

13 IT IS THE LATTER WHICH THE CONTROLLED SUBSTANCES
14 ACT INTENDED TO CONTROL.

15 IN FACT, LOOKING OVER THE LEGISLATIVE HISTORY YOU
16 CAN SEE HOW CONGRESS WAS WRESTLING WITH HOW TO SCHEDULE
17 MARIJUANA, ULTIMATELY DECIDING THEY WOULD TEMPORARILY PUT
18 IT IN SCHEDULE ONE PENDING THE RESULT OF THE SHAFER
19 COMMISSION REPORT. AND AS WE MENTIONED EARLIER, OF COURSE,
20 WHEN THE SHAFER COMMISSION REPORT CAME OUT RECOMMENDING THE
21 DECRIMINALIZATION OF CANNABIS THAT WAS COMPLETELY SWEEP
22 UNDER THE RUG BY THE FEDERAL GOVERNMENT, THE SAME FEDERAL
23 GOVERNMENT WHICH IS NOW ATTEMPTING TO BRING THESE SANCTIONS
24 AGAINST THE DEFENDANTS HERE.

25 NOW, BOTH PUBLIC SAFETY AND PUBLIC HEALTH ARE

1 ISSUES WHICH ARE TRADITIONALLY LEFT TO THE STATE AND LOCAL
2 GOVERNMENTS. AND THE STATE AND LOCAL GOVERNMENTS HAVE NOT
3 BEEN SILENCED UPON THIS ISSUE.

4 WE KNOW PROPOSITION 215 IS NOW THE LAW OF THIS
5 STATE. ALL OF THE LOCAL JURISDICTIONS WHICH ENCOMPASS
6 THESE DEFENDANTS HAVE WEIGHED IN ON THIS SUBJECT, EVERY
7 SINGLE ONE OF THEM.

8 THEY HAVE DONE SO EITHER BY FILING OR JOINING
9 AMICUS BRIEFS, BY HAVING THEIR OFFICIALS WRITE PUBLIC
10 LETTERS, BOTH OF WHICH YOUR HONOR HAS MENTIONED, AND BY
11 PASSING OFFICIAL RESOLUTIONS CONDEMNING THE FEDERAL
12 GOVERNMENT'S LAWSUITS IN THESE VERY CASES AND SUPPORTING
13 THE DEFENDANTS.

14 IF YOUR HONOR'S NOT FAMILIAR WITH THOSE
15 RESOLUTIONS WE WOULD BE MORE THAN HAPPY TO PROVIDE YOU WITH
16 COPIES OF THEM IF YOU HAVE NOT ALREADY SEEN THOSE. BUT
17 CLEARLY, THE JURISDICTIONS WHO HAVE THE MOST TO LOSE AT
18 THIS, WHOSE CITIZENS ARE THE ONES WHOSE HEALTH AND SAFETY
19 IS GOING TO BE MOST AFFECTED IF THE GOVERNMENT GETS ITS
20 WAY, THEY ARE UNANIMOUS IN SUPPORT OF THE DEFENDANTS IN
21 THIS ACTION.

22 AND THAT'S NOT THE WAY OUR SYSTEM OF FEDERALISM IS
23 SUPPOSED TO WORK. THE TENTH AMENDMENT PROVIDES THAT THE
24 RIGHTS AND POWERS THAT ARE NOT GIVEN TO THE UNITED STATES
25 ARE RESERVED TO THE STATES RESPECTIVELY OR TO THE PEOPLE.

1 THE NINTH AMENDMENT GIVES THOSE CERTAIN RIGHTS THAT ARE
2 RETAINED BY THE PEOPLE.

3 WE'VE MENTIONED THESE IN OUR SUBSTANTIVE DUE
4 PROCESS ARGUMENTS AND VARIOUS OTHER PLACES. BUT UNDER OUR
5 SYSTEM MATTERS WHICH ARE LEFT TO THE PRIVACY OF A DOCTOR
6 AND PATIENT SHOULD NOT BE TREADED UPON BY THE FEDERAL
7 GOVERNMENT.

8 MATTERS WHICH ARE MORE RIGHTFULLY LEFT TO THE
9 LOCAL JURISDICTIONS SHOULD NOT BE TREADED UPON BY THE
10 FEDERAL GOVERNMENT.

11 YET, WHAT DO WE HAVE HERE? WE HAVE THE FEDERAL
12 GOVERNMENT BRINGING A TEAM OF LAWYERS IN FROM WASHINGTON
13 D.C. TO PROP UP A FAILED AND DISCREDITED POLICY, WHICH IS
14 CONTRARY TO SCIENCE, IN DEFIANCE OF THE PEOPLE OF
15 CALIFORNIA, AND IN DEFIANCE OF ALL OF THE EFFECTIVELY LOCAL
16 JURISDICTIONS.

17 WHAT THEY WANT IS CONTRARY TO THE JUDGMENT OF
18 DOCTORS AND, MOST IMPORTANTLY, CONTRARY TO THE MEDICAL
19 REQUIREMENTS OF PATIENTS WHO ARE MOST DIRECTLY AFFECTED BY
20 THESE ACTIONS.

21 YOUR HONOR HAS THE ABILITY IN YOUR HANDS TO
22 ACHIEVE JUSTICE. SITTING AS CHANCELLOR IN EQUITY YOU HAVE
23 AN OPPORTUNITY THAT MOST PEOPLE HAVE NOT HAD ADJUDICATING
24 CASES UNDER THE CONTROLLED SUBSTANCES ACT.

25 WE THEREFORE REQUEST THAT YOU DENY THE

1 GOVERNMENT'S REQUESTS AND ISSUE NO INJUNCTION.

2 THE COURT: SO THAT CONCLUDES THE DEFENSE
3 PRESENTATION?

4 MR. PANZER: YES, YOUR HONOR.

5 THE COURT: DID YOU WANT TO SAY ANYTHING,
6 MR. HALLINAN?

7 MR. HALLINAN: IF YOU WANTED ME TO SPEAK, IT WOULD
8 BE EASIER FOR ME TO SPEAK NOW.

9 THE COURT: YES, OF COURSE.

10 MR. HALLINAN: PERHAPS A LITTLE DIFFERENT VIEW
11 THAN SOME OF THE OTHERS. AND I HAVEN'T HAD AN OPPORTUNITY
12 TO CONGRATULATE YOU SINCE YOUR APPOINTMENT.

13 CONGRATULATIONS AND LIKEWISE THANK YOU FOR
14 ALLOWING ME TO APPEAR BEFORE YOU AS AN AMICUS.

15 I WILL TRY TO ANSWER A COUPLE OF THE QUESTIONS
16 THAT YOU ASKED, JUDGE.

17 THE FIRST QUESTION YOU ASKED WAS: WHAT IS THE
18 ADVANTAGE OF ABSTENTION? THAT IS TO SAY, WHY SHOULD YOU
19 CHOOSE TO STAY OUT OF THIS CASE? AND I WOULD LIKE TO URGE
20 YOU TO REFUSE AN INJUNCTION IN THIS CASE.

21 AND I SAY THAT BECAUSE CLOSING THE DISPENSARIES --
22 AND I THINK YOU REFER TO THEM AS THE MEDICAL MARIJUANA
23 DISPENSARIES, ALTHOUGH TECHNICALLY IN THE CITY THEY ARE
24 CLASSIFIED AS HEALTH CLINICS FOR THE PLANNING DEPARTMENT
25 PURPOSES. BUT MEDICAL MARIJUANA DISPENSARY CERTAINLY SUMS

1 IT UP.

2 THAT CLOSING THESE DISPENSARIES WOULD HAVE A
3 DRAMATIC AND ADVERSE EFFECT ON THE CITY AND COUNTY OF SAN
4 FRANCISCO AND WOULD HAVE THAT FOR A NUMBER OF REASONS.

5 FIRST: THE PATIENTS WOULD HAVE TO OBTAIN THEIR
6 MARIJUANA ELSEWHERE OR THEY WOULD HAVE TO NOT USE THE
7 MARIJUANA. EITHER OF THOSE CHOICES ARE NOT CHOICES THAT
8 ARE IN THE BEST INTEREST OF THE CITY AND COUNTY OF SAN
9 FRANCISCO. THAT IS TO SAY THEY WOULD RETURN TO DELORES
10 PARK OR U.N. PLAZA, TO THE STREET CORNERS OR THE ALLEYWAYS
11 TO PURCHASE ILLICIT MARIJUANA.

12 THEY WOULD -- SOME OF THEM WOULD STOP USING
13 MARIJUANA, SUFFER AS A RESULT OF IT. THE PRESENT,
14 REASONABLY WELL-CONTROLLED, SAFE DISTRIBUTION SYSTEM WHICH
15 WE HAVE IN SAN FRANCISCO -- AND I'LL SAY A LITTLE BIT ABOUT
16 IT. IT IS THAT -- WOULD INSTEAD BECOME AN UNREGULATED
17 PUBLIC NUISANCE AND A RISK AND A PROBLEM TO EVERYBODY, LAW
18 ENFORCEMENT INCLUDED.

19 WITHOUT THE MEDICAL MARIJUANA DISPENSARIES SORTING
20 OUT THE BONA FIDE PATIENTS WHO DO HAVE A DOCTOR'S LETTER
21 WHICH IS CONFIRMED, THE ENFORCEMENT OF THE LAW WOULD BE
22 EXTREMELY ONEROUS BOTH TO POLICE OFFICERS ON THE BEAT AND
23 TO OUR OFFICE, WHO WOULD HAVE TO SORT OUT WHO HAS A GENUINE
24 AND WHO DOESN'T HAVE A GENUINE CLAIM.

25 AND, LIKEWISE, RESIDENTS OF SAN FRANCISCO, AS MANY

1 OF THESE PEOPLE WHO ARE HERE TODAY ARE, WOULD SUFFER
2 NEEDLESSLY, AND SOME WOULD DIE.

3 AND THAT IS THE REALITY OF THE WASTING DISEASE
4 THAT SOME OF THESE PEOPLE WE ARE TALKING ABOUT, THE FACT
5 THAT THEY TAKE 33 PILLS. THEY CAN'T HOLD DOWN WITHOUT THE
6 MARIJUANA TO SUPPRESS THE NAUSEA THAT GOES WITH IT.

7 PEOPLE WHO WON'T FACE CHEMOTHERAPY, MANY OTHER
8 ILLNESSES THAT WITHOUT IT, IT COULD VERY WELL BE FATAL AND
9 HAVE -- CERTAINLY WOULD CAUSE THE CITY AND COUNTY A GREAT
10 DEAL IN TERMS OF MEDICAL CARE AND ALTERNATIVES THAT WE
11 WOULD HAVE TO PROVIDE FOR THEM.

12 MAINLY, YOUR HONOR, THERE IS NO NEED FOR AN
13 INJUNCTION IN THIS CASE. AND I THINK ONE OF THE GREAT
14 POWERS OF THE FEDERAL COURT IS THE POWER OF RESTRAINT; THAT
15 IF THERE IS NO NEED FOR THE FEDERAL COURT TO INTERVENE THE
16 FEDERAL COURT CHOICES NOT TO INTERVENE AND THE FEDERAL
17 AUTHORITIES CHOOSE NOT TO INTERVENE.

18 I SAY THERE IS NO NEED FOR IT BECAUSE, AS HE HAS
19 ALREADY PROVEN, THE ATTORNEY GENERAL, DAN LUNGREN, WILL
20 REGULATE VIOLATIONS OF PROPOSITION 215.

21 MY OFFICE OVERSEES THESE CLUBS. WE HAVE
22 PROSECUTED SUCCESSFULLY INDIVIDUALS WHO WENT OUT IN THE
23 STREET AND SOLD SMALL GRAMS THAT THEY BOGUSLY OBTAINED AT
24 THE BUYERS CLUB.

25 AND VERNON THERE HAS SECURED CONVICTIONS IN THOSE

1 CASES.

2 WE DO ENFORCE THESE LAWS, YOUR HONOR.

3 NOW --

4 THE COURT: IS THE ATTORNEY GENERAL -- IS THE
5 ATTORNEY GENERAL ENFORCING THE INJUNCTION IN SAN FRANCISCO?

6 MR. HALLINAN: AS OF RIGHT NOW HE ISN'T, OR AT
7 LEAST IT IS NOT BEING ENFORCED. I'M NOT 100 PERCENT CLEAR
8 ON WHAT THE STATUS OF IT IS.

9 AS YOU'RE AWARE THAT IS A CIVIL MATTER, LIKE THIS
10 ONE IS HERE, WHICH MOVES SLOWER, AND THERE'S THE RIGHT TO
11 HAVE HEARING AND CONTEST THE FINDINGS AND SO ON. SO I'M
12 NOT AWARE OF THAT.

13 THE COURT: THERE IS GOING TO BE A HEARING, I
14 UNDERSTAND, ON APRIL 3RD. THAT'S WHAT I UNDERSTAND.

15 MR. HALLINAN: ON THE PERMANENT INJUNCTION, I
16 BELIEVE, THAT'S CORRECT, YOUR HONOR. AND AT THAT TIME
17 THERE WILL BE EVIDENCE PRODUCED THAT, I THINK, CAN SHOW TO
18 EVERYBODY'S SATISFACTION THAT THE FACTS IN THESE CLUBS NOW
19 BEARS NO RESEMBLANCE TO THE AFFIDAVITS THAT WERE OBTAINED
20 BY THE DRUG ENFORCEMENT AGENTS OR STATE NARCOTICS AGENTS
21 AND FILED AS PART OF THAT, AS ATTORNEY GENERAL LUNGREN'S
22 SUIT.

23 THAT WAS YEARS AGO. THAT WAS PRIOR TO PROPOSITION
24 215. THAT WAS PRIOR TO OUR ADOPTION, THE HEALTH DEPARTMENT
25 RULES AND OUR OVERSIGHT OF THESE CLUBS.

1 ANOTHER OF THE QUESTIONS THAT YOU ASKED, YOUR
2 HONOR, WAS WHETHER OR NOT THIS IS COMMERCE, THIS IS A
3 BUSINESS. YOU MADE THE POINT:

4 "THIS IS COMMERCE. THIS IS A BUSINESS.

5 AND, IN OTHER WORDS, DOES FEDERAL LAW COVER THIS?"

6 AND I DO THINK THAT IT IS TRUE THAT FEDERAL LAW
7 DOES, TECHNICALLY SPEAKING, COVER THIS. BUT IN THE WHOLE
8 HISTORY OF SAN FRANCISCO WE HAVE NEVER HAD THE FEDERAL
9 GOVERNMENT ATTEMPT TO DO ANYTHING LIKE THIS. THE MARIJUANA
10 DISPENSATION TO MEDICALLY-ILL PEOPLE WHO HAD A DOCTOR'S
11 NOTE WAS DECLARED THE VERY LOWEST PRIORITY BY THE SAN
12 FRANCISCO BOARD OF SUPERVISORS AND SIGNED BY EX-POLICE
13 CHIEF FRANK JORDAN IN 1992.

14 THE CLUBS -- DENNIS PERON'S CLUB HAS OPERATED
15 UNDER THAT STANDARD FOR A LONG PERIOD OF TIME. THE FEDERAL
16 GOVERNMENT CHOOSES NOT TO INTERVENE UNTIL NOW. AND WHAT IS
17 HAPPENING THAT WOULD MAKE NOW A NECESSITY AS OPPOSED TO
18 ANOTHER TIME?

19 WE HAVE IN SAN FRANCISCO, AS I'M SURE THE JUDGE IS
20 AWARE, A NEEDLE EXCHANGE PROGRAM UNDER WHICH WE HAVE GIVEN
21 AWAY MORE THAN A MILLION CLEAN NEEDLES IN ORDER TO FIGHT
22 AGAINST AIDS. THEY HAVE A PARAPHERNALIA LAW IN THE FEDERAL
23 GOVERNMENT, YET THEY CHOOSE NOT TO ENFORCE IT OR CONTEST
24 THAT WITH US.

25 WHY DO THEY CHOOSE TO GO AFTER MEDICAL MARIJUANA

1 USERS?

2 I DO BELIEVE THAT THE FEDERAL GOVERNMENT HAS THE
3 POWER TO ATTEMPT TO POLICE THIS AREA, BUT, IN FACT, IT'S
4 HIGHLY UNLIKELY THAT THEY HAVE EITHER THE WILL OR THE
5 RESOURCES TO DO SO, YOUR HONOR. ONE CAN HARDLY IMAGINE THE
6 FEDERAL GOVERNMENT GOING OUT INTO THE STREETS AND PARKS OF
7 SAN FRANCISCO TO ARREST PEOPLE FOR SELLING GRAMS OF MEDICAL
8 MARIJUANA AS A FEDERAL OFFENSE.

9 DO THEY INTEND TO GO IN AND CLOSE DOWN THE CLUBS
10 THEMSELVES? WHAT ARE THE COMPLICATING FEATURES THAT THEY
11 WOULD HAVE TO DO TO ENFORCE THESE?

12 AND I THINK THE POINT THAT MR. SERRA MADE ABOUT
13 THE FACT THAT THEY DON'T HAVE CLEAN HANDS IS VALID.

14 WELL, WHY IS THIS BEING DONE? WHAT ARE THEY
15 ATTEMPTING TO PROVE THAT IS NOT ALREADY BEING DONE BY THE
16 STATE IN RELATIONSHIP TO THESE CLUBS, BY THE STATE AND TO
17 THE CITY? WE REGULATE THEM CAREFULLY. ATTORNEY GENERAL
18 LUNGREN IS ON TOP OF THEM.

19 WELL, THE FEDERAL GOVERNMENT IS ADDING NOTHING TO
20 THE PICTURE. IT SEEMS TO ME THAT REALLY FROM THEIR POINT
21 OF VIEW IT'S MORE OF A POLITICAL ISSUE, A POLITICAL POINT
22 TO BE MADE, THAN IT IS REALLY ATTEMPTING TO PREVENT
23 SOMETHING THAT THEY CONSIDER ILLEGAL THAT IS NOT BEING
24 PREVENTED WITHOUT THEIR INTERVENTION. AND THAT ISN'T CLEAN
25 HANDS, AND THAT ISN'T WHAT THE FEDERAL GOVERNMENT SHOULD BE

1 USING THE VAST POWER OF THE FEDERAL GOVERNMENT FOR, YOUR
2 HONOR.

3 AND I MUST SAY THAT AND IF THIS COURT DOES CHOOSE
4 TO ISSUE AN INJUNCTION, PARTICULARLY IF YOU SHOULD ISSUE A
5 PRELIMINARY INJUNCTION, POSTHASTE, YOU WOULD CREATE A LAW
6 ENFORCEMENT AND PUBLIC HEALTH CRISIS IN SAN FRANCISCO.

7 I DON'T SAY THAT LIGHTLY. I DO BELIEVE THAT IS
8 TRUE, YOUR HONOR. SO I WANT TO URGE YOU: DON'T ISSUE AN
9 INJUNCTION. THERE'S NOTHING TO BE GAINED BY YOUR ISSUING
10 AN INJUNCTION IN THIS CASE THAT IS NOT ALREADY BEING DEALT
11 WITH BY THE STATE COURTS, BY STATE AUTHORITIES, BY THE CITY
12 AND COUNTY OF SAN FRANCISCO, BY OUR HEALTH DEPARTMENT.

13 AND IF I CAN JUST PASSINGLY SAY WITHOUT GOING INTO
14 A LOT OF DETAIL, SINCE PROPOSITION 215, THE HEALTH
15 DEPARTMENT OF SAN FRANCISCO HAS MET. THEY HAVE ADOPTED
16 RULES AND REGULATIONS UNDER WHICH THESE CLUBS ARE REQUIRED
17 TO OPERATE.

18 THEY HAVE HEALTH INSPECTORS WHO GO INTO THE CLUBS
19 AND VERIFY THE NOTES FROM THE DOCTORS AND VERIFY THE
20 VERIFICATION OF THOSE NOTES.

21 MY OFFICE OVERSEES THEM. I HAVE DROPPED IN ON
22 THESE MEDICAL MARIJUANA CLUBS WITHOUT NOTICE.

23 I'VE BEEN IN DENNIS'S CLUB TWO TIMES, STAND THERE
24 WHILE THEY ARE CHECKING NOTES AND WALKED AROUND AND GOTTEN
25 A VIEW.

1 AND I AM SATISFIED CHILDREN ARE NOT ALLOWED EXCEPT
2 UNDER VERY LIMITED CONDITIONS. GUESTS ARE NOT ALLOWED.
3 SMALL AMOUNTS ARE ONLY ALLOWED TO BE BOUGHT. THE PRICE IS
4 HALF WHAT YOU PAY ON THE STREET.

5 THEY BASICALLY ARE TRYING THEIR BEST TO COMPLY
6 WITH PROPOSITION 215. I'M NOT SAYING IT'S A PERFECT JOB,
7 AND WE COULDN'T MAKE IT A LITTLE BETTER. BUT I DON'T THINK
8 IT'S A TASK THAT THE FEDERAL GOVERNMENT SHOULD UNDERTAKE AT
9 THIS POINT, YOUR HONOR.

10 IF, THOUGH, YOU DO INTEND TO ISSUE AN INJUNCTION,
11 PLEASE WAIT FOR AN EVIDENTIARY TRIAL. THAT IS, DON'T DO IT
12 ON THE PAPERS.

13 APART FROM THE FACT THAT IT'S UNFAIR TO REQUIRE
14 SOMEBODY TO VIOLATE THE LAW IN ORDER TO DETERMINE WHETHER
15 THEY AREN'T VIOLATING THE LAW AND MAKE THAT DECISION AT A
16 CONTEMPT HEARING INSTEAD OF LETTING PEOPLE KNOW WHAT THEY
17 ARE OR ARE NOT REQUIRED TO DO, I THINK MANY OF THE ISSUES
18 THAT YOU WERE TALKING ABOUT MAY VERY WELL BE BARRED UNDER
19 THE DOCTRINE OF COLLATERAL BAR.

20 THEY MIGHT RUN INTO PROBLEMS TRYING TO GO BEHIND
21 THE INJUNCTION AND TO CLAIM THEY WERE ENTITLED TO VIOLATE
22 IT. AT A HEARING, EVIDENCE COULD BE PRESENTED, AS I WAS
23 TALKING ABOUT, ABOUT HOW THE HEALTH DEPARTMENT OPERATES,
24 AND THEIR MODEL WHICH IS OPERATING IN SAN FRANCISCO AT THE
25 PRESENT TIME.

1 AND I WILL SAY AS THE CHIEF LAW ENFORCEMENT
2 OFFICER OF SAN FRANCISCO, WE HAVE HAD NO PROBLEMS WITH
3 THESE CLUBS. THEY ARE A CONTINUATION OF THE AIDS SUPPORT
4 APPARATUS WHICH HAS SPRUNG UP OVER MANY YEARS IN THE CITY
5 AND COUNTY OF SAN FRANCISCO.

6 AROUND 80 PERCENT OF THE PEOPLE WHO GO TO THESE
7 CLUBS ARE HIV POSITIVE AIDS PATIENTS. TEN PERCENT OTHERS
8 HAVE CANCER. WHEN YOU GO IN THERE YOU SEE THEY ARE
9 BASICALLY SICK PEOPLE, AND THEY ARE BEING RELIEVED BY THEIR
10 USE OF THE MEDICAL MARIJUANA.

11 AT A HEARING YOU WOULD BE ABLE TO GO INTO SOME OF
12 THE ISSUES THAT HAVE BEEN BROUGHT UP HERE. THE ISSUE OF
13 MEDICAL NECESSITY, THE ISSUE OF A JOINT PURPOSE, TO SPELL
14 OUT SOME OF THE ALTERNATIVE ROLES YOU SEE THE GOVERNMENT
15 PLAYING.

16 AS I SAY, AS THE DISTRICT ATTORNEY OF SAN
17 FRANCISCO, I'M ANXIOUS TO MAKE THIS WORK. AND I WANT TO
18 MAKE IT WORK PROPERLY AND LEGALLY. THE VOTERS
19 OVERWHELMINGLY -- AND I CAN'T HELP COMPARE THE REACTION OF
20 SO MANY OF THESE SAME OFFICIALS TO THE ANTI-AFFIRMATIVE
21 ACTION INITIATIVE WHICH PASSED WITH 54 PERCENT AND ALL OF A
22 SUDDEN IT'S THE LAW THAT MUST BE ENFORCED COMPARED TO
23 MEDICAL MARIJUANA WHICH GETS 56 PERCENT AND NOBODY WANTS TO
24 DO ANYTHING TO HELP MAKE THAT LAW WORKABLE FOR THE PEOPLE
25 OF SAN FRANCISCO.

1 AND YOU WILL BE ABLE TO MAKE A DETERMINATION AS TO
2 WHETHER, IN FACT, IT IN ACTUAL CONFLICT DOES EXIST.

3 SO JUST IN SUMMATION, YOUR HONOR, I WOULD URGE YOU
4 EXERCISE RESTRAINT. THERE IS NO NEED FOR THE FEDERAL COURT
5 TO GET INVOLVED AT THIS POINT IN THIS INSTANCE. THERE IS
6 NO NEED FOR AN INJUNCTION.

7 AND IF YOU DO CHOOSE TO ISSUE AN INJUNCTION PLEASE
8 DO THAT ONLY AFTER YOU HAVE HAD A FULL HEARING, TAKE IN THE
9 EVIDENCE, HAD AN UNDERSTANDING OF WHAT IT IS.

10 THERE IS NO CRITICAL EMERGENCY AT THIS TIME.
11 THESE PEOPLE ARE NOT GOING TO LEAVE TOWN. THEY ARE THERE
12 WHERE THEY ARE. THEY HAVE BEEN THERE FOR A LONG PERIOD OF
13 TIME. THERE IS NO OVERRIDING REASON FOR THE FEDERAL
14 GOVERNMENT TO GET INVOLVED IN THIS, JUDGE.

15 THE COURT: THANK YOU, MR. HALLINAN.

16 MR. QUINLIVAN, IT'S 6:15 NOW. I OBVIOUSLY WANT TO
17 HEAR A RESPONSE FROM THE GOVERNMENT, WHATEVER YOU FEEL
18 APPROPRIATE TO RESPOND TO.

19 I CAN HEAR IT ORALLY NOW. I COULD ALSO, AND WHAT
20 I WAS INTENDING TO DO WAS ASK THE PARTIES TO SUBMIT ONE,
21 ONE SUPPLEMENTAL BRIEF ON THE SUBJECTS THAT WERE RAISED
22 HERE FOR THE FIRST TIME.

23 SO I WAS GOING TO GIVE THE PARTIES THAT
24 OPPORTUNITY, IN ANY EVENT. BUT HAVING THAT IN MIND, DO YOU
25 WANT TO ADDRESS ANYTHING ORALLY, OR DO YOU NOT?

1 MR. QUINLIVAN: WELL, YOUR HONOR, I WOULD LIKE TO
2 JUST BRIEFLY ADDRESS WHAT I THINK ARE SOME HIGHLIGHTS AND
3 THEN WE CERTAINLY WOULD TAKE THE OPPORTUNITY IF YOUR HONOR
4 WANTS FURTHER BRIEFING ON THOSE ISSUES.

5 THE COURT: SURE.

6 MR. QUINLIVAN: I WILL BE VERY BRIEF, YOUR HONOR.

7 THE COURT: WELL, TAKE IT.

8 MR. QUINLIVAN: YOUR HONOR, THE BODY OF THE
9 ARGUMENTS THAT HAVE BEEN PRESENTED TO YOU TODAY ARE, AS I
10 SAID BEFORE, IN MY CONCLUSION THEY ARE EITHER POLITICAL
11 ARGUMENTS THAT ARE IN DISAGREEMENT WITH CONGRESS'S ACTIONS
12 IN THIS AREA, OR THEY ARE MEDICAL ARGUMENTS THAT ARE --
13 THAT SHOULD BE SENT TO THE FDA UNDER THE SECTION 811
14 PROCESS.

15 AND, YOUR HONOR, AS YOU HAVE INDICATED IN YOUR
16 QUESTIONING, THE SECTION 811 PROCESS IS NOT DEA'S
17 DETERMINATION ALONE TO DETERMINE WHETHER OR NOT MARIJUANA
18 HAS MEDICAL VALUE.

19 THE DEA UNDER THIS PROCESS MUST CONSULT WITH THE
20 SECRETARY OF HEALTH AND HUMAN SERVICES AND PURSUANT TO
21 STATUTORY MANDATE THOSE FINDINGS ARE BINDING ON THE DEA AS
22 TO SCIENTIFIC OR MEDICAL EFFICACY.

23 BUT EVEN BEYOND THAT, THERE IS REVIEW IN THE COURT
24 OF APPEALS. SO IF THE BODY OF EVIDENCE AND THE BODY OF
25 SCIENTIFIC EVIDENCE IS SO PATENTLY CLEAR THAT MARIJUANA HAS

1 A MEDICAL VALUE, THEN THAT ARGUMENT CAN BE PRESENTED IN THE
2 PROPER FORUM, WHICH IS IN THE PETITION TO THE FDA AND WITH
3 AN APPEAL TO THE COURT OF APPEALS.

4 THE COURT: IS THERE PRESENTLY A PETITION TO THE
5 FDA?

6 MR. QUINLIVAN: MY UNDERSTANDING IS, YES, THERE
7 IS, YOUR HONOR.

8 THE COURT: WELL, THEN, IS THE PRUDENT COURSE OF
9 WAITING A RESULT IN THAT? I MEAN, IF THE ARGUMENT THEY
10 MAKE, THE ARGUMENT THAT PEOPLE ARE DYING. PEOPLE ARE VERY
11 SICK. PEOPLE ARE IN GREAT PAIN. YOU ARGUE -- AND, BY THE
12 WAY, I DON'T THINK YOU'RE INSENSITIVE TO THAT ISSUE.

13 BUT YOU ARGUE THAT THERE IS A PROCESS, A
14 LEGITIMATE, STATUTORILY-PLACED PROCESS, WHICH IS THIS TYPE
15 OF PETITION.

16 THEY ARGUE THAT THAT'S NOT REALLY AN EFFECTIVE
17 REMEDY HERE. IT'S NOT BEEN EFFECTIVE IN THE PAST AND
18 THERE'S NO REASON TO BELIEVE IT WILL BE EFFECTIVE IN THE
19 FUTURE.

20 YOU SAY:

21 "WELL, WAIT A MINUTE. WE BELIEVE IT'S
22 AN EFFECTIVE REMEDY. SHOULD I WAIT AND SEE
23 WHETHER IT'S AN EFFECTIVE REMEDY? SHOULD I WAIT
24 TO SEE WHETHER OR NOT IT RESULTS IN A CHANGE?"
25 BECAUSE IF IT DID RESULT IN A CHANGE, WHY, THEN,

1 SHOULD I REACH OUT AND ISSUE AN INJUNCTION? THAT'S THEIR
2 ARGUMENT.

3 MR. QUINLIVAN: THAT IS THEIR ARGUMENT, YOUR
4 HONOR. AND I WOULD POINT OUT THAT THIS ARGUMENT IS, AS
5 I'VE SAID BEFORE, IT IS NO DIFFERENT FROM THE ARGUMENT THAT
6 WOULD BE ADVANCED BY THE AIDS PATIENT WHO IS WAITING FOR
7 THE NEXT GENERATION OF PROTEASE INHIBITORS TO BE APPROVED.
8 AND IT'S NO DIFFERENT FROM THE CANCER PATIENT WHO MIGHT BE
9 WAITING FOR THE NEXT GENERATION OF GENE THERAPY TO BE
10 APPROVED.

11 IN ALL OF THESE SITUATIONS THERE IS AN APPROVAL
12 PROCESS THROUGH THE CONTROLLED SUBSTANCES ACT AND THE
13 FEDERAL FOOD, DRUG AND COSMETIC ACT WHEREBY A MEDICINE OR A
14 PURPORTED MEDICINE IS DETERMINED WHETHER IT HAS MEDICAL
15 VALUE.

16 BUT IN ADVANCE OF THAT DETERMINATION BEING MADE,
17 THIS COURT IS OBLIGATED TO ENFORCE FEDERAL LAW, THAT IS,
18 WHEN YOU HAVE A CLEAR VIOLATION OF FEDERAL LAW.

19 THE COURT: WHEN DO YOU AND ANTICIPATE -- WHEN DO
20 YOU ANTICIPATE, IF YOU HAVE ANY ANTICIPATION, OF AN ANSWER
21 WITH RESPECT TO THE PETITION?

22 MR. QUINLIVAN: YOUR HONOR, THAT WOULD BE
23 SOMETHING THAT I WOULD HAVE TO TAKE UP IN THE BRIEF.
24 THAT'S SOMETHING --

25 THE COURT: I WOULD LIKE THAT. I WOULD LIKE THAT

1 RESPONSE.

2 MR. QUINLIVAN: I WILL. I WILL TRY TO OBTAIN
3 THAT. BUT THAT'S SOMETHING THAT, AGAIN, WE WOULD HAVE TO
4 CONSULT WITH --

5 THE COURT: I UNDERSTAND.

6 MR. QUINLIVAN: -- DEPARTMENT OF HHS ON THAT
7 QUESTION.

8 LET ME JUST READ A LITTLE BIT FROM THE --

9 THE COURT: SURE.

10 MR. QUINLIVAN: FROM THE --

11 THE COURT: I WOULD LIKE TO ALSO NOTE YOU THINK
12 THEIR INTERPRETATION -- YOU MIGHT DISAGREE, BUT I WANT TO
13 MAKE SURE THAT I FOCUS ON THAT.

14 THEY SAY THAT I CAN USE THE TRADITIONAL
15 GUIDELINES, STANDARDS FOR IMPOSING INJUNCTIVE RELIEF. AND
16 THERE ARE FIVE OR SIX OF THEM. I UNDERSTAND THAT YOU DON'T
17 SUBSCRIBE TO THAT PROPOSITION.

18 MR. QUINLIVAN: THAT'S RIGHT, YOUR HONOR. AND I
19 THINK WE'RE CITING FROM THE SAME CASE IN THAT REGARD. AND
20 THAT'S THE EN BANC DECISION IN THE MILLER CASE WHERE THE
21 NINTH CIRCUIT SET OUT WHAT WERE THE STANDARDS FOR THE
22 ISSUANCE OF INJUNCTIVE RELIEF.

23 AND IN THAT CASE THEY SET OUT THAT THE MORE
24 RIGOROUS TEST IS LIKELIHOOD OF SUCCESS AND THE POSSIBILITY
25 OF IRREPARABLE INJURY.

1 AND IN THIS CASE, THERE ARE UNAMBIGUOUS VIOLATIONS
2 OF THE FEDERAL LAW. THERE IS NO WAY TO RECONCILE WHAT THE
3 DEFENDANTS ARE ENGAGING IN AND FEDERAL LAW ABSENT --

4 THE COURT: OKAY.

5 MR. QUINLIVAN: -- ABSENT THE SCIENTIFIC PROTOCOL
6 UNDER SECTION 823.

7 THE COURT: WHAT ABOUT MR. HALLINAN'S ARGUMENT
8 THAT THE IRONIC THING HERE WOULD BE THAT IF THE COURT
9 ISSUES AN INJUNCTION THEREBY PUTTING THE CANNABIS CLUBS OUT
10 OF BUSINESS THAT WILL EITHER RESULT IN PEOPLE GOING AND
11 USING, OBTAINING ILLICIT -- OR ILLICITLY OBTAINING
12 CANNABIS, THAT IS CANNABIS THAT CROSSED STATE LINES OR IS
13 AGAINST STATE LAW. OR THEY WILL SIMPLY SUFFER. IN EITHER
14 EVENT, IN EITHER EVENT, THE UNITED STATES GOVERNMENT
15 WOULDN'T WANT THOSE TWO THINGS TO HAPPEN. THAT IS THEIR
16 ARGUMENT.

17 WHEN YOU LOOK AT THE GOALS OF THE UNITED STATES
18 GOVERNMENT IT CAN'T BE, THE GOAL CAN'T BE OF THE GOVERNMENT
19 TO WANT EITHER OF THOSE TWO THINGS TO HAPPEN, IS THEIR
20 ARGUMENT.

21 WHAT'S YOUR RESPONSE?

22 MR. QUINLIVAN: I THINK THE RESPONSE IS FIRST,
23 YOUR HONOR, IF, IN ESSENCE, THAT ARGUMENT IS AN UNLAWFUL
24 CONDUCT JUSTIFIES FURTHER UNLAWFUL CONDUCT, THAT IF THEY
25 ARE ENGAGING IN VIOLATIONS OF FEDERAL LAW AND THIS COURT

1 ENJOINS THEIR ACTIVITY, THIS COURT SHOULDN'T ENJOIN THEIR
2 ACTIVITIES BECAUSE THEY WILL ENGAGE IN UNLAWFUL ACTIVITY IN
3 ANOTHER AREA. AND THAT CAN'T BE A PROPER FACTOR TO
4 CONSIDER IN THE BALANCING OF HARDSHIPS.

5 AND I THINK, SECONDLY, YOUR HONOR, NO ONE, FOR
6 INSTANCE, WOULD ASSERT -- AND I DON'T UNDERSTAND THE
7 DEFENDANTS TO ASSERT THAT BECAUSE WE KNOW THAT OTHER
8 SCHEDULE ONE DRUGS ARE USED ILLEGALLY THAT A CITY OR A
9 COUNTY COULD, OR THE CLUBS AT ISSUE HERE COULD, YOU KNOW,
10 ENGAGE IN THEIR MORE LIMITED DISTRIBUTION OF THAT
11 CONTROLLED SUBSTANCE.

12 AND SO WE GET BACK TO THE POINT, THE DIFFERENCE
13 HERE IS THAT THE DEFENDANTS ARGUE THAT MARIJUANA HAS A
14 MEDICAL VALUE. AND FOR THIS COURT EVEN IN THE CONTEXT OF
15 THE BALANCE OF HARDSHIPS, TO SAY THE BALANCE OF HARDSHIPS
16 WEIGHS IN FAVOR OF THE DEFENDANTS WOULD BE AN IMPLICIT
17 DETERMINATION THAT, YES, MARIJUANA DOES HAVE A MEDICAL
18 VALUE.

19 AND, ONCE AGAIN, THAT IS A DECISION NOT -- THIS IS
20 NOT THE PROPER FORUM FOR THAT DECISION. THAT IS A DECISION
21 AS THE CENTRAL DISTRICT OF CALIFORNIA RECOGNIZED THAT MUST
22 GO THROUGH THE PROPER PROCEDURES OUTLINED BY CONGRESS.

23 LET ME GO TO THE ARGUMENT THAT'S BEEN MADE THAT
24 BECAUSE THAT SOMEHOW WE CAN RECONCILE UNDER SECTION 903
25 CALIFORNIA LAW AND STATE LAW -- I MEAN, CALIFORNIA LAW AND

1 FEDERAL LAW ON THIS QUESTION.

2 AND I POINT, AGAIN, YOUR HONOR, TO THE
3 UNITED STATES VERSUS ROSENBERG CASE. AND LET ME JUST QUOTE
4 BRIEFLY FROM THAT INSTANCE, BECAUSE I THINK THAT IT
5 COMPLETELY ANSWERS THE DEFENDANTS' ARGUMENT HERE.

6 IN THAT CASE, THE COURT SAID:

7 "THE DEFENDANT CLAIMS, QUOTE, 'THAT SINCE
8 HIS PRESCRIPTIONS WERE WITHIN THE LEGAL LIMITS OF
9 CALIFORNIA FOR SUCH PRESCRIPTIONS AND SINCE IT WAS
10 NOT CLEAR THAT HE WAS ACTING OTHER THAN IN THE
11 COURSE OF HIS PROFESSIONAL CONDUCT, THE
12 CONSTITUTION SOMEHOW REQUIRES THAT THE STATE OF
13 CALIFORNIA MUST FIRST FIND HIS ACTS WERE
14 UNAUTHORIZED BEFORE FEDERAL PROSECUTION IS
15 PERMISSIBLE.' "

16 WE DO NOT AGREE. IF THE CONSTITUTION ALLOWS THE
17 FEDERAL GOVERNMENT TO REGULATE THE DISPENSATION OF DRUGS IT
18 ALLOWS IT TO DO SO IN EVERY CASE.

19 THAT IS THE CASE HERE YOUR HONOR. SECTION 903
20 SAYS THAT, FOR INSTANCE, A STATE COULD GO BEYOND THE
21 PROVISIONS OF THE FEDERAL CONTROLLED SUBSTANCES ACT. AND
22 AS CALIFORNIA HAS DONE HERE, FOR PURPOSES OF STATE LAW IT
23 CAN CHANGE THE APPLICATION. BUT IT DOES NOT PURPORT TO
24 ALLOW ANY KIND OR PURPORT TO VITIATE THAT WHICH THE
25 CONTROLLED SUBSTANCES ACT PREVENTS.

1 ON THE ISSUE OF ABSTENTION, YOUR HONOR, WE DID
2 HAVE AN OPPORTUNITY TO RESPOND TO THE BRIEF THAT WAS FILED
3 BY THE CANNABIS CULTIVATORS' CLUB ON THE BUFORD ABSTENTION
4 ISSUE.

5 I WOULD ONLY POINT YOUR HONOR TO THE HOTEL EMPLOYEES'
6 CASE WHICH APPEARS AT 984 FED. REPORTER 2ND SERIES AT PAGE
7 1507.

8 IN THAT CASE, THE NINTH CIRCUIT REAFFIRMED THE
9 PRINCIPLE THAT IN PREEMPTION CASE -- ABSTENTION IS
10 INAPPROPRIATE IN PREEMPTION CASES WHETHER IT BE BUFORD
11 ABSTENTION, WHETHER IT BE PULLMAN ABSTENTION.

12 AGAIN, WE DON'T THINK THAT THE CONTROLLED
13 SUBSTANCES ACT OR THAT PROPOSITION 215 IN ANY WAY SERVES TO
14 VITIATE THE CONTROLLED SUBSTANCES ACT.

15 BUT UNDER THEIR BEST ARGUMENT, EVEN IF IT DID, IT
16 WOULD BE A PREEMPTION CASE AND ABSTENTION WOULD BE
17 INAPPROPRIATE.

18 ON A SUBSTANTIVE DUE PROCESS, YOUR HONOR, THE
19 CARNOHAN IS DISPOSITIVE ON THAT. AND I THINK THAT
20 MR. PANZER'S STATEMENT THAT A COURT WOULD HAVE TO LOOK FOR
21 A REASONABLE BASIS IMPLICITLY, IN EFFECT, CONCEDES THE FACT
22 THAT THERE CAN BE NO FUNDAMENTAL RIGHT BECAUSE, OF COURSE,
23 IF THERE WERE A FUNDAMENTAL RIGHT THERE WOULD BE NO
24 REASONABLE TEST THAT WOULD BE APPLIED.

25 ON THE UNCLEAN HANDS ARGUMENT, YOUR HONOR, LET ME

1 JUST POINT, YOUR HONOR, SECTION 882 ALLOWS THE FEDERAL
2 GOVERNMENT TO PROCEED BY WAY OF A CIVIL INJUNCTION
3 PROCEEDING. THAT IS WHAT CONGRESS HAS ALLOWED. THERE CAN
4 BE NO ARGUMENT THAT WE ARE PROCEEDING WITH UNCLEAN HANDS BY
5 PURSUING THIS ACTION THAT WHICH CONGRESS ALLOWS.

6 THE COURT: WELL, WHAT ABOUT THE FACT THAT THERE'S
7 BEEN A DELAY? I MEAN, I THINK YOU HAVE AN ANSWER TO IT,
8 BUT I DON'T THINK IT'S THE ONE YOU'RE GIVING ME. I MEAN
9 THE FACT OF THE MATTER IS, YES, 882 PROVIDES FOR INJUNCTIVE
10 RELIEF. SO THEN -- AND IT SAYS:

11 "IN ACCORDANCE WITH THE FEDERAL RULES OF
12 CIVIL PROCEDURE, ET CETERA, ET CETERA, ET CETERA."

13 OKAY? THEN, WHETHER YOU GRANT AN -- I DON'T
14 DENY -- I DON'T MEAN "DENY." I DON'T QUESTION THE RIGHT OF
15 THE GOVERNMENT. THERE IS A REMEDY IN THE BOOK THAT CAN BE
16 UTILIZED. THE QUESTION I HAVE OR THE QUESTION THAT THEY
17 HAVE RAISED IS ONE OF LACHES.

18 THEY SAY WHEN YOU WAIT TWO YEARS TO BRING AN
19 INJUNCTION AGAINST THE OPERATION OF THESE CLUBS IT'S TOO
20 LATE.

21 I MEAN, EVERYDAY WHEN PEOPLE APPLY THE INJUNCTIONS
22 I'VE SAT HERE A SHORT TIME, BUT I MEAN I'VE HAD A NUMBER OF
23 APPLICATIONS FOR INJUNCTIONS, INJUNCTIVE RELIEF. AND I
24 THINK THAT THE STANDARD IS, TO SOME EXTENT, YOU KNOW, HOW
25 TIMELY IS THE APPLICATION? YOU KNOW WHAT I MEAN.

1 MR. QUINLIVAN: RIGHT.

2 THE COURT: PEOPLE WHO SIT AROUND -- SHOULDN'T
3 USE THAT TERM. PEOPLE WHO HAVE NOT SOUGHT INJUNCTIVE
4 RELIEF FOR TWO YEARS, THAT'S A FACTOR. THAT'S WHAT
5 MR. SERRA IS SAYING. HE'S SAYING MORE THAN THAT, BUT HE'S
6 SAYING AT THE VERY LEAST THAT'S A FACTOR THAT OUGHT TO BE
7 CONSIDERED. NOT WHETHER THE REMEDY IS AVAILABLE, BUT
8 WHETHER THE REMEDY OUGHT TO BE APPLIED. THAT'S THE
9 QUESTION.

10 SO LET'S HEAR YOUR RESPONSE TO THAT.

11 MR. QUINLIVAN: THERE ARE TWO RESPONSES, YOUR
12 HONOR. AND THE FIRST IS THAT LACHES CANNOT BE APPLIED
13 AGAINST THE GOVERNMENT.

14 AND I'D CITE YOUR HONOR TO THE UNITED STATES
15 VERSUS CHALKER CASE, 915 FEDERAL REPORTER SECOND, PAGE
16 1268, ESTABLISHES LACHES CANNOT BE APPLIED AGAINST THE
17 GOVERNMENT IN THIS SITUATION.

18 AND THE SECOND ANSWER GOES BACK TO THE STANDARDS
19 FOR INJUNCTIVE RELIEF WHICH IS THE IRREPARABLE INJURY
20 QUESTION. BECAUSE, ONE, THE NINTH CIRCUIT CONSISTENT WITH
21 EVERY OTHER COURT OF APPEALS HAS HELD IS THAT WHEN A
22 FEDERAL STATUTE IS BEING VIOLATED AND WHEN THAT STATUTE
23 PROVIDES FOR INJUNCTIVE RELIEF, IT IS PER SE IRREPARABLE
24 INJURY.

25 AND THAT IS THE COMPLETE ANSWER, YOUR HONOR.

1 THE COURT: PER SE, SO IT IS AN IRREBUTTABLE
2 PRESUMPTION.

3 MR. QUINLIVAN: IT IS. AND LET ME GO TO THE
4 ARGUMENT THAT BECAUSE THEY ARE DISPUTING THE ALLEGATIONS
5 HERE, THAT IT IS NOT --

6 THE COURT: NO, I'M NOT GOING TO THAT.

7 MR. QUINLIVAN: OKAY.

8 THE COURT: I'M SAYING -- I'M SAYING -- I MEAN, WE
9 CAN DO THAT, BUT I AM SAYING THEY HAVE SAID IT'S A
10 REBUTTABLE PRESUMPTION AT THE VERY LEAST. OR, VERY BEST,
11 IT'S REBUTTAL. OKAY. BUT YOU'RE TELLING ME THAT IT'S NOT.
12 THAT I HAVE TO, IF I SIT HERE AND HAVE A HEARING YOU SAY:

13 "HERE'S THE INJUNCTION. HERE'S, YOU
14 KNOW -- PLEASE DO NOT TAKE ANY EVIDENCE ON
15 IRREPARABLE HARM. DO NOT TAKE ANY BECAUSE AS A
16 MATTER OF LAW, IT'S IRREPARABLE HARM. AND THEY
17 CAN'T BRING IN ONE IOTA OF EVIDENCE TO SHOW THAT
18 NOBODY'S BEING INJURED HERE. OR TO THE CONTRARY,
19 THAT THE INJURY IS RUNNING THE OTHER WAY."
20 IS THAT THE GOVERNMENT'S POSITION?

21 MR. QUINLIVAN: YES, IT IS, YOUR HONOR. AND THE
22 REASON IS THIS. BECAUSE CONGRESS HAS -- AND IT GOES TO
23 WHAT THE NINTH CIRCUIT SAID IN THE ODESSA UNION WAREHOUSE
24 CASE.

25 ONCE CONGRESS HAS DETERMINED THE ORDER OF

1 PRIORITIES IN A GIVEN AREA, IT IS FOR THE COURT'S TO
2 ENFORCE THEM WHEN ASKED.

3 AND THAT IS THE SITUATION HERE. CONGRESS HAS
4 DETERMINED WHAT THE ORDERS OF PRIORITIES IS, AND CONGRESS
5 HAS SAID, THEREFORE, THAT THE PUBLIC INTEREST IS HARMED AND
6 IRREPARABLE INJURY IS ESTABLISHED WHEN A STATUTE OF THE
7 UNITED STATES IS BEING VIOLATED.

8 THE REBUTTAL PRESUMPTION COMES IN IF THERE IS A
9 SERIOUS QUESTION AS TO WHETHER OR NOT THE STATUTE IS, IN
10 FACT, BEING VIOLATED.

11 AND THAT IS NOT THE CASE HERE. THE DEFENDANTS ARE
12 NOT COMING HERE, FOR EXAMPLE, YOUR HONOR, AND SAYING:

13 "WE'RE NOT ENGAGED IN THE DISTRIBUTION
14 OF MARIJUANA."

15 THEY READILY CONCEDE THAT. THE QUESTION IS: DO
16 THEY HAVE A LEGAL DEFENSE TO THAT?

17 THE COURT: THEY ARE SAYING SOMETHING ELSE. I
18 MEAN, THEY ARE SAYING THAT WHAT YOU CHARACTERIZE AS
19 DISTRIBUTION THEY ARE CHARACTERIZING AS JOINT POSSESSION.

20 I MEAN, THAT -- WHETHER THAT'S -- THAT'S VIABLE IS
21 ANOTHER ISSUE, BUT THEY ARE SAYING IT'S A JOINT POSSESSION
22 CASE FROM THEIR POINT OF VIEW, AND YOU'RE SAYING IT'S A
23 DISTRIBUTION CASE.

24 MR. QUINLIVAN: RIGHT.

25 THE COURT: OKAY.

1 MR. QUINLIVAN: AND YOUR HONOR WOULD OBVIOUSLY
2 HAVE TO REACH THAT QUESTION BEFORE IT COULD DETERMINE
3 WHETHER OR NOT WE HAVE SHOWN THE LIKELIHOOD OF SUCCESS.

4 THE COURT: ALL RIGHT.

5 MR. QUINLIVAN: LET ME JUST TOUCH ON THE NECESSITY
6 DEFENSE, BECAUSE I KNOW THE ARGUMENT HAS BEEN MADE THAT
7 THIS IS NOT AN AVAILABLE REMEDY IN THESE CIRCUMSTANCES.

8 YOUR HONOR, AGAIN, THE LAETRILE CASE PRESENTED THE
9 SAME SITUATION. THERE WERE CANCER PATIENTS WHO CLAIMED
10 THAT THIS WAS THEIR LAST CURE FOR CANCER. AND THE
11 GOVERNMENT IS NOT UNSYMPATHETIC TO PEOPLE WHO ARE FACING
12 THESE DREADED DISEASES.

13 NOBODY ON EITHER SIDE HAS NOT HAD A FAMILY MEMBER
14 OR A GOOD FRIEND WHO HAS NOT SUFFERED FROM ANY OF THESE
15 CONDITIONS. BUT THE SIMPLE FACT IS THAT CONGRESS OF THE
16 UNITED STATES HAS DETERMINED WHAT IS THE ORDER OF
17 PRIORITIES IN THIS AREA, AND WHETHER OR NOT A CERTAIN DRUG
18 HAS A MEDICAL VALUE.

19 CONGRESS LONG AGO DECIDED THAT IT WOULD NOT JUST
20 ALLOW A DOCTOR AND A PATIENT TO DETERMINE WHETHER OR NOT
21 THEY WOULD USE ANY KIND OF MEDICATIONS. AND SO WHAT THE,
22 AGAIN, DEFENDANTS HERE MUST RETURN TO THE CONGRESS OF THE
23 UNITED STATES OR TO THE SECTION 811 PETITION PROCESS TO
24 ESTABLISH THAT MARIJUANA HAS A MEDICAL VALUE.

25 BUT AS THE CENTRAL DISTRICT JUST FOUND IN THE

1 MCCORMICK CASE, THAT'S THE LAETRILE CASES UNIFORMLY
2 ESTABLISH THIS COURT IS NOT THE PROPER FORUM FOR THOSE
3 ARGUMENTS. BECAUSE THE LIKELIHOOD OF SUCCESS IS SO CLEAR
4 IN THIS CASE AND BECAUSE UNDER THOSE CIRCUMSTANCES
5 IRREPARABLE INJURY MUST BE PRESUMED, YOUR HONOR, WE
6 RESPECTFULLY REQUEST THAT THE COURT ENTER THE INJUNCTIONS.

7 THE COURT: ALL RIGHT. LET'S TALK ABOUT TIMING.
8 I WOULD LIKE BRIEFS SUBMITTED SIMULTANEOUSLY, ONE BRIEF NOT
9 TO EXCEED -- WELL, I WOULD SAY NOT TO EXCEED 50 PAGES. I
10 THINK THAT PROBABLY GIVES EVERYBODY SOME LIKELIHOOD I'LL
11 READ THEM. NOT TO EXCEED 50 PAGES.

12 MR. QUINLIVAN: 5-0?

13 THE COURT: I MEAN, A LOT OF SUBJECTS. YOU DON'T
14 HAVE TO USE 50 PAGES.

15 MR. QUINLIVAN: IS THAT ONE BRIEF AS TO --

16 THE COURT: ONE ENTIRE BRIEF. I MEAN, YOU WRITE
17 YOUR BRIEF. THEY WILL WRITE THEIR BRIEF. SO ANY OF THE
18 SUBJECTS WE HAVE COVERED TODAY THAT YOU FEEL THAT YOU WANT
19 TO STATE WHAT THE POSITION OF THE UNITED STATES DEPARTMENT
20 OF JUSTICE IS AND THEY WANT TO FEEL THAT THEY NEED TO
21 RESPOND, AND THEY DON'T NEED TO RESPOND TO THE ISSUES THAT
22 WE DISCUSSED TODAY.

23 BUT I'D LIKE THEM QUICKLY. AND SO HOW SOON? I
24 PROBABLY SHOULD HAVE THOUGHT ABOUT PAGE LIMIT AFTERWARDS
25 BECAUSE THAT'S GOING TO GIVE YOU A FALSE IDEA OF HOW MUCH

1 TIME I WANT TO GIVE YOU. I WANT IT TO BE DONE VERY
2 QUICKLY.

3 I DON'T WANT THIS TO BE OUT THERE TOO LONG. SO
4 HOW LONG? LET ME TURN TO THE GOVERNMENT.

5 MR. QUINLIVAN: WE WOULD BE PREPARED, YOUR HONOR,
6 TO SUBMIT IT WITHIN 10 DAYS. BUT --

7 THE COURT: WELL, LET ME HEAR FROM THE DEFENSE,
8 ONE PERSON.

9 MR. PANZER: YOUR HONOR, WE ARE THINKING MORE IN
10 TERMS OF 60 DAYS. I MEAN, BEAR IN MIND, YOUR HONOR, THAT
11 THE GOVERNMENT HAS SOME ATTORNEYS THAT ARE PAID JUST TO
12 WORK ON THIS CASE. WE HAVE A LOT MORE ATTORNEYS THAT ARE
13 WORKING PRO BONO THAT HAVE OTHER PRACTICES.

14 AND TOO MANY COOKS SPOIL THE BREW, SOMETIMES IT'S
15 SAID.

16 WE HAVE A LOT OF PEOPLE AND A LOT OF DEFENDANTS
17 THAT HAVE INTEREST IN THIS.

18 IT'S JUST A LOT OF ISSUES TODAY, AND I DON'T THINK
19 THAT'S UNREASONABLE.

20 THE COURT: ALL RIGHT. WELL, LOOK, I UNDERSTAND
21 THAT THIS WILL BE SOMEWHAT ARBITRARY IN NATURE, BUT I THINK
22 THAT BRIEFS CAN BE SUBMITTED WITHIN 20 DAYS FROM BOTH
23 SIDES.

24 TOO MUCH TIME AND THEY SOMETIMES BECOME A LITTLE
25 UNFOCUSED. SO LET'S HAVE IT.

1 WHAT DO WE HAVE HERE IN TERMS OF TIME?
2 AND THEY SHOULD BE FILED SIMULTANEOUSLY. THAT IS,
3 I DON'T WANT ANY REPLIES BACK.

4 THE CLERK: TODAY IS THE 24TH.

5 THE COURT: I'M GOING TO -- I'LL GIVE YOU SOME
6 ADDITIONAL TIME BECAUSE ACTUALLY I'LL NOT BE HERE THAT
7 WEEK, SO I'LL GIVE YOU UNTIL APRIL 16.

8 PLEASE FILE BY APRIL 16. THE MATTER WILL BE
9 DEEMED SUBMITTED UPON THE FILING OF THE BRIEFS.

10 IF AN ISSUE COMES UP THAT I FEEL I NEED FURTHER
11 CLARIFICATION I WILL ISSUE AN ORDER TO THAT EFFECT,
12 OTHERWISE I'LL DECIDE ON THE FILING OF THE BRIEFS.

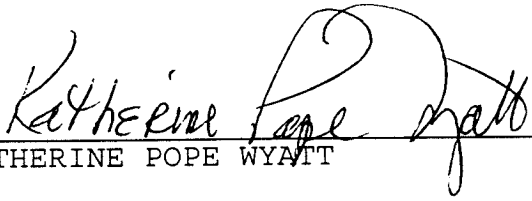
13 THANK YOU VERY MUCH.

14 (WHEREUPON, THIS HEARING WAS CONCLUDED.)

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25

1 CERTIFICATE OF REPORTER

2 I, KATHERINE POPE WYATT, COURT REPORTER, HEREBY
3 CERTIFY THAT THE FOREGOING TRANSCRIPT, PAGES NUMBERED 1
4 THROUGH 147, CONSTITUTES A TRUE, FULL AND CORRECT
5 TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH COURT
6 REPORTER TO THE PROCEEDINGS HEREINBEFORE ENTITLED AND
7 REDUCED TO TYPEWRITING TO THE BEST OF MY ABILITY.

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12 _____
13 KATHERINE POPE WYATT
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MARCH 29, 1998

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case Number C98-0085-CRB and related cases
Plaintiff,)	
v.)	MEMORANDUM IN SUPPORT OF
CANNABIS CULTIVATOR'S CLUB et al.,)	MOTION OF CITY AND COUNTY OF SAN FRANCISCO TO FILE ADDENDUM
Defendants.)	TO BRIEF <u>AMICI CURIAE</u>
)	NO HEARING REQUESTED

I. INTRODUCTION

The District Attorney of San Francisco requests permission to file an addendum to his previously filed brief amici curiae in civil cases C98-0085, United States v. Cannabis Cultivators Club, et al., and related cases. The attached addendum contains copies of San Francisco Health Department regulations, San Francisco Board of Supervisors resolutions, and San Francisco voter initiatives, all of which are relevant to the case at bar and some of which were cited in the previously filed amicus brief.

II. ARGUMENT

As discussed in the previously filed motion for leave to file an amicus brief, it is the purpose of an amicus brief to assist the Court. The documents contained in the attached addendum are relevant to the case at bar and, more specifically, to the issues discussed in the District Attorney's amicus brief. Making these public documents available in the form of an addendum will assist the Court by relieving it of the burden of searching for these local records. Cf. Fed. R. App. P. 28(f) (requiring parties before the Court of Appeals to submit copies of relevant "statutes, rules, regulations, etc."). This addendum will therefore assist the Court.

III. CONCLUSION

For the above reason, the District Attorney of San Francisco respectfully requests that this Court grant this motion to file the attached addendum to the previously filed brief amici curiae.

DATED: April 13, 1998

Respectfully Submitted,



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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case Number C98-0085-CRB and related cases
Plaintiff,)	
v.)	[PROPOSED] ORDER ON THE MOTION OF SAN FRANCISCO DISTRICT ATTORNEY TO FILE ADDENDUM TO BRIEF <u>AMICI CURIAE</u>
CANNABIS CULTIVATOR'S CLUB et al.,)	
Defendants.)	

This matter comes before the court on the motion of City and County of San Francisco to submit an addendum to the previously filed brief amici curiae. Upon consideration, the Court hereby GRANTS the motion on this ___ day of April, 1998.

United States District Judge

Addendum Exhibits

- 1) San Francisco Proposition "P" Text and Results;
- 2) Resolutions passed by San Francisco Board of Supervisors:
 - a) Resolution #741-92 adopted Aug. 24, 1992 calling on police and D.A. to make possession and cultivation of medical marijuana "lowest enforcement priority;"
 - b) Resolution #375-97 adopted April 21, 1997 to defend physicians recommending marijuana for medicine;
 - c) Resolution #138-98 adopted Feb. 23, 1998 requesting city agencies to formulate policies implementing Prop. 215;
- 3) S.F. Health Department guidelines for Prop. 215 implementation;
- 4) S.F. Mayor Willie Brown letter to Pres. Clinton asking halt to lawsuit.

Text of San Francisco Proposition "P"
passed November 1991 by margin of 79% - 21%

TEXT OF PROPOSED INITIATIVE DECLARATION OF POLICY
PROPOSITION P

RECOMMENDATION TO AMEND THE
HEALTH AND SAFETY CODE OF CALI-
FORNIA.

1. The people of the City and County of San Francisco recommend that the State of California and the California Medical Association restore hemp medical preparations to the list of available medicines in California. Licensed physicians

shall not be penalized for or restricted from pre-
scribing hemp preparations for medical purposes
to any patient.

(1) Definition:

The term "hemp medical preparations" means
all products made from hemp, cannabis, or mari-
juana, in all forms, that are designed, intended,
or used for human consumption, for the treatment

of any disease, the relief of pain, or for any
healing purpose, including the relief of asthma,
glaucoma, arthritis, anorexia, migraine, multiple
sclerosis, epilepsy, nausea, stress, for use as an
antibiotic, an anti-emetic, or as any healing agent,
or as an adjunct to any medical procedure for the
treatment of cancer, HIV infection, or any other
medical procedure or herbal treatment.

You can vote absentee in person at Room 158
in City Hall starting Tuesday, October 7 through Tuesday,
November 5, during regular working hours — 8 a.m. – 5 p.m.,
Monday through Friday and 7 a.m. – 8 p.m. Election Day.
Take advantage of this option if you will not be able
to go to your polling place on Election Day.


S.F. Proposition "P" Election Returns

★ Wednesday, November 6, 1991

SAN FRANCISCO EXAMINER
ELECTION 1991 **THE CITY**

Domestic partners, pot, kids triumph

SAN FRANCISCO

Mayor			E Changes practices for terminating city employees *Yes 98,900 No 54,905	L Rezones an area near City College for development of senior housing Yes 89,133 *No 81,798
*Frank Jordan 58,082	*Art Agnos * 49,359		F Allows city to make up difference in salary when city employees are called up as military reservists *Yes 105,124 No 52,424	M Limits rent increases on vacant units Yes 75,747 *No 94,501
Angela Alioto 33,348	Richard Hongisto 18,920		G Allows eligible Housing Authority police to join city police force *Yes 98,505 No 81,530	N Releases condominium conversion laws Yes 52,939 *No 108,258
Tom Hsieh 18,823	Gloria LaRive 2,457		H Bars mayor from hiring deputy mayors *Yes 104,357 No 52,852	O Reaffirms The City's support for Proposition 13 *Yes 113,381 No 42,131
Joni Jacobs 1,347	Cesar Ascarrunz 898		I Allows minors to be appointed to boards or advisory bodies Yes 87,288 *No 90,988	P Authorizes city to recommend to state that marijuana be legal for medicinal use *Yes 125,965 No 32,338
Elisa Keyes 322	Dehnert Queen 293		J Allocates a percentage of the city budget for children's programs *Yes 88,841 No 72,794	Q Calls on federal government to spend on social programs *Yes 99,868 No 80,216
Peter Planteen 199			K Repeals domestic partners legislation Yes 87,987 *No 101,080	
District attorney		B Allows city workers to collectively bargain for benefits, salaries *Yes 88,782 No 71,854		
*Arlo Smith * 119,793		C Puts civil service regulations under control of Civil Service Commission *Yes 90,552 No 81,337		
Sheriff				
*Michael Hennessy * 128,040				
Local measures				
A Provides early retirement alternatives to reduce workforce *Yes 127,851 No 35,558		D Changes hiring practices in civil service *Yes 108,151 No 47,198		

Key: * = winner; ** = incumbent.

ER0353

Medical Marijuana Resolutions Passed by San Francisco Board of Supervisors

- 1) Resolution #741-92 adopted Aug. 24, 1992 calling on police and D.A. to make possession and cultivation of medical marijuana "lowest enforcement priority."
- 2) Resolution #375-97 adopted April 21, 1997 to defend physicians recommending marijuana for medicine.
- 3) Resolution #138-98 adopted Feb. 23, 1998 requesting city agencies to formulate policies implementing Prop. 215.

Amendment of the Whole
8/24/92

1 (Marijuana for Medicine)
 2 URGING THE MAYOR TO URGE THE POLICE COMMISSION AND THE DISTRICT
 3 ATTORNEY TO MAKE LOWEST PRIORITY THE ARREST OR PROSECUTION OF THOSE
 4 INVOLVED IN THE POSSESSION OR CULTIVATION FOR PERSONAL USE OF
 5 MARIJUANA FOR MEDICINAL PURPOSES, AND FOR THE DISTRICT ATTORNEY TO
 6 ALLOW A LETTER FROM A TREATING PHYSICIAN TO BE USED AS PRIMA FACIE
 7 EVIDENCE THAT MARIJUANA CAN ALLEVIATE THE PAIN AND SUFFERING OF
 8 THAT PATIENT'S MEDICAL CONDITION, AND INSTRUCTING THE CITY'S
 9 REPRESENTATIVE IN SACRAMENTO TO LOBBY THE STATE LEGISLATURE AND THE
 10 CALIFORNIA MEDICAL ASSOCIATION FOR A STATE MEDICAL MARIJUANA BILL
 11 FOR THE 1992-1993 LEGISLATIVE SESSION.

12 WHEREAS, In November of 1991, the voters of San Francisco
 13 passed Proposition P by an overwhelming 80 percent of the vote; and
 14 WHEREAS, Proposition P made it City policy to recommend that
 15 the State of California and the California Medical Association
 16 restore hemp medical preparations to the list of available
 17 medicines; and

18 WHEREAS, Proposition P defined "hemp medical preparations" as
 19 all products made from hemp, cannabie, or marijuana that are
 20 intended for the treatment of disease, the relief of pain, or for
 21 any other healing purposes; and

22 WHEREAS, "Medicinal purposes," for the purpose of this
 23 resolution, would include, but not be limited to the treatment of
 24 AIDS, glaucoma, cancer, multiple sclerosis, and other diseases
 25 which require chemotherapy, as well as other serious illnesses; and

BOARD OF SUPERVISORS

1 WHEREAS, Federal agencies have refused to recognize
 2 marijuana's important role in medical therapy, continue to maintain
 3 legal prohibitions against marijuana's prescriptive medical use,
 4 and recently cancelled the nation's federal marijuana-as-medicine
 5 program; and

6 WHEREAS, These federal policies unnecessarily expose the
 7 people of San Francisco to suffering and unrelieved pain, and
 8 prevent physicians in San Francisco from exercising their
 9 professional judgment; and

10 WHEREAS, The Board of Supervisors has received extensive and
 11 unambiguous testimony in open hearings from highly respected San
 12 Francisco physicians, from nursing organizations and from others in
 13 the medical community who accept marijuana has a legitimate role to
 14 play in the medical treatment of persons afflicted with the above-
 15 mentioned ailments; and,

16 WHEREAS, The Board of Supervisors has received extensive and
 17 compelling testimony from many citizens afflicted with the above-
 18 mentioned ailments and other serious illnesses who, as patients,
 19 attest to marijuana's legitimate role in medical therapy; and,

20 WHEREAS, While opposing the recreational use of marijuana, the
 21 California Medical Association at its March, 1992 convention
 22 endorsed the belief that the therapeutic use of marijuana under the
 23 direction of a physician may be appropriate for certain conditions;
 24 now, therefore, be it

///

Supervisor Mallinan

PAGE TWO

BOARD OF SUPERVISORS

1 RESOLVED, That the Board of Supervisors urges the Mayor to
2 urge the Police Commission and the District Attorney of the City
3 and County of San Francisco to make lowest priority the arrest or
4 prosecution of those involved in the possession/ of hemp for
5 medicinal purposes; and, be it

6 FURTHER RESOLVED, That the Board of Supervisors urges the
7 Mayor to urge the District Attorney to allow a letter from a
8 treating physician to be used as prima facie evidence that
9 marijuana can alleviate the pain and suffering of that patient's
10 medical condition; and, be it

11 FURTHER RESOLVED, That the representative of the City and
12 County of San Francisco in Sacramento lobby the California
13 legislature and the California Medical Association for a State
14 Medical Marijuana Bill for the 1992-1993 legislative session.

15 ///
16 ///
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20 ///
21 ///
22 ///
23 ///
24 ///

Supervisor Hallinan

Page Three

BOARD OF SUPERVISORS

Adopted - Board of Supervisors, San Francisco August 24, 1992

Ayes: Supervisors Achtenberg Alloto Conroy Gonzalez Mallinan Hale
Kennedy Nigden Shelley

Absent: Supervisors Britt Maher

I hereby certify that the foregoing resolution
was adopted by the Board of Supervisors
of the City and County of San Francisco

John H. Taylor
Clerk

File No.
285-92-1

AUG 31 1992

Date Approved

Richard A. Fisher
Mayor

8/24/92
exp

ER0356

FILE NO. 194-97-1

RESOLUTION NO. 375-97

Defending Physicians Recommending Medical Marijuana)
AUTHORIZING THE DEFENSE IN FEDERAL CRIMINAL AND ADMINISTRATIVE
PROCEEDINGS OF DEPARTMENT OF PUBLIC HEALTH PHYSICIANS WHO RECOMMEND
MEDICAL MARIJUANA TO THEIR PATIENTS IF CERTAIN CONDITIONS ARE MET
WHEREAS, in 1996 the voters of the State of California approved
Proposition 215, the Medical Marijuana Initiative, thereby legalizing
under State law the use of marijuana for medical purposes with the
approval or recommendation of a licensed physician; and,

WHEREAS, The Department of Public Health employs licensed
physicians who may recommend medical marijuana for certain patients;
and,

WHEREAS, The Health Commission has indicated its support for
physicians employed by the Department of Public Health who make a
medical determination of whether or not to recommend marijuana to
patients; and,

WHEREAS, The Federal government has indicated that it may
institute criminal or administrative proceedings against physicians
who recommend marijuana for their patients under Proposition 215;
and,

WHEREAS, State law allows a county to defend an employee in
administrative or criminal proceedings brought against the employee
for an act taken in the course and scope of the employee's employment
if certain other conditions are met, now, therefore, be it

///
///
///

Superior Blumens, Leal, Esq., Assistant, Temp. Brown, Neilson, Research
DEPARTMENT OF PUBLIC HEALTH
BOARD OF SUPERVISORS

RESOLVED, That licensed physicians of the Department of Public
Health shall have their legal defense provided at City expense in a
federal criminal or administrative proceeding if the following
conditions are met:
(a) the federal administrative or criminal proceeding arises
solely out of the physician's approval or recommendation of medical
marijuana to a patient care at a Department of Public Health site by
a Department of Public Health employed physician;
(b) the physician gave his or her approval or recommendation of
medical marijuana to the patient in the course and scope of the
physician's City employment;
(c) the physician's approval or recommendation of medical
marijuana was consistent with all guidelines of the Department of
Public Health;
(d) the physician neither expected nor received a monetary or
other personal gain from the approval or recommendation of medical
marijuana to the patient;
(e) the physician acted in good faith, without actual malice,
and in the City's and patient's apparent best interests; and
(f) the physician immediately notifies his or her supervisor and
the City Attorney of any action, claim, or inquiry by the federal
government regarding the physician's approval or recommendation of
medical marijuana; and, be it

///
///

DEPARTMENT OF PUBLIC HEALTH
BOARD OF SUPERVISORS

Post-it Fax Note 7671

Date	3/16	# of pages	3
From	Reddy		
To			
Phone #			
Fax #			

ER0357

1 FURTHER RESOLVED, That upon recommendation by the County Health
 2 Officer, the Board of Supervisors shall have the discretion to
 3 determine whether an individual physician meets the criteria for a
 4 defense; and, be it

5 FURTHER RESOLVED, That the defense of the physician shall be by
 6 the City Attorney unless the City Attorney authorizes otherwise, and,
 7 be it

8 FURTHER RESOLVED, That the City Attorney shall provide
 9 information to the Board of Supervisors regarding the necessary
 10 appropriations at the time of a request for a legal defense by a
 11 physician.

DEPARTMENT OF PUBLIC HEALTH
 BOARD OF SUPERVISORS

Page 1
 1/23/59

Adopted - Board of Supervisors, San Francisco April 23, 1957

Ayes: Supervisors Amalio Miramón Brown (Mariano José Medina
 Manuel Tang Yaki Yee

Absent: Supervisor Katz

I hereby certify that the foregoing resolution
 was adopted by the Board of Supervisors
 of the City and County of San Francisco

Robert Taylor
 City Clerk
James H. Brown
 Mayor

MAY - 2 1957
 Date Approved

File No.
 156-97-1

[Position on Proposition 215]

REQUESTING PERTINENT CITY AGENCIES FORMULATE POLICIES /

ORDINANCES ON THE IMPLEMENTATION OF THE LEGAL ASPECTS OF

PROPOSITION 215.

WHEREAS, The voters of California passed Proposition 215. Compensation for the Act of 1996, or the Medical Marijuana Initiative; and

WHEREAS, San Francisco's Department of Public Health has established policy regarding their role in the implementation of Proposition 215; and

WHEREAS, The San Francisco District Attorney, Police Department, City Attorney and Planning Department have been meeting to examine policies to address social implications related to the implementation of Proposition 215; now therefore, be it

RESOLVED, That the Board of Supervisors of the City and County of San Francisco

requests that all pertinent City agencies, including police, District Attorney, City Attorney, and the Department of Public Health, coordinate and formulate City policies / ordinances on the implementation of the legal aspects of Proposition 215, specifically where medicinal marijuana can be smoked, who can cultivate for sale to medical marijuana and relevant centers.

SUPERVISOR AMBROSIO, KATZ, BERMAN, MEDINA, TATE

COUSE OF SIGNATURES

Adopted - Board of Supervisors, San Francisco February 23, 1998

Ayes: Supervisors Ambrosio, Berman, Brown, Katz, Kaufman, Medina, Yang, Yeh

Absent: Supervisor Medina

I hereby certify that the foregoing resolution was adopted by the Board of Supervisors of the City and County of San Francisco

[Signature of John F. Clune]

File No. 98-0275

MAR - 6 1998

Date Approved


Mayor



This has been distributed to 57 districts by
S.F. D.A. Terrence Hallinan. It is public record and may be
modified and adapted for each community.

THM 2-20-97

MEMORANDUM

To: District Attorney Terrence Hallinan
From: R. Jan Gurtley, M.D.; Medical Director 
Through: Mitchell Katz, M.D.; Director, Community Health and Safety
CC: Sandra Hernandez, M.D., Director, Health Department
Larry Meredith, M.D., Director, Substance Abuse Services
Date: February 12, 1997
Re: Final Documents and Guidelines for the Implementation of Prop 215

I would like to thank you for your leadership on the implementation of Proposition 215. The Health Department greatly appreciates your helpful comments and suggestions. I am including in this packet the final versions of the guidelines for implementation, which have been revised to include your recommendations. Along with these guidelines are the standard documents for use by physicians and by the Centers.

San Francisco Health Department Guidelines for Prop. 215 Implementation

AIDS OFFICE

25 VAN NESS AVENUE, SUITE 500
SAN FRANCISCO, CA 94108 • 6099

415 • 854-8000
FAX 415 • 671-7927

ER0360

Implementation of Health and Safety Code 11362.5 Medicinal Marijuana Distribution Centers

Core Standards/Guidelines and Issues:

- *Health and Safety Code 11362.5 is also known as Proposition 215.*
- *Sources for legally procuring marijuana for medicinal purposes (previously known as "clubs") will be referred to here as "Centers."*

1) Cannabis Products

- Quality assurance mechanisms currently utilized by centers will be collected and disseminated to centers to assist in sharing expertise and resources. The criteria for quality assurance includes: 1) potency assessment, 2) assessment for adulterants—pesticides, molds, fungi, and 3) assessment for adulterants—other drugs in addition to cannabis.
- Centers should establish instructions/cautions/advice re: emergency situations/drug interactions/public safety (e.g., driving or operating equipment).
- Centers should develop procedures for ensuring as much as possible that the entire chain of activities (growing, harvesting, transportation, storage and exchange) is in compliance with Health and Safety Code 11362.5.

2) Facility and Operations of the Center

- Centers should comply with all required local, state and federal business permits and regulations (e.g. ADA, OSHA, business license, zoning, Health and Fire Department).
- Centers should establish and maintain a good neighbor policy, including effective crowd control so there are no public nuisance or safety issues; pedestrian traffic management so that traffic does not create a disturbance to other businesses or residents; noise/music parameters that are within normal and acceptable levels; and site security.
- Centers should maintain general liability insurance.

3) Record Keeping and File Maintenance

- Individual distribution sites may develop and maintain verifiable patient identification cards. An approved list of sites' cards may be used by law enforcement (with verification phone numbers on the cards) to identify patients.
- Centers should maintain documentation necessary to demonstrate that the cannabis purchased by the facility is directed only to individuals with qualifying conditions (audit trail).
- Centers should maintain financial record keeping consistent with the organization's status (e.g., private, non-profit) in standard accounting procedures.
- Centers should maintain personnel and management records consistent with acceptable business practices and legal status. File appropriate reports with governmental agencies in a timely manner (e.g. 501(c)3, IRS, permits, dues).
- Centers should NOT pay employees, staff, or volunteers with cannabis. All employees, staff and volunteers should be free of felony convictions and be in good standing.

4) Operating Procedures and Protocols—Intake and Eligibility

- Centers should establish intake protocols to verify that an applicant is qualified to purchase medicinal marijuana for a specified period of time. While the knowledge and confidentiality of the individual physician/patient relationship is the best determinant of eligibility, the distribution site may be most protected by those diagnoses specifically cited in the legislation.
- Intake and screening procedures must ensure that only those individuals with qualifying conditions and physician recommendations have access to purchase of medicinal cannabis. Procedures may include a combination of individual physician and medical board involvement for patients whose diagnosis is not included in Health and Safety Code 11362.5's language.
- Centers should develop guidelines/criteria for membership of a Medical Advisory Board whose function is to oversee policy development.
- For those Centers where Medical Advisory Boards are involved in any fashion with reviewing the legitimacy of individual eligibility or intake decisions, these guidelines/criteria should be employed: 1) membership can include 3-20 individuals, of whom a majority must be licensed M.D.s and/or pharmacologists, 2) Medical Advisory Board members should be free of felony convictions and be in good standing
- Centers should have documentation of the training of intake workers to the protocol.
- Centers should establish procedures for processing non-standard issues—(e.g., non-standard form from physician to patient, applicant has no identification, physician unavailable to validate patient and condition).
- Centers should establish and maintain a standardized physician statement form for patient intake and eligibility purposes (see attached document).
- Centers should develop standardized formats for accommodating and verifying oral physician recommendations (see attached documents). These guidelines should include adequate information to protect the distribution site and provide an audit trail for monitoring of compliance.
- Centers should develop mechanisms to update expiring recommendations for patients and notification/implementation procedures for patients whose physician recommendation is not renewed.
- Centers should establish and maintain a standardized form for "primary caregiver" designation (see attached document).
- Centers should determine what confidentiality requirements should exist between the Center and the physician and/or the patient/client, along with procedures for the safe storage of documents.

5) Operating Procedures and Protocols--Preventing Abuses

- Center should require an original letter or recommendation or oral authorization for each patient. Other relationships among distribution centers should be developed so abuses of the system can be avoided.
- Intake protocols and client management practices and procedures must insure that there is no diversion of cannabis to unqualified individuals either by the Center or the client.
- Any distribution to minors should include explicit documented parent/guardian approval. In addition, distribution should not occur for children below the age of 13 years unless at

least two physicians concur that this is a recommended treatment and the parent and/or guardian has given their written consent.

- Centers should limit purchases to a maximum of eight grams of marijuana per day per individual to avoid secondary distribution. Centers should establish an automated patient per day purchase monitoring system to prevent system abuses.
- Centers should establish terms and conditions for club membership; sanctions for violations (e.g., resale or distribution, behavior), along with verification that each member understands the terms and agrees to them.
- Centers should establish, maintain and post: Conditions of Membership; responsible marijuana use; health bulletins, alerts and messages.
- The San Francisco Department of Public Health will develop monitoring guidelines to assess the compliance of sites with Health and Safety Code 11362.5. DPH monitoring activities will initially focus on intake and eligibility procedures, with feedback to sites on areas of improvement. Violations may be reported to the District Attorney's Office.
- Substance abuse education and prevention messages (e.g., avoid overuse of cannabis, do not drive when using cannabis, avoidance of use of other drugs) should be developed for use at Centers, especially prevention programs aimed at minors.

Health and Safety Code 11362.5
VERIFICATION OF PHYSICIAN'S
ORAL RECOMMENDATION

*This form must be completed in full to qualify as a verified oral recommendation.
 Please remove and destroy the bottom half of the form once verification is complete.*

Print patient's name _____

Date seen by physician (optional) _____

I have spoken to the recommending physician who attests that (check all those that apply):

- He/She has discussed the risks and benefits of cannabis use.
- He/She will continue to monitor the patient for side effects and drug interactions.
- He/She has a valid California physician's license.
- He/She recommends medicinal marijuana for this patient.
- OR-
- He/She does not recommend medicinal marijuana for this patient.

The physician gives an oral recommendation for the following time period:

- 3 Months 12 Months
- 6 Months Other: _____

Date of Oral Verification: _____

I have also verified this physician's California license as current and valid by checking with the California Board of Medical Quality Assurance. Yes No

Employee's Name _____

Date Verification Complete _____

Employee's Signature _____

Verification information was provided by (please check all that apply):

- Office staff at physician's phone number
- Nurse at physician's phone number
- Nurse practitioner or physician's assistant at physician's phone number
- Direct discussion with physician

The San Francisco Department of Public Health has created this form for usage by centers. This form must be accompanied by a Patient Declaration Form.

(This part of the form is provided for the convenience of the authorized Center. Please remove and destroy the bottom half of this form after verification has been completed in order to protect the identity of the recommending physician.)

Physician's Name _____

Date Seen by Patient (optional) _____

Address _____

CA License No. (obtain by phone) _____

Phone _____

Health and Safety Code 11362.5
DOCUMENTATION OF PHYSICIAN'S
ORAL RECOMMENDATION
Patient Declaration Form

Patient Declaration Under Penalty of Perjury:

I, _____, do hereby declare, that I have discussed the risks and benefits of
 print patient's name
 cannabis use with my physician, who has recommended it for my diagnosis of _____

I understand that my physician will be contacted to verify the contents of this declaration. I also understand that my physician may need written authorization from me to discuss my medical condition and the contents of this declaration with the center for verification purposes only.

I understand that if my physician is unable to verify this declaration, I will be refused services at this center.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was signed by me on _____ (date) in _____ (county), California.

 Patient's Signature

 Witness Signature/Title

 Date

The San Francisco Department of Public Health has created this form for usage by centers. This form must be accompanied by a Verification of Physician Oral Recommendation Form.

(This part of the form is provided for the convenience of the authorized Center. Please remove and destroy the bottom half of this form after verification has been completed in order to protect the identity of the recommending physician.)

Physician Name _____

 Date Seen by Patient (optional)

Address _____

Phone _____

Health and Safety Code 11362.5 PHYSICIAN'S STATEMENT

This certifies that _____ is a patient under my medical care and supervision for the treatment of _____
print patient's name

I have discussed the medical benefits and risks of cannabis use with the patient as a treatment for these medical conditions. I recommend cannabis use for my patient.

If my patient chooses to use cannabis therapeutically, I will continue to monitor his/her medical condition and to provide advice on his/her progress.

This letter is for use by my patient and _____ (please include the name of the chosen marijuana center) only. I understand that I may be contacted to verify the information in this letter. My patient authorizes me to discuss their medical condition and the contents of this letter with the center for verification purposes only.

Patient's Signature

Physician's Signature

N.P./P.A. Signature (optional)

Physician's Name (print)

N.P./P.A. Name (optional-print)

Physician CA License No.

(street)

(city)

()
Phone Number

Date of Statement: _____

Time Period Covered:

3 months

6 months

12 months

Other

The San Francisco Department of Public Health has created this form for physician usage.

Health and Safety Code 11362.5
PRIMARY CAREGIVER CERTIFICATION

I, _____, do hereby certify that
 print patient's name

 print full name of caregiver

 address of caregiver

is my primary caregiver. S/he consistently assumes, on my behalf, responsibility for my housing, health or safety.

 Date

 Signature of patient

The San Francisco Department of Public Health has created this form for the purposes of caregiver certification for Health and Safety Code 11362.5, also known as Proposition 213. This form does NOT confer legal guardianship, durable power of medical care or other implications beyond those of Health and Safety Code 11362.5, also known as Proposition 213.

The New York Times

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SUNDAY, MARCH 22, 1998

Four Mayors Ask Clinton to Halt Suit Against Marijuana Clubs

By The New York Times

SAN FRANCISCO, March 21 — The Mayors of four California cities have written to President Clinton, urging him to halt a Federal lawsuit that threatens to close clubs that distribute marijuana for medical use.

The letters follow an announcement this week by the San Francisco District Attorney that if the clubs close, city officials might distribute marijuana to patients who say they need it.

Mayor Willie L. Brown Jr. of San Francisco wrote to Mr. Clinton: "At stake is the well-being of 11,000 California residents who depend on the dispensaries to help them battle the debilitating effects of AIDS, cancer and other serious illnesses. If the centers are shut down, many of these individuals will be compelled to search back alleys and street corners for their medicine."

The letters were sent to forestall a Federal court hearing here next week in a Government suit against six marijuana buyers' clubs in northern California.

Mr. Brown called on the President to drop the suit and impose a moratorium on enforcing drug laws that "interfere with the daily operation of the dispensaries."

Mayors Elihu Harris of Oakland, Steve Martin of West Hollywood and Celia Scott of Santa Cruz sent the President similar messages.

A White House spokesman, Barry Toiv, said the suit would move ahead as planned.

"Distribution of marijuana is still a violation of Federal law," Mr. Toiv said.

Federal authorities have locked horns with state and local officials over marijuana since 1996, when California voters approved Proposition 215, an initiative to legalize cultivation and distribution of the drug for seriously ill patients.

In January, the Justice Department sued six clubs, in San Francisco, Oakland, Santa Cruz and Ukiah, contending that they had violated the Federal Controlled Substances Act. The six cases were combined into one suit, scheduled for a hearing on Tuesday.

ER0368

OFFICE OF THE MAYOR
SAN FRANCISCO



WILLIE LEWIS BROWN, JR.

March 12, 1998

The Honorable William J. Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear President Clinton:

I am deeply troubled by the Department of Justice lawsuits aimed at shutting down medical marijuana dispensaries in our cities. The harmful impact the closure of these patient clubs would have on patient health and public safety cannot be overestimated.

At stake is the well-being of 11,000 California residents who depend on the dispensaries to help them battle the debilitating effects of AIDS, cancer and other serious illnesses. If the centers are shut down, many of these individuals will be compelled to search back alleys and street corners for their medicine. This will not only endanger their lives, but place an unnecessary burden on our local police departments.

A year ago when Proposition 215 was being debated statewide, critics of the initiative warned that our communities would be overrun with drug corruption and rampant abuse if medical marijuana were legally sanctioned. To date these lurid predictions have not materialized. Instead, local officials have worked closely with public health experts, police chiefs, medical marijuana providers and our community members to formalize dispensary systems that live up to the spirit of the law, and most importantly, make marijuana affordable, safe and accessible to suffering patients.

Today's system is not perfect. Regulatory oversight over these dispensaries must be given time to develop airtight systems for working with federal authorities to report law-breakers. Shutting the dispensaries down will undo our regulatory efforts and unfairly punish bona-fide patients.

For the above reasons, I ask that you drop the lawsuit and work with state and local officials to find an amenable solution that will put patients first. In the interim, I ask that you implement a moratorium on enforcement of federal drug laws that interfere with the daily operation of the dispensaries.

481 VAN NESS AVENUE, ROOM 338, SAN FRANCISCO, CALIFORNIA 94102
(415) 554-6141

RECYCLED PAPER

ER0369

1 JAYNE W. WILLIAMS, City Attorney - State Bar #063203
2 JOYCE M. HICKS, Assistant City Attorney - State Bar #076772
3 WENDY P. ROUDER, Deputy City Attorney - State Bar #085569
4 BARBARA J. PARKER, Deputy City Attorney - State Bar #069722
5 One City Hall Plaza, 6th Floor
6 Oakland, California 94612
7 Telephone: (510) 238-3815 Fax: (510) 238-6500
8 206480v1

**ORIGINAL
FILED**

APR 15 1998

Attorneys for CITY OF OAKLAND

**RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA**

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 v.

14 CANNABIS CULTIVATORS' CLUB and
15 DENNIS PERON,
16 Defendants.

Case Nos. C-98-00085 CRB
C-98-00086 CRB
C-98-00087 CRB
✓ C-98-00088 CRB
C-98-00089 CRB
C-98-00245 CRB

**EXHIBITS TO "CITY OF OAKLAND
SUPPORT OF AMICUS BRIEF FILED
BY THE DISTRICT ATTORNEY FOR
THE CITY AND COUNTY OF SAN
FRANCISCO" WHICH WAS FILED BY
THE COURT ON MARCH 20, 1998**

17 AND RELATED ACTIONS.
18

19 On March 20, 1998, the Court filed the "City of Oakland
20 Support of Amicus Brief Filed by the District Attorney for the
21 City and County of San Francisco".

22 The City of Oakland ("Oakland") hereby files as exhibits
23 to its March 20, 1998 filing the resolutions of the Oakland City
24 Council, the administrative memoranda of the Oakland Police
25 Department and Oakland Mayor Elihu M. Harris' letter to President
26 William J. Clinton. The exhibits are described and listed below.

ER0370

1 The exhibits supplement Oakland's March 20, 1998 filing
2 by amplifying the public safety implications of the injunctive
3 relief that the United States seeks in the pending litigation and
4 the important role medical marijuana dispensaries, such as the
5 Oakland Cannabis Buyers' Cooperative, play in Oakland's efforts to
6 ensure that patients suffering from AIDS, cancer, glaucoma,
7 multiple sclerosis, and other illnesses have access to a safe and
8 affordable supply of medicinal marijuana to alleviate their pain
9 and discomfort.

10 The attached resolutions (1) establish Oakland's low
11 priority policy with respect to law enforcement activities related
12 to medicinal marijuana use, possession, cultivation,
13 transportation, sale, and distribution; (2) discuss the critical
14 need to provide medicinal marijuana to persons whose pain and
15 suffering can be alleviated by the ingestion of cannabis; and (3)
16 express Oakland's support of the activities of the Oakland
17 Cannabis Buyers' Cooperative. The attached administrative
18 memoranda detail the procedure police personnel will employ to
19 comply with the low priority policy and enforce California
20 Proposition 215. Mayor Harris' letter to President Clinton asks
21 that the federal government dismiss the actions pending before
22 this Court and work with state and local governments to develop a
23 safe, effective distribution system for patients whose pain and
24 suffering can be alleviated by medicinal marijuana.

25 Exhibit 1. Oakland Mayor Elihu M. Harris' March 16,
26 1998 letter to President William J. Clinton.

ER0371

1 Exhibit 2. The December 1996 Memorandum and
2 Administrative Memorandum of the Oakland Police Department
3 regarding Medicinal Marijuana.

4 Exhibit 3. Oakland City Council Resolution No. 74039
5 C.M.S. entitled, "Resolution Calling Upon Federal Authorities To
6 Desist Their Efforts To Terminate the Operations Of The Oakland
7 Cannabis Buyers' Cooperative".

8 Exhibit 4. Oakland City Council Resolution No. 73555
9 C.M.S. entitled, "Resolution Supporting Medical Marijuana
10 Activities In The City of Oakland And Declaring That The
11 Investigation And/Or Arrest Of Individuals Involved With The
12 Cultivation, Manufacture, And/Or Transportation Of Medical
13 Marijuana Products Shall Be A Low Priority For The City Of
14 Oakland".

15 Exhibit 5. Oakland City Council Resolution No. 72881
16 C.M.S. entitled, "Resolution Establishing A Working Group To
17 Discuss And Make Recommendations To The City Council Regarding The
18 Medical Marijuana Policy Of The City Of Oakland".

19 Exhibit 6. Oakland City Council Resolution No. 72516
20 C.M.S. entitled, "Resolution Endorsing H.R. 2618, Supporting The
21 Activities Of the Oakland Cannabis Buyers' Club And Declaring That
22 The Investigation And Arrest Or Individuals Involved With The
23 Medical Use of Marijuana Shall Be A Low Priority For The City Of
24 Oakland".

25 Exhibit 7. Oakland City Council Resolution No. 72379
26 C.M.S. entitled, "Resolution Endorsing AB - 1529, 'The Medical

1 Marijuana Bill' and the 'Compassionate Use Initiative of 1996'.

2 For the reasons, set forth above and in Oakland's
3 March 20, 1998 filing, the City of Oakland respectfully requests
4 that the Court deny the injunction.

5 Dated: April 14, 1998

6 JAYNE W. WILLIAMS, City Attorney
7 JOYCE M. HICKS, Assistant City Attorney
8 BARBARA J. PARKER, Deputy City Attorney

9 By: 
10 Attorneys for CITY OF OAKLAND

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ER0373

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PROOF OF SERVICE

United States of America v. Cannabis Cultivator's Club, et al.
United States District Court Case Nos. C-98-0085 CRB,
C-98-0086 CRB, C-98-0087 CRB, C-98-0088 CRB,
C-98-0089 CRB, C-98-0245 CRB

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One City Hall Plaza, 6th Floor, Oakland, California 94612. On April 15, 1998, I served the within documents:

EXHIBITS TO "CITY OF OAKLAND SUPPORT OF AMICUS BRIEF FILED BY THE DISTRICT ATTORNEY FOR THE CITY AND COUNTY OF SAN FRANCISCO" WHICH WAS FILED BY THE COURT ON MARCH 20, 1998

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth.
- by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by causing such envelope to be sent by Federal Express/ Express Mail.

FRANK W. HUNGER
Assistant Attorney General
MICAHEL J. YAMAGUCHI
United States Attorney
GARY G. GRINDLER
Deputy Assistant Attorney
General
DAVID J. ANDERSON
ARTHUR R. GOLDBERT
MARK T. QUINLIVAN
U.S. Department of Justice
Civil Division, Room 1048
901 "E" Street, N.W.
Washington, DC 20530

Attorneys For Plaintiff
UNITED STATES OF AMERICA

ER0374

1	William G. Panzer 370 Grand Avenue, Suite 3	Attorneys For Defendants OAKLAND CANNABIS BUYER'S COOPERATIVE; JEFFREY JONES
2	Oakland, CA 94610	
3	Robert A. Raich 1970 Broadway, Suite 940	Attorneys For Defendants OAKLAND CANNABIS BUYER'S COOPERATIVE; JEFFREY JONES
4	Oakland, CA 94612	
5	J. Tony Serra Brendan R. Cummings	Attorneys For Defendants CANNABIS CULTIVATORS CLUB; DENNIS PERON
6	Serra, Lichter, Daar, Bustamante, Michael & Wilson	
7	Pier 5 North The Embarcadero	
8	San Francisco, CA 94111	
9	Carl Shapiro Helen Shapiro	Attorneys For Defendants FLOWER THERAPY MEDICAL MARIJUANA CLUB; JOHN HUDSON; MARY PALMER; BARBARA SWEENEY
10	404 San Anselmo Avenue San Anselmo, CA 94960	
11	Jess P. Yanez VISSE & YANEZ, LLP	Attorneys For Defendant GERALD M. BUHRZ
12	One Daniel Burnham Court, Suite 220-C	
13	San Francisco, CA 94109-5460	
14	Susan B. Jordan 515 South School Street	Attorneys For Defendants UKIAH CANNABIS BUYER'S CLUB; CHERRIE LOVETT; MARVIN LEHRMAN; MILDRED LEHRMAN
15	Ukiah, CA 94582	
16	David Nelson 106 North School Street	Attorneys For Defendants UKIAH CANNABIS BUYER'S CLUB; CHERRIE LOVETT; MARVIN LEHRMAN; MILDRED LEHRMAN
17	Ukiah, CA 95482	
18	Terence Hallinan District Attorney CITY AND COUNTY OF SAN FRANCISCO	
19	800 Bryant Street San Francisco, CA 94103	
20	Council Member Nate Miley Office of the City Council CITY OF OAKLAND	
21	One City Hall Plaza, 2nd Floor Oakland, CA 94612	
22	Oakland, CA 94612	
23		
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ER0375

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I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 15, 1998, at Oakland, California.



Kristin Ericsson

ER0376

EXHIBIT 1

ER0377

CITY OF OAKLAND



CITY HALL • ONE CITY HALL PLAZA • OAKLAND, CALIFORNIA 94612

Office of the Mayor
Elihu M. Harris
Mayor

March 16, 1998

(510) 238-3141
FAX (510) 238-4731
TDD (510) 839-6451

The Honorable William J. Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D. C. 20500

Dear President Clinton:

We are deeply troubled by your intention shut down medical marijuana dispensaries in California. The harmful impact the closure of these cannabis patient clubs would have on patient health and public safety cannot be overestimated.

At stake is the well being of thousands of California residents who depend on the dispensaries to help them battle the debilitating effects of AIDS, cancer, and other serious illnesses. If the centers are shut down, nay of these individuals will be compelled to search back alleys and street corners for their medicine. This will not only endanger their lives, but also place an unnecessary burden on our local police departments.

A year ago, when Proposition 215 was being debated statewide, critics of the initiative warned that our communities would be overrun with drug corruption and rampant abuse if medical marijuana were legally sanctioned. To date, these lurid predictions have not materialized. Officials like ourselves have worked closely with public health experts, police chiefs, medical marijuana providers, and community members to formalize dispensary systems that live up to the spirit of the law, and, most importantly, make marijuana affordable, safe and accessible to suffering patients.

ER0378

Page 2
President Clinton

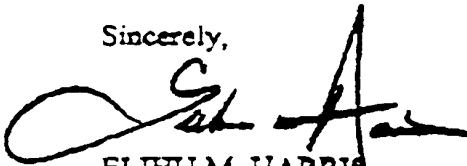
Today's system is not perfect. Our regulatory oversight over these dispensaries must be given time to develop airtight systems for working with federal and state authorities to report law-breakers. Shutting the dispensaries down will undo our regulatory efforts and unfairly punish bona-fide patients.

For the above reasons, we ask that you drop the injunction and work with state and local officials to find an amenable solution that will put patients first. In the interim, we ask that you implement a moratorium on enforcement of state drug laws that interfere with the daily operation of the dispensaries. We need safe access and distribution of medical marijuana.

A bill currently before the California State Senate is a fruitful starting point for our joint efforts. SB 1887 would establish a task force that would seek to recommend safe, legal and affordable systems to distribute medical marijuana to patients. We fully support this path of inquiry and respectfully urge you to do the same.

We honor and will abide by the primacy of federal law. In return, we ask that the federal government respect local governments' experience and expertise in potentially developing legal community-based solutions that benefit the public health of our residents.

Sincerely,



ELIHU M. HARRIS
Mayor

EMH:pj/pj

TOTAL P. 25

ER0379

EXHIBIT 2

ER0380

CITY OF OAKLAND

Memorandum

TO: Bureau of Field Operations
ATTN: Command Staff
FROM: Vice/Narcotics Section
DATE: 12 Dec 96

RE: Medicinal Marijuana Enforcement


Attached is a copy of an administrative memorandum you will be receiving shortly outlining Chief's Samuel's' guidelines for the enforcement of Proposition 215. It is similar to the guidelines dealing with the needle exchange issue. The primary people you will come into contact with will be members of the Oakland Cannabis Buyer's Club (CBC) who are working with us (to the extent they can) to find a way to make this thing work until the issue is settled in the courts.

Clients of the CBC are being issued new photo identification cards with a 24-hour number to contact to verify they are medicinal members. The City's working group has agreed to accept these new cards as a legitimate means of verifying identification if the person has no driver's license, etc. You may come into contact with older ID cards until the transition is complete; these more than likely will be valid. I would assume non-CBC members will claim in some fashion to be medicinal marijuana users; they may, or may not, have some form of doctor verification.

In evaluating whether an arrest should be made, you should consider the intent of Proposition 215 and the City Council's resolution supporting it and setting a low priority on enforcement. Each case should be decided on its own merits.

It is requested the identification cards not be seized without a valid need. All information on the card should be listed on the report. The marijuana should be seized and turned into criminalistics. All such incidents require a report in addition to any citation which may be issued. Follow-up responsibility for verifying the medicinal use will rest with the Vice/Narcotics charging officers. The DA will make charging decisions. Ultimately, a court order will have to be initiated by the patient/suspect if no charges are filed.

I realize this is confusing; feel free to call me anytime, day or night. I will try to provide some guidance based upon what I know about the issue.


Peter A. Peterson
Lieutenant of Police
Vice/Narcotics Section

ER0381

ADMINISTRATIVE MEMO
Oakland Police Department

TO	BUREAU COMMANDERS (BFO)	DATE	11 Dec 96	NUMBER	-	DUE DATE	-
SUBJECT	MEDICINAL USE OF MARIJUANA						

The City Council has adopted a resolution in support of the medicinal use of marijuana as a means of alleviating pain and discomfort for individuals suffering from medical illnesses.

In accordance with the subsequent directive of the City Manager to handle medicinal marijuana activity (in violation of Health and Safety Code 11357, relating to the possession of marijuana, and 11358, relating to the cultivation of marijuana) as a low priority, the following procedures will be implemented immediately:

- Citizen calls for service requesting police intervention at sites where such activity is occurring shall be assigned a "D" priority by Communications Division staff.
- At both field and dispatch levels, every effort shall be made to obtain and record the identity of the reporting citizen(s).
- Field units receiving a dispatched assignment or initiating a contact with persons purportedly involved in the use of marijuana for medicinal purposes shall summon a command-level officer to the scene if an enforcement action (citation or arrest) for the 11357 H&S or 11358 H&S violation is intended.
- The command officer shall evaluate the facts and exercise the discretion and decision-making required to resolve the incident, in accordance with the low-priority policy.
- If an enforcement action is to be taken, the command officer shall promptly notify his/her Bureau Commander and provide him with a written summary of the incident and a copy of all pertinent documents.

ER0382

- Incidents involving persons who wish to make citizen arrests for the law violation shall be handled in the normal manner.
- Discretion to arrest will be left with the officer and commander at the scene, based upon the facts presented to them at the time. The marijuana should be turned in as evidence for follow-up investigation by the Vice/Narcotics Section.

There are varied and opposing views--professional, legal and medical in nature--regarding the practice of medicinal use of marijuana as a means of alleviating symptoms and controlling chronic pain of patients with specific medical conditions.

Nevertheless, the recent passage of Proposition 215 by California voters has now created law. Federal and state officials are reviewing the initiative and may issue guidelines in the near future. In the interim, the Department will continue its participation on a City working group to identify and resolve local implementation issues. As agreements are reached or decisions made, additional procedural guidelines will be set forth in Departmental publications or communications.

Interim training to all commanders in general and BFO commanders in particular shall be provided over the next 3-4 weeks by Lieutenant Peterson.



Joseph Samuels, Jr.
Chief of Police

EXHIBIT 3

ER0384

OAKLAND CITY COUNCIL



RESOLUTION No. 74039 C.M.S.

**RESOLUTION CALLING UPON FEDERAL AUTHORITIES TO
DESIST THEIR EFFORTS TO TERMINATE THE OPERATIONS
OF THE OAKLAND CANNABIS BUYERS' COOPERATIVE**

WHEREAS, in November 1996 the voters of the State of California passed Proposition 215, the Compassionate Use Act of 1996, to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes" by a YES vote of 55.7 percent, and the residents of Oakland voted YES for Proposition 215 by an overwhelming 79.3 percent; and

WHEREAS, the City Council of the City of Oakland finds that many of its City residents are suffering from life-threatening or serious illnesses whose painful symptoms are alleviated by the ingestion of cannabis; and

WHEREAS, the City of Oakland has repeatedly expressed its support for access to a safe and affordable supply of marijuana for medicinal purposes and the operations of the Oakland Cannabis Buyers' Cooperative in Resolution Nos. 72379 C.M.S., 72516 C.M.S., 72881 C.M.S., and 73555 C.M.S.; and

WHEREAS, the City Council finds that the Oakland Cannabis Buyers' Cooperative has served the aforementioned residents with a well-organized, safe, and responsible opportunity to obtain cannabis in furtherance of a course of medical treatment; and

WHEREAS, federal law enforcement authorities have threatened to disrupt and prevent ill Oakland residents' access to cannabis by filing suit to enjoin the Oakland Cannabis Buyers' Cooperative from supplying medical marijuana and to shut down its operations; and

WHEREAS, the federal law enforcement policy impairs public safety by encouraging a market for street narcotic peddlers to sell cannabis to Oakland's ill citizens; now therefore be it

RESOLVED: the Mayor and the Oakland City Council urge the federal government to desist from any and all actions that pose obstacles to access to cannabis for Oakland residents whose physicians have determined that their health will benefit from the use of marijuana and recommended medical marijuana use for such residents; and be it

FURTHER RESOLVED: the Mayor and the Oakland City Council endorse Senator John Vasconcello's call for a statewide summit on the distribution of medical marijuana; and be it

FURTHER RESOLVED: the Mayor and the Oakland City Council urge the Alameda County Board of Supervisors to declare a state of medical emergency; and be it

FURTHER RESOLVED: the Mayor and the Oakland City Council express their support of the furtherance of medical marijuana research; and be it

FURTHER RESOLVED: copies of this resolution shall be forwarded to Senators Boxer and Feinstein and Congressman Ron Dellums urging the federal policy-makers to dismiss current lawsuits impacting California's cannabis buyers' clubs and cooperatives.

*I certify that the foregoing is a full, true and correct copy
of a Resolution passed by the City Council of the City of
Oakland, California on*

January 27, 1998
CEDA FLOYD

City Clerk and Clerk of the Council

Per *[Signature]* Deputy

ER0386

EXHIBIT 4

ER0387

OAKLAND CITY COUNCIL

RESOLUTION No. 73555 C.M.S.



RESOLUTION SUPPORTING MEDICAL MARIJUANA ACTIVITIES IN THE CITY OF OAKLAND AND DECLARING THAT THE INVESTIGATION AND/OR ARREST OF INDIVIDUALS INVOLVED WITH THE CULTIVATION, MANUFACTURE, AND/OR TRANSPORTATION OF MEDICAL MARIJUANA PRODUCTS SHALL BE A LOW PRIORITY FOR THE CITY OF OAKLAND

WHEREAS, on November 5, 1996, the voters of California passed Proposition 215, the Compassionate Use Act of 1996, by a YES vote of 55.7 percent, and the residents of Oakland voted YES for Proposition 215 by an overwhelming 79.3 percent; and

WHEREAS, marijuana had been shown to help alleviate pain and discomfort in people suffering from a variety of illnesses including AIDS, cancer, glaucoma, and multiple sclerosis when no other medications have been effective; and

WHEREAS, cultivation of medicinal strains of marijuana, the manufacture of medical cannabis products such as oral preparations, and the transportation of marijuana and cannabis products for medical purposes may remain illegal notwithstanding the passage of Proposition 215; and

WHEREAS, there is a need to ensure that patients have access to a safe and affordable supply of medical grade marijuana and cannabis products; and

WHEREAS, the Oakland City Council passed Resolution 72379 C.M.S. endorsing the Compassionate Use Act of 1996 and similar measures; and

WHEREAS, the Oakland City Council passed Resolution 72516 C.M.S. supporting the activities of the Oakland Cannabis Buyers Club and declaring it to be the policy of the City of Oakland that the investigation and arrest of certain individuals involved with the medical use of marijuana shall be a low priority for the City of Oakland; and

WHEREAS, the Oakland City Council passed Resolution 72881 C.M.S. establishing a Working Group to make recommendations regarding the City's medical marijuana policy; and

WHEREAS, to the extent permitted by applicable law, the City of Oakland wishes not to expend any City resources, including but not limited to those of the Oakland Police Department, in any investigation, detention, arrest, and/or prosecution arising out of alleged violations of state or federal law regarding the cultivation, manufacture, or transportation of marijuana or cannabis products for medical purposes; now therefore, be it

ER0388

RESOLVED: that the Mayor and City Council hereby declare that it shall be the policy of the City of Oakland that the investigation, detention, arrest, or prosecution of a person and/or that person's primary caregiver for the cultivation, manufacture, or transportation of marijuana or cannabis products shall be a low priority for the City of Oakland if such person has been medically diagnosed as suffering from a serious illness or injury, the symptoms of which may be alleviated by the medicinal use of marijuana and such cultivation, manufacture and/or transportation of marijuana or cannabis products is for the personal medical use of such person upon the written or oral recommendation or approval of a physician; and, be it further

RESOLVED: that the Mayor and City Council hereby declare that it shall be the policy of the City of Oakland that investigation, detention, arrest, and/or prosecution of persons for the cultivation, manufacture or transportation of marijuana or cannabis products shall be a low priority for the City of Oakland if such persons cultivate, manufacture, or transport marijuana or cannabis products for patients whose physicians have determined that they are suffering from a serious illness or injury, the symptoms of which may be alleviated by the medicinal use of marijuana and have recommended or approved medical marijuana use for such patients; and be it further

RESOLVED: that the Mayor and City Council call upon the Alameda County District Attorney not to prosecute persons involved with the possession, purchase, distribution, cultivation, manufacture or transportation of marijuana or cannabis products for medical use; and be it further

RESOLVED: that if any provision of this Resolution is declared by a court of competent jurisdiction to be contrary to any statute, regulation, or judicial decision, or its applicability to any agency, person, or circumstance is held invalid, the validity of the remainder of this resolution and its applicability to any other agency, person, or circumstances shall not be affected.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 03 1997, 19__

PASSED BY THE FOLLOWING VOTE:

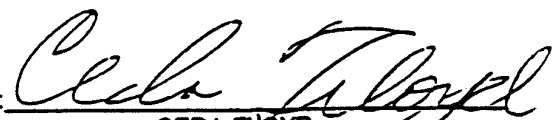
AYES- BRUNNER, CHANG, DE LA FUENTE, MILEY, NADEL, REID, RUSSO, SPEES, and
PRESIDENT HARRIS - 9

NOES- None

ABSENT- None

ABSTENTION- None

ATTEST:



CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

ER0389

EXHIBIT 5

ER0390

OAKLAND CITY COUNCIL

RESOLUTION NO. 72881 C. M. S.

INTRODUCED BY COUNCILMEMBER _____



BJP:trc

RESOLUTION ESTABLISHING A WORKING GROUP TO DISCUSS AND MAKE RECOMMENDATIONS TO THE CITY COUNCIL REGARDING THE MEDICAL MARIJUANA POLICY OF THE CITY OF OAKLAND

WHEREAS, marijuana has been shown to help alleviate pain and discomfort in people suffering from a variety of illnesses including AIDS, cancer, glaucoma, and multiple sclerosis; and

WHEREAS, marijuana has alleviated the suffering of people with chronic illnesses when no other medications have been effective; and

WHEREAS, the use of marijuana is currently unlawful even under the supervision of a physician, and

WHEREAS, the illegal purchase of marijuana by people already suffering chronic illnesses subjects them to further suffering in the form of potential arrest and prosecution; and

WHEREAS, the Oakland Cannabis Buyers Club provides a way for patients needing to purchase marijuana for medical use to do so with greater ease and less risk of arrest and prosecution; and

WHEREAS, the Oakland City Council passed Resolution 72516 C.M.S., supporting the activities of the Oakland Cannabis Buyers Club and declaring it to be the policy of the City of Oakland that the arrest of individuals involved with the medical use of marijuana shall be a "low priority" for the City of Oakland; and

WHEREAS, to the extent permitted by applicable law, the City of Oakland wishes not to expend any City resources, including but not limited to those of the Oakland Police Department, in any investigation, detention, arrest, and/or prosecution arising out of alleged violations of state or federal law regarding the cultivation, distribution, sale, purchase, and/or possession of marijuana for medicinal purposes; now therefore, be it

RESOLVED: that a Working Group be established to discuss and make recommendation to the City Council regarding refinement of the City's medical marijuana policy, and be it

FURTHER RESOLVED: that said Working Group shall consist of representatives designated by the City Manager and interested members of the public, and be it

FURTHER RESOLVED: that said Working Group shall consider legislative and administrative methods to insure enforcement of and compliance with the City's medical marijuana policy, and be it

FURTHER RESOLVED: that said Working Group shall consider the feasibility of any other matters pertaining to the City's medical marijuana policy, and be it

FURTHER RESOLVED: that said Working Group shall report to the Public Safety, Health, Human Services and the Family Committee no later than October 1, 1996, concerning the results of its discussions and any recommendations regarding the refinement of the City's medical marijuana policy.

I certify that the foregoing is a full, true and correct copy of a Resolution passed by the City Council of the City of Oakland, California on

July 30, 1996

CEDA FLOYD
City Clerk and Clerk of the Council

Per Margie Sosa Deputy

EXHIBIT 6

ER0393

OAKLAND CITY COUNCIL

72516

RESOLUTION NO. _____ C. M. S.

INTRODUCED BY COUNCILMEMBER _____

RESOLUTION ENDORSING H.R. 2618, SUPPORTING THE ACTIVITIES OF THE OAKLAND CANNABIS BUYER'S CLUB AND DECLARING THAT THE INVESTIGATION AND ARREST OF INDIVIDUALS INVOLVED WITH THE MEDICAL USE OF MARIJUANA SHALL BE A LOW PRIORITY FOR THE CITY OF OAKLAND

WHEREAS, marijuana has been shown to help alleviate pain and discomfort in people suffering from a variety of illnesses including AIDS, cancer, glaucoma, and multiple sclerosis; and,

WHEREAS, marijuana has alleviated the suffering of people with chronic illnesses when no other medications have been effective; and,

WHEREAS, the use of marijuana is presently unlawful even under the supervision of physician; and

WHEREAS, the illegal purchase of marijuana by people already suffering with chronic illnesses subjects them to further suffering in the form of potential arrest and prosecution; and

WHEREAS, Representative Barney Frank (MA) and local co-sponsors Representative Ronald Dellums and Pete Stark have introduced H.R. 2618 which would allow physicians to prescribe marijuana for medical purposes and would insure the production of marijuana to meet the need for medical use; and

WHEREAS, the Oakland Cannabis Buyer's Club provides a way for patients needing to purchase marijuana for medical use to do so with greater ease and less risk of arrest and prosecution; and

WHEREAS, the City of Oakland wishes to declare its desire not to expend City resources in any investigation, detention, arrest or prosecution arising out of alleged violations of state and federal law regarding the distribution of marijuana for compassionate medical use; and

WHEREAS, the Oakland City Council passed Resolution 72379 C.M.S. endorsing state legislation AB 1529, "The Medical Marijuana Bill" and the "Compassionate Use Initiative of 1996;" now, therefore, be it

RESOLVED: That the Oakland City Council endorses of the passage of H.R. 2618; and be it further

RESOLVED: That the Oakland City Council authorizes the City Manager to instruct the City's federal lobbyists to work in support of H.R. 2618; and be it further

RESOLVED: That, the Mayor and City Council hereby declare that it shall be the policy of the City of Oakland that the investigation and arrest of members of the Oakland Cannabis Buyers' Club for purchasing, selling and distributing marijuana for medical purposes shall be a low priority; and be it further

RESOLVED: That, the Mayor and City Council hereby declare that it shall be the policy of the City of Oakland that the investigation and arrest of persons for planting, cultivating, purchasing, and/or possessing marijuana shall be a low priority for the City of Oakland if such persons have been medically diagnosed as suffering from an illness or injury, the symptoms of which may be alleviated by the medicinal use of marijuana; and be it further

RESOLVED: That, the Mayor and City Council hereby declare that it shall be the policy of the City of Oakland that the investigation and arrest of persons for cultivating, purchasing, possessing and/or distributing marijuana shall be a low priority for the City of Oakland if such persons purchase or possess marijuana for, and/or distribute marijuana to patients, whose physicians have determined that they are suffering physical pain that may be alleviated by the medicinal use of marijuana; and be it further

RESOLVED: That, the Mayor and City Council call upon the Alameda County District Attorney to cease prosecution of persons involved in the medical use of marijuana; and be it further

RESOLVED: That if any provision of this resolution is declared by a court of competent jurisdiction to be contrary to any statute, regulation or judicial decision, or its applicability to any agency, person or circumstances is held invalid, the validity of the remainder of this resolution and its applicability to any other agency, person or circumstance shall not be affected.

IN COUNCIL, OAKLAND, CALIFORNIA, MAR 12 1996, 19 _____

PASSED BY THE FOLLOWING VOTE:

AYES- BAYTON, CHANG, DE LA FUENTE, JORDAN, MILEY, RUSSO, SPEES, ~~WOODS-JONES~~, and PRESIDENT HARRIS - 7

NOES-NONE

ER0395

ABSENT-NONE

ABSTENTION-NONE

Excused - Jordan/Woods-Jones - 2

ATTEST:



CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT 7

ER0396

OAKLAND CITY COUNCIL

Ex. E
[Handwritten signature]

RESOLUTION NO. 72379 C. M. S.

RESOLUTION ENDORSING AB - 1529, "THE MEDICAL MARIJUANA BILL" and the "COMPASSIONATE USE INITIATIVE OF 1996"

WHEREAS, marijuana has been shown to alleviate nausea and pain associated with cancer and;

WHEREAS, marijuana has been shown to help people with AIDS to relieve stress and depression, eliminate nausea, reduce and manage pain and fight the "wasting away" syndrome by stimulating the appetite and;

WHEREAS, marijuana has been shown to control spasticity from multiple sclerosis and paralysis and;

WHEREAS, marijuana has been shown to arrest the advance of glaucoma and;

WHEREAS, marijuana has been shown to relieve the pain of arthritis and rheumatism and;

WHEREAS, marijuana has been shown to block epileptic seizures and help migraine headaches and;

WHEREAS, AB - 1529 and the "Compassionate Use Initiative of 1996" will not legalize the personal use of marijuana;

LET IT BE RESOLVED that the Oakland City Council endorses the passage of AB - 1529, "THE MEDICAL MARIJUANA BILL"; and let it be

FURTHER RESOLVED that the Oakland City Council endorses the "Compassionate Use Initiative of 1996".

I certify that the foregoing is a full, true and correct copy of a Resolution passed by the City Council of the City of Oakland, California on

December 12, 1995

*CEDA FLOYD
City Clerk and Clerk of the Council*

Per *Margie Sosa* Deputy

ER0397