

Gaining Traction toward Reform: The Interplay between  
California Print Media and Medical Marijuana Social Movement Organizations

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## Gaining Traction toward Reform: The Interplay between California Print Media and Medical Marijuana Social Movement Organizations

Scholarly research pertaining to illicit substances, particularly marijuana, is a sparse, yet evolving field. As examination has moved from fringe articles to media accounts of criminal activity to historical interpretations of marijuana prohibition (Bonnie and Whitebread 1970; Morgan 1980), sociological (Lune 2003) and public health policy researchers (Clark 2000; Cohen and Clark 2002; Pacula 2003) have directed their endeavors toward what is seemingly vibrant reform efforts by several social movement organizations to legalize the drug for medical purposes. Though this policy area suffers from a dearth of data collection, analysis, and scholarly scrutiny concerning reform policies pertaining to marijuana, over the course of the last two decades numerous medical marijuana laws have been enacted; Congress, on multiple occasions, has debated the medical viability of marijuana; and the Supreme Court and lower federal courts has heard arguments for the legalization of marijuana's medical use premised on the First and Tenth Amendments as well as the Commerce Clause. All of these sources and events hold great promise as to "filling in the blanks" concerning the advocacy and policy reform origins of medical marijuana laws.

The heightened attention to and development of the medical marijuana laws add to, and broaden, what is a fragmented narrative of challenges to the CSA mandated prohibition of marijuana. One of the intentions of my study is to establish indicators (media attention, issue saliency, public debate) of how the

medical marijuana social movement was energized by the founding of multiple SMOs with the shared goal of legalizing marijuana for medical purposes. At first glance, 1996 and the passage of California's Compassionate Use Act or Proposition 215 can be perceived as the initial successful political strike against CSA induced prohibition of marijuana.<sup>1</sup> However, this only superficially explains when the movement gained impetus for continuing. What institutions coupled with a fledging movement facilitated such policy dynamism? Possible answers to that question are gained by investigating why the voting public, and then electorally influenced policymakers, changed their minds about the medical employment of marijuana. Intuitively, one would obviate investigation toward information sources, namely media outlets.

Particular to this paper, the influence of the Fourth Estate on the public's perceptions begs examination. Describing the types and amounts of frames reported in print media serves to weigh the possibility that media depictions of marijuana that ran counter to years of the federal government's "war on drugs" framing, facilitated or allowed a political "opening" for social movement development. It is the manner in which the media covered politically determining events focused on medical marijuana policies, I argue, that allowed for SMOs to separate marijuana from other illicit substances and gain political "traction" toward reforming policy.<sup>2</sup> The negative and socially detrimental properties and

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<sup>1</sup> For the California Secretary of State's Legislative Analysis of Proposition 1996, as well as pro and con assessments please see Appendix One. These are the same assessments California voters had access when deciding Proposition 215.

<sup>2</sup> Indicators of this researcher's "political traction" concept include: raises in issue saliency, public opinion favoring an SMOs cause, SMO frames entering in public discourse, and the policy reform desires of SMOs being debated within political institutions.

connotations proscribed to marijuana in federal policy and anti-drug campaigns stymied any organized movement purposed with reform policy in mind, until 1996. Therefore, by surveying California newspapers, this researcher intends to demonstrate how the print media facilitated SMO reform efforts concerning medical marijuana policy by separating marijuana, in definition and use, from insidious illicit substances, and instead focus on the contestations over state and federal substance policy taking place within the electoral and judicial institutions.

This work is also prelude to, and part of, a greater research endeavor aimed at explaining the successes and setbacks of medical marijuana Social Movement Organizations (SMOs). The larger work examines how SMOs advocating the legalization of marijuana for medical use have mobilized in multiple political venues or *venue shopped* while managing numerous *frames* simultaneously. In particular, this paper explores what can be considered antecedents to the electoral, legislative, and judicial victories or defeats of medical marijuana advocates: media presentation of alternative frames and a honed attention to SMO supported endeavors to reform policy through legitimate political means. Well before milestone judicial rulings, including the Supreme Court's decisions in *U.S. v. Oakland Cannabis Cooperative Buyers Group* (2001) and *Gonzales v. Raich* (2005), or several state legislatures passing medical marijuana bills, or even California voters favoring Proposition 215-making their state the first to break prohibition lines-there was a public agenda being contested and a political

agenda to be challenged pertaining to illicit substances, namely the use of marijuana for medical purposes.<sup>3</sup>

### **Medical Marijuana: Federal Prohibition and New Frames**

Through the use of a top-down policy process and as part of his presidential campaign promise to “Get Tough on Crime”, Richard Nixon was able to create and implement the Controlled Substances Act of 1970 (CSA), then subsequently house the CSA’s enforcers, the newly founded Drug Enforcement Administration, within the Department of Justice in late 1972. Categorizing marijuana as a Schedule I illicit substance (most detrimental to society and possessing no medical properties), the Nixon administration hoped to contain the use, abuse, and trafficking of the drug.<sup>4</sup> Though Nixon’s pre-DEA illicit substances policy advisors consisted of public health professionals, medical researchers, drug abuse therapists, along with enforcement personnel, it was the crime and punishment path that ended up being the overriding direction Nixon took in lobbying an acquiescent Congress and implementing statutes regarding illicit substances.<sup>5</sup> Three years after the passage of the CSA, Nixon addressed the

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<sup>3</sup> I present these examples of medical marijuana advocates attempts to reform illicit substance policy in retreating chronological order to illustrate how medical marijuana SMOs have ventured into different political milieus overtime. These are but a few of the numerous endeavors by varying medical marijuana SMOs. Arizona voters also passed a medical marijuana ballot initiative known as Proposition 200, which was part of a larger illicit substance crime and health bill. However, since its passage, Arizona’s law has been attenuated to the point of only being symbolic in nature and does not equate to the varying substantive laws enacted in 12 other states.

<sup>4</sup> The Controlled Substances Act of 1970 is comprised of five “Schedules” of illicit substances. What Schedule a given drug is categorized as depends on its detrimental properties and if it possesses medical properties. For example, any drug determined to be severely detrimental to society and not possessing any medical worth is a Schedule I drug. A Schedule II drug would be perceived as very detrimental, but hold some medical potential. Again, Marijuana was categorized as a Schedule I drug at the inception of the CSA, and remains as such today. Information taken from the Drug Enforcement Administration website: [www.dea.gov](http://www.dea.gov) on May 12, 2007.

<sup>5</sup> See Massing, Michael. 1998. *The Fix*. New York, NY: Simon and Schulster.

nation in one of his many radio presentations to discuss the need to keep marijuana illegal within a law enforcement first policy structure, “there have been proposals to legalize the possession and the use of marijuana. I oppose the legalization of the sale, possession, or use of marijuana. The line against the use of dangerous drugs I now draw on this side of marijuana. If we move the line to the other side and accept the use of this drug, how can we draw the line against other illegal drugs? Or will we slide into an acceptance of their use as well. My administration has carefully weighed this matter...there must continue to be criminal sanctions against the possession, sale, or use of marijuana.”<sup>6</sup> Nixon’s line more closely resembled a pile of illicit substances, grouped as one in a meta-frame of unhealthy behavior and criminal guilt. The President’s pronouncements concerning marijuana would make discernment of any valid normative claims about one or any of the substances nearly impossible to defend.

Even though nearly forty years have passed since the inception of the CSA as federal drugs statutes, very little in the way of policy has changed concerning marijuana. Only in the last ten to fifteen years have feasible alternatives to marijuana prohibition surfaced within the milieus of public discourse and policymaking institutions. By presenting marijuana as possessing medical properties, SMOs are able to circumvent traditional arguments that were constructed and applied in a blanket fashion, not only to marijuana but to various illicit substances, thereby indicting marijuana with the same claims as other notable and more insidious drugs. However, the process of changing marijuana’s

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<sup>6</sup> President Richard M. Nixon: “*Radio Address About the State of Union Message on Law Enforcement and Drug Abuse Prevention.*” March 10, 1973

image not only depends on the introduction of new frames that might resonate with a larger public, but also countering the practice of anti-drug organizations and policymakers of grouping marijuana with all illicit drugs that have been postured politically and medically as ruinous to society. As if creating a collage of unacceptable substances, federal policymakers mixed in marijuana use with cocaine, methamphetamines, heroin, LSD and other noxious illicit drugs. In other words, new social movement and media frames concerning medical marijuana battle against messages of negativity and fear associated with the more commonly thought of “dirty” or less socially and politically acceptable substances. Thus, at best, marijuana as a medically viable mainstream pain reliever, and those advocating such, are kept at the margins of public and political debate.

This mindset and grouping of marijuana as a member of the whole enemy of illicit substances is evinced in the comments of then House Subcommittee on Crime Chair Bill McCollum (R-Oklahoma). During hearings on the Medical Marijuana Referenda Movement in America approximately one year after the passage of Proposition 215, the congressman referenced National Institutes of Health data, “the backdrop of this morning’s hearing is a sobering one. Over the last 5 years, we’ve been losing ground in our national effort to combat illegal drugs, including marijuana. The drug supply in the United States is up; drug purity is up; drug prices are down, and more kids are becoming users. We have a methamphetamine crisis in our western states, and it’s spreading east. We have more than 500 metric tons of cocaine pouring into the United States...and when

we look to our south-Mexico, the Caribbean, and all of this region-we see criminal drug cartels that are more powerful and sophisticated than ever before with their criminal networks reaching into the streets of every major city in America.”<sup>7</sup> These hearings, led by Representative McCollum, were conducted in the shadow of medical marijuana advocates rejoicing over their victories in California (Proposition 215) and Arizona (Proposition 200), and were not the only federally sanctioned activity seemingly directed at resolving the question of marijuana’s medical viability. Mr. McCollum was keeping marijuana on the same side of “the line” that Richard Nixon had drawn twenty-five years earlier.

In 1997, The Office of National Drug Control Policy commissioned the National Institutes of Medicine (IOM) to conduct one of the few comprehensive data collections and scientific analysis pertaining to cannabis’s therapeutic properties and applications. Contrary to the federal government’s decades long entrenchment of anti-marijuana promotions and prohibition, IOM researchers concluded that while future federally funded research would enlighten medical professionals, policymakers and citizens alike, patients seeking alternative pain relievers due to adverse side-effects from legal pharmaceuticals should have access to marijuana, which they also found to be ‘safe and effective.’<sup>8</sup> Contrary to this finding and the efforts of SMOs in sponsoring ballot initiatives and lobbying individual state legislators to reconsider medical uses for marijuana, the federal

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<sup>7</sup> Representative Bill McCollum, member House Subcommittee on Crime during hearings on medical marijuana referendum in America, October 1, 1997. *Hearing Before the Subcommittee on Crime of the Committee on the Judiciary House of Representatives*, One Hundred Fifth Congress First Session-Serial Number 110.

<sup>8</sup> See *Marijuana and Medicine: Assessing the Science Base*. 1998 Janet Joy, Watson, Stanley, and Benson, John A., editors, Institute of Medicine



government chose not to begin any form of rescheduling debate, either at the bureaucratic or congressional level. As mentioned, quite to the contrary, the House of Representatives took a defensive posture towards California's Proposition 215, while the IOM study carried little influence regarding congressional consideration of the drug's medical potential, and DEA authorities continued to raid medical marijuana dispensaries.<sup>9</sup> Therefore, newly formed medical marijuana SMOs could neither rely on an acceptance from the federal government to democratically enacted marijuana laws nor lawmakers acting on the results of congressionally sanctioned studies favorable to legalization.

Though there were pro-marijuana legalization factions existing prior to 1996 as well as an increasing favorability towards the medical use of the drug as evinced by public opinion polls, one of this researcher's assertions is that the success and proliferation of medical marijuana SMOs is due in large part to California print media outlets reporting political events germane to medical marijuana in an equal manner to the traditional anti-marijuana frames crafted and disseminated by the federal government.<sup>10</sup> Moreover, by substituting medical, medicinal, and/ or pain relieving for slang terminology such as pot and weed to describe the drug, the media allowed the public to wade through nearly forty years of negative frames and decide if any beneficial medical usages of

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<sup>9</sup> Several news print accounts of DEA raids on dispensaries account for this claim, as well as Santa Cruz, Ca. city council resolutions to officially establish a Compassionate Use Committee with the purpose of prohibiting such raids.

<sup>10</sup> According to a November 2003 Gallup Poll approximately 75% of Americans favored the legalization of physician prescribed marijuana for pain relieving purposes. Reported in "*Medical Marijuana: Is It What the Doctor Ordered?*" Coleen McMurray, Senior Staff Writer-Gallup Poll Tuesday Briefing, 12/16/2003.

marijuana existed, thus questioning the prohibition policy model associated with cannabis.

This inquiry into media coverage of medical marijuana centered issues, in part, anticipates what Doris Graber (1990) pertinently asked some years ago, “Do the media support or subvert the political status quo?” Pertaining to debate concerning the possible legalization of medically prescribed marijuana, I also attempt to discern whether California newsprint media outlets aided the development and proliferation of medical marijuana social movement organizations. Answering those inquiries is possible when the following can be answered. Did media outlets, in this case the two largest circulated California newspapers (*San Francisco Chronicle* and *Los Angeles Times*), disseminate articles that: 1) stood in agreement with the present policy status, 2) called for reform policies, or 3) presented reform efforts of medical marijuana advocates as any other political or legal contestation taking place in established institutions of policy debate and creation? Also, as the 1996 California elections and milestone judicial rulings neared, transpired, and passed, what changes can be identified concerning newspaper coverage pertaining to medical marijuana? In other words, do patterns emerge that are indicative of changing frames, increases or decreases in articles, and/ or was newsprint media more honed to coverage of elections, litigation, and policymakers compared to editorials or reporter commentary that espouses a normative or governmental claim about the medical viability of marijuana?

## **Social Movement Organization Development: Reassessing Media Involvement**

In his sociological analysis of social movement development, Richard Gale (1986, 205) notes, "Social Movements themselves change in response to external conditions. One element shaping this change is organized response from opponents." Though Gale's research is integral for understanding how SMOs membership increases, mobilizes and in turn influences policymaking arenas, it is also similar to scholarship that has endeavored to explain SMO development by examining countermovement and governmental activity while *overlooking* the external conditions reported on by media outlets. The omission or little attention given to media effects on the various developmental stages of social movement organizations could also be due to the difficulty in assessing what has been termed the "external conditions" of media/ activists relations.

In her treatment of media frames Deana Rohlinger ( 2002, 482) assigns more weight to the effectiveness of media presentation, "mass media outlets are not impartial observers but have interests, norms, and practices that influence what and how messages are relayed to an audience. Moreover, media outlets are commercial by nature, have practices (deadlines, limited space for articles, corporate sponsors and the tendency to rely on "proven" and "legitimate" sources) that might not be conducive to capturing changes SMOs are advocating, and thus become reticent to covering issues outside of mainstream opinion (Gans 1979; Ryan 1991; Barker-Plummer 1997; Herman and Chomsky 1988; Smith 1996; Rojecki 1999). What has been firmly established is the media's ability to sway public opinion towards a shift or change in public policy

formation that can result in the public's consciousness or at least awareness being heightened, then drawn to particular topics in ways that generate consensus (McCombs 2005). For SMOs, having the public revisit a set of issues, once thought of as having their only meaning proscribed to them by policymakers, hold beneficial results for their respective causes, two of which are pertinent to this research: higher issue saliency and possibility for reform. It is at the meso-level, between mobilization and policy change that SMO's gain an audience, legitimacy, and opportunities to present their arguments, thus incrementally moving forward analogous to an automobile's tires trying to get a grip on an slick road, SMOs gain issue traction through media reports of their activities within political venues.

Coverage of marginalized and/ or controversial issues by media outlets must be cleverly and consistently balanced for the obvious reason of avoiding a political association with an issue and its respective advocates,

“Because privately owned, profit-oriented media must attract large audiences and therefore must avoid alienating major audience segments, American media tend to shift perspectives and value structures only very slowly and circumspectly. Their policies recognize that vested interests resist changes and that alterations in ingrained major beliefs are difficult to accomplish. They try to avoid confrontations with powerful mainstream interest groups whenever possible. The range of perspectives that can be safely presented is thus fairly narrow. Nonetheless, there is enough leeway, especially over the long haul, to permit sizeable swings in political and ideological directions. Such swings may permit major alterations in public policy” (Graber in Spitzer, 1990, 23).

Indeed, the frames that have defined and directed illicit substance policy in the United States for the past seventy plus years were constructed by powerful

mainstream lobbying groups, incorporated into governmental policies (Bonnie and Whitebread 1970) and result as given in debates concerning marijuana prohibition and regulation. From the 1970s until present, conceptualization, defining of marijuana, and use of the drug has been presented as either a foray into the “counterculture” a “gateway” drug, a “stepping stone” illicit, and/ or detrimental to body, mind, and spirit.<sup>11</sup> Thus, medical marijuana social movement organizations in their attempts to counter the sustained federal governmental and anti-drug lobbying groups seek to identify that narrow range of perspectives that do not necessarily alienate large audiences, hold greater potential of entering public discourse, and gaining a docket slot on political agendas. Identifying narrow perspectives begins with presenting definitions that resonate with citizens.

The struggle for definition as an impetus for change is what Gamson and Wolfsfeld (1993, 119) deem, “a contested realm of media discourse in which struggles over meaning and interpretation are central. It is a major achievement of some movements that they succeed in moving issues from the uncontested to the contested realm. Even if the subsequent contest is played on a tilted playing field, it is still a contest, and many movements have scored media successes in spite of odds.” In a similar account of media framing Robert Entman (1993, 52) articulates the practice as, “To frame is to select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to

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<sup>11</sup> This is a general message that has been articulated in various forms by federally supplement anti-drug groups including Partnership for a Drug Free America. One version is the television public service announcement with the tagline: “This is your brain on drugs.” Another example of all CSA monitored illicit substances being grouped together.

promote a particular problem definition, causal interpretation, moral evaluation and/ or treatment recommendation for the item described.” Crafting alternative definitions from opportunities presented either by media coverage or sympathetic officeholders, stokes issue saliency, which furthers SMO prospects of reform. Speaking to legal reform and media coverage specifically, Deborah Rhode (1999, 139) argues that media perspective is especially important with regard to portrayals of legal matters, emphasizing that the “way that journalists frame either coverage helps reshape the legal world that they claim only to represent.”

In essence, the ability of the media to offer up alternate and innovative messages and then the adoption of such meanings by SMOs, not for conflating, but rather for directly confronting existing governmental frames constitutes what E.E. Schattschneider (1960) determined as widening the scope of conflict so as to draw attention and followers to a cause. Therefore, recreating a policy’s definition that counters well-accepted and sustained frames is only one of the major difficulties facing SMOs seeking reform policy. Gamson and Wolfsfeld (1993), acknowledge Schattschneider’s findings in their study concerning media/ movement interactions along with contending that mobilization and validation of a movement’s policy stances have a greater chance of being realized through media discourse because media outlets reach a mass audience that only respected sources can “tap” into while SMOs are limited in their dissemination reach. Focusing on media depiction as applied to medical marijuana offers a keen insight because there were so few well-established organizations solely dedicated to the medical use of the drug. In essence, the launch of the medical

marijuana movement was given stability by media articles depicting a separation of health needs from leisurely use.

Even if SMOs craft frames that clearly demonstrate a beneficial return for society, organized advocates still need to disseminate their frames within political and social venues that are highly trusted and respected by the public, influencing policymakers to place their respective issue on the political agenda. Enter the need for media attention to reform policy and the frames produced by reporters, editors, and affiliated commentators. The willingness of media outlets to address an issue, such as medical marijuana, in a non-traditional or counter status quo manner in fact facilitates a possible point of legitimacy for a fledging social movement, producing political traction. Why do reform policy movements have such a difficult task when it comes to moving their causes from marginalized status to public and political agendas? Initially their interests do not appeal to a wide audience and coupled with a meta-framing or narration of the "war on drugs" carried out by the federal government over a forty year span, what becomes apparent is Rohlinger contention:

"A group organized around narrow and particularistic values may have difficulty constructing frames and packages that appeal to a broader audience, and it is less likely to be able to "stretch" its frames and packages to address a changing political environment. This ultimately affects the SMO's ability to get media coverage in mainstream outlets because when journalists look for sources they choose moderate organizations that represent a portion of the mainstream over marginal voices that challenge some aspect of status quo" (Rohlinger 2002, 482).

In their foundational work pertaining to mass-media agenda setting, McCombs and Shaw (1972) note two complementary and astute contentions concerning the

public's policy knowledge formed through a conduit relationship with the media. The first is from Lang and Lang (1956) who note the blunt simplicity of the relationship media outlets share with their consumers. When considering how the public becomes aware of a given issue, the authors promote a direct path of public learning, "the mass media force attention to certain issues. They build up public images of political figures. They are constantly present objects suggesting what individuals in the mass should think about, know about, have feelings about." Lang and Lang's evaluation of reporting somewhat skews the causal link between media coverage and public knowledge by posturing media outlets as a filtering agent as well as a dictating force in the issue stances of citizens.

Second, Cohen (1963) holds a slightly alternative assessment of media/audience relations, one that allows more room for individual decision-making: "[the press] may not be successful much of the time in telling people what to think, but it is stunningly successful in telling its readers what to think about." McCombs and Shaw (1972) further articulated Cohen's directional premise by hypothesizing that "the mass media set the agenda for each political campaign, influencing the salience of attitudes toward political issues." Though the two media scholars focused their study on presidential elections, their assertion is applicable to the study of social movements. Just as their model of presidential campaigns puts great emphasis on the changes occurring during campaigns, this study scrutinizes the issue of medical marijuana well before voters were given a choice at the ballot stage and as is discussed, were offered several alternative



frames/ messages to those being proliferated by officials within various institutions of American government.

Extending the previously mentioned works, I contend that once the public is informed of and exposed to alternative frames or event-based narratives, SMOs can contest existing frames without being dismissed as detrimental to society or irrelevant to public discourse. Thus, the value of a given SMO's cause is greatly appreciated in regards to moving from the public to political agenda and achieving reforms. In short, as reform policy is put forward, those gaining control of the message have a competitive edge in agenda setting within multiple political venues.

Indeed, many of the media frames extracted from this research timeline also serve as basis for various medical marijuana SMO anti-prohibition arguments, which is an example of David Domke's (1997) assertion that "news media produce representations and images of the social world, provide and selectively construct social knowledge, and order a complex meanings into a "common sense [and] "in doing so, the press, as both institutions and individuals functions as the intersection of social, political, legal, and economic environments, serves not only an agenda-setting role in public discourse but is crucial to establishing the range of criteria for constructing, debating, and resolving social issues." Whether SMOs rely on the frames of media outlets for purposes of conflating with their own messages or non-basis support for an issue stance favorable to their cause, social movement organizations are instrumental in disseminating frames with the intention of resonating with citizens (especially

voters), draw members of the public to mobilize in numerous ways as well as demobilize participants of countermovements and/ or status quo adherents (Snow and Benford 1988). When contributing to public awareness, discourse, or mobilization through frame creation SMOs become "signifying agents" who directly rival, many times, governmental standard symbolic or statutory messages and are what Gamson and Modigliani (1989, 7) term "actively engaged in the production of meaning." Pertaining directly to illicit substances, the federal government, until relatively recently, has held a monopoly on "meaning." It is the media and in turn SMOs that have forged a path of "meaning" competition with the State's messages, often causing a dismantling or redefining of the federal government's frames.

## **Methodology**

Passage of California's ballot Proposition 215 in 1996 is the "baseline" from which to measure any change in the amount and focus of print media articles relating to the efforts of medical marijuana SMOs to reform policy. Though there were several options concerning the next "event" to select from, I chose *Conant v. McCaffrey* (1998), as the second time/ event to examine and compare for several reasons. Two years had transpired between this case and the election which legalized the medical use of marijuana, thus ensuring adequate "down time," so as to ensure that articles generated from the *Conant* case did not suffer from some type of residual or spill-over effect from the 1996 elections. Also, this episode did not place California's Compassionate Use Act up for legal scrutiny, but rather asked federal jurists to contemplate a unique

constitutional inquiry that coupled the legality of medical marijuana with a physician's first amendment right. The third point in time/ event I focus on is *U.S. v. Oakland Cannabis Buyer Cooperative* (2001). The duration between *Conant* and this event offered ample time for an undulation of media reports and was more directly challenging of the CSA by asking whether there was a medical exception to federal guidelines for cultivation and distribution of the drug. *Gonzales v. Raich*, decided in 2005, served as the final milestone event and year of study.<sup>12</sup> Focus this time was on patients' rights (use) with the petitioners delving into several federalism issues with a primary focus on the Interstate Commerce Clause. In short, at the heart of each event a unique inquiry was being made, the interim between events increased by one year ensuring an adequate time separation, and though each event possessed a modified set of questions, they all stemmed from the same point of origin, marijuana's medical legality.

Since all of the print media employed in the following data directly pertains to either a voter enacted law or legal dispute following the passage of Proposition 215, I follow Haltom and McCann's legal studies of media framings in which they assert "constructions of legal reality by the print media may be most consequential in that they provide the foundational knowledge that makes other constructions more "real""(Haltom and McCann 2004, 18). Another justification for the use of print media over television is Downie and Kaiser's (2002, 64) claim that "in American towns and cities, the local newspaper sets the news agenda...television news depends on newspapers, as it practitioners freely

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<sup>12</sup> For a full explanation of all cases please see Appendix Two.

attest. Radio news is often lifted right out of the newspapers. Government officials and politicians understand the primacy of newspapers and regularly go to newspaper reporters first with important or complicated information."

The selection of local print media over coverage given to social movement issues by national publications is found, according to Koopmans and Rucht (in Klandermans and Staggenborg, 246) ,in the inclusive and selective nature of local newspapers. That is to state, local newspapers place a higher level of "news value" on social movement activities taking place in their respective areas and is more pertinent to their readership. Therefore, claiming that local newsprint media is more intense and close to such issues is hardly a stretch. Print media can be more articulated than television "sound bites" as well as hold a heightened degree of importance when reporting on community (city, county, and state) issues. The newspapers selected for this study, *The Los Angeles Times* and *San Francisco Chronicle* offer a regional intimacy of medical marijuana while holding the status as nationally recognized media outlets. Moreover, one of the advantages of employing these media outlets is their coverage of local matters, which hold potential for having national ramifications and maintaining a respectable "distance" from SMO personnel, which ensures the integrity of journalistic ethics. This model of reporting keeps information flowing from both sides of the issue's debate, instead of media coverage degrading to the point of banter exchanged between SMO members and government personnel.

I conducted a search of print articles containing mentions of the drug associated with the proposed and eventual passage of medical marijuana. The

first search consisted of all print media in California available through the Lexis-Nexis search engine with the timeline encompassing the inclusion of articles ten years prior to, during, and subsequent to the 1996 passage of the Compassionate Use Act. I employed the Lexis-Nexis news search engine by first entering “pot” as a headline word and “medical marijuana” as an ‘in text’ phrase beginning ten years prior (1986) to Proposition 215 and up through ten years after (2006).<sup>13</sup> This offers a symmetrical span of time before and after the event in question. Though admittedly not conclusive, the search results could indicate whether media outlets are willing to remove marijuana from the “pool” of Schedule I illicit substances. I then conducted a search with “medical marijuana” as the headlined phrase and “pot” as ‘in text.’ Since there is a long history of ‘pot’ as a slang synonym for the drug as well as carrying a culturally excepted, yet negative connotation of marijuana, comparing the number of references to the drug by its street moniker to medical marijuana could discern whether media outlets were reporting on the issue consistent with the status quo or redirecting the discourse toward a more refined and politically acceptable definition.

I narrowed the second search by including only the two largest print circulations in that state, *The San Francisco Chronicle* and *Los Angeles Times*. Their respective circulations easily divide the state geographically into north and south, thereby dismissing any regional basis or pockets of advocacy and/ or

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<sup>13</sup> The original search consisted of years 1986 through 1996, however only five articles were found in searches 1986 to 1989, therefore due to the sparseness of findings, those years were omitted from the final graph.

dissent.<sup>14</sup> This process would allow me to examine how print media outlets reported the issue, then note the similarities or differences those reports held in comparison to the federal government's or alternative frames disseminated by pro-medical marijuana advocates. I then compiled the number of finds into two timeline graphs. Each year from 1990 to 2006 is represented by a graph with "pot" as headline and found in text as well as "medical marijuana." This serves twofold: (1) whether these media outlets have changed their terminology/designation in regards to the drug, and (2) the salience of the issue can be inferred due to an increase in the number of articles pertaining to medical marijuana, especially if there is an increasing tendency by reporters to replace the word 'pot' with 'medical marijuana.'

Unlike ballot initiative process of signature gathering and voting, the time from argument to decision for judicial decisions is not set, therefore I choose to examine media reports over the course of the whole calendar year of each respective legal event. This offers a balanced comparison to media attention given to the ballot initiative's campaign and election date. The survey of media coverage produced three distinct article types: (Type 1) articles directly focused on medical marijuana, but not the event, (Type 2) articles pertaining to the medical marijuana event, and (Type 3) articles that report on marijuana, but are ancillary to the event and medical debate.

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<sup>14</sup> According to a report prepared for and published by the Knight Foundation in 2006 the Los Angeles Times had the largest circulation of all California print media outlets at 902,164 subscribers while the San Francisco Chronicle had 505,022. Taken from <http://powerreporting.com/knight/California.html> on January 9, 2008.

The last data set is a list of medical marijuana SMOs founded prior to and over the course of all the events examined. This list serves a contextual purpose more than any other; however, a comparison of media attention, namely articles dedicated to the events rather than normative claims concerning marijuana could indicate a rise in issue saliency, a result that holds potential of mobilizing membership and fundraising endeavors of SMO. These “indicators” of SMO development enhance the traction proposition put forth in this paper. Also, consistent with much of the SMO development literature, the groups included on this list have the legalization of medical marijuana as a shared goal, but vary as to their foremost directive. Therefore, rudimentary patterns of SMO development are identified.

### **Assessing the Findings: Articles, Events, and Claims**

The following data is of two data sets. The first is displayed in Graph One and constitutes all print media (non-AP) articles in California with a headline and text of ‘medical marijuana’ and ‘pot’ archived by Lexis-Nexis from January 1990 to June 2006, though inconclusive and not yet disaggregated in order to determine what prominence articles on medical marijuana were given within each paper's editions, an accumulative perspective concerning the issue is discerned. The second data set is an articulation of *Times* and *Chronicle* articles from each milestone event’s year, representing a change in the amount of articles dedicated to the issue, coverage framing, and differences in ‘event’ and ‘non-event’ time periods . Framing is not articulated to the point of patients’ rights or states’ rights, but rather if reports within articles were framed as event coverage, discussion of

medical marijuana in general, and reports of marijuana, but not in the medical sense. Graph1 data reveals an overall increase in the referencing of marijuana by California print sources as a medicine or medical rather than by its common term "pot" during every year from 1996 to 2006, save 2001.

An item for future SMO research is found by noticing the consistent increase in medical marijuana articles subsequent to Proposition 215's passage, a slight increase and preference by print media outlets in their employment of "medical marijuana" over "pot," and the seemingly significant jump in attention paid to the medical marijuana cause before, during, and after a period of heated legal disputes taking place between 2000 and 2005, decided by the Ninth Circuit Court of Appeals and the Supreme Court. More specifically, between 2003 and 2005, as the three high profile cases concerning the legality of medical marijuana were making their way through the legal system, print media articles in California increased between two and four times a rate than over the three year duration (1996-1998) that Proposition 215 was being publicly debated, processed for ballot initiative approval, voted on, and enacted into law.<sup>15</sup> Also, notice post-2002 (see Graph One), as litigation spread to the federal courts, the media's use of medical marijuana and not pot as a headline increased along with the total number of articles.<sup>16</sup> Taking each point of contestation in chronological order, the

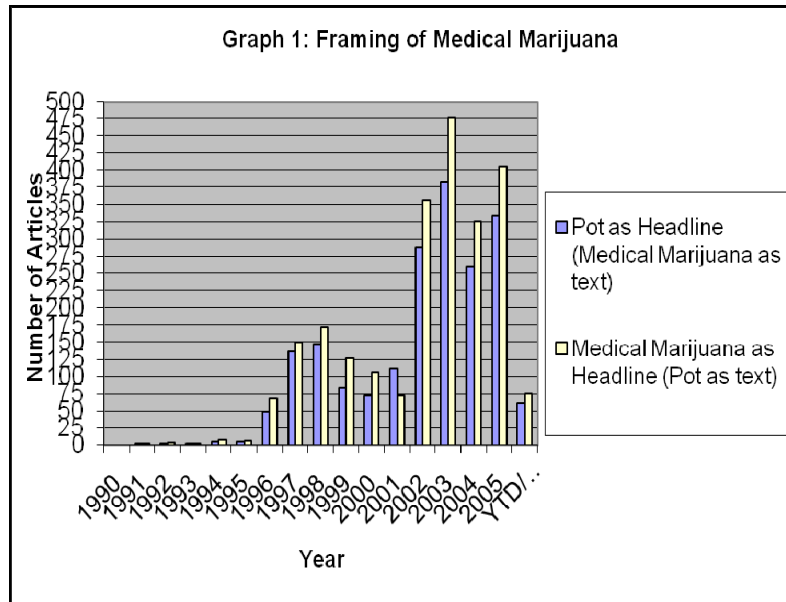
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<sup>15</sup> Admittedly this data compilation and presentation is limited in articulation, but it does offer a glimpse into media attention and framing of medical marijuana. I will continue to refine this work by conducting close reads of the articles, breaking down the timeline to weeks and months, categorizing the articles as to legal, political, and social aspects of medical marijuana, who are the primary actors being reported, evidence of priming by advocates, and broadening the search so as to include more sources. Moreover, an analysis of the rhetoric used by the relevant actors in the articles is necessary for understanding the advocates and proponents in ballot initiatives, legal disputes, and enactment.

<sup>16</sup> Though *Dr. Marcus Conant v. William McCaffrey*, 172 S.Ct. 2195 (1998) took place shortly after 215's passage, there were cluster of cases that coincided: *United States v. Oakland Cannabis Buyers Co-op* 532



amount of press given the 1996 ballot initiative should not be perceived as the first spike in issue saliency because elections tend to garner more media coverage anyway.

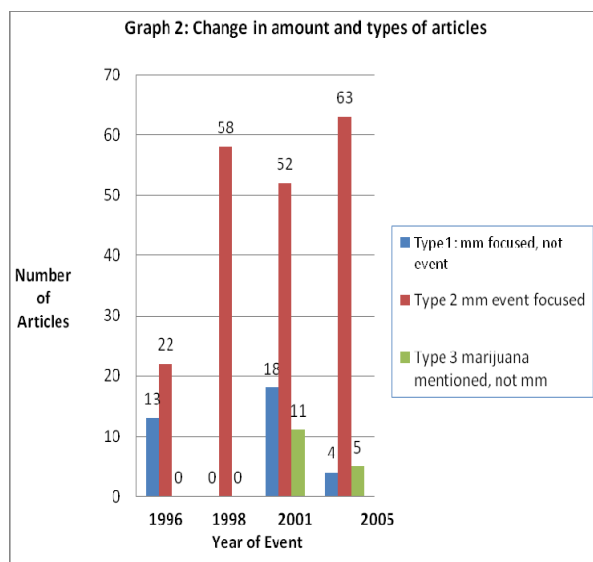


In respect to the development of medical marijuana SMOs, 1996 is the “attention getter” or starting point for future public discourse and coverage by the media, evidencing a few indicators of political traction. Not only does the two year time period from 1996 to 1997 indicate that print media began to address the issue of medical marijuana without referring to the drug by its street moniker, an increase in the allocation of more articles dedicated to the issue is also evinced, which could indicate heightened issue saliency. If the media are truly non-bias, they are in effect giving their readers what they want them to read based on the importance of the subject matter, and discerning the essence of an emerging

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U.S. 483 (2001) *County of Santa Cruz, Ca, et. al. v. Ashcroft, et. al.* (2002) (herein Santa Cruz) and *Wo/Men’s Alliance, Valerie Corral, and Michael Corral v. the United States of America* (2002), and *Gonzales v. Raich* 545 U.S. 1(2005).

issue for public understanding. The increases in number of articles and presentation of frames more favorable to movement organizations comes during, and directly following an election, and then levels back out to pre-election surge. This pattern is captured not only in 1996, but also leading up to, during, and immediately following the three federal court cases examined. Identification of this pattern is significant for two reasons. First, in regards to how the print media reported on medical marijuana, Cohen's assertion that the media tells its audiences *what* to think about and not necessarily *how* to think, finds another valid example of support.



To further substantiate the second half of Cohen's statement is the low amount of editorials printed by the media outlets studied.<sup>17</sup> Emphasis for this claim is found in the way of Halberstam's (1979, 414) practical illustration of Walter Cronkite's avoidance of being the center or cause of controversy by

<sup>17</sup> The total amount of editorials for the year/ events was thirteen, breaking down in the following manner: 5 in 1996 (1 in Type 1 article and 4 in Type 2 articles all in SF Chronicle), 3 in 1998 (all Type 1 articles, all SF Chronicle), 8 in 2005 (7 all in Type 1 article SF Chronicle 1 in Type 1 article LA Times); 2001 editorial data not available.

introducing frames counter to well-accepted governmental messages, “To him (Cronkite), editorializing was going against the government. He had little awareness, nor did his employers want him to, of the editorializing which he did automatically by unconsciously going along with the government’s position.” Media focus registered the events of this study as political challenges and did not venture into normative claims, which begins to answer Graber’s question of media support or subversion of the status quo. By presenting the electoral and judicial (non-criminal) episodes that featured dispute over governmentally sanctioned prohibition, print media was broadening the avenues of discourse pertaining to the subversion of the status quo and offering SMOs to draw politically viable policy alternatives from a ferment of discontent. However, by predominantly reporting on events taking place within political institutions, and giving a lower priority to coverage of SMO protests and medical marijuana distribution, media were supporting the systematic ways of causing policy change.

Looking at Table 2, one finds that print media articles dedicated to medical marijuana issues increased. Amongst the three Types of articles, Type 2 articles, focused on SMO sponsored or supported events aimed toward reforming policy through legal means accrued the most, while Type 1 articles, those concentrating on medical marijuana issues not germane to litigation, also increased but at a lesser rate. Type 3 articles, those that mentioned marijuana, but did not focus on medical properties of the drug were only traceable. Seemingly, the event was the issue for *The Los Angeles Times* and *The San Francisco Chronicle*. This

indicates that issue saliency rose from the initial election event to court-based activity with little let down in media attention. Some may wonder if media interest in the 1998 *Conant* case was novel due to the uniqueness of the issue or the media was drawn to a rare success engineered by a group of advocates pushing a marginalized issue into mainstream political venues.

Second, the rise of issue saliency imitates what Schattschneider posited as an enlarged scope of conflict. This is significant because prior to the medical marijuana movement, the few fragmented organizations that advocated legalization of marijuana were unable to separate themselves from fringe thought including counterculture activities of the 1960s, which the CSA was a direct governmental response to. The medical marijuana SMOs, with issue saliency rising and a foundation of non-bias reporting focused on their cause as a legitimate political event, can broaden their horizons, as it were, and pursue other venues of policy change. More specifically, SMOs can branch out in their activities, including the introduction of innovative frames, mobilizing members, convincing the public of the medical viability of marijuana, and possibly garnering legislative support.

The increase in the number of articles the print media allotted to events determinant on the future use of medical marijuana definitely indicates that the print media wanted their readers to be cognoscente of the organized challenges being made to marijuana prohibition and quite possibly that California voters wanted their electorally mandated policy reform measure to be sustained. Viewed in another way, the print media also made their readers aware of the fact

that there was a growing belief amongst the general public, physicians, and policymakers that marijuana either had medical viability and/ or the status-quo was an antiquated set of policies.

**Table One: Medical Marijuana Social Movement Organizations**

<u>Social Movement Organization</u>	<u>Year Established</u>	<u>Primary Purpose</u>
Americans for Safe Access	2002	Patients Rights Defense
Green Aid	2002	Marijuana Legal Defense
Drug Policy Alliance	2000	Health Policy of various substances
Marijuana Policy Project (MPP)	1995	Marijuana Rights
Multidisciplinary Association for Psychedelic Studies	(1986) Began Funding medical marijuana efforts in 1995	Research and Education of alternative drugs
Harm Reduction Coalition	1994	Creation and Enactment of alternative drug policies
Drug Reform Coalition Network	1993	End Drug Prohibition
Wo/Men's Alliance for Medical Marijuana <sup>18</sup>	1993	Cultivation and Distribution of medical marijuana at no cost
S.A.F.E.R.	2004	University based organization supporting policies that legalize substances as substitutes to alcohol use. <sup>19</sup>

The election returns of 1996 are indicative of the “binding voice” of the people; *Conant v. McCaffrey* demonstrates, at least to some extent, the disagreement of medical professionals with how Proposition 215 was federally impeded; and federal jurists were deciding disputes between social movement

<sup>18</sup> While conducting interviews with several Santa Cruz, Ca. officeholders I was informed that this organization was the primary impetus for Proposition 215 as well as being responsible for medical marijuana distribution prior to California’s legalization. Valerie and Mike Corral are the founders of WAMM and are well known in the medical marijuana community, though they keep a low political profile in comparison to MPP and ASA.

<sup>19</sup> Though S.A.F.E.R. is a state (Colorado), not nationally, based SMO I include it because MPP parented with it in several local ballot initiatives. 2004 is S.A.F.E.R.’s year of establishment, but their resources are mobilized in mass specifically for election year activities.

advocates and governmental officeholders on an issue that seemed to be securely held within a meta-frame and federal statutes of prohibition.

The last area that warrants cogitation is establishment of medical marijuana SMO while media attention to a changing illicit substance landscape was taking place. SMOs neither establish nor sustain themselves without funding and membership inspired by progress toward their group's goals. As media attention to legal battles rose, legal defense SMOs or legal arms of those organizations were founded. Prior to the passage of the Compassionate Use Act, only Wo/Men's Alliance for Medical Marijuana (WAMM) and the Marijuana Policy Project (MPP) had the capabilities to either give legal advice to patients or refer users of medical marijuana to legal counsel. At the same time media attention increased the most (2000-2003), three additional SMOs were founded, with two having legal defense as their primary purpose (See Table 1). It is not only attention from the media that creates the perception that legalization of marijuana for medical purposes is feasible, it is the prolonged legal disputes that give SMO members a willingness to donate money and allocate their time and resources. If the media is telling the public that medical marijuana advocates have been able to pose a sustained legal opposition to the federal government, belief in the cause has a greater chance of gaining adherents.

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*Gonzales v. Raich* (2005) 545 U.S. 1

**Appendix One: Proposition 215 Legislative Analysis and Proponents/  
Opponents Statements**

## **Analysis of Proposition 215**

**by the Legislative Analyst**

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### **BACKGROUND**

Under current state law, it is a crime to grow or possess marijuana, regardless of whether the marijuana is used to ease pain or other symptoms associated with illness. Criminal penalties vary, depending on the amount of marijuana involved. It is also a crime to transport, import into the state, sell, or give away marijuana.

Licensed physicians and certain other health care providers routinely prescribe drugs for medical purposes, including relieving pain and easing symptoms accompanying illness. These drugs are dispensed by pharmacists. Both the physician and pharmacist are required to keep written records of the prescriptions.

### **PROPOSAL**

This measure amends state law to allow persons to grow or possess marijuana for medical use when recommended by a physician. The measure provides for the use of marijuana when a physician has determined that the person's health would benefit from its use in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or "any other illness for which marijuana provides relief." The physician's recommendation may be oral or written. No prescriptions or other record-keeping is required by the measure.

The measure also allows caregivers to grow and possess marijuana for a person for whom the marijuana is recommended. The measure states that no physician shall be punished for having recommended marijuana for medical purposes. Furthermore, the measure specifies that it is not intended to

overrule any law that prohibits the use of marijuana for *nonmedical* purposes.

## **FISCAL EFFECT**

Because the measure specifies that growing and possessing marijuana is restricted to medical uses when recommended by a physician, and does not change other legal prohibitions on marijuana, this measure would probably have no significant state or local fiscal effect.

# **Argument in Favor of Proposition 215**

Arguments on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

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## **PROPOSITION 215 HELPS TERMINALLY ILL PATIENTS**

Proposition 215 will allow seriously and terminally ill patients to legally use marijuana, if, and only if, they have the approval of a licensed physician.

We are physicians and nurses who have witnessed firsthand the medical benefits of marijuana. *Yet today in California, medical use of marijuana is illegal.* Doctors cannot prescribe marijuana, and terminally ill patients must break the law to use it.

Marijuana is not a cure, but it can help cancer patients. Most have severe reactions to the disease and chemotherapy--commonly, severe nausea and vomiting. One in three patients discontinues treatment despite a 50% chance of improvement. When standard anti-nausea drugs fail, marijuana often eases patients' nausea and permits continued treatment. It can be either smoked or baked into foods.

## **MARIJUANA DOESN'T JUST HELP CANCER PATIENTS**

University doctors and researchers have found that marijuana is also effective in: lowering internal eye pressure associated with glaucoma, slowing the onset of blindness; reducing the pain of AIDS patients, and stimulating the appetites of those suffering malnutrition because of AIDS 'wasting syndrome'; and alleviating muscle spasticity and chronic pain due to multiple sclerosis, epilepsy, and spinal cord injuries.

When one in five Americans will have cancer, and 20 million may develop glaucoma, shouldn't our government let physicians prescribe any medicine capable of relieving suffering?

The federal government stopped supplying marijuana to patients in 1991. Now it tells patients to take Marinol, a synthetic substitute for marijuana that can cost \$30,000 a year and is often less reliable and less effective.

Marijuana is not magic. But often it is the only way to get relief. A Harvard University survey found that almost one-half of cancer doctors surveyed would prescribe marijuana to some of their patients if it were legal.

#### IF DOCTORS CAN PRESCRIBE MORPHINE, WHY NOT MARIJUANA?

Today, physicians are allowed to prescribe powerful drugs like morphine and codeine. It doesn't make sense that they cannot prescribe marijuana, too.

Proposition 215 allows physicians to recommend marijuana in writing or verbally, but if the recommendation is verbal, the doctor can be required to verify it under oath. Proposition 215 would also protect patients from criminal penalties for marijuana, but ONLY if they have a doctor's recommendation for its use.

#### MARIJUANA WILL STILL BE ILLEGAL FOR NON-MEDICAL USE

Proposition 215 DOES NOT permit non-medical use of marijuana. Recreational use would still be against the law. Proposition 215 does not permit anyone to drive under the influence of marijuana.

Proposition 215 allows patients to cultivate their own marijuana simply because federal laws prevent the sale of marijuana, and a state initiative cannot overrule those laws.

Proposition 215 is based on legislation passed twice by both houses of the California Legislature with support from Democrats and Republicans. Each time, the legislation was vetoed by Governor Wilson.

Polls show that a majority of Californians support Proposition 215. Please join us to relieve suffering and protect your rights. VOTE YES ON PROPOSITION 215.

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*Registered Nurse, Orange County*

## **Argument Against Proposition 215**

Arguments on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

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### **READ PROPOSITION 215 CAREFULLY \* IT IS A CRUEL HOAX**

The proponents of this deceptive and poorly written initiative want to exploit public compassion for the sick in order to legalize and legitimize the widespread use of marijuana in California.

Proposition 215 DOES NOT restrict the use of marijuana to AIDS, cancer, glaucoma and other serious illnesses.

READ THE FINE PRINT. Proposition 215 legalizes marijuana use for "*any other illness for which marijuana provides relief.*" This could include stress, headaches, upset stomach, insomnia, a stiff neck . . . or just about anything.

### **NO WRITTEN PRESCRIPTION REQUIRED \* EVEN CHILDREN COULD SMOKE POT LEGALLY!**

Proposition 215 does not require a written prescription. Anyone with the "oral recommendation or approval by a physician" can grow, possess or smoke marijuana. No medical examination is required.

*THERE IS NO AGE RESTRICTION.* Even children can be legally permitted to grow, possess and use marijuana . . . without parental consent.

### **NO FDA APPROVAL \* NO CONSUMER PROTECTION**

Consumers are protected from unsafe and impure drugs by the Food and Drug Administration (FDA). This initiative makes marijuana available to the public without FDA approval or regulation. Quality, purity and strength of the drug would be unregulated. There are no rules restricting the amount a person can smoke or how often they can smoke it.

THC, the active ingredient in marijuana, is already available by prescription as the FDA approved drug Marinol.

Responsible medical doctors wishing to treat AIDS patients, cancer patients and other sick people can prescribe Marinol right now. They don't need this initiative.

NATIONAL INSTITUTE OF HEALTH, MAJOR  
MEDICAL GROUPS SAY *NO* TO SMOKING  
MARIJUANA FOR MEDICINAL PURPOSES

The National Institute of Health conducted an extensive study on the medical use of marijuana in 1992 and concluded that smoking marijuana is *not* a safe or more effective treatment than Marinol or other FDA approved drugs for people with AIDS, cancer or glaucoma.

The American Medical Association, the American Cancer Society, the National Multiple Sclerosis Society, the American Glaucoma Society and other top medical groups have *not* accepted smoking marijuana for medical purposes.

LAW ENFORCEMENT AND DRUG PREVENTION LEADERS  
SAY *NO* TO PROPOSITION 215

The California State Sheriffs Association  
The California District Attorneys Association  
The California Police Chiefs Association  
The California Narcotic Officers Association  
The California Peace Officers Association  
Attorney General Dan Lungren

say that Proposition 215 will provide new legal loopholes for drug dealers to avoid arrest and prosecution . . .

Californians for Drug-Free Youth  
The California D.A.R.E. Officers Association  
Drug Use Is Life Abuse  
Community Anti-Drug Coalition of America  
Drug Watch International

say that Proposition 215 will damage their efforts to convince young people to remain drug free. It sends our children the false message that marijuana is safe and healthy.

HOME GROWN POT \* HAND ROLLED "JOINTS"  
\* DOES THIS SOUND LIKE MEDICINE?

This initiative allows unlimited quantities of marijuana to be grown anywhere . . . in backyards or near schoolyards without any regulation or restrictions. This is not responsible medicine. It is marijuana legalization.

#### VOTE *NO* ON PROPOSITION 215

**JAMES P. FOX**

*President, California District Attorneys Association*

**MICHAEL J. MEYERS, M.D.**

*Medical Director, Drug and Alcohol Treatment  
Program, Brotman Medical Center, CA*

**SHARON ROSE**

*Red Ribbon Coordinator, Californians for Drug-Free  
Youth, Inc.*

### **Appendix Two**

#### **Judicial Rulings: From First Amendment to Medical Exceptions**

*Conant v. McCaffrey* (later Walters) is a U.S. federal district of Northern California case that over the course of nearly five years advanced to the Ninth Circuit, where the Judges upheld the lower court's ruling in 2002. Before being decided in March 1998 by the U.S. District Court for the Northern California, *Conant v. McCaffrey* asked whether or not physicians were compelled by the federal government to handover the files of patients who requested information on the medical viability of marijuana. Department of Justice personnel in conjunction with the Drug Enforcement Administration requested materials that could possibly infringe on a physician's first amendment freedom of association and their Fifth Amendment right against self-incrimination.<sup>20</sup> This attempt at

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<sup>20</sup>Judge Fern Smith notes, [in their] "first set of interrogatories and requests for documents," served August 1, 1997, the government sought information relating to communications about marijuana between plaintiff doctors and their patients and between plaintiff patients and their doctors. Specifically, the government

discovery was the first legal response by any federal agency to the medical marijuana initiative passed by California voters that did not take the form of raids, arrests, and/ or surveillance. Almost a year prior to the 1998 ruling, the district court had issued an order of injunction against the collection of such information by the federal government.

On March 16, 1998, Judge Fern Smith issued the district court's opinion finding partially for the government by ordering discovery of patient information relating to requests by patients to be informed of medical marijuana as an alternative pain reliever so long as the government did not make inquiries into criminal activities patients had already declared. This ruling was temporary and eventually in October of 2002, the U.S. Ninth Circuit ruled in favor of the physicians. Though the federal government, under the direction of Drug Tsar and Office of National Drug Control Director John Walters, appealed the Ninth's ruling to the Supreme Court in 2003 no writ of certiorari was issued. Therefore, this case serves two purposes: 1) as an initial point of contestation pertaining to an issue directly relating to Proposition 215's passage and 2) as a comparison to media attention given to subsequent cases.

The last events/ times (both Supreme Court decisions) analyzed are *U.S. v. Oakland Cannabis Buyers Cooperative*, decided in March of 2001 and the *Gonzales v. Raich* (2005) ruling. The former case asked the Court to decide if there was a medical exception for the cultivation and distribution of marijuana to

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requested that the plaintiff patients describe, and provide the portions of their medical records containing, any instances in which a doctor "suggested," "approved," "supported," or "encouraged" the use of marijuana between November 1994 and the present.



the prohibition of marijuana mandated by the Controlled Substances Act of 1970 (Schedule I). Advocates also desired to know if there could be a common law defense for the writing of an exception into the CSA, as well as if the federal courts would be able to “carve out” said exception. The Court found, in a summarized fashion, that the “terms of the CSA leaves no doubt that the medical exception defense is unavailable.” As to an exception to manufacturing and distribution, the Justices by an 8-0 vote that only the federal government had the power to carry out or facilitate an exception because all of the legal research regarding marijuana was being conducted by the federal government.<sup>21</sup>

In the four years following the *Oakland* ruling, medical marijuana advocacy increased in terms of social movement organizations, the adoption of medical marijuana laws by three other states, and the formation of a new legal argument centered on a patient-use exception to the CSA and anchored in federalism/ states rights.<sup>22</sup> Law Professor and Federalist Society member Randy Barnett brought expertise and academic legitimacy to the cause by leading a legal team that would push the issue through lower federal courts, the Ninth Circuit, and finally being granted a writ of certiorari from the Supreme Court for the 2004-05 session. *Gonzales v. Raich*, was as high-profile and media attention grabbing as any determining event dealing with medical marijuana issues since 1996. Using this case as the final point of examination and comparison of media reporting and framing is also insightful due to any “let-up” by the media concerning this article.

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<sup>21</sup> In *U.S. v. Oakland Cannabis Buyers Cooperative*, Chief Justice wrote the opinion for the Court while Justice Breyer took no part in the consideration or decision of the case.

<sup>22</sup> Nevada’s legislature passed A.B. 453 on June 14, 2001, Vermont’s state assembly choose to do the same by voting in favor of S. 76 on May 26, 2004, while the voters of Montana decided to pass Initiative 148 on February 11, 2004.

In other words, did media outlets shy away from this topic due to the lack of SMO legal success at the federal level (*Oakland*)? Did the editors and reporters of California print media become resigned to the thought that medical marijuana laws were taking place in a state-by-state vacuum and, therefore, *Gonzales v. Raich*, no matter the outcome, would be nothing more than a reaffirmation of the choices made by California voters? On the other hand, would the media continue to be attuned to the activities of medical marijuana social movements, and possibly act as a catalyst for movement progress?

It is intuitive to believe that more media reports would be generated focusing on Supreme Court decisions than by lower courts that are hearing the issue for the first time. Supreme Court rulings, especially on issues never addressed by the Court before, carry a “high profile” potential by media outlets nationwide. However, because this study is narrowed to California print media, it is equally intuitive to think that state centered newspapers would put reporting priority and importance on issues having greater saliency to citizens of their state, especially litigation that tests a controversial neophyte policy. Also, each case presents a variation of inquiry concerning the legalization of medical marijuana, therefore the reporting of each case, is to some extent, garnering a different “angle” and understanding concerning the legal formidability of Proposition 215.