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The Fordham Law Drug Policy Reform Project: America's Oldest War: The Efficacy of United States Drug Policy

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**THE FORDHAM LAW DRUG POLICY
REFORM PROJECT
AMERICA'S OLDEST WAR:
THE EFFICACY OF UNITED STATES
DRUG POLICY***

TUESDAY, APRIL 23, 2002 — 7:00 PM

MODERATOR

*John Nicholas Iannuzzi
Adjunct Professor, Fordham University School of Law*

PANELISTS

*Graham Boyd
Director, ACLU Drug Policy Litigation Project*

*Asa Hutchinson
Administrator, Drug Enforcement Administration*

* The Fordham Law Drug Policy Reform Project planned and executed the debate, "America's Oldest War: The Efficacy of United States Drug Policy," on April 23, 2002 at the end of the organization's first year. The goal of the debate was to bring to one forum the leading voices at both ends of the drug policy spectrum. Professor John Nicholas Iannuzzi moderated, giving each speaker three minutes to answer each question from the floor. Over one hundred and twenty professionals, students, and community members attended the debate.

MS. KAY: Hi. Thank you all for coming and welcome. My name is Amanda Kay and I am the Executive Director of the Fordham Law Drug Policy Reform Project.¹

When four of us started this group in September, we had a lot of ideas, but never really guessed that we would be able to bring such esteemed speakers here and attract law students from beyond Fordham and practitioners from beyond New York. We are very excited and thankful for everyone who has given us support in putting on this event.

Before we turn to the debate, I just want to remind you that immediately following this event there is a reception right outside in the Atrium. Everyone is welcome to stay.

Also, there are materials on the table outside the door you can help yourself to.

The transcript of this debate is going to be published in the *Fordham Urban Law Journal*, in one of Volume 30's books, which will begin in the fall. If you are interested in getting a copy of that or a copy of the videotape we are making, there is a sign-up sheet outside. It is just an interest sheet, so you're not actually placing an order for anything.

Also, if you want to be on the list of participants that will go in the *Journal*, then there is another list for you to sign up.

It is now my pleasure to introduce the moderator and both of our distinguished debaters.

John Nicholas Iannuzzi is going to moderate the debate this evening. He has been an Adjunct Professor teaching trial advocacy here at Fordham for over twelve years, and he has also operated a private law practice specializing primarily in criminal litigation for over thirty years. He has authored five novels and three legal books on trial practice. We are delighted that he has agreed to moderate the debate tonight.

1. The Fordham Law Drug Policy Reform Project was founded in September 2001 by a group of law students who recognized that United States drug policy is in need of reform. The Project's mission is to raise awareness of the effects of current and proposed drug policy within the law school community and to promote policy reform at the local, state, and federal levels in accordance with harm reduction principles. Members participate in brown-bag lunches on topics such as the racial implications of the drug war, visiting speaker discussions on legal alternatives to the current enforcement and interdiction model, and lobbying efforts directed at lawmakers. The Project is housed in Fordham's Public Interest Resource Center and is currently run by five Executive Officers. The Project has over seventy-five members.

Mr. Graham Boyd is the founder and director of the ACLU Drug Policy Litigation Project.² The Project conducts the only national litigation program addressing civil rights and civil liberties violations arising from the War on Drugs. Mr. Boyd is currently litigating constitutional challenges to restrictions on medical marijuana, the denial of voting rights, drug testing of students and welfare recipients, police interference with syringe exchange programs, and DEA targeting of rave promoters.

Mr. Boyd speaks frequently for television and radio news productions. He has been quoted on drug policy issues in publications including *The New York Times*,³ *The Washington Post*,⁴ *The Los Angeles Times*,⁵ and *Time* magazine.⁶ He has appeared on *Good Morning America*,⁷ *The Today Show*,⁸ *CBS Evening News*,⁹ *ABC World News Tonight*,¹⁰ and a variety of shows on *CNN*,¹¹ *MSNBC*,¹² and other cable news channels.

Mr. Boyd's own writing on drug issues includes his recent publications, *This Is Your Bill of Rights on Drugs*, which appears in the December 1999 issue of *Harper's Magazine*,¹³ and *The Drug War is the New Jim Crow*, appearing in the July/August 2001 issue of the *NACLA Report on the Americas*.¹⁴ He is currently working on a piece addressing the collateral consequences of the War on Drugs.

2. See FATEMA GUNJA, AM. CIVIL LIBERTIES UNION, ACLU DRUG POLICY LITIGATION PROJECT: A REPORT OF ACTIVITIES, 1999-2001, at iv (Graham Boyd & Norma Fritz eds., 2002), available at <http://www.aclu.org/Files/OpenFile.cfm?id=10978> (last visited Jan. 15, 2003).

3. Todd S. Purdum, *Judge Rules Doctors Can Discuss Marijuana Use*, N.Y. TIMES, Sept. 8, 2000, at A22.

4. Lois Romano, *High Court to Consider Case on Drug Testing; Degree of Student Screening is at Issue*, WASH. POST., Nov. 9, 2001, at A03.

5. *National Debate About Raves, Drugs*, L.A. TIMES, Aug. 27, 2001, § 6, at 2.

6. Ron Stodghill, *Higher Learning*, TIME, July 8, 2002, at 34.

7. *Good Morning America: Drug Testing Lawsuit* (ABC television broadcast, Aug. 19, 1999).

8. *Today: Attorneys Graham Boyd and Don Hemslee Discuss Drug Test Policy at Rural Texas School District* (NBC television broadcast, July 5, 2000).

9. *Evening News: ACLU Files Lawsuit Against School Policy of Mandatory Random Drug Testing For Students in Extracurricular Activities* (CBS television broadcast, Aug. 18, 1999).

10. *World News Tonight: Texas School Gets Tough on Drugs and Faces Controversy* (ABC television broadcast, Apr. 18, 2000).

11. *Live Today: Supreme Court Hears Argument in High School Drug Testing Case* (CNN television broadcast, Mar. 20, 2002).

12. *The News With Brian Williams* (MSNBC television broadcast, Nov. 12, 1999).

13. Graham Boyd & Jack Hitt, *This Is Your Bill of Rights, On Drugs*, HARPER'S MAG., Dec. 1, 1999, at 57.

14. Graham Boyd, *The Drug War Is the New Jim Crow*, NACLA REP. ON AM., July/Aug. 2001, at 18.

Prior to working for the ACLU, Mr. Boyd practiced labor law in San Francisco, and during the past three years he has helped created [sic] and served as the directing attorney for the Workers Rights Project at Yale Law School.¹⁵ He is also the founder and ongoing consultant of the Environmental Justice Program of the Legal Resources Center in Cape Town, South Africa.¹⁶ Mr. Boyd received his J.D. from Yale Law School in 1992.

Mr. Asa Hutchinson has served as Administrator of the Drug Enforcement Administration since August 8, 2001.¹⁷ While serving his third term in the U.S. Congress, Mr. Hutchinson was tapped by President George W. Bush to join the Administration and was confirmed with a bipartisan vote of 98-to-1 in the U.S. Senate.¹⁸

After receiving his J.D. from the University of Arkansas School of Law in 1974, Mr. Hutchinson practiced law in rural Arkansas for twenty-one years before being elected to Congress in 1995. During that time he was appointed by President Ronald Reagan as U.S. Attorney for Western Arkansas. Mr. Hutchinson was, at age thirty-one, the youngest U.S. Attorney in the nation. During his tenure as U.S. Attorney, the FBI awarded Mr. Hutchinson a citation for his successful prosecution of a terrorist group in northern Arkansas.

While in Congress, Mr. Hutchinson continued his leadership in the fight against drugs by serving on the House Judiciary Committee and the Select Committee on Intelligence. He served on the Speaker's Task Force for a Drug-Free America, charged with finding new approaches to reduce drug use among the nation's youth.¹⁹

During the impeachment and trial of President Bill Clinton, Mr. Hutchinson served as one of the House managers charged with conducting the trial in the Senate.²⁰

15. Jim Callaghan, *The Deportees*, VILLAGE VOICE, Oct. 27, 1998, at 21; see Workers Rights Network, at <http://www.yale.edu/wrp> (last visited Jan. 15, 2003).

16. See generally Legal Resources Centre, at <http://www.lrc.org.za> (last visited Jan. 15, 2003).

17. See *Arkansan Picked For Top DEA Job*, DALLAS MORNING NEWS, May 9, 2001, at 4A.

18. See Press Release, Congressional Press Releases, Congressman Asa Hutchinson's Nomination as DEA Head Confirmed by the Senate (Aug. 1, 2002); see also Josh Meyer, *New DEA Chief Suggests 'Compassionate' Policy*, L.A. TIMES, Aug. 2, 2001, at A19.

19. See Meyer, *supra* note 18, at A19.

20. See James Risen, *Impeachment Figure in Line For Drug Enforcement Post*, N.Y. TIMES, May 9, 2001, at A28.

As head of the DEA, Mr. Hutchinson concentrates on finding effective enforcement strategies while recognizing the need for increased treatment and education programs.

I am now going to turn it over to Professor Iannuzzi to explain to you the format of the debate this evening.

Thank you and I hope you enjoy.

MR. IANNUZZI: We will have introductory remarks first by Mr. Boyd, then by Mr. Hutchinson, each speaking for approximately six minutes. Thereafter we will field questions from the audience, and the speakers will have three minutes to respond to each question. Questions can be directed to both speakers or to one or the other. If the question is directed to one of the speakers, we will give the opposing speaker the opportunity to respond, despite the fact that the question may have been asked directly to one. At the end, we will have conclusory remarks, each speaker having five minutes.

We will begin with Mr. Boyd.

MR. BOYD: Thank you for that introduction, both of you, and thank you especially to everyone who came out tonight to hear what we have to say.

I didn't come here really to try to engage in a fiery debate, and certainly not to try to make anyone look bad. That's not my style, and that's not really a particularly good use of this relatively rare opportunity to have what I think I would rather call a discussion than a debate between heads of two organizations that you could not think of as being more apart from each other, the ACLU Drug Policy Litigation Project and the Drug Enforcement Administration.

But I think we have the same goals here. What I want to explore is: how true is that, what are the ways that we each see of arriving at those goals, and are our goals even the same?

So let me try not to use my six minutes to hammer out a bunch of statistics, although I am going to mention a few, but, rather, to try and frame things a bit. I hope that by mentioning a few of these areas, I can encourage you to ask us some questions and give us more of an opportunity to get into detail.

To frame the debate, what is it that we care about here? Is it simply a chart that shows numbers of people using drugs going up or down and scoring political points? I hope not. Charts are not that interesting.

What I care about, and I bet what we all care about, is, how many people are dying because of drugs and our drug policies?

How do these drug policies contribute to death or disease? How many people are contracting preventable diseases because of our drug policy? How much money are we spending that could be spent elsewhere? How much are we putting aside our most cherished rights, rights like privacy and free speech, in the name of some higher goal of fighting a war on drugs? How much are we really undermining principles of democracy that we care about in order to fight a “war?”

Remember, this idea of war started as a metaphor, with the “War on Drugs.”²¹ But who is the enemy in this war? Is it the people we are arresting? Is it the people who use drugs? Is it the families that are separated from the people we arrest? Who exactly is the enemy? It is not a conventional war, but yet in wars that is exactly where we are most prone to say, “Let’s put the normal rules and considerations aside.”

In World War II, we locked up 120,000 U.S. citizens in internment camps, simply because they happened to be of Japanese-American descent.²² In retrospect, everybody knows that was a huge mistake.²³ But it was a necessity of war, or so we thought, and the rhetoric of war justified that.²⁴

I think right now there is a very healthy debate in this country about how far we are willing to go in the “War on Terrorism” to set aside rights that have been dearly held.

That same dynamic comes into play with the War on Drugs. How much are we willing to set aside our rights and our notions of how we live in this country to fight a War on Drugs?

Now here come the statistics. Over the last fifteen years or so—and I anticipate that we are going to hear from Administrator Hutchinson that over the last fifteen years, there has been a sev-

21. See JAMES P. GRAY, *WHY OUR DRUG LAWS HAVE FAILED AND WHAT WE CAN DO ABOUT IT: A JUDICIAL INDICTMENT OF THE WAR ON DRUGS* 27 (2001) (noting the phrase “War on Drugs” was coined in 1969 by President Richard M. Nixon).

22. See *Korematsu v. United States*, 323 U.S. 214, 223 (1944) (holding Army exclusion order, calling for the forced detention of persons of Japanese descent within war powers, as justified by national security concerns). See generally PAGE SMITH, *DEMOCRACY ON TRIAL: THE JAPANESE AMERICAN EVACUATION AND RELOCATION IN WORLD WAR II* (1995).

23. See *Korematsu*, 323 U.S. at 245-46 (Jackson, J., dissenting) (“Much is said of the danger to liberty from . . . deporting and detaining these citizens of Japanese extraction. But a judicial construction of the due process clause that will sustain this order is a far more subtle blow to liberty than the promulgation of the order itself.”).

24. See *id.* at 223 (“Korematsu was not excluded from the Military Area because of hostility to him or his race. He *was* excluded because we are at war with the Japanese Empire . . .”).

enty-five percent decrease in cocaine use—right?²⁵ He has certainly said that in other debates, and I applaud him for engaging in these debates.

But over these last fifteen years there has been a 300 percent increase in federal drug arrests,²⁶ a third of them for marijuana.²⁷ The length of drug sentences during that period has doubled. Sixty percent of those arrested are street-level dealers, or those arrested for possession.²⁸ The budget has gone from \$1.6 billion to \$18.8 billion, a ten-fold increase.²⁹

So these are real costs, in terms of people whose lives have been affected by incarceration, and in terms of budgetary expenses. And what have we gotten for it? Well, drugs are cheaper and more plentiful than they ever have been, certainly than they were fifteen years ago.³⁰ They are more widely used, I would say.³¹ Casual use of cocaine—this is according to a NDC report from two years ago—has declined by seventy-five percent.³² Hard-core use of co-

25. Asa Hutchinson, Address at the Yale University School of Law (Nov. 15, 2001) (stating that “[c]ocaine use is down by 75 percent in the last 15 years.”), *available at* <http://www.usdoj.gov/dea/speeches/s111501p.html> (last visited Jan. 15, 2003); *see infra* note 48 and accompanying text.

26. *See* OFFICE OF NAT’L DRUG CONTROL POLICY, THE WHITE HOUSE, NATIONAL DRUG CONTROL STRATEGY 75 (2002) [hereinafter DRUG CONTROL STRATEGY], *available at* <http://www.whitehousedrugpolicy.gov/publications/pdf/Strategy2002.pdf> (last visited Jan. 15, 2003).

27. *See id.*

28. *See, e.g.*, HUMAN RIGHTS WATCH, WHO GOES TO PRISON FOR DRUG OFFENSES?: A REBUTTAL TO THE NEW YORK STATE DISTRICT ATTORNEY’S ASSOCIATION (1999), *at* <http://www.hrw.org/campaigns/drugs/ny-drugs.htm> (last visited Jan. 15, 2003).

29. *See* OFFICE OF NAT’L DRUG CONTROL POLICY, THE WHITE HOUSE, NATIONAL DRUG CONTROL STRATEGY: FISCAL YEAR 2003 BUDGET SUMMARY 1 fig. 1 (2002) [hereinafter BUDGET SUMMARY], *available at* <http://www.whitehousedrugpolicy.gov/publications/pdf/budget2002.pdf> (last visited Jan. 15, 2003).

30. *See* U.S. SENTENCING COMM’N, SPECIAL REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY 65-66 (May 2002) [hereinafter FEDERAL SENTENCING POLICY] (tracking cocaine prices over two decades), *available at* http://www.ussc.gov/r_congress/02crack/2002crackrpt.pdf (Jan. 15, 2003); *see also* 1 OFFICE OF APPLIED STUDIES, U.S. DEP’T OF HEALTH & HUMAN SERVS., RESULTS FROM THE 2001 NATIONAL HOUSEHOLD SURVEY ON DRUG ABUSE: SUMMARY OF NATIONAL FINDINGS 82 (2002) [hereinafter HOUSEHOLD SURVEY], *available at* <http://www.samhsa.gov/oas/nhsda/2k1nhsda/PDF/cover.pdf> (last visited Jan. 15, 2003).

31. *See* INST. FOR SOC. RESEARCH, UNIV. OF MICH., MONITORING THE FUTURE tbl. 12 (2000); *see also* HOUSEHOLD SURVEY, *supra* note 30, at 82.

32. *See* DRUG CONTROL STRATEGY, *supra* note 26, at 58 tbl. 2; *see also* OFFICE OF APPLIED STUDIES, U.S. DEP’T OF HEALTH & HUMAN SERVS., TRENDS IN THE INCIDENCE OF DRUG USE IN THE UNITED STATES, 1919-1992, at xiii, 36 tbl. 3.6 (1996) [hereinafter TRENDS], *available at* <http://www.samhsa.gov/oas/analytic.htm> (last visited Jan. 15, 2003).

caine has actually remained steady.³³ Hard-core use of heroin has remained somewhat steady,³⁴ and casual use of heroin has gone up in approximately the same proportion that cocaine use has gone down.³⁵ So you can manipulate the statistics to claim success, I think, but you can equally claim there has been absolutely no effect in terms of even drug use.

But deaths and overdoses from drugs continue to rise.³⁶ AIDS contracted from sharing infected needles continues to rise at a horrifying rate.³⁷ The assault on privacy from increased drug testing is something that has become widespread in the name of the War on Drugs.³⁸ Half of the FBI's police corruption investigations involve drugs,³⁹ because to investigate a drug case, to use the money and the drugs that are involved in those cases, is necessarily going to breed corruption.⁴⁰ Crack exists because of drug prohibition.⁴¹

I also think we have to get into this whole idea of terrorism, because terrorism is, in many instances, both domestically and internationally, funded by a black market in drugs.⁴² There are these commercials that we're going to talk about.⁴³ But I want to argue forcefully that it is because of drug prohibition itself that you find the terrorism. The United States Government awarded the Taliban

33. DRUG CONTROL STRATEGY, *supra* note 26, at 59.

34. *Id.*

35. *Id.*

36. *See id.* at 25 ("The [CDC] estimate[s] that 19,102 people died in 1999 (or 52 such deaths per day) as the direct result of drug-induced causes."); *see also id.* at 71 tbl. 20.

37. Ctrs. for Disease Control & Prevention, *AIDS Associated with Injecting-Drug Use*, 45 MORBIDITY & MORTALITY WKLY. REP. 2, 2-3 (1995), available at <http://www.cdc.gov/mmwr/PDF/wk/mm4519.pdf> (Jan. 15, 2003).

38. *See* GRAY, *supra* note 21, at 95-122; *see also* Steven Wisotsky, *A Society of Suspects: The War on Drugs and Civil Liberties*, 180 CATO POL'Y ANALYSIS (Oct. 2, 1992).

39. *See* Dan Herbeck, *FBI Arrests 3 Detectives in Probe of City Drug Unit*, BUFF. NEWS, Mar. 2, 2000, at A1; *see also* H.G. Reza, *U.S. Agents' Drug Trade Ties Probed Crime*, L.A. TIMES, June 16, 1995, § A.

40. *See* Eric Blumenson & Eva Nilson, *Policing for Profit: The Drug War's Hidden Economic Agenda*, 65 U. CHI. L. REV. 35, 76 (1998).

41. *See* FEDERAL SENTENCING POLICY, *supra* note 30, at 68-69; *see also* Richard Cowan, *How the Narcs Created Crack*, NAT'L REV., Dec. 5, 1986, at 26.

42. *See* DRUG CONTROL STRATEGY, *supra* note 26, at 26; GRAY, *supra* note 21, at 137-42; *see also* Hale E. Sheppard, *U.S. Actions to Freeze Assets of Terrorism: Manifest and Latent Implications for Latin America*, 17 AM. U. INT'L L. REV. 625, 627 (2002).

43. *See* Frank Ahrens, *Super Bowl Ads Target Terror*, WASH. POST, Jan. 31, 2002, at E03.

a financial windfall for their efforts at eliminating drugs.⁴⁴ We actually paid the Taliban several years ago for that.

The other things I want to talk about, and I'm not going to go into detail here, are medical marijuana,⁴⁵ and what our policy should be in that regard, and I want to talk about raves,⁴⁶ because I think that that is a very important issue in where we are going and it is something that is very much within the purview of the DEA today.⁴⁷

Thanks.

MR. IANNUZZI: Mr. Asa Hutchinson.

MR. HUTCHINSON: Thank you, Professor.

I want to thank Fordham University School of Law for hosting this discussion on drug policy. I also want to express appreciation to my distinguished guest, Graham Boyd, who is one of the outstanding litigators in the country, and I am grateful for his honest presentation of some of the statistics that he remarked about in his opening discussion.

I want to remind the students that even though this is an academic environment that we are engaged in today, that the debate that we have on drug policy is not simply theoretical or academic. It certainly affects families and the lives of Americans every day.

I approach this subject not just as a former United States Attorney, not just as a former Member of Congress, or as Administrator of the DEA, but principally as a parent who has raised four teenag-

44. See John Alan Cohan, *Formulation of a State's Response to Terrorism and State-Sponsored Terrorism*, 14 PACE INT'L L. REV. 77, 116 (2002) (stating that the Bush Administration gave the the Taliban \$43 million dollars in exchange for limiting the drug trade); see also *Plan Aims to Halt Afghan Opium Cultivation*, WASH. POST, Nov. 25, 1997, at A15 (describing the agreement between the U.N. International Drug Control Program and the Taliban to stop the cultivation of opium, at a cost of several hundred million dollars); Raymond Bonner, *Top U.N. Drug Aide Hopes to Rid Globe of Poppy and Coca Crops*, N.Y. TIMES, Nov. 14, 1997, at A6 (stating that the drug eradication program would cost \$25 million a year and would last ten years).

45. See generally INST. OF MED., MARIJUANA AND MEDICINE: ASSESSING THE SCIENCE BASE (Janet E. Joy et al. eds., 2001) [hereinafter MARIJUANA AND MEDICINE]; JANET JOY & ALISON MACK, INST. OF MED., MARIJUANA AS MEDICINE? THE SCIENCE BEYOND THE CONTROVERSY (2000) [hereinafter MARIJUANA AS MEDICINE]; see also *infra* text accompanying notes 91-100.

46. Raves are large, organized, all night dance parties. See Press Release, National Institute on Drug Abuse, Popular Rave Drug "Ecstasy" Impairs Memory, Apparently Related to Brain Damage (Dec. 21, 1998), at <http://www.nida.nih.gov/medadv/98/ma-1221.html> (last visited Jan. 15, 2003).

47. See Asa Hutchinson, *Hearing Before the House Gov't Reform Subcomm. on Criminal Justice, Drug Policy, and Human Res.* (Sept. 19, 2002) (statement of Asa Hutchinson, Administrator, Drug Enforcement Administration), at <http://www.usdoj.gov/dea/pubs/cngrtest/ct091902.html> (last visited Jan. 15, 2003).

ers. Any time you have been through that, you struggle with this issue from all different standpoints. And, like many families, drug abuse has left its mark on mine; my nephew, as a teenager, was in and out of treatment programs and ultimately met his death at a very young age. So it is something that impacts us. I know that probably it is true for this audience as well.

I would suggest as we begin this discussion that the burden of proof should be on Mr. Boyd, and it should be on Mr. Boyd because it is he who wishes to change the current drug policy in our country to something that is different. I believe before an impartial audience that we would not change the current drug policy.

Two things I will discuss: what our current policy is, and secondly, what alternatives are out there, some of those which are being advocated by Mr. Boyd.

First of all, the current drug policy is demonstrated by success. Now, I don't mean to present that this is the kind of success level that we want to stop at, but it is success. As Mr. Boyd correctly said, we have reduced cocaine usage by seventy-four percent,⁴⁸ and overall drug usage by fifty percent.⁴⁹ But it's more than percentages. That is nine million fewer people using drugs on a regular basis today than twenty years ago;⁵⁰ it's 4.3 million fewer people using cocaine.⁵¹

Now, there is another way to categorize that statistic; only five percent of Americans use drugs; ninety-five percent do not.⁵² Now, if you would have changed the policy fifteen years ago toward legalization, what would those percentages be? Most folks who honestly look at that conclude that there would be a much higher rate of drug usage.⁵³ If you believe that drugs are harmful, then legalization is not the direction you wish to go.

The second part of the current policy is balance. I think it's important that, even though I'm involved with the enforcement oper-

48. See TRENDS, *supra* note 32, at xiii, 36 tbl. 3.6; see also DRUG CONTROL STRATEGY, *supra* note 26, at 58 tbl. 2.

49. See TRENDS, *supra* note 32, at 35-39 tbls. 3.5-3.9; see also DRUG CONTROL STRATEGY, *supra* note 26, at 58 tbl. 2.

50. See TRENDS, *supra* note 32, at 35-39 tbls. 3.5-3.9; see also DRUG CONTROL STRATEGY, *supra* note 26, at 58 tbl. 2.

51. See TRENDS, *supra* note 32, at 36 tbl. 3.6; see also DRUG CONTROL STRATEGY, *supra* note 26, at 58 tbl. 2.

52. See TRENDS, *supra* note 32, at 1-2.

53. See Juan R. Torruella, *The "War on Drugs": One Judge's Attempt at a Rational Discussion*, 14 YALE J. ON REG. 235, 255 (1997) (stating that legalization would increase drug use, especially among the poor); see also Asa Hutchinson, *Drug Legalization Doesn't Work*, WASH. POST, Oct. 9, 2002, at A31.

ation—this administration also believes in treating people with addiction problems⁵⁴ and alternatives to incarceration for non-violent offenders including treatment with accountability,⁵⁵ and we also believe in educating young people.⁵⁶ In fact, this administration is investing more than ever before in each of those arenas.

We have increased investment in the treatment of drug abuse by \$3 billion, which is a twenty-seven percent increase over 1999 figures.⁵⁷ In terms of drug treatment research, which is very important, those funds have increased. Over the past five years, prevention efforts have increased by a third.⁵⁸ And so we do need to have this balanced approach to our drug problems.

A third point I would make about the current policy is that we are open to new ideas. Yes, we do believe that it is important to keep drug use a criminalized conduct.⁵⁹ We believe that is the right direction for America. But we should have new ideas and support things that work, such as drug courts that have treatment with accountability for those with addiction problems;⁶⁰ looking at our ed-

54. See DRUG CONTROL STRATEGY, *supra* note 26, at 13-19; see also Asa Hutchinson, *DEA Congressional Testimony: Hearing Before the Subcomm. for the Dep't of Commerce, Justice, State, the Judiciary & Related Agencies of the House Comm. on Appropriations*, 107th Cong. (Mar. 20, 2002) [hereinafter *DEA Congressional Testimony*] (testimony of Asa Hutchinson, Administrator, Drug Enforcement Administration), at <http://www.usdoj.gov/dea/pubs.cngrtest/ct032002p.html> (last visited Jan. 15, 2003); James Gerstenzang, *Bush Sets Goals for Major Cuts in Drug Use Politics: He Discloses Strategy that Focuses on Disrupting the Market for Narcotics, Help for Addicts, and Prevention*, L.A. TIMES, Feb. 13, 2002, at A28.

55. See DRUG CONTROL STRATEGY, *supra* note 26, at 16 (describing the Administration's proposal to increase federal support for drug courts); see also Statement by President Bush on H.R. 2500, President Signs Commerce Appropriations Bill (listing drug courts that provide treatment rather than incarceration for nonviolent drug offenders as one of the Administration's key initiatives), at <http://www.whitehouse.gov/news/releases/2001/11/20011129-1.html> (last visited Jan. 15, 2003).

56. See DRUG CONTROL STRATEGY, *supra* note 26, at 8-10; see also *DEA Congressional Testimony*, *supra* note 54.

57. See BUDGET SUMMARY, *supra* note 29, at 3, 6-10.

58. See *id.*

59. See DRUG ENFORCEMENT ADMIN., U.S. DEP'T OF JUSTICE, DEA RESOURCES, FOR PARENTS & TEACHERS, SPEAKING OUT AGAINST DRUG LEGALIZATION: DEA'S POSITION (outlining the DEA's position on drug legalization), at <http://www.usdoj.gov/dea/demand/druglegal/02dl.htm> (last visited Jan. 15, 2003); see also Hutchinson, *supra* note 53, at A31; Wayne J. Rogues, *Legalization? No!*, MIAMI HERALD, Nov. 30, 1993, at A13.

60. See DRUG CONTROL STRATEGY, *supra* note 26, at 16; see also What Are Drug Treatment Courts?, at <http://www.usdoj.gov/dea/ongoing/treatment.html> (last visited Jan. 15, 2003); Asa Hutchinson, Speech at Ohio Association of Drug Court Professionals (May 2002), at <http://www.usdoj.gov/dea/speeches/s051002.html> (last visited Feb. 5, 2003).

ucation policy;⁶¹ looking at our sentencing disparity⁶² or our policing enforcement activities to determine if racial disparities exist.⁶³ These are all fair areas of debate of our current drug policy.

Now, Mr. Boyd has suggested some alternatives, and some will come up today, one of them being that, in the name of freedom, if we simply legalize drugs, we would not have terrorism today. Well, the first point is that you would have to legalize everything. If you legalized marijuana, that is not going to put the cartels out of business, because you've still got heroin and cocaine. If you legalized heroin and cocaine, does that put them out of business? No, because you still have methamphetamine. And if you legalized that, you still have Ecstasy. You will never put the cartels and the terrorists out of business by legalizing drugs. You would have to legalize everything, and that is not going to be a good structure.

Secondly, the argument is that, "Well, somehow the drug efforts of this country impinge upon freedom."⁶⁴ Ladies and gentlemen, the Bill of Rights has not been suspended. The courts have the responsibility to make sure that our enforcement efforts comply with the Bill of Rights. The Bill of Rights has not been suspended because of our anti-drug efforts.⁶⁵

And then, finally, I think it is important to learn from history. If you look at our anti-drug efforts in this country, we have not been engaged in it for twenty years, but 120 years.⁶⁶ One hundred and twenty years ago we had a legalized regime in this country where cocaine and heroin were legal and plentiful.⁶⁷ And what was the result of that legalized scenario? Addiction and crime were at an unprecedented level.⁶⁸ That's why in 1880 there were over 400,000

61. See DRUG CONTROL STRATEGY, *supra* note 26, at 9-10.

62. See MARK MAUER, THE SENTENCING PROJECT, AMERICANS BEHIND BARS: THE INTERNATIONAL USE OF INCARCERATION, 1992-1993 (1994), available at <http://www.druglibrary.org/schaffer/other/sp/abb.htm> (last visited Jan. 15, 2003).

63. See HUMAN RIGHTS WATCH, PUNISHMENT AND PREJUDICE: RACIAL DISPARITIES IN THE WAR ON DRUGS (2000), available at <http://www.hrw.org/reports/2000/usa> (last visited Jan. 15, 2003).

64. See GRAY, *supra* note 21, at 95-122 (discussing the erosion of protections of the Bill of Rights due to drug policy).

65. See Paul Finkelman, *The Second Casualty of War: Civil Liberties and the War on Drugs*, 66 S. CAL. L. REV. 1389, 1452 (1993).

66. See JOHN RUBLOWSKY, THE STONED AGE 129-31 (1974).

67. *Id.*

68. *Id.* at 89-93.

opium addicts in our nation.⁶⁹ That's twice as many per capita as there are today.⁷⁰

And so I believe that what we need in our drug policy is leadership, consistency, and balancing, focusing not on just enforcement, which is critically important, but also education, prevention, as well as treatment, and that is something that I think we should agree upon.

MR. IANNUZZI: Thank you, Mr. Hutchinson.

Now we are going to field questions.

QUESTION: Mr. Hutchinson, you said that the Bill of Rights has not been suspended. But what about the freedom that we should all have, America being the freest country, to put whatever we want in our own bodies and not have the government regulate that for us?

MR. HUTCHINSON: The freedom to put anything into your body that you wish—well, you can argue that in a free society we should be able to do things that do not harm others. I think that's where you have to debate it in the legislative halls.

Whenever I pick up the newspaper, today—this is not an ancient story, but today:

A Phoenix man who told police he bit off his two-year-old son's thumb, and apparently held it in his mouth for about six hours, was arrested on charges of child abuse and aggravated assault, authorities said. Raymond Jones, 31, told detectives he had taken several hits of PCP and had swallowed his son's thumb because he wanted to mix their DNA, police said. However, Jones coughed the thumb out while he was being interviewed by police.⁷¹

Now, did this gentleman exercise his freedom in a way that we believe freedom should be exercised in the United States? It was just his body that it was talking about; it was just PCP going into him.

Or how about the lady who ingested methamphetamine, fell asleep, and her children wandered out into the woods for two days, and were ultimately hit by a train?⁷²

69. *Id.* at 130-31.

70. See TRENDS, *supra* note 32, at 29-30, 43 tbl. 3.13; see also DRUG CONTROL STRATEGY, *supra* note 26, at 58-59 tbls. 2, 3.

71. *Man on PCP Bit Off Son's Thumb, Police Say*, L.A. TIMES, Apr. 22, 2002, at A12.

72. Tom Gorman, *Public Turns Against Dead Girls' Mother; Tragedy: Lawsuit, Drug Reports Change Opinion of Woman Whose Children Were Killed By Train*, L.A. TIMES, Nov. 21, 1997, at A1.

Now, does drug use simply affect you or someone in this room who is deciding to exercise their freedom? In our society, our legislatures make the decision as to where we should restrain freedom for the benefit of the public good.⁷³

I think it is a reasonable conclusion that when you have problems of child abuse, whenever you have problems of productivity, whenever you have problems of the harm that comes from drug use, then it is appropriate to determine that there is a reasonable restraint upon that freedom.

I would agree that if you wanted to have a pure, free society, then we would all do what we wanted to do. We wouldn't have to wear seat belts. I don't know what you believe about seat belt use. Do you support the laws of our society and municipalities that encourage seat belt use? I think everybody can answer that for themselves, but most people believe that requiring the use of seat belts is a reasonable restraint upon freedom. I think that curtailing drug use is similar in that fashion, and is a reasonable constraint.

MR. IANNUZZI: Mr. Boyd, would you like to respond?

MR. BOYD: Sure. Nobody goes to prison for twenty to forty to a hundred years or life for not wearing a seat belt. The way that we enforce seat belt laws is not too far from how I might suggest we think about drug laws. I like your analogy there.

Has the Bill of Rights been put on hold? Absolutely. The courts do serve that function of protecting those rights. It is important that we have the independent judiciary. Yet, in case after case after case when drugs have been at issue, courts have carved out new exceptions to the Bill of Rights.⁷⁴

In this country, freedom of religion was something that was widely accepted as being sacrosanct, until a group of Native Americans claimed the freedom to use peyote and the Supreme Court ruled, in the *Smith* case,⁷⁵ that the longstanding rules on freedom of religion would be abandoned.⁷⁶ And now drug laws serve to open the door to basically changing the freedom-of-religion rules

73. See John O. McGinnis, *Presidential Review as Constitutional Restoration*, 51 DUKE L.J. 901, 911 (2001); Dana Graham, Comment, *Decriminalization of Marijuana: An Analysis of the Laws in the United States and the Netherlands and Suggestions for Reform*, 23 LOY. L.A. INT'L & COMP. L. REV. 297, 300-04 (2001).

74. See, e.g., *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 877-78 (1990); see *infra* notes 75-78 and accompanying text.

75. *Smith*, 494 U.S. at 872.

76. *Id.* at 908 (Blackmun, J., dissenting) ("Until today, I thought this was a settled and inviolate principle of this Court's First Amendment jurisprudence. The majority, however, perfunctorily dismisses it as a 'constitutional anomaly.'").

for everyone under all circumstances, something that, I imagine when you were in Congress, you probably voted for the Religious Freedom Restoration Act,⁷⁷ which was intended to restore the rights that the Supreme Court had rolled back in *Smith*.⁷⁸

The Fourth Amendment—one of the founding rights of this country—was about British troops not being able to come into our homes, into our property, into our lives, for no good reason—and yet jurists across the ideological spectrum have rolled back those rights in drug cases.⁷⁹

I argued in the Supreme Court just a few weeks ago, in a case involving Lindsay Earls, a high-school student now at Dartmouth College.⁸⁰ Lindsay has never used drugs. What did she do to deserve being tested for drugs? She sang in the school choir in a school that had virtually no drug use. This should be a no-brainer case.

The Tenth Circuit Court of Appeals, Reagan appointees, ruled in my favor.⁸¹ I don't know what the Supreme Court is going to do,⁸² but I can tell you that some of the members of that Court were extremely hostile to the idea that we should not just put aside the Fourth Amendment in order to pursue drug policies that seem more important than constitutional rights.⁸³

Freedom of speech—now this is getting into the medical marijuana thing, but your predecessor in the DEA said, and this is incredible, that doctors in California who inform a patient that marijuana could be helpful, who basically give information—not

77. The Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb-1 (2002), was enacted in response to the Supreme Court's decision in *Smith*. See 42 U.S.C. § 2000bb(a)(4) (2002) (findings of Congress criticizing the Supreme Court's decision in *Smith*). The Religious Freedom Restoration Act was later declared unconstitutional in *City of Boerne v. Flores*, 521 U.S. 507, 519-20 (1997), on the grounds that it exceeded Congress's Fourteenth amendment section 5 enforcement powers.

78. *Smith*, 494 U.S. at 890.

79. See, e.g., *Minnesota v. Carter*, 525 U.S. 83, 88-89 (1998); *Illinois v. Andreas*, 463 U.S. 765, 771 (1983).

80. See Lyle Denniston, *Justice Kennedy Attacks Student's Views She Challenged School Drug Test*, BOSTON GLOBE, Mar. 20, 2002, at A2; Debra J. Saunders, *Want to Join the Chess Club? Pee In a Cup*, S.F. CHRON., July 4, 2002, at A22.

81. *Earls ex rel. Earls v. Bd. of Educ.* 242 F.3d 1264 (10th Cir. 2001), *rev'd*, 122 S. Ct. 2559 (2002).

82. The Supreme Court ultimately reversed the Tenth Circuit. See *Earls*, 122 S. Ct. at 2559.

83. See *id.* at 2572 (Ginsburg, J., dissenting) ("The particular testing program upheld today is not reasonable, it is capricious, even perverse . . .").

drugs, but speech and information—to patients can lose their license.⁸⁴

I argued in the Ninth Circuit just a couple of weeks ago against a Department of Justice attorney who was hammered by Judge Alex Kozinsky,⁸⁵ a very conservative judge, who said, “What is going on in Washington, D.C.? I thought this administration cared about states’ rights. I thought this administration cared about the Constitution. How can you say that a patient should be denied critical medical information from a doctor—not drugs, but information?”

That is a policy that I would love for you to stand up tonight and say, “You know what? We made a mistake on that one. Doctors should be free to give honest medical advice to their patients and we’ll back off of that,” because the Bill of Rights, as you ask, has been very much sacrificed in pursuit of the War on Drugs. That’s one of the costs.

MR. IANNUZZI: The gentleman at the top?

QUESTION: Mr. Hutchinson, I’m a thirty-nine-year-old productive member of society, I earn a six-figure income from an investment bank here in town, I am peaceful, I harm no one else, I am kind to strangers, and a couple of weekends a month I enjoy smoking marijuana, listening to music, and on occasion consuming a pint of Haagen-Dazs. I have in those twenty-some years never, as I recall, bitten off the finger of anyone, nor have I neglected children—actions, by the way, which I thought were already illegal, whether one was high on drugs or not.

My question to you is: why are you so concerned with turning me from a user of marijuana into a non-user of marijuana? Why is that a concern of yours?

MR. HUTCHINSON: My only concern is, as head of the DEA, that the law has respect and that the legislatures, which represent the people of the United States, in different forms, when they de-

84. See Administration Response to Arizona Proposition 200 and California Proposition 215, 62 Fed. Reg. 6164-01 (Feb. 11, 1997); see also Laura M. Rojas, Comment, *California’s Compassionate Use Act and the Federal Government’s Medical Marijuana Policy: Can California Physicians Recommend Marijuana to their Patients Without Subjecting Themselves to Sanctions?*, 30 McGEORGE L. REV. 1373, 1374-75 (1999).

85. Judge Alex Kozinski was appointed to the Ninth Circuit Court of Appeals by President Reagan in 1995. Prior to his confirmation, Judge Kozinski served as chief judge of the United States Court of Claims from 1982 to 1985, assistant counsel in the office of counsel to the president in 1981, and was deputy legal counsel in the office of the president-elect in 1980-81. Judge Kozinski served as a law clerk for Chief Justice Warren Burger during 1976-77. Judge Kozinski received his J.D. from the University of California at Los Angeles. See 2 ALMANAC OF THE FEDERAL JUDICIARY NINTH CIRCUIT 15 (2002).

termine the values and mores of our society, that the law is respected and the laws are enforced.

Now, in reference to marijuana, which you mentioned—and you certainly have been courteous to me and I will stipulate to that, and I have no reason to think that you have been neglectful of anyone, so I would stipulate that—but just because you in your personal life can maybe smoke marijuana without any personal harm as you perceive it or any difficulties to society does not mean that everybody else is in the same category.

Society has to make some judgments, and those judgments are made through the legislatures. If you can persuade the legislature that your lifestyle is appropriate and that society ought to move in that direction, then that is what is going to happen.

Mr. Boyd was raising questions about physicians prescribing marijuana. That is something that has happened in some states that have legalized medicinal marijuana.⁸⁶ We simply want to listen to science and medicine. That's what we've always done.⁸⁷ The American Medical Society has not endorsed medicinal use of medicinal marijuana, because they believe it still should be a classified as a Schedule I drug, which has no medical benefit, because that is what science is telling us.⁸⁸

I have authorized studies.⁸⁹ The University of San Diego is looking at the benefits of smoking marijuana to treat difficult dis-

86. ALASKA STAT. § 11.71.090 (Michie 2001); CAL. HEALTH & SAFETY CODE § 11362.5 (West 2002); HAW. REV. STAT. § 392-122 (2002); ME. REV. STAT. ANN. tit. 22, § 2383-B (West 2002); NEV. REV. STAT. 38.4 (2002); OR. REV. STAT. § 475.300-346 (2002); WASH. REV. CODE ANN. § 69.51A.005-902 (West 2002); *see also California Lightens Up on Medicinal Pot: Supreme Court Treats Marijuana Like Any Other Prescription*, 28 A.B.A. J.E. REPORT 3 (2002).

87. *See* DRUG ENFORCEMENT ADMIN., U.S. DEP'T OF JUSTICE, DEA BRIEFS & BACKGROUND, DRUG POLICY, CONTROLLED SUBSTANCES ACT, at <http://www.usdoj.gov/dea/pubs/csa.html> (last visited Jan. 15, 2002) (noting that the Controlled Substances Act is influenced by the scientific and medical communities); *see also* Controlled Substances Act, 21 U.S.C. § 801 et seq. (2002).

88. *See generally* AM. MED. ASS'N, REPORT 10 OF THE COUNCIL ON SCIENTIFIC AFFAIRS, MEDICAL MARIJUANA (Dec. 1997), available at <http://www.ama-assn.org/ama/pub/article/2036-4299.html> (last visited Jan. 15, 2003); *see also* MARIJUANA AS MEDICINE, *supra* note 45, at 156-71; Fiona A. Cambell et al., *Are cannabinoids an effective and safe treatment option in the management of pain? A qualitative systematic review*, 323 BRIT. MED. J. 1, 5 (July 2001) ("We found insufficient evidence to support the introduction of cannabinoids into widespread clinical practice . . ."), available at <http://bmj.com/cgi/reprint/323/7303/13.pdf> (last visited Jan. 15, 2003).

89. *See* Philip J. Hilts, *After Two-Decade Halt, Marijuana Research Is Set*, N.Y. TIMES, Dec. 15, 2001, at A16; *Needed Science; DEA Approves UCSD Marijuana Study*, SAN DIEGO UNION-TRIB., Dec. 7, 2001, at B12.

eases.⁹⁰ We're going to listen to those studies, and I think that that is the right direction to go.

However, marijuana is a harmful substance.⁹¹ Someone who smokes marijuana five times per week may be taking in as many cancer-causing chemicals as someone who smokes a full pack of cigarettes every day.⁹² Those are carcinogens.⁹³ A Harvard University research report says that the risk of a heart attack is five times higher than usual in the hour after a person smokes marijuana.⁹⁴

Now, there is an individual freedom issue there, but it is our legislators that must determine where we have a reasonable basis as a society to curtail that freedom in order to accomplish the good for society and to minimize the risk to society. They draw that line on cigarettes, they do it on alcohol, and they do it on marijuana as well as other drugs. I respect their decision.

MR. IANNUZZI: Mr. Boyd?

MR. BOYD: This wasn't your question, so please forgive me, but the subject of medicinal marijuana certainly was bound to come up.

This probably seems like a gesture, but what I want to do, Mr. Hutchinson, is actually offer you this. That is a study by the Institute of Medicine,⁹⁵ and it was commissioned by the Drug Czar of the greatest minds and medical experts in this country on the subject of marijuana.⁹⁶ I know you say you want to listen to the experts, so please read that.

What it says is that they have concluded that medicinal marijuana does work for desperately ill people.⁹⁷ I know I've had in my family, and you probably have too, somebody who had to go through chemotherapy because of cancer and who was vomiting so much that they could barely stand the treatment. Their ribs crack,

90. See David Eggert, *Marijuana Study Moves Drug to Medical Arena*, Hous. CHRON., Feb. 17, 2002, at A12; Press Release, UCSD Health Sciences, DEA Approves UC Center for Medicinal Cannabis Studies (Nov. 28, 2001), at <http://ucsdnews.ucsd.edu/newsrel/health/DEAapproval.htm> (last visited Jan. 15, 2003).

91. See MARIJUANA AS MEDICINE, *supra* note 45, at 38-68; see also MARIJUANA AND MEDICINE, *supra* note 45, at 136.

92. See MARIJUANA AS MEDICINE, *supra* note 45, at 41-43.

93. *Id.* at 41, 183.

94. See Murray A. Mittleman et al., *Triggering Myocardial Infarction by Marijuana*, in 103 CIRCULATION 2805, 2805-09 (2001); see also William J. Cromie, *Marijuana Said to Trigger Heart Attacks*, HARV. UNIV. GAZETTE, Mar. 2, 2000.

95. MARIJUANA AS MEDICINE, *supra* note 45.

96. *Id.* at 5-6.

97. *Id.* at 25; see *Another Vote Against McCaffrey; Journal Medical Marijuana is a Blow to Federal Drug Czar*, L.A. TIMES, Jan. 31, 1997, at B8.

their esophagus tears.⁹⁸ In many cases, it is almost more unpleasant than the disease itself. For many of them, they are lucky to have medicines that work, medicines that will relieve that nausea, but for some of them the other medicines don't work. Marijuana helps them keep their food down.⁹⁹ That's what these experts say. And these experts say, "Yes, it's a carcinogen and probably not the best medicine for everybody." But if you have somebody dying of cancer, smoking a carcinogen and the theoretical risk of lung cancer down the road is not what you're concerned about if you need desperately to stay on your chemotherapy, or your AIDS treatments, or to stand your pain treatment. I mean, these are people who are sincerely and profoundly suffering.¹⁰⁰

Your Agency's policy right now is to arrest the people who provide their medicine, as has happened in California, and to gag their doctors.¹⁰¹ Again, you want to listen to the experts? Let some of those experts start talking to their patients.

You said that doctors have prescribed marijuana. That is wrong, and there is an important distinction here. The doctors in California and the nine other states seek to recommend marijuana, to say something like the following to their patient: "You know, Mary, all those medicines aren't working for you and you're thinking about quitting chemotherapy, and if you do you'll die. But there is one alternative, which is that you could try marijuana." Now according to the DEA, if a doctor makes that statement in California, they will lose the ability to practice medicine and may be arrested.¹⁰² That is profoundly wrong and inhumane and it goes too far.

Whatever you think about this gentleman's ability to smoke marijuana, how can you say that their doctor shouldn't be able to make that comment? How can you say that that woman shouldn't be able to take the one step that will help her stay alive without fear of being arrested or having her doctor be arrested? This is a policy that simply must change.

MR. IANNUZZI: Anyone?

98. See *HOW TO LEGALIZE DRUGS* 422 (Jefferson M. Fish ed., 1988) [hereinafter *LEGALIZE DRUGS*]; see also *NAT'L CANCER INST., MARIJUANA USE IN SUPPORTIVE CARE FOR CANCER PATIENTS 1-4* (2000), available at http://cis.nci.nih.gov/fact/pdf-draft/8_rehab/fs8_4.pdf (last visited Jan. 15, 2003).

99. See *MARIJUANA AS MEDICINE*, *supra* note 45, at 96; see also *LEGALIZE DRUGS*, *supra* note 98, at 422; *MARIJUANA AND MEDICINE*, *supra* note 45, at 145-54.

100. See *MARIJUANA AS MEDICINE*, *supra* note 45, at 103; see also Rojas, *supra* note 84, at 1387.

101. See *Wanted: Rationality About Pot*, L.A. TIMES, May 12, 1997, at B4.

102. *Id.*

QUESTION: Mr. Administrator, in terms of equal enforcement, in the case of New York State, which still has very harsh, stringent, and punitive drug laws,¹⁰³ the facts are that ninety-four percent of the people who are actually in jail serving time under these laws are black and Hispanic.¹⁰⁴ This is an incontrovertible fact.

My question to you is, given your belief in equal enforcement, should the federal government examine the statistics and examine why there is such a high and disproportionate penalty on blacks and Hispanics, when it's clear that the statistics are skewed? Is that a role that the federal government should assume?

MR. HUTCHINSON: Absolutely. Any time we see arrest statistics, enforcement statistics, that are racially disparate, we should study those to determine if they are the result of any inappropriate enforcement policies. I think we have to be extraordinarily vigilant in that regard.

In reference to the statistics that you cited, I'm not necessarily that familiar with New York, but generally the percentage increase in arrest statistics across the country by various racial groups to a large extent is caused by the increase in arrests because of violent crime.¹⁰⁵ There has certainly been an increase because of drugs, and New York is a part of that, but violent crime is reflected in those statistics as well.¹⁰⁶

So yes, we certainly should review those policies. I think that we need to be very careful to make sure that there is not any racially unfair enforcement policies.

Let me use my time to go back to what Mr. Boyd was talking about. He handed me the study from the Institute of Medicine, which I am very familiar with and I have a copy, but I just sort of thumbed through it.

103. See N.Y. PENAL LAW §§ 70.00, 70.15, 220.00 (McKinney 2000); see also Deborah W. Denno, *When Bad Things Happen to Good Intentions: The Development and Demise of a Task Force Examining the Drugs-Violence Interrelationship* 63 ALB. L. REV. 749, 753 (2000); Susan Herman, *Measuring Culpability by Measuring Drugs? Three Reasons to Reevaluate the Rockefeller Drug Laws*, 63 ALB. L. REV. 777, 780-83 (2000); Anthony Lewis, *Abroad at Home*, N.Y. TIMES, Feb. 20, 1995, at A15.

104. See LEGALIZE DRUGS, *supra* note 98, at 105; see also HUMAN RIGHTS WATCH, *supra* note 28. See generally HUMAN RIGHTS WATCH, *supra* note 63.

105. See GRAY, *supra* note 21, at 67-68; see also BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, COMPENDIUM OF FEDERAL JUSTICE STATISTICS, 2000, at 1 (2002) [hereinafter JUSTICE STATISTICS], available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cfjs00.pdf> (last visited Jan. 15, 2003).

106. See GRAY, *supra* note 21, at 68-69; see also JUSTICE STATISTICS, *supra* note 105, at 1, 13-15.

The Institute of Medicine study talked about the health impacts of smoking marijuana.¹⁰⁷ It acknowledges that there is some medical benefit for the THC content in marijuana.¹⁰⁸ Do you know how that is delivered to a patient who needs that remedy? It is through Marinol®, which contains THC, which can be taken in pill form.¹⁰⁹ Now, many people like to take their marijuana not in that fashion, but by smoking it, and the Institute of Medicine balances the adverse health consequences of smoking marijuana with any health benefit that is derived from it.¹¹⁰ The report says:

The chronic effects of marijuana are of greater concern for medical and fall into two categories: the effects of chronic smoking and the effect of THC. The marijuana smoking is associated with abnormalities of cells in the human respiratory tract. Marijuana smoke, like tobacco smoke, is associated with increased risk of cancer, lung damage, poor pregnancy outcomes.

....

A second concern associated with chronic marijuana use is dependent on the psychoactive effects of THC. Although few marijuana users develop dependency, some do. Risk factors for marijuana dependence are similar to those for other forms of substance abuse, in particular, antisocial personality and conduct disorders closely associated with substance abuse.¹¹¹

So I'm grateful for Mr. Boyd providing this to me and I wanted to be able to share some of the things from the Institute of Medicine that Mr. Boyd has brought up tonight.

MR. IANNUZZI: Mr. Boyd, do you want to respond in any fashion?

MR. BOYD: Sure. I mean, this is kind of what I don't want to be doing so much, a "he said, she said" dialog here.

The bottom line of the Institute of Medicine's report is that it says that we shouldn't be arresting people for this, that it has medical benefits, that there are some risks. And what drug doesn't have risks? There is no pharmaceutical drug that doesn't have some down-side to it. I'm sure you could read the research for any drug, probably penicillin even, certainly aspirin—more people die from aspirin every year than they do from marijuana, and you could

107. MARIJUANA AS MEDICINE, *supra* note 45, at 38-75.

108. *Id.* at 27.

109. *Id.* at 12; Charles W. Henderson, *AIDS Therapies: Marinol Might Reduce Associated Nausea and Vomiting*, AIDS WKLY., Nov. 6, 2000, at 1069.

110. MARIJUANA AS MEDICINE, *supra* note 45, at 103.

111. *Id.*

read that little snippet and say, "Now, see? Aspirin, we've got to do something about that."

But the bottom line there is that the experts say that until we come up with an inhalation delivery system that works, we shouldn't get in the way of people using inhaled marijuana under medical supervision,¹¹² because THC in pill form is something that people who are vomiting cannot use, because they vomit it right back up.¹¹³ And it's something that comes in a big old dose of THC, and you are stoned if you take a THC pill; you can't work, as it is very debilitating.¹¹⁴ Whereas people who smoke medicinal marijuana often smoke just a very small amount, to stimulate the appetite.¹¹⁵

It is something that the experts have spoken on, and they say that it may not be the best medicine for everybody, but you need to let people alone, you should have a hands-off policy, and stop arresting them.

And I really hope you will respond to what I said about the doctors. Why in the world not let a doctor give information to a patient? Why not? What's wrong with a doctor giving their patient information and allowing the patient act on that information? It is DEA policy right now that any doctor who does that is going to lose their license.¹¹⁶ If that is something that you are not altogether familiar with because of the prescription/recommendation difference, I want to have a conversation about that, I want to work it out, because that's not right.

QUESTION: This question is for Administrator Hutchinson. You used the horrifying example of the person who bit his son's thumb off.¹¹⁷ As the gentleman here said, I think what should be illegal are the things we do under the influence of whatever substance we're taking, not taking the substances themselves. Obviously that person should be put away.

112. See Rojas, *supra* note 84, at 1388-89.

113. See Jerome P. Kassirer, *Federal Foolishness and Marijuana*, *NEW ENG. J. MED.* 336, 337 (1997).

114. See Sally Satel, *Medical Marijuana: Research, Don't Legalize*, *WALL ST. J.*, Oct. 30, 1997, at A22.

115. See *MARIJUANA AS MEDICINE*, *supra* note 45, at 90.

116. See *Wanted: Rationality About Pot*, *supra* note 101, at B4.

117. See *supra* note 71 and accompanying text.

My question is, seeing how alcohol causes far more violence,¹¹⁸ spousal abuse,¹¹⁹ car crashes,¹²⁰ than I would guess all drugs combined,—I guess I should say all other drugs—you said before your job is simply to enforce the laws as they are now. My question is, if people were to look at these facts and decide that alcohol should be classified as a Schedule I controlled substance, would you have any problem with enforcing that law?

MR. HUTCHINSON: Did you say if alcohol were scheduled as a Schedule I substance?

QUESTIONER: If it was made illegal, for the same reasons you say that drugs should be illegal.

MR. HUTCHINSON: If the Congress of the United States passes a law, I would certainly endeavor to enforce the law.

But let me point out, though, that the enforcement policy comes at two levels. The DEA does not enforce the marijuana possession laws; we don't enforce the marijuana use laws or the other drug use laws. These enforcement policies are determined locally.¹²¹ Here in New York City, that's your Mayor, that's your Chief of Police, and they decide what level of discretion they should have and what their enforcement policy is.¹²² The same thing would be true if alcohol did in fact move in that direction.

The DEA goes after the trafficking organizations.¹²³ The major international trafficking organizations are who we target. We don't put people in jail for simple possession or for use.

You referenced the issue that people should be arrested for the harm that they cause. That's a fair point, and that's a consistent argument that is made on the side of those that believe that drugs

118. See BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, ALCOHOL AND CRIME: AN ANALYSIS OF NATIONAL DATA ON THE PREVALENCE OF ALCOHOL INVOLVEMENT IN CRIME 2 fig. 1 (1998) [hereinafter ALCOHOL AND CRIME], available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ac.pdf> (last visited Jan. 15, 2003); see also Note, *Drug Legalization: Cost Effective and Morally Permissible*, 32 B.C. L. REV. 575, 589 (1991).

119. ALCOHOL AND CRIME, *supra* note 118, at 4-5.

120. *Id.* at 11-15.

121. DRUG ENFORCEMENT ADMIN., U.S. DEP'T OF JUSTICE, DEA BRIEFS & BACKGROUND, DRUG POLICY, DEA MISSION STATEMENT [hereinafter DEA MISSION STATEMENT], at <http://www.usdoj.gov/dea/agency/mission.htm> (last visited Jan. 15, 2003).

122. See OFFICE OF NAT'L DRUG CONTROL POLICY: DRUG POLICY INFO. CLEARINGHOUSE, THE WHITE HOUSE, NEW YORK, NEW YORK: PROFILE OF DRUG INDICATORS 2 (2002), available at <http://www.whitehousedrugpolicy.gov/statelocal/ny/nyny.pdf>.

123. See generally DEA MISSION STATEMENT, *supra* note 121.

should be legalized—that if they drive a car when using drugs, then arrest them; and if they abuse a child, we’ll arrest him for that.

But if the legislature determines that there’s a consistent pattern here, that there’s such an extraordinary danger—for example, people who are on methamphetamine generally do not make rational decisions, they don’t control their paranoia;¹²⁴ and I think it’s a reasonable statement for our elected officials to say “the harm is so great, we cannot simply allow a strategy of arresting them whenever they do get behind a vehicle; they should not be using it to begin with.” I think that’s a rational position to take.

Finally, I just want to make sure this debate focuses on the big picture. Marijuana is consuming probably sixty percent of the time and effort in this debate today, and our drug policy is much bigger than that. When you’re looking at the problems of heroin and cocaine addiction,¹²⁵ when you’re looking at the methamphetamine problem that’s affecting our country,¹²⁶ these are issues that are consuming our enforcement policy, and I think that should be a fair part of the debate as well.

Mr. Boyd, obviously, in his position argues for the legalization of all drugs. I think that is the wrong direction for our society to go. So please understand that the enforcement policy is much broader than simply the marijuana that is consuming a great deal of attention tonight, even though I will certainly agree that it’s an important part of the discussion as well.

MR. BOYD: Talking about alcohol, I think that gives me an opportunity to bring up something that I think is really important to think about. You mentioned learning from history. We’ve done

124. OFFICE OF NAT’L DRUG CONTROL POLICY, EXECUTIVE OFFICE OF THE PRESIDENT, ONDCP:DRUG POLICY INFORMATION CLEARINGHOUSE: FACT SHEET: MDMA (ECSTASY) 1 (2002) [hereinafter ECSTASY FACT SHEET], available at <http://www.whitehousedrugpolicy.gov/publications/pdf/ncj188745.pdf> (last visited Jan. 15, 2003).

125. See generally ABT ASSOCS., OFFICE OF NAT’L DRUG CONTROL POLICY, ESTIMATION OF COCAINE AVAILABILITY: 1996-2000 (2002), available at <http://www.whitehousedrugpolicy.gov/publications/pdf/cocaine2002.pdf> (Jan. 15, 2003); ABT ASSOCS., OFFICE OF NAT’L DRUG CONTROL POLICY, ESTIMATION OF HEROIN AVAILABILITY: 1996-2000 (2002), available at <http://www.whitehousedrugpolicy.gov/publications/pdf/heroin2002.pdf> (Jan. 15, 2003).

126. See generally OFFICE OF NAT’L DRUG CONTROL POLICY, EXECUTIVE OFFICE OF THE PRESIDENT, PULSE CHECK: TRENDS IN DRUG ABUSE: NOVEMBER 2002, at 47-52 (2002), available at http://www.whitehousedrugpolicy.gov/publications/drugfact/pulsechk/nov02/pulse_nov02.pdf (Jan. 15, 2003).

prohibition once before, with alcohol prohibition,¹²⁷ and when we did we created a terrible situation.¹²⁸ Murders skyrocketed.¹²⁹ There's a nice graph; maybe when this gets printed, we can include the graph in it.¹³⁰ The murder rate went from about one per 100,000 up to ten times that by the end of Prohibition,¹³¹ and as soon as Prohibition ended it fell down.¹³² And this makes sense, right? Organized crime in this country was created by alcohol prohibition.¹³³ Dillinger, Capone, all of those people were created and funded, and they were domestic terrorists, and they got their start and they became powerful because of alcohol prohibition.¹³⁴

They also shifted the consumption patterns of alcohol in this country away from beer and wine and towards hard liquor¹³⁵ because Prohibition was calculated to make—and this is, I think, a phrase you've used before, Mr. Hutchinson—you want to make it “more risky” to engage in this activity. Well, it was more risky to transport alcohol, and so they needed to do it in smaller containers. Beer is bulky; hard liquor is small.

Now, the same thing has happened under drug prohibition. Cocaine in powder form is something that was predominantly the cocaine that was consumed in this country.¹³⁶ Crack came into existence, which is just cocaine mixed with baking soda that can be consumed in a different way.¹³⁷ That means you don't need as much of it for a single dose and it can be consumed for a cheaper price.¹³⁸ Now, if cocaine weren't prohibited, that would have never come about; there wouldn't have been any appeal for it. But be-

127. See U.S. CONST. amend. XVIII, *repealed* by U.S. CONST. amend. XXI. See generally EDWARD BEHR, PROHIBITION: THIRTEEN YEARS THAT CHANGED AMERICA (1996) (outlining the history of Prohibition in America).

128. See BEHR, *supra* note 127, at 238; DAVID E. KYVIG, REPEALING NATIONAL PROHIBITION 20-52 (2d ed., 2000); Mark Thornton, *Alcohol Prohibition Was a Failure*, 157 POL'Y ANALYSIS 1 (1991), available at <http://www.cato.org/pubs/pas/pa-157.html> (last visited Jan. 15, 2003).

129. KYVIG, *supra* note 128, at 27.

130. Thornton, *supra* note 128, fig. 4.

131. *Id.*

132. *Id.*

133. See KYVIG, *supra* note 128, at 26-27.

134. BEHR, *supra* note 127, at 91.

135. Thornton, *supra* note 128, at 3.

136. Cowan, *supra* note 41, at 30-31.

137. See NAT'L INST. ON DRUG ABUSE, U.S. DEP'T OF HEALTH & HUMAN SERVS., NIDA INFOFACTS: CRACK AND COCAINE (2001), available at <http://www.nida.nih.gov/Infofax/cocaine.html> (last visited Jan. 15, 2003).

138. See NAT'L INST. ON DRUG ABUSE, U.S. DEP'T OF HEALTH & HUMAN SERVS., RESEARCH REPORT SERIES: COCAINE ABUSE AND ADDICTION 2 (1999), available at <http://www.nida.nih.gov/PDF/RRCocain.pdf> (last visited Jan. 15, 2003).

cause of the market for cocaine being driven up and the price of it, just as we went from beer and wine to hard liquor, we went from powder cocaine to what I think most people think is a much more dangerous form of cocaine, crack cocaine.

And, of course, we have created the Dillingers and Capones of our day in Colombia, South America, and Afghanistan by making it extremely lucrative to traffic in narcotics.¹³⁹ It's fine for you all to run these commercials saying to kids "you're funding terrorists if you smoke marijuana"¹⁴⁰—which is absurd, first of all, and simply inaccurate. But what's really funding the terrorists is to make it so profitable to do something that people are going to continue to do it no matter how much we prohibit it. That's a calculation our government has made. We would rather create very, very powerful narcotics cartels all around the world that are going to be well-funded and cause us no end of trouble than to even contemplate the idea of eliminating that black market. It's a very, very, very dangerous way to go.

MR. IANNUZZI: Over here?

QUESTION: My question is addressed to Mr. Hutchinson as well as Mr. Boyd. I guess the best way to say it is the old quote, "For every 1,000 strikes at the leaves of evil, there is one strike at the root." It seems that the way the drug policy is formulated and enforced, people are arrested, people are incarcerated, and lots of lives are destroyed in the process. I was wondering what you think about the ideology of spending more time with taking the environment away from where it's okay to use drugs, where more impoverished people in this country think it's okay to use cocaine, okay to use crack, because they see it all the time. And people who have no hope for a job, no real hope, and they have the opportunity of working in McDonald's or going out and making \$5,000 a day selling drugs—what do people do in that situation? So I was just wondering what you think about that particular ideology, of spending more time with developing people with jobs, more community intervention, things of this nature? Thank you.

MR. IANNUZZI: Graham, do you want to take that first, since he asked both of you?

MR. BOYD: Thank you. It's nice to have a question asked of me. Everybody else only wants to ask him questions.

139. See generally BRUCE PORTER, *BLOW: HOW A SMALLTOWN BOY MADE \$100 MILLION WITH THE MEDELLIN COCAINE CARTEL AND LOST IT ALL* 11 (1993).

140. See Ahrens, *supra* note 43, at E03.

I think that that's a great point, and I think that it certainly is true that we need to deal with broader economic development issues, for all kinds of reasons, not just because of drug use.

And I think it also gets at the fact that for many people who do use—and even abuse—drugs, it is a form of self-medication in circumstances where, because of lack of other medical care, other drugs aren't available.¹⁴¹ The Prozac for somebody who has Prozac [sic] could be some other drug for somebody else.

This is actually a point that was made to me when I talked to a group of prisoners in upstate New York who were serving long prison sentences, many of them for Rockefeller drug violations.¹⁴² I spent a couple of hours talking to a group of about thirty or forty people. It was not something I had actually heard before, but they said, "You know, you've got to understand that a lot of us and a lot of people we know were using drugs because the situation we were in was just miserable. Things were bad for us and this was something that made us feel better. You rich white folks"—and these people were all people of color—"you rich white folks can go and get your Prozac and your everything else, but this is what we use, and for that we get sent away."

You know, that's a complex discussion, and one that's probably beyond the scope of us having here, but I think it's something that you might want to think a bit about too.

MR. IANNUZZI: Mr. Hutchinson?

MR. HUTCHINSON: Thank you. It is an excellent question and comment.

I think we ought to concentrate as part of our efforts on taking the environment away, absolutely. Economics is certainly a part of that. Even when we're dealing with Afghanistan or Colombia, clearly our alternative crop development is a very important part of it.¹⁴³ We recognize these people must live, and we want to be able to give them a way to make a living other than growing cocoa or poppy.¹⁴⁴

Here in the United States, we need to develop the economy, improve the environment, to help people make the correct decisions.

141. Ronald Paul Hill et al., *The Birth of Model Entitlement Programs: Reports From the Field and Implications for Welfare Policy*, 15 J. PUB. POL'Y & MARKETING 263, 270 (1996).

142. See N.Y. PENAL LAW §§ 70.00, 70.15, 220.00 (McKinney 2000).

143. See Andres Oppenheimer, *Coca Growers Winning in Drug War*, SAN DIEGO UNION-TRIB., July 9, 2002, at B-8.

144. See Rone Tempest & David Zucchini, *A Cloud of Ruin Hangs Over Poppy Crop*, L.A. TIMES, Apr. 11, 2002, at A1.

Part of it, though, is not just the economy. Part of it is peer pressure. We need to change the culture in schools that creates that peer pressure. I think that's part of an advertising campaign, the anti-drug—you know, "Choose life, choose something responsible."¹⁴⁵

Whenever you look at kids who are disaffected—in other words, they're not a part of the "in" crowd, they're out—that's an opposite kind of peer pressure; they're forced into what they perceive as looking at drugs. We need to change that to make people open up more.

The DEA, even though we're enforcement, is engaged in this through community intervention.¹⁴⁶ I have what we call "integrated drug enforcement assistance ("IDEA")."¹⁴⁷ Rather than having the communities or the treatment and the education side in competition with enforcement, we want to work with them. So we bring them all together and say, "Let's enforce the law, but let's look broader than that," so that another gang doesn't come back, the demand is changed, the culture of the community is changed. We're trying to engage in the community intervention that I think is a very important part of it.¹⁴⁸

Finally, you said they use drugs "because they see it all the time." I get letters from parents who talk about "can you do anything about the easy availability of drugs in the schools?" The fact is that in many instances the criminal organization creates the demand; they put the supply out there.¹⁴⁹ Ecstasy is a good example of that.¹⁵⁰ We didn't have teen-agers hollering, "Hey, we need ecstasy over here, or MDMA, or some other kind of club drug." It was the Netherlands, the chemists there,¹⁵¹ that said, "Hey, this is a good one, let's send that over," and they had a profit margin there,

145. Parents. The Anti-Drug, at <http://www.theantidrug.com> (last visited Jan. 15, 2003).

146. See Jerry Seper, *Top Anti-Drug Agent to Quit this Summer*, WASH. TIMES, May 25, 1999, at A6.

147. See generally DRUG ENFORCEMENT ADMIN., U.S. DEP'T OF JUSTICE, INTEGRATED DRUG ENFORCEMENT ASSISTANCE, at <http://www.usdoj.gov/dea/programs/idea.htm> (last visited Jan. 15, 2003).

148. See Anne Hall, *Something's Keeping Kids From Being Killed in Boston*, ST. PETERSBURG TIMES, May 11, 1997, at 1A.

149. See *Prepared Testimony by Wm. J. Olson Former Deputy Assistant Secretary of State Bureau of International Narcotics Matters Before the Subcommittee on Western Hemisphere Affairs of the Committee on International Affairs, United States House of Representatives*, FED. NEWS SERVICE, Mar. 30, 1995.

150. See ECSTASY FACT SHEET, *supra* note 124.

151. *Id.*

they had it out there in the streets, and they built the demand for it.¹⁵²

The easy availability of drugs has something to do with demand. If you legalized every imaginable drug out there today, which I think would be a huge mistake—methamphetamine, Ecstasy—what would happen tomorrow? You're going to have a new drug on the scene that hasn't been legalized yet, that's more powerful, that does more damage, that's more attractive to young people, and they'll create a demand for it.

We like to think that when Prohibition ended, organized crime ended, but that didn't happen. When Prohibition ended, two things happened: (1) alcohol use went up;¹⁵³ but (2) organized crime did not end;¹⁵⁴ they had plenty of business to engage in. I think that if you legalized everything, it would not put the cartels out of business. But our enforcement efforts do have a way of reducing that supply, and that's an objective of it, and there's a balance in our treatment and education efforts.

Thanks for that question. It's very good.

QUESTION: I would like to address the issue of hypocrisy in our society. Putting aside the obvious examples of alcohol causing death,¹⁵⁵ injury,¹⁵⁶ violence,¹⁵⁷ versus marijuana, or the hundreds of thousands of tobacco deaths¹⁵⁸ versus marijuana, or even the invol-

152. See *U.S. Urges Douch to Toughen Drug Policy*, USA TODAY, July 15, 2002, at A06; see also NATIONAL DRUG MONITOR: JAARBERICHT 2002 (2002), at <http://www.trimbos.nl> (last visited Jan. 15, 2003).

153. See DEAN R. GERSTEIN & MARK H. MOORE, *ALCOHOL AND PUBLIC POLICY: BEYOND THE SHADOW OF PROHIBITION* (1981); see also Rex Greene, *Towards a Policy of Mercy: Addiction in the 1990s*, 3 STAN. L. & POL'Y REV. 231, 238 (1991).

154. See Nora V. Demleitner, *Organized Crime & Prohibition: What Difference Does Legalization Make?*, 15 WHITTIER L. REV. 613, 626 (1994).

155. U.S. DEP'T OF HEALTH & HUMAN SERVS., 10TH SPECIAL REPORT TO THE UNITED STATES CONGRESS ON ALCOHOL AND HEALTH 3-11 (2000) [hereinafter ALCOHOL AND HEALTH], available at <http://www.niaaa.nih.gov/publications/10report/intro.pdf> (last visited Jan. 15, 2003); *Sobering Statistics*, USA TODAY, Apr. 21, 1992, at 4D.

156. ALCOHOL AND HEALTH, *supra* note 155, at 54-66; see also *Sobering Statistics*, *supra* note 155, at 4D.

157. NAT'L INST. ON ALCOHOL & ALCOHOLISM, VICTIM AND OFFENDER SELF REPORTS OF ALCOHOLIC INVOLVEMENT IN CRIME, at <http://www.niaaa.nih.gov/publications/arh25-1/20-31.htm> (last visited Jan. 15, 2003); see also Antonia Abbey et al., *Alcohol and Sexual Assault*, 25 ALCOHOL RES. & HEALTH 43, 48 (2001) (noting that approximately one-half of all sexual assault cases involve an element of alcohol consumption); *Sobering Statistics*, *supra* note 155, at 4D.

158. Ctrs. for Disease Control & Prevention, *Smoking: Attributable Mortality and Years of Potential Life Lost*, 46 MORTALITY & MORBIDITY WKLY. REP. 433, 444-51 (1997).

untary deaths from breathing polluted air,¹⁵⁹ and the hypocrisy of the government saying they want to protect us yet doing nothing to the real threats to our lives, there are two political questions I would like you to address, Mr. Hutchinson.

You said before that society has to make judgments and respect for the laws. There are nine states that have now made laws, eight by the will of the people¹⁶⁰ and one by the legislature,¹⁶¹ about medicinal marijuana. I have a two-part question.

George Bush in his campaign said that he would respect the rights of states to choose medicinal marijuana policies and that it was a states' rights issue.¹⁶² Yet, you, as his Administrator, are going directly against what he promised in that campaign.

Secondly, I'm wondering how the federal government, in the seat of democracy that is held up to us in schools and by our politicians, has got the balls to say to the people, "You voted for this, you went through the normal process, you put it on the ballot, you voted, you expressed your will democratically, but do you think this is democracy? No, no, the federal government knows better and you people are not getting your democracy, you're not getting what you wanted." How do you justify the federal government overruling the will of the people democratically expressed in the voting booth?

MR. HUTCHINSON: In reference to what's happened since the campaign, we had a United States Supreme Court decision that came down and said Congress had correctly determined that marijuana was scheduled as a Schedule I drug with no benefit and, therefore, medicinal marijuana was no defense to the enforcement of our marijuana laws in this country.¹⁶³

You also asked about the nine states that have passed some type of initiative in reference to medicinal marijuana or some other type of decriminalization movement. We have two sets of laws in our country in regard to our drug laws: we have our federal system;¹⁶⁴

159. *Particulates: NRDC Links 64,000 Deaths Yearly to Pollutant*, GREENWIRE, May 9, 1996, at 1; see also ENVTL. PROT. AGENCY, SMOG—WHO DOES IT HURT 7 (1999).

160. See, e.g., ALASKA STAT. § 11.71.090 (Michie 2001); ARIZ. REV. STAT. § 13-3412.01 (2001); CAL. HEALTH & SAFETY CODE § 11362.5 (West 2002); ME. REV. STAT. ANN. tit. 22, § 2383-B (West 2001); MINN. STAT. § 152.125 (2001); NEV. REV. STAT. ANN. § 453A.200 (Michie 2002); OR. REV. STAT. § 475.300 (2001); WASH. REV. CODE § 69.51A.005 et seq. (2002).

161. 1995 MA. H.B. 2170 (2002).

162. See Spencer S. Hsu, *Bush: Marijuana Laws Up to States; But GOP Candidate Says Congress Can Block D.C. Measure*, WASH. POST, Oct. 22, 1999, at B07.

163. *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 491 (2001).

164. See, e.g., Controlled Substances Act, 21 U.S.C. §§ 801 et seq. (2002).

we have our state system.¹⁶⁵ The federal system is not dependent upon the state system. If we have federal laws against bank robbery, if a state decided to legalize bank robbery, that's not binding upon the Federal Government.

As you know as law students, we have the Supremacy Clause.¹⁶⁶ So the Supreme Court decision was rationally based, it was certainly based upon the Constitution.¹⁶⁷ The states can do initiatives and the voters can change their state law, but they can't change federal law. That's where we are.

We do have a difficulty because we have a federal system where it's a violation of the law, and you've got the states expressing something different in reference to their state laws, but one does not necessarily impact the other.

I would certainly encourage you to continue. I was in Congress, and inconsistencies are difficult, and if you can root out hypocrisy in our society, hats off to you, because we have trouble with that in a lot of different arenas.

But I think there is some consistency in reference to the Supreme Court decision, the Supremacy Clause, and the dual laws that we have, federal and state, in our society.

MR. BOYD: I'll tell you what, the Supreme Court ruling didn't tell the DEA or anybody else that they had to go out and arrest anybody, that they had to enforce any laws, and in fact it didn't have anything to do with the Supremacy Clause.

The Supremacy Clause says that when federal and state laws are in conflict, the federal laws prevail.¹⁶⁸ There are many areas, and this is one of them, where federal and state laws can choose to diverge.¹⁶⁹ There is nothing about California or these other states choosing not to criminalize medical use of marijuana that is inconsistent with federal law.¹⁷⁰ They are free to do that.

165. See, e.g., N.Y. PENAL LAW §§ 220 et seq. (2002).

166. U.S. CONST. art. VI, § 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land").

167. See Jason Hoppin, *Pot Clubs Find a New Venue*, RECORDER (S.F.), June 7, 2002, at 1; Mike McKee, *Ruling Against Medical Pot Use Leaves Questions*, RECORDER (S.F.), May 15, 2001, at 3.

168. See CHESTER JAMES ANTIEAU & WILLIAM J. RICH, *MODERN CONSTITUTIONAL LAW* 34 (2d ed. 1997).

169. See Robin Conrad & Jim Wootton, *One Economy Indivisible? U.S. Prosperity Has Been Built on One Great Market Under Federal Law, Yet Now Congress Unwisely Proposes To Undercut Its Own Power to Pre-empt Conflicting State Laws in the National Interest*, LEGAL TIMES, Sept. 13, 1999, at 19.

170. See CAL. HEALTH & SAFETY CODE § 11362.5 (West 2001).

Now, the choice of the federal government and the promise that President, then-candidate, Bush made was that he would basically respect that.¹⁷¹ That hasn't been done.¹⁷² That is not something that you actually have to do.

Earlier tonight you pointed out that the DEA doesn't arrest people for marijuana possession, at least for small amounts of marijuana possession.¹⁷³ You have enforcement guidelines on the order of forty-four plants or pounds in certain places before you'll do a case.¹⁷⁴ Now, those aren't congressional rules; those are your rules.¹⁷⁵ Those are the rules that you decide on. It is perfectly within your discretion as a political matter to say,¹⁷⁶ consistent with the principles that then-candidate Bush said, "We're not going to arrest medicinal marijuana patients," which you haven't done; and "we're not going to arrest the people in these clubs,"¹⁷⁷ which you have done; and "we're not going to go after doctors," which your predecessor threatened to do.¹⁷⁸ Nothing forces you to do that. The Supreme Court didn't tell you to do that. That is a choice that the federal government is making because of its policies about marijuana, and it is, I would submit, profoundly the wrong choice.

MR. HUTCHINSON: Would the gentleman yield and I'll give you a minute afterwards?

MR. BOYD: Yes, sure.

MR. HUTCHINSON: Would that be all right?

MR. IANNUZZI: Yes. A minute.

MR. HUTCHINSON: That was a very good analysis of the law, and you are a tremendous expert in that arena. That's a very fair statement that you made.

There is discretion in the enforcement policy,¹⁷⁹ and we don't enforce federal law in terms of users, and, as you acknowledge,

171. See Hsu, *supra* note 162, at B07.

172. See Holly Wolcott, *Pot Advocates Face Up to 40 Years*, L.A. TIMES, Sept. 18, 2002, § 2, at 3.

173. See *supra* notes 121-123 and accompanying text.

174. See HUMAN RIGHTS WATCH, *supra* note 28.

175. See *supra* note 123 and accompanying text.

176. See Jefferson M. Fish, *Is Our Drug Policy Effective?*, 28 FORDHAM URB. L.J. 9, 15 (2000).

177. See Hsu, *supra* note 162, at B07.

178. See *Conant v. McCaffrey*, 2000 U.S. Dist. LEXIS 13024, at *6 (N.D. Cal. Sept. 7, 2000); see also Roberto Suro, *U.S. Will Issue Warnings On Medical Marijuana Laws; More Aggressive Federal Crackdown Rejected*, WASH. POST, Dec. 31, 1996, at A1.

179. See *supra* note 176 and accompanying text.

we're not going out and arresting people in California that use marijuana.

But you pointed out that we do have an enforcement policy in regard to those that supply the marijuana,¹⁸⁰ and I think you referenced the cannabis buyers' clubs.¹⁸¹

The problem is that we see 900 plants of marijuana coming in from Canada.¹⁸² Well, what do we do with that? That's a violation of federal law.¹⁸³ It's not a user quantity. So we engage in enforcement operation with regard to those 900 plants coming in from Canada. Well, after we do that, then we find out that this was going toward a cannabis buyers' club in San Francisco.¹⁸⁴ Well, you know, you're putting us in an impossible position there.

And so I just wanted to comment that what we are doing is enforcing, trying to do a consistent federal policy of enforcement, where we go after the major traffickers.¹⁸⁵ It just so happens that some of those major traffickers have the marijuana winding up in places that sell it for different purposes.

MR. BOYD: This is useful. Stay up for a second, if you would, please, because I think we can work something out here.

MR. HUTCHINSON: Don't count on it.

[Laughter.]

MR. BOYD: Oh yes, we can.

If your concern is that there is international trafficking going on, make that clear. I mean, one of the clubs that your folks arrested was in Los Angeles,¹⁸⁶ and that was one of the most above-board, with cooperation of the local sheriff. I mean, they were doing things right. They were only dealing with legitimate patients. And yes, the quantity was good. But if your objection is "well, it's international," I'm sure you can work with them to deal with it locally. But you're basically saying, "We have no choice, our hands are tied; if the quantity is high enough, we have to arrest." That's not true.

180. See *supra* note 123 and accompanying text.

181. See *supra* note 162 and accompanying text.

182. See Barry Brown, *Pot Boom Shows Grass is Greener in Canada*, BOSTON HERALD, Aug. 2, 1998, at 15.

183. See U.S. DEP'T OF JUSTICE, DRUG CONTROL STRATEGIC PLAN 53-60 (2000), at <http://www.usdoj.gov/criminal/press/DCSPdoc.pdf> (last visited Jan. 15, 2003).

184. See Jeff McDonald, *Pot Grower Gets Letter of Warning From DEA; Steven Williams Says He Won't Be Intimidated*, SAN DIEGO UNION-TRIB., Sept. 20, 2002, at B-1; see also Burr Snider, *Inside a Marijuana Pharmacy; San Francisco "Club" Offers Sick, Dying "Medicinal" Pot*, S.F. EXAMINER, July 3, 1994, at A-1.

185. See *supra* notes 121-123 and accompanying text.

186. See *supra* note 182 and accompanying text.

MR. HUTCHINSON: If those 900 plants were coming from a suburb of Los Angeles, so the international consequence—I mean, that’s an example, a real example actually.¹⁸⁷ But the 900 plants could have been coming from Arkansas, or they could have been coming from a suburb of Los Angeles. You still have the same enforcement problem.

MR. BOYD: Why do you have no choice, though? You said you have no choice but to arrest. Why? I don’t understand that.

MR. HUTCHINSON: Well, there are always choices in life. But I think that whenever you’re looking at someone that is trafficking in marijuana, and that’s who we are targeting, the federal law makes no distinction as to the purpose of the trafficking, whether it’s to sell it to kids at a high school, or whether it is to go for some other purpose.¹⁸⁸ We don’t make that judgment, and federal law doesn’t make that judgment, so we go after the traffickers wherever the traffickers are heading, bringing their product.

MR. BOYD: Okay, fair enough. I want us to leave here, though, with some clarity about the fact that that is a choice, and that if the government was serious about what candidate Bush said about not interfering with our local system, there are ways in which you could work out guidelines to make sure that the use was legitimately medical and that you would have a hands-off policy for that. I hope you’ll think about that.

Let me, as part of my rebuttal, ask a question which you can choose to answer or not.

MR. IANNUZZI: Excuse me. As fascinating at this is, we have run out of time. We will now have concluding remarks by each of the gentlemen, starting with Mr. Hutchinson.

MR. HUTCHINSON: I’m sorry we didn’t get to more questions.

I want to thank Mr. Boyd for his excellent presentations and the courteous way that he has conducted this debate. I want to thank each of the students. Sometimes I get intense, so forgive me if I got aggressive on some of the answers. But I do believe in debate, I think debate is healthy, and so I go at it aggressively.

I said at the beginning that this is not just an academic discussion, that it’s about individuals and families. But there’s one thing I left out: the debate is also about our future as a country.

I have also had occasion to debate Governor Gary Johnson of New Mexico (R-NM), who believes in drug legalization, and he

187. See *supra* note 182 and accompanying text.

188. See 21 U.S.C. § 841 (2002); see also *United States v. Oakland Cannabis Buyers Coop.*, 532 U.S. 483, 486 (2001).

always has made the comment and makes the point that he does not use drugs—he used to, but he doesn’t anymore—and he says it’s because they are harmful, and he says he does not want to handicap his performance in life.¹⁸⁹

Well, if we legalize drugs, from marijuana to methamphetamine to Ecstasy, we’re simply increasing the use of harmful products, and I don’t believe that we want to handicap our future as a nation, our children’s future in education, our young people’s productivity and creativity.

I believe we have a good, rational policy for the future which is a balanced approach; treatment, education, helping young people to make the right decisions, and I think this is the right course for the future. Whenever we look at the success that has been obtained, we can obtain more success by reducing the drug usage in our country, and that should be an objective, through this balanced approach.

Now, much of the time has been devoted to the issue of marijuana, and I think I’ve talked about the organized crime side, that you’re not going to eliminate terrorism by legalization; that’s just not going to happen. The organized crime element is going to be there regardless of what steps you take down that direction, so let’s just don’t go there.

But the second thing, a lot of time has been spent on the medical marijuana issue. I want to emphasize that we want to listen to science and medicine. Mr. Boyd indicated that the Institute of Medicine talked about the benefits,¹⁹⁰ but the ultimate conclusion was that the American Medical Society and the medical journals are not saying you need to prescribe marijuana for health benefits.¹⁹¹ Now, if science and medicine changes that, then we will listen. But that has been the basis of the enforcement policy.

And again, I want to thank each of the students here for their interest in this, for the discussion of it. I believe it is fair to debate drug policy in our country. I think it is good and it is healthy.

But we are looking at easy panaceas, easy fixes, because we get frustrated, we want more progress. But just because we’ve invested a lot of money in education or in child abuse or in other social problems, we shouldn’t get frustrated and say, “Well, we ha-

189. See Scot Lehigh, *A Pol Who Doesn’t Blow Smoke*, BOSTON GLOBE, Apr. 10, 2002, at A23.

190. MARIJUANA AS MEDICINE, *supra* note 45, at 19-24; see *supra* notes 97-100 and accompanying text.

191. See *supra* notes 91-94 and accompanying text.

ven't solved that problem." Things are a continuing cycle that we have to face in our country. Every generation is going to face these issues. We have to be able to face them in terms of continuing to invest both in the enforcement and our treatment and education sides, and I think we have success. We've reduced the number of people that move in that direction of life choices, but also we reduced the addiction,¹⁹² because that is what is creating the demand.

The enforcement side is an important part of it. I'm very proud of what the DEA does. It sends the right signal to society, but in many instances it also triggers treatment¹⁹³ and better education.¹⁹⁴ I think that we can work in a cooperative spirit, integrating this, rather than simply competing.

I'm grateful for the discussion today. I hope that we all together can build a great future for our country.

MR. BOYD: I'm going to let you all in on a little secret about myself. I'm actually a newcomer to this drug policy thing. It wasn't something that, as an activist about civil rights, environmental justice, a number of other issues, that I even thought was that important ten years ago as a law student.

I am amazed at how different that is now. The law students and the college students that I interview on a regular basis to work in my office, and when I come to talk to audiences like you—you guys get it; you guys totally get that this is one of the most important issues in our country today.

And so one of the things that's interesting is that as we ratchet up this War on Drugs¹⁹⁵—and it only goes in one direction, right? Every year there's a new law with new penalties, taking away your college loans, taking away another new thing. Every time that happens, we're getting closer to the end—we're getting closer to the end of this failed experiment.

DARE¹⁹⁶ is a great example of that. I interviewed a college student just the other day for a position. She was very straitlaced. I said, "Why are you here? Why is this the thing you want to work on?" She said, "You know, growing up, those DARE officers would tell me all these things about drugs which I've learned were lies, and I don't like being lied to. The whole DARE program is so

192. See HOUSEHOLD SURVEY, *supra* note 30, at 25.

193. See *id.* at 26.

194. See Hutchinson, *supra* note 47.

195. See generally DAN BAUM, SMOKE AND MIRRORS: THE WAR ON DRUGS AND THE POLITICS OF FAILURE (1996).

196. See generally Drug Abuse Resistance Education ("D.A.R.E."), at <http://www.dare.com> (last visited Jan. 15, 2003).

corrupt. If they want to educate people about drugs, they've got to tell us the truth." So every time another DARE officer tells another student another lie, we're getting closer to the end of this.¹⁹⁷

Every time another black man is arrested in this country on drugs, with the gross disproportionate targeting of our laws, every time that happens, we get closer.

A few years ago, you had Charles Rangel on your side,¹⁹⁸ you had the black congressional leadership on your side. They're not anymore. The black community is shifting away from being supportive of the War on Drugs decidedly, because right now we have 800,000 African-American men in prison today.¹⁹⁹ That's the same number of black men who were on the plantations in 1820. At the rate we are arresting black men and incarcerating them in this country, in fifteen years we will have as many black men behind bars as there ever were slaves. That's where we're heading with the War on Drugs, because that's what's driving it. So you keep arresting the black men and women in this country, and you're going to keep radicalizing communities of color.

Every time a young man or woman is arrested, say in Florida, for a minor marijuana charge, they may not spend any time in prison, but they lose the right to vote forever, because they have lifetime disenfranchisement for any felony conviction,²⁰⁰ which are big things like murder and I would say relatively small things like being caught with a joint. They lose the right to vote forever in Florida,²⁰¹ in Alabama,²⁰² in twelve other states.²⁰³ They're being written off from society. So keep on arresting them, keep

197. See Dawn MacKeen, *Just Say No to Dare*, at <http://www.archive.salon.com/mwt/feature/2001/02/16/dare/print.html> (last visited Jan. 15, 2003).

198. See *Getting Serious About Drug Enforcement*, N.Y. TIMES, Aug. 28, 1981, at A22 (quoting United States Representative Charles Rangel (D-N.Y.) on the Reagan Administration's drug policy failures).

199. PAIGE M. HARRISON & ALLEN J. BECK, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS BULLETIN: PRISONERS IN 2001, at 12 (2002), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p01.pdf> (last visited Jan. 15, 2003); Salim Muwakkil, *Why is Prison Becoming the Norm for Black Males?*, CHI. TRIB., Sept. 2, 2002, at 21.

200. See FLA. STAT. ch. 944.292 (2002); see also Press Release, ACLU Applauds Changes to Aid Restoration of Voting Rights in Florida, Urges Governor to Make Process Automatic (Apr. 24, 2002).

201. See FLA. STAT. ch. 944.292.

202. See ALA. CONST. art. VIII(b), amend. No. 79.

203. See generally 39 Jeffrey B. Kuck, *Elections: Effect of Conviction Under Federal Law, or Law of Another State or Country, on Right to Vote or Hold Public Office*, A.L.R.3d 303; see also THE SENTENCING PROJECT, FELONY DISENFRANCHISEMENT LAWS IN THE UNITED STATES 1 (2002), at <http://www.sentencingproject.org/brief/pub1046.pdf> (last visited Jan. 15, 2003).

disenfranchising them, keep writing off part of the community, and this will end that much sooner.

Every time a child dies of AIDS because somebody shared a needle, we're getting closer to the end of this. And that is happening on a large scale, especially in communities of color.²⁰⁴ The major way that we're transmitting HIV in this country today among women, especially women of color, is because of people sharing needles.²⁰⁵ That doesn't need to happen. Our policy on the federal level of denying aid for needle exchange,²⁰⁶ and at the state level of outlawing needle exchange in some states,²⁰⁷ is murder. It is murder. And every time we let that happen, we're getting closer to the end of this, because people aren't going to stand up for a policy that is tantamount to murder.

Every time a college student has to drop out of college because they smoked a joint and they lost their financial aid²⁰⁸—not because of murder or arson or rape or any other crime; none of those count. But you folks are in school right now, and if you get caught with a joint, you lose not only your grants from the government, but you lose your student loans.²⁰⁹ You can't even do work-study,²¹⁰ you can't even work and get paid,²¹¹ if you are a drug user in this country in college. What we say to you is, "McDonald's is your future, not higher education." Every time we do that to a college student, it's somebody else being radicalized.

As an aside, Yale University had a policy during the Vietnam War of saying if you didn't register for the draft and that was a decision of conscience and you lost your financial aid, Yale would make up for it.²¹² They just decided to do the same thing with to-

204. Rhonda Mundhenk, *Prevention Challenge: New Face of HIV/AIDS, New Prevention Needs*, at <http://aap.idph.state.il.us/phfi/pdfs/hiv/pdf> (last visited Jan. 15, 2003); see also Susan Ferraro, *The Face of AIDS: HIV Hits Some Groups Hard, But New Weapons Are Coming*, N.Y. DAILY NEWS, June 22, 1998, at 31.

205. See Ferraro, *supra* note 204, at 31.

206. See Cynthia Laird, *Senate Subcommittee Holds SF Hearing on AIDS Funding*, BAY AREA REP., July 17, 1999, at 4.

207. E.g., ME. REV. STAT. ANN. tit. 5, § 4592 (West 2002); MINN. STAT. § 363.03 (2002); R.I. GEN. LAWS § 5-71-16 (2002).

208. Diane Carroll, *Drug Offenders' Loss of Federal Education Aid Draws Opposition*, KAN. CITY STAR, June 13, 2001, at 6.

209. See Letter from Graham Boyd, ACLU, to Financial Aid Offices (2002), at <http://www.aclu.org/issues/drugpolicy/fin-letter.html> (last visited Jan. 15, 2003); see also Carroll, *supra* note 208, at 6.

210. See Carroll, *supra* note 208, at 6.

211. *Id.*

212. See Diana Lo, *Yale to Establish New Financial Aid Policy*, CORNELL DAILY SUN, Apr. 30, 2002, at 2.

day's war, the War on Drugs.²¹³ There is a new antiwar movement brewing on our campuses, and it's being pushed forward by the policies of the federal government.

Every time a high school student, like Lindsay Earls I mentioned today,²¹⁴ every time she has to pee in a cup because she sings in the choir and people are suspicious of her and she has to prove her innocence in the War on Drugs, every time that happens, we've got another person who's going to say, "These drug policies aren't going to work," and we're that much nearer the end.

So I hope we can agree about some things. But one thing that I'm certain of is that in your new position at the DEA you are writing the final chapter in a story that is going to end only one way, in the same way it did with alcohol Prohibition, and for all of our sakes, I hope it will be soon.

Thanks very much.

MS. KAY: I want to thank you all for coming. I really hope the discussion that got so lively today continues after you leave this room.

I just want to give another round of applause to our participants today for doing such a great job.

You're all welcome to stay for the reception. Thank you.

213. *Id.*

214. *See supra* note 80 and accompanying text.

