Sense and Sinsemilla

Drug warriors take a big hit on medical marijuana

June 1, 1999 By Susan Gerhard

These are heady days for medical marijuana advocates: Voters in seven states have now passed pro-access initiatives and the Clinton administration's own blue-ribbon panel released a report in March recommending that seriously ill patients have access to therapeutic pot. The office of drug czar Barry McCaffrey, who famously claimed in 1996 that there was "not a shred of scientific evidence that shows that smoked marijuana is useful or needed," issued an unexpectedly mild statement on the report expressing "delight" that science is the basis of the medical marijuana discussion. A former champ of the "gateway theory," McCaffrey even told the BBC, "It's not addictive, it's not a gateway to heroin and cocaine, it has a legitimate medical use, and it's not as dangerous as common drugs like Prozac."

Clearly the demon weed is already having an effect—disorienting government officials whose anti–medical marijuana position looks increasingly out of touch.

A prudent federal government might take this opportunity to reject conservative antics like those of Georgia Rep. Bob Barr (R), whose 1999 federal budget amendment has so far blocked the District of Columbia from counting the votes on its November '98 medical marijuana initiative. For now, McCaffrey's office is at least promising to give serious consideration to that March Institute of Medicine (IOM) report it commissioned, which recommended providing access to smoked marijuana for people with AIDS wasting and other debilitating conditions—at least until a less lung-damaging toking device is developed. And the National Institutes of Health (NIH) may be compelled to get serious about pot studies, since a call for research was featured in both the IOM report and one issued by the United Nations this past February.

For years calls for research have been the federal government's primary way to stall medical marijuana access—coupled with threats of jail time to buyers' clubs and doctors. The one medical marijuana study underway, Donald Abrams' safety study at San Francisco General Hospital on the interactions between protease inhibitors and pot, only got NIH funding after five years of wrangling with government agencies from the Drug Enforcement Administration (DEA) on down. The federal government itself has been holding up research, limiting access to the only source of legal pot: its own farm in Mississippi, whose notoriously low-grade pot generally goes to research looking at the drug's detrimental effects.

These days, it's the government's own IOM panelists who are saying that patients in dire need shouldn't have to wait for all the research to come in to meet the arduous demands of the FDA approval process. It takes hundreds of millions of dollars to bring a drug to market, and the IOM report cautioned that "cannabinoid-based drugs will only become available if public investment in [such] research is sustained" by private enterprise. Such investment is as unlikely for smokable marijuana as it is for vitamin C or any other nonpatentable substance. Michael Onstott, executive director of the National AIDS Nutrient Bank, thinks developing a patentable form of marijuana could be difficult as well. "This is a very complex botanical drug, and to isolate all 60 cannabinoids and then to develop a delivery system, the cost is unknown."

Rick Doblin, director of the Multidisciplinary Association for Psychedelic Studies, is working with the FDA to set up a clinical plan for marijuana approval. He has found marijuana to be "more controversial than the medical use of psychedelics" like LSD. He has attempted, unsuccessfully, to get funding for medical marijuana research through the orphan drug law, which spurred development of two appetite stimulants, Megase and the canniboid-based Marinol, for AIDS wasting; the law offers patent protections and grants for drugs to treat diseases affecting 200,000 or fewer people.

Even though the FDA has been fast-tracking more-toxic drugs to the AIDS community for years through its compassionate use program—which allows patients to use a drug before its development process is completed if it shows benefit and safety—marijuana, which has no record of fatalities, raises red flags. Doblin first brought the idea of studying marijuana to Donald Abrams; he says Abrams' study should open the door for clinical trials on efficacy if the results are promising—if, for instance, there's no negative impact on viral load or lung function. And he hopes for trials in which individuals get access to pot as an experimental treatment, an idea proposed in the IOM report.

In the meantime, for most people with AIDS, the plant is still illegal. Perhaps the highly publicized IOM report will loosen up the supply. If not, state initiatives may be the only recourse. Says Chuck Thomas, communications director for the Marijuana Policy Project (MPP), a lobby group, "We'll keep winning state initiatives until there's no longer any state penalties. Then the federal government will have to run around finding individual patients to arrest. Do they want to increase the DEA twofold?"

They just might. Congress, at least, has proved how little concerned it is with prevailing public opinion on medical marijuana. Just seven months before the 1998 election in which Alaska, Arizona, Oregon, Nevada and Washington voters passed medical-use initiatives, Congress approved a resolution saying that marijuana had no medical use and was dangerous and addictive. By year's end, predicts MPP's Rob Kampia, legalization of medical marijuana will have been debated in at least 20 state legislatures. Yet the federal government continues to harass buyers clubs and doctors in states where medical use of pot has been made legal.

In California, where Proposition 215 jump-started the medical marijuana movement in 1996, the 1998 elections brought a new outlook to state government. Reefer-maddened Republican Dan

Lungren, then attorney general, was knocked out in his bid for governor by Democrat Gray Davis, who then chose a pro–medical pot attorney general, Bill Lockyer. Whereas Lungren made shutting down pot clubs a pet project, Lockyer immediately assembled a panel of experts, including medicinal marijuana activists, defense attorneys who've been handling medical pot cases, prosecutors, doctors, researchers and police, to try to decide how best to get pot to patients.

Prosecution—particularly in California where Prop 215's simplicity leaves much room for interpretation—varies depending on the county you're ailing in. Orange County officials, for one, weren't at all happy with California's new pot position, so when they encountered a cannabis buyers club on their own turf, they snuffed it out with a vengeance. Its founder, Marvin Chavez, became one of the movement's martyrs in January when he received six years in state prison for supplying pot to patients. That's more time, according to defense attorney Bill Panzer, who represented Bay Area buyers clubs against a federal lawsuit in 1998, than what a typical street dealer gets.

Advocates hope that the more recent medical pot initiatives will lessen the ambiguities—and Chavez-style punishments. The five state propositions passed last November specify quantitative limits for how much pot a person can grow or possess (two ounces or a couple of plants) rather than conceptual limits (a reasonable amount for a specific illness) and ask state health departments to issue ID cards to pot users. But Kampia, who helped draft the 1998 measures, sees them as too restrictive. "If you trust the government to play ball on this issue," he says, "then you don't know anything about history. Our assumption is that government is going to fight us all the way."

Up until now, the federal government has done just that, to the point that courts have had to chastise its zealotry. After the infamous 1996 press conference in which McCaffrey, along with Attorney General Janet Reno and Health and Human Services Secretary Donna Shalala, vowed to prosecute doctors who even discussed pot with their patients, doctors won a preliminary injunction to regain their First Amendment rights. In the Philadelphia-based class action *Kuromiya et. al v. The United States*, patients sued the Department of Justice (DOJ) to gain access to marijuana, and U.S. District Judge Marvin Katz suggested a settlement: that the government agree to develop a "scientifically controlled" program to provide marijuana to individuals whose health requires it. Though eight patients already receive monthly marijuana cigarettes from the federal farm—a compassionate use program shut down in 1991, just as AIDS wasting promised to bloat the number of applicants—the DOJ has, so far, rejected that settlement.

But when the case goes to trial in June, the DOJ may be persuaded to rethink its position: According to the American Civil Liberties Union, 60 percent of Americans—including even morality maven Abigail Van Buren ("Dear Abby"), who told readers March 1 that she thinks "marijuana laws are overdue for an overhaul"—don't think patients should get arrested for using medical marijuana.

Those supporters include San Francisco Assistant District Attorney Keith Vines, the last person who any medical marijuana coalition thought would join its side. A former self-described "foot soldier in

the War on Drugs" who prosecuted the city's second-largest drug seizure in recent years, HIV positive Vines had wasted from 200 to 150 pounds by the time he enrolled in a human growth hormone study in 1993. In order to give the hormone a chance to rebuild muscle mass, he had to eat three meals a day. The FDA-approved Marinol made him too stoned to work, so he ended up going straight from the D.A.'s office one Friday night in his suit and tie to a cannabis buyers club for relief. "It was a pretty terrifying moment for me—I was wasting. You could see bones in my body. But I realized that as a prosecutor, I was in jeopardy."

The split between public opinion on medical marijuana and federal law promises to widen in the years to come, as voters in more states approve initiatives. "Trying to solve [the drug problem] like we're doing is like saying, 'Hey, I have the solution for AIDS. Make it illegal,'" says Bill Panzer. November's election, he says "sends a message to politicians that you can talk reasonably, rationally and scientifically about the drug war and it might not be political suicide."

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