

The **NORML** Legislative Bulletin

A guide to current marijuana policy developments from NORML

Marijuana Distribution On Hold At OCBC After Supreme Court Ruling

Acting on an emergency request from the Department of Justice, the U.S. Supreme Court on Aug. 29 voted 7-1 to prohibit cannabis distribution by the Oakland Cannabis Buyers' Cooperative to patients who qualify for the federal medical necessity defense while the case is on appeal. The case was originally brought as a civil suit to force the closure of several northern California patients' cooperatives who had begun distributing cannabis as a medicine to patients who qualify under Proposition 215, the California medical marijuana law.

"This is a small bump in the road and the important issues in this case will be decided later," said Robert Raich, Esq., lawyer for the

OCBC. "It is a travesty that the Clinton-Gore administration is trying so vigorously to keep the only medicine that works away from patients who so desperately need it."

On August 11, the 9th Circuit U.S. Court of Appeals denied the federal government's request for an emergency order to stop the OCBC from distributing cannabis to patients who qualify as having a medical necessity. Government lawyers then sought the emergency ruling from Justice Sandra Day O'Connor, who referred the request to the full Court.

Writing in dissent, Justice John Paul Stevens said the government "has failed to demonstrate that the denial of necessary medicine to seriously ill and dying patients will ad-

vance the public interest or that the failure to enjoin the distribution of such medicine will impair the orderly enforcement of federal criminal statutes."

"While the issuance of this injunction by the high Court was a disappointment, the Court was ruling on a narrow procedural issue," said Keith Stroup, NORML Executive Director. "The far more important question of whether the protection afforded patients under Proposition 215 is valid was not before the Court at this time. Despite this ruling, Prop. 215 remains in effect in California."

The federal government requested the emergency order to stay a July 17 ruling by

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Ontario High Court Calls Canadian Marijuana Law Unconstitutional

Gives Parliament A Year To Change Law Or Marijuana Will Be Legal

The Ontario Court of Appeals on July 31 called Canada's prohibition of marijuana "unconstitutional" and said if Parliament does not amend the law to allow for medical use within a year, marijuana possession for all Ontario residents will be legal.

The appeals court ruled that Canadian law fails to recognize that marijuana can be used as a medicine for patients with chronic illnesses.

The case involves Terrence Parker, a patient who suffers from debilitating epileptic seizures, and was charged with marijuana possession under the Controlled Drugs and Substances Act. Under the act, it is illegal to possess or cultivate marijuana unless patients are granted exemptions by Canada's health minister. The appeals court suggested Parliament write into the law a nationwide

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New Study Reveals Blacks Arrested For Marijuana At More Than Twice The Rate For Whites

The following analysis of race and marijuana arrests is excerpted from a more comprehensive report and analysis prepared for the NORML Foundation by Jon Gettman, Ph.D., a public policy analyst and former national director of NORML. The full report is available on the NORML website (www.norml.org). Based on 1995 data from 700 metropolitan counties, Dr. Gettman has calculated the ratio of Black arrest rates to White arrest rates. The data set used for this report includes 1,076,816 out of a total 1,476,199 drug arrests reported by the Uniform Crime Report data, 73 percent of 1995's total. Data was not available for metropolitan counties in Illinois, Kansas, Montana or New Hampshire.

In 1995, marijuana possession accounted for 34.1% of all drug arrests and 31.5% of the metro area drug arrests considered in this report. Total marijuana possession arrests for 1995 were estimated by the Uniform Crime Report at 503,350. The metropolitan area data includes 339,605, or two thirds, of those arrests.

MARIJUANA POSSESSION ARRESTS

When the offense is marijuana possession, the arrest rate for Blacks on average is two and half times greater than the arrest rate for Whites.

Among the metro counties with at least a population of 500,000 with available data the greatest disparities between Black and White arrest rates are found within 90 miles from each other in central and western New York state in Onondaga County, NY (Syracuse) at 10.61 and Monroe County, NY (Rochester) at 5.63. Rounding out the top 10 greatest disparities in Black and White marijuana possession arrest rates in metropolitan core counties were Cuyahoga County, OH (Cleveland) (5.56), Hennepin County, MN (Minneapolis) (5.31), Fulton County, GA (Atlanta) (5.12), Hartford County, CT (Hartford) (4.56), Allegheny County, PA (Pittsburgh) (4.43), Washington, DC (4.05), Hamilton County, OH (Cincinnati) (3.79) and

Jackson County, MO (Kansas City) (3.74).

Fifty-six counties had over 100 marijuana arrests, a Black population of over 1,000 and the marijuana possession arrest rate for Blacks of at least five times that for Whites. Lake County, OH, which includes part of Cleveland as well as Lorain and Elyria had a ratio of 19.77 Black arrests to White. Rounding out the top 10 were, St. Joseph County, IN (South Bend) at 11.27, Minnehaha County, SD (Sioux Falls) at 10.71, Onondaga County (Syracuse) at 10.61, Albany County, NY (Albany, Schenectady and Troy) at 10.56, St. Louis County, MN (Duluth and Superior) at 10.34, Bay County, MN (Saginaw, Bay City and Midland) at 8.54, Douglas County, NE (Omaha) 8.39, Cecil County, MD (Wilmington and Newark) at 8.16 and Schenectady County, NY (Albany, Schenectady and Troy) at 8.

MARIJUANA SALES ARRESTS

The disparity between Black and White arrest rates increases when offenses with greater penalties are considered. In metro area counties Blacks are arrested for marijuana sales at a rate 3.6 times more than Whites. In counties where the Black population is at least one-third of the entire population, Blacks are 4.1 times more likely to get arrested for marijuana

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New Study Reveals Blacks Arrested For Marijuana At More Than Twice The Rate For Whites

sales. Among counties with a minimum of 100 marijuana arrests and a Black population of at least 1,000, Blacks are between 6.5 and 35 times more likely to get arrested for marijuana distribution than Whites. Broome County, NY (Binghamton), had the highest ratio of Black to White arrests at 34.70. In all 12 counties had ratios over nine. They were: Broward County,

FL (Ft. Lauderdale) at 20.35, Erie County, PA (Erie) at 14.08, Plymouth County, MA (Boston) at 12.33, Cobb County, GA (Atlanta) at 12.24, Mercer County, NJ (Trenton) at 12.18, Washington, DC at 12.11, Orange County, FL (Orlando) at 9.83, New York County, NY (New York) at 9.69, Lancaster County, PA (Lancaster) at 9.51, Monroe County, NY (Rochester) at 9.20 and Kent County, MI (Grand Rapids, Muskegon and Holland) at 9.18.



“Racial disparities in drug arrests represent a serious threat to the integrity of the criminal justice system that should concern all Americans,” said the report’s author Jon Gettman, Ph.D. “The differences in arrest rates between Blacks and Whites are significant, stark and unambiguous. In

the United States, Black drug users face a far greater chance of encountering the criminal justice system than white drug users. Sadly, in this area, justice is not blind.”

SELECTED U.S. METROPOLITAN AREA COUNTIES 1995 MARIJUANA POSSESSION ARRESTS BY RACE

(DATA SOURCE: UNIFORM CRIME REPORTS)

STATE	ALL*	BLACK*	WHITE*	STATE	ALL*	BLACK*	WHITE*
Alabama	229.37	293.96	203.10	Montana	No Data Available		
Alaska	114.71	4,834.53	284.76	Nebraska	432.72	2,241.27	289.52
Arizona	242.10	538.84	234.92	Nevada	130.70	311.02	118.36
Arkansas	245.30	450.70	205.52	New Hampshire	No Data Available		
California	116.11	218.35	122.80	New Jersey	245.57	518.01	208.82
Colorado	270.85	755.98	251.01	New Mexico	50.67	139.57	46.12
Connecticut	212.60	645.96	168.48	New York	241.04	639.52	176.13
Delaware	138.89	371.40	85.90	North Carolina	225.13	436.80	169.48
District of Columbia	305.78	420.56	103.92	North Dakota	105.75	322.21	98.89
Florida	224.83	436.87	192.42	Ohio	171.41	531.57	113.61
Georgia	273.95	412.63	164.62	Oklahoma	211.87	347.28	202.02
Hawaii	71.11	51.36	64.29	Oregon	162.85	303.15	165.25
Idaho	312.24	669.48	315.78	Pennsylvania	72.60	148.92	62.99
Illinois	No Data Available			Rhode Island	190.26	402.29	182.54
Indiana	164.54	436.40	123.77	South Carolina	261.63	344.69	235.40
Iowa	207.86	836.84	180.70	South Dakota	252.92	1,541.27	223.12
Kansas	No Data Available			Tennessee	186.53	383.63	161.42
Kentucky	189.57	394.06	166.97	Texas	235.80	405.99	216.11
Louisiana	240.09	493.02	149.96	Utah	225.79	471.31	224.93
Maine	149.74	85.74	150.76	Vermont	99.54	0.00	102.06
Maryland	216.05	328.42	182.11	Virginia	222.05	336.65	200.54
Massachusetts	154.35	421.88	140.90	Washington	151.42	313.23	149.01
Michigan	166.22	286.57	151.91	West Virginia	152.29	656.36	133.89
Minnesota	159.03	612.32	141.47	Wisconsin	226.15	592.88	195.86
Mississippi	347.71	551.35	255.03	Wyoming	264.82	962.03	254.44
Missouri	262.26	658.90	185.24	*RATE/100,000 POPULATION			

Drug Czar Lied To Congress, Secretly Taped Phone Calls

In late July, U.S. drug czar Gen. Barry McCaffrey's operating tactics came into question again in two new articles. *Insight* published a story that alleges McCaffrey lied to Congress by manipulating data on a drug use study, while *Newsweek* reported that McCaffrey has been secretly taping phone conversations with journalists.

The ONDCP manipulated data without reporting changes in its "Performance Measures of Effectiveness: 2000 Report," a violation of federal law which requires the ONDCP to disclose any changes it makes to the reporting system. One of the goals listed by the ONDCP is to "increase the percentage of youth who perceive drug use as harmful" to 80 percent by 2002. The ONDCP claimed they were on target, but in 1996-1999 the percentage of 12th-graders who believed that drugs were harmful dropped from 59.9 per-



Courtesy of Common Sense For Drug Policy and John Wilson

cent to 57.4 percent. *Insight* indicated that this goal should not have been considered "on target." The ONDCP changed the base year from 1996 to 1998, thus making the downward trend seem less severe. Perhaps more

significantly, the ONDCP then changed the target group from seniors in high school to 8th-graders, where 73 percent view drug use as dangerous, thus bringing the ONDCP within seven percentage points to their 80 percent goal.

Insight reported that ONDCP did point out other changes it made in its reporting system. A spokesperson for the ONDCP said "We weren't trying to pull anything sneaky here,"

Newsweek learned that the ONDCP head has been secretly taping phone conversations with reporters after over two dozen audiocassettes were turned over in response to a 1997 demand for evidence in a lawsuit.

One reporter, drug war proponent and *New York Times* reporter A.M. Rosenthal, who was recorded discussing with McCaffrey how to attack medical marijuana financier

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Report Declares ONDCP 'A Troubled Bureaucracy,' Says McCaffrey Is Difficult To Work For

An independent review mandated by a House and Senate and conference committee has found the White House drug czar's office to be an "understaffed and troubled bureaucracy led by a director who is 'high pressure and military oriented,' driving many career professionals to quit."

Congress hired PricewaterhouseCoopers to review the Office of National Drug Control Policy after concern grew about problems in employee retention and drug czar Barry McCaffrey's management style.

The report states that it takes 20 full-time employees to manage McCaffrey's schedule, about one-seventh of the staff. The report describes McCaffrey's leadership style as "aggressive, high pressure and military oriented," and many interviewed by PricewaterhouseCoopers

said "He's difficult to work for." The report states "Under the current directorship, a military structure has been imposed on a previously civilian culture. As incompatibilities have developed, people have made the decision to leave."

In 1999, the ONDCP had a 27 percent turnover rate and PricewaterhouseCoopers estimates a 38 percent turnover rate this year as many are expected to leave after the November election. The report speculated that when McCaffrey leaves with the change of administrations, the ONDCP will likely not have a deputy director in place which will hurt the office's continuity. There has not been a deputy director for 73 percent of McCaffrey's reign and as the report states, McCaffrey has instead appointed "acting deputy directors" which

"serve at the pleasure of the director, but confirmed deputy directors (by Congress) can only be dismissed by the President or impeached by Congress."

The report also showed that "[A]uthority and institutional knowledge are concentrated centrally with the current director and...the knowledge base appears to be weakened and vulnerable."

"This report confirms what most observers of America's drug policy already know — the ONDCP is principally a political backwash and has little real impact on the consumption of illegal drugs by Americans," said Allen St. Pierre, NORML Foundation Executive Director.

The PricewaterhouseCoopers' report can be downloaded at the "Today's Reports," June 29th section of www.gao.gov.

MEDICAL MARIJUANA

State Funded Cannabis Research Center Established At UC-San Diego

A center aimed at researching the medical efficacy of marijuana has been established at the University of California San Diego (UCSD).

The Center for Medicinal Cannabis Research (CMCR) is a joint venture between UCSD and the University of California San Francisco (UCSF) and received \$3 million in funding by the California state legislature.

“The politics of medicinal marijuana are behind us as we begin the important work of researching the safety and efficacy of medicinal marijuana,” said Sen. John Vasconcellos (D-Santa Clara), who sponsored the marijuana research bill that provided funds for the CMCR. “The National Institutes of Health and the Institute of Medicine of the National Academy of Sciences have independently called for further studies. Now, because of the vision of the California legislature, the governor and the University of California, the issue of medical marijuana is properly in the hands of physicians and researchers.”

Serving as co-director of the CMCR is Donald Abrams, M.D., a professor of medicine at UCSF, who in July completed the nation’s first clinical trial using inhaled marijuana. His study showed HIV patients who

smoke marijuana do not disrupt the effect of anti-retroviral drugs (for more information, see related story below).

“The findings from our initial safety trial suggest that studies of the possible effectiveness of marijuana should be launched now,”



Drs. Igor Grant and Donald Abrams

Abrams said. “This state funding will allow that to happen quickly so that we may finally get some needed answers.”

The center’s first studies are anticipated to begin in the new year.

Research Demonstrates Marijuana Is Safe For HIV Patients

Researchers at the University of California-San Francisco have found that HIV patients who smoke marijuana do not disrupt the effect of anti-retroviral drugs.

This was the first double blind study in the United States to examine marijuana and HIV patients. Sixty-seven people participated in the study that was conducted by Donald Abrams, MD at San Francisco General Hospital. Twenty of the patients smoked marijuana three times a day and gained an average of 7.7 pounds during the 21-day study; 25 patients took oral dronabinol (synthetic THC) and gained on average 7 pounds; and 21 patients took the placebo and gained only 2.9 pounds on average.

Thirty-six of the patients started the study with undetectable HIV RNA levels and those levels remained constant throughout the study. The 26 patients who had detectable HIV RNA levels experienced declines. The patients who smoked marijuana or took oral dronabinol experienced slightly greater decreases in HIV RNA levels than the patients who took the placebo.

“The slightly better decline experienced by those using marijuana or dronabinol is intriguing, but not statistically significant,” Abrams said. “The good news is that there is no statistical difference between the three groups.”

“The fact of the matter is that any good clinician with his eyes and ears open has known for a long time that cannabis is very useful in the treatment of the AIDS reduction syndrome and does not harm patients,” said Professor Lester Grinspoon, MD, of the Harvard Medical School and NORML Foundation Chair. “When all the dust settles, and when marijuana is admitted to the U.S. pharmacopoeia, it will be seen as one of the least toxic drugs in the whole compendium.”

Marijuana Distribution On Hold At OCBC After Supreme Court Ruling

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District Court Judge Charles Breyer. Breyer had previously modified a 1998 injunction against the OCBC that would allow the group to legally distribute marijuana to its members who meet the criteria for a medical necessity defense under federal law.

In modifying his injunction, Breyer wrote, "The government continues to press arguments which the 9th Circuit rejected, including the argument that the court must find that enjoining the distribution of cannabis to seriously ill individuals is in the public interest

because Congress has prohibited such conduct in favor of the administrative process regulating the approval and distribution of drugs. As a result of the government's failure to offer any new evidence in opposition to defendants' motion, and in light of the Ninth Circuit's opinion, the Court must conclude that modifying the injunction as requested is in the public interest and exercise its equitable discretion to do so."

The federal government countered the 9th Circuit's ruling by filing an application to stay the decision with the U.S. Supreme Court.

The government filed a petition for certiorari on July 28 asking the Supreme Court to review a September 19, 1999 decision of the 9th Circuit which ordered Breyer to reconsider his injunction against the OCBC and consider

"the criteria for a medical necessity exemption," under federal law. The U.S. Justice Department previously asked the 9th Circuit to reconsider that decision, and the court refused.

If the circuit court decision is allowed to stand, Stroup said it is important that patients who live in California understand that the criteria required to qualify for the medical necessity defense in federal court are different from, and far more difficult to meet, than the requirements of Proposition 215.

"Many patients protected from state prosecution by Proposition 215 will still be vulnerable to a misguided federal prosecutor who chooses to initiate a federal prosecution," he said. "Nonetheless if this decision holds, it is still a major victory for patients in California and the other states within the 9th Circuit."

2000 Voter Initiatives

The following state initiatives will appear on the November 7 ballot:

STATE: Alaska

Ballot Measure No. 5

2000 HEMP: Ballot initiative to fully legalize marijuana. Approval would eliminate penalties for possession, use, cultivation and sale of marijuana.

ALASKANS FOR PRIVACY

Randall Patterson, Esq., 907-272-6434

FREE HEMP IN ALASKA

Al Anders, 907-278-HEMP

HEMP 2000

R.L. Marcy, 907-376-2232

STATE: California

Proposition 36

"Substance Abuse & Crime Prevention Act". Drug offenders would receive treatment, not prison time, for first and second non-violent drug offenses.

CAMPAIGN FOR NEW DRUG POLICIES

Dave Fratello, 310-394-2952

STATE: Colorado

Amendment 20

"An amendment to the Colorado Constitution authorizing the medical use of marijuana..."

Legalizes the use and possession of marijuana for medical purposes.

COLORADANS FOR MEDICAL RIGHTS

Luther Symons, 303-832-2444

STATE: Massachusetts

Question 8

"Drug Dependency Treatment and Drug-Crime Fines and Forfeitures."

Seeks to reform civil asset forfeiture laws by requiring that forfeited property be sold and the proceeds deposited in a newly created Drug Treatment Trust Fund. Provides for drug treatment diversion for low level, first- and second-time drug offenders.

THE COMMITTEE FOR FORFEITURE REFORM

Thomas R. Kiley, Rob Stewart, 617-439-7775

STATE: Nevada

Question 9

Proposal to amend the Nevada constitution to allow possession and use of marijuana for treatment of certain illnesses upon physician's recommendation.

NEVADANS FOR MEDICAL RIGHTS

Dan Hart, campaign manager, 702-259-0300

STATE: Oregon

Measure 3

Oregon Property Protection Act

Civil asset forfeiture reform, including the following major tenets: no forfeitures absent of conviction of crime; forfeitures must be proportional to crime; and proceeds go to drug treatment programs.

Geoff Sugerman, 503-778-5616

STATE: Utah

Initiative B

Utah Property Protection Act

Seeks to Implement uniform procedures for all civil and criminal forfeitures, including a variety of due process protections for property owners.

UTAHNS FOR PROPERTY PROTECTION

Carter Livingston, 801-232-8152

Portuguese Parliament Decriminalizes Marijuana

The Portuguese Parliament voted on July 6 to decriminalize the possession of marijuana.

Marijuana use and the consumption of other previously illegal drugs will now be considered a medical matter as opposed to a criminal justice problem and users will receive treatment instead of jail time.

“The idea is to get away from punishment towards treatment,” said Carlos Borges, a

spokesperson for the Presidency Ministry which is responsible for Portuguese drug policy.

The Portuguese conservative party, the Social Democrats, called for a voter referendum on the new drug law, but the prime minister, Antonio Guterres, rejected the idea saying it did not merit a national vote.

Portugal now becomes the third member of the European Union, after Spain and Italy, to decriminalize possession of small quantities of marijuana.

“In the last few years, Italy, Switzerland, Scotland, Spain, the Netherlands and now Portugal, have proven to be enlightened and pragmatic countries in crafting workable marijuana policies,” said Allen St. Pierre, NORML Foundation Executive Director. “In contrast, the United States continues to embrace the failed policy of prohibition.”

Ontario High Court Calls Canadian Marijuana Law Unconstitutional

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medical marijuana exception.

Judge Marc Rosenberg, J.A., relied heavily on the testimony provided by John P. Morgan, M.D., co-author of *Marijuana Myths, Marijuana Facts* and member of the board of NORML and the NORML Foundation.

In his decision Judge Rosenberg wrote, “I have concluded that the trial judge was right

in finding that Parker needs marijuana to control the symptoms of his epilepsy. I have also concluded that the prohibition on the cultivation and possession of marijuana is unconstitutional... I have concluded that forcing Parker to choose between his health and imprisonment violates his right to liberty and security of the person. I have also found that these violations of Parker’s rights do not accord with the principles of fundamental justice.”

Rosenberg ruled that Parker, for his medical use, will be exempt from Canada’s marijuana laws while Parliament attempts to rewrite the laws.

“This decision will open doors across the country for sick Canadians who need cannabis

Drug Czar Lied To Congress, Secretly Taped Phone Calls

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George Soros, said, “I don’t recall anybody telling me they were going to record this.” Anita Manning, a *USA Today* reporter who found out she was caught on tape by McCaffrey, said, “This is just creepy.”

Although it is legal in Washington, DC to tape phone conversations without prior consent, ONDCP spokesperson Bob Weiner said the drug office “may have screwed up” in this incident.

“Maybe they ‘screwed up’ appears to be the ONDCP’s mantra this year,” said Allen St. Pierre, NORML Foundation Executive Director. “Let’s recall that earlier this year the ONDCP also ‘screwed up’ by embedding secret government-approved anti-drug themes into popular network television programming. Also, the ONDCP admitted that it was ‘wrong’ to secretly track visitors to the ONDCP’s web of internet sites. Representative John Conyers (D-MI) and the rest of the Congressional black caucus is spot on with their public demand that Gen. McCaffrey should immediately resign.”

to help alleviate symptoms such as nausea and vomiting,” said Parker’s lawyer Aaron Harnett.

The decision can be found at: www.ontariocourts.on.ca/decisions/2000/july/parker.htm

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Federal Court Rules Doctors Cannot Be Penalized Over Marijuana Recommendations

U.S. District Judge William Alsup ruled on September 7 that doctors may recommend marijuana to patients who may benefit from it without fear that federal authorities may strip them of their license to prescribe medicine, or otherwise impose sanctions.

When the voter-approved medical marijuana law known as Proposition 215 passed in 1996, the Clinton administration announced that doctors who recommended marijuana faced losing their federal license to prescribe medicine. In January 1997, doctors and patients statewide filed a class action suit against the federal government alleging the government's threat violated their free speech rights under the First Amendment to the U.S. Constitution.

In his decision Judge Alsup expanded a previously granted temporary injunction that prevented the government from revoking a doctor's license to prescribe medicine and made it permanent.

"Contrary to the government's argument, it is not true that a mere recommendation will necessarily lead to the commission of a federal offense," Alsup wrote in his decision. "To the contrary, such recommendations can lead to lawful and legitimate responses. In the marketplace of ideas, few questions are more deserving of free-speech protection than whether regulations affecting health and welfare are sound public policy."

In further citing the importance of a doctor being able to freely treat his or her patients,

Alsup wrote, "[I]t will be the professional opinion of doctors that marijuana is the best therapy or at least should be tried. If such recommendations could not be communicated, then the physician-patient relationship would be seriously impaired.

"My hope is that this ruling effectively puts an end to the fear that physicians have been experiencing," said Graham Boyd, Esq., Director of the American Civil Liberty Union's Drug Policy Litigation Project, who represented the doctors and patients suing the federal government. "(This decision) puts the federal government on notice that if they do threaten doctors, they'll be back in court and they'll lose."

NORML

conference

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and join us at the Renaissance Hotel
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Celebration of Freedom

April 19-21
2001

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