

# The Governor's Sub-rosa Plot to Subvert an Election in Ohio

By Daniel Forbes

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**Principals:**

- Bob Taft**, Governor of Ohio
- Hope Taft**, First Lady of Ohio
- Domingo Herraiz**, Cabinet Member & Director of the Ohio Office of Criminal Justice Services
- Luceille Fleming**, Cabinet Member & Director of the Ohio Dept. of Alcohol & Drug Addiction Services (ODADAS)
- Brian K. Hicks**, the Governor’s Chief of Staff
- Marcie Seidel**, the First Lady’s Chief of Staff
- Jennifer Carlson**, the Governor’s Executive Assistant for Criminal Justice and Public Safety Issues
- William Olson**, Minority Staff Director, U.S. Senate Caucus on Int’l Narcotics Control
- Mary Ann Solberg**, White House ONDCP Deputy Director nominee (since confirmed); presidential adviser; CADCA board member; director of Michigan anti-drug coalitions
- Betty Sembler**, wife of the Republican National Committee finance chairman (1997-2000); founder of the Drug Free America Foundation
- The Partnership for a Drug-Free America**
- James McDonough**, Drug Czar of Florida
- Edward J. Orlett**, Manager, Ohio Campaign for New Drug Policies
- Dave Fratello**, National Campaign Manager, the Campaign for New Drug Policies,

**Principal Areas of Inquiry:**

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Ohio Governor Bob Taft and the highest reaches of his administration have embarked on a months-long, concerted effort to subvert the state's electoral process. With overall control over budgets, jobs and sentencing policy at stake, the Taft administration has organized a sophisticated, sub-rosa campaign to defeat a drug treatment rather than incarceration amendment likely to appear on the ballot in November. Starting last spring, Gov. Taft himself, First Lady Hope Taft, his chief of staff, Brian Hicks, two of his cabinet members and numerous senior and support staff have worked to defeat it.

This Republican effort in Ohio has been aided by federal officials, including President Bush's publicly announced nominee to be deputy director of the White House drug czar's office (since confirmed) and a senior U.S. Senate staffer. The drug czars of Florida and Michigan, as well as a senior Drug Enforcement Administration agent participated in the scheme. Ohio officials consulted with and enlisted the aid of the wife of the finance chairman of the Republican National Committee from 1997 to 2000, as well as several taxpayer-supported, staunch anti-drug organizations, including the Partnership for a Drug-Free America. The Partnership was slated to produce TV ads to sway public opinion in favor of the Ohio drug-policy status quo. Additionally, the Taft administration proposed diverting U.S. Department of Justice crime-fighting grants to fund their campaign's polling, focus groups and even advertising.

The effort has entailed hundreds of man-hours of state-paid time, as well as state funds paying for out of town trips and overnight lodging.

A day-long strategy session led by that senior U.S. Senate staffer was held in the U.S. Capitol building itself. In attendance were Hope Taft and the two Ohio cabinet members, as well as executives from the Partnership and the Community Anti-Drug Coalitions of America.

Opposition to the proposed amendment – entitled, “Ohio Constitutional Amendment for Treatment of Substance-Abusing Offenders” – has been crafted at at least one formal Ohio cabinet meeting. This past fall, Ohio's first lady and key members of the Taft administration, including senior staffers in the governor's office, attended weekly strategy sessions. Ohio officials also planned to create a statewide coalition stocked with wealthy and famous Ohioians. An entity to be sprung full-grown from the governor's office, it would be guided by the administration in both funding and eventually pursuing the counter-initiative campaign.

Modeled on a similar measure, Proposition 36, that passed overwhelmingly in California in 2000, the Ohio amendment proposes to offer treatment rather than prison solely to defendants charged with a first or second instance of simple drug possession. Judges may approve a few other classes of non-violent offenders, but typically any crime beyond possession precludes participation. The measure is backed by the same rich trio – billionaires, George Soros and Peter Lewis, and multimillionaire John Sperling – who have financed drug reform initiatives since 1996, including Prop. 36, and several medical marijuana measures.

They're pushing a similar treatment initiative in Michigan this year and tried to promulgate one in Florida. Proponents collected nearly 300,000 signatures in Florida, which have a four-year shelf life. But, with the Florida Supreme Court delaying approval of the initiative language by five months from the date of oral arguments and nine months from when signatures were submitted, proponents postponed it until, they say, the presidential election year of 2004. By design, the three states chosen are east of the Mississippi and led by Republican governors.

Ironically enough, the Taft administration is so fearful of the loss of control over money, jobs, sentencing policy and sheer bureaucratic heft – along with a spirited resentment of liberal (and effective) outsiders waltzing into their state – that it is willing to steal the proponents’ thunder by copying the initiative’s intent. It planned to introduce either legislation or a competing initiative emphasizing treatment over incarceration.

And, if some surprising admissions are to be believed, there’s a lot of room for improvement in Ohio. As the minutes of that U.S. Capitol building meeting indicate: “Recognize that incarceration without treatment makes no sense....” In the truncated diction typical of meeting notes, the minutes continue: “Takes us to places that we normally would not go, such as changing drug laws – felony to misdemeanor.” Finally: “Need a comprehensive approach – treatment and prevention – some mandated minimums are too harsh.” Should the initiatives’ proponents actually force such changes in Ohio, to some degree they win even if they lose at the ballot box in November.

The tale emerges from a close reading of hundreds of pages of documents from Ohio executive branch departments, including Gov. Taft’s office. They were released to the press in mid-December by the initiative’s local proponents, the Ohio Campaign for New Drug Policies (OCNDP). Taking advantage of Ohio’s effective open-government laws, the OCNDP filed its Freedom of Information request after someone slipped one of its attorneys a Taft administration ‘talking points’ memo.

Despite, or perhaps because of, the hundreds of documents outlining their anti-initiative campaign, senior Ohio officials declined comment. Perhaps this stance is wise, given that the sole Ohio official interviewed by this reporter, Taft cabinet member and Office of Criminal Justice Services Director, Domingo S. Herraiz, offered little but what, back in Richard Nixon’s day, came to be known as inoperative statements.

Dozens of phone calls to Ohio officials and to many figures with a national interest in the counter-amendment effort were not returned. Yet documents – some detailed, some not – summarize day-long meetings and provide ample evidence.

When the amendment’s backers, the OCNDP, released a sampling of the documents in mid-December, the Ohio press sought explanation. Taft spokesman Joe Andrews told the *Cleveland Plain Dealer*, “ ‘I’m not sure there is an active effort to keep it off the ballot.’ ” Andrews added: “ ‘The governor has asked every interested entity to look into it to see where it stands and how it will affect Ohio.’ ”

Given the “active effort” here delineated, that “not sure” bears a lot of weight. Andrews then turned to legalities, the article continuing: “Andrews said Taft’s legal counsel has cleared discussions because they involve an investigation, ‘as opposed to a campaign against it.’ ”

Yet the documents quote a participant from the governor’s office indicating her belief that William Klatt, Taft’s chief legal counsel, approved the anti-amendment campaign. Given the documents’ detailed blueprint for a robust political campaign, there’s ample evidence of a very “active effort.” As Hope Taft’s chief of staff, Marcie Seidel, wrote in her minutes of the Washington strategy session: “This a political campaign – must strategize as such. Look at

political pockets of support. Look at specific targets and design message to fit.... Look for enemy's weaknesses.”

Despite vast use of state-paid time, plans for an administration-run coalition of public and private luminaries, the spending of state funds and plans to access federal funds, the involvement of the Partnership for a Drug-Free America, the cooperation by officials from three states and the federal government, etc., the Taft administration attempts to cover itself with a thin veil of denial. Criminal justice chief Domingo Herraiz told me, “We had nothing to hide – we had to determine the initiative’s implications.”

Herraiz asserted that even the day-long, mid-October strategy session held at the governor’s residence in Columbus involved merely neutral fact-finding. This “Multi-State Forum” was attended by 19 senior officials and private executives from Ohio, Michigan and Florida, including that White House Office of National Drug Control Policy (ONDCP) deputy director nominee, the Florida and Michigan drug czars, and the DEA agent. Ohio taxpayers paid overnight lodging for out-of-state drug-war notables to attend this session, along with \$2,000 for a meeting facilitator.

A five-page [“Outcomes” memo](#) summarized the day’s strategizing. It features such overt political exhortations as: “Have a seamless, collaborative effort of organizations involved, mobilized and working hard to oppose the Initiative.” And this one: “Beat the Initiative back in the entire country, not just in each state.”

Yet Herraiz termed the session mere “fact-finding and research.” Apparently it’s pure policy analysis, the administration exercising its duty to study issues that will impact the good people of Ohio. Nothing to do with that “collaborative effort ... to oppose the Initiative.”

Self-deprecation his chosen defense, Herraiz said that he and his fellow hapless bureaucrats remain paralyzed, though they’ve been at it since last June: “If this was a campaign, we’d fail.... There’s been meeting after meeting, and I’m still making recommendations.” He added, “We’re the government and move slow.” Feigned, stodgy incompetence, however, does not excuse meeting after meeting developing a sophisticated partisan campaign on the public’s dime.

Though self-avowedly still just making recommendations, Herraiz did manage way back in August to generate a twenty-page call to action, a [“Playbook”](#) dense with hierarchical Goals & Tasks, Steps, Options, Purposes, Timeframes and Resources – all intended to defeat the initiative. Herraiz sent a draft of the *Playbook* to Hope Taft, to Brian Hicks, the governor’s chief of staff, and to two individuals prominent in this account: Mrs. Taft’s top staffer, Marcie Seidel, and Jennifer Carlson, who eventually transferred to Gov. Taft’s office.

M. Dane Waters, president of the Initiative and Referendum Institute, said that politicians fighting initiatives rarely think their opponents might possess the chutzpah or resources to fight back. Waters believes that as drug reform initiatives have spread across the country, opponents are increasing their efforts “exponentially – they’re doing whatever they think necessary to stop this movement.” And they do so, said Waters, with “mind-boggling arrogance.... It’s a blatant abuse of office to work actively to stop an initiative. Their role is to advise the public.”

A related case from the state of Washington sheds light on these issues. According to a 1998 Associated Press report, the state ethics board investigated Lieutenant Governor Brad Owen, contending that he “improperly used his office to fight” a 1997 medical marijuana proposal. The AP reported that, “The board contended Owen illegally distributed letters, press releases and other documents against [the initiative] and used public employees, equipment and federal grant money to fight the measure.”

According to a 1998 editorial in *The Seattle Times*, Owen agreed to “a \$7,000 settlement with the state Executive Ethics Board....” The editorial scolded Owen: “[H]e turned his office into a taxpayer-financed bully pulpit.... The ethics board contends he used public employees, equipment, federal grant money and his own working hours to illegally distribute countless letters, press releases and documents against the initiative.” The editorial concluded, “For a state employee to use public money to kill a state initiative ... undermin[es] the intent of the initiative process.”

The revelations from Ohio and Michigan question the probity of both the Partnership for a Drug-Free America and the Community Anti-Drug Coalitions of America. If past practice is any guide, CADCA member organizations will receive over half of \$450 million in recently authorized federal funding; its members received two-thirds of the grant money awarded during the program’s first five years. For its part, the PDFA partners with the White House in the controversial, nearly \$2-billion (total-value) anti-drug advertising and media content campaign.

As previously proven in print, the White House has at least indirectly meddled with state ballot initiatives for years. (See the section on the PDFA below.) In fact, the effort in Ohio is just a more sophisticated – well, wildly blatant – manifestation of the sort of public funding of partisan drug-war politicking that has long befouled the nation’s electoral landscape.

## Overt Evidence

The Taftites’ thin denial rests on characterizing all their months of effort as mere due diligence by an administration scrupulously casting its eye to the horizon. Good proactive government, no more, no less. As Herraiz told me, “We’re no closer to developing a campaign – it continues to be fact-finding.”

And yet consider some of the documents’ testimony, a few choice bits plucked from hundreds of pages that indicate active opposition was the manifest intent.

Luceille Fleming is director of the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) and, along with criminal justice chief Domingo Herraiz, the second member of Taft’s cabinet heavily involved. In mid-September, Fleming wrote Greg Moody, the governor’s executive assistant for Health and Human Services. With a copy to Herraiz and the subject heading, “[Fighting the Ballot Initiative.](#)” her memo contained this gem of policy analysis: “The first line and best possible defense against the proposed Constitutional amendment is to keep it off the ballot.”

Earlier, back in May, Hope Taft wrote her husband and his chief of staff, Brian Hicks, two memos calling for the administration’s opposition to the amendment. The first was prompted by her meeting with a California judge, Stephen V. Manley, who opposed Prop. 36 in California and

wanted to help in Ohio. In the second memo, prompted by a May *Wall Street Journal* article on the initiative's trio of wealthy backers, Mrs. Taft stated, "the time might be ripe for working out a plan to pre-empt the Prop. 36-type initiative." She included "an outline of a counter-strategy," written by a drug court booster and retired judge, Jeffrey Tauber, who also attended the Washington strategy session in July.

Though conceived of months earlier, the campaign took firm root at that day-long session last July 17 in the East Front 100 room in the U.S. Capitol building itself. It was hosted by William Olson, a well-connected federal drug warrior with an extensive background, someone with the stated belief that marijuana use impairs judgment for up to four days. Olson ran the Senate Caucus on International Narcotics Control for years; with control of the Senate passing to the Democrats last June, he's now minority staff director.

Some of the recommendations generated in D.C., according to Domingo Herraiz's [summary of this initial strategy session](#): "Develop a positive campaign to counteract their amendment." And: "Review and update our drug policies in order to counteract this initiative." And a third: "If we are proactive and not defensive, we stand a good chance to defeat their efforts." Then there are these bullet points: "Pre-empt their message and their ability to steal the issue," and, "Fundraising is most important issue in defeating this initiative in Ohio." Finally, some outright misinformation wasn't deemed out of bounds: "Make it appear as if everyone is against it." And, "... build off the anti-tax theme as if this was taxation."

For his part, William Olson, the host of the meeting, sent Hope Taft, Luceille Fleming and Herraiz his own memo summarizing the discussion. He also emphasized being "proactive. Do not wait for the other side to define the debate and respond to their initiatives. It is important to take their arguments away from them.... *Frame the debate.*" [Emphasis in original.] Olson indicated the meeting participants disagreed whether an indirect approach or a "straightforward effort to kill the initiative" was preferable. But they agreed on the importance of fund-raising: "If one theme predominated it was money."

Brian Hicks received a copy of Domingo Herraiz's notes from that day in Washington. Referring to "potential strategies to be addressed or placed in a timeline," Herraiz noted his two top aids' "assistance and dedication to this effort," and called on the governor's chief of staff to, "Let me know how you would like to proceed and what additionally you may need, and I will move forward." He also attached his four-page, single-spaced document: "Potential Strategies to Utilize in Ohio for a Proactive Approach to Prop 36."

In September, Fleming replied to Hicks' request that she provide: "a one-page summary of why the state should oppose it." She indicated, "Here are ODADAS' responses." So this is not her personal opinion, but the response from an Ohio state agency that oversaw \$106 million in treatment in FY 2000 to a request from the Governor's chief of staff. As was often the case, vast swaths of the upper reaches of the Taft administration, including his chief of staff, chief policy advisor and criminal justice director – along with the *primum mobile*, his wife – were sent this statement from Ohio's director of drug treatment outlining the state's opposition to the initiative.

As Ohio's opposition campaign started to go public, Hope Taft gave a speech in October to treatment professionals, listing eight separate scenarios attending the amendment (including the canard that it's "de facto legalization") that, in her view, will yield a "backlash" against the treatment system. Referring to the California-based national Campaign for New Drug Policies, she urged her audience to "work against all efforts by CNDP" to have Ohio challenge

“California's leadership role in the movement towards legalization.” And she closed by saying, “Please join me in defeating these proposals.”

Such are couple of highlights of the Taft administration's opposition to the initiative. Their antipathy generated a concerted, proactive campaign to defeat the amendment from the governor on down.

## **Olson's Meeting Under the Dome**

An important, early meeting, a tutorial for the Taftites on the workings of treatment-vs.-incarceration initiatives and how to oppose them, occurred July 17, 2001. It's curious and perhaps illegal, certainly unethical, that such an unabashed political session occurred in the East Front 100 room of the U.S. Capitol. Equally curious is why it occurred under the auspices of the Senate Caucus on International Narcotics Control, whose declared focus is “international cooperation against drug abuse and narcotics trafficking.” Additionally, says its web site, “As a formal organization of the Senate, the Caucus has the status of a standing committee,” including subpoena power.

Established in 1985, the caucus is currently chaired by Sen. Joseph Biden (D-Del.) and co-chaired by Sen. Charles E. Grassley (R-IA). By all accounts, Biden is more interested in his far more prestigious Judiciary committee assignments, including running the Crime and Drugs subcommittee. Though Grassley gave up officially running the caucus in June when the Republicans lost control of the Senate, he perhaps retains more interest in it than any of his colleagues. And Grassley's man on the caucus, his point man on drug policy in general, is William Olson, currently the caucus's minority staff director.

In one of Hope Taft's May memos on plans to “pre-empt” the initiative, Olson was presented as a strategic asset and someone to grease the wheels for producing TV ads that trumpet drug courts as an alternative. Taft wrote, “Bill Olson ... is very knowledgeable on the ways of these propositions and is willing to advise and bring together a group of people to see how some of the national groups like Drug Court Professionals, PDFA, etc., can develop PSAs that highlight the best aspects of the current drug court system” – that is, the status quo. She added, “Bill would like to pull together a group of people for me to talk with on my next trip to D.C.” (The PDFA refers to the Partnership for a Drug-Free America, and PSAs to public service announcements.)

Founder of the Drug Court Professionals Association, retired judge Jeff Tauber attended the session in D.C. He said Olson was “the person who got it together and led the discussion to some extent.” Ohio cabinet official Domingo Herraiz termed Olson a “facilitator” who gathered people together. And himself acknowledging that he held the reins, in a letter on Senate caucus letterhead, Olson informed Hope Taft, “I have laid out the day in three segments,” and “I have kept the groups small,” etc.

As Mrs. Taft anticipated, Olson did produce the top four executives of the Partnership for a Drug-Free America for a three-hour session that morning, including its current President and CEO, Stephen J. Pasierb; Vice Chairman, Thomas A. Hedrick, Jr.; and Director of Public Affairs, Stephen D. Dnistrian. In his letter confirming his and the three others' participation, the PDFA's Director of Operations, Michael Y. Townsend addressed Olson as the caucus “Staff Director” – not some private expert – and said he looked forward to a productive “counter-



legalization brainstorm session.” (As a member of its board, Pasierb lends his media expertise to the Community Anti-Drug Coalitions of America, a principal drug-policy advocacy group.)

The PDFFA executives were accompanied by Peter Kerr, then responsible for communications at the New York-based treatment provider, Phoenix House. (Prior to Prop. 36’s passage in California, the president of Phoenix House termed it “a dangerously deceptive measure,” and also “a giant step toward decriminalization.”) No doubt the Taft administration would welcome a similar high-profile endorsement.

The PDFFA foursome (and Kerr) were the only non-Ohioans present that morning aside from their host, Olson. Therefore political advertising – Hope Taft’s sanitized reference is to ‘PSAs’ – presumably dominated the discussion, as the three sets of minutes generated that day certainly indicate. Mrs. Taft’s staffer, Marcie Seidel, generated one set of minutes. Employing the frequent obfuscation, ‘educational,’ she phrased one of the consensus recommendations as: “PDFFA can do educational PSAs starting now about success stories of people who were required to get treatment.... They could start these educational PSAs before the political season begins.”

Apart from getting the [PDFFA bigwigs](#) there, what did Olson bring to the table?

With a wealth of experience, he’s well plugged in to Republican drug war circles. Prior to the inaugural in 2001, for instance, Olson was on President-elect Bush’s transition team, focusing on drug policy. Back during the elder Bush’s administration, he was Deputy Assistant Secretary of State for International Narcotics Matters. And, according to the biographical squib accompanying one of his published articles, he was also an acting deputy assistant secretary of defense for “low intensity conflict.”

Active long enough to know anyone worth knowing in anti-drug circles, Olson was able to invite Betty Sembler to the July meeting. Referring to opposition to past medical marijuana initiatives, a senior Clinton administration official said, “Betty Sembler and Sue Rusche [who also attended the July meeting] were active and vocal, and Olson is close to that crowd. He spoke at one of Betty Sembler’s conferences in Florida on medical marijuana.”

Sembler and her husband Mel, the wealthy Finance Chairman for the Republican National Committee from 1997 to 2000, are known for having run the controversial and coercive private drug treatment program, Straight, Inc., whose affiliates have been closed down by several state governments. The last branch, according to Fox News, closed in 1993. Fox cited lawsuits resulting in Straight payments of \$220,000 and \$721,000, and it referred to accusations from Straight critics of vicious physical and mental abuse “at Straight chapters all over the country.” Betty Sembler, according to the Drug Free American Foundation website, was a delegate to a White House drug policy conference, has served on the Governor’s Drug Policy Task Force in Florida, and is vice-chair of Drug Abuse Resistance Education, International.

A second Washington drug policy insider referred to Olson as “Grassley’s point man.” His most important current connection, though, according to this source, is that, “Olson is good buddies with [Drug Czar] John Walters, dating back to when Walters headed supply interdiction at ONDCP during Bush I and Olson worked with him.” Once Grassley sent Olson to the Senate caucus, this source recalled that Olson worked with both Bobby Charles, the influential, ex-House drug policy staffer, and Walters “behind the scenes.” John Carnevale worked in a senior

analytical capacity at ONDCP throughout the '90s and ran Bush's drug policy transition effort; Olson was Carnelvale's "number two" on the transition, said this source. This person figured that currently, "He's functioning at the behest of Walters, implementing Walters' ideas."

William D. McColl is director of national affairs for the Drug Policy Alliance, which receives funding from the amendment's three backers: Soros, Lewis and Sperling. While previously representing a treatment-provider group, McColl dealt with Olson at the Senate caucus some years back. Even by Republican, professional drug warrior standards, said McColl, Olson is "an extreme hardliner" who declared his belief that the government should focus almost entirely on law enforcement, interdiction and source country production. McColl said Olson made it clear that, "He had staked out the intellectual position that treatment is not effective."

Interviewed by *The Pittsburgh Post-Gazette* in March, 1999, Olson was asked about the "recreational" use of marijuana. He said, " 'What you're talking about here is people becoming addicted to a substance that disrupts their lives and makes them dangerous to be around.... And the effects of marijuana last for two, three and four days in terms of impairment of judgment.' "

Four days – a remarkable assertion.

Some might question the judgement of a senior Senate staffer who brought anti-drug private executives together with top state officials under the Capitol dome itself to craft a strategy to defeat a state ballot initiative.

Queried on the propriety of Olson running a political strategy session in the Capitol building, Jill Kozeny, Sen. Grassley's press secretary, said, "It was official business related to public education."

In this case, however, the 'public' consisted of the first lady of Ohio, members of the governor's cabinet responsible for multi-million dollar public agencies, the PDFAs' top leadership and the wife of the Republican National Committee's chief fund-raiser and now ambassador to Italy. As to the repeated phrase, 'education,' it refers to changing voters' views, not imparting knowledge.

Pressed for an explanation, Kozeny said the meeting involved "talking with people with an interest in these referenda." Indeed. And, she reiterated, it was formal Senate caucus business: "a discussion of public policy."

Kozeny subsequently said the meeting was "a policy debate." An odd debate, this, with only one side of the issue represented. She added that it occurred "under Senate auspices." But rather than a debate's pros and cons, Olson's [written summary of the day](#) yields an unmistakable political blueprint. He stressed such dictates as: "Take back the language," and, "This effort then needs a strong follow-up element to act as a focal point for implementing any plans and to be the point of contact for coordinating efforts."

Kozeny said that the meeting was organized by Olson on his own initiative and that Sen. Grassley "was not involved in the meeting." Asked if Grassley approved it, she said he had "by virtue of the fact that Bill works for him."

Over a period of weeks, Olson did not return nearly a dozen phone calls.

Marcia Lee, the Senate caucus's current majority staff director, works for Sen. Biden. She knew nothing of the meeting and declined further comment.

Biden's press secretary, Margaret Aitken, said Olson "is a Republican staff person" who doesn't work for Biden. Aitken noted that Biden "thinks treatment has gotten the short end of the stick." Referring to the July meeting, she added, "It doesn't seem like something Sen. Biden would want his staff to do."

White House spokesperson Marcy Viana referred to ONDCP questions on the propriety of Bush transition team member Olson leading a strategy session on quashing state ballot measures. Despite the White House referral, ONDCP communications director Tom Riley refused to comment on the meeting. He said, "The transition is over. Mr. Walters has been confirmed, and his time is here and now."

Alexander Robinson, a public policy consultant with government relations firm Robinson & Foster, Inc., was less reticent: "Potential referenda becoming official Senate business is bogus and completely over-reaching, contrasting with the conservative politics that are supposed to protect states rights." Robinson, who helped organize opposition to Attorney General John Ashcroft's confirmation, added, "I can't imagine under what circumstances the Senate might have a role to play. It's a state-based campaign, and that's where it should remain."

Dave Fratello, National Campaign Manager of the initiative's main proponents, the California-based Campaign for New Drug Policies, charged that this meeting brought the idea of mult-state, anti-initiative cooperation to a reality. As to its location, he said, "That's really dirty. To have a meeting furthering a political conspiracy against Ohio voters spawned in the U.S. Capitol makes it even more disgusting."

Not surprisingly, the Senate Ethics Manual has a long chapter entitled, "Political Activity." Cutting to the quick, its very first paragraph states that Title 31 of the U.S. Code "has been interpreted in Congress to mean that congressional employees receive publicly funded salaries for performance of official duties and, therefore, *campaign or other non-official activities should not take place on Senate time, using Senate equipment or facilities.*" [Emphasis added.] That explains the game attempts by Grassley's spokesperson to characterize the meeting as official business.

Two paragraphs on, the ethics manual declares: "Senate employees are compensated from funds of the Treasury for regular performance of official duties. They are not paid to do campaign work." And the next page indicates that Senate employees can "engage in campaign activities on their own time ... provided they do not do so in congressional offices or otherwise use official resources." Generally speaking, though, Olson's actions as a Senate *staffer* were of greater consequence than the use of the room, no matter the edifice.

One Capitol Hill pro told me the rules are usually interpreted in such fashion that, "I could see numerous circumstances where [the meeting] might be official Senate business.... It's an ethics call. It's for the member to defend." This source concluded that the whole thing "is Grassley's to defend. Official Senate business is not defined."

Dismissing Peter Kerr and the four PDFA executives, Olson and the Taftites broke for sandwiches in East Front 100. They were soon joined by Sue Thau, lobbyist for the Community Anti-Drug Coalitions of America, who remained for much of the afternoon session, according to Jeff Tauber. CADCA's website boasts that Thau is "recognized for her advocacy and legislative accomplishments.... She was a driving force behind the passage and full funding of the Drug-Free Communities Act...."

Along with Thau, both Olson and his boss, Grassley, were prime architects of the original Drug-Free Communities Support Program. Sen. Grassley claimed paternity, stating he "won passage by the U.S. Senate of his bill." (In a christening gambit that didn't stick, he tried to name it after himself.) Reps. Sander Levin, a Democrat, and Rob Portman, a Republican, were the chief House sponsors of both the original, 1997 bill and last year's reauthorization. Coincidentally enough, they represent Michigan and Ohio, respectively and, along with the PDFA's Steve Pasierb, also serve on CADCA's board.

The program has grown wildly since its June, 1997 enactment. Initially funded at \$10 million a year, this year's total of \$50 million was a full 25% increase over the prior year. And the sky's the limit.

That is, the program's first five years were initially funded at a cumulative total of \$144 million. But then last December, while attending CADCA's annual meeting, Bush signed its reauthorization bill. With \$450 million guaranteed over the next five years, annual appropriations will increase steadily until maxing out at nearly \$100 million in 2007. The use of some of this money for "voter education" is discussed in the accompanying sidebar on CADCA.

The afternoon session in the Capitol building featured the wealthy Mrs. Sembler, who Hope Taft had informed Hicks and the governor "was the possible source of some funding for a counter-effort." Judge Tauber, who had already provided the Taft administration with "an outline of a counter-strategy," also attended. (Tauber's counter-strategy declared: "We need to co-opt the initiative proponents" by capturing "the allegiance" of treatment providers so as to "be seen as the real reformers." He also called for boosting drug courts, a PR effort, and "a substantial amount of money to stay in the game.") Sue Rusche of National Families in Action, an active opponent of past drug reform ballot measures, rounded out the session.

## **The Gathering at the Governor's Residence**

The second big strategy meeting, the "Multi-State Drug Policy Forum," was held at the governor's residence on October 12<sup>th</sup>. The state of Ohio offered to pay for meals and lodging for out-of-state attendees, and with 19 participants, including the drug czars of Florida and Michigan, it was a somewhat grander affair than the Washington session. In a preparatory memo, Domingo Herraiz indicated that he, Luceille Fleming and the "Governor's Office" would set the agenda. A five-page ["Outcomes" memo](#) summarized the day's political strategizing, with a focus on fund-raising, as well as potential cooperation between Ohio, Florida and Michigan. It featured such exhortations as the aforementioned, "Have a seamless, collaborative effort of organizations involved, mobilized and working hard to oppose the Initiative."

Michigan community anti-drug activist Mary Ann Solberg also attended; she'd served for years with Hope Taft on the presidential advisory commission that helped steer many millions of

dollars in federal funds to CADCA members. But Solberg had achieved an even more significant White House connection two months *prior* to the October forum, when President Bush nominated her to be the White House Office of National Drug Control Policy's deputy director. (She was confirmed in April, 2002.)

Rich Isaacson, a DEA special agent with functional responsibility for demand reduction in Ohio, Michigan and Kentucky, also represented the federal government. A Michigan drug court judge participated, as did prospective funder Betty Sembler, who brought along her high-profile, DFAF executive director, Calvina Fay. Ten senior officials from Ohio were present, including Hope Taft, Fleming and Herraiz and their top legal, policy and communications deputies – in short, nearly the entire Taft anti-amendment team.

Making it an even twenty participants was a meeting facilitator, one Patrick Donadio, a “certified speaking professional” who was paid a cool \$2,000 for keeping the conversation on track. It's a bit surprising that these high-powered officials laid their cards on the table before someone with no particular institutional loyalty to the war on drugs, but maybe someone vouched for Donadio.

The two Florida participants, Sembler and the state's drug czar, James McDonough, indicated that “Florida's goal is that [national] CNDP not return to Florida or anywhere else.” The two discussed drug courts, gaining the governor's support and “legislation to moot the CNDP amendment.” They concluded, “The best time to win is before the process even starts: stay on the offensive all the way.”

(A prominent drug warrior, while working at the ONDCP, McDonough had the guts to upbraid Bill Clinton in a *Wall Street Journal* op-ed for dallying with Monica Lewinsky while talking on the phone with a Congressman about potentially sending troops to Bosnia. McDonough wrote Herraiz last summer on Office of the Governor letterhead outlining the nature of his opposition to treatment initiatives and thereby providing the Taftites with talking points galore. He ended by saying, “I would hope that the people of Florida reject this cynical ballot initiative ... [and] the normalization of drug abuse in the state of Florida.” [His marginal note](#): “Any help I can give you in your effort, please let me know. Jim.”)

DEA agent Rich Isaacson's lodging was paid for by the taxpayers of Ohio, his time and travel by federal taxpayers. Isaacson told me the forum was “merely to determine what is happening in these states regarding possible legalization efforts.” (Opponents of the amendment often falsely categorize it as de facto ‘legalization.’) His statement should be evaluated in light of the numerous, overt political tactics participants agreed were necessary.

DEA spokesperson Thomas Hinojosa said of Isaacson, “His job is drug investigations and stopping the flow of narcotics.” Asked how attending a strategy session on defeating a treatment initiative fit that brief, Hinojosa said, “That initiative deals with illegal drugs, which come under the Controlled Substances Act. So there's nothing wrong with that.”

“Fundraising Strategies” were dissected, with mention of Bill Gates, Ross Perot and Steve Forbes (no relation to myself). Corporate sponsorship was also discussed, as were “National groups.” The next page of Outcomes listed an astounding group of 37 potential “State & National Resources” to fuel the Taftite counter-campaign. Yes, there's a certain wish-list element

involved, but the Taftites looking to buy TV time, especially as the vote neared, they thought to cast a wide net.

ONDCP and the DEA were inappropriately listed as resources for this nascent state-based political campaign. That was so much water under the bridge, though, since ONDCP nominee Solberg and DEA agent Issacson were already participating. D.A.R.E, the discredited Drug Abuse Resistance Education program, was listed, as was the White-House-supervised, Department of Justice unit that will distribute over the next five years the recently authorized \$450 million, up to 20% of it available for “voter education.”

The Taftites also proposed soliciting fraternal, religious, political and professional organizations, including the PTA, the NAACP, AARP and the “Elks, Moose.”

And the Partnership for a Drug-Free America of course made the list, also water under the bridge after the Washington meeting.

Though the “Alcohol Industry” was also listed as a possible resource, Herraiz maintained there was no political intent. Rather, he insisted, the alcohol industry’s inclusion was a sudden and otherwise unexplained reference – in the midst of all these potential campaign funders – to encouraging the industry to contribute to treating alcoholism. Herraiz told me, “The ‘alcohol industry’ refers to treatment for alcohol abuse.” Challenged on the out-of-context reference to raising private money for actual treatment, something I don’t recall elsewhere in hundreds of pages of documents, Herraiz declared: “It has nothing to do with fund-raising for a campaign. Absolutely not.” Apparently it just dropped in out of left field as a by-the-way reminder should the document’s readers wish eventually to engage this entirely separate issue.

The insurance industry also graced the list. As marvelously out of context as the alcohol industry, Herraiz said insurers were included solely to remind meeting participants to encourage insurers to increase treatment funding. Similarly, the AARP was listed, according to Herraiz, so they’d be sure to encourage its work educating senior citizens on the dangers of over-medication.

One wonders – the White House? the DOJ? – was nothing beyond consideration as a potential resource to impact Ohio’s upcoming election? Apparently not, since the ultimate goal – “Beat the initiative back in the entire country” – would require massive amounts of money for TV advertising. Faced with the August, 2001 Buckeye State poll results that 74% of Ohioans favored drug treatment rather than prison, the three state governments pledged to work together and stay in touch through e-mail, conference calls and perhaps future strategy sessions. As both sides admit, this is a political battle with national ramifications.

## **Rifling the Public Till**

The whole enterprise rife with rifling the public till, let’s start with a couple of clear examples.

Travel invoices indicate the governor’s office paid \$468.00 for Hope Taft and her staffer, Marcie Seidel, to fly economy class to Washington and back. The State of Ohio Voucher reads: “IT IS HEREBY CERTIFIED: That necessary services shown herein have been rendered and authorized by proper authority.” For the requested signature, “Bob Taft” is typed in.

Luceille Fleming's voucher for \$212.90 is described as "airfare for the director to attend Proposition 36 meeting" and was paid out of her department's administrative funds. Herraiz didn't initially provide a voucher for his D.C. travel.

Out-of-town participants in the mid-October forum, according to a letter Herraiz wrote to the Florida drug czar, James McDonough, were invited "on behalf of Gov. Bob Taft and First Lady Hope Taft." Saying McDonough should bring as many as five colleagues, Herraiz added, "The Ohio Office of Criminal Justice Services will pay the cost of your lodging and meals while in Columbus."

Herraiz told me that such expenditures were for "research and planning" in full accord with the laws governing general revenue funds. "Everything's been done on a fact-finding basis," he said.

The Michigan Department of Community Health confirmed that the State of Ohio paid for two Michigan drug policy officials, Craig Yaldoo and Betsy Pash, to stay in Columbus. Neither Yaldoo nor Pash returned calls for comment.

A write-up by Herraiz's department on a mid-August meeting with Taft's chief of staff, Brian Hicks, and Fleming's department notes: "No \$ from Governor's office or ODADAS for Campaign – OCJS responsible." So, in a directive seemingly from Hicks, Herraiz's Office of Criminal Justice Services (OCJS) was to pay for out of towners and the like. Accordingly, professional speaking coach Patrick Donadio said his meeting facilitation fee of \$2,000 was paid by OCJS, his participation at the forum coordinated by OCJS staffer, Hope Janke.

True, these are not vast sums of money. Yet principles and probity apply no matter the amount. There's also the simple theft of state time at play here. Countless Ohio officials and their support staffs, as well as individuals such as the drug czar of Michigan and the federal DEA agent, were on the clock.

Along with the high-octane strategy sessions, Ohio public servants regularly used state time to ponder how to defeat the initiative, as is indicated by a late September memo Fleming wrote to Herraiz and Hope Taft about "our conversation at the Cabinet meeting this morning...."

Senior officials in the governor's office and in Fleming's and Herraiz's departments devoted themselves to the counter-initiative campaign on a quotidian basis. The *Playbook*, which dictates the campaign's overall design, lists the resources for the counter-initiative Executive Committee as the Governor's Office, ODADAS and OCJS. Other resources listed for various prospective Goals & Tasks are the Ohio AG, the Ohio Dept of Health, the Ohio Department of Mental Health, "Treatment Partners," the Partnership for a Drug Free America and police groups.

In one Herraiz-to-Fleming memo, he designated "Key Staff support/contacts for the initiative," as himself, his Director of Research, Planning and Development, Hope Janke, and his Legislative Liaison, Brent Walls. From Fleming's department, Herraiz listed Fleming herself, her Chief of Program Planning, Michael Stringer, and her Chief Counsel, Sara Vollmer.

Including the trip to Washington, here are some entries from Herraiz's schedule:

6/13/01 Prop 36 Meeting;

6/29/01 Meeting w/staff RE: California Proposition;

7/17/01 Washington, D.C.;

7/25/01 Prop 36;

8/6/01 Meeting w/Maris Prop 36;

9/11/01 Prop 36 meeting;

9/20/01 FL/MI/IL [they apparently thought of consulting with Illinois as well];

10/12/01 Prop 36 discussions;

10/23/01 Stephanie and Ann Husted – Prop 36;

10/29/01 Prop 36 meeting at 4:00;

10/30/01 Prop 36 meeting – Governor’s Office;

11/7/01 Prop 36 meeting 3:00 pm;

11/16/01 Prop 36 Meeting.

Notice the regularity of the meetings as fall progressed. In fact, Hope Taft set a schedule for a “core group” to meet weekly for an hour at the governor’s residence to get their marching orders for the coming week(s). For instance, six substantial “Tasks” [were formalized in the notes from the 11/7/01 “Prop 36 Meeting.”](#) Usually attending were Seidel, Fleming and Herraiz, Jen Carlson, who eventually moved to the governor’s office from the Lieutenant Governor’s staff, and Ann Husted, who *The Columbus Dispatch* referred to as the governor’s special events coordinator. (Amendment campaign manager Edward Orlett was of the opinion that Husted worked for Bob Taft as a sort of “pre-campaign advisor” focusing on the upcoming gubernatorial election.)

These weekly sessions were designated the “Prop. 36” meetings, named after the California treatment initiative. That the Taftites knew they transgressed devoting so much state-paid time to their efforts becomes clear following Orlett’s late-November Freedom of Information request. In early December, the straight-forward “Prop. 36” designation becomes the [“SB 178 Weekly Meeting Schedule”](#) – a reference to the bill introduced by state senator Robert F. Hagan that to some degree copies the proposed initiative.

It’s unlikely they’d hold weekly meetings on a proposed state senate bill unless they were actually crafting an uphill political campaign. (In an August, 2001 poll, 74% of respondents favored the treatment initiative.) Really, how much cogitating and planning can there be about a proposed piece of legislation – as opposed to a statewide political campaign – a bill that, with both houses of the Ohio legislature dominated by Republicans, has no chance of passage? Yet, following Orlett’s FOI request, the first lady used her clout to schedule weekly meetings months in advance with cabinet officers and senior advisers to the governor. By referring to them as SB 178 meetings, now they can pretend, at least on the official schedules that distressingly find their way into FOI-able documents, that it’s solely, week after week, a discussion of this DOA bill.



## Pilfering Eddie Byrne's Memorial Money

The Taft administration proposed to use federal funds legislatively earmarked for fighting crime to pay instead for polling, focus groups and advertising. They apparently considered the vast, public coffers of the U.S. Dept. of Justice a ready resource.

Named in memory of a rookie New York City cop killed in cold blood while guarding the home of someone battling drug dealers on their block, the Edward Byrne Memorial State and Local Law Enforcement Assistance Program dates to 1988. It's administered by a different DOJ unit than the one that passes out the local coalition grants largely to CADCA members.

An undated document from Luceille Fleming's Ohio Department of Alcohol and Drug Addiction Services is entitled Key Issues. One main subheading, ["Byrne Support for Strategies."](#) is followed by four bullet points: (1) "Money Available – Ad Campaign/PR – Message" (2) "Brochures" (3) "Focus Groups" (4) "Polling."

Similarly, a mid-October document from Domingo Herraiz's Office of Criminal Justice Services is a ["Debriefing ... @ Governor's Residence."](#) It's apparently a debriefing and "TO DO" list from the multi-state strategy session held the week before with the drug czars, Solberg, Sembler and the ten Ohio officials. The bottom third of the memo concerns Ohio's "Talking Points." Like any cogent political campaigners, the Taftites seek to speak with one voice. The Talking Points must, according to this memo, be simple and direct enough to be "discussed @ kitchen table." And, the two top men determining something this important, it also states that "Governor & Brian will decide" their ultimate content.

To ensure that the Talking Points have the right impact in that policy-minded kitchen, using the Byrne Funds surfaced in this memo as well: "Develop points, then test it [sic] to polling/focus group. (Use Byrne funds to discuss drug issues/feelings.)"

In FY 2000, according to the DOJ website, Byrne grants to the states totaled \$552 million, including \$18.5 million to Ohio. According to the DOJ, the overall program "emphasizes controlling violent and drug-related crime and serious offenders...." Focus groups, polling and advertising are not part of the program.

True, \$52 million that fiscal year was in a nationwide discretionary fund, one purpose of which was "improvements in front-end decision-making." But these discretionary funds were approved only after a state submitted "concept papers" describing their use. Should Ohio have tried to sneak focus groups and the like into a concept paper, one hopes the most basic DOJ oversight would have disallowed such flagrantly political expenditures.

If Ohio was to succeed in overt political access of this money, it would most likely target not the \$52-million discretionary portion of the program, but, at \$500 million, FY 2000's far larger "formula" grant program, 10% of which is available for administrative costs. Ten percent of the monies Ohio received in FY 2000, for example, was \$1,850,000, which offers a lot of wriggle room for polling and focus groups.

But the DOJ required that the \$500 million be used "to improve the functioning of the criminal justice system, with emphasis on violent crime and serious offenders, and to enforce" local drug laws. Additionally, the grants are to be used "for more widespread apprehension, prosecution, adjudication, detention, and rehabilitation of offenders..." through application in

“26 legislatively authorized purpose areas.” The Taftites might want to focus on the leeway afforded by ‘administrative costs,’ because none of these 26 purposes involves the tools of a modern political campaign.

Even the most likely candidate, the eighth “program purpose” doesn’t provide much of a loophole. It refers, say the DOJ guidelines, to: “Career criminal prosecution programs, including the development of model drug-control legislation.” Never mind that polling and focus groups – not to mention advertising and PR – can’t be categorized as the development of model legislation. It’s also hard to conceive of the treatment amendment’s typical target population of first or second-time drug-*possession* offenders as the career criminals targeted by the Byrne funds.

I sought comment from the DOJ on this proposed misuse of the funds they administer. Laying my cards on the table to prompt a response, a couple of preliminary, off-the-record conversations indicated a general recoiling from the notion of using Byrne funds politically. But beyond that, nothing – no reply to several requests for a formal response.

## Potential Illegalities

Given the steady expenditure of staff time and other state resources, how flat-out illegal is the administration’s concerted political campaign? Should Ohio officials worry about a court of law as well as the court of public opinion? Naturally, opinions vary.

Neither the governor’s chief legal counsel, William Klatt, nor his spokesman, Joe Andrews, returned numerous phone calls requesting comment. But in mid-December, Andrews told *The Cleveland Plain Dealer* that “ ‘I’m not sure there is an active effort to keep it off the ballot.’ ” Andrews added, “ ‘The governor has asked every interested entity to look into it to see where it stands and how it will affect Ohio.’ ” The article continued, “Andrews said Taft’s legal counsel has cleared discussions because they involve an investigation, ‘as opposed to a campaign against it.’ ” Similarly, another Taft spokesperson, Mary Anne Sharkey, told *The Ohio Report*, “ ‘We’re looking at policy.’ ”

It’s quite an active investigation, quite an examination of policy.

Over Edward Orlett’s signature, the OCNDP filed futile complaints with both the Auditor of the state of Ohio and the state Inspector General charging that for “purely ideological political purposes” the administration acted against the amendment. In January, building on their December complaint to state auditor Jim Petro, OCNDP filed a futile complaint with Ohio Inspector General Thomas P. Charles against the Governor and Mrs. Taft, Fleming and Herraiz.

OCNDP alleged that the Tafts, Herraiz and Fleming “and members of their staffs, acting individually and in concert in their official capacities and/or under color of their office(s) and with other state of Ohio employees engaged in wrongful activities and conduct which unconstitutionally infringed upon rights of the citizens of the state of Ohio....”

Citing Ohio case law, [Shryock v. Zanesville, 92 Ohio State 375] OCNDP referred to, as it put it, “the right of Ohio citizens to bypass the legislative branch of government in order to place an issue on the ballot....” That is, a citizen’s right to introduce ballot measures is, according to

the language of this Ohio case, "put beyond the power of an unfriendly general assembly (or chief executive) to cripple or to destroy...."

In addition, OCNDP cited two 1997 U.S. Supreme Court rulings that it maintains hold that "the expenditure of public funds or resources to oppose or to promote a ballot issue, such as a citizen initiative or a particular political viewpoint violates citizens' " First Amendment free speech rights.

Charging that the administration was operating a de facto political action committee, OCNDP stated that the documents cited throughout this report are "sufficiently clear" that the Taft administration "understood and possessed more than a reasonable belief" that their actions constituted "wrongful 'campaign practices' and [were] violative of complainants' rights and other statutory prohibitions."

OCNDP cites the 11/7/01 "Prop 36 Meeting" memo's statement from Ann Husted that " 'We need to find out from Bill Klatt what we can and can't do – what the 'trigger' is that we can't go past once it becomes more than an issue.' " (Klatt is the governor's counsel, and *The Columbus Dispatch* has referred to Husted as his special events coordinator.)

According to the memo, Jennifer Carlson, Taft's eventual Executive Assistant for Criminal Justice and Public Safety Issues, answered: " 'I think Bill [Klatt] said it's Okay – that as long as we're talking about policy it's not a campaign. Besides, with Hagan's legislation, we're just talking about legislation and opposition to it.' "

OCNDP charged that "this belated, November, 2001 attempt at protective positioning," which included the sham of changing the name of the Prop 36 weekly meeting to the Senate Bill 178 weekly meeting, is undone by simple chronology – that the Taft campaign began months before. OCNDP cited a memo penned by Luceille Fleming back in March, 2001 that the material she was providing, " 'includes an overview, some background ... and strategy on what we consider a good way to begin the *campaign*.' " [Emphasis added by OCNDP.] OCNDP also cited the reference in the *Playbook* – which was distributed in August – to the administration's "Ohio Drug Reform Campaign." And it noted that the retroactive defense of crafting a response to Robert Hagan's long-shot proposed senate bill provides scant cover for last summer's efforts, since Hagan introduced it in mid-October.

OCNDP bolstered its complaint to the state IG with a letter from its lawyer, Dennis W. McNamara. McNamara stated that, "Any governmental office or employee who purposely attempts to prevent or interfere with the proper exercise" of Ohioans' right to submit a proposed amendment to the voters may be in violation of two criminal statutes found in Ohio Revised Code Chapter 2921: Offenses Against Justice and Public Administration.

Under "Dereliction of Duty," the law states that, "No public servant shall recklessly fail to perform a duty expressly imposed by law with respect to the public servant's office...."

Referring to the fact that Ohio Attorney General Betsy D. Montgomery took 11 weeks (as opposed to past ballot initiatives' average of 18 days) to approve the amendment's proposed summary language, McNamara stated that: "The unusual delay at the Attorney General's Office could arguably be a violation...."

But McNamara felt that the section of 2921 on “Interfering with Civil Rights” was perhaps more germane. It states that, “No public servant under color of his office, employment or authority, shall knowingly deprive, or conspire or attempt to deprive any person of a constitutional or statutory right.” McNamara then quoted Fleming’s mid-September memo entitled “Fighting the Ballot Initiative” which was sent to the governor’s executive assistant for health and human services. Writing on departmental letterhead in her capacity as ODADAS director, Fleming stated, “The first line and best possible defense against the proposed Constitutional amendment is to keep it off the ballot.” (Despite the memo’s official context, Taft spokesman Joe Andrews dismissed this as solely “her opinion,” ” said *The Dayton Daily News*.)

McNamara argued, “This might be indicative of a conspiracy or an attempt to deprive the Ohio Campaign of a constitutional right. And if so, there could be a violation of the Interfering with Civil Rights statute.”

Should the Ohio officials’ acts fall short of actual “criminal culpability or liability,” McNamara also pointed to Sec. 121.41 (G) on potential “wrongful acts or omissions.” Such acts or omissions are “not in accordance with the requirement of law or such standards of proper governmental conduct as are commonly accepted in the community and thereby subvert, or tends to subvert, the process of government.”

McNamara also referred to Sec. 121.22, which requires state officers to “devote the entire amount of time for which he receives compensation from that office to the duties of the office....” He then stated his belief that the documents he examined “would seem to indicate that a significant amount of state time has been devoted, by a number of people, to preventing, obstructing or otherwise hindering [OCNDP’s effort] to get its initiative before the voters.”

Both Ohio’s state Auditor, Jim Petro and its IG, Thomas P. Charles, rejected OCNDP’s complaints. Petro replied that he examined solely “any improper use of state time and resources” – not any crime or civil rights violation. In OCNDP’s favor, Petro stated he would examine the issue though the amendment had not yet qualified for the ballot. He then cited a Supreme Court decision that public officials are allowed to express themselves on issues appearing on the ballot.

Oddly enough, Petro then cited Ohio law to the effect that officials can communicate about the “plans, policies and operations” of government entities and can attend *public* meetings to present information “in a manner that is not designed to influence the *outcome* of an election....” [Emphasis added.]

Well, the Taft counter-amendment effort – promulgated at private meetings – is geared entirely towards influencing an election. Petro similarly, oddly, shot himself in the foot by citing a 1999 Ohio Attorney General Opinion that stated that, without specific authority, officials are not allowed “to expend public funds specifically to attempt to persuade people to vote a particular way on a ballot issue....”

Petro reiterated his position that the administration is free “to use public time and resources to analyze ballot issues affecting the public office and then to disseminate or publish information concerning the consequences of the passage or defeat of such issues.” And he maintained that officials can “spend time and resources to review your [OCNDP’s] proposed amendment and assess what impact it would have on Ohio.”

Orlett replied to this at length. He argued that Petro addressed only the administration's efforts to respond to the amendment, develop reasons for its opposition and generate a plan to communicate this opposition. But, Orlett charged, Petro totally ignored both the forging of a plan to keep the initiative from qualifying for the ballot and the administration's efforts to "develop a plan with the specific purpose of defeating the proposal at the election, if it is not successful in keeping the proposal off the ballot."

Responding to Petro's decision, Orlett charged in a letter to IG Thomas Charles that the administration was not "attempting to disseminate information to the public;" it was "not attempting to educate the voters about the proposed initiative or any of its possible effects; nor [was its] complained of activities limited to 'reviewing' or to 'assessing' what impact OCNDP's initiative would have on Ohio."

Rather, Olett declared, the Taftites "were conducting an unlawful political 'campaign' to raise funds and to defeat the initiative on state time utilizing state resources...."

Noting that his decision rested partly on Petro's finding, Charles stated that, "We do not find sufficient cause to believe an act of wrongdoing or omission occurred that would fall within our jurisdiction."

The case of Washington State Lieutenant Governor Brad Owen has already been mentioned. To reiterate, in 1998, the AP reported that the state ethics board investigated Owen, contending that he "improperly used his office to fight" a 1997 medical marijuana proposal. The AP added: "The board contended Owen illegally distributed letters, press releases and other documents against [the initiative] and used public employees, equipment and federal grant money to fight the measure." One action the board reviewed was Owen simply distributing his views to state legislators – child's play compared to the Taft administration's efforts.

Supporters of the Washington state initiative charged in September, 1997, prior to its defeat at the polls that November, that Owen had improperly accessed a \$170,000 federal grant funding a Marijuana Awareness/Education Effort. The initiative backers charged, according to a September, 1997 article in *The Seattle Times*, that the grant "paid for multiple copies of an anti-marijuana handbook and audiovisual material, plus the salary of an adviser to the program." The article continued: "The grant paid for a phonebook-size handbook that includes newspaper articles, statistics, a guide to debating marijuana issues and suggested 'talking points,' plus a video and slides." The article said the \$170,000 was part of a \$3-million federal grant to combat drug trafficking.

According to a 1998 editorial in *The Seattle Times*, Owen agreed to "a \$7,000 settlement with the state Executive Ethics Board...." The editorial scolded Owen: "[H]e turned his office into a taxpayer-financed bully pulpit.... [H]is office became a mini-campaign headquarters of sorts. The ethics board contends he used public employees, equipment, federal grant money and his own working hours to illegally distribute countless letters, press releases and documents against the initiative." The editorial concluded, "For a state employee to use public money to kill a state initiative ... undermin[es] the intent of the initiative process."

And Owen got nailed for efforts that pale before the concerted campaign of a score of the most senior officials in Ohio state government – along with the drug czars of two other states, an

announced nominee for the deputy directorship of ONDCP, a senior U.S. Senate staffer, the wife of a Republican National Committee official, etc.

As to political propriety, whether the sheer, albeit somewhat arcane wrongness of the administration's anti-amendment effort ever registers with the mass of Ohio voters remains an open question. That political and moral calculus aside, the administration may have some legal wiggle room based on the fact that chronologically their efforts detailed here have occurred prior to the amendment qualifying for the ballot in Ohio. Ethically, if not legally, that thin reed is bent to the breaking point by the fact that with the proponents' ample funding and polling indicating 74% of Ohioans favor the amendment, qualifying for the ballot would seem a *fait accompli*. The administration asserts it has confined its efforts to researching the issue. Yet numerous documents demonstrate the sort of spadework that, once the measure qualifies, would enable the state-wide coalition slated to be organized and directed by the governor to hit the ground running.

Robert M. Stern, president of the Center for Governmental Studies (an organization supported in part by George Soros), said ballot measure legal issues are “not a real black and white issue.” While the state cannot spend money to urge a ‘No’ vote, Stern said, “Since the measure hasn’t qualified for the ballot yet, it’s too early to tell. I’m not sure it’s a violation – it’s too early to say it’s a misuse of public funds. Once it qualifies, though, spending money to defeat it is a misuse of funds.” He concluded: “Ballot measures are always tricky.”

### **The ‘Apolitical’ Partnership for a Drug-Free America**

The Taft administration formulated detailed plans to influence the election with the help of the supposedly non-partisan and above-the-fray Partnership for a Drug-Free America. Its declared mission: “to reduce demand for illicit drugs.” Its website declares: “The Partnership for a Drug-Free America exists to help kids and teens reject substance abuse by influencing attitudes through persuasive information.” There’s no mention of influencing elections.

William Olson, the Senate staff director and well-wired Republican drug-war insider, brought them together. Recall Hope Taft’s memo to Hicks and the governor about Olson gathering “a group of people to see how some of the national groups like ... PDFA, etc. can develop PSAs that highlight the best aspects of the *current* drug court system.” Such PSAs, of course, sway the public in favor of the status quo. [Emphasis added.]

Not an organization that leaves much to chance, [the PDFA sent its current President and CEO, Stephen J. Pasierb; Vice Chairman, Thomas A. Hedrick, Jr.; Director of Operations, Michael Y. Townsend; and Director of Public Affairs, Stephen D. Dnistrian to D.C.](#) for what Townsend termed a “counter-legalization brainstorm session.”

Numerous references to the PDFA littered throughout the documents demonstrate that the Taftites were hoping to get it to run ads in Ohio extolling the existing treatment programs. Herraiz’s department generated a four-page, single-spaced document [entitled “Potential Ohio Strategies for a Proactive Approach to Prop 36.”](#) A total of 17 strategies fell under the heading, “Public Relations/Media,” including, “Develop Public Service Announcement – before the actual

campaign begins in order to promote what is being done and the benefit of treatment – partner with the Partnership for a Drug-Free America.” In other words, have an ‘educational’ campaign supposedly preceding any political effort promoting the status quo.

According to this Office of Criminal Justice Services document, which was sent to the governor’s office for review, the Taftites also planned to, “Develop relationship with Partnership for a Drug-Free America (PDFA) for *preventative* advertising (treatment related), training programs and speeches.” [Emphasis added.] Since this advertising is proposed as “treatment related” – as opposed to keeping kids off drugs in the first place – it seems clear that what they seek to *prevent* here is passage of the initiative. In fact, the PDFA typically doesn’t do treatment related advertising, focusing instead on prevention; any new ads encouraged by Ohio officials and related to treatment would seem designed to boost acceptance of the status quo in Ohio.

Herraiz told me, “I had the intent to talk to the Partnership to identify what to do in Ohio.” He added, “The PDFA was slated to produce ads on the benefits of treatment. There’s nothing illegal regarding their 501(c)3 [tax] status.” Asked whether such ads on treatment rather than prevention would be a significant departure from the PDFA’s almost single-minded focus on prevention, Herraiz said they’re “talking of branching out to treatment and drug courts.”

That is certainly news to this observer. Kevin Zeese, president of Common Sense for Drug Policy, said, “To my knowledge the Partnership’s focus is on prevention and not on advocating treatment in their advertising.” Adds Allen St. Pierre, executive director of the National Organization for the Reform of Marijuana Laws Foundation, “In my eleven years at NORML monitoring the Partnership’s ads, none come to mind that focus on treatment.” Though the PDFA normally trumpets any new developments, amidst the many ads showcased on its website, just one posits the notion that treatment is indicated for its drug-using protagonist – despite the successful, middle-class trappings of his life. But certainly none discuss state treatment options, let alone, as Herraiz mentioned, drug courts..

Herraiz spoke of “discussions with the PDFA on how to market the message of treatment.” But he added that any such ads would not be “political.” He told me, “If the Partnership had generic PSAs [on treatment] we would encourage that they run in Ohio.” Notice that “if”: apparently Herraiz has never seen any PDFA ads on treatment either, and he’s worked in the field a long time. The Taft administration, he said, would “write a letter of support to local TV stations encouraging using such ads.” He said he has similar letters on file encouraging the ‘McGruff the Crime Dog’ ads. The McGruff ads, however, are truly donated, while Ohio was looking to raise money to buy the TV time for its ads pumping the status quo.

Marcie Seidel, Hope Taft’s chief of staff, generated her own set of minutes from the Olson-led meeting with the PDFA executives. In bold-face, she declared: “Partnership for Drug Free America is to present a couple page concept on how they can help.” It’s indeed worth bold-facing, this declaration from the first lady’s top aid, who went to Washington in part to formally record the actions and strategies decided on at the meeting. The promised “*couple page concept on how they can help*” is a clear smoking gun. It indicates the Taft administration intended – with the PDFA’s full agreement at the time – to utilize the PDFA’s advertising expertise for the unmistakable, well-documented goal of defeating a treatment vs. incarceration ballot measure.

In fact, the PDFA’s four top men traveled to Washington in July to discuss strategy and tactics, not generic politics. Only nuts-and-bolts planning would justify sending four senior executives rather than one or two. But there’s no need to rely on such inferential reasoning.

As indicated above, Seidel phrased another D.C. recommendation this way: “PDFFA can do educational PSAs starting now [July, 2001] about success stories of people who were required to get treatment. Ohio has enough treatment systems to do this type of campaign. They could start these educational PSAs before the political season begins.”

Seidel then added: “We have two media tracks: 1) the Partnership’s educational, nonpolitical piece and 2) the political ads to get out the vote.”

Yet, given their genesis and intent, calling the first set of ads non-political is absurd; indeed, so-called PSAs lend themselves to any number of political applications. In 1998, Betty Sembler’s Drug Free America Foundation promoted its TV and radio spots featuring former first lady Barbara Bush as “a generous boost” to the “campaigns opposing ‘medical’ marijuana initiatives in Alaska, Washington and Oregon....” According to a DFAF release, Barbara Bush declared in the ads, “Now is not the time to send a message to our young people that marijuana is medicine. It is not. It is a dangerous, illegal drug.”

The release from DFAF on this “marketing coup” stated that Mrs. Bush “should persuade voters to reject so-called ‘medical’ marijuana initiatives.” The point is, the DFAF stated the ads were “originally recorded as public service announcements....” Obviously, with their “generous boost,” PSAs have, says the DFAF, political applications, and Taftite confrere Betty Sembler had experience with psuedo-PSAs used for political ends.

Herraiz’s strategy bible, the *Playbook*, contains a few more PDFFA smoking guns. Under its dual headings of “Information Campaign” and “Message Marketing,” we find Task Number 2: “Develop Public Service Announcement.” The two steps to achieving that goal are: “Contact and confirm meeting with Partnership for a Drug-Free America” and “Meet to discuss creation of a PSA promoting Ohio Drug Reform message.” This last referring to the Taft counter-initiative effort, the indicated resources are the PDFFA, the governor’s office and Fleming and Herraiz’s departments.

An additional *Playbook* Task, slated for February, 2002, is “Develop PSA, with run time concentration only days before election.” The corresponding resource is listed as the PDFFA. Now, an ad buy concentrated “only days” before an election has an irreducibly political intent. The *Playbook*, the administration’s formal plan of action, underscores the PDFFA’s political involvement.

Seidel’s Washington summary stated, “Partnership for a Drug Free America will create educational PSA to run now, and we can purchase well-placed time during the end of the campaign to make assure [sic] the message continues.”

Facing the same threat prior to the proponents’ postponement in Florida, the three state governments realized they need to pool their resources. Seidel’s D. C. notes cast this call to action in bold-face: “Next steps: Ohio to Host meeting with Partnership for Drug Free America, Florida and Michigan.”

Seidel also generated a “Checklist and timetable for Ohio,” which she indicated should be shared with Gov. Taft and Brian Hicks. One proposed course of action: “Convene in Ohio a strategy meeting with Partnership for a Drug-Free America, Florida and Michigan counterparts.”



Three weeks before the October Multi-State Forum at the governor's residence, Seidel reported to Herraiz that, as part of a potential united front with Florida and Michigan, Hope Taft was both considering sharing data, resources and ideas, and pondering whether they should "develop and use same ads?" Seidel concluded: "The answers to those questions might tell who should be there and may include the Partnership for a Drug-Free America people ... and Bill Olson."

Though the PDFFA executives didn't make it to the governor's residence forum, they were strategic partners in at least the crucial early design phase of the Taft campaign. In Olson's summary of his meeting sent to Hope Taft, he referred to participants' debate over competing proposals: whether to offer "a counter-initiative that tried to take the wind out of the legalization proposal; or ... a more straightforward effort to kill the initiative." Olson wrote that "the PDFFA participants strongly favored" the ameliorative counter-initiative, but that the more strident Betty Sembler did not. This indicates the PDFFA was involved with fundamental, fork-in-the-road planning.

Herraiz noted that D.C. participants considered linking CADCA with the PDFFA for an overall strategy review. He wrote: "Form a panel to review the Ohio plan once it is developed – judges, Community Anti-Drug Coalition[s] of America (CADCA), Partnership for a Drug-Free America (PDFFA) etc."

In September, Herraiz sent his communications director, Stephanie McCarty, contact information for PDFFA boss, Steve Pasierb; there's also a handwritten note that PDFFA executives Mike Townsend or Tom Hedrick "owe Luceille [Fleming] a letter" regarding their plans. Herraiz suggested they plan McCarty's phone call in advance, and handwritten notes – probably McCarty's – aim to marshal her thoughts prior to calling the Partnership. Likely referring to Olson's meeting, they read: "@ meeting you had pledged to help. Want to come out to NY to discuss. Is PSA on treatment already avail? or one need to be made?" Like St. Pierre, Zeeze, Herraiz and myself, the writer of these notes wasn't aware of any existing PDFFA ad focusing on treatment.

The handwritten notes continue under the heading: "What you could do to help?" The specific potential steps: "What can they do in Ohio? Costs assoc? Speaking engagements, etc. Putting together PSAs. Helping us develop our playbook." This reference to the *Playbook*, the grand plan, is another indication that, more than just a source of advertising, the Partnership was thought of as a resource to help plot strategy. The final handwritten note refers to a meeting with the governor some ten days hence. A lot riding on the effort, I imagine that rather than appear empty-handed before the governor, the writer wanted to be able to update Bob Taft on the PDFFA's "pledged" help.

Grand plans all. Given the documented revelations – including mine in *Salon* on the PDFFA's purely political response, at Barry McCaffrey's behest, to the passage of medical marijuana initiatives in California and Arizona in 1996 – the PDFFA might want to give up the ghost of its supposed non-partisanship.

As disclosed in *Salon* (7/27/00) in my article, *Fighting "Cheech & Chong" Medicine* – the phrase McCaffrey's – the initial five-year, White House media campaign valued at nearly \$2-billion (the total value, given ONDCP's take-it-or-leave-it half-priced ad buy) was engendered at

a meeting McCaffrey convened in Washington nine days after medical marijuana initiatives passed in Arizona and California in 1996. Minutes of the meeting revealed that some forty officials and private sector executives met to discuss the need for taxpayer-funded messages to thwart any potential medical marijuana initiatives in the other 48 states and perhaps even roll back the two that had just passed. They included two policy advisors from the Clinton White House, the head of the DEA, representatives of the FBI, Departments of Justice, Health and Human Services, Treasury and Education, along with state law enforcement personnel. Among the private participants was CADCA's then CEO, who was quoted in the meeting's minutes as saying, "We'll work with Arizona and California to undo it and stop the spread of legalization to [the] other 48 states."

PDFFA executive vice-president Michael Townsend attended both McCaffrey's 1996 strategy session and Olson's meeting in Washington last July. He was quoted as telling McCaffrey's meeting, " 'National Partnership [PDFFA] concerned about what they can do about spending \$ to influence legislation.' " In the notes' clipped parlance, Townsend was also quoted as saying that "the effort required '\$175 million. Try to get fedl \$.' " Not coincidentally, \$175 million was the budget the media campaign's backers, among them, PDFFA chairman James E. Burke, first proposed to Congress. (Congress later boosted the figure.)

As I wrote in *Salon*: "PDFFA president [in 1996] Richard Bonnette laid out the challenge to the group. 'We lost Round I – no coordinated communication strategy. Didn't have media,' the notes quote Bonnette telling his colleagues. One participant not clearly identified in the notes asked the gathering, 'Who will pay for national sound bites? Campaign will require serious media and serious \$.' "

Eleven months after this meeting – lightening quickness by Congress's standards – in October, 1997, the nearly \$2-billion campaign was born.

The PDFFA enjoyed total revenue of \$19.5 million in 1999, of which government grants totaled \$228,608, according to Philanthropic Research Inc. By contrast, its 1997 total revenue was just \$2,526,886, including government grants of \$316,280. As more and more drug reform voter initiatives surfaced – seven appeared on ballots around the country in 2000 – funders started throwing money at the PDFFA.

Incidentally, Herraiz told me that his staffer, Stephanie McCarty, never made it to New York to discuss the PDFFA's promised aid. Self-deprecation his chosen key, Herraiz attributed the lack of follow-up solely to his own failure as a manager. As he put it, "I failed. I didn't follow up and see she went to New York."

After all the talk of prospective TV spots on Ohio's treatment options, plus the documents' proof of the PDFFA's conceptual role, perhaps the New York ad men learned of Ohio's rather effective sunshine law and therefore disinvited McCarty. If so, they're sure not saying. With all the evidence scattered in black and white throughout the Taft administration's plans that the PDFFA was willing to meddle in Ohio's election, it declined speaking to a reporter who has studied the documents. Rather, in a transparent ploy, the PDFFA declared it would speak only to my editor, who – having blissfully *not* spent months delving into this miasma – would be less likely to identify any ... inoperative statements.

## Fund-Raising

Like any political operation, the Taft anti-amendment campaign will be fueled by money, particularly for the planned late-stage advertising. According to an April, 2002 article in *The Columbus Dispatch*, “Taft said he will help raise money for a campaign to fight the issue. That campaign is expected to raise about \$1 million.” Writing to Hicks and her husband, Hope Taft cited Olson’s belief that the status quo loses these elections “in the last 2 weeks when the big 3 [Soros, Sperling, Lewis] flood the airwaves.” Fearing this flood, the Taftites started planning early how to raise money themselves.

There’s always hope that a white knight might come riding in to match the \$1.2 million that, according to the AP, Sperling, Lewis and Soros *each* contributed to the successful Prop. 36 campaign in California. And so, perhaps quixotically, there was mention at the Multi-State Forum of such potential “Individual Sponsors” as Ross Perot, Bill Gates or Steve Forbes.

Whether a white knight materializes or not, TV remains the fulcrum. Calvina Fay, the executive director of the Mel and Betty Sembler-backed Drug Free America Foundation, sent to Marcie Seidel the results of two Florida focus groups. (Seidel promptly shared the results with the governor’s staffers, Jennifer Carlson and Ann Husted.) The groups were conducted by Orlando-based Consensus Communications, which, incidentally, is owned by George W. Bush \$100,000 “Pioneer,” Charles W. Evers III. The oddly punctuationless market researchers stated, “... there are very good arguments against this initiative they just have to be communicated to people in a way that they believe them and we have to be able to communicate it to millions of voters in 30-second sound bites, not two hours [sic] focus groups.”

Thirty-second sound bites – i.e., TV advertising – require money, lots of money. As Olson wrote to Hope Taft: “[A] fund-raising strategy must be central to the effort because it must underwrite everything else.”

Herraiz also wrote to his colleagues about the importance of fund-raising. However, he told me, “There’s no need for fund-raising for education.” Again, there’s that key obfuscatory phrase: education. He said the administration can provide information on treatment issues in brochures akin to the crime prevention brochures that go out to neighborhood watch groups. Other possible publicity angles include press releases, websites and representation at state fairs, Herraiz said. Sure – a booth next to the prize heiffers.

The most ready source of funds remains federal tax dollars; CADCA-controlled federal money and the administration’s plans to access Byrne funds have been discussed. But the federal wheel spins in any number of directions. Referring to the federal Center for Substance Abuse Treatment (part of the Dept. of Health and Human Services) – which had a FY 2001 budget of \$1.9 billion, an estimated FY 2002 budget of \$2 billion and a projected FY 2003 budget of \$2.14 billion – Seidel’s D.C. notes indicate that “CSAT has funds available to *reshape* public opinion on treatment – this could be used in the educational phase of the campaign.” [Emphasis added.] Again, the dissembling pedagogical reference.

State resources are also part of the pie. In their grand-plan *Playbook*, under the heading of developing a “Funding Strategy,” the first task listed is “Identify available state funding for education and treatment components of campaign.”

Maybe they have an ace in the hole. Mel and Betty Sembler, founders of the Drug Free America Foundation, have talked a good game about fighting past initiatives, but they've yet to contribute funds to rival "the big 3." There's always hope, though, especially since their home state of Florida was targeted. One of George Bush's numerous \$100,000 men, Mel Sembler was finance chairman of the Republican National Committee from 1997 through the 2000 election. Rewarded with the ambassadorship to Australia for raising money for Bush I, his efforts for Bush II led to the ambassadorship to Italy. And, according to the *St. Petersburg Times*, Betty Sembler was a significant fund-raiser for Jeb Bush during his last campaign; Fox News declared her co-chair of his campaign committee.

So Hope Taft wrote Hicks and her husband back in May with some well-founded optimism about a "possible source of some funding for a counter-effort. Betty Sembler – organizer of Drug Free America Foundation may have some resources available. She is the wife of Mel Sembler – the big GOP donor in Fla." And she gave three phone numbers for Sembler.

(According to Philanthropic Research, Inc., in the FY ending in September, 2000, DFAF had total revenues of \$528,872; of this, government contributions and grants totaled \$206,016. For 1998, total revenue was \$527,465; government grants, \$176,073. And DFAF's own web site reports that in December, 2000, the U. S. Small Business Administration awarded it and two collaborators a \$314,539 grant "to assist 200 small businesses ... in establishing and maintaining drug-free workplaces." DFAF was to assist these employers in identifying, documenting and intervening.)

The Semblers an uncertain resource, the Taftites needed to tap potential Ohio contributors. Along with money, they also needed to fabricate that coalition to (publicly, anyway) assume their campaign should the initiative qualify for the ballot. As any ballet company or orchestra knows, contributions are often induced by gracing the right individuals with the honorific of a trusteeship or committee membership. Thus, the *Playbook* lists "Option 2.A": "the Ohio Drug Reform Coalition" – a creature to be sprung full-grown from the forehead of the Taft administration like Athena from the brow of Zeus. Should it see the light of day, it would be a front, a political construct rather than an organic coalition. Identifying the members of this coalition, contacting them and confirming their participation was the responsibility, says the *Playbook*, of the governor's office and the anti-amendment Executive Committee. The latter was to be comprised (a double scoop of Taft here) of the governor's office and Fleming and Herraiz's departments.

With step 2.A, the Taftites establish their coalition. Its true purpose is indicated by the *Playbook's* next Goal & Task, 2.B: "Funding Ohio's Drug Reform Campaign." And the coalition, this Taft creation, is listed as the sole resource to that end. Get some prominent citizens – a judge, a minister, a prosecutor – to bolster the rich folks so they don't feel too lonely, give them their marching orders, and stand back and let them unfurl their checkbooks.

A document from Herraiz's office noted that the coalition "would exist separate from state government." Though conceived by the governor's office and two of his executive branch departments – who will then choose its members and give them their briefs – this coalition, should it come to pass, will be characterized as somehow existing 'separately.' Sure, a toddler exists separately from her parents, she just does whatever they say. Actually, the coalition members chosen to be of like mind on the issue, they should require minimal direction.

The list of *possible* coalition members is divided among the distinguished, the politically powerful and the well-heeled. Chief Justice Thomas Moyer of the Supreme Court of Ohio, a prominent Baptist minister from Cleveland, a county prosecutor and Judge John Durkin, head of Ohio Drug Court Professionals, would provide the necessary drug warrior credentials. Former governor, Dick Celeste, former president of the Ohio Senate, Stanley Aronoff, and GOP powerhouse lobbyist, Neil Clark, were the designated potential political heft. For sheer star-power, Ohio State football coach Jim Tressel made the list. Then, rounding out the possibilities are the folks who might reach into their pockets: Joy Timken of the Timken Foundation; John E. Pepper, former Procter & Gamble CEO and, not incidentally, a sometime member (according to his bio on the site of a private organization called the Yale Entrepreneurial Society) of the board of directors of the Partnership for a Drug-Free America; Dimon R. McPherson, former CEO of Nationwide Insurance Companies; and Cheryl Kreuger of Cheryl's Cookies and Tami Longaberger of Longaberger Baskets.

Herraiz told me the state's entire effort had gotten bogged down, and he didn't know if such a coalition would actually be formed. But he added that the administration "will get a good grasp" on communicating to the people who need to know what's happening. Potential funders of those crucial 30-second TV spots will undoubtedly be grasped as well.

## **Date Rape, Focus Groups and Surveys**

Word for word, the Taftites copied a Florida Resolution against that state's since-postponed initiative to create their 'own' opposing resolution; in the draft copy, Florida is crossed out and Ohio written in, along with a couple of other tiny changes. Asking for approval from the "30<sup>th</sup> Floor" (the Office of the Governor, the Office of the First Lady, or both), Herraiz staffer Stephanie McCarty sent it along to Jennifer Carlson and Ann Husted, the governor's two key anti-amendment aids.

One facet of both states' planned resolutions is how prominently – and dishonestly – they feature the awful crime of date rape as somehow germane to the electoral debate. Following Florida and, previously, California's lead, Ohio's proposed emphasis on date rape is a bit of political legerdemain also suggested by the focus group results that Betty Sembler's staffer, Calvina Fay, sent on up to Ohio.

The virtually identical Florida and Ohio proposed resolutions have a preamble that denounces drugs, followed by mention of the respective ballot measures. Then, in Ohio's case, comes the *first* brass-tacks clause: "WHEREAS, this proposed constitutional amendment will also seriously weaken the law against the possession of 'date rape' drugs...."

The marvelously trenchant memo generated by the "Prop 36 Meeting" of 11/7/01 indicates that the week's "Message," according to Ann [Husted], is that, "Drug courts are the wrong message that we should be using, based on Calvina's insight from the recent Florida Prop 36 focus groups." In fact, the memo adds, the Florida focus groups indicate, "Drug Court angle isn't strong and won't work." But drug courts the Taft plan for squelching the amendment, de-emphasizing them would throw quite a wrench in the works.

Consider, additionally, the memo describing the VIP coalition that was supposed to carry the campaign into 2002. It lists five courses of action; as mentioned, the last is "Raising money."

The other four rest squarely on touting the success of Ohio's drug courts. And then the Florida focus groups indicated the public will shrug.

But a nicely inflammatory issue, if they can possibly shoe-horn it however improbably into the debate, presented itself. According to the 11/7 Prop. 36 Meeting memo, Calvina Fay had previously told Ohio officials that the "Date Rape issue scored high, and should be the primary focus of 'message.'" The *primary* focus. In a likely reference to Brian Hicks, Ann Husted added, that " 'Brian' " has always said there were " 'two strong angles' " on the amendment, and that one of them is date rape.

The only problem with attacking the amendment with the canard of its supposed connection to date rape is that any crime but simple drug possession, certainly any sexual assault, renders offenders ineligible.

A document from Taft's office indicates the careful wording of their proposed date-rape "Survey Statements." The administration proposed to test the following disingenuous statement: "The initiative would allow people who are convicted of possessing the 'date rape drug' to receive drug treatment instead of jail or prison time, even though they don't even use drugs themselves."

Of course, if beyond possessing such a drug, you actually inflict it on someone so as to assault them, you're ineligible. But notice the artful phrase: "don't even use drugs themselves." Hence, confused voter, if you possess them – but don't use them yourself – why obviously their only possible use is on some innocent victim, someone a bit like your daughter or niece probably.

Forget the question's mangled veracity. Assume the Taftites manage to generate some press with this survey. That accomplished, all many voters will remember pulling the ballot some weeks later is that the stark phrase, date rape, is somehow connected with this initiative. 'What – they're for excusing date rape?' The details fuzzy, your spouse finished voting and growing antsy, just vote 'No' and be done with it. Far safer that way. Not for nothing is obfuscation the syntax of American politics.

This potential line of attack shows the Taftites willing to tar their brush with methods that failed in California, where Prop. 36 opponents lost by some 20 points. In August, 2000, a California judge ordered Prop. 36 opponents to remove from campaign materials the "false and misleading" language stating that "date rape" defendants might avoid jail if the measure passed. The judge in California noted that since Prop. 36 covered only "personal use" defendants, drug use "intended for victims" disqualifies anyone else.

More proposed Ohio survey misdirection: In the California survey that the Taft document uses as a template, reference was made to the program's annual cost. But the proposed Ohio survey statement conjures up vast new expenditures: "The initiative spends \$250 million extra in state money...." This is an apparent reference to the program's proposed *seven-year* cost of \$266 million. And there's no mention of the offsetting lower incarceration costs that are part of the program's design.

They also propose charging that the initiative will lead to "fly-by-night" treatment providers utilizing internet chat rooms and cassette tapes. The Taftites shoot themselves in the foot with the

fly-by-night allegation, though, since the program's treatment standards will be implemented by Fleming's department. But that's another detail easily fudged.

Betty Sembler's market researcher down in Florida, Consensus Communications, indicated it will be *more* difficult "to convince voters that the amendment is an evil plot by evil people (which we know to be true)" than to discuss what it termed "dangerous loopholes" and "major loopholes." These loopholes – opponents' easiest route to success according to the market researchers – "make this amendment unsupportable even though [focus group participants] found the overriding intent of the matter as meritorious." Meritorious, as in, voters tend to favor the amendment, so here's how you trick them into voting no.

Consensus Communications identified two "major loopholes" opponents in Florida (and elsewhere) should stress: the lack of mandatory drug testing and that " 'liscensed counselors' " in the program "could be almost anyone, including marriage counselors and school counselors." In the market researchers' opinion, the point about counselors, "combined with the lack of drug testing seemed to create the uncertainty necessary to switch supporters into opponents."

Marcie Seidel forwarded Consensus's "interesting information" along to Carlson and Husted at the governor's office in mid-November, under the e-mail heading: an "upcoming meeting." A month prior, Fleming had written to Brian Hicks and Greg Moody, the Governor's Executive Assistant for Health and Human Services, referring to the "survey statements" she indicated Hicks had previously discussed.

In fact, focus groups and surveys were high on the agenda, even as far back as the Washington meeting, when Seidel's notes indicated, "Must test message with general public – before rolling out." One of the Outcomes they'd agreed on at October's Multi-State Forum was, "Polling definitely helps the cause. Share questions from other states to include in Multi-State polling effort."

In other words, since the Semblers are paying for polling in Florida, let them share the results with Ohio and include some Ohio-generated questions as well. Thus, at that November 7<sup>th</sup> weekly meeting in Columbus, amidst discussion of date rape and "Calvina [Fay]'s insights," participants took comfort from the fact that "Consensus Communications is willing to use a few questions from Ohio."

## **Join 'Em, Don't Beat 'Em**

Remarkably enough, with all the sturm und drang to defeat the amendment, the Taft administration is quite willing to change its spots and attempt to co-opt the proponents' arguments. They discussed whether they should introduce legislation, sponsor their own competing initiative – or perhaps both. (At one point, they worry about their potential initiative as well as OCNDP's *both* winning voter approval.)

One of OCNDP's seemingly sincere goals is to help the many hapless drug users going to jail for simple possession. So, given the Taftites' plan to copy their amendment, the initiative proponents may win even if they lose. It almost resembles a school-yard squabble: 'No! We're playing with *my* football or I'm going home!'

Numerous references litter the cache of documents on beating OCNDP at its own game. Judging from the initials at the bottom, a memo last June was authored by Luceille Fleming and Michael J. Stringer, her program planning chief. They advocate: “Gain participation of legislators, drug court judges and others in the justice system in developing these plans [for drug courts and community supervision] which, if announced early next year [2002], might pre-empt the initiative.”

Hope Taft took the long view in one of her May memos: “Key elements that should be in a plan should be decided upon, and maybe a bill with those elements can be passed in the Ohio legislature and deflate the Prop. 36/legalization movement.”

This echoes the “Suggestions for an Ohio Strategy,” sent to Mrs. Taft by retired judge, Jeff Tauber, who also attended the Washington strategy session. Judge Tauber’s third strategic point: “We need to co-opt the initiative proponents.” He stressed the importance of retaining the support of treatment providers and being “seen as agents of reform.” He notes Prop. 36’s twenty-point victory in California, though “opponents tried to play hardball. . . .” Therefore, he continued, “That means moving ahead with a reform agenda that includes no prison or felonies for those charged with simple drug possession of controlled substances for personal use.” And, he concluded, that will require millions of dollars to beef up drug courts, since they “reach only 5% or so of those charged with simple drug possession.”

And though the *Playbook*, refers to “the *threat* and ramifications” [emphasis added] of the initiative, on the same page, Option Two is for the Taft administration to offer their own amendment, and Option Three is to offer their own legislation. The cynical, realpolitik “purpose” of any such legislation is defined as, “Draft Legislation to Eliminate Need for [O]CNDP Initiative.”

A main co-opting strategy, one already present in Ohio, though in skeletal form, is the drug court system. As the “Outcomes” memo from the October forum put it, “Expand Drug Courts as the alternative to the Amendment.” The Outcomes continue: “Strongest argument: the Amendment damages the Drug Court system.” A task in the *Playbook*: “Develop and distribute publication on the effectiveness of Drug Courts.” Herraiz’s office produced a potential opinion piece – presumably written on state time – entitled, “The Benefit of Drug Courts Is Seen Across the State.” It was left undecided whether the eventual ‘author’ would be the governor or some member of that big-shot, statewide coalition.

The administration planned to tout drug courts despite their limited use. Of the 19,000 inmates sent to Ohio state prisons in 2000, drug abuse was the most serious offense for a sad 4,000 or 21%. Of that number, 77% were African-American. What’s more, said OCNDP’s Edward Orlett (echoing Tauber), the approximately 48 drug courts (only half of which, he said, treat adults) “reach only 5% of those charged with simple drug possession.” Should the initiative succeed in spurring the state to action on drug courts, new funds will be needed. As the Fleming and Stringer memo quoted just above gloomily acknowledged: “Downside: . . . [an] increasing demand for court-related treatment at a time when we have no new funds for treatment or drug courts.”

So, the state can either trumpet drug courts – but snow the voters by continuing their limited funding and skimpy jurisdiction. Or the governor and legislature can actually boost drug court capacity. Or the amendment can win, sending offenders *caught* for the first or second time to



treatment. (Proponents' reference to first- or second-time drug *users* is obviously nonsense except for all but the criminally unlucky.)

A projected champion of drug court expansion is Judge John Durkin, president of the Ohio Association of Drug Court Professionals. Fleming wrote in September to all the key players regarding the drug court association's "decision to support the Governor and oppose the proposed constitutional amendment...." Fleming, who knows Durkin well, declared him a good addition to the planned big-shot coalition, and her office wrote that his association hoped the administration would push its own amendment, therefore recognizing both "budgetary constraints" and sentencing guidelines.

DEA Administrator Asa Hutchinson also lent his political weight to the fray. According to a DEA press release, Hutchinson met with Judge Durkin and 16 Youngstown, Ohio drug court graduates on October 12<sup>th</sup> to thank them "for doing well and to thank you for the example you've set." Hutchinson also warned his audience of "a growing challenge to drug courts" – the Ohio ballot initiative. It lacks accountability, Hutchinson asserted, and was thus "a program that is doomed to failure." The photo accompanying this release is of a beaming Hutchinson and Durkin.

Since then, Hutchinson has published a piece in the 5/14/02 *The Columbus Dispatch* arguing against the initiative. He touts drug courts' "compassion with accountability," but doesn't mention their limited resources in Ohio. Remarkably enough, according to the DEA head, drug court clients "finish their education, get job training and reconcile with their families." Quite powerful instruments – addicts *finishing* their education in a single year – Hutchinson would have the public believe. Describing one judge and his team, he wrote they became "counselors, friends, mentors, disciplinarians and surrogate parents" who practiced "tough love." I'd be glad of half of that from my own nearest and dearest, and yet the public still criticizes civil servants.

Opponents tend to refer to the initiative – which sends people to jail if they fail dramatically in treatment – as 'legalization.' DEA agent Rich Isaacson referred to the measure as legalization some half-dozen times in our brief interview and insisted that the initiative was "illegal drug decriminalization or legalization – I'm saying that's the possibility that may be proposed." Herraiz told *The Dayton Daily News* this January that the amendment would allow " 'de facto legalization of drugs.' " He and the ONDCP's Tom Riley used the term with me, and the documents indicate Hope Taft, Fleming and the PDFA's Michael Townsend also referred to legalization.

Sure, rhetoric is crucial, but the right group-think apparently only goes so far with the voters. Consensus Communications reported that Florida voters "were not fazed by the argument that this was really legalization. The argument simply was not credible...."

Thirty years of domestic Drug War taking their toll on combatants and victims of all stripes, the documents echo with unexpected admissions of wavering true belief. In a memo from Fleming to the governor way back last March, she trashes the incipient initiative's likely proponents, but adds, they "have already begun to point to the low-level felony drug offenders going into Ohio's prisons in too large a number."

Herraiz's notes on the Washington session coughed up several unexpected admissions from the national experts Olson assembled. For instance: "Recognize that incarceration without treatment makes no sense – they will exploit this and take the high ground if we do not." Here's another, which echoes Tauber's point above on an "agenda [with] no prison or felonies." Wrote Herraiz: "Takes us to places that we normally would not go, such as changing drug laws – felony to misdemeanor." Or try this: "Need a comprehensive approach – treatment and prevention – some mandated minimums are too harsh."

Allow the documents to yield one last surprising admission. A memo from Fleming's department admits that, "... there are more people in prison for drug offenses alone than there needs to be (approx. 3,000)." Which begs the question of the actual number there *needs* to be, but ....

What's not surprising is that such a struggle has emerged given that control of vast sums of money and vast numbers of jobs is at stake. In fact, Ohio spent \$106 million on "community-based treatment" in FY 2000. The memo just quoted states the legislature will lose both "its ability to control sentencing policy" and "control of its own budget." Fleming wrote Herraiz and a gubernatorial aid in September under the heading, "Fighting the Ballot Initiative." She asserted that "...the whole effort is an end-run around the responsibilities of both the legislature and the administration to set and administer budget and sentencing policy." (She wrote in her capacity as ODADAS director on departmental letterhead; despite these official trappings, this memo was dismissed by the governor's spokesman, Joe Andrews, as just Fleming's "opinion," according to the *Dayton Daily News*.) Finally, Fleming advised Hicks regarding one of the administration's Talking Points geared to turn voters against the amendment: "The legislature [read: state government as a whole] loses control over the alcohol/drug treatment budget process."

## **Blind Serenity**

The question inevitably arises: weren't the Taftites worried about getting caught? Or did these veteran lawyers and other political operatives just fall prey to simple, robust denial? Herraiz told me, "We had nothing to hide, we had to determine the initiative's implications." These determinations, however, proving proactive enough to generate a sophisticated political campaign, Herraiz's statement lacks credibility.

Only one expression of unease surfaced and that from an outsider, Sembler's staffer, Calvina Fay. Having battled, however ineffectually, these drug reform initiatives for years, she knows the tenor of her opposition. Forwarding to Ohio in November the preliminary focus group results that I've quoted, Fay told Marcie Seidel she can give copies to " 'others who participated in our strategy meeting recently in Ohio, but please ask that everyone treat it as confidential correspondence. We do not want this to fall into the hands of those on the 'other side' of the issue because we do not want them to know what we learned.' "

The law still counting for something, it doesn't work that way in a sunshine law state.

With 14 drug policy initiatives under their belts, this was still the national proponents' first FOI request. They served it on Herraiz after someone slipped an OCNDP attorney a Taft administration talking-points memo. Orlett said he's examined a total of some 2,000 documents. Does generating such a blizzard of paper constitute rank arrogance or mere incompetence in a

state with a decent open government law? Dave Fratello, of the national Campaign for New Drug Policies, said, “The Republicans feel unchallengable in Ohio. There’s the notion they’re invulnerable.”

Referring to the legal wrangle, Fratello added, “That our first image to Ohio voters is us on the attack has us wringing our hands internally a bit. Just fighting with the governor, we look like politicians ourselves.” Which of course they are – true believers, perhaps, but quite effective campaign consultants nonetheless.

Donald McTigue, an OCNDP attorney, expressed shock at it all. “It’s extraordinary. You don’t often see the proverbial smoking gun trying to kill the initiative.” Maybe not, but Taft and crew left a litter of spent shelling casings.

Kevin Zeese, president of Common Sense for Drug Policy, said, “Ultimately, this reflects the arrogance of a very myopic, long-held policy in this country – the drug war – and its anything-goes attitude that leads to covert meetings, ‘grassroots’ lobbying groups and the like to try to defeat voters’ intent.”

It’s the sort of arrogance that ultimately rests at the feet of the chief executive. Bob Taft naturally delegated much of the work crafting this campaign to his chief of staff, Brian Hicks, and to his cabinet members, Luceille Fleming, Domingo Herraiz and their staffs. Yet, the documents bear his fingerprints, both directly, and in the many references that Taft’s office needs to initiate or approve this or that course of action.

With copies to Hicks and his wife, in late September Taft wrote [a memo](#) to Jennifer Carlson, who got so caught up in the counter-initiative campaign that she eventually left the lieutenant governor’s staff to work as his Executive Assistant for Criminal Justice and Public Safety Issues. Under the heading, “Treatment versus Incarceration Ballot Issue,” the governor asked Carlson to organize a meeting with himself and five prosecutors and five drug court judges. Asking her to send them a summary and text of the proposed initiative, he said, “I want to determine the extent of their opposition to it before committing to organize a campaign. You may want to invite the Attorney General to that meeting together with appropriate members of our Cabinet.” This memo details Bob Taft’s central involvement in the decision whether “to organize a campaign” or not.

Also in late September, this [hand-written memo](#) from Carlson to Taft speaks for itself: “Governor – I thought you should know that the petition to allow for treatment in lieu of incarceration ... was filed with the state Attorney General’s office today. We are working with [AG] Betty’s Chief Counsel section.” This last reference is unexplained, but state Attorney General Betty Montgomery did take months rather than the usual weeks to approve the amendment’s language. Carlson continues, with a reference to the governor’s own chief counsel: “Bill Klatt is in the process of reviewing it and his attorneys are still in the process of doing their legal analysis as you requested.” So, apparently Taft has his office’s attorneys going over the initiative with a fine-toothed comb. And, Carlson concluded: “Also we have an internal staff meeting tomorrow to discuss various issues to prepare us for your requested meeting with prosecutors & drug court judges which is scheduled for Oct 11<sup>th</sup> at 2:00 p.m.” In other words, governor, here’s the latest news; otherwise we’re proceeding with our marching orders.

When Herraiz sent Fleming a projected time line and task list, his request is similar to others throughout the documents: “Please review and submit feedback to [my office] which can then be shared with the Governor and his Staff.”

In Seidel’s July “timetable,” one of her tasks for August is to “Share plan, goals and time line with Governor, Brian Hicks and other key individuals.” A few weeks later, Seidel e-mailed Herraiz and Fleming to request a “meeting to craft a draft plan” which can then be “presented to the Governor, Brian and Mrs. Taft.... They would be able to react to this draft and help move Ohio’s initiative forward.”

Hope Taft surfaces throughout this narrative as catalyst, analyst and cheerleader. Following her research forays to D.C., where she met with ONDCP’s Chris Marston and others, her two handwritten memos in May to Hicks and her husband probably mark the genesis of the Ohio counter-initiative effort. Inertia, resentment of liberal outsiders trying to force a change, money-and-jobs turf protecting and both state and national political calculation explain much of the effort. But by all accounts, a zealous Mrs. Taft has been a rock throughout.

Fratello admitted his group always elicits “virulent ideological opponents. But we think they just got a little hysterical here.” He credited Luceille Fleming and Hope Taft for what he considers an out-sized response, particularly Taft. She’s a true believer, said Fratello, “cut from the same cloth as Nancy Reagan, reacting like we’re a threat to bring down civilization.” This experienced anti-drug crusader with something of Nancy Reagan’s fervor about her, Hope on the prowl, Ohio won’t falter.

As to sheer politics, with the governor up for re-election in November, a memo on the heels of an August meeting Herraiz’s department had with Brian Hicks is instructive. Perhaps the second most powerful person in the administration (or third, behind Hope?), Hicks is quoted as saying: “We need a good fight – we need a really good fight right now – Hicks.” Did simple political animus in a campaign year, the need to juice the troops, play a formative role? Edward Orlett figures, “They’re looking for something to run against, so make this the bogeyman.” Or, to paraphrase the press secretary in *The West Wing*: If you’re not on offense in politics, then you’re on the defensive.

## **National Political Implications**

What’s beyond dispute is that national political ramifications underscore this battle. I’ve already quoted one of the optimistic Outcomes from the Multi-State Forum about defeating such treatment measures nationwide, not just in individual states.

Consider some of the participants with a national perspective who risk political immolation as they flit variously about the Taft flame. Mary Ann Solberg, the ONDCP deputy director, is she a moth drawn to fire? Is Senate staffer William Olson vulnerable?

But they’re just influential individuals. What about the compromised Partnership for a Drug-Free America? Will the documents’ unassailable proof of the political role it was *prepared* to play in Ohio prove combustionable?

What about ONDCP's paid media campaign, promulgated in conjunction with the PDFFA? It's second five-year appropriation is currently under consideration in Congress. As the Drug Czar foists his misbegotten equation that Drugs = Terrorism (how does that play, given Walters' stated intention for the media campaign to renew its focus on marijuana?) upon the land, will Congress take another look at a program whose private strategic partner, the PDFFA, was so willing to insert itself improperly into an election in Ohio?

Similarly, might the Community Anti-Drug Coalitions of America be brought to heel, given the exhumation in the accompanying article of its federally funded, overt political goals? As detailed in that sidebar, Solberg's coalitions in Michigan are but one small, shining example. The DOJ has already awarded 464 grants nationwide under this program, and that was before last December's huge reauthorization. Up to ninety million bucks – that is, the permitted 20% of whatever portion of the \$450 million slated primarily for CADCA members actually ends up in their hands over the next five years – buys a lot of publicly funded, “voter education” to try to swamp elections.

Readers can judge how close Jim McDonough and Craig Yaldao, the drug czars of Florida and Michigan, dance to the flame. Mrs. Sembler and her Drug-Free America Foundation, drug court consultant, Judge Tauber, and Sue Rusche's National Families in Action also circle round, though as private citizens and organizations (some up to their elbows at the public trough), they're less constrained.

As to Ohio officials almost too numerous to count, from Bob Taft on down, let legal analysts ponder resignation, termination or incarceration.

Of course there's a flip side to the national politics coin. The high-octane, California political consultants, Dave Fratello and his boss, Bill Zimmerman, and their three big-bucks backers collectively call the shots in the Florida, Michigan and Ohio campaigns. Sincere, probably, shrinking violets they're not, none of them eager to grow old(er) jumping laboriously from state to state pushing new initiatives every two years. So they consciously seek a fight with national implications.

Seidel's Washington notes summarize the thinking at that session that, “Ohio is the nation's best bet to swing the momentum back to our side, but it will be difficult.”

Difficult indeed, given the 13 of 14 wins Fratello, Zimmerman and their backers have engineered with drug-policy voter initiatives since 1996. The initiative proponents do seem possessed of momentum, or as they like to say: the people are ahead of the politicians on this issue. Some people are, some aren't – but most are certainly ahead of most members of Congress.

Pointing to Congress's rigid stance, Fratello said that directly lobbying it is beyond CNDP's reach. (Rep. Barney Frank (D-MA) told me recently he despairs of the House Republican leadership unleashing any drug reform measure this session.) Rather, CNDP seeks change by demonstrating in referenda that voters' views vary from what most politicians assume. CNDP's victories “embolden” elected officials who fear getting ahead of public opinion. Though the public, Fratello maintains, is already there.

Indeed, last May, 2001, *The Wall Street Journal* cited a then month-old Pew Research Center for People and the Press study that “found that a 52%-to-35% majority of adults believe drug use should be treated as a ‘disease,’ not a crime.”

Zimmerman told the newspaper *Columbus Alive* last June that, “ ‘There’s a perception in Washington that drug reform is a Western phenomenon.... So we have selected the three largest initiatives states east of the Mississippi. We are most interested in Florida and Ohio, because they are Republican states.’ ” As mentioned, Florida will have to wait.

As to his boss’s statement on Republican states, Fratello said they need “To demonstrate that California wasn’t a fluke.” He said that in a meeting he attended with Ohio officials, Luceille Fleming noted the three states of Ohio, Florida and Michigan and wondered about a goal of “ ‘taking down Republicans.’ ” But Fratello said it’s “almost incidental” that they’re Republican states (gubernatorially, at least). He joins with many Americans in thinking, “The Democrats, frankly, are just as terrible on the drug issue.”

William D. McColl, director of national affairs for Drug Policy Alliance (which receives funding from Soros, Lewis and Sperling), said that should the initiatives pass, “that will ratify for everyone to see that we’ve elected a government that is pursuing policies opposed to what we know some 65 percent of the American people support.” McColl added: “They’re doing everything they can to prop up an edifice with a rotten core – all they care about is the façade.”

The entire Taft campaign exposes issues of federalism, states’ rights – and hypocrisy. Lee Cokorinos, research director of the Institute for Democracy Studies, said that ballot initiatives typically involve “a lot of hypocrisy.” He believes that conservatives have pushed anti-affirmative action initiatives by charging an over-arching federal government with suffocating states’ rights. But then, pointing to Attorney General John Ashcroft’s attack on assisted suicide in Oregon (since stalled by a courageous federal judge), as well as the current medical marijuana and drug treatment disputes, Cokorinos said, “Bush and Ashcroft exhibit a deep level of hypocrisy that champions what they call federalism only when it suits them.” Cokorinos also blasted Gov. Taft as an inconsistent champion of states’ rights. He wondered, “How truly federalist is the right wing, or are they just using the label to dismantle affirmative action?”

Comparing the drug reform effort to such long-gone movements as women’s suffrage and achieving direct election of the Senate, M. Dane Waters of the Initiative and Referendum Institute said the initiatives’ opponents are so alarmed because, “when enough states have passed measures, that takes cover away from Republican representatives in Congress.” And Congress will then finally be forced to confront the drug issue.

Bill Zimmerman, according to Sue Rusche’s National Families in Action website, concurs. NFIA summarizes his speech at the NORML conference in April, 2000 as follows: “Approaching legalization incrementally, [Zimmerman] argues, works. It allows us ‘to project that we win every time on this issue,’ which is important, he says, ‘because that puts increasing pressure on the federal government.’ ”

Herraiz told me, “We believe this [initiative] will lead to the legalization of drugs.... Their bigger agenda is to weaken the strong states and push down the road to legalization of drugs.”

Hope Taft's Washington trips helped form her thinking on the challenge awaiting the Taft administration. In one of her May memos, she noted that "Chris Marston, the chief of staff at ONDCP had some very good strategy ideas too. He is very involved in VA politics so has a good feel for what is possible." (Marston was actually special assistant to the acting director when Mrs. Taft met with him last Spring. He is currently deputy chief of staff.)

I caught Marston on his cell phone after he'd ducked several calls to his office. He admitted to lunch with his "good friend," Hope Taft, "one or two times in the Spring of last year." Asked of any discussion of Prop. 36-type initiatives, he said, "We might have mentioned that they're on the ballot – there was no discussion of substance." Informed of Taft's characterization of his "very good strategy ideas" grounded in local political experience, he said, "I can't comment on Mrs. Taft's communications with the Governor. True, I am involved in Virginia politics."

Marston added that during his meetings with Taft, "I certainly offered her advice on numerous topics, both ex-officio and as a friend." Though he has subsequently discussed other matters with Hope Taft, Marston declared there's been "no communication" since then on treatment initiatives. ONDCP communications director Tom Riley declined to address questions on its staffer discussing strategies to defeat ballot initiatives with Ohio's first lady.

Marston also said that ONDCP Director John Walters has yet to take a position on ballot initiatives..

White House spokesperson Marcy Viana declined comment and (this prior to Solberg's confirmation) referred questions on her nomination and Marston's lunch(es) with Taft to ONDCP. Similarly, she referred questions on Agent Rich Isaacson's attending the mid-October strategy session at the governor's residence to the DEA.

Despite Marston's assertion regarding Walters' supposed hesitancy, ONDCP's Tom Riley said that, "Director Walters opposes all efforts to legalize drugs." No matter how I formulated the question regarding treatment versus incarceration initiatives, Riley responded only with variations of: "Mr. Walters opposes anything he believes furthers the cause of legalization." Just dismiss the initiatives as legalization efforts, as the DEA's Isaacson did, and ... case closed.

Pointing to his polling that indicates an approximately 74% favorable rating in each of the three Republican-led states, Fratello said the victories he anticipates (Florida's now in the offing) will demonstrate that his outfit can win "in the face of vigorous opposition." That rate exceeds California's approval rating at a comparable time in its campaign, he added, which indicates that, "voter attitudes on drugs are massively in flux." He cited results in the three states that 40-to-46% of respondents say family or friends have landed in trouble behind illegal drugs. And, he said, "The drug war has been much ballyhooed in recent years, and people don't see results."

Maybe just one more weapon will push it over the top. Maybe. Given John Walters' declared opposition to initiatives, proponents might question the purpose of a new, senior-level ONDCP position announced this July. Utah prosecutor Scott M. Burns has been confirmed in the new slot of deputy director for state and local affairs; his brief: to coordinate outreach to state and local governments, as well as "public interest groups" and funnel state and local officials' input to Walters. It's a new position ripe for federal fiddling, financial and otherwise, with our much-assailed Democracy.

-- End of main report --

## **Profile: CADCA Empire Builder and Current ONDCP Deputy Director, Mary Ann Solberg**

A substantial Taft ally is an ex-school teacher from Michigan whose affinity for appointed office recently culminated in her becoming deputy director of the White House Office of National Drug Control Policy. In addition to her importance as a senior White House official, Mary Ann Solberg's contributions to the anti-initiative effort so encompass the often publicly funded campaign against drug reform, that this report discusses her and the Community Anti-Drug Coalitions of America in this stand-alone section. Solberg has served the presidency before, as a 1998 Clinton appointee - along with Hope Taft - to the Advisory Commission on the Drug-Free Communities Program. Solberg was co-chair, a position she initially kept under Bush, but relinquished upon ascending to ONDCP. According to the White House, this 11-member commission advises both the DOJ and the drug czar on the “distribution of grants to community organizations.” The commission, therefore, helps direct this federal money, recently reauthorized at \$450 million over five years, up from its 1997, initial five-year funding of \$144 million. Signing the program’s reauthorization at the CADCA conference in December, Bush publicly lauded his then nominee, Solberg.

Underscoring the presidential advisory commission’s funding heft, the DOJ says its role is to “advise, consult with and make recommendations to the [ONDCP] Director concerning activities carried out under the Program.” As one of Solberg’s ten fellow commission members, Hope Taft also plays a central role in deciding where this money goes. Since ONDCP ultimately disburses these funds, Deputy Director Solberg may now have more say than anyone in the country (depending on drug czar Walters’ degree of micro-management) as to this money’s ultimate destination and purpose.

(Solberg has also served on advisory panels for a U.S. Department of Health and Human Services agency: the Center for Substance Abuse Prevention, and for the National Ad Council’s Community Anti-Drug Campaign, helping to direct local anti-drug advertising.)

Solberg’s tenure on the commission telling the drug czar and DOJ where to funnel the support program millions was bedeviled by conflicts of interest, since – along with U.S. Reps. Sandy Levin (D-MI) and Rob Portman (R-OH) and the PDFA’s Steve Pasierb – she also served on CADCA’s board. What’s more, two Detroit-area coalitions she ran prior to joining ONDCP received the standard, approximately \$100,000 each in these funds, one in FY 1999, the other, FY 2000. Mubashar A. Choudry, M.D., a Maryland cardiologist, also serves on the presidential advisory commission. He said that as a member, he would not apply for one of the \$100,000 grants for his own foundation “because of the obvious conflict of interest with myself on the commission.” But other commission members do apply and appropriately so, Dr. Choudry paradoxically maintained.

Recall that, along with Hope Taft and other Ohio officials, CADCA lobbyist Sue Thau attended the July strategy session in the Capitol building, no doubt pledging CADCA’s support to the Taft campaign. That’s no idle promise since much of the \$450 million will go to CADCA members. (As mentioned, approximately two-thirds of the original \$144 million went to its member local coalitions.) In early January, *The Detroit Free Press* quoted CADCA spokeswoman Betsy Glick’s statement that, “Under federal law, the nonprofit coalitions generally can spend up to 20 percent of their budgets ‘to educate voters.’ ”



Hearing this statement, Tim Mooney, nonprofit advocacy counsel of the Alliance for Justice, said, “I think, so long as they’re speaking of ballot measures and referring to *non*-federal funds, that is factually correct.” As opposed to the regulations on 501(c)3s endorsing candidate Jones vs. Smith, Mooney said that on ballot measures they can articulate and communicate a for-or-against position provided they do not use federal or otherwise restricted funds.

Solberg would not comment specifically to *The Detroit Free Press* on, as the paper put it, “how Michigan’s coalitions will fight” that state’s proposed treatment initiative. Paraphrasing her, the article continued: “But Solberg said she is determined to see more coalitions spawned and strengthened. And if confirmed [as she was], she is expected to help them play a key role in opposing any easing of drug laws.” There you have it, according to the *Free Press*: the now ONDCP deputy director who will help dispense up to \$450 million in public funds wants to funnel money to organizations seeking to influence state elections..

What’s more, she has used her partly federally funded platform to attempt to influence the outcome of a Michigan election, according to the *Free Press* article: “Behind the scenes, Solberg is ‘spearheading the campaign against this [Michigan treatment] initiative,’ said Diane Dovico,” of the Detroit-area Royal Oak Community Coalition.

CADCA spokesperson Betsy Glick declined to address Solberg’s statements to the *Free Press*. Asked about CADCA’s efforts to ‘oppos[e] the easing of drug laws,’ she said – rather remarkably – that at CADCA national, “We haven’t talked here about opposing easing of drug laws.” Asked whether CADCA national, which Glick said is a 501(c)3 organization, provides educational materials to its members discussing treatment versus incarceration initiatives, she said she didn’t know, and she did not respond to three requests to find out.

Previously, in May, 2000, Solberg’s two coalitions collaborated with the DEA, Michigan prosecutors, Betty Sembler’s Drug Free America Foundation and, for some reason, Northwest Airlines, to sponsor a two-day seminar in Lansing entitled, “Putting the Brakes on the Drug Legalization Movement.” It’s a movement, said the seminar organizers, that starts with medical marijuana and “ends with all drugs becoming legal for all Americans, even our children.” Michigan’s drug czar and the head of its state police both participated.

Though not all the money will go to CADCA members, the total of \$450 million will nurture numerous, invariably like-minded government-fueled coalitions. One-fifth of the grants’ value can be used to educate voters. The rest of these fungible grants can help pay staff and provide programming so funds from private sources can be used for political rather than quotidian operating needs. “Bush signing that reauthorization bill is key for what we do,” said Bryan K. Barnett, a Detroit-area city councilman who’s on the board of one of the coalitions in Solberg’s stable.

And it’s worth noting, as CADCA’s website does, that it was founded in 1992 in large part by James Burke, who was also instrumental in founding the PDFA. An influential member of Bush the elder’s Drug Advisory Council when CADCA was formed, Burke is the former chairman and CEO of Johnson & Johnson, the prime source of the Robert Wood Johnson Foundation’s vast endowment. (According to the Foundation Center, as of March, 2002, RWJ Foundation was the nation’s sixth largest, with assets of \$8.8 billion.) And, not surprisingly, the

RWJ Foundation is by far the PDFA's main funder and also CADCA's chief nongovernmental funder. One hand washes the other.

Yes, Soros, Sperling and Lewis, who typically spend a collective \$3 million per state ballot campaign, contribute real dough in pursuit of their political aims. They happen to use their own money, though, while their opponents attempt to use your's.

The public largely opposing the war on drugs in its current form, reform initiatives usually win. In fact, the national Campaign for New Drug Policies has scored 13 victories in 14 attempts. Couple that with the lack to date of any millionaires writing large checks to support the drug-war status quo, and officials fending off voters' assaults on their 'perogatives' are in such a bind, they're naturally tempted to rationalize the use of public funds.

Dave Fratello of the national CNDP links December's huge leap in federal funds available to CADCA members to the 13 drug-reform initiatives he's helped pass: "I think there's a direct relationship, because the hard-line drug warriors are freaked out by our success, and they do anything and everything to try to stop us."

Acknowledging the sincerity of legions of anti-drug volunteers in such coalitions, Fratello nonetheless asserts that many of the local groups would have died on the vine without steady injections of politically motivated public funds. He asserts that people genuinely trying to help addicts, "are tarnished by the idealogues running the political campaigns feeding at the [public] trough."

Hope Taft's July e-mail to Solberg congratulating her on her nomination for ONDCP deputy director was sent to someone with a firm grip on the federal anti-drug cash spigot. Saying that Ohio, Michigan and Florida are all "being targeted by the Prop. 36 people," Taft wrote, "We are interested in sharing info and ideas with both states and wondered who in Michigan will be in charge?" Taft, who knows Solberg from that presidential advisory commission that helps dispense the grants, assumes as a matter of course that Michigan will designate someone to be "in charge" of fighting the initiative.

This exchange occurred a couple of weeks after her nomination to the White House post, and Solberg pointed Taft to Michigan's drug czar, Craig Yaldoo. "I met with Craig last week, and he is very interested in taking up the fight and appears to be on top of the Soros' [sic] people and their movements in Michigan. I suggested he form a partnership with you to fight the prop[osition].... It would be very effective if we could pool resources to produce TV spots. I have some funding commitments and I believe we could raise even more as a team. I would love to meet with an Ohio/Michigan team before I leave Troy to begin planning. [This will be a very hard fight.](#)"

Note Solberg's immediate emphasis on TV ads and the money to air them in this tough fight. Knowing that the Florida, Ohio and Michigan initiatives' three hugely rich backers will fund their own ads prior to the election, Solberg realized that she and other opponents' need to match that TV exposure. Despite opponents' tough talk, they've failed to buy much TV time in other states in the past. The best option, as the refreshingly frank Diane Dovico told *The Free Press*: "We'd like to squelch this before people vote on it." The largest portion of \$90 million slated potentially for CADCA members' "voter education," that money provides political heft to try to besmirch these and future drug-policy initiatives before they can capture enough signatures to even qualify for the ballot.

Solberg's activities in Michigan over the last several years shed light on the state and federally funded private apparatus that defends the drug-war status quo. Solberg's base is the Troy Community Coalition for the Prevention of Drug and Alcohol Abuse, which, according to the U.S. Department of Justice, was formed with federal money in 1991. (Philanthropic Research, Inc. notes that for the FY ending in June, 1999, the Troy coalition had total revenues of \$254,000, with government grants providing \$163,000. At \$356,000, its assets nearly doubled from the year before.)

The next calendar year, in September, 2000, it received one of the DOJ \$100,000 grants, the money to be spent in part for Solberg's group to act "as a catalyst for collaboration among all segments of the community, thereby building ... awareness that will lead to an increase in the perception of the health risks involved [with drugs] and growing social disapproval within the community. Strategies will include ... programs to bolster both peer and parental ATOD disapproval levels." ATOD refers to alcohol, tobacco and other drugs. Not incidentally, the DOJ requires that grantees include "at least one" media representative, the better, no doubt, to foster the sort of general "social disapproval" that leads to defeat at the polls for treatment vs. prison initiatives.

The year before, the Coalition of Healthy Communities (CHC), an umbrella group for seven community coalitions located north of Detroit that Solberg also directed, received \$99,209 in DOJ money. Some of the CHC executive board members' phones are answered by staff at her home base, the Troy Coalition. I reached one of them, Theresa Mungoli, at home and no matter my question, her refrain remained: "You have to ask Mary Ann Solberg."

According to the DOJ website, in addition to coalition-building and other prevention efforts, CHC used some of the \$99,209 to "implement a public awareness campaign." Referring to this CHC social marketing effort, Mary Louise Embrey of the DOJ Office of Congressional and Public Affairs told me, "The way they were going about it is multi-faceted: They've hooked in with the Ad Council and the national ONDCP anti-drug media campaign – they use print materials from ONDCP. And they used the local media to make connections. They have people [appear] on the local news or they *feed them different stories.*"

My work in *Salon* proved the Clinton White House used taxpayer funds to financially reward broadcasters and magazines who inserted government-vetted (in the case of at least one broadcaster) and otherwise government-approved anti-drug content. To cite two examples, the White House dictated script changes to television writers and requested a specific writer for an article in the 550,000-circulation weekly, *The Sporting News*.

Now it appears, according to the DOJ, that public funds were also used to help local coalitions propagandize citizens through local media north of Detroit. CHC, one of hundreds of these coalitions nationwide, was "site-visited" a year ago, said the DOJ's Embrey, and was found to have met its goals in "very satisfactory" fashion.

Embrey added that, assisted by the White House's national media campaign, CHC had two radio "spots," which she assumed were public service announcements. There were also messages emblazoned on the paper wrappers dry cleaners put on their hangers, as well as, said Embrey, "print ads from the Ad Council" – the national organization that Solberg herself advised.

Not incidentally, CADCA will sponsor a four-day “training institute” this August in Seattle with an ambitious program of twelve courses deemed worthy of continuing education professional certification. One two-day seminar is entitled, “Marketing Your Coalition/Media Relations.” This course will concentrate, in part, on “How to use news media to further your coalition’s goals.” It will also offer guidance on how to “ensure community buy-in.”

The government took its lumps, including three separate Congressional hearings and widespread editorial condemnation, after my disclosures in *Salon*. But even at this late date it’s alarming to learn that a different set of public funds, DOJ rather than ONDCP money – though ONDCP ultimately directs where it goes – was used to “feed” the media stories. After all, Mary Ann Solberg’s CHC is just one of the 464 coalitions nationwide that, in a far smaller program than the current authorization, have already received public funds.

The question arises as to what an announced, high-level White House nominee (since confirmed) was doing attending a multi-state forum which had the naked political intent of defeating state ballot initiatives. Actually, more than merely attend, the agenda indicates Solberg gave a presentation on Michigan’s situation. Was this proper for an official who, whether still a member of the presidential advisory commission or not, was awaiting Senate confirmation to a senior White House drug policy post?

Based on the comments of Sen. Patrick Leahy, Chairman of the Senate Judiciary Committee, during drug czar John Walters’ confirmation hearing in October, Solberg might have deserved some Senate scrutiny. Referring to medical marijuana initiatives, Leahy voiced his concern about “Mr. Walters’ reaction to popular and legislative judgments by various States....” Noting that Walters advocated the federal government strip prescription-writing privileges from doctors who ‘prescribe’ marijuana, Leahy said, “In addition to running roughshod over any federalism concerns whatsoever, Mr. Walters’ draconian response raises questions about his sense of proportion.”

Reached prior to her confirmation, ONDCP communications director Tom Riley declined comment on the status of her nomination.

Walters was a private citizen who had only verbally trampled states’ rights, not a publicly announced White House nominee who had then helped organize and lead a high-level political strategy session attended by officials running drug policy in three states. In addition to Solberg’s presentation, three weeks before the meeting, Ohio Office of Criminal Justice legislative liaison Brent Walls [e-mailed](#) her asking for guidance on “appropriate attendees.” In a brief phone call, Walls told me experts from Michigan attended to provide a “better understanding of how they handle the initiatives.” Since little of substance had occurred on any treatment initiative in Michigan as of the forum’s mid-October date, it seems more likely they were planning ahead rather than discussing any current anti-initiative efforts.

Hope Taft her years-long colleague in funneling DOJ money to groups nationwide, Solberg replied quickly to Taft’s e-mailed congratulations on her ONDCP nomination. She indicated their need to focus on television advertising, that she had some funding options available, and that “we could raise even more as a team.” Shedding the usual low profile of a nominee awaiting Senate confirmation, Solberg wrote, “I would love to meet with an Ohio/Michigan team before I leave Troy to begin planning [for] a very hard fight.”

Herraiz's comment on Solberg's attendance strains belief: She was there merely as a "citizen" expressing community concern. Herraiz maintained that her role was just to explain what local people were doing – to give the "citizen's perspective, that's all." That's some awesome citizen: someone who helps choose the day's confreres, a White House nominee who had also served for years as a presidential advisor.

Herraiz referred to the governor's residence meeting as "fact-finding and research," despite the numerous and manifest strategic "Outcomes." Let me add two to those mentioned above: "Generate excitement for [our] campaign and show the strength of states working together." Also, "Develop good sound bites to show what [their] Initiative says vs. what it means."

Speaking for the initiative's backers and referring to an announced ONDCP nominee, Dave Fratello said, "It disturbs me because if the White House is involved in directing their campaign efforts, it means they've escalated the battle exponentially." But his outrage is tempered by the fact that the Taft administration is just broadening a path cleared already by, said Fratello, "Barry McCaffrey, by the anti-drug coalitions, and by the Partnership, whose ads are blatantly political. We saw this trend five years ago." (McCaffrey, of course, was drug czar during the second Clinton administration.)

Given her high-level appointments, Solberg carries a bigger stick than most community coalition leaders. Yet the DOJ grants that her groups received were just two of the 464 grants that've been awarded nationwide, grants that preceded the program's hundreds of millions of dollars increase.

And, said the *Detroit Free Press*, Solberg wants more and more of these coalitions. The *Free Press* indicated that this profound anti-democrat, now confirmed in her senior White House post, will employ these federally funded coalitions in "a key role" to fight drug reform ballot measures. Recall the boast of her colleague, Diane Dovico: "Behind the scenes, Solberg is 'spearheading the campaign against this [Michigan] initiative.' "

Like virtually everyone working to oppose the treatment initiatives, Solberg did not return numerous calls for comment, in her case, at least half-a-dozen.