

## Dustin Costa Re-arrested

## Feds Take Over Prosecution Of Merced Organizer

The ominous thing about the federal case against Dustin Costa is the implicit warning it sends to those engaged in political activity.

Costa, leader of the Merced Patients Group, was arrested at his residence on Wednesday, Aug. 10. He is being held at a federal detention facility in Fresno as we go to press. Federal prosecutors have taken control (from the Merced County district attorney) of the case against him.

The case stems from a February 2004 raid on his farm in Winton that turned up some 900 plants, 8.8 lbs of dried marijuana (leaves and shake), and a shotgun. In a federal trial the jury will not be allowed to weigh Costa's claim that the cannabis was all destined for medical users and dispensaries.

Costa, 58, is a Vietnam-era Marine Corps vet who has experience as a union organizer. Instead of retreating after getting busted, he devoted himself to building the Merced Patients Group. It's a co-operative for which attorney Bill McPike wrote the by-laws in conformance with state law (created by Prop 215 and SB-420) and precedent cases. McPike advised that the patients group could assign (hire) members to grow marijuana for those who were unable to do so for themselves.

"DC was very confident that they were establishing a legal model that would be applicable throughout the state," says Tom O'Connell, MD, who has seen patients in Merced. "His group was really picking up momentum."

**"Safer than aspirin..."**

Willingness to do political work is one of the explicit conditions for membership in Costa's group. In July he led

eight MPG members to the office of Congressman Dennis Cardoza to protest Cardoza's "no" vote on an amendment that would have stopped the DEA from raiding growers and distributors in states with medical-marijuana laws. Cardoza was the only California Democrat to oppose the measure. Costa and crew arrived at his office dressed in black t-shirts emblazoned front and back with a bright marijuana leaf and blunt slogans: "Safer than aspirin" on one side, "More effective than Ritalin" on the other.

MPG members also had gone in their distinctive attire to public hearings in Modesto and Stockton (where their input helped block extension of the local moratorium on cannabis dispensaries). They twice attended San Joaquin County Superior Court proceedings in support of Aaron Paradiso, a quadriplegic facing cultivation charges. They launched a graffiti removal project that was written up favorably in the *Merced Sun-Star*.

The group was there en masse when Costa appeared in Superior Court in Merced and got a continuance of his trial till October — over objections from the D.A. Ebullient after this small victory, Costa's friends distributed t-shirts to courthouse employees.

*The looming question is: at whose initiative did the feds take over the prosecution?*

The looming question is: at whose initiative did the feds take over the prosecution? Most of the explanations are ominous (and not mutually exclu-

sive). Congressman Cardoza could have expressed his displeasure with Costa. A sheriff who had it in for Costa might have asked a federal colleague, as a personal favor, to take him down. The Merced County D.A. could have asked them, knowing that Costa was going to mount a vigorous medical marijuana defense in Superior Court and the Central Valley media. Or, the feds on their own could have moved against Costa after identifying him as a leader in a political movement they are determined to stamp out.

DEA Administrator Karen Tandy issued a revealing statement July 29 on the arrest of Canadian seed salesman Marc Emery: "Today's arrest of Mark (sic) Scott Emery, publisher of Cannabis Culture magazine and the founder of a marijuana legalization group, is a significant blow not only to the marijuana trafficking trade in the U.S. and Canada, but also to the marijuana legalization movement. Hundreds of thousands of dollars of Emery's illicit profits are known to have been channeled to marijuana legalization groups active in the United States and Canada. Drug legalization lobbyists now have one less pot of money to rely on."

If the DEA is applying political criteria in deciding who to take down in California, Costa would have been a prime candidate. He was the leading activist in the Southern Division of the Eastern District. "He was our ace and he was trumped," says Tom O'Connell.

Undoubtedly the DEA and federal prosecutors will claim that they had no ulterior motives and that Costa is being prosecuted based on the number of plants he had under cultivation.

Can Costa's rearrest be considered a direct result of the Supreme Court's ruling in the *Raich* case? U.S. Attorney McGregor Scott was paraphrased thus in the Merced media: "marijuana remains an illegal drug under federal law, as affirmed by the U.S. Supreme Court last June."

Assistant U.S. Attorney Karen Escobar will prosecute Costa, who was indicted by a federal grand jury on three counts — manufacturing, possession of 8.8 pounds, and intent to sell — originating from his February '04 arrest. He faces a mandatory-minimum five years and a fine of up to \$2,000 for each drug charge. The gun charge adds a manda-



**DUSTIN COSTA** led members of the Merced Patients Group from Rep. Dennis Cardoza's office in mid-July after setting up an appointment to discuss medical marijuana. Costa had been arrested on cultivation charges in February 2004 and was facing trial in Merced County Superior Court when he was rearrested Aug. 10 and his prosecution taken over by the U.S. Attorney's Office.

tory consecutive five-year term.

"Costa has been flouting the law for months now under the guise of Proposition 215," Merced County Sheriff Mark Pazin told the *Star-Sun*. "What Costa has done is take the original intent of medical marijuana and has used it for his own agenda."

O'Connell was concerned by word that Costa, a diabetic with a problematic ticker, had gone on a hunger strike. He reached him by phone at the Fresno jail to advise against it. Attorney Bill McPike estimates that he and Dennis Roberts had made some 20 appearances on Costa's behalf over the past year and a half. He says at least one deputy at the jail was "upset and sympathetic" upon learning that Costa's arrest was actually a rearrest in an ongoing state case.

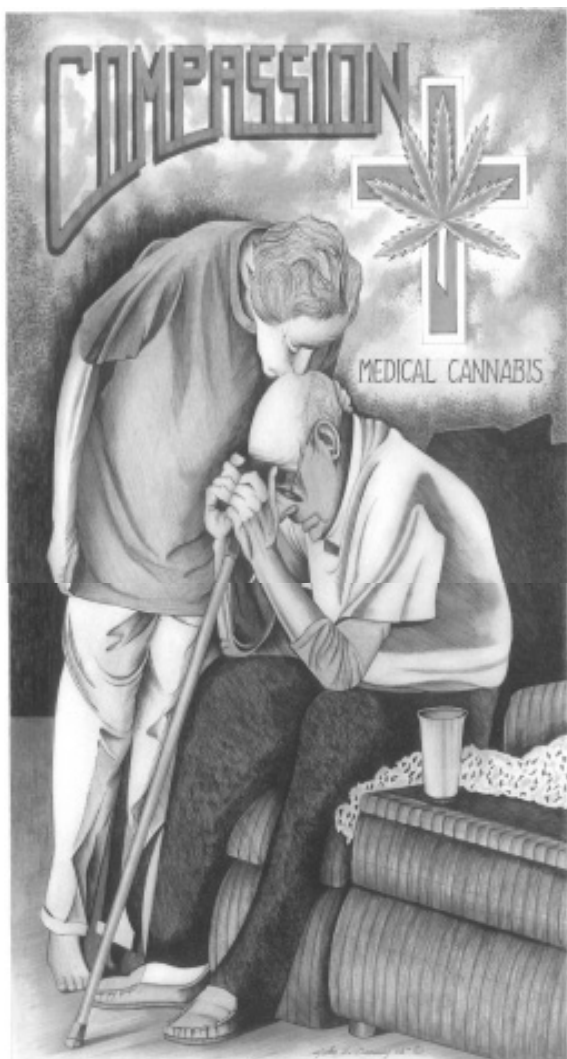
#### Double Jeopardy?

In plain English, Costa has been put in double jeopardy, which most Americans assume to be illegal. "Not according to the courts," explains attorney Joe Elford. "First, there is the fiction that the state and federal governments are separate sovereigns, so they can each attempt to prosecute once without any double jeopardy problems. Double jeopardy only prevents successive prosecutions by the same same sovereign. (This is how the Rodney King police were convicted in federal court after being acquitted in state court.) Second, the prohibition on double jeopardy attaches only after the jury is sworn. Because Dustin made bail, there was no jury trial, so there could be no double jeopardy."

But Dustin Costa sits in a cell in Fresno — in the real world, doing real time — having been arrested twice for the same "crimes."

Costa communicated to a third party that conversations with fellow prisoners confirm Dr. O'Connell's findings about marijuana use patterns. Costa says he has interviewed 30 people who had tried marijuana in their teens or earlier, "all of them to relieve stress or anxiety. 90% say it helps them focus, 90% say it helps with anger management, most of them use it as a sleep aid, 3 of them have been diagnosed bipolar, 2 diagnosed ADHD, and 1 diagnosed PTSD."

*Down in the valley, the valley so low  
Hang your head over, hear the wind blow...*



**"Compassion,"** a compelling new work created by renowned artist John E. Denney, is being offered as a limited edition, full-color print. Each print will be numbered and signed by the artist and matted to 16x20 for easy framing. Ideal for display at a pro-cannabis doctor's office or dispensary. To order, contact the artist at [johndenneyart@yahoo.com](mailto:johndenneyart@yahoo.com). Cost is \$75 plus shipping and handling; partial proceeds to benefit NORML.