At secret meetings in Sacramento and Washington, plans were formulated to deny Californians access to medicinal cannabis. Here is the evidence prosecutors would not allow into the record at the Mikuriya hearing.

By Patrick McCartney

It was no secret, in the summer and fall of 1996, that California law enforcement officers were leading the opposition to the medical marijuana initiative, Proposition 215. Orange County Sheriff Brad Gates headed Citizens for a Drug Free California, the official No-on-215 campaign committee. 57 of the 58 district attorneys urged a “No” vote; and Attorney General Dan Lungren wrote the “No” argument in the Voters Guide, warning that the new law would “exempt patients and defined caregivers” from law enforcement.

After the medical marijuana initiative passed (by a 56-to-44 margin, creating Health and Safety Code Section 11362.5), the opponents had a fundamental choice: try to block full implementation, or accept the will of the voters.

Many in law enforcement chose the obstructionist approach. Numerous documents obtained by this reporter from state and local agencies, and litigants in Conant v. McCaffrey case, reveal California officials committing acts of covert opposition to the new state law — including appeals for federal legal intervention to undermine it.

In a recent interview, former California Attorney General Dan Lungren defended the law’s legal actions of California law enforcement, insisting that his office exercised its best judgment in devising a “narrow interpretation” of the landmark measure. Although Lungren admitted that it was his Constitutional duty to uphold state law against a federal challenge, he would not acknowledge that any dealings between his staff and federal authorities had a contrary purpose.

He now says that his goal was to reconcile the state and federal laws. “You don’t go looking for conflict with federal law.” Lungren said. “You try and resolve conflict, you try and see where the laws can work in conjunction with one another.”

The AG’s “Narrow Interpretation”

On Oct. 24, 1996 — the day can- nabis became legal for medical use in California— Lungren faxed a memo to every district attorney, sheriff and police chief in the state, summoning them to an unprecedented mess.” He told the Sacramento Bee at a meeting coming up on Nov. 14. He also said he was glad the No-on-215 campaign was over, implying that it had been an unpleasant assign- ment. Mikuriya notified Rep. Ronald Dellums’s office that he wanted to par- ticipate in the upcoming meeting, which would be hosted by the Drug Czar. Dell- ums asked that Mikuriya be invited, but no such courtesy was extended.

Joining the attorney general’s con- tingent were representatives from three of California’s most powerful law-enforcement associations: Santa Clara D.A. George Hallinan of the Dist. At- torneys Association; Seal Beach Police Chief Bill Stern of the Chiefs of Police Association; and Santa Barbara Sheriff Jim Thomas and Stanislaus Sheriff Les Weidman of the Sheriffs Association. Also attending was Orange County Sheriff Brad Gates, who came with a handout from Stu Mollrich, the camp-aign specialist employed by the No- on-215 campaign. The Gates/Mollrich proposal and strategies to overturn the California and Arizona voter initiatives. “Private lawsuits against these initia- tives should be filed unless the federal government takes immediate action.” said Dellums. “Determine the powers of the federal government to preempt 215 and 200.”

Have law enforcement organiza- tions in each state work with the federal government to implement the strategy.”

A new political force is needed to fight Soros and his associates. It must be national and ongoing.” Gates said a role for himself in the new national campaign. He promoted the idea of a new initiative to rescind Propo- sition 215 — a trial balloon that would deflate when polling found California voters had little appetite to revisit the issue. Gates would later seek $3 million from the Robert Wood Johnson Foundation.

Former Attorney General Dan Lungren is the Republican candidate for Congress in California’s heavily Republican 3rd District. He had been out of electoral politics since 1998, when he ran for Governor and got only 39% of the vote against Gray Davis.

In his public statements, Lungren attacked the wording of the medical marijuana initiative — as if it were obstacles to implementation were technical, and the fault of the authors. “This thing is a disaster,” he told the Los Angeles Times immediately after it passed. “We’re go- ing to have an unprecedented mess.”

Lungren said the new law would lead to “anarchy and confusion.”

Meanwhile, back in Washington...

At the Office of National Drug Control Policy in Washington, director Barry McCaffrey was hearing from outraged drug warriors and politicians. Unless he contained the fallout from the California and Arizona initiatives, the drug czar risked being grilled about who “lost” California. The easiest target to blame was lawmaker George Soros, who con- tributed heavily to both state initiatives.

Without professional signature drives funded by Soros, Prop 215 would not have qualified for the ballot in 1996, nor would a reform measure in Arizona.

“It’s not paranoia on my part,” McCaffrey told A.M. Rosenthal, an influ- ential New York Times editor alarmed by the success of the medical-pot initia- tives. “I see [the vote in California and Arizona] not as two medical initiatives dealing with the terminally ill; I see this as part of a national effort to legalize drugs, starting with marijuana, all over the United States. Soros, added McCaffrey, was “at the heart and soul of a lot of this.”

Comparing Soros to a pornographer, Rosenthal asked McCaffrey to denounce him, encouraging right-minded people to shun the billionaire financier.

On Nov. 14, 1996, nine days after California and Arizona voters approved medical-marijuana laws, delegations of law enforcement officials from the two states met with federal drug officials in the nation’s capital.

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A review of the agenda and notes from the meeting suggests that the offi- cials were not seeking, as the California measure directed them, “to implement a plan to provide for the safe and af-fordable distribution of marijuana to patients…”

Instead, police and prosecutors from the two states asked for federal help in killing the medical marijuana measures. The California delegation represented a broad cross-section of the state’s law-enforcement establishment. Four key members of Lungren’s staff were at the first and largest of the meetings. Career prosecutor Thomas F. Gede was Lungren’s special assistant and relayed his views. Senior Assistant AG John Gerdier would write the department’s principal analysis of the initiative and later issue series of “Updates” to Cali- fornia law enforcement.

Special Agent Robert S. Elsberg wore two hats representing the California Peace Officers Association and the California Chiefs of Police Association. Special Agent Thomas J. Gorman, the opposition’s Washington liaison during the Cam- paign while still on the AG’s payroll, attended on behalf of the 7,000-member California Narcotics Officers Associa- tion. Before the election, Gorman had written “Marijuana is NOT Medicine” for the CNOA and the AG’s Bureau of Narcotic Enforcement.

[Mikuriya had called Gorman the day after Prop 215 passed with ques- tions about its implementation. Gorman mentioned the meeting coming up on Nov. 14. He also said he was glad the No-on-215 campaign was over, implying that it had been an unpleasant assign- ment. Mikuriya notified Rep. Ronald Dellums’s office that he wanted to par- ticipate in the upcoming meeting, which would be hosted by the Drug Czar. Dell- ums asked that Mikuriya be invited, but no such courtesy was extended.]

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tion to fund a similar project. Welcoming the California and Arizona delegations were two dozen federal officials representing the Office of National Drug Control Policy, the Drug Enforcement Administration, the Department of Justice, Health and Human Services, Education, Transportation, Treasury and the National Academy of Sciences. Four U.S. senators, including California's Dianne Feinstein, sent aides to the meeting.

Also sitting in on the meeting were representatives of seven private anti-drug groups — the Partnership for a Drug Free America, the National Center on Addiction and Substance Abuse at Columbia University, the Anti-Drug Coalition of America (CADCA), the federal government's most heavily subsidized, "private" anti-drug organization. Joining them was Paul Jellinek, vice president of the Robert Wood Johnson Foundation, the largest private funder of drug abuse research.

McCAFFREY, the retired four-star general said he did not believe that many doctors would be willing to recommend patients to their patients. Federal law had not changed, he reminded the participants, so enforcing existing laws should be a simple task. In notes Elsberg took, he wrote that McCaffrey "wants the state to proceed and not wait for a coordinated action."

McCAFFREY said he was not going to rush into unwarranted actions, but preferred to observe the political fallout from the state measures before taking additional steps. "He inferred [sic] that by waiting approximately one year we could sort through and think through the issues," Elsberg noted.

Perhaps it was no coincidence that a little more than a year later the Clinton administration would file civil lawsuits against the states that had legalized marijuana dispensers. The strategy targeted the only public supply of marijuana available to qualified patients, and by choosing the path of civil litigation, the federal strategists avoided the risk and potential embarrassment of a jury trial.

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The first-state federal powwow included three principal topics, according to Elsberg's notes:

- **California and federal law-enforcement policy as a result of Proposition 215**
- **Potential legal and legislative challenges to Proposition 215**
- **How to fight the new political war against drug legalization in America.**

Nowhere in the agenda is a reference made to the explicit conflict between state and federal laws or the implications for California law and policy makers.

As Lungren said in our recent interview, he had taken an oath to uphold the U.S. Constitution as well as the California Constitution. "I am not going to attempt to determine how you can uphold Prop. 215 within the context of the California law, but also within the context of the U.S. Constitution."

Lungren stated, "I don't see any conflict with that.

Yet according to Elsberg, the California delegation had come specifically to ask the feds to overturn the law they had so bitterly opposed. "The California delegation was attempting to have the federal government sue the state of California since we felt federal law preempts State's authority to make something a medicine," Elsberg notes. "We requested that the federal government to give California law enforcement a written document authorizing us to seize marijuana under federal authority and for DEA to take a greater role in marijuana enforcement in California."

On behalf of Lungren, Gede asked the federal government to intervene with a lawsuit. In addition, he asked the DEA to cross-designate some prosecutors and peace officers so they could enforce federal law.

"(Gede) indicated that there was a sense of urgency because we need guidelines for state law enforcement, the public and doctors," Elsberg observed.

District Attorney Michael Bradbury of Ventura County called for a federal-state partnership so that local police could avoid any civil liability for enforcing federal law.

"(Bradbury) wants DEA to reassure states that state could still enforce federal law," noted ONDCP lawyer Wayne Raabe in minutes he took at the meeting. "Biggest problem is no one knows what enforcement policy to enforce."

Much of the discussion by the private anti-drug officials who attended the meeting focused on how to prevent the medical-marijuana campaign from succeeding in other states.

"We must protect the other 48 states and rollback in California and Arizona," said CADCA Executive Director Jim Coppole, according to Raabe. "We are taking it very seriously."" McCaffrey and U.S. Attorney General Robert E. Honig of the Robert Wood Johnson Foundation came specifically to ask the feds to overturn the law they had so bitterly opposed. "The California delegation was attempting to have the federal government sue the state of California since we felt federal law preempts State's authority to make something a medicine," Elsberg notes. "We requested that the federal government to give California law enforcement a written document authorizing us to seize marijuana under federal authority and for DEA to take a greater role in marijuana enforcement in California."

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The private anti-drug officials identified money as the essential ingredient in any publicity campaign attacking new initiatives. Coppole said CADCA, the Johnson Foundation and the Center for Alcohol and Substance Abuse at Columbia University, run by former drug czar Joseph Califano, could provide the money and expertise to respond to the threat posed by additional medical-marijuana measures.

As the discussion over strategies to defeat the reformists continued, the vice president of the Robert Wood Johnson Foundation recognized the political nature of the meeting.

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The “affirmative defense” strategy

A leading faction of the drug policy reform movement did not object as law enforcement sought to limit implementation of the Compassionate Use Act. “We have much more to fear from Peron right now than we do the police,” said Bill Zimmerman, the professional consultant who replaced Peron as Prop 215’s campaign manager, to a Los Angeles Times reporter. Zimmerman had drafted the ballot argument that made Prop 215, with an affirmative-defense-only — the basis for ongoing arrests. In an appearance on CNN two weeks after the election, Zimmerman reiterated the point.

“What Proposition 215 does is create a medical necessity defense for people arrested for marijuana,” Zimmerman said. “Anybody in California can still be arrested for marijuana.”

Lunger met privately with federal drug officials in Washington after the All-Zones Meeting to discuss and coordinate their response to Proposition 215. The White House had decided to create an affirmative-defense-only law enforcement to the fullest extent by having officers continue to make arrests and seizures under state law, leaving defendants to raise the medical-use provisions of the proposition only as a defense to state prosecution.

The affirmative-defense strategy allowed opposing legal medical marijuana to achieve what they couldn’t on election day — the ability to continue arresting and charging people as if Proposition 215 never passed.

Many defendants were subjected to arrest and prosecution without a ful discussion of patient qualifications, the guideline relied on narcotic-agent advisory to proclaim that only medical users guilty of growing and possessing too much medicine:

FEDERAL OFFICIALS who staffed 1996 to plan opposition to medical marijuana included Attorney General Janet Reno, NIDA chief Alan Leshner, and HHS Secretary Donna Shalala. At the 12/30/96 press conference Reno threatened to prosecute doctors who approve cannabis use. Leshner said “more research is needed” (while Prohibition continues), Shalala said marijuana use could not be medical because it is “wrong.”

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The five panels spelled out how local police and prosecutors should respond to the new law. District Attorney Mike Capizzi of Orange County, once the nominal co-chair of the opposition to the new law, although Hallinan took the floor during a question period to say it could work. He advised his law enforcement colleagues to trans

The appearance of cannabis clubs in California after the election especially bothered Lunger. As far as he was concerned, Proposition 215 did not authorize anyone to sell marijuana. When asked recently if he believed that voters intended patients to be subjected to arrest and prosecuted under state law, leaving defendants to raise the medical-use provisions of the proposition only as a defense to state prosecution.

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