

A Guide for the Perplexed

Obama Administration Policy on Marijuana

January 20, 2009: Americans cry tears of joy and relief as Barack Obama is inaugurated. His supporters include millions of citizens who hope the new President will take steps to end marijuana Prohibition.

Jan. 22: DEA agents conduct a raid on a South Lake Tahoe cannabis dispensary run by a wheelchair-bound entrepreneur named Ken Estes. They seize about five pounds of herbal medicine and a few thousands dollars. No arrests are made. "It was a typical rip-and-run" says Estes.

Pro-Cannabis (PC) activists protest that DEA was ignoring promises made by the new President during the campaign.

Feb. 2: Eric H. Holder, Jr. is confirmed by the U.S. Senate as Attorney General, the top federal law-enforcement post. The AG heads the Department of Justice, which oversees the Drug Enforcement Administration as well as the network of U.S. Attorneys who prosecute cases in U.S. District Court.

Feb. 3: Four cannabis dispensaries in the Los Angeles area are raided simultaneously by DEA squads.

"They took everything," says a member of the Beach Center Collective in Playa del Rey, "right down to the television. The computer, patient files, medicine, cash in the register. That's it, we're done. It's just too bad. Our patients have epilepsy, cancer, MS, diabetes. Two of our patients have one leg. They're gonna have to travel a lot farther and go to places that aren't as safe for them."

PC activists led by Americans for Safe Access protest at a rally in Los Angeles and deluge the White House with emails.

Feb. 4: White House spokesman Nick Shapiro appears to blame the raids on Bush Administration holdovers, telling the *Washington Times*, "The President believes that federal resources should not be used to circumvent state laws, and as he continues to appoint senior

Eric Holder Says "No More DEA Raids" in Press Conference 02/25/2009



ATTORNEY GENERAL ERIC HOLDER at his Feb. 25 press conference said that the Justice Department would implement the President's policy as expressed on the campaign trail. He did not say "No more DEA raids," as claimed on reform groups' websites.

leadership to fill out the ranks of the federal government, he expects them to review their policies with that in mind." PC reform groups spin Shapiro's comment as a conclusive victory.

According to the Marijuana Policy Project, the White House is "signaling an end to the federal war on state medical laws" and the new approach represents "a sea change."

Feb. 11: DEA agents take part in a raid on the MendoHealing Co-operative farm in Fort Bragg, California.

Feb. 25: Attorney General Holder holds a press conference with Acting DEA Administrator Michele Leonhart (a Bush appointee) to discuss drug-related violence in Mexico. More than 20 minutes in, a reporter asks, "Right after the inauguration there were some raids on California medical marijuana dispensaries. Was that a deliberate decision by you, by the Justice Department? Is that a prediction of policy going forward? Do you expect those sorts of raids to continue despite what the President said during the campaign?"

Holder replies: "Well, what the presi-

dent said during the campaign, you'll be surprised to know, will be consistent with what we'll be doing here in law enforcement. He was my boss during the campaign. He is formally and technically and by law my boss now. So what he said during the campaign is now American policy."

Holder's response is worth checking out on YouTube (search "Holder marijuana"). He's been in office less than a month, the press conference was called on another topic, it's obvious that he doesn't know what promises, exactly, his boss may have made regarding medical marijuana, but he gamely commits to carrying them out.

Reformers spin Holder's line as another win. MPP posts a video clip headlined "Holder Says 'No More DEA Raids' in Press Conference." But Holder never spoke those words, the quotation marks are duplicitous.

Feb. 27: In Los Angeles, Southern District US Attorney Thomas P. O'Brien directs prosecutors in his office to stop filing charges, issuing subpoenas, and applying for search warrants in cases involving medical marijuana dispensaries. O'Brien's order is emailed by Christine Ewell, head of the office's Criminal Division.

March 6 U.S. Attorney O'Brien rescinds his week-old order and instructs prosecutors to go forward with medical marijuana cases. Evidently O'Brien had believed media reports that Holder intended to end such prosecutions, and was complying in hopes of keeping his job. (U.S. Attorneys traditionally submit pro forma letters of resignation, enabling a newly elected President to replace them at will.)

Somehow O'Brien got word during the week that the old approach was still acceptable. His flip-flop was reported by Scott Glover in the *LA Times*, along with his spokesman's attempt to rationalize it: "prosecutors target people they consider egregious offenders, such as those accused of selling drugs to minors or proprietors with past drug convictions." (California law does not prohibit the use of marijuana by minors who have physician approval. Glover, relatively new to the beat, reported the disinformation as fact.)

"The policy is to go after those people who violate both federal and state law... And that is consistent with what the president said during the campaign." —AG Eric Holder

March 18 AG Holder tells reporters in Washington that the Justice Department does not intend to prosecute cannabis dispensaries that comply with state law. "The policy is to go after those people who violate both federal and state law. To the extent that people do that and try to use medical marijuana laws as a shield for activity that is not designed to

comport with what the intention was of the state law, those are the organizations, the people, that we will target. And that is consistent with what the president said during the campaign."

March 19 PC activists tell the media that Holder's remarks represent another big win. "Today's comments clearly represent a change in policy out of Washington," says Ethan Nadelmann of the Drug Policy Alliance to the *LA Times*. "He [Holder] is sending a clear message to the DEA." **DPA'S NADELMANN**



"In every single case we have prosecuted, the defendants violated state as well as federal law."

—U.S. Attorney's Spokesman

But Drug Warriors contend that Holder's policy statement vindicates the approach they've taken all these years. The U.S. Attorney's spokesman in Los Angeles, Thom Mrozek, tells the *Times*: "In every single case we have prosecuted, the defendants violated state as well as federal law."

LA Times reporters summarize Holder's announcement of the new Obama policy thus: "Holder said the priority of the new administration is to go after egregious offenders." This echoes their previous summary of the U.S. Attorney's priorities under the old Bush policy: "prosecutors target people they consider egregious offenders."

March 20 The *New York Times* runs a piece by Solomon Moore headlined "Dispensers of Marijuana Find Relief in Policy Shift" —a subtle pun. Ethan Nadelmann is quoted saying that the feds now recognize state medical marijuana laws as "kosher." But the DEA thinks Holder is serving up a tasty pork loin. Spokesman Garrison Courtney "pointed out that the attorney general's statement indicated that the federal authorities would continue to go after marijuana dispensaries that broke state and federal laws by selling to minors, selling excessive amounts, or selling marijuana from unsanctioned growers."

March 23 In Los Angeles, U.S. District Court Judge George Wu delays the sentencing of Charles Lynch and asks the U.S. Attorney to provide a written summary of the Justice Department policy. Lynch, who operated a dispensary in Morro Bay, had been convicted of cultivation-for-sale, conspiracy to distribute, and selling marijuana to a minor. He contended that he was operating legally under California law and with the support of city officials.

March 26 DEA agents, guns drawn, raid a San Francisco dispensary, Emalyn's, confiscating their inventory and cash on hand. No arrests are made. Meanwhile, back in Washington...

President Barack Obama, answers questions at an "online town hall." He initiates an exchange (ostensibly ad lib) with the moderator, economist Jared Bernstein:

THE PRESIDENT: "Can I just interrupt, Jared, before you ask the next question, just to say that we, we took votes about which questions were going to be

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What Barack Obama actually said about medical marijuana while campaigning

As a candidate for president in 2008, Senator Obama was drawn out twice on the subject of medical marijuana by reporters in Oregon (the state where a primary win would seal the nomination for him). In March Obama told Gary Nelson of the *Medford Mail Tribune*: "My attitude is that if it's an issue of doctors prescribing medical marijuana as a treatment for glaucoma or as a cancer treatment, I think that should be appropriate because there really is no difference between that and a doctor prescribing morphine or anything else.

"I think there are legitimate concerns in not wanting to allow people to grow their own or start setting up mom-and-pop shops, because at that point it becomes fairly difficult to regulate. Again, I'm not familiar with all the details of the initiative that was passed [in Oregon] and what safeguards there were in place, but I think the basic concept that using medical marijuana in the same way, with the same controls as other drugs prescribed by doctors, I think that's entirely appropriate..."

"I would not punish doctors if it's prescribed in a way that is appropriate. That may require some changes in federal law. I will tell you that —I mean I want to be honest with you: whether I want to use a whole lot of political capital on that issue when we're trying to get health care passed or end the war in Iraq, the likelihood of that being real high on my list is not likely... What I'm not going to be doing is using Justice Department resources to try to circumvent state laws on this issue, simply because I want folks to be investigating violent crimes and potential terrorism. We've got a lot of things for our law enforcement officers to deal with."

In May James Pitkin of the *Willamette Week* asked, "Would you stop the DEA's raids on Oregon medical marijuana growers?"

To which Obama replied: "I would, because I think our federal agents have better things to do, like catching criminals and preventing terrorism. The way I want to approach the issue of medical marijuana is to base it on science, and if there is sound science that supports the use of medical marijuana, and if it is controlled and prescribed in a way that other medicine is prescribed, then it's something that I think we should consider."

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asked and I think three million people voted or—

BERNSTEIN: Three point five million.

THE PRESIDENT: Three point five million people voted. I have to say that there was one question that was voted on that ranked fairly high and that was whether legalizing marijuana would improve the economy (laughter) and job creation. And I don’t know what this says about the online audience (laughter) but I just want, I don’t want people to think that... This was a fairly popular question, we want to make sure that it was answered. The answer is, no, I don’t think that is a good strategy (laughter) to grow our economy. (Applause.)

By choosing to comment on total legalization (an abstract future possibility), the President avoids answering the concrete question of the moment: will he allow DEA to keep raiding medical marijuana “dispensing collectives” and their affiliated growers?

Equally slick is the script that makes it seem as if Barack Obama insists on addressing a topic his staff would rather he avoid. The lighthearted, unspoken “stoner” charge aimed at everyone who emailed a marijuana-policy question—and the attendant laughter—is just a way of saying “we know that the herb is widely used and hardly dangerous.”

Why not tell that to your DEA?

April 8: Joe Russoniello, U.S. Attorney for the Northern District of California (a Bush appointee), says at a Hastings Law School forum that all medical marijuana dispensaries are profiteering operations in violation of state law and therefore “fair game” for DEA raiders. Russoniello asserts that marijuana is “a more dangerous substance” than alcohol or tobacco.

Dispensary operators who draw

“reasonable compensation” and who only obtain their cannabis from and sell it to collective members continue to hope they can be distinguished from “egregious offenders.”

April 17: U.S. Attorney Thomas O’Brien forwards to District Judge George Wu the letter he requested clarifying Justice Department policy (so that Wu could apply it in sentencing Charles Lynch, operator of a Morro Bay dispensary). The letter is signed by H. Marshall Jarrett, director of the office that oversees all U.S. Attorneys. It says:

“In response to your request, the Office of the Deputy Attorney General reviewed the facts of this case to determine whether the prosecution of Mr. Lynch comports with the Department of Justice’s policies with respect to marijuana prosecutions. Based on the facts of this case, the Office of the Deputy Attorney General concurs with your office that the investigation, prosecution, and conviction of Mr. Lynch are entirely consistent with Department policies as well as public statements made by the Attorney General. Accordingly, you should seek to proceed with the sentencing recommendations which your office has filed with the court.”

The letter from Deputy AG Jarrett begs the question: in what way did Charles Lynch’s Morro Bay dispensary violate state law? No evidence of profiteering by Lynch had been introduced during his trial. Nevertheless, the Obama Administration’s policy is now unambiguous: California dispensaries are subject to DEA raids, and their operators are subject to prosecution.

Hope of amnesty vanishes for all those in prison for medical marijuana cultivation and distribution.

April 23: U.S. District Judge George

Wu postpones the sentencing of Charles Lynch until June, indicating that a one-year sentence is contemplated. Wu says

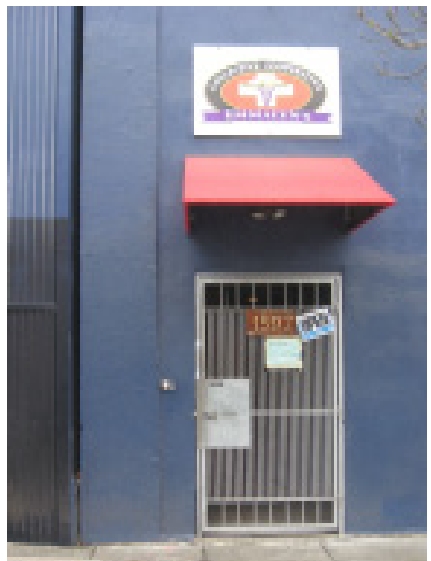
he will look into the possibility of Lynch serving his sentence in a non-prison setting. See page 41, “Lynch Sentenced.”



OBAMA ADMINISTRATION POLICY towards providers of medical marijuana in California and other states that have legalized its use is expressed in this letter from Assistant Attorney General H. Marshall Jarrett to the U.S. Attorney prosecuting Charles Lynch. It states, “The investigation, prosecution, and conviction of Mr. Lynch are entirely consistent with Department policies as well as public statements made by the Attorney General.” The prosecution cited this letter in a brief filed June 2 urging U.S. District Court Judge George Wu to impose a five-year mandatory minimum sentence on Lynch.

The Raid on Emmalyn’s

“I would have let them in if they would have showed me something,” said John W., 35, who came to the front door of Emmalyn’s on Howard St. in San Francisco on the afternoon of March 25.



“They were dressed kind of like me,” according to John, who was garbed in a football jersey. “Once they actually got in I could see that they had bulletproof vests that said DEA on the back. But I couldn’t see that from the door. The only thing I could see was a person with a gun. I asked for a search warrant or a badge but they didn’t show me either one, they just battered down the gate.

“They rushed in and pushed us down—me, two or three patients, a lady who doesn’t work here anymore, and Rose [a woman of 30 who was behind the counter when your correspondent visited Emmalyn’s a week after the raid].

“There were between 15 and 20, all DEA. The man lying next to me didn’t

put up any kind of struggle but he kept saying, ‘I’m a patient.’ And ‘Why are you doing this?’

“They never asked me no questions. They just went through the whole place and took the medicine we had and the little bit of money.” Some heavy machinery was deployed to rip out a safe that had been bolted to the floor. The agents hauled it off, past a passionate group of protesters on the sidewalk chanting, “This medicine is marijuana. Listen to Obama.” Did they know that Obama has said no such thing?

“To me it was robbery,” John said of the raid. “That’s how it feels. I was scared at first but then I just started listening to their conversations. They were in such a good mood, like they’d just won a championship or something. Then when they didn’t find very much they started saying, ‘There should be more. There should be more.’ We tried to tell them that upstairs was just a tenant who had nothing to do with us but they went up there and broke in and actually took their stereo equipment out of their apartment.

“A lot of their conversation was really sarcastic. Like poking shots at us and the whole movement. ‘You guys are pretending that dope is medicine...’ It was really disturbing but I just stayed quiet. They saw a headline on the West Coast Leaf (a tabloid that covers the medical marijuana movement/industry) about Obama ending the raids and that gave them a big laugh: ‘We didn’t get that memo.’

“One agent asked me if I had a card. I said yes. He said ‘Well, what’s wrong

with you?’ I said “Better than me tell you, I could show you.” And I showed him. I have a disease called Blount’s Disease. One of the bones in the bottom portion of my leg didn’t grow. See, if I stand up straight, you can see how much shorter one of my legs is. (About two-three inches.) He said, ‘Well that medicine is not going to help your leg grow.’ That’s highly disrespectful. But you know, I was like, ‘Why am I even debating with this person?’

“I figured that it wasn’t the time or the place to tell them the truth. A lot of people come through here. People in wheelchairs, young people in wheelchairs, the handicapped. Different problems. Sometimes people won’t have cards, they’ll have their letter of recommendation. Even though I try not to read ‘em, the information is on there. It makes me feel bad for them: AIDS patients, hepatitis patients, cancer patients. Sometimes people come in here and they just start to cry because they’re appreciative that we’re here because out of all the medications that they take, this is one that they really get relief from.”

The raid was typical in that no arrests were made. Emmalyn’s reopened the next day with product lent by a nearby dispensary. Beautiful Rose says, “We wanted to make sure that our patients would be taken care of. That we would be here for them and for everybody.”

Cannabis dispensaries tend to serve poor people. Rich people have land in the country, and middle-class people have friends with land in the country.

The raid occurred one week after Eric Holder’s statement that DEA would

target only dispensaries that violated state as well as federal law. “What state law did they violate?” wonders attorney Brendan Hallinan (Terence’s son), who is representing Emmalyn’s. “They were permitted by the city. They were in the process of changing their layout to provide wheelchair access. They take pride in their low prices. They were one of the smallest clubs in San Francisco in terms of how many patients they served.”

Documents laying out the DEA’s case against Emmalyn’s are under seal because the investigation is supposedly ongoing. If it turns out that the operators were laundering money or importing BC bud, then dispensaries that don’t engage in such practices can continue to believe that the Obama Administration will leave them alone. But if Emmalyn’s is charged with nothing more than unpaid taxes—which should provoke a warning from the state board of equalization, not a rip-and-run from DEA—then the terror level will rise back to blood orange, as in the time of Bush.



SF Supervisor David Campos speaks at a rally protesting the raid on Emmalyn’s. Proprietor John Baumgartner is left.