



## **Policy Perspective: An Interview with Paul Gallegos**

Paul Gallegos is a private attorney practicing state and federal civil litigation and criminal defense. He served as District Attorney of Humboldt County for 12 years before retiring on January 2015. While District Attorney of Humboldt County, he served as Co-Chair on Attorney General Kamala Harris' 2011 Smart on Crime Summit.

### **What brings you to the work of the Blue Ribbon Commission, and marijuana?**

I was the District Attorney of Humboldt County for twelve years. Before that, I did state and federal civil litigation and criminal defense. Practicing as a private defense attorney in Northern California and then serving as District Attorney of Humboldt County for 12 years has given me a very unique opportunity to witness the impacts of the criminalization of marijuana and the cultivation, sale and consumption of marijuana on my community, on the individuals in my community, and on law enforcement and the environment.

I started as DA shortly after Prop 215 - California's Compassionate Use Act - passed. Upon taking office I created and publicized prosecution guidelines for law enforcement and the community. These guidelines attempted to provide notice to all people living in or traveling into or through Humboldt County as to what conduct would presumptively be considered lawful and unlawful under the Compassionate Use Act. The Guidelines expressed a commitment to enforcing the law, and by doing so, protect people's rights to cultivate, possess and use marijuana under the Compassionate Use act while enforcing other existing marijuana laws.

The "Prosecution Guidelines" allowed for the use and possession of up to 3 pounds of marijuana and the cultivation of marijuana within a 100 square foot canopy and, if the cultivation was indoors, limited wattage usage to 1000 watts. The guidelines expressed an opinion regarding the unresolved legal questions of transportation and concentrated cannabis by stating that they would be presumed to be lawful within the Compassionate Use Act. The guidelines remained in place until superseded by the Medical Marijuana Program Act and subsequent Humboldt County Ordinances regarding marijuana grown, possessed and used under the Compassionate Use Act and the Medical Marijuana Program Act.

### **You were District Attorney of Humboldt County, home of California's "Emerald Triangle." What was it like enforcing criminal laws against marijuana production, cultivation, and use in a county that is known for its cannabis?**

As the attorney for the People of the State of California my job was to enforce the laws of the state of California. As such, we attempted to do that without regard for regional biases, regardless of what those biases were. My authority began and ended with California law. While I was committed to providing the protections of the law to those that cultivated, possessed and

used under the Compassionate Use Act and the Medical Marijuana Program Act, I was committed to prosecuting those that acted outside of it.

My position was that, while those laws authorized cultivation, possession and use of cannabis, they did not exempt people from the obligation to comply with every other law in the State of California. As such, while some continued to struggle over whether they could support the new law, my position was that my office would not engage in such debate and we would support the law that was passed by the People. However, we would insist on compliance with all other laws.

Affecting that paradigm shift was difficult, though. It took work and it required patience. However, I believe we did see that shift in Humboldt County. Specifically, we quit talking about whether we would provide the protections of the Compassionate Use and the Medical Marijuana Program Acts and began talking about finding solutions to the ancillary issues associated with the cultivation, possession and use. We did that by pulling agencies together to evaluate the environmental and water use impacts of cultivation, as well as the safety and protection of consumers and employees of cultivators and our neighborhoods. I confess to experiencing deep frustration with what I perceived as a failure on the part of legislators to step up and address the ancillary issues associated with marijuana cultivation, possession and use. However, in Humboldt County we worked to address the problems and develop solutions rather than endlessly wringing our hands.

At the end of the day what we tried to communicate to our community was that our freedoms come with responsibilities. While all people are entitled to the protections of the law, they have a responsibility to act within the limitations of the law. People always want the freedoms. They seldom want to the concomitant responsibility associated with those freedoms.

I was also clear in expressing my opinion that marijuana, in and of itself, was more of a public health and public education issue than a public safety issue. However, the criminalization of marijuana and the necessary things that attached themselves to the criminalization often created public safety issues associated with the cultivation, possession and use of marijuana and responsible behavior on the part of those cultivating, possession and using marijuana could effectively reduce or eliminate those public safety issues.

**What about the role of the federal government? Marijuana is still a Schedule I substance under federal law. Did you have problems or conflicts with that in Humboldt?**

I did not and do not believe that the cultivation, possession and use of marijuana should be criminal. It is a drug, just as alcohol is a drug, and it should be regulated just as any drug should. The criminalization of it has not, in my experience, furthered any of our stated goals. Rather, it has exacerbated the problems associated with marijuana cultivation, possession and use and endangered our citizens and our communities.

The federal government, the federal agencies and the people that I worked with within the federal government were my partners and assisted me in fulfilling my duties to my community. We agreed on most things. Those things that we did not agree on did not inhibit our ability to work together on the rest.

Just as my authority began and ended with California law and the state and federal constitutions, my colleagues' authority began and ended with federal law. That necessarily put

us at cross purposes as it related to the cultivation, possession and use of marijuana within the state of California.

To me, it seems clear that the criminalization of marijuana has not reduced the presence or the negative impacts of marijuana within our communities. Just like when we criminalized the creation, possession and use of alcohol, the criminalization of the cultivation, possession and use of marijuana merely created a criminal market scheme that would not otherwise exist.

That criminal scheme results in horrible losses of life, especially for young people who are otherwise law abiding citizens, and potentially productive members of our community. To be honest, I felt somewhat complicit, or responsible, when I saw the deaths associated with the cultivation, possession and use of marijuana because I felt that it was the criminalization of the drug that was causing the deaths. I was part of the law enforcement community. I was part of the system that ultimately criminalized their behavior and drove the market underground, where it is so much more dangerous. I think we have all been somewhat complicit in those deaths.

**We've heard a lot about the environmental damage caused by irresponsible marijuana cultivation, especially illegal trespass grows. Do you think that legalizing marijuana will help to ease the environmental burden on Humboldt County?**

I do. The illegal marijuana cultivation and sale of marijuana relies on inefficiencies. These inefficiencies make it difficult for law enforcement to find and interdict but they increase marginal costs for those cultivators and sellers at every step of the way.

With legalization, those inefficiencies will no longer benefit the cultivator or seller of marijuana. With legalization, cultivators will have to reduce those inefficiencies to compete. Those reductions in inefficiencies, such as being able to operate out in the open, near industry and trade routes, and accessing the courts to obtain contract compliance will result in less costs to the cultivator and seller and a reduced cost to the consumer.

The illicit market will not be able to sustain its inefficient production and still make a profit. Eventually, these trespass grows will not be able to compete with legal grows, and the black market will fade away.

As more and more grows become legal and compliant, the number of people operating illegally will go down and the rest of the industry will be invested in removing them from competition and from the industry. The reduced number of offenders, the increased number of people invested in shutting them down and, hopefully, increased revenue that will go toward identification and interdiction of those that are not operating with the law should make it harder and harder for those people to operate and thrive.

Also, regulators and lawmakers will no longer have an excuse for non-action. When cultivation, possession, and use of cannabis becomes legal, it will be incumbent upon legislative bodies and regulatory agencies to step up and treat the industry like every other legal business. That means enforcing labor, environmental, and quality restrictions.

**What about taxation and regulation?**

On the most fundamental level we are all members of this community and we benefit from that membership. Accordingly, we have a duty to contribute back to it. People that are engaged in

the cultivation, possession and use of marijuana use our streets, hospitals, schools, fire departments, and everything else that is funded by tax dollars. Therefore, they should pay taxes and contribute to the commonwealth. I don't think that anyone would or could meaningfully disagree with that. That is the first part of taxation.

The second part of taxation is that it is also a powerful tool to effect public policy. Accepting that is true, the next issue to determine is what policy or policies, besides the generation of revenue, we are interested in accomplishing with taxation. I personally believe that, at a minimum, we should pursue two policies: (1) placing the costs of the business on the business and (2) promoting a free market system that allows for the free flow of people and resources into and out of the industry and promotes the diversity of ideas and skills that follow, while controlling or limiting the economic takeover of the industry by large corporate or other interests.

The first of these is a strictly rational, economical policy. Specifically, if you want to engage in business for profit, the community at large should not have to subsidize that activity. That activity should be paid for by the industry and the consumers. So, for example, if marijuana consumption results in more people driving under the influence, the increased police officers, courts, etc., necessary to address that issue should be paid for by the industry and the consumers of that product through taxation. It should not have to be paid for by everyone in the community regardless of their participation in that activity or not. Similarly, if marijuana consumption results in increased rates of lung cancer, that should be quantified and taxes on that product should go up to pay for those increased costs to the community. In short, that foreseeable and predictable costs of that business should be borne by the business through taxation and passed to their consumers through price of the product.

The second is a judgment call based on what your goals are. I believe that using tax policies to encourage industry that promotes smaller scale production, instead of large economies of scale or big industry, increases inefficiencies and costs to the consumer but it distributes wealth more broadly over a large scale of people than localizing it in the hands of a few. That, in turn, distributes political power of the industry over a larger scale which reduces the capacity of the industry to capture government and limit regulations that we would otherwise place on that industry to protect ourselves from that industry. Creating a tax model that imposes a progressive tax based on consumption and promotes smaller scale, more numerous farms would elevate consumer prices but that elevated consumer prices would help accomplish another public interest of making marijuana more difficult for young people to purchase. Specifically, if it is too expensive, less kids can afford and less will have access to it.

**What do you think is the most important issue that the public and policy makers need to think about before legalizing marijuana in California?**

I think people should stop and think about what the American ideal of freedom is. What authorizes our limitation of the freedom of others? Do we get to regulate anyone and everyone's activity just because we don't approve of it? Or is our authority to regulate the conduct of others tied to the impact of that activity on us individually and/or as a community? If it is former, we get to regulate whatever we want. If it is the latter then our ability to regulate the conduct of others is limited.

I think we intended to limit government's ability to regulate our activity to those things that impacted us individually and a community. If so, government should have little or no authority to

regulate or prohibit responsible adult behavior that does not limit or impact the freedoms of others individually or as a group.

When we reduce other people's liberties, it results in an overall reduction in everyone's liberties, and we all feel it. Marijuana prohibition has had a negative impact of our liberties - the 4th Amendment has suffered terribly as a result of the war on drugs. Our streets are not safer, people are more like to use, abuse, and become addicted. Our kids are less safe. We have basically incentivized criminal activity with a black market, and it's not helping anyone.

We should do what we do with alcohol - trust the responsibility our adults. Driving under the influence of alcohol kills several hundred thousand people a year, but we still allow alcohol, and only punish people who don't drink and drive responsibly. Firearms are the same way! We lose a ton of people every year, but we still allow responsible adults to own them. Marijuana doesn't do any of these things, and yet, it's prohibited.

Let's think about what our goals are as a state. If it's really safe communities, then let's do this. Let's end prohibition and invoke a rational response to the problems - the environment, accessibility, law enforcement - and let's develop real tools to deal with those problems. We can use sensible regulation to keep people, and the environment, safe. If, as has been said, insanity is doing the same thing over and over and expecting a different result - then the war on drugs is insanity. Let's move forward with reason and both expect and demand responsibility from our citizens. That seems like a better way to address this issue than to continue with what we are currently doing.