Case Archive

# Chapter 6: Organizational Problems

## California and the Marijuana Muddle: When Federal and State Laws Are at Odds

(From Kettl’s “Potomac Chronicle” in *Governing*, August 2010, at http://www.governing.com/columns/potomac-chronicle/marijuana-legalize-not-legalize.html)

Business had taken some strange turns for Stewart Hauptman. He had been making roving sales from his motor home in Norco, California, until police ticketed him. The crime? Selling $10 marijuana cookies from his roving dispensary—legal in California but not in Norco, where local officials tried to trump the state policy with a local ordinance banning the sale of medicinal marijuana within its jurisdiction.

Hauptman’s journey highlights the bizarre legal and policy tangles surrounding the spread of pot-as-a-drug. California is one of 14 states plus the District of Columbia that allow the sale of marijuana for medical conditions. No one really knows whether local restrictions can preempt state permissions, or how states’ legalization of medical marijuana will affect the federal war on drugs—or whether medical marijuana even works.

Medical marijuana has entered a legal and political twilight zone, caught between the ongoing policy battles on drugs and the pleas of patients suffering from painful, debilitating diseases. Last fall, U.S. Attorney General Eric Holder announced that, in the 14 states permitting the sale of medical marijuana, the feds would focus only on big drug trackers and money launderers. Republicans fired back that Holder was undermining federal laws and fueling the drug wars on the Mexican border. The House Judiciary Committee’s ranking Republican, Rep. Lamar Smith, countered that “We cannot hope to eradicate the drug trade if we do not first address the cash cow for most drug-trafficking organizations -- marijuana.” The Cato Institute’s Tim Lynch countered that the drug war had proven a “grand failure” while advocates of legalizing marijuana quietly applauded.

The feds signaled they wouldn’t prosecute, more states joined the medical marijuana bandwagon, libertarians wanted the government to back off, and opponents resorted to trying to ban sales through local ordinances. State laws on what could be sold, how it could be sold, and the conditions for which marijuana could be prescribed varied widely. As the Mexican drug wars heated up, American pot policy fell into legal chaos.

This battle has played out against a background of surprising scientific uncertainty. Researchers think there’s evidence that marijuana might help those with long-term pain, glaucoma, multiple sclerosis, and seizures. They’ve found that some human cells seem to have receptors wired to respond to the active chemicals in pot. Doing the research to prove these claims, however, is a tall order. The federal Food and Drug Administration does not recognize marijuana as a drug and classifies marijuana as a Schedule 1 controlled drug, along with PCP and Ecstasy. To research its effects, investigators need a license from the Justice Department’s Drug Enforcement Agency. There’s little incentive for scientists to jump those hoops to check on something peddled on the street, illegally in plastic bags or legally in cookies.

It’s hard to think of a policy battle full of so much heat but backed by so little research. The drive for medical marijuana comes from two sources—the underground campaign to make marijuana legal, where advocates have long argued that pot is a harmless recreation; and the desperate plight of patients suffering from chronic diseases, where traditional medicine has provided little relief. For these patients, the argument goes, what can it hurt to try something that’s been peddled for decades, albeit illegally, and that might give help for people where nothing else has worked?

That’s just what 60-year-old grandmother Ellen Lenox Smith thought. She’s struggling with two horrendous diseases, one plaguing her lungs and another destroying the connective tissue in her joints. The pain made it impossible for her to sleep, and she couldn’t tolerate prescription painkillers like OxyContin typically used to treat the problem.

Her doctor suggested she try marijuana. Her lung disease made it impossible for her to smoke it, so she soaked some marijuana in oil and mixed it with applesauce. For the first time in months, she said, she slept through the night. She took her applesauce, “and the next thing I know, it was morning,” she told a National Public Radio reporter. And because she lived in Rhode Island, which recently had legalized medical marijuana, her pot-spiked applesauce was legal.

Tales like this grandmother’s are driving the medical marijuana experiment forward. Even the American Medical Association is intrigued, suggesting that more research would be useful and that the FDA ought to consider changing marijuana’s Schedule 1 designation to make that possible.

But the debate has taken on a truly bizarre character. Amid the ongoing federal war on drugs, the states are leading a noisy revolution to legalize pot, at least for medical use. The Obama administration has said it will back off prosecuting drug laws in the states permitting medical marijuana, but in some local governments, opponents are fighting back to restrict where state-sanctioned marijuana can be sold. The state laws themselves are all over the map, from California’s permissive statute to New Jersey’s tough government regulation of the chain from plant to user.

Somewhere between Steven Hauptman’s potmobile and Ellen Lenox Smith’s tough struggle with two incurable diseases, we’re clumsily drawing new lines on drug use as only American federalism can.

## Questions to Consider

1. State governments have long prided themselves as “laboratories of democracy,” where new ideas can be tried as experiments before being launched across the nation. But that also means that some state governments sometimes can get out of sync with national policy. What do you think about state practices that vary with national policy?
2. How should we sort out the enforcement responsibilities between federal, state, and local officials, when the policies under which they are operating diverge?
3. In states like California that have allowed the sale of medical marijuana, local ordinances and local enforcement practices often vary. When Norco officials stopped his roving potmobile, Hauptman began using his car to deliver his goods to individuals’ homes. How do you believe the local police ought to invest their time to deal with such issues?