

Get Benno! Shasta County Snuffs Out Medical Marijuana — And Gun Rights, Too?

By R.V. Scheide

Sometimes, I wonder what the Shasta County Board of Supervisors and the Shasta County Sheriff's Office have been smoking. Wasn't it just six months ago they were telling voters that Measure A, by totally banning all outdoor medical marijuana cultivation in the county's unincorporated areas, would make it easier to enforce the law, even though it contained no funding mechanism?

Well, apparently their short-term memory has returned.

"The ordinance itself does make it easier to identify or see a violation," Sheriff Tom Bosenko told the board last week, suddenly recalling that "you still have to have the staff to enforce the violation and proceed through the administrative hearings."

Now he tells us!

In fact, Bosenko says he needs as many as six full-time deputies and four full-time code enforcement officers to cover the 3,847 square mile county. The board agreed to add one part-time code enforcement officer and two part-time deputies at a cost of

Martinez-based attorney Joseph Tully, who has successfully defended several Shasta County clients charged with illegal cultivation and various other related felonies, points out that many people, even law enforcement officials, don't understand the legal differences between medical marijuana cooperatives and collectives.



James Benno's trial date continues to be pushed back.

\$125,000 this year, money that will be taken from the general fund at the expense of other undetermined budgeting priorities.

For some fiscal perspective, consider the city of Anderson's Measure A, the half-cent sales tax passed by voters last June. In order to face a simple-majority

Continued on next page

Continued from previous page

vote, instead of a super-majority, the city paired it with an advisory measure mandating that 50 percent of the revenue raised be spent on public safety. It's expected to raise \$1 million annually, and so far Anderson, population 10,000 or so, has hired three additional police officers. Despite the city's stretched-thin public services, its voters only narrowly passed the tax increase, 53 percent to 47 percent.

Does anyone harbor any serious allusions that Shasta County's total ban on outdoor medical marijuana cultivation, Measure A, would have passed if its proponents, including the county, the sheriff and the the Shasta County Chemical People, had mentioned how much it's going to cost? Of course not. That's precisely why the ballot materials made no mention of Measure A's potential impact on the county's finances.

It may be true that Shasta County voters are fed up with medical marijuana, but I'd wager they're even more fed up with the way Shasta County officials spend their money. Last year, the Shasta County Grand Jury found that "the Board of Supervisors cannot provide effective oversight of the code enforcement process because it does not receive written reports regarding code enforcement activities and statistics."

It also found that "the total cost of code enforcement is not clear from the county budget."

According to the report, which did

not include medical marijuana code violations, there's a backlog of 1,728 open cases dating back to 1997. More than 600 cases have been open 10 years or longer.

Say what? The same governmental body that unanimously chose to transform every medical marijuana patient in Shasta County into potential code violators and felons has no idea how much money it spends on code enforcement?

I'm still sort of new here, so correct me if I'm wrong, but did someone say all the Shasta County supervisors are conservatives? Because that sort of fiscal responsibility isn't necessarily the thing that springs to mind when I think "conservative."

There's no question that some marijuana growers are flagrantly breaking the law and wreaking havoc on the environment. These are mainly cartels from south of the border, and the occasional bad apples from this side.

Local law enforcement are already doing a good job stopping them without creating new code violations turning honest people into criminals.

Like I said, it doesn't sound very conservative to me. But as I've discovered, Shasta County's anti-marijuana coalition has nothing to do with conservatism and everything to do with extending government's reach into your garden, your home and even your gun cabinet.

•••

James Benno's trial date continues to be pushed back.

Anyone paying half-attention to Shasta County's war on medical marijuana has heard of James Benno. An imposing 6-footer with a shaved pate who sometimes sports a fu manchu mustache, the 49-year-old Benno is a master gardener and perhaps the county's most fervent medical marijuana advocate.

He'd rather storm out of a supervisor meeting than bare insult from a surly public official. He'll calmly stare down code enforcement officers illegally attempting to gain entry to his home, then upload the video to YouTube. He's what I call a medical marijuana true believer, which come in several flavors, in his case libertarian.

Benno is by no means the only medical marijuana advocate in Shasta County. In fact, judging by the ease that local advocates had putting Measure A on the ballot—the supervisors tried to cram it down their throats, so they circulated a petition—more people in Shasta County support medical marijuana than oppose it. Why wouldn't they? Medical marijuana generates significant economic activity, from 530 Collective and Queen of Dragons, the two dispensaries in Shasta Lake City, to the smoke shops, hydro stores and big box retailers throughout

Continued on next page

Continued from previous page

the county. Some rightfully argue it's the only economic activity of any note lately.

But it seems the so-called conservatives on Shasta County's Board of Supervisors aren't interested in rational arguments on the subject of medical marijuana. They refuse to recognize state law, namely the Compassionate Care Act and SB 420, the cornerstones of California's medical marijuana regulations. They ignore the increasing body of research demonstrating marijuana's remarkable healing properties. And it's common for folks from the Chemical People to say "medical marijuana" with air quotes in the newspaper.

To them, demon weed was, is and always will be illegal, a position in which they are fully supported by Sheriff Bosenko and the board of supervisors.

What was done to James Benno and his sons is a textbook case of political persecution. After the ruckus caused when the supervisors tried to shove the first no-grow ordinance through without debate last January, Benno publicly announced he'd nevertheless be operating his 99-plant medical marijuana collective in Happy Valley as usual.

As it happened, last year Easter Sunday fell on April 20, which is also known as 420, the unofficial national holiday of cannabis proponents. So Shasta County building division director

Dale Fletcher invited a Record Searchlight reporter along on a CHP helicopter surveillance flight in search of code violators above where else? Happy Valley.

In the story, Fletcher's treacly sentiments were found beneath the headline, "Family values at heart of county's 420 marijuana hunt."

The story set the scene: "As dozens of kids hunted eggs outside of Happy Valley Elementary School on Easter Sunday, law enforcement and a county building official circled overhead in a helicopter, looking for marijuana gardens rooted nearby ... "Seeing those kids hunting Easter eggs was great because that's exactly why we're out here today," said Dale Fletcher, director of Shasta County's building division. "We want to have a nice, safe place for our children to be raised."

It's so cringeworthy, it almost brings tears to your eyes.

The video accompanying the story cuts to the next scene, and they're orbiting over Benno's immaculate collective, 99 tan, 200-gallon smart pots lined up in perfect columns and rows. The Record Searchlight continues to use the same screen grab on nearly every medical marijuana story it runs online, without identifying it as Benno's property.

"That's what we're looking for," Fletcher tells the camera.

Yeah, that damned dirty drug dealer James Benno, hiding

hashish in Easter eggs!

The reporter pointed out that Fletcher purposely flew over Benno's collective—which is nowhere near any school, park or playground—and notes that the grow exceeded the number of plants permitted by the ordinance that was in effect last year.

In other medical marijuana coverage, the Record Searchlight infers that such large grows are illegal. But that's not necessarily correct. Zoning violations can be challenged in court, and once in court, defense attorneys can take advantage of a California Supreme Court precedent that found no limit can be put on the number of plants a patient may cultivate, in part because the amount of medicine any given patient needs is a medical determination made by a physician that's protected by the right to privacy.

What the state provides are guidelines: Six mature plants or 12 immature plants per patient. Patients who don't have the property to grow their own marijuana can join a collective and contribute labor and money in exchange for their allotted number of plants. Growers generally keep a record of their members, including copies of medical marijuana recommendations, on site. For illustrative purposes, the average 99-plant collective has about 10 members growing 10 plants each, minus one.

Continued on next page

Continued from previous page

It's worth noting that the "99-plant" number is based on the federal government's promise a decade ago that it wouldn't raid gardens with less than 100 plants. They broke the promise of course, but the 99 number, which is completely arbitrary, stuck. In theory, you could have 1,000 plants, as long as you have enough patients to support the claim.

Martinez-based attorney Joseph Tully, who has successfully defended several Shasta County clients charged with illegal cultivation and various other related felonies, points out that many people, even law enforcement officials, don't understand the legal differences between medical marijuana cooperatives and collectives.

Medical marijuana patients and their supporters who form cooperatives must register with the state as a business and keep records just like any other company.

On the other hand, for collectives, registration with the state and record-keeping are voluntary. Tully refers to this as an "informal collective." Law permits medical marijuana patients and caregivers to exchange money and/or labor for medicine, in transactions that can be far less transparent. No doubt that bothers county officials, but that doesn't make it illegal.

Tully recommends keeping accurate log books instead of going all "loosey goosey."

That paid off for two of his clients, father and son Ron and Robert Drewson of Millville. The Drewsons each operated large informal collectives similar in plant number to Benno's, one in Millville, the other in Anderson. Both were raided in October 2013 by agents from the sheriff's Marijuana Investigative Team, Shasta Interagency Narcotic Task Force and the California Department of Fish and Wildlife.

The agents seized 197 plants, five vehicles and \$33,000 cash. The Drewsons were charged with four felonies, including suspicion of marijuana cultivation, possessing marijuana for sale and conspiracy. They were not arrested. You can read all about it in the Record Searchlight archives. What's harder to find (at least with the newspaper's search engine) is a small item that appeared in North State news briefs in early January, in which the Drewsons were acquitted of all charges by a Shasta County jury. As in not guilty on all counts.

I don't mean to completely harsh on the Record Searchlight's reporting. I've been a working journalist for 25 years, so I know a little bit about what I'm talking about. The reporter to whom I referred earlier, who went on the helicopter fly-along, has made an honest attempt to cover all sides of the medical marijuana issue, and has often given voice to local activists, including Benno.

Even so, almost without fail, the

Searchlight falls into the habit of repeating anti-marijuana talking points without investigation, as was the case with the reporter's story about his visit to Benno's Happy Valley collective on Cinco De Mayo, two weeks after the flyover story.

You don't need to pay for a helicopter to find Benno's place, you can just call him up. He's in the book. The cops have his cell number. I've visited him at the Happy Valley location on several occasions, and he doesn't know me from Adam. He invited the Record Searchlight reporter, and anyone else interested, to attend his collective's annual potluck planting, and the reporter's story did a good job of capturing the community spirit that's part and parcel to being a member of a medical marijuana collective.

Benno's sons Jacob, 22, and Logan, 19, were on hand, and the flyover article's "family values" headline would have been far more appropriate here.

And then the story suddenly veered off into the anti-marijuana gang's favorite new talking point, the environment. In keeping with traditional conservatives, the board of supervisors has over the years shown little interest in the environment, if the ongoing flooding of rice fields by farmers, water diversions by ranchers and illegal pesticide spraying by timber companies is any indication. Yet suddenly marijuana growers have all been branded eco-terrorizing

Continued on next page

Continued from previous page

water thieves. So Clint Snyder, assistant executive officer at the Central Water Quality Control Board in Redding, was invited into the potluck planting story.

“Generally speaking marijuana does require a significant amount of water per plant,” Snyder said in the Record Searchlight story, adding that the exact amount can vary, but marijuana plants average between 12 and 15 gallons of water each day.

Here's the problem with that figure: It's off by a factor of at least 10. They don't call the large fabric planting containers most growers use these days “smart pots” for nothing. They permit the plant to use soil and water far more efficiently. Using a drip irrigation system, Benno prefers to water his plants three gallons once every three days. This is in line with other growers I've talked to. For the math-addled, that works out to one gallon per plant per day.

Anyone attempting to pour 15 gallons of water per day on a marijuana plant in a smart pot would kill the plant in less than a week.

The newspaper reporter could have asked Benno this question, he was standing right there next to a smart pot. Perhaps he did ask, but it was cut from his story.

That's not to say that there aren't large illegal grows in the county, with tens of thousands of plants that are extremely destructive

to the environment. Most of these are cartel grows, but some are medical marijuana patients pushing way beyond the law. Rat poison—strychnine—is used liberally to prevent varmints from eating the immature plants, poisoning the ecosystem. Water is illegally siphoned off from streams and ditches. The most caustic, cheapest pesticides are used, further polluting the water table.

To their credit, Shasta County's law enforcement agencies appear to do a fairly good job at detecting this blatantly illegal activity. But to equate that activity to collectives such as Bennos and the Drewsons is flat-out wrong.

In the flyover story, Benno is quoted as saying such aerial surveillance is illegal. That might be true if the U.S. Supreme Court stuck to the original intent of the Fourth Amendment's protections against unreasonable searches and seizures. Unfortunately, the Fourth Amendment was thrown out three decades ago when the War on Drugs began in earnest.

Here's what the Supremes say about helicopter searches: Law enforcement can fly over your property and look in your yard, but law enforcement can't fly over your house and use infrared cameras or other devices to peer inside the walls.

I hope you feel better now.

That's why the Shasta County Sheriff's Office had no qualms

whatsoever about using the “intelligence” gathered on Easter Sunday, along with one more taxpayer-financed aerial adventure, to come down hard on James Benno.

•••

What agent Tom Barner of the Shasta County Sheriff's Marijuana Team did was spin up the information gathered to investigate alleged code violations by Shasta County's most outspoken medical marijuana proponent into a full-blown felony search warrant, including a search for “weapons commonly used by individuals to facilitate trafficking or to protect their cache of marijuana and offensively used against peace officers serving a warrant such as assault rifles, hunting rifles, shotguns, handguns, and their ammunition, and illegal or combat style knives.”

The only way the warrant works, presuming cops and judges are honest, is for Barner and the judge to have willfully pretended they'd never heard of James Benno.

If this sort of behavior doesn't shiver the timbers of every God-fearing Second Amendment rights supporter in Shasta County, I can't imagine what would. A small cadre of righteous prohibitionists has decided federal and state law doesn't apply to them. Now they're coming for everything, including your guns. Today, it's medical marijuana patients. Tomorrow,

Continued on next page

Continued from previous page

who knows? Perhaps people who mouth off too much about local government on the Internet?

On May 20, they showed up in force at Benno's place in Happy Valley, patrol cars, unmarked SUVs, dump trucks and kevlar-clad agents armed to the teeth. Benno told his sons "don't do anything freaky!" and came out on the front porch with arms in the air, holding a cell phone in his left hand, which he'd just used to call 911. Benno said that as the operator answered, tiny red dots of light appeared on Benno's chest—the laser sights of multiple police assault rifles.

Benno also said he's uncertain exactly what happened next. An agent on his left was holding the search warrant. Benno assumed the agent wanted him to read it, so he reached for the warrant. As he did so, the officer standing on his right struck him and took him to the ground. Several other cops dog-piled on top of him. When he emerged from the pile, he had a four-inch gash on the side of his head, visible in the mug shots taken later. He's not sure if he was struck by a rifle butt or kicked in the head.

In the 15 felony drug and weapons charges levied against Benno and his sons that day, this one is called "resisting arrest." Benno and both of his sons were jailed on \$500,000 bail each, where they languished for a month until members of the medical marijuana community raised enough to make a down payment on the bail.



After hauling the Bennos off to jail, government agents brought in the dump trucks, loaded up all 99 plants, pallets, smart pots, dirt and all, and carted it off to the local landfill. All of the Bennos' legally-owned guns were confiscated. Police took \$5,900 in cash, including \$600 found in a drawer that has since gone missing from the evidence list, according to Benno.

In the Record Searchlight story on the Bennos' arrest, Sgt. Barry Powell with the Shasta County Marijuana Investigative Team claimed, "Our team wasn't out to get Mr. Benno at all. We're taking these (investigations) one day at a time, one step at a time and one cultivation at a time."

If you believe that, you've been sipping a few too many poolside margaritas.

District Attorneys stack up multiple charges against the majority of medical marijuana defendants for one simple reason: To force them to take a plea deal rather than face the risk and expense of court battle.

One member of Benno's collective, Elias Dippold, who was charged but not arrested, did just that. According to the Record Searchlight, on July 10 last year, Dippold, faced with a felony cultivating charge, "pleaded guilty to a charge of cultivating marijuana on the property in exchange for a deferred judgment. He will be required to complete drug education classes and obey all laws for two years in order to have his charges dropped."

One wonders if Dippold will be taking those classes from one of the recovery homes partnered with the

Continued on next page

Continued from previous page

Shasta County Chemical People.

Benno says the District Attorney attempted the same tactic, and even offered to drop all of the marijuana charges if he would plead guilty to the felony weapons violations. Being no fool, Benno refused to do so. Benno and his sons are now being represented by a public defender and the trial date keeps getting pushed back.

It's easy to imagine Shasta County isn't too eager to bring the case to trial. If they lose and a jury acquits them of all charges, they can expect to be on the receiving end of some serious Benno blowback, via a multi-million dollar civil lawsuit. Benno figures the value of his collective's certified organic crop, which was destroyed by Shasta County, was at least \$108,000 per patient, which he conservatively estimated thusly: Six plants per patient, 4 pounds per plant.

The value of his certified-organic soil, which he has been composting for nearly 20 years and was also destroyed, is much higher: \$17 million.

This is no joke, as Benno's civil attorney, Michael Scheibli, explained at a meeting convened by the ACLU in February to address concerns by Shasta County's medical marijuana community. Asked if the county can afford to prosecute the number of new cases that are sure to develop if Measure A is fully enforced, Scheibli, who has been extremely successful at getting compensation for clients who have been cleared of all charges, predicted the county would go bankrupt within 10 months as long as every single patient charged with a code violation pleads not guilty.

Judging by the county board of supervisors long track record of

code enforcement mismanagement, I wouldn't be surprised in the least if that's what happened.

Not too long after the ACLU meeting, I visited James Benno at the Happy Valley location for the last time.

I arrived just as Jacob and Logan pulled the final fence post out of the ground with a Bobcat tractor. The vast field behind the house where 99 marijuana plants in perfectly arranged smart pots once grew now lies bare and fallow.

"They've been trying to make me homeless for five years," Benno said, with some resignation in his usually antagonist demeanor. Three times they've forced him to move from rental properties where he'd established large collective grows.

Nevertheless, he remains defiant.

"In 2009, I started making videos," he recalls. "The computer is a powerful tool, they can't hide shit now."

He's right about that, too. ■

