

# Legalizing Marijuana: A View from Among the Weeds

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*The United States is on a fast-track to a new era in marijuana law. The prospect of a federal pathway to legalization opens a Pandora's Box of issues for states like California. This Article focuses on Humboldt County in the Emerald Triangle, California's prime marijuana growing area, and examines how the region might be impacted by state legalization. After a brief look into the development of the marijuana market in Humboldt County, this Article identifies some of the costs that have come with leaving the county outside the legal fold, including a failure to address poor working conditions for seasonal trimmers and an epidemic of sexual harassment that has only recently come to light. The Article then explores some of the obstacles to bringing the county into the legal economy. Depending on how policymakers and marijuana producers respond to these issues, Humboldt County may become a boom-or-bust economy. The Article then examines some of the benefits of bringing producers into the legal economy, including improved working conditions for the scores of individuals employed in the industry. Failing to bring the county into compliance with county and state cannabis regulations also threatens the goals of marijuana reformers. The Article concludes with thoughts about how Humboldt County might fare in the new world of legal pot. Just as in the wine industry, the region's best hope may lie in the move towards marijuana appellations, which will require entry into the legal market.*

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\*\* University of the Pacific, McGeorge School of Law, J.D., 2017. I want to extend special thanks to my co-Author Professor Michael Vitiello for his support and mentorship, and to Kendall Fisher for her excellent editing. Finally, I want to thank the people in Humboldt County that make it my home.

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## INTRODUCTION

The United States is on the fast-track towards a new era in marijuana law.<sup>1</sup> After the 2016 election, over half of the United States has some form of legal access to marijuana, with seven states legalizing its recreational use.<sup>2</sup> Despite uncertainty surrounding how the Trump Administration and Sessions Justice Department will respond to those efforts,<sup>3</sup> the pressure is on the federal government to accommodate those states that have legalized marijuana in one form or another.<sup>4</sup>

The prospect of a federal pathway to legalization opens a Pandora's Box of issues for states like California.<sup>5</sup> Indeed, a number of law reviews have organized symposia focusing on many of these questions.<sup>6</sup> This Article focuses on Humboldt County in the Emerald Triangle, California's prime marijuana growing area<sup>7</sup> and examines how the region might be impacted by state legalization. This Article explores the challenges that both state regulators and local growers will face. Depending on how policymakers and marijuana producers respond to these issues,

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1. See Matt Ferner, *Obama: If Enough States Decriminalize Marijuana, Congress May Change Federal Law*, HUFFINGTON POST (Mar. 16, 2015, 7:51 PM), [http://www.huffingtonpost.com/2015/03/16/obama-marijuanadecriminalization\\_n\\_6881374.html](http://www.huffingtonpost.com/2015/03/16/obama-marijuanadecriminalization_n_6881374.html).

2. Melia Robinson & Skye Gould, *This Map Shows Every State that Legalized Marijuana on Election Day*, BUSINESS INSIDER (Nov. 9, 2016, 2:55 PM), <http://www.businessinsider.com/where-is-marijuana-legal-2016-11>.

3. Beau Kilmer, *Trump's Marijuana Options*, THE HILL (Jan. 17, 2017, 1:30 PM), <http://thehill.com/blogs/congress-blog/judicial/314569-trumps-marijuana-options>.

4. Katy Steinmetz, *7 Reasons President Trump Is Unlikely to Fight Legal Marijuana*, TIME (Dec. 8, 2016), <http://time.com/4594445/legal-marijuana-trump-sessions-policy/>.

5. See Beau Kilmer, *Your Questions About Marijuana Legalization, Answered*, RAND BLOG (Sept. 13, 2016), <http://www.rand.org/blog/2016/09/your-questions-about-marijuana-legalization-answered.html>.

6. See, e.g., 2017 USF Law Review Symposium, *California's Green Rush: The Business and Ethics of Cannabis*, U.S.F. L. REV. (Jan. 27, 2017), <https://www.usfca.edu/stream/law-review-symposium>; Symposium, *Disjointed Regulation: State Efforts to Legalize Marijuana*, 50 U.C. DAVIS L. REV. 573 (2016); Symposium, *The Road to Legitimizing Marijuana: What Benefit at What Price?*, 43 U. PAC. L. REV. 1 (2012).

7. Max Cherney, *Growers in California's Emerald Triangle Are Changing Their Minds About Legal Weed*, VICE (Mar. 24, 2015, 3:05 AM), <https://news.vice.com/article/growers-in-californias-emerald-triangle-are-changing-their-minds-about-legal-weed>.

Humboldt County may become a boom-or-bust economy. The Article then examines some of the benefits of bringing producers into the legal economy, including improved working conditions for the scores of individuals employed in the industry. Failing to bring Humboldt County into compliance with county and state cannabis regulations also threatens the goals of marijuana reformers.

Part I of this Article briefly reviews the development of the marijuana industry in Humboldt County. It discusses some of the reasons that regional growers might be tempted to remain outside the legal market. Part II identifies some of the costs that come with leaving the county outside the legal fold, including a failure to address poor working conditions for seasonal trimmers and an epidemic of sexual harassment that has only recently come to light. Part III addresses some of the obstacles to bringing the county into the legal economy. It examines the history of similar processes in Washington and Colorado and assesses whether those states might offer a framework to bring Humboldt County outlaws into the emerging legal cannabis economy. It also evaluates possible challenges unique to Humboldt County and assesses whether legalization will allow marijuana production to move out of the secluded mountainous regions of the Emerald Triangle into rich farmland in the Central Valley. The Article concludes with thoughts about how Humboldt County might fare in the new world of legal marijuana. Just as in the wine industry, the region's best hope may lie in the move towards marijuana appellations, which will require entry into the legal market.

#### I. POT GOES NORTH: THE TRANSFORMATION OF HUMBOLDT COUNTY

Humboldt County has always been valued for its wealth of natural resources. In 1850, Euro-Americans settled in what was already home to the Wiyot, Yurok, Hupa, and other native tribes.<sup>8</sup> Propelled by the search for gold, settlements expanded throughout the region towards the Klamath and Trinity rivers.<sup>9</sup> In the eventual dénouement of gold rush hysteria, the economic focus of the region shifted to other valuable resources: salmon, trees, and land.<sup>10</sup> One hundred years later, the cultural and economic framework in Humboldt County would shift again, setting the stage for the current economic situation confronting the region.

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8. Susie Van Kirk, *Humboldt County: A Briefest of Histories*, HUMBOLDT COUNTY HIST. SOC'Y (May 1999), <http://www.humboldthistory.org/bHumboldtHistory.html>; Siva Admin, *Why Is so Much Cannabis Grown in Humboldt County?*, SIVA (Mar. 15, 2017), <http://www.sivallc.com/why-is-so-much-cannabis-grown-in-humboldt-county/>.

9. Siva Admin, *supra* note 8.

10. Siva Admin, *supra* note 8.

In the 1960s, migrants from the Haight-Ashbury neighborhood in San Francisco traveled north to Humboldt, Trinity, and Mendocino counties.<sup>11</sup> This tri-county area eventually became known as the “Emerald Triangle.” As part of the “back-to-the-land” movement these new residents purchased cheap land, built homes, and began to grow food to eat and cannabis to smoke.<sup>12</sup> They established a new culture, hidden behind the protective trees of the “Redwood Curtain.” People felt free to experiment with communal living, self-sustenance, and alternative lifestyles veiled in the forest, away from the urban sprawl.

A new technique for growing cannabis made its way to Humboldt County around 1975.<sup>13</sup> This technique produces “sinsemilla,” which literally translated means “seedless” in English.<sup>14</sup> Unlike traditional marijuana, sinsemilla is grown by separating the male and female cannabis plants early in the growing process. Since the female buds remain unpollinated, seeds fail to develop. With fewer seeds in each bud, there is a higher amount of smokeable plant matter. This process yielded more potent and more marketable material, and sinsemilla quickly became the norm. As one commenter put it, “Sinsemilla may have been born elsewhere, but Humboldt growers mastered it.”<sup>15</sup> This technique was only one of the ways in which Humboldt growers influenced marijuana in the United States.

During most of the 1970s, more than ninety percent of the cannabis consumed in the United States was brought in from outside the country, and by 1979, an estimated thirty-five percent was grown in California.<sup>16</sup> By 2010, California alone was responsible for seventy-nine percent of all cannabis consumed across the nation.<sup>17</sup> The growth of the growing industry was not a secret within the county. In 1979, *The New York Times* published an article about Garberville, a southern Humboldt town, titled “Marijuana Crops Revived California Town.”<sup>18</sup> The article quoted then-State Senator Barry Keane explaining, “[e]ven some very responsible members of the Clamber [sic] of Commerce have asked me whether it wouldn’t make sense to decriminalize it . . . and use it to diversify the economy, broaden the tax base and create jobs in this high

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11. See, e.g., Emily Brady, *How Humboldt Became America’s Marijuana Capital*, SALON (June 30, 2013, 9:30 AM), [http://www.salon.com/2013/06/30/how\\_humboldt\\_became\\_americas\\_marijuana\\_capital/](http://www.salon.com/2013/06/30/how_humboldt_became_americas_marijuana_capital/).

12. See generally EMILY BRADY, HUMBOLDT: LIFE ON AMERICA’S MARIJUANA FRONTIER (2013) (providing an overview of these migrants’ experiences).

13. Brady, *supra* note 11.

14. *Sinsemilla*, DICTIONARY.COM, <http://www.dictionary.com/browse/sinsemilla> (last visited Mar. 3, 2018).

15. Brady, *supra* note 11.

16. Brady, *supra* note 11.

17. Brady, *supra* note 11.

18. Brady, *supra* note 11.

unemployment area.”<sup>19</sup> Senator Keane also expressed concern about the growing crime rate associated with the booming industry, particularly violent crime.<sup>20</sup> He stated that he believed “one homicide [sic] and a number of kidnappings, assaults and burglaries” had occurred in a once peaceful area.<sup>21</sup>

Senator Keane’s observations in 1979 speak to the heart of the issue that Humboldt County faces today. In a county where an estimated twenty-five percent of all revenue comes from illicit cannabis growth, the shifting national trend toward legalization poses a number of cultural and economic issues.<sup>22</sup> For several decades, the industry has been structured on a high-risk, high-reward model, due in part to the characteristics of the growers themselves.

That Emerald Triangle growers survived the Reagan Administration’s War on Drugs demonstrates their resilience. Supreme Court cases through the 1980s suggest some of the invasive tactics used by drug enforcement agents.<sup>23</sup> For example, in *California v. Ciraolo*, the Court found that flying over a home within public airspace at 1000 feet did not constitute a Fourth Amendment search.<sup>24</sup> A divided Court extended that holding in *Florida v. Riley*, where five justices found that surveillance from a helicopter hovering 400 feet above an isolated property was not a search.<sup>25</sup> Beyond the risk of criminal liability, marijuana producers also faced the threat of aggressive use of asset forfeiture provisions during this era, whereby they lost not only their crops but their property.<sup>26</sup>

Despite those risks, many Emerald Triangle producers continued the trade or managed to avoid detection entirely. The region is so rural and includes so many producers that full drug law enforcement was impossible as a practical matter.<sup>27</sup> No doubt, those who survived the most aggressive tactics are hardened by the experience. It is easy to find people

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19. William Carlsen, *Marijuana Crops Revive California Town*, N.Y. TIMES (Mar. 11, 1979), [http://www.nytimes.com/1979/03/11/archives/marijuana-crops-revive-california-town-annually-at-harvest-the-100.html?\\_r=0](http://www.nytimes.com/1979/03/11/archives/marijuana-crops-revive-california-town-annually-at-harvest-the-100.html?_r=0).

20. *Id.*

21. *Id.*

22. *Id.*

23. See generally *United States v. Sokolow*, 490 U.S. 1 (1989) (finding DEA agents had reasonable suspicion to stop a traveler from Miami who looked nervous while traveling under a false name); *United States v. Mendenhall*, 446 U.S. 544 (1980) (holding that DEA agents established reasonable suspicion to seize a woman suspected of transporting drugs).

24. *California v. Ciraolo*, 476 U.S. 207, 215 (1986).

25. *Florida v. Riley*, 488 U.S. 445, 451–52 (1989).

26. Nick Sibilla, *The Shame of “Equitable Sharing,”* SLATE (Apr. 2, 2014, 1:03 PM), [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2014/04/equitable\\_sharing\\_legalized\\_marijuana\\_and\\_civil\\_forfeiture\\_the\\_scheme\\_that.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2014/04/equitable_sharing_legalized_marijuana_and_civil_forfeiture_the_scheme_that.html).

27. See Matt Drange, *Crime Rates in Humboldt County Increase; Statewide Numbers Dropping*, EUREKA TIMES STANDARD (June 29, 2010, 12:01 AM), <http://www.times-standard.com/article/ZZ/20100629/NEWS/100626747>.

in the county who are anti-establishment and prone to believing conspiracy theories.<sup>28</sup> As indicated above, many of the early marijuana settlers came with those attitudes.<sup>29</sup> The War on Drugs only hardened these anti-establishment beliefs.<sup>30</sup>

The skeptical attitude, which developed in reaction to aggressive policing, has also led many producers to question legalization efforts.<sup>31</sup> Even if arrest and imprisonment are no longer in play, many still question whether a legal business model will be economically viable.<sup>32</sup> They are distrustful of licensing fees and are concerned they will be taxed out of business.<sup>33</sup> Beyond that, the libertarian bend of producers leads many of them to resist any form of business regulation.<sup>34</sup>

In addition to licensing fees and taxes, there are limitations now in place involving water rights and regulations on the use of pesticides and fertilizers.<sup>35</sup> Even before California adopted Proposition 64, the ballot initiative legalizing recreational marijuana for adult use, California adopted legislation to regulate the medical marijuana industry, motivated in part by the drought and degradation of the environment.<sup>36</sup> Producers must comply with regulations promulgated by California's Water Resources Control Board or face sanctions.<sup>37</sup> Compliance may increase costs and limit yields, with a reduced risk of governmental interference as the only benefit.<sup>38</sup> The largely anti-establishment Emerald County Triangle producers no doubt view these new rules as violations of their personal rights.

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28. See Benjamin Wallace-Wells, *The Truce on Drugs*, N.Y. MAGAZINE (Nov. 25, 2012), <http://nymag.com/news/features/war-on-drugs-2012-12/>.

29. Van Kirk, *supra* note 8.

30. Wallace-Wells, *supra* note 28.

31. Patrick McGreevy, *The Push to Legalize Pot for All Has Deeply Divided the Medical Marijuana Community*, L.A. TIMES (Oct. 4, 2016, 12:05 AM), <http://www.latimes.com/politics/la-pol-ca-proposition-64-recreational-pot-opponents-20161004-snap-story.html>.

32. *Id.*

33. See Guy Kovner, *North Coast Pot Growers, Law Enforcement Wary of Marijuana Legalization Measure*, PRESS DEMOCRAT (July 2, 2016), <http://www.pressdemocrat.com/news/5800058-181/north-coast-pot-growers-law?artslide=0>.

34. Lee Ferran, *Legal Pot: Death of the Emerald Triangle?*, ABC NEWS (Aug. 3, 2010), <http://abcnews.go.com/US/TheLaw/emerald-triangle-marijuana-legalization-destroy-americas-cannabis-capital/story?id=11302182>.

35. Anastasia Pantsios, *5 Reasons Legalizing Pot Is Good for the Planet*, ECOWATCH (June 26, 2015, 11:15 AM), <http://www.ecowatch.com/5-reasons-legalizing-pot-is-good-for-the-planet-1882056664.html>.

36. See *Cal NORML: A Summary of the Medical Cannabis Regulation and Safety Act (MCRSA)*, CAL. NORML (Sept. 15, 2015), [http://www.canorml.org/one/A\\_SUMMARY\\_OF\\_THE\\_MEDICAL\\_MARIJUANA\\_REGULATION\\_AND\\_SAFETY\\_ACT](http://www.canorml.org/one/A_SUMMARY_OF_THE_MEDICAL_MARIJUANA_REGULATION_AND_SAFETY_ACT).

37. *Id.*

38. See Ryan Burns, *Another Medical Marijuana Regulation Bill Passes Vote in State Legislature*, LOST COAST OUTPOST (June 4, 2015, 3:20 PM), <https://lostcoastoutpost.com/2015/jun/4/another-medical-marijuana-regulation-bill-passes-v/>.

These attitudes pose a significant challenge for reformers. Marijuana reform in California is almost certainly a reality, but many Humboldt County producers distrust one another and are even more wary of outsiders.<sup>39</sup> Although those attitudes may reflect traits essential to survive in the industry,<sup>40</sup> achieving many of reformers' goals depends on bringing producers—including those in the Emerald Triangle—into the legal fold.<sup>41</sup>

## II. THE COST OF REBELLION

Many commentators have started to identify many of the costs that come with leaving Humboldt County producers out of the legal arena.<sup>42</sup> Proponents of legalization have long pointed to increased revenue from licensing fees and taxes on the production and sale of marijuana as a reason to legalize.<sup>43</sup> Leaving Humboldt County producers out because of inadequate incentives to enter the legal market would put a significant dent in the promised windfall.

But a decrease in taxable industry is not the only problem associated with marijuana production and use. The drafters of Proposition 64 recognized these social costs,<sup>44</sup> and earmarked some of the expected tax revenues to address a host of those problems.<sup>45</sup> Legalization of marijuana may expand its use among minors.<sup>46</sup> In response, Proposition 64 directs money to educating youth about the risks of marijuana.<sup>47</sup> Another problem many fear is increased incidents of intoxicated driving.<sup>48</sup> The drafters directed significant funds to law enforcement efforts to develop a reliable way to test whether or not a driver is under the influence of

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39. See Zach St. George, *What Will the End of Secret Marijuana Mean for Growers in Humboldt?*, PAC. STANDARD (Oct. 31, 2016), <https://psmag.com/what-will-the-end-of-secret-marijuana-mean-for-growers-in-humboldt-ac7589762e86#.3pfgow73x>.

40. See *id.*

41. See *infra* Part II.

42. See, e.g., Will Houston, *Pot Rules on the Emerald Triangle: A Comparison of Humboldt, Mendocino, and Trinity County Regs.*, EUREKA TIMES-STANDARD (Oct. 22, 2016, 10:20 PM), <http://www.times-standard.com/article/NJ/20161022/NEWS/161029948>; Rory Carroll, *California Marijuana Legalization Faces Unlikely Foe: Growers*, REUTERS (Oct. 4, 2016, 1:25 AM), <http://www.reuters.com/article/us-usa-marijuana-growers-idUSKCN1240AF>.

43. See, e.g., Heesun Wee, *California's High on Its Billion-Dollar 'Green Rush'*, CNBC (July 12, 2016, 4:42 PM), <http://www.cnbc.com/2016/07/12/californias-quest-to-legalize-marijuana-in-the-state.html>.

44. See, e.g., Brooke Edwards Staggs, *Why Prop 64 Is About More than Just Smoking Marijuana*, ORANGE COUNTY REG. (Oct. 29, 2016, 10:21 PM), <http://www.ocregister.com/articles/marijuana-733151-prop-pot.html>.

45. Samantha Tatro, *Proposition 64: Legalization of Marijuana and Hemp*, NBC SAN DIEGO (Oct. 17, 2016, 2:09 PM), <http://www.nbcsandiego.com/news/local/Proposition-64-Legalization-of-Marijuana-and-Hemp-397348761.html>.

46. *Id.*

47. *Id.*

48. *Id.*

marijuana.<sup>49</sup> The law also appropriates funds for drug treatment and abatement of environmental harm.<sup>50</sup>

In order to achieve many of the goals of reform, the state must curtail the illegal production and sale of marijuana. As one of the co-authors has argued, a large number of illegal producers would make it unlikely that environmental damage caused by the illicit industry could be abated.<sup>51</sup> If the black market remains unchecked, tax revenue earmarked to help cure social problems could fall short of expectations.<sup>52</sup>

As indicated, many commentators have identified these kinds of uncertainties in California's new world of recreational marijuana.<sup>53</sup> Less visible, however, is the effect on working conditions for many individuals in the industry.

However, the issue has not been ignored completely. Some commentators have focused on working conditions.<sup>54</sup> Legalizing marijuana production puts increased pressure on producers to comply with a wide array of worker safety, health, and wage provisions.<sup>55</sup> Recently, though, an additional workplace risk has surfaced beyond health insurance and minimum wage: sexual abuse of seasonal marijuana trimmers.<sup>56</sup>

In September 2016, Shoshana Walter from *Reveal*<sup>57</sup> produced a story that exposed the systemic issues of sexual violence, discrimination, human trafficking, and retaliation that plague the illicit marijuana growing industry in Humboldt County.<sup>58</sup> The story paints a picture of isolated, verdant mountains and the young "trimmigrants" who move to the area to trim each marijuana harvest for cash.

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49. *Proposition 64 Revenues*, LEGISLATIVE ANALYST'S OFFICE 4–5 (Feb. 16, 2017), <http://www.lao.ca.gov/handouts/crimjust/2017/Proposition-64-Revenues-021617.pdf>.

50. Joy Haviland, *Why California Should Vote Yes on Prop. 64 to Legalize the Adult Use of Marijuana*, DRUG POL'Y ALLIANCE (July 1, 2016), <http://www.drugpolicy.org/sponsored/why-california-should-vote-yes-prop-64-legalize-adult-use-marijuana>.

51. Michael Vitiello, *Legalizing Marijuana and Abating Environmental Harm: An Overblown Promise?*, 50 U.C. DAVIS L. REV. 773, 791–96 (2016).

52. Tom James, *The Failed Promise of Legal Pot*, ATLANTIC (May 9, 2016), <https://www.theatlantic.com/politics/archive/2016/05/legal-pot-and-the-black-market/481506>.

53. Beau Kilmer, *The Legal Marijuana Middle Ground*, USA TODAY (Nov. 30, 2016, 6:00 AM), <http://www.usatoday.com/story/opinion/2016/11/30/marijuana-legalize-states-medicalrecreation-column/94553192>.

54. See, e.g., Joel Warner, *Marijuana Employees Ask to Be Treated with the Same Respect as Their Merchandise*, INT'L BUS. TIMES (Dec. 18, 2015, 8:13 AM), <http://www.ibtimes.com/marijuana-employees-ask-be-treated-same-respect-their-merchandise-2231136>.

55. *Id.*

56. Shoshana Walter, *In Secretive Marijuana Industry, Whispers of Abuse and Trafficking*, REVEAL (Sept. 8, 2016), <https://www.revealnews.org/article/in-secretive-marijuana-industry-whispers-of-abuse-and-trafficking>.

57. *Reveal* is a media platform from the Center for Investigative Reporting. *About Us*, REVEAL, <https://www.revealnews.org/about-us> (last visited Mar. 3, 2018).

58. Walter, *supra* note 56.



The *Reveal* piece “unearthed dozens of accounts of sexual exploitation, abuse and trafficking.”<sup>59</sup> These problems are not being addressed head-on. Instead, law enforcement agents are focusing on what they perceive as the main problem: illegal growing. The sexual abuse, trafficking, and violence are treated like symptoms of a bigger disease. Kyla Baxley, an investigator for the Humboldt County District Attorney’s Office, explained that the police are “going in to eradicate marijuana, and they would probably tell you nothing else is happening but the drugs.”<sup>60</sup> The narrative that comes out of Humboldt County is marijuana-specific. People only hear about the growing and selling, and the host of other issues in the industry are rarely reported.

The *Reveal* story painted a frightening picture of the Emerald Triangle. Walter wrote, “[d]uring one harvest season, two growers began having sex with their teenage trimmer. When they feared she would run away, they locked her inside an oversized toolbox with breathing holes.”<sup>61</sup> Another teenager from Humboldt who started trimming at age twelve was given methamphetamine to make her work faster.<sup>62</sup> She described being “passed . . . around” to the grower’s friends to cover his debts.<sup>63</sup> The girl eventually ended up in a homeless youth shelter, and was further manipulated by the growers and coerced to recruit other vulnerable teens into the same life.<sup>64</sup>

In the *Reveal* story, Walter characterized sexual abuse as “rampant” in the growing community.<sup>65</sup> Humboldt Domestic Violence Services received over 2000 crisis calls in 2015, a shocking 80% increase since 2011.<sup>66</sup> The rise in sexual abuse and trafficking has been attributed to the presence of illegal marijuana grows.

Not surprisingly, issues raised in the *Reveal* exposé are open to debate. First, some commentators dispute whether the sexual predatory practices can be traced back to the illegal nature of the industry. They point to Colorado, where recreational marijuana was legalized in 2014, but sex crimes have still increased. Colorado Springs Police Sergeant Craig Simpson has posited, “Colorado marijuana provides pimps a reason to move into the state while the drug lures women and men into the sex trade industry.”<sup>67</sup> Assessing the validity of such a claim

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59. Walter, *supra* note 56.

60. Walter, *supra* note 56.

61. Walter, *supra* note 56.

62. Walter, *supra* note 56.

63. Walter, *supra* note 56.

64. Walter, *supra* note 56.

65. See Walter, *supra* note 56.

66. Walter, *supra* note 56.

67. Chhun Sun, *Alleged Connection Between Legal Marijuana, Sex Trade Sparks Debate in Colorado Springs*, GAZETTE (July 10, 2016), <http://gazette.com/alleged-connection-between-legal-marijuana-sex-trade-sparks-debate-in-colorado-springs/article/1580044>.

(somewhat reminiscent of *Reefer Madness*<sup>68</sup>) is difficult because police do not provide corroborating data. Marijuana supporters reject the link as well.<sup>69</sup>

Second, some dispute whether Humboldt marijuana producers are engaged in sexually predatory practices at all. When the *Reveal* story was released, growers in Humboldt reacted with disbelief.<sup>70</sup> Kym Kemp, a well-established local reporter from Southern Humboldt, explained that growers thought “the abuse seen in their area was found in similar proportions across society . . . .”<sup>71</sup> Kristin Nevedal, the director of Patient Focused Certification,<sup>72</sup> asked, “[i]f this was at Harvard, it would be called rape culture and white privilege. But because it is happening here, they want to call it cannabis culture?”<sup>73</sup> Given a culture of criminality, one would be hard-pressed to prove that sex offenses are more common in such a culture than elsewhere.

Sexual assault is only the most dramatic risk faced by trimmers and other transient marijuana workers. The *International Business Times* published a piece titled “Marijuana Employees Ask to Be Treated with the Same Respect as Their Merchandise.”<sup>74</sup> The article details the experiences of several different marijuana workers, including trimmers and budtenders.<sup>75</sup> Some trimmers complain about long workdays, up to eleven hours a day. The article pointed out that workers do not have employee benefits either.<sup>76</sup>

Unlike working conditions for retail employees selling legal marijuana, the conditions for laborers at grow sites are largely unregulated. “Employees and outside observers say there’s lax surveillance of workplace conditions, little in the way of mandatory worker training and minimal protections to ensure proper employee

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68. REEFER MADNESS (Motion Picture Ventures 1936) (a film warning of the supposed extreme dangers of marijuana, now considered highly exaggerated fiction).

69. Mason Tvert from the Marijuana Policy Project believes that any claims connecting sex trafficking to marijuana are unfounded. He explained law enforcement, city and state officials are blaming marijuana for everything they can’t handle. Sun, *supra* note 67. Thomas Ravenelle, an FBI special agent in Denver, attributes any connection between an increase in sex trafficking and the marijuana industry to the inevitable result of a major event. “Whenever an event draws people from around the world, you will see an increase in sex trafficking.” The Rocky Mountain High Intensity Drug Trafficking Area, a local task force, has relied on questionable statistics in drawing the conclusion that “legalization of marijuana is fueling a sex tourism in Colorado.” Sun, *supra* note 67.

70. Kym Kemp, *Humboldt Reacts to Sexual Abuse Exposé*, HIGH TIMES (Sept. 29, 2016), <http://hightimes.com/news/humboldt-reacts-to-sexual-abuse-expose>.

71. *Id.*

72. Patient Focused Certification is a “non-profit, peer reviewed, third party certification program for the medical cannabis industry.” *The Patient Focused Certification Program*, PATIENT FOCUSED CERTIFICATION, <https://safeaccess2.org/patientfocusedcertification/about> (last visited Mar. 3, 2018).

73. Kemp, *supra* note 70.

74. Warner, *supra* note 54.

75. Warner, *supra* note 54.

76. Warner, *supra* note 54.

treatment.”<sup>77</sup> There are also health concerns stemming from workers handling products that have been heavily treated with pesticides or contain mildew.<sup>78</sup>

The Occupational Safety and Health Administration (“OSHA”) is currently able to regulate working conditions more effectively in most other industries. In marijuana growing, according to Colorado grower Susan Chicovsky, “OSHA is not involved.”<sup>79</sup> The Denver OSHA office claims that OSHA treats marijuana businesses the same as any other.<sup>80</sup> But Herb Gibson of that same office explains that OSHA hasn’t developed marijuana-specific guidelines or undertaken proactive inspections.<sup>81</sup>

Less open to debate is the reality that marijuana producers are regularly the victims of violent crime, often related to robberies, fueled by the desire to steal marijuana or its cash proceeds. On November 11, 2016, in Mendocino County, Sheriff’s deputies were called to a murder scene in Laytonville on Highway 101.<sup>82</sup> Three young trimmers returned to the farm at night to steal marijuana from the premises. When the plan went awry, they murdered the grower.<sup>83</sup>

This type of violent crime is commonplace on illegal grow operations.<sup>84</sup> Only a week after the Laytonville murder, the *Lost Coast Outpost* reported a home invasion robbery in Willow Creek, a town in Humboldt County. “[T]wo unknown suspects entered the residence, brandished a firearm, [and] demanded marijuana and money.”<sup>85</sup> Within the span of a week, two violent marijuana crimes made headlines in the Emerald Triangle. This is not unusual for these rural areas that sustain themselves on illegal growing.<sup>86</sup> Because growers currently have little legal recourse when their plants, equipment, and profits are stolen, they are an attractive target for potential thieves.<sup>87</sup>

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77. Warner, *supra* note 54.

78. Warner, *supra* note 54.

79. Warner, *supra* note 54.

80. Warner, *supra* note 54.

81. Warner, *supra* note 54.

82. John Ross Ferrara, *BOLO: A Group of Trimmers Allegedly Rob, Murder Laytonville Grower, Make off with More than 100 Pounds of Weed*, LOST COAST OUTPOST (Nov. 13, 2016, 10:01 AM), <https://lostcoastoutpost.com/2016/nov/13/bolo-group-trimmers-allegedly-rob-murder-laytonvil>.

83. *Id.*

84. See, e.g., Haya El Nasser, *Armed Guards Defend Illegal California Marijuana Farms*, AL JAZEERA AM. (Jan. 30, 2014, 6:00 AM), <http://america.aljazeera.com/articles/2014/1/30/armed-farmers-combatillegalcaliforniamarijuanafarms.html> (another example of violent crime arising from illegal grow operations).

85. Andrew Goff, *Armed Robbers Steal Marijuana, Escape in Jeep Near Willow Creek*, LOST COAST OUTPOST (Nov. 21, 2016, 10:41 AM), <https://lostcoastoutpost.com/2016/nov/21/armed-robbers-steal-marijuana-escape-jeep-near-wil>.

86. Ryan Burns, *Humboldt’s Violent Year: Lessons from 16 Homicides*, LOST COAST OUTPOST (Dec. 23, 2014, 4:38 PM), <https://lostcoastoutpost.com/2014/dec/23/most-violent-year-humboldt-homicides>.

87. Sean Garmire, *Growing Violence: Marijuana Gardens Are Robbery Targets Throughout*

Some marijuana reformers argue that these kinds of problems weigh in favor of legalizing recreational sale and use of marijuana.<sup>88</sup> That invites further exploration: one should consider, as we do below, whether Proposition 64 (or other legalization measures) will actually reduce sexual assault and other violent crime and improve working conditions for marijuana workers.

### III. OUR CRYSTAL BALL

Legalizing marijuana will have unintended consequences. By the time lawyers began drafting Proposition 64, they had the benefit of hindsight from a number of events. They could focus on why voters rejected Proposition 19 in California several years earlier,<sup>89</sup> the federal government's response to state marijuana legalization initiatives,<sup>90</sup> a thoughtful report on the subject commissioned by Lieutenant Governor Gavin Newsom,<sup>91</sup> and lessons from legalization efforts in Colorado and Washington.<sup>92</sup> The resulting proposition was the product of considerable effort and, no doubt, political compromise to get major players on board.<sup>93</sup> Despite such a detailed drafting process, the authors could not have anticipated all the potential consequences of legalization. As a result, one must ask what is likely to happen in Humboldt County and, by implication, other growing regions founded essentially by outlaws.

As one of us has written<sup>94</sup> and the other seen in person,<sup>95</sup> a generational shift occurring in Humboldt County can give some reason for optimism. Generational growers desperate to find purchase in the

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*Humboldt County*, EUREKA TIMES-STANDARD (Apr. 19, 2009, 12:01 AM), <http://www.times-standard.com/article/ZZ/20090419/NEWS/904199690>.

88. Matt Ferner, *Legalizing Medical Marijuana May Actually Reduce Crime, Study Says*, HUFFINGTON POST (Mar. 27, 2014, 7:43 PM), [http://www.huffingtonpost.com/2014/03/27/medical-marijuana-crime-study\\_n\\_5044397.html](http://www.huffingtonpost.com/2014/03/27/medical-marijuana-crime-study_n_5044397.html).

89. Marc Lacey, *California Rejects Marijuana Legalization*, N.Y. TIMES (Nov. 3, 2010), <http://www.nytimes.com/2010/11/03/us/politics/03ballot.html>.

90. Memorandum from James M. Cole, Deputy Attorney Gen., to All United States Attorneys (Aug. 29, 2013), <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>; Memorandum from David W. Ogden, Deputy Attorney Gen., to Selected United States Attorneys (Oct. 19, 2009), <https://www.justice.gov/opa/blog/memorandum-selected-united-state-attorneys-investigations-and-prosecutions-states>.

91. BLUE RIBBON COMM'N ON MARIJUANA POLICY, PATHWAYS REPORT—POLICY OPTIONS FOR REGULATING MARIJUANA IN CALIFORNIA (2015), <http://www.sfchronicle.com/file/110/4/1104-BRC-ReportJuly20-FINAL.pdf>.

92. Peter Fimrite & Joe Garofoli, *6 Lessons from Legal Pot in Washington and Colorado*, S.F. CHRON. (Sept. 30, 2016), <http://www.sfchronicle.com/crime/article/6-lessons-from-legal-pot-in-Washington-and-9487445.php>.

93. See, e.g., Katy Steinmetz, *What to Know About Marijuana Legalization in California*, TIME (Nov. 9, 2016), <http://time.com/4565438/california-marijuana-faq-rules-prop-64/>.

94. See Vitiello, *supra* note 51.

95. Rosemary Deck lived in Humboldt County for seven years and worked with the Public Defender and former California Legislative Assemblyman Wesley Chesbro's office, and interviewed a number of marijuana industry workers.

burgeoning legal market are trying to address issues of crime, including sexual assault,<sup>96</sup> and other issues associated with illegal marijuana production.<sup>97</sup> Grower's guilds have started forming across Humboldt County, allowing growers to pool their resources, streamline compliance, and advocate for a space in the legal market.<sup>98</sup> One of these groups, the Humboldt Growers Association, is the gold standard for marijuana growers in the county who want to comply with regulations and set high industry standards.<sup>99</sup>

Despite that, Steven Dillon, the executive manager of the Humboldt Sun Growers Guild, rejects the claim that sexual abuse is “rampant” within the industry in Humboldt County.<sup>100</sup> Even with that hesitation, Dillon explained that the *Reveal* exposé sparked a serious discussion of issues within the community. In response, he hired a consultant from the California Employer Advisory Council to “make sure guidelines are created to help their members treat their workers appropriately in every way, from creating safe working conditions to avoiding sexual harassment issues.”<sup>101</sup> Dillon's personal beliefs are beside the point—the goal of the Guild is to bring marijuana growers into the sphere of legitimacy.

Another growers group, the California Growers Association, led by generational southern Humboldt marijuana grower Hezekiah Allen, also reacted publicly to the exposé. In a letter to the editor, Allen wrote, “Rape and exploitation are not our culture. This is about criminals exploiting the failed policies that we are working so hard to overcome.”<sup>102</sup> He went on to blame the issues of sexual abuse in the industry on a “multi-generational failure of public policy” that has created safe places for criminals.<sup>103</sup> In his letter, Allen outlined what he believes are the issues that need to be addressed within the industry: permitting, normalization of the work force, and an increase in resources for law enforcement, mental health, and emergency services.<sup>104</sup>

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96. Walter, *supra* note 56.

97. See, e.g., *Joint Committee on Fisheries and Aquaculture*, SENATE.CA.GOV (July 1, 2015), <http://senate.ca.gov/media/joint-committee-fisheries-and-aquaculture?type=video> (providing statements of Hezekiah Allen of the Emerald Growers Association regarding environmental concerns of generational growers).

98. See, e.g., TRUE HUMBOLDT, <http://truehumboldt.com> (last visited Mar. 3, 2018); Cal. Growers Ass'n, <http://www.calgrowersassociation.org/> (last visited Mar. 3, 2018).

99. Humboldt Growers Association, FACEBOOK, <https://www.facebook.com/Humboldt-Growers-Association-166379536718201/> (last visited Mar. 3, 2018).

100. Kemp, *supra* note 70. No doubt, one can understand Dillon's hesitation to acknowledge widespread abuse in his industry out of a fear that abuse brings unwanted additional legal scrutiny.

101. Kemp, *supra* note 70.

102. Hezekiah D. Allen, *Letter to the Editor*, REDHEADED BLACKBELT (Sept. 9, 2016), <http://kymkemp.com/2016/09/09/rape-and-exploitation-are-not-our-culture-says-hezekiah-allen-from-the-c/>.

103. *Id.*

104. *Id.*

Coming into the established business community holds numerous advantages. Such a move increases the chances that the federal government, or perhaps states that have legalized recreational marijuana, will address the banking needs of an industry that is currently mostly cash-based. That change would lessen at least some of the risk of robbery and violent crime. Lawmakers may be able to create a similar work-around so that insurance companies will be more willing to provide growers with coverage options.<sup>105</sup> Creating viable legal opportunities for growers provides a greater incentive for them to participate in the legal market and develop a risk-averse approach to the industry.

Lessons from Washington and Colorado also suggest some reason for optimism. A number of producers there have entered the legal market, judging by the number of licenses issued by those states: Washington's Liquor and Cannabis Board has issued 173 producer licenses<sup>106</sup> and 955 producer/processor licenses,<sup>107</sup> while Colorado has issued 784 licenses for medical marijuana cultivations<sup>108</sup> and 633 for retail recreational cultivations.<sup>109</sup> Beyond the number of licenses, those states have seen some improvements in employment conditions for workers in the marijuana industry.

As noted above, OSHA has yet to enact workplace standards specifically tailored for marijuana employees.<sup>110</sup> At least one private company has capitalized on the lack of training for workers in the marijuana industry in Colorado in spite of the dearth of formal regulations.<sup>111</sup> This company, Cannabis Trainers, offers "Sell-SMaRT" classes to educate workers in the marijuana industry, similar to "ServSafe" programs for food handlers.<sup>112</sup>

Cannabis Trainers' "Sell-SMaRT" classes teach "budtenders" about the consequences of selling to minors, the varying potency and effects of different edible marijuana products, and inventory tracking methods.<sup>113</sup> The classes also prepare students for the unique experience of retail marijuana sales: "[T]hey are expected by many customers to provide the

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105. Julie Weed, *Insurance Companies Start Noticing the Legal Cannabis Industry*, FORBES (July 5, 2015, 6:00 AM), <http://www.forbes.com/sites/julieweed/2015/07/05/insurance-companies-start-noticing-the-legal-cannabis-industry/#126365535810>.

106. WASH. STATE LIQUOR AND CANNABIS BOARD, WEEKLY MARIJUANA REPORT <https://data.lcb.wa.gov/stories/s/WSLCB-Marijuana-Dashboard/hbnp-ia6v/> (last visited Mar. 3, 2018).

107. *Id.*

108. COLO. DEP'T REVENUE, MED LICENSED MEDICAL MARIJUANA CULTIVATIONS AS OF FEBRUARY 1, 2017, <https://www.colorado.gov/pacific/sites/default/files/MGrows%2002012017.pdf> (last visited Mar. 3, 2018).

109. *Id.*

110. Warner, *supra* note 54.

111. Warner, *supra* note 54.

112. Warner, *supra* note 54.

113. Warner, *supra* note 54.

sort of medical advice associated with pharmacists.”<sup>114</sup> Although the training is not mandatory, dispensaries that send their employees to programs like “Sell-SMaRT” receive lower penalties from Colorado’s Marijuana Enforcement Division and may receive discounts from their insurance.<sup>115</sup> This indicates the state recognizes the value of having well-trained employees in this growing industry.

According to an *International Business Times* report, Nevada, Maryland, and Washington all require marijuana worker training programs for marijuana industry workers.<sup>116</sup> “Budtenders in Oregon’s recreational program will soon have to pass a state-administered employment test.”<sup>117</sup> Only recreational marijuana workers in Oregon are required to complete a state-mandated permitting process; employees of the Oregon Health Authority working at registered medical dispensaries are exempt from the licensing requirements.<sup>118</sup>

Anyone working in recreational marijuana in Oregon, whether as a producer, retailer, wholesaler, or processor, must have a valid permit issued by the Oregon Liquor Control Commission.<sup>119</sup> Applicants must be over 21 years of age and have no “recent criminal convictions.”<sup>120</sup> The permit costs \$100 and can be acquired online from the government website.<sup>121</sup>

This permitting process gives the industry a certain level of oversight. Employers can be held liable for the actions of their employees. According to Canna Law Group, a marijuana law website, “This means business owners are clearly vested in ensuring employee compliance.”<sup>122</sup>

While still relatively new, the Oregon program is an opportunity to learn what works and what doesn’t. Any eventual federal marijuana decriminalization effort will have the benefit of learning from the states as “laboratories of democracy”<sup>123</sup> before instituting a national framework.

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114. Warner, *supra* note 54.

115. Warner, *supra* note 54.

116. Warner, *supra* note 54.

117. Warner, *supra* note 54.

118. *Marijuana Worker Permit*, OREGON.GOV, <https://www.oregon.gov/olcc/marijuana/Pages/mjworkerpermit.aspx> (last visited Mar. 3, 2018).

119. *Id.*

120. *Id.*

121. *FAQs: Marijuana Worker Permit*, OREGON.GOV, <http://www.oregon.gov/olcc/marijuana/Pages/FAQs-Marijuana-Worker-Permit.aspx> (last visited Mar. 3, 2018).

122. Vince Sliwoski, *Oregon Marijuana: Employee Permits and Employer Liability*, HARRIS BRICKEN: CANNA LAW BLOG (July 12, 2016), <http://www.cannalawblog.com/oregon-marijuana-employee-permits-and-employer-liability/>.

123. *See* *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (providing the famous quote that a “State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”).

These developments reveal incentives for Humboldt County's marijuana producers to come out of the black market into the gray market, or perhaps in the not-so-distant future, even the legal market. And yet, such a result is not assured.

At the end of the day, economic factors determine whether reformers' goals will be met. The future of marijuana production remains uncertain. Absent economic incentives, marijuana producers in Humboldt County and elsewhere will have little reason to conform to good business practices. Ensuring that the benefits of the legal market outweigh those of the black market is necessary to see a successful shift from illegal growing to the legitimate industry.

Aside from alleviating the risks inherent to illegal growing, including sexual assault, trafficking, criminal prosecution, and the absence of government protections afforded to legitimate businesses, the transition to the legal arena must also be profitable to incentivize growers. If growers are unable to profit, they have no reason to legitimize their operations and conform to the risk-averse model.

Over-taxation therefore encourages a continued black market industry.<sup>124</sup> In Alaska, Colorado, Oregon, Washington State, and Washington, D.C., state and federal restrictions and state taxes have kept "the marijuana black market alive and profitable."<sup>125</sup> In these recreational marijuana states, the balance between the free market and the need to regulate and tax has yet to be achieved.<sup>126</sup> In order for legitimacy to be an attractive option, the protections afforded by the legal market must outweigh the additional burdens of state taxes and regulations.

In Washington, for example, government restrictions are so burdensome that many people are willing to risk criminal prosecution and imprisonment by participating in the black market marijuana industry.<sup>127</sup> Washington's Liquor and Cannabis Board released a report in 2015 that described the marijuana market in one and a half years after recreational legalization.<sup>128</sup> The report estimated that thirty-seven of the market was comprised of medical marijuana, thirty-five percent came from legal recreational marijuana sold through state-licensed stores, and twenty-eight percent was still derived from the illegal industry.<sup>129</sup>

Colorado experienced some of the same difficulties as Washington in striking the proper balance of taxation and regulation. Unlike

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124. Tim Baker, *New Bootleggers: Weed Restrictions Foster Black Market*, NEWSWEEK (Aug. 7, 2016, 2:00 PM), <http://www.newsweek.com/new-bootleggers-weed-control-black-market-new-bootleggers-weed-marijuana-486956>.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*



Washington, however, Colorado made changes to address the situation. When the black market remained strong in the wake of recreational legalization, Colorado lawmakers pivoted in their approach to taxation.<sup>130</sup> Legislators dropped recreational marijuana taxes from ten percent to eight percent.<sup>131</sup> If the marijuana industry must embrace regulations in order to withstand the new wave of legality, states in turn will need to follow Colorado's example and embrace flexible policy approaches.

What will happen in California? Consider a few variables likely to influence the fate of counties like Humboldt. Despite Attorney General Jeff Sessions' aversion to marijuana,<sup>132</sup> we doubt that the Trump Administration will undo the uncertain truce between the Department of Justice and states with legalized marijuana. That is so for several reasons, including the significant, and likely increasing, investment already in the industry.<sup>133</sup> Most recently, Sessions has spoken somewhat equivocally about tolerance of the industry, rather than as a full-bore foe.<sup>134</sup> He has an out—President Trump ran on a promise of state control over the industry.<sup>135</sup> If our prediction is wrong, all bets are off: Humboldt County and other Emerald Triangle producers have supply chains already in existence and have survived aggressive federal enforcement in the past.<sup>136</sup> Any efforts to shine a light on the illegal and gray market trade will probably fail.

Most likely, the Trump Administration will continue current forbearance as long as a state has vigorous controls of the industry in place.<sup>137</sup> Even so, uncertainty abounds. Many economists<sup>138</sup> claim that marijuana legalization results in a dramatic decline in the price of

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130. *Id.*

131. *Id.*

132. Attorney General Jeff Sessions has opined that "good people don't smoke marijuana." Christopher Ingraham, *Trump's Pick for Attorney General: 'Good People Don't Smoke Marijuana,'* WASH. POST (Nov. 18, 2016), [https://www.washingtonpost.com/news/wonk/wp/2016/11/18/trumps-pick-for-attorney-general-good-people-dont-smoke-marijuana/?utm\\_term=.ee90a996b0c1](https://www.washingtonpost.com/news/wonk/wp/2016/11/18/trumps-pick-for-attorney-general-good-people-dont-smoke-marijuana/?utm_term=.ee90a996b0c1).

133. See, e.g., Suzanne McGee, *Paypal Founder Peter Thiel Becomes Marijuana's First Big Investor*, GUARDIAN (Jan. 8, 2015, 6:00 AM), <https://www.theguardian.com/business/2015/jan/08/cannabis-investor-peter-thiel-paypal-founder>.

134. Jeremy Berke, *Here's Where Attorney General Jeff Sessions Stands on Legal Marijuana*, BUS. INSIDER (Feb. 8, 2017, 7:26 PM), <http://www.businessinsider.com/attorney-general-jeff-sessions-legal-weed-2017-2>.

135. See, e.g., Debra Borchardt, *Roger Stone Wants Trump to Keep His Marijuana Campaign Promise*, FORBES (June 23, 2017, 2:48 PM), <https://www.forbes.com/sites/debraborchardt/2017/06/23/roger-stone-wants-trump-to-keep-his-marijuana-campaign-promise/#64a1752b4c24>.

136. John Howard, *California's New Marijuana Era*, CAPITOL WKLY. (Jan. 6, 2017), <http://capitolweekly.net/new-marijuana-era-california/>.

137. Memorandum from James M. Cole, *supra* note 90.

138. John Dyer, *Good News, Stoners: Legalization Is Driving Down the Price of Weed*, VICE NEWS (June 25, 2015, 6:37 AM), <https://news.vice.com/article/good-news-stoners-legalization-is-driving-down-the-price-of-weed>.

marijuana, with prices dropping as low as a few cents per joint.<sup>139</sup> Recent data may support those arguments.<sup>140</sup> That trend may worsen from the perspective of growers. Proposition 64 left industry regulation to local governments, so counties and cities are free to disallow marijuana operations in their communities.<sup>141</sup> However, because of how profitable the industry can be, the temptation to allow production will be strong, even in communities not as cash-strapped as Oakland, for example.<sup>142</sup> Expanded competition from other regions, including farms in the Central Valley, will put pressure on Humboldt County producers to keep costs to a minimum. With increased competition, growers will have to balance licensing fees, taxes, and other costs of compliance, including adherence to labor laws, against the diminishing returns on their investment and the potential costs of arrest and prosecution.<sup>143</sup>

As discussed above, marijuana producers set up shop in the Emerald Triangle in the 1960s because the region lent itself to hiding grows, not because the weather is conducive to growing the plant.<sup>144</sup> Property value of farmland in the Central Valley has gone up in the last few years, largely because people have been purchasing land to grow marijuana.<sup>145</sup> As long as they are not concerned about the risk of federal prosecution, many individual farmers in the Central Valley are receptive to incorporating marijuana as one of their standard crops.<sup>146</sup> One farmer in the area considers it “just another potential option for something that could be a benefit to the farm, and then also make some money hopefully.”<sup>147</sup> Further, farming marijuana does not create special adverse effects on

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139. See Brad Tuttle, *How Much Will a Legal Marijuana Habit Cost You?*, TIME (May 20, 2013), <http://business.time.com/2013/05/20/how-much-will-a-legal-marijuana-habit-cost-you/>.

140. Debra Borchardt, *Marijuana Prices Fall in 2016 as Growers Flood the Market with Pot*, FORBES (Jan. 31, 2017, 8:00 AM), <http://www.forbes.com/sites/debraborchardt/2017/01/31/marijuana-prices-fall-in-2016-as-growers-flood-the-market-with-pot/#2a8149911e6e>.

141. Paul Elias, *California Cities Ban Pot Sales Ahead of State Marijuana Legalization Vote*, DENVER POST (Nov. 2, 2016, 1:42 PM), <http://www.denverpost.com/2016/11/02/california-cities-ban-pot-sales-ahead-of-vote/>.

142. See, e.g., Ray Sanchez, *Oakland Approves Four Marijuana Factories*, ABC NEWS (July 21, 2010), <http://abcnews.go.com/Business/US/oakland-approves-marijuana-factories/story?id=11209664>.

143. Carroll, *supra* note 42.

144. See, e.g., R.W. Navis, *California Legalization Could Bring Unexpected Changes*, SANTA BARBARA INDEP. (July 16, 2016), <http://www.independent.com/news/2016/jul/16/california-legalization-could-bring-unexpected-cha/>; Peter Fimrite, *Allure of Legal Weed Is Fueling Land Rush in Emerald Triangle*, S.F. CHRON. (May 28, 2016, 6:52 PM), <http://www.sfchronicle.com/science/article/Allure-of-legal-weed-is-fueling-land-rush-in-7948587.php>.

145. Fimrite, *supra* note 144.

146. Ezra Davis Romero, *Could Marijuana Become California's Next Big Ag Crop?*, KQED NEWS (Feb. 16, 2016), <https://www.kqed.org/news/2016/02/16/could-marijuana-become-californias-next-big-ag-crop/>.

147. *Id.* Alternatively, some producers are considering hemp production, which would lessen the competition for Humboldt County producers. See Brian Johnson, *Valley Growers Consider New Hemp Crop*, ABC 30 ACTION NEWS (Oct. 4, 2017), <http://abc30.com/health/valley-growers-consider-new-hemp-crop-/2490460/>.

agriculture. An eighth of an ounce of marijuana requires 1.875 gallons of water, which is less than what it takes for a single almond, a head of broccoli, or a pound of beef.<sup>148</sup>

Some Central Valley farmers fear that marijuana brings “bad elements” into the community.<sup>149</sup> That concern may change over time if marijuana goes mainstream. Some Central Valley farmers are purchasing large indoor facilities to grow marijuana, suggesting that production will increase significantly in the region.<sup>150</sup> Indeed, its location within the state gives the Central Valley a key advantage over Humboldt County: Humboldt County is hard to reach. That was key to its initial allure for illegal growers, but now it only adds to producers’ costs.

Especially given the rich soil in the Central Valley, such developments may signal bad times ahead for regions like Humboldt County. But again, predictions require juggling numerous moving parts. Plummeting marijuana prices may make other (better) uses of Central Valley farm land more profitable. Given the demand for California’s food crops, one should root against large scale production of marijuana in the Central Valley.

Perhaps the best hope for Humboldt County’s future is the move towards appellation recognition in the marijuana world. Every wine drinker is aware of the value of appellation-designation in that sector. Napa wines demand a premium over other regions, and sub-regions like Stag’s Leap, Howell Mountain, or Atlas Peak add even more cache and, of course, income for producers.<sup>151</sup>

The move towards marijuana appellations is already afoot. But whether Humboldt County can take benefit from the movement is uncertain. Mendocino County seems to be leading the appellation movement at this point with the Mendocino Appellations Project.<sup>152</sup> The project divides Mendocino County into eleven separate appellations.<sup>153</sup> The project is county-supported, since for obvious reasons the federal government will not approve the equivalent of an American Viticultural

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148. Anna North, *Is Weed the New Almond?*, N.Y. TIMES: TAKING NOTE (July 1, 2015, 3:40 PM), <https://takingnote.blogs.nytimes.com/2015/07/01/is-weed-the-new-almond/>.

149. Alice Daniel, *A Tale of 2 Farm Towns: How the Central Valley Is Torn over Marijuana*, KQED (Oct. 20, 2016), <http://www.scpr.org/news/2016/10/20/65698/a-tale-of-two-farm-towns-how-the-central-valley-is/>.

150. *Id.*

151. See Seth Kugel, *Napa on a Budget, Through the Grapevine*, N.Y. TIMES, Oct. 27, 2013, at TR13; *The Napa Valley Appellation and its Sub-Appellations*, NAPA VALLEY VINTNERS, [https://napavintners.com/downloads/Napa\\_Valley\\_Appellation\\_map.pdf](https://napavintners.com/downloads/Napa_Valley_Appellation_map.pdf) (last visited Mar. 3, 2018).

152. Hilary Bricken, *Canna-Terroir: Appellations and Craft Cannabis in California*, ABOVE THE LAW (May 31, 2016, 4:20 PM), <http://abovethelaw.com/2016/05/canna-terroir-appellations-and-craft-cannabis-in-california/?rf=1>.

153. Cynthia Sweeney, *Mendocino County Divided into Cannabis Appellations*, NORTH BAY BUS. J. (June 13, 2016), <http://www.northbaybusinessjournal.com/northbay/mendocinocounty/5702907-181/mendocino-cannabis-appellations?artslide=1>.

Area for marijuana.<sup>154</sup> One of the main goals of the Mendocino Appellations Project is to help small farmers survive when larger farms start producing marijuana. It also aims to set minimum standards for regional designations—most importantly that the “traditionally high-quality product” grown in the region is the only one that can state “Mendocino Grown” or the like on its packaging.<sup>155</sup> It will “cement Mendocino’s reputation as a premier growing region in a market that could be flooded with more generic weed” likely to come out of the big farms that could emerge in the Central Valley.<sup>156</sup> One Mendocino County grower referred to Central Valley marijuana as “Two-Buck Chuck weed.”<sup>157</sup>

Mendocino County has advantages over Humboldt County: it is far more accessible than Humboldt County<sup>158</sup> and already has other tourist attractions, including its wine industry.<sup>159</sup> Factors like these give Mendocino County an edge as a tourist destination. But don’t count out Humboldt County.

Humboldt County has brand recognition within the marijuana community beyond California. Humboldt county producers need to be protective of their brand. Proposition 64 even included language regarding appellation protection: section 26063 of the California Business and Professions Code, enacted by the initiative, provides,

Cannabis shall not be marketed, labeled, or sold as grown in a California county when the cannabis was not grown in that county. The name of a California county . . . shall not be used in the advertising, labeling, marketing, or packaging of cannabis products unless the cannabis contained in the product was grown in that county.<sup>160</sup>

Legislators have enacted similar provisions even before the passage of Proposition 64, as with Senator Mike McGuire’s Senate Bill 643, passed in 2015.<sup>161</sup>

No doubt, most consumers cannot look at a joint and determine the source of marijuana. But the California government has created a track-and-trace program regulating legal cannabis sold within the state.<sup>162</sup>

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154. Bricken, *supra* note 152.

155. Bricken, *supra* note 152.

156. Paul Payne, *Mendocino County Growers Plan Pot Appellations to Promote Cannabis Country*, PRESS DEMOCRAT (Aug. 27, 2016), <http://www.pressdemocrat.com/news/5958381-181/mendocino-county-growers-plan-pot?artslide=0>.

157. *Id.*

158. See *Travel Map of Northern California*, MOON TRAVEL GUIDES, [https://moon.com/wp-content/uploads/2015/09/00\\_01\\_N\\_California.jpg](https://moon.com/wp-content/uploads/2015/09/00_01_N_California.jpg) (last visited Mar. 3, 2018).

159. See Freda Moon, *Mendocino Coast, California*, N.Y. TIMES, Sept. 4, 2011, at TR4.

160. CAL. BUS. & PROF. CODE § 26063(a) (2017).

161. CAL. BUS. & PROF. CODE § 19332.5 (enacted by 2015 Cal. Stat. Ch. 719).

162. Will Houston, *Humboldt County Pilot Pot-Tracking Project Eyed as Model for State, Italy*,

Humboldt County pioneered the program in August 2016, and the county now serves as a model for the new legitimate market.<sup>163</sup> Fifteen businesses currently participate in the program, which is run by SICPA, a product-tracking company that also provides statewide tracking services for the tobacco industry.<sup>164</sup> Alex Spelman, Vice President of Business Development for SICPA, explained that “[t]he scale of the operations is going to dwarf anything a state has had to consider in terms of getting this technology ready for the industry, but also for the government side.”<sup>165</sup> The scale referred to is the size of California’s population compared to other legalization states, such as Washington and Colorado.

Spelman explained that the Humboldt County track-and-trace-program is similar to how wine and cheese are tracked in the Valle d’Aosta region in Italy.<sup>166</sup> Furthermore, he related that Italy is eyeing Humboldt’s track-and-trace program in the event that the country legalizes marijuana.<sup>167</sup> Humboldt County Agricultural Commission’s Jeff Dolf observed that whichever track-and-trace strategy the state ends up employing, it is likely to have the greatest impact on growing counties in the Emerald Triangle, where most of the state’s marijuana is grown.<sup>168</sup> The track-and-trace program serves to “detect whether marijuana has been diverted into the black market and whether tax fraud has occurred.”<sup>169</sup>

The program works as follows: the farmers make a “crop declaration” to the Department of Agriculture, which an inspector then verifies for accuracy.<sup>170</sup> The Department of Agriculture must be notified if any plants are replaced or damaged. Once harvested, processed, and packaged, the container full of marijuana receives an identifying stamp, which seals the container to the lid.<sup>171</sup> The stamp has a barcode and bears the Humboldt County seal.<sup>172</sup>

The county has a “proof of origin” website that can be used to verify the authenticity of the product and seal. The website provides information about the farm where the marijuana was grown, registration history, THC makeup, and other miscellaneous information about the

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EUREKA TIMES STANDARD (Nov. 10, 2016, 10:23 AM), <http://www.times-standard.com/general-news/20161110/humboldt-county-pilot-pot-tracking-project-eyed-as-model-for-state-italy>.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

marijuana's origin and quality.<sup>173</sup> Nathan Whittington, owner of the Ferndale dispensary Ladybug Herbal Sanctuary, anecdotally observes that the stamps have increased sales. He explains that the products are so popular it is hard to keep them in stock. According to the Department of Agriculture, "more than 15,000 stamps have been used on over 970 pounds of Humboldt County marijuana" as of October 30, 2016.<sup>174</sup>

It is also worth noting that, while marijuana producers cannot register federal trademarks as long as the substance remains illegal under the Controlled Substances Act,<sup>175</sup> common law trademark still provides some protection to individuals seeking product identification.<sup>176</sup> Further, state-level intellectual property protections still likely apply to producers in those states that have legalized marijuana. The move towards state appellation protection provides significant benefits, and trade secret law could also provide intellectual property protection for individuals in the marijuana industry. Trade secret law protects confidential business information that gives its holder an edge over the competition.<sup>177</sup> Marijuana producers possess much information that could qualify as trade secrets, from growing processes and watering techniques to customer lists and knowledge of the market.<sup>178</sup> Importantly, state trade secret protection provides remedies to the owner if a trade secret is misappropriated—the remedies range from an injunction against further use by the offender to compensatory damages.<sup>179</sup> Trade secret misappropriation can even result in criminal liability.<sup>180</sup> Between the developing appellation movement and state-level copyright and trade secret law, individuals in the legal marijuana industry do have at least some options for intellectual property protection.

In a tech and information era, this kind of development may save the Humboldt County industry and, simultaneously, create economic incentive for producers to enter the legal economy. As indicated throughout this Article, a lot is at stake. Assuring a profitable Humboldt County industry offers major benefits. Marijuana producers are more likely to comply with a host of regulations if the industry remains economically viable. Promised tax revenues and abatement of environmental harm are at issue, as is compliance with safety and

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173. *Id.*

174. *Id.*

175. James Rufus Koren, *Trademark Law Is a Bit Hazy for Cannabis Firms; Without U.S. Assent, Producers Look to Protect Weed Brands*, L.A. TIMES, Jan. 7, 2017, at C1.

176. Rebecca Gan, *Protection for Marijuana Trademarks*, 32 GP SOLO 72 (2015).

177. CAL. CIV. CODE § 3426.1(d) (1995); see *What Is a Trade Secret?*, WORLD INTELL. PROP. ORG., [http://www.wipo.int/sme/en/ip\\_business/trade\\_secrets/trade\\_secrets.htm](http://www.wipo.int/sme/en/ip_business/trade_secrets/trade_secrets.htm) (last visited Mar. 3, 2018).

178. *Id.*

179. CAL. CIV. CODE §§ 3426.2 (1984), 3426.3 (1984).

180. *Trade Secrets Law in California*, DIGITAL MEDIA L. PROJECT, <http://www.dmlp.org/legal-guide/trade-secrets-law-california> (last visited Mar. 3, 2018).

employment regulations. A weakened industry leaves in place many producers who are already adept at surviving in a legally hostile world.

#### CONCLUDING THOUGHTS

Entrepreneurs are already investing heavily in the marijuana industry.<sup>181</sup> Some prospective growers have bid up the price of Central Valley farmland with expectations of a strong economy.<sup>182</sup> When California issues licenses to grow and sell marijuana, capital will almost certainly flow more rapidly into the industry.<sup>183</sup> Given the boom-and-bust cycle common in our economy and many overheated markets, the marijuana industry may be headed towards a correction.<sup>184</sup>

Who will be the survivors and how will their survival effect goals of marijuana reformers? Humboldt County producers helped the Emerald Triangle dominate California's marijuana industry for years.<sup>185</sup> They have proven resilient in adapting to the government's war on drugs, because of both the region's geography and their own temperament.<sup>186</sup>

Those natural advantages may no longer matter. A legal market undercuts the advantage of temperament. Geography may no longer be an advantage in a legal market where high transportation costs cut into profits, especially where the market value of one's crop is in sharp decline. In such a world, Humboldt County may suffer a profound economic shock, keeping marijuana producers in the black market. Any hope for improvements like better working conditions, greater tax revenues, or compliance with environmental regulations is likely to be dashed.

At the same time, brand recognition and technology may provide the best hope for both the region's survival and goals of marijuana reformers. Humboldt County may be too remote to lure marijuana tourists, but the "Grown in Humboldt County" label may provide enough cache to give

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181. McGee, *supra* note 133.

182. Fimrite, *supra* note 144.

183. Ben Gilbert, *California Just Legalized Marijuana, and It's Going to Have a Huge Impact on the Economy*, BUS. INSIDER (Nov. 9, 2016, 10:06 AM), <http://www.businessinsider.com/marijuana-california-weed-legal-economy-2016-11>.

184. Indeed, even without new producers entering the industry, California produces far more marijuana than its residents can possibly use. See Johnny Green, *How Much Marijuana Does California Consume?*, WEED BLOG (Mar. 10, 2010), <https://www.theweedblog.com/how-much-marijuana-does-california-consume/> (comparing California's annual marijuana consumption of about one million pounds of marijuana with its production of almost nine million pounds per year). Absent a national or international market for California marijuana, a "market correction" seems inevitable.

185. Max Daly, *The Stoners' Paradise of Humboldt County is Dreading Weed Legalization*, VICE (Feb. 25, 2014, 8:00 AM), [https://www.vice.com/en\\_us/article/jmbpvy/the-us-weed-growing-town-dreading-weed-legalisation](https://www.vice.com/en_us/article/jmbpvy/the-us-weed-growing-town-dreading-weed-legalisation).

186. *Id.*

producers the economic edge sufficient to induce compliance with a host of reformist legislation.