



Metro

US attorney unnerves pot advocates, but those who know him say chill



US ATTORNEY'S OFFICE

Andrew E. Lelling was appointed US Attorney for Massachusetts in December.

By [Maria Cramer](#)

GLOBE STAFF JANUARY 18, 2018

A middle-aged executive had used stolen identities to inflate company revenues. He faced at least a 20-year sentence under federal guidelines.

But instead, Assistant US Attorney Andrew Lelling agreed to five years, recalled the defendant's lawyer, veteran criminal defense attorney Martin G. Weinberg.

"Andy helped me avoid the risk of a Draconian outcome," Weinberg said of the 2012 case. "It demonstrated to me that he individualizes cases and doesn't simply maximize the coercive use of federal powers."

The case underscored what many lawyers describe as the open-mindedness of Lelling, who was appointed last month the US attorney for Massachusetts and now finds himself in the middle of a controversy over marijuana laws in the state.

Lelling has refused to rule out prosecutions against state-licensed marijuana growers and manufacturers, [unsettling proponents and](#) raising fears of a crackdown little more than a year after voters legalized the sale and possession of marijuana.

But for defense lawyers, friends, and colleagues who have known him for years, Lelling's comments about marijuana were in keeping with a practical, flexible prosecutorial style. While acknowledging that marijuana is illegal under federal law, they said, Lelling sought to assure the public that prosecutions would be driven by resources, not ideology.

"I don't expect a licensed marijuana businessman to be indicted by this US attorney," Weinberg said. "There are plenty of drug traffickers who operate outside the law that the federal government will focus its resources on."

Lelling's comments came after US Attorney General Jeff Sessions [said](#) federal prosecutors could enforce laws against marijuana, reversing an Obama administration directive to limit prosecutions in states that had legalized the drug's recreational or medical use.

In a statement, Lelling said that while he would examine on a "case-by-case" basis the need to use "limited federal resources" to clamp down on marijuana operations, he could not promise he would not prosecute growers or manufacturers of the drug.

His comments stood in sharp contrast to the reaction of the US attorney in Colorado, who suggested that despite Sessions' memo, he would continue to follow the hands-off pot policy of the Obama era.

But Nancy Gertner, a retired federal judge, said that Lelling wisely avoided rhetoric that would anger his new bosses in Washington, D.C. Prosecutors serve at the pleasure of presidents, though they rarely let go of their own appointments.

“If he said, ‘I will never prosecute,’ he will be gone,” Gertner said. “If he said, ‘I’m going to make it a priority,’ he will be completely inconsistent with the priorities of this state. So what does he say? Case-by-case basis.”

Gertner said the office of the US attorney is meant to be decentralized, with prosecutors relatively free to set their priorities.

“There is no question that things are less certain than they were before,” Gertner said. “But [Lelling] has an enormous amount of discretion.”

Martin W. Healy, chief counsel of the Massachusetts Bar Association, which supported Lelling’s nomination, said his numerous conversations with Lelling have not suggested a hard-line prosecutor who will target medical marijuana dispensaries or licensed shops.

Massachusetts “got a prosecutor who works in the trenches and hasn’t been a zealot or heavy-handed in any way,” Healy said.

Through a spokeswoman, Lelling declined to comment.

Before President Trump nominated Lelling as US attorney in September, few had heard of the unassuming lawyer.

At 47, Lelling had spent 12 years as a federal prosecutor, working largely on white-collar criminal cases that can be among the most complex to investigate and prosecute but tend to generate the least amount of headlines.

Lelling, who grew up in Monsey, N.Y., and graduated from University of Pennsylvania Law School in 1994, is married to Dana Gershengorn, a juvenile court judge appointed by Governor Deval Patrick in 2009.

They live in Sharon with their 12-year-old son and a 16-year-old daughter.

A voracious reader who tears through Cormac McCarthy novels and works of nautical fiction, Lelling is an avid food lover who takes his children on tours of restaurants around the city and New England. He also has a creative side — he and a former high school friend cowrote a comic book about undercover military agents called [“Industry of War,”](#) which was published in 2005.

He was not long for the genre.

“At a certain point, he had to bow out,” his cowriter, Jordan Raskin, said. “The lawyer stuff was just taking over everything.”

Daniel Dain, a Democrat who met Lelling in 1997 when they were both young attorneys working in commercial litigation at Goodwin Procter in Boston, often joins Lelling, a Republican, on his food field trips.

The two men rarely discuss politics beyond their predictions for upcoming elections.

“He’s a conservative Republican, but he’s not an ideologue,” Dain said. “He’s an independent thinker and is open-minded.”

In 2001, Lelling left for Washington, D.C., to work in the Civil Rights Division at the Justice Department under President George W. Bush. Among Lelling’s jobs was investigating claims of civil rights violations against Muslims after the Sept. 11 attacks.

In 2005, he began working at the US attorney’s office in Boston, in the Economic Crimes Unit under Paul Levenson, who is now director of the Boston Regional Office of the Securities and Exchange Commission.

“I was delighted when Andy came into the unit,” Levenson said. “He has the ability to command complex factual and legal situations and explain them to a jury in a way that ordinary people can not only understand but also understand why they matter.”

During his tenure, Lelling spearheaded the prosecution of a billion-dollar pyramid scheme that defrauded almost 2 million investors; prosecuted Carlos Rafael, a New Bedford fishing

magnate known as the Godfather, who mislabeled hundreds of thousands of pounds of fish to boost profits; and tried international drug-trafficking cases.

But he was also willing to walk away from a case when the evidence did not justify prosecution, said Elissa Flynn-Poppey, a lawyer at Mintz Levin in Boston who specializes in ethics, campaign finance, and election law.

She recalled how in 2015 he dismissed charges against Carl A. Nystrom, an official at Merrimack Education Center who was accused of being part of a long-running scheme to defraud the state's pension system.

Flynn-Poppey represented the education center.

“He’s really one of the fairest prosecutors I’ve ever met,” she said. “He takes the power of his office very seriously.”

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