

Too Legit to Quit!

Harborside Resists Federal Eviction Move

By O'Shaughnessy's News Service

Occasionally the iron heel comes down on people who are widely respected and/or have the resources and will to fight back effectively. "The feds have overreached," said Steve DeAngelo, who runs Harborside Health Center in Oakland and had been presented by the IRS with a \$2.4 million bill for back taxes. He said it back in the fall of 2011 in response to California's four U.S. Attorneys announcement that they were sending letters threatening asset forfeiture to cannabis dispensaries and their landlords.

In late January 2013 DeAngelo stood at the back of a packed conference hall in San Francisco and listened to Harborside's attorney, Henry Wykowski, update a crowd of more than 300 marijuana legalization and medical-use advocates about the status of Harborside's fight with the federal government. Some of DeAngelo's own rhetorical style seemed to have rubbed off on the lawyer, who did not conceal his passion:

"The federal government is trying to close down Harborside. It brings many issues to the forefront.

"In July 2012 the federal government filed a forfeiture action against Harborside Health Center and its landlord over operating its dispensary in Oakland. We filed our claim in that action and then we filed our answer and we put everyone on notice that we were in it to fight until the end. The federal government responded by telling the landlord that if they didn't evict us, they were going to lose their property. So the landlord filed an unlawful detainer action in state court in Alameda County in Oakland. After reviewing that action, we filed a motion to quash — in essence, a motion to dismiss

"We went to a hearing on that motion to dismiss and we argued that the California Court has no business closing Harborside. What Harborside was doing was legal under California law, they made full disclosure of what they were going to do, they've done it openly, they're not ashamed of it, and they wanted to stay in business. And we won.

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"Up until December when that decision came down, one of the most effective tools the US Attorneys had was fear of the landlord letter. They would send a letter to a dispensary's landlord saying 'If you don't obey, you're going to lose the property.' And the landlords would then tell the dispensaries to get out and most of the dispensaries, based on law realized — or believed — that they would be evicted.

"By taking its case to court and winning it, Harborside has effectively deprived the government of that tool of intimidation.

"If you have a dispensary and you told your landlord what you were going to do if



HARBORSIDE ATTORNEY HENRY WYKOWSKI shared good news at a California NORML conference on legalization in San Francisco, January 2013. In foreground, Mendocino County Supervisor John McCowen, the politician who devised the sheriff's "zip-tie" program. (See story on page 54)

you rented that property, you can't be evicted based on a claim by the U.S. Attorney that you're in violation of federal law. So says the California state court. You still have to pay your rent and everything. But you can't be evicted on the basis that you're violating federal law. That was a significant victory.

"The federal response was to put pressure on the landlord to ask the federal court where the forfeiture was pending to enjoin Harborside from engaging in the sale and dispensation of medical cannabis. So they filed motions to enjoin Harborside from engaging in that activity and we had a hearing on that in the latter part of December. We filed opposing motions and made our arguments and the federal court ruled that Harborside could remain open while the forfeiture case was pending.

We want our day in court. We want to go before a jury in the Bay Area and argue our case so that we can establish a precedent that everybody can continue to rely on.

"Think about that! This is a ruling — it will be a published decision — in which a federal court has refused to stop a medical cannabis dispensary from selling cannabis. It allows Harborside to remain in business. Harborside will now have the resources to continue this fight and we will now get what we said we wanted after the forfeiture action was served. We want our day in court. We want to go before a jury in the Bay Area and argue our case so that we can establish a precedent that everybody can continue to rely on.

"Now the court will set a schedule and we will be able to take discovery in this matter. I am looking forward to it. One of our defenses is: we opened in 2006. The DEA, the FBI, the IRS, the U.S. Attorney, the ATF, and everybody else knows that what we did was done openly, it was "out of the shadows and into the light" [the Harborside slogan] and you can't close us down now. We are ready for that fight, we are willing, and we are able to take it on!"

Wykowski's speech had been interrupted repeatedly by applause, which crescendoed as he concluded. Attorney William G. Panzer, who was moderating the panel, directed attention towards the Harborside proprietor in the back, and the crowd rose to give Stevie D. a standing O.



Eric Holder, Attorney General of the United States, and Melinda Haag, U.S. Attorney for the Northern District of California.

The World According to Haag

Unlike the estimated four-to-five-hundred dispensaries that folded after California's U.S. Attorneys launched their crackdown in October, 2011 (on orders from Eric Holder's office), Harborside is not within 1,000 feet of a school, park, or playground. And unlike some of the dispensaries closed by federal raiders, Harborside's books are said to be audit-worthy. (Harborside is already in litigation with the IRS over its tax liability for 2007 and 2008. The IRS refuses to allow such standard business deductions as rent and payroll.) So Melinda Haag, the U.S. Attorney for the Northern District of California, came up with a new rationale for eliminating a dispensary: commercial success is a marker for criminality.

This is the statement Haag issued explaining the take-down:

"On Monday, July 9, this office filed civil forfeiture actions against 1840 Embarcadero, Oakland, California, and 2106 Ringwood Avenue, San Jose, where Harborside, a marijuana dispensary claiming over 108,000 customers, operates.

"This office has used its limited resources to address those marijuana dispensaries that operate close to schools, parks and playgrounds. As I have said in the past, this is a non-exclusive list of factors relevant to whether we should commence civil forfeiture actions against marijuana properties, and circumstances may require us to address other situations.

"I now find the need to consider actions regarding marijuana superstores such as Harborside. The larger the operation, the greater the likelihood that there will be abuse of the state's medical marijuana laws, and marijuana in the hands of individuals who do not have a demonstrated medical need.

"The filing of the civil forfeiture complaints against the two Harborside properties is part of our measured effort to address the proliferation of illegal marijuana businesses in the Northern District of California."

Translation: we can't find evidence that Harborside is not abiding by state law but my boss told me to take down the medical cannabis industry, piece by piece.

Haag should apply her simplistic logic to the financial institutions on Montgomery Street. "The bigger they are, the greater the likelihood that there will be abuse" of federal banking laws. So why not take down the billionaires instead of the would-be millionaires? A billion is a thousand times bigger than a million. Haag has previously said, "People

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Greetings from Uncle Sam

1	MELINDA HAAG (CABN 132612) United States Attorney	
2	MIRANDA KANE (CABN 150630) Chief, Criminal Division	
3	ARVON J. PERTEET (CABN 242828) Assistant United States Attorney	
4	450 Golden Gate Avenue, 11th Floor San Francisco, CA 94102 Telephone: 415.436.7200 Facsimile: 415.436.7234 Email: arvon.pertee@usdoj.gov	
5	Attorneys for United States of America	
6		
7		
8		
9		E-filing
10		UNITED STATES DISTRICT COURT
11		NORTHERN DISTRICT OF CALIFORNIA
12		SAN FRANCISCO DIVISION
13		EDL
14	UNITED STATES OF AMERICA,	
15	Plaintiff,	
16	v.	
17	REAL PROPERTY AND IMPROVEMENTS LOCATED AT 1840 EMBARCADERO, OAKLAND, CALIFORNIA,	
18	Defendant.	
19		
20		
21		
22	In this <i>in rem</i> forfeiture action, the United States alleges:	
23	JURISDICTION AND VENUE	
24	1. This <i>in rem</i> forfeiture action is brought pursuant to Title 21, United States Code,	
25	Section 881(a)(7).	
26	2. This Court has jurisdiction under Title 28, United States Code, Sections 1345 and	
27	1355.	
28		

FORFEITURE NOTICE was tacked to the door of Harborside Health Center July 9, 2012.

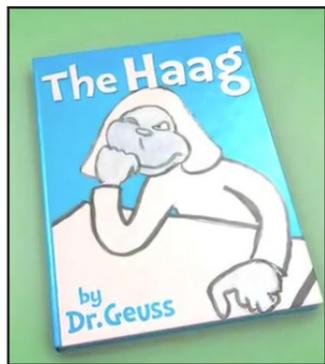
Harborside from previous page

are using the cover of medical marijuana to make extraordinary amounts of money.” Since when did it become a crime for an entrepreneur to succeed in America? Does the U.S. Attorney for the Northern District not believe in capitalism? Harborside is a perfect example of a small business creating jobs, paying taxes, and providing services and products that consumers appreciate. “Drug trafficking” and “selling medicine” are synonymous, but they spin in opposite directions.

As Tod Mikuriya, MD, used to say about prosecutors like Haag who refuse to accept the law created by Prop 215: “Where did she go to medical school?”

As for Haag’s slurry reference to “individuals who do not have a demonstrated medical need...” She ought to observe the line of people waiting to buy herb or extracts at Harborside, any time of day, any day of the week. She’d see working- and middle-class people (the lumpen can’t afford good Cannabis and the rich have their own excellent sources), young and old, all races.

Everyone on that line has a diagnosis from a physician entitling them to medicate with Cannabis as per California Health & Safety Code 11362.5. As Tod Mikuriya, MD, used to say about prosecutors like Haag who refuse to accept the law created by Prop 215: “Where did she go to medical school?”



Goose Duarte, general manager at Harborside San Jose, has written and illustrated a book in the manner of Dr. Seuss, Theodore Giesel, the author of *The Cat in the Hat* and many other favorites. Narrated by Harborside’s director of operations, Andrew DeAngelo, *The Haag* is approaching 10,000 hits on YouTube as we go to press. We think Haag was “only following orders,” as the Germans used to say. But then again, we’re not in the direct line of fire; Duarte and Harborside are.

The Haag



...But an ancient law dictated that all cannabis is bad, so the g-men confiscated every flower that they had.

Then the people got together, and proclaimed “It is our will that this flower still be legal for the dying and the ill”.

On the hill, Mr. Obama, Who presides over the land, heard the voices of the people and replied to their demand:

“Under my administration You may use your medication, as long as you always follow every local regulation.”

And so it was, with this promise, that the flower once more bloomed; and the sick people would use it unaware of looming doom.

T’was The Haag, US Attorney, who corrupted with her power, would set out to bring destruction to every last cannabis flower...

“Get the dispensary owners, and try to get their suppliers. If they say you have no reason, make one up, and call them liars

“Bring the operators before me from every corner of town. I will come up with a reason to one by one, shut them down”

So they brought the Vapor Room and the Divinity Tree from the heart of San Francisco where the movement came to be...

And now the Haag is facing her largest and loudest dissenter, they have brought into her courtroom the Harborside Health Center.

In six years a hundred thousand patients walked through their doors; Harborside was also featured in the TV show “Weed Wars”.

Even government officials say to close it would be a pity, after all, the business’s paying lots of taxes to the city...