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State marijuana grower argues U.S. can't prosecute him

By L.J. Williamson

Quoting Bob Dylan lyrics in his motion for a stay of prosecution, defense attorney Ronald Richards reminded a U.S. District Court that, when it comes to marijuana laws, "The times, they are a-changin'."

Richards argued that his client, Anthony Pisarski, would never have been prosecuted under California's laws, especially after the passage of Proposition 64, which legalized marijuana for recreational use. And if he had been tried in state court, Richards added, evidence of his doctor's authorizations and his membership in a growers' collective would have easily created reasonable doubt as to whether he was acting outside of state laws.

But Pisarski is being tried in federal court and may face a two-year sentence for the 300-plus plants he and others were found with in a Drug Enforcement Administration raid. *U.S. v. Pisarski et al.*, CR14-278 (N.D. Cal., May 21, 2014).

At a hearing last week before U.S. District Judge Richard Seeborg in San Francisco, federal prosecutors agreed that Pisarski is entitled to an evidentiary hearing but refused to drop federal charges against the marijuana grower.

"Mr. Pisarski's submission of the physician's recommendation and the cultivation agreement more than satisfy his low burden under California law by establishing facts relating to the immunity, then shifting the burden to the government to prove the immunity does not exist beyond a reasonable doubt," Richards' motion said. "The legal horror in what the government is trying to do by their response is take someone who was in strict compliance with state law and create burdens in federal court that are irrelevant when viewed through the state law lens."

Assistant United States Attorney Laura V. Horn did not respond to requests for comment.

In 2014, Congress passed a federal budget bill that included an amendment introduced by two California representatives preventing federal funds from being used to prevent states "from implementing their own state laws that authorize the use, distribution, possession or cultivation of marijuana."

Richards, a Beverly Hills-based sole practitioner, was among the first to argue, shortly after the budget's passage, that this Rohrabacher-Farr Amendment meant his client could not be prosecuted because there was no money to do so.

Monday, April 10, 2017

Weekly Appellate Report Podcast

Presiding Justice of the 2nd District Court of Appeal's 6th Division, Arthur Gilbert offers wit and wisdom from his decades on the bench, guidance on best appellate practices, and an explanation of how he's maintained his mirthful monthly *Daily Journal* column for nearly 30 years.



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California Supreme Court

Law firms weigh in on unfinished business case Here

Thirty-two major law firms have told the state Supreme Court that the Heller Ehrman LLP estate cannot collect revenues from unfinished business that began at the defunct law firm but was completed elsewhere when shareholders left for other employers.

State Bar & Bar Associations

Dues bill would fund State Bar for two years

Sen. Hannah-Beth Jackson's legislation also calls for splitting of the bar's sections into a private nonprofit.

U.S. Co.  **PATENT DISPUTES FORUM**

State marijuana grower argues U.S. can't prosecute him

Defense attorney Ronald Richards argued that his client, Anthony Pisarski, would never have been prosecuted under California's laws, especially after the passage of Proposition 64, which legalized marijuana for recreational use.

Firm Watch

On the Move

Attorney moves and promotions and new firms from around the state.

Seeborg had granted a stay until the 9th Circuit ruled on whether a criminal defendant could use the appropriations bill to halt a criminal prosecution. *U.S. v. McIntosh*, 833 F.3d 1163, 1172 (9th Cir. 2016).

In its reply brief, the government cited the McIntosh decision, noting its holding that appellants "were not entitled to injunctive relief from the courts to stay their prosecutions but could seek to enjoin the Department of Justice from 'spending funds from the relevant appropriations acts on such prosecutions.'"

The 9th Circuit stopped short of determining that the prosecutions at issue were a violation of the appropriations bill, saying, "If DOJ wishes to continue these prosecutions, appellants are entitled to evidentiary hearings to determine whether their conduct was completely authorized by state law, by which we mean that they strictly complied with all relevant conditions imposed by state law on the use, distribution, possession and cultivation of marijuana."

But the times may be a-changin' again soon, when the Rohrabacher-Farr amendment expires on April 28.

At last week's hearing, Seeborg asked that parties to update him on May 1 as to the budget and to set a briefing schedule on issues in the case. If Congress extends the budget bill, "there won't be a lot to litigate," Richards said.

"Mr. Pisarski's federal case highlights the severe risks medical marijuana growers have faced under California's patchwork of vague medical marijuana laws," said Lance Rogers, partner at Greenspoon Marder LLP. "When there was no clear state or local law for this activity, individuals such as Mr. Pisarski were exposed to criminal prosecution from the feds. ... Thankfully, the state is in the process of correcting this with the roll-out of new state regulations."

But the new U.S. administration has done nothing to indicate that state regulations will rule out future federal prosecution. U.S. Attorney General Jeff Sessions said in an April 5 memo that a DOJ task force will "undertake a review of existing policies in the areas of charging, sentencing and marijuana to ensure consistency with the department's overall strategy on reducing violent crime."

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U.S. Supreme Court

A win for the US Constitution

With the confirmation of Justice Neil Gorsuch to the Supreme Court the Constitution, the rule of law and the American people won. By **Jay Sekulow**

Environmental

Utilities attorneys say recent cap-and-trade decision reduces much uncertainty

Attorneys representing utilities and other greenhouse gas-emitting businesses say the recent court decision upholding California's cap-and-trade program reduces a lot but not all of the uncertainty that had surrounded survivability of the program.

Edison enters settlement talks regarding San Onofre nuclear waste

The announcement on Friday moots a hearing scheduled this week in which San Diego County Superior Court Judge Judith F. Hayes was to consider a petition for writ mandate challenging a permit issued by the California Coastal Commission in 2015.

Government

Nothing was lost with confirmation filibuster

Senate Democrats did not filibuster Judge Neil Gorsuch to stop his confirmation they did it to express a protest message that would please and energize their constituents. By **Erwin Chemerinsky**

A win for the US Constitution

With the confirmation of Justice Neil Gorsuch to the Supreme Court the Constitution, the rule of law and the American people won. By **Jay Sekulow**

Administrative/Regulatory

Immigration enforcement bill spreads false narrative

The plain truth is that sheriffs are not enforcing immigration law on our streets despite accusations that we are. By **Donny Youngblood**

Appellate Practice

Avoid 'mere gamesmanship' on appeal

Better late than never rarely applies to appeals failing to raise issues during trial can be determinative. By **Robert A. Roth**

Labor/Employment

Recent ruling clarifies two key wage statement questions

One of the most contentious areas of litigation between California employees and employers involves what's listed on the employee's pay stub or wage statement. By **John C. Kloosterman and Courtney M. Osborn**

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PATENT DISPUTES FORUM NORTH

APRIL 18, 2017
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We are delighted to announce that **John Cabeca**, Director of the West Coast United States Patent and Trademark Office in Silicon Valley, will join us as our keynote.



2017 Patent Disputes Forum North is a full day rich in valuable information and intelligence for in-house and corporate counsel, intellectual property litigators, and those involved in the ever-changing Patent environment. Delegates will walk away armed with best practices and insights concerning key IP issues that impact their clients, companies and even careers.

Sessions include a premier Judges Panel, including Judge Kevin Trock, Patent Trial & Appeal Board, USPTO Silicon Valley and Judge Kimberly Johnson, United States District Court, Eastern District of Texas, among others.

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Letter to the Editor

Gorsuch nomination did not violate the 'advice and consent' requirement

"Is Trump's nomination of Neil Gorsuch unconstitutional?" Craig Horowitz posed the question in a recent column. By **Larry DeSha**

Judicial Profile

Timothy J. Staffel

Superior Court Judge

Santa Barbara County (Santa Maria)

U.S. Supreme Court

Nothing was lost with confirmation filibuster

Senate Democrats did not filibuster Judge Neil Gorsuch to stop his confirmation they did it to express a protest message that would please and energize their constituents. By **Erwin Chemerinsky**

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