

# Activists' Cases Riding on *Raich* and *Booker*

By Ann Harrison

The U.S. Supreme Court decision in *Ashcroft v. Raich* will have far-ranging consequences for medical cannabis patients, caregivers, growers and dispensary operators fighting federal marijuana charges.

Directly at stake are the homes, the businesses and the freedom of at least 30 defendants. Their cases were put on hold following a December 2003 ruling by the 9th U.S. Circuit Court of Appeals entitling Diane Monson and Angel Raich and her caregivers to use and cultivate marijuana under California law.

The 9th Circuit injunction — which the Bush Administration challenged in the U.S. Supreme Court — applies in eight western states that have medical marijuana laws.

The injunction has had an indirect effect, too, according to Attorney Omar Figueroa, who says he is seeing different enforcement practices in federal court districts in California. In the Northern District, from Santa Cruz to the Oregon border, says Figueroa, federal prosecutors appear to be taking a wait-and-see approach, holding off on new medical marijuana prosecutions until *Raich* is decided.

But in the Eastern District, from Yolo County east to Nevada, which includes Sacramento, Figueroa says the attitude is, "if you grow any marijuana we will arrest you and we'll see what happens with the *Raich* case. If the Supreme Court puts a stop on it fine, but we'll still prosecute."

Recent sentencing decisions from the Supreme Court could also impact many of the federal cases awaiting the *Raich* decision. The Supreme Court's decision last June in *Blakely v. Washington* held that federal sentencing guidelines violated a defendant's right to a jury trial. The court ruled that juries, not judges, should weigh the facts that could increase a defendant's prison sentence under federal guidelines. The decision struck down a state sentencing system that gave judges too much power in sentencing.

The justices have confirmed this logic in the *U.S. v. Booker* decision and the *U.S. v. Fanfan* decision, which found that federal defendants were also entitled to jury judgments. Justice Stephen Breyer wrote that the federal sentencing system was broken because it forced judges to be driven by sentencing guidelines. The justices retained the guidelines for judges to use as voluntary advisories.

*Blakely* found that power should be shifted from judges to juries; *Booker* granted judges more power to act outside the compulsory guidelines.



**Bryan Epis with daughter Ashley (above) after his release from the federal penitentiary at Lompoc in August 2004, pending the outcome of the *Raich* case. Epis had served 30 months of a 53-month sentence before being allowed out on bail. While Epis was incarcerated, supporters publicized his plight on billboards in California.**



The *Blakely* and *Booker* decisions could change the lives of 64,000 people sentenced in federal court each year. Ninety-seven percent of federal defendants plead guilty to avoid a jury trial that could result in longer sentences. As a result, federal prosecutors often determined the length of the sentence which judges were bound by the guidelines to follow.

*The Booker decision could have a significant impact on medical cannabis cases because judges can give reduced sentences to people who are clearly patients.*

It is unclear how judges will use their expanded discretion to make sentencing decisions. Medical marijuana defendants may reap the benefit of judges' recognizing their status as patients and caregivers. But most legal scholars predict that judges will not make dramatic departures from the guidelines.

Defense specialist Laurence Lichter expects the lasting impact of the decision in the *Raich* case will be limited to non-commercial medical marijuana transactions. "Most of our clients don't do it for free," Lichter observes, "and the feds can draw a line between people who do it for free and those who don't."

Several defendants whose cases straddle the line between commercial and non-commercial have been released from prison pending the outcome of the *Raich* case. Others hope the *Raich* ruling will uphold their states-rights arguments and help shield them from having to attend a federal sentencing hearing.

The roster of individuals currently in limbo reads like a Who's Who of activists who made Prop 215 a reality.

### Bryan Epis

A government victory in *Raich* could send back to prison two California medical cannabis growers, Bryan Epis and Keith Alden, who were released pending the Supreme Court ruling. Bryan Epis was sprung from his 10-year mandatory federal drug sentence in August. He had been arrested in June 1997 for growing medical cannabis for four medical marijuana patients in Chico. It took the government five years to convict him. Epis has completed 30 months of his 53-month sentence.

If the Supreme Court finds in favor of *Raich*, Epis says he will get a new trial. The facts of his case fit *Raich* because Epis says he was never compen-

sated for ninety-five percent of his grow, and did not receive payment for the remaining five percent. All of the medical cannabis that he grew was used inside the state of California, says Epis. But the jury in his case was not allowed to hear that he was growing for patients.

"If they restated the sentence under the current set of facts with new guidelines, we can go to trial and win," said Epis. "The 9th Circuit can drop the conspiracy charge to grow 1,000 plants, and I could get nine months at most with a drug treatment program."

According to Epis, the U.S. Sentencing guidelines before the *Booker* decision prevented him from receiving a "safety-valve" exception to the mandatory minimum sentences. Now the jury, not the judge, decides what kind of sentencing enhancements apply to his case. "Even if *Raich* loses," says Epis, "Under *Booker*, the jury has to find beyond reasonable doubt that I forced these people to let me grow for them."

### Keith Alden

Keith Alden could also be sent back to prison if the *Raich* injunction gets overturned. Alden, who lives in Windsor in Sonoma County, is fighting three convictions including a 2002 conviction for cultivating 755 marijuana plants for several medical cannabis dispensaries. He served 20 months of his 44-month federal sentence before being released in April 2004. His sentence is currently on appeal in front of the 9th Circuit pending the outcome of *Raich*.

"The only thing that the government could argue in my appeal is that I was at a distribution level," said Alden. "I was only convicted of cultivation, the jury would not find any number of plants."

Alden says the *Raich* case helped focus public attention on cases like his. But he says supporters of the *Raich* case should now focus their attention on supporting defendants appearing in local courts to fight federal marijuana charges. "The attorneys are all done now, but we the people are not done and we will always maintain the right to petition and be heard and now is our time to step up," said Alden. "We the people will put the pressure on, there is very little that the attorneys can do."

### Marin Alliance For Medical Marijuana

The decision in the *Raich* case will also affect three California medical cannabis dispensaries with cases in the 9th Circuit: the Oakland Cannabis Buyers' Cooperative, the Marin Alliance for Medical Marijuana, and the Ukiah Can-

nabis Buyers Club. The three cases have been bundled together as a single case, but they have different implications for the dispensaries involved.

The Marin Alliance For Medical Marijuana in Fairfax was slapped with a federal injunction in 1998 prohibiting founder Lynnette Shaw from distributing marijuana. The injunction arose from a civil lawsuit in which the government sued six medical marijuana dispensaries, three of which have since closed.

Shaw disputed the government's claim that it had jurisdiction over her dispensary based on the Interstate Commerce Clause. She ignored the injunction and continued to defiantly distribute medical cannabis. "We have nothing to do with interstate commerce," says Shaw. "Our business reduces interstate commerce because we use locally grown medical marijuana for local patients and reduce demand for the commercial market."



**Lynnette Shaw testifying at the Institute of Medicine hearing in Irvine, April, 1998**

Shaw says her dispensary is supported by the town, the county and the local DA. But if the government wins the *Raich* case, the dispensary has a sudden death provision in their agreement with Fairfax. This allows the town to immediately close the dispensary due to an indemnity clause in the permit that removes them from liability. "They can and will yank the permit and close the club immediately which would be a medical disaster," says Shaw who notes that the dispensary serves 900 patients a month and has registered over 2,700 members.

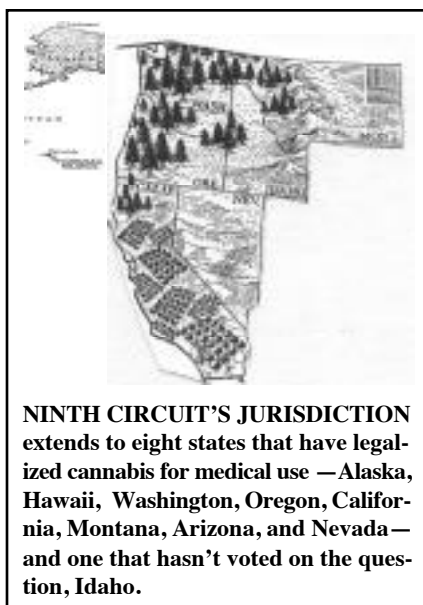
Shaw says she has an emergency contingency plan, but she would not be able to distribute medical marijuana for the rest of her life.

"If they decide that the drug war is more important than state's rights and close the clubs, it will be a human disaster that will empower the gangsters, the thieves and the illegal drug market which is guaranteed employment for the narcs," says Shaw. "They are all for it."

### Oakland CBC

The Oakland Cannabis Buyers' Cooperative has the longest and most tangled legal history of any dispensary in the nation — and is the only one to have taken its case to the Supreme Court. In January 1998, the U.S. government sued the OCBC charging that their cul-

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**NINTH CIRCUIT'S JURISDICTION extends to eight states that have legalized cannabis for medical use — Alaska, Hawaii, Washington, Oregon, California, Montana, Arizona, and Nevada — and one that hasn't voted on the question, Idaho.**

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tivation and distribution of medical cannabis was illegal under the Controlled Substances Act. The government charged OCBC with dispensing marijuana without a federal permit, possession and distribution of marijuana, and furnishing an address for these activities.

Federal prosecutors asked the District Court for a preliminary injunction against the cooperative and in May 1998, the court complied. OCBC was found in contempt of the injunction and the court granted the government's motion to exclude the medical necessity defense from contempt proceedings.

In October 1998, the court denied OCBC's request to modify the injunction to allow them to continue distributing cannabis.

But the 9th Circuit found that the District Court had the power to modify the injunction. In July 2000, the District Court finally granted the revision allowing OCBC to distribute to patients whose use of cannabis was a matter of medical necessity.

Then the government filed a stay of this order with the 9th Circuit, and appealed the decision to the Supreme Court.

In May 2001, the Supreme Court ruled that medical necessity was not a defense for the cultivation and distribution of cannabis, but it did not tackle the constitutional issues of due process or the federal government's ability to regulate the in-state use of cannabis under the Commerce Clause.

In 2002, the OCBC was handed a summary judgment by District Court Judge Charles Breyer in which the case was closed and the Cooperative permanently enjoined from distributing medical cannabis. This decision was appealed back up to the 9th Circuit, which remanded it back down to the District Court, where it is now on hold pending the *Raich* decision.

"If it's an open-ended decision, we have two to five years in federal court to struggle for collectively changing the law," said Jeff Jones, executive director of the OCBC and main defendant in the case. "They've been getting away with being an ostrich with their head in the sand, saying it doesn't exist."

Jones believes that any marijuana case, medical or not, will be impacted by *Raich*. He notes that in the OCBC Supreme Court case, the judges found that marijuana had no accepted medical value — limiting their ability to side with a medical defense in other cases. This will change if the court finds that marijuana medically benefits the *Raich* defendants, allowing patients to bring this defense into their cases, says Jones. He adds that a positive ruling could create an avenue for state-sponsored distribution agencies to support patients.

"The Supreme Court is not going to give the government what they want," predicts Jones. "We will get a ruling that doesn't go as far as we want, but hopefully will protect patients and caregivers' rights. But it may not protect dispensaries or collectives, which will be our next struggle."

Jones believes that if *Raich-Monson* lose, the DEA will begin targeting dispensaries outside of the Bay Area. "They'll pick off the loners and try to scare the Bay Area into obedience," he thinks.

For people not using cannabis for medical purposes, Jones predicts that a win in the *Raich* case would at least, "take the wind out of the sails of prosecutors and what they see as their moral right to go after these cases."

### Ukiah Cannabis Buyers Club

The federal government's civil action against the Ukiah Cannabis Buyers Club took place in 1997 six months after the passage of Prop. 215. Federal agents showed up at the club with a temporary injunction for the three directors, Marvin Lehrman, Millie Lehrman and Cherrie Lovett who has since passed away.

According to Millie Lehrman, the injunction was appealed and San Francisco Federal District Court Judge Charles Breyer granted the government a permanent injunction.

The case was sent back to the 9th Circuit where a decision has been delayed pending the *Raich* case. Like the Oakland Cannabis Buyers' Cooperative, the Ukiah dispensary has stopped distributing medical cannabis. It serves as an information center, sells cannabis related products, and issues patient ID cards for the County of Mendocino. Millie Lehrman also consults with medical marijuana patients in her capacity as a pharmacist at the Willits hospital.

"If *Raich* wins it would be favorable to our case because we could get the injunction removed and we could start distributing medical cannabis again. It has given a lot of people hope" said Lehrman, whose dispensary serves around 400 patients.

Lehrman said a favorable ruling might also help dispensaries ease fears of forfeiture which prevents many landlords from renting to them. She noted that the Ukiah dispensary is located in the Unity of Ukiah Church and her local sheriff, Tony Craver, doubts that federal agents will raid a church.

### WAMM

With three active lawsuits and a standing injunction against the U.S. Government, the Wo/Men's Alliance for Medical Marijuana (WAMM) has a high stakes interest in the outcome of the *Raich* case. The Santa Cruz-based collective has had more than its share of attention from the DEA.

On September 5, 2002, 30 armed DEA agents raided WAMM's Davenport marijuana garden and the home of its founders, Valerie and Michael Corral. Agents chainsawed 167 marijuana plants while holding the Corrals and a patient at gunpoint. But the DEA's exit was blocked by patients who successfully negotiated for the Corral's release. No charges were ever filed.

The collective lodged a civil suit against the government demanding the return of items seized in the raid. That case was dismissed by Judge Fogel in



**WAMM GARDEN DENUDED** by DEA raiders in September 2002. Mountainside land north of Santa Cruz, cleared and developed by Mike and Valerie Corral, had been tilled collectively by members.

December 2002 and is on appeal.

Undeterred, the collective and Santa Cruz city and county officials sued in April of 2002. *County of Santa Cruz et al. v. Ashcroft* challenged the federal government's authority to conduct medical marijuana raids and focused on the constitutional rights of patients to control the circumstances of their own pain relief, and ultimately their deaths. The collective also has a due process case against the government.

In August 2003, Judge Jeremy Fogel denied WAMM's motion for preliminary injunction. When asked to reconsider in light of the 9th Circuit's decision in the *Raich* case, Fogel reversed himself. In April 2004, Fogel issued a landmark ruling granting WAMM's request for a preliminary injunction allowing the collective to resume cultivation and distribution of medical cannabis. This marked the first time a federal trial court judge had enjoined law enforcement from enforcing federal laws against marijuana cultivation, possession and use.

The *Raich* case will have a strong influence on the WAMM injunction because it is based on almost the exact same arguments. Santa Clara University law Professor Gerald Uelmen, who represented WAMM, noted that their injunction took the *Raich* case a step forward establishing that there was no difference between a single patient growing their own medicine and a collective group assisting each other to achieve the same purpose.

If the *Raich* defendants win, Mike Corral says WAMM's attorneys will move to secure a permanent injunction with the district court and the return of property case will go forward.

"If *Raich* loses, the Supreme Court will announce the decision and 60 days later record it in the Federal Register," says Corral. "Then the feds can petition the court to lift the injunctions and I expect that they will do that." He adds that a negative decision would also put WAMM's return of property case on hold depending on the timing of the due-process case.

Corral says a negative decision would also force the collective to stop cultivating medical cannabis. Since the WAMM bylaws prevent any member of the cooperative or its representatives from buying or selling marijuana, it will depend on cannabis freely distributed by its members or acquired by donation.

"If we don't have an injunction, we will likely be targets because we've been fairly high profile, sued the government and garnered extra attention from the DEA," said Corral. He also fears the government may launch asset forfeiture proceedings against them. "We think that there will be federal criminal charges against Val and me for conspiracy to cultivate and distribute marijuana or keeping a place to manufacture and distribute, like the charges against Ed Rosenthal."

### David Davidson/Cynthia Blake

According to Attorney Omar Figueroa, *Raich* will help determine the fate of medical marijuana patients David Davidson and Cynthia Blake. (Figueroa and Tony Serra are representing Davidson, Shari Greenberger is representing Blake.) Like the WAMM collective, Davidson and Blake are well acquainted with the commando tactics of the DEA. Davidson was growing cannabis in a greenhouse on the banks of the Sacramento River in Tehama County when contractors working on a

neighbor's property saw the plants and called Tehama County Sheriff's Department. The deputies raided the greenhouse in the fall of 2003, arresting both Davidson and Blake on state charges.

Assuming he was protected under state law, Davidson told police about his second grow in Oakland which was subsequently raided. Figueroa says at least 1,000 plants were seized in the raids, all of which were clones or cuttings with no rootballs.

Lured into the judge's chambers to discuss motions for return of property and expected dismissal of the charges, Figueroa and Greenberger were informed by D.A. Lynne Strom that their clients had just been re-arrested by federal agents in the courtroom. Taken into custody by local law enforcement cross-designated by the DEA, Davidson asked to see his lawyer and was told by sheriff Eric Clay that he no longer had one.

In January 2004, Davidson and Blake were slapped with federal charges of conspiring to manufacture over 1,000 marijuana plants and conspiring to possess with intent to distribute. They were both released on signature bond secured by Davidson's property.

Figueroa says he has filed motions to dismiss the charges based on 9th and 10th Amendment arguments, on a patient's constitutional right to alleviate suffering, and on a Commerce Clause argument. All motions were denied without an evidentiary hearing.

"We've been putting off the case to see what the Supreme Court will do in *Raich* and have not entered a plea," said Figueroa who says he asked the judge to allow the jury to question whether defendants were involved in interstate commerce. "If *Raich* wins it may be such a narrow victory we may not be able to take advantage of it. If *Raich* loses they may take a plea and could be facing stiff sentences."

Davidson and Blake have a hearing on March 1 before Judge Morrison England in U.S. District Court in Sacramento for a motion to allow pre-trial jury instruction based on *Raich*. While the *Blakely* and *Booker* decisions will likely not affect his clients, Figueroa says it could impact other cases. "It is just applied to the guidelines, not the statutory mandatory minimum," says Figueroa. "But a jury has to find the amount [of marijuana plants] beyond a reasonable doubt."

### Ed Rosenthal

Until *Raich*, the highest-profile medical marijuana case undoubtedly belonged to Ed Rosenthal. The author and cannabis advice columnist was arrested in February 2002 and convicted in January 2003 on federal marijuana cultivation and conspiracy charges after a high profile trial. Sentenced in June of 2003 to one day (time served), Rosenthal has appealed his conviction to the Ninth U.S. Court of Appeals.

Rosenthal contends that the conviction was unfair because Judge Charles Breyer prevented the jury from hearing evidence related to medical marijuana. Rosenthal maintained that he had been deputized by the City of Oakland to grow medical cannabis. Breyer barred this evidence, prompting a majority of jurors in the case to disavow their verdict.

Breyer handed Rosenthal the lightest possible sentence saying Rosenthal believed erroneously — but reasonably — that he was engaging in legal acts. The judge concluded that the "extraordinary,

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Medical Board of California and charged with violating the standard of care in her treatment of several patients. The case was settled when Fry agreed to take a records-keeping class. According to Lichter, the U.S. Attorney in the Eastern District threatened to indict Fry, Schafer and one of Schafer's grown children if Fry didn't make a deal with prosecutors and admit that they conspired to grow marijuana. Lichter says Schafer could still face prison time because he was cultivating medical cannabis for Fry as her caregiver.

**Ken Hayes**

"I can report that I am not in Canada any more," writes Ken Hayes via e-mail. "I cannot tell you where I am."

Hayes was charged in February 2002 with conspiring to grow more than 1,000 marijuana plants with Ed Rosenthal and Rick Watts at the Harm Reduction Center, a San Francisco medical marijuana dispensary. Prosecutors claim that Hayes fled to Canada in a chartered plane with \$13,000 hidden in his pants.

While seeking asylum in Canada, Hayes grew a small personal-use garden and was arrested on marijuana cultivation charges.

Hayes' quest for political asylum was summarily discharged. It is unclear whether or not his Canadian cultivation charges have been dropped.

"The U.S. Government has made a point of telling me that they want me and are unwilling to negotiate," writes Hayes. "I find this a pitiful waste of taxpayer resources."

Hayes recently placed an ad in the *San Francisco Bay Guardian* seeking to raise money for his bond so that he can return and fight the charges still pending against him. Hayes says he's "broke and eating potatoes." But George Bevan of the San Francisco U.S. Attorney's office has taken a particular interest in building a case against him. Hayes said Bevan called him after the ad was placed.

"We got the feeling that he was annoyed by this act of strength," wrote Hayes, who says Bevan was contacting people connected to his case as recently as last May. "He does not want to do the courtroom drama again. I think he is trying to drum up something so that I am compelled to accept a plea bargain and do some time."

**Ken Hayes in 1999 (auditing a meeting of the task force set up by Attorney General Lockyer to "clarify" Prop 215). The group ultimately helped produce SB-420.**



According to Hayes, prosecutors are also charging him with money laundering, plus ongoing cultivation in the U.S. He believes both the *Raich* and *Brooker* cases will influence his battle with the feds.

**Steve Tuck**

According to Laurence Lichter, Steve Tuck, a medical marijuana activist from Humboldt County, could also be affected by the *Raich* case. The last Lichter heard, Tuck was in Canada with Ken Hayes avoiding pending federal charges. He had already managed to duck state charges involving 800 plants.

Tuck, a Gulf War veteran who suffers from spinal injuries, was arrested again with Steve Kubby in Canada in April 2002 on a marijuana cultivation offense.

He was released on bail. While Hayes' asylum request was denied, Tuck was granted a stay of his asylum request pending a hearing by the Canadian federal court.

**Rick Watts**

Rick Watts was one of several defendants charged in association with a DEA raid on San Francisco's Harm Reduction Center. Some 714 plants were confiscated during the February 2002 operation. Watts was charged with maintaining a place to manufacture marijuana and jailed for three months.

Released on a \$500,000 bond, Watts lost his truck, his tools and his equity in a San Francisco property he was renting to own. After learning that he was facing 20 years in prison, Watts crashed his car and broke his back. He's currently on pre-trial parole with no trial date.

"They are waiting to extradite Ken Hayes from Canada," says Watts. "I think they want me to testify against him. They asked me in jail if I had anything to say and I said, 'Yeah, I'd like to go back to bed.'"

Watts believes that the *Raich* decision will help defendants such as himself who are involved in cases which involved commerce. "I think it will impact my case because it will uphold states rights,"



**Rick Watts signs the guestbook at Wayne Justmann's 60th birthday party, San Francisco, 1/22/05.**

says Watts, whose attorney Tony Serra advises him not to test the theory. "Tony says 'Don't kick a sleeping dog.'"

**Jacek Mroz, Jessie Nieblas, Mario Pacetti**

Indicted in July 2004 by a federal grand jury in Oakland, Jacek Mroz, Jessie Nieblas, Mario Pacetti pleaded not guilty to a series of charges involving a raid on a West Oakland warehouse containing 4,000 plants. The three were charged with manufacturing marijuana, possession of marijuana with intent to sell, aiding and abetting, and using a place for manufacturing marijuana. Supporters say it was a legitimate medical cannabis grow.

California Highway Patrol Officers discovered the marijuana June 30, 2004, after pulling over a truck transporting clones. The CHP turned the case over to the DEA. Two other suspects, Celeste Angello and Heleno Dearaujo entered guilty pleas of misdemeanor possession. The government's case is relying on the alleged odor as the basis for the search and seizure.

On February 11, a federal grand jury indicted two more suspects in the case. Thomas Grossi, Sr. 60, of Lafayette, the owner of the West Oakland warehouse on Market Street where the plants were discovered — as well as a previously undisclosed building in East Oakland — was indicted for providing property for marijuana cultivation. Federal prosecu-

tors are seeking the forfeiture of money or property from both sites. Grossi was released on \$250,000 bond.

Roy Lewis, 52, of Walnut Creek, was named in a superseding indictment and indicted on charges of conspiracy and three counts of growing marijuana at both sites. The DEA alleges that he helped set up the alarm system on Market Street and rented \$7,000 in equipment from his construction company for the site. Lewis was sought on a no-bail warrant.

**On February 16, Pacetti pleaded guilty to his role in the Oakland grow.**

On February 16, Pacetti pleaded guilty to his role in the Oakland grow. He will be sentenced on June 3 on a charge of using the warehouse as a place for the manufacture of marijuana. Pacetti was indicted by a federal grand jury on Feb. 17 on another charge of making the second location, 2653 East 11St. in East Oakland, available for marijuana growing.

**Steve McWilliams**

San Diego activist Steve McWilliams was arrested in October 2002 on cultivation charges after he displayed sample plants and bagged marijuana outside City Hall ("as a political and educational act," says McWilliams).

**McWilliams thinks he was arrested in retaliation for presenting medical marijuana guidelines to the San Diego City Council.**

McWilliams thinks he was arrested in retaliation for presenting medical marijuana guidelines to the San Diego City Council.

Sentenced in April 2004 to six months in prison and three years probation, McWilliams could get a lighter sentence if *Raich* prevails. Under his plea bargain agreement, McWilliams was ordered by the judge to seek drug-abuse counseling and register as a convicted drug offender.

"When I was sentenced it was a conditional plea. And while I was waiting, a panel of three judges from the 9th Circuit sent my attorney a letter wanting to

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know how my case was similar to Angel's," says McWilliams. "They had an emergency hearing because the court was unclear about caregivers, and it had never been discussed whether Angel's John Doe caregivers were growing for other patients."

McWilliams pled guilty to a single felony charge of cultivating two dozen plants on the condition that he receive no more than six months of time. He was originally facing a 40-year sentence. The court decided to put his case on hold while the *Raich* case was heard. McWilliams said it was disappointing because he is banned from using medical marijuana and is being drug tested. McWilliams and Barbara MacKenzie run Shelter From the Storm, a patient resource center. Since neither one is allowed to smoke marijuana, McWilliams says they are using morphine and methadone to treat their medical conditions. "We can take these highly potent, highly addictive opiates but we can't use pot," he pointed out.

McWilliams is permitted to use Marinol. His urine is tested at the University of Mississippi by a lab that can distinguish between metabolites of Marinol and possible smoked marijuana. (Cost to taxpayers: \$300/month.) "They are trying to get me on a probation violation to accept a worse plea," he fears.

According to McWilliams, his lawyer is arguing that the states have a right to regulate medicine and are challenging the Attorney General's stance that marijuana has no accepted medical use.

"If we lose *Raich* and our own private acts are interstate commerce and the states don't have the right to define medical practice," said McWilliams, "then states don't have much value for what they can do for citizens. The feds have taken over."

*Photos by David Smith, Pat McCartney, Wendy Russell, Janet Jacobus, O'Shaughnessy's News Service*



**Barbara MacKenzie and Steve McWilliams created the Shelter From the Storm coffeehouse in San Diego. McWilliams thinks he was targeted because of his political work — urging the city council to adopt guidelines for cultivation and distribution of medicinal cannabis.**

**Photo by Janet Jacobus**