

Erasing Hallinan’s Legacy

The LA-ization of SFDA

By Fred Gardner

In a fluorescent Hall of Justice hallway, a silver-haired defense lawyer pulled a document from his worn but classy leather briefcase. “You have to read this,” he said to a reporter. “The DA is saying ‘all sales are illegal, all dispensaries are illegal.’ Can you believe it? This is San Francisco!”

Seems like only yesterday this lawyer, Terence Hallinan, was the DA, the top law-enforcement officer in the City and County.

The document he handed me —“Memorandum of Points and Authorities re: Continued Illegality of Selling Marijuana”—was filed March 1 by District Attorney George Gascon and signed by Assistant DA John Ullom. It was addressed to the judge, the defendant, and “Terrance [sic] Hallinan, Esq., Defense Counsel of Record.”

The misspelling of his name didn’t bother Terence (I made it for a Freudian dis), but he didn’t like the attempt to undo his signal political accomplishment: a regulated distribution system in San Francisco for the once-forbidden herb.

In 2003 Kamala Harris outpolled Hallinan, who was seeking a third term as DA. Though not as supportive of the medical marijuana industry as Hallinan had been, Harris was by no means hostile. In 2010 she ran for state attorney general and won a narrow victory over LA District Attorney Steve Cooley, considered an arch foe by the industry because he was moving to close LA dispensaries on the grounds that sales are illegal.

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To replace Harris, San Francisco Mayor Gavin Newsom appointed George Gascon, who spent most of his career in the LAPD, rising to assistant chief and acquiring a law degree along the way. Gascon became the police chief of Mesa, Arizona, in 2006, and won the respect of liberals by countering Sheriff Joe Arapaio’s lies about immigrants causing an increased crime rate. (Gascon’s parents had emigrated from Cuba in 1967.) Newsom brought Gascon to San Francisco as police chief in August 2009, then moved him to DA in January 2011. Newsom appointed Greg Suhr to replace Gascon, restoring the dominance of the narco-clique within SFPD.

Hallinan says that during Gascon’s time in office and in his election campaign he gave voters no indication that he intended to move against San Francisco’s medical marijuana dispensaries. Now, in the memo addressed to “Terrance,” Gascon charges that “a marijuana mega-myth has been perpetuated... a semantogenic shell game...” And what is this fancy-phrase-inspiring fraud? It’s the legality of marijuana sales (the method by which commodities are generally exchanged in our society).

“Marijuana Sales are Illegal” asserts Point One of the SFDA memo. Defense specialist Bill Panzer comments: “The sales-are-illegal theory was developed by one of Steve Cooley’s deputies named Joe Esposito. Cooley sent people from the LA DA’s office to other counties to give seminars. The Sonoma county DA has been arguing that sales are illegal, and the DA in Tehama County got a judge to agree that collectives can’t exchange money for any purpose whatsoever.” Panzer adds, “I can

see them trying to put it over in Tehama County, but San Francisco?”

Point Two of the SFDA memo is a review of “California’s Medical Marijuana Statutes” that Panzer calls “misleading.”

Gascon asserts that the law created by Prop 215 “provides limited affirmative defenses to patients and their primary caregivers for personal possession, individual cultivation, and medically related transportation.” This is not the wording of Prop 215, but an interpretation by a prosecutor of an interpretation by judges.

“The voters intent in passing the CUA has been established by case law,” according to Gascon, citing a 1997 appeals court ruling (in *People v. Pebbles Trippet*): “Both the statute’s drafters and the proponents took pains to emphasize that, except as specifically provided in the proposed statute, neither relaxation much less evisceration of the states marijuana laws was envisioned...” In the ballot pamphlet rebuttal [District Attorney Hallinan, a CUA proponent, stated] that the proposition ‘only allows marijuana to be grown for a patient’s personal use. Police officers can still arrest anyone who grows too much, or tries to sell it.’”

Did Gascon and Assistant DA Ullom chuckle when they discussed using Hallinan’s own words against him and his client? The ballot pamphlet rebuttal that Hallinan signed back in the spring of ‘96 had been drafted by Bill Zimmerman, a Santa Monica “campaign professional” who had replaced Dennis Peron as campaign manager.

“Ballot arguments are written with winning the election in mind, not implementation,” observes Panzer, a co-author of Prop 215. “But courts should only take them into account when there is ambiguity in the law itself, and in this case there’s is no ambiguity.

“Prop 215 doesn’t provide an affirmative defense,” says Panzer, “it provides a limited immunity to arrest and prosecution. The language is clear, and the state Supreme Court said so in the Mower decision.”

“Prop 215 doesn’t provide an affirmative defense,” says Panzer, “it provides a limited immunity to arrest and prosecution. The language is clear, and the state Supreme Court said so in the *Mower* decision. An affirmative defense requires the defendant to prove innocence by the preponderance of evidence. Limited immunity puts the burden on the prosecution to prove beyond a reasonable doubt that the crime did not involve medical use.”

Panzer says he once asked Joe Esposito about the practicality of no money changing hands within a collective. “I described a two-person collective. The electric bill is \$200. If we each pay PG&E \$100, that’s legal. But if I write them a check for \$200 and you reimburse me \$100, is that illegal?”

Esposito replied, “I’m not gonna answer that, but it’s a good question.”

Pebbles Trippet, an activist whose legal acumen is far superior to most lawyers’, thinks the sales-are-illegal argument presents a serious challenge. The law created by Prop 215 makes no reference to sales. SB-420, a measure passed by the legislature in 2002 to “clarify and implement” Prop 215, entitles patients to engage in “collective, cooperative cultivation.” In the *Urziceanu* case, a conservative appeals court panel in Sacramento ruled unanimously that this implied the right to sell

1	GEORGE GASCÓN (SBN 182345) District Attorney	ENDORSED FILED San Francisco County Superior Court
2	JOHN ULLOM (SBN 249141) Assistant District Attorney	MAR 01 2012
3	NICOLE R. CROSBY (SBN 256238) Assistant District Attorney	CLERK OF THE COURT BY: <u>BON GIDDINGS</u> Deputy Clerk
4	Office of the District Attorney 850 Bryant Street, Third Floor San Francisco, California 94103 Telephone: (415) 553-1048 Facsimile: (415) 553-1700	
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6		
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10		
11	THE PEOPLE OF THE STATE OF	Case No.: 11034365
12	CALIFORNIA,	PEOPLE'S MEMORANDUM OF POINTS AND AUTHORITES RE: CONTINUED ILLEGALITY OF SELLING MARIJUANA
13	Plaintiff,	Date: March 6, 2012
14	vs.	Time: 9:00 A.M.
15		Dept.: 23
16	Defendant.	
17		
18	TO THE HONORABLE JUDGE OF THE SUPERIOR COURT, DEFENDANT ANASTASIA MARIE ORTH, AND TERRANCE HALLINAN, ESQ., DEFENSE COUNSEL OF RECORD:	
19		
20	The People respectfully submit the following memorandum of points and authorities	
21	regarding the continued illegality of selling marijuana and the requirement that members of an	
22	association must all participate directly in the “cultivation” of marijuana to enjoy the	
23	protection of Health and Safety Code section 11362.775:	
24	INTRODUCTION	
25	Despite the continued proscription of marijuana sales under California law, the absence	
26	of any statute or case immunizing marijuana sales, and the lack of any expressed intention of	
27	the part of voters or the Legislature to legalize marijuana sales, a marijuana mega-myth has	
28	been perpetuated: selling marijuana over-the-counter at marijuana selling outlets is legal.	
	While California's medical marijuana laws may be complex, the law is clear that marijuana	
	POINTS AND AUTHORITIES RE: MARIJUANA SALES IMMUNITY - I	

District Attorney George Gascon tried to distance himself from his own attempt to ban sales of medical cannabis, which was first exposed on CounterPunch.org.

and distribute. Production and distribution had to remain within a closed loop (no sales to non-members), according to guidelines issued by the attorney general’s office under Jerry Brown.

Pro and con arguments in the Voters Handbook are not the only basis on which people decide how to vote on an initiative, especially one as highly publicized as Prop 215. Attorney General Dan Lungren, the leader of the No-on-215 campaign, arranged for the Bureau of Narcotics to raid Dennis Peron’s San Francisco Buyers Club on August 4, making front-page headlines from Crescent City to San Diego. As Bill Zimmerman pointed out, the opposition goal was to remind the electorate that Prop 215 was the work of “a drug dealer from

San Francisco.”

The raid on the SFCBC was ridiculed in a week’s worth of Doonesbury strips. Lungren wrote an open letter to editors and publishers urging them not to run the strips. Gary Trudeau weighed in with a second week of strips in October. Certainly, to many voters, Prop 215 was a referendum on the SFCBC’s right to operate. In Southern California, TV ads developed by Zimmerman featured an actor in a white coat dispensing herb in glass jars in a bright, clean pharmacy. Whether the five million people who voted “Yes” on Nov. 4 looked favorably on Dennis Peron’s bustling club or Bill Zimmerman’s conventional drug store, the model they had in mind involved sales.



BROWNIE MARY RATHBUN AND TERENCE HALLINAN were instrumental in bringing medical marijuana to San Francisco in the 1990s. She baked and distributed brownies to AIDS patients, publicizing the appetite-inducing and anti-depressant effects of the herb. He, as a city supervisor, sponsored Measure P, which enabled Dennis Peron to run the San Francisco Buyers’ Club without interference from the police. But the SFPD, fiercely resented Hallinan, especially after he was elected district attorney in 1995. The photos at right show a gay-pride-parade t-shirt on which an officer had penned “is a commie cocksucker” under Hallinan’s name hanging in the gym at 850 Bryant where I used to shoot hoops with the law enforcers. —F.G.



"I hate this damn kind of talk, but maybe I better tell you that if it were more than jail, if it were my life, I would give it up for what I think democracy is. And I don't let cops or judges tell me what I think democracy is." —Dashiell Hammett

Last Call at the Vapor Room

By Fred Gardner

As the sun was going down over Twin Peaks on the last day of July, two staffers took down the Vapor Room sign. Hand-painted and hung on a wrought iron bracket, the sign had not seemed out of place on a Haight Street Victorian built of redwood in a time when carpenters could express their artistry. Inside, people commiserated and said their goodbyes. The United States government had threatened to seize the building if the landlord didn't evict the club.

The Vapor Room was a club, a place where people could hang out and socialize. It was way smaller than Dennis Peron's San Francisco Cannabis Buyers Club at 1444 Market Street, but it had the same friendly feeling, as if it was an extension of the proprietor's living room.

Among the 40 people saying goodbye Tuesday evening were some friends of Dennis's who had circulated petitions for Prop 215 all those years ago. "We were there at the beginning and here we are at the end," said Kitty, a frail woman who was trying unsuccessfully to hold back the tears.



Unlike the retail outlets that defined themselves as "collectives," the Vapor Room was organized as a Co-operative Corporation under California law and met all the formal requirements. Attorney Bill Panzer once said the Vapor Room may have been the only marijuana provider in unambiguous compliance with SB-420, the confusing law (created by legislators to "clarify" Prop 215). If members of the Vapor Room co-op hadn't liked the way Martin Olive was running the place or allocating funds, they could have voted him out as director.

With only a few exceptions, the entrepreneurs who built the medical cannabis industry after Dennis's club was taken down in '98 (as a "nuisance" under California law) did not defend the right of medical cannabis users to consume and socialize on-site. The entrepreneurs' goal was to sell cannabis —a right-on mission, given the federal prohibition, but a big retreat from what Dennis had created and what he and many voters thought Prop 215 had legalized.

The politicians who have been trying to ban cannabis dispensaries in California cities and counties always claim that dispensaries are "not what the voters had in mind in passing Prop 215." This assertion never gets challenged. Here goes...

Prop 215 passed by a 56-44 margin although it had been opposed by every major office holder in the state, with Attorney General Lungren most visible and vocal. Polls at the time showed about a third of California voters favored outright legalization of marijuana, a third would not approve of its use by anyone under any circumstances, and the remaining third determined the outcome of the vote on November 5, 1996.

What did voters in that swing group think they were voting for? Given the widely publicized bust of Dennis Peron and the closure of the SF Cannabis Buyers Club in August '96, many voters thought the measure was a referendum on Dennis's right to

operate his business.

Sitting with Kitty and her friends I recalled what Dennis had told the Institute of Medicine investigators on their visit to 1444 Market St. in December, 1997: "marijuana is part of it, but the biggest part of healing is not being alone."

Flashback: The Institute of Medicine Visits the SF Cannabis Buyers Club

Some influential figures in the medical establishment had been embarrassed by the Dec. 30, 1996 press conference at which top federal officials dismissed as "Cheech and Chong medicine" a therapeutic agent they knew to be effective and safe. The *New England Journal of Medicine* ran an editorial entitled "Federal Foolishness and Marijuana," by Jerome Kassirer, MD, the editor-in-chief. It called the federal policy "misguided," "hypocritical," "out of step with the public," and "inhumane... the absolute power of bureaucrats whose decisions are based more on reflexive ideology and political correctness than on compassion."

On January 30, 1997, the very day the *NEJM* editorial ran, Dr. Harold Varmus, director of the National Institutes of Health, announced that there would be a special conference to resolve "the public health dilemma" raised by the passage of Prop 215.

"I don't think anyone wants to settle issues like this by plebiscite," said Varmus, calling instead for "a way to listen to experts on these topics."

There followed a big conference in February, organized by Alan Leshner of the National Institute of Drug Abuse, at which various experts decreed that there was no proof —which they define as placebo-controlled, double-blind clinical trials— that marijuana is safe and effective medicine in treating pain, neurological and movement disorders, etc.. They called for "more and better studies."

Drug Czar Barry McCaffrey, who in December '96 had mouthed the Cheech-and-Chong soundbite, then announced a \$1.5 million allocation for a study by the Institute of Medicine (IOM) on the medical potential (and dangers) of marijuana. Somebody evidently had explained to the Four Star Drug Czar that there really are some compounds in the plant that the drug companies hope to develop into marketable synthetics, and that NIH, NIDA, DEA, and FDA would from now on be running a four-cornered stall to prevent



ENTRANCE TO THE VAPOR ROOM no longer poses a threat of being glimpsed by people entering Duboce Park three blocks away will be spared the possibility of glimpsing the,

"the crude plant" from gaining status as medicine. The line official line would be more research is needed" (with Prohibition staying in place until the more research got conducted.)

The Institute of Medicine study was conducted by two male MD "investigators" —Stanley J. Watson, a research psychiatrist from the University of Michigan and John A. Benson, a professor emeritus from Oregon Health Sciences University— and three female "staff." Staffer Janet Joy would write their report.

On a Saturday in December '97, they visited Bay Area cannabis buyers clubs. It was the day after an appellate court had ruled that Dennis's club was illegal. The headlines carried Lungren's vow to close down all the clubs.

Their first stop was the Oakland Cannabis Buyers Co-operative, where Jeff Jones and colleagues described their operation in careful detail. The OCBC had prepared diligently for the meeting, and presented the IOM team with a report on the illnesses their members had been diagnosed with. Tod Mikuriya, MD, explained the advantages of vaporization over smoking. Watson and Benson nodded and the staff took notes.

Next stop was the SFCBC on Market St. The IOM delegation arrived at the club a little after noon. A memorial service was being held so they left to get some lunch, heading towards Van Ness on windy, desolate Market Street.

On the fourth floor Dennis Peron sat alone in the last row, head bowed as friends, co-workers, and family members recalled Ken M., a person with AIDS who had worked at the club for four years. "The friendliest guy," Dennis said of him. "We always used to talk baseball... He was one of the best warriors for medicinal marijuana... When we marched on the DEA, it was Ken who made up those wonderful chants... 'Anti-gay, DEA, why don't you just go away?'"

When Dennis finally spoke with the IOM team in his office on the mezzanine, he explained that his head was someplace else: his right to operate, established by California voters, had just been taken away by three judges. Dennis said he had glanced at the IOM questionnaire when it arrived in the mail, but it was buried under a pile of paper on his desk. As he started looking through the papers to find it, somebody came into the office with Ken's ashes under his arm, said goodbye, and exited. Dennis turned back to the investigators and generalized:

"People's responses to marijuana are like an inverted U. On one end of the U there are people who should never do marijuana. They take a puff of it, they get red, they cough, they get paranoid, they feel like death is imminent. And on the other end of that U is somebody in a wheelchair or they're in constant pain, they should never be without it. In between is everybody else."

"This is a club of last resort for some people," he went on. "How I run it is, I try to think of it as a country club for poor people who have never really had much in their life. And now that they are physically challenged, they even have less. Most of them are living on SSI in tiny one-room hotels downtown where everything's crazy and the bathroom's down the hall and there's screaming people down the hall."

"When they come here it's like a sanctuary for them. There's comfortable couches, there's places to sit at tables and talk. You'll see combinations you never see outside except on a bus: a black person with a white person with a brown person with a gay person, all at the same table, all sharing a part of their life."

"I like to think of this as a giant group

"Marijuana is part of it, but the biggest part of healing is not being alone. They always find that people who are alone die faster."

—Dennis Peron

therapy! And no matter what you got, this is therapy for it. And marijuana is part of it, but the biggest part of healing is not being alone. They always find that people who are alone die faster."

Dennis told the doctors, frankly but diplomatically, that he was skeptical about their mission. "You know, the medical potential of marijuana has been studied to death. The Shafer commission came back —you remember that one, 1972? Nixon appoints this commission. 'I want you to study it.' The commission comes back and says 'Legalize.' 'We can't do that!' So he totally disregarded the commission's voice...."

"The National Academy of Sciences, 1981-82 report, originally commissioned by Jimmy Carter..." The investigators nodded as if they had just read that report. "It was vague, it was ambiguous, but there was enough room to reschedule marijuana. Only by then Reagan was president and he threw the report in the garbage. Wouldn't even publish it for a while."

"Then there was the DEA study that they chose to ignore, Judge Francis Young, 1988... And now there'll be another study."

After a beat Dr. Benson smiled and said, "Help us," in an earnest, encouraging tone that implied, "the medical establishment is all ears." Dennis said he would show them around the club.

Back in the Now

The tasteful Vapor Room sign was painted by New Bohemia Signs from a design drawn by Jeremy Fish... The club will carry on as a delivery service, as will HopeNet, another Cannabis outlet closed July 31 after the landlord was threatened by the U.S. Attorney. HopeNet also used to allow use on-site, although it was very small space.

With a delivery service, instead of getting to spend time with friends and like-minded people, medical cannabis users will have a brief transaction with a driver. It's an immeasurable loss for Kitty and countless others for whom the Vapor Room was a place to hang out. After hugging her goodbye (will we meet again?) and paying my respects to brave Martin Olive, I walked down Haight towards Fillmore where I had parked. There are five bars on that one block and on a warm evening the smell of spilt beer wafts up from the floorboards and out into the street. I went into the Mad Dog in the Fog and had a Guinness.



MARTIN OLIVE GETS A HUG as the sign is removed from its bracket.