

Brittany Drew

From: Evans, Leonard O. (OPR) [mailto:Leonard.Evans@usdoj.gov]
Sent: Monday, February 1, 2016 12:19 PM
To: Michael Daniel <mdaniel@pdwlawfirm.com>
Subject: U.S. v. Currency \$940,313, No. 3:13-CV-62-CDL (M.D. Ga.)

Mr. Daniel – As I indicated during our brief telephone call this morning, I am an Assistant Counsel in the Department of Justice’s Office of Professional Responsibility (OPR). OPR investigates allegations of professional misconduct made against Department attorneys. OPR is separate from the litigating components and exercises independence in its investigations. OPR is conducting an inquiry related to the above-captioned civil asset forfeiture matter, in which an allegation has been made that the Assistant U.S. Attorney involved in the case threatened the claimant in order to coerce a civil settlement shortly before trial. I understand that you represented the claimant and handled settlement negotiations in the case, so as I mentioned during our call, I would appreciate the opportunity to speak with you briefly about it. Please let me know if you would be willing to speak with me and if you have a few minutes for a short telephone call sometime later today or tomorrow. Thank you for your consideration. Sincerely – Le Evans

Leonard O. Evans
Assistant Counsel
Office of Professional Responsibility
U.S. Department of Justice
(202) 514-3366

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From: Bennett, Danial (USAGAM) [mailto:Danial.Bennett@usdoj.gov]
Sent: Tuesday, May 07, 2013 8:21 AM
To: Michael Daniel
Cc: Solis, Mike (USAGAM); Jarrett, Tamara (USAGAM)
Subject: Re: Clyde's Armory

I'm not fond of your use of the term leverage. I would answer your question by stating that our civil forfeiture complaint is due in June. We are currently engaged in a negotiation in advance of that filing deadline. A decision for a figure to resolve this matter was just made. A decision on what amount we would file on has not been made. Civil forfeiture statutes and rules expressly provide for investigation of criminal activity both before and after filing. I hope that answers your question.

From: Michael Daniel [mailto:mdaniel@pdwlawfirm.com]
Sent: Tuesday, May 07, 2013 07:40 AM
To: Bennett, Danial (USAGAM)
Cc: Solis, Mike (USAGAM); Jarrett, Tamara (USAGAM)
Subject: RE: Clyde's Armory

Dan. Are you willing to remit the balance of the offer so that we can litigate the 325K, or are you holding that as leverage?

Sincerely,

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Statement of Andrew S. Clyde
CEO, Clyde Armory, Inc.
for
U.S. Congress
House of Representatives
Committee on Ways and Means
Oversight Subcommittee Hearing
May 25, 2016

Honorable Members of Congress, thank you for providing me with the opportunity to again discuss the sustaining impact that the actions of the Internal Revenue Service ("IRS") and Department of Justice ("DOJ") have had on my business, my employees, and myself personally. I am confident all of you remember my prior statement to the committee regarding the IRS and DOJ. However, for the sake of preserving the record, I will provide a brief summary of why I, a small business owner, veteran, and proud American, am submitting this statement today.

Friday, April 12, 2013, is a date that is forever etched in my memory. It was the first day I became aware of the IRS and DOJ's concerted effort to oppress the constitutional rights protecting my business, my employees, and myself. On that Friday, I was surprised by the appearance of two IRS agents on the retail sales floor of my Armory during a busy afternoon. The agents handed me a seizure warrant and stated that they had already taken \$940,313.00 from my company's bank account that morning. My surprise then turned into shock and utter despair, the reality of which was impossible to understand. I stood there accused of felony "structuring" as a result of a pattern of legally earned cash deposits of less than \$10,000.00 by my company.

Over twenty years prior to that dreadful Friday, I had planted the seeds of my business, Clyde Armory, in my home. After a decade of strenuous, personal labor to cultivate the business, I was able to hire my first employee in 2002. Over the next decade, I was blessed to live the American dream, to see the business grow to support two dozen employees and serve the needs of the public and many law enforcement agencies. On that Friday, the decades of blood, sweat, and tears that my employees and I had put into Clyde Armory meant nothing next to the seizure warrant thrust upon me by the IRS agents.

The \$940,313.00 seized represented nearly all of the working capital of Clyde Armory. With over two dozen hardworking men and women looking to me for leadership, I was put in a

position where my only options were either closing the doors of Clyde Armory or negotiating with the IRS and DOJ. My guilt or innocence was of no consequence. Only the harsh reality of the IRS's grip on Clyde Armory's working capital and the DOJ's forthcoming threats dictated how this legal battle would be resolved.

After the seizure, my legal counsel pressed for the earliest possible trial so that I could be exonerated and the funds returned. In the interim, between the seizure and the Court date, my counsel and I worked tirelessly to cooperate with the IRS and DOJ by providing them all the documentation they requested. In the information provided to the DOJ was clear evidence of my longstanding insurance policy which covered cash losses up to a maximum of \$10,000.00. This insurance policy proved why I had implemented a practice of restricting deposits to amounts of less than \$10,000.00. This documentation was clearly exculpatory evidence showing that I had directed deposits to be made in amounts of less than \$10,000.00 in order to protect my employees and not forgo my insurance's limitations. It was a best business practice that any responsible business owner would have implemented.

Regardless of the evidence in hand, the DOJ through the Assistant United States Attorney ("AUSA") assigned to the matter, continued to apply relentless pressure upon my business and my person during negotiations. My counsel respectfully requested that the DOJ release a portion of the funds so that Clyde Armory operations would not be threatened. The DOJ obstinately refused. The pressure reached a peak when the AUSA threatened to pursue criminal prosecution in addition to the civil forfeiture action. (Exhibit "A" – Danial Bennett Correspondence) At this point, if I was going to protect my business, my employees, and myself, my only option was to settle the matter. Regardless of how unjust the actions of the DOJ and IRS were, I had to swallow the bitter pill of a coerced settlement to protect what I and so many others had labored

to build. I agreed to forfeit \$50,000.00. I did not agree to cease maintaining my innocence of the accusations and charges and I resolved to continue to fight for the complete exoneration of both myself and for the others the IRS and DOJ had trapped in similar situations.

After our negotiated forfeiture was finalized, I went back to operating my business accompanied by the knowledge that the IRS and DOJ were not interested in the truth or in fairness. I also returned with a chilling feeling that they could do this again, at any time, and cause serious problems for my business. It is disheartening to know that the IRS and DOJ, with all the resources of the federal government behind them, are waiting in the wings ready to torment a person suddenly and without just cause when an opportunity for profit presents itself. After nearly two years of this stress, I was afforded an opportunity to testify before the House of Representatives Subcommittee on Oversight for the Committee on Ways and Means. With great honor I accepted and spoke of my experiences as a victim of civil asset forfeiture.

The Committee took exception to the way innocent business owners had been treated by the IRS and DOJ. In doing so they requested that the IRS and DOJ review all IRS civil asset forfeitures based on allegations of structuring. In my case personally, the Committee expressed significant concern over the actions of the IRS and DOJ during our negotiations. One Committee member expressed great disquiet over the AUSA's furtherance of the Government's position by use of the threat of criminal prosecution. Hearing the reactions of the Committee was heartening and alleviated some of the stress I had felt since the IRS seized Clyde Armory's operating funds. But to this day, contrary to the request of the Subcommittee, no one from the DOJ has contacted me or my counsel to review the settlement.

After appearing before the Committee, my counsel was contacted by the DOJ's Office of Professional Responsibility ("OPR"). In correspondence from the OPR, it was reported that the

OPR was investigating the AUSA assigned to my case. (Exhibit "B" – Leonard Evans Email)

The OPR was investigating due to the potentially unethical threat of criminal prosecution which had been levied during our negotiations. This action by the OPR shows some recognition of the seriousness of the threat I was facing, and the potential result of that threat. A criminal prosecution, whether or not it resulted in a conviction, would have effectively razed my business. Clyde Armory's primary revenue has always come from the buying and selling of firearms. To perform this business, Clyde Armory must maintain a federal firearms license ("FFL"). The initiation of any criminal prosecution could have resulted in a suspension or loss of this license. Additionally, Clyde Armory's credibility with the public and law enforcement agencies, with which it does business, would have been irreparably damaged. I believe the OPR investigation to be a step in the right direction, but until the laws are changed for the better there will always be a potential for abuse by the DOJ.

In an attempt to allow the DOJ to make amends for their unethical conduct exhibited during my case, I have filed with the United States Attorney for the Middle District of Georgia a Petition for Remission seeking return of the \$50,000.00 in forfeited funds plus interest. (Exhibit "C") The Petition asks the DOJ to follow the IRS October 2014 policy guidelines relating to forfeitures. It also asks the DOJ to simply "do the right thing". If the IRS and DOJ had been focused on doing the right thing since the implementation of the civil forfeiture statutes, the grief and heartache of thousands of Americans could have been avoided.

All over the news one hears of pundits calling our federal government a "do nothing Congress" because they say not much seems to get done. I have never believed that but I am certainly a little frustrated, as I think are many others, at the slowness by which things happen in Washington. I, and I believe the American people with me, are looking for bold moves forward

in the protection of our cherished freedoms. This area of civil asset forfeiture reform is the perfect area for bold moves and these moves must be made retroactive. Undo the wrong that was done 16 years ago. Preventing the wrong from happening again by codifying it into law is certainly a “must-be-done” priority. That indeed is excellent work and I praise the Congress, but restoring those who have born the burden of the unconstitutional seizures is much more excellent work and is the right thing to do. Abraham Lincoln expounded upon the first three words of our Constitution, “We the people”, in his Gettysburg address by rightly saying **“that this nation, under God, shall have a new birth of freedom; and that government of the people, by the people, for the people, shall not perish from the earth.”** How can we claim to follow in those footsteps of a government for the people if we are unwilling to provide restoration for undue penalties that Congress could have unknowingly enabled? The law when written was either too vague or badly worded for it allowed the enforcing agencies to attach inappropriate meanings and thereby profit from seizing legally earned money with no connection to criminal activity. I do not believe that was the intent of Congress but it appears these agencies saw the opportunity to manipulate the meanings and cast the blame on the Congress. In doing so they have also extra-funded their own budgets and bypassed the constraint of Congressional appropriations. Now innocent people have been slapped with heavy fines and or felony criminal records for simply using the banking system to deposit or withdraw their own hard earned legal money. Congress has both the authority and the power to correct this and reverse the wrong done to thousands of innocent American citizens. But does Congress have the will to do the right thing? Do not give the pundits ammunition to slander the Congress. I pray that you will lead with courageous legislation that will hearten the people and uplift the spirit of freedom in America. Legislation that says the Congress will do what is right simply because it is the right thing to do.

I am a simple man and my life is guided by simple principles, one of which is found in Matthew 7:12 which says; "So in everything, do unto others what you would have them do to you."

Please put yourself in the position of any of those of us who have suffered under this enforcing agency abuse. Would you not desire restitution? Would the IRS ever say to a taxpayer who had short paid their taxes for the last 16 years, "Oh don't worry about it, just make sure the taxes are paid from now on going forward."? They would never say that! All the back taxes would be forced to be paid in full plus interest and penalties. The delinquent taxpayer would be required to make full restitution, and rightly so! So why would full restitution not be in order for the citizen who had suffered severely under the boot of enforcing agencies who did not follow the spirit of the law or the true intent of the Congress? I respectfully submit to the Congress that restitution is an equally important part of correcting this civil asset forfeiture injustice.

In conclusion, I would like to reiterate that I am honored to have my testimony before you today to bear witness on such an important subject. I am a veteran of the United States Navy, and I will forever be bound by the oath I took to protect the Constitution of the United States of America. I feel this Committee's recent actions to protect the constitutional rights of all Americans from the wrongful seizure of their assets by the enforcing agencies of the federal government have pointed us back in the right direction. For your hard work on our behalf I am very grateful. Thank you.

Andrew S. Clyde