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The ongoing conflict between the protesting veterans and the West Los Angeles Veterans Administration moved from the streets to the courthouse Tuesday when the American Civil Liberties Union (ACLU) announced it was suing the VA in Federal court for denying a 67-year-old Army veteran his free-speech right to protest the agency's land use policies. Filed on behalf of Robert Rosebrock, the ACLU suit specifically points to the use of the American Flag. When it is flown right side up, there's no problem but when Rosebrock flies it upside down, as allowed by the Flag Code to show distress, and has been done historically to show protest, the VA has ordered Rosebrock to stop.

"They seem to be just fine with Mr. Rosebrock hanging the flag in the way they feel is appropriate. They refuse to allow him to do so when he is expressing a message they don't like. In this case a message of dissent or protest. That's simply not acceptable under the first amendment. Anytime the government does that it's important that they be stopped," said lead attorney Peter Eliasberg, ACLU of Southern California managing attorney and Manheim Family Attorney for First Amendment Rights.

The struggle over Rosebrock's, and other veterans, first amendments rights is only the opening round in a much larger fight over the VA's land use policies. One portion of the West L.A. campus is leased to a nearby private school for tennis courts, where veterans are not allowed. Two buildings on the VA ground are leased to private promoters for use as theaters. In a particularly galling event last year, the VA allowed a "celebrity carnival" to take place on the property. Rosebrock said at a time there are more than 6,500 homeless veterans in Los Angeles, some of whom slept on the sidewalk by where the carnival was taking place. Now that land has been leased by the VA land to build a public park.

That's why Rosebrock and his supporters have been protesting every Sunday for over two years, since March 9, 2008. Until now, it's been a small, but very dedicated group of veterans against the Veterans Administration Greater Los Angeles Healthcare System (the West LA VA official title). It is the largest, most complex healthcare system in the United States Department of Veterans Affairs. It serves veterans residing in Southern California and Southern Nevada. Rosebrock said he was "elated" when the ACLU entered the case on his behalf.

"When somebody of the stature of ACLU comes to our rescue I think it opens up many doors to resolving the issues over there [about] this land. It has continuously been abused and misused and that's precisely why we hung the flag in distress. It's living proof today that hanging the flag in distress gets results. I think justice prevails if you hang in long enough and I think we're heading towards that," Rosebrock said.

Rosebrock had been protesting for a year when he witnessed the "celebrity carnival" and it was that event that convinced him that more drastic action was needed. Here is part of the narrative from the complaint filed in Federal court by the ACLU:

"Mr. Rosebrock began hanging the United States flag - this time union down - beginning on June 14, 2009. He hung the flag union down as a distress call. Specifically, he intended to express that the land that previously been deeded for the benefit of the veterans was not being used for its intended purpose, thereby resulting in extreme hardship and distress to veterans in need. Mr. Rosebrock did not intend to demonstrate disrespect for the flag.

*One week after Mr. Rosebrock first hung the United States flag union down, Lieutenant Carson of the VA police drove up to Mr. Rosebrock from inside the fenced grass lawn. Lieutenant Carson ordered Mr. Rosebrock either to hang the United States flag union up or remove it. Although they believed this request violated their right to free expression, Mr. Rosebrock and his companion removed the flag because they were planning to leave the area shortly.*

*Just a few days later, on June 26, 2009, Lynn Carrier, associate director of VAGLAHS, (Veterans Administration Greater Los Angeles Healthcare System) sent an email message to Mr. Rosebrock to further express the VA's disapproval of Mr. Rosebrock's viewpoint. She wrote that Mr. Rosebrock and his companions 'may not attach the American flag, upside down, on VA property including our perimeter gates.' Ms. Carrier then added, "This is considered a desecration of the flag and is not allowed on VA property."*

*There after, the VA embarked on systematic harassment of the veterans in general and Rosebrock in particular. This included video taping the demonstrators, confronting individual protestors, more orders to stop displaying the flag, a series of criminal tickets issued to Rosebrock (later dismissed) and finally locking the veterans out of the grounds for a previously approved celebration."*



Veteran Robert Rosebrock and ACLU attorney Peter Eliasberg announce the lawsuit against the Veterans Administration.

Now that the ACLU is taking the VA to court, Rosebrock hopes that underlying issues, especially the leasing of the land for a public park, will come to light. "think this will give us a good opportunity to expose that. Now Donna Beiter and practically everybody over there has said this is not a public park yet it said in the sharing agreement that it is. So I think it may yet come out in court that it is a public park and that will lead us in the direction to challenge it and hopefully some day get an injunction against that public park," he said.

There's been an undercurrent of resentment among some of the veterans' more conservative supporters over the involvement of the ACLU. It was pointed out to them that none of the Veteran Support Organizations stepped forward to offer legal assistance, only the ACLU. Defending people's rights, Eliasberg said, is what the ACLU does.

"I hope that some people who view the ACLU as a leftist organization or a liberal organization will understand that our commitment to free speech doesn't turn on whose rights or liberties are being infringed upon. The reality is that the ACLU is committed to everybody's right to speak free from interference from the government. I hope people will see that and recognize that here. We did this case because we don't like the government telling Mr. Rosebrock how he should or shouldn't speak," he said.

The ACLU will do everything it can to move this case through the courts as quickly as possible, Eliasberg said, so Rosebrock and the other veterans can get their protests. "I think it's important for Mr. Rosebrock to get his message out so the public can evacuate why the VA is leasing this land for purposes that seem to have no relationship to the care and shelter of veterans. Is that appropriate?"

The 19th century deed which gave the land to the federal government, Eliasberg pointed out, specifically stated that the land was to be used, in perpetuity, for disabled veterans and for their shelter and care. "Is the VA living up to its obligations to abide by that?" Eliasberg asked.

For his part, Rosebrock said again that the veterans were going on the offensive. "We're tired of playing defense. We'll also be pushing forward with the grand plans we envisioned and trying to change the rules of the game. Take the game to them instead of them always bringing the game to us on their terms and their rules.

That's where we're going to be headed now, in the courts, and in the land use, a whole new vision, a new plan," he said.



Peter Eliasberg, ACLU of Southern California managing attorney and Manheim Family Attorney for First Amendment Rights.