

# THE CLARION

"CALLING FOR AN END TO CANNABIS PROHIBITION"

## Heartless Feds Deny Justice

### Mock Trials Follow Raids on Sick and Dying

**You could be next, over pot or any other excuse!**

Administration officials annoyed at California's support of the medical use of marijuana have found someone on whom to vent their frustration. Ed Rosenthal, 58, is a medical-marijuana advocate who grows the drug for use by the seriously ill. At the urging of federal prosecutors and judge, a jury convicted Mr. Rosenthal, the self-described "Guru of Ganja," of charges that carry a five-year minimum sentence and could be 10 years to life.

A jury that almost immediately questioned its own verdict. For they were not told, among other things, that Rosenthal was acting as an agent of the city of Oakland's medical marijuana program, which was an outgrowth of a 1996 medical marijuana initiative approved by California's voters.

"It's the most horrible mistake I've ever made," said juror Marney Craig, a 58-year-old Novato property manager. "I feel like we were sheep. We were manipulated."

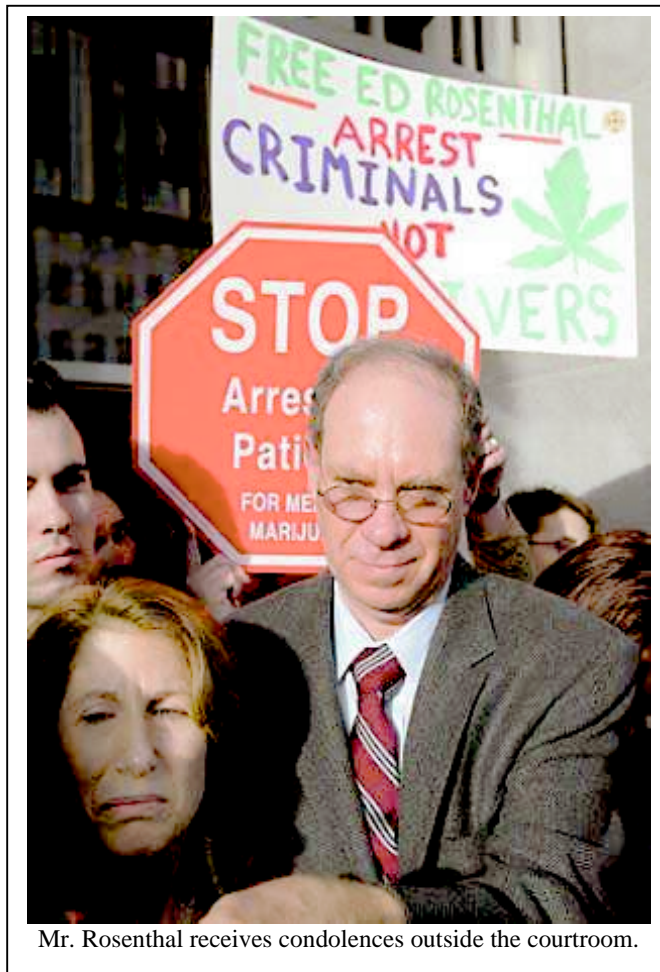
His harsh punishment, and the twisting of justice to impose it, shows that the misguided federal war on medical marijuana has now escalated out of control.

Mr. Rosenthal, who raised marijuana in an Oakland warehouse, was acting within state and local law. California's Proposition 215, which voters approved in a 1996 referendum, permits marijuana use by seriously ill people. In addition, Oakland has its

own medical marijuana law, and Mr. Rosenthal was acting as an officer of the city. Nevertheless, the judge refused to allow the defense to mention any of this at his trial, using the excuse that it is not a valid defense against federal drug charges.

Prosecutors were thus able to present Mr. Rosenthal as an ordinary, big-time drug dealer. After a witness said he had met Mr. Rosenthal "in the context of Proposition 215," the judge instructed the jury to disregard the reference, and took over the questioning himself. The foreman said afterward he felt the jury had had no choice but to convict, but hoped Mr. Rosenthal would win on appeal.

The prosecution of Mr. Rosenthal is only the latest attempt by the federal government to frustrate the will of California voters. Washington DC has also tried to revoke the licenses of doctors who recommend marijuana to their patients. This strategy was struck down as unconstitutional by a federal court last fall. We're glad to report that Ed Rosenthal remains a free man pending his sentencing hearing in June 2004. <continued next page>



Mr. Rosenthal receives condolences outside the courtroom.

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support.

<continued from previous page> The courts should not allow Mr. Rosenthal's conviction to stand. It would be a serious injustice if he were to serve years in prison, as he well may. Meanwhile, the administration should stop tyrannizing doctors and sick people and allow the truth that cannabis is medicine.

Some insiders say Rosenthal will surely appeal, based on irregularities that include possible jury tampering during the Grand Jury phase of the case that produced the indictment, and on Breyer's surreal insistence that Californians not talk about the landmark medpot law they passed in 1996, a law that Rosenthal was abiding by.

"The judge was openly hostile to the defense in a way that was unprecedented," one source lamented. "The jury was being threatened by the judge. If they had come back with a jury nullification or not guilty, he might have had them jailed. There was no real trial. It was a set-up. It was an mob hit carried out by the feds."

**Mr. Ed**

Ed Rosenthal is an activist and author. He is a self-described "Yippie" who has been one of the world's most courageous and fearless marijuana advocates for the past 30 years. He's also been an iconoclast- a man who spoke out against corruption and hypocrisy wherever he encountered it- whether it was in the ranks of drug warriors or in the marijuana industry and movement itself.

He is one of few marijuana writers and advocates who has had the guts to use his real name and face in his work. It may surprise you to know that most people who make money writing about marijuana for major pot magazines or in books are using fake names because they are afraid to put themselves on the line for pot.

Not so for Rosenthal, who outed himself three decades ago and never looked back.

"He has been very confident and organized, knowing that he was in the right, and seeking to prove that the government is in the wrong in every aspect of this case," a source affirmed. "He never thought of giving up, becoming an informant, or fleeing. That isn't his way. He doesn't run and hide, even though he is facing a virtual death sentence if life imprisonment is handed down."

One of the founders of NORML, the National Organization for the Reform of Marijuana Laws, Mr. Ed is known around the world as a man who has brought light and humor to the science of growing pot. A father, husband and talk show host, he has helped generations of pot growers in their quest for perfect cannabis agriculture. His "Ask Ed" column appeared in "High Times" magazine and graces every issue of Cannabis Culture. He has researched and written nearly 20 books on marijuana, selling millions of copies, with titles such as "The Growers Handbook," "The Big Book of Buds," and "Ask Ed: Marijuana Law."

It's surprising that the US federal government hasn't hammered Ed before. The cannabis law reform community expected it, yet, he spent many years helping people grow pot without any real harassment from the anti-plant agent s.

Now, it seems the war-loving administration of George W. Bush, John Ashcroft and John Walters feels strong enough about the issue to waste public money. And since Ed was openly working to provide medpot to sick and dying people with the blessing of municipal authorities, it was easy for the federal bully DEA posse to bust him last February in a Bay Area series of raids.

Rosenthal had been deputized by the city of Oakland as "an officer" in the city's program to distribute medical marijuana. Proposition 215, passed by California voters in Nov. 1996, was designed to allow patients -- with a doctor's approval -- to grow and use marijuana to, among other things, relieve the effects of cancer, AIDS and glaucoma. But, the federal government refuses to recognized the medicinal potential of marijuana. This is in spite of one of the few federally commissioned studies on medical marijuana, by the Institute of Medicine in 1999, found pot to be helpful for many patients when other medications don't work. The report called for clinical trials and concluded, "there is no clear alternative for people suffering from chronic conditions that might be relieved by smoking marijuana."

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### **Due Process**

The trial has been reminiscent of a Kafka story. District Court Judge Charles Breyer muzzled Ed and his defense team. The jury was not allowed to hear the context of Rosenthal's "crimes," which included growing marijuana for sale and distribution. Breyer even went so far as to prohibit Rosenthal's lawyer from questioning a key defense witness; he took over questioning himself.

Despite the judge's determination not to let the jury hear about California's medpot laws or to hear testimony that exonerated Ed, the defense managed to demolish the prosecution's case in key areas, such as in the number of plants being grown and in the credibility of DEA agents. Of course, even though DEA agents are trained liars, it doesn't take much to demolish their credibility, does it?

The case against Ed Rosenthal represents the latest clash between federal agents and state and local authorities over the medical use of marijuana. Nearly two years ago, the U.S. Supreme Court said it was a violation of federal drug laws for medical marijuana clubs to dispense pot. Armed with that ruling, the government has raided several marijuana clubs and growing operations in California over the objection of marijuana advocates and local prosecutors and politicians.

Throughout the two-week trial, Rosenthal's defense team repeatedly tried to call witnesses to testify that Rosenthal was growing medical marijuana. The judge denied those requests. The 9th U.S. Circuit Court of Appeals sided with the judge twice during mid-trial appeals. Breyer barred the use of a medical marijuana defense under California's Proposition 215, saying federal law supersedes state law. During testimony (such as was allowed) defense lawyers tried to put the purpose of Rosenthal's operation in front of the jury in spite of Breyer's orders. Those attempts were the source of constant sparks in the courtroom.

Rosenthal's lawyers were twice rebuffed by the 9th U.S. Circuit Court of Appeals in their bid to have the appeals court force Breyer to allow them to call witnesses that would have testified that Rosenthal's marijuana was being grown for the sick and dying.

"No motions for reconsideration, rehearing, clarification ... or any other submissions shall be filed or entertained," the San Francisco-based appeals court wrote.

Like an annoying iceberg of truth, Prop. 215 kept drifting into the case anyway - with demonstrations by taped-mouth supporters outside the courthouse, pretrial questioning of jurors about their views on the measure, and incessant defense efforts to slip words like "medical" and "patient" into questioning or testimony, which consistently drew rebukes from Breyer.

### **About 215**

The California state law known as Prop. 215, passed by voters as an initiative in 1996, permits the cultivation of marijuana as medicine for seriously ill people as it allows seriously ill patients to use marijuana with their doctor's approval. Almost immediately after it's passage the people who use our federal government had

Clinton's Justice Department file civil suits to close local pot clubs and sought to punish doctors who recommended marijuana. The Bush administration has followed up with statewide raids and criminal prosecutions -- most notably, the charges against Rosenthal and others associated with the San Francisco Harm Reduction Center.

Besides California, eight other states - Alaska, Arizona, California, Colorado, Hawaii, Maine, Oregon and Washington - allow, in some form, the sick and dying to receive, possess, grow or smoke marijuana for medical purposes without fear of state prosecution. The harrasment in those states has not been at the levels seen in California, however. The feds probably think the publicity will be better as they start with the "hippies" in California. No one will care at first (they figure) and by the time anyone does, they'll have established precedence.

So local governments are left to sort out the legal contradictions. The war on drugs should not be about Rosenthal. He represents one city's noble effort to distribute medical marijuana in a controlled, responsible way. Without Rosenthal, many patients would be forced to turn to dealers in the streets, enriching the enterprises that should be the real focus of a war on drugs.

### **Groping for an indictment of Ed Rosenthal; A Peek Behind the Rosenthal Grand Jury Veil: Manipulation Rampant**

We take you to the grand jury hearing for Ed Rosenthal where the government outlines its case against the evil criminal mastermind and "the people" decide whether or not to go to trial. Unlike the trial jurors who actually decided if Mr. Ed was guilty, the grand jurors deciding on whether to unleash a federal prosecution on Rosenthal got to poke their noses into things - or at least ask some questions.

Assistant U.S. Attorney George L. Bevan, Jr seeks some reply to a rebellious grand juror who'd just argued that most of the jury had probably voted for the state's 1996 medical marijuana initiative.

"The supply side of the equation, okay, is not protected under California law. The only thing that's covered is if you can grow your own - okay? Or you're sick, and there's some criteria, as you all know, that certain diseases are specified, like cancer." Along with the specified illnesses, there's also a provision for doctors' open-ended recommendations.

Had Bevan made such a statement during Rosenthal's actual trial, U.S. District Judge Charles Breyer would have immediately stifled him. Jon Pickette, the Drug Enforcement Administration agent ostensibly testifying in response to Bevan's questions - though at times Bevan seemed reluctant to yield the floor - tried to rescue Bevan, soon reminding the grand jury:

"And also, I think it's important to mention that under Prop. 215, you cannot sell marijuana. And despite all of that, it's still against federal law."

With perfect timing, a juror immediately complains: "Well, you can understand our confusion then." The U.S. Attorney's office declined comment beyond the legal papers cited below.

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## Public Lamentations

Unlike grand jurors, regular jurors can't ask questions. But, when they actually learn the truth outside the halls of justice, they can protest. Though overawed by the majesty of the federal trial of pot botanist Ed Rosenthal in San Francisco, several jurors, including the foreman, will call publicly for a new trial, charging they were misled into convicting him.

Such novel public lamentations please reporters, but they come a day late and more than a dollar short for Rosenthal. Yet the drug-reform community should not castigate these citizens too harshly.

For odd as it may seem to patients dependent on medical marijuana to ease their pain, these jurors, regular folks - noncombatants in the war on drugs - truly had no knowledge of who Rosenthal is. Said Keith Stroup, Executive Director of the National Organization for the Reform of Marijuana Laws,

"There's was enormous good will for Ed. But if jury nullification didn't work for him, I don't think it's much of an option beyond a patient who's just growing a couple of plants. After all, the judge is sitting up there on an elevated platform with the American flag behind him, telling jurors when they can come and go. It takes a strong-willed individual." He added that any strategy from here on out has to reflect the fact that "the feds are playing hardball."

Judge Breyer's stranglehold on the truth had them believe he was a big-time drug dealer, in it solely for the money. Never mind the inconvenient fact that the city of Oakland had officially charged the well-known cultivation columnist and advocate with growing medicine so spastic patients in wheelchairs wouldn't have to risk arrest on street corners seeking expensive and maybe ineffectual pot.

Seeking to direct matters away from medicine and towards the view that Rosenthal is a common, mercenary drug dealer, Bevan immediately promulgated the notion that "we prosecute growers." And, "most of the growers we have in our inventory [for Bevan's is indeed a business - larger and more powerful and better armed than most, but a business nonetheless] are up in the boondocks, they're in Mendocino, Humboldt County ..."

Then, tying Rosenthal to such feral, outlaw grows, Bevan then discussed one of his products: "Humboldt Hash." Never mind that Rosenthal was growing out of a warehouse in Oakland near City Hall. For more details on this visit:

<<http://www.green-aid.com/edrosenthal.htm>>

### A (Doomed?) Motion to Dismiss

Transcripts of the grand jury proceeding surfaced when the government felt the need to call Agent Pickette to the stand, thus opening up his testimony, along with Bevan's commentary - or co-testimony - to the defense.

Having obtained it last week, the defense filed a motion dated 1/28/03 to dismiss the grand jury indictment. Failing that, it requested the entire grand jury transcript be made available. It requested a delay in the proceedings, but Judge Breyer indicated that he could rule on the defense motion even after the jury returned its verdict. During the trial the judge emblazoned his

view in neon letters writ large across the sky, therefore his ruling might be anticipated. But the defense feels the grand jury proceedings do add to what they consider already ample grounds for appeal.

As to the defense motion to dismiss filed by attorneys Robert V. Eye and William M. Simpich, it states that, "Otherwise, any reasonable prosecutor knew that this grand jury would never indict Mr. Rosenthal," it argued that "the prosecutor led the grand jurors to believe" a number of legal fictions.

### the Travesty continues; on to the "Trial"

Assistant U.S. Attorney George Beven outlines the case against the man known as the foremost expert on marijuana growing, without actually discussing what Mr. Rosenthal was doing -- providing small starter clones of high-potency female plants to local marijuana dispensaries for distribution to qualified patients. He went through great lengths to exaggerate the what and prevent any "why".

The result was a disjointed opening argument. After a preliminary discussion with judge about whether the purpose of Mr. Rosenthal's activities could be mentioned -- it couldn't -- the defense elected to reserve its opening argument for after the prosecution completed presenting its case.

Then came what may prove to be one of the trial's more unjust moments, in which Judge Breyer quashed the defense subpoena of one of the DEA agents who had participated in the raid. Mike Heald, the former supervising agent from Sonoma County was being called to testify, outside the presence of the jury, about comments he'd made to a colleague of Mr. Rosenthal's regarding the DEA's policy on prosecutions in California. The colleague, Mary Pat Jacobs, who runs the Sonoma Alliance for Medical Marijuana, claimed in a declaration provided to the court that

Agent Heald had told her that it was policy to follow the lead of local authorities in determining whether or not to prosecute those cultivating medical marijuana under Prop 215 guidelines. Ms. Jacobs had relayed that conversation to Mr. Rosenthal, who had relied upon it, in addition to the numerous assurances of local officials, in concluding that his cultivation of marijuana plants on behalf of medical patients would be immune from federal prosecution.

The quashing of the subpoena of Agent Heald is of particular significance to the defense argument that the prosecution of Mr. Rosenthal is a case of "entrapment by estoppel" in which officials tell an individual that their conduct is legal and then try to prosecute them for it. In rejecting this argument, Judge Breyer made much of the fact that, while Mr. Rosenthal could reasonably have believed he was immune, the defense had not produced a key element in that defense: any federal government official or agent who's said as much. Now the federal agent who might have testified to exactly that will not be permitted to appear.

### Judge Continues Tight Rein On Pot Trial; References To Medical Uses Quickly Squelched In Federal Court

As the Bay Area's first federal medical marijuana trial ended, it finished with a series of bizarre touches that symbolize the entire case and "justice" under the drug war.



In front of an overflow crowd in the courtroom, the prosecution rested its case, and court recessed briefly. Once the jury exited the courtroom, there ensued yet another round of arguments as to what the defense could ask its first witness, Alameda County Supervisor Nathan Miley, who had been an Oakland City Council member when Mr. Rosenthal began participating in the city's medical marijuana distribution program. Assistant U.S. Attorney George Bevan, Jr. renewed his objection to Supervisor Miley being allowed to testify at all, and once that was denied, asked Judge Breyer to strike half the defense's proposed questions. That objection was sustained, and the defense was left with little more than the chance to ask Supervisor Miley about where he'd first met Mr. Rosenthal -- so long as no one mentioned either the name or purpose of the meeting, because both mentioned marijuana -- and his experience touring the cultivation facility - so long as all he commented on was Mr. Rosenthal's openness.

Then, the judge took over questioning of the defense witness to make sure he didn't refer to the medical use of marijuana. The fun started when Supervisor Miley mentioned that he had met defendant Ed Rosenthal "in the context of Proposition 215." Without prompting from the prosecutor, U.S. District Judge Charles Breyer told jurors to disregard the reference.

A few minutes later, as Rosenthal's lawyer struggled to let Miley describe the defendant's motives and the city of Oakland's endorsement of his work as a medical marijuana supplier, the judge verbally shoved the attorney aside. Breyer then asked Miley a few yes-or-no questions and abruptly curtailed his testimony, to gasps from Rosenthal's supporters.

### **Due Process, (Dis) Continued**

After the last witness, Judge Breyer gave his instructions to the jury. The last of the instructions, that marijuana cultivation is never legal, had drawn an objection from the defense out of the presence of the jury as going beyond the language of any laws. It is also curious on the facts, since the U.S. government funds clinical marijuana research of several types and maintains its own cultivation facility in Mississippi for the seven patients it has remaining in the federal medical marijuana program. (That program was closed to new patients when the AIDS epidemic created a surge of applicants with ailments only treatable with marijuana, such as wasting syndrome.)

After Judge Breyer completed his instructions to the jury, Assistant U.S. Attorney Bevan then presented the prosecution's closing argument. He portrayed his case as open-and-shut: "Cultivation of marijuana is a federal offense, period. Nothing else matters." Judge Breyer then instructed the jury yet again not to pay any attention to the extensive publicity surrounding the case.

Defense Counsel Robert Eye tried valiantly to present the defense's closing argument, in spite of repeated interruptions both by objections from the prosecution and by the judge himself, who interjected instructions to the jury to disregard elements of what the defense was trying to say. He told them that they'd brought to the trial life experience and common sense and that it was right that they apply those in deciding the case. He then suggested that each of them had their own sense of justice and that they should apply it in reaching their verdict.

At which point -- arguably the most bizarre of the trial -- Judge Breyer stopped Eye again and addressed the jury, instructing them that they were not to apply any personal sense of justice, that they were not to decide if a law was unjust, but were to follow the instructions he had given them. An irritated Bevan said Eye was out of line. "This is a federal courtroom," the prosecutor said. "It is not a polling place." Defense Attorney Eye, concluded by telling the jurors that they had the power to acquit, that he had confidence in them, and, finally, that he wanted them to see justice done.

### **How Can They Do That?**

Legal experts said U.S. District Judge Charles Breyer had federal precedent on his side. "Sorry," they say, but, technically, "A bank robber is not allowed a defense that he was stealing money for his starving children, even if he was," according to Rory Little, a Hastings College of the Law professor.

Jeffrey Toobin, CNN Legal Analyst: "This is a big difference between the Clinton administration and the Bush administration. The Clinton administration really let a lot of these medical experiments, medical marijuana experiments, proceed. Attorney General Ashcroft has said from the very beginning in Oregon, in California, this is against federal law, you proceed at your own risk, and now he's starting to prosecute."

"There's an important issue here. Judge Breyer, the judge in the trial here, the reason he didn't allow this in evidence was that this is not an intent crime. It doesn't matter what your intent is under the law, to possess marijuana. If you possess it, you're guilty. It's like speeding. If you speed, you're guilty. If you possess marijuana, you're guilty. It doesn't matter if you have good intentions. That's his ruling. And I think under the law, that's true."

The judge did the right thing?

"As far as I understand it, I think the judge did the right thing. The issue here is not so much the judge, it's the prosecutors. It's bringing a case like this is an invitation to sort of tell the state of California to go to hell. And your laws don't matter, federal government matters."

"And one of the reasons they bring cases like this, the Justice Department does, is to tell everyone in those [medical marijuana] states, you want to go ahead with those marijuana experiments? You're looking at going to jail too. I mean, it's a specific philosophy of this Justice Department. And we're seeing the effects of it now. "

### **Mr. Ed Does Not Take A Chance And Testify**

Hemmed in by Breyer's rulings, Mr. Rosenthal did not testify in his own defense and was left to hope that a sympathetic local jury would connect the dots. His lawyers were left to try and explain to the jury his motive for growing the plants - without actually telling them anything that the feds disapproved of. Like the truthDefense attorney William Simpich, told reporters that he declined to put Rosenthal on the stand because "He couldn't talk about anything. There was no point in Mr. Rosenthal taking the stand." **<continued next page>**

## The Jury

The case of the United States vs. Edward Rosenthal, marijuana author and activist then went into the hands of a jury of his peers, or as close to a jury of his peers as U.S. District Judge Charles Breyer would allow. Whatever the outcome of the jury's deliberations, it will inevitably be tinged by the extraordinary effort the judge expended on eliminating the remarkable number of potential jurors who could not agree to be bound by narrow instructions on federal law. In a supreme case of lying by omission, the jury was not told that Mr. Rosenthal was acting as an agent of Oakland's medical marijuana program, as well as the state law.

With the conviction, and subsequent jury uprising, very little question remains as to what the outcome would have been if the case had been heard by a real cross-section of citizens. An acquittal -- or even a hung jury -- would have only further emphasized the rapidly growing publicity of the consensus of the people on legal access to medical marijuana. And the feds knew this.

Those who have been following the development of the case will recall that the process of selecting the jury required two days and the calling of nearly 80 potential jurors to find fourteen people who either had no opinions or would agree to set aside their beliefs about the medical use of marijuana, its criminal classification, and the conflict between 33-year-old federal law and that passed by Californians in 1996.

And so, the jury, initially, concluded that Ed Rosenthal, was guilty -- for no good reason, not that it mattered they were told, erroneously. Jurors deliberated less than a day before finding the Oakland resident guilty of all three felonies charged. Rosenthal faces a minimum of five years in prison

## Small Victories

Prosecutors requested U.S. District Judge Charles Breyer to revoke the bail of Rosenthal. The government, again, essentially portrayed Rosenthal as a major drug supplier and by implication that he was dangerous and a flight risk. All more lies of course, but it costs them nothing to try. Assistant United States attorney, asked that Mr. Rosenthal be taken into custody immediately.

However, the federal judge did rebuff attempts by the feds to immediately have our hero chained and dragged off. He ruled Mr. Rosenthal is not a flight risk and allowed him to remain free on a mere \$500,000 bail pending his June 4th sentencing.

Further, Judge Breyer granted Defense Counsel Robert Eye and William Simpich an additional 30 days beyond the normal ten to file their request for a new trial. He also set the sentencing date as June 4th, much farther out than is normal.

Also, under federal law, cultivation of more than 1,000 plants carries a mandatory 10-year sentence. Prosecutor George Bevan told the jury Federal agents reported seizing 3,163 plants growing in Rosenthal's place near Jack London Square in February 2002. So, under the original indictment, Mr. Rosenthal had faced a minimum sentence of ten years in prison if convicted. His attorneys argued that most of what was found were rootless

cuttings that were not technically "plants" and that the count involving 1,000 plants was excessive. The jury concurred and effectively cut that amount in half when it rejected the prosecution's contention.. The jury at least understood that much and reduced the amount of rope the feds wanted to hang Ed with.

Upon leaving the courthouse with his family, a subdued but defiant Mr. Rosenthal was greeted by a mob of cameras, microphones and well-wishers. He called the verdict a "terrible decision" and He and his attorneys vowed to fight on, saying this was a struggle for patients' rights that would win out in the end. His lawyers said they would prepare motions for a new trial immediately, asking U.S. District Judge Charles Breyer of the Northern District of California for a new trial. Barring that, they vowed to appeal to the 9th U.S. Circuit Court of Appeals.

"Ed, for doing the right thing, is paying a terrible price," Robert V. Eye, of Topeka, Kan, one of Mr. Rosenthal's lawyers, who fought back tears during a news conference after the verdict.

Self serving Federal lackeys were naturally overjoyed with the verdict and were on hand to gloat and trumpet more government lies and propaganda.

"There is no such thing as medical marijuana," said Richard Meyer, a spokesman for the U.S. Drug Enforcement Administration (DEA). "We're very pleased with the results. We're Americans first, Californians second."

Apparently, however, they did not get the same script to the (jurors / Americans / Californians) they had just duped, because they believed otherwise on all points.

## Revolution; Jurors Decry Their Own Verdict

In an unusual show of solidarity with the man they convicted last week, five jurors in the trial of a medicinal marijuana advocate issued a public apology to him today and demanded that the judge grant him a new trial. In a statement read outside the federal courthouse here, the five jurors, joined by an alternate, said they would not have voted to convict Mr. Rosenthal if they had been allowed to consider all the laws. The group said they represented the views of at least two others who had served on the 12-member panel. Hilary McQuie, campaign coordinator of Americans for Safe Access, said she spoke to five jurors, all women.

"The jurors were just normal people who were put into a terrible position. They mentioned that they were being good "boys and girls, following orders" and were quite intimidated by the judge who kept reminding them that they had to follow his orders. They did not know they had the right to vote their consciences. When they found out more about jurors' rights and when they learned of the facts of the case that were kept from them, they felt extremely used and manipulated by the system."

## Juror Nullification

In the trial's aftermath, jurors said they are learning the concept of deciding on a verdict regardless of the law in a case, which is known as juror nullification. Some said they might have voted for acquittal and perhaps forced a mistrial had they known more about the concept.

Medical marijuana advocates said juror nullification could be an issue in future federal trials for people growing pot for people with medical needs.

"What we may have said is there's something more to this. I cannot in good conscience make a decision on this ... we don't have enough information," said Pamela Klarkowski, a Petaluma nurse on the jury.

"If we'd known he was hired by the city, I would have said this guy didn't deserve any of this. I really feel used and manipulated. It's horrible. Had I known that information, there is no way I could have found that man guilty."

### **Judge's Instructions and Withholding of Critical Facts Led Jurors to Convict Grower**

Jury foreman Charles Sackett III, 51, a landscape contractor in Sebastopol, Calif., spoke to reporters after the trial.

"It was one of the most difficult things we ever did as jurors," Mr. Sackett said of separating the state and federal aspects of the case. "We followed the letter of the law. We followed the court's instructions. And I feel embarrassed, humiliated, and can you imagine being able to sleep at night knowing that your name was at the bottom of that document?"

"This made me angry beyond belief. I'm not sure I've ever been so angry in my life. To the point that by the time I got out into the public, I didn't care if I got into trouble or not. I really do not know about contempt of court. And at first, I just wanted to raise a few eyebrows. When I was asked, what is your opinion about this case, and I said, 'I hope he appeals and wins'."

Later, at a press conference, the jury foreman apologized to the medical cannabis patients, California voters, and Ed and his family.

"I think the culprit is the system, the federal government. And the whole court system, the prosecution, the DEA, they're all the culprits. It was a huge well-planned scheme to get Ed Rosenthal because of who he is and what he represents. And I think that the federal government is going to realize that this is not the way to handle this situation. The federal government is going to have to acknowledge the medical marijuana issue and do something about it."

### **MEDICAL MARIJUANA: BLIND INJUSTICE**

Marney Craig, a property manager in Novato, served as a juror in the trial of Ed Rosenthal, who was convicted Jan. 31 of growing marijuana. She is extremely motivated to do what she can to make up for this travesty of justice.

"I'm sorry doesn't begin to cover it," she said. "It's the most horrible mistake I've ever made in my entire life. And I don't think that I personally will ever recover from this. We were sent into the jury room with half the evidence and expected to come up with a fair and just verdict. This did not happen."

"Ed Rosenthal should have a new trial, a fair trial in which all of the evidence is presented a trial in which the jurors are informed of their rights. One of the real problems here was that we didn't know we had any options. We thought our only choice was to

follow the judge's instructions and not consider anything that was not presented as evidence in the courtroom. And follow his instructions with regard to the federal law. And we didn't know that we had the right to do otherwise. And so we didn't.

"This is insane. A person accused of shooting his neighbor is allowed to explain why he did it, and motivation is often central to guilt or innocence: Did he act out of cruelty and malice, or did he shoot in self-defense, or to protect others? No one would dream of preventing an accused killer from explaining why he killed.

"The central irrationality is the federal law that decrees, as Drug Enforcement Administration spokesman Richard Meyer told reporters, 'There is no such thing as medical marijuana.' Medically, that's nonsense. No less than the New England Journal of Medicine -- considered the world's most authoritative medical journal -- has called for an end to the federal ban on medical marijuana, calling it "misguided, heavy-handed and inhumane."

"Ever since the verdict, we have sat awake nights, anguished at the injustice we participated in and angry at ourselves for failing to follow our consciences and vote to acquit. We hope Judge Breyer and the prosecutor share at least a little of that anguish at the cruel charade they conducted. But mostly we hope that Congress and the president will act quickly to end the federal ban on medical marijuana. No jury should ever again have to choose between the law and justice."

### **Will the Rosenthal Case Destroy Federal Medical Marijuana Enforcement?**

Throughout US history unjust verdicts have led to dramatic change. Indeed, the birth of the United States was sparked by a verdict in favor of the crown in Paxton's case challenging the warrantless searches by the King's soldiers of colonial homes and businesses. John Adams, who later became a leader in the revolution and the second president of the United States, was a young court reporter and at the time of the verdict he wrote, "Then and there, the child Independence was borne."

For years the King's soldiers had been abusing the rights of the colonists, searching homes, unreasonably taxing them without any representation in Parliament, quartering soldiers in private homes - but there was no fervor for independence. A verdict in favor of the Crown on such a critical issue as arbitrary searches stoked the fire of independence a movement grew and a country was born.

For years, the federal government has abused the rights of citizens when it came to enforcing drug laws. The medical marijuana issue has highlighted how extreme the drug warriors are willing to be. They are willing to allow the seriously ill suffer - even die - because they use marijuana a medicine they deem illegal.

Ever since California passed Proposition 215 in 1996 the federal government has done its best to thwart the law and undermine the democratic vote. Civil and criminal actions have been taken against individuals, doctors have been threatened, and state legislators have been ignored. But, for the most part the people have not rebelled - they have not gotten angry - they have not put pressure on their elected representatives, especially their US senators - to take action.

# THE CLARION

"CALLING FOR AN END TO CANNABIS PROHIBITION"

Laws designed for drug kingpins like Pablo Escobar - are being applied to Good Samaritans trying to provide medicine to the ill. The attack on medical marijuana was initially an attack on democracy - undermining the peoples vote. Then, it became an attack on the seriously ill - threatening their doctors, their providers and denying them their medicine. Now, it is becoming an attack on the jury system - a bedrock of our justice system. Again, our second president, John Adams made the relevant point: "it is not only [the juror's] right but his duty to find the verdict according to his own best understanding, judgment, and conscience, though in direct opposition to the court." An independent jury is a check against unjust laws abusively enforced.

The Bush administration's current offensive in the war on medical marijuana should now be exposed for the misguided and mean-spirited venture that it is. Doctors have long recognized marijuana's value in reducing pain and aiding in the treatment of cancer and AIDS, among other diseases. A recent poll found that 80 percent of Americans support legalized medical marijuana. The reasons the government gives for objecting to it do not outweigh the good it does. And given the lack of success of the war on drugs in recent years, there must be better places to direct law enforcement resources.

Ed's conviction stands as a monument to the bankruptcy of federal drug policy. Six years after Californians approved Prop. 215, the feds have come up with no better response than to corrupt our justice system even further in order to arrest, prosecute and imprison those who supply marijuana to the seriously ill. We must remain vigilant in our efforts. Seeing how good people can be misled by intimidating authority figures only reaffirms that what happened in Nazi Germany was not a fluke, but it could happen here, too. Thank God, though, some of us are compelled to take a stand and speak truth to power while we still are able.

This is certain: Cannabis IS medicine, it is Only a matter of time for the truth to win out. So, this is NOT the end of Prop. 215. Medical marijuana is here to stay. Ed's case is one of several currently in the federal courts that raise compelling appellate issues. When the dust is settled, Prop. 215 will stand, Ed will be vindicated, and the marijuana laws will go the way of alcohol prohibition. In the meantime, we of the medical marijuana community will stand steadfast in our support and best wishes for Ed and his lovely family. See [www.MedicalMJ.org](http://www.MedicalMJ.org) for more information about the reform reaction to the federal onslaught.

## Statement by Ed Rosenthal on the Medical Marijuana Trial Verdict

"I am disappointed in this verdict for several reasons. This was an unconstitutional prosecution. It should never have come to trial. Once it did, I was not afforded a jury of my peers. They had to bring in 80 people to come up with 12 who would agree to set aside their beliefs on this issue. Even so, they would have acquitted me if they had been permitted to hear my story. But I did not get the chance in this

trial to defend myself and explain my actions.

"Federal prosecutors made extraordinary efforts to block the truth, the whole truth, and nothing but the truth. Because the truth is that I was deputized by the City of Oakland to legally grow marijuana for medicinal use by sick or dying patients under California's Prop 215, the Compassionate Use Act, the law that is supposed to guarantee safe and legal access to medicinal marijuana. In fact, there is federal law -- Title 18 USC-885(d) - that exempts officers of the city from criminal activities when they're carrying out health and safety regulations."

"The City of Oakland showed courage in working to come up with a safe, open, and legal system to harmonize California's medical marijuana law with federal law. And I was acting as an official of the city, implementing their program to help patients. Had the jury known about the City's attempts to give immunity to their people, including me, it would have acquitted me today.

"The other victims of today's decision are patients -- people who are extremely ill or dying and who are soothed by medicinal marijuana -- because I am only one of many people that they are trying to put in jail for helping sick people, as allowed under our laws.

"For these reasons, we will be asking for a new trial. This verdict will not be allowed to stand.

"The federal government silenced my courtroom defense, but it can't silence the court of public opinion. The opinion of the American public is one of overwhelming support of medicinal uses of marijuana. They need to get this message.

"My case clearly demonstrates that it is time for a national debate on the issue of medical marijuana. California voted to make medical marijuana legal, but the federal government is trying to block that law. The federal government is choosing to prosecute and imprison individuals instead of working directly with the State of California and local cities to resolve the conflicts in medical marijuana law.

"Our elected officials must have the courage to discuss this issue publicly, and then resolve this conflict. Because helping sick people should never be a crime.

"For my entire family, thank you all for your support."

-- *Ed Rosenthal*  
[www.sfgate.com](http://www.sfgate.com)

FOR MORE INFORMATION on the web at:

[www.green-aid.com](http://www.green-aid.com) or [www.safeaccessnow.org](http://www.safeaccessnow.org)

To order Rosenthal's amazing grow books and his newest book about making powerful hashish and other concentrated pot products, go to [www.quicktrading.com](http://www.quicktrading.com).