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Judge to Decide Validity of Case on Marijuana

By [CAROLYN MARSHALL](#)

SAN FRANCISCO, March 3 — A federal judge has asked the United States attorney here to submit all trial preparation memorandums in the case against a leading advocate of medical marijuana so that the court can determine if the government has been pursuing a “vindictive prosecution.”

The judge, Charles R. Breyer, ordered the review at the request of lawyers for Ed Rosenthal, a spokesman in the effort to legalize marijuana who has been in a closely watched court battle with the government.

At a motion hearing in Federal District Court here on Friday, defense lawyers for Mr. Rosenthal urged Judge Breyer to dismiss an array of federal drug, money laundering and tax evasion charges against their client, saying an appellate court judge had overturned his conviction in a nearly identical case last year.

The new charges, outlined in a federal grand jury indictment issued in October, accuse Mr. Rosenthal of 14 felonies, including conspiracy to grow and sell marijuana for medical use, laundering \$1,850 and failing to report income from the sale of crop plants on his tax returns.

The overall charges are nearly identical to a 2003 federal case against Mr. Rosenthal, which ended with a one-day prison sentence after members of the jury disavowed the verdict, having learned belatedly that Mr. Rosenthal was growing marijuana under Proposition 215, the state’s medical marijuana law.

“We are outraged that the prosecutor continues to pursue this case,” said Shari L. Greenberger, a lawyer for Mr. Rosenthal. “The vindictive nature of the prosecutor is clear-cut and utterly shocking.”

Despite the short sentence in the 2003 case, Mr. Rosenthal challenged the fairness of his trial, and in April, a federal judge with the Ninth Circuit Court of Appeals overturned the marijuana growing conviction, citing jury misconduct. The decision punctuated a contentious three-year volley of legal appeals and cross complaints that were given a second wind on Friday, with the start of the new case.

The United States attorney, George Beven, declined to answer questions about the case, citing an office policy. But at Friday’s hearing he agreed to provide Judge Breyer with all interoffice memorandums pertaining to his office’s decision to seek another trial and expanded charges.

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