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Pot Advocate Rosenthal Accuses Prosecution of Plot

By [Matthew Hirsch](#)
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U.S. District Judge Charles Breyer might be eager to get the "Guru of Ganja" off his trial calendar. But he wasn't prepared to dismiss charges against famed toker Ed Rosenthal as defense lawyers wanted on Friday.

Before a colorful crowd of medical marijuana activists, plus a gaggle of lawyers for witnesses in the case, Breyer was skeptical of a motion to dismiss the case on the basis of vindictive prosecution.

He quickly rejected claims that the U.S. Attorney's Office overstepped its bounds by pushing to retry drug charges against Rosenthal. But Breyer agreed to give a closer look to the motivation behind tax and money-laundering charges that weren't part of the first trial. He asked Assistant U.S. Attorney George Bevan Jr. to turn over internal prosecution memos that might shed light on the charging decision, and said he'd review those *in camera* before ruling.

In 2003, Rosenthal -- a well-known personality in the medical pot community and author of many marijuana books -- was convicted on three drug charges for growing more than 100 marijuana plants in an Oakland, Calif., warehouse. He and his supporters derided the trial as unfair because he wasn't allowed to testify that he believed his operation was allowed under state law; the city of Oakland had even licensed him to provide medical marijuana.

Though Breyer handed him just a one-day sentence, that didn't stop Rosenthal from challenging his conviction. And the 9th U.S. Circuit Court of Appeals reversed it due to juror misconduct.

But that victory was short-lived. In deciding to retry him, the U.S. Attorney's Office added new tax and money-laundering charges.

Those additional charges fed the vindictive prosecution argument Joseph Elford, one of Rosenthal's many lawyers, made in a brief last month. In it, he claimed Bevan admitted in a hearing last fall that the prosecution was motivated by public statements Rosenthal made saying his first trial was unfair.

Bevan called that a "mischaracterization" of his comments. "The government," he wrote in court papers, "did not obtain the superseding indictment in retaliation for Rosenthal's comments to the press, but because the government agreed with Rosenthal that at a retrial the jury should hear the full story of Rosenthal's marijuana-growing operation." That, he added, included proceeds Rosenthal didn't declare on his tax returns.

Looking ahead to the retrial, set to begin March 19, Breyer also said that evidence he excluded from Rosenthal's first trial -- including testimony about the 1996 California law that legalized medical marijuana -- would be admissible this time around "in some form or another."

Defense lawyers seemed pleased by this approach.

"Let's bring it all in. We want the whole truth and nothing but the truth," said defense lawyer Shari Greenberger.

Breyer cautioned defense lawyers that he wouldn't accept just any argument, however, and he drew special attention to a statement in one defense brief that suggests Rosenthal didn't violate tax laws because he was in the medical marijuana business for humanitarian reasons, not to make a profit.

"People work for humanitarian organizations all the time, and I'd be surprised to hear that they don't record their income," Breyer said.

Rosenthal has to have a good-faith belief he didn't have to pay taxes, Breyer added. "You can't just come in and make up something and say, 'That's what I believed at the time,' [and] isn't that convenient."

Greenberger replied by assuring the judge that the Rosenthal legal team would offer a "multi-faceted defense."

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