

# FEDS vs. MEDS

## The U.S. Government's War on Medical Marijuana

Defying the wishes of California voters, the federal government busted Ed Rosenthal for growing medical marijuana by order of his own city government. Rosenthal is fighting back, hoping the case against him goes to pot.

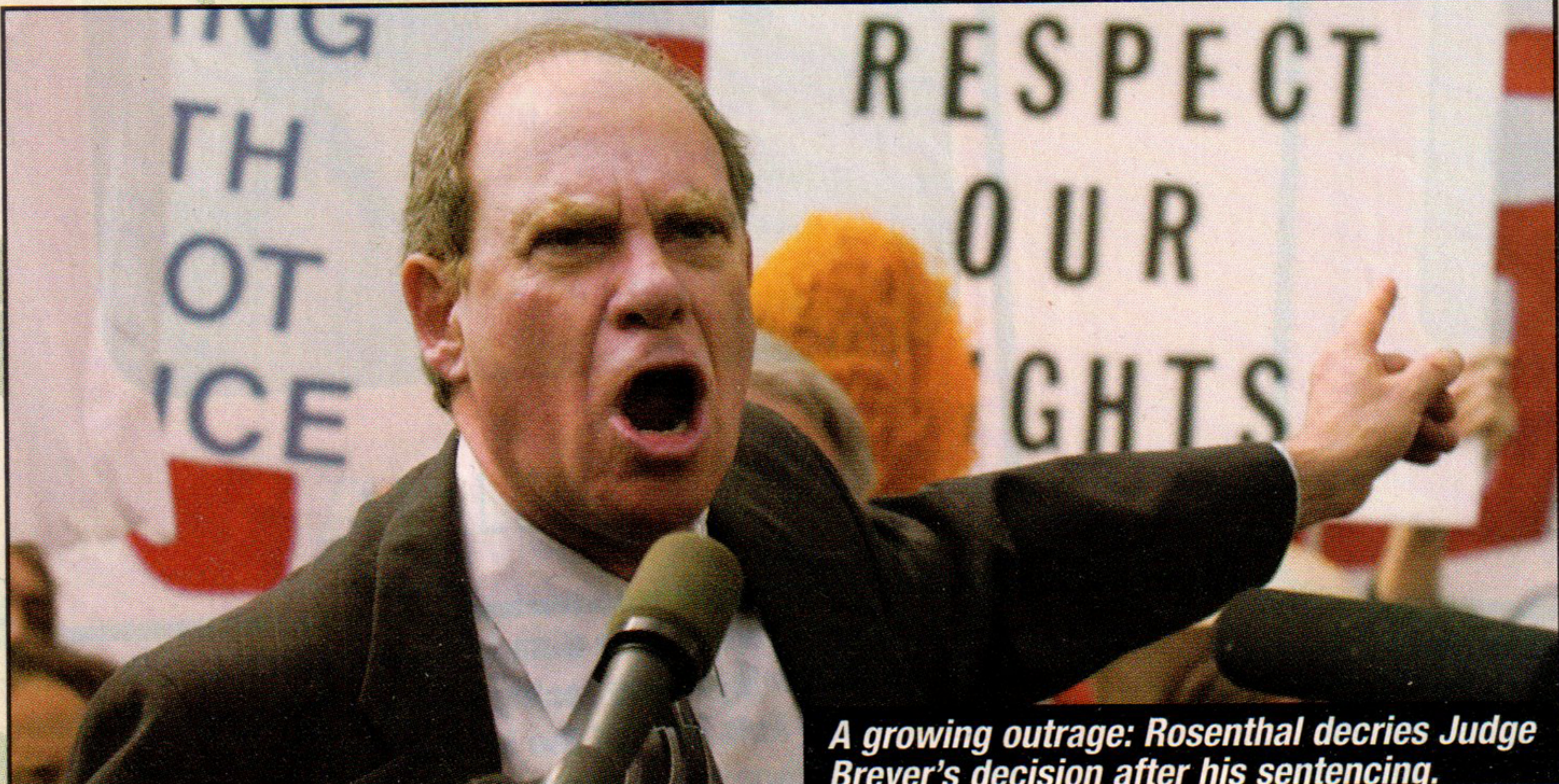
Report by Michael Allen

**E**d Rosenthal thought he was following the law. According to the city of Oakland and the state of California, he was actually enforcing it. The 58-year-old Oakland resident was growing marijuana for the Oakland Cannabis Buyers' Cooperative (OCBC), which was officially designated by the City of Oakland as a distribution center of medical marijuana for patients with AIDS, cancer and other ailments. Rosenthal had,

in fact, been deputized to do so.

Then he found himself facing five to 85 years in prison.

Growing, possessing and using marijuana for medical purposes has been legal in California since the passage of Proposition 215 in 1996 by California voters. Even so, U.S. federal laws prohibit the cultivation of marijuana and the use of cannabis by anyone, including the sick and dying. Based on federal law,



A growing outrage: Rosenthal decries Judge Breyer's decision after his sentencing.

Rosenthal, who, aside from writing more than a dozen books about marijuana cultivation and social policy, has served as an expert witness in federal and state marijuana trials, was charged with three crimes: the cultivation of more than 100 plants, conspiracy to grow more than 100 plants and maintaining a place where marijuana was grown.

Rosenthal was arrested at his house in Oakland, where he lives with his wife and 12-year-old daughter, at 6:00 a.m. on February 12, 2002. "I heard a loud banging on the door," recalls the longtime activist. "The DEA, FBI and IRS were there." Ed spent the next 36 hours in jail until he was released on bail.

When Rosenthal's trial began on January 21, 2003, Judge Charles Breyer barred Rosenthal's legal team from informing the jury that Rosenthal had been growing marijuana in accordance with California state law and that he was a deputized officer of the OCBC. In contrast, Assistant U.S. Attorney George Bevan was free to paint Rosenthal as a drug kingpin. The jury found Rosenthal guilty on all three charges.

After the trial, when the jurors finally found out the circumstances in which Rosenthal had been growing marijuana, many of them felt they had been duped and recanted their guilty verdict. Five of the jurors and one alternate issued a statement that read, "In good faith, we as jury members allowed ourselves to be blindfolded...therefore we were not allowed as a jury to properly weigh the case."

Allen G. Weinberg, a Beverly Hills, California, attorney and a member of the NORML (National Organization for the Reform of Marijuana Laws) legal committee, has successfully defended medical marijuana patients in California state courts and has convinced appellate courts to overturn convictions. Weinberg says the Rosenthal case presents difficulty because "courts generally hold that federal laws trump state laws. Mr. Rosenthal was charged with violating federal law in a federal court."

Yet the question remains: Should the jurors have been allowed to hear *why* Rosenthal had been growing marijuana? Some judges suppress evidence because they fear "jury nullification," in which jurors refuse to find a defendant guilty because they feel the law itself is wrong. Legal experts say jury nullification is a gray area; some courts allow it while others don't.

Rosenthal's conviction has brought the issues of states' rights and medicinal use of marijuana to the forefront of public

debate. Medical-marijuana advocates claim the drug greatly reduces the nausea that cancer patients suffer due to chemotherapy. They also say marijuana is beneficial for patients who have AIDS, multiple sclerosis, glaucoma and other illnesses.

The Drug Enforcement Administration (DEA) appears to be playing both sides of the fence. "There is no such thing as medical marijuana," stated DEA Spokesman Richard Meyer after Rosenthal's conviction. But when contacted by HUSTLER, Meyer conceded that "certain components of marijuana, like THC, do have some therapeutic effect. I think that everybody agrees on that. Right now, there are legal drugs on the market that can be obtained with a medical prescription to increment your appetite, to neutralize nausea. That drug is Marinol."

Marinol is a synthetic form of THC, the active component in marijuana. However, Marinol comes in a pill form, and many experts question its usefulness.

"When people are nauseous, they tend to throw up pills," says Dr. Ethan Russo, a neurologist who has researched the effects of both Marinol and marijuana. "That pretty much defeats the purpose of taking pills to neutralize your nausea. Problems with Marinol are numerous. It's very slow; it can take two to three hours [to work]."

According to Dr. Russo, smoking marijuana provides a quicker delivery of the medication and allows the patient to control exactly how much of the drug he or she needs, as opposed to a Marinol pill's premeasured dose.

On June 4, 2003, Rosenthal was sentenced to one day in jail, fined \$1,000 and placed under three years' court supervision. According to Judge Breyer's ruling, the sentence was so lenient because it was reasonable to conclude that Rosenthal had believed he was acting legally, allowing Breyer to avoid sentencing requirements, which would have given Ed a minimum of five years in jail. Rosenthal was given "time served" for his initial arrest and incarceration, allowing him to walk out of court a free man.

However, the battle is far from over. After the sentencing, Rosenthal promised, "This is Day One in the crusade to bring down the marijuana laws." Indeed, Ed's lawyers plan to appeal his conviction to the Ninth Circuit Court of Appeals.

Rosenthal's defense team believes its strongest argument is Section 885(d) of the Controlled Substances Act. This is a federal-immunity statute that protects "duly authorized officers" from being

prosecuted. Traditionally it has been used to shield narcotics agents from being busted when they buy and sell illegal drugs in the course of their job. But Rosenthal's attorneys argue that their client was protected because he was a duly deputized officer of the city of Oakland. His lawyers will also appeal on the grounds that the Controlled Substances Act of 1970 is based on "interstate commerce," which would not be applicable to someone growing marijuana in-state for in-state medical use. Finally, Rosenthal's defense team plans to question if federal law can overrule states' rights in the area of drugs without a constitutional amendment similar to the 18th Amendment, which prohibited alcohol in 1918.

Unhappy with Rosenthal's light sentence, the U.S. Attorney's Office has filed its own notice of appeal with the Ninth Circuit Court of Appeals.

The problem Ed Rosenthal creates for the DEA and federal government is both legal and moral. Rosenthal breaks the long-held stereotype of the slimy drug dealer who hangs out at school yards. In this unique situation, it is the federal government that has gone on trial in the court of public opinion.

"There are 30,000 people who are

either registered [as patients] through San Francisco or through Oakland," says Rosenthal. "So [Bevan] would send these people out onto the street where they get bad product or they could get mugged. Obviously, he doesn't care about their health, or even whether they live or die." (Bevan refused to comment for this story.)

Perhaps sensing the public outrage, the DEA told HUSTLER they are not going after individuals with terminal diseases, such as AIDS. Attorney Weinberg greets this compassionate pose with heavy skepticism. "John Ashcroft would absolutely like to go after people [using marijuana] who are dying of AIDS," he says. "Everything to him is black and white. If he had the budget to do it or could face Congress with a straight face and do it, he would."

For 130 years, this country survived without a single drug law. Hopefully the Rosenthal case will return us to the days when medical decisions were made by patient and doctor instead of the government.

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