



Rich Paul is Appealing His 81-Year Prison Sentence for Selling Pot

By: Harry Cheadle – May 29, 2013

Last month I wrote about Rich Paul, a pro-marijuana activist in Keene, New Hampshire, who was facing 81 years in prison for selling marijuana. Rich had refused plea bargain deals (including one that would have let him walk away with no jail time) because he wanted to stand up for his principles—weed is basically harmless and you should be allowed to smoke it and sell it to your friends. “Somebody had to stand up and say that this is wrong, and I thought I might well be that guy,” Rich emailed me. “I took the risk and now we’ll find out whether I bet my life well.”

Two days after he wrote that, the jury found Rich guilty, sending him to prison for a long, long time for a nonviolent crime.

That’s not so strange, because Rich essentially admitted that he sold a whole bunch of weed to an FBI informant. His defense didn’t rely on convincing anyone he wasn’t breaking the law—he wanted to convince the jury that the law itself was wrong. In other words, he was leaning on the principle of jury nullification, which is the idea that juries can vote to acquit people who have clearly broken the law if they think that the law shouldn’t exist in the first place.

“I wasn’t shocked,” Rich admitted to me in a video recorded from jail. “Jury nullification is a long shot.” Even so, he’s planning on appealing to the New Hampshire Supreme Court on the grounds that the judge misled the jury on what nullification is.

Last year, New Hampshire adopted a law that allows defense attorneys to speak directly to juries and tell them that they have the right to judge the application of the law, not just the facts; that is, they can decide the law shouldn’t be applied in particular cases. This is something that’s not allowed in any other state, but the wording of the law isn’t perfect—in a blog post, Tim Lynch of the libertarian Cato Institute voiced some concerns (emphasis in original):

If the attorney’s argument is “too strenuous,” the judge may reprimand the attorney in some way or deliver his own strenuous instruction about how the jurors must ultimately accept the law as described *by the court, not the defense*. I’m also afraid what the jurors hear will too often depend on the particular judge and, then, what that judge wants to do in a particular case.

That appears to be exactly what happened at Rich’s trial. According to the anti-government activist organization Free Keene’s coverage of the trial, judge John C.

Kissinger emphasized that the jury had to follow the law *as he* explained it and didn't touch on jury nullification. Kissinger's instructions to the jury were different than the ones given to the jury in the case of Doug Darrell, a 59-year-old Rastafarian woodworker who was acquitted of marijuana growing charges thanks to nullification.

Rich's argument for his appeal is that Kissinger should have made sure to inform the jury about nullification. It certainly seems like the jurors weren't 100 percent clear on the concept—after the trial, one told Free Keene, “We didn't want to break the law” by reaching a verdict of not guilty.

Confusion about the legality of jury nullification is natural—essentially, it's legal only because jurors can't get punished for whatever verdict they reach. In the 90s, a juror from Colorado named Laura Kriho was charged with contempt of court for voting to acquit a 19-year-old charged with possession of meth and supposedly lying about her anti-drug war beliefs during the jury selection process, in what a lot of people read as an assault on the doctrine of nullification. Since then, though, the idea has become more mainstream—in 2010, the *New York Times* reported on prospective jurors in Missoula, Montana, voicing their concerns about sending an admitted weed dealer to prison, which led to the charges being dropped, and the mayor of San Diego recently said he supported nullification in a case involving a man running a medical marijuana dispensary (legal under state law) who got arrested by the feds.

In the past, juries in the South have used nullification to acquit whites accused of hate crimes against blacks, so the doctrine does have some nasty history behind it. A common critique, as expressed by the Straight Dope in a 2009 blog post on nullification, is, “If you want to change the law, do it at the ballot box, not in the jury room.” But change at the ballot box is complicated in 2013's America. Even when states legalize marijuana, the federal government's agencies can still crack down on people using and selling a legal (or semi-legal) substance. Juries are supposed to represent the conscience of the community—is it so far-fetched to believe that many communities would find laws that send nonviolent criminals to prison for years repugnant? And shouldn't they have some clearly defined mechanism for stopping that from happening?

The activists supporting Rich certainly think so. If his appeal is successful, it'll set a precedent in New Hampshire that juries have to be informed that nullification is both possible and legal, which would presumably make a huge difference—one of the big hurdles for nullification advocates has historically been educating people about it. In order to make his appeal, Rich has to hire a lawyer, and his supporters have started a fundraising campaign to make that possible. Whatever legal loopholes Rich and his lawyer will be jumping through, it seems worthwhile to support the cause of freeing him. As he said in his video statement from jail:

Our country has become one that puts words on paper before human life. And, that's wrong. The bottom line is, I choose—or I should be able to choose—my own medical care. The people who bought weed from me should be able to choose their own medical care and if that includes marijuana that's their right. Even if it's recreational. Who cares? It's not *your* body, it's not *your* mind, *you* don't have a right to control it.