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Ending the Prohibition of Marijuana in Vermont:
On the issue of Plants

As presented to the State of Vermont
House of Representatives

Judiciary and Government Operations Committees
Joint Public Hearing

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Almost exactly three years ago, I testified before the House Judiciary Committee in support of the decriminalization of marijuana. I will present committee members with copies of that testimony. You might find it an interesting read. The bottom line was that, a few years ago, I re-planted and thus nurtured one marijuana plant that had sprung from a spider plant in our small greenhouse in Wallingford. The seed had been thrown into the spider plant by a friend of my son. What resulted, once I was reported and found myself in the jaws of the criminal justice system, was an extraordinary waste of public (and, yes, private) resources that ultimately led to a seven-page court decision and a disposition of "charges dismissed, judgment of no judgment." Thank goodness that we still have privacy rights in Vermont!

Decriminalization legislation is now, of course, in force, although dealing with the issue of plants was avoided at that time and appears to be headed towards avoidance once again. If that issue is not dealt with head-on now, or at least when prohibition is inevitably lifted in Vermont and ultimately in the entire nation, it will still remain a crime, as it is now, for any citizen of Vermont to raise any number of marijuana plants in their home or on their own property.

Current Vermont statute now states, “A person convicted of... cultivating marijuana,” and that is any amount of marijuana, “shall be imprisoned not more than two years or fined not more than \$2,000.00, or both [Title 18, s. 4230(B)].” Once you get past three plants, the punishment goes up, but two years in jail and a \$2,000 fine for growing one marijuana plant in my home or on my property? That is really the law of the land? And, wait a minute, we are talking about making it legal now but leaving that aspect of the law unchanged?

In the end, this is a liberty issue – pure and simple! Yes, let us end this failed and costly prohibition, but ending the prohibition of marijuana while maintaining the prohibition on growing a few plants would be like ending the prohibition of alcohol, but leaving the personal production of beer, wine and/or alcoholic spirits illegal. Doing that would truly defy reason and would be an affront to personal freedom!

Thank you.

A Personal and Public Plea
For the Decriminalization of Marijuana
In Vermont

As presented to the State of Vermont
House of Representatives Judiciary Committee

April 3, 2013

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By way of introduction, today is my 62nd birthday! If you do the math, that means that I went from age 9 to 19 in the 60s. I first smoked pot in 1966 when I was 15-years-old. In the 47 years that elapsed since, I have gone weeks, months, even years without using the stuff. I have also managed to earn a B.S. degree in Management from CCSU and a Master's degree in Public Administration from UVM, both with honors. I served for seven years on the Wallingford Selectboard, six years on the Mill River Union High School Board and many more years on various public and private non-profit Boards. I have volunteered regularly in many other capacities, such as over 20 years now as a Rutland County Court Diversion Board Member, and have otherwise worked diligently during the 37-year span of my career in public service.

My family and I have lived in the beautiful little town of Wallingford, Vermont, for over 20 years. In late 2009, we were able to add a small greenhouse to the southeast corner of our home. In April of 2010, while my wife and I were away on vacation for a week, an older friend of my then 18-year-old son apparently placed a few marijuana seeds in a spider plant that we had growing out there. We knew that our son had begun to experiment with pot, but he and his friends were supposed to do such things somewhere other than in our home. It was "against the rules," but, because we were not there to monitor their activities, they presumably had opened the windows, turned on the fan and were smoking weed in the greenhouse.

Low and behold, two small pot plants sprouted and began to grow in the

spider plant some weeks later. I did not think much of it when I pulled one of them out and threw the weed into a six-inch plastic pot to give it a chance to grow along side the tomatoes, the broccoli and the zucchinis that we had planted from seed. It was a novelty, a science experiment. I had no specific plan for the plant, although I did enjoy hosting it for as long it lasted.

It was a sunny Saturday morning in early June of that year, and I was picking up our lawnmower from the repair shop when I got a call from my wife. She told me that there were two State Troopers at our front door. Of course, I immediately thought of my son - was he in trouble? Was he okay? But no, it was the lone pot plant that had brought them to our home. An anonymous tipster, a "concerned citizen," had called and reported my criminal activity. We believe it was a disgruntled tenant, but regardless of who called in the tip or why, the Troopers were asking my wife if it was okay to come in. If not, one of them would stay put and the other would go get a search warrant. So, she gave me the call on my cell phone and put the question to me. "Let them in," I said. After all, I had not been trying to hide anything.

They confiscated the plant that I re-potted and pulled the second one, which was stunted and struggling to survive amidst the dominant spider plant. They then searched the entire house - every room, every closet, our dirt-floor basement, etc., apparently looking for grow lights and more plants, paraphernalia, processed marijuana, etc. They also searched the entire property outside of the house. Of course, they found nothing. They said they knew that I was a Corrections professional and that my wife was a teacher at our local elementary school. They explained that if it were someone else, they might not pursue the matter, but I/we could be held to a "higher standard." They would have to check with their Sergeant.

We were asked to report to the Rutland State Police barracks at 1 PM, and we did so. I took full responsibility for my actions - neither my wife nor my son had anything to do with it. I signed off on my Miranda rights. I answered every question fully and honestly. In fact, I have managed quite literally to tell the truth, the whole truth and nothing but the truth every step of the way during this entire affair.

I was subsequently arrested, finger-printed, a mug shot was taken, and I was cited into court for Cultivation of Marijuana. Of course, I reported this

all to my boss the following Monday morning. I was going to a meeting at the DOC Central Office in Waterbury anyway that day, so I brought the issue to that level as well. I was appropriately advised to get a lawyer and contact the Vermont State Employees Association. The word eventually came down to me through the DOC chain of command that everything would be okay "if it goes away."

Well, it did not go away. The case had gotten "conflicted-out" by Rutland County State's Attorney Marc Brierre to Bennington County and State's Attorney Erica Marthage's office. I decided at that point that it was time to "lawyer up." I learned that Ms. Marthage did not feel that Court Diversion was appropriate, although I would have accepted that as an appropriate option. It apparently was also not an option for me to pay a fine and walk away with a criminal conviction. Her office was not even willing to consider deferred probation as an alternative, which would have at least allowed me to be on probation for a set period of time with the potential to have a clean record if I did what was required of me during the allotted amount of time. The only offer I ever received from Ms. Marthage's office was a sentence of probation, which carries with it a life-long criminal record.

Of course, I could not know, in regards to my employment status, how the DOC would respond to a drug-related criminal conviction. Although I was facing up to six months in jail and/or up to a \$500 fine, I simply did not believe that probation was an appropriate, effective or a just response to what I had done. As a result, I felt compelled to make a motion, through my lawyer, to suppress the evidence and dismiss the charge. I had admitted from the start that I had done what I had done, so this appeared to be my only option other than to plead guilty and accept a plea agreement with probation as the sentence.

I ended up going to Court in Bennington twice during the course of these events. First, it was to be arraigned (9/13/10), which was when my lawyer and I were finally able to receive a copy of the police affidavit (copy attached). It was immediately clear to both my lawyer and me that the officer who, as revealed in the affidavit, had gone around our house and into our backyard before making any contact with anyone may very well have "stepped over the line" in doing so. My wife actually never heard a knock, even though she was just upstairs from the front door. She happened to look out the window at one point and saw the two State Trooper cars and quickly went downstairs, also initially concerned that our

son was okay.

The second visit to Court in Bennington was for the hearing on the Motion to Suppress the Evidence and Dismiss the Charges (12/3/10). My wife and the two State Troopers were called as witnesses by the State. Prior to this hearing, the State's Attorney's Office had submitted a three-page Response to Motion to Dismiss and I, again through my attorney, submitted a Response to State's Opposition to Motion to Suppress and Motion to Dismiss. It had also been necessary for me to submit a Motion to Continue Calendar Call to avoid a third hearing that would have been an additional waste of time for all parties. Copies of all three of these filings and the Judge's subsequent Decision and Order Re: Motion to Suppress, which was ultimately decided in my favor, are attached. Yes, the documents were flying and the hours of labor necessary to produce those documents were significant.^A

I take responsibility for what I did and accept my share of the responsibility for the resulting public expense. The State, however, needs to accept a share of that responsibility as well, because the "law of the land" drove this process from beginning to end. It would be difficult to put a price tag on how much this specific case cost the people of the State of Vermont. During the course of the initial investigation, two State Troopers (in two State Trooper vehicles) drove to Wallingford and spent a significant amount of time at our home. One of the Troopers then questioned me further at the Rutland Barracks and ultimately put me through the booking process. As it worked out, he needed to make yet another trip to Wallingford the next day to give me my copy of the citation. He then had to make a third trip out to our home when the venue changed from Rutland to Bennington and the charge changed from Cultivation of Marijuana to Possession of Marijuana. He had to write the two-page affidavit and both he and the other Trooper (again, in separate cars), were obliged to travel from Rutland to Bennington to testify at the hearing on 12/3/10. Following the hearing, Judge David Howard then had to take the time and make the effort required to write a seven-page Decision and Order Re: Motion to Suppress. It would be difficult to guess how much time the Bennington County State's Attorney's Office spent on the case.

The law is the law, but this all could certainly have been dealt with more effectively and efficiently through Court Diversion. After all, I have never had more than a traffic violation in my entire life. Although I do recognize

the concept of “prosecutorial discretion,” the fact that Diversion was not seriously considered also challenges the whole concept of “equal justice under the law.” The bottom line was that in another county, under the jurisdiction of a different State’s Attorney, I might have been offered Court Diversion right off the bat. Given the honesty of the State Trooper’s report in the affidavit re: the details of the search and seizure, the charges might also have been dropped outright prior to any Court proceedings. Fortunately for me, as opposed to many others in similar circumstances, I had the resources available to hire a good lawyer and was able to prevail in Court. Thank goodness that we still have privacy rights firmly established in case law!

Regardless of any of that, however, this case is a classic example of why the possession of a small amount of Marijuana needs to be de-criminalized. It was such a waste of State resources (not to mention the \$2,000 it cost my wife and me) and such a psychic drain on my family. And to what end? At this point in my life, it might not have hurt me terribly to end up with a misdemeanor, drug-related criminal record. For a young person, however, it could mean the inability to secure a Federal student loan, could affect their future employability, housing options, etc. The law as it now stands is simply bad public policy and needs to be changed. This will be accomplished by the passage of H. 200, which is currently being considered by your Committee.

Over 1,000 individuals per year in Vermont are charged with simple Possession of Marijuana. That comes down to over 20 individuals per week in our small state. Perhaps some of these people truly are criminals who, for instance, are also in possession of heroin or meth or crack cocaine or Percocets or Oxycontin and are dealing these dangerous drugs in the streets of our cities and towns. Others, however, may be young people (or old) who are not criminals and should not be treated as criminals.

In supporting decriminalization, I am in no way suggesting that Marijuana is harmless. While it may not be as potentially harmful as alcohol or tobacco, it is not without its negative effects. Persistent marijuana use beginning in adolescence is associated with a decline in cognitive function by midlife. Particularly in regards to the bodies and brains of young people, they are growing and developing well into their 20’s, and it is well-documented that regular marijuana use alters that growth and development. The effects may include problems with cognition, memory and motivation. Of course,