



## MY CONTRIBUTION TO SCIENCE

I recall learning about the painfully short half-life of certain chemical compounds in high school chemistry. Some of those nasty little compounds expire in hours, minutes or even a few short seconds. Several years after high school, I can now truly empathize with such ill fated compounds. I have discovered that the half-life of a principled libertarian superior court judge on the criminal bench is about one half hour. <sup>1</sup>

After many years as a practicing criminal defense attorney, I decided to apply to become a judge on the court of appeals. Despite good credentials and numerous letters of recommendation from several respected judges and other accomplished people, I was not deemed worthy of an interview by the appellate court selection committee. It may have had something to do with the fact that I cited a need for intellectual diversity as my reason for wanting to become an appellate court judge and used the term "pro-freedom" in my application. Maybe I was doomed from the start.

My application to become a superior court judge pro tem<sup>2</sup> was lodged with visions of presiding over selected criminal jury trials. As a judge pro tem, I expected to have the luxury of picking and choosing my limited trial assignments. I was determined neither to conceal nor to violate my principles. My application included a disclosure that I am on the legal committee for the National Organization for the Reform of Marijuana Laws ("NORML") as well as the fact that I co-founded the Freedom Summit <http://www.freedomsummit.com>. In addition, my application included my associations with the Foundation for Economic Education, the Future of Freedom Foundation and CATO.

I was pleasantly surprised<sup>4</sup> when my application was approved and I was appointed for a one year term as a superior court judge pro tem. I was excited and eager to work hard and do justice.

After two months of waiting for a criminal trial assignment on a non-victimless case, I inquired about obtaining such an assignment. I learned that the superior court's urgent need was for pro tem judges to cover the assortment of cases composing the pre-trial calendar. I had refused countless opportunities to cover court calendars I believed would contain predominately drug cases. On a day when the court was desperate for help, the court administration was agreeable to reassign a full time judge and arrange a criminal court calendar I believed would not contain many drug cases. I agreed but expected some non-violent drug cases would be on my calendar.

Determined to be honest and honorable, I decided to recuse myself on all drug related cases<sup>5</sup>. To avoid being accused of having secret or illegitimate motives, I drafted a detailed six page minute entry: [http://attorneyforfreedomcom.nxg.verizonsupersite.com/protem\\_art.pdf](http://attorneyforfreedomcom.nxg.verizonsupersite.com/protem_art.pdf), explaining the legal reasons underlying my anticipated recusal. I believed the parties had a right to know why I refused to hear their case. After all, the government, including judges, are supposed to be agents of the people; not masters.

When my first (and last) day as a judge arrived, I learned there were seven drug cases on my calendar of thirty seven matters. I arranged for another judge to handle the seven drug cases and offered to take several non-drug cases in exchange. I planned to recuse myself from the seven drug cases and reassign them to the other judge to be heard that same day.

Shortly after I began my court calendar, a friendly law enforcement officer arrived with several routine arrest warrants to be signed. All but one of the proposed arrest warrants were for drug cases. The other was for a questionable gun case. I informed the law enforcement officer of my principled refusal to consider his warrants and

sent him away. To my surprise, the officer informed me of his support before he left to seek out a more agreeable judge<sup>6</sup>.

Without my knowledge, the clerk e-mailed my recusal minute entry to her supervisor who forwarded it to the presiding criminal judge of the superior court. I soon found myself on the telephone with an angry judge who voiced his disagreement with my legal reasoning by referring to my minute entry as "bullshit." He ordered me not to issue my minute entry on any cases until after he consulted with the presiding judge of the superior court<sup>7</sup>. He promised a quick call back.

Back in chambers, I informally explained to the prosecutor and defense attorney why I hesitated to call their drug case. While the defense attorney sat shocked, the prosecutor informed me of his unqualified support<sup>8</sup>. I eventually decided to retake the bench and recuse myself. I stated on the record that I intended to disclose my reasons for recusal in a detailed minute entry.

The cranky presiding criminal law judge soon called back and informed me he was not happy with my performance<sup>9</sup>. I was fired and told to leave immediately. Before I left, the clerk who initially e-mailed her supervisor with my minute entry privately told me of her unqualified support for my position. Two other defense attorneys also came back into chambers to voice their support. I walked out of court that day a bit disappointed but with my principles firmly intact.

While my judicial career was going up in flames, my good friend and guerilla libertarian activist, Ernest Hancock [www.ernesthancock.com](http://www.ernesthancock.com) was driving to the courthouse to see me wearing the black robe. I called Ernie and told him my judicial career was over. Although neither of us predicted my lifespan as a judge would be long, his response was, "Already?" In what seemed like seconds later, the press was calling me for comment.

The next morning, I was news. The television, radio and print media all did stories about the judge who was fired because he refused to hear drug cases. I received about one hundred e-mails; not one negative. Many of the e-mails I received praised me for having integrity. I also learned that within hours of my firing, the presiding justice of the Arizona Supreme Court issued an order recinding my appointment as a judge pro tem<sup>10</sup>.

The Supreme court's order stated in relevant part, "Having expressly declared his inability to be impartial in the application of the law and the disposition of cases before him...." I found this language curious as I had not declared any inability to be impartial<sup>11</sup>. Moreover, the Supreme Court's order appeared as if I had issues with all laws as there was no mention of drug cases specifically nor any connection with my reasons for recusal.

About a week later, an editorial writer from a major local newspaper showed up to interview me. He was shocked to learn that there was a much bigger principle involved than the right to smoke pot. He wrote a great article which now appears on my law firm website [http://attorneyforfreedomcom.nxg.verizonsupersite.com/azrepublic\\_art.pdf](http://attorneyforfreedomcom.nxg.verizonsupersite.com/azrepublic_art.pdf)

After my initial publicity waned, another local superior court judge pro tem drove drunk and killed a seventeen year old high school student who was riding a bike<sup>12</sup>. The professional, unbiased, fair and balanced newspaper editorial staff writers at the Arizona Republic published an editorial recklessly lumping me with the other judge under the title, "Two Bad Apples."<sup>13</sup> It wasn't my proudest moment, but I concluded some people would draw the fine distinction.

Being unsatisfied merely that my unusually distinguished judicial career was over, the presiding judge of the superior court referred my conduct to the Commission on Judicial Conduct<sup>14</sup>. Among other things, I was accused of acting in a manner which fails to promote public confidence in the integrity and impartiality of the judiciary. I was asked to formally respond to the judicial complaint against me. After reviewing the incident and my response, the Commission on Judicial Conduct dismissed the presiding judge's complaint against me.

Although my judicial career ended abruptly, my career as a scientist is off to a promising start. I may have been the first to discover that the compound P-L-J (principled libertarian judge) has a tragically short half-life when mixed with the highly toxic compound C-B (criminal bench). For now, I will continue my experiments combining the

volatile and explosive compound A-L-C-D-A (aggressive libertarian criminal defense attorney) with all varieties of T-S (toxic statist).

1 Technically, my scientist friend Stu Krone says there are not enough principled libertarian judges to determine the actual half-life.

2 A judge pro tem is a judge who serves part time. In Maricopa County, Arizona, pro tem judges serve without pay.

3 The website link was included in my application. The Freedom Summit website links to many other pro-freedom websites.

4 OK, I was shocked.

5 My specific reasons for recusal are detailed in my minute entry. Generally, I gave four reasons: 1. The non-initiation of force principle and my refusal to violate it. 2. My view that the Arizona Constitution protects the right to control one's own body. 3. My view that the United States Constitution protects the right to control one's own body.

4. My membership on the NORML legal committee requires recusal as it creates an appearance of bias.

6 I suspect virtually any other judge would have sufficed.

7 I'm not sure what authority one superior court judge has to tell another superior court judge not to issue a minute entry. In any event, the clerk in my courtroom was clearly following the instructions of the presiding criminal law judge.

8 The prosecutor's support did not surprise me. Despite the lack of public discussion about ending the war on drugs, I have found many prosecutors who agree that the war on drugs has been a colossal failure and wish they were prosecuting "real" crimes instead.

9 My "performance" amounted to granting a routine uncontested continuance on one case and recusing myself from two drug cases.

10 I didn't know the Arizona Supreme Court could do anything that fast. Apparently, recinding my appointment as a judge pro tem was so important that it required immediate attention apparently ahead of anything else happening at the Supreme Court that day. By the way, I got a copy of the Supreme Court's order from the press because it was never sent to me. I have still yet to receive it from the Supreme Court.

11 I have always believed I could have been impartial had I been inclined to hear victimless cases.

12 His blood alcohol content was more than twice the legal limit and he had a prior DUI.

13 Who says only fruits and nuts work at the Arizona Republic?

14 This commission serves as the disciplinary commission for all judges in Arizona. 15 They retain continuing jurisdiction over former judges for their conduct while serving as a judge.

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