The New Cannabis Fight
What you need to know about Marijuana, THC, and Hemp

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INTRODUCTION

Whether you agree with smoking marijuana (aka weed, bud, grass, dope, herb, reefer, pot, you get the picture) or not, it is easy to see that marijuana has become almost totally acceptable in today's society. Marijuana is used both medically and recreationally in the United States and is commonly smoked (in joints or blunts, or out of a pipe or bong) but it can also be eaten in edibles, brewed in teas, and more recently, through vaporizers and vape pens. As a defense lawyer, we need to be aware of the different forms marijuana can come in, what it means for our clients, and how we can best defend them.

WHERE DOES IT COME FROM?

Marijuana is derived from the cannabis plant, which is one of mankind's earliest crops[1], and has been around for thousands of years. In fact, for a significant portion of modern human history, marijuana had medicinal, spiritual, and recreational uses that date back at least 5,000 years[2]. Still, its legality has been a topic of controversy in America and even the world for longer than most of us have been alive.

THE MANY FORMS OF MARIJUANA

Marijuana today comes in a variety of different forms and can now be consumed in various ways. We all know that the most common way of consuming marijuana flower is to simply smoke it, however THC can be ingested in many forms. The most common way you will likely see THC consumed these days, however, is in a "vape" pen containing a cartridge of oil with some concentration of THC. Below are some of the many examples of substances containing THC, the main psychoactive compound in cannabis that produces the high sensation.

Cannabis Concentrates may include products such as Kief or sift, Hash, Rosin, Live Resin, Shatter Wax, Crumble Wax, Honeycomb Wax, Budder or Badder, Pull and Snap, Tinctures, THC Oil, BHOI & CO2 Extract Oil, Rick Simpson Oil, Distillates, Isolates and Crystalline.

Solvent Concentrates include products and variants such as Shatter, Crumble and Honeycomb, Budder and Badder, Wax Products, Live Resin, CO2 Oil, THC Oil, Butane-Honey Oil, and Rick Simpson Oil.

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[1] Newton, D. (2013). Marijuana: A Reference Handbook. ABC-CLIO: Inc. Santa Barbara, CA.

[2] Tackett, Brittany. *History of Marijuana.* American Addiction Recovery Centers. 31 Oct. 2019. *Available at:* https://law.uakron.libguides.com/c.php?g=627783&p=6800463.

Dabs may include products such as Shatter, Wax, Resin, and various types of Hash Oil.

Old Definition of Marihuana (Flour), pursuant to HSC 481.002, "Marihuana" means the plant Cannabis sativa L., whether growing or not, the seeds of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant or its seeds. The term does not include: (A) the resin extracted from a part of the plant or a compound, manufacture, salt, derivative, mixture, or preparation of the resin; (B) the mature stalks of the plant or fiber produced from the stalks; (C) oil or cake made from the seeds of the plant; (D) a compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake; or (E) the sterilized seeds of the plant that are incapable of beginning germination.

Now the **New Definition of Marijuana** (Flour) adds to the list of not included: (F) "hemp", as that term is defined by Section 121.001, Agricultural Code.

Old definition of "THC", pursuant to HSC 481.002, was defined as follows: "Controlled substance" means a substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Group 1, 1-A, 2, 2-A, 3, or 4. HSC 481.103, Penalty Group 2, includes THC: Tetrahydrocannabinols, other than marihuana, and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity.

Now in the **New Definition of "THC,"** HSC 481.002 does not include "hemp," as defined by Section 121.001 of the Texas Agricultural code or the tetrahydrocannabinols in hemp. Note that the definition of "THC" leads to a rational conclusion that there is ALWAYS some THC found in Hemp.

So, what is **Hemp**? According to Tx. Agriculture Code Sec. 121.001, "Hemp" means the plant Cannabis sativa L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

And **Cannabidiol ("CBD"),** according to HSC 443.201, is defined as a "Consumable hemp product" meaning food, a drug, a device, or a cosmetic, as those terms are defined by Section 431.002, that contains hemp or one or more hemp-derived cannabinoids, including cannabidiol.

What does all this mean? It means that the green leafy substance and any odors that an officer or a K-9 me smell may be an illegal substance, or it may not. Now, marijuana is Cannabis sativa L. with a concentration of THC over 0.3 percent THC a hemp is Cannabis sativa L. with a concentration of THC under 0.3 percent THC. These are not scientific definitions. They are legislative ones.

A CHANGE IN ATTITUDE – GUESS WEED ISN'T THAT BAD AFTER ALL

In the past decade or so, there has been a dramatic shift in the attitude toward marijuana consumption and that shift is starting to be shown in our legal system today. A study by the PEW Research Center in 2019 concluded that two-thirds (roughly 67%) of Americans say the use of marijuana should be legal, reflecting a steady increase over the past decade. The survey revealed that the share of U.S. adults who oppose legalization has fallen from 52% in 2010 to 32% in 2019.[3]

While marijuana remains federally illegal (but the definition also now excludes hemp), marijuana laws are changing at a rapid pace across all 50 states. On November 6, 2012, Colorado and Washington became the first two states (and first two places in the world) to legalize marijuana for adult use. Alaska, Oregon and Washington, D.C. followed suit two years later in 2014. In 2016, voters in four additional states (California, Massachusetts, Maine and Nevada) also approved ballot measures legalizing marijuana. In January 2018, Vermont became the first state to legalize marijuana through a state legislature. Also in 2018, Michigan became the 10th state to legalize recreational marijuana and Utah, Oklahoma, and Missouri voted to legalize medical marijuana, joining numerous other states that already had such laws on the books. More states are expected to legalize in the near future. As of the date of this publication, 40 states have some sort of legalization of Marijuana in place.

Some states are even doing more than just legalizing marijuana. Last June in Illinois, Governor JB Pritzker signed a legal marijuana bill into law which legalized recreational marijuana use but also contains a sweeping criminal justice component, namely, expunging the records of potentially hundreds of thousands of Illinois residents who have previously been convicted for possessing marijuana under previous laws.

Marijuana is now legal in 11 states for adults over the age of 21, and legal for medical use in 33 states, despite the continuing Schedule I status of marijuana under the Controlled Substances Act ("CSA"). Currently, only 11 states remain with a "fully illegal" approach to Marijuana.

WHAT RECENTLY CHANGED IN THE LAW

Federal Law. Marijuana is federally illegal under the Controlled Substances Act ("CSA"), which was enacted in part to implement the United States' obligations under the Single Convention on Narcotic Drugs, 1961, and other international conventions designed to establish effective control over international and domestic traffic in controlled substances. *See* 21 U.S.C. § 801.

[3] Daniller, A. *Two-thirds of Americans support marijuana legalization*. Pew Research Center. 14 Nov. 2019. *Available at*: https://www.pewresearch.org/fact-tank/2019/11/14/americans-support-marijuana-legalization/.

Under the CSA, substances are categorized into five schedules, depending on their therapeutic benefit and their potential to result in abuse, diversion, dependency, and addiction. Schedule I is the most restrictive and the substances listed as same are said to have no currently accepted medical use in the United States and a high potential for abuse. Schedule II substances similarly have a high potential for abuse, but they do have a currently accepted medical use. Schedules III–V substances have an accepted medical use and less (relative to each preceding schedule) abuse potential. See 21 U.S.C. 812(b). Marijuana is listed as a Schedule I substance.

In December of 2018, however, the federal landscape for marijuana changed with the passing of House Bill 1325, known commonly as the "Farm Bill." The Farm Bill was designed to create a legal hemp market and defined "hemp" as the cannabis plant, or any part thereof, including its extracts and cannabinoids, **having a THC concentration of not more than 0.3%** on a dry weight basis. *See* 7 U.S.C. § 1639o (emphasis added). Because of this definition, "hemp" is removed from the legal definition of marijuana and is can no longer be considered a controlled substance under the CSA. While not explicitly authorizing interstate commerce of hemp, the Farm Bill likewise does not authorize the interference with same.

The 2018 Farm Bill requires hemp cultivation to be licensed and regulated pursuant to "state plans" promulgated by a state, which must contain, among other things, provisions for THC testing. It further directed the United States Department of Agriculture ("USDA") to establish a national regulatory framework for hemp production in the United States. In response, the USDA established the U.S. Domestic Hemp Production Program through an interim final rule. This rule outlines provisions for the USDA to approve plans submitted by States and Indian Tribes for the domestic production of hemp. It also establishes a Federal plan for producers in States or territories of Indian tribes that do not have their own USDA-approved plan. The USDA has authority to issue regulations and guidance, but the law explicitly preserves the existing jurisdiction of the FDA.

Cannabidiol ("CBD") is a non-psychoactive compound of cannabis. CBD was classified in Schedule I of the CSA because it is considered a compound or derivative of cannabis/marijuana. *See* 21 U.S.C. § 802. However, as indicated above, the 2018 Farm Bill has de-scheduled hemp as it is defined under that law. Therefore, commercial activity with hemp (including its extracts and cannabinoids) is now lawful. A DEA registration is no longer required to cultivate hemp or to conduct research with hemp. However, if clinical research, i.e., involving human subjects, is involved, an investigational new drug exemption (IND) must still be opened with FDA, and the investigational product must be manufactured in a facility that complies with good manufacturing practice requirements.[4] Currently, CBD is approved by the Food and Drug Administration (FDA) as a prescription drug. Per federal law, prescription drugs cannot be added to foods, cosmetics or dietary supplements.

[4] Mead, A. *Legal and Regulatory Issues Governing Cannabis and Cannabis-Derived Products in the United States*. Frontiers in plant science, 10, 697. 2019. Available at: https://doi.org/10.3389/fpls.2019.00697.

Texas Law. It is still illegal to use or possess marijuana under Texas law, and has been since 1931. What changed last year, however, is how the code defines what marijuana is. The Texas Health and Safety Code now defines "marihuana" as follows:

> "Marihuana" means the plant Cannabis sativa L., whether growing or not, the seeds of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant or its seeds. The term does not include:
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> (A) the resin extracted from a part of the plant or a compound, manufacture, salt, derivative, mixture, or preparation of the resin;
> (B) the mature stalks of the plant or fiber produced from the stalks;
> (C) oil or cake made from the seeds of the plant;
> (D) a compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake;
> (E) the sterilized seeds of the plant that are incapable of beginning germination; or
> (F) hemp, as that term is defined by Section 121.001, Agriculture Code.

Tex. Health & Safety Code Ann. § 481.002.

As you can see, the 2019 definition of marijuana changed to explicitly remove "hemp". Like the federal definition, the Texas Agriculture Code defines hemp as the plant Cannabis sativa L. and any part of that plant, including the seeds of the plant and all derivatives, with a THC concentration of not more than 0.3 percent on a dry weight basis. *See* Tex. Agric. Code Ann. § 121.001.

This definition was changed when, in an attempt to bring the state in line with the 2018 Farm Bill, on June 10, 2019, House Bill 1325 was signed into law by Governor Greg Abbott. HB 1325 legalized the production, manufacture, retail sale, and inspection of industrial hemp crops and products in Texas. This also includes products for consumable hemp products which contain CBD as well as other edible parts of the hemp plant.

The Texas Department of Agriculture ("TDA") submitted the state hemp plan to USDA on December 2, 2019, and it was approved by the USDA on January 27, 2020. Administrative rules were published in January 2020 and became effective March 11, 2020. Now that the TDA plan is approved by USDA and the administrative rules are adopted, industrial hemp can be grown and cultivated legally in the State of Texas. Furthermore, per this plan, the regulation of CBD consumables, including CBD oil, will be handled in accordance with Food and Drug Administration (FDA) guidelines. The state agency with oversight of CBD consumables is the Texas Department of State Health Services (DSHS) and not the TDA.

At its heart, this new law means Texans should no longer face criminal penalties for hemp or any of its derivatives, including CBD.

It is also important to note that medical cannabis is said to be legal in Texas in very limited circumstances. Governor Abbott signed the Texas Compassionate Use Act into law in 2015, allowing people with epilepsy to access cannabis oil with less than 0.5% THC. Last year, he also signed House Bill 3703, which expanded the list of qualifying conditions to include diseases such as multiple sclerosis, Parkinson's disease and Lou Gehrig's disease, or ALS.

PROSECUTIONS IN TEXAS HAVE DECLINED

So, what did the new hemp laws do to marijuana cases? While counties in Texas all treat low-level marijuana cases differently, one thing has become clear across the board: prosecutions in the State have drastically plummeted since Texas legalized hemp. In January of 2020, the Texas Tribune noted that district and county prosecutors across the state began dropping hundreds of lower-level marijuana cases since the legalization of hemp, which resulted in marijuana prosecutions dropping by more than half[5]. The article also noted that some district attorneys began requiring agencies to submit lab results proving the suspected drugs had more than .3% THC before the case was accepted for prosecution.[6] In fact, even the good folks at the Texas District and County Attorneys Association issued a press release suggesting to its members that such testing is likely needed to prove in court that the seized marijuana substance is illegal.[7]

In 2019, before the passage of the hemp law, there were about 5,600 misdemeanor marijuana possession cases a month. After the law's passage, that number got slashed in half, with only around 2,000 cases filed in November[8].

Since the passing of the hemp law, more and more policies across the state started popping up in favor marijuana legalization, or at least de-criminalization for minor amounts of marijuana possession. In July of 2019, Bexar County District Attorney Joe Gonzales joined three other Texas District Attorneys (Fort Bend County, Harris County, and Nueces County) in adopting a policy of not accepting criminal charges for misdemeanor possession of marijuana for amounts of four ounces or less[9]. Later that month, even Texas DPS issued a memo instructing its officers to cite and release suspects in misdemeanor marijuana cases (less than 4 ounces in possession cases) "as appropriate."[10]

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[5] McCullough, Jolie. *Marijuana prosecutions in Texas have dropped by more than half since lawmakers legalized hemp.* The Texas Tribune. 03 Jan. 2020. *Available at*: https://www.texastribune.org/2020/01/03/texas-marijuana-prosecution-drop-testing-hemp/.

[6] *See id.*

[7] *Interim Update: Hemp.* Texas District & County Attorneys Association. 24 June 2019. *Available at*: https://www.tdcaa.com/legislative/interm-update-hemp/.

[8] See fn. 5.

[9] *Statement on hemp/marijuana case filing policy*. Bexar County District Attorney's Office. 03 July 2019. *Available at*: https://www.bexar.org/CivicAlerts.aspx?AID=513.

[10] Prince, Randall. *Department of Public Safety Interoffice Memorandum regarding HB 1325 Enforcement Guidance.* Texas Department of Public Safety. 10 June 2019. *Available at*: https://static.texastribune.org/media/files/6bb887232ae43ab238d88d50d18b196f/DPS-citerelease2019.pdf?_ga=2.102158146.252285754.1602180849-554138637.1602180849.

In January of 2020, Austin's City Council voted unanimously to end most arrests and fines, as well as ban spending city funds on testing, for small-amount marijuana possession cases.[11] The police chief was obviously not on board with this decision, however, as evidenced by his response a day later that he would still instruct his officers to issue tickets or arrest people for these offenses.[12]

THE TESTING

It seems clear that part of the reason marijuana prosecutions are declining is because labs are struggling to keep up with the THC testing. In February of 2020, Texas DPS announced that "the new THC testing methodology for plant material is expected to be finalized by Sam Houston State University (SHSU) near the end of March."[13] DPS clarified, however, that they will not be accepting misdemeanor cases, likely due to the high volume of arrests. Likewise, the letter clarified that they will not be testing felony concentrate materials at this time.[14] A downside to DPS not testing, though, is that it leaves agencies in many areas to use costly private labs if they are not inclined to forego pursing marijuana cases. With new kinds of testing, however, it's also important for us to remember problems that could also arise with its validity, including the ability of the sponsoring expert to meet *Daubert* factors in trials.

WHAT THE NEW LAWS MEAN FOR DEFENDING YOUR MARIJUANA CASES

The passage of the 2018 Farm Bill and Texas's HB 1325 give defense attorneys new ways to challenge Marijuana cases and develop issues that have not yet been decided by the courts. A few tools to use in defending marijuana cases today are outlined below.

Challenging PC. The new laws surrounding hemp have a drastic effect on law enforcement's ability to assert probable cause to search or continuing detaining a suspect. Since the passage of HB 1325, whether something is legal cannabis (hemp) or illegal cannabis (marijuana) is a legal conclusion. The only way to distinguish between legal or illegal cannabis is to have a lab test done to determine the THC concentration. The two are indistinguishable to the nose. One cannot distinguish between legal or illegal cannabis by the look or smell. Nor is the odor of burnt marijuana or bunt hemp distinguishable. The two are the same plant. The level of THC does not make the plant appear different. The THC level also does not make the plant smell different. The smell of cannabis is based on the terpenes not the THC level. The human nose is not smelling marijuana, it is smelling the terpenes of the cannabis plant. This means that all an officer can detect, is the odor of Cannabis sativa L., which is legal unless the THC concentration

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[11] Menchaca, M. *CBD, hemp, medical marijuana? Here's what you need to know about Texas' changing pot laws*. KBTX-TV. 28 Jan. 2020. *Available at*: https://www.kbtx.com/content/news/CBD-hemp-medical-marijuana-Heres-what-you-need-to-know-about-Texas-changing-pot-laws-567357991.html.

[12] *See id*.

[13] McCraw, Steven. *Letter to DPS Laboratory Clients*. Texas Dept. of Public Safety. 18 Feb. 2020. *Available at*: https://www.texasnorml.org/wp-content/uploads/2020/02/thcMethodologyUpdate.pdf.

[14] *See id.*

is over 0.3 percent, but the officer cannot detect the level of THC concentration. Therefore, while the odor of marijuana or burnt marijuana previously could establish probable cause to search in Texas, a detention or search based solely on the smell of cannabis or burning cannabis alone is arguably illegal. For these reasons, detentions based upon smell alone lack reasonable suspicion and searches based on the smell alone lack probable cause. It should now be argued that no probable cause exists if law enforcement has no reason to believe that the odor they claim they smell is not, in fact, hemp.

Given the similarities of marijuana and hemp, not only does law enforcement lose its ability to form probable cause to search vehicles incident to the vehicle exception or use odor as the basis for probable case in a search warrant, but arrests of persons and seizures of green leafy substances are also devoid of probable cause absent other articulable facts indicating that the substance is in fact illegal marijuana.

It should be noted that smokable hemp containing CBD is widely used as a method of ingesting CBD for its medicinal effects. Many people prefer smoking hemp rather than using a "vape" cartridge given the unknown and often negative effects of "vaping" oils.

It goes without saying that "vape" cartridges containing CBD are indistinguishable from a "vape" cartridges containing THC. It is impossible deduce the concentration levels of either CBD or THC within a cartridge just by looking at them. For this reason, as with the indistinguishability problems of marijuana and hemp, so too are substances containing CBD and THC likewise indistinguishable. For these reasons, the same arguments apply concerning the probable cause to search arrest and seize.

Officers aren't the alone in their inability to distinguish illegal marijuana from legal hemp or illegal THC from legal CBD. Narcotics detection dogs are likewise unable to make any meaningful distinctions. Cases involving indications that a "K-9 alerted to presence of narcotics" which form the basis of probable cause to search, are also ripe for suppression. No K-9s have ever be trained to distinguish between Hemp and Marijuana, assuming that there is any scientific basis to even do so. And these issues can create even worse problems for cases relying on K-9 sniffs. Because of this, an "alert" from a K-9 can now be a false positive. The sniff is therefore no longer reliable probable cause. *See People v. McKnight*, 2019 CO 36, 446 P.3d 397, *reh'g denied* (July 1, 2019).

In Colorado, where small amounts of marijuana were legalized in 2012, drug dog searches became problematic because the animals would alert officers to a legal amount of marijuana. The Colorado Supreme Court ultimately held that that police had to establish probable cause before using a drug-sniffing dog, a move that led authorities to roll back the role of dogs in drug cases. *See id.* As well, there can be no more probable cause for "vape pens" and/or "THC Cartridges" because there is no way to differentiate and spot the difference between a THC-Pen and a CBD-Pen.

If there is no probable cause, the arrest should be obviously be suppressed. Don't forget, however, the seizure should be suppressed, too. Without the requisite probable cause, it is likely that any incriminating post-arrest statements should also suppressed, as well as any testing to confirm the substance is THC. If argued correctly, this can be a huge tool to use to get your case dismissed. For example, in a possession case involving alleged THC oil, if there is no pre-arrest admission that the substance in question is THC oil, and not CBD oil, it is virtually impossible for the officer to distinguish between the two. It is also very important to note that field tests cannot give probable cause to arrest in this situation because a substance containing less than 0.3 percent of THC can produce a positive result while remaining a legal substance.

What the state has to prove. As noted by DA Joe Gonzales, "[t]he immediate effect of the hemp law is that it requires the state to prove a THC concentration on marijuana cases that cannot be accomplished without lab testing."[15]

It can now be argued in marijuana cases that the State has to prove beyond a reasonable doubt that the substance in question is not legal hemp, but rather a substance containing more than .3% THC. This has proven to be a difficult task for prosecutors, as THC-level testing is still developing and uncommon. The lack of testing resources to distinguish between Marijuana and Hemp casts too much reasonable doubt over criminal proceedings, which is why, as mentioned above, many counties are either tossing low-level marijuana cases or holding off on pursuing criminal charges in larger cases. If you have a case where a private lab has determined the level of THC-concentration in a material, remember to challenge its validity and remember the *Daubert* Factors required for expert testimony. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

There currently exist no peer reviewed scientific procedures to test THC concentration levels in Cannabis sativa L. While arguably, High Performance Liquid Chromatography (HPLC) could produce concentration levels, no studies have been produced or peer reviewed. Even with the limited use of HPLC to obtain concentration levels for commercial marketing reasons in recreational jurisdictions, the experimental nature of those procedures does not meet the necessary *Daubert* standards and have technical problems of their own.

How we instruct the jury. Because of the new hemp laws, changes are required in how juries are instructed when it comes to alleged marijuana cases. Because the definition of marijuana has changed to exclude material with 0.3 percent THC concentration or less, juries should be instructed accordingly. Juries should also be instructed that it is the government's burden to prove beyond a reasonable doubt that the alleged marijuana does in fact have a concentration above 0.3 percent THC. Obviously, since no expert can testify to this fact, your chances of winning greatly improve.

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[15] *Statement on hemp/marijuana case filing policy*. Bexar County District Attorney's Office. 03 July 2019. *Available at*: https://www.bexar.org/CivicAlerts.aspx?AID=513.

Hemp is just back door jury nullification. We already know that the public's appetite for prosecuting marijuana is virtually gone. Assuming the state could even empanel a jury that could convict or punish someone charged with possession cannabis in 2020, why would they ever want to. Obviously, in most possession cases of any type of contraband the only way to when is through suppression. If they caught you red handed, what's your defense? You can't just argue to the jury, "C'mon, it's just weed" can't you? Maybe now you can?

If you lose that suppression issue, remember you can always put it to a jury with at 38.23 instruction. But more importantly, think about this argument. If you have sufficiently *Voir Dired* on how many states and how many millions of Americans are making billions of dollars in legal cannabis markets, and how important it is to hold the state accountable to the proper standards of testing and reasonable doubt they should be ready for virtual cannabis nullification. "Sure, we know that its weed" but the state never proved beyond a reasonable doubt that the weed had more than 0.3 THC in it. They set the bar at 0.3 percent, they should have to reach that bar, that's what the legislature wanted. *Malum prohibitum* laws are technical ones to begin with. There is nothing inherently evil with that green leafy substance. Its technically illegal, not actually evil. So, it stands to reason, they must technically prove it's got more than .03 percent THC.

The same is true in federal court. Obviously the issues are a lot heavier to contend with when we are in federal court, but these same concepts hold true. Because these concentration distinctions come directly from the federal "Farm Bill," all of the arguments apply equally. And in reality, a marijuana case in federal court obviously will have more serious consequences than in state court, so all the more reason to fight.

How we negotiate with Prosecutors. The new hemp laws give us more leverage when negotiating plea agreements with the government. Remember all the arguments discussed in this article and highlight some of them when discussing your marijuana case with prosecuting attorneys. Convince them that if pushed to trial, you will hold them to their burden and will make them prove every element of their case, which may prove difficult concerning the current inability to test THC levels. If you have a good suppression issue, use that to your advantage to try and secure a dismissal.

CONCLUSION

The attitudes surrounding marijuana have drastically changed both in the United States and in Texas and show strong support in favor of legalization. Nationwide and statewide polls reveal a strong pattern in favor of marijuana legalization, evidenced by the fact that 40 states in America have some form of legalization and that it's fully legal for adults 21 years of age or older in 11 of those states. In Texas, numerous counties are no longer prosecuting small-amount marijuana possession cases, including Bexar, Harris, and Dallas County. The 2018 Farm Bill and Texas' House Bill 1325 have changed the landscape of criminal defense for marijuana cases indefinitely and gave criminal defense lawyers new and effective tools to use to beat marijuana cases. So, fight every fight, NEVER plea a misdemeanor marijuana case and NEVER let anyone become a felon for marijuana. And to quote my homie Dr. Dre "Smoke [hemp] everyday" 😎.