

## *With Legalized Pot in the Air, a Federal Trial Riles Advocates*

Although some states have approved cannabis sales, the federal government still considers it a serious drug. That muddle was on display in a case where a man faced 10 years to life in prison.

**By JoAnna Daemmrich and Campbell Robertson**

May 6, 2022

BALTIMORE — In his closing arguments to the jury on Friday afternoon, an assistant U.S. attorney, Anatoly Smolkin, declared what U.S. v. Jonathan Wall was not about. “This is not a case about marijuana possession,” he said. “This is a case about a drug conspiracy,” about an operation that shipped “massive amounts” of weed across the country in return for “enormous money.”

When the defense’s turn came, Jason Flores-Williams, a sharply dressed lawyer from Colorado, stood up and begged to differ. “It’s about pot,” he said.

That the lawyers in the trial, one of a steadily shrinking number of federal criminal prosecutions concerning the trafficking of marijuana, differed on what the case was even about reflected the national legal consensus on pot — or more accurately, the confounding lack of one.

At the moment, marijuana is legal for recreational use in 18 states and legal for medical use in 37, a multibillion-dollar industry in states all over the political spectrum. Yet at the federal level, it is still classified as a Schedule I drug alongside heroin and LSD. Presidential administrations have sent memos about the priority of marijuana prosecutions only to have them rescinded by successors. While a bill to decriminalize marijuana recently passed in the House of Representatives, it faces long odds in the Senate.

Mr. Wall, a white 27-year-old who grew up in the Baltimore suburbs, is neither a celebrated tycoon of the booming legal cannabis industry nor an emblem of the racial inequities in how low-level drug prosecution is carried out.



Jonathan Wall.

But he has already spent nearly two years in federal prison awaiting trial on charges of helping run a cross-country marijuana distribution operation, which carries a mandatory sentence of 10 years to life. Since his arrest he has become something of a celebrity in the overlapping circles of marijuana advocates, libertarians and supporters of criminal justice reform, the subject of long profiles in High Times, Reason and other magazines.

“No one should go to prison, especially for long periods of time, for this, and especially when companies are operating on such a large scale and profiting from the exact same thing,” contended one of Mr. Wall’s courtroom supporters, a 67-year-old former racecar driver named Randy Lanier. Having spent decades in prison for marijuana smuggling, Mr. Lanier is now a brand ambassador for a publicly traded cannabis company, and said he had recently obtained a commercial license to grow weed himself, just up the road in New Jersey.

Ninety percent of all federal charges result in guilty pleas without trial, and federal trials involving marijuana are becoming rarer still. The number of federal prosecutions of marijuana trafficking has plummeted over the past decade, falling under 1,000 last year. Fewer than a hundred people were sentenced in 2021 to the 10-year mandatory minimum.

But in the federal courthouse in Baltimore, jurors heard none of this. Judge Stephanie A. Gallagher of the U.S. District Court for the District of Maryland barred “signs, buttons or pamphlets” from the courtroom, and on Day 2 of Mr. Wall’s trial, she ejected a member of FreedomGrow, a nonprofit supporting people incarcerated on marijuana convictions, after the woman took a selfie next to one of the witnesses.

More pointedly, the judge emphatically forbade the defense from noting that the legality of recreational marijuana differs markedly from place to place, an observation that prosecutors argued would only serve as “an implicit suggestion for jury nullification” — the decision to render a “not guilty” verdict because jurors found the law or penalty unfair.

Legal experts said that in modern marijuana cases, jury nullification was a real possibility — and several trials going back decades have ended that way. Mr. Flores-Williams tested the limits, at one point expressing amazement that in the present day, police officers would still “break down doors in a raid to charge people for marijuana.” But the judge quickly stopped him, leading him back to questions about evidentiary shortcomings.

Closing arguments followed days of testimony from those who had been charged alongside Mr. Wall and pleaded guilty; they described a successful enterprise that grew and shipped hundreds of pounds of marijuana from California to warehouses in the Baltimore suburbs. They kept careful accounts, they said, and made enough money to finance a comfortable life of travel, Phish concerts and upscale rental homes in the gentrified neighborhoods of Baltimore.



A medical marijuana grower in Maryland in 2019. Michael Robinson Chavez/The Washington Post, via Associated Press

If that organized distribution had taken place within certain states and followed the local tax and regulatory strictures, it could have been a profitable, if unremarkable, cannabis business. A person can go to a number of graduate schools to study the ins and outs of management of this line of work.

But this was a cross-country business that included a state — Maryland — where recreational marijuana sales have not yet been legalized, though it is already dotted with massive warehouses growing medical marijuana. A referendum is on the ballot for recreational marijuana in November, but even if it were legal now, ducking the costly and onerous regime of licenses, regulations and inspections that legal cannabis businesses face would still be a crime, albeit a more white-collar version that carries a much lighter sentence.

While the prosecution in this case at times painted Mr. Wall's operation with shades of the underworld — one witness even accused Mr. Wall of sending a coded death threat in a courtroom hand gesture, an allegation the judge told the jury to disregard — a jury in 2022 might be more offended by the cheating than the drugs, said Douglas A. Berman, a law professor at Ohio State University who edits a blog on marijuana law and policy.

“Maybe you're not that scary anymore because you're involved with this drug,” he said. “But you know, we really don't like you not following the rules.”

It was on a 2019 trip with his parents to Portugal that Mr. Wall told his family the federal authorities were looking into his pot-growing operation in California, said his mother, Mitzi Wall, a retired contracting officer for the U.S. Army. Within months, the indictment came down, and Mr. Wall responded by fleeing to Guatemala.

Back in Maryland, and desperate to keep in touch with her son, Ms. Wall would soon learn what a burner phone was. In long days on the internet, she would also learn about the drug war, mandatory minimums, three strikes laws and many other parts of the giant machinery of criminal justice in the United States.

“You start deep diving, and you learn these horrors,” Ms. Wall said. “Once you find these things out, you can't

return from that.”

Richard Stratton, a journalist who had written about his years in prison on marijuana smuggling charges, eventually persuaded Mr. Wall to turn himself in. Mr. Stratton also put him in touch with the son of one of his former cellmates: the lawyer, Mr. Flores-Williams.

Mr. Flores-Williams saw this as a case with big implications. “It is likely that, within four years, or perhaps four months, that the crime for which the government is prosecuting Mr. Wall will no longer even be a crime,” he wrote in a 2020 filing. He concluded the motion with a flourish: “Who will be the last American to be deprived of their life and liberty for marijuana?”

On Friday night, the jury took about an hour and a half to reach a verdict: guilty. Ms. Wall burst into tears. Mr. Flores-Williams made his way out of the courthouse, remarking that it felt like “a hermetically sealed box compared to what is happening elsewhere in the United States.”

Mr. Wall was marched back to prison to await his sentencing.