

Thinking Outside the Bud

Episode 399 - Jeffrey Hoffman

<https://www.thinkingoutsidethebud.com/podcast/399-jeffrey-hoffman>

Jeffrey Hoffman, Cannabis Attorney, Jeffrey Hoffman & Associates PLLC

Jeffrey is a cannabis attorney and legalization activist with over 25 years of experience starting, operating, advising, and selling businesses. He is a leader in promoting pro bono advocacy for the rights of those impacted by anti-cannabis enforcement in the United States. Jeffrey holds a JD from the University of North Carolina School of Law and a BA in Russian and East European Studies from the University of North Carolina.

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EPISODE TRANSCRIPT

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You're listening to thinking outside the bud where we speak with entrepreneurs, investors, thought leaders, researchers, advocates and policy makers who are finding new and exciting ways for cannabis to positively impact business, society and culture. And now, here's your host, business coach, Bruce Eckfeldt.

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1:06

Welcome everyone. This is thinking outside the bud. I'm Bruce Eckfeldt. I'm your host, our guest today is Jeffrey Hoffman. He's a cannabis attorney and legalization activist based out of the New York City area, we're going to talk a little bit about cannabis in general, but really kind of what's going on in New York, what's going on East Coast, we're in you know, a very interesting situation. In this part of the world in terms of the

development of the cannabis market, obviously big, huge markets, states coming online here, and obviously with that, lots of drama. So we're gonna get into it a little bit, got to understand what's happening, maybe why it's happening and how we'll resolve it will resolve you know, what the future may hold for these for New York and kind of the region. So with all that, Jeffrey, welcome to the program.

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Outstanding. Thank you for having me.

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It's a pleasure. Before we dive into, you know, everything that's going on in this region, let's get a little background. How did you get into law? How did you get into cannabis? What's the backstory?

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Sure. So as I like to tell folks, I've been getting high since Reagan, back in high school as a senior in 1988. I love it. And you know, it never made sense to me why this plant was illegal to start with, right? Cannabis has been with humans, as long as there's been humans. It's just this little 50 6070 year window. Here in my lifetime, where we've decided to make this illegal so I you know, thought about that in college, I went to law school in 1994 ended up mostly not practicing law. I ran a tech company for a while, for a while I was actually the hot dog king of New York City when I was a principal in a business that did the deal with Nathan's Famous. And we had 60 Nathan's Famous hot dog carts all over Manhattan. Oh

2:47

my gosh, the king of street meat

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right before COVID That business got, oh, that business got destroyed by COVID. Yeah. And then the key is right before COVID We did a deal with Dunkin Donuts, and that would have been cray cray. But that hadn't happened. I wouldn't be a cannabis attorney. That's true. Right. So I've been screaming about the justice issues for quite some time. I think there's a great video of me, I think from 2013 When Rhode Island was one of the first states after Colorado and Washington had legalized, Rhode Island started talking about what would they would do for legalization. One of the additional ideas that they had is in addition to legalizing going forward, they would expunge the records of anybody that whatever they were doing would have been legal under the new law. Right. So I was big into these justice issues and the expungements. You know, I was kind of one person without much of a platform. So not so much I could do. You know, I was also had a day job as a tech guy or a hot dog guy, whatever I was doing. And then finally New York legalized, right? There's there's a whole tortured story as far as how New York legalized between, you know, Cynthia Nixon primary and Cuomo. And then Cuomo not doing anything with the legislature for three years. But then finally, in 21, they legalized and I said, hallelujah, it's about time. And, you know, COVID had destroyed the hotdog business. So made sense to do this, which I really had no particular interest in, like I said, since since the days of Reagan. So here we are,

4:12

here we are. Alright. Excellent. Good. I'll be telling you a little bit about just from a legal point of view, like how has the New York legalization process kind of been set up relative to how other states have done it? And like, what's kind of the beginnings of the story here in terms of sort of why cannabis got legalized or kind of the

drama around it? And how has New York kind of approached this from a legislative point of view? And how is it similar different than how other states have done it?

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Sure. So talk about it a bit in that little intro I have, but let's dive into it a little bit more specifically. So everybody thinks New York is this very liberal state, and it tends to vote that way? Because downstate where I live in New York City is unbelievably liberal, right? I think I live in the bluest, or second bluest congressional district in the United States, right? I'm sure for West side here and in New York City. However, for much of my lifetime, the Senate in the State Assembly has been controlled by the Republican Party, simply because the Senate is less directly representational. Right. So you can you can get a, you know, I don't know what the exact numbers aren't in the Senate, but you can get, you know, a 2524 split with the Republican Party winning. Yeah. And in fact, there was one period in the 2010s, where the Democrats actually had more seats. But the Republicans bribed the most conservative Democrats with really big offices. So they voted with the Republicans, and it was unbelievable. And so there's only one party in our country that moves cannabis legislation. That's the Democratic Party. I mean, I don't care what your political affiliations are. I'm not here to have an argument about that. It's just the fact the Democratic Party moves cannabis legislation. The Republican Party does not move cannabis legislation, unless it's legislation to make it illegal, or more draconian, the punishments for having it right. And so if the republican party controlled the Senate for most of my lifetime, you are never going to get a legalization bill. That's number one. Number two, New York is not a state where the citizenry can initiate referendum Right? Or referenda, right, it has to come from the legislature. So it was never going to come from the legislature. However, two things happened in 2018. We had the wave election, related to the election of Trump in 2016. So 2018 was a big blue wave election. And so the Democrats took both chambers and the assembly, and in fact, I believe they took it with a veto proof majority. Additionally, very liberal Democrats got elected. So the folks that got elected and Sent to Albany, yes, they were Democrats, but they were very liberal Democrats. Similarly, Governor Cuomo was primary by Cynthia Nixon, for those of you that are not very familiar with that name. She was Miranda on Sex in the City. And she ran a great campaign, and really pushed Cuomo on a lot of issues. One of them was cannabis, right? And she really pushed him to the left. And he basically said in his, in all the debates and everything. Yes, I know, I hate cannabis. But I'm finally gonna get to do what the people want me to do. Exactly. And so then from 2018, on, there was a debate with between him and the legislature, the legislature was very liberal. No is and they wanted an equity based bill, the bill that eventually got passed, and Cuomo wanted a much more business oriented bill, which would favor the MSOs. And those interest more than necessarily the equity interests. Yeah. And so they fought about it for three years, you know, basically almost three years from 18 to 21, beginning at 21. And then you may remember that Cuomo hat was in the depths of his knee two problems. Oh, yeah. In the first quarter of 21. Yeah. So the legislature passed the equity bill, and said, if you feel like you have the political wherewithal to veto this, you go ahead, we'll probably override it. Maybe not. But Cuomo did not have the political stature anymore at that point to veto. So he succumbed and allow the more equity focused bill to become law. Now, interestingly enough, what is the first thing that needed to happen after the bill becomes law? It's it the governor appoints his appointees to the Cannabis Control Board. Well, Cuomo never did that. So from a pocket veto, well, not even if not well, I mean, a pocket veto means it doesn't become law. It's law. Yeah. It's gonna now freeze it out. Right? Like, I'm not gonna appoint the board. So Screw you. Right. And finally, he was forced from office in September, about six months later. And I think like the second or third thing that Hoko, who was lieutenant governor, at the time did when he became governor was appoint the board. So you know, we last six months there right off the bat with Cuomo not doing his job. So we ended up with the equity bill, right. And frankly, which I'm in favor of, I'm a big believer that we destroyed the black and brown community

everywhere in the US, but certainly here in New York, the number one place for anti cannabis enforcement was New York City. Yeah, you know, millions of people arrested and we destroyed their ability to generate wealth, right. We probably, you know, did a trillion dollars worth of economic damage to those communities just from anti cannabis enforcement, right? Yeah. When you bid when you have a conviction on your record, you don't get jobs and you don't get employment, right. That's how it works. And so we really destroyed this committee. So I was a fan of the equity things. I think they're things they could have done smarter and better. But I do think we needed that. Right. So we do have this equity build. And we do have folks that are appointed to the regulator, the Office of cannabis management, that are really focused on equity, right. So that means they're going to do a lot of things differently than a lot of other states have. One big one is what we call here in New York, the two tier A system. And what that means is if you're involved in cultivation, processing, or wholesale distribution anywhere in the universe, you cannot be involved in retail in New York, and vice versa. If you're involved in retail, anywhere in the universe, you can't be involved in cultivation, processing and wholesale distribution. You can work again, it's a two tier system.

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And what's what's the logic there? Like? Why, why put a system like that in place?

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Because that's exactly how alcohol works. How many Budweiser bars have you seen? Zero, right? Because there's a similar prohibition and alcohol. The manufacturers and distributors can't own retail shops. So they're modeling it directly on that. And it also means you can't be vertically integrated in New York with a few exceptions, the micro business can garos the medical guys will be able to for their three stores, but everybody else can't be vertically integrated. Okay. And so that's, that was New York's goal in setting up this two tier system, right. That's how they wanted to do it.

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Okay, so we got the we got the board in place. Well, so tell me how was the board kind of played out at this point in New York.

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So there's a very interesting component to the board. You may be familiar that the first retail license is this card licensee au rd, conditional adult use retail dispensary license, okay. And the way it was supposed to work is that the state was going to raise \$200,000,000.50 from the state and 150 from private investors. And an entity called Daphne, the dormitory authority of the state of New York, who you can tell from their name originally built all the dormitories at the SUNY campuses. But now their portfolio is the entire real estate portfolio of the state of New York. Basically, they are New York's real estate arm guide. They were going to literally build the dispensaries for these first what was originally going to be 150 licensees. Wow. Now, one of the five the head of this Daphne entity is a gentleman named Ruben McDaniel. He also happens to be one of the members of the cannabis control board. Yeah, of course. So you know, a lot of people now we're questioning that a lot of ink is getting written about it. A lot of the card folks are questioning that a lot of legislation, legislators are questioning that. So you know, you just got a lot of things that are going to play out related to that. Right. Yeah. And it's still unknown exactly how it's gonna play out. But, you know, this is definitely something folks have called into question. Yeah.

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And so, I mean, I know, we've got a couple of dispensaries, you know, opening up in New York or that have been open for a little while, like, how are they operating? Under what, what terms and where do they go from here? What's the next step in the market for New York In New York City.

12:47

So they're currently operating under guidance documents, the OCM issued guidance, which looks more or less exactly like the regulations that they're going to be promulgating here shortly, we think the final regs, except the on site consumption, and full delivery regs will probably be done done by, you know, Labor Day, right. They got to put them into the state register one more time, they've already gone once, for 60 days, they got 1000s of comments, they made a bunch of changes. Now it needs to go back into the register for 45 more days, folks do get to make comments. But typically, after that second window, they don't do anything different. And whatever they put into that 45 day window becomes the regulations. So ideally, that'll happen, you know, in September, and then perhaps in October or some point thereafter, they will be able to open the application for all of the other licenses. So right now, we have these conditional licenses which are opening for that you had to have a cannabis related conviction and own 10% of a business that was profitable for two years. And then we also have conditional cultivators and conditional processors with for folks that were in the state's hemp program before and the state let them do a pretty simple application, and then come over and be full THC cannabis folks. So those are the licensees we have in the market now. And then whenever they open up this next application period, that's when everybody else will be able to apply

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and what am what are the license counts like how many licenses are they planning on issuing over what period of time at this point

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so they've not been very clear about that New York is not going to be a limited license states so up in Connecticut they said this is how many licenses we're giving you get to buy ping pong balls when we do the drawing and off we go got it New York has said we're going to meet the needs of the market so out in Buffalo if the dispensaries that open still have lines a year out then they're going to issue more retail dispensaries in Buffalo. If a year out the stood there's no more lines and and some of the some stores are doing well but other stores tell them they're not doing so well. Then they won't issue any more licenses. Right. I think they're really going to try to look at the market and kind of be a Federal Reserve of the cannabis industry right.

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But that's primarily on the issue license on locations. I mean, can they issue license? Does the license have limits on on volumes and types of product and stuff? Or how does the actual

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some of them do? The micro license will obviously because it's micro license, and it's living by definition to do no cultivation licenses will have limits on your canopy, right things of this nature?

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Yeah. And in terms of local sort of municipal, county and municipal review and approval and stuff like that, what is the how is the state handled, being able to give control or not give control to the local, local government?

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So they have not given control? It's very different than what New Jersey? Did? You Jersey absolutely gave a veto to the localities? Yeah, that is not the case here in New York, you do have to give notice a certain amount of time before you apply. Okay. And the in New York City, that'll be to the, what's called the Community Board. Okay, York City's broken up into a number of community boards. Yeah. And then outside of New New York City, you have to give notice to the clerk or whoever else, the municipality tells you to it very often, you'll appear before the city council or Board of Aldermen or whatever we have there to you know, do a presentation, they will then be able to include a letter to the OCM with your application saying whether or not they're in favor of it, but that is not an upper down decision. Yeah. Right. Just to not submit a letter that just says we don't want a cannabis dispensary here, right? Yeah, a negative letter would have to be like, the people that are applying already have a bar here. And they're terrible, you know, community citizens, they there. It's so noisy, and they don't abide by the noise rules. And they're delinquent on their taxes and all this. That's a letter against and that's a letter against that will have impact.

16:48

Right? Yeah. So I would guess what are you? I mean, from a legal point of view, from an advocacy point of view, you know, what are the handful of things that you like about how New York is playing out? And what are the handful of things that you find problematic?

17:00

Yeah, so I love that they are thinking about equity. And I mean, we've had our own lawsuits. And they unfortunately settled one because the regulation that they did around that lawsuit was very susceptible to legal challenge, bad idea that they should have done that better. But it is what it is. But I do, in principle, really like the fact that they're really thinking about equity, and that the you know, this first basket of licenses for retail went to equity folks are not really technically not equity folks, justice involved individuals, folks that have that conviction, that later licensing round has a really strong equity component as far as how they're going to do it. The goal in the law is to get 50% of the licenses to equity folks. So I do think that's right. You know, again, to what we said before, basically New York is taking an industry that's existed for my entire lifetime, the cannabis industry in New York City is a billion dollar industry by itself. And they're basically saying, we're not going to make this legal and give it to a bunch of people who were never in the industry before and let them make all the money. Right. Yeah. So that that doesn't play well, with me and with lots of other folks. I do think it's good that they are taking the steps to address that, you know, stuff that is questionable. Because two tier system, we'll see how it plays out. It's definitely going to have a chilling effect on I think investment. Because if you're invested in a cultivator, or if you're if you're invested in somebody outside of New York that's vertically integrated. You can't invest in New York at all. Right? So yeah, because

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you're because you have license on both sides. So that knocks out both sides. Right.

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Interesting. So it's just I'm not sure how well that's gonna play out, right?

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Was this a way to just kind of control or prevent the big companies from coming in? Or? I don't know. Like, I find big companies are smart. They're, they're gonna find a way around this now.

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Well, I mean, it depends on how many folks they have it OCM doing the due diligence on the applications, right?

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Yeah, how many? How many? How many corporate entities can you dig through to see right.

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That's it. That's what the tech now, I think that's something that OCM is going to focus on significantly. So I do think they'll be able to do that. But you know, that that's kind of what it comes down to. There's a few other things in the law that I think maybe I'm the only one that thinks they're not right. But you know, I can unpack those for you real quick. So he's, the micro license is one that I'm a big fan of, and I think it really could go to help, particularly minority folks that are doing cannabis things here in New York City, if they had allowed them not to grow. So one of the requirements of the micro licenses, you must cultivate, and then you get to pick what other activities you want to do. And the big problem is here in New York City, the cultivation is going to have to be in the same county as your retail. So if you want to have your retail be in Manhattan, your cultivation is going to have to be in Manhattan. Right? That is a nightmare. Right? So that seems to be to be pretty moronic. Yeah. So either make it that they could grow anywhere. Yeah, in the state, or don't make them grow one of the two.

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Yeah, they'd be able to buy biomass off the market and then do but

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not how it's gonna work. So I think that's bad. You Okay, next, there are nine license types. But in the law, it specifically calls out three of them that are to be specifically promoted to social and economic equity applicants. It's the delivery, the micro and the nursery. Fees for those licenses to equity applicants in my mind should be waived. That's how you differentiate it from the other six licenses, right. And the equity licensees are going to be able to apply for any of the nine, and they're going to get benefits in the law from all nine. But in the law, it specifically differentiates those three from the other six. Okay, so what are we doing different for those three? best as I can tell right now, nothing. So my proposal is waive the fees entirely for those three, what are the fees roughly. So they're all over the map, there are 1000s up to potentially hundreds of 1000s for a huge grow. Okay, but who cares, right? Every dollar counts if you're an equity apple. So waive them. That was what I thought there. And then the other one, which is a big problem is the delivery license. So the way they've structured it here in New York, and remember, the delivery license is what it's supposed to specifically be for social and economic equity applicants to somehow approach generational wealth, right? They're only going to let the delivery folks be Uber Eats for delivery, they're not going to be at four dispensaries, they're not going to be able to hold their own inventory. It's not like a delivery licensee is going to be able to buy cannabis wholesale, and then sell it retail through their delivery, they are only going to be able to deliver orders that have come through to a licensed dispensary. And frankly, forget generational wealth. I don't know how those guys are going to make any money period. Yeah. And so I thought that was dumb, and they haven't fixed it.

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Interesting. And what are the what's the texture for like me? How was New York approaching kind of the taxation? I know a lot of states are

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yeah, there's a potency tax paid in the transaction between the distributor and the retailer. And that's based on the kind of cannabis, is it flour? Is it concentrate? Or Is it edible? And there's a different rate, depending on the percentage of THC and each of those things. And then there's a retail tax, which is 13% at the retail sale 9% goes to the state and 4% goes to in various tranches to the localities where the sale occurred. And the neat thing is, and I'm totally in favor of this, the localities that opted out, don't get any of that tax money. Yeah, exactly. So Screw you. Yeah.

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So I guess where do we go from here? Like, what's the big amended sounds like we've got, you know, the policy is going through or the regs are going through their approval process sounds like sometime around Labor Day, they should pass licensing will open and like what's what's the real timeframe for when you feel like the New York cannabis market? Cannabis industry is kind of up and running and humming at some level? What do you think the timeframe is?

23:01

So all of those things that you said mean different things? So like shopping, running versus humming? So I mean, we're up and running, right? We've got 12, I believe stores open. Yeah, there's product. We're about to license more people to grow product and more licensees to sell product. So we're up and running, we'll be really up and running and 24 or late 23. Even coming? That depends on how well they deal with some of the issues we have. Right? We've got 2000 illegal dispensaries in New York City alone. Right. And most of the public thinks they're legal. Right?

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Yeah, that's tough. You know, like, I mean, I know a lot of Sam and I know, California was dealing with this for quite some time. I mean, it still is still is like, what's the solution there? After they figured out? I have

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an easy solution. They're just scared to do it. Oh, what are all the elected officials and the enforcement folks are just cowards, about this easy, easy solution. Here's my law, or my bill, that should become law. And they've kind of approached this, but they're just that it's not strong enough, and that they're clearly scared to actually enforce, although we'll see, we'll see what happens over the summer. Okay, but here's how you address it. If your building is on the tax rolls of New York City of New York State, or the locality in which we're located, which is every building in the state, yes. The Office of cannabis management, with two days notice may come in and inspect your facility for illegal cannabis. If we find it, we confiscate it all. And it's \$100,000 fine to the landlord. Yeah. After that first time, we can come back without notice. And the second time we find illicit cannabis. It's a \$500 \$500,000 fine to the landlord. Yeah. And then I can come back again without notice. And the third time I find illicit cannabis on the premises. We take your buildin Yeah, that'll solve it immediately. My bill will solve the problem immediately. Immediately.

25:03

Yeah. Because landlords will just Well, I mean, it's certainly going to solve the problem and that landlords will be enforcing this now does it? Does it squash the cannabis market otherwise and that landlords just want to don't want to do anything with cannabis? Because it's so

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no, no, we'll tell them and in fact, the sooner you get who's in your premises out, the quicker we'll turn you on to our licensees that are looking for real estate, we'll make a direct can put that in the law and the OCM shall directly introduce cannabis licensees to the landlords who have removed illegal cannabis operations from their premises. Right. Yeah,

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we'll help help broker the right. Yeah.

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And the biggest issue that licensee the licensees are facing is real estate. Forget you can open on Long Island, all of Nassau County opted out in most of Suffolk County opted out and all the localities are inventing their own distance rules, which are event we're eventually gonna have to sue them over.

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Yep. Wait. So say that again. I mean, a meeting they're coming up with, with distance regulations that are not that you're going to claim are not legal. Correct. Like, what's an example of what they're

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Yeah. 1000 feet from a residential zone.

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Okay, I mean, are they doing this intentionally to just make it so it's impossible to put up a cannabis business. And this is right there. It's not in good faith. They're doing this stuff, no backdoor to track down the cannabis. Alright. Interesting. So I guess what's your likelihood that these things happen? Like what what's your confidence level? With that? Will we'll have a healthy, legitimate, thriving cannabis market in New York in the next couple of years? Any states have that? Well, we'll we will New York be a shining example of how to how to do cannabis? Well, in this gotta state by state system that we have right now in the US, like, are we going to be are we going to be the new crown jewel?

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Not the way we're doing it now? Yeah. But we got plenty of time to figure it out. And we got lots of smart people coming up with lots of good ideas. Yeah. Yeah. What they'll be I will tell you what New York will be in New York will be the cannabis tourism capital of the world of the world, interesting world. And lots of things about that. So the people that say, I don't know what the hell I'm talking about when I say that, their next statement is why would I fly from Colorado to New York just to smoke cannabis? And when they say that, it's how I know they did they in fact, have no idea what they're talking about. No one is going to come to New York from a state that has legal cannabis just to smoke cannabis. Yeah, exactly. What are people going to come to New York to do to enjoy the world cat class, music and music venues? The world class museums, the world class parks, what's better than getting high with your special somebody and laying out on a blanket in Central Park?

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Absolutely. Going for an amazing meal, right? I

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mean, all of it, all of it. So that is number one. Number two, and with all due respect to my friends up in Canada, because I've had discussions with folks up there in Canada, and the people that I've talked with about it just don't even understand what's going on in their own country. New York is the only jurisdiction in the world where you can smoke cannabis. Absolutely anywhere that it's allowed to smoke cigarettes, period, full stop, right? So you can advertise to a tourist, you will have no run ins with the law. And I get people do it plenty in other jurisdictions, but it is still technically illegal to smoke in public everywhere else. Yeah. Not true in New York. 100%. Legal to smoke anywhere you can smoke a cigarette at your site. So that's next. Yep. Next what is currently the cannabis and cannabis tourism capital of the world.

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I Amsterdam, I guess. My line

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is New Amsterdam is the New Amsterdam. And in fact, if you want to read the articles, Amsterdam is going 180 degrees in the other way.

29:00

I'm going I'm getting on godaddy right now. Have you got it? Yeah.

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I figured you'd take that. But they are. They're running 180 degrees the other way. When I used to go to the Netherlands decades ago, you could go to a coffee shop in any town and buy cannabis. Now the only town where tourists can buy is Amsterdam. Yeah. And they're limiting where you can do that. And I don't know if you know, the the crackdown on the stuff they're doing in the red light district, right. 180 degrees opposite running in 180 degrees the opposite direction of New York. Yeah. Yeah. So my bet is in the next several years New York absolutely will be the cannabis, tourism capital of the world. They're not we have a healthy, thriving regulated market. I can't tell you, but 100% We will be the cannabis tourism capital of the world. Yeah. All right.

29:44

Well, you heard it here, folks. Different there's been a pleasure if people want to find out more about you more about the work that you do. What's the best way to get that information?

29:53

Sure. You can go to my website, which is 420 jurist j u r i s t dot com. jurist is a fancy word for a person in the legal profession. Just the word jury. You can also go to LinkedIn. I'm a big, big user of LinkedIn got tons of folks following us on LinkedIn. And over there we do a thing every Wednesday at 420 called asked me anything about cannabis legalization in New York, get a couple of 100 folks live and a few 1000 folks checking it out every week in the reruns. We would love to have folks listen to this. Just come on in, ask your questions and join the dialogue about cannabis.

30:35

I love it. I love it. Make sure all the information there is in the show notes people can get that, Jeffrey, it's been a pleasure. Thank you so much for taking the time today. Rock and roll. Have a good one. That's it for this episode of thinking outside the bud. Be sure to subscribe using your favorite podcast app so you don't miss our future episodes. See you next time.

30:53

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