

# Hemp and Marijuana Are Both Cannabis: What Attorneys Need to Know

*By Ted Menadier, MBA*

*Cannabis & Marijuana Expert Witness | Approach One LLC*

---

Since the passage of the 2018 Farm Bill, confusion surrounding the distinction between hemp and marijuana has increased significantly among attorneys, law enforcement, and industry professionals. Understanding this distinction is critical in litigation involving cannabis crop valuation, classification disputes, insurance claims, and criminal matters.

## **The Legal Distinction**

Hemp and marijuana are both cannabis. The legal difference is based almost entirely on THC concentration, not appearance, smell, or plant structure. Under the 2018 Farm Bill, hemp is cannabis containing no more than 0.3% Delta-9 THC on a dry weight basis. Marijuana exceeds that threshold.

As a cannabis expert witness, I cannot conclusively distinguish hemp from marijuana without laboratory testing — and neither can trained narcotics detection dogs. The UNC School of Government has noted that K-9s are trained to detect THC, which is present in both plants.

## **The THCA Problem**

One of the most significant gray areas in current cannabis litigation involves THCA flower. A product may contain less than 0.3% Delta-9 THC but more than 20% THCA. Under certain interpretations of the Farm Bill it may be marketed as hemp — yet it is chemically and visually indistinguishable from marijuana. This has created a rapidly growing marketplace where products effectively identical to marijuana are sold legally as hemp in many jurisdictions.

## **Testing Methods Matter**

The two primary laboratory methods used to test cannabis — Gas Chromatography (GC) and High-Performance Liquid Chromatography (HPLC) — produce meaningfully different results. GC uses heat, which converts THCA into Delta-9 THC during analysis and may show significantly higher concentrations. HPLC measures THCA and Delta-9 THC separately. Which method was used, and how results were interpreted, can be determinative in litigation.

## **Yield and Valuation Are Frequently Overstated**

In my experience reviewing cannabis matters, yield and valuation estimates are frequently overstated — sometimes by several multiples. Accurate valuation requires consideration of usable dried flower weight, cultivation method, processing losses, harvest conditions, and regional wholesale versus retail market pricing. Roots, stalks, stems, and fan leaves have little to no meaningful market value and should not be included in flower yield calculations.

---

### **About the Author**

Ted Menadier, MBA has been retained as a cannabis, marijuana, and hemp expert witness in more than 35 litigation matters and insurance claims, with testimony experience in state and federal courts at deposition and trial. He is a Certified Commercial Cannabis Expert (CCCE) and a State of Colorado Certified Hemp Sampler. He works with plaintiff and defense counsel and is available nationwide.

*Read the full article: [www.growminded.com/hemp-vs-marijuana-classification-litigation](http://www.growminded.com/hemp-vs-marijuana-classification-litigation)*

---

Ted Menadier, MBA | Approach One LLC | Denver, CO | [Ted@themothereplant.com](mailto:Ted@themothereplant.com) | (717) 357-0148