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To

Donald D. Black
A Remarkable American Hero
James O’Reilly of the University of Cincinnati College of Medicine is former chair of the 8,000-member Section of Administrative Law & Regulatory Practice of the American Bar Association and has been active in numerous ABA, Federal Bar Association, and state and local bar activities. He retired as Associate General Counsel of The Procter & Gamble Company to teach full-time, and served as a consultant to three federal agencies and to the Deputy Secretary General of the European Commission. He has authored fifty-two texts and more than 200 articles, and his work was cited numerous times in a March 2000 opinion of the U.S. Supreme Court (Food & Drug Administration v. Brown & Williamson Tobacco Corp., 120 S. Ct. 1291). During his fifteen years as an elected city official, Professor O’Reilly has been a member of the executive committee of the Ohio-Kentucky-Indiana Regional Council of Governments. He has received numerous honors and awards for his professional and electoral activities and has been listed in Who’s Who in American Law for twenty-five years. He is a graduate of Boston College and the University of Virginia School of Law.
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Appendix A State Statutes, Regulations, and Relevant Cases ........................................................................ App. A–1

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Clients with urgent and complex questions keep the legal profession busy as well as intellectually interesting. Questions about the business of marijuana are especially intriguing for lawyers whose states have recently begun to permit either wide recreational use of marijuana, or which have adopted narrower statutes allowing medically established need-based uses.

Listen carefully to the client’s questions before responding. Just discussing the textual provisions of the state laws will not produce the quality of responses that the client will need. Like other compromises on controversial issues, the various state legislatures have produced a quilt of agreements rather than a seamless garment of logic. Reading the actual statutory terms is the first and most vital task for counselors. Knowledge of commercial law, real estate, and criminal defense law will be necessary as the client’s business evolves.

It is interesting to observe the rise of commercial ventures to sell software and specialty products to regulators and to marijuana dispensaries. The marketing innovations will move the operational pace of this new commercial marketplace, but innovation in systems works only so long as the real contingencies of legal preemption and state regulations are considered, at the time when each prospective new business development is evaluated. We help the clients to deal with the world as it is.

Cannabis is different, as this book will explain, from other commodities for consumer purchase. The legal constraints of federal preemption conflicts will be a key barrier. Hostility by the current federal administration and the judges whom they are selecting for federal courts is likely to be manifest in litigated controversies for years to come. Rapid legal responses to the potential governmental challenges will be needed by the business clients. Any set of prepared answers to the probable questions must change and must be updated accordingly.

For some lawyers, cannabis business specialization will be a gold mine. For others, the legal malpractice insurers will be hesitant to continue coverage if the attorney is not fully “up to speed” with the highly nuanced regulatory control issues in that state. Federal civil forfeiture

and federal or state criminal prosecution are much harsher outcomes than the optimistic and naïve marketing client might expect, and legal malpractice insurers must anticipate strong responses from their former clients who face those potential outcomes.

We urge lawyers and clients to “stay tuned for the news,” as this rapidly changing confrontation of federal and state norms evolves in the decade to come.
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It takes a village to study the complexities of this densely packed and controversial topic. The legal issues were very capably studied by skilled legal researchers Christopher Hurley, Erin Conklin, Claire McVey, Brenden Sullivan, Russell Gribell, Anna Korneeva, and Linda Long. I greatly appreciate their diligent research efforts. Mr. Hurley’s special contributions to the text and its appendix were indicative of his bright future in the creative and conscientious practice of law.

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The literature published on these public health controversies was well studied by Radhika Bhog, MPH, and Anne Chandra Thomas, MPH, two of my exceptional College of Medicine students. I admire and respect their professional talents and diligence.

Alyson O’Leary, RPh, provided invaluable insights into the dispensary function from her perspective as a professional pharmacist. These most welcomed views expanded our insight into the operational aspects of the commercialization of cannabis.

The original inspiration for our coverage of business startups in the cannabis field came from the energetic New York practitioner Hanan Kolko, a true leader in this field, who first inspired a quest for writing the ideal training text for a lawyer whose client enters this difficult field. I appreciate his experienced suggestions as this book was being developed.

My family deserves great credit for the patience they exhibited as this, my 52nd book, again filled our house with great volumes of paper and copies and data. I appreciated their forbearance during the months leading to completion.

Finally, my students at the College of Medicine endured numerous lectures, questions, debates, and insights on related themes, which have hopefully made them more skilled Masters of Public Health.
The reader is invited to offer corrections or improvements for this text’s future editions, at james.oreilly@uc.edu.

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