Episode 21: "Comparing Oregon and New York's Cannabis Landscapes, Featuring Perry Salzhauer"

Speakers: Aleece Burgio, host, Barclay Damon, and
guest Perry Salzhauer, of Green Light Law Group

[Aleece Burgio] Hey, everyone, this is a Barclay Damon Live broadcast. You're listening to The Cannabis Counselor, and I'm your host, Aleece Burgio. Let's get into it.

[AB] What's up, everybody? This is Episode 21 of The Cannabis Counselor. And today we're here with Perry Salzhauer. He is the owner of Green Light Law Group, which is a law firm in Oregon and in Washington, and soon to be New York State. And we're going to talk about cannabis specialization for lawyers and what we've seen in Oregon and the West Coast and what could happen in New York. Stay tuned.

[AB] Perry, thank you so much for joining us for Episode 21 of The Cannabis Counselor. How are you today?

[Perry Salzhauer] I'm doing great. I'm doing great. Thank you for having me ... I think, you know, my wife and I just welcomed our first child into this world a few weeks ago. So we're doing great. It's kind of living on ... living on cloud nine here for a little while.

[AB]] I know, I snagged you after having a three-week-old baby. I apologize, but time is of the essence. I'm kidding. I probably could have waited a week.

[PS] No, no, no, it's fine. It gives everyone, him an excuse to nap and me an excuse to ... nap. [Laughs]

[AB] Okay. Well, for those listening and watching, Perry is an owner of Green Light Law Group, which is out in Portland, Oregon. They have offices in Washington and are continuing to expand across the U.S. But they're also my first employer coming out of law school and moving over to Oregon. And so I thought it'd be a great idea to bring Perry on and for us to talk about the differences between where Oregon is, where we anticipate to see New York, and just kind of an outline of this odd period we're in, which is we don't have rules and regulations yet. We have legislation. What are we going to do now? What are we waiting for and what can operators and people looking to enter into the industry kind of anticipate in the next 18 months? So Perry, do want to tell a little bit about Green Light Law Group?

[PS]] Yeah, sure. Like Aleece said, we formed in 2015. Right when marijuana was legalized through Measure 91. We started out in Portland. Now we have offices in Portland, Medford, Seattle, and soon to be in New York. We're basically a full-service law firm servicing the cannabis industry. We used to say the only things we don't do are tax and IP. But now we do IP, some limited IP, and we still don't do tax. But we represent both companies, individual investors, licensees, folks who contract with licensees, sometimes just employees of licensees. The whole gamut. We just ... effectively we're just a full-service business law firm. But we have a significant amount of expertise in cannabis, in several different jurisdictions. And we work in Washington, New York, Florida, Texas, Maryland, California.

[AB] So back in 2015-2016, when we were kind of kicking it off a lot of the work that we did was applications and licensing and getting people going, which is kind of, I think, where we are right now for New York, we don't necessarily have the rules and regulations yet, but kind of similar steps, which is looking for real estate, looking at local opt-out provisions, and kind of getting people's companies up in order for purposes of forming their entities and their agreements and things of that nature. Since that infancy, where do you think cannabis has led itself in the last five years for you guys in Oregon? Are you still condensed in the marijuana space, or has it moved into more hemp-related and those businesses that were all applying, where do we see them now?

[PS] Well, I think we're starting to a bit of ... see some maturity in the industry, both from the industry participants' side and also from the regulators' perspective. And I think maybe you remember when we first started out, you are exactly correct, 90 to 80% of our work the first year as a firm was business formations, organization and capitalization of businesses.

[AB] Totally ...

[PS] But I don't know if you remember, we joke that there would be, in year three, all of the business breakups and the litigation associated with that. Truth is, we did, in fact, see that.

[AB] No, absolutely.

[PS] And after that sort of, years five to six now, we're seeing sort of leveling out and we are still seeing new participants entering the industry, but there's an increased level of sophistication from people who are coming into the industry now. In 2015 it was really ... you know, I grew up in New York. Anybody with a piece of property and a dream could apply for a license. And I don't know if you might remember, a lot of folks had some really, really overly complicated ideas about how they wanted to capitalize their businesses—not ever really understanding what a security is, trying to find investors. And a lot of the first year, I think, was tempering expectation. I mean, there was this idea. Like I said, I have some ... "I own a farm," "I have some experience growing in my basement or my backyard," "I'm going to raise $2 million dollars from these strangers who 'Craig's Listed' me"—was that still a thing back then? I don't remember!—and then we're going to build a spigot in the back, and it's going to spew CASH! And a year from now we're all going to retire. I think everybody knows that's not how it happened. And I think the necessary Phase Two, like I joked about was ... a lot of those businesses are not around today anymore, or they exist in a different form. Turns out that maybe going into business with your best friend or your cousin's wife's best friend, where you have to each invest half a million to $2 million dollars is not maybe the best idea. A lot of inter-company litigation, a couple of years of it, it's still coming, right? But we're sort of seeing the tail end of that, where a lot of these litigation matters are being settled or finally adjudicated. And these companies are coming out sort of recapitalized, reconstituted, and leaner and meaner, and more poised for success, in my view.

[AB] No, absolutely. And I think that's funny ... whenever I talk about Oregon, I always include that within the first year, we saw a lot happening within applying for your license, getting the construction up and running, getting bottlenecked in the locality. And then at some point, you might run out of money, might go bankrupt, you might merge, acquire. There was just so much ... you saw a capitalistic enterprise in one year. You really saw the benefits of that. And so it's interesting. I'm not necessarily sure New York is going to be the same, given you can't really sell your license for three years, so it's going to be a little bit of a different situation. But I think the principles are the same. And your point of tempering expectations is really important because money ... finding where it comes from, understanding how much it'll be for real estate. You can have up to three retail locations, but it doesn't necessarily mean that you have to have three retail locations to start. I think a lot of people are putting so much "bang for their buck" into these applications, are trying to prepare for it, and you're right, it's a lot of money on the table. There's a lot of family relationships. People are getting into business with friends and coworkers, and there's other things that we can be doing to prep expectations. So what would you say is some good advice for those who right now are just waiting for rules and regulations and are kind of waiting to enter into the space for New York?

[PS] I have a lot of things I can say about that, but I wanted to address the sticking with this concept of normalizing and aligning expectations between you and your new business partners—without sounding like a plug for lawyers everywhere. Probably the most important thing you could be doing is hammering out the terms of your organizational documents, right? You don't want to have a vague operating agreement, for example, or no shareholders' agreement or no buy/sell agreement if you're a corporation, and then wake up in six months and realize, "Oh. Here's something we didn't address," "Here's something we didn't think of; it never occurred to me that I might hate you." Well, and this is something...

[AB] ... or "you're a terrible worker." Yeah.

[PS] Oh, don't get me started. So many people. Yeah. Yeah. "I'll give you ...

[AB] ... a terrible ...

[PS] "I'll give you 5% of my business, but you just show up and be, like, my master grower, or work my computers." It turns out you don't know how to grow, and you don't know how to use a computer. So what do I do?

[AB] So true.

[PS] Some good advice is avoid giving away equity in your business for services rendered. Do what you can to come up with a way to pay cash for those services, because once you are ... once someone's in your company, they're in your company, unless there's a clear pathway to get somebody out in the operating agreement or like I said, shareholders' agreement. Right now, while everybody's sort of sitting around waiting for the regulations to be dreamt up and "promulgated," I think it's technically the word. It would be a good thing to do is to get to know your business partners and talk about some of these issues. I know it's always an uncomfortable situation to go into business and have a discussion about, well, what do we do if this doesn't work out? But it's a very important discussion to have before you're too far down the road, and that's probably going to be the best way to avoid that Phase Two litigation I was talking about that's going to come around in years three to five. You can be putting yourself in positions to avoid that, which was a very common ... common pitfall. The other thing is to remember is the regulations are going to steer this industry in ways that people don't maybe realize yet. And this is sort of this is a shout-out to both the industry participants and the regulators. For example, this is a highly regulated industry, probably more highly regulated than any industry that I've ever been in ...

[AB] ... food ...

[PS] ... and I was a securities attorney and an environmental attorney previous to this. One of the significant issues is, like you mentioned, you run out of money, right? You need capital. Other businesses can get quick access to that capital. This type of business, at least in both Washington and California, and in Oregon, you can't just go to the bank for one; and you can't just call up your rich friend and say, I need a loan, because everybody needs to be vetted. This is one of the lessons that the regulators in Oregon and Washington have learned, and they have—over the years—eased the restrictions and made it easier for companies that need additional capital to get that capital from outside sources. And so, if I had to send a message to the regulators, it would be please put in a mechanism that will allow companies to get financing in a reasonably quick, reasonably short period of time the way other businesses can, because otherwise you're going to have a lot of failed businesses. The advice to the industry participants, which is the other side of that, is make sure that you're adequately capitalized. You don't want to be in a situation where you need half a million to a million dollars, which I think everybody in corp fin [Note: Corporate finance] knows it's kind of an oddball amount to need ... it's too small, too small for the big guys, ...

[AB] Oh right!

[PS] ... too big for a little guys. Nobody wants to give you half a million dollars. And you need to get that in, in a period of time—quicker than six months, right? So the regulators should be thinking about this and putting in a mechanism that's going to allow folks to not have to fold up shop. Remembering that until something changes on a federal level, cannabis businesses cannot avail itself of federal bankruptcy protection.

[AB] What's interesting—I completely agree with you on the rules and regulations. We get this question a lot, which is: What should we be doing? What should be doing? And honestly, I feel like a broken record. But I tell them we really have to wait for the rules and regulations, especially in New York State with this qualification of becoming a social equity applicant. Sure, you might right now fall under one of those five or six categories that would make you a social equity applicant. But the rules and regulations are going to tell you whether or not there's income requirements, whether there is a certain percentage of descent. I mean, there's going to be all these different requirements on what happens as a social equity applicant. And that's kind of the real starting point for a lot of these applicants is, "Hey, how should I structure it so that I qualify as social equity?" That's what we're seeing a lot of right now.

[PS] Absolutely.

[AB] Yeah. The rules and regulations are just going to be so important and it's going to take time. They're going to change a lot. I mean, how many times do we see emergency rules and regs out of Oregon, change the rule from a month prior?... So we would have to go to those meetings over at the OLCC [Note: Oregon Liquor Control Commission] and sit in and see what they changed that week.

[PS] Remember, strangely, I still get, sometimes ... we get calls from people who think that there is a residency requirement in Oregon, because if you remember, the first iteration of the rules had a residency requirement, there was just a massive revolt about that. So much so that the legislature took it up immediately, passed emergency legislation removing it. So, things are going to change so fast.

[AB] Yup.

[PS] And I agree, particularly with respect to these fundamental issues, like, how do I structure my company? And I don't envy the regulators with respect to social equity issues because they have to dance a fine line, right? You want to craft rules that are going to be faithful to the concept and the legislature's intent, while also giving flexibility and avoiding the ability to have sort of a "straw man" situation. We were just wrestling with that in this past legislative session in Oregon, there's an omnibus cannabis bill that includes the first social equity piece in Oregon cannabis.

[AB] Yup, I was reading about that.

[PS] And there was a lot of discussion in the session about, how do we do exactly that? How do we prevent a "straw man" scenario, while also making it fair, right? And I think that's going to be a big challenge. It's a big challenge.

[AB] Well, for Oregon, too, especially the early states that put adult use cannabis on the docket. They didn't have social equity provisions. So you're kind of working your way backwards. Right, Colorado, Washington, even California, there wasn't anything in the initial round of legislation, which I think does give New York a little bit of a more leg up. Although we did see that in Illinois, Illinois is supposed to be the gold standard for social equity. Fifteen months later, there wasn't one person of color that was the majority leader in an operation ...

[PS] ... how does that happen?

[AB] It really has to be ... I don't know! It really has to be an initiative that takes place at the onset. But you're totally right. There's a lot surrounding it. I do think, though, Oregon does it best with money to apply, right. They really encourage the legacy market to enter into it because they weren't asking where your money was coming from. And so I think that that's a really important quality for New York to encourage legacy market holders, especially when we're talking about things like ... there's already a huge infrastructure for delivery. You got to have to want those guys to switch over to adult use in

[AB] New York I'm talking about. Oregon did it right with the legacy, but New York should adopt that ...

[PS] There is ...I have a lot of friends who work in justice reform, criminal justice reform in New York City. So to this day, I got to give a shout-out to the prison-to-college pipeline run out of John Jay; my good friend Baz [Dreisinger] founded that and heads that ... it's very important, in my opinion, to ... to make sure that the communities that have been most impacted get to experience the benefits, because—I think there was another article in The New York Times this weekend about, you know, what do you do? What happens? I think the article was do you still go smoke at your favorite old weed-smoking spot now that it's legal? Now you can smoke anywhere. Yeah ...

[AB] ... it's a good question.

[PS] But in Oregon, I think, you know, racial dynamics aside, I think they were largely successful in empowering those communities that were historically black-market communities and historically in prison for that. Right. You were talking about the Medford, Grants Path, Jackson, Josephine County. That's still where the bulk of certainly outdoor and mixed production occurs. So I think following that kind of model, the regulators in Oregon were very up front. If you remember going to those meetings, Aleece, they said straight up, "We want to encourage the folks who have been in the illicit market. We want to encourage you to join the regulated and taxed market." And one of the ways they did that was this sort of "don't ask, don't tell" policy about some of the money, right?

[AB] Right. Truly.

[PS] "Pre-existing" business was what they told you to put on your application, right? "Pre-existing medical marijuana business."

[AB] Yeah.

[PS] Which is funny, because you couldn't have a medical marijuana, but I think those were illegal, right?

[AB] Right. It could be a patient caregiver, but that was about it. You know, I think New York kind of takes it a step further with the Community Reinvestment Fund, which Portland just started doing, right. They were taking that 3% tax and putting it into grants to minorities to enter into the industry.

[PS] It does, yeah.

[AB] I think actually Jesce Horton was the one who, yeah, was administering them. And they're still starting small. And I'm sure Dasheeda Dawson probably is trying to help facilitate that a little bit more for the city of Portland for this inclusion. They're definitely doing their part. But I think part of the Marijuana Regulation Taxation Act that is more economic than anything else we've seen is 40% going back to these communities who've been disproportionately impacted; giving these grants and programs, and waived applications and licenses, is definitely something that we haven't necessarily seen before. I think we're going to see it more so as things are legalized, but, yeah, the social equity component is so critical, and I think hopefully we just continue to get better at it.

[PS] I think I remember, when looking at other comparable regulations in New York, I still think there's an open question that the regulators are going to have to answer about, "How do we define the level of community when we talk about impact" ... right? We're talking about impacted communities. That means you have to draw boundaries. You have to draw lines around, and you say this is how we define community. I don't know why, but I'm thinking about all of this voting rights stuff that we're seeing right now. How do you ... Somebody has to draw a line and say, "This is the community." And the way you draw those lines will determine whether you are disproportionately impacted or not. Right. Particularly where I grew up in Rockland County.

[AB] Totally.

[PS] There are pockets of disadvantaged communities around what you couldn't ... no one would say it's a disadvantaged community. So if you draw those lines half mile out, you completely change the dynamics, and you change the way that whole area looks. So I think that's going to be a challenge. I think a lot of attention should be paid to that by the social justice community when they are providing their comments. The other thing I think to really look at is vertical integration, right? The way the rules are ultimately crafted are going to impact—obviously, you can't fully vertically integrate—but in certain jurisdictions like Washington, they even prohibit contracts, certain types of contracts between different participants, right?

[AB] Like partnerships.

[PS] How strong are they going to go against vertical integration by contract essentially, right? I mean, well ...

[AB] ... so that indirect language is pretty vague. I think it's going to be lobbied pretty heavily, but they have listed out like, you can't even be a landlord and a licensee, which is pretty extreme, in my opinion, or even have stock. Think about this. Anybody who has any stock on the Canadian exchange or even some of the few that are on weed maps and whatever. That's going to be problematic if these are license holders in New York State. So any of those MSOs that are coming into New York and you have public stock in them that's problematic for anybody who's going on.

[PS] Someone's going to challenge that.

[AB] Every time I talk to somebody I go, if you want to hire a lobbyist, hire it for the fact that indirect interest is incredibly vague, and we needed a lot more definition to that. But, Perry, we could talk for maybe another hundred hours, mostly because you're my bud, but also because you're so knowledgeable. But we're going to wrap up Episode 21.

[PS] Aww. Thanks for having me, Aleece.

[AB] Thanks so much for tuning in. We're doing quick episodes, ya know!

[PS] And no, that's great. The last time I was on a podcast there was no video involved, that's how old I am.

[AB] I know it's elusive. You're getting recorded, we're looking at the hair! All right, please do. All right.

[PS] Bye.

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