



## Registry Matters Podcast

Episode 290

Recorded 1-20-24

Announcer 0:00

Registry Matters is an independent production. The opinions and ideas here are that of the host, and do not reflect the opinions of any other organization. If you have problems with these thoughts, F Y P.

Andy 0:17

Recording live from FYP studios, east and west, transmitting across the internet. This is episode, wait for it, 290! of Registry Matters. Good evening, gentlemen! How are you? I can't just say Larry anymore. I've got to like include Chance now too.

Chance 0:32

Very well, thank you.

Larry 0:33

I'm doing awesome as well. I can't wait to get this thing rolling.

Andy 0:37

Well, we are now rolling. It is officially rolling. Make sure you head over to YouTube and press Like and Subscribe, leave five-star reviews. I have a button here. There it is. I had to move buttons around because we had so many clips last week. So make sure you press Like and Subscribe and click the fancy buttons and everything. Subscribe on your favorite podcast app and all that. So Larry, you being the one that writes what we're going to be doing, what are we gonna be doing?

Larry 1:02

Well, we're gonna be discussing the removal process to deregistering in California with our very special guest Chance Oberstein who practices in California. And he will be able to fully explain how that process works. And we have a question that we carried over. And we also have a couple of articles depending on how much time we have, if we can get to them. And I know that they're entertaining to me. So that means that they won't be entertaining to you.

Andy 1:26

That's probably true.

Chance 1:27

Perfect episode for this subject!

Larry 1:28

Well, alrighty. Before we get going, and I'm going to hand this mostly off to you and Andy, but before we get going, I'd like to add a little bit to the mix. Some people insist that the victims are not involved in removal processes. And they are. And Chance will get into that, in terms of how California law is constructed, how victims participate or not. But I have to add this from the onset. I have a case, as well as some statutory language from Georgia law, and the case is *Rhonda McCleary vs. Nodaway County Sheriffs and Missouri State Highway Patrol*. And this case was just decided by the Missouri Court of Appeals on December 12th, 2023. The facts, as articulated by the court of appeals, are: On July 18, 2022, the Circuit Court held a short hearing on the petition. The prosecutor told the court that there was no objection to the petition, and that the state had contacted the victim, who was in custody, and that

the victim did not know that McCleary was on the sex offender registry, and did not oppose her being removed from it. This strongly suggests to me that the victims are definitely involved in the process in Missouri. I mean, would either one of you disagree with that before I go on to Georgia?

Andy 2:51

I wouldn't.

Larry 2:52

If the Court of Appeals reviews the trial court history, and says that the victims were notified. In this case, one victim was notified, and that the victim didn't object, that strongly suggests to me that there was a participation by the victims in Missouri. So, if we go on to Georgia, we recently had a guest on from Georgia whose petition to be removed had been denied, and he'd expended a lot of financial resources, and wanted to know if he should go pro se. And I said absolutely not. But it was denied due to the victim being in opposition. Now the relevant law in Georgia is O.C.G.A. Section 42-1-19(d) and we'll read the relevant parts: Subsection (d)(1) includes that "The court may consider: 1. Any evidence introduced by the petitioner"; Number 2. "Any evidence introduced by the district attorney or sheriff"; And Number 3. "Any relevant evidence". Now, Chance, on numbers two and three, would you say that that would include victims in there, with that broad latitude that is expressed in numbers two and three?

Chance 4:08

Oh, yeah, yeah. It could. I mean, that's a very broad scope. If you look at number two, it says "any evidence" and that's exactly what it means. Anything goes.

Larry 4:18

Okay. Now, I've always confessed I'm not a licensed practitioner of the law, but I am able to read. And the key points of the Georgia statute are subsections two and three, "Any evidence introduced by the district attorney" leaves a wide amount of latitude, and "any relevant evidence" would certainly include hearing from the victim. Andy and Chance, you guys are gonna take it away from here on getting off the California registry, and if I have any questions or observations, I'll try to chime in.

Chance 4:51

Okay, thank you very much. Then I guess we'll get to how to petition for termination of your sex offender registration requirements, or at least the nuts bolts of the petitioning process, in California. So let's start out: First thing you've got to do in California is to determine if you're eligible. How do you do that? Well, you've got to ask some questions like, one: Have you met your minimum mandatory registration period, pursuant to Penal Code Section 290(e)? In other words, have you been registered for either ten years or twenty years? Because you've got to register for that amount of time to be able to petition off those particular tiers. Second question: Are there pending charges against you, which could extend the time to complete your tier, or change your tier? For instance, a new Failure to Register, or a new sex offense? That will certainly trip you up. Another question: Are you in custody? Because if you are, you can't petition off while in custody. Are you on parole, probation or supervised release? That

would disqualify you as well. Are you classified as a tier-three lifetime registrant? If that's the case, you can't because, in California, if you're lifetime, it's lifetime.

Andy 6:15

If you don't mind, I have a battery of questions that I would like to throw at you, and get your legal-mind opinion on these questions to be asked. That alright?

Chance 6:26

Okay.

Andy 6:27

All right so, since I had all my time and all that stuff in Georgia, if I somehow figured out how I was going to be able to afford to live in California, and I made my way out there, would I be able to? Since I have an out-of-state conviction, would I be able to petition to be removed from the registry in California?

Chance 6:45

The answer is yes. If you meet the mandatory minimum registration requirements for the applicable tier for that offense, you may petition for termination of the requirement to register as a sex offender in California. Simple as that.

Andy 7:00

And suppose that they can't immediately figure out what kind of tier I would be under? What happens then?

Chance 7:08

That's a good question. But we do have a section that pertains to that. Pursuant to California Penal Code Section 290(d)(5), a registrant is placed in a tier-to-be-determined category until their appropriate tier designation can be ascertained. Once it is ascertained, and you are classified as either a tier-one or a tier-two, and if you meet the mandatory minimum registration requirements for the applicable tier for that offense, you may petition for termination from the requirement to register as a sex offender in California.

Andy 7:43

Does your time include your time out-of-state? So someone that has been on the registry, you know, if you were Larry and you got on the registry in the 1800's when he was coming up, and then you move to California, does that time count? Or does it start the moment you stepped foot in California?

Chance 7:58

No. Your time is your time, whether you did it elsewhere, or you do it in California.

Andy 8:03

Oh really?

Chance 8:03

It's the aggregate time.

Andy 8:05

Interesting. That's an interesting point. Because there's somebody asking in chat, and he's been on the registry for quite a while. And

it might be an option for him, I suppose. Is my "registering law enforcement agency" required to comply with my request?

Chance 8:25

Oh, yeah. It must provide you with your DOJ designation and proof of current registration upon request. It must.

Andy 8:31

Can you expand on that and clear it up a little bit?

Chance 8:41

Yeah. First of all, this comes under requesting your tier designation letter and copy of your proof of current registration from your registering law enforcement agency.

Andy 8:53

So that would be from where I'm from, yes?

Chance 8:56

No, it's where you're from in California. And this is something that people get very confused about. So, first of all, your question is, is your law enforcement agency required to comply with that request? Well yeah. Under state law, it must. If you qualify, and you're otherwise eligible, it has to. It must provide you with your tier designation letter, and proof of current registration.

Andy 9:21

Very good. And then, is my proof of current registration form the same as my annual registration form?

Chance 9:29

No, actually, it isn't. And this is where people get confused too, because they think that "proof of registration" means that they have a form that they've done annually, and that just doesn't cut it here. In California, a proof of current registration form is a CJIS 8050. It's different from your annual registration form, and is only used for the purpose of petitioning off the registry, petitioning for termination. Now, if you are eligible for relief, and you obtain the proper California Judicial Council forms, those instructions and forms can be found online. Let me just say that one more time: You gotta have the proper forms, because it's up to you to initiate this process. So, in order to initiate it, you've got to fill out the proper forms. And when I say proper forms, I mean, the forms that are used specifically in this process, which can be found online. So, if you want to go online to find them, enter in your search engine: "California Judicial Council Forms". Once you get to that site, enter "termination of sex registration" in the "Find Your Court Forms" box, make sure you download the following forms, and I'm going to name them out for you so that you'll know: CR-415: which is a "Petition to Terminate Sex Offender Registration", CR-416 which is "Proof of Service", the CR-418 "Order on Petition to Terminate Sex Offender Registration"

Andy 11:09

Are these forms \*only\* available online?

Chance 11:11

No, you can also contact your local superior court or juvenile court and request the forms as well. You've got to fill out the petition, the CR-415, this is the first thing you do in the process. And then

attach your current registration, your current proof of registration form to it.

Andy 11:32

And do I do this all by myself? Am I like the burden of proof? Or is it just completely advisable to reach out to an attorney, because they're going to know how to do all this?

Chance 11:43

Well, you know, a lot of people ask, "What if I'm having trouble understanding or filling out the forms?" The forms are pretty straightforward, but sometimes people just have trouble with those things. There is form information next to the download box, for every Judicial Council form. However, if this task is too daunting, or you don't understand, or you're just confused, always seek the assistance of the local public defender's office or a private attorney.

Andy 12:11

Can we just reach out to Public Defenders, though? Can we just reach out to them and ask them for help on stuff?

Chance 12:17

Yeah, yeah. In California, when it comes to post-conviction relief, you certainly can. You can reach out to the public defender's office. Most of those offices across the state have designated units that handle these things. And so they do have the information at hand, and are more than willing to share it with you. And then once that's done ...

Andy 12:37

Just to jump in, Larry, does that exist in all of the states? Or is California different?

Larry 12:44

California is probably unique in their resource-level because, here, the public defender has to be assigned to your case. And if you call the public defender, they will represent you only when they've been assigned to the case -- there has to be an ongoing proceeding. And I don't know that you can just call the public defender. I mean, the duty attorney for that day may have a conversation with you, but you're not going to get any active representation from them until the court has put them on your case, and qualified you as indigent.

Andy 13:12

Okay. All right. Please continue, sir. Sorry for the interruption

Chance 13:16

Larry brings up a good point because California does represent. So, if you're unable to afford a private attorney, California certainly can do that through the public defender's office. Okay, now, we'll go on here. Once you have those forms, and you fill them out, you've got to determine the proper court in which to file your petition. Let me give you a hint: it's the same county in which you register, and most likely closest to your place of residence. In other words, your local superior court. So you've got to file a petition at that courthouse.

Andy 13:55

Should the petition be filed at the criminal clerk's window or at the civil clerk's window? God, like, nowhere in my brain would I think of "Window A or Window B?" Which one would I go to?

Chance 14:09

Right, who does? As a layperson, how would you know which window to go to? I mean, it makes the most sense to go to the criminal clerk's window, because this was originally a criminal clerk's matter.

Andy 14:20

But the registration, hold on, that's a "civil" regulatory scheme!

Chance 14:23

It is, but it stems as a condition of a criminal case. So everybody just naturally thinks that it goes into the criminal box. But every county in California is different, in terms of procedure. Once you determine the correct court to file in, contact the clerk at that location, and they'll tell you whether you should go to the criminal clerk, the civil clerk, or if there's a special clerk. They are all different. But once you determine where to go, that's where you file it. And once you file it, you have to serve copies of your petition on the law enforcement agency or agencies, and on the district attorney or district attorneys that are involved in this case, in your petition. And then file the Proof of Service at the same place your petition was filed, at the same clerk's office, with the same clerk.

Andy 14:23

Now, to be fair Chance, I have done one of those. I have served copies to law enforcement agencies and district attorneys for a case that was being brought in Georgia. And I was not received very well! So, on whom do I serve my petition?

Chance 15:37

Well, you know, it's streamlined in California, it's a little bit different. Let's take a step back here for a minute. The petition, meaning the three-page CR-415, and the two-page proof of current registration, which is attached to your petition so it's, all together, a five-page document, is required to be served on the law enforcement agency you register with, and the District Attorney in the county where the petition is filed. So they're not uniquely different, they're uniquely the same. And then you must also serve it on the law enforcement agency, and the district attorney, of the county where you were \*convicted\* if it is different from the county where the petition is being filed. So let's just say that, originally, you picked up a conviction in County A and now you reside in County B, you're going to serve the agency you register at in County B plus the District Attorney's Office in County B. And also you're going to serve the law enforcement agency in County A where were you registered originally and also the DA's office in that particular county that prosecuted your case. Does that make sense?

Andy 16:57

Uh, yes. I can read the words, and I can understand the words, but I got lost at least three paragraphs ago. Seriously, this is complicated!

Chance 17:08

It is complicated. And you know what? It's not only a little complicated, it's also fraught with problems because every jurisdiction is different.

Andy 17:20

You just said that. Every county has their own procedure.

Chance 17:24

They do. And there's no uniformity across California. So you've really got to know what you're doing in this realm.

Andy 17:31

How many counties are there in California?

Chance 17:34

Lots. I've lost count. Lots, lots, lots.

Larry 17:38

And I want to clarify something you said, Andy, when you said you weren't well-received. You're not making an apples-to-apples comparison here. Serving documents is different than what you got almost handcuffed for.

Andy 17:52

(laughs)

Larry 17:53

You were actually going to see a court to get an order signed.

Andy 17:57

I was talking about the Halloween case, though. I was talking about when I was going around delivering the Cease and Desist whatever to the attorneys and the DAs whatever -- the sheriff's offices.

Larry 18:07

Oh, okay. Well, I didn't think you had encountered any major problem there, other than the fact that one of them wasn't there. But if you go in as the defendant in a case, and you're going in to get an order signed, and you are the defendant -- if the courthouses in rural America still are letting people go in, they don't let us come in, in Bernalillo County anymore. But, if at the courthouse where they let you go in, and sit down in the judge's office, they're not going to be very happy about the defendant sitting there, waiting for them to sign an order. They're just not.

Andy 18:34

I totally get that. I was referring to the other one where I was scared out of my mind, because I was still on the registry, still on supervision, going around to These People's offices. I even brought a runner with me, so that it wasn't me going in there and putting myself under the firing line, so-to-speak.

Larry 18:51

Well, just for the audience's clarification, we were serving two counties, Butts and Spalding County in Georgia, and we were delivering them to the County Attorney's office, and I believe to the Sheriff's office themselves. So they had two stops for each county. And it was like on a Friday before Halloween or something like that. One said, I didn't need this the day before -- it was a

weekend or whatever -- before Halloween. But yeah, that's what you're talking about. Okay, go ahead. This is getting very entertaining here in terms of this process.

Chance 19:27

Well, yeah, and you know, let me simplify it a little bit.

Andy 19:29

Please!

Chance 19:29

Because the great part here is you don't have to serve it personally. The most efficient way to serve these agencies is through priority mail! So you take your three-page petition, your two page current proof of registration, you put it in a priority mail envelope, just with tracking, so you know where it went, no signature is required. And you send it off to the law enforcement agency you register at, the district attorney in that county and, if you were convicted in a separate county, to those entities over in that jurisdiction as well.

Andy 20:06

And once that is done, I mean, roughly what, a week for the mail to go around? How long could it take to get a response on my petition?

Chance 20:15

That is a great question! And as everything else in this process, it fluctuates. I mean, at max, it's a 120-day process. Because law enforcement has 60 days to submit a report regarding your eligibility. And once they do that, the district attorney has 60 days to respond to your petition. Now, this time period can be shortened, depending on how quickly these agencies respond. And so every case is different. Some go to the max, some don't. But in general, at max, it should be 60 and 60. So that's where the parameters are.

Andy 20:54

What you've described, at least this one little step of the process, is this is just a 100% factual information-gathering piece. I'm assuming like the law enforcement, do they get calls to go to your house every week to deal with you being a bonehead? Or are they asking for personal opinions?

Chance 21:17

No, no, none of which. What they're doing is calculating the time that you've registered, if you picked up any new cases, if you're on parole, if you've got pending cases, everything I mentioned that could cause you to be ineligible. All this is, is an eligibility report.

Andy 21:33

I gotcha.

Chance 21:34

Most of that can be done right on the computer within moments.

Andy 21:39

Right. But to counter that, what Larry brought up at the beginning of, if the victim is involved. In this particular step, have they reached out to the victim? And asked them their opinion?

Chance 21:51

No.

Andy 21:51

Okay.

Chance 21:52

Absolutely not.

Larry 21:53

No, this is just a preliminary "Do you meet the basic criteria of being deemed ineligible?" Like if you were to apply for government benefits and you didn't have the requisite amount of service to qualify. This is an eligibility determination. Are you theoretically eligible, on the face of the statute?

Andy 22:10

What happens next, Chance?

Chance 22:12

Okay. Well, in simplicity here, just simply one of three things are going to happen next: (1) the court may summarily deny a petition, if the court determines that the petitioner does not meet the statutory requirements for termination of sex offender registration, or -- and this is a big "or" -- if the petitioner has not fulfilled the filing and service requirements of this section. What am I saying here? What I'm saying is that all those things I talked about, as far as eligibility goes, that go into that eligibility report that Larry just mentioned, if the report comes back, and says "ineligible" because of any of those things, that stops the process. And you get a "summary denial". Or if you messed up, okay? If you didn't do the proof of service, right? Which is generally the area where people get dinged the most, or you didn't fill the form out correctly, which means you missed a box or whatever, or you checked the wrong classification, but whatever it is, if any of those things are present, you can get summarily denied. It doesn't mean that you can't file again, it doesn't mean a time's assigned to you, within one to five years of filing again. It just means you've got to fix what's broken. And now, the second thing that can happen is the district attorney does not oppose. If they submit a form called a CR-417, and they mark "non-opposition", they do not oppose the petition, and the superior court grants your petition, then you come off the registry. However, there's a third thing that can happen. And that is they do oppose. And if they do oppose, a hearing date is set by the superior court, and if that should happen, one big thing that you should start thinking about considering is hiring an attorney, if of course, the district attorney opposes the petition.

Andy 24:15

And why exactly would you want to hire an attorney? Not that this was the simplest easy thing that you would have to do, but why would you want to hire an attorney?

Chance 24:23

Okay, well, because an attorney can educate the court and effectively argue on your behalf. Integrating statutory and case law, with a current risk assessment, in response to the DA's response in opposition, you need someone who understands exactly what to do, and how to do it, and how to get in court and argue it. That's where the rubber meets the road here.

Andy 24:49

So I know of an attorney in another state, and obviously I did my own registry petition to remove, and the one in the other state that I'm familiar with, he produces this like "War and Peace" sized novel of why you should be removed from the registry. Does an attorney in California go to war with that kind of war chest at their disposal? You're this kind of person, engaged in the community, you've had this kind of employment, for this long, etc., etc. And the evaluations and all that stuff to support the claim?

Chance 25:19

Yeah, of course. It's a brief in response to the DA's response. So you really do have to file a brief. And, you know, it can't be a kitchen-sink type thing. You've got to be right on the mark because what you're doing is educating the bench. You've got to educate the judge to make the right decision. So that brief has to really, really lay out what statutory law says, and what case law says, number one. Because, more often than not, it's misinterpreted, or just absolutely turned upside down by the district attorney who's handling the case. Two: all those things you mentioned really buffer up the case. But in California, one of the most important things is that an attorney will know who to go to, to get you a current risk assessment that the court will respect.

Andy 25:19

Sure.

Chance 25:27

And there is case law that goes part and parcel with that current risk assessment, which will get you, you know, 99.9% over the bridge. So you've got to put all that into that brief, and it's got to be precise, and it's gonna have to have exhibits, and it is what the court initially looks at, before you get into oral argument. And so what you want to do is make sure that you have set the playing field for victory.

Andy 26:47

What kind of pitfalls would there be? Let me backup, most of what you've described here seems to be time-based, just you've checked off these boxes, and it doesn't seem like there's a lot left to be -- I don't know what the right word would be, I don't want to say "interpreted" -- but to be objective. What kind of pitfalls show up that would be subjective?

Chance 27:16

Pitfalls, you mean, in terms of all the things I've outlined here?

Andy 27:21

No, the things that you haven't outlined here, actually. Like you go into court, and the thing that comes out of the corner is that the victim writes a note that says you're a piece of dirt and you shouldn't be removed from the registry, something along those lines?

Chance 27:37

Yeah, I don't think you have to worry too much about that because this is really just a risk assessment. The burden of proof in these hearings is defined by a case called Thai now, in California. And the burden is on the prosecution to show that you pose a current risk. And so your focus is opposing that. A victim who was included in

the underlying case, generally the court can look at the police reports and everything else. But in general, what we're really talking about is: What's happened in between the time you were convicted and the day you appear in court for this hearing? And so, unless you've had an interaction with the victim, and they have a point of view, or you've had interactions with other folks, and they have a point of view, and it is relevant to the proceeding, those things just don't go. What happens in these proceedings, and the thing that people don't really understand when they get into them is that the district attorney wants to sell the facts of the case as if they were brand new, as if they were happening today. And thankfully, due to the Thai case, this is a whole different talk. I think you have to look at the procedural nuts and bolts, different than from a hearing, I think we could spend a whole segment on just the hearing. But to make a long story short, the people generally want to rely on the facts and say they oppose based on those. But, because there is a case in California, and because it's such a wonderful case, and that's the Thai case, which effectively says that they have the burden of proof to show that the person is a \*current\* risk, meaning if they can't get over that burden, then theoretically, you should win every time.

Andy 29:37

In your experience, do they?

Chance 29:40

Do they bring up these facts all the time?

Andy 29:43

Oh, either way. Is there a good chance of success when people do bring it? And how much does the DA oppose it? I guess is the way that would be asked.

Chance 29:57

In my experience, this process started out in 2021 and I've been doing it since then, I have not lost a petition yet. Now, I'm not saying I won't in the future, but so far, based on what I've said so far, if everything is done correctly, if this whole process leading up to the hearing is done correctly, and it goes to hearing, based on statutory and case law, and a current risk assessment, and the fact that a person has remained, basically, with a clean record ...

Andy 30:36

Offense-free.

Chance 30:36

If we look at that, their conduct, and generally I do submit a current risk assessment, that's been a winner every time.

Announcer 30:49

Are you a first-time listener of Registry Matters? Well then, make us a part of your daily routine and subscribe today. Just search for "Registry Matters" through your favorite podcast app, hit the subscribe button, you're off to the races. You can now enjoy hours of sarcasm and snark from Andy and Larry on a weekly basis. Oh, and there's some excellent information thrown in there too. Subscribing also encourages others of You People to get on the bandwagon and become regular Registry Matters listeners. So, what are you waiting for? Subscribe to Registry Matters right now. Help us keep fighting and continue to say F Y P.

Andy 31:37

Very good. Larry, do you have anything that you want to add in?

Larry 31:40

Yes. How are those risk assessments paid for? Because I'm a big believer in having a current one. And I have all sorts of pushback from people. They say, "Well, Larry, you don't understand. I had a risk assessment in 2007." I said, "What do you think I don't understand about it? I understand you had a risk assessment in 2007. The court wants to know where you are today." Who pays for those risk assessments in California?

Chance 32:04

Yeah, well, that's up to the petitioner. Generally, they pay for the risk assessment.

Larry 32:12

Okay, when you said the public defender can do those for people who are eligible, I'm presuming they have to be eligible for public defender services in California. If it's all free for all, nobody would pay for private counsel, hardly. But does the public defender, are they provided, by statute, funding? Or do they have to rob one of their expert funds? The people who are indigent, do they get expertise for a current risk assessment? Or they just kind of have to go with what they had ten years ago?

Chance 32:43

Well, that's a good question, because state law doesn't require that, as far as I can see. And they are set up, and they do represent indigents in these cases. As far as risk assessments go, I don't know how they arrange it. And it may be different for each jurisdiction. But I would say that, if they don't arrange it. It's really not a good idea to go that way if you have something that could be heavily contested through a hearing.

Larry 33:10

So well, I've read the Thai case from the California Court of Appeal and it certainly does emphasize and make abundantly clear that the burden is on the prosecution. But what has troubled me about it -- I don't like petition processes, because of the very things we're talking about right now -- is the mismatched resources that the state has versus the petitioner, and the fact that it's a fairly cumbersome process that one has to go through. I would prefer a timeout method. But that's not an option so certainly this process in California would be preferable to the law that pre-existed, meaning that everyone was on for life. I concede that, I've always conceded that. But I would, if I could design the system myself, I wouldn't design the system the way it is, even though apparently it works better in California. But at the time I was doing my pontifications, the Thai case didn't exist. And the Thai case still doesn't say that the victims can't be heard from. I saw a section I think in California law, I didn't put it into the notes today, but it says also "relevant evidence." Doesn't relevant evidence, could that not include the victim? If the prosecutor wants to read the police report, are you going to be able to win that objection? Say "Objection, Your Honor. We don't need to hear anything about this. This is ancient history." I mean, is the victim completely cut out of the process in California?

Chance 34:25

No, not really. Their participation is in the original reports, and the court surely, because the people always submit the reports, surely reads them. But, you know, as far as the hearing itself, there's a law called Marsy's Law and it allows victims to testify at almost every hearing. But this hearing is a little bit different. And I've had this issue come up where the people, the DA's office, the prosecutor, in particular, who's handling the hearing, wants to bring in victims, and I've argued effectively that Marcy's Law doesn't apply, that this is not that kind of hearing. And that, unless there's been some type of contact, or unless they have relevant information within what I would call "the risk assessment period window," from the time the person's placed on probation until this very day, that their testimony isn't relevant. And every court I've argued that in, has agreed with me.

Larry 35:38

Well, you're on a roll. I'm hoping that the bar makes that argument across the board in terms of keeping the victims out. They don't belong in this civil regulatory process at all. And that's one of the things that causes me to so vehemently object because they're intimately involved in these processes across the country. And they wreck a lot of removal petitions after people have done well, like the guy in Georgia that we talked to had done well, but his train was derailed by victim participation. As far as I'm concerned, they have no role in this civil regulatory scheme, shouldn't have any role, but yet they do. And I find that to be one of the many problems I have with this, but certainly this is better than being on for life, with no way to be off. Absolutely.

Chance 36:20

Absolutely.

Larry 36:22

So, well, I don't have anything else. Do you want to try to take a stab at this next question that is related to California that we carried over from last episode?

Chance 36:35

Sure, sure.

Larry 36:36

Okay, Andy is gonna read this from one of our patrons, that gives us \$36,000 a year.

Chance 36:44

Wow!

Andy 36:46

I'm just saying, Larry, I think I'm pretty privy to the accounting books and there's nobody that does that.

Larry 36:52

Oh, okay. Alright.

Andy 36:53

Well, this is a question for Chance, but it says "Hi, Andy and Larry," so this probably came in before Chance was involving himself with us, with "We People", Larry, there's no more You People, there's We People.

Larry 36:56

Okay.

Chance 36:58

Does that mean small people, like "wee people?" like small?

Andy 37:08

(laughs) No, it's not that kind of Wee People, no. But you know, there was a car named a Yugo, and they made a minivan and it's called a Wego. Badump bump. Alright, that was bad. Alright, "It's me again, I just listened to your latest podcast about Bob and his attempts to get relief from the Georgia registry. That got me motivated again to research some more about this for us in California. I came across this case from "Joisey" (from New Jersey), and I was hoping Larry could take a look at it. In California, certain PFRs were able to file for a "COR" (a certificate of rehabilitation) to get removed from the California registry. My fiancé was eligible to file the petition since his time had elapsed, then came the new tiered registry law, SB384. With this new law, they added that obtaining a COR would no longer relieve one from the registry. Isn't this similar to the New Jersey case in that, prior to the new law, my fiancé would have been eligible to petition off the registry after seven years. But with the new law, this possibility was taken away? And now we have to wait twenty years, as opposed to the old law where it was just after seven years, for his type of offense? Similar to the New Jersey case, this should not apply retroactively, in my opinion. I'm just curious on what you think, Oh, and by the way, FYP.

Chance 38:31

Okay, perfect place to jump off here. I'll try to make my response accurate and short. I think your question is answered in a case called *Doe vs. Harris*. It's a 2013 case, 57 Cal. 4th page 64, where the court held that a plea agreement does not have the effect of insulating a party to the agreement from changes in the law that the legislature has intended to apply to them. I know that sounds like it doesn't even address your issue, but please read that instead of going to the New Jersey case. Go to the *Doe vs. Harris* case because that will cover this issue right here about retroactive application, and in what types of laws move retroactively, and what don't. The bottom line here, that you should understand is that this particular law, Penal Code 290, the tiered registry law, that SB384 modified it, and it's a regulatory scheme so it's administrative in nature. But I don't want to go into the woods with this. Take a look at *Doe vs. Harris* and if you have questions, I will personally invite you to call me and discuss it and I'll point out exactly the salient features of it, and I'd be more than happy to direct you in the right direction.

Andy 40:13

And how would someone call you?

Chance 40:15

My information should be there. You can, of course, always Google me, you can find me at ObersteinLaw.com or you can call my phone number that's probably posted here, which is (949) 365-5842. Any of those ways will work.

Andy 40:36

Very good. Anything to add there, Larry?

Larry 40:40

I tend to agree with Chance, as a general proposition, on everything he said, although I have not read *Doe vs. Harris*. But I would say that if, in a rare circumstance where a person in this state, if it was, if the plea agreement, rather than just doing the admonishment and the appraisal of the duty to register, on those couple of plea agreements I've seen where there was a particular time for registration provided, there's case law (and I'm not near as good as Chance at giving a citation) but there's a case here that holds that when agents of the state make a bargain, that they cannot overturn a judicial order that was issued in agreement with an agent that has the authority to represent the state. So if the state of New Mexico is stupid enough to put into a plea agreement that you will register for a period of ten years, and that was integral to the plea negotiations, you would likely have that ten year period upheld here. But that only happens in such rare cases that it's not gonna be stuff that you're gonna need to worry about very often. As far as your situation there, I think you're sunk.

Chance 41:57

And you know, Larry brings up a really good point too, because there is such a rare case in California, too. It's called *People vs. Arata*. It's a 2007 case that can be found at 151 Cal.App.4th at page 778. And what Larry's talking about is "getting the benefit of the bargain". The thing that distinguishes Arata from Harris is kind of like what Larry was saying, if it's part of the bargain. If clemency, for instance, expungement or dismissal is part of the bargain, it's pretty hard to argue that if the law changes, you lose that benefit. But no one, no one, bargains in California for how much time you do on the registry. It's just not part of it. It's state regulatory law. No one says, "Oh ten years, twenty years, no years." It just doesn't happen in a plea bargain, it's never part of it. So it's a good point, Larry. And that's exactly what happens here.

Andy 41:57

Well, that's not unique to California, that nobody considers the registry when they're taking their plea deals, or going to court, at all. It's just like, holy crap, how much time am I going to spend in prison? That's the only thing anybody's worried about.

Chance 41:57

Well, that generally is the nature of the plea. I mean, everybody understands of course, if you truly understand what you're pleading to, that as a consequence, and as a condition, you're gonna have to register. The plea itself, you know, what's to be expected in the plea, doesn't involve setting the amount of time that you would have to register because a district attorney doesn't have the jurisdiction to do that. It's all regulated by the Department of Justice.

Larry 43:39

Well, I used to say that, very arrogantly and sarcastically, to people who would call me and say, "The judge put in my J and S that I will register for ten years," and I think I've had a total of two presented to me where the judge actually did sign that into the J and S and the prosecutor had initialed or signed off on it. I think I've seen two.

Chance 44:02

What's J and S?

Larry 44:02

That's Judgment and Sentence. So, at that point, it became an order of the court. And it was agreed to by a delegated official that had the authority to negotiate on behalf of the state, but I've seen it only twice. But if Silvia has similar circumstances, perhaps maybe there would be a different outcome, but otherwise, I agree with Chance. It's gonna go exactly the way he says. It's "Too bad, so sad." Yeah, unfortunately, that's what happens.

Andy 44:31

Moving along, then?

Larry 44:32

Let's move along. We got a couple of articles here. We're gonna be able to get to at least one of them, maybe both.

Andy 44:37

Maybe. Do you want to cover them in the order listed, or do you want to switch it around, for the one that you think is "funny"?

Larry 44:43

No, let's just do the death penalty because that's generating a lot of chatter about death penalty for sex crimes.

Andy 44:51

Very good. Well, this first article comes from the Idaho Capital Sun: "The Idaho Legislature's House Judiciary, Rules and Administration Committee introduced a new bill Wednesday afternoon that would allow the state to seek the death penalty for a person convicted of lewd conduct with a minor under twelve. Representative Josh Tanner, a Republican from Eagle, is sponsoring the new bill with the committee's Chairman, Bruce Skaug, Republican from Nampa. If passed into law, the new bill would amend two sections of existing Idaho law to allow a sentence of capital punishment for a person convicted of lewd conduct with a minor under twelve, if there are aggravating circumstances. Existing law allows for a death sentence for first degree murder convictions." Is this a new fad, do you think?

Larry 45:37

Yes, it very much is. Similar bills have been introduced in at least five or six states, and already become law in Florida. So yes, this is.

Andy 45:47

Do you think it will pass?

Larry 45:48

Well, it's passed in Florida, and it definitely will pass in a number of the states, particularly the ones that are more conservative politically. You know, Chance can jump in here about what the Supreme Court of the United States might do, because the death penalty has been eroding in popularity, and previous tribunals of our Supreme Court as it was composed before it took the massive conservative shift that it has now, have been limiting the applicability of the death penalty, even when Scalia was alive. But whether these death penalty statutes will pass the current muster, that's up for grabs. So Chance, do you have any opinion on what this court would do?



Chance 46:32

I agree with you completely. It really is up for grabs there. We're living in a whole different legal environment now.

Andy 46:43

Did I hear something recently that the feds nuked someone recently, for the first time in fifty years or something?

Larry 46:51

No, they've executed people more recently than 50 years ago. They executed Timothy McVeigh. I mean, there's been federal executions.

Andy 46:58

I'm trying to remember what I heard then. Nevermind, just scratch what I just said, continue.

Larry 47:02

So yes, this is a fad. And it will be used as a wedge issue, politically. When the perception has been so eloquently put out there about the ever-escalating crime rate, and particularly these vicious sexual offenses (that are actually in decline). But the myth of the horrible things that are happening to children, this is going to be difficult to kill, particularly in the conservative-leaning states, like I said. Now, if you take a state like Arizona, where it's pending there, you've got a much more evenly-divided legislature there, almost evenly-divided. And you need a supermajority to override, you don't just need a simple majority. You need some greater level of either sixty percent, or two thirds or three quarters, but it's a supermajority needed. So, in Arizona you've got a governor who is opposed to the death penalty. And I do believe this governor would stand with her morals, and I believe she would veto it, if it gets out of the Arizona legislature. And an override would be more difficult in Arizona because there's just not the supermajority there on the Republican side. But in these other states, like in the southeast, where this has been introduced, it's going to be very difficult to stop. I think West Virginia has one pending, there's a number of states where this has been introduced.

Andy 47:03

So what do you think can be done to stop it?

Larry 48:18

Well, there's really nothing you can do to stop the proposals from being introduced. But what can be done to stop them from passing is to vote for people who profess opposition to the death penalty. And if you vote for people who are law-and-order, that say that they believe that it's okay to execute people, you should not be shocked when proposals are introduced and passed.

Andy 48:45

I don't know why I would be shocked if the people that I vote for do the things that I voted for them to do.

Larry 48:48

(laughs) Well, apparently that shocked some of Our People. They say that they're shocked. And I say, "Well, you voted for the person who professed to be the law-and-order candidate. And I don't know why you're shocked when they follow through with what they committed to doing, which was to lock up more people, and seek longer penalties, and tougher enforcement, and more

resources for the cops. What is shocking to you?" But anyway, I guess I'm just not smart enough to figure it out.

Andy 49:20

Clearly, you're not smart enough. You're not looking at the whole picture, Larry. You're just looking at this one narrow little issue.

Larry 49:27

Yes, right. Okay.

Andy 49:30

Let's move over to another article you put in from Alabama. Thomas Owens can't move his arms or legs. So, his likelihood of committing another property crime is low. Yet one member of the Alabama Board of Pardons and Parole still voted last fall that the thirty-four year old quadriplegic man should remain in prison. Board Chair Leigh Gwathney -- that's a bizarre name, G-W-A-T-H-N-E-Y, Gwathney -- alone voted not to parole Owens to a long-term health care facility. But Owens need not take it personally, Gwathney votes against nearly everyone whose case comes before the all-powerful parole board, a board that today serves as the cap on the shaken-up bottle that is the state's troubled, jampacked prison system.

Larry 50:18

Well can you at least, finally, admit this is funny?

Andy 50:22

The guy's a quadriplegic and they won't let him out. Yeah, okay, Larry, that's funny -- No, that's not funny! Sue Bell Cobbs stated, "I am convinced that the public should know that the chairman of the parole board voted to deny the medical parole of a nonviolent offender who is a quadriplegic, completely bedridden, and spends most of the day in a catatonic state.

Larry 50:44

Well, since I don't know what that means, I'm gonna keep going.

Andy 50:49

In a catatonic state, the person's like laying in bed, essentially just like staring at the ceiling, spending all their time in their head. But also probably to the point, and I'm not medical, I'm just going by what I think it means, is that they're not answering requests, they're not talking to anybody. They're not doing anything to be further yet engaged. They're just staring off into space.

Larry 51:07

So, well Sue Bell Cobb went on to say, "I don't know how she sleeps at night," referring to Gwathney. Cobb is the former Alabama Supreme Court Chief Justice. Now, you wouldn't think of any Alabama Supreme Court Justice in recent memory ever being a liberal who today runs a nonprofit that focuses on parole for prisoners with medical conditions. Alabama doesn't grant many of those either. And yet Owens squeaked by. On a two-to-one vote, Owens, who was serving twelve years after pleading guilty to burglary, ID theft, and receiving stolen property, was granted medical parole.

Andy 51:50

He became the rare exception for a board that last year granted just eight percent of paroles. According to the board's data, in

fiscal year 2023, there were 3,583 parole hearings. Just 297 were granted. And this is just hearings, Larry. That's despite the parole Board's own guidelines suggesting that more than 80% of the prisoners should qualify for a second chance. The board even rejected all ten people over 80! Octogenarians who were up for parole in 2023. These are your contemporaries, Larry.

Larry 52:24

I see, but it wasn't always this way, according to the article. Just five years ago, more than half of those who had a parole hearing were granted release. Now remember we're at 8% right now. But things changed in 2019 when Gwathney took over. At the same time paroles began to slow to a trickle, the entire prison system ran into a major crisis. The U.S. Department of Justice sued in 2020. Now remember, this is under the Trump administration, not known for being liberal, arguing that the Alabama prisons were overcrowded and understaffed, leading to so much death and violence and rape, that they failed to meet constitutional safeguards against cruel and unusual punishment.

Andy 53:06

Isn't this the same place that we covered, the big war that went on in the prison? Was that Alabama or Mississippi? I always get them confused.

Larry 53:14

Well, I know we've covered Alabama and Mississippi a lot in the last few years.

Andy 53:20

I remember we even played a video from it. And the conditions were just -- there's black mold growing in the prison cells.

Larry 53:28

Yeah, the prisons in the deep south are very hard. I mean, California is no panacea because they were grossly overcrowded, but they had one of those damn liberal judges come in there and force their hand, some number of years ago, but anyway, keep going.

Andy 53:43

Yup yup yup. At the end of last year, according to the state corrections report, there were about 20,000 inmates packed into spaces built for just 12,000. In 2021, the feds updated the suit, saying that the murder rate in Alabama prisons soared past the national average, that the buildings were crumbling, that there weren't nearly enough guards, that rapes and extortion were rampant, and that Alabama appeared uncooperative.

Larry 54:07

Now, doesn't that shock you, Andy, that Alabama would be uncooperative?

Andy 55:32

(laughs) Completely.

Larry 56:12

Now, before I get into what was scripted, when you talk about a prison system running above capacity, it's not as simple as it seems to the naked eye. If it's designed for 12,000, you really don't need anywhere near 12,000 in it. You need far less than that.

Because within that 12,000 you've got theoretical space, but you have problems. So it's meeting the theoretical occupancy standard, because you have security concerns with people, there may be a person who needs to be isolated. You may need more cells in a security level that are not matched with your inmate population. And you have a mismatch of available space. So you end up having to put people in the incorrect security classification, because you've got more "bad boys", and you have more low security space, you know. So, there's no magic formula. And then when you're running something at 100% or more capacity which, I'm not a mathematician, but 20,000 is well more than 100% of 12,000, I can figure that out, you know, it's just doubled. When you run something at capacity, you're running a continuous stress on all the systems in the prison, because everything is running 24 hours a day, from laundry, to cooking services, if you're trying to prepare meals for twice as many people as the prison's designed for, everything in that prison is under a fair amount of stress, including the staff. Because you have office space, they built that place to have office space, and administrative space for a certain number of people. So all those people on the outside that have no idea how prisons operate, they don't realize, if you have space for 12,000, you probably ought to be running about 10,000 to be able to effectively manage that population. So anyway, they're twice where they should be. But "The United States Department of Justice has determined that constitutional compliance cannot be secured by voluntary means," wrote the Justice Department. The case is speeding towards a high-stakes trial this Fall.

Andy 56:12

The article asks, "So how did a troubled state penal system, one short on beds and guards, decide that the best way forward was to keep the most number of people behind bars, as long as possible?"

Larry 56:12

Well, that's not hard to figure out how that happened. Public attitude in Alabama is one of the factors. Well, you're in Alabama. Hey Chance, have you ever been to Alabama? Do you know actually how bad it is?

Chance 56:48

Yeah. Yes.

Larry 56:49

The public attitudes. But according to the article, another is because the hearings are open to the public, inmates don't get to attend, and often there are no advocates to speak for either side. Each hearing lasts just minutes. If someone does speak, a small timer sits on a podium, ticking down the two minutes allotted to family or friends to make their case. The state and victims advocacy groups usually speak in opposition, when someone supports the release of the inmate.

Andy 56:49

I have a question towards Chance. When I first got locked up, and started listening to mountains and mountains of radio, is when I learned of the overcrowding in California prisons. And I think that they said it was unconstitutional that the treatment was going on in California in roughly '08 or '09 timeframe.

Chance 57:39

Oh, yeah. As a matter of fact, the interesting part of what Larry's saying and what you're asking, is California's solution to that was to have 24-hour prison, which means half the population sleeps during the night, and half sleeps during the day, so that you can make use of the thing 24 hours a day. I mean, think about that!

Andy 57:50

(laughs) They could "hot-rack it", like they do in a submarine!

Chance 58:07

Exactly. And what you're talking about, the same conditions exist in every prison, all over the United States, but some are worse than others. And this Alabama situation sounds pretty bleak.

Andy 58:26

That does sound pretty bleak. So, it just feels that you could then classify people that did some really bad check-kiting kind of things that got them into prison, which probably doesn't exist, but you did some really bad check writing. And you're in prison, that you could let that person go home and don't let them have a checkbook. It seems like you could make those determinations. Not everybody is in there for rape and murder, that you could find those people that you could let go home, and put them on parole and probation.

Larry 58:50

Well you could! That's what the article made reference to. Five years ago, they were letting half the people have early release. But the citizens down in Alabama have been petrified because we're being told, if you watch what's coming out of candidates for office, they're telling us how bad crime is, even though it's not that bad compared to what elevated crime rates we had in the 70's and 80's. But they're telling us that this is the most dangerous, precarious times we've ever lived in. And that translates to public desire to see harsher penalties because what we're doing is not working. And Alabama is not the most sophisticated state in the country.

Andy 58:53

That's a shocker, too.

Larry 59:29

Yeah, so it doesn't take much to dupe the people there. And so they want the people they elect to be tough. Now you have these little "pockets" of liberalism, maybe in Birmingham, maybe Montgomery, maybe where their college or university dominates in the community. But Alabama, as a whole, is so conservative, and so far off the charts, that the people want this harsh treatment. And they don't give a damn about what people are living like in prison. Their answer is, "Well, they should've thought about that before they got themselves into trouble."

Andy 1:00:03

Can't do the time? Don't do the crime.

Larry 1:00:05

That's exactly what the average Alabamian would say.

Andy 1:00:09

Ah, all right, then. Well, as usual, Dr. Doom comes to the rescue, some positive news for us at the end of the show.

Larry 1:00:21

I'm glad I could help.

Andy 1:00:22

Thank you very much. I appreciate that. Is there anything else, gentlemen, before we head on out here?

Chance 1:00:27

No, thank you very much for having me on.

Andy 1:00:30

Tell me that phone number again Chance?

Chance 1:00:32

It is (949) 365-5842.

Andy 1:00:37

Fantastic. Larry, anything before we go?

Larry 1:00:40

I'm looking forward to having an easy episode next week. We're going to do some fun stuff. But we haven't put it all together yet. So you'll just have to join us next week to find out.

Andy 1:00:49

Well, do me a quick thing. Tell me why you're so busy all of a sudden?

Larry 1:00:54

The legislature is in session.

Andy 1:00:57

And why, like okay, sooo??

Larry 1:01:00

Well, I \*work\* in the legislature.

Andy 1:01:02

And do you have any specific targets that you could talk about?

Larry 1:01:07

Well, I'm dealing with criminal justice issues, including a registration bill that's going to soon be introduced in the next two or three days.

Andy 1:01:15

No tow-trucking bills?

Larry 1:01:17

No trucking bills, no.

Andy 1:01:19

Tow-trucking. You had a tow-truck bill?

Larry 1:01:22

No, no tow-truck bills that I'm aware of ... this year.

Andy 1:01:26  
(laughs) All right, well, there's a funny story there, Chance, uh we can we can get to that at some other point, I suppose.

Larry 1:01:34  
It was definitely funny.

Andy 1:01:37  
Find all the show notes over at [registrymatters.co](http://registrymatters.co) and leave voicemail at (747) 227-4477, [RegistryMattersCast@gmail.com](mailto:RegistryMattersCast@gmail.com) if you want me to forward a message over to Larry, I will probably read it too. And then of course if you go over to [patreon.com/registrymatters](https://patreon.com/registrymatters) to support the program, for as little as \$1 a month, but you could go to a much higher, like Larry's said and \$36,000 a year (whispers: that doesn't exist) but you could do it, if you really were so motivated to.

Larry 1:02:02  
Yeah, it is tax deductible! You never tell people that! We're a 501(c)(3).

Andy 1:02:10  
I do forget about that. We are a nonprofit, like registered and legit, and all those other things.

Larry 1:02:16

So, when you're giving to these other organizations, like the Chance Oberstein Law Firm, that's not tax deductible, but we are!

Chance 1:02:26  
Rats!

Andy 1:02:28  
Fantastic. Well, thank you, gentlemen, very much for joining this evening and I will talk to you all soon. Have a great night.

Chance 1:02:34  
You too, thank you.

Larry 1:02:35  
Good night.

Announcer 1:02:45

You've been listening to F Y P.

**You've been listening to Registry Matters Podcast.**

**Registry Matters Podcast is a production of FYP Education.**

---

More show transcripts are available at <https://RegistryMatters.co> (that's right... just C O with no M)

In prison and can't get the podcast? Have a loved one "subscribe" at <https://patreon.com/registrymatters> at the **\$15 level**, and include your prison address information. Or send a check to cover at least 3 months.

## REGISTRY MATTERS MAIL-IN SUBSCRIPTION FORM

Sign me up for \_\_\_\_\_ months X \$6 = \$ \_\_\_\_\_  
(Minimum 3 months) \* **We do accept books or sheets of stamps. No singles please.**

\_\_\_\_\_  
First Name

\_\_\_\_\_  
Last Name

\_\_\_\_\_  
Name of Institution

\_\_\_\_\_  
ID Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

**Make check payable to FYP Education and send to RM Podcast,  
Post Office Box 36123, Albuquerque, NM 87176**