



## Registry Matters Podcast

Episode 298

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Announcer 00:00

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Andy 00:17

Recording live from FYP Studios east and west, in a thunderstorm even, transmitting across the Internet. This is Episode 298 of Registry Matters. Good evening, Larry. Have you found your alter ego yet? Oh, all right then. Well, hey, so just remember, as always, make sure you go over and press Like & Subscribe on YouTube, five-star rating, you know, the whole drill. It helps out a lot. And then, of course, you can always be super-special and generous and go over to Patreon, because we do have a new Patreon supporter this week, and I think that's all we got. Make sure you subscribe in your favorite podcast app, because those are the numbers I keep track of. Larry likes to watch the YouTube stuff.

Andy 00:55

So what are we doing tonight?

Larry 01:00

Not very much.

Andy 01:01

Okay, good night.

Chance 01:03

Good night.

Andy 01:05

Take care, everybody.

Chance 01:07

Let's welcome Chance back to the program and have a big round of applause. He's been out of the country.

Chance 01:14

Thank you. Thank you. (Andy claps)

Larry 01:16

He was hit with COVID. Glad to have Mr. Oberstein back. We're planning to take it easy and not be as hard-nosed tonight, hopefully, since it's Easter weekend. Do you have any mercy on Easter weekend, Andy? Do you have any mercy on us?

Andy 01:31

I don't, no. This is a normal, like, only the kids are off. My kid asked me about this. He's like, "Dad, what about spring

break?" I was like, "Man, that's only for people in school. After that, maybe you get a three, possibly four-day weekend. Nobody else gets spring break. So no. Neither for you, sir."

Larry 01:47

All right, well, I've got some articles to cover that we've been putting off. And Chance has some news from California about registration. Also, we were talking about, I guess Chance was bored and listened to the damn episode last week, and he's got some questions about that episode. So before we get too deep into it, we're going to do those questions and see what has got him so discombobulated. Were you discombobulated or was that an overstatement?

Chance 02:17

No, no, no, I was discombobulated. I was listening to last week's podcast and the discussion about the case from Illinois, it was fascinating. I'd like to pose a few of my own questions, if you don't mind.

Andy 02:29

Wait a minute! The lawyer is going to ask *you* questions, Larry? I didn't think that's why we had an attorney on.

Larry 02:36

Well, I'm thinking that he's going to rip me apart for what I said. I would never object to your questions unless I don't like them after I hear what they are.

Chance 02:48

Okay, well, with that caveat, not only did I listen, but I read the podcast transcript because the case was fascinating to me because pro se litigants are often flushed, and not taken seriously.

Larry 03:02

Well, that is generally true. Why is that anyway?

Chance 03:06

Well, I think there's a number of reasons, mostly due to lack of knowledge. But judicial bias and lawyer tricks add another layer of peril. You know, lawyers know how to avoid default judgments, dismissals, and summary judgments. Pro se litigants rarely do. Lawyers skillfully handle pro se opposition. Most pro se litigants don't handle lawyers, or their own cases with the skills needed to come out on top. So, in the end, most pro se litigants lose, and they do so very quickly.

Larry 03:34

Is that what's got you all fascinated? Because he has survived this. He's had now *two* reviews by the Illinois

Supreme Court, and he's still in the ballgame. He's still living.

Chance 03:50

Well, you know, yeah, that piqued my interest. Even though I've not read the opinion in its entirety, it's a very lengthy opinion, which means that they took the case seriously. Kopf had relied on law enforcement's approval of, and he had registered his address as required. Later in 2018, the Hampshire Police Department informed Kopf that a daycare home was opening within 500 feet of his residence and pursuant to the residency restriction, he was required to move from his residence. I can certainly understand his frustration.

Larry 04:32

Well, I have a question for you. Is this going to turn you upside down? Since you had questions for me, I've got a question for you. After the first limited remand, as I understand it, the circuit court was given the case again and, at a status hearing, according to this opinion, the state defendants had proposed submitting stipulated facts or, if the parties could not agree to those facts, proceeding to an evidentiary hearing. The Supreme Court's opinion stated that Kopf objected. Kopf argued that this court's (being the Supreme Court's) limited remand order did not allow for an evidentiary hearing. So, since evidence is needed to declare a statute unconstitutional, can you think of any sound and viable legal strategy that would explain why Kopf or anybody would object to an evidentiary hearing?

Chance 05:29

Frankly, I can't. But I'd love to hear his reasoning!

Larry 05:33

Well, we're planning on doing just that. He's going to be here in the coming weeks. Andy's been working 80 and 90 hours a week, and we had a lot of stuff to set up for this, and we weren't even planning on getting into this, really, today, But we're planning on having him on to talk about this case, this whole endeavor, this long ordeal at some point.

Chance 05:54

I'm looking forward to it.

Andy 05:56

I have a couple questions, if I can.

Larry 05:59

Sure.

Andy 06:00

It's back to the pro se part. So back when I got my first college degree, we went through, I can't remember what it

was, but they talked about "common law." And I am under the impression that our legal system, being based off of – what is it called? – something that we kind of inherited and then expanded on? But it's supposed to be a legal system that the "common human" can understand. Yet both of you are saying that mere mortals are just not really equipped to do it. But I thought that was sort of like the intent.

Chance 06:35

Common law ain't so common. (Andy laughs) I mean, you know, what can I tell you? You know, yes. Yes, the basis of it goes back to that. But, like any cottage industry, it's grown, and it's grown its own language in about maybe 18 forms. It's very complex and difficult.

Andy 07:02

You know, when Larry goes over these cases and digs into, and we're harping over the word "shall" or "may", and that has a significant impact on how things go. And the casual observer wouldn't give a poop about whether it says shall or may. But there's a very distinct difference in the legal vocabulary of that word alone.

Chance 07:26

Oh, absolutely.

Larry 07:28

I think I can explain it in a way that you can understand a little bit better. If you took a doctor from one of the best trained medical schools in the country, pick your best trained medical school from 1930, and you resurrected that doctor from the dead and put them in today's medicine. The complexity of medicine has changed so dramatically since 1930, from that little black pouch that you saw on Gunsmoke, making house calls? And the same thing's happened in the law. When you say "an evolving body of case law" and jurisprudence, as it evolves, the complexity of what we're talking about and the issues that we're looking at today are far more complicated than they were. A Supreme Court justice, if you resurrected them from the dead from 1860, they would have no idea of what's happening today, because things, life, has changed so dramatically. So that would be part of it.

Larry 08:27

And I think there's a self-serving part of the legal profession. They do not want "pro se" people out here doing this, even if it weren't complicated, because it's kind of like any other profession, whether it be bricklayers or whoever, they push for licensure. The profession itself will come to the legislature and say, "We don't need people doing this without a license. This is *highly* complicated stuff, and people could get hurt. We need to license these people." So, it's the profession asking that we adopt licensure. It's not lawmakers spending all night with nothing but boredom

on their hands, trying to think of new licensing requirements. It's usually the industry itself asking for that.

Larry 09:10

But all right, so let's get going. Andy asked me last week (and he rolled his eyes and he didn't think I saw it) but he asked me to define the difference between "facial" and "as applied" constitutional challenges. And I stated "A party raising a facial challenge must establish that the statute is unconstitutional under **any** possible set of facts, while an as-applied challenge requires a showing that the statute is unconstitutional as applied to the **specific** facts and circumstances of the challenging party." Did I get that succinctly, or do you disagree with that definition?

Chance 09:43

No, no, I agree. I noticed in the podcast transcript, the court stated, "By definition, an as-applied constitutional challenge is dependent on particular circumstances and facts of the individual defendant or petitioner. Therefore, it is paramount that the record be sufficiently developed in terms of those facts and circumstances for purposes of appellate review."

Larry 10:08

Well, I'm glad you zeroed in on that. I had prepared some notes because this case is fascinating. The court also stated, "A court is not capable of making an as-applied determination of unconstitutionality when there's been no evidentiary hearing and no findings of facts. Without an evidentiary record, any finding that a statute is unconstitutional as-applied is *premature*." Do you concur?

Chance 10:33

Oh, absolutely, I do.

Larry 10:35

Well, the defendants argued that Kopf abandoned his as-applied challenges because he objected to an evidentiary hearing during the limited remand from the Illinois Supreme Court. They did not accept that argument, fortunately. In my opinion, going forward from this point, Kopf should expend all of his energy preparing for the evidentiary hearing. He needs to prove his case. Do you agree with that?

Chance 11:03

Well, you know, that would be my suggestion, unless he wants all his efforts to go for naught. And he has to be able to handle this blatant judicial "hint", (laughs) as I would call it, that a court is not capable of making as-applied determination of unconstitutionality when there has been no evidentiary hearing, and no findings of fact. Or he can end up, as many pro se litigants do in the end, as I've said before, losing very quickly.

Larry 11:29

Well, I've spoken to Mr. Kopf, after last week's episode and he's indicated he's considering asking the Illinois Supreme Court to reconsider their opinion. I see significant risk if he were to follow through with that strategy. Am I smoking wacky weed or do you see any risk yourself?

Chance 11:49

Well, I do. I mean, you know, it may give the court a chance to clarify its opinion to Mister Kopf's detriment! I just would be very, very wary of this strategy. I don't think I'd go that way.

Larry 12:02

Well, so I **am** smoking wacky weed, but at least it hasn't impaired my thinking.

Andy 12:07

(laughs) I was going to say, you're probably doing that anyway, but that's not relevant to the question here.

Larry 12:07

Well, when you ask a Supreme Court, be it the U.S. Supreme Court or a state Supreme Court, they're mostly accountable to themselves, and in some cases they're accountable to the electors of the state. But they're largely accountable only to themselves. So therefore, if they decide to *expand* the scope of what you ask them in a post-proceeding motion, you run the risk that they might give you something that you do not want. I mean, they could give you something good, but the risk is too great, in my opinion, that they could give you something that you do not want. If they're trying to make this case go away — if that's their sinister motivation — and he asked for reconsideration ... Anybody asking for reconsideration is running the risk that they might sharpen the blade and put additional limitations on you.

Larry 13:01

And you would say, "Well, Larry, that's just not right. How can they make the opinion worse?" Well, because they're the Supreme Court, and they can do whatever they want to do. That's how they can do it.

Chance 13:13

Especially when you're coming with empty hands. You know, you're asking them to reconsider what you've already submitted. It's just clearly not a good idea.

Larry 13:24

Well, expand on that because I think, you know, my thought process would be that, if it was a narrowly divided court (say it was a five to four, or a four to three) I would think that it might not be *quite* as risky. There would still be risk,

but if you could sway *one*, you could flip that majority the other way. But would you see the risk if, say it was a sharply divided court, almost *even*, would you see it as equally risky? Or am I smoking crack on that one? Is it still a dangerous move?

Chance 13:58

I think it's still a dangerous move because there's always the chance that it can be re-thought-through, and you can lose your advantage. If an evidentiary hearing is what's recommended, and what is necessary, and what you need to do, then when you come back, you come back with a much more fortified position, especially if that evidentiary hearing is going your way, it's favorable. You know, you could only come back in a better way. You don't want to flip a coin! I mean, let's face it, you know, unpredictability is what you want to avoid completely in litigation. You want to be able to go forward with some idea of where it's all going to lead to, and how to achieve your victory. It's just plain common sense.

Larry 14:56

Well, I remember a case I was working on with an attorney on a constitutional challenge, and I don't think I even want to sharpen down on what state it was, but it was on the east coast, in the eastern part of the country, and they had won a favorable decision. The lead attorney wanted to ask for reconsideration on a victory. I said, "You do not want to do that!" She needed something clarified. I said, "You don't want that!" (laughs) And she says, "Why not?" I said, "Well, you had a justice sitting by special designation and, on a reconsideration, what if it's a different justice there to do the reconsideration? What if that same justice sitting there by special designation has been disowned by his wife because of voting in favor of the PFRs?" I said, "You do not want to do that. This decision is plenty clear! We won, and it doesn't need to be clarified any further." I didn't see anything complicated about that, but I got pushback on that. You never want to take a victory and possibly turn it into a defeat!

Chance 16:05

Exactly right. Exactly right.

Larry 16:08

So, all right, well, anyway, we're going to have this Kopf case come back in the coming weeks. He's got a lot of work to do. If he doesn't go the reconsideration route, then he's got a lot of work to do preparing for the evidentiary hearing. I would recommend that he get representation, that he reach out to organizations such as NARSOL and find out if there's any assistance they can provide. He has survived amazingly. Let's get to the finish line with a victory, a clear victory.

Chance 16:40

Yeah, he's done very, very well, and I think that's a great suggestion.

Larry 16:45

All right, well, you've got some kind of stuff here, new news from California?

Chance 16:50

The California Corner! What happened in California this week? Let's see here. As per an alert, according to ACSOL's executive director, Janice Bellucci, the California Department of Justice has agreed to reduce tier assignments for individuals convicted of an **attempted** offense. In the past, the California Department of Justice assigned those people to the same tier as if they had **completed** their offense. As a result, thousands of registrants became ineligible to petition for removal from the registry, mostly because, if their offense landed on tier three, so did their attempted offense. That agreement has been formalized in an order issued by a Los Angeles Superior court judge this week. The question is, why did it happen? Well, the California Department of Justice was sued. That's why it happened.

Chance 17:51

They were sued for requiring that attempt crimes be given the same tier as their corresponding completed offenses. Makes no sense at all, defies rationality. The Department of Justice could not achieve the summary judgment in the case because the court reasoned that, and this is really important because it's something that's just so clear and unequivocal. (1) "Attempt" is defined as "an inchoate or incomplete crime," where an individual with the intent to actually commit a crime undertakes an action in furtherance of the crime, but ultimately fails to complete the crime. (2) Punishments for attempts are typically **less** severe than the punishment would be had the crime been completed. And so (3) the California legislature's omission to require that attempt crimes be given the **same** tier as their corresponding completed offenses is effectively a legislative determination that the risk to the public presented by persons convicted of such attempts does not rise to a level that requires lifetime registration. I mean, if you look at this, it just makes perfect sense.

Chance 19:01

And if you really want to see good coverage of it, read *People vs. Marinelli*, which is based on a case called *People vs. Lewis*. But Marinelli, which was decided in 2014, and you can find it at (2014) 225 Cal.App.4th 1 which deals with California's dismissal statute 1203.4 and relief for attempted crimes, and that really breaks it down beautifully. That was the whole idea behind the court denying summary judgment to the DOJ. What does all this

actually mean? Where we really are going with this is that the California DOJ agreed to change its policy rather than litigate the issue.

Chance 19:46

What happened is they got caught up in the suit and, after a couple of **years**, it hit them (with this opinion) that perhaps their policy is just plain wrong. But it's still unclear which particular offenses will be affected, and how the policy change will be implemented, because we have no idea how they do this. We don't know, we have no idea what their policies are because they're not published. We don't know how that all works. But in general, this is a good bug fix to the California tiered registry, *if* it's applied consistently, which means for all crimes up in tier three, all attempts should be dropped down, and my understanding is they should go to tier *one*.

Chance 20:37

And so that is something that has come up this week. It's a good step forward, but it's unclear how it's all going to work and how it's going to be applied. Hopefully it will be consistent and hopefully those attempts will drop down to tier one and a lot of people will get good relief.

Larry 20:58

Well, I've got some questions. I think I understand it, but an attempt normally drops the sentence by one level, at least in the states where I've done my years of Unauthorized Practice of Law, so if you are saying it would drop it from a three to *one* — I know this is for registration purposes in a civil regulatory scheme — but isn't that inconsistent with what you normally get? Wouldn't an attempt drop something just one offense level? Wouldn't a viable argument be made that it would drop it down to a tier two (which would still be better than a tier three because you would be able to petition after 25, 20 or whatever the term is) but how do you come up with a tier one from a tier three?

Chance 21:44

I really wish I knew, but I don't. Because, again, we don't have the policy manual from the Department of Justice. I believe the *agreement* was that attempts will be dropped down to tier one, but I can't actually say that that's what they're going to do because, until they do it, we won't know for sure. Could be one. But, you know, again, we're going to have to wait to see how this comes out. But I think the general idea is that it's going to be dropped to tier one. I don't know what the rationale for that is, other than, it's an incomplete crime, and tier two is still a 20-year wait on an incomplete crime. I think the rationale probably is, because it's an incomplete crime, it really deserves tier one, 10-year treatment.

Larry 22:32

Well, I agree with it. And the reason why I posed the question is because we're working on a bill for this upcoming legislative session in my state, and I wanted to know how to combat that argument, because I'm going to make the same argument. Attempts are always a problem, in terms of how to treat those who have pled to a lesser charge of an attempt. Then what really gets on my nerves is we don't even register conspiracies here, and the state is insisting that that be a part of the negotiations, because they want to get conspiracy on the list of registerable offenses. I need this discussion here to help me figure out how to combat the argument. You just gave me what I need. An attempt is an incomplete crime. Therefore, if they didn't actually facilitate the completion of the crime, they're not as risky. Now they're going to come back and say, "Well, the only reason they stopped is because we caught them. That's why it was only an attempt."

Larry 23:25

But anyway, that gives me something to work with. Then what would I say about conspiracies? Because that's also on the list for AWA compliance, is you have to register conspiracies.

Chance 23:36

That's interesting. But I would say, as a good primer for your arguments, take a look at *People vs. Marinelli* and, in particular, also look at *People vs. Lewis*, 146 Cal.App.4th 294. There's also going to be a reference to Lewis, which is the basis for Marinelli. Excellent discussions and plenty of food for thought on how you might approach this.

Larry 24:05

I'm trying to figure out a way to give people the possibility of getting off the registry here, and I'm trying to do it in a way that we don't have this silly petition process that I detest. But if it comes to that, I would rather have that than nothing at all. I want people to just fall off the registry when their time is up. The only way I'd want a petition process would be if you got off earlier than the prescribed time. If you're going to put the rigid tiers in effect, where they have to do 15, 25 years, and then you could give them the five years reduction on the tier ones. If you're going to make them do the 10 years or the 25 years, why the heck should you have to spend money to file a petition, when you've done all that the big old bad federal government requires? There's no need to have a petition process. I'm trying to work it where there's just an automatic termination of registry obligations.

Chance 25:01

Yeah, I think that you're thinking there is correct. In California, because it's a risk-based system, or at least theoretically it's a risk-based system, there are people on

tier two and tier one who may have other things going on with them in terms of things associated with risk, that might come up during the petition process that might cause the court to say, "Look, I think they should continue to register at least for another x number of years, based on community safety standards." So this is built into this tier analysis when it comes to petitioning. I'm not saying that a lot of these go to hearing, because once you look at what the backgrounds are on the eligibility and everything else, some of these are very effectively dealt with without a hearing. But it's there, and there are hearings. It's just kind of baked into the whole scheme here, and that's why we're kind of Stuck Like Chuck with it.

Larry 26:18

Well, with this lawsuit, was there an organization supporting it? How did it come about?

Chance 26:26

I'm not completely sure if it was sponsored through ACSOL or Janice Bellucci did it independently, but it certainly was promulgated through that organization.

Larry 26:40

Well, then we need to give kudos to ACSOL for doing something that's going to help the PFR population in California.

Chance 26:51

Kudos. Kudos!

Announcer 26:55

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Andy 27:46

All right, well there is a question that got posted from one of our patrons and it goes as such, "I hope this message finds you well." and he addressed it to Larry, Andy, and Chance, "As someone deeply invested in the real estate sector and passionate about providing quality housing, I've encountered a unique challenge that I believe you, Larry, with your extensive landlord experience, might shed some light on. Recently, I embarked on a project aimed at addressing the housing needs of a specific group in our community, commonly referred to as PFRs. Recognizing the

scarcity of accommodations that cater to their requirements, I explored the possibility of purchasing an eight-unit apartment complex specifically for them. The intent was to create a safe, structured living environment, mirroring the regulations of a successfully managed property nearby. These regulations include: no women, no children, no drugs or alcohol on the premises, and a curfew of 8 p.m. There's also mandatory employment and also attendance at meetings," which he didn't specify but let's just assume that they're the PFR-type treatment meeting things. "Despite securing an appropriate location and initiating collaborations with another group of PFRs, I've been met with resistance! The feedback ranged from skepticism to outright dissatisfaction, likening the proposed rules to those of prison. It's disheartening, especially considering the effort to offer a viable solution to their housing dilemma. The director of the other property, who is contemplating winding down operations due to similar challenges, and the increasingly entitled behavior of PFRs, shared these insights.

Andy 29:25

"The constraints, particularly concerning alcohol and visitors, were initially established in response to disruptive behaviors traced back to the late nineties. These rules weren't arbitrary, but borne out of necessity to maintain a peaceful and safe environment. Reflecting on this, I can't help but wonder about the broader issue at hand. Why is it so challenging to provide housing for PFRs that meet both their needs and the community's standards? And more importantly, Larry, given your background, do you have any advice or suggestions on how to navigate this complex situation? How can we better communicate the benefits of such structured living arrangements to potential residents? Your insights would be of value to me as we strive to make a positive impact on our community throughout thoughtful and inclusive housing situations. Thank you for the podcast and FYP. Best, Ethan" So he's gonna go buy, I mean, an eight-unit property? Even in Iowa, I think is where this person is, I mean, that's still a good chunk of change!

Andy 30:31

It's not like he's going to shell out \$50,000. I mean, this could be three or four, \$500,000 depending. And he's setting it up just so that PFRs could – it would be within whatever the restrictions are in Iowa of a thousand feet this or that, and get it arranged with the handlers to provide it, knowing that they're going to be PFRs here and they're like, "Oh, we don't want to live there because you said no women and no alcohol and a curfew. Seriously?? I'd take it.

Larry 31:02

He's describing more of a halfway house than he is an apartment complex.

Andy 31:06

I won't disagree with you there.

Larry 31:08

Well, the type of structure and the cost of running something like that is significant because you need staff. Rules are great, except if you don't have any monitoring or enforcement, they're just worthless posters on a wall somewhere. If you're going to have no women, no children, no drugs or alcohol on the premises, a curfew at 8 p.m., mandatory employment, and attendance at meetings, well, let's just think about that. How would you monitor that? The only way you could check for drugs or alcohol would be to do drug tests and routine searches of the person's dwelling, right? That's the only way you'd know.

Andy 31:44

That seems reasonable.

Larry 31:45

And no women seems a little bit sexist. That would imply that only men would be rented to, right?

Andy 31:54

That seems kind of obvious. Maybe, yeah. I mean, I get where you're going with all that, but still, like, when I first got out of prison, I needed a place to go. So, like, I was told, "Maybe this hotel would be okay." I'm assuming that this guy's property would be cheaper than the \$250 I was spending per week at the hotel, which sometimes meant \$1,000 a month just for a freaking hotel room.

Larry 32:18

With the type of programmatic requirements he's talking about here, it wouldn't be any cheaper. It'd be more because you would need 24-hour staffing to do this. You would need caseworkers. How would you, if you have attendance at meetings and mandatory employment? Well, I mean, you can say, "You have to work," but if you come out of prison, you likely don't have a job, which means you have to engage in a job search. Someone has to monitor that, right?

Andy 32:46

Reasonable, assuming if you got to pay rent on the first, then if you don't pay rent, then you're probably not working.

Larry 32:53

What he's talking about really is a "program" environment rather than just an apartment complex. If he tries to do this without getting buy-in from the local municipalities, they are going to zone him out of business. That's what they're going to do. Public pressure without public buy-in is going to shut him down. He'll be spending money for eight units

that he will find he's not able to be used for the purpose he intends. That doesn't mean he can't use his eight units, but he won't be able to use them for this, because they will pass a local ordinance. Unless Iowa has a prohibition against any locally-imposed restrictions, they will pass ordinances that will forbid PFRs from congregating.

Andy 33:40

Right.

Larry 33:41

And they will do mass media stories. They will coax and harp to the media. All these anonymous tips will go to the nearest television market about how horrible this is. "This person's got an apartment complex that's filled with sex offenders." If I were going to give him any advice, I would give him the advice to go, before he invests, to try to get buy-in for a **program** of reintegration of PFRs, and that's going to be a tough one to do. Because when you approach a city council, or a city attorney's office, or a mayor's office, nobody's gonna wanna touch this, so he's got a lot of work to do. If I were going to do something like this, I would try to present it as a program, like a halfway house, a reintegration center where "we can keep this community safer by having a program rather than just having these people under bridges and out pushing shopping carts."

Andy 34:38

This individual has also talked about having single unit places and the PFRs are giving an equal amount of pushback just like when you're renting a house or an apartment from someone. You have to pay your bills, you have to meet the standards that the landlord has set up for you. And they're pushing back on that and not complying. Which I'm like, "Well, kick them out!" But PFRs consistently have housing problems. And here's someone that's trying to help him out and they're showing him some kind of grief and attitude about it.

Larry 35:12

And it's only going to get worse.

Andy 35:16

So, very good!

Larry 35:18

Okay. Now you know why I run off so many listeners?

Andy 35:21

I do!

Larry 35:24

So now, Ethan, I just saw a flash came through. He canceled his patron.

Andy 35:29

Yes, I saw that as well, Larry. (laughs) All right. Are we ready to move on to these handful of articles?

Larry 35:35

Yes, we've got this old one from the Ninth Circuit. It's so old, I don't even know if we want to still talk about it. But it's in here.

Andy 35:42

That case is almost two months old!

Larry 35:45

Yes.

Chance 35:45

Oh, no.

Larry 35:47

It has to do with pretrial attorneys, and I hate anything that erodes our opportunity to defend our clients. So I just couldn't help myself. If you and Chance want to do it, we can do it. If not, we can skip it and go into the next one.

Chance 36:01

Yeah, let's give it a shot.

Andy 36:04

Okay. So this is from Court Service News [<https://www.courthousenews.com/ninth-circuit-considers-reviving-law-regulating-defense-attorneys-access-to-victims/>] and it says, "The Ninth Circuit considers reviving the law regulating defense attorneys' access to victims: The state of Arizona defended, before a Ninth Circuit panel recently, a law that prohibits criminal defense attorneys from contacting victims without going through the prosecutor's office. A federal judge overturned a law in 2022, in a lawsuit filed by Arizona Attorneys for Criminal Justice, a statewide nonprofit made up of defense attorneys, law students and other associated professionals. The group says the law — which requires that all contact between a defense attorney and a victim in a case be facilitated by the prosecutor so long as the case is active — violates the First Amendment right of defense attorneys, and is too broad, restricting all speech rather than just illegal speech.

Andy 37:02

The law dictates that once a defense attorney initiates a request to interview a victim, the prosecutor is to notify the victim of the request and remind them of their right to decline an interview. The law doesn't require that the prosecutor forward any correspondence from the defendant or defense attorney to the victim. What is wrong with this?

Chance 37:23

Ahhh, do you have time?

Andy 37:25

This seems awful!

Chance 37:29

It doesn't violate the First Amendment, it violates the Sixth Amendment. I mean, from my vantage point, prosecutors can use the statute to undermine the truth-seeking function of our criminal justice system. That's just obvious.

Andy 37:40

What is the Sixth amendment, please?

Chance 37:42

Oh, the right to representation.

Andy 37:50

Okay. That's not the confrontation clause, is it?

Chance 37:54

Well, I don't know. I just got back from Indochina. My mind is kind of mush. You tell me!

Andy 37:59

Hold on, I'll look it up ... Sixth Amendment. I think the Fifth Amendment is the right to ... Sixth amendment guarantees the right to criminal defense. Oh, you're right, you're right, you're right. Right. Okay.

Chance 38:08

Yeah. I mean, you know, how in the world can you defend somebody like that? That is just letting your opponent take care of, ultimately, what's providing the allegations, and you can't even test that pre-trial? It's crazy. Where's your right to be represented if you don't have a representative being able to do that?

Andy 38:34

Tell me, just in typical practice though, do you have to ask permission? You're defending me from doing terrible things, and can you just go talk to the alleged victim in it? Just on your own, being my representative attorney? Or do you have to ask the prosecutor?

Chance 38:54

Certainly can, if they're willing to speak.

Andy 38:57

Yeah, yeah, yeah. Okay. I know you have stuff to go on to, Larry.



Larry 39:01

Alexander Samuels, representing the Arizona attorney general's office, said, "The procedure ensures a victim's rights are upheld. Without it, a defense attorney could catch a victim off guard when they may not know they're allowed to refuse to interview." And that just *breaks my heart*.

Chance 39:23

Yeah. (laughs)

Andy 39:25

But the three judges on the panel seemed concerned with the one-sided implications of the statute. "A prosecutor who wants to talk to a victim need not go through these steps?" asked U.S. Circuit Judge Andrew Hurwitz. "That is correct," Samuels said. "So, what we have here is ..." a failure to communicate? That's not what he said. Sorry, I got sidetracked. "What we have here is a disparate treatment of prosecutors and defense counsel," the Barack Obama appointee concluded. "The case is about free speech though, not equal protection," Samuels countered, following up by telling the panel that the action regulated by the statute is professional conduct, not speech. "This is about the practice of law," he said.

Larry 40:09

Can either you or Chance admit that that's funny? That response is totally hilarious. Can you guys admit that?

Andy 40:16

I'm not admitting what you say is funny, Larry.

Chance 40:18

Yeah, no, it is. It is.

Andy 40:21

Okay, Chance is on your payroll now, not mine.

Larry 40:18

(laughs) U.S. Circuit Judge Marsha Berzon, a Clinton appointee, said speech isn't stifled in this instance because the victim is given the opportunity to agree to an interview, though she seemed to change her tune by the end of the hearing. "You are, in fact, the way you administer it, preventing speech," she later told Samuels. Jared Keaton, representing the defense attorneys, agreed. He said, "Restricting the ability to approach a victim in person or even send one's own letter, rather than asking the prosecutor to do so, stifles free speech." George Hurwitz asked if it would still be a constitutional violation if the prosecutor was required to follow the same rules as defense attorneys. Keenan said, "Yes, because the law would still stop an attorney from approaching a victim by their own volition."

Andy 41:21

Yeah, that does sound bizarre. Judge Berzon suggested that the prosecutor be required to forward a defense attorney's letter in addition to sending a note about the victim's rights and the request for an interview. Keenan again agreed that it would be better, but still insisted that the attorney should be able to contact a victim however they like. Though the law in question was permanently enjoined by the trial court, Arizona Criminal Procedures Rule 39 *also* requires that defense attorneys request victim interviews through the prosecution. Judge Berzon suggested additional briefing on the applicability of Rule 39 to the issue. Keenan said that isn't necessary because his group isn't challenging Rule 39. He said that rule is specifically about "formal interviews" and depositions, whereas he is just advocating for general contact outside of prosecutorial oversight. Samuels clarified that the statute doesn't prohibit incidental contact. "Oh, excuse me, I ran into you at the mall" in which a defense attorney might come across a victim in public. It only prohibits intentional contact or communication relating to the active case. "I'm sorry I tail-ended you at the intersection. Do you mind if we talk real quick?" I mean, just ... seriously??

Chance 42:38

Ridiculous, ridiculous, ridiculous.

Larry 42:18

Well, we do have to go through a process here of getting the interview set up through the prosecutor. But what happens here is if the interviews don't go down (I'm sure you do the same thing in California) we move to suppress that testimony. If we can't talk to you, you don't get to testify.

Chance 43:01

Yeah, that's a nice remedy. I just think that, if it were that way in California, there would never be any interviews, because prosecutors would emphasize that the victim need not talk to anyone. And that whole avenue would be closed down. I mean, it just wouldn't work out that way. And if it were about suppressing this, because of the victim's bill of rights and all kinds of measures in California that are pro-victim, we'd still lose on that end. So it would be very, very tough to implement that in California.

Andy 43:45

Larry, what's driving this?

Larry 43:49

I'm not sure, but it's a perpetual expansion of victims' rights and a continual erosion of the most important rights. I know this will offend some people, but the most important rights we have to protect are those of the person who's going to be put into a cage.

Chance 44:06  
Yep.

Larry 44:08  
We have to protect those rights. It's bad enough being a victim of crime. I've been a victim. Just very recently my car got busted into. But we have to protect the people who are going to be caged up like animals, to make sure that we're not putting an innocent person into a cage, and that we're not putting a person into a cage based on perjured or misleading testimony or testimony taken out of context, misidentification. All these things go wrong in the criminal justice system, and we continually see erosion of that balancing act which is supposed to be tilted in favor of the accused. Remember, there's some kind of saying about "better that a hundred guilty go free than one innocent person go to prison"?

Andy 44:53  
I've heard it!

Larry 44:53  
Yeah. That's what our system is supposed to be about. We're not supposed to do anything that would put an innocent person away. We're supposed to guard zealously to make sure that we're not convicting innocent people.

Chance 45:05  
That's exactly right. But we've moved so far away from that. And this is just another indication in Arizona, that that is the trend.

Larry 45:14  
Well, it's largely driven by the law enforcement, and the victims' advocates organizations' advocacy efforts. And that's why I keep telling people that listen to this program, "The victims are on a different side of the courtroom." When you go to a courtroom, Chance, do you ever sit down on the same side of the courtroom with the alleged victim, or are you on the opposite side of the courtroom?

Chance 45:37  
Always on the opposite. Always, always.

Larry 45:40  
And they keep believing that we're on the same page. We're not. They're trying to put you in a cage. That's why they're there in the courtroom. So, alright, well, let's zip through these articles. I think we can do it, Andy, if you talk fast.

Andy 45:55  
I can certainly talk faster. This one is from Cardinal News [<https://cardinalnews.org/2024/03/21/youngkin-signs-36-more-bills-but-vetoes-22-criminal-justice-measures/>] and

this is serving Southwest and Southside Virginia. I've never heard of Southside Virginia, but anyhow, "Youngkin signs 36 more bills, but vetoes 22 criminal justice measures." The governor stated, "I really felt those bills were undermining our public safety, and I can't let that happen," Youngkin told reporters during a visit to Roanoke on Thursday, referring to the legislation he vetoed. He went on to say, "Over the last two years, on a bipartisan basis, we have really moved to support law enforcement to make sure that we are able to have our law enforcement community, our commonwealth's attorneys and our judges work in order to promote safe communities, and I felt that these bills undermined that."

Larry 46:42  
But advocates for criminal justice reform pushed back against Youngkin's veto pen. By the way, this brings to 50 the number of bills passed this year by the democratic controlled General Assembly, but then vetoed by the Republican governor. "It's disingenuous for the governor to use the so-called 'public safety' as an excuse to veto common sense legislation to incentivize good behavior, make it safer to report overdoses, and to protect people with special needs in distress," said Chris Kaiser, policy director of the American Civil Liberties Union of Virginia.

Andy 47:18  
So there have been 50 bills passed by the legislative body that get to the governor's house and they get nuked?

Larry 47:29  
That's what's happening. And that's the whole theme I put together for this segment of articles. Folks, elections have consequences. You put a general assembly in, in Virginia, and you thought you were going to get criminal justice reform. You're not going to because you made a choice to put somebody else in charge of the executive mansion.

Chance 47:48  
Yep, it doesn't make sense, yet it happens over and over again in many, many states. And, you know, for the life of me, I just can't figure this out.

Andy 48:05  
Obviously, Americans are more criminally minded than in other countries that have kind of figured this out over the last *several hundred years*.

Larry 48:15  
All right, but that's the theme. So, keep going. We're going to hit 'em again and again tonight.

Andy 48:22  
Okay. All right. Well, then this one is from, I don't know what WLPN is. Oh, it's their NPR station. Oh, God, we're

gonna get flamed for our progressive nature, Larry.  
"Tennessee rolls back reform passed after the death of Tyre Nichols."

Andy 48:38

The highlight of this article is: Police reform passed in the wake of Tyre Nichols's death at the hands of Memphis police is now null and void. Republican Governor Bill Lee signed into law a measure Thursday that prevents local governments from passing *anything* that would interfere with police stopping crime. The governor's office did not immediately respond to WLPN's request for comment." But, Larry, you have some comments, don't you?

Larry 49:03

No. I'm just going to say, other than "elections have consequences," you folks in Tennessee, you bemoan how bad things are, and about how you can't believe it, but yet you keep electing the same people that you're electing. So: elections have consequences. That's all I can say.

Chance 49:19

You don't wanna live in a police state, but you vote to live in a police state. There you go.

Andy 49:23

(laughs) We got the guy coming back that's going to be the law and order president. So I guess we're going to get it again, huh?

Chance 49:31

Oh, my God.

Andy 49:34

I have no idea what Bolts is. This article comes from boltsmag.org [<https://boltsmag.org/louisiana-special-session-crime-jail-population-sheriffs/>]. Never heard of this one. "We're going to just be overwhelmed. How Louisiana just ballooned its jail population: In February as the Louisiana legislature debated Senate Bill 3, which would move all 17-year-olds charged with a crime out of the juvenile justice system and back into the adult system. Will Harrell, an advisor to New Orleans Sheriff Susan Hudson, went to update the department's Prison Rape Elimination Act" – That's PREA, for those of you who may be familiar with that from being on the inside – "the PREA coordinator, on the proposed changes."

Andy 50:11

"He watched as tears came to her eyes. Teenagers are uniquely vulnerable to physical and sexual abuse in adult jails. And federal law requires they be separated from the adult population, which often translates to solitary confinement conditions. "She knows what that means for these kids," Harrell told Bolts. The bill quickly passed, and

was signed into law by Louisiana's new governor, Jeff Landry, on Wednesday. Now Harrell is scrambling to figure out how to absorb dozens of 17-year-olds into the already overburdened Orleans Parish Justice Center, once SB3 takes effect in April.

Andy 50:47

"We are already at capacity. We're under a consent decree," he said. "I talked to deputies who were there seven years ago when they had kids in here, and they were like, 'Oh, it's just going to be a mess.'" Larry, any comments? And don't you say anything about this being funny!

Larry 51:04

Well, it is under a consent decree, meaning that they've already agreed with the court to eliminate judicial intervention to certain terms, and they've signed this consent agreement, and now this is effectively being undone by the legislature. That's what makes it funny. So you've got the state legislature that has decided to pass legislation without any regard to what impact it's going to have on local government. They don't have jail space, they don't have any facility space specifically for juveniles, so they're going to throw 'em back into the adult system. And please admit that this is funny.

Andy 51:45

No, this is not funny!

Larry 51:48

You know, Louisiana, they were making some token progress under the Democratic governor John Bel Edwards, but now it's back to business as usual. So, as I've stated previously, elections do have consequences.

Chance 52:04

Wow.

Andy 52:04

Are there any kinds of — since we have an attorney — are there any kinds of constitutional protections of any sort that you can fabricate and pull out of, like some wild hair that a 17-year-old is not an adult, and shouldn't be in an adult prison atmosphere?

Chance 52:21

I wouldn't know nothing 'bout that there, senator. (Andy laughs)

Larry 52:27

So, you're not agreeing that this is funny?

Andy 52:31

No.

Larry 52:32

I thought that conservative legislatures believed in local control and not imposing unfunded mandates from the state capital. That's what I have always heard all my life. They're essentially doing that here. So, alrighty. Keep going.

Andy 52:54

Okay, I'll go. I think this is the last one we have.

Andy 52:58

And this one is from the Marshall project [<https://www.themarshallproject.org/2024/03/09/louisiana-georgia-kentucky-tough-on-crime>]. God, we haven't had anything from there in a bazillion years, Larry. "How Louisiana, Georgia and Other States are once again embracing 'Tough-on-Crime' laws: Louisiana is one of several states passing punitive measures in response to public fears. Louisiana is not alone. Across the country, state legislatures are rapidly advancing punitive bills and rolling back criminal justice reforms, largely in response to fears about crime. In Georgia, Senate Bill 63, which has passed the State Senate and House, would add 30 charges to the list of crimes that require judges to impose cash bail to release a person from jail, pre-trial."

Andy 53:38

"That list includes many minor and nonviolent crimes like shoplifting and forgery, if they're not a first offense. The bill would also effectively ban charitable bail funds in the state, in what some have interpreted as a direct attack on the 'Stop Cop City' protest movement, which has relied on bail funds to get arrested activists out of jail."

Larry 54:06

I'm going to pontificate about that in a moment, but, "In Kentucky, a similar measure to restrict charitable bail funds passed the state House and is now pending in the Senate. It's part of a broader package that would also stiffen penalties for the sale of fentanyl, and some gun crimes, and impose a life sentence without parole on anyone convicted of a violent offense for a third time." And I don't know how broadly they've defined "violent". "The bill will also create a new law against 'unlawful camping', an effort aimed at policing unhoused people. Both Kentucky and Georgia have experienced serious issues with overcrowding and understaffing in jails and prisons in recent years, problems these pending laws are likely to make worse." Again, elections have consequences. But what I think is so ironically funny about this ... now, limiting bail funds, let's just think about this.

Larry 54:58

What a bail fund is, is that since the cash bail system is so prevalent across the country, only a few states have taken dramatic steps to end or modify cash bail as a condition of

release. What they're telling people — now, these are the people who believe that you should be able to speak, and do what you want to, with your own personal funds — they're telling us now that it's against the law to donate your money to raise funds for people that you believe have the right to be presumed innocent and to be released pending trial while that presumption of innocence is enforced. And it's restricting you, as an organization, from being able to solicit donations to help people that don't have financial resources. Can you please admit that that's not funny, but it's inconsistent with what they claim that they believe in? Can you admit that?

Chance 55:48

Oh, absolutely. Ironic is the word. Ironic.

Larry 55:54

Yes. But they pay such lip service to what they believe in. You know, they're the "freedom lovers". But they're far from being freedom lovers. They throw those words around and people say that, like the guy that wants to leave the communist state of Colorado to go back to the "freedom loving" state of Texas? And I said, "Well, wait a minute. Colorado gave you your freedom by letting you off of the registry from a Texas conviction, and you can't get your freedom back in Texas, from that freedom loving state. And you're going to leave the communist state to go back to the state that won't give you your freedom? Do I have that right??" Well, the same thing here.

Chance 56:29

You've got it right. Many people in California get off the registry and then they go live in Florida! Same thing.

Larry 56:36

(laughs) Well, I mean, can you please admit that that's funny?

Chance 56:40

It is kind of funny. And odd.

Larry 56:43

So, but if you would just pay attention to what these elected officials say, versus what they actually do. I was at a luncheon today and a person was talking about politics. I told him what the plans are trying to do a reform for the New Mexico registry and he says, "Well, what about getting the retroactivity out?" I said, "Well, we're going to try to take it out." The reach-back originally was going to apply to anyone who was "convicted" after '95, and then they added "on probation or parole on July 1 of '95." I said, "We're going to try to take it out by legislative action." He said, "Well, if you pass the law with a new registry, wouldn't that repeal it?" because we're basically going to write a whole new registry bill. I said, "Only if it says so. Because it's

assumed to be prospective in application unless it specifically states that that law is retroactive. It's like when they pass a law that decriminalizes a particular thing, that doesn't undo those previous convictions unless it specifically says in the legislation that it does, correct, Chance?

Chance 57:49  
That's correct.

Larry 57:51  
Okay, well, then I said, "Now you're a diehard conservative. If it doesn't state it in the legislation that it's to undo existing convictions, you wouldn't want a runaway judicial official wearing a black robe to decide to substitute his or her judgment for that of the people. They were smart enough to make it retroactive if that's what they wanted to do. And you don't believe in legislating from the bench now, do you?" And he got really quiet and he said, "Well I guess I do, sometimes." I said, "Yeah, that's the problem. Everybody does sometimes, if they're legislating something that you *agree* with, from the bench." But I can't get over this hypocrisy.

Larry 58:35  
Elections have consequences. Remember that, folks.

Chance 58:40  
Elections do have consequences. They do.

Andy 58:44  
Larry, do we actually have two new mail subscribers or is that leftovers?

Larry 58:50  
We do.

Andy 58:50  
Oh, cool! Well, tell me about them.

Larry 58:50  
We have Sean and Mark.

Andy 58:55  
All right, and where are they, Larry?

Larry 58:59  
They're in custody.

Andy 59:01

Thank you. I kind of figured that. And we also do have a new patron, Athena, thank you very much for joining. And thank you to the new snail-mail subscribers. We do our best to get those out, like Monday or Tuesday so that you have them, maybe by the weekend. And we do the best that we can with that. But thank you very much for coming on board.

Andy 59:18

Chance, do you have anything that you want to say before we close out? Like just, just personal messages?

Chance 59:23

Just thank you for joining us. Thank you, thank you, thank you. And Happy Easter!

Andy 59:30

Yes, happy Easter. I'm not gonna say anything about it. I'm gonna stay quiet. Um, make sure you head over to [registrymatters.co](http://registrymatters.co) for the show notes. And you can leave us a voicemail message at (747) 227-4477. Email [RegistryMattersCast@gmail.com](mailto:RegistryMattersCast@gmail.com) and of course, if you would like to be generous, you can head over to [patreon.com/registrymatters](http://patreon.com/registrymatters). And I thank you all very much, all the patrons, I thank you so very much, appreciate it, appreciate it, appreciate it.

Andy 59:58

And I think that'll do it. Thank you, Larry, for joining us. And welcome back, Chance. I'm glad you're feeling better. You survived The Rona.

Chance 1:00:07

Thank you.

Andy 1:00:08

I hope everybody has a great weekend. As a reminder, we're not recording next weekend because there's a big eclipse happening and I'm going to be on the move, going to find the good seats. I'll see you all in a couple of weeks. Take care.

Larry 1:00:23

Good night.

Announcer 1:00:25

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