



Registry Matters Podcast

Episode 299

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Announcer 00:00

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Andy 00:17

Recording live from FYP Studios east and west, and west-er. Yeah. Transmitting across the Internet, this is Episode 299 of Registry Matters. Good evening, gentlemen. How are you?

Chance 00:29

Good.

Andy 00:31

Larry?

Larry 00:33

I'm doing awesome because it is warm, beautiful, coming on late spring, and we're soon going to be into summertime.

Andy 00:42

And then you'll be sending me screenshots of 105 and 110 degree temperatures, right?

Larry 00:48

Well, that was last year, because the air conditioning was broken. But this year it's brand new, so hopefully we won't have that problem.

Andy 00:54

Yeah, but I mean, it's still gonna be 110 outside.

Larry 00:57

Oh, I can handle it.

Andy 00:59

Okay. I bet you run, in a Larry-style run, from your car with AC to the building with AC.

Larry 01:09

I can handle 120. I've been to Phoenix before.

Andy 01:12

Oh, that's right, your building was out, wasn't it?

Larry 01:15

Last year, yes. For about a month.

Andy 01:16

For like two or three? (laughs) I do remember that, now. Chance, is it scorching hot in the summertime there?

Chance 01:26

Nah, nah. You know, maybe for a very small time, during the summer. Most of the time it's just beautiful. Just beautiful.

Andy 01:37

All right, well, everyone, please make sure that you subscribe on your favorite podcast app. Like and subscribe and thumbs-up and all those things on YouTube. And it helps out the algorithm, helps us out, helps people find the content if they are new, because new people still show up and they're like, what's "FYP" mean? And all that. So anyway, and then if you are feeling generous, please become a patron and that would also be fantastic. And then you can take part and join in on Discord where Deputy is posting AI tracks of me and Larry singing, which is quite ... amusing. But what are we going to be doing tonight, Larry?

Larry 02:16

We got this great episode planned, actually. I think you're going to love it. We're planning to discuss a case I'm working on here in New Mexico that involves some of your favorite topics.

Andy 02:30

Such as?

Larry 02:32

Well, we're going to be doing Interstate Compact for adult offender supervision, PFR probation supervision, and PFR polygraph testing.

Andy 02:43

Ah, PFR polygraph. The Kabuki machine as it is, eh?

Larry 02:47

Yep. And we have a couple listener questions about the Interstate Compact, which ties in nicely. And there are a few articles if time permits. You're going to tell the audience about why you played hooky last week, so tell the audience about this.

Andy 03:05

I did. I had planned to go down to Arkansas, but it was going to be a massively long drive and the weather was just going to be miserable so I bailed on that one, and went all the way up, almost to where you could see the Canadian border, up in, what's it called? Plattsburgh, New York, and went and saw the eclipse. It was just fabulous because it

was like three and a half minutes, 3:40 I think is what it turned out to be of the eclipse? I had the glasses, had cameras. It's cold as crap — oh my God, is it cold in April in Plattsburgh, New York — it was amazing though. It was really awesome.

Larry 03:44

Now, that far north, were you able to see a hovercraft on the horizon?

Andy 03:51

(laughs) There was no hovercraft. You know, there were a bunch of drones though! I think people were filming as the shadow streaks across the ground with their drones.

Larry 04:01

Well, I understand you've got some pictures posted already.

Andy 04:06

I have posted some, somewhere. But you know, Larry, with your cell phone, you can take some really nice pictures of it. But people with \$10,000 of gear, with all the magnifiers so they can get a really big fat picture, and see all the little crests and the mountains on the moon (they're called "Bailey's beads"). You can't do that without having a massive amount of gear. And so otherwise, just enjoy the experience. You'll end up missing the experience, messing with all the gear.

Larry 04:38

Well, all right. I'm glad you're back.

Andy 04:42

I am back. Here's a question that came in. This one's ... Larry, I don't think we've ever covered Puerto Rico because, you know, it's another country, right?

Larry 04:53

Not exactly.

Andy 04:51

There was this funny story. There was a hurricane that happened in 2018 maybe? And rolled right over. I heard people on the news say, "Boy, I am so glad this hurricane missed the United States!" Meanwhile, Puerto Rico got destroyed. But anyhow, I digress. The questioner says, "I was transferred from Virginia to Puerto Rico under an Interstate Compact without being required to continue a treatment program that Virginia had originally sentenced me to. My probation officer indicated that participation in the program might not be necessary after the move. After serving three years of trouble-free probation, Virginia is now refusing to grant me early release because I didn't complete their mandated program, despite Puerto Rico

being satisfied with my conduct and ready to terminate my probation.

Andy 05:44

"Given this situation, is there a risk that Virginia might attempt to incarcerate me due to this issue? What steps can I take to successfully conclude my probation and leave Puerto Rico?"

Larry 05:59

Now, you did a little editing job there. He actually said something a little bit stronger.

Andy 05:58

(laughs) I did. I ran it through something to clean it up a tad.

Larry 06:09

Yeah, well, I had cleaned it up quite a bit, but he wants to leave the United States.

Andy 06:12

Oooh, I see.

Larry 06:14

But anyway, Chance, I'll go first, and then you can fill in the gaps. So, transferring under the Interstate Compact, remember, all the conditions that are imposed in the jurisdiction of conviction follow you. So that means completion of a treatment program would be required. Now, we're looking in the rearview mirror at this point. It would have been ideal, had he been able to get Virginia to certify that he'd completed treatment.

Larry 06:52

But since he did not (or could not) do that, then we're in a conundrum, because now he would like early termination. And the PO in Virginia that's got this case — as a non-Virginia supervision, but it's still on someone's desk to be monitored for Virginia — they may have no knowledge of what happened three years ago, may not be the same person, may be an Interstate Compact unit. So they're looking at this and saying, "Hmm, conditions say he needs to complete a treatment program. That's not been submitted to us, so therefore he's not in full compliance." But it gets a little dicier because, as I understand it, in most jurisdictions, if there's not a violation alleged during the term of the probation, the term of probation generally expires. So, they can't file a petition to revoke, except in limited circumstances, after the term has expired. And Chance can probably dig into some of those limitations of the circumstances, but one is generally, if you haven't paid your fines and your fees. Well, they won't really know until the final day that you haven't paid everything, so I think that's generally an exception.

Larry 08:04

But on this, if Virginia hasn't sought to violate him, nor has Puerto Rico sought to violate him, my expectation would be that his probation would be terminated at the end of the term. But he wants to be terminated early. He wants that privilege of being released early. And I do not know how to achieve that, unless he can recreate what happened in Virginia, and convince them that he did de facto complete their obligation that they imposed, for him to go through an approved treatment program to its completion. So, Chance, what say you?

Chance 08:44

Well, I say this: when you're asking for a favor — and early termination is a favor — it's contingent on the originating state. You do what you can to comply with those conditions so that there's no issue at the time you ask for the early termination. Otherwise, you're at the mercy of that state's conditions. And you're right, if no one takes exception when it expires, it expires. But if you're gonna ask for a favor, you're going to need to make sure you cover all your bases.

Larry 09:12

Well, do you see any reasonable way he would be able to go back to Virginia and say, "Look, I was in this treatment program for x number of sessions or x number of years and I didn't have an official termination, but I had de facto completed that." To me, that's his only option. Because if Puerto Rico hasn't had a program, and didn't put him in one, they don't have anything to offer at all to Virginia, in terms of satisfying that condition, other than "We wouldn't have imposed it." But it's not their choice whether they would have imposed it. Their job is to enforce it.

Chance 09:50

That's right. And I guess that would be Plan A right there. Whether or not that's going to work out, who knows? But you also could get into some "stickiness" where everything's going good up until expiration. All of a sudden you want early termination. You go back and when they insist that the conditions aren't complied with, that can grow into something worse than you have now, which is, you know, a path to successful expiration. These are the problems when you decide that you want to early-terminate, and you've done everything you're supposed to do, but you have one of these situations, it's sticky.

Larry 10:36

I can see the potential for that. I mean, it's one of those things, when you open a record, sometimes the scrutiny will reveal something you don't want to have revealed. So, he asked for early termination (chuckles) and Virginia says, "Oh, well, you're out of compliance. We're going to send a retaking notice to Puerto Rico." Now wouldn't that be funny? (laughs)

Chance 10:57

Yep. That... well, it would in a way, and it wouldn't in another way, yeah.

Andy 11:01

(laughs) Now, so his charges and all that happened in Virginia. And then he moved to Puerto Rico. And he's lived there, trouble-free, and all that stuff. And now he's trying to get early release. Virginia says he needs to complete treatment, but they're not requiring treatment in Puerto Rico ... who's in charge?

Larry 11:27

Virginia.

Andy 11:29

So he has to comply with whatever Virginia says. If they want treatment, he's got to go find someone in Puerto Rico to do the treatment?

Larry 11:36

Well it's, as I've said so many times, "Your conditions follow you." Wouldn't it be a great country if you could be put under a penalty and go to another state and escape the punishment? I mean, everybody would. There'd be so many people moving you wouldn't believe it. But here, the system appears to have broken down in the original transfer request. Because the way it's supposed to work is that the receiving jurisdiction, if they cannot enforce a condition, they're supposed to notify the sending state, "We're unable to enforce this condition." And the sending state can make the determination whether they want to lift or modify that condition, or just say "No," and then the transfer doesn't go through. In this case, the transfer went through. Now, whether that gives him any standing — and I would have to do more research to figure out if an unenforced condition that the receiving state didn't catch on to until years into the supervision — if there's any allowance for that error to inure to his benefit. I don't know the answer to that.

Andy 12:40

That's interesting.

Chance 12:41

That's the stickiness of it all.

Andy 12:44

Man! All right. And Larry, out of curiosity, since Puerto Rico is not a state, under the Interstate Compact, is transferring to a United States territory very similar to transferring to another state?

Larry 12:59

In my initial research, it's one of the territories, and it's one of the compacting parties. So yes, it's the same as a state.

Andy 13:06

Interesting. And you don't need a passport to go to Puerto Rico, I don't believe?

Larry 13:12

I can't imagine that you would need a passport, as an American, to go to an American territory.

Andy 13:16

(whispers) Just checking.

Chance 13:17

Correct.

Andy 13:18

Because again, there was the whole thing with "I'm so glad the hurricane missed the United States." Meanwhile, I mean, like they got wrecked. People were like starving to death and whatnot, and the former president was down there throwing out paper towels.

Larry 13:33

Well, he was also handing out relief aid. Remember? He said, "This is blowing a hole in our deficit. But that's all right."

Andy 13:44

He was throwing paper towels, as I recall. Oh my God, Will has shown up! Will hasn't been here in a million years. Whoa. Sorry. Do you want to say "Hi, Will," Larry, in your southern drawl?

Larry 13:57

I cain't.

Andy 13:58

(laughs) Alright, well then we have another question: "I wanted to update you on a recent development in Wisconsin. Our governor has signed SB 874 into law, which redefines the criteria for being labeled a "repeat offender" based on actions occurring on two or more separate occasions. This law is retroactively applied only as far back as September 2, 2017. I was convicted in 2000 of multiple counts of CP and was removed from the registry on September 7th of 2023" — congratulations on that! — "which was 15 years after my probation concluded. However, last Wednesday, I was informed that, due to this new legislation, I would be reinstated on the registry."

Andy 14:43

Ughhh. "It's disheartening that, after 24 years, I am faced with this situation because the law now categorizes anyone with multiple counts as a repeat offender. Thank you."

That's from Chris. Yikes! Isn't that what we all fear, though, is that somewhere they change the law and it draws us all back in?

Larry 15:04

That is certainly a possibility to be cognizant of. And when people spend so many hours worrying about imaginary boogeyman, this boogeyman is not imaginary. This is one thing that you actually should worry about, is what's going on in the legislative arena, because as long as it's a civil regulatory scheme, they have been known in states to "welcome" people back to the registry who have been terminated from the registry. In terms of this question, it's got a nuance to it that I think is going to be answered by Adele Nicholas and Mark Weinberg in some ongoing litigation that they have about the constitutionality of lifetime GPS monitoring. But what I would tell people is, they hung their hats on the Supreme Court ruling out of the Wisconsin Supreme Court that interpreted what the legislature meant when they said "two or more separate occasions." And they looked at what they thought a reasonable interpretation of that was, and they interpreted it that way, and said it has to be criminality that "arises on separate occasions in separate cases". Well, it's the legislature's prerogative to go back and say, "No, that is not what we meant. We meant this." And now they have actually ratified, by legislative action, what the attorney general said when they issued their opinion letter. Do you remember the opinion letter that was so controversial, that the Wisconsin attorney general had issued an opinion of what "two or more separate occasions" meant? You remember that?

Andy 16:43

I believe so, yeah.

Larry 16:44

Okay. Well, legislatively, they have clarified. It is their prerogative as a legislative branch to do that. If a judiciary says, "We think it meant this," then the legislature says, "No, we actually meant this," that is their prerogative to do that. That doesn't mean that more constitutional challenges can't ensue just because they meant that, doesn't make it constitutional that you can search and see someone's location data for the rest of their life. But there's nothing inherently wrong with what the Wisconsin legislature did. And the governor signed it. Remember, I predicted that the governor would sign it? There'd be actually no reason in the world the governor would have vetoed that, because he would have thought there was a rare opportunity for a bipartisan bill to have passed.

Larry 17:32

It was probably near unanimous, if not completely unanimous, and the governor would have looked at that and said, "In an election year, with half of my assembly up for reelection, I am not going to ask them to stand with me on a veto of something that's going to only lose the democratic seats." And so there was no way in the world he was going to veto that. Alright, well, I'll quit pontificating. Chance, what do you think?

Chance 17:56

I just think it's horrific, just horrific. That's the only way I can describe it.

Andy 18:07

One person in chat said, "Once off, it should be permanent." My reply, Larry, was, "It's a civil regulatory scheme. It's not punishment." And I got voted thumbs-down.

Larry 18:19

What do you mean, "I got voted thumbs-down"?

Andy 18:21

Somebody gave me a thumbs-down emoji instead of a thumbs-up.

Larry 18:25

Well, it is a civil regulatory scheme, until it's defined as otherwise by the courts. And right now it's a civil regulatory scheme. But we're going to get into some articles if time permits. We're going to be talking about "elections have consequences", and they do have consequences. The people wanted the legislators that they have in Wisconsin, and this is what they did to 'em.

Andy 18:53

Is this going to be one of those cases where "elections have consequences," Larry?

Larry 18:57

Well, this is definitely a consequence of election. If there had been a strong democratic majority there, this may not have passed. Who knows? But under the current makeup, the Wisconsin legislature is under firm Republican control. Although they happen to have a Democratic governor, the governor was not going to get into a veto fight over this, not something that's only going to lose seats. He just wouldn't do that.

Andy 19:23

Moving along, then?

Larry 19:26

Let's do it.

Andy 19:39

All right. Well, before we do jump into the deep end, Larry, you've had a rather peculiar brush with a constituent through your senatorial gig in New Mexico? Could you update us on this little tale?

Larry 19:41

Yeah. After I'd worked many hours on her problem, we discovered that she doesn't even live in the district. Also, I got snookered by her.

Andy 19:49

Wait, I'm sorry, say that second part again?

Larry 19:52

I got snookered by her.

Andy 19:54

You got snookered?

Laugh track 20:01

(people laughing)

Andy 20:01

Expand on that, please. How did you get snookered, exactly?

Larry 20:04

(laughs) Now, that's not funny! Why the heck did you play the laugh track?

Andy 20:08

Because you always find everything else funny, and this was our opportunity to poke fun at you.

Larry 20:16

(laughs) If you say so. You got a weird sense of humor.

Andy 20:20

That's me. Well, funny-not-funny is what it always is, Larry.

Larry 20:24

So, well, she's certifiable, for one thing. And the next thing is she's very unstable, and she has now made sexual misconduct allegations against the owner of the building.

Andy 20:36

Yikes. And so what's the underlying problem, then?

Larry 20:39

Well, she lost her husband of two months, after – (Andy laughs)

Andy 20:43

I'm sorry, that's not funny. But, god, I mean, like, the ring hasn't even made a crease on your finger yet, and...

Larry 20:52

So they were married two months and she can't pay the rent. I felt bad for her, the senator felt bad for her, because the owner is being very aggressive about wanting their money. They're threatening her with an eviction and she's 70 years old. And I thought, "Well, gee, give her a chance to get her affairs in order, and she's going to be getting a Social Security benefit as a widow of a worker. She's already received her first payment," so my compassion blinded me from seeing everything that I should have seen.

Andy 21:33

Wait, so literally, she was only married to this individual for two months?

Larry 21:38

Yes. And the funny thing is that this is her second husband that has died under mysterious circumstances.

Chance 21:43

Wow...

Andy 21:44

(laughs) Larry, I gotta interject. Does snookering trigger registration requirements? I couldn't resist.

Larry 21:42

(laughs) So, yes, well, there's a story of a very high-profile case here. Those who are bored, you can google "Commissioner Eugene Gilbert". He was married to a woman whose name escapes me. But he died a very mysterious death to this woman. They had broken up, and he was coming back to the house to get together, and she heard a strange sound downstairs, and she thought Commissioner Gilbert was an intruder, so she shot him to death. That was, like, maybe 20, 25 years ago. But prior to that, back in the seventies, she was married to a Stephen Hotchkiss, and they broke up, and Mister Hotchkiss was coming back for a late night rendezvous, and she thought that he was an intruder, and she shot Mister Hotchkiss the same way she shot Commissioner Gilbert.

Larry 22:56

She got acquitted on both of them. Now, can you at least admit that that's funny? (laughs)

Andy 23:00

That's probably funny. We should leave this one alone and move on to the next topic. You actually want to talk about a case you are working on in New Mexico. Not as a lawyer, I

want to emphasize, not in a legal – not in a lawyer capacity, not as an "Esquire". It involves one of our favorite topics.

Larry 23:26

It does indeed. It's the Interstate Compact. And our other favorite topics, PFR supervision, and polygraph testing, which you love dearly.

Andy 23:35

Polygraph testing is nothing at all but junk science. The reason why I refer to it as "The Kabuki Machine". Didn't the Tenth Circuit agree with me?

Larry 23:44

Uh, no, they did not totally agree with you. They did issue a ruling about the Kabuki machine in terms of self-incrimination.

Andy 23:42

Refresh our audience on that, please?

Larry 23:55

In May 2016, the U.S. Court of Appeals for the Tenth Circuit held that PFRs released from custody cannot be compelled to answer potentially incriminating polygraph questions as a condition of federal supervised release. The ruling came after an early emergency stay of a polygraph test was issued by the appellate court. The case centered on Brian Von Behren, a Colorado resident who was convicted of distribution of CP in 2005 and sentenced to 121 months in federal prison. Now, hear that! Ten years for possession, along with a three-year term of supervised release. And in March 2014, as Von Behren's prison sentence was ending, a special condition of his supervised release was modified, requiring him to submit to a sexual history polygraph that included potentially incriminating questions. He challenged and won. In fact, he attended one of our NARSOL conferences. Didn't we have him on as a guest?

Andy 24:51

I believe we did. I was just going to ask. I thought we did.

Larry 24:53

At that conference, I think we did.

Andy 24:56

I don't think it was at the conference. I don't — hmm, maybe. I'll have to go look. I remember talking to him, though, and that's a fascinating story. Larry, you said he was convicted of possession. But he was convicted of distribution.

Larry 25:08

Oh, well, that makes some difference.

Andy 25:11

It does. I believe that just holding onto, versus "pushing it out"... that's a whole different conversation.

Larry 25:17

Now everybody in the federal system gets convicted of distribution, because there's something about the file... sharing that they do?

Andy 25:23

Totally.

Larry 25:24

...that's been interpreted to be distribution. But I don't understand.

Andy 25:26

Absolutely. It's, yeah, I can see that it would be. All right. Anyway, let's shift gears and spill the beans on the high stakes case involving the former cop!

Larry 25:36

It's a high-profile case involving a former police officer, and he's been in plea negotiations, which may result in a probated sentence or a short period of incarceration followed by probation.

Andy 25:51

As I understand it, he's now living in the freedom-loving state of Texas — Larry, why don't these people move to the Communist state of Colorado instead? — and he wants to have his supervision transferred there.

Larry 26:04

Correct. He's actually already departed this Leftist state of New Mexico and established residence in the freedom-loving state of Texas (where virtually nobody gets removed from the registry).

Andy 26:13

(laughs) I'm sorry, because we talked about that, just two weeks ago, three weeks ago? The "Communist state of Colorado". What are his concerns that brought you into the case?

Larry 26:26

Well, the attorney brought me in, and Chance might can explain it that, when I'm actually working under the supervision of an attorney, then the privilege is attached, and I can give advice because she is actually, this attorney, she's liable for any advice I give that's not correct. But I can tell them that, "As my opinion — and your lawyer has sought my opinion — I believe this is what you should do." But Chance, do you agree or disagree on that?

Chance 26:55

Yeah, you can't "advise" the client, but you can certainly explain to the attorney what your opinion is, and what you think.

Larry 27:05

So, well, the first issue is the effectuation of the transfer from New Mexico. He's been told that he'll have to be supervised here for up to 45 days before he can be transferred to Texas. The second issue is how he would handle the "sexual history polygraph" initial test, which would likely be administered here in New Mexico, if he ends up being supervised here for those 45 days.

Andy 27:29

You say "if he ends up being supervised in New Mexico." Is there a possibility that he would not need to be supervised there initially?

Larry 27:37

In my opinion, there's a very strong possibility he would not. Because if New Mexico were to follow the terms of Interstate Compact, he wouldn't need to spend that 45 days here.

Andy 27:49

You seem to forget that FYP has vast archives, Larry, and I recall that you have pontificated repeatedly, over the years, that there's a "special rule" for how they handle transfers of PFRs. They need pre-approval before they can go.

Larry 28:03

Well, you are correct. When did you have time to search our archives?

Andy 28:08

I actually know that firsthand! There are some conditions where you are guaranteed to go, but otherwise, when I tried to transfer, I had to have an address, a job, I had to do all that stuff before they would even consider it.

Larry 28:22

So I have indeed stated and pontificated that. The problem for them is, if the court accepts the plea that he's negotiated, he will not be a "sex offender" as defined by the Interstate Compact.

Andy 28:35

How's that?

Larry 28:34

Well, he's pleading to one count of contributing to the delinquency of a minor. And, under the Compact, one must be defined as a sex offender, either by the sending state or by the receiving state, for that special rule to be applied to

him. Neither New Mexico nor Texas defines that offense as a sexual offense. So he's not actually a PFR, he's a standard-supervision offender. Now, if he were to stay in this state, he would be supervised as a PFR. He would not have to register, but they would put the whole gamut of sex offender special conditions on him, and the initial sexual-history polygraph, all that stuff, because they look at the underlying facts of the case.

Larry 29:16

They reach beyond what the actual statute that he pleads guilty to was, and they say, "Well, you did this, because these are the underlying facts." But he's not officially defined as a sex offender under the Compact, so therefore he's eligible for the expedited transfer, rather than the special rule that governs the transfer of PFRs.

Andy 29:37

Now, wait a minute. I got to inject here. So, isn't that the executive branch? Chance, isn't that the executive branch doing judicial branch work, saying that these are the underlying conditions, so "You will be treated this way"?

Chance 29:51

No, not necessarily. It's certainly a delegation of powers. But, you know, if the delegate has the powers to make the call, that's the call. It has to say so, somewhere. It's gotta be some kind of law, legislation somewhere that says that.

Andy 30:05

I don't like your answer. (laughs)

Chance 30:07

I know. It's horrific, but that's the area, that's the niche, we have to concentrate on.

Announcer 30:16

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Andy 31:04

Well, then what are the special rules, Larry, for the PFR transfers?

Larry 31:08

Well, it's under the Interstate Compact for Adult Offender Supervision (ICAOS) rules, and it's 3.101-3 "Transfer of Supervision of Sex Offenders" [<https://interstatecompact.org/icaos-rules/chapter/ch3/rule-3-101-3>]. (as opposed to the general rule, which is 3.101-1 "Mandatory transfer of supervision" [<https://interstatecompact.org/icaos-rules/chapter/ch3/rule-3-101-1>]). 301-3 says that a PFR cannot be "granted reporting instructions" until the receiving state has approved the address. It doesn't matter that the person was already living there at the time of the conviction. So I spend a lot of time with attorneys that think that they can send someone back home right after they've done their plea here in New Mexico (because we have border cities where you may have gotten in trouble in an Internet sting or something) and they think they can plead 'em out and they can go home. "Nope, nope, can't do that." What do you mean, can't do that? Well, your person, once they plead to a sexual offense, they're stuck here until they're approved to go back.

Larry 31:53

"Well, but Larry, he's been living there for 26 years." It doesn't matter. That may be an exclusion zone in that state, so you can't dump a PFR into an exclusionary zone, per the Compact. That's the reason why they have that special rule.

Andy 32:11

Well, let's assume he achieves his goal of moving to the freedom-loving state of Texas. Which state's probation rules would be in control? Because this really always makes my head spin.

Larry 32:23

Well, New Mexico has complete control over the duration and any early termination from that sentence. But, in terms of the supervision itself, both states control. He must abide by the conditions New Mexico imposed plus any special conditions that Texas may choose to impose.

Andy 32:40

And Texas can impose any? Like, anything that they want to?

Larry 32:46

No, not anything they want to. But they can impose special conditions, as long as those conditions are what they routinely impose on those convicted of similar offenses in Texas. And that is somewhat logical, because you've got a probation officer with 60, 70, 80 probationers, and them running around with a flow chart of how they supervise offenders? And when they go into a team visit with a probationer, there can't be all that differentiation. So, they tell you that, "Your conditions, how we supervise PFRs here,

we're going to put those on you, even if New Mexico did not, and you're obligated to follow those." So when you sign your application to be transferred, you agree to follow those special conditions imposed by the receiving state. And you can always tell them to take those special conditions and do something with them.

Andy 33:37

(laughs) Take this job and shove it, as it were?

Larry 33:39

You could do that, but they won't transfer you, if you decline to sign that.

Andy 33:39

Um, can he be revoked for violating a Texas-imposed condition?

Larry 33:48

Yes, he certainly can.

Andy 33:50

We can certainly ask somebody in chat about that one, too. He transferred over to Texas and got completely wrecked.

Larry 33:56

Yes, you can. Oh, but he had a Georgia probation that he transferred over to Texas. The receiving state, they can't do the revocation themselves, but there's a process by which they can facilitate that, and if the sending state doesn't want to revoke you — it's actually referred to as a "retaking" — they can force the sending state to retake you, saying that they'll no longer supervise you. But ultimately the revocation is likely to be a good possibility. If you violate so significantly that the receiving state is trying to get rid of you, a judge in the sending state is going to look very favorably upon that, if they documented their stuff. So you very well can find yourself sitting in prison.

Andy 34:41

Would you do me a favor? Would you like take a quick little lap around the difference between the "retaking" and the, you know, the opposite, I think the other word is "extraditing"?

Larry 34:51

Extradition, yes. There is a lot of confusion, even by legal professionals that have that fancy degree. A retaking is not the same thing as an extradition, although people tend to treat it the same way. So, a person gets thrown into custody on Interstate Compact and they're sitting in jail, and the machinations are not moving, because it's up to the sending state to figure out what to do. So they're sitting and sitting and sitting, and the public defender walks in and they say, "Well, you know, if you'll just sign this waiver of extradition,

we can get you on back down to Georgia and they can take care of all this stuff there." Well, the problem with that is, that the evidence and the testimony that might prevent you from actually being revoked in Georgia, is in Texas. So you're entitled to a Preliminary Probable Cause hearing in the jurisdiction that's supervising you.

Larry 35:49

Well, in an extradition, the scope of that examination is only, basically, your identity. You know, they're not examining whether there's probable cause, they're not examining what you did in the demanding state. You're a fugitive from justice, so they're just examining, "Are you that fugitive?" and "Has this demanding state perfected the paperwork?" But they're not getting into a mini-trial. Well, in a retaking proceeding, they're actually getting into a preliminary hearing to establish "probable cause". So that's why you don't want to waive extradition. You've already waived that when you transferred. You want your Probable Cause Determination.

Larry 36:24

And Chance, I bet if you were to go out and ask your lawyer buddies, if you asked them to explain that? I bet you wouldn't find one that would be able to explain it.

Chance 36:36

Well, not too many. No.

Andy 36:36

(laughs) Another issue, though, is the polygraph, the Kabuki machine. And what did you tell him? I don't want to use the word "advise", Larry, because you didn't advise. What did you suggest that he do on that subject?

Larry 36:53

Well, he's very concerned about uncharged criminal conduct that he might disclose in the treatment polygraph. And I stressed that even if they accuse him of deception, he cannot benefit from confirming their suspicions. I emphasized that, "The truth will not set you free." And I asked him, I said, "You're a trained interrogator. You've interrogated many people in your career. When you finished your interrogation, after they came clean and told you what you wanted to know, did you put the handcuffs on? Or did the truth set them free?" And he said that almost every time he put the handcuffs on. I said, "Well, what would have changed? I mean, they're going to do the same thing to you." But I'll let Chance, he's been working on this for hours and he can explain better what I'm trying to explain here. But the truth is not going to set you free. If you tell them you've engaged in uncharged conduct, you can expect bad things to happen.

Chance 37:48

That's completely true. I mean, the question of whether polygraphs are a good way to figure out whether someone is lying, was settled long ago, and the answer is: They aren't! There's no unique physiological sign of deception. There's no evidence whatsoever that the things that the polygraph measures (heart rate, blood pressure, sweating and breathing) are linked to whether you're telling the truth or not. So why is law enforcement so bent on using them? One reason is because they're useful as a prop in the "theater of interrogation". If the examiner does the theater well, and tricks the subject into believing that their lies can be detected, they might confess. And this is what Larry's referring to, you know, I mean, just shake the tree and believe that what's happening is actually happening, and voila.

Chance 38:39

And related is the belief that polygraphs might be useful as a deterrent. If the registrant believes that they're going to be regularly subjected to accurate lie-detection tests, then committing a crime suddenly looks like a guarantee of heading back to prison. So, for both these uses, it doesn't matter whether the test actually works, just that it's perceived as so. Here's the bottom line: You're not going to be convicted for a failed polygraph test. But you will certainly face legal consequences for admitting uncharged conduct.

Larry 39:14

And my fear with this particular case, is that if he falls into that trap, which many people do fall into, it's so sweet at the end of a polygraph when the examiner tells you, you know, "We're adults here, and I don't have an axe to grind. I'm just here, you know, trying to help everybody involved, and it seems like there's something you need to come clean about, and get off your chest." You know, they have all these things that they tell you. And you trust this person, and you think, "Well, maybe he's serious." Well, he is serious. He's serious about getting that team of people that are working to lock you up, to help them facilitate that. If you admit to anything, you're going to go down. So when the examiner says, "Well, I'm really troubled because you're showing a negative seven," say "I'm really troubled also, because I told you the truth." And I'm assuming that you told them the truth, but when they say, "Well, why is the machine saying that?" "Well, if I could explain why the machine is the way it is, I would be so rich, I wouldn't be sitting here!

Larry 40:21

"I don't know why the machine does what it does. All I know is that they're not admissible in court, they're very limited in terms of how they're allowed to be used, and

they're notoriously unreliable. That's all I know. But I can tell you the truth. Are you asking me to tell you a lie?"

Andy 40:38

Now suppose you threw in some extra stuff, like what you found from the polygrapher that you spoke to, like "I know that it's only about as good as a coin flip". If you start throwing things at them, I bet you'd end up having a very hostile polygrapher.

Larry 40:51

Oh, if you started saying that to a polygrapher, you would definitely have a hostile polygrapher.

Andy 40:58

(laughs) And are they going to turn up the electrodes or something?

Larry 41:01

The only thing they're going to do, if you fail a polygraph, is they're going to intensify your supervision. Because, as Chance stated, I've never seen a petition to revoke that says, "Probationer violated for failing a polygraph examination." If anybody's got such a petition like that, please forward it to me because I'd like to see it. That's not going to be a petition that's going to be filed. But a petition will be filed that says, "At the conclusion of an examination, the probationer did in fact acknowledge these violations. And as these violations are clearly not acceptable, we're moving the court to terminate the supervision and impose a sentence of imprisonment."

Larry 41:48

That's what will happen. Now, there are times when people get terminated from treatment, and as a condition of their supervision. They get dropped from treatment because they're "deemed deceptive". And that's an issue that I wish we could figure out how to challenge on a constitutional ground. If they won't have you in treatment because, in their opinion, you're lying, that seems like a backdoor way of using the polygraph to put a person in prison. Because you can't be in treatment if they won't have you in treatment. And the only thing you can do is make a paper-trail, offering to do alternative treatment and seeking suggestions. But if they drop you from treatment – Chance, what are you supposed to do if they say, "We won't treat you anymore. You're lying. You're not going to make any progress in our program." What are you supposed to do?

Chance 42:30

Yeah, that's a conundrum. What do you do? You know, (chuckles) you litigate.

Andy 42:36

Hey, Larry. So there was this guy in my treatment class, and as the treatment person was going around talking about, "Oh, it's time for your polygraph," there was this older guy. He was roughly your age, and he was starting to have some "memory issues" and that brings up a very interesting situation. If you don't remember whether you have violated your terms of probation (because you are old as dirt and your memory is failing) well, then you're not lying. So they were going to give him "alternate" polygraph tests and use the little blood pressure cuff, on your little doodad down below.

Larry 43:14

I can't see any problem with that. What is the problem with that?

Chance 43:11

(laughs) Trying to liven it up a little bit, I guess.

Andy 43:22

(laughs) Oh, geez. I was like, "You're gonna give the guy a plethysmograph? How barbaric is this?" It was so bizarre. It was so very bizarre.

Chance 43:33

And that's what I call getting jacked by the system.

Andy 43:37

(laughs) God. Not jacked enough. Oh, boy! Are we ready to move on from here?

Larry 43:44

I think so.

Andy 43:45

Okay, then we're going to – Larry, I should have told you beforehand that we don't need to do this, because I got kind of chastised by one of our patrons for talking so much about "elections have consequences". Because he's like, "I don't want to hear that crap anymore because I know, and there's nothing I can do about it, because I can't vote."

Larry 44:05

Well, if he's one of those that truly can't vote, that's one thing. But a lot of people think they can't vote, but they actually can vote.

Andy 44:11

Oh, no, he's in Florida. He can't vote.

Larry 44:13

Oh, in the freedom-loving state. I forgot.

Andy 44:17

(laughs) All right. "Kentucky governor cites higher incarceration costs in veto of criminal justice bill" [<https://apnews.com/article/kentucky-governor-legislature-crime-83d916df30ffa8dc95e455c562d87e5c>] What is this?

Larry 44:26

Well, I didn't want to dwell on it, but I just wanted to point out that there are courageous elected officials. You have a governor from the Democrat party in Kentucky who chose to exercise the veto, and there could be a showdown. But I'm not sure if Kentucky is on the same election cycle that we are, where they're going to have a significant number of legislators up for re-election soon. There are a few states that have these oddball elections, and they may be on that cycle where there's time for him to recover from this veto. But it was a veto, and if there's an override attempt, we'll report back on it. But don't say that everybody is spineless, because this is an elected official showing some courage. That's what I wanted to say about it.

Andy 45:12

Do you think he can survive a veto – whatever you want to call it – where the legislative body would go back and overturn the veto?

Larry 45:20

Well, there's a lot of political considerations I didn't do the research on. But if this is an election year and, like I say, for example, if the entire House of Representatives in Kentucky were to be up for reelection, they would probably not vote to sustain the governor. They would probably vote with the Republicans to override the governor. But if they're not facing election this year, that gives them some breathing room. So, depending on what offices are up for election, that determines what's going to happen with this.

Andy 45:48

I see. And then another article is "Tennessee Senate Advances Bill To Allow Death Penalty For Child Rape" [<https://apnews.com/article/tennessee-death-penalty-child-rape-a37909e303411daa1137dac02de2aa66>]

Larry 45:59

Well, that's actually a thing that's working its way around the country, particularly in conservative-governed states. And it's not about the death penalty, per se. But it is. What they're trying to do is undo the limitations that the Supreme Court, through the years, has imposed on the use of the death penalty. You know, juveniles, for example, and people that have mental disorders at certain levels, can't be executed. And I think it was an Idaho legislator who was quoted as saying, "We're deliberately wanting to pass this. We think it's unconstitutional, but we're going to pass it anyway because we want the death penalty for child

rapists. And we want it to get before the Supreme Court of the United States," because they believe that the Supreme Court, as it's currently constructed, composed of a lot of conservatives, they believe that they will get a better outcome on the death penalty, and the Supreme Court will say, "It's really up to the states." That's what they're hoping for. So this is a battle to expand its use, and the state options of how they impose the death penalty, in my opinion. What say you, Mr. Chance?

Chance 47:14

I agree, I agree. That's what I say.

Larry 47:19

So, then we're going to go to the California Corner.

Andy 47:25

Very good. I was just going to suggest that we do that. And here we have the California Corner with Chance Oberstein! What have you for us tonight?

Chance 47:33

Well, just a little message about how to protect yourself in an adverse society. Of course, we're all aware of that. But I think it's important because I'm seeing a lot of calls, and a lot of concern over areas that people seem to want to turn away from, rather than understand. So this is just a little note to take down, in terms of what things you should know, and how you should prepare yourself to live in the era we're living in. First of all, I think, number one, you have to understand the parameters of the registry as it relates to your conviction or convictions which led you to registration. For example, in California, registration requirements span over twelve separate statutes.

Chance 48:26

Now, every state's different, but it's pretty convoluted in California. How do you approach something like that? Well, one, I would say, "Perceive registration as a mere record-keeping requirement," just like you do taxes or anything else. Be professional. Reject the attitude you expect to encounter when you go in and do it, and say only what you need to say. Because brevity in terms of the registration process, is everything.

Andy 48:58

Hey, Chance, I have to interject because, "Be professional." One of our patrons (the same one that can't vote in Florida) he sent me a picture. He was at the registration office and there was a guy in there with a snake around his neck! Now you said, "Be professional." Would having a snake around your neck be considered professional attire?

Chance 49:21

No, no, I don't think so. Not professional. That's what I'm saying.

Andy 49:30

(laughs) I just couldn't resist.

Chance 49:31

(laughs) This is why I get calls all the time! I get calls about this, and I ask, you know, "How did you show up? What did you wear?"

Andy 49:38

I wore a snake.

Chance 49:40

Yeah, no. Don't take your snake, okay? Don't do that. And don't take children as a human shield. And there's a whole bunch of other things, but this is just a common outline, and we can fill this in later. This also pertains to knowing about domestic travel. In general, know about the state and federal rules. International travel? Understand what the federal rules require. Know what law enforcement can and cannot do with respect to registration. This is really important for Californians, especially. Omissions. What happens if you fail to include required information on your registration form? A lot of people come from other states and have dual-residency because they want to get off registration in California to help them in the state they moved to, but they omit to put down all things that the form requires.

Chance 50:37

Be sure you understand what the form is asking. Make sure you include all the information. If relocating, whether it's jurisdictionally, or whether it's in another state or whatever. There are reporting requirements in California. You got five days to do that. Know what compliance checks entail. Now, in California, law enforcement will show up at your door, and they'll be able to be there legally, so understand that what they smell, or what they see, or what they hear comes into play. Be aware of the possible collateral consequences of this compliance check. Make sure you're living where you're supposed to be living. Especially be aware of scams.

Andy 51:23

I get it. Hey, Chance, you're breaking up really bad right now. So, Larry, while Chance's internet settles, go over these compliance checks for a minute.

Larry 51:41

You expect me to be able to go over compliance checks?

Andy 51:45

I can tell you that when they would do them for me, they would come in and look. I do not drink. I just don't. Never have. There's no beer in my fridge – but, man, sure as hell, they would always come in and they check in the fridge and look for the bottle of Jack Daniels or look for the Budweiser. There's never alcohol in my house. But they'd come in and they would do it every frickin' time.

Larry 52:06

But now, you got to remember, you were under supervision.

Andy 52:21

Correct.

Larry 52:21

Well, now, compliance checks also happen to people who are not under any form of supervision. They can have all the alcohol they want in the refrigerator, because there's no registration requirement that you're forbidden to drink alcohol.

Andy 52:21

Is "smell", then, referring to pot?

Larry 52:25

Anything that would be unlawful. Anything that you would have unlawfully in their presence that they observe. But see, you don't have to let them in. Now California, being the Communist state, they may have a rule that you have to let them in.

Chance 52:45

No, no.

Larry 52:45

But you don't have to let the registration people come in unless you choose to.

Andy 52:46

And Chance, what is this about beware of scams?

Chance 52:49

Well, I just want to go back and emphasize what Larry just said, because there's no special rule in California that you are allowing somebody into your place, but you do have to be aware of your environment. What can be seen through a window or what's happening at any given time. Now, being aware of scams, you should know the police can't keep you on the phone and demand that you go get money at an ATM machine. That's not the way things work, okay? There's a lot of different scams, but just be aware that they're out there, and that you are a target of those scams. If you feel that you're being pressured, and someone's

asking you to do something that you wouldn't otherwise have to do, understand it's just not a natural thing, and it's just not a legal thing. It's probably a scam.

Chance 53:40

And so, the bottom line is, exercise good judgment. The social and legal landscape. Think about this. Your home, people who come into your home, make sure that you know what you're doing when you allow individuals to enter your home. Make sure you know who they are, and that you can trust them. Regulated areas such as schools: can you drop your kids off? Can you pick them up? Know what the laws say, know what you can and cannot do. And in terms of extracurricular activities, ask yourself, "Is it safe? Is it sane? Is it legal?" If the answer to any of these is "no", don't do it. Bottom line.

Andy 54:29

Going back to "what you're allowed to do", so to speak, is there a compiled list somewhere that says I can do X, Y and Z or not A, B and C?

Chance 54:42

In which way, Andy? Explain that.

Andy 54:45

Well, because there are 50 states, plus territories, etc., you said, I think, twelve different statutes tell you what the rules of your registry are. Do you have to go noodle through twelve different textbooks to figure out what you're allowed, and not allowed to do?

Chance 55:03

No, they're all in one. They're in Penal cCode 290, but you should look through that if you're a Californian. You should also understand, for instance, what you can do and what you couldn't do. If you change your name, you need to report that within five business days. Most people don't understand that in California. It really behooves a person to look through the laws, and just get a general concept. If they don't know, and they're going to do something, maybe talk to a legal professional before they do it, instead of doing it afterwards.

Andy 55:37

And then, as we've all seen, the — god, what's the name of the movie, "Untouchable"? The movie with the guy from Florida, Ron Book? — and there's the girl that they profiled in Oklahoma who was taking her daughter to the park, and they were changing the law the next day. This was the last time she was going to be able to take her daughter to the park because they were changing it so that PFRs can't be in parks now. Like, it's incredibly, incredibly hard for us to keep up with these things. They certainly don't make it easy for you to follow it.

Chance 56:11

No, not easy. Not at all. Complex, hard, and very easy to get in trouble.

Andy 56:18

Right. What were you going to say, Larry?

Larry 56:21

Well, on the extracurricular activities, I would suggest people think it through when there are things that you would be allowed to do that you probably shouldn't do, and things that you should do, just because it's the safe thing to do. If your victim was a hands-on child victim, and you go into a restroom and you're the only one in the restroom other than a minor child, are you allowed to use the restroom? Of course you are. Is it a wise thing to do? Probably not. Unless it's a dire emergency, you would exit the restroom. I mean, just use a little bit of common sense on things that could go south on you, that you ought not do. You know, the situation I was dealing with, with that woman that we talked about at the top of the program, now that she's making accusations, it's going to be hilarious if she makes one on me because I went to her house to pick up the paperwork to reflect that she did have payments coming from the Social Security Administration. Looking in the rearview mirror, maybe it wasn't such a wise idea for me to go to her house, but I was trying to go above and beyond, because my heart felt bad for her. Just because you can do something doesn't mean you should do it. Think about it very carefully, "How is this going to look if push comes to shove?" Don't take it to a paranoid level, that you're obsessing over it. But if you walk into a restroom and there's only a minor in there, get the heck out of there.

Andy 57:50

Larry, if she makes allegations against you, I'm going to play the Clinton laugh on repeat.

Larry 57:55

Oh, is that right?

Andy 57:56

I'll just loop it.

Larry 57:58

Now that would be funny.

Andy 58:01

(laughs) Now, we are talking about registration conditions, correct, Chance? We are not talking about supervision conditions, right?

Chance 58:10

Yeah, that's correct.

Andy 58:12

Did you get a chance to look at that PDF I sent you before?

Chance 58:16

I did.

Andy 58:18

Did you look at number 19 like I asked?

Chance 58:09

I did. The "chaperone" condition?

Andy 58:22

(laughs) Right, so I realize this is like a special condition of probation, but number 19 says, "You will never drive alone, especially ..." and I'm like, "Okay. So you've already said never, and now you've added especially on top of it?" I never understood how I can "never" do something and then "more-never" do it, more. Never.

Chance 58:41

Yeah, I think they're trying to make sure that you don't enter areas where children are. And it sounds like a chaperone-type thing, but the language is so poorly done, it sounds like "you'll never drive alone".

Andy 58:57

Right! And then the probation officer calls and says, "Come to the office," "You said I can't drive alone. Will you come down here and escort me up to the office, please?"

Larry 59:07

That would be funny. Do that!

Chance 59:11

Yeah, exactly. That was a crazy condition, because it's just so poorly written, you know?

Andy 59:16

Right.

Andy 59:18

Larry, are those conditions written by legislators? Or are those written by the Department of Corrections kind of people, the probation people?

Larry 59:30

It's the bureaucracy that composes all those rules. The day-to-day operations are well beyond the scope of legislative oversight. Even the governor's office isn't paying any attention to that. I mean, they put a corrections secretary, and the corrections team is assembled that's going to supervise the department. There are various agencies. The way ours is constructed, we have the Department of

Corrections, and then within the Department of Corrections, you have divisions. You have the Division of Probation and Parole. You have the Adult Prisons Division, the Interstate Compact, all these different divisions. So those things are being supervised. Nobody at the legislative level would even think about that. It's like "We're not interested in that. That's too mundane."

Andy 1:00:17

I appreciate all this Chance. It's highly useful. Chance, I realize that you are licensed in the Communist state of California. If someone called you from one of these freedom-loving states and they had questions, would you be in a position to help them navigate it? Or are they just so crazy that you can't transfer the knowledge from state to state?

Chance 1:00:43

If it's a generic question, sure. If it's a state-specific one, that's a little bit different, but I could at least help navigate them to a place where they could understand exactly what they need to do, or where they need to go in order to get that answer.

Andy 1:00:57

Because, you know, as the attorney that is representing FYP Education and all that, we need you to be the Master Attorney of The Universe.

Chance 1:01:07

Alrighty then... Okay!

Andy 1:01:11

(laughs) Is there anything else that we need to cover before we shut this thing down, Larry?

Larry 1:01:16

We're already on overtime.

Andy 1:01:18

We crossed an hour just now. We did get a new patron! Pam joined. It was nine days ago, Larry, and we were on a slight bit of hiatus, and I was driving all over the place, man. It was a lot of driving. And anyway, Pam, welcome! Larry, did we get any snail-mail subscribers?

Larry 1:01:34

No new subscribers, but we do want to offer our heartfelt, warm thank you to Mark for his generous donation to support the transcript service. He's a recipient of the transcript, and he had a windfall come to him and he wanted to share some of it. That was just so kind and generous. Thank you, Mark.

Andy 1:01:55

Was it one of those, um, whatchamadoo, stimulus checks?

Larry 1:02:00

It wasn't quite that big, but it was amazing for a person who's incarcerated.

Chance 1:02:06

Wow.

Andy 1:02:06

He must be suitcasing cell phones. [awkward silence] Okay! On that, I guess we will shut it down so head over to registrymatters.co for the show notes, and you can leave voicemail at (747) 227-4477. We received a lot of email lately, and that's at RegistryMattersCast@gmail.com. And of course, as I was saying earlier, head over to patreon.com/registrymatters and just for as little as a buck a month, you can support the program and it's very much appreciated. That's all I got. Thank you, everyone, the hundreds of people that showed up in chat tonight and listened to us record this live, I greatly appreciate it. It was a good time, keeping things lively while the show is going on. I don't have anything else. Have a good evening, Chance and Larry, and I will talk to you all soon.

Chance 1:02:56

Thank you. Good night.

Larry 1:02:58

G'night.

Announcer 1:03:06

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