



## Registry Matters Podcast

Episode 301

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Announcer 00:00

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Andy 00:08

Recording live from FYP Studios east and west, transmitting across the Internet, this is episode 301 of Registry Matters. Gentlemen, how are you? Larry, how are you this evening? You're getting older, aren't you?

Larry 00:21

About to turn 183!

Andy 00:24

183, wow! Chance, welcome back!

Chance 00:27

Thank you. Thank you. I'm in awe of the wisdom of a 183-year-old.

Andy 00:34

He's up there. You're not 183. Are you even close? Are you even a third of his age?

Chance 00:39

Yeah, I'd say about exactly his age. But, you know, what can I tell you?

Andy 00:46

(laughs) I'm with you. I don't know what to do with him. Make sure that you press Like and Subscribe and leave a five-star review in all of the places. And you can see there on the YouTube video. Where is it? It's over there. Press Like and Subscribe, and subscribe on your favorite podcast, app, etc., all that. And if you're feeling generous, become a patron for as little as a dollar a month, and you can join the community, you can hang out with us in Discord and all that fun stuff, because we have a lot of good conversations there.

Andy 01:13

So, with all that said, Larry, what are we doing tonight?

Larry 01:18

Well, we have a listener comment at the beginning, and we're going to do a dive, possibly a deep dive, into the New York Court of Appeals decision to overturn Harvey Weinstein's conviction. We have the California Corner with attorney Chance Oberstein, and we have three articles I'd like to cover.

Andy 01:39

Now, you know, based on the amount of content we have, I don't think we're getting to all three of them. I looked at this, Larry. This goes for, like, 47 pages.

Larry 01:49

Talk fast.

Andy 01:50

All right, I will talk fast. But literally, before we get going, a friend of mine called me yesterday, and we have talked about him on the

podcast before, but he went and took a polygraph yesterday, you know, six-month, whatever it is, and he's got to drive all the way up to the city. He's not really comfortable driving up to the city. He's got to pay his \$225, \$250, whatever, whatever extortion fee they throw at you. And one of the questions caused him to sort of, kind of bust out, not all the way laughing, but kind of like almost. And that, I guess, tripped up the machine. And so they say he failed his polygraph. And I wanted to know. We've talked, Larry, you and I have talked a million times about the polygraph, but I wanted to get Chance's opinion on the impact of it as far as his supervision. Are they going to then lock him up? Can they lock you up for a polygraph, all those things? What is your take on where things go from here?

Chance 02:46

Well, typically no, they're not going to lock him up for that because basically, as you've probably discussed a million times, this isn't even evidence in a court of law.

Andy 02:57

Right.

Chance 02:57

What's going to happen, probably, is it's going to have to do with therapy. It's going to have to do with resetting or applying more ... you know, the process is the punishment. If you're on maintenance, you go back to group. If you're on group, you do more of that type of stuff. Obviously, from what you say, if he was set off on one question, probably, you know, he failed the test. It doesn't test whether you're speaking the truth or not. It has to do with galvanic nerve response.

Chance 03:32

And when you're pissed off or angry, you don't do well on the test. It could be that you're nervous. It could be that you're nervous because the truth is out there and you can't deal with that because that question makes you nervous about that. Or it could be that you've been asked the question so many times that the question is so ridiculous that your immediate response is anger and that's going to cause a problem too. There are different explanations for it. But bottom line is, no, the repercussion from that is more on the therapy side, not necessarily on the custodial punishment side.

Andy 04:14

For me, the polygraph is one of the things that drives me the most batty, because there's no science behind it whatsoever. I'm all about some science and some evidence. You probably don't know this Chance, but one of the first episodes that Larry and I did was about the polygraph. We almost broke out in a fight because Larry's like, "No, this thing's real. It works," Until he went and asked a friend of his that does the polygraph. And he's like, it's kind of about a little bit better than a coin flip.

Chance 04:44

Correct.

Andy 04:45

And it drives me absolutely bonkers. But! If it intimidates you to where you admit to doing whatever you were doing, then I guess it did work! It just drives me absolutely bonkers.

Chance 05:00

Well, you know, I couldn't agree with you more. That's essentially what it's used for, is to shake the tree and hope that some apples fall out. That's the best and highest use of that technology.

Andy 05:14

Now, before we close out, and, Larry, feel free. I want to ask you a question, Chance. Do you think that it would be advisable to buy a polygraph machine so that you could practice at home, so that when you do take the real test, you're better prepared for it?

Chance 05:32

No. No, I think the best way of dealing with that machine is finding someone who's familiar with it, and having a consultation with them. Perhaps someone who formally gave those tests, or perhaps psychologists that have been involved with those tests. But your best investment in time is learning the reasons underlying why you can't pass it, and it has nothing to do with working with the machine. You can do it a million times, and you'll get the same result. What you need is some good consulting with someone who knows what they're talking about.

Andy 06:08

Gotcha. Anything to add, Larry, before we go?

Larry 06:11

Well, I don't want to be too critical of the person who did that. That was a real-life story. But if you were to have a polygraph in your home, a machine, and a probation officer came around to do a home visit and they were to discover it, do you think their reaction would be favorable?

Andy 06:30

(laughs) No! Not at all.

Larry 06:32

Well, that's what I was asking Chance. I mean, this is what happened. He got in some significant trouble having a polygraph machine. They did not think that was as funny as he thought it was.

Andy 06:43

See, Larry? I think that's funny!

Larry 06:46

Well, it was funny! Except for the person who was serving the prison time. It wasn't funny to them.

Andy 06:52

Definitely not funny. All right, I don't mean to make fun at you, Rocky. I'm sorry. Let's move on to a question. That is a true story, Chance. The person did have a polygraph at home when the handlers came back around.

Chance 07:05

Wow.

Andy 07:06

Yeah. All right, anyway, "I am from Illinois and I love your podcast show. I feel the need to speak with you or maybe Chance on matters of registration here in Illinois and would welcome any help you can provide. I, too, do not always agree with Adele and Mark," — which would be Adele Nicholas and Mark Weinberg — "nor with Martin Kopf. Yet, they all act like I'm beneath them, and others as well. I helped others to get their day in court and they went home! Had to fight for my life as I had faced a possible civil commitment, and I knew not to use any alleged ex post facto claims. Larry, you tickle me to death." Larry, this is the one person that thinks that you're funny. "Larry, you tickle me to death. With all your wisdom, I get the laugh, laugh, laugh sir! FYP James.

Larry 07:53

Well, you got it right. That's why I put it in here.

Andy 08:02

(laughs)

Larry 08:02

Because, see? At least one person appreciates what's funny, even though you don't.

Andy 08:06

I don't find you funny, Larry. Not what you send me. I don't think that's funny, what you send me.

Larry 08:10

Well, that's because you've got a warped sense of humor.

Andy 08:13

Maybe you're the one with the warp sense of humor.

Larry 08:16

Well, I just got his email here, and funny thing is, he sent it to an address I don't use very much. Don't know how he found it. Maybe I had contact with him years ago, but I don't monitor that account, and I just happened to see it, but I don't stay on that account regularly.

Andy 08:33

Gotcha. Well, what else do you want to talk about with this comment?

Larry 08:37

I think we've covered it sufficiently. But thank you, James. At least you have a good sense of humor.

Andy 08:43

All right.

Larry 08:45

I'm suggesting, speaking for Chance, that if he wants to talk to Chance about Illinois, I'm sure Chance will. But remember, he doesn't practice there, nor do I conduct my unauthorized practice of law in Illinois. (both laugh) So anything that we would tell you should be taken with a little bit of trepidation.

Andy 09:05

Well, can you imagine that anybody that listens to this show did not hear this news already?

Larry 09:16

Yes, I could imagine that.

Andy 09:17

Really? I can't imagine, because I heard it ten different ways, coming in on the Discord server or in the affiliates list email, all kinds of different ways. Anywho, if you haven't heard, Harvey Weinstein, his rape conviction, and, like, really what kicked off the whole "Me Too" movement, his conviction was overturned and that was just a handful of days ago.

Andy 09:41

Let's see, what's going on with Mister Weinstein that justifies the consumption of FYP's valuable time? Before you answer, you should know, Larry, that even though this came out, like, what, two days ago? I scoured through, and very intently and intensely, I read all 77 pages of the opinion, which includes two dissenting opinions.

Larry 10:07

Well, you've already set it up. His conviction was overturned by the New York Court of Appeals, which I believe is their top court (even though they call it "Court of Appeals"). I believe that this is the end of the line, in terms of any further appellate review. He has a new trial coming his way if the prosecution chooses to prosecute him again. Which they will.

Andy 10:28

And maybe we will cover this. Does this mean, like, the doors open and free he goes? I don't want to talk about California. I'm just saying he walks out of the building?

Larry 10:37

No. Not at all. There's too many machinations that have to go down before that. He's got a detainer that would keep him from leaving if everything else went perfectly, because he's also got a conviction in California so they'd hand him off to California. But also the machinations of this, he's not going to get to walk out until this process is complete.

Andy 10:58

I see.

Larry 10:59

There's a reconsideration that could be requested. It was a 4-3 opinion. There's the mandate that has to be issued, and then they have to figure out what kind of appeal bond they're going to grant him. There's a lot of things. I mean, Chance could probably more eloquently speak to it than I just did, but it's not like they're running around with a key ready to let him out. That's not happening.

Andy 11:19

All right, well, then we will continue. On page two of the opinion, it states, "Under our system of justice, the accused has a right to be held to account only for the crime charged and, thus, allegations of prior bad acts may not be admitted against them for

the sole purpose of establishing their propensity for criminality. Nor may the prosecution use 'prior convictions or proof of the prior commission of specific, criminal, vicious or immoral acts' other than to impeach the accused's credibility." I've heard you mention many times, there are exceptions to this provided by Rule 404(b). By the way, can either of you please dig into what this rule means?

Larry 12:02

Well, I could, but I'm going to defer to a real attorney to keep my detractors happy.

Andy 12:06

That's why we got him here anyway.

Chance 12:08

Me? Oh, me.

Andy 12:10

That's you. The guy with the "esquire".

Chance 12:13

Okay, all right. Well, let's talk about it a little bit, since I must. From the federal perspective, 404(b) evidence is evidence of prior bad acts that the prosecution can introduce in their case in chief. Under the Federal Rule of Evidence, commonly abbreviated as FRE 404(b), the prosecution is able to introduce evidence of the defendant's prior bad acts that are not charged in the instant criminal case. Although introduction of 404(b) evidence is not permissible to show an individual's criminal propensity or predisposition to commit crimes, it is admissible for other reasons.

Andy 12:58

And what are some of those reasons?

Chance 13:00

Well, you know, 404(b) provides that prior act evidence, "is not admissible to prove the character of a person in order to show action and conformity therewith," but it is admissible for several other purposes. Specifically, FRE 404(b) evidence can be admissible for purposes such as (and this is the list): proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. And that's it.

Andy 13:40

Isn't that everything?

Chance 13:41

No, I mean, but, you know, it is a pretty comprehensive list.

Andy 13:49

Now, you have referenced the Federal Rules of Evidence, as you said, the FRE. Since this case was tried in New York, do they have a similar rule?

Chance 13:58

They do, which actually comes before the Federal Rules of Evidence. New York state has a similar provision, however, under a different name, under a criminal case from 1901 titled People of the State of New York vs Molineux.

Chance 14:20

It's the Molineux case. The prosecution is able to make what's called a Molineux application, and its purpose is identical, really, to the FRE 404(b). However, the difference is that FRE 404(b) comes from a statute, while New York's Molineux application comes from a judicial opinion on a criminal case. Which simply means that the exceptions can be expanded. It's non-exhaustive. As a result, prosecutors can get very creative in their arguments in applying Molineux.

Andy 14:57

How is the notice and application done to admit 404(b) evidence?

Chance 15:02

Well, in the federal sense, the prosecutor can make an FRE 404(b) application as a "motion in limine" (before the trial). The reason why a 404(b) application is made before trial is to give both sides an opportunity to present their arguments to the judge as to whether the FRE(b) evidence should be presented at trial.

Andy 15:25

Now, Larry, since the time of Jesus, you've been complaining about this kind of thing. So what is the standard for admissibility of 404(b) evidence?

Larry 15:35

Well, you're right. I've been complaining for a long time, because there's judicial discretion, so whether to admit under 404(b) is within the discretion of the trial judge. But in order to decide, there's a test that the court must consider in determining whether such evidence is admissible. And to make that determination if uncharged crimes or other bad acts would be admissible at trial, the most important thing is that they must consider whether the evidence of the uncharged crimes was offered for a purpose that is relevant to a disputed trial issue. In other words, if you just want to show that the guy is bad, it doesn't come in. If you're trying to draw a connection to a disputed issue — and I'm going to give my own self as an example in a moment, but that's the first part of the test — and if you get past prong one, then you've got to do a second evaluation on whether it's probative value substantially outweighs the possibility of significant prejudice to the accused person. And that's where the system breaks down, because you can generally get past hurdle one, but then there's enormous pressure on the judge to find whether it's not going to be too prejudicial to outweigh the probative value.

Larry 16:46

But, as an example like on that non-exhaustive list that Chance read, I used to make thousands and thousands of prank telephone calls. I had an addiction that could not be overcome. I did want to overcome it, but I don't think it could have been at the time. I had a particular method of how I did it. I liked calling universities and colleges that had phones in the housing units. I would call sequentially, from room to room. All you had to do is add a digit number to the previous number and you were going to get someone, likely even the next room or two over. I would do that. So, for example, if the police were unsuccessful in tracing the calls to me, but yet they had hundreds and hundreds of complaining people from within the university community that had received similar in nature calls, where the same thing was said, by a person who did the same thing, going from door to door, room to room

number, and the person had the same type of soft southern accent that I had, they could argue that "You are correct. This is possibly prejudicial, but it's very probative, because we're going to show that this is something that only this man has done, in all the history of us investigating prank phone calls, he's the only one who's done this. So this is a very unique M.O. to him. Therefore, we ask that you admit it."

Larry 18:37

Now, in a case like that, Chance, if you were defending me, what would you say when the prosecutor moved to admit evidence under 404(b) that there had been a hundred or maybe two hundred phone calls to a particular housing unit on the University of Colorado campus? And we want to bring in some of these to testify that your guy did it. What would you say?

Chance 18:57

"Ouch!" (both laugh) But, wow.

Larry 19:03

Would that be a very appropriate use of 404(b)?

Chance 19:10

Well, no, of course it's going to be more prejudicial than anything else. It's going to outweigh any probative value that it's just, none of it. It's just not going to come in.

Larry 19:24

So you think the judge would deny that. Because I thought — it never happened, I never had a prosecutor threaten that — but I thought they could make a compelling showing that we need to tie these calls to this person and what he does is very unique.

Chance 19:38

But the fact is, you're right about that second prong. And that's where most of the mistakes are made. If it's too prejudicial, then you get results like the Weinstein reversal. But here's also stacking and everything else. What's the probable outcome? Some will come in, but most will stay out.

Andy 20:06

Let's say that a jury hears 404(b) evidence during a trial. What prevents the jury from misusing that evidence and convicting a person just simply because they do not like what they've heard?

Larry 20:18

Nothing. And therein lies the danger. The jury does hear a "limiting instruction" prior to beginning of deliberations. It's something to the effect of "The 404(b) evidence that was presented by the prosecutor was presented for a limited purpose, namely to explain motive, opportunity, intent, preparation, plan, knowledge, identity, and absence of mistake or accident." The jury will also be told that they're "not allowed to consider 404(b) evidence as proof of defendant's criminal propensity." That is to say that, just because the prosecutor presented the evidence of the defendant committing bad acts that are not charged in the incident indictment, the jury is not allowed to use the prior bad acts as proof the defendant committed the crimes. That's such a joke! That's kind of like when the jury is told to disregard something that they've heard.

Andy 21:09  
Right!

Larry 21:10  
I mean, you tell the jury, "We're going to let 15 people come in here and say 'He raped me too,' but you're to disregard any of that, other than just ..." I mean, it's nonsensical.

Andy 21:20  
I don't understand why this exists, as opposed to bringing in witnesses as actual evidence to testify.

Larry 21:31  
Well, they did that in Weinstein's case, but they wanted to make sure that they secured a conviction. They had the actual complaining witnesses, but they brought in several that were not a part of the case. I sounded the alarm bell then, "Hey, this is dangerous stuff. This is a high-profile case. This shouldn't be happening." But they did.

Andy 21:52  
Well, let me ask you in a different way, though. Is this just to have a lower standard of evidence, to just get something in the jurors ears?

Larry 22:00  
It's to win the game. This is to win the case. That's why they do it.

Chance 22:07  
Andy, think of it like this. You can't say, "He did that, so he did this." You can say "He did that, so he's the type of person who could do something like this." (laughs) What's the difference?

Andy 22:26  
I gotcha, alright. Wow. The court stated, "Defendant was convicted by a jury for various sexual crimes against three named complainants and, on appeal, claims that he was judged not on the conduct for which he was indicted, but on irrelevant, prejudicial and untested allegations of prior bad acts."

Andy 22:55  
"We conclude that the trial court erroneously admitted testimony of uncharged, alleged prior sexual acts against persons other than the complainants of the underlying crimes, because that testimony served no material non-propensity purpose." So this reversal is based solely on an error by the court?

Chance 23:17  
Yes. Yes, what they're saying is "there's no probative value." So they can retry him, and likely they will. The court went on to say, "The trial court compounded the error when it ruled that defendant, who has no criminal history, could be cross-examined about those allegations as well as numerous allegations of misconduct that portrayed defendant in a highly prejudicial light. The synergistic effect of these errors was not harmless. The only evidence against defendant was the complainant's testimony. And the result of the court's rulings, on the one hand, was to bolster their credibility and diminish defendant's character before the jury. On the other hand, the threat of a cross-examination highlighting these untested allegations undermined defendant's right to testify."

Larry 24:10  
I'm sorry, let me interrupt you. I hadn't even thought about that when I put this in here. Can you expand on that before we go to the next point about "undermined his right to testify," else we're going to leave that hanging. I think I understand it. But if he had testified, he did testify if I recall right. But, he would have been put in a very bad position. So, Chance, what does that mean, "undermined his right to testify?"

Chance 24:39  
Well, because it focuses not just on the act he's being alleged to have committed, but he could be tested on all that stuff, okay? It just opens up a whole Pandora's box of things that are just indefensible. And basically takes away from what the act in itself is. It's just, how can I put it? It's just like "piling on," okay? And the stack gets so high, it's just impossible to deal with.

Andy 25:23  
So then what is the remedy for this?

Chance 25:26  
Well, according to the court, "the remedy for these egregious errors is a new trial."

Andy 25:32  
"Before trial, the court granted the prosecution's application to admit certain testimony of uncharged crimes and miscellaneous bad acts as an exception to the Molineux rule, prohibiting such evidence, to establish defendant's intent and his understanding of the complainants' lack of consent." Is that the application you referred to earlier?

Chance 25:59  
Yes.

Andy 26:01  
So then "The three Molineux witnesses testified about defendant Weinstein's unwanted sexual advances towards them. Witness 1 stated that she met the defendant in 2004 at a Manhattan nightclub while she was working as an actor and the defendant said he could help her career. Sometime in 2004 or 2005, she met the defendant in a hotel room for a networking event. Defendant led her to the bedroom, where he suddenly put his hand up her skirt and tried to put his hand inside her and apologized when she pulled away. A few weeks later, she agreed to meet him at another hotel, where, clothed in a bathrobe, he told her that he would sign contracts for her to work only if she had sex with him and his assistant, but then told her he was joking and said that she would 'never make it in this business' unless she changed her attitude."

Chance 26:51  
Yeah. Can you imagine for a moment? Let's go back to Larry's question on what we said up above, which was "The threat of cross-examination highlighting these untested allegations undermines the defendant's right to testify." If you've got to answer up for all those different things on cross-examination, no one's going to want to testify! Because it's going to look like you've committed several crimes. And before you know it, you're in way deeper than you were to begin with. So who's going to ever take

the stand with so much at stake? Not just what you're being charged with, but the potential of other crimes and other things hanging in the wings? What do you think, Larry?

Larry 27:37

Well, that's what I was trying to understand, because it seems like that he was in a no-win position, but I was thinking that he did testify despite this, but maybe he did not. Maybe one of our vast audience members will let us know. But he was deprived, if he didn't testify. The way you've explained that, who could testify? If you're going to have a whole litany of people saying things that haven't gone through police investigations, no formal charges, no probable cause has been established, and they get to say all those things in a courtroom as if those things had been thoroughly tested and met at least a minimum threshold showing a probable cause. That is sad!

Chance 28:17

Correct.

Andy 28:22

What happens next to him then? We talked a little bit that he won't get released, but this is overturning ... at least that he gets a new trial in New York. But if they did open the doors, he still has a conviction in another place, correct?

Chance 28:36

Oh, yeah. I mean, this is not a get-out-of-jail-free card. You know, the whole process starts from square one again in New York. But on the other hand, he's already been convicted on the west coast, and that's not going anywhere. So no one's getting out, that's for sure.

Andy 28:58

Does this highlight that if you have essentially unlimited money, that you can fight the justice system almost to the point of breaking them down?

Chance 29:07

Larry?

Larry 29:10

I don't think so. First of all, I don't know that he has unlimited money, but I think this was such an egregious case of abuse by the prosecution that I almost would like to believe that, that the bar itself, the members of the bar would have found this so repugnant that they would have stepped in to try to undo this, because this sets up doom for anybody. Because this case is far bigger than Harvey Weinstein, in terms of the ramifications of them being able to put you on trial for things that you were never accused of. I think that it has very little to do with money. But my fear is that, legislatively, the pushback is going to be so enormous. There's already critics out there saying how this out-of-control, left-leaning, wacko Supreme Court of New York has done stuff like this over and over again, and that "we need to do something to contain them." I think the pressure will be so enormous on the New York assembly that they won't be able to disregard this. They're going to have to try to pass some legislation. Don't know what it'll be, but they will come up with something.

Andy 30:26

I just want to go back around to the money thing. None of us would be able to get appeal after appeal after appeal. Keep coming up with anything because of not unlimited money, but the guy at the time was worth 300 or something million dollars when all this started?

Larry 30:45

Well, I don't think he's had appeal after appeal. I think this is a direct appeal. This is his first appeal and it's gone to the state's high court. This is not like another person who's challenging everything over and over again.

Andy 30:59

(laughs) ...who shall remain nameless.

Chance 31:04

You're not talking about Crosby, are you?

Andy 31:07

Crosby or Cosby?

Chance 31:08

I'm sorry, Cosby.

Andy 31:10

No, we are not talking about him. We are talking about the man with the good hair.

Chance 31:16

Oh, that's right. That's right.

Andy 31:18

I'll have to tell you later about the conversation I had with someone on Discord about what I said last week, and the challenges that were brought to me because of it. But. California Corner time. Chance, take it away!

Chance 31:33

All right. California Corner time! Last week, I received a submission from my website regarding the following question: Whether prison time for a sex offense could preclude an individual from relief under California's Certificate of Rehabilitation (COR) statute. Let me read the submission first, and then we'll get into the crux of the question. And here's what I got:

Chance 31:59

"I've obtained relief from yearly registration due to SB384 and PC290.5 as I was designated a tier one offender, and I have the court order attesting to this. However, I would very much like to obtain a Certificate of Rehabilitation as well. It has been 25 years since my convictions for felony non-aggravated PC 314, of which there are four. I have lived a law-abiding life since release from prison in 2004.

Chance 32:29

"The problem I see is the new SB731 specifies that for any felony sex convictions, an expungement is not possible. PC 4852 indicates that one needs to expunge the convictions before applying for a COR. However, even before SB731 passed, if one had served a prison sentence, it's my understanding that an expungement

would not have been permitted. SB731 changed all this for non-sex offenses only.

Chance 33:05

"However, if you study 4852.13(b), (c), it seems to indicate that Certificates have been obtained by sex offenders released from prison, as it states that 'the COR could be revoked if the felon has been subsequently deemed to be a danger to society.' Okay, so to obtain a COR under this scenario, it may be a totally untested filing. I guess what would be helpful to know is whether or not there is any case law on the books that could support a request for a COR under a PC 314 conviction that resulted in state prison. I had an attorney previously tell me that a COR is not possible for an ex-prison inmate convicted of a sex offense. I am wanting a second opinion."

Andy 34:01

Now, it seems like he has already achieved his goal, though. He didn't have to register in the state of California, even though he had been convicted of the same offense at least four times and served time in prison. What does he really want? What more can anyone ask for?

Chance 34:17

Well, you know, your dignity back? Redemption?

Andy 34:23

You want your time back? (sorry.)

Chance 34:25

What he really wants is the court to declare that he's rehabilitated. He has been removed from the California registry because he no longer poses a risk to community safety, but he wants complete relief under California law.

Larry 34:41

Well, I've got a question on that. I think that we can zero in on what "complete relief" might mean. Under a certificate of rehabilitation, if it were to be available to him, would that restore additional rights? What other relief would it provide? Like, for example, could run for, and be elected to public office? What would complete relief look like?

Chance 35:03

Well, you know, it can help your chance of getting a professional license from the state board, and be an official record that shows that you are officially rehabilitated, which may improve your job or housing opportunities. So it may go to your job, or you may be able to apply it to housing. Additionally, if granted, it's sent to the governor as your official application for a pardon. And that's automatic, just that.

Larry 35:38

Okay. Well, all these benefits sound great, but it looks like he has done the research and verified his conclusions with his wise counsel. That those are correct.

Andy 35:49

"Wise counsel"... Really, Larry? Does that even exist today?

Chance 35:54

Well, you know, that's a good question, Andy, and we're going to find that out right now. Now let's see. Okay, let's break this down. Under PC Section 4852.01, which is where he should go in order to analyze this. And if you think about his message, it jumps around a bit, but just the front part of the statute is pretty clear. Under Subsection (a), it says "Except as specified in Subdivision (b), a person convicted of a felony may file a petition for a certificate of rehabilitation and pardon pursuant to the provisions of this chapter." Period.

Chance 36:33

Now we go down to sub (b), and sub (b) says, "A person convicted of a misdemeanor violation of any sex offense specified in Section 290, or a felony violation of any sex offense specified in Section 290 who is granted probation" and, you know, let's just say that it's been dismissed pursuant "to Section 1203.4" — which is a dismissal statute — "may file a petition for a certificate of rehabilitation and pardon pursuant to" (a few other things). Now the operative thing about sub (b) is, it talks about probation. So, it doesn't mention prison time because that's contained in (a). It specifically only applies to sex offenses where probation is granted.

Chance 37:24

Therefore, for sex crimes where probation is granted, special conditions apply in terms of eligibility, such as a dismissal under Penal Code Section 1203.4. However, if you did your time in prison and were paroled, no such conditions apply, even if your conviction was a sex offense. Of course, this is a very simplistic analysis, and there's other variables that may apply but, for the limited purpose of answering the question of whether prison time for a sex offense would preclude an individual from relief under PC 4852.01, the answer is unequivocally: No. Unless your particular conviction is barred from relief under Subsection (3) of that statute. There are some statutes, some convictions that are barred. Anyways, gentlemen, your thoughts?

Andy 38:24

Over my head (laughs)

Larry 38:25

Well I'm about as dizzy as Andy is when I explain some of this stuff, with subsections a, b and c.

Andy 38:31

Oh my god, dude, I can't read these things. It hurts my head so bad.

Larry 38:35

So can you, as Andy says, "Can you dumb it down?" If you get prison time, you are eligible for a Certificate of Rehabilitation, but if you get probation, you're not eligible, is that correct?

Chance 38:50

No. (Andy laughs) No, you can be eligible either way. But here's the interesting thing: If — and I'm not talking about subsection (c), because subsection (c) has certain convictions that you can't. Whether probation is granted or you go to prison, just can't get it. So forget subsection (c) for a minute.

Chance 39:12

But if you go to prison and you're paroled, you don't need a dismissal because you were never placed on probation. Therefore, you can apply without having to follow all those conditions under sub (b), you don't need any of that. And by the way, sub (b) has a few more conditions, okay? It says, if you're placed on probation, one, you need a dismissal. And two, you can file a petition only if you have not been incarcerated in "prison, jail, detention facility, or other penal institution or agency" since the dismissal was given, and you're not on probation, and a few other things, but none of that stuff applies to prison.

Chance 40:01

I'm going to tell you a quick, brief story about an anomaly that happened in California. Before the tiered system happened, if someone was convicted of possession of child porn and they were convicted of a misdemeanor after 2014, because in 2014, that particular conviction was barred from relief under the dismissal statute. So, if you were placed on probation after 2014 for a misdemeanor, you could not get a certificate of rehabilitation. And that was bad, because for that particular crime, if you got a certificate of rehabilitation, you were taken off the registry. However, if you were convicted and you went to prison for a felony and you were paroled, you were otherwise eligible for a certificate and you could be removed from the registry. Does that make sense?

Larry 41:01

Uh... call the phone number that says Chance (Chance laughs) and he'll answer your question. This is making me dizzy.

Andy 41:09

See?? This is what happens when you write stuff, Larry, and I've got to read it. And you're like, "Why don't you understand?" Like, dude, "I can read the words, and I can make the sounds, but I didn't understand a word I said." This is the same thing.

Chance 41:24

Call the number. Call the number. Call the number on the board.

Larry 41:28

Call the number, and Chance will walk you through it. But I can see what the writer of this is trying to accomplish, and I understand that part of it. But in terms of trying to dice this out, in terms of whether you could get relief or not, I don't think I could practice law in California. I'm not going to open my office there.

Chance 41:46

Yeah, I don't blame you. The simple answer is "Yeah, if you go to prison, you can. And yeah, if you get probation and you meet the conditions, you can." And so it does take an attorney to look at it and figure it out with you.

Andy 41:56

And the moral of the story is: Call Chance at (494) 365-5842. That's the moral of the story.

Chance 42:05

I like that moral. It's very good moral.

Andy 42:09

Excellent. Well, Larry, we have some articles that you've left here for us. Shall we dig in?

Larry 42:15

Let's do it, because we got three of them.

Andy 42:18

Okay. Well, from Courthouse News, there's an article [<https://www.courthousenews.com/los-angeles-assistant-prosecutor-faces-felony-charges/>] from Los Angeles that says, "The California attorney general Wednesday announced criminal charges against a Los Angeles assistant district attorney, accusing her of using information from a government computer without authorization. Diana Taren, the assistant district attorney for ethics for" – Listen! – "for ethics and integrity, faces 11 felonies after what Attorney General Rob Bonta said in a press release was an extensive investigation. She's accused of repeatedly using data from confidential and protected-by-statute peace officer files." Now, how does this relate to PFRs, Larry? Why is this in here?

Larry 43:00

Well, after reading it, I thought about it and I thought about it, and I'm cautiously optimistic that after three hundred episodes of Registry Matters, that you and I can finally agree on something that's funny.

Andy 43:13

You had something at the beginning that was funny. This is not funny.

Larry 43:17

Based on this, being an assistant district attorney in charge of ethics! This, you have to admit this is funny, right?

Andy 43:26

It's super-ironic. And, you know, I may go to... no this is not, it's not funny, Larry. It's not funny.

Larry 43:34

Okay. How far could you go? Since it's not funny, what would you concede?

Andy 43:39

It's ...intriguing.

Larry 43:39

Okay. You're hopeless.

Andy 43:41

I ... probably.

Larry 43:43

If you can't see that having the person in charge of ethics having been indicted is funny, there's absolutely no hope. But anyway, "According to the AG, Taran didn't have permission when she accessed a computer or computer network taking information from it. 'No one is above the law,'" Bonta said in a statement. "Public officials are called to serve the people and the state of California with integrity and honesty. At the California Department



of Justice, we will continue to fight for the people of California and hold those who break the law accountable."

Andy 44:22

Now, "Taran is accused of tapping into computer data, which included many confidential peace officer files, while serving as a constitutional policing advisor at the Los Angeles County Sheriff's Department in 2018. She then is thought to have used that data after joining the Los Angeles District Attorney's office in January 2021.

Larry 44:44

And you can't even admit that's funny, can you?

Andy 44:46

No, I cannot.

Larry 44:49

(laughs) Okay. "District Attorney George Gascón said in a statement, 'When I took office, we developed a protocol that ensured we complied with our constitutional obligations under Brady — which requires us to turn over potential exculpatory evidence to the defense, a category that includes law enforcement's prior misconduct — while simultaneously complying with state and federal law around privacy.'" Now, I don't know what the relevance of that statement was, but I put it in there because it came from the district attorney himself.

Andy 45:26

Now, what would you have done differently, though?

Larry 45:28

I mean, clearly, we're looking in the rearview mirror, but if I appoint someone to be in charge of ethics and integrity, I would make that appointment only after careful consideration of the person's own ethical behavior. And the article states that "Taran served in a handful of roles since joining the DA's office over three years ago. She began as a special advisor to the district attorney on post-conviction review, compliance with issues involving evidence and justice system integrity. In that role, she was considered part of Gascón's executive management team. Taran then served as director of prosecution support operations before assuming the role of assistant district attorney."

Larry 45:55

You would think that Gascón would have been able to observe her, ask enough questions, watch her ethical conduct, and determine if she was ethical. Now, Chance, she'd been practicing law for thirty-plus years. Is it hard to determine if a prosecutor acts ethically? You've been on the other side of prosecutors for a long time. Is it difficult to figure out who exercises their responsibility under the code of professional conduct and the special role of ethics for prosecutors?

Chance 46:38

Not really. Think about this, though, what Gascón said. You just said, "I don't know what this has to do with anything," but he said, "When I took office, we developed a protocol, and we ensured we complied with our constitutional obligations under Brady." And, you know, Brady just says that you've got to turn over stuff that's

exculpatory to the defense. Like, you know, bad acts — were just talking about bad acts — bad acts by police officers and so forth.

Chance 47:06

They recruited her from the very source they were digging into. Everybody knows that the police department stonewalls, and makes it impossible for that information to get to the defense, and she shortcut it. When you look at what Gascón's saying, he is backing her play and he's saying, "Look, you know, there's a real tension between what we're asked to do, what we can do, and how we can do it." And that's going to be the complexity of this case. I see where that's going, and I'm not sure whether it gets into ethics and integrity ... maybe? But there's a whole lot of folks here (laughs) that are lacking integrity in the system, not just the person digging into those resources when they shouldn't be.

Andy 47:56

There's an angle in here for the Computer Fraud and Abuse Act. I don't know if I have that whole code titled correctly, but there's, you're not allowed to access systems that you're not allowed to have access to.

Chance 48:07

Correct. Correct.

Larry 48:09

Well, Chance, will you keep us apprised of how this case unfolds since it's in your neck of the woods?

Chance 48:15

I sure will.

Larry 48:17

All right.

Andy 48:18

And moving along then over to Reason Magazine [[https://reason.com/2024/04/24/she-only-served-10-months-behind-bars-florida-still-slapped-her-with-a-\\$127,000-bill/](https://reason.com/2024/04/24/she-only-served-10-months-behind-bars-florida-still-slapped-her-with-a-$127,000-bill/)] Oh, gosh. "She only served," this is the title of it, "She only served ten months behind bars. Florida still slapped her with a \$127,000 bill." This is going to be another one that you say is funny, right, Larry?

Larry 48:37

Uh. I probably will.

Andy 48:39

All right, so under Florida's law, it's a "pay-to-stay" law. Inmates are charged \$50 for every day of their sentence, including time they never — how does that work? How is including time they never spent incarcerated — how does that work? Did I read that right?

Chance 48:58

Looks like.

Larry 49:00

Uh, you did. Imagine you've just been released from prison in Florida. You have every intention of turning your life around, and you plan to stay out of trouble, and get a job, and follow the rules

of your parole. Then you find out you owe a six-figure bill. Now, can you try to admit that that's sort of funny anyway??

Andy 49:17

Certainly not if you're the one that gets the \$127,000 bill and you're making minimum wage. No, it's not funny! And just like the previous story from California, this is also not funny!

Larry 49:27

(laughs) There's just no hope for you, I'm afraid. After three hundred episodes, I'm going to let go of it. But according to the article, Florida charges prisoners \$50 for every day of their original sentence – meaning they keep getting charged even if they're released early. When former inmates inevitably fail to pay this massive bill, it can prevent them from ever moving on from the period that they spent behind bars.

Andy 49:53

And couldn't that also then end you up in debtor's prison, where you have a fine, and then they lock you up because you have a fine, like if you're not paying child support?

Larry 50:01

I don't think it'll do that, but it certainly could cause you a lot of problems with your credit rating and with job approval. A lot of employers these days look at your credit as one of the conditions for how reliable you are as a human being and an employee.

Andy 50:17

This is insane. All right, well, quote, "Where I'm at today, I'm truly being stopped by one single barrier, and it is a dollar sign," Shelby Hoffman told WFTS Tampa Bay, a local news station. Hoffman was hit with a \$127,000 bill for a 7-year prison sentence, even though she only served ten months. Since her release from prison, Hoffman has gotten clean and rebuilt her life. She's soon to graduate with a bachelor's degree. However, she can't start her dream career as a case manager because of her outstanding pay-to-stay bill. Now, does this make any sense?

Larry 50:52

Apparently it does to the voters of Florida. Pay-to-stay fines end up following people like Hoffman long after they've left prison, trapping them with insurmountable debt. Not only is this practice cruel, but it obviously has little utility beyond the extended punishment of former offenders.

Chance 51:11

Yeah, you know, I noticed that this article was from the ABA, "Asking those caught up in our criminal justice system to support government agencies is an inefficient way for the government to raise revenue," Lauren Brooke-Eisen wrote last year in Human Rights, the American Bar Association's magazine. "Because many low income people can't pay their debt, billions of dollars in fines and fees go unpaid every year."

Larry 51:36

"We think it's unconstitutional," said Lisa Foster, Ce-Executive Director of Fines & Fees Justice Center. And she said that to WFTS in Tampa Bay, quote, "It's not proportionate, either to the underlying offense or to the person's financial circumstances."

Chance 51:57

It's interesting, the turnabout of Hoffman's grandmother. She is quoted as saying, "I had a mindset, because my dad was a federal prison guard, that you do the crime, you know, you do the time. But when I actually lived through this, I thought, this is not the way it is. There's no compassion shown to anybody who makes a mistake and pays the price for it. And she did."

Larry 52:22

Isn't it interesting that people have these epiphanies of things that they've accepted as being good and cool when it's applied to "them". But have you noticed, when it's applied to you, now that it's applied to her granddaughter, magically, she's been able to think it through more carefully. This is ridiculous to charge somebody ... if you can make a credible case for charging for the days that they spent in prison – you're providing their care. But how can you make any compelling argument that you should charge for the six of the seven years that she wasn't there?

Chance 52:58

It's ridiculous.

Andy 53:00

Do any other states charge you for being locked up like that?

Chance 53:05

I've never heard of it.

Larry 53:06

I think it's on the books in other states. I don't think they make it a high priority to try to collect it. I know during my time here in Albuquerque, we had a mayor named Martin Chavez, and Marty wanted people to pay for their time in local lockup, and they started billing people, I think it was \$40 a day. But they dismantled the practice when they discovered they were spending more on their collection efforts than they were recouping.

Andy 53:30

(laughs) I could see Arpaio doing this!

Larry 53:35

I could see him doing anything. But thankfully, his political career is over.

Andy 53:40

Fortunately. Well, then, moving along, back to the Associated Press "Senators demand accounting of rapid closure plan for California prison where women were abused" [<https://apnews.com/article/fci-dublin-california-prison-shutdown-86b7284ca597d89269a1af301c02eed3>]. This article states "Nearly all inmates have been transferred out of a troubled women's prison set to be shut down in" — Hey, Chance it's your back door again! — "in California. U.S. senators on Wednesday demanded an accounting of the rapid closure plan for a facility where sexual abuse by guards was rampant." Now, what is all this about?

Larry 54:04

Well, this is one of those situations where you're damned if you do and damned if you don't. If the prison was as bad as the allegations, it needed to be closed, but "Members of the Senate

Judicial Committee sent a letter to the Bureau of Prisons (BOP) expressing concerns over claims of a chaotic transfer process during which inmates were placed on buses and planes and they didn't receive proper medical care, and were reportedly subjected to mistreatment, harassment, neglect and abuse while in transit.

Andy 54:33

Susan Beatty, a lawyer for the inmates who blew the whistle on the conditions at the prisons, said there were reports that during transport, guards made abusive comments to the women, "labeling them as snitches, referring to the closure of Dublin." In addition, the inmates were shackled at their wrists and ankles for the entirety of their long journeys, despite their minimum-security classification, and in some cases were denied water and trips to the bathroom. Look, man, I have put up with that crap. They – for a long time, you get shackled without a lot of bathroom breaks. Don't you remember that article we covered forever-ago about the prison transport van? You'd be on the van for 36 hours and they'd never let you off, no air conditioning, and you get thrown a pack lunch and you gotta eat it – and people were – sitting on the floor getting peed on?

Larry 55:20

I've heard that. I remember that. A 2021 Associate Press investigation exposed a "rape club" culture at the prison, where a pattern of abuse or mismanagement went back several decades. The Bureau of Prisons repeatedly promised to improve the culture and environment – but the decision to shutter the facility represented an extraordinary acknowledgement that reform efforts had failed.

Chance 55:47

Heeew, yeah. Following the sudden announcement April 15 that FCI Dublin would be shut down, U.S. District Court Judge Yvonne Gonzalez Rogers ordered a case-by-case review of each inmate's specific needs before the transfers began. In response, the bureau filed court papers questioning the authority of the special master appointed by the judge on April 5 to oversee the prison, who was tasked with reviewing each woman's status. Inmate advocates hoped the judge's decision would slow the shutdown, but the bureau proceeded with the process anyway, saying in a court filing that "extensive resources and employee hours have already been invested in the move."

Larry 56:33

And five Senate Judiciary Committee members on Wednesday asked Bureau of Prisons director Colette Peters to provide information on preparations to close the facility and guidance given "for the safe and humane release from custody or transfer of individuals to other Bureau of Prisons facilities."

Andy 56:52

Now tell me, though, what will be the result of all of this attention from U.S. senators?

Larry 56:58

Absolutely nothing. This will pass, and soon be forgotten. These people will be in their new institutions. Those that were eligible for release, that were close to being released, will be put in – they were kept at Dublin, some that were close to being released – they'll be put in their halfway houses. The facility will be shut

down, it'll be long forgotten, and nobody will be thinking about it anymore. I don't think anything is going to happen to the Bureau of Prisons. They do what they want.

Andy 57:23

Just like the riot, whatever, in Mississippi a handful of years ago? Like, nobody talks about that anymore either.

Larry 57:29

Correct. I don't understand everything that was going on at Dublin. I don't understand how something as complex and sophisticated and as well-funded as the Bureau of Prisons can have a facility that has that much abuse and mistreatment happening. But if they couldn't fix it, it needed to be closed.

Andy 57:50

Sure. Yep. That doesn't mean it's not going to happen somewhere else!

Chance 57:55

Well, you know, there's something to be said about sweeping stuff under the rug, I guess.

Andy 58:03

And, yes, "FCI" means a Federal Correctional Institution. Somebody asked in chat, real quick. Anything else, before we, uh, kick this down the road?

Larry 58:15

I think we've done it, and we did perfect time. We've got a minute to go.

Andy 58:19

We do. I'm going to check real quick if we have any patrons. You and Chance talk for a moment.

Chance 58:23

What should we talk about?

Larry 58:24

We didn't get any paper subscribers, but we are going to build that. I know that in 2024 we're going to triple by the end of the year, I have faith.

Chance 58:35

It's going to happen. It's going to happen.

Andy 58:38

Well, it can only get better, now that we have The Real Chance Oberstein on the show.

Chance 58:45

I thought I was like a product of AI. I don't know. I've got to pinch myself, but I can't see anything.

Andy 58:55

(laughs) You're a product of AI? Are you an AI chat bot on the program now?

Chance 59:00

Yeah, I'm an AI chat bot, something like that.

Andy 59:03  
(laughs) Make sure that you head over to registrymatters.co to find the show notes. And then you could also then head over to a phone, if you want (747) 227-4477 to leave a voicemail. Send me messages that I will forward to Larry and Chance, at RegistryMattersCast@gmail.com, and of course, please head over to patreon.com/registrymatters and then, for as little as a dollar a month, you can support the program and all of the work that we do here, and all the many, many, many, many hours that we spend putting this whole thing together for your listening enjoyment.

Andy 59:37  
Without further ado, Larry, I hope you have a great weekend and enjoy your "event" this evening. You're not going to stick around for very long, because you have an "event" to go to.

Larry 59:49  
I do. So good night.

Andy 59:52  
And Chance, as always, it's a pleasure having you, and I look forward to seeing you soon.

Chance 59:57  
Thank you. Soon. Thank you. Thank you. Thank you.

Andy 59:59  
Good night.

Chance 1:00:00  
Good night.

Andy 1:00:04  
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