



Registry Matters Podcast

Episode 303

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Announcer 00:00

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Andy 00:17

Recording live from FYP Studios, east and west, transmitting across the Internet, this is episode 303 of Registry Matters. Good evening, Larry. How are you this evening?

Larry 00:27

Doing awesome. Glad to be with you again, as usual.

Andy 00:31

It's a very short list and, well, you're at the bottom but you're the only one that answers calls.

Larry 00:36

I'm not surprised. The last person that answered their phone died about twenty years ago.

Andy 00:41

I called somebody today, Larry, and they answered the phone.

Larry 00:45

That's shocking.

Andy 00:46

Chance, how are you, sir?

Chance 00:48

I'm very well, thank you. Good to be here.

Andy 00:51

Welcome back. Any exciting legal stuff to quickly summarize that you've had to deal with this week?

Chance 00:58

You know what, I would talk about it, but I'd immediately be killed, so I'm going to remain silent.

Andy 01:05

(laughs) We should probably make sure that you, Like, Subscribe, hit all those fancy buttons that do all the things, and leave reviews. It really does help, at least that's what they tell me it does. And the best thing that you could do is share it. Tell somebody you know that you like this podcast, it's great, you could even tell them you hate it (don't do that). And so, Larry, what are we going to do this episode?

Larry 01:34

Not very much.

Andy 01:36

All right then. Good night.

Larry 01:37

We don't have any cases to review, so we plan to cover listener questions and comments, a couple of articles, and a California Corner with Chance Oberstein, plus a letter from Daniel. One of the letters we're covering will be very interesting since it's about polygraphs, which is your favorite.

Andy 01:57

It is one of my favorites, for sure.

Larry 01:59

There was a two-part question, and we're going to save that second part for next episode. The second letter, from Mark, is a comment about my wonderful sense of humor, that you don't agree with. So, I can't help myself. I have to put that in there. Somebody, at least, thinks I'm funny!

Andy 02:17

(laughs)

Larry 02:17

And now that, in and of itself, is funny. Can't you agree?

Andy 02:21

Definitely. That's funny.

Chance 02:23

Oh, yeah.

Larry 02:25

We got this listener comment that you put through chatGPT, so we had to reduce it because it was too excessively long. We apologize if we've distorted it too much, but we're trying to save time. So go ahead.

Andy 02:40

Just for clarity, it's G-P-T, not B.

Larry 02:43

Okay.

Andy 02:44

It's not Georgia Public or whatever. Anywho, anyway, "I recently contacted the Georgia Bureau of Investigation, the GBI, after receiving a second harassing scam call at my workplace, the company store I manage. The scammer, posing as "Lieutenant Ross", used the national sex offender registry to target me, claiming I was under investigation and needed to contact them immediately. Despite our strict company policy against sharing personal information, they used my work address listed on the registry to impersonate law enforcement and attempted extortion by demanding payment for a fictitious bond.

Andy 03:23

"This is not the first time I've been targeted. The same individual attempted a similar scam over a year ago. These incidents are extremely distressing, affecting both my family and my efforts to rehabilitate and reintegrate into society after my conviction. Although I acknowledge the importance of the registry for public

safety" — can we put an asterisk by that? Just because we recognize it — "it should not facilitate intimidation and exploitation. I have maintained compliance with all registration requirements, striving to live as a law-abiding citizen and community leader. However, the misuse of registry information for scams undermines my rehabilitation and poses a significant threat. I urge the GBI to address the misuse and protect individuals like myself from such fraudulent activities. Thank you for your attention to this serious matter."

Larry 04:13

I put this in here, even though it was long, because I wanted to clarify, and I checked with people who are, and have been, registered in the state of Georgia. They do not list employment on the Georgia PFR registry. This writer is referring to the "National Registry." First of all, there is no national registry. There's a national search tool, and it merely looks into the state registries. I can assure you of this: if Georgia is not listing your employer on the public facing registry, then the "national" registry would not have that information, because all it is is a tool to tunnel-in from a central source. If that person receives a call at their job, that's very distressing. As Andy and I were chatting about this during the week, that would almost suggest that there is a penetration of the secrecy of law enforcement because that information wouldn't be on the website.

Andy 05:21

I would argue, Larry, it's an inside job. I would argue that it's friends, family, or even law enforcement themselves doing it because I got one of those calls once. It is incredibly convincing what they're up to. They have radio chatter going on, like in the background there, being police traffic, and they'll almost, like, move their hand away from the phone for a moment and they'll talk on the radio, talking back to "command center", whatever. It's incredibly convincing.

Larry 05:52

Well, I remember when you got that call, and it was very convincing and distressing to you. But he's got to run a deeper investigation because, unless Georgia has changed what they're doing, and now listing this information publicly, the national search engine wouldn't find it, because it just follows what's the — you do the search on the national website and it takes you to the state's website where that individual with that name is registered, and it looks into their registry. It doesn't create information that's not already there.

Andy 06:25

And it would be pretty challenging. Who else would know? It would be challenging for them to have, "the national registry" that says that you work at Waffle House on 123 Main Street and they would have the phone number for the Waffle House. The people that would have that would be your handlers. That's the people that would have — and not even the phone number, probably — they would certainly know that you worked at Waffle House, 123 Main street, and perhaps they have your supervisor's name.

Larry 06:51

That's very distressing to me, because he had to deal with something that might cause his termination. No one wants to deal with that, that's running a business, with phone calls related to the

PFR registration status. That's horrible. But I don't know what to suggest. I mean, maybe our attorney might have some suggestion for him, but I don't know what to suggest because how the heck do you figure out who did it?

Chance 07:17

Well, we probably don't have enough information to do that anyway because, when these things happen, subjectively, we get into fear-mode and sometimes we forget what we've done. Sometimes we need to check our social histories, or what we do on the Internet, where the information is, about us. I mean, often anyone could google someone and find out all kinds of things that they didn't even realize were out there, or were put out there, or they put out there, or whatever. And so, the first place you start is: what's out there about you anyway? Then you kind of whittle it down until you get to the point where either you can't figure it out or, hey, this little fact came out and, unfortunately, it's there. And what do I do about it?

Larry 08:07

Indeed, and that's a good point because I've known people, particularly youngsters, that don't have any life experience to guide them about the fear of private information becoming public. I remember a kid that I knew put his picture of his driver's license on his Facebook page. And I said, "You ought to pull that down."

Chance 08:26

Yeah.

Larry 08:27

"You've given people a whole lot of information about you that you wouldn't want the whole world to be able to access." But he was proud about his driver's license!

Andy 08:38

Certainly. But you could redact the crap out of it, and not just put the thing out there "naked", so-to-speak.

Larry 08:43

He had the entire license without any redaction.

Andy 08:47

License number and everything, full address, phone number, eye color? Good grief, man.

Larry 08:52

Everything.

Andy 08:54

Well, anything else here?

Larry 08:56

Good luck to this guy, because I can imagine how disturbing this would be.

Andy 09:04

Totally. All right well, then this one is a letter from Daniel, correct?

Larry 09:09

That is correct, with a two-part question. We're going to divide, one this episode, and another one next episode.

Andy 09:16

Very good. It says, "I am writing about two separate issues/questions." — So, we're only going to cover the first one, as Larry said — "In episode 299, you discussed polygraphs. I'd like to share my experience with the polygraph. The authorities involved PO," — which could be police officer, but I think it's probation officer — "judge, etc. most definitely believe in them, and treat them as if they are infallible science. We, of course, know better. The polygrapher told me I failed, but I did not believe him. So, I asked to see the charts, and he said he cannot share them due to policy. My PO then got involved, and ultimately, I was taken into custody that day for refusing to consent to a search. I never refused the search. That was one of the many lies the PO made up. The next day, the PO searched my house. It did not have any prohibited items. However, I did have a book written about the polygraph, antipolygraph.org. Once he found the book, he then added a violation for attempting to manipulate the polygraph. I am innocent of both violations, but the judge ruled guilty, and sentenced me to twelve months. I had an appeal, but my former worthless court-appointed lawyer filed an 'Anders brief' and then quit. My sentence will be complete before any appeal. My biggest concern is about all the lies and false information submitted by this PO, which my lawyer never even tried to contest. Any suggestions on what I should do?" Boy, Larry, there's tons of stuff. We should just let Chance go at it.

Chance 10:50

Oh, no, no. I'd say Larry first. Go ahead, Larry. Take a shot.

Larry 10:56

Well, in terms of the Andrews brief, I will defer if you're going to expand on what that is. I've never written one, but I'm familiar with the term. When your probation is revoked, we typically don't refer to that as being "found guilty" because the violations, unless you've been charged with a crime (which also can constitute a violation of supervision), the technical violations are not criminal acts. They result in an additional potential incarceration period, but the evidentiary standard is much lower. The rules of evidence is much lower. The admissibility of evidence is virtually almost anything is competent evidence in a revocation hearing. It's hard to keep anything out. And having that book, in my state, would have been very troubling for any court. Now, that doesn't mean that I agree with it, but it would be very troubling. If you're in a regimen that requires that you go through polygraph examinations, and they find guides on how to circumvent those maintenance examinations, the judge here, any judge here that I can think of, would not think that's very funny.

Andy 12:14

(chuckles)

Larry 12:14

But in terms of how to undo it, the sanction he got is relatively short, I think it said twelve months, right?

Andy 12:22

I believe so, yeah.

Larry 12:23

Yeah. Twelve months. By the time you get your appeal up and running, you've already exhausted the twelve months. It's a very

difficult situation. I would say, don't do anything of that nature again when you get out, because even if you were to prevail on appeal, you've already done the time. Go ahead, Chance.

Chance 12:49

You know what? I'm just thinking about this and, first of all, I'm not familiar with an Anders brief. What state is this?

Andy 12:56

I don't think he said.

Chance 13:02

Here's my thinking on this (and this is more of a California-type thinking on it). What Larry described, of course, was accurate. It's the same in California. It's not a newly charged crime. It's an allegation of a violation, which is a much lower threshold, so it's a problem. But if you have an attorney, and that attorney believes in your cause and is willing to bat for you in this case, and — again, in California — it's very easy to find the violation. But if you get some latitude in it, you might want to ask for a stay, pending appeal. And of course, you've got to have some firepower, some equities built up here. You really have to have this thing settled out, in terms of what the law is. And it is a very fine line, a very fine line. This is a tough thing to defend. It's just very, very, very tough these days with these tests, and trying to prepare yourself for them, and things like that. This sounds just pretty awful to me.

Andy 14:25

Let me just back up. He is in Ohio. He is in the northern district of Ohio.

Chance 14:29

Yeah, that's what I thought, because I've never heard of an Andrews brief before. So, yeah. And it says here, — well, anyways, I'm not even going to try to guess what an Andrews brief is — but the biggest problem is that his lawyer quit. And that pretty much sunk everything. You would think that if his lawyer quit, he'd be able to get another lawyer, someone appointed, who would take up where the other guy left off or whatever, a conflict lawyer, whatever the reason why the lawyer quit, and a determination on who's going to be the next one to step in. But that shouldn't leave him alone and having to defend himself on his own.

Larry 15:11

I'm not going to try to explain Andrews either because it didn't come up in prep, but I do remember something about it in terms of counsel withdrawing, and a brief's supposed to be put in, and I think it goes back to a Supreme Court decision from the sixties. But, man, that's been a long time ago, probably back in a liberal heyday of Earl Warren. Like I said, I'm not going to give my detractors a chance to say I'm giving frivolous information because I'm not really up to speed on Anders.

Andy 15:45

Well, I can tell you what it says about it real quick. So, I'm reading information from the Internet: "An Anders brief is a type of legal document submitted by an appointed attorney in a criminal case who believes that an appeal would be frivolous. It originates from a US Supreme Court case, Anders versus" — hey Chance, California! — "In that decision, the court established that if a court-appointed lawyer finds no meritorious grounds for appeal,

after a diligent review of the case, they can submit this brief to request permission to withdraw from representation." (laughs)

Chance 16:19

Wow! I just, I've never, never heard of anybody doing that in California. At all, you know, zero. But it is interesting, if you think about it. That may be the problem with this whole claim here. Maybe legal counsel looked at it and came to that conclusion, and that's just the way it goes there. I'm just not familiar with Ohio's procedure. It's just, I've never heard of that happening in California.

Andy 16:45

Well, sure, sure.

Larry 16:46

If that person had contacted this office, they probably wouldn't get past screening, because I would have the same reaction. As I explained, and you expanded on, the evidentiary standard is so low in a revocation. It's basically, if you have a scale, the preponderance of the evidence is what you're looking for, in a probation violation. You've already been granted mercy (by not being incarcerated) so it doesn't take the same standard to take that privilege away from you. If it did, no one would ever be granted probation.

Larry 17:21

So therefore, if he had called here and said, "Oh, well, all I did was have a guide on beating the polygraph, and the probation officer violated me for that," I would say, "Well, we'll take your case, but I'm not sure we're going to gain any traction with that, because the judges are going to look very unfavorably on that, regardless of which judge you have, and therefore, they're likely to uphold the action, agree with the PO, and revoke your supervision for a period of time," and it appears that's what they did. He's concerned about all the lies and stuff that were told, but that's common in this business. When you're on probation, these are not people who've been appointed to the priesthood and the sainthood that you're dealing with. Some of them are very honest, but some of them will cut any corner to achieve their goal. When you have that in mind, you realize that you're going to have to play extra diligent by the rules, and not give them anything.

Andy 18:24

Go back. You said they're going to do anything to achieve their goal. What is their goal?

Larry 18:30

Well, it varies from case to case. If the probation officer has someone that they, in their mind, think didn't get sufficient punishment, that they should have never been given probation, their goal in that particular case may be to see to it that you see the inside of a prison. And their goal in that case would be to revoke you. They don't want to revoke everybody. If you think about it, if a probation officer had a zero success rate, you would have to take a look at, well, this probation officer, why is it that no one makes it through? So they don't want to revoke everybody. But in this particular case, they may have wanted to revoke this person.

Andy 19:08

The way you just worded that, though, Larry, makes it sound like there's some kind of performance review at the end of every six months or something like that, like people have at big companies? "Now here, Mr. Jones, you haven't had any successful transitions off of probation. We're going to send you to" ...further training? I don't see that environment in the "Handler" Department.

Larry 19:34

Well, I don't know if it's quite that blatant, but think about it: If you set a probation system up, the goal would not be to revoke everyone. There would be no point whatsoever in having probation if that was the goal, to put everyone back in prison. So it stands to reason that there would be some examination of a probation officer who has continuous failures and nobody ever gets through it. You'd like to think, in an ideal world, that someone would look at that and say, "Well, wow, you've had 123 people assigned to you in the year and a half you've been here, and not a soul has made it without a violation." I'd like to think that that would come up in a discussion.

Andy 20:10

Sure.

Larry 20:12

I haven't worked in that system directly, but I would assume that it would.

Andy 20:16

I thought you'd worked everywhere!

Larry 20:18

Not quite. I mean, I've only had since 1841 to do this stuff!

Chance 20:23

Wow...

Andy 20:24

(laughs) Yeah, he's old. Chance, you think you're old? He's got you beat by triple.

Chance 20:29

I don't think so. I think we're just about the same.

Andy 20:33

(whispers: Shhh, don't tell him.)

Chance 20:35

I'll tell you one thing, though. I'm thinking about this whole thing, and I'm looking at it, and I'm thinking: One, he failed the test. And again, it's not a measure of whether or not you're telling the truth, it's a measure of whether you get nervous when they ask you about something. And it gives a probation officer or parole officer cause to maybe think that you're hiding something. So, then you get a search. During the search, they find a book about polygraphs, and you know, you've got someone who, one, is suspecting that you're hiding something, and two, is putting two and two together, which might not equal four, but in their mind it does, and you've got a problem. So there is a moral to this story, and I think Larry hit it on the nose, and that is: Make sure you play by

the rules, and you've got a sterile environment when they come to search your house.

Andy 21:35
100%.

Larry 21:36
They are likely to intensify supervision if you show deception on that polygraph. You might as well plan for that. Don't doubt us on this, if you are reported to have failed a polygraph test, they can't revoke you for that alone, but they can intensify supervision and find something else to revoke you for, which is what they did.

Andy 22:05
Moving along?

Larry 22:05
Moving along.

Chance 22:05
Moving along.

Andy 22:06
This next one is a letter from Mark. It says, "I received your April 12th letter on, well, April 22nd, regarding my donation and how to utilize it. Let's do this: put however much towards twelve months of receiving the transcript until May 1st of 2025. Then please use the balance in whatever way is most useful to sustain the transcript service, because the transcript service is really important to me, and I want to do whatever I can to keep it going. So, paying your transcriptionist, office supplies, postage, etc. And because there cannot be a transcript without a podcast, I don't mind if you apply it towards podcast costs as well (like, Geritol for Larry)." — I'm in favor of this. All in favor of Geritol for Larry, say "Aye." — "and a sense of humor for Andy! Yes, absurd laws are funny. Or, as you mentioned, a case of beer for the staff. If you guys are a" — He wrote 401(c)(3), but it's 501(c)(3), That's what we are, right, Larry?

Larry 23:05
Correct.

Andy 23:07
Yeah. So, "501(c)(3) nonprofit, could you send me an official 'Thank you for your tax deductible donation' letter? If not, well. Oh well. Yes, I am now caught up on transcripts. The mail room in this place is hardcore. I tried sending you some stamps back in December. They would not let me. Hopefully there will be more dollars to come, after the judge denies their second motion for summary judgment, or grants mine, or I win my second appeal, etc. I'm surprised they are willing to drag this out. Clearly, their attorneys are salary, and not hourly. Thank you for your help. Cordially,"

Larry 23:41
Well, I appreciate that, Mark. And we do intend to send you a thank-you letter, officially, so that tax deductibility is there. For anyone who wants to donate to FYP Education, that is a great option for you. If you're looking for a tax-deductible vehicle, why not use FYP?

Andy 24:02
I concur. That was the stimulus money, right?

Larry 24:04
That is correct. No one's done that yet. But if anybody has \$1,400 left over, feel free to dump it in FYP Education. And thank you, Mark. That was extremely generous, what you sent to us. That'll carry us for a little while, and we appreciate it.

Andy 24:22
All right, Chance, your turn. Take it away, sir.

Chance 24:25
Okay. I put this in here because there was some confusion about it last time around, so I want to clarify some things. I've been getting calls, texts, emails about Certificates of Rehabilitation. I can't even say it, but yeah, so that's what it's going to be. It's going to be: Certificate of Rehabilitation. This is going to be the first installment. There will be a second one, but the first one is going to be simply to just maybe clarify some stuff about it. If you guys want to jump in at any point, please feel free, and I'll start right here.

Chance 25:00
People are asking, "What's the difference between a Certificate of Rehabilitation and termination of sex registration? Aren't they both the same? Do I need both?" Let's just clarify that for a minute. The termination under Penal Code Section 290.5 terminates the obligation to register and removes you from the California sex registry. It says nothing about rehabilitation. It just simply does that. In this state, in California, we have another thing for those who have been convicted of either a felony or specific sex crimes, and that is a "Certificate of Rehabilitation". This is a court order that says someone who was, one, convicted of a felony, and two, served time in state or local prison, has been rehabilitated. Completely different from being removed, okay?

Chance 25:59
It does not erase your criminal record, but it can have some benefits. This is why it's really good. For example, it may help you when you're applying for a job, or professional license from the state. Let me just dive into this a little bit deeper. There are laws about when an employer can ask about, or consider your criminal history when you apply for a job. One of these laws is called the — believe it or not — Fair Chance Act. Don't laugh. That's the name of it.

Andy 26:33
(laughs) You wrote this for you!

Chance 26:36
No, no, I didn't, but I was quite shocked when I read it. Anyway, in California, most employers can't ask about your criminal history before making you a conditional job offer. After making you an offer, they can do a criminal history check, and ask about your convictions. But they can't ask about, or consider, convictions that have been expunged, sealed, dismissed, or statutorily eradicated. They also can't consider convictions for which you've received a Certificate of Rehabilitation or a pardon, in this state. Now, this law does not apply to all employers or all jobs. For example, the law doesn't apply to employers with less than five employees. It

also doesn't apply to jobs where the employer is required to restrict employment based on criminal history, or to do a background check (for example, certain jobs in healthcare, banking, education, or law enforcement). And for those who are interested in this, and want to see a little bit more in this area because they're considering it, more information can be found at the California Department of Fair Employment and Housing.

Chance 27:43

And other laws may apply to your situation. One of the things I always say is: If you don't know, talk to a lawyer about it. That would be really good in this area right here. But, in general — and I'm talking about Certificates of Rehabilitation — in general, "rehabilitation" means that, for many years after your conviction, you've lived "an honest and upright life," followed the law, and showed good moral character. And that can be found at Penal Code section 4852.05. That's the standard. Now also, another benefit is it's a good first step to applying to the governor for a pardon. And I'm not pushing pardons here, folks, because I've never heard of one granted with respect to a sex crime conviction. But it is the first step and, short of the pardon, there are still benefits.

Chance 28:36

If you get a Certificate of Rehabilitation, if it's granted, it gets sent to the governor's office because it's considered an official application for a pardon. But let's talk about, really, what it can do. It can help your chance of getting a professional license from a state board, even without a pardon. It would be the official record that shows that you're rehabilitated, which may improve your job or housing opportunities. And, as I said before, it gets sent to the governor as an official application for a pardon.

Chance 29:04

Now, here's what it does not do: It does not erase a felony conviction or seal a criminal record. California has laws for doing that. It doesn't let you say that you don't have a criminal record. This may be possible if your case was dismissed or expunged, and we've talked about this before, dismissals, reductions, and things like that. It doesn't restore your gun rights, and it doesn't prevent the conviction from being considered a "prior", if you're convicted later of a different crime. And, most importantly, as distinguished from being removed from the sex registry under PC 290.5, it does not end sex offender registration. That's not ended unless you get relief under PC 290.5.

Andy 29:55

Chance, who can apply?

Chance 30:00

Who can apply? That's a good question. All right, so here are the requirements for application: One, you've got to have California residency, so there's a California residency requirement. You must have lived in California continuously for the last five years, prior to applying. Now it says, when you go to the state site, the judicial site that puts this information out, "If you don't live in California, you can always ask for a pardon." But, you know, as I mentioned earlier, that's not really a good way of going.

Chance 30:35

Required waiting period: at least seven years. That's the second requirement. This is how long you have to wait after you've been released from jail, prison, parole, or on probation before you can apply. This is called the "period of rehabilitation". During this time, you can't get in trouble with the law, and you must make "significant improvements in your life." The period of rehabilitation is five years of California residency plus an additional few years, based on your conviction. Now, in general, it's two to five. The period of rehabilitation starts when you're released from jail, prison, probation, or parole, whichever happens first.

Chance 31:17

And this means, in general, you can't apply unless it's been at least seven years for most felonies. And it's got to be since you've been released from jail or prison. You can find these "wait periods" in California Penal Code Section 4852.03. In general, if you've been convicted of a sex crime, then it's five years residency, plus five years rehabilitation.

Chance 31:47

Okay, convictions that qualify: We spoke about this a couple of episodes ago (maybe an episode ago?) Generally, only those convicted of a felony are eligible. This is in general. There are some exceptions for those who have been convicted of misdemeanor sex crime convictions. So, for those who have felony convictions and went to state or local prison, except for certain sex crimes: you must be off parole, post-release community supervision, or mandatory supervision. Those are for people with non-sex crimes that have been convicted of a felony. For those who are placed on felony probation, except for certain sex crimes which we'll get to, you must have your case dismissed (expunged) before you can apply. You also can't have gone to jail or prison since you got your felony dismissed, or be on probation for another felony.

Chance 32:39

Now, the same thing applies to sex crimes. Felonies or misdemeanors involving eligible sex crimes listed in Penal Code Section 290, same thing applies: You must have your case dismissed, which is expunged, before you can apply. You also can't have gone to jail or prison since you got your case dismissed, or be on probation for another felony. Now, there are some people who can't get a Certificate of Rehabilitation. These are the sex crimes where you can't get it, so you're not eligible if you are: currently in the military, or live out of state, you also don't qualify if you are on mandatory life parole, have a death sentence, or are convicted of the following sex crimes involving a minor (and these are typically force crimes): PC 269, 286(c), 288, 288(c), 288.5, 288.7, or 289(j). If you're ineligible to apply for a Certificate of Rehabilitation, you can always apply for pardon (which is going to be denied, in general, almost all the time). So this, in a nutshell, is what a Certificate of Rehabilitation is about. It's also a description of who is eligible. Next time we'll visit how it is that you apply.

Announcer 34:05

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Chance 34:54
Any questions, gentlemen?

Andy 34:55
I have a question. But Larry, if you have one, go first.

Larry 34:59
Well, I know you said this is an automatic pipeline to the governor. It's treated as an application for a pardon, but then you said that they're all denied, that you've never known anybody to get one. Just out of curiosity, do you have any idea about what percentage of these Certificates of Rehabilitation are granted? You know, is it 10%, 30%? I mean, how likely are you to be able to achieve this stuff? You got these benchmarks you're up against. What's the success rate?

Chance 35:31
I wish I had a breakdown to give you. They don't keep stats like that in the state, at least I've never seen them. I can tell you, I've been doing this for probably, I don't know, at least the last decade, if not more. And most of the ones I've prepared — and they've all involved, with the exception of maybe one, sex crimes — have all been successful. So, you know, if you ask me if there's a good chance of success, there is. But a lot goes into these. A lot goes into these, they're not easy things to do. A lot depends on who is applying for it, and how they've conducted their life, and how they've documented it or can get it documented, so it can be put into order and submitted to the court for review. The answer is: yes, there's always a good chance of success, if you have the right stuff. I don't know, in terms of what percentage there is, but apparently it was just a trickle, and it was holding back the state, and it was backing up the list. We have well over 100,000 registrants in California, and that was one of the reasons — among others, but one of the reasons — why the tiered registry came into vogue.

Andy 36:59
So, Chance, what, if any, of the professional licenses are denied when you are still under supervision, before you get this Certificate of Rehabilitation? That's a conversation we talk about pretty regularly, about once you get released from prison, how many different kinds of jobs you're prohibited from?

Chance 37:19
Well, whatever position that you're looking for that requires a license. It could be a contractor's license. It could be a license to work in the social sciences, whatever it is that requires a license. If you're not barred by the business and profession code outright, then it's probably going to be an issue with licensing. And if it's an issue with licensing, this is a very good thing to have.

Andy 37:50
Yeah, no doubt, because people in prison will learn how to cut hair, for example, and then they go try to do that profession, and that industry's whatever regulations, licensing scheme, they say, "Oh, well, you're a felon. You can't have a barber's license." "But I

did the classes while I was gone, to be..." Anyway, seemed kind of ridiculous and counterproductive to do that.

Chance 38:14
Interesting you should say that, because, of course, this goes part and parcel with getting, if you at least have something that can be reduced within the state of California, and you're eligible for it, it really helps to do that along with dismissals and stuff. But in terms of its effect on licensing, for what you're speaking to, if you're not outright barred, and it becomes an issue, this is the perfect vehicle for helping you get over that hurdle.

Andy 38:45
And then the second thing — somebody kind of commented on it in chat, but — do people think that this Certificate of Rehabilitation ends their registration? Has that come up to you?

Chance 38:56
Well, you know, in certain instances, it used to, before the tiered registry. And that does come up all the time. People think that if they can't get off the tiered registry because, say, they're in tier-three and they're doing life, that they can then apply for a certificate and be removed. That is just not the case. Generally, okay. Here's the caveat: If you've got a pardon, you can be removed. But I've never heard of one. I've never heard of one happening. And so I can't really say that if you get one, you can't be removed. Yes, I mean, in the rarest circumstance, that could happen. I mean, I guess anything's possible.

Andy 39:35
And it's totally possible I wasn't completely paying attention but, who is the one that issues this Certificate of Rehabilitation? Is this treatment, or is this probation?

Chance 39:46
No, the court, the state court is where you petition. So it's the court in the city you reside in, the jurisdiction you reside in. That's the court you go to, and that's who issues the certificate.

Andy 40:01
Larry, can you translate what this is to any other jurisdiction?

Larry 40:07
Not at first glance, I cannot. We have discussed wanting to model something here after California, in terms of a Certificate of Rehabilitation, and we've not been able to get a lot of traction on it politically. The political opposition comes from the law enforcement apparatus, but also from the fear that people will come to The Lax State of New Mexico to eradicate their criminal history, and claim to be rehabilitated. And we just haven't been able to get any traction. So I can't think of anywhere else where they have this. But I'm sure there are other states that do.

Andy 40:46
This isn't your treatment provider telling you that you have been rehabilitated, and this isn't you necessarily being removed from supervision, and this isn't being removed from the registry. This is yet another thing? Another mountain you're trying to climb?

Chance 41:04

No, this is a post-conviction relief mechanism, when you're done with all of that. And, just to address what Larry said, which is interesting, I always think of reform as: if you find something somewhere else that's great, cut and paste it, and take it to your state and say, "Hey, this is only done for people who have original jurisdiction in California. For instance, if you've committed a crime anywhere else and you come to California, you're not eligible for a certificate, because California is not the state of original jurisdiction. This is only for folks who get convicted within the state. This is a remedy for them." Just like if you got convicted within the state and you went to live somewhere else, and you wanted to apply for relief under the tiered system. In some states you can get relief, but, you know, in California, you can come from another state and actually live in California and get relief. But in this instance, for a certificate, you have to have been convicted in California first, in order to be eligible for it.

Larry 42:13

We have wanted to do it broader than that, because people have been convicted in other states and they've lived here 20, 30, 40 years successfully. So we've wanted to do that. But yes, Andy, this is a whole process similar to a pardon. You're applying for it, and the court's granting it. It's another thing that a person can do to show that they have been rehabilitated from their criminality, even though it doesn't erase their record. And I love it. But like I said, we can't get the political will to do it here.

Andy 42:42

Gotcha. All right. Anything else there before we go over to talking about Weinstein ...again?

Chance 42:49

Weinstein! Let's go!

Larry 42:51

Let's do it. I can't wait.

Andy 42:53

(laughs) I know, right? We recently discussed — yeah, like two episodes, I think, in a row? — we discussed Harvey Weinstein's conviction, and you want to go back to that again? In this article from the Marshall Project [<https://www.themarshallproject.org/2024/05/04/sex-crimes-weinstein-me-too>] it states, "New York's highest court overturned Harvey Weinstein's sex crime conviction last week to cries of anguish from women despairing that the legal system lags behind the #MeToo reckoning in delivering justice for survivors of sexual harassment." And, Larry, you're going to tell me what your take is. So, tell me your take!

Larry 43:26

Well, as the article stated, "The 4-3 decision, the ruling, laid bare a separate tension plaguing criminal justice: the fear that eroding protections for defendants could hurt Black and brown men, another historically harmed group." But my fear is it will ultimately hurt all defendants, because of public pressure to change the rules of evidence. We need more convictions, Andy! You don't understand this. We need more convictions!

Andy 43:55

Clearly. So remind the audience of the essence of that decision?

Larry 44:02

Well, the majority ruled that the trial judge should not have allowed testimony from women whose accounts of Weinstein's forcing sex on them were not part of the charges. In other words, they took testimony from people who were not parties to the case. They weren't witnesses to anything other than they're saying, "Hey, happened to #MeToo!"

Andy 44:24

Larry, it seems absolutely clear to me that you cannot understand that sex cases are often messy, frequently with no witnesses, and circumstances where women, pressured to placate powerful men, also had consensual nastiness with them.

Larry 44:41

I actually can understand all those points. Nonetheless, our system of justice does not, and should never, allow such evidence to be admissible.

Andy 44:49

You're hopeless. The central issue in these kinds of cases often come down to whether the jury believes the man or the woman. The he-said she-said. There are generally no witnesses. You're hopeless!

Larry 45:03

Well, I do understand that, but it's still no different than any other criminal behavior that's been alleged. I mean, I go through this. The accuser bears the burden of establishing that a criminal act has taken place. Why do the police even bother to ask anybody about an accusation? When you say you've had an embezzlement of 1.4 million dollars, why don't they say, "Oh, we don't need to see your audit trails. We don't need to see your video. We don't need to see anything. You've lost a million dollars? We'll take your word for it!"

Andy 45:30

That's an awfully specific number.

Larry 45:31

The police must first determine that a crime has occurred. And that means that, if you're saying, "I was sexually assaulted," we don't just automatically assume that you were sexually assaulted; we don't assume that you weren't. Just like we don't assume when someone says their house was burglarized, or their business was embezzled. We start getting into what evidence demonstrates that that crime occurred, as I understand it. But if you're going to accuse somebody of something that will put them in a cage, you got to have evidence. I'm sorry.

Andy 46:03

I remember in the Bill Cosby case, such testimony was admitted because it was intended to establish patterns that show intent and bolster women's credibility. As the article points out, "Cosby's case first led to a mistrial, then a conviction, and ended with a successful appeal on different grounds."

Larry 46:22

Well, I truly don't remember the exact reasons that Cosby's conviction was overturned. Maybe Chance does. But still, he spent years in that cage before all this was undone, and it should never have occurred the first time. I mean, they had to extinguish the rules of due process to convict Cosby.

Andy 46:45

The article quotes Elizabeth Schneider, a professor at Brooklyn Law School, saying, "Rape is a charge easy to allege and hard to prove." Standards were historically based on the fear that "women are going to falsely accuse men of rape. That's why rape law has so many evidentiary exceptions compared to other crimes." Some of these rules changed as attitudes shifted. Lawmakers and court decisions can alter rules of evidence. Is she correct?

Larry 47:12

Yes, she is indeed. The article also states, "In 1994, Congress amended federal rules to admit evidence of prior sexual assault or child molestation in some cases," said Stephen J. Schulhofer, professor emeritus at New York University Law School. That applies only in federal courts, but some states have also altered the rules of evidence, including New York, "Californy" and Pennsylvania. More changes are likely coming in view of this decision in Weinstein's case, because the #MeToo movement, these people are not going to roll over and say, "Well, we give up." They're going to put enormous pressure to make sure that anything that they deem as evidence should be admitted. That's what they're going to do.

Andy 48:00

The article then states, "Allowing testimony of prior accusations of harassment runs up against a fundamental legal principle that prior bad acts should not be admitted as evidence. Doing so could bias a jury against the defendant, since they're likely to believe a person will repeat past actions." Is that your fear?

Larry 48:17

Indeed it is my fear. When you start making exceptions, and Chance, as a thirty-year law practitioner, the exceptions begin to swallow the rule. This article also noted another example of a case where outrage over a ruling backfired and hurt vulnerable people: California voters recalling a judge who handed down a lenient sentence to Brock Turner, a Stanford swimmer accused of sexual assault. The article cited a study concluding that judges, fearing a similar political outcome, handed down harsher sentences in a wide range of cases, with Black and Latino men most affected.

Andy 48:59

So, does protecting the rights of defendants mean that PFR-type crime survivors will be denied justice? An outspoken dissent in the Weinstein ruling by Judge Madeline Singas raises that very specter. How does the legal system balance these competing interests?

Larry 49:19

Well, in my view, there's no need to make any drastic changes. The burden appropriately belongs with the accuser to demonstrate a crime was committed, and the burden correctly rests with the prosecution to prove the allegations beyond a reasonable doubt. And they do not need to change the rules, the

process, to include character assassination, which is what they did in Weinstein and Cosby's case.

Andy 49:43

I just wanted to add that someone in chat said — I'm pretty sure that this sounds about right — "Cosby had previously given a deposition in a civil case based on a previous prosecutor's promise not to charge him criminally. Then, years later, a different prosecutor charged him criminally. The court ruled that the state broke its promise, and overturned the conviction."

Larry 50:02

Thank you.

Andy 50:02

Now with that said, though. What's next for Mr. Weinstein?

Larry 50:05

Well, he's getting a new trial, and I think we identified a September trial date. And then also there's issues in California where his attorneys have vowed to do an appeal. I think that appeal is underway. And the California appellate judges, at some level, will have to face the same tensions and the same difficult choices. Are they going to give in to the mob? Or are they going to do what should be done? If the same type of evidence got in, in California, those convictions should be overturned as well.

Andy 50:35

Do we have any comments from Chance before we move along?

Chance 50:41

Yeah Chance is, like, frozen in time with this. You know, this issue has been around for a long, long, long time. I think that Larry's right: the rule gets swallowed up by the exceptions. The push is to get it almost to the point where you just believe an allegation based on who's making it. If a woman's saying that she was assaulted, take it as true! And the line's just been pushed so far. It's just incredible that we're at this point right now. And it's going to be really fascinating to see how the courts and what the politics are here and how the thing shapes out. But so far, where we are in time right now, it's not great.

Andy 51:45

Well, then the final article to close out the evening is from Reason Magazine [<https://reason.com/2024/05/06/minnesotas-indefinite-detention-of-sex-offenders-is-ineffective-as-well-as-unjust/>] Boy, this is one of my favorite magazines. According to the article, "Minnesota's Indefinite Detention of PFR Offenders is Ineffective and Unjust. A new report argues that the notorious program squanders taxpayer money while keeping people in prison without justification or recourse." What do you want to say about this, other than it's not right?

Larry 52:17

Well, a lot. Minnesota's Sexually Dangerous Person Act was enacted in 1994, and it authorized civil commitment of anyone who has "engaged in a course of harmful sexual conduct"; "has manifested a sexual, personality or other mental disorder or dysfunction"; and "as a result, is likely to engage in acts of harmful sexual conduct." Now, that is so broad, I can't even describe what you could drive through that definition!

Andy 53:01
(laughs)

Larry 53:01
Or "likely to engage in acts of harmful sexual conduct." What does that mean? Chance, you're a lawyer. Does that mean making obscene telephone calls? Does that mean... (laughs)

Chance 53:05
That means: Get on the train, because everybody's going to the same place. That's what it means.

Andy 53:10
Since you were asking about how big of a – whatever you could drive through it – there was a solar flare that hit the Earth (I think it was last night?) and it was like, I think, 15 times the size of Earth? So, perhaps you could drive that through that hole.

Larry 53:25
I put this in here because we don't do enough about "civil commitment." We don't talk about it as much as we should. It's just one of those things where I have little hope that we can eradicate it. I think we can contain some of the excesses in it, but sex offender civil commitment is morally repugnant, and it violates everything about our due process. But the Supreme Court has upheld it. And it's not likely to change unless we can muster the political will.

Andy 53:55
And how is this different though from "standard" civil commitment?

Larry 53:58
Well, the biggest difference is the standard for commitment of PFRs is so much lower than the regular civil commitment process. And then the standard in a regular civil commitment process is: They want to get you out; and this, they want to keep you in. In regular civil commitment, the goal is to rehabilitate the person and get them out of the institution, including people like John Hinckley, who shot the president (along with four others!)

Andy 54:23
Sure. And how many states have this practice?

Larry 54:26
According to the story, "Twenty states authorize civil commitment of PFRs who have completed their criminal sentences but are deemed too dangerous for release. Minnesota, which deploys that option against a larger share of its population than any other state, spends one hundred million dollars a year to detain about 750 individuals who are deemed 'likely' to commit sex offenses."

Andy 54:52
As of last September, just 21 of the 946 people committed in the Minnesota Sex Offender Program (MSOP) had been fully discharged, while 94 — more than four times as many — had died in custody." Why is it that nobody is released from this?

Larry 55:10
Well, because as I said just before: that's not the goal. What the goal should be, when you take away someone's liberty civilly, it's only for no longer than necessary, is the goal. But "The MSOP program, which is overseen by the Minnesota Department of Human Services (DHS), imposes life sentences on its 'clients,' not as punishment for crimes they've committed" — because they've already served that — "but in anticipation of any crimes they might commit in the future," which is against everything this country stands for! We don't preventively detain people for something that they might do.

Andy 55:40
You know, Larry, I'm going to ask Chance this, because I know your answer is no. But Chance, have you ever seen the movie Minority Report?

Chance 55:48
Oh, yeah. Yeah. And that's what Larry's describing, right there.

Andy 55:53
Yes, it is. It's thought crime. If you, possibly, would think of the crime, that you might go do it, then they have these three people suspended in water, and they will tell the police to go arrest you. And so, minutes before you go commit the crime, you get arrested for "thought crime".

Chance 56:09
Yeah. The only difference here is that they're not suspended in water. They're suspended on ice — it's Minnesota.

Andy 56:17
(laughs) Right, that's true. The article states, "Civil commitment's reduction of sexual violence is vanishingly small compared to its expense," said the report from Mitchell Hamline's Sex Offense Litigation and Policy Resource Center, which notes that it costs about \$175,000 a year to keep each detainee in the program. "Because civil commitment focuses on preventing a small fraction of recidivist offenses," law professor Eric Janus and his co-authors argue, "it neither addresses nor repairs the vast majority of sexual harm in Minnesota."

Larry 56:50
Uh, did you just say \$175,000, per detainee, per year?

Andy 56:54
I did, yes. 175k!

Larry 56:57
Now that's funny. Can you admit that?

Andy 57:01
That's a lot of simoleons! No, it's not funny. 175,000 bucks? And there's 946 people in there now, or is that, the 946 have been there?

Larry 57:12
Not clear on that. But that is a very expensive operation to run, at nearly \$200,000 per... per "guest."

Andy 57:20

(laughs) "per guest." And I'm sure they don't get, like, house cleaning and room service. I always thought that the facilities were more like hospital settings. It appears that they're not. Officially, the MSOP's locked facilities in Moose Lake and St. Peter, both of which "have secure perimeters fenced by razor wire," are treatment centers, not prisons. Civil commitment, nevertheless, is subject to several constitutional requirements. To be committed, an individual must have a (ahem) "mental disorder" that makes him dangerous to himself or others. In the case of PFRs, that (ahem) "mental disorder" must distinguish people subject to commitment from others convicted of similar crimes. The program must provide treatment when it is feasible, and "the nature and duration of commitment must bear a reasonable relationship to the purpose of the commitment." The MSOP falls short on all accounts.

Larry 58:13

I definitely agree with that. I've been shocked that this — hopefully we have time to get into it — but this has been declared unconstitutional by a trial judge. And then it was overturned by the Eighth Circuit Court of Appeals.

Andy 58:29

The article states that "Abdication of responsibility jives with the attitude of Minnesota's political leaders. Even while defending the MSOP in 2015, then-Governor Mark Dayton conceded that civil commitment decisions are no better than guesswork, because "it's really impossible to predict whether or not PFRs are at risk to reoffend." As Dayton saw it, the solution was to err on the side of keeping everyone locked up. Larry, if we follow that approach, then pretty much everyone would be in jail, because probably everyone has committed something along the way.

Larry 59:02

Correct.

Andy 59:02

That was consistent with the position Dayton's predecessor, Tim Pawlenty, took in 2003, when he issued an executive order barring the release of MSOP detainees "unless required by law or ordered by a court."

Larry 59:17

So, sad. "In practice, each detainee has the burden of petitioning for transfer or release, and that process is plagued by bottlenecks, redundant reviews, and backlogs. MSOP detainees wait an average of 625 days," — nearly two years — "for a final decision to be made on their petitions to transfer to a less restrictive environment or to be discharged." And that's according to Professor Janus.

Andy 59:41

Um... where did I go?

Larry 59:49

Right here.

Andy 59:49

Oh, that's okay. Sorry, there's a tornado warning, like, they've been sighted in my area. Um, the article pointed out that "until

2015, when a federal judge deemed the MSOP unconstitutional, no detainee had ever been fully discharged, even though the program at that point had been operating for two decades. Since that time, 'a slow trickle' has begun, but releases are still outpaced by deaths in custody." As of September, nearly three-quarters of MSOP "clients" had been detained for more than a decade, nearly half for more than 15 years, and about a fifth for more than two decades. God!

Larry 1:00:26

Now, before I get to my script: Now, think about this: You've served all of your time, and then, a few months before you were going to be released from prison, they hit you with this petition. You serve 10, 15 or 20 years in this "shadow prison" on top of that, with no hope of getting out. You're going to die there.

Larry 1:00:48

But the funny thing is, as the article stated, "Running parallel to civil commitment's expansion over the last three decades, Minnesota has also increased criminal sentences and post-confinement supervision for those convicted of sex offenses." For example, "the average sentence for First Degree Criminal Sexual Conduct increased from 75 months in 1988, to 190 months in 2017."

Andy 1:01:10

Oooh.

Larry 1:01:11

"Minnesota and many states have gone to the extremes when it comes to sentencing for sexual offenses." Folks, elections have consequences. I can't say this enough. When you go to vote, and they tell you that they're going to impose harsher penalties, that they're running on that platform, please take them at their word. This shows you what you've been voting for since 1988. They've mostly all promised you longer sentences and, you see, they've kept that promise.

Andy 1:01:42

Without a doubt. And I'm just going to assert that, for the people to be placed in these facilities, these aren't people that flashed running down the street, I'm assuming. These are people that did, they did a significant amount of time before they got to this stage.

Larry 1:02:02

Correct. That is what's so tragic about it. If we really had some concern about how dangerous they were, and that they might reoffend, we would have actually treated them in the 10, 15, 20 or 30 years they were in prison previously.

Andy 1:02:16

Yeah, wouldn't that be a better approach? That, from day one that they walk in the door, that there are treatment classes, mental retraining, thought processes, critical thinking, all that stuff to try and keep people from doing terrible things when they get out?

Chance 1:02:37

Depends what your philosophy is. I mean, if your state philosophy is that folks that commit these kinds of crimes can never be rehabilitated, then you've got the Roach Hotel Approach, which is what this is. If you think that there's hope, and that you can make

a difference, and people can transcend and be reintegrated, you've got a different program. And, you know, Larry's absolutely right. You know, your vote counts.

Andy 1:03:02

But, comparing us to other nations (and we'll stick with Western-ish type nations), I'm assuming that Americans aren't, like, that much more deranged. Why aren't they doing these kinds of things to "Us People?"

Larry 1:03:20

Well, they take a different attitude in other nations about the length of sentences. When you talk to a European, they're shocked that we believe in putting people in prison for so many years. The attention-getting, and the effectiveness of prison, diminishes, the longer the person stays there, because they become institutionalized. You could get a person's attention completely without imposing 20, 30, 40 years of time. But Americans, we're bloodthirsty. We want to see punishment and suffering. I mean, just look at the states that don't even air condition their prison facilities in the south, particularly Florida, Alabama, Texas. They want them to suffer and be miserable. That makes Americans very happy.

Andy 1:04:07

I meant to send it to you, Larry and Chance, but I found on Reddit there's "data is beautiful", is one of the subreddits. And there was one about how much the states spend on prisons. And it was just like a colored graph. And the southern states were all like, they weren't zero, but they were 30 or 40, whatever the bottom of the graph was. And things got more expensive as they went into other areas. I don't want to call it Red versus Blue, Larry, but I think you could almost overlay some pigments of red and blue over that map, and there'd be a good correlation between those two.

Larry 1:04:39

Well, there would be, but it's more "conservative versus liberal". There was a time when Republicans were very liberal, particularly the northeastern Republicans. So, I prefer to keep it non-partisan. It's a "philosophy" rather than a "party".

Andy 1:04:53

All right. We're going to have to discuss one day where those two things are actually different, because I would kind of call them being roughly the same thing.

Larry 1:05:00

They are now, but they haven't always been.

Andy 1:05:03

I see. Because you would have, like, whatever they're called, the "Blue Dog Democrats" that were more right-leaning Democrats? Is that what you're referring to?

Larry 1:05:10

Yes, we had very conservative Democrats, and very progressive Republicans, at one time.

Andy 1:05:14

Gotcha. Anything else, gentlemen, before we head out?

Chance 1:05:19

That looks like that's it. That looks like that's it.

Andy 1:05:23

Chance, what's your phone number?

Chance 1:05:25

It is: (949) 365-5842.

Andy 1:05:26

And are you restricting to only talk to the Californy-type people?

Chance 1:05:37

I will talk to anybody who calls. And if they can't reach me on that, leave a message, I will get to them.

Andy 1:05:44

And you have a vast staff? And some lackey intern will call them, or will it be you?

Chance 1:05:50

I have people waiting by the phones at this very moment!

Andy 1:05:53

(laughs) Well, very good. Gentlemen? I hope you have a great night, and a great weekend. Thank you for joining this week's episode of Registry Matters. Larry, hope you have a great night, and stay not-so-busy man! And I'll talk to you soon.

Larry 1:06:07

Good night.

Andy 1:06:08

Take care, Chance.

Larry 1:06:09

You too. Good night.

Announcer 1:06:14

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