



Registry Matters Podcast

Episode 304

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Announcer 00:00

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Andy 00:18

Recording live from FYP Studios east and west, not on a Saturday night, but transmitting across the internet. This is episode 304 of Registry Matters. Larry! How are you this afternoon? How are you? What's up?

Larry 00:31

Doing awesome. I'm glad we could do this today, so my Saturday doesn't have to be absorbed with podcasts. Thank you.

Andy 00:38

Is it really that much of a *burden* to do the podcast?

Larry 00:42

Well, it takes a big part of my weekend away, as I would like to be doing other things.

Andy 00:48

I've offered to do it on a different day of the week. We could do it on a different day so it doesn't destroy your weekend.

Larry 00:53

But then I would have to quit doing the things I have responsibilities for. So, I just have too many things on my plate.

Andy 01:00

(sigh) God. Can't win with you, ever. Chance? How are things over there on the west coast? I'm sure it's a lovely, fine, beautiful day. 75 or 80 degrees. Everything good?

Chance 01:14

Yeah, just happy to be here. Yeah, very good.

Andy 01:17

Perfect. Well, welcome back. Hey, everybody! Remember to press Like and Subscribe, leave five-star reviews, all that happy horse-stuff. Also... Thumbs-Up the episode! Go over to YouTube, do me a favor, you don't have to do anything else. You don't even have to listen to it, if you don't want to. If you've made it this far, go to YouTube and press Like on the video. Without anything else going on, Larry, what are we doing tonight?

Larry 01:42

Well, we have a case from the Sixth Circuit Court of Appeals, a PFR case out of Tennessee. And then, of course, we're gonna have the *California Corner* with Chance Oberstein. And then we have part-two of the listener letter from Daniel, which

should be interesting. We have a question and a listener comment. We have a couple articles of good news (if we get that far). And we're going to try to keep this compact tonight because, as I understand it, our "eastern" partner has an obligation this evening, that they need to take care of.

Andy 02:18

That is correct. I have other obligations and I can't get out of it. That's why we couldn't record the rest of the weekend, because, well you know, holiday and all that. So that's what's going to happen. Larry, do you want to tell me about one of your new "General Rules?"

Larry 02:33

Yes, I do. I was coming back from Las Cruces, traveling on Interstate 25, and I heard this story on the radio and it happened in Albuquerque. As a General Rule, if you pull a weapon, I would suggest this: If you're going to pull a weapon — please don't! ... but if you're *going* to pull a weapon on a police officer — and you don't get shot dead, which this person did not, the police officer discharged the weapon, but the person didn't die, I would suggest that you **do not** send a family member back to the scene to try to locate the weapon, that you tossed before the police caught up with you.

Andy 03:12

Um, okay, that seems reasonable. But, like, continue on with the story. Like, why wouldn't you do that?

Larry 03:22

Well, it was an interesting story. The weapon was stolen, the person was a convicted felon, and the person was on pretrial release. During the interrogation, after being apprehended (and not being dead), the person "admitted" that they had pulled a **BB gun** on the police. Then the *wife* went back to try to *find* the weapon, where it had been tossed, and asked the property owner if she could conduct a search for "her husband's property". (Andy laughs) The person said "No," and they called the police, and the police thought, "Well, gee, if there's someone wanting to search that property in that area", they linked it together to the incident, and they said, "Well, we'll be happy to come search your property, with your permission." And they came, and found the weapon. So, a whole lot of new charges were stacked.

Larry 04:17

Now, we have an attorney here, and my theory would be that, if police had been unable to find that weapon, and maybe months went by and they *never* located the weapon, the police would never have been able to prove it was a real weapon. And, of course, *had he not made the statement* that he even "pulled a BB gun" on the police, then the case against him would be less strong than it is presently. Chance, would you see any flaws in my logic, or does that make any sense, what he shouldn't have done?

Chance 04:51

No, that makes perfect sense. You know, you don't want to help anybody (laughs) convict you. That makes perfect sense.

Larry 05:00

So he kind of did the same thing that the poor young lady in Georgia on the beach did. He made a case that was *somewhat* weak, he made it *very* strong, by helping the police locate the weapon, and by admitting to the police that he'd *pulled* a weapon. But please, folks, don't pull a weapon on the police. You're going to end up dead. And beyond that, you shouldn't pull a weapon on the police, or anybody else for that matter.

Andy 05:26

That seems reasonable. All right, then. Well, so that was that. And then we have a question from Darin, and this just came in over YouTube ... pretty recently? I guess it's kind of a little bit open-ended, but I think you can fill it in. It says, "In regards to 2:47" – I don't remember which episode he posted this on, Larry. Do you remember which episode it was?"

Larry 05:49

I don't, offhand. [*Transcriptionist note: In Episode 300, around 21:06, Larry said: "his problem was the **vehicle** he was using. He was doing it in a **habeas corpus**. He would have needed to have filed a 'petition for declaratory judgment'. If he was going to make those challenges you're talking about, he would have needed to have used a vehicle that allowed him to move forward."*]

Andy 05:51

All right. Anyways, pretty recent, but he says, "What are the **correct** vehicles to challenge the registry, Larry? (Could we get some suggestions or examples other than declaratory judgment?)"

Larry 06:05

Well, you're right, that is an open question. Let's just take some guesses here. If he wants to just challenge the registry, quote "the registry", because he doesn't think the registry should exist, that's going to be almost an impossible challenge to make, because we have controlling case law that says registration is constitutional, meaning that, on its face, it's not unconstitutional. The mere act of registering is not unconstitutional on its face, and "facial" means that there's no set of circumstances where you could validly operate a registration program. Well, we operate registration programs all throughout the country that are very valid, and very constitutional. In some of them, you do not get to opt-in by committing a crime, like registering being a young man between 18 and 26, you must register for the draft or you would be subject to penalties, and there's nothing unconstitutional about that.

Larry 07:04

But if he wants to challenge the registry, I would say, first would be to try to focus on what *aspect* of the registry you want to challenge. The declaratory judgment is going to be, in

my view, the appropriate vehicle in most instances, **but not always**. You could also make a challenge through a criminal case. For example, if a new aspect was added to the registry, and it became effective or was going to become effective, well, you could use a declaratory judgment and seek an injunction, if you wanted to try to prevent the implementation. Or, when it became effective, you could tell the police, kind of like a person in Georgia did named Mister Park, (in *Park vs Georgia*, decided by the Georgia Supreme Court in 2019) that what was a GPS challenge. Georgia said, "You will have to be fitted for a GPS the rest of your life, beyond your supervision." And Mister Park said, when his supervision finished, he told them they could take their GPS and shove it. They said, "Well, that's fine, we'll prosecute you." He said, "Well, prosecute away!" He made the challenge within a criminal action.

Larry 08:09

I don't *like* doing challenges within a criminal case, because my theory of judges that are handling criminal cases is *they think you're whining*. When you bring a case that's being challenged, and a criminal charge has been filed against you, and that statute's been on the books for 15, 20, 30, 40, 50, 60 years, and there hasn't been even a challenge *attempt* before you, it almost seems like you're just trying to dodge responsibility and delay, and you're not going to get the full workup in most of those situations. You're going to file a motion, some sort of pretrial motion, saying that that aspect of the registry is unconstitutional, and you're just trying to stop your prosecution. Most of the time the judge is going to say, "Good luck, no dice" and keep going. Now, I've rambled quite a bit. Chance, what would your thoughts be on my observations?"

Chance 09:04

Well, just about the same. And then beyond that, you've got to decide where you're going to start. You got to pick your court. You know, are we going to start it in federal court, what federal court? Are you gonna start in a state court, what state court? There's a lot of questions about what it is, what aspect you're challenging, and what court you're going to do it in. It's a strategy call. So it's not a really simple equation. It's actually a really complex equation and would take longer than this segment is geared for, to really get into the mechanics of it.

Andy 09:42

A question over on Discord came in. Someone says, "At what point in time does the *level of requirements* to be met for the registry cross over into punitive?"

Larry 09:52

Well now, that's a tough one. You would need to analyze the case law that's developed in your jurisdiction, either federal or state. If you're going to take it into state court, you would need to look at the decisions that are already in existence. All the things that previously were a part of your registration scheme, that were required, and have been upheld at an appellate level, those are not going to be magically overturned because you don't like them and you're coming back to court. So think about it this way: The Court of Appeals, for example, I think

universally around the country, they divide into "panels" so they can handle all of the voluminous amount of work that flows to them. And one panel will not overrule another panel, because you would have chaos if that were the case.

Larry 10:42

So, if there's an existing panel decision from an appellate level court or the Supreme Court, those challenges are not going *anywhere*, unless you have significantly different facts. If they add one additional horrendous disability or restraint that *hasn't* previously been litigated, then *that* would be potentially a tipping point. But you've got to look at what's already been upheld before you mount your challenge because if you don't, they're going to look at you and say, "Why are we here? This has already been decided. This issue has already been decided."

Andy 11:24

This would be where disabilities and restraints can be brought up, that type of thing, to figure out if it's punitive?

Larry 11:31

Well, that's the essence of the question. When he says "the level of requirements," the registry requirements that you provide information, those are never going to be unconstitutional, in my opinion, except for possibly the active publication of all your personal information online. But if they just collect one additional piece of information, there's no disability involved in that. You have to give them the information. If they add **email addresses**, well, you might be getting into a territory there where you could argue that it's impairing your anonymous speech. But if they add something much more innocuous, you're not going to get anywhere with that. If you've never had a residency restriction, and they say, "By the way, starting July 1 you can't live within a thousand feet of a school," that becomes more problematic because that is truly a disability. And it's going to be *very* problematic if they tell you that you have to leave your existing residence, that you've already been residing at for a long time. It's going to be a case-by-case analysis of: *what they add*, and what the appellate case law looks like in the jurisdiction where those requirements have been enhanced.

Andy 12:45

Anything else you want to add to that, Chance?

Chance 12:48

No. I mean, I think Larry makes a very good point, which is, if you're going to duplicate an effort that's already been denied, that's a waste of time and money. If you've got something that's "of first impression" and unique in that way, then it's a whole different table. But if the table has already been set, by precedent, and what you're bringing up has already been decided, yeah. It doesn't make much sense trying to push it again. Unless! Unless — I say, there's always a caveat — unless you've got something new, and compelling.

Andy 13:27

Another question that just came along is, "But what if I have no residency restrictions in **my** town, but I want to move to a town in the same state that **does**, would that be considered a disability?"

Larry 13:41

That's a fun question. I would say I don't know the answer to that because *that is not "the registry"* — that's the town! They're merely using the registry as the basis for *imposing* the disability or restraint. If you were to bring that case to me, I would tell you, "Honestly, we don't know." If that town passed that restriction *after* you were convicted, and it's truly an ex post facto requirement, if I were the state, I would argue, "Well, yes, it *was* passed four years after he was convicted, but we've got 58,876 square miles in 159 counties here that he *can* live in. So he doesn't have to live there. He's not being banished from the entire state of Georgia." I just don't know what the answer to that would be.

Andy 14:33

Compare that to ... gosh, whatever it was, 2015 or 16?, where Texas was trying to do things — and what is it called, "home rule"? — where if your town is smaller than X, you have to follow the rules of the state, you're not allowed to make your own rules. Is that, did I describe that halfway-well?

Larry 14:47

You did.

Andy 14:49

Is that a unique situation, being in Texas? Are there other states that have similar things? Do all states have similar things?

Larry 14:58

Well, we have similar rules, but what had happened in Texas is that the "non-home-rule" municipalities — those 5,000 or less, I believe the threshold was — they were not allowed to regulate PFRs, but the larger cities were. So those small non-home-rule cities that were not large were not allowed to do that. And so an attorney made that challenge, that they didn't have the authority, that they were pre-empted by state law. And I said, "Well, have fun with that challenge. They're simply going to change the law."

Larry 15:31

I mean, there's no way a rural-based legislature — where you got the urban centers of Dallas, and Houston, and San Antonio, and Austin, but Texas is very rural, because it's so large — there's no way that those lawmakers who represent those rural areas are going to be able to look their constituents in the face and say, "Yeah, we trust the people in Houston to make good decisions about how they can regulate PFRs, but we ain't going to give our small town administrators and mayors, and counselors that kind of power because they just don't know how to use it." Can you imagine how long you'd stay in office if you took that position? So they just simply changed the law,

and they gave the non-home-rule cities the same prerogative that the home-rule cities have.

Andy 16:17

And to close that out, so they'll basically keep pushing and pushing and pushing until the point where they find where it becomes something challengeable. And then it's on us to prove that it's unconstitutional, to push it back to something ... *less bad*? And it's never going to go away, but it would just be "less bad"?

Larry 16:35

Now I don't think I would say it's *never* going to go away. I always keep eternal optimism. I think that the population has the *capacity* to become enlightened, and wake up and insist on sound public policy. But the courts cannot save us from poor, bad policy choices. That's the freedom of living in a democratic society, is you can impose things that are less than ideal on yourselves, if you choose to.

Andy 17:00

We should elect a dictator and we'll just be done with it!

Larry 17:03

And we choose to elect people who promise us they're going to be harsh, and then we're shocked when they're harsh. I've not been able to process it in my head and understand it. Why do you find it surprising that they do what they promised you they would do, in terms of being tough on crime, and being hard-nosed? And then they whine and they wring their hands and they say, "Well, why did we get this?" and I say, "Well, you did ... vote for it."

Andy 17:29

The guy running says he'll be a dictator, at least for a day, right? So, we would vote in the guy that could be a dictator, right Chance?

Chance 17:36

That's how long it takes to set everything up, just approximately one day.

Andy 17:43

(laughs) All right, moving along, this is a follow up to the segment we did in the last episode, two weeks ago, about the GBI investigation and harassing phone calls, so, "I recently contacted the Georgia Bureau of Investigation after receiving a **second** harassing spam call at my workplace, the company store I manage. The scammer, posing as "Lieutenant Ross", used the National PFR 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 attempt extortion by demanding payment for a fictitious bond."

Larry 18:25

I asked you to bring this question back because, subsequent to that episode, we heard from a listener in Illinois, and we validated that listener saying that there was information **on** the national website that was **not** listed in the Illinois website, in terms of employment. It seemed to check out, on more than one PFR registered in Illinois, and that may, in fact, be the case in Georgia. I'm not going to sit down and go through every registrant in Georgia, or even very many of them, to try to figure that out. But this, in fact, may be how that happened. I was kind of arrogant in the episode saying, "Well, the information that's on the national website is *only* the same information, because it's merely a connecting search engine, that lets you see that state's registration information." Now it appears that, at least Illinois, and possibly Georgia, *are* sharing more information with the national search engine than what's actually visible on their own website. So, folks, be careful! Make sure that you check yourself, and see if the information is different and inconsistent on the national website.

Andy 19:35

Is that anything challengeable? If your state doesn't require it, but then it's being published elsewhere? Does that pose something challengeable?

Larry 19:44

I have not been able to come up with any challenge because the fact of the matter is, *it's truthful information*. Unless what's being listed on the national website is not accurate... I mean, you **might** find an attorney that's very bored, and has so much money that they can blow a lot of billable hours on this. But, Chance — you're an attorney — if someone came to you and said, "Hey, I'm wanting to challenge this. California doesn't require it to be published, but yet when I search myself nationally, it's showing up on the national website," would you be gung-ho to go down with a challenge? And what would your cause of action be?

Chance 20:25

Yeah, that's just not my wheelhouse. I would refer them to other attorneys who do that type of work, but my gut feeling is that I'm not sure very many would be wanting to challenge *that*, for the same reason you just stated. If it's true information that's being shared, you're running into First Amendment issues I don't think you can overcome.

Larry 20:55

So, well, I wanted to let people know that I certainly *don't know it all*. What I *do* know is that the person who directs the registry in this state has testified no less than a handful of times — possibly more than a handful of times in the years since Adam Walsh Act passed — and part of her assertions are, "The reason why New Mexico should become AWA compliant is because our website is deficient, and they're not allowed to share any information because it is simply a search tool that connects people in one location to a state's registration service, to the website." I've heard that five, six times, at least in testimony. I assumed that, if the director of the registration

said, "It's merely a search engine", I assumed that that was accurate testimony. It might not be, or it might just be an anomaly in Illinois, and possibly in Georgia. But that's what I was always told.

Andy 21:57

Very well. I am going to move over, and we're going to read a letter. This is, again from two episodes ago. We covered a person that had a two-part question. And so this is Daniel's second part, and it goes, "I was on federal supervision in the Northern District of Ohio. My conditions require internet monitoring software. I asked the PO *many times*, how do I get the monitoring, and he just *refused* to provide it. He told me that the internet is a privilege that I have to earn and he can take it away at any time. Well, in 2023, one cannot function in society by avoiding the internet. I was unable to apply for jobs, collect unemployment, obtain healthcare, find a residence, take college courses, and many, many, many, many more things. This seems to be the normal policy for the entire district. Everyone I've known in this district experienced the same issue. Is there any way to challenge this, considering the internet is a necessity now, how are we expected to survive and function without it?" I love this question, Larry.

Larry 23:00

I do as well. That's why I gave this person a 50-year subscription to the transcripts, because it was such a good set of questions. That means we have to keep this program alive for 50 more years.

Andy 23:15

All right, then.

Chance 23:16

Perfect!

Larry 23:17

So, in looking at that question, I think that he has a magnificent potential challenge, assuming everything he's saying is correct, and I have no reason to doubt it. Because you *can't* function. When I go into all the places that are begging for help, not a single one hands out paper applications anymore. Does anybody see a paper application being handed out anymore?

Andy 23:43

Um, I have no idea.

Larry 23:46

Well, they're very rare. They direct you to a terminal to apply, or they tell you to "Go online to our website at Taco Bell jobs dot [whatever]." They direct you to go apply online. And, as a condition of supervised release, or any supervision, you're generally required to work, to maintain appropriate employment. So, if you can't search for a job in the modern era, that would *seem* to run contrary to one of the most basic conditions of rehabilitation and reintegration: holding a steady job. So, Andy, would you **finally** admit that this is funny?

Because, if you are required to work, but they won't let you look for a job, is that funny or not?

Andy 24:30

No, not funny. I don't know why you keep thinking this shit's funny! This is not funny.

Larry 24:37

(laughs) Well then how would you describe it? If you're required to work, and they won't let you look for work, what would be a better description of it than being funny?

Andy 24:46

All the words that I would use for this, Larry ... particularly like, while you're on supervision? You're required to have a job. Yet, they're going to refuse you the tools you need to go *get* a job, and then they would say, "We're going to have to lock you up for not complying, because you didn't get a job!" Okay, **that's** funny. No. It's **not funny**. That's really shitty. No, that's not funny!

Chance 25:08

Kind of funny. Kind of funny. (laughs)

Andy 25:11

Not if you're the one that can't do it!

Chance 25:13

Correct!

Larry 25:14

It's a lot deeper than that. There are so many things, when you're living in this society, in modern times, that you just really can't do without access to the internet. You're just hopelessly lost if you can't get online. And, so Chance, the question I would pose to you is: Imagine you're in a federal court district in California, representing someone on federal supervised release, and they bring this question to you. Would you be more comfortable with asking *the judge* to clarify to the probation service that the internet monitoring is not an option? What would you think would be the least risky option? Because there's risk with everything you do. If you file something and probation service has to come to court, they're not going to like you very much. But what would you advise a client?

Chance 26:08

Well, that's interesting that you ask, because I was just there yesterday doing something very similar. I guess I would ask for a modification based on the fact that it doesn't really "reasonably relate" to the conviction itself. (Because if it did, I wouldn't be there, because there would be a stronger case in regulating.) But let's just say that we take everything as true and it *doesn't* reasonably relate to the conviction, then yes. I mean, you're ordered to either be employed, be in school, and a dozen other things you've got to do, but all of which depend on access to the internet, and it just totally defeats the purpose of that condition. So the argument here is: "You're

asking somebody to do something, you're putting the condition on them, *with the threat of repercussions*, so, in order to enable them to do what the condition calls for, and at the same, *rehabilitate*," — okay, which is a big thing for judges, doing that type of thing — "either a modification, or a real explanation from probation is necessary. And modifying to limit the condition, or eliminate the condition is completely, I would say, a reasonable thing to do."

Larry 27:43

So, you would not be hesitant if the probation service couldn't make a really strong case that this was a unique and egregious case that such access would be dangerous for society. You would go back to the judge and say, "Clarify, and allow access." Because it's so *ridiculous!* When my boss's mother died, I was trying to close out accounts with, like, for example, whatever the electric company is, out in Southern California where she was. And I called the electric company and they wouldn't even **take** the phone call. You had to "punch" options, and I pressed the option that said "Discontinue service" and they said, "Oh! You pressed option three: Disconnect Service. *Go online* and put in your account number and you can terminate service." (laughs) You can't even turn off your electricity by calling the electric company anymore on the phone!

Chance 28:37

Larry thinks that's funny!

Andy 28:37

I know, right? And then how would you move *into* a place? How would you even *establish* utilities without having internet access?

Larry 28:48

You wouldn't. Like I say, there's *so many* things. You get your doctor's appointments by the internet, online. I haven't been able to get a statement from some dental work I had. They don't send statements anymore. They tell you to *go log in*, and you go log in to the link they send you, and it tells you how much you owe. It doesn't tell how they got to the story, which is a separate component. But I have to go online to figure out what I owe, to pay what I owe, and to do anything related to my dental account.

Andy 29:19

Does a person like this have any option of relief? Like, you know, we used the word "vehicle" earlier. Is there *anything?* I mean, you just, you're going to go piss off a bunch of people in the process.

Larry 29:29

Yes, that's the only option he has. He's going to have to go back to the sentencing judge, or whoever's got it, may not be the same judge, depending on if the judge has died or something, but, he'll have to go back to judge that has jurisdiction and ask for modification, clarification, and Chance said that's what he would advise. I would go along with that

advice, but I'm telling you: if you do it, they're not going to have a sense of humor about it.

Chance 29:53

(all laugh) They're not going to be **like Larry**. They are gonna be pissed!

Andy 30:00

I know! He thinks everything's funny.

Larry 30:01

That's right.

Announcer 30:04

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Andy 30:52

All right, well, let's move along before this podcast takes us seven years. I found an article in my normal stream of things, and it's a very "science-ey" one. It's from *Scientific American*, which discusses the flaws in a widely used criminal justice algorithm called "CP" (Y'all can figure out what that part is) "Offender Risk Tool", or CPORT. And the article raised a whole bunch of concerns about the validity and the accuracy of this tool, which is often used to estimate the risk of recidivism among CP offenders.

Larry 31:22

So what's the main issue with the CPORT algorithm, as you see it?

Andy 31:27

First of all, the CPORT was developed using a very small sample size. There was only 266 people ... from Ontario, Canada. I gotta think that the people Way Over There are not the same as we are, here. (I'm actually not being serious about that part.) The problem is that these were people being released from prison in Canada from 1993 to 2006. And, out of these, 29 were convicted with a new PFR-type offense within five years. This small sample size makes the statistical models unstable, and not generalized to be applicable to the broader population.

Chance 32:04

Yeah, that's a significant problem. It's kind of like the "Static-99", same problem with that. Isn't sample size crucial for the reliability of any statistical model? I mean, with such a small number, it's hard to make accurate predictions.

Andy 32:20

That's exactly right. Size matters, as we all know! Furthermore, the data used to develop CPORT is outdated. Since it was developed in the mid-nineties, when Al Gore was just in the finishing stages of *inventing* the internet, it doesn't account for technological advancements *since* 2006, like the widespread use of cell phones and the internet in general, which have *drastically* changed how CP offenses are even committed. Can you imagine, like, in 1993? People were still swapping *polaroids*. (Probably.)

Larry 32:49

So the algorithm is essentially working with outdated information, which means it's not accurately assessing the risk in today's context. Is that what you're saying here?

Andy 33:01

That's exactly correct. And even the *validation* study they conducted was flawed. They only validated it with 80 offenders, from the same jurisdiction in Ontario, and the results were inconsistent. What they're saying there is, if you build a model that says, "Here's what we're going to do to predict it." and then you turn around and you go try to evaluate it with somebody new, you try to see if your model can predict, and that wasn't working out for them. The algorithm's predictive power *varied* depending on whether cases with missing information were included.

Chance 33:32

Yeah, this inconsistency is alarming. I mean, a reliable algorithm should produce consistent results regardless of minor variations in the data set. These inconsistencies suggest that the CPORT isn't robust and might be very biased.

Larry 33:50

What about independent studies? Have they confirmed these findings?

Andy 33:55

You mean independent studies like the one from *Spain*? They *also* had small sample sizes, and incomplete data. None of these studies were conducted on U.S. offenders, which further questions the applicability of CPORT in the United States.

Chance 34:09

Yeah, it sounds like there could be a selection bias. How were individuals chosen for the study?

Andy 34:15

That's a really excellent point, Chance. The article doesn't mention how the individuals were selected, which means there could be a selection bias. This happens when the sample isn't representative of the broader population, possibly because certain types of offenders were more likely to be included in the study than others. This bias can distort the algorithm's predictions making it, again, unreliable when applied to a *different* group of people.

Chance 34:37

Well, this raises significant and ethical concerns, in my opinion. Using an unvalidated algorithm can lead to unjust outcomes – non-dangerous offenders might receive harsher punishment sentences, while dangerous ones could be released prematurely. This undermines the integrity of the justice system.

Larry 34:58

Precisely. And it doesn't just affect individual cases, it also can erode public trust in the justice system. People need to believe that legal decisions are based on accurate and fair assessments.

Andy 35:12

That's actually like the crux of the issue. The continued use of CPORT, despite its flaws, illustrates the dangers of relying on unvalidated risk assessment tools. Until these tools are rigorously tested, *and* validated in the jurisdictions where they are applied, their use remains problematic and potentially harmful.

Chance 35:31

So what **should** be done to ensure these algorithms are properly validated?

Andy 35:35

Steps to ensure proper validation include: conducting large-scale studies with diverse and representative samples, peer reviewing the methodologies and findings, and continuously updating the algorithm to reflect new data and technological advancements. Transparency into how these algorithms operate is also crucial. Larry, I think you'll have significant insight into what we need to have done.

Larry 36:06

Well, sure. Policymakers need to balance the need for immediate tools with the necessities for developing accurate and validated algorithms. And investing in research and development is key. We should avoid quick fixes that lack scientific backing. I'll go off script here a little bit. It always raises a financial question for funding. When you're trying to do these studies, you're competing for funding within the budgetary process. Some would argue that a small study of — what was it, 266? — is better than *having no information* because, otherwise, we still have to sentence these people. We still have to do something with these people. So would your position be that we should just, without any studies, just keep flying by the seat of our pants? Or would this be better than nothing?

Andy 36:57

I would be inclined to say that it would be better to have nothing, because you don't want to sentence somebody to a thousand years that doesn't necessarily deserve it.

Chance 37:07

You know, it's also important to look at alternatives. The Public Safety Assessment algorithm, for example, has been validated across multiple jurisdictions with large and diverse data sets. Developing localized risk assessment tools can also offer more accurate and fair assessments. They do this in California, with respect to instruments used in forensic and psychological testing.

Andy 37:33

Absolutely. Ensuring that risk assessment instruments are validated and reliable is crucial for meaningful and lasting criminal justice reform. Only then can we trust these tools to make fair and accurate legal decisions.

Larry 37:48

Good article!

Andy 37:55

Yeah, it was cool. I'm a huge fan of statistics and science stuff, too. You ready for this, Sixth Circuit Court of Appeals?

Larry 37:58

I am, indeed. I've been studying this decision intently for two weeks now.

Andy 38:04

I believe it. So we're going to discuss this case about a PFR victory being — wait for it — **overturned**. Our Tennessee listeners will be very disappointed. So, you ready for that?

Larry 38:16

I think so.

Andy 38:18

All right. In an opinion filed May 15th, the Sixth — I hate saying the word "sicksthh" — the Sixth Circuit held that Tennessee's entire registry law *cannot be thrown out* because a handful of requirements *may* be unconstitutional. The decision vacated an injunction granted by U.S. District Judge Aleta Trauger. Judge Trauger had ruled in plaintiffs' favor on *Does #1-5 vs. Snyder* — oh, my god — 834 Federal 3rd 696, "sicksthh" Circuit, 2016?? [834 F.3d 696 (6th Cir. 2016)]. How did I do?

Larry 38:49

Good.

Andy 38:50

Okay, this can't be good. And what went wrong, Larry?

Larry 38:54

What went wrong? My initial thoughts after reading the opinion is that the Sixth Circuit is conveying very clearly that they did **not** strike down registration entirely in the state of Michigan in *Does vs. Snyder*, but that's what Judge Trauger relied on so heavily. I think they're conveying, "Don't over-read what we did in 2016." But let's see what Chance has to say.

Chance 39:20

Well, you know, after skimming that decision thoroughly, if anyone could ever **do** that, I tend to agree!

Andy 39:43

(laughs) You "skimmed it thoroughly?"

Chance 39:43

Yeah, skim it thoroughly. But I did notice as I was skimming it thoroughly, and looking at other comments on it, Larry's written about this. Larry's done a lot of thinking about this. So I would defer to Larry for elaboration on this point.

Andy 39:45

Well, the opinion listed in chronological order the many amendments and enhancements added to Tennessee's registration law since 1995. The plaintiffs alleged that Tennessee's imposition of these enhanced requirements against them violates the Constitution's Ex Post Facto clause. They filed an action for declaratory and injunctive relief against Governor Lee and Tennessee Bureau of Investigation Director Rausch, asking the court to prohibit the state from enforcing the Act. What's wrong with that?

Larry 40:16

Nothing, conceptually. The problem is that the plaintiffs' attorneys were over-reading the *Does vs. Snyder* decision from Michigan, that's the problem. But there's nothing wrong with trying to use *Does vs. Snyder* to tame the beast. I would suggest **every** state and **every** advocacy group within the Sixth Circuit look very carefully at *Does vs. Snyder*, but don't put stuff in it that's not there.

Chance 40:41

Yeah, because if you read the fine print, they really didn't throw the baby out with the bathwater, right, Larry?

Larry 40:47

That is correct.

Andy 40:50

Um, so what's the reason that Governor Lee was removed, and TBI Director Rausch is the lone party now?

Larry 40:58

Well, again, I wish I had direct pipelines to the attorneys. I don't know what their position and their theory was for naming the governor. I would be very hesitant to name a governor because governors don't run day-to-day operations. The governor of Tennessee has no idea what the registry does, who's on it, or anything about it, and is not involved with it. I don't know if that was supposed to be impressive and say, "Well, if we name the governor, that will surely include everybody down the food chain," because it does not. So, when they looked at Tennessee law, they figured out that the governor is ceremonial but really doesn't have any direct control over the registry, so he was removed.

Larry 41:36

But TBI Director Rausch is in control, and does have a fair amount of say-so in Tennessee's registration system, so he is a remaining party. That's not to say that they couldn't amend later and plead in new parties. And Chance might be able to expand on that, but you can ask that a party that's been removed, if there's an appropriate party, it's conceivable that, since this case has been remanded, that they could ask to bring in a new party.

Andy 42:07

Plaintiffs argued that Tennessee's registry law is identical to Michigan's SORA in the *Snyder* case. And what's wrong with that concept, Larry?

Larry 42:15

Well, **it doesn't matter** that the Tennessee registry is nearly identical. **What matters** is the Sixth Circuit did not deem Michigan's registry to be unconstitutional in its entirety. As I stated, too many people want to over-read what the court has determined. That circuit opinion said very clearly that, "We have previously upheld registration in Michigan. But when you did what you did in 2006 and 2011, you went too far in terms of the ex post facto clause." I think 2006 was when they put in the proximity restrictions, and I think 2011 is when Michigan went substantially "AWA-compliant", and they put people into tier designations. So those who ended up in tier-three, or lifetime, without any due process, then the court said, "You can't do **these** things." But saying you can't make someone a lifetime registrant without due process is not **anything** like saying that they can't be forced to register! How can you interpret that, that way?

Andy 43:18

The Sixth Circuit noted that the district court [Judge Trauger] "took a similar view, treating *Snyder* as a case dealing with Michigan's SORA in its entirety, and seemed to imply that the panel [in *Snyder*] enjoined the entire law," and repeatedly characterized *Snyder* as a broadly enjoining the Michigan law. Are you implying that Judge Trauger got it wrong? Are you so bold, Larry, that you would think that you could say, "A judge got it wrong"?

Larry 43:48

Well, I don't really *need* to imply that, because the Sixth Circuit stated, "This is incorrect. In *Snyder*, we evaluated only 2006 and 2011 *amendments* to SORA – amendments prohibiting offenders from living, working or loitering within 1,000 feet of a school and requiring immediate, in-person appearance to update critical information," and that's in the opinion on page ten. So I will trust **them** if **they** say that Judge Trauger got it wrong. Those are the portions of the law categorizing offenders and prohibiting them from living, working and traveling within certain areas. And those claims are still standing, and they will go forward on remand. But the Sixth Circuit is very clear: *Don't say we struck down Michigan's registry because we didn't.*

Chance 44:36

Correct, correct. They will go forward on remand, in a very limited way, to determine the constitutionality of the newly added provisions.

Larry 44:46

So, folks, just when you read an opinion, don't try to invent things that *you wish* it says, because people do that all the time. I remember many years ago when I first got into this advocacy on the PFR issue, a person had (I think it was in Pennsylvania, and he was in Maryland), he says, "I'm going to move to Pennsylvania. PFRs that are homeless don't have to register in Pennsylvania." And I said, "Well, really?" He said, "Yeah, the Supreme Court said that, in Pennsylvania." I said, "Really? Let me take a look at that." I looked at it, and it said that the PFR that was homeless did not have to *provide an address*. So I called him back and I said, "Well, the way I read this, it says that a homeless person cannot be **jailed** for failing to provide an address. Where does it say you don't have to **register**?" He said, "Well, you can read between the lines that, clearly, if you don't have a place, you don't have to register." I said, "Well, what about your fingerprints? What about your DNA? What about anything else that you're required to do? What about all that stuff? They can take your picture. They can do a whole *lot* of things. Why is it that you can conclude that, because you don't have to provide a physical address, that you don't have to register? They didn't say that." But people tend to do that all the time.

Andy 45:56

Shall we move along to the Chance Hour, and go to the *California Corner*?

Larry 46:00

Of course! 'Cause we want to get out of here, so you can go to the game.

Andy 46:03

Right! Okay, take it away, sir.

Chance 46:06

Let's go to Sunny California! Now listen, gentlemen, jump in wherever you want. I'm going to remind people that this is **California Corner, Certificate of Rehabilitation, Part Two**. We did part one last time. *This* episode is about how to apply. The *last* episode was about "What *is* a Certificate of Rehabilitation and who's eligible for it, who can apply." Today: **How to apply**. And so, following up, the first thing I think everybody should know is, they should consider getting legal help, because this is kind of a confusing area in terms of procedure.

Chance 46:45

Now you can do this on your own, *without* a lawyer. There's nothing that says you must have one, but I think you should consider getting help with the process and, during the proceedings in court, you have an absolute right to a lawyer of your choice, or a public defender, who is a lawyer who works in the public defender's office. Okay, the next thing to consider

is: **Get your criminal record** and find out what forms you need. That's the first step, really. In California, getting a copy of your criminal record is fairly easy. You can get this from the California Department of Justice, and you will need this information to complete your Petition.

Chance 47:19

A lot of people call me about this, and they need it for other things as well. They would say, "What do I do? How do I know what my criminal history is?" Well, it's pretty easy. You know, you just use the "Live Scan form" found online, to –

Andy 48:03

Online! (laughs) So you need internet access, too!

Chance 48:03

Yeah, **online** — which means you need to use a "**com-pu-ter**" — at the California DOJ website. Now I say that, and it's kind of funny, but you could probably get the same form at FedEx if you really wanted to, because they probably have them there.

Chance 48:03

On the form, check "Record Review" as the "Type of Application" because, if you don't, they're not going to do it. Enter "Record Review" on the "Reason for Application" line. So, it's a record review, that's what you're putting on that form. A lot of people get messed up there. Fill out your personal information. Take the completed form to any "Live Scan site" for fingerprinting services. FedEx does it right there, but fingerprinting services are also available at most local law enforcement agencies, including the ones that you may register at, or any public applicant Live Scan sites, such as FedEx.

Chance 48:27

And let me say one other thing: You know, people might ask, "Well, why is that so important? Why do I need that?" Well, because it really says, as far as your criminal history is concerned in California, *exactly* what the DA is going to look up and find out. So, you might as well see if it's accurate or not. And it will help you understand and assess your background for purposes of doing this form, because either the DA's office is going to ask you to list prior felony convictions, and you're also going to be asked on the forms that you fill out and file with the court. So, this is an important step. And it's an *excellent* step to take if you're going to have an attorney assist you, because that attorney might want to look and corroborate exactly what you're saying.

Chance 49:13

The next step is to go online or contact the court to **Find out what forms you need**. Now, what I mean by this is, every court, each court is required to have forms for your use. And these often come with additional instructions. So, they have them at the criminal court clerk's office, in the particular court you're going to. Or you can go online and usually they have them online. You can just download them and print them out, but you want to contact the court or public defender, either

where you live or where the convictions happened, to ask how you can get the forms. That's important. And we're really only talking about three forms, and that will become clear in a minute. So, you want to fill out these forms, *and make copies*. And the two forms I'm going to talk about right now are the Petition and the Notice. The Petition is just the body asking, you're just requesting relief. The Notice is letting other folks who need to know what you're doing that you're doing this. So that's what those two forms are about.

Chance 50:23

Then you want to **Gather supporting evidence**, supporting documents, and *attach them to your petition*. And I say that because most people think, "I'll just fill out these forms, and I'll file them, and that should be enough." *Noooo*, it's not enough.

Chance 50:36

What you want to do, for example, is you want to get letters of support, you want to attach psychological assessments if they're positive, certificates from classes or programs you've completed, and proof of education or employment, to show that you've turned your life around. Because rehabilitation means "I've turned my life around *so significantly* that the court should declare that I'm rehabilitated." So, you want to include those *with your petition* and I'll speak to Notice in just a moment. You want to **Make copies of your Petition**. The original petition is for the court. You want to keep a copy for yourself, and provide copies to the District Attorneys and the Governor's Office.

Chance 51:15

In filing the forms — let's talk about **File forms**, because that's the next step — you want to file the forms in the Superior Court in either the county where you live, or in the county where you were convicted. So, you have two options. If you're living in San Francisco, but you were convicted in Los Angeles, you've got two places where you can file.

Chance 51:38

After you decide *where* you're going to file, you want to **Give Notice of your court date**, okay, and that's post-filing. So, after filing the Notice and the Petition, and receiving a court date, you must officially let the District Attorney and the Governor's Office know about the court date. You got to invite them to the party. And that has to be done at least 30 days before your court date. So, you must formally notify the District Attorney and the Governor's Office about the court date. This is done by serving them with the Notice of your court date. Note (and this is really, really important): You must notify the District Attorney in the county where you filed the Petition **and** the District Attorney in the county *where you were originally convicted*, if those are two separate places.

Chance 52:20

I would also just suggest, and this is what I referred to earlier, attaching a copy of your Petition to the Notice. Because the Notice is just one page. What you want to do is attach a copy of the Petition to that Notice. The reason being is because

you're going to load that copy with all kinds of wonderful letters of support, and all kinds of other evidence, to show that you rehabilitated. Because those parties that you're sending those Petitions out to, they can come to court and object! And so what you want to do is you want to defeat that, *before* you get to court. You don't want to have a whole bunch of folks running in saying, "Don't do it!" and that "We object to it!" So the best thing to do is attach your Petition, and *show them* that there's no need for them to show up and object.

Chance 53:01

Now, **Who can serve, and how to serve the court papers:** If you're doing it yourself, someone 18 years old or older — **not you** — must deliver a copy of the Notice. The person who delivers the copies is called a server, usually a "process server". The server can deliver the papers in person or by mail, and —

Andy 53:24

Chance, can I interrupt? I have a story to tell you about this.

Chance 53:27

Tell me that story!

Andy 53:28

Omigod, so, I got out in 2014, and in that window, I was trying to get a modification so that I was allowed to be around my child. And I'm dealing with my attorney that defended me, and I'm offering, "whatever I can do to help out, you let me know." So she goes, "Here, run this paperwork to the judge. This is the sentence modification that says that you're allowed to be around your child." So, I take it down there. (laughs) I go down to the courthouse! And I'm sitting there in the judge's secretary's office, and the judge is just in the room over there!

Andy 54:02

And the judge's secretary looks at the paperwork, and she's like, (in a scary, raspy voice) "Is this **you**?" And I said, "Yes, ma'am," and I'm dressed in, like, khakis and a polo shirt. I'm dressed presentable. And she says, "Okay." I mean, I don't think anything, *anything at all*, is happening. Next thing I know, a very large, female, like, deputy or whatever, courthouse officer comes in and she says, "You! Come with me!" and I'm like, "Okayyy..." and we're walking down the judge's chambers hallway, whatever, and there's a cop on the other end, *running at me at full blast!*

Chance 54:35

Wow!

Andy 54:39

And I said, "Is he coming for me?" And she says, "Yes!" I'm like, "What did I do? You guys let me in." When I got to the courthouse, they're behind a secured wall or a doorway, and you got to, like, go up to it. There's a camera. You go, "Hi, I'm here delivering paperwork for Judge So-and-so." And they go, *buzz*, and you pull the door and you walk in! *Like, they let me in!*

Andy 54:59

So anywho, next thing you know I am surrounded by, like *six officers*, and they are about to like **pounce** on me and they're like, "Why are you in here?" I'm like, "You let me in! I was filing the — my attorney *said* to come down here." And they're like, "*It was not supposed to be you.*" Next thing you know, though, I'm in — whatever, like the deputy in charge of the security force, there at the courthouse — I'm in his office, he's got guitars all over the place, and I'm like talking to him about music and whatnot, and he *personally* hand-runs the paperwork to the judge to get it signed for me, and then I was out the door.

Chance 55:36

That's a pretty extraordinary story.

Larry 55:40

And funny!

Andy 55:43

It is funny. It wasn't funny at the time. I was petrified.

Chance 55:44

That's interesting! What do you think about that, Larry?

Larry 55:48

It's not *quite* the same situation. We're talking about service of process, and you're talking about, you were effectively a law firm runner, and you ran your own paperwork down. But, yeah, this is not quite the same thing, but it is a funny story!

Andy 55:59

But Chance said "someone 18 or older, **not you!**" (laughs)

Chance 56:03

Well, yeah. It's similar, and it does bring back memories for you, Andy. And it's demonstrative of what I'm saying, which is, it says "not you", and it **means: not you!** You know, in this case, it could really get in the way of an efficient process here, and stall things for quite a while. So, but moving on: **How to file that proof of service:** Once the server delivers the Notices, and again, I'll remind everybody, Notices are just *one* sheet of paper saying that, "This is the court date, and this is what it pertains to." That's why it's so important to attach the Petition to it.

Chance 56:43

But once that happens, the server can fill out and sign the "Affidavit of Service by Mail" or "Notice of Service in Person". And that's included in that one sheet of Notice. And then what you want to do is make a copy, and file the original in the court. It's just a single sheet, showing who was served, and by whom. That's it. So, so far, we're talking about three separate documents: We're talking about a Petition, we're talking about Notice, and we're talking about the Notice of Service, which is separate.

Chance 57:19

Respond to any requests is the next step. And that's, depending on the county where you applied, there may be more forms to fill out. For example, the District Attorney may want you to complete an investigative application for a pre-hearing investigation, looking into what you've done since your release. So they may have a form that you fill out, talking about your entire life, and *everything* you do, own, or have done, since your conviction. And usually these things are extensive. And this is where it's really a good thing to have legal counsel involved, because this sometimes could be tricky, and sometimes a wrong answer can lead to bad things, not good things. So, you've got to really be careful about how you fill out that form. The other thing is that, once you do fill out that form, if there's an investigation, it's going to take a little time.

Chance 58:16

It's also good to have legal counsel because they then, based on the conclusions from the form, and based on your petition, may want to *meet* with the District Attorney to, say, eliminate the possibility of the District Attorney objecting to your Certificate of Rehabilitation. And if that's done then that's really good, because it just makes it very easy then, for you to declare to the court why you think you're rehabilitated, or for your attorney to do it. And during that hearing, you can have witnesses testify to your good character, and highlight letters of recommendation, employment history, community activity and service, and any other evidence you believe will support your request. And with that, I think I've just skimmed under, just slid into home.

Andy 59:10

Um, I wanted to ask you a question, and just as I was about to formulate the question, it kind of vanished from my head. Can you go over the thing, though, again, with using an attorney to do this, that the attorney can talk to the DA instead of you doing it pro se? Why is that so beneficial?

Chance 59:30

Well, actually, there's several steps in this that are beneficial. If you look at the procedural steps, it's beneficial because an attorney knows how to do these things, so you don't make the mistake of doing them yourself. The second step is that when you put together your packet, your Petition, and you buffer it with all kinds of good things you've done, and letters and support, it's good to have someone who knows how, to organize what needs to be said in the letters, and how to organize everything that follows. And then your question is, after the investigation, let's just say the investigation comes out pretty pristine. In particular cases, sometimes, "policy" dictates that District Attorneys object almost all the time. But if you've got somebody who's reasonable, and things worked out in the investigation, and an attorney who knows how to negotiate with that District Attorney, knows what to do, it may be that the objection is either watered down, the DA may submit, based on your conversations with them, may not object at all. So, it's very wise to have someone who can work

those things out, because if you try to do it yourself, you're probably going to end up making things worse, more than anything else.

Andy 1:00:48

Got it. Okay.

Larry 1:00:49

Well, that was what I was going to say. It's really hard to talk about yourself in a way that sounds rational. It's kind of like if you watch a person that represents themselves, "Well, did you see *me* there?" (Andy laughs) It's like when you're putting forth the presentation, "My client has been exemplary. Since release from prison, *my client* has achieved X, Y and Z." but it's really awkward saying, "Since release from prison, your honor, **I have done this**," and it's just a whole different ball game. And plus, an attorney can have conversations with the prosecution and figure out where their pressure points are. As an individual, you're going to be limited in those conversations. Because, A. The prosecution is not going to talk to you. And then, B. If they *do* talk to you, they're not going to tell you what they really feel about you. But they'll tell your attorney, most of the time.

Chance 1:01:40

Correct.

Andy 1:01:43

Alllll... right, I think that we've about had it for the day!

Larry 1:01:49

I agree. This is a perfect one-hour episode!

Chance 1:01:52

Excellent.

Andy 1:01:52

This is right on the one-hour mark. I am going to bid all of the people that decided to come hang out with us on a Friday afternoon, bid you all *adieu*, and thank you very much for coming and hanging out, 'cause I appreciate having people to keep poking fun at Larry, and his *old-ness*, while we record. But head over to registrymatters.co to find the show notes. You can leave voicemail at (747) 227-4477, email us at RegistryMattersCast@gmail.com. And then you can *always* call Chance at (949) 365-5842. *Even if you just want to chit-chat*, he's there for ya.

Chance 1:02:38

That's right.

Andy 1:02:38

(laughs) Lastly, if you're feeling generous, go over to patreon.com/registrymatters and support us for as little as a buck a month, and that is very much appreciated, sharing and showing the love. *And* you get the podcast early! The "normal people" are going to get this on Tuesday after Memorial Day, but the Patrons are going to get it probably tomorrow. So without anything else, Chance, as always, enjoy your weather

out there. I'm very jealous, and I hope you have a fantastic holiday weekend!

Larry 1:03:02
Thank you.

Chance 1:02:57
Thank you, thank you.

Announcer 1:03:04
You've been listening to F Y P.

Andy 1:02:59
And Larry, you do the same and I hope you have a great weekend.

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