



## Registry Matters Podcast

Episode 326

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[00:00] Announcer: Registry Matters is an independent production. The opinions and ideas here are those of the host and do not reflect the opinions of any other organization. If you have problems with these thoughts, FYP.

[00:16] Andy: Recording live from FYP Studios east and west and possibly another west, maybe. We don't know. Transmitting across the Internet, this is episode 326 this Christmas Eve Eve. Eve? Eve? I think I got that right?

[00:30] Larry: Maybe you did. [Andy: Larry, how are you tonight?] Alright. But you've already messed up the transcript because you said the way you did the episode number. You didn't say episode 326.

[00:44] Andy: You know, it's a good lesson for the transcription person to learn how to do it, like, right out of the gate in the first sentence. They have stuff that they have to work on. So, then you can know right off the bat whether the person's actually listening and following along or not. I'm doing it for them for their training purposes, the training value.

[00:58] Larry: Well, I've learned that they don't listen and follow along, and they miss these things in their opening paragraph. And so let me give Larry's life lesson before you, before you move on.

[01:13] Andy: I'm not ready for this.

[01:18] Larry: Yes. Let's do life lesson. If you're doing if you're doing work for me or just in general work, do your best in the first part of the job so that the person is less inclined to check your work. If you goof up in the first part and show slack, that is gonna cause someone like me to keep looking. So, if you want me not to look, impress me in the first part. And then you have to hope that I don't start at the middle of the or the end of it, but you need to do it right up front.

[01:51] Andy: So, someone has made this much more concise. From Larry, the response is cheat late, not early. That's really concise there. [Larry: Yes.] Well, please head over and show your support. Like, subscribe, 5 star ratings. If you leave a review, that would be fantastic. Please let me know because I don't know if people leave reviews. But I would read it, and then maybe we read it on the on the podcast. We would read it on the show and all that. And then if you're feeling generous, because it's that time of year, it's 501c3, this, Registry Matters, FYP education thing, you could go over there and you could make a tax deductible contribution to support the program, and that

would be amazing if you would do that. There's also a donation button on [fypeducation.org](http://fypeducation.org) website where you could also buy merch, and there's new stuff up there with some hoodies and some tumblers and a mouse pad. And they look awesome, And I will be decking out FYP Studios here with that, swag here shortly. What are we doing tonight?

[02:52] Larry: It's me, Mr. Doom & Gloom again, for sure. But Chance is back with us if all the technological issues are resolved. And he's gonna be doing a California coroner and he wants to discuss the removal from registration as it exists in California and that there are too few people taking advantage of this option. Either they don't know, or they can't afford those exorbitant fees that these attorneys are charging. We plan to take a look at the case from a case from United States Court of Appeals for the Tenth Circuit. That's gonna be a blast. And then we're teasing again about an upcoming episode we're working on for international travel. And believe me folks, it's gonna come together. There are some challenges because we wanna have 2 guests. 1 of them is on the other side of the globe in Germany. So trying to figure out how to set up all this and get to questions where we can do the answers for the things that we think we know. I can have something intelligent to say, I'm still working on it, but it's coming.

[04:04] Andy: Well, very good. God, we got a bunch of people in here that I haven't seen for quite some, some time. And I cannot remember who a couple of you are. So, welcome everybody that is here in chat. That is one of the perks of being a patron is to be able to listen to us do this whole thing live and, hear Larry off the cuff do life lessons. Life lessons. Shall we be shall we roll?

[04:28] Larry: Life lessons. I think we should have one of those every episode, but I need a scriptwriter to tell me what lessons I'm teaching each episode. But that would be good to have Larry's lessons.

[04:38] Andy: We had one. We had one. Yes. And then also people get to make snark snarky comments. You probably don't remember. This is a holiday episode, so I'm gonna try and have fun, Larry. But I don't know. It was probably episode 20 or something like that, and the people in chat said, get Larry to say medulla oblongata and make it flow, and, like, I had to work this out. And I was like, do you think the attorneys are doing this because they have an enlarged medulla oblongata? And you were like, what? Yes. I got you to do that, and then people did that quite some time ago.

[05:11] Larry: Well, I still don't know what it is, and I still can't pronounce it.

[05:15] Andy: Right. Alright. Well okay. So here we have this thing that you put in here from the Tenth Circuit, affirms prosecutors listening to attorney calls. You know, Larry, this doesn't sound right right out of the gate before we even go into it. But because I swear I thought that they can't listen to you. That's why they have, like, separate Hohn system. But anyhoo so a divided US Court of Appeals for the Tenth Circuit overturned its nearly 30-year-old precedent Monday in holding that a violation of the right to confidential attorney client calls occurs only if a defendant can show a realistic possibility the prosecution benefited from hearing the communication.

[05:55] Larry: That is correct. It's not directly on point for PFRs, but it really is because a lot of PFRs are held pre adjudication of their cases. So today, in view of that, we're discussing the United States versus Holland from the Tenth Circuit, and it rendered its opinion affirming the lower court's decision. In fact, as Andy said, the Tenth Circuit overturned its 1995 decision in Schillinger v Haworth. And that decision was that a defendant is prejudiced and a Sixth Amendment violation occurs whenever the government deliberately and for no legitimate law enforcement purpose becomes privy to confidential attorney client communications. It was presumed prejudicial under Schillinger v Haworth.

[06:49] Andy: Are you ready to do a deep dive then?

[06:51] Larry: Not really. And that's why we've utilized AI for this case. It's 186 pages. And that's too much for an old geezer like me to read. So, that's what we did.

[07:04] Andy: Alright. Well, the AI says now to be fair, I wanna clarify this because, like, the AI did a lot of work for us, but I told it to not hallucinate, and I told it to only use what's in this document and help us out. Help us out. Make it easier. Larry, can you mute your Hohn, please? It's the not the Hohn, but I can turn off the computer. I hear what you're complaining about, and I can turn that off. Thank you. Thank you. Thank you. Thank you. Alright. Well, so the AI says it's about attorney client privileges and whether the government can eavesdrop, just like it's the net latest Netflix drama.

[07:40] Larry: Indeed. It, Andy, so you really don't even need me. [Andy: We never need you, really.] Nonetheless, we're discussing the court's en banc decision in United States versus Hohn. And this case deals with significant Sixth Amendment implications, revisiting the precedent in Schillinger versus Haworth, I guess. And that's h a w o r t h.

[08:05] Andy: Well, oh, goody. Another round of legalese. So, the government spied on some poor SAT and got caught? Tell me this isn't as bad as it sounds?

[08:14] Larry: Well, I can't tell you that because it's worse in some ways. But let's clarify. This isn't just about spying. It's about structural error and where the prejudice should be presumed when the attorney client confidentiality is breached.

[08:31] Andy: But let's set the stage for this. Who is this? Is it Ho do you think it's Hohn, h o h n?

[08:37] Larry: I would think so, but it could be a long o or a short o, but I think it's Hohn.

[08:42] Andy: Alright. Well, I'll call it Hohn. So, who's the Hohn guy and what's he accused of?

[08:51] Larry: Steven at Hohn was indicted for conspiracy to distribute methamphetamine and firearm possession. While awaiting trial at a CoreCivic, which is a private detention facility, the government obtained recordings of his calls with his attorney. [Andy: And wait a second. They recorded his phone calls? How's that even legal?] Well, it's not. At least under the Sixth Amendment. The issue isn't just that the calls were recorded. CoreCivic allowed detainees to privatize such calls. However, Hohn didn't follow that process, and the recordings ended up in the prosecution's hand. And I'm not sure what that means privatized. So what you did, you have to hit a button or something to say that this can't be recorded? What does that mean? [Andy: Yes. I don't well, could it be the Hohn systems part? I mean, I think all prison Hohn systems are privatized. That's the only angle I can really see from that.] But it said it allowed detainees to privatize. I know that the correction facility privatizes because they make money. They get a flow back of, of, revenue. Oh. But it said it allowed detainees to deprive privatize such calls, and I'm not sure what that means.

[09:59] Andy: Yeah. I'm with you. Alright. Well, they were listening to his defense strategy, and that sounds kinda like cheating, which would sort of be the whole point of why you wouldn't be allowed to have the prison people and the prosecution listen to your Phone calls with your defense attorney. So, did it affect this trial?

[10:15] Larry: Hohn admitted it didn't. And the government didn't use the call or, trial or during sentencing. But Hohn's argument hinged on this 1995 precedent of Schillinger, which presumed prejudice for intentional breaches of the attorney client, privileged communication.

[10:36] Andy: Now, CoreCivic, aren't they one of those for profit prisons? [Larry: Yes. ] Alright. And doesn't that raise bigger questions about how these facilities handle detainee rights?

[10:49] Larry: Absolutely. Private prisons like CoreCivic introduce unique challenges. They contractually they're contractually obligated to meet certain standards. But cases like this reveal systemic flaws, especially in safeguarding constitutional rights. And folks, based on the 2024 election results, you're gonna see a whole lot more privatization of prisons.

[11:11] Andy: Yeah. I would imagine that. And then let me guess. So, this isn't the first time that CoreCivic has been in hot water?

[11:18] Larry: Far from it. Private detention facilities like CoreCivic have faced scrutiny for years over issues ranging from inadequate healthcare to security breaches, inadequate training for their staff, horrendous turnover of their staff. I know that because we have facilities operated by them here in my state. And this case, though highlights how their policies or lack thereof could lead to constitutional violations.

[11:46] Andy: So, what should Hohn have done, differently? I mean, is it his fault for not privatizing the call?

[11:54] Larry: Well, again, that's a bit of a gray area. CoreCivic had procedures to protect privileged calls, but the onus shouldn't be solely on the detainees to navigate those complexities. I'm guessing off script here that he would have to arrange a scheduled attorney call, and he needed to, discuss with his attorney outside the protracted process of getting scheduled. And I suspect he used the regular phone system. This facility bears responsibility for ensuring robust protections are in place and they're clearly communicated. Meaning that if I'm the prison administrator, I'm gonna tell you, you can use a regular phone system for your attorney calls, but you have no expectation of privacy, and I would have them sign that. So, you may end up hearing yourself record on those phone calls.

[12:43] Andy: I'm gonna go off script here for a second. I thought that you, you know, in the certain circumstances where you had to speak to your attorney, like, those numbers are registered in the phone system as being the attorney, and then they are, I guess, almost like in a best effort not recorded or they're gonna be recorded, but then they're not allowed to be used. Something like that that they're somehow not available, whatever that would mean. But otherwise, you'd have to, like, fill out a request to be able to call your attorney and you go to a special room

where there's the special bat phone and that gets you in touch with your attorney that's not on a recorded line. That's what you're supposed to do.

[13:18] Larry: And I'm guessing that's what they mean that he had an option to privatize the call. He had the option to go through those steps. That's my speculation. But again, due to short staffing that's so common in these, prison facilities, both public and private, but more so in private, you don't necessarily have 3 and a half weeks to wait for that approval to come down so they can schedule one of those. Totally.

[13:42] Andy: Yep. Yep. Yep. So, it's but it sounds like though this is the blame the victim situation. Why aren't these systems foolproof, do you think?

[13:49] Larry: It's a great question. Many private facilities prioritize cost cutting over implementing robust legal safeguards. Remember, they owe their obligation to their shareholders, not to the people who are in custody. And when oversight is minimal, corners get cut as we see here, and we've seen oftentimes with private facilities.

[14:09] Andy: And what do we, what did the government actually do with these recordings? If they didn't use them in court, then, well, who cares?

[14:17] Larry: Well, the recordings were reviewed by the prosecution team, which itself is a breach of the Sixth Amendment. Even if they weren't directly used, the mere fact that the confidential strategy discussions were accessed creates a chilling effect on the defendant's ability to trust the system. Imagine he's having a conversation with his attorney about what plea offer he might accept. Wouldn't it be a powerful tool for the prosecution to know how far he's willing to go?

[14:45] Andy: Yeah. Totally. Totally. Totally. So, trust. So, it sounds like that ship has sailed. Do cases like this happen often, do you think? Or is Hohn's case unique?

[14:57] Larry: Unfortunately, it's not all that unique. There have been other instances where attorney client calls were improperly accessed. And we're battling that here in my state. I see it on the listserv. Attorneys are reporting that they've they're hearing themselves, and discovery that's been provided. But this case is notable because it forces the courts to address whether these breaches automatically warrant relief or if defendants must prove, tangible harm. And it looks like based on the outcome of this case that we've got the answer that there's no presumed harm.

[15:33] Andy: Alright. Well, then what's the deal with this precedent? This is the case with Schillinger or whatever that

that started this. What's the legal equivalent of duct tape handy but not always reliable?

[15:45] Larry: Close. Schillinger established an intentional intrusion into the attorney client relationship without legitimate purpose constitutes structural error. And you're gonna ask me what is structural error. So, I've used this opinion in simpler terms. It's presumed prejudice, and the defendant didn't have to prove harm. But quoting from this opinion, they are saying that the Supreme Court generally classifies an error as structural if, one, if the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest. Or 2, if the effects of the error are simply too hard to measure, this would fall with the number 2. We can't measure the harm because we don't know how it impacted them. Or 3, if the error always results in fundamental unfairness, so they that's based on a US Supreme Court decision.

[16:42] Andy: That I mean, I guess that sounds like a solid rule. So why change it now?

[16:48] Larry: Well, the Tenth Circuit found that Schillinger, that decision, that precedent to be inconsistent with Supreme Court rulings like *Weatherford v. Bursey*. Those decisions require actual prejudice, a tangible impact on the defendant's case that can be measured.

[17:06] Andy: So, what you're saying is no harm, no foul? That's a pretty high bar when your calls are being monitored.

[17:12] Larry: It is. But structural errors resolve for extreme cases like denying counsel entirely for prejudice is unavoidable. The court rule is, Schillinger as it as it was a precedent, it was far too broad, but no longer consistent with US Supreme Court.

[17:30] Andy: And what's this new rule that you're talking about?

[17:32] Larry: Going forward, defendants claiming a Sixth Amendment violation must prove how the intrusion prejudiced their case. And it's a stricter standard, but it aligns with the Supreme Court precedent, which is ultimately who calls the shots. That's why it's important when you go in those polling locations, like on November 5, 2024, you take that into account when you pull the lever.

[17:58] Andy: I'm gonna play devil's advocate for a minute. Isn't there a risk that this new rule lets prosecutors off the hook for intentional misconduct? Yeah. How would you know if they're like, well, I didn't mean to listen to them. Wink, wink, nod, nod. I totally did it on purpose.

[18:11] Larry: That's a very valid concern. But courts still have tools to address intentional misconduct, sanctions, disciplinary action, or even barring the evidence, which is an extreme, remedy. But it used to be more common than it is now to bar the evidence altogether. It used to be referred to as a doctrine of the fruit of the poisonous tree, but then they started carving out the good faith exception for law enforcement. But the difference now is that the focus shifts to measurable harm rather than presumed harm and the burden is on the defendant. I'm doubting the prosecution's gonna be straight with us telling us what they learned as a result of the phone calls. They're just gonna implement what they learned and use it. I don't see any reason why they would tell us.

[18:54] Andy: Yeah. They would they would have no reason to tell you.

[18:58] Announcer: Are you a first time listener of Registry Matters? Well, then make us a part of your daily routine and subscribe today. Just search for Registry Matters through your favorite podcast app. Hit the subscribe button, and you're off to the races. You can now enjoy hours of sarcasm and snort from Andy and Larry on a weekly basis. Oh, and there's some excellent information thrown in there too. Subscribing also encourages others of you people to get on the bandwagon and become regular Registry Matters listeners. So, what are you waiting for? Subscribe to registry matters right now. Help us keep fighting and continue to say FYP.

[19:48] Andy: Can we, diverge for just a second? What is the Sixth Amendment? Because I sure as hell don't remember. I'm gonna look it up if you don't know it offhand. [Larry: I never can align those with numbers, so you go right ahead and look it up. It's in the Bill of Rights.] Yeah. Yeah. Of course. The Sixth Amendment of the United States Constitution guarantees a series of rights to criminal defendants including right to a speedy public trial, I'm gonna skip all the details, right to an impartial jury, right to legal representation, right to be informed of charges, right to confront witnesses, and right to compel witnesses. None of those things in there, Larry, say anything about having the prosecution record your Phone calls.

[20:22] Larry: Well, it doesn't say that they can't either.

[20:25] Andy: Well, that's I mean, that's what I meant. Doesn't say that they can't record your Phone calls and then use that information against you in court, whether they admit to it or not.

[20:42] Larry: But it would be my position that there was a very little recording happening in colonial times. So therefore, this is a technology that's evolved. So, we would

have to do what the late justice Scalia said. We would have to look at the overall trajectory of what that would have meant at the time when they wrote that. And over time, I don't think that the, that the founding framers would have intended for the prosecution to have access to defense strategy. I just don't see that that would have promoted fundamental fairness.

[21:06] Andy: Now I gotta press back on that though. If they wanted to make it so that the prosecution couldn't listen to your phone calls, they could have written that.

[21:14] Larry: But again, there was no listening through, recording devices in the colonial times. But like I say, Justice Scalia said, we would look at what those clauses meant at the time, and then we would look at the advent of new technology, and we'd look at the trajectory over time of what new technologies, how it would be interpreted. Well, if the intent was to provide a robust representation of fairness without the government having an advantage to convict innocent people, the trajectory over time would have been as new technologies come along, that we would adopt that role to include those new technologies like recording phone calls, surreptitiously, enlisting in with electronic devices that would pick up. We didn't have a whole lot of ways to eavesdrop in the in colonial times. [Andy: Sounds like an evolving standard, Larry, and it's not what's written.] But I'm going by Scalia doctrine. He said that with new technology, we have to look at what the trajectory would be based on what that clause meant at the time and what the framers were thinking. I'm thinking the framers were thinking that we were going to have a fair process that didn't prejudice the accused. So over time, if you take that to the horizon with the evolving of technology, it would be that we would give those protections for all sorts of technology to keep the attorneys' consultations confidential.

[22:42] Andy: Gotcha. Well, what about the defendants who can't afford board high powered legal teams to prove prejudice? Does, does this tilt the scales against those folks that get, like, public defenders or less capable attorneys?

[22:56] Larry: It's a challenge, no doubt. The decision raises the stakes for defense attorneys to meticulously document how breaches impact their client's case. The only problem is you can't document if you don't know about it.

[23:09] Andy: But it also right. This is like this there was a supreme court case where the police were putting trackers underneath your car. To me, this is vaguely similar to that that that's I know that's search and seizure. However, they're now monitoring everywhere you go without a proper search warrant to do it. And then they're, like, well, we saw you at this place and that place, but you didn't do

that with legitimate authorized techniques. That's what this whole thing is. The same thing. [Larry: It is the same thing.] And I interrupted you, and I'm sorry.

[23:47] Larry: But it emphasizes the need for stronger safeguards to prevent breaches from happening in the first place. But, I don't know how the attorney can meticulously, record these breaches because you don't know about them. The prosecution is probably not gonna call you and say, Chance, I hate to tell you, good old buddy, but I've got 17 recordings that we intercepted, through the corporation of the prison, and we've learned a, b, c, and d, and e, and f. I just don't think that you're gonna be able to document that. It doesn't seem rational to me that you would be able to. All you'll know is that it seems like the prosecution is clairvoyant, but you won't know how they know.

[24:19] Andy: Yeah. Totally. Now, this isn't just about reigning, in courts. It's about putting more responsibility on everyone involved, defense, prosecution, and even detention facilities. Don't you think?

[24:32] Larry: I do. Exactly. The Tenth Circuit's decision reflects the shift towards shared accountability. It's not a perfect solution, but it's a step toward balancing constitutional protections with a practical enforcement. And I think it's tipped the scales. I disagree with Al. I think that this is not balancing the scales. If you have carte blanche to listen in, you've not balanced the scales because you've put the accused to an unfair disadvantage. Because we don't know what you know and we don't know how to attack what you know and how much prejudice we've suffered, I don't know that I wouldn't have got a better plea offer except for you knew how my far my client was willing to go. Because you listened surreptitiously without me knowing that. So, I don't know how I would prove this stuff. It it's causing me consternation to try to figure it out.

[25:22] Andy: Well, can we unpack this prejudice thing? And what does this actually, what does a defendant have to prove now?

[25:27] Larry: Well, prejudice in this context means showing that the intrusion directly impacted the trial's outcome. For example, if the prosecution used confidential information to gain advantage in court, that would qualify. But, again, how are we gonna know? [Andy: And without proof, the government gets a free pass?] Well, in my opinion, yes. But not quite according to this. It says courts will still scrutinize intentional breaches. But remedies like dismissal or sentence reductions are reserved for cases where harm is demonstrable. And, you know, we've got that standard already, which is derived from, I'm guessing, from *Strickland v Washington*, which is ineffective assistance of counsel. Yeah. Well, you have to show that the errors were

significant, and you have to show that but for those errors, that it the outcome likely would have been different. It's pretty tough standard. Ineffective assistance claims are difficult to show. I think this is gonna make it very difficult for anybody to get any relief. Basically, the prosecution's got carte blanche.

[26:42] Andy: And no more automatic penalties just for bad behavior then?

[26:48] Larry: Correct. This decision ensures the legal system focuses on fairness rather than punishing theoretical risk. So, fairness means that if you can't show that they benefited, then it was fair. And that is just so ridiculously absurd. It suggests to me that none of these judge judges that were in the majority have ever practiced in criminal defense. That's what it suggests to me.

[27:16] Andy: I gotcha. Well, do you wanna cover some of this then about what the big picture might be? Why would anyone outside of a courtroom care about this?

[27:31] Larry: Well, this case is certainly something, even if you're not inside the courtroom, you should care about because it's raised several concerns and unintended consequences. Those unintended consequences have led to discussions about the balance of power between the judiciary and the litigants, and potential impact on the fairness and predictability of legal proceedings. Additionally, this decision has been criticized for several reasons. Number 1, overturning precedent. The court chose to overrule *Schillinger v Haworth* precedent, which established the structural error ruling, which presume prejudice when the government intrudes into attorney client communications. Critics argued that this move undermines legal stability and predictability. I agree. And the burden of proof by requiring defendants to show prejudice from government intrusion into attorney client communications. This decision places an additional burden on defendants, which some believe is unfair and contrary to previous legal standards. I agree. And judicial activism. This decision can be seen as an example of judicial activism where the court took action on its own initiative to respond to raising concerns about judicial overreach and the balance of power between judiciary and litigants. Now we don't like judicial activism. Now do we, Andy? [Andy: I've heard that we don't like that.] But we do like it. That's the thing that I hope that I've communicated on this podcast. We do like these things when it suits our purposes. It's just like legislating from the bench. If we can't win something through the legislative process, every one of us likes to legislate from the bench. So, but also it will have potential impact on future cases. The there are concerns about the broader implications of this decision on future cases, particularly those involving attorney client privilege

communication and government surveillance. I would not want to be incarcerated right now being held, waiting for trial because this would scare me to the point that I would insist on my attorney coming to the facility. But you know what's funny? They'll just go ahead and record it in the facility based on this ruling. They'll still do the same thing.

[29:51] Andy: Well, then, give me your opinion on what happens from here. What is your, what is your opinion?

[30:00] Larry: Well, this decision certainly reshapes the balance between protecting attorney client confidentiality and preventing unfounded claims of prejudice. And it underscores the importance of concrete evidence in Sixth Amendment violations. And this is very troubling to me. It was posted on our listserv here when it when it came out because we're in the Tenth Circuit and that's where I picked up on it and I find it very troubling.

[30:28] Andy: And then what's next? Does this, set any new precedents? Does this carry, weight? I mean, you know, I what better word could I use besides that to ask that question?

[30:47] Larry: It does. It's green lighted everybody in the, runs correctional facilities in the entire Tenth Circuit, both for ruling *Schillinger*. The Tenth Circuit brings its standards in line with the Supreme Court and expect future cases to hinge on clear demonstrations of prejudice rather than any presumptions. So that means that there's a whole lot. I think it I read in the opinion, there was, like, a 100 cases out of Kansas that were where they were challenging these intercepting Phone calls. It flushes all those cases and no telling how anymore.

[31:08] Andy: Someone in chat says that you are the legal Grinch, so to speak, and I think that you should have come here bearing presents and good news for us, on this Christmas Eve, Eve, Eve, whatever that is. And it sounds like we've entered a new era for legal accountability. Anything else you wanna say about this before we head out?

[31:31] Larry: Well, just this, the attorney client privilege remains a cornerstone or should be of our judicial justice system. This decision refines the protections while demanding accountability for all parties. I'm not so sure that I believe it's demanding accountability. I believe it's demanding a standard for the defendant that can't be met and virtually no accountability from the prosecution. But that's, that's the way I see it.

[31:56] Andy: Well, on that, Larry, I'm going to introduce you to a new word that some of you that listen to some tech podcast will have heard, and this is the inshitification of the legal system.

[32:06] Larry: I think you could, justify it justifiably describe it that way. This is not the best Christmas news I could have, but what about we've got thousands of listeners who are in custody right now and they need to know this. [Andy: There would be more cell phones.

[32:30] Larry: Yeah. But they need to know about this. They need to know that everything that they say in prison is subject to being used against them even in what should be a protected conversation. They need to know that. So that's why I chose to do it on Christmas Eve.

[32:47] Andy: I I don't see how those 2 are related. I mean, I see the importance of airing this, decision. I don't see how this is the Christmas Eve present,

[32:57] Larry: It's not a present, but I'm saying I think that if I let someone not have this information that hangs themselves between now and next year when we did this, we would feel bad that they didn't have this information. Like I say, we've got tens of thousands of people in prison listening to us.

[33:11] Andy: Absolutely. I'm sure that they do. Because, Deputy is broadcasting us. He, you know, he was doing that. Did you hear that? That he was broadcasting us into prisons for a little while? I never did. I know nothing.

[33:23] Larry: I know nothing.

[33:29] Andy: Okay. Do you have any happy news to fill in before we would head out?

[33:35] Larry: I take it that we have not resolved our tech issues.

[33:39] Andy: I just spoke to him, like, ever so briefly, and the answer is no.

[33:47] Larry: Alright. Well, then we will just say that for all of our support that we've received over the past year and several years, thank you. We wish you the best of holidays however you celebrate them. And we look forward to returning to the airwaves after the New Year with more vital information that helps the PFR community.

[34:13] Andy: And in this particular case, all of the people that are accused of things.

[34:17] Larry: Indeed. This is not just for PFRs, but I suspect there's a higher percentage of PFRs held in pretrial detention than most other offenses except for maybe capital crimes. So, this is gonna have a disproportionate

impact on the PFR community because now the Tenth Circuit, it's free to do anything you wanna do.

[34:38] Andy: Can you can you just explain that? Can you expand on what you just said about in pretrial detention?

[34:43] Larry: Well, I believe that since we're so sensitive to setting high bonds for people who are accused of sex offenses, that more of them were unable to make conditions of release. So, therefore, I think that this is a disproportionate impact on the PFR community because they set such ridiculous bonds that a lot of people were held in jail. And, therefore, this is gonna be you're gonna be more vulnerable. If you're post-conviction, you're a little bit less vulnerable because you've already resolved your case.

[35:11] Andy: I see. And as you said, because now you're being held in jail waiting, like you said, pretrial. I gotcha. And because the bonds are not \$500. They're 10- and 20-thousand-dollar bonds.

[35:21] Larry: And 250,000. And no bond holds and all sorts of things that, you know, the bond is very difficult here because we don't even use cash bond much anymore. But getting pretrial release, they have to do an evaluation on this grid. And you love computers. This should just make your heart palpitate. So, they give you a score based on criminal history, the severity level of your offense. It all comes out on a grid, and the computer tells the judge if that person is releasable. And, if the computer says you're high risk, you don't get released. They don't set a bond for you. They don't set anything for you. They're just, the state moves for pretrial detention based on your history, the severity of the crime, and what the score says on that on that, lovely system we have to determine if you're releasable.

[36:12] Andy: You are seriously no fun, Larry. Alright. Well, okay. Are we gonna head on out?

[36:18] Larry: Well, unless you have anybody that wants to do a quick question or so, because we got a couple of minutes. But I'm happy to head out.

[36:29] Andy: No one has offered much. We can hang out for a little while after we stop recording and wish everybody a merry Christmas, happy New Year. Hanukkah starts on Christmas day, which is I as far as I remember, is one of the latest days I've ever heard of. I don't remember Christmas, or excuse me, Hanukkah rolling into the next year. All of the Hanukkah's I did as a child.

[36:49] Larry: I don't know anything about that stuff.

[36:52] Andy: Oh, it's all about that crazy lunar town. Well, I thank everybody for being a supporter and, hanging out with us on these crazy Saturday night programs that we do. And if you're a patron, I can't thank you enough for making this a fantastic year and showing sport and all that stuff. And I wish you all a happy New Year, and we will see you, the 1st Saturday of 2025. Wow. 2025, Larry. It's coming. It's right here. [Larry: Right around the door.] Well, have a good

night and I will talk to you soon. Take care everybody. Good night.

[37:38] Announcer: You've been listening to F Y P.

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