

Hey, Larry

Hi there, Andy. How's it going tonight,

a bit better but I'm having a great day.

It could be a lot worse. So look at the positive you heard Mr

absolute Mr. Negative every time.

Now I'm saying I'm having a great day. It could be a lot worse. Yes,

please consider making us part of your podcasts diet. You can find us at registry matters on your smart speaker or podcast app of choice like Google podcasts or Apple podcasts. Also, if you like what you hear, please write a review if you don't forget everything I just said you can support us at Patreon dot com slash registry matters. Well, we have a guest joining us tonight. Josh be whoa Josh is the co host of the podcast Deckard iteration nation which is a podcast about radically changing the way America does criminal justice. He's recently interviewed gubernatorial candidates and Michigan and book authors on criminal justice reform. Josh is also a published author and hard charging on his bar the ballots campaign. Welcome to the registry matters podcast, Josh.

Thanks, Andy. Good to be here. Great. I'm also registering I probably should mention, well

that's that's what we're here to talk about we're privileged to have you here a couple. I don't know what it was a month or maybe two months ago. We received a comment about a formerly incarcerated person not being able to vote and that wasn't just from the registry side but just anybody that has a felony record and which on the podcast we cover that we pointed to I don't know, it's like 40 states where you can get your voting rights back to some degree, and you have this initiative bars to balance and I was hoping that you could share those those details with us.

Yeah. So as you just mentioned in most states at some level people who are formerly incarcerated and even some people who are incarcerated can still vote. It depends on the state and what the rules are and you know after several years of, you know, my head against the wall about criminal justice reform. You know, I mean stuff gets done and I definitely enjoy being an activist and it's something that matters a lot to me cuz I'm formerly incarcerated and because I'm a registered,

but the frustrating thing about it is you see a lot of incrementalism and in truth. A lot of the incrementalism is really progressivism and what I mean by that is that a lot of times the reform does harm to more incarcerated and formerly incarcerated people than it helps. And so I thought about it a lot and I started becoming a lot more openly politically active, not just as an activist, but also in party and stuff like that. And so I got myself made a delegate I went to the nominating committee and I found that none of them were talking about any of this stuff that I thought was important. And so I thought about it some more. And I decided, Well, you know, I wonder how many people are formerly incarcerated and so I talked to some of my friends at the Brennan Institute and a couple of other places and I found out that there's about two the 14 million people who are either incarcerated or formerly incarcerated and as we said before, many of them can vote at some level. And so my thought was, well, how can we start getting people so that they all at least in one area, at least in the area of our shared interest start being more politically active and my thought was is that at the very least, we should all vote and where we can and that if we vote. We should only vote for people candidates who support real

criminal justice reform. The second part of the the platform is really just to try to get get the vote for everyone who doesn't have the vote. And then there's some other like more technical things like things that you can do to try to get your candidates on the record. There's some stuff that you know right now we're really just kind of at the educational stage of the program where I'm just trying to let people know that we're starting this I've started to try to network with a bunch of the other organizations that work on criminal justice reform and stuff like that. What's going okay so far.

Larry pretty much you bring up about I'll just say our people in their lack of willingness lack of fortuitous to get involved, here's the example of someone really taking the reins

yeah well you know i mean i feel like one thing that I've really learned over the time is that no one else is going to get up and do it for us. You know, it's some cases even in the case of like dos versus Snyder, you're the ACLU did an awful lot of work, but so did a lot of registrants, you know, the University of Michigan law school did a lot of work, but so did a lot of registrants, you know, plus all the people who are the, you know, we're in the people who are named in the case that those were obviously registrants as well and it had direct impact on them and and I feel like just in general you know right now politicians feel like that criminal justice reform, regardless of the kind that they're they'll be for it to a certain extent, but there's really no penalty for them to ever be tough on crime or tough on criminals and the only way we can change that is by demonstrating that we vote and then our votes have impact and we can only do that if we start turning out very

I agree with you, Josh. Unfortunately, as I've been in this movement for the better part of a decade now I find that all of our people would you do an analysis of which way they lead politically to too many of them lead toward the conservative side and vote for the people who want to continue to hammer down, they'll just they'll justify that by they'll have to look at the bigger picture

and they'll say things like, well, I'm more yes criminal justice reform is important, but it's also important about keeping the border safe and it's also important about prayer in the schools. It's also a prayer portal about and they'll go down a litany of conservative things and then at the end of the day, they say they can't just vote for this issue you're you're advocating that they vote that if I just heard you correctly. What does your platform that if they cannot sign on to real criminal justice reform which means fewer people in prison that you don't endorse candidates and that sounds like a single issue and our people have not indicated to be in the last eight years that they're willing to forego their vote for for people that they find to be darlings when everything else. Yeah. So here's the thing on that.

The first thing is I don't care what jacket someone Where's if I walk in and I talked to a candidate who's a republican and they're good on criminal justice reform against the democrat who's not you know we're on register your form against the candidate who's not I'm voting for the Republican, even though I'm traditionally a democrat and you're right. This single issue thing is kind of odd for a lot of people and I understand that, but what impacts our lives more directly as formerly incarcerated people or as registrants than this issue. You know, I'm not saying,

and on top of that there's an awful lot of organizations on the right that are doing good criminal justice reform work. I mean, you got right on crime. I have a lot of friends who, you know, like for instance, Sean Hopwood at Georgetown who's doing a lot of really good stuff you know he was invited to the Jared Kushner, you know, in Trump thing, you know, I mean, there, there are plenty of people who are working on both sides. And there are people in the state here in Michigan, who are Republicans who are doing the most work on criminal justice reform even more than the people who are Democrats are progressives. So while I agree with you and I am a life long democrat i generally find that at least in local and state politics that it is an issue, you can at least find

some common cause it's gonna be hard. You know, there's no doubt about that. But you know, I mean, we got to start somewhere and if we don't start standing up, then we're, you know, and all those other issues are really important. They're even really important to me. Some of them are but none of them affect my life on a daily basis, like the ones that I'm talking about

and I agree with everything you just said. Josh, I work with any republican that I can find because Republicans, as I've said before, when it comes to crime they really have the strongest license sure to do the reform, because if a liberal progressive wants to do it. They're accused of turning loose a tidal wave of crime on on the citizenry. It's the same thing about national security. You can take our next one who can open China and open up relations. Was it Oh, improve relations with a communist nation day taught and if the same comes from the liberal side they're they're selling our national security and look at in foreign relations when you had good Chuck Ribena in Israel. He was Mr security. So he had the license or to do the standing to do things to make make peace treaties that no other person for the Labour Party would have had him and Madonna had begun if I pronounced it right we're able to do things that that that the Liberal Party could do. So we do have to get these people on our side I've just not been successful in my endeavors to try to convert many of them.

Well, I know it's kind of a weird deal though because like in Michigan, you know, we have we're our legislators overwhelmingly republican but the people who have done the most work, have you know for criminal justice reform of late. You know, you know, Representative PAYGO, for instance, are the Speaker of the House Tom Leonard, you know, there's three things I can point to just off the top of my head and he's a former prosecutor you know so i mean it's it's it's huge. I think it's really and you probably know this as much as anyone, it's just getting to know people and finding out which ones are actually the ones that have a friend who was formerly incarcerated or a relative that was formerly incarcerated or know someone on the registry or, you know, I mean, you just have to, you know, and it's not easy. I mean, it's not gonna be easy. I don't think you know I think you're right it's it's an uphill battle, but I meet people every month you know that are you know on our side, at least at some level,

I agree. And we look at states where before it was happening. There's a lot of it be led by Republicans, you look at Tennessee, you look at Ohio, they're doing it for probably slightly different reasons. But we don't care about the reasons we just want the result people incarcerated don't want to spend the money and they don't want to tax people looking at things to cut a corrections look like a target that doesn't have as much opposition to cutting is when you start cutting school funding and other things are more critical I'm all for getting the conservatives on board and we have to have them to win this battle. It's just I have not been very good at converting any people in my state, but our people lead that direction. So, I wish we could engage our, our supporters

to figure out how to connect with lawmakers and tell their personal stories so we can convert more people. It would be great. So, Larry. You know, I mean one thing I will say about that is that some of it isn't just telling your stories in my opinion and getting it's also being able to turn out numbers, you know, like I said, right before one of the biggest problems is is that most legislators, even if they have sympathy with us. Don't feel there's a political cost to voting against us and until the world in which we can show up in numbers. I mean, not just people on the registry. Although, for instance, in Michigan. That's 40,000 plus people and you know most state elections are decided for less than 40,000 people. But if we could even turn out a portion of that and start, you know, but I'm talking about all criminal justice impacted people, family, friends, allies started devote our interests, they would have to start paying attention, even if they don't seem to pay attention now that's because it's just a discussion. There's nothing behind it and what they really care about is getting elected Larry that's exactly what we spoke about. We talked about Pennsylvania and then people

get went out in force we forget who was on the ticket, whatever,

but we could have swayed the election in Pennsylvania. If our people. Specifically, whatever it is, in Pennsylvania. Well, I I say that to get it to get it but I wrote it. I wrote this that they will disregard all the stuff about criminal justice reform, because the other issues which I consider four of us important if you're being oppressed, to the point that you're not allowed to rent an apartment. You're not allowed allowed to hold a job. I can't think of an issue that would be more important than your livelihood. If you're living in a tent and just shy of living in a tent where you're living in some place in the skid row part of town because that's the only place that would read to you. I can't believe there would be any saying oh border wall I can't think of anything that would be more important, but for our people engaged so many of them just a lady last week from Virginia. She went on and on about yes I I know that then I want reform but I'm going to continue to vote conservative because it reflects my values and I deal with this all the time and I said well you just told me your value. So the opposite. You told me you were for

Governor McAuliffe trying to reinstate all the other felons who had served their time and the conservatives filed a lawsuit and stopped it. You just said you were for that and the conservatives stopped him. How do you square that Who did you vote for governor well I voted for the Republican. And as I said, this is a lost cause here. Well, it is a lost cause. But again, one way that I would suggest that that lady or anyone else deal with it

is to go into that office with as many other conservative registrants or or formerly incarcerated folks or family or friends or allies as she can and say, Hey, we all really do want to vote for you. We're for the border wall. We're for this. We're for that I'm not personally but I'm just saying if this is their position and that's their values and we're going to vote for you or we're going to find a candidate that that we can vote for. And if enough people keep doing that then eventually they're going to start listening to the actual agenda, because they're going to want those votes. Now I agree with you that you're not, it might be harder to flip people, although I think it's like you're saying kind of nuts because in my opinion. Just the idea of being able to, for instance, graduate from the light registry would be more important to me than almost any other any other issue. I can think of, you know, getting rid of a lot of the collateral consequences from incarceration are pretty important you know all these things are more

salient in my life every day, then these kind of things that yeah I may have like very, you know, I may have very strong feelings about our policy say with Iran or North Korea but that's really probably not going to directly affect me today as much of if I can you know accidentally get if I can get arrested for accidentally being in a restaurant near a school or something

agree with you agree with you, Josh. We were on the same page. I just I'm I'm probably more burned out and jaded from the years working at this beating my head against the wall we need we need a new

new group of people to come behind you, because your time is almost up there.

Well, like I feel like it's up.

All right. Well, I think that YouTube could go on and on and on about this all night but we should probably move along. So the first article comes from North Jersey dot com Bill Cosby verdict send a strong message to victims, New Jersey. Experts say Judge Neil allowed for five other accusers to testify as as prior bad act witnesses during the retreat trial explain Levy, although prior bad acts are generally not admissible there are exceptions. You said none of these prior bad acts were proven in court. That's going to be the issue of the appeal Larry, I need you to help out with what what's going on here.

Well, I haven't seen the appeal it hasn't been filed yet so help out on which aspect of it. We talked about for for be right they rule regarding prior bad acts extensively article describes it they're going to go for an appeal based on

that the people that were testifying it it's just hearsay honest.

Well, it's certainly not hearsay their, their direct witnesses. But the problem is though their witness something that if it occurred at all dead. It was not on trial Mr Cosby was on trial for one victim,

not those other five. That's what I'm getting at is that they were they were witnesses of their own case they weren't witnesses to the victims case

up be the rule or propensity evidences it's called doesn't require that it'd be in this case that's how it gets in his eyes exception to be relevant it's relevant because it helps prove motive lack of mistake modus operandi it helps approved. And in this case, clearly, you could say that the testimony from what I was reading was somewhat consistent with what was alleged by the victim or whose case, who was testifying the the actual victim. And at this point, we don't have to say alleged because Cosby was convicted. She was in fact

the victim of his of his of his acts. Well, the articles talking about. That's what the appeal would be based on is that they the women's testimony hadn't been verified

that that will be I would imagine if I were involved in the appeal these lawyers are going to be he's going to have the greatest lawyers that that would be far above

my skill level with our assisting but I would not be arguing that that we would be wanting to to know how if this was these acts allegations were recorded contemporaneously at the time, or they just surfaced decades later, the if that would that would be that would be something I would I would be arguing that I would argue to the judge didn't properly way the appropriate forces prejudicial our value is supposed to be a very terrible balancing of of how productive this evidence is in terms of what light it sheds versus the prejudicial value and the presidential effect

to the accused and clearly it was it was quite prejudicial to have to have five people come in and say, Yep, he did the same kind of thing to me.

Josh, do you have anything

yeah you know i mean this gets to the core of something that really bothers me and I get into these debates on social media a lot but you know one of the things that really upsets me is this notion of either defendants rights or victims rights or you know perpetrators rights or whatever you want to call the dip, they always make it kind of this dilemma between, you know, even though we've had 30 years of tough on crime that that somehow everything's been tilted toward the perpetrators or supported a legit perpetrators, and my real problem with this as a you know lifelong civil libertarian is that I don't believe we have victims rights and you know defendants rights we have constitutional rights and we all have the same ones. And if the idea of victims rights which it seems to ultimately be is to try to prejudice. The trial system to make sure convictions happen. I'm not okay with that. If the idea of victims rights is to help make sure that people who have been the victims of crime are able to tell their stories are able to be protected when they're on the stand from, you know, abuse are have

time to, you know, take care of themselves or compose themselves or whatever they need to do. I'm 100% 1,000%

on on that as long as the point of it is to disrupt the actual trial process in a way that that you know could be prejudicial Lee not beneficial to defendants because I feel like

if the situation's were reversed they'd feel the same way.

Well said. Josh that unfortunately the victims advocacy has

made it that that the that the the illusion that that they accuse still enjoy all of these all these advantages and they really don't. But our forefathers intended it to be difficult to convict a person they intended and deliberately designed a system that would be difficult because they recognize to power

up the almighty government well yeah supposedly the you know the thing we should hold the tightest to is liberty and what's at stake is liberty and, you know, and in a lot of cases a whole lot of liberty, you know.

And so, in my opinion, it's very important you know yes it's certainly important to make sure that victims aren't re traumatized. But that doesn't mean that you have a license to prejudice. The trial in my opinion. Well, well I'm not convinced that a confrontation should be viewed as traumatizing that's how the system was designed it was supposed to. That's why there's a Confrontation Clause in the Constitution. It's hard to imagine right we're supposed to have vigorous confrontation yeah steak. I think we're probably talking about we're probably dancing around a semantic issue because I agree with you

that the nature of the questions and the ideas behind them should be fair game. Perhaps you know there are ways that you could do it that are less. I do think it is relevant that the person you know if you've I think even for anyone any of us who have been to prison. We understand that there is such a thing as PTSD and I understand that the system was designed a certain way, but that people can be triggered or upset in particular ways that sometimes get exploited. All I'm saying is that there should be some care for that. Not that the questions aren't relevant or that the person shouldn't be put under the pressure of the questions we obviously agree on that part

we wait we do agree on that part. I don't think that that when when it comes to crimes in general there there's if if you if you call it abusive to explore if there was a motivation for accusing criminality other than it really happened we don't we don't treat companies when they say they've been embezzled lesson under hundred 40 crime to begin with but those who do report that we we started investigating their log systems to see how they kept the record sweet we start investigating to save their in financial trouble to see if they have any reason to try to to try to manufacture something for insurance purposes. There's nothing wrong with that. Well, I don't think that the investigation is necessarily what I'm talking about. But I don't think we're like i said i think this is probably more about the way questions are asked

and the value you have, you know, of how people are approached more than it is about the content. I agree with you probably on the content. Are you saying, just like in the courtroom setting where the defense attorney will be really aggressive and almost condescending and attacking the victim.

Yes. Okay. That is what I'm saying.

And there may be a value to that but I'm not sure that the value to that is in a lot of cases. I think it's prejudicial in the other way. But that I'm not a lawyer. So I'm probably not the best there's just my personal feeling the rest of it. I definitely believe though that victims right shouldn't prejudice someone's trial and if it turns out that that is part of prejudice and someone's trial them at the same time. I'm just saying I have an empathy toward people who have been victims. Because, for instance, my case, I was later in life, a perpetrator. But when I was young, I was a victim. So I totally have a lot of empathy for that situation and and what is all the discussion is had and complete at the end of that a victim is barely a witness in an adversarial proceeding, nothing more. For the purposes of this proceeding. You are a witness. Yeah. And we're really just talking about the difference between the legal proceeding and the human being part of it and I'm kind of talking about the human being part of it and you're talking about trying to be objective, which I understand

and this next article is from criminal legal news the offender registry. It's not what you think and Sandy. She's a board member of Nassau provides a lot of information or excuse me, provides a lot of information about the misinformation of what the registry is including that 40% of those on the registry committed their crimes while they were juveniles for things like mooning or playing doctor. She also presents evidence that 70% of those on the registry would be considered the lowest level risk, followed by 20% for the moderate risk and 10% would be considered the highest risk.

But if we look into what public perception is anybody on the registry is about to come in your house abduct all your children and do horrible things to them. That's what the public perception is

well you know i mean i mean my biggest I actually thought this was a really good article and I thought she provided a lot of really good information kind of one of my biggest pet peeves is when you start from the position of recidivism or you start with that other position without asking what to me is the most fundamental question, which is why is a registry a good answer to those problems. Regardless, you know, to me, the fundamental core question that never gets answered in a lot of these debates is why are registries. Good. I don't think they are. And I don't think there's any evidence that suggests that a public registry is a good idea. I have seen evidence. It says that a private registry available only the law enforcement, etc. can have a small positive effect on recidivism. But then a public registry creates a much larger chance of recidivism. So, to my mind, the core question for me before we even get to this is why registry

Larry that has to be music to your ears right there.

It certainly is the registry.

I've got on earth

any evidence that shows it's statistically relevant, but you can't make the argument that absolutely that it doesn't save one, it may have saved one. I don't care if it did or didn't because we got we can't flush our constitution down the to save one if we did, we could just go ahead and go after the Second Amendment because I can assure you, depending on how straight into the bands were and what weapons we would disallow we could save at least one but we don't save one at the expense of the Constitution. So punishing people after they've done their crime is not within the Constitution of the United States, our American values we shouldn't be doing it and I'm against it at all times. And it's just misguided public policy but the public feels good about the registry for some reason, despite all this evidence that's out there if you ask if you go out and pull 25 citizens off the street, they will say yes, I appreciate the registry. It's great. And I have a right to know. Well, no, actually, you don't have a right to know you have the right to know the person's been convicted about offense, but you have the right to know where they're going to school or to pay the debt to society. What

vehicle, they're driving where they live. You have no right to restrict where they can be present. You have no right to restrict who they can engage with them where they can live in the household hopeless ominous you do not enjoy such rights, nor do you have a right to know you don't have a right to know the most personal intimate details about this person's life after they paid their debt to society. That's an imagined right that you think you have that you do not have

and I'm one of the few little say that most of the offenders. I get interviewed they'll say, Well, what yes they have right I guess the public has a right, we need to say no, actually, they don't. I find it interesting to you brought up something else with the Second Amendment I frequently say to people who are you know advocates of the change of the Second Amendment, etc. Whatever I say, isn't it interesting how all the I just wish really what I really wish is that all the people who are diehard Second Amendment people and who are always talking about how much they do it because they love the constitution would love it in all instances and for all amendments as much as they do the second I I'm using that as fodder and my legislature I remind that all the time that that you profess to be a big believer in the Constitution.

Well, I'm going to ask you to join me if you say this is worth it if it saves one I've already had this dialogue. Okay, I'll join you. I'll be for the registry and I'll tell my people that I'm for the registry. If it saves one if you're glad. Tell your people, your rifle your nra members that we're going to have to give up a little bit of these constitutional rights because it because it's all about saving one child and I have not gotten a conservative to join me on that yet.

Yeah, I think the framing is a little off. I agree with what you're saying. Larry, but I think the framing might be a little off because it's not a question of if the registry has saved one. It's a question of the registry has hurt more than it saved. I understand that you're asking a fundamental question first, which is it constitutional and I'm definitely on your side with that. But if you're looking at it from a societal safety standpoint it's not just a question of if the registry is saved one at how many people is it hurt, which is why I said the public registry has been shown to increase recidivism which means it causes more crime that it saves absolutely Josh, but that's a policy argument about whether it whether it hurts.

We have the right to inflict policies

and laws that hurt people. We just don't have the right to bulldoze over the constitution an ex post facto isn't as an absolute clause in the Constitution. We are not allowed to inflict punishment on people after the fact, that's even more solid than the Second Amendment. Even the right wing darling delay Justice Scalia will tell you that the second member does not absolute he said that more than once publicly. I don't know where the limit is or weapons, but I can assure you he he said I could find it if need be, that there there would be a little bit. We don't know where the case would have to. There is no limit. There is no limit on Expo stacked or you cannot do it. And we're doing it so i i would i would gravitate toward the Constitution, although that's a very important thing to say it's adverse public policy but we have the right to have bad public policy. We don't have the right to trample the cost, although you will admit that that's still an open question, not from our perspective but from a legal perspective because,

as I understand it, the ballot the bout the battle that is happening right now is between the circuits that have decided it is ex post facto in the ones that have decided that it's a legitimate safety function of the court well and that's that's a function of how poorly the cases were put together

these challenges have been brought on low budgets are no by just without the resources to prove and it's our burden to carry the proof that it is punitive there's the presumption that it's not because the legislature intended

when they weren't a preamble they stated an intent, not to be punitive that this was merely several regulatory so the Kennedy, but also several factors have to be put to in the case of Michigan, the panel on the Sixth Circuit Court of Appeals concluded it was punitive despite that civil regulatory label and in many other instances there concluding that that is Peter, there would be the case where you can have a registry. That is a punitive and I tell people that and I get criticized for that you could have a very but on registry that would not inflict punishment. It could be private. You can melt in a form once a year. It could have no cost associated with it and what happened, no penalties. They'll prohibitions in terms of what you could do in your life and that way you could not argue that it would be constitutional because they're going to sodas registry that are similar to that and that would be difficult to strike down on constitutional grounds that would be a policy argument you would have to make is this wise use of resources, but most of the registries, I'd say over half of them that I've analyzed clearly they have so many restrictions where we're about to get involved in a case in Louisiana where the person has to pay nearly \$1,000

when they register for community notification. They live in New Orleans because of the population density. Everyone has to be notified when 2500 feet and they have to pay the cost of that with 21 days so they go to jail if they can't pay it is pretty crazy

so clearly that's a punitive that's a period of aspect of like being punished, but through the civil regulatory scheme. It hasn't been challenged because people have been shy. They look at the decisions that they say, Why don't spend a whole bunch of money fighting this and registered has no money to pay me and I made out with this and I'm

private my family have a livelihood while I'm doing this and I just can't do it,

but I think we can find. I think we can find a middle ground because I think I agree with you, obviously. So I think what we should be saying maybe in terms of arguments is first of all, we don't accept that this is constitutional we're not going to understand we're not going to accept that its constitutional but it also is bad policy. Absolutely. It's absolutely bad policy we start from a place sometimes farther down the chain. The Tree of Life policy and we should start at the very beginning when we're talking about policy that registries. Just don't work. They're not a good idea but to blame. And then we can talk about recidivism. But right we'll do dribbling in Atlanta was saying that you need to get into court on the constitutional grounds and then you're going to prove it with the ineffectiveness and the recidivism rate that what's the point,

but you're going to get it into court based on it being unconstitutional from the start. That's correct. You cannot argue I bad or good policy as as a basis for judicial intervention. Oh, sure. Of course to decide. Yeah, that's I keep telling people separation of powers. If you're like people that run on platforms to do these things and why are you surprised when they do these things after you're like them. That's clearly true as everybody settles down. This was really awesome. By the way, good conversation

from Maine public comm

main towns allow allowed to ban offenders from parks fields, a new law allows municipalities prohibit offenders from coming within 750 feet of such party officials and Matta was had argue that this the state law only 11 municipalities to ban such individuals who come near proper t lease to nonprofits

and Larry, I wanted to talk to you specifically about this one in formulating the thoughts around the idea of making a challenge against something like this without going into the specifics of the statute, but just in

concept of where would they start cross in line of being legit or not challengeable or where would across a line of being challengeable

when you say challengeable your your your meeting with any likelihood of success on the merits well yeah he's challenged a certain sound soon yeah you can find it was it

the that the test is going to be the same when when this, this would be similar to the Illinois Park ban restriction that they had made just expanded

what they felt was lack of clarity and the old statute. They. This

is not a new public policy. They just appeared to apply to public facilities so they they wanted to make certain there was no doubt that the 750 feet applied to those facilities where the republican pools or schools or

a number of things on the list challenging. This would be looking at how much there's there's always do in claims. You can invent like taxation without representation that I don't think it's been effectively all sorted in these claims. What we generally go in saying is that it's a punishment and it's an ex post facto thing because these these these restrictions apply to people after the fact that they can't do these things they can't be presently facilities, but but you're going to have to invent some new clever claims the courts are not by again to the ex post facto they are they're saying this is not punitive enough there's not enough that the areas of the restrictions are so minor compared to the things that you have access to, because they don't they don't find that this debate particular pod.

Hey, Larry. Do you think I've been two things jumped in my mind. The first one is the banishment argument. I've seen a few court cases and the second one is the idea that that you know it creates moral hazard for, you know, people to start building more parks,

it does do that there's actually pocket parks places where

they can create a pocket Park. It just requires a small amount of feet footage square footage to have a pocket Park and they've got a circumference

radius around that where people can't live or be present and it's all it's all Bs, but they're they're doing it in terms of in terms of the the challenge I just I just don't see I don't see that this was going to be a great challenge.

I'm for it if we can find find it, but it it

it made it through the legislature. There was, of course, with almost unanimous support it was unanimous. In fact, after the after they agreed on the language. It was unanimous

and I'm not so much concerned about that part

of it. I was just about the the thoughts that people on our side would be having to do the mental gymnastics to just what questions would you start asking like you brought up well how much area. Does this then restrict people from living and if it's only 10% of the of the property of the of the town, then maybe it's not that big a deal. But if it's 90 or 99%. Then, now you've got affected, but he gets a creep right because if right you know

like Larry was just talking about if people start deciding what I don't want offenders in my neighborhood and the old

pocket Park and the nature of the amount of territory changes pretty dramatically right that pretty sure that happened in Los Angeles. I can't remember what I believe it did Josh and the answer. The answer to this. Fortunately, we're not dealing with it in our state because we we don't have the cities and counties. We're not allowed to do anything of this nature

that was done by legislative action rather than court action. Some states the courts have have have interceded for the challenges bed that this creates too much confusion. So that is certainly a claim

that can be be made that that that these

we have a vagueness which of vagueness doctrine which was just in the immigration the

permanent resident case we talked about the last week or the episode before if if this is so vague that it is constantly changing the people that are subject to enforcement can can be held in non compliance not know what they're supposed to do what how to how to comply, maybe, maybe there's some challenges that can be can be asserted

however the courts haven't been all

that generous, but maybe state could be be that. But this is a state law say we're delegating to the cities, the opportunity to do this so struggling to come up with anything. I think it's going to be particularly effective okay

well that's kind of what I wanted to try and touch on this even that aspect of our the just like up the creek.

It would have been better if they could have stopped it in the legislature unfortunate. We don't have much going on an advocacy and main, main it's not one of the worst states to deliver despite the fact they had those gruesome murders there a decade ago, or however long it was but but the registry and main has been tamed by judicial intervention of the decision of advocates, I can't pronounce all these things we can't pronounce. But the main Supreme Court has limited them or their ex post facto application of the of the bus otters requirements.

Got it. And then from Missouri net com Missouri

Supreme Court. Here's case on prosecutor who targeted letter writer writers in assault case, the National Association of criminal defense lawyers and the Missouri, associate of criminal defense lawyers joined together to submit a friend of the court document in support of the chief disciplinary councils proposal to impose sanctions on prosecutor Zonda I guess is how you pronounce that you brought this case to the attention of the podcast, Larry. So can you give us some background on it

sure that it's one that really troubles me because I, I, I can see a little bit of merit on the on what the prosecutors position as the prosecutor was faced with character letters that were being sent by small a small community on behalf of a convicted person of a offense and the prosecutor

let the riders know that that they were going to be that which is already given these letters are not private. This is you don't get to make a private letter to the judge about some one year in support of those letters, go to both

sides is an adversarial system. The prosecutor knows exactly who wrote the letter and while sad, but the prosecutor took it a step further. The prosecutor

informed the letter writers that that they that their names would be released in a press release

advising the public of who they were various things about them and it would be it would be to their interest to consider withdrawing those letters, so that they would not have to be on the end of the press release that he was intending to do

and the press release was to the effect of these people support a convicted offender. Hey, Larry was this pre sentencing or is this mitigation, this was for mitigation for sentencing. Okay,

so the the the the the discipline our council lawyers are subject to discipline and they the complaint was alleged that there's violate the rules of Professional Conduct I don't know all the rules of Missouri.

I think that it would be a questionable violation.

I don't know exactly what will remember I didn't read that read all the stuff about this, but he found he filed a complaint was filed this printer council found that this violate the rules of professional conduct and they assess the thousand dollar cost for the action and investigation and a six month suspension of his license for violating the rules of Professional Conduct which would mean he would be elected prosecutor of a jurisdiction, which he's not licensed to practice for six months

that that discipline has been appealed it as before the Supreme Court will all the law enforcement apparatus is writing and the victims advocates are sitting there because briefs in and urging that the that the disciplinary board be overturned

as an art our side is writing in saying the disciplinary council should be sustained that he did the right thing. And we're waiting to see what the court does this is such, this is an issue that it's just so crazy to me because

the system is already set up in such a prejudicial way pre sentencing. I don't know if every state has this but for instance in Michigan. We have pre sentencing investigations that are carried out by a parole or probation officer who barely knows you and it's given incredible weight by the judges and even carry through your time if you end up going to prison. It's used even in Pearl hearings, but mitigation is like, you know, your only hope of maybe mitigating that a little bit. And the idea that you would then try to publicly shame anyone who comes to the assistance or to the side of someone who is, you know, facing sentencing is just I mean it's just crazy to me because

the system is already so biased at the sentencing phase because of pre sentencing investigations against the defendant, you're absolutely right. Josh, that's that's the struggle on this because the probation officers I've read since I work in the business. I read a number of presents reports in my career. They don't often emphasize the positive achievements of the person, although they occasionally do they occasionally do but usually they emphasize that the person at their worst sure

they're on there on the team of law enforcement. I mean, they're not. We even if they if you know miracles happening and I got two reports and one of them was okay you know even of miracles happen

you know that the odds are pretty good that they're going to be taking the side of the law enforcement end of things, you know, in my opinion, what these reps generally limit the positive. A person who stand before judgment sentencing has lived a life anywhere from

a few a couple decades to 55 678

decades and these these characters these people that are writing or saying this person has been a stellar asset to the community for decades and take that into consideration and that component

will if the if the if the state wins this it's a Supreme Court rules in favor of the prosecution

that will further diminish people writing in on behalf of the the convicted person trying to give a more balanced view of their life which will further prejudiced tip the scales in favor of harsh sentencing because the judges won't know about good things that people have done

their access to information. I think this is another example of what we're talking about before, of how the at least an aspect of what's called victims rights ends up being really an attempt to prejudice, the process even more in my opinion. Well, but the prosecutor has valid article most he has the right to issue a press release. Does he not

well of course everybody would say he does have that right to if you're pressed, but he's elected by the people in that jurisdiction. He's their spokes person. He has the right to communicate with them. Does he have the right to try to intimidate people who would provide the court balance from speaking. That's the god baby. The question. Does he have the right is this an attempt to intimidate and silence, and if so, does he enjoy that. Right. I'm gonna go ahead and say, No,

you just being disagreeable

well no I don't want prosecutors to be able to intimidate people who are trying to mitigate and they don't have a legal basis for that neither did the disciplinary Council and Missouri to their credit and I hope that the Supreme Court a pulse of this, but our council and finds that they that they should that was over the top, but we will wait and see. It seems like he has

it's legit for him to issue the press release, but he was releasing the people's work addresses and prior work addresses or at least work names totally shaming the people he it seems like you have been legit to maybe shame, an organization for doing it

or like a first initial last name or something like that just to send me shed some light on the people doing it but he like totally call them out almost like the offender what destroys flip

it. Let's flip it over, what would happen if the what's not allowed by the rules of

the limits of what are placed on what a victim and most states. I know norm Pettis got a lot of praise for for for the acquittal he just got a couple weeks ago in the last month for he's a Connecticut attorney for some very aggressive cross examination, which is forbidden in most jurisdictions, what would happen if you flip it over and all the stuff that the defense wanted to get in about the accuser how they had conducted themselves. What if they issued a press release and condemned and out and all the bad things that that person had done.

I wonder if we would be having this discussion right now.

I wonder if the prosecution be in favor of a defense attorney having the right to do that, that

I would be willing to bet that the prosecutor would not like that I would be willing to bet the Donald the posture would like it. The victims advocates would cry holy hell, of course. So, but they don't see this because this is the other side the accused should never be humanized right but if we did the same thing. They would be screaming murder. Yeah, that

that justice will never be served, etc.

It makes me think about in I think it's France. You can't even do a perp walk. You can't even have all the cameras running around as the person's taken out of the cars are taken down town or whatever, just to prevent their from being that media bias and taking the other pictures and showing the person is being guilty before they've even been really formally accused of anything.

And that's the intent of the Purple Heart Of course

to say it's not prejudicial is insane because that's the whole point. Right, right.

All right. Can you guys aren't making me feel any happier tonight. All right, well, so this next one comes from the PBS news hour and I even have some audio clips Missouri public defenders are overloaded with hundreds of cases, while defendants wait in jail. The Sixth Amendment to the Constitution guarantees every American facing trial, the right to a lawyer, even if they cannot afford one but across the country. Public Defenders to public defender systems is being stretched to the breaking point and Missouri, maybe Ground Zero

forest when someone is charged with a crime but cannot afford an attorney. The court is required to provide one in most cases that person is a so called public defender. But what if that public defender already has too many clients to serve as competent representation. That's a situation playing out in many states, including Missouri where public

defenders have started refusing cases throwing around wrench into the machinery of the criminal justice system, I realized there's a limit to how much a person can work but how do you how do you as a public defender go yeah I can't do your case.

Well, you have to remember I think Andy and we did a whole episode on indigent defense and public defenders on the corporation nation, but I think you have to remember that, you know, here's a great example. When I was in, I was just hanging out and waiting for my came and remember which hearing it was when I was awaiting at, you know, when I was in the adjudication process and I went over and just started looking at the docket and there were public defenders who were hearing 30 cases a day. You know, I mean, how much of a quality defense. Are you racing for your clients when you probably barely know their names. So, I mean, I have some sympathy for the public defenders and part of this is because you know there's no equivalency between the prosecutors budget. The prosecutors office budget and the public defense budget in most states and obviously the prosecutor has a much larger budget a lot more resources and they have a free investigation service known as the police and so you know I mean Something's got to give you know i mean

it sucks, Larry.

Well, the public defenders generally cannot refuse to take cases because they were charged under the statute. If it's a State Public Defender system or if it's an appointed system. They're obligated to take the promise. But what you can do and I advise that and they look at me like I've been from Mars,

but in Missouri. The the public defender subpoena to Governor appointed him to a case not subpoena but appointed by case. But what you can do

is when the judge calls for the case, you can when the judge says counselors are you ready, you say, No, sir. I am not. And when the judge says, Why aren't you ready

because I've got 72 cases

and I haven't been able to get to this case so No, Your Honor. I'm not ready. Hey, did of judges where we got a trial setting for for two weeks from now going to be ready you say your order. Yes, I'm going to be as ready as I can. I'm going to try my best. And when you come into the judge says We ready you design thing you say no, you're not ready. I'm not ready Eddie's you're forced to go to trial. Then you state for the record, your honor object that were that we're moving forward this case because I cannot render effective representation. I have not had the opportunity to go to all the discovery. I've had I've had pre trial interviews I should have done that I haven't done I haven't had the budget to hire an expert to look at some forensics evidence that the state has provided so I want to lay the record that the court is requiring me to go and are not prepared and I cannot provide constitutionally effective representation. That's what you can do now, there may be a consequence to do in that if you're on. If you're on a contract basis. You may you may you may find that they don't refer you to more contract work and it may have an effect on your livelihood and if you work for a public defender system or you're on the payroll, the chief public defenders probably going to get called in and he's going to get reamed out and why that person that said establish the record and a cheapo with entities and say, Well, Your Honor. He's doing that because that's what I instructed to do I instructed all by associate defenders to let the courts know that they cannot properly represent these people and we're going to establish a record as long as it takes until we get adequate resources to defend people in a constitutional effective manner. That's what you can do

on. You can also as room polymers policy perspective peg. The Public Defender's Office resources at the, you know, at a level that's similar to the prosecutors I think I've seen different proposals up to 80%

like that. But you've got to go through a political process where there's no support for that but meanwhile the person that's accused is just sitting in the tank

that is an unfortunate very unfortunate tragic collateral consequence that we have to come together and figure out ways to file creative

motions to get people that are in detention who have not had adequate representation sub mechanism to try to provide them relief well this is also part of why so many people. It's not just that you're in the shotgun situation, but it's also that there's a huge incentive for the public defender to play because they don't have time to do much more than that.

And I have a clip that covers that let's move on. You have to go visit with your client, you have to look at the charges that your client faces. You have to investigate the case you have to meet with witnesses, you have to talk to the police officer, you have to file motions. You have to receive the evidence that the prosecution has and then discuss the evidence

with your client

to think that you can do each one of those steps in 150 cases is absolutely ridiculous. I just wanted. I know that we've we've said similar things Larry you specifically said things like that and Josh and I heard you're the episode you were talking about for the indigent defense. So here is Michael Barrett is the head of Missouri public defender system and those that's a quote from him speaking to that point. Exactly.

Well, how could you possibly if you're doing 100 felony 150 felony level cases and there's 250 working days in a year. How could you possibly do all those things on audio for your clients effectively because you would be having to plead up a case practically every day. That's what it sounds like

the play itself takes time because you have to go to the ritual of establishing the all the things have to be established for the bona fide acceptance of a plea but it's it's 150 cases are not humanly possible. I got a letter from somebody in an Oregon prison say that public defenders typically handled 1000 felony cases a year and I felt like it's so ridiculous but I did respond to it so that that's that's not humanly possible do 1000 felony level cases that a year will come home that will you know the defenders being an attorney. They should just be working for free because the work so easy. Well,

even if it weren't for free. You could do 1000, that would be four plays a day or work it you can't do for four guilty pleas a day

because as you heard Mr Baron he explained the processes. If you go through all that stuff before you decide that a plea is an order that itself takes more than a half a day, you can't you can't. I mean, this is the answer is that the public, the citizens are going to have to be willing to fund or the courts are going to have to be willing to start turning people loose like in the California prisons where they got grossly overcrowded that the federal judges. What I can't make you people build prisons. That's your prerogative. But what I can do is tell you that there's limited time many people you can put in these and the judges and the courts are going to have to say we can't make you find the public defender's office.

But what we can do is we can dismiss cases that

are not being met. And that's what I'm in Philadelphia.

Oh, the Philadelphia prosecutor's office. Yes,

well there that that's where you got a friendly prosecutors trying to cut

the case law, but we don't have that very often around the country where the prosecutors trying to work for a lower case law. Well, I think that's part of the reason why you know a lot of people have suggested

that one of the things that we really need to do and the first time I heard someone talk about it was Danielle's thread from the beer Institute is that you know we should change or find a way to change the incentive structure for prosecutors offices and I think that's what Larry Clark Krasner is doing a pretty good job of and it you know moving from things like how many convictions, you get to the actual outcomes, you, you, you get, you know, actual, like what happens to the people outcomes and I've always thought that outcomes outcome based criminal justice reform is much better than what we've got now there's a general rule,

I agree with Josh. Fortunately, the citizens are not willing to like prosecutors like him. That's not what that's not what sells to most voters that we elect prosecutors and almost all of our jurisdiction from the country at the state level. There are some pretty good new organizations that are coming up

that are doing a lot of work to try to to agitate to get you know progressive or what you would call progressive prosecutors elected. We'll have to see in this cycle, how they do but you know like Sean Kings organization than Rory forgetting his last name, but there's I think it's called fog light LLC, but both of those people are doing a lot of work trying to get

more progressive prosecutors elected and a lot of run pretending to be progressive that they magically fall into that law enforcement mentality that day they assume office, we did the same thing here. We thought we elected a progressive here with roll tours. He started out to be no different than the previous administration and it's I'm asked

Lex even worse, and that's that happens across the country. Their progressive until they get an office and then all of a sudden that perspective goes right in law with the law enforcement apparatus the prison industrial complex definitely doesn't help that you know they have so much

interaction with law enforcement. They have so much of an incentive to work fall into that camp. As a result, defendants like Ray shot Ashton often end up pleading guilty to crimes they say they didn't commit just to get out of jail.

It's called pleading to daylight and you just spoke about that Josh.

Well, I think the you know the obvious example of that is the case in Rikers Khalif Brower who he didn't end up playing out but and it ended up being pretty devastating for him but he talked a lot about how much you wanted to play today light because there's a lot of people who've said that they did play today light that you know jails. I know from my own experience that jails as bad as prisons are jails are much worse in a lot of cases there's just

on the present threat like the jail that I was at since I think it's 2012. There's been 18 deaths

and that's that's a lot and that's not even counting all the violence and everything else that's happened. It's just the deaths. And so yeah, there's a lot of incentive when you can't afford bail and you're stuck in jail to try to play out because in a lot of cases if you watch any of the writers documentaries or any of the you'll you'll hear the reasons why people want to get the heck out of the jail. As soon as

humanly possible.

And then finally,

David weaker has been a public defender in Jackson County for six years. I thought that this whole thing is a ticking time bomb for all of us. It is

probably due to our clients inexperienced with the system that they don't know how to file proper bar complaints against us that allows us to keep going with the system in which we don't give them proper service but if they were ever made aware of the ways in which they can file formal ethical complaints against us. I think that the gates are open at that point. And I think we drop like flies. I thought you could speak to that Larry

well that's that's kind of what I was addressing earlier than that the prosecutors. I mean, excuse me, that the public defender stage, go ahead and say no, he just admitted the artists that the clients do not know these rules they need to go ahead and lay the record for them so that when they look down the road and they they get a jail and they start talking to jailhouse lawyer, there was already the record laid for them that this representation was effective don't wish that the clients were smart, sir. Go ahead and do it yourself. Speak up now and lay the record that your representation has been constitutionally inadequate. And then when they follow their ABS corpus you immediately you immediately stipulate does your representation to the best of your, your ability was totally inadequate and you stipulate to why and you let the person put that in the atheists petition. If you really want to help them. Quit making excuses and do the help. I'm telling you how how to do it. Here's the roadmap to

how you get there,

Josh. Oh yeah, I mean, I agree that that sounds like what you should I it's really frustrating that it seems like if there's really a flaw in the democratic system. It's this for whatever reason this your career becoming entire your ethics becomes subsidiary secondary to your career and so my mean with legislators. All that matters is getting elected with prosecutors all the matters. It's getting elected with even with these terrible public defender jobs. All that matters is getting more cases, even at the expense of though you know for a fact. If you're one of those public defenders. I know a lot of them are working really hard and they it's a tough job but you know you know for a fact, a lot of times you're not providing a robust defense but you just let the system just eat it up. Just keep eating even everybody up you know it's just it's depressing. Well, I can't guarantee there won't be consequences.

I can't guarantee you that,

but I can guarantee you this the system won't change without you doing some of the things I'm recommending you are the one that's in the driver's seat here to establish the record the defendant doesn't get to speak your his or her mouthpiece and use your mouth, where they are silenced and you establish the record this goes to show that you're not doing unconstitutionally effective job don't pass the buck do it. It's the right thing to do.

Yeah, I agree with that

ready to be a part of registry matters get links at registry matters dot CEO. If you need to be all discreet about it contact them by email registry matters cast at gmail. com You can call or text a ransom message to 74722744771 a support registry matters on a monthly basis, head to Patreon dot com slash registry matters not ready to become a patron give a five star review at Apple podcasts or Stitcher or tell your buddies that your treatment class about the podcast we want to send out a big heartfelt support for those on the registry keep fighting without you. We can't succeed you make it possible from the Miami Herald homeless offenders are getting kicked out of their South Florida encampment. Now what this is a place in Florida where due to other restrictions like 2000 feet 2500 in Florida, I forget what the limit is there where they have just been pushed off in almost like a warehouse district and there's a tent city there and they came in and said you guys got to go and where are they supposed to go then.

Yeah, I remember the first time I heard about this tent city or under the bridge city actually when I was incarcerated. I was really lucky that I had a friend that sent me the New York Times, I know that's crazy. I was probably the only person in the history of prison who got a daily New York Times, but I did and I remember I guess it had to have been somewhere around 2013 or 2014 reading this the first time and just being so disturbed you know I'm I don't know what it's going to be like when I get out and I'm reading about Florida and

about how there's places where there's nowhere for anyone to live so they have to literally live under a bridge and then you know a little bit after that. Let's 40, you know, I finally get through parole and probation and I go to my first nurse all conference and we watched the untouchable documentary by David fake and hit up just watching this thing and I'm good. You know, I sure am glad I live in Michigan is I guess I would say I mean it's just it's just awful. And one of the things I was thinking when I when I heard this story. This time this time when I heard it the first time, I was just thinking to myself, you know how crazy the offender registry is when I'm sitting here rooting for a bunch of people to be able to stay living under a bridge. Right, right.

It's it's miserable and I can't for the life of me figure out, it just it's like, Hey, we're going to institute this thing without anybody looking not forget like 10 moves out but even just like the next one will they can't live here.

Where are they going to live. Nobody, nobody even quit like where are they going to go oh they're gonna they're going to pitch a tent next to a an abandoned semi trailer.

I think that's mostly because the person who's writing all these rules could care less what they do. I mean obviously that in. And for those of you who don't. I mean, this was another of the many wonderful ideas by the books in Florida, which you know the the older book The gentleman is one of the biggest political powers in Florida. He's a lobbyist and has been for a long time. I think he was really got his power under the Clinton as what because he had relationships with the clinton family or something like that, if I remember correctly, and you know basically his daughter was

there was some kind of abuse with a maid, and as a result of that for the last at least you know i don't know 1015 years I don't know they've been basically coming up with a million ways to to push new laws that increase the level of restriction on offenders. And so, you know, Florida has some I mean especially that area Florida has some of the craziest I mean everything you can imagine you know i mean i'm sure that people are listening are from Florida are well aware but man, it's just I mean these these. I mean, it's like they've created an industry around every year. Having a new set of restrictions to put on offenders

again I I'm just baffled at thinking about what are they supposed to do next. If they have to live somewhere to me, then the alternative question is okay. You don't want them here. You don't want them anywhere. You should have sentenced them to life and or you should have sent in some that have the death penalty.

Well, I kind of remember when I lived in New York City. It was a different New York City that exists now and that's because at one point in New York City. One of the mayor's decided that it would be a good idea to take all the undesirable elements and make it so hard for them to live there that they had to move to a different state and ultimately that happened

you know and so the New York of today while I'm not saying it's perfect is much different than New York of my my youth and frankly I like the old New York better

but you know I feel like maybe that's maybe what is is you know I don't know what his goal really is. Aside from continue doing to use this to amass political power for his daughter, but who's now in the legislature, if I remember correctly, she is. Yeah. And so this you know the keeping the this thing going. It's like I said it's like a family business for them and I kind of feel like if there is I don't think they care at all what happens, but my guess is they would say, well, they'd rather they just moved down to Florida, but I could be wrong. That's not necessarily easy. You can't just pick up and move unless you have a reason to get to that next state you just you just it's not that easy to do. Don't make things hear about the practicality. I'm saying they could care less because it's not about all it's about them as the

continuing to have the issue I

think I don't you know yeah I don't think they could I think they could care less if someone has no alternative and they end up back in prison. They don't care if they move. They don't care. They just want to keep ramping it up because it keeps them in the spotlight. Right. And so then I guess a follow up came out just maybe in the last day or so that maybe they're going to be allowed to stay. Yeah. That's my understanding, it's some kind of a delay or a stay I didn't get a lot of time to read that. But that was good news. I thought, like I said, it's a little weird to be rooting for people and I get to keep living under a bridge, but as opposed to having no alternatives. That's definitely better it's ridiculous it's

Josh, I kind of sidestepped your question about banishment earlier because I was going to bash about management this article and I didn't want to do it twice. So

we were talking about the parks, like, but it made the yep yeah I got a side step to your management banishment

banishment is is a tough.

There's a conservative view of banishment and then there's the more progressive you have banishment so conservative view of management is we look at we look at the words as they were met were Manton understood

at the time the constitution was framed the colonial times and banishment had the meaning of pushing someone out all together. That's why the resonance restrictions have been difficult to prevail on banishment because they're free to you should be in the city. They just can't live there and that's not a true banishment as far as a conservative Jews would tell you that that that I have to look at what the framers would have met at that time. All this evolving standards decency is nothing but here's an opportunity for us to give the conservatives something to hang their hat on

the court system we can map. This is going to cost them money but a legal challenge could be mounted in Dade County and Broward knows heavily populated counties in South Florida bleep brought words next today, but I know date is Miami, we could we could do a challenge there and we can map out. It only has a miniscule percentage of the of the land parcels are available which you effectively do have a management. I think a banishment claim might would work here because they're not allowed to live there and they're not allowed to be there because of the proximity restrictions. If I understand Florida restrictions correctly, which gets us much closer to management and we can hand this to to conservatives on the court and say, Hey, does this meet your narrow standard of management, they can't live there. They can't be present there and they've got point 33%, but just probably more than that, but they've got 9.2% of the of the landmass in Dade County available to them. Does this qualify it see what they say.

Sounds like a good idea to me. I would love to see the banishment argument asserted cases for both they can't live anywhere and they can't be in town because of the Lord ring and and the presence restrictions you combine that

you can almost make the tough dash definition of banishment isn't that was going on in North Carolina. That's what

dribbling said in his presentation about the I'm pretty sure they had presence restrictions where you couldn't even get to like the the state, the capital

yes those, those are those were budget. They don't

they're not quite as bad as Florida because they don't have this strange it resonates restrictions that Dade County Florida has a state restriction and then they have their locals that exceed that and of course I would want to go back to the try to go after preemption and a challenge as well say that the state needs a uniform regulatory system. Therefore, the locals can't do that. But that's an inconsistent argument because some people like for the cities to be able to regulate things if they agree with them and then they magically don't like the city's to be able to regulate things that they don't agree with it off, give you example like minimum wage conservatives and who claimed that they believe so strongly in local home rule and the people that are closer to the community goes to the voters or the wise is therefore they should be empowered more that they're the smartest they have preempted every chance they get where they're the majority to state level at local minimum wage in Missouri. For example, St. Louis voters have voted a hard minimum wage and they just went winter session and said, Oh, gee, well we're smarter. Here we preempt them because we don't agree with that. Well, we can't have it both ways. We either believe that that that that there should have a minimum wage believer. I think the minimum wage should be higher. Therefore I'm kind of okay with local setting higher minimum wage, but then I turn around and say well we shouldn't allow locals which way is it you can't be intellectually honest if you are both sides of the issue

intellectually honest enough to admit to you that I'm not intellectually honest on that issue, but most people will do a flip flop and twist themselves into a pretzel but but but the local should not be having all these hopscotch of regulations, because that may makes it even if they're smarter, more brilliant. It makes it almost impossible for people to comply with how many municipality governments are in the state of Florida at idea if they all have all these different regulations. How are you supposed to know how to comply right when you're regressing transgression when you're when you're when you're crossing. I mean, if you're going to be there for a day or two. There's no way possible. You could comply with all this stuff and have a map and all that all that your disposal and just even knowing how to comply. I mean, that's I think one of the real frustrations for all of us who are caught up in this stuff

is that knowing how to comply. I mean, you know, when the dose case one of the famous moments in the dose case was that Tim was working with the ACLU called all the state police offices throughout the state and ask them the same set of questions about compliance and he got a different set of answers every single time. So even the people who are enforcing it will enforce it differently in different jurisdictions and that's got to be true in terms of all these different localities. And the way that everything interacts just a total mass murder just no way to be I mean, a lot of times, like when I give talks to people about compliance, which I do sometimes I always preface the talks, you know, Michigan's compliance. I always preface the talks by saying, look, this is a lot of this is my best guess based on what I found in court decisions and whatever people have said at the highest level. But the truth is, nobody really knows you know i mean we knew what the words are but we don't necessarily know what what the interpretation that correct legal interpretation of a lot of them is

and I'm glad to hear you say that because people get frustrated with me when I tell them something else. We don't know

because it's a matter that hasn't been interpreted in the words were not so simply and clearly written. Therefore, we we we can only guess what they might have met and depending on what side of the perspective and issue you're on. You could

have to completely rational discussions about the words mean this so they mean that yeah I mean it's you know it's all speculation until the court decides it so

and I hope to see some challenges in Florida some some real effective challenges. So we've got a active affiliate the dorsal organization does that I'm hoping that they're working on challenges they don't run all their strategy past us so I don't know precisely what they're doing. But I hope that there are some things coming down. I doubt any of them. Can I don't know what kind of you know how you can listen to podcasts under the bridge. But if you can. I hope those people know that a lot of people are thinking about them.

We got to get the word out. Josh, we need more people to listen to podcasts

to see these people, these old people that are hanging around

their time is, you know, running out and they need to move on. Perhaps Larry and, you know, then we can get some younger people that listen to podcasts.

I know Larry must listen to every one of

your podcast and mine. I can't barely stand Alyssa that myself doing this, listen to myself a second time is more than I could take so I I'm just amazed that people listen to the numbers if they're listening and I'm just I'm just getting I hope we're providing valuable information and we're helping people and encouraging people to know that we're we're doing all we can with the resources that we have resources. We're constantly the issue and

you you see our, our restraint is largely because of resources, not because of will well and I say this to people all the time. I think I was just talking about this earlier today

is you know when when we were talking about bars to balance at the very beginning, maybe there's a full circle kind of thing. But I say this all the time that you know you know I my podcast, you know, it's totally do it yourself. I bought a you know I have a microphone. I have a laptop computer I figured out the E. I didn't even know how to do any of it and you know I do it you know you can do anything I do you can do you know I mean you're right that resources matter but you know I'm pretty much a self contained I put out all the promotion myself I do everything else and you know it's just a passion project for me and and you know i mean you know whether it be voting are going to be legislators like for me it was symbolically really important to be a delegate to the democratic nominating convention this year in Michigan, because I'm publicly a criminal justice reform advocate a formerly incarcerated person and a registered citizen and I let everybody know that and so you know I keep showing this picture of me holding a lanyard at the thing in front of the big stage because not because I think you know i know i'm not pretty but the idea is just to say, hey, if I can do this. You can do this, you know, and I feel that's true with all this stuff podcasts or writing stories online and I know a lot of people who do that kind of stuff, sharing information, you know, going to the content, the conferences,

networking, whatever it is, if we can do it you can do it. I agree wholeheartedly because you know this this was all put together. It's just funded out of my own pocket and and Larry down donates his time. Basically, that's how that's how our podcast works just the same. Yep.

And our final article is from a pellet squawk Come on, Larry. This is all you the Court of Appeals believes the victim, even when the church jury doesn't in a six to one opinion with only the we downloadable judge Rivera

that dissenting the Court upheld the lower court's decision putting the defendant on the internet offender registry for the rest of his life based on acquitted charges. So if I get this right, the person was tried and then the charges rescinded he was acquitted, but still ends up on the registry.

I took the time to do some research on the case. And this is an example of less than 30 journalism, because the journalist. It bothered taxi report entire case accurately. He was acquitted of almost all the charges, but he was convicted of one count.

I know you guys do that one count was a offensive somebody or it was it was a offense, but that would make a big difference. And so he he ended up as a convicted person having gone to trial and had had not guilty verdict on the jury was hung said to judge note three times what they were there, they were home and then they managed on hang themselves and found him not guilty of all the girls except one and so he he was convicted of a offense, which in this state of New York. They have a risk based system at that at that process. It's not a film space it's risk based so he had an opportunity to cooperate with the risk assessment, but to do so he he was at he he was it was placed him in peril. Because

if you could imagine you're

you're contemplating appealing. The one conviction that you did have

but in order to be risk assess you have to talk about what you were convicted on

which means that Mr. Quinn. The guy's name, Mr. Quinn Britain was anonymous Britain Quinn, the way but but but anyway this this this individual was asked to cooperate with his assessment, so they can properly level him and he he declined to do so that I hate to say so but he did the client or participate in the process. And that was his right to invoke his fifth amendment, but in doing so that a call that caused extra points to accrue to him for for for that he was he was he was given extra points and then the standard for putting a person for for the risk level is not subject to the same evidence rules as a criminal proceeding and the evidentiary standard is slightly lower it's that that the state has to approve it by clearing convincing evidence that the offense occurred

and it's not the same as

beyond reasonable doubt. The next most stringent standards, but it's not beyond reasonable doubt which left the the court the prerogative to find that that I was an evidence level high enough the judges sat through the trial to say I

believe the accuser the jury chose not to. But I believe the accuser and I find that they're scoring convincing evidence based on the fact that he gave a pre trial interview to the detective detective allegedly he admitted the stuff that he that he took the stand and said he didn't do it, but unfortunately didn't record it, which means that detective could have been lying or you could have been telling the truth. And I'm not going to apply them which way it was. But the detective didn't have anything other than he said that the person admitted to the offenses, but the jury didn't believe they have that that was beyond a reasonable doubt without any stronger evidence. So the jury did convict him but the judge found that there was a lesser evidentiary standard to find that that he did commit commit the acquitted charge just which means that combined with the extra points

made him my higher level offender that he wouldn't have been potentially and though the lowest level vendors don't get displayed to the public and I'm not sure at the level to put him on the public registry, but I think it does. I'm not an expert on New York registry. Can you can you back up just one step. Did you the jury acquitted

him on all charges, but the judge then still found him guilty on one shall judge, jury convicted him of one second. Okay. Okay. What

it above the others. All right, which is also hit by the position of needing to be risk evaluated convicted offender at that point

right and this is one of the I mean this isn't exactly this case doesn't do this. But one thing that I think, you know, I think we need to be aware of and talk about is that while in general I think in the main risk based systems are probably better for most people than a fence based system for some people it can be worse. And for some people it can be a lot worse. And so, you know, I mean, you know, I know every one doesn't agree with me on this, but that's why I'm such a big fan of the notion of graduation because there's so much resources to Jess after a certain amount of time be at 710 12 years depending on the different research you talk about that people's level of supposed risk drops below the risk in the general population and also things like that people age out of crime. A lot of other things that in my opinion the for me at least one of the gold standards is the idea that people it until we can get to the idea where everyone agrees that the registry itself isn't a good idea that maybe another or we get a constitutional challenge that overturns it.

One thing I would really like to see his graduation built into registry. So if you remain Fence Free that regardless of your tier, you have a chance to graduate automatically in a clean slate kind of manner

they agree with you i agree with you, Josh.

Well said. I cannot read the sentence from the opinions, so please stand. The jury acquitted defend a first degree and they cite the code of New York statute and to counsel Crim of criminal act in the first degree and they they cite the statute all those were felony charges and convicted of one count of second degree abuse, which was a misdemeanor that that brought him into the abbot of registration and so I just want to clarify. Are you saying that he got convicted of a misdemeanor, and somehow that's become lifetime registration. Uh huh. He got convicted of this to me but under New York's risk based system. It's not an offense based system that magically people would like the offense base system better here but a risk based system takes into account your actual behavior and the factors. So the jury did not find that they have enough evidence beyond a reasonable doubt. No, I just like the judge felt that since the he doesn't have that standard for assigning the back of the rest of your it's only by clearing convincing evidence he found that the clearing convincing evidence existed that those crimes were committed that did you read it and convict on therefore he aside that that extra level based on his finding that there was evidence of occurring convincing nature. Yeah. That's why I think I'm say I was suggested might might have suggested earlier that you know that's about as badly as a risk based system can go for someone is what I'm suggesting well everybody thinks the risk based system is somehow magically without, without any imperfections special that on contact offenders. I think that magically they'll be low risk. And of course, if they got to looking at the states where they have MySpace systems that find out that the non contact of interest, typically are much higher risk but but in this case the judge was permitted to consider whether there was evidence of other deviancy he considered it and he found it to be cleared convincing and he assigned those points and he ends up, hands up at higher risk level

like judicial discretion at till such time as we don't like how the out the discretion comes down, kind of like the judge Persky with the Stanford swimmer when when when he when he posed a very short incarceration, followed by probation you've ever the case well yeah sure there's a you know. Luckily, there are a lot of people who have defended that judge quite a bit of late. Yeah, but the voters are going to turn about regards what they've what what happened the voters are going to turn about with overwhelming margin,

but but our people that frustrates me that our people. We claim that we want judicial discretion and we want judges we prefer judges who exercise of independence that judge did that very thing and some of our people have have have been the most upset about war by Sun God. Well, but your son was not the same situation where the probation department recommended this type of sentence. Well, I'd like to suggest that one thing we should stop doing as a group, generally not I don't mean nurse all i mean us as as offenders

ex offenders or whatever you want to call the registered citizens is probably the better nomenclature. But what we should do is stop stop saying this registry would be okay. I mean, I think we should start with the premise that the registry is not okay and then try to make the best of what's left but never giving ground on the notion that the registry itself is a bad idea.

I agree with you, Josh. I oppose the registry.

Period. End of discussion if you're gonna do a registry. You have to do it within the constitutional confines which would be a very benign registry process which

virtually doesn't exist anywhere in the United States, except for a couple states like I'd say probably be that benign.

Yeah,

but even that I don't support because it still doesn't serve any purpose but you could do it from a constitutional perspective, you could do things that are bad public policy.

Yeah. As long as you agree with the Constitution.

We do all the time and forth. Absolutely.

We get mad when the judges don't save us from bad choices we make

to circle back around my gosh you what you call that we call it legislating from the bench where they were they were they strike something out that we agree with we're quite we're quite a best of hypocrisy. Right. Yes, we are. And to circle back around the you you mentioned some studies Josh that talked about people aging out of crimes where I'm sure you saw the debate with Marci Hamilton and Emily Horowitz, and she said they were absolutely somehow magically when you turn 18 treatment is over. It's a non issue but Emily turns around and She cites meta studies but you know I have read certain studies that even after like three years, your law enforcement officer has a higher chance statistically of being an offender than you do as a former or as a registrant to reoffend

but Mars. I don't know if I really want to comment on that. Well, you know, and I just, I was just joking. Because of the Lord for

but Marcy Hamilton is out there, beating of really, really loud drum saying that there is no rehabilitation for over eight. There's the statute of limitations opened up forever.

One of the biggest problems we have and this is goes back to, like you said, full circle is that we are not and it's understandable. I mean, we get beaten down by everybody. Yeah, we get abused when we put our heads up

like when I was talking about earlier about, you know, showing the lanyard and all that. I mean I understand that you know I've been, you know, people have come after me in every possible way. You know what I'm that happens for everybody. And there's dangers and stuff and people have wished death on me and all kinds of stuff like that. It's not like it. I understand why people don't do it, but if we don't stand up and we don't talk about these things and we don't. For instance, caught Marcy Hamilton and you know most of the research that she uses is at best questionable and and the and she uses the most these kind of really bad studies done in a limited setting, usually with college students asking kind of just questions and stuff like that are not relevant to our situation almost ever and usually don't have any sample size that justifies her conclusions. Now that sounds dry when we're talking about it here but you know I thought that Emily did an amazing job of beating her up on that. I mean, he took a crowd that at the beginning of that event were solidly on the side of registries being good and they flipped by the end of the debate which is astounding giving how much people love the registry is a general rule, so that actually gave me a lot of hope. Seeing that debate. Um, I did want to I didn't do the comment section where we had I had, I had a huge long thread with somebody from New York who wish to remain anonymous, but I did want to throw

a shout out out there to someone out there in New York. You know who you are and that we appreciate very much that you're listening to the show and hope hope that you'll enjoy this one this one is run very, very, very long and I appreciate everyone's patience in sticking with us. If you've made it this far. I deeply, deeply, deeply want to thank Josh for being a guest with us tonight. And that's all I got.

Josh, I would say I enjoyed it. I hope you can come back again. I would love anytime I would love that very much.

Yeah, just let me know. Very good. Have a great night guys appreciate my heart

too.