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SPEAKERS

Scott Flaherty, Anthony Sanders, Sam Gedge

A Anthony Sanders 00:00

"Aye aye, and I'll chase him round Good Hope and round the horn and around the Norway Maelstrom and around the perdition's flames before I give him up. And this is what ye have shiped for men! To chase that white whale on both sides of land. And all over sides of Earth till he spouts black blood and rolls fin out. What say ye, men, will ye splice hands on it now? I think ye do look brave." That is Herman Melville. But what that also might pertain to is Younger abstention. And my good colleague, Sam Gedge, who joins us today on Short Circuit, your podcast on the Federal Courts of Appeals. I am your host, Anthony Sanders, who did not write Moby Dick, but did just read from it because I think it particularly pertained to what we're going to be talking about later. We recording this on Wednesday, August 24, 2022. And once again, on the program is, again, my colleague, Sam Gedge, who is going to talk about his white whale, Younger versus Harris decided in 1971, as you'll know, from the festival we did last year with him, and professors Fred Smith of Emory. And he's here once again to talk about a case involving that precedent. So Sam, welcome to Short Circuit.

S Sam Gedge 01:55

Thank you, Anthony.

A Anthony Sanders 01:58

And Sam, I do say you make a little bit of a Captain Ahab impression these days. So I wanted to thank you for thinking towards the podcast with your current very manly beard.

S Sam Gedge 02:11

Well, thank you, Anthony.

A Anthony Sanders 02:12

Someone else who does not have a manly beard, but in an every other way, is a great man is someone who I have been trying to get on this show for a long time. And I'm even more excited to introduce him, then to freed a few words from Moby Dick. And that is Scott Flaherty. Scott is an attorney, including an appellate attorney at Taft law in Minneapolis, formerly Briggs and Morgan. He's practiced appellate law in Minnesota and also at the trial level for many years. If you have a question on some obscure procedural rule in the Minnesota courts, he is the first person you should call. And finally, he has come on Short Circuit today to talk about a case of his choice. So Scott, welcome to Short Circuit.

S Scott Flaherty 03:09

Thank you, Tony. That's very kind. And this is not only my first appearance here, but my first appearance on any podcast so.... be gentle.

A Anthony Sanders 03:19

All right. Well, I will skip some of the the normal podcast antics then to ease you into this. But first, introduce yourself, what you practice and why you like arcane rules of procedure so much.

S Scott Flaherty 03:35

Well, your intro was very nice. So I'm an appellate lawyer at Taft Stettinius and Hollister here in Minneapolis. Because appellate law sort of is this umbrella term, I've touched a lot of different substantive areas of law under that umbrella. And Indian law is one such area that I've been working with a lot for the last several years, which is why I chose a recent Seventh Circuit case involving Indian law to to discuss today.

A Anthony Sanders 04:02

So let's go to that case, out of the Seventh Circuit that was decided just a week or two ago. I'm gonna say this wrong.

S Scott Flaherty 04:11

Lac Courte Oreilles -- I'll save you the ...

A Anthony Sanders 04:14

Lac Courte Oreilles band?

S Scott Flaherty 04:17

Yeah, Lac Courte Oreilles. The French is tough.

A Anthony Sanders 04:21

We'll leave it there. Yeah. Two years high school French, very well spent for me, versus Evers, the governor of Wisconsin. And my first question on this case, for you to tell our listeners about is what is the difference between tribal law and Indian law? Because I guess this is a Indian law case, not a tribal law case.

S Scott Flaherty 04:45

So that's a great question. You said it correctly, this is an Indian law case, not a tribal law case. And this distinction is that Indian law is a body of federal law. You can think of it like say admiralty law Maybe or patent law. So these are substantively federal law. Tribal law refers to the domestic law of tribes. So if a tribe say enacts a code, tribal law is the content of that tribes law. So you can think of Indian laws, federal and tribal law as analogous to state law.

A Anthony Sanders 05:22

What would you call say, the interaction between state law and tribal law that comes up?

S Scott Flaherty 05:28

I would still put that under Indian law. Because, as we'll touch on in this case, the ways in which state law can or cannot affect tribes is, in large part, and maybe even entirely governed by federal Indian law. And so I would still put that question. Under federal Indian law, there are some, there are some unusual exceptions. So tribes with treaties with states that predate the Constitution, for example, but but by and large, I put it under the umbrella of Indian law.

A Anthony Sanders 06:01

Okay, well, what's going on with this decision in Indian law?

S Scott Flaherty 06:06

So this case, is about state taxation of land. And that's the 10,000 foot single sentence summary, I want to take a step back from this case and lay out some general principles of Indian law that will sort of work us towards the dispute in this case, and why I think it's interesting. So for those who don't know, federally recognized Indian tribes are what one Supreme Court case has referred to as domestic dependent sovereignty. So they are domestic, they are part of the United States. But at least as the federally recognized tribes, they also have certain forms of sovereignty. And generally subject to a bunch of exceptions, most of which we won't get into, that sovereignty is freedom from certain state, and local interference

in tribal affairs, and for tribes who have reservations for on reservation conduct and reservation land. So one crude rule of thumb you can go by is that states cannot impose property taxes on reservation land owned by tribes, unless Congress has allowed it. And as we'll get into this case, unless it is permitted under some other provision of federal Indian law. I want to stay focused on property for this case, but there's state criminal jurisdiction over tribal members, and over non Indians has been a hot topic in the US Supreme Court's docket over the past several years. That, I think, is still evolving quickly. Following cases like the Cooley decision, which I think was last term, or maybe two terms ago now, but what I liked about this case is it's on the non criminal side of the house, which hasn't seen, to my recollection, quite as much recent attention from the US Supreme Court, and this case, picks sides on an already existing circuit split on the given question, and so it does seem reasonably likely to draw the US Supreme Court's attention. Okay, so that's kind of the table setting. Here's some important history relative to understanding this case. Initially, before the Articles of Confederation and before the Constitution. Indian tribes entered into treaties with Great Britain and with some US states. Following the enactment of the Constitution, where article one gave Congress power over Congress with Indian tribes, the federal government (this is a simplification but is basically true) the federal government took over all relations with Indians from the States, again, oversimplification, basically true. Initially, during the early period, relations with most Indians were done via treaty. So the Article Two president's power to make treaties ratified by the Senate. After many decades, I want to say by the 18th, let's say mid to late 19th century, the treaty period ended, Congress passed a law saying, "No more treaties with tribes. We're going to use statutes." Now some statutes since the beginning, and I say the beginning, I want to say 1790, I believe was the first intercourse act, so statutes had always been used, but the treaty making period ends and Congress uses its statutory power to regulate the United States dealings with tribes. I bring up treaties and statutes because this case, and the two other cases that form at circuit split are about the differing effects, if any, between what happens when land is allotted under a treaty and what happens when land is allotted under a statute. This case, involves a couple of different types of lands in Wisconsin where the Lac Courte Oreilles band has their reservation in Northwest Wisconsin, believe not far from Hayward. The set of parcels that are interesting here are parcels that had been allotted to members of the tribe. I'll use band and tribe interchangeably. So parcels that had been allotted to members of the tribe under an 1854 Treaty, that had then at some point passed out of Indian ownership and had been owned by whites. I'll say whites to refer to: it could be anyone who is non Indian. The exact demographics of the non Indian owners doesn't matter. Seventh Circuit doesn't get into the detail and it doesn't matter, it matters that they are non Indians doesn't matter what their race is. So, certain of these lands within the reservation, initially allotted to Indians, pass out of Indian ownership into non Indian, or I'll say white for simplicity, ownership. Later, these parcels are then required by either the tribe or tribal members. And the dispute is, what happens to that land that has passed out of Indian ownership within a reservation and then comes back into Indian or tribal ownership? The question is, can the state impose property taxes? No party this litigation disputes that once land passes out of Indian ownership to whites or non Indians, it can then be taxed by the state. That doesn't appear to be disputed. I think it's pretty uncontroversial. The dispute between the parties is the four bands at issue in this case, they took the position that once the tribes or the bands reacquire the parcels that their treaty rights with at 54 Treaty preclude state taxation on this land. The state of Wisconsin takes the position that once that chain is broken, so once land ownership leaves the tribe of the Indians who are subject to the treaty, Ever agrees, we can tax at that point. So Scottson says, "It doesn't matter if it later goes back to being owned by the tribe or members of the tribes, we still get to tax it." So taxation sort of follows alienation is the rule of thumb. And in fact, that was the rule articulated by the Ninth Circuit in a case called looming Indian tribes several years ago. Ninth Circuit said, "Alienation taxation, once it leaves tribal ownership, you're off to the races and

immunity from taxation doesn't spring forth if the land returns tribal ownership." The Sixth Circuit later, in a case called Covina Bay, I believe, was the name of it disagreed with a Ninth Circuit and they said "no, the treaty rights are essentially rights that the tribe has, if they own the land. They own the land, they can't be taxed into the treaty. They don't own the land, treaty doesn't apply." So there's a split between the Ninth and Sixth Circuit. Here's what I think makes this case interesting, because the way it was litigated. It wasn't wrongly litigated, but this doesn't jump to the Four from the Seventh Circuit's opinion, the way I think it should. What's interesting here is really the interplay between the treaty power and Article Two and the indeed Commerce Clause under Article One of the Constitutions. Because the Sixth Circuit's reasoning which holds that it can't be taxed once the tribe requires ownership, is based on a distinction that the Sixth Circuit draws, and that the Seventh Circuit agrees with which is as follows: "When a reservation is created, and your treaty or allotments are allowed by a treaty, even if there's a little later dispose of the land, that isn't a sufficient in Disha, that the United States... [I should be fair] that is not an expression that Congress is going to allow the land to be taxed if they need to acquire it." But those courts agree that if there had been a statute, so if this had been a statutory allotment rather than a treaty allotment, the answer would be different, if that makes sense. So if a statute allottd a land under well established US Supreme Court cases, Cass County is a famous one for Minnesota. County of Yakima is an older one. And then there's an even older one from 1906. If Congress passes a statute alienate allowing land to be alienated later, it can be taxed. Everybody agrees that's the case. Now the Seventh Circuit says you reach a different result if it's allottment under a treaty, because according to those courts, a treaty is not an expression of congressional intent. Because of the President signs a treaty. Yes, the Senate ratifies it. So that's, that's the rule of law that sort of comes out of this case. What's interesting to me about that is the Sixth Circuit case that's on one side of the split has a dissent. The Ninth Circuit case on the other side of the split also has a dissent. It's a very close case. This year, the Seventh Circuit reversed the district court in this case that came to the opposite conclusion. So you have, depending on how you count judges, you have maybe three, four or five, six groups of judges, almost all of them are evenly split. And it's very close. Because in these in these older US Supreme Court cases, they do talk about congressional intent, congressional intent, congressional intent, and so that language was seized upon by the Sixth Circuit, now Seventh Circuit. But you have to wonder... Two questions to be streamlined. You have to wonder two things. One, those older cases, we're talking about statutes. So of course, we are looking at congressional intent, to my knowledge, no case answers the current open question, which is, "Well, what happens where a treaty rather than a statute allows us now that we have answers in in three circuits so far?" But, I think, there's some theoretical problems with saying statutory allotment allows for later taxation, treaty based allotment doesn't. Why are we drawing that line between the Article Two treaty power and the article one Indian Commerce Clause power? I don't understand the theoretical basis for that. Maybe it exists. Maybe I'm not aware of it. Maybe we're going to get it from the US Supreme Court. But but we'll see.

A Anthony Sanders 16:19

Well, in my very uneducated knowledge of of Indian law, that I got from the opinion, it seems to me, it has something to do with that treaties we're respecting tribes as sovereigns, whereas isn't it exactly the same with the statute power? And so when you're talking about a sovereign, that you're going to be looking at the powers differently than in this post 1871 statute set up that we have in the modern era? Is that too simple a way to look at it? Is that kind of what's driving it?

S Scott Flaherty 17:03

So that is an important distinction, no doubt. And that's a real distinction. And it is even one that sort of has a doctrinal basis. Could, in theory, justify something. But it seems like it actually ought to cut the exact opposite way here, because you can think of treaties as contracts between sovereigns. And so the rule of law here says, "Well, the treaty power where more contractual as opposed to statute, which is unilateral statute, unilateral action by Congress. Well, in this unilateral action, we're allowing taxation happened downstream following alienation." But in the treaty context, where the tribe entered into this contract, knowing what it's doing kind of had a chance to negotiate a treaty. We're tribes, more when they enter into treaties, and we're protecting them less when there's unilateral congressional action, it seems like it ought to be the other way. There shouldn't be a higher protection for tribes, when Congress acts unilaterally, as opposed to when tribes negotiate treaties. Now, one response is, some of these 19th century treaties, you can really look at that and say, "Fine, they're both sovereigns. But is it really a treaty of peers?" And so I think, as a theoretical matter, we talked with them as contracts between sovereigns as facts on the ground, maybe that's not always the case. But the distinction you just drew... I don't know if it recognized. I don't recall if the district court recognized it explicitly here, or at least made reference to it. But it's a real distinction, but it's counterintuitive. And then the other thing I come back to is, the US Supreme Court has not articulated that distinction to my recollection, between treaties and statutes in that way. So it's a long winded way of saying, I don't know that is a distinction. I don't know that it supports the outcome here.

A Anthony Sanders 18:56

If the court does, say take this case or similar case on this issue, again, this is my very, an expert question coming out, do the recent cases and criminal law especially the couple that come from Oklahoma McGirt and, and then just this last term, Castro-Huerta? Do they pretend anything on this question, or is it really a separate thing in Indian law?

S Scott Flaherty 19:22

Honestly, briefly, the recent cases don't really answer this question, because the things that were disputed there are either not disputed here, or don't matter. So the criminal stuff, nothing criminal is in the mix here. And in terms of the recent case about civil jurisdiction over non Indians in Indian country, there's no dispute here, in this case, about where the Lac Courte Oreilles reservation is. And so the the scope of Indian country is not at issue, no, this is sufficiently different. The reason I picked it is because it was not a criminal or law enforcement case. It's pretty different.

A Anthony Sanders 19:56

I see.

S Scott Flaherty 19:57

Now, I want to give one caveat though. There is a rule of law that could emerge from this case, or any of these cases that has not been adopted by any of the circuits to look at this, which you could say whether land allotted under a treaty can be taxed by a state subsequent alienation turns on a particular treaty. The text of any particular treaty almost always matters. That wasn't the result here. The Sixth Circuit considered the treaty language, but I don't think it was dispositive. So this case is interesting, because I think it's got a split, it could go different places. And it could say some interesting things about the distinction between powers under Article One and Article Two, even if it's just the treaty making power under Article Two in the commerce clause in Article One. And there's a bunch of interesting ingredients here this case

S Sam Gedge 20:48

Could I ask a foolish question about this. I feel like we're we're kind of in a safe space here.

A Anthony Sanders 20:52

This is a safe space.

S Sam Gedge 20:53

Yeah, no one's listening. So I noticed in the case of sounds like the band's sued the government to stop the tax, and they just raised red flags for you about the anti tax Injunction Act. I assume there's an easy answer that I could Google. But if you know the answer, I'd be curious to hear.

S Scott Flaherty 21:08

Well, I don't... I wondered what had happened. I looked at the district court record. And the last I saw, the bands had paid the tax under protest, which isn't really responsive to your question. I think somewhere in the district court order, those state or local governments did make some argument along those lines, and I think the district court rejected it, but my recollection was, it was not on Indian law grounds. And certainly it was not in the mix of the issues raised to the Seventh Circuit. That's my recollection. But these sorts of tax cases challenged by bands are not uncommon. It happens.

A Anthony Sanders 21:49

And for listeners benefit, the act that that Sam was talking about, is that generally when you're suing about a tax, it is, essentially, very hard to get into federal court. Because you're you're expected to try to litigate that through the state court tax system, essentially. Listeners may remember, this was an issue in the Obamacare litigation where the court had to say, Well, this isn't a tax, so we can adjudicate it. But it is a tax. And so therefore, there's no constitutional problem with that part of Obamacare. Well, Scott, I think we're much more educated now, at least Sam and I on the basics of what Indian law is. And this was very interesting to me, because there's often litigation about whether something is tax exempted or not. Then as the

court notes, just like with tribes in this situation, there's nonprofits, that aren't taxed for all kinds of reasons, including real estate tax, and they can go in and out of whether they are taxed depending on who the owner of the property is. And so this is actually not too different than that situation. Well, a situation that is quite a bit different is foster care. And the horrific things that sometimes can happen in the foster care system, including it seems in West Virginia. So Sam has selected this case, that, as he said earlier, has to do with foster care, but the actual opinion isn't really about it at all. It is about this thing that listeners can go back, we'll put a link to it and learn all about which is called the Younger abstention from the episode we did last year with Professor Fred Smith. And Sam is going to give us a little update on the latest in Younger abstention, and whether we're any closer to catching that white whale.

S Sam Gedge 23:59

Well, thank you, Anthony. I think the answer is yes. At least in the Fourth Circuit. So yeah, as you mentioned, this is a Fourth Circuit case, it's out of West Virginia. The underlying facts are pretty troubling, we can we can give a flavor of them in a second. But what the Fourth Circuit ends up talking about is a grab bag of fed courts esoterica, which we can talk about all of it if we want, but I'm gonna hone in on the Younger part, we can leave the mootness and class actions for like a follow up episode if the people demand it. But just by way of, I think so but by way of background, so West Virginia evidently has a pretty hair raisingly terrible foster care system. There are lots of structural problems, officials have unmanageable caseload. They're short staffing, there's budgetary shortfalls, and the upshot is that, at least according to the plaintiffs in this case, that there's routinely just really terrible stuff going on in the foster care system. Just to give an example, one of the plaintiffs in this case, I assume they're proceeding under a pseudonym, because it's a child but they enter the foster care system when they're four years old, there shuttled off to a psychiatric institution, they end up in a juvenile detention facility after some shoplifting when they're 10. They're sleeping on a mattress on a cement floor surrounded by older kids. And then to top it off, they're shipped off to a different facility in a different state, which promptly becomes famous because their admissions officer is charged with sexually abusing another child at the facility. So the entire thing sounds like a really a horrific train wreck. According to the Fourth Circuit's opinion, this sounds like it's not a unique example. So a bunch of these foster children in West Virginia, they file a class action in federal court against the West Virginia agency that's in charge of handling the foster system. They raise a constitutional due process claim and a variety of federal statutory claims. And they're seeking to certify classes and classes of foster kids. And basically, they're asking the federal courts to remedy what they view as constitutional and statutory violations that are happening at a system wide level. They're asking for system wide changes to fix those violations. And they're seeking that relief against the agency that handles the whole foster situation. Now, the district court dismisses the case. And as you your forecasts they didn't dismiss on the merits, but on Younger abstention. So we've talked about Younger before. But basically, it's the doctrine that says that even if you're bringing a valid federal claim, the federal court can kick your case out of federal court, if your lawsuit would interfere with certain kinds of state legal proceedings that are pending in state court. One of them's, for example, criminal cases in state court, that's one example. Now, when federal courts engage in this exercise of kicking cases, on Younger abstention grounds, they normally kind of recite the usual platitudes that have gone back to the 1971. Case, Younger versus Harris, the idea that this is all about federalism and respect for the state courts. And basically, what it boils down to is they say, "You know what, get out of here with your federal claims and go across the street to the state court and complain to them about it." So that's pretty much what the district court did in in this case. But on appeal, the Fourth Circuit really kind of flipped the script in a pretty interesting way. And

they said, what I think very few federal courts ever say in this context, which is that federalism, the motivating principle behind Younger abstention, that federalism is actually kind of a two way street. It's not just a label for kicking federal civil rights claim inside of federal court, it's not a label that government lawyers can latch on to to try to get themselves out of federal court. It's actually the whole point of federalism is so that people can have their rights vindicated, including their federally protected rights. And so what the court, the majority in the Fourth Circuit really comes down comes out of saying is that Younger abstention is a narrow doctrine, it's a narrow exception to the rule that people get to choose their forum. And it's narrower for a reason, namely, that people with Federal Claims normally should have the right to present those claims in a federal forum, if that's where they want to be. So that's kind of some high level, talking about federalism, but they know the Fourth Circuit analysis really kind of starts off on a pretty straightforward doctrinal track. The Supreme Court has said, there's these three categories of state cases that can give rise to Younger, the majority kind of marches through them and says, "Yeah, they're state courts that are involved in the foster care system, there are these periodic check ins with the local courts. But it's not the kind of thing that the Supreme Court has said normally triggers Younger abstention." And that's, that's all well and good. But the majority then really kind of goes a lot further, there's a very short dissent, the complaints about the majority spending another 17 pages on just pontificating about kind of these these broader principles. And the majority kind of make some points that I think kind of a lot of federal courts would benefit from hearing, which is the idea that, you know, when you're a foster kid, for example, or when you're in some other group of vulnerable people whose rights are being violated, often the only way that you're going to get a systemic remedy for those violations, is through class action litigation. So here, for example, the West Virginia lawyers, the West Virginia agency said, "Well, you should apply Younger abstention because every single one of those four year olds and preteens and adolescents in foster care, they can just argue for statewide systemic relief during their quarterly check in with the local judge."

A Anthony Sanders 28:42

I'm sure their judge will be very interested in that.

S Sam Gedge 29:23

Precisely, it's laughable, but it's also the kind of laughable absurdity that government lawyers raise all the time in this context and then federal courts often kind of buy into. But the Fourth Circuit really engaged with that in a way that you don't see very often. And I said, what I think our reaction was to that, which is that it's completely unrealistic to expect these kids individually to secure systemic structural relief and their individual check in hearings. Basically, the idea that these systemic problems these funding problems, these staffing problems, they demand systemic relief, and the most obvious way to secure systemic relief is is through class action litigation. That's kind of the whole point that we have rule 23. And we have class action litigation to begin with. So where the majority here comes down is basically saying you just can't get that kind of systemic relief in these one off state court proceedings. And for that reason, you can't just invoke Younger abstention reflexively and say, go take it up during your kind of quarterly 10 minute status conference in state court. I can keep going, but I'll kind of try to bring us to a close on this line of the case. Because I really think it's kind of exciting as far as Younger abstention goes, because it's a rare moment of judicial engagement when it comes to

these kinds of potential principles. And frankly, Anthony, you mentioned, you know, are your former guests, Fred Smith from Emory. A lot of what the Fourth Circuit majority saying here has echoes of what Professor Smith has written about he's written a great article called, I think it's abstention in the time of Ferguson. And he makes the point, which not many folks have done, that, you know, Younger abstention absolutely should not be a tool for kicking people out of federal court when the folks are trying to vindicate these systemic or structural kind of classwide rights. And it's great to see that idea kind of getting traction with the majority in this case. And in the Fourth Circuit in particular there are certainly some circuits, I would say the Seventh Circuit is one of them, which are pretty reflexive when it comes to kicking folks out on pretty aggressive use of Younger abstention. The Fourth Circuit really has a history of looking critically at these kinds of defenses that the governments raise. This is one example of that. So it's a super exciting case, Younger abstention continues to be just where all the excitement is at when it comes to

A Anthony Sanders 31:41

hot, hot, hot.

S Sam Gedge 31:42

Yeah, civil rights litigation. I'll add, as I said, there's a couple of pages sent from Judge Rushing. She ultimately agreed that just based on a straightforward application of Supreme Court doctrinal Younger precedent, that Younger shouldn't apply here. But she said, "Okay, so maybe we should just say that and not talk about all of these broader issues with the with the doctrine."

S Scott Flaherty 32:00

I have one question. So I find it impractical, as you suggested, the notion that you can get structural relief in state court and attendant status conference in some sort of foster care status hearing. Would there have been away or did the court even discuss whether they could proceed on a class basis, but in state court, was that on the table?

S Sam Gedge 32:23

Yes. So the Fourth Circuit alluded to it, but but I think that kind of the proves the problem almost with the abstention doctrine here, right, because the notion of abstention isn't that the federal courts are gonna say, we think that you should pick a different forum to try to vindicate your rights. It's that you're already in some kind of state form, and we're going to defer to that. So really what the majority said, I think they kind of touched on that point and said, "Really, if we're talking about meaningful relief, in this kind of context, the choice isn't between showing up your status conference and federal class actions. It's between federal class actions and state class actions." And the plaintiffs are allowed to make that choice.

S Scott Flaherty 32:58

Yeah, okay, that makes sense.

A Anthony Sanders 33:01

Scott, have you ever had a younger harpoon thrown at you, or, thrown when yourself?

S Scott Flaherty 33:07

I'm trying to remember that. I may have once thrown a Younger harpoon. Now that I think about it.

A Anthony Sanders 33:16

We will talk about that.

S Scott Flaherty 33:19

I mean, raised a Younger issue. I don't remember I was actually thinking... I think I have, but I can't recall a specific instance. But I used to do pro bono work through the Minnesota Children's Law Center. And so I have been in these foster care status conferences, which can be very brief, very cursory in the notion of raising, even for an individual clients systemic problems. I just don't think that seems practical.

A Anthony Sanders 33:50

At one, it really brings up the major reason for the Younger abstention in the first place, which is that it applies if in the state court proceedings, you can raise these claims and have an adequate forum or whatever the phraseology is. And I think this is the maybe the most extreme version I've ever seen of that just not apply. There's all kinds of ways where I know, in some good case law that the courts have said, what doesn't apply were it's an administrative proceeding, and you couldn't have an adequate record made or you couldn't even appeal and in some cases, no final judgment. This is just utterly laughable that you could have anything similar to a federal class action lawsuit. Well, thank you both for both these the sail of the Younger sees and the the Indian law versus tribal law distinction. Scott, is there there anything else any any hot topics in your practice that people should be watching for or cases they should be following?

S Scott Flaherty 35:11

I see only hot topics, but they're also esoteric. It's hard to begin one at this point. But yes. So the answer is yes. But a nonspecific yes.

A Anthony Sanders 35:22

I see. I see. Well, people should then keep their eyes glued to both the federal courts and and some of the state courts including the Minnesota Supreme Court where you have a case pending. Sam, thank you for for coming on. And we'll have you on again some time maybe Younger, maybe something else when you've caught your your white whale. In the meantime, though, I'd like to thank everyone for listening. Remind everybody that if you're in the New York City area, we have our short circuit live coming up on October 26. We'll put a link up to that in the show notes and we'll be talking about it in future episodes as well. And for everyone else, I'd ask that you get engaged.