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SPEAKERS

Anthony Sanders, Scott Regan

A **Anthony Sanders** 00:24

"Gaily bedight, a gallant knight, in sunshine and in shadow, had journeyed long, singing a song, in search of Eldorado." Well, that was "Eldorado" by Edgar Allan Poe, published in 1849. In some way, I think all of us are searching for our own Eldorado. That particularly applies to officers of the law, who do a lot of searching. And we're going to talk about a couple of those searches and some of their seizures today on Short Circuit, your podcast on the federal courts of appeals. I'm your host, Anthony Sanders, director of the Center for Judicial Engagement at the Institute for Justice. We're recording this on Monday, August 7, 2023, although the episode will not go out until later this month. We are working around vacations in the month of August by stockpiling episodes. One of my fellow stockpilers and an attorney at the Institute for Justice is here with me today, and it is his first time on the show. He'll be presenting one case, and I will be presenting the other, and that is none other than Scott Regan. So Scott, welcome to Short Circuit.

S **Scott Regan** 01:37

Thank you, Anthony. It's great to be here. You're looking great as always.

A **Anthony Sanders** 01:40

Well, thank you. Scott is referring to my shirt that has a rat on it, while he has something much more work appropriate. Scott is appropriately working for us at IJ because he used to do law in New York City, and before that, he went to a couple of great schools, including Cornell Law Schoolâ€”where I went a couple years ago, and I'm very happy that I'll be returning there for a talk later this coming school yearâ€”and also to Hamilton College. And he grew up there in New York state. So I know little of this lingo from out West (where I've lived most of my life), but Scott, of course, I know you're a proud upstate New Yorker. And so you grew up upstate. Is it ... I'm right ... This is, I know, kind of a cliche thing, but I really never know the parameters. Is upstate New York ... It's literally everything north of New York City?

S Scott Regan 02:46

This is a very contentious issue for we upstate New Yorkers. If you live in New York City, absolutely anything north of, say, Westchester County probably counts as upstate, or where I'm from, we like to consider that upstate New York is anything north of I-90. But that is a very controversial take; I think most people would say anything north of Westchester or somewhere around there. If you're on the Metro-North line to New York City, maybe you're not in upstate. But, as someone who had to deal with, you know, six months of winter every year, if you're not dealing with that, you're not a true upstate New Yorker.

A Anthony Sanders 03:20

So I ... So remind me, I-90, it goes through Buffalo, right?

S Scott Regan 03:24

Yeah. It hits all the big New York, upstate New York, cities. It goes: Albany, Syracuse, Rochester, Buffalo.

A Anthony Sanders 03:30

Oh, so that is pushing it. So like, like Ithacaâ€”which is a little south of Syracuseâ€”that would not be upstate New York.

S Scott Regan 03:38

From my perspective, no. It's the Finger Lakes region. It is part of New York. It's not New York City, but it's Finger Lakes.

A Anthony Sanders 03:46

Wow. So within upstate New York, do theyâ€”do some people in, you know, the whole of New York other than the city and Long Islandâ€”not consider themselves from upstate, like they have their own? Or, are they all proudly upstaters, even though you don't think they're upstate?

S Scott Regan 04:03

This might be my own, fastidious, upstate New York persona. I'm sure many people in Ithaca consider themselves to be upstate because they specifically don't live in New York City.

A Anthony Sanders 04:14

A Anthony Sanders 04:14

Because all of them ... They want to be contra the city?

S Scott Regan 04:18

Precisely, yes. There's a certain persona that you build on when you are not in the hustle and bustle of Manhattan per se. That definitely defines basically everything north and north of the Metro-North. But, as someone who prides himself on enjoying a good wintertime, I consider upstate New York to be very far north.

A Anthony Sanders 04:39

Understood. Well, yeah, that ... There's similar dynamics in some Midwestern states, and in Minnesota, with us in the Twin Cities area, we say "outstate." But, then, there's divergence in the rest of Minnesota, which is what that means, whether you're in Duluth or St. Cloud or way southern Minnesota. And, of course, the more north you get in the state, the more they are like, well, we have real winners here. You know, you guys down south don't have anything. I don't know how like Watertown, New York, compares to the Twin Cities in terms of their "winter-idge," but we both have plenty. I'll just put it that way.

S Scott Regan 05:18

I'm sure that's the case. They're very different. As someone who now lives in D.C., I miss a little bit of winter. I think we got about ... maybe a flurry ... months over my first winter. But, you know, we deal with what we can.

A Anthony Sanders 05:30

Right. Yeah, D.C. is interesting as this feast or famine with snow. I mean, there are these ... every few winters, the snowpocalypse. And, you know, people make fun of the federal government for shutting down when there's a prediction of snow, but sometimes, they really do get snow. So it's a continental climate (in some ways). Well, we're going to go to a continental load of data because you're going to talk to us about an electronic searchâ€”we haven't talked about it all that much on Short Circuit in a whileâ€”involving someone's Apple account, which maybe is going to raise the eyebrows of quite a few listeners. So how does that work, and what's going on in this 9th Circuit case?

S Scott Regan 06:21

Sure. This is really a squall of data, as you might say in the snow metaphor. The case is United States v. Pelayo, and the case involves, as you noted, an iCloud account. Now, I should note ahead of time, I am one of the last Apple holdouts. I have no Apple products. I was actually probably the last person who still had a Windows phone.

A Anthony Sanders 06:42

Oh no, I'm with you. I'm right here.

S Scott Regan 06:44

So if I misspeak on anything iCloud related, someone's going to have to correct me. But, basically, what this involved was the question of whether the government violates the Fourth Amendment when it conducts a two-step search and seizure of an entire iCloud account. That two-step process, which is authorized by a 2009 statute, includes the initial seizure (authorized by a warrant describing the crimes alleged and the specific types of evidence the government could seize) and a secondary search of the data in that account to find the evidence sought. The specifics of the case is a fentanyl drug ring involving a number of individuals where they would be purchasing fentanyl from China over the internet, which apparently is a thing you can do (I'm not familiar), and the subsequent production of millions of fentanyl pillsâ€”which, again, was something I was not familiar with ... that's how people consume fentanyl, but apparently it is. The background is, following the discovery of this drug ring, police conducted a physical search ofâ€”the person I'm going to characterize as the kingpinâ€”his residence. When they're there, they seize drugs, guns, ammunition, as well as his phone. After this search, once they had gone through this person's phone, police obtained a further warrant for the Apple iCloud accounts of several of the other suspects identified from his phone contacts, which included the appellant defendant here, Pelayo. The warrant goes to the court. It goes eventually to Apple. Apple, after some back and forth, turned over all of Pelayo's iCloud dataâ€”the whole kit and caboodle. They didn't hold back anything notwithstanding what was requested and ...

A Anthony Sanders 08:30

Everything he's got on his phone basically.

S Scott Regan 08:32

Exactly. And I understand that iCloud data includes your phone contacts, your text messages, your emails, every app data that you could possibly have (especially if you're using multiple devices). It syncs your computer, your phone, everything. So they provide everything to the police, and they inform police that they were unable to segregate the data based on the warrant. They couldn't say like what was going to be relevant to this crime or what app was going to contain "x" evidence that they were seeking, so that's why they send everything. Police then spend months combing through the entirety of this account to find what they are after. After a few months, they find what they were after, which was text messages, photographs related to drug trafficking, as well as internet browsing data showing that Pelayo, the defendant here, had researched items related to the manufacturing of fentanyl pills.

A Anthony Sanders 09:25

Yeah, don't do that on your own, personal phone, you know. Go to a public library and use their computers or something.

S Scott Regan 09:31

Precisely. So we've all seen the movies, but apparently, Pelayo never did. That's what was produced in the case, but agents reviewed far more than that, obviously. They had the entire iCloud account, so, again, it took them months to comb through it all. They accessed all of his data, both from his phone and all his apps. Once this had finished up the search, they eventually bring the case. Pelayo gets convicted, but he had obviously raised a suppression issue under the Fourth Amendment. Now, the Fourth Amendment, as you well know, prescribes what are called general warrants, which had been an issue before the [American] Revolution is ... I'm sure Anthony could probably give greater context than I. But, effectively, the Fourth Amendment requires that not only must searches be reasonable, but warrants must be supported by what's called probable cause. And they must particularly describe the place to be searched and the persons or things to be seized. In essence, fishing expeditions and dragnets are no good. So the defendant here argued that no matter what the warrant specifiedâ€”again, it said a particular crime that he was suspected of and it said about 21 items of evidence that the police were after by seizing the entire iCloud account, which contains even more data than might be found on the device itselfâ€”police had transgressed the Fourth Amendment by conducting a general search under the guise of particularization, if you will. In other words, although the warrant specified the evidence sought, there was no protocol in place to enforce those limits. They got everything (the police), and they looked at everything. The fact that they had pulled out the key pieces, according to Pelayo, did not mean that there hadn't been a general warrant in place. Now, among other risks, seizing Cloud data allows law enforcement to access information they had no probable cause to seize, which, again, is a requirement of the Fourth Amendment. That risk is exacerbated when the officers (as they did here), who are the ones who asked for the information, are also the ones combing through all the data. So there is no limitation in place where, say, a tech group of the police were the ones looking at the data, pulling out what was relevant, and then filtering it on to the relevant ...

A Anthony Sanders 11:44

Is that when they've been talking about a team, I think, in the business?

S Scott Regan 11:48

Yeah, or in a law firm with a Chinese wall or something like that, where, you know, for conflict purposes or trying to actually make sure it's clean, you have separate teams. That didn't happen here, so the same officer who asked for the information via the warrant was the same one who actually looked at everything. Now, when it got to the court, the government analogize a search of an iCloud account to the search of a home wherein maybe the police know what they're looking for in a home, say drugs, but they might not know which room it's located in. They may have an inclination, but they don't know for sure. So they need to access the entirety of the home, like they needed to access the entirety of the iCloud account, to find that evidence. But, according to the defendant (as noted), law enforcement could have taken basic steps to avoid searching his entire account, like using certain extraction software (which they pointed out could have delineated the difference between what was relevant and irrelevant), or (as noted) using a separate team to look at the data, or even circumscribing it more by time period because, here, this iCloud account was created originally in 2011, I think,

and all the crimes were suspected of having occurred after 2016. So they looked at everything, even though there was a five-year period that they knew was not relevant. The police did absolutely nothing for that. In the end, the Court sided with the government, as you can probably presume from where we are right now. In so doing they relied on a precedent case that involved the search of all data available for a Facebook accountâ€”very, very different from an iCloud account. I'm sure many people have much personal information on a Facebook account they wouldn't want the police to see, but we're talking exponential amounts more via an iCloud account. Right, because Facebook is about your ... I mean, you may limit who can look at it, but it is for other people. It's not your own, private stuff. Precisely. And maybe Meta wants to imagine that Facebook is as integrated into our lives as Apple might be, but it's not, so we don't have to pretend like it is. So, basically, the 9th Circuit concluded that these types of two-step searches (like had been done in the Facebook case) are valid under the Fourth Amendment, so long as the authorizing warrant specifies the crime suspected and the types of evidence to be seized. According to the court, the search of an iCloud account is like the search of a home or maybe the search of computer files, specifically, where police can't really know ahead of time where the particular evidence might be found in rooms or in specific folders on the hard drive, nor can they really (on an iCloud) necessarily know which apps might have relevant digital evidence. The limit, according to the court, therefore, is not what data the government actually obtains, but how the warrant circumscribes the subsequent search of that data.

A Anthony Sanders 14:46

Right.

S Scott Regan 14:47

And, to the court, the warrant itself effectively protected this search because it had the words on there that they wanted to see: the particular crimes and the particular evidence. Importantly, though, Pelayo (the defendant) couldn't point to any data used against him based on the allegedly overbroad provisions of the warrant. That made the decision much easier for the court since the harm was closer to being hypothetical. There wasn't a new crime that was alleged against him based on information that the police had seen in his data. I think it would have been a much different case and, we can imagine, a very straightforward, future case where, for instance, police seize Cloud data searching for, say, evidence of drug trafficking (as here), but in so doing, they access data on an app and also find evidence of something likeâ€”I don't knowâ€”insider trading, and then we have a new case against this individual. That's going to be a harder case, I think. So I think the particular facts of this one made it easy for the court to simply give short shrift to the defendant's arguments and say, no harm, no foul. But we'll see how this plays out in the future.

A Anthony Sanders 16:00

Yeah, that, you knowâ€”it's interestingâ€”definitely is a harder case because you have that other, potential criminal prosecution. But it does kind of remind me of the whole irony that often happens in Fourth Amendment law, which is that we always say the Fourth Amendment is not there to protect the guilty, it's to protect the innocent from unreasonable searches and

seizures. And yet, all that innocent stuff that he had on his iCloud account is not going to get him in this ... is not going to raise eyebrows like this, say, the insider trading that you talked about. And yet, that's really what the Fourth Amendment is there to protect. But the court ... It's easier for the court because it is kind of "no harm, no foul," even though that's the innocent stuff that, you know, the Fourth Amendment is supposed to protect from the government's eyes. This is is a really interesting case in a lot of ways. I think one interesting thing about it is it's unpublished, and there's a few other things going on in it. But that, I think, just shows you how often this kind of situation comes up. And it's a good example of how this works and how these searches can factor into Fourth Amendment law. But you can see that police are doing this all the time: this kind of search and this kind of seizure of the data and, then, the literal search (as in a Google search) of that data. The metaphor ... it's so hard for us to wrap our heads around this because, of course, of the traditional way the Fourth Amendment was applied when there was no such thing as data. There were papers, but there wasn't, you know, electronic data when the Fourth Amendment was drafted, so it's always hard to have an analogy of this kind of situation. But, you know, one way I think about it is what if the police took every ... They had a warrant that said what they were supposed to do, but they took everything in your house: all of your filing cabinets, all your papers, but also all your stuff, stuff that is not in "plain view" if they just look around the house. And, then, they look through all of that (but in a way that maybe they don't see the particulars of everything) in order to get, you know, this evidence about fentanyl. It, the metaphor, really breaks down. It just isn't there, which is why the courts, I think, have gone with this strategy of saying, well, you can grab it all, and then you can do the search. And the search ... Whatever the searches turn up, you can look at that, police. You can't go beyond the searches. And yet, you know, you're going to see a lot of stuff that is not pertaining to the crime by doing that. And there's some problems with that, but you can kind of see some of the logic of it. I'm no expert on the searches of iClouds, but yeah, I could see, in a different case, how there would be a lot more tricky issues, as you said.

S Scott Regan 19:29

Yeah. I am also no expert on iClouds, I gather, neither is the court. If I can glean anything from the fact that this is unpublished and rather short, if I may, (it's only a few pages of analysis here because it's unpublished) it would definitely be beneficial to a lot of courts going forward if they had actually fleshed this out a bit more so that people know the parameters of what these two-step searches can entail. But I gather courts are a little sick of technological progress, which I can kind of understand, I have to say. Last night, it was thunderstorming here in D.C. I was debating whether to go see Oppenheimer or to stay in and watch a classic movie. And I found myself staying home to watch the classic movie, William Wyler's "The Big Country," which, as you can imagine, doesn't include any CGI. But I didn't feel like I had lost anything, so I also sometimes don't think I need technological progress. But the court here clearly just kind of threw up its hands and said, you knowâ€”Facebook account, iCloud accountâ€”it's all the same (which it's not, but I understand why they might be a little sick and tired of having to apply the Fourth Amendment to new technologies). And I think that's partly what we're seeing here: an unwillingness to engage with the particular nuances of the technology. So it certainly needs to be fleshed out more by, if not the 9th Circuit, a future court because, to your point about the metaphor, when you're spending months combing through an iCloud account, it's not unlike police, you know, posting up in your house for months just to look at literally everything that you might have. Well, it's both invasive in terms of what they're looking at and extensive in terms of what they're actually looking at.

A Anthony Sanders 21:08

I mean, months of searching sounds like you basically looked at everything (is my guess).

S Scott Regan 21:14

Yes. It's hard to imagine that there's a lot of filtering going on in terms of their reading.

A Anthony Sanders 21:20

It's not like they just typed in "fentanyl in China," and that was that.

S Scott Regan 21:25

Yes. That would have been (probably) a faster search, but I don't think that's what happened.

A Anthony Sanders 21:30

Well, a much faster search is the next one we're going to talk about, which was in the District of Columbia by some police there. But they ran into the old favorite that we've talked about on ... the case many times: the federal ban on felons in possession of firearms. Now, this is not a Second Amendment case in any way, but that is such a common way of having folks end up in federal custody and federal prison. And so that is what happened to the defendant here. The case is United States v. Gamble. And the facts are colorful, and the real ... The details of what happened really matter. So we'll get into those here. So it is an evening in D.C. in November. And Johnnie Gamble and some other people were hanging out outside an apartment building in D.C., apparently smoking marijuana, but that has really nothing to doâ€”given the changes, that are good changes in my view, that we've had in many places in the last few years about laws to do with marijuanaâ€”with the criminal side of this case. So they're hanging out, smoking pot. And the cops come by, and they stop. And so, of course, you know, everyone outside the building turns and looks at the cops. And one of them gets outâ€”one officer gets outâ€”and starts to walk towards these people, and one of them, Mr. Gamble, starts backing away from the officers and the group and raising his hands. A little bit of odd behavior for someone who, you know, is totally "innocent." So officer ... The officer notices this, and he says, "Just making sure there's no guns, that's it. Ain't got no gun on you, man?". And Mr. Gamble says, "No, I'm cool." And he stops moving away. And, then, the officer says, "Let me see your waistband." Now, at this point, Mr. Gamble kind of adjusts the waistband of his pants, and he has these kind of cargo pants basically that are quite bulky. Everything looks kind of bulky around his midsection. And so he adjusts his ... the waistband of his pants. But, then, the officer is a little suspicious, and he shines a flashlight because it's dark. And he says, "Lift up your shirt again." And he pulls up his shirt like the officer asked for. But, then, the officer starts walking towards him, and then he runs away really fast. And, apparently, he then threw a firearm in the bushes, and he's apprehended after (the court says) 50 seconds, so maybe ...

S Scott Regan 24:54

Very precise.

A Anthony Sanders 24:55

Yeah, not the fastest fellow. Also, the officer kind of indicated to another cop who was with him when he started moving towards him, so I think he knew the jig was up, but he did not get away. So he is then prosecuted, as I said, in federal court because he has a previous felony for felon in possession. Now, at the ... There's a suppression hearing to try to throw out this evidence because his lawyer argues that we have two, different seizures here. We have the first one when he says, "Let me see your waistband." And, then, he has a second one where he says, "Lift up your shirt." And at the suppression hearing, the officer said, when you said the second time ... So the first time, he just kind of looked bulky in his compression pants (is actually the type of pants he had) ... that the first time it looked like ... It just looked weirdâ€”I mean, the raising his hands looked weird from the get-go, I guess, but also, the moving his waistband around. But, then, the second timeâ€”when he said, "Lift up your shirt," againâ€”the officer said he saw a dark, in-color object in between the compression pants and the white T-shirt. And the object, he said, was inconsistent with a cell phone or male anatomy, so quite suspicious at that point that it looked like a firearm. So there's two, different, potential searches and seizures here or at least a seizure of some kind. We can get into whether they're a search in a minute. And the court saidâ€”the District Court saysâ€”that definitely this first one, "Let me see your waistband," was a command. But he doesn't ... the District Court ... So the district judge doesn't think that it was a seizure. The second one, the District Court says, was a seizure, but there was reasonable, articulable suspicion under the test that was applied to this kind of thing and, therefore, denied the suppression motion. So they then had a bench trial, which means a trial of no jury, and he's found guilty. And he appeals and says that the evidence should have been suppressed. So, the ... on appeal, the D.C. Circuit, the judges say ... Judge Srinivasan says that the firstâ€”so they look at both of these searches and/or seizuresâ€”one, the, "Let me see your waistband," was a seizure because the ... He did not, basically, feel free to leave when he was told, "Let me see your waistband." He could have just turned around and walked away, I guess. But kind of the fact that he didn't is evidence that he didn't feel free to leave, like a reasonable person that would not feel free to leave. So, therefore, it's a seizure. And, then, the government doesn't have a backup plan, which is kind of an interesting litigation strategy here. They didn't have a backup plan to say that, well, nevertheless, it was reasonable under the ... this test, Terry v. Ohio, that we've talked about many times (on whether you can do a stop and frisk). There was no frisk here, but there was a stop. And there wasn't a search, I think, because the officer is just looking. But, essentially, it's a search because he commands him to stop. So they saidâ€”the District Court saidâ€”this is a command, and if it's a command, it's probably a seizure too. And because the government doesn't make this other argument about "it's reasonable," they say, well, it forfeited that, and therefore, the evidence should have been suppressed. And that's kind of all there is to it. Now, the interesting thing is in the concurrences. So the author of the opinion, Judge Srinivasan, has his own concurrence where he says ... Yeah, which is a tad ...

S Scott Regan 24:55

Yeah, you don't see this one often.

A Anthony Sanders 24:57

Yeah. Occasionally, judges say, I have some more stuff I want to say, but you know, my colleagues maybe aren't totally into putting this in there. And so he says that, you know, a lot ... It's very important as to whether or not this command is a seizure. And he's responding to another concurrenceâ€”we'll get to in a momentâ€”by Judge Pan. So, actually, maybe I should talk about Judge Pan's concurrence before. So Judge Pan says, I joined the rest ... the opinion of the court, but if the government had argued that initial seizureâ€”so, "Let me see your waistband,"â€—if that was constitutional, I would have maybe said it was constitutional. He doesn't commit on this point, but he says, look, there's a few facts going on here. One is it's a high crime neighborhood, which I myself am greatly skeptical of because officers say that all the time to justify searches and seizures. He also says he had his hands in the airâ€—which, yeah, that looks a little suspicious, I get thatâ€—and that he had this, you know, bulkiness around his midsection. So under the Terry test, that could have been reasonable. And, then, the second one ... So Judge Pan then looks to the second deal where he said, "Lift up your shirt." At that point, he's seen all these other details, and therefore, that would absolutely have been reasonable as a Terry stop. And, of course, you know, then the fellow runs away. So Judge Srinivasan (in response) says, look, a lot depends on whether or not the person walked away. So when he just said, "Let me see your waistband," and the guy goes, yeah, I'm just going to leave. The test is whether a reasonable person would think they can leave, and he did ... And, in that case, he would have left, so it's not so much of a seizure. But the fact that he stayed means essentially it is, and so we have to treat it that way. I have to say, I think there's a bit of circular logic there. I mean, I very much think this was a seizure. But I don't think you can just say, you know, whether if he left, it would have been reasonable, if not, it's not, because that can't be the only reason. I think you need to, you know, step outside the situation and have a more objective test there. And Judge Srinivasan does look at some other details. But it's ... I think it's ... The interesting thing about this is it ... They're talking about whether it's a Terry stop, but there's no, you know, pat down. Usually, it's you stop someone on the street, and you do the pat down and find something that way. Here, there's no "search" because it's just the officer looking at the person, and it's whether or not the person stops or not. So I side ... I do side more with Judge Srinivasan here, but I think that maybe the reasoning doesn't quite work out right. Scott, would you have felt free to leave in this situation, maybe assuming you didn't stick up your hands in the air in the first place?

S Scott Regan 32:51

Yeah, the hands up thing is certainly ... It bespeaks his submission before there was even anything said, so I suppose there's that, but no, I would absolutely not have felt free to leave. What I thought was interesting, also in the opinion, is how much they focused on, effectively, the grammar of what was it? "Let me see your waistband," as opposed to a question such as, "Can I see your waistband?", which I don't ... I assume there was probably a body-worn camera recording of this, which the District Court probably saw to see that this was a command, as opposed to say, for instance, "Let me see your waistband," where there just is a kind of quiet question mark at the end. But they did seem to focus a lot on the fact that this was a statement and less a command to comply with the showing of the waistband, whereas if he had phrased it as a question, maybe it wouldn't have been a command. And therefore, he wouldn't have been seized, which I thought was interesting line drawing. It seems to be a very lawyerly way to look at this when we're talking about grammar and punctuation marks, if you will. But I agree with you that as soon as police are approaching me, and they're clearly suspicious of

somethingâ€”they don't have articulable suspicion, as I would agree with this case, no matter how high crime it might have beenâ€”I wouldn't have felt free to leave. So I think a seizure was affected here.

A Anthony Sanders 34:11

Yeah, I mean, I have to say, maybe I just haven't had enough dealings with police on the street as, apparently, this defendant because he's ... ... a convicted felon and probably has a lot more experience than you or me, fortunately or unfortunately. But if a police officer is coming up at me on the street, other than my legal training and reading a lot of Fourth Amendment cases, I think I or, you know, others I know would be not at all feeling free to leave if you have an ...

S Scott Regan 34:19

Lucky you. Certainly.

A Anthony Sanders 34:42

... officer in full uniform, you know, coming up to you at night, saying, "Let me see your waistband."

S Scott Regan 34:49

Yeah, I didn't also research this. I think this happened in 2020. I'm not sure when D.C. decriminalized marijuana, but it was probably sometime around there, if not, afterwards. Even if it was before, I can imagine feeling a little uncomfortable if I had been smoking outside in a group of people and get approached.

A Anthony Sanders 35:06

Yeah.

S Scott Regan 35:07

Even if it's legal, I think there's still some discomfort there.

A Anthony Sanders 35:10

Right. I mean, it is still illegal under federal law, and everyone knows ...

S Scott Regan 35:13

Exactly, yeah.

A Anthony Sanders 35:14

Yeah. Yeah, I just looked it up here. It was a few years agoâ€”a few years before 2020â€”that D.C. decriminalized pot, so at least in possession of whatever these folks obviously had. So it still is probablyâ€”you know, if you don't want the police to come up to youâ€”not the best thing to do outside your apartment building, I would gather.

S Scott Regan 35:40

Yes, I would agree with them. Even if I had a beer in the vestibule of my apartment building, I'd probably feel a little uncomfortable. But yeah.

A Anthony Sanders 35:49

Well, Scott, whether you're uncomfortable or not, I think you've had a very comfortable presentation and discussion on Short Circuit. So thank you for joining us, and we look forward to talking to you again sometime.

S Scott Regan 36:02

My pleasure. Thanks for having me, Anthony.

A Anthony Sanders 36:04

And thanks all of you for listening. And until the next time, I ask that all of you get engaged.