Short Circuit 308: Burns Night

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SPEAKERS

Brian Morris, Adelaide Dixon, John Ross, Anthony Sanders

J John Ross 00:24

In yon courts where justice seeks; a serpent coils, its shadows reek; qualified immunity, a cloak so wide; hides misdeeds in its murky tide. The lassies weep, their rights denied; as power's shield stands tall with pride; no recompense for the wrongs they bear; while the haggis of justice sobs in despair. Let fairness reign, let truth be known; banish the cloak that evil has sown; for in its absence, justice shall rise; and the lassies' tears turn to hopeful skies.

A Anthony Sanders 01:06

Hello, and welcome to 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 and hopefully, if editing goes well, releasing it on January 25, 2024. Why do I emphasize it is January 25? Because that has a lot to do with that out of nowhere poem that you heard to start the show. January 25 is the birthday of Scotland's favorite poet, Robert Burns. And many of you may not know this, for our predominantly American audience, but all across Scotland tonight and all across the Scottish diaspora and indeed just friends of Scotland, people get together in pubs, in homes, and wherever to recite the poetry and sing the songs of Robert Burns. Why do they do this? God knows. Something to do with Scotland and his connection with the rolling hills and the streets of Edinburgh and all the things that he wrote about way back in the 1780s and 1790s. It is a joyous occasion, if you've ever been to a Burns night or to a Burns supper where they eat haggis and drink whiskey and all that good stuff. And so we wanted to just bring a little bit of that joy to Short Circuit. Now, Robert Burns himself, I gotta admit, did not have a heck of a lot to do with the law or, you know, the American Constitution or anything like that. He was a little bit of a radical. He got in trouble with some things he said about the French Revolution at the time, actually. But because he doesn't have a lot of poems about the law, we needed to improvise a little bit. So that opening was read by our friend, John Ross, doing a pretty good accent, I think. And he was reading a poem that we asked ChatGPT 3.5 to write about the evils of qualified immunity but in the style of Robert Burns. So there you have it. If you ever wondered what that kind of poem might sound like, I think ChatGPT 3.5 did a pretty good job. Now, we're going to have a real show today, believe it or not. We're going to move on to a case from the 5th Circuit and a case from the 7th Circuit,

both of which we think have a bit of a Burns tie-in. And then we will close. So a preview for later in the show, we will close with a real Burns poem read by a real actress who is a friend of the show. So that's a little treat at the very end of this episode. But first, I am very happy to introduce our guest today. And it just so happens he knows a thing or two about poetry. Much more than I do. And that's IJ Attorney Brian Morris. So Brian, welcome back to Short Circuit.

B **Brian Morris** 04:18

Great to be here.

A **Anthony Sanders** 04:20

So, Brian, you are going to tell us about this case from the 5th Circuit that has a bit of a tie-in to Robert Burns. And you also maybe have something else to share.

B **Brian Morris** 04:34

Yeah, you know, I can sympathize with Burns. As listeners may remember, I'm the resident Kentuckian here at IJ. And my family were sharecroppers and tobacco farmers just a few short generations ago. We could also fill probably an entire episode debating scotch versus bourbon, which I will say for IJ listeners who are bourbon drinkers like myself and looking for a scotch, I would recommend (if I don't butcher the pronunciation) Glenmorangie, which is, I think, a great introduction to the scotch world for bourbon drinkers. But, I mean, as an IJer also, I can sympathize with, you know, Burns in his views against authority and his pre-romantic and liberalism ideas. But I have not read Burns since my undergrad days as an English major, which are getting further and further behind me. But it was fun this week going back through his poetry, and I remember there's this one poem I really love. It's A Man's A Man For A' That, which was from 1795, just a year before his death. And, you know, it talks about how a man is a man for being honest and not for his possessions or rank. So I figured I couldn't go through a Burns episode without trying my hand at a little poetry.

A **Anthony Sanders** 05:54

Okay. Lay it on us.

B **Brian Morris** 05:57

Not as good as an accent. I will skip the accent like John Ross. But so it goes: "What though on hamely fare we dine, wear hoddin grey, an' a that; gie fools their silks, and knaves their wine; a man's a man for a' that: for a' that, and a' that, their tinsel show, an' a' that; the honest man, tho' e'er sae poor, is king o' men for a' that." So I think, you know, the IJers and listeners of the show can agree too, we can agree with Burns' disdain for lords and dukes and wanting society to be based on, as Burns said, sense and worth.

A Anthony Sanders 06:37

That's lovely. That's lovely.

B Brian Morris 06:39

He did have those views though, I think, when he almost lost a job that he had because he enunciated those views. And then he came crawling back and denounced them all, but I think that was purely so he could keep his job. So that takes us, you know ... a good segue to the case out of the 5th Circuit. So this just came out last week, which is *Book People Inc. v. Wong*, which was a Judge Willett opinion he wrote for the unanimous panel. But this is the case that relates to the new Texas law that's called the Restricting Explicit and Adult-Designated Educational Resources Act, which perhaps intentionally is short for the READER Act, which requires book vendors who want to do business with Texas public schools to issue sexual content ratings for every book they've ever sold or will sell in the future.

A Anthony Sanders 07:38

Not just books they offer to schools, but any book they happen to sell themselves.

B Brian Morris 07:45

Yeah, and so each vendor has to review each book and then determine whether they think that book is sexually explicit or sexually relevant. And then each book gets a rating: sexually explicit, sexually relevant, or no rating. And then the vendors have to submit these ratings to the state, which posts the vendors' ratings on a website. And if the state disagrees with any of the ratings, then it tells the vendor to change its rating. And school districts can't purchase any sexually explicit books. And if parents or if any student wants to check out a sexually relevant book, they have to have parental consent beforehand.

A Anthony Sanders 08:26

And what does sexually relevant mean?

B Brian Morris 08:30

That's a great question. There's not a whole lot of direction in making these determinations. It's just kind of ... There's these factors that the vendors have to weigh. They have to determine whether something is graphic or whether a reasonable person would find the book "intentionally panders to, titillates, or shocks the reader." And then the back end is if a vendor is noncompliant, even on one rating for one book, schools are prohibited from buying for them. So, you know, I mean, as a side note, I think it's easy to say which side of the law Burns would fall on on this.

A Anthony Sanders 09:14

I wonder what his poetry would be saying.

B Brian Morris 09:17

I mean, one of the toasts during Burns night is "for the lassies." So, I mean, if I was a book vendor in Texas, you might have to issue a sexual warning for a lot of Burns' work. You know, I was going through some of the poems, and there's one ... It's one of his poems, Green Grow the Rashes, which has lines like, "The sweetest hours that ever I spend are spent among the lasses, O," and "For you say douce you sneer at this; you're not but senseless asses, O. The wisest man the world ever saw, he dearly loved the lasses, O." So I'm not sure what the Texas legislators would think about a lot of Burns' work or, you know, how many kids he had with how many women. But, thinking back, I was like, you know, this law would apply to a lot of 18th and 19th century poets and authors. You know, I think back to reading Robert Browning and Oscar Wilde, and, you know, Browning had more than one famous poem about sex, love, and murder. And all of these authors would have trouble under Texas' new law, which came up during the briefing and oral argument where Texas kind of admitted this. They said under the READER Act, a book vendor would very likely have to add sexual ratings to literary classics like Romeo and Juliet, To Kill a Mockingbird, and even Lonesome Dove. So, perhaps unsurprisingly, there was a First Amendment challenge to this and its restrictions. So there was a group of plaintiffs, but the main ones are two Texas bookstores and book vendors. And as any public interest attorney knows, Texas started with a barrage of jurisdictional arguments to try and avoid the merits. So Texas made arguments that there was no standing, that this wasn't right because there were still kind of trying to figure out enforcement mechanisms. And the 5th Circuit rejected all of these. For standing, as listeners may remember, there's the three classic requirements: an injury in fact, that's fairly traceable to the defendant, and that is redressable or able to be fixed by the court, assuming they win. So here, there's definitely an injury, the 5th Circuit said. The law forbids the plaintiffs from selling books to the public schools unless they comply with the rating system, and one of the bookstores was explaining that for them, 20% of their business is with public schools. So if they don't comply, they instantly lose 20% of their business across the board. But if they did comply, it was estimating costs between $200 and $1,000 per book to review them and rate. So, I mean, that company was saying all told, it would cost them hundreds of millions of dollars to comply, and their annual sales is a million. So that's a pretty legit injury. And, I mean, in the briefing, it gets into the weeds a little bit more. But the largest ... I think they said the largest six public schools in Texas have over 6 million books in their collections. And so it would be astronomical to think how much it would cost for vendors to review and rate every single one of these books.

A Anthony Sanders 12:35

It's pretty insane. To think of it, you say well, hey employee, go read the library and tell me what's in there.

B Brian Morris 12:41

Yeah, yeah. And if you get it wrong, you're in noncompliance with the state, and you can't sell any books to the schools. So I think the the traceability and redressability elements are a little

easier. The injury relates directly to the state's enforcement of the law. And if the court enjoins the state from enforcing it, it would eliminate this catch-22 that all these book vendors find themselves in. So there's also, we don't have to talk about it much, but there was a rightness challenge and, you know, an immunity ex parte young challenge, and the 5th Circuit kind of disposed of those pretty quickly. So it finally gets to the merits, seemingly more than halfway through the opinion. But the bookstores argued that the rating system was compelled speech. So under the First Amendment, there's kind of two sides to the coin. You have the right to speak freely, and you also have the right to refrain from speaking at all. So it reminds me of the *303 Creative* Supreme Court case from last term, which that was a website designer who under Colorado law would have been compelled to design a website she disagreed with. So Justice Gorsuch wrote for the majority and talked about kind of how creative professionals like artists and writers shouldn't be forced to choose between producing speech they disagree with or remaining silent or speaking their minds and getting punished for doing so. And so, here, that's pretty much what's happening. Texas is forcing book vendors to either stay silent and lose out on a massive part of their business or be forced to produce speech, which are the ratings that they disagree with. So the 5th Circuit, I like how they put it, they said, "'speak as the State demands or suffer the consequences." And that's compelled speech. So, in response, Texas raised essentially three defenses or exceptions to the compelled speech doctrine. They said, first, well, this is actually government speech. Government's doing the talking, not the vendors. And when government is the speaker, then the free speech clause just doesn't apply. But, here, Texas isn't doing the speaking, right? The Act requires the book vendors to rate the materials themselves. And that's very different than, the 5th Circuit explains, you know, a government-created warning label that you see on tobacco or alcohol, which, I mean, here, Texas, I think, could do that. If Texas wanted to review all the books and tell vendors, hey, slap this warning label on, that would be a different analysis. But that's not what's happening here. Here, the book vendors are required to go into this fact-intensive, costly analysis and come up with their own ratings. And then there's an argument that, well, the government puts these ratings on their website, so it's actually government speech. But on the website itself, it connects each rating with the actual vendor. And it's basically just an unedited list of ratings that was created by the book vendors. So, at the end of the day, it is the vendors' compelled speech, not the speech of Texas. And then the other exceptions were Texas raised what's called the government operations exception, which says, well, you know, the government can require you to speak when it's to preserve an orderly society or to disclose basic information. So think of it ... Let's say there's an IRS disclosure form or the demographic information that you have to give in the Census or the sex offender registry has been upheld under this exception. These are all some forms of compelled speech where the government is requiring you to disclose something, but it's limited to basic demographic information or factual information. That doesn't apply to the ratings, the 5th Circuit explained, which require the vendors to undertake this deep, contextual analysis and weighing factors, and it's necessarily subjective speech that they're engaging in. So the government, Texas, similarly raised what's called the commercial speech exception. And that is, you know, states can compel speech in commercial advertising by requiring factual disclosures. And this is kind of along the lines of ... You can think of nutrition labels. That's requiring the company to engage in some form of speech. But the 5th Circuit explained that only applies again in purely factual and uncontroversial speech, you know, such as telling a consumer, hey, you're buying this product, and it has x amounts of sugar in it or so much protein in it, right? Those are factual determinations, factual speech, that relates to consumers that the government can compel speech. But, again, that doesn't apply here because the Texas law requires the vendors to express a view or kind of passing judgment on something, right? That's very different than just a factual statement. And that was the theme at oral argument, we talked about this a little bit earlier, that the trouble with this law is figuring out like what is sexually explicit? You know, it reminds me a little bit of Justice Potter

Stewart's famous quote about pornography where he goes, yeah, I know it when I see it. It's kind of this subjective well, I'm not quite sure what it is, but I think I'll know it if I see it or if I read it.

A Anthony Sanders 18:23

And he later disavowed that view too because, of course, that's not even workable. But, here, it's not ... I mean, I think everyone admits it's not "you know it when you see it" because people will have a different take on a particular book.

B Brian Morris 18:34

Exactly. And there's different communities in different parts of Texas. What might be explicit in Dallas may be very different than a small, you know, farming community. So, in the end, you know, Texas is not requiring vendors to make these simple, factual statements about books or a product. It wants to force them to engage in these pretty tough, I think, judgment calls on what may or may not be not only just sexually explicit but sexually relevant, which are very, I think, kind of tough calls to make. So, in the end, none of these exceptions apply. So the 5th Circuit said the READER law does compel the speech of the vendors and that they would be harmed without the injunction in place stopping enforcement of the law. So the 5th Circuit affirmed the district court, and this was perhaps a surprising but nice win for the First Amendment in the 5th Circuit.

A Anthony Sanders 19:37

Yeah, and I guess it's surprising in the sense that we see all sorts of stuff, good and bad, coming out the 5th Circuit these days. And we, of course, have more than our fair share of opinions on the show. The one thing I didn't really see the court getting into, and I did read the opinion but not as closely as you did, is the fact that these companies are choosing to enter into business with the government. And it may be just that the state didn't lean on this all that much, and I think it probably would be a loser of an argument, but play devil's advocate, there's something be said that you don't have to do business with us. You can sell books in the private market all you want and rate them or not rate them however you want, but if you enter into business with the school district or whoever it is, then you need to do this stuff with your books. And so what's the big deal? Why is it a different standard under that relationship than it would be if it was, you know, true censorship?

B Brian Morris 20:45

Yeah, and I think, I mean, that kind of went into some of the standing analysis as well. The reality is that with some of these companies, just a huge portion of their business is with these school districts. And, you know, the law even requires, you know ... Let's say, hypothetically, a book vendor is like, hey, I'm done. There's no way that I will comply with this. I'm not going to sell. That doesn't take them outside the purview of the law, right? If they've sold anything in the past, and those books are sitting on the shelf, they still have to go back and rate those.

A Anthony Sanders 21:18

Wait, so it was ... I didn't catch that. That is retroactive?

B Brian Morris 21:22

Yeah. It's books they have sold or will sell. So if you've sold books to Texas, even if you're like, you know, I'm out, you still have to provide ratings for books that you've sold.

A Anthony Sanders 21:34

Why would they include that in the law?

B Brian Morris 21:37

Well, you know, because they want to cover these books, I guess, that are sitting on the shelves in Texas schools for the ratings.

A Anthony Sanders 21:44

Or because they wanted publicity from passing this law. They knew that would be struck down, perhaps, but that's a different story.

B Brian Morris 21:50

Yeah. And it goes back to, you know, one of the themes at oral argument was that the book vendors were saying, hey, we're not trying to say the state can't make decisions about curriculum or the books that children read in school or to protect kids from obscene material, but if the state wants to do that, the state needs to do that. It shouldn't be compelling these third parties and these companies from engaging in speech that they don't want to engage in.

A Anthony Sanders 22:20

I see. I mean, this comes up, that kind of argument by the government of well, you can opt in, you know, you don't have to. It comes up in all kinds of circumstances. Like we at IJ will encounter in our occupational licensing cases, the state will say, well, you don't have to enter into this occupation. You could go do something else, but if you do choose to be, you know, whatever it may be: psychiatrist or, you know, a horse masseuse (all the occupations we've litigated). Then you have to do all this stuff that maybe doesn't make any sense. And so it's even ... I think the key there is that courts sometimes forget, and I'm glad the court here remembered, that just because you're doing business with the government, doesn't mean you're in a Constitution free zone. It still applies in all kinds of ways.

B Brian Morris 23:13

Exactly.

A Anthony Sanders 23:14

So where does the case go from here? This was a preliminary injunction, but it seems that unless this gets reversed, there's not a lot of future to this law.

B Brian Morris 23:24

I wouldn't think so. Yeah, I would imagine it goes back down, and the district court can turn the preliminary injunction into a permanent injunction. And, you know, there may be more factual findings related to different elements of the claims, but I would imagine, unless something surprising happens, that this law is not going anywhere.

A Anthony Sanders 23:48

Well, the best laid plans of mice and men and Texas legislators. So we will now turn to a case ... I think that was very closely tied to the spirit of Burns' case. I think you did a great job there, Brian, bringing it out. This one's a little bit more tenuous, but it's a fun little case. It's actually kind of a warning to litigators out there, our lawyer listeners, as to what not to do when you're litigating, especially in a foreign jurisdiction where you're not licensed. Basically, the tie-in to Burns is you have to know when it's time to sing Auld Lang Syne: when you're done, the case is over, the year is over, you say goodbye to your friends, you walk away. As we said a few weeks ago in a different context, you got to know when to hold them; you got to know when to fold them. This lawyer really didn't know when to fold them. And we could talk about, you know, whether he had a point or not too. So the case is ... The underlying matter is called *Bailey v. Worthington Cylinder Corporation*. And it's actually part of a series of lawsuits that are pretty mundane, pretty run-of- the-mill products liability stuff that usually, you know, wouldn't make for a huge splash on Short Circuit. Essentially, there is a manufacturer of gas canisters for, I think, it's blow torches, and the claim is they've been malfunctioning and injuring people. So there are, it's not just this case, this case was in the Northern District of Illinois in Chicago originally, but there were other cases around the country. And so a California attorney was involved in this litigation. At one point, I think, at least part of it, tried to go to a multi-district litigation panel, but it got sent back to Chicago for whatever reason. And so he's from California; he's involved in these cases. And so he has a client who is suing the company in the Northern District of Illinois. It seems like the venue is fine and all that, but he is not licensed in the Northern District of Illinois. Non-lawyer listeners, a little bit of background, it usually is pretty easy to become a member of a federal district court. State court is different, but as long as you're a member of a state bar, so California, Virginia, New York, wherever, you can then pretty easily become a member of most federal district courts, including what I actually think I'm still a member of, the Northern District of Illinois from my Chicago days. So instead of doing that though, probably because he really did just have this one case in mind, he's pro hac, so pro hac vice, the Latin term we use to mean a lawyer who's just appearing for one case in a jurisdiction. Now, to do that, you have to say where you're licensed and what your record is, essentially, in your home communities where you are licensed, this being California for this

guy. So you have to say if you were ever reprimanded by the bar. That doesn't mean you won't be able to waive in necessarily, but you know, it raises an eyebrow. It's kind of like a criminal background check. And so he says, I'm fine, everything's fine back in California. So he gets his pro hac, and then they get into litigation. And from what I can tell, I think there's a lot going on here that's not in the opinion or the underlying opinion I didn't read. There's a lot of opinions, but there was one specifically at the district court that I looked over. I think this was very contentious litigation, and at one point, the defense counsel moved to remove his pro hac status to kick him out of the case, which is kind of a big deal. And they had various arguments, and one was that he didn't disclose something that had happened back home in California. Now, I don't know the ins and the outs of this. I looked at it very quickly, and from what I could tell, it was a kind of a technical thing. But this is a word of warning to litigators out there, and this comes up at IJ too, so everyone should take note of this. In our age of e-filing where we have you sign something ... In the old days, you would sign it with a pen, you would mail it to the court, and mail copies to opposing counsel. These days, so much is e-filing where you scan your signature, or you may even just type the signature in and that's the electronic signature. There is often still a requirement that you sign a copy and then retain the "wet signature" with the actual pen and actual ink. And can the court enforce this? Well, usually not. But the court can technically come to you like two years later and say, oh, do you have that wet signature on file? It hardly ever happens. I don't know if I've ever heard of it otherwise happening, but for whatever reason, this was a few years ago now, but this was the same kind of rule. And this guy got found out for not keeping his wet signature. So we're warning litigators out there. Ah, yeah, that doesn't matter. We'll just toss it in the trash and file the scanned copy. Keep your wet signatures for God knows what might happen. So he gets found out for this, and he appeals it in California. And the court kind of admonished him, but he thinks it wasn't really a bar discipline. But the court here in Illinois says yeah, I think that was bar discipline. But for whatever reason, the magistrate judge in the case does not remove his pro hac status. They're like, no, you know, maybe he's a little annoying, but we're not going to remove it right now. But then he makes a mistake because they appealed, the defense counsel actually appeal that from the magistrate judge to the district judge just on removing his pro hac. So this isn't like a final judgment or preliminary injunction or anything like that. This is just removing this guy's pro hac status. They appeal to the district judge. I don't think I've ever heard of any of this before. And they say that not only did he do this, or whatever else they were annoyed at, but he had been asking the magistrate judge to recuse himself because he used to work for a firm that's involved in another matter that he was involved with in Illinois. I think it's kind of the same set of cases, and he should have recused himself. Now, he used to work at this firm, this big firm, that everyone knows around the country, including in Chicago: Holland and Knight. So he worked at Holland and Knight, he left that, became a magistrate judge, and apparently, some lawyers from Holland and Knight represented one of these cases before him. But he said, you know, I left the firm before they retained counsel, so there's not a ... I mean, sure, I used to work alongside these guys, but that's not a conflict. The ethical rules show that it's not a conflict. And you can make an argument as to whether it should be a conflict or not, but it's not a conflict under rules. So this really ticks off the district court judge who says all right. Your complaint about the magistrate judge, that's way out of bounds. You also have this other stuff. I disagree, so I actually am going to throw you off the case. So he's removed pro hac, he appeals that, but the thing is, the case is still going, right? So you can only appeal a case while it's still going in the trial court for certain reasons. One is what Brian just talked about, the preliminary injunction; that's something you can appeal. There's not a lot of other exceptions. Another one is, if you lose on a qualified immunity motion, and you're an officer, then you can do that, unfortunately. But you can't for this pro hac thing because, I mean, after all, you're the lawyer, not the actual party. So he's told he can't do that, and then they get later in the case. The case settles. I think the guy was, his client was, representing himself pro se for a while, but anyway,

the case settles. The case is over in that part of the case and in that district, his client's case is done. Nevertheless, he appeals to the 7th Circuit, and so that's where we get to the actual opinion that came out earlier this week. And he says, okay, I get the case is over, so you might think this is all moot, but my reputation has been damaged by my pro hac status being taken away from me. And I demand that you tell the district court judge that he was wrong in order to rehabilitate myself. And the court goes through some factors about mootness and the case being over and all that. Usually, we talk about this on the show when it has to do with, you know, an ongoing constitutional violation or constitutional violation of the past, that kind of thing. Here, it's whether he should have been removed from this case or not. And the court says, you know, sorry, the case is over. Maybe you didn't like what happened to you in the past, but courts malign all kinds of people in their opinions, not just attorneys. And you can't just have everyone suing about that. And so this is the end of the road. Let's sing Auld Lang Syne, and you can go back to California. They do say though that like if there was a really crazy, arbitrary result in district court where someone lost their pro hac, and they really thought it was unfair and the client really needed them, they could essentially ask for a writ of mandamus at the court of appeals. That's kind of your break glass in emergency writ that we have talked about in the show before, and so that could be an option, but they explicitly say that his situation would not qualify. They say, we add, however, that this particular order is not one for which we would find a writ of mandamus appropriate. So he's out of luck. This is now in the Federal Reporter, and he has to go back and litigate in California.

B Brian Morris 34:37

You know, I love Auld Lang Syne. It always reminds me ... One of my favorite renditions is at the end of It's a Wonderful Life, and it's not quite the magical ending for this guy, but I mean, man, this guy just doesn't know when to quit. You know, if I understand the timing correctly, so the magistrate denies the motion at first, and he thinks, you know, I'm gonna go after this magistrate and talk some more, you know, crap about him. So then, I mean, it gets worse for him. And then the district judge is like, no. No, you're out of here, which is just wild. And it reminds me of one of our cases we have here at IJ. It's the Upsolve case, which is currently pending in front of the 2nd Circuit, which is we're challenging part of New York's unauthorized practice of law, those restrictions, under the First Amendment. And there's this poor, disbarred attorney who thinks if we win, then all law licenses are unconstitutional, and he gets to practice again, right? And the court just denied, just in the 2nd Circuit alone, his third motion to intervene in the case. And there was even more in the district court, so I mean, if nothing else, you gotta respect these guys. They have no quit in them.

A Anthony Sanders 35:59

Yeah. Maybe the two go together, the two impulses, a little bit.

B Brian Morris 36:04

Yeah. It's also just ... It's bizarre too. It's just ... Why? You know, it's not like the court ... It's not like he's in California, and they revoked his bar status, right? This is like a one-off pro hac admission in Illinois, which, I mean, I guess in some sense it could affect future pro hac admissions elsewhere, but it seems like quite the fight to pick.

A Anthony Sanders 36:26

Yeah. And I have to say, I don't have a lot of sympathy for this guy, but in the abstract, I do think it's a little troubling that you might not have a remedy here. And so it's good that they have this thing about getting a writ of mandamus. But, you know, if the court maligns you or maybe it rises to the level of libel or defamation, there seems like maybe there should be some kind of remedy. Now, of course, you're not gonna be able to sue the judge. There's the absolute immunity that listeners of Bound by Oath know all about. And in suing the judge, if you don't like what the judge does ... So, usually, your only avenue for some kind of relief is to appeal, but I think in this set of facts, it was time to ring in the new year. Well, the last case that I'm going to talk about very briefly, just in the spirit of it being January 25, is a case that a few of you may remember from law school. So this is an old case, but it is a case where Robert Burns comes up. So, for fun, I looked at when Burns has been cited in the federal and state courts, in American federal and state courts. And, you know, for any author, any famous author, judges can't help themselves to quote them from time to time, and maybe more clerks when they're drafting the opinions can't help themselves. I definitely was guilty of that when I was a clerk. So, you know, if you search Shakespeare in the Federal Reporter, you'll find all kinds of references, you know, where judges just think they'll do a turn of phrase or whatever. And we had an episode a couple years ago about judges just getting way too into pop culture references and referencing pop culture. So this is kind of a more erudite version of that, but it definitely happens. There's all kinds of, you know, cites to Dickens or to the fellows you mentioned or Wordsworth or, you know, whoever it may be. Well, I said, who cited Burns? Well, there wasn't as much as I would have expected, but almost entirely, they are to the poem To a Mouse and specifically, the line "the best laid schemes of mice and men" because there's so many of these cases, right? You say, okay, so this was set up, and then the best laid plans of mice when everything went wrong, right? Everyone ran the court and sued each other. That's the story so many times. So it was no different in this case, but this case is different actually in that it actually did concern a mouse. So we'll put a link in the show notes. Again, I'm not going to go into it. It's a very short case. I could have read it probably to you on the show in just a couple minutes. But someone bought a bottle of Coke in Mississippi, and they opened it up. They had a few swallows, until they realized there was a decomposing mouse in the bottle of Coke. So they sued the bottling company. They bought it from a store, but the store got it from this distributor who got it from the bottling company. And, anyway, there's quotes to the poem that you guys will hear in a little bit (To a Mouse). And I think the key line is the bottling company says, we have this amazing system, clean system, where we ensure that our product is safe. And this guy actually got sick from drinking this Coke, unsurprisingly, and so there's no way that the mouse could have gotten in there. And so the court lays that out, and he goes, nevertheless, the little creature was in the bottle. So what does that mean? Company's liable. So a little bit of products liability law for you that, Brian, you said you might have read this like in Torts or something?

B Brian Morris 40:39

I remember reading this in Torts and thinking, you know, part of me was interested to see a modern day camera to figure out how the mouse got into the bottle, but I love the line right before they quote Burns where it's, "Suffice it to say he did not get joy from the anticipated refreshing drink."

A Anthony Sanders 41:02

Yeah, it's going to make you think twice every time you open a bottle from now on. You know, you should inspect your bottles. So, in any case, this is one of the most beloved of Burns' poems. I think because it doesn't get into controversial stuff like we were talking about earlier or politics, but it is a little bit of an environmental tinge to it. So the poem, the full title is To a Mouse, On Turning Her Up in Her Nest with the Plough. And we have a special treat. So we have an up and coming young actress in the Twin Cities area, her name is Adelaide Dixon or Addy Dixon, reading the poem to you. She has been in many productions, many theater productions. I will disclose she is also a friend of our family. But she's a great actress, and she jumped at the opportunity to read this poem to all of you, so we will close with To a Mouse. First, I want to say the next couple of weeks we have some great non-IJ guests coming. I think you will enjoy both of the shows that we have lined up with these special guests, so look forward to that. Raise a glass to justice, to liberty, to Robert Burns, to Scotland, whatever you want of your favourite tipple tonight; it's Burns night. And also, I want all of you to get engaged.

A Adelaide Dixon 42:41

"Wee, sleekit, cow'rin, tim'rous beastie, o, what a panic's in thy breastie! Thou need na start awa sae hasty, wi' bickering brattle! I wad be laith to rin an' chase thee, wi' murd'ring pattle! I'm truly sorry man's dominion, has broken nature's social union, an' justifies that ill opinion, which makes thee startle at me, thy poor, earth-born companion, an' fellow-mortal! I doubt na, whiles, but thou may thieve; what then? Poor beastie, thou maun live! A daimen icker in a thrave 's a sma' request; I'll get a blessin wi' the lave, an' never miss't! Thy wee bit housie, too, in ruin! It's silly wa's the win's are strewin! An' naething, now, to big a new ane, o' foggage green! An' bleak December's winds ensuin, baith snell an' keen! Thou saw the fields laid bare an' waste, an' weary winter comin fast, an' cozie here, beneath the blast, thou thought to dwell-till crash! The cruel coulter past out thro' thy cell. That wee bit heap o' leaves an' stibble, has cost thee mony a weary nibble! Now thou's turn'd out, for a' thy trouble, but house or hald, to thole the winter's sleety dribble, an' cranreuch cauld! But, Mousie, thou art no thy lane, in proving foresight may be vain; the best-laid schemes o' mice an 'men gang aft agley, an'lea'e us nought but grief an' pain, for promis'd joy! Still thou art blest, compar'd wi' me the present only toucheth thee: But, Och! I backward cast my e'e. On prospects drear! An' forward, tho' I canna see, I guess an' fear!"