

Episode 45 David Feige

Hello and welcome to Episode 45 and the decarceration nation podcast about radically reimagining America's criminal justice system. I'm Josh Hoe, among other things, I'm formerly incarcerated, a freelance [writer](#), a criminal justice format, good and the author of the book *Writing Your Own Best Story: Addiction and Living Hope*. Okay, we'll get to my interview with David Feige in just a few minutes, but first the news

I don't have that much today. Later this week, I'll be speaking at the University of Michigan Carceral State Project's Symposium on "Control and the Carceral State.: This is happening on Wednesday. So if you live in the area, hopefully I will see you at the Hatcher graduate library in Ann Arbor. The event starts at 5:30pm.

In addition, I'm one of the organizers of the day of empathy event in Michigan this year, which will be held at the central United Methodist Church in Lansing. The day of empathy on March 5 is a national day of action to generate empathy on a massive scale for those directly impacted by the criminal justice system. This is the third annual day of empathy. I was a participant in your one speaker in year two and an organizer in your three. I guess that's progress. We have some great speakers and legislative meeting setup throughout the day. So we'd love to see you on March 5 in Lansing. If you don't live in Michigan, there'll be day of empathy events all over the country. They're sponsored by the organization [cut 50](#). To find out more visit [day of empathy.org](#) all one word day of empathy.org.

Finally, I'll be a guest on the registry matters podcast this week. So make sure that you check that out as well. Okay, now let's get to my interview with David Feige.

David Feige is a lawyer legal commentator TV writer TV producer and documentarian he was the co founder of the Bronx freedom fund co creator of the TNT show *Raising the Bar*. The author of the book *Indefensible: One Lawyer's Journey into the Inferno of American Justice* and director of the award winning Documentary Feature *Untouchable* which not coincidentally, recently got a distribution deal and now can be found on most streaming services. Welcome to the decarceration nation podcast. David

I like to I like to start out asking people to flush out their bios, can you share the story of how you ended up choosing the law and how you ended up as an attorney at the Bronx defenders?

Sure. Um, I you know, I sort of fell into being a public defender all the way back in college when I interned as an investigator Public Defender Services DC and it just really suited me and you know I wanted to do something that was interesting and engaging and I found

really found that works. Sort of them. You know, it was amazing. And it really opened my eyes also to a kind of injustice that I think growing up in Wisconsin I had been dimly aware of, but not deeply exposed to, and that was a very, very formative experience. And so by the time I think I was in my second year of college, I pretty much decided I want to be a public defender and, you know, the summer that's what I went ahead and did

And what in particular, is there anything you remember from that experience?

I mean, look, I didn't put in years I loved it. It was when I was the crowd to for the Bronx. The Bronx defenders, I think I had probably the best job that is anywhere it was terrific. It was exciting and righteous and fun and a great outlet for you know, whatever pent up aggression you happen to you happen to have and you could direct it On behalf of other people in ways that were productive and great, and yeah, I mean, it was, it was wonderful. You know, when you're a public defender, you really are giving voice to the voiceless, you really are sort of the last line of defense between freedom and incarceration. And that's a great place to start. That's what I've always been proud of proud of.

At some point during that period, you co founded the Bronx freedom Fund, which I think was one of the first bail funds can you talk a bit about how that project started?

Well, it was actually um, yeah, like many things was just born out of frustration, you know, one one day in coming home after arrangements one night where Judge just set up a \$250 bail on some woman who who couldn't pay it and was bereft and you know, was it was that kind of outrage that isn't was not just your That was one of those things where it made made you want to reach into your pocket just for just go to the ATM and be like, Look, I will pay this is ridiculous. And of course the time for canons of ethics, you know, don't let you as a public defender or your clients fail. And I went home and I spoke to my my now wife was like, nonsense, you know, why don't we just why don't we just start it really could have a charity that could do this. It could like we could just have and then we could refer cases to ourselves, but it would be a charitable organization. What do we do with that? And that was sort of the germ of the idea. And, you know, I'm great at waving my hands around. I'm really bad at actually making anything happened. My wife is incredibly is like a serial social entrepreneur. She's the one who actually founded the Bronx defenders. She made the mistake of making me the first person she hired. And he actually managed to go out and find and find funding and work with me sort of put together an actual, a real live program. And over the course of a decade, we built that, you know, I became chair of the board, and she served on the board as well. And we built that into the Bronx Freedom Fund, which currently employs, you know, more than half a dozen people full time and last year bailed out over 1000 people in the proxy.

Sorry, are you excited by how that's grown across the country? The idea of bail funds?

Well, that's all well, it's not just the idea of cell phones. It's bad on to her. You know, Robin basically stepped down from the Bronx defenders has devoted herself almost entirely full time to a program called the veil project which is really this this The National expansion of what we piloted in the Bronx and and she that has been amazing they've opened nine sites in their first year are in the process of opening you know couple dozen dozen or more couple dozen more with some really ambitious goals and that has been wonderful to watch some participants.

So how did you move from being a public defender to an author, writer and producer?

Randomly? Luckily, you know, with far less intentionality than that kind of transition probably deserved the triggers, I wind up writing a book indefensible, which you know, get garnered some interest from the Hollywood world when it came out. had a bunch of meetings, I wound up sending it to the one person in Hollywood that I thought really, you know, would not just respond to it, but who who had who had created public defender characters that were great. And that was Steven Bochco and to my amazement, as I was, sitting in my 380 square foot studio apartment in New York City, which is where I lived for 20 years, phone rang, and somebody said, you know, David, oh, please hold for Steven possible and he's this legendary writer he got on the phone. "I read your book." And just by the way, there's no show here that I wanted to put I understand why you say to me, I wanted to, you know, I wanted to call you and just tell you how much I enjoyed it and we got this rollicking conversation. He basically said, look, I think you're smart kid. Obviously, you can write You know what? Let's stay in touch. And that was fantastic. Anyhow short version is I wrote him an unbelievably long email which just said, You're Stephen. Here's why I think you're wrong. Here's why a show about public defenders is you know exactly what the world needs and I sent it to him and he called me back and laughing and basically said, Listen, you need to change my mind. But I love your enthusiasm. And how about a show they sort of rough out a show that looked at public as a group of friends, some of them were public defenders, some of them are prosecutors want to judge that idea became the basis for a show that was really sort of based on the book called "Raising The Bar" and to my amazement, you know, that show wound up on on on the air for two seasons, and I wound up taking a leap from being a law professor to go out and write and produce.. Just took me to school. And I got a key year private tutorial from, you know, one of the most successful writer producers in Hollywood. So I think all of that boils down to how did I do it? I just got really lucky.

I think that's why a lot of things work out, believe it or not. When I told people I was going to be interviewing you, many people asked me about "Raising The Bar."

Yeah?

So it still has the following.

Love that. Yeah, look, it was very much I look back on it. And there's bits of it that I really like. And I think it was in many ways a show that was out of time. I think it was an idea that at the time, believe it or not, seemed really radical, like nobody had ever really done a public defender show now the defense and justice and Innocence Project and all that stuff are the fodder of Hollywood but you know, nine, eight or nine years ago you couldn't find that And as a consequence the exigencies of storytelling I think hemmed in a little bit it wasn't ultimately perhaps to show that I that that same i really i love it their episodes are really love the experience couldn't have been better working with Stephen was absolutely you know phenomenal but I do think that it was the you know looking back on the show it wasn't it was a show out of time so but still great day and you know gave me a foothold in a an entirely different industry and apparently world

So you've got that going and you've had all this all these things happen in your life and then you decide somewhere around there to direct a documentary about people on sex offender registries and people fighting for or against stringent registration How did you get there?

Yeah, You know why not being glib, this look, this was all born out of being a public defender. This was born out of watching years of years and years, you know, as the laws that, you know, that applied to my clients went from strict to severe to draconian to ridiculous, you know, as through the birth of registries, and making them retroactive. And, you know, I was alive to all of those issues and awareness and because the work that I had done the once I sort of moved out to Hollywood and, you know, had written and produced for a couple years I had more tools at my disposal in terms of being able to tell stories and you know, think about actually tackling the subject and documentary because if you think about it, you know, all the things from things I've done are different variations on a central social justice theme, right? Being a public defender was incredibly direct work every day you understood the stakes, you saw the face of the person, the faces of the people, you're going to help. And at the end of the day, there were days where you actually walked people out of jail, right? That was an incredibly specific intimate, like how emotionally powerful and resident experience and then I went and wrote a book and I justified writing the book by thinking, look, here's this little cultural instrument and if it works its way through the culture and inspires you know, one or two people a year to become public defenders or say public defenders for another year, and it has that effect For four or five years that my, you know, one or two year effort at writing, the thing will yield, you know, 20 or 30 or 40 years of public defender inspired effort on the fire. And that's a pretty good return on my investment. So let's try that. And then, you know, randomly somebody sort of handed me the, you know, the keys to the cultural Kingdom in terms of Hollywood and, you know, making the show in a certain way was a little too diffuse, because so much goes into it. There's, it becomes

entertainment more than anything else. And, you know, its impact is incredibly broad, but it's also incredibly diffuse. And I started thinking to myself that documentary filmmaking might be a different way to create a little social justice machine that you know, went out into the world. Started conversations or changed attitudes toward important subjects. And just the nature of me, I'm drawn to the most difficult subject. So I didn't want to do in essence, I didn't want to do you know, the death penalty. I didn't want to do the drug war. And frankly, I didn't want to do mass incarceration. I wanted to do take on a subject that nobody else would talk. And, you know, if you want that, then sex offender laws are really good place to go.

As a person in that community. I know that for the most part, our community is pretty hard to reach and tends to be pretty shy. So how in the process of making your documentary Did you get access to people who are on the registry who generally are pretty camera averse?

Well, understandably so. I mean, you know when you're when you're trading is a pariah people when you're, you know, controlled, controlled and corralled and subject to innumerable restrictions. Like, it's not at all surprising that that anybody would be a little would be a little camera shy and not particularly enthusiastic about, you know, hitting your face out there. So I get that. I totally get that. And having dinner, public defender really helped because I was able to say, listen, here's who I am. Just go look at what I've done for the last 25 years. I think you will find at the end of it that you will have, you will find anybody who's going to be you know, more willing to meet you literally and figuratively meet you where you live. Listen, and be fair and honest and honorable and you know that so I found two things number one that helped and number two I want to challenge a little bit the premise of the question because the other thing that I found was that if you just talk to people with an open heart and listen there they have been so traumatized and so victimized that and have so few people to listen to them that almost everybody I talked to opened up very quickly spoken credibly, frankly. And in heart wrenching detail about you know, what had gone on and what they had experienced and what their lives were like. I just captured some of them.

So, you know, that makes a lot of sense to me. And you do throughout the film tell the story of several specific people who are on the registry. The film came out a few years ago has much changed for those folks since the movie was made?

That is a good question Shawna who was in the in the film actually got a job at the veil project as a bill disruptor and then left that and is now I believe back in Arizona. I don't know I haven't really followed up in great detail with some of the other folks. And in recently I last saw some of them. When I did the screening. I did a screening after we premiered. Much of the bunch of the film was shot in this lot in Miami, where there was just sort of an address that the probation department was essentially forcing registrants to live and I had

interviewed a bunch of people down there and I've always told them that I promised them when the film was done I'd find a way to let them see it. And when we started the film in Miami I also rented a mobile screen on a projection unit thanks to the ACLU and some other organizations we actually went out there and show that but I haven't been back

So, one of the things that always stands out to me in the film is your lengthy interviews with Ron and Laura Lauren book who are in many ways responsible for you know pretty much how draconian the registry is in Florida How did you get them to participate and what do you think they thought of the documentary after the fact?

Well Ron you know liked the film and I'm makes me very happy Look, it makes me incredibly happy that everyone who participated in this very complicated as possible controversial film felt that they were treated fairly I you know, John, you know, John and Clyde and Shawna and you know, and Ron all felt that way. And that means an enormous amount to me. Because I think when you are making a film, you're impressive. You know, people in trust you with themselves in a certain way, and you got to respect that honor that you have to try to meet them where they live and take them seriously and honor you know who they are and give them a voice and there can be containable as is and its own, there are competing voices, right, Ron is entirely I mean, really entirely responsible for a lot of these laws and is a staunch defender of them. He believes things that are entirely different than other people in the film and you know the trick is to give voice to both sides. And then to create a narrative tension and an intellectual tension that engages a viewer in the question of are these things right? Is this what we should be doing?

Doesn't make doesn't doesn't make sense from a moral point of view doesn't make sense from a practical point of view, like, why do we have these policies? What is driving the policies? And if we don't like what the policies are doing, what should we do about that?

I think it's a great credit to you that you dealt with their family story with so much empathy. But for me, one of the most stunning parts of the documentary is when you ask Mr. Book, how any of the registration requirements that he has passed would have protected his family. That was one of my takeaways, what were some of your takeaways from those interviews?

Yeah I mean look credit goes to Ron in for that in that moment he look, he's he's a smart, smart, smart man. And he thinks really seriously about these issues where he comes up is probably not where I come out but I have to say I have an enormous amount of respect for the way he engages in that. And the fact that he doesn't try to sugarcoat stuff and when asked him that question, you know, there was this long pause and he says, you know, he thinks about it, you watch it, think about it, and he says, none of the laws that we password protected my daughter and then he goes on to sort of talk about and it's actually an

interesting moment in the film because it kind of turns toward, you know, Lauren and her approach which is which is different by the end somewhat from her dad's. So, you know, here's what I would say lots of lots of people are upset that I took the voices and the stories of registrants seriously and treated them in an empathic way. And then some people who are registrants are upset that I took Ron and Lauren story and treated. That is in all honesty and empathic way. But it is only Stephen. Going back to Stephen. You know Steven Bochco used to say look, drama only lives in the Titanic clash of legitimate worldviews. And I think about that a lot they have to it has to be a clash of legitimate worldviews to get you thinking, to get you engaged to get you wondering, and so if I had treated anyone in the film in a more perfunctory or less honest way, I think it's over to suffer. And I really liked. I'm very proud of the film. I like it a lot. I think it really frames important questions. It really makes it melts your heart on both sides of the issue. And that's what matters. That's what gets people thinking. And this issue is so complicated and over determine and people aren't. There's so much fear, so much loading so much, you know lunacy in this little area of our criminal legal system that the first thing you got to do is start a conversation and it can't be a conversation among polarized groups separately. You have to shoot for the middle you have to you know, I used to say we're in the Edit room. Listen guys. You know, 5054 46, in an election is a landslide, you don't make a polemical film. Because if you do, you just preach the choir. But if you make a film festival to everyone, that's where you start to shift attitudes and change and challenge assumptions. And that's I think the best thing

So you talked about the screening you did for the folks who are living under the well in the bridge area in Miami. Can you talk about how that you know, how did that go?

What was the was amazing. I think it may have been my favorite screening ever. They really liked the film, they were really engaged by it. It was this it was really incredible. But then you know, whenever you start thinking that you're going Oh, look, I made this I'm a documentary filmmaker I'm at this time of that, you know, whenever you start even approaching the university, you might think it doesn't stink. There are these wonderful reminders of what's real and what matters and like I don't want to you know, I can tell you that I love that screening but the thing that sticks in my mind more than anything else is that you know these guys are living in this lot with no sanitation with no nothing literally sleeping in car on cardboard mats you know and Okay, I maybe I brought that to light that you know what one of the guys asked me at the end is like, hey, how long are the porta potties going to stay?

Because what really mattered was not my movie what mattered was that for three days, you know, because we have to because we had to go comply with a bunch of county regulations I had to also hire like you know to porta potties that offered like an actual clean place to go you know use the use the bathroom and so it's like kind of I always think it's valuable to remember what what what really what really matters and you know all night but I made a movie and I'm happy about it but yeah there you go

So in all your discussions with the people in Florida over that period you know having learned that lesson you know what why do they think that's okay Did you get a feel for that or why do they think that's a good solution to the problem?

You mean the laws that that Ron and Lauren champions that well the ones that resulted in people living without sanitation under a bridge. in other words in other words given that this is the result will be because because as Ron says over and over in the film and as legislators you know routinely site rightly rightly or wrongly, they are not so concerned with what happens to register they are only concerned about what they term public safety and by that they mean eliminating what they what they believe to be predatory behavior and they are willing to pay an enormous price in terms of social social costs and and and civil liberties costs to do things that they believe effectuate that end now that's the film you know explores a lot of those things are not only not effective, but often counterproductive, but the narrative of dangerousness of sex offenders particularly pedophiles as dangerous people who prey on children and we have to keep society say is one that really really resonates with politicians and that and place to a kind of public fear that make those laws easy.

So you the film came out in 2016 and it took a while until very recently for you to get distribution in the in the interim you made a couple of you reduced or cut up the film into some shorter clips and I heard over the summer you do a presentation that kind of explain why you did that? Can you kind of share some of the highlights of that presentation from the center?

Look, let me be really clear. I I I love the movie. I'm very, very proud of it. I feel like the creative decisions that went into it. We're we're good and right. And I stand by them. I'm proud of them. From a commercial point of view. It was the abject failure they it was most almost every way. Look, we premiered at Tribeca Film one me you know, the best new Director Award. That was all great that one couple weeks later when the first short film that's like you're off to a great start, I had never made a film before. I did not do a good job of figuring out how to, you know, monetize the film, how to get it out there, how to find a broadcast partner, like almost all the decisions I made on that front how to publicize the film, all all those decisions, we're putting a bad ones and certainly unsuccessful ones. And as a consequence, there is this, you know, gem of film that just turn it kicked around and didn't really do much in the world. There were a bunch of they were bunch of screenings that was great played internationally a little bit that was great but we in the ensuing couple years never really found a broadcast partner willing to back the film and you know put it on their waves and that was a bit of a heartbreak but because I felt like these issues were so important, one of the things we did and we had a lot you know when you make a documentary what you see on the screen as an intern testimony portion of what we've shot so we had a lot of additional footage and we decided we just make to sort of little short films

with some of the stuff that's in the film but a lot of the stuff that was you know sequences that we've assembled that were left on the cutting room floor and and put those up one one to the New York Times one went to the Marshall project, in part just to call attention to the issue not so much to promote the film but to take pieces of the issue and get them out there in a short punchy way with the hope of reaching larger audiences. And then, you know, now we have, you know, run all this via data on iTunes and Amazon and Google Play. So the film is sorted out in the world.

Now, I heard that you felt that one of the clips ended up being more successful than the other clip. One of them was on frightening and high and the other one was on the lady from Oklahoma, correct?

Oh, I don't know. I don't know. I heard Oh, no, I don't think I know. I think they were both. I like the boat. Okay. Oh, no, I like them both. I don't think I would. I think they were very different. One was a very personal story. And the other really was a deep dive, deep dive into the statistics and sort of how did we arrive? How you know, the sort of supreme how the Supreme Court made the mistake in terms of their psychic You know, in some cases, so they were very different film very different shorts. No, I don't think I don't think I, you know, prefer one over the other

Just to share my own anecdotal experience. I use the frightening high clip when I do a training for social workers who work with people on the registry and 100% of the time, almost 100% of time, they mentioned that clip and their feedback. So it's been pretty successful.

That's wonderful to hear. I really like that. I mean, look, this is when you're a filmmaker, like you're making a toolkit for other people to use. So that's great. I love that that's a wonderful thing. You know, you're you're making these little things and saying, go out, disseminate them, show them share them, you know, so that's right. That makes me happy.

So you finally got the distribution deal. How Did that happen? And how has that changed your thoughts? Or has it all about everything that led up to that point?

Well, it's not really it's not really a distribution deal. We, you know, if you have a film, it's not that hard to get the film to get the film, sort of on on VOD, like, what we were looking for was really in terms of the distribution deal, but a bit either a theatrical release, which didn't happen or a broadcast partner, which didn't happen VOD if you've made a you know, a half half decent film that that's an accomplished double goal. So I'm not you know, I feel like I'd be tooting my own horn a little too much if I just grabbed it but but it is the film is available finally for the public and it is by the way bread it's on canopy for you know, educational educational institutions and I'm glad it's you know, look, I'm glad it's out there. This is the

first time Since we made the thing but since we finished it, I started it when it premiered in 2016. I started 2013. So you know, it's long. It's a long road. And this is the first time it's finally easily accessible to the public.

Have you come to any conclusions about creating effective messaging and relationship to this kind of various you said, emotionally charged issue of registries or people on registries?

Um, that's a great question. You mean specific to specific to register? And I think so that that's a really tough question because I think it would have been much easier to make a more successful film. If I had just focused on say, Shauna who was you know, you know, a young woman who had had consensual sex with the younger boy wound up on the registry for life like is incredibly sort of an incredibly sympathetic character, you know, in in every quarter and every quarter, right. And that can be effective messaging, but it also implies that you should make distinctions among among registrants in this way, rather than attacking the larger question of whether the policies themselves make sense. So there's I say that to suggest that there is danger in messaging strategies around this right. There is an easy and somewhat available and somewhat appealing almost divide and conquer type strategy by looking but those things are easily dismissed as outliers, right? Or there's a much more complex attempts to say let's look at the, you know, the civil rights, the social justice costs of what we're doing here and then also look at advocacy and try to balance those out a little. That makes sense in a, you know, a larger logic.

So to circle back around to where we started. One of the big problems, I think, in criminal justice reform is the disparity between the resources of public defenders and the resources of the police and prosecutors. I assume you have to have some thoughts on this. So I thought I'd kind of circle back and ask you about that?

Look, we've been in the era of falling crime rates for quite some time off and We have not seen the era of falling police departments so that means that there are enormous number of people out there who are incentivized to justify it to justify a job and that is the piece that feeds feeds the criminal legal system right so yes I think we as a country are beginning to come to our senses about mass incarceration of back be our top on you know the results of our tough on policies and whether they make sense or more accurately the ways in which they don't make sense I think that district resourcing, it's certainly an issue but it's one of many,

Okay, in an attempt at humility. I tried to always ask at the end If there's any questions I should have asked, but didn't. So what did I miss?

Oh gosh,

I get that a lot too.

Yeah, I know these are all this is this is all good. All good all questions. At the end of the day. I like I said, I'm very, very proud of the film. I was done. I wish to reach farther because I think it can be impactful. And I think it can actually help start a conversation that I think is really important to start having about you know, we have look there more people on the registry than there are in our jails right now. That's an amazing and that should get people

Well, that's a pretty good place to end. Do you have any plans on making any more documentaries? Are you heading in a different direction? Before we go?

I know I'm still thinking about that. I don't have a good answer. I don't have a good answer for you on that, because I don't have a good answer for me.

Makes sense. Well, I really appreciate you taking the time and thanks for doing this. I know you're pretty busy. So thanks a lot.

Yeah, my pleasure.

Okay, thanks again. Bye.

And now my take. My main motivation for this podcast is usually not selfish. I rarely talk about my own circumstances, but for reasons will hopefully be apparent and hopefully not too shocking. For people who haven't been listening for a long I'm making an exception this week. I remember that after I was released. I was feeling pretty down for a lot of reasons, not just because of parole and probation or not being able to find employment, but also because right before I was released, there was a Change in my registration. When I went in, I went in with a 25 year registration requirement, which at the time seemed pretty steep and what it's what everybody in Michigan gets for internet based crimes. But as a result of the passage of the Adam Walsh Act while I was incarcerated, and as a result of what Michigan did to change their registration requirements, subsequent to the password to the animal track, I found myself extra judicially escalated to being on the registry for life. So anyway, I was pretty down and then I started to research and what I started to learn was that there was no rational basis for registries I learned that registries don't work and then in fact, they are counterproductive. This was based on solid evidence and not speculation. Now, I still didn't have much hope because emotions and especially hate generally seem to overwhelm evidence and reason almost every single time when it comes to legislators, but then some friends invited me to Go to a conference that was about registry reform. at the conference, I saw a ton of other people who are organizing around the same idea. And I saw a screening of David's movie on touchable and I was one of the few people who are allowed to ask David a question versus via Skype after the movie, and for some strange and unexplainable reason, for the first time, I started to feel like change was possible and that hope was

present in my own heart, and then I ran a cross JJ Prescott's research then I found the dose versus cider case, which I followed through all of its core challenges all the way up to the Sixth Circuit, and through the Supreme Court when the Supreme Court refused to hear the case that made the dose versus Snyder decision at the Sixth Circuit, the law of the states in the Sixth Circuit, and then not long after that was a case called packing ham or the Supreme Court decided that people who are on the registry do indeed have first amendment rights. And then I started talking with the ACLU about the class act. version of those verses Snyder, which is a case to ensure that all the folks who should have been covered by the Sixth Circuit decision get covered as a class. And then just a few days ago, something even more remarkable happened for the first time ever sitting state attorney general submitted an advocacy brief in essence opposing retro registration as it currently exists. As she puts it in the brief at the beginning, the tide is changing. For years, federal and state courts consistently held that sex offender registration and notification requirements were not punishments and therefore did not violate the Ex Post Facto Clause. their conclusions relied heavily on the us supreme court's analysis and Smith veto and its conclusion that Alaska sex offender registration act was non punitive. But more recently, both state and federal courts have and rethinking the issue and light of the significant additional burdens that have been added to the statutes and Smith upheld a first generation registration statute states supreme court's in Alaska, California, Indiana, Kentucky, Maine, Maryland, Ohio, Oklahoma and Pennsylvania have concluded that there registries constitute punishment and their retroactive application of ex post facto violation either by distinguishing Smith or by relying on their state Ex Post Facto Clause in 2015 the six circuit reviewed Michigan Sex Offender Registry act saara determine that Sarah was something altogether different from and more troubling that Alaska's first generation registry law and holding that it's 2006 and 2011 amendments were punishment and that their retroactive application violated the federal Ex Post Facto Clause. The Sixth Circuit caution that Smith was not a blank check to stage to do whatever they please in this arena. Smith's rationale which was premised on the limited nature of Alaska's registration scheme seems that outdated with respect to modern registration schemes, it surely is with respect to Michigan Sex Offender Registry, which has changed greatly since its initial character as a tool to help law enforcement keep Michigan citizens safe from dangerous predators and far exceeds the baseline federal requirements for such registries. It has become a bloated statute who've recent amendments are out of touch with the practical ramifications of its geographic restrictions and in person reporting requirements with society's evolving relationship with the internet with the needs of law enforcement and with a more balanced and research understanding of recidivism. And then this conclusion and note that she names herself here the 2006 and 2011 amendments to Michigan Sex Offender Registry, notably the geographic exclusion girl zones and in person reporting requirements, impose burdens that are so punitive in their effect, that they negate the state's public safety justifications accordingly, this question grants the application believe in this case, Dana Nestle, as this court to hold that the amendments or punishment and their retroactive application violates the Ex Post

Facto Clause of the United States and Michigan constitutions. This is truly astounding to hear from the top law enforcement officer in our state. And I want to thank her for having the political courage to say this. I have known all of the research she quoted for years. I'm just not sure I ever thought I would hear it an elected official quote that research the day it was released. As I checked in with friends, many of us felt like we were being pumped as we read it subsequently in checking with many officials. It actually was real and this really did happen, I imagine the data, Nestle is going to get a large amount of backlash, especially since the outgrowth of this is that there's likely to be some serious registry changes as soon as in the next few weeks, and Michigan that could affect in person reporting the ability to graduate on registries, distance requirements and if registers for me in public or change to be law enforcement only registries. I hope people remember that her argument wasn't about leniency It was about effectiveness Attorney General data Nestle came out against registries as the current exist for one reason. And one reason only that reason was that registries as currently constructed, do not work and are often counter productive. They do not increase public safety.

Now, that said, I do have some small problems with what she wrote. But it is still amazing that she wrote it at all. And at the very least, it means it's very likely she is going to agree with the pending those class action which there's a pre trial settlement meeting between the ACLU and the ag that's happening this week. So we will know more very soon. One thing is 100% for sure didn't so was right when she said at the beginning of the entire time. document the tide is changing.

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