



Registry Matters Podcast

Episode 137

Recorded 7-24-20

Andy 0:00

Registry Matters is an independent production. The opinions and ideas here are that of the hosts and do not reflect the opinions of any other organization. If you have a problem with these thoughts, fyp.

Andy 0:12

Recording live from FYP Studios, east and west transmitting across the internet. This is Episode 137 of Registry Matters. What's up, Larry? Happy Saturday yet again. How are you?

Larry 0:23

Well, thank you and we have a full house tonight I can see.

Andy 0:27

we do we have a pretty good crew. And just for point, I made it so that if you're if you're a patron that you can get into the live stream, I locked it out of just anybody random drive bys. Come in and listen to it so that I just wanted to kind of solidify one of the benefits of being a patron is listening and participating in the live stream chat stuff.

Larry 0:47

So that's why we do we only have half as many tonight as (Andy: Correct.) have had in the past.

Andy 0:53

Correct. But I'm just always looking for ways to actually offer up the value of becoming a patron which we're going to While we're recording this tonight, there will be a drop out where we're going to go record a Patreon extra. So if you're not a patron and you would like to hear the extra, you should go over to Patreon.com/registrymatters and sign up to be a patron for as little as \$1 a month and then you could participate in getting the patron extras that we've been doing lately.

Larry 1:20

And you get to engage with a couple of quacks before and after the recording

Andy 1:25

there would be that though I think I'm going to outsource my quack to have somebody else represent on my behalf. (Larry: Oh, who would that be?) I don't know. I'll have to just find some other quack someone of your quality caliber of quackery

Larry 1:40

shouldn't have any problem finding a quack of that caliber.

Andy 1:44

Larry, I got a question. Being me and someone inside of the discord chat. We started talking about term limits for politicians. And I hear people rail against that. Oh, these people been in it for 20, 30 years. Blah Blah. Blah. And just just to tie this over, someone mentioned on the podcast all this has gotten to, on YouTube, that this has gotten too political. And maybe the better term would be too partisan maybe. But like everything about what we're doing is politics oriented. So I don't want to like throw that we should never talk about politics in general. But sometimes politicians like Mitch McConnell's been there for 1000 years, and Nancy Pelosi has been there for 1000 years. Chuck Schumer has been there for 1000 years. Shouldn't we have term limits for Congress if we have term limits for el president de?

Larry 2:41

Well, that's an issue. I think I want to backtrack just a little bit about the podcast because we're not partisan at all here. It may be perceived that way. But we we don't we don't endorse a particular side. I tell you what my political affiliation is but I bash my side when they're wrong. And I do that with some regularity, I'm about public policy. So I kind of take a little issue with us being partisan we we we look at the policies were strictly attacking bad public policy. That's the whole point of this podcast. But in terms of the the whether there should be term limits, and the literal sense of the word there, of course, there, there are term limits they are, they are a result of the elections that are held every two years, every four years, every six years, as the case may be for US senators, it's every six years, for US House of Representatives, every two years, for most governors, it's every four years. And in state legislatures, it's usually some variation between two

and four and a few exceptions, six years but there there are those term limitations. what what what you do when you have and I've done an involvement in my thinking, as I've aged, I used to feel the same way I felt that that the term limits would be properly, It would be it would be better if we had term limits. And, and my my analysis was flawed at the time. We, I guess I think I heard someone on one of the news channels talking about people that that made a career out of public service. They make bad decisions. But that doesn't mean you want to turn it over to amateurs. He said, people who fly commercial airplanes professionally, they make bad decisions, and sometimes we have catastrophic, catastrophic consequences. But that doesn't mean you want to put an amateur in the cockpit does it? (Andy: Nope.) Okay, well, surgeons who are very highly trained, they make mistakes. And sometimes those mistakes are in fact catastrophic. But that doesn't mean you want an amateur. That doesn't mean you want an amateur as a surgeon, and with with what people refer to as politicians, they prefer to be called a public servant. But in reality, they are politicians. You have to be able to convince at least 50% plus one, that you're that you're the best choice of the choices they have. And that requires appealing to people's desires that because you're representative of a group of people, and and but but you if you turn this over to if you when you have term limitations, I'd like for the person who believes in that to cite me a state where they have them at the state level, Nebraska would be one example where they have them, and tell me that you think Nebraska is so much better governed than any other state and pick a state that has term limitations where that they can only serve a fixed amount of time tell me that you feel that that government is so much better? Because of the term limitations because what you have when you do that, particularly at the state level, it wouldn't be as pronounced at the federal level. But at the state level, what you have is you have the unelected bureaucracies that decide what happens because when you take a person who's been in just a regular job, and they just decide to run for the legislature because there's a seat open. And they have never been in government. But they they want to make their first run for public office as a state senator and in Nebraska, they don't have any idea how those agencies work. They don't have any idea what the powers of those agencies are. Government is very complicated these days, we deal with issues that were

never imagined when the founding fathers developed the idea for this for this representative Republic we have. Nobody was thinking about the Clean Air Act, nobody was thinking about all the things that we talked that that governments at various levels provide today. We're talking about complex things, things that even I don't understand. And I'm as informed as the average voter and I don't understand all the issues that our state legislators deal with. So what you end up with, when you don't have any institutional knowledge, you have the the the bureaucrats that are making all the decisions and if that's what you want, that's what you You end up with when you have termed limitations where you have constant rotation and no institutional memory, no institutional knowledge.

Andy 7:08

Can you dig into that just a little bit? So you're telling me that the bureaucrats would be making the decision. So can you tell me what is a bureaucrat in that in that context?

Larry 7:21

Well, well, when when, when you when you contact a state senator in this state, who's been around for a while, who's who's seen various administrations come and go. They know how the Department of Corrections is funding, what is what how its funded, what its mission is, and what its powers are. Will you take the person who's never been in public office before and they have the best of intentions, I'm not knocking that, but when they come in with no understanding of that institution, and what its powers are what it can do, it's a lot easier to have Regina deciding and Regina is the lady that we use pejoratively because she works at the Department of Public Safety and she makes all the decisions regarding the sex voter registration in New Mexico. You end up with Regina telling when a senator call, a brand-new Guppy, Senator calls and says well what's the deal with this? Regina can tell that Senator anything she wants. (Andy: Okay) And that Senator does it doesn't know any better. And when Regina says it has to be this way, then that person those no different or you could take it into something to do with childcare and protective services. If the person has no institutional knowledge of Child Protective Services, they end up when they said, Well, we have to pass this law because this is what's required.

Because this is the way it's done. You don't understand all of that. And you end up with people who have no institutional knowledge of why things are done, the way they're done, and what the limitations are. And you end up deferring to a person who's been a career bureaucrat working in the agency telling you, the elected official that it has to be this way because they've been there 26 years, and you just came on the scene today.

Andy 9:06

Doesn't that also go the other direction of a politician then getting entrenched in and rubbing elbows with all the big powerful people, and then they're not necessarily representing the people, but they're representing their donors? And I don't even know if I'm wording that the right way of who would be rubbing the elbows but just like it seems like that can go in a different direction. Special Interests, maybe is a better way to word that.

Larry 9:31

Well, I was going to get to that point that though there is absolutely no doubt that a person who's been in office, has been in office for a long period of time has a significant advantage over the newcomer because contrary to what the cynics out there think people do not come to you and try to offer you money to persuade you to see it their way. What what happens is, after you've been in Office, they have analyzed your voting record your accessibility and your receptivity to persuasion in terms of issues, and they end up saying, we like this senator, we don't agree with that or on everything, but this senator is right 75% of the time when it comes to issues that we support, or that we oppose. So you end up when, when the newcomer comes in with with no public service, they don't have to, they don't have the capacity to raise that money because the special interest, they're going to fund a known versus an unknown. So I can sit back in an office where I work and wait for the checks to come in. And there's no strings attached to the checks. They're just simply looking at what the person has been doing, and what they're what they're happy with, and how accessible they are. And they make donations that but that doesn't mean we we should scrap the whole system. That means we probably ought to take a look at how races are funded. (Andy: Right) which is a conversation we never get to have in this country.

Because when you raise any of the options because the the Supreme Court's ruling in Citizens United, you can't you can't limit an entity's speech, at least not in federal races. Now, some states do have campaign limits, ours does have limits in terms of how much you can give in a particular election cycle. But when you start talking about maybe public financing, then people go, they go completely bananas and go into all sorts of convulsions when you talk about that. It's kind of like the gun debate. You can't have a discussion about how to solve this problem. How can we make the races more competitive, to take away some of the advantage that the incumbent has, without denying the citizens a choice? Now what you're talking about doing as denying a citizen a choice of someone that they may be very happy to have stay in office. Is that democracy?

Andy 11:47

Definitely not. Definitely not. I just wanted to get the experts opinion on it because I don't think that I I can see where the person has the issue with there being people that are there forever. But at the same, you know, the point you brought up about them having an understanding of how the system works. Alexandra Ocasio-Cortez, whose name is very difficult to say, brand new, doesn't know how the system works yet. And I use her just to highlight just because she's probably the most well-known freshmen. But she doesn't know how the systems work where Mitch McConnell knows all the ways to manipulate the system is one better than the other one? And like, she needs to get her feet wet and know how the ropes work and so forth. But does she eventually end up in the pockets of the special interest groups? That's where the person's term limit idea would come in. But how do you how do you balance that out? And I think one of the answers would be to have just as much public transparency of where the money comes from and where it goes to and that's where then the political action campaigns come in, because they don't have to report anything, I don't think because they're private entities.

Larry 12:53

Well, they do they do in this state file reports in terms of who their donors are and who they give money to but but at the The federal level since I'm not working for anyone in the federal system, I don't know what the disclosures, what all is required. But we do have a

significant amount of transparency here. And we're always looking for a way to enhance that transparency. And, and but having a government by amateurs just ask yourself about any other profession. Do you want those professions done by amateurs? And I think you can come to the conclusion: Government's a very complicated business. We're not living in the 17th, in the 1780s anymore. We've got issues that are very complex.

Andy 13:33

I completely understand. Hey, did you see the picture that super patron Mike sent us with the fyp compliance tank.

Larry 13:43

I did it I love it.

Andy 13:44

I just wanted to make sure that we noticed that it's in the it might end up to be maybe it'll be the show picture for this week's episode. Anyway, there's a picture of it over in the live stream chat if anybody wants to have a look at the fyp compliance tank and there's a little subtitle under it says Sheriff department, making sure no emails go unregistered. It's a very intimidating device that they could use to make sure that you're compliant with all of your emails.

Larry 14:09

Well, you're gonna, you're gonna comply with registration or else .

Andy 14:13

Or else. we only have a few news items because we have some other super fun content to cover. But the first one is a homeless man jailed for failing to put address on sex offender registration dies at Rikers, this is from a publication called the city dot NYC. And, you know, like, there's a lot of content here, but basically he failed to register he gets locked up under violation while he's in jail, he ends up catching the COVID and then dies while struggling to breathe, which sounds like an unbelievably terrible way to die. And I think that that is incredibly cruel and an unjustified, unconscionable that this has happened.

Larry 14:51

It is tragic and we knew that there was going to be will be continue to be a lot of people that will lose their lives in correctional settings because of our unwillingness to take a look. The politics would be very bad to release a person like this because he failed to comply with putting his whatever, New York is somewhat lenient compared to other states in terms of compliance, but he failed to do whatever those steps were. And we just can't have a person like that out on the street during a pandemic.

Andy 15:21

Unbelievable. Yeah. And like I said, I just I just wanted to touch on it just because it's, it's just really terrible.

Larry 15:26

And I think the article raised the issue about what sort of medical care he received and whether it was proper.

Andy 15:33

I mean, if he simply died from an asthma attack while laying in bed that sounds very minimal.

Larry 15:39

So well it says in April he tested positive but did not have the virus at the time of his death, according to so so I'm not real clear on the cause of death, but it's still tragic that a regulatory scheme causes you to be jailed during a pandemic.

Andy 15:53

and then die from all that because I you know, I'm assuming that Yeah, on March 4, he was sent to Rikers. So he did not have the COVIDs when he went so we contracted it while gone. He, we could then make some level of presumption that he wasn't, he didn't, He wouldn't have gotten it while he was on the street, perhaps.

Larry 16:16

So...

Andy 16:16

Um, I wanted to bring up though that I watched a movie last night. I think it's called Most Wanted, it was very slow, but it's about some Canadian drug dealing going on. And then somebody ends up in a Thai, a jail in Thailand. Dude, you don't want to go to jail in

Thailand. This is not if you think prisons the United States are bad. This is no joke there. They got like, just an open no bed, no floor or not no floor, just like maybe it's a dirt floor. And 50 people and everybody's just in leg irons, no separation, no personal property, nothing. So I just want to bring that up that there are certainly worse places to go.

Larry 16:54

Certainly That is true. People in the Latin American countries, particularly when You live in a border state like like mine you hear people that have been in jail in Mexico and various Latin American countries and and they they they don't yearn to be in jail in the United States but they they they're able to recognize that an American jail is preferable to almost any Latin American jail and again nobody wants to be there but when you when you do the comparison it's it's all relative when you when you're, type of places that people get incarcerated and around the world which are which are medieval dungeons in many, many instances.

Andy 17:35

Yeah, this is not cool. All right, but then over at mynewsla.com sex offenders lose bid to serve on juries, Judge rules, all ex-felons don't have to be treated the same. I never like when sentences are worded sort of like in a negative context. And that's one of those ones where it's they don't want to not be like makes my head kind of hurt. But so I guess some some of our people PFRs wanted to serve on juries. And it didn't go well for them in court.

Larry 18:08

That was I wasn't able to find how to access the judge's decision. But from the article here, it didn't go well. And of course, there's always appellate options. But, but it didn't go well.

Andy 18:21

Why can you even like, just, like, get into the judge's brain for a minute, why wouldn't all ex felons be treated the same?

Larry 18:32

Well, because the law mandated different treatment. That's why

Andy 18:35

Oh, geez. I mean, so in the law, then it would say that these people can't serve on juries ever.

Larry 18:45

Well, I'm suspecting that like I said, without being able to read the decision, but I'm guessing that when they pass this, that restored the right to serve on juries, there's always carve outs for people for the PFRs for the persons forced to register. And I'm guessing that that was the car About that they had to make a compromise so that anybody could serve on a jury. And the basis for the lawsuit was probably as you can't treat there's an equal protection clause, in the United States Constitution. So the argument would have been that, that, therefore, the all ex-felons should be treated the same. And this is the superior court judge saying no. The legislature mandated a separate equal treatment, but But like I say, with the opinion, I can be more precise, but yeah, sure. Well, we have an article here.

Andy 19:26

And and it does say like in the middle of the article says, however, the bill was later amended to target registrants by making them the sole class of persons excluded from that bill's reforms. So I guess they did make a bill that allowed felons to serve on juries. But in the bill, they said negative ghost rider.

Larry 19:43

Yep. And that's, I mean, it's so is the will of the people as expressed through their legislative elected officials that we're going to restore everyone's right except for the people could have said no, we want we want everyone but they didn't. They said we want everyone but

Andy 19:59

and I'm going to I'm going to hit you with this little softball and laws are presumed to be constitutional?

Larry 20:05

They are until the challenging party shows by the clearest of proof that they're not.

Andy 20:10

clearest of proof. All right, so there is a non-victory for our people. But that probably was something that was kind of sort of doomed to fail from the start?

Larry 20:21

I don't know, I'd have to look at and see if each side would have would have cited case law that they thought supported their position. And this is a trial court level judge. So an appeal may be launched and and the depending on what the appellate court says in California, this battle may not be over yet. But the benefit of the doubt goes to the law because as the will was expressed to the people that they didn't want fully to restore people's right to serve on jury they did they did do a carve out so the question is can the people carve out what what rights they are restoring. If you have the right to vote, You have the right to serve on a jury Now see, I'm not sure that there's a such a right. Oh, the voting is pretty much a right and I've always wondered how we could we could permanently disenfranchise people. But if there's any such right to serve on a jury that there might be some, there may be some hope for an appeal on that issue.

Andy 21:20

Over at Ars Technica, Ajit Pai who is the FCC chair urges states to cap prison phone rates after he helped kill the FCC caps. Wait a minute, who, what, what is what Ajit Pai help kill the FCC caps and now he's asking for them to be sort of reimposed?

Larry 21:39

Well, I think this is a good time to play Governor Maddox. Because the phone calls that my understanding is and this is not my area of expertise. But my understanding is once they cross state lines, only the feds can regulate them. And so the FCC after Obama left office, with the help of the business interests that provided phone services challenged that limitation that the Obama FCC had put in place on the cost of phone calls, and they won. So I think it's a little bit of a little bit of hypocrisy here, to come back and say the states can do something, I'm not even sure that they have the power to do an interstate calls, clearly calls that originate and terminate within a state. The state regulators have control over those, but I'm not sure that the states can do anything about calls originating from outside their borders in terms of capping those prices.

Lester Maddox (Audio Clip) 22:38

For you to come back and call bigots my admirers is a farce. It's an act of hypocrisy it's a terrible way to treat a guest on your show and you know it.

Andy 22:46

Haha. So, so Okay, so as I understand it, and I was following this pretty close at the time, um, so, roughly in 2013, the FCC chair instituted something that puts some kind of caps on the cost of phone calls, that for me personally calls went from about 25 bucks a call out of state to four ish, maybe \$5 a call, which was a huge boon. But I was released very shortly after everything actually kicked in. So it really didn't ever impact me. And then we change administration's A few years later. And that immediately goes away and calls, as far as state to state calls, probably go back to 25 or something bucks, I guess that would vary by state. And the reason why this happened is because the current administration appointed this, Ajit Pai, who is a former a big telecom company, lobbyist or executive, I forget which one he was like. So it just seems like hey, I don't want this to happen away. Now. I don't want this to happen because of the COVIDs.

Larry 23:52

Well, like I say, I don't I don't believe that the power exists for the states to to regulate that and it was the business interested challenge the regulation but the FCC could have continued to defend the regulation in court rather than saying we concede that this this is not something that we want to continue with this with this regulation. And so I think it is a little bit hypocritical now for him to be claiming that he wants something done when he could, could have and still could lead the charge at the Federal Communications Commission to limit what these companies are charging. But on the other hand, if you're a pure capitalist, and you believe that companies who invest their money and to take in business risk, don't you believe that the market should dictate the price? I mean, that's kind of what capitalism is about. I'm just being devil's advocate here.

Andy 24:41

Yeah, except for it's not like you can go to the other phone on the other side of the dorm and have lower rates. So I mean, you know, you're totally locked into the prison industrial complex as you like to call it. There's no alternative other than to not make a call or suitcase a cell phone into the into the joint

Larry 24:58

but wouldn't the prison Obviously make the decision to award the contract to the lowest bidder. They I mean, they wouldn't have any incentive to do anything to the contrary, would they Andy?

Andy 25:08

Since they collect like, I don't know, 50% of the revenue, wouldn't they be incentivized to get the highest cost?

Larry 25:14

Of course, they would I'm being very facetious here. But but but those who believe in pure capitalism who claim that there should never be any regulatory oversight. We can cite example, after example, after example of this is where the big bad government has to be the oversight because there's, there's, there's businesses where there really can't be a true competition. And this is one you're not going to be able to have true competition in correctional settings when you're trying to monitor for security reasons and legitimate security reasons. You're trying to monitor what's, what's going on in the way of communications. So you're not going to have a true competition. It's kind of like the electric company. We've tried to have competition in power but in reality, there's, there's only one distribution. There's only one distribution of power unless you self-distribute the power lines, somebody has to own the distribution.

Andy 26:12

And then our final article is going to be sex offenders can find hope in Christ, but not necessarily a place at church. I just wanted to, I just kind of wanted to like point out more hypocrisy that churches will often be places where they are trying so very hard to help people getting out of prison with maybe clothing or maybe some places to stay. But when it comes to our people that they are very often they are turning up turning up their noses at the PFRs. And it's very, very sad, but I just wanted to highlight the article that I came across my way.

Larry 26:52

Well, I find that having having worked sort of in the church environment for some number of years, I find that sad, but as society has changed, churches have become a business and they have to run them like a business. Because the the liability issues that, that

their insurers are telling them that they face if they, if they have too many people with this background and they know that they're there and then something happens. The churches even that want to be more spiritual, what is it administering the spiritual needs of people forced to register, they find themselves in a conundrum and there are some who just flat out don't want to they don't want those yucky people as they would consider them. But there are churches who really are torn between the ministry and the business side of it of the liability that that their insurance has told them that you have and they end up in this predicament. And and I don't know what the answer is because the big bad government shouldn't be telling people who to have in their sanctuary but the big bad Government should not be prohibiting people from building their sanctuaries either. And we have that component where people are not allowed to go to churches who would welcome them, because they're within 1000 feet or whatever the exclusion zone may be, or they have a daycare at which the government says that qualifies as a as a daycare, therefore, you can't be there. That's a place where children congregate, therefore, you can't be there. So it's a multifaceted problem. The church is a part of the problem. The church can also be a part of the solution, in terms of in terms of the governmental restrictions because I'd like to see the church fight back and say that's our business who's in our doors, not yours.

Andy 28:34

There's a about three paragraphs in it says pastors and staff are trained to pay attention to new faces during one Sunday gathering before the pandemic they noticed a visitor intently watching children in the congregation. They met him learned his name and later found him listed on the sex offender registry. His Facebook page also turned up unsettling posts about children. I, could they have picked the worst kind of person to profile that 90, 95, 99% of the PFRs are probably just trying to get on with their lives and find a place where they can do the worshipping how that they would want to. And they've decided to highlight the worst of the worst kind of person this could be related to. I don't think that's really fair. That's cherry picking.

Larry 29:14

what it is, and that would be where, probably the author of this story should be, why don't you report

about the thousands of people who worship they do not stalk children or have any desire to do that. But this is this is what this is the angle the reporter took.

Andy 29:32

Yeah, no kidding. It is time for a question about the nuances of transferring supervision to a new state. So this comes from I don't even have a name of a person how we're going to cover this. How did we...

Larry 29:49

I could I could give you Well, this was written to NARSOL for a legal corner submission. And I liked it so much. I selected it. It's going to run on the next issue of the NARSOL newsletter. And I feel like that this could be a big help to people out there because I think we've talked about interstate transfer at least twice in the history of the podcast, but we have new listeners, and we have people who forgot or didn't completely understand it. So we can try to unpack it again in terms of Interstate transfer. But yeah, this came from this came from someone that submitted this question to, to us and I loved it. So So therefore, he won himself a free subscription to the newsletter. And and and we don't put names we just say, an inmate wrote this, but but he gets a subscription for putting a good letter together that impacts more than just his situation. And that's the same thing Justin did Justin asked a question that impacts him, but it also impacts anybody who has a Wisconsin conviction, who might have left Wisconsin, and it impacts anybody who might would want to be relieved of registration obligations, and it impacts anyone who might be traveling So that's the type of thing that we like to give general responses to because it's not unique to your situation, that it only impacts you.

Andy 31:10

All right, so transferring. I'm gonna like, I'll throw the first one out there that what organization controls how you get transferred from state to state while you're under supervision?

Larry 31:24

Well, if you say organization, I don't know if there is an organization, but there's a process. There's an agreement among the states. It's called the interstate compact for adult offender supervision. And there is a process prescribed which the states have agreed

upon, that controls those transfers and those movements.

Andy 31:41

All right, and so so it's just an agreement. And so then is there an office set up or at least like a person or persons in the states to handle the to's and from's?

Larry 31:53

Yes, there is. There's the national office in Kentucky. I forget what city but there is the interstate compact for adult offender supervision, they do have administrative staff. And they there there is an office but they're they're far removed from the individual transfers, they are just simply the the entity that puts together the agreement in a readable form so that the Justice people there that are employed in the justice system can understand what to do. So they publish a bench book and the compact rules, and then they they they, they have a process where they have a dispute, and believe it or not, sometimes the states disagree about what the compact requires and a state will do something, deny something, or or violate the compact and the interstate compact commission as the entity but as far as the movement, each state has a compact administration office. So when you when you're dealing with a correctional entity in each state, depending on the size of state, it'd be a very large operation or if you were smaller states like Wyoming you might not have but but but but a handful of people work in interstate compact, but the process really starts with your probation office if you're in the community, or if you're trying to leave a prison Correctional Facility, and these are all people who've got state convictions, we're not talking anything about federal. These are state convictions. It starts with the offender approaching either their caseworker in prison, or they're supervising PO to get the process started to make the application to be transferred to another state. You have no right to go to another state.

Andy 33:29

All right, well, that would that would preempt a question I have later but so I go to one of those two different or three different people and I say can I please have the paperwork that I need to fill out to get transferred?

Larry 33:41

Well, there's really not any paperwork for you to fill out they do they do the bulk of it, the communication between interstate compact so the, the things all automated today, back in the old days, they would actually sit down and type up papers, but now they they key it into the computer into a system called icots and they they they submit it to the to the state and the process is all done electronically, there's there's guidelines in the interstate compact bench book that tells them what needs to be included in the packet in terms of the offender's plan of supervision, their criminal history and conditions of supervision that are that are uniquely imposed on them. They have to understand where the proposed residents it is and and then they they're allowed 45 days to investigate that request for transfer and get back to the to the requesting state. And and the requesting state doesn't really control what the, they're called the sending state in the state that makes the request has no real control over the state that where the request is submitted. That's called the receiving state. The receiving state will determine if they wish to receive that offender.

Andy 34:46

So do you have any kind of arbitration if they if they deny you can you appeal?

Larry 34:55

I have not been able to unearth an offender process for an appeal and in fact, with our attorney Ashley, we were not able with the vast amount of research that she did to, to to unearth that process. It seems like there should be. But the interstate compact is relatively new. When I say relatively new, it's less than 20 years old. And it replaced a much more relaxed compact agreement that was adopted in 1937, called the interstate compact for probation the ICPP. And, and the ICALS is relatively new. And there hasn't been a tremendous amount of litigation in terms of what to do in the courts. They're given guidance. The courts have been known to duck these things, because they said, Well, that's all interstate compact I don't want to deal with that. And so there's just a lot of case law in terms of what you would do, what rights you have. And that's, that's an area where the case law needs to develop in terms of if they turn you down. But, but in terms of our audience, on the people forced to register, you can assume that there's going

to be a bias against you as a person forced to register (Andy: And why would that be?) Well, I hate to answer a question with a question. But why would you want to take another state's offenders that have committed this type of high-profile offense that has a heightened sense of community outrage? And why would you want that to be a risk on your watch? Wouldn't you rather that Georgia keep their offenders? And if you have 100 offenders from another state that you're supervising, and there's a 3% recidivism rate, isn't that pretty much guaranteed? You're going to have some offenses that would have occurred in your state that won't occur if you keep those people out.

Andy 36:31

Seems reasonable. I mean, it's a NIMBY thing, not in my backyard.

Larry 36:35

That's the reason I mean, and again, again, I'm not making this rule up. I'm just you asked me the question, why would they turn you down? That's why they would turn you down because of the heightened community sensitivity. At about there will be some reoffense rate regardless of how low it is. And whatever number of offenders you have, that are required to register that you've allowed from another state. If that recidivism rate is as low as three percent which is number we tout around a lot, because you've got 300 offenders from from another state there, you've got you've got offenses that are occurring in your state that wouldn't have if those people had not come to your state. Conversely, you'd logically want to get rid of just as many as you could that have those type offenses because you would want if if you can offload 100 of your offenders that have that type of offense, you'd rather them to be offending in another state, wouldn't you? If you really are that afraid of recidivism? Would you want to offload as many as you possibly can? That's what's the fallacy of this this letter? Why don't we just read his question, but that's the whole fallacy of this because it will illustrate my point better. Let's read his question.

Andy 37:38

Let me get back to it because I extracted the questions from it. Did you put it in dropbox, Larry? You did, right?

Larry 37:50

Yes. No I sent it to you by email. Never put it in Dropbox. Well, what kind of show prep Have you done?

Andy 37:58

clearly Not enough. I read the thing and I extracted out the questions of what I wanted to deal with.

Larry 38:07

So, I'll, I'll find it and read your question.

Andy 38:10

it. I got it. I got it. Alright. So you want me to just go from the start of it?

Larry 38:15

Yeah, it's a short question.

Andy 38:17

Yeah, sure. I'm serving time in Tennessee and we'll be getting out next year, and I'd like to return to my home in Georgia and take care of my aging parents. How can I find out what I need to do? If the entire process is cloaked in secrecy? I spoke with my caseworker and did not find the person truly knowledgeable regarding interstate transfers. Does our soul have some basic information on Interstate transfer of supervision for those in my situation? It is rumoured around the prison that I have to pay \$150 for the privilege of applying to prison. Is this true?

Larry 38:51

Yes, in his case that that Tennessee does levy an outgoing application fee. That's how they illustrate my point. If you believe recidivism is too high If you say that you believe it is, and you're in the law enforcement apparatus, you would want to get rid of as many as you could. So if you, if you stop thinking about it, you'd want to waive that fee. And you'd want to put together the most beautiful application package you could possibly put together. And you'd want to get those people you'd want to get him down to Georgia, right? Because he's the rest of the community of Tennessee. So why not haven't been Georgia haven't been arrest there? I mean, does that make sense? Sure. Sure, I made a steak this exact argument in reverse of why they don't take people. If you don't want to take people because they're so dangerous, then logically, you'd want to get rid of as

many as you could as quickly as you could. So, so yes, that some states charged an outgoing fee, and they charge that fee for their time in processing your application. And in the answer, right, I told him that he needs to consult and see if they have an emergent process where they can waive that fee in Tennessee. And I don't know if they do or didn't do that type of research, but some states don't charge in some states charge a higher fee for one versus Since the other library probation is one fee, and parole, like be a different fee, but all that is on the interstate compact for adult offender supervisions website, there's a there's a link you can follow. And no prisoners are not going to be easily able to access that. But your family member can follow that link and find out what the fees are. But what state you want to transfer to find out because you could go bankrupt pretty quickly. If you're \$150 a pop to apply. And you you you want to make sure that you have done all the homework you can do before you apply because they may turn you down and then you've got to start that cycle all over again with a new proposed address.

Andy 40:37

The question that always perplexes me Larry whose rules do you follow? Do you do you follow the rules of the sending state or do you follow the rules of the receiving state?

Larry 40:49

Well, let's clarify because that's what seems to be the confusion. Are you talking about rules for supervision or rules for registration?

Andy 40:56

Yes. Which one I will We need to cover both because a person moving is going to have to follow the rules of state a and state B in some combination.

Larry 41:08

Well, when you're on registration you when you're registering, you've never follow the rules up to sending state your registry is always what the receiving state is.

Andy 41:17

So hypothetically, our 51st State has no registry at all you moved to that state, you wouldn't have to register.

Larry 41:23

You wouldn't have to register, that would be correct. Now. Now the question would be if we had a hypothetical state that didn't have a registry since we don't, what the sending state allow you to transfer because its members their option to allow you the privilege of transfer. If I'm looking at that state, and we have, we have 50 states and we have two states that don't have a registry, and we hate you so much. We want you to suffer the humiliation registry, would we allow you to pull out of that state?

Andy 41:51

Then I guess the answer to that would be no that doesn't that then introduce another element of it being punishment, Larry.

Larry 41:57

It does. But But in terms of of your of your question. If you go from Florida, to Vermont, right from what tells you to mail us your form once a year if you do your initial registration, and robot tells you that we're going to cut you loose after 10 years unless you have multiple offenses. Florida has no say of that about that in terms of your registration obligation, if they transfer you to a robot, you're registering in conformance with robots registration requirements, but Florida does have say over the conditions of supervision they impose on you all of those go with you to robot

Andy 42:31

and they also have to have whether they would let you transfer to Vermont if you went to a state that had some other similar shitty registration scheme, then they would say yeah, you can go there but you're not going to Vermont, which is sort of not so bad.

Larry 42:45

Sort of not so bad the people ever bought think it's awful because that's all that I'm sure they you relate it to what you know, I mean, we've got a list are in New York that just thinks it's horrible. And people would die to have New York's registration. But but but him for a month, that would totally be The registration will be their obligations. Now Florida again, as we talked about earlier, they may not take you off their website. But Florida is out of the loop in terms of registration. But all the conditions that were imposed on you by either the judge or by the supervising authorities, those go with that packet to you for overbought. And

under the compact, they're obligated to enforce those. And if they cannot enforce those conditions, they're supposed to notify the sending state that we are unable to enforce those restrictions. And then the syndic state can either remove them or they can deny that they can say well, we wish all the requests because those conditions have to go. But you do not get an advantage by going to another state. All of your supervision requirements are imposed on you go with you. If you're worth \$5,000 fine, you still owe the \$5,000 fine. If you have 10 years of supervision and robot would have only given you two years for that offense. You have 10 years of supervision. It doesn't give you an advantage in To the opposite, it can actually give you a disadvantage. You could have a state that like for bought, let's reverse that transfer, and you want to transfer to Florida because you've got familial support in Florida. So you go from having to register once a year of mail format to having to register three times a year. You go from having no exclusions on in Vermont to having Exclusion Zones everywhere as large as 2500 feet in Miami Dade County. You go from having having a I'm guessing fairly lack supervision in Vermont, to possibly having much more extreme supervision in Florida, because for most conditions come with you to Florida, but Florida has the option to stay compact to take your offense, compare it to what that offense is in their state and they can impose conditions additionally, that they would have imposed had you been convicted in Florida for similar offense as long as they're not doing that. Those special conditions to dissuade you from coming to Florida. You have to are consistent standard conditions they impose on that offender. They can impose those conditions on you in Florida. So you may end up in with rather than getting a better result, you may end up going from, what is it, they say, the frying pan to the pot or whatever the saying goes?

Andy 45:18

From the pot to the fire, whatever.

Larry 45:20

don't don't think of an interstate transfer some place where you go to get a better outcome because that's not the purpose interstate transfer is not going to likely result. Now, the reality is if you go to Vermont, and you go from a real bad state like Alabama, where they hate everybody, and the people that run the

system have a 11th grade education. And you go to a state like Vermont where they take if you ended up at Burlington, where they have a little more progressive view of things. You might end up with a supervising officer that just may refuse to enforce some of that stuff, even though it said it's in the paperwork, how rigorously they're going to enforce that is entirely up to the human individual that starts with enforcement. So I can't say that you bought by you, but you end up with a better outcome by transferring. But you don't go into that you just hope that happens, because there's no assurance that they won't be just as rigorous as the state that impose those conditions.

Andy 46:13

So we've already covered the fees. And then so let's let's go back to is the transfer guaranteed? Are there any conditions that you have family, kids, your dog, your house, anything that could like be like, well, we can't deny the transfer? Or is there? Can they just always go? No, we don't want to

Larry 46:33

there are there are situations and they're getting the bench book is a health helpful tool for that because they have a they have a chart of mandatory acceptance cases. And a couple of examples would be like, if you weren't living in that state at the time you're, you're you're convicted, and you can prove that that would be a mandatory acceptance state. So so you're traveling out of state and you do something that causes you to enter the criminal justice system but but you were only in that state as a visitor You're so you go back and forth to court and you plead out in that state and then you want to go back home, they will, they will have to take those cases back because that that's a mandatory acceptance case. You can't use the justice system to make someone homeless, if you're putting them on probation. Now, if you put them in prison, and that state, rather than sending them, giving them committee supervision, I'm not clear if that breaks the requirement that they take that person back if they were living there at the time of their sentencing. But clearly, if you go straight from from from being on the street, you go to a plea judge gives you five years probation. You were living in Georgia, you can plead out in Arkansas, Georgia has to grant reporting instructions, but what Georgia doesn't have to do is if it's a person forced to register if it's a sexual offense, and that means or if it Arkansas

defined it as a sex offense, or Georgia defines that a sex offense which Georgia has a slightly broader list at Arkansas does. If Georgia either state defines that as a sex offense, then they will trap you in the sending state until until the receiving state has cleared your your residence because you might in a normal circumstance they will give you immediate reporting instructions and say we verified you. That was your place of residence, you can go straight home if you have a sex offense, they they don't have that provision that you could end up trapped in the state where you did the plea because that residence you're gonna live maybe an exclusion So, so the attorneys are woefully woefully underprepared on that. They plead out people all the time. And then their client says I'm stuck here. They say Ha. And they sell what I went to probation, they said I couldn't go back until until my home approves. And then what's even sadder is that sometimes the homeless not approvable, because the people back in Arkansas say Well, sorry, that's within an exclusion zone can't live there. And the person's been living their 20s at 27 years, and they don't have the hundred dollars a night for a hotel room. It's Georgia and they end up they end up trapped. And that happens all too often because the feds attorneys out there, you're not prepared. And you don't take the time to be prepared. You tell the by I got your probation outcome, are you going to get us probation? This is a sweetheart deal. And you have not bothered to know what the consequences are depleting out to a sex offense and how that's going to impact their life. When they leave that courthouse, you have done your homework, and you should do your homework.

Andy 49:25

And who would be the expert on this subject?

Larry 49:29

Well, I don't know who all of them would be, but I know that that I do teach this in our state and I really hammer that hammer that issue every chance I get because attorneys just don't know. And, and probation sounds so good, particularly but yeah, when when you've got something that that could easily in the person with a prison sentence, and they're not intentionally doing that. But they're, they're doing it by omission. And if you're going to do sex offense cases, you need to deal with The registry is all about, and you need to know the consequences. And you

need to properly inform your client. Because your client might not have taken that plea if you're told him. Oh, by the way, I'm telling you, this is a great plea. But one thing that I haven't told you we need to talk about is what are you going to do for housing? Because they have up to 45 days to investigate your place? And do you have 45 days worth of income to keep your going? Or do you have anybody you can stay with because I can try to stall for more time if you can get that money together. But that's going to be the inevitable outcome is you're going to be trapped in the state because this offense is going to require registration, and we got to make sure that you can live now. Preferably, you would do that research to make sure that that you know whether that residence is going to qualify. But that can be more difficult because then you're getting into another state's restrictions and who do you call? How do you get accurate information? And you end up just like the person calling right on I know, people spend their life calling around other states and they say, Gee, I can't get an answers. Well, that's true.

Andy 50:58

right Then the final question that I have is how long after I arrive at the destination state Do I have before I am required to register?

Larry 51:07

Well, that would be up to the destination state, it would be whatever amount of time that they have now, your your, your state's going to tell you to register within a certain amount of time. But in reality, they're not going to violate you as long as you get registered within that states. Because for them to violate you, they're gonna have to allege to the to the citizen court that you violated the law in the receiving state. And as long as you comply with that law in the receiving state, you've got whatever amount of the time is, which is typically three days, sometimes as many as five days or even in our state, it can be as long as 10 days before you have to register. But I would tell people don't don't drag it out, register within within a couple of days. That way, you're showing good faith to be in compliance.

Andy 51:46

Sure. Is there anything else that we've missed?

Larry 51:50

Well, I'm sure that the listeners will will let us know but but I really, I really think that this is an important thing about interstate transfer and people out there who, who may be contemplating Write us sorts they call us nobody calls when's the last time we got a phone call was ended about three months ago. Write us, write us. And we make it engage on that particular point, as long as it's not too personalized to your case and the nuances of your case, but like this is very general. He wants to know how to get to Georgia. Well, the answer is very simple. He needs to do a lot of research, find out what restrictions he's gonna have. And there's nobody he can call easily. There's not somebody sitting in Georgia waiting to say, Whoa, you're in Tennessee prison. We're just be delighted to have you here in Georgia. How How can we be of help? Right, right, right, right.

Andy 52:42

Ready to be a part of Registry Matters? Get links at registrymatters.co. If you need to be all discreet about it, contact them by email at registrymatterscast@gmail.com you can call or text or ransom message to say 747-227-4477 want to support Registry Matters on a monthly basis? head to Patreon.com/registrymatters. Not ready to become a patron, give a five-star review at Apple podcasts or Stitcher or tell your buddies that your treatment class about the podcast. We want to send out a big heartfelt support for those on the registry. Keep fighting without you, we can't succeed. You make it possible. All right. Well, to continue on with the show. And Larry, you even wrote me up like a cheat sheet for this Commonwealth. Commonwealth of Pennsylvania challenge in McHenry County Common Pleas blah, blah, blah.

Larry 53:47

This is one of the five appeals that have been working this way. We talked about *Torsilieri*. I don't know how to pronounce it. But we talked about a case sourced resource early.

Andy 53:56

Torsilieri, I think it's about a month ago.

Larry 53:59

Yeah, we talked about that. This is Another one of those cases that's working its to the state Supreme

Court. This was Commonwealth of Pennsylvania versus Claude Lacombe and Michael Whitmyer.

Andy 54:14

Okay, and what? So, Larry, like you wrote me up the cheat sheet and I read the cheat sheet and it still comes out to be like legalese. They were trying to get some relief of some sort for, I think their crimes were like, a million years ago and they were things changed after their crimes. Is that sort of right?

Larry 54:35

Sort of, yes, this is a consolidated appeal from from both Lacombe and Whitmyer and the the essence of it is that the registry, and and the Supreme Court of Pennsylvania decided I believe in 2018 in *Munez* or *Moon-ies*, however, they pronounce it that The registry was unconstitutional because it impose punishment retroactively, the way they increased the duration and all the requirements when they passed their 2000. When they passed their law in 2010, which took effect I believe, in 2012, December 20th. And after years of litigation, they decided that well, then the legislature needed to fix that because I don't want to say they the terminology I use, but they're just not gonna let 1,000s of people disappear into the wind. So they like something in the wind, you know, you've heard me say it before.

Andy 55:31

Yes it's usually like doing like number one into the wind.

Larry 55:37

And so, therefore, the the General Assembly passed by an attempt to save the registry for people whose crimes predated and these two both Lacombe and Whitmyer did predate December 20th 2012. So they they came up with with a sub chapter in their revised attempt to be constitutional subchapter I, and in the cheat sheet, subchapter I applies to those convicted of a sexually violent offense on or after April 22 1996, but before December 20, 2012. So, so that's what they did. And they, they, they peeled back some of the onion from what had what had been in SORNA which was what what had been declared unconstitutional as applied to people who, who it was who had been roped into it retroactively. So, this is a this was a universe of people whose crimes predate SORNA. And, and when I'm saying SORNA, I'm talking about

the 2012 they didn't call it SORNA until 2012 they called it Megan's Law. (Andy: Okay) but but when they when they adopted the Adam Walsh Act, they referred to that as SORNA because of the Federal lingo, The jargon they refer to it as SORNA. But as I have said so many times and every time I say it I get a hate mail, registration of any type, whether it be sex offenders, or whether it be people exposed to bad water in Flint, Michigan children, or whether it be young men for the draft, whether it be whatever, in and of itself isn't unconstitutional. Each version of registration has to be examined on the merits of it. The courts will never be able to issue a decision to say that you cannot register people under any circumstances because that would knock down hundreds of registration schemes that we have operating constitutionally. I sent an email to someone on a task force we're looking at how to respond about a police officer registry. A police officers registry doesn't have to be punitive. It could be punitive, but it doesn't have to be punitive. You could register the police officers. You could keep their information confidential except for those who have a need to know, you can allow the police officer to go about his or her life, the former police officer that engaged in misconduct, you could allow them to work in any other occupation other than police business. And you could only make that information available to anyone who would be considering hiring them for police or security type work. And that would be a form of occupational debarment for one occupation, unlike the sex offender registry, which in many states, debbars the person from so many occupations, because of either the proximity restriction, or just flat out they have a list of things that a person can't do from driving an ice cream truck to a taxi cab or an Uber and on and on and on. They can't work in a place that serves children primarily. But you can do you can do that. And that's what we have here. The Pennsylvania legislature said we're going to try to see what we need to do to have a constitutional registry. So they passed subchapter I and they peel back the onion, and they took off some of the previous things that had concern the court in *Munez*, and, and in my opinion, and this is only my opinion. This was not unanticipated because they relaxed it not as much as I would like to have seen. But they relaxed it just enough to satisfy the majority of the core. And that's what they did. And at this point, what they did, and we can go through what I think was most relevant,

they did put forth a specious argument that said that, that there was that the the parties didn't have one of the parties didn't have jurisdiction, the court wouldn't have jurisdiction because he didn't use the Post-Conviction Relief Act, which is the primary way to challenge something in Pennsylvania. And there was a time limitation and the court just laughed at that. They said, Nope, we don't require that you use the PCRA. So that's a specious bogus argument so they got slapped down on point one, but point two of those scienter Martinez seven factors which they only look at five of them. The one that I think played the integral most important part was the disabilities and restraint, which those who know me have heard me ranting about this for years, you can have a registry as long as it doesn't impose any disabilities or restraints. And they decided that that this peel back of what they took off of the requirements just enough, they don't consider it a disability or restraint. I still consider having to go to a police station once a year to be a disability restraint. But, when they compared what they were having to do previously which if they go through in the opinion if anyone was to read all 60 pages, including the dissenting opinion, they went through what has been peeled out of the onion and they peeled back the in-person and terms of when you change employment or have any updating information under the the version of of SORNA That applies to people convicted after 2012, they make any change, they have to go in and person. They peel that part off of the people who have old convictions. They peeled back the terms of Registration to be what they were at the time you were convicted, which in most instances is going to be 10 years. And they peeled back, they peeled back the the onion just enough that if you go back to your original term of registration, you don't have to go in person. And they say that they don't see this as a particularly disabling to have to... and they say that once a once a year in person is necessary to keep your photo current. Now, what they don't tell you is that you could actually take a photo without going in and through electronic transmission and with the facial recognition, they can quickly identify if that's you, and you wouldn't have to go in at all. But that's not what the legislature chose to do. The legislature chose rather than using technology. They chose to require a once a year in person visit. And everything else can be submitted in writing.

Andy 1:01:53

Yeah, and it says that they were required to register quarterly so now they're only required to register annually.

Larry 1:02:00

And the and the big thing they did is they put a removal process in for the there were a few people under the old Megan's Law that were lifetime by virtue of their SVP their sexually violent predator designation, or for having multiple convictions. You could be a lifetime offender, but most people were not. But those people that are triggered under under the old law, which essentially those terms were restored by subchapter I, those people now can petition to be removed. And so that interjects due process into it now, they have to show by a preponderance of the evidence that they're not a threat. But there's a there's a petition process now. And this is just enough to be constitutional. And this is the final say on this. This is there's nothing nowhere else to appeal to. I mean, you could file a cert petition with the Supreme Court. Lacombe and Whitmyer could do that. They're not going to grant it they've already told us that when they denied the cert petition in *Munez* that they have no Interested In This Pennsylvania issue, and they're not going to grant cert on this one if and I doubt that even attorneys would even bother to apply for cert. But this is the end of the line. So this is the registry that will be applied going forward to people who have old convictions and the court has spoken. So the only other way to change it is through the legislative process. And that's not likely to happen, because why would they change it Now? The courts have ratified that this is just enough of a peel back.

Andy 1:03:25

Does this by chance set up a framework of what other states could do to be constitutional like they have they found the wall like what the limit is of what is or isn't constitutional?

Larry 1:03:37

Well, they have in Pennsylvania because, but see, each state Supreme Court is different. I mean, other state supreme courts will look at this if this issue comes before them, where they're trying to figure out if they peeled back enough, they will certainly use this well written analysis. They'll look at that, but but it

doesn't, there was a dissenting judge with a very blistering dissent. normally I don't pay much attention to the dissents because at the supreme court level, They don't mean a whole lot. But But since someone said, Larry you should talk about the dissent, so I'm talking about the dissent. There's a well written dissent That's that in, I've got two versions in Dropbox. One is the one that Pennsylvania PARSOL and it only has the majority opinion. But then I went on casemaker and downloaded the it was a full with the dissenting opinion. And I made some highlights on both, but those who like to read the dissent have at it, there's a well written dissent. So I guess that if you could change the makeup of the state Supreme Court enough to where more people thought like the dissent Did you could come up with a different outcome. But right now, I don't see that happening anytime soon.

Andy 1:04:39

And that would take a massive effort, because I know how this the SCOTUS has identified it, you know, lifetime appointments, and I don't know how the states are, but I'll assume it's something vaguely similar that it would be pretty hard to change enough with them to make a difference down the line.

Larry 1:04:55

I don't think it's lifetime but but it's it's sometimes it's very political Where they just run for the seats. And sometimes it's a hybrid model where they're pointed, then they have to be retained in a retention process. And I don't know the Pennsylvania process, but I know that in Wisconsin, it's elected because they were able to, they were able to get what are the real right wingers off the court of last election. And so that's one one step towards, towards getting I would daresay and I don't know this judge, but I would dare say this judge is probably not a real conservative judge that wrote the dissent. But anybody who wants to read the dissent, do the research on the judge and if it comes back that this is as a real conservative judge, we'll certainly put your comments on and your if you can document it, don't just say in my opinion, this is conservative, but show us that this, this, this person, this person is recognized as a solid conservative, if that's the dissenting judge we'll say that next week or whatever amount of time it takes you to put that together. But usually the dissent is not from the conservatives on this issue, they're usually okay with it. So I'm doubting that's the case.

Andy 1:06:01

Um, can you do me one favor? You talked about? I think I I don't I don't remember you saying it during the segment, but we talked about it pre-show and I said that sounds like a strict liability and used some word that I've never heard before. Can you use that word again? It was one of the seven thingamajigger is for the Mendoza Martinez thing.

Larry 1:06:20

Yes, it's S, as in Steve, -c-i-e-n-t-e-r. Scierter

Andy 1:06:26

Scierter. and what does Scierter, can you define it in so many terms?

Larry 1:06:31

knowledge.

Andy 1:06:34

So, so strict liability means you knew the crime you were committing was committing the crime.

Larry 1:06:39

No, just the opposite. It means you didn't know nor do we care. It's a strict liability crime. (Andy: Okay) so so so but but the Supreme Court of the United States has expressed a strong distaste for strict liability of crimes. They have they have said that they're okay in regulatory type situations or crimes that are very minor that don't carry life altering consequences. And one of the factors is to help determine if this is a civil regulatory scheme, Because in civil regulatory schemes, oftentimes we don't really care much about whether you do any better, you know that you just shouldn't do it and you get slapped on the wrist for doing it. But in registration, too many courts ignore that seven and it would be it would be easily adaptable to what would help you come up with another factor that weighs in favor of fighting it's punitive. In order to be required to register, I do not know of any state where you can be required to register and not know about it.

You have to be apprised. And, and and since *Padilla v Kentucky*, US Supreme Court, the collateral consequences all that are known at the time you have to be apprised of those and one of the collateral consequences of a sexual offense conviction that

triggers the duty registers that you been informed. So you have to know that you have a duty to register. So that means that in order for this scheme to come into play, there has to be a finding of scienter, you do not have to register until you know, you have to register. If you've never been apprised of a duty register, they can't convict you of failing to register. So in my mind...

Andy 1:08:16

So if you did some sort of crime in 1910, and you've never even heard of the registry here you are 120 years old, and they'd say, Well, you didn't register we're gonna throw you in prison for the rest of your life like shit. I didn't know I got convicted way back way back when?

Larry 1:08:30

And that would be actually I mean, you're actually being silly, but you're actually that's a good point Because in the the Adam Walsh Act criteria from the federal government, there is a provision that says that if a person reenters the justice system for an older conviction that didn't trigger a duty, and that they get convicted of something that carries a year or more of incarceration, they, the state can bring them in retroactively. But again, say you got convicted of something that that was a felony level which most felony offenses carry a potential penalty of more than a year. Now it doesn't have to be imposed. Everybody gets all, Well, I didn't get it, I got probation, but your crime had a statutory maximum penalty That was more than a year. Whether or not it's imposed is irrelevant. If you get convicted of a crime that carries more than a year, then the Adam Walsh Act says recapture these people. Well, if you had a true tier three offense, meaning something that would qualify as a tier three, the feds tell you that you can capture them, if they're still alive, you can you can impose a registration obligation, but that person would not have a registration obligation that they could be prosecuted for because they never knew so they committed their crime in 1972. And they've been crime free until 2020. And they commit a crime get convicted and that state has that provision. They've adopted that recommendation from the feds and they've got that clawback provision in there. They would have to serve that person and notice look, you are now subject to registration. It would only be after they failed to register. Thus they would have had been

they would have the scienter that they need, but they just simply say, Oh wait, we finally stumbled across you you got convicted in 1975. Therefore you have to register today you didn't register that that that would be strict liability. that couldn't happen because you have to have knowledge that you have the duty to register.

Andy 1:10:24

Fan freaking tastic Okay, I think this is this to me, Larry, this is pretty, to me, it's very nuanced, very complicated, very like in the weeds detailed and it hurts my head. And I mean, I think it's simple, but just the way that it's presented is not and I just want to say it that way. But...

Larry 1:10:47

I to try to try to prevent, present it simple.

Andy 1:10:51

I know you do. I know you do. And probably people listening are way smarter than me and they're like, Andy's an idiot and he'll like don't worry about it. We got no problem man. You guys are smarter than me. That's fine. I don't care. All right. Are we ready to move on then?

Larry 1:11:04

I think we are.

Andy 1:11:06

Okay, cool. Well, we have, see I was going to play a voicemail message. But I persuaded the individual with the question to actually ask it and have a little bit of dialogue with you, because you always have follow up questions of the person that has asked the question. And so this is a patron who has a question to ask you Larry.

Tammy 1:11:28

Hi, guys, I do appreciate all that you guys do, and getting the information out there. So please keep it up. (Andy: Who are you?) I'm Tammy (Andy: okay, hi Tammy) and my husband is on the registry. I just have a follow up question from Episode 135. The petition for removal from the registry of the podcast. I want to help him with the process of getting off the registry. This will not only benefit him, it will benefit his family too. What actions can, me and the family do to ensure a positive outcome. Basically, add to the judge's file,

maybe a letter from the family. Would this benefit, what type of wording should be included in those letters? For example, I was thinking that we have a son, and for him to get off the registry would take the fear and anxiety away of any retaliation or being harmed, with his name being public. Is there anything else the family can do to ensure him getting off the registry? Thank you.

Larry 1:12:41

That's, that's a brilliant question. And it brings forth something I've never thought about. We don't have a petition process in our state. So I'm only involved in an advisory capacity of two states where lawyers have met me in some national setting and they say what would you do? What would you do? I never thought about that. But I can tell you that anything a family can do, either legislatively, and I've encouraged this to for family members that are old enough to to come talk about the adverse impact on the registry to them. It's very powerful when they do it. And I can't imagine that it would be anything other than helpful to have have a letter to the judge. Now, you don't get to exporté the judge, meaning single party communication. So if a petition is filed, and the prosecuting attorney is the district attorney is the responding party, any communication to the judge gets presented to the other side, and so they'll be aware of it. And it is possible that the judge would not consider it if the prosecutor strenuously objected, but remember, prosecutors are elected individuals. And if a letter was was was composed in a way, that it sounded like it was coming from someone who was a victim, so to speak off the horrors of the registry. I would be, I would be doubtful a prosecutor, what would what would object extraneously. We'll see, the question becomes an approval process what is what is relevant evidence, the judge has got got the idea by the statute of what's relevant, and that a judge has a little bit of leeway of what they want to consider. And they'll consider things as long as there's not an extremely vigorous objection. So I can't imagine that a letter from a family member would be would be extraneously objected to unless they really didn't want that person off the registry. And they were looking for anything they can do. But in terms of other things you can do, you can make sure that the lawyer is competent. You can make sure the lawyer understands these things. Lawyer competency is a real big problem this area because you , geez I'm gonna

get myself when I don't have any business at all, but but lawyer competency and diligence is a big part of the problem. They do not go into these taking this as seriously as it should be taken. Because of the limitation on how many times you can go back and ask him and what the time delay is before you can Ask again. You need to get it right the first time. And and I think letters although I'd never thought of it, I think it's a great idea. And I think most judges would consider it and I doubt prosecutors would would vigorously object. But getting that getting that packet like Paul Dubbling, who's in in Chapel Hill, North Carolina, and he does a lot of work for NARSOL. He has an extremely good process of putting together the packet, and he gives the judge everything they need to grant the relief that's requested. And he's well prepared. And when you find an attorney like Paul, you have a much greater chance for success. And and that attorney has communicated with the prosecution to find out what their position is going to be and how to try to overcome any objection they may have. And if you don't talk to the prosecution, you're never going to know if you just filed a petition say Well, we'll see when we get to court what the judge decides. You've just cut your odds down considerably when you do that.

Tammy 1:15:53

Okay, so when you do submit that letter you suggested to victimize it. What the registry is doing to his family if he stays on?

Larry 1:16:04

I would, I would say, That's exactly what I would say. Just like when we ask people to come the legislature, we want that teenager to say, until until my father was on the registry, I had a good social life. But now he's on the registry, the kids won't have anything to do with me. I'm an outcast. And I didn't do anything wrong. This is the consequences of what I've, and I didn't do anything wrong. And I'm a victim here. And the old, the age old, kids didn't ask to be born. I said that in my life at once, once or twice I'm sure most of most of us have. The kids didn't ask for this. So you can't help but be moved by, If you're human, you can't help but be moved by a minor who's saying that I'm suffering because of this, and I'm being victimized because of this. And, and my father, my mother, whichever the case might be is an exemplary parent

and I need them in my life. I can't see how That would be anything other than helpful.

Tammy 1:17:02

Okay, great. Can you pass on anything else?

Larry 1:17:09

No, but I'd be glad to help you if you if you know how to contact us through the through the channels, I'd be glad to try to help you when that time comes. So

Andy 1:17:18

is there a kitty that you can like start throwing dollar bills in or hundred dollar bills into the judges coffers, I mean does that help? I don't know I'm just grabbing straws.

Larry 1:17:29

I've never, I've never heard of that. I keep emphasizing that the prosecution is a bigger part of the picture than the judge. You're going to occasionally run across a judge that just just hates anybody who's got this type of conviction. But judges are are human beings and if if a compelling case is made, and there's not strenuous opposition, they're inclined to just go I mean, they want to get through the day and get off the bench, believe it or not, they don't want to sit there and hear all this stuff. So if you can get if you can, if you can reduce the prosecution's anxiety that is so critical to everything because in every state I'm familiar with that is the responding party. That is who you have to go through, is the district attorney or the prosecutor's office. That's the responding party on the petition.

Andy 1:18:17

All right. Well, thank you, Tammy. Appreciate it.

Tammy 1:18:22

Thank you, guys.

Andy 1:18:23

Thank you. (Larry: All right.) Then let me play. So Larry, I was fortunate to have one of our Patreon supporters, he was rolling through town and we met for lunch and he was just leaving one of the the horrendous states. And while he was traveling, he was listening to the show for a little while. He's not here now, but I definitely need to give a shout out to Nate from Iowa who was listening. And but he left a voicemail

message. It's sort of related. He didn't bring up the actual hovercraft, but here's a quick little voicemail message from Nate.

Nate (Voicemail) 1:18:58

Hey, Andy, Larry. This is Nate from Iowa. I'm currently driving to Tennessee looking for Will thought we'd try and find them and explain to them what fyp stands for. Anyway, I just want to guys let you know that we just got done going to Florida, and there were no sheriff's or state patrol waiting at the border for us. I think it was only there for about three days, so I made it. I'm alive. Anyway. Thanks guys. Can't wait to hear you tonight, fyp.

Andy 1:19:27

Well there you go no hovercrafts, leaving the state of Florida after being there past the requisite time to register.

Larry 1:19:34

Well, it It surprises me that there was no hovercraft. But, you know, I remember we had a recent episode where I said maybe there maybe there can be such a thing as a hovercraft because somebody got caught in something. I said Gee, they really did want to catch that person. I don't remember particulars, but I think maybe there might be a hovercraft.

Andy 1:19:55

I just thought it was kind of silly to play. Not not encouraging anybody to go break any rules but just anyway and also Will he's looking for you in Tennessee. He's probably way past there. Now he was Nashville or so when we started recording. Good, dude, Pleasure to meet you and thank you for stopping by. We can almost close it out. We got a couple of new patrons this week, Larry, we had a Jay. Jay is a person that emails us all the time, like, sends a bunch a bunch a bunch of articles and finally became a patron. And then also Ethan, who is a person you're interested in having on the podcast in the next will be on at the beginning of August as well.

Larry 1:20:34

Fantastic. So that is a big fyp.

Andy 1:20:36

Yeah, man. How about some fyps? Hey, Tammy, when you were on, you didn't say fyp? I don't think so. Might have to cut out your whole section on the question you asked. It's a requirement. But Larry, that's all we got. And where can people find the show?

Larry 1:20:55

Very carefully.

Andy 1:21:00

Of course. It's careful. Where's the website for people to download the podcast?

Larry 1:21:03

It's on the internet.

Andy 1:21:05

Ah, just somewhere on the internet superhighway of informations. You're scrolling down the page now aren't you? You should have it memorized. I should be able to wake you up like cold like, Hey, what's the address? And you should just know. registrymatters.co

Larry 1:21:26

I don't I don't keep track of that kind of stuff.

Andy 1:21:28

Oh, okay. Not the important stuff. And so we did get some voicemail messages and how do people leave some voicemail?

Larry 1:21:36

(747)227-4477 and if you didn't hear that, that's 747-227-4477 and if you want to send an email, it's registrymatterscast@gmail.com

Andy 1:21:54

Did I ever tell you about the email address that I originally set up and I lost it I lost the password to it. I did have registrymatters@gmail.com and I lost it. Did I ever tell you that?

Larry 1:22:03

Well, why don't you do a reset?

Andy 1:22:05

I tried it like, Hey, what's the most recent password and I didn't set up enough recovery stuff, so it's just gone. So that's how it's registry matters cast because I'm an idiot. So

Larry 1:22:15

the best way to support us if you are so inclined is patreon.com/registrymatters or just patreon.com. And you can search for all your favorite podcasts, including Registry Matters.

Andy 1:22:27

There's only one podcast that matters at Patreon. And that's Registry Matters that I can assure you. Larry That is all I have on this fine Saturday night. Anything else before we head out?

Larry 1:22:39

I'm done.

Andy 1:22:41

All right, man. Well, have a great night and I will talk to you soon. Take care everybody. Good night.

Larry 1:22:45

Good night, everybody.

More show transcripts are available at <https://RegistryMatters.co> (that's right... just C O with no M)

In prison and can't get the podcast? Have a loved one "subscribe" at <https://patreon.com/registrymatters> at the **\$15 level**, and include your prison address information. Or send a check to cover at least 3 months.

REGISTRY MATTERS
MAIL-IN SUBSCRIPTION FORM

Sign me up for _____ months X \$10 = \$_____ (Minimum 3 months)

Make check payable to Registry Matters and send to RM Podcast, Post Office Box 36123, Albuquerque, NM 87176