



Registry Matters Podcast

Episode 154

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Andy 00:00

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Larry 00:17

Doing fantastic. I am so glad that you were able to make it despite all the vast responsibilities that have fallen on you in the last two or three days.

Andy 00:27

It, uh, yeah, I was incredibly busy with the conference, the Litigation Summit held by NARSOL, I guess I kind of turned into sort of like CNN. And I was I, I don't I didn't run the conference. But I was the guy pressing buttons making the whole stream happen.

Larry 00:44

Well, from what I heard through my sources it went off with very few glitches. It was a fantastic, the transitions were great. The speakers were great. And I heard it was a wonderful event.

Andy 00:56

I think it went off pretty well. I practiced really hard and trained and whatever, you know, I was like Mr. Miyagi, and doing wax on wax off, you may or may not get that a movie reference.

Larry 01:06

I do not. The last movie I watched was in 1987.

Andy 01:11

I think, now come on, The Karate Kid came out before that. You crack me up Larry. You crack me up so bad. What do we have going on tonight on the show?

Larry 01:23

We have listener questions. We have a case that's before the State Supreme Court in New Mexico. We have a case that's in federal court in New York. Trial court has issued a preliminary ruling. We have several articles that we may or may not get to all of them. And we have just general banter about all the things that have happened in the last week since we've been here.

Andy 01:55

All right, where are we gonna kick things off? Are we gonna start with some we're going to start with the New Mexico thing that you put in here, the Supreme Court? Is that where we're going to start?

Larry 02:05

Oh, let's do, let's do some questions. I know these inmates that sent these questions, they're just salivating for the answers. And Eric, thank you for sending your letter. He didn't have a question. He just had a compliment for the podcast about how he

appreciates it. And he sometimes doesn't get the front and back because they scan mail at many institutions these days and they don't let you have the actual papers. And he's not receiving the front and back, which I think he might want to consider a grievance about that. But anyway, thank you, Eric. It's always nice to have your support.

Andy 02:45

Very good. Thank you very much for that. Alright, so here is the first letter it says:

Listener Question

Dear NARSOL, I'm not sure if this question will cover more than those impacted in the North Carolina prisons but hope to get some advice from you. In this system, individuals with sexual offenses are not permitted to participate in various programs such as barbershop school, dog training, or inmate construction programs at minimum custody. These are the ones I'm aware of. Additionally, while inmates may participate in work release programs, once they are 36 months from release, sex offenders aren't permitted until 24 months. And that's if we can even get in. Finally at the camp I'm at currently, sex offenders will not be promoted to minimum custody unless they have attended the SOAR, which is sex offender something treatment program. And with an extremely high waitlist and low admittance rate. Would any of these be considered discrimination? Could I file a class action suit? And if so, how? Thank you very much for your help.

Andy 3:57

We've talked about class actions before and those are really hard to get. And would that even be the right vehicle to try and pick for this kind of operation?

Larry 04:00

It might would be but again, the complexity of a class action, you have to get certified. There's too many people who think you just have a red stamp that says class action. Of course, you can go to most any office supply store that provides rubber stamping, could get such a rubber stamp printed. But that doesn't make your cause of action a class action. It's a certified processing where you have to appeal to the court to certify the class and there's commonality of claims, deficiency of judicial economy. And the likelihood that those claims can be handled by the law firm. There're some standards to get a class certification. And they're exceedingly difficult to be certified. The states, the governments always oppose certification of a class because they would rather have you fighting individually, because your resources are more limited as individual. But in his particular case, I don't see... I hate to be the bearer of bad news here. It is in fact discrimination. But the only problem is all forms of discrimination are not illegal. There are discrimination, there's discrimination that's very much legal, and can be done. There's no law that says you can't discriminate.

Andy 05:14

And we have to start talking about what is a protected class?

Larry 05:20

in prisons, there are very few things that that.... everything in prison is, and I shouldn't say everything, let me back up. Most

things that apply in the free world do not apply in prison. That's a controlled environment where people are being punished. And prison administrators are afforded a huge amount of latitude in terms of what they do. And those programs are considered privileges. Security levels are considered a privilege that you earn. Now he's right, that you can do the exact same behavior, and because of your offense, you will not be awarded that custody level, which would allow for you to participate in more programming. But the prison's argument is that they are under intense community pressure for those particular offenses, not to have it possible for people to walk away. And the last thing, the last thing that prison commissioners, corrections commissioners for states, or wardens want is a microphone in front of their face, saying can you please explain to the good citizens of this community how this sex offender walked away from custody and just disappeared like a you-know-what in the wind and they're not...?

Andy 06:39

I'm sorry, what was that in the wind? I didn't catch the word. Maybe you broke up for a second.

Larry 06:44

We can't say that a little family program. But yes, that, I would, I would say that I sympathize with him. The likelihood that finding legal representation, it's going to be a long shot, and even a longer shot to prevail on the litigation for those things. Although I would endorse and support it and cheerlead for it, I don't see those cases going. The better thing to do, which you can't do from prison walls is to try to make policy changes, where that the elected people of the state recognize that reintegration is important thing and then make it possible for more inmates to be allowed to prepare for reintegration into the community which includes some of those things like he has on the list. I would guess if you learned to be a barber in prison, you might have a better chance to pass the barber's exam when you get out. Maybe. I mean, maybe not. But I'm thinking that would be one thing, that's a skill that translates to the community. Right?

Andy 07:46

I was just, I was just about to redirect back up there about the different schoolings that they may have and training programs, dog training and construction program. Um, these are these are places that you could potentially get jobs. Can you can you help rationalize why they would then push our people back 12 months before they're even eligible to go into these programs? I can't see why a PFR can't go do haircut stuff.

Larry 08:11

That one doesn't, I can't opine. Because if it's community sensitivity, wouldn't you be just as sensitive in the 24-month range as you were in the 36-month range? I don't know. Unless it's unless it's that they want to make sure you've done the treatment program they SOAR or whatever he called it.

Andy 08:31

Right. I've often wondered that too, Larry, why don't they, so I don't mean to take like the second detour. But why don't they put people in the programs to help them get treatment as soon as possible? Why do they get front loaded instead of back loaded?

(Larry: It costs money.) I see. Well, all right, then. Well, that answers all of those questions.

Larry 08:51

That's the short answer. All these things, in particular treatment, cost money. I don't want me to sound crass about this, but it's kind of like a case when people tell me that I don't like my case pending. And I say it's a good thing if your case pending, because as long as it's pending, you're not convicted. And the good things can happen when your case is pending, the accusers can die. The personal witness can be transferred to Afghanistan, and not be available to testify against you. Well, the same thing in prison. If you got someone a 10-year sentence and you frontload treatment, and you've got all these people, we do have a certain mortality rate in prisons. Wouldn't you agree that we have a certain mortality rates rates in prison? People pick up additional charges while they're in prison for both ends for conduct behind the walls and for previously unchanged conduct. So why would you want to spend all that money?

Andy 09:46

I can see that but then you end up with someone that may have some sort of good time or, you know, they're going to get out early for on parole or whatever. And so maybe that kicks their time back from that 10-year sentence, maybe that kicks it back eight to eight years. So then you would like by the time you then get in that program, well, you're not eligible for it until you're like two months out, 24 months out, you're already at the edge of you going home to begin with. By the time they even let you become eligible for the program, then you could be getting out of parole. Anyway, it just, it's crappy Larry.

Larry 10:22

It is. Prisons are not great places.

Andy 10:27

That is definitely like an underlying theme of the show. Okay, so we're just going to title it prisons are not great places, and we'll move on.

Larry 10:33

All right.

Andy 10:35

I'm sorry that there's just so a class action is not going to help out? And therefore, if so how? So that would be because that's going to be because of resources, and you cannot find an attorney and it's hard to do from prison.

Larry 10:52

Well, when they don't see a good reasonable probability of recovery, they're not going to take this on a contingency, because all they're doing is spinning their wheels, and they're not likely to gain any traction with this type of litigation. So, the next question, we're going to concentrate on paragraph two.

Andy 11:11

Okay. Yes, yes. And this is:

Listener Question

A potential question for your podcast. I have been getting the RM podcast transcripts since August and have been reading the NARSOL Digest since early 2018. One thing that I have noticed is that you haven't discussed SVP. What is SVP?

Larry 11:30

So I was on a different question. Are you on question two or three?

Andy 11:32

Oh, you're on a different question? I'm on question two.

Larry 11:39

Okay, I got it. I got it.

Andy 11:41

Oh, you got it now? We're on the same page?

Larry 11:43

We're on the same page. Old timers.

Andy 11:47

You've got that covered, man. Look at your picture.

LQ Cont.

SVP is sexually violent predator, civil commitment process very much during that time.

I have an SVP trial coming up in three months and would love to get your insight on how to come out of an SVP trial successfully because according to my public defender, SVP civil commitment is much like a life sentence is representing myself out of the question. Last but not least, what does fyp stand for?

Andy 12:22

Should we start with the easy one first?

Larry 12:24

I don't even know that we can answer what fyp means.

Andy 12:31

So like the quick story is, so you're there at home and you're sitting in your jammies and someone comes up and knocks on your door and says, I demand to know who lives here. Now it is your task at home the listener to figure out and say your response should be something that revolves around the letters fyp. Is that enough of a clue?

Larry 12:50

I think that is. Civil commitment. Now, in terms of the... let's sharpen that a little bit. We're talking about sex offender civil commitment. Because purportedly only 20 states have civil commitment, because that's when people look at the sex offender specific civil commitment. But I hate to tell you, I do believe all 50 states have civil commitment. I haven't researched the statutes. But there is a process by which people can be civilly committed that are dangerous to themselves or to others.

Andy 13:20

You're standing up on top of the water tower and you threatened to jump, they're going to put you somewhere for a few days

against your will and you're not being locked up. You're just you're somewhere being civilly committed.

Larry 13:29

And they may seek a longer-term commitment based on what that short-term commitment yields in terms of your evaluation and whether you're amenable to medication and can be stabilized, it could turn into a longer term commitment. But with what that standard, the standard is very clear that the person has to be an imminent danger to themselves or to others. And the goal of that commitment is to bring that person to a level which they can be released. We do not desire to hold people in this country in civil commitment. With the sexual offender specific civil commitment, the standard is atrociously bad for the person whose commitment is sought. It's rather than having the imminent danger to do harm to themselves or others. It's much more innocuous, they have to have a mental abnormality is the boilerplate language that the states have used that have this process that makes them more likely to commit a sexual offense. And it is not exact around the 50 states. I didn't research California, so I can't opine specifically about California. But the mental abnormality is the catch and then you end up in a process of which you have little control over because you've been locked up as he has been. He probably doesn't have any financial resources. And the state has virtually unlimited resources to seek his commitment. And the standard of proof they have to meet is a very low one, a mental abnormality that makes them have a higher propensity to do whatever that state statute says. And when you are committed, the goal is not clear that that it's intended to release the person. So therefore, you end up like in Moose Lake Minnesota, you end up with people that have been there for a very, very long time. And only a handful last time I did any literature, read any literature, have gotten out. A very small number have been released. And that, that that process was challenged. And the the trial court found that it was unconstitutional, but it was appealed by the state of Minnesota, of course, and the Eighth Circuit said that no, you have no right to get out, you have a right to a process that might let you out if you meet the standards. So this, this person, Theodore, he doesn't want to go in, obviously, because he's already served his time. And he's got a train coming at him. With him having limited resources to fight with, he has apparently been assigned to a public defender, which I don't understand this is a civil proceeding. So I don't understand why it was assigned to a public defender. That's something I cannot answer that. This is not a criminal commitment. This is a civil commitment. He's finishing his criminal commitment. Right? (Andy: Okay. I'm with you.) So this is a civil commitment. That's why it's called civil commitment.

Andy 16:34

Okay, that's far. I didn't really quite put that together. But I see how simple it would be to go civil and then civil, I'm with you. Okay, I didn't put it together that way.

Larry 16:42

So, but the downside to a civil process is you're not entitled to free counsel, unless the statute gives it to you. But constitutionally, you're entitled to free counsel when you're going to be put in the clink for criminal, I mean, that that has not been expanded universally, to include civil proceedings. And it may be that California has either put it in statute, or there's a court ruling that says that the public defender shall represent those who are

indigent. But there's another part of the component that goes unaddressed is that you need funding. Because if they're going to assert a mental abnormality, you may need your own expert to say that you don't have that abnormality. And that expert is going to cost money. And I looked at the state of Virginia, they do provide, they have they have a civil commitment process, and they do provide a modest amount of money. I think it was in the \$1,000 to \$3,000 range for experts for those whose commitment has been sought that are indigent. But that's another significant deficiency on our system is that we don't have the resources for these people whose commitment is sought. And then in the regular civil commitment, there's statutory build, they build in the statute that reviews will take place at intervals. Like like here, I think we have a three-day commitment where you go back before the court, maybe five days, but there's a limited number of days. And then the person goes back before a judge with additional information from the mental health from our state hospital or whatever psychiatric ward is evaluating the person and they they give the quarter report. And the court is looking for a way to release that person in some kind of capacity, whether it be with required treatment in the community or whatever. We haven't made that clear that the intent of this so called civil commitment is to restore these people to health so they can be released. And first of all, we don't even prove that they have anything unhealthy about their mental state because abnormality is not a criminal, is not a clinical diagnosis. So, he's in a bad situation.

Andy 18:53

Yeah, that sounds like an awful situation. And can we briefly circle back to a roughly a year ago with Galen, I've lost his last name. He went through civil commitment. Everyone was coming out of the woodwork to try and support him and help him and how did that go for him?

Larry 19:11

Well, it didn't go so well. He, it was his second attempt and what NARSOL we took a position that since he had not committed additional sex offense and since he was in Virginia, there is a requirement that to be eligible for the commitment to be sought, you have to have a predicate sexual offense and he did have a predicate sexual offense. He went through the process and he was not committed. And then while under community supervision, he picked up some technical violations of probation, no additional predicate offense, and they violated his probation at the end of the of the sanction period, which I think was 12 months and they sought his commitment civilly. Again, without a predicate offense. We stepped in and tried to argue that if there hasn't been another predicated offense, you do not get multiple bites at the apple. But they went forward and they secured his civil commitment. And he I think he's just recently been conditionally released from civil commitment. (Andy: Oh, really?) Yeah, I think I heard something through the grapevine that he has been conditionally released. We we could follow up on that maybe the next podcast, but he was he was found eligible and committed again.

Andy 20:18

Oh, I only bring him up because he didn't commit another crime to get him committed. And I'm not trying to paint a nasty picture for the question here. I'm just trying to, it's an awful system that doesn't give you, your favorite terms are about due process. And

this doesn't provide you with a robust level of due process to defend yourself.

Larry 20:41

Well, it's weak on due process in the beginning, and it's weak with due process one you're there. If you had the same robust reviews, with the intention of getting these people out. That's what's lacking here, a robust review process that's geared toward getting these people out. And then back to what you said in an earlier segment. Why didn't we, if they really needed this treatment? Why didn't we seek it in prison? This is actually a disguised attempt, and successful I might add, for the states that have it, which I think are 20 of them, to extend people's period of incarceration after they've given them all the incarceration they can in the punishment system, as a result of their conviction. This, all it does is extend their confinement, and in many cases the confinement closely resembles prison. Now, some cases it doesn't, they're clearly in a psychiatric unit, and it's a much softer place in prison. But some of the civil commitment, it's nothing more than a prison that's been, that they put a sign in front calls it a civil commitment center, and they're in the same type of facility as when they were serving their time.

Andy 21:51

Anything else before we bounced number three?

Larry 21:53

And wearing the same clothing and suffering the same deprivation. If you're a patient, what rights you're supposed to be afforded as a psychiatric patient are different than... When you visit someone in a psychiatric hospital, the deprivations are what's to keep them safe. Yeah, but you generally get to wear your own clothing, you generally get to have a whole lot of things in the way of makeup and personal care items and things that they would never allow in a prison because you're being treated. You get more access to communications. And that's what it's supposed to be because you're not being punished. You're being helped.

Andy 22:28

Hmm, not cool. Well, then question number three comes to us. It's for the NARSOL Legal Corner. And did you want me to skip anything here or just run it?

Larry 22:42

Just go and run it. It's not that long.

Andy 22:45

Okay.

Listener Question

Hello, I have just learned of your publication today and hope that you may have some information that may help in my situation. I am serving a life sentence in Kentucky and have been litigating my actual innocence for 12 years. Under Kentucky law a person under a life sentence is eligible for parole after serving 20 years. Another Kentucky law, sex offenders are not eligible to see the parole board unless or until they complete sex offender treatment, SOTP. Earned goodtime credits also require SOTP completion. A requirement of this program is that you must admit guilt. I hate that, Larry, I absolutely despise it. Failure to admit guilt renders you ineligible to take the class or pass the class. All statements

made in the class are a matter of record for courts to access and have been used to counter actual innocence claims. Here is my question. Is there any litigation in place or being done to fight this requirement to admit guilt? False allegations and wrongful convictions happen, yet this requirement of to admit guilt is forcing these people to choose a lesser sentence and chance for parole by admitting guilt or face longer sentences and no chance of parole by maintaining innocence. Without goodtime credits, you serve 100% of the sentence day for day. It is wrong and coercive. Can't they do counseling without requirement that you must admit guilt? What are the effects of taking SOTP If not guilty? Thank you for your time and consideration.

Larry 24:07

There are so many good questions here. I'm going to start toward the bottom Can't they do counseling without the requirement you must admit guilt. I believe they could. Now I'm not a therapist, I'm not an expert so this is just a lay opinion. But I think you could do counseling for a person. But if the person is actually innocent, I'm not sure how they would benefit from that from that therapeutic relationship. I mean, unless you're just doing general insight therapy into a person's life. But if you're doing specifics about sexual offending and about impulse control, and, and thinking errors, I don't know how you would deal with thinking errors if the person doesn't have any and I don't know how you deal with impulse control if they don't have any impulse control issues. So I'm not sure it would be effective. So what are the effects of taking SOTP if not guilty? I don't know because I haven't taken the SOTP program. So I don't know what the effects of that would be. I can't imagine that any treatment would harm you. But again, that's a lay opinion. Can treatment harm a person if they didn't do anything. Can you think of any treatment, if you go, if you go to see a marriage counselor, and your marriage is perfectly healthy, does that counseling harm you? I guess it could, you could create problems that don't exist.

Andy 25:26

We have a treatment level person in chat, and they're saying, yes, it could hurt you.

Larry 25:30

Well, we need to mic that person up because like I said, I don't feel qualified to answer that. And but in terms of the, the this in terms of litigation, I am not aware of any but that doesn't mean there isn't any, because he raises valid points. But again, getting out, when you're actually being paroled early, which is what he's talking about. He's got a life sentence. And when they when he serves his entire sentence, they will let him out. I will assure you that

Andy 26:04

Well, I mean, life being when he dies? They will send him somewhere.

Larry 26:07

yes, yeah, they will let him but but everybody doesn't have a life sentence. So when you serve the entirety of your service, whether or not you admit, they will let you out. And I need to qualify that, unless they have a post period, mandatory period of supervision that follows your sentence, then they may not let you out in some states like Illinois, or New Mexico, because even if you serve all

your time in those two states, they still won't let you out. But in terms of in terms of being early released on parole, that is a privilege. And to get that privilege, there are requirements for that privilege to be bestowed upon a person, and you have every right to maintain your innocence, and you have every right to keep pursuing your appellate review of your case. But I would just about bet that they're going to continue to pass you up for any type of early release, because as far as, the way they would look at is you're in denial, and therefore you can't be safely released early. And you need to stay in prison until you take responsibility for the acts which you've been convicted of doing.

Andy 27:13

Ahhhh, I just I've just spoken to our resident treatment expert, and we are going to set up an episode in the future to go over how treatment could be bad.

Larry 27:22

Let's do that. Because like I say, I don't feel qualified. And if it can harm you, then we need to know about that. And we'll we can circle back on this as soon as our expert is ready.

Andy 27:32

And maybe I should hold this, but I will just me going to treatment personally. I, I didn't feel that I needed the treatment that they were providing. I made a thinking error and the person that I went to discuss those kinds of things like cognitive behavioral therapy, CBT, and just trying to help you go through those things. There was never, really my treatment never covered anything from like a you did the naughty things with people that you shouldn't have done them with. He almost never went over any of that it was about thinking errors and an impulse control, like you just described. That, look, you could sit there and you'd be like, Man, I'm perfect. But you could probably always improve your decision-making process. Everybody can (Larry: Agreed.) So that that was how I approached it. Just look, man, I've got to go. I can sit here and cry and moan about it. And that probably would come back and bite me in the tuchus. Or I can participate and try and look at it from a positive way and then they'll report back to your handlers that you're doing great. And at the end of the day, everybody gets happy at the end, and somebody gets paid out of your pocket. Hey, what could go wrong there?

Larry 28:44

Absolutely. We're on a roll

Andy 28:46

The next thing... I know it, I know it. The next thing that I have up is the New Mexico. Are we ready to go there?

Larry 28:53

Let's do it. This is fun.

Andy 28:55

All right. have no idea. Let me see, is there something I can quickly read that would give a description? Let me okay, I have section 31-21-10.1c requires the parole board to conduct a hearing where the state bears the burden of providing a clear and convincing evidence that the sex offender should remain on parole. There that probably concisely states that they're trying to figure out who has the burden of proving.

Larry 29:24

If you just read the questions I gave you, it'll go flawlessly.

Andy 29:28

Okay, perfect. Perfect. So the questions are:

Listener Question

You people put an answer brief in the folder of a case in New Mexico called New York, excuse me, New Mexico versus Ryan Allen James Thompson. What is this about and why is it important enough to be discussed on this podcast?

Larry 29:46

Well, the reason why it's important is because it actually relates a little bit back to what we were just talking about. It's an appeal on an important part of law regarding what we call parole in New Mexico. New Mexico requires an indeterminate period of supervision that begins only at the conclusion of a person's sentence, you do not get early released here. And so, you serve your sentence less any goodtime credits, which can be 15%, or 50%, depending on whether it's a serious, violent felony. And then after you've maxed out, and I think killed your numbers, they refer to it in prison jargon, you go into a period of mandatory supervision for a list of sexual offenses that can be from five to 20, or a couple of them actually are five to life. And the statute says, after five years have passed, that the person shall receive a hearing, to see if they shall, shall remain on parole, and that the state bears the burden of showing by clear and convincing evidence they should. So Mr. Thompson was not afforded his hearing after five years, and that's what this case is about. It's whether or not he should get a hearing.

Andy 30:58

And the problem is what?

Larry 31:00

The problem is he's been on parole since 2013. But he's been serving segments of it in prison, because you can end up in prison at the front side of that period, because they may not the the statute placed the responsibility just like they did in Illinois, of approving your residence on the parole board. So the parole board may say, Nope, can't live there. So you've maxed out your time, and you've got nowhere that they will approve. So you're on parole, because you've killed your number. And you're serving your sentence behind the walls, you're doing what they refer to as in-house parole. So he, he, he, he made his parole by killing his number, but he had nowhere to go. So then when you finally get a place to go, then they're aiming and gunning for you. And the slightest technical violation will put you back in prison. So the parole board takes the position here, that you have to have five years continuous in the community. And the statute doesn't say that. The statute says after five years of being on parole. So, Thompson is arguing that he doesn't care where he was on parole at. He was in fact on parole for more than five years and they did not grant him a hearing. Therefore, there have lost jurisdiction to continue to supervise him. That's what that's what this case is about.

Andy 32:26

Did you work with the attorney that was going over this case?

Larry 32:31

I have actually worked with Kim Chavez Cook on a number of things. She is an appellate attorney with the State Public Defender. And she's also their, she represents the public defender's office in the legislature when they're in session. And we strategized a lot of things, including this case. And we've really strategized on both how to fix the statute and in terms of what's wrong with the arguments that have been put forward previously by people and which the judges sight back to old case law from the 1970s when actually parole meant being released early before we had determinate sentences. New Mexico switched in the 70s. I don't know the year because I wasn't here, but we went from, we went from indeterminate to determinate sentencing. And when we had indeterminate sentence, a person would be granted parole early with good behavior and all the different criteria that went in there. So it was a privilege. It's not a right. Now, the argument is, it's a matter of law, you've served your time, as a matter of law. This is a period of community supervision as a matter of law, they should release you. If they're not going to release you, it definitely counts toward the five years. And this is one of those situations where those who liked textual interpretation, this is a mighty fine case for textual interpretation, because the statute is very clear. It says you shall receive a hearing after five years. It doesn't say, it doesn't say five years of successful supervision in the communities. So their first position was it had to be five years continuous without violation. Then they backed off, they backed off of that position. And they said it had to be a cumulative of five years because that would still knockout people that served it in prison. That you had to have a cumulative of five years in the community. And the thing that's funny is that, you know, the trial judge by what I was told is a conservative judge, but he said that he couldn't think of a place where you got more strict supervision than in prison.

Andy 34:34

No kidding.

Larry 34:35

He said, he said that, that he couldn't think of any place where a person's more closely supervised than in prison. The district court found this is on page 9, the district court found that no other form of parole was more greatly supervised than parole that is served in prison.

Andy 34:57

Can we back up for just a second the way that you described that that is worded. That sounds similar to the Georgia statute with the two years shall be placed on unsupervised probation. sounds like similar language?

Larry 35:09

It does.

Andy 35:11

Okay, I just want so this like the word shall has a specific definition that says Like, it's not kind of a mighta coulda. It's not a like if you want to, it means you will do it.

Larry 35:21

It does mean that and this is an example of when you have part-time legislatures that don't have a lot of time to spend on something. And the community is clamoring for something to crack down because of some imaginary boogeyman that's out there, could be a boogeywoman, but some imaginary event that causes them that they need to act and need to act now. And and they they put this statute together without a lot of thought about the wording. And, but, but I'm amazingly a textualist when it suits the agenda. And had they wanted it to be five years in the community, they were quite capable of saying that and they didn't.

Andy 36:04

Do I need to play the hypocrisy clip?

Larry 36:08

I have never claimed to be a rigid ideology when it comes to one or the other. Textualism can be fatal in cases and textualism can be your best friend. That's why you should never religiously be one or the other. Textualism can be very bad for when we've done at least a half dozen cases on this podcast where textualism has led to a bad outcome. But textualism here is your strongest argument. If they had wanted it to be in the community, they would have said that. If they have wanted it to be violation free, they would have said that. If they would have wanted it to have been because the parole board takes the position that that clearly the intent of the legislation was that you'd be able to evaluate how they responded to community supervision. Well they didn't say that. Now, that is probably what they intended. There's no arguing that. That is probably what they intended, but they did not say that. So therefore, why not be a textualist?

Andy 37:17

Right, right. I want to ask you in the answer that you wrote of the question that we're on. It says now that the case law is no longer relevant, because this case is distinguishable. Can you help me understand how you use the word distinguishable here?

Larry 37:33

Well, when you're a trial level court there, you're arguing, when you're arguing interpretation of law, you're arguing what the trial court is going to guide him or her in making their decision. So, the state will always refer to a case named *Edwards* back in the 70s where the Supreme Court said that you had no right to parole. They distinctly said that in *Edwards*. You have no right to parole. It's a privilege. And it was as parole existed in the 70s. Because it was something that you were granted in advance of your termination of your sentence date. But *Edwards* is no longer relevant in this case. In this case, it's clearly distinguishable. Because what we have now is a person who served all their time. It's not, it's no longer a privilege to be released. Arguably, it's a right to be released because they've extinguished their debt to society. This period of post-prison supervision that we label parole only comes into play after you've served your time. That wasn't the case when the Supreme Court decided I believe it was *Edwards*, we were sitting in the meeting in Santa Fe talking about this. That was the case that we looked at the most closely. I believe it was *Edwards*. But that's that's so your distinguish yourself. You say, trial judge, the state is arguing *Edwards*. That's great except it doesn't apply here because this case it's

distinguishable. And if the trial judge doesn't bite which this one did, but then the state of course appealed. We're at the state Supreme Court, not because of Ryan Thompson. We're at the state supreme court because the state does not want this to be decided the way the trial judge decided it. They do not want to hold these hearings. They do not want to acknowledge that people have the right to be released, if they're not going to be released, at least they have the right to have that time counted toward their computation of five years for their review hearing.

Andy 39:28

All right now, my limited ability to read these things. It seems that the legislature needs to clean it up. And you I think you're saying that you agree that they need to clean it up. Are you are you the one that they should, like you've said, if somebody is going to write a bill that hurts us, it would be better that you write it than they write it?

Larry 39:37

Well, it would be better. Now the public defenders they've got a lot of energy invested in this. And we're working collaboratively on language. We don't see exactly eye to eye because right now it says clear and convincing evidence this person should remain on parole. I want to not stop there. I want to say clear and convincing evidence that the person poses an elevated risk to commit a sexual offense if released from parole. So that gives the board something that they must cite to, that this person presents an elevated risk of committing a sexual offense if they are not continued under supervision. Because we need specificity, because otherwise they're gonna say, Well, I'm sure you could benefit from that. Actually, they have said that they have kept people on parole, that have done exceedingly well with no violations. And they said, we think you could benefit from more supervision.

Andy 40:39

All right, then. Anything else on this before we cut and run?

Larry 40:43

I think we'd beat this one to death

Andy 40:46

Ro deaf. Deaf, deaf, deaf. Ready to be a part of Registry Matters? Get links at registrymatters.co. If you need to be discreet about it, contact them by email at registrymatterscast@gmail.com. You can call or text a ransom message to (747)227-4477. Wanna 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 at 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. We have some listener questions some like stuff that came from the website and then and also our discord chat. Ready for that?

Larry 41:45

let's fire those up.

Andy 41:48

All right, Brian in Louisiana says:

Listener Question

Louisiana Leper licenses. It's been four weeks since the Louisiana Supreme Court ruled the identifier box unconstitutional. The state said they would have a plan in place in two weeks. I called the Office of Motor Vehicles today asking what the plan is. The representative said they received an email on 11/5 saying there is no change for now. Branded licenses are still being issued and that any changes on hold for a possible appeal. What is the status? What's the deal with that? I mean, if they were told to do something, shouldn't they go do it?

Larry 42:22

Well, that's where people don't understand the process. And there's nothing sinister going on here. When an appellate court rules on something, the case has to be sent back to the trial court for implementation, because it's the trial court that has the jurisdiction to hold the party in contempt for failure to comply. So there'll be a mandate they'll issue, that will come down. First of all, when the appellate decisions come down, they clean them up for grammar for errors, the initial release may contain errors, they get cleaned up. But eventually after that process takes place then there's a mandate that will come down, it'll be sent back to the lower court. And then there's a time period where the state has the right to notify of its intent to appeal, which almost always they do. And it would be my guess they probably would in this case as well, because that's just what they do. And so therefore, since this case is not final, it is not final, the Supreme Court has ruled on it. But there's the possibility of asking for reconsideration. There's the possibility of not only reconsideration, that's really the one thing there's also the possibility of following a cert petition with the US Supreme Court. And therefore, this case isn't final. And if the state is going to take an appeal, they're going to ask for a stay. They're going to ask the state Supreme Court to instruct the trial court to stay any further movement on implementation of this until the appeal is exhausted. I'm not the least bit surprised. I know I got tarred and feathered when I said that I expected there to be no immediate change. But this is just the reality of what happens. And I would like to think that Louisiana would have an epiphany. And they would say, gee, we probably shouldn't have been doing that, now we've got something to hang our head on, we're not going to do that. But that's not likely what they're going to do. What they're likely going to do is to try to figure out the minimum they can do to change the status quo. And while they're figuring they might need to be using their appellate options to keep the case pending, they can figure out to come up with some legislation. I don't know when when their legislature convenes. I don't know if Covid is going to impact what the scope of what they're going to consider. But they've got all these considerations, trying to figure out how they can preserve as much of the status quo. And one of the things that can preserve status quo is to file appeals and to seek stays to stay the implementation. And that would be what I would expect them to do.

Andy 45:01

is a stay similar to an injunction?

Larry 45:04

Similar, yes. It's holding, it's holding off on the on the on the implementation until the appeals decided. So it's similar to an injunction. It would preserve the status quo. And it is just not logical to think that the state that has, arguably, according to that

Supreme Court's analysis, the most onerous license marking in the country would epiphanize to the point they wouldn't want to mark licenses at all. I mean, what would cause them to do that?

Andy 45:34

To then decide to not do it?

Larry 45:37

To not mark licenses at all? What would make them want to go from having the most extreme to having no marking?

Andy 45:43

Punish them, thump them over the forehead, and say you can't do this?

Larry 45:47

The court didn't say that. The court said that they could do a less onerous marking, but I'm saying for them to, to devise a plan, which is what this listener is hoping for that they'll have a plan where they won't mark licenses. Why would they go from having the most onerous marking in the country to not having a marking at all? Why would you do that? Tell me what would keep moving from that point to that point?

Andy 46:12

Right. Yeah, yeah, no, I mean, they're going to have to whatever degree they can is just fine. Whatever the line is what they can get away with. And they're going to take one tiny little inch step back from whatever that line is of what they can do.

Larry 46:25

That is likely what they will do unless the people of Louisiana register complete resentment to their lawmakers that these licenses are being marked. And I don't see that happening. I do not believe the phones are ringing off the hook in legislators' offices, saying How dare you mark these driver's licenses? I don't believe that to be the case. Do you?

Andy 46:48

Right. No, probably not. Probably not

Larry 46:52

Remember I picked on Louisiana and I couldn't think of his name last time I did it. Senator Vitter, who was the architect of the... US Senator Vitter, who who ran for governor as well, I think but he was the architect of the further reduction of people eligible for nutrition assistance. And he got great accolades in Louisiana for that for that position. And he would not have....

Andy 47:18

For paying people less nutrition?

Larry 47:21

for restricting, further restricting the eligibility for nutrition assistance based on felony and sexual offense convictions.

Andy 47:28

That sounds like a really great plan.

Larry 47:30

Well, my position is if the citizens of Louisiana had registered resentment with Vitter, saying how dare you not want to feed a person because of a mistake they've made in their life? You're going to deprive nutritional assistance because of mistake. How Christian is that? But that's not, that's not what the people of Louisiana did. He got great accolades; his phone rang off the hook saying they were in favor of it.

Andy 48:00

Sure. Sure, sure. Yeah, it's a very inhumane position to hold. But that's what we do here, Larry. That's the American way right there.

Larry 48:06

So all right, so that answers that one.

Andy 48:09

Yes. And then we did receive a comment from what Episode are we on? 154. So this is from the last week's episode it says:

Listener Question

Petition for mine... Oh, this is all related to the the removal from probation terminating the sentence stuff. So petition for mine after 65% completed denied. DA Assistant opposed it, said a lot of negative things, even untrue things, saying I had thousands of pictures when it was only 300 according to the discovery we saw. Said I was the worst case in the history of the country, which was untrue and just DA flare. My lawyer did everything you said. Probation rules here is they aren't allowed to recommend any SO for relief. However, he told the judge I was a model probation person and that I was violation free and have completed all my court ordered mandates. He was very kind. I tried. But hey, I made it this far. I'm just happy not to be sitting in prison. And I'm with my daughter and my wife. Love the podcast by the way, and hey, you forgot to say fyp. But I'll, I'll hold off on that part.

Andy 49:21

So I am, Larry, I almost have some level of like, like survivor's guilt to a certain degree because if this person did all of the things and like it's very person specific. It is very probation officer specific. Its probation office specific. Your County, your da the judge this like so many things for whether you will be successful or not at having modifications done to any degree. And you know, it's it's unfair is really like the best words that I could use to describe it that two people could have the exact same case so to speak, and one of those pieces of the chain, derail the whole thing?

Larry 49:50

Well, what I would like to zero in on is your lawyer did everything you said. I would like to question that because if the lawyer did everything that I say you would have known that they were going to say these things, because your lawyer would have had the conversation, the lawyer would come back to you and say, they would have said, Look, this is what they're going to say this is going to be their position. And I can go forward with your petition. But I'm telling you, if they say these things, Judge Smith is not likely to grant your petition. That's why I encourage this conversation. Most lawyers have their paw out from money, and they want the full fee. And I'm sorry, I have to criticize lawyers. But I do. And what I would like a lawyer to do that wants to do these

removal petitions whether it be from the registry, or whether it be from early termination, is to don't collect the entire fee. Tell the person look, these things, particularly termination from probation aren't rights, they're privileges. And I'm going to need to do some homework to find out if it's even doable. And if that lawyer had had that conversation, and they came back and told you, and if that lawyer told you that this is what they're gonna say, and you went forward, then this one's on you because you should have known if they come and say you're the worst case in the county, and that you had thousands of images. And this is another reason why you can't go in to this pro se, because they're not going to tell you these things in advance of the hearing. You can't go in to the DA's office, first of all they're not going to let you in, and second of all, they're not gonna tell you that you're the biggest creep that ever lived. And you need to know that before you go forward with some of these petitions, because in some cases, you're barred for a period of time from presenting another one. In particular a removal or reclassification. In Arkansas, you have to wait certain amount of time, you have to wait before you can file another one. You need to do your homework and get as many barriers out of the place as possible, as you possibly can. What if that DA that that did this was in a bitter reelection campaign? I don't know any of this, I'm just speculating. But suppose the timing of this could have been altered, where it would have been decided after there was no, no judicial election that could have been a factor or DA election that could have been a factor and the DA might not have been as adamant. All those things are considerations.

Andy 52:18

Yep. Yeah, I would say that while I was still even like interviewing the lawyer the first time he called over to the DA, and I don't remember which level he didn't talk to the head honcho, I don't believe, but started just taking the temperature while I was still there to see if it was something that could be accomplished or not, before I put a penny down.

Larry 52:38

And that's the correct way to do it. If you have integrity, you'll tell the person you know these things. Oh, you're in this county? Well, I'm telling you, they haven't early terminated a sexual offense for the entire years I've been practicing here. Now you could be the anomaly. But they don't do it here. And then you can go down, you can go down the street, and you can tell another lawyer the story, who isn't honest. And you can buy into the hoopla, which is what people do. They accuse all lawyers of being crooks. And they go look for the one that will give them the message that they're wanting to hear and they hire that one. Because who wants to hear that they can't get off early. Nobody wants to hear that.

Andy 53:22

No, nobody wants to hear it and I certainly went into it with that mindset. I don't want, I don't want someone to lie to me and tell me that Oh, man Piece of cake and then obviously it fails. But I also don't want someone to say like, no, never never does this work. And maybe it does work. I was like, how do you how do you get past that cruff of figuring out where the actual, where does the barometer lay on this actually being a plausible thing? It's hard to do. And it's, you know, we're lay people, we don't have the expertise that someone like you has, and we're trying to fly by the seat of our pants, we barely know how our car works. And we're asking a mechanic to help us, you know, tell us whether we need

to get our car fixed. And it could be a \$10 part, or it could be a \$10,000 job.

Larry 54:04

Well, if I could give this piece of advice, be willing to pay the lawyer for the time it takes them to figure out what you have and what your potential is. That's all they've got is their time and their expertise, be willing to pay for that. They shouldn't have to go talk to the DA for you, on the off chance that you might hire them. But if they absolutely cannot win a removal petition, they shouldn't charge you for the full price for one because they should be honest enough to tell you that I will do your petition for you, Andy, but not a single one has ever been granted. I feel bad about taking your money, but I will give it my best shot. But I'm telling you, this is what they're going to say. That cost you \$1,000 to find out. Would you rather pay \$1,000 to find out that you sunk or would you rather pay \$5,000 to a person who tells you that I do these all the time. Don't worry about a thing. I'll handle it and then you get sunk and then you may be sunk for a period of time, statutorily you can't come back, which is more, which is more preferable to you?

Andy 55:07

Nick brings it up exactly the way I think you should play this one, it says for petition, the key is to have a lawyer who can make calls and get a good read of the room who actually spends the time in that particular court and knows all the players. Yes, yes. For something like this, you would want somebody that knows your local jurisdiction, you don't want some out of town one that's going to burn bridges. You want someone that plays golf with these people and hangs out and send Christmas cards and whatnot.

Larry 55:30

you're absolutely right. The exception would be if you know it's an extreme long shot and if you think you can break down a key witness, and you need a person who is not afraid to do that, because if someone's gunning for you, and you think you can break them on the stand, and get them, get them, get them to be tripped up, and to give conflicting testimony, you might break you might win the case with an outsider. But generally speaking, that is exactly correct. You would want to basically what you want to do is talk to me every time you have one of these and pay me to tell you. I'm just kidding on the payment because I couldn't begin to talk to everybody who has legal questions, but you've got to find some way to talk this through with a person who's not just out to get paid if there's virtually no chance of you prevailing.

Andy 56:18

You should provide a service of where we hire you to interview our attorneys for us. *long moment of silence* And then there were cirkets.

Larry 56:27

That's a good idea. What should that price be? \$1,000 an interview?

Andy 56:35

Containers of fudge.

Larry 56:37

I still got fudge leftover.

Andy 56:43

I'm sure you do. Thank you, Justin for that. He then turned around and offered me and I was like, No, no, no, no, it's totally okay. I was just I was totally just picking on him about, I don't need a whole lot of sweets, it's totally fine. I was just totally playing fun that you got something and I didn't. I was just playing. So alright. Somehow, we missed this one Larry, but this one came up on the radar of different advocacy groups. So, this one comes from Florida Action Committee. It says New York Federal District Court grants injunction against the state blocking social media. But this is like a two-month-old decision or something like that. And it says a group of people forced to register as PFRs in New York have been granted a preliminary injunction by a federal district court in New York against the New York State Department of Corrections and community supervision, which sought to ban these individuals' access to social media. What's going on here?

Larry 57:32

Well, it certainly went passed my elaborate detection systems here at FYP. So, we have a vast apparatus of detection, but this one got past me. But this is a statutory requirement for people under supervision. And it includes three categories. The victim of the registrant's offense was under the age of 18 at the time, or the registrant has been designated as a level three sexual offender, or the internet was used to facilitate the commission of the crime. And those people are restricted significantly from accessing the internet and social media. And the trial judge, this is in a trial court. It is not an appellate case yet. And for kicks and giggles, I looked up the district judge just because everybody wants to know is it red or Team Red or Team Blue? (Andy: Right. Right.) And this is a judge that was appointed by President Ronald Reagan.

Andy 58:41

Probably makes them Team Read.

Larry 58:44

And Judge Dearie I think that's the way it would be pronounced and just like in Colorado that the judge Matsch was appointed by President Nixon. Now, in in the days of Nixon, they were they were not very elaborate at doing... they didn't analyze philosophy that much in those days at the trial level. They did at the Supreme Court level. But at the trial level, if the senators from that state recommended a judge, the President, someone for a federal judge, the president was going to appoint them. But this case is similar to what we had happen in Butts County, Georgia, where a preliminary grant has been given to enjoin the state but he only had enjoined them for the group of the internet which was used to facilitate their crime. He decided that they are likely to prevail on the merits of this of this case and but I wanted to talk about the exceedingly high requirements for getting an injunction because it's like the stamping class action. That doesn't make it a class action. Applying for an injunction doesn't get, and in fact most are not granted because of the exceedingly high standard and the party seeking a preliminary injunction on anything has to establish that they're going to suffer irreparable harm and a likelihood of success on the merits when the case goes to trial, and that the preliminary injunction is in the public interest. And then there's another component to stay a government action that the moving

party seeks to stay a government action must establish that they irreparable injury and likelihood of success on the merits of the claim. And that's a tough thing. That's a real tough standard to meet. And, and then I really zeroed in on page 17, because it made me reflect back on international Megan's Law when the injunction was sought, and people threw darts and arrows at me when I said we can't meet the standard. And I couldn't find the standard, but I knew it because I had researched it before but I couldn't find it. But thankfully this district judge has a law clerk that could find what I couldn't find. And they say, Judge Dearie says irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction, quote, the movant must demonstrate an injury that is neither remote nor speculative, but actual and imminent and that cannot be remedied by monetary damages. That is the reason why the injunction for international Megan's Law was doomed from the get go. Because everything that was being sought was based on speculation. We did not know what the marking was going to be. Therefore, all we could do was speculate. And therefore, it failed. And I got mad, people got mad at me, I didn't get mad. But I just felt like that I was doing the best I could to explain people the odds of prevailing, but this one here is a good case study for those who want to know about how difficult it is to get an injunction and why they are granted and why they're denied. And this case is still unfolding. Hasn't gone to trial yet. We do not know how it's going to come out when it finally does go to trial.

Andy 1:02:14

Can you back up? You gave us the three different positions that people could be in for this for these conditions to be held true? And I just want to be clear, is it the people that use the internet to facilitate their crime? They are the only ones that didn't get this relief? Or they're the only ones that did get this relief?

Larry 1:02:33

The way I read it, they're the ones who did get the relief.

Andy 1:02:37

That seems backwards?

Larry 1:02:40

Well, let's go back and make sure I didn't misread it. Let's make sure I read that correctly. So let's go down to the end of it, you know, do and do a skim of the read because it could be that I have a bout of old timers.

Andy 1:02:54

Well, because I you know, to me, the people that you would seem to want to keep off the internet would be the ones that used the internet to commit their crime. The first one that says the victim of the registrant's offense was under the age of 18. Well, they could have gone to a park to do their, to pick up the whatever, that doesn't have anything to do with the internet. Why would you restrict them from the internet? That's the only reason I'm asking this because that just seems backwards to me.

Larry 1:03:19

Yeah, it looks like I've got it backwards. They're the ones who didn't get it. (Andy: You're fired.) Yes. Yeah, that that's a bout of old timers this here.

Andy 1:03:30

Okay, I didn't think that that made sense. But hey, look, you know, we're editing on the fly. And that's what happens when you do a live podcast. So cool. Okay, so the people that use the internet to commit their crime, those are the people that did not get this relief. The other people where the victim was under the age of 18, or the registrant has been designated as a level three offender. Those people are relieved from this where they can still potentially use social media.

Larry 1:03:56

That is correct. And another neat thing, and this is the overreach of *Packingham* where the, it was a unanimous decision of the Supreme Court. But the conservatives were very reluctant because of the overreaching dicta that they said that would be used to drive wedges. And they, they were cautionary about that. And this came up in this decision here, where, where the *Packingham* case was about people who had completed their sentence, they were not subject to any form of supervision or punishment. They were being banned by North Carolina. And the court had some dicta that, that they were particularly concerned as how the internet ban was affecting people who had paid their debt to society, which suggests that they were concerned about people who were still paying their debt as well because of the use of the word particular, particularly. And so that came up in here as well, but this case is still unfolding folks.

Andy 1:04:58

Okay, but as we learned, as we learned with the Butts County, one in Georgia with the signs, it is a very high bar to receive the injunction. But that does not mean that you can just tip your hat and say, Hey, man, we we've got this, it's over. We don't have to do anything else we've won, it could still come back and bite you.

Larry 1:05:17

They could come up with because the Court made it clear that they hadn't shown the evidence to justify what they're doing. It could be when this goes to trial, they have more evidence, like the had in Butts County. Well, of course, it wasn't a trial, it was summary judgment. But if this was resolved by a trial, and they actually hear evidence, it could be that they present evidence, we don't know that because everybody moves for summary judgment.

Andy 1:05:44

Okay. We have some articles to cover if you want to fill in some extra time. And we're gonna have to prioritize these because we have maybe 10 or so minutes to go and we have like 45 articles to go.

Larry 1:05:55

All right. So let's do some articles. Let's start at the top. And the ones that are at the top of the list are more of a priority for me. And the first one doesn't take any time at all.

Andy 1:06:05

No. Man freed from five hundred and..., I can't even, 505-year federal prison term, Larry, his release date. I just I stopped when I was reading this and left. His release date was July 8, 2419. Who do you think's gonna be running for president in 2419?

Larry 1:06:23

Well, they would have released him after he did his time.

Andy 1:06:29

I don't mean to be laughing because that's an obscene amount of money, I mean, time, I was just reading. He was a money launderer. Like, he he made phony money Larry. And he received a 505-year prison term, but he's been released early, so that's good news for the guy.

Larry 1:06:45

Because of the pandemic.

Andy 1:06:48

Oh, well, I mean, okay, but it's not like he's not he's not somebody that's violent. He's not Charles Manson as an example of somebody that would be a threat to society, so to speak. This guy just put some money in the laundry mat, and then took it out and spread it around. That's all he did.

Larry 1:07:04

Well, not quite literally.

Andy 1:07:09

I know. That's a long time. 2419 Larry, come on, you may still be alive.

Larry 1:07:13

Well, like I say, they would have released him in 2419.

Andy 1:07:20

Anything else before we... It's just a long time Larry haha.

Larry 1:07:24

I like the next one about the wedding.

Andy 1:07:27

Okay, let's see here. So this is from courthouse news, Nebraska inmates fight Eighth Circuit for prison e-wedding. That's fun. I didn't really get enough information out of it. Is it just two people that were pen pals, and they want to get married? I didn't really quite catch what the actual situation was

Larry 1:07:47

Something to that effect. They want to get married. And but the the marriage statute from 1866 I guess, in Nebraska, contemplated to get married you had to be present. And the state of Nebraska saying that a virtual wedding doesn't count. And the court apparently the judges were like, discombobulated but why do you need that? Why are you trying to keep these people from getting married? And we've had case law since 1966, you have the right to get married. But the question is, do you have the right to force prison administration to provide a platform and a portal for you to get married virtually? What right, the right to get married, does that include a right for someone to facilitate your marriage for you?

Andy 1:08:43

Let me let me just it seems like it would be easier to put in a computer to let them have a Skype wedding or a zoom wedding

than it would be to go through the security precautions of bringing a human body inside the walls.

Larry 1:08:56

Well, but they're not going to do either. I mean, that's the question I'm raising and I don't have the answer. I'm saying you have the right to marry who you want to. Where is it etched that you have the right to force prison administrators to provide you transportation or security if physical presence is required? Where is it? What right can you cite that you have the right that they must force, that that you can force them to provide a platform for you to get married virtually. If we want to be textualist, what can you cite to that says while you're being punished that they must provide you the avenue to get married?

Andy 1:09:38

and remind me Eighth Circuit that is the appeals court that's one step below the Supreme Court?

Larry 1:09:42

That's correct. And that runs down the midsection it would be it would be Nebraska Arkansas, Minnesota, that midsection of the country. But I'm wondering what right can you cite to? You can get married all you want to. As soon as you're out, you can go get married?

Andy 1:09:59

Okay. Okay. And that would then put the burden on you to find somebody to marry you just find the priest or minister of some sort to marry you, you go to some sort of establishment to do it. But the prison doesn't have to do that for you.

Larry 1:10:11

I don't know. That that's where, if you are a textualist, and a literalist, then this would be legislating from the bench for the people wearing the robes to put in the, to issue an edict from the bench, saying that the legislators should have done this. And they didn't, therefore, we're doing this, that's a little bit of legislating from the bench. So, I'm just wondering what right you have to force the prison, you can't force them to provide you access to your doctors. They provide you access to the doctors they want to provide you access to right?

Andy 1:10:53

You can't yeah, you don't get to go, hey, look, my special doctor over here, that's what I'd like to go see. No, fyp you can't go there.

Larry 1:11:00

you don't get to force them to provide you access to visitors of your choice. I mean, you you do have some limited visitation rights that you can forfeit, depending on discipline, but you have severely curtailed rights in prison. So I'm just anxious to see what right that they are going to be able to assert. And if the eight circuit invents a right, because I think they'd be inventing it, what they hang their hat on, if they say that the prison has to do this stuff, and I'm not taking a position on it. I'm just raising the question. If I were prison administrator, I think I would probably try to create without a court telling me to, I would probably try to create something. But the prison would take the position, this is what administrative would say, Well, if we start providing these virtual weddings, they're going to be they're going to become

commonplace. And, and that's all we're going to be doing. And they're gonna be sham weddings.

Andy 1:11:48

We're not the yeah... and we are not the Department of marriage,

Larry 1:11:54

They're gonna say that there'll be Sham weddings that people will have met through through writeaprisoner.com and friends beyond the walls and all these websites. They're going to say that, that people are getting married, to try to get benefits. What happens if a person's that 72 years old, you only gotta be 60 something to get Social Security. But what happens if a person's in their 70s and their benefits to Social Security have been curtailed because they're incarcerated, which happens whether you're on disability, whatever form of social security. What happens if a sham wedding happens for someone who is in a financial condition that they can collect spousal benefits by being married. Now, I don't know all social security law, and I don't know how long you'd have to be married. But what happens if people use it to scam that? Would we be happy that our prisons are accommodating sham weddings?

Andy 1:12:42

Probably not. If only you would think of that. I shouldn't say only you, somebody else would too. But you were the one that would think of these things.

Larry 1:12:49

What would happen about people who who want to sponsor folks to come in and suppose they're in prison for something other than a sexual offense? And they could receive a monetary consideration for a virtual wedding for someone that they've never laid eyes on before. Would that make you happy as a society? They're downsized all these things that I'm just curious how this case is going to come out. It's going to be fascinating to me. That's why it's in here.

Andy 1:13:17

yes, of course. And then we have a pair of articles. At least they're tangentially related from the New York Times. Sex abuse claims against the Boy Scouts now surpass 82,000. And the other one is a \$73 million settlement is reached in sex abuse suit involving UCLA gynecologist. I don't know why you put these in here.

Larry 1:13:38

Well, we do tend to talk about stuff related to sexual offending and what I put it in here for is because I'm totally confused. And I don't understand. We've talked about former House Speaker Hastert who was molesting the wrestlers apparently for a long time and he admitted it, it's not my speculation. He admitted it when they charged him for money laundering and all the stuff they charged him to do. He admitted that he had done that when he coached wrestling. We had Jerry Sandusky. We had Dr. Nassar, we've had on and on these high profile cases of people that that I don't understand what happens how this stuff goes undetected, and undisciplined, and unprosecuted for years and decades. I don't get it. I don't want to believe just because someone comes forward that they're automatically guilty of every accusation that's made. But on the other hand, at some point, it becomes a pattern. And if you're paying out \$73 million at UCLA, I would say that there are a lot of, in this case it was women it wasn't like with

Sandusky and Hastert it was it was boys, but there are a lot of people who have been victims that who have been reporting things as we found out in Penn State University that the administration was aware of this and they took no action. How does that happen, Andy? How?

Andy 1:15:08

I don't know. I don't know. But, is some portion of those 82,000 claims, some portion of those are probably not true, but some of them are probably true.

Larry 1:15:27

I would guess in any situation where there's money to be had, people will put forth dubious claims. I mean, that's, that's just human nature. Hopefully they have a process of ferreting out that the people were a member of the scouts, I'm sure they do because money is at stake, and they have some process of validating. You'll never be able to know what happened. All you'd be able to know is the person was a scout under that particular scout master under that particular era when those allegations were made. But again, you would have a pattern. If you only have one scout that comes forward. And that's all. That's not to negate that that could be true. But if 27 scouts come forward from one scout Master, and report something at some point, you ought to take it seriously, I would think.

Andy 1:16:13

You would think. You would think. Anything else here before we go on and we could probably do one more if you want to like pick one.

Larry 1:16:22

Pick one. All righty. So well, you know, the war on drugs.

Andy 1:16:31

Ok so this is from The Hill. 50 years after the start of the war on drugs, Americans have a chance to fix the harm it created. Richard Nixon is the one that is credited with starting the war on drugs public enemy number one, how can you imitate how Nixon would say it? *Nixon accent* "Public Enemy Number One." I don't know. I can't do Nixon

Larry 1:16:51

You did a pretty good job actually.

Andy 1:16:57

I have heard people like bashing president, vice president-elect Kamala Harris for her position as DA back in California whenever that was as being incredibly harsh on people coming before her for drug crimes. That's what I've heard. And they're wondering, is this all going to change when she steps into the office and all that stuff?

Larry 1:17:18

Well, I think you heard me bash her, because I've asked that, posed that question when she was running, you know, is she truly different now. But this this is, clearly these two articles indicate that we spent a lot of money and not achieved a whole lot. The deaths from drug overdose have gone up. As the public has voted, in this recent cycle of election, this general election, the conservative and liberal states have voted to relax, I mean, it's a

it's it's bipartisan. There are states that you would not think of that're voting to decriminalize and legalize the use of drugs. And I think we're finally turning the corner and we're but it's going to take some time to unwind because a lot of people make a lot of money and they don't want to give that money up.

Andy 1:18:17

You think that this is based, like so we'll call this the the war on drugs industrial complex, perhaps?

Larry 1:18:22

Absolutely. It is, is a big industrial complex. And a lot of money's made and the cops are one of the biggest opponents to legalizing drugs. I'm sorry to tell you that. I know that we have an audience that tends to love the police, but they fight tooth and nail and they use scare tactics. And some of their scare tactics are legit. I mean, but they overdramatize the complications of smoking a little bit of weed. (Andy: Certainly for that one) It's not a gateway drug. Yeah, it's not a gateway drug in my opinion. And that's what they say. This is just the beginning of what's coming. If we legalize this, what's next?

Andy 1:19:03

Except for we still have alcohol, which is from my understanding as a lay person is far more harmful and leads to alterations of personality where people get drunk and they turn into completely violent crazy people. That's not your gateway drug? Okay. All right then. But that one's legal.

Larry 1:19:21

So well, we're only skipping three articles. So we did fairly well.

Andy 1:19:25

Not too shabby. Uh let's see. What do we have to do close this thing out? We can, I don't think we got any Patrons. If we did. I am sorry. It was a really crazy busy day and I didn't even have a chance to look. But Larry, how do people find the podcast?

Larry 1:19:39

They search online.

Andy 1:19:41

Search online awesome smoke signals. Yeah, I think I keep using that one. Let's see, what can we come up with? Teletype! You were probably around when the teletype was invented.

Larry 1:19:51

So registrymatters.co will get you to our site and you will find every episode we've ever done right?

Andy 1:20:02

I think so. Yeah, I'm pretty sure if not, it may have started like around Episode Five, but I'm pretty sure you can go back to episode one. You can go back to episode one. Yes, yes, yes, yes.

And what about your favorite way of phone calls if somebody wants to call in the old-fashioned way with the rotary or the touch tones?

Larry 1:20:19

that would be 747-227-4477.

Andy 1:20:25

Email is registrymatterscast@gmail.com. And we love all of our listeners, but our patrons are, make this so much more fun. And you can find that over patreon.com/registrymatters. And you can support the podcast for as little as \$1 a month, and they get the fabulous transcription service that pretty much Larry runs. Do you want to quickly talk about that just for a brief moment?

Larry 1:20:50

I do. I'm hoping that sometime early in 2021, we're going to have our entity created. I've been hesitant to do all the work that's involved. But we'll have a business entity. We'll seek our 501c3 status. And we're hoping to be able to drop the cost of the transcripts, which I'm hoping that even if before we may be able to drop it because we had anticipated that were were going to be using large envelopes, and that the postage was going to be running higher because we didn't have the formula to keeping it concise, to the number of pages that we can get into the to the process we're using now. So, we may be cutting the cost of the podcast transcripts a little bit and then hopefully as we get donors under the 501c3, we can reduce it to free for people who are indigent and we can reduce it even further when we have more financial support.

Andy 1:21:38

Groovy man, that's awesome. Larry, as always, I appreciate your time that you spend here on the podcast. And I know that the listeners do too. You are an immense amount of knowledge and I look forward to next week. It'll be right after Thanksgiving next week. I hope everybody has a good Thanksgiving holiday too. And if you're traveling please be safe and wear your damn masks. Right?

Larry 1:22:01

Fantastic.

Andy 1:22:03

Great. Have a great night, Larry, talk to you soon. Bye.

Larry 1:22:05

Good night.

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