



Registry Matters Podcast

Episode 155

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Andy 00:00

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. Recording live from FYP Studios, east and west, transmitting across the internet. This is Episode 155 of Registry Matters. Larry, are you all fat dumb and happy from Thanksgiving?

Larry 00:24

Well, I would say at least a couple of those things.

Andy 00:28

How about old, fat, dumb and happy?

Larry 00:30

That's even better.

Andy 00:33

I have something to show you. Can you see the camera angle of me? (Larry: Sure I can.) I have something to show you? Can you can you read this?

Larry 00:43

No, I can't read anything because it's dark.

Andy 00:47

It's dark? Well it says I am currently unsupervised. And then something about anything is possible at this point.

Larry 00:54

Well, anything is possible. That's what I've been telling you for years now.

Andy 00:57

Yes. And if they, if they, if they want to do it, they can do it, they will do it right.

Larry 01:02

That's correct.

Andy 01:03

What do we have going on on this episode tonight?

Larry 01:08

We have an amazing amount of content that we will never be able to get to. We have...

Andy 01:15

Better to have too much than not enough, right?

Larry 01:17

We have five listener contributions. We have a case, an appellate decision from New York regarding detention post-sentence. And we have some articles that we may not get to any or only a couple of them. But we have quite a program. So, I hope everyone had a wonderful Thanksgiving and we're ready to plug ahead, plug ahead, I should say.

Andy 01:43

Plow, plug whatever. And I guess we will start with the first listener contribution which you actually said to me to be read first.

Andy 01:51

How about that? Right?

Larry 01:53

Sounds good.

Andy 01:55

Alright. So here we go. So from this person says:

Listener Question

I am writing to inform your organization that no one, at least the ones that I've spoken to at this facility, received the volume XIII. What is that 13, Issue 4? From August-September 2020 issue, none of us have received any restriction notices either. When I realized I hadn't received the paper newsletter, I resorted to viewing it via email, which I fortunately have. I believe the reason for not receiving the newsletter was because of the story that shed light on this facility. It is clear that the mailroom is censoring articles that are damaging, damning to the reputation of this institution. The article did a good job explaining the situation here. And trust me there is much more that can be said I just hope by him writing under his name won't lead to retaliatory action against him, as mentioned by some other writers from that issue. I know of a few cases where individuals would try to write their public official, the press, ACLU, or other advocacy groups and had their mail blocked or intercepted or as most likely with the August-September issue just thrown away and not delivered to the inmate. I would really like to see some of these people held accountable. These people should be charged with mail tampering. Just because we as inmates have committed a crime to get here doesn't justify our overseers to commit crimes themselves to further punish us. Anyway, I wanted to thank you for your newsletter and just wanted to update you as what happened to the August-September issue. I don't mind using some of what I've said in this letter, but please use my initials or otherwise hide my identity as I can't afford any unwanted attention at this time.

Andy 3:42

Wow, can they can they mess with your mail Larry when it's coming into the institution?

Larry 03:45

Yes, they can. We very carefully considered that article and I personally reviewed what was in it as the publisher of the of the NARSOL Digest newsletter. And we bent over backwards not to do anything that we felt would compromise institutional security. I mean the institution, the people there obviously know that that at that particular institution and many others that there is a problem. And what we were attempting to do was to illuminate to those on the outside world, how critical this situation has become. And I, if they put up the best argument they could possibly put up they would say that the fact that the that the rampant nature of COVID at that institution, would cause unrest among the inmates,

therefore they had a duty to censor that to keep it to keep the situation from being unmanageable, but that's a stretch.

Andy 04:49

They block all kinds of things whether it's based on certain specific kinds of words that are in there, they block depending on which place you're at, whether they block how much flesh is shown. I'm sure they won't allow anything with like weapons or ammunition in it. So, this isn't an unknown kind of thing for them to intercept or block or, you know, whatever kind of mail coming in?

Larry 05:12

Well, we are actually consulting with legal people, we're going to consult with other publications that go into prison. There's, there's one biggie called Prison Legal News. And we're going to figure out if we have a cause of action, but we would really like to know if they did everyone, in fact, not receive the newsletter. And it's difficult to ask that request without identifying the institution. So, more generally speaking, if you're in an institution, and you're one of our subscribers to the NARSOL, digest, and you did not receive the October issue, we would sure like to know about it, we would really like to know.

Andy 05:51

And what would be the recourse other than mailing another copy? I mean, can you actually sue the institution?

Larry 05:57

Well, if they have, if they have blocked it without any reason whatsoever. Like I say, the best case I could make would be that this would be it would cause unrest among the inmates, because it's being exposed that there is a problem, but I kind of think they already know it, that there's a problem. But what we would do is we would ask, we would ask a court to compel them to allow the newsletter, the inmates deserve to be informed about things. You don't lose complete rights while you're in prison, you have severe restrictions, but you don't lose all rights. So this is one of them where publications have been successful, including Prison Legal News, when when, when they're, they're denied access.

Andy 06:41

And so and Charles in chat says freedom of speech, do you lose your freedom to receive, to hear speech while you're gone?

Larry 06:49

You do lose some of that I was just saying that. The institution has an obligation to keep the functioning of the facility safe for everyone, including the staff and the inmates. So, you don't have the right to send in something that's going to stir up a ruckus. But we considered that when we published this article, we looked at it this going to cause a ruckus in any way that they're going to be..? And I reviewed every line of the article myself. And I didn't see it, that this would cause any institutional unrest. If people are being taken to sickbay and they're being treated for COVID-19 and they're being taken out on stretchers, I suspect that that the way the prison grapevine works, I suspect they already know that inside the prisons.

Andy 07:38

Gotcha. All right.

Larry 07:39

Wouldn't you?

Andy 07:41

Yeah, totally.

Larry 07:43

So we weren't encouraging an insurrection. We were simply relaying information as seen from a person on the inside of several institutions. That's what we were doing. And it's very difficult for in a normal press or relationship, you would seek the other side of the story. We don't find prison very helpful wanting to give their side of the story when we call them for a question. If we get through to anybody they don't want to tell, all they do is tell us that inmates make complaint about everything. So, we didn't have another side of the story, but they certainly can feel free to write us and tell us that we have not presented the story accurately. And we will consider a rebuttal if it seems like it's reasonable that what they're saying is remotely true. We would publish that in response to what we published.

Andy 08:34

I see. I see. Well, then we should move on to number two. This one, this one is fun for me. So, I'm gonna I'm gonna turn on my super snarky voice.

Listener Question

I'm waiting to sign up to receive your publication. I am incarcerated on a PFR-type crime I did not commit but I have been given a 10 to 20 year mandatory minimum sentence. After I serve this decade, I'm facing 20 damn years of intensive parole, aka supervised release. This should be illegal to have this sentence, but it is the norm in West Virginia. It should be construed as double jeopardy. I will have already served my time but will still serve a secondary sentence. My lawyer explained supervise released as parole on steroids. He said they make it hard for parolees to even work. They can call you in for polygraphs, breathalyzers, classes, counseling or even show up for home visits 24/7. On top of that, in West Virginia, I'm also required to register for life, that is triple jeopardy. I have to carry a stigma around my neck as they used to make criminals were a dead albatross. In many states, the time is five years to register or you have the ability to petition for registration removal. These rules prevent people from having a fair advantage for employment and housing wise. Something needs to be done. I plan to fight this archaic, antiquated, biased policy. I hope to glean some knowledge from the publication that will assist me in my fight. Thank you in advance for your help and for being a voice for those of us with these cimes. In solidarity and respect.

Andy 10:09

Larry are split sentences with mandatory minimums like is that double and then with the registry, is that triple Jeopardy?

Larry 10:16

Well, I, I feel his pain and and in some cases the post-prison supervision has been added on. I think in North Carolina, they've done that and it apparently hasn't been successfully challenged. I'm not totally familiar with Virginia, if he would have known about West Virginia, excuse me, if he would have known about this at the time he was sentenced, but on the surface, simply having a

period of incarceration followed by a period of supervision, that is not unconstitutional. So that would not constitute double jeopardy. So he's, he's, he's misguided on that. And then his comment "in many states, the time is five years to register," I'd sure like to know what that list of states is, because I'm not familiar with it.

Andy 11:03

Yeah it's just a five-year registration obligation? So it's gonna be pretty short.

Larry 11:07

Yeah. I think maybe in Colorado, you might have for low level misdemeanors, you might have the ability to get off after five years, but I can't think of a list of states where five years is enough. So I think I think he's got misinformation on that which is common with him in prison. In terms of what his lawyer told him about the supervision, I'm actually pleased that the lawyer described it accurately, because that's a very good description. Those are things that do happen. I don't know about the middle of the night. But I know that that everything else other than the middle of night happens. The polygraphs, the home visits, at all kind of hours. It doesn't sound all that out of touch with reality. Except in there's a couple states where they do it perfectly. One is Maryland, the other one's Georgia, but other than those two, other than those two states were where they were they treat people properly, all that sounds rather routine.

Andy 12:07

I will tell you, I never got a visit past I think 9:30. And that was only like once in almost seven years, I only had a visit at 9:30. That was the latest and then one at superduper early in the morning before breakfast timeframe. But otherwise, it was always between, you know, like after lunch to nine o'clock at night, it was always incredibly reasonable hours. So the 24/7, I know they can come do it if they... I think that kind of has more and depending on the state, of course, but I think that has more to do with the individual if they have some sort of inkling that you're effing up that they're going to come mess with you at different hours. If they don't have any reason, I don't know that, they don't want to be up at two o'clock in the morning, either.

Larry 12:49

Yes, I tend to agree with you. My state is particularly bad, but I haven't heard of at two o'clock in the morning visits from supervising authorities. But you know, it could it could be, what I would ask for this person would be for him to write us back again with a little bit more information in terms of was he made aware of this post-prison supervision at the time. Was that was that explained to him? And if it was, I mean, this is not double jeopardy. The registry is not triple Jeopardy because the registry, until the court declares that to be punitive, is just simply a civil regulatory scheme. And if West Virginia doesn't have a way off this, that's too bad. Some states don't have a way off. It's tragic. Some states don't have a way off. And that that said, but you know, he's not, he's not required to live in West Virginia for the rest of his life, he could conceivably go to a state that would have a way off the registry.

Andy 13:45

Right? Do you just go to have some sort of number in your head of how many states have lifetime do you?

Larry 13:51

I don't but it's a significant number nowadays. There's at least some (Andy: Okay.), there's at least some segment of the offenders that have to register for life. It may not be that for everybody like Florida, it's for everybody, Alabama, it's for everybody. But some of the states if they've done the tier alignment, there will be a lifetime category usually they put more people in there than what the feds have recommended in the AWA classification system. You know, it's a categorical approach based on your offence and they're, they're more people put on lifetime that are really required to be there, but you can over-tier, you just, you have more problems if you under-tier.

Andy 14:28

I see anything else before we move on to number three?

Larry 14:32

No, I'm sorry for guy in West Virginia for all of our listeners in West Virginia. It sounds like it's not a great place to be.

Andy 14:41

This next one comes in and it's a it's what 12 days old and we somehow just sort of missed it. And so we have some excerpts to read. Says:

Listener Question

I am a convicted SO with an offense which occurred in 1985. (That's almost the year that you were born Larry, no that would be 1985. Correct) At that time, there were no laws requiring electronic monitoring, registration, SOTP programs, polygraphs, civil commitment or any other laws associated with this type of offense. I was required to attend a mandatory SOTP program with the attached polygraphs. After nine months, I was falsely accused of tampering with the GPS device I was required to wear along with the painful ankle monitor. I was ultimately sent back to prison for supposedly failing two Poly's related to the tampering. And then finally, I would not be here if not for the retroactive laws. Maybe you have a suggestion How To combat this and get reinstated. Do you have contact with CURE, the ACLU, the Department of Justice, other organizations that might care? I don't know what cure is offhand. I think maybe I've heard it, but it doesn't ring a bell that clearly.

Larry 15:46

So yes, it's Citizens United for the Reform of Errants. It's a group that that has been at our conferences before. I believe that's what it stands for. But so, we got a little bit to unpack here. So he was, his offense occurred in 1985. And he is correct. We had, we were in the very beginning of development of electronic monitoring in 1985. So that would have been an anomaly for that to exist. Registration other than Alaska excuse me, rather than California. There was no there was no sexual offender registration. polygraphs were around back then. And I hate to break it to you civil commitment has been around since the beginning of time. Now what he's referring to is sex offender specific civil commitment, rather than just civil commitment. Civil commitment's been around as long as the republic's been around I

think, or at least close to it. But But in terms of that component of it, his offense occurred in 1985. And if the registry has been deemed punitive, if he happens to be in a jurisdiction where the registry has been deemed to be punitive, then he would have something to hang his hat on because they would not be able to apply it to him, the registration requirements if his if his description accurately, if he's described the situation accurately. Now, Texas, I think reaches back a lot further. But there are some states where he you know, the statute doesn't reach back reach back that far or the courts have limited them from reaching back that far. So there would be options where he would not have to register. So that would take care of that. And what's his other question? Oh, being sent back for the polygraph. Okay, I would very much like to see, I hear this over and over again. And I haven't seen a shred of evidence that has supported that. the tampering with the polygraph with the GPS, he I doubt that the petition to revoke says that he failed a polygraph. What I suspect the petition to revoke says is that the GPS was not worn correctly, was removed or in some way tampered with. But I doubt they said we are seeking revocation because he failed a polygraph related to tampering. I just haven't seen it yet. If you have such a petition that says that, please send it to us. Because I want to go on the air on this podcast and say I have seen something I haven't seen yet because everybody says they got revoked for failing a polygraph. They got revoked for the admission they made at the post polygraph interview is what usually happens. And I don't believe that the petition to revoke his supervision said as a result of showing deception on the polygraph test, we believe he tampered with his GPS device, I believe they would have said something along the lines of the GPS device was removed and examined. And it showed evidence of being, having been tampered with. That's what I would believe the petition would have said.

Andy 18:57

And then during the poly they asked him if he had tampered with it. And he said no. And the thing goes all walkie and they say hey, you showed deception. He goes yeah, I messed with it.

Larry 19:06

Well, he possibly didn't. He could have said no, I didn't. I don't know why it's showing deception. But they would have had the evidence of that they would have put on some minuscule evidence showing that the polygraph, that the GPS have been tampered with is what they likely would have done. Yeah, and it doesn't take much because remember, when you're in a revocation, you don't have the presumption of innocence, you are on conditional liberty. So the rules of evidence are different. The admissibility of evidence is different. The standards of proof are a lot different at a revocation. So you're not trying to prove a new crime.

Andy 19:41

Right. And you are something of an expert on this whole element too that you... Can you describe more about the whole revocation process?

Larry 19:55

Well, it depends on if it's a probation or parole revocation there, there are two different two different tracks. one is administrative if parole's being revoked, and one is judicial if probation is being revoked. And and in the federal system you have supervised

release, and it's it is it's, and they also have probation, which a few people still get in the federal system, but most revocations in the federal system go through a judicial process. But in a revocation proceeding, since you are already guilty of a crime, the issue is, are you violating the conditions of your supervision. And the standard is usually more likely than not, it's not beyond a reasonable doubt. It's not even by clear and convincing evidence. It's usually whatever moves the conscious of the court slightly in favor of, of the of the allegation being true. So they would not have needed to have had as much testimony on the alleged tampering, as they would have needed if they were charging him with a crime of destroying the device, a brand new crime. they would have had to prove beyond a reasonable doubt that he destroyed the device. But if they're just simply using the tampering as a basis for revoking his supervision, they would just had to show that it was more likely than not that he tampered with it. That's the standard and the the rules of evidence are much more relaxed, things that will come in on revocation would never be allowed. Some hearsay is allowed. You know, the cross examination still happens, you can still cross examine whoever they put on. But the there's there's it's a lot more relaxed standard, because it is a convicted person who has been given conditional Liberty, and they're not being accused of a new crime. They're being accused of violating conditions of that liberty.

Andy 21:41

I see, huh. And then towards the end, Can you help maybe suggestions on how to combat this and get reinstated? I don't even really understand what reinstated would be, but I'm assuming he's just like, get out from underneath this umbrella of garbage. What do you suggest he do?

Larry 21:59

Well, he's got to get out of the Texas prison system. But But with that, we got to figure out how much time he has left in in Texas prison. But see, there's there's always stuff missing from these letters and they don't know what to write us. And we don't want the voluminous amounts of material. But even though the crime happened in '85, we don't know if they discharged him two years ago. Since everybody's eradicated the statute of limitations, you cannot tell how recently this person was charged with it. All we know is he said that the crime occurred in '85. Was the charge five years ago. Did he plead guilty? How much time does he have left to go? Does he have any post-prison supervision? If he doesn't have any post-prison supervision when he gets out the next time, rhe thing to do would be to leave Texas. He's probably, Texas has has this process where people get out early because they have such overcrowding. So you'll you'll you'll get a 20 year sentence you'll do two or three and you'll be eligible to be released. So when he when he leaves prison again, he may still have paper hanging over him and he wouldn't be able to leave Texas but you're never going to find your... the promised land is not the Lonestar state, I can tell you that.

Andy 23:17

He says he's 64. He was 29 and stupid in 1985. If parole isn't granted, I can be forced to serve until 2029. So he's got roughly what eight years, eight half years left. that's a that's a long time. Carl says in chat leave Texas. That's what I did.

Larry 23:35

That's that's my recommendation. You know, also quit voting for the law and order conservatives but since Texas doesn't show any sign of changing their political views. Although there was all this whole with Texas is gonna flip. Well, they didn't flip. (Andy: Here you go. Here you go.) This is relevant, though. I mean, I'm sorry to tell you that that who you elect determines the sentencing, and the penalty severity, and how people get out of prison. And if you don't want to talk about that, then we don't have to talk about it. But who you elect has to do with how long and what conditions you're going to serve in prison. And Texas is a hard-right state. I'm sorry to tell you I'm just a messenger here.

Andy 24:17

I know. I know. All right. Now come off of that high horse. So and (Larry: Okay.) this is this is we have a fourth contribution says:

Listener Question

Even though after the FBI thoroughly investigated me and recommended against prosecuting me for downloading what I thought was Third Rock from the Sun, which is a sitcom television show that ran for a long time. It was really CP of little girls and deleting it within seconds when I found out what it was what it wasn't. The prosecutor pushed for every conviction to get promoted. The new prosecutor wanted to drop my case, but since my paid lawyer had convinced me to plea already the judge only allowed me to drop the second most serious charges. Second more serious charges. My lawyer told me that because I'm 100% homosexual, that I'm sick and need to go to prison. I'm now trying to get some relief through the courts. Thank you for your great publication, all your hard work to get in sensible laws changed.

Andy 25:23

Alright, so he apparently has, he did not intend to download what he downloaded, which then he ended up with what he wasn't supposed to have. I think he's screwed.

Larry 25:35

Ah, I tend to agree with you. He, unfortunately the this is a sort of the Michael Flynn case after you've pled guilty.

Andy 25:43

Okay.

Larry 25:44

Yeah. The Michael Flynn, National Security Advisor, formerly National Security Advisor. (Andy: The recently pardoned one?) Yes. I was going to talk about that but we've got too much in here already. But but there's a there's a slight comparison of that once you've once you've pled guilty, then apparently, at least according to the DC Circuit Court of Appeals, the judge owns you at that point. And so his guilty plea by his paid lawyer now, now this is unique, because usually that's always the public defenders that get the rap, but he says my paid lawyer had convinced me to plea. And so he had, he had retained counsel, as it's referred to. And he pled guilty. And under the, under the doctrine of the DC circuit, the judge owns you at that point. So I can understand why the prosecutor would not want to let the case go, because they've already got your guilty plea. When the judge read all that stuff, do you understand all these rights your surrendering? And he said, Yes, I do.

Andy 26:55

And is there anything about like a vendetta about my lawyer told me that I'm 100% gay homosexual, that I'm sick and need to go to prison? Like, I don't even know where that would come from. You think the DA actually said something to that effect?

Larry 27:08

Well, he says, my lawyer told me he didn't say the DA.

Andy 27:11

Right. I'm reading that. And I like those are the words that he wrote. But I'm thinking that why would if you hired a lawyer that said that to you, you wouldn't hire, you would immediately unhire that lawyer.

Larry 27:23

Well, that would be my natural reaction.

Andy 27:26

I'm thinking he's, he's telling his client what the DA said to him. To me, that's what I'm reading, at least I'm hoping that's what I'm reading. But I can't even see them saying that too. Unless it's Jeff Sessions. But..

Larry 27:37

there you go on your high horse. You're, you're criticizing man an honorable man, he, an honorable man who did his best to serve the country. And there you go vilifying him.

Andy 27:53

I know, I know, I know, I'm a terrible person. So what about do you know, in your experience, do DAs like really go after people in a personal sense? And that gets to back to the lawyer, which then I can't imagine that you working for a lawyer that your lawyer would say that to one of the clients, I just can't imagine that that comes out?

Larry 28:13

Yes, they do. There is there is homophobic prosecutions where the where the the attitude would be much more harsh based on based on the sexual orientation of the accused. And it does come into play. It would really trouble me if a lawyer that was had been retained, or even a non-retained lawyer, if any defense lawyer said that the client was sick. Now I could see the way you describe it, them saying to a client that the prosecution says you're sick, and you need to go to prison, this is the best I can do unless we go to trial. And we go to trial based on the fact that you confessed. And you've signed a written confession. And based on the fact this is a federal case, we can deduce that from where he is. He's in a Federal Correctional Institution, being that they have all their i's dotted and their T's crossed and all this stuff, they would get a conviction, I could see him saying that this is the best I can get from this prosecution here. And if we go to trial, we're going to have a worse outcome. I can see something like this being said, but I don't think the lawyer should have been telling his client that h,e that he was sick, but you could relay that to a client and say this is what they think of you. That's the reason why I encourage people when I tell them, You can't actually have a conversation with the prosecution. They're not going to tell you how sick they think you are.

Andy 29:32

Sure. Hey, this is another one. But I don't know if you if you were the one doing like the pro se thing and you caught up the DA would they tell you in this case? We talked about that all the time where you can't really call the DA and say Hey, what do you think about me? They may tell you in this case.

Larry 29:48

they're gonna do everything they can to avoid talking to you if you try to reach out. First of all the courts can do everything they can to make sure you've represented and with a serious charge, they're gonna at least have a legal advisor. Sometimes nuts do represent themselves. But the prosecution is going to everything they can to avoid talking to you. That's just the way it is. I didn't write that rule. But that's the way it is. Because of a number of reasons, including that it wouldn't be very healthy for them to tell you that they thought that they think you're sick. I mean, what, how would you react to that? The average person wouldn't react very well.

Andy 30:23

I don't think that would go over well.

Larry 30:24

well, then what if you wanted to retaliate? So they're just not going to tell you that.

Andy 30:28

Yeah, sure. Sure, sure. Sure. Hmm. There are, there are definitely ways that if you go on to the video sharing websites that would let you download TV shows and whatnot, it is not hard for you to end up in a spot where you're downloading stuff that was not what you intended, you know, you're downloading the latest music video of Britney Spears. And, you know, it starts out for two seconds being that but that's the end of that and turns into something entirely different. And they're tracking IP address, the FBI, and so forth three letter agencies, they'll capture your IP address, find out your address from your internet service provider. And next thing, you know, you're getting a knock at the door, probably two o'clock in the morning.

Larry 31:10

You know, that is, that is what I hear. I don't understand all that. But I hear that all the time that no one had any intent. But again, when we talk about defunding the police, this is one of the reasons why we talk about curtailing their funding. If they had less funding, they would not be able to bring these type of cases against you and your loved ones. So when you automatically, when you automatically object to any type of reduction of funding, because the funding is, nobody's talking about defunding the police, but when we talk about curtailing their funding, this is an example of the reason why.

Andy 31:54

Right. I'm with you there. And our final contribution, this one, I'm gonna read it all, but it's not that bad. It says:

Listener Question

The reason I'm writing today is because I'm in need of some assistance from you, I was convicted in Dallas County for the

offense of Agg. sexual assault of a minor, which I'm completely innocent of. Yeah, I know, that's hard to believe someone in my situation. But NARSOL, you already know how hard it is for someone to believe in someone in my situation. I've been searching for help during my 11 years of incarceration. But up to now, no one has granted me an opportunity. And I understand why people refuse to help me out of the nature of the offense that lawyers won't work or fight for this type of case. Also, due to the public backlash towards them, it makes them look sympathetic to these types of cases. That's very wrong, because there are some that actually didn't commit the crime. But I came across your address in a legal prison news or Prison Legal News. And I was wondering if by chance, you might be able to help me and guide me in the right direction, please, I sincerely need some help. I just need someone to believe in me and guide me in the right direction, because this is hard. Also, can I pay for one year of the Digest, blah, blah blah... Well, thank you very much for your time in this matter. It's very important to me. I think that's pretty much... Oh, also, Happy Thanksgiving and Merry Christmas to everybody.

Larry 33:18

I put this in here because it comes from again, from Texas from a state prisoner in Texas. And that state is not known for being lenient or rehabilitative oriented. And when he said that he can't find anybody to help him, it's kind of like when you tell letters to the editor, when tell the senior editor that I know you won't publish this? Most of them bristle, and they say, Well, let me look at and I'll see why. Well, I'm guessing that what he's saying is he cannot find anybody who will take his case, pro bono. (Andy: Right.) And I have to remind him that we're in a system of capitalism. And these lawyers, these cases that that in today's age are very complicated. We don't know, we don't know the extent of what his what the evidence was they had on him. We don't know if he pled guilty. All we know is the title Agg. sexual assault of a minor. But we don't we don't know if he pled or if he went to trial. But if he pled, the avenues open to a person to undo a plea are so small, that even if he had gobs of money, if the lawyer had integrity, they would tell him it's going to be very difficult to undo this plea. If he went to trial and was convicted, there's more doors open, but it's still an uphill battle because at that point, you're no longer presumed innocent. You're presumed guilty. Guess who the burden shifts to at that point?

Andy 34:55

I guess it shifts to you

Larry 34:57

It does indeed and you've got to come up with some evidence that is substantial in nature, and the first thing people want to come up with it evidence is recantation. And that's, that's the worst evidence they can come up with is recantation, because all that proves is the person is a liar, which makes anything they say, unbelievable. Which makes the prosecution say, Well, if you go forth now and tell this story, which is not what you testified to under oath on trial at trial, I'm going to prosecute you for perjury. And that usually disincentivizes the person quite a bit when they tell him I'm gonna lock you up for perjury. And even if they don't go to that extreme, they tell them on cross examination, they're gonna, they're gonna demonize you, they're gonna say, Well, wait a minute. Now, you're telling this story today at this habeas

hearing, but you testified to this at trial. So we can see that there's two different stories. And it's clear that both of them cannot be true. So you are admitting that you're a liar, aren't you? You are a liar, aren't you? You have no choice but to admit that you're a liar. Because the evidence is showing you clearly be a liar. There's two different stories that have come out of your mouth. And then you say, Okay, so now that you're an admitted liar, should we believe anything that you say? And, of course, the answer is, well, I am an admitted liar because you forced me to lie initially, because of the way you the way you and your office threatened me if I didn't. Now that I see the consequences of that lie, now, I would like to rectify it. And I can clearly see that you don't have any conscience about how you're handling your office, and you don't mind an innocent person staying in prison? That's the answer. Of course, they're gonna try to cut you off before you get through with all that.

Andy 36:58

You gotta have some big kahunas to say all that too.

Larry 37:00

But that that is what you should say. And so we don't know enough about his case to know the basis for his innocence claim. But what we do know is that if he pled there are exceedingly few options to undo that. And if he went to trial, there are a few more, but there are time, those those things, those actions are time sensitive. And he has to have been pursuing those claims. And he may, in fact, be time barred on some stuff. And if he doesn't have any money, then this is one of the pitfalls of our capitalist system. You know, it's very hard. I mean, I know that that you would not believe it would be fair to take from a lawyer and force them to provide their services at no cost, would you?

Andy 37:51

Like no, like they want to make every penny, right?

Larry 37:54

But I'm saying is what right do we have to confiscate from a lawyer from a law firm their services without compensation? Isn't that unconstitutional, and unamerican?

Andy 38:07

It's definitely unamerican. I don't know about the unconstitutional part. Well, to force someone to work for free. Yeah, that's...

Larry 38:13

yeah. So So I think, I think that's kind of what what what he's saying here is that that he hasn't been able to find anyone who can take his case pro bono. And the reason is because trying to unravel a conviction is going to be exceedingly difficult, long shot at best, and it's going to devour a lot of practice time, to no avail. In most cases, no avail. There are convictions that are undone and people do work for free. But that can't be an expectation in a capitalist system, we have to figure out a way to fund this that I can just about guess that Texas does the bare minimum they can do in post-conviction relief, because that's not a state where you're going to get a lot of support when you say we need to help more people undo their convictions. I just don't think that would play well with the average Texan.

Andy 39:02

Probably not, probably not. They want less government, less government. Anything else before we then move on to something of our feature event?

Larry 39:12

Let's do it. We've already been at this for an hour and a half.

Andy 39:15

Almost it's 39 minutes as I count. 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 registrymatterscast@gmail.com. You can call or text a ransom message to (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 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. All right. Well, you put this thing in here. It's about the New York Court of Appeals says prison post sentence detention is constitutional. So you put this decision in here for us to discuss, it's over 80 pages. Larry, do you actually think that I can read 80 pages of legal mumbo jumbo?

Larry 40:26

No.

MacArthur Movie Clip 40:28

That is why I am here.

Larry 40:30

Hahahaha.

Andy 40:34

You're gonna then like break it and then start laughing.

Larry 40:38

Oh, I did that pretty well this time, didn't I? I've got that voice down.

Andy 40:43

Almost. Yes. Oh, yes, you do.

Larry 40:46

So well...

Andy 40:48

You're here to to discuss it with us, though.

Larry 40:50

That is why I am here.

Andy 40:54

So first, tell me what is so unique about this case, everybody knows that parole is not right, and that they can hold you in prison after you, you pass your parole eligibility date. So why are we focusing on what everyone already knows?

Larry 41:07

Well, that is exactly why we're focusing on this because there are distinguishing factors about when a person is eligible to be released from prison. And this particular consolidated appeal, it was two cases. But it presents the opportunity for us to distinguish the difference parole as it's understood generally, and periods of supervised release that may be called parole that follows the expiration of a person's sentence. And, and this consolidated appeal of two different cases, it involves both of them. One of them had an indeterminate sentence up to life. And the other one had a determinate sentence which had expired. So that's what's so fun about this case, so we can have fun with it.

Andy 42:00

Okay, and is this about people that get some sort of final date? Here, you're going to get released from prison on January 31? January 31 rolls around and they go, No, not today?

Larry 42:15

Well, again, it was two different cases. One of them had a parole eligibility date, because he was serving a sentence, it was to two to life, I think, or something to life.

Andy 42:23

Okay. Okay.

Larry 42:25

And he had been granted a parole eligibility date in 2017. We had another guy, that was Johnson, and Ortiz had a 10 year sentence, which expired in 2018. And at the end of his finite, his determinate period of time, he wasn't able to be released. And he had, he had a period of post release supervision they refer to as PRS in New York. So so he would have normally walked out the gate, except for they detained him because of what we're going to dig into this case. So we had, we had an indeterminate sentence, and we had a determinate sentence, and they were both held, for different reasons. But that's what we're going to get into.

Andy 43:15

You use the term a minute ago about a consolidated case, which I mean, I realize consolidated means they like join them. But if they have two separate cases, don't you end up with like, double cases being combined if you do a class action?

Larry 43:30

No, what they did was this was two different individuals who had filed petitions for writ of habeas corpus, challenging the legality of their detention. And they trial court denied the habeas petition. So the appeal was consolidated at the at the state's highest court, which I think they refer to as the Court of Appeals. I thought Maryland was the only court in the state that referred to their highest court. But apparently the highest court in New York is the court of appeals and they consolidated the two cases, because they dealt with the same issue of whether a person can be held beyond, continue to be held in detention after they're eligible to be released. And the Ortiz challenger, his case was more compelling because he had served all his time. The the other one, he had not served all his time. They would release him when he completed his life sentence. And I can promise you that they will release him at that point.

Andy 44:32

Probably in some sort of container, a little vessel, like a box of some sort, Right? But so what did the court decide, I guess, would be the next sort of logical question.

Larry 44:46

Well, they decided that that in both cases that they that they can continue to hold people in the case of Johnson, they said it was not even a close call. That discretionary parole is a generous act and you have no right to that. So therefore, even though you're eligible for it, you have no expectation of that liberty. So, it was not, it was not hard to determine his case. So his was an emphatic denial. But they said, in the Ortiz case that his challenge presented a closer call because of the nuances of his situation. He had served all this time. And when you've served all your time, you generally expect to go home, right?

Andy 45:34

I think so I mean, I was kind of excited when they said, hey, it's your time to go home, and they opened the doors.

Larry 45:39

But in New York, he had some things that worked against him that we generally think we're for. Everybody thinks that they're for a risk-based system. Now don't confuse this with tiers, because we've got a lot of that goes on out there. But New York does a risk-based analysis, where they determine through a process, that's, that's maybe not perfect, but there's a process by which they determine what level of threat that you pose, and that's a part of the sex offender registration act, SORA. And, and they, they had determined both of these individuals to be a level three, which triggered the Sexual Assault Reduction Act comes into play because under the sexual assault under SARA, a level three can't live within 1000 feet of all these things. Which New York City would probably be an awful lot of things. That would be I mean, when you got a densely populated area, you'd probably have a whole lot of difficulty finding a place to live, that wasn't within 1000 feet of something. So the combination of SORA and the risk based system, with and with the requirements of SARA, the sexual assault Reduction Act, that these people who had had their due process to determine what threat they pose to the community, that they were determined to pose a high threat to the community. So therefore, they did not have the right to live in any place they chose, particular while they're being punished, because the post-prison supervision, regardless of whether it was, in the case of Ortiz, where it was where it was a period of post-prison supervision, or if it was traditional parole, it's still a form of their punishment. And the court said that we can't put a person in immediate violation of their supervision. Their supervising officer's supposed to assure their compliance. So therefore, since you cannot live in these the places you want to live without being in violation, you'd be in violation from the get go. So in order for the safety of the community, you need to be held in detention. So they sent them to a residential facility. It wasn't supposed to... they have what they call an RF, residential RTF, residential treatment facility. So, they sent Ortiz to one of those facilities, and he still had too much restrictions. And he said, he put forth a very clever argument, he said that they should let him come and go as he pleases. Because he was not there for punishment. He said he was there simply because he didn't have a place to go. So therefore, his restrictions should be almost nonexistent. And the

court didn't buy that either. But I mean, you have to give him credit. That is a that is a pretty creative argument.

Andy 48:35

Right? And, and you can't find an address, at least from what the way that I'm interpreting what has happened here is you get out and they would then figure out that you can't comply and then lock you back up, they're not going to hold you preemptively because you can't get an address before you get out. They would in Georgia, they would let you out and then nail you on the other side that you can't be in compliance.

Larry 49:01

Yeah, well, but that's that's that's different than New York, in New York has SARA, sexual assault Reduction Act. And SARA says that a person who's been assigned a level three cannot live within 1000 feet of all these things. So your argument, your your your position, is logical. Usually we'll let people break the law, but they're saying you'd be in violation, the court said they'd be in violation from the get go. So therefore, this was kind of a preventive measure, so that they don't go non-compliant from day one. But there were so many arguments this case took a lot of twists and turns about the level the standard of review and about whether it should be under the state or the Federal Constitution, and they didn't adequately plead the state constitution because New York's constitution provides greater protection than the Federal Constitution. But they just tiptoed around it and they didn't assert a state constitutional claim so this was decided under the United States Constitution. And they found that in view of the individualized process, determined that these two were dangerous, that they could be held and that's the highest court in the state. So that's kind of the law of New York now.

Andy 50:13

I was reading through the case, and both of them had actually gotten out before this case, by the time the case was on appeal. But they kept litigating at that point, like, why would you still care if you've already gotten out?

Larry 50:26

Well, it may be that the lawyers cared more than... this is one of those cases where we talk about the mootness doctrine. And the state will always argue that your case has been extinguished, because your dispute has been resolved. But you can argue exception to that. And this is a prime example of an exception, something that's capable of repetition. So we don't believe that these are the last two sexual offenders that might encounter this. This is clearly capable of repetition. And then this has continuously evaded judicial review, because the people have somehow had their issue resolved, before it got fully litigated on appeal. So this is one of those prime examples of exception to the mootness so you would argue as an attorney, that yes, my client's issue has resolved itself. But this case is not moot, because it falls into the narrow exception of the mootness doctrine, and this would be one, a very fine example of exception to mootness.

Andy 51:23

And how long I'm trying to think how long could they hold these individuals in custody?

Larry 51:30

Well, in the case of Johnson, they could hold him until he serves out the entirety of his life sentence. But in case of the case of Ortiz, they can only hold him for his five years of post-prison supervision. And at that point, he would, they would have to release him. Because that was the only thing they held him on was that he had post-prison supervision.

Andy 51:51

And forgive me, I'm going to be like extreme here. Like when they, when you say they're getting held past their sentence, they're getting put up in the the Hilton with the swimming pool and the jacuzzi, or are they staying in prison in prison?

Larry 52:04

Well they were transferred to a community to a residential treatment facility, which is a part of a prison. I didn't delve into to how much it was like a prison. I can imagine it was considerably like a prison. But theoretically, if you're in a residential facility, they would be some coming and going else I don't know how you could refer to it as residential.

Andy 52:25

Okay, so I mean, could we do you think it's like a halfway house?

Larry 52:30

No, I don't. I think it's like a prison facility. It's maybe kind of like work release from a jail. I think it's probably an adjacent to a prison facility where there's maybe not all the barbed wire and towers, but you still have, you still have more like a correctional setting. But this is where we would need a New Yorker to really come explain the two facilities were named in the in the in the case. And I don't know, I don't know either one of them, you know, those names don't mean anything to me. But a New Yorker might know.

Andy 53:01

You've talked about things similar, I think in a couple other states, maybe like Illinois, and New York, excuse me, New Mexico. Does this do anything to dump those down the toilet?

Larry 53:14

That was my first fear until I went through it. And then I realized how they got to their outcome. And I don't think it really does, because in the case of New Mexico, which I'm more authority on than Illinois, but there was a great deal of similarity. In New Mexico, there is no, our sex offender registration Act does not have a risk-based component. So you have not gone through that process in the state. And, and what happens here is that you serve all your time, and then you go into what they've labeled parole. And when you don't have an address that satisfies the parole board, they continue to hold you in custody. So there's been no individual... this is a broad brush that we apply here. So I don't think it really is going to hurt us much. I mean we would try to distinguish our way out of it. It's First of all, it's not even binding. It's just persuasive authority, but we would argue that it's not all that persuasive because it's so distinguishable from what we have here. We don't we don't have discretionary parole, you earn your parole by serving all your time.

Andy 54:15

And then even things like the the SARA, the sexual assault Reduction Act, you I'm assuming you don't have something like that there as well to pile on extra conditions on top of?

Larry 54:25

We don't have that. We don't have a statue, see that's statutory that was signed by Governor Pataki, that came out in the in the opinion that...

Andy 54:34

How do you know names like that?

Larry 54:35

It came out of the opinion. Yeah, and I don't know, I don't know if he was the driving force behind it or not. Or if it was one of those things that just made it to his desk. But anyway, it was it was in the opinion that it was signed by him. And we don't have anything statute. We just have policies. The corrections department has a policy that that you can't be thousand feet of things, statutes carry more more impact than policy because statutes had been vetted by all the people. A policy has been vetted by a bureaucrat.

Andy 55:15

Okay, and fine, I guess I don't know of anything else to ask about, do they have any options for appeal any other further steps that they can take?

Larry 55:25

Well, being that it's a highest tribunal in the state, they would be able to file a cert petition with the Supreme Court, because this was decided on the US Constitution. So if they don't like the interpretation of the US Constitution, they could ask the US Supreme Court to review it I have a feeling that the US Supreme Court would come down with a similar outcome because of the of the system in New York. And I would hate for this to go to the US Supreme Court and then come up with that decision because everybody would say, see, you can hold people in prison after they've done their time, the US Supreme Court said so. So, I hope this doesn't go to Supreme Court, but they could conceivably do that. But since these people are in the community, it's not likely they're going to spend all that effort going to the Supreme Court.

Andy 56:08

And then also, what, eight or 9000 requests go up there, and they serve 1% of those?

Larry 56:15

1% of those and the state would say there's no need that this case, the state would have... well, first of all, the state wouldn't file a response, they would ignore it. But if the court directed them to file a response, if they were interested enough that they wanted a response, they would say that this has all been resolved, these people are out of custody. Nothing here to see is what they would say.

Andy 56:34

taking things off the script a little bit, I mean, this happens in several other states where people like finish their sentence, they are, you know, directed out the door, where they go get locked up

somewhere else, for civil commitment for some indeterminate amount of time. I'm confusing two subjects.

Larry 56:54

You're confusing two subjects. Civil commitment is an independent process that requires a mental abnormality. And they file a petition seeking the commitment, this was just being done, because of the nuances of the law. The civil commitment is an independent process that is initiated against you.

Andy 57:13

Okay, so this is just you don't have an address, we can't let you get out of prison. That's pretty much all this is.

Larry 57:19

That is correct, you're a level three, you don't have a compliant address with SARA, you're required to have a complaint address, you agreed to that. And therefore, you get to sit here until we get your compliant address, but they put them in a residential facility, which I don't know what additional freedom that gives them

Andy 57:38

And so the one person only had five years to serve, and the other one had some something of a life sentence. So, the five year person could only be held up to that five year limit, and then they would be free to go, the other person would just be there for, you know, indefinitely.

Larry 57:54

Potentially, yes. Till he serves the sentence.

Andy 57:58

So weird. So weird. Is there anything else that we need to know about this before we move on?

Larry 58:04

No, I think I've done the best I could, it was exceedingly complicated to try. And there was two dissenting opinions that were longer than the majority opinion. And I just did a glance of the dissenting opinions. But if there were going to be a cert petition, that would be where you would use dissenting opinions. You would, you'd go in there, and you would clip out all the great stuff in the dissent. And you would say this is why you should consider this case, because it's brilliantly written dissenting opinions.

Andy 58:32

I see. Why is this important to us, though? Why is this important to the PFRs? And the Registry Matters listeners at large?

Larry 58:42

Well, it would, if you were in the New York correctional system, it would be extremely important to you because you know that you better work really hard to find suitable housing, because the highest tribunal in your state has said you can be held in custody if you don't have suitable housing, so do the best you can. And New York actually does provide better reentry resources than many other states. So, there was even discussion of the New York City's shelter system. Apparently, you have a statutory right to shelter to the extent that they're not overcrowded, but for some reason, they could not find a shelter within that elaborate system that

would that complied with the thousand feet. All the shelters were within 1000 feet of something.

Andy 59:27

Yeah, yeah. Yeah. That seems to be a pretty common thing too in other states as well. Are you ready to move on to something of a lightening round of some articles. See how many we can cover in the next 10 or so minutes?

Larry 59:39

Well, let's do it. I think we can cover all of them.

Andy 59:42

Maybe, maybe Alright, the first one comes from the appeal. Some Texas election suggested voters aren't afraid of defunding the police. Do you want to describe again just real quick what this defunding the police means?

Larry 59:55

it's a fancy term, a scare tactics that the right wingers have come up with to convince people that every dollar the police get is sacred. And that you can't even discuss any reallocation any... the police always have to have everything and more. But defunding the police doesn't mean that we would be without police protection. It only means that looking at the overall commitment of public resources to law enforcement, would there be a better utilization to divert some of them, some of those resources to treatment, prevention and to rehabilitation. That's all it means. But somehow or another of the many catchy lines that went really took off, defund the police. Defund the police. And it became central in the campaign. And people voted a lot on that, I'm not going to vote for the Democrat Party, because they're talking about defunding the police. And no one is talking about defunding the police. Everyone recognizes that there needs to be law enforcement. I don't care what socio-economic group you go. They recognize the need for police. They recognize the need for significant police reform, and reexamination of how all this fast bureaucracy got to the level of funding where in most instances, local governments, 50% or more of a local government is all spent on law enforcement. Of all the things that cities do, half of it goes to public safety, or more.

Andy 1:01:27

Right. I've heard a bunch of segments on different radio programs in almost every city that they cover, like 50% of the budget goes to the police force, somehow, some form or fashion is what I mean to say. The subheading for this article is none of the Austin City Council members who voted to cut police funding lost their elections, but a police union vice president who fearmongered about the defund movement did. Do you like, I don't know, Austin's a pretty progressive city in the Texas state overall. And I got to think that this would be very isolated to Austin. I can't see Texas doing this as a whole.

Larry 1:02:05

You beat me to the punch. That's what I was gonna say. I don't know that we can extrapolate. When we compare an urban setting where they tend to be more progressive, I don't know that we can compare a San Francisco and an Austin. I don't know that we can compare that to other parts of the country. But it is a good start that that, that the people that had the courage in Austin, to say it's

time to look at making some changes, they were not voted out. Same thing in Minneapolis. One of the city councilors that was on the cutting edge of saying that we need to reform the police before George Floyd. He had courage. I mean, when you're speaking against the police, it takes an awful lot of courage because of the power that they wield.

Andy 1:02:50

Very true. Very true. Anything else?

Larry 1:02:53

No. See how quick that was?

Andy 1:02:55

I know. All right. Then from the New York Times, and what would you like us to call it? What is your favorite radio host call it?

Larry 1:03:01

Oh, that would be the New York Slimes I think.

Andy 1:03:05

Ah, okay. America is letting the Coronavirus rage through prisons. It's both a moral failure and a public health one, actually, someone sent me an article the other day about a prison in Georgia that it was a very long, very, I don't want to call it a hit job. But it was a very revealing thing about how bad COVID is at a particular prison. Happened to be a place that I was at. And I can't imagine that any prison would be the model of like, we have this completely under control. There's no problem here. Like and actually be true. It's got to be awful at every institution.

Larry 1:03:40

So well, it's not anything that that we can solve here. But during the week of November 17, there were 13,657 new coronavirus infections reported across state and federal prison populations, according to the Marshall project. And that is by far the highest weekly total. And then they report that more than 1450 prisoners have died. And on the beginning of this, early pandemic when we were saying to cut the prison populations dramatically. We didn't do that. These people are trapped. And there's no way... they can't even get masks. We had an article we're going to cover last week from a sheriff in Colorado that wouldn't even provide them the masks until they had rampant infection. I believe that was in El Paso County, Colorado. But there's one thing that we could be learning from this possibly, if this is leading to herd immunity, I mean, there's a theory that if you don't wear a mask and just let it run rampant that somehow or other that that the population will become immune, it'll take care of itself. So wouldn't we be getting some good feedback from prisons? Is it working?

Andy 1:04:50

Larry, that's an incredibly good point because you have a very controlled isolated population, you know, of hundreds of people that it wouldn't take long to get everyone sort of exposed, so forth. Like, yeah, that's actually an interesting kind of point. It's a controlled experiment. Interesting. And I don't think they're achieving any level of herd immunity.

Larry 1:05:09

Well, in county jails the turnover's too fast. But in prisons where there's a more stable turnover, particularly the admissions to prisons have dropped, because cases, new cases have, the putting people in has really dropped because they can't run trials, and they can't run the court systems with any efficiency right now. So I would think the population is relatively stable except for internal movement. So we would be getting some possible evidence in terms of the herd immunity. I'm not saying I buy into it. But I mean, there are people who say we just should let it do its thing. And we'll have immunity.

Andy 1:05:41

I hear that. And I think they're kind of nuts. You know, I bet those people are one of the some of the ones that have never had anybody super close to them get infected to any degree.

Larry 1:05:51

Well, as of mid-November, they say 196,000, some say 200,000, and we've got roughly a couple million people in state in federal prison, so you've got an infection rate that's about 10%. It looks like to me.

Andy 1:06:04

Yeah, yeah. Yeah. Because then it says the correctional system for employees to 685,000 people are employed and 45,000 of them have been reported coronavirus infections. That's just shy of 10%. So it's getting pretty high amongst those two

Larry 1:06:18

And only 100 deaths versus 1400 deaths of the prisoners. Not that I'm minimizing 100 that's not but it is one of those things where we all saw this coming, but we couldn't do anything about it.

Andy 1:06:33

I don't know what to tell you, man. Then moving over to another one from the appeal. This is Andrew Cuomo promised criminal justice reforms but New York is still waiting. The governor's rollback bail reform not released enough prisoners during the pandemic and failed to rein in policy, police abuses advocates and prisoners say.

Larry 1:06:53

so well, that I couldn't help myself putting this one in here. I want the conservatives who listen who say that I don't bash liberals, I want you to listen very carefully because I'm going on a tirade here. (Andy: Oh, boy here we go.) This governor who grandstands as being a reformer has been anything but a reformer. If he'd spend a little bit less time grandstanding, and a little bit more time working on reform, then we would be a lot further along in this. But this, this reminds me of our governor here, that was going to be a reformer. And there's been scant reforms in the criminal justice area. And it's one thing when we had the previous governor who was a prosecutor who made it clear that she was about locking up as many people for as long as possible. There's no bait and switch there. But when you present yourself as being a reformer, then I'd like to see a little bit of reform. And from what this appeal article describes, there's been scant reform and scant leadership from the governor's office. And it's very disappointing. If you want to present yourself as being the savior to the nation, and we should follow New York on everything, then show some

leadership and courage. It's easy to criticize Trump for everything he did wrong. But now it's your turn to be criticized. Where are you on criminal justice reform?

Andy 1:08:16

Certainly that they've got to have a huge number of people locked up in New York.

Larry 1:08:22

Well, he did, his office did make reference of the prison, state prison population is the lowest it's been since at some point in the 1980s. But it's still, according to the experts in New York, it's not anything near where they need to be in terms of making reforms. Some of the things that they do in New York, I'll tell you, don't serve my interest. That sexual assault Reduction Act that made it almost impossible for anybody to have a house there. But that sure made the victims' advocates feel good. And I guarantee you that that was bipartisan support. Plenty of that, when that passed, that would be one of those things where both parties would have signed up and said, count me in.

Andy 1:09:06

that but that's a typical thing. You know, I like to paint things with blue or red brushes. A pretty blue thing is to really cater to the victims advocates versus red seems to push back on that somewhat more. And I don't know which side... I know which side to favor, but I don't know which, god I don't know how to word that one. Pushing back seems to be I don't know, like a thumbing, you know, thumbing your fingers at the people trying to push back just trying to hold the line. I guess. I'm not I'm not really sure how to word it. Kowtowing to the victims' advocates versus pushing back on them so hard.

Larry 1:09:44

So well, it's very hard to push back on the victims' advocates because they come in with such a united front and they they know how to be very emotional and, but as far as is the reforms like bail reform, everybody, everybody recognizes that our system meets some adjustments. I'm not necessarily on board with everything that they are doing or have done or want to do. But I, I don't think, matter of fact, we have an article if we get to it later where we're going to be talking about a \$2 million bail. But sometimes you have to be courageous, even though you're going to take a political hit. If you, if you're too bold with criminal justice reform, the conservatives are going to hit you. That's just a given. They're going to do it. And you have to go ahead and prepare your population for it. I am going to be vilified and here's why. But this is the right thing to do. And here's why. And you hope you hope you hope you can survive it. But you may not. And he may have other, Cuomo that is, he may have other priorities that are more important to him and he doesn't want to spend his time fighting off the vilification. I mean, all you have to do is look at when you when you try to be courageous, you get vilified because you're turning loose a tidal wave of crime. And that generally comes from the conservatives. It doesn't come from the liberals.

Andy 1:11:10

Another article that we have from the appeal is Kyle Rittenhouse bought his freedom. Kalief Browder could not. Rittenhouse case raises particularly pointed questions about what we're really

talking about when we talk about bail. I think this is what you were alluding to just a minute ago?

Larry 1:11:28

Yes. And I interestingly enough, I come down on the side of... I know we're gonna want assume he's guilty, but he has the right to be presumed innocent, until he is proven guilty in a court of law beyond a reasonable doubt. And that presumption is supposed to follow him through duration of the proceedings. And if you're presumed innocent, we cannot act as if you're guilty and say that he should be paying a price right now for what he did. We do not know that he did that yet. And I don't know why that's so hard for the victims' advocates to understand. He is entitled to the presumption that he didn't do anything. And it's your job to prove that what he did do that he's guilty of what we're saying he did. And until then, he's an innocent person. I say the same thing about police officers that are accused, I only wish the police would say it about someone who was accused. Because that's the way our system works. I don't consider it him buying his freedom. I mean, I know what they're getting at because there are people who have very low cash bonds that they can't make the cash bonds because they don't have... it doesn't matter how low it is. If it's \$100 dollars and that don't have the \$100, it might as well be \$10,000. And there are people who also should be enjoying that presumption of innocence, and they're not enjoying it because they're incarcerated. I totally get that. And I understand it. But does that mean we should punish everybody? Because we're in a capitalist system, and some people can't afford to make the bail?

Andy 1:13:09

And what we're really describing here is that two people, one of them had a \$2 million bond. Wow, that's a lot of money. And that family had the resources to get donations and so forth to pay something of like what would have been like \$250,000 bond because it's like 12%, or 11% to put up bond. And but the other person, I'm going to assume for whatever for whatever it was, it could have been \$50 a bond. I don't see it in the article, but couldn't raise that money. So that person is still sitting behind the walls while this \$2 million bond that Kyle's of friends and family put together \$2 million a bond.

Larry 1:13:45

Well, he had donors in the community because there are people who despite how guilty they think he is, they're going to support that. And I'm not want to get into a debate about whether he is guilty or innocent but he strikes a chord with a certain segment of the population that they can identify with. And they've made donations to him. But that doesn't change the fact that he's presumed innocent.

Andy 1:14:09

Yes.

Larry 1:14:10

And for some reason, we can't wrap our head around that. The people that are sitting in on the 1500 dollar bond, they are presumed innocent. And I say the same thing about them. It's unfortunate in our system that they can't be released. Is the answer to punish everybody pretrial because some people don't have capital in a capitalist system. Is that the answer?

Andy 1:14:35

I'm going to read this one little paragraph, a little bit more than halfway done says Kalief Browder spent three years in jail, most of them in solitary confinement for allegedly stealing a backpack. And because he couldn't afford his freedom, at 16 years old, he was wrongfully incarcerated for a crime he did not commit. A system that locks innocent children and adults in cages is not just or smart. It's cruel. When he was released, Kalief Browder tragically died by suicide. In stark comparison, Kyle Rittenhouse has been heralded a hero. 16 years old Larry for allegedly stealing a backpack.

Larry 1:15:07

Well, and then we're getting into the juvenile system versus the adult system. And there, there's greater latitude generally in the juvenile system. So, I don't know of Browder's case, what the nuances were, why was he held in custody, it's certainly a tragedy. Nothing could describe the tragedy of committing suicide. But, but we need to figure out in a capitalist system, what do we do with people who don't have capital?

Andy 1:15:41

Yeah, I don't know what the answer to that one is, Larry, I just don't.

Larry 1:15:45

Because the bail reforms, the bail reform systems are not the panacea that you think they are, they end up looking at the seriousness of the accusations. And on this accusation under that, under that cash register systems they would use, he would have gotten so many points because of the weapon, the type of weapon, and the fact that he left the state. And he had to be extradited back, he would have so many points that he would be unbondable. So that would also destroy his presumption of innocence, wouldn't it?

Andy 1:16:15

Seems like Yeah.

Larry 1:16:16

yeah. So he would have he would have, at least in this particular case, and I'm not rooting for him. If he's guilty, I'm not rooting for him at all. I just don't have an opinion, because I don't know enough. But it's pretty good case. He at least can facilitate and prepare and work with his defense team. Everybody should be able to do that. Everybody, even in jail pretrial should have unfettered access to their legal team, which they don't, they never have. But I don't know how to fix the system. We live in a capitalist system. We have to figure out in a capitalist system, how do we deal with people who don't have capital?

Andy 1:16:51

I do not know Larry. Larry, let's jump to the very end of the list. This is from Pro publica, a Deputy Prosecutor was fired for speaking out against jail time for people who fall behind on rent. I didn't realize that it was some kind of crime, like a prosecutable crime to not pay your rent. I figured that you would just get evicted and possibly owe some money like you'd be put into collections or something but I didn't realize that you could be like charged for not paying rent.

Larry 1:17:18

Well, apparently in Arkansas, it is against the law if this is an accurate article. Now your propublica is one that you like so is this...?

Andy 1:17:27

I like pro publica.

Larry 1:17:29

Well, this is in Garland County, Arkansas, but it is the option to go civil or criminal for failure to pay rent. It says under the law, which dates to 1901. (Andy: Good grief.) If the rent is a day overdue they forfeit the right to be on the property. If they don't leave the homes within 10 days of getting notice from their landlords, they can be charged with misdemeanor and fined for each day that they overstay.

Andy 1:17:58

Okay, now help me out what is what is the consequences of a misdemeanor? Like a speeding ticket is a misdemeanor if I understand, right?

Larry 1:18:05

Well, the consequences depend on what type of misdemeanor. It can be severe. Domestic Violence is oftentimes a misdemeanor, but it's severe, the consequences of that of that.

Andy 1:18:16

We need a failure to pay rent registry.

Larry 1:18:18

I don't see a problem with that. But anyway, this Deputy Prosecutor voiced his opinion, I guess, gave an interview and that got back to the elective prosecutor and she did not see the humor in this at all. And so she let him go.

Andy 1:18:34

Oh Okay.

Larry 1:18:36

And so this is one where Josh deserves the kudos and the elective prosecutor doesn't deserve anything other than maybe, she's got a point, it is the law. She doesn't make the law. But you certainly have a prosecutors Association and you have extreme clout with the state legislature. And you could be in Little Rock saying look, we need to repeal this archaic law that's 120 years old. We don't want to be prosecuting people. So Michelle Lawrence, the prosecuting attorney of Garland County. Shame on you, you should be trying to undo this law and Josh Drake congratulations for speaking truth to power. It costs you your job, Josh. But guess what? You'll go on to do better things.

Andy 1:19:24

Let's hope so. Wow. That's bizarre. That's just a really bizarre. Larry do you know that we got an amazing number of patrons this week?

Larry 1:19:34

How amazing was the number?

Andy 1:19:37

It was two. We got two new patrons. We got a Derek and a Jessica and I want to thank you both very, very, very, very much. Thank you so very much. It's really really appreciated.

Larry 1:19:46

Aren't we getting close to that magic 100?

Andy 1:19:50

We are getting closer. We are getting closer. What are we going to do? Are we going to do like a 12-hour livestream when we get to 100 patrons Larry?

Larry 1:19:56

We should do something but yeah, I think we're at 83. I logged into my account yesterday and I think it was 82. So this would make 83.

Andy 1:20:05

A podcast that I listen to, they crossed 4000 patrons. And they're doing a 12 or 24, I can't remember which one it is, which is unbelievably insane to me. I can't imagine trying to record anything for that long. I, by the end of it, we both be like, *crazy noises*, we would not be very coherent kind of people by then I imagine. How do people reach the podcast, Mr. Larry?

Larry 1:20:34

We've done amazing to get to this level, you know, when we started, we had zero.

Andy 1:20:39

That is true. We did have to get to one before we got to two and so forth. So how do they find the show?

Larry 1:20:47

It's online.

Andy 1:20:50

The tubes of the internet? I can't remember who was the guy from like, someplace over West, he called it the tubes. I'm always tickled when I hear that clip of the tubes.

Larry 1:21:01

It's registrymatters.co. Not .com, but .co

Andy 1:21:11

yes, we couldn't afford the extra letter. It was too expensive. So we we've reduced it by one. What about a phone number there?

Larry 1:21:20

(747)227-4477

Andy 1:21:25

And sending us an email. Where would they do that?

Larry 1:21:28

Oh, that would be easy. registrymatterscast@gmail.com.

Andy 1:21:36

And as Derek and Jessica did, you can find us over patreon.com/registrymatters That is the best way to support the

podcast to show some love for the Larryinator for being the one that knows all the things and I thank you so very much for being here, Larry.

Larry 1:21:52
It is my pleasure and also...

MacArthur Video Clip 1:21:54
That is why I am here.

Andy 1:21:56
Where's your cue, man? I try this every week and you flush it.

Larry 1:21:59
Well, you already did it. I didn't know you were gonna do it again.

Andy 1:22:04
Alright, man.

Larry 1:22:05
well, just bleep bleep it out. Let's do it again.

Andy 1:22:08
All right, Larry. I very much appreciate having you here. And I hope we can do it again very soon.

MacArthur Video Clip 1:21:54
That is why I am here.

Andy 1:22:18
You're supposed to say it. Alright, anyway, we're out of here. I hope everybody has a great night the rest of your weekend. I hope you didn't get too fat from all the turkey. And we will talk to you again next week. Good night.

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