



Registry Matters Podcast

Episode 159

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Andy 00:00

Registry Matters is an independent production. The opinions and ideas here are that of the host 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 I think it's 158 of Registry Matters, Larry, Happy New Year. How are you?

Larry 00:23

It's actually 159, but who's counting?

Andy 00:26

Are you serious?! I just looked at Oh, it is 159 Oh, crap. I messed up. All right. 159. Happy New Year.

Larry 00:34

Well, thank you so much. Glad to be back in 2021.

Andy 00:38

It is 2021. Can we maybe take just a couple minutes? Were there, can you think of anything super significant from 2020, from the PFR stance that that we could reflect on real quick before we dive into this great content for the day?

Larry 00:54

Super significant.

Andy 00:57

And I kinda hit you, I didn't even prep you for this one. It was something I was thinking about. Is there anything that we can reflect on as being either good or bad from 2020 that we could highlight just real quick?

Larry 01:09

Well, we're certainly we're certainly building the body of case law in a number of areas, particularly in the First Amendment with with the the additions from other courts that have adopted the reasoning of *Packingham*. Those are significant developments. And the recognition that the generation, first generation registries like existed in Alaska, more and more courts are beginning to depart from the *Smith versus Doe* analysis and saying we have to look at current generation so that those are positive developments.

Andy 01:44

And expand on that real quick since you're talking, so *Smith versus Doe* then said like, because there really wasn't much of an internet at the time, there were no disabilities and restraints as I really love that term, no living restrictions, no work restrictions, things like that, like that registry, quote, unquote, would be okay. And I'm making air quotes. They're departing from that sayomg doing more things than that, that's not okay.

Larry 02:07

That's correct. The lawyers are finally beginning to, on the cases that are not being decided by summary judgment, they're actually having factual development in the way of trials. The the cases are being developed where the the registries as they exist today, are shown to be far more debilitating and having disabilities that

didn't exist when *Smith versus Doe* was decided. And as I've said, so many times on the podcast, the Supreme Court didn't say you can do anything you want to do. They have emphatically said, you can have this registry as it exists now, because it doesn't do and they went through the litany of things that it doesn't do. Since then, law makers have done those things. And that's why they're they're experiencing losses in court because they couldn't stop at a registry. A registry wasn't what they really wanted. What they really wanted, was to continue to inflict punishment on people after they had been punished sufficiently through their sentence and the expiration of your sentence, that's what they really wanted. That's the same thing. But with the sex offender civil commitment. They don't want to do any treatment. All they want to do is continue to warehouse people, after they've paid their debt to society. Let's be clear on that. That's what they want with the registry. And that's what they want with civil commitment. If they really wanted to treat people, they would treat them in a mental health setting to begin with.

Andy 03:37

I completely agree with you. I find it interesting the way that you word that, I was, I was following the the movement, maybe a year or so before you and I established any kind of a relationship and I never really heard anybody describe what you just said about how the registry was designed and how that *Smith v. Doe* decision. No one ever described it as saying, well, you can do whatever you want with the registry. Like that's how it always sort of seemed to me it's like hey registry, like the voters voted for it. And it's okay. But you really draw a line at the at that decision, like, Hey, you can do this, but you can't do whatever you want. And like you said now with like Michigan and so many other places are having decisions come down where no you can't do whatever you want. I find that to be really a stark contrast in what I've always heard people describe how the registry is set up.

Larry 04:30

Well they've been told, they've been told that like when the the part time legislatures, which most of our states have, they're not filled with expert analysis, analysts, I should say. They're not filled with those. You'll have someone coming from California, where they have a gigantic well-funded legislature or New York where they have lots of money. But these states don't have that. These smaller states don't have those resources. And the law enforcement apparatus comes in and tells them when they're, when they put forth their wish list of a new proposal of things they want to do in registration, they tell them that it's okay. And if if a token lawmaker says, Well, wait a minute, this seems like it might be unconstitutional. The first thing they say is the Supreme Court said in *Smith versus Doe*, that it's okay. And the non-lawyer people, particularly but even lawyer people, they they're they're looking at them saying, , okay. Well, you're saying that the Supreme Court upheld it, all right. And and they give it the thumbs up, because nobody from the registered side is there to say, actually, that's not what the court said, is *Smith versus Doe*, they actually said, you can collect names. And you can do something similar to a driver's license renewal. They didn't say you can do all the things that have been heaped on through the years. They didn't say that.

Andy 05:48

I gotcha. All right. Well, do you want to give us a little teaser about what we have coming down this evening? Or do you want to just dive right into it all?

Larry 05:57

Well, let's do a teaser. We have we have some questions that were submitted. I think they all came from behind the walls this time, I think. Prisoners and then we have we have a review of a decision from the California Supreme Court that came out on the 28th. It has to do with PFRs. And then we have a small discussion on the emergency appeal to the US Supreme Court out of Louisiana. And we're gonna talk about Pell Grants, and then we're gonna bash Governor Cuomo.

Andy 06:30

Bash Governor Cuomo, man, we could actually probably like make that a whole segment on its own is a bash Cuomo.

Larry 06:36

So all right, so let's do it.

Andy 06:39

Alright, well, so question number one, it says, Dear Andy, and Larry, and this is dated on 12/13. And just to get to the meat and potatoes of it, is:

Listener Question

How do I get around the internet and connected device issue? And you handed this to me, Larry, and I said, I don't want to tell anybody how to, like circumvent them monitoring your internet usage. So um, yeah, that one's scares me. And I guess we can have a private conversation, but I am not responsible. Is that what this person is talking about?

Larry 07:12

I didn't interpret the question that way. Because if you read further down, he's asking, Can I file a 1983 or 2254 now. So what the way I interpret and Adam, thank you for the for the question, the way I interpret Adam's question is, he wants to, he's anticipating that he's going to have these restrictions to deal with when he gets out. And he's correct. In all likelihood, he's gonna have restrictions he did not know about, that never came to his attention. until until, until he's on supervision. So he's trying to file now to try to extinguish those restrictions. And the first point, I would say that this is getting close to having an individual wanting advice about their case, which we're not allowed to do. But generally, I would say without, without crossing that line, that if you file something now, while you're still in custody, and you have not had these conditions handed to you, and you have not been told to sign these, these are gonna apply to you. I can tell you this, if I were licensed to practice law, and that petition came to my desk, my response would be as follows: that this is hypothetical, that that that this, this might be an issue and it might not be an issue. That it's rests upon speculation. And I would ask the court to dismiss this request, because you don't know yet what you're going to be required to do, I don't think. So that would be by my expectation they would move to dismiss because it's not ripe.

Andy 08:51

And this goes to having standing because you're not being harmed. You don't have controversy yet.

Larry 08:59

Well, he would have the requisite standing if the conditions were imposed on him. But But if they have not been imposed, if he if he if he's just imagining based on what people have told him, that he's got to have these things, He's he's he's he's premature. And courts don't decide hypothetical questions.

Andy 09:22

Right. Interesting. And 1983? Is, is that just like codeword for a habeas?

Larry 09:29

No, it doesn't refer to a habeas. 1983 is the civil rights 42, section 42, US code...

Andy 09:36

Oh, I've heard that brought up on another podcast before okay.

Larry 09:38

Yeah, yeah. So so. So yeah. And I would guess that that that, that they would try to extinguish the petition, if you filed it now, that would be my expectation. That's certainly what I would look at if I if I were faced with it. And I know people get angry, but always try to imagine that I'm in the other person's, the other party's shoes. I would imagine what they would do and it helps you know what to do if you don't what your opponent's likely to do.

Andy 10:05

So yeah, that's fair. Yeah, you when you're when you're playing chess, you should play chess from the other side of the board and try to figure out what they're going to do to figure out what you're going to do. Don't just make your moves blindly. I wanted to share on this then just a teeny little bit of anecdotal, before I was released, knowing that I kind of live by computers, I had someone call, like, figured out who my probation officer or potentially predict probation officer would be, called the office and said, Hey, so and so's getting out soon and you know, they use a computer and they said, nope, not gonna happen. And, oh, crap. Now I got all this fear and anxiety. And I get to the office, when I'm released, like, and maybe it was the day or day after, and I go sit down, he's like, and I handed him a letter from the company that I was going to work for. And he said, just don't do anything you're not supposed to do. And that was the end of it. And I've never had any issues with computers since. It's really interesting how it just was like, like nothing. I see all these things of people challenging and having restrictions and it just never applied to me.

Larry 11:05

Well, I mean, I can, I can say that he did say that, Adam, on this question, he did say that, that this was imposed on him when he was previously on probation. Now, he, his argument would be, hypothetically, that he can anticipate that when he gets out again, they're going to impose that condition again. But again, since it wasn't imposed by the court, and just as you pointed out, you may, he may have a different probation officer, and the case law may have developed since then. And they may what they did previously, they might not do again. Like I say, I think there's

probably not anything a person can file this particular situation until they actually have the restriction imposed on them.

Andy 11:41

And everything matters based on your probation officer, based on their supervisor, based on the county, based on the state, based on like the overall climate of what the pressure is too. Like, I mean, so many things could have changed from whenever this happened originally. (Larry: That's correct.) All right. And then we will move on to question number two. And this says listener question from RM 150, oh, for RM 159, says:

Listener Question

Perhaps this question is asking for more speculation than intended. But what is the legal significance of something being labeled a utility? And if things continue to move in this direction, what might this change about the exercise of blanket internet bans. After all supporters of such bans like in the practice to revocation of driving privileges for those convicted of major traffic offenses, but I would argue that a person today has greater access to alternatives to driving than to any real alternative to the Internet, and that the practice of blanket bans is more akin to telling someone that they cannot have power in their home because their offense involve the use of electricity. What are your thoughts? Can you imagine Larry that someone uses electricity to grow marijuana, and you know, their electricity bill goes through the roof. And because they used electricity to commit that crime, then they are no longer allowed to have electricity.

Larry 12:55

I mean, it's a, it's a great analysis of correlation there that, that that a, and I think that we're going, my personal thought is that we are going to move more towards the internet being viewed as a public utility. But the, it all starts out differently. The public utility concept came about because of, it really wasn't practical. When you think of public utilities, you think about water, electricity, and gas. It really wasn't practical to have all these competing companies stringing wires and you choosing your electric company to buy electricity from. So so you end up having monopolistic practices within a service area, and the companies were, they they agreed to serve everyone in the service area. And in exchange for the regulatory... in the old days, companies were guaranteed a rate of return so that would they would, the Public Utility Commissions would set the rates in the state sufficient to guarantee the company 10-12% rate of return on their investment. And they would agree to serve everyone. But the internet did come about that same way. You don't need, you don't need the, you don't need wires and pipes. You need water for your pipes for water pipes for gas

Andy 14:22

Tubes as that senator said. You don't have the tubes.

Larry 14:26

You don't. You don't need the same infrastructure on the internet. But But regardless of whether you need the same infrastructure, people, people's lives depend on the internet. More and more, you you you can't do, I mean, you can actually deal with social security by phone. But people now create an online profile for their social security to manage their benefits, to apply for jobs, to do everything. They do it online. And I think if you, if you listen to

what the President's argument is about the section 230, he's making a tangentially similar argument about how he's being denied access because of the, you know, the restrictions because of the truth detection, that that that Twitter and all these platforms are saying that that they won't allow untrue things to be posted. You know how they're monitoring content. The President's making that same argument, yeah, he's making, he's making similar argument that, that they shouldn't be allowed to do that. So I believe with his power, and people like him, recognizing that, that that, that the internet is an integral part of everyday life, we may be moved towards that it big defined as a public utility, but it's not that way today.

Andy 15:46

He, someone reached out to me and told me that they were watching Trump do a town hall of some sort within the last week, and it was only and maybe he was watching it on Facebook. And I like all of my little tingley senses went up, I was like, oh, if if the President of the United States exclusively used Facebook to deliver their message, oh my God, everything would have to come down. Something I heard about, if a restaurant wanted to not serve a group of people, like they can choose to do that. But if a politician goes in there, it has to be open to everybody. Because you can't segment the population from a political point of view. And if Trump started using as a political official, you know, after he leaves office, then then that would all go away. But he can't just use, I'm sorry, he could use Facebook as that only platform, but then Facebook could not restrict access to anybody from watching it.

Larry 16:44

So well I like, I like the way you're headed. If public discourse is more and more online, which by this pandemic, we're going to have our legislative session that way, they're going to they're going to be, the committee meeting is going to be virtual far as I've been able to hear. If you were not allowed on the internet, you would not be able to participate, you would be excluded from government because the capital buildings gonna be locked down tighter than a houndstooth this year. And that's a colloquial term there for those who are not from the South.

Andy 17:17

But when you say they're going to be done, virtually, they're going to be using their own platform, they're not going to be doing these things through Facebook, Twitter, like none of those massive social media platforms, they're going to, for lack of a better term, they're going to make a zoom meeting for their, for the events.

Larry 17:34

But wouldn't if you were not allowed to have an internet accessible device, wouldn't that, if you had a blanket ban, wouldn't that keep you from being able to, to, to hook up to it?

Andy 17:45

Totally. It's just when we talk about these internet bans for people, you have repeatedly said only under the most extreme of circumstances, like they can't restrict you from using the internet, but they can heavily restrict it and monitor and so forth. That Facebook then is where our challenge is of blocking people. So if your legislature is hosting these things online, then that's that's the difference that I'm making is most most, most everyone has

access to some kind of device for them to participate. It would only be in those rare circumstances. But God, Larry, what do you do, like you have said, if they made a ban with like the 1000-foot restrictions, I remember Paul Dubbeling, putting up a map with the circle of the state capitol. And there was some sort of daycare or something within 1000 feet, and there's a presence restriction, you'd like I'll be damned if I'm not going to the state capitol to redress my grievances because of that 1000-foot circle. I am going to the Capitol, and I'm going to go talk to those people. Would you then apply the same logic here if they said you can't use this, but that's the only way for you to participate? Would you go do it anyway?

Larry 18:49

Well, it's easy to say what you would do when you're not facing the consequences, but it's one of those things where someone has to be willing to do it, because that's one way to bring the controversy and the constitutional challenge forward. You would have standing to file if there were such a restriction imposed on you without placing yourself in jeopardy, but it makes more of a potent point if you do it in real time. You know, if you say hey, I'm showing up to capitol because during a session for 30 days and I have to be here now. Otherwise, it might take you a year to two before you get anything get your case to court.

Andy 19:31

Interesting. Wow. All right. And so then to highlight the point, though, is that there isn't really any sort of alternative to the internet. So like you know, we can't it's sort of how Connections got created with NARSOL so that we could at least have our own social media platform. And but you don't have an alternative on when you look at the Burger King marquee and it says go to PBKjobs.com or whatever to apply for a job. You don't have an alternative.

Larry 19:59

That is correct and supervising authorities, I hate to break it to you what you're going to need to do. I know it's complicated for you but what you're going to need to do is you're going to need to develop a list of internet sites, that would be problematic. And then you're going to need to develop a criteria for offenders who you can legitimately restrict from those problematic sites, you're going to have to let go of this notion, you can ban everybody from everything. And you're going to have to strategically target restrictions on people for particular sites. And if you'll do that, I know it's hard for you but if you'll do that, you won't find yourself in court all the time with these constitutional challenges.

Andy 20:40

It's not rocket science, it's not even that hard to do Larry. It's just not that hard to do.

Larry 20:45

Well, it is for them, because they're afraid that they might overlook somebody. See, human beings can be charming. And you can have the most beautifully drawn criteria in the world. And you can have people who could snooker folks and get an exception made for them. And when that exception's made, and when something goes wrong, there's the fear of when those cameras come rolling in, how did this person have access to do this? So it's easier just to have a blanket ban because then you don't have

people falling through the cracks. And but they're going to have to get beyond that. They're going to have to actually develop criteria for what sites are problematic and what individual characteristics in offenders make those sites problematic. And if you'll do that, you'll be able to constitutionally supervise people and protect the public. And I know that's a difficult concept, but that's what you need to do.

Andy 21:41

And then we'll move over to our third question. It says:

Listener Question

Hello, I wanted to ask a question I hear it's extremely hard to transfer supervision of PFRs to New Mexico, then I heard that all PFRs have a curfew if you're not at work. They say you can't live with your own kids. I have a 17-year-old son and my wife and I plan to have more children in the future. So, I would not be able to live at home. That sounds insane. Also, what are the residency restrictions (e.g. 1000 foot rule, all that just curious). We need to find a decent place to live in a landlord that will rent to a PFR. If you have any information that can help, please let me know. My wife has a Bachelor's of Science blah, blah, blah. I don't see how any of that matters, but then says thanks again for remembering me over the holidays. Larry, this is your neck of the woods.

Larry 22:28

Well, since I don't see it anymore, I had it in the Dropbox, you're gonna have to go through the questions. There was several questions in there. So we're gonna have to go through them again. You expect my memory to be that long?

Andy 22:38

I do. It's still there in Dropbox. I didn't move it. I just copied it. (Larry: Oh, you did?) Yeah, it's still there. But it says I hear it's extremely hard to transfer supervision of PFRs to New Mexico. I think it's probably equally hard everywhere. Nobody wants you.

Larry 22:57

So yeah, that would be that there's nothing that unique. New Mexico may be a little more zealous about the trying to invent something to turn the offender down. Some states might actually just go strictly by the rules and New Mexico is known to to invent something and they'll say well a school bus stop just might locate here. It's not here now but it might, so with with New Mexico, I would say that it's it's a tough one to get an out of state supervision transferred here. And but but I don't think any state is open and welcoming. I just found the folder now. Okay, so so yes, that is true. Curfew...

Andy 23:43

And then, yeah, go ahead. Curfew is the next one to hit.

Larry 23:45

Yes, curfew is common. It can range from six o'clock on at five or six in the evening. Early curfew. And I think the latest that they're they're granting is a nine, a nine o'clock curfew. Now there's an exception for that if your job goes past nine o'clock, but if your job doesn't go past nine o'clock, you can't be out past nine o'clock. And then the but you can't say your own kids, I've never heard of that one. So I think that's a little prison mumbo jumbo there. If you had it inside the home victim, meaning that the offense

happened within the confines of the family unit, whether it's a child or a niece or nephew. If you had an inside the home, hands on victim, they will look at that with a great deal of scrutiny. Because there's justification there. I mean, that's them doing their job. If, if you are going to be supervised for a sexual offense and you had a hands on inside the home offense, you're going to run into some problem. But if you just simply have a biological child and your offense had nothing to do with the family unit, I don't recall them giving a great deal of difficulty for people living with their kids. So that so that that one is not something I'm familiar with.

Andy 25:11

And then I guess we can move over to the that sounds insane part, what are the residency restrictions, 1000-foot rule and all that junk?

Larry 25:19

Now, keep in mind, we don't have any restrictions imposed by the registry itself. These are only conditions that apply while you're under supervision, it's 1000 feet from, from schools, playgrounds, parks and places where children are likely to congregate. The 1000 feet is not really clearly defined. Last time I looked at the probation parole department policy, it says, well, it doesn't tell how they take the measurement. Doesn't say if they measure it from the outermost property line or to the structure. But it's generally 1000 feet. So when you're thinking about where you might want to live in New Mexico, you would want to measure in the most ridiculous way that you could imagine that they would measure it. So that you would make sure you are at least 1000 feet in any way that they could calculate it. That's what you would want to do.

Andy 26:15

Yeah, I was a friend of mine, like blindly bought a house, he just like up, I'll buy this one I was like, man you are just playing with. I mean, he bought one that's so far out in the middle of nowhere. But I was like, man, you don't know about some sort of daycare, that's somewhere around the corner. Like I was like, Oh, my God, you're gonna close on this house and be like, sorry, you can't live here.

Larry 26:34

That has, that has happened on occasions.

Andy 26:36

Of course it has. Let's see, we need to find a place to live with a landlord that will rent to a PFR. I you know, like that's, that's just you just have to go through the numbers. And you know, and call this one call that one call this one call that one. And I think that's about it.

Larry 26:53

Well, actually, the Liberty and Justice Coalition, which is the state affiliate, we actually have a member who is very, very good with PFRs. His rental units are not in the high rent district. But he is very, very accommodating. And so we would certainly have a door to open. Now, if you're looking for looking for exquisite high end housing. He doesn't have any of that. Most people that we deal with are not looking for that high end housing. They're just looking for average housing. And yes, we would have someone we can

refer a person to that would that would not discriminate based on the PFR status.

Andy 27:33

Do I know this person?

Larry 27:35

I don't think you do.

Andy 27:37

Okay. Very good. Let's see, that's questions one, two, and three. Well, then let's go over to what would be essentially the feature event and this is the case with Janice Bellucci in California. And she's well known for those, she does a lot of work on behalf of the PFRs. Can you give us like the the quick two sentence version and then we'll dig into it?

Larry 28:00

Sure, this is this is a case that arose because of Proposition 57. And proposition 57 was one of those famous citizen ballot initiatives that was supposed to help reduce prison population, which California has been grossly overcrowded for years. And, and in the implementation stage of the proposition, they decided even despite the language in the proposition itself, that they would exclude people that were required to register for a present offense or anyone who had a previous offense, regardless what their offense that they were serving prison time for. So this case meandered its way through the court and a favorable decision came down on the 28th of December from the California Supreme Court.

Andy 28:48

Thought they would not be working right there at Christmas time.

Larry 28:52

Isn't it absurd that they were working?

Andy 28:55

That is. Alright, well, then we have a bunch of questions that we can go over to dig into the content here. So So you put this in here called Regaldin. It was just released on the 28th. I read, I man, look, I didn't read the decision. I'll be honest with you. And you're just bored though, aren't you?

Larry 29:15

Not really.

Andy 29:18

Alright, did you need something to do over the holidays? that's what that's what this is all about.

Larry 29:23

No, I thought this might be relevant.

Andy 29:26

Okay, um, and it's everybody knows that you you don't have a right to parole. So what is the beef here? Why is this person making all this hoopla and, of course, why are they making decisions over Christmas?

Larry 29:39

Well, the reason why the person is making all the hoopla is because the the the, the initiative did not contain the restriction that the prohibition for from parole consideration that the department the California Department of Corrections and Rehabilitation, that they invented. But as I recall, any Californian can correct me but I do recall, I think when this was being implemented after the ballot, after the language went on the ballot, there was some concern and Jerry Brown who was governor at the time, and he promised that you don't need to worry, these kind of people won't be paroled. And therefore, when the Brown administration left, and the Newsome administration came in, a lot of those people with the California Department of Corrections Rehabilitation are still employed there. And they continued with that strategy. So they implemented regulations that cut this guy out from consideration, even though he should have been considered. So that was his beef. He said you invented a requirement that's not in the law.

Andy 30:49

And this individual had prior sexual convictions, but this one was not based on that. This, his current conviction.

Larry 31:00

Yes, he had. He had some old convictions from a long time ago. But all he did this time was armed robbery.

Andy 31:08

I mean, all. Okay. I mean, no big deal right, you just grab some iron and you go do what you do. Did the California Department of Corrections just disregard the will of the voters and implement its own version of what it thought was best? Would this be a case of bureaucracy inventing its own requirements?

Larry 31:26

That's precisely what this is. I'm sure at the urging of the previous governor, and I'm sure without any objection from the present governor, that that they feel, felt and still feel, they still feel the same way. They feel that they are protecting the community. And that if the voters had only known that they were going to be releasing these people with that language, they would have wanted that language in there. So they actually, they did the voters a favor in their view, and they created a parole process would exclude these evil people. And this guy was his convictions from sex offense go way back. And he's not serving time for that now. And and but they're protecting the community. That was their theory.

Andy 32:16

He's serving a mountain of time to he's serving like a 25- or 35-year sentence, depending on when I read through part of it like, that's what I saw. It's a mountain of time for the armed robbery.

Larry 32:26

Well, yeah, because he was also under three strikes. He, (Andy: Cuz that is a thing too.) Yes, he had, to show how far back, he had a 1984 conviction for forcible rape, and a 1986 conviction for child molestation. So we're talking about how many years ago? (Andy: That's almost 40.) Yeah, so and following his conviction in 2007, which is what he is serving time for now, he, let's see, forgetting what I said. Following his convictions, he was sentenced to a total

prison term of 35 years to life consisting 25 to life for the assault with a deadly weapon under the three strikes law. So so he was under three strikes.

Andy 33:12

I mean, okay, forgive me, I don't want to like minimize what the crime was and how much time he's going to serve. But if he committed his first crime in '84, we could, we could assume he was of something of rational age, let's say he was 15, which would be really young, but I'm thinking he was older then. He's up there in years now. I mean, he's like, pushing 55 or 60 years old now.

Larry 33:37

Well, he's older than methuselah sure, but he still wants out of prison. So I don't know what that has to do with it. I mean, are you saying that he wouldn't be a danger now?

Andy 33:49

I mean, that is essentially, you know, with medical expenses, with people just not being able to move as briskly in older years than younger years. You know, you don't see people running in the Olympics that are 80 years old. They're usually in their like, teens or 20s. So I'm, it seems that quote, unquote, they age out and like the level of threat would go down over time. You don't run around seeing grandpa robbing banks very often.

Larry 34:14

Well, he, he's clearly, he's either gotten away with many sex offenses since '84 to '85, or else he's he's not been doing sex offenses. But clearly for some period of time, he was engaged in criminality. That's what rendered him under the three strikes law. He continue to engage in. But philosophically, I don't believe three strikes law should exist because as you're pointing out, once you get older and older, all you end up doing is having your prison become an infirmary unit, which that care cost that incarceration and care cost more than a regular young prisoner. The person has very little threat to the community, but yet the cost of their care and the prison is much higher than a regular, non-infirm inmate. And I don't know about you, but I'd rather have them getting federal benefits, collecting money on their social security through eligible, their SSI, or something else, rather than using state funding to keep them in an infirmary? I don't. To me, that's just a no brainer. Yeah, I

Andy 35:20

like federal benefits, like, what do you think that they would pay out? Like, could we say 20 grand a year? I mean, this guy's also spent a bunch of time in prison, his social security money wouldn't be that high to begin with. But we're gonna spend 50 grand to keep them locked up.

Larry 35:35

And maybe even more, depending on his mental deterioration medically. If you keep a person in prison for life. Their cost of care goes up. I mean, I'm not saying they provide great medical services, and that you're going to get nice comfy hospital care in prison. But regardless, it does cost you more to incarcerate a medically challenged inmate.

Andy 35:55

Interest. And now Now we move into the case of like, from from an economics point of view from a what am I thinking of like a libertarian, like, let the economics like bear it out. Or capitalism bear it out? And this this doesn't sound like a good model for capitalism at all, keeping people locked up.

Larry 36:14

Not at all.

Andy 36:15

Would this be one of those cases where a textual interpretation saved the day?

Larry 36:21

It actually is. This case was initially went through, he filed a habeas petition with his Superior Court, which is a court of general subject jurisdiction in California. And the Superior Court judge denied him and he filed an appeal with the California Court of Appeal, as they call it. And the California Court of Appeal reversed. It said, you're right. And they they went strictly by the text, they said there is no prohibition in the text of this proposition, this constitutional amendment. Therefore, you can't invent it California Department of Corrections and Rehabilitation, you cannot invent that. So this was actually some textual interpretation from a very liberal state I might add.

Andy 37:05

is can we then say that they're inventing their own things is that similar to Sheriff Long in Butts county?

Larry 37:12

It is a great deal of similarity that he invented his own thing. The only difference was that, that at least they had a backdrop. They had a proposition. Long just totally invented Halloween sign restriction out of thin air. There's nothing in Georgia statute anywhere dealing with Halloween. But other than that, he did invent his own restrictions and this is what CDCR did in California. They said, Well, we appreciate the concerns of voters, but we are going to keep you safe. And truly, a lot of voters would be very pleased that they took that posture.

Andy 37:47

Yeah, I'm sure. And then this is over. There's nothing else that's gonna go on now that California Department of Corrections is going to start treating PFRs as the same as everyone else.

Larry 37:59

I wish I could be that optimistic, but unfortunately, I can't. I believe that they being CDCR, they'll do everything they can to obstruct parole for those convicted of sex offenses. And in fact, I wouldn't be surprised to see another round of voter initiative, or even a legislative enactment if they have, if that's permitted, if you can modify a constitutional amendment through a legislative enactment. And I'm not sure that you can, but I would not be surprised to see either or in terms of trying to, to fix this. There will be a backlash in California. I know, I know it's supposed to be a red state, I mean a blue state. There will be a backlash, in particular led by the conservatives, they're going to say that this is going to result in a tidal wave of unsupervised on accountability. And I would not be surprised if there is an attempt to to

legislatively, change this to put more restrictions and say that you that you don't have to consider these people. Now I hope I'm wrong. But that's what I would not be surprised would happen.

Andy 39:04

Can we backpedal a little bit. I'm drawing a blank on the Judge Persky, Judge Persky, that he was removed, because he was he he did what a judge does, and he adjudicated the Stanford swimmer guy and lost his name too that. So he said, hey, look, you're just going to basically get like probation, because you've already done some time served and the registry is really horrible. And the voters went back and canned him. Is that I guess, what I'm asking is, is that pulling the judge out, voting him out? Is that similar to the proposition that California can do they can vote directly on bills? Or could any...

Larry 39:46

Yes, they recall they used the process. And the recalls are common in California. In fact, Governor Newsom has got a petition pending against him now and and the court extended the deadline for the petitions. The requisite number of signatures they need like 1.495. They need like 1 million and 495 thousand signatures. And and but that every governor endorsed that. I mean, there's always a petition circulated there's always an effort to recall a governor Gray Davis got recalled back in 2003. And so recalls, that's in their blood.

Andy 40:25

Okay. This is the only state that does that, though, right? Is this the only state that has the the ballot initiative process?

Larry 40:30

No, I don't think so. We have we have constitutional ammendments here that go to the voters. But it seems like in California, it must be much easier. It's apparently it's a lot easier to get something through to go on the ballot. Here the legislative hurdles are pretty high to get a constitutional amendment, because we take the constitution seriously. You know, the Constitution should not have day to day operational initiatives in the in the state constitution. But but in California, apparently, it's a lot easier to amend the constitution and put it before the voters. And that's how they end up with the three strikes law. That's how they end up with these things. Like I harp on proposition 13, from back in '78. They, they have that, and I would not be surprised to see the big-pocketed donors coming here that support the law enforcement apparatus to say that we need to close this loophole because the parole board in California is going to be forced to release these people, and that they need to clean the language up to say that there are additional people that are not eligible for this, for this privilege. That's what that's what I would not be surprised. I'm not rooting for it. I'm not engineering it. I'm telling you, I wouldn't be surprised if I saw that, if that's what they do.

Andy 41:48

And then finally, like you just can't help yourself, because you wanted to start off 2020 with your typical doom and gloom.

Larry 41:57

What was doom and gloomy? This was a great decision.

Andy 42:04

Well, yeah, that's how you ended 2020. I guess, I guess you wanted to make up for it.

Larry 42:08

Oh, yeah, that's a great decision. But but all court decisions, I think we've had King Alexander on as a guest from Louisiana many times, several times. And, and he will tell you, every time they win something in court, the legislature tries to undo it. They just simply go in and pass a new law. We see that what happened in Michigan, they passed a new law. Now still the law that they passed, I think it's better than as existed previously. But what'd they do in Pennsylvania? they passed a new law, what'd they do in North Carolina, as Paul Dubbeling wins cases, they passed a new law.

Andy 42:42

And the remedy for that is to put us in the put us to get in contact, build those relationships to try and stop things before they make it to a vote.

Larry 42:53

that you have to extinguish this stuff before it before it passes. It, I guess it'd be an example of the one that Governor Whitmer just signed the the revised registration law in Michigan. As I predicted on the previous episode that we recorded before the holiday. She was going to sign it and she did. She had really no choice. I mean, yes, she did possess the power to the veto, but she wasn't going to because of all the... if you look at the proper consideration that a governor be looking at, or a president, you can tell in all likelihood, what they're going to do. And just like with the defense override, yes, the President did possess the power to issue a veto for the National Defense Authorization Act, you can do that. But the Congress is not going to stand by and let the military be unfunded. And it was easy to predict an override, nobody is going to stand by and let the military go unfunded.

Andy 43:52

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. We should, so we'll close out that section and we don't have it on the roster. But can we go over and talk about the the Michigan signing? I know that you said that it was going to happen so we can chalk that up to a Larry was right. But what are the politics what is, like this is a person that has come out in the favor of saying that the registry laws are extreme and so forth. I don't remember all that was said, but why would she go ahead and sign this thing?

Larry 45:06

Well, I don't think she said that. I think it was the Attorney General Nestle, Nestle that said, that.

Andy 45:09

That's right. That's right. That's right. That's right.

Larry 45:12

But but but you can rest assured the attorney general's office. First of all, the Attorney General never did see that brief had no idea that that was written. The Attorney General's Office in Michigan's a vast operation. And the Attorney General's name goes on everything that's filed on behalf the attorney general. So our people got all excited. Dana Nestle had no idea that that was even written. She had no idea the case even existed, in all likelihood. But But when when that brief was written, that was approved by a supervisor in a section of the AG's Office, and it was filed on behalf of the State of Michigan where they conceded that the registry as it existed, with those 2006 and 2011 amendments had become punitive. Those were removed with this legislation. So the big things that the court were concerned about, were dealt with, with this change, those things have been stricken. And I don't know why people are finding that so confusing.

Andy 46:19

Okay. And just like you were describing, in comparison with the defense authorization act, that they overruled the veto with, like 80 something votes, it wasn't even like, Oh, God, we need to get just to the two thirds to get the 66 votes they needed to get, you know, they had another 20 votes on top of that.

Larry 46:37

Correct. Well, what what you have happened here, the the AG's office had given the Go ahead. And I'm not in direct contact with Michigan ag office. But I can assure you that since they were part of the litigation, they would have given the, they would have given the legislature the green light saying in our view that this meets the the this meets the requirements to bring us back within the constitutional framework, as the Sixth Circuit has determined that we were out of compliance with the Constitution. And so the lawmakers passed this bill. And it wasn't unanimous, but it was pretty close. It was overwhelmingly this this this legislation pass. So you have a governor who has a federal judge, who's not allowing the registry to be enforced, which is actually what, what, what triggered them to legislate because the, as I said, when we were watching this unfold, that there's no incentive to legislate as long as the old law was being enforced. But once the old law could no longer be enforced, which in 2020, the federal judge said times up, you can't enforce this anymore, you've had plenty of time to legislate. Well, magically, it became a priority at that point. And they did, they did the minimum that they had to do, and the AG's Office would have given the governor's office the green light, saying we think this meets the requirements to be constitutional. For the governor at that point on her own initiative to veto that she would have been slapping the face of the entire state of Michigan because it was almost unanimously passed. And it would have left people off the registry, they would have vanished because that unconstitutional law was not being enforced. So you would have a sitting governor saying despite the fact that almost all of you that were elected by the people have vetted this, I know best. And I'm gonna prevent 1000s of people from being visible to the systems of the state. That's not a very attractive position to be in, that would top the new cycle in every media market in Michigan, for days on end, it would have been a major distraction to her coming up to her her legislative agenda for 2021. And it

would have been fodder for defeating her in the next election cycle. She wasn't going to do that. So if you look at what her considerations would have been, you could easily figure out that she was going to sign it. I'm not particularly gifted in this area. It's just her considerations would have been what I just said, and she would not have wanted that distraction.

Andy 49:07

Oh stop, you have like a crystal ball and all that kind of stuff.

Larry 49:11

So would you want that distraction overshadowing your 2021 legislative agenda that you vetoed a bill that almost everybody in Michigan was for?

Andy 49:20

Yeah, that sounds like that would go over poorly when you try to get reelected.

Larry 49:25

It would have been such a distraction. And it would have come out of left field like her office, her legislative team was aware of what was passing. They may not have been in agreement with every aspect of it. But they had signaled clearly, believe me that the process works different than what people think. The governor's legislative liaisons are working with legislators, and they would have known if the governor's office had any objections because the governor is usually consulted, maybe not the governor personally but their team is consulted. So the governor's office was also involved in this process.

Andy 50:04

Alright, then let's move over to someone over in discord posted this. It's the Supreme Court refuses Louisiana's emergency request to reinstate sex offender ID law. And like the bottom-line up front is this good news, Larry?

Larry 50:20

Absolutely. This is great news. I don't know what action that the Supreme Court Justice assigned to the Fifth Circuit took. I don't know if Justice Alito just punted it to the full court or if he made a decision. I don't, I don't, I didn't follow that closely. But the fact of the matter is, the state of Louisiana is going to have to file a regular cert petition with the Supreme Court. And they're going to have to wait for the response from the other side. And they're going to have to wait for the Supreme Court to put it on the calendar. And they're going to have to wait to see if they can find four justices that want to hear this case. And in the meantime, they've got an unconstitutional law. So, if I'm the attorneys in Louisiana, I am going to at this point, I'm going to ask for relief in the form of an order saying that they can no longer enforce this law, because they're going to enforce it until they're told they can't. The finding of unconstitutionality hasn't stopped him from enforcing it. We've talked, we've had a guest, or not we're not a guest, but we've had one of our patrons where we've talked to him as far as he said, in Louisiana, nothing's changed. So you're gonna have to you're gonna have to go into to the to the trial court, and you're gonna have to ask for, for an injunction to stop enforcement. That's what you're going to have to do. And that's what I would do at this point based on the fact that the Supreme Court would not take the emergency appeal.

Andy 51:51

And then this means like, they aren't enforcing the law too.

Larry 51:57

Well, as far as I know, they are. When we talked to our guy in Discord, he said that they were done, nothing had changed. They were still enforcing the law. But But I'm saying a declaration something's unconstitution doesn't immediately stop enforcement.

Andy 52:11

Clearly.

Larry 52:13

well, it but it doesn't. Even the best scenario, because the case there, there has to be the remand has to come down, the mandate has to come back down. And then you have to ask the trial judge to issue an order, based on what the Supreme Court said. So all that stuff hasn't happened yet. But I'm saying that now's the time to go to trial judge if the if if this case has if the mandate has come down from the Louisiana Supreme Court. Ask the trial judge to issue an injunction against the state of Louisiana, you can't do this anymore.

Andy 52:44

There's a particular sentence in here that I really, really wanted to find. I saw it when I read through the article and I I'm not positive that this one is it? But it uh, where did it go now? Uh oh, there it is. It says the state's brief said the law should be reinstated pending the appeal because the danger is not theoretical. Children die when recidivist sex offenders hide their status. Like that is some severe hyperbole that I that some of the worst that I've ever heard that is so inaccurate, that like you hide your identity, therefore, you're now able to go out and do the bad things. I don't think that the ID is going to prevent them from doing it or encourage like, that's not even a factor.

Larry 53:28

Well, that brief, I did a skim read of it, that emergency brief that they put to the US Supreme Court. It was so filled with that type of hyperbole and just nonsensical arguments that they made. And they even interjected the shelter argument, they said that, for example, that those we just have had storm activity in our state, and that the emergency shelter operators would not have known that these people without this being stamped on their ID. I mean, this is vital. But remember Louisianans, you elected that attorney general's office, and you fund that attorney general's office with gobs of money. If you don't want them doing this, A) you vote for a different candidate, you vote for someone more like Nestle in Michigan, which you would never do Louisiana and B), you look at reducing the amount of funding that they have. With less funding, they can be less creative because they don't have as much free time on their hands and I keep bringing it up every opportunity, because funding is what allows everything to be challenged.

Andy 54:36

If you want to get a barometer of what the Joe Schmo public thinks of situations like this, go over to the article in the show notes and look at the comments section of what people are saying about this. How this process went about and the people involved

in it. And it's it's not it's not at all nice at all. That's I will leave it at that and use your own judgment to go Check out and see what people say. These are the people that are that we are fighting against by the way. that's that's what I'm really trying to get to is if you're trying to figure out why the public is not on board with helping us in any way, take a look at the comments section and you can see how they characterize things.

Larry 55:16

Absolutely. And Jeff Landry's office, he thinks that they're doing the will of the people in Louisiana, and they're doing what is best for the citizens of that state. Did I get that I get that just right on the accent?

Andy 55:36

I think so. I think that was spot on. Then we can then move over to the hey, oh, I saw this, uh, just like, right, maybe the day after we recorded our last podcast and says Congress clinches deal to restore Pell grants for prisoners 26 years after ban. I think this is amazing. So it almost inspired me to go commit a crime. So I could go to prison and get a Pell Grant. Not really. But it brought up brought to my attention because I would have died to get some, some money to go get some education while I was gone. And it just wasn't available. And I had no idea it wasn't available. What do you think?

Larry 56:14

Well, I think it's fantastic. And you wouldn't have to go to prison, your your Pell Grant eligibility would be the same if you were in the community if you were economically eligible. I think that's the grant based on need, if I'm not mistaken.

Andy 56:28

I agree with you. But you know, when you go to prison, they have a tendency to like you're the company we're working for before stops paying you.

Larry 56:35

Income streams are very challenged for people in prison. I'll concede that. There are some there's some things that keep paying but a lot of things don't. Employers typically don't and private pensions continue to come. Some government pensions continue to come. Social Security doesn't. I think the VA continues to pay. Yeah, I think you've earned that from your service. So So it depends on what, what what you're collecting, but income would be a challenge for most people in prison. But it's fantastic.

Andy 57:06

roughly the lack of last paragraph says House and Senate leaders also agreed to boost the maximum Pell grant awards by 150 bucks to 6495. So you can get almost 6500 bucks a year. And you could certainly find some accredited schools online kind of you know, correspondence course kind of things. I think you could find stuff in that in that range to get some education situated while you're gone. I think that's fan freaking tastic

Larry 57:31

Yeah, these liberal do gooders are just looking. Bobby Scott representative from Virginia, Patty Murray is a liberal democrat on the Senate Education Committee. These people are always looking to find ways to create more government spending.

Andy 57:51

And like one of my arguments for doing this is, first of all, not everyone would qualify because there's a crap ton of people in prison that don't even have a GED, so they wouldn't qualify for any of this money to begin with. And second of all, then the number of people that would be interested in doing something would be would reduce the the number of people that are trying to do this also, the only thing that comes out of this is someone leaves prison with some kind of more education that would help them find economic stability, that probably would lead them to not commit another crime to go back to prison. And as you always point out, get them paying taxes.

Larry 58:26

Absolutely. Now, to be fair, this was a bipartisan thing. There's this was there were a lot of Democrats, but the Trump administration signed on board. But now let's be clear, the initiative started under the Obama administration with a pilot project called Second Chance Pell. And that that was one of those things that started in the previous administration, and to this administration's credit, they helped bring it to fruition. And so we deserve to recognize both presidents for this. Both administration's for this.

Andy 59:02

Very good. And then oh, here's your little, hang on, let me go get up the podium for you to step on, your soapbox sorry, with 80% spike in clemency applications Governor Cuomo still unlikely to grant them. So what is what is this about Larry. Why are you wanting to go on a Cuomo bashing session?

Larry 59:24

I can't help myself when someone claims to be a progressive. I'm a lot less willing to bash those who make no bones about that they're lock up them up and throw away the key and but but this is someone who claims to be a progressive, claims to believe in reform and from the looks of of all that I can find, he takes credit for the fact that the state prison population has been on a downtrend, because crime has gone down for the last couple three decades. But every opportunity he has to do something to reduce the prison population, he is found lacking. He doesn't grant clemency apparently, he doesn't do anything to push for the release on various creative alternatives because of the pandemic. It seems like he forgets all about it. He's the big one about keeping folks safe. You remember how he's been on the on the on the on the warpath about how brilliant New York is and how the federal administration has been lacking. Well, don't you consider prisoners humans too? Why is it that you've been out in the pasture unaccounted for doing anything for for for for your prisons when there's a rampage going on? And you remind me of Governor Blagojevich from Illinois who had a stack and ton of clemency applications. And he took no action on almost all of them. And then he was so complimentary of Trump for giving him a sentence reduction, which I guess it's great because he got out of prison. But when he had the power he didn't do anything. Andrew Cuomo, you have the power, qhy don't you use your power?

Andy 1:01:12

Hmm. Do you have any, like, could you put on your I am Governor Cuomo hat and see why he is not?

Larry 1:01:22

I suspect he fears the vilification if he went on this broad release a campaign. It hasn't been that long ago, the New York legislature was under republican control. And I suspect he fears that he would be bashed from the conservatives. And he just doesn't want that distraction. But sometimes it's kind of like I think I've told the story about the Indianapolis on the podcast, and when the when the rescue ship came along, when all the sailors were in the water. And they illuminated the lights and the commander said I gave the order, despite it was a violation of naval policy. And sometimes you just have to do the right thing. Even though you're going to take grief for it.

Andy 1:02:09

I mean, that's why we're electing them is to make hard decisions and hopefully do the right thing and not just make a decision based on a political calculation to get the job next year too.

Larry 1:02:19

well, but in reality, if you're if you're swept from office, you, all the things you care about doing you can't do. So that is that is a legitimate concern. And sometimes you if you spend a little bit less time bashing the other side, and trying to build support for what your vision is, I mean, he has spent an awful lot of time on the on the cable and satellite news networks bashing the federal administration.

Andy 1:02:48

It was like a constant battle back and forth. I mean, it was like a ping-pong match.

Larry 1:02:52

Yeah, he could have spent a little bit of time trying to swing New Yorkers towards his way of looking at things, persuading them that that thinking about people in prison as also a part of being a human. You know, that might have been a more positive use of some of the last year that he spent bashing.

Andy 1:03:11

I don't think that's going to happen from too many politicians anytime soon Larry.

Larry 1:03:16

That's unfortunate.

Andy 1:03:18

I hear you. Is there anything else? We have a couple little notes to close out the show. But is there anything else that you want to talk about before we head out?

Larry 1:03:27

just glad that we've made it through 2020. And, and I'm looking forward to the podcasts where this is gonna be a year of exponential growth.

Andy 1:03:36

Exponential, I like it. I'm all on board with that.

Larry 1:03:39

The transcript service is going to balloon. we're going to get our we're gonna get our 501 c 3 status sometime in 2021, or hopefully the first quarter of 2021. And we're going to we're going to be having this this is gonna become the premier operation of the entire United States related to registration issues.

Andy 1:04:00

I think we're already there, Larry. I mean, I don't like there's not a lot of competition in the space. Just saying.

Larry 1:04:06

There isn't?

Andy 1:04:08

No, no, there is not. There have been others and they have come and and they have went.

Larry 1:04:15

I thought there Brian Cohen or whatever his name is that does all those videos. I thought he was talking about our issue.

Andy 1:04:22

I don't know who Brian Cohen is.

Larry 1:04:24

It was a joke. No, he doesn't talk about this issue.

Andy 1:04:29

I was like I don't know who that. Alright. Well, we did get a new patron a couple weeks ago, and it was a Jennine? I don't think that's Jennine but thank you so very much I feel now terrible for not being able to pronounce the first name. But thank you so very much. That is a that is all the the new patrons that we got for the time being. And otherwise, that is all I have Larry. And if there's anything else, then we can shut this thing down and call it a day.

Larry 1:04:57

Well, how do people, how do people do things that help us. What would be the first step if you want to support the podcast?

Andy 1:05:05

Seriously, let's make this very easy, obviously, registrymatters.co is the website that you can send people to. So like, subscribe and share it. You can find it on every podcast platform. Larry, I didn't tell you this. But maybe a month ago, I looked on Pandora. I had been trying to get us on Pandora forever, and they would never add us. And then I just happen to scroll by and look. And I saw, we are also available on Pandora. But you can find us on any podcast app, you can find us on YouTube. And obviously in your podcast app, subscribe to us on Registry Matters and tell all your friends and family. And that's all I got for that.

Larry 1:05:41

And if they want to leave a message, how did they do that?

Andy 1:05:45

You would record a voicemail message and send it to registrymatterscast@gmail.com or leave a voicemail message at (747)227-4477.

Larry 1:05:57
And what if they want to give their second stimulus check to us?
How did they do that?

Andy 1:06:02
Right on second stimulus checks, go to
patreon.com/registrymatters and sign up for the \$600 a month
level.

Larry 1:06:10
They only get one \$600 payment. So wouldn't they have to cancel
after the first month?

Andy 1:06:17
After we collected, they can cancel it. That would be sufficient. I
will be okay with that.

Larry 1:06:22
Do we have a \$600 level?

Andy 1:06:25
Just fill it in. You can make it whatever amount you want. You can
sign up for the dollar a month level and put in 600 it'll be just fine.
It'll work.

Larry 1:06:33
Alrighty, I didn't know that. So they can create their own levels.

Andy 1:06:39
Larry, Happy Happy, happy, happy new year. And I hope you have
a fantastic rest of your weekend and I will talk to you soon.

Larry 1:06:46
Thank you Andy and Happy New Year to all of our listeners each
and every one of you.

Andy 1:06:52
Thanks a bunch. Take care bye bye.

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