



Registry Matters Podcast

Episode 164

Recorded 2-6-21

Andy 00:00

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Larry 00:44

That looks so much like me, it's unbelievable.

Andy 00:50

I do that as a as a little bit of an affront to bring up to make sure that if you are listening to this, make sure that you go over to like and subscribe and share it over on YouTube and helps people maybe with some kind of like-mind on the subject. Maybe it would, the recommendation engine would help people discover the show over on the YouTube side of things. Anything you want to add to that before we move on.

Larry 01:13

Hit that SUBSCRIBE and LIKE button.

Andy 01:14

Also, the bell, ding ding ding. Yeah. Yeah, there we go. Look over in the corner on the video. I'm snazzy, I got buttons. What do we have for this evening?

Larry 01:31

We have more content that we can jam into an hour. We have three questions from behind the walls of prison. We have a couple questions from outside the walls of prison. And then we're going to dig into interstate compact, probable cause hearings. And we're gonna talk about Justice Scalia, the late Justice Scalia and his his philosophy about evolving about the evolution of the Constitution and why it does not evolve.

Andy 02:09

Okay. Beautiful. Well, let's jump right into the Scalia clip. Did you want to set up the Scully clip any further than that?

Larry 02:16

Well, I do because we have a question that goes along with it. And I'll read the question if you if you like.

Andy 02:25

Sure, please do.

Larry 02:27

Okay, so it's says:

Listener Question

I've been listening to Registry Matters for a very long time. Thanks for the work you do. It almost seems as though Larry picks on

conservative judges, I would like like to know why Larry can't find it within himself to give credit for anything good from the conservative side, especially since he claims to be all about good public policy without regard to the party. And so I want to say I'm not sure which podcast you're listening to. Because we've spent a lot of time talking about the virtues of conservative judges, and how in some instances that it's helpful about how a textual interpretation can be useful to us. We've also called out how textual interpretations can be bad for us. And we've given more airtime to conservative, Justice Scalia than any other justice. I mean, we've only done token attention to any other justice. And I've given Justice Scalia a lot of credit for his stance, his steadfast support of the Confrontation Clause. So this, this is in the context of the Confrontation Clause and he's got this clip we're playing tonight.

Justice Scalia Audio Clip 03:33

And also a case whose name I always forget, that restored the Confrontation Clause to its original meaning. Well, I'll talk about that, because it says something about... some people think that when when you depart from the original meaning of the Constitution, you're oh, you're always creating greater freedom, you know, there's no harm done. That's not true. I mean, if you ignore the original meaning of the Constitution, sometimes you'll create more freedom, sometimes you'll eliminate prior ones. And what we had done with the Confrontation Clause, which guarantees in all criminal prosecutions, that the accused shall enjoy the right to confront the witnesses. It meant you had to bring the witnesses into court. You could not use hearsay, you could not bring somebody come in and say, Well, I wasn't there, but Joe was there. And he told me... no, you can't do it. You have to have the opportunity to cross examine the person who's sending you to prison. About, what 25 years ago, we just kicked that aside and said in a case called *United States v. Roberts*, that all the Confrontation Clause means is that any hearsay you introduce has to be reliable hearsay Well, I wrote the opinion that overruled that. Maybe what about eight years ago or so? And so the confrontation clause now has the meaning it had at the beginning. I'm very proud of that opinion.

Andy 05:05

I have to tell you Larry, and I know I've said this before, I'm somewhat of a Scalia fanboy kinda like you are. He's, he's entertaining. He's, you know, he cracked a little joke in there. And his logic, whether you agree with it or not, it would be really hard to sit down with him and end up not agreeing with his logic, you could disagree with the outcome, but there would be no way to disagree with his logic leading up to it all.

Larry 05:30

If you buy into his judicial philosophy, it's completely logical. And that's what I tell people about the law. The other the other people who have a different opinion of the law, they can put forth very logical arguments also. But in terms of the Confrontation Clause, there has not been a stronger advocate that I can think of than he was. And it's the victims' advocates, and the law enforcement industrial complex, who have all but dismantled that and made it impossible for you to have confrontation. They bring in people who can testify to what their interpretation of what the accuser

has said, because it revictimizes the person making the accusation that's trying to send you to prison. So we let another person come in to the case that's not a party to the case, and they get to try to send you to prison on behalf of that person.

Andy 06:28

I've mentioned before that I host like a skeptics group. And from that point of view, it has everything to do with how do you prove, how do you have evidence for, for something to be a thing. And that would carry right over into court that if someone just says Well, I saw my third cousin's nephew's, you know, what, you know, four or five persons down the chain? Like how do you have any level of confidence so that evidence would be real, you would have to have the source, if possible, be the witness to work through to be able to confront in court? I don't see any other way around that.

Larry 07:05

Oh, but it victimizes them again, they should not have to live through that trauma of what's happened to them and have to tell it in open court. I don't know why you can't understand that.

Andy 07:15

It's because I have a small brain.

Larry 07:18

So well, I'm with Scalia, yeah, you're trying to put a person in a cage. And that's the terminology that I use. If you're going to try to put a person in a cage, you bear the burden of showing by evidence that's beyond a reasonable doubt. And I have a reasonable doubt, if someone else comes in and says it's their opinion that this happened, I want to hear from you. You're the one that wants the person in prison.

Andy 07:49

I think everything ends up to be presented from the person that had the wrong done to them without any sort of consideration for the person that is accused. And so everything then gets prioritized to making that person whole in some form or fashion. And with that, like I said, without any concern for the person that gets accused, whether they're innocent or guilty, we need our pound of flesh, and we're going to take care of this and off you go.

Larry 08:20

But see unfortunately, that gets away from the Constitution. The presumption is that person is accused did absolutely nothing wrong.

Andy 08:30

All right, and then anything else...?

Larry 08:32

Remember that. The presumption is is that they're innocent.

Andy 08:38

Yes, well, let me let me throw this at you. We covered something recently. I know we didn't cover it. But I saw an article from a local news outlet here that was talking about the jail, the local jail is overcrowded. And I'll be able to relate this back. And these are as far as, correct me if I'm wrong, jail is predominantly for pretrial kind of people. So, we could then presume that they're innocent until

proven guilty. They're being held in jail, where you have a raging virus, we could send them home. But we and that particular unit because they when they go and they have like a 10 or 14 day quarantine before they put them into general population, that dorm unit is overcrowded. And I'm like we do have other solutions to this. And we could presume they're innocent, not all of them, maybe, you know, higher profile cases. But if you got locked up for check kiting or something like that, we can probably send you home, either on your own recognizance, or something of a leg monitor, whatever you want to do, but we don't have to leave them locked up if they're presumed to be innocent.

Larry 09:45

That is correct. But we have this fixation on doing that because we really don't believe in the presumption of innocence. The primary consideration should be can we get this person back before the court if we release them. And then the secondary consideration would be what would be their propensity to engage in criminality that would jeopardize the community. But see when you get into predictive behavior, that that's where it's really, really, really risky. Because you can easily predict someone, because they're accused of something violent, that they will be violent. But if they have, if you've if they've never been convicted of any crime of violence, then to me that's, that's really, really dangerous to predict future violence based on this accusation. And we get into we get into holding people because of what they might do. And it's less about whether they'll appear in court, but about what they might do. That's the danger of these pretrial detention statutes, which we just recently, in the last few years got in this state whereby constitutional amendment, a person can be held without bond. And they have these predictive models, and they say that you get points. And if you get too many points, then the state moves for pretrial detention.

Andy 11:02

I gotcha. Anything else on Scalia before we move on to the ranting and raving voicemail from our existing GameStop fan?

Larry 11:13

Oh, I just think that, that it's unfortunate that people don't realize that we we have given the conservatives credit for a lot of things.

Andy 11:21

I think we cover the conservatives far more than we cover liberals.

Larry 11:25

We've criticized liberals for a lot of things. So I don't know where that comes from. But anyway, just wanted to bring that up. But we should start bringing Scalia back more often because he is...

Andy 11:38

I enjoy him lot. And I'll just set this up real quick. The person that has left a voicemail several times time talking about GameStop, blah, blah, blah, not part of Registry Matters. I know. We did a long deep dive whatever for a Patreon extra that came out earlier in the week. So he's calling to rant and rave, talking about you people are dodging questions.

Patron Voicemail 11:57

Hey, Larry, and Andy. It's me again, I appreciate the patrons special you people did last week about short sells and short

squeezes. But I have to wonder why Larry dodge the question I asked specifically about if I should sell my GameStop stock. I paid only \$9.13 a share for it. And it closed the day before YouTube recorded at 325. Which is why I sent that first question in. And then I noticed yesterday it closed at \$63.08, which is like an 81% drop in stock price. And now I'm screwed. Because it probably won't ever go back to 325 or 483, which was the all time high. So hopefully you guys can figure out what's going on. And as always fyp

Andy 12:46

What did you know what to close that yesterday by chance?

Larry 12:50

It was about \$62. And the reason why we didn't, first of all that that was that was a joke that we even did that episode because it was just all over the financial news and even the regular general news about the manipulation with Robin Hood and the online, the cartel that formed to to use the rules that the big boys had made against the big guys. And we did that just simply for fun. But if people have interested investments, they should go back and listen to that episode. But the thing is, we can't give personalized advice. So, I would never tell a person to sell a stock personally. But what I could say is that if you've bought something at \$9, and you've had it go up to \$300 or \$400. And you cannot force yourself to sell it, that you're setting yourself up for disappointment. And even at \$60, if you paid \$9 for it, that's a that's a significant gain. I mean, people look to make 20% in a year, and they're happy. And if you're up since the first year, if you're up from nine to 60, what is that a sixfold increase? If you're up 600%, I mean, what more do you want?

Andy 14:04

Yeah. And but you could have you could have gotten out at if you bought in at nine bucks, and you could have gotten out of \$300. That's a really good, that's a really good

Larry 14:13

It is indeed, but the thing, the topic was short squeezes and we don't know that the short squeeze is over. You need to talk to a financial advisor and see if they can tell you how much short interest is still in the stock and it could go up again. But in terms of that particular company, I don't see a lot of value. And we went into that in a deeper dive. So if you're holding on to that stock, you ought to consult with your financial advisor about how much longer you should hold it.

Andy 14:42

And how do people get that that Patreon extra?

Larry 14:46

oh they go to patreon.com and they subscribe. Become a patron at a dollar and any other level all the way up – what's the latest level you put up there? Have you put the \$1,400 on there for the latest proposal for stimulus?

Andy 15:00

No, I should update to have a \$1400 "just send us your stimulus check" level I should do that. But you know, patreon.com/registrymatters by the way.

Larry 15:13

and \$1.00 will get you access to all of those.

Andy 15:18

Very good. All right, well, now I'm going to read scratchy penmanship. Here we go.

Listener Question

Dear friends, are all persons convicted of federal sexual offences considered sexually violent? I was convicted of a non-contact sexual offense possession of child porn. There is nothing in the pre-sentence investigation report to indicate or even hint that I committed a contact offense. The matter was thoroughly investigated by federal and state authorities confirming my own clear conscience that I never molested a child. Yet the prosecutor used the term sexually violent I can't remember if the word predator was used. But the judge on the day I was sentenced, as he addressed the matter of whether I would be allowed to self-surrender or be immediately remanded and transported into custody. I was allowed to self-surrender. Yeah, I was allowed to self-surrender, not because I wasn't found to be sexually violent, but because of my medical condition. The judge found it appropriate because of my health to make an exception to the rule that sexually violent defendants be remanded into custody immediately upon sentencing. I thought it might be helpful for to have this matter explained. Larry, you are the great explainer of all things legal and PFR-related, so ding ding, go for it.

Larry 16:38

Well, I wish I could give him more comfort, I'm glad that he did not get taken into custody immediately. But unfortunately, the legislatures across the country and the US Congress has decided that things are violent. And they've turned things violent where there actually isn't any violence. Now, the way they get there is because some child porn does reflect violence. You'll see a child gagged and bound and all sorts of things that really is not appropriate to talk about in great detail. But there is violence in the production of porn. Without knowing the specifics of his case, I'm assuming that there was nothing, that that wasn't the case. That his images that he possessed were not like that. But they put this blanket thing. And Bill O'Reilly former, Fox News hosts at talk show that fought so hard to get the Adam Walsh Act passed so hard. He had a debate one time he argued with a lady that was trying to tell him that many sex crimes are labeled violent are not violent. And they have been successful in convincing people that if you do something that's illegal, and it's of a sexual has any sexual component to it, that that's somehow violent, and I don't know how to undo that. And fortunately for him, he was allowed to self-surrender. But we have so many things mislabeled. And rather than going the other direction, I see more and more statutory proposals and legislators to add more and more things to the to the violent list, you know, this this crime will be added to the list of sexually violent offenses, and yet there's no violence.

Andy 18:19

A person in chat says that they self-surrendered and there were no health issues. And that's also fed charges. I guess that would come to different judges, different timeframes. I don't want to say different jurisdictions, because fed would be fed, all fed, or do I have that wrong?

Larry 18:36

You do. There is some variation on the the jurisdictions in terms of traditions that have sprung up. If you were to go into to the federal court system in Alabama, although it's part of US federal court system, it'd be highly unlikely that a that a person would get appointed to the bench that would be similar to who would get appointed from Pelosi's district. And that temperament and the community standards do, even though these judges are protected from the angry mob at the federal level. They do live in these communities. And they do have families in these committees and they are sensitive to community standards. And so it would not be uncommon that you would have some variation in self-surrender and also the impact of available, the marshals have to help you when you're taken into custody, pretrial, the marshals have to help you and then and while they're waiting for a slot to open up in the Bureau of Prisons, the marshals have to house you. And in some places, there's less available housing for pretrial detention, and you end up with a few more people being released to pretrial simply because there's just not the feasibility of as much pretrial detention.

Andy 19:46

Okey dokey, anything else? We can move on to the second one?

Larry 19:51

Oh, let's do the second one.

Listener Question

To whom it may concern. I recently saw your ad in prison legal news. I've been incarcerated at Florence McClure Women's Correctional Center in Las Vegas, Nevada for over two years. I was convicted in October of 2018 of sexual misconduct between a school employee and a pupil. This is a category C felony in Nevada, however, it's considered a violent crime. So, I received no time off of my sentence. I am serving eight to 20 years, four consecutive two to five year sentences. The age of consent in Nevada is 16. And my victims were over the age of consent. I know many states are currently looking at the statute and revising it. In Nevada, the statute is NRS 201.540. I am interested in anything you can share with me. I am appealing my case currently at the district court, a habeas for ineffective counsel, but I'm still awaiting a court date. I look forward to hearing from you. Sincerely...

Andy 20:52

Why did you put this in here? It's just almost like someone just writing just to tell us their situation.

Larry 20:54

I put it in here because it ties back to the previous question about violence. This is a case where clearly there is absolutely... now we take these questions at face value. We don't know where she, we don't know whether she... we're assuming, making an assumption that they were male students. And we're making the assumption that she did not tie them down and take advantage of them against their will. Now, it could have been female students, but I'm assuming that that she would not have overpowered the male students and that this was consensual. So I'm doubting there's anything that would be qualified or remotely, would resemble violence. But yet, the good lawmakers in Nevada have decided to succumb to the pressure of making the label violent because of the authority. There's a there's a power mismatch there is

whether or not you want to acknowledge it, a student in a school setting is subject to power. And again, she doesn't tell us if she taught these peoples or if they just happen to attend the school there. But there is a power, but power doesn't translate to violence. If you want to get right down to it, she might have inappropriately used her position to coerce or persuade. But that does not make her a violent criminal. But yet, she's serving how much time in prison? I'm serving eight to 20, 4 consecutive two to five years. So we've got a woman who's going to be in prison for at least eight years.

Andy 22:30

And and it could be like completely variable, she will even if she got the lowest on one of them, the other ones could somehow have different circumstances associated with them. And so but you know, it could be 12 years, because one of them did two years and one of them did five. Like, it could be all over the map, depending on how each one is looked at.

Larry 22:49

That's true, but she's going to to serve a minimum of eight years because they're consecutive, so she can't get out any less than eight years. Now, I put it in for the other part of it, which is the ineffective assistance of counsel. I'm dubious about that. And I know I'm supposed to be upbeat, but I'm dubious about that. Because... let me set it up. The lawyer didn't make the statute, the Nevada revised statute 201.540, which I did not pull prior to the podcast. But they didn't make that statute. And the lawyer gets handed the statute book. And this is what the state accused her of doing. The lawyer's job was to look Nevada revised statute 201.540 and figure out if the evidence that they had would be sufficient to meet the elements that are required in that statute. What if the elements are simply that, that a school employee has sex with a person who's under the age of 18. And I don't know if it's 18, 19, or whatever age they've had. But if they put that in there, if they've got the evidence to show that she did, in fact, have sex with a student under that age, then the elements are met. So, what is the lawyer supposed to do? The lawyer can say, well, we can take it to trial, but they have overwhelming evidence. I mean, they have overwhelming evidence. They actually, unbeknownst to you, they had a camera when you went into the closet right after right after class that day. And then they saw you coming out panting and putting your clothes back on and blah, blah, blah, they have been they have the evidence. So what is the lawyer supposed to do? Let's roll the dice and the potential exposure might be 50 or 60 years, you know, whatever the maximum would be, and stack those consecutively. So I don't see the ineffective assistance of counsel here. So the next question would be should the lawyer have asserted a constitutional challenge? I can't think of anything that comes to blush about what is unconstitutional about a statute that makes the age of consent higher for a person who has authority. So I don't I don't see that and then with her sentence, although I think it's outrageous the eight years, I think I mean, it's a total waste of her productive potential, the best punishment for her is to revoke her teaching license. And say that you can't, you clearly have not been able to manage your urges in this environment, but eight years in prison at 30,000 a year, 40,000 a year, plus the damage that they're going to do to her for the rest of her life, because she'll never be able to hold a decent job. That is way overkill. But having said that, those are decisions that are within the purview of the

Nevada Legislature. The courts do not get to sit there and say, well, you know, we would prefer that, that the statute carry a different penalty structure. Those robes do not entitle those people who wear those robes to adjust the law to their liking. So I'm dubious on her... now I'm hoping for her. But I'm assuming she's wanting an honest answer and not what she'd like to hear. I don't see that this is ineffective assistance of counsel at first blush. And I think it's I think it's an outrageous sentence. And I'm sorry.

Andy 26:13

And to move this over to an advocacy point of view. I've never heard of an affiliate and any sort of advocacy group in Nevada just be my ignorance, but at least nothing of any sort of substance, not like Florida Action Committee or FAIR or something like that. Is there anybody in Nevada in this space helping our side?

Larry 26:36

At the moment, I don't think there is. I think there has been, they were fighting their, that version, that state had their own version of the Walsh Act, and, and it stayed in court for years, both in state and federal court. And ultimately, it was declared to be constitutional, and it's in operation but in terms of an advocacy, I don't believe there's an organized advocacy to my recollection and this state. And, but even if there were these, these bills are hard to kill. When you go into, when a lawmaker comes in with a proposal that the victims' advocates and the prosecution apparatus has advocated for, to say that we need to do something about about sexual exploitation of our students. Try voting against that and see what happens to your political career. I mean, we can't we, we can't have our schools turn into a sex shop where people get off scot free and nothing happens to them. I mean, you couldn't vote against that. That's the type of thing you have to bottle it up in committee, and make sure it never gets to the floor. Because if it does, it's going to pass, and I don't care what state it is, it's gonna pass.

Andy 27:45

Oh, okay. Yeah, I know. It's all gonna pass unless there's somebody there wrecking trains, right?

Larry 27:52

Yep. And that's what that's what it takes is you need to wreck trains.

Andy 27:56

Okay, let's move over to some level of hate mail. And I guess this is a somehow the voice of NARSOL I guess we could say, this is for handling this issue. We're gonna have a quick little segment here with the executive director of NARSOL, who is the Brenda Jones mighty person that she has, she's awesome. And we received a question, I guess NARSOL received this question and kind of like, not quite hate mail, maybe. But it reads:

Listener Question

I'm in prison. And I've been writing to NARSOL for several months seeking to organize people in prison to help fight this battle. So far, NARSOL has sent me responses that seem to overlook the vast amount of talent sitting idle in prison. Why is it that NARSOL is so close minded? This seems to be a failure of the NARSOL leadership.

Andy 28:53

Brenda, I think you are the leadership, Larry, you are also part of the leadership. And again, ding, ding, go at it. Hi, Brenda, thank you for coming on down short notice.

Brenda 28:58

Yeah, I was hearing about this letter earlier. And the response that I just need to make is that, certainly, we're very aware that there's a lot of great talent, sitting there in prison. The struggle that we have, of course, is that it's hard to get that talent utilized behind bars. You know, it's as frustrating for us as it is for them. But the kind of things that we need doing include things like researching and responding to legislation, it might involve contacting lawmakers, but we don't have letter writing camp. We don't do that. There's no legal analysis that's really very practical to do on the inside because as everybody knows, prison libraries, if they've got law books at all are going to be woefully out of date. That's why people usually contact us from prison asking for more information. So, we're kind of left with the only things really that people on the inside, effectively can do that we are aware of, are get their loved ones to get involved on their behalf. Those they have on the outside. They can send, they can send articles to the Digest, if they want to do some researching and writing on current events, and they send articles to the Digest, they're welcome to do that. They've got access to CorLinks or some other email type system, they can certainly send us something that way. But otherwise, you know, they can write it. The downside, of course, is if they can't type it, we have to, but you know, we could work with them on that. You know, and the other thing would be to just, you know, if they have another great idea that they were just missing out on, write it up, clearly, don't just say I've got an idea, you're not listening. Write up the idea and send it maybe we can get that published in the Digest. And we can see if anybody else wants to help take it and run with it. The problem that we often have is that there are a lot of people with really great ideas. And sometimes we hear those same ideas about every year or every month. And we've tried that, and they don't work as well as the great idea sounds like, or, it's a great idea, but we have nobody to actually run the project. And, and it's hard to run a project from behind the walls. It's frustrating, but that's the reality. Larry, you got any extra thoughts on that?

Larry 31:43

I think you've done a good job of explaining it. And, and I do agree that there's a lot of talent in prisons, particularly in this area of offending. This runs across the entire gamut of, of our socioeconomic classes, you know, you have people that are very wealthy, from what's his name from subway, you know, to people who, who are practically destitute. But, but there are people who've had very successful jobs for successful careers, and they have the type of talents we need. We need people who can do things. But the limitations of the prison make that impossible. And then what happens after they get out of prison is that they have all these barriers erected by the supervising authorities in terms of Felon Association. And therefore, out of fear, most people read that Felon Association to include a professional relationship. I don't read it that way. But I'm not the one that's going to be going to prison if I'm wrong. And if you happen to be collaborating on a project with another person who has a felony conviction, then we run into problems with a revocation and we're not trying to promote things that will send people back to prison, because

prison is such a horrible place that we want you out, not in. And so, try to take that into consideration, that some of the stuff of organizing prisoners would tend to backfire. Now in prison, you're already there. So they, you know, they could always send you in the hole and take your privileges away. And which I've heard of them doing that, in terms of reduction in privileges. But if you get out of prison, and you get involved in advocacy, there's also the fear and threat of sanctions that may be imposed. So we worry about that a lot as well.

Brenda 33:31

We definitely, and we've encountered this in a number of times on the outside Larry, you're right, which is that we, we have made a point now of people wanting to volunteer, we say like, I know, you don't like this, but you've got to get your permission from your PO, if you're gonna do at least any kind of, you know, front facing role, we need to know that your PO knows that you are working with us and that it's okay. And we've had sometimes they say, oops, no, I can't or they'll sometimes they'll say yeah, it's fine with my PO. But then the PO kicks it upstairs, and the next thing you know, the people upstairs say heck no. And they just disappear because they have to or get in trouble. You know, and so it's a real struggle even on the outside. You're absolutely right.

Andy 34:25

I would also just one as another volunteer though, the amount of different projects and different directions that people are going, there's not enough bandwidth for everyone to get involved in all the things to go all the directions everyone wants us to go.

Brenda 34:39

Yeah, exactly. Is that that's kind of the point is is that you know that you can have the best ideas in the world and and when you're sitting in prison, and I know this from my own loved one who spent eight and a half years there. You get lots of great ideas and you got plenty of time to sit and think about them and put them all together. But you can't launch them because you're on the wrong side of the fence, right? You know, and meanwhile, we're on the outside, trying to get done what we're already trying to get done. And we can't add a new project, unless we have people to run it. Even if it's a wonderful project, we just can't. So that's the struggle, because we're all volunteers. You know, it's not like we can just go out and hire, you know, five, new lackeys to go take care of whatever it is.

Andy 35:22

You can't just requisition another \$40,000 salary for yet another person to do these tasks?

Brenda 35:28

What 40,000 salary? Is there a \$40,000 salary somewhere? I hadn't heard about.

Andy 35:35

oh, my bad. Sorry.

Brenda 35:38

That's more than I make in my real day job. I don't get paid for this one.

Andy 35:44

I was poking fun at that one.

Brenda 35:45

I know you were, and I'm running with it.

Andy 35:50

Anything else?

Brenda 35:52

Not from me.

Andy 35:54

Was there anything else you wanted to cover? Brenda?

Larry 35:57

I was I was just gonna say that I really do, I empathize. And I appreciate the desire to be helpful. And the way they the way they would be analyzing it from prison, is that there's so much that needs to be done. And if you people would just be doing some of these things, then we would be moving further toward our common goals. And we agree. But unfortunately, the resources are the limitation and the capacity that you have in prison to help is very, very limited. But please send us more ideas about how you can help particularly. The person who wrote this is going to get a copy of this transcript.

Andy 36:39

Brenda, thank you so much for coming by. I personally would just always thank you, I think you're awesome. And I appreciate all that you do. And I mean that very sincerely, from the bottom of my heart.

Brenda 36:49

Love you guys. Take care.

Andy 36:51

Appreciate it. 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. Wanna support Registry Matters on a monthly basis? Head to patreon.com/registrymatters. Not ready to become a patron? Give a five star review at Apple podcasts or Stitcher or tell your buddies at your treatment class about the podcast. We want to send out a big heartfelt support for those on the registry. Keep fighting. Without you, we can't succeed. You make it possible. From there, Larry, we have to oh, boy, the feature segment like interstate compacts. I'm just gonna say again? Seriously, which I know every time we bring this up. I'm always like, you throw me some curveball. And I'm like, Oh, I thought I knew this but apparently, I don't. So apparently somebody else has asked another question about it. And we're going to go over interstate compacts again, from a different angle from a different bet. Not that we're going to rehash and reinvent the wheel all over again. So to set this up, this question is about interstate probation compact transfers.

Listener Question

I've heard you people talk about it on previous episodes. But what you say does not comport with what they actually do. My son was in New Mexico serving as Colorado parolee and violated. The

violations were relatively minor, yet he was arrested and sent back to Colorado. Larry has used the term probable cause hearing and says that a person on Compact is entitled to a probable cause hearing. My son did not get such a hearing. He sat in MDC for weeks. And eventually he was asked if he wanted to waive extradition to Colorado. If such a right exists, why is it that nobody I've ever heard of gets one of these hearings? I paid a private attorney \$3,500 bucks for him to advise my son to waive his extradition. And literally there there's somebody in chat. I don't know, I never really got into all the details. He's sitting here in chat with us. He paid 20 grand to get extradited back to Georgia, which sounds like a really buttload amount of money to just be like, well, I guess I'll get back on the bus and go back to where I came from.

Larry 39:17

Well, why didn't he pay me \$19,500?

Andy 39:23

I tell you, I we were doing the podcast when all that happened. And he just vanished. And I was like, Well, I guess he just said fyp to me, and we stopped talking but turns out he sat in the county jail wherever it was for a year. And I don't know, it never dawned on me to try and figure out where he was because I'm an idiot.

Larry 39:38

Well, I will guarantee you this. That even though I would not have been licensed to practice law, I will for \$19,500 I could have achieved the same result he got.

Andy 39:54

Right. Totally. And and I would completely argue that you could have done him significantly better for way less too.

Larry 40:02

So that's, when I talk about college coaching, and we're going off topic on a tangent, but I'm making an analogy. People say that, you know, our athletics here in the state of division one level are so horrible. We don't, we don't win anything. And they keep wanting to pay the head coaches more and more and more, because we're gonna magically rise to be a competitive division one level. So they bring in these high paid coaches, and they go 0-11, 0-12 in football. And I tell him Look, so you've paid all this money for these high price coaches, and they didn't win a single game. Well, I'll do the job, and I'll take 70% of what you paid the high price coach, and I guarantee you that I can go 0-12. I will not do any worse. Why wouldn't you want to pay me 50% or 70%, of what you paid the high price coach because I can promise you the same result that that person got? Well, same thing with this case here. For less than \$20,000 could have gotten him the same extradition to Georgia. But there are several questions here. But before I even get into this, it's very difficult for a person forced to register. That's what your PFR stands for, for any new listeners, for them to be accepted to interstate compact. Once you go through all those hurdles, it's really bad to get set back on some whimsical thing. And there's a special rule for people who like to take notes, the interstate compact has a benchbook, and there's rules rule 3.103-3 makes it difficult because the person is not allowed to go to the to the state, the receiving state. They're not allowed to leave the sending state until their residence has been approved. And that trips up a whole lot of people, particularly people who, who get a probated sentence from the beginning. And they think

they're going to just get in their car and head back to their state and live where they lived before they went and did their plea. And they're trapped him in the state where they did the plea. The lawyers never tell them about that. But I'm assuming you don't want to talk about that. But that's just a cautionary note. So we can talk about that on another podcast. But you're wanting to know about this probable cause thing, right?

Andy 42:25

Totally Yes. Which as I understand it is waving for extradition just means go back where you people came from. But this probable cause hearing gives you at least some level of due process, not like a court system level of due process. But we've discussed this before. So can you explain what provisions in the compact you're referring to about a probable cause hearing, then we can come back to these rules later. If we figure out we need to.

Larry 42:53

So well, the so do you want to know what the rule number is? Or what is a probable cause hearing?

Andy 42:58

We need to go over what a probable cause hearing?

Larry 43:01

Well, when when you have a probable cause hearing, you have some sort of a tribunal, it may be an administrative law judge, it may be an administrative hearing officer by the department of corrections in that state. But there's some level of due process where you are afforded the opportunity to be notified of what it is that they're alleging violations were, who the witnesses will be that will attest to those violations, and you will be allowed to cross examine those witnesses. And I say you, and it's likely going to be your counsel. But you're allowed to have this proceeding take place with a neutral, detached, supposedly neutral and detached hearing officer that renders a decision at the end of the conclusion of closing of evidence of whether there is enough evidence to establish probable cause, which is a fairly low threshold. But before you before you get on the bus, and you go back to a state that may be many hundreds or over 1000 miles away from where you're being supervised, you might be able to extinguish this probation or parole violation in that state if they were to find no probable cause. So that's why you want these probable cause hearings to take place, because you may end up avoiding going back to the state that convicted you if you have a good robust probable cause hearing.

Andy 44:28

And what is the rule number for it? I'm making noises just because I'm like trying to process and follow it. And I'm going to try really hard to formulate intelligent questions for you. So, what is the rule number?

Larry 44:39

If you're in interstate compact the rule is 5.108, and the origin of this rule is two Supreme Court cases that happened in 1972 and 1973. And for the legal beagles out there, the cases were *Gagnon v. Scarpelli*. And that was 411 United States Reports at page 778. And the other one is *Morrissey v. Brewer*, which is 408 United States reports at page 471. And, and, and the brewer, *Morrissey v. Brewer* came out in '72 and *Gagnon* came out in '73. And this is a

long established, right. This is not something that's just come to be in recent, this is a long-established thing that if you're if you're being supervised by another state, and there's an attempt to revoke your state imposed supervision, you have the right to a probable cause hearing at the place where the violation occurred. And I'm disappointed that that my state doesn't apparently follow that process, because this person was very convincing that that all she did was spend a whole bunch of money. And then the lawyer eventually came in and said, Just sign this document, go back to Colorado and get it straightened out. Well, it got straightened out all right, they revoked his supervision

Andy 46:01

revoking the the supervision sounds kind of crappy, that would be aggressive. So can you go over the different rules that are provided in the ICOTS stuff?

Larry 46:14

So Well, now, we need to set up about the difference in extradition. You've already when you when your supervised in another state, you've already signed a waiver of extradition. I don't, I don't know why this comes up over and over again, other than the fact that the courts are not properly trained. And there's no established process for bringing these people into the correct system, which would be a probable cause proceeding. But so you've got people sitting in jails, and sometimes they go unnoticed for a long period of time, because there's no local case. They were brought in, in our state, and this is what we're talking about in our state, you don't need a warrant to arrest a person under supervision here. You need to issue, the probation officer issues a PV hold under their own authority. So you're booked on the PV hold. And since there's no case number attached to you, when you go into the to the jail, what's happened is, what happens is the person is sitting in jail. They're in a PV hold number, if you look them up on the MDC, which is the, which is the large county that are Albuquerque is, Bernalillo. County, you look up on the jail, they'll say, rather than having a case number, they'll have a PV hold number. And the persons being held, while the jail is happy as a lark, because they're getting to bill the corrections department for a daily room and board charge for housing the inmate. So they're not in a hurry to have anything happen, because that's their revenue. There's no case. So there's no there's no judicial proceeding, that person's not going to get on a bus in normal times and be carried to court or put on a monitor, visual monitor, which they do these days, they're not going to be taken before any type of procedure. So they just sit and sit.

Andy 47:55

I'm gonna also just suspect that they're that that the the employees there, it's somewhat rare for an interstate compact person to be put on a PV hold. So it's not even something that they're used to dealing with and then they just fall by the wayside.

Larry 48:09

Well, it's more common than you think. But there's no incentive to do anything about it. The are jails happy they're getting lots of money. And the the, the judges are not aware of it, because they're so case number attached to them. And the lawyers are, like this lawyer, they hear the term extradition. And and they know, with an extradition proceeding, that the chances of you of you preventing an extradition are very slim, because the only issue

for examination are the issues for examination are "Are you the person who's who's who's being sought?" And it's kind of like the you are Andy right?

Andy 48:49

Last time I checked.

Larry 48:52

Yeah. Well, if you say you're not then they they, they identify you through through various means, including fingerprints and DNA, and they say well actually you are this person that that state wants. And then the other component of the examination in an extradition is has the paperwork been done correctly? And if you waive all that, it doesn't matter about those things but if you contest extradition, that's the scope of the inquiry. You can't get into whether or not you did the violations, they'll tell you what that's a matter for the sentencing court to determine. But if you get your probable cause hearing, that's a matter for the hearing officer, be it judicial or be it non judicial, that's where the hearing officer determine if you've reached that level of probable cause before you have to be sent back to the state that may be a long distance away, and the witnesses might not help you. If you get set back to Maine, and you're being supervised in New Mexico, very few witnesses are going to want to travel on their dime to help you.

Andy 49:48

I got it man I'm there I'm there for you. Travel all across the whole world. man I'm there for you. We'll charter a plane.

Larry 49:55

So you end up with your witnesses if you had any that would have been beneficial that the PO were to accuse you of something that really wasn't yours, we found booze in the house. And we've told him about the booze and the person just had a birthday the night before that actually owns the house. And that person is willing to testify that it was their booze that you had nothing to do with it. I worked that that evening until the party was almost over, well, that person is their credible witness, but who's going to pay to get them to remain so they can tell that story. But if that came into a probable cause, hearing it, you might be able to extinguish that without ever going back to Maine.

Andy 50:34

Sure, using the booze example, hey, that's my girlfriend's, my friends came over, we had some we watched a movie, they left some beer, like they could at least, you know, it would be, that's not hearsay. But you're just taking their word at face value that hey, look, no, that is nmy beer. It is not John Doe's. The person being accused of this probation violation can at least do that?

Larry 50:54

That is correct. And it might be enough for a truly neutral hearing officer. The neutral hearing, the neutral hearing officer might say, Well, yes, you technically were in violation, because it was wasn't supposed to be in your dwelling. But under the circumstances, we can see that you were not a consumer of the alcohol. And we're going to give you a warning. And we're going to give you 30 days on home confinement, to make sure that your household understands that you have these conditions you must abide by. And if you can't abide by them, you need to find another

arrangement to live. But that would be the type of thing that could be imposed. At the end of the hearing, the officer could say, Yep, we found that he that he actually was in the presence of alcohol, but there was no intent to be in the presence. So therefore, there's no need for this person to have to go fight a probation violation revocation proceeding. And you want those hearings, folks, you want those hearings do not waive extradition. First of all, you've already done it. And second of all, it doesn't serve your interests to go back to the state that sentenced you because once you get there, they're going to assume in order to for you to be there, you have to admit one or more of the violations in order to waive your due process. That's the way the rule reads, you know, to accept a waiver of your due process, you have to admit a violation. At least one. Why would you want to do that?

Andy 52:16

I don't know. I'm reading from the person in chat that I'm personal friends with who went through this. He said they never told me which way the probable cause hearing turned out with. They just opened the door one day and they said, come on, pack up your going and they sent him back to where he came from without he paid for an attorney. He doesn't know how the, the the hearing turned out or anything and they just sent him back. That sounds very kabooky to me.

Larry 52:47

I think we can conclude how the hearing came out. But what but what his attorney that he paid \$14,275 should have given him... there's a report required at the end of the probable cause hearing, I forget the number of days, but that rule provides that the hearing officer shall provide a written report to the sending state with conclusions of whether they found probable cause or not. And if they found probable cause, what recommendations they have? They could recommend that that supervision continue, that we can deal with this level of violation here with our sanctions that we can impose, or they can wait for further direction from from the sending state. So what did that report say? How much did you pay the lawyer?

Andy 53:29

He paid \$20,000

Larry 53:32

And he never got anything from the lawyer in terms of that? That sounds like the lawyer didn't know the process at all. And I would have done it for 19. I'll even cut off a full 1,000.

Andy 53:43

I wish we could go back in time a couple years because then they made him max out. It's a kind of a crap story, to be honest with you. But I don't know that being out on parole versus the probation set. I don't know that he was any better. That's a complete, complete tangent that we won't go into now. Larry, I am lost where we are in the outline. Did we cover the the small bullet points, the A's, the B's and the C's? Before we move on?

Larry 54:08

Well, mostly we did. Yes. (Andy: Okay. All right.) But in this particular case, the person waived extradition and returned to Colorado. And I'm assuming they admitted it at least one of the violations and Colorado revoked him.

Andy 54:21

What's wrong with if you waive it and you head back to where you came from? What is really so wrong with that?

Larry 54:28

Well, what's wrong with it is that there may have not been enough, had he got his due process in New Mexico, there may have not been enough for Colorado to revoke. And the pressure, the scales change when you're before a judge in Colorado. And the judge is assuming that you've got had you've had your due process, and you've admitted, or you've been found that probable cause exists. At that point, the Colorado people start offering you a deal. Why don't you just go ahead and quit fighting this, and we'll give you x amount of time and get this over with. And this case it was board. So I have a feeling he was dealing with a board rather than a judge. But if it was probation, you'd be, he would have been dealing with a judge. And the prosecution would have offered him Well, we'll give you 12 months in prison or 18 months in prison. And let's just end this whole thing. And you're at a power disadvantage at that point. I mean, you're always at a power disadvantage, but you're really screwed when you're sitting in jail and probable cause has already been determined.

Andy 55:34

In the in the in the hearing, though, you have the opportunity, but you just said something that I hadn't really considered. So depending on the the level of infraction, I guess, determines whether you have whether you go before a judge versus what, did you say something like a law review? What did you I didn't catch the term used a minute ago?

Larry 55:55

I'm saying in terms of the penalty for the infraction. You can have an infraction that you actually, in fact did do. And the hearing officer at the probable cause level could find that it doesn't rise to the level. See the standard they're looking at is if this infraction had happened to one of our sentenced offenders here, would that result in a request for revocation here? And if they could conclude, yes, he actually did drink some booze, but we don't normally request revocation for that. So they could tell Colorado, Yep. He admitted to drinking. Sure did. But that's not normally where we request for supervision. So therefore, our recommendation is that we that we use in house sanctions here, and Colorado could say fine, or they could or Colorado could say no, that we consider that a very serious violation. And we want him back. And it's ultimately Colorado's decision.

Andy 56:50

And what would be, what are like the quote unquote, rights? Are these the same rights that I'm thinking of, like constitutional rights? What are this? What are the rights that you have following a probable cause hearing?

Larry 57:01

Well, if no probable cause is found, you have the right to be released. (Andy: That would be a good way to go.) If probable cause is found, then you have, then you're going to go through a full-blown revocation in the state that imposed the penalty to begin with, because New Mexico's out of the loop in terms of what happens to him, once he got to Colorado, once they found

probable cause by either following the process that they didn't follow, or he admitted to one or more of the violations, he was off to Colorado for them to determine what to do with it. My point is, I don't want you to go to Colorado, I want you to force our system to do what it's supposed to do here. And you may end up not having to go to the other state.

Andy 57:44

Okay. Yeah, I mean, if you have chosen to live in the new state, so you most likely would prefer to stay where you are now, with the receiving state. Okay. Um, so I think I, the way that it sounds is it would be in your best interest to get the probable cause hearing. And how does a person, if you if, unless you know that you are, have the right to a probable cause hearing, I don't know that you know how to request it, or demand it that you have a right to one. That they're gonna I think you've described to me in our normal phone calls, that they're going to try and screw you along and send you back home back to where you came from. But how does the person actually get a probable cause hearing?

Larry 58:27

I wish I could, I could figure that out myself. I work with attorneys on a case by case basis, what we do is we file a notice of the demand for a public cause hearing in the in the district court. So if a person were to be taken into custody in Bernalillo County, and they were to have private counsel, I can't speak for the public defender's office. But if they have private counsel, and that private counsel reaches out to me, I say, I've got a template for you and the file this and you adjust it to your clients. And you file it in District Court. And they said, well, how do I file it. There's no case number here. And I say, well, you use a miscellaneous case number, which is the court assigns for case for cases that are not in a traditional flow of cases. And you try to get a district judge to agree with you. And when you file a miscellaneous case number, it may end up with any one of the district judges. And some of the district judges are sympathetic, and they'll give you a hearing. And some of the judges say I don't know what this is all about, and they deny your, summarily deny your petition. We need a systemic fix. And I think that's going to have to be done by statute and trying to get a statute passed, that's going to require work. I mean, this is expensive work. So you're talking about if you pass a statute that say that anyone who's on interstate compact supervision is entitled to a probable cause hearing, and you would cite to the compact to the interstate compact that we have an obligatory responsibility to fulfill, because we, we signed on to it to fulfill this obligation, we want this to be in statute. The district judges association is going to come out and say we've got more cases, and this is gonna open the floodgates, we can't be holding hearings on this, you people need to figure out another way to have your probable cause hearing. The corrections department's gonna say we're over overwhelmed already. We don't have enough administrative hearing officers, we'd have to hire four more administrative hearing officers. And then the public defender is going to come in and say, well, we don't have enough resources, because we already can't handle the volume of cases that we defend already. At the pretrial, you know, when when a person is indicted, and all the different stages of representation, habeas, we have all these cases, and this is just going to add work to us. So everybody's gonna say, No, no, no. The prosecutors are gonna say, well, who's gonna represent the state? We don't want this responsibility. We've got too many cases. And trying to put

that in statute is going to be extremely difficult. But that is ultimately the answer is to put it in statute, and make it a responsibility of, of a judicial official, to be aware of who's in their jail, why they're there. And to make sure they get due process, when we're holding someone in a cage, we need to make sure that they're being afforded the due process that our state has committed to providing them, which is a determination of probable cause before they're shipped out of here.

Andy 1:01:22

I have what is going to sound like a dumb question. And so please just work with me here. You have written down here multiple times of waiving the right to extradition. That sounds backwards to me, I'm thinking of, if you wish to waive your right to remain silent, you are therefore then speaking. So if you waive your right to extradition, you're refusing extradition? Can you explain waive extradition, please, in really dumb people terms for me,

Larry 1:01:52

You have the right, if it was truly an extradition, if you were a wanted fugitive, you have the right to force the state who's demanding that you be surrendered to them, you have the right to force a very limited due process, which is them to prove your identity. And to prove to the satisfaction of a judicial official and the asylum state is, where the fugitive is located. You have the right to force them to prove that they have their paperwork in order that's gone through the governor's office approval and that everything is as required. So you can waive that and say, I will not have my hearing. I will not force Colorado or whatever the demanding state is, to prove who I am. I am that person. And I agree to go back. So that's what the waiver of extradition does. But this isn't an extradition, this is a probable cause. You're not being extradited. You're here legally, you're not a fugitive from justice. You're not on the run. You're being, legitimately supervised, and you have the right to a probable cause hearing, which is a much more robust proceeding than an extradition.

Andy 1:03:03

Okay, I think I got it. And this was far easier for me to deal with than the rest of the interstate compact stuff.

Larry 1:03:10

Would you... I mean, it's very simple. Would you like to have a hearing where they can only you can only talk about who you are? Or would you like to have a hearing that talks about what you did?

Andy 1:03:20

I think B. sounds much better. Because I mean, I can I can, you know, hey, here's my driver's license, I am me, but I didn't do those things.

Larry 1:03:31

So, yep, that's, that's the difference between the two. And if the lawyers don't know that, then it's very difficult for the person who's in this. That's why you need to be listening to Registry Matters. And you need to be supporting us because before they put those handcuffs on you and accuse you of a violation, you know, this 5.108. There's two things you should remember, when you're on supervision. You should remember a phone number of who you can call and I mean, remember it, not having your phone because remember, they take your phone away from you when

they book you and it goes into your property. So you need to know the phone number of some people you're going to call and you need to know when you call your lawyer, you need to know 5.108 interstate compact

Andy 1:04:15

and the routing number for your checking account so we can hire you to represent us or advise not represent advise. Oh my god, Larry, this stuff's so complicated. There's so many little nooks and crannies and details and things that you have to be aware of which I totally get why if someone needs some level of advice from a person such as yourself, a knowledgeable, legal, professional, etc. This is ridiculously complicated.

Larry 1:04:48

That is why I am here.

Andy 1:04:50

Oh yeah, hang on. I can play this. I can do that. (MacAurthur Movie Clip: That is why I am here.) missed my chance.

Andy 1:04:58

Wow. Is there anything else that you want to do with this segment or any other segments before we call it quits?

Larry 1:05:07

I think we've had a fantastic program. Are there any fabulous questions in chat.

Andy 1:05:13

There were no questions in chat people got latched on to like that first thing with the teacher, with an eight to 20 year sentence, people got latched on to all the little nuanced details on that. And then the person who had the extradition, he was peppering me with some different things, but nothing, nothing lately.

Larry 1:05:32

Oh, well, I think we've had a fabulous segment, segments. I'm looking forward to next week if you invite me back..

Andy 1:05:40

I will probably. I think I could probably find some... Nope, probably can't find anybody else that can replace you Larry, that's for damn sure. I do want to say I want to, I want to thank all of the internet gods for not letting my internet die tonight, which is pretty amazing. It's been the first time in about, I don't know, five or six weeks that I haven't had internet problems while we've recorded. I'm sure as soon as I'm saying that I'm going to jinx the whole thing. And the whole Internet's going to collapse as we finish up this section. Larry, tell us about YouTube again. What do you need them to do at YouTube?

Larry 1:06:12

You need to subscribe so we have 1000 subscribers by the end of this year.

Andy 1:06:17

Wow.

Larry 1:06:18

Okay. And you need to, you need to hit the like button because there's some algorithm in outer space that figures out that feed this out if there's a lot of likes, and you'll need to hit the bell, which will notify you when the next one comes out. And then at midnight eastern time, on the dot, you'll get a dingy on your phone

Andy 1:06:42

Unless I'm late, and it comes out at about 12:30 on this most recent Tuesday. I would also add that in podcast apps when you do subscribe to it, when you search for Registry Matters in Spotify and Pandora in Pocketcasts in overcast all the podcast apps, when you subscribe to it, you are then also feeding some kind of algorithm that can then perhaps recommend other shows to you. But that's the whole point of why you would subscribe and it will get delivered directly to your device. I've never liked Larry, even in all of the conversations my favorite thing in the world is a podcast because you click Subscribe and the thing just shows up on your phone and you have stuff to play. It's great. You don't have to do it on their time you get to do it on your time. It's like a TiVo, kind of sorta. Everybody go to registrymatters.co and you can find the podcast you can call in and leave voicemail at 747-227-4477. registrymatterscast@gmail.com What's a TiVo? Seriously, someone in chat says what's a TiVo and they laugh at me. And we appreciate all of our listeners. Our numbers are growing and that's great. Please share it and the best way to support the podcast is over patreon.com/registrymatters. Larry, anything else? You're my best friend. I love you very much. You are the man of all knowledge and great things. Anything else before we head out?

Larry 1:08:07

I can't think of anything else. So I appreciate being here. And I appreciate all of you.

Andy 1:08:19

Excellent. Thank you very much, Larry. I'll talk to you soon. Take care. Bye bye.

Larry 1:08:21

Goodnight.

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