



Registry Matters Podcast

Episode 171

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RM #171-BEING-SHOT-IS-BEING-SEIZED

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[00:00:12] Recording live from FYP studios, east and west, transmitting across the internet, this is episode 171 of Registry Matters.

[00:00:20] Larry, we've definitely surpassed your age by now.

[00:00:23] Larry: We're almost, but we still got two more years to go.

[00:00:26] Andy: A person in chat says that she is 160. So you guys are sort of like contemporaries, maybe.

[00:00:34] Larry: Oh, I'd say we're very close in age.

[00:00:38] Andy: I mean, once you get that far, what's a difference of 10 or 20 years at that point, you'd be basically like went to the single little schoolhouse together. You ran down the hill together.

[00:00:48] Larry: It was uphill.

[00:00:50] Andy: Both ways in the snow?

[00:00:51] Larry: Both ways. Yes.

[00:00:55] Andy: Anything exciting that happened to you during the week? Or do you want to dive right in?

[00:00:58] Larry: Well, I can't think of anything terribly exciting that the audience would find amusing or entertaining.

[00:01:07] Andy: Maybe we should dive right in.

[00:01:09] And before we go on Larry, be sure that you like and subscribe and share on YouTube and also write a review on your podcast app of choice and all those other great things to help spread the word to all the peoples that we exist. What do we have tonight Larry?

[00:01:21] Larry: If you don't hit that like button on YouTube, every YouTube viewer, we're going to disconnect you from this end.

[00:01:28] Andy: Perfect. We can do that too. I have the technology.

[00:01:32] Larry: Oh yeah. We didn't get very many likes last week, but we didn't get any dislikes either.

[00:01:37] Andy: Well, that's good.

[00:01:38] So you didn't say anything that anybody was really that offended by.

[00:01:43] Larry: So tonight we're going to hear a voicemail and try to address that. And we're going to have some letters or questions that were submitted in writing, and we're going to read a letter and then we're going to talk about two cases, one from the U S Supreme Court and one from the Minnesota Supreme Court. We may end up dropping the articles that we were contemplating because these cases are going to devour some time.

[00:02:06] Andy: Yeah. I thought we had already kicked them out, but we do have one that we're keeping cause one of our loyal listeners submitted actually it looks kind of interesting to talk about.

[00:02:13] All right, well then let's dive right in. I think he might be patron number one, an individual from Kentucky named Jeff and he sent a voicemail message.

[00:02:24] Jeff from Kentucky: Happy Saturday to my two favorite podcasters, Andy and Larry. I had a question about a court case that Larry has touched on in the past. It's called the Commonwealth of Kentucky versus Baker and it says, "The question of law to be answered is whether or not KRS 17.545, which restricts where registered sex offenders may live, maybe applied to those who committed their offenses prior to July 12th, 2006, and the effective date of the statute. We hold that it may not."

[00:02:56] So when Larry touched on this before, I thought he said that they could not force you to leave your house if a park or daycare or school popped up. Well, I'm reading that they can't force you to do that unless your crime was committed after 2009. I was wondering if Larry would review the case and give me some insight on what the case actually says, and as always F Y P have a great day, guys. Thanks.

[00:03:30] Andy: Thank you Jeff, very much. I seem to recall this going on way back in the day. This may have been pre-podcast that this was even talked about.

[00:03:39] Larry: It may have been, we we've talked about it, certainly have written about it. I'm gonna say "we" meaning NARSOL. And the question he asks is actually a good one. And we don't, we don't know the answer for sure. I didn't thoroughly reread the case, but I remember it fairly well. And of course, courts can't, they're not clairvoyant. They cannot foresee the future. So the issue before them, in that case was for that block of offenders that predated the registration statute that was in question that those prohibitions. It would be my non-legal opinion, that the same concerns that they held when they issued that opinion 15 years ago, would hold true today. What they were trying to address was the perpetual vulnerability to being asked to move, that there would be no play, there'd be no offender would be safe. And that wouldn't, that would not have changed since

then, in terms of if you, if you could force a person to move, then you would not be safe. So if you were convicted after 2009, I believe he said, then you would not be safe. That makes no more sense than what it made in 2006, none whatsoever.

[00:04:53] But as we said before, guess what? If they have passed a law that says you have to move, do you remember where the presumption is? Right?

[00:05:00] Andy: The presumption is, Oh, that you, if you were convicted before, if, if you didn't have to do it, then you wouldn't have to do it now.

[00:05:07] Larry: But the presumption of constitutionality, if, if the legislature --

[00:05:11] Andy: If it's presumed constitutional, when they'll let you know when the legislature signs it and the governor signs it, then it's presumed to be constitutional until it's set otherwise by a court.

[00:05:18] Larry: So, since this this case that he's mentioning, the Baker case, doesn't apply to people after 2009, there would have to be a new challenge if they have started forcing people retroactively to leave their homes. I have heard nothing about that in all the years since this case was decided that that's happening or occurring, or even contemplated in Kentucky.

[00:05:39] But, but if they are doing that, they would be able to do it until they're stopped.

[00:05:47] Andy: I've heard that before Larry, I've heard that they can do it until they're told to stop.

[00:05:51] Larry: And sometimes they don't stop after being told to stop.

[00:05:53] Andy: I've heard of that too. So it's kind of an amazing thing. Are we are we ready to go on and start delving into this content?

[00:06:02] Larry: If there's anything going on that we need to know about in Kentucky from Jeff, I'd be glad to hear about it and we can take it up in our next episode, but I'm not aware of anything in terms of people being forced to move.

[00:06:15] Andy: All right.

[00:06:16] And then, all right, so we received a letter from a woman that says "Hello. I'd like to see more info on your organization, please. I'm currently a female PFR from 26 years ago. And it's not even that I'm a pedophile. It's registration that's ruining my life. I received only five years after I refused the offer plea for original charge itself. They tried to give me 10 years for a missed registration appointment. 26 years later, I managed to talk them down to four. It is ruining my whole life. Please give me info that will help. Sincerely." Jeez, did she receive more time for a failure to register than she did for the original offense? Whatever that was?

[00:07:02] Larry: Sounds that way. And unfortunately, I cannot give her any good news because all the challenges in Texas, this letter comes from Gatesville, Texas. All the challenges in Texas have been turned aside because the proof has not been satisfactory, that the registry is imposing enough disabilities or restraints. They have not been able to distinguish the registration requirements in Texas to the level. And in fact, a lot of the restrictions don't occur in Texas. It's these other States that've had that have made their schemes vulnerable. And so therefore she's on that tragic land of, and the intervening years, there was a penalty for the civil regulatory scheme is greater than what the penalty was for the crime.

[00:07:47] She's having to bargain for a sentence that's greater than what originally was imposed. And she's going to continue to experience this potential for prosecution because registration is basically lifetime in Texas. Very few people are removed through that process, but they do have on the books, but no one, no one actually achieves removal.

[00:08:08] Andy: It's one of those that you'd have to find the tiniest little scope where you were convicted for these three days, 27 years ago. And then you might be able to get off something, something ridiculous like that.

[00:08:22] Larry: My thought is that it is very similar with California. I can't wait to start hearing the details and statistics as they come out of California, but the process, the way it's designed on paper, it's going to be a very difficult thing for anyone to achieve ID registration in California, but I'm hoping I'm wrong.

[00:08:40] Andy: Yeah. Well, that's discouraging for sure. And certainly sorry to hear that. Where do we are we, are we able to send her any information that might be of help?

[00:08:51] Larry: Well, we're gonna get her on the NARSOL newsletter list. I'm always glad to hear from new institutions. So, we sometimes sprinkle the new institution with a newsletters and that now, so now this is the first communication we've had from that prison.

[00:09:04] And where else are gonna give her a trial run for the podcast transcripts though. Hopefully that is a consolation, she can at least collect information about what's going on through the NARSOL newsletter and from us.

[00:09:16] Andy: Larry, tell me real quick. Why don't we just blanket every prison in the United States and send letters out?

[00:09:23] Larry: It's an undertaking. I'll tell you.

[00:09:27] Andy: it was totally just like a bait and switch kind of question for you just to just make your head kind of explode because I there's two and a half million people in prison and we would like, there's gotta be, I don't know, maybe an average of a thousand people per prison. Maybe? That would be a lot of letters going out.

[00:09:45] Larry: So prisons have far more than a thousand.

[00:09:47] Andy: Oh yeah, yeah, yeah, yeah. But some only have a few hundred too.

[00:09:51] All right. Then we'll move on to this question that we received says, "Dear Andy and Larry, glad to make your acquaintance, but of course not under these circumstances."

[00:10:00] And I think, well, did you want me to read that in one next paragraph or was that it?

[00:10:05] Larry: Now we just want to acknowledge, this is a tragic letter from a guy in Alabama who was traveling, and he ended up, he ended up getting pulled over by the police. So we speculated about what might have happened.

[00:10:17] And from his letter, that's far too long to read on the podcast. It looks like a lot of our speculation was correct in terms of how it went down to stop and what happened. And he's wanting appellate help. Alabama is probably not going to be a state that provides anything in the way of post-conviction resources beyond what they're absolutely required to do. So. Oh, I don't know that we can be of any more help to him other than say, we feel bad for you. We did get the letter and at the moment I don't have anything to offer him other than, than condolences.

[00:10:49] Andy: Well, all right, then, then we will move on, man. Larry, at this pace we'll be done with the podcasts at about 20 minutes.

[00:10:55] Then we've received another letter. It says, "To whomever this may concern, Hello, my name is McClain and I have truly been wrongly convicted of rape and sexual assault and sentence to 33 years." God, that's a long time. Larry. "There's no DNA in the rape kits, no physical evidence," blah blah, blah, blah. No evidence. "The prosecutor allowed a bunch of known false testimony to go uncorrected and that the state deleted and withheld evidence that would have proven my innocence." Dot dot dot. What did you want to say about this?

[00:11:25] Larry: I feel, I feel bad for him, but we're trying to use this as an educational moment for people.

[00:11:30] When he says there's no DNA, no rape kits, no physical evidence whatsoever. The state relied heavily on their witness testimony. Well, that's, what's permitted in our system. There's no requirement anywhere, constitutional or otherwise, that there must be forensic evidence. If you look back on the founding of the Republic, we didn't have anything that were resembled rape kits or DNA. Or for forensics analysis in those days. And we relied for convictions on mostly people being seen and observed by others of what was being, what they were being accused of. And the courts and the juries evaluated the credibility of those individuals. In the arena of sexual offenses, the courts have been mandated by legislation to make it very difficult for you to challenge anything that the accuser says because the accuser is being revictimized, if you actually, if you actually confront them, yes. The only crime I can think of where that is the standard and every other crime, if you claim you're, if you claim you're embezzled, that you've lost a bunch of money, the first thing that they demand of you as evidence that you had anything to start with.

[00:12:48] Larry: You know, you have to come up with journals and videotape or nobody uses tape anymore. But video clips of something that identifies that a crime actually occurred. But in the case of this offense, the statutes have been largely amended to where no such evidence. In fact, they've even been more sinister than that.

[00:13:09] They've put in the statutes that no other evidence is required. So that gets, that gets to be read to the jury. That that no other evidence is required. So, he's when he says there's no evidence, there was evidence, there was evidence of the

[00:13:22] Andy: Physical. Yeah, yeah, yeah, yeah. Brenda asks is how, like, can you, what do we know about those known false claims that he makes?

[00:13:30] I mean, how, how would you prove that the prosecutor knew that they were false testimony?

[00:13:34] Larry: I mean, that's a good, good question. And what happens is that if you've ever talked to your defense attorney, your defense attorney, if you tell them what you did, they will tell you, I cannot allow you to get on the stand and say anything contradictory to that.

[00:13:48] You've heard that before, right?

[00:13:50] Andy: I believe so. Yeah.

[00:13:51] Larry: You've heard that. You've heard, while the prosecutors that they do know such admonishment. But they know that police officers get on the stand and they tell exaggerated truths all the time. And sometimes they tell incredulous stories, and versions of stuff.

[00:14:07] But he has to prove, the burden as a convicted person, now he has to prove that they withheld evidence. He has to uncover the withheld evidence and show that it would have altered the outcome. There may be evidence that that's withheld that would have changed the outcome, and people get obsessed over that. So, he's got to first prove that there's evidence that that would have been exculpatory, that would have been relevant and, and that the prosecutor withheld it, that they had at that time. And the false testimony, that's going to be a tough one. Is he going to be able to get people to admit that they committed perjury? That never goes anywhere either because.

[00:14:43] Andy: I can't imagine anybody would admit to it. Yeah. Cause those people then when some kind of prison, hot water.

[00:14:48] Larry: But not only that, when you admit that you gave false testimony, then you are an admitted liar.

[00:14:54] Andy: Correct.

[00:14:55] Larry: And at that point, the question turns on you. And they say, okay, so you are an admitted liar, correct? You're saying, no, I'm not. I said, well, wait a minute. You're telling a different story today than what you told on the witness stand two and a half years ago. So, since both stories cannot be true, which one is

true? Well, of course the answer is to what I'm saying today. And then they say, but you're an admitted liar. So why should we believe anything that you said that well, how can we put any faith in your testimony? That's the way it goes down.

[00:15:30] Andy: I want to back up. I'll ask him my question in a second.

[00:15:34] Larry: So false testimony. That's going to be a really tough one, and he's on the position, he's going to have to prove that there's perjury or false testimony.

[00:15:42] Andy: Okay. Okay. So, but when you go to court the first time, the burden of proof is on the prosecutor. And you're saying that when you try to, I guess your expression is take a second bite at the apple, if you try and go back, you, you have the burden of proof to prove these allegations of misconduct and whatnot?

[00:15:57] Larry: Because you're now the convicted person.

[00:16:01] Andy: So for you to get something reversed, overturned, you have to then prove that the prosecutor lied, that the evidence was prosecutorial misconduct. The evidence was not legit and all that stuff.

[00:16:12] You have to go prove that. Got it. That's a pretty high hurdle to cross. Yeah.

[00:16:16] Larry: It's, it's very, very high. Now, if you can prove that there was relevant exculpatory evidence that the prosecution had at the time and that they withheld it, that'll get you a long way.

[00:16:25] Larry: If, if he, if he can show that, but he's got to show what the evidence was and how, how was relevant. I mean, you can come up with anything that you could imagine that people say, well, my lawyer could have done this. I could have done that. Well, they could have done a lot of things, but, but he's saying that there's withheld evidence.

[00:16:40] Larry: What evidence was withheld? He can write us back and tell us because he'll get the transcript. What evidence was withheld in particular and how would it have altered the outcome?

[00:16:51] Andy: I have, I guess I've heard from miscellaneous court transcriptions that yes, there was something of withheld or prosecutorial misconduct, but it wouldn't have changed the outcome.

[00:17:03] So somebody has to then go make that decision that, yes, it wasn't 2:00 PM. It was 7:00 PM, but that wouldn't have changed the outcome of the case.

[00:17:11] Larry: That is correct. And misspeak in testimony doesn't constitute perjury or wouldn't change the outcome. And there may be, there may be like a surveillance log was withheld. They had you under surveillance and they withheld their surveillance log, and it would prove that you were at a certain

place at a certain time. And you couldn't have committed the murder. Now that would be a piece of relevant information that would potentially change the outcome. If governmental agents had you under surveillance, and they found you, and that was withheld by the prosecution because it would have sunk their case. But if their surveillance log revealed nothing other than you drank yourself to a stupor 10 minutes before the crime occurred, I mean that wouldn't, that would not change the outcome. So that surveillance log withheld would not be nearly as relevant at all that, but he really needs good legal advice to take this evidence and find out if he has any hope, because of how post-conviction works in Ohio, we wouldn't have any idea. And that's where this letter originates from. We wouldn't have any idea about that stuff if we couldn't give it advice, even if we did.

[00:18:18] Andy: Okay. Well, all right, then let's move along.

[00:18:22] So it goes, "Hello. I was wondering if you could possibly help me out. I'm going to parole from Illinois department of corrections to the state of Arkansas.

[00:18:32] I'm going to go live with my mom and her boyfriend. I would like to know if you people would be so kind as to send me all of, any of the PFR laws and the registration laws for Arkansas.

[00:18:47] Larry: Wow. That would be when he says all the laws, I guess he means all of it. Every sexual offense. Well, that's not feasible to do now.

[00:18:57] I'm hoping that the day comes so when we can actually send the statutory schemes which could be 20, 30, 40, 50 pages of stuff all at once. What I find interesting is when we send those, when I, when I'm in a good mood and actually send someone the registration and entire registration statute. Okay. They write back and say they had no idea that there was as much to it.

[00:19:16] Yeah. That was 44 pages or whatever.

[00:19:17] Andy: Yeah. They thought it probably the, it was just like five bullet points or something.

[00:19:21] Larry: So but, but in terms of his, we don't know enough about, or at least I don't know enough, I don't know about y'all don't know enough about getting released from the Illinois department of corrections.

[00:19:32] What we do know is that there's a lot of litigation for people being held in who are eligible for what they call mandatory, supervised release, their MSR that the prisoner review board, and that has to approve their housing. And they never approved the places because of some proximity restriction.

[00:19:50] So people stay in Illinois department of corrections way beyond their release date. We know that. But when he goes to Arkansas, if he's able to make that connection to Arkansas, if Illinois first will allow him the opportunity to apply, and if Arkansas accepts him, if his proposed residence doesn't violate one of their restrictions, if he manages to get to Arkansas, in some regards, it would be better.

[00:20:14] The registry is better in Arkansas as it exists right now. I think their legislature in session right now. I don't know if at the end of the session, if it'll change, because they've been trying for a few years to change the risk-based system that they have. But in that regard, and after 15 years, he could file a petition to be removed, assuming in the next 15 years, the law doesn't change. I don't believe that process exists in Illinois. So he would be better off under Arkansas' registration. And in terms of the supervision, I don't think it's going to get much better in Arkansas. I think it's going to be very similar because they're obligated to follow everything that Illinois has, plus they're allowed to put conditions consistent with how they supervise PFRs at Arkansas. So he's got to bring every condition of his supervision for Illinois with him, and he's got to pick up whatever they impose, if anything additional.

[00:21:04] Andy: Jen just added a little anecdote. So is that they passed two horrible hate laws in Arkansas this week, which without any details, I don't know what they did, but Brenda also points out that maybe this individual's family could go check out the NARSOL Wiki, and that, that would be the Cliff Notes version of the statute for the two states.

[00:21:23] Larry: Oh, that would be a good idea. And then I want to just make one other observation and, and very few people choose where they're born and we're not reading the second paragraph or the third paragraph, but he says that he was charged with a sexual abuse victim 13 to 17, and he was 16 and she was 13. And then he was 19 she was 17. If you live in a civilized state like mine, neither one of those would have been a crime as long as it was consensual, because we do not prosecute 16-year olds for having consensual sex with a 13 year old. So we do not prosecute 19 year old individuals for having consensual sex with a 17 year old. Now that's the whole contingent. It had to be consensual, but of course we've got a four-year age bracket. So 19 is less than four different from 17. So no prosecution on that. And 16 to 13, there's a less than four years. And they're both juveniles. We don't prosecute that. So if you had had your parents in New Mexico you wouldn't be in this position because we don't do that here.

[00:22:26] Larry: So, but unfortunately he's got he's got failures to report and I think that's gonna change the alteration on my previous comment about him getting discharged in Arkansas. They're going to be really reluctant to let him off registry, even if the law doesn't change in the next 15 years, because he's got failures to register.

[00:22:42] Larry: If I'm the prosecuting attorney of whatever county he chooses to live in Arkansas, the first thing I'm going to say is that this person's had difficulty complying with registration. Judge, you can't let him off. That's what I would say. If I can think of that, trust me. They can think of that.

[00:22:57] Andy: All right. Let's do at least one article. And this one came by the way of one of our long-time listeners and patrons. And it says, "Former Missoula man sues over outdated sodomy law convictions, a sex offender requirement." And this comes from KPVI, wherever that is. I don't know what that, I guess it's Missoula, which is Montana, but you wanted to highlight one particular paragraph if I can find it. It says "However," no, wait. Nope. Not that however. However, no, not that, however, there's another, however, I think I went too far there, you know this is the

trouble with doing, Oh, there it is. "However, in 2005, the Montana state legislature changed the law so that anyone required to register as a PFR in one state had to register as an offender in Montana. And Idaho, unlike Montana, still has a law against sodomy and oral sex and requires people convicted of crimes to register as PFRs under its crimes against nature statute."

[00:23:52] That doesn't really comport with what I understand a crime against nature, but that's just how I understand it.

[00:24:00] Larry: Well, I feel, I feel bad about this because the person could end up with a very textual interpretation. Like we've talked about out of Nebraska, when a person moved from Colorado and they had very similar language in their statute. Now that was a state court, that was a state decision. And the person was charged with violating the registry. Is this person being charged with violating the registry or did he file a declaratory judgment action? Is it clear in the article? Because I just did a skim read of the article.

[00:24:29] Andy: Yeah. I didn't read much about it either, so I can't answer that myself.

[00:24:32] Larry: So well, if he filed a declaratory action, it will permit him to bring forth the evidence that would not be necessarily opportunity for if he's being prosecuted in a criminal case. Some people just insist on using the wrong vehicle.

[00:24:51] Larry: But if he, if, if he I'll actually, it just says it right here, he filed it. He's in, he's in federal court there's a 1983 action. So he's filing, he's doing the correct thing. He's filing a petition, he may get a different outcome in federal court because the federal court first is bound to follow the state law. But if he can put forth some constitutional claim about equal protection, he might prevail. But if he were to take this, if he had taken us into state court, which is probably why he didn't file as declaratory action in state court, he would, he would likely end up with a similar decision that came out of the Nebraska Supreme court.

[00:25:24] They're going to ask him, you are a person, right? Well, yes. You did, you do have to register in your state of Idaho, correct? Yes. Well, it's black letter law. It says right there that you are covered under Montana's law. If you've got a problem that goes legislature, that's what, that's what a textual interpretation would be.

[00:25:41] If you look at that very issue in Nebraska where the issue was, whether juveniles would have to register, Judge Richard Koph, a federal judge, was trying his best not to require people to register. And he was using some, he was inventing the, the intent. He was putting some of that intent into the decision, because he says, well, we don't register Nebraskans that are convicted as minors, therefore it stands to reason that the legislature didn't intend to register juveniles from out of state, but the Nebraska Supreme Court said nope, they could have said that. They could have said any person other than a juvenile who was convicted out of state. They didn't say that. And our robes do not entitle us to insert that into the statute.

[00:26:24] Just because the federal judge has the black robe, he's not entitled to insert that into the statute. In fact, he cannot do anything unless you can prove there's a constitutional violation occurring which permits the invalidation of that law. If he can enjoin the state of Montana for him applying that law to you. But, but you're in an uphill climb because the law says what it says what it does. Most people, when they say they're for textual interpretation, that's actual interpretation. You're covered.

[00:26:53] Andy: Charles' comments, but he is registering in Montana for a crime from Idaho that wouldn't be a crime in Montana. Does it matter?

[00:27:01] Larry: Doesn't matter. It's a civil regulatory scheme. He's not being charged. Of course he has. He has the requisite definition that subjects him to the scope of the regulatory scheme. And I mean, that's an argument he can make and I'm sure he will make it. He will say that I would not be a crime here, but, but that's not going to be the analysis.

[00:27:21] Larry: If it's the textual judge, the textual judge is going to say, well, let me ask you again. Are you a person? Yes. Did you move here from Idaho? Yes. Did you have to register an Idaho? Yes. Okay. Where's your beef?

[00:27:37] Andy: And just as a final note, the ACLU is assisting him.

[00:27:43] Larry: All right. That's really amazing. They generally don't get involved in these things.

[00:27:48] Andy: Are you ready to move on to the main event?

[00:27:53] Larry: Do we have a main event tonight?

[00:27:55] Andy: Well, I mean, I guess these two cases that you put in here are the main event.

[00:27:59] Larry: Wow. We're going to talk about, are you ready? What did you put in here?

[00:28:03] Andy: I know, right? So you, you, people put in a couple of, one is a *Torres versus Madrid*. We're going to sue the whole, like the whole country in Madrid or the city. What's the city, I guess it's Spain, Madrid, that was decided by the US Supreme Court on March 25th. The other is called *Minnesota vs. Francios Momolu Khalil*. I'm totally botching these words up, which was decided in Minnesota Supreme Court.

[00:28:26] I glanced Larry, I didn't read. I glanced and I can't really see the relevance of the case and I'm really struggling with the other one. So what are we going to do with these?

[00:28:35] Larry: Which one can you not see the relevance to?

[00:28:38] Andy: Either. How about that? So which one do you want to cover first?

[00:28:41] Larry: Oh, well, they're both relevant, but the one that's going to take up the most time is the Minnesota one. So let's do it first.

[00:28:49] Andy: Cool. Then according to the court's opinion, a female referred to as JS was intoxicated after drinking alcohol and taking a prescription narcotic. She went to a bar with a friend, but was denied entry due to her intoxication. The appellant, Mr. Khalil approached JS outside of the bar and invited her to accompany him to a supposed party at a house. Like that story's never been played in a movie and it went South before. After arriving at the house, JS passed out and woke up to find Khalil penetrating her vagina with his penis. Since we all know that the accusers don't lie, it sure seems like rape to me. And why is this here in the program for tonight?

[00:29:28] Larry: Well, it's not quite that easy. As the court noted, the question is whether Khalil's conduct is third degree criminal sexual conduct under Minnesota law. And under Minnesota law, that is the sexual penetration with that other person when the perpetrator knows or has reason to know that the complainant is mentally incapacitated.

[00:29:50] Andy: I got ya. Yeah. And you, and your super focus on nuances in laws. Everyone knows that if a person is intoxicated, that they are mentally incapacitated. But God Larry, that would be, that would be squishy because how intoxicated are you?

[00:30:06] Larry: Well, I'm not so sure that we can agree on that. As the court pointed out, the decision turns onto the meaning of the mental incapacitated as defined in Minnesota statute.

[00:30:14] And you guys need to look up Minnesota statute, 609.341. The statute provides mentally incapacitated means that a person under the influence of alcohol or narcotic, anesthetic or any other substance administered to that person without the person's agreement, lacks the judgment to give a reasonable consent to sexual contact or our sexual penetration. Specifically, the court was tasked to determine whether the phrase "administer to that person without the person's agreement" applies to alcohol.

[00:30:44] In other words, the court had to decide where their person can be mentally incapacitated under the statute when the person voluntary ingests alcohol. That's what this is about.

[00:30:57] Andy: Didn't we say before that she took the narcotic on her own, correct? Didn't we say that? Yep. Then I'm confused on why there's even a question.

[00:31:06] All right. "The court seems to be out of touch with the reality of rape. How is it that they can simply turn a rapist loose on some ridiculous technicality? Let me share some of the facts from the decision, which parties do not dispute. JS, she traveled with her friend SL to the Dinkytown neighborhood of Minneapolis." Who the hell names a town "Dinkytown", Larry? -- "with a friend and attempted to enter a local bar. She was denied entry by the bouncer because she was intoxicated. Shortly thereafter, Khalil and two other men approached GS and SL outside of the bar, invited them to a party. Khalil then drove the group to a house in North Minneapolis arriving in the early morning hours of May 14th, 2017. There was no party at the house." Duh! "SL testified that after walking into the house JS immediately laid down on the living room couch and soon fell asleep. JS testified that she

blacked out due to intoxication shortly after arriving at the house and did not clearly remember lying down on the couch. JS woke up sometime later to find Khalil penetrating her. She said, 'no, I don't want to,' which he replied, 'But you're so hot and you turned me on.' JS then lost consciousness and woke up at some point between seven and 8:00 AM with her shorts around her ankles. She retrieved a cell from another room and the two called Lyft and left the house. During the ride JS told SL that she had been raped. Later that day they drove to Regions Hospital in St. Paul to have rape kit. However, there is not a crime." Oh, excuse me. "How is there not a crime here?"

[00:32:29] Larry: Well, we're not saying there's not a crime here. There was a crime here. Not even the court said that. What they said is that the law did not recognize voluntary intoxication as rendering a person mentally incapacitated.

[00:32:41] Larry: That's what they actually said. And it's important to point out right now that there was a less serious charge that the prosecution could have chosen, which would not have resulted in this outcome had they chosen that. The state chose to charge him with the more serious charge when they could have used the less serious charge. And unfortunately they appear to be headed towards defeat on this. And that's what happens when you're not happy for a conviction. So, ah, I guess you wonder why they, why they didn't choose the other charge, right?

[00:33:17] Andy: Yeah, definitely. Why didn't they do that?

[00:33:19] Larry: Well, because it was only a gross misdemeanor, rather than a felony.

[00:33:22] Andy: Of course. Well can we stop right there? Tell me about gross misdemeanor versus just misdemeanor.

[00:33:26] Larry: I don't, I don't know. It's probably the high level of misdemeanor. We call it high misdemeanor here. Right? So it's probably a more serious misdemeanor. But, but for the first offense for that, it would have been a misdemeanor and that would not have satisfied the victim nor would it have played well in the community. And in fact, that's one of the reasons why we actually have negotiated pleas. Had the state charged the proper offense, they probably would have gotten a guilty plea, which would have meant some level of accountability. And I think registration as well. I think that's on the list. We'll have, we can have one of our patrons from Minnesota, tell us if we're wrong, but I think that's on the list.

[00:34:01] Unfortunately, some cases are just too political, which makes it impossible to offer a reasonable plea. Okay.

[00:34:07] Andy: This, this is super gray area. I mean, I was having a conversation with someone about this yesterday. Where if she didn't consent to it then, and he did it anyway, then like that there's no gray area there.

[00:34:20] However, she put herself in the stupor that she did. So then does everything that happened to her from that point forward because she put herself in the stupor, then she's just like,

everything else is not, her is not anybody else's fault. They could have robbed her. They could have done all kinds of things if --

[00:34:39] Larry: That's not what the court's saying here, that's not what the court's saying here.

[00:34:43] Andy: It sounds like the way that the law is written because she is self-inflicted on the stupor, the drunken stupor, that it's not rape.

[00:34:52] Larry: That's not what they're saying.

[00:34:54] Andy: Okay. Then, then that would go, why I'm still confused. She was intoxicated and the parties agree. What's the problem? You cannot have sex with an intoxicated person.

[00:35:02] Larry: Well, the issue is that the state, the statute required that the intoxicant be administered against her will and the state did not assert that it was nor did the evidence support the notion that was the case, that it was without her agreement. There just simply wasn't any evidence to support that.

[00:35:18] Larry: Now they'll all on the other hand. The guy called Khalil does not dispute that there is sufficient evidence on the record that he knew or had reason that JS was under the influence of alcohol. The course of session, and this appeal is centered on whether the legislature's definition of mental incapacity includes a state of mental incapacitation caused by the consumption of alcohol, voluntarily or not, or whether it's limited to the circumstances for the state of mental incapacitation results from consumption of alcohol administered to the complainant involuntarily, without her agreement, which is what the statute requires.

[00:35:50] Larry: This is what the statute requires the court to do. The court didn't write the statute that says that that's what's required.

[00:35:59] Andy: No, of course not. Of course not. I, I hadn't really ever considered how this would go down. Plus I don't, even if there is a rape kit, you still have a "he said, she said," so there's obviously they didn't, in the docs here, I didn't see if, did the rape kit come back and say there had been activities going on?

[00:36:16] Larry: Oh, well, they already stipulated that there was sex.

[00:36:18] Andy: Okay. Okay. Okay. But, so then you're just down to a "he said, she said," he's saying she was ready to go. And she says, I didn't say that. But if her friend was there, Larry.

[00:36:28] Larry: But we're not down to that, that's not at issue here. The issue is that the statute required that it be involuntarily administered to her.

[00:36:38] Andy: Right? So like date rape. Somebody spiked her drink. And that's how she became incapacitated.

[00:36:44] Larry: Correct. Incapacitation is not recognized under the statute unless it was, unless it was involuntary.

[00:36:50] So, he didn't write the statute. The court didn't write the statute. The legislature did.

[00:36:55] Andy: Yeah, of course, of course. Which is represented by the people. Man, I'm with you. Okay. But like, so you're always hell bent on reminding people about textualism is not necessarily good or bad. So is this an example of where textualism is a good thing?

[00:37:09] Well, I don't know if I would say it's a good thing, but this is certainly an example of textualism. This is the purpose of statute. This is what the court said. The purpose of statutory interpretation is to ascertain and effectuate the intention of the legislature, and our deference to the intention of the legislature is due not only to Section 645.16 from the legislature itself, it also reflects a structural understanding that legislators, or elected representatives of the people, and the legislative bodies are institutionally better positioned than courts to sort out conflicting interests and information surrounding complex public policy issues. That's on page nine, between nine and 10 of the opinion.

[00:37:49] Larry: If the legislature didn't intend to have that prohibition in there that incapacitation that was voluntarily administered didn't count as being incapacitated. They should have not put that in the law. Correct. So, you don't like legislating from the bench, do you?

[00:38:12] Andy: I don't think that they should, but of course there are times when we would do want. Brenda has the same question that I was just coming up with. It says, do you think that the legislature will now go in and change the law?

[00:38:23] Larry: I do believe that will. And it's I think that it won't take them very long.

[00:38:27] Will this wait til next year to go down the path? Are they still in session? Does this happen this year in some kind of emergency session?

[00:38:35] Larry: I don't think they'd call it a special session for it, but, but if they're in session, this is, this is certainly gonna be introduced if it's not too late and that they have to fix this, but the victim's advocates will not let it go.

[00:38:49] Andy: Yeah, sure. Is what the court did was to render textual interpretation and punt to the legislature. Is that, do you think that's, that's a fair way to word it?

[00:38:57] Larry: Well, I guess that's one way of looking at it. They did their job. They looked at the law and they applied the law unanimously. That was not even a single dissent in this decision.

[00:39:09] Andy: Through the time of doing this podcast, I have come to the conclusion that I believe that we want them to be textualist. Of course there are times when we don't. But if we were not competent, and I mean, we, as in the, you like literally like the lay people and we don't go deal with our legislators and we are not competent in who we vote for, and when there are, this is a lot of work, Larry, but these laws are really important and how they impact our lives. And we need the language to be hyper-

specific about what they do and don't do. You had me watch a video yesterday and I like there was a, they were focusing on these like one and two and three words of how this bill was being written. And they matter in the outcome of things.

[00:39:52] And if this is not what we, the people wanted the legislators to do, then we would want them to go change it. We don't want the judges to go behind them and go, well, no, this is probably not what they meant. We don't know what they meant. We know what they wrote.

[00:40:06] Larry: That is correct. And courts typically do everything they can to discern the intent and to apply it as it's written, if possible.

[00:40:17] And sometimes they'll go beyond the written words and they will, they will contour a statute to they can drop a word from it to make it constitutional. But most courts are very hesitant to fix policy. This is, as a self-governing people, you have the right to impose ridiculous policies on yourself.

[00:40:35] Andy: Correct. Right.

[00:40:36] Larry: A part of self-governance. If you want to do that, and you're happy electing people who put you in a restrictive state of things that you don't like, and you continue to elect them, that's on you, not the court. That's on you.

[00:40:49] Andy: We can make jaywalking a felony and make people get executed for a felony jaywalking. We can do that.

[00:40:56] Larry: I don't know if we could, if we could actually get that to pass, but you could make it a much more serious crime. And I know that that's your prerogative to do that.

[00:41:05] Andy: I'm making a super extreme example that I'm doing that on purpose too, because we could do that if we really, really want it to, I know, I know you're saying it would never pass, but if we really were hell bent on doing it and it could pass and make it through it, we could make it that you jaywalk and you die. Does the state appeal or do the charges get dismissed? What happens?

[00:41:21] Larry: Well, the state really can't appeal this as this is highest tribunal of the state and the charges do not get dismissed either. The case is remanded to the trial court and the state will have to make a decision now, if it can overcome the previous testimony that there was no -- I mean, they can't overcome the previous testimony. But if they have to make a decision now, if they want to offer this person a plea bargain, because there's no way they're going to secure a conviction on this offense, the same evidence is going to play out the same way.

[00:41:50] Larry: You know, the statute says what it says, the highest tribunal in the state has ruled that it was a voluntary intoxication. Therefore, she's not mentally incapacitated as required by law because it was not administered against her will. So they cannot prevail on this of this statute. So they're going to have to offer him a deal and the deal has got to be time served and he's going to go free.

[00:42:15] And that's going to drive the publicity in Minneapolis and Hennepin County. It's going to go off the chart bonkers about how a rapist is going free, and that will put immense pressure on the legislature to fix this. If they, if they have, if they have the ability to do it this session, because this is a travesty of justice in the eyes of most citizens.

[00:42:34] Andy: Okay. Anything else? God, you come up with really interesting ones. I've never considered that the way that the language in this bill works is that if you did it to yourself, then sorry, like what happens to you is your fault.

[00:42:50] They didn't say that. I wish you would quit saying that. They did not say that.

[00:42:54] That's what it sounds like.

[00:42:55] Larry: It does not say that. They said they couldn't convict him of this more serious charge that requires a different level of proof. I just got through telling you the charge that they could have convicted him of. Right. I don't know how that goes free. I don't know how you keep saying that.

[00:43:12] Andy: Cause that's what it said. That's what I thought, Larry. I'm still back to it's if she did it to herself,

[00:43:21] Larry: It says that that's equivalent to a premeditated first-degree murder and a non premeditated murder. Yes. The person is dead. They're still just as dead. Sure. But the elements of the offense are different, and the penalty is different.

[00:43:38] This offense that they charged him with is a more serious offense and it required a different level of proof. They had an offense on the table they could have used, but it wasn't glamorous and glitzy enough and it wouldn't have played well. And they've rolled the dice and they steam rolled and they got the jury instruction just the way they wanted it to convict.

[00:43:57] We didn't go into all the nuances. They got the jury instruction the way they wanted it, which just the mere fact that she was intoxicated was enough. And that was not what the law said. The mere fact she was intoxicated was not enough to render her incapacitated under this particular statute. And, but that doesn't translate to, there was no statute that held him accountable. There was. The state chose not to use it. They will use it now because that's all they have.

[00:44:23] Andy: Right. Okay. I gotcha. Okay.

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[00:45:15] Andy: Before we jumped, we wanted to acknowledge Charles in the state of Indiana, Indiana. Excuse me.

[00:45:21] Larry: Yes. Charles wrote us a nice letter and we're not going to read it because it's too long. But he was sharing with us about the *State vs. Wallace* case from back 15 years ago, and about the unconstitutional. He was replying to the decision out of Wyoming and he was suggesting that Wallace should be looked at. And Wallace of course is not binding in Wyoming. And the registration requirements are different from what was being challenged in Indiana. So just because one state Supreme Court finds one registration statute unconstitutional does not magically translate to another state's registry being unconstitutional because the levels of disabilities or restraints are different.

[00:46:02] You could never win a disabilities or restraints challenge in Vermont, there are no disabilities or restraints imposed. So it'd be difficult for you to prevail on all of that components of the analysis. But we do appreciate the letter because there are things that we sometimes don't know about. So, so it doesn't hurt to have it. But anyway, we, we are aware of that case.

[00:46:21] Andy: What is a pipeline to get that kind of -- do people just write to NARSOL and miscellaneous others and post them on different blogs. Like, do you think that stuff, how often do you think that that stuff gets missed?

[00:46:33] Larry: Well, it doesn't get missed very often, but occasionally there may be something that we have overlooked that might be relevant. This case has been out for a long, long time and it's cited all over the place. So we're aware of it.

[00:46:44] Andy: I guess it's the benefit of having, what, 10 years wait, probably what 12 or something years for NARSOL.

[00:46:52] Larry: I can't even keep track of it.

[00:46:55] Andy: Jeez, man, you've been around since time began practically.

[00:46:57] You were there when they invented sand. So I guess you ready to jump over to the other case?

[00:47:03] Larry: Let's do it cause we're gonna, how are we doing on time? Yeah, we're running short on time, so let's do it.

[00:47:07] Andy: Why do you feel that this was worthy of the very premier FYP time?

[00:47:13] Larry: Well, that's worthy of our time because it presents a real-time opportunity for us to draw the parallel to *Smith vs. Doe* to this decision that was just decided. Now would you please recite the name of this decision for all of our people in prison who want to know what we're talking about?

[00:47:31] Andy: All right. Well, this is the Supreme Court of the *United States Torres vs. Madrid et al.* Is that enough? Or do you need me to go for more?

[00:47:39] Larry: That is enough. Okay. So the reason why this is relevant well, you can, you can tell me, I think, I think you have an idea about it. What were you thinking after you read it?

[00:47:49] Andy: I mean, it was decided by summary judgment so that we can go there first. Can you remind me of what the good, the bad, the ugly and all that stuff is of summary judgment?

[00:47:57] Larry: Yes. That's why I put it in here because I want to do the parallel to Smith vs. Doe. People have so much anxiety about Smith vs. Doe and that the "alarming and frightening high" recidivism.

[00:48:09] So summary judgment is a vehicle to avoid going to trial. And it's appropriate when there are no facts in dispute, and one or both parties believe that they're entitled to a judgment as a matter of law.

[00:48:23] And in other words, in summary judgment, there's no trial. You do your pleading. You're the party that's bringing the action does their brief, the other party responds with their brief. And then you do your reply in support. You do your depositions and you do everything you can to develop your case. And you, you say, gee, we don't need to go to trial. This case there's nothing here to decide, the facts were undisputed. Well, the pitfall of summary judgment is that sometimes there are issues that were in dispute. And when you have a decision or that where there, or there things where the court could have better developed in a trial, all the doubt goes in favor all of the non-moving party.

[00:49:09] Larry: So in the case of Smith vs Doe, the challenger was the one who filed for summary judgment, because he said, well, you know, we don't need to spend a lot of time with court. I don't want to have to register. This is crystal clear is ex post facto. They've passed a law that they've applied to me which didn't exist when I was convicted. End of discussion. And the state of Alaska said, well, not so fast. You know, it's a civil regulatory scheme. And we would argue that there are frighteningly high level of recidivism among PFRs. And he turned around and said, so what? Say it all you want to, you just can't do this to me because of ex post facto.

[00:49:47] And so all the benefit of the doubt accrued to Alaska because their defense was never tested. There was no evidence taken. So the frightening high recidivism was a fact that was handed to the Supreme Court by the agreement of the parties, which is what makes this case relevant. Because it's a case cited by summary judgment, which goes the opposite direction.

[00:50:11] So that's why I put it in here.

[00:50:12] Andy: Okay. And I mean, we we've covered that quite a bit lately with the Butts County thing of, one of the things that would have been in dispute is, is that, is that particular part of your property right-of-way. We needed experts and whatnot to go in and decide is that actually right-of-way that the sheriff can go drop signs down. That was a fact that was in dispute, if I recall correctly.

[00:50:31] Larry: That is one fact that it may become, the way the case was briefed on appeal, it may turn out that that's less relevant. We'll have to wait and see. But yes, that was, in my view, an important fact that was not developed.

[00:50:41] Andy: Then moving into this case specifically, what are the issues here? And can you please clarify and connect those dots?

[00:50:49] Larry: Well, let me just read from the opinion a little bit, so people know what the case was about. And it happened in New Mexico. "At dawn on June 15, 2014, four New Mexico state police officers arrived at an apartment complex in Albuquerque to execute an arrest warrant for a woman accused of white collar crimes, but also suspected of having been involved in drug trafficking, murder, and other violent crimes.

[00:51:12] "What happened next is hotly contested." And then I'm still reading. "We recount the facts in light most favorable to petitioner Roxanne Torres because as the court granted summary judgment below to officers, Janice Madrid and Richard Williamson, the two respondents here." That you can find that on page one of the opinion.

[00:51:35] So, so again, remember the lady that got shot, the police shot her once she did not stop for them. She said that she felt they were carjackers. She said that she did not identify them as being police officers. And she was fleeing for her safety. The police of course said they readily identified themselves, that anybody would have known they were police officers and that she didn't stop. So they shot.

[00:52:05] Well, remember, since this, with summary judgment, the court has to assume that her version is the correct version. So the facts that the Supreme Court were handed in this case was that she did not know that they were police officers and the attorneys on behalf of the officers gave the court those facts by moving for summary judgment.

[00:52:28] So they conceded and consented to that being a fact. So whether or not she knew there were cops is irrelevant. Okay. Because all inferences and benefits of the doubt or are going to the non-moving party. She didn't want summary judgment. She wanted her case to go to trial. And it didn't go to trial at the officer's instigation because they said, wait, all the different things that it would take two podcasts to cover all the things they said in this case.

[00:52:55] But, the point I was trying to connect the dots on is that the Supreme Court did not decide that the officers, that she thought that they were carjackers. They didn't decide that. Officers Madrid and Williamson handed the court that fact by moving for summary judgment.

[00:53:14] And if you'll look at it that way, that'll help you understand what happened in Alaska. The court didn't decide that recidivism was high. They merely accepted the fact that the challenging party, Doe, handed to them. He said, Go ahead and give me a judgment as a matter of law, it doesn't matter what they're saying if their defenses might be because you just can't do

this. And the court said, well, no, actually they can do this as long as it's done in a civil regulatory way. And it doesn't impose any disabilities or restraints and blah, blah, blah. And, they mentioned that fact now, I suppose they could have just not even cited to that fact, but it was a fact established by our side. We gave the court that fact.

[00:53:54] Andy: Thinking back to that time, if that Kennedy Mendoza Martinez is that the disabilities and restraints, is that where that comes from?

[00:54:02] Larry: That's the seven factors from a 1963 case called *Kennedy versus Mendoza Martinez*.

[00:54:07] Andy: Had we presented that side of the disabilities and restraints to that whole court process, this may not even be where it is today because of that, just hypothetically, us presenting that side of evidence to bring it to trial and all that stuff.

[00:54:23] Larry: Well, I don't know that I, I don't think there were enough disabilities or restraints that they looked at. They did that test, that there wasn't enough disabilities or restraints at that time so they would survive that test.

[00:54:32] Andy: Correct. And I'm with you because there was no living restrictions. There was really no internet really to speak of in 2003 or whatever. So yeah, like you just had to go visit the Popo annually and go get your picture and fingerprints or whatever. Whereas now --

[00:54:45] Larry: You had to mail that form back then.

[00:54:49] Yeah, because in Alaska you could be 7,000 miles away from your local Popo. But you could live out there with a caribou and to take you seven days to get there.

[00:54:58] Andy: But and, and, and just to clarify one other thing, just to put a mark on it, they didn't say any registry is okay. They said that registry is okay.

[00:55:07] Larry: That is correct. They said what was being challenged as it existed at that time did not impose disabilities or restraints. You guys can fixate on recidivism if you like. It's a fixation that we'll never win you a case, at least a significant case. Or you can fixate on the disabilities or restraints, which will win cases and have won several cases. And that's what we have to do is we have to develop these cases below with factual evidence, expert witnesses, show the disabilities or restraints and what the consequences are. And we distinguish ourselves from previous decisions as we've reviewed on this podcast, several times we've shown that the challenging parties have done a good job of distinguishing the registry as it exists now against the registries as they exist the last time they were decided. I think we just talked about that last week or the week before, you know, it's your job to challenge it, it's your job to prove. The presumption is that the registry is constitutional until you prove it isn't.

[00:56:13] Andy: It seems, Larry, that most of the states like sands we'll leave out the super benign ones, but that the disabilities and restraints are, it seems that they're easily presentable. I don't

know that you can get a case going and all that, but people can't get jobs. People can't find housing. The whole homeless camps that go on in Florida -- those are clearly disabilities and restraints. How are they not seen that way?

[00:56:38] Larry: Well, well, first of all, your criminal record, they always argue that your criminal record is what causes you not to be able to get a job. They dispute that the registry is the cause of you not getting. So you're going to have to bring in evidence that shows that they would have hired you with your particular criminal conviction, but for your list in all the sexual offender registry, excuse me, the sexual offense registry.

[00:56:58] Andy: You're not "offender"--

[00:57:00] Larry: Because they registered the offenses.

[00:57:02] So when you get out of prison, remember you're going to go in and register your offenses. But, you have to prove that, and the state will argue vehemently that you're not getting a job because of the historical fact of your sexual offense conviction. And where's your counter-argument? What do you have to show that? You're going to need some expertise. You're going to have to have some data. You're going to have to show them that the segment of PFRs who are not listed or employed at a greater rate. And then you're going to have to get into some picking that apart to figure out if there's a generational difference than to people.

[00:57:35] If you've got a group of a cohort of PFRs that are in their sixties, well, they're already have barriers to employment. And if you're comparing it to a bunch of PFRs who have convictions, who were like that were adjudicated, juveniles or very young, and they got like in Michigan, they have that homeless youthful trainee act that goes up to like age 26 or something.

[00:57:52] If you compare the two cohorts or you say, well, they're registered the ones that are registered, have all these higher rates of unemployment, blah, blah, blah. I'm going to come back and say, well, that's true, people who are 60 years old have a higher rate of all these things anyway. So that's why you need, that's why you need expertise and that's why you don't cost them--

[00:58:10] Andy: You have to have some money.

[00:58:12] Larry: That's why you don't move for summary judgment on these things. You go in with a big bank roll and you develop, you imagine everything that the state can think of. And there's been enough litigation that you shouldn't have to be very creative to do the imagining because they've already put forth these arguments over the years.

[00:58:29] So you look at every argument that they put up, everything that they claim, and you have expertise ready to shoot their arguments down. Remember, it's your job to prove. It's not the state's job to prove. They have the presumption that the legislative enactment is constitutional.

[00:58:46] Andy: Okay. So, this is what we were just discussing.

[00:58:49] I forget where the, I guess it was the article, the letter that somebody wrote in that they say they're innocent, but they have already been convicted. So they have the burden of proof to prove we on this side of the fence, now that we are at the PFRs, we have the burden of proof to prove that these things are disabilities and restraints.

[00:59:07] Larry: And that they offend the Constitution of either their state or of the United States. And again, on page 10 to 11 at the Supreme Court decision, they went through all, they went through 400 years of what constituted or whether this was -- the issue in this case is whether or not they actually seize the person.

[00:59:25] And the cops argued that shooting, that since they never had control of the person, she was able to drive away after being shot. They said that they never actually seized her. And the five to three majority -- Coney Barrett didn't participate because she wasn't on the court when this case was originally heard -- but it was five, three decision.

[00:59:43] And they said that at the time the shot was fired, that was a seizure. And they went through 400 years of jurisprudence from around the world and English common law and blah, blah, blah. We would spend a lot of time. But they said in concluding again, applying these principles articulated above to the facts viewed in the light most favorable to Torres, the officers' shooting applied physical force to her body and objectively manifested an intent to restrain her from driving away.

[01:00:13] We therefore conclude that the officers seized Torres for that instant and that instant the bullet struck her. So again, that's bizarre, you hear that you hear them twice telling you that that construing the facts most favorable to Torres because she didn't ask for summary judgment. She wanted to have her day in court.

[01:00:36] Now she's going to get her day in court now because the Supreme Court didn't decide on the merits. They don't find facts. So now the case is going to go back to federal court. And I can tell you one thing they'll do: they'll settle now. She's magically going to get an offer for some money, because when you shoot someone in the back and, and the Supreme Court says that your theory that she was not seized is not a good theory, there's a good chance that they're gonna start talking to her about a settlement.

[01:01:04] Andy: Interesting. So can, can you clarify? Cause I'm, I'm confused. I'm the one that's dumb. They shot her. Did that constitute them seizing her or not seizing her?

[01:01:14] Larry: The Supreme Court said it did.

[01:01:16] Andy: And that's what I thought.

[01:01:19] Larry: The five justices, there were three liberal pointy heads, joined by Justice Roberts and Justice Kavanaugh. The three dissenters were, of course the usual conservatives. This time I was surprised that I would have thought that this was something that Gorsuch would have been sympathetic to. But as I realized, it came out of the Tenth circuit, the Tenth circuit, and he served there. He may not wanted to embarrass his colleagues.

[01:01:41] So since his vote wouldn't have changed the outcome. It still would have been it's what -- actually would have.

[01:01:46] Andy: That would have been before four.

[01:01:48] Larry: Yeah. So, that would have upheld the lower court decision. But he didn't vote with the majority.

[01:01:53] But I continue to believe that Roberts will continue to be a moderating force on this court. And I've said that over and over again. And when people say that all life is, we know what's going to come to end because you know, they're going to throw out Roe v. Wade and blah, blah. I don't see that happening. I think Roberts, being the institutional guy he is, and the even cool head that he is, I think he's going to exert that influence over the court.

[01:02:22] And I think we're going to get much more moderate decisions than what we would have gotten had Roberts not been there. You know, if he's, he's the best of all choices to be the Chief Justice in the current environment of what you have on the conservative side that he was from. So, Roberts is got to be what saves that court.

[01:02:40] Andy: But that doesn't mean though, that the court has not drifted radically right. In at least in like the last decade or so.

[01:02:47] Larry: Of course it has. Absolutely. But I'm saying Roberts is saving it from going much further to the right.

[01:02:53] Andy: Off the cliff! No, I'm with you on that. And I, and I've heard plenty of politics podcasts that have talked about something along those lines that he is going to be that middle-ish of the road, even though it's still, probably fairly right.

[01:03:04] But I I'm really struggling and we can close after we just talk about this for a second. How is it that shooting you is a taking of some kind? I don't get that that is actually them doing that, by them shooting. Huh?

[01:03:18] Larry: Well like I say, five brighter people than you and I came to that conclusion.

[01:03:22] Andy: No kidding.

[01:03:23] Larry: Gone through 400 years of legal precedent and, and they said that that's what it was. Now, you don't want to question the court's judgment here, do you?

[01:03:34] Andy: Absolutely I want to question them because I don't see how that I see that they shot in the attempted, I guess. And then you could perhaps have like resisting arrest if you then run away after being shot.

[01:03:44] But I don't get that that one is. . . Anyway. I just wanted to talk about that just for another minute. Cause that's bizarre.

[01:03:52] Well, a seizure, that's the word I couldn't remember.

[01:03:55] Larry: The conservatives were very infuriated. Their dissent was very blistering. I did a half skim read of that and they were not happy at all.

[01:04:04] Andy: Interesting, very bizarre.

[01:04:06] Before we close down, I want to make sure that I offer up a reminder that we will not be here next week. I'm going out of town and you're going out of town and it will be very challenging to record a podcast next week. So you guys get a Saturday night off.

[01:04:20] Larry: Well, I may actually may not go out of town, but I'm glad to have the week off because I'm so far behind with work that this will give me a chance to do some stuff.

[01:04:31] Andy: Very well, very well. Is there anything else before we close things down?

[01:04:38] Larry: Well, I'm hoping that we can grow our podcast transcript distribution list. We're not getting any new subscriptions lately. So as you've told people, please pass them around, promote the podcast. You're not going to get a better source, a more frequent source of information than these transcripts flowing into your prison.

[01:04:55] Andy: Definitely. What was I gonna, Oh, do you, do you want to, like, do we want to try and make that goal about me doing a certain thing that we talked about last week? If we hit a hundred patrons? Do we want to like spill those beans?

[01:05:05] Larry: Absolutely. We've got a challenge that if we get a hundred patrons that we're going to have the best saxophone performance from Andy --

[01:05:14] Andy: [Laughing] Everyone in chat is screaming yes!

[01:05:18] Larry: He is going to outdo Kenny G.

[01:05:20] Andy: No, I'm not going to go there, but you -- Bakersfield? Is that the name of the song? Bakerstown. Bakersfield, I forgot the name of the song.

[01:05:27] Larry: Baker Street.

[01:05:28] Andy: Baker Street. That's what it was. Okay.

[01:05:31] Larry: Gary Rafferty

[01:05:33] Andy: In another lifetime, I was a professional musician and I still have some saxophones laying around.

[01:05:37] So if we reach a hundred patrons, you can go to patreon.com/registrymatters and figure out how many patrons we have. And when we reached 100, I will do some crazy sax solo to

this song. I'll do like a version of karaoke and play that song and play the sax solo for you people!

[01:05:56] Larry: You're going to do the solo that's on the Baker Street. You're going to do that?

[01:06:00] Andy: I thought that's what we agreed to. I don't want to do all of the hootin' and hollerin' and the dancing stuff from the St. Elmo's Fire one or whatever that was.

[01:06:07] Larry: Well, I'd like to see you doing the bobbing that he was doing and playing that sax.

[01:06:13] Andy: Oh, okay. Well, we'll figure out what to do when we get closer to that mark.

[01:06:16] So there you go, a hundred patrons at somewhere around the 20 something mark that we need, and then I will perform a saxophone solo live on stream. And who knows whatever else happens to it. How about that? So share and spread the word.

[01:06:28] Larry: And we're actually contemplating doing a YouTube Live taking calls and stuff maybe once every month or two or something, I don't know, on a regular basis so that we can interact with our people, with our patrons, and our audience.

[01:06:38] Yep.

[01:06:40] Andy: Well fantastic. Larry, as always, I think it is fantastic that you joined me every week. I try really hard to find someone else, but you are always available, and I really greatly appreciate it.

[01:06:50] Voice from beyond: That is why I am here. McArthur Movie Clip

[01:06:53] Andy: And just real quick, RegistryMatters.co is the website, (747) 227-4477. RegistryMattersCast@gmail.com.

[01:07:02] And as I already said, patreon.com/registrymatters.

[01:07:05] But with that, Larry, you are the best. I appreciate it. And we'll talk to you soon.

[01:07:10] Larry: Good night. Bye.

[01:07:14] Voice from beyond: You've been listening to F Y P.

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