



## Registry Matters Podcast

Episode 175

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Andy 00:00

Registry Matters is an independent production. The opinions and ideas here are that of the hosts and do not reflect the opinions of any other organization. If you have a problem with these thoughts FYP. Recording live from FYP Studios, east and west transmitting across the internet. This is Episode 175 It's May 1st Larry, Registry Matters. Happy Saturday night. How are you?

Larry 01:40

Well, very well thank you. It's good to be here and it has caught up we have caught up with my age.

Andy 01:46

Oh sweet. I didn't I've never known that you were 175 Wow. Wow, that's very impressive. are you celebrating with any beverages this evening?

Larry 01:56

Just vodka.

Andy 01:59

Just vodka. This doesn't have anything to do with the pain from the accidental last week.

Larry 02:03

It does but vodka is very effective. All you have to do is just swallow fast.

Andy 02:09

Oh, doesn't it like I seriously I know you're not a drinker. But I hear that junk burns like an MF as it does its thing.

Larry 02:18

I have heard that.

Andy 02:22

Just a quick update. We talked about it last week briefly that you got into a kind of a significant tail ending accident. And how are you physically How are you?

Larry 02:33

I'm still I'm still in pain. I've still have lacerations that haven't healed and I'm still waiting to see my dental professional to see how bad the face is smashed on the inside but but I I'm still alive. They didn't get rid of me. But guess what? There was another accident One week later to the day. The same spot maybe 20 feet further north. same location.

Andy 02:54

Um, you had mentioned something about possibly breaking your hand. Did you go check that out?

Larry 02:58

Oh, yeah, there there's no there's no fractures but the pain didn't go away.

Andy 03:05

All right, then. Well, we got we got the humanitarian side of things out of the way. Now we need to go on to the meat and potatoes. What's going on tonight?

Larry 03:14

Why don't we have a jam-packed episode? We have four questions. We have a story from the state of Iowa. We're going to talk about the Supreme Court in a recent decision dealing with PFRs going to talk about the Prison Litigation Reform Act and we're going to cover some articles if we have time by like, second chances in Alabama and Michigan and then you have to you have to look at the one on the Mississippi prisons ending the food contract now that that one is bizarre. I can't say funny anymore because the person last week on YouTube said that nothing's funny. But when I say funny I'm talking about ironic, but anyway, I can't say the word. It's not PC.

Andy 04:00

Okay, well, then let's get going. This one came in something of a week ago or maybe even more. It's from a new patron says hi guys, longtime listener, new supporter. Thank you. Again, that was from Sean, I think we reported maybe a week or two ago. I have a three-year review coming up to try and shorten a five-year probation period for misdemeanor convictions. I've been told by two POs that they are required to recommend the completion of their original five year probation period when asked by the Judge, even though I've been told on numerous occasions, how much of a waste of time the whole thing is. The question on my mind lately is this. If during a legal proceeding, the Judge asked the opinion of a PO if the response of recommending to stay on probation is said because they are required to say that isn't that some form of perjury that could be argued in court? It seems like that's a pretty important question that could have a huge impact on the outcome of the hearing. It seems that if a Judge is asking the opinion of an expert, that is the opinion and excuse me that if the opinion is forced or coerced? It's a pretty big problem. What are your thoughts and then after we finish that I have one other final thing to bring up. But that that does sound legit, Larry that the PO should be asked, responding, how they feel about your caseload, how you respond under treatment and so forth, that they should say, whether they think you should be on their case or not. Not that they're the default position of probation to say that you should stay on. So aren't they lying?

Larry 05:26

No, they're not lying. They're, they're telling them the truth, they're telling the truth as they've been instructed to tell it. Our department policy is that we don't recommend a particular action. So there's no lie they are just the declining to give an opinion, but remember, I don't think I've done the world the way it is be for a long time. There's the way that things should be. And there's the way things are, in this case, the way it should be, would be a PO would give their opinion. And they would give it based on all the factors you articulated the caseload they have and how well this person has performed and following the restrictions and complying, they would do that. But in the world the way it is, they're not likely to do that, because the last thing they want is for

those cameras to come in on them. If there is a relapse, and their supervisors want it even less than they do, and the people who run the department wanted even less than all the ones previously mentioned. So therefore, they're not going to give their opinion, but they've been instructed not to that would be an insubordinate act would it not?

Andy 06:44

it would be. So and then I guess the way that I'm going to present myself as legal expert, which I know I'm not, so don't take me this way, but then your attorney would ask the specific question of has the person ever caused any problems? Have they always met their probation obligations, and you're never asking them for anything that is beyond fact, for them to give them any room to that you're going to leave it to the Judge is what I'm saying that this person is only there to state the facts of how you are under their charge, and then the Judge would then make the determination of whether you are released or not.

Larry 07:18

That is absolutely what does happen. In those cases where they in those instances where they have that policy, the lawyer has to be skilled at eliciting the answer that the lawyer is looking for. And then the cameras will come in on the Judge, because the prosecution is gonna take the same posture in all likelihood, when that what that issue is being heard the state's got to be consistent with probation, they're going to say either they oppose it, or we take no position, you can hope they take no position, but they're going to, they're likely going to oppose the release. And therefore, they're going to dredge up something from the facts of your case that happened all these years ago, to say that that's their justification for opposing it. So you're gonna end up in a position where it's going to be up to Judge and you're going to a Judge is going to be thinking about Persky from time to time when they're making these decisions.

Andy 08:09

Judge Persky was the one that was recalled by the Stanford swimmer, and he got recalled, and in California for three years ago.

Larry 08:17

Correct, but, a Judge who has to be elected. And that happens in many states, a Judge who has to be elected, is going to be very sensitive to that our state, they don't have to be elected per se, they have to be retained after they've been appointed and gone through one election. And the retention threshold is 57% to either retain, and if they don't reach that threshold, they're not retained. But even with that system, there's enough bad press that can really impair your retention election. So therefore, these Judges the world the way it should be, and the world the way it is there. I mean, I don't see the perjury, but he does have a fantastic point. It really, it really makes it difficult when the when the Pos will not give an opinion about a particular offender.

Andy 09:08

Um, and we could just personal experience back to my case, seeing the Judge whatever November is what it was the prosecution, excuse me, the DA's office. They did not say well, no, we don't have any problem. But they were like, we're not going to ever say that we think that this person should be off but they

certainly did not come in there with any guns blazing. They came in with like little cap guns, so to speak. They did not approve it, but they were not coming out guns blazing, trying to prevent it either. That's certainly another situation that could come up.

Larry 09:38

Absolutely. You were fortunate that they weren't vocal. And they didn't dredge up something in the way of facts related to the case like this, this person should not be released. But those kind of things do happen. And that's what your lawyer supposed to tell you. When they when they take your money. They're supposed to tell you look, here's the way it plays out of this jurisdiction. They're gonna come in with all guns blazing. They're going to say this. That's why you go have the conversation with the DA with the prosecution. You have the conversation, what are you going to do? What is your office going to say, when I filed this petition?

Andy 10:13

And to clarify a point for you, that's you said, That's not a conversation. I mean, the PO person the probation person, I can't go ask the DA, hey, would think about me? Well, you can get someone else to go in there for you.

Larry 10:30

You could go do it if they would, if they would see you, they'd be unlikely to see you. But if they did, they're not going to give you the kind of feedback that they'll give an attorney, particularly a person who practices in that jurisdiction, they have a relationship, they're going to be more honest and say, Look, we're gonna we're going to strenuously oppose this person's release, or they're gonna say, we're gonna take a non-oppositional stance or whatever. That's why you pay the attorney.

Andy 10:55

I see. I think we're done with that. Are we done? Sure. All right, I just wanted to bring up this, Shawn also said, Hey, could you make it so that we could pay a lump sum annual payment rather than monthly, and I converted Patreon over to allow us to be able to do it, if you want to do that, I forgot how much of a discount, I think it's a one month roughly discount if you pay in advance for a year. There you go, you could go over to Patreon and sign up for a year at a time, and you'll get something of a one month discount in doing so. So there's that. So there you go. Question number dos. It says Hello, we are writing to you about info regarding the new tier law in California. We wish to know what the tiers are and the requirements. Please, if you could answer this within your newsletter, or give us a copy of it in writing. Thank you and God bless PS, if you have any info on resources in California that could appeal great to thank you that certainly that that's right up there with ACSOL, right.

Larry 12:00

That is and I'm not going to be able to be specific because there are too many offenses, California has had a registry since 1947. And they have a very, very long list. So what they did with their tier system is they took the categorical approach, and they put the offenses in a particular tier based on the offense itself. And where they went wrong, where they went wrong in many places. But where they went wrong, is the tier ones and the tier twos do not have to file a petition pursuant, if you're actually following the federal recommendations, those people just, they just vanish after

they after they're 15 or 25 years passes. Tier one is 15 with a five-year reduction for no felony conviction or any sexual or conviction of any at sexual conviction period, then you can be released after 10 years. And also there's a provision that you have gone through treatment at tier two is 25 years. Again, no petition is needed. The tier three, there is no petition process if you're actually following the federal recommendation, they're no tier petition except for adjudicated juvenile offenders. But what California did is they they put this categorical approach in they put the offenses in tiers, they require you to file petitions, even though even though it's not required by federal recommendations, and then the process is so cumbersome, you have to serve it on the police department where you're registered, they get 45 days or something to check your background to see if you've been convicted of anything, then they clear you. And the DA is next and the DA has to notify victim by make an effort to notify the victims and the victims get to say something. And then the Judge has this very vague standard that if there's any reason practically to keep you on the registry, they can keep you on the registry, the removal will be that will be sparse, and far and few between that I say that and I get hate mail, I get criticism. But I'm telling you, it will be very difficult to get off California's registry, they had no reason to create a petition process for tier one or tier two except to placate the victims and the prosecution and the law enforcement industrial complex. And they didn't need to do it. And also, it's gonna be a big business for the lawyers, there'll be a lot of people who will not be honest, they will tell them what they want to hear that that I can file this petition, and you stand a good chance of getting off the registry. The truth of the matter is when a lawyer tells you that they do not know what chance your stamp getting off the registry because this is a new process. And they're telling you what you want to hear. But far be it for me to actually tell you the truth. It is a very difficult process in California. And remember, if you file and you get off in California, that only relieves you of California's registration obligation. It doesn't do anything else for you than any other state.

Andy 14:48

And maybe, let me let me try and explain it in my own words, like just so one word answer the there is no federal registration. Right. Right. And AWA is, I guess it's law, but it's like they're not holding the states accountable to it. Like if you break the law, then we're gonna send your state to jail. You either abide by these guidelines or you don't, and you're compliant or not, but there's no consequences for it other than some money. So California and any other state can go above and below the requirements, however they choose to. So you're dealing with California.

Larry 15:29

That is That is correct. Again, folks, there's no federal registry. And these days AWA recommendations, they're just recommendations. If you want to have a federally compliant registry, where you get your full allocation of federal Byrne justice grants, you will have registries up to this level and you can go higher, but this is what you'll have. If you go beyond it, and do more, that's okay. And by California did not need to do this. First of all, they've said that they're not going to attempt to call it comply with the AWA. That's been their posture for some number of years. But then they created this cumbersome removal process because lifetime, they're everybody's lifetime in California, they created this removal process that will virtually remove no one.

Andy 16:17

Sad, sad, because it's a I don't know otherwise, how they are in a criminal justice sense, where we often talk about the Northeast Corridor there, that's all more friendly to criminal justice. I don't know how California is in those regards. Everyone talks about the left coast being super progressive and whatnot. But this this seems to be an outlier of California to be this way.

Larry 16:42

Oh, I don't I don't think so what happens is when you get these when you get a collection of liberals, in many ways, they can be as bad as a collection of conservatives, because they do things because it makes them feel good. And it made them feel good to have the victims take part in developing this removal process. The only problem is, well, there are many problems. But the most significant problem is that the victims are not interested in having a fair removal process. They're interested in more vengeance. The victims should not be included in the removal process, period. This is a civil regulatory scheme. I would have said that at the time, but say most people that are required to register and advocates are afraid to utter those words, that is a civil regulatory scheme. The punishment is over with. This is a civil regulatory scheme. You don't get to participate in civil regulatory scheme. But nobody had the courage to say that.

Andy 17:36

All right. All right. I guess we'll move on to question number three. And here we go. Says being incarcerated for picture crime, rumors and myths circulated that social media platforms, example Twitter, Facebook, YouTube block all PFRs and similar rumors are associated with Walt Disney World, Florida. Are there any legitimacy to these? Is there any legitimacy to these claims? If so, is it indiscriminate basis? Is it being? Excuse me, I'll paraphrase is it discriminatory? For read, discriminate basis from registry databases? This is hard to read? Um, I think they are saying that, are they using the registry databases to find this information? Or is it more individualized, such as prior accounts to scrutinize and or utilize in commission of the offense? With a genuine stop?

Larry 18:30

You can you can stop there. Okay, I meant I meant to block that out. That was a political rant there. Alright. So the answer is, the rumors are true. Don't know about Disney but I've heard that rumor, but I have not independently verified it. But in terms of the social media platforms, those rumors are true. It's an indiscriminate blocking of people who are required to register, there's no individualized analysis done. That's that's true.

Andy 19:03

And, and should they be allowed to?

Larry 19:06

Well, that's what that's what the courts are gonna determine someday, but he went on to political rant about the Hunter Biden story being suppressed by the New York Times and blah, blah, blah. And I just didn't want to go there. But in terms of that question, in terms of his question, these things are true. They do block you on Facebook, and Twitter and so forth. And I don't know about YouTube. I don't know that YouTube blocks PFRs.

Andy 19:30

I've never heard of anybody getting shut off of Google. That's not one I've ever heard of. And I don't know that I've ever heard of anybody being knocked off of Twitter, either. I mean, we obviously have the Registry Matters Twitter account. There's also a Facebook one, but the Twitter account I post on there at least roughly weekly, and that's never been shut down. But my question is, should they be allowed to and maybe that's taking too far of a left turn of them being private companies and being allowed to let's focus more on Disney World than You are forgive the extension here for me for just a second, you are someone that has been convicted of a sex crime. And I'm not saying that you were convicted of one that's a child based one, but you're going to a place that predominantly caters to children, and they are a private entity. And they probably have a sign that says we can refuse the right to admittance to anybody. So that's their privilege to do so. I think.

Larry 20:27

Well, I wouldn't go so far, you'd have to look at how much tax subsidies that may have gotten in the way. Okay. The more there's big companies are very, very skilled at figuring out how to get benefits for operating businesses in an era of particular a large employer like that. But I can tell you, they've been under a lot of pressure. I mean, cruise operators are under a lot of pressure. Anybody that that has a recreation component that involves a lot of miners, as customers, they're they're under a lot of pressure to keep folks safe. And so they're responding to public pressure. That that's what the public is demanding that that we don't want PFR is roaming around here trolling to victimize our children while they're having a good time. So Disney is being a good corporate citizen and their view.

Andy 21:20

okey, dokey. Is there anything else there before we move on to the next one?

Larry 21:24

No, we can go on to number whichever one we are on?

Andy 21:28

I think we're on number four, as you have posted the PDF, it says I have not been able to get a straight answer to my question, though. I know I'm not the only one to face this situation. I have an established longtime residence in Pennsylvania driver's license, etc. in 2015. I was arrested while on vacation in North Carolina and ultimately convicted of something for a 2005 offense receipt of for a 2005 offense in federal in federal Connecticut sentencing court Judge a federal court sorry, federal court. If you put CT I'm gonna say Connecticut Larry. At sentencing, the Judge ordered me to register as an SO upon release, which should be not so far off. In 2017, PA declared SORNA as punishment, both state and federally through a Supreme Court decision. Since non-contact offenses such as possession receipt, were not subject to registration until 2006. My 2005 offense should be exempt from registering ex post facto in Pennsylvania, North Carolina, however, refuses to recognize the punishing effects of SORNA. My question, how will my out of state conviction of 2005 affect me as far as the registry goes? Well, I still have to register even though it's unconstitutional in Pennsylvania, what happens if I cross state lines or move out of state? Is there ever a time where it is no longer a concern? Or do I

have to stay in Pennsylvania for the rest of my life? I have seen the push by the government for a federal duty to register as a way to circumvent the states. If I register at a state first before Pennsylvania says I'm exempt. Will I then be removed from the out of state registry or while I have to maintain it for the next 10 years? I would be very grateful for any light you can shed for me on this subject. There's a lot going on there, Larry.

Larry 23:25

Yeah. And he's not gonna like the answers I give him. But I'm actually he says no. But he says nobody can answer the question, I can actually answer this question very succinctly. And accurately, he needs to stop thinking about Pennsylvania, Pennsylvania is only relevant if he lives there. So if he's not choosing to live in Pennsylvania, remember, when you take your car across state lines, you comply with the registration requirements in the state where your vehicle is moved to. And this case is the vehicle is you and if you take yourself to another state, you will register according to what that state's requirements are. Now, it could be in some instances, the state that you move to may incorporate the requirement to make it approximate what you had in the previous state example, Utah does that they say you will register for 10 years, or the amount of time required in the state where you were convicted to make sure you don't you don't receive a benefit for moving to Utah. So the Judge just simply apprised him of his duty to register as a sexual offender. But he gets to North Carolina, North Carolina has their own registration requirements. They have their own system in terms of the duration, they have their own removal processes. And if you're going to live in North Carolina, you will be subject to what North Carolina requires. So I've answered that part of the question. If you live in North Carolina, you will comply with North Carolina law and terms of what happens if you if you move to another state. If you leave North Carolina. You will comply with the state that you move to so I've answered that part of the question, yep. about whether it's unconstitutional in Pennsylvania, it was ruled unconstitutional, but they have since reconstituted a registry, that has not been ruled unconstitutional. So if you were live in PA, you might very well have to register there. His argument is that his crime of 2005 occurred prior to when they, when they did their massive amendments that caused the registry to be vulnerable. They had many they had a registry 2005 believe they had a registry since the late 90s. All states did. But if he if he can live without registration, in Pennsylvania, if that is in fact true, that is exactly what he should do, because that is the only place where he will be home free. And that still may not make him home free, because they can sense it's a regulatory scheme. As long as it's benign enough that it's not deemed as punishment, they can continue to require him to register in Pennsylvania. So I've answered every single question that he asked, not what the answer is that he likes. But every single thing he asked, there is no federal registry. But if you cross state lines, we're going to get to that later in the main event. If you cross state lines, you will be prosecuted because you have engaged in interstate commerce. And you have not registered in the new state. You have to present yourself for r for registration in the new state, or you've committed a federal offense.

Andy 26:32

Larry, we decided in chat that nobody likes your answers ever. I'm sorry that I'm pretty sure your answers are right. But and that's

why you're here. I think I have a button that does this. Hang on. Wait, I got it.

President Franklin Roosevelt Clip from MacArthur Movie (1977)  
26:46

That is why I am here.

Andy 26:48

Because that's why you're here. Because you're right. And nobody likes it. And let's just touch on that for just a minute. It's a it's a regulatory scheme, similar to car stuff that if you're in California, you're gonna have much more emissions controls than if you're living probably in New Mexico, I'm gonna guess that you have very limited emissions control. That would be correct. Okay, and so you just, Hey, I would like to move my car and you're moving from New Mexico to California. They're gonna say, you got to do all the smog stuff. And you're like, but I didn't have to in New Mexico. Well, sorry, you're not in New Mexico, are you? Same thing applies here that whatever North Carolina says North Carolina says that you have to go to work doing handstands? Well, those are the regulations you have to comply with. And when you move to Pennsylvania, they don't make you do that. So then you don't have to do it because you're not there anymore.

Larry 27:35

That is That is correct. And I wish I could give them the different answer. I wish that we had reciprocity among the states, I wish we had more uniformity among the states. And, of course, I don't wish we had uniformity. With the harshness to southeastern part of the country has the deep south. But I wish that it was not so confusing. And I wish that when you finished at one state, you were finished everywhere. I wish all that stuff. But that's not the way it is.

Andy 28:02

But even again, using the car comparison, you could have a car that is considered a classic and in your state, then you don't have to comply with certain things. You move that car to another state, and then all of a sudden, you have to come back into some kind of compliance. All of that would then still hold true, it is very akin to this kind of thing. But there's that disabilities and restraints part of it, where the pictures on websites potentially living and work restrictions, potentially presence restrictions, internet restrictions and so forth. I mean, the people in North Carolina prior to the Packingham case, they couldn't be on anything related to social media. This is post probation, all that stuff that you're just a PFR on the website and you can't be on social media. That's how it used to be. That's a disability and restraint.

Larry 28:52

That's correct. And litigation, we may we may have more and more of these restrictions declared unconstitutional, but right now he's gonna have to comply with whatever state he's in and Pennsylvania is not in the equation unless he lives there.

Andy 29:06

Okie dokie I believe then, Mr. Larry, we are on this little piece that you put in here about Iowa. Unless I have missed something.

Larry 29:15

No, that's where we are.

Andy 29:17

So I got I got nothing that goes along with this one. I so Iowa, first of all, what is an HF?

Larry 29:25

House file?

Andy 29:26

is this related to a house bill or Senate bill? Is that similar?

Larry 29:31

It's the house bill that that has become law in the state of Iowa that prohibits PFRs it just was posted today on the on the listserv. It prevents people that are required to register from for conducting any any childcare, a babysitting services, you'll find yourself in trouble with the law in Iowa now.

Andy 29:55

Alright. Okay, and like you said, just file today's Hey, why did you bring this up?

Larry 30:02

Well, I wanted to, I think I've been harping about when these things pass. The governor is going to sign them. I think I harped about a governor just in the last episode about in Maryland, Governor Hogan, would sign the banishment of minors who had been convicted of offenses. You remember that one?

Andy 30:22

I do. I do. I do.

Larry 30:23

Okay, well, this is the same thing. The governor of Iowa is going to sign this bill. It's it passed the legislature unanimously. Unanimous in the house unanimous in the Senate. And it's been signed by this signed by the governor. And I just wanted to, to make the point when, when these things are passed unanimously, or near unanimously, with overwhelming bipartisan support, which is what you always yearn for is bipartisan support. Well, this had plenty of it, since it passed unanimously. But this is one of those things where the Democrat Party in Iowa is in a minority. And I put the put, there's a there's a picture there of Iowa General Assembly by party, that a look at it, you know that when the the there's 50, senators and our 32 to 80, the Democrat Party only has 18, and you'd like it. The house, it's 59 to 41. So it's almost 60 40. And in the house. So explain to me, if you're in the Democrat Party in Iowa, and there's a proposal like this, and there's absolutely nothing you can do to stop it nothing. Because you're in such a minority. Explain to me why you would oppose something like this, even though you might not believe it's good public policy? Because there's nothing you can do about it. And all you do is you look at that up at the top half of there, where there's only eighteen members of Democrat Party, all you do is make those 18 seats vulnerable to the attacks from the right, they'll say, and this person doesn't even deserve to be in the Iowa Senate. They voted pro sex offender on House Bill 710. Last year, or whatever the next election. So this is why people should not expect the minority to save you wait for this something this controversial, and there's no political gain in it, and only a political loss. Whatever the minority party is, I don't care if it's the Republican Party, we can flip this

over in the states for the Republicans are irrelevant. California would be an example that where the Republicans are totally irrelevant. They have such small numbers, there would be nothing that they would do or nor would there be anything they would try to do. Because it would be a wasted effort. There's almost veto override majorities here. Not quite but almost. If but if but since it was unanimous, you don't need to talk about a veto. But if every single if every single Democrat voted against it, you could almost still pass these with the margins that they have. So there, I just want to do a little civics lesson, you know, folks, politics, for example, or here's an example of you let it get to the governor, the governor signed it, you have to kill this stuff before it makes it to the governor.

Andy 33:22

And killing it means what committees mean? So where you're going?

Larry 33:27

You either have to make it in a committee where you can live with it, or you have to kill it. And people criticize me for trying to make something where I can live with it. Because I'm a sellout at that point. Well, if I was gonna, if I was going to have a choice between having every PFR in the state of Iowa, not allowed to babysit, or do any type of childcare, or narrowly tailoring something, if I concluded that this was going to pass and there was nothing I could do about it, I would feel better about if we could narrowly tailor it. So that it would only target those where there might be a legitimate concern that they shouldn't be engaging, and childcare. But see, I would take I would take pies at my face at all sorts of criticism, because I would be a sellout at that point because I would be negotiating with the system. But which is better to negotiate and get something that's more narrowly tailored or have this blanket ban that they have in Iowa Now you tell me.

Andy 34:23

I hang on, I got a clip for this. What are you trying to do there?

Larry 34:28

I'm trying to win the game and I would consider it a win. If I could, if I could have narrowly tailored this bill. And when the political realities, you have to deal with political reality. I would have gone to leadership and said are you are you people going to pass this? Yes, sir. We're going to have to pass it. Okay. I want to try to narrow it a little bit and bring it within the contours of constitutionality. And I would have enough respect that they would actually listen to me and say we need to narrow this a little bit. But again, we don't have much of an advocacy in Iowa. This is what happens with your bipartisanship, you had plenty of it here.

Andy 35:06

And we have a, we'll have a link to the show notes of this house file. It's a house file 710. If you want to go find it in the show notes. Anything else here before we go on to the main event,

Larry 35:19

I think I'd beat that dead horse. It was it was a civics lesson, all I was trying to do.

Andy 35:26

Ready to be a part of Registry Matters, get links at Registry Matters.co. If you need to be all discreet about it, contact them by email Registry Matters cast@gmail.com. You can call or text a ransom message to 747.227.4477. to support Registry Matters on a monthly basis, head to patreon.com slash Registry Matters. Not ready to become a patron. Give us a five-star review at Apple podcasts for Stitcher, or tell your buddies that 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. This one is a recent decision from the Supreme Court. Is that where you want to go? Correct.

Larry 36:21

Let's let's do it that way. We ran out of time we can skip some articles.

Andy 36:25

Yeah, yeah, of course. Of course. It's a case of Alaska versus Shawn. Right. Larry, I did read all of it. It was pretty short. I can't see what it has to PFR is except where Wright is a PFR. And he took him before the Supreme Court. It's all about habeas corpus, sigh corpus, I won't like trash that word that bad. It's habeas corpus, which nobody ever wins these days. I don't know anybody that ever files any. And I do see that the Supreme Court reversed the Ninth Circuit decision, which is a favorite thing to do. What is this case about in Haha, here it is for you one minute or less?

Larry 37:00

Well, I'm not sure I can do it in a minute or less unpack all these issues?

Andy 37:05

Well, you're gonna have to get on that.

Larry 37:08

So Well, hopefully now you see the reason why we have the article from the New Yorker titled The destruction of defendants rights. Shaun Wright, was convicted in Alaska back in 2009 of sexual crimes. And he completed his Alaska sentence and then he decided to move to Tennessee. And he chose after arriving at Tennessee to ignore his registration obligation. And guess what he found himself being prosecuted by the feds, I just mentioned that if you've traveled interstate commerce, the feds convicted him or he pled a failure to comply with his registration obligation. And he received a sentence of time served plus five years of supervised release. I'm just guessing that he found supervised release to be somewhat of a bummer. And he decided to try to undo his Alaska conviction utilizing a petition for a writ of habeas corpus as the vehicle he reasoned that if his Alaska conviction could be undone in a habeas proceeding, his federal conviction for failing to register would be voided. Because the predicate conviction would no longer exist, which would mean he would have no registration obligation. So that's what this case is about.

Andy 38:16

Alright, so I see where you're heading, you're itching to explain the limitations of federal habeas, particularly in view of the restrictions imposed by the anti-terrorism and effective death penalty act of 1996, commonly referred to as AEDPA. Is that how it would be pronounced AEDPA.

Larry 38:33  
That's fine.

Andy 38:36  
I've heard you pontificate about the harm done by AEDPA. Anti terrorism you have the acronym there wrong. And now you have this article from the New Yorker published in 2015.

Larry 38:48  
Well, I did suggest the article so the audience will actually see that it's not just me saying this that that AEDPA is bad. So I'd like to just read the quote one of the quotes from the article, this law gutted the federal writ of habeas corpus, which, which a federal court can use to order relief of someone wrongfully in prison. It is often called the Great Red because of its extraordinary power to protect the liberty of individuals. In the 1960s, the Supreme Court expanded the law of habeas corpus as a protection against unfair treatment of defendants at every stage of criminal process, from arrest interrogation through trial and sentencing, especially in cases of death sentences. This expansion was controversial and under Chief Justice William Rehnquist, by the way, appointed by President Reagan. The court later restricted the availability of the writ, but the protection that the rate gave even when it was limited was indispensable. A dramatically high percentage of individuals sentenced to death had their sentences reversed. Owing to errors by trial courts. That is a quote from the article. I encourage everyone to read that the entire article.

Andy 39:57  
This is from the Ninth Circuit and I'm guessing you have a point that you would like to make about the ninth circuit's view on AEDPA. Before we get into the actual case at hand.

Larry 40:08  
Yes, I do. You've heard me mentioned Judge Stephen Reinhardt, who's now deceased. And he served on Ninth Circuit for many years. And he wrote the following, and I'm going to quote again from this article. While AEDPA was misconceived at its inception, the deeply conservative Supreme Court has repeatedly interpreted in the most inflexible, unyielding manner possible, so that constitutional rulings by state courts are nearly unreviewable by the federal judiciary. The appeals courts including the Ninth Circuit, beautifully follow existing Supreme Court law, the Supreme Court often this is Judge Reinhardt. "The Supreme Court often reverses us not for failing to apply the law it has previously enunciated, but by creating new previously undeclared and Extreme Rules this that serve to limit the ability of federal courts to enforce the rights embodied in the Constitution" end of quote by Judge Reinhart.

Andy 41:06  
What should Wright have done instead of filing the habeas,

Larry 41:09  
By the way, this was passed in 1996, in the glory days of Newt Gingrich and the conservatives that had control of Congress. And this, this is a lingering effect. And we're also gonna talk about the prison litigation Reform Act, which was also passed in the glory days of the 1990s. But what should he have filed instead of the habeas corpus?

Andy 41:30  
Yeah.

Larry 41:32  
Well first, he should have registered in Tennessee. Folks, if you have a registration obligation, and you cross state lines, you must present yourself to the new state, they may tell you that their registration obligations are not as extensive. And it could be that they will tell you that you don't have an obligation, but you must present yourself for registration, and let them decide what to do with you. If you do not present yourself, the loop is left open on the state that you moved from, they will notify the feds, the feds have virtually unlimited resources, they will track you down, and they will prosecute you federally. But second, he should not have used section 2254, which is for those who are in state custody. He is clearly not in state custody per AEDPA. He had exhausted his Alaska sentence in its entirety. And he's in federal custody. And he's serving supervised release, which under the expanded definition of custody, that does count as custody, but there's a separate section 2255 that he should have used, because he's not in state custody.

Andy 42:49  
Alright, so you're saying he should now use he should now file a new petition using 2255? That's what you just said?

Larry 42:56  
Well, I said that what the Supreme Court said, if he does that, that's not going to do any good, either.

Andy 43:04  
But it's never setting me up for failure.

Larry 43:07  
Well, I'm just telling you the Supreme Court said if he has a vehicle to ride, it would be 2255, because he's not in desktop for those who are in federal custody. And if he uses 2255, even though they suggested that's the proper vehicle, that won't work, either, because the scope of that inquiry will be limited to the validity of the Federal provision that he's convicted under, which is traveling in interstate commerce. And what is going to happen, then the federal Judge was looking at 2255 they're gonna say you are a person, aren't you? Not? Yes, you can travel. You did travel across from state A to state B, did you not? Yes. And, and they say, well, the law says that you were required to register. And you didn't. So why are we here? So that's not gonna do any good either.

Andy 43:55  
What was that? What did he do?

Larry 43:59  
Well, I don't know what, I don't know what he really can do. But remember, he pled guilty to one count of failure to register under 18. United States Code 2050(a). And since there's no federal registry, right, only was convicted because he traveled interstate commerce and he failed to comply with Tennessee's registration requirements. And, I do have to say that, that this does seem like a light sentence because he was he was sentenced to time served and they're not clear on how much time he had served. But normally you get several years and the federal system. So he got

time served and he got five years of supervised release. And federal prosecutions generally move fairly rapidly. So I'm, I'm not convinced he had a whole lot of time served when he got this relatively modest sentence, but as far as I'm concerned, he's not got a lot of options except for maybe going into state court in Alaska and try to challenge some constitutional aspect of his conviction. But he's not going to get there in federal court.

Andy 45:03

When you talk about vehicles, can we circle back to that? We talked about this almost like from the nexus of our relationship of using the proper vehicle a writ of mandamus was a vehicle a type of vehicle, what do you mean by this term vehicle?

Larry 45:19

Well, when you when you file seeking relief, the petition that you file has to be the scope of it has to be broad enough to allow you to seek the type of relief that you are asking. If you file a petition for restitution where you are seeking possession of the property a petition for a writ of restitution is the proper vehicle. If you don't file a petition for writ of restitution, if you just file a civil lawsuit saying that you won't damages from the person, the court isn't allowed to give you the writ of restitution, which is the order directing the law enforcement to go out and dispossess you. So you would not the scope of that relief would not be available. When you're filing under, under when you're filing a petition for habeas corpus after the 1996 amendments. They've the AEDPA puts severe restrictions on what type of relief can be granted, what claims are cognizable and what the standards are. And you have extreme tight time limits. And you have deference to the state courts, unless it's clearly contrary to US Supreme Court precedent. And you have all claims are not cognizable. Like for example, His he wasn't in custody. So he lost out simply because he was not in custody, as required by a by the anti-terrorism effectively effective death penalty, it was not in state custody. So you cannot file a petition seeking relief from a state court conviction where you're not in custody in some form, or at least expanded custody. And he so therefore, he was not riding the correct vehicle, the correct vehicle for him to possibly seek relief is the section that permits the person in federal custody. But that's not going to go into for either because the scope of examination is going to be so limited to whether or not he was properly convicted of the Federal offense, they're not going to get into the Alaska conviction. I would be very surprised. So he's gonna end up he's gonna end up with no relief when he files the right petition. But I know I'm not supposed to say that either.

Andy 47:23

Um, we need to take a tiny little detour, there was a conversation in chat going on about using the car analogy for registration. And it certainly, it certainly ties into this case from the Supreme Court that we're talking about. But a car is a thing that you registerer and we are people that are registering. And last time I checked, we're not cars, you're not a car, are you, Larry, but there's a distinction there isn't there. We're not registered people.

Larry 47:51

There's distinction in terms of what we're registering, but the only distinction is minor. The fact is, it's still a civil regulatory scheme, and the state that you're going to move into whether you're moving the car or your person, you will comply with the

regulations, the regulatory scheme as exists in that state, you don't get to bring the regulatory scheme from the state that you came from with you. And impose that on the receiving state that's receiving you now. And it's not the receiving formerly interstate compact. So that's really not a good term. But you don't get to change the rules of that state. If you don't like the rules simply don't go there.

Andy 48:26

Yeah, the point that I wanted to get is it's a it's a it's a sexual offense register. It's not a sex offender registry, it's a sexual offense registry, we're registering the offenses in the States, I real religious person attached to isn't that don't Haven't we talked about that recently?

Larry 48:41

Well, now that is there's an organization that's trying to change that to be less offensive to say, the sexual offense registry, but try going and registering defenses and see what they say.

Andy 48:54

No, I understand that. But I thought that it was I this is what I was trying to the point I was trying to get across is that we're registering the offenses and not the people, I realized that there's a person associated with the registration of the offense, but the former is the offense and then the person is attached to it's kind of like registering the car and you have a VIN number. I don't know if that's the right analogy.

Larry 49:15

Well, I don't I don't quite follow you because they're registering you. They're not registering the offense. They're registering you is your DNA is your your fingerprints I take it's your it's your everything, but they take your photograph.

Andy 49:29

Then I'm mixing up that I get like you just said there was somebody that's trying to change it to be a sexual offense registry that's not what it is currently. I got it.

Larry 49:40

Well, I get I get the reason for it. Because it Yeah, you have offended it. It assumes that you're still offending, if you say the sexual offender registry. I'm sure that that's in the past. Hopefully that's in the past.

Andy 49:55

The individual is also being very Debbie Downer as the term that he used. For that we're not going to have any progress. And Brenda and I are trying to give him some level of optimism that things are moving. Maybe it's one or two steps forward one step backwards. And you certainly have successes in your state. Not always but mostly.

Larry 50:16

Somewhat Yes.

Andy 50:18

And people around the people that do fight, I couldn't remember the attorneys name in Colorado. I cannot call in Kelly, they just

came to me and said, is that that is an attorney who won the case? Who was the one that won that case for like, four people?

Larry 50:36

That was wasn't Colleen but her name is escaping me also.

Andy 50:42

Okay, there is another attorney over there. That is doing work. And certainly you support and help however, however, those things go about. I suppose. Is there anything else you wanted to cover on this case before we move out of that section?

Larry 50:57

Now we can go the prison litigation Reform Act.

Andy 51:02

Prison litigation Reform Act? I don't know which one that is? Okay.

Larry 51:10

Yeah, and this is. So yeah, it's too long for us to get into great detail about it. But what I want to make a point that this is, this happened in the same timeframe, as the restriction on habeas corpus. These are bad laws. And if you read the article from the appeal, they go into great detail tell you how difficult it is to win a lawsuit against prisons. we claim that we want to see prison conditions improve, that we want to see reforms in prison conditions. If you truly do mean that, then you will work to try to repeal the prison litigation Reform Act, because it's very difficult now that the volume of cases has plummeted since 1996. And the successful cases has even plummeted beyond that. And prisons conditions, I think most would say have not gotten better since 1996. So if you if you truly do want reform, this is bad public policy that was put through in the 90s. That needs to be revisited, just like the anti terrorism and effective death penalty Act, which no one could vote against. Very few did vote against it. Because how could you oppose this was this was driven by the bombing in Oklahoma City by McVeigh. And they didn't have a death penalty that bothered them to know that they didn't have a death penalty. An effective death penalty at the federal level. So it was hijacked during the process to include the restriction on habeas corpus, because the Judges were saying they were being inundated with all these state claims. And the conservatives said that we have perpetual litigation. And our state courts are not being respected for the hard work that they do. So that provision was added into it. And those were all bad laws. And we need to work on changing those laws.

Andy 53:05

And this article that we're talking about came from the AP second chance, Alabama approves expungement bill, but it's only for low level crimes, to have their records wiped clean. Just want to make sure people knew what we were talking about and where we were going with that.

Larry 53:21

We just we're just we're just not moving to Alabama. We were talking about the prison litigation Reform Act previously, but now we're moving to the Alabama expungement bill.

Andy 53:30

Well, then I was talking about the wrong one. All right. Well, then let's talk about the second chance Alabama versus expungement bill. Tell us this is about Alabama, moving low level crime that apply and have their records wiped clean, and Governor Kay Ivey has signed it, Why'd you bring this one up?

Larry 53:49

It's positive news. And we have so little of it that I thought it would be worthwhile is certainly a very narrow, but it's a step. And it's a positive step, unfortunately. And guess what? If you read the first paragraph, notice the third paragraph down. You see that Alabama, decided to exclude PFRs, violent crime, sex offenses, and major traffic convictions will not be eligible for expungement.

Andy 54:16

So, of course, of course,

Larry 54:19

So but I would encourage people in Alabama, the names are here, of the of the drivers behind this bill. Senator Linda Coleman from Madison, and Representative Chris England, from Tuscaloosa. Those were the key drivers of this bill, I have conversations with them and find out if they feel like that they can come back and expand upon it. It said the bill passed the Senate without a dissenting vote. The house of representatives approved the measure on a 57-38 vote. So it was not nearly as strong and the house and I didn't dig into what who the 37 were that opposed it but Don't let this be the end of it. This is the first step.

Andy 55:06

Right. And then we will move over to an article from Mississippi says Mississippi prisons end contract with controversial food provider from CBS News. A company of a company accused of serving rotten and spoiled meals to inmates a Mississippi is no longer providing food and the state's correctional facilities. Larry, this is an amazing victory that people aren't going to be eating rotten food. That's amazing.

Larry 55:33

So when the state began a new three year deal with a company Merchants food service on March 1 to provide meals to 15 prisons. But But I can't believe from the description of this. This was pretty bad stuff that they were serving. But remember.

Andy 55:53

We've talked about stuff like this more than a single or double time that this is just this has got to be probably the second or third largest resource consumer for a prison budget is food and any place that they could scrounge a couple bucks away, boys will keep the food, maybe we'll keep the cooler a little bit warmer, so we can save some money on the electricity bill.

Larry 56:17

So well, Mississippi has certainly had its share of notoriety for bad prison conditions, and violence. And I think the governor blamed it on cell phones. Remember we talked about that? A year ago or so about he said that the problem was cell phones. You remember that?

Andy 56:35  
Yes, Parchman.

Larry 56:36  
Yep. So. But, again, folks, this reflects back really to us, the people, we the people, if you made it clear, to the people you elect to represent you in Jackson, that you wanted your inmates treated humanely, that you wanted them to have good food, and you want them to have rehabilitation services, if you made that clear. That's the way it would be. But you do just the opposite. When you look at the mirror each morning, remember it's you that says that you don't care what they have to suffer that they should have thought about that when they did their crime, that I'm out here working, paying taxes, killing myself, and these people in prison are living better than I do. They have to have three Hots and a cot they have free health care. Remember, these politicians that are that are representing you are reflecting you.

Andy 57:33  
Yeah, I'm with you on that. We could do better if we wanted to. But we have decided not to.

Larry 57:39  
Try running for I think I said last episode try running for, for state office, on a platform if you want to make prisons better and tell me tell me how that goes for you.

Andy 57:51  
All right. And then from the Detroit Free Press, the Supreme Court is wrong. Even children who killed don't deserve life without parole. These sentences ignore brain research and are tainted by racial bias. Until last week's opinion, the court was headed towards closing the door on them. Geez, Larry, why didn't you put this in here? Well,

Larry 58:12  
I think it's a good thing to follow up on last week's episode, because I reminded folks that that the Supreme Court had strayed from previous precedent and said that this conservative court 6-3 with all the conservatives being in lockstep said that, that previously the court had it wrong when they said juvenile life without parole was unconstitutional without an incorrigibility finding. Well, this is an opinion of the Detroit newspaper, free press that says that the Supreme Court should legislate from the bench. I'm not expressing an opinion, folks. I'm just asking you. Do you want the Supreme Court to come in and save you from this? Or do you want the state of Mississippi I believe it was I think it was Mississippi, because that they were overturning the precedent that had been previous from Alabama. Do you want the Supreme Court to come save you from yourself? Or do you want to do the right thing and change the law so that people in Mississippi a juveniles will not be subject to life sentences without parole? whose responsibility is it? I'm posing the question. I'm not expressing a view at this point.

Andy 59:28  
Should they email crackpot at Registry Matters? May I take a stab?

Larry Speaker 59:35  
Sure.

Andy 59:36  
We would want them to be handled as close to the people as we want to, unless we deem it to be so repugnant, that we want it to be that way for the entire country. And that's where either federal legislation or something like this gets stepped in to with the Supreme Court. But we would want as many laws to be handled as local as possible because that would be the governor and your city council. Whatever your state, your local representatives, those were the ones that know the local issues and know the community and the attitudes of the peoples.

Larry 1:00:10  
Well, now, let's just reflect on some of those Scalia clips. The something simply because it's repugnant magically become unconstitutional.

Andy 1:00:20  
Clearly not.

Larry 1:00:22  
Okay, well repugnant, then it's not just proper standard. If you are following the Scalia model, he says, you know, that, that the people certainly are not required to impose the death penalty, and not the death penalty, life without parole. And he said the same thing about the death penalty, they're not required to impose the death penalty. They're choosing to impose the death penalty. He says that there was nothing in the framer's mind about having a prohibition about the death penalty against using death penalty. Same thing about this. Nobody, in the constitutional making process ever thought about putting limitations on what type of sentences could be handed down by the people, people's representatives. So do you want to invent this and the Constitution? And have the court decide what the proper punishment levels can be? Or do you want your elected officials which is it? And like I say, I'm posing the question. So don't write me say that let Larry said this, because I'm only asking. I'm trying to promote intellectual honesty, because it seems like we'd like the court to step in and do things we agree with. And we have what we can, well, we can't win it through the legislative process, then we want judicial intervention. Right? And then we get mad about we get mad about judicial intervention, if they intervene in a way inconsistent with what our beliefs So which is it folks, do you want the courts to save you or do you want to save yourselves.

Andy 1:01:45  
We need them to be super legislators when we need them to be super legislators otherwise stand back?

Larry 1:01:51  
I see.

Andy 1:01:54  
Alright, one last step. article and we are out of here. This is Westmoreland County prison to pay inmates at prison to get Coronavirus vaccine. Oh, sweet, they're gonna get some kind of little bonus like 25 cents or something. They're gonna get \$25 in commissary credit, if they received the vaccine, that's amazing.

Larry 1:02:12

It is and I'm not sure where that county is. But being that you know, the state inside out what county what county seat it was.

Andy 1:02:20

Hang on. Westmoreland. County PA. Yeah, I'm using Google as we speak. To find out where it is someone in chat if you know really quick, tell me where it is. Oh, God, Google be faster, please. It is a like just east of Pittsburgh, it looks like.

Larry 1:02:41

so well. I put it in there simply because I think it's novel. I think it's creative. And I like it. You would have to think that since there's hesitancy on the street people, including me, I've had some hesitancy that's my brother had the reactions he did to the to the Maderno shots. I've had some hesitancy and this modest amount of money. If it overcomes hesitancy and makes the facility safer for the inmates as well as the staff, I think it's very creative. \$25 isn't a whole lot of money. And if you can push someone in the right direction by that isn't that a great thing?

Andy 1:03:19

Sure. 25 bucks is it's not certainly it's not a lot of commissary money, because I bet your soups are like 75 cents by now. But it would I would do it in a heartbeat. I got my second shot a couple days ago. I am pleased.

Larry 1:03:34

So I would bet a lot of inmates that are on the fence would go in favor of the \$25. And then we achieve the herd immunity at least within the institution. Yeah. So I think it's a great idea. You folks that are listening to us and reading our transcripts on Westmoreland County tell us what \$25 will do for you.

Andy 1:03:54

I imagine we get pretty much anybody because the way JPay is as far as whatever the organizations are Securix that is running commentary for everybody. It's got to be 75 cents to see if it doesn't go that far. But it's not zero either. So I would do it, I definitely would do it. So there we have finished up with everything.

Larry 1:04:15

Yeah, we got some acknowledgement stuff.

Andy 1:04:18

We do we do. We had two subscribers actually directly to the transcript service. And the first one was Shawn, different Shawn that we covered earlier. And he sent in a letter and said we'll get to we'll get to that letter in a future episode. And then also Douglas. Douglas said, I want to thank you people for sending me a transcript from Registry Matters 171 and everyone in chat, you have to take a quick shot because we said you people again.

Larry 1:04:45

So All righty, well, we'll see our transcript our we're going to grow this transcript distribution is going to soon surpass every prison publication.

Andy 1:04:58

That would be Oh man, we could be bigger than Prison policy prison legal news, excuse me prison legal news that I'm planning.

Larry 1:05:04

I believe it's going to happen within three years.

Andy 1:05:08

That's a pretty lofty expectation there, but I'm up for the challenge. With that, we will shut it down, Larry. And I think everyone can go find all of the necessary the pertinent information over at Registry Matters.co. You'll find links to everything if you want to sign up on Patreon that's patreon.com slash Registry Matters. And if there's nothing else, Larry, I will bid you a happy, wonderful, good night in the rest of your weekend and I will talk to you soon.

Larry 1:05:35

Thanks, and I appreciate being here again.

Andy 1:05:39

Take care, buddy. Good night.

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