



Registry Matters Podcast

Episode 178

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Andy 00:00

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Larry 00:28

Fantastic. Glad to be with you tonight.

Andy 00:30

Wow, you sound excited. Are you feeling better finally? You got pot brownies, didn't you?

Larry 00:35

Not yet.

Andy 00:38

Any movement? Have you gotten a prescription? Anything? Are you still on the fence?

Larry 00:43

I'm still working on it.

Andy 00:48

I have a pop question for you that I don't even know if I can frame correctly. But it has to do with there's a case that's going to hit the Supreme Court and we can cut this if you don't want to answer it but there's a case that's about to the Supreme Court. And it has to do with *Roe v. Wade*. And I'm one here's my question for you is I'm hearing that the vast majority of the of the United States is very much opposed to just overturning *Roe v. Wade*. However, we have a very conservative court, probably six of the judges want to, they would probably be in favor of it. Do you think that the opinion of the population, the United States impacts what the judges would do? That's really the question. So regardless of what the topic is, do you think that they take that into account?

Larry 01:31

Yes, marginally they do.

Andy 01:33

Okay, so you think if they feel that *Roe v. Wade*, is bogus, that they would then vote against it. And then and so and even though I forget what the number is, but it's somewhere around two thirds or so of the country is in favor of some kind of right for a woman to choose. Secondly, to then tack on the back of that, that puts conservative legislatures in the crosshairs of being the ones that have taken that right away from women. I'm not trying to go down the politics side of that particular subject, but that puts them in the crosshairs and being very angry.

Larry 02:10

It does, but the people in those states are going to be very supportive of that. Those people who are in those states like Mississippi, where this case originates from, most of the women do not agree with that right.

Andy 02:24

Okay, I'm with you on that. Continue, please, please, please.

Larry 02:33

They do marginally take public opinion into consideration. Because when you talk about a precedent here, are you talking about a 15-year precedent. This was decided in 1973. Since 1973, we have had this ingrained that there is a right to choose, in particular during the first trimester. And there are going to be certainly aware of the disruption they're going to have. And you're going to have, like Chief Justice Roberts (Andy: John Roberts) reminding people about what they're going to do. I'm not saying they're not they're not going to put tighter restrictions on abortion, Mississippi already has pretty strict abortion rules already. I think there's one clinic operating in the entire state, which is in Jackson.

Andy 03:15

Yes. And they keep doing, again, I'm not trying to go down this route. So please don't send me any hate mail over this particular subject. I'm interested in the concept of the justices taking public opinion as part of anything that they do, which I got to say that they should be more or less removed from it. So I kind of agree with your answer that they would, hey, look, it's on the radar of something that they're interested in. But they many of those states are putting in super tight controls over how far the place is from a hospital or whether the doctor has admitting privileges, how wide the hallways are, and so forth.

Larry 03:48

Well, I mean, it indirectly affects the decisions that they make related to our issue. It's got to be very controversial for us to be talking about that issue. But it is important to understand to what extent that they're going to look at public opinion. I think it marginally is considered, but they're supposed to be removed from that they're supposed to be looking at it... the question is, is there a constitutional right? And those on the conservative side would argue there clearly is not there is no nothing that you can argue to in the constitution that provides for that, right? Therefore, if you want that, right, you need to go through the process and put it in the constitution like we've done what 20s or so many times, the Constitution is amended. That's what they would argue. And they would argue that that they are not supposed to be the ones who decide what the constitution should be. They're the ones supposed to decide what it is be.

Andy 04:42

Yeah, I'm kind of in favor of that, I think I am. Anywho. All right. So since that's the way What do we have going on tonight?

Larry 04:52

We have the most exciting episode ever. (Andy: Ever?) Ever.

Andy 04:59

How is it gonna be the most exciting episode ever Larry?

Larry 05:03

We're going to be discussing how the AWA defines a tier three registrant, because we touched on it, but we really didn't go all the way through it the last two episodes, so we're going to go back to

it. And I'm actually going to read from the Adam Walsh Act. And then we're gonna come back to this case from the Seventh Circuit Court of Appeals from Indiana. And then I have a funny point to add about the case from Montana that we talked about last week that's on appeal in the Ninth Circuit. There's a guy on the NARSOL website that is going crazy, insisting that that had nothing to do with homosexuality. But yet, I quoted from the judge who made the decision, who said that it had everything to do with that. So I find it find it very strange that you can look at direct quotations, and say that it had nothing to do with homosexual sex. That is so bizarre. But anyway, we're gonna have some questions, including one we carried over from last week, and so we're going to be busy.

Andy 06:01

And then we have like some, like dozen articles that we're never going to get to, but we'll think about them.

Larry 06:06

So that question is, what will they do if I leave the United States while under supervision? That's the essence of the question.

Andy 06:13

Okay. And I think where we will start then is about the tier three designations. And I would like to, like you said, oh crap, I forgot to cover this. So we covered another part of this person's questions, but not how a person what I think this was the alternate ways that someone could become a tier three designation, I believe in Virginia.

Larry 06:34

Yeah, and I'm just gonna read it directly from the Adam Walsh Act, what a tier three offender is. This is, remember, we've talked about this two previous episodes, you can go beyond this. But to be deemed substantially compliant, you need to do at least this. And under the federal recommendations, a tier three offender means a sex offender, whose offenses is punishable by imprisonment of more than one year. So that's generally going to eliminate all misdemeanors. A tier three misdemeanor would not have to be in tier three. I'm not saying that they're not. But if a tier three only has to be crimes that care more than a year, we just dropped the whole misdemeanor universe from the tier three, right? (Andy: Yep.) Okay. Okay. So let's continue: it's comparable to or more severe than the following offenses or an attempt or conspiracy to commit such an offense. (1) aggravated sexual abuse, or sexual abuse as described in sections 2241 and 2242, of title 18 of the United States Code; or abuse of sexual context, as described in Section 2244, of title 18, United States Code against a minor who has not attained the age of 13. So that means if you've abused someone under 13, and that's what I keep telling people, this universe is fairly narrow. It involves kidnapping a minor unless committed by a parent or guardian, or occurs after an offender becomes a tier two offender. That's what they recommend. So misdemeanors don't need to be in tier three. Now in Louisiana, if they even have any misdemeanor sexual offenses, since everything has to register for life in Louisiana. Clearly, that's a tier three, even though I think Louisiana puts tiers levels on, you don't get any benefit from that. You still have to register for life. But it's a fairly narrow universe of of tier three, but the states have gone beyond that. So that's really all I wanted to say was, I want to read this and we can make it available in the show notes.

Andy 08:54

Sure. Okay. And let's see here, I think then are we can go over to the listener questions that were written in.

Larry 09:03

Sounds good.

Andy 09:05

Okay, great. So this one had some background information. But so this one continues. This one is from Sean says:

Listener Question

With that being said, I get released in about eight months, I just applied for my British United Kingdom passport, as I'm a dual citizen, as well as my brother. I plan on leaving from Wisconsin, direct flight to England on my British passport. As a British citizen. I know from Registry Matters 175 not to leave from any other state or to or to land in any other states otherwise, that would be interstate commerce, and a new fed case. I guess what I'm wanting to know is what all can I be charged with for leaving the United States to my other country of citizenship, just failure to register? Do they extradite PFRs for that? Couldn't I seek asylum as a PFR due to the fact that Wisconsin PFRs could possibly be civilly committed, which most European countries don't agree with. As sad as it sounds, I'm not worried about doing more time. In fact, knowing once my five years of extended supervision is over, I'm free to leave the country. I actually wrote to my sentencing judge and asked him if I could just sit the full 10 years off right away at once. So I could leave a little legally leave the country to be with my dad, brother and granny in England. The judge said he couldn't answer my question and suggested I write to my probation officer. So I wrote my probation officer and asked her if she could pre revoke me, that's a funny term, she could pre revoke me, so I can do all my time now. She said, I need to contact my sentencing judge, as she legally couldn't let me revoke myself from prison. I just want to be with my family in England, I don't know how many years left my granny overseas has and how much longer my dad will be around as he's had heart attack and stints already put in. All I know is I no longer have family in the US, and that I've been in and out of jail since I was 19, now 29, and I've never even made one year of probation. So it's not realistic to expect I make five years of extended supervision, especially with no family support this time. So let me have it. Larry, what are your thoughts? What do you think will happen? Will England extradite me for being to being a British citizen? Will the US come for me over a failure to register? Thank you very much for your time, Sean, and I plan to renounce my citizenship once in the UK.

So let us have it, Larry, what's the what's the skinny gonna be?

Larry 11:27

Well, we're not going to touch the renunciation of citizenship, because I do not advise that anyone ever give up the United States passport, ever.

Andy 11:34

We talked about that kinda like, what five weeks ago? And that was your same position, then.

Larry 11:39

Yeah. And I can't recommend that. I would find that appalling. But he's got actually two different angles within this question. If he were to have totally be completed with all his supervision requirements in Wisconsin, that's one scenario. The other scenario would be if he hopped the flight, and left the United States, while still owing Wisconsin that five years, that's another scenario. So if he were to leave, with Wisconsin still being owed supervision, I will absolutely guarantee you this: Wisconsin will put out warrant for you. They will put out a warrant for you, and they will seek your return to the state of Wisconsin, and I don't care where you are, they will want you back because you're a sexual offender. I don't agree with that. But that is what they will do. And a person might go to a country that would refuse to extradite them. England will not be one of those. If he were to go to England, and Wisconsin wanted him back, I would just about bet you that the United Kingdom would honor that extradition request. So that's what I would say on the first scenario. The other scenario would be that he extinguishes that five years of supervision, and he only is obligated to register. Well, what we've learned from that, is you have an obligation under federal law to notify in advance of international travel, and I think United Kingdom would be considered international travel. Would you agree?

Andy 13:12

last time I checked, oh, yeah, they are definitely not part of the umbrella of the United States of America. They're not a territory.

Larry 13:18

Therefore, he would be obligated to notify the US authorities that he's going to travel internationally. Being that he holds a passport, I would just about bet they would admit him. If he has that passport at the time he seeks admission, they will admit him. If he's done that notification, and he's complied with US law. And they've notified British authorities who choose to admit him. I think he's home free. But if he doesn't notify them, US authorities will seek his extradition. I think we've learned that back in the Philippines, many, many years, three or four years ago, however many years that case was where the person went to the Philippines and they didn't tell US authorities that they were departing and they were seeking his extradition from the Philippines.

Andy 14:02

I think he was from Kansas. The person left Kansas. And one of the Supreme Court justices said, so the person left, and we went and got them back? And this is a person that we don't really want here. Why would we do that? But that's what they did.

Larry 14:17

And that's what they would do.

Andy 14:19

Yes. Especially with a nation that is that much friendlier. I mean, you could call us like bosom buddies with the UK I would think.

Larry 14:26

yes, I've had that discussion with law enforcement about a person our state was extraditing from South Dakota, I believe it was, and I said, Well, why would you want to bring a person back from South

Dakota. If they're offending, wouldn't we be better off if they're offending there?

Andy 14:44

They're not going to show up on your statistics on some kind of blotter if they offend in South Dakota.

Larry 14:49

That's right. But see, that wasn't that way. They looked at it. They looked at it was a caller for them, meaning a catch. They looked at and we're gonna go to bring a person back. They're gonna get some jail time because they didn't come comply with the requirements that notifies that they were leaving the state. Therefore, we're going to have a felony conviction. And it boosted statistics for our unit that we've apprehended a dangerous person. That's what they would hang their hat on. They wouldn't care about the greater good of the community, the greater good of the community. If the person is as dangerous, as we say PFRs are, then we would want them to be offending in South Dakota, I would think, wouldn't you?

Andy 15:26

I, that sounds reasonable.

Larry 15:28

I wouldn't want them to be offending at all. But if you are offending, I would prefer you offend in another state.

Andy 15:36

That sounds legit to me. But again, that's not what we do here. Okay, so let me let me throw this out there. And I realize the UK is not Germany, but there's that guy out there. And he has a YouTube channel, the name of it is escaping me, but the person's name is River. And he, as I understand it, he like, got himself out of the US and got himself to like one of the neutral countries like a Switzerland kind of place. And then he got himself to Germany. He's claimed political asylum there because of civil commitment stuff in Florida, as I understand that could have some of the details wrong around the edges. And he is safe in Germany at the moment and is seeking political asylum for these human rights violations for the way the civil commitment stuff is. Kind of what Sean here was saying, instead saying about that they disagree with the registry stuff in the United States.

Larry 16:32

Well, that's a difference of whether the United States will seek their extradition or whether the United States will succeed. I mean, we've had Snowden, for how long? (Andy: Oh my god, like 12, 10?) But that guy he's asking, will they seek his return? Absolutely, they will seek your return. If you leave Wisconsin, they will put up a warrant in the NCIC. It will be, they do that in in layers like statewide regionwide, national or international, they will put out a warrant that says anywhere to bring you back. Now, when actually you're found in another jurisdiction. They do look at cost. They look at those factors, and they may decide to forego extradition and hope you get a little bit closer to the to the destination state. If I'm if I'm making an allocation of extradition resources, which somebody in a DAs office, in a prosecution office is charged with that task, if I'm making that decision, and someone is in New Hampshire, and I think they've got ties in Texas. I just might forego extradition when they get picked up in New

Hampshire and say no, we'll pass this time. And hope they get picked up some somewhere closer. Because you don't take advantage of extradition, that doesn't nullify the warrant.

Andy 17:52

Okay, so so they could you're, you're saying they will, they will literally put out the extradition. But then when they say hey, we found this person in the United Kingdom, that's got to be a \$2,500 deal to get a marshal on a plane to escort you back. And all that funds to buy the commercial plane ticket, all this stuff, it's got to be some number of dollars. It's not like you just go send a trooper over there, pick them up in the car and drive them back, there's going to be a hefty expense in doing it and they might go, maybe not this time.

Larry 18:22

That is exactly what they might do. But there will be that warrant out there. And he might decide to come back here, people die in the United States, people, people re enter the United States that think that they never will. And there's a welcoming committee waiting for you when you do that.

Andy 18:37

So the next part of that is not that you're giving any advice, but don't ever come back if you do get out.

Larry 18:43

I would tell people that if you're if you're going to flee the United States, you need to stay gone. But again, I don't encourage anybody to flee the United States. For all of our problems, this is a country that many envy and try to enter, we need to always consider that we have the opportunity within our system of government to change the things in the United States that need to be improved. So rather than throwing our hands up and leaving, I choose to work for change. And I choose to vote for people who campaign on platforms of change. A lot of our people actually vote for the people who campaign against the change that they say that they're for. But that's a topic for another podcast.

Andy 19:23

Maybe some Patreon extra somewhere along the way. (Larry: Sure.) All right. I think I think we're done there. Anything else? You're

Larry 19:30

Sure, sure. We're done.

Andy 19:33

Cool. All right. So this one carried over I think, so this letter came in somewhere in the early of May and it's from Charles, it says:

Listener Question

To whom it may concern, and this is not our Charles, our regular listener. This is a different Charles. I understand that you are by no means a lawyer or can help me with law or help with my case. I just wanted to give you a little about my case and how it is so hard to get any help from anyone when you have these kinds of charges. My question is, how is it that a woman or child can say you abused them or raped them with no DNA, no times, no places, that they can tell you where they are located, all hearsay and be convicted? The only charges you can be convicted on hearsay. I

really enjoyed reading the papers and really hope that something can change. Thank you and I hope change can come soon. And that is from Charles and boy do I agree with his sentiment there.

Larry 20:26

I put that in there because I wanted to talk about hearsay. What he described as hearsay is not hearsay. When a witness testifies against you, that is not hearsay. (Andy: Sure.) And hearsay is when someone says, I heard from another individual. It's not first-hand testimony. But when someone says he did that to me, she did that, to me, that is not hearsay. That's direct testimony, direct witness testimony. Now, the hearsay rule is not absolute. There are exceptions to hearsay, and I can't begin to go into all of them because I'm not an attorney and I don't know them all. But a dying person can make a declaration that would be an exception to hearsay, because they're on their deathbed. And therefore, they won't be here. So there's no absolute prohibition against all hearsay, but what he described is not hearsay. The woman or the child, they witnessed that. And what about DNA? What about for the first 200 years of our existence? We didn't have DNA. Under that theory, nobody would have ever gotten convicted of anything. Where's it written anywhere that DNA is required?

Andy 21:37

You don't have a constitutional right to DNA evidence?

Larry 21:40

Absolutely not. Yeah, if you want that to be a constitutional requirement, then you need to work on changing the Constitution. But right now, witness testimony is sufficient. Now, I agree with him about the no times, no places, and they can't tell you where the offense occurred at with some particulars. That is a real problem. You can thank the victim's advocacy apparatus for that, and the law enforcement apparatus for that. They have worked diligently for many years, to make sure that we actually can't put an accuser on the spot and ask them particulars. We've never been able to badger a child. And the older the child is, the more leeway you get. But when you have an 11-year-old, no court, in my lifetime has allowed you to aggressively attack an 11-year-old witness. First of all, they're not going to have the ability to relate to dates and times and places the way an adult should have. But you have the witness testimony. And if the jury or the judge, in the case of a trial to the court without a jury, if they choose to deem that witness credible, that is all the evidence you need to convict a person.

Andy 23:03

Let me provide a couple of little points. Hopefully I can remember the second one. The first one is, and I'm pretty sure I've shared this before is I sat on a jury trial for something along those lines where a DEA person had taken some pictures of a witness and the witness then was calling a civil suit. And I know that the standard of evidence is different at that point. But we acquitted because we didn't have the photos. So it was her word against his word. And so to what he's saying, he's saying he was convicted, just based on testimony evidence, testimonial evidence. And that's all this was, was testimonial evidence. And because we didn't have pictures, we didn't convict the person, even though we believed that he probably did it. We didn't have any evidence to go on. And I'm with the writer. The questioner about that, in this regard, that without any, any sort of physical corroborating evidence to

support the claim? It's hard to, it's hard for me to fathom that you would convict somebody of just someone saying that he made me feel Oogie or touched me without anything that is something more tangible as evidence.

Larry 24:09

Well without the particulars of that case, I don't know what to say. But you can deem a jury, can deem no witness credible, in which case they should return a not guilty verdict. If the person... remember the accuser has the burden. The victims forget this. You're trying to put a person in a cage, usually for a long period of time. And in order for us to be willing to put a person in a cage, you have to carry the burden of showing that their behavior was unlawful. And if you can't carry that burden, they don't get to go into that cage. But if the jury chooses to give you that benefit of believing you, that's all that's required. Your jury that you sat on, chose not to believe the person without any corroboration, but that was your prerogative. You could have chosen to believe them. The judge when they give you the instructions, say that as I instruct you, being that we don't have any, any corroborating evidence, you should find this person not guilty. Of course, the judge didn't say that.

Andy 25:13

Right. Right. All right. Larry, I think based on the amount of questions that we have to go over on this little shindig that we have going on that we will move over to the Seventh Circuit thing that we have covered already that we need to go back to.

Larry 25:32

the Seventh Circuit thingy. Tell me about that.

Andy 25:35

Well, I'm wondering why you want us to spend more of our absolutely overly expensive airtime on this matter. We talked about it. I think I brought up that Fred had asked a question about it. And then so now we're gonna go back to it again, and we talked about it several months ago again. But here we are doing it, again.

Larry 25:57

We're doing it again because even though we indeed have talked about it, the PFRs won this case in the Seventh Circuit. And we talked about I think in early February, but the decision came out in January. Unfortunately, the state of Indiana was not elated with that outcome. So they appealed. And they requested en banc review. In rare circumstances, courts grant en banc review. And they did in this case.

Andy 26:23

I need to know what en banc and can please please please spell it because like en banc like there's actually there's like a martial arts movie called on bonk. And I don't think it's that?

Larry 26:36

Well, it means that the full court, when these cases go up on appeal, most appellate courts operate, as far as I know, practically all operate on three-judge panels. And with three-judge panels, you seldom get a tie. And so a three-judge panel decided this case back in January. But that doesn't mean that that's the end. That's referred to as a panel decision. And the panel decided to two one with one dissent, that that the PFR case was decided correctly, and

they affirmed the trial judge, but the state of Indiana asked for a full court review. That's what the that's what the en banc is. So all the judges sitting on the full court will make the decision. Now this is not unprecedented, but it's rare. If you remember the case of Michael Flynn, do you remember? I think he was the National Security Advisor, I think for Trump.

Andy 27:38

Yeah for like, for like a month or a couple weeks.

Larry 27:41

He was granted... The US AG was trying to dismiss the case against him. And, and judge Sullivan I believe was his name, did not want the case dismissed because he'd already entered a guilty plea. And my position is, as I believe that the government and the prosecution can always dismiss a case. And the panel agreed with me and I was pontificating about see, I told you so. But then the government appealed. Judge Sullivan asked for en banc review, which was granted, and they reversed the panel. So reversals do happen. This type of review is granted sparingly, but it does happen. So that's what happened in this case, we have a full court review underway right now.

Andy 28:28

Um, so how many judges you were just talking about the number of judges on the initial panel, there were three judges and now they've done en banc, how many judges are on the hunt now?

Larry 28:40

Now as best I can count, there would be 10 judges, the 10 would include the three that were on the panel. We can we can assume that the panel is gonna think the ones who voted in the two that they got it right. So we can figure that to two of the judges are going to be voting the way they previously did. And we can assume that the judge who dissented is going to think they got it wrong. So we start out with seven undecided judges. And from seven, you're trying to reach a total of six. So it's a lot easier to get to six when you've got two to start with than it is when you've got one to start with, but anything can happen.

Andy 29:20

And to clarify, so that I understand cause I'm the the dumb one. The decision was in our favor. So we have two in our favor, and there was one that was not in our favor. So we already have two that would then in en banc, we're looking for the full court to then affirm or what's the word for is that dissent? Is that the right term?

Larry 29:40

They'll affirm or they will reverse.

Andy 29:43

Okay, good. So we already have two in our camp and there's one not in our camp? Is that right?

Larry 29:47

That's correct. That's correct. That's correct. We got two in our camp right now.

Andy 29:52

So if that ratio holds, we'll end up with something of six or whatever and everything would go great. And this has to be a simple majority since there's only 10, as soon as you get to the sixth person is over. This isn't like Senate rules where it has to be 60% or anything like that.

Larry 30:05

You could conceivably have 6-4. Or you can have a tie or you can have nine to one. Who knows, but in order for the decision of the panel to be changed, you're going to need a majority to reverse the panel. So if there are in fact five sitting judges, and they were to tie that would affirm the panel decision.

Andy 30:26

Okay. all right. Let's see here. And what is India, not India, Indiana arguing here? What are they what is their issue?

Larry 30:35

Well, I'm just going to quote from their petition for review. They say quote, rehearing en banc is warranted because the question raised by the majority's decision is whether the privilege or immunities clause prohibits all state laws that have a disparate impact on newer residents is a question of exceptional importance. And that they say, the decision conflicts with precedents of the Supreme Court, this court and at least one other circuit, and threatens to invalidate scores of long standing state laws, and that's on their petition, at page one.

Andy 31:14

Is this at all similar to what we talked about last week in Montana?

Larry 31:18

It absolutely is similar. The Indiana law requires an offender to register, and they use "He's", if he committed in Indiana a registerable offense that gets you on the list, obviously, or committed a substantially similar offense elsewhere, or is required to register any other jurisdiction, which is a catch all clause we have discussed. So that's absolutely what happened with the person from Idaho who went into Montana. Same thing. Now the issues were different there in terms of the particulars we talked about, we don't need to dredge it go through again. But the underlying issue is the same. Can you have these catch all clauses, that the states are fond of having?

Andy 32:06

Now, I know that it'll be hard for you to believe this, but I read the state's petition for hearing and they say that if you have to register anywhere, you should have to register in Indiana. What is wrong with that logic?

Larry 32:19

Well, according to the panel opinion, and to the district judge, District Judge opinion, it's the equal protection clause, that's what's the matter with it. And a state with a more expansive registry, having that law would place you on another state's registry for conduct that would not be registerable in the new state. So that's what's wrong with it. Our country operates under the premise that when you move to a state, you have the protection of that state's law. And that's what's wrong with it.

Andy 32:52

But if you move to a state, and your car is smoky, and smelly, and they have emissions controls, then you would have to follow your new state... If you move to California, which is gonna have the most restrictive emission laws, and your car is belching out stuff, and you came from a state that didn't care. California's gonna say, fix your shit.

Larry 33:13

That's exactly what, but that's the reverse of what we're talking about. If you reverse that, and you move from a state, where you're where you are required to register your vehicle, and inspect it for emissions, and you go to a state where they don't care about emissions, they wouldn't say, well, gee, you had to register it back in that state. So you have to you have to emissions and smog inspect you here, they wouldn't do that. It doesn't carry over with you.

Andy 33:40

Okay, all right. Um, when wouldn't people move from one state to another to seek a safe haven? Now we talked about that on the regular Larry?

Larry 33:47

Well, of course, they would, some would. But how is that different, people move from state from one state to another for a plethora of reasons. One would be avoiding paying income taxes. Another would be no tax on Social Security. Why don't we impose the same obligations as for all new arrivals for the taxes they had in the previous state? Why don't we do that?

Andy 34:07

And would we call taxes a civil regulatory scheme?

Larry 34:11

Yes.

Andy 34:13

okay. So then since this is a civil regulatory scheme, then when they have the same sort of logic applied to them?

Larry 34:19

Well, you get the benefit of the tax structure of the state that you move to. If you move from a state that they'll or you go to a state that doesn't have an income tax? They don't say, Well, you know, we normally wouldn't have an income tax here, but you moved from New Jersey, and they have an income tax. So we're gonna levy one here.

Andy 34:35

Right, right, right. I'm with you. I'm trying to figure out how they would then apply that logic to a PFR moving to their state and saying, Oh, well, you were registered over there. So now you're going to register here. That seems inverse of what we're saying about something like taxes.

Larry 34:50

Well, that's what I'm saying. That's the idiocy of the whole thing. Of course, people would move from one state to another if they could to avoid registration. You would be crazy not to.

Andy 35:02

But people move different counties for property tax reasons. I mean, just inside your own state.

Larry 35:08

People move from one state to another for a whole variety of reasons. And we don't impose the previous state's requirements upon them. We just don't do that because it would violate the equal protection clause.

Andy 35:21

Interesting. So how does this relate to the *Wallace* case from Indiana Supreme Court? And this was one of the first victories. Tell us about *Wallace* and how it's relevant in this dispute.

Larry 35:33

Sure, you've heard me talk about *Wallace*, I think I talked about on last episode or before that the end, and the Supreme Court decided that the Indiana constitutions Ex Post Facto Clause limits retroactive application of registration. And the court held that that SORA, as they called it could not be applied retroactively to someone who had been charged with, convicted, and served the sentence for his crime before SORA was enacted. Because as to such a person, SORA would impose bars that had the effect of adding punishment beyond what would have been imposed when the crime was committed. That's *Wallace v. State*. And for those legal beagles, that's 905, North East second, at page 371. That case is 12 years old now.

Andy 36:30

And I realize that it's not really that simple to make comparisons. But didn't the Indiana Supreme Court permit some level of retroactive application on registration?

Larry 36:41

Actually, they didn't. On the same day that they decided *Wallace*, the same court held that Indiana's Ex Post Facto Clause does permit applying for or retro actively to an offender for whom the marginal effects of the Act are merely to increase the length of an existing registration obligation. And that was in *Jensen v. State*. And that's 905 NE second at 384. Same thing 2009. So they did say if you already had a registration obligation, that they could increase that registration obligation. And that's where it...

Andy 37:17

Because it's a civil regulatory scheme.

Larry 37:19

And that's what the state is arguing in this case.

Andy 37:24

Um, All right, let me try and put this into my own words, the state is arguing that the federal court is bound by existing Indiana Supreme Court decisions, right?

Larry 37:34

That is correct. They say, the state of Indiana, they say that based on existing case law that has that has established a straightforward rule. They say that that straightforward rule is if an offender is already required to register by Indiana or any other state, the Indiana constitution prevents applying SORA

retroactively to him so long as the marginal effect of doing so it's not to increase his obligations dramatically, and thereby impose punishment. And that's what they argued in their petition on page four.

Andy 38:08

What does that mean not to increase his obligations dramatically? So if they go up by one year, that's not dramatically, but if they go up by 50? That's dramatic. Like, isn't that a subjective term?

Larry 38:18

I don't know. I don't think I think that's one of those things that's a little unclear what they mean by that. Clearly they're saying that if you had a registration obligation, that you that you're not protected by the *Wallace* decision, because they on the same day, they decided that there could be a retroactive imposition of registration. But in my skim read of the of the *Jensen* decision, it's not clear to me what the marginal effect is. So I guess that's what is going to become a contentious dispute of this in this case now, because what is marginal? If you have to register, and you merely have to mail in a form, which I don't think Indiana has ever been that way. But if that's all you had to do is mail in a form, whether you had to mail in 20 of them, or 10 of them once a year. That's not a huge change. But if you have to go see the sheriff, or law enforcement and have fingerprints taken, and you have to be constantly visiting them and have and receiving home visits, and you have to go from 10 to 20 years, or from 10 to lifetime, that would seem like that's more than marginal. So I'm not sure what that means

Andy 39:28

We could extend out your your prison riot thing from New Mexico of that one day mattering. Where if your name is on that list for one more day, you could end up under the scrutiny of some sort of vigilante that one day could matter of your life. Don't you think?

Larry 39:45

it absolutely could matter. One day could make all the difference. But there's another option that the court the Seventh Circuit could if they're not clear, and they may be a lot clearer than I am because they have law courts. So they've there's 10 of those judges. And they may have figured out what the marginal effects are. But they could ask for clarification, they could certify a question back to the Indiana supreme court and say, What? What do you mean by marginal effects and see if the Indiana Supreme Court will tell them.

Andy 40:15

Wouldn't they then kick the ball back down to the legislature? Isn't that where that would go that they left that to be something vague?

Larry 40:25

Well, I don't know that they intended it to be that way. That's what the what the law enforcement apparatus presented to them as being the language that they preferred. And all these things are the law enforcement's creation. And since the PFRs are never represented or are seldom represented, there was nobody there to argue that that was vague. But this case could go on for some time. If the Seventh Circuit decides that they want to certify the question. Now remember we talked about that in the Michigan

case about whether they the certified question and I've learned to quit predicting that they will certify questions, because I would have certified that question that they didn't certify out of the Sixth Circuit. And I think if I were this position, I would seek some more clarity from the Indiana Supreme Court. Because ultimately, the Indiana constitution if it provides greater protections than the US Constitution, only Indiana gets to, the Indiana courts get to interpret their constitution.

Andy 41:19

Okay, we're gonna have to dig into that one at some point. I think there might be stuff that might be interesting to noodle around with, because we talked about Maryland having more protections. So I don't know where those boundaries are. And maybe we could get into that at some point. Have you talked to any of the attorneys that were dealing with this case?

Larry 41:39

I haven't actually had a verbal conversation. I did reach out after a listener or someone alerted us to the fact that they had granted full court review. I reached out to one of the attorneys, and I received an email back saying he said at this point, and this was after oral argument was held on Thursday. At this point, there was not much to do other than wait for the en banc court to weigh in. I do not have a good sense from their argument, what they are thinking, but I'm more than happy to let you know when it happens. So they they're not going to try to read the tea leaves. I'm not going to try to read the tea leaves. I'm very disappointed that the panel decision is in jeopardy. I can say this, though. Now that we do know about it, it won't fall through the cracks again. And we will be looking and that would be the National Association for Rational Sexual Offense Laws (NARSOL). We'll be looking for an opportunity to weigh in on this with an amicus brief. And every Attorney General in the United States practically had briefs in this case. But on our side, there were no amicus briefs, but all the AGs from all over the country, they weighed in.

Andy 42:54

Let me ask two questions. Let me ask this one first. Is it just that the losing team asked for they appealed it, that's why there's en banc?

Larry 43:05

That's correct. They had the option, they could have they could have filed a cert petition with United States Supreme Court, or they could ask for a full court review. Full court review is seldom granted. But in this case, it was but even if the full court review had been denied, they could have sought a cert petition. And they probably would have.

Andy 43:24

and why would they pick for the full court panel versus cert and vice versa?

Larry 43:31

Well, I think that since only about 1% of the cert petitions are granted, that they would view that as even lesser odds than full court review. So, I think that if it were me, I would go for the full court review before filing a cert petition. Because if you, it gives you another bite at the apple. If you lose with the full court, you can still do the cert petition.

Andy 43:54

Oh, I see. But I mean, couldn't the Supreme Court just refuse... wait, so they refuse cert than the en banc wouldn't be an option?

Larry 44:00

That would not be an option. If you've not filed for en banc review and you go to the Supreme Court, and they deny cert, you can't come back and ask for en banc review, that's the step before you go to Supreme Court.

Andy 44:16

And so then my final question is, I think you've said that there's not really much of an advocacy group in Indiana, I think you've said that.

Larry 44:25

That's my understanding, that there's not

Andy 44:27

So what other groups would have been in a position to write some sort of amicus brief and why didn't NARSOL?

Larry 44:37

Well, honestly, we didn't because it was not on our radar. The other groups would be like the National Association of Criminal Defense Lawyers (NACDL), that would be one possibility. Okay. That would be one possibility. The the state of Indiana has some kind of lawyer association that deals with criminal offense, that would be another. Like in in New Mexico our criminal defense lawyers, we actually have a lobbyist that's in the Capitol when the legislature is in session. This would be something for a state criminal defense or a national Criminal Defense Lawyers Association to weigh in on being that every Attorney General in the United States weighed in on it, it would have been great if NACDL had weighed in. That'd be a really great question to ask them. Why didn't they weigh in? Because their resources are far greater than what ours are.

Andy 45:26

Yeah, sure. Larry, I got nothing else on this one. Are we being clear of this discussion about this Indiana case?

Larry 45:32

We are indeed unless you can think of something else.

Andy 45:36

I got nothing. And I've asked the 75 people that are with us in chat, and they have had nothing to share. There may be some slight exaggeration on the 75 people in chat part too.

Larry 45:45

I only see 71 people in chat.

Andy 45:49

See, I told you I was exaggerating. Do you want to we have about 15 ish minutes to hit some dozen articles. Do you want to want to move over there for a few? Or is there something else that I missed before we get there?

Larry 46:02

Oh, let's do some of these articles. We don't do articles anymore.

Andy 46:06

We do do them just not like was quite so many.

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Alright, this first one's come coming from the ABA journal. I don't know what ABA journal is, what is ABA journal?

Larry 47:06

American Bar Association.

Andy 47:08

not the American Broadcast Association. Alright, so the American Bar Association. Momentum builds for second look legislation that allows inmates to get their sentences cut. Why did you put this in here?

Larry 47:21

Because we're always accused of not having enough good news. So we have, we have some good news that momentum is building which means public support is building. And therefore, it could be that people who are not eligible to have their sentences reduced, will find themselves eligible. And I don't have enough from this article to really tell you anything other than Washington DC approved referendum measure in December 2020 allows people who committed crimes younger than age 25, to petition the courts for re sentencing after 15 years of imprisonment. So that would be a good thing. Elected prosecutors across California using a 2018 law allows they can seek resentencing. So there's several states mentioned in the article. And momentum public support is building for beginning to chip away at the prison industrial complex. Cf course, PFRs are always excluded.

Andy 48:20

We are always excluded and and just for clarity, where we you were covering things from specific states that the Federal stuff is its own, we'll call that its own state just for this context that they are their own state. They have what 200 or 200,000 or so people locked up under federal stuff. And then you have the 57 states, how many states are there Larry?

Larry 48:41

I'm not even sure somewhere in the 57 to 63 range.

Andy 48:46

It's 50. Don't, don't confuse people. It's 50 states. So I just wanted to point out that those two things, so the federal laws would be different than Maryland and Virginia and Wisconsin and California, like all the other states would have their own laws on how many

people are locked up. And this is pointing to something that there is momentum for changing sentencing laws across the country, including federal too. That sounds amazing. We spend so much money on prisons. It's ridiculous to me how much we spend on keeping people in cages. It's just really unfair. It seems inhumane to me.

Larry 49:19

Well, I just had a conversation with a board member who will remain nameless at the moment, but I can give you the state, West Virginia. And he was talking about how the legislature just extinguished good time for people, for a certain group of people that they have to serve their entire sentence if they have violated any of their extended supervision. That they don't receive good time. And I told him, I said, Well, now let me just make sure I've got this straight. Now West Virginia, we would agree is fairly conservative, right? He said yes. I said you're conservative, right? He said yes. I said well, the way I understand it, conservatives are totally brilliant when it comes to being frugal financially. So how is it that you were not able to argue to those lawmakers that if they're going to hold those conservative values that they espouse publicly? How is it that you could not convince them that not allowing good time, which was a subject somebody people to basically life in prison, how would you not able to make that case and have it connect with them? Of course, the answer is hypocrisy. But he says, Well, I guess that's a good point. And I said, Well, that is an excellent point. You need to call these people out who claim that their fiscally responsible conservatives and ask them when they just dramatically increased the length of people be imprisoned? You should ask them how do you feel about being running a geriatric prison? How do you feel about the health care costs that we're gonna have to have to absorb because of the decision you're making right now? You call yourself a conservative right? I said these are legitimate questions, ask those questions. And he said he was gonna give that some thought.

Andy 51:00

All right. Let's move over to SCOTUS blog. I hear this one referenced on some different podcasts that I listen to. Says justices divided on retroactive application of jury unanimity ruling. That's a really weird word to say. And you're gonna give me the skinny on what this is about?

Larry 51:23

Well, in 2020 or 19, somewhere recently they decided the Supreme Court decided that that non unanimous jury verdicts violate the constitution. But then that raises the inevitable question, what about people that were convicted as a result of not unanimous jury verdicts. So this decides that issue. So the Supreme Court on Monday in a 6-3 vote that inmates whose convictions became final before last year's *Ramos v. Louisiana* decision, they have no recourse. Because they've already, their decisions were already decided before this new decision. So basically, it broke along conservative versus liberal. The six conservatives said, you don't get your day in court. It's over. It's old news. Serve your time. Forget it, get over it. And the liberal pointy heads said, of course, we should go back and look at those nonunanimous convictions. But since six said no. And three said yes. Guess who wins?

Andy 52:31

I think the six overrules the three.

Larry 52:34

So but yeah, I just wanted to put that in here cuz our listeners are just so convinced the conservatives are going to save us and every chance I get to show what happens when you have the conservative ruling. This is an example of those people should be given. If a nonunanimous jury verdict is unconstitutional now, doesn't that call into question every verdict that was achieved by nonunanimous jury?

Andy 53:07

Let me flesh this out a little bit. So there's a, I was going to ask this question, but it's right here in front of me says the geographical impact of Monday's decision is limited to Louisiana, Oregon. The question I was going to ask you is weren't there two states that were still allowing non unanimous convictions, and I wasn't sure which ones. (Larry: Those are the two states.) So you do like the most heinous crime and those two states would allow like an 11 to one jury decision that would convict you. Not being a unanimous jury, and now you get some life in prison sentence. And this ruling said that you need from this day forward to have a unanimous jury to have a lifetime conviction. But this is not a retroactive thing. The opposite of the registry. (Larry: That's correct.) The registry goes and sucks and everybody from 50 and 100 years ago, were this you have a lifetime sentence and on this day forward, no one's going to have a... it is unconstitutional to have non unanimous jury, but it's not going to retroactively apply and let someone out.

Larry 54:09

That is correct.

Andy 54:13

That's sad. All right. And I guess then we will move over to The Advocate. House committee rejects Louisiana PFR offender ID bill due to legal concerns. House committee rejects. This sounds like good news. Hey, we got two good news things, Larry.

Larry 54:31

This is absolutely good news. And I'm bringing this up simply because I didn't expect it. The conservatives control Louisiana and the measure failed in committee. It didn't get a due pass recommendation. And in most instances that will derail the legislation. It's not a complete guarantee. But the measure failed on a six to seven. Meaning there was only six to pass and seven against passing after lengthy discussion. There was concerns about the constitutionality. And this is just fantastic news. Now I tell people just because it didn't get out of committee favorably. There are parliamentary procedures to move something out of a committee without a due pass. They're rare like that previous episode segment we talked about, you can actually by a majority vote of the chamber. You can remove something from a committee that's, that's assigned to you. So I'm not tracking Louisiana day to day. I don't know if that's been attempted. But that is a process. So don't consider it over until the gavel goes down on this session. And then certainly, this will be brought back in all likelihood in a future session. Just because something doesn't pass one year, doesn't mean that representative Larry Bagley, Republican from Stonewall will not bring this back again. But it's good news for the moment.

Andy 55:54

Interesting. Um, yeah, and I don't think we have much of an advocacy group down there. But I think this is one of the tactics that you, you, you preach from time to time about, hey, look, if maybe I guess I've maybe I've heard Paul Dubbeling saying something to the effect of if you make this a law, we will sue you. And so you can expect to see me because this is not a constitutional thing for you to be able to do.

Larry 56:19

Well, I think it was more powerful than that. The courts had done, already declared it unconstitutional. So therefore, you have the threat. And the reality of it has already been found to be unconstitutional. But that never stops them if they want to do something. I'm surprised that they didn't pass it.

Andy 56:40

I don't I don't see the incentive from a politician of saying I made like, I brought this back after these judges that after it was ruled unconstitutional, like, move on to something else, I don't see why you would then like try to die on this hill?

Larry 56:55

You really don't?

Andy 56:57

I mean, I don't in a sense, like, I don't see why driver's licenses are such a big deal for someone to stake their flag in the sand and saying this is what I accomplished. I got driver's licenses marked after they were ruled unconstitutional.

Larry 57:13

Well, it's really not that complicated. The reason you would do that is because that's where the people are. The people support this. It's a soundbite issue. And you can go out and say, in short, sound bites that I protected children and families in the state. And I'm keeping the community safe by this marking, I don't support it. But as long as the people do, this is something you can benefit from politically. What we have to do is make sure that the people don't support this. But right now, if you were to take a poll in Louisiana, the poll would be very overwhelmingly in favor of having driver's license marked. They would say, of course, law enforcement and people who deal with those kinds of people need to know exactly who they're dealing with. That's what the average person would say.

Andy 58:04

And I guess this goes back to our conversation about Supreme Court justices. Do they care about public opinion, and they should be removed from that. And if this was deemed unconstitutional, in spite of public opinion, this is a flip flop of the issue we talked about where we would want them to rule constitutionally not based on public opinion.

Larry 58:23

But the court didn't say you cannot mark a license in any circumstance. They said you can't do that type of marking. They were they were proposing a less of a marking than what they had been declared unconstitutional. The court didn't say you can't mark driver's license. I keep reminding people, we mark driver's

license with all sorts of markings all over the country. You can mark driver's licenses.

Andy 58:48

And Will says Tennessee has restriction code 88. And Will is that what's written on it? That says code 88, or restriction code 88 on the driver's license? Yes, he says that's what it is. All right. And then we'll move over to a New York Times article, it says victory in Philadelphia buoy supporters of progressive district attorney, we talked about Larry Krasner, somewhat regular, at least we used to as a new breed of prosecutor who is very focused on progressive prosecution. And he has stymied a primary challenge. Is that what you said it is?

Larry 59:22

That is correct. He has survived a challenge from the primary side. But he would probably have to go through a general election, but republicans are going to face an uphill battle in that urban center. So the fact that he's survived the primary he's good for another term.

Andy 59:39

Teresa says they were sweating it. We covered him when he was elected forever ago. And the thing that sticks out in my mind is take some number of 40 or 50,000 bucks a year to lock someone up. And if your prosecutor wants to lock up someone, then it's more than like three or something years. Hey, write me personally an IOU for x times so many years times 50,000 bucks and is the crime worth that kind of money? So if you want to lock up someone for 10 years and 50 grand, are you willing to put up some what would that be? 500,000 bucks. Is that crime worth 500,000 bucks? I think that's a really interesting way of substantiating that the person did something horrendous that they need that much that much time that it's going to cost that much money to the public.

Larry 1:00:22

And let's go back over this next week. Because there's an issue I want to talk out of Florida, but I don't want to get into it now. But we're going to talk about the cost of incarceration. So let's put this back to come back to next week.

Andy 1:00:35

We'll do it. And second to last if we got time. This is from St. Louis, Public Radio, Missouri senate passes a wide-ranging law enforcement and criminal justice bill. Larry, all of these are tied to the same thing we were just talking about two things back about the support is rising for criminal justice reform.

Larry 1:00:54

Yes, and this is a republican state. This is a Republican legislature, this Senate, we got to give them kudos. And it passed totally bipartisan 31 to two and like to keep telling folks. I promise you, the Democrat Party won't vilify the republicans for leading the charge on this reform. But often, when it's the other way around, you do get vilified. Remember the clip we played last week?

Andy 1:01:19

I do. It was the campaign ad against the person of something, act, whatever we got to support this thing in Congress,

Larry 1:01:28

The Breathe Act. So it was just so filled with misleading statements. But But anyway, we're giving. This is the good news episode. We're giving good news. And then we're gonna close on one that's not such good news.

Andy 1:01:45

Excellent. And that's from St. Louis, Public Radio. And then the final one, and this is going to lead us out perfectly. Larry, this is from the Washington Post Mississippi court upholds a life sentence for pot possession. Now Larry you better be careful if you get one of these medicinal things that like you better watch out. You can be one of these people.

Larry 1:02:00

Yeah, and this is under a habitual offender statute and life sentence for habitual offense. And it doesn't take much for the states that have those life sentences. And again, Mississippi is a very conservative state. Mississippi listeners, ask those lawmakers, do we really want to do this? Do we want to pay for health care? Do we want to put someone in prison for this? Should we rethink our habitual sentence? But right now, that's what happened. The court said, Gee, we don't make the laws here. We just interpret them and that's what the law says and you are a person aren't you? You do have two prior convictions, do you not? Well, why are we here?

Andy 1:02:43

Come on. This guy. He's 38 years old, was sentenced to life in forest county in 2019, after a jury found him guilty of possession of more than 30 grams, which is 1.05 ounces, that I've realized that pot doesn't weigh very much. So it's like what like, physically, it's probably a decent amount, but like it's an ounce, man, that is not a lot of marijuana. That has been legalized in more than 50% of the states at least for medicinal use. But yeah, Mississippi is somewhere back in the dark ages in the 1950s. Where everything is bad. This is ridiculous. And life without parole for pot.

Larry 1:03:18

So well, you are a person, aren't you?

Andy 1:03:22

Oh, my God. That's ridiculous. That's just terrible. I won't use the word hate. That's terrible. Larry, I think that it is about time for us to get out of here. I think. Is there anything else that you want to cover? Before we scoot?

Larry 1:03:38

Well, we have a new patron this week or a couple of 'em.

Andy 1:03:41

we do have a new patron. I only captured one. And it's a Michael. And thank you so very much. That was an annual subscription that seems to be the way people are going these days is to sign up for an annual one. Did we get any snailmail subscribers?

Larry 1:03:54

I'm not sure if it came in this week or not. But we are getting more interest and inquiries about the podcast and requests for... I know I've gotten requests the past week for sample transcripts. But I'm not sure if anybody actually signed up. But please sign up because

nobody can provide you the information that you get from FYP Education.

Andy 1:04:17

And that is to say if you come in at the \$15 a month level, then you can provide us with the name, address and telephone number of someone and Larry will get it sent into them on professionally printed material for someone inside to have a transcript of it, which is a really neat service that we're providing. What is the status of our of our nonprofit? If you don't mind me asking.

Larry 1:04:41

There hasn't been any additional movement on that.

Andy 1:04:44

We need to get on that. I think it would be wise for us to do that in the near future.

Larry 1:04:49

We are going to encourage people to actually send the transcripts that are going to be at our FYP Education website. They will be available with a subscription form. And if you want to subscribe by becoming a patron or if you want to subscribe directly to receive the transcript from us, they will come like clockwork every week. Matter of fact, I'd like some testimonials from people who receive them about how reliable they are because they are sent out on Monday. After we record this on Saturday they're sent out. But we would like to let people know that you'll be able to print a copy, if you want to send it in, then you can bypass all that stuff because we want to get information to people who need knowledge. Knowledge is what people are thirsting for.

Andy 1:05:34

Absolutely. And just going back to patrons real quick, we are getting closer to that 100 point mark, where I said that I would play some goofy sax solo for you people. And we are getting closer. It's about 15 or so away, so sign up. And so I will start getting my chops back up. And I'll play a sax solo for the listeners.

Larry 1:05:55

All right, I'm looking forward to that.

Andy 1:05:57

That should be fun. You can find all the show notes and everything over at registrymatters.co You can leave voicemail at 747-227-4477. The email is registrymatterscast@gmail.com. And of course the best way to support the podcast show some love as over at patreon.com/registrymatters. Larry with that, I don't have anything else and I hope you have a splendid rest of your weekend. And I will probably invite you back next week. Because I mean, if I find somebody else maybe you'll be kicked to the curb. But otherwise, you can expect to be back.

Larry 1:06:33

Thanks for having me.

Andy 1:06:35

Take care Larry. Have a good night. Bye bye.

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