



## Registry Matters Podcast

Episode 180

Recorded 6-7-21

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 180 of Registry Matters. Good evening, Sir Larry, how are you?

Larry 00:25

Fantastic.

Andy 00:26

That's good to hear. Anything exciting over in the land of enchantment land?

Larry 00:32

Well, there was a little bit of humor, the governor announced reelection, her candidacy for reelection and she found it difficult to speak over the hecklers. (Andy: Really?) I find that so humorous. Along with many things about this governor, I find humorous, but I find it humorous that she has done a settlement for sexually harassing a staffer and paid \$65,000. And I'm going to find track down the video one of these days, or at least the audio of her saying that Governor Cuomo should step down because of the seriousness of the allegations. And as far as I know, I don't believe that Governor has settled with any of his accusers in a civil settlement. (Andy: I haven't heard anything.) And she hasn't resigned, as she's advocated that people do because of the seriousness of the allegations. And I'm just troubled by that. Because again, for those of you who don't think I call out Democrats, our governor's a Democrat, and I'm very troubled that she imposes a standard of conduct that she does not follow herself.

Andy 01:48

Would this be hypocrisy? Wait, hang on, I have something for this. I have. Which one is it? This one.

Audio Clip 01:53

for you to come back and call bigots my admirers is a farce. It's an act of hypocrisy. It's a terrible way to treat a guest on your show. And you know it.

Andy 02:04

Just like that? Hypocrisy.

Larry 02:06

That's what it would be.

Andy 02:09

And hypocrisy would be a double standard, where she's saying, "Do as I say, not as I do."

Larry 02:14

Well, among other things that she's done during the pandemic.

Andy 02:20

Well, tell me about what we might have going on the show this evening.

Larry 02:25

Well, we're going to have a fantastic discussion with some audio clips that were submitted. And a letter from a prisoner who wants to talk about *Packingham*, and we're going to talk about Derek Chauvin from Minnesota whose sentencing is approaching very rapidly, I think it's June 25<sup>th</sup>.

Andy 02:50

Okay, and that would be I've, I've always wondered what like when I got convicted, I didn't go home that day. Why do some people have to then report for prison some weeks or months in advance from now or in the future from now?

Larry 03:05

Well, he was taken into custody. So, you're not talking about him. But in general, what happens is, there has been an assessment done by the authorities in terms of flight risk, ties to the community. And bonds are not automatically revoked upon conviction. In this case, the bond was revoked, and he was taken into custody. But in the federal system, there are a lot of people who are allowed to self-surrender. And even in some states, it's less, I think, less common in in most states, but people do self-surrender, and you need some time to get your affairs in order. But that's not a given.

Andy 03:39

Interesting. Okay, well, let's, let's get this show rolling. And first up is to just quickly plug that there is a conference, a little miniature virtual conference coming up in about two weeks. It'll be on June 19<sup>th</sup>. And that's coming from NARSOL. And there's a whole up on the screen, if you're looking and there's a link will be in the show notes. It's building your advocacy toolkit. There's 5, 6, 7, 8, 9, 10 people it looks like. Nine people that are doing presentations. That's coming up here in a couple of weeks.

Larry 04:15

So, what is NARSOL?

Andy 04:18

Oh, NARSOL is the National Association for Rational Sexual Offense Laws, formerly known as RSOL. But that was like a million years ago. It is a national organization that advocates for making the lives of PFRs better. Did I do it justice?

Larry 04:36

You did. That means all of our listeners should also be a member of NARSOL.

Andy 04:42

I think that's accurate. Because they're the only national organization that I'm aware of that goes out and funds challenges nationally. I think if I word that right, because I think like ACSOL, they will do challenges, but they're pretty much isolated to California and correct me if I'm wrong there. NARSOL provided funding for the case that we did in Georgia. And then there have been other ones that they have been advocates for in other states as well.

Larry 05:09

Well, they have, that organization has a different model, since they have an attorney who is on their leadership team. But they don't do the same model that we have. We can't initiate as much litigation as an organization with an attorney. Therefore, we end up funding litigation, which helps seed litigation, particular with out-of-pocket cost, which can be horrendous. So oftentimes, we will seed a case with some money for legal fees. And we will secure the case related hard costs, depositions, expert witnesses. Those things could prohibit a case from moving forward. And that's not their model, if they take on a case, since they have an attorney, they plan, they plan to support the necessary funding through their donors. But they as far as I know, they don't fund cases that they're not handling. We do fund cases that we're not handling. We're involved in, but we don't have the lead position on the on the case. So it's, it's a different model.

Andy 06:13

Okay, um, yeah, I guess if NARSOL had an attorney, like as a board member or something like that, then it would be where we could go out and play offense a lot more. So it's kind of how you're describing it.

Larry 06:26

Kind of, we're moving in that direction. We're moving towards having at least a part time attorney at some level, but when your executive director is the is an attorney, and that's their entire day job. It creates more flexibility for that organization for them to do and that is ACSOL. What does ACSOL stand for?

Andy 06:49

Oh, the Alliance for Constitutional Sexual Offense Laws. I may have that slightly off, but I think that's pretty close.

Larry 06:56

That is correct. And so we're plugging ACSOL as well.

Andy 06:58

Very good. Well, then, let's move over to our voicemail messages. The first one comes from a very long time, possibly, like patron number one, or two or three or something like that. And this is from Jeff.

Jeff Voicemail 07:14

Hey, this is Jeff from Kentucky, also known as Captain Crazy on Twitter. So, I had a comment slash question, I guess. So, in the last week's podcast, you guys said that public is starting to get on board with criminal justice reform, which I think is fantastic. There are a lot of people in jails for reasons they shouldn't be. However, I'm afraid law enforcement is still going to find a way to justify their own existence. So, if we stop arresting people for crimes that they would normally get arrested for, and we start letting people out for crimes that would normally keep them in jail for a long time, in order to justify their existence, do you not think law enforcement is just going to start cracking down on the real dangerous people? A.k.a. sex offenders. My fear is that if they start turning loose a bunch of people from jail, and they stop arresting a bunch of people for that, they're just gonna get really, really hard on us, in order to, you know, justify their own existence. But anyway, thanks for what you do. And fyp. Goodbye.

Andy 08:27

Thank you for that question, Jeff. Sorry, it took us an extra week. It just slipped my mind last week to play that one last week. But what do you think, Larry?

Larry 08:36

I think he's absolutely correct. That is exactly what they will do. And that's the reason why we have to curtail the funding, as we are doing these reforms. If you leave the apparatus in place, with all the funding and resources that has today, and you don't change that, it will need to operate and justify its existence. He's absolutely correct. So if we make a concerted effort to reduce our prison population by 25%, we've got to look at the input mechanisms that put people into that to those prisons, and figure out what we need to do with those resources and how they should maybe be reallocated and retrained and redirected if we don't do that. He's absolutely correct.

Andy 09:25

Gotcha. Yeah, I don't think there was anything else that I wanted to even touch on from there. Let's move on to the next one.

Brian Voicemail 09:38

Hey, guys, I just want to know, this is Brian. I'm in Virginia. About to take a probationary polygraph test tomorrow, and I know that it's a bunch of bull crap junk science, that means nothing. But I think you guys will find it interesting to know that here in Virginia, they have case law that they don't tell people about. It's *Turner v. Commonwealth* in 2009, which ruled that polygraph results are inadmissible in probationary revocation hearings, and Virginia Department of correction and probation parole operating procedures, specifically state that maintenance polygraph test results and just test results, in general, cannot be used in hearings. They become a treatment issue. So, I just figured you guys would think that's interesting. I appreciate everything you guys do. You guys are amazing, very informative on the corrupt criminal justice system that we have. And thank you and for everything you guys do and fyp.

Andy 11:03

Have you ever heard of anything? Like that would be the only positive thing about PFRs in Virginia that I've ever heard.

Larry 11:09

Well, it's consistent with what happens around the country. Those things are not admissible. I keep emphasizing they will never, you will never present me a petition that says only on the petition, showed deception on polygraph. I've got the challenge, a long standing challenge asking for that. No one has met that challenge yet. That's exactly what I've been saying. But what is admissible is what you tell them in the post polygraph interview, that is very much admissible. And that is exactly what hangs most people is the confessions they make after the polygraph results are disclosed to them. And they are confronted with you showed deception, is there something you want to tell us about this? And inevitably, the people tell them things and those things, those statements are admissible.

Andy 12:09

And that would be them, hey, you showed deception. Yes, I had some alcohol. I was watching naughty videos on the computer. I

missed curfew, I was hanging out at a ballgame, anything of that nature, that's where they get trapped.

Larry 12:22

Absolutely. And that's what people need not to do. And again, FYP doesn't advise anybody to violate conditions of supervision. Nor do we advise anybody to be dishonest on a polygraph test. But what we do tell you is that after the conclusion of the examination, if you change your story, what you tell them will be used against you in a court. That's what we're telling you. You can read from that, whatever you would like to, but we're telling you, if you change your story, they will use that against you.

Andy 13:01

Gotcha. All right, then let's move over to Super patron Mike.

Mike Voicemail 13:08

Hey, Andy, Larry, this is Mike down in Central Florida. Longtime patron, longtime listener, just wanted to call and share a little experience I had down here with you real quick. On Monday, of this past week, I, not Memorial Day, but the one before sold a vehicle and you got 48 hours to make that registration change. The very next day, I had a situation where my wife came down sick, ended up in the hospital with COVID. So clearly, we were quarantined. I wasn't able to go out to the registration office, but I had a 48-hour window that had to be changed had to be made. So, I called the people got them on the phone, talked to them, and they were understanding, they took the vehicle off. They verified my information over the phone and handled it. And although that isn't a procedure or an option. A lot of times, I find that if you just give them a call and try to you know, be honest with them. You may or may not have that nonsense that I hear a lot of places play the whole gotcha thing. And, you know, to their credit, they've always been pretty civil. I mean, it is a civil regulatory scheme, right? Anyway, I just want to share that with you. If someone's listening to this and you get in that situation where you just can't do it. And there's a reason for it, call them see what they say, Man, you might have avoided a disaster. Don't stick your head in the sand and pretend it's not gonna, you know, and nothing's gonna happen or it's gonna go away. I would encourage you to pick up the phone and call them. That was my experience. But anyway, I just want to share that with you and maybe encourage some people you know. Other than that, I just want to say fyp love the show, and I'm looking forward to the next week's episode. Thanks, guys.

Andy 15:00

Do you have any opinions on that? Do you think that they act human generally? Or do you think they're out to get you

Larry 15:06

Both. Absolutely Both. And I think this would be a good example to illustrate my point. And I agree with what Mike said, you always want to be on the up and up. And when you have something that makes it difficult for you to comply, it's always good to reach out to them. Whether you would get the same reaction remains to be seen. We can take a look at just around Metropolitan Atlanta, within how people get treated in Cobb County, which is on the northwest of Atlanta, and how people get treated in Gwinnett County, which is on the northeast side of Atlanta. And I've never lived in either of those counties. But I just hear from folks, Cobb

County, until recently, when they had a new sheriff elected, they were very hard-nosed, and Gwinnett County was much more like what Mike describes. And then there's economic status that can play into it. When people that are middle class, which I'm pretty sure that Mike is solidly middle class, people in the middle class have the potential and the capability of being able to fight back. Those officers that are looking for an easy target is in some regard similar to the schoolhouse bully. You look for the easy target: the kid that you can take the lunch pail from or if they even have lunch pails anymore, I don't know. But an example would be like a homeless person in this state that doesn't have a fixed residence. Law enforcement, at least in my county, tell those people that they must come in weekly. There's no such requirement in New Mexico statute anywhere. That is a completely invented requirement that the person could tell them, sorry, too bad. So sad, I'm not going to come in every week, because I'm not required to. But when you're homeless, clearly, if you're homeless, most of the time, very few homeless people running around with gobs of bank, gobs of financial resources. Therefore, they know if they push back, what's going to happen to them. Contrast that with a person who's living in a \$300,000 middle class house and has resources, they tend to be better respected in the community, even though there are a PFR. Law enforcement does recognize that they have the capacity. They have resources, and they're respected to some degree in the community. The homeless person is basically human garbage. And I think we've heard people refer to folks as human garbage. These are not my words. This is what we've had public officials, or want to be public officials, refer to. And those people may not get the same treatment. I agree with Mike, you would want to call, you would want to document. Calls are not even the best way to document if you have anything else that would be a better way to document that you reported it. That would be even preferable. But don't think just because you got that treatment, that everyone is going to get that treatment.

Andy 18:11

I know from my experience with whatever six and change years that I always was, sir Ma'am, I was as punctual as possibly could be. As soon as they would pull up on the driveway, I would practically run out the door and greet them. I sort of did that as a defense mechanism. Hopefully, I would keep them from coming inside. Not that I had anything. I just didn't want them rummaging through my stuff. But the other people that I know, they have been forthcoming and respectful. And none of the people that I am in touch with on a regular basis have had problems. That goes to support what Mike is saying. And then Charles said in chat said, it's how you treat people. I'm respectful. So, the officers are good to me. I'm inclined to agree with that, too. And I have definitely seen people buck and think things go poorly for them.

Larry 18:59

I agree with that. But are you supposed to do things you're not required to do if they impose invented requirements? We've talked about those things in Cobb County that they're telling people that they have to do that they don't have to do. That would be equivalent to Rosa Parks saying, okay, I mean, if she would have just gone the back of the bus, everything would have been fine. But law enforcement, typically, that maybe too strong a word, frequently imposes requirements that are not in the statute. And our state does not give them that prerogative to do that. In fact, we prohibit them from putting anything that's not in the

statute as a requirement on a PFR. Therefore, I don't consider it bucking. I don't consider it bucking when you go to MVD to pay for your license registration. And they tell you that the fee is \$45. But we'd like you a whole lot better if you pay \$90, would you go ahead and pay the \$90?

Andy 19:50

Can we revisit the Rosa Parks thing just for a minute, where a very common, I almost want to call it a trope these days is well why don't you just comply? It would just be easier if you would just comply. And yes, Rosa Parks, everything probably would have been, like not long term. In the immediate sense, it would have been easier, then, but not fast forward. Where we have... I mean, that was almost like what sparked the civil rights movement back in the 60s. So if you don't have a requirement to do it, which would mean you have to know the requirements for you to be able to push back and go I'm not required to do that.

Larry 20:27

Well, I believe she actually did have the requirement, she just chose to buck an unconstitutional requirement. But there are things that PFRs are told to do that they're not required to do by the state statutory schemes. And if law enforcement, but when they put the hand on the Bible, they were supposed to enforce the law, not invent the law. And the Gwinnett County Sheriff's position was, I don't know about the current Sheriff, if it's not in the statute, we don't invent things. We only force you to do what's in the law. That's all we ask. We don't agree with the law in many regards of what they impose, but we ask you to stay within the contours of the law. That's what you put your hand on the Bible and swore to do.

Andy 21:15

Okay, let's move off from that. And we will move to a letter that was written I think you said it was by a prisoner. It says:

#### *Listener Question*

Dear Andy and Larry, I'm writing in regards to Episode 175 of the podcast dated May 1<sup>st</sup> of 2021, particularly in the portion the transcript I read from time index 17:36 to 19:30. When I was a PFR, before being arrested in 2016, I was able to access some social media platforms such as Twitter. And at that time, Twitter's Terms of Service did not have any stipulations barring PFRs. Same with YouTube, Gmail, or anything else Google owns. Facebook, as far as I understand, it still bars PFRs today, even in spite of the *Packingham* case. Again, Google does not do this. I have a Gmail account with them. Could you please verify this? And please tell me which social media platforms as of 2021, do not bar PFRs. And thank you muchly.

I put a link in here to a video that I did about a year ago that talks about this exact subject where someone had called me. And I realized that this doesn't help the person in this message because he's in prison at the moment. But Larry tell me why can what *Packingham* was about and how this impacts what Facebook and Google and those guys do a

Larry 22:38

Lot of confusion still out there about *Packingham*. It was a challenge. North Carolina had imposed a blanket ban on anyone who was required to register, prohibiting them from using social

media where minors were likely to be present. And that was a governmental prohibition. And the Constitution guarantees that the government will not do these things. That does not guarantee what the private sector will, will or will not do. Therefore, when people say despite *Packingham*, Facebook does this. *Packingham* was not a challenge against Facebook, it was a challenge by Lester Packingham against the state of North Carolina for its restrictions that it had imposed blanketly on PFRs. And in fact, the Supreme Court made it clear that these restrictions might in fact be constitutional if they were narrowly tailored. Again, I've said before the law enforcement apparatus cannot bring itself to narrowly tailor anything. They would be able to do a lot of things if they would actually narrowly tailor. Here's your clue. If you want to restrict PFRs from being on Facebook, or similar platforms, make sure that there's a direct correlation between their offense and their restriction. And make sure you prohibit them from engaging in conduct that would put them in closer proximity towards making contact with a minor that they don't have any business contacting. If you will narrowly tailor. Now I'll even volunteer to help you do it because I get tired of these unconstitutional statutes being presented to legislatures all the time. I'll actually help you write a constitutional statute. The only problem is, it'll be so narrow that it will not encompass enough people to make the jaws of law enforcement happy. But this writer,, Frank, he's misguided about that because the challenge was against the state of North Carolina for its blanket prohibition.

Andy 24:41

And let me just hypothetically, like critique this narrowly tailoring, if an individual is using Facebook to go solicit whatever he's trying to solicit, and that's something against the law, then they would tailor that access to social media based on that person's proclivities to use social media to do their grooming.

Larry 25:07

Correct. Now, it's already against the law to solicit a minor for immoral purposes. And I think in all 50 states, so that we already have a protection against. But prior to that point, we don't have to let it evolve to that. I think you could craft a constitutional statute that would prohibit a person who had narrowly tailored facts of their conviction, where they had used some sort of electronic means to approach a real minor or at least a make believe minor. And that would probably be constitutional that you could say that you can't use these platforms to make contact with an unrelated minor. You still need to allow them to have access to their family. But you could narrowly tailor this. I'm volunteering law enforcement, please contact me, if you want to do this so desperately, I will help you write something that's constitutional. But you won't be satisfied, because it will prohibit very few people from using most social media. It will prohibit a small number of people who've been narrowly tailored for a specified period of time from approaching minors on social media. That's what you can do constitutionally. But Facebook can do whatever it wants to. It's a private company. And it can choose to disallow people from being on its platform until the case law or until the statutory law changes.

Andy 26:33

Yeah, I'm, I'm stuck on this. I'm thinking of another example is if you were somebody of a drinker kind of person, and they said you can't go to bars. Like that would pass because it's narrowly

tailored like this would potentially put you in harm's way of going to get a drink if you go to bars. I can see that that would make sense. What I'm stuck with also, Larry, is that they come out and I'm doing a lot of air quotes here that they say this is the interest of public safety. So then why not work with someone like you to actually tailor it so that it is in the interest of public safety? Because you don't need to someone that I don't know, looked at adult people porn, that's probably not even a good example, that just a different example. And it has nothing to do with computer crimes and getting on the internet. But then they make all these restrictions against it that we then have to go to court, it comes up the system and creates all this headache and overhead, when if they're trying to protect public safety, why not craft the laws in such a way that they are actually effective?

Larry 27:39

The reason why that's not done is because in our soundbite society, it would be very difficult. And the soundbites to explain that to the general public. And the victim's advocate, and the law enforcement Industrial Complex, they're not interested in that. And I can't explain to speak for them why they're not interested. Maybe it's because they need more business, you will have to have one of them come on explain why they want so many things to be illegal, and why they want to constantly elevate the severity of crimes and all this kind of stuff. But they would not try to explain that. And it would be difficult in the soundbite era that we are in to explain. That's part of the problem. So, there would be all this pushback. So "Would you believe they're letting sex offenders be on social media? They just passed this. And it's only it's only for a certain group, I don't think any of them should be on there." And there'd be news stories that would be running vilifying the lawmaker who made such a proposal, if they spotted the nuances, and they would say this hardly impacts anyone. And so that's the reason why they don't do that. But that's what we should do. You're correct. If public policy was about public safety, I don't know that the drinking thing is a good comparison. Because when you finish your sentence for your drunk driving, you're allowed to drink again, you may not be allowed to while you're on probation. But as far as I'm aware of we don't have a civil regulatory scheme that follows you post-conviction after you've discharged all of your jail time if you've received any and after you discharge your probation. I'm not aware of anything that prohibits you from going and buying alcohol. I'm really not. Is there such a thing?

Andy 29:14

Right. For any other crime other than this one that has all these extra things after you're done with your sentence.

Larry 29:20

And that's how we win on public opinion. We ask people, don't you believe that a person who's paid their debt in full to society? Do you believe they should have restraints placed on their liberties? And they won't be able to think it through because they don't know that they have all these restraints. They think this is a part of their punishment. And they'll say, Well, of course not. So well guess what? That's what we do. We control people where they live. We control their social media access. We control where they work, we bar them from jobs. We do all these things to them after they've paid their debt to society. And people go huh, we're doing that in this country? They don't know that.

Andy 29:57

And that that is it. You've said Probably since before the podcast to me anyway, that if we can't win that battle, we can't do anything for anybody that's still under some level of supervision. But we have people that are being punished and harassed and whatnot, after they've completed everything, or to work from someone like super patron Mike, who completed all of their stuff before the registry really even existed where he lived, and then got roped into it after the fact.

Larry 30:23

Absolutely. If you can't, what I've said, and that's a great memory. What I've said is that, if we're trying to change public opinion, and you can't go out and have a conversation with John Q citizen and ask them the question that you just posed, that we should stop punishing people after they've done their time. If you can't win them over them that, how would we ever convince them to reduce the punishment, that for people that are serving their time, if they don't want to stop punishing people after they've done their time. I don't know how you would actually convince anybody to reduce existing punishment, but a person's still being punished if they won't stop punishing people after they've served their punishment. To me, that's a no brainer.

Andy 31:07

Alright, so thank you for writing in that question. And man, best of wishes for your time that you're down, you didn't say how long that you were gonna be gone. But I hope that you have a safe travel and that you get out as soon as possible.

Ready to be a part of Registry Matters? Get links at [registrymatters.co](http://registrymatters.co). If you need to be all discreet about it, contact them by email at [registrymatterscast@gmail.com](mailto:registrymatterscast@gmail.com). You can call or text a ransom message to (747)227-4477. Want to support Registry Matters on a monthly basis? Head to [patreon.com/registrymatters](https://patreon.com/registrymatters). Not ready to become a patron? Give 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.

Um, well, Larry, I think we should move over to our feature event. And you put this thing in there of a sentencing memo for Derek Chauvin in this week. And for the life of me, dude, I am trying to think of all the things that could be related or not related. And this fits in the category of not related, some disjointed logic you've got going on, but I'm sure you have a reason to think that it's relevant.

Larry 32:31

Well, I do. I'm not sure how disjointed my logic is, but I believe it's relevant. And I believe it'll help our audience to understand how the sentencing process works.

Andy 32:41

All right, so what is a sentencing memorandum?

Larry 32:46

They are fairly common. In this instance, it's a memo written by Mr. Chauvin's attorney seeking leniency. And he's putting forth his legal and other relevant factors in support of why this leniency

should be granted. (Andy: And what is he seeking?) Wow, you want me to go through all these 26 pages?

Andy 33:07

Yes, and I want you to do it quickly. Do it now.

Larry 33:12

I'll just quote briefly, the defense argues that the requisite substantial and compelling circumstances for a downward dispositional departure are present in this case, and he urges the court to grant its motions and impose a probated sentence or limiting his incarceration to time served, or the alternative a downward durational departure in crafting the sentence for Mr. Chauvin, meaning that the duration of a sentence should be less than the guidelines.

Andy 33:44

Allright, so since you read directly from the motion, let's get in the memo a bit. And so before we finish, what I want to know is what did they do right, and what did they do wrong? And then of course, Larry, if you think it will work?

Larry 33:57

Well, those are great questions. So you must have worked all afternoon. (Andy: Yes. I did) Well, what they did, right, and any good attorney does this, but what he did right was he tried to humanize Mr. Chauvin. And they portrayed him as a working family man with no prior criminal history. Those were the facts. Also, they cited to the relevant Minnesota statutes and case law pertaining to judicial discretion and urged a significant downward departure. And again, I'll quote from the memo. Mr. Chauvin asked this court to look beyond its findings because the court already issued some findings in response to the state's motion. So, they're asking the court to look beyond the findings to his background. His lack of criminal history, his amenability to probation, to the usual facts of his case, and his being a product of a quote broken system. Mr. Chauvin requests this court grant his motion for mitigated dispositional departure or in the alternative a downward durational departure, and that's on page three of the memo.

Andy 35:04

What is the difference between dispositional departure and durational departure?

Larry 35:11

Well, in terms of the disposition in this case, it's supposed to be a prison sentence, the way I read the guidelines and that's just from what I'm reading it. I'm not an expert in Minnesota. But it appears, though, that this has a required disposition of incarceration for a significant period of time. I think like between 10 and 15 years, but so he's asking that the disposition not be incarceration, and the alternative, he's asking that the duration of the incarceration be significantly moved downward from what the guidelines would be.

Andy 35:47

He's asking the court to impose a probated sentence and can you first before you answer that? Can you describe probated sentences that where he doesn't do any jail time? He just or whatever he's done already, but he just he has probation?

Larry 35:59

Yes, he has made that request.

Andy 36:02

Okay. How does he make such a claim?

Larry 36:05

Well he thinks he's put forth a good argument. Again, I'm going back to this so I can be specific on what he's arguing. The sentencing guidelines recognize that there are cases where the guideline sentence is not appropriate due to substantial and compelling factors. When such factors are present, the judge may depart from the presumptive disposition or duration provided in the guidelines and stay or impose the sentence that is deemed to be more appropriate than the presumptive sentence the next Minnesota sentencing guidelines 2.D.01. And then he goes on to argue a departure is not controlled by the guidelines, but rather an exercise of judicial discretion, constrained by statute or law. And the defense is urging the court to use its discretion to depart downward. And now we do believe judicial discretion at Registry Matters and at fyp, right.

Andy 36:58

Yeah, right. Mandatory minimums. That's what we often talk about as you get convicted of XYZ crime and you're going to do a minimum of 30 years, 10 years, whatever. And we talked about the judge's hands are tied of someone that worked in the community, all these things. So yeah, we're in favor of letting the judge take the circumstances of the individual into account and adjust the sentence accordingly. Do you think that he has any realistic chance of this happening?

Larry 37:25

None whatsoever.

Andy 37:27

Well, you're Mr. doom and gloom as usual. Um, you people work in a law office? How can you make such an argument with a straight face? Tell me what compelling arguments his attorney has made?

Larry 37:39

Sure, I could do that. Well, here's the attorney is arguing that he's 45 years old. He will be when he stands before the court and his age weighs in favor of determining the sentence because the attorney points out the life expectancy of police officers is generally shorter, and police officers have a significantly higher probability of death from specific diseases than males of the general population. And they point out that he has been preliminary diagnosed with heart damage that might that he may likely die at a younger age, like many other ex-law enforcement officers, and independent of any of those health factors, the long-term damage of prison sentence would inflict upon Chauvin's life prospects given his age, and the fact that he's a former law enforcement officer, that increases the likelihood of him becoming a target in prison. And such safety's concerns they argue, are evident by his pre-sentence solitary confinement in a high security prison, which is taking a toll in itself. When you're in continuous lockdown for your safety, that is a horrendous way to do time. I think you would agree with that.

Andy 38:47

Oh, absolutely. I did like a week in the hole. And I just had a bunkmate and it was pretty miserable. Um, but it kind of seems like you're going kind of all soft and feely touch for this for this ex officer. I've never heard of a police officer being concerned about how someone arrest might become a target in prison, nor do I ever recall them being expressing concern for the health. Like they don't give a poop about who they lock up and put away Larry.

Larry 39:17

well, you're right about that. And that's, that's just who I am as a defense-oriented person. And for, for better or worse. I believe that this defendant, now that he's been convicted, should be treated like any other defendant. I know the officers don't feel that way. And I know they'll never say what I'm saying, but I believe he should be treated like anyone else. However, that does not change anything. We're supposed to be a compassionate society. Do we value all human life or not? Mr. Chauvin is a human who made a very bad decision and his sentence should not be to appease an angry mob. Rather, it should be consistent with a person with zero criminal history who's been convicted of a similar crime, don't you think?

Andy 40:10

I think so. Yeah. I mean, I think that that sounds fair. I just, but what about holding the concept about law enforcement being held to a higher standard?

Larry 40:25

Well, that does come into play, and he's being held to a higher standard. Do you think any other person would have been vilified to the same level had they not been a police officer? We need to look at the other unintentional deaths for guidance, and I'm not in Hennepin County, but I don't believe it was proven that he intended to kill George Floyd. It was proven beyond all doubt, in my mind, anyway, that the knee deprived him of oxygen, which resulted in his death. But that's quite different than saying that when he put the knee on his back and held it there that he intended to kill him. You would agree that that the intent was not shown that that was when he got up in the morning, I'm gonna figure out how I can... you know.

Andy 41:09

Yeah, I agree with that. I don't think he ever intended on Hey, today, I'm going to go kill some SOB by putting my knee in the neck or killing them. However, things just escalated. I'm fairly confident that's how it went down.

Larry 41:20

Okay, then the question is how would we treat a person who had zero criminal history? Who had been a productive taxpaying citizen? I know he had some prior issues with complaints from citizens. But how would we treat a person who had unintentionally done something that resulted in death? I think that Chauvin is being treated quite a bit harsh. I think he's being held on to a much different higher standard. I'm guessing. Again, I don't know how the sentencing goes in Hennepin County, but I'm betting he is being held to a higher standard.

Andy 41:55

Let me ask you this question. Real quick, though, is, um, do you think he's taking, Chauvin is taking extra heat for being this first one, because there have been so many, so many, so many other cases, that that there was never even like a trial even brought to and if there was, the cop was acquitted. So do you think he's taking all that excess baggage, and they're dumping it on him?

Larry 42:18

I do believe that, that this is part of the what's happening here. I think there was a US House of Representatives member that said that they're better than nothing other than a guilty verdict.

Andy 42:33

Um, well, let me ask you this question in a different way. So, would you be in favor of a probated sentence?

Larry 42:40

I don't know. I don't, I'd have to know. I need to see the state's reply. They're going to have a chance if they haven't already filed it. I doubt they filed it this quickly. But I would really have to know what the state says in response. And I'd have to know how other defendants with a similar criminal history who are deemed amenable to probation, and he made an eloquent argument in there that he was compliant with all pretrial supervision and all the stipulations. I'd have to I'd have to consider all that. And it would be a tough call to make because I know that you would make a significant segment of the population mad if you were to impose a probated sentence. It would be deemed as a dismissal of value, devaluing of George Floyd's life, and I doubt it would be a very tough thing. But I could see a person with an unintentional death getting a probated sentence. I mean, I could live with that. As a general supposition, I could.

Andy 43:37

I'm trying to draw a comparison to someone like Harvey Weinstein, who did a whole bunch of heinous stuff and was convicted. But as far as I know, he complied with all the pretrial stuff, wearing ankle monitors not trying to flee all that stuff. I don't think he got handed a light sentence. I think they kind of put the screws to him in the end. Just trying to make a comparison to something in our camp.

Larry 44:02

They did indeed. They were very harsh. And he's got more charges in California that are still pending. And he'll die in prison.

Andy 44:09

Oh, I know. I'm sure of that.

Larry 44:12

I don't know that this is a comparison, though, because we still have something accidental versus something that was intentional. And I'm not pronouncing Weinstein guilty of all that stuff. But we have what appears to have been a very bad decision. Looking back on it, I think that if you had any training at all you would know about oxygen, and deprivation of oxygen. But it was a very bad decision without the requisite criminal intent to inflict death.

Andy 44:48

All right, well, then kinda like moving into the backside of this. What do you think the defense lawyer did wrong?

Larry 44:56

Well, I'm glad you asked that. I think he minimized too much in the sentencing memo. He used phrases like during the restraint, Mr. Floyd ceased breathing. Well, I mean, that is literally true. He did in fact, cease breathing. Yes.

Andy 45:10

And I'm not laughing. Because, yes, he definitely ceased breathing. I don't know if they know... I don't want to, I don't want to go into that that. But go on. What else?

Larry 45:19

I don't believe he would have ceased breathing without the pressure being applied to him. So therefore, I think that is unnecessary minimization of what was there. Then he said paramedics attempted recitation, and Mr. Floyd was later pronounced dead at Hennepin County Medical Center. Well, that's trying to make it appear as though there was hope, and that he could have possibly been resuscitated. This is code speak for with the right level of resuscitation effort, he might would be alive today. And I just don't like that being in a memo. I would never... if an attorney I was consulting for had written that, I would have gone to bat and say we've got to take that out. We've got to take this out. (Andy: Tell me why.) Because it minimized and devalued his life. He did not cease, well he did cease breathing. But he ceased breathing because of a direct action of Derek Chauvin. And it makes it sound like he just was breathing just fine. And then he stopped. And then the paramedics attempted recitation but by the time they did do that attempt, he had long since stopped breathing.

Andy 46:31

Sure, I'm totally with you there. Alright. So here's what's really bothering me though, since the attorney said, here, Mr. Chauvin was unaware that he was even committing a crime. Okay, I'll buy that because was he committing a crime. Killing somebody is probably always a crime. But he didn't know that putting his knee was going to kill him, which I guess doesn't know that he's committing a crime. But in fact, in his mind, he was simply performing his lawful duties as an assisting officer in the rest of George Floyd. By that, Mr. Chauvin's not a typical case in which person commits an assault that results in the death of another. As is clear from Mr. Chauvin's actions, he had believed he was committing a crime. As a licensed police officer, Mr. Chauvin simply would not have done so. Mr. Chauvin 's offense is best described as an error made in good faith reliance on his own experience as a police officer in training he had received, not the intentional commission of an illegal act. And that's the memo at page 11. How can they say that with a straight face, though?

Larry 47:27

I was a little stunned with that myself, if Mr. Chauvin had been taught about the danger of using this type of restraint, it's difficult for him to say that he was merely doing his job. And then you combine that with the fact that Mr. Floyd did say I can't breathe. And another officer even recommended to Chauvin that Floyd's position be changed, to no avail. So, it's very hard for me to agree

that he was merely doing his job. But having said that, I think that adrenaline rushes can cause people to do things. (Andy: completely agree with you there.) That's part of the good screening of police officers. We need people that are very even tempered, and they have to be able to suppress that anger and those emotions, you come up on a scene where your buddies are being attacked, and his view, he would have perceived that his lack of cooperation with getting out of the car as something that needs to be dealt with. And then if there's more pushback from Floyd, his macho is going to kick in, and he's going to exert more force rather than de-escalating, I would have tried to de-escalate, I would try to come and be the good guy and say, What's going on here? You know, what, why is this happening? Let me have a talk with this guy. But that's not the way police officers are trained. They're trained to achieve compliance, regardless of what they have to do. To increase force, increase force, you will comply, you will comply. But I did have some trouble with that. With those statements as well. It again, it goes back to minimizing. And I felt uncomfortable with that. I would have argued with the attorney and said we can't say this, but this is what he said.

Andy 49:11

Interesting. And then let's just say the judge were to whatever the right terms are somehow he reads this memo and accepts it and grant some kind of leniency. What do you think the outcry would be? What would be the public's response from that?

Larry 49:29

Well, it would actually be twofold. There would be some people who would be very happy. There are a lot of people who don't believe he should ever have been charged, particularly law enforcement apparatus, but a lot of people who tend to be politically conservative, they would tell you that he should have complied. That he brought this on himself. But there the other side of this would be that this would be justice snatched away from them. Finally, a conviction has been achieved. And then the judge is going soft, and I would think that what happened to Persky would probably be relatively mild in terms of the reaction from the community that feels like that this is finally our day of justice. So, if he were to get any type of leniency, I don't think the reaction would be very good.

Andy 50:08

Because you'd end up with an outcry on both sides.

Larry 50:11

It would be a jubilation on one side, but the people who believe that this is finally justice, they would be very... There's really nothing the judge can do with this case other than impose a significant prison sentence, he can't consider probation and prison, it's got to be something of a significant nature, does he have to max them out? I don't know. I would, I would hate to be the judge that has to explain why I didn't max this person out. Because you're going to need to read into the record. And you're going to have to be ready to explain to an angry mob of people why you didn't impose the maximum. So, I would hate to be in this judge's position.

Andy 50:53

Interesting. I think that wraps all of that up, there's, um, there's a link to an article from courthouse news that will give you some of

the background on this. And then there's the actual memo, all that stuff will be in the show notes. Is there anything else before we duck out of this whole topic? We've been at it for about 20 minutes,

Larry 51:12

I think we've done the best we can, I hope it was helpful to people to understand. If you're a PFR, high profile, particularly, this is the same site type of situation, you would be facing community outcry. And it would be very tough on a judge, even if they were allowed discretion to exercise that discretion. So that's why we went down this rabbit hole. We were hoping to draw some correlations between how these high-profile cases play out.

Andy 51:44

I like the content that you develop for us. Larry instead of... we'll cover the articles here in a minute. If we have a few minutes. Do you mind if I ask you that question that my friend asked about international travel?

Larry 51:56

Sure, I'll do my best.

Andy 51:58

Okay, we started with a patron about six months ago, and he's a good friend of mine. And he asked me today at lunch, if, so Georgia has a way to get off the registry. So, he achieves all that he's done with the sentence, he gets off the registry. And he may or may not have the resources to perhaps like get a sailboat and then just go drift around the globe in all the waters. And he was asking me that he wants to know what the kind of requirements or restrictions would he have of getting into: pick random country? And I'm not like I don't think like we know about places like the UK or Germany and like, but if he just picked some random island in the Caribbean Ocean. Like, what are they going to do when he shows up and knocks on the door and says, Hi, I'm here. I'd like to hang out here for a week, month years, whatever, just on a sailboat, though, not take up residence but just visit?

Larry 52:49

Well, there's a lot to unpack in that question. And some of it we don't know. But what we do know is that international Megan's Law was signed in the tail end of the Obama presidency in 2016. So largely, all this stuff, the regulatory framework was put in place by the Trump administration. Because during the remainder of 2016, they were trying to figure out what to do in response to the law, and they were on the early part of the implementation. But the Obama administration and the Trump administration followed with the same policy. Even though the language of international Megan's Law would appear to encompass anyone who's ever been convicted. It's only those who are currently registered that have any duty to report anything. So therefore, if this person has been removed from the registry, they certainly don't have a duty to report anything, unless the Biden administration tries to more broadly define the requirements under international Megan's Law. But that's not his only issue. His issue is what's going to happen if he tries to get into a country? And that I really don't know the answer to because I don't know to what extent that country is going to check the American criminal records repository system and what they're going to have access to. What I do know is that America wants to know everything it can about people it admits,

and it wants to check every database and it wants the home country to assimilate and accumulate as much information as possible on people that are admitted here. Something tells me that other countries have similar outlooks. That they'd like to know who's coming in their borders. So will they have access to his American criminal history and they tell him, we don't want you here? I don't know the answer to that.

Andy 54:49

What about the travel advance notice three weeks before blah, blah, blah. What about all that? And describe what that is too.

Larry 54:57

Well, well, that won't apply to him again, because I was pointing out the Trump and the Obama and I'm assuming the Biden administration. It's so early that they probably not even thought about this. But they have not attempted to apply this to anyone who's not registered. You told me this person is no longer registered, correct?

Andy 55:15

Well, I'm giving you the hypothetical that in a decade from now, or something like that, he gets off the registry. It'll be a future thing.

Larry 55:23

If he's still on the registry, he does have that duty to provide that advance notice if the state has it in the statute. Again, I hear lots of folks say, despite whether your state has it in the federal law, they are absolutely correct. It is in federal statute. But there's no where to report it to that I'm aware of. It's your local law enforcement that you provide that advance notice to who transmits it around the globe. Your local law enforcement transmits it to US Marshals who as I understand the process transmits it to Interpol. I'm not an expert on this, because I've never traveled internationally. But that's my, that's my understanding. And, therefore, if the state of Georgia doesn't require that, if that's not in the statute, I don't know who you would file the information with.

Andy 56:17

So in his case, hypothetically, he hops on his boat down there in Savannah or something like that, and goes and drifts off into the sunset to, you know, never be heard from again, I don't know that, you know, but he goes in visits, he's not going to hide from the felony aspect if they do some kind of search to see if he is a felon of some sort. That would likely show up. Whether they care about or that's another story. And he goes and presents his paperwork and gets admitted and has a good time and moves on to the next port. Possibly?

Larry 56:49

That is correct. Now, does Georgia require that 21 advance days advance notice of international travel? If they do, I would encourage him to make sure that Georgia law doesn't require that. And then my next question would be if getting on a sailboat is international travel, if you don't, in my mind, if you don't cross the port of entry, you haven't traveled internationally.

Andy 57:13

Okay, well, so you just go drift out in the middle of the Atlantic and come back, never visiting anyplace?

Larry 57:18

I would not consider that international travel.

Andy 57:21

Okay, but yeah, but then he goes and visits I'll pick a random place. Barbados, that's an international country.

Larry 57:27

Yeah, that would qualify. So he needs to make sure he familiarizes himself with the requirements of Georgia law.

Andy 57:36

Okay. I don't really have anywhere else to go with that. You know that statute way better than me but I don't recall anybody ever mentioning that particular subject being in there.

Larry 57:52

Uh, well, I will peruse it in the coming week or so. And we'll see if there's any such requirement. Many states have adopted it, either administratively or through a statutory change. West Virginia sent letters to everybody saying you have to do this, bring this letter to us signing saying that you agreed that you've been notified of this. And people dutifully went in and signed the letters and handed them in even though there was nothing in the statute at that time. I cannot say if they've put in their statute since then. I can't keep track of every change. But unlike what Rosa Parks did, when they got these letters that said you better do this. They went, rushed to the offices to turn those letters in.

Andy 58:34

Okay. We got just a few minutes for some articles. Are there any ONE that you want to cover in a specific, and I'm saying that intentionally wrong specifically? Are there anyones that you wanted to hit before we get out here?

Larry 58:48

Not particularly. Did any of them jump out at you? I had these in here for filler and it doesn't sound like we need any. The seven-year-old would be the only one that I would really, I would really want to say just a few words about the seven-year-old accused of rape.

Andy 59:02

I got this from the New York Times. Says a seven-year-old was accused of rape. Is arresting him the answer? Science doesn't support prosecution of second graders, one lawyer said still in New York children as young as seven can be charged with a crime. That seems awfully young to charge somebody with a crime Larry.

Larry 59:20

Well, now, again, we're going to do the unthinkable. What state is this happening in?

Andy 59:26

It would be in the liberal state, the very blue state of New York.

Larry 59:30

All right, so all right, if it's New York, I'm coming down very hard on New York. I can't believe you enlightened people that are so brilliant. And so much more sophisticated than the rest of the country would even think about such a thing. Even allowing an

arrest. Now beyond that, I would question any law enforcement agency that would do a formalized arrest of a seven year old and I'm hoping that they didn't and I hope that if they did arrest a seven year old they went out, took the seven year old, led the kid to the car. And did it as calm and as friendly as possible. But I find that so distasteful. A seven-year-old could not even begin to understand the criminal justice system. They couldn't even begin to comprehend what's going on with them. That is just unthinkable to me. And I think there's a movement, I think in the article said states are raising that age. And I think it's very appropriate and it's late that we would have to go back and change this. We never should had the possibility of doing this to a seven year old. What's wrong with you, people?

Andy 1:00:42

You people, all right, I, you know, we just crossed an hour. I think we could probably get out of here. I do want to point out that if you happen to be watching the video, and you can look up here, there's a tenor saxophone in the back of the screen in the back of the studio here at FYP East. Because I broken the thing out and dusted it off, and I'm getting ready for when we cross 100 patron mark and we're getting closer and closer. So get your votes in. When you are a patron, you get to vote for the your preferred song, I have four listed, and I will be performing that for our patrons.

Larry 1:01:17

I can't wait till we get there. There was one other article that was interesting to me. Senate now Minority Leader Mitch McConnell signals concern over changes to qualified immunity. And this is the police reform where police basically get a free ride on a lot of things they do. It's a very high standard to overcome qualified immunity. And again, I just got through bashing liberal New York. I'm getting ready to bash conservative McConnell. So, but it's over policy. McConnell's on the wrong side of this. Qualified immunity is too broad. It's an invented thing. It's not in the Constitution. It was invented by the Supreme Court, I forget what year but decades ago, and it's time to revisit qualified immunity. And McConnell doesn't get a free ride just because he's a conservative. He's on the wrong side of an issue. And I just called him out.

Andy 1:02:09

All right, not a fan of this particular individual at all. I think that is about all we have. Larry, is there anything else before we skip out of here?

Larry 1:02:21

Do we have any new patrons? I did not receive any mail-in subscriptions. And I also had asked for people to give us some feedback on how punctual they're receiving their, their transcripts. And those haven't arrived yet. So, I'm gonna blame the post office that they're in route. And they just haven't arrived, but we need some subscriptions. And we need some shout outs from the people who receive them.

Andy 1:02:42

I think that we should possibly defund the post office then.

Larry 1:02:47

I think they tried that.

Andy 1:02:49

I think they've been doing it for a long time. Um, no, there were no new patrons. But I do want to thank that we had a rush of them last month. And I can't thank everyone enough. That is a new patron, and definitely ongoing patrons. You guys and gals are amazing. And I can't thank you and appreciate you enough. Anything else Larry? I'll do the closing stuff, and we can scoot on out of here.

Larry 1:03:13

I think that does it. I enjoyed being with you this week.

Andy 1:03:16

Awesome. Appreciate it. Find all the show notes over at [registrymatters.co](https://registrymatters.co) and then leave voicemail at 747-227-4477. That's how we received two of those. And then there's email [registrymatterscast@gmail.com](mailto:registrymatterscast@gmail.com). And finally, again, the best way to support the podcast show some love is [patreon.com/registrymatters](https://patreon.com/registrymatters). Find us all over social media and all

that. And Larry, as always, I thank you so very much for super neat content. From our point of view that doesn't get covered. I don't think there's anything else that covers what we do here. And tell me in some sort of comment or somewhere that somebody else is doing it better than us, but I think we got it covered. So, thank you, Larry, as always, and I will talk to you soon.

Larry 1:04:01

Thank you and good night, everyone.

Andy 1:04:04

Take care. Bye.

**You've been listening to Registry Matters Podcast.**

**Registry Matters Podcast is a production of FYP Education.**

---

More show transcripts are available at <https://RegistryMatters.co> (that's right... just C O with no M)

In prison and can't get the podcast? Have a loved one "subscribe" at <https://patreon.com/registrymatters> at the **\$15 level**, and include your prison address information. Or send a check to cover at least 3 months.

**REGISTRY MATTERS**  
**MAIL-IN SUBSCRIPTION FORM**

Sign me up for \_\_\_\_\_ months X \$6 = \$ \_\_\_\_\_  
(Minimum 3 months) \* **We do accept books or sheets of stamps. No singles please.**

\_\_\_\_\_  
First Name

\_\_\_\_\_  
Last Name

\_\_\_\_\_  
Name of Institution

\_\_\_\_\_  
ID Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

**Make check payable to FYP Education and send to RM Podcast,  
Post Office Box 36123, Albuquerque, NM 87176**