



Registry Matters Podcast

Episode 197

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Andy & Live Audience 0:20

Recording live from FYP Studios Houston! Transmitting across the internet. This is Episode 197 of Registry Matters. Larry, where are we at?

Larry 0:29

We're in Houston, Texas at the NARSOL National Conference.

Andy 0:33

Do you have any just opening thoughts? Something interesting that you witnessed in the last couple days?

Larry 0:40

Well, I had someone educate me about something I was wrong on again.

Andy 0:43

What? Wait, I need a calendar. What were you wrong about?

Larry 0:48

Well, we did a piece of legislation in 2013 in New Mexico that did a lot of good stuff for PFRs, but you never get anything that's totally for PFRs. And we had a provision in there that I thought was good enough. But he informed me that it said something that I didn't even remember that was in there. And I said no, it doesn't say that. I wrote the damn thing. I know what it says. And so, he pulled up the statute. And he showed it he says, well, actually it does say that.

Andy 1:15

Do you want to elaborate?

Larry 1:17

Well, it was regarding the people who moved to New Mexico from other states. So, anybody who moves after 2013 - who has been convicted after 2013, not who moved there - they potentially might have to register under the terms of what they had in the state they came from, that's not what we intended. But you could, since the law is subject to interpretation, you could interpret it that way. So but he doesn't understand. Most people don't. In the fury of the closing legislative days, when most of the bills pass and are acted upon, things happen so quickly. Like, you can't get something passed unless you agree to amendments. So we often write amendments up on paper. One side will say "If you'll put this language in..." So the sponsor will come back and say, "What do you think about that language?" And I say, briefly, "Yeah, we can go with that." And then that's when the negotiations end. Then we send it up to the fourth floor to be drafted by Legislative Council so it can come down in printed form. And they vote on the bill as amended. So, the language, people think it goes days and days. It, sometimes, it's just literally minutes when language is changed. Like I looked at it, and I said, this will work. Well, it might not work as well as I thought. But I am right about one thing: it has never been used the way he thinks it is used. But that doesn't mean it

couldn't be at some point. But we don't apply it the way that he is in the most negative possible light it could be applied. And I told him that I said, you have spotted something that if someone who was really trying to apply the law in the most disastrous way that could be imagined that could be interpreted that way. Because the law is often not as crystal clear as you think. We have differences of opinion. He thinks it says that. I know I didn't intend it to say that. But someone else may think it says that as well.

Andy 3:06

So we need to get the FYP administrative staff on board so that we can catalog this is the day that you learned that you did something wrong? (Audience: *quiet laughter*)

Larry 3:15

Well, I don't know if I'd go that far. (Andy: Oh, I see) I would say that I did not... See, we always think about unintended consequences. And we think very carefully. But sometimes you cannot imagine everything. You have a 30-day session, you have a 60-day session, you've got 600-700 bills, and they're moving quickly. Particularly in the final two weeks and things like that happen. It doesn't work the way most people think it does. You know, we don't keep these things going for months and months and months in small states. Your sessions are short. I think even Texas has a relatively short session every other year. And it doesn't work the way people think. In Congress, they say I'm running year round, except for these long recesses and holidays and in the summer. But in the smaller populated states, not that way.

Andy 3:58

We are in Houston, as we said in the intro, and we have a room full of hundreds of people. Y'all can laugh now, (Audience *loud laughter*) if you want to. See they're really here. There're hundreds of people. There's a line out the door actually going around. There're bicycle cops circling the building, so we have security. Is everybody enjoying the conference? (Audience: YES!) How many people are here for the first time? I can't hear you! (Audience: *huge laughter*) Jeepers. So, for me what I thought was one of the most interesting things, I'm all about cognitive biases and logical fallacies. And one of them is called the Dunning Kruger effect. And Paul Dubbeling today described it and goes, so you got a picture a bridge and when you know nothing, you think you know more. And when you know a lot, you realize how much more you actually need to know. And Paul Dubbeling said, I am probably the most educated person in North Carolina on these laws, and I realize how little I know about the laws. And I was like, he just pointed out Dunning Kruger, and I thought it was amazing. (Larry: Yep.) Anybody else? Anybody want to just shout out? Who was your favorite speaker? (Audience member: Kathleen!) Kathleen?? Who is Kathleen? (Audience Member: Kathleen Hambrick.) Oh, and what did Kathleen Hambrick do? (Audience Member: Well, she represents CAGE.) So, she represents CAGE.

Audience Member 5:28

She spoke out about sexting operations, and basically how it's just the money making scam that our government is running.

Andy 5:36

And we may have Kathleen join us here in a little while, and she can give us an overview and a rundown of what went on. I thought it was an amazing presentation. Just saying, just saying. (Audience Member: It was!) Did you observe this, Larry?

Larry 5:48

I didn't get to observe that.

Andy 5:52

Sigh Alright, let the flogging begin. What are we going to do tonight, Larry?

Larry 5:55

I don't know yet. We're on the fly. We usually have a much more scripted program. But we're going to be talking about polygraphs with a person who knows probably more about litigation than anyone in the room related to polygraphs. He's a precedential case out of the 10th Circuit. Brian Von Behren. And even though we have forgotten it, it's the second time he's been with us.

Andy 6:20

We were sitting at a table with Brian, and he was like, "Man, dude, this would be awesome. You're here. We can go over your case on the podcast. "He goes, "We did it like a year ago?" I seriously still, even listening to it, I don't remember this. It was Episode 160. (Brian: I think so. Yeah.) It was either 160 or 161. And it was recorded in January of this year. It's not even like it was that long ago. And I was like, yeah, Larry, we did this.

Larry 6:47

So we have Brian and we have possibly some questions. I've been speaking with people here. And there's one that really intrigues me because I get the question in writing a lot since I'm on the board of directors of NARSOL. and I'm the publisher of the newsletter and I'm the Legal Coordinator. And I get a lot of questions. And we take a lot of on the podcast from people who write from prisons and so I got a question about a loved one who cannot have access to email and then I started talking around because we hear that question all the time. Then I have attorneys concerned about time limits running out about filing things because communication, though some of those timelines are pretty tight. So I don't have the answers. But maybe we can shed more light on it and figure out how to move forward towards what we can do to solve the problem. But the blanket restriction related to people who are serving time in federal prisons, it even seems to be hit or miss depending on which prison you're in. So hopefully that person can stay around long enough, and we can get into that a little bit more. But yeah, and other people may have questions. We always welcome questions. There are usually coming in by *Almost taps the table*... he said don't tap the table. Don't tap the table. And I already did it once. (Andy: You did, and you were like...) Yeah, I realize and he just got through telling everybody not to do that. So I put my hands under.

Andy 8:03

I just squelch the drinking cadre in the back and you're up here tapping on the table. (Audience: That's us! Woohoo!) Yes. Have fun! So, we are going to have a little conversation for the first or second time with Mr. von Behren about the Colorado case that

occurred sometime in the middle 2010s, right? 2015, 2016 - not really sure when.

Brian 8:27

Yeah, I think the decision was 2016. I should have looked it up before I went up here, but the process was 2015 or 2016.

Andy 8:33

And you gave a similar answer when we asked you about it before, so no further research has been done. (Brian: No.) Okay. What were the conditions? It has something to do with pleading the fifth and taking a polygraph, correct?

Brian 8:46

Yeah, so my case involved are required sex offender history polygraph that was given to me while I was in treatment. It involved the full packet and a lot of the stuff you guys talked about a few episodes ago on the call-in show, which is great. Um, and yeah, I had to take the full packet home and fill it out and did all that. And at the same time, I was already kind of talking with a public defender about some post-conviction stuff, and brought up the issue of the polygraph. And, you know, basically wanted to push it, you know, and see how far I could kind of, uh, you know, force the treatment providers hand to either allow me to not take it or to, you know, do what they're threatening. Which was to kick me out of treatment, but do it in a way where I would be protected from being revoked for my supervised release.

Andy 9:36

Is it fair to ask what the question was, do you even know?

Brian 9:40

I do. The ones they submitted to the court, there were four or five questions. I don't remember the exact wording, but all of them except for one would have implicated, you know, a criminal offense if I had answered affirmatively to them. I personally didn't really have too much to worry about with it, but didn't think they should be asking the questions regardless. But they involved if you had any sexual contact with anyone under the age of 18. You had any sexual contact with anyone who was asleep or unconscious? Um, I think one of them involved, I think, one of them was about incest. Have you had any incestuous contact? And there was another one that was also placing things illegal. I think it was a position of trust or something similar for there. (Andy: Okay.) And then there was one general one. Well, one of the questions they also asked, they inadvertently got put on the record was, is there anything else, or have you committed any other criminal offense that you haven't told us about? And they admitted that that was actually a control question, and that that would be taken off. But the other ones were relevant questions.

Andy 10:54

Is the polygraph a reliable way of determining truth or fiction?

Brian 11:00

Depends on who you ask. My opinions are a little different than I think, some people I've talked to, including you. I think there is some validity to it, I'll be upfront about that.

Andy 11:14

You think there's validity in the actual device or that it extracts a confession?

Brian 11:21

I think that when it is used in a way where the person receiving it does not know how it works, and there's a key deception there. That that's critical to it, that when that deception is unknown by the person taking it, that it's better than a 50/50 in determining if someone was answering a question truthfully or not.

Andy 11:44

But that's because you've scared the person into them believing that the Kabuki machine works, and then they confess.

Brian 11:49

I would say, even if even you're just asking someone a question, that was, you know, not in the confessional part of it. It's just straight up question that it would be better than just a straight coin flip. How accurate, I don't know. I have seen some studies. But I think that the polygraph has changed somewhat from the way it was used, you know, 20-30 years ago. And at least all the polygraph I took and the ones I've talked to from other people in sex offender treatment, they're often graded by a computer algorithm with the polygrapher kind of, you know, being able to override that. But they're based on some physiological response that I think are real.

Andy 12:39

Okay. So back to the case side. Larry, why don't you take over and start digging into extracting more information about this case?

Larry 12:46

Well, when you realize that you're going to potentially have an issue with a polygraph - I don't think we covered this on the podcast - How did you get the ball rolling? What happened that inspired you to take the action that you took. PO called him and said be at the polygraph office tomorrow morning? How did that go down?

Brian 13:04

Yeah, so I had a bit of some interactions before that. I was, when I was released from the BOP, still part of well, still in the custody of the BOP. I entered treatment in a.... well, it's a community corrections center. And that's when the, you know, the history polygraph questionnaire started. I knew something was upcoming. During that process, I was terminated from treatment for a host of some... and my infractions were fairly minor things such as receiving a card from a family member who has a minor that said Happy Birthday on it. You know, third party contact, and a couple other things. And I was, you know, back essentially for a month or so in a holding facility and had access to the law library. And I started looking at ways that I could fight any of the treatment conditions that I knew we're gonna be coming up, you know, in another month or so. And one of those was the history polygraph. And I had done some legal research before and was somewhat familiar with it. So I kind of wrote up some information to an attorney. And I was fortunate that a public defender's office was able to continue to represent me and gave some information to my attorney and kind of confirm some things with him. And I was little bit prepared and then inevitably I was, you know, put back

into treatment. And had a lot of conversations back and forth with the treatment provider and, you know, whether or not they're going to force it. And at one point, they were trying to arrange immunity. That was one of the ways they could have essentially forced me to if they offered both federal and state immunity to anything I said. And that ended up being, you know, something that was, in their words, impossible. And so, at that point, I was ordered to take it. I refused. We appealed to a district judge. The District Judge sided with the, you know, the prosecution, the probation office and the treatment provider. And we appealed. Asked for a stay of that order and, in the parking lot right before I was walking in to actually take the examination and, you know, assert my fifth amendment right, and assume at that point, probably revoked. And the 10th circuit issued the stay.

Larry 15:24

That's where I was trying to get with it, because people ask me all the time, "What can I do? What did von Behren do?" And I say, "Well, I really don't know. I didn't represent him." But people want to know, the real mechanics of when they said take it, because I don't want to ever tell someone to refuse because I don't want someone to go in handcuffs because I said so. So that machination from when you were told to take it, you just flat out refused? And said, I'm not going to take it, or did you narrow down that rejection and said I can't answer certain questions?

Brian 15:56

Right. And that was that was in there initially. I told the court that I would not answer the incriminating question.

Larry 16:06

But when they told you to go take the polygraph, I'm trying to get at that. PO calls and says, you got a polygraph scheduled Wednesday of next week. Did you say, "I ain't gonna take it?" Or did you say... What did you do? Mechanically, what did you do?

Brian 16:20

No, I told him that I was going to take it with my lawyer present and that I was going to assert my 5th amendment right to any incriminating questions they asked.

Andy 16:28

I seem to recall, Larry, you saying that, like, you can do that.

Larry 16:30

But it's not going to go well. And so you so you just flat out said, "I'll take it with my lawyer present."? (Brian: Correct.) And your lawyer agreed to be present?

Brian 16:40

Yes, yeah. And they told me that he was going to have to be, he couldn't be in the room, but he could be observing from another room. And if I really wanted, that, he'd give me a break to go talk with him. But that would have to reset the machine. And they made it sound like it would be an onerous process.

Larry 16:58

So you're at this polygraph examination, and I've taken a few of them. So they've got you, all wired up. Right?

Brian 17:05

Well, I was prepared for that. The 10th circuit issued their stay while we were walking into the polygraph office. So, I didn't have to go in there once the 10th circuit issued the stay, because the polygrapher had already said they weren't going to be able to change the questions to not be incriminating. They refused to do that.

Andy 17:25

Do me a favor. Back up, though. So, there's a gap in the story. Larry's saying, you get told to take the polygraph and fork out the \$225, \$250, whatever that number was. Somewhere in there, you contacted counsel to then start running things up the flagpole? Before they then issued the stay.

Larry 17:44

I want to tell people what they can do when the PO calls and says, "Go take a polygraph." I want to mimic what you did.

Brian 17:52

If it's repeatable. If it's not repeatable...Yeah, no, it is and the way it works in Colorado now as a result of this, and I think in a lot of other places, is that the - and in my case addressed this a little bit - the Fifth Amendment privilege in some context to be self-executing. In the context of sex history polygraphs, you have to affirmatively raise it. And you can't refuse to take a polygraph just because it's a polygraph or just because they might ask you incriminating questions. What you can do, at least in the 10th circuit, is you can plead the fifth to any question they asked you that implicates a new criminal offense. And that can either be something you believe is a new criminal offense, or if you really have an attorney present, the attorney tells you is. But you have to go. You have to show up. Once they actually ask you the question in the pre-interview phase, I imagine that would be when you would do it. Right before you are actually hooked up to the machine. They say, Here's the question, you know, is there anything you want to tell me and you say, I'm not going to answer that question at all. I'm not gonna give you information under the fifth amendment.

Andy 18:58

So you were at a polygraph exam. And they asked you the questions. That's when you said Fifth Amendment?

Brian 19:03

Yeah. And my case specifically, it didn't go that far. Because the polygrapher and the treatment provider had already said that they weren't going to change those questions. And I had already said that I'm going to plead the fifth to them. And they already said, Well, if you do that, we're gonna kick you out of treatment and revoke you. And so the stay we requested was to temporarily not allow them to require me to take a polygraph exam. And that's the 10th circuit that issued that stay.

Andy19:35

So from the time that you were told to take it, you did not take one at that point, because you said I'm not going to answer these questions. I'm going to plead the fifth. So you do get revoked? You do get kicked out of treatment at that point, or no?

Brian 19:47

I got kicked out of treatment once the 10th circuit issue their stay. Once it was settled, right? It was still up in the air. They didn't really know... (Andy: How long does this take though?) Three months.

Andy 19:57

So for three months, they let you just kind of slide? (Brian: Yeah.)

Larry 20:00

I'm still confused cuz normally you get the test- you do the pre interview, that's when they give you the questions. Because the PO and all these people have developed, supposedly, some questions. Your sexual history is kind of straightforward. But you knew the questions because... Who had given them to you? Because normally you don't know the questions until you get there. So how did you know what you were objecting to when you hadn't seen the questions?

Brian 20:23

That information came out in my challenge to them at the district level. The person who was going to give the polygraph exam came in and put on the record the questions they were going to ask me. And you're right. That part is not standard. There's a huge packet you fill out and they can ask you any question on there. But there's a little bit of some back and forth. And some things actually got miscommunicated that officially became part of the district record, but they put on the record the questions they were gonna ask me at that point.

Larry 20:52

So you were on your way in to take your polygraph, and the order came down, and it was stopped? (Brian: It was stopped. Yeah.) That is amazing. I mean, that happens so infrequently.

Brian 21:03

Yeah, it was literally like, in the parking lot. My lawyer gets a phone call and, you know, just gives me a look. And I think, I don't know, a little high-five or something. But yeah.

Andy 21:12

Were you able to find an attorney that would represent you pro bono? Are you independently wealthy? (Larry: Public defender.)

Brian 21:18

It was the same public defender who represented me in my original thing. So all of this started, it's kind of funny, the reason why the public defender was able to represent me was because this started initially with the probation department. (Audience Member: Starts playing the Live Podcast inside.)

Andy 21:37

I have somebody in the audience, checking the sound to make sure that was working, haha.

Brian 21:43

The probation department sought to modify my conditions of supervised release to require me to stay in a halfway house for an extra six months. And I refuse to sign the papers saying I waive my rights to hearing. They did not like it at all, and they threatened stuff, you're gonna be homeless, all this kind of stuff. But I,

because I refused, they had an emergency motion that day, I was gonna be released from custody, to modify my conditions so that I had to go to a halfway house. And at that point, because it was now you know, a hearing as part of my sentence, they appointed me a public defender. It was the same public defender that represented me, you know, a decade ago.

Larry 22:19

So well, for anyone who doesn't practice law, that's an amazing story. The courts are so hesitant to intervene on any type of supervision stuff, and the fact that he could get the Court of Appeals, which we only have 11 of those in the United States... it's pretty important to have a case acted on and then have an injunction issued. Because the standard of review, when we talk about legal case, there's a standard review. And most everything is called a standard review of abuse of discretion. And without remembering the case, specifically, I believe that would have been an abuse of discretion decision, a standard of review. And for the 10th circuit to take that strong opposition saying we're gonna stop this preemptively is amazing. I mean, it really is. And now the whole 10th circuit – however many states, I can never remember - but eight, whatever it is, in the 10th Circuit, that this is something that can be cited as precedential. So, if you live in the 10th circuit, and they're giving you a polygraph where you can incriminate yourself. It can't be just because you don't like the polygraph. But if you are risking having a criminal charge, thanks to [removed] and his lawyer, Brian, we've got some good case law in the 10th circuit. And it's actually come back to help us in Utah, and I don't know where else, because I don't know every case that's out there, but it has been utilized successfully.

Andy 23:41

Larry, I have been informed from our covert staff here that there's someone that has a question. Please do me a favor and come up in here on this edge of the wall because the microphone won't pick you up from way in the back. And if you want to say a real name, or not a real name, but just give me a first name and then go ahead. I think that'll be fine, I think. Yeah, I mean, can you get sort of close to the picture? And go ahead.

Audience Member Araceli 24:07

Okay, so my name is Araceli. So my question is, because you were talking about how you can plead the fifth, what about if you are being forced to lie and not provide your real truthful answer? Can you use a fifth for that? Or how does that work?

Andy 24:23

What would be the conditions that they're asking you to tell a false narrative?

Araceli 24:28

Well, for example, in my son's case, it's one of these sexting operation cases. And the question was going to be, did you show up to have sex with a minor? And his answer is a firm no.

Andy 24:39

Oh, because he didn't believe that he was there to have sex with a minor. Right?

Araceli 24:43

Right. His intention was not to have sex with the minor. (Andy: Right.) That's not why he showed up. He actually did believe it was a minor, but his intention was not to... He is one of the ones that did believe it was a minor. But his intention was not to have sex with the minor, and it's too much to explain. He doesn't have previous sexual experience blah, blah, blah, whatever. Anyway, his answers a firm "No." Well, he's not allowed to answer that. And he's being punished for that now. He was made to pay \$250 for his polygraph. He showed up to take it. He did not refuse to take it. He refused to lie. And he said, the answer is going to be no. And they knew that ahead of time. He said, I'm going to want my results and the recording for my lawyer. So then they backed out of giving him the polygraph. And he got kicked out of treatment. And now he's facing revocation.

Andy 25:36

This sounds similar. Jill Levinson brought it up briefly that while you're in treatment, if you actually are innocent, but then your treatment provider says I need you to admit guilt. But I'm not guilty of anything. And now the treatment provider says you can't stay here and now you've been kicked out of treatment. And that would probably be a probation violation.

Audience Member Araceli 25:54

Yes. So, my question is, does the fifth not apply in that case? (Andy: Larry?)

Larry 26:00

It's too hard for me to even go there. *Roaring laughter from the audience* I totally understand the question. And it's not a new question. I've heard that. (Andy: Really?) They want me to lie, because I go in, and I tell them the truth. And that's not what they want to hear. Particularly a person who didn't do anything at all. They were falsely accused. But once they stand convicted, then a conditional treatment is accepted as a responsibility. As far as the law is concerned, you are a convicted person. You did that because the jury of your peers or you admitted you did it. One or the other, you're convicted. So therefore, if you say you didn't do it, and you're a convicted person, you're lying.

Araceli 26:36

So he was terrified that he would fail the polygraph if he did lie. So I guess can we agree that the polygraph is not legit then? *Rumbling laughter from the audience*

Andy 26:45

You're not gonna get any disagreement out of me. Because like the statements that you're making further support that it is the big giant Kabuki machine, because if they need you to say a specific thing, then it's not an unbiased, it's not a double blind anything. It's complete smoke and mirrors. But if you do believe that it works, and if the thing goes, "tick, tick, tick," when you say the wrong thing, then yeah, it worked. Same as if the doctor puts on the white coat and says, "Here's your aspirin," and he just handed you a sugar pill. And now your aches and pains are gone. It's the exact same thing. It's a placebo.

Araceli 27:20

Because if it were real, they would have allowed him to answer with his response. (Andy: Sure.) And then they could have shown,

okay, you failed. You're lying. But they didn't even bother giving them the polygraph after that.

Andy 27:32

We're going to get to these stories in a little bit. Thank you for that. We've never covered that kind of question, Larry.

Larry 27:39

Yeah, it's not unusual for people to say I'm going to get kicked out of treatment for telling the truth. (Male Audience Member: [Redacted]) You do you do kind of have that look.

Andy 28:01

You do have that look. (Male Audience Member: [Redacted].) Right? [Redacted] And it's complete bunk. Just saying. We don't have to rehash that whole thing. We did a whole episode on the Kabuki machine.

Larry 28:44

So Brian, would you try to clarify to people because all the time - Georgia - You remember your buddy in Georgia that was part of the advocacy group there that his mother's... or it wasn't his mother's. It was another advocate that said that that since von Behren came down that people don't have to take a polygraph. And I said, You go ahead and do that and find out what happens.

Andy 29:04

Yeah, he refused outright everything. So my understanding is that you can refuse to answer that question, or that question, but you can't go I plead the fifth, and I'm not answering anything. And that's what this guy did. After your case came out and I was brand new into advocacy, he just said, I'm gonna go sit in jail, eff you people. I'm not taking the polygraph because I plead the fifth. And I don't know what happened to him, but I don't think it went well.

Larry 29:29

You don't advocate that approach to you?

Brian 29:31

No, no, no, not at all. There's some amount of subjective in your mind, right? Like, if you're taking a polygraph, you're not an attorney. But it's usually pretty easy to tell if the question they're asking you is implicating a criminal offense or if it would just be something that could get you in trouble for probation revocation or treatment violation, something like that. There's a very, very clear line between those two things and all the courts that have issued opinions on the polygraph have all come the same way, which is that questions that implicate probation violations, technical violations, treatment violations are allowed. They can require you to answer them, and that you are welcome to refuse. But if you do, there is no protections on them from terminating you from treatment or revoking your probation for not answering those

Larry 30:25

Would an example be something like, so we are crystal clear. As Nixon used to say, "perfectly clear." When they say, "Did you violate your curfew?" That is not a criminal offense. That is a legitimate question. Correct? But if they say, I'll give you another, have you looked at any stimulating sexual pictures? That is a broad question. And you should actually ask for that to be refined,

because you could be looking at legal porn if you were not under supervision, and that wouldn't subject you to a criminal charge. But if they say, "Have you looked at anyone's picture that's under the age of 18?" Then you're potentially facing a new criminal charge. So you have to be particularly concerned about what you refuse to answer. Are you going to find yourself behind bars? I mean, you agree with that?

Brian 31:18

Yes. No, no, for sure. And usually in the context, there's two types. There's two typical types of exams, right. There's the sex history polygraphs, which usually occur at the beginning and occur in a limited number, one or two sometimes. And then there's the maintenance polygraph exams. Generally, they don't ask you questions on the maintenance exams that would implicate you in a new criminal offense. And if they do, you are usually able to get them reworded in such a way to limit them or expand them sometimes. You know, to not implicate a new criminal offense. So, for instance, I talked to someone who, in all of his maintenance exams, we get asked, Have you viewed any child pornography in the last, you know, since the last exam? And he would say, I'm not gonna answer that. But if you asked me if I viewed any pornography, just like you said, in the last six months, I will answer that. And then actually broaden the question right? And then make it so that it was implicating a criminal offense. And then they would ask him, and he would answer it and, you know, and pass the polygraph.

Andy 32:15

Do you have a question?

Audience Member Mike 32:16

Yes. Mike from New Jersey. Quick question is, can the polygraph examiner force you to try to answer a question if they just say, "Oh, it's a control question, the answer doesn't matter."?

Brian 32:32

So there are three types of questions they'll ask on a polygraph exam. There are relevant questions, control questions, and irrelevant ones. The entire reason why the polygraph machine works at all is because they intentionally try to get you to confuse the control questions with irrelevant ones. If they ask you and they say you have to answer this question, are you sitting down? Is your name John? Those kinds of questions, and they tell you they want you to answer them. They're trying to convince you that those are the control questions, and they absolutely are not. Those questions are completely irrelevant for the scoring. They are said only to convince you that there is some legitimacy to the machine. And that you somehow answering those is giving in some kind of more control. The real control questions are ones that you don't know are and that once you do realize they're control questions, it completely invalidates it. That's what makes, you know, it trivial to pass a polygraph.

Andy 33:37

Do they actually bring up the word legitimize the polygraph? Because I would end up laughing. I would straight up laugh. *some laughter from the audience*

Brian 33:46

I mean, it's part of the training that the polygraphers receive. They want you the person taking it to believe that it is legitimate so that it builds it up. And they also want you to believe that the real control questions they're asking are questions that you have some reaction to, and they need you to have a reaction to the real control questions. Otherwise, they can't score it at all.

Mike 34:10

So all retired FBI agents have been giving the test for 25 years and things like that. You know, so...

Brian 34:17

Yeah, there's a really great resource called the Lie Behind the Lie Detector. It's from a website called antipolygraph.org. It's a manual, it's a free eBook.

Andy34:30

He reached out to us after we did the polygraph episode trying to say we missed the mark. On the Florida Action Committee call we did, he said we missed the mark.

Brian 34:39

I think that once people read that and can learn to identify what these control questions are, it makes the polygraph completely trivial. And I think the more people that do that, eventually they'll just stop giving it because everyone will know and they won't be able to have any kind of even pretend accuracy in it any longer.

Andy 35:02

So where do we go from there? So you have now, you've pled the fifth and you got the stay from the 10th circuit. And what happens then?

Brian 35:12

Yeah, and so I got kicked out of treatment. They followed through on their promise. They terminated me and he said, He's not amenable to treatment because he won't follow... because at the time, Colorado's requirements required a sex history polygraph. And so they kicked me out. question officer, you know, was basically told that he can't violate me for that. He could try. But it would be a very easy win on my part. And so he didn't. And so I was, you know, a very "dangerous, uncontrolled" person out in the wild of Colorado while on supervised release without any kind of treatment or any kind of restrictions on me for a year and a half. And amazingly, I didn't go on a rampage and start causing havoc. I got job and went back to school and had talked both with my family. So but yeah, and then, about a year or so later, the 10th circuit issued their opinion in my favor. And magically, at that point, the same treatment provider is going to change their mind and say, Oh, yeah, we'll welcome him back now that they know. And so the same one that terminated me for being not amenable to treatment, and invited me back. And my PO said you have to go to them. And I did end up completing treatment through them. And it was a better experience the second time.

Larry 36:25

So, you're magically amenable after they had the ruling. Amazing. (Brian: Yes. Haha.)

Andy 36:29

Sir, Larry, give me that give me the scope. 10th circuit only applies to Colorado? It applies to the entire 57 states that we have?

Larry 36:36

It only applies to the states within the that circuit. But if you're not in that circuit, being that it was well planned, well argued, well researched, you can cite to it even if you're in Alabama. Even the 11th circuit, you can say this is very persuasive.

Andy 36:52

And to what degree does persuasive matter? Does it just like nudge it along? Is it like, Wow, that's really significant?

Larry 37:00

Well, when an appellate court is looking at something, they're looking at what already exists in case law, from the Supreme Court, because the Court of Appeals is only one notch below. So they're looking to the Supreme Court. There is nothing from the Supreme Court on this in terms of the his particulars. So then it's a matter of first impression for the Court of Appeals. So rather than starting out from scratch, another appellate court, if they're inclined to want to be objective, they're going to look at the 10th circuit and say, "What did they do?" So, although they're not bound by it, they're going to be very intrigued by and so it has been helpful around the country. You know, it's helped in West Virginia, the state Supreme Court. I don't remember the name of that case, but they said - I believe it was West Virginia - but yeah, there's other states even not in that circuit that have said, "Yes, we agree with this analysis." So it can be very persuasive if they're inclined. If they're inclined, not to give any relief, they'll be dismissive. But if they're inclined to be objective, they'll say this is well done. And it was well done.

Brian 37:58

And I can't cite the case. I don't have it memorized but I'm almost completely sure the ninth circuit has reached the same conclusion as well.

Andy 38:09

And did this now launch you into getting off the registry and having a perfectly easy-going life?

Brian 38:15

Oh, yeah, it's been it's been smooth sailing from there. No, I mean, it certainly helped. And I'm glad that you know, I fought the battle so to speak. I, you know, was, like I said, when I'm going back into treatment and completed that and was fortunate that I had a relatively short term of supervised release compared to some other people.

Andy 38:41

Larry, is this an example of impact litigation?

Larry 38:42

It very much is. This is exactly impact litigation. His case has impact well beyond him. It is precedential. Meaning if you're in the 10th circuit, and you have very similar facts, you're likely to get the same result no matter what state you're in. And so yes, this is what we do at NARSOL. This is impact litigation. So that's what our

next segment is hopefully going to be about in terms of the mail policy. Not the mail policy. The email policy. It's similar to mail but no.

Ando 39:13

In the last little sliver of your life that you've been alive so long, you were around when they invented Pony Express.

Larry 39:20

We didn't even have ponies back.

Andy 39:22

Right, right, right. So before ponies were even invented. *laughing from the audience* So email has been a very small part of your existence, whereas the rest of us we've been using email the whole time we've been around pretty much.

Larry 39:31

Yes. Back in the Lincoln administration, they were beginning to use covered wagons and ponies.

Andy 39:37

So are we ready to go down that path?

Larry 39:41

Let's do it. Brian, did you have anything else? We really are grateful to have you here in Houston. And thanks to one of our patrons, they helped make that happen. So it was very nice that the opportunity arose and we took advantage of it.

Andy 39:54

And the individual that sponsored your participation here, he miraculously fell ladder, or unfortunately, I don't want to say miraculous. He unfortunately fell off a ladder sometime earlier in the week and he was excited about coming. He was going to fly in Friday night. We were going to introduce you guys. And he's not here, because he fell off a ladder. He's somewhat of a clumsy, super hardworking individual, but it was over-the-top generous that he would try to sponsor someone and bring them out here. I'm glad you're here.

Brian 40:21

I really appreciate that. And thank you guys as well.

Unknown 40:25

Cool. Appreciate you coming on.

Roaring applause from the audience

Larry 40:31

Kudos. Seriously. So okay.

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Andy 41:27

What is this crap that you've brought about CorrLinks?

Larry 41:30

Well, we have another guest.

Andy 41:33

We do? I don't know who's coming up for CorrLinks. Oh, you are. Do you want to use a real name or fake name? (Hannah: I can use my real first Name?) That's fine. That's totally okay.

Hannah 41:44

It's active so I just want to be careful. And there's active litigation going on.

Andy 41:48

Okay. Yeah, yeah.

Larry 41:49

You can use any name you want to.

Hannah 41:51

My name is Hannah.

Andy 41:53

Hannah. Welcome, Hannah. And what are we going to talk about?

Larry 42:00

Hannah, tell us about the issue.

Hannah 42:01

I don't profess to be an expert. We have an ongoing case with my loved one. And one of the things that you find out real quickly is that deadlines are everything. And even involving extensions which are common on both sides. Both, you know, prosecution and defense. They're still important. And, you know, even good cases can fail because of a deadline or an extension or missed paperwork. Sorry, (Andy: That's okay) I get passionate.

Andy 42:33

Just don't do it again. I'll chop them off.

Hannah 42:35

I'll try, I can't make any promises. *Audience laughs* I only have experienced with the Bureau of Prisons, BOP. Is the term people lovingly refer to.

Andy 42:48

Great organization.

Hannah 42:49

Um, and when you're working, you know, active cases, whether it's appeals or you know, anything post-conviction related, or even, you know, if you're being imprisoned and your case is ongoing, because it happens a lot. You're remanded before there's even a trial. There are... some prisons are better than others, just like anything. But there are a lot of prisons where the BOP just makes their own rules, which is par for the course for a lot of

people who fight cases that are, you know, sexual in nature, any kind of sex offense, whether it's people in the registry or people who are about to be on the registry or any variation on a theme. And the BOP does not look very fondly on them. They're not an exception, and they are second class citizens, even when they enter the prison system. And a lot of, especially internet based sexual offenses carry restrictions that usually don't take effect until after you've served your sentence. But the BOP, again, tends to make their own rules and has very little oversight and very little recourse. Again, as do many of these offenses. And when timelines are important, it is even more important to be able to connect with your attorney. And it brings up a lot of civil rights issues for you not to be able to connect easily with your attorney, or even your loved ones who might be acting as a third-party intermediary with your attorney. So I'd like to bring light to the issue that there are several federal prisons and more than likely state prisons as well that go out of their way to make it more difficult and push things, you know, close to a deadline that's very important to someone's case, whether pre or post-conviction. You know, if you have an internet restriction, the BOP says, Okay, well, you can't use the internet. Well, a lot of these email systems like CorrLinks, they're not really connected to the internet. Or if they are, it's a very restricted channel between you and the other person. And as many people probably know when they're even, you know, using snail mail to communicate with their loved ones in prison, there is a process of you know, approval that you have to go through to even be able to receive or send mail to an inmate. The same goes for internet. So for the BOP to go out of their way to make it more difficult for people to keep in touch with our loved ones or attorneys in a more immediate way than snail mail, because we all know how reliable that's been, especially in the last year and a half or two years.

Andy 45:17

So wait, you're telling me that your loved one inside is not allowed to use the email system?

Hannah 45:25

Because it was an internet-based case. And of course, he was on the registry with a prior conviction before, so that adds all sorts of enhancements. The BOP has taken it upon themselves to enforce this. And again, I'm not an expert. So, there might be legal gaps in my knowledge.

Andy 45:40

So do they have full internet access inside? (Hannah: No, they have no internet access.) And is the email list of the to's and from's, is that restricted? Can you just email johndoe@yahoo.com? (Hannah: You can't email anyone.) But somebody that could, someone that has access...

Hannah 45:58

Someone that could would have to go through the same process that you'd have to if you were to use snail mail. You would have to get that person's name and phone number and address or whatever. Because everything's individual too. So each person might have different rules, or there's an overarching, BOP policy. But again, there's variations depending on who's the warden, who's the staffer, who shows up that day for work. So you know, you're held to a different standard, not only being you know, a registered person, or just someone with a sex offense, but also, if

you have any kind of internet restrictions, even though you're not connected to the World Wide Web, internet is being used to transfer messages between one party and the next. And they are excluded from that, which further just cuts you off from the immediacy of being able to connect in a timely manner with attorneys.

Andy 46:46

So I'm going to assert some tech prowess here. And somebody here can probably back me up here a little bit. I believe that the email systems that are in place could filter everything, word by word, and if either based on a specific word or even like with some kind of like machine learning stuff, you could kind of figure out intent of messages?

Hannah 47:06

Nothing, not even phone conversations are anything but recorded and reviewed.

Andy 47:12

So, if you were allowed to email them, and they said anything about breaking out anything like sex related, they could flag them? I believe. (Hannah: Of course.) Don, would you agree? (Don from the audience: I would agree.) So it makes zero sense to me as to why they would do it. (Hannah: How much of these laws really makes sense?) Very few of them. But I try. Larry says, "The law is very legal." And I'm like, bullshit. It's not, they may be often, but a lot of times, then they're just knee-jerk reactions, and someone being a jerk. And this, this isn't law, though. This is just someone's policy.

Larry 47:49

The term I use is the law is logical... (Andy: I'm sorry,) ...until the politicians screw it up. But what I'm intrigued about are the points of this restriction. The podcast listeners know that I have been very generous to prison administrators, they have broad, broad discretion in terms of privileges, or that they're privileges. And therefore, a privilege can be denied. But what intrigues me about this privilege being denied is if it's a blanket denial... like recreation, like going to the library, if you're in disciplinary segregation, you would not get to go to the library, you would not necessarily get your recreation time unless it was required by law. You would not have visitation. All these things can be denied. But a privilege like the communication through postal mail, or through electronic mail, which is very highly regulated, I do not know how legally that can be done if it were challenged properly. Because as she pointed out, it puts the person who has legitimate needs to access attorneys for deadlines and stuff at a disadvantage without a showing of anything. It's just an arbitrary policy that some administrator has decided upon. And so therefore, it troubles me greatly and I get the letters all the time. So is it everyone with an Internet based? Because that's what they might say. Well, it's only those who use the internet or is it everyone with a sexual offense? Do you know are there institutions where they give them access? The particulars still escape me because the letters are hit or miss. I get letters from Arkansas, saying that I can't do that from. There was a prison is Forrest City. And then you know, it's like hit and miss.

Hannah 49:43

Take it a step further to just letting the notary, someone who's official enough to be able to sign off on an affidavit that you need to get to an attorney here. Even that process is difficult and not just for anyone with a sexual offense, but in general, it's already difficult. So you're taking Again, you know, someone who's pushed way down to the on the totem pole of even a prison patriarchy. And the BOP employees take it as their special mission, which I'm going into a little bit more opinion than actual facts in that regard. But anything it's not, you know, obviously the most egregious in my opinion is the internet restriction for something that is entirely monitored and entirely separate from what anyone here would consider actual internet access. But, you know, other things are required of people who were actively fighting their cases, or actively appealing their cases, or just trying to reach out to attorneys and experts who can help them in prison. You have a right to do that. That is part of the only thing that you have going for you when you've been convicted of a crime or pled to a crime. And as far as at least my experience with someone with a sexual offense, it is not possible or it's barred. Or, if it is possible, it's at the last possible second, where you are endangering yourself just in a simple matter of meeting a filing deadline. Or meeting a deadline, but your lawyer had to take out anything that you were participating in, because he couldn't get that information in time. He couldn't consult with you. He couldn't do anything. But you know, wait and wait and wait, or in my case, call every single day with the prison and get a different answer every single day and not be able to schedule because there's only one person in the entire BOP who's responsible at that particular location to sign off on an appointment. So it's a serious issue, and people should be not only aware of it, but obviously that's a serious civil rights issue too.

Larry 51:38

Well, most people in federal prison are going to be internet-based crimes, because it's going to be the possession and distribution of child porn, or it's going to be something with interstate because otherwise it would be an intrastate thing. It would be in state court. So most of your federal people are going to have been traveling across state lines, because they thought they were going to meet somebody that turned out to be an undercover sting. But your general sexual crimes, if it's not on an Indian reservation, or if it's not somewhere where there's federal jurisdiction, they're going to be in state court. So what I'm trying to get at is everybody who has a sexual offense conviction, since they're so primarily internet based, can you be a sex offender in federal prison and have internet access through CorrLinks?

Hannah 52:21

With an internet crime, I can guarantee No. I don't know. I don't know.

Male Audience Member 52:27

So I was in the BOP, when they implemented CorrLinks. They gave discretion to each individual prison, to the warden, to ultimately decide. But the guidance they issued was that people who had contact or attempted contact with minors, which included all the sting operations, were not going to be allowed to have the access to the CorrLinks systems. Whereas people who had internet based crimes that didn't involve contact or communication were allowed to.

Larry 52:57

Well, there would be so few of those because like I say, if you have a standard sex crime, you're going to be in state court. You have to have an interstate jurisdictional hook, which is the internet, primarily, or on Indian Reservation or where there's federal jurisdiction. You can't come in to the state of Texas, and someone who's doesn't have... there's a limitation on jurisdiction.

Male Audience Member 53:18

Like a child pornography offense. They were allowed to access the CorrLinks system.

Larry 53:24

Oh really? So, it's not internet based, okay. Okay, that helps clarify.

Andy 53:29

Larry, something interesting about internet based crimes is the packets, like the traffic of the Internet, has to go somewhere else first, which generally crosses state lines, and then it comes back. So even if you're like, emailing your neighbor, it may have had to go to Nebraska for you to email your neighbor in your neighborhood, all the way across the other side. So now you've committed interstate travel. You've broken interstate jurisdiction.

Larry 53:56

So well, you know, and the thing about the individual warden, I think we talked about on the last episode, the Bureau of Prisons was not created until 1930, which was like 70, something years after I was born. But before the Bureau of Prisons, we had a federal prison system, but each institution was funded by Congress line item by line item. So we had a couple of prisons, and they were individually funded. And each Warden was his own little fiefdom. But in 1930, they, they created the Bureau of Prisons. But still, it's a very decentralized you have the administration arm in DC, but these prisons are so far spread out that no one from the outside comes in and monitors them. So the warden and administration are the kingpins. So, they have broad, broad latitude run the institutions. I think anyone who has been in one would agree with that. You know, very few people come from the outside. So the warden is still making up stuff as they go. And there's really not much you can do about that. You know, that's just the way prisons are. But anyway, so I think there's another question here,

Male Audience Member 54:59

I got a comment that I was in the federal system. It was actually a club fed. And the CorrLinks system went in when I was in prison, too. And it was not run like we were saying there, but this has been 10 years ago. So I don't know what it's like there now. And I have to agree with Larry that it really is kind of up to the local administration. But we were treated pretty well there.

Larry 55:31

What is club fed for everybody who doesn't identify with that what? What word is club fed?

Male Audience Member 55:37

Well, it's in a place here. Just north of here.

Andy 55:42

The question is, I've heard they have salad bars. I've heard (Male AM: Sometimes) Seriously?? Sometimes salad bars?

Male AM 55:49

Yeah, we ate good.

Andy 55:51

I mean, that's why it's called club fed. That's the joke.

Hannah 55:56

Security level is key in these issues too. Keep that in mind.

Male AM 55:59

Low security institution. It was a low security institution. People there were not scary for the most part.

Hannah 56:07

They're either at the end of their term, or they, you know, pled out and we're given a fairly light sentence comparative.

Male AM 56:15

Oh, I had seven years. Or eight years.

Larry 56:18

Well, before we keep everybody here all night, there actually is a plan of action that we've been working on. Mostly our guest has been working on. She's been talking to NARSOL's attorney. So Hannah, tell us what the plan is because I'm the coordinator. So I'm going to be also involved in this but she's going to be exchanging... just let her tell. What are we going to try to do?

Hannah 56:44

Well, follow up is necessary, obviously, but she was going to reach out to the federal public defender's office to see if at least my prison in particular was one where multiple complaints have been brought to the attention of at that level. Because, again, you know, there is a broad interpretation of policy at the BOP. And depending on the person, and depending on the security level, the warden does have a lot of leeway in how those prisons work. Inmates with similar charges may not have to deal with the same restrictions or the same staff difficulty. But he plans to establish if there are multiple complaints for specific locations, because on an individual level, it's next to impossible to get any kind of relief. And I would go a step further to say it could even endanger your inmate to do so in some cases. You always want to make sure that you're in you know, communication and keep that in mind as well. But it's easier to make civil rights claims if you have multiple instances of something with the same specific issue to purchase. So that is the avenue of attack if there is one, at least in the short term.

Larry 58:03

So, we may end up when we have the 2025 conference, because litigation takes time. So we may end up by the 2025 conference talking about in great detail that we've been able to find this pattern and find a good cause of action and it gains traction and we're having another guest. If it's not Hannah, it's someone else who benefits from that work.

Hannah 58:29

If there are listeners who have the same issues, speak up. Email, contact, however you guys get in touch.

Andy 58:36

Generally crackpot@gmail and that goes straight to Larry. *Audience erupts in laughter* Pretty much. It will be registrymatterscast@gmail.com. That's the email for the program. Well, thank you very much. Is this your first visit on a podcast? (Hannah: Yes.) Awesome. You did fantastic.

Larry 58:54

And it's your first visit to a conference of this nature. Right? (Hannah: Yes.) And have you had a blast?

Hannah 58:59

It's been a lot of fun. A lot of emotional roller coasting.

Larry 59:04

Okay, I gave her a hard time. She stayed at a B&B and didn't even stay here with us.

Andy 59:09

What!? You did? Oh, it's probably because we're all creepy. (Hannah: No, not at all.) *Audience laughs* Thank you so very much. Thank you so much. Will we see you next year? (Hannah: Yes. Absolutely.) All right.

Larry 59:20

So she stayed at a B&B because she has particular travel needs like me. We don't even have a picture of my shower yet. (Andy: I was gonna ask you, did you bring your shower head?) Yes! It's installed! (Andy: Do you guys know the story?) Well, but come up here. Brian, tell us about showerheads.

Brian 59:35

I just remember from you talking about it.

Larry 59:36

Right. But what is your policy on showerheads? Do you believe that there's legitimacy for needing...?

Brian 59:43

After hearing you talk about it, when I traveled to New York, I don't know a year or so, year and a half ago, I brought one with me.

Andy 59:49

This was a running joke.

Larry 59:49

But did you did you need it because of low water flow?

Brian 59:53

Yes. Yeah, I used it because I was going to be there for a while and I wanted you know, showers I got used to.

Larry 59:58

Yeah, so like, I have a need for strong waterflow and the little trickle that comes down, it's not enough. So I install my own

showerhead and I put theirs back when I leave. I think everybody should do that.

Andy 1:00:09

Hold on. And when you travel, this was a running joke. I mean, like, somewhere around Episode 50, there's a picture of a shower kit. So you actually have to carry like a separate trunk with you that has a pipe wrench, plumber's tape? Do you carry a plumber with you by chance?

Larry 1:00:26

Well, all you need to carry is channel locks, the showerhead, plumbing tape, and you've got it.

Andy 1:00:35

And have you ever damaged anything to where you like, now all of a sudden there's a water leak?

Larry 1:00:39

Well, not to my knowledge.

Random Audience Member 1:00:40

Plead the fifth!

Andy 1:00:43

Yes, now you're having a polygraph and I'm going to ask you these questions.

Audience erupts in deafening laughter

Larry 1:00:48

But the first thing I'll check is waterflow.

Andy 1:00:52

I don't think... you haven't done that here because that's... (Larry: Oh yes, I have done it here). *more laughing from the audience and Andy* I was like, I was pretty impressed. It's a nice big fat shower head.

Larry 1:01:01

You should go up to the room and take a picture.

Andy 1:01:01

I'm not going anywhere near your room.

Larry 1:01:05

But it was a great wide flow of water. But there was no water coming.

Andy 1:01:10

That's because you're on the 10th floor. So, it's a lot of effort to get water up that high. Do you want to come join us? (Kathleen: Sure.) You don't you don't have to? I can just open up the floor to questions. (Kathleen: Why the hell am I sitting down here if I'm not gonna join you.? *laughs*) Because you're drinking? (Kathleen: Too late. I've been drinking) Oh, you've been drinking? Um, so there was a presentation done yesterday by a woman named Kathleen. And you have joined us, and we met talking about meatballs. (Kathleen: Meatballs.) Friday night. (Kathleen: Yes, we did. Meatball man. Oh, man.) No, that was Thursday night even sorry. (Kathleen: Oh, it was.) and yeah, there was a problem

with the meatballs at the meet and greet. (Kathleen: It wasn't a problem.) It some sort of special needs.

Kathleen 1:01:55

"I don't want to eat any of... Oh, there's meatballs." That is exactly what happened.

Andy 1:02:00

You did a presentation yesterday that honestly, like... how many times have you done the presentation? Wait, I'm sorry. The listeners can't hear you.

Kathleen 1:02:08

That was the only time I did the presentation. Although I've got to say I've been working on it a long freakin' time as my coworkers could tell you.

Andy 1:02:15

I gotta tell you it was it was incredibly well done. (Kathleen: Thank you.) And give us the elevator pitch, 30 seconds, something like that. What was the presentation about?

Kathleen 1:02:23

The presentation is about protesting law enforcement agencies from using police proactive stings versus actually gum shoe handling reactive cases of sexual assault.

Andy 1:02:36

Larry has brought up the stings from the context of that there's not even a victim on the other side. (K: Correct.) And so that's what this is related to? (K: It is.) We've had a number of conversations about it, where if you do end up in a chat room, and it is really a 13-year-old, you're screwed. Because that's what the vigilante on that other show, they were actually getting minors to do the chatting.

Larry 1:03:04

That's what he was claiming. I've never seen it done that way. It always starts as an adult, and then they morph to a minor.

Andy 1:03:11

But what you were describing is the profiles are created with adult pictures. Right?

Kathleen 1:03:17

Correct. Well, my, in my son's case, he was sent a picture of a 24-year-old.

Andy 1:03:21

And how long through the conversation did it stay an adult before it flipped?

Kathleen 1:03:27

No. So the ad itself the profile, and this was on Craigslist, it did not state in age at all. And quickly within the conversation, this person professed to be 13 and my son scoffed it off. Why would you be on an adult dating site if you're 13? You mean 23. That is exactly what my son said. She did not verify or not verify. He asked for a picture and was sent the picture of a 24-year-old. Along they move.

Andy 1:03:58

And how long does it then... like what happens next? Does he then go meet?

Kathleen 1:04:04

Eventually he does go to the address. He texts her says, I'm here would you come outside please? Because he's still a little like, "Is this a child? I don't think this is a child? Is this a child?" She comes outside, she is the woman from the picture she is an adult he walks inside and he is arrested for attempted rape of child.

Andy 1:04:21

What child? (K: No child.) No child? (K: No child.) So, I guess the only like the only crime then is that it was stated to be a minor in the continued chat...

Kathleen 1:04:31

Nope, nothing.

Andy 1:04:38

Larry, your turn. (Larry: That happens all the time, unfortunately.) But how does that even exist? That sounds like entrapment. (K: It is entrapment.)

Larry 1:04:46

They say it isn't.

Andy 1:04:49

Okay and you're gonna say something to the effect that they can do it until they're told to stop.

Larry 1:04:54

Well, I think sometimes like do it after they're told. But the way the statutes are often drawn, and they're drawn at the instigation of the victims' advocates and law enforcement, because they want to have successful sting operations. So, they draw the statute, construct it in such a way it says, a person, a minor, or anyone who is represented to be a minor.

Andy 1:05:18

It could be a cartoon image of a child. Yes?

Larry 1:05:24

So you show up... but see the conversation, the 24 year old has the advantage because they know what they're attempting to do, which is to make an arrest collar. And so they have the advantage. And they can shame you, they can manipulate you, they can tease you, they can do all these things. And it's okay, because entrapment is only when they provide – and it's a real fine line. Juries don't like it when you put it forth as an offense. We try it and it fails every single time. But the entrapment is when you never have any interest in committing a crime. And the law enforcement officer says, hey, I've got this great idea. If we do this, the result will be a gain of whatever. We're gonna put together a scam to take all the money out the vault, and you never thought about the vault, but you've become tempted. Well, the juries don't like that defense, because they say, well, when they told you they're 13, you must have been predisposed to have a crime or you would have stopped. So therefore, you had the predisposition. So there was no entrapment. The officer was just merely fortunate barrier between you being able to act on your

impulses. And we're fortunate, and thank God that that operational went... But see, that operation was not needed.

Because the person wasn't looking for sex, they were on an adult chat room. They had no desire to talk to a minor. They created an imaginary victim. I hate to tell you, when you're as old as we are, minors don't want to have anything to do with us. They really don't. They they're looking for, if they have anything to do with you, it's only because you're going to get them alcohol, it's because you can do something, But they're not interested in your sex. You know, you've watched these things with Chris Hanson. And you see these guys that are 300 pounds and 45-50 years old, and they talking to this supposed to be a 14 year old. Oh, you're so cute. They don't think you're cute. So but sometimes our ego gets in the way. And like, if it was me in the hotel... You know, I can't tell that story in the podcast, I have to do it privately. (K: Okay, I want to know!)

Andy 1:07:30

Maybe a Patreon extra question. You have a question?

Kathleen 1:07:33

So what I wanted to bring up was, the way they get around entrapment is they say, well, we just post online and they act like they just post as a regular teenager just casually hanging out. And they say we don't reach out to the men, we let them reach out to us. What they don't tell the public is that they created an adult dating profile, or they posted an ad for men to reach out to them. So that's how they're saying, Well, no, they're the ones that reached out to us. We weren't the ones reaching out to them. Yeah, but you were asking for the men to reach out to you. And then the second thing they use is they get them engaged in sexual conversation. Well, a lot of people use adult dating platforms to engage in sexual fantasy talk. That's why they're using these adult dating platforms because they know they can easily get the men to play along. And then the third thing is, well, they showed up. So they use showing up as that shows intent that they wanted to have sex with a minor. So they would have raped a minor. We are heroes that stopped them from raping the minor. Showing up does not prove that they have intent to rape a minor because men are showing up for different reasons. And actually wanting to have sex with a minor or was going to try to have sex with a minor is actually very few of them. That that turns out to be the reason

Andy1:08:53

Larry helped me understand. If we were to equate this to going to a bar, and upon entry, they check your ID. However, some people show up there with fake IDs, but you have a reasonable expectation that everyone there is above 18-21, I don't care whatever age it is. And you go into the bathroom, and you have relations with someone, and then they turn out to not be, but you had... it's a reasonable expectation that everyone got carded on the way in. That they have already prescreened that everyone is of legal age. Is that similar?

Larry 1:09:24

Yes, it's similar. But therein lies the problem. If you are in some of the states where they have what's called a strict liability statute, which is I think what he's wanting to talk about. Michigan on the Zack Anderson case, anybody remember that case? (Andy: Yes.) Well, that that was a strict liability offense. He traveled from Indiana across the border into Michigan. And it turned out that the

person he had relations with was below the age of consent. And Michigan says we don't care because of strict liability. The legal term is spelled SCIENTER, scienter. And there were statutory schemes all over the country that are devoid of any scienter. And they said we don't care. I think they're unconstitutional. The Supreme Court has never said they're constitutional. But legislatures enact them anyway. And challenges always failed because there's a case, Moressiti. But there's a case from 40-50 years ago, where there was a footnote, just a footnote, where the Supreme Court said, and some strict liability statutes have been upheld in the arena of sexual offences. Something to that effect. So everybody hangs their head on the Moressiti exception. But the Supreme Court, when they have spoken on strict liability, they said that crimes that are going to have significant impact on your life, you have to have knowledge that you're committing a crime. Something that's strict liability would be like speeding. There's no long term, you may pay higher insurance rates. But if you get a speeding ticket, you get three points on your record. It's a temporary aberration. It goes away after a passage of time. But when you're talking about a sexual offense, or even a felony offense, that's a lifetime altering consequence. All those statutory scheme should have an element of scienter, and that's what the Supreme Court has said. But legislatures all over the country say, yep, well...

Andy 1:11:23

I'm going to give you my definition. Strict liability is like you get a speeding ticket. "Well, Officer, I didn't know what the speed limit was." Sorry, ignorance of the law is no defense. So you're going 55, they don't change it to 35.. He didn't see it change. But now it's 25. And they pull you over, you are expected to know. That's strict liability?

Larry 1:11:41

That's strict liability and with small infractions and regulatory in nature infractions, they're okay. Strict liability doesn't alter your life. It's like a speeding ticket. Three points come, three points ago. But a felony doesn't come and go in most instances. In particular sexual offense felonies.

Andy 1:11:58

I received a message that says, but what about the minor that has a fake ID? There was no intent to commit a crime. Please define that term. That would go back to the bar.

Larry 1:12:08

That's what I was trying to describe. You would have a reasonable expectation. But in Michigan, they wouldn't care. They would say, Well, the fact of the matter is, verse three says he or she was under the age of strict liability. And you say, but I didn't know, she was in a bar, he was in a bar... strict liability. That's what the birth certificate says. That's wrong.

Andy 1:12:29

And the parallel is when you go to these dating websites, there's some sort of language that says you're over 18. Even there's some, I don't know what it's called, but there's something on the internet, they can't track information. Generally, under 13 can't even make profiles, like on Facebook. So they make a Facebook for kids kinda thing. So anyhow, you're at some adult website for meeting people. You're expected to be over 18 upon entry. Of

course, you can lie and just change the year of your birth to say that you're 175 years old, and you're one of your classmates.

Kathleen 1:13:02

So kind of off of that same remark, we have a woman in the audience who her brother was entrapped on Badoo, and they have facial recognition. So the of age police officer had to get her face.

Andy 1:13:15

She could have used a picture of her mom to pass.

Kathleen 1:13:20

I'm not sure how it works. Theoretically, it has to be a person of age. I mean, how could you possibly then ever date anybody? How could you meet anybody on the internet?

Andy 1:13:33

I have no answers for any of these questions?

Larry 1:13:36

Well, I don't know how you could actually even have a physical relationship with strict liability because I hate to tell folks, people mature very young. They develop physically, very young. And so therefore, you would almost need to collect identification, photocopy it, and then have them sign that. I mean, it's ridiculous.

Andy 1:13:56

and be able to spot fake IDs as if you're a bouncer at the club.

Larry 1:14:00

Yes. You'd almost need one of those fancy - I guess you would call it a scanning machine - for that. Where it reads it and they could validate it. You'd almost need all this stuff. I mean, how realistic is that?

Andy 1:14:11

Someone says you need to cut off the leg and count the rings. We're going to age people by trees. That's clever. Very good.
Audience laughs hysterically

Andy 1:14:21

Your organization is what?

Kathleen. 1:14:18

Citizens Against Government Entrapment. CAGE.

Andy 1:14:27

CAGE. Like Cage. All right, and (K: We're in a cage.) Can you quickly tell me how people can find you? I would very much like to have you on again and we're running short on time. I just I was super impressed. I wanted to bring you on.

kathleen 1:14:37

Thank you. So our website is cage.fyi. And I also have a blog ladyjusticemyth.blog, which you can reach me off of that as well.

Andy 1:14:45

Excellent. (Kathleen: Thank you so very much for having me.) I appreciate it. (K: Absolutely.) Kick rocks, haha. Is there anything else that you want to talk about?

Larry 1:14:54

I'm exhausted, but we can take questions if there are any because you guys have stayed with us.

Andy 1:15:00

If you have a question. So look, here's the deal, this microphone like, oh, like it rejects you people and listens to us. So if you want to come up and ask a question, please come up along the side, you can even sit down in the chair. And please, please, please, you're coming back. And that's totally fine. Are we going to talk about the same subject?

Female Audience Member 1:15:18

You're probably tired of hearing from me, but I have a lot to say. I'm going back to the polygraphs. Okay. Okay, so I have heard that, in polygraphs, you're not supposed to ask more than one or two questions. And you're supposed to ask the same question in more than two ways in order to get accurate results or close to accurate results. Do you know anything about that? Or have you heard anything about that?

Andy 1:15:41

So the question would be are you over 24? And then are you under 26? Is that sort of the way?

Female Audience Member 1:15:48

Not because you'd have to be like, re you 24? Were you born in whatever year? (Andy: That's fine. Okay.) So you ask the same question in two different ways to get the same answer. And that that's the way polygraphs are supposed to be conducted. But from what I'm hearing, especially from his, there are multiple questions being asked. So from what I know about polygraphs, that automatically is no good. Like the polygraph is not gonna work because you asked multiple questions. Not just one question. Do you know anything about that?

Andy 1:16:18

Our polygraph expert Brian?

Brian 1:16:22

Oh, yeah, no you hit a dead on the National Polygraph Association. I don't know if that's their actual name, but there is a national association of calligraphers. And they've issued guidance and they show in their studies that they show the polygraph is really reliable. In those studies, they talk about a specific issue: polygraph exam. And that is the question where, "Did you commit this crime? Did you steal from the store." Whatever. And in specific issue polygraph examinations, their guidelines say to limit to one to two questions and to ask those questions in multiple ways. In sex offender treatment, they rarely do specific issue polygraph exams. Sometimes they'll do them if the person says they were innocent of the crime, they will use a specific issue polygraph exam to ask them you know, did you really do it and, you know, mental treatment kind of stuff. But the majority of the maintenance exams are not just an issue, they ask four or five relevant questions. And the polygraph associations expanded that

magically to say, Okay, well that's okay. It's not quite as reliable but still really, really good. And they say you're supposed to limit to I think three to five relevant questions.

Female AM 1:17:33

Did you guys hear that Texas just passed a law that says polygraphers no longer have to be licensed? What do you think about that?

Andy 1:17:44

Should we have licensed magicians? Should we have licensed smoke and mirrors performers? It's such bullshit. I got yelled at when we were doing that polygraph program on my disdain for them for the level of disdain that I have for them. Someone was like cool it, we know you think it's a kabuki machine. And I so I'm trying to refrain from... someone said to me on our social networking site. Well what about real magic? I was like there's no such thing is magic. So what is real magic? So there's not real lie detectors.

Female AM 1:18:26

I think we should be the polygraphers. We should start doing it because you no longer have to be licensed. I think I'm going to become one of those.

Andy 1:18:34

Why don't the people that are a step or two removed from the person so like, I can't become the polygrapher. Why don't one of you people become a polygrapher and go take money from people? Because that's what it is. It's a complete sham. Um, any other questions from anybody? Anybody? I do want to make sure to acknowledge and thank everyone, so very much, really appreciate you coming and hanging out. It really means a lot. It's a lot of fun. This is 197 episodes. Larry, like in a week and a half, two weeks. We move into year number five, and we cross 200 episodes. (Larry: Awesome.) I've been putting up with you for like seven years.

Larry 1:19:16

And how long does a typical podcast last?

Andy 1:19:20

They're usually like an hour and 10. And we're at 1:19.

Larry 1:19:23

No I'm talking about the length of the life of a podcast.

Andy 1:19:27

I mean, you can go back and listen to episode one.

Larry 1:19:29

No, the person who starts a podcast.

Andy 1:19:32

Oh! You mean that. The average age is seven episodes. (Larry: So we have exceeded the seven.) By a little bit. Any other questions from anybody? Anybody? Bueller, Bueller? Anyone? Bueller? Thank you. Thank you guys so very much.

Audience erupts in a symphony of applause

