



## Registry Matters Podcast

Episode 199

Recorded 10-23-21

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 problems with these thoughts, fyp.

Andy 00:17

Recording live from FYP Studios, east and west. Transmitting across the internet. This is episode 199 of Registry Matters. Larry, we should just dive right in. Man, are you ready to hit this? What else are we doing tonight that's exciting?

Larry 00:33

We're gonna be doing a patron extra for the people who support us. And hopefully we don't run off too many of our patrons, but we're going to be talking about the United States economy. (Andy: Oh, are you an economist?) And whether it's in good condition, or whether it's in deplorable condition. There's all these varying views. So we're going to talk about the economy and do a deep dive.

Andy 00:55

Awesome. What are we going to do on the main feed for the for the regular folks?

Larry 01:00

Well, we're going to read some letters that were sent to us from people behind the walls and a couple from people who listen to us electronically. And we're going to talk about a case from a couple of years ago from United States Supreme Court. And it should be a very interesting episode to say the least.

Andy 01:19

I am looking forward to it. I did interrupt I did say how are you and then jump right into stuff. So how are you?

Larry 01:27

I'm doing awesome. I'm looking forward to a week from now, we're gonna decide a week from now whether Halloween is Saturday or Sunday.

Andy 01:37

When did this become a thing? In my brain, Larry, it was always on the 31st. And it was also dark outside cuz we moved the times zones – not the time zones - Daylight Savings Time in like '05, I think. But hasn't it always been on Sunday, and this Saturday thing is kind of new?

Larry 01:57

I suppose so. But it seems like there's people that have written to us saying that they're going to be ordered to stay home both nights because it may be celebrated on Saturday night and the authorities are not sure. So they're gonna, just to be on the safe side, make sure folks are not out or doing things. They might be tempted to grab a child that's trick or treating.

Andy 02:18

And even before my little visit with the Georgia Department of Corrections, I just remembered like being here, like, I remember just being on Sunday. But the other thing that's always been weird

to me is trunk or treat. Man, when I was a kid, we just got our little bags, and we started scouring the neighborhood and we went and collected candy and came home with candy. We didn't have some, I don't know, structured - doing it in the square of the town or anything - like we just went out and went on our own.

Larry 02:49

I agree. I think that kind of destroys the spirit of trick or treating and figuring out which house to go to judging by the decorations and the affluence of the neighborhood. And what you've heard from other trick or treaters To just go to a central location and scoop up candy doesn't seem to be very much fun. You know, it's kind of like to me, I enjoy buying Scout cookies from the girls. But when the adults are all there selling the cookies, and there's no girls anywhere to be seen. I know it stills technically goes to the scouts. But I kind of like the interaction with a shy girl saying, "Hey, would you like to buy some Scout Cookies?" And I say, "Well tell me about those cookies." And I like to see if they've actually been coached in what to say. If they can think on their feet. And like it's no fun for someone who's not a Girl Scout to be selling cookies, so I never buy them unless there's girls selling them.

Andy 03:40

All right, then. Okay, so let's move on. You did say what we were doing tonight on the main feed? Yes, you did. So we can begin, yes?

Larry 03:49

I think we can.

Andy 03:51

Excellent. Um, so we have an article- a typed letter. Larry, this is another thing. I never had any access to any sort of like mass production of text. Like I type really fast. And I always had to write very fast. It was very disturbing interaction that I had. But so this individual has typed us a little letter it says: Dear Larry and Andy. Hello, guys. It's Doug again. He's from the Michigan Department of Corrections. I wish I was writing you concerning something other than this. I'm very troubled over the poor soul you featured through his listener question in Episode 194, recorded on 9/18. In this transcript, his question appeared at the time 11:28 concerned the fact that he is an inmate in the Luther Luckett Correctional Complex in LaGrange, Kentucky and more importantly, the fact that he was attacked and raped by another inmate. I am writing in hopes you could get the following information to him and everybody else if possible. There is an organization out there called Just Detention International, JDI, that I hope he and anybody else who has ever went through this has enough courage to contact. At this facility, we have their contact information posted in every housing unit. The following is their contact information and description of services offered as listed in Prisoner Activists Resource Center 2021 Resource Directory. And I'll quickly give the address so that it ends up in the transcript, just detention International, Miss Cynthia Totten, Esquire, and lists her Bar number is 199266. That's 3325 Wilshire Boulevard, Suite 340, Los Angeles, California 90010. Yeah, if you have any problems like that, first of all, there's PREA, the Prison Rape Elimination Act. And then of course, follow that information. This stuff should not happen to you while you're locked up.

Larry 05:52

It's awesome that Douglas wrote this to us. And the best way we can share the information is through this podcast. Unfortunately, very few prisoners get it. But since I am the publisher of the NARSOL Digest newsletter, we may run this resource in there because it's such a significant thing. Traumatic and horrible. And so we may, we may... Thank you, Doug, for sending this.

Andy 06:16

And also, if anybody puts like a piece of candy on your bed, when you get locked up, don't eat it. Don't take it. Just leave it there.

Larry 06:24

Tell me about that. I'm not familiar with that.

Andy 06:27

They're going to come collect that debt. So you want to give them that candy bar back.

Larry 06:33

Well, do you have to pay for the economic value of the bar?

Andy 06:40

Yeah, you're gonna pay for it. I don't think there's gonna be any sort of economic value. You're not going to trade a stamp for it or something like that. You're going to... Anywho Alright, moving on Larry Dear Larry, and Andy. My name is Michael, and I am a prisoner in Wisconsin. However, in 30 days, I will be released and sent to Maryland through interstate compact. On several occasions, you described Maryland as being pure as the wind driven snow. Why do you describe it this way? Are you implying that is a great state for PFRs? Or are you being facetious? I don't know if your description means I'm headed for a good state or dangerous trap. That being said, I know that you've been sending rules and regulations for various states from the KlaasKids Foundation website. If possible, could you send me that information for Maryland? I'm enclosing 15 stamps to help defray any expenses. When released, I plan to become a subscriber to your podcast. Currently, my friend Sean lets me read the transcripts he receives. But when I subscribe, I'd like to consider being a patron. What are the differences between just subscribing and being a patron? What are the different patronage levels? Thank you in advance for all the information and answers I've requested. I appreciate all the time you guys spent on the podcast, Michael. Thank you very much, Michael. So I'll quickly describe, we don't really have anything different as far as the different levels. I'll reveal the man behind the curtain. If you subscribe at \$1, you get the same stuff as you do if you subscribe at the \$1,400 a month level, the stimulus check level. However, people find that the information provided is more valuable than others. But we wanted to make it available to everybody because a lot of our people have very severe financial hardships. So people come in at all different levels, but you can get away with just doing \$1. But Larry, I'll let you describe the subscriber side of it versus the Patreon side.

Larry 08:31

Well, that's easily described. Most people who listen to us either on our Patron distribution or through YouTube or all the different ways they listen to us, they have very little interest in the

transcript. The only time they interest in the transcript, we've got a few listeners that will go back and use the transcript so they can put some critical comments in YouTube that's been said. (Andy: That has happened recently, hasn't it?) Yes, on this last week. If we have time, we may get to that. But yeah, that's really the only difference. And we realize that most prisoners who are behind the walls are not able to listen. So we wanted to provide content. So this transcript is something different for people who cannot listen to us and it's actually quite a costly production. There's labor going into making the transcript accurate from the auto transcribe, and then the printing and the postage and envelopes and distribution. But FYP education is committed to making information available. The people who are behind the balls are going to be outside the walls at some point; most of them. The overwhelming majority of them. And these are questions that arise all the time and we are helping you to know what you're looking at when you get out.

Andy 09:43

Back to his questions. What did he ask? First of all, is Maryland as pure as the wind driven snow and the best state to transfer your supervision to?

Larry 09:53

It is not, but he's leaving a state that's not all that fantastic either: Wisconsin. Wisconsin is that state that sends you the bill for the \$100 and tells you that you need to continue to keep your registration current while you're no longer living there. I'm not aware of any other state that does that. Now, there are other states that will keep you on the website, but they're not telling you that you must report to them and pay the money. But Wisconsin does that. Maryland - that's a joke. The executive director of NARSOL and I, when we became friends, she was relatively a novice at advocacy. And we were talking about the treatment, as it exists in most paradigms that exist out there. And I told her, well, in general, this is a collaborative fishing expedition. They use what they can get you to confess to in treatment, and then they turn around and revoke you or violate you in some way. Maybe tightening your restrictions on supervision. And I said, I'm just not fond of that type of treatment. I'm very big proponent of real treatment, but she says, well, we don't do it that way in Maryland. I said, Well, I hate to tell you, you actually do. Yeah, Maryland is not... I mean, I'm sure that there might be some jurisdictions within the 23 counties of Maryland that try to do a better job. But it's not pure as the wind driven snow. But it is a very good state overall. They have the benefit of two state Supreme Court decisions, which I was peripherally involved in the strategy and the litigation. And their souped up version that they enacted in 2010, cannot be applied retroactively. So therefore, if he happens to have an old offense, and he's been in Wisconsin for a very long time, he might very well find himself under the old registration scheme in Maryland, which would be, in many instances, only 10 years. But depending on that those factors, and I'm not going to try to analyze them here, Maryland is not a bad state. The disadvantage he has, he's on interstate compact. And you remember, you have the conditions from Wisconsin that are on your supervision. And then you have the conditions that Maryland wants to add, as long as they're consistent with what they put on PFRs. And you have to comply with both sets of supervision conditions. And both violations, whether it's from a Wisconsin condition, or a Maryland condition can get you in deep trouble and revoked. And due process is hard to come by because

even though you're entitled to a probable cause hearing, those are very difficult to arrange. And people end up just signing their waivers and going back. And then they end up in the state where they might not have even had to go back to had they insisted on a probable cause hearing. We've done a couple of episodes on that.

Andy 12:33

Yes, we have. All right. Um, and so let's be clear. I know that we'll have to revisit this because somebody will start listening on the next episode and they didn't hear this. When you say pure as the wind driven snow? Are you being serious? Or are you being facetious?

Larry 12:49

I'm being a little bit facetious. It's not a bad state overall. They don't charge you registration fees. I think they might charge supervision fees as a part of their supervision regimen for your punishment, but it's not really all that bad, Maryland, comparatively. There's no state I would say as ideal and perfect, but Maryland is not a bad place to go. So he's not going from a great state to horrible state, he's going from a pretty bad state to a much better state. Maryland actually doesn't even have any residency restrictions, as far as in the law, but there could be that the supervising authorities may impose them while you're under supervision. So that's something he's gonna have to find out when he gets there.

Andy 13:30

And the KlaasKids stuff, the rules and regulations, will you be able to send that? Will that be able to get sent him to about the state of Maryland?

Larry 13:38

Absolutely. We have been doing that. People have actually been requesting those. And I think even though some people say we shouldn't do it, because it promotes the Klaas foundation, which they're not actually in alignment with our views, the information they have is largely accurate. It comes directly from the state, and it gets updated annually. And I would much prefer to be able to punt to the KlaasFoundation if something's wrong, and that FYP education doesn't own that. We give them full credit. This is their information from their website. And if you rely on it, your beef is with Klaas, not with FYP.

Andy 14:13

Fair enough. And how big is the staff at FYP now?

Larry 14:18

Oh, it's enormous. We've research and... (Andy: I was gonna say I can't keep up with it.) Just the tip of the iceberg. We've got a research department, we've got writers of content.

Andy 14:30

Yeah, we've got video production and audio production staff.

Larry 14:34

We're gonna soon overtake the EIB network in terms of the number of people we employ. (Andy: Of course. Of course.) Anybody who does or doesn't know, EIB is the Excellence in Broadcasting Network that Rush Limbaugh was the originator of.

Andy 14:49

Yes. And alright. Well, then let's move on to a question from one of our patrons who sent this in. This came from Patrick. Can a federal probation officer based on sex offender loitering zoning laws in Georgia prohibit you from going to church. I guess loitering, loitering is a specific term. Can you give me offhand the legal definition of loitering?

Larry 15:14

I can't, but he had thrown it in the question. And, as a general rule, to be hanging out with no purpose. If you're like, just meandering. And if you're patronizing a business, if you're sitting at McDonald's, and you're consuming your meal, you're not loitering. But on the other hand, if you stay at McDonald's for hours on end, because there's a playground, and you're not conducting any legitimate business, then that could transfer from being a patron to loitering. And he put all that in his question, and he did a very diligent amount of research, excellent research. He's got some of the best arguments that anybody could make. And he really needs an attorney. But can they stop him from going to church? Yes. You remember what we say? about can they do it? (Andy: They can do it until they're told to stop.) That is correct. Now, in some circumstances, they might be able... remember narrow tailoring to the individual offender is the key. If a person had been in a church, I'm trying to figure out how you would narrowly tailor a condition that would be appropriate. If they had committed their offense at a church, I think any probation department that wanted to severely restrict their physical presence in a church would be on fairly solid ground to do that. And particularly if they did that in a setting where they might have had a leadership role; they violated trust and so forth. But, you know, a general situation, telling a person they cannot exercise their first amendment - I believe that's the first amendment, freedom of religion and separation of church and state - I believe that would be a very serious violation. And he could possibly seek redress through a competent attorney in the state of Georgia. Because the federal probation office, I think, is over the top unless his offense merits that type of restriction on an individual basis, not because they just plucked this out of the Georgia... There is something in the Georgia registration statute that prohibits a PFR from loitering. But loitering is defined, and they refer to the other section of Georgia statute that defines what loitering is. And being there for a legitimate purpose is not loitering.

Andy 17:30

If we were to overlay - and this is me, and my non legal mind - if we were to overlay Packingham, the premise behind that was the person went on to Facebook and he posted a religious message because he didn't get a ticket, speeding ticket, and he said, Praise the Lord. Thank you, Jesus. Something along those lines. I would imagine that that would be some kind of referenceable material for you going to church that the Supreme Court said, Nah, you can't do it for that reason. So this seems to be like at least in the same ballpark.

Larry 18:00

Correct. They're going to have to provide him... if there's no basis for the prohibition of going to church, it just won't stand. But if they can come up with something related to you, that somewhat justifies that. Then they're going to have to provide you an ample

alternative means to worship because they just cannot extinguish your right to worship.

Andy 18:20

But that doesn't apply in the opposite direction. Go ahead Larry.

Larry 18:24

But what that adequate alternative method would be would be subject to interpretation. If they tell you that you can listen to the Billy Graham Evangelistic Association, I don't know if that would qualify as an adequate suitable alternative, an ample alternate means. But if they say you can go to a small church that doesn't have a daycare and your offense involved hands on with a child, that might withstand scrutiny possibly. I don't know. All this stuff has not been fully developed in litigation. Some things we just don't know the answer to.

Andy 19:02

But in Georgia, they were going to go on like almost like a slander campaign against a church that kicked one of our people out. But a church can deny you access. But probation, the government, can't deny you from going to church just carte blanche.

Larry 19:21

That is correct. Now that's what's really puzzled me. I have great difficulty understanding why you want to be where the business or the entity does not want you. And I know people are going to throw eggs at me because there have to be exceptions. It would be someplace like the Capitol. I don't care if the people in the Capitol want me or not. I want to be there. That's not the analogy I'm making. But if I'm going to spend my hard-earned dollars, unlike the people on the other side of this microphone, that just rain from the sky, I have to work for mine. That supposed to be funny. But I don't want to go spend my money if the businesses does not want me. By the same token, I would say the same thing about a church. If a church tells me we do not want your kind here, why would you want to be there? Now the first response would be, I've got friends there. I've been a member of that church, my family's been there for decades. That would be their first response. But that's, still, that doesn't matter to me. If the congregation does not welcome you, part of the worship experience is diminished. And I don't know why you would want to be there. But people insist, they have to me. No, they actually don't. They don't have to let you in.

Andy 20:32

Totally. Alright, well, let's move along. And this is from, I forget the name of the person that sent this one in. But it says, to the NARSOL Legal Corner, I am currently civilly confined in New York State PFR management and Treatment Act program. Its sex offenders' management and treatment act program. If, when I am released unconditionally with a complete discharge from civil management, I would like to travel to North Carolina to stay in visit with friends in that area, then go to Kentucky, and then Ohio to see family in those states for an extended stay. Most likely, I would then come back to New York State to live. My question is a general one that has relevance to a wide number of PFRs. Once I've registered in a particular state, and then moves to another state, and register there, do I have to continue with registration on the registry in the state I've moved out of and no longer reside in? Upon moving to the third state, am I then required to keep up

registration in multiple states? Or is it just the one that I currently reside in? Respectfully, and I still can't read the name. It's written in cursive. And I don't want to put it up on the screen. So do you have to keep registering in the state that you've come from?

Larry 21:47

It is from Mark, and this is exactly- folks listen to that question. That is exactly the type of question we love to answer. Because it's not specific to your case, necessarily. We don't have to do in depth legal research to try to figure out the answer and risk being wrong. And we know enough from our life experience to answer this as a general rule. As a general rule, when you go to another state, you will have to register. The previous state, your obligations to them will terminate. It's like, think of it when you take your vehicle. When you move your vehicle from North Carolina, and you take that vehicle to Arizona, and you decide that you're going to register the vehicle in Arizona, North Carolina will cease charging your registration fee. And they will quit sending you a notice to update. That's the same thing, as a general rule, that happens when you're on the sexual offender registry in one of our wonderful 50 states. When you move from one state to another state, your obligation ceases because it's a civil regulatory scheme that applies to you and you're no longer there to be regulated. Now, that does not mean they will take you off the website. But a website is a historical record of what was. So, they may leave you on the website. And we'll get into why that can be dangerous later in my answer, but they may leave you on the website. But generally, they do not require you to continue to communicate with them. The exception being, one exception that we know emphatically is Wisconsin. If you're convicted in Wisconsin, and you leave Wisconsin, they will tell you that you're obligated to continue to report to them and pay \$200. And when I say report, not physically in person, but sending in their form and verifying your information. I happen to believe that's unconstitutional. But it's constitutional until the court says it isn't. So that would be the exception. Now what I don't know about Wisconsin, is if someone, if their conviction is from another state, and you move into Wisconsin, and you have a registration obligation, and then you cease to live there, and you connect yourself with another registry, and Wisconsin says we continue to need to collect our \$100. I don't know the answer that. So I know we've got dozens of Wisconsin people. So that would be one I would be delighted to know. But in terms of how this can harm, I said I was gonna get back to that, it can harm you in the aspect that you may be in a state where you can be discharged from registration. So say you visited Florida, or one of the several states that never remove you from the website. So you're in a state that terminates your obligation lawfully through a petition process or you timeout, one of the two, and your registration obligation ceases, you're still on the website in Florida, or Nevada, or one of the states that never removes you from the website. You're not having to send in a form or any money. But there's a likeness of you. And your offense description, there's lot of stuff on the on the internet that will linger forever. And you will still be hampered by the fact that you were registered. So try not to go to a state that never removes you from the website. I mean, that would be my advice. Do your best to avoid that.

Andy 24:56

Can you rattle off a handful of states that never take you off? Obviously, Florida.

Larry 25:02

Florida, and I know Nevada doesn't take you off, but they both show you living out of state. But what they don't do to my knowledge is, if you've been lawfully discharged from registration, they don't show that. They'll just show the last address that you registered that was reported to them. So when you leave Florida and you connect with the registry authorities in New Mexico, New Mexico will communicate that address to Florida, and they'll show that you're living out of state at that address. As far as I know, they don't continue to update that. I haven't had any personal experience. But I have been told that that address shown on Florida is very old by a person who actually does live here that has a Florida conviction. So I don't know that they continue to update it. But if the registration obligation were to end in New Mexico, guess what? You're still on the Florida website, and people say I'm still being forced to register. No, you're not being forced to register. They're carrying a historical record of your registration.

Andy 25:54

Um, there's somebody in chat saying that he was in North Carolina, has since left, and then he's still listed on the website. I hadn't heard of North Carolina being one of those states that when you leave there, you get to stick around and be memorialized so to speak.

Larry 26:10

I think there are a lot more states doing it than we realize. I think our state does that. I've heard I think it's hit or miss with our state. I've heard people say that they're still on the website. I've heard people say they took me off. So I don't know how that works. But it's very difficult for you to know that. I mean, if you call them and say I'm thinking about visiting you people. And I'm wondering if I visit you people, if you people are going to take off the registry, off your website when I leave. And they're gonna say, that's a good idea. Maybe we should change a law. That'll discourage you people from visiting us. I mean, you gotta be careful.

Andy 26:41

That's kind of my question. Is that in statute that these places leave it on? Or is it just a clerical oversight that you left and nobody crossed the right t and dotted the right i to have you removed?

Larry 26:53

No, I don't think the statute addresses it either way. I think it's just a practice that's arisen. I don't think there's anything in the statute of Florida that says "shall be carried on the website forever." And I don't think there's any such thing in New Mexico's statute nor in North Carolina, it's just the practices developed. Now the theory goes, that they're doing it to get the extra tracking money from the SMART Office in Washington, DC. But I don't believe that theory. I do not believe that. If the government pays people to do residency verifications on folks that are not there, then we're in deeper trouble than I thought.

Andy 27:25

That's interesting. And maybe that's why if you went around and checked state by state by state, maybe you would end up with the million people on the registry. But that's because somebody went and visited North Carolina for 15 days and ended up on the

registry and then went home. So there's not just the 80,000 people on the registry in Florida, when there's only 30 and change, whatever, that are actually registering.

Larry 27:48

Yes, that's what people misunderstand when they add up all the registrants in one state, and then they go the next state, then they compile the grand total. The reason that's flawed from the get-go is there's a component of people that are not listed on registries, in some states. They're registered but not listed publicly. So you would miss those. And then the people that are registered in more than one state, when I say registered, listed on the website in more than one state. Some are actually legitimately registered in more than one state, because they hop across the border to go to work or go to school. And they have an obligation to register in both states, but there's so many duplicates. So you need to take all those numbers you here and throw them straight into the garbage because they're not accurate.

Andy 28:29

And somebody else, one of our friends from Wyoming I think it is, he visited his parents in Sarasota, Florida for two weeks in August. He's still on the Florida registry.

Larry 28:40

And he will be for the rest of his days unless they change that.

Andy 28:44

And one final question on that there. Larry, do you then have to go visit Florida and like check in, call in, drive down there and say, Yes, I still live out of state or do you do anything? Or is it just almost like a stagnant record, a dead record, that you once visited Florida, you no longer live there, and they just leave you on the website? There's nothing that you have to do actively to maintain it?

Larry 29:08

Yeah, that's what I mentioned earlier that they will show the address as it was reported to them, but they don't continue to impose any obligations on you. And when people say it's the same as registering, No, it isn't. You don't have any residency prohibition, proximity restrictions. You don't have any obligation to notify Florida before you travel. So it's not anything approximating the same thing. People like to say I'm still registered. No, you're listed on the website. You're not registered. You're not complying with registration in Florida.

Are you a first-time listener of Registry Matters? Well, then make us a part of your daily routine and subscribe today. Just search for Registry Matters through your favorite podcast app. Hit the subscribe button and you're off to the races. You can now enjoy hours of sarcasm and snark from Andy and Larry on a weekly basis. Oh, and there's some excellent information thrown in there too. Subscribing also encourages others of you people to get on the bandwagon and become regular Registry Matters listeners. So, what are you waiting for? Subscribe to Registry Matters right now. Help us keep fighting and continue to say FYP.

Andy 30:28

Alright, let's move on to the next question. Says, Hey, Andy and Larry, in Episode 198, you were discussing parole and probation

revocation hearings. In 2018, the Supreme Court heard a case in *United States vs. Hammond*, in which Justice Alito said the case had the potential to bring down the entire federal supervised release system, but for the time being, let it stand. In that case, for those of you not familiar with it, Hammond was sentenced to 38 months in prison and 10 years of supervised release. Two and a half years after Hammond began his supervised release, he was violated with a five year mandatory imprisonment term, which the court ruled unconstitutional. Hammond argued that the supervised release statute, which required PFRs to serve up to a lifetime on supervised release was unconstitutional because it exceeded the statutory limits of the actual crime itself. However, since Hammond had not served more time on his supervised release than his statute required, the court threw out that argument. I wanted to get you people's opinion on those who do serve more time on supervision than the actual crime. For instance, if your crime was for zero to 10 years, you serve 10 years in prison, and then were violated for supervised release violation afterwards, and forced back to prison going over the 10 year statutory maximum. What are your thoughts on that? Interesting, okay.

Larry 31:51

Yeah, this is our main event, isn't it?

Andy 31:55

Did I jump ahead? That's, oh, yeah, I think I... alright, fine. I put something out of order then. Alright. Yeah, we'll do our main event, and then we'll come back to other things. That's fine. My bad.

Larry 32:07

Sure. Okay. All right. Well, this is the big discussion item we're gonna have. And the essence of Jacob's question is really very succinct. He argued that the supervised release statute, which required PFRs to serve up to lifetime on supervised release was unconstitutional. So that was the essence of it. And so I don't completely agree with the final part where he said the court threw out that argument. I don't read it that way. But the rest of what he said is pretty much spot on. But let's talk about the case, the case is *United States v. Hammond*, 139 S. Ct. 2369 (2019). The court held that by imposing a mandatory term of imprisonment, after revoking supervised release, based on a finding by preponderance of the evidence, that he had breached his condition supervised release, violated the sixth Amendment's jury trial guarantee and the fifth amendment due process proof beyond a reasonable doubt standard for criminal cases. The court left for the lower court to determine whether the error was harmless and, if not, what was the appropriate remedy. That's what this is about.

Andy 33:27

Okay, I bet you I have a whole battery of questions for you. (Larry: Well, I know you do.) Now I understand what is happening. Alright, let me cover some background on the case then. A federal jury convicted Hammond of possessing some CP, which is punishable by imprisonment for not more than 10 years. The district court sentenced him to 38 months in prison and supervised release for 10 years thereafter. The court conditioned Hammond's supervised release on him committing no further crimes, submitting to periodic polygraph examinations, Kabuki machine, and consenting to searches by his probation officer. It is humorous that Hammond

passed several polygraphs, suggesting that he had neither viewed nor possessed any CP since his release, yet when Hammond's probation officer seized Hammond's cell phone, he found images of CP cached there. This alone shows that the Kabuki machine is not accurate. What happened next, Larry?

Larry 34:24

Well, you can guess that they moved to revoke his supervised release. And in his revocation hearing, Hammond presented expert testimony that the material could have been put on a cell phone without his knowledge. Nevertheless, the court concluded - this was the trial court - that it was likely more likely than not, remember that's the standard for revocation, that Hammond had knowingly possessed child pornography in violation of his conditions of release. The trial court, with reservations, ordered him returned to prison for the mandatory minimum of five years.

Andy 35:01

Wow, five years. I'm guessing that Hammond appealed.

Larry 35:04

He did indeed. And the US Court of Appeals for the 10th circuit reversed the trial court, holding that the mandatory minimum feature of the sentencing revocation procedure violates the fifth and sixth amendments.

Andy 35:18

So what was the basic argument on appeal to the Supreme Court, though?

Larry 35:23

Well, Hammond claims that the Federal supervisory statute, for those legal beagles that's 18 U.S.C. § 3583, which subjects federal inmates on their release from prison to certain conditions, usually for a maximum of only five years. But for certain sexual offenses, the supervised release term is at least five years and maybe for the sex offender's entire life. Under the statute, a court may revoke an individual's supervised release and return him or her to prison by preponderance of the evidence and if the court finds that the individual violated the condition of the release. So that was what his claim was to the Supreme Court, that the whole thing was unconstitutional. Now, I think it was actually the state that appealed because you see, the title of the case is *United States versus Hammond*. So that means they are the ones who filed the cert petition. So they weren't happy with what the 10th circuit had done, so they took this up to the Supreme Court.

Andy 36:19

As I understand it, when a court revokes supervised release, it reimprisons the individual for no longer than his remaining time of supervised release. And in any event, for no longer than five years, with an exception for PFRs. Under Subsection 3583(k), a court must sentence a PFR registrant to reimprisonment for at least five years when the court revoked a supervised release based on a PFR offense.

Larry 36:50

That is correct. And therein lies the problem: that subsection that came into being, I think they said in 2006. But that provision was the issue before the court, and if allowed to stand, it would permit a person to be on perpetual supervision that could be revoked

without proof beyond a reasonable doubt, which is a fundamental constitutional right. That was really a battle of judicial ideology. The Conservatives took the position that federal supervised release should be treated the same as parole or probation revocation which does not require or provide the same level of due process, because both are forms of conditional liberty. On the other hand, supervised release, as used in the federal system is a rehabilitative period that follows the completion of one's punishment. Federal parole was abolished in 1984 when the sentencing reform act was passed and signed by none other than President Ronald Reagan.

Andy 37:47

What was the ultimate outcome then?

Larry 37:50

Well, the court actually agreed with the 10th circuit that those provisions were unconstitutional. Because what you had is a mandatory... no matter how much the person had served, if they had any supervised release remaining, they were required to impose a mandatory five years. So say you made it through your entire period of supervised release to the final six months. And that was all the jurisdiction of the court left, because they gave you all the time that they had available to you. They didn't in this case, but say they did, they gave you all the time they had available to you. And then you finish that, complete that, and under normal circumstances, they would revoke the remainder of your term. But Congress decided that five years would be the minimum if you violated your supervised release if you were a PFR with this list of offenses. So the Supreme Court actually agreed with the 10th circuit, and they remanded the case back to them to address whether the issue could be resolved by requiring that subsection 3583(k) revocation hearings be conducted before a jury using the standard burden of proof, beyond a reasonable doubt. Because the person is in essence getting a new sentence.

Andy 39:04

Why didn't they just ask him, if he had new charges, why didn't they just say, Hey, look, we're charging you for new crime?

Larry 39:11

That was actually in the decision. The pointy heads on the court pointed that out. That, you know, that he could have actually... but see that requires a more complicated process and a higher burden of proof. And that's exactly what they said is hey, you know, if he was such a bad guy, they could have charged him because 13 of the 53 images were thought to be for sure, knowingly in his possession. They might not be able to prove the other 40, but they said, Gee, if you can obtain a life sentence and impose... because five years is the minimum amount under Section subsection 3583(k), you would never need to ever convict anybody of anything. You could just simply lock them up. So that's where the polarity - I have trouble saying that - of the court joined by one of the liberals. He agreed with the outcome, but he didn't necessarily agree with all their reasoning. It turned out that it was basically an ideological divide. And so I think you're gonna ask that question, but I've already beat you to it.

Andy 40:20

Yeah, that too. I wanted to ask you the question though about because I know that you love it when I always try to do is this a blue or red thing? Which justices took which positions in this case?

Larry 40:31

In this case, it almost was, and often it is - I know that our audience really gets trepidation when I do that, though, because sometimes the conservative judges that are appointed by conservative presidents are spectacular. Scalia would be an example of being spectacular on the Confrontation Clause. You didn't have a better friend on confrontation, but Scalia wasn't right on everything when it came to criminal justice. So they'll latch on to one thing that a justice says in one particular case, and they don't look at the totality. Generally, the liberal judges are more likely to be sympathetic to these arguments of people who are behind bars and to protect them from the law enforcement apparatus. But you're correct. I hate for us to frame things that way. But in reality, it does more often than not that the conservative justices side with the law enforcement apparatus. In this instance, the dissenters were all conservative judges who argued that the sky would fall because of what the liberals had done. And they were joined by Justice Gorsuch. So he's perceived to be a conservative appointed by Trump. But the way it aligned was Justice Alito, who was joined by Justice Clarence Thomas, Chief Justice John Roberts, and justice Brett Kavanaugh, they wrote the dissenting opinion that said that proof beyond a reasonable doubt are not constitutionally required for supervised release revocation proceedings, and that to suggest otherwise has "serious implications." So if you like that type of ruling, then I'm fine with it. But typically, you're going to get this alignment on criminal justice stuff. And this is typically the way it unfolds, but not an absolute. We got Gorsuch. Without Gorsuch, it would have gone the other way. I mean, I don't know what the outcome would have been. But he actually was on the right side of this.

Andy 42:20

I gotcha. Is there anything else on this before we move on? This is super neat. So let me try and kick back and we'll see... If you got a 10 year sentence, and after eight years, you were released on parole or probation, whatever, and you end up with some kind of revocation and they're going to then hit you with five years, you are now essentially doing 13 years. And that would be against what the judge initially sentenced you to the 10 years. That's the unconstitutional part?

Larry 42:50

That is correct. And that's what he's in essence asking. He's wanting to know if this can be used for people whose supervision period has exceeded the maximum jurisdiction of the court, and I believe it can, but again, he would need to consult with the legal professional for particularized legal advice, but I believe it can. But see, they've skirted that. And they mentioned that in this long opinion. They mentioned that legislatures and Congress have been very creative in finding sentencing schemes that didn't exist back in colonial times with the community supervision for life, the CSL. That didn't exist in colonial times. Probation didn't even exist in colonial times. All this stuff is relatively novel.

Andy 43:41

And that's because there's a mandatory minimum for this thing.

Larry 43:45

Well, for violating supervised release. Normally, it would be you would be subject to the remainder of your supervised release. But they start the clock all over for a PFR. They give you a mandatory five years, despite what you've already done, and the five years could overlap the end of what would have been the end of your sentence. And that's what this is about, as I understood it.

Andy 44:08

Okay, so the two people that we know recently, one of them is going to just finish out their sentence, I think. Or they're dropping the remaining year, right? (Larry: Yes.) He has three years left and he's getting two and they're gonna call it quits when he's done. The other person has like seven years, and he's gonna do two, so he's still gonna have five left. These two things don't fall into that category because they're not going to exceed their original sentence.

Larry 44:31

That is correct. But in the case of like, in my state, we have this period of parole, which is really nothing more than supervised release, because you serve all your time. And then you have a five to 20. So like, for example, child solicitation by Electronic Communications device is an offense that only carries a sentence of no more than three years, but yet you can end up serving, if you violate your parole period, you could end up serving much longer than that. A lot of litigation can unfold based on this case out of the 10<sup>th</sup> circuit. And in fact, on my listserv here in New Mexico, I've seen people say, Hey, we need to litigate this because you can end up serving more time than what the crime carried to start with.

Andy 45:14

Interesting, okay. Well, now that I took everything out of order, now I got to figure out where we got to go next.

Larry 45:19

We got to go back to where we were supposed to be.

Andy 45:23

I know. And yes, I don't have a name on this person. But I'm gonna wing it, Larry, I am a military convicted PFR out on supervised release. Do you think that's where we're supposed to be?

Larry 45:35

So well, we've already... I think we've done this one. I think this is just an extended version of it. But let's see what it is.

Andy 45:43

Okay, I'm having an issue with my federal probation officers. Oh, yeah, that's probably that one. Okay, so that's like supporting stuff. Man, I'm so confused about what's going on.

Larry 45:52

Yeah, you got old timers tonight.

Andy 45:53

Holy crap, man. I have no idea what's going on. I don't know what. I posted that one as question two, blah, blah, blah. I don't know what question two from Jacob is Larry. I've no idea what this one is. Hold on. I'm gonna go find this question.

Larry 46:08

I'll just do some monologuing while you're getting it. But in terms of that issue, that was a great question, for sure. And I would like to see the litigation, and I expect to see more litigation on that as time unfolds, and we'll see what the courts do because there is a limit to how much a person can be punished for the same crime.

Andy 46:30

All right, Larry, I don't have a question two man. I don't know what you've put in there as question two from Jacob.

Larry 46:36

You don't have a question for Jacob? I do. Well, I don't have it up, but I will find it. I know I wasn't hallucinating.

Andy 46:48

Then I'm going to, while you locate this, I'm going to read something from one of our people. It says Andy, thank you for discussing the article about Tennessee looking into registry changes that I dropped into Discord story ideas. Tell Larry How disappointing his reaction was to me. I jest but he's probably true. I hope they might do something bipartisan. But as we know, in this political age, that ain't gonna happen. I promise to follow up with any additional news I hear on this one. He also had a comment in there that patrons- Larry, I didn't tell you this- the patrons didn't hear the Who's that Speaker? last week, because editing podcasts is complicated. And there's another track and I forgot to bring in the other track. Sorry. And then lastly, congrats on your NARSOL award. And thank you very much. I received an award at the conference. So thank you. Did you find what you needed to find?

Larry 47:34

We actually have done that one also. So yes, that was a great comment. And what I would say to him is, I realize it disappointed people. But let's have a look, since we got a little extra time, we didn't take all the time we normally do. We can talk about the political reality. The reason why I made that comment, and I always hope I'm wrong when I make these comments, and I freely come back and say I was wrong when that happens. But what we're looking at is Tennessee is within the Sixth Circuit, so the Does versus Snyder decision is binding on them. But that doesn't mean it happens automatically. It means that cases have to be litigated and has to be proven that the Tennessee registry has enough similarities, there are enough similarities that the Does versus Snyder would merit a similar outcome. And I think that article said there were like 30 cases pending. Well, I think the article also said, as I recall that the legislature was considering changes because of what the court might do. Well, there's where my expertise comes in. I can understand and explain politics. So what you have is a federal judiciary, the Sixth Circuit is a Federal Circuit Court. They have article three lifetime tenure, and they cannot be retaliated against. You don't get a judge Persky in the federal court system. And that's for those who don't remember that was the judge that got recalled that sentenced the Stanford swimmer to too lenient of a sentence. You don't get judge Persky in the federal system. So what you would have would be people... you're thinking that people who are elected by the citizens of Tennessee, they're going to make life better for PFRs because of what a court might do. They haven't done it yet, but they may do it. That is really far-fetched. I hope it happens. But the likelihood of

that happening is very slim, because I would like to be running against you if you did do something to make life better for PFRs and the major cited reason was the court might do something. Can you see the what the ads would look like? You remember the ones we played about the New Mexico congressional race? We played the ad. That's exactly what that ad will look like. They would say that representative or senator such and such made life better for sex offenders on pure speculation of what a court might do. And therefore, that makes that very unlikely.

Andy 50:06

This is I think where we were going to talk about there was a woman at the conference that really got a little overwrought with her son is in civil commitment. And she started really bashing on politicians and saying that all they're interested in is getting reelected and so forth. We were going to exchange some comments about not what she did, but the things that she said, and we're going to talk about there's a different economy for politics than there are for like a job.

Larry 50:34

Well, not significantly different.

Andy 50:37

I mean, they work for money, but their currency is votes, right? (Larry: Yes, yes.) So then they have to do to some degree what the people in, their district, whether that's county, state, whatever, they're going to do what those people want them to do, or else, they will not be doing that anymore.

Larry 50:58

That is correct. And that's what really puzzles me about the misunderstanding and lack of fully understanding about our democratic process. When you refer to someone as a representative, they are speaking for you, not against you. And they are supposed to represent the views of the people that sent them there. To be irate and furious at them that they are for the registry, when that's where the people are, it's really short sighted because that's where the people are. And what are they supposed to do? Flip the middle finger and say, despite you're for this, to hell with you people. I mean, we've not moved the dial on where the people are. And when we move the dial on where the people are, the political dial will move itself just like it did on same sex marriage. When it all of a sudden became that's where the people are, that they were okay with it. And they supported it. All of a sudden, you notice how magically politicians, liberal and conservative aligned themselves? I mean, it was very quick.

Andy 51:59

But I'm thinking of like Bernie Sanders. And I would imagine he's not very pro-gun, but he lives in a very pro-gun state and probably doesn't vote against stricter gun laws, because he would like to stay in office and do the other work that he's interested in.

Larry 52:15

That is correct. He willingly acknowledges that Vermonters are not with him. And he speaks for Vermont, he doesn't speak for another state. And he votes where Vermonters are on that particular issue. And many others as well. But people totally misunderstand. A legislator, they really don't have a big interest in every single issue. Government is very complicated. There's a lot

of things government do. We could spend an entire podcast going through all the things that government do and does. And what they do that you don't even realize they do. And most people that are elected don't understand all that. You wouldn't find, in our 112-member legislature here, you wouldn't find two people that really understand the sexual offender registry. And you say, Well, Larry, that's silly. They vote. Yes, they do, because law enforcement told them to. They told them this is what the other states are doing. This is the model act as recommended by the National Conference state legislature. This is what they do. But they don't understand the nuances unless they have a family member on it. And so, if they lose their office, they can't work on what is important to them. It may be improving foster care, it may be on public transportation. That may be where their heart and soul is. It may be environmental. It may be on any number of things. K through 12 education, it may be on higher ed. I could go on and on things that might be that that's what their passion is. And they're not going to sacrifice the opportunity to make a difference on where they care so that they can fight for a constituency that's very unpopular. They're just not going to do that. That's the reality. I don't make the rules, I'm just telling you, as the reality, they're not going to do that. And I know we'll get that YouTube commenter that will have something bombastic to say about that. But I don't write the rules for our democracy, I'm just relaying to you. That is the reality of people you elect. They're not going to sacrifice their career to fight for something that's so unpopular when that would prevent them from doing what they would really like to work on.

Andy 54:08

I guess another example, though, is I follow tech very heavily as most of you would already know. With the Facebook files, the release of the Facebook documents that came out with how their algorithms working in teenage girls on Instagram have terrible images, whatever. And but these are, generally speaking, older humans, and they don't know nearly as much about tech as however much tech is influencing our lives, but they don't know about it. And we would think that they would have staffers that can do some level of informing them. But that's not what they're there to do. That's not what their forte is. So Rand Paul, if I'm not mistaken, he is an eye doctor. Okay, well, what is he going to know about necessarily how Facebook works and how to regulate it? He would need someone to teach him. It's not what his emphasis and area of expertise is.

Larry 55:01

So that is correct. He would be very likely to be able to be very helpful on the issues that he understands. But most of the time you rely on, if you're the federal Congress, the House or the Senate, they have an excellent amount of staff support. As you get into the less populated states, they don't have so much staff support. And you end up relying on the bureaucrats that tell you this is what you need to do. If the people that were the nice insignia on the uniform come in and say this is what we need to do, that is what they're going to vote for absent a compelling reason not to vote for it.

Andy 55:39

Okay, well, Larry, I think we are at the point for where we can do the Who's that Speaker? I think? (Larry: Sure.) I could have that

wrong. I don't think I missed anything else. I'm going to play Who's the Speaker? from last week.

Winston Churchill 55:54  
We shall never surrender.

Andy 55:56  
I said it was very short. I don't recall anybody writing in. I didn't think that that was gonna be that hard to figure out who it was, but nobody wrote in Larry. So that was who?

Larry 56:07  
That was Sir Winston Churchill when he gave his famous speech that we will fight them in the beaches. Will fight them in the streets. We'll fight them from the trees. We shall never surrender.

Andy 56:21  
Yeah, I figured if I put in all of that, then it would have just been too easy, but either nobody cared Larry, or they were stumped by it. And then here we go. Another one of your contemporaries Larry, here we go with another one for this week. So this is this week's Who's that Speaker? You can email me at [registrymatterscast@gmail.com](mailto:registrymatterscast@gmail.com) with your answer. If you announce it in chat, I'm disqualifying you

Who's that Speaker? 56:46  
A date which will live in infamy. United States of America was suddenly and deliberately attacked by naval and air forces of the Empire.

Andy 57:03  
Oh, and I cut it off Larry because that would be the Empire with like the Death Star and the TIE fighters and the force. That Empire?

Larry 57:12  
Well, I'm not sure about that. But that seems like that was like, way, way back. That sounds like a crackly voice. Who could that be?

Andy 57:21  
I don't know. Write into [registrymatterscast@gmail.com](mailto:registrymatterscast@gmail.com) if you think you have the answer for this week's Who is that Speaker? We're right at an hour. We can shut it down. Oh, we have new patrons to do for sure. Hey, uh, one of the new patrons was in chat and he just left. He doesn't even get to hear his name announced. Anything before we go on to that?

Larry 57:42  
Well, aren't we going to be doing something special and different tonight?

Andy 57:46  
Yes, we are after we finish this. Don't leave. Don't leave if you're there in chat because we're going to do a Patreon extra where Larry's going to tell us about how the state of the economy is. Right?

Larry 57:58  
What the heck does that have to do with the registry?

Andy 58:01  
It has nothing to do with that. I've said before that we are teasing the idea of starting like a spinoff program where we're going to talk about other policy things that Larry has interest and expertise in. And this would be something along those lines. Let's cover some new patrons. We had two new patrons this week. We had one named Patrick, thank you very much Patrick and Brandon. Brandon just went away from the chat in livestream chat to go watch a baseball game. Like, who cares about baseball? But thank you both very much for becoming new patrons. If you want to sign up and listen to the Patreon feed, you can put your podcast app in there and get it and you'll get it tomorrow afternoon when I release it. It comes out usually like before lunch on Sunday. Did we have any new snail mail subscribers Larry?

Larry 58:46  
Well, I think we may have announced Matthew before, but we received his payment. It was a very large and massive payment for years and years of transcripts to come. But he paid and I think we have announced him, but it doesn't matter. Welcome Matthew. He is in Rochester, Minnesota as a guest of the BOP.

Andy 59:07  
Wow. Guest, huh? Probably not very much of a guest. Probably not really happy that he's there. But that is all we have for this evening. Again, if you go subscribe over at [patreon.com](https://patreon.com) for as little as a buck a month you can listen to any Patreon extra, any extra content that we put out. Oh and probably unless something bad happens, us achieving the 100 subscriber goal, and me playing a sax solo for you people, that will probably be happening next week live on the air. And so that'll be happening next week. So sign up for Patreon and you can participate and hear me squeak and honk and be terrible at the saxophone.

Larry 59:48  
And are you going to be bobbing and bouncing?

Andy 59:51  
There will probably be some gesticulating.

Larry 59:54  
All right, I'm looking forward to that.

Andy 59:57  
Feel free to go over to [registrymatters.co](https://registrymatters.co). You can find all the show notes. You can find links to everything. You can find links to go over to Patreon. You can sign up for emailing when I release the episode, and get notified that way. And you can leave a voicemail over at 747-227-4477. Again, email at [registrymatterscast@gmail.com](mailto:registrymatterscast@gmail.com). And of course, the best way to support the podcast is over at [www.patreon.com/registrymatters](https://www.patreon.com/registrymatters). You can find us everywhere on the internet, generally speaking, by searching for Registry Matters, whether that's on Twitter, on Facebook, on YouTube, et cetera, et cetera. We are all over those places. And without further ado, Larry, I think that is all we have for the evening. And I'll see you on the other side when we do a Patreon extra.

Larry 1:00:47  
Thanks for having me.

Andy 1:00:50  
Very well. Good night.

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.

Glossary:

PFR – Person Forced to Register  
NARSOL – Nasional Association for Rational Sexual Offense Laws  
AWA – Adam Walsh Act  
BCC – Bureau of Community Corrections  
CCC – Community Corrections Center  
CCF – Community Corrections Facility  
ICAOS - Interstate Compact for Adult Offender Supervision  
PC – Protective Custody  
PREA - Prison Rape Elimination Act  
DOC – Department of Corrections  
CSL - Community Supervision for Life  
DCS – Department of Community Supervision  
IML – International Megan’s Law  
SOMP – Sex Offender Management Program  
BOP – Bureau of Prisons  
CAGE – Citizens Against Government Entrapment  
COMET - Collaborative Offender Management Enforced Treatment Program  
PV – Parole Violation



**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**