



## Registry Matters Podcast

Episode 234

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Disclaimer 00:00

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Andy 00:17

Recording live from FYP studios, east and west, transmitting across the internet. This is episode 235. It is 235. Right?

Larry 00:27

234, according to my count

Andy 00:30

I had the wrong document. I made the 235 document already. Alright, that's the right document then 234 of registry matters. Good evening fine, sir. How are you? It's Saturday night. Beautiful outside.

Larry 00:42

Doing awesome. Glad to be back after our one-week vacation.

Andy 00:46

No kidding. Let me do this before we so make sure that you do all the things that say like and subscribe with us. Yep. Yep, there goes, it popped up there is and does the click to call on the YouTube, make sure you click like, subscribe and hit the bell for notifications. You know all about that stuff right there.

Larry 01:04

I do. And I've been watching our numbers go up. And then we lost a couple of last week. Andy: So, you read them off, didn't you? Larry: I must have said something that bothered a couple of subscribers.

Andy 01:15

Could be could be. So, let's, let's dig right in man. What do we have going on tonight?

Larry 01:22

Well, we've got really just one large case about qualified immunity. And we've got some questions. And we're gonna go off topic and talk about something from an audience submission that I just could not help myself because I was challenged.

Andy 01:39

All right. And All right, well, then we shall dive right into the first question that we have. This came from a patron longtime patron supporter will. And he said, this is from two or three episodes ago where we were talking about some GPS stuff. And he says I have to agree with you guys regarding the idea of the appellants not being the most sympathetic asset. So excuse me, sympathetic of characters. I also agree with the unreasonable search angle Larry discussed at length, there's an obvious and glaring limitation of GPS that the supporters of this measure conveniently ignore. GPS monitoring ankle bracelets, for the most part only report your location, they cannot detect who the person being tracked is with or what he or she is doing. If this person is determined to reoffend, they will regardless of any level of supervision or

electronic surveillance. By that same token, if the person is deeply committed to not reoffending, they will not do so even in the absence of such close monitoring. Some people actually learn their lessons except the depth of the harm that they've inflicted on an innocent person to change for the better. You have any comments from Will on that one?

Larry 02:52

I really liked it Will, thank you. I'll send you a check.

Andy 02:56

All right, so now Will is on the payroll.

Larry 02:59

So, he's an FYP creator. Andy: FYP. Creator? Larry: Yes. He just created content for us for tonight.

Andy 03:09

Oh, I see what you said. Okay. And then I don't have a title card for it. But I'll just leave that one up. So, let's move over to this voicemail message. So, this is from a longtime patron. Do you want to set this not a longtime? I'm sorry? Pretty new one, like six months or so you want to set it up?

Larry 03:24

Yeah, this is a question that was developing on a private conversation I was having with someone. So, I actually have heard the question, and I'm prepared to answer it, but it's a novel question. Well, I'll let you explain what it has to do with the registry after you play it.

Patron Question 03:38

Okay, here we go. This is Deanna. This is for you, Larry, because my professor is either wrong, or he can't explain something in a way that makes sense. He says that a bank's efficiency ratio is deemed better when the efficiency ratio is lower. Everybody knows that something is more efficient when the number is higher. Who ever heard of a lower number being more efficient? I know Larry will find some way to justify that the professor is right. If he does, I want him to explain how lower efficiency is better in a way that anyone other than a professor can understand. Good luck, Larry.

Andy 04:18

All right. So somehow you want to talk about finance stuff related to banks on a program where we cover stuff about people that have to do with them register?

Larry 04:26

Well, this is FYP education, right?

Andy 04:31

Oh, I see. So somehow FYP education is all encompassing over everything related to educating people about all of the things

Larry 04:39

Well, only if FYP has any knowledge in this area. And when this particular situation, it does have there is a tangential relationship

between what we're going to go into with this question and our issues.

Andy 04:53

So I when you presented this, to me, my idea of the tangential relationship would be in just the overall understanding of the larger system, I suppose would be a way to put it, that there are all these individual little moving pieces and the machinations that go along with all of that. And so just sort of like this question, when you start digging into the deep nuanced elements of an issue, that here you go, banks have a different way of calculating their thing than what you would with normally, like tracking how I guess like the, the efficiency of a company would go something like that.

Larry 05:29

Correct. Or your oxygen saturation? Lower is not deemed better in most instances where you're talking about efficiency, but in this particular, the professor's actually right.

Andy 05:44

Oh, okay. So, she has to adjust her thinking,

Larry 05:48

Yes, the professor didn't explain it in a way that made sense and see since I don't get paid six figures to explain it. And I don't get tenure, based on what I publish, I'm just sharing information. So, if you understand what the efficiency ratio measures then you can understand why lower is better. So, let's go into what it measures. So, picture a financial institution, your local bank, whether it be a locally owned or whether it be a mega bank, they all have the same measurements in terms of this particular number. So, if you look at the income side of the ledger, and banks primarily have two major sources of income, they have net interest income, which is the interest that they receive. They pay interest on deposits, they pay interest for other types of borrowed money, often from the Fed from the Federal Home Loan Bank. And they charge you interest, and the net interest income is a big chunk of their income. But they also have other things depending on the size of the banks, they have the account maintenance fees, they have returned check fees, they have loan origination fees, they have all sorts of income streams that fall into the category of other income that are not really interest related. So, you got so far, so good. You've got you got to picture the income side of the ledger, right? Andy: I think so. Yeah. Yep. Larry: All right. So, say the income side of the ledger, let's keep it small, the income is \$100 million dollars for the most recent quarter. And that's combined from the income from the two sources of income that the institution has it. But then you go to the non-interest expense side of the ledger, which you have, which you have things that are related to personnel costs, human resources and the benefits related to those employees. You have marketing costs, you have occupancy costs, you have deposit insurance premiums, and you have things that are that are not directly interest related. And those costs are figured as a percentage of that 100 million dollars. So as the bank operates, the bank that can keep those non-interest costs down, will keep a will have a lower efficiency ratio, because it's a percentage of that total number that we just discussed. So, if the bank keeps its operating expenses down to \$50 million, then its efficiency ratio is 50. And if it was if it operated by paying more lavish benefits and having higher rent or higher, higher costs related to the bricks and mortar branch

network, they spent \$70 million, their efficiency ratio would be 70%. And that would not be as good as the institution that only had an efficiency ratio of 50. So now, does it make sense to you?

Andy 09:01

A little bit. I have a little funny, maybe you won't find this story funny. I have a funny story for you.

Larry 09:06

Sure. Let's hear a funny story.

Andy 09:07

This was an individual that made a really high dollar like well in the six figures. And she considered that she had overdraft protection. But she was spending like \$1,000 a month. Yeah, like, yeah, of course, that was like five or 600 bucks a month on overdraft fees. And she considered that to be overdraft protection because they kept covering the checks. It was like, no, you're bouncing the checks. They are covering your checks, but that's an overdraft protection.

Larry 09:38

Yeah. I have to admit it. That's funny.

Andy 09:41

That's funny, but that was you know, 35 bucks, whatever it was per bounced check that goes into their revenue column, right?

Larry 09:48

That is correct. That would be one of those other income streams, but there's so many income streams depending on the complexity of the bank. You know, they may have a brokerage component. That's a part of fee income, but your community bank is not going to have a lot those income streams. They're gonna have fewer income streams because they don't have that vast network of product line. But it's still the same concept. I see.

Andy 10:13

I see. So, Deanna, you should probably listen to your professor and Professor Larry, in this particular case as well.

Larry 10:20

So, if you if you look on page two of that press release that I have in Dropbox, it's from an association called Washington federal.

Andy 10:34

Wait, I have something for this Hold on. I'm here at the Hyatt Regency Hotel in Washington, DC, Washington.

Larry 10:42

So yes, we do that poke in front of people who say, Washington, but it's actually Washington. But anyway, that that one line that I highlighted our efficiency ratio, decreasing from 59 to 52%, is tangible evidence of the operating leverage we've achieved over the last year by controlling expenses and growing revenue. And that's counterintuitive. The point related to us is a lot of what we do is counterintuitive. You think you know how something works. And you're mistaken, because how it works in reality is not what you were taught somewhere along the way. And this is so counterintuitive. So don't assume that something is counterintuitive has to be wrong. Yeah, we've, we've said before

in episodes that actually to do any meaningful criminal justice reform, you're gonna have to get conservative buy in. Because with conservative without conservative buy in, there's great political risk, but you have conservative buy on the political risk diminishes to virtually zero. We're going to possibly cover that a little bit later, with an article from Florida.

Andy 11:53

All right, then. So, we shall move along to the main event. Here. We are only 11 minutes into it, and we're covering the main event.

Larry 12:00

Well, that's right. But I hope that's I hope everybody in chat realize that efficiency ratio is better when it's lower. Nobody is confused.

Andy 12:09

I hope not. People are probably like, why are we talking about this? We won't beat that dead horse for too long. But thank you for that question. Alright, well, you put this piece this case in here from the Connecticut appellate court. And it is Omar Miller versus John Doe, Et Al. Oh, what does that all mean?

Larry 12:31

It's one of those terms that means all others rather than selling them all out?

Andy 12:36

I see. And so obviously, you were super bored, because I mean midweek or like, I guess we're just gonna cover articles all week. So here you are, you've come up with something for us to cover. But I don't really see how this is related to our issue. So, are you really that bored?

Larry 12:53

Not particularly but it does have a connection, because it has to do with qualified immunity, which is a significant reason why we lose so many of our lawsuits. So, we're going to go into the nuances. Dig a little bit into the qualified immunity, and how it came to existence what it does. So that's the relevance.

Andy 13:15

What is qualified immunity? As I recall, and maybe we will dig into this more but qualified immunity like was something with the officers with George Floyd like you can't sue them or something like that?

Larry 13:27

Yes, qualified immunity is a special protection for government workers that the Supreme Court created. They actually created it in the late 60s. But the premier case that people cite to is the 1982 case, Harlow versus Fitzgerald. And that didn't even involve the police. It was brought by a whistleblower who wanted to sue the Nixon White House aides for punishing him because he spoke out against the Pentagon weapons program. In Harlow, the Supreme Court made all government workers immune from constitutional liability by default, under qualified immunity, government workers can only be held accountable for violating someone's rights if a court has previously ruled that it was clearly established, that these precise actions were unconstitutional. If no such decision exist, but exist in another jurisdiction, the official is immune, even

if the official intentionally and maliciously and unreasonably violated the law.

Andy 14:26

So even like in the case like George Floyd, what does it take? I don't remember the cat that was in the in the van in Baltimore, where they put him in the back of like the paddy wagon, and he ended up dead when they arrived. Like, what is the level of evidence required to show that somebody's civil rights have been violated?

Larry 14:49

Well, it takes quite a bit, and this case is somewhat similar to that other than the person survived it. But according to the Institute of Justice's website, which I'm plagiarizing tonight, the clearly established test requires a victim to identify a nearly identical earlier decision by the Supreme Court or in a federal appellate court in the same jurisdiction. This means that courts will sometimes hold that a government worker's actions violate the Constitution, and then they'll use qualified immunity to let them off the hook. But often courts do not even address whether a government worker violate the Constitution. And this is thanks to the Supreme Court's 2009 decision in Pearson vs. Callahan. Courts may decide cases without even addressing whether the actions violate the Constitution. And this is a horrible system, it forces it what scholars call a constitutional stagnation because courts simply ignore the underlying constitutional issues and decide cases under qualified immunity.

Andy 15:51

So only if it happens, basically in your neighborhood, or if the Supreme Court decides it is something that has happened in the past. So, if it happened in your neighborhood, but not mine, then I can't get qualified. Like I can't sue the government official.

Larry 16:07

You can certainly sue but the qualified immunity is going to be the first motion they're gonna make is to dismiss for qualified immunity. And the burden is going to be on you to show that there's a case that's binding in your jurisdiction. And if you can't, your case, is going to go down the crapper.

Andy 16:26

That's crazy. Okay, so that same website, for instance, when a police officer shot a 10 year old child while trying to shoot a non-threatening family dog, which I don't even understand how that came about non-threatening family dog, I can see this little tiny little five pound fluffy poof running by the castle. This is a dangerous animal and they whatever, okay, I'm on the 11th circuit US Court of Appeals held that the officer was entitled to qualified immunity because no earlier case had held it was unconstitutional for a police officer to recklessly fire his gun into a group of children without justification. The court also declined to establish that rule. Not only was the officer let off the hook in the case, but that very same officer could act the same way again and would still be entitled to qualified immunity. That's effed up to say the least Larry.

Larry 17:14

I agree. But remember, I don't make the rules.

Andy 17:19

Does qualified immunity apply when government workers intentionally violate the law. Someone's scheming behind the scenes to mess up your day.

Larry 17:31

Yes, qualified immunity applies even when intentionally, officials intentionally or recklessly violate the law. The primary consideration in a qualified immunity analysis is whether there is an earlier court specifically stating that the particular actions of an official are unconstitutional. So, for example, the Ninth Circuit Court of Appeals held that a police officer accused of stealing \$225,000 while executing a search warrant were entitled to qualified immunity because that court had never addressed whether theft of property was covered by the terms of the search warrant, and it violated the Fourth Amendment. Now you have to admit that that's funny.

Andy 18:15

I've seen videos of somebody getting pulled over on the side of the road. I saw a video of like a veteran who didn't trust the government, so he had gobs of cash on him, and they seize the money. And maybe then it doesn't make it into evidence of the cop just pockets it. And so now you go sue them. You they would possibly qualify for this qualified immunity and they just stole 100,000 bucks out of your pocket.

Larry 18:42

That's why I said that. You have to admit that's funny. You didn't admit it's funny.

Andy 18:45

That's not funny. That's not funny. All right. So since qualified immunity was invented by the courts, that sounds like Roe versus Wade, Can Congress eliminate it?

Larry 18:58

Well, actually, the House of Representatives did pass such a bill and 2020, the George Floyd something Reform Act. We've got a link to it here. But unfortunately, the Republicans refused to consider the House bill and then they blocked a similar proposal that was introduced in the Senate, by that at that time by Senator Kamala Harris, Senator Ed Markey and Senator Cory Booker, and they introduced a resolution calling for the elimination of qualified immunity. But the sponsors are all liberal pointy headed Democrats and like I told you, you gotta get conservative buy in. And they need 10 in the Senate because of the filibuster rule, and they were not able to move the legislation in the Senate.

Andy 19:42

So, it was initiated, and then it died. So, we would have had a legislative act, would that have been applied to all of the states or only in federal jurisdictions?

Larry 19:53

Well, it would apply in my opinion, it would apply certainly in all the states. But I would say suspect what would happen would be that the states would pass counter measures to try to try to get around it. Because if it's not in the Constitution, the state would say, well, we're not bound by federal law. I mean, that this is not in the Constitution. It would be it would be an argument, but

certainly in federal court, if there was a federal statute, the federal courts would be bound.

Andy 20:27

Which would then bounce right back to the Supreme Court?

Larry 20:32

Well, it will, it would, but the Supreme Court would say, like Scalia has told us over and over again, nothing stops you from passing a law. And that's exactly what that's exactly what we should do. That's why we sat on the sidelines for 50 years after Roe vs. Wade was decided knowing that all the effort was underway to overturn it. And finally, it happened for 49 years, they could have been working to build public support to pass it through a congressional process.

Andy 21:02

But earlier, you said there was a 2009 decision from the Supreme Court. So I I'm assuming that if the state writes a law that goes directly counter to what Federal law says, like that's do not pass go eventually, like directly end up at the Supreme Court steps. And but they already decided it. So they go, no, sorry. This has already been decided. That would like kick it back. It was already done.

Larry 21:26

Well, I don't see it that way. I think the Supreme Court would stay out of that, because it's a state issue. If it's if it's only the state deciding for within a state court system, the Supreme Court, since it's not a constitutional matter, the Supreme Court can only control a constitutional matter. If it's not, if it's not in the Constitution, I'm just not seeing that. We'd have to get a constitutional scholar here. But the states would be free to pass laws in terms of how they run their courts.

Andy 21:52

I see. Okay. All right. And so then what you're just describing those states would do it themselves. So, they could do something to fix this, then?

Larry 22:02

Oh, yes. And some have. Colorado provides the gold standard for qualified immunity legislation. And after the murder of George Floyd, the legislature there acted swiftly and decisively enacting a law in June 2020 that allows individuals to sue officers who violate their rights, and explicitly prohibits the qualified immunity defense, which means that everybody would file their actions in state court. The government is required to indemnify defendant officers, but if they'll strikes in bad faith, then the officer has to pay up to \$25,000 toward the judgment. So, in doing so, Colorado satisfied both goals of qualified immunity reform, so victims could get redress and officials who violate the Constitution are held accountable, and some other states have done as well. New Mexico passed a modest reform, but I don't know enough about the difference between it and Colorado. Connecticut, New York City and there's a number of these lefty states that have done similar things on qualified immunity.

Andy 22:59

Well then let's move along further, though in the information about the case. And I'll read from this syllabus with one exception, I'm going to change the references to M who is the defendant to

simply defendant for simplicity. But before I go further, I will note that the plaintiff represented himself, which is called Pro SE, I think. Larry, yep. Andy: that's your favorite thing is when people go in there saying, I'm gonna do this myself, right. That's your favorite Larry: Absolutely. Absolutely. Andy: Never comes up poorly.

Larry 23:28

Well, I don't think it would change the outcome in this one but go ahead.

Andy 23:31

All right. So anyway, the plaintiff who was being transported to and from a medical appointment in a vehicle operated by defendant was placed in full restraints in the rear seat of a vehicle in which there was not enough room for the plaintiff to sit upright now. I like, do you have an information on the vehicle that this person was in was this person like eleven feet tall, and they were in this very small little compact car, and I've done prisoner transport. It was like a 15-passenger van that you could put like, King Kong Bundy in there.

Larry 24:01

So, it was probably a passenger vehicle, and it was probably large person, but it didn't state it in the paperwork.

Andy 24:08

All right, and then the plaintiff informed the law enforcement apparatus but the defendant that the vehicle was too small, but defendant said that he could not obtain a larger vehicle. The plaintiff did not ask the defendant to secure his seatbelt, and defendant did not check to see if the seatbelt was fastened. On the return trip, defendant drove erratically in excess of the speed limit, ultimately colliding with another vehicle. Now, you gotta love when the police apparatus get in a car accident with people. The plaintiff alleged that the defendant had violated his civil rights under the Eighth Amendment to the United States Constitution, claiming that defendant's failure to abide by reasonable safety standards while transporting him gave rise to a claim of deliberate indifference. You have to admit that the state was liable. Can you at least go for that one, Larry?

Larry 24:57

Oh well, I suppose I have to say it. But the trial court decided otherwise what they say denied defendants motion for summary judgment finding there was a disputed question of fact as to whether he knew was indifferent to an excessive risk to the plaintiff's health and safety. So, but ultimately, he lost. So

Andy 25:20

I'm guessing then that Connecticut appealed.

Larry 25:25

Yes, because they wanted to be granted summary judgment under the doctrine of qualified immunity, and the trial court did not grant that qualified immunity. So, on defendants appeal from the denial of motion for summary judgment, the appellate court held one, the trial court erred in holding that the defendant was not entitled to qualified immunity as the allegations in the plaintiff's complaint and the record before the court did not give rise to a claim for deliberate indifference because no federal precedent

clearly established that the defendants conduct violated the Eighth Amendment Constitutional right against cruel, unusual punishment.

Andy 26:07

And they justified it by citing a decision from the Court of Appeals for the Second Circuit in *Jabbar v. Fischer* (683 F.3d 54). The Second Circuit held that the failure of prison officials to provide inmates with seat belts does not without more violate the Eighth Amendment and other federal courts have held the same and largely held that dangerous road conditions, distracted driving and speeding while transporting inmates do not give rise to claims of deliberate indifference. I don't see how that can be man. Are you telling me that prison drivers can leave a person unbelted and drive like a frickin maniac without any sort of consequences?

Larry 26:45

Yes, with a few exceptions. The few incidents in which a Federal Court has found that a constitutional violation occurred during transportation of an inmate, the plaintiff typically has alleged that he was not seat belted. The defendant purposely drove in a reckless manner, and the plaintiff asked the defendant to fasten the seat belt or to drive more safely, but to defendant ignored that request. But in this case, the plaintiff neither alleged nor presented any evidence that he requested to be seat belted, requested that the defendant drive more safely, or requested that the defendant obtain a larger vehicle for safety rather than comfort. And so the court went on to say furthermore, defendant's conduct was not severe enough to constitute an obvious constitutional violation and absence of clearly established law, as the present case involved motor vehicle accident was circumstances under which no federal court has found an Eighth Amendment violation. That's the court telling you that.

Andy 27:46

it's interesting. All right. So this goes back to qualified immunity. Is that correct?

Larry 27:53

Yes, the appellate court held that the trial court Well, I think already said that, but yes, but it does go back to qualified immunity. As I stated earlier, qualified immunity shields federal and state officials from monetary damages unless a plaintiff pleads facts showing that one the official violated a statutory constitutional right, and the right was clearly established at the time of the challenge conduct. In other words, qualified immunity shields government officials performing discretionary functions, from liability for civil damages, in as far as their conduct did not violate clearly established statutory or constitutional rights.

Andy 28:31

I just struggle with this, like you're hauling human cargo that you've you've shackled and bound, possibly, like locked to the floor. And how are you not liable for their non damaged arrival on the other side? I mean, if we get an Amazon package that the box is broken, we get to return it. But that's this is a human we're talking about?

Larry 28:54

Well, because the courts, the US Supreme Court started saying in 1967, and has said many times since the law enforcement is

entitled to the benefit of the doubt for everything they do, unless you can show by an existing case that there is there is no immunity. You've got to show an existing precedent, the burden is on you. And this is an invented right that came about in the late 60s. It's been upheld over the decades, and the makeup of the court has changed, but they don't seem to have any interest in changing this.

Andy 29:33

Well, the appellate court also stated given our review of the relevant federal case law and particular facts of the present case specifically that one, the plaintiff was not seat belted to the defendant refused to acquire a larger vehicle, and the defendant drove erratically and exceeded the speed limit. We conclude that the allegations in the plaintiff's complaint and the record before the court in connection with the defendant's motion for summary judgment, do not give rise to a claim for deliberate indifference, because no federal precedent clearly established that that the defendant's conduct defendants conduct violated the constitution. So, again, that's like they agree that all of these facts were true, but they don't have anything to stand on to decide this. So, F you and try again.

Larry 30:21

I'm afraid that's the way it is until the law and qualified immunity is changed either by the courts or changed by We the People.

Andy 30:31

Okay, you're back to the "We The People" thing like we can actually change this, figure out who we're going to vote for and change things in an election.

Larry 30:39

Yes, this issue comes up during campaign, there are people running on this issue to make sure that the qualified immunity is not altered or disturbed. So, if you are for what you say you're for, you will be able to make that as one of your considerations.

Andy 30:58

I see. All right. Well, I've done my own research, and no federal statute explicitly grants qualified immunity. This is a judicial precedent established by the Supreme Court. And while qualified immunity has been repeatedly affirmed by the courts, and legislation has established similar immunity in some states. It seems to me, Larry, that adoption of qualified immunity in federal law amounts to judicial activism does not.

Larry 31:24

Well, actually, it does. The late Supreme Court Justice Antonin Scalia argued as much in his dissent and Crawford, El. v. Britton, and I don't know nothing about that case, but it came up in research I was doing. It says the Supreme Court finds itself engaged in the essentially legislative activity of creating a sensible scheme of qualified immunities for the statute we have invented, rather than applying common law embodied in the statute that Congress wrote. That's Scalia speaking, so if qualified immunity as important to you, to eliminate it because you want to see more cases move forward, then don't rely on an invented right. Do what the late Justice says do? Go make it into the statute, pass an old-fashioned law and get that bill that passed the House or some variation on that to pass the Senate and make it a priority. And if

you'd like to status quo, then vote for people who say that it's an abomination to consider altering the current state of qualified immunity. And they call that a part of the defund the police movement and the war on the police. The war on the blue? I think they call it.

Andy 32:44

Okay. I don't know if I shared with you. I'm sure it was an NPR program. But somebody quoted that just somewhere, recently, prior to Scalia passing away, that one of the things that he wished for, would be to make it easier to make constitutional amendments. And I find that to be super interesting that I mean, we have hundreds and hundreds of amendments at this point. But at this stage of the game, I can't imagine an amendment that passes that everyone in the country would agree to, we can't even agree what color the sky is at the moment.

Larry 33:19

I agree with you, it'd be difficult to pass a constitutional amendment.

Andy 33:24

So, who are the primary opponents to this type of legislation?

Larry 33:29

Well, law enforcement and the law enforcement establishment. It comes from the sky would fall if we were to do that. Because these officers, they're out working diligently, they don't have time in the heat of the moment, to call for a legal opinion when they're out in the field doing their job. And all we're going to do is disincentivize law enforcement. And they're going to just stand back and let our anarchy control. And it's a scare tactic, but we could train our law enforcement, and we could hold our law enforcement accountable, and we would have better policing. But the law enforcement, the police union, and the entire criminal justice establishment says that we can't survive without qualified immunity. So, you've got a lot to overcome.

Andy 34:17

Do you think should there be some sort of limitation to this, in some regard, that they're just under a different set of circumstances and how the pressures of their job and the circumstances of their job and so forth, should they be held to the exact same standard that a civilian would be? You know, they're running around carrying a gun just as the example using the kid above that, there are so many other things that they would have to deal with it you have to give them some level of deference, not immunity, but should they have some higher degree of protect Action, I guess would be a word to say.

Larry 35:03

Yes. And I think they do. I think anytime you were to put a police officer before a jury, you can see how hesitant juries are to take any type of concrete action against a police officer, a conviction is very rare in the criminal setting. And the same thing holds true in a civil setting, when you have these cases go to trial, where they do survive qualified immunity, and they go to trial. Oftentimes, what should be a win is not a win because of deference to the police, because they're out there doing these difficult jobs and difficult situations. But there was nothing difficult about this job. This was basically what people when they go to work. They show a

reasonable amount of ordinary care, and particularly when a person is not able to care for themselves. And that, to me, it's not all that complicated. The guy could not take care of himself, it's kind of like I had a debate with someone of my conservative circle of friends about prisoners being deserving quality medical care. And this friend, although has a loved one has been the correctional system could not understand why would feel that way. And I said it's very simple, because we do not allow them to provide their own medical care. They are captive. And but they did something to put themselves there. And I said, well, it doesn't matter. They're a captive. And once they're a captive, they cannot do anything for themselves as this guy couldn't in the transport vehicle. And therefore, you have a higher obligation to take care of these people. The person who's incarcerated would be happy if you let them out. If you don't, if you don't want to pay for their medical care. But if you're going to put them in a cage, you have to do that. You have to take care of their human needs, because they need to be fed, they need to be free from exposure to extreme heat and extreme cold. And they need to have their basic medical care taken care of. But the talking points for the conservative side on that, as I'm out working, paying my taxes, trying to send my kids to school, and I'm working two jobs, and we're going to mollycoddle these criminals. And we're going to give better medical care that I have for my family. I mean, who would want to work and pay taxes? That's the argument that they put up against that. But I reminded the same person, I said, we do not hold people's mistakes against them. That person happens to be a smoker. So said if you go in for anything, I said, you've made the choice, just like the person made the choice to commit the crime, because that was that was the defense. Well, Larry, you have to understand they chose I said, yes you also choose to ingest the tobacco products that you use, use daily, extensively. But if you go to a health care establishment, we will not smell smoke on you and say this seems to be respiratory related. You did this to yourself. suffer. Yeah, it's it. That's no argument at all, that a person made a bad decision got put in prison. When we are when we're taking care of inmates, whether you're transporting them, whatever, when they are not free to take care of their needs themselves, we have an obligation, you driving the van have an obligation to keep this person safe.

Andy 38:09

And the other one where they would say Larry's well, they should have thought about that before they did the crime.

Larry 38:15

Well, you should have thought about that before you smoked or ingested all that smoke into your lungs.

Andy 38:19

Without a doubt, without a doubt, without a doubt without a doubt. Um, so where does this case go from here? Is this just done? We need to follow Scalia saying we need to make a law which we talked about the law, if we made a law, then the states would fight back and one state would write laws one way and another state would write laws another way, Cory Booker can make New Jersey do what he wants to do?

Larry 38:40

Well, if we make a federal law, I suspect that most of these cases will be filed in federal court vice versa, the states like, like

Colorado, I bet the civil litigation practice has moved all to Colorado courts now. But yeah, it's one of those things where it depending on what side of the spectrum you're on, you're going to have to get your conservative people, you're going to have to get them to be more receptive to these arguments, because we need 10 senators, and right now they don't exist.

Andy 39:11

Right. Right. Right. Right. And then I guess the one other question is, how does this relate to us very

Larry 39:18

well, it relates to us in terms of litigation when someone has what they believe to be a constitutional violation, since the registry has not been around but roughly in modern registry, 25 years or so. Everything that you're gonna allege as a constitutional violation, you're going to have to be burdened with this qualified immunity, the first motion that they're going to make is to dismiss because of qualified immunity. So, if the officer does something this against your rights, like, for example, in Cobb County, Georgia, where they're making up their own rules outside the statute. Andy: Sure. Larry: If they do something that violates your constitutional rights, this makes it difficult for you to find representation because 1983 claims are usually litigated with the attorney getting paid as prevailing party. The person doesn't generally pay for litigation in 1983. Well, you're going to end up with virtually no litigation until something is done about qualified immunity. You can't win these cases because it has to be clearly established. And you've got you got the burden of showing it now, like on the constitutional right, that you have to weigh probable cause hearing. We've talked about interstate that's been well established since 1972. and 73, there was two Supreme Court rulings that established enshrined that right as a constitutional right. Well, if someone if you're on Interstate supervision, and someone deprives you of that right to a probable cause hearing. And they deprive it of you that right at a great peril because that is an established right, and you can cite to those two cases. It's been established for 50 plus years.

Andy 41:54

Andy: All right, then. Well, um, if there's nothing more to do with that, then we can go on and cover a few articles and then shut the show down.

Larry 42:01

All right, what do you have on the agenda for articles tonight?

Andy 42:04

Well, one of them. Oh, let's talk about this one real quick, because someone reached out to you even like offer you this one. And the title is Florida's probation changes include remote employments. Is that the right one? And that's from Axios Tampa Bay. That's one of the articles you gave me. This is about Governor Ron DeSantis signed off on collaborations with Meek Mill and Jay Z to reform the state's probation system. And it's about to affect 1000s of Floridians. What's this about?

Larry 42:31

I put it in here because one of our diehard conservatives wanted to show that conservatives do good things. And I put it in here because this actually is mostly a positive. We've got the legislation, and you can refer to it. But this makes it where people who are

under supervision will have some good time afforded them if they behave themselves and do what they're supposed to do. They'll be able to report remotely versus having to travel to see your PO which can be very difficult for some who lack transportation. And I noticed within the law, there is one giveaway to the conservative side, which doesn't surprise me. They had a prohibition, that private probation was not allowed in Florida. And it seems like they've dropped that prohibition. So that least misdemeanor offenders can be supervised privately. And but this passed unanimously in the house and unanimously in the State Senate. And the governor signed it. And our conservative, she's correct that this was a conservative state doing something good. Kudos. The only thing I always like to point out about something like this is that it takes a conservative to lead the charge on something like this because if the conservatives are not on board, they will vilify any reform, whether it be bail reform, whether it be modestly changing police funding, whether it be anything that reduces sentences, or allows for community control. They have a way of going on the attack mode. When elections are approaching and you'll see a lot of it this fall, we will play clips from time to time as we go through the election cycle showing exactly what I'm talking about. They do that. But you don't have the Liberals will never vilify for this type of thing. Now there will inevitably there will be people who will screw up to get off probation early they will violate the law and they will be re-arrested. And that will happen because we're dealing with the human condition. But there will not be a single Democrat anywhere in Florida who will run against this and use it was a campaign issue to target beating their Republican opponent. And if you can find the one where it happens, we will call that person out on it. We will vilify them. But that's just not something that happens. You don't get the vilification from the lefties on this issue. You will get it on other issues, believe me, but not on this issue. So, this is where you need Republican support. If you're going to do anything positive.

Andy 45:18

Could you at least provide me with some sort of Flipside? What is the issue that you have one of them would be statute of limitations that you need Democrats to back off on that one to make that one happen?

Larry 45:31

What do you mean, the statute limitations?

Andy 45:33

The Democrats are pushing really hard to remove those things where you have 100 year old allegations that they want to take away the statute of limitations. So, you would need Democrats to push for that issue to push to not push for that issue?

Larry 45:48

Well, that's a bipartisan by both sides want to do they have different reasons. The Conservatives are happy to repeal the statute of limitations generally, because they're hard on crime and they believe that putting criminals behind bars is good. But the liberals tend to be okay with that because they've bought into the selling point that justice shouldn't have an expiration date, and therefore these poor victims aren't getting justice. But what you're looking for is where the where the liberals? Will you get liberal buy in on something that conservatives normally want to do? You can do it and we were talking about pre-show let it be like welfare

reform. You had you had a Democratic president in the 90s, rather if you'd had a Republican president rather than a Democratic president, any Republican who had dared to sign on to welfare reform, as it passed, would have been vilified as being cruel and heartless, because they capped benefits at five years for a lifetime. Also, they block granted it to the states, which is not generally something that Democrats are cool with because they know the states are going to be less committed to funding those programs, as they have been like state of Georgia has not increased their aid payments since welfare reform happened. So, approaching 25 to 26 years, they've been paying \$280 a month for a family of three in Georgia. But you would never have gotten that to easily be signed, without a lot of ridicule if you'd had if you'd had a Republican president. But Clinton got a pass because he's a Democrat. So, they held their nose and they said, Okay, we'll do this because he's one of ours.

Andy 47:28

All right, sir. Well, then let's move along to something somewhat happy sounding 1000s of North Carolina felons can now register and vote. It's obvious why this was put in there. But why was this put in there?

Larry 47:40

It's a PR thing to let folks know that some positive things happen. Even in states that are not notoriously known for being progressive. But more than 56,000 people in North Carolina were prevented from registering under the challenged law. And, but now those people are going to be able to vote. So go register. I know we've got about 5000 listeners in North Carolina. So go register. Go.

Andy 48:13

There's not carve out for anybody in this. If you have a felony, you can go register vote doesn't matter. Larry: Not that I'm aware of. Nope. Andy: Okay. Well, very good. And then I wanted to put this one in there because I'm a musician type String Quartet brings music to inmates in Mississippi. This is kind of cool man that somebody decided from a Baptist church to bring in a string quartet to play some classical music and some other music for a women's prison. And I think it said there were like 60 or so people in attendance of the, of the little concert, so to speak. It's really great. When the civilian side, the outside world decides to do something nice and generous for the people on the inside of the world.

Larry 48:53

It is indeed. And it's even more amazing when prison administrators allow that to happen. It is a women's prison. But there used to be there's a there was a singer named Johnny Cash. Have you ever heard of him? I believe I've heard of him. Andy: Yeah, Larry: he used to go into prisons and do concerts, and performances. In fact, some have attributed that to his comeback from what would have been oblivion, but he went into San Quentin and Folsom and other I don't know how many other prisons but the enlightenment to allow this to realize that it's a good positive thing. And it's Mississippi of all places. You remember, we've bashed Mississippi many times. Andy: Absolutely.



Andy 49:39

Well, very cool. Is there any other articles that you wanted to cover before we do my new who's that speaker because we didn't do one last time if I'm not mistaken? Larry: We didn't. Andy: I believe not the one the one that I chose before that one was the who was the Secretary of State guy.

Larry 49:54

Oh, yeah, that was Dr. Henry Kissinger.

Andy 49:59

Yeah, yeah. Yeah, that guy. And everyone was like, I got it in point two seconds. And I didn't even think about I was like, Okay, fine. I thought that was like, that's a very unique voice. But anyhow. So is there. Are there any other articles you wanted to cover before we do that part?

Larry 50:16

No, I think we can pass those articles.

Andy 50:20

Cool. All right. So, my news that speaker Larry, there is a clue in here for those of you and you're not going to recognize the voice. There's no chance. Are you ready? Larry: I'm ready.

Unknown Speaker 50:35

I had so much bravado, I thought I was untouchable. Made a lot of money. You know, had the big house to fancy cars, the beautiful children beautiful family. When Amy came into the picture, I was full of piss and vinegar.

Andy 50:48

Alright, any ideas? Larry: I'm stumped.

Andy 50:53

Okay, well, if you know who that is, then send me an email message to registry matters cast@gmail.com and put who's that speaker WTS 234 Something like that, so that I can easily identify it. And if you are the first person do let me know then you will get your 15 seconds of fame on the very popular world-renowned international listenership Registry Matters Podcast.

Larry 51:18

Well, I didn't think we were going to have time, but we did receive a question by postal mail today. And I am going to move it over just in case you want to read it. If you don't have anything else to fill out the remaining moments.

Andy 51:33

We can if you if you want to cover it, Larry, we will cover it. And this will be your little bit of bonus content, and not for patrons for everybody though you shouldn't become a patron. Larry: Okay this is from Paul. Andy: Alright, so Paul, and I got I got to filter it first. Because I don't want everyone to see where Paul is from, you know, read the whole thing.

Larry 52:00

Well, I'm not going to be able to answer all of it. But I do really like the part about him overthinking so. So let's go.

Andy 52:09

Very good. Thank you for your excellent resources for registered citizens. I am currently incarcerated in the federal system, and I'm due for release in July of 2023. Assuming I get halfway house, I'm considering a new career as a truck driver. Since my question has a lot of moving parts that add up to one big question. I'll start from the top down. Generally, how do RC RC RC RC What does RC registered citizen truck drivers handle registration requirements on the road? I know many states require registration if the registered citizen or let's call them PFRs. If the PFR spends more than three calendar days in a given state, how is a day defined? If a PFR spends 3 10-hour asleep overnights in a state, does that count as three days? If a PFR truck driver drive delivers a load to a grocery store across the street from a daycare center, is that PFR in violation of workplace restrictions? Those are excellent questions. Larry. I hope you can see now why the why the leading question opens up with me for me an entire world of compliance-related issues. How do PFR truckers make sure they are in compliance with the vaguely worded laws? When I ask fellow inmates these questions, they tell me I am overthinking it. My reply is that I may be under thinking. I'd like to know which position is right. That's a really kind of kick ass question to be honest with you.

Larry 53:36

Well, it is for Paul, the first thing that he needs to know is that he will leave federal custody with a period of supervised release. And so, his bigger problems are going to be dealing with the federal probation system in terms of whether they will even allow him to have such a job. And I can't speak for each probation district because they're different in terms of how lenient and how strict they are. But assuming he can overcome any concern that the probation service might have, then he's going to be dealing with stuff or some of these things, there's just no answer to. If he could call the registry offices and every county of the state, he would get different answers because they haven't been litigated at when they designed the statutory schemes, they did not think about these types of scenarios. So, in that regard, he is overthinking a little bit. He's overthinking a little bit about do you really think that they're really spending that kind of resource level on you to make sure that that you've been 3 10-hour consecutive sleepovers in a state. You'd really have to place a high level of importance on yourself to think that but if you are tracked by GPS as a condition of your probation, they wouldn't have to spend a lot of time because they've already got the information, right? Andy: Yep, totally. Larry: So, they would know that you spent those days in the state. If how's a day defined? There's some variation from jurisdictions. So, he's going to have these problems to deal with. I don't know exactly how PFR truck drivers do. I think we've got someone in our audience that did or does drive a truck, but I don't know how they cope with all this. This would be a good one to bring back for for follow up. The daycare thing. If you're on business delivering something as a trucker, I've never heard of that being a problem. If there's a daycare center, I mean, how would the trucker know?

Andy 55:34

Um, the one of the things. So Georgia probation is obviously different than federal supervised release. But a friend of mine listener, he would get like a month-long travel permit to cover the Georgia, Alabama, like Tennessee, kind of South Carolina kind of

range. And he would go do day trips, he was not, not over the road as I'm not spending the night. But he, you also have to do with like, you can be in the truck for 14 hours, but only moving it for 10 or something like that. I forget those exact things. But so, he would have the travel permit. The PO knows that he is handling things in those handful of states, and just goes about his business and does those things and then follows the trucker rules that anybody else would have to follow.

Larry 56:24

Well, these are by and large, good, good questions.

Andy 56:30

Yeah, I agree. Like he, I don't think he's necessarily overthinking it to the point that it's complicated. And you if you've spent some time inside and you want to get out, not go back, then you have to figure out how you're going to comply. And if being a truck driver, like, I don't think you're gonna have any problem getting a job as a truck driver, because I know that there's a super huge shortage, you might not get a super high paying job, but you can certainly go get your CDL and get a license probably job pretty much anywhere. And so maybe you can just get away with being like a long day trucker, just like regional and not spending overnight, and then work up to that. Something like that. I think that would be I think that's a great way for many, many, many of our people to go,

Larry 57:13

Particularly during your period of supervision because as I've explained to people, it sounds cute, to think that you're going to be away from your PO's observation, but all you do is set yourself up for electronic scrutiny, they're gonna want it all likelihood to have GPS on a person who's going to be driving long distances, at least initially.

Andy 57:39

So a listener that we have in Louisiana says in Alabama, you have to register immediately, not in three days. And Mississippi or Tennessee, I don't remember which is two days to register. So yeah, I struggle with that one being accurate, but I'm not going to like argue that.

Larry 57:57

Alabama is tough, but I'm not familiar with that particular provision. But there's a long-standing case and attendance in the 11th circuit that's been going on for years related to Alabama's registry.

Andy 58:07

I mean, like, you know, I drove to the Houston conference, and I drove through Alabama, I didn't upon crossing the state line moving into Central Time Zone, I didn't go register, and then D

register as I as I passed out in the Mississippi. did I violate the law doing that?

Larry 58:23

Yeah, I don't think so. But like say I'm not familiar with that provision. Last time I looked at Alabama registration.

Andy 58:30

All right. Um, I think that about does it for this show. Fine, sir. Anything else? Before we go?

Larry 58:40

We did not get any new subscribers by paper. Did we get any new patrons? I think we got like four, right?

Andy 58:48

Not in this little batch, like on the last two weeks. And so, we took our little vacation time. So, nobody knew in the last couple weeks.

Larry 59:00

So well, we gotta, step up the effort. Andy: Without a doubt.

Andy 59:05

If you want to become a patron, go over to [patreon.com/registry](https://patreon.com/registry) matters to become a patron for as little as \$1 a month, we did lose one. You know, Larry, I know, I know, you're devastated by losing the one. I probably should click that out. But go over to [registry.matters.co](https://registry.matters.co) to find all the show notes, or FYP education to get the transcript. And if you want to leave some voicemails 747-227-4477 email [registry.matters.cast@gmail.com](mailto:registry.matters.cast@gmail.com). And like I said, support us at [patreon.com/registry.matters](https://patreon.com/registry.matters). And I think that's about it. Larry, I hope you have a splendid rest of your weekend and a good night, and I'll talk to you soon.

Larry 59:43

Well, thank you and I'm going to encourage someone to trip me up with a trick question. Send me something. Send me something that tops that one. Okay.

Andy 59:51

Very good. Do it. So, take care bye. Bye.

Unknown Speaker 1:00:01

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