



## RM243—Military Sexual Assault Statistics

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Announcer 00:00

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Andy 00:17

Recording live from FYP studios, east and west, transmitted across the internet. This is episode 243 of Registry Matters. How are you people this evening? Larry, that's directed at you for sure.

Larry 00:29

Doing awesome. Glad to be back with you. I've got lots of stuff to report on tonight.

Andy 00:34

That's right. I do know that you have something to report about. Is one of them related to temperature control?

Larry 00:43

Yes. But you got to remind people to subscribe and do all that good stuff.

Andy 00:47

Yes, of course, make sure that you like and subscribe and hit the bell button and the notifications and all that. That's all that stuff. So tell me about your furnace.

Larry 00:58

Well, for the last two seasons, I was teaching it a lesson because it wouldn't fire up. But I finally decided it was time because the poor thing just didn't learn its lesson. And I had enough things go wrong in my house, it was time to call for service. So I called for service on the list of things that nobody wants to hear. And lo and behold, I got my furnace fixed, and it's gonna be providing heat this season.

Andy 01:26

How did you get it lit?

Larry 01:29

Well, it turned out that the only thing wrong was that I had forgotten all the steps to light it, and it just needed to be fired up.

Andy 01:41

So all you had to do was light the pilot light.

Larry 01:44

That's all that particular aspect of the repairs. That's all he did. There were several things that he had to take care of. But he just fired it up correctly and changed the filter. So I've got heat again. So I guess in a way I did teach the lesson, didn't I?

Andy 01:59

I think that's totally it being stubborn and teaching you a lesson, Larry, for real. That's you being stubborn and not doing what it takes for you to not have heat. And then how much do you think your electric bill was higher by using space heaters?

Larry 02:11

Well, the electric was higher, but the gas was cheaper. So it was a net profit.

Andy 02:18

All right. What else do you have to report before we go on?

Larry 02:21

Oh, that's really about it. What are we doing tonight? I think it's going to be a great program.

Andy 02:26

I believe so. But I believe that you're going to tell me what we're doing tonight.

Larry 02:29

We have a guest. We have the spouse of a person who is serving time in the military confinement over Fort Leavenworth. There's a federal facility over there that has military confinement. I believe it's called Fort Leavenworth, one of the oldest pens of the country. But this is not that facility. This is the Joint Regional correctional facility. And it's only for military. And we have the spouse here but can be introduced shortly. And depending on how much time we have left, we've got some articles. And we definitely want to play a funny clip from a high-profile trial that's going on.

Andy 03:09

And no, I think we covered that like a week ago. Just introduce maybe it's two weeks ago that we introduced it.

Larry 03:15

Yeah, the Darrell Brooks trial up in Waukesha, Wisconsin.

Andy 03:20

All right, anything else? Before we introduce our guest?

Larry 03:23

Let's roll the train because we've had a lot of questions prepared.

Andy 03:29

Very good. So we have a special guest tonight, Ashley. Ashley is the mother of three, and her husband has two children. Both have a set of twins, which is pretty unique. You probably met through like some sort of twins dating website, I'm going to guess. Ashley has become very distraught over what she has witnessed in the military justice system over the past couple of years. And we are planning to discuss about those who with military convictions. So Ashley, would you tell me where your husband is right now?

Ashley 03:58

He is in the Joint Regional Correctional Facility in Fort Leavenworth, Kansas.

Andy 04:05

And so actually, thank you very much for coming on. We've been doing preps and I know you're nervous, but don't be. It's all good. We're all friends and family here. So everything's great. Tell me what kind of facility is this?

Ashley 04:19

It's a medium security prison. And I know everyone thinks of the big one when you hear Fort Leavenworth, but this one is smaller, and it exists, literally to house so-called Sex Offenders within the military. 90% of the population in the prison is people convicted of sex-offender crimes. And that figure came from a social worker, so it's accurate.

Andy 04:53

Why would there be an entire prison for just one type of crime?

Ashley 04:59

That's the big question. The facility is basically secret. And you can't find much out about it unless you have a loved one there. And it's on the base--the army base--so access is restricted.

Andy 05:17

And just remind me--you're in North Carolina. And if he's in Kansas, that makes visitation kind of challenging, huh?

Ashley 05:27

Yeah. Budget wise, I've been going about every three months. It's a very long and expensive trip. It's about 20 hours if you drove. Yeah.

Andy 05:40

And then once you do that, then you're I mean, are you able to visit multiple days to do that?

Ashley 05:46

When I go, I try to go when they have a four-day weekend, and then you get special visiting hours for two-to-three-hour sessions a day or the weekend?

Andy 05:58

Why would so many military members be convicted of the one crime?

Ashley 06:06

It all started about 10 years ago, when there was a lot in the media with the rape culture, on campuses and in the military. And the media was full of salacious stories that turned out to be fake. And then there was a documentary called "The Invisible War." And it ended up being a big deal, and a lot of members of Congress got ahold of it and made a lot of changes.

Andy 06:41

And what is a reaction to a big military problem? What does the military do to solve a big problem like that?

Ashley 06:51

Well, that's the thing. There's not now nor was there ever, actual numbers saying that sexual violence was occurring at a higher rate in the military versus civilian world. Hard numbers say there is less sexual violence in the military. And the military takes it much more seriously than the civilians. And those good stories that people were telling created the perception that the military was full of sexual predators. And of course, bad things happen. And some of those guys should be in that prison. But the military prosecutes and punishes at a much higher rate than civilians.

Andy 07:46

But they do have numbers. So where do they get statistics? It seems like in a closed environment like that in the military, they would have all of the data for what is going on? So where is that data? Where's that information coming from?

Ashley 08:01

So about 10 years ago, the military started using surveys to gather information from the soldiers. And they created a "dark figure" of assaults. And those surveys allowed women to say that they were assaulted, but they never actually reported the assault. And the company is Rand that makes the surveys. And they claim that in 2018, 20,000 women in the military were assaulted, but only 6053 reported their

assaults. And the reason they gave for not reporting is retaliation. They were afraid of retaliation from the accused, and Rand and those who use their data tout the 20,000 number, like it's a fact.

Andy 08:58

And what is the veracity of this "dark figure"?

Ashley 09:06

I think for women in the civilian world, there are legitimate reasons why you might not report because you're scared of retaliation. But in the military, it's nearly impossible. And soon as you file a report, you get assigned a lawyer that's called a special victims advocate, and then they are immediately transferred out of their unit away from their alleged abuser.

Andy 09:39

And I've heard that there can be a monetary incentive to report abuse. Can you explain that?

Ashley 09:46

Yeah. There is a strong incentive to report anything that might resemble an assault because of this. It's called a transitional compensation program, and it pays the victim a monthly stipend plus, it gives them completely free health care, and benefits if the accused is convicted. And you get it for several years, and it's a lot of money. And you can even go to the website, and you can see how much you will get if you win. And for active-duty members that are reporting the sexual assault, you can also get VA benefits for the rest of your life. So with all that, there's a low likelihood that the dark figure actually exists. And if it does, nowhere near 20,000. But all of this data goes to the Secretary of Defense.

Andy 10:52

Let me get this straight, because that sounds completely bonkers. They get money and benefits, and they get to move to another unit, or even another base, if they want to do that. That creates a motive. Yeah, that totally creates some reason for a civilian to--I don't want to call it entrap--but just lure somebody in to then make accusations so that they would then get benefits. And it would also potentially if you wanted to get transferred, you could make the allegation that someone did something, then you could get transferred to some really lush base that you want to go to, like Hawaii or something like that.

Ashley 11:30

Right? Yeah. And for civilians, there is no penalty for committing perjury in a court martial trial, they can't do anything to a civilian. So they can say anything on the stand that they want. And plus, they have their special lawyer there to speak on their behalf when needed. And so two things happen from that. The system gets used for financial

or benefits gain, and then it gets weaponized. And that's what happened to my husband. He was going through a bad divorce. She told him many times that she was going to do this unless she got her way. And then she did it. And he wants people to understand that this is much bigger than just him. It's happening to a lot of guys. And the figure of 6,053 that we mentioned earlier, only 90% of those were not even sent to trial because they were unsubstantiated. So there's a lot of evidence to show that the system is being used as a weapon.

Andy 12:46

Tell me why do you think that this is happening?

Ashley 12:51

There's a lot of reasons, I think, but that would open up a really big political conversation. I think whatever the reason, since 2012, over 100 changes have been made to the military legal system that make prosecution of the alleged crimes easier. And convictions in the military mean jail time.

Andy 13:21

And so the military has its own law system, not the civilian law system that most of us here are used to?

Ashley 13:31

Yeah. Everything in the military is governed by the Uniform Code of Military Justice, the UCMJ. And it has its own laws, rules of evidence, court procedures, sentencing requirements, prison system, everything. And any of that can be changed at any time by the National Defense Authorization Act, which occurs yearly. And Congress votes on it, the President signs it. And that's it. So you might not even know stuff is happening. But most of the big changes happened in 2014.

Andy 14:14

Unlike what we have in the civilian side of things where your legislators would introduce bills, and then both sides would vote on it and so forth, and then it goes to the governor. We the people then have the opportunity to derail things or at least observe it, try to testify on it and so on. So, like the military side of it is almost like a black box.

Ashley 14:38

You think?

Andy 14:41

Okay. So this could go on forever. But I wanted to talk about some examples of how it differs from the civilian side. So your husband wrote this paper? "No Means No, But Yes, Does Not Always Mean Yes." I think we covered that at some point, Larry, didn't we?

Larry 14:55

We did. We read a portion of that.

Andy 14:59

Okay. We talked about it on a previous episode. And we read a section that I think summarizes the thing completely. It talks about withdrawing consent after the fact. All you have to do is say you were intoxicated. So you couldn't have consented. And you can withdraw the consent virtually any time, because there's no statute of limitations. So, right.

Ashley 15:21

Right. There is an important distinction to make and that in the UCMJ, the standard isn't intoxicated, it's impaired. And they have changed the standard over the years. And you used to have to be incapacitated, which most people would consider as pretty freakin drunk. And now it's all the way down to impaired. And what exactly does that mean? That's a really low bar. So someone can say I said, yes, but I was impaired. And under the UCMJ, that is a sexual assault because an impaired person can't consent. And on top of that, it's based on the person's subjective memory of just how impaired they were.

Andy 16:19

This would seem to open up the door to someone having some level of buyer's remorse.

Ashley 16:26

Correct? That's a lot of the stories in there. And a lot of regret sex is being tabled as assault, when really, it's just poor judgment on both parts. But these women have strong motivations to report the incidents as assault, and there's no downside for them really. And so that's why claiming there's a "dark figure" is highly unlikely. And that's what's happening in the barracks, but it's not what happened to my husband. And usually it happens to the lower ranking soldiers within the barracks.

Andy 17:10

You just said that your husband's situation is different. How was that?

Ashley 17:16

His was a vengeful-ex situation. During their divorce, there was disagreement about their house. And so he had to file a lawsuit, just like the normal division of property stuff. And so she was served those papers on a Friday. And on the following Monday, two days later, she told the army he had assaulted her two years prior. And those facts were never in dispute in court by anyone and was evidenced by documentation that it was the correct timeline. And that wasn't a problem to them, I guess.

Andy 18:02

And you said that she threatened to do this to him before all of that went down.

Ashley 18:07

Yes. He started recording her because of the constant threats. And he kind of thought that would help him to not end up where he is. He has a lot of recordings saying that she's going to do it and explaining in great detail what she is going to do and kind of mocking him about it. But he was not allowed to use those recordings in court as evidence. And the military does have their own set of rules of evidence, but I think that might have also been attorney error. But it was all confusing. And we just had to trust that they knew what they were doing, which didn't work out.

Andy 18:54

Clearly. What was her evidence then?

Ashley 18:57

Literally nothing. And I know that sounds unbelievable, but she had nothing. She had never mentioned this assault anyone before. And she and my husband had never talked about it, as was evidenced with 1000s of texts and audio messages and recordings. And she didn't have to answer why she was only mentioning it after the lawsuit was filed a few days earlier. She was actually turned away from civilian investigators at two precincts because they told her she had nothing to build a case on, but the military said we'll take it. And a person's testimony alone is solid evidence to them.

Andy 19:48

I believe it also comes down to being fairly solid, solid evidence in the civilian side of things. Did your husband testify in his own defense?

Ashley 19:58

No, his attorney advised him not to. So all they had were her words. And I think our attorneys counted on the jury not believing her because it was all so bizarre. But that was obviously a mistake. And there's a lot more to it. Like you don't have to have a jury of peers, it's all higher-ranking officers, and only two thirds majority is needed to convict. But I think they're about to change that. But I'm not positive. But it's way more complicated and worse than what we've said. But this is just the quick version. And things that happen in that courtroom were so bizarre and unbelievable. And I know I sound like I'm exaggerating whenever I tell our story, but I saw it all with my own eyes. So there's no disputing what happened.

Andy 20:59

And since he's currently serving time in prison, he was ultimately found guilty, I'm guessing.

Ashley 21:05

Yes. He had a lot of charges. I think they were just trying to throw a bunch and see what would stick. But they found him not guilty on a lot of the charges. Then he got a three-year sentence for two charges. And a lot of guys that he's with they got much worse sentences for less, which to me indicates they just wanted to give him some time for the sake of appearances, because he was facing around 90 years with all the charges added up.

Andy 21:42

And frankly, I'm not 100% sure I'm understanding the why behind all of this.

Ashley 21:49

That's a big question. And all this happened because politicians made decisions and not the military. Why do politicians do anything they do?

Andy 22:06

I think that probably is a question that we will move over to get an answer from Larry. Why do they do this, Larry?

Larry 22:14

Well, I remember that as this was happening as Ashley is describing it, there was a lot of publicity about rampant sexual abuse in the military. And the military--the Department of Defense--when you take out the big programs like Social Security, Medicare, that's where we spend our money in the United States. And therefore, Congress is under lots of pressure, enormous pressure, to do something about our brave soldiers who are going and putting their lives on the line only to be abused with no consequences. This means that there would have been enormous pressure back in that time to find ways to fix it. And it's kind of like what I've said through the years when it comes to the police departments across the country not being able to stop the abuse of suspects. And I say, we fund the police agencies, so it's up to us to decide how they police, what weaponry they use, what the rules of engagement are? Well, the same thing would apply to the military, the Congress was under pressure to figure out if there's this enormous number of assaults. What would you refer to that number as a 20,000, the "shadow number"? But if all this is happening, then Congress needs to step up because obviously the military hasn't done its job, so the pressure would have been too much to withstand it. That's the answer is they did it because they had to. They had to do something to fix a wrong.

Andy 23:58

There was a big scandal back in the day, Larry. You probably remember--it was Tailhook, if I'm not mistaken. That was a big six get almost like I was, like, frat house kind of activity, and hazing and whatnot, and the women were the targets. I'm trying to think of the right way to word that.

Larry 24:22

So we can undo this by putting the pressure back in the other direction. That's one of the reasons why Ashley's here, as she's trying to communicate to the public that what is being done is an overreaction to virtually, almost non-existent problem. It's certainly an exaggerated problem. But until Congress becomes convinced of that, there's not going to be any pressure because the people who lead advocates in charge for victims, are well funded, well connected, and well respected. And if they say it's happening, you better have some solid evidence that it isn't.

Andy 25:03

Let's continue then Ashley. So how, how receptive have people been to your messaging? How understanding and all that?

Ashley 25:12

I get a lot of mixed reviews. I think no one gets it at all, unless you are personally going through it. It sounds like I'm just a wife trying to defend my husband as any wife would. But unless you're living it, you just aren't going to understand what it's like with the military justice system. And the political piece is the thing because why is it all so secret? If politicians thought they were protecting citizens? Wouldn't they want everyone to know their high conviction rates? And this prison exists solely to house these military sex offenders that they were so worried about? Shouldn't they be proud that they have done what they thought people wanted? They know the American public would not be okay with it--shipping military men off to the prison without a fair trial. There's no due process whatsoever. These were our heroes, and the guys that we used to thank for their service. And I know on here, you guys have talked about people forced to register as being an unsympathetic group. And that's just not the case here. There's a prison full of young men who are not criminals. They swore an oath to protect their country, and their reward is to be caught up in this political power grab.

Andy 26:53

When they do get out, will they have to do registration in their local state?

Ashley 27:00

Yep. They fall under whatever the rules of the state are, where they're registering. My husband--I don't know quite how to compute the military to civilian, so I'm not sure exactly--but it looks like it would fall in a tier that would put him on the registry for the rest of his life, which obviously would affect our entire family forever.

Andy 27:30

Depending on the state, though, I think he might not have to do it for the rest of his life. That's depending on that

state, though. So don't go to Florida, because then it will be for the rest of his life. But a place like a Georgia-kind of state has a removal process, as do some others. I just want to say that a person in chat said that actually, many wives just leave, and you should be commended for your loyalty. And I would totally go with that. Any, any spouse that sticks by as their spouse goes through anything related to this is definitely gotta be commended. Or kicked in the head for being crazy. Three years, like, three years isn't the end of the world, but let me ask you this. Does this mean something of a less than honorable discharge? Does he get discharged as you get to go back to work in the military?

Ashley 28:25

He got a dishonorable discharge.

Andy 28:29

So pile on registrant, pile on convicted felon, and then pile on dishonorable discharge.

Ashley 28:37

After thirteen years, he didn't get anything he earned.

Andy 28:42

Well, I mean, I served eight years. I don't have anything from that. But I'm assuming after 13, he was planning on being a lifer.

Ashley 28:50

No. He was actually set to retire in May '21. But they extended it for the trial. So he had found out he had cancer and long story short, he was set to have disability with all that stuff that we were going through. And then this kind of threw it into a different direction.

Andy 29:12

Totally. So if he was going to retire with benefits, I guess that that goes away then.

Ashley 29:20

Yeah. So will still have to appeal, but yeah.

Andy 29:26

So Larry, that would segue over to the FYP education Social Security Disability podcast. Wouldn't he qualify for disability benefits?

Larry 29:36

He possibly would qualify, but he's going to run into a problem depending on whether he is currently insured or not. People who stay out of circulation for a longer period of time when they're looking to look at whether you're currently insured, and this is it gets very nuanced. You can have insurance for retirement benefits, your Social Security. You can have your 40 requisite credits or what they used to

be called quarters, and you could be eligible for retirement benefit. And you could not be currently insured for disability benefits, meaning that you don't have recent enough work. So a person needs to have earnings and five of the 10 years prior to the onset of disability. A person who has been in prison for 10 consecutive years would not be currently insured because they would not have any earnings, unless they could show that the onset for their disability began before they went to prison, which gets more and more complicated to do. So he could conceivably get Social Security Disability benefits, but the longer he stays out of circulation, the more that he rolls beyond that period of being currently insured. Does that make any sense at all?

Andy 30:52

Well, he's doing the three years and you use the number of five years in there, does that mean he is in good shape to get it or not good?

Larry 31:00

You should be currently insured with only three years of downtime, because if he worked seven years prior to three years of downtime, seven is greater than five, and five is enough to be currently insured in the previous 10 years before the onset of your disability. But that is a catch all that people get trapped in. They've been in prison for a long period of time. And when it comes to disability and social security, and you're not currently insured. Social Security says, Ha. Well, I've worked for 22 years. I'm eligible for retirement. Yes, you've got your 10 years, which is 40 credits, but you're not currently insured because of your absence. And then they say, well, I was in prison. How could I work? Well, that's not our problem. You are not participating in the workforce. And so yes, he's probably still currently insured if he has a medical disability. But has he been eliminated from all benefits for military, everything is gone? Everything?

Ashley 31:54

So we're trying to figure that out right now. But I think he has three prior honorable discharges. And I think he can still get the stuff from those, just not from his current enlistment, which includes the cancer and stuff that he really needed help with. But I think he'll still get--I don't know--no one seems to be able to give good answers.

Andy 32:25

Well, Larry, do you have any follow up before we close out the segment?

Larry 32:28

No, it's a tragedy. And politically speaking, Ashley, you guys are going to have to get into the mainstream media with this. And you're going to have to find a sympathetic person

that does old-fashioned journalism that will actually sit down and listen to you and get it on the air. And that's probably going to be easier said than done. But you're going to need an audience of with huge numbers, for people to say, really, I don't believe this can happen in our country. I don't believe that we can convict people without any meaningful due process, and particularly people who were risking their lives to protect our country. That's the type of outreach you need. And you're going to have to work really hard beyond our podcast to get mainstream attention. You're going to have to find a print journalist to write about it. And then maybe get on one of these old-fashioned talk shows where you can reveal what's happening.

Ashley 33:31

Yeah, I write to people every day. But I don't know. I just assume the military is very scary and intimidating, and no one wants to take that on. I don't know. I'm not going to quit trying. And I'm very grateful that you guys are giving me this platform.

Andy 33:51

Hey, Larry, there's a person that was at the 2015 Conference in Atlanta. And he writes periodically? I don't want to out his name. Do you think he would be a good person? He frequently journals, things related to our issue, and it gets published in a lot of different publications. Do you think he'd be a good person?

Larry 34:11

I think it'd be worth a try.

Andy 34:14

Can I say the name?

Larry 34:17

I don't see why not.

Andy 34:20

Okay. Steve Yoder is a person that you may want to try and get in touch with. He writes on our issue. He is not directly related. He is tangentially related to the registry, but through a friend or a brother or sister or something like that. And someone also said in chat said Pro Publica maybe would be a place. And what about the what's the criminal news--We get articles from them all the time.

Larry 34:52

The Criminal Legal News--are you talking about that?

Andy 34:54

No, it's like Collateral Consequences Resource Center or something like that.

Larry 35:02

So I'm not sure that would be something they would do. But you leave no stone unturned. Because you're needing an audience. You're needing the American people to be outraged.

Andy 35:16

Very good. I'm sending you have a message Ashley--possibly your American Legion post if you haven't already. So probably half of the people that are in chat are from the military or have prior service to some degree. And so they're providing some ideas as to what you can do.

Ashley 35:35

Thank you. I'll take them all.

Andy 35:39

Well, thank you so much, Larry. Was there anything else you wanted to follow up on before we dive out?

Larry 35:43

No, unless Ashley has anything to close with, we can move on.

Andy 35:48

Ashley?

Ashley 35:49

No. I'm good. Thank you, guys. Thank you.

Andy 35:53

You're welcome. Thank you for coming on. I really, really appreciate it. And I hope you have a splendid rest of your weekend. Thanks so much.

Announcer 35:58

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Andy 36:52

Anything else before we go on there, sir?

Larry 36:54

No, let's keep moving.

Andy 36:58

Ok, cool. So, I wrote this question. But this is an ongoing issue with a friend of mine. And so to set it up--a friend of mine has been transferred to another state. This was three or four years ago. He went from Georgia and transferred on parole down to Texas. And there was a retaking or revocation--I always get those kind of confused. And when that all happened, he served an additional two years in Georgia prison. And now he's down for another two years for a probation violation of having some adult nude images. Now, couple that with somewhat recently, there was a new law signed in, it was called House Bill 105, that stipulates after three years, you can have your probation terminated of being a PFR. Do you think that having the revocation or retaking thing on parole, and then having the probation violation plus those two years--how do you think that will impact him on getting leveled and terminated and all that stuff?

Larry 37:59

Now, are we talking about early termination for probation? Are we talking about removed from the registry?

Andy 38:03

No, terminated. So when he when he gets out, he'll have seven years left. So do you think that when he finishes those three years of the five--so he had seven when he got locked up--so that would leave five when he gets out? That would then be three years that would leave two additional years on probation before he would be eligible. I hope I did all that math. Right. And it made sense.

Larry 38:26

Well, here's what I would say. Am I allowed to say the answer that I believe would be most accurate?

Andy 38:33

Oh, and let me just add this one other thing while he was in the Texas jail, he got leveled a level one in Georgia. So yes, now you can say whatever you want to say.

Larry 38:45

Okay, in terms of probation, when you're asking for early termination from probation, you're going back to the sentencing court. Even if that judge is no longer on the bench, it would be a judge who assume that bench. But termination from probation can only be done by the judge that sentenced or the replacement judge. And the adverse party to that removal petition, that early termination petition, would be the prosecuting agency in the jurisdiction that achieved the original conviction. If I'm the prosecutor in that jurisdiction, and I've got a person who has messed up on supervision twice, once on parole, and once on probation, there's no way my office is going to be able to come in and not oppose that removal. And that's not to say

it couldn't be granted over the objections of the prosecution. But there will be opposition from the state of Georgia through the district attorney of that jurisdiction. They're going to say that this person has had difficulty adjusting to supervision as tried to skirt the responsibilities of their superiors. As a judge, you would be not serving the constituents of our community to let this person off supervision. That is what they will say, in all likelihood.

Andy 40:12

Even when I went to court after having zero issues in the time that I was on for seven years, I did half of my probation, 14 years. Then the DA, he came in there with little fuzzy gloves, but he still put up a fight. He said, "Your Honor, we don't approve of this, but I don't really have anything to say against him. But we still don't approve of this." So I can imagine that if somebody has things against them, since the time that they've been on post release from prison, that they're going to at least be able to go, "Hey, we have these things." Right?

Larry 40:47

That's exactly what they're going to do. Remember, the district attorney--are we talking about the same jurisdiction that you were in, or a different jurisdiction?

Andy 40:58

A different county in Georgia.

Larry 41:02

Okay. It might be on the same circuit, but not the same county. But the district attorney has to run to be elected. The last thing that district attorney wants is to have the local television come rolling in saying--Why did your office not oppose the early termination from this person, after having difficulty, at least twice, on supervision, and here's what the person did. And you still were okay with removing them from supervision? No elected official is going to put themselves in that position. They're just not. I wish I could tell you that they are. But they're not. The best thing to do would be to have an attorney. Go have a conversation with them and say, I'm thinking about filing for early termination. What is this office's position going to be? Then they go and get back and tell you, their client, "I went and talked to the DEA, and this is what they said. I can still file the petition, and we can still request a hearing. But the opposition is going to be significant. And this judge is not often known to overrule the DA and do something because the judge also runs in Georgia" The Superior court judges are elected in Georgia. So therefore, it's going to be extremely challenging in a scenario as you're describing here to get an early termination from supervision.

Andy 42:29

Okey dokey. He is listening to you live. And I know he doesn't like what you're saying. But so he then asked, Will he have to be re-leveled, or leveled again is how he worded it. I think they're going to adjust his level. I would imagine he's not just going to sit there as a level one, it would be my guess.

Larry 42:47

I'm not totally familiar with what all can trigger a leveling in the state of Georgia. I would assume that since the PFR, can ask for leveling to be looked at again, it would stand to reason that the state can ask if they have reason and evidence. If I'm the state, and the person files a petition, that's precisely what I would do. And I tell people this, I'm not trying to be negative, I just don't want you to spend your money--gobs of money which these lawyers typically charge, like \$5,000 for removal petitions, I hate to see you spend \$5,000. I would only charge \$3,000 to tell you that this is a waste of time. But generally, if I'm the State, I'm going to ask that the person be re-leveled. And I'm going to state reasons why. I'm going to say on this date, the person violates their supervision by doing the following. On this date, they violate their supervision by doing the following. Both of these violations are sustained by finding--either by an admission or by finding. Therefore, the level may be inappropriate, and I'm going to try to get that person juiced up to where they won't be eligible. Then I don't have to deal with the fact because you're not eligible as I understand it in Georgia.

Andy 44:07

That's the way that I understand it.

Larry 44:10

So that's what I would do. And if I can think of that, I'm quite certain they can think of that.

Andy 44:17

Alright, man, very good. Shall we move over to this little video clip that you had me copy for you?

Larry 44:25

Yes, this is regarding the high-profile case of Darrell Brooks, whose trial is getting quite interesting because in my view, they shouldn't even be conducting this trial. The guy's got some serious mental health issues, but the trials going forth, nonetheless. We've talked about it, a couple episodes back. And we just have this for your local entertainment here, to hear a little snippet of how he goes back and forth with the judge. I think there's a real crucial part that we like so much that I want people to hear.

Andy 45:00

I want to point out though that he is at least wearing a suit this time.

Larry 45:05

Yes, he did decide to wear a suit.

Andy 45:09

Alright, this is a little over 90 seconds.

Darrell Brooks 45:17

If you have seen it numerous times before today, why did you need to see it again, make sure if any questions were asked, or however you refer to it, what would be the need to view again this morning? Something that you had viewed numerous times before.

Prosecutor 45:42

Objection, argumentative.

Judge 45:51

Overruled. The witness may answer.

Darrell Brooks 45:53

Did you view the video this morning because you knew that the video will be made an exhibit this morning?

Prosecutor 46:01

Rejection of facts not in evidence.

Judge 46:04

Sustained as to the form of a question.

Darrell Brooks 46:12

This is mind boggling. Can you clarify again why you viewed the video this morning?

Prosecutor 46:21

Objection asked and answered.

Judge 46:23

Sustained.

Darrell Brooks 46:24

So you are going to sustain everything?

Judge 46:26

It was already answered, Sir.

Darrell Brooks 46:29

And I'm asking for clarification.

Judge 46:33

Next question, please.

Darrell Brooks 46:35

I've got no more questions.

Judge 46:39  
All right. Thank you.

Darrell Brooks 46:41  
This is mind boggling.

Judge 46:42  
You may step down. I'll excuse the jury.

Darrell Brooks 46:51  
What you people is trying to do is not fair. Hide things from the jury repeatedly. Don't tell them all this information.

Judge 46:53  
I'll take up all of your objections outside the presence of the jury.

Andy  
If you didn't catch it there, then he gave a you people.

Larry 46:54  
Did he say you people there?

Andy 46:56  
He did say you people. He just said I can't believe you people are doing this.

Larry 47:00  
So that's why I put it in there. Every time someone can find "you people," we have to play it here on F.Y.P.

Anndy 47:06  
We're gonna make the F.Y.P. You People Award.

Larry 47:11  
That's right. If you can send us a good, unused "you people," we'll play them.

Andy 47:15  
You seem to have discovered something interesting about that particular individual who's representing himself, which you are very fond of, by the way?

Larry 47:24  
Well, yeah, very fond. He was going to call an ex-girlfriend as a witness. I think her name is Dawn. And the state notified the judge outside the presence of the jury that if he does call Dawn, that Dawn was the victim of an improper sexual relationship that resulted in an impregnation when she was underage. And therefore, he's on the PFR registry, I think it said, in Nevada. So he exploded when the prosecution said that would open the door to discussing his situation with Dawn if he puts her on the stand. So it's

getting quite interesting. I didn't know that until it came out yesterday that he has a conviction of a PFR nature.

Andy 48:23  
Well, we don't have anything else specifically. Do you have any of those articles that you want to cover? We have maybe 10ish or so minutes to cover any articles that you would like?

Larry 48:32  
Yes, I'd like to do the UCLA gynecologist found guilty. And I'd like to do the Spacey being cleared. And then if we get enough time left, we can do the one on the Supreme Court, the one where Texas argues overreach of federal relief. So we could do those three if we have enough time.

Andy 48:54  
Very good. So this one comes from Courthouse News. "Former UCLA gynecologist found guilty of sexually assaulting patients. James Heaps was found guilty on five of the 21 charges he faced at a trial that lasted over two months." Why are we here on this one?

Larry 49:11  
Well, first of all, I'm shocked that in this day and age, that anybody be found not guilty. But he was found not guilty of more things than he was found guilty of. But yet the university had settled out. It said something to the tune of \$700 million. For his accusers, victims had been victimized. But the defense attorney told the jury at the start of the trial in August that his client's case would rest on two types of evidence. Medical records showing that every examination performed by Heaps was medically necessary. As well as testimony from medical assistants or chaperones who will say they were in the room when the alleged abuse occurred. And the medical records will show that every examination had a medical purpose, and the chaperones will testify that there were no acts of sexual gratification and then I won't go further. But this was a high-profile case in Los Angeles. It basically went down the crapper. It basically went down the crapper and he was convicted of some lesser his charges. They'll probably give him jail time, but he was found not guilty. So folks, it does occasionally happen.

Andy 50:28  
Oh, I see. Okay. Very good. So, and then we can move over to the Courthouse News Service. "Jury clears Kevin Spacey in \$40 million sexual battery suit. And the deliberations were swift in the trial between Kevin Spacey and 'Rent' actor Anthony Rapp, who says he was just 14 when he wound up alone with the future House of Cards star in the bedroom after a party." What's going on here that you wanted to talk about?

Larry 50:56

Well, again, in a civil setting the standard is so much lower--remember it's just preponderance of evidence--rather than proof beyond a reasonable doubt. But the description of this by Spacey's attorney was so fantastic. It was an imaginary invented episode that didn't happen. And what has been the damage to Spacey, who knows? But that case went down the crapper. He is facing some charges in the United Kingdom later, which he's pleaded not guilty to. But folks, we're out of control. We're putting people in prison, destroying their lives with frivolous or no evidence. In this incident there apparently was just scant or virtually no evidence that it happened. And in fact, the evidence was contrary to where he lived and what his house looked like. That accusation didn't hold up. It was like, Okay, you should have waited 40 years to come forward.

Andy 52:06

And when those things are inconsistent like that, it seems like, Larry, that Kevin Spacey would have effectively unlimited resources to hire the best attorneys in the world to go, hey, look, the testimony from the witness here does not match with what was actually in reality. And then wouldn't the jury go, oh, that's true? But that's not how this goes.

Larry 52:30

Well, that's what Jennifer Keller, his lawyer said. "'This is a party that never happened,' Spacey's attorney told jurors. There was no bedroom. It's a small studio."

Andy 52:48

I sat on two jury trials. And one of them we thought the guy was guilty, but they couldn't present the evidence. And like, yes, we think he did it. But we can't, like in good conscience, say he did do it. Because we don't have the evidence that the person says that exists. So we found the guy not guilty. And then another one, there was like, we watched three hours of camera footage of the person shoplifting some stuff and we were like, yes, they're guilty. They did it and we convicted. But all I'm saying is like, how do juries sit there and take inconsistent testimony against reality, and then still end up convincing? I'm not saying that they did in this case, but like, how does it even go through the process of getting to a jury? Both sides are presenting evidence to see if they're going to go forward.

Larry 53:39

Well, I think jurors feel bad for people. I mean, nobody wants anyone to have been victimized, but you have to remember your oath. You're taking an oath to only consider the evidence just before you, not what you feel in your heart. Right, you can feel bad for the person all you want to. That's great. I mean, I feel bad for people that they're victimized. I sat for three months on a grand jury. I actually

wanted evidence, and I was perhaps one of only a couple that actually thought that evidence was necessary.

Andy 54:14

Yeah, totally. And then finally, this is from The Nation.com. "The Supreme Court is poised to make it even harder to challenge wrongful convictions. The court will hear oral arguments Tuesday in Reed vs. Gertz." I'm guessing a case which the stakes are quite literally life or death. Oh God, I can only imagine what you want to do about this one. Tell me what you want to do.

Larry 54:39

Well, actually, this was intended to be covered last week. So the oral arguments have already been held. This is a case where we've got a conflict between the circuits. We've got two circuits that say one thing, and we've got the 11th circuit that says another. This case is out of the Fifth Circuit because it's from Texas, but Texas argues that Reed should have sought federal relief after the Texas trial court denied the DNA testing. And they said that he should have taken that directly to the federal court. The problem is that that's so irrational, because you're still in the state court. And the federal courts generally don't look at state convictions until they're final. But the Fifth Circuit of Appeals sided with Texas, and they said that he should have filed an appeal back in 2014, when the trial judge said no to the DNA testing. And the 11th Circuit said the opposite. So the question before the Supreme Court is technical and relatively narrow. When exactly does a habeas statute limitations clock begin to run? That's the question. After Supreme Court sides with the Fifth Circuit and says, well, you should have filed a simultaneous petition for federal intervention, while you were still in state litigation, you're going to open up a floodgate of duplicative litigation, because people are not going to want to be time barred out of their federal habeas. So this is what is being set up for the Supreme Court. And since the Supreme Court is so fond of having people executed and not intervening, they're going to be in a real dilemma, to see what they do with this case, because if they have no problem with him being executed, they're going to open up a floodgate of duplicative litigation in the federal courts, simultaneous with the state court, and they have to think really, really hard. Is that what they want to do? Now? That's going to be funny for me.

Andy 56:45

Okay. Yeah. You and your definition of funny, we do not get along with your definition funny. Okay. So we will close out the show. Any closing remarks?

Larry 56:59

Well, they probably noticed that we won't likely have a session this coming weekend because it's Halloween, and you're doing something special. And I'm taking risks because I'm 178 now, and I bet we will be back the following week.

Andy 57:20

You are correct. So we will take off next weekend, which will be the 29th of October and we will be back on the airways as we sort of call it tongue-in-cheek on the fifth of November. And I appreciate all that you do, Larry. And I hope that everyone has a happy Halloween, and if you're on lockdown, then maybe you can listen to this episode while you're not going out trick or treating. It's really crappy what they do, Larry. That you can't go out and all that stuff on Halloween really is crappy.

Larry 57:47

It really is. We've made some headway with the Halloween signage out of the 11th circuit in Georgia. There's a lot more to be done in terms of Halloween restrictions, particularly

those that are applied to people who have paid their debt and they're not under the supervision.

Andy 58:04

Right. Well, very good. You find all the show notes over at [registrymatters.co](http://registrymatters.co) or [fypeducation.org](http://fypeducation.org). You can leave voicemail at 747-227-4477 or email [registrymatterscast@gmail.com](mailto:registrymatterscast@gmail.com). And the best way to support us is on Patreon at [patreon.com/registry matters](https://patreon.com/registry matters), or donations over at [fypeducation.org](http://fypeducation.org). And I don't have anything else beyond that sir, and I hope that you have a fantabulous weekend, and I will talk to you soon.

Larry 58:37

Thank you.

Announcer 58:39

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