



RM 244: Doe v. Swearingen—A Victory in Florida?

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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 244. How are you, Larry? How are you this evening?

Larry 00:31

Doing awesome. Glad to be with you again.

Andy 00:33

Fantastic. For those who aren't patrons, we just recorded a Patreon extra. And if you're a patron, for as little as a buck a month, which is about 25 cents an episode or less, then you could get in on that action as well. Before we get rolling, make sure that you go over on YouTube and press like and subscribe and write a podcast review, share it with a friend, all those other things so that we can grow the FYP Registry Matters family. And there's that. What are we gonna talk about tonight, Larry?

Larry 01:03

We're going to talk about a case from the United States Court of Appeals for the 11th circuit which originated from the state of Florida. I can't pronounce it. So I'm just gonna let you worry about that. But it's an important case. We're going to we're going to talk about some articles. We've got the Mississippi public defender system being underfunded, and we've got why is a person being required to register in Texas that didn't commit a sexual offense per se. And there's some other articles if we have time, but yeah, we've got we've got some good stuff.

Andy 01:34

Excellent. Well, then let's just dive straight into this. And you brought up we'll put in a case here from the US Court of Appeals for the 11th circuit named *John Doe versus Richard L. Swearingen*. If I'm butchering that, well, I'm sorry. The plaintiffs here, whose offenses predate the registry had been subjected to this reporting structure since the registry law was enacted in 1997. This is an ex post facto challenge, Larry?

Larry 02:01

Yes, it is.

Andy 02:04

Let me set this up. The plaintiffs alleged the following facts in their complaint, which the court must accept as true. The plaintiffs committed qualifying offenses prior to 1997, meaning they were registered for over twenty years prior to the 2018 amendments. John Does 1 and 7 each report in person about eight times per year to re-register and report information changes, such as those caused by travel. Neither has been arrested for violating the registry law, but they fear that the law has become so onerous that an inadvertent failure to register is unavoidable. John Doe 6 suffers from a mental disability that requires him to depend on his sister to comply with his registration requirements, including his obligation to report in person four times a year. Before his sister began helping him, John Doe 6 was arrested twice for failing to comply with requirements that he did not understand. Like the other plaintiffs, he fears that the registry law now virtually ensures his future incarceration. It sounds like an I gotcha, doesn't it, Larry?

Larry 03:09

Oh, it is indeed. It's interesting that in a state that claims to value every penny of taxpayers' funds, they claim that they seek to eliminate wasteful spending every chance they get. But they create all these gotchas when it comes to the registry. So they incarcerate people. You have to admit that's ironic.

Andy 03:26

I will definitely concede that that is ironic. So a story I'll just slip it in here. Super-Patriot Mike tells me that a good friend of his has many cars, and one of them had screwed up registration and some ammunition, something like that. I don't know all the details. But he gets arrested for that somewhere right around Halloween when they're doing their compliance checks. Like these are very, very, very benign innocuous things, and they just seem that they want to go after some people to lock them up. It does seem like it, Larry.

Larry 03:56

It does, indeed.

Andy 03:58

Now after the lawsuit was served (*John Doe vs. Swearingen*) on the state, what was the state's response? I can only guess.

Larry 04:04

The state moved to dismiss the complaint containing in part that the underlying basis for the claims accrued long ago. For each claim the state traced the alleged injury to an

amendment to the registry law and measure the limitations period from the amendments effective date. Now, the plaintiffs responded that they were not challenging their designation as PFRs. But the constitutionality of second-generation registration burdens and the continuing threat of imprisonment for failing to meet them.

Andy 04:37

So what did the district court do?

Larry 04:39

The district court agreed with the state that the claims were time barred. The judge said because the plaintiffs are subject to the registry law for longer than for the four-year limitations period and because they had not pleaded that their challenges and alleged injuries were tailored specifically to amendments and acted within the limitations period, they were denied. Of course, they appealed.

Andy 05:03

The Appeals Court noted, over the past twenty-five years the Florida legislature amended the registry law more than a dozen times. The information collected by the Commissioner now ranges from basic identifying information like a registrant's permanent address to details like the license tag number of his roommate's car. Any change to this information triggers a registrant's duty to report, and failure to comply is a third-degree felony. I'm assuming third-degree is minorish.

Larry 05:30

Well, it's down the chart, but still a significant crime in Florida.

Andy 05:34

Yeah, yeah. But it's not first-degree murder. I'm assuming as a first-degree crime versus third degree. I'm not saying I'm just saying it's lower tear anyway. And you people have always said that the mere act of registration is not unconstitutional, but it can be depending on what is required. Can you admit that Florida's registration requirements are unconstitutional?

Larry 05:54

Sure, I can admit that. But what I say really doesn't matter. But yeah, I can admit that.

Andy 05:58

How are you required to report your roommate's car? I mean, like, why would that even frickin' matter? Why would you be required to do that? How would that pass muster?

Larry 06:11

What there would be a clause in there, they would say something to the effect, and I don't know exactly what Florida law says. But it would say something to the effect of a car that you own or regularly operate. For example, you live with a roommate, and you share the vehicle. So your roommate's car would be subject to disclosure, which could jeopardize the safety of the roommate.

Andy 06:38

And this has been hailed as a great victory over the past week. What do you say about it?

Larry 06:43

It is a victory. I don't know if I'd go so far as to say a great one, but it's definitely a victory.

Andy 06:49

Ah, are you confusing me? So it sounds like you are confusing me. This is not about the constitutionality of Florida.

Larry 06:58

You jumped ahead. The plaintiffs allege that the reporting requirements became intolerable in 2018. That's where we are.

Andy 07:05

Oh, okay. So the plaintiffs allege that the reporting requirements became intolerable in 2018 when Florida again began amending the registry law. Registrants are now required to report any absence from their permanent residence for any reason that lasts more than three days. That sounds like a prior restraint on one's liberty. Can you admit that?

Larry 07:27

Yes, if you have to report travel in advance, before you're allowed to travel, I can definitely admit that that's a prior restraint. But again, it doesn't matter what I say, does it? Now you're to the part about this being hailed as a great victory.

Andy 07:46

So people have been saying that this is a great victory. What do you have to say about it?

Larry 07:51

It is a victory to be able to have your day in court. It absolutely is. The district judge summarily dismissed it and agreed with the state. So yes, to be able to resurrect this with a 11th circuit, it is a victory. But we'll get into how great the victory is further down. But I would not hail it as a great victory. But it is a victory. But I prefer to let the court speak. The court said, "the constitutionality of the registry

law is not before us— we must determine whether the plaintiffs' claims are timely." So that is a victory. Absolutely.

Andy 08:26

You are confusing me to a degree. This isn't about the constitutionality of the Florida registry?

Larry 08:34

It is about that, but the state of Florida argued that the claims were not timely, and thus barred, and therefore, they were able to flush the case. So in order to get to those issues that are being argued in the complaint, we had to resurrect the case. So the Court of Appeals only did one thing. They resurrected the case from dad, and said trial judge, you shouldn't have dismissed the case agree with the state. And so the case is now being remanded.

Andy 09:04

So I see. Okay, so the court stated, "The plaintiffs sued to remedy various injuries, some caused by the 2018 amendments and some arising from other provisions that have been on the books for several years." How did the trial court respond to that defense?

Larry 09:20

How did they respond? Well, the district court dismissed the claims, agreeing with Florida that the plaintiff's injuries stem from one-time acts: the enactment of each provision that allegedly injures them. Therefore, under the applicable statute of limitations, they were required to sue within four years of the date of each provision that imposed the challenge burdens. And so it was kind of the state said that we don't really want to have to defend these issues. So, therefore they were going to throw up a bunch of smoke and mirrors saying that their time barred if we could get the court to buy into it, then we don't have to defend on the merits. It worked. And you have to admit that's funny.

Andy 10:12

No, I'm not admitting it's funny, and it wasn't to the court either. They said although the plaintiff's injuries undoubtedly originated when the challenged provisions permitted the commissioner to first injure them, the district court failed to consider whether the plaintiffs, who are subject to the registration requirements day after day, were continually injured by the requirements within the state statutory period. I remember when you people were litigating in New Mexico regarding non-New Mexico convictions, you asserted a continuing violation doctrine. Isn't that relevant here? What is that doctrine that we were talking about them?

Larry 10:45

Well, it's great because that's exactly what salvaged the case. According to court, the continuing violation doctrine

permits a plaintiff to sue on an otherwise time-barred claim when additional violations of the law occur within the statutory period. If a defendant's actions violate plaintiffs rights that are repeated and ongoing basis, then a cause of action may be timely even if the first violation took place outside the statute limitations, and they cited Callaway versus Partners National Health Plans. And that was a case from the 11th circuit in 1993. So that resurrected this case for now.

Andy 11:21

Was that relevant to the court's decision?

Larry 11:24

Yes, it is. The court stated that, "examining each of the plaintiffs' alleged injuries and claims individually, we conclude that the following claims are timely or satisfy the continuing violation doctrine: Count I, Count III(A), Count III(B), Count IV(A), Count IV(B), Count IV(C) and Count V. Conversely, we conclude that Count II and Count IV(D) are barred by the statute of limitations." So it wasn't a clean sweep. But they get to go back to the trial judge that dismissed them, and they have to litigate on these of these issues.

Andy 12:00

The court also stated, "we believe the plaintiffs have alleged a continuing violation. The registry law requires the plaintiffs to make multiple in-person reports each year, even if nothing about their registration information changes. In addition to that requirement, each day the plaintiffs must try to determine whether an action they take—whether, for example, they wish to purchase a new car, book a weekend trip, or create a new online account—requires making an in-person report. The complaint contends that these reports are time-consuming and burdensome, and the plaintiffs allege that they have forgone certain opportunities because of the likelihood that they would have to report information to the Commissioner." Is this not a disability or restraint? Sounds like a disability restraint to me there.

Larry 12:44

It is, indeed. And in terms of I don't know, if I was clear enough on the continuing violation doctrine before I get the rest of this answer. But the continuing violation doctrine is really not that complicated. You can have a continuing violation. And the way that Florida wanted it to be interpreted would yield an absurd result. The law is not intended to yield an absurd result. So let's say for example, the statute of limitations is three years like what we had in New Mexico in the case that you mentioned. All of our plaintiffs had been on the registry for more than three years. And they asserted that doctrine here and I said, no, it doesn't apply because the injury is still happening. So

although the initial injury happened before the three years, it's continued to happen. So the violation is still occurred. And there's a continuing violation doctrine. The lawyers weren't keen on the argument. Certainly, the judge wasn't, which was more important. But we made a weak argument about continuing violation doctrine. And then we shifted to another argument, which I can't readily recite, but we abandoned the continuing violation doctrine. But just think about this. So the sheriff and Bibb County comes out and arrests you. And make it a sheriff in Bernalillo County since it's a three-year statute here. And they managed to keep you in custody for three years without you contacting a soul. They forbid you to have access to anything. You're never successful in smuggling a phone and you're never successful in contact with the outside world. Three years and one day later, they decide to let you go. So they've had a lawful detention for three years. You were never charged with a crime. There was ever even an affidavit of probable cause the sheriff just went and arrested you and held you for three years. That would yield an absurd result to say that you should have filed a complaint within the three years because you couldn't. The PFRs are in a similar situation. They fear filing complaints will involve rocking the boat. They know that the registry people are, in most cases, going to double down, not that this does not apply in Maryland, which is pure as driven-snow, and they would never do that there. But in most jurisdictions, they're afraid that they're going to be doubled down. Their families are going to be targeted. Their employers are going to be told bad things. Their apartment owners going Be told bad things. So therefore, out of fear, they don't file a complaint. Well, the person in jail couldn't file the complaint. And therefore, it's absurd. The Court recognized that "Contrary to the Commissioner's suggestion, this injury is not caused by the plaintiffs' initial designation as sex offenders, but by the state's continuing threat of enforcement of the registration and re-registration requirements."

Andy 15:31

Fourth and finally, the plaintiffs argued that they have been injured by the very classification as PFRs. The plaintiffs contend that they are being unconstitutionally punished under the Eighth Amendment (Count II) because the law imposes obligations on them "until they die" without any individualized assessment of the risk of re-offense. And what did the court say about that one?

Larry 15:53

Well, the court didn't buy that one. The court said, "We believe the counts about this alleged injury are based on nothing more than the lingering effects of the plaintiffs' initial designation as sex offenders, which occurred over twenty years prior to this lawsuit. The plaintiffs were either provided with appropriate process before they were "punished" by being placed on the list, or they were not.

Either way, their claim was complete at the time they were categorized as sex offenders and made subject to the law's requirements. The continuing violation doctrine does not save this kind of claim."

Andy 16:29

I still don't quite understand Larry. How somebody commits their crime and all that stuff prior to the registry--and I get that it's a civil regulatory scheme--, but how does this type of obligation to report information not cross that Kennedy, Mendoza-Martinez ruling, particularly the disabilities and restraints when you have to do all of this reporting stuff? And it doesn't seem like there's no evidence that it supports anything. So then how do they get away with pulling this one off. Especially in Florida, where it's really, really over the top crappy, without somebody filing challenges and getting them rolled back? When other states have done it successfully with lesser restrictions?

Larry 17:13

Well, because they have not successfully proven that the disabilities are punitive. There's been too many summary judgments motions filed. There's been too thin evidentiary records going up. And the cases have not been done as well as they should have been. And remember, the burden is on the challenging party to prove that this is in fact a punishment scheme despite its so-called civil regulatory name.

Andy 17:41

You've talked about there being something similar to something like a constitutional registry, where it maybe you just mail in a postcard or something along those lines? Can you articulate where the line gets crossed? From? Where Florida like if they rolled it back far enough to be x--would it be simply like there was a way to get off the registry after X amount of time or something? Would that do it? Is there anything in your brain that would look like rolling it back far enough where these challenges would go away?

Larry 18:20

Well, certainly a way off the registry would be a start, but also the disabilities of what people are not allowed to do, where they're not allowed to work--those are going to have to be peeled off, particularly for the people whose offenses predate those obligations. You can't impose restraint on people to a regulatory scheme and it be constitutional, certainly after the fact. Now you might be able to do it going forward, if that's an expectation, and something that's going to happen to you as a result of the collateral consequences of a conviction going forward. But to people who's had their obligations either imposed upon him after the fact or increased dramatically after the fact, that's really problematic. So you'd have to take out all the things like what Michigan did. You remember in Does verses

Schneider? The court really hammered them on the disabilities or restraints, and most of those were peeled out for the old people. You know, they can live where they want, they can work, I think, where they want. And there's a path off. That's a part of it. I don't know how Michigan provided a path off, but I think there's a path off in Michigan. But you're gonna have to peel off significant layers, taking the registry back to where it was probably the very beginning, if you want it to be constitutional.

Andy 19:39

But that's only for people that were convicted before X date. Those convicted yesterday are going to have all of this crap pile on them for them to report. Is that's what is going on here as well?

Larry 19:54

Well, these particular plaintiffs are all pre preexistence for registration. But yes, there are people who will have continuing complaints. If your sentence has ended, my contention is there can be no disabilities or restraints imposed upon you through a regulatory scheme. Only reporting is all that can be imposed on you, and reporting of things that were, in essence, in existence at the time of the offense. But such as a car you drive, all the things that weren't a part of the original offense, like the name of your offense, the age of your victim, the date of your offense, the jurisdiction of your offense, those type of things, that's public record, that's long standing public record of what you did, what you pled to, or what you were convicted of. And your mugshot at the time. But where you're going to school, or you're working, who you're living with, all those things, were not a part of the original conviction. Those are forward-looking requirements. And those are huge disabilities, when we tell you, you can't live somewhere.

Andy 20:52

Right? I have to think maybe 75% of people's issues would go away if they didn't have residency restrictions or work restrictions. And then secondly if your information weren't just immediately available on a public website.

Larry 21:11

And even if the website were public, if it didn't put your pinpoint your address, if it just put a city or maybe the name of the street.

Andy 21:20

Larry, some people live in cities with like 300 people. They're gonna be able to figure out who you are, if you put a city.

Larry 21:26

Then you should get the heck out of that small city.

Andy 21:31

True. What happens next on this case?

Larry 21:37

It goes back to the District Court for determination on the merits of the surviving counts. So the district judge, despite his wishes, is going to have to conduct a trial. Or they'll do their famous motions for summary judgment and ask the judge to decide it without a trial. I would not ever encourage a motion for summary judgment. If you really are serious about this, then you need to raise some money down in Florida, maybe even approached NARSOL about assisting and make sure that there's a solid evidentiary record list. Don't end up like the case in Colorado with Judge Magee, where there was no evidence to support his findings. You've got to have evidence when you're going to strike down the will of the people and say the will of the people is null and void. We can't just do that because we feel emotions. It's got to be proof.

Andy 22:24

Larry, I gotta say that you almost sound optimistic on this one. You sound optimistic that they'll get their day in court.

Larry 22:33

Well, they will get their day in court. But I'm not that optimistic about this, because the 11th circuit just handed down that horrible decision we discussed in McGuire versus Strange. Remember that one? Vaguely one of the one where the brother moved from Colorado to Alabama.

Andy 22:51

That one in Alabama, I remember that for sure. I just don't know the cat's name. But yes, I remember that.

Larry 22:56

Yes. Okay. Well, that is binding precedent. Remember, the 11th circuit is Georgia, Florida and Alabama. So we've got a binding precedent of a registry that's equally as bad as Florida's where this Court has already said, it doesn't cross the constitutional line. So it's hard for me to be optimistic when I've got binding precedent in the circuit. So what they're going to have to do to have a chance of winning is they're going to have to distinguish the disabilities of restraints that exist in Florida, to make them more excessive than what exists in Alabama. And remember, Alabama did peel off some of the requirements that have the dual reporting. Not much. And they took the driver's license notification. Alabama did a little bit to clean up the registry, but most of the disabilities are still there. And you can't be optimistic when you realize that the 11th circuit is bound by existing precedent. They could only come up with a different decision. If this has been so distinguished in a way that they can say that panel decision is not valid here, because this is a totally different case. But if the issues are

very similar, they're going to come with the same decision, because that's just the way the circuit courts work.

Andy 24:13

Gotcha. You're saying, if I'm gonna make this kind of comparison, the 11th circuit being where Georgia is also where they said you can't do the Halloween signs, and then they do something sort of similar in Florida with signs. And then the attorneys can try and figure out how to make it seem like it's similar to Halloween signs. Because of the 11th circuit, it would be binding there too.

Larry 24:31

It would be binding, and the argument you would make would be that you can't do it because the previous panel has said you can't do it. And that wasn't appealed. Therefore, that's binding in the 11th Circuit. So if a Florida jurisdiction made a law about signs, they would have to distinguish themselves. Well, this is not really what they were doing in Georgia. We're distinguishing ourselves. We didn't do that. We're actually applying it to people who've gone through this process, and they are more appropriate candidates, we're not using the blanket imposition on everybody. You could possibly get away with it by distinguishing yourself. But that's what these people are gonna have to do. They're gonna have to say our registry is so much more onerous on Alabama's if they expect to win. Otherwise, I cannot be optimistic.

Andy 25:17

So I think we're going to change your name to Mr. Doom and Gloom for the duration of our time here doing FYP Education, and Registry Matters. I think that's what we should do.

Larry 25:26

Mr. Doom and Gloom? Really?

Andy 25:28

Yes. We're gonna give you like a superhero outfit. You will be like a super villain. And so you are Mr. Doom and Gloom.

Larry 25:35

So I'm just telling you what I'm looking at. I can't make this stuff up.

Announcer 25:42

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bandwagon and become regular Registry Matters listeners. So what are you waiting for? Subscribe to Register Matters right now. Help us keep fighting and continue to say F.Y.P.

Andy 26:30

All right, well, there's that. So we have some time to kill. We started this at 7:26. So we're the 30-ish minutes. So we will cover some articles. One of them was passed along from an individual that resides in Florida. And it is a post from the Florida Action Committee website. 40 PFRs arrested in Hillsborough County, and Halloween operation. And in this little clip, I could go to the article. But it's enough that 40 of them that were arrested, I think it was 37 had violated their probation, meaning they had missed curfew, all that benign stuff. That's just a technical violation. So I guess you could say that they did find the three people that did significant violations. Right?

Larry 27:19

Well, without disclosure of what those violations were, I don't know, for sure. But it doesn't seem like the best utilization of funds. And the state that claims they're so conscientious about public funds. But go ahead.

Andy 27:32

We've covered this over the years, I remember some forever ago, we covered something coming out of Pennsylvania, where they were just looking for some sort of anything that they could find to put you back in there with their thumb on you for violating some small terms. And I guess if you didn't register an email address, that would be considered a violation that you would get nailed for.

Larry 27:59

Absolutely. But what did the special operations cost? When you got teams to go out there. On overtime, I would imagine. And multiple agencies. Right?

Andy 28:10

And we could speculate at them making \$20 an hour base pay or \$30 an hour base pay. 50k or 60k a year as a beat cop. And then you're saying throw in overtime. So let's call it 60 to 70 bucks an hour. Fair. Yep. So and then five hours because they got to be there early to like to suit up and get all their tactical squad gear on and look all threatening. And they go out--20 people cover a county? I don't know what number of people cover a county?

Larry 28:44

Well, they're huge undertakings and lots of money being expended. And they did find some conditions of supervision violation. But remember, if they went out and knock on everybody's door, and they didn't find anything that's difficult to justify conducting the operation. So you have to

find things, even you have to look really hard, you have to find things.

Andy 29:08

So now it's almost like you're the traffic cop. And if you don't come back with at least some number of speeding tickets, you didn't do your job. So you had to find somebody that was speeding, whether they were or not.

Larry 29:19

That is kind of the way the system works. I don't make the rules. But if you're going to have these operations, they're going to find things to arrest people for. They're not going to come back and say, that's it. Pretty good out there today. It doesn't work that way, folks.

Andy 29:32

So this is them. This is almost like the wagging the dog; the tail wags the dog. If they go out and they don't find anything, and they do these multiple years in advance in a year in a row, then the public would be like why do you keep doing this? So they have to find things to report.

Larry 29:49

Absolutely. And that's the reality of life. I had a person called the Legal Hotline here just a couple of days ago from some small city up in Minnesota. His son has had a relationship with an underage girl. And they put him on probation. And he's finding probation to be very challenging because of the things you're describing. You know how closely they're supervising his son. And he said, I don't understand this. He said, they're treating him like he's some kind of hardened criminal with all the requirements and all the check ins they're doing, and it's just such a waste of money. And I said, well, you know, it's ironic you should mention that. I said, we're about to have an election in a few days. And I said, remember, when you vote, whichever way you vote, you've got candidates telling you that law enforcement needs more resources. And you've got candidates telling you that some of the resources law enforcement received are not best used. And they should be redirected to other purposes, including maybe some treatment or counseling. And I said, Is it possible in that jurisdiction that you've overfunded your law enforcement apparatus, because they were so happy? Yeah, he said, they made this case when there's so many other crimes out there, they should have been focusing on. I said, really, if it's a small jurisdiction, there might not be a lot of criminal activity, and you may have given your police more resources than they need. And they had to make the case because your son, for all practical purposes, is a sexual offender. He broke the law in the state of Minnesota, and they had to prosecute him because there's an election coming up in three days. And if you truly believe what you say about all these frivolous charges are being made, then

you might want to be a little more receptive to the argument that we've got too much funding going into law enforcement.

Andy 31:48

Oh, my God, Larry, don't start with that defunding the police crap.

Larry 31:51

I've not used that term. But if you believe that we have frivolous cases being made--and I think a lot of our audience believes that--the only way you will stop frivolous cases being made will be to diminish the ability to make frivolous cases, which is a resource question. If you believe that there are not enough cases being made, and you need to vote the other way then you need to vote to give the cops more resources, more funding, so they can make more cases. The decision is on you.

Andy 32:23

I know that you put in the Operation Blackout for Memphis, but there's no more detail in that article. So we'll move along. Do you want to do the underfunded public defender system in Mississippi?

Larry 32:39

Yes, this is gonna be informative in terms of the public defender system. but

Andy 32:45

This is from Mississippi today. I didn't realize that Mississippi had a publication called Mississippi today. "The system is not designed for you to win: Underfunded public defender system penalizes Mississippians." I'm sure there's some reason why you wanted to put this in here. This doesn't have anything to do with PFR stuff.

Larry 33:08

Well, maybe it does. So like most public defenders in Mississippi, Mallette was appointed by a judge. She represented an unlimited number of defendants for a fixed payment that often did not cover the cost of investigators or expert witnesses for the cases. Many times when Mallette filed a motion for her client, she said she thought twice to make sure she could prove to the judge she was not wasting time and money. She said, "My first priority is to my clients, but that is always balanced and tempered against how bad this is going to piss the judge off."

Andy 33:56

The article says that Mallette's experience is not unique. In Mississippi, attorneys who represent the indigent in criminal cases have to deal with an underfunded public-defender system that lacks statewide funding and oversight. In an ideal criminal justice system, the three

components, law enforcement, prosecution and defense would be balanced in order to work fairly. But Mississippi spends significantly less money on the public defender system than its counterpart, the district attorney's offices. What do you say to that?

Larry 34:34

Well, I'll just quote from the article. "This funding discrepancy results in an indigent defense system that fails to provide state oversight and ensure independence from the judiciary. Since the system allows judges in counties without a funded public defender's office to have control over how attorneys are chosen and compensated, indigent defense attorneys might fear that when they push too hard, they will lose their job." Now that's what the article said.

Andy 35:04

Um, and public defenders are appointed by the courts for defendants who cannot afford legal representation. Of the 82 counties in Mississippi, only eight have full-time public defender offices. The vast majority of counties hire part-time contractors to provide legal representation. Meanwhile, a few counties appoint lawyers on a case-by-case basis and pay by an hourly rate. What's wrong with that idea?

Larry 35:31

Well, it's wrong because the disparity and treatment depending on the county. Some counties are not very generous. Even if they have that compensation system, they may have a very, very low hourly rate. But according to the article, attorneys working in counties with no public-defender offices often have little control over their defense processes because they can't begin their work when the person is charged. In Mississippi, the constitutional right to have an attorney doesn't kick in until defendants are indicted. While some counties appoint lawyers only after indictment, most counties and cities appoint two sets of attorneys to specialize on cases at different court levels. Duane Lake was in jail without a lawyer for almost three years before he got indicted. He eventually spent six years in Coahoma County jail for a murder he didn't commit. I assume this means he was found not guilty, or the charge was dismissed. So that's what's wrong with it. We've got a system in Mississippi--I think they rank up in the top three in the rate of incarceration per 100,000 population--and they don't provide any consistency in defense for their citizens. And again, if the people of Mississippi wanted to provide criminal defense, pursuant to a US Supreme Court decision in 1963, called Gideon versus Wainwright, they would demand that of their elected officials. They don't because it's not important to them. And therefore, this is what we have.

Andy 37:01

In your opinion, should dollar for dollar go to the DEA and PD?

Larry 37:09

I don't know that you can make that simple comparison, because there are people who have the resources to be represented by private counsel. The state has to prosecute everybody that don't have private counsel. So if you have 1000 cases in a jurisdiction, the state is going to have to resource up for all those of that 1000 cases. You might have 300 that are privately defended. So I don't know that a dollar-for-dollar representation is necessarily the way to go. But I don't know that it isn't either. Even though the private defense bar is covering some of the representation, the state system has a lot of resources that are not really visible to the person. For example, all the investigative resources of law enforcement are paid for by government. So the local police, they are government funded. The investigators that work for the Prosecution Office of the State Attorney are all probably lay funded. So they can send stuff to the state law enforcement. In the case of Georgia, the Georgia Bureau of Investigation. In the case of the FBI, they can sometimes rely on the FBI, depending on what they need. They send stuff to the lab in Quantico. They have all these resources that are publicly funded. So maybe it should be equal, even though there are fewer people represented by the public defender, because of the investigative resources and the expertise that the state has that the defense has to hire and pay for.

Andy 38:43

I understand. I was just wondering. I'm sure there's no public support for it, because they think crime is bad, crime is going through the roof, whatever. They're guilty, obviously, or else the DEA wouldn't even bring charges. So screw them, don't give them any constitutional protections or anything like that and lock them all up. Because that's what we do.

Larry 39:03

That is what we do. And it's unfortunate because in this country of ours, where we're supposed to presume everyone innocent, the Supreme Court said decades ago, almost 60 years ago--it will be 60 years next year--said that you're entitled to representation. If you can't afford one, the state will provide you representation. So the state is attempting to put you in a cage. And the state bears the burden of proof of putting you in that cage. But yet the state gets by despite 60 years of precedent of not providing you with representation if you can't afford it. You end up in a cage in a country where we claim liberty and justice for all.

Andy 39:46

Alrighty, then. Then let's go over to this Reason article. "Why is Texas requiring a guy who stole a car to register as a PFR? When states misuse PFR registries and apply them to any crime that involves a child individual rights are abused." There are some crimes that are very bizarre that you would end up with on the registry. So why, let's see. Why did you put this in?

Larry 40:12

Because it's interesting and the title of the article is a bit misleading. Yes.

Andy 40:19

John Michael Weatherly has never been convicted of a sexual offense. Yet, once he is released from prison, Mr. Weatherly will be required to publicly brand himself a sex offender. Mr. Weatherly will live with the obligations and consequences of being registered in the state of Texas, including the state's monitoring of his movement, incursions into his privacy, reputational harm, restrictions of his housing options and educational goals, and limitations on his recreational activities, despite the fact that he has never committed a sexual offense. How can they do that?

Larry 40:54

Because he was convicted of a registerable crime under Texas law.

Andy 40:58

And how can they do that?

Larry 41:01

Because three offenses listed on the sex offender registration list, trigger PFR requirements without requiring any finding of sexual conduct, intent, or action. These three offenses— kidnapping, aggravated kidnapping, and unlawful restraint—carry mandatory registration requirements under SORP, despite being crimes that are not necessarily sexual in nature. See TEX. CODE CRIM. PROC. art. 62.001(5)(E).

Andy 41:33

Can they win this case if the law requires registration? (Clinton laugh track). I'll take that as a no.

Larry 41:47

Oh, well, there's no additional finding of sexual intent or conduct required by the courts or the Department of Public Safety, for a conviction of unlawful restraint to trigger the PFR registration requirement. In addition, a first-time conviction for unlawful restraint of a minor child under 17, which was the case for this was like a four-year-old that automatically requires registration on Texas PEFR list. This is a choice for the people of the state of Texas to make.

Andy 42:20

And I have read all 299 paragraphs later if you can believe that. You're sitting there and telling me that this case has is already on life support. No wonder you people we get we referred to you we've changed our name to Mr. Doom and Gloom.

Larry 42:38

Well, I'm telling you that at first glance, and I didn't read all 299 paragraphs, so you're ahead of me, but just haven't read the complaint for the first time. This is a weak case. It is for the people of Texas to determine how broadly they wish to apply their PFR requirements. It's not for lifetime. I don't like judges wearing black robes to overturn the will of Texas unless, of Texans, unless they have violated the Constitution. They have to prove that the Texas registration scheme is unconstitutional. And they have an uphill battle. They haven't been that's a steep climb, but that's what they have to do.

Andy 43:14

So I also noted that Georgetown University Law School is listed as the attorney. How does a whole university become the attorney for an individual? Does that impress you at least?

Larry 43:25

Well, it's not the entire school. But yes, you did notice that correct. There is an attorney from that law program. But it doesn't change the reality. Now listen to what you're saying. You're all of a sudden saying of people, our audience, I've heard states' rights and keeping the big old bad federal government out and no legislating from the bench. Now, all of a sudden, I think I'm hearing you say that, despite the fact that Texas chooses to have a broad list of registerable crimes, which includes this kidnapping, that they can't be listed on the PFR registry. And that is for Texas to determine. Now, I think it's despicable. I think it undermines and neutralizes if you're going to call it a sex offender registry. You would almost think that someone who is on that sex offender registry would have committed a sex offense. I mean, right. Doesn't that seem somewhat logical?

Andy 44:25

That seems entirely logical to me.

Larry 44:28

So it would be nutty to have, but we have states across the country that have sex offense and violent offense registries. And we, we defer to the state's rights and all of a sudden I'm hearing it sounds like a little bit of pointy head ism coming out of you that you want to trump your nose and stomp your nose and thumb your nose at the states and

have the black robes decide what the people those states can do. And I'm not sure that that's going to fly well in the federal courts. particulars are comprised today I just don't think this case is going to have. Certainly, I wish them well. And I'd be happy if I were asked for input. But they've got to prove that the Texas registry is punitive, before they can limit the application of the registry, merely naming someone to be on a list. I don't think it's going to get you there. And I haven't read the entire complaint. Maybe we'll come back to this case later. But

Andy 45:23

Because I mean, we the people get decide what we prosecute as crimes.

Larry 45:29

And we get to decide what our civil regulatory schemes regulate. You got to prove it. You got to prove that the registry is not just a civil regulatory scheme. You got to go after the whole thing. And somewhere in those 229 paragraphs that that it looked like they were attacking the registry itself.

Andy 45:47

I didn't see anything of that sort. So.

Larry 45:50

So yeah, well, maybe like say, I'll give it I just actually got it yesterday. So I didn't have a chance to read it with thoroughness. But the answer is he's being required to redshirt because law requires him to apply, is he being labeled a PFR? Because he's on the list, that crime is on the list in Texas. And they're asking a court to limit the list. And I'm not sure a court can do that.

Andy 46:17

And then I think this will be enough to close out the program and says, this is from Forbes. "Military Veterans in Federal Prison Have a Program Meant to Assist in Their Successful Return to Society." I'm assuming there's a but in there. Why did you put this in here?

Larry 46:33

Well, there was a, but it doesn't look like that the prison system is doing a great job of, of utilizing this option. So the money is there.

Andy 46:47

So the opening paragraph says, "Our military veterans are the pride of our country, but many have challenges after returning from service where they faced hostile environments under stressful circumstances. While most transition back to civilian life, mental illness, trauma and drug addiction are too often a part of the life of post-war veterans." I was getting my hair cut the other day, and the

lady cutting my hair said that her, I think it was her nephew, did the second Gulf War and did a bunch of tours over there and is not right in the head after coming back and just really struggles with functioning day to day. And I feel for and it's almost like in my brain, Larry, it seems that if going in doing horrible things to people shooting them, all that stuff that goes on and war, if that doesn't affect you, you have problems. If it does affect you, you also have problems.

Larry 47:36

Well, it says there 10,000 veterans at VOP custody. That's a huge number. I mean, I think the VOP has something about 180,000 inmates last time I looked.

Andy 47:46

I was thinking it was 200. So that's like, what is that? Five?

Larry 47:50

So yeah, that's a huge number. Now they're not they're not all PFR related. It sounds the two thirds of the offenders are. Well, I think there's a huge number of veterans that are also homeless or near homeless. But apparently there's that is also pretty common. There's programming available to help these people but apparently, it's not being utilized.

Andy 48:17

So like the state system, then you have to go through some kind of counselor, and they don't want to work, and they don't want to do much to help you and your you don't have any outside resources generally to help you. Someone in chat can speak to finding people that help them do anything on the outside. So you're a person with an unlimited amount of time, but no resources to do anything where the people in the outside have resources but no time to do anything. So you're just stuck.

Larry 48:44

Well, it says the BLP reports incarcerated veterans. Through his collaboration with the US Department of Veterans Affairs, the VLP acknowledge that veterans as a result of their service suffer from higher incidences of trauma, anxiety, depression and physical disabilities, which can be pathways to the criminal into the criminal justice system. But what are you doing? What are you doing about it? So I felt like it piggybacks on our last episode. You know, we have such great admiration for these people. But all of a sudden when they get into trouble, we forget them. I know this has been published in Forbes, which is not exactly a liberal publication.

Andy 49:23

Truth, truth, truth. Well, very good, sir. I would like to point out that we did get a new patron that came in the name is Chris so I'm a little I would say he, but I don't know that he could be a she, so of Chris, thank you so much, and did an

annual subscription. So that's really frickin awesome. And then another Chris spelled with the non-traditional CH, who's already a patron did a very generous donation to FYP education, and I can't thank that person enough as well. Anything else before we head on out of here, there?

Larry 49:55

Well, I did get a couple of letters that I haven't responded to yet. So I'll just ignore I was to Timothy, and in Ohio that I did get your FYP did receive your packet. But we haven't been able to focus on it yet. And also received another one. Well, how much time do we have left? I might, I might can do this one.

Andy 50:19

Give it five. If we started at 26, and we're at seven, we started 7:26. And whatever it is, it's 7:15. So we have like, seven, eight minutes, really?

Larry 50:29

So well, let me take a look at it. Frank's submission. I think I can answer because the answer is going to be I don't have an answer. But I want to acknowledge something.

Andy 50:38

Well, that doesn't help. Well, but I'm going to try to find there's no answer.

Larry 50:42

It says Dear Andy and Larry, Greetings once again. Forgive me for getting straight to the business. Well, we don't need to forgive you. That's what we want. My question is regarding the pronounce the Pennsylvania case, tr LSI. LL er I, that case that we had on a couple of weeks ago? Sure. Sure. Sure. Sure. So I'm, I'm twice convicted PFR from the Middle District of PA halfway through my sentence with a prosecution with a projected release in 2030. As I am one of the rare to have people who have reoffended over seven years ago, how will that case apply to me? While I still have the right to reputations? How will this ruling benefit me? And I don't know the full answer. The right to reputation does not have an exception that I could see for anyone who has had a second transgression. So I don't see that that alone. But in terms of what Pennsylvania did, and how being a repeat PFR how that's going to affect you with the modifications I've made to the law. I do not know, but I will endeavor to try to find out. Maybe we'll have our expert from PA come back soon.

Andy 51:57

Very good. Sounds like a plan. So anything else did you want to try to do the other letter ad hoc.

Larry 52:04

No, there's too much there.

Andy 52:09

Very good. You find all the show notes over at registrymatters.co or fypeducation.org. You can leave voicemail at 747-227-4477 or email registrymatterscast@gmail.com. And the best way to support us is on Patreon at patreon.com/registry matters, or donations over at fypeducation.org So anything else? Any parting words?

Larry 52:41

Well, let me give some kudos to Timothy for his proper utilization of postage. Only an anal-retentive person would notice this, but rather than just putting extra first-class stamps that cost 66 cents each, he actually understands the system. It's 24 cents, as it stands right now, for each additional ounce. So he put five separate five cent stamps, and so he only put one cent more than what he needed to put on postage.

Andy 53:13

Probably didn't have access easy to access the penny stamps anyway.

Andy 53:17

Yeah. But the fact that he has five cents and chose not to put to first class stamps is amazing. Most people say, oh well I'll put a second or third first class stamps on. And it doesn't get there any faster. If it goes over one else, then you need to put an additional health stamp those costs 24 cents. As it stands right now. They will go up on January 1.

Andy 53:39

Well, this has been "Understanding the postage system with Larry and Andy." And without anything else, sir. I will bid you a farewell this evening. And I will talk to you next week. I hope you have a wonderful weekend.

Announcer 54:01

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