



Registry Matters Podcast

Episode 257

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Announcer 00:00

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Andy 00:18

Recording live recording live from FYP studios east and west transmitted across the internet. This is episode 257 of Registry Matters. How are you people this evening?

Larry 00:33

We are doing lovely. It's a beautiful balmy 62 degrees outside.

Andy 00:38

Wow. My head is still spinning because I worked like 100 hours the week before and am still kind of recovering. So like, is it 257? Because I don't remember anything. Like I edited 256 blind. I just put stuff together, lined it up and said go. I didn't listen to it. I have no idea where we are. Is the Earth still spinning?

Larry 00:59

Sort of.

Andy 01:01

Okay. Hey, so, before we get rolling, make sure that you do all the things that you need to do in the YouTube channel. Press the likes and the subscribes and notification bells. And then Larry is happy because he can see the count go up by 10s and dozens every day. Right?

Larry 01:20

That's right. Every time I see new subscribers, my heart just goes--. I mean, I don't even know how to describe it, it just beat so fast.

Andy 01:28

Very good. Then before I even find out what we're going to be doing tonight, you have a funny to share.

Larry 01:36

I do. I haven't done anything with Larry's criminal advice. So I want to give some people advice tonight. This is pertaining to a federal benefit system called Social Security Disability. If you're applying for benefits, it's probably not a good idea to make false statements to Social Security. So for example, if you are telling Social Security that you cannot drive, it might be that you first take a look at your driving record and see how much driving you've been doing and how many times you've encountered the police if you can't drive. Take a look and see if you have anything on your record because they will do that. And if you get caught, particularly if you get caught driving a moving truck, can you claim you can't drive a passenger vehicle and you can't afford to get yourself to work? You might not want to have a record of driving, things like that. And if you are sent to a consultative exam, because your evidence that you submit from your own physicians is not convincing enough, and you're telling them that you cannot walk without the aid of a walker. It is probably not a good idea when you leave the consultative exam to go and have a nice

celebration. And then walking around as if you don't need a walker, because they might just be following you with cameras taking video of all the things you're doing.

Andy 03:18

Not to take too long of a detour down this, but the whole idea of social media has made their jobs a lot easier.

Larry 03:25

Oh, it has indeed. But this was more serious because they have this special fraud and integrity unit. And they assigned the disability adjudicators to look at cases that are a little bit suspicious. And they bring in that team because that's what they were created to do. And they start looking for inconsistencies. And then they follow, and they monitor if they need to. So and then the funny thing of just this was one person. She applied to be a representative payee and was approved to be a representative payee for someone who couldn't manage their funds. And then years later she claimed on her application that she's not able to manage her funds and she can't take care of basic things. And so they were spotting a discrepancy where she was claiming that she could not manage her affairs, but yet she applied and said she could manage the affairs of another person. Now even you have to admit that's funny, right? [That's funny.] So just be careful when you're applying for these things. They will put you in prison. Any of those things will put you in prison. Don't do those things.

Andy 04:34

All right. So what are we doing tonight?

Larry 04:37

We've got a lot of questions coming in from the audience. Some of them will be answered and some will be deferred. But we at least want to raise the questions because maybe our vast audience will know answers. And we can come back to the audience for information. So we've got that and then we've got a main event of a case from California thanks to a listener. I forget who sent it, but it's a great case from California regarding civil commitment. We're going to be doing that. And then we've got one article for sure that I want to cover about felon voting restoration.

Andy 05:10

Do we have any guests?

Larry 05:12

Oh, yes, we do. We got a guest from the state of Georgia. We're going to talk about some legislation that's moving in Georgia that may or may not make it to the finish line.

Andy 05:24

Okay. Well, let's start things off. Actually, I think I'm going to need to bring on an impromptu guest. But I'll read this up. "Just curious if anyone might know: I am in the process of gathering information that I can use to compose my letter to the state registry concerning the possibility of my removal based on law. In addition to trying to find out when my actual offense dates were, I am having a problem locating MD Code, Art. 27, § 792, but I keep running into this – §§ 790 to 795. Repealed by Acts 2001, c. 10, §

1, eff. Oct. 1, 2001 from West's Annotated Code of Maryland Article 27. Crimes and Punishments [Repealed]. My goal at this point is to locate MD Code, Art. 27, § 792 so I can find out what the law was for the registry in 1999-2001. If anyone can point me in the right direction or assist me, I would greatly appreciate it. Thanks in advance either way." Either way, Larry, you know, all statutes for all states, like, right in your brain? What does he do?

Larry 06:47

Well, what we do is we consult with our vast studio audience, because as I look at the list, we have a barrel under here. And so we bring that person on, and we ask them, and this is the reason why you want to be in the studio audience, because you might get your moment of fame, when you're sitting here listening, we just might put the microphone on and let you speak.

Andy 07:11

So is this Brenda on the line? It is. So hey, Brenda, you haven't been here in a while? [I haven't.] Well, welcome back. Do you have any inside knowledge about this whole Maryland thing?

Brenda 07:27

I do. In fact, this fellow is talking about a major change to the law that happened in 2001, as they kind of shut down article 27, blah, blah, blah, and changed it over to give it a whole new numbering system, which is why he's not able to find it in the existing code. And the reason he's doing all this is that we had an ex post facto challenge, some years ago and whether he can get off based on that challenge is, is based on when his offense was relative to what the law was at the time, if that makes sense. So you must get all these little pieces in place, so that he can send out to the registry office and hopefully say, hey, my offense was in 1999. And the law was such and so I should be able to get off. Trouble is you can't find that law because it's been repealed with that number on it.

Andy 08:36

So is this like they changed the highway exit numbers some 40 years ago? And you're looking at a map that says it's exit 742? And now it's exit 29?

Brenda 08:47

Yeah, went from exit 742 to exit 29 A and B. So yeah, it's exactly like that. So it used to be article 27 Criminal Procedure. And now it's 11.71, and a whole string of numbers. So that's what he's trying to deal with. [Okay.] Yeah, the interesting thing was that this fellow also reached out to our organization in Maryland. And we, I actually thought the best thing for him to do because of course, you're not going to have that law, the old stuff sitting there right next to the new stuff. I mean, we get confused enough, our eyes cross enough already when we go and look at, you know, laws. That gets very confusing. So obviously, they're going to get it as far away as possible, but it's in the history. So I said, federal law library. And law librarians will have the old copies of the history so you can go look it up and see what it was at the time of this offense. Jot it down, and you'll have the information that you need. He had he had made an appointment with a local law library. And I haven't heard back from him. But hopefully that the librarian was able to find that particular bit of code.

Andy 10:14

So he reached out across a whole bunch of different channels, which would be casting a wide net hoping to get as much feedback as possible. I got that question off of the NARSOL Connections site.

Brenda 10:24

Yes, he went to the Connections Site. He also contacted us through the Maryland organization. So yeah, definitely reached out a couple three different places.

Andy 10:36

Got it. Do you have anything to add to that, Larry?

Larry 10:39

I think she's done a fine job, better than I could have done.

Andy 10:43

Fantastic. Thank you. Very well. Thanks, Brenda. I appreciate you stopping by. Talk to you soon. All right, well, then we'll move right along. This one came from Discord. And I think you have a very, very insightful answer for this one there. So it reads, "So the human trafficking bill Larry has worked to kill for the last 5 years has come back. But this time, they want to expand the list of indeterminate probation to include more offenses. The part that I don't know is possible is that they are including offenses for which the basic sentence is not at least 5 years. Our indeterminate probation is 5 to 20. And every offense that qualifies currently has a basic sentence of at least 6 years. So he asks me, this might be something to ask Larry about. Can a sentence's minimum probation term exceed its basic sentence? Please, can you spin that so that I can understand the words?"

Larry 11:41

Not really, what he's asking as I understand it is can the probation sentence exceed the sentence of the underlying offense? And the answer is as case law currently stands in New Mexico? Yes. Because probation is rehabilitative. So they can give you they can give you a sentence of probation. That's like, for example, let me make it simple. Misdemeanor carries a sentence of five or one year, okay. They can send it to you, and they can defer imposing any prison sentences. Most misdemeanors seldom result in a prison sentence, but they can put you on a period of probation longer than that they can put you on a period of incarceration of up to five years for a misdemeanor. Even though the sentence itself, if they were to incarcerate, you would only be one year maximum. But probation is a diversion from prison. So it's intended to rehabilitate. So as they say in the south, and therefore, sometimes you need more time to receive that help. So this sentence can exceed the maximum if it's probated, yes.

Andy 12:51

All right. So did that spin answer the question?

Larry 12:56

I hope so. But we are looking at that. We are looking at that because people are ending up on parole, probation. People were ending up spending much more time in the criminal justice system than what the original offense carried, because of the indeterminate amount of time. They're piling on them after they have served their sentence. So we are looking at litigation and I'm trying to drum up some litigation. In fact, it's at the top of our

agenda of things to litigate. It's the system we refer to as parole, which is nothing more than an extension of prison.

Andy 13:35

Gotcha. Okay. Well, then let's move along because we got a crap ton to cover. I did not record who or where this came from. So I apologize for that. But it says, "I have a question for you people. I know neither of you are lawyers, so in your non legal opinion. Could you possibly give me your take on if I'd be able to still attend this place as it's in Hernando county. My son and I regularly go for day trips. It is considered a state park. I pay for annual passes to use the land. Does this ordinance prohibit me from using that park? I have registered motorcycles and everything's legal. I'm not going to be camping or staying. It's just a day trip. I'm not sure if this ordinance would make it illegal for me to go there. I know I currently have no residence restrictions. I know this ordinance is very new. It has a few other areas it covers like residency restrictions and Halloween signs. I have no residency restrictions because of the age of my conviction. However I don't know if the county ordinance supersedes the state requirements? Any input would be awesome. And as always FYP." And now I remember who sent this and his is in Florida, Larry.

Larry 14:51

Yes, I did read that ordinance. It's still being proposed, but I don't think it's been adopted yet. But the quality qualification is already there that if this is non legal, it would be of my opinion that it actually does apply. And it doesn't really supersede, it runs parallel to the state law. If it's adopted. They're piggybacking off the state law. So they're defining everything the same way the state law does an ordinance, and they're just simply expanding. And piggybacking on state law, I normally don't get overly paranoid. But if I were in this situation, I would be somewhat hesitant to go to the place, because it looks like this ordinance covers it. Now the good side is it's only an ordinance and ordinances are not the same as felonies. You don't have the long prison tails, you're looking at 90 days, six months in county jail, but nobody wants to even do that. [Sure.] You're not looking at it extremely long stretches of incarceration. But it would be my non-legal opinion that they have crafted this fairly well. And it looks like it would run right in parallel in tandem with the state statute. And I would be hesitant to tell anyone to blow it off, because you might find yourself cooling in a county jail or city jail. Most times municipalities contract with the county where the municipality is located, rather than operating their lockout, but you're going to end up in a local jail, potentially, and I don't think you'd want that.

Andy 16:27

And I mean, this is Florida further, further, further, putting the screws to people who just want to function, and he's just trying to go trail riding with his kid on some motorcycles and whatnot. Just go, you know, just cut loose.

Larry 16:43

Well, now you've got to remember, Andy, Governor DeSantis is our Savior.

Andy 16:50

Yes, I've heard this.

Larry 16:51

Yes. So he's going to straighten everything out. So just what I would do is reach out to the governor's office. And being that he's such a kind, compassionate soul, I'm sure that he would lean on his office who will lean on the people in that county, and they would back off.

Andy 17:07

And again, this is only in that county, perhaps he could get day passes to a park, whatever a trail thing in another county, and everything's hunky dory there.

Larry 17:19

Was it he would be under the state law. And I don't think there is such a prohibition. But again, I didn't do a lot of research. I'll read the proposed ordinance. And it looks like that I would be scared if I were there. And I'm normally not as hesitant. But on this one, I think that consulting with a legal professional would be wise if this is adopted by the local government and becomes operational.

Andy 17:42

That sucks. All right. Well, I'm sorry for the bad news there, my friend. We'll move right along. Then another question. It says "in July, I reached out to you people about a question I had regarding the way that Nevada did their tiering. I ended up taking a plea deal that should have removed and should have moved my level from three to two. However, after serving jail time as a condition of probation, I was tiered as a three, regardless of what the conviction was. I'm looking to see if you guys have anyone who I can reach out to for any information that might be helpful to me for me to resolve this. I can give you more information as you need. And we really appreciate the help. I am subscribing to you guys on Patreon. And I appreciate all that you do for us. F.Y.P."

Larry 18:30

Yeah, unfortunately, we may need to come back to this because for the life of me, I don't understand how you're a level three. That would suggest that you're already on the list. Right? He said I should have been moved. He did a plea. And he should have been moved from a level three to level two. So I'm reading between the lines, I'm already on the registry and I do a plea. And I would go down to the lower level. Can you explain to me how you would drop. Generally you don't drop to a lower level after you plead to a new offense? If you've already read it.

Andy 19:02

I'm inclined to agree with you there.

Larry 19:05

So I'm a little confused about that. So we might have to bring this one back for clarification in a future episode. But I don't have any of the top of my head. Although we do those conferences in Vegas. The locals do turnout, and several attorneys there. So I should be able to dig through our vast archives and find some attorneys in the state of Nevada.

Andy 19:27

Okay. Very good. Well, I'm going to press some whiz bang buttons to try and reconfigure things, because we have a guest coming on. Do you want to introduce yourself, sir? Hi.

Brandon 19:43

My name is Brandon, and I'm a member of Restore Georgia, which is a nonprofit organization that dedicates itself to serving as a collective voice for those impacted by sex offense laws in the state of Georgia. We are the state affiliate for NARSOL for Georgia.

Andy 20:02

All right, and you want to talk about House Bill 188. Do you want to give me some background on what's going on?

Brandon 20:11

Georgia uses a three level Risk-based Classification system to determine the likelihood that a sexual offender will engage in another crime against a victim who is a minor or a dangerous sexual offense. This classification is done by the Sexual Offender Registration Review Board (SORRB). In 2003, Joseph Park was convicted of 10 PFR type offenses. He was sentenced to 12 years in prison with 8 years to serve. Upon his release from custody in 2011, SORRB classified Park as a Sexually Dangerous Predator which required him to wear an ankle monitor for the rest of his life. Park sought a judicial review of this classification, but the decision was upheld. In 2016, after Park had completed his 12-year sentence, he was arrested and indicted for tampering with his ankle monitor. He argued that he could not be prosecuted for this because the statute violated his 4th Amendment rights. In 2019, the Georgia Supreme Court agreed with Park and ruled that requiring electronic monitoring of someone after the completion of their sentence was unconstitutional.

Andy 21:31

And that brings us to a bill going through the legislature currently.

Brandon 21:37

That is correct. So for the fourth time, a representative out of St. Mary's, Georgia, which is down in the south, near Savannah, introduce the Georgia dangerous sexual. So the Georgia Dangerous Sexual Predator Prevention Act, which intends to impose life sentences, which is either prison time, probation, or a combination of both for people who are convicted of a second time of 13 felony PEFR type offenses. So part of that sentence would also require PFR is the word GPS monitoring for life after the release from prison. [Good grief.] So we're having problems with the bill is the bill was passed the previous the last three times the bill previously passed the House, and but it ended up dying in the Senate. So this time, they feel like they kind of use a little bit of cloak and dagger tactics to get out of committee. So about two Wednesdays ago, on the 20, Wednesday, the 22nd the bill was brought up on the agenda subcommittee hearing. But we were all told that a different version would be coming out soon. So any of the witnesses were able to comment on the current version, and not the new version that was going to be posted. So then last Wednesday, on March 1, the bill was brought up in the late hours of the full committee hearing. And when we're talking about like, what happened at about 6:45, seven o'clock local here in Atlanta, and the bill was not printed on the agenda for that day. But it could have been considered under the additional bills to be determined. So during that session, the sponsor gave a couple of minute discussion stating that the substitute bill was being released. And that included additional provisions. And some of those provisions, included one that if you weren't leveled by the

board, or Sorb, you'd be required to be electronically monitored until your classification was given. So in some instances, we're seeing offenders who haven't been leveled in about five to 10 years. [Yeah, I was one of them.] Yep, that backlog is approximately 11,000 deep right now. So another thing we have an issue with, like the representative response, or the bill is using a 2021 murder of one of our one of the years of 2021 murder of the Atlanta bartender that was allegedly committed by a PFR on probation, who was not leveled by Sorb. However, the case has not yet been adjudicated. And we're talking 18 months later, since the crime was committed, there's no been no conviction for that. So the representatives use the murderer to push this bill through. So kind of questions we have is how did this bill sneak through without any of us to have any comments or saying on this?

Andy 24:37

Definitely for you, Larry.

Larry 24:40

Well, now, I wasn't there. And I haven't been in the Georgia assembly for decades. So I'm sure things have changed, but you're going to have a hard time getting me to consider anything snuck through because it's just that it's the way the system works with Hundreds and hundreds of bills that they have. And I don't know what caused there to be a substitute bill. But usually that happens when problems have been identified in initial vetting. And I gave them preshow a bill that I wrote here in New Mexico to change a public assistance benefit level. And based on the feedback we got from the Department of Human Services, and from the one of the co-sponsors, I wrote a substitute bill. So when it comes to its first committee, the public notice had the original bill, the substitute had never been published anywhere yet, because it was just being finished up that day. And the substitute was what was presented. So everybody in the committee room, there was no one in the committee room. Except for me as the expert witness, but everyone in the committee room had they'd been prepared to testify, they would have had to shift gears for a quick quickly, that's just the reality of the situation. Otherwise, we would have had to have rolled it over to another day, and precious time would have been lost. And a good piece of legislation would have died. It will ultimately die anyway, the next committee, but that's just, that's just the way it works. So I would guess that the substitute came about because of some changes. Now, if the substitute is exactly identical, no changes to that sort of theory that would not hold up. But I suspect changes were made because of some concerns that were raised. I know, Mark, your object was saying that he was going to raise some issues in terms of that particular bill. We spoke a couple of weeks ago, and he was aware of it.

Andy 26:35

But on that, though, that Larry, with them doing some kind of substitution? Doesn't that make it harder for the constituents to be able to review it and oppose or support the additional, the changes and the amendments and stuff?

Larry 26:48

It does, if you're looking at a totally different bill, from what you had seen, when you came in with your testimony prepared? It would definitely present a challenge for you. Absolutely. But the alternative is that we would have to reschedule the bill. And you would be told to go home. We appreciate you making the trip to

Atlanta. I know you drove up here for Valdosta. But get over it. We're going to schedule this again at a future date, and then it may die because the clock runs out.

Andy 27:16

Which in this particular case, I think we'd be happy with that.

Larry 27:19

That is the side of the issue on this you're on? Yes, there would be other issues where you would not be happy that that's happening if you have a horrible piece of legislation.

Andy 27:30

Alright, continue on, sir.

Brandon 27:32

That brings up another point. Our crossover day is up on Monday, the sixth, and this bill could either die in the house or end up in the Senate. So what do we do other than just have to wait for the Senate?

Larry 27:46

Well, don't give up on crossover, I understand. We don't have that term. But I'm familiar with the states that do. It needs to have gotten out of whatever committee it was in; it needs to be reported out to the floor. And it needs to be voted on by the floor. And I don't know if Georgia simply ran through the weekend. If they held if they held sessions over the weekend. But a lot of things they're trying to when you have that system, you're trying to push things through by the end of that day, so that they're eligible to move over to the other side of the rotunda. It could be that it never makes it through because of the tight compact system on the sixth if it doesn't cross over. But just be aware that doesn't mean it's dead just because it doesn't cross over. I want to expand the discussion to that. Okay, so if this deal doesn't cross over to the other side, it can be added as an amendment to a bill that's already on the other side and that's already crossed over. So let's say hypothetically there was a bill that does something similar. I don't know what it is. But if there's something similar, where you're not where you're not mixing and matching legislation, but if there's something that's dealing with an area related to PFR stuff that's already on the other side, or something criminal justice may be a little bit broader, but you could take this and you could add it as an amendment. And it's, it's just as good as gold. Yeah, if it's the same as if it had crossed over. So people have their heart starts palpitating on that crossover system. They think that they've won the game. Now they have won a game because it adds a new challenge and a new dimension. But it doesn't foreclose the possibility that this could be put on as an amendment and as a piece of legislation that's already close to crossover. It can be amended in the committee, that that legislation has already crossed over and or it can be even added as a floor amendment. It could be added in the Senate. So this is a house bill, correct? [That is correct.] It could be added by a committee member and one of the Senate Committees. Were the other bills already there, it could be added as a floor amendment. They could have something that's already been through the committee process. And if they feel strong enough, they could add this as the Senate floor amendment. So don't consider the fat lady has not sung until that gavel goes down on the closing session.

Andy 30:18

All right. Do you have anything else that you wanted to ask Brandon?

Brandon 30:24

I think we're good. There are parts of the bill that we don't like, especially the terms using shall versus may. But that's a long discussion we could have for hours. And there's the representative using the family's trauma to push the bill, which is another concern of ours. In that case, if the defendant is found not guilty, how that could essentially kill the bill? So I understand this could be a just a wait and see kind of situation.

Andy 30:59

Isn't that how almost all of this stuff happens? I mean, you've got the Patriot Act and all that stuff. That's all knee-jerk react legislation. Go ahead, Larry.

Larry 31:11

If you are trying to run strategy in the Senate, you have to formulate arguments that theoretically appeal to Republicans. The Democrat party cannot kill this bill in Georgia. So therefore, you're kind of wasting your time if you spend a lot of time in the offices of the Democrats, because they really can't do anything to help you. So you've got to formulate arguments, and you've got to hold the Republicans to be intellectually honest. And some of the arguments you would use on this would be the enormous hidden cost of this. You've already identified. They're removing judicial discretion. And they claim they're all about judicial discretion. Yeah, well, they believe that the judges should enter, until they don't believe it any longer. But you get to the cost of this. You're going to have people under supervision or in prison for a very, very long time. And it's difficult to quantify those costs because we don't exactly know how long people are going to live. We don't know the age brackets; they're going to pick up their second offense. So these things are very difficult to quantify. But we can safely say that a state is already in the top five or six and its rate of incarceration, it is going to continue to be high in that level of incarceration, and enormous fiscal cost in the state of Georgia. And try to keep them honest because they will try to wiggle and squirm. And they'll say, well, when it comes to public safety, we can't let cost be a factor. And you have to say, well, you know, I've always admired you throughout your political career, that you've stood for fiscal responsibility, and scrutinizing carefully all expenditures of public funds. Now, we can't deviate from that now. That's important that we stick with fiscal responsibility. And the citizens of Georgia, we're already we're already incarcerated at higher the rates than the entire country, Bart, I think you're like, say you're five or six, there's only four or five states are incarcerated a higher ratio of their population that we are here in Georgia, our corrections department is already costing us a fortune. So those are the best arguments. They don't care about the constitutional rights of the PFR. They've pay lip service to that. But the strongest argument you have is cost. This has a huge identifiable cost, and it's going to only grow as time goes along. Because if they're honest for life, whether it be principal, or type of supervision, all these things have cost.

Andy 33:42

Well, very good. Brandon, how can people find Restore Georgia, if they want to reach out to you?

Brandon 33:49

You can check us out on our website at www.restore-ga.org. Or you can email us at info at restore-ga.org.

Andy 34:04

Very good. I appreciate that very much. And thank you for coming by and doing all that on short notice.

Larry 34:15

It was very short notice indeed, like maybe a few hours.

Announcer 34:20

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Andy 35:07

So Larry, you people wanted to talk about this case from the California Court of Appeals, which was sent to us by a listener. And you said it is funny, and I've read it. I read it all day today, instead of doing the things that I wanted to do, I read your stuff. And it's not funny. Anyway, the name of the case is The People vs. the Superior Court of Santa Cruz County. Tell me what this is about.

Larry 35:47

The Santa Cruz County District Attorney petitioned for a writ of mandate directing the superior court to vacate its order conditionally releasing Michael Thomas Cheek. Cheek had been designated as a sexually violent predator. The district attorney successfully argued that the order is contrary to law because Cheek has a history of sexual conduct with children and would be placed within a quarter mile of a school which is prohibited by California law.

Andy 36:20

The superior had court found the statute would not prohibit the proposed placement because the school in question is a private home school that did not exist until after the community was notified of Cheek's pending release—suggesting the school was created for the very purpose of preventing placement in that area. Seems to me that the trial judge got it right. Can you admit that the school was created for the sole purpose of prohibiting Cheek from living there?

Larry 36:48

Yes, I can. I can admit that. Unfortunately, the inquiry does not end there. According to the court, "the statute prohibiting placement of certain sexually violent predators near a school does not require the school to have been operating for any particular time. Nor does the statute contain any language preventing its application to schools operating in a home."

Andy 37:13

Okay, so for real, you are hopeless. It's clear that the parents created the school to prevent Cheek from living there. The judge did the right thing and ruled in favor of Cheek. Now the Court of Appeals has overturned the trial judge based on their interpretation of the statute. Let's dig into a bit of Cheek's background. What was his original crime and how did he end up as an SVP?

Larry 37:48

Cheek was convicted of kidnapping, rape, and forcible oral copulation in 1980. He was sentenced to 20 years in prison but soon escaped and committed another rape in 1981. The victim in that case was 15 years old. He was sentenced to an additional 11 years four months. When Cheek's prison term neared its end, the Santa Cruz County District Attorney successfully petitioned to have him declared a sexually violent predator.

Andy 38:16

This was like, my math isn't great. 40ish years ago, he's got to be he like, does he never mind--I'm not even going to say that he's got to be old, almost as old as you at this point.

Larry 38:28

Well, he is probably older than dirt, but he's not as old as me. But yes, he is older than dirt.

Andy 38:34

The Sexually Violent Predators Act (SVPA) allows for involuntary commitment of certain convicted offenders. A person convicted of a sexually violent offense is subject to involuntary commitment after release from prison if a diagnosed mental disorder makes it likely the person will continue to engage in sexually violent criminal behavior. According to the Court, "The law's primary purpose is to protect the public; its secondary objective is to provide treatment for the offender's mental health disorder." So he was in the process of being released when this snafu arose?

Larry 39:11

Yes, the community had been notified that he would be joining them. Under the SVPA, "Once it is determined that a person no longer meets the definition of sexually violent predator, he or she must be released. Alternatively, if an offender remains a sexually violent predator but can be treated in a less restrictive setting—and the public can be adequately protected by conditions allowing for close supervision—the offender can be conditionally released to the community under the supervision of the Department of State Hospitals." So they were in the process of executing that provision of conditionally released and they had notified the community.

Andy 39:52

So he spent 30 years in prison, the first 20 and then did an additional--am I doing that right in my head?

Larry 40:03

Well, whatever good talk me out. But yes, he, he extinguished a 30-year sentence. Yes.

Andy 40:08

He can't be in that good health after being 30 years in the place where they're hunting for socks because the place is too crowded and people have their socks stolen. Like this is not a well-maintained kind of institution. In 2019, the Department of State Hospitals deemed Cheek an appropriate candidate for conditional release. The superior court found Cheek would not endanger the community and could be adequately supervised in a less restrictive setting, making him eligible for conditional release. The court determined Santa Cruz County to be Cheek's County of domicile, meaning he should be placed there absent extraordinary circumstances. After receiving the recommendation for Cheek's placement at the Santa Cruz County site, the superior court ordered in July 2021 that the Department of State Hospitals notify the surrounding community of the pending release decision, as required by statute. This is where the problem began. This is where the problem begins. Larry, you're up?

Larry 41:07

Yep, correct. The notice prompted a significant community response, with hundreds of residents sending letters to the court urging against the placement. State and local legislators also sent correspondence warning that placing Cheek there would endanger the community. Specific concerns included that the remote site has no cellular service and has a lengthy law enforcement response time; it is close to hiking trails; and it is near a bus stop used by children to get to school.

Andy 41:45

So the district attorney argued Cheek cannot be housed at the proposed site because a sexually violent predator who has a history of improper sexual conduct with children cannot be placed within one-quarter mile of a school. The opinion acknowledges that, "The superior court accepted that there is a school within a quarter mile of the site." How did the proposed release go forward?

Larry 42:08

The trial judge found "the statutory restriction inapplicable because the school was established only after the community was notified of Cheek's proposed release, explaining: "I will find that [section 6608.5, subdivision] (f)(2) does apply here. But I do not believe that creating a school after the date of notice is grounds for finding a placement comes within the subdivision (f)(2) limitations. I think this is a legal issue, and I think that the date of the Court's order regarding notice of placement is the last possible—latest possible date for determining whether a school is planned or is in existence." See opinion at 4-5. So the judge found that this was all a charade. But that didn't end it there.

Andy 43:03

In my opinion, the judge is correct. Why can't you admit that?

Larry 43:08

Well, I can admit that morally. He's correct. But the question is not whether he's morally correct, but whether he's legally correct, and he's not according to the California Court of Appeals.

Andy 43:20

At the district attorney's request, the superior court temporarily stayed its order to allow for appellate review. The district attorney

petitioned for a writ of mandate and asked for a further stay to allow consideration of the issues. They began by stating, "The decision about where to place a sexually violent predator is a difficult one that requires balancing many interests. The superior court must implement the Legislature's directive that qualifying sexually violent predators receive outpatient treatment in a less-restrictive setting; at the same time, it must protect the community and mitigate any risks to public safety as much as possible." The trial judge did that, did he not?

Larry 44:00

Well, yes, he did our opinion, but not according to the Court's opinion. The court ascertains and declares what? The court ascertains and declares what is in the statute; it does not omit what has been inserted or insert what has been omitted. They cited Rudick v. State Board of Optometry and noted "We closely adhere to that rule because of its importance to our system of government. So they're relying on existing case law that they cannot insert what's not there or omit what's there, and that'd be they're interpreting the statute.

Andy 44:41

That sounds like textualism to me, though, doesn't it? [It does.] Okay. I see that on page six. They stated, "The elected members of the Legislature write the laws, not the courts. To maintain that separation, courts must not rewrite laws under the guise of interpreting them." They went on with "It is well established that it is not the proper function of the courts to supply legislative omissions from a statute in an attempt to make it conform to a presumed intention of the Legislature not expressed in the statutory language."

Larry 45:17

That is correct. The issue here is section 6608.5, subdivision (f). The statute provides that any sexually violent predator eligible for conditional release who has a history of improper sexual conduct with children "shall not be placed within one-quarter mile of any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive." The court stated, "We see nothing in that language that can be construed to require that the school be planned or in existence before notice of an offender's placement. The Legislature could have prescribed that a school exist at the time notice of placement is given to the community, but it did not. We have no authority to insert that requirement ourselves." This is a straightforward textual interpretation. Can you admit that? No legislating from the bench is what people claim they want from their judges. I hear that all the time, Larry, I just want them to interpret the law. And so that's what we have here.

Andy 46:24

So I do see that. And they said, imposing a specific requirement not found in the text goes beyond interpreting the statute, it would amount to re writing, which we cannot do.

Larry 46:35

Now, you see why I said this is funny.

Andy 46:38

Not funny.

Larry 46:42

What is funny to you?

Andy 46:44

I'm not sure well, so this is one of those things. It's not funny. There.

Larry 46:50

So well, are you a textualist or are you for purposivism in your judges? Which are you? Because I've been hearing for the whole five years. Plus, we're going to do this podcast. Most of our supporters are textualist. Which are you? Are you purpose driven? Will play a little clip there. See how I pronounce that from Senator Kennedy?

Andy 47:08

You want this one? [clip from Senator Kennedy in confirmation hearing]

Larry 47:22

[mimicking Senator Kennedy] Prupropositivism.

Andy 47:26

My answer, Larry, is that the answer is yes, I want them when it works for me, and I don't want them when it doesn't work for me. But they did go on to say we understand the Superior Courts' concern that in interpreting the statute, other than as it as it did, would allow any member of a community where an SVP could be released to create a private school for the sole purpose of precluding a proposed placement. But the courts must interpret and apply the law as legislature enacted it. If the absence of a requirement that a recognized school be operated before community notice is given can obstruct proper application of the statute, it is for the legislature to remedy any perceived loophole, not the courts.

Larry 48:11

That's what they said, Now, do you agree with that, or don't you?

Andy 48:15

I don't agree with because then anybody anywhere can just go file to create a school and they have one or two little students a little too little young and showing up and now hey, we've got education going on. But now this person cannot go live there. So I'm going to have to pass on this because I need to cogitate on this for a little while.

Larry 48:33

Okay, well, that's my point on this program, and reasonable, I found this case appealing, I want our audience to cogitate as well. And realize that when you say that you're something and you unequivocally and emphatically state that you're a textualist. And we've covered many textual determinations that most of you are not happy with, you might want to rethink what you think you are. Because it might be that when it comes to certain issues, you've kind of misconstrued where you think you stand. Because purposivism is good. What helps you win your case? That's what you cite to you decide to legislative intent and the purpose of the statute. When the text doesn't get you where you're trying to go. You try your best to persuade them that the purpose is what's important. That's just what we do in litigation.

Andy 49:21

What I do find challenging, though, Larry, is we could craft the most perfect legislation as the society exists today. And move forward. Like it's so hard to move legislation through as it is, and particularly at the federal level. I'm like, there's bajillions of things trying to get passed through. And in some period of time, our society will be different. I will we could talk all day long about the section 230 of the for what essentially created the internet, and like no one could imagine how the CP laws would have been When they made them, there was only Polaroid cameras. And now you can transmit stuff all across the globe. And the laws cannot keep up with how things are. So you almost must have a judge step in and go. But that's not how it works today. Who was it the goofball that said that the internet's a bunch of tubes. Like, I mean, it's just radically different, just speaking about this one tiny little area of how things have evolved so much faster than legislators, and the legislative body can handle changes. It's just it's just insane to think that they would have known what we needed to be 20 years ago today.

Larry 50:36

You're correct. And when they drafted this civil commitment law, no one was thinking about schooling the way that it's being used now, but they have there have to be amendments done to the law, because apparently this appellate level review has decided that we're going strictly by the text of the text just doesn't support what you would like to be the outcome to do to be so you got to change the law?

Andy 50:59

Well, we'll close out the section here with a little bit more in the debate, that Department of State Hospitals offered several reasons why interpreting the statute to include schools operating from a home is problematic. The Department of State Hospitals offered several reasons why interpreting the statute to include schools operating from a home is problematic. The Department suggested there may be so many home schools currently operating in California that applying the school proximity exclusion to all of them would make placement of sexually violent predators who have a history of sexual conduct with children "exceedingly difficult, if not impossible." Why did that carry no weight?

Larry 51:30

Very simple. Lack of evidence. The court stated, "We note the Department offers no evidence to support that conclusion and concedes it does not have data on that point. On this record, there is no basis to conclude that home schools are so common throughout the state as to make sexually violent predator placement impossible."

Andy 51:51

I see. And then the court compared this case to the 2015 case of In re Taylor versus retailer in retailer, I. There's somebody with the last name of N?

Larry 52:03

No, that was just the name of the case.

Andy 52:07

The court compared this case to the 2015 case of In re Taylor which was a blanket enforcement of residency restrictions as

applied to sex offender parolees in San Diego County. They noted that evidence established the restrictions excluded the parolees from 97% of rental properties and resulted in 34% of effective parolees being homeless. I know how adamant you are on evidence, and this would be an example of why.

Larry 52:32

You're correct. I hate summary judgment. I hate it. I hate. I hate. Now this case was different. Summary judgment was not an issue here. But I hate summary judgment because you need an evidentiary record. And you can't develop evidentiary records what you can because parties can stipulate to the facts, but it's difficult to build the record that you need. And in that case, there was evidence in this case, there wasn't.

Andy 53:01

So what happens next?

Larry 53:04

Possibly the California Supreme Court. We'll just have to stay tuned. It just depends.

Andy 53:09

Um, next week or how long do you think it'll take for this to work its way through?

Larry 53:15

A year, a year and a half?

Andy 53:18

That's not horrible. I mean, how long does it take like the Michigan re registry kind of stuff? That was like five years or something, wasn't it?

Larry 53:28

Yeah. But we're well into this. This is already, this has already been pending. So it's all I got California Supreme Court to go. I don't know what to federal issue would be if you wanted to take it to the US Supreme Court. But possibly you could figure out a way to do a cert petition on it, depending on how the Supreme Court handles it, they may decline to review it. I don't think they have to review it. I think that it's an option prerogative, they want to grant review. But I would not be surprised if a guy has been committed for prison, our mental hospital for all these years, decades. I don't think he's going to say, well, I give up, I would be shocked. I think they're probably an attempt to go higher.

Andy 54:07

And the inverse of this is that he is being released. And I assume that they're going to essentially kick him out. And then he just goes, it seems like being homeless is worse.

Larry 54:21

No, that's not going to happen. This case, since he's into custody in the state hospital, he's got to stay in the hospital setting until they can find a place to release him. So now he won't be kicked out.

Andy 54:29

And then I also would assume that in that kind of setting, it's not just normal prison kind of cost but it is a good chunk higher. Or do you think it's just--

Larry 54:36

I would imagine any type of treatment facilities kind of rewriting hearts business because theoretically, you have medical people there. Yeah, you're providing higher care.

Andy 54:45

Yeah, it's a much higher or lower ratio, whichever you want to look at that the staff to residents ratio would be much more favorable. an even split, not even but closer, not one to say like it is in Georgia, but maybe like one to 20 or something like that.

Larry 55:04

Your security would be in prison. Your security staff would be the bulk of it. But here in a hospital setting, security, of course is important. You don't want the people roaming around the community. But security is supposed to be secondary to treatment. I mean, it's a part of it. Sure. But I would say that there'll be a lot more professionals that are providing care, hopefully, anyway, we'll probably get feedback because we've got people who listen to us and read our transcripts that are in civil commitment. And we'll probably get some feedback. And that's one reason why I put this in here because we don't do enough from them.

Andy 55:34

I hear you. And then we will move along because we're somewhat short on time. And this article comes from NPR guy, you appointee liberal headed person. State lawmakers across the country appear poised this year to continue a trend of revisiting rules for granting voting rights to people who were convicted of a felony. This article cites Nicole Porter who is the senior director of advocacy for The Sentencing Project, a nonprofit organization that advocates for restoration of voting rights for people with prior felony convictions. What is wrong with you?

Larry 56:11

Sounds like a bunch of lefties. Anyway, yes, in Minnesota, where Democrats last year gained full control of state government, more than 50,000 people previously convicted of a felony are expected to immediately regain voting access following legislation that was recently sent to Gov. Tim Walz's desk. The law would restore voting rights after someone is no longer in custody; currently, former inmates need to complete all parts of their sentence, including parole and probation, before getting back access to the ballot. So this was going to put 1000s of people in the potentially on the voter rolls. And this is what those left the states do, and they do it all the time.

Andy 56:56

So in addition to Minnesota is built in New Mexico lawmakers are debating a similar piece of legislation. Porter also flagged proposals and a number of states including Nebraska, Oregon and Illinois, with the very strong prospects for 2023. In Nebraska people with a prior conviction must meet a two-year waiting period after their sentence before they can get their voting rights back. Proposed legislation would automatically restore those rights after a completed sentence, which could affect about 20,000 Nebraskans, which is got to be like 150% of the state.

Larry 57:32

So actually, not quite. But yeah give kudos to Nebraska is a conservative leaning state. But some Democratic led states are exploring going further with lawmakers in both Oregon and Illinois offering proposals that would seek to join the couple of states where that even incarcerated felons can don't lose their right to vote. That's really left up there.

Andy 58:01

And we don't like there is one particular party that's trying to like not have more people vote why one group of people want more people to vote. I'm in the camp of having more people vote because I think it would make us more representative of the peoples, and while almost 70 bills have been introduced throughout the country this year to restore voting rights to returning citizens. According to the left leaning Democracy Docket. Porter said there are a few states considering rolling back the rights of the formerly incarcerated.

Larry 58:32

Indeed, according to the article, it's not all good. Lawmakers and Republican led Indiana are considering legislation that would strip voting rights of anyone convicted of voter fraud for 10 years after a conviction, regardless of whether they're even incarcerated. Currently, Indiana, only disenfranchises individuals during their incarceration. Porter noted that they're also watching Florida closely in 2018, voters approved a constitutional amendment ensuring restoration of voting rights to most people who would complete a prison sentence. However, Republican lawmakers This is the article not be in that state passed a law regarding those returning citizens requiring them to fulfill every partner says, including paying fines or fees in order to regain access to the ballot, which gutted it because as we talked about one of the episodes, some people can't even find the paperwork that says how much their fines and fees were you know that their convictions are so old.

Andy 59:27

Let me ask you this, like in your personal opinion, if you get charged and convicted of something related to operating a motor vehicle, it seems reasonable that you would then have some kind of restrictions against operating said motor vehicle. And if you have a crime involving the children, it seems reasonable that you would have some kind of restrictions tailored to that thing. So if you are convicted of voter fraud, it seems reasonable that you would have some kind of supervision or restriction against voting. That doesn't sound other than you seem to have a right to vote but does doesn't seem that far-fetched that someone convicted of voter fraud would have some kind of problems voting in the future?

Larry 1:00:05

Well, they do. But what about 10 years having to set out an additional 10 years after you've completely paid your debt to society? What about that? Well, I don't want to go under supervision.

Andy 1:00:14

Yeah. I'm just wondering what your opinion of how it would be narrowly tailored. I mean, like, if a guy gets convicted of like

Bernie Madoff, he probably shouldn't work in the finance industry after he is released, which I'm not saying he's going to be released.

Larry 1:00:29

Well, I would look at that. And maybe we would have a prohibition against them working in the voter business. But as far as restoring the right to vote, they've paid their debts, theoretically, we are restoring them to the wholesomeness of pre conviction. So I would not disenfranchise them for an additional 10 years after they've paid their debt to society.

Andy 1:00:52

Reasonable, I'm with you. Very good. Anything else before we kick the bucket kick rocks, get out of here?

Larry 1:01:00

Well, I suppose I don't have anything else other than we need to be at 1000 subscribers within one week on YouTube.

Andy 1:01:09

Wow, that's a heavy ask Larry. But I bet if all the people listening to this, if they got one or two friends, then we could get there.

Larry 1:01:19

And what happens when you hit the magic 1000? Tell people what happens?

Andy 1:01:24

The only thing that I know that would happen is that we could like turn on the button that says monetize. I don't think anything else happens.

Larry 1:01:33

Would that be good? Or bad? If we could pay for ads to pop up on our on our YouTube channel? Wouldn't it?

Andy 1:01:40

Yes, it would. So that means we would make a fraction of a fraction of a penny for every impression of an ad. So we would probably make about \$5 a month for these videos.

Larry 1:01:52

Oh, is that all?

Andy 1:01:54

I think so. I mean, I really like for that number I just in my head, Larry, I think it's about 50 cents. It doesn't work this way. But just from what I've observed from people, depending on how much content they put out, and all the stuff, it's about 50 cents per subscriber, so to speak.

Larry 1:02:12

So if we have 50, if we have 1000 subscribers, how much would that be?

Andy 1:02:18

If it's 50 cents, we would make approximately \$50 a month that is just like I said, I have known or follow people, and they have 50,000 subscribers, and I have an idea of how much they make and so forth.

Larry 1:02:29

So already, well, perhaps maybe it's not a big deal benefits aren't going to bring \$50 a month I thought I was going to bring \$5,000 a month?

Andy 1:02:37

No, we would have to have like, you know, 50,000 subscribers or 25,000. We would have to have some substantial number of people.

Larry 1:02:46

So I would need to apologize to one of our listeners over in the short regional correctional facility, they wanted to talk about something that we didn't have time for, but we're going to get it back on the agenda as she reached out to us. So we didn't have time this week, but we're going to talk about it. Yeah. Also, I did a senior moment. I sent someone a renewal notice that has an expiration date that I thought went till November. And I told him they had expired already.

Andy 1:03:15

They probably freaking out. That's good because you're out there as well. Very good, sir. I hope you enjoy the rest of your Saturday evening and the rest of your weekend, and your legislative session is hot and heavy now for the next couple weeks.

Larry 1:03:32

We got two weeks to go noon, two weeks from today.

Andy 1:03:36

Very good. Well, everybody, you can find all the show notes of everything that you need over at registrymatters.co. And that will take you everywhere you need. Support us on Patreon at patreon.com/registrymatters for as little as a buck a month to show your love and appreciation for the work that we're doing here. And without anything else, Larry, I bid you a farewell, and I hope you have a fantastic weekend.

Larry 1:04:00

Good evening. Good night.

Announcer 1:04:06

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