



## RM 247 Recorded 12-3-22

### The Difference Between an Extradition and a Probable Cause Hearing

Announcer 0:00

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Andy 0:09

Recording live from FYP studios, east and west, transmitted across the internet. This is episode 247 of Registry Matters. How are you this evening, you people?

Larry 0:21

We're very well. Nice and cool, but very well.

Andy 0:24

Fantastic. Before we get going, make sure you press the like and subscribe and get the notification bell, then add a thumbs up to this video. And that will add all the sugar spice and everything nice to the YouTube algorithm and maybe some more people will find this content, and we would appreciate it very much. Do you want to banter about anything? Or do you want to dive right in there?

Larry 0:45

Well, we can banter a little bit. We're gonna do a brief discussion about the upcoming what would have been a national rail strike.

Andy 0:55

That sounds fun.

Larry 0:57

So it sounds fun?

Andy 1:01

Sounds fun. Well, so before we get going, though, I do have a question that I need to ask you. So since we just crossed our five-year mark, right, and with your age, and retirement, and I've now named you as actually Dr. Doom and gloom.

Recorded voice #1 1:18

"How much longer are you planning to stay?"

Recorded voice #2 1:22

"A long time. Get used to me."

Andy 1:25

What does the rail strike have to do with our issue? Exactly?

Larry 1:29

Well, it doesn't directly in terms of our issue, but it has to do with political analysis. So we're gonna get a little bit into the analysis of what happened in the legislation that the President just signed. And a little bit of the hypocrisy and the inconsistent contortions that were played, But I was afraid you're gonna ask me that. But we're gonna get into the political analysis. And also, we had a fantastic jobs report, which I want to spend a few minutes on. And then we're gonna get some listener questions tonight. And then we're gonna do a segment on Interstate Compact, dealing with probable cause hearings, and we have some articles. So it's gonna be a great program. It's gonna last for hours and hours.

Andy 2:11

Probably. Since you mentioned jobs report, I do want to send a shout out to one of our patrons, and a good friend of mine. And he has had a pretty high-dollar job for a number of years. And someone doxed him. They went on to the company website, and they posted and contacted every person--the director, finance, they found all the different people--and they posted and said, Hey, this guy's on the registry in another state. And two weeks go by, and they fired him.

Larry 2:40

That's really sad.

Andy 2:43

It's really like, I mean, that's a complete SH move. And we talk pretty regularly about is there any way to file anything legally? And first, you'd have to find the person that did it? How would you prove that they did it with malicious intent, beyond just informing them? Maybe they didn't know it at his job, and he was just informing them. That's a really murky road to try and do anything with this issue.

Larry 3:10

Well, that gets into some interesting legal areas. Because I don't know what states we're talking about, but many, if not the majority of our states, are employment-at-will, meaning that a person can be employed or unemployed. Their employment can be terminated for no reason because the employer maintains that right in an employment-at-will state. Unless, of course, you do one of the prohibited actions related to discrimination, which is largely things that a person can't help, like the nation they're born in, and disabilities, and certain things that are prohibited. Be interesting to know if he lives in a state that has an enhanced level of protection. That where you might have a cause of action. And then it would be interesting to know

that if he disclosed the fact that he was on the registry, or if they even asked in the beginning, because if they're firing him now, and they didn't ask him the beginning, that seems a little bit, no that seems quite wrong.

Andy 4:15

I believe they knew. But it became super public from people that may not have known. I believe his boss knew, and maybe somebody else, but the quote unquote, the Board didn't know. Once the Board found out, they felt that they had liability and so forth. He is not on the registry in the state he lives in.

Larry 4:37

That's typically what happens. The lowest levels of supervision, they're aware of it and are okay with it. But then when all hell breaks loose because of the public nature of the registry, then the public pressure starts being applied. And then it all changes, and the s-h-i-t rolls downhill. And the person who made the hiring and accepting gets questioned why did you make the exception for this? And that's why no one wants to make any exceptions. But I think that he, depending on the state, might want to seek redress, because there may be some options. And certainly this would help prove the registry itself is the reason for his termination because of the doxxing and the revelation he was on the registry.

Andy 5:23

Yep. Totally, totally. All right, well, enough of that. Please feel free to go on and do your jobs report now, Sir.

Larry 5:31

All right. So yesterday, the Bureau of Labor Statistics reported that the American economy added 263,000 jobs in the month of November, and the unemployment rate remain close to historic low at 3.7%. This report brings good news for working families as the economy continues its transition to steady, stable growth. Since the start of this administration, the economy has added ten and a half million jobs, and there are now more than one million more Americans working than there were before the pandemic. And hear that one more time--we have restored all the jobs, and we're 1 million above what was the all-time record in the previous administration, and there yet 10 million unfilled jobs that are going begging due to the chronic labor worker shortage. And many of these jobs are very high paying skilled ones such as airline pilots, doctors and engineers. So again, America, when are you going to do something about your labor shortage? We've got 10 million people who can be paying taxes. Ten million jobs that would be generating taxes and economic activity, but we're just gonna let them remain unfilled. Until when? So that was a great jobs report.

Andy 6:47

Yeah, and as I continue to say, this number probably has to change though, the number that I have in my head. It's 150,000 jobs per month to maintain no improvement or decrement in the unemployment rate. So 263 is a good chunk over that. I don't know if that 150 has changed any. I've never heard an update to it.

Larry 7:06

Well, that's an elastic number because people exit the labor force. And then when the economy gets stronger, traditionally, people have reentered the labor market. They hear that there's openings, and they hear that salaries and wages are going up, and people re-enter the workforce, because it's a magnet effect that brings people back in. It seems like now that even with this chronic shortage, we've had a similar number since the end of the Obama presidency in 2016. We had like 8 million unfilled jobs. We hit over 11 million, and we're still over ten million unfilled jobs. So the strength of this economy, the draw is just not there with all these high paying jobs that are open. And they can't fill them. At some point, we need to recognize the workers just aren't there.

Andy 7:56

Yeah, when you have a six-figure job, and someone's not filling it. Of course, there's always people that who say, I'm not doing that job because I don't want to, but I think more so than not, we don't have the population to fill the job.

Larry 8:10

That is correct. And we have people who get to choose not to work, and I'm going really off script now. But I have a friend whose niece is at the highest level of nurse. I can't keep those straight, but the highest amount where you could, if you were working, you could be making the highest amount of money. She has that education. She's in her 30s. And she's raising a family and she's choosing not to work. Her husband as a CFO of a hospital. And he makes good money. And this friend, bless his heart, he's always talking about there's so many sorry people that won't work. So I confronted him. I said, well, your niece is a highly-trained individual. She could be providing a great service to the community right now. She could be nursing, and she could be pulling down six figures. Is she one of those sorry, people that won't work? There are people who choose not to work because their economic circumstances allow them not to work. And that's the beauty of a free country. You don't have to work if you don't want to work and if you can support yourself. She is choosing to raise her children. She's choosing to be at home. There's nothing wrong with that choice. But for the greater good she could be in nursing right now pulling down six figures. But that's her choice. We have a lot of people in the economy that because of their prosperity in the previous couple of decades they've

accumulated enough money in their 401k. They took early retirement. They don't want to work anymore. They're 54 years old. They've got the resources not to work. You get to make that choice in America. I don't know why that discombobulated people so much. You have the right not to work.

Andy 9:52

Does this tie in any way in the rail strike bipartisan stuff that happened in Congress this past week?

Larry 9:59

It does tie in indirectly. The worker shortage is a real issue. The rail strike that was averted through congressional action would have been a devastating blow to the economy because we already don't have enough truckers. Now that's a profession that pays reasonably well, and there's not enough people. That's why those driverless trucks are going to be in our future because we don't have enough humans that want to do that work anymore. But since there's a shortage of truckers, the elasticity is not there for them to take on the shipping. So the Congress quickly invoked--I think it's something from 1926, that has to do with their authority to regulate the rail industry. And they invoked a settlement at the instigation of a Democratic president. And we're going to get to bash both the Democrats and the Republicans tonight because both parties got themselves in a contorted position. But the lesson for our listeners is that what drove this was the political necessity. The political necessity is that the economy would take a devastating hit. We don't know how much of a hit, but it would be devastating to have the rails shut down, and the railroad companies just quit moving freight. So the Republicans, who normally claim that they believe in letting the market resolve its issues, which, by that doctrine--if they really believed it, they would have allowed a strike to happen. They would allow the companies to try to hire what's called scab workers, replacement workers, or bid up their wages to try to get people to fill the jobs, if they truly believed that the market would take care of it. So they would have stood down and let the workers go on strike. The Democrat party that claims it's the friend of workers, it would have stood down and let the negotiating process work. And the most powerful, and really the only tool that organized labor has, is the power of a work slowdown or a stoppage. They would have allowed the stoppage to go forward. So the Democrats did a flip-flop. And they use the power of government to impose a settlement. And the party of no government intervention, they did the same thing for slightly different reasons. But they did the same thing. And they protected the interests of the railroad companies to keep them operating. And if they truly believed that competition would fix this, they would let the rail companies deal with the shortage of workers and hire new workers. But truly, they don't, they looked at the political things, and they know

that there's not enough workers out there, they know that it would be devastating. And they decided to jettison everything else and use the power of government to put the rail situation to rest. Now, it's going to be interesting to see if they actually work at full capacity. If the workers actually don't call in sick anyway. To see if there's any sabotage, which has been known to happen with organized labor. Things break down mysteriously. It's going to be interesting to see if they work at full productive capacity. Time will tell. But the political lesson is that the considerations won the day, and the Democratic Party abandoned its interest in protecting organized labor. And one more thing, if we had a Republican President right now, and a Republican president had done this, the Democratic Party would be crying foul. They would be saying that they neutered the tool of organized labor.

Andy 13:38

Just in my mind, the vastness of our rail network and the reliance on it feels vaguely similar to us subsidizing our farming so that you have very stable milk prices and bread prices. And those staples do not radically change because we subsidize farmers, even to the point that they if they have a completely failed crop, we pay them anyway so that they will stay in business. And we don't have this radical flux of farming up and down. This feels similar. The farmers are corporate, private-owned. This is the same--the rails are private company-owned kind of things. Shouldn't we do something to--I don't want to say nationalize it--but shore it up so that this type of thing isn't in play?

Larry 14:26

I don't know the answer to that. I mean, I agree with what you're saying. But I'm trying to illuminate that people who claim that they believe in pure capitalism, they really don't. I mean, you can't do what the Republicans just went along with and claim that you're market oriented, because the markets were not allowed to work to see if this could be resolved. And the Democratic Party clearly wasn't the party of labor because they capitulated. They didn't get their sick leave. I think it was like seven days a year they were trying to get and ended getting one day. I'm not sure I've had the facts right.

Andy 15:01

Yeah, I heard something weird about something with like, oh, three days' vacation. Like that's the issue? And I'm sure it's totally not. That's some oversimplification and mischaracterization of it all.

Larry 15:12

But there are times when I think that bringing the power of government, like with the Defense Production Act, that was contemplated when Trump was President trying to produce the ventilators and certain things and there was discussion

about the Defense Production Act. There are times when it is in the national interest. But then you have to come off your intellectual high horse where you say that capitalism can solve all problems, you have to admit that the power of government is necessary to do some things. You can't have it both ways.

Andy 15:45

Boy, we could diverge into like 10 different directions from that. But I think we should shelve it there and stop doing the Larry Matters-on-Labor podcast or whatever the hell we would call that. Alright, well, then let's move over to a question that came in from Mike. It says, "Hello, Larry and Andy. I enjoyed the segment on the interstate compact as I've been through that process. There was one area that I believe Larry didn't mention." Larry, I thought you mentioned every area. "But he says when it comes to the controlling state, in the case of probation, the conditions set by the court are only the conditions they can revoke you on? Case in point--the receiving state adds some random condition that's not on your original sentencing court conditions. But you violate that new condition. During the retaking and appearance before the sentencing court, you argue that condition X, this new condition, wasn't in the original court agreement. I have read in the ICAOS benchbook, that in such a situation a probationer can only be in violation of those original conditions." So Larry, I give you the floor, and please elaborate.

Larry 16:56

Well, he's put an organized, coherent thought together. And the truth is we don't know the answer to this. The bench book suggests strongly that conditions imposed in the receiving state are to be treated by the sending state as if they had been imposed there. But in reality, you've got the human factor. You got judges who are sitting in the state that sent the person and allowed them to be transferred. And they say, well, I did tell them that in my conditions of probation, and if they'd stayed here, we wouldn't revoke them for that. So therefore, you may have a judge who says, you know, just because New Mexico wants them to do that, we wouldn't have required that here. So that is a distinct possibility that you may end up in a situation where they wouldn't revoke you. I think the question he is asking is can they revoke you or are they forbidden? I think they can revoke you. My personal opinion is I do not believe they're forbidden to revoke you. I say that because when you request transfer, you sign a stipulation saying that you agree to abide by the conditions that are imposed in the receiving state. You sign that knowing that if you refuse, that you're likely not going to be allowed to transfer. But that, to me, is the same thing as if you go to the probation office after the judge has sentenced you. And the Probation Office gives you additional conditions that are routine in nature, or maybe a

condition that the probation officer discovers that that he or she thinks is appropriate for you. They hand that to you and say sign this, this is a new condition of probation. Can the judge revoke you for not following that? I believe the judge can, and I know for a fact that judges do revoke you for things that they didn't put in their original conditions. The probation officer typically has you sign those, and then they get sent back to the court to be signed by the judge. And they are typically added by the court at the behest of the probation office. But in terms of this is kind of murky. I would be very leery of going back to a state where I had been originally sentenced and saying, Judge, you cannot revoke me, because you didn't impose this on me. I would be very leery of hanging my hat on that argument. But it's not without any rationality to it. I mean, he is making sense. It's just we don't know the answer to this. We'd have to wait and see. And it would have to go up on appeal. But my feeling is that if you if you agree to the conditions, and you don't adhere to them, I believe your supervision could be revoked in the sending state.

Andy 19:36

Would you step out on a limb. So one of my probation conditions was--I always love this one--you shall never drive alone, especially in places where children are known to congregate. So let's just say the state that you started in doesn't have that. And then you go to Georgia where they do have that. And you say, this wasn't part of my original conditions. Is that the scenario?

Larry 20:07

Well, you're making a good point, and I would argue that slightly differently. I would argue that that is an impossible condition.

Andy 20:16

Oh, I know. I know. But it's there. It's written and I signed it. I'm like when you say-- come to my office? Are you going to come pick me up, so I don't have to drive? How do you want me to get to your office if I can never drive alone? And you already said never. How can I especially never know where children are known to congregate?

Larry 20:35

Well, clearly, that was not an artfully worded condition of supervision. Did you ever hear of anyone being revoked or attempted to be revoked because of that condition?

Andy 20:45

Absolutely not. Same thing with driving log where you log every mile, you drive to everything, hey, I went to the grocery store, I went to church you did. I never, no one ever asked me about it. And I never did it, either. But so those are two things that you could end up going to Georgia that were not in your state, they go from New Mexico, where

maybe they don't have them, and you end up in Georgia. And they have those two things here. And they say, well, where's your driving log, and you're like, I didn't have these where I came from? Sorry, adios.

Larry 21:15

Well, now, under such a really strange scenario, there's two different things that go on. You can be retaken and not revoked. So a state that allowed you to go to Georgia, they could communicate to Georgia, we are not going to revoke them for that. But since the compact requires us to retake the person, if they refuse to comply with the conditions that you've imposed, we will retake that offender. And retaking is not the same thing as revocation. So they will send you they will send you instructions to report back and be supervised there. Which might be very inconvenient, depending on your life circumstances.

Andy 21:54

Would you do that one piece there? Because he did write that, and I was pleased that he wrote that about the retaking versus the revocation.

Larry 22:03

Well, when they're there, the whole process is always a retaking--when a person is in a state on Interstate supervision--since the states are being supervised and cannot revoke them. They cannot revoke them. They didn't impose the supervision, so they cannot revoke it. All they can do is force the person to be retaken by the state that sent them. But when the state retakes them, they still have a choice about revoking them. So retaking is the process by which Georgia says this person is not complying with us. We're instituting retaking. And you have to retake them out. If the sending state wishes to revoke and try to revoke, they're supposed to instruct Georgia to conduct a probable cause hearing, because that's step one. And in the retaking process. If Georgia establishes there's probable cause, then you go back to Colorado, New Mexico, or whatever state that you named. And then you go back and have a full-blown revocation process. But when you get back, New Mexico is not going to have to revoke you. They can say, well, we are taking them, but we don't have those conditions here, and we're not going to revoke him for those. But if you don't want to supervise him because you have those conditions, then we will supervise him here. But again, that may be very inconvenient for you if you get if you get forced out of the state where you have support and job and stuff. Even though you're not get even though you're not getting put in prison, it's not very convenient.

Andy 23:36

Do you know of a movie with Tom Hanks called "Terminal"?

Larry 23:40

I've not seen it, but I've heard of it.

Andy 23:43

Okay. So he is from some super-duper, duper, duper, duper small country. And while he's on an international flight, his country dissolves. So now his passport, visa, and all that stuff are null and void. And he can't get into where he wants to go to. And there's no home to go to. So he's just stuck in--what do you call it where you go to through immigration? What's that space called at the airport?

Larry 24:10

Customs?

Andy 24:12

So he's stuck in the custom side of the terminal.

Larry 24:19

They will eventually let him out.

Andy 24:22

I assume that they will. Anything on the ICAOS thing before we go on?

Larry 24:26

Well, I appreciate the great question.

Andy 24:29

This thing--we could almost have a podcast about it, it's so ridiculously complicated. It makes my head spin every time we talk about it. Ok. This came in an email a little while ago: I have listened to your podcast on military sexual assault on October 24th. Our son is currently serving an eight-year sentence due to a female not wanting to admit she cheated on her fiancé who was deployed at the time the incident occurred and claimed sexual assault. She and my son had been dating for a month. This was in October of 2018. There are so many issues that happened throughout this process. Criminal Investigation Division is UCMJ lawyer, which is the Uniform Code of Military Justice lawyer. And on and on. He was convicted on two counts and got eight years at the JRCF at Fort Leavenworth. We've tried to appeal his case two times. And we were denied, with no reason. I'd love to talk to you about this.

Larry 25:32

Well, I do plan on reaching out. Now keep in mind, I have such limited knowledge that I may not be the best resource. But I can at least tell you what comes to mind after I hear, so I'm planning on reaching out at some point very soon. But that scenario could very well happen.

Andy 25:58

Anything else or do we just move along?

Larry 26:00

I don't have anything else to add other than we feel bad about it. That's why we had our guests. Now this stuff, this stuff is totally out of control, apparently.

Andy 26:09

Yeah, it seems like it. Seems like you have just slightly more than zero way to defend yourself. Like you could show up with nothing, and you might do better than if you tried to defend yourself because they'd be angry at you for wasting time or something.

Announcer 26:24

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Andy 27:13

Well, then moving along, we picked up a comment on our Patreon feed from Eugene, and it's about church attendance. He says, "I have been on probation for seven and a half years without an infraction. Then six years ago, I had the minister of a church fill out a form for my probation officer to allow church attendance. Recently, I wanted to attend a different church. But the rules have changed. Now the minister must drive eighty-two miles roundtrip to meet in person with my P.O. I can't ask a minister to do that. Also, I suspect that he must agree to having an escort follow me to the men's room or wherever I go in the church, or in the room where the dinner is served weekly. And attractive lady invited me to dinner at the church, and I'm very lonely, with no way to meet ladies. Now, this isn't the Larry's Giving-Advice-On-Dating podcast. I assure you of that.

Larry 28:04

Well, what I would suggest is going to be difficult, but it's the only suggestion I can come up with. And he needs to take a clear look at himself, and take an objective look at himself. Can they justify this as an individualized-tailored condition specifically for him, related to his offense and his characteristics. We get the part that he's had all these years without an infraction. But what we don't have is what the underlying offense was. If he offended in a church, I think that that would diminish his claim that these are unreasonable conditions. So I would first ask myself, is this specifically tailored in any way to my profile as an offender?

If it is not, if it's just what they tell everybody that the person has to if they want to go to church, if they have to meet the P.O., and that the minister has to drive to the probation office him. I think that--not being an attorney authorized to practice law--I think that might be erecting too much of a barrier on the free exercise of religion. I think this might be a cause of action that would gain traction, but the first part is the self eval, find out if they can justify it for you, and find out if they're doing this for others, or if it's just you.

Andy 29:25

I gotcha. Okay. The one part that I guess that I'm not super clear on is he wanted to attend a different church, and now the minister must drive 82 miles. I'm sure you can find a church that's closer than 82 miles.

Larry 29:38

Well, the minister is driving 41 miles, but what I'm taking from that as he's out in a rural area, that he's changing churches, and this was off the radar until he decided to change churches. Nobody was thinking about it, but he goes in because he feels like he needs to have permission to attend the new church. And then they say, oh, by the way, we have to meet with the minister. So the question is do they have to meet with every one's minister? Or is it because of his characteristics as his offense goes, if they have to meet with everyone's minister, and everyone's minister was asked to drive 40-50 miles. That is, I think, in my opinion, is erecting a very high barrier towards your freedom to worship.

Andy 30:24

I gotcha. Okay, then let's move along to the Interstate Compact Probable Cause Hearing. Someone wrote in and said, "I'd like to follow up on the last episode regarding Interstate Compact and Probable Cause Hearings. I remember episode 164--" Could grief How do you remember episode 164? I don't remember whatever we did last week--"when we discussed a case from Colorado. I've heard you people talk about it in previous episodes, but what you say does not comport with what they actually do. The lady's son was in New Mexico serving his Colorado parole and violated. The violations were relatively minor, yet he was arrested and sent back to Colorado. You use the term "probable cause hearing" and claim that a person on compact is entitled to a PC hearing. Her son did not get such a hearing. He sat in the Metropolitan Detention Center for weeks, and eventually he was asked if he wanted to waive extradition to Colorado. He did. If such a right exists, why is it that nobody I've ever heard of gets one of those hearings?" Boy, I already know what you're going to say.

Larry 31:35

So you're implying that this hearing is a figment of my imagination, right?

Andy 31:39

No, what you're going to say is that after you've sat in jail for some period of time, you're like, Screw this, I'll sign the thing. And back to where I came from. I go instead of waiting for where you have access to people that may testify for you and all that stuff. But instead of sitting there waiting it out, you go back.

Larry 31:57

Well, that's part of our process. But it's not a figment of my imagination, even though very few people get these hearings. It's not a figment of my imagination. It's ICAOS Rule 5.108. The origin of this right is two Supreme Court cases from 1972 and 1973. For the legal beagles, the cases are Gagnon v. Scarpelli, 411 U.S. 778 (1973) and Morrissey v. Brewer, 408 U.S. 471 (1972). ICAOS Rule 5.108 provides that:

(a) An offender subject to retaking that may result in a revocation shall be afforded the opportunity for a probable cause hearing before a neutral and detached hearing officer in or reasonably near the place where the alleged violation occurred.

(b) No waiver of a probable cause hearing shall be accepted unless accompanied by an admission by the offender to 1 or more violations of the conditions of supervision.

(c) A copy of a judgment of conviction regarding the conviction of a new criminal offense by the offender shall be deemed conclusive proof that an offender may be retaken by a sending state without the need for further proceedings.

These things are not a figment of my imagination. They're reality.

Andy 33:19

And you just spewed a whole mess of legal mumbo jumbo. If a person does have such a right, why don't they schedule the hearings?

Larry 33:27

Well, that's a good question. Well, because most state legislatures have not mandated a procedure for the hearings in their statutory schemes. This means it's up to the correctional authorities to invent a process. And since it's the correctional authorities who want the offender sent back to the state of conviction. What interests would they have in creating a robust process to establish probable cause? Wouldn't that undermine their efforts to get rid of the person?

Andy 33:56

Yeah, I totally see that. They don't want you here. And certainly where you came from, they don't want you there either. But so I remember that. You said they mistakenly or intentionally offer extradition hearings rather than probable cause hearings? Yeah. We have talked about that, that even the legal system doesn't understand what these hearings are supposed to be. So what's the significance of that?

Larry 34:20

Well, the significance is sometimes, depending on the jurisdiction, if a person gets arrested, they have a system in place that automatically says, if a person's in my jail, they're entitled to see a judge within so many hours. So they automatically, if they're in a local jail, and in the jurisdictions that have these processes in place, even though nothing has been filed in the way of a probable cause hearing, they get brought into the court on miscellaneous charges. And the judge asks why is this person in my jail. Why is this person being held? Well, Your Honor, he's on probation from Colorado. And he's being held here in Alabama because of a probation violation. While the judge is not real familiar with the ICLs, either, he says, "well, what about this? It seems like to me, you ought to get on back Colorado and get this all straightened out. Do you want to waive the extradition?" And the person says, "well, I don't like your jail too much down here in Alabama. And they do tend to take better care of us in Colorado." And they go ahead and sign the waiver of extradition. So then they've got a signed document that the offender signed, without the benefit of any legal advice oftentimes, because due to the lack of public defender resources, often they've not had any consultation with anybody. And even if they did, the person didn't know jack about what they were talking about, because they were what we call Guppy Attorneys. They got hired to do first appearances. And they have never heard there's of interstate compacts. So that's often what goes on here. But the difference is significant. It's really different because the scope of the inquiry afforded to a person in an extradition hearing, is quite different, as opposed to a probable cause hearing. The scope in an extradition hearing is limited to the identity of the person and the validity of the fugitive demand. Remember, this person is not a fugitive. They're in Alabama, on permission from Colorado to be supervised, so they are not a fugitive. So we don't need to identify them. They've already been identified. But an extradition hearing a person who gets picked up. And NCIC reveals a warrant for them in another state. So the only inquiry that takes place in an extradition hearing is--are you the person who's named in this arrest warrant? And has the state that wants you back that's making the fugitive demand, have they put the proper paperwork together to make that demand, which includes some documents from the governor's office?

That's the significant difference. That's not a probable cause determination. That's an identity determination.

Andy 37:08

So how would that extra extradition hearing differ from a probable cause hearing?

Larry 37:16

Well, in the probable cause hearing, the offender would be entitled to the following rights--they'd get a written notice of violations, because we can't do ambush litigation. So the probation people are going to have to show you a list of things that you violated. They're going to get disclosure of non-privileged, non-confidential evidence regarding the alleged violations. They're going to get the opportunity to be heard and to present witnesses and documentary evidence, relevant violations, and the opportunity to confront and cross examine the adverse witnesses. Unless the hearing officer determines that there's some risk of harm to the witness. But you're going to have a robust proceeding taking place. The probation department is going to tell you in writing what you did wrong. They're going to tell you who they're going to call against you, which would be the probation officer usually, but possibly law enforcement, maybe some some civilian witnesses. You're going to get the opportunity to confront those witnesses and ask them questions in a probable cause hearing. You're not going to get to do that in an extradition hearing. The judge is gonna say, are you John Paul Jones, born 6/19/58? And you're going to say, "no, Your Honor, I am not." And a judge is gonna say, well, then we're going to force the demanding state to prove that you're John Paul Jones. It's going to take some time. I'll give them 30 days. They're going to submit fingerprints, DNA, whatever they have, and they're going to tie you to being the fugitive named in this warrant. You can cool out in our jail. And you can wait. That's what that's all the evidence that's going to be taken in the in the extradition demand. It's quite different from a probable cause hearing.

Andy 38:58

What we're talking about, Larry, is like the Miranda rights--you have the right to remain silent. You have a right to an attorney. We kind of sort of all know those by rote memory of watching every legal procedural show that exists. This almost needs to be formalized into an expression like that to tell you have the right to a probable cause hearing. You have the right to bring forth evidence and witnesses, etc.

Larry 39:23

I agree with you. I wish it had happened. But probation authorities are not wanting that to happen, because they want you off of their caseload. I know this sounds so crass and so rude, but if you're a supervising probation officer, and you've got someone you have bad vibes about, you

would much rather them be offending in the state that convicted them than in your state. So therefore, they're going to look for ways to get rid of as many as they can if they have any hesitation about them because they much prefer the camera go rolling in the state of the probation office that's supervising them and convicted them, rather than answering, "how did that happen here?"

Andy 40:08

This person waived extradition and voluntarily agreed to return to Colorado. Did he disadvantage himself by doing that?

Larry 40:18

Yes, he did. Potentially he did, anyway. Even if they did not revoke him in Colorado, after he got sent back there, he was stuck there. And he had to apply again to be transferred. And had he had a proper hearing in New Mexico, he might never have been transported to Colorado. So we don't know what would have happened. But we know that he didn't advantage himself in any way. At best, he basically disadvantaged himself because he has to start the process all over again to come back to New Mexico. And they're gonna do everything they can to slow that train down.

Andy 40:50

It does sound to me like it would be significantly better to have the probable cause hearing. So how does John Q. Public, when they end up getting locked up for some sort of revocation, how do they get this probable cause hearing? How do they get such a hearing?

Larry 41:06

I wish I could answer that I have not been able to rectify this problem, systemically. I've had some success on a case-by-case basis by filing, a pleading called a petition, a notice of demand for a probable cause hearing in the receiving state. So that's what your attorney would file. The problem you have is that most of the attorneys are not up to speed on the ICAOS, and they're hesitant to file such motion, because they've never seen it before. And trying to file it because remember, you don't have an action going in the state were you're being supervised. So there's no case number to attach it to. So you have to go into the old-fashioned courthouse the old-fashioned way. And you have to get a clerk to agree to let you file something under miscellaneous case number. Because normally, it would be filed under your sentencing case number, right. If there's something to be filed, it would be filed under your sense sentencing case, where you don't have a sentencing case. Because in the state you're being supervised, you're a guest there being supervised as a courtesy, so you don't have anything. So the attorney is trying to pull their hair out trying to figure out and I tell me, you file a miscellaneous case, well, how do



you do that? Well, in this day of electronic filing, you have drop down menus. When you go on, you got people like Andy, who set up these platforms, and they've got things all neat and clean for you to select to drop down, but they don't have a miscellaneous filing of a notice of demand for a probable cause hearing. So you can't open a case in the state of supervision. So due to all the barriers and the confusion, it just never happens. And the people end up agreeing to go back to the state. It's a tragedy, but it happens.

Andy 42:50

Oh, god, is this a mess? What I'm thinking is that everyone that is on PFR-type probation should have your number tattooed on the inside of their eyelids. That way, when they do get arrested for whatever, they can look up your number and call you and have you help them find the attorney that will represent them best, and you can advise them on how to go about it. That just sounds like that would be the smart move.

Larry 43:18

I could indeed if these people had enough money to buy my time.

Andy 43:21

Oh, I see. I thought you were free.

Larry 43:24

Well, I am on the public dole now.

Andy 43:26

You're cheap and sleazy, like on a bathroom wall. No, that's not you?

Larry 43:31

There's one other thing that you can do that conceivably could throw a monkey wrench in it. You could file in your state where you were sentenced, you could file a notice of a demand for a probable cause hearing in the receiving state. Now, of course, that court cannot force the receiving state. Remember, if you file something in Colorado court where you're sentenced, and you say, I'm debating a probable cause hearing in Alabama, they don't have any jurisdiction to force Alabama to do anything. But what you could do is put the court in Colorado on notice that their revocation is going to be tainted by the fact that you haven't had this probable cause determination, which may limit their options when they finally get you back because you weren't brought back by the legitimate process. That's another thing you could do. Again, you're going to have pushback from the attorneys because they're gonna say, "well, you know, once we get you up here, we'll just straighten this all out with the judge. I'll talk to the DA, and I'll get this all worked out." And you say, "I want you to file this just in

case the DA is not reasonable. I want the judge to know that the process by which I was returned to Colorado has been tainted because I wasn't given a PC hearing in Alabama."

Andy 44:38

God, what a nightmare. Like for real. Unless you're in Alabama or some state like that, it is probably better to just stay where you are until you're done with your supervision and can then move without having to bother with this. This is such a convoluted, complicated mess.

Larry 45:00

It is indeed. It absolutely is. And a lot of people don't have that option. They get their sentence there and they have nowhere to go. And they have connections in the states that are not very desirable to go to. But the other option is to either be held in prison like in Illinois, where they hold you in prison until you do not have a place to go. They do the same thing in my state. They hold you in prison until you have a place to go. Or your other option is to go someplace where you have some level of support and hope you can work your way through it. And that's what they choose to do.

Andy 45:33

Sure, sure, my God. So I thought we had a talk pre-show about you are going to be happy and positive and inspirational. But no, you deliver this garbage.

Larry 45:43

Well, I thought I was delivering it with happiness and inspiration.

Andy 45:48

Okay, yes. Somebody already said Scary Larry. All right. Then we will move on. We have some feature articles that you have provided for us this evening. Shall we move over there, sir?

Larry 45:59

Sure. Let's do this one. This first one is gonna be fun because we already talked about it on the last show, except it's a different state.

Andy 46:05

Okay, so this is from the Texas Tribune--Prison firm MTC accused of billing Texas for inmate treatment programs it didn't provide. Now that's fun. One of the country's largest private prison companies has defrauded Texas by collecting millions of dollars for improperly billing the state for thousands of unmanned prisoners for in-prison therapeutic programming it hasn't provided during the pandemic, a new complaint filed with the state auditor claims. Now that is funny, Larry.

Larry 46:41

Well, you think that's funny? That's odd, but I'll go along with you. It is funny.

Andy 46:49

In 2020, as the coronavirus killed thousands of prisoners across the country, a push to release more people eligible for parole was met with firm resistance by the Texas Board of Pardons and Paroles. And the board continued requiring most prisoners approved for parole to first complete treatment programming, which generally takes three to nine months and focuses on life skills, substance abuse rehabilitation or treatment for those convicted of sex offenses. What did the company do that was illegal, Larry?

Larry 47:23

Well, Texas prisons largely kept men and women confined to their cells or dorms, and people inside told The Texas Tribune in 2020 that much of the required programming wasn't occurring. On Monday, prison rights advocacy group LatinoJustice alleged that despite the lack of services, Management & Training Corporation continued charging the state for the programs and forced prisoners to falsify documents stating they had received treatment. Now you have to admit that's funny if true.

Andy 47:55

That is definitely funny. This isn't the first time MTC, a private prison operator which also contracts with state prisons for rehabilitation programming, has faced fraud allegations. Just last week, Mississippi's state auditor demanded MTC pay nearly \$2 million on guard shifts, after an investigation by The Marshall Project.

Larry 48:23

Well, I always hear people that lean conservative talk about fraud. And fraud is a bad thing. But it seems like their voices become very weak when it comes to corporate fraud and large-scale fraud. They worry about, in these conservative states, they worry about food stamps, they worry about the person taking a drug test, they impose all these regimens to make sure that for their get their \$200 worth of SNAP benefits. They have to be clean and sober and all this stuff. And they allege fraud. Well, I don't condone fraud. But I would like to hear the same amount of anger when it comes to this type of fraud. And I'm hoping that the governor of Texas, who just got resoundingly reelected, and the governor of Mississippi, I hope these governors will be on their high horse about fraud and find it just as obnoxious as the fraud they tend to be so critical of. Because fraud is fraud, and they shouldn't be doing it. If it's true. Remember these are allegations. The presumption is, right now, that MTC has not done anything wrong. So they can choose to force both states to prove these allegations, or they can

agree to settle. But right now the presumption is they haven't done anything wrong.

Andy 49:50

I gotcha. Um, anything else here before we move into the Reason article?

Larry 49:55

Now that's enough on this.

Andy 49:57

Okay. I do think that this will be funny, Larry. No, it's not funny. Alabama Jails Woman for Endangering a Fetus that didn't exist. Another woman. The lawsuit alleges false imprisonment after arrest for endangering fetus that didn't exist. Another Alabama woman has been jailed for using drugs while pregnant. But this time there's a twist: she wasn't actually pregnant. Her young child merely told a social worker that she was, according to the woman's lawsuit against local law enforcement in Etowah County. We've covered them before Larry, Etowah County.

Larry 50:37

Yeah, this is quite entertaining. And we want to get who got who got locked up? Again, folks, we're supposed to validate charges before we file them against people. I'm not sure a child's recollection that Mommy's pregnant would be sufficient before I would seek a warrant to arrest someone for endangering a fetus. I would like to have some documentation that there actually is a fetus. I mean, that's not too much to ask.

Andy 51:07

This is totally just on the heels of the Dobbs decision then too.

Larry 51:14

Well, I'm not seeing the connection. But what are you saying?

Andy 51:17

The connection would be that if abortion is not a legal thing, and Alabama then is one of the states that would say no, under any circumstances at all. And so here you are--let's just say that she did these things and harmed the fetus--then you are committing a crime against a human being. That's where this comes from.

Larry 51:38

That is correct. And that's why they locked her up.

Andy 51:41

Right. So this is totally on the heels of the Dobbs decision. This is an impact of it, and an effect of it.

Larry 51:48

But they didn't have the requisite evidence. I'm not even getting into a debate about whether it's right or not. When you level a criminal complaint prosecutor--I know there's dozens of you out there listening--you have a higher ethical duty under the rules of professional conduct. You need to know that a crime has occurred within your jurisdiction. And you need to have significant evidence that points towards the person whose liberty you're about to put in jeopardy and their reputation in jeopardy, that they committed a crime. If you don't know the person's pregnant, you don't have proof of that. You're a step ahead of yourself. You could hold off on filing charges until you actually have the requisite evidence. You don't file the charges and try to build a case later, which too often prosecutors do.

Andy 52:36

Right? That's, that's a really bizarre article there. She wasn't even pregnant. And I'm laughing and I'm sorry, if you were the one in prison, I am not laughing at you. That is just really high on the redonkulous scale. Have you heard of that word before, Larry? Redonkulous.

Larry 52:54

I can't understand how our transcriber's going to spell that. We'll find out.

Andy 53:01

All right, from the AP news. Oh, God, we're gonna get bashed for being a lefty and whatnot. Wave of Sex Abuse Lawsuits Seen as New York Opens Door for Victims. Sexual assault victims in New York will get a one-time opportunity to sue over their abuse starting Thursday, under a new law expected to bring a wave of allegations against prison guards, middle managers, doctors and a few prominent figures including former President Donald Trump. For one year the state will waive the normal deadlines for filing lawsuits over sex crimes, enabling survivors to seek compensation for assaults that happened years or even decades ago.

Come on, you've got to side with the victims. What could you possibly find wrong with this, Larry?

Larry 53:45

Well, I don't have a side in this other than I work on the defense side. And on the defense side, old allegations are virtually impossible for a person who's been accused to receive a fair trial. And in a civil setting, which is what we're talking about here, the threshold of proof, the burden of proof is far lower. So you're talking about just a preponderance of the evidence. So if someone brings decades old allegations against you in a civil setting, a) you don't have the right to counsel to be appointed for you if you don't have money, because you're not at risk of losing

your liberty. But they may sue you anyway, as a part of going after the deeper pockets of whoever you've worked for or whatever entity you were involved with, be it the scouts, be it the university or your employer, and therefore you're not going to get a fair shake. You're going to be more concerned about it, of course, if you have assets to lose, because you've worked all your life and you've accumulated a little bit of wealth and you're 58 years old, and somebody says you did something when you were 28. And they clean you out. You have a very low level of proof required in a civil case. So what's wrong with it is that the person can't get a fair trial. That's the only thing that's wrong with it.

Andy 55:03

A person in chat says I'm currently being sued by my victim because of a temporary look back period on statute of limitations, revocation, and sex crimes in DC. So then it goes on, "I feel like I've been in jail for almost three decades said the person who's 49 and said she was abused by the millionaire and notorious sex offender Jeffrey Epstein when she was a young woman. And it's more than time for me with other victims to be free of that prison that we've been in and for the people who are accountable to be held accountable. And what would you say to the individual being reported with?

Larry 55:43

I'd say that I'm sorry that this happened. And it's too bad the allegations weren't brought in a timely manner. I'd also say that justice indeed has an expiration date, because people are entitled to fairness. And people can't receive a fair adjudication and trial decades later. So I'm terribly sorry this happened. It's unfortunate, but in my mind, it's too late.

Andy 56:12

All right. And then finally, we have an article from Source, New Mexico, I guess. Source, NM?

Larry 56:19

Yes. What on earth. Why did you drag this crap in here for?

Andy 56:24

New Mexico's public defenders say they have too many clients and nowhere near enough attorneys to represent them. Without more funding they say people accused of crimes are losing out on their constitutional rights to adequate defense and due process. When someone is charged with a crime in New Mexico, there is a good chance that they can't afford their own attorney and must be provided one by the state. And among those attorneys, many are not actually employed by the state Law Offices of the Public Defender but are contractors instead. Why do you people have contract attorneys when you have a statewide public defender system?

Larry 57:20

Well, a number of reasons. Some of our counties are too small to justify having a public defender office. We've got a county that has 1000 people in it. And another reason is that the public defender can easily have a conflict with a case. For example, there may be multiple defendants, and it would create an ethical conflict for the public defender to represent multiple defendants that were involved in the same case. So, therefore, they will send out the additional defenders to contract attorneys. So there's a number of reasons why that happens.

Andy 57:51

I would also imagine that depending on the kind of case, a public defender could be just out of their league. It could be a very significant case--I'm thinking OJ Simpson type of case--and you're the public defender, you're like, I don't know what to do with this. I assume that would also be a scenario.

Larry 58:06

I would like to think that's not as likely the scenario here because of the highly specialized nature, and we've got a great system here. It's not great enough, obviously. But we do have some highly specialized units where they send complicated cases too, so of it's a complicated case, you're not going to end up with a first-year law student or first year attorney. So I would I'd like to think that's not really the reason. But people look at it that way. They think their case is just so complicated that only a private attorney can understand it.

Andy 58:42

I mean, the difference would be very procedural, I suppose. But whatever. And when a contractor takes on, for example, a first-degree murder case, they are paid a base rate of \$5,400. For the whole case. That means, on average, that attorney is making \$13.81 per hour representing their client, according to a study of New Mexico public defenders' workloads published in January. "Those numbers should shock us," Rep. Ryan Lane of Aztec told the Legislative Finance Committee on Tuesday afternoon. Are you shocked, Larry?

Larry 59:25

No, not at all because we've had this problem for many years. But let's give credit to Representative Lane for his recognition of the problem. Because he's a Republican, he represents a very conservative part of the state. And typically there's not a high level of support for public defenders increasing those resources. So let's see if we actually increase the pay for the contract attorneys, but I appreciate Representative Lane's position.

Andy 59:52

The office is asking the Legislature for \$13.2 million more from the state's General Fund — about 21% more than what's being spent now on public defenders. The request includes \$4.2 million to increase contract attorney compensation, \$1.2 million for in-house attorney compensation, and \$5.7 million to add 60 full-time staff, including 30 attorneys. The request for funding more staff is based on recommendations from a four-year-long workload study released in January that found three times more defense attorney hours are needed across New Mexico to provide adequate legal representation. Do you think they will get the money?

Clinton Laugh Track.

Larry 1:00:46

No, they will not get anywhere near that amount of money in my opinion. I mean, they will get an increase. Financially we're doing okay because of the elevated energy prices. About a third of our state revenue comes from energy production, be it natural gas and oil from the Permian Basin. But you also have every agency looking for more resources, every single agency that of the state government, whether it be the taxation revenue department that collects the taxes, whether it be the children, youth and families department that works with children, whether it be infrastructure, roads, whether it be prisons, everybody's wanting more money. And it's going to be difficult when you start looking at the requests that are more popular. When you look at what all state government does, things are far more popular than representing criminals. And therefore, when you're divvying up new funding, which we will have a lot of new dollars in the state budget this year because of the high energy prices. It's a lot more vote voter friendly, to give those monies to other programs, like the Department of Veterans Services. Now, would you rather go out campaigning on what you had done to improve the life of veterans? Or would you rather go out campaigning on what you had done to improve the life of people accused of crimes? Tell me, which do you think you would garner more votes?

Andy 1:02:17

I'm pretty sure the veteran issue would gain you a whole lot more popularity.

Larry 1:02:21

So therefore, they're not likely to get this amount of money. And we've had this discussion over several years. And they'll get they'll get an increase, and it will be probably above the rate of inflation. But I'll be shocked if it's 21%. I'll expect it to be more in the eight to 10% range.

Andy 1:02:41

All right, sir. I don't have anything else on the schedule for this evening, do you?

Larry 1:02:47

No. And you see why we pull those articles because we would have run out of time.

Andy 1:02:52

And one of them was super short, that we probably should have covered anyway. But we will get to it next week. I tried to ask them again, if that if we can do anything about the podcasts getting on the on the tablets in prison. That's what one of them was about. But I will address it more fully next weekend.

Larry 1:03:10

So that was one thing that I that I had forgotten that was in there. And that was what I'm getting more than just the one I put in there. I'm getting regular inquiries about that. Maybe we need to task someone that's got more time on their hands, maybe even a transcriptionist to get on the old-fashioned phone and start calling people because they've not been very receptive to email communication.

Andy 1:03:33

Right. I mean, I followed their procedure and I had emailed someone. They emailed back and said, go to this website and fill out their form. I know that I filled it out before, and I filled it out again tonight, and it says we've received it, and we will get back to you shortly. And I mean, we're a 501c. We are trying to provide factual, non-biased, nonpartisan information about how to help people be productive, get out, follow the rules, navigate this whole thing. And that's what we're trying to do, and I mean, I could have just thrown it all in the trash.

Larry 1:04:08

Well, I'm over my head in terms of I can't really be of any help. But I would like to, if people have tablets and can listen to us, I would very much be supportive of that. It's not really about the money, it's about the information. They will come to us when they get out and be appreciative of what we provided to them.

Andy 1:04:28

And it's obviously a captive marketplace. And these are the people that need the information, probably the most dissed mostest.

Larry 1:04:35

I would say so because they there's such a lack of information that's reliable. They get all sorts of rumors and misinformation, and we're trying to clear it up as best we can. Sometimes we tell you there's not a really a clear answer to the question.

Andy 1:04:51

Sure. Well, very good sir. Find all the show notes and everything that you need over at registrymatters.co. You can find phone numbers and links and everything over there at the Registry Matters main page. And we didn't get any new Patreon people. I can double check really quick, but I don't think there were. Do we get a new snail mail people?

Larry 1:05:12

I think I've got five coming our way soon as the person provides the names to me.

Andy 1:05:17

Oh, that's true. And then I also sent you another one from the guest we had on a few weeks ago, right?

Larry 1:05:23

Yes, yes. I think I activated it, but we'll make sure. But I think I activated that one already.

Andy 1:05:29

Very good. Well, that is all that I have for everything. And we had a pretty good crowd listening live. So those are the patrons and I appreciate you all so very much. Thanks for hanging out. There was good chat tonight. It wasn't like a bunch of crickets. And I know that you were following on with bated breath watching those people chat in there, Larry.

Larry 1:05:48

Yes, indeed. I am.

Andy 1:05:51

Have a great night everybody, and we will talk to you soon. Take care. Goodnight.

Announcer 1:05:58

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