



**Rm248: Does Child Pornography Drive Sex Offender Laws?
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Announcer 00:00

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Andy 00:18

Recording live from FYP Studios, east and west, transmitting across the internet. This is episode 248 of Registry Matters. Good evening, fine sir. Happy second episode of December? Yes, this will be the second episode of December. How are you?

Larry 00:32

It is indeed the second episode in December. And I'm doing okay considering my age.

Andy 00:39

I know right. To doctors you're like a first impression kind of person for them. They have never seen the likes of you before, of that advanced age.

Larry 00:49

That is correct. When they run my blood and when they look at my joint, they say that it's remarkable, unlike anything they've seen in their whole medical practice.

Andy 01:02

Very good. Let's see--anything you want to banter about? Can we talk about politics? Please? Can we piss off people?

Larry 01:12

I don't think we've got much political on the agenda tonight. I don't. Although indirectly, everything is related to politics, but I'm not doing any economic analysis tonight or anything like that.

Andy 01:25

Do you have any comments about Brittney Griner being released for the trade for Dr. Death or whatever his name is?

Larry 01:35

What? I just said there was not going to be any politics.

Andy 01:43

Doesn't seem like a fair trade.

Larry 01:46

What's unfair about it?

Andy 01:48

He is like--I'm saying that human to human, they have the same value. But she is--I don't want to diminish it that much--but she's simply a basketball player. And he is like a known arms dealer, like running around killing people. She throws balls in a hoop.

Larry 02:06

Well, I don't know anything about what he did or what he was convicted of. So I'm talking without sufficient information. But isn't there a legitimate market for arms sales? Isn't the United States the biggest arms dealer on planet Earth? I mean, don't we sell more armaments than every other nation?

Andy 02:24

That's probably true. Well, they're approved by Congress, so it is we the people that do this, right?

Larry 02:32

Well, what was the nature of the arms he was selling? I don't know. I don't know enough about it. But anytime we can get an American free is generally a good thing. Like former New Mexico governor and UN Ambassador Bill Richardson said--human for human. We certainly could have decided to leave her there had we wanted to. But yeah, she's home. And the Russians have--

Andy 03:00

--There was a lot of pressure. There was a massive amount of public pressure to do it.

Larry 03:04

Absolutely. And the Russians have said they're willing to trade Paul Whelan, or to keep the door open to negotiations. But they want spy for spy. He's been convicted of spying. And they say that they want a spy for a spy. I have a couple of observations. First of all, I don't know just because you're a Marine, that doesn't make it that potentially that you're a spy. I don't know that I can come to that conclusion.

Andy 03:29

Fair.

Larry 03:30

So he very well could have been spying in his capacity of a Marine. But the fact of the matter is he was convicted of it, correct?

Andy 03:38
Yes.

Larry 03:39
Just as she was convicted. Americans become very righteously indignant when some foreign national is convicted here, and they think that our laws are too harsh. And we tell them, well, these are American laws, and you have to abide by American laws when you're on American soil. But the same thing would be true when you're on Russian soil. If you're not allowed to have CBD oil, that is their law. Their penalty schemes are just what they would like just as our excessively harsh penalty schemes are up to us as Americans. And it's really difficult for us to have the high horse about penalty schemes while we incarcerate at a higher rate than any other nation, including Russia.

Andy 04:21
So moving along. I was minorly involved in this conversation. Somebody posted something, so I jumped in after an individual made a comment. The person said, and we were talking about sex offender laws, most of these draconian laws are not voted on by the people. They're just made law by the government to further their own agendas and make themselves look good to the people. And I wrote back and said that most everything is done by proxy, meaning we vote for a candidate to represent us to do the things that we want them to do. So very few things are a pure democracy. Am I wrong? That's what I wrote back. And so the response was, and this is where I want you to give me some commentary. [whispers] This is also related to someone that said something on YouTube. So I said, in that way, then yes, you would be correct. If you voted for your candidate, you voted for laws that plague us then just you have to know your candidates' intentions before voting, I guess. But then I write in my candidates, when I vote, Mickey and Goofy are gonna win one of these times. Can't be any worse than the morons we got now. So Larry, if we have morons, we can fix this. If you don't like Kyrsten Sinema, if you don't like Mitch McConnell, if you don't like any of them, you can unvote them.

Larry 05:45
I'm truly puzzled when a person will make a comment like that. And it's part of my real frustration and sadness. Of the five years we've been doing this program. Because I've tried to be straight up and down the middle with factual presentation. Although people accuse me on YouTube of being otherwise, I try to give country concrete examples of what the public policy proclamations are. We play it as straight as possible. When someone runs for office, and they campaign on a platform that they're going to be tough on crime, that they are going to make sentences harsher, that people need to suffer and be incarcerated for long periods of time to keep the community safe. And they vilify

the other side of the aisle that wants to let people out and have second chances. And they weaken the first step act, and they do these things. We give the concrete examples with supporting evidence. We give the sources. We play the audio clips of the people speaking this themselves. And your job as a citizen is to pay attention to what people are telling you. They tell you what they are for and what they would like to do and which way they lean. Trust them on that. That would be who you are, it would behoove you to do that. Trust them when they tell you that they believe in law and order, trust them, because that's what they mean. Now, there are things they tell you that they would like to do this or not able to do because we live in a democratic system where you have to secure other support than your own. So you might want to close Guantanamo, for example, which Obama pledged to do. He was not able to achieve that goal, because there wasn't support in Congress for closing Guantanamo, although they did dramatically reduce the population of people being held in Guantanamo. And of course, the people that tend to lean conservative were very much against that. They said they were turning loose terrorists to fire on Americans again. But I'm really disturbed that someone will make a comment like this. You don't directly vote on whether we're going to make a felony a misdemeanor or a felony, or whether we're going to make this a fourth degree or a second- or first-degree felony, you're correct. You don't vote on that. But you vote on the person who runs for office that will make those decisions. You have an opportunity to give them input when they're on the campaign trail and tell them that they don't represent your values. And that if they persist with that position, that you will be withholding your support and possibly voting for their opponent. That's your responsibility as a citizen. Voting for Donald Duck or whatever he said he would do, that's just a childish written reaction that is not productive and that does not move the ball forward.

Andy 08:51
All right. Let's move along to a listener question that came in. He writes: I've listened to the two episodes about interstate compact and you people are too much. What good does it tell us that there is a right to a probable cause hearing and then turn around and say that you don't know how to enforce the right. What good is a right that cannot be invoked?

Larry 09:20
Who said that?

Andy 09:22
That's a good question.

Larry 09:26

Well, I don't think that I said that the right cannot be evoked, nor did I even suggest that to my recollection. To the contrary, I suggested that 1) the right should be raised with your attorney, if you're in that position, and not to waive the probable cause hearing and do not agree to an extradition hearing, rather than a probable cause hearing. And I said that if nothing works, then you should have an issue to raise on appeal that you didn't get the proper due process during the retaking and revocation proceedings that were held. But that is somewhat of a good question, because a right that exist but it cannot be enforced, particularly if no one seems to know what you're talking about--it's very difficult. Oftentimes, you're already convicted, but you're sitting in a probation violation detention facility. And you have very limited access to communicate with attorneys. And the conditions are usually not optimal for long-term staying, and you want to get out of the place. So it's very tempting to sign anything just to move the process along. But those temptations should be weighed against the fact that you may be put back in a state that's quite a distance from where you're being held in detention. And you may not be able to have what would be considered a proper revocation hearing because the witnesses that may support your version of what happened are in the state where you're serving your probation, and they're not going to be able to make it to the other state. If you're in Alabama, and your revocation is going to take place in Idaho, having witnesses that are favorable to, are they going to be able to go to Idaho to testify on your behalf?

Andy 11:21

All right. Moving along, then, sir.

Larry 11:26

Well, that's about all I can say. I agree. I mean, I'm aware of this conundrum for the difficulty in getting these probable cause hearings. I think this will bleed over to one of the articles that we talk about later about bail reform, where you see systemically just because something has been established, right. And you assume that attorneys should know the process, and judges should know. When we get to that segment, I think we can tie these back together. And it's an established right and has been established since 1972 or 1973. This is long standing case law-- that you have the right to a preliminary determination of probable cause before you're shipped across the country. This is not anything new.

Andy 12:12

Well, just so from my own personal point--when everything first started hitting the fan, I was like, Man, I got this, I can handle this, I'll go talk to them, I'll clear this whole thing up. So right off the bat, we play that whole session from the law

professor, that's don't talk to the police session. We don't teach that. So you don't know what you should do. It's something that you most likely don't have a lot of experience with of dealing with the whole apparatus, the whole industrial complex that it is. And then after the fact, like you just want to keep your head down and keep your nose clean, and but then some kind of revocation hearing thing comes up. And you, again, don't know the rules. So you're playing the whole game blindfolded and being spun around.

Larry 13:00

And you expect from what you were taught in your civics in your education growing up, that the attorney does know the rules. And you expect that the courts and the attorneys on both sides of the equation are going to do their best to protect your rights. And you're shocked when you find out that isn't necessarily the case.

Andy 13:18

Right. Well, let's move along to a question from Michael. And that's the handwritten one, correct?

Larry 13:28

Well, there's question two for REM 248. Yeah, that's the one.

Andy 13:36

So hello and thank you for doing such a great program. I'm hoping you might be able to help me, as well as a few others in prison. Here in the state of Nevada, the courts add a special sentence of lifetime supervision to what seems to be most PFR type charges. None of us are quite clear on what lifetime supervision is or what will be required of us. We keep getting directed to Nevada, revised statute NRS 176A. 410. But it just lists all the probation requirements and NRS 176.400 states, that lifetime supervision commences after any period of probation, or any term of imprisonment and any period of release on parole. It also talks about petitioning to be released from it after 10 years, but not what it is, as far as we can tell. It's not registry, not probation. And it's not parole, in which all the NRSs we've read made clear when explaining rules and stipulations. Are you able to explain what the special sentence of lifetime supervision is in Nevada and what the details are. Thank you for your help. Mike. So up on the screen, if you're watching on the YouTubes, I have the document posted, and Larry is going to describe all of the things

Larry 14:58

I wouldn't go quite that far. What I'm going to do is tell you that as a general proposition, community supervision for life, lifetime supervision, various descriptions they have for these supervision schemes that kick in after your regular post-prison supervision, they're handled very much like the

supervision that you've discharged from. This is so bizarre, but you've got five years of parole, for example. And then when you complete that, then you've got CSL as it's known in New Jersey, Community Supervision for Life. But the conditions don't change much. And as best I can tell, that's the case in the state of Nevada as well. So I found this document that I think will be helpful. And I'm going to actually send it to the person who wrote this. And it's called PFR Conditions of Supervision. And it has quite a few bullets. And we probably don't know if we want to read every single one of them, but our readers are going to read the ones that are most significant in terms of what you need to be on guard for because I will just about assure you that these conditions are going to be in your lifetime supervision, after you complete your regular supervision. That's what I can almost guarantee you from what research I've done. So pick some of these bullets and tell him what people are going to be looking at in that state.

Andy 16:32

I'm going to read quickly, Larry. I can get through these, but I will read quickly. Okay?

Larry 16:40

All right let's see what you can do.

Andy 16:42

Alright. Submit to a search and seizure of his person, residence or vehicle or any property under his control--surrender your fourth amendment is where that one is going--anytime of the day or night without warrant by any parole or probation officer or any police of a peace officer, excuse me any peace officer for the purpose of determining whether the defendant has violated any conditions of probation or supervision of sentence or committed any crime. Next, reside at a location only if it has been approved by the parole and probation officer assigned to the defendant, and keep the parole and probation officer informed of his current address. Accept a position of employment or a position as a volunteer only if it has been approved by the parole or probation officer assigned to the defendant and keep the parole and probation officer informed of the location of his position of employment or position as a volunteer. Abide by any curfew imposed by the parole probation officer assigned to the defendant. Participate in and complete a program professional counseling approved by the Division.

Larry 17:40

Stop. Stop. Now, let me just ask you this. This seems so bizarre. So let's say hypothetically, you had five years of supervision, and you completed a program of counseling. I know in my state, they would actually keep your counseling forever and ever, because it generates money for the treatment provider. But does this mean that conceivably,

that you could be in counseling and treatment for another 10 years out of your pocket? Because that's what it says you can petition for removal of minutes after 10 years stop? That's sad.

Andy 18:10

Isn't that vague. It just says participate in and complete a program. So the program could be 10 years in length, or the program could be three months in length? But I'm sure it's not. Then moving along--submit to periodic tests as requested by the parole and probation officer assigned to the defendant to determine whether the defendant is using a controlled substance [whispers] don't do drugs. Submit to periodic--I love this one, this is my favorite--submit to periodic polygraph examinations, as requested by the parole and probation officer assigned to the defendant. Abstain from consuming, possessing, or having under his control any alcohol. Why is that listed? Why wouldn't the alcohol one be listed with the substance abuse, Larry?

Larry 18:56

I don't know. But you know, that bothers me because that's a legal product. But yet, coming under supervision, you can't use it.

Andy 19:04

All right, not have contact or communicate with a victim of the sexual offense or witness who testified against the defendant or solicit another person to engage in such contact or communicate a communication on behalf of the defendant, unless approved by the parole and probation officer assigned to the defendant and a written agreement is entered into and signed in the manner set forth by subsection two. Don't use aliases or fictitious names. Do not obtain a post office box unless the defendant receives permission from the parole probation officer assigned to the defendant. Do not have contact with a person less than the age of 17 in a secluded environment, unless another adult who has never been convicted of a PFR type offense is present, and permission has been obtained by the handlers assigned to the defendant in advance of such contact. Not be in or near a playground, park, school grounds, or a motion picture theater. Hold on, man. We can't go to the movies, can't go to the pictures, man? And who calls it that motion picture theater? Listen, it's all digital. Now there's no film running through the thingamajigger anymore. You remember that?

Larry 20:15

I do. Indeed those were invented when I was a child.

Andy 20:20

You were one of the guys that had the hand cranked, turning the pitch. [laughter] Alright, so don't go to the movie theater or a business that primarily has children as

customers or conducts events that primarily children attend unless approved by your handlers. Comply with any protocol concerning the use of prescription medication prescribed by a treating physician, including without limitation any protocol concerning use of psychotropic medication. Do not possess any adult material that is deemed inappropriate by the parole or probation officer, blahblahblah, your handlers. Do not patronize a business which offers adult material in the form of entertainment, and which is deemed inappropriate by your handlers. Do not possess any electronic device capable of accessing the internet, and not access the internet through any such device or any other means unless possession of such a device or such access as approved by your handlers. Do you want to stop there and rail on that one for a second?

Larry 21:20

Yeah, that one's very problematic, because it's a necessary thing in the modern society that we live in.

Andy 21:26

And the last one is if the defendant expects to be or becomes enrolled as a student at an institution of higher education or changes the debate date of commencement or termination of his enrollment at an institution of higher education, advise your handlers, as used in this paragraph institutions of higher education as a meaning ascribed in another publication. But probably trade school, college, something like that. There you go.

Larry 21:52

Those, those are very similar to what we would have here. They're not as detailed as what we would have here. We've got a much longer behavioral contract here. But to Mike, and all those out there that are listening, you're gonna have conditions similar to these regardless whether you're on federal supervised release, or whether you're on state-imposed probation, unless you're in the state of Maryland, which is pure as wind-driven snow, or unless you're in a particular county in Georgia, which we will leave nameless. But otherwise, these are very common types of things that you're going to encounter. And I think you're going to have them on your lifetime supervision as well.

Andy 22:33

I could say, you know, not word for word, but they were very similar to the 23, or whatever that I had in Georgia.

Larry 22:39

Yes, that's what I'm saying. We were trying to broaden the audience's knowledge. We've got people who've not been under supervision, family members and stuff, and they're yearning for this information. And I do apologize for how long it went. But the people who have not seen these that are listening, I'm trying to get ready for helping their loved

one when they come out. Hopefully, this helped them to understand the types of things that they're going to have to be aware of from the supervising authorities, and how they can help their loved one be successful.

Andy 23:10

I've just a question that's coming across in chat--are these lifetime? So is Nevada one of those, like you're on probation, parole for ever. During that whole time you have these?

Larry 23:22

Apparently, there is a group of offenses that after their standard supervision, if you have those offenses, you go into a period of lifetime supervision. And it's that way in Nevada and some other states, where you can petition to be off in 10 years, according to the writer. I didn't do that diligent research to see what the petition process is like. But the essence of the question is, yes, you're going to have almost identical conditions, I would think, regardless of what they named the supervision, if it's a sexual related offense.

Andy 23:55

I would agree. I mean, like most of those were in Georgia, except for the Georgia one that says, I shall never drive alone, like seriously. How am I supposed to do that? Okay. Then moving along to some articles, and then we'll move over to some more kind of feature stuff.

Larry 24:11

Sounds good. You've got quite a few articles in here. You must have worked all afternoon writing this stuff up.

Andy 24:16

I did definitely work all afternoon. This first one that you wanted to talk about comes from the NPR place. And you people put this article in that pertains to sexual assault in the military. And the headline is "House passes defense bill that includes proposal to combat sexual assault in the military." And I note that the bill cleared the house on a bipartisan 352 to 80 votes. That doesn't really leave a lot of room for anybody that said no, I mean, that's a lot of folks.

Larry 24:45

Yes, because keep in mind, this is the National Defense Authorization Act. And so this is something that's traditionally been very bipartisan. So yes, it passed. You're correct. And since it pays for the entirety Department of Defense and the bill nearly passes each year with huge bipartisan support. In fact, you remember back what happened in 2020 when President Trump vetoed the National Defense Authorization Act? You remember that?

Andy 25:12

I do recall that I believe yes. He was promptly overwritten, as you predicted in a previous episode. What are the nuances of this, and explain how it impacts we people--the PFRs?

Larry 25:27

Well, the effort was led by a New York Senator to get this provision, and this is the subject of this article. "The effort, led by New York Democratic Sen. Kirsten Gillibrand for nearly the last decade to force such cases and other serious crimes such as murder and domestic violence out of the chain of command and under the purview of trained prosecutors. They assert that sexual assault cases in the military have been plagued with concerns from victims who fear coming forward to see prosecutions led by their own commander. Overall, a very low share of such cases goes to trial or see conviction. So that's the problem she's trying to fix.

Andy 26:27

According to Senator Gillibrand, this is the answer. "This is a historic milestone in our efforts to reform and professionalize the military justice system." She continued, "and while it will take time to see the results of these changes, it is still important for us to celebrate this victory and continue our fight." I thought you people have claimed that the Democratic Party is more on our side, can you admit that this is not a positive step for we the people?

Larry 27:00

I cannot say that on this particular legislation because I've not read it in its entirety. It's more than 4000 pages long. And it will be in the show notes, hopefully, for those who doubt me, but yes, I have not read it. So I'm really not able to say

Andy 27:30

You said 4000?

Larry 27:33

Yes, I said 4000 pages. The Department of Finance is a very large operation. And the legislation that keeps it running is super complex. This is one of the funny things when I hear a lawmakers claim that they don't vote on a bill that they haven't read. That's BS. Every lawmaker votes on bills that they have not read. It's not possible to fully read all the massive proposals that they consider.

Andy 27:45

Don't they have a bunch of aides or pages, whatever the term would be, and they all read--like maybe she had 10--and they read 400 pages each, and then they summarize back to the individual that would be voting.

Larry 27:57

Yes, that is what they do. But you get criticized for that by people who have no idea what goes on in legislative chambers. We had a representative here a few years ago that got chastised for not reading something because he admitted on a TV interview that he had not read it. And he got chastised. He said my staff read it. And people said--we pay you \$170,000 a year to do that? Well, it's just not feasible to do that. If you're going to read a 4000 page, you'll tell me how long that would take with average reading speed.

Andy 28:31

It would take me about 4000 days. "A senior democratic aide touted the new changes in the plan, saying it strengthened the fight against sexual harassment in the military by requiring independently trained investigators to probe such concerns and place it under the jurisdiction of a so-called Office of Special Trial Council. Outgoing California Democratic Rep. Jackie Speier led the fight focused on addressing sexual harassment since the murder of Army Spc. Vanessa Guillén, who faced such concerns while she was based in Fort Hood, Texas." What is wrong with this?

Larry 29:09

So? For those out there with a Spanish surname, which would be pronounced Gui-yen. But who's keeping score? I don't know yet. I just have my concerns because of what we were told by Ashley, who was with us a few weeks ago. And she stated that their economic incentives for those to make allegations. And if that is the case, we cannot be sure of how this will play out when it's fully implemented.

Andy 29:43

It's now touted as "A system of justice that is worthy of their sacrifice." That article notes that for years, Gillibrand's legislation was met with opposition from the Defense Department, some Republicans and even Democrats. Last year, she saw a major breakthrough, partnering with Iowa Republican Sen. Joni Ernst, a combat veteran to pick enough bipartisan support to approve the plan in the Senate." Does this mean everyone is on board now?

Larry 30:11

It does not. "Senator Gillibrand and Rhode Island Democratic Senator Jack Reed, who happens to chair the Senate Armed Service Committee openly sparred over several Senate floor sessions last year about this proposal." So according to the article, no, it doesn't mean that at all. I've said consistently throughout this podcast that the Democrats are not right on some of our issues. This would be one where they're not right. But try to understand the reason why they take the position they do. They typically take a position on stuff like this with emotion. They have bought into the thing about justice shouldn't have an expiration date. So they're not on our side on statute

limitations where they should be. And they have drank the Kool Aid about all this massive amount of sexual misconduct in the military. And women represent a huge democratic voting bloc, a huge democratic voting bloc. The Democratic Party has lost the white male vote a long time ago. And the Democratic Party for political reasons, has to be on the side of protecting women who are serving the nation They just have to be. And again, I don't make these rules. I'm just simply telling you the reality of the political pressure they're under. So even if they have, like Senator Reed from Rhode Island, even if they have reservations, it's difficult politically to express those reservations because you're alienating one of the largest, if not the largest voting bloc of the Democratic Party. If you say, well, we don't care.

Andy 31:49

Now, "under the Office of Special Trial Counsel, Gillibrand said it marks a sea change that could help better protect servicemembers. She went on to say, 'We now have a system of justice that is independent, that is transparent and accountable, that will hopefully reduce or be free of bias.'" Do you think POTUS, President Biden will sign this?

Larry 32:10

Of course he will. And if he didn't, he would probably be overridden. Just as Trump was back in 2020. The White House has expressed some concerns that I noticed throughout the article. It wasn't about that this particular provision, but there were provisions of concern. But he'll have no choice but to sign this. And he would not take the loss of political capital to veto a National Defense Authorization Act. I mean, he may be having signs of senility. But he has not forgotten how promptly Trump was overridden when he vetoed the National Defense Authorization Act. So that's not going to happen, not going to happen.

Announcer 32:43

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Andy 33:31

Another article that you wanted to cover was from The Appeal. "Georgia sex offender registry traps people in debt and homelessness." And I think you want to dig in deeper than we typically do with articles. So go for it.

Larry 33:54

I do want to dig a little bit deeper and the person in the article--I didn't see the name, so we're going to talk about the person and that's what we're talking about. The focus of the article says "I was arrested in 2010 while engaging in sex work to survive and later forced to register as a sex offender. Since then, social stigma, footage laws, and crushing monthly court debts have made it difficult to get back on my own two feet and succeed after prison." I'd like to show some of the barriers people face in Georgia. That's the purpose. But you know, we both have some connection to Georgia, and we're familiar with how things operate in the Peach State. So this article presented itself.

Andy 34:41

The individual stated "In 2010, at age 20, after six years of engaging in sex work to survive, I was arrested and charged with pimping, pandering, and exploiting a minor who was over 16 years old. In 2012, I was convicted and sentenced to 30 years, with 14 to be served in custody, and forced to register..." "As my public defender so appropriately described it, I was depicted by the media as a sort of Guido the Killer Pimp and accused—I maintain falsely—of terrible acts befitting only a terrible person."

Larry 35:15

So well, he might not be a terrible person at all. They may have just been in survival mode.

Andy 35:23

According to the article, "it's well known that police target sex workers, criminalizing their means of survival and contributing to sex offense related convictions and statistics and political in particular, police target BIPOC and LGBTQ sex workers in particular.

Larry 35:40

I have no idea of what that is. I'm hoping someone in chat will enlighten us.

Andy 35:43

Yes. Please tell me what BIPOC is especially the many disenfranchised ostracize and homeless teens and young people engaged in a trade for survival. Why do you think they do that?

Larry 35:56

Why they do the arrests and investigations because it sells well in public opinion. You can go out as a law enforcement apparatus, and you can say that you're running these sting operations and you're catching these pimps that are prostituting our youth. Nothing is more heart tugging, that I can think of. So these sorts of arrest and patterns by law enforcement cater to public's hunger for our spectacle, and

it pads conviction rates. And while furthering the general rhetoric of perversion and predation. That's what the Appeal said. But clearly, it sells. And again, folks, if you don't want this stuff to sell politically, you have to register. Our listeners, you out there, have to register with people and tell them that you find this objectionable. When you see them on TV, making comments or grandstanding, you have to send an email. You have to call. You have to tell them I have find your behavior appalling. That's when it will stop.

Andy 37:11

Oh, by the way, BIPOC is black, indigenous and people of color. So there's that? Ok. And he stated, "I didn't know at that time that I was fulfilling a narrative around crime and sex offenses. Nor did I know about the vicious re-incarceration cycle of the registry and potentially lifelong monetary peonage to the criminal (in)justice system. But I do unfortunately know one thing now: Sex offender registries are debt traps that cause mass homelessness and mass incarceration." Dig into that one.

Larry 37:46

Well, in Georgia first-time technical violation by someone on the registry is a felony punishable by up to 30 years in prison. Now, make sure you heard that--30 years. And in the Land of Enchantment of New Mexico, a registry violation is a fourth-degree felony punishable by up to a maximum of 18 months of incarceration. And it's not a serious violent offense, which means in most instances, you're going to get day for day. So you're going to do a whopping nine months if they max you out. Under the state's recidivism statute, in addition to that 30-year potential a second violation triggers a provision where there's no parole eligibility, meaning that you will have to do that 30 day for day in Georgia. It is so difficult to secure housing for people with PFR convictions. And the outskirts of at least four Georgia cities--I'm assuming it's the major cities--they're just loaded with encampments for people that can't find housing. I'm guessing that would be Atlanta and Savannah and maybe Columbus. You know--the places with population centers. Maybe Macon. But there are places where there's just nowhere to go.

Andy 39:04

Yeah, right. The article states that prisoners within 15 months of their parole or maximum release date can apply for placement in a TC, where they may have their own clothes and leave the facility each day for work release. He stated that "my application was denied; I was told I couldn't be placed on work release while still receiving gender-affirming treatment I'd won through litigation." That's not funny, Larry.

Larry 39:31

It's, definitely not funny. "As a citizen on the registry, I'll be paying for my ankle monitor, mandatory treatment classes, monthly urinalysis tests, biannual polygraph tests, and of course my parole officer's valuable time. These charges will accumulate to at least \$400 to \$800 per month. If I cannot keep up with these fees and with rent simultaneously, it doesn't matter which bills I choose to pay." What he's saying is that if I can't pay them all, I'm going to fail.

Andy 40:08

So I frequently reference this--go back to, I believe it's June, maybe 2016. There was an episode of Freakonomics--I can leave a link in the show notes to it--but it is why do we make sex offenders pay, pay, pay, pay. That incredibly good episode describes that we're going to put approximately a \$10,000 debt on someone coming out of prison with a PFR-type offense. Anyway, the article notes, "that it's terribly easy to land on the PFR registry in this country. The U.S. Department of Justice reports that children are accused of committing roughly a quarter of all known sexual offenses and more than one-third of all sexual offenses against kids. At this time, there are more than 200,000 people on the registry for conduct that occurred when they were a minor." Does the average person realize how easy it is to find yourself on the PFR list?

Larry 41:00

No, they do not because of the terminology that you use. Law enforcement and media use words like sexually violent predators, rapists, child molesters, so the public doesn't realize how easy it. nor do they realize how difficult it is for a registrant to work in most states. PFRs in Georgia are not able to work within 1,000 feet of public parks, schools, childcare facilities, or any other places where minors are known to congregate. Law enforcement will sometimes even prohibit registered persons from working in restaurants. Multiple studies have linked sex-offender registries to increased rates of homelessness. But we still insist on doing this unconstitutional and horrible public policy.

Andy 41:46

Did I ever tell you about getting denied housing because it was like since what 1000-foot thingamajigger. And the place I was trying to move into was like 996 or 990, something like that. And they said no. And the in the place that was a park it was a cul-de-sac. And there was a park bench. And there was a sign under that said something. But there was just a concrete bench in this cul-de-sac that was the park, and I couldn't have done that house because it was 900 and change feet away.

Larry 42:13

Now that's funny.

Andy 42:15

It's ridiculous, man. It's ridiculous. And the house was across the street. So it was like 200 feet from the police station.

Larry 42:23

So yeah, I hear that all the time. Similar stories.

Andy 42:27

I'm sure you do. Moving along then to an article from USA Today. You put this in here about pretrial detention. It's titled "Federal magistrates, prosecutors misunderstand bail law, jailing people who should go free." This is from USA Today. So tell us about this one.

Larry 42:43

Well, according to the article, "A Reagan-era law, passed by Congress nearly four decades ago to change the federal bail system in order to address concerns over rising crime committed by arrestees released pending trial, has been wildly misunderstood and misapplied by the federal court system's magistrate judges, prosecutors, public defenders and probation officers, a new two-year national study finds."

Andy 43:14

The article continues: "The unprecedented look at federal pretrial detention conducted by the University of Chicago Law School's Federal Criminal Justice Clinic paints a portrait of a judicial system that has neglected the rights of especially poor arrestees and people of color. Such systemic problems are largely the result of what judges and advocates told USA TODAY is a poorly written, war-on-drugs-era statute known as the Bail Reform Act of 1984, an over reliance on prosecutorial discretion, and risk-averse magistrate judges and federal defenders." What changed after the bail reform act was implemented?

Larry 43:49

Well, according to the report, here's what changed. "Less than 24% of arrestees were jailed pretrial. By 2019, nearly 75% of them were. As of June 30, nearly 118,000 people were federally jailed pretrial, according to federal courts data. At the same time, the amount of time presumably innocent people spent locked up awaiting trial has also increased nearly sevenfold, the report found, from an average of less than two months in jail in 1985 to nearly a year now." And they're presumed innocent, and we're detaining three quarters of the people accused of crimes folks. This was a policy that was passed in the 80s. Congress had to pass it. Reagan couldn't have signed it if Congress hadn't passed it. But there was a lot of public pressure on Congress to do this because of the supposedly revolving door of catch and release. And the same thing that was said

then is being said with the states now that have implemented bail reform where they are letting more people out pending trial. But anyway, go ahead.

Andy 45:08

I want to make sure that we are talking about people that are innocent until proven guilty, correct.

Larry 45:13

That is the theory of our Constitution. And I'm shocked. I'm shocked when people who are reluctant to say that. When I hear an interview and when an alleged victim says that person should be in jail? On what basis do you say that? Well, they, they did so and so to my husband? Well, they are accused of doing that. They're presumed innocent

Andy 45:39

And that why you would then get held and then go before some magistrate judges. You would go before one of them to be afforded bond, and unless you are like Jack the Ripper, shouldn't you go home, possibly for some kind of monitoring of some sort?

Larry 45:57

That is what our system is supposed to be built upon. The presumption of innocence until you've either pled guilty or been convicted. Innocent people are not supposed to be held in custody.

Andy 46:10

According to the report, "Federal magistrate judges may over-detain out of fear that someone they let go will commit a new crime or worry that they may lose their jobs since they serve terms at the discretion of the district court." I thought that federal judges are appointed for life.

Larry 46:27

Federal judges are the ones that are a district judge and above, but magistrate judges are not. The magistrate judges are appointed by the District Court. And they must reapply regularly. I think they serve six-year terms, but I'm not absolutely sure. But they must reapply.

Andy 46:43

The article continues: "The Bail Reform Act includes a narrow list of offenses that make an arrestee eligible for detention and a second hearing. Those include more serious violent crimes; crimes involving violence, guns, minor victims or terrorism; most drug offenses; offenses carrying a maximum penalty of life imprisonment or death; and certain cases of recidivism. Prosecutors can also argue there is "serious risk" an arrestee will flee or obstruct justice. If none of these offenses are involved nor conditions met, then an arrestee should be released at the

initial appearance.” And then Larry, you being the knower of all things judicial system, why are they not released?

Larry 47:19

I wish I could explain it. My guess is similar to the issue we just talked about with probable cause hearings. The people who work in the system do not understand what they're supposed to be doing. That's one possibility. But when you look what the article said when US Magistrate Judge Jonathan Hawley first got to the bench in the Central District of Illinois over eight years ago, he stated, “no one appearing in front of me, from the defense lawyers to prosecutors, to probation officers understand how the Bail Reform Act applied. And it was a shock to me.” Now, you have to admit that's funny.

Andy 47:53

I am not going to admit that funny. Not at all. Do you want to argue about what's funny now?

Larry 47:59

Well, if you've got a magistrate judge saying that of all the various key players from prosecutors to probation, federal probation, a significant player, that these people don't understand the Bail Reform Act, how else would you describe it if it's not funny?

Andy 48:16

Not funny at all. “Juval O. Scott, the federal public defender for the Western District of Virginia, said when she took over the office in 2019, she instituted a policy that lawyers in the office had to challenge detention unless there was a reason not to. Since then, the district's release rate has gone up almost 20%. Scott said, ‘There were a lot of very seasoned defense attorneys that had no clue what the statute said,’ Scott said. ‘They walked into court, and they would agree that their clients could be detained even when the statute did not offer a basis for their detention. So we can't blame judges for detaining people if the defense bar doesn't step up and ask for their release and tell the court why.’” That is very sad. We were expecting that these people go to colleges and whatnot that teach them these things. Then they go to an institution, a workplace where they would then like, here's how we do this. And this is what we are afforded, constitutionally, as the people that are being represented by, well, these people.

Larry 49:18

It's indeed sad, because Congress, I think, intended the presumption of detention, to apply narrowly to the worst of the worst. And that's what the article says. But under the statute, prosecutors are supposed to persuade judges that detention is necessary. And judges are supposed to weigh the presumption alongside an individual assessment of an

arrestee. The report says all that. I don't understand. I really don't.

Andy 49:43

But the real world comes down to, god what was the judge's name in Persky? Then it comes down to, so you go into court, you're standing there, and you've got your side defending you that saying like you're the best person ever, and then the prosecutor is painting picture that you are the worst person ever. And then the judge is going to end up on the news that they let this terrible person accused of these things go home.

Larry 50:09

That is a fear, and particularly for the magistrate judges who do not have lifetime appointments.

Andy 50:15

The report notes, it's every judge's nightmare that they release someone who then goes out and does some violent act, what can be done, we would have to stop watching the ambulance chaser kind of news reports is what we would have to do.

Larry 50:26

Well, Congress could also pass amendments to the Bail Reform Act and make it abundantly clear that the presumption is that defendants should be released pending trial. Unfortunately, that's not likely to happen. Because it's political. The Right has been demonizing the states that have been trying to do that very thing, to make it easier for defenders to be released pretrial. They say it's turning loose a tidal wave of crime on the innocent public, and you just cannot withstand that type of an assault. I mean, you just can't.

Andy 50:57

Can you remind me of some of the criticism that went on with the pretrial detention for those accused in the January 6, Capitol riot?

Larry 51:05

Well, there were some on the right who were very indignant that these people were being detained. And they are justified in their righteous indignation. But what disturbs me is that for 40 years, there was no indignation. I mean, we on the progressive side, we've been complaining about this, those of us in the trenches, practicing law, we've been complaining about the presumption of innocence being eroded, and people being held pretrial, we've been sounding the alarm bells to no avail. And then when something like January 6 happens, and you have your people being held pretrial, then suddenly it's a problem. Okay, fine, you've now realized it's a problem. Let's start working on a solution to stop the demonization. And let's

start doing what you say you want done. And changing the Bail Reform Act and making it abundantly clear that people should be released pending trial.

Andy 52:05

An individual in chat, who is listening to us live for the first time ever, said federal supervised release was only supposed to be for the worst of the worst. It's how they sold the 85% of sentencing having to be served and no parole. I think that makes sense as a comment.

Larry 52:25

Well, the abolition of parole--the old system we had in the federal system--there was after a percentage, I'm not remembering if it was 30%. But there was a percentage of the sentences that were served and that you were eligible to be released. That was abolished, but the Sentencing Reform Act didn't have to do with the Bail Reform Act, but the Sentencing Reform Act abolished federal parole. And it put in these guidelines because there was great consternation of what was referred to as a disparity in sentencing across the land. I mean, you had people in the more conservative side, were saying, why is it that down here in Alabama, when someone robbed the bank down here, we give them 12 years in federal penitentiary? And how come out there in San Francisco and that pond of sin out there, how come they get on probation out there for the same crime. And part of what drove that Sentencing Reform Act was to make sure that everybody goes to prison. So now we have someone like Martha Stewart, who makes a false statement about a stock trade that she would have made more money on had she not traded. But she's a convicted felon because of making a false statement. And she had to serve five months in the federal penitentiary.

Andy 53:44

Right. And then did she do house arrest too?

Larry 53:48

Yes, yes, she did.

Andy 53:51

Very good. Um, anything else there before we dive into the little shindig that I wrote up?

Larry 53:57

No, let's do it. Because we're running short on time.

Andy 54:00

We are. I hope we can get through this. So I saw over on a subreddit for sex offender support a post by someone who was convicted of CP type charges and questioned the prevalence of illegal content. And it still makes me wonder. He asked why hasn't the government started a campaign to educate people on the hazards of possessing CP? Do you

want to say anything about it? Do you think that it's the government's job at all to tell you the rules and dangers of having these things? I mean, I only know that M.A.D. was the only thing similar, but that was driven by that organization. I don't see that our government--local, state, federal--does anything to inform us of what we should or shouldn't be doing.

Larry 54:46

I'm in agreement with you. I'm not sure. I mean, we do have public service type of announcements, but I'm not sure that we have those except for maybe with drunk driving. And who pays for those announcements? I'm not sure, but if you don't know that looking at naked children is probably not ideal, then you've got more problems. Now what I'm told, and I've not experienced this myself, I'm told that sometimes you don't know what you get. You click on something, and it opens totally different than what you expected. But I'm over my head on this. I don't know this stuff. But that's what I'm told it. Actually, people are not looking for it. But they click unknowingly on this stuff, and then they've possessed it.

Andy 55:25

Yes, then you would then be in possession of it. So first, I'm getting some feedback on this, what identifies as CP? How is it identified? Is it like SCOTUS said at some point in time, I know it when I see it when they were referring to porn, in general. Is CP merely nudity? At some point in time, it crosses a line. And it says, yep, that's what that is. How would you know? Is it just a person in skimpy clothing? So how would you even identify what is versus what isn't? I think that would be one area where like, I don't know what you would call it.

Larry 56:06

Well, the more egregious is very easy, because it's age based, you got anyone under 18. for federal purposes, this is defined as a minor. So images of nudity, exposing, exposing the breast or the genital area. But then I think it goes beyond that, you know, there's these sexually suggestive poses that may qualify as well. I don't do federal work, so I don't know all the complications within the federal system. But it's age based, for sure. And then there becomes experts brought into play when you don't know the name of the person, you can't identify the person. So therefore you don't know the age. So you have these experts come in and testify that that's the age of the body development of the person that's depicted in the images.

Andy 56:54

And wouldn't that be super fuzzy. Some develop very early, and some develop very late?

57:00

That is correct. You could very well have that situation where someone could be fully developed, and they could be 16. And they could look older. It's very difficult because part of the federal law prevents the images from being turned over to the defense attorney. In the old days, we would just get a copy of all that stuff. And we would look at it. But I think after the Adam Walsh Act passed in 2006, now you have to view it under supervision. And it's highly regulated because you're in possession of the porn yourself. So they don't give us a thumb drive with a discovery. But those images, we have to go down and take a look.

Andy 57:38

My main focus in this segment is you are very skilled with law policy and that whole apparatus. That's really the area that I'm trying to focus on with this conversation, not about how is it identified all that stuff? So is there any incentive on it? Is there any incentive by the government to try and curtail this activity? Do you think?

Larry 58:06

Well, depends on what, like Bill Clinton said what the meaning of the word is. Okay, it depends on what you mean by incentive. There is an incentive to arrest people and prosecute people because that keeps the apparatus of law enforcement working and justifies their existence. Is there an incentive to reduce the incidence of it so that you don't need their law enforcement apparatus? I'm not so sure about that. I have never been convinced that the law enforcement apparatus wants to diminish its need. I think it's constantly trying to increase the justification for its need.

Andy 58:44

So I was reading through the comments of the subreddit, and so I've summarized some of them. One tells us that you it's a conspiracy, just follow the money. Nothing is done about it as a way to constantly Feed the Beast through polygraphs, parole, probation payments, treatment providers, etc. Then throw in bonuses for extra overtime during events like Halloween for all the compliance checks. The question is then is it simply a cash cow for the various parties and that's prison, DEA, law enforcement, Kabuki machine operators, and the like?

Larry 59:17

What kind of machine operators?

Andy 59:19

The Kabuki machine operators, the ones who hook you up to the whole little machine and watch the little needles move back and forth.

Larry 59:26

Can you spell Kabuki, so we understand how it's spelled?

Andy 59:29

K-A-B-U-K-I.

Larry 59:32

All right.

Andy 59:34

Do you think that it's just a money machine for them?

Larry 59:40

I have a hard time believing these things come about that way, but they develop and evolve that way. It'd be kind of like the Department of Homeland Security. For example, the Department of Homeland Security was a reaction to 911 and the fact that our various agencies could not coordinate well when asked to respond quickly. But the Department of Homeland Security has evolved to be one of the big participants in the porn prosecutions. Anytime there's a federal prosecution, you can almost guarantee that the Department of Homeland Security has been involved in. So I think once these things evolve, and grow, kind of like the SMART Office with registering ratio, registration, tracking and monitoring that federal office that does that mean to the states, it needs to survive. It's not looking to eliminate its existence. So yes, I think that Kabuki machine operators, the prosecutors, defense attorneys, all these people depend on a high level of of cases rolling through there. If all of a sudden the federal caseload dropped by 60%, what would happen to all these people?

Andy 1:00:52

By God, the Kabuki machine operators would have to go legitimize their existence and do something real.

Larry 1:00:57

But what would probation officers, and what would pretrial service workers do? Well, with the people that sell technology, to the electronic monitoring? What would all these people do if federal apprehension and enforcement dropped by 50%? If we, you know, the Conservatives talk about downsize government. If we downsized the apparatus by 50%, and reduced its capacity by 50%, to prosecute and incarcerate, what would happen to all these people who are working in this system?

Andy 1:01:26

I gotta tell you, just to some degree in a lot of those cases, then they would actually move into close to their operating capacity where many places are operating at 110% and 120% of capacity. So they would almost come down to a normal load.

Larry 1:01:41

So it would result in a lot fewer people being employed over time, and nobody's sure that--

Andy 1:01:50

But aren't we interested in the public safety? So this is almost like, well, we'll let the content stay out there so that we can continue to arrest and be employed instead of thinking about the overall benefit of society, and cutting the head of and killing the beast instead of just chopping it off?

Larry 1:02:09

Well, I'm not qualified to talk about how the content gets out there. You know, people say that it's the federal government that runs it. I don't know that. I don't know that it is true. I don't know it's not true.

Andy 1:02:20

Another aspect of this, someone, we've meant something we've mentioned on the podcast, and I don't know if we can ever actually verify it. I know that I've seen articles and heard people say it, but nothing really that that verifiable, it says that 50% of the sites that are hosting this type of content are in fact run by government agencies. And the question here is of some numbers of the sites are, are, are therefore funded by taxpayer dollars to ensnare those that access the content into the legal system, I guess, incense, in essence, feed the previous question. So I don't know how we would ever verify it. But if the government our taxpayer dollars, are running the servers that host the content, that I guess it's not entrapment by Larry's definitions, but sure seems like it

Larry 1:03:08

not entrapment, because they're not encouraging the crime, they're merely providing you the platform for to do something you have a predisposition to do theoretically.

Andy 1:03:17

Right. Do you do you see any sort of parallel like, I mean, there's not a cocaine store up the street for you to go buy stuff that's run by the feds? Are there? I guess there might be.

Larry 1:03:31

Yeah, I don't know that.

Andy 1:03:37

So how about we kind of briefly touched on this? Should there be some kind of public information campaign, as Nancy Reagan did back in the day? Just say, no, likely from peer pressure? Do kids end up drinking and or doing drugs? Should there be some kind of YouTube ads, or wherever to help get the word out about the consequences? And would it even help, though. I can't imagine that anybody really

thinks looking at this content would be above board. For example, consider what you can buy at Walmart. Some items require proof of ID to buy like some medicines, they sell guns and ammo, but they're in controlled areas. You have to make something of a concerted effort to find the content that you're not supposed to have. One poster wrote that I think there's an Allah and analogy to the drug war. And that I don't think it's a problem. We're going to incarcerate our way out. I think it requires a conversation about ending demand. And I think that requires policy and conversations about access to mental health treatment, sexuality, pornography, repair, repression, etc., that he doesn't think we're ready to have. What are the steps needed to do something like this? Do you think like some sort of public awareness campaign and so forth, obviously, it would take money and who might fund that sort of thing?

Larry 1:04:48

That was going to be the question. I would pose this wherever the money come from. I mean, we're more than willing to spend the money to incarcerate people, but spending money for treatment and prevention is a difficult sell because you cannot ever imagine or what the effective rate, what the efficacy rate was of that stuff, we don't know what crimes would have been committed, because crime rates are not stagnant. So just because the rate didn't change much, it could have been that was going to escalate by 40%. Without the prevention and intervention and the treatment, we just don't. It's difficult to prove. So, therefore, it's difficult to secure public funding for prevention.

Andy 1:05:24

I have one final thing that I want to bring up as a technological person. You have companies out there like Facebook and Google. So Meta and Alphabet respectively, they can build algorithms to identify suspicious content. And that's computers looking at the images to try and see and they make determinations. And then they have some report mechanism and processes in place that takes the information off of their sites. And I'm not saying it isn't there for you to do a Google search to find stuff. I'm just saying it's really hard. But if they have the mechanisms to do it, why can't our government do it? And again, another comparison is to the drug war. When you compare the money of the drug cartels have to what the US spends, its paltry by comparison. Like, if that content ended up on a Facebook or Google type property, prosecutors would go hammer them. And so they have an incentive to not have the content there for you to get it. So you have to go through some really covert, subversive channels to pick up anything of volume. So it just seems like it's possible to be done, but we don't do anything about it. It's really all I wanted to then add to the end of that.

Larry 1:06:40
Well, I think Facebook and the big companies are doing something about it. They are putting the brakes on it. They're turning it over to the authorities.

Andy 1:06:48
Agreed, agreed. And they have the ability to do so. But then it just moves elsewhere from where it's now. But it's out of those mainstream kind of channels. It still seems like it would be plausible for the government to do that. But then there's fourth amendment stuff, like they can't go search your stuff without a warrant. And it's very complicated, but it seems doable to some degree.

Larry 1:07:10
So it's a conversation for another episode about why would you want to have the have the government interfering with this kind of stuff.

Andy 1:07:19
So very good. I don't have anything else. And we're a tad over time. Anything that you would like to say before we depart?

Larry 1:07:26

Looking forward to being back next week, one more week before Christmas.

Andy 1:07:32
Absolutely. One more show before Christmas. And then we'll take off and I guess we'll be recording somewhere on New Year's Eve, aren't we? Well, maybe we'll record a day earlier like on the 30th or maybe even a day later, one or the other. And so any who all you've got to do then is go find the show notes over at registrymatters.co. And that would be fantastic. You can find links to everything there to support the show over on the Patreon kind of place or find the show notes and the transcript over at fypeducation.org. Thank you everybody that hung out in chat. We had a big, huge crowd tonight. And without anything else, sir, I would bid you a great weekend. Take care.

Announcer 1:08:24
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