



RM 252--Recorded 1-21-23 Entrapment or Not?

Announcer 0:00

Registry Matters as an independent production. The opinions and ideas here are that of the host, and do not reflect the opinions of any other organization. If you have problems with these thoughts, F.Y.P.

Andy 0:12

Recording live from FYP studios, east and west, transmitting across the internet. This is episode 252 of Registry Matters. Good evening. How are you people this evening?

Larry 0:31

We're doing lovely.

Andy 0:33

Who was that other voice there?

Aracely 0:36

It's me. I'm not a ghost. I'm here.

Andy 0:45

All right, so we are being joined tonight by an individual who is from Texas. Her name is Aracely. And her son was trapped into one of these crazy sting operations that we've covered a couple times. This was on Craigslist, casual encounters, no strings attached in 2018, right before Craigslist shut down their personal ads. So that's like the intro version of what is going down this evening. And tell me what other things that we might have going on. I know I dove right in Larry. I wasn't expecting Aracely to jump in so quick. But tell us what we're going to be covering today.

Larry 1:16

We're going to be covering this thing in great detail with a lot of questions that have been prepared in advance that I have looked at. And we're going to be covering an old case that's been around for years and years out of Arizona. It deals with a person named Steven May on his quest for freedom and how the system of justice has failed. Steven May

Andy 1:44

We talked to a woman--maybe a year ago--that we last talked about Mr. May?

Larry 1:49

I don't know. I know it's been a number of times and probably within the last year. It's because this case lives on

and on and on. And they're trying to find everything they can to get him out of prison. And I don't blame them.

Andy 2:01

Of course, because he didn't get five years. How many years did he get?

Larry 2:05

Just 75.

Andy 2:07

Oh, just a piece of cake. No worries there. You'll get out before you know it. It's 75 years. And I mean, maybe if you were locked up when you were two, that seems plausible. But he's not. I don't know how old he was. But 30s or 40s, or something like that. So 75 years. Why don't they just say, here's a death sentence if that's what they're going to do. That's what they should have done.

Larry 2:29

He's a welder into his 40s. That's not pushing the door. It's near fifty. So yeah, it's a life sentence effectively.

Andy 2:36

All right, um, do you have anything at all that you want to talk about before we dive into the sting stuff?

Larry 2:43

No, I'm looking forward to having all these tough questions. And there's going to be some commentary at the beginning and at the end, and then we're going to take the questions.

Andy 2:57

All right. And I want to remind everybody that we are not enemies. We're not trying to be combative. And so with all that ground rule set, Aracely, you have like an opening remark that you would like to make, I guess?

Aracely 3:13

Yes, yes, thank you. Um, so I wanted to start off by saying that it makes sense that these online child predator sting operations started when they did, because back in the late 90s, and the early 2000s, online chat rooms were general, and they were being used by people of all ages. That means adult and minors were together in the same chat rooms. And these were chat rooms that were created for socializing. And so it made sense to pose as a minor in those places to attract adults who were seeking minors to exploit sexually. So it makes sense for them to have been doing that in those places. As the internet evolved, separate adult only sites were created for the purpose of adults meeting other adults for sexual purposes. Those that were

conducting these “child predator” sting operations obviously figured out that it was way easier to target men in these adult predator sting operations. And they could use those men to create cases where they were “fake catching” predators who were seeking kids online, then it was to address the real problem of minors being targeted by adults online to exploit them in the places where children were online.

Andy

Larry, please. What do you have to say to that so far?

Larry 4:38

Oh, so far, I agree with what she's saying. And I would even add to that. In my 20 years in law, I think I've seen one case of an actual minor being propositioned online. So I'm not sure that I think she's being more generous than I would be about that it makes sense to have these operations. I think it's a solution searching for a problem.

Andy 5:04

All right. Well, please continue then madam.

Aracely 5:06

Okay. Well, this is a problem because of the money that has been made from fooling people into believing that these things operations are actually helping keep their kids safe online.

Larry 5:20

What do you mean by the money being made? And I already know because I understand what happens. But just for the audience, can you explain what you mean. How's the money made?

Aracely 5:30

Well, we know that they receive ICAC funding from the Internet Crimes Against Children grant program. In order to receive funding from the federal grant program, The states or police task forces have to report their numbers of how many investigations they have conducted of online, child exploitation, how many arrests were made, how many were referred for federal prosecution, how many convictions for the state they had, and what types of sentences were given. So they need the arrests and the convictions in order to get, maintain, and maximize the money they get from these federal grant programs. And if these cases aren't happening on their own, police must go out and create them for the purpose of getting this money. And we also know that some also received donations from other sources like private donations from organizations. And vigilante groups who are not law enforcement also do this for monetary purposes. Many of them solicit donations, and they're also looking to make money off this by streaming the videos on places like YouTube.

Larry 6:48

Ah, I agree with what you've said there. But without being combative or confrontational, there is no state or local jurisdiction that's required to do these just because they're in search of a pot of gold, particular because it's free federal money from the large federal government that everybody says is too big. They are seeking money that they don't have to apply for. If you live in a city that has a police department that takes part in these as a part of the political process, you can put pressure on them to not seek the federal funds, because they're not required to do that. But I agree with you that in fact, there is money driving this. When there's money to be had from the big old bad federal government, everybody who claims they want a small government has their paws out to get into that trough. But yes, so far, so good.

Aracely 7:45

Yeah. And it makes sense because police officers, you know, don't have a high salary, so it makes sense that they would want in on this money because they get to work overtime hours, and all that. And it also increases what goes into their retirement funds and all that. So there's a lot to that. Anyway, it takes much more effort with way too few catches if the decoy police officers simply pose as a minor in the places online that kids hang out on and act like kids do online. And I'm talking about places like Facebook, Instagram, Snapchat, video game platforms, which are the places where real kids have been lured by, you know, predators online, who are seeking kids to exploit. I'm pretty sure this is something that was figured out even before the internet evolved into having those separate adult only websites that are used by adults for sexual purposes. By someone claiming that they are a minor after they have used sex to lose the men, and to contact them--it's just much easier for that person to force a conversation to be about sex, because they've already set it up to be about sex. And it's much easier for them to force it into having been a conversation about sex with a minor, and then turn around and lie to everybody about it, claiming that they caught an online child predator, and they stop them from raping a child. They were never looking for a kid to begin with. So that's why I say they're lying about it.

Andy 9:23

What do you say about that, Larry?

Larry 9:26

So far, I agree with what she's saying. That is precisely what happens when they are in these chat rooms posing as adults to begin with. Then they morph into minors, and it confuses the adult, because the adult thinks that some sort of role playing is one option. They think it's a fantasy play. They don't know what to think. And they use all sorts of guilt mechanisms to try to keep the engagement going.

They say, Well, you're just like the rest of the adults. You don't care for me. I mean the detectives, they've had immense amount of training, and so they are at a great advantage over the unsuspecting individuals. So everything she's saying is so true. And that they go out you and say that they kept all these people from taking advantage of a child. These people were ever seeking to take advantage of a child. So far, so good.

Aracely 10:23

It's completely created to compute them in. And of course, most of them are curious, and some of them are even concerned. So yeah, that's a big problem. So I want to move into a federal law, it's 18 U.S.C. 373. I'm not a lawyer. But I do a lot of research and look into the different laws and all that because I've been trying to figure this out--why is this happening? And how can it be that they keep getting away with doing this. This law specifies that it is illegal for anybody to solicit another person to commit a federal crime. It does specify that it must be a crime of violence. And then we know that law enforcement, their goal is to create federal cases, because of course, that helps them with their funding. So their goal is to refer these to federal, to the federal government for prosecution. And we know that 18 U.S.C. 2422 is a federal law that specifies that it is illegal to use the internet to solicit someone for sex who was under the age of 18.

Larry 11:34

We look good. We got two things to break down here. Are you finished with your question? Because I'll try to break down both of those two statutes.

Aracely 11:41

Yes, yes, go ahead.

Larry 11:42

Okay, so with what you the first one, the 18 USC 373 confuses people all the time, even legal professionals. I've had this discussion with attorneys, and it takes them some time to get it. When you solicit a person to commit a crime, it has to be a crime if that person commits it. And you're thinking, well, that sounds nutty. If I solicit a minor to engage in sex with me, for example, in my state, it's legal to have sex with a minor as long as they're above the age of consent, which is 16. So I can solicit minors all day long to have sex as long as they're above the age of 16. So there would be no prosecution available against a minor. It must be a crime that the person who's being solicited it would be criminal for them. If it's not a crime for minors to have sex, they can never be subject to prosecution. They would be at most a victim in this. Now, what's going through your mind right now. In a sting, there is no minor and that is absolutely true. There absolutely is not a minor. There's a whole group of detectives working in that chat sting operation. But the

statutory interpretation treats them as if they are minors because they're posing as such, and the statutes have allowed them to pose as minors. So under the legal interpretation, they are, in fact, minors even though they're adults. So therefore, the minor can't be prosecuted, because the minors were the victim of that crime. So on answer number one, you can't prosecute a victim. No one answer number two on the US Code section 2422. That is, it's in fact illegal to solicit someone for a sex who's under the age of 18. Federally, not necessarily state, but federally. So if you go online and do that, federally it's against the law, even though it wouldn't be against the law if you did it in the state of New Mexico. It would be against the law federally. But when you're making that solicitation, law enforcement is saying we didn't solicit anybody. They solicited us and we just presented the opportunity. So it'd be equivalent. Their argument would be if you go into a local library, and you go into library, (you would make the argument well, I didn't go to the library for sex), but if you go into a library and you have and solicit sex, it's no longer the library. It's sexual activity. And sting operations are completely legal if the law enforcement doesn't make the overture and begin the discussion about criminality. If I go to a local strip for people hanging out to hustle, and there may be five legitimate hustlers there. And there may be one sting operation nearby. If I'm looking to pick up on an adult, and one of those adults happens to be a police officer, they have not interrupt me because I'm out cruising, trying to pick up. When I pull up to the detective and say, what are you doing this evening? I'd like to hook up. And they say, Yep, I do this for a living. Are you willing to pay because this is how I make my living. You're getting into a gray area. They generally like to person offer to pay first. But when these men show up for meetings with minors, police win the case because even they have morphed into adults, the person has shown that they are willing and predisposed to have a sexual encounter with a minor. That's how they win.

Aracely 15:30

Oh, but did they really show or did the police officers just make it look that way? Because was it the intention? So we know that it was not law enforcement intention to have them have sex with a minor, right? But was it the intention of law enforcement to target men on adult sites or apps that adults use for sexual purposes? To get those men to have sexual conversations with someone online who claimed to be a minor?

Larry 16:00

Oh, it's exactly what you said. They go into the sting operations knowing that they're going to find vulnerable, lovely, hormonal, men--all the above. They're going to find these people, and they're going to be able to succeed in their agenda. You're absolutely right. I wish it didn't happen. But it's a form of grooming by law enforcement. I

would have to see the chat logs. I don't do a lot of federal defense cases. I've been a consultant on a handful of cases. So I haven't seen many of these chat logs. But the chat logs I've seen have been very compelling and damning against the accused. It has been obvious to me. And in fact, I sat on a grand jury for three months last year--January, February, March. And we indicted a number of these cases as well. And I did have some trepidation on a couple of them. But most of the cases, it was clear that in my mind that the probable cause existed, because the accused had taken the bait. They had decided that they were suddenly willing to have these romantic encounters even though they didn't start out that way. So that's like saying if you go to a place not intended to do something, you can form the requisite intent. In fact, the grand jury judge instructed us that way. The intent formulation of intent can occur relatively quickly. So even though they didn't enter the chat room with the intention of soliciting a minor, they were able to form the requisite intent in very short order, and that's how they win.

Aracely 17:31

Okay, so I get the part, you know, that they showed intention or made it look like there was intention? I think we agree that it was the intention of law enforcement to make the men provide sexual conversation to someone claiming to be a minor online. Someone they met online, who then claimed to be a minor. And it was their intention to get the man to show up to meet this person. We agree that it was law enforcement intention to do that. Okay, is it illegal to provide a sexual conversation to someone online who has claimed to be a minor, and then show up to meet that person?

Larry 18:15

Not sure I completely follow the question, Is it illegal to provide a sexual conversation with someone online who is claimed to be a minor and then show up to meet that person. If you only show up to meet the person, and you absolutely disavow any desire to have sex, if all the chat logs were to reveal that I'm coming to meet you to try to protect you. You shouldn't be here, somebody's going to hurt you. And I'm worried about you. And I absolutely will not have sex with you. But I am going to try to save you from vultures and predators that may be on this platform. I don't believe that that person would be convicted.

Aracely 18:53

Actually, they have been. I've seen it.

Larry 18:55

I haven't seen that, but I don't have enough experience in the federal system. But I saw one on To Catch a Predator who said that he tried to lay that foundation by saying that I'm really not interested in having sex. I'm worried about

you. But then he showed up with the condoms and all the other stuff, and booze and everything that the minor told him to show up with. So he ended up taking a plea, I think I recall that. But yes, this is a disaster.

Aracely 19:24

One important thing that I hadn't thought about before that I need to bring up is the fact that we know now, too, that law enforcement, and these vigilante groups, can and have altered these chats. They can delete parts of that. And that's something that the courts have not considered. Most of these cases have not gotten experts (Larry: Is that a question. Because I can answer that.) to see the way it's presented, because it can be tampered with. And we know some of them have been most often they will omit parts. Do you understand what I'm saying?

Larry 20:07

Yes. There's two ways to alter. There would be omission, or there would be actual deletion and deliberate manipulation of the chat history. I have heard of that. I've not been on a case where I've actually seen it. But I've heard that alleged. And that is a legitimate defense if they're hiding the ball from you--

Aracely 20:30

--a lot of them don't. I'm sorry--

Larry 20:34

--if they're hiding the ball, in the process, that's one of the most issues you would raise in pretrial. You have not been provided complete discovery. And there's relevant and missing discovery that's pertinent that would tend to cast doubt on the accused mental culpability of what was happening. Those are serious accusations if someone does that.

Aracely 21:00

Yeah. And I mean, and we have seen the proof of that. And it's too bad that we didn't find out about this until talking to other people about this. We figured this out, and we figured out it's a common thing that happens. We've seen it several times. But most guys, I think they're just so embarrassed when they get caught, that they're not paying attention to those details. They're just embarrassed, and they've been humiliated. They're not looking at that and they don't catch it. So who knows how many times that has happened. And those men were convicted when they shouldn't have been. And it's very infuriating to see that that has happened, and they've gotten away with it. But anyway, I got off a little, I got off topic a little there. I want to go back to us code 2422. So my understanding of this is that it is illegal for someone to use the internet to solicit someone for sex with a minor, solicit a minor for sex that you met online. Based on US Code 373. All that needs to be proven is that

someone encouraged them to commit the crime. Now, I am not focused on the crime of statutory rape, I am focused on the crime of soliciting a minor because isn't it true that soliciting a minor online itself is a crime and that law enforcement did solicit the men to commit that crime by inducing the conversation to be about sex with a minor?

Larry 22:43

It's a relatively novel argument that you're trying to make. I doubt you've gotten a lot of interest from attorneys when you've made this suggestion to them. Because law enforcement continues to maintain that demand opened the door. The men went down the path that they just simply were there. And the men did this. Law enforcement clearly use their vastly superior intellectual skills to manipulate the situation and play on raging hormones of the adult, and they use their training to make the adult feel okay—that's what was happening. You get no dispute from me about that. Law enforcement is looking for a problem that doesn't exist very much, in my opinion. There are not many minors out there looking for sex with adults. They may be looking for drugs, and booze, and money. But not the average. The average minor, the average teenager does not find people who are 40 to 50 years old to be very sexually appealing. And because there's so much knowledge out there about the penalties with soliciting a minor, there are very few adults soliciting minors for sex. I just don't see the evidence that is happening.

Aracely 24:00

So you are saying that it's not that they that law enforcement is not soliciting someone to commit the Federal offense of soliciting a minor online US Code 2422?

Larry 24:18

I'm saying that I have not seen compelling evidence that they were soliciting and say, hey, you know, I got this minor I think I can hook you up with them. That would be unlawful. But if you're in a chat room posing as a minor, and you move from an adult to a minor, and somehow there is an invitation for sex from the person itself. Now if the minor says I have to propose the minor says I want to have sex with you. That is a solicitation. But the minor is still the victim. The minor can make the solicitation. The minor can solicit an adult to have sex, but the minor can't be prosecuted. Because the minor would still be the minor and still the victim.

Aracely 25:01

Yes. So the way I'm looking at this is the law is very clear on if you encouraged a crime, then you solicit to them for that. It makes sense to me that the minor would not be held accountable for demanding sex from a, an adult online, because they are a minor. However, in these cases, it's not a real minor. It's really an adult who is pretending to be a

minor who is demanding sex from a random adult stranger online that they met on an adult sex website. I guess I'm trying to figure out how, why or how this does not apply to them because the crime itself was committed not only that they encouraged the man to commit the crime, they pushed for him to commit the crime, and in many cases, they forced the crime to be committed. And the crime is not the rape of a minor, it's the soliciting a minor by forcing the conversation to be about sex with a minor and forcing the meeting to be about sex with a minor, they force for that crime to be committed. Do you understand what I'm saying when I say that?

Larry 26:14

Oh, I do. Indeed, I do. Indeed, I follow your logic. And it's not totally without a rational basis. It's just the statutory scheme doesn't support you on that. That's why I said, I don't think you've gotten a lot of attorneys interested in your defense strategy. They would have looked at you with the most bizarre expression saying this is not going to work. Now, I love going to trial. Although I haven't been a part of a trial team in at least two, maybe three years, I love going to trial. And if you can find someone if your organization who is willing to roll the dice and put forward this defense that you've not created, but that you've designed in your head, I would be supportive of doing it. But just make sure the person knows that if they get convicted because that defense doesn't work, they are looking at an even longer period of incarceration. I'm all in favor of doing it. I just don't have a great amount of optimism.

Aracely 27:10

Yeah, and that's the thing. We haven't tried it yet. Like I just, came up with this and had that aha moment about it just a week or two ago. That's why I'm doing this now. So it's not something that has been tried before in a court. I asked one lawyer about it. He usually answers my questions, and he hasn't responded, which is interesting. So I don't know if he's really thinking about it, or looking into it, or maybe he thinks I'm crazy. I don't know. But he hasn't responded. And he'll tell me like, no, this does not apply, or this doesn't work because of this or that. He hasn't responded at all. And I emailed him, like two maybe three times. So I'm waiting to see. Um, let's see. So another

Larry 28:02

trap to trap my defenses for you're now.

Aracely 28:06

Okay. Well, can I get in right quick, though, I want the issue of, you know, the why somebody should have just stopped the conversation. I think that's part of my entrapment defense, isn't it? Oh, I wanted to point out first is, I mean, I know most people would say and realistically soliciting a minor online. In reality, is it a crime of violence or not?

Well, was there a real act of violence committed? Well, no, not really. But it was more like that there was intention supposedly to commit an act of violence. But our system does treat it as a crime of violence. And because the federal government has a minimum mandatory sentence of 10 years in prison, and even up to life, and then there's, you know, the registry and all types of strict restrictions. So it is treated as a crime of violence, or equivalent, or sometimes even worse, because sometimes the sentences for soliciting a minor online is worse than it is for someone who actually raped a minor or had consensual sex with a minor. So I don't understand why it would not be a crime of violence. And if it is, then it should fall under, you know, US Code 373--somebody solicits solicited someone to commit a crime of violence. And again, you said you don't disagree with that. But I guess it's something we're going to have to try and court right. Or if we can find a lawyer who's willing to take that

Larry 29:44

What most prosecutions for the actual sexual activity would not be under federal law because the Feds would not have the jurisdiction to do that. They can get you for the travel. They can get you for the solicitation, but most of the time, the actual sex--there's not going to be any actual sex because there's no actual minor. But traveling with the intent of engaging in sex is a federal law. But it's not a it's not a crime of violence in the true sense of how the federal statutory scheme defines under 18, US Code, subsection 16, the term crime of violence means an offense that has an element to use the attempted use or threatened use of physical force against a person or property of another. A consensual sexual encounter would not fit under the definition and then under be any other offense that is a felony. And by its nature involves a substantial risk that the physical force against a person or property of another may be used during the committing offense, again, consensual sex, this will not qualify as a crime of violence. But you are correct. We treat the solicitation people who engage in internet offenses, it tickles me, and that's southern colloquial term tickles as humorous to me that people think that if we just had sex offender registries that treated the noncontact offenders as lightly as they deserve to be treated, they're just wrong about that. Oftentimes, the noncontact offenders are treated more harshly. They're evaluated as more dangerous. And they're sentenced more harshly. And they will find themselves without being able to get off the registry, because when they file their petitions where that's allowed, the state comes in argues with all these imaginary things that they might have done. But in the sense of the US Code, this is actually not a crime of violence.

Aracely 31:36

I've heard people that work in the government say that these guys are actually more dangerous than someone who did commit the actual act of having sex with a minor. So it's treated as that or worse.

Andy 31:54

Okay, are we going to the entrapment defense part?

Aracely 31:57

Yes. So on the entrapment defense. I'm trying to understand. For the most part, these cases are not allowed to the entrapment defense, but to us, it's crystal clear that this is entrapment. We still don't get why they keep saying it's not entrapment. Well, I think, if I'm understanding correctly, I think it's because they're putting the focus on just the right of a minor, where the man solicited to rape the minor. Well, they can say no, because it was not their intention to truly have the men rape a minor. However, the men were not just solicited to rape a minor, they were solicited to commit at least two crimes that, first of all, they were solicited to commit the crime of soliciting a minor online, where the men were induced to provide sexual conversation before they were able to meet. And the answer to me is clearly yes. They were induced, and for an entrapment, all you have to do is show that they were enticed, induced, or coerced, and not even all three. And then it's entrapment. It's clear that they were induced to provide conversation about sex with a minor when they were not there to do that to begin with.

Andy 33:10

What do you have to say to that, Larry?

Larry 33:14

Well, I've covered the entrapment defense a little bit already. There's only a minimal showing that needs to be made by the law enforcement that the person had inclinations to commit criminality. The fact that they just happened to be there and happen to be the police, that's not what she's saying. I totally get that. She's saying that the police were there, and in the chat room, and they move the man of the direction that they would not have gotten by inducements and by what she termed as a solicitation. If you really believe that, then you must put that forward as a defense rather than pleading out. You have to notify the prosecution that you have an intent to insert in an entrapment defense, you're taking it to trial. And you must ask the court to instruct the jury accordingly. And they will read that statutory definition in Texas in case and her case, and her son's case, they would read that to the jury at the time before they retire for deliberations. And they would tell them, if you find these elements of entrapment, if you find these elements of entrapment, then you shall return a verdict of not guilty. Most people never get that far. I can

tell you from the three months I was on the grand jury. Remember folks, in a grand jury, we don't find guilt or innocence. I didn't have any to do with that. I had only established about a probable cause which is much lower threshold. And it only took eight of the 12 of us to find probable cause. But in three months we must have heard hundreds of cases. I heard no sympathy from liberal Bernalillo County Albuquerque from a single juror about these types of things. They were not interested in hearing entrapment. They were not interested in considering what is being put forth here. They were ready to lock these men up and indict them. I mean, some of the indictments came down within minutes after law enforcement stopped with their presentation. We retired for deliberation, and it took one to two minutes to return an indictment. These things just don't work. So if you get the judge to grant an entrapment defense if you have the requisite elements to show that there is a credible argument for entrapment, the juries. Just. Don't. Buy it.

Announcer 35:32

Are you a first-time listener of Registry Matters? Well, then make us a part of your daily routine and subscribe today. Just search for Registry Matters through your favorite podcast app, hit the subscribe button, you're off to the races. You can now enjoy hours of sarcasm and snort from Andy and Larry on a weekly basis. Oh, and there's some excellent information thrown in there too. Subscribing also encourages others of you people to get on the bandwagon and become regular Registry Matters, listeners. So what are you waiting for? Subscribe to Registry Matters right now. Help us keep fighting and continue to say, F.Y.P.

Andy 36:21

So I just want to ask real quick. You don't just go into the courtroom and then go, oh, by the way, we're doing this. You have to get pre-approval to assert this kind of defense.

Larry 36:35

Can't speak for Texas, but I'm assuming it's very similar. We don't do ambush litigation in the United States. So the duty is to continuously disclose. So you disclose witnesses, like an insanity defense. Certain defenses must be notified. You must place the state or the prosecution on notice that you're going to raise these defenses because they need an opportunity to prepare to have rebuttal witnesses or whatnot because they might not have called two witnesses to testify. If they didn't know that you were going to put forth entrapment defense. So therefore they need to know that so that they can be prepared to rebut you on why it was an entrapment. So yes, you don't just come in one day and go to trial and do it all by ambush. These things happen in advance.

Aracely 37:25

So we were straight out told that the entrapment defense was not allowed for these cases. And of course, I know people in different states that have faced these cases as well. And they were told the same thing. And it just doesn't make sense. Yeah, it has to be, I guess, very specific. You need to show why it was entrapment. But I think the problem has been that it's because they are putting all the focus on No, they were not in trap to rape a minor. I get that. They can say that under the law, even though technically there would have never been an attempt to rape of a minor had they not created it themselves. I think the focus needs to be on that they induce the conversation to be about sex with a minor. And that's what has not been happening. I think it would make a difference. If the defense lawyers start putting the focus on that, because if the men are good, for example, in my son's case, he was not when once they brought up that they were 13 or 14. The first thing he said, well, you shouldn't be looking for your dates on here. And then he was just making conversation. He was not talking about sex. They kept putting those ideas out there. He was talking about going to the mall. Maybe that's not smart, either. He was a 22 Naive guy, you know, he's socially challenged. But that's not illegal. Had they allowed him to do that? And just say, okay, yeah, let's just meet at the mall or whatever. There was nothing illegal about that. The problem is they don't allow them to do that. Or they could have stopped the conversation and said, Okay, he's not one of these guys. The problem is that they forced the conversation to be about sex, they kept giving clues, and supposedly they're not supposed to bring up sex first. Well, first, they brought up sex to begin with by posting an ad on an adult sex website. As a woman who was looking for men for sexual purposes, casual encounters, no strings attached. That means casual sex. But he wasn't making the conversation about sex. And they did. And then they would not agree to me. They kept rewarding him. They were guiding the conversation to sex, and he'd give them a little bit and they would reward him for that. And then he'd give them a little bit more and it was like yes, okay, we can meet now. By doing that they forced the conversation to be about sex with the minor and they forced the meeting to be about sex with a minor. They forced the crime of solicitation of a minor to be committed. And that's the problem I have with this. And I don't understand why that's not entrapment or how that's not entrapment to ice. To me it's clear, that's entrapment. I guess it's because they're not looking at it that way. Is that what the problem is?

Larry 40:20

Again, I don't know the specifics about entrapment defense in Texas, I would imagine it would have been something that could have been assertive asserted. The lawyer probably, in professional opinion, said it's not going to

work. And this and we're going to end up not even having probation as an offer. If you force a full trial, rather than pleading out and taking responsibility, you're not going to get a probated outcome. And with a first-time offender, what we're trying to do is figure out a way to resolve the case as they go home, and they don't go to prison. That's what we're looking to do.

Aracely 40:53

So Larry, would this be different for vigilante groups than it is to police? Because no, police have certain protections and stuff. But what about vigilante groups? Could they be prosecuted for soliciting someone to commit a crime?

Larry 41:09

I believe that it would be potentially, depending on what is that and how far they go, that they could be prosecuted for several things. But again, prosecutors are elected. You said you're from West Texas. Can you imagine a district attorney saying, well, I'll tell you what I'll do. I'm getting sick and tired of these people who are trying to clean up and keep our kids safe, that are doing this volunteer work. And if they step one foot over the line, they don't find themselves in front of a judge facing prison time here, do you think that they would likely be reelected to be the district attorney or the prosecuting attorney for that jurisdiction if they took that posture?

Aracely 41:48

Yeah, it's a hard hill to climb like that stuff. But because they make it about, you know, just the fact that they made it about, you know, sex and children to begin with, but what I'm trying to get, I'm trying to reverse that and show that they are the ones who sexualized kids to begin with and went around forcing that on others. And that's not acceptable. Like I find that to be disturbing behavior. But people don't see that because they put out the narrative about this when they got out in the media, and say that these men were targeting kids online, they straight out lie about it. And of course, that's what's in people's heads. And they think, oh, I don't want them, you know, coming after my babies online. Well, if your baby's not on Craigslist, casual encounters, you know, seeking men for sex and demanding sex from these strangers, this, that would never be a problem, you know, what you need to worry about is those that are targeting your children on Facebook, and so forth. So the point I want to make is that they did not prove I think our legal system has gotten it wrong. By saying that they prove that the men had intentions to rape a minor or have sex with a minor. What they proved was that police can talk men on adult hookup sites or sex forums into saying that they agree to sex with a minor, they did prove that. And they can do that by, you know, molding the conversation into what they need it to be, and even forcing them to say they agree, because the men goal is just to

meet this person, like they've been on there talking to different people. There's a lot of bots on there, a lot of them are fake, and they're just trying to get your credit card number. And I don't know what finally they get a real person that they're chatting with. They want to know more about this. And it's like, this is a weird, unusual situation. I've never seen this before, because I've talked and then that's that they use Craigslist for years. One of them said he had been using it for 10 years, and had never, ever seen a minor on there. Never even heard about minors using, you know, this website to meet men. And if there were minors on there, nobody knew it because they weren't telling people on there that they were minors, and that that would be more normal, you know, if a minor was really on there. So no law enforcement did not prove that the men were predisposed or had intentions to really have sex with a minor. All they proved was that they could make the men say that they agreed to it. And then they rewarded them with okay, we get to meet now. But it doesn't show whether the men really would have done it or not. So they have that part wrong. And we know that it can be done because of false confessions. We know that police can make people say things that police want them to say whether it's real or not. And I think that's what's happening here. Police are making them say things because then they're rewarding them what something they get rewarded with the meeting to find out more about this extremely unusual situation that nobody had ever seen before.

Larry 45:04

So we're going to need to kind of compress some of the remainder so that we can get to the other segment. But you're correct on all those things. But they don't need to prove it when the person agrees to a plea because they are consenting to the elements of their crime by virtue of their guilty, or no contest plea, that the requisite elements were there. The person who goes to trial has a whole lot more rights because they can force the police to show that there was a solicitation and generally, an attempt to engage in sex with a play. That's not necessary if you're stipulating to those elements when you enter your guilty plea.

Aracely 45:48

So is this violating constitutional rights?

Larry 45:53

How so when you choose to plead guilty? What right? I mean, you've been apprised of what the elements are by your attorney. You've been provided a charging indictment or an information as it's called, with the with owner about this date, you did this, and you've had a legal professional tell you what the elements are or that would need to be proven. If you choose to go to trial, they admonished you at the police setting about all the rights that you're relinquishing. They go through a list of all this stuff, and you

realize you're forfeiting this right to cross examine. You're, you're giving up this right and this right, and this right, you remember that? You remember all those things they did. And they hold up the plea agreement generally say this, is this your signature? Did you sign this? Did you do this under any threat or coercion? Do you remember that process that took place? That is when the person pleads guilty there, they're consenting that the elements could have been met had there been a trial.

Aracely 46:48

So personally, I think knowing, since we know that police can make people say, things that police want them to know, that are not real or not. If there's no other evidence, I don't think we could trust the evidence that simply police create it, whether it's a confession, or in this case, they created the conversation. If there's no other evidence that, you know, they would have been looking for minors, online or anywhere else. I just as I think it's just not valid, it's not credible. I mean, there's just too many wrongful convictions based on police forcing people to say things that aren't real. That's a whole other, you know, side of this, but on the constitutional rights, so this is not illegal search and seizure, because they had no they had no reason no probable cause to begin with, they created it.

Larry 47:54

I don't agree with you on that. Because when the when the chat was unfolding with the pretend-to-be minor, that created the probable cause, depending on what was said. Remember, I haven't seen the chat logs. But when these things happen, it is more than adequate, probable cause as far as the courts are concerned, to go search the person's computer, seize their computer, and search their dwelling and look for evidence of criminality. So there would have been more than adequate probable cause. But again, if you don't think there's probable cause, you have your attorney go full bore against the state, and you say we're going to file a motion to suppress. You can file motions to suppress statements that were made, you can file motions to suppress the warrant, saying it was invalid, all those tools are available to you. But when you use those tools, you're not going to get a plea offer. Because when you force the state to do a whole bunch of work, they're not going to make you a good deal. That's just the way our system works in this country. It's set up as a system of pleas. And this is the way your case your son's case unfolded, I think by plea agreement, and he got ended up getting a probated sentence, correct. He didn't go to trial, right. Is that a trial? He forced him to prove beyond reasonable doubt that he that he that he committed this crime. They call witnesses against him, and he forced the state to put on their case in chief against him. Was that correct?

Aracely 49:25

Yes. But it was not an honest trial. Yes, because the way this works is they hide a lot of the important facts and evidence like it was not made clear. It's like, oh, this was a this was a site where you had to be 18 Plus. That was not specified. This is an adult website that people use for that. It's not expected to find minors on here. They posted an ad that didn't even specify that. The first post is as a woman. The post said we are women looking for men. That part was not covered. So little things like that makes a difference to juries. And that's how they've been going away with this because they made it seem like this was the same thing as just coming across someone on Facebook or Instagram. It's not the same thing. There's a huge difference. And I think that's what the problem has been--we're just now getting to the part where people are finally understanding. These are adult hookup sites that are used for sexual purposes. It's not the same thing as your kids being, you know, on a video game platform, and so forth.

Larry 50:31

Do you want to have a part two segment that we could do, either to play at a later time because I really want to get to the Stephen May case and we're long on time.

Aracely 50:43

Yeah, I was going to wrap it up. Can I say my last piece that I want to do? (Okay) So lastly, as a woman, I just want to say I find it to be incredibly disturbing that a grown man, like the police officer who conducted the sting operation that my son was trapped in, he's supposed to be a protector. I find it to be incredibly disturbing that he came up with the idea of pretending to be a 13-year-old virgin girl, who wanted to use an adult sex website to find random adult male strangers to demand sex from those random strangers, because that is what he did. Simply because this 13-year-old girl was just bored and curious about sex. It's not even that he thought of it. It's his actions. He went around forcing this on other men and on my 22-year-old son. And then he pretended like it was those other men having these kinds of thoughts about 13-year-old virgin girls, not him, even though it's clear and obvious. These were his own thoughts. He was projecting that onto others. I just find it to be incredibly disturbing for somebody to be doing that. And I find it to be disturbing for people to support and even defend this very sick, twisted behavior from him and others who are doing this. They're sexualizing kids for self-serving purposes. And then they go around and force that on others for more self-serving purposes. And there's just nothing heroic about that. It is just sick. It's twisted. And it's disgusting. I don't get that. And I don't understand how prosecutors can stand by that and do that. They're defending that. And they're enabling that. And that's just wrong. That's my piece on that.

Larry 52:37

I agree with practically everything you said there in that closing statement. It's a tragedy that these things were happening. They were spending so much money on these things. Again, you've not heard all the podcasts, but I have harped about this for a long time. As long as there's funding for these things, they will happen. We must reduce the funding. And that has been difficult to do because the hype about the crime, particular this type of crime, how dangerous it is. But if we want to curtail the reach of law enforcement, we must curtail the very lifeblood, which was their funding.

Aracely 53:15

Okay, I'm all for that.

Andy 53:20

Very good. Aracely, thank you very much for joining us. And putting all of that together. There's two or three times more that we don't really have time to get into because we have the other stuff that we need to cover tonight, too. So thank you very much for all that you put into this. And thank you for coming on and being wonderful and flexible and all that. Thank you so much.

Larry 53:39

We could do a part two with the part we didn't cover. We could bring that back as another segment at another time. So I'm not saying it's not worthy. But yeah, we could do a part two, but I wanted to get to Stephen May case. All right. Well, then let's pick up where we left.

Andy 53:55

Have a great night. (Thank you. You too.) All right, Larry. So do you need to take a breather a potty break anything like that?

Larry 54:12

No, let's do this case. Let's see how fast you can talk.

Andy 54:17

Oh, I can talk fast. You want to discuss the case of Stephen May versus David Shin. And Larry, I checked FYP archives. I checked Registry Matters and boy o boy. Like I need toes to count how many times we have covered this. Is this another one that you can't let go of?

Larry 54:36

Correct. I cannot let this case go because it's a travesty of justice.

Andy 54:41

What is the question presented for the Supreme Court to decide here?

Larry 54:46

If they were to grant the petition for cert? The question is whether a judgment rendered after a habeas petition or has been unconditionally released with no collateral consequences and where the state does not dispute that the Petitioner was no longer quote in custody pursuant to the United States Code 28. United States Code subsection 2254 is void for lack of subject matter jurisdiction. In other words, did the court loses jurisdiction by granting habeas relief and ordering Steven May's immediate relief, that's the argument being made to the Supreme Court.

Andy 55:20

And what do you people think about this argument?

Larry 55:24

It's a novel argument for sure but I'm not convinced that it's a compelling argument. If you dissect the argument, May is asserting that since the habeas court granted his immediate release, that the state of Arizona lost its ability to appeal because the discharge from custody extinguished the "in custody" requirement of federal habeas. His argument is that because he was released, the state has no opportunity to appeal Judge Wake to the Ninth Circuit and that Judge Wake's decision is final. That's what he's cobbled together.

Andy 55:56

So if you will grant me this, I'll set this up. United States District Judge Neil Wake granted habeas relief based on the burden-shifting of the Arizona child molestation statute. Judge Wake found that Arizona's law violated May's due process rights. Judge Wake also found May's trial counsel was ineffective, thus that infectiveness provided cause and prejudice to overcome the procedural default of failing to object to that issue at trial. Judge Wake found "Counsel's performance was deficient where it should have been obvious that the burden-shifting scheme presented a serious constitutional question that could have been dispositive" for Petitioner May.

Larry 56:38

He also found that there were "no reasons, tactical or other, for failing to preserve the federal constitutional claim." That was powerful to me.

Andy 56:48

And I think I've got this straight. So the lifetime federal judge declared Arizona child molestation statute unconstitutional and ordered Stephen's immediate release.

Larry 56:59

You're correct. So why do you even bother having me?

Andy 57:02

Well, you know, so then what happened after that?

Larry 57:06

Arizona appealed of course. It's noted in the cert petition that the State did not avail itself of the automatic stay or seek a further stay. Instead, the Attorney General's office directed the Arizona Department of Corrections ("ADC") to release May from its custody the following day after Judge Wake's decision.

Andy 57:28

Did the appeal process proceed to conclusion?

Larry 57:33

It did. The Ninth Circuit originally affirmed Judge Wake, then on reconsideration, they chose to reverse Judge Wake. Now after completion of the appellate process, May is arguing that the process was null and void because he was no longer in custody.

Andy 57:47

Explain the in-custody requirement of federal habeas law, please?

Larry 57:52

Sure. To use federal habeas as a vehicle to seek release or modification of a sentence, one has to be in some form of custody. And that's the requirement of habeas statute. But the definition of in-custody is broad enough to include supervision and, in some instances, unsupervised probation. But the person must be in under some form of restraint or control. May now asserts that the court's jurisdiction terminated because he was released basically unconditional by Judge Wake's order finding the Arizona statute unconstitutional, and the state did not seek a state, so he said that, that his he's not he was told are in custody. So all this litigation that happened subsequent his release is null and void.

Andy 58:39

So if I'm following this right, I see that on page 17. It says "Petitioner walked out of prison a free man; he was not subject to any supervision from ADC or the State of Arizona. He was not subject to the order of a state court or supervision by the District Court. After serving 10 years in custody, Petitioner was unconditionally released." You said that the Ninth Circuit originally affirmed Judge Wake. What happened? How did they reverse course?

Larry 59:08

Well, good question. Good question. The State moved for panel rehearing. A full year later on March 27, 2020, the divided panel reversed itself, without explaining what facts or law it had overlooked or misconstrued. According to May's petition on page 19, "Rather than seriously consider trial counsel's actual thought process, and the matters

counsel did not consider, which were developed in the record, the majority hypothesized a series of reasons why a lawyer could have thought that sticking with the current trial record and jury would better serve May's interests than would a new trial." I'm unable to explain why that happened. And what had happened was that the jury had deadlocked, and the judge had released the jury, and then the jury asked, well, maybe on second thought maybe we'd like to keep deliberating. And the judge quickly asked, counsel, do you mind if the jury convenience and trial counsel said, no, I don't mind. And May's counsel said, no, we don't mind. And then they ultimately, upon reconvening, convicted him, and I'm at a loss to explain why that happened.

Andy 1:00:23

Okay. The dissent stated the panel's original decision affirming habeas relief "was correct then" and "correct now..." Do you agree?

Larry 1:00:35

I do indeed agree. With the dissenting judge on the panel on the panel.

Andy 1:00:42

Now you stated earlier that this latest petition for search theory--I only know how to say it as a cert. Can you say the full word please?

Larry 1:00:50

No, I forgot how to pronounce it.

Andy 1:00:53

Alright, grant cert is novel and creative. I thought Stephen had a dream team of lawyers all along. How do they overlook this novel argument for so long? It would seem that they should have contested all litigation after Judge Wake ordered his release.

Larry 1:01:10

I agree. I agree. The petition states, "on February 9, 2022, less than one year after the mandate issued, new counsel—who was not part of Petitioner's original defense team—recognized that the federal courts had lost subject-matter jurisdiction when Petitioner [May] was released from state custody without any collateral consequences pursuant to the District Court's unconditional habeas grant." That's what they're arguing.

Andy 1:01:39

And I noted that on page 21, the petition states, "counsel filed a Motion to Recall the Mandate based on lack of subject-matter jurisdiction. Did NARSOL support that effort?"

Larry 1:01:52

We had provided significant support to Mays case. All throughout it. Unfortunately, we did not have much faith in that particular approach. So we didn't join with that. Not because he's definitely has been and is being screwed, but we didn't see motion to recall the mandate as being a viable thing that was likely to happen.

Andy 1:02:13

So to dig into that--the legal team for NARSOL you probably just dissect the whole thing, word for word. And you figure out the pieces that you want to file the motion with, or the brief, what's the term?

Larry 1:02:29

We pick what we can afford to spend our limited resources on. This was not a case that would have lent itself to any fee recovery where we're doing it because it's the right thing to do. This is a significant thing, when the accused has to prove a significant element of the offense, which under that statute as it existed at the time, the accused had to prove that they didn't have a sexual motivation for the touching if the man was a lifeguard, and he was touching minors, at the pool, theoretically, to save their lives. That's the way I understand it.

Andy 1:03:01

But we have to do that in a non-touching capacity, Larry.

Larry 1:03:05

So we looked at it. And we couldn't find any case law that was compelling enough on a recall of a mandate with the jurisdictional claims that they were making their novel, but we couldn't find any indication. And we consulted with a distinguished law professional, we just couldn't find that. So therefore, we said we're out. But that doesn't change the fact that this is a miscarriage of justice.

Andy 1:03:28

And the motion was denied on June 10, 2022, in a four-sentence published order which stated that "motions that assert a judgment is void because of a jurisdictional defect generally' must show that 'the court that rendered judgment lacked even an arguable basis for jurisdiction..." What happens next?

Larry 1:03:51

Well, the Supreme Court has this new cert petition before them, and they will decide whether to grant or deny the petition. My hunch is that it will be denied. And the tragedy of this injustice will continue to be a 75-year sentence, which for all practical purposes is a life sentence for Stephen, and the statute was unconstitutional at the time. His attorney failed miserably to raise that as an issue. His attorney failed miserably. Well, I'm going to back a little bit

about that in terms of letting the jury reconstitute itself. That was a really fast-moving situation where that might have been some viable reason to say I'd rather a hung jury. Keep deliberating. Maybe I'll get it. I'll get a mistrial here. You're going to get the mistrial anyway, so maybe I'll get an acquittal here. If they keep deliberating. But certainly he ought to have raised the constitutional claim. This injustice is sad. But the attorneys created it, and the law limits what can be done in habeas relief, and we need to revisit the Anti-terrorism and Effective Death Penalty Act that was passed. That's really going to be the solution. Give him another bite at the apple under different rules, and not the rules are the way they are now. And nothing's going to change.

Andy 1:05:12

Wow. All right. And I mean, just we've talked about this a number of times, so maybe 2000, or something petitions for cert hit the Supreme Court and they grant less than 100. So out of this ends up in the pile with the other a couple of grand of them, for them to somehow see this as being something that they want to undertake and correct or wrong. So that doesn't sound like very good odds is what I'm trying to paint the picture of.

Larry 1:05:41

No, that's a little low. The number of cert petitions is usually between 8,000 and 9,000 per year, and I'm sorry, 80 to 90 granted, so you've got about a 1% chance of having a reversal granted. And with those low odds, what would need to happen here is there would have to be a plethora of interest from other states. I can assure you that there's not a single attorney general out there that serves any state in this country that wants the US Supreme Court to grant cert on this. So therefore, there won't be that plethora of friends of the court brief. Remember that? Through this podcast we've talked about there was one issue where there was like a group of attorneys general that put in a dozen or more amicus briefs. He's not going to have that level of support. The Supreme Court is not likely to see this as something earth shattering. Now, that doesn't mean that you can't get to the requisite four because it takes four to be interested that there's something of significant public importance. To me. The burden shifting of an unconstitutional statute is of great public importance. But that's not the issue before the court. The issue before the court now, is whether or not subject matter jurisdiction was lost when they released Stephen May. Although the petition contains all the nuances of the case, that is not before them now. Before them now is did the habeas court loses jurisdiction, or did they not? If you take that to its logical conclusion, Stephen has now argued that he would have preferred not to have been released, when Judge Wake found in his favor. He would have preferred to have sat in prison while all the appeals were taking place. I don't

think that we really want that to be the outcome that no judge could ever release a person from custody, or they're going to forfeit jurisdiction.

Andy 1:07:49

I gotcha. Yeah. And have you invented that time machine that lets you go back and undo a decision that you made some time in the past? Yes. All right, well, then maybe Mr. Miyagi, can use that and help it out. That's really crappy. Someone in chat said so he got 75 years for, like, touching kids as a lifeguard in the course of doing the duty of being a lifeguard.

Larry 1:08:19

Yes, because they claimed that even though he was alleging that he was doing his job, that there was a sexual motivation, and he was sexualizing these minors by where he was touching them and how he was touching them. That's their allegation. And Arizona is a tough state. He went to trial, he got convicted, and he got a very lengthy sentence.

Andy 1:08:44

The follow up in chat says even if there is quote unquote, unacceptable touching in a public place--75 years?

Larry 1:08:53

It's amazing. 75 years for touching. Can you imagine if he'd actually done something?

Andy 1:08:59

I have wondered what if somehow pushed the envelope and gone to the next stages, where would they go? I mean, do you bury the person under the jail? Do you take them to the nearest ocean and given them concrete shoes?

Larry 1:09:15

Well, I mean, I'm minimizing it a little bit I mean, for this is a family program, but there were apparently some allegations of some significant touching, but still, no matter what was done--75 years? We don't need people in prison for 75 years very often. We just don't.

Andy 1:09:33

So that's a long, long, long, long, long, long, long time. Very good, sir. Thank you for all your efforts as always. And we got two new patrons. Aracely, our guest tonight, became one of our new patrons. And then we had another person join. I sent you a question from that person.

Larry 1:09:52

Did she come in at 1400 per month?

Andy 1:09:55

Slightly less than that it was close. And then we had an annual set up by a person named Dustin. So thank you so very much for becoming patrons. I really appreciate it. Is there anything else you want to go over before we get out of here?

Larry 1:10:11

Not anything in this episode, but I'm looking forward to next week. What do you have in store? You don't know yet, do you?

Andy 1:10:18

I have no idea what we're going to do next week. It will be next week. Okay. I hope you have a wonderful night. So go find all the information that you need to either at registrym.co or fypeducation.org. You can find all the stuff that you need to find. And I hope that you and all the people in internet land have a wonderful, fantastic evening, and I'll talk to you soon.

Larry 1:10:45

Good night. Bye.

Announcer 1:10:51

You've been listening to F.Y.P.

You've been listening to Registry Matters Podcast.

Registry Matters Podcast is a production of FYP Education.

More show transcripts are available at <https://RegistryMatters.co> (that's right... just C O with no M)

In prison and can't get the podcast? Have a loved one "subscribe" at <https://patreon.com/registrymatters> at the **\$15 level**, and include your prison address information. Or send a check to cover at least 3 months.

REGISTRY MATTERS
MAIL-IN SUBSCRIPTION FORM

Sign me up for _____ months X \$6 = \$ _____
(Minimum 3 months) * **We do accept books or sheets of stamps. No singles please.**

First Name

Last Name

Name of Institution

ID Number

Address

City

State

Zip Code

**Make check payable to FYP Education and send to RM Podcast,
Post Office Box 36123, Albuquerque, NM 87176**