



## Registry Matters Podcast

Episode 260

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### RM260: Plea Bargains

Announcer 00:00

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Andy 00:17

Recording live from FYP studios, east and west, transmitting across the internet, this is Episode 260 of Registry Matters. How are you this evening?

Larry 00:30

I am doing marvelous here. I'm ready for a great program. So let's fire this thing up.

Andy 00:36

Alright, so diving right in. And let's cover this now. So first of all, we had a whole bunch of new viewers because of a, I guess we could call it amplification, that NARSOL sent out a post, giving us some kudos for covering the Rhode Island case that we covered last week. So welcome to all of you new YouTube people. But I also want to make sure that everyone knows that this is actually a podcast. And so please find your favorite podcast app and search for Registry Matters. And you can download it, and then it's on your beautiful phone. And while you're driving to work, or you're doing house chores, you can put on your headphones, and you can listen to the program, all just the same. That's my preferred way to catch these things. But I know that you're big on the YouTube thing, which is great, because maybe one day we can actually turn on the button that says monetize, I know that would excite you.

Larry 01:23

Because it's going to be a \$40,000 a month payout, just like these people who tell these falsehoods about Social Security and various things. Now it's the banking crisis. They're making gobs of money scaring people about their money while not a dime has ever been lost in an insured deposit account.

Andy 01:41

And, you know, just to noodle around there, I was listening to a tech heavy podcast, and they were talking about that, that maybe 72 hours into it, then the government said that they would cover everyone's deposits no matter how big it is. So then all it really was a bank run.

Larry 01:59

That's all it was to begin with. It was a bank run. And the bank caused it. The bank was well capitalized. That was never any reason for people to be afraid other than the fact that there was a large ratio of uninsured deposits in that particular institution, Silicon Valley, because of the great wealth that created and supported that bank. 90% of the depositors were

over the \$250,000 FDIC limit. Those sophisticated people started running the bank because they got word that the bank might be insolvent while the bank wasn't insolvent. The bank was as solid as it has had ever been. They were sitting on United States treasuries which are safe, which are always generally deemed as a place to put excess cash. And that's what they were doing. But the problem is the rising interest rates to treasuries had declined in market resale value. And they began to need that money because of the deposit run, which continued to accelerate when all the "geniuses" kept spreading the word about how dangerous the bank was. And no bank can withstand a run. Not a single bank in the land can withstand a run because the bank doesn't have all your deposits in cash. They just don't. They have at most 10%.

Andy 03:11

And an angle that I hadn't considered is that a small company uses ADP, the payroll processing place. So you the small business would send your money to ADP, and then ADP would send all the payments out to the employees. But ADP might have had their money in the Silicon Valley Bank, and then they could not make payroll. And that obviously disrupts a bunch of people's lives that have nothing to do with Silicon Valley.

Larry 03:39

That is correct. And it was the prudent thing to do to cover the deposits. Because every bank has uninsured depositors. And if you don't cover the deposits of uninsured people, those who have greater deposits at FDIC limits, then you would have a run across the spectrum of people saying, well, I've got to get underneath the deposit limit. Because this bank failed taught us a lesson that we can lose our money. And that would be an unsustainable position because most banks have greater than 10% of their deposits as uninsured. And at most, they're going to have 10% capital. That's considered well capitalized. And banks can't put all the money in cash. If they did that, they would not be able to pay employees for their salaries. They would not be able to pay benefits, they wouldn't be able to pay federal deposit insurance, they wouldn't be able to pay rent, they wouldn't be able to pay for marketing, wouldn't be able to pay for technology costs, or other things they would not be able to pay for. So, therefore, the bank has to deploy those assets for interest earning opportunities.

Andy 04:42

Yep, totally. All right, that was a bit of a detour. Anyway, my whole point was, make sure that you like and subscribe and press all the buttons and do all the whiz bang things that we need you to do so that we can have a happy successful place that we live here on YouTube and podcast apps. We're also on Pandora and Spotify. You can find it anywhere. Just search for Registry Matters. And the big blue crisscross logo will show up and click subscribe. And that will make me so happy. So on YouTube, Larry, before we like dive into what are we going to do, which is really important stuff, we need to cover some

terms. Because there were some YouTube questions that people had asked for. And the big one was--would you please explain to the fine audience--What is a PFR?

Larry 05:29

Well, a PFR would be a person who is forced to register. Most people are forced to register. I haven't heard of a lot of volunteers going in for that.

Andy 05:37

You need to come in the Discord server because I found one, but that's a conversation for another day. But okay, so a Person Forced to Register. Very good. Now the second question that someone asked was, so what does FYP stand for? And I gave an answer. And then I asked Chat GPT to give me five examples. And so from here, and then you can chime in with whatever you want to say Larry, but so we have these: Frequent Yoga Practice. Fierce Yet Playful. Fearless Young Prisoners. Freshly Baked Pastries. And Friendly Yellow Parakeet. Now, if you have any that you would like to add to that, feel free.

Larry 06:16

I can't think of any, but I'm not sure which one of those it actually is.

Andy 06:21

Well, then. So without further ado, please give us the rundown what we're going to do tonight.

Larry 06:29

Well, we're going to have you read something from Fort Leavenworth. And we'll chat about it briefly. Then we're going to be talking about a legislative proposal in Louisiana that deals with PFRs. And then we have a segment on the process of plea bargain. And if time permits, we have a potential cert petition at the Supreme Court, except I've already decided we're going to move that over to the next episode. And I think we have a video clip and some commentary about the arrest and conviction of Clayton County Sheriff Victor Hill.

Andy 07:05

Yes, we do. Well, very good. So I will be the reading from our friends at Fort Leavenworth. Let's begin. "I just wanted to quickly address the AP article that you referenced in RM-258 regarding the increase in reported sexual assaults at US military academies, only because I never want this stuff to go unchallenged. I don't have access to the article, but I am sure it is more of the normal number twisting from the same groups I have mentioned before. Let me address the 'outrage on capitol hill.' The 'expanded assistance programs' you mentioned from the article are in the form of thousands of dollars, to say nothing of lightened class loads while in school and choice assignments after. I'm just skimming this topic here, but yes, when you increase enticements to the court, reports will go up, and, of course, they will be higher than civilian universities that do not have similar incentives. What these articles conveniently leave out is that one in five number comes from

surveys of females who say something happened to them at some point in the last year, usually using the dangerously ambiguous, but serious sounding term unwanted sexual contact, which is a journalism term, not a codified crime. Most of those incidents don't get reported. And the ones that do only a small percentage, somewhere around 10% are found with merit. The numbers read a lot different when you phrase it that way. And for the record, these are Department of Defense numbers. You're a legal guy. So you tell me, is there another crime that is measured in unfounded reports? For instance, does saying 'I was robbed last week, but I never reported it' drive down the property values in a neighborhood? In what other instance is legislation based on unfounded claims? That's what makes this topic so unique." So feel free, Larry, we've talked about it. I don't think we've ever come up with one. Is there another type of crime that has only like eyewitness testimony, or they're generating statistical incidents? Based on I guess it would just be hearsay.

Larry 09:16

I'm not aware. I mean, that's a great point in terms of the uniform crime statistics about unreported stuff being counted as criminal activity, and then he makes the point about unwanted advances. And unwanted events are not necessarily a crime. It is not. I can go out on the street all day long and say, "You're cute. Would you like a date?" That's an unwanted advance, but it's not a crime.

Andy 09:41

Would there would there be any action that could be pursued? I mean, if you kept pursuing them, they could do things like restraining orders or whatever, but otherwise, can the police ever do anything to you? I guess they could talk to you, but what else could they do?

Larry 09:57

Well, they could do a stop and talk, but there is nothing unlawful about going out and telling every person you encounter that they're cute, and you'd like to go on a date with him. If you follow them in a way that causes them to have concerns about their safety, then you could be possibly charged with a crime of stalking. But just simply going out and telling them? I have the right to tell you that you're cute all day long. And that's unwanted, but it's not unlawful.

Andy 10:21

Okay, good. All right. Well, then to continue. "Why is this an important distinction? Because, while we will parse the discrepancy in the data, the rest of the country sees a headline and acts accordingly. For example—" during Vordie or dir-- what's this word? I tried to learn how to pronounce it. And I've forgotten.

Larry 10:43

Voir Dire.

Andy 10:44

And what is that?

Larry 10:46

It's a process before a tribunal convenes a trial. You're selecting the members of the tribunal. In the civilian world it would be a jury. But you're trying to find out if they can be fair and impartial. So you go through these questions, either their attorneys or the court itself, but usually they're done in advance. Questionnaires are sent to potential jurors to try and find out if they can be fair and impartial.

Andy 11:09

All right, then. All right. "For example, during voir dire a common question to the panel (jury) is 'Do you believe the military is facing an epidemic of sexual assault?' The common answer, of course, is 'yes', but when asked to expound upon this, the most frequent response is 'well, that is what I have heard.' We are basing policy and convicting people on, essentially, urban myth." To close it out. The reality is college students are acting as college students always have, sadly. But now, what once was called regret sex or the walk of shame can lead to a big payout and or other benefits. These anonymous surveys are being answered through a fog of alcohol addled memories, and the numbers are being used to fuel an agenda that seems to have no sign of stopping. The time is coming when everyone will know a man who has had at least been accused of sexual assault sometime in their life. Maybe then, some semblance of sanity will return to the Halls of those who produce legislation.

Larry 12:08

He did a great job, and thanks to the person who took this dictation by telephone. No, it was not me. But I did a little bit of cleanup on it, because I could see what he intended to say. But thanks to the person who took the dictation. We're glad to give him the outlet to say this.

Andy 12:33

Yeah, I don't think this--I don't want to take away from anybody that actually does end up having unwanted advances that then turned into something that goes criminal. I don't want to take any away from that. Because I know that happens. And it's disgusting. And no means no, right? [I've heard that.] But I don't know how you're supposed to, how do we set up some sort of meeting place in the middle. And this is where you go home when we should have singles bars, you go to the middle so that you are sure that the people there are trying to meet people there. I don't know, this is so complicated.

Larry 13:13

That wouldn't fix the problem. Because I can still have buyer's remorse. I can have buyer's remorse and say that was they were too drunk to give consent on and on. I mean, he makes a great point.

Andy 13:24

All right. Well, we will move along, then. Let's move over to Louisiana House Bill 135. What is this legislation seek to do, sir?

Larry 13:37

It would add a section of the statutes of Louisiana that would criminalize a PFR from working in polling locations anywhere in the state of Louisiana.

Andy 13:47

Why in the world would they do that? Like what would be the rationale behind saying a PFR cannot work at a polling station?

Larry 13:55

I did try calling the sponsor, but he didn't pick up, so I don't know.

Andy 14:00

Alright, well, there's been considerable chatter on NARSOL's affiliates list today. And you told me that in pre-show, you were not convinced that the strategy being discussed is the best approach. Can you tell me and tell the audience, with some of your brilliance, what they should do instead?

Larry 14:19

Well, I freely admit that I don't have all the answers. My strategy may not work. And I admit that, but I just want everyone to understand that if they argue recidivism, it is most unlikely to be successful. And that's where everybody wants to go.

Andy 14:35

Ah, what would you do instead?

Larry 14:37

Well, first, you must recognize that the Democratic party cannot help you in Louisiana. People tend to because the Democrats are quote, a soft on crime. They tend to want to run to the Democratic Party. The Democratic Party cannot help you in Louisiana. This means that, that you shouldn't take any trips to see Democrats because they really can't help a battle maybe we'll be one Under last with the Republicans.

Andy 15:03

I'm imagining that the split there is like 80/20, or something ridiculous for Team Red. [Very close.] That's what I thought. Doesn't Louisiana, though, have a Democratic governor? [They do.] Okay. And didn't one of our patrons recently remind us of that and that state of Louisiana was a Democratic state?

Larry 15:25

Yes. That's why I put this in here. This is directed towards the listener who assured us that it's a Democratic state. The current governor is a Democrat. Unfortunately, that does not make Louisiana a Democratic state. In fact, nothing could be further from the truth. He's the only Democratic office holder on the whole list of statewide offices, including lieutenant governor. Republican Governor John Bel Edwards is an anomaly that occurred due to the flawed candidate on the Republican side in 2015. His opponent was former US Senator David Vitter. Remember the one that added additional

restrictions to keep food stamps from people that had PFR convictions.

Andy 16:04  
That sounds familiar.

Larry 16:07  
And Republicans now have super majorities in both houses of the State Assembly, a long-term Democrat, just switched parties. And that one switch, gave them super majorities.

Andy 16:21  
And remind us what super majority means.

Larry 16:24  
That means that the Republicans have enough votes to override Governor Edwards. And it doesn't matter what Edwards thinks, because with a supermajority, anything that the Republicans want to do, there is no check and balance in the system. And they achieved this super majority status with a longtime Democrat that had been in office since 70 and switched his party affiliation.

Andy 16:47  
And so to move forward, what would you suggest as the best strategy to try and correct these kinds of things?

Larry 16:53  
Well, in my opinion, you must focus on two points if you're to have any hope. Point one. This has to be hammered. This is a solution in search of a problem. There are whole elections are held in public facilities with ample supervision. And at most, I would guess that there's video surveillance, meaning that there's no Hanky Panky going on. So you have to tell the small government people, and this is who we're talking to folks, we're talking to those who claim to be small government, you have to tell them that you have throughout your career stood strong against expansion of government intervention, when there's not a problem. This is a solution that's searching desperately for a problem. That's point one. And point two, this is a big one. And I don't know what your order, I haven't decided I would present this. This proposal will drive up the cost of elections, and make it more difficult for election officials to hire enough poll workers. And again, you're dealing with a conservative, supposedly fiscal, really responsible group that guard every penny with their life and your appeal to their no nonsense approach that the government doesn't need to drive up the costs. Because if you reduce the pool of election workers--you start with this felony and what comes next--that you start with making it more difficult. And you tell them look, it's hard enough for the election poll positions to be filled already. And I guarantee you because I'm in touch with that in my state. We're constantly trying to find old geezers to get into work because that's the only ones we can find to work in polls, and they don't pay enough money. And then you lop off a segment of people that are eligible to work otherwise in the polls, you've just driven up the cost and made the positions more difficult to fill. You tell them that, and you tell them how

important it is that we don't work our older elderly people to death, and that we don't make it more difficult for the people who are trying to run elections to have the workers they need. Throw your recidivism straight into the trash can, because you can't win with that.

Andy 19:05  
And I had some things I was going to say, but they are all kind of snarky. It was suggested that the sponsor be contacted. Do you think that would be a good idea?

Larry 19:14  
It would be but only if you had a personal relationship with a sponsor. The sponsor is Mike Johnson, and he's in leadership, I forget what his position is. But he is in the House leadership. You're not likely to have access to him unless he knows you. And he's not going to because you're a stranger. If he did pick up the phone, a stranger calls him and says this is a bad piece of legislation, he's not likely to dump it and say, "Oh, I didn't think of that." I mean, it's just doesn't work that way.

Andy 19:40  
There you go. Again, you're bringing your name back as Mr. Doom and Gloom. So who should they contact instead? Can't they contact any Democrats? Because what good would that do if all of them voted against it? The supermajority would override them.

Larry 19:54  
What you want to work with the House committee or committees. I don't know how many committees that have or will sign this bill? That's who you want to start with. In addition, you want to find parish election officials as they refer to their county, that's parishes and see if they will join in. And they're not likely to say that they favor PF ours to be working in the polls. But they will say likely say that they have difficulty already recruiting poll workers. And this reduction in eligible workforce will only compound that problem. And that would be my approach or what I would do.

Andy 20:28  
All right, and then a comment was posted that reads, "when you strip someone of their value as a human being and make it where they cannot participate in society in any meaningful way, you strip away any incentive to better themselves as human being." Is that a good approach?

Larry 20:45  
It's a fabulous statement. Unfortunately, it's really far too broad. It really isn't as far down the list of what I would do. If you get a dialogue started. And if you're gaining traction, I would bring that in. But I wouldn't start with that. It sounds kind of vague. You go in and say this is a bad bill. Why is it bad? What if you strip people their dignity? Do you see how I'm saying that really doesn't tie together in a meaningful way to me?

Andy 21:18

I gotcha. And let's say that the bill passes in a sense of the governor can or would he veto? I think we kind of already covered that.

Larry 21:31

So yes, he could, he could definitely veto it. He does possess the power to veto. But a veto is not likely. It's extremely unlikely. Remember that the Republicans have a super majority in both houses. They would move to override immediately. In addition any Democrat who dared to vote with Governor Edwards to sustain the veto would be setting themselves up to be taken out of the next election cycle. And that's just not a good position to put yourself in. And then you got another problem is that Governor Edwards said his final months in office, Louisiana has a strange election cycle where he got elected in 15. He got reelected four years later. He's term limited. So you would be asking people to stand with a lame duck governor, and to vote with him in a futile endeavor because the Republicans have the supermajority status. So you'd have to peel off at least one Republican. You'd have to reach for the stars and find a Republican that would not vote to override. And they would be stripped of their committee chairmanships rating committee decent committee assignments, if they did that, by the Republican leadership. And you will be asking people to vote to sustain in a futile endeavor, so that they could be taken out of office in the next election cycle. That is just not a reasonable expectation to impose on them. They will vote to override John Bel Edwards if this gets to his desk.

Andy 23:05

I'm not going to articulate this very, very delicately or very well. But it seems that in the last presidential election, we learned that the ballot counting places are very well camera--fide. And I would imagine then that there is some level of cameras at the polling stations. What is someone going to do in a public building to where they could--Why would somebody even--? I don't even understand where this would come from, to be introduced that Oh, my God, we have to fix this loophole of a PFR is working at polling stations. I can't even imagine that this is a thing?

Larry 23:45

Well, again, I'm not in Louisiana. So I don't know that I could give you anything other than a speculation. But if the sponsor has risen to House leadership, he likely has a safe seat. So he's not worried about his reelection. He's likely in a safe seat. You're generally, not always, but generally the people who have strong backing in their districts are likely to be a leadership because there's so many enemies, you can make in leadership that they can cost you that seat. And you don't want to expose the person, particularly when a thin majority. Now they don't have just the majority, they have supermajority. So he's likely in a safe seat. So probably, I would guess, that some constituent voted and approached him and said, "You're not going to believe this. But I went to vote. And I took my nine year old to the polls, and you wouldn't believe who was sitting there to check me in at the poll location. It was

a person on the PFR registry. And something ought to be done about that." And he checked the records and he says, "Oh, well I see that you've given me donations and you've been hosting house parties and stuff from me for 22 years I've been in office. And I don't think it's that long. But yes, something to be done about that I'll carry a bill." And he, if the bill doesn't pass, he's not going to lose his office. How hard he's going to work the bill. I don't know. But if this bill gets on the floor and gets any traction, folks, you can't stop it. If it gets to the governor, the governor will sign it. So yeah, you guys that are all dead set against voting for any Democrats, you need to go contact the Republicans, and you need to try to win over one or two of them if you want to try to stop this in key committees. Otherwise, if it gets to the governor, it's going to become law.

Andy 25:38

Ah, I need to post that Doom and Gloom picture of you again. Anything else here? Before we move along?

Larry 25:45

I think I'm done. There are at least 1000 questions in live chat.

Andy 25:50

The only thing that I think--well, first of all, Brian, from Louisiana says he hasn't been here in a while, and the one night, he joins and we're talking about Louisiana, which is super-duper coincidental. But I did see--oh, is this a NIMBY law? Is it not in my backyard, which is kind of what you just described, as somebody going to a polling station. I know you're speculating. But that does sound like a legit reason that this would have come about?

Larry 26:11

Well, I say that because I haven't seen this making its way around the nation. Therefore, it may be unique to Louisiana. But when we start seeing this in other states, then we'll know that there are advocacies pushing it, but right now, I'm not familiar with this bill. Maybe some of our chat people, particularly those one in Maryland, if this has made its way through Maryland can help. But I think it's unique.

Andy 26:33

But to go back to you talking about the poll workers, don't we struggle to find anybody to go in there and be a poll worker, and generally, they're 150 years old?

Larry 26:45

That's what I mentioned earlier. It's very difficult to get those positions. It's very difficult. And that's your appeal to the conservative, responsible, fiscally frugal people, again. We don't want to make it more difficult for our election administrators to find and fill these job positions.

Andy 27:06

We would have to drive up and make them pay more to incentivize more people to show up.

Larry 27:11

That is correct. And they claim that they're the guardians of the purse. And you remind them of that you say, Look, you know, I have been a great admirer of how fiscally responsible you've been throughout your career. Now we need to hold fast and tight to that fiscal responsibility. This is not something responsible. What comes next after this, this is a slippery slope, you turn their arguments on them. Next is going to be people who have dealt drugs, and who's going to come next? And before you know it, we won't have any former people with a criminal record allowed to work in polling locations. This is silly, absurd, and must be killed.

Announcer 27:50

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Andy 28:40

Do you want to talk about plea bargains now?

Larry 28:43

I do. We're getting a lot of wouldn't say a lot. But we're getting a steady stream of letters at NARSOL, and occasionally an email to FYP about plea bargains. People don't understand why I don't understand that we could crash the system. What if we would just all unite together? So I'm going to have a discussion tonight about plea bargains because I'm going to let the people educate me about what I don't understand.

Andy 29:12

So to be fair, you don't because pretty much the day that I stepped into the county jail, someone was saying everyone should dig into trial that way. You know, the system would collapse, and they couldn't have all the people locked up. And I thought that that didn't sound like the worst of ideas. "My Public Defender pressured me to plead guilty and I now regret it. This is my first felony, and the justice system seems totally rigged and so unfair. He told me that things would go much better for me if I accepted the plea bargain and that it was a good deal. It sent me to prison for nine years. So much for a good deal?" Can you admit that the plea process is broken?

Larry 29:54

Yes, I can admit that. Unfortunately, there's not an alternative on the horizon.

Andy 30:00

He went on to say "the police broke every rule in the book: they lied to me and said they would get me help if I cooperated

and made numerous threats of bad things if I didn't. At one point, I asked if I should have a lawyer. They said no. I cooperated with them, and I am now serving a lengthy prison sentence. Why is it that the police are allowed to lie and nothing about that is ever mentioned in court while they were allowed to make me look like a monster when I was sentenced? This is not fair." Is it fair?

Larry 30:29

Well, I don't know the specifics of this case. So I can't really say if it's fair. It could be a very good outcome, depending on all the facts of the case. I will point out that he did not say if this was his first felony.

Andy 30:43

Why does that even matter?

Larry 30:46

Well, if he had a previous felony, he could have been subjected to an enhancement, which in some cases can be life in prison? I'd say nine years is preferable to life, wouldn't you?

Andy 30:57

I would argue that life is worse than nine. So you have a way of justifying the impossible. What am I missing?

Larry 31:06

Well, first, we would need to know what the potential incarceration was he was facing if he had taken the case to trial, meaning convicted on all counts. And they had sentenced consecutively, what would he have been looking at? Second, we would need to know if he confessed, which would have given the prosecution a very strong hand to play. And third, we would need to know if there was a victim. And would that person have made a credible witness? Had there been a trial? All those things would help me to formulate an opinion if I knew those things.

Andy 31:42

And while we're sitting right there, roll back, I don't know, 20 episodes, and go find "don't talk to the police" and make sure that that rule is adhere to. Well, how can you justify what he said next. He stated that the police lied and promised him that if he cooperated, they would offer help. What spin do you have happen to have for this one?

Larry 32:03

Well, the police are generally allowed to lie without any consequences. So that's my spin. That is why it's so vitally important that a suspect not speak with police without some criminal defense attorney. The theory is that all the benefits of the reduced sentence would remedy any of the police misconduct, including lying. That's the theory about plea bargaining is that you as a defense attorney, you make your argument to the prosecutor. Well, the cops did this wrong by lying. It's not wrong, in terms of legally, but anything that they did in the way of breaking the rules of evidence--if they searched without a warrant, if they didn't properly mirandize,

you'd make that argument the prosecutor you're off to I've got a good motion I can make here. But in terms of lying, you've not got a leg to stand on.

Andy 32:53

Let me get this straight, though. The police can use a deceptive interrogation tactics and that's not a problem.

Larry 33:00

You're correct. In *Frazier v. Cupp*, 394 U.S. 731 (1969), the United States Supreme Court affirmed the legality of deceptive interrogation tactics. Acting on a tip, police picked up and interrogated Martin E. Frazier, a 20-year-old U.S. Marine, about his possible involvement in the murder of Russell Anton Marleau. They lied to him, and he confessed based on the deceptive statement. And the Supreme Court said, well doesn't matter. He confessed.

Andy 33:35

And it's like I'm not going to let you off that easily. Because we have an article here. "Plea bargaining is broken; we can fix it," from the Las Vegas Sun Newspaper. It says, 'when Carolyn Jean Hamm was found hanged in her basement in Arlington, Va., police suspected a 'strange' young man seen in the area named David Vasquez. Prosecutors, aware of significant weaknesses in the case, offered him a deal. The deal was 'if he entered an Alford plea, which allowed him to claim innocence in open court while pleading guilty to rape and murder, prosecutors would take the death penalty off the table.' As it turned out, he did not do it. Can you finally admit that it was not a good deal?

Larry 34:17

Oh, no, I cannot admit that. He might not be alive today but for the plea deal. So I'd say that it might have been a great deal. But remember that that took the death penalty off the table.

Andy 34:33

Except he might not have been guilty.

Larry 34:38

Well, but he also might be dead.

Andy 34:41

That's true, but innocent until proven guilty, though, right?

Larry 34:47

Well, but if they had convicted him with the weak evidence that that's a big enough, but he might be dead. So I would say that the plea bargain may have saved his life.

Andy 34:59

Maybe. All right, well, the article states "prosecutors eventually learned the plea offer they had made to guarantee a conviction in a weak case had actually coerced an innocent man to falsely plead guilty. Moreover, that coercive bargain had allowed a serial killer to kill again. In total, 13 women were attacked by the man who became known as the 'Southside

Strangler.'" And so back to Mr. David Vasquez, who was innocent. What do you have to say to that?

Larry 35:24

I'd say it's clearly a tragedy in this case.

Andy 35:30

"The Plea Bargain Task Force, a group convened by the American Bar Association's Criminal Justice Section, has studied the problem for four years. This task force is a bipartisan group of prosecutors, defense attorneys, judges, academics and members of various think tanks and advocacy organizations. In a new report, the task force proposes several major steps that we think can be taken by legislatures, lawyers, judges and court administrators to create a fairer and more transparent plea-bargaining system." Has it always been this way?

Larry 36:00

No, it hasn't. In the 1960s, way back when I was probably approaching my retirement age, the trial rate was four times higher than it is today. More cases were proceeding to trial where a citizen jury could test the credibility of witnesses and the strength of the prosecutor's case. And where misconduct by police and other government actors could be discovered. But a higher trial rate also meant that appellate courts regularly had time and important issues to decide that would create precedential guidance for lawyers. This is no longer the situation today, because the rules have changed, like when you don't plea out of the federal system. You get enhancements, if you're found guilty, just for mere avoiding responsibility. So it's like all the rules have changed. And so beyond that is the strength of the cases with the evidence we have today. Forensics were in infancy in the 1960s. Would you agree with that? [Certainly] Compared to those forensics, the cases the cases are a lot stronger today and what they have against you. They have evidence we couldn't have even dreamed about in the 1960s available to them today. They can be powerful in the circumstantial nature of what they have against you, although they may not have eyewitness, but they can have powerful circumstantial evidence. And it might be totally innocent circumstantial evidence. What happens if you pick up a hitchhiker, and later the next person who picks them up kills them, and they find the DNA in your car of the of the dead person? That's powerful? [Yep.] So you have a tough time explaining to a jury how a person was found dead later, and their DNA is in your car.

Andy 37:48

The article noted "that the current trial rate in most of the country for felonies, however, hovers around 2%. In today's courtrooms, defendants rarely opt for a trial; instead, they plead guilty in exchange for some benefit. These "deals" are often so lopsided that even innocent people like Vasquez will plead guilty." Do you agree to that?

Larry 38:12

I do agree to that. Yes, I agree with that completely. We need more trials to promote accountability. But I don't see it happening. There would be too many things we would have to change. We also need fairer and more transparent plea agreements for those who decide to plead guilty. A lot of people don't even understand despite the fact that they stay state in open court where they get that litany of questions. They didn't understand completely what they were doing. It was a big fog to them.

Andy 38:47

And you're only--at least in my case--I was only made aware of all the things that I was agreeing to the day of court and signing over all of those things. And you're in a crowded courtroom and it was certainly noisy, and you're attached to like the holding cell thing. So that's a whole big pocket of noise. And then you're trying to talk through the glass to your attorney. Like you can't hear an effing thing. She is trying to explain to me, do you agree to this? And I'm like, Ha, because all I hear is, oh, like, what? And then we're getting yelled at from the courtroom, that we're being too loud.

Larry 39:23

So well. And now, in theory you could have when the judge said, do you understand all this? You could have said No, Your Honor, I couldn't understand anything that was being said by my attorney. That was all garbled, I was talking through a speaker. And I was being told to hush. And No, Your Honor. I don't understand to say you could have done that.

Andy 39:42

I'm not even sure what that would have done for me other than a kick the can down the road for later. I mean, I just don't even understand what that would have done for me. This is baked into the cake.

Larry 39:54

What it would have done is the judge would have stopped that proceeding. And a judge would have said "Counsel have you not spent any time with your client to explain this," and the attorney would say, "No, Your Honor, I've got a very heavy caseload. And today's the first day I've gone over the plea." And the judge would say, "We're going to reschedule this. And if it's still your client's intention to plead guilty, you will go over this thoroughly. And you'll come back into court and we're going to set to settle next calendar. We'll see you in six weeks." That's what the judge would have done.

Andy 40:24

Right. So again, it wouldn't really have changed anything other than my understanding of all the pieces of the puzzle. But all of that to say, I bet you almost everybody that does this is in the same boat as me.

Larry 40:37

You are correct. And therefore we need to fix that. We need to make sure a judge could ask the person after it rather than ask

him a question. The judge could say "we've got a plea here. Mr. Defendant, can you tell us what it is you're doing here? Can you explain to the court what we're doing here today?" "Your Honor, I came to plead guilty." "Are you pleading guilty because you are guilty? Did you commit the crimes? Let me read the indictment,"--or there may not be the indictment, it may be the charges that you've read the police. "Let me read the charges. Are you pleading to these because you actually did commit these offenses?" "Yes." "Okay. So just to be clear, no one has made any promises or, or threatened you in any way. This is your admissions that all these dates, and you would read from the document. You did commit this behavior?" "Yes." "Okay. Now you're giving up a lot of your rights. Do you understand what rights you're giving up?" "Yes." "Well, okay, recite a few of those to tell me what rights are giving up."

Andy 41:41

It wouldn't take anyone except giving up my rights to own a gun.

Larry 41:44

Well, primarily in the police process, you're giving up your right to confront and cross examine. And to point out all the things that the writer of this question mentioned about the police misbehavior, you're not able to bring that in at that point because it's no longer relevant. You're pleading guilty. So what the police did is no longer relevant. But you would want to defend it to be able to explain to you a few things that they're surrendering and where their rights. And a judge would say, your list is not all inclusive, but you have identified that you understand that this is going to put an end to this case, you will also be forfeiting a whole litany of rights that I'm going to go through with you. And if it's still your desire to plead guilty, after I've gone through all this, then we'll continue this process. You're going to lengthen the process by a number of minutes each time. But also you're going to have people not being able to come back and say they don't understand what they're doing because we want you to understand what you're doing. At least I do when you're surrendering all these rights. I want you don't understand what you're doing. This is a lifetime decision you're making that cannot be reversed.

Andy 42:49

To read the conclusion, "We recommend that prosecutors never threaten to increase the charges or sentence for a defendant like Vasquez to force the case to resolution without a trial. Why like why would that one even be brought up Larry?"

Larry 43:08

Family members can be legitimately brought into it. You remember with Bernie Madoff that it's quite possible that his spouse knew what he was doing and may have even been compensated. The government may have had evidence of that. It is quite fair to say Bernie, hey, you know, this is the evidence we have on your wife. Now, we don't want to charge her, but we may have to.



Andy 43:33

But it says, "Nor should they threaten family members to induce a plea. We also conclude that guilty pleas should not result from using impermissibly coercive incentives. We also recommend adopting more transparent plea procedures and collecting more data, including a more detailed record of each case that charts the plea offers and reasons for those offers." Do you agree?

Larry 43:58

I mostly agree. But I don't think taking family members out of the equation is something I completely agree with. Because sometimes family members are fully involved or tangentially involved. And therefore that is a legitimate offer to make to an accused. Do you want this person to go down with you? If you don't, we've got a deal for you.

Andy 44:24

A person in chat says, "what I hate about plea bargains is you waive your right to appeal. There should be a way to appeal if you have new evidence in your favor, et cetera." I find it hard to swallow you could probably find a reason to appeal if you were guilty in a trial, but not if you pled out.

Larry 44:43

So the question is what?

Andy 44:46

Well, I guess it wasn't a question, but he said what he hates. So what would be your response then? Would there be a way to plead out, but then because there's overwhelming evidence, and you still know that you're innocent. And then you find some evidence down the line that would make it useful for you to bring it back into court to try and reverse it. Just because you took a plea. Shouldn't the end result be the same in taking a plea versus taking it to trial?

Larry 45:13

It would depend on when the evidence was found, and it wasn't available at the time you did the plea. If you find totally new evidence that was not available, there's a good possibility you can get back into court if that evidence is strong enough that it would exonerate you. But it has to be pretty powerful evidence. It can't be speculative. People come in and say well if my attorney had done this, the court looks at that and asks how would that change the outcome if they had done that? But if there's conclusive evidence of innocence, you can generally find a way. Not always. But generally, you can find a way to get back into court to air that new evidence. But remember, you have said you did this thing. So it takes overwhelming evidence of your innocence, not just a theory of what could have happened, you have to have overwhelming evidence that what you are convicted of didn't happen, you didn't do it.

Andy 46:13

I knew some people that took plea deals that were like 10 years, and they were potentially going to get sentenced to 40.

And you will cave even if you're minorly guilty. And you'll take the plea deal, just like this dude being accused of doing the killing and the raping, and he was like completely innocent. But because you won't get the death penalty, or taking away life and like, okay, I guess I don't have to die. And maybe I get another day in court, perhaps. But I guess if he took a plea deal, does he ever get out if he took a plea?

Larry 46:49

Well, he paid. It depends. What, you always want a straight answer? It depends. You can take a plea. And if you have proof of your innocence, you might get out. If you take a plea, and you just don't like the taste of it. If you got it. No, you're not going to get out in certain circumstances.

Andy 47:08

So they found the dude that did the actual 13 murders or whatever. Did he get out after that?

Larry 47:11

I believe he got out. But if he had been executed, he would not be getting out.

Andy 47:21

But he would have gotten out Larry. They wouldn't hold him in there.

Larry 47:25

Well, you have a point there, they would release.

Andy 47:30

Sorry, that was a dark turn that we just took right there. All right. It's just a dirty system. That's all I got to say. I'm not saying that we can figure out a better way. Some of these recommendations do seem that it would make it better or the prosecutor never threatened to increase the charges or sentence for a defendant like Vasquez to force the case to resolution without trial. So like you said, in the federal system if you don't plead out, there are enhancements. That's definitely a value add, I guess. If you take the plea deal and you know, here's your five years instead of 30, or 40.

Larry 48:08

That is correct. And then there's a political component as well. Remember, we had a presidential candidate in 2016, whose name is escaping me. But he promised to be the law and order President candidate, and he ordered his attorney general to seek maximum charges and maximum penalties. Do you remember that?

Andy 48:25

I do recall that. And the previous one was kind of hitting people with kid gloves for certain kinds of charges.

Larry 48:31

That is correct. So there's a political component of this as well. We have to be careful who we're voting for. And if they tell you

they're going to seek maximum penalties, and they're going to be the law and order person, please take them at their word.

Andy 48:45

Well, very good. Let's move along because we are starting to run out of time, and you wanted to mention the conviction of Clayton County Sheriff Victor Hill. "Mr. Hill was convicted of violating the civil rights of people in his custody by unnecessarily strapping them into restraint chairs. He was sentenced Tuesday to serve a year and a half in prison. A jury in October convicted on six of seven federal charges. Prosecutors had asked for a sentence of three years and 10 months in prison, while defense attorneys asked for a sentence of probation, home confinement and a fine." Do you think that's a just outcome?

Larry 49:22

Yeah, I think we need to play the video to set it up a little bit better.

Andy 49:26

Okay, I will we will go play this video then. Here's the clip hopefully.

Reporter 49:42

"During the sentencing four character witnesses spoke on his behalf, including interim Sheriff Lavon Allen. Each one of them talked about Hill's positive work out in the community. But Prosecutors argued Hill's conduct inside the jail was an affront to our criminal justice system, and that he tortured people by ordering them held in restraint chairs. Judge Ross told everyone in the courtroom that she truly struggled with this case, and reminded the public that she was not here to punish Victor Hill for everything he's ever done or ever been accused up. Though before announcing Hill's sentence, she had some choice words for the former sheriff. As much as you love the law, your love of power overcame that Ross told Hill more than once judge Ross brought up hills arrogance and said she prays he will sit down for a moment and think about everything. In a video statement, Assistant Special Agent in Charge, Chris McCray, with the FBI, Atlanta says everyone pays a price when law enforcement officials abuse their power."

Special Agent Chris McCray 50:50

The sentencing today should send a strong message to any law enforcement officer who wants to follow their own version of the law. As I said at the indictment of the ex-Sheriff Victor Hill, a badge doesn't come with the authority to ignore the Constitution. It comes with the responsibility to protect it.

Reporter 51:11

Just before learning his sentence. Sheriff Hill told Judge Ross, his intent was never to hurt anybody. Hill's defense attorney, Drew Findling, says they will appeal and called the Justice Department's prosecution of the former Sheriff selective.

Defense Attorney Drew Findling. 51:27

--the fact that he's been singled out.

Andy 51:30

I'll stop it there, though.

Larry 51:31

That's actually a great segment that you played. I was having trouble trying to figure out what part, but that's actually a great segment to play. And I liked that comment about he was singled out. He was singled out. Now he wasn't saying he broke the law.

Andy 51:47

And not just laws. He broke the civil rights, which are more than laws.

Larry 51:51

So you had a question? Is this a just outcome? [Yes] Yes, it is. Mr. Hill will derive no additional benefit from a longer period of incarceration than what was imposed on him. So yes, I think it is.

Andy 52:05

You don't necessarily think that he was violating civil liberties that he shouldn't have some sort of equivalent kind of civil liberty reduction applied to him?

Larry 52:18

Well, I think 18 months in a federal prison as a former law enforcement, followed by six years of supervised release is a significant diminishment of his liberty. And yes, I think that is an adequate sentence for Mr. Hill.

Andy 52:32

"In addition to the prison term, US District Judge Eleanor Ross ordered him to serve six years under supervised supervision, once he is released during that period, he must perform 100 hours of community service and cannot work in law enforcement or serve as a consultant to a law enforcement agency." So do you think that all works out okay?

Larry 52:53

I do. I think that this former law enforcement officer is going to have a really tough time in prison. And you know, what would what would you think an alternative would be for him? What would you have them do?

Andy 53:06

Wouldn't they put him somewhere special, like not just in general population. I don't think they do that. Because he could run into people that he locked up.

Larry 53:15

While he likely will run into people he locked up, or there will be people who will get the word out wherever he's placed into BLP system. Yep, no matter where they put him around the country, Victor Hill is going to be marked. And he will not have an easy go of it, no matter where he is.

Andy 53:32

Someone says in chat, they will put him in a soft compound. So you just say that he they should he should be in general population, they should treat him like a normal inmate kind of person.

Larry 53:44

They won't be able to do that because he will need some level of protection. So he'll likely not be running around general population because his life will be in constant danger. He will likely be in some level of protection. And that means that his time will be far more difficult to serve than somebody who can run around in general population work in a camp and have a good job. As far as good jobs go in the federal prison system. Victor Hill will not enjoy all those perks, I don't think.

Andy 54:11

Gotcha. So no club fed for this guy.

Larry 54:14

Well, they may assign him to a camp, but I don't think he's going to be able to be free to roam the camp because the word is going to get out. And someone is going to want to extract revenge on him. Doesn't take a whole lot of money to get someone to want to go after an ex-cop.

Andy 54:31

Just a handful of soups.

Larry 54:33

I don't think it's going to be an easy time for Victor Hill. And I just think that we're minimizing a prison sentence followed by the supervision. So magically we're doing a flip flop here we're saying that all of a sudden we're becoming the lock them up, throw away the key guy. This this is boggling to me if we want to apply any rational basis to this. This guy didn't kill anybody. The restraint chair doesn't kill you. He's not accused of a murder. He's accused of putting someone in a restraint chair that didn't belong. There was more than one person and a restraint chair. I think there were six that were that he was indicted for convicted.

Andy 55:14

I don't disagree. I just compare that to the amount of time that some people serve for certain kinds of crimes, the time that, generally speaking, US citizens spend in prison is exorbitant. And then for this guy to get, quote, unquote, 18 months, seems a little bit on the short side compared to what we give other people for having some illegal substances.

Larry 55:39

I tend to agree that our sentences are too long. We've covered that. And then some people are mad because he's got voluntary surrender. But that's kind of normal in the federal system, a person who has long ties to community, and they've taken their passport away. And often they're under electronic monitoring till they surrender. But there's nothing wrong with

that either. I mean, it's very common in the federal system for self-surrender to be afforded to the defendant.

Andy 56:05

Gotcha. Is there anything else that you want to any of these articles that you want to cover because we have just a handful of minutes to go before, we need to close it out?

Larry 56:15

So well, I just feel like Victor Hill, before we get to anything else, Victor Hill ought not have been doing what he was doing. He's being held accountable. And that's all we ask for, for people to be held accountable. I'm not always quick to lock people up for long periods of time. Accountability is not necessarily the same with a long prison sentence. He was disgraced. His law enforcement certification has been revoked. He was removed from office. He may have lost part of it or all of his pension. He's going to prison. He's coming out as a convicted felon with six years of supervision in the federal system, and this is going to be very tight supervision. It's not as if he got a slap on the wrist. He has been properly admonished. And I don't think additional benefit can accrue from a longer prison sentence, or do anything else to Victor Hill.

Andy 57:05

Because I guess if you make a comparison to PFRs, his whole thing where he can't do any sort of consulting work for law enforcement, and as you said, convicted felon, those are all essentially life sentences of preventing him from working in an area that he would assume, presumably have a lot of experience in.

Larry 57:25

Absolutely. And I'm hoping that Mr. Hill is able to turn his life around like I hope everybody when he comes out of prison. Now there's a chance that he might not actually serve all the time. He said he's going to appeal. And if the appeal is successful, he might not serve all the time. But we'll see. But we can do the Kansas public defender shortage article. That shouldn't take long.

Andy 57:50

All right, let me find one. That's the second one on that list. Let me put it up on the screen for our people. This one reads "Kansas Public Defenders Shortage Reaches Crisis Point. A top public defender in Kansas says the state is at a crisis point on the 60th anniversary of a landmark US Supreme Court decision case that guarantees legal representation for those who can't afford to hire an attorney." Come on you lefty, mumbo jumbo, pointy-headed person. Why did you put this in here?

Larry 58:25

Well, you think after all the years of Gideon versus Wainwright--60 years now this past week--that we would have recognized we need to provide adequate defense. But we're not doing it. We haven't done it. My state hasn't done a good job of it. There's only one state in the country, you know which state that is, that has done a fantastic fabulous job of

defending the energy. And that's up on the Eastern Seaboard about mid-Atlantic region.

Andy 58:52

That would be Maryland which appears pure as driven snow.

Larry 58:56

That would be correct.

Andy 58:59

I guessed that one, actually.

Larry 59:02

But this is this is a tragedy. What I would advise, not that anybody's listening, but every Kansas public defender when they come in and when the judge says state your appearances, are we ready to go? If it's a trial setting? You specify Absolutely, Your Honor. I am not ready to go. And here's what you say. Listen carefully. "Due to the crushing caseload that I have, I will not be able to provide the accused constitutionally adequate defense. So an answer to your question, Your Honor, no, the defense is not ready." I promise you that will kill that case. I mean, it won't kill it indefinitely, but it will get it set back when you pronounced it not ready. Your client will be taken back in handcuffs, and they will cuss you for everything that they can think if they're in custody. But that's what you need to do is you need to say I cannot provide my client constitutionally adequate defense, Your Honor. And if enough public defenders are doing that We're at a situation right now where we don't have enough attorneys. So nobody would be fired like they would have been five years ago. They might fire one, but I doubt they'll even fire one. All of a sudden, the lawmakers in Kansas will discover that they have to provide indigent defense because the system will really back up. And the judges are going to start say, Hey, by documents growing, the prosecution is going to say we can't convicted anybody. Jail administrators are going to say our pretrial detention is going through the roof. And the legislature will act. This is what you need to do. It's not that hard. Just do it.

Andy 1:00:36

Is that significantly different than what we talked about of gumming up the system by no one taking plea deals?

Larry 1:00:42

It is similar but different, because you have an obligation to provide your client constitutionally effective representation. But the judge is asking you, are you ready? That's the same question to the judge's asking you about the plea. And rather than saying, yes, Your Honor, defense is ready, you say No, Your Honor, defense is not ready. No, no, if you are ready to you wouldn't do that. You're not trying to you're trying to obstruct the system. If you have a trial that you're properly prepared, you don't do that. But if you're not prepared, you announce on the record that you're not prepared.

Andy 1:01:18

And remind me, Larry, a public defender, what is their caseload compared to a private attorney?

Larry 1:01:26

Well, depends on what level of charges you're talking about. If you're talking about misdemeanors, it's a much higher threshold. I'd have to look at the charts of what's recommended, but typically, they're carrying double into sometimes triple the caseload of serious felonies. And if you're in like the capital Crimes Division, you may only have a small handful of cases, because capital crimes are very intensive in terms of preparation. Someone's going to go to the gas house or to the electric chair. So you can't handle 40 or 50 active death penalty cases, you might have a dozen. But if you have dealt a felony caseload of drug cases, that's one level of preparation, if you have a felony caseload that are more complicated with forensic stuff with PFR type stuff, that's another. It depends on the division within the office that they're working in. And what type of caseload you're handling. If they're in a really small office where they handle everything, then you have our unique set of circumstances because the public defender may be handling the whole gamut. But like at a larger office, like in Albuquerque, they're handling a similar type caseload. So it's going to depend on the type of case they're handling.

Andy 1:02:38

And my follow up question to that would be, what kind of time does a public defender get to spend with their client versus a paid attorney?

Larry 1:02:47

Well, it varies, of course. But a public defender is mostly going to be spending as a general rule less time because of the heavier caseload. And they're trying to prepare for court spreading themselves over a number of appearances, greater than your privately retained attorney as if you're paying the private attorney \$25,000. He or she can afford to give you more time in a death penalty case, and we don't have death penalty, but in a life in prison murder case life in prison without parole here, a contract public defender only gets paid like six or six or \$7,000. I forget what the amount is, but it's a very low amount of money. And then they have to ask for complex litigation pay if it's a particularly complicated case. That's not much money. And what is that? 20 hours of work at 300 bucks an hour?

Andy 1:03:39

Sounds like it. Yeah. All right. Um, I did have one other question, but I think I'll let it go. Is there anything else we can close out the show now, if you are so inclined,

Larry 1:03:50

I think we can call this quits. Very good.

Andy 1:03:54

Make sure that you head over to registrymatters.co and find all the show notes and everything. And for those of you folks who have joined in recently, we have supporters over at patreon.com. That's p-a-t-a-r-e-o-n.com/registry matters. And for as little as a buck month you can listen to us record the show live. And there are a handful of people in chat, and we can talk and banter. There's a Discord server if you want to come hang out. And it's all a good time. And like I said, even as little as a buck a month, you can show some love for the show. And it really helps to inspire and keep us doing this thing that so many people do enjoy. And by golly, Larry, everyone in chat is saying how smart you are with these really good points about the public defender's that part I can tell you for sure. Um, and so without anything else to say. I think we can head on out of here. Anything else you want to say before we go?

Larry 1:04:42

Have a great week.

Andy 1:04:50

Thanks, man. Have a great night. Talk to you later.

Announcer 1:04:59

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