



Registry Matters Podcast

Episode 261

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Police Stings – Preying on Human Emotions Works

Announcer 00:00

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Andy 00:17

Recording live from FYP studios, east and west, transmitting across the internet. This episode-- holy cow, Larry--261 of Registry Matters. Good evening. How are you?

Larry 00:28

I'm feeling really wonderful. I have had some great chiropractic treatment this past week.

Andy 00:34

You know, I made some sort of derogatory comment about chiropractic care, maybe around episode 10. And someone sent me the biggest nasty gram of all time, and said don't ever talk about that again. Not a fan, not a fan. So Anywho. Well, you actually bounced around and broke your back and all that.

Larry 00:53

They did all those things; they dropped me and pounded me. But I feel better today. The last treatment was yesterday, I feel better today than I felt in some number of weeks now. So there may be something to this Kabuki.

Andy 01:06

There may be, but okay, I'll leave that one alone. So do us a favor, listeners. Please feel free to go over to YouTube. Like, subscribe, and share. Do all those nice find things so that people can find this video and see that you like the same content that other people like and then that whole algorithm will kick in, and we'll get more people watching the videos. Because why are we here? Larry, we're here to help people, right?

Larry 01:32

That's absolutely why we're here.

Andy 01:35

We're not here to lie to people consistently, repeatedly, over and over and like, double down and triple down, and quadruple down on the same lie over and over again.

Larry 01:45

I've heard of some outlets doing that. But no, we probably made mistakes. And we've probably give out some information that is not complete, but we don't deliberately do any of those things. There are channels on YouTube where there's no way that they believe what they're saying. But they have 70,000 or 200,000, or sometimes I think I've seen where people who are

follows approaching a half million subscribers. So apparently, that's what people want.

Andy 02:17

I think that you may be onto something there. But if you do keep telling them the wrong information, then if you, I guess these channels that you're talking about, they're not calling out someone specific. They're not saying Acme Corporation did a bad thing. So that then Acme Corporation would then come back and sue the crap out of you. Is that where they cross the line?

Larry 02:41

That's definitely where they crossed the line. But some of the stuff that they tell people is just fear inducing. It's all intended, in my opinion, just to cause people to be afraid. I mean, there are people who are with 250,000 subscribers, telling them that the banks are all going to be shut down within a month. That's like, really folks, you really believe that.

Andy 03:04

Before we get too far derailed, we have a lot of stuff to go over tonight, please tell me what we will be doing.

Larry 03:10

We've got some questions that are submitted some good questions. And then we got a segment where we're going to pick up where we left off about entrapment. And we've got a couple of guests that are with us. In the past, what was it Episode 252, or something like that? If you say so. And they're going to convince me that I'm all wrong about what I'm saying. They know that they can do it. Now we've got an article or two if we get to it.

Andy 03:40

All right, then. So let us begin. We have a question that came up on the YouTube channel, if I'm not mistaken. An accused inmate is offered a plea deal. He rejects it and is then held for 3 years without a trial and finally gives up and takes the deal. What is the maximum number of years you can be held without a trial?

Larry 04:07

I couldn't help myself when I read this on YouTube. This is one of the best questions that I've seen in a long time. Because there's so many variables, I'm not going to be able to give it an answer without knowing more information. But I can point you in the direction of what you need to look at when you ask that question. And as always, facts do matter. And we don't know enough from this question as it's been presented. My first question would be is the person already on any type of supervision at the time of the recent charge that resulted in detention without bail? If they were on supervision already, a bond hold is not unusual at all. It's very common. It's kind of the norm rather than exception. So another variable would be

if that person had a previous criminal history particularly in a sexual offenses or crime of violence, because then you're talking about risk to the community. And that would factor into the algorithm, or they look at the release ability of a person pretrial. And then has the person ever missed any court dates in the past? That also is a part of the algorithm. If you have missed two court dates, on your previous charges, your past behavior can be used to factor in your reliability to show up in court. But now, if not those things, then we move forward to what would be the assumption that this was the first encounter with the law. And that situation holding a person without bail, this is mostly up to the laws and practices of the jurisdiction. But they do have to be cognizant of the Sixth Amendment, I think it is. Which is, comes into play. Unfortunately, there's no exact amount of time. And it can depend on the complexity of a case. For example, if you're charged with misdemeanor shoplifting, that's not a particularly complicated case to put together. So therefore, a speedy trial time, what would be a reasonable amount of delay for putting together a very simple case, would be far less than a complicated case that involved a whole lot of witnesses, maybe a second or third jurisdiction, maybe multiple defendants. So those type of things figure into the complexity of the case. But in addition, beyond the complexity of the case, there are actions that an accused can take and initiate, they're not counted in the computation of time. For example, if the accused raises a mental health issue and says I'm not competent, that would suspend all the proceedings while competence is being determined. And that time would not be counted in any speedy trial calculation formula. If you the defendant caused the delay. You can't turn around and yell about the thing that you caused. So if you want to be evaluated for competency, six, you're presumed competent, we've got to take that time out of the formula. If you're out on pretrial release, and you skip trial, and hate, that's not his question. But another example, if you don't show up in court, all the time between that schedule setting that you didn't make it appear at an index schedule setting all that will not be counted and the computation because you created that delay. So does that does that help you in any way? Or you're just as confused? Now, as you were before you read the question?

Andy 07:36

Um, I can see where you're going with all of that, and we don't have enough information. I mean, this was just a completely green person off the street, then if they never charged you with anything, I've always heard on TV shows later that if like, we have to release them in 24 or 48 hours if we don't have something to charge them with? I've always heard that I don't know if that's somewhere in some sort of statute that the police have to release you. Right?

Larry 08:01

You're correct. But this one he's been charged he was he just hadn't been brought to trial. But yes, you're, you're asking about a situation where they haven't been formally charged. I'm under the assumption on this question. He has been formally charged. Sure. He's a custody waiting awaiting trial.

And he's wanting to know how long but yes, there are limits to how long you can hold a person. And that, again, varies from jurisdiction. As a general rule, you can find that the southern states are a little more like more conservative, which tends to be primarily the South, but not entirely. Those jurisdictions that are believing law and order are more likely to have more leniency in terms of holding a person without bail for a long period of time. You remember when the pandemic was going on in Georgia, and they've all been suspended everything and Webcor proceedings? Date, they just threw out everything. Because it was a speedy trial, they said, the courts decided, well, we're going to ignore that, and the people can litigate it later. But if, if you tend to get into the more liberal jurisdictions, where are the people don't care about public safety, and they're all about turning loose a tidal wave of crime on the population. Right? Yes, of course, I believe that that just means due process of law, I don't believe that you I've not in any have no desire to turn loose a tidal wave of crime on myself, but also have the utmost respect for the Constitution and due process that we supposedly adhere to. And if it means we have to turn a person loose, I'm okay with it. We'll have to deal with the consequences of that because the Constitution and those protections are there for a reason. But as a general rule, you'll find that the more conservative states a little more tolerant towards those violations and extensions of time.

Andy 09:43

So when I was very young, and I would log on to computer bulletin boards and I would see these messages that would say free Mitnick, and I had no idea what it was. Then later I found out that there's a person named Kevin Mitnick. And as I understand, I have nothing to back this up with, but he was held without charges for five years. We're kind of going off track here. But the DA had convinced the judge that Mitnick could launch a nuclear war with just whistling into a phone. So he was concerned but phone calls and all that stuff, but anyway, that's the way that I understand it. But that's the only time I've ever heard of anyone being held for an extremely long period of time, that didn't have some sort of really violent kind of charges that like in the interest of safety. We can't let you go because these are the allegations against you.

Larry 10:34

I remember that. He was my partner. We used to hacked into their phone systems.

Andy 10:40

Do you remember that he was held like that?

Larry 10:42

I don't remember the specifics, but something along that line? Yes.

Andy 10:46

Okay. You know the name of the person. I'm surprised that you know this person's name.

Larry 10:50

He was supposed to be the one who could do things, like you said with his he knew how to work the telephone system that was activated by tones, and he could whistle those.

Andy 10:59

Yes, correct. Correct. All right. Well, then. So if we're done with that one, there was a part two to this question: You spent a bunch of time on justifying plea bargains. Yet you never really addressed the obvious point that if every one of refuse to bargain, then the system would crash. Can you not duck, Larry, listen carefully, can you not duck that question and admit that the system would crash?

Larry 11:43

Now I embellished it. But that not duck? All he said was can you bet that's fun. That was one of our loyal listeners that emailed me and said, I can't believe that you didn't answer that part. And I said, Well, I don't think it was asked, but I'll answer it now. No, I cannot admit it a bit. I guess I could admit the system with theoretically crash, I could admit that. But it's not going to happen. Because when we go into an attorney-client relationship, we're representing you. And the obligation and ethical oath that the attorney takes is to try to get the best outcome for you. And we have to take a look at what your circumstances are, and what evidence they have against you, and how strong the case is against you. And what would be the downside to you if you got convicted of the charges as they have been leveled by the prosecution. We can't look at some greater cause of trying to save the system or crash the system so that we can invent a new one. We're working within the system as it exists. So our job is to try to protect you. And that's why it's never going to happen. When a person is accused of a crime, we're looking at the facts as they apply to you.

Andy 13:02

I'm with you. And God, if they came at you say, um, you know, if you take it to trial, you'll get 100 years. But if you take this plea, we'll give you less. Who's not going to take that deal?

Larry 13:12

Well, there are cases where you can, if the state doesn't have a great case. But that's generally one of the factors that goes into how great the bargain they offer you. The weaker the case, the better bargain you're going to get because they're trying to assure an outcome. The stronger the case, the less they have to negotiate because they could convict you if need be. So as an accused person, you've got to make sure their case is as weak as possible. That means not signing your confession. And after you've been read your Miranda rights, it means refusing to talk to them when they say I'd like to talk to you. We're from the government, and we're here to help. Well, I'm sorry, I don't believe that anybody from your branch of the government--I don't think you're here to help. You're here to help us secure a conviction. And if you maintain that posture, their cases would be a lot weaker. But lots of times we're handed junk because the person has done everything possible

to make it so that virtually no defense is available. They have a college education. They have told the officers on camera that they understand the English language, and they read it very well. They understand it, and they sign this. They take on and on telling them graphic details of how they did what they did. And then they're surprised when they don't get a great offer. Because we don't need to make a great deal with you. If I'm the prosecutor, I say I've got your videotaped confession, I've got your signed confession. But on the other hand, if you've done none of those things, and the witness is not all that credible, or maybe a little bit weak a good deal might be offered because that closes the case with a victory because once they get you convicted, they don't need to try you. If you mess up under supervision or imprisonment or both, I mean, you may, get out on supervision. If they gave you a split sentence and you come out, and they got their three years, they give you five years to serve, and you come out with two years to serve in the community. They've got two more years to stack up on you prison if you goof up. They don't have to put you on trial. They only have to show by the preponderance of the evidence that you violated your supervision. And you're right back behind bars. That's why they offer great deals. But the great deals are offered to people who have who have not turned all the evidence against themselves.

Andy 15:39

At least one follow up is someone asked what about the trial tax? To take it to trial that they just throw extra stuff on you? So they're calling it a trial tax. I get it.

Larry 15:51

Well, the trial tax is being referred to comes for a number of reasons. When you do a plea bargain, you normally don't plead what we call straight up. Meaning that there's concessions made. It wouldn't be a plea bargain. If we said, Andy, we've got 10 counts on you. And we'll make a deal with you plead guilty, and there's no cap at sentencing. Why the hell would you do that? [Right?] Why would you do that? So we say Andy plead to four of the 10. And the four of the 10 counts would carry a combined exposure of 40 years because they're 10 years. So each count, could be stacked consecutive, we will agree to concurrent sentencing, and we will agree not to oppose probation. You've just cut your exposure down from 10 counts to four, and you've just cut your exposure down from the stacked 40 years to a concurrent 10 years. And you've just eliminated the argument that we vehemently opposed probation. That's a heck of a good deal. Well, the trial tax would be that if you went to trial, you would have the 10 counts time 10 stackable, so the first thing most judges are going to say after the jury comes in with a verdict, the judge is going to know what the last plea offer was. Because I had to sit through this four day trial. And I had to sit through this graphic stuff I didn't want to hear and you got convicted of all 10 counts. What did the state offer you? That's one of the penalties. It's hard for you to argue mitigation if you've taken them to trial. So mitigation is a weak argument when you've gone to trial. So that's a form of another trial tax, because you don't get to make your case for mitigation.

Andy 17:51

And obviously, on the other side, somebody was asking about this in the post show last week that you also if you take the plea deal, you lose your right to appeals and all those other things.

Larry 18:01

You lose virtually all of those rights. And they go through that with you when we're they're doing the plea. And as I mentioned on that episode, I wish that the defendant would actually get to articulate and be asked to articulate that, rather than just answer yes or no. I wish they would say, can you tell us in your own words, what you're giving up here? Because we're about to take a dramatic step that could have the potential to alter your life? Do you understand what you're giving up. Tell the court. I know it would not be very eloquent for many people because they'd be scared senseless. But at least we could get a little bit on the record of what you understood at the time. Now that works both ways. If you do a great job articulating what you're giving up, and then you decide you've had buyer's remorse, you've just screwed yourself even more than what you did with your yes or no answers.

Andy 18:55

Already, then. Well, let's move along. You dropped in a question. This one was typed to you. And it says, "Dear Larry, I happen to be browsing through the law library and was seeking the 42 US Code 1983 statute and wanted to read some of the accompanying federal laws. And I discovered 42 US Code 1982 that all citizens of the United States shall have the same right in every state and territory as enjoyed by white citizens. Therefore to inherit, purchase, lease, sell, hold and convey real and personal property. I am unsure what conveyed means in this context; however, I could read that to mean I could have it any damn color as I feel I want to display the house in a neighborhood. But under the pretext of the registry and residency restrictions, I could say I could choose whom I want to live in my property. Because the federal law laws trump and are superior to state law and regulations, and there are no residency restrictions in SORNA. Would an individual be able to sue the state because I think their legal right to convey their property or rental location to be whomever they feel is appropriate themselves on the registry, even if it is across the street of a particular structure. Thank you for this judicial argument hypothesis. And because of the racial implications of the law, by white citizens, if a person sues, should it be a minority? Thank you very much, respectfully yours.

Larry 20:26

I'm going to ignore that part of the question. But I like the previous paragraph about because federal law trumps, and he's actually on to something that I've been preaching for some amount of time. He doesn't do it as eloquently as he could. But I get the point of what he's trying to convey. I've said for a number of years, that if I were still in property management, I think you'll remember as I say this, now, if I

were still in property management, I would be tempted to sue, because it's not if your damn business how many PFRs I have on my property. That's a managerial decision that I will make. We will determine what's the appropriate level of that in our community. We will assume that risk, and it's none of your business to interfere with me in terms of that. And so I think that there's a case to be made along the lines of what he's trying to articulate here. And if property owners and management groups step forward and say, sorry, you're interfered with an economic write of mine, I get to determine who lives on my property. I think they have a very compelling case to make along these lines. Okay, see, I'm not all gloom and doom.

Andy 21:50

So I should change your picture from this week?

Larry 21:52

Yeah. So you know, he's got he's got something that I've thought about a long time. And I would like to see some litigations kind of similar to the church litigation that I would like to see. I'd like to see for churches to tell the government that there is a separation clause between the government and us. We, the congregation, will determine if we want PFRs amongst us, and we will determine what level of supervision we provide for our own benefit. And we will determine if we want them to be around our children. This is all an internal affair of the church. But he's making a very similar argument here in terms of this.

Andy 22:34

Yep, I understand where you're going with that. It does seem like in the interest of commerce, like who why can they who can they? How can they tell you who you can rent to?

Larry 22:45

Well, they claim that they're not telling you that they're staying for public safety reasons. We're trying to keep them what do they call it? When they when they accumulate? Too many in one area? They have a term for it. It wouldn't be congregating? [Congregating.] Maybe. But well, let's say yes. Because they make it impossible for them to live anywhere. And then when they find a sliver of land, then they get mad because there's a group of them living there.

Andy 23:10

Yeah. They totally make it where like, You're damned if you do damned if you don't. So we created a little community where we can kind of support each other and all that stuff with like, Oh, my God, there's 100 PFR is living in one square mile. We have to disband and disperse them.

Larry 23:24

Yes. Well, I believe that this litigation would not be dismissed on the failure to state a claim upon which relief can be granted. I think this one would survive that dismissal. And I think with proper development, spending a little bit of money, it might get traction.

Andy 23:44

Interesting. How would you go about it, though? Is there a particular state that you would try this first anything.

Larry 23:51

I would try to find a willing property management group that's ready to take the public hit because they're going to take a public hit. They're going to be cast in the public eye as being pro-PFR. It's kind of like a church. I mean, that's the reason why the churches don't do that, though. If they were to take the public posture that we want PFRs in our congregation roaming around the nurseries here at the church, this is not going to be good for the average collection tithe on Sunday. It's not going to be good for the intake. But I would try to find a willing property management group that is fed up with governmental intervention. And I would try to get some conservative lawmakers on board, because I would go and I would spew back to them what they claim they believe in. And I would say you claim that you believe, and the fundamental right to keep the government out of business, and let business decide because business is best prepared and qualified to make these decisions about how to run. And so let's remove the big bad government from this. Of course, they're going to run and talk and they're going to twist and they're going to figure out some way to bypass your arguments. But if you make this argument enough times, you might find a conservative lawmaker to say, wait a minute, we shouldn't be telling ownership groups who they can rent to, and how many. These kinds of things I believe in that person is going to have to be politically secured their seat. For them to fail to do that you can't go find someone who's winning 51 to 49. You got to find someone who's either unopposed or winning 67 to 70% of the vote. That way, they've had a little bit of political capital to burn.

Andy 25:33

I understand. Anything else before we move over to the Cage segment?

Larry 25:40

Let's do it. Cuz I know this is gonna take a little bit of time. We've been preparing this for 10 weeks now.

Andy 25:47

Believe that you're right.

Announcer 25:49

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Andy 26:38

I guess we will be bringing back Aracely. And let me do some reconnoitering here on my system so that they don't see themselves broadcast back. Because boy, is that unnerving. I've done that before, and it messes people up pretty bad. Can you guys see me okay. All right. Let's move along to the Cage section. Aracely, you have some opening comments that you want to make to get things going?

Aracely 27:13

Yes. Hi. First of all, Larry has been preparing for this for 10 weeks. I haven't. I don't know why Larry spent 10 weeks. I've only been there for a few days. But I'm sure Larry's got some really great answers because he's been preparing for 10 weeks now. So um, okay, so to start off with, I wanted to ask, I wanted to talk about a federal law. So I want to, I want to say so those who are convicted of soliciting a minor online are treated in our system the same and many times are treated even more severely than those who have actually sexually assaulted a minor, which is an actual crime of violence. Then why would this crime the crime of soliciting a minor online not be considered a crime of violence when it comes to applying the federal law 18 US Code 373, where police officers and vigilante groups have solicited men on adult dating and hookup sites to commit this crime.

Larry 28:21

On your first point, I'm not sure I agree with your statement. You said, "those convicted of soliciting a minor online are treated in our system the same and many times, even more severely, than those who have actually sexually assaulted a minor. This neglects the salient point that very few contact offenses are prosecuted in the federal system. The federal system is extremely harsh in the penalties imposed for criminal behavior. Most contact offenses are prosecuted in state courts and the states are free to impose their own penalties which in many instances are less severe. On your second point, I'm not ready to concede that the police or vigilante groups you refer to are soliciting anyone. They are acting unethically, and their behavior tempts men with the forbidden fruit. The bottom line is that the men have to disengage when the adult morphs into a teenager.

Aracely 29:16

Okay. Well, federally, I mean, there is a mandatory 10-year sentence. So that's why I say it's being treated the same as a crime of violence. Because I mean, that is a pretty serious penalty or a sentence.

Larry 29:32

Let me respond to that. Yes, you're correct. That's the federal system. You are making an apples to oranges comparison. If someone gets three years in the State of Vermont for having inappropriate sex with a minor, that has nothing to do with the mandatory 10 years in the federal system, because the federal government through Congress has set these penalty schemes up and the lawmakers in Vermont have set that penalty

sentencing scheme up. So therefore, do you want to apply the federal law to or do you want to require the federal law to be the state laws to mirror the federal law. The states get to decide how they punish people?

Aracely 30:11

Oh, no, I was not talking about state laws at all. I'm just saying if there's a mandatory sentences of 10 years in prison for soliciting someone online, then that's clearly being treated as someone committed a crime of violence. Otherwise, why would you feel the need to lock them up for 10 years and put them on the registry for it?

Larry 30:31

We have federal guidelines that require people that to get punished as an adult do violent crimes. You're making a false assumption that just because it's a 10-year sentence, which means it's a crime of violence. Bernie Madoff did commit a crime of violence, he got a life sentence for a crime.

Aracely 30:49

Okay, so we're getting a little off topic here. I was just thought, to me, that just seems the same as you know, it's equivalent, because it's not like, well, I won't go there. I don't know how much I get for theft or stuff like that. Okay, so I want to make the point. If a lawyer were to use this argument that the police officers who conducted their sting operation on an adult dating or hookup site violated this federal law, again, I'm saying that they it is being treated equivalent to a crime of violence. So by soliciting the men to commit this crime, and the judge, which rule against it, claiming that Nope, this is not a crime of violence, can this ruling then be used by those convicted of this crime to argue that this is not a crime of violence? So why is why does the punishment not fit the crime? Why the mandatory tenure sentence, would that not fall under the Eighth Amendment cruel and unusual punishment for something that's not a crime of violence?

Larry 31:58

Again, a long lengthy prison sentence does not necessarily correlate to a crime of violence. Congress gets to decide through the American people decided through their who they elected to Congress, to declare this to be a very serious offense. I keep hearing this term crime of violence, According to 18 U.S. Code § 16, the term "crime of violence" means: (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. I've added an attorney's website to the mix. The attorney's website is worth visiting. What Is a "Federal Crime of Violence"? (johntfloyd.com)

Aracely 32:58

Okay, I have also looked up the definition of what the crime of violence was, and I interpreted the part that says were threatened use of physical force, as that part applying to this is that not so or do this because if you're talking about sex with a

minor isn't that a threat of physical force hasn't been done, but when that fall into that, that was my interpretation of that.

Larry 33:25

I do so little federal work. I can't say for certain. But in the limited work that I've done, I don't remember this being on the list of crimes of violence. But it's a serious offense. There's no doubt the American people have deemed it a serious offense. Ten years is a lengthy sentence. But we do a lot of things in the federal system much more seriously than the states do. So you could have committed a much more heinous, violent act. In many states, I get less time that what you get for this, that I agree with you on, but it's an apples to oranges comparison. You would have to look at the federal statutes in terms of where they do have jurisdiction to prosecute forcible sexual offences, and what the sentences are imposed for those to do a real valid comparison. But most of the sexual offences are not prosecuted in the federal system, because there's very few territories where there's actual federal jurisdiction. The internet is the exception if there's federal jurisdiction. But most of the time to federal the sexual offences are going to be prosecuted state court or there's been actually a contact defense.

Aracely 34:33

But what you're saying is it needs to be compared to the sentences that the federal government prosecutes for crime of violence. And that's okay. I understand.

Larry 34:46

The sexual offences themselves, where there wouldn't be federal jurisdiction, there can be sexual offenses that are not crimes of violence. They can be merely up against the law because of an age discrepancy, but there's no violence involved. We'd have to take a look at the sexual offences, the whole universe. And since I do so little federal work, I feel woefully unprepared to tell you what those sentencing ranges would look like without doing some research. And I didn't do that for tonight.

Aracely 35:15

Okay. Well, my next question was going to be an I don't know if you've kind of already answered that. But my question was, well, isn't it and an inconsistency in our system? Isn't this an inconsistency in our system? If it's treated as a crime of violence when it comes to the punishments for this crime, then it should also be applied as that when it comes to soliciting someone to commit this crime. What can be done to fix this?

Larry 35:49

It it's a harsh penalty scheme, for sure. The federal system, as I've given figures, and I'll recite those from memory, just to give you some context, the federal prison population remained relatively stable from 1940 to 1980, at 20,000, roughly going up or down 1000 or so. And in 1980, we had a presidential election, and we had a new regime that came into power that promised to make America safe again. And by 1988, at the end

of eight years of that new presidency, the federal prison population, which had remained relatively constant for 40 years, had tripled to 57,000. So it's a serious anything in the federal system is treated very seriously after the sentencing reform act of 1984. And the bail reform act of 1984 has resulted in a significant number of people who have federal charges being detained pretrial, as the people who were involved in the capital disturbance have found out that a lot of them got detained pending trial. But what can be done to fix about that? Nothing unless you can prove that the police solicit the person to commit a crime. And we're gonna end this episode at the same plot we did last time, because I haven't bought into that yet. But you would have to go to Congress, Congress made these laws and establish these penalties. And that's where the change would have to be made. It would be through congressional action. I don't see that happening anytime soon. The Congress is not in a mood right now to lighten up on criminality in any way. If you watch what happened in the last election cycle, if you remember, we talked about on the podcast, all the vilification that went around, went around for just a modest reforms are being talked about, if you remember the confirmation of Judge Ketanji Brown Jackson, about how she was vilified for being soft on this type of crime, to porn and anything related to sexual offenses in the federal system as her tenure as a federal judge before she got confirmed to the Supreme Court. It's not in the cards anytime soon.

Aracely 38:00

So Larry, would you say it would be better to use because I get it now we have to show specifically, you know, how they did solicit, would it be better to take, like the general tactics that they're using that we've seen across the board in these cases or to take one specific case? And then specifically show, you know, and from that case, this is how they solicited? So say, in general, these are the types of so are using this, this is what we've seen? And all of these cases, or hey, look at Sebastian's case, let me show you exactly how they did this. Is there a better way?

Larry 38:41

My strategy would be to win support. We're having the same thing with the people over in military custody that are writing to us, and we're doing episodes and segments about that. This has to come from the conservative side of the aisle. I hate to keep saying that, but you need conservative vindication for anything that's going to proceed be perceived by the public is being soft on crime. So you're going to have to get to the conservatives. The liberals can't really help you. And the Liberals will go along, if they know they're not going to be vilified and tarred and feathered by the conservatives. So you've got to get to conservatives. And you've got to make an appealable case, which would probably mean someone who had limited emotional development that was what he called delayed development, and someone who was easy vulnerable to the type of tactics that they used. And then you would have to build a record of showing that this is systemic, not an isolated case, because if you just have one, they're gonna say,

Well, you know, that was a breakdown, you know, that was you know, that was an anomaly. So you're gonna have to show that that there's this as a systemic, but you start by winning them out over that this is a vulnerable, they do this to vulnerable people because you don't get yourself in the door when you go with a person. Like I was working with a psychologist that was temporarily out of prison because he wanted appeal due to a technicality. And he was helping do some volunteer work. And he was hoping to avoid going back to prison, which he ultimately went back in November, because they convicted again, just like I told him, they could do add, but he was not an appealable, he was not an appealing individual, because he had a, I don't want to get too specific, but he had professional degrees, he was a practitioner and held a license, he's not going to be a candidate for going out and saying, the system is abusing people, because he knows better. So you, you got to help the right person to start the ball rolling. And it's going to be a tough sell. But you've got to go to the people who are on the right side of the aisle politically, because they are the only ones who can do it, they will vilify if they're not in on this, and winning them over as the tough thing to do.

Aracely 41:10

Well, that's, that's very helpful to hear. And we do have some members in our Cage group that have some good ideas for how we can do that. So thank you for that. That's helpful to hear. So about constitutional violations. I think the search and seizure are illegal in these cases, because to begin with, there was no probable cause. There was no probable cause to be investigating or searching these men to begin with. The men were just randomly targeted on an adult website or app, which is just not logical to assume that people were on there looking for minors to have sex with. So they were targeted here. And these are places that adults use for sexual purposes to meet other consenting adults for this. And law enforcement had to create the probable cause that these men would have had sex with a minor.

Larry 42:11

I cannot totally agree with you, although I share your frustration. I certainly do. But law enforcement does indeed create crops with a sting operation. But having said that, the legal test us whether or not the man were predisposed to commit the crime. And your argument, and I truly do get it. Your argument was that they went into the room expecting adults, and they're in the room. And when an adult approaches them. And I don't do these things myself. So I don't know exactly how it works. But your argument is when they're approached by an adult, that that's where the solicitation occurs, that is the adult who solicits to him. I totally understand that. But it's just disconnected from reality. That when the when they are approached by the adult, they have to express righteous indignation, that you've morphed into a teenager. If you truly are a teenager, you shouldn't be here. And I've got to report it to the police, which is actually who is already there. And they predisposition test. I wish it were a long test. And I'll tell the story about being on Grand Jury, I

think a year later I can talk about a little bit of details. We had a case where the person there, what they were doing, there was a group of people going out robbing massage parlors, and they were targeting primarily Asians, because that's seems to be the bulk of that business. It seems to be that that's who does that work. And they had no intention of doing anything other than robbing them of their jewelry and their cash. Well, one of the massage parlor operators decided that since they didn't find her weapon, she was going to shoot one of them in the back because they were leaving. And she shot him in the back and downed him didn't kill him. But he's paralyzed for life. The other person turned around and returned fire and killed her. He had no predisposition whatsoever to kill anybody. But as the law stood and as the prosecutor convinced us that just that predisposition for that brief moment that he turned around and made a conscious decision to open fire. But that was enough under the law. These men when they when a person morphs into a minor, which is enough of a predisposition because you're faced with a choice of disengaging or you're faced with a choice of continuing. And I think an analogy I could make would be at church. Most men don't go to church looking to have a hookup to have sex as a general rule. So you would go to church, and that's not the general purpose of going to church, but if someone approaches you, and they have the scantily clad teenage girl, and they sit tell you that well, baby, who knows what could happen? You got to say, You're the house of the Lord, for God's sakes, and you're talking about this, I'm appalled that you would even suggest such a thing. In such a setting like this. There, the answer is very simple. It really is. The men are going to have to disengage when a person walks in as a minor. That's not what people want to hear.

Aracely 45:33

So you have helped me understand more what the disconnect here is. And obviously, clearly, it's that most people, I mean, including myself, within the beginning, don't really understand how these hookup sites work, because we haven't used them. I know a lot more about them now, because of this. And I've been looking into this for years. And it's just the problem is that it's just not a realistic situation, because and like you said, you know, somebody in charge my approach you and this is something you're not expecting, but that's different, you're there in person, it can be confirmed online as a totally different world, especially when you are in Ghana, and one of these hookup sites where role playing is very common. So I don't I mean, to me, it's clear that the police are the ones initiating the thought of sex with a minor. It's true that they're not initiating the thought of sex altogether, because the men wouldn't be there in the first place. I mean, they are in an adult place that adults use for sexual purposes. So yeah, they were thinking about sex. But it's a fact that police basically told the man hey, you should have sex with a minor instead of with an adult and directly, that's what they that's what they did. And then they were very persistent about it, which is where I disagree that they did not just offer an opportunity. They induced it, because they were persistent. They repeatedly asked, it's not, it's just an it's not a realistic situation at all,

because it's not normal to think, oh, yeah, this is just a 13 year old on here looking for random adult male strangers to have sex with. That's not normal thinking. And I don't, I don't get like people are not getting that. And to say, Oh, it's just a 13 year old, so I have to disengage? No, you're going to be like, whoa, whoa, why the heck are you saying you're 13? And if you are 13 why are you on here looking for random men to have sex with? Or are you really 13? It's more natural to want to find out more about the situation. If you know that this is just someone trying to play some stupid game with you and you're not interested in playing with them, then yeah, you would disengage. But if it's more natural to be confused about it, and to want to know more about it, like, is this person for real? And if she is, why is she on here, and if I disconnect, she's gonna move on to the next person and do this, but, and I can report it to police. But it hasn't been confirmed if it's real or not. I can report it to the website. All they're going to do is remove this profile, and she's going to go somewhere else. What if it is real? So my question is, Why are the police allowed to continue insisting on the sexual conversation and on the sexual encounter? And because in most cases the man is attempting to meet, they've made the conversations not about sex. But the police take away that option. It has to be about you have to agree to sex with me. And even after the men straight out, say no, they continue to harass him about it. And realistically, the goal is to meet this person in person so that you can confirm what's real or not. Why are they allowed to continue to make the conversation about sex with a minor? Why not just let them in make the conversation about whatever they want?

Larry 48:50

Well, the reason why they can do that is because the laws of the states have been created to allow that the law enforcement industrial complex, along with the victims' advocates have convinced the lawmakers that there are people trolling by the 1000s and hundreds of 1000s of the internet looking to hook up with minors, and they have carved out language and the statutory schemes that has to have made it okay for to pose as a minor and do this, if you really find this repugnant need to work on start changing the law to eliminate that provision. Now, that's going to be almost impossible to do. But they're allowed to do it because the law allows them to do it. And we the people made the law.

Aracely 49:30

Well, yeah, I think the problem is that the law needs to clarify that the this needs to be done on the platforms where the kids are hanging out, not on the adult hookup sites, where nobody has seen children doing this and if there are children doing this on those adult hookup sites, then why haven't police found them and rescued them from there, remove them from there. They've never put out any information about minors on these websites doing this. It just does not add up. So I think the law needs to be clear on that the sting operations need to be conducted on the platforms that children are on, not on the adult sites where no one goes expecting to find children. I mean, that part just does not make sense.

Larry 50:13
I agree with you.

Aracely 50:15
Thank you. So let's talk about the case United States versus Mayfield. This is a 2014 case. And they explained what inducement is. And they basically said, you know, it requires more than just an ordinary situation that they have. The government has to be persistent, or persuasive. And the nature of the enticement or reward to be more than the typical enticements and temptations that the crime or criminal actors posted a defendant. So, it explains that ordinary means something close to what unfolds when a sting operation mirrors a customary explicit execution of the crime. And this is where I disagree because they're not creating realistic situations but creating completely unusual situations. So, I think it's best to expect anybody to have a normal response to something that's just extremely strange, like the situations they are creating. But anyway, fraudulent representations, which is the case here, and all of these repeated attempts at persuasion is systemic. If the men don't give in right away, if they stop communication, they get harassed, promises of reward. I say, you know, they agreed that I'm going to meet with you, but only after, after you tell me that you're going to have sex with me and you have to specifically tell me what you're going to do to me. That's the reward, the reward is, I want to meet you because I want to know what's real or not. You're withholding the meeting until I play along with your game. And then I think they're also indirectly presenting a threat by saying if you don't tell me what I want to hear that I'm going to move on to the next man and guess what he's going to tell me what I want to hear and he's going to be get to meet me. So I do see this as inducement please. Based on needs sympathy or friendship, same thing. They, you know, they target the men's manhood like, Oh, your chicken, oh, you're, you're just scared or you're not brave enough. And I mean, how is that not inducement?

Larry 52:32
Oh, well, it is. It is something to do smarter. But let's look at a case. Leslie Mayfield was indicted for conspired with a coworker at a drug career to rob a stash house controlled by the courier supplier suppliers. The conspiracy was a setup. The drug courier was under government cover as a government agent, and the coworker was an informant. At his trial, Mayfield wanted to present a defense of entrapment, but the government opposed it and move to preclude the defense arguing that there wasn't enough evidence to show the government induced a crime and that may feel like the or that may feel like the predisposition meaning to he had the predisposition may feel responded with a narrative of the informants persistent campaign, which you're talking about to secure his participation and the cell stash robbery and repeated resistance to his repeated resistance in scheme. The district court the trial court granted the government's motion, meaning that the defense was barred, and a jury was not instructed on Chapman defense that they convicted Mayfield of several federal crimes stemming from the conspiracy. But a

divided panel of the second Seventh Circuit ended up ended up affirming and then a petition for full court review on bike was granted and they reversed and then I hand this off to Andy because I've been reading too much and stumbling.

Andy 53:55
Oh, you want me to read the Oh, I see where it is, um, and may feel a Mayfield court clarified entrapment is a defense to criminal liability when the defendant was not predisposed to commit the charged crime before the intervention of the government's agents and the government's conduct induced him to commit it. The two elements of the defense, lack of predisposition and government inducement are conceptually related, but formally and temporally distinct, who decides if a person has been entrapped?

Larry 54:25
The entrapment defense is an issue of fact for the jury, and the Seventh Circuit clarified that a defendant is entitled to no travel jury instruction if he or she can show some evidence that supports both elements of the defense. When the issue is raised before trial on the government's motion to preclude the defense, the court must accept the defendant's factual proffer as true and not weigh the evidence against the government's counter statement of the facts. That stated, "Here, Mayfield proffered enough evidence to justify giving the issue to the jury. He provided some facts showing that he was not predisposed to commit the charged crimes prior to being approached by the informant, and he narrated a story of substantial government inducement going beyond the mere offer of a chance to rob a stash house. His story may be false or unpersuasive, but that's for the jury to decide. The district court erred by crediting the government's evidence over Mayfield's and precluding the entrapment defense before trial. They vacated the judgment and remanded for a new trial. He doesn't get away with it. But it means that he gets a chance to put on the defense that he was denied.

Aracely 55:44
But I think really, we need to educate the defense lawyers about this because it's clear they are not getting it, but to us, it just seems like a lot of them have just been a big part of trying to keep this going. Because, of course, it's money for them too. It's cases for them. And it just seems like there's so many people that benefit from these cases, therefore, a lot of people that work in the system want to keep it going. But I mean it makes sense. Some of the lawyers just probably need to be more educated about this. So my next question is, can the police officers have targeted men on an adult dating or hookup site to solicit them to commit this crime? Can they be held liable for failing to perform their actual jobs, which is supposed to be protecting children online, and by conducting these online hookup sites and dating sites are creating these cases, they're not protecting children online. And they're receiving funding to protect children online. They're lying to the public about what they're actually doing, because these men were not targeting children online. And this is causing this has caused real harm and real damage to the men they solicited

for this, these are cases that would have never existed, had police not created them. Can the police be held accountable or liable for doing this?

Larry 57:09

No. In my opinion they're performing as their command staff has ordered him to do, and they are not their own bosses as a general rule. So, in my opinion, no.

Aracely 57:18

So to me, that sounds like then the police departments are can actually be held accountable for this. Because that's just I mean, that's wrong. So from what I've heard about qualified immunity, this only applies when law enforcement can show that they were doing their job. And they have to be able to show that their actions were reasonable and something that any other police officer would have also done in their in their position. So to pose as an adult to begin with an adult sight to supposedly catch child predators, that's not really doing their job.

Larry 57:52

That's not exactly the best description of qualified immunity. The issue on qualified immunity comes into play when there's a constitutional violation, or some violation of some clearly established right that doesn't have to be a constitutional right. But it has to be clearly established. And the fact that you don't personally approve of law enforcement priorities, it's not a constitutional violation. And it wouldn't be subject to qualified immunity. The test you're trying to apply is that you're trying to say that the police officer, because they're not doing the enforcement on the websites and doing it in a way that would be consistent with your belief of how they would catch more people that is not has nothing to do with qualified immunity. Qualified immunity has to do when the police acting under the color of law, and they deprive you of something that you have a right to have. And so the argument goes, that the officer is protected by qualified immunity if they're discharging their duties responsibly. But if they disregard a clearly established right, for example, we talked about the interstate compact, you have a right to a probable cause hearing before you're transported across the country. If they deprive you of that constitutional right, which has been established since 1972. That's a clearly established, right. So therefore, the police, they would not be entitled to qualified immunity to that claim, because they knew better and they did it anyway.

Aracely 59:17

So we would have to show how this applies to a constitutional right,

Larry 59:22

Right. It doesn't have to be a constitutional right, but something that's been clearly established,

Aracely 59:28

Like the first amendment right, well, that is that sound. Okay, because that's something like that has been brought up and it actually be.

Andy 59:35

Marriage would be marriage would be an example. Right?

Larry 59:39

Yeah. Well, that I think that's in the Constitution. [Right.] But something that's clearly established, it doesn't have to be the Constitution, but you have it it's a matter of a statutory right. And it's clearly established that the police should not be treating you the way they're doing and they're ignoring that process and right there qualified immunity evaporates.

Aracely 59:57

Okay, well, that's helpful to hear because then that tells me we have to show exactly what rights they violated. For example, the right to be on an adult hookup site to want to find other consenting adults to have a sexual encounter with. I mean, that's nobody else's business for they weren't hurting anybody.

Larry 1:00:21

I have the right to be there. They're just don't have the right to have a couple of binders while they're there. But go ahead.

Aracely 1:00:27

And they have the right to not be targeted by somebody who's pushing on them or forcing on them the idea of sex with minors just because you want to have documents or to have that right.

Larry 1:00:39

I think that person has the right to speak anything they want to speak.

Aracely 1:00:45

Right? So if they want to if they want to speak and say, okay, yes, I agree to sex with someone pretending to be a minor, that should be a First Amendment right? Because it is logical to assume that this is just a person, an adult who wants who maybe just gets turned on by pretending to be a 13 year old. I mean, it could be a 40 year old woman that just likes to pretend to be a 13 year old girl, and she's trying to hook up with a younger guy. I mean, that's actually realistic.

Larry 1:01:14

I get the roleplay argument.

Aracely 1:01:17

Yeah. See, that's one of the big problems is with these cases. But anyway, moving on. So what if we can show that police are using similar tactics to what they use to force false confessions. For example, you know, usually, when they force a false confession, they are removing options. So they're not and then, so it's this is the information that their target provides is not voluntary. And police will then turn around and say, Oh,

this was voluntary. Nobody made them do it. But they are making them say, for example, they withhold the meeting until the men given and play along if the men say, hey, let's go to the mall or let's meet at a restaurant. Oh, no, no, you have to tell me about sex. I'm not going to go meet with you until and the man finally, you know, catch on. Oh, you want to hear about sex? Well, yes, this is an adult website. This is what people do on here. Oh, okay. Yes, okay, we're going to do this or whatever, hey, can we meet now, that's what's happening with these. So if they had not withheld the meeting, until the men, you know, gave in and played their game with them, a lot of these men would never have taken it to sex, you know, once this person claimed to be a minor, or whatever. And then they also present the threat of, well, if you're not going to tell me what if you're not going to play this game with me, I'm going to move on to the next man. And I'm going to get him to play along with me, and I'm going to go meet him. To me, that's forcing the guy into the situation where he has to say that he will agree to it. And no, they did not prove that this man would have had sex with a minor. They proved that they can make the man a man say that they would agree to sex with a minor. That's what they prove. That is a huge difference. And this really matters because the whole goal from the beginning, when you're on one of these websites, is to meet the person that you're chatting with. So why not force the conversation in the meeting to be about sex? Why not just agree to meet in person, which is a natural, normal thing to do? And let them then confirm what is real or not, and praise them? I mean, if they didn't talk about sex, but they want to meet this person to find out who this is, and why they're doing this, why not just praise them for saying, hey, good for you for not trying to groom this minor and have to have sex with them? Why forced them into the sexual conversation? Because that's just not realistic. It's not something a real minor would do.

Larry 1:03:49

Well, I have sympathy. Your arguments are persuasive from a legal standpoint, the men are not forced to have the meeting, they could say, I'll tell you what, I will come meet with you. But we absolutely will not engage in any sex, I find it repugnant, that even the thought of having sex with a 13-year-old. I'm 97 years old. They could do that. But they don't do that.

Aracely 1:04:11

Well, many have done that. And they continue to get harassed. But then also many of them just think that this is an older woman who just gets turned on by pretending to be a 13-year-old. And see that's the First amendment right there too. He can play that game if he wants and that doesn't make him a predator at all. And that's just wrong to assume that that proved that he was going to go rape the minor. But if it was Facebook, maybe but not on here, not on one of these sites.

Larry 1:04:42

You're correct. Talking about it doesn't but when you agree to that you will have sex and you show up, it's no longer talk. It's action at that point. They were given a choice. They could have

said no, I find this morally repugnant. I will not have sex with a 14-year-old.

Aracely 1:05:01

Many have still been charged and convicted, even though they did that, because these chat logs also get altered. And that's another big problem. That's a whole other conversation.

Andy 1:05:15

You did awesome. Thank you very much for coming back. No stuttering. That was great. And thank you. Joining us now is Heidi. So let me do some muting and unmuting. Heidi, welcome. How are you?

Heidi 1:05:32

Thank you. I'm, well. How are you?

Andy 1:05:34

Doing fantastic. So you have a couple of follow up questions that you want to ask the Larry-nator. So I'm sorry, Larry, that we're like tag teaming against you. We have two ladies to ask you questions. And so you're the punching bag for the evening. Are you ready? [Sure.] Okay, so here's Heidi. Thanks for coming on, Heidi.

Heidi 1:05:54

Yes, well, thank you for having me. I know we're about out of time. And I really feel like my questions probably warrant its own episode. So what I'd like to say is that obviously, all the things that Aracely passionately speaks about are very near and dear to my heart, also. And what I've been able to glean from this unfortunate experience is that, really, I guess where we need to start is with reforming the iconic federal funding requirements of how state police and local municipalities get funding, because currently, there's just an operational and procedural standard that no one follows. And I don't know how you guys are on time. But I think I'd like to table it if we could, and maybe set it up for another date.

Larry 1:07:10

That sounds awesome. Because we are up against the clock. And we wouldn't be able to do you justice on your questions. And it's kind of rude for you to come in prepared and say, Oh, we're out of time. But that would be awesome. Because these are important issues. There really are, but how do we deploy resources? Those are important issues. But you guys, the legal arguments that you've put forth are just not compelling. So far.

Heidi 1:07:40

I understand. And I look forward to now. You've taught us so much, and I so appreciate your experience and advocacy in this and everything that you do. And I would love to save my stuff for another time.

Andy 1:08:02

Very well. I do want to point out something that we're not your enemies. And I'm not saying this to you, Heidi or Aracely. I want to make the general statement though, that these laws

are impacting your children and so forth, in completely egregious way. And I do feel that there's a lot of shenanigans, shall we say, that goes on here. But I want to mainly point out that this program is directed towards your group of friends and family, as well as the whole registering community because when your children are charged with these crimes, they most likely end up on the registry. Therefore they're what we call a PFR. They are a person forced to register is what the term means. And that's what this program is. It's called Registry Matters for a reason. It is about the registry. It's about fighting it. It's about trying to cope with it, it's how to deal with your probation and all these extra laws that and restrictions that they put on you. A friend of mine in Florida says that they're trying to pass a new law that makes all PFRs licenses bright red. That sounds ridiculous. So I just want to make sure that you are among friends. We are not your adversary. That's the word I was trying to search for this whole time. We're not your adversaries in this whole cause. We're just fighting from a different point of view as far as the subject matter of what we're dealing with.

Heidi 1:09:29

I understand that and I see you as my fellow advocates for everyone. And let me tell you, this whole experience has educated me on registrants and all the crap, and I'm a registered advocate now, regardless, as well as an entrapment government against entrapment, our citizens against government, and travel advocate.

Andy 1:09:56

Gotcha. Well, cool. So we will work out maybe something closer to the NARSOL Conference, which is towards the middle end of June, to do another segment on this.

Heidi 1:10:08

This is great.

Larry 1:10:10

This is one where it doesn't end because these operations are going to continue. They will probably intensify because they work. And therefore, it's something that we don't just do one time and then forget about it because people need to be on notice. You want to help with disengaging, and it's difficult, and we know that it really is.

Andy 1:10:31

Very good. All right. You put this thing in here, Larry about the Georgia House voted 95 to 81 on Wednesday to pass Senate Bill 63, which would have acquired cash or property bail for 31 additional crimes, including some misdemeanors. But the House and Senate could not say could not agree on a final version, the measure failed to pass as the 2023 session ended just after midnight on Thursday. What does this mean, when it says they could not agree it looks like if it passed the House 91. But then the Senate couldn't do it anyway. They could not agree.

Larry 1:11:26

Well, it was two different versions. We could probably should take this up on the next episode because the session is over. But it did not. It did not make it through the journey. But I wanted to get into a deeper dive about what's going on behind the scenes in Georgia. And I don't think time is going to permit but that you had an amended version. And it would need it to go back to Conference and have that process where there's negotiations between the two chambers, and then there would have been a conference vote on adopting a report. But I want to dig into this a little bit in terms of George's political posture in terms of how they're moving backwards on criminal justice.

Andy 1:12:04

All right, well, then I guess it means you're saying we're going to close out the show.

Larry 1:12:09

It's getting to that point. Yes.

Andy 1:12:13

All right, then well, I want to thank everyone for coming in. I really appreciate when the Cage folks show up. They bring like a whole arsenal of people. They bring a whole brigade of people that come in and join in live chat. Makes it super exciting and fun. But obviously, go over to registry matters.co and find show notes and fypeducation for the transcript and other free resource. You can look at most of the history shows transcripts and stuff like that. And don't forget to support us on Patreon at [patreon.com/registry matters](https://patreon.com/registry-matters). What are you doing this weekend?

Larry 1:12:54

I can't think of anything after this.

Andy 1:12:58

We're going to switch over and move everybody into chat so that they can talk and unmute. And then your computer is going to die, Larry. Anyway, Larry, I hope you have a great weekend.

Larry 1:13:12

Thanks. See you in a couple of weeks. We're skipping next week, folks. So we'll be back in two weeks.

Andy 1:13:17

Yep. Take care.

Announcer 1:13:21

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