



## Registry Matters Podcast

Episode 262

Recorded 4-15-23

Announcer 00:00

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Andy 00:16

Recording live from FYP studios, east and west, transmitting across the internet. This is episode 262 of Registry Matters. Good evening, fine sir. How are you?

Larry 00:27

Doing awesome. Glad to be with you after a one week vacation.

Andy 00:33

That is correct. It was Easter and I was out of town. And next week, we're going to record on a different day. Is that right?

Larry 00:42

It's not going to be this coming week because I'm going to put that off to the end of the month. So maybe the last weekend in April, the first weekend of May, maybe. But I've got to go to California.

Andy 00:52

I thought you said it was next weekend.

Larry 00:55

When I looked at options, it wasn't a good time to do it next weekend.

Andy 01:00

I see. All right, then. Well, welcome everybody. As you know, you found us here. So please make sure that you like and subscribe to YouTube and give five-star reviews on whatever podcast app you're using. And, you know, my preference is for podcasts. So fire up a podcast app and subscribe to it. So it will automatically be downloaded on your phone, you can pick up the Patreon version. You'll get that as soon as I finish editing it, which could be late Saturday night or Sunday morning. You'll get it in your feed. Or if you do it the slum way, then you'll get it Tuesday morning before you head off to work. But do me a favor, sir, would you tell us what we're going to be doing this evening?

Larry 01:40

We are going to be doing a deep dive into a case from the Rhode Island Supreme Court that deals with risk assessments. And we're going to be talking about the complexity and the expense of those risk assessments. And we are going to talk about the arrest of a jail staffer in Clayton County, Georgia. And we are going to have a few questions. So it should be fun.

Andy 02:01

Outstanding. Well, let's dive right into a comment that came in from Stephen. It says I heard from a Connections person that Washington House Bill 1394 is on the governor's desk. It would keep juveniles off the Public Registry. It's an interesting bill. I did a little research. Now I understand a little bit about how the legislative process. But I had no idea how

complicated it is. But when I went to this resource, I was shocked. You often talk to the audience about how complicated the legislative processes. This shows it. Most Republicans voted against the bill except for three and most Democrats for it, except for three. And I'm going to pull that link up. But, so where are we going from this?

Larry 02:53

Well, just showing that what I say is not totally without merit. There is a fair amount of complexity of what goes through these legislative bodies. Theoretically, it's a great deliberative process. We want to get this stuff right, believe it or not. At least that's been my experience in the decades I've been in the process. And there's a lot of thoughtful contemplation on the language, purpose, and unintended consequences. And I just can't help myself, since I didn't write this. I could point out that this is the reality of the situation. You'll all have our audience heavily leaning conservative, but yet the conservatives don't give us a lot of help on this stuff. This is a step in the right direction in Washington. Washington is not that bad to begin with in terms of registration. They do have ways off the registry, and they do have a risk-based system as I understand it. But to get the juveniles off the public registry, which they never should have been there to begin with, that's all a positive thing. But where were the Republicans when they were voting for it?

Andy 04:04

It's interesting. I don't want to hijack this. However, Georgia had a statewide meeting the other day, and there was some guy in chat while we were having the meeting that says that he's trying to reach out to us and help. But then he says something that the government is just corrupt, corrupt, corrupt, and nothing can be done because it's corrupt. And I was like, there's a ranking of how corrupt countries are. And the United States is listed, I think in the top 20 of not corrupt nations. So if you think that we're corrupt, compared to, I don't know, some middle African country, like I mean, run by warlords and whatnot. I don't see how people say it's, "corrupt." I know that money moves things, Larry, but you have the opportunity to meet your legislator. And so I don't see how people just come off and say it's just corrupt, corrupt, corrupt, and nothing works.

Larry 05:05

It really pains me when I hear comments like that, because I've been in the system, working at it as an advocate for a long time, long before PFR issues were ever on my radar. And I've seen nothing that substantiates that. Is there corruption? Yes, there are human beings involved in government. And human beings are fallible, so of course, there are people who succumb to temptation. But the overwhelming majority of them are there for the right reasons. They're there because they believe in contributing back to having a better state, better city, better county, or whatever body they're serving. And you may disagree with them. You may say things differently, but they're there for the right reasons. They really are. They are not corrupt just because they voted for something that you don't happen to believe is good public policy. You may be mistaken. But that doesn't make you corrupt. It really doesn't. So it really pains me when I hear that.

Andy 06:03

Do you think Mitch is there trying to make the right decisions?

Larry 06:09

I actually do think that he's doing what he believes Kentuckians want, at least the ones he hears from. And I think he's misguided on a lot of things. I think his tactic to take the Supreme Court the way he did that was unprecedented. But he looked at it differently. His looking at it was I'm only in office for a short period of time. I'm fortunate to be in this leadership position. And I'm going to try to make a difference for what I believe in. And I'm going to try to get justices on the Supreme Court that are in alignment with me, with Kentuckians and what I believe in. Did he get paid off? No. He just believed that it was time for a different direction on the court. You got a choice when you went to the ballot box in Kentucky, and you had a choice. And you reaffirmed that he did do the right thing because you people in Kentucky, you did reelect him, after all this.

Andy 07:09

Here's another other comment that I wanted to bring up. I don't want to really spend too much time on it. So somebody said that they made X amount of money doing some kind of work, and they had to write a check to pay for their taxes. Somebody else chimed in and said something similar. And then another person who is a "libertarian" small government kind of person, he said, I hated that I owe money. And it's unconstitutional that I owe this money. And I forgot how he worded it, but he's on the registry. So he is diminished. I forgot the way he worded it. Too bad you were not at the conference last year. I would have introduced you to him.

Larry 07:48

You know, I don't have a lot of respect for people who refer to themselves as libertarians. We are benefiting from the collective good of things that are done collectively. And that includes the people who don't like paying the taxes. The National Defense covers you, that umbrella covers you, the national transportation, all that covers you. Education and Public Health System covers us and keeps diseases from running rampant. The criminal justice system that keeps crime at a fairly low level covers you. All the things that we collectively contribute to, you benefit from those things. And I think that you ought to be willing to pay your fair share of the cost of those things. Your share is different depending on what you have achieved in the capitalist system. Our tax system is designed so that if you earn more, you pay more. So if you earn \$500,000 a year, you are going to pay more for the collective good that a person earns \$10,000 a year. I mean, you benefited more from what from the things that the common good, did you benefited more you didn't do this all yourself.

Andy 09:01

All right let's move along, sir, before we end up spiraling down like a downed fighter from World War One. This is a letter that you received to the legal corner from NARSOL. It's from Mike and he write, "Hello, I read in a book something that concern me. It suggested that if an RC, which would be a registered citizen, was given a pardon to get off the registry in one state, another state may or may not accept that pardon? Does an RC still have to report to the other states or

risk noncompliance because another state refuses a given pardon elsewhere? I assume petitions granted would be the same deal, since the outcome is more or less the same, right?" He kind of flips that around making that complicated to follow along, but I think you get it.

Larry 09:49

I do, and I put it in there because I thought it's a great question. [Yeah.] The state has no choice of accepting the pardon. If I have a governor of New Mexico, great show your pardon to Georgia. But the analysis in terms of registration goes a little deeper than that. So the question is, New Mexico granted your pardon. But registration is a civil regulatory scheme, and a collateral consequence of your conviction in order to get a pardon. I'm not aware of anyone who grants a pardon when you've not accepted responsibility admitted that you did what you did. [Okay.] So as a factual matter, you did commit the sexual offense. And there are states that, regardless of whether you are still convicted, the fact that are that you committed the offense, and you might have to register? Now, this takes us down the rabbit hole of if you're not registered in the states that you got the pardon. First of all, you might consider staying there. But second of all, if you do go to a new state, I never advise anyone to present themselves, because it would be reasonable for you to believe that you're done. But the answer is, yes, you might end up in a state where you might encounter the police, and they might run your background. They might find the pardon, but they might still say that's our law. I think Florida would still include a duty to register for a pardoned person. But I'd have to do some deeper research. And I just got this today. But you could end up being back on the registry. Stay put if you really want to have the security that you're looking for. Stay put.

Andy 11:28

Right. I understand that one. All right. Anything else there before we head along to Rhode Island?

Larry 11:35

No, but I do appreciate Michael's question. It's very, very good, because people don't understand a pardon doesn't necessarily give you your full rights back. It doesn't.

Andy 11:48

I mean, the question he's asking, though, is just similar to I got removed from the registry that has nothing to do with if I go visit Florida and end up on the registry, because the wording may say I have been convicted of a sexual offense. Now I'm on the registry.

Larry 12:03

Yes. And even when you leave, you're still going to be on their internet website.

Andy 12:07

Yes. And that means I can't get jobs and so forth. It's just the website, Larry. It's just the website.

Larry 12:13

Well, I mean, I know people get angry when I say that, but it is all it is.

Andy 12:16

I know, I was poking fun at those people. We're going to get a bunch of email hate letters now. It's more than a website, Larry. All right. So you want to talk about this case from Rhode Island, don't you?

Larry 12:37

I do because there are 1000s of people writing me about it.

Andy 12:41

There's only 12 people that live in Rhode Island. This comes from the Rhode Island Supreme Court, and it just came out a few days ago. The case is State vs. Cesare--Oh, sorry. How do you say that name?

Larry 12:54

That's Cesare DeCredico?

Andy 12:56

That is a name I have never heard of before in my life. So I have no idea how to pronounce that name. I think from this point on, I will simply refer to him as Mr. D. What is this case about? I've read it twice, Larry. And I wanted to know. I'm sitting there at dinner, actually. And I was ignoring my family when reading it. But I was hoping that you might have a clue.

Larry 13:21

Well, then why don't you tell us about it? But yes, I do have a clue. The petitioner in this case is Mr. D. He appealed from a final judgment of the Superior Court in favor of the State of Rhode Island. That decision affirmed a determination by the Rhode Island Sex Offender Board of Review that Mr. D poses a level II, moderate risk of re-offense. So that's what the issue was.

Andy 13:50

Before we dig too deeply into this particular case, I'd like to expand on the process in Rhode Island. I've heard you pontificate about the difference in levels across the United States, and you've spouted some mumbo jumbo about risk-based levels vs. what you refer to as the categorical approach. Can you explain the difference?

Larry 14:16

But I'm not sure why you would call it mumbo jumbo, but I can explain. The Adam Walsh Act or otherwise known as the AWA recommends the categorical approach meaning that the offenses themselves are the bases of a Tier level assignment. On the other hand, the risk-based system considers the individual and many factors of that individual's offense and background. Once this process is complete, he or she is notified what level of risk they believe he or she poses to the community. There's no analysis or anything like that. You did this crime. I'm looking at my list. This is a tier two. So that's how simple it is.

Andy 14:57

And is that what happened in this case? Is that how this individual was determined to be a Tier two.

Larry 15:02

That is correct.

Andy 15:06

All right. Well, that then it begs the question, why don't all states do risk assessments for the PFR population instead of doing categorical?

Larry 15:14

Well, many reasons. But first, it's an expensive proposition to undertake. And it's complicated.

Andy 15:21

What is so complicated about it to figure out. Like you just get some people to get into a room and go, Is this guy a threat? Is this person not a threat? All right. Well, what's your answer there?

Larry 15:34

Well, it's a little more complicated. First of all, we need to determine what the goals are at the risk assessment scheme. Because risk assessment schemes are done for several reasons, including sentencing, parole, probation, supervision management. But in terms of registration, if you want a standalone system for registration, do you want to utilize the risk assessment to determine whether the person is visible on the internet website? Or do you want to make it determine if the person's duration of registration could be lessened depending on the risk? Or do you want to determine if there are any additional residence restrictions or housing or employment restrictions? What all he wants to risk assessment scheme to do?

Andy 16:19

I want it to do all of the above, sir.

Larry 16:22

Well, I and NARSOL fully support that goal. However, there are significant issues to be resolved. Are we to assume that every individual would be satisfied with his or her risk assessment?

Andy 16:34

I'm confident that that's not going to be a true thing.

Larry 16:41

And also, just for the record, we cannot assume that most noncontact offenders will be rated as low risk which they believe they will be because that's not all at all what happens in those states that utilize risk assessments. This case is a prime example of that. So in addition, there are some other important questions that I would need answers from the advocates who advocate for risk-based registration. Number one, how would you want the registration scheme to be modified to be based on what we just discussed that a little bit? Number two? Are you suggesting that the person not be listed on the website? Or do you want to reduce the registration periods based on the outcome and that you need to be able to answer How much would it cost to create the entity that would determine the person's risk? That entity would need some level of staffing that would include professionals to conduct the individualized evaluations. Otherwise, you are stuck with using an instrument such as a Static 99. Which is what they are doing, I think up in Oregon. What would the process of the appeal look like the register if they disagreed? Would it be administrative? Or would it be judicial? There's a different level of expertise, a different level

of proof of different levels of costs related to those appellate processes. So a lot of unanswered questions.

Andy 18:00

I'm guessing that in whatever type of appeal process, we need to know who would represent the state as they would certainly want to have a say in an individual's risk assessment. And as I think this through, I'm wondering who would provide legal representation for indigent registrants? How would the psychologist or other experts be compensated so that the process would be fair? You know, Larry, even on that one, it's not like the legal system is fair for people that are indigent versus people that have gobs of money. You'll agree that they come out with better prison terms or sentences, if you throw gobs of money at the system. So a person that's indigent would have a crappy appeal process.

Larry 18:45

That is true. We would want to look at how often they would be reevaluated because that would add another cost depending on how frequently you did that. So that was a really great question.

Andy 18:56

Yeah. And would there be some sort of timetable. You can't go re appeal tomorrow; you have to wait a year or something like that. And how would all of that stuff be established? How could a registered person petition to have her risk assessment be reevaluated? Do you have to then go back to an attorney and pay some 5000 bucks to get them to file a petition for you to get reevaluated again every time you want to take another bite at the apple?

Larry 19:20

Yep, great questions. Also, we must recognize that this will be an uphill battle from the beginning because states are generally moving away from risk-based models to an offense-based model to comply with the federal Adam Walsh Act. Since enactment of the AWA, several states including Nebraska, Wyoming, Oklahoma, and Vermont that previously utilized risk-based models have scrapped them. Vermont did not totally scrap its risk-based model but changed its law so that those with victims under age 18 are now posted on the Internet even if the person is determined to be at low-risk for re-offense. So it's a modified risk-based system and Vermont so states have moved away from this because that's what the federal government has encouraged when they adopted the Adam Walsh Act was that you go to a categorical approach. So people are moving, most states are moving in the other direction rather than moving towards a risk-based system.

Andy 20:12

Those are great points about the complexity of risk-based registration. But do you mind if we move on at this moment?

Larry 20:21

Sounds good. Let's move.

Andy 20:22

On appeal, Mr. D argued that the trial justice erred in accepting the decision of the Superior Court magistrate who had determined: (1) that the board used a validated risk-assessment tool for noncontact offenders in deciding his risk

level and the board used reasonable means to collect the information used in the STABLE- 2007 risk-assessment tool. Can you provide some basic background on this case?

Larry 20:50

Yes. On April 28, 2015, Mr. D pled guilty to one count of possession of child pornography in the United States District Court for the District of Rhode Island. The court sentenced him to a prison term of twelve months and one day, followed by five years of supervised release. He appears to be a non-contact offender. So as I was telling people don't assume you're going to be low risk.

Andy 21:18

Can you why would it be 12 years and one day? Any insight?

Larry 21:26

I can't imagine.

Andy 21:26

That's 12 months and one day. I'm sorry, not 12 years, but 12 months and one day.

Larry 21:30

I would guess if I were taken, I guess it's because a year 12 months is perceived as not as serious. So maybe they wanted to get it above that level. But I'm not sure what the day would have accomplished.

Andy 21:44

Okay. Okay, that makes reasonable sense. I noted in the opinion that he was evaluated using the STABLE-2007. The opinion states that "the developers of the STABLE-2007 designed it to evaluate and monitor changes in risk by reviewing "negative social influences, intimacy deficits, problems with self-regulation, attitudes tolerant of sexual crimes, lack of cooperation with supervision, and problems with general self-regulation." Mr. D scored four points out of twenty-six on the STABLE-2007, thereby placing him in the moderate risk category. Explain how they got to that score.

Larry 22:25

I cannot because I'm not familiar with that particular tool. The report justified its recommendation based on several sources. It considered Mr. D's STABLE-2007 score, statements or any intentional refusal to provide statements, and his institutional record. The report also contemplated police reports, probation and parole supervision information, treatment information, Mr. D's conviction, and the facts underlying the offense. They claim they took everything into consideration.

Andy 23:07

The report noted that the investigation leading to Mr. D's conviction uncovered that he possessed a large amount of CO of an extremely graphic nature of which you kind of hinted about, and we're not going to go into the details because they get kind of nasty. The report detail that investigation uncovered over 2600 images and 375 videos of CP in his possession, including things I'm not going to read that are really, really bad and kind of over the top even for the most, I don't know, deviant among us. So that can't be good.

Larry 23:43

Oh, well, no, it's not good. Not at all but there was some good in the report. It documented Mr. D's lack of a history of sexual aggression, no prior criminal record, or known history of substance abuse. And it states that the report considered his mental health history and sex offender treatment, his familial support, his employment history, and compliance with probation. So again, they're claiming that they're considering everything.

Andy 24:13

I see the complexity of what you mentioned earlier about the risk-based process. It states that the board notified Mr. D of its classification decision and informed him of his obligation to register as a level II offender. Mr. D filed a timely appeal of the board's determination before a Superior Court magistrate. He argued that the board (1) improperly relied on the STABLE-2007 in determining his risk level, and (2) failed to document a factual basis for scoring his problem-solving skills. What did the magistrate do?

Larry 24:48

Or the magistrate basically rubber stamped that they found that Mr. D was granted a meaningful hearing. In his decision, the magistrate noted that the board based its classification on several factors including those listed in Mr. D's risk-assessment report, his STABLE-2007 scores, and both the quantity and graphic nature of the pornography in his possession. So it seems like those that quantity weighed heavily with the, with the board and with the magistrate affirming the board.

Andy 25:22

And I'm just going to throw it out there that Mr. D did not agree with the magistrate.

Larry 25:27

That is correct. And say that goes back to my point about the cost of this. Now remember, we already had to create an entity, we had to staff the entity, we had to examine this guy, we had to do all this stuff. And then he doesn't agree with it. And now the state of Rhode Island is having to spend additional resources to give him due process because they didn't agree. Mr. D appealed to magistrate's decision to a justice of the Superior Court. So he's already had one judicial intervention. Now he's going to a mid-level appeal. There the justice conducted a *de novo* review of the magistrate's proceedings.

Andy 26:09

And what is *de novo*?

Larry 26:13

It's a new proceeding without being bound by previous rulings. It is basically a new bite of the apple, so to speak.

Andy 26:22

Wouldn't that be like inverted double jeopardy, though, because you're he's seeking a review.

Larry 26:27

It just means like when you do when you're doing an appeal, you're normally doing it on the record, and they're bound by the facts that are established. De Novo means that you're getting a fresh bite. So there was no precedent, and there's

nothing you're bound to. So you're getting a second bite at the apple.

Andy 26:45

Alright. Mr. D argued that the coding manual for the STABLE-2007 states that it should not be used to estimate recidivism rates or to assign nominal risk categories for noncontact offenders. Mr. D also argued that: inconsistent with the coding manual, the board failed to provide an adequate factual basis for its scoring determination in the "poor problem-solving skills" Sounds to me that he had some good points on appeal.

Larry 27:12

He did indeed, absolutely.

Andy 27:15

And then, of course, the state didn't give up. They argued that the STABLE-2007 qualifies as a valid risk- assessment tool in Rhode Island and that the board permissibly uses it to determine the risk levels for noncontact offenders. The state also argued that the STABLE-2007's coding manual states that it can be used for both therapeutic and counseling purposes. Additionally, the state argued that the board employs a comprehensive approach in making this determination and that it can rely on factors outside of the STABLE-2007. Did those arguments succeed at that level?

Larry 27:47

Well, I'm just going to say they did, but I'm not sure they did, because the trial justice, and that's not the Supreme Court found that the PFR registration and community Notification Act requires the board to use a validated risk assessment tool, but does not prevent the board from considering other factors in reaching its risk determination to support her conclusion. To support her conclusion, the trial justice noted that both the act and the board's guidelines contain mandatory language directing the board to consider both actuarial test scores like the STABLE-2007 and outside information. Further, the trial justice found that the STABLE-2007 comprises one factor in the board's overall risk-determination analysis and, as long as the test is valid for some discrete purpose, the board may rely on it to reach a valid determination.

Andy 28:43

Okay, so he lost at the lower level of appeal. Did he make the same argument to the state level Supreme Court?

Larry 28:51

He did indeed. He didn't give up. Mr. D argued that the trial justice erred in finding that the state presented a *prima facie* case sufficient to justify the board's determination that he poses a level II, moderate risk to reoffend, because (1) the STABLE-2007 does not qualify as a validated risk-assessment tool for exclusively noncontact offenders, and (2) the board did not use reasonable means to collect the information used in the STABLE-2007.

Andy 29:27

We've discussed this before and I know you've told me. But you know, I'm not really the brightest bulb in the drawer, or the sharpest knife on the tree. You know what I'm saying? What does *prima facie* mean?

Larry 29:39

Well, it's one of those Latin terms that it means that sufficient to establish a fact unless questioned. An example would be if a muffler's dragging on the pavement underneath your car, and there's a car following you. And the video shows that your muffler is sparking and you're passing a tinderbox of forest. That would be a *prime facia* showing that you were in fact negligent. And it would potentially set you up for some monetary expenditures to reforest that land. So you'd have to come in and rebut that because I've got a *prima facia* showing that the forest caught a fire 35 seconds after your buffer through sparks and the forest.

Andy 30:20

Did they find his arguments more compelling than the lower-level Court did?

Larry 30:28

They did, but I prefer for you to read it because you're a much better reader. So on page eight, I think that's where you would start.

Andy 30:34

And this is like 700 words later. Alright, hang on.

Larry 30:38

You can read it.

Andy 30:39

I know. I'm just kidding. On page 8 they stated, "Our examination of the record in this case reveals that the evidence presented by the state was not sufficient to support the board's moderate risk classification. Not only does the STABLE-2007's coding manual disclose that it is not a validated risk-assessment tool for noncontact offenders, but it is also not clear from the record that the means used to collect and score Mr. D's problem-solving skills were not reasonable in light of the guidance provided in the coding manual.

Larry 31:12

That's pretty good. The court stated, "This conclusory explanatory note parrots the language of the scoring rubric without providing a factual basis for the additional point allocated." They went on to say, "There is nothing stated to support a finding that the board engaged in any dialogue with Mr. D about how he has identified past problems; generated and analyzed possible solutions; chosen his course of action; and reviewed outcomes in decision-making. There is also nothing to suggest what his poorly considered decisions were, or how the board decided that he is open to correction."

Andy 32:02

Let's wrap things up here soon. I have a question or two when we're done, though. The conclusion states that "the trial justice erred in upholding the magistrate's decision that affirmed the board's classification of Mr. D at a level II risk to reoffend. The determination that the evidence in the record justifies the proposed level of and manner of notification was clearly erroneous. It overlooks the plain language of the STABLE-2007 coding manual, both with regard to its limitations for use with noncontact offenders, as well as its guidance concerning the collection of information relevant to

assessing and scoring an individual's problem-solving skills." What happens next? Do they appeal to SCOTUS?

Larry 32:43

I do not believe so? Because I can't see what the Federal issue would be, which means that this decision is final.

Andy 32:50

And so that's it. He's at the state level of Rhode Island, and he can't appeal to Vermont, or like one of the circuit courts, nothing like that.

Larry 33:01

There's no federal issue that I can see.

Andy 33:05

So what is the practical impact for Mr. D, then?

Larry 33:09

Well, he gets a new evaluation because they can't use that instrument. So it could be that he gets the same outcome. It could be that he gets a found at a lower risk, but the worst-case scenario would be that they could come back with a higher risk. And now that would be funny.

Andy 33:26

I don't think that would be funny. Can this case help anybody else even in Rhode Island or in other states?

Larry 33:33

I would say definitely Rhode Island, I'm not so sure it would help anybody else in another state, because it's not binding, but in Rhode Island, anyone who has a noncontact offense and if their evaluation was based on this particular tool that was enabled to third April 2007. I would say that their cases are ripe for reopening based on this decision. So I would say it's a good time to be a lawyer in Rhode Island. Because if people have non cognitive defenses have been evaluated at a higher level than the lowest possible level, and they have the resources would say it's time to go see an attorney and see if you can get your risk level lowered. So yes. But as far as outside the state, you would have to cite this as a persuasive authority. You'd have to use it in a state that has a similar system. And that state would have had to use to Stable 2007. So it's just not really all that compelling if you're not in Rhode Island.

Andy 34:34

Which leads me almost directly to of the 261 previous episodes, I don't think we've ever said the word Stable 2007. I'm assuming that this is the 2007 version.

Larry 34:51

I would guess. I didn't do that research. I haven't worked on a case where that's been an instrument that's been used. When we get the psychosexual reports, the evaluator will give a list of what test and what instrumentation they used. And if I think back, I don't remember this ever being utilized. So I'm not even familiar enough to be helpful.

Andy 35:15

But that I mean, that's my point, though, is that it's an obscure event. And so I mean, maybe Rhode Island is the only batch of people that are using this, whatever it is, maybe it's great. Maybe it's not?

Larry 35:27

Well, it's certainly not great for noncontact offenders, because those tests aren't used for noncontact. So you would think that they would know what they decided to do, and they didn't design it to deal with noncontact offenders.

Andy 35:41

Let's circle back then. We keep talking about his problem solving skills. Is he a genius? Or is he slow?

Larry 35:52

It sounds a little unclear in terms of what was under the court's decision, but I think that what they would be looking for would be your problem solving skills when you're faced with an option range of decisions? How do you analyze those options? And are you capable? And do you often make the best decision? Or do you not make a good decision? Because if you're not capable of making good decisions on what your options are, you might not make good decisions in terms of in the community, because you're going to be faced with temptation when you're in the community. Right? Most likely you're not going to become asexual, just because you've been convicted of a PFR offense. [Right.] So we, we would want you to be able to make good decisions.

Andy 36:36

And that was that was going to be how does that even matter? I don't know, I was going to make a comment about him having all of those videos where he might not have had interest in them. When you like if you start downloading pirated movies, you just start collecting movies so that you have something to trade for something else. And so if you have this particular interest, you collect other things so that you can then trade what someone else is interested in, for what you're interested in. I'm not justifying or trying to say that what he did was right. But when you have all of the Marvel movies and you want to get something else, and someone wants the Marvel movies and they have what you want, then you have currency to exchange. That's all I'm trying to say. Does that make sense?

Larry 37:21

It makes sense. But I wasn't aware that it was treated like a commodity. [Oh absolutely. Straight up.] A person says, what are you into man? Let's just say teenage athletes. Oh, well, I've got a whole stack of those. What do you got? Is that the way that works?

Andy 37:41

Yes. I think that closes out all the questions that I did have.

Announcer 37:46

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Andy 38:35

Shall we move along to Clayton County? [Let's do it.] All right. So do you want to set it up? Or do you want me to just fire up the video?

Larry 38:44

Well, we have a short video from the Atlanta area. We're talking about Clayton County, Georgia, by the way, and you seem to be obsessed by Clayton County. We talked about the Clayton County Sheriff just recently about his soon to be trip to federal prison. And now we are talking about Clayton County again. But there was a deputy that works in the Clayton County jail that was arrested. We got to kind of dive into what the reaction of the county is both on the prosecutorial side, what the citizens are saying, and what I feel about this particular case and incident.

Andy 39:24

It's a bit over two minutes. Here's the video for you.

News Anchor 39:35

This is a developing story. She went from overseeing inmates to being one of them after investigators say she engaged in sex acts with an inmate. Tom Jones is live right now in Clayton County. Tom, the corrections officer is out on bond?

Tom Jones 39:53

Yes, she is Linda. I reached her by phone briefly, but she is not ready to talk to the media as evidenced by the fact that once she found out who I was, the call suddenly ended. I spoke to people here in the county. They say if these allegations are true, law enforcement did the right thing by locking her up. [Speaker 1: "Oh, yes, he should have been arrested. They need to leave her in longer."] These are reactions from people who learned Clayton County corrections officer was arrested after investigators say she engaged in sex acts with an inmate. [speaker two: "Yeah, that's ridiculous. Absolutely ridiculous."] 21-year-old Mary Moore faces sexual assault by a law enforcement employee. Investigators say she and the inmate were involved in sex acts in the control tower doorway and one of the housing units. The control tower sits in the center of the housing unit. I wanted to get more side of the story. So I called her a little bit more. She asked who was on the line. This is Tom Johnson channel two, I want to get your side about your story about your arrest. Did you do what they said you did? The phone call suddenly ends.

Andy 41:09

So this is Mary Moore of Clayton County, Georgia. And this is she was 21 years old in September of 2022. That is surely really young to be a corrections officer. But I've seen signs while driving around Georgia. All you have to do is have a pulse and be at the you can be a corrections officer and they tout all the perks and benefits of being an officer and a security specialist in the county jail responsible for assuring that jailed detainees were secured. And that is what she was. So in late September, she was arrested in jail for inappropriate relations with an inmate. And there's nothing to suggest or even hint at force. The encounter was caught on video, and she confessed. She was later charged with sexual assault. And the reaction to this was swift and condemning. "That's ridiculous. Absolutely ridiculous. That one doing something stupid. She should have been arrested. They

need to leave her in their inappropriate behavior.” What do you have to say about this, sir?

Larry 42:08

Well, I would agree. It's ridiculous. But it may be even stupid and inappropriate behavior. Yes. But the question is, what is an appropriate response? Should she be fired? Yes. Should she lose her law enforcement officer certification? Yes, of course. Should she be charged with sexual assault? I don't think so. Should she go to prison and be left in there? I don't think so. What will all this accomplish?

Andy 42:40

Obviously, the state will go through costly legal proceedings, she was certainly be found guilty, most likely through a plea deal that could give her some prison time, more cost to Georgia taxpayers and earn her a place on the Georgia PFR registry and a coveted slot on the female side of things where there's like, I don't know, one out of 100. Basically, this will assure her a lifetime of struggle with even basic needs and of diminishing earnings, all of which predict possible dependency upon state services. Wouldn't the Team Red people be vehemently against this sort of thing?

Larry 43:11

Well, they generally claim that that they are but you know, this is happening in a state that prides itself in its fiscal responsibility. But beyond that, in my opinion, all this all this is over the top. All that needs to be accomplished and can be accomplished that she no longer be in a position to misuse her position as a corrections officer. Clearly, the temptation is greater than she was able to withstand. And I'm taking her confession at face value. They say that she comes fast. They say it's a long video, but this could be accomplished. And she could be denied by the state of Georgia to be credentialed again, that capacity. And that would be inappropriate and a measured response to what she did. I just don't doubt what we get out of locking people up and ruining their earnings capacity so that they can pay taxes into the system and support their families. I just don't get it.

Andy 44:07

There you go. Again, as a liberal pointy headed do gooder, she needs to be held accountable and the book thrown at her keys thrown away buried under the jail all that?

Larry 44:18

Well, nobody disagrees that she would need to be held accountable. And I think she has been held accountable. I said similar things about Sheriff Hill when he was found guilty of the civil right's violations. He's going to be serving sometime in the federal prison. He's going to be very lonely in isolation because of his security needs. And he's has been held accountable. And the fact of the matter is a 21-year-old, she's been disgraced. She's been obviously fired or in the process of being fired. She has been humiliated in the news. And she's, what more what is it? Why is it that people are so demanding of perpetual punishment?

Andy 45:06

I have my answers, but I'm going to hold that one on my own. For the time being, I'll bite my tongue. The case against her is quite compelling. Apparently there's a video of the encounter. I mean, there's cameras like everywhere in jails

these days, so I'm sure they had 15 different angles of whatever was going on.

Larry 45:24

Well, if that is true, and I'm sure it is, the video does demonstrate that there was consensual activity between adults. Stupid, yes, ridiculous, and clearly inappropriate. But my position is to charge her with a sexual crime to destroy her future. Is that emotional response that over the top and unnecessary, but a very costly emotional response? You people in Georgia say that you are very frugal with your expenditures of public resources by not throwing everybody in jail. Why do you have the fifth highest incarceration rate in the entire nation?

Andy 46:00

Is it fifth? I thought it was third. It's like California and Texas and then Georgia, I think.

Larry 46:05

No, I'm not talking about total time. I'm talking about the rate of incarceration, and like per capita measure, as measured by number of people in prison by 100,000 population.

Andy 46:15

Gotcha. Okay. Ah, well, this has become the norm verse, sexual activity that is inappropriate or offensive to the public. Hasn't this that seems to be like, that's what this has become, right?

Larry 46:29

Yes. So examples would be teens sexting each other, they're charged with distributing child pornography rather than being mandated treatment and, and the dangers of engaging in such behavior. Men found guilty of serious sexual crimes or given sentences that are measured in hundreds of years to set an example, the account serve, very few people were able to serve more than 100 years in prison. Right? So that's over the top. And then adults having consensual sex with other adults and inappropriate situations are treated as violent sexual criminals that's over the top. If you're running a 711 store, and you're supervising people, it's not appropriate for you to have sex with a consenting subordinate, if you're the manager of the 711. But if it's consensual again, I don't think that it's appropriate to make that person, a leper for the rest of their life and unemployable for the rest of their life. These are emotional responses. And they're driven by our distaste for the behavior, and our sense of indignation of disgust.

Andy 47:37

What do you propose that they would have done instead?

Larry 47:40

Well, I think the punishment would be appropriate as I described above, she would you would take the credential her take her law enforcement certification would hit her with the most minimal charge that you could come up with. And clearly that would be a probated sentence, and a misdemeanor charge would probably be more appropriate for what happened. This emotional response of we're going to lock them up because they know better yes, she knew better. I'm sure that there was some employment handbook, miniatures department, I'm guessing that said that you don't



have any contact intimate, particular but even any outside or contact with inmates. I'm sure she was provided some orientation to that. But she failed. She's a 21-year-old. She failed. And she was tempted. So we were on her way ruin her life for one mistake. Really?

Andy 48:30

Do you want to hear it like I plausible, the flip side of that scenario, forget that she had the power could be that the inmate had the power. And people in Clayton County generally live in Clayton County. And she probably lives at least if not in Clayton County somewhere in the nearby area. And there could be some sort of not I don't want to say blackmail but some kind of pressure applied, that if she doesn't do the things, then she has problems on the outside.

Larry 49:01

Are you saying that the inmate that was participating in the sex blackmailed her to do the sex?

Andy 49:09

Perhaps something of a plausible alternate scenarios that the inmate applied the pressure and not the power differential of the officer towards the inmate? It's totally plausible.

Larry 49:19

Well, I did see other videos that was the shortest one, but I saw other videos where there was a man who had served time in the Clayton County Jail, and he said it's not unheard of he had seen similar things before but he said that the men that do these favors are getting favors in return in terms of special treatment protection, extra privileges, and whatnot. And, and so there's a *quid pro quo* taking place. And then some people I've discussed this with say, Well, there's a power mismatch. There's a power mismatch in every aspect of our life. I mean, there really is. Everything you do in life, someone has more power than you.

Andy 49:57

So someone sent me a text message saying that of all the time that they've ever seen someone get they saw somebody got 3000 years.

Larry 50:08

3000 years? Well, we'll let him out.

Andy 50:16

All right, well, then we will move over to the Oklahoma legislative process. legislation moving in Oklahoma that would prevent PFRs human traffickers from working in senior living communities because this is a very, very big problem, I'm sure. Last week, the Oklahoma Senate approved Senate Bill 369. Is it coincidental or ironic that there's a 69 and that number to prohibit long term care facilities from employing anyone listed on the state's juvenile PFR registry? The bill applies to assisted living communities residential care homes, continuing care, retirement life plan communities, nursing facilities, home health settings, and adult day centers. Now, what's the problem with this?

Larry 51:02

Well, the juvenile sex offender registry is theoretically closed in Oklahoma to the public. And the bill would grant long term care facilities access to that registry to further vet prospective employees. The bill would grant long-term care facilities

access to the registry to further vet prospective employees. It also would decrease the time period from seven to five years — that nurse aides would be precluded from employment at long-term care facilities for any nonviolent offenses.

According to the sponsor, "This legislation closes an extremely dangerous loophole that has allowed those who were convicted of sexual crimes as minors to be hired to work with our most vulnerable adults in long-term care centers, many who are physically or mentally unable to protect themselves. That is what was said by state senator Jessica Garban, who was a Republican from Dunkin. She is quoted as saying that in addition, she was quoted as saying, we must make sure our long-term care facilities know exactly who is applying, and being able to thoroughly check their criminal records and backgrounds while also providing them with legal protection by putting this into statute.

Andy 52:20

Wouldn't that defeat the whole purpose of having the juvenile records being closed?

Larry 52:25

Well, I don't know if I'd go that far. It was certainly weaken part of it. But it begins to slide down the slippery slope of who all would have access to those records. That's a great point.

Andy 52:36

The article also states, "In many states, long-term care employers are only able to look back two to three years on a nonviolent offender's record during a background search. Oklahoma employers must wait seven years after a sentence ends to hire nonviolent offenders. Care Providers of Oklahoma said that it will be monitoring the bill as it progresses through the legislative process." Who is pushing this legislation?

Larry 53:01

I'm not sure. But it looks like the care providers association of Oklahoma is actually pushing it because their President Steven buck is quoted as saying, "Senate Bill 369 provides meaningful clarification of who can care for our state's most vulnerable residents." So that quote seems to suggest that the care providers of Oklahoma are involved in this. But I can assure you one thing and the reason why I put this in here is because one of our loyal supporters said this bill doesn't do anything. And so I told him, sure it does something it, but you just don't agree with it. It absolutely does do something. It does something you don't agree with. But I'm guessing from this quote that it was the caregivers themselves, who said, wait, we were having some difficulty in knowing who we're putting in these facilities without this additional access to information. And that's my guess. But since I did not have direct contact with the sponsor, the best way to find out is to contact Jessica Garvin, or one of the 30 co-sponsors. They'll generally tell you because she didn't stay awake at night burning the midnight oil trying to figure this out. It was brought to her by some entity or some group that said we need to close a loophole. That's why they refer to it as a loophole.

Andy 54:18

I do have a question for you. The Care Provider president was quoted as saying, "who can care for our state's most vulnerable residents." Now I need to know--are the older

people the most vulnerable or the youngest among us the most vulnerable? Which one it? You can't have them both?

Larry 54:34

Well, I would say that older people as they're in the final throes of their lives. They would probably be more vulnerable in terms of, of abuse, but it's a toss-up it really is. But I'm not sure I follow your point because these are people who committed crimes as young people themselves.

Andy 54:53

I know I'm being silly. It's just because we make all the PFR laws to protect our most vulnerable. Generally, you know, if it saves one child, that's normally where this goes. So now here's somebody else throwing this on the other side of the equation of making it go after the oldest people.

Larry 55:13

Well, it's in the House of Representatives now. And my prediction would be that it would pass. I can't imagine that there would be a sufficient level of opposition that would materialize that would derail this. It's something that you have a hard time coming up with a viable argument against.

Andy 55:33

And someone in chat--I have to read I got to reword this, but I want to share. It says, I find this mystifying do they think someone on the juvenile registry might do something inappropriate with someone's grandma? It's an overbroad assumption.

Larry 55:51

I don't know if I could agree with that. The person on the juvenile registry--we don't know what they did. We can't assume that automatically that they had a juvenile related offense they could have perved on an old person. We don't know that. Do we?

Andy 56:04

Alright, let's move along to this one article. I think we have enough time to do this one thing from the Associated Press. The Georgia House voted 95-81 on Wednesday to pass Senate Bill 63, which would have required cash or property bail for 31 additional crimes, including some misdemeanors. But the House and Senate could not agree on a final version, and the measure failed to pass as the 2023 session ended just after midnight Thursday. What does this mean when it says they could not agree?

Larry 56:45

What it meant is that it was one of those bills where there were changes made in one side of the rotunda versus the other. So the bill has to pass identically. And if it doesn't, then you go to a conference process that means that the amendments cannot be worked out in the remaining moments of the session. And that's all it means. The scary thing is that Georgia is moving in the wrong direction, especially if you believe in criminal justice reform.

Andy 57:10

Could you remind me of this word--congruent? What's the c-word when they agree?

Larry 57:17

Well, if you have, if you have legislation that's not identical. The first thing to do is you seek concurrence.

Andy 57:22

That's what I was looking for.

Larry 57:26

But if current system concurrence is not achievable, you can send something back to the originating chamber and say, look, the House say it's a Senate Bill three, Senate Bill 369, for example, in Oklahoma, but this bill in Georgia, it was a Senate Bill, so the house made changes. And then the first step is to send it back to the Senate and say, would you like to concur with the house amendments? And if they say yes, then it's done. But if they say no, then you have to send it back to the House, or you have to send it back to the originating where the members were asked, but they like to receipt on the amendments. If they say no, then you have to appoint a conference committee to work out and that requires the appointment of the members on equal quantity. And they work out an agreement among the conferees. And then they take that agreement back to the floor for a vote, and there just wasn't enough time. That's all it means. It doesn't mean that this bill doesn't have support, but it just means it won't work out.

Andy 58:26

So I just couldn't remember the word. But I mean, that's a fairly close vote 95 to 81.

Larry 58:33

Well, it clearly passed the Senate. The Senate in Georgia is controlled by the Republicans. So there was nothing a democrat party could do about it. It probably would have passed in its final totality. Had there been enough time to work out a conference agreement, it would have gone back and it would have been agreed to it there. Just this just the clock ran out. That's all.

Andy 58:53

I gotcha. Supporters said that bail is needed to guarantee people show back up for trial and to respect victims. "This measure establishes Georgia as a state that won't accept the soft-on-crime policies that we've seen in places like New York, California, Illinois, or catch-and-release," said Rep. Houston Gaines, an Athens Republican.

Larry 59:16

So yes. Mostly Democratic opponents of the measure said many more poor people would sit in jail, causing them to lose their jobs, housing or even custody of their children, while costing local taxpayers much more money to fund their jailing. "This bill will harm poor people. This bill will create a two-tiered criminal legal system in the state of Georgia, one for those who can afford bond and one for those who cannot," said House Democratic Whip Sam Park, of Lawrenceville. "We cannot simply lock poor people up as a solution to building safer communities."

Andy 1:00:02

I also noticed that Rep. Anne Allen Westbrook, a Savannah Democrat, noted that it costs \$74.51 a day to house a prisoner in the Chatham County jail. Does this argument not have merit?

Larry 1:00:20

Well, it should have merit, but it doesn't have when you really don't mean what you say when you claim you're being fiscally frugal and responsible. Because sometimes you make these arguments to people, and they don't have anything else to say. So what they will come back and say, well, we have to spend whatever it takes to be safe. That's their comeback.

Andy 1:00:40

Yeah, I understand. That's a that's a large sum of money, when you know, not 75 bucks a day, not you know, for one day, but when you hold somebody in there for, I don't know, two years or something, whether their child goes through, that's a crap ton of money that gets paid for.

Larry 1:00:59

And it's an unfunded mandate on the counties because the counties pay the cost of the jail. You will become a state prisoner after you're convicted. Now at that point, the county starts getting paid. Most counties get paid by the state, yes, like they're convicted, and then the state is paying for their incarceration, even if they're still sitting in county jail.

Andy 1:01:20

But when I first started doing my time, they were 105% capacity, if I'm not mistaken, the state was. So that doesn't bode well for the counties when they do need to when they've convicted the people and they need to offload them back up to the state, there's no place to put them. So then that gets outsourced. I got outsourced to a private, like county jail, so to speak, that was pretty far south in the state and spent two months there. And they were charging like 90 bucks a day or something like that I heard them say in a conversation while I was moving between vans or whatever.

Larry 1:01:57

Yeah, well remember, fiscal responsibility, you need to bring that argument back to the people that claim that they are fiscal, responsible. Individuals need to bring the argument back to them and force them to discuss it with you. Because they claim this as their mantra. We're watching the public purse with a great deal of vigor and we're guarding every dollar of the taxpayers' money. Hold them accountable for that. Ask them does everybody who's arrested for a crime pose such a threat to the community that we need to be incarcerating them pretrial?

Andy 1:02:32

Well, since chat doesn't have any questions, anything else before we shut this party down?

Larry 1:02:38

I think we've done a great job. This was fun tonight.

Andy 1:02:42

It was a good episode. I enjoyed it. How's your sleep been lately?

Larry 1:02:47

Not all that fantastic.

Andy 1:02:49

I had sent you something multiple times that offers you some different supplements or whatever. You did the melatonin, right?

Larry 1:02:58

Yeah, do that. Yes.

Andy 1:02:59

And did you ever do the other drug? And I shouldn't call it a drug. It's as a supplement.

Larry 1:03:05

What is it called again?

Andy 1:03:06

It's called niacinamide. [What was that?] Ni-a-ci-na-mida. And don't even start talking about the LA Ayomide either. [All right.] That was just some silliness. But you really should try it. It knocks me out like nothing. But I'm a lightweight.

Larry 1:03:27

I need to try it because I really would like a little more sleep.

Andy 1:03:30

It doesn't everybody. Well, you can sleep when you're dead. I'm actually wearing a shirt that says nobody asks for more sleep when they would like to party. I'm wearing a pirate shirt and says, hey, we need a party. We can sleep when we're dead.

Larry 1:03:44

Sounds good to me.

Andy 1:03:45

Alright, man, I hope you have a great night, and I will talk to you soon.

Announcer 1:03:50

Good night.

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