



Registry Matters Podcast

Episode 272

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Notice to our subscribers:

Registry Matters will not be recorded during the month of August. We will extend all expiration dates by one month to assure that you receive the requisite number of episodes.

00:00:00

Announcer

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00:00:14

Andy

Recording live from FYP Studios, East and West transmitting across the internet, this is episode 272 of Registry Matters. Good evening. Happy Saturday night to you, sir. How are you?

00:00:25

Larry

Doing awesome. How are you?

Andy

I'm doing very well. It's not Saturday night.

Larry

Is it Saturday afternoon?

00:00:35

Andy

OK. And that's because you're melting in there still.

00:00:40

Larry

Not so bad. Now I have auxiliary air conditioning.

00:00:44

Andy

Alright. And make sure before you get going too far that you press all the likes and the subscribe buttons and notifications and all that stuff. and go to your favorite podcast app and search for registry matters and you can download it so you can listen to it while you're driving, doing your laundry, and all that stuff around the house. With all that said, Larry, what are we doing with this episode?

00:01:07

Larry

We're covering a case from the Wisconsin Supreme Court. The decision regarding lifetime registration which impacts GPS monitoring, and we have a few articles. We have a

very famous guest, and you can introduce that guest now, if you like.

00:01:23

Andy

All right, I will do that because joining us again, I think the third time, is Lady Liberty and this is Kathleen. She is the co-founder of the anti-proactive sting group called CAGE, which is Citizens Against Government Entrapment. She's been writing her blog, Lady Justice Myth for about five years, has presented at a NARSOL conference, and her son's case was the focus of a 2020 article in the New York Times. Welcome back, Miss Kathleen. How are you? [Kathleen: I'm good. Thank you.] Do you wanna just dive right into what's going on? Do you want to kick the can for a few?

00:02:03

Kathleen

I'm a dive kind of gal. I have a friend who had reached out to me through the Lady Justice blog a couple of years back and he ended up going to prison for CP charges; right, wrong, and different, he's in prison. He's been having trouble. His parents have been denied visitation and he is an only child. His parents are elderly, both around 80 years old, and his father in particular has been doing very poorly, especially since this all happened. The stress has not obviously been good for him. I did not know why they were being denied. He wrote and asked for my help. I tried to work with Paul at the conference.

Paul suggested I ask Larry. I thought that it would be a good thing to have this on the podcast in case other people have this problem or heard something come up and go, "I don't know, are you automatically allowed to visit your immediate family in prison?" This is what I wrote to you and Larry, "I have a situation where an inmate is being denied visitation from his elderly, sickly parent. The inmate says they were denied because pre-incarceration, the inmate cut his ankle monitor and fled. When his plans fell through, he went to the only place he could think of, which was his parents' house. They were prosecuted for shielding him and each received a misdemeanor of six months unsupervised probation. The inmate was told by the guards that his parents were denied due to being a security risk. These are 80-year-old elderly people, which is, of course, ridiculous. Paul had asked me to ask the inmate to get his rejection paperwork from the guards, but they're dancing around that question. This poor man's parents are beside themselves. The father is and has been hanging on, but could take a bad turn at any time. What can I do to get his parents approved so they can see their son one last time? The man is serving 17 years, and obviously his parents

aren't going to last. Any help you can give me, in getting the parents in would be of great help."

00:04:22

Larry

You're screwed.

00:04:24

Andy

That's friendly.

00:04:27

Kathleen

He has been screwed. So, there's a couple of updates and I do wanna hear Larry tell me if this is normal, if there really *are* times when an inmate would be denied visitation, but this seems rather punitive and extreme. I did write at Paul's suggestion. He helped me look up the documents that are needed and there's something called the Justification Memorandum. According to the Rules for Ashland, the unit has to write to the warden to say, "We're denying these people and this is why." Then the warden is supposed to write back his approval of denial and his reasons for why. Paul had said you need to get these two documents from your friend who's the inmate. Interestingly enough, the guards have told him that that they can't get those documents without a Freedom of Information Act Request which is lunacy because it's their documents about him. He should have all of these, or he should certainly be able to get them. The guard told him if his parents reapply now, he'll try to get them in. Now, this is after me asking for the appropriate pieces of paper that should have been filed. My guess is that they didn't do this stuff and they were just being jerks, but I don't really know, Larry. What do you think?

00:06:10

Larry

Well, on the thing where I said, "You're screwed," I'm not being serious. But what's happening here is they are looking for a reason to deny the visitation. Now, I don't know if they have any axes to grind against the inmate, but that's usually the reason why they're looking for it, for a justification for the denial. So, as they were going through the precedence report, they discovered this, then they did their, maybe they did their background check, but they came up with the flimsiest reason possible. If it were *my* case, I would be looking at the actual policy of the Bureau of Prisons itself and then what discretion level the wardens have in terms of making independent terminations and I'd be looking for an actual rejection document. Paul is on the right track in terms of you do want them to formally reject them. What they could be doing here when they tell you to reapply is just stalling. If you're 80 years old and you're in bad health, it may be that you're just trying to run out the clock. These

are all speculative in terms of what they're doing, but it is fairly sad. So where are you with this right now? Are you gonna reapply or what are you gonna do?

00:07:29

Kathleen

Well, I was approved; I'm the only person that he ever got approved to see him and I've never met the man before, but his own parents were denied, and his aunts were also denied who were not part of him having cut his ankle monitor off. It really makes no sense why all of his family was denied. Where we are right now is that he's being told that they can get the next submission to go through and he was asked not to do anything else, which is, of course, a red flag to me. "Oh, you don't want us to tell anybody that you've denied this man visitation from his family? Ok." We are going to give them the two weeks. But at that point, I don't know how he can get his own papers. What do we do?

00:08:14

Larry

Well, again, I think they may be running out the clock if you're in frail health, 2 to 4 weeks could be enough to end the matter. There's no longer an issue if the man dies, at that point.

00:08:29

Kathleen

He's not sick, his parents are sick.

00:08:31

Larry

No, I don't know about the man. That would be the visitor, the approved visitor if he dies.

00:08:35

Kathleen

Well, yeah, but his mother would still want to see him.

00:08:37

Larry

Yeah. Well, I'm a big believer in certified letters, with this type of issue. So, if the inmate has been told that he's been denied the visitation of parents, I would tend to want to compose a certified letter and say, "I need the official denial because there is an administrative review process for everything in the BOP." There's a form, I don't remember specifically, because this is not my area of expertise, but there was a form where you go through an administrative appeal. I would go through the administrative appeal process. I don't think I would wait. Honestly, I think I would appeal the denial and I would do it with documentation. They don't like certified letters. No, nobody does.

00:09:32

Andy

Hey, Larry, are they, in your opinion, you know, we're only speculating, of course, but are they denying it because he cut off the ankle monitor? And so, anybody in that circle is being denied just so that they can mess with him?

00:09:48

Larry

But it's hard to say what's going through these people's minds because the best and brightest among us don't tend to work in prisons.

00:09:56

Andy

You mean that it was the day NASA wasn't hiring? So, they ended up at the prison system.

00:10:01

Larry

So that's generally not the case. I suspect that it could be that they're jerking him around or they genuinely believe that since he was harbored, I would not use the term shielded, but he was harbored that that would be a security risk. I can't see that because that's a whole different set of circumstances. Being on an electronic tracking device and you decide you want to exempt yourself from tracking is not the same as escaping from an institution and removing that electronic tracking device is not something that the parents did. From the way the story was communicated, his plans fell through whatever his original plans were. If he was gonna jump on a plane and go to Germany, those plans were abandoned and then he went seeking shelter, the logical place you would go, which is a family or a close friend. Very few people are gonna tell, their son, "Hey, you can't stay here." I think there's great grounds for an appeal here, but you've got to have something to appeal. You've got to have denial of what they're doing and saying, "Well, you just apply again."

00:11:25

Andy

I just want to ask this one other thing, why would Kathleen get approved as a completely unknown third party? Why would she be approved? I understand why the grandparents for harboring a fugitive or whatever the hell terms you want to use. I get the logic. It seems cruel.

00:11:45

Larry

Well, Kathleen probably has no criminal background, and he requested her approval on the list. I think you have some say so in who can visit if you request a visitor. I'm not sure about that. I've not been behind the walls, but I don't think they have to be a blood relative.

00:12:01

Andy

No, no, no, no, I don't mean that at all. I just, but Kathleen being just a completely unknown person and she was approved, I forget who you said that the grandparents weren't approved.

00:12:11

Kathleen

His parents who weren't approved.

00:12:13

Andy

His parents and then there was a cousin and aunt, and she wasn't approved also and she had nothing to do with the whole other thing. That's what I'm confused about. Why would they deny her? I get why the parents were denied even though that's ridiculous.

00:12:28

Larry

But that's very puzzling. Does she have any criminality in her past that you're aware of? [Kathleen no] then that's very bizarre. I think it's time for some certified letters if it were me.

00:12:42

Andy

And where does somebody get the template? Do we ask chat GPT for a template on how to write the prison?

00:12:50

Larry

Well, I would freeform it. I would identify the issue. And the aunt if she wants visitation would send one. How was it communicated to her that she was denied? Or has it been communicated? If it hasn't been communicated? A certified letter would say, "Dear warden, this application was made on this date. I have not heard anything from 'you people.'"

00:13:12

Andy

Do you recommend the 'you people' part?

00:13:15

Larry

I might not say that, but I haven't heard 'any formal response.'

00:13:19

Andy

And yes, please, please, please. It's your segment.

00:13:22

Kathleen

Do I write this, Larry? I mean, he's not getting any help. Does his mother write this? Who writes this letter?

00:13:31

Larry

Well, it could be either the parties that feel aggrieved themselves, which would include everyone from the inmate. He's not gonna be able to do a certified letter. He can file a formal grievance. But it would be anyone from the inmate to the aggrieved parties who were denied visitation to a legal representative of those like Paul could write the letter. I'm not sure that I would have the requisite standing to write the letter since I don't have those initials by my name, but I could compose the letter. You could compose the letter on behalf of the elderly parents, or we could jointly compose the letter. But they're stalling it, "Apply next time, it'll go through." Yeah, that just gets you out of our hair while you're going through this process all over again.

00:14:20

Andy

How far have you gotten in the process, Kathleen? Have you written anything, a draft letter or anything?

00:14:26

Kathleen

I had called and wrote to the facility saying that I have a friend there. His parents have been denied and is that normal? What can he do? You know those kinds of questions? And they pretty much just said, "Read the manual and F off." But then I met with Paul, so that's where I am.

00:14:51

Larry

So there has not been any official communication regarding the visitation applications. It's just been that there's no answer and the guards have told the inmate unofficially that they've been denied because there's been nothing official. That's what you're after an *official denial*.

00:15:11

Kathleen

But Brian did send me a piece of paper that he printed out where it does show that someone had been crossed off. They originally approved his father, but not his mother and later denied his father and crossed him off. And the guard apparently told Brian no way were these people ever going to get in to see him.

00:15:32

Andy

Brian is the individual locked up.

00:15:35

Kathleen

The inmate. Yes, Brian.

00:15:37

Larry

Ok. So now what was it that the guard showed him where it was crossed off? What are you talking about?

00:15:44

Kathleen

It was his list of people that are allowed to see him, and his father was originally on it, it said, approved and then it was crossed off and said, denied. He sent me this piece of paper, but there's no written notice, and I will also say that his mother has applied, I don't know, six times. I mean, it's just been like, "Let me see my son, let me see my son," and she doesn't get anything back from them.

00:16:10

Andy

I think that's where Larry is recommending the certified letter part. That way you at least have positive confirmation that the letter got into somebody's hands.

00:16:20

Larry

That is correct. There's this big principle of exhaustion when you're fighting a bureaucracy and the courts tend to not want to step in until exhaustion has occurred. The bureaucracies know that if you haven't met the exhaustion requirement, that you're not gonna get anywhere with legal action, so therefore, they don't really want you to formally exhaust your remedy. And therefore, they said, "Well, we haven't received anything; there's no grievance pending. There's nothing on that. I mean, if the inmate had any problems, the inmate should have told us. That's why it's important you follow these processes."

00:16:55

Andy

We could almost call it ghosting [Kathleen: gas lighting].

00:17:02

Larry

Yes. Yes.

00:17:03

Andy

Somebody in chat, Larry, says, "Why not take an emergency hearing of the condition of the parents to the court and get a judge to intervene?"

00:17:16

Larry

You could do that. But I'm afraid you would be potentially premature because of the failure to exhaust. I get the point that the person's making that if someone is at death's door, you may not have time to exhaust. But a judge is gonna be hesitant to jump into this and tell a prison that you must let someone in. I mean, that's gonna be a last resort for a court. Got you.

00:17:43

Kathleen

Well, I would love for you to be able to help me with that and I can certainly ask Paul as well if you have any time, Larry, please, please connect up with me and we'll get that sent off.

00:17:51

Larry

I always have time if the price is right.

00:17:57

Andy

Oh, there it is true capitalist.

00:17:58

Kathleen

An air conditioner.

00:18:01

Larry

Oh, I don't know about that.

00:18:05

Andy

She went for the jugular with that one, Larry.

00:18:09

Larry

I don't know if I can spend an air conditioner.

00:18:15

Andy

Anything else on this before we move along?

00:18:19

Larry

I think that's the best I can do with the information I have, but we can dig into the BOP policies a little bit, off the air and see if we can figure out anything that that would be relevant.

00:18:31

Andy

Very well. Thank you. All right. So, we will move right along. Thank you again, Kathleen. The next thing on the list here is a question from an individual. How did this come in, Larry? Did I forward this to you?

00:18:59

Larry

I think you forwarded it to me, and I figured you must have liked your expertise more than mine because you know the question subject matter better.

00:19:08

Andy

All right. Well, the question is, "My name is Georgina and I'm looking to move my family. That's my wife and kids to Georgia. I'm having problems finding a realtor to bring some people in on the registry. Do you guys know of any that will rent to people on the registry? And that's all I had, and you know, thanks for everything you do. Thank you for everything in FYP." Well, shoot, I don't know anybody? Does anyone even Restore Georgia. I don't even wanna say contact Restore Georgia, but they're the NARSOL affiliate in Georgia and there may be some resources provided if you want to email: info@restore-Georgia.org. If you're looking for places to rent, that's such a hit or miss kind of thing because you're depending on the landlord or the property management company to do a background check and then let you come in. If you're buying a property, that's a whole different story, you would just have to figure out what kind of rules you have to follow on being in Georgia. Do you have a different spin on that than what I'm reading?

00:20:24

Larry

I don't particularly have a different spin, but buying a house is gonna be something you need to be extremely careful about because Georgia has varying levels of restrictions depending on crucial dates of the offense. And therefore, someone who might be eligible to live at one address in Georgia, that's on the PFR list, you cannot conclude from that, that another person would be able to live there because all those crucial dates might be different. As time passed, Georgia extended restrictions and to avoid the Ex Post Facto Clause, they didn't apply them retroactively. So, therefore, somebody convicted in 2003, I think that's the magic cut-off, they don't have any restrictions. Is that right?

00:21:10

Andy

Somewhere in the ballpark, I believe 2003 is right. But I think it's mid-year 2003. It's not January, I believe it's like July 1st. If your conviction is prior to and not the conviction,

your date of, what would be the right term that when you did the deed.

00:21:23

Larry

Yeah, your date of offense.

00:21:26

Andy

If that's before whatever, 2003, then, yeah, you don't have any living, work, or presence, nothing. And then things start scaling up with 1,000-foot restrictions of varying degrees of entities, starting in that time frame.

00:21:41

Larry

Then you're going to get into the issue of whether the community wants you. We had a listener, I'm sure we still have that listener from New York that wanted to live in Georgia, and he picked the most conservative part of the state and tried to plop himself down and he wasn't particularly welcome there. And even though he had the right to be there, you could run into those types of problems. So, when you're buying real estate, you've got to do a lot of research in terms of what restrictions might be applicable to the offender. And you have got to carefully evaluate the neighborhood where you're going. And if it's a gated community, if it's a homeowner association type community, you're gonna have more problems, the more urbanized area you live in where people don't know one another, you're gonna tend to have fewer problems as a general rule. But not necessarily as a complete rule. If someone has an axe to grind against you, you may move into Dekalb, Fulton County, which was a very urbanized area in Atlanta, and they still may not want you. But I can guarantee you're gonna run into significant problems depending on where you go because there's a lot of parts of the state where they're just not too welcoming or forgiving of people who've made mistakes in their life.

00:22:51

Andy

Absolutely. So, yeah, if you wanna do that, like I said, info@restore-georgia.org and somebody should reach out to you with some resources that may be of use to you. Definitely, when you're sending in that email though, tell them what kind of area you're looking for and any other kind of details. Nobody wants to know exactly what you're convicted of, but something that would get them down the right frame of mind as to what kind of restrictions you might have, date of conviction would be significantly important for that email.

00:23:23

Larry

I don't think as far as finding a realtor, if you're trying to purchase a home is gonna be a real setback because they're trying to close a transaction. But I don't know what their duties ethically might be in terms of apprising you about the law. I think we had a realtor a few years back, from Georgia, but I don't know what they're required to do and that sort of thing, but they're trying to sell real estate. So, if you come and say, "I'm looking to be a buyer," "you look and find yourself a buyer's agent. I don't think they're gonna say, "Oh, well, you're on the PFR list, I'm not gonna try to help you buy a home." I just don't think that's the way it goes.

00:23:57

Andy

If I recall the conversation, she has no duty to tell the owners of your status and you have no obligation to tell the realtor of your status. The benefit of this particular realtor is that she's very familiar with the issue and can use the tools that she has available to her finding properties that meet the 1,000 foot restriction and so forth that would just help you instead of them having to pull up Google Earth and draw bubbles around properties and try to figure out if there's schools, parks, daycares, libraries, anything like that. And, you know, somebody sets up a sign-out front that says, "We'll watch your kids for \$20 a week." Now, they have a daycare sitting next door and you can't move in. Those things are really hard to track down, especially if you're not in the state and you can't go check out the neighborhood yourself. That's what you would be hiring a realtor to do. And if the realtor doesn't know about your situation, how would you covertly try and get that information and figure out what property you're allowed to live at without telling the realtor what your restrictions are.

00:25:00

Larry

Yep. Hopefully that was a little bit helpful.

00:25:03

Andy

Very good. Alright. Well, now we will move on to the main event.

00:25:07

Announcer

Registry Matters Promo Deleted

00:25:52

Andy

We have a request to discuss this case from the Wisconsin Supreme Court, Wisconsin. We had this comment posted on Youtube. "How about any disabilities or restraints

regarding the lifetime ankle monitor statute? 301.48 in Wisconsin. Try wearing an ankle monitor for over 4.5 years and online registration doesn't seem that bad. The statute went into effect 12 years after I completed my sentence. Republican, Governor Scott Walker was voted out of office in November 2018 shortly after implementing the statute. The case is *the State of Wisconsin versus Cory Rector*." What does that mean? What does Governor Scott Walker have to do with the question?

00:26:40

Larry

I don't know. He put that in there. But I suppose he's implying since Walker's out of office that Walker was either a nut job or it should be no longer the law. But unfortunately, everything that the governor signs when they have the power is the law until it's repealed or struck down by the court. So, I agree that GPS monitoring is a significant disability and definitely a restraint on one's liberty. The question is how we move to reduce the intrusion and there is ongoing litigation.

00:27:10

Andy

I want to clarify something. He finished his sentence of 12 years. And then I guess, still on the registry or not, he might not have even been on the registry, but then they pulled him back in.

00:27:24

Larry

No, he was on the registry, but they had that GPS law passed requiring people with multiple convictions and the way it's written, which is gonna be the subject matter as we go into this case, it didn't really apply the way that they applied it. But the attorney general under Walker interpreted the language to mean that anybody with multiple counts within the same case had lifetime registration and GPS monitoring, so that's what this case is all about here.

00:27:54

Andy

Ok. Well, we got off track but, we didn't have time to talk about it on the last episode. Before we get into it, let me read something written by attorney Adele Nicholas, and she said this decision, the one we're about to talk about affects only a narrow subgroup of people subject to lifetime monitoring in Wisconsin. Specifically, those who were convicted of more than one count in a single case. "Wisconsin continues to subject a huge number of people to lifetime monitoring who fall into other categories, which is those convicted of offenses labeled as serious. Anyone with more than one sentencing date for a sexual offense and anyone released from civil commitment." She went on

to say that we are litigating this issue. We filed a proposed class action in the eastern district of Wisconsin in 2019. The case is ongoing. The case is called Braam, that's B R A A M , Brahm versus Carr. C A R R. So far, the circuit 7th Circuit has upheld lifetime GPS tracking, but we are continuing to fight the issue. This recent Wisconsin Supreme Court decision narrows the class, but does not end the practice of lifetime monitoring. Does that mean we can shut down and move on to something else, Larry?

00:29:05

Larry

It does not because we can get into the numerous nuances of this ruling a bit and then try to explain how we got to where we are, as best I understand it. And folks, you don't need to send the hate emails because we don't have the elaborate resources to do in-depth research on some of these things. We do the best we can looking at the decision and cutting and pasting and analyzing it. But some of the stuff could be incorrect because of my interpretation and lack of knowledge. But feel free, if we're wrong, to send us clarification and we'll go back on it. But as I go into this, some of the stuff I may not have exactly right.

00:29:45

Andy

Well, if they have it right, then they can do a podcast. That's what I say.

00:29:49

Larry

That's correct. But sometimes people write and say, "Well, you got this little point wrong." And I say, "Well, I'm doing this from a distance. I'm not directly involved in these cases."

00:29:57

Andy

You're not flying around the country to interview these people directly?

00:30:01

Larry

Not at the moment. We don't have that within our vast budget.

00:30:06

Andy

All right. Well, let me give you a bit of the underlying facts. The state filed a criminal complaint charging Rector with 10 counts of possession of CP after seizing over 1,000 offending images and videos. During a single hearing, Rector pled guilty to five out of 10 counts. The Circuit Court sentenced him to eight years of initial confinement and 10 years of extended supervision on each of the five counts to

be served concurrently. And ordered that he comply with registration requirements for 15 years. The court found Rector ineligible to participate in the ERP in relevant part because the offense was not a substance abuse crime. And what happened next? But what is ERP

00:30:49

Larry

It's an early release program in Wisconsin.

00:30:53

Andy

So that, I mean, the equivalent of saying parole?

00:30:56

Larry

No, it's not. The Department of Corrections requested the Circuit Court amend the judgment of conviction (JOC) because it believed that the statute in play here required Rector to register for life. The Circuit Court denied the motion to amend the judgment determining that the statute did not require lifetime registration because the convictions did not occur on separate occasions. The State cross-appealed the motion to amend.

00:31:27

Andy

The Wisconsin Supreme Court ultimately took jurisdiction over the appeal. What was the actual issue on the appeal? Oh, I missed this. Rector also filed a post-conviction motion to amend the JOC on the basis that the court improperly determined he was not eligible to participate in the early release program. The Circuit Court denied Rector's motion for two reasons. One, the Circuit Court explained that it only authorizes eligibility to participate in the ERP when substance abuse directly goes to the criminogenic factor that caused the crime and that was not the case here. And then secondly, the Circuit Court was concerned that participation in the ERP could lead to release before the defendant had served the statutory minimum sentence.

00:32:12

Larry

I deliberately did that to you. I first had that in my script, and I moved it when I saw I couldn't pronounce it.

00:32:19

Andy

I kind of glanced through stuff looking for weird words and that didn't show up on my radar.

00:32:28

Larry

So, I said, "Well, since I can't pronounce it, I'm gonna put this in his section. [Andy: Thank you]. You are correct.

Rector filed an appeal challenging the denial of his motion to amend the judgment of conviction. The issues are very simple in this case, whether or not his convictions occurred on separate occasions as required by the language of the statute, and whether he was eligible for the earned release program.

00:32:55

Andy

And I recall that now the former Attorney General of Wisconsin had issued an opinion that multiple convictions in the same case require lifetime GPS monitoring. Is an AG's opinion binding.

00:33:08

Larry

Well, it is not. It can be cited as persuasive, but an opinion letter is just that, it's an opinion.

00:33:16

Andy

And to get some clarification, if you happen to download naughty images on Monday, Tuesday, Wednesday, Thursday, Friday, Wisconsin could charge you with five different events instead of having a bunch of naughty images and that would then put you into this category.

00:33:33

Larry

What the issue really is, is how did they dispose of the case? If they prosecuted you on all those different dates within the same case, that is one episode. It's not necessarily continuing, but it's criminality in one episode, and you've been brought to justice. And that's what this was, the whole stupidity of this. This is within the same case.

00:33:57

Andy

To make the point, you hear about a bank robbery, and then there's some sort of interaction between the person driving the car and the police. So now you have assaulted an officer, but all of those will get lumped into one trial and you'll be convicted in one group. I don't know what the right word would be.

00:34:14

Larry

One case number. If you go out and rob another bank after that, that's a separate episode. But this was a silly argument.

00:34:23

Andy

And so, what did the state argue after that?

00:34:26

Larry

Well, everything they could imagine, but the court noted the state fails to offer any textual reading which gives effect to the phrase 'separate occasions.' The state reads the statute as if it required a person to comply with lifetime registration if that person has twice been convicted. But the statute actually reads, 'If a person on two or more occasions, separate occasions, has been convicted by ignoring separate occasions.' The legislature used the phrase 'separate occasions.' The court says we must attempt to give effect to every word as such. We hold that the person is convicted based on charges filed in a single case during a single hearing, then these convictions have not occurred on separate occasions. Wow, I mean, that's kind of straightforward.

00:35:13

Andy

So, I mean, this does sound crazy. How do courts determine the meaning of language in a statute?

00:35:20

Larry

Well, Statutory Interpretation begins with the language of the statute; if the meaning of the statute is plain, the court ordinarily stops the inquiry. In determining the plain meaning of a statute, courts use common, ordinary, and accepted meanings of words and give technical or specially defined words or phrases their technical or special definitional meaning. So, you look at the statute and you ask, "What does it say?" And this is the argument about textualism. If you have a situation like this, textualism is beautiful. This gives you exactly the result you're looking for because they looked at that and it says 'separate occasions.' You cannot come to anything at a textual interpretation other than the outcome of this case.

00:36:04

Andy

The court stated we are tasked with interpreting the phrase on separate occasions. And we determined that in the context of this statute, the plain and ordinary meaning of separate occasions does not refer solely to the number of convictions. What is the significance of this for Rector and others?

00:36:22

Larry

It means that the Circuit Court did not error by ordering him to register for 15 years rather than until his death because of his five convictions and he will not be subject to lifetime

GPS monitoring. That's what it means, and it has that same meaning potentially for others.

00:36:38

Andy

So let me get this straight though. Wisconsin's registration statute requires lifetime registration when a person has, on two or more separate occasions ... I want to maybe rephrase that ... two or more case numbers, having been convicted of a PFR-type offense, what is ambiguous about that language?

00:36:54

Larry

Well, it's not ambiguous to me and that's very common with states. If you have a subsequent conviction after having been intervened, having received intervention and you can continue your PFRing, you're going to have lifetime registration.

00:37:11

Andy

I haven't heard it term PFRing.

00:37:15

Larry

If you continue to engage in unlawful behavior, you're gonna end up with a lifetime registration in many states.

00:37:21

Andy

This would be Three Strikes laws is what that goes to. Anything more than one. So, if you go rob the other bank, you are now doing more criminal activity; Wisconsin Statute, Subsection 301.45(5)(a). Is that close? [Larry: close enough]. So that section governs when a person must comply with registration requirements for 15 years and all that same stuff again. But in Paragraph B, 301.45(5)(b) in parentheses, B governs when a person must comply for life. Wisconsin statute § 301.45(5)(b)1 requires a person covered under this section shall continue to comply until his or her death if any of the following applies: When the person has on two or more separate occasions, been convicted or found not guilty or not responsible for reason of mental disease or defect for a PFR type offense or a violation of the solicitation conspiracy or attempt to commit a violation of a federal law, a military law, a tribal law or a law in any state that is comparable to a PFR type offense. Rector was only convicted on one occasion, right?

00:38:48

Larry

It is indeed correct. The court stated, "We begin by defining the 'separate occasions.' 'Separate' means 'set or kept apart: disunited.' An 'occasion' is an event or a happening;

an 'incident,' or a 'time at which an event occurs.' Occasion, taken together, a separate occasion is an incident or time at which an event occurred, which is set apart from another incident or time at which a different event occurred.

00:39:25

Andy

Oh, I see that in paragraph 18, they stated, "Given the common and ordinary understanding of the phrase separate occasions as shown through examples and dictionary definitions, we hold that Rector's convictions did not take place on separate occasions." Like different apples purchased during the same trip to the store or different activities occurring at the same wedding, Rector's multiple convictions occurred during the same 'occasion.'

00:39:52

Larry

Yeah. And the state was not happy, and neither were some of the justices that were in the dissent. And the court recognized the dissent, and they said as follows, "However, before concluding, we're compelled to respond to the dissent's accusations charging that this opinion omits the details of the images found in Rector's possession and in doing so, both trivializes heinous crimes against children and ignores the statutory purpose of public protection."

"Either accusation holds water," said the court. "This opinion omits the details of the images not to trivialize Rector's crimes, but rather because the seriousness of Rector's crimes is irrelevant to the question of statutory interpretation before us. We attempt to honor that purpose by deferring to the legislature's policy decisions as expressed in the words of the statute. "Again, this should just make people that are textualists palpitate because they did what the text said.

00:40:56

Andy

To kind of close this out, what is your general opinion of the Wisconsin AG's Office in terms of how they handled this case?

00:41:05

Ronald Regan

Run by the strangest collection of misfits looney tunes since the advent of the Third Reich,

00:41:11

Andy

Does that accurately portray what you think of it?

00:41:16

Larry

It does. I can understand the politics of why they took the position they did. But this was a no-brainer case. It really was. It was needless litigation and we've got the outcome and I don't know that we would have gotten this outcome but for a change in the justices on the [Wisconsin] Supreme Court in the most recent election cycle. I don't know all the nuances, but I'm not sure if we would have had this outcome without those changes. So, the liberal do-gooders may have swayed the balance.

00:41:45

Andy

Oh, I see. Well, very good. Now I believe that we have a few more things to cover. We're at 40-ish minutes and I don't want you to melt in your little delicate state. Are you OK to continue with a couple of articles?

00:41:56

Larry

Yeah, let's do at least this one on the Massachusetts Law Lawyers Weekly.

00:42:05

Andy

Very good. You provided this article from Massachusetts. It's from Massachusetts Lawyers Weekly. I mean, is there a different one for every state, Larry? Is there a weekly digest for every state? [Larry maybe] All right. From Massachusetts Lawyers Weekly, it says where a superior court judge affirmed a plaintiff's classification as a level three PFR, that judgment must be vacated because the hearing examiner did not explain or even make explicit her apparent conclusion that the defendant, convicted only of a non-contact offense, was likely to reoffend by committing a contact offense against a prepubescent child. What is the relevance of this case?

00:42:50

Larry

It affirms that when the law requires that a hearing officer follow a specific process and issue specific findings and cite to the evidence that the hearing officer must do that. I chose not to put this guy's criminal history related to his PFR-type offending in here because it is not pretty and I can tell you how that hearing officer got to this decision, but she didn't do it by the correct process. So, this is a procedural reversal. This is gonna actually result in nothing because she's simply gonna put everything in writing that she did previously. This stuff was gross that I mean he started PFRing when he was a youngster. It continued to his juvenile life and into his adult life. So, this is not a pretty case.

00:43:45

Andy

It says on November 22nd of 2021 a Middlesex County Superior Court judge entered a judgment affirming the final decision of the PFR Registry board, SORB Sex Offender Registry Board to classify the plaintiff as a level three registrant. The plaintiff now appeals arguing that his classification is improper because the SORB hearing examiner breached the appearance of impartiality, misapplied statutory risk factors, ignored relevant expert testimony, and rendered a classification decision unsupported by clear and convincing evidence. What did the court determine from there, sir?

00:44:20

Larry

It held, although most of his assertions that he made are without merit. We conclude that because the hearing examiner did not explain or even make explicit her apparent conclusion that the defendant convicted only of a noncontact offense was likely to reoffend by committing a contact offense against a prepubescent child, her conclusion that he does not pose a high degree of dangerousness was not supported by clear and convincing evidence. Here the hearing examiner made no explicit finding about the type of PFR crime that the plaintiff would be likely to commit or how he would likely reoffend, and that's required by the statute.

00:45:04

Andy

According to the court, it's not enough that the hearing examiner may have believed the plaintiff poses a risk of reoffending by committing a contact offense with a prepubescent or other child and thus presents a high degree of dangerousness, but that the hearing examiner's decision does not lay out clear and convincing evidence that is the case.

00:45:24

Larry

Yes, and it's important to note what the court said, "We express no opinion on these questions, or on the question of what offenses someone with the complex sexual offense history of the plaintiff would likely commit if he were to reoffend. We have none of the expertise on the matter that the hearing examiner and the experts at SORB have. But a high risk of dangerousness must be found by clear and convincing evidence before an individual can be classified as a level three PFR. Imagine that you've got to have evidence.

00:46:00

Andy

Stop it.

00:46:01

Larry

The thing about this case is the evidence in my view was there. He had an evaluation and it was shown that at least a hearing officer believed the evidence showed that he was not truthful, and he was evasive, and he started offending when he was quite young. Now he was offending against youngsters because he was young. That doesn't necessarily mean you're gonna continue offending against youngsters now that you're an adult, but I can see how she got to her decision. You better put it on paper next time, you better issue those findings because this is going back to the hearing officer for a new process. And if you want him to be at level three, you gotta do your job, you gotta document why.

00:46:48

Andy

And also, this is not some broad brush, this is an individualized assessment, so-to-speak.

00:46:57

Larry

That is correct. He is in a state where they actually have a fairly sophisticated process to determine if the person should have additional scrutiny and restrictions, and that process just wasn't followed.

00:47:16

Andy

Gotcha. Larry, I don't want you to roast and, so I think we should let it go for the day. Is there anything else that you would like to cover and speak to? Anything before we get out of here? I have a few patrons to announce,

00:47:32

Larry

Not really, we're gonna carry the sex traffic and bill over to episode 273 and we can get into some detail about that. About how politics carried the day. So, guys stay tuned to the next episode and we'll be talking about the political football and theater that happened in the state of California.

00:47:50

Andy

Fantastic. And without further ado, we got four more new patrons, Larry and, I can't thank all of them enough. Well, there aren't enough words to thank them all. And so that was Randall, families for a better Florida. No idea what your name is, but that's fine. And then Lucky. And also Scott. Thank you all so very much for becoming patrons. It's certainly wonderful to have more supporters and help pay the bills and show your support and love. Anything else, sir?

00:48:20
Larry
We'll see you in about two weeks. We're on that summer schedule for another month, right?

most importantly, patreon.com/registrymatters to support the show for as little as a dollar a month and all of that is greatly appreciated. Thank you, sir. I hope you have a fantabulous rest of your weekend and don't die of the heat.

00:48:26
Andy
Yes, I think we could record next weekend. August becomes chaotic. We almost have to take the whole month of August off unless we record at different times.

00:49:02
Larry
See you next week.

00:48:36
Larry
Ok. Well, maybe we'll see you next week.

00:49:03
Andy
Take care, buddy. Bye.

00:48:39
Andy
Yes. All right. Please make sure you go over to [Registrymatters.com](https://RegistryMatters.com) to find all the show notes and everything else and links to places. And then of course,

00:49:08
Announcer
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