



Registry Matters Podcast

Episode 275

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Announcer 0:00

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Andy 0:17

Recording live from FYP studios, east and west, transmitting across the internet. This is episode 275 of Registry Matters . Good evening, sir. How are you?

Larry 0:27

I'm doing awesome. Glad to be back with you one more time.

Andy 0:31

Just once. This is the last one, I'm not putting up with you anymore.

Larry 0:35

That's what I've been hoping for.

Andy 0:37

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Larry 1:10

I don't understand why not. The plans are cheap.

Andy 1:13

They are but you know, my kid has a very restricted plan. And he just wears out some Instagram and he runs out of data in about 10 days. And then he's got 20 days of being miserable. He cannot ration himself.

Larry 1:24

That's difficult for a teenager to do.

Andy 1:28

Would you tell us what we are up to this evening?

Larry 1:32

We have a significant ruling from the state of Texas, their highest court, the Texas Court of Criminal Appeals. And it's gotten you all fired up, and I'm not sure why. But anyway, we have a few articles. But the bulk of it is going to be that case from Texas regarding PFR registration.

Andy 1:53

Well, very good. Did you have any sort of celebrations recently?

Larry 1:59

I celebrated my 100 and 80th birthday in June.

Andy 2:03

So since you celebrated your 100 and 80th birthday, how much longer are you planning to stay?

Larry 2:08

A long time? Get used to me?

Andy 2:14

Ha, I hit the cue on point, didn't I?

Larry 2:17

That's pretty good there.

Andy 2:20

I do want to bring up before we get rolling that last week, we covered an article. If you're looking at the YouTube thing, there's a screen posted for a news release from NACDL, the National Association of Criminal Defense Lawyers, and one of our patrons wrote, "Just to let you know that PFRs are excluded from the revised sentencing guidelines. You may want to add that to the show notes or the transcripts." Well, there they are. You want to say something about that?

Larry 2:45

We have added it and we're aware of it. And through the history since the First Step Act was passed, we've occasionally called people's attention to how it was restricted by last-minute amendments placed by the United States Senate and by a conservative group of senators led by Senator Cotton from Arkansas.

Andy 3:09

I've heard of him. Yes, he's amazing.

Larry 3:13

We've encouraged people to either elect different senators, if they want criminal justice reform or convince those that

led the charge for those restrictions, or you need to convince them to change how they vote.

Andy 3:33

Have you had much success in converting people and how they vote?

Larry 3:38

Very modest in terms of that, but you can occasionally, with sound arguments, actually convert people. And I know I've had some headway here in my state, particularly for the issue of the statute of limitations, because the Liberals have bought into the notion that "Justice" shouldn't have an expiration date. But then when I go through all the nuances of why we have the statute of limitations and how it's unfair to a person when they can't put on a defense 30 or 40 years later, it actually resonates with a few of them. And occasionally you can break through, but it's difficult when they're hardwired to do a certain thing. And conservatives are hardwired to believe that people in jail keep the community safe and the more the better.

Andy 4:27

Let's get moving because this episode's going to be amazing. This is the 275th episode and I predict that it will be the first time Larry that you will not be able to spin a bad judicial decision. The case is from the Texas Court of Criminal Appeals. I've read this case thoroughly, word for word. I took notes, I've cross-referenced, I dragged lines around to make references. I don't see any wiggle room on this one. You just won't be able to make excuses for this terrible decision. Normally, we would wait and do the main event. But this time we're going to do it first. I can't wait to finally get an admission that the court got it wrong. Are you ready to spew your usual spin?

Larry 5:12

I think so. Yes.

Andy 5:14

So here we are. In 274 previous attempts, you will finally have to admit that there's no justification for their ruling. And I'll set this up a little bit. This case was brought by David Richard Lane and arises from a conviction for the offence of failure to comply with PFR registration requirements. In this application for a post-conviction writ of habeas corpus, Lane challenged his 2007 conviction for that offense on five grounds. Actual innocence is number one, number two, ineffective assistance of counsel, three, involuntary plea; number four, due process violation, and five, of course, no evidence. And he brought this up using a habeas corpus as a vehicle. Would you do me the kind deed and tell me what a habeas corpus is?

Larry 6:03

Sure, a writ of habeas corpus is a petition filed with a court on a person and it's usually a prisoner[who] wishes to contest the legality of their custody. And, most frequently, a writ of corpus is used as a post-conviction remedy when the person believes the laws are being illegally applied that result in no detention. It doesn't necessarily have to be a detention because the courts recognize and many jurisdictions and the federal systems recognize that the confinement can be out of custody, but still under the restrictions of a sentence. But generally speaking, the person is in custody, they've exhausted all their other judicial remedies. And they can also be used for military detention, as well as immigration deportation matters. But like I said, it doesn't necessarily require an individual to be in physical custody, but it does in the state of Arkansas. If you're going to file a petition for habeas, you must be in physical custody, otherwise, you can't.

Andy 7:03

Isn't there a time limit? You can't file a habeas petition 50 years later.

Larry 7:08

I think they can in Texas. If I remember correctly, one of the Texas advocates says there's not a time limit. But under the federal habeas, there is a timeline. In most instances, there is a time limit, but in Texas I think as long as you were suffering any type of custody status, you can file one, but I won't swear to that.

Andy 7:26

Okay, I believe I'd heard all along that in most states, there's some kind of time limit three-ish years, on how long you might have to file.

Larry 7:38

Yes, it's generally a short period of time and under the federal anti-terrorism and effective death penalty act, I think it's one year after you exhaust your state remedies. So you have to do exhaustion first, going through the state courts, even though you know, it will work and then I think it's one year from post exhaustion.

Andy 7:57

Larry, since he had five different claims, which he was going after, you would think that one of them would be valid, wouldn't you?

Larry 8:04

Not necessarily, where do you get such a notion?

Andy 8:07

It just seems like that would be kind of common sense for me. And I can see that this is not going to be easy to convert

you. So, in June of 1982, a jury convicted Lane of aggravated rape and he received a sentence of 10 years imprisonment. Probated. He did not appeal. Five years later, in March of 1997, the trial court entered an order terminating Lanes probation and setting aside the conviction of the then existing Texas Code of Criminal Procedure Article 42.12, Section 7. The conviction was set aside in 1987, well, before the state of Texas had a PFR registration scheme. So, what's your spin from here?

Larry 8:47

Well, he didn't have to register in 1987 so there's no spin. The duty came about many years later,

Andy 8:54

When did the duty for him to register become applicable to Mr. Lane?

Larry 8:59

Well, as you eloquently pointed out, and thanks for doing all your homework, when his conviction occurred in 1982, there were no PFR registration requirements. It wasn't until 1991 that the legislature of Texas enacted the first PFR registration program. As we discussed in the last episode, the laws are frequently changed because they can't help themselves. And 2005 the requirements were made retroactive so that anyone with a reportable conviction occurring on or after 1970 was then required to register. Can you at least admit that 1970 occurred prior to 1982 which would encapsulate Mr. Lane's 1982 conviction.

Andy 9:42

Perhaps I can concede that the conduct after 1970 would include 1982. When did he begin registering as a PFR then?

Larry 9:57

Well, he began registering in 1998. And this is in the court opinion. The court noted that Lane was added to the registry for the first time upon his release from prison on a drug charge. Lane registered in April of that year in Pasadena, Texas. What this tells us is that Lane might not have ever been required to register, had he not been sent to prison again for a drug charge. It was the prison doing their due diligence prior to releasing him when they discovered the old 1982 conviction. And they notified him of his obligation to register that resulted from the 1995 legislative change. Now let's see, let's do the arithmetic folks. In 1991 they enacted the registry. From 1991 to 1998 there was no Gestapo that had gone out and found him. He was found upon release. Of course, they might not have been looking because he was in prison and it's not clear how long he was in prison. But everybody knows that they're just out looking for you. And they discovered him because he was already there and being released.

Andy 11:03

And they do a lot background checks. They make sure there aren't holds in other counties, jurisdictions before they just open the door and let you go. This would then show up his other convictions and then they would flag him as being a PFR.

Larry 11:18

That's exactly what they did. So, not knowing how long he was in custody is not clear., but certainly he had a large number of years between the time he got discharged and the time the law got changed from 91 to 98. A good seven years that he wasn't registering.

Andy 11:35

The case at hand here is based on a 2007 guilty plea to failure to register. How did that case come about?

Larry 11:42

Well, now that's a funny story. In April 2007 Lane was arrested for another offense. And investigating officers discovered that he was not living at the address where he had previously registered and had not completed his registration requirements in recent years. Again, this bolsters what I'm saying folks, that are not out looking for you the way you think they are. So, he hadn't registered and was not at the last address where he had registered. Not only was he not at that address, but he had also not updated for years. But upon being questioned about this, Lane told the investigating officer that he thought he was no longer required to register, based on statements made by an attorney who represented him in another case. The investigating officer disagreed and told Lane that pursuant to provisions of the Code of Criminal Procedure, Chapter 62, he had a lifetime duty to register.

Andy 12:34

If you'd reference page six, it says he signed a form acknowledging this requirement and stated that he would have registered had he known he was required to do so. The officer scheduled an appointment for him to complete his registration. Lane gave his word in quotes that he would attend the appointment. He further acknowledged his understanding that the department would pursue criminal charges against him if he missed it. Despite this, Lane failed to appear for the appointment.

Larry 13:04

He failed to show up. Can you admit that that's funny?

Andy 13:07

That's just ridiculous. Months later, in September 2007, the investigating officer met with Lane to inquire about his registration. Lane told the officer that he had been busy working and did not want his friends to deal with listing

their residence as the home of a PFR. Lane was then arrested and charged with a third-degree felony failure to register as a PFR.

Larry 13:31

And because of Lane's criminal history, he qualified as a habitual offender and faced a sentence of 25 years to life. By the way, in New Mexico, we have specifically exempted PFR registration from the habitual offender act, because it is a civil regulatory scheme. [Andy: I'm sorry, what Larry], a civil regulatory scheme?

Andy 13:51

Oh, I'm sorry. And that would be kinda like not criminal punishment.

Larry 13:55

Well, the deed itself is like a civil scheme, therefore, it's not like you're out committing new criminal offenses since it's like a civil regulatory scheme. Therefore, we've got a specific carve out that cannot be used for habitual enhancement. Most states do not have this exemption in their statutory scheme. This means that a failure to register violation gives the prosecution a really huge bargaining advantage because they can negotiate to not file habitual proceedings if you choose to plead guilty. In this case, they still have the underlying conviction, sentencing authority for a third-degree felony to hold over him, which is significant in Texas. But having the habitual enhancement made it virtually impossible for him to do anything other than a guilty plea. The funny thing is that in New Mexico, the maximum exposure for failure to register is 18 months. Goodtime credits can reduce that to nine months, even if the Court were to impose the maximum sentence, which they seldom do.

Andy 14:55

In Georgia, if I'm not mistaken, if you fail to register the first time is a one-year sentence. And then it's five and then I think it's 30. Well, so he missed it, and it was 25 to life.

Larry 15:06

Because of habitual enhancement, he's a habitual offender. In Georgia, they have habitual enhancement as well they can file habitual enhancement. But when you say the one, I don't think that's the maximum exposure. There's no felony in Georgia that carries a maximum exposure of one year.

Andy 15:23

I'll buy that. That's a minimum of one.

Larry 15:25

Yes. All right. But I'm talking about maximum exposure. If the judge maxes you out, the judge can only give you 18 months.

Andy 15:33

I see. The trial court appointed Attorney J.A. "Joe" Salinas to represent Lane. Salinas obtained a plea offer from the prosecutor for Lane to serve 10 years in prison, despite his habitual offender status. According to Lane, Salinas, informed him that the prosecutor was hard on these types of cases and would revoke the ten-year offer if you do not accept it on this day. Do it or die, man is what that's telling you. Thus, on October 29, 2007, Elaine accepted the offer and pled guilty. Now can you admit to me please, that this plea bargain was nothing more than coercion?

Larry 16:11

No, I cannot do that either. It was sad. It was really sad. But the simple reality is that Mr. Lane was actually facing 25 years to life as a habitual offender, and Mr. Salinas reduced his exposure to 10 years through negotiations. Mr. Salinas did not create the statutory scheme. The citizens of Texas did. He was merely the messenger of the bad news.

Andy 16:38

And that's combating the idea of ineffective assistance of counsel. [Larry Yes.] After serving eight years of the 10-year sentence, Lane was granted parole in August of 2015. While on parole Lane was again charged with failure to comply with registration requirements. In August 2017, he pled guilty to that offense and was sentenced to an additional five years of imprisonment to run concurrently with the remainder of his prior sentence. Then something bizarre happened, would you dig into that one a little bit?

Larry 17:10

I can. I know you're getting bored listening to all this build up, but it's essential to make the case come together toward the end. We normally tell you that in this case, it did not resolve well for Mr. Lane, but we're going to great lengths to make you understand why. But according to Lane, in September 2017, two attorneys from the Texas Department of Criminal Justice Office of State Council for Offenders contacted him and informed him that the department had determined he, in fact, had no duty to register and would be removed from the registry. They informed him the decision was based on the TDCJ Office of General Counsel and was based on the decision of the Sixth Court of Appeals and as a state court of appeals. and the case named *Hall v. State*, 440 SW 3d at 690.

Andy 18:01

In *Hall*, a case with nearly factually identical circumstances, the Court of Appeals held that an aggravated rape conviction that had been set aside to judicial clemency under former Article 42.12, Section 7 could not serve as the underlying offense for the failure to register charge. What's your spin on that? That was a decision from the Texas Court

of Appeals. You always pontificate that appellate decisions are binding on lower courts. What's your spin?

Larry 18:28

Well, they are binding, and I have not changed my opinion. They are definitely binding. Unfortunately, we're at the highest court of Texas on this case. And the Texas Court of Criminal Appeals is not a lower court. It's the Supreme Court on criminal matters. And it is not bound by that decision at all. So, there's no spin. That's just the reality of the case. It would have been binding on the habeas judge, but it would not have been binding on this court.

Andy 18:51

To reach this conclusion, the Court of Appeals relied on Cueller versus State.

Larry 18:58

It would be pronounced quasar. Cueller?

Andy 19:04

OK. That's Cuellar Cuellar, in which this very same court, the Texas Court of Criminal Appeals, reached a similar holding in a charge of possession of a firearm. They held that because Cuellar's underlying felony conviction was set aside pursuant to the judicial clemency provision, he was not a convicted felon, and thus, there was no predicate felony conviction to support a conviction. The Court of Appeals in Hall applied this reasoning to similarly concede that Hall had no underlying conviction, which could serve as the predicate conviction activating the sex offender registration requirements. Mr. Spin Doctor, what do you say to that one?

Larry 19:45

Well, I say is a law as it applies to registration is clear that judicial clemency is not one of those rare exceptions that nullifies a "reportable conviction." That's what I say.

Andy 20:00

Can we dig into the favorable habeas decision that was reversed here?

Larry 20:04

Yes, folks, this is what you're waiting for now.

Andy 20:07

All right. The habeas court thus determined that Lane's conviction was not a reportable conviction triggering the requirements to register. Regarding his actual innocence claim. The habeas court similarly reasoned that because Lane did not have a reportable conviction, he did not have a duty to register when he was convicted of that offense, and he should be entitled to relief by having his conviction vacated. And what's wrong with that one.

Larry 20:33

There was nothing wrong with that. That was the correct decision for the habeas court because they were bound by Hall. But of course, the state appealed, so that's what's wrong with it. They're before the final decider now, and the final decider is not bound by Hall because they have never adopted that reasoning.

Andy 20:46

It looks like the deck was stacked against Mr. Lane. He had a gun held to his head to plead guilty to failure to register both times and he pleaded guilty. the lawyer in the second case should have known about Hall. Can you admit that at least?

Larry 21:01

Yes, I will admit that in the second charge in 2017 the attorney would have or should have had the knowledge of Hall if he or she had actually done some research because that decision was issued in 2013. Unfortunately for Mr. Lane, that case was: (1)not directly on point because it dealt with a felon in possession; and (2) it was not a decision from the state's highest court, which is where he's at right now for this decision. Nevertheless, I do believe it was ripe at the time to have that decision discussed with the prosecutor. This means that you would have gone in had he known about it and had the discussion about it with the prosecuting attorney. This suggests that the attorney didn't know about it because he would have gone to the see the prosecutor and I simply got this little problem. We've got this Hall decision and I don't think in good conscience I can plead my client to this. So, I strongly believe that the attorney certainly on the second case should have known and they didn't, but it turned out not to be relevant.

Andy 21:57

So now that all of the listeners to this have their eyes are rolling in the back of their head, it's been 20 minutes of us rambling about this. Can you finally admit that the attorney in 2017 should have addressed the Hall decision?

Larry 22:12

I believe I can definitely admit that. I admit that in terms of the second case, but not for the first, as Salinas pointed out, the attorney in the first case, the decision from the court of appeals in Hall was not issued on 2013, six years after Lane pleaded guilty in that case. In Salinas' view and I agree, a subsequent court of appeals decision and change it administrative policy interpretation does not render his representation ineffective. Simply put, Salinas contends that no one could have anticipated that another defendant years later could successfully challenge the duty to register under the circumstances. But keep in mind, again, the Court of Appeals is not the final decision maker. We need to move

to the meat of this decision. And according to the court, the pertinent statute and the Code of Criminal Procedure, Chapter 62, define a reportable conviction as a conviction or adjudication, including an adjudication of delinquent conduct, or deferred adjudication that regardless of pendency of an appeal is a conviction for an adjudication for based on a number of sexual offences, including the modern day equivalent of Lane's conviction, and that's in Texas Code of Criminal Procedure, Article 62.001, Subsection 5.

Andy 23:29

All right. I see that and they said pursuant to the provision in Chapter 62, a conviction of aggravated sexual assault is subject to a lifetime registration requirement. The claim of ineffective assistance of counsel was validated by the habeas court and reversed by this court. And I don't really understand that. Would you explain why?

Larry 23:52

Explain why it was reversed?

Andy 23:56

Yes, please.

Larry 23:57

Well, I'll read from what the court stated. The Applicant, meaning Lane, further contends that but for counsel's ineffectiveness, he would not have pleaded guilty to the failure to registry charge. We disagree that Applicant is entitled to relief on that basis. Viewing the circumstances from counsels' perspective, at the time of the representation, the law was unsettled with respect to whether Applicant had a duty to register following the trial court's order setting aside that conviction under the Judicial cCemency Provision. Because Salinas cannot be deficient for failing to discover something that was unsettled or unclear, Applicant cannot establish deficient performance, and that's an important prong of the ineffective assistance claim under Strickland versus Washington. Accordingly, the ineffective assistance of counsel claim failed. So that's why that claim didn't go anywhere.

Andy 24:51

Tell me something from like a law clerk kind of point of view. When there are ongoing cases, what is the ability of the law firm to be aware of ongoing cases, like they haven't been published yet. So, they're not in the whatever published law books, whatever those things would be called. How do you know about ongoing stuff to see if something would be relevant for you to use now?

Larry 25:15

Why you couldn't use it as a general rule because it hasn't been decided. But I've never known a way to find out all

that stuff because the cases are just difficult to locate. So, no attorney has ever told me to research ongoing cases, we're always waiting for a decision.

Andy 25:30

I see. Okay. Well, as we've already discussed, Lane argued that this action by the trial court wiped away his conviction for all purposes, and therefore, he had no reportable conviction requiring registration under the applicable statutes and Code of Criminal Procedure, Chapter 62. In support of his position, Lane relied on a decision from the Sixth Court of Appeals in Hall v. State, 440 S.W.3d 690, and they shot that argument down. Can you explain a reportable conviction?

Larry 26:05

I will do my best but you're gonna have to help me. It really comes down to the letter of the law as it's written, as the Court stated, while the definition for reportable conviction or adjudication in Article 62.0015 requires anyone who has one of the enumerated types of convictions or adjudication to register, it does not address what circumstances a person ceases to have a conviction or adjudication based on subsequent legal events. But another provision in Chapter 62 does expressly address that matter. And I ask that you read that because your reading is so much better than mine.

Andy 26:41

All right. So, Chapter 62 provides in relevant part, except as provided by Subsection C, the duties imposed on a person required to register under this chapter on the basis of a reportable conviction or adjudication, and the corresponding duties and powers of other entities in relation to the person required to register on the basis that conviction or adjudication are not affected by these couple things. An appeal of the conviction or adjudication or a pardon of the conviction or adjudication. To continue with what I had read with Section B, and now this is Subsection C, if a conviction or adjudication that is the basis of a duty to register under this chapter is set aside on appeal by a court or if the person required to register under this chapter on the basis of a conviction or adjudication receives a pardon on the basis of subsequent proof of innocence, the duties imposed by the person by this chapter, and the corresponding duties and powers of other entities in relation to this person are terminated.

Larry 27:48

Now, did you did you focus in on Subsection C very carefully, because that's where it's noteworthy. The letter of the law, that a pardon must be for actual innocence. Lane's successful completion of probation and judicial remedy is not that judge didn't say, "Well, now I'm dismissing the case because you're actually innocent and

not inappropriately accepted a guilty plea.” That was just a mechanism that was in place. But looking at the letter of Texas law, a judicial pardon would not qualify, because you have to have received the pardon on the basis of subsequent proof of actual innocence. Now, sometimes you get pardons just because executives grant them and I'm not sure what the process is in Texas if the executive can grant a pardon, but he did not receive a pardon for actual innocence. So, we're back to what their letter of the law says.

Andy 28:47

I had hoped that this would be the episode that you would finally admit that the court blew it and appears that this is not going to be that one either.

Larry 28:56

I don't see how I can admit that when their reasoning is actually sound and consistent with the judicial philosophy of not legislating from the bench. As the court noted, the apparent purpose of this provision is set forth to narrow circumstances under which a person with a reportable conviction or adjudication may be relieved of his or her obligation to register based on events after their conviction or adjudication. And to clarify that certain subsequent events do not absolve a person of a duty to register. According to the statutory terms, a person with a reportable conviction or adjudication is no longer obligated to register if: (1) the conviction or adjudication is set aside on appeal by the court or (2) the person receives a pardon on the basis of subsequent proof of innocence. However, a person's duty to register is not affected by a pending appeal or a non-innocence-based pardon, which is what he got here.

Andy 29:56

I see that on page 17. And then they went on to say, while the statutory terms do not expressly address a final judge's order setting aside a conviction after successful completion of probation, that type of relief plainly does not constitute a reversal of the conviction on appeal by a court, nor is it a pardon based on proof of innocence.

Larry 30:18

And it does not qualify as an exception under Texas law, under the doctrine of strict interpretation, the Texas Court of Criminal Appeals got it right. And I don't know why any of our audience would see it any differently. If you are for strict interpretation and no legislating from the bench, you would be applauding on a megaphone about how wonderful this decision is.

Andy 30:43

All right. I'm going to try this one more time, Larry, one more time. All right. The habeas court determined that

because the Hall decision relied on this Court's reasoning from its 2002 decision in Cuellar, Cuellar should have led Salinas, the attorney, to conclude that the applicant's aggravated rape conviction that had been judicially set aside was not a reportable conviction. And what's your justification for that?

Larry 31:09

Well, I'll let the court speak. They stated, I'll let the court speak. They stated, "We disagree with the habeas court's analysis of Cuellar as it pertains to these circumstances. In Cuellar, this Court considered whether a felony conviction that had been set aside under former Code of Criminal Procedure Article 42.12, Section 20—which is nearly identical to the previous version of the statute under which Applicant's conviction was set aside—could serve as a predicate conviction for a felon-in-possession-of-a-firearm charge. We held that it could not. In doing so, we reasoned that a person whose conviction is set aside pursuant to an Article 42.12, § 20, order is not a convicted felon, and thus, the appellant there could not have been a felon in unlawful possession of a firearm under the applicable terms in Penal Code Section 46.04(a). They went on to say, even if Salinas had been aware of Cuellar, that decision would not have clearly indicated one way or another whether Applicant's set-aside aggravated rape conviction was a reportable conviction for purposes of his duty to register under Chapter 62." Lane at 18.

Andy 32:12

You are, I don't know how else put it, you're just hopeless. Now what?

Larry 32:17

Well, in my opinion, this was the end of the appellate process. So, the next step is to convince the Texas Legislature to change the law.

Andy 32:25

Oh, I know, what are the odds of that?

Larry 32:32

I'd say that the odds are very low. And the court noted that. They stated it is also worth emphasizing that the legislature has amended judicial clemency provisions to now provide that sexual assault convictions are explicitly exempted from eligibility for judicial clemency, [and they give to section of law there], and an offense or conviction which requires registration for a PFR, all those are now excluded by Texas statute. So, for them to do an about-face I think would be most unlikely.

Andy 33:11

To kind of recap, in 1970, I think he had his first conviction of things. Is that right?

Larry 33:21
1987.

Andy 33:22
Then what was 1970?

Larry 33:26
They passed the PFR Registration Act in 1991. 1970 was a key date for an amendment that impacted Lane because they came back in 1995 and expanded the applicability provision for anybody convicted after 1970. I forget what day in 1970, but they made it retroactive.

Andy 33:42
Oh, I see. Okay. But his original first conviction was prior to them having registration that clawed people backwards.

Larry 33:52
Correct, and it was even prior to having a registration scheme, period. It was four years prior to him, and there's no telling when the conduct occurred. But that was years before they had registration.

Andy 34:02
And so had he not been naughty along the way, they never would have found him to begin with, which is kind of like the other stories that we've talked about where people call the registry offices and ask them if they have to register multiple times. It's kind of similar.

Larry 34:17
It is very similar. And I don't encourage that behavior. But I'm telling you, this guy probably would have lived his life successfully had he just stayed out of trouble, but he couldn't stay out of trouble for whatever his reasons were. And he brought this on himself. I would say looking at the way the court would have looked at this, with all of his encounters with difficulty registering and other criminal convictions, he would be the last person they would want to grant any relief to.

Andy 34:46
Yeah, no kidding. All right. This isn't good news for anybody really.

Larry 34:56
It would not fall into that category. I was just trying to give some explanation because there was so much chatter about how crazy the opinion was. It's not that crazy at all. I would have preferred a different outcome, but in the state of Texas, with all the judiciary, I think even though the appellate all the way through the Supreme Court, they're all elected, and I just don't think that Texans are ready to elect an activist court. And particularly as it pertains to criminal matters. Now, they're probably happy to have activism

when it comes to personal rights, and privacy rights and stuff like that. But like women's choice, but in terms of this, I just don't see Texans being ready for that. So, I think you're gonna be stuck with this ruling for a long time to come.

Announcer 35:46
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Andy 36:39
Let's move along to an article that comes from CBS News. It's an amazing story and it reads, "A New York man was officially exonerated on Tuesday, 47 years after he was found guilty of rape in 1976. The longest standing wrongful conviction to be overturned based on new DNA evidence in US history. A DNA hit conclusively excluded Leonard Mack who is now 72 years old as the perpetrator. Westchester County District Attorney Miriam Roach said in a statement, "Conviction review unit investigators identified convicted sex offender after they ran the DNA through the databases and the DEA has often said that the individual has now confessed to the rape."

Larry 37:29
I don't know anything about the suburbs of New York because I've never even been there. I usually spew about Atlanta and Denver in places where I've lived. But I happen to know a little bit about Westchester County because back in the 80s I bought an Initial Public Offering stock of a financial institution that was based there, and I remember from the prospectus it was very affluent. Now Miriam Roach is quoted as saying, "This exoneration confirms that wrongful convictions are not only harmful to the wrongfully convicted, but also make us all less safe." That's been my position for years. I don't know why prosecutors strive so hard to hang on to a wrongful conviction. Because if there's credible evidence that the conviction shouldn't have been had, you have a culprit running around loose and the community, including me and you, are less safe. I don't know why you'd want to hang on to a wrongful conviction.

Andy 38:28
Doesn't just show some level of incompetency. That's probably not even the right word. But just like, "Oops."

Larry 38:35

I think it does that. But for her to make that statement, Miriam Roach, that's incredible. That's just astounding because District Attorneys don't say stuff like that, as a general rule. She's recognizing that the community is less safe. [She's saying], "My job is to try to make my community more safe, and if I've got a wrongfully convicted person here, I need to get the rightfully convicted person behind bars."

Andy 38:59

You would think and Larry, we all know that there's 1000s of rape kits sitting in the police evidence lockers. 1000s across the country.

Larry 39:11

Absolutely. And this man served 47 years. I think I wrote that wrong. But after 47 and a half years.

Andy 39:19

You know, it's in there that he was convicted in 76. Mack, who served forty-seven and a half years in prison for the crime said, "I never lost hope that one day I would be proven innocent." So, this guy's lived for almost 50 years with that, and everything that he would ever do from that point forward as far as like filling out job applications and stuff like that. Everything that somebody looks at him would show that he had raped somebody.

Larry 39:50

And that's amazing to have that kind of attitude after nearly 50 years. Everybody would have lost hope. I mean, you're telling everybody in there [prison] saying I'm innocent to no avail. So yeah, it's just an amazing story.

Andy 40:08

And then on May 22, 1975, police pulled over Mack in Greenburgh, New York, two and a half hours after two teenage girls were stopped as they were walking home from school. One teen was violently violated, the other teen broke free and ran to a nearby school where a teacher called the police. The attack happened in a predominantly white neighborhood. The Greenberg police department had put out a call for a black male suspect in his early 20s, the statement said. This is so tragic. I mean, like, Larry, do you know that there's only one or 20-ish year-old black man in the country?

Larry 40:42

Well, in that particular part of the country, that was the point I was making. From what I remember about that prospectus on the stock offering, that that suburb is pretty affluent, and there wouldn't have been a whole lot of black people there. But again, I've not been there so people can correct me if I've got it all wrong.

Andy 41:00

We've covered stories where you have a very common name, and you are a predominantly African American black descent, and you live in this neighborhood and your name is like John Williams, and like you, there's probably somebody nearby you that has a conviction. So, you're just kind of guilty because your parents gave you a common name.

Larry 41:22

Makes sense to me.

Andy 41:24

Perfect. Easy peasy. All right. Let's move over to an article from NPR. The judge has sentenced that 70s Show actor Danny Masterson to 30 years to life in prison for the same thing that we talked about a second ago, but for two women. "This has been a long and arduous road for the victims of Mr. Masterson," read a statement from District Attorney George Gascón. "They not only survived his abuse, but they also survived a system that is often not kind to victims." I don't know what that little symbol would be for the name anyhow. So, gas cone, maybe? I'm sorry. [Larry That is correct. And so, I'm just curious, why are we covering this one?

Larry 42:08

Well, first of all, because I have no idea who the hell that is. It shows that California is really tough on sentencing of PFRs. And like, say, "Who the hell is Masterson?" But it also shows you that DA Gascón is on the bandwagon, that victims are being oppressed by a system, and he wants to make more rights for the victims and fewer rights for the accused. That's what I read between the lines.

Andy 42:37

I don't even know that I've ever watched the show all the way through. But so, in probably in the 2000s, or even like the early teens, they had a show Larry that took place in the 70s. And they came up with the incredibly unique name for it. It was called That 70's show. Everyone's wearing plaid pants up to their elbows and driving Volkswagen minibuses and whatnot. The show ran from 1998 to 2006. He was first accused of sexual misconduct in 2017 which kicked off an investigation by the Los Angeles Police Department. In June 2020, he was charged with that deed by three women, including his former girlfriend, in his Hollywood Hills home between 2001 and 2003.

Larry 43:26

Well, they're not particularly lenient in terms of this case. You can talk about how progressive Los Angeles is, but this doesn't sound like a particularly lenient sentence to me.

Andy 43:38

Another one from Minnesota is a new Minnesota law that restores voting rights to 1000s of felony offenders. And this falls into the new good news category. I just wanted to mention that this is happening. Would you like to comment on this one?

Larry 43:56

I listened to a little snippet of the interview. They're actually setting up a mechanism to register these voters as they exit prison. And that's phenomenal that a corrections department would do that. But what would you expect from a lefty bunch of Looney Tunes in Minnesota?

Andy 44:11

I don't think Minnesota is pretty much like right on the fence. There's Minneapolis which would certainly be liberal that way, but I don't think the rest of the state is.

Larry 44:19

Well, we got one more article to go and then we'll be out.

Andy 44:23

Very good. Alright, so this last one is from Reason, a fantastic publication by the way. Ex-Proud Boys leader Enrique Tarrío get a hefty 22 year sentence. Larry, what's most interesting to me is that he was not there on January 6, he was not present. That's the most amazing thing from this whole story.

Larry 44:45

I don't know the details, but it exemplifies what we were just talking about.

Andy 44:53

Another Proud Boy is paying a hefty trial penalty for January 6th. On Tuesday, a federal judge in Washington, DC sentenced former Proud Boys leader Enrique Tarrío to 22 years in prison for his part in organizing, organizing, not participating in organizing the 2021 protest riot that obstructed Congress's ratification of Joe Biden's victory in the 2020 presidential election. And I do have to ask, why in the flippety flip, are we talking about this? Why is this relevant?

Larry 45:20

We really don't want to talk about it from a political point of view. But it proves my point about the benefits of a plea agreement, as we just talked about in the case of the 25 to life that was taken off the table by a plea agreement. In this case, there were no limitations, the full plethora of sentencing options was available, and prosecutors had requested an even longer sentence. They had sought a 33-year sentence, but US District Judge Timothy Kelly declined to go that far. He did slap Tarrío with a sentencing

enhancement for committing an act of terrorism, and if exposure is there, it will be used. Folks, you've got to limit your exposure, unless you're confident of acquittal. It's so unfortunate that I've been hearing all the Conservatives complaining about the stiff sentences. But it's actually they who created the federal sentencing guidelines that we're operating under today. They created them back in 1984. It would be so wonderful if they were willing to go back and look at the mess that they helped make then and change the law, rather than vilifying the judge. That's my point. You created a system where you had this as a certain outcome. And the lefties have been complaining about this system for many, many years when the federal prison population exploded from 20,000 in 1981 to around 200,000 by the time Obama was in the Oval Office, so a tenfold increase. And we've been sounding the alarm bell about the excessive sentences in the federal system. Now, magically, they're blaming the judge for what they created. That's the relevance.

Andy 47:08

I'm going to put an image up on the screen there. Let me stop the rotator doodad and get to that. Can you see my screen?

Larry 47:18

I can see that. Absolutely.

Andy 47:21

So, at the bottom of that, where that hockey stick kind of goes up? That's 1984.

Larry 47:36

That is correct. And what was odd is that you look back 40 years, the federal prison population had hovered around that 20,000-range going up or down a couple of thousand for 40 years. And this is what the 1984 Sentencing Reform Act gave us. The Conservatives told us this was our salvation. Now, they're mad about what they created. That's what's funny.

Andy 48:01

I believe that that closes this fantastic episode of Registry Matters. Do you have anything you want to dibjab about before we close out?

Larry 48:09

We need to get our subscription numbers up for the transcripts, or we may have to disengage from that. So, everybody that's receiving them, find us more subscribers because it's not cost effective to continue this.

Andy 48:24

It's also a massive pain in the butt.

Larry 48:27
Oh, yeah, we want to provide the service, but we need far more subscribers to spread out the cost than what we have.

Andy 48:35
Well, on that happy note, Larry, I hope you have a fantastic weekend. You have any plans?

Larry 48:42
I don't have any plans other than coming in tomorrow to do the transcript.

Andy 48:48
As always, we record on Saturday night somewhere pretty close to 7pm, Eastern time, because as I always say that's the only time zone that matters unless I'm in a different one like in Houston, Texas, which isn't Central. But otherwise, it's 7pm Eastern. And then the podcast comes out for the

patrons pretty much tomorrow, which would be Sunday, unless again, I'm in Houston or something like that. But then for everyone else who's not a patron, you get it around Tuesday. You can find it by searching for Registry Matters pretty much everywhere and you'll find it. You can find the show notes at RegistryMatters.com. Show notes or the transcript you can find on FYP education.org. Email me and I will pass it over to Larry. Send it to registry matterscast@gmail.com if you have a question that you'd like to ask. I think that about does it and bid you a farewell. I hope you have a great weekend there.

Announcer 49:47
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