



Registry Matters Podcast

Episode 283

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Announcer 0:00

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Andy 0:16

Recording live from FYP Studios east and west. Transmitting across the internet, this is Episode 283 of Registry Matters. I would ask Larry how he's doing this evening, but Larry isn't joining us tonight because he has come down with a small little case of The Rona. You know, that thing that didn't really happen a few years ago, that locked everybody down and killed a bunch of people? But you know, that didn't actually happen. So what we do have though is, I have asked to have a guest on, where we will talk about all the things going on in Pennsylvania. And that guest is Randall from PARSOL. So, without further ado, we'll just head on over to that interview.

Well, joining us now is Randall Hayes from PARSOL and we've never had anybody -- well, we've had Theresa on a handful of times, probably more talking about her position as being a "clinical psychotherapist" I think is the is the word that I heard her use this morning, and not so much necessarily from like the legislative angle. So, this is going to be an opportunity to talk to one of the leaders of PARSOL, which is the Pennsylvania chapter of NARSOL. It's the Pennsylvania Rational Sexual Offense Laws? Is that going to be the right title for it?

Randall Hayes 1:35

Throw in "Association" and you got it, Pennsylvania Association.

Andy 1:37

Oh, PA. So, you happen to kind of double that up then. And "PA" is the abbreviation for Pennsylvania. It's the "Pennsylvania Association" of Rational Sexual Offense laws, gotcha. Let's just dive in and talk more about your own personal point of view. How did you find it? How did you decide to get involved? And I'm asking this from the frame of: there are so many people ... like, I don't know, pick a number seven, eight, nine hundred thousand people ... that are impacted by the registry, directly. Forget the families and so forth. And many of them choose to do nothing, stay below the firing line, and so forth. Why did you choose to? How did you find PARSOL? How did you find NARSOL? How did you get involved even to begin with?

Randall Hayes 2:24

Well, I think, like a fair amount of people who get involved in this movement, you know, I had my own legal consequences back in 2010. And I did a bid from 2011 until around 2014. And hearing the director of NARSOL, Brenda Jones, speak recently, she talked about the prisoner outreach, and how important The Digest (<https://www.narsol.org/resources/narsol->

digest/past-issues/) was to people on the inside. And that reminded me, "Yeah, that was really important to me, to get that information on a regular basis on the inside, and see what was going on." I guess that's when the seed was planted that, when I get out and get back to the community, I want to take part in it, and took my time doing it. Three years or so had passed. I still followed the cause, but it wasn't till three years that I said, "Okay, let me make a damn move and reach out." I emailed NARSOL and they put me in contact with the state contact for PARSOL, which was Theresa. Before long, I was on the Board of Directors, and pitching in.

Andy 3:32

(laughs) It doesn't take long. There's so few people that do anything. Show up and "Hey, you're the Executive Director!"

Randall Hayes 3:41

(laughs)

Andy 3:42

You know, it's not *that* easy. But many organizations, the guy in South Carolina, he was essentially a lone wolf for like ... a decade! And then built up and created an affiliate, outside of just being the contact, and he would go to the state legislature by himself. He was just "The Guy" in South Carolina, until they formed the South Carolina chapter. Did you come into the movement with *any* level of expertise? The guy that I co-host with, who, incidentally happens to have COVID, which is, really why I needed, like, "Randall! Help me!" So, Larry has COVID. But he has been following politics and legislative sessions and so forth, since he was a preteen. I don't think that's a very common thing for people to do. When we all start following this stuff, it's like a big Kabuki machine. It's "What is a committee? Who do you talk to?" Did you show up here like Larry? Or are you a "lay person," so-to-speak, like the rest of us?

Randall Hayes 4:48

I hear that. I think the process is complex by design. That, in general, the people who pull the strings and pull the levers of power, they don't want the pesky common person to get involved. I don't think there's exactly a concerted approach to make this stuff more digestible or understandable. The short answer is no, I did not have any formal training on this kind of thing before I jumped in. But I was just kind of "justice interested," or "justice curious" you might say, ever since really the war in Iraq.

Andy 5:29

Okay.

Randall Hayes 5:29

When I saw that major things can happen in reality -- like bombs dropping and people losing their lives -- based on lies and on misdirection from the people who are there to help us,

right? ... who are supposed to be there to protect us, and what an odd thing that this could happen. This happened kind of quickly for me from 9/11 happening and being, "USA, rah, rah, rah" to, a couple of years later, and then seeing that this does not add up. That's kind of where the seed was planted. And ever since like 2003, like I said, I've been interested in politics and "government stuff," but I didn't lift a finger to get involved really until right around 2016.

Andy 6:18

Okay, interesting. Interesting that something, even that far back, would kind of plant that seed. And so then you get involved with PARSOL. The next question that I have for you is that, Pennsylvania, is it a part-time legislative body? Or is it a year-round?

Randall Hayes 6:42

We have a full-time legislature.

Andy 6:45

Oh!

Randall Hayes 6:45

And we are the largest legislature in the nation, second only to the United States Congress.

Andy 6:52

Really? How many people are there in the legislative body in Pennsylvania?

Randall Hayes 6:58

Two hundred fifty-three. We have two hundred three members in the House, and we have fifty State Senators.

Andy 7:04

Oh, wow, I didn't realize it was that big. God, if it's year-round, I don't even know how to frame the question. So Georgia, it's just like, you know, sixty days or whatever it is. And, so you know when stuff's coming. You know when you have to, like focus all of your attention in that direction, and the bills start coming out. I guess they can drop legislative bills, like, anytime? June, December, March, like whenever somebody feels like it, then it pops up there?

Randall Hayes 7:34

Yeah, it really is year-round. And, just to zoom out a bit, I live in the capital city of Pennsylvania. And that's kind of where my role in PARSOL came from. It was kind of a natural fit to be the person to do the legislative stuff, and pay attention to the lobbying end of it, and propose laws. So yeah, it really does happen year-round. And our state is very ... user friendly! ... when it comes to keeping track of proposed legislation. You can sign up for email alerts and it's, again, very user friendly. You just put in your email, and you get an email, every day, with the digest. What bills were voted on, what bills are introduced, and if you want to even focus more, you can just subscribe to the Judiciary Committee, or the Finance Committee, and it'll tell you exactly what happened in that

committee, what was introduced, what came out of it. And that makes it very easy, actually, to track of what's popping out.

Andy 8:34

I don't have an example on the tip of my tongue, but I know that sometimes a bill will come down the pipe that has essentially nothing to do with PFRs. However, there's PFR language in it, that might not be where you might see it. Do sometimes they miss? Because, like, I guess our bills would normally fit in the Judiciary Committees. That's where almost everything would come from. But on occasion, I don't know, there's a tow-truck bill that says that the tow-truck driver is forbidden from picking up PFRs or something like that. And that doesn't have anything to do with PFRs, actually. But they put that language in there just because someone said, "This sounds good!" Do sometimes those things fall by the wayside, in your experience so far?

Randall Hayes 9:22

Yeah, sometimes those things come up. An extreme example I can think of, let's say the title of the bill is "Probation Reform." Sounds good. And when you dig and get into the document, as you mentioned, included in the middle, tucked in there is, "except for PFRs," or "these offenses are not qualified." And so you do have to do a little more digging. Sometimes it makes it very easy for you with proposed legislation, "sexually violent predator" and "residency restrictions," that's obviously one you want to pay attention to. But then for something like probation reform or sentencing reform or enhancements, that's one you got to open up and dig a little more into.

Andy 10:02

And when you do find those things, I'm interested in how do you, as a non-legal attorney-trained kind of person, how do you read through the legalese? When I read legalese, my eyes roll in the back of my head. They say, "Thou shalt not," and I'm like, "Stop, just stop!" Can you just tell me, "Don't do these bad things to these people?" How do you translate it into something that you can digest, consume ... or are you just one of those savant people that can read legalese and understand what it says?

Randall Hayes 10:35

It's like anything, it's practice, right? You don't get good at riding the bike the first time, you don't get good at public speaking the first time, you don't get good at reading legalese the first time. And you just keep doing it. Ideally, you have somebody there who can answer questions. But if you don't have that, you do your best, right? And there are guides, on the Pennsylvania website anyway, it explains what a "bold text" means versus a "strikethrough."

Andy 11:04

Oh! Okay.

Randall Hayes 11:05

The information is there. You just have to kind of be motivated to learn it. If you're passionate about what you're into, like I am for getting the registry addressed, and reforming sex offense policy, then you're motivated to do it. You're motivated to learn that stuff.

Andy 11:23

I'm intrigued by the way that you phrase that, "the information is available." I heard a third-person conversation where they said that, "It's really hard to get information these days. Whereas, back in the day, you could go do..." and I'm like, "You are carrying around with you at all times the world's most elaborate communicator (and also tracking device, but that's a different podcast) that you can find *anything* you want, in *all* of history, just about. And yet we choose to doom scroll TikTok, which has a bunch of conspiracy theories and so forth, without anything valid to go look at. It is entertaining, of course, but so, you don't end up like throwing stuff in the ChatGPT and asking it to dumb it down for you? I put that in there, specifically, because I'm enamored with ChatGPT at the moment.

Randall Hayes 12:12

It is pretty incredible. I've seen some people do some examples of using that. And it is remarkable what it can do, but I have not personally used it. I haven't opened up that box and I imagine there's some room for utility there. I am concerned, as we move forward, you mentioned information being available. And it is, but I wonder if we're reaching a plateau, to a point now where we won't really know what is true and what is false. I think that's already becoming hard. But now if you have very sophisticated computer programs creating things, and we're really going to be on a shaky foundation of what is real and what's not?

Andy 12:12

The 2024 election is going to be phenomenal with the amount of money that will be put into artificial intelligence things. And you will watch a video of (pick your candidate) saying the most ludicrous things, and it will look indistinguishable from reality. I don't know how we are going to validate it, and prove that anything that we're reading is true. It's going to be an incredibly interesting election cycle. If you had multiple bills that came up on your radar, and only a limited amount of resources, how would you figure out which ones to focus on and try to attack and so forth? And then how would you even develop that strategy?

Randall Hayes 13:38

Yeah, it's like, part of it is intuition in a way, of just kind of knowing, "Okay, this has legs." To zoom out again, I cut my teeth, or I really learned how to do this stuff in the capitol, and do lobbying and build relationships, and track things from another group, which is focused on money in politics in Pennsylvania, and on anti-corruption stuff. And so before I ever got involved with PARSOL, I was able to join this group, and get like hands-on training, experiential training, at the feet of these people who had done this for a while and knew

exactly what they're talking about. And just being able to be in a meeting with a state senator or a state representative or the Chief of Staff for whoever, and just shut up and just listen, right? This is where I learned how to talk to these people. You know, what a committee is, as you mentioned before, how a bill actually gets passed. And to bring it back to your question, learning that a LOT of bills get introduced in Pennsylvania (and I'm sure other states around the country too) A LOT get introduced and Very. Few. Move. Very few move. And so when I see a bill about "residency restrictions, fifty feet away from a school bus," I kind of roll my eyes.

Andy 14:56

Oh Really?

Randall Hayes 14:56

We write it down in our tracker (which is available on our website, PARSOL.org) but we don't really take it that seriously because it's not going anywhere.

Andy 15:05

Okay.

Randall Hayes 15:05

When you have, like we do on our tracker, a dozen or twenty bills related to sex offense policy or PFRs, how do you know which one to really follow? Geez, like, none are moving. Like none are moving, *none*. And so it's kind of hard to put a finger on how I just understand, or know, that these really aren't serious. But I'm thoroughly convinced that, as of this moment, there is no serious threat to making things worse for this community. And part of it is like, here's one way to more or less get a really good feel for whether or not something's gonna move: Is it introduced by a Republican or a Democrat? Right now the Democrats control the House, so if a Republican introduced a bill in the House, it's not going anywhere.

Andy 16:03

I see.

Randall Hayes 16:03

Two years ago, it was the opposite situation. The Republicans controlled the House, so ANY Democrat, and I mean, literally ANY bill that a Democrat would introduce would not see the light of day. So that's one way to just chop off a whole 50% of bills that get introduced. It's important to know who is actually calling the shots, who is running the show, in the Senate or in the House, if your state has that. Who has the majority? Because the other party, they're not going to get the time of day.

Andy 16:28

How much of a split is it? Is this a supermajority? Or is it just one or two seats?

Randall Hayes 16:33

Well in Pennsylvania, like the United States, we have a House of Representatives and we have a Senate. The state senate is

not quite a super majority, but it's a pretty big split. I think there are like thirty Republicans and twenty Democrats, something like that. But in the House of Representatives, it is a ONE-seat difference.

Andy 16:51
That's similar to the US.

Randall Hayes 16:53
Yeah 102 Democrats, 101 Republicans. It is very, very close.

Andy 16:59
Oh wait isn't this where, oh my god, like the person got elected and then passed away? Or they decided to not take the seat? Isn't that Pennsylvania where that happened just this last year?

Randall Hayes 17:11
Yeah, we had a few special elections where this incredibly slim Democratic majority was thrown into limbo when somebody took a higher office, which happened outside of Pittsburgh. There was somebody who died I believe, and we had to have a special election for that. There was somebody who resigned because of some scandal, they had to have a special election for that. And so it's like starting and stopping, starting and stopping, because they won't hold session if they don't have a majority. They don't want to take the risk of not getting their way, with their one-seat majority.

Andy 17:45
That's crazy. And before we move on to Torsilieri and others, I do want to ask specifically about interacting with and I'm sure you have a "chosen" party that you kind of affiliate yourself with. However, you then have to go talk to The Other Team and I'm interested how you address that? If you're a Democrat, if you're Republican, how do you go talk to the other team without having seething expressions on your face, saying, "I hate what you stand for!" and still go talk to them in a professional manner? How do you address that?

Randall Hayes 18:22
Yeah, it's like you have to just remain detached in a way. You kind of remain above it all. I feel like if you are a cheerleader for either one of the two parties, you might not find this work to be that easy, right? And I feel more and more people are independent. And people are fed up with both of the major parties. They are fed up with the inaction, and more and more people identify as independent, and think, "to hell with the both of them!" And that, more or less, describes my stance as independent. They are both beholden to their wealthy donors.

Andy 18:56
Yeah, sure.

Randall Hayes 18:57
They, at the end of the day, want to get re-elected, and get campaign cash. And that is their *only* concern. That is their number-one concern. So, there are differences in the "culture-war stuff" with Republicans and Democrats. But,

fundamentally, I'm not talking to very different people, right? These people are all in the "ruling class." They are wealthy. We have very little in common with the majority of them. Working people have very little in common with any of your Democrat or Republican representatives. And so you just kind of try to stay above that. The things we're talking about are *moral* issues whether we're talking about corruption with the other team that I'm with, or we're talking about people's dignity and constitutional rights, like we do with the PFR reform movement. These are moral issues. This isn't culture-war stuff. We're talking about harm reduction. We're talking about prevention of sexual offenses. We're talking about respecting the constitutional rights of ALL people who live in this state. And so you really got to stay above, again, culture-war nonsense that's really meant to just divide us.

Andy 18:57
Fantastic position! I like the way that you look at that. Let's go over to... I do have a bunch of questions regarding Torsilieri and then maybe some other things that we can fill in if we have the time at the end. Could you give me a synopsis, the thirty-second elevator pitch, of what went down, what Torsilieri is, was, and is going to be?

Randall Hayes 19:11
Once upon a time there was a person in Pennsylvania who had a Romeo-and-Juliet kind of offense. And this person was put on the sex offender registry. He did not like this, right?

Andy 20:36
Sure.

Randall Hayes 20:37
So he appealed to the courts. He said, "Hey, I'm not high risk, okay? And your law, Pennsylvania, says right in the text, that 'due to the high risk of all of these people who have committed sexual offenses, they need to have some of their liberties curtailed, and they need to be on this registry.'" So Torsilieri said, "I'm not a high risk and I got all this evidence to show it. So take me off this list." And the judge was persuaded and it went to the Supreme Court, because this was a constitutional issue, which in Pennsylvania, can go right from the trial level court to the Supreme Court if it tackles constitutional stuff. And the Supreme Court heard his argument, and they still have not made a ruling. And we are waiting for a ruling. There's a lot more in between the beginning and end of that story I just told, but that's the thirty-second version.

Andy 21:22
Can you give me the timeline? When did the original judge make that decision? For to then elevate to the Supreme Court? What kind of timeline have we been looking at with that?

Randall Hayes 21:31
Yeah, I regret that I don't have the exact date. But it was around 2016, 2017?

Andy 21:37
Holy moly! Really?

Randall Hayes 21:39
Yeah, when this started at the trial level court and then it got up to the Supreme Court for the first time in 2019 or 2020 and then it was heard, and the Supreme Court said, "Hey, we need more evidence. So go back to start, Commonwealth, and show us where these people are all so high risk. We need an evidentiary hearing so go back to the start." That's what made this take even *longer*. They went back and then COVID happened, and uh...

Andy 21:39
Yeah.

Randall Hayes 21:42
It's been a long route.

Andy 22:09
I didn't realize that it had been going on for that long. "So, Commonwealth of Pennsylvania, go get evidence that says that these people DO have a high risk of re-offense?" What evidence are they then bringing to the table that says that there IS a high risk to re-offense?

Randall Hayes 22:30
Well, you know they again got their second chance to introduce their evidence, when it got remanded back down to the trial level court, and they brought in an expert. I'm afraid I don't know much about this expert. I could have done a better job of understanding the Commonwealth's arguments. To be honest, I was very set already in my opinions, and the research that I've read, that we're all familiar with re-offense rates, and risk levels of people who are on this list. I didn't pay attention, I'm afraid, to what the Commonwealth had to say, as far as their *evidence* for why PFRs are a high risk. I believe one thing they said was that, "just because 'some studies' show that there is a low risk, doesn't mean that that is the be-all end-all." And the counter to that, of course is: "Well, sorry. It's like unanimous. ALL of these research studies point to this conclusion." So maybe there are one or two outliers, but it really does seem like a vast majority are pointing to "low risk." I'm sorry, I don't know what the Commonwealth had to say, as far as why they're high risk.

Andy 23:35
To give you a plug, I was watching one of the YouTube videos that you have on the PARSOL website where you did a forty-five minute deep-dive into it and there was something that you said, and I don't have it quoted, but you said that the Commonwealth said, "Well, there aren't 'no studies' that say there is a high risk of re-offense, but we have this ONE study. So it's not that there are 'no studies' but we have this one. So here are the hundreds that say there is a very low chance, but we do have this one. So it's not that there's 'not no'." And I was like, "Ugh, okay. Alright, good job on the wordsmithing." I'm sure that you could find a way to construct a study to find that

there is a higher chance of recidivism, but have you ever heard the conversations that I've had with Larry about how recidivism is just a complete non-starter argument?

Randall Hayes 24:35
I've listened to your podcast a couple times but no, I haven't heard this interchange.

Announcer 24:40
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Andy 25:29
So here's the scenario: I have a Gatling gun, and you know like the thing was, "We're gonna stuff bullets down the thing and I'm gonna tick, tick, tick, tick, tick, tick, tick. And we're going to put in ninety-seven blanks and we'll put in three, and that'll represent the 3% or whatever recidivism rate. You go stand at the other end of the football field, and let me go at it." Would you be willing to stand on the other side? You only have a 3% chance of getting hit. Would you be willing to take that chance? The moral of that story is that well, no one's gonna go stand on the other end of that. It's not a 0% chance, so there is something. To make the recidivism argument, you're almost always going to lose because someone's going to go, "But if it just saves one child ..."

Randall Hayes 26:15
Yeah, we've heard that very argument, Theresa and I, when we were in a state senator's office. He talked about, "Even if we save one, you know one victim from this kind of thing, then the registry is worth it." And we had to point out, "I'm sorry, sir, but that is a really defeatist and weak stance. If you could utilize policy, and the *best* prevention methods, then that is your duty to do that, as a public servant, to make sure that you're using the best available methods, and instead you're advocating for, "We will continue to prop up an *ineffective* method that *may* have *some* benefit to *very* few people and we are failing as a state. If that's the stance we're going to take, sir, then we are failing."

Andy 27:11
Interesting, interesting point. Was PARSOL involved in the case at all from the beginning? And the reason why I'm asking that is because, so *often*, we cover a case on the podcast and we say, "Wait a minute! This hit the Supreme Court of Nebraska and like no one knew about it." So the people that were filing the case never did any advocacy searches to find someone that could sign-on for an amicus brief, anything of that sort and it

just like, "Well, how did this get decided and no one knew about it?" So anyhow, I'm asking, was PARSOL involved in Torsilieri at all?

Randall Hayes 27:42

No, not this one. We have submitted amicus briefs in other cases. More recently, we submitted an opinion to the United States Sentencing Commission to talk about sentencing levels for these kinds of crimes on the federal level, but that's another story. No, we were not involved in this one. And, kind of a funny story, when we went to the last hearing in the Supreme Court in May of this year, we got to meet the defendant, Mr. Torsilieri. He had no idea who we were. It was laughable. I couldn't believe him when I shook his hand and he had no idea what PARSOL was. Just tell him, "Man, you are the reason we're doing what we're doing. But he likes to keep a low profile.

Andy 28:28

Sure, I can imagine. I was in the court when the court case for the Halloween signs in Butts County, and NARSOL funded, essentially, at least bootstrapped, that whole thing. And I imagine that those cats had no idea who anybody from NARSOL or the Restore Georgia group was. I'm certain they had no idea who any of us were. And then probably after the fact, also still have no idea or no interest in following along with what is going on. And that's kind of demoralizing, like "If you don't care how we're going to help you, why should we then try to help you?" Do you have an opinion? Let me ask you that. What is your thought on that, about how many people are on the registry in Pennsylvania that you're trying to help that don't give a flip that you exist?

Randall Hayes 29:16

Yeah. I mean the total number for the registry in this state is around 23,000 people. I think that yeah, it's a mixed bag. You know you'll get a lot of people who want to bury their head in the sand, put their fingers in the ears, and just disappear. I couldn't really take a guess as to what percentage would appreciate what we're doing, and want to get involved. I'd say a fair amount. But hey, there's always people who just want to pretend it's gonna go away, and hide.

Andy 29:49

So-to-speak, like to some details about the Torsilieri case and how does Judge Allison Bell Royer justified her finding that Pennsylvania's Megan's Law is unconstitutional, both facially, and as applied to the specific case of *Commonwealth vs Torsilieri*?

Randall Hayes 30:05

Yes, well you mentioned Judge Royer, and to explain a bit, this case started right around 2017 at the trial level in Chester County. And then it went to the Supreme Court in 2020. The Supreme Court said, "Go back down to the trial level court to introduce new evidence, Commonwealth" and that's where Judge Royer comes in and makes her decision. She made her decision in 2022 at the trial level court and sent it back up to

the Supreme Court like they asked this court to do. And as she sent it back up, she gave her opinion. And to quote it, it says, "SORNA is unconstitutional both facially and as applied to this Defendant on the bases that it employs an irrebuttable presumption that is not universally applicable and because its punitive nature offends *Alleyne* and *Apprendi*;" [*Alleyne vs. United States*, 133 S. Ct. 2151 (2013) and *Apprendi vs. New Jersey*, 530 U. S. 466 (2000)] "results in a criminal sentence in excess of the statutory maximums; violates Federal and State proscriptions against cruel and unusual punishment; and breaches the separation of powers doctrine." So that is how she worded it and that's how she found that SORNA is unconstitutional both facially, that means for everybody in the state, as well as "as applied" that means to Torsilieri himself. That's how she worded it. But to zoom out from that and explain a bit more, she made this decision from listening to the expert witnesses that Torsilieri was able to bring into the courtroom, people like Dr. Elizabeth J. Letourneau, people who have researched this stuff, Dr. R. Karl Hanson was in there. And the defense was able to cite these experts who have made it their livelihoods, and who have been studying this stuff for decades, and that's how she was convinced. That's how she came to these conclusions. I can briefly talk on what some of this stuff means, like "irrebuttable presumption" if you like.

Andy 32:03

Yeah, I do actually. Because I saw in your video, you had used the wrong term, and then you went back and you corrected that it was, "irrebuttable" I think? And now you're changing the term?

Randall Hayes 32:14

(laughs) Right. So, in the video that I did, which you can find on our YouTube channel. [YouTube.com/@PARSOLOfficial](https://www.youtube.com/@PARSOLOfficial), what I said in the video is, I was highlighting that, in Pennsylvania's constitution, we have a very unique aspect, which is that in Article I, Section 1, it says everyone has a fundamental "Right to Reputation" and guarantees that this is an "inherent" and "indefeasible" right which means like un-severable.

Andy 32:36

Okay

Randall Hayes 32:37

Yeah. And the word "indefeasible" escapes me now and then. But back to this decision. It is talking about the "irrebuttable presumption." And the irrebuttable presumption is what you could say this whole case rests on. It is the presumption of the state, Pennsylvania that says, "All of these people are high risk and therefore, these things have to happen." And there is no way for the PFR to defend against that or to *challenge* this irrefutable presumption, this presumption that the state has made, that this is a FACT, and therefore, this must happen. Well, there's no way for the person who is affected by that decision to challenge it.

Andy 33:21

Wouldn't that be then just simply, "due process?"

Randall Hayes 33:26
I am not a lawyer. (laughs)

Andy 33:29
Yeah, me neither.

Randall Hayes 33:29
If I had Josiah here, my friend on the legal committee, he could probably answer these questions better. But yeah, I mean, it seems to relate to due process.

Andy 33:40
Because it seems if you have no ability to prove that you are not what they are claiming you are, that to me sounds like a due process claim. And maybe there's a Venn diagram here, and these things are overlapping. Did the *Kennedy vs Mendoza-Martinez* case factor into her claiming it was unconstitutional? I love the Kennedy Mendoza-Martinez test. That's why I would like to focus on it.

Randall Hayes 34:01
Yeah. If you go to our website, you can find a link to the entire decision [<https://parsol.org/wp-content/uploads/2022/08/ComvTorsilieri-Royer.pdf>]. It is 29 pages or so of reading, and you're right, to decide whether or not she wants to make this ruling, she examined the SORNA, the Sex Offender Registration and Notification Act in Pennsylvania, and she ran it through the "Mendoza-Martinez test," if you will. These are five different examinations of whether or not a law is able to be applied or meets these criteria. If you meet these criteria, then you can say that the law is "punitive." She was easily able to check off ALL FIVE of those boxes, as far as SORNA goes, and the kind of consequences it has for a person, even after they've served their sentence, to demonstrate that yes, indeed, this is punitive in Pennsylvania.

Andy 34:58
Interesting. Could you tell us who Justice Christine Donohue is? Would that be one of the Supreme Court Justices?

Randall Hayes 35:05
Yeah, she sits on the Supreme Court in the state. And, as this has reached the Supreme Court twice now, in 2020 and when it came back for the closing hearings in 2023, she has been very vocal on pressing the state, "Why are these people at high risk? Why is it that you have a determination to make somebody an SVP?" which is tier-three in our state, a sexually violent predator if you will. "Why is it that you run THOSE people through a test to determine if they are a high risk, but here you're arguing that *everybody* is a high risk? If you have a test that can tell you whether or not somebody's high risk, why haven't you done it for everybody? Are you saying then that everybody is a high risk, but these people are extra high risk?" Right? And she's asking, "What is the logic here? How does this work?"

Andy 35:56
That's kind of hilarious. You have a test to identify the ones that *are* high risk, but everyone's a high risk. (laughs)

Randall Hayes 36:04
(laughs) Right.

Andy 36:07
Do you think that to me that seems almost like a linchpin, that would then make everyone else well, they're an "else". I mean if you make essentially an SVP, then I guess no one would be an SVP. How do you think that would influence the court's decision on the constitutionality of SORNA?

Randall Hayes 36:29
The fact that they have a test and they're not using it?

Andy 36:32
Yeah and at the same time, then identifying that everyone has a high risk of recidivation?

Randall Hayes 36:40
Well, how will this affect the ruling? Again I think it just speaks to the idea of an irrebuttable presumption, right? It's a blanket statement, and you know people have very different backgrounds, very different crimes, very different stages in their life and where they're at. Are they just out of prison? Have they been out of prison for 50 years? And so yeah, this is kind of a linchpin, a central issue to this case, this broad brush that we're painting in Pennsylvania, specifically here, but really around the nation, that everybody on this list is a danger and needs to have their liberties curtailed, even well after their sentence is completed.

Andy 37:23
Sure, and I believe that you take a "person-first" approach to criminal justice reform. How does this align with or challenge the prevailing views on managing PFR-type offenses?

Randall Hayes 37:35
Right, person-first.

Andy 37:40
Do you wanna cover that term to begin with? Do you want to cover the definition of what "person-first" would be?

Randall Hayes 37:48
Yeah, "person-first" is recognizing that people are not defined by their actions. And so there's a lot more to a person than the worst thing they've ever done. In our movement here, we use the term PFR or "persons forced to register." We don't say "sex offender" because that does not describe who that person is, right? You could say something like "a person *with* a sex offense", "a person convicted *of* a sex offense" and so what you're putting forward *first* is that this is a *person*. This is a human being, with a life, needs, wants, responsibilities, hopes, dreams, failures, successes. And it doesn't just pigeonhole them and put this label on them as a "sex offender." And this

came out of the Disability Rights movement, where we didn't call people "handicapped people" or "disabled people." You know, they're a lot more than that, right? They're brothers, fathers, mothers, sisters, students, teachers. There's a lot more to them than just this label. And so this perspective was informed by one of our founding mothers, Dr. Theresa Robertson, coming from her background in therapy, and knowledge of that Disability Rights movement, we want to put that forward. I feel like all people in this movement kind of share that goal of not demonizing this population or painting them into a corner by calling them a "sex offender." As far as a "person-first" approach, it would involve understanding where a person is in their lives, and what their treatment needs are, what their rehabilitation needs are, respecting that "you do the crime, you do the time" but there is a way forward after that, and people do change. That's one of our core principles: people do change. And so you don't necessarily need to be on a sex offender registry for 40 years after you've done your time.

Andy 39:46

I was intrigued that, during one of the interviews and I watched the one that you and Theresa did, more like just kind of like a fireside chat almost, and she brought up that when she first heard the term "sex offender" she was like, "Oh, my God!" a fear response kicked in. And then, sometime later, her child ends up with an offense. And so with all of that, she argues that, not only is the registry ineffective, it also can contribute to an increased likelihood of re-offense. So, do you know what evidence she's citing to, that supports this claim? And do you think that that would also impact the court's consideration?

Randall Hayes 40:34

Do you mean the claim that the registry has negative effects on reentry? I'm sorry, which claim?

Andy 40:41

Yeah, exactly that. So, if you're on the registry, supposedly, the registry would then "if it only saves one." However, because it puts a registrant in a box, makes it significantly more difficult to function, that then they would have a higher chance of recidivating. So, does that evidence and research, do you think that that then impacts how the court's decision would come out?

Randall Hayes 41:04

Yeah, I think it will, and this is something that Dr. Letourneau introduced at the trial level, again, when it was remanded, and is something that Judge Royer brings up in her decision. She brought up that studies have demonstrated the difficulty that being on a registry results in, for reentry. And it's something we all know, for regular listeners to this podcast, this is nothing new. For those who might be new, it's very difficult to reenter society after being in prison to begin with, having a label of a "felon" or a "criminal." But it's much harder when you have a sex offense on your record. When you're listed on a registry, your options become very limited, for employment and for

housing. And, in this state, we have a public policy on the executive level, that we need to "foster reentry." We have a goal, as a state, and this is listed in policy, that we have a *duty* to foster reentry and make reentry as smooth as possible. This is one reason that residency restrictions in this state were struck down around 2016 I believe... somewhere around there? Because the challenge, I believe it was in Allegheny County, was made that residency restrictions are counterproductive to reentry. And the court in this case was convinced of that because of, again, the stated goal of Pennsylvania to facilitate reentry. The court ruled that we cannot do residency restrictions in this state because it would hinder reentry. That did not make it up to the Supreme Court. The state did not choose to appeal it there. But it made it to a court high enough where nobody has seriously talked about residency restrictions since that time.

Andy 41:29

Do you know roughly when that was?

Randall Hayes 42:54

Yeah, it was roughly 2016 - 2017 and I believe the case was somebody vs Allegheny County.

Andy 43:02

Okay, this'll close the section out. I'm curious about PARSOL calling on legislators and policymakers to implement fact-based legislation, including recommendations from the American Law Institute, and I guess it was maybe a year or so ago that they came out with a big batch of recommendations. Do you have any ideas on which specific ones that PARSOL is proposing? And how might they address the concerns on the current registry system from the recommendations from the American Law Institute?

Randall Hayes 43:35

Yeah, this is kind of a tough one, because this is not like all or nothing. What the American Law Institute is recommending, which is a body of lawyers, academics, former judges, professors, who know the law, and who make recommendations to all fifty states about what the best policy *could* be, for your state. They've been doing this for a hundred years, they have a lot of clout, and in some states, what they say is kind of just copied and pasted into the law. They have a lot of clout and on the committee level, they decided, and approved, a couple of years back (not the full level, but just the committee level) they decided that, because of all the controversy with sex offense registries around the nation, and all the problems with liberty, and recidivism, and ineffectiveness, they recommended that: One, registries should be law-enforcement-only, private. This is not to say that you couldn't still access a registry, but you would have to ask for it. So if you have an interest in your neighborhood or where your kid goes to school or where your wife goes to work, whatever, you can ask for this information from the police or whatever body would wind up administering this and you would get this information. That's the first recommendation of the ALL: no more public registry, no more browsing anywhere

in the country for any reason (or for no reason), a private, law-enforcement-only registry. Number Two, they recommend that the amount of crimes that land somebody on the registry should be very much curtailed. Again, we cast a very wide net, we paint with a very wide brush. And people who maybe access the public registry really might not know the difference between somebody who just got out, who has a history of hands-on abuse, versus a Romeo-and-Juliet case, maybe who's been out for several decades. And so the ALI committee recommends that the number of offenses should be curtailed, largely to hands-on offenses and violent crimes that should land you on a registry. Number Three, they recommended that the period that you're on a registry should be maxed out at 15 years. They cite the evidence that we're all familiar with, that after decades of living in the community offense-free, you're no longer much of a risk, and you don't need to be on a sex offense registry past 15 years. They would say that's the maximum. Their Fourth recommendation is that there should be no collateral consequences to being listed on a public site, or any sex offender registry, in this case a private one. So, they say that you should still be allowed to live where you want to live, free of residency restrictions, you should be able to enjoy public services like parks and beaches. You should not have any collateral consequences to being on this registry, which again, kind of goes back to the idea of extra punishment. You already did your time, you did your probation, you're done. Well, you're not done if you're on the registry, which a lot of you already know. And so these are the four recommendations, and the last one there doesn't really affect us and Pennsylvania. We're lucky enough to have really no collateral consequences of being on the registry, besides treatment obligations for some people. And so I said this is a tough one because some people in our movement, they're more-or-less "absolutist" if you will, or all-or-nothing, "There should be no registry period,". So, some people don't want the ALI recommendations and they think it's a bad idea to "give" on that, that there should be a law-enforcement-only registry. Other people have the view that, despite what the court may rule in the state (and we're anticipating that ruling sometime in the next six months, could be longer, could be shorter), there will be some registry. Some people believe there will be some registry. And so how can we do this "right"? How can we do this the best way, where we can gain a lot of ground and still compromise? If you're interested in this kind of work, and in getting involved in legislative affairs and contacting your elected officials, I would say that is something you ought to internalize and believe: you never get everything. It is always a compromise ... always a compromise.

Andy 47:46

Sure. I've encountered those absolutists and it seems, "Wow, that's pie in the sky, that would be awesome." Also, just shy of impossible. Yeah, it doesn't seem like that is even remotely realistic. Then you would have to go for a realistic position of, just as an example, I personally believe that most of our issues would go away if there wasn't a public website, and you could live/work within some kind of reason. So take away residency/work restrictions and take away a public-facing

website and I believe that the vast majority of our issues would go away. Another one would be where people have to go register four times a year, and it takes them twelve hours to do it. Four times a year, you're having to take a full entire day away from work, and maybe your boss doesn't know. Now you're asking for some kind of weird reason to take a vacation day. But I believe that those two things would make our lives 90% better.

Randall Hayes 48:48

Yeah, I think you're right. This is what the ALI recommendations would approve. So fingers crossed that the full ALI does approve these recommendations on the committee level and that we can say with 100% certainty, all around the nation, "Hey, team. Hey, legislator. Hey, Senator. Hey, Chairman. These are the recommendations of the most influential law body in the United States. And what can we do?" And I do want to mention, and I would be remiss if I didn't, that we have a very unique opportunity in Pennsylvania, and it is not like this in other states, and I sympathize with you and it makes your job harder if you're not in Pennsylvania. I would not be asking for these meetings and having these conversations with these people if we didn't have a pending State Supreme Court decision, which was looking at striking down the registry, right? So that is like a *huge* point of leverage that we're able to have with PARSOL and talking to the state legislature. If you don't have some kind of leverage, right, like a court case or something to back it up, it's gonna be a lot harder to convince the state legislature to make rational sexual offense laws policy. And I do want to recognize that because of this state Supreme Court case, that is why we are able to have good relationships and meaningful dialogue with our people in our state government.

Andy 50:08

Interesting, but if it does come down that the Supreme Court rules in PARSOL's favor, then that would then be persuasive leverage for at least the immediate surrounding states, if not nationwide, to say, "Here are the things that were found." How much impact do you think that that decision, a positive position from the Supreme Court, how much do you think that would impact people's legislative work in other states?

Randall Hayes 50:38

Well, I think it would have a positive impact. I think that a State Supreme Court decision, if it is favorable, would be a wonderful asset, and would really help the cause. I remember the term from earlier, it is the "indefeasible," right?

Andy 50:56

Oh, indefeasible.

Randall Hayes 50:58

Yes, the indefeasible right. And so I do want to mention, as well, that in our state's constitution, and it is the only state constitution in the nation that explicitly states in text, that residents of Pennsylvania have an Indefeasible Right to Reputation.

Andy 51:16

Right, the right to reputation.

Randall Hayes 51:17

Where it will be harder in other places that don't have an infeasible right to reputation. And again, infeasible: "not able to be severed." Under no circumstances can it be severed. It is core. It can never be removed. And so that's part of what will go into this decision, we suspect. Other states will not have the right to reputation, but they will still be able to make an argument on the irrefutable presumption, again, the idea that people are high risk, when there's really no evidence that people are high risk.

Andy 51:50

Especially if you then have a test to determine that someone's an SVP. So, you're using a test to determine that the person has a higher chance of recidivism, however, we're not going to put you through that test, you still are a high risk.

Randall Hayes 52:02

That may be an unfortunate result of the State Supreme Court case, right? Perhaps the Supreme Court will word it in such a way that the legislature is able to say, "Okay, from now on, we're giving everybody a test and we'll just do it that way." Now, how would that work in practical terms? I don't know. But perhaps that's the answer here. Everybody has to get a risk assessment.

Andy 52:26

Yeah, would they make it that everyone is high risk. If you want to, you can hire your own researcher, your own therapist, whatever, to determine that you're a lower risk. And then that puts the burden back on you to spend some number of hundreds of dollars to get this evaluation done. (Sighs) Randall, I don't have any other questions and I want to thank you so much. But before we go, is there anything that you want to talk about, that you want to plug, besides PARSOL.org, which we've mentioned a bunch. But is there anything else that you would like to go over, cover, plug, whatever?

Randall Hayes 52:57

Well, no. I think I did some plugs already. Our YouTube page is fairly active. I give some updates on there. Give us a subscribe if you're up for it. If you're in Pennsylvania, please do reach out to me, to Josiah, to John, to any of the other people on the team. It's very easy to find us on our website. We'd love some help. We'd love more support. And to people who are not in Pennsylvania, I would encourage you, as our host has mentioned, we need more people to stand up and show their face, right? Doing something in your state's capitol and with your elected representative is really important. It might not feel that way, but it is. So, I implore you to, even if it's just sending a letter, if it's sending an email, or if you are ready for it, go to their office and show them your face. They work for you. You pay their salary, and you have every right to be in

their office, and to let them know the situations and the conditions that have a meaning and an impact on your life. You have every right, just as much as the oil lobbyists do, and the casino lobbyists do, the pharmaceutical industry people do. They are not constituents of your state senator or state representative. They just walk in their office, and they have a nice handshake and a good talk over a glass of whiskey or whatever it is. Remember, those people feel like the state legislature is very important. I feel like people in our movement should also have that same feeling, that your state legislature is very important. It's important to the multimillionaire lobbyists, and they're doing something about it and they find it worthy enough to spend their time on. It's worthy of your time too.

Andy 54:35

Let me circle back. I want to bring up two things. You are still under some kind of supervision, is that accurate?

Randall Hayes 54:42

Yeah.

Andy 54:42

How do your "handlers" as I call them, how do they feel about your advocacy work?

Randall Hayes 54:49

Yeah, I have a federal probation officer, and I've had five now, over nine years.

Andy 54:56

God.

Randall Hayes 54:56

Yeah, I didn't have the first one when I was involved in any of this. But the last four have been supportive of what I'm doing. I'm lucky, right? Not everyone has a cool P.O. or cool supervisor. But they know exactly what I'm doing, what I'm advocating for, and they're supportive of it. They could just tell me, "Hey, sorry, you can't be on the board of PARSOL anymore because you're talking to all these felons" (or "people with felonies" right? person-first language!)

Andy 55:21

Correct. Correct.

Randall Hayes 55:23

But they have not done that. And I appreciate that. They don't have to do that. It's right in the conditions. I shall not associate with people with felonies. And, again, I'm grateful for the leeway I'm given for that because obviously this is a pro-social and positive thing that I'm engaged in.

Andy 55:39

And the other thing is, you were going through your stump speech, so to speak, that you are saying that you have just as much right as others. So often people go, "Well, I can't vote, what can I do?" So, are you allowed to vote?

Randall Hayes 55:55

Yeah, in Pennsylvania I can vote, yup.

Andy 55:58

All right, well, somebody in a different state where they can't vote, could still do the same advocacy work that you are doing. I don't want to say that one vote doesn't count but, when the vote is split, and there's 100,000 people that voted in your favor or against you, whichever way it doesn't matter, your one vote didn't matter in swaying anything. So going and talking to the legislative body, testifying, analyzing bills, and so forth, that IS something that does have a massive impact. And I just wanted to just cover that, that even if you are unable to vote, that you can have a massive impact on the lives of you, and your family, and the others around you, if you get involved in doing advocacy work.

Randall Hayes 56:42

And I do just want to reiterate that I didn't do this by myself, right? I had people who helped me. I found an advocacy group who already were in there, they had roots. And I was interested in corruption of money and politics, so I clung on to them, and I learned. So, whatever you're into, whether it's gun rights or women's rights or the death penalty or death by incarceration, whatever it is, find that group! Latch onto them and then learn. And just shut up and listen, and you will learn. You'll find out how this stuff works. And then once you have enough knowledge, you band with a couple of other people in the PFR movement and you're off to the races.

Andy 57:17

Fantastic! Thank you again. I really appreciate you for taking time on this Sunday afternoon. What website do we go to?

Randall Hayes 57:26

Our website is PARSOL.org. You can find our "Torsilieri Headquarters," which has everything to do with this State Supreme Court case that is coming up. We have our YouTube channel, just search for PARSOL on there, or search for "the right to reputation" if you want to learn about our state's unique right to reputation. That's the best way to find us.

Andy 57:40

Fantastic! Again, thank you so very much and I hope you have a great rest of your weekend. I'll talk to you soon, buddy.

Randall Hayes 57:52

Rock'n'roll, thanks for your help.

Andy 57:57

And to close out the show, I just wanted to make sure that we give acknowledgement and thank yous to two new patrons this week, Amy and Steve. Thank you both so very much. It's really appreciated to help support the program. You can go over to registrymatters.co for show notes and to patreon.com/registrymatters if you would like to support the show and the work that we do over here. Thanks much everybody and talk to you in a couple of weeks!

Announcer 58:26

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