



Registry Matters Podcast

Episode 288

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Larry 0:00

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Andy 0:18

Recording live from FYP studios, east and west, transmitting across the internet, this is episode 288 of Registry Matters. And I would say "How are you this evening?", but it's not evening, Larry. It is a Sunday afternoon because you had schedule conflicts and made my life more challenging, but really Sunday would be really fine in total. Make sure you go over and like and subscribe on YouTube, and leave five-star reviews if you have that option, and all that stuff. If you're new to the show, you can not only find us on YouTube, but you can download the show as a podcast and listen in your favorite podcast app. And that'll show up on Tuesday in your feed. If you're a patron, you'll get it as soon as I finish editing it, and all of that. So with all of that in place, Larry, what are we going to do this afternoon?

Larry 1:01

We're going to do a little bit of this and that.

Andy 1:04

Fantastic. Let's get going.

Larry 1:06

So we have a guest from the great Peach State of Georgia. I think he's been with us on previous episodes.

Andy 1:11

He has.

Larry 1:12

We have a guest from the NARSOL affiliate, Restore Georgia, and he's going to talk about a client of theirs that is interested in international travel. He was once himself on the PFR registry in Georgia and was removed. But he does appear on another state's website. Well, the guest does not appear. We're talking about the client of Restore Georgia to clarify that. But you'll be driving the bus on that. And then we have a question from one of our supporters dealing with interstate compact issues. And the main event will be a Supreme Court decision from North Carolina, the North Carolina Supreme Court, and we were going to talk about "don't talk to the police". But I don't see that in there so I suppose we're going to put that off to another episode.

Andy 2:00

I don't think there's enough time.

Larry 2:02

All right.

Andy 2:04

All right. Well then, joining us is going to be Brandon from Restore Georgia. He's been here before at least once. Do you remember? Is it once, twice, ten times?

Brandon 2:13

I think it's been twice. But thank you for having me again.

Andy 2:17

So yeah, give us a rundown. What's going on?

Brandon 2:20

All right. So here at Restore Georgia, we get emails all the time from our constituents, people with questions. We recently had someone who asked us via email about international travel and how International Megan's Law (IML) applied to this person. The person was convicted in a different state some years ago, moved to Georgia, and then a couple years ago, he successfully came off the PFR registry in Georgia. But he still shows on the other state's website. A prime example is; if the person was convicted in Florida, moved up here, and still shows on their website, but has no duty, no obligation to register or check-in with Florida. The person does have a passport, and without the IML marking, is afraid of what could happen if he didn't notify anyone of their pending international travel. Which is a good question. What if they want to travel? It doesn't stop you from traveling. This person wants to travel internationally, go spend time and see the world, so what could happen if they don't report their travel? That's pretty much where we're at.

Andy 3:34

When they emailed you, what did you go do first?

Brandon 3:38

At first, I decided to take a look at what IML stated in public law. It's Public Law 114-119, which defines what's required, who's required to notify, and how all the various information is transmitted to the various agencies. And so the PFR, in theory, would notify the local PFR office. The local PFR office would then notify the US Marshals Service, who would then pass the information on to the DHS "Angel Watch Center". The Angel Watch Center is the organization that certifies the individual as a covered PFR, and then they would notify the Department of State if that person needed a marking on their passport (identifying them as a PFR), and the US Marshals Service also then transmits a notification to the destination country via Interpol notices.

Andy 4:33

And as you've already said, the person is not on the registry in Georgia. What happens if you're not required to register in your local jurisdiction, where you reside or work? And what if you were, as in this person's case, already removed from the registry? Who do they go to, to register? Who do they go announce this travel with?

Brandon 4:56

Exactly. Who do they go to because they're not required to register locally? We, as an organization, have contacts at our county PFR offices and with state officials too. We can say, "Hey, I've got this client who I could ask questions about." My first email was to someone who worked in a local PFR office. I knew this person had been there a couple of years and we have a good working relationship. This person was a longtime staffer, not a law enforcement officer.

Andy 5:31

Why is that important to you?

Brandon 5:35

Law enforcement officers in the counties rotate jobs after a couple years. Let's say they work in the PFR office for two years, then they're gone. You're not going to get consistency. But they keep some staffers on for years upon years, and that's all they do, so they know the laws better than some of the law enforcement officers that work in that office.

Andy 5:57

All right um, Larry, let me ask you a quick question: Why wouldn't you go ahead and call the Office of the Federal Duty to Register for International Travel or something like that, and tell them that you're going overseas?

Larry 6:11

Well, I'm not familiar with that office of the Federal Duty to Register.

Andy 6:15

(laughs) Sorry I had to be snarky there. I couldn't resist.

Larry 6:19

My general philosophy (and, for those detractors out there, this is my *personal* philosophy) is that you don't want to call attention to yourself. If you've been registered in Georgia, for example, I would bet there's a good chance your passport was captured by the PFR registry in Georgia, and scanned a long time ago. And it's probably already in that bureaucracy. But if, somehow or another, you escaped that, and you never actually provided a passport to them, it's not in there. When you call any federal government agency, you're *asking* to have your passport flagged, in

my opinion. I don't know how you could call, and I don't know how they could do any research, if you didn't give them identifying information. They're going to ask you a little bit about your name, date of birth and certain information. If you weren't already flagged, you've just flagged yourself. That's why I would not personally make that call.

Brandon 7:14

Yeah, so that's why we do this as an organization. I don't mind making those calls on behalf of the person. And even, for the phone calls, the people I talk to are receptive to that. They understand that, too.

Andy 7:28

Brandon, why wouldn't you just call the normal law enforcement office?

Brandon 7:32

My methodology is trying to get answers from different sources. I like getting the law enforcement answer. I also like to get some attorney's interpretation, as well as my own interpretation, and find commonalities around all of those so we can make a good, solid determination of what could happen. I have a good working relationship with this staff member at my local county office and her response was that she couldn't answer that question because she didn't know. She knew this person was removed from the registry requirements of Georgia, but convicted in a different state. And she gave me another number, which was to the US Marshals Service.

Andy 8:18

Can you do me a favor? Can you cover that once again, and slow down and say it again, what the answer was?

Brandon 8:25

Okay. The answer that was provided to me was: "I cannot answer that question since this person was removed from registry requirements in Georgia, but was convicted in another state. I would have this individual call the number below for more information" in which they provided me the number to the "US Marshals Service National Sex Offender Targeting Center" (202) 616-1600.

Andy 8:45

I'm wondering, does that mean that there's no place in Georgia for this person to go register with? That is at least one part of this answer. Whether there is another office to go register with, that would be what would come next.

Brandon 8:59

That is correct. If this person tried to go report their travel, the local PFR office wouldn't be able to do anything with it. The staffer's recommendation was, "Hey, call the US

Marshals Service and see what would need to be done" because they didn't really have an answer.

Andy 9:21

This is gonna start turning into a circle-jerk of "call this office" and then they tell you to call that office, and you end up back at the first office, eventually.

Brandon 9:28

Yeah.

Andy 9:29

What happened after that? Did you reach out to that 202 number in DC?

Brandon 9:34

Actually, I did. I called the number, pressed one for international travel, and heard, "Press one if you're representing a PFR or are the PFR." I just pressed one and left a voicemail saying, "Hey, can you please call me back?" I didn't explain the situation over voicemail. In the meantime, while waiting for that, I actually sent an email out to the Angel Watch Center and got an automated response, a pretty lengthy automated response, which described what the International Megan's Law is, and what are the requirements. One of the things that stood out to me was, it says, "Additionally, per International Megan's Law, individuals who have been convicted of a covered sexual offense against a minor, *and* are required to register as a sex offender in any US jurisdiction, are subject to the passport marking provision." This portion told me that there are two requirements in terms of IML: You need to be convicted of a covered sexual offense against a minor *and* you need to be required to register as a PFR in any US jurisdiction.

Andy 10:53

And with the word "and" in there, that means that A and B have to be true, before you have a marking on your passport.

Brandon 11:01

That is correct. That's the conditional statement. One and two. If either one of those two conditions don't apply to you, then IML doesn't apply to you. This is what I was thinking at the time when I got the email back with this statement; it's gotta be one and two, not one *or* two. I waited for that phone call back from the US Marshals Service, which actually came a day later, after that email.

Andy 11:26

Did you see the part where it says, "If you would like to self-identify ...?"

Brandon 11:26

(chuckles) Yeah, exactly. Which, if you want to self-identify you can, but I did not want to "out" this individual. I just wanted to get assist because I had questions, you know. I didn't want to flag this individual.

Andy 11:47

Larry, would you...? God, I don't even want to ask you the quote-unquote "legal interpretation" question. But would you interpret that the same way?

Larry 11:57

Well, therein lies the problem here. I interpret it as if it were going to be *my* skin on the line. I interpret "and are required to register" to mean: "if you're actually actively required to register. "And are required" is not the same as "would be required". If this person were in those states, even though they may have a residual life of their previous registration information still carried on that state's website, that is not a *current* duty to register, in my opinion. Now, my detractors, I am entitled to have an opinion. It's just not a legal opinion, but if you asked me if I would get a particular surgery, even though I'm not a surgeon, I can tell you no, I don't think I would do that. My opinion is, as a layperson, that if you would be required to register in that jurisdiction, and you were in non-compliance, that would apply to you. So if he were required to register in, I think it's North Carolina, we're talking about here, or Florida, whichever the two it is. If he were actually within a zone of being required to register, and has choosing not to register, that would be one thing. But since this person has left Florida (or North Carolina), they don't have a duty to register, although they're carried on the website. Now, the US Supreme Court hasn't addressed this issue. They would be the final authority. But I don't think this question will ever reach the Supreme Court because the practicality of the way it's being enforced now is consistent with what our guest has said. If you are not actively required to register, then you have no duty because you have no way to report it. There's no entity. In fact, the guest just told us that they said, "If you come in here and try to report it, we will not take this report. We will not file it. We have nothing to do with it." Is that correct?

Brandon 14:01

That is correct, sir. The staffer in my local county said, "I can't do anything with this information. I can't submit it because you're not actively registered in the local jurisdiction."

Larry 14:13

I would believe that the practicality of trying to enforce it, it's well known to the government who is required to register because two things happen. You're listed in the National Crime Information Center (NCIC) system as an

active registrant, when an agency registers you. If you go non-compliant, you're still listed as an active, non-compliant registrant. But once you've been deregistered through a process, they deactivate that registration in much the same way they deactivate a formerly active warrant. If they didn't deactivate a warrant, you'd be picked up every time you encountered the police, even though you've already been arrested, made bond, been sentenced, and served time twelve years ago. They do the same thing with a former registration. My opinion is, based on everything I can gather from dealing with law enforcement in my state, and in my capital, and in other states, is that once you're deregistered from their system, if you go through a process of being deregistered, whether it's timing-out, or you've been released by court order, they deactivate that registration. You're no longer in that zone of what the law describes. Now a lot of people worry about the website. They say, "Well, I'm still on the Florida website." Well, you're not registered in Florida. "Larry, you're so stupid. I'm on the website". You're not registered in Florida. And we go round and round and round. So if you want to believe you're registered in Florida when you're listed on a website, you can choose to believe that, and you can choose to have an imaginary fear, but you're not registered; you're just listed on a website! God, the hate mail is going to come the first week of the year (laughs).

Andy 15:49

It's already starting in chat, Larry. "But I'm on the website!" someone says. It's already started.

Larry 15:53

(laughs) So if I could just be smart enough to understand that the website is the same as a registry ... but it isn't.

Brandon 16:01

And I get everyone's fear about that. But then, when I got the response back from the US Marshals Service via phone call, and we had this conversation regarding this individual, their response was, "If you do not have a duty to register in your local jurisdiction, then you do not have to report your international travel. AND, if you do not have a duty to register where you reside, then the IML does not apply to you."

Larry 16:26

That is consistent with what the last three administrations have interpreted because it's not practical to interpret any other way. The law may be written in such a way that you can interpret that it applies if you've *ever* had a conviction. But the practicality is, you can't really enforce it that way. So, they're choosing, right now, under three successive administrations, from Obama through Trump through Biden, to enforce it to people who are actively,

currently, required to register. Not theoretical people who *might* have a duty to register.

Brandon 17:00

And we even went over cases of people being left on the state website in Florida. And that's what this staffer at the US Marshals Service said, "If they don't actually live there, and actively have to register in Florida, they don't have to report their international travel."

Larry 17:20

Let me get this straight. Say this again. They don't run the state websites when they're deciding whose passports to mark. Are you telling me one of the US Marshals themselves told you that they don't pay any attention to the website?

Brandon 17:37

They want the active registered, they want to know where you're actively registered, not where you have residual stuff.

Larry 17:46

So that's what I'm trying to illuminate here. They don't use the website to determine active registration status, according to the marshal. And I've been saying that for how long on this podcast Andy?

Andy 17:56

I mean, it's episode 288, so ... (all laugh) a little bit of an extended break this year.

Brandon 18:04

They're using NCIC, like everyone else does.

Larry 18:07

That is the logical place to go because you're either in compliance or you're non-compliant. But when an agency registers you, they put it in the NCIC. It's in one of the many "person" files, I think there's like 15, 16, 17 different person files: "active supervised offenders", "warrants", "gun permits", on and on and on. They put you in one of those files and when you're no longer actively registered, you go into an inactive status, if they've done things correctly, and you're no longer a registered person. Folks, try to get over it! A website is not active registration. It's a humiliation. It's an unfortunate thing. I wish we could do something about it, but it doesn't come close to being actively registered.

Brandon 18:52

And I'll definitely follow up when this person comes back from their international travel and shows you that nothing happened. So we'll give you a follow up and say, "Look, there's no fear. If you want to travel, travel."

Andy 19:06

Totally I can add something to that (and there's even somebody here in chat that probably would attest to this) that you'll have more problems coming back to our shores, than you will going there. I think he had one problem going somewhere. But generally speaking, from the people that I've heard that did international travel, they had more problems coming home than they did going to where they were going,

Brandon 19:27

I've heard that as well. I mean, if you're confident in what you know, in all the laws that apply to you, or don't apply to you, you can definitely navigate those troubles on the way back.

Andy 19:40

What were you gonna say Larry?

Larry 19:43

I was gonna say, we don't know that nothing's gonna happen, because my fear would be that this person's passport has previously been entered as a part of the registration process. I think J. Edgar Hoover taught the FBI a long time ago that they don't destroy any information that they have. If it was entered into the NCIC, scanned into a law enforcement database, this person may already be flagged. But what I'm saying is that that is a separate issue. We can't undo what you've provided to law enforcement while you were registering. We can't change that because you're not going to get it back from them. But what we can do is accept the fact that you're not registered, and you're not covered. That doesn't mean, when you get back to the United States, if American law enforcement is dealing with your reentry, they might still know that you were a former PFR, and they may still rake you over the coals. We don't know that.

Andy 20:39

Right. Was there anything else in here that you wanted to cover Brandon?

Brandon 20:46

No, sir. That is it. Thank you for having me.

Andy 20:48

I appreciate you doing all that legwork. That's fantastic. It's really funny to have a whole bunch of people saying that they experienced this, they experienced that. But you actually kind of went to the mat and got the details that says, if you have a minor-related crime, *and* a current duty to register in a work, school or living situation, then you have to deal with this. But like, if you don't have both, then it doesn't apply to you. So that's really fantastic. We appreciate that information.

Brandon 21:19

Thank you, sir.

Andy 21:21

Thanks, buddy. Take care. I'll talk to you soon. All right, well, let's get rid of him, and we will move on to the actual good stuff, right?

Announcer 21:31

Oh, that was good stuff.

Andy 21:32

That was really good stuff. I appreciate him doing all of that. That's fantastic. Let's move over to a question that came in. It says, "Thank you" from, let's see, it just says "Sincerely in solidarity". I don't know. I don't remember who this is. Larry, you put this in there. I don't know. I don't have a name to reference what I was looking for.

Larry 21:50

He didn't want to be referenced.

Andy 21:51

Okay. We'll just call this person "John". John wrote, "I thank you for the information you provide, especially useful the Illinois and West Virginia cases verifying a total ban on social media is unconstitutional under Packingham when a person has not committed a crime with a computer or the internet. I get questions all the time and comments where people believe they can just leave the state (Interstate Compact Agreements) and that the harsh laws in Indiana cannot be imposed on those who leave. They believe that once they leave Indiana, that the state they are going to cannot and/or will not enforce Indiana's requirements that the 'registrant be subjected to more stringent requirements' between the state they are moving to, or Indiana's laws. Can you clarify these types of clauses and explain them better? In other words, Indiana (parole?) requires that the registrant comply with Indiana's laws in the receiving state if Indiana's are harsher, and *that* state's law if *they* are harsher. Is this accurate? Legal? Enforceable? I know you recently clarified federal stuff in the NARSOL Digest October/November 2023 issue and stated, 'If you relocate to a state that has more lenient requirements, that state's requirements will be applied.' But I don't think this is correct for someone on supervision. Can you better explain this?" This came in from the NARSOL Digest feed kind of stuff.

Larry 23:16

Yes, this was one of the prison jailhouse lawyers and he writes regularly. This is very nuanced. We've been dealing with this for years, and you even still profess that it's confusing.

Andy 23:30

It is! It drives me crazy!

Larry 23:33

Okay. Well I'll try, again, to make it as simple as possible. Registration generally, with one or two exceptions, is solely in the hands of the state you're living in. Totally disconnect "registration" from any of your "supervisory" requirements (probation or parole). Registration is going to be dictated by the state or jurisdiction that you're living in. If you go from Vermont, and you go to Florida, you can't say to Florida's law enforcement that, "I only had a ten-year annual paper report that I had to mail in. That's all I have to do" because that is not binding in Florida. Florida will take over as the regulatory arm of the registration requirement. And whatever Florida tells you to do, that's what you will do, in terms of registration. If you want to be subjected to Vermont's, you stay in Vermont. And to me, that's so easy because it's like your vehicle, your personal vehicle, if you take your vehicle from a wide open state that doesn't do emissions inspections, and you take it to New Jersey where they're tightly compacted like sardines in that state, and they're very conscientious about air quality, you can't say, "I only had this requirement in Arizona." So that one should be easy to understand. The regulatory scheme will be whatever the state has. So far, so good, right?

Andy 25:09

Totally.

Larry 25:10

So *then* you get into your "supervision", which is part of the punishment scheme. When you're sentenced for the commission of a crime, you're being punished. And, I use this over and over again, wouldn't it be a great country if you could extinguish your punishment by moving from one state to another? Wouldn't there be an awful lot of interstate movement if you could do that?

Andy 25:33

Yeah, you could just "state shop" who has the easiest time to get off.

Larry 25:38

It would be a fantastic system if you could do that. If you just apply a little bit of logic, and say, "Hmm, now Alabama imposed a sentence of punishment that included a twenty-five year supervision period on me. Now, I can go to Vermont because I don't think anybody ever gets more than ten years of supervision in Vermont. Therefore, I'm going to be off in ten years!" That would be such a "fantastic" system that Vermont would be overrun with criminals because who wouldn't want to get out from under supervision faster? When you apply logic to it, you realize that that's illogical. The punishment is being transferred to

the state, whether or not they would have imposed it. It's being transferred to the state through a process that's called an "Interstate Compact" which is, in essence, a treaty between the states. And the state that is taking over your supervision, has agreed, when they signed that treaty, that they will honor the terms of that punishment that was imposed by the state that imposed it. And that includes ALL of the punishment. That means if that state says, "We want you to do X", and it wouldn't have been a condition in Vermont, it goes with you to Vermont. Your term of supervision follows you, and any special conditions follow you to Vermont. Your punishment will be like Indiana parole conditions. If a person thinks they're going to escape Indiana parole conditions by leaving Indiana, they're just flat wrong. Their parole conditions from Indiana will follow them to wherever they go. Now, how religiously and zealously a state enforces conditions that they might see as less than appropriate, that's another question for another episode. But technically, those conditions go with you. You will not gain any advantage by going state shopping. You might even gain disadvantages because the receiving state can impose *additional* conditions, as long as they're not inconsistent with what they would impose had you been convicted there. Now that doesn't mean that they can lengthen your punishment. If you come there with five years, and they would have given you twenty, they can't make it twenty; it's still five years. But if you come to them, and you didn't have a curfew, but they typically put curfews on their PFRs, they can do that because that's a special condition that's consistent with how they would supervise an offender who was convicted there. You may end up making yourself even worse off by moving. Now that would be funny, when you do that. Can you agree with that?

Andy 28:29

(laughs) We need to have a conversation about what you and I define as funny.

Larry 28:33

I don't see why you couldn't admit at least that that would be funny. If you go state shopping, and you make your life worse, that's not funny? What would you classify it, in your vocabulary?

Andy 28:44

I don't think that's funny if you make your situation worse, not for the person that's living it anyway. Might be funny for everyone else.

Larry 28:52

(laughs) So hopefully that long diatribe helps clarify it. I'm going to actually answer this in The Legal Corner of the NARSOL Digest. I like the question. We get some variation of it all the time. But if you can disconnect registration from the actual sentence, it will be a lot simpler for you. And

then when you apply the logic of "Wouldn't it be a great country if you could extinguish your conditions and your punishment by moving to another state?" Wouldn't we have a lot of U-Haul traffic if that were the norm? You just can't do that.

Andy 29:23

Can you also say, to extend it, to accept that your "supervision" stuff is going to be different than your "registration" stuff? Those are two very distinct situations.

Larry 29:35

Absolutely. People tend to combine them because, when they're in court, part of what's pronounced is that you will comply with PFR registration, because they have a duty under *Padilla vs. Kentucky* to apprise you of those collateral consequences. And they associate that with the sentence because it's in their probation order most of the time, about the duty to register, and to comply, and keep current. But it's not an actual part of your sentence. It just isn't, except in screw up-cases where they actually put it in. I've gotten arrogant a couple of times and told people, "Well, it wasn't a part of your sentence." And I've been shown a J and S where it was a part of the sentence, where they actually put in the specific period. They shouldn't have done it, they did it, and if you can show me one of those, then I'll magically flip on you and say, "Well, great! You've got a contract that you've made with the state. If they specified a particular term, a representative of that state, being the district attorney, who's duly authorized to make deals on behalf of the state, has made an agreement with you. And your plea was contingent upon that agreement." But most of the time, if you read it carefully, it's not a specific term, it says you're "notified" of your duty to comply with registration. That's what it actually says in 99.9% of the plea agreements. People say, "Well, the judge said I'd have to register ten years." Show that to me. Maybe twice, someone has shown that to me.

Andy 31:04

I gotcha. Alright here we go again with interstate transfer stuff. We should like keep a hit counter of how many times we have covered ICOTS (the Interstate Compact Offender Tracking System). We're ready to move on from there, then?

Larry 31:19

Yeah, let's do it.

Andy 31:20

Well, I added this one just today so you're not privy to this one yet. But this one was on the YouTube channel, and says (ahem, I gotta turn on my "angry voice"): "Here's the problem with getting off the registry that everybody wants to do. In 40 of the states, if you move to that state, even

after getting off the registry, you will have to register with them, as the law states ... if you have ever been convicted of!!!! ... you have to register in that state!!! And like my home state of Wisconsin, my residency restrictions are written as, "If you have ever been convicted of." So even after I deregister, I can't go to parks, libraries, even the movie theater is listed!!!! So really, getting off the registry is no relief!!!! Abolish the registry!!!!!!!!!!!!!"

Larry 32:07

I certainly agree with the last "abolish the registry" part, I wish we could do that. But I disagree with most everything else because getting off the registry certainly would improve your quality of life, even in Wisconsin because you're no longer within a "zone of prosecution" and you're no longer having to make disclosures. It's a passive thing. It's a passive part of your life, to have been *formerly* registered. I think he's right about the way the statutes are constructed there. If you've "ever been convicted", you may still have these disabilities following you but, honestly, how often are they enforced? Who do you know that's actually been prosecuted who has been removed from the registry? It probably has happened, but it's not very frequent. But I disagree with him about getting off the registry, that there's no benefit. I'm hoping that the \$100 annual fee would no longer be assessed if you were able to be removed from Wisconsin's registry. If there is a process that lets people off there, I agree that when you move to other states, you may be within a zone of registration again. But, as I've said many times, you may move to another state and go the rest of your life and never have a problem (unless you incessantly call the PFR office!)

Andy 32:07

(laughs)

Larry 33:31

I mean, you may technically have the duty. I'm not "advising" anybody to take any particular course of action. But the reality is, whether I give you advice or not, if you go to another state and you've been dutifully removed from registration, I challenge this audience, as well as any other audience, to show me an instance where a person who has been validly removed by a process (or they've simply been terminated by the passage of time, which happens in some states), show me a person who has been terminated from registration, who has moved to another state, and has been prosecuted for failure to register. I am not aware of it. I'm connected with the national defense lawyers, the state defense lawyers, and I'm not aware of that. In fact, we have seen evidence to the contrary, and we've done episodes of people who have relocated, who have been deregistered, not that far in the past, where they were just simply told, "You actually do have a duty here". We have no evidence to

justify that paranoia, although it's reasonable. The law may say that. But it's just not done.

Andy 34:48

So, is it safe to say that, if you are in your state and you deregister, like that would be the end of it? (whispers: "I say change it") but for at least for that time window, you are safe? Is that at least fair to say up to the start of this?

Larry 35:07

Well, I would say you're as safe as you can be. Now the residuals of any private websites may still exist, but you're not within a zone of prosecution and that's the big one, because the penalties in most of the states, this counts as a habitual offense. Therefore, you may have a prior felony or two, and may be looking at lifetime for failure to register. I don't know why anyone can sit there and keep a straight face, and tell me that when they're facing prison for failure to register, that no longer having that threat facing them is not an improvement in their life. I must be more retarded than I ever realized that I am. Because I can't see how you can keep a straight face and say that no benefits derive from being deregistered.

Andy 35:53

In my case of being off of the registry in Georgia, I'm done with that. If I were to relocate to somewhere else, and they have that on their books saying that, "if you have ever been convicted of" that's not the same. I think the way Georgia has it worded, I believe they say "if you are required to register somewhere else", as opposed to this other language that this person is writing about, "if you have ever been convicted of...", well, that statement would still be true for me. So if I go to one of those states, I would then have to go to the PFR office and declare myself?

Larry 36:28

You would have that decision to make.

Andy 36:30

Sure. I'm with you.

Larry 36:30

I'm not saying you would have to go. If you went approximately ninety miles across Alabama, they cover you if you've ever had a conviction. You remember the McGuire case?

[<https://talkingpointsmemo.com/muckraker/mcguire-strange-ruling-eleventh-circuit-delay>] He had *never* been registered, even in Colorado where he was convicted. But he went in and said, "Hey hey hey, I've got this conviction from 1986 or 1989 and I'm now living here. What do you people think?"

Andy 36:58

(laughs)

Larry 36:58

If they had *found* Mr. McGuire there, being that he had never registered, all they would have done was given him the notice to register, which they gave him at the PFR office when he showed up and said, "Please tell me if I have to register." Why do you want to impose the worst thing that can happen to you, yourself? If that's the worst that's going to happen, is they're gonna tell you gotta start registering, in my mind, the safest thing to do would be to wait and see if they ever tell you that you need to register. I mean, again, I realize I'm not playing with a full deck but, to me, I would rather wait until they find me.

Andy 37:04

All right.

Announcer 37:13

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Andy 38:31

And now Larry, we're going to cover this North Carolina case.

Larry 38:39

Why do you want to cover this case?

Andy 38:41

Well, because I found it interesting because I read it 47 times, just to make sure I had it all worked out, ironed out, and I could recite it basically.

Larry 38:51

Okay, well, but before you start, I think the name is pronounced "Fritchie".

Andy 38:57

Oh I think that would just be "Fritch". Just my opinion.

Larry 39:01

I think it's a German name. I think it's "Fritchie". But you pronounce it however you'd like.

Andy 39:08

Man, okay so: To Whom It May Concern: that your last name is Larry "Fritchie" or "Fritch", we apologize up front. We're doing the best we can with our single language of English guiding us here.

Larry 39:23

All right.

Andy 39:23

This is the state of *North Carolina vs. Larry Fritsche* (or "Fritchie". Larry says Fritchie so I'll go with what Larry says. That way he can be wrong, and he directed me). We've spoken about it and you are having heart palpitations, Larry, since you found out about it. And what's this case about? Oh, this is the one that you told me about from a particular individual that didn't know about it, but that individual knows everything.

Larry 39:46

Yes, that is correct. It's a case to determine whether or not North Carolina must provide credit for time a PFR has been on *another* state's registry. A person is eligible to petition for removal after ten years in North Carolina. The question before the court was "Does the time on another state's registry count towards the ten-year requirement?"

Andy 40:10

And I take it from the decision that it was favorable to PFRs? And that's the reason why you're so giddy? Like a little school girl?

Larry 40:18

No, I don't think I'm quite that giddy. But no, it was not favorable to PFRs.

Andy 40:22

All right, well, then. Okay, well, so then that begs the question, Larry, if we lost, if it wasn't in our favor, why are you so giddy?

Larry 40:30

Well, I'm a little bit happy to start the year because I'm in recognition that this is a strict "textual interpretation". And a large number of our supporters believe in textualism, and they believe that judges should not legislate from the bench. This is a classic example of textualism and no legislating from the bench. So, our audience should just be totally enamored by this decision.

Andy 40:56

Then will you allow me to read directly from the text, and not do any interpretation, and make my own legal opinion?

Larry 41:02

Certainly.

Andy 41:03

Alright. So, from page one, "In this case, we determine whether N.C.G.S." ... so that's North Carolina, what? General Statute?

Larry 41:12

Yes.

Andy 41:12

Ah, sweet! God I got it, I guessed! "... whether N.C.G.S. 14-208.12(A) permits removal of a registered offender from the North Carolina PFR Registry ten years after he initially registers in *another* state. The Court of Appeals has previously held that Section 14-208.12(A) only permits removal of a PFR from the North Carolina registry ten years after he initially registers *in North Carolina*." Is this the first time that this issue has ever been litigated in North Carolina?

Larry 41:45

No, it's not. The North Carolina Court of Appeals answered this question back in 2011. In the case of "In re Borden" (and for the gurus out there, I can give you a citation for that. It's 216 N.C. App. 579, 718 South Eastern 2nd 683) and the Court of Appeals held that the time registered in another state does NOT count toward that ten years.

Andy 42:11

I'm going to set this up. "On 17 November 2000, defendant Fritsche pled guilty to sexual exploitation of a child in Colorado pursuant to Colorado Revision Statute 18-6-403 from 1999. The trial court suspended his sentence and placed him on probation. He subsequently violated the terms of his probation, and the trial court revoked the probation and activated his sentence. Fritsche served eight years in prison in Colorado. Upon his release, Fritsche registered in Colorado on the 26th of August, 2008. Then in February 2020, Fritsche moved from Colorado to Florida" (bad move...) "where he registered with the Florida registry office." I'm guessing that life was less than ideal in Florida so, in October of 2020, which is only, what? February to October, so six-ish months? Then Fritsche moved to North Carolina. When did he file his petition for removal in North Carolina?

Larry 43:14

That's funny you should ask that, because that may have been part of the problem for him. It's pretty obvious that he moved from the two previous states in order to find a pathway off the registry. Nothing wrong with that, just yet. But according to the court, on 28 October 2020, Fritsche petitioned the trial court in North Carolina under 14-

208.12B requesting a judicial determination as to whether he must register in North Carolina. On the ninth of April 2021, the trial court issued an order requiring that Fritsche register in North Carolina. He did so. Now listen to this. He did so on the 12th of April 2021. Then, just TWO days later, on 14 April 2021, Fritsche filed a petition pursuant to the North Carolina removal process, seeking *termination* of his requirement to register in North Carolina. Now, can you at least admit that it's funny that he tried to get off two days later?

Andy 44:12

I don't think that's funny. And I wish you would make a resolution in this new year to figure out what is, and what is not, "funny". That's my New Year's resolution for you, Larry, and I'm gonna keep up with you. I'm gonna be your accountability partner for the year.

Larry 44:26

(laughs) Well, if he had come to me, I would have told him this was not a wise move. But go ahead. You're not gonna admit that this is funny. So go ahead.

Andy 44:35

Fritsche filed this petition almost thirteen years after initially registering in Colorado. At the hearing on the petition, Fritsche argued that because ten years had passed since his initial registration in Colorado, he qualified for early termination in North Carolina. Then, on the seventh of May, just a month later, the trial court denied Fritsche's petition. Relying on the Court of Appeals decision in "In re Borden", the trial court concluded that because Fritsche had not been registered in North Carolina for at least ten years, he did not meet the requirements for early termination. Shall I continue or is that yours?

Larry 45:14

Yeah, you keep going.

Andy 45:18

Okay. Well then the Court of Appeals affirmed the trial court's denial of the petition. Like the trial court, the Court of Appeals relied on In re Borden in reaching its determination. Can you explain In re Borden, please? In that case, the defendant similarly sought early termination of registration on the North Carolina registry. He argued that he was eligible for early termination because more than ten years had elapsed since his initial registration in Kentucky. The Court of Appeals held that "the plain meaning and purpose" of N.C.G.S. 14-208.12(A) requires that an offender be registered for at least ten years in North Carolina before being eligible for early termination." Can you please admit, if we're not going to agree on what's funny, that this is a stupid decision?

Larry 46:04

No, I cannot admit that. (laughs)

Andy 46:09

(laughs) Of course not.

Larry 46:12

This is a decision that is very defensible from a textual point of view. According to the court, "We must determine whether the trial court erroneously interpreted the language of the relevant statute. Conclusions of law, such as issues of statutory interpretation are reviewed de novo by this Court and are subject to full review," which means a brand-new review, as you know, the term "de novo" means that there's no deference to the lower court's decision. And this is a defensible position. I don't like it! But no, I can't admit it's "stupid".

Andy 46:45

And you're starting off the new year the same way as always. You can justify the most ridiculous things.

Larry 46:51

(laughs) This finding is not ridiculous at all, just because you may not agree with it. It's well-reasoned, and it's very logical.

Andy 47:03

The court stated, "When the language of a statute is clear and without ambiguity, it is the duty of this court to give effect to the plain meaning of the statute and judicial construction of legislative intent is not required. However, when the language of the statute is ambiguous, this court will determine the purpose of the statute and the intent of the legislature in its enactment."

Larry 47:27

They did say that. And a PFR who commits certain "reportable offenses" as defined in North Carolina General Statute 14-208.6(4) is "required to maintain registration with the Sheriff of the county where the person resides." I omitted the citation for the remainder. The registration requirement generally lasts "for a period of 30 years following the date of initial county registration." And that's also in the statute. Section 14-208.12A provides an exception to the thirty-year registration requirement and allows an offender to petition for early termination of registration "ten years after the date of initial county registration." He had not been registered in North Carolina but a matter of days before he sought removal. Can you admit that days is not ten years?

Andy 48:15

I mean, two days *sounds* like ten years. (laughs) They both start with T's.

Larry 48:21
(laughs)

Andy 48:21
We can interpret those to be the same, couldn't we?

Larry 48:23
So you can't admit it, that two days is not ten years.

Andy 48:26
(laughs) Tell me, how does the thirteen years not count for anything from Colorado?

Larry 48:33
So now you're falling back on what he'd done previously in Colorado. But the North Carolina legislature chose not to provide credit for those thirteen years. That's their prerogative. You do not want judges legislating from the bench, do you?

Andy 48:49
Sometimes I do! I'll admit it.

Larry 48:52
Okay.

Andy 48:54
Then the court stated on page 5, "the precise question we must answer is whether the word 'county' in the relevant statute refers to a county of any state, or only one in North Carolina."

Larry 49:07
That is the operative question. And the court stated, "Because the definitions under Article 27A refer specifically to counties in North Carolina, 'initial county registration' in Section 14-208.12A must mean the first registration compiled by a sheriff in a county in the state of North Carolina." Moreover, they said, "the purpose of Article 27A aligns with this interpretation of initial county registration."

Andy 49:36
Well, this is a very depressing, as usual, first episode of the year. Because you are Mr. Doom and Gloom, I have not changed your Doom and Gloom picture since, whenever, because that is just who you are. You are Dr. Doom.

Larry 49:48
Well, I'm sorry to hear that. But the court went on to say, "it is an offender's registration in North Carolina, not in other jurisdictions, that protects North Carolina citizens." And then they cite back to *In re Borden* and the citation doesn't need to be given again here. But they're quoting from *In re Borden*, "Allowing registered PFRs to be removed from the PFR registry without being on the registry at least ten years

in North Carolina contradicts the intent of the statutes to protect the public, maintain public safety, and assist law enforcement agencies and the public in knowing the whereabouts of PFRs." That's the court saying that.

Andy 50:27
I did find it interesting, though, that they stated, "interpreting initial county registration in Section 14-208.12A as requiring ten years of registration in North Carolina is further supported by the General Assembly's silence since the Court of Appeals decided *In re Borden* in 2011." What's the relevance of "legislative silence"?

Larry 50:52
Well, they might have made it a little more relevant than I would have. But it's somewhat relevant because it's telling us that, for more than a decade (and the legislature presumably is aware of important appellate decisions). They noted that "over the past twelve years, the General Assembly has made no attempt to amend or clarify that section in a manner contradictory to the Court of Appeals' reading and interpretation." So if this was so offensive to the PFR advocacy, they have a strong state organization in North Carolina. I mean, it is strong and beyond recognition, and the leadership they have, it's just great, so they've had more than a decade to go to the legislature and say, "Look, we had this interpretation that's inconsistent with what you guys intended to do. And why don't we just say, with a couple of word changes, we could fix this"? The reason why they didn't do that is because there's no support for changing it. The legislature's happy with the Court of Appeals' decision. And now it's been affirmed by the state Supreme Court, so this is the law of the land. Not likely to change, unless the legislature changes it.

Andy 52:06
I see. Well, there you go. Anything else on that? Any further thoughts on that before we close things out?

Larry 52:16
Well, I really feel bad about this decision because it would be nice if people got credit. In some states, they do get credit, but it's in the statutory scheme, or there has been an appellate ruling saying that credit must be applied. But no state wants you to come there to escape registration. The lesson I would take from this is, had this Mr. Fritsche come to me, and as part of his case screening before he got turned over to the big guy, I would have told the big guy, "Here's where we're gonna have problems. We've got an appellate decision". My job, as the preparer of the case, is to help the attorney and, if I'm good at what I do, to spot potential minefields, I would have known about *Borden* even if the attorney didn't know. I'd say, "Look, the case law is against us on this case. This has already been decided a decade ago, and we're gonna have trouble getting this

credit." But what I would have told Mr. Fritsche is that, "Case law is not on your side. But what we're going to try to do is *posture* you so you'll be the most appealing individual that we can come up with. So, we're gonna get you well-established in North Carolina. We're gonna get your stable, where hopefully you can buy a home or buy some real estate, and have at least a year or two of steady employment behind you, paying taxes in this community, and doing something productive with your life. And we're going to make you much more appealing. If we take this to court when you've been here thirty minutes? They're going to see right through it." And that would have not been very popular with Mr. Fritsche, and he would have gone down to the next law office that would've told him what he wanted to hear, which is, "Yeah, I can file the petition, we got a good shot at it." And what would be funny would be if the lawyer that *did* this case, did not know about the appellate decision, and took this man's money. If he didn't know that there was already case law against him. Can you admit that *that* would be funny?

Andy 54:05

Sure, I'll go along with you.

Larry 54:06

Well, that's what I find puzzling about our detractors out there. They criticize attorneys for being incompetent, and for selling them out, and for doing all these grotesque things. And then they turn around and say, "Well, because Larry and Andy disagree with attorneys, they shouldn't have the right to say anything!" You can't have it both ways. Either attorneys are fantastic and they know it all, or they deserve to be questioned and second-guessed. And most professionals, if you go to a medical doctor, it's kind of strange, they *tell* you to go get a second opinion!

Andy 54:38

Right. Totally I do know that.

Larry 54:38

I work under the direct supervision of a very qualified attorney. Everything that I say (within reason, not everything, but most everything that I say) has been vetted,;we've talked about it, the attorney is comfortable with my stance on everything. And I find it amazing that they say that "Because Larry disagrees with an attorney, he shouldn't be allowed to speak." I think a man named Trump contradicts that. He says that he shouldn't be silenced. I don't think I should be silenced either.

Andy 54:56

I'm inclined to agree with you. Cool. Tell me then, Mr. Not-Attorney Attorney Person, why are attorneys so different than doctors in their stance on going to get a second opinion?

Larry 55:21

I wish I could understand that. After more than two decades doing this, they seem to be very opposed to having second opinions. Most are, not all. But many are very opposed to that and I don't understand why. Because if I had the license, I would say, "This is merely a *practice* of law. We have no guarantees. And you may go out and talk to another attorney that may tell you something different, and I won't discount what that attorney says. My experience is based on my experience. That attorney may expect a different outcome, based on his experience." But I do not know how you could take Mr. Fritsche's money and not have told. Now I don't know that he *didn't* tell him, but if he didn't tell him, that "This is a very bad case for us to take up," if he didn't do that, in my opinion, that is not very ethical.

Andy 56:15

Do you think it's arrogance, on the part of the attorneys, to not try to do the second opinion kind of thing?

Larry 56:23

Ego maybe, yeah. Could be, but yeah, I would want you to get a second opinion. And when you come back and say, "Attorney such and such told me this", I'd say, "Well then you're gonna have a choice to make. You're going to have to decide who you're comfortable with, in terms of articulating on your behalf, your mouthpiece, and who you think can do a more thorough job. But I'm telling you: This case is not going to go well for you unless we can position you differently. And it's still going to be an uphill climb, because the Court of Appeals is just the mid-level review in North Carolina before it gets to the state Supreme Court. The state Supreme Court could have declined to review this case and it would have been final long before now." So Mr. Fritsche got to spend a whole bunch of money taking it up under discretionary review to the North Carolina Supreme Court and got the outcome that I would have told him, at the very first interview, that this is where this case is likely to end up.

Andy 57:20

So um, then you experienced this when I was talking to you during my registry removal piece, that the attorney didn't like that I knew what I knew. I was challenging his... stepping around in his sandbox. Yes, he's the attorney but I probably know more about registry removal stuff than he does!

Larry 57:40

I don't understand it, I wish I could understand it.

Andy 57:45

Some people in chat just said, "Maybe it's because they don't want to lose the money? People hate turning away business."

Larry 57:51

I would tend to give that a high probability. As an attorney, you've got overhead to cover. Maybe you're having a slow month, and a guy comes in who's ready to plop down \$5,000 to try to get off the registry, maybe \$10,000. I don't know what he charged him, could be any number of things. But I think that would be a factor as well. You got a mortgage to meet, you got maybe an assistant to pay overhead for, and you haven't collected anything. And you know how people live month to month, even if they have great incomes, they live month to month,

Andy 58:16

I have another thought just from the medical side, that most people going to get treatment, if they have insurance, I'm thinking that when they go get a second opinion, that there would be some level of coverage of insurance. Whereas if you go talk to 2, 3, 5, 10 lawyers, you're going to have pay them all, even if it's a reduced rate, for an hour of their time to get counsel. So you're going to be out of pocket for a couple hundred bucks an hour or something like that, for each one that you go talk to.

Larry 58:49

I never thought of it in that perspective.

Andy 58:52

So, there's a disincentive on you, because you're gonna be money out of pocket just to either have confirmed or not. And now you've got to make a decision, if they have different opinions. Do you believe the person that is giving you the good stuff, or the believe the person that's giving you the bad opinion?

Larry 59:07

Well, I think it's human nature to want to hear what you want to hear. And it's tough to hear what you don't want to hear. Me too! I don't like hearing what I don't want to hear. And I've argued with medical professionals, and I've told them that they were wrong, and sometimes I've proven them wrong. I think I've told you, about various teeth issues, that I know a little bit about dentistry (enough to be dangerous) because I managed property for a dentist many, many decades ago? And I was told that I needed to extract a tooth. And I said, "No, I don't need to extract that tooth.

It's gonna stabilize." And he said "Not likely at your age." I was thirty-something and I had a bicycle accident. I said, "Well, I happen to believe I'm fairly healthy and I happen to believe it might stabilize. And I'm not going to take your advice. I'm going to follow my own advice." And when it stabilized, the guy's name was Dr. Phil Cook and he said, "You have proven us wrong." He said, "I have never seen one do what your tooth did." I said "But now you've seen it!"

Andy 59:59

And that's why they're always "practicing".

Larry 1:00:01

That is correct. And that's why, I'm not a roofer, I'm not in construction, I don't have a construction license, but I can look at your roof. I can see the sheetrock falling. I can see the deterioration. I can feel the shingles crack when I pick up one. And I can tell you, "In my opinion, you need a new roof."

Andy 1:00:19

Gotcha. Well, is there anything else you would like to talk about before we head out? Happy New Year, everyone. That'll be the first thing I say.

Larry 1:00:26

Well, I think that we've done enough damage for today, so we're ready for next week. We're going to be back in routine mostly from here on in, till the next round of holidays, I hope.

Andy 1:00:37

I believe so. Well, thank you, sir, very much for all of this. Yeah, I didn't think that we were gonna have time for that video that you wanted to put in here, and it works out. Here we are at an hour. Well, again, thank you, sir. I appreciate it. I hope you had a good Happy New Year. I hope everyone had a good New Year, and we will talk to you in another week.

Larry 1:00:55

Take care.

Announcer 1:00:59

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