



Registry Matters Podcast

Episode 294

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Announcer 0:00

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Andy 0:19

Recording live from FYP studios, east and west, transmitting across the internet. This is episode 294 of Registry Matters. Good evening, my insidious friend. How are you?

Larry 0:30

Doing awesome. It's a balmy 65 degrees here with not a cloud in the sky.

Andy 0:35

You probably don't really ever get clouds though. You -- so the national average, if I'm not mistaken, is 205 days of sun per year (and this is important to me for a bunch of personal reasons, but) -- you probably get, I don't know, 300 days of sun a year?

Larry 0:51

That is correct. It's a little over 300 average sunny days.

Andy 0:54

Oh is it really? I guessed! I was just bullshitting, I just guessed.

Larry 0:57

Yeah, so we get between 8 and 11 inches of precipitation annually.

Andy 1:02

Oh my god. Wow. All right, then. So remember to show your support by hitting the Like and Subscribe button or give a five-star rating on your podcast app, it really makes a difference for us. We truly appreciate your love. And in return, we're here to keep delivering content you'll enjoy. If you're feeling generous, Patreon support would also be incredibly valued. Thank you for being a part of our community. We do have a couple of new people that I will mention at the end of the show. And so, what are we doing this evening, sir?

Larry 1:30

We're gonna be wasting a bunch of time.

Andy 1:32

(laughs) That I believe. Hey, are we joined by anybody this week?

Larry 1:37

No, it's just the two of us. We've got a vacationing partner right now. He's gone off to Southeast Asia.

Andy 1:51

It was funny. He calls me, he's like, "Hey, I've got to run over here real quick." I was like, "Nope, nobody goes there real quick, man." Like, how do you do that real quick? It's 20 hours of flights and whatnot? (laughs)

Larry 2:07

So, but yeah, we're going to be doing legislative advocacy, we're going to be discussing some bills that are pending in West Virginia, Oklahoma, gonna cover our own state of New Mexico, the Land of Enchantment. Also, we have some articles that time is not likely to permit, and Andy and I will discuss a case that I've been assisting a local attorney with, to convince the client to accept a plea offer. And I know how much you really love the plea process.

Andy 2:37

I do. You know, we should all stop taking plea deals, Larry. That way we would collapse the whole system.

Larry 2:42

So yes, well, you're going to explain that here later, actually early on in the program. And also, we have a comment that you're going to read from one of our loyal supporters.

Andy 2:52

Yeah, well, not so much "supporter". He was a guest recently. I wouldn't so much say a loyal supporter. A friend of mine, and this is from Bob, who we had on about a month or maybe two months ago? Talking about being a pro se person, trying to get yourself off the registry. And he said, "You asked to let you know if there are any issues with traveling, so I'm writing from the transfer bus outside of the Miami port. We're heading to the airport now. Keep in mind, MSC..." I looked this up Larry. I don't know what MSC cruise line is, but he says it's the only cruise line that doesn't do background checks "according to my travel agent wife. Zero issues getting on the cruise at all. We stopped at their private island and Nassau, that's it. As we were exiting the boat, my wife's card was scanned first and immediately flagged. We were pulled aside and escorted to customs, where they searched all, and I mean all of our bags and items in our pockets. It took about 20 to 30 minutes. The guy searching our stuff was very respectful. Of course all we had was a few T-shirts and my wife's rum cake, that's really all. I doubt we'll have any issues flying home from Miami, but I'll let you know if we do." So he traveled internationally, which, you know, is the Caribbean? I mean it's technically international, but pretty much it's just United

States tourists that go to those locations. However, he's done it a bunch of times and has no issues, and he has a passport that is marked, and he's on the registry.

Larry 4:21

So, well that is helpful to know that, but could it be because it's that particular cruise line, MSC? Or can we deduce anything further?

Andy 4:31

I can't deduce anything further other than him, and another one of our very loyal patrons, travels quite regularly to the east coast of Florida range, Bermuda and the Eastern and Western Caribbean areas, and haven't had any problems. And they both have passports that are marked, and both are on the registry. Just sharing. That's really all I wanted to do.

Larry 4:59

Well thank you, Bob.

Andy 5:02

We're gonna talk about coercing a plea deal. I didn't even like make a title card for this one. So, we'll just have to maybe make it while we're going through this. You've been working on "coercing". Now, Larry, can we work with this "coercing" word? Are you like twisting the person's arm?

Larry 5:24

Well, that's what you said when we were conversing about it. I don't believe I was coercing anybody.

Andy 5:29

(laughs) So I guess we need to know more about this. Can we go into it for a little bit?

Larry 5:37

Yes, we can. It's a great case to examine and explain the pros and cons of the plea negotiation process. In my opinion, this offer is in the client's best interest.

Andy 5:51

Aren't they usually in the client's best interest, Larry?

Larry 5:55

Well, that's what the attorney tells them. Sometimes, maybe not. But upon thorough examination, and my years of expertise, in my opinion, and the attorney concurs with my opinion. That's why she was actually seeking a second opinion from someone who she trusted. The attorney agrees. And so yeah, we went through all the pros and cons of the plea offer, and there were a couple offers we'll get into, as we go through this.

Andy 6:23

So, what was this charge?

Larry 6:25

Oh, it's criminal sexual penetration of a minor between 13 and 16. And there are five counts.

Andy 6:30

Oh. I've heard you speak often about "maximum exposure". Yeah, that topic comes up pretty regularly. Explain what you mean by that. What is his "maximum exposure"?

Larry 6:43

Well, the way I use the term and the way it's used professionally, generally is "maximum exposure", we look at the charge, and we look at all the charges that you have pending against you, and we look at the maximum sentences imposable by statute, and we add those up. And that gives us a maximum number. Say, you got convicted of all the counts, of all the different things that they've brought against you, and the judge maxed you, and they stack them consecutively. That's what we mean by maximum exposure. Now, those are ingredients that seldom happen. You seldom are going to get maxed out, but you could. So, we always like to tell people what their maximum exposure is.

Andy 7:28

So, when you are going through, with plea offers, they will not even necessarily plead them down to lower felonies, but possibly run them concurrent. So they're all running at the same time even if you have ten charges and there are five years each, you're running ten all at the same time. So, you only end up with five years, tops.

Larry 7:47

That is correct. Now, in his particular case, on the indictment, he's facing five fourth-degree felonies, which carry a maximum exposure of eighteen months each. So if you do eighteen months each, times five, you get a total exposure of ninety months, and that translates to 7.5 years. Good time can reduce that, day for day.

Andy 8:10

Is that federal?

Larry 8:11

This is state, it's New Mexico charges. If you had five felonies in any other state, you'd be facing a whole lot more time than that, as maximum exposure, eighteen months for a felony is exceedingly low.

Andy 8:26

Yeah yeah yeah. Okay. I'm seeing the seven and a half, but that would be the maximum. Okay I gotcha. So, um, and

then so you told me that he ,The Accused, has proclaimed his innocence, then how can you insist that he plead guilty to something that he did not do? Why would you do that, Larry?

Larry 8:40

Well, it's easy to answer that. While we're examining how to handle a disposition of a case, the question is not so much what you did, but it's what they can convict you of doing. And that sounds silly to people, but we're looking at "can they convict you of this?" And they have a credible witness that has insisted that she'll testify. And her testimony will be that they had sex. And she was beneath the age of 16, which was not a lawful sexual activity for a 39-year-old at the time. And so she's now 17 years old, and very composed, as far as witnesses go. And the other problem for him is he chose to engage in this endeavor in a very rural, conservative, county.

Andy 9:03

(laughs) I thought you were entitled to equal justice under the law, though.

Larry 9:33

Well you are, but we cannot change the reality of what a jury in Lincoln County, New Mexico is likely to do. But yes, you are entitled to it, but trying to get it is a different matter.

Andy 9:44

So, let's see. Did you get like the thumbscrews out for him, to help "convince" him to accept the plea deal?

Larry 9:52

Are you implying that I was heavy-handed with him?

Andy 9:56

I'm just trying to get the specifics about how did you coerce him, how did you entice him, incentivize him? Because if the guy's not guilty, why wouldn't you stand up and profess to the universe that you are innocent of what they're accusing you of?

Larry 10:12

Well, that's part of what helped win him over. I told him, "I love trials. And I love the experience. And the excitement" and I said, "If your attorney wants to do the trial, and you're willing to pay the compensation to have me there assisting, I can't wait to be there!" (laughs) "but the problem is greater than that in terms of what you're looking at." They've offered him a plea to two counts of contributing to the delinquency of a minor. And that is a non-registerable offense. And we don't have that provision in our law that says that if it was sexually motivated, that you can be ordered to register anyway, it has to be a registerable

offense. So, they offered him, they're basically gonna max him out on those two charges, because they're also fourth degree felonies. So, they're going to give him three years. And, as I mentioned earlier, with these being nonviolent offenses, he will be under the 50% rule rather than having to serve 85% of his sentence. So, he's going to do a year and a half. The other option is he'd plead to two counts of criminal sexual penetration, with no agreement on sentencing. So, there would still be a cap of the statutory limits, meaning that if they let him plead to just two, the worst they could do to him is give him a year and a half on each, so three years. So, you're sitting there saying, "Well, if he can only get the worst by pleading to the CSP (criminal sexual penetration), but see, he doesn't want to plead to the CSP, because he would have to register. So he doesn't want to plead to a sexual offense. So, he's got the option to plead to a non-sexual offense and do time or plead to a sexual offense and argue for probation. I will just about guarantee you that, in this jurisdiction, it's most likely he would get prison time anyway. And the prosecution knows that. That's why they're offering him to plead "with no agreement to sentencing", because they know that he's going to get prison time. So why on earth -- I mean, being that you're a brilliant guy -- why on earth would you want to plead with no agreement to sentencing, likely get a three year prison sentence anyway, then come out of prison with an indeterminate period of parole (which is five to 20 for that particular charge), and have to be on the PFR registry? And his home state is Louisiana, so why would you do that?

Andy 12:47

And the registry scenario, the registry "umbrella" in New Mexico is just as tough as Louisiana?

Larry 12:58

No, but he's not gonna be under our law here registering. He intends to "compact" back to Louisiana (serve his parole in another state under the Interstate Compact Agreement). So, in our state yes, the registry would be very benign as compared to Louisiana, this would be a ten-year offense. But he's choosing not to live here. You got to understand, these "communist" states like Colorado, New Mexico...

Andy 13:18

(laughs)

Larry 13:21

I was working with a person a few weeks ago (we talked about him on the air) that said that he got off the registry in Colorado, and he's determined to go back to Texas where he was convicted.

Andy 13:31

Jesus.

Larry 13:31

And he said he has to get out of the "communist state of Colorado" and I said, "Let me make sure I heard you correctly. So, you're leaving the 'communist state of Colorado' that gave you your life back by releasing you from the freedom-loving state of Texas that won't give you your life back, that will not release you, and you're gonna go back to that state?" He says, "Yeah, but I just need to try to get off there too." I said, "Okay. Makes perfect sense to me." But anyway, that's what he wants, to go back to Louisiana. Because see, they're civilized down there. And we're a bunch of lefty lunatics out here.

Andy 14:00

Well, I mean, I'm gonna point out that we have someone visiting us in chat who normally does listen to the show, and he went from super-red place to super-blue place because they have a much more gooder registry scenario. And I think he's loving it, because, if I'm not mistaken, he has a time-out, there. He doesn't have to go petition or anything. He will time-out and get off the registry.

Larry 14:23

That is correct. I normally don't encourage people to "state shop", but in that particular instance, I did tell the person, "I mean, if you're ready to get off of your right-wing high horse" (laughs) "there are still states where you could have a much nicer life. Or you could try to fix the state of Wyoming." And you know, fixing that state's going to be very difficult. It's almost like as bad as fixing Mississippi or Alabama.

Andy 14:50

There ain't no fixing Alabama, not after what just happened. There ain't no fixin that mess. You think we could like cut those states off, and just push them off into the Gulf of Mexico?

Larry 15:03

Well, I wish we could. But now can you at least admit him going back to Texas is funny?

Andy 15:08

This is an individual that doesn't listen to the show, and has no idea how insignificant the registry would be in New Mexico compared to how the registry would be, like to live in Louisiana. Like, your life would just be horrid.

Larry 15:28

Yes, well, it's even funnier that he drives the truck for a living, which means if he took the plea to the CSP, criminal sexual penetration, and in the strange circumstance that he actually did receive probation, he would have all the problems related to interstate travel while under

supervision. And beyond that, if he got prison time, he'd be subject to indeterminate parole supervision, which is what I explained earlier. This plea is in his best interest, can you bring yourself to admit that?

Andy 16:00

I can definitely bring myself to admit that! So suppose you were to bring the, if you could figure out how to, like make the parallel charges of what it would be like in Louisiana to present that to him? This is what it'd be like in your home state.

Larry 16:19

Oh, I did. I did tell him what the registry would be like there, like the paying for the community notification, and some of the pitfalls. And he thought he'd be under New Mexico law. He says, "Well, let me just make sure I understand this. So you're telling me" -- and now, he actually talks this way -- "You're telling me that New Mexico punishes me, and I have to follow Louisiana's law." I said, "Yeah, because the registry is not a part of your punishment. They're just simply advising you that you have to register, but that's only valid for New Mexico. Theoretically, you could go to the other state that didn't have a registry, and you wouldn't have to register. But unfortunately for you, all 50 states have a registry, and Louisiana has one of the really bad ones." But he has no idea about interstate compact, he had no idea about the nuances of having to deal with that. I said, "When you're on supervision, you're going to run into all sorts of travel barriers for work because you're going to be in a state 40, 49 hours, and you're going to be stuck on that state's registry list for the rest of your life. This is just not something you can deal with. You're gonna go to prison anyway if you plead to the CSP." I mean, the likelihood is very low that he would get probation and I can tell you what the factors are: He's from out-of-town, so he doesn't likely have any influence levers he can pull in Lincoln County and he's got someone who's fairly well connected, from what the attorney told me, and they're trying to make sure that "justice is done". He is going to be "hometowned", if he were to go to trial. It's going to be an unbelievable thing for a 39-year-old man to say, well he was 39 at the time, but it's gonna be unbelievable to a jury there for this beautiful girl, who would have no motivation to lie, to come in and say "we had sex a half dozen times" and him to say, "Nope we ain't never had no sex at all. It's all in her mind. All we did is make out." "Oh, is that all you did? You just made out? Well, that makes all the difference!

Andy 18:19

(chuckles)

Larry 18:19

"You were 39 and she was 15 and all you did was make out? Well, all right, thanks for telling us that. We're still gonna convict you."

Andy 18:26

The thing is Larry that in Louisiana, that's probably accepted.

Larry 18:30

Well, in this particular county, it probably is as well, but they're not gonna be happy about someone driving across the country and taking advantage of their pristine purity.

Andy 18:41

Yes. It is incredibly hard for the uninitiated, the unexposed to this, to think that all of this is bearing down on you for something of a natural act, that, and if you've had no exposure to the criminal justice system, that all of this, with the registry, with prison, and all that stuff is coming down at you. You didn't rob a bank, you didn't like -- it's just hard for someone that's not involved in it prior to, to accept all that's coming.

Larry 19:17

You got that correct. He even had that discussion with me. He said, "With all the real crime that's going on out there in New Mexico" because we tend to have a higher crime rate in many categories than most of the other states, "I would have thought that they wouldn't even bother with a case like this." I said, "Yeah, you believe in the 'overworked, understaffed' thing, but they're not too overworked or understaffed for sex crimes!"

Andy 19:40

You don't happen to know which parish he's from in Louisiana, do you?

Larry 19:44

I do not, but he certainly sounded like he was from the boonies.

Andy 19:50

Because how you "mimicked" him is not how "Louisianians" sound. And I wish I could get Brian to un-mute himself and let us listen to how a real coon-ass sounds because it's unbelievable how real Cajuns sound.

Larry 20:06

So, well, he told me at the end of the conversation, I'd been very helpful. I told him, "Please call me back, you've got my private number, call me back here with other questions. If you do change your mind, I am all-in for trial." And that's what attorneys don't tell their clients enough. You need to tell them -- attorneys out there, I know there are hundreds

of them listening-- tell your client, "I am delighted to do the trial. It gives me great experience and I'm gonna go home and have my regular life, regardless of how the trial goes, but I'm worried about you. If you want to do this trial, I'm going to give it my best effort."

Andy 20:47

Price-wise, to have somebody to take someone to a plea deal, versus taking them through a trial, what is the cost difference, like zeros added to the end of it?

Larry 20:56

Unfortunately, that's one of the common things that goes on in the legal profession. They price it as if it's going to go to trial, knowing that it's not likely to go to trial. And they tell you upfront, they say, "Well, I haven't really gotten deep into discovery, but based on what you've told me, sounds like we've got some good defenses on this." And so they quote you a fee, and they'll say, "This will take you all the way through trial, no appeal included." And then after you get the fee paid, the \$25,000, or whatever it is, when you get the fee paid, then they've "been reviewing the discovery and talking to the prosecutor and getting a lot of details. And possibly even done pre-trial witness interviews". Then they come back to you and tell you, "We can't do this trial." Well see, I would have told him upfront, and I would've lost the case. I'd have told the guy up front, "Hey, you know, under the fact pattern, before I even look at a single shred of discovery, with these facts, they're not gonna like you very much, and they're going to be looking for a way to convict you. And so if you're going to plan to do a trial, not negotiate, it's going to be at least 25, 35 thousand. But, at first blush, I don't think your odds are gonna be very good at trial." What he's gonna do is pick up and walk out of this office, and he's gonna go down the street and say, "I can't believe the gloom and doom that I just encountered with a person who hadn't even seen any of the paperwork, telling me that I'm doomed at trial. I'm not gonna hire a quack like that!" That's exactly what he would do.

Andy 22:29

And you wonder why people have a lack of trust in attorneys based on what you just described.

Larry 22:38

I don't wonder at all. I know exactly why (laughs) they have a lack of trust. But I helped him work through this because I'm letting him know, "Your attorney is a very fine attorney." And she is. I said, "She can put on a great trial." And she could, "but you're not likely to win." And that's only a judgment call you can make as the accused. If you want to be maxed out at 90 months, assuming you get stacked -- and you could get stacked, I can't guarantee that you wouldn't, because there'd be no limitations on the

judge at sentencing -- if you want to get stacked with 90 months and if you want to come out with an indeterminate period of supervision following you, go right ahead. Because like I said, it'd be fascinating to me, I haven't done a trial in several years, be fascinating to do one."

Andy 23:23
(laughs) Well shall we move along, sir?

Larry 23:25
Let's do.

Andy 23:26
Alright, so now you want to talk about some legislation around the country this week. I guess some -- most, many -- of the legislative bodies, specifically the ones that are part-time, are kind of shutting down, so we can kind of have an after-action review, so-to-speak, and we're gonna first bring up New Mexico. What do you have to report from your home state?

Larry 23:46
Well, we were successful this session. There was a PFR registration bill introduced in the House of Representatives. In fact, it wasn't a terrible bill, overall. But it needed more fixing than our thirty-day session is equipped to handle and we're hoping to make those adjustments and bring it back next year.

Andy 24:03
There was a proposal to impose the death penalty for child sex offenses and I remember your arrogance when it was introduced. You stated that it has "No Chance!" of passing. Were you right?

Larry 24:16
I was, but not just because of being arrogant. I was right because, procedurally, it never got past the House "Rules and Order" committee because, in our state, in a short session, it has to be deemed germane to the session, and to be germane, it has to have a "Governor's message" -- also called an executive message -- or it has to be a budget matter. And since this didn't have a Governor's message, there was no way in the world it could pass that initial test to be germane. I knew it wasn't gonna pass because it couldn't get out of committee so that one was easy.

Andy 24:48
Can you stay here for just a minute? I haven't quite heard this sort of description of ... I understand the House Rules, whatever Order committee, that there are 2, 3, 4 committees that a bill will have to go through before it goes for a full vote. But what is this you're saying, about a short session, that the governor has to sign off on it?

Larry 25:06
Yeah in a 30-day session, it's really just for the purposes of crafting a budget. If you want to go beyond that, every lawmaker can put forth their own budget if they wanted to. And they can put forth spending proposals if they want to. But anything beyond that, the executive has to issue a message. If the executive hasn't issued a message, it is not deemed germane. The first committee it goes through in a short session is, if it's a House Bill, it goes through the House Rules. And the same thing on the Senate side; if it's a Senate Bill, it goes through Senate Rules to see if the message is included. If there's no message, then you can't pass their germaneness test, then it doesn't move forward.

Andy 25:48
So, in other words, every other year, you have to really worry about things. But on those other years, like a lot of stuff that would come down the pike doesn't even matter.

Larry 25:59
Doesn't matter. You can introduce anything you want to. But without a message, it's not going anywhere. Now the governor did message the SORNA bill that we're gonna talk about a little bit later as we go through this.

Andy 26:09
All right, well, what was the bill number for this PFR registration bill and who drafted the proposal?

Larry 26:14
Oh, it was House Bill 282. And certainly, the sponsors did not draft it. It was presented to them by the Department of Public Safety and they simply filed the bill. So that's what happened.

Andy 26:27
All right and so, I took a look at it (if you can believe that), and I noticed that there was some wording that was carefully crafted to protect PFRs. Are you telling me that DPS did that? They put in language that protected some PFRs?

Larry 26:43
I am not telling you that. They actually used some of my recommendations that I've put forward in previous proposals that have not gone through. But they've been willing, under the current leadership, to be more compromising. So that's why this bill that was put forward. If it had been a 60-day session, we probably could have fixed it, but we just didn't have time.

Andy 27:05
Interesting. And the proposal adds new offenses to the list of registerable offenses? I noticed that the wording is very clear to protect those that have been previously convicted

of those offenses. Would you please explain this for us, uh, small-brained people?

Larry 27:20

Well, sure. The language I used, I promise you it's not the best, most artfully drafted, but it was the best I could come up with. So the language that I have got in there as a placeholder is, when we define a "Sex Offense", it means any of the following offenses or their equivalents in any other jurisdiction, "committed on or after the date the offense became registerable in New Mexico". And this means that we will not have to engage in litigation for those who have previously pled to, or been convicted of, one of these newly registerable offenses, because you're only convicted of a sex offense, for registration purposes, if you committed it *after* the date that the offense became registerable. So, hypothetically, if this had passed, and became law July 1 of 2024, you would have to be convicted of committing one of those offenses after that date, not convicted after, but committed after that date. And I could not come up with anything that really sounded better. But that sounds, I mean, it's clear enough that you understand it, right?

Andy 28:23

I think so. Yeah. So, what are the new offenses then?

Larry 28:28

Well, I think there's four, maybe five of them: "patronizing prostitutes as described in Subsection B of Section 30-9-3 NMSA (New Mexico Statutes Annotated), when there's a separate finding of fact that the offender knew or should have known that the person believed to be the prostitute was younger than sixteen" So, now that provision there, about the "separate finding of fact" remains consistent for all of the offenses that they're wanting to add. The next one is "promoting prostitution as provided in Section 30-9-4 NMSA", the same finding is required, "they should have known"... The next one, "accepting earnings of a prostitute" as defined in the appropriate section of New Mexico law, same provision. And then "human trafficking for a sexual purpose, when the victim is under sixteen years of age". Those are the biggies. Now the other one is criminal sexual communication with a child, and that one doesn't require that separate finding, you just have to do it. It means sending your junk or something like that to a child. But although this is my language, I wanted to make certain that we protected all previous pleas, where the clients were told they were not required to register. And we may need to address this further, and I put this for the analyst when we got it to the next committee but, fortunately, it didn't move beyond the first committee. We didn't have to address that as it moved forward. The bill died. It was not acceptable. And there just wasn't time to fix it. But I did not summarily

dismiss this one, like I have so many in the past. This one was worth saving.

Andy 30:15

And registration of certain juvenile offenders is necessary for AWA compliance, was that in the proposal?

Larry 30:21

It was, and they used my parameters. And those parameters are: (1) that juveniles will not be listed publicly, they'll be on the internal list, but they will be non-public, (2) only aggravated offenses are registerable, not the full universe of sexual offenses, and they have to be over the age of 14, because that's a part of the federal requirements, (3) the obligation is terminated when the juvenile reaches age 21; (4) they must register with juvenile authorities, and (5) at the end of the registration period, the registration is destroyed. They agreed to all of that. And I was shocked.

Andy 31:01

Certainly. So then what happens after all of that?

Larry 31:07

Well, the problem, the only problem we had was relatively minor, they termed the juvenile sexual offenses as, rather than as I would've preferred, "aggravated", they used "sexually violent" which, I can't accept that. I'd like to get rid of that terminology "sexual violence" due to the negative baggage that would be associated with it, if we let it stand. The actual federal statute, is 34 U.S. Code § 20911(8) says: "The term 'convicted' or a variant thereof, used with respect to juveniles, has to be over age 14 at the time, and they have to be adjudicated as a juvenile for something comparable or more severe than 'aggravated sexual abuse'." Now, that's where they pull the "aggravated" from, but it doesn't say that. It says something "comparable or more severe" than that. So I want to use something other than "sexual violent" to describe those offenses because, otherwise, we've got the juveniles "tagged" as being sexually violent. Everybody would be carrying that label of being violent, and I can't live with that.

Andy 32:15

You also had some other problems, if I'm not mistaken?

Larry 32:19

Yes, on pages 14 - 15, they're attempting to change the requirement for updates for registration from the current "five business days" to "immediately". And that's inconsistent with federal law, and it's not workable at all, what does immediately mean?

Andy 32:37

Doesn't it mean, kinda like, now? Yesterday, even?

Larry 32:40

Yes. But "immediate" could be, if you're online right now, do you immediately have to do it this second? Or do you have to the end of the day? Such language would invite a plethora of arrests, and a constitutional challenge. That we have to fix. And they propose to categorically classify a person as "lifetime in New Mexico" if they were lifetime in their state of conviction. I have real problems with that, in terms of constitutionality. I can understand their intent. What they're trying to do is to stop the state shoppers and I can understand that. Who wants people to come pouring in here, that are lifetime, I get that. But we do have an equal protection clause in our Constitution. When a person becomes a resident and citizen here, they're entitled to be protected as every other New Mexican is. I have a real problem with saying, "Well, we're gonna make you lifetime here because you're a lifetime in Alabama." I just can't quite go along with that.

Andy 33:37

And then what about listing of employers' information? Did you have problems with that?

Larry 33:42

I did. The effect of it would be that they would be making all adult registrants' employment visible on the internet. Under current law, it's only supposed to be displayed if the registrant has, "direct contact with children". Now, they go beyond that. They consider incidental contact as to be direct enough contact. But there are a number of registrants that their employers are not listed. That is a very debilitating thing, for the employer as well as the registrant. The employer doesn't want you, and the registrant can't make a living.

Andy 34:15

Now, Larry, at the risk of circling back around and taking too much time on this, how much input did you have that the -- what was it, the DPS? -- picked up, to carry the language that specifically, *you* provided them??

Larry 34:31

Well, the way it came about is, I had drafted a bill and I didn't ask it to be put forward this year because I truly didn't want to try to do a bill in a short session. What would have been sponsored as our bill didn't get put in. But the potential sponsor of our bill provided it to DPS, and they took what they could live with. I'm deducing that, because we haven't really had a thorough conversation. I'm deducing that they took what they could live with from the bill, and they canned the things that they couldn't live with. But this is the closest we've ever come to something that we can live with, that's constitutional, and won't be causing lots of litigation. And I think we could get that "substantially compliant" designation, and it would help people, because

a lot of people are, right now under the law, are lifetime, and they won't be under this proposal. They've got the tiering done fairly well, not completely, where they should have aligned some of the offenses. But they've done a good job aligning the offenses. They took most of my recommendations on the alignment. To me, it's a win-win if we can get this done right. The state gets their precious burden grants and people have a pathway off the registry.

Andy 35:47

And you're just a lowly paralegal! How do you, Larry, write a bill that ends up in their hands, to then be submitted to all these politicians and whatnot, like the elected officials? How does that happen?

Larry 36:02

Well, you build a relationship with a lawmaker, with a few key lawmakers. And you establish a reputation of competency. And I think you saw an email that I forwarded where one of the analysts was referring me to the next committee analyst, and said, "He knows more about this than anybody in the state." You remember that email?

Andy 36:02

I do!

Larry 36:02

Yeah, well, that's how you do that. You build relationships with people who analyze bills. And trust me, they want your input, as long as you're competent, and as long as you're objective, because every time they're in session, they have more bills than they can thoroughly analyze. And if a competent individual can give them a succinct analysis, without going on and on and on, with reams of stuff, they will use it.

Andy 36:57

Don't bring them the 300-page binder of recidivism statistics?

Larry 37:03

No, I think I even sent you my analysis, of what I sent to them. What was it, about a page?

Andy 37:07

Something like that, yeah.

Larry 37:08

Yes, that's what they need. And you will become very well appreciated, because you're saving them work and you're making them look good. If you form relationships with lawmakers, and with particularly the analyst, and I didn't have a full appreciation of the analyst in my earlier days. I thought, "Well, gee, they're just pushers of paper." Well, they're a lot more than that. They tell the lawmakers what

questions to ask in committee hearings, where the problem points are, and when you've got people that serve in the Assembly that don't know this stuff, and they're looking at a good analysis, they're asking questions as if they know something. They don't have a clue what they're asking, but someone prepared those questions for them.

Announcer 37:08

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Andy 38:40

Gotcha. All right, well, then enough of that. I just want to highlight that "We" have these abilities, that you are certainly special, Larry, but you're not special, that We could build these relationships of shaking hands and whatnot, and building these relationships, and then put forth some sort of bill analysis that would help them with their job, and then perhaps like that builds up and You are then the person -- that's not the Larry-You, but the We-You -- of making things better for us!

Larry 39:12

Well, I didn't even know about this bill, I received a phone call. Because it was the day before the final day for introductions and I was about ready to close the books. You know, the DPS was not gonna be able to have their SORNA bill in. I got a call from an analyst, and he said, "Have you looked at 282?" I said no. They said, "Well it's introduced, and we're hearing it tomorrow." I said, "Oh, so it just got introduced, and you're hearing it tomorrow?" He said, "Yeah, we got to move quickly. I need help on the analysis." And I fed the analysis, like I say, but it was one page. If we could get people to open their minds, the biggest thing is closed minds that I encounter, is they refuse to accept the reality of how these processes work. They go in thinking that, in their way of explaining things, they say, "Well, everybody wants to know all these facts." They may want to know them, but they just can't get that deep into the weeds. You need to give them bullet points. It's very tempting to give them way more than they need.

Andy 40:18

Right.

Larry 40:19

When we get into the West Virginia bill, you're going to see that. I think he gave a six-page analysis where I gave: one. The six pages are not going to be read because nobody who receives that is going to know who it came from. It'd be very lucky if anybody opens it.

Andy 40:38

Let's quickly go over to Oklahoma. I didn't mean to drag that out that long. I just want to make it clear that We can do these things and we typically don't. But alright, anyway, Oklahoma. There are a couple of bills pending there. What are they?

Larry 40:51

Senate Bill 1890 and House Bill 3992. Senate Bill 1890 is short and simple. That's the one we're going to focus on tonight. The House Bill, I'm going to try to bring it back next week. It's 46 pages. I'm going to try to connect with some people in Oklahoma and see if they've done a thorough analysis. That'll save me some work. On Senate Bill 1890, it's funny.

Andy 41:18

(laughs) Larry-funny or like the-world funny?

Larry 41:20

(laughs) Uh, well, I always think what I think is funny is funny. But it has a provision in there and I'm going to read it: "Any person who has been convicted, whether upon verdict or plea of guilty or upon plea of nolo contendere, or received a suspended sentence or probationary term or parole for a crime which requires him or her to register as a PFR, pursuant to the terms of the PFR Registration Act shall not enter into a plea agreement whereby the offender shall be allowed to forego registering as a PFR." That's one funny part. This is from a state who believes in judicial discretion, they're taking it away. The second part is, "The sealing of a criminal record or other action that limits the publicity or availability of conviction information shall not remove the requirement of the individual to register as a PFR, pursuant to the provisions of the PFR Act." What this is making emphatically clear, if it wasn't clear enough, is that if you have an expungement, or anything like that, you still have to register. And the funniest part of the proposal is a new section of law, to be codified in the Oklahoma statutes as Section 590.3 of Title 57, unless there's a duplicate in the numbering scheme, which reads as follows: "A person required to register under the provisions of the PFR Registration Act shall not be allowed to have any contact with a person under the age of eighteen (18) years, including the child of such offender."

Andy 42:01

That would be your own biological children, or probably even not just biological, if you happened to have adopted one prior to.

Larry 43:20

Yes. This would become effective November 1, 2024. Now can you admit at least that section's funny?

Andy 43:28

That's not funny! Do you think that Oklahomans can kill this proposal?

Larry 43:35

This particular bill, I believe they have a better chance of making headway with it, because of the case law that's already in existence. There's already been two similar things, in Alabama and in Tennessee, regarding no-contact including your own children. I think that there's hope, but it's going to be tough for them to do because I don't think they're that well organized and they have just overwhelmingly lopsided majorities that Republicans hold. The Democrat Party barely exists in Oklahoma.

Andy 44:07

They don't want to be communists there!

Larry 44:09

I think if I remember right, there's 38 senators and 30 of them are Republicans, and usually that's more than a supermajority. I think in the House it's 101. I think 80 of the 101 are Republicans. So, folks, if you're gonna do any talking to anybody, don't waste any time going to any member of the Democrat party in Oklahoma. They can't do anything for you. This is all being run by the Republicans.

Andy 44:36

And then, let's move over to West Virginia. What's going on there?

Larry 44:39

Well, we're not completely done with Oklahoma, but we are for this episode. We'll have hopefully House Bill 3992 which is 46 pages long, and we'll do that next episode, if I can be prepared. I need time to study. But we've got House Bill 5502, which is a bill to bring West Virginia into substantial compliance with the Adam Walsh Act, otherwise known as SORNA.

Andy 45:10

AWA compliance. Shouldn't we just automatically get pitchforks, and go to the state capitol and say, "No. Hell no, we won't go"?

Larry 45:18

No, not necessarily. It's totally dependent on the state's existing law, the structure of the registry as it currently exists. If you were in Vermont, you would want to do exactly that. But if you're in Mississippi, Alabama, Louisiana, you would want to take a look at the existing law, and find out how bad it is, and then compare it to the AWA. In many instances, if you would be objective (remember, I said that objectivity is what they're looking for), if you would objectively look at your existing law, and then you would look at the AWA, and you had a good analytical framework, you'd come back and say, "I love this Adam Walsh Act" because it would be better than what we have right now, if it's done correctly.

Andy 46:06

Um, so did you analyze this bill yourself?

Larry 46:12

I did analyze some of it, yes, I did a partial analysis, I think that'd be fair to say. I didn't cover the tier alignment because the offenses, they're too numerous and there were too many nuances, but I did do some analysis.

Andy 46:31

And what did you identify as problematic?

Larry 46:35

Well, there are a number of issues that need to be addressed during the committee process. The issues are: It requires information that virtually no registrant might have in their possession. On page three, lines 51 through 55, "the following information relating to the criminal history of the registrant". Now just listen to this, and tell me that you have this in your pocket: "the date of all arrests, date of all convictions, status of parole, probation, or supervised release, and any outstanding warrants." Now I can't name a soul in 22 years of being in the legal business, that can tell you, as I say, I've only been arrested once, what the dates are of all their arrests, of their convictions, and all this stuff. And most of all, a lot of times you don't know when a warrant's out for you. That's something that's in their computer system. You don't know that.

Andy 47:25

Wouldn't a lot of warrants be issued, that they then just spring on you? ... not giving you a chance to flee?

Larry 47:31

Yes, and this information that they're requiring of the registrant, it would already be in possession of law enforcement. But the unintended consequence would be that, for many, it would almost be impossible to comply with this. Therefore, you run the risk of having needless

violations related to this particular section, that's in the new legislation. This needs to be fixed.

Andy 47:56

How would you fix it? And could that be done easily?

Larry 48:00

Yes, you actually could fix it easily. It could be fixed by moving the placement of the language. There's such a provision in the Adam Walsh Act, but it's a requirement on the *state* to make this type of information available on their website. And if they move this requirement, to say that the internet website "shall contain this information", that's fine, but not a requirement of the *offender* to provide it. I would very calmly tell them, "Yes, you're headed in the right direction. This is a part of the AWA compliance package, but you've put the onus on the wrong party. This is something that goes in "the internet website shall contain the following". And that would fix that.

Andy 48:39

What would happen if you gave them the wrong or inadequate info? Like, I mean, it says "date of all arrests". If you got arrested multiple times, does that even apply to things not related to this? Like you got arrested when you were 18 for a bar fight back in 1980? I mean, would that count? And if you didn't provide it, then what are the consequences? You go back to prison for not providing it?

Larry 49:05

The consequences would be a potential prosecution because "date of all arrests" doesn't say "all sexual offense arrests". Now remember, we're *textualists* around here, right, Andy?

Andy 49:15

Of course we are, cause we're not communists. Or I mean, we are -- yeah, we're not communists.

Larry 49:19

Okay, in the "textual" world, Justice Scalia would sit there and look at you straight in the face and say, "Well, what does this say, Mr. Andy? Does it say date of 'sexual offense' arrests or does it say 'all' arrests?"

Andy 49:30

It does say "all".

Larry 49:32

Okay, so that would be all-inclusive, of any arrests. I can see a person in a PFR registration office who doesn't like a particular PFR saying, (in a heavy West Virginian drawl) "Well, you know, I was looking over your disclosure list, heah, and I see you've missed about fo' a yo' arrests. Two of

yo' arrests resulted in convictions. You didn't disclose that. And in fact, there's a wowant out for you."

Andy 49:59

(laughs) Uh, a what?

Larry 50:01

A wowant!

Andy 50:02

(laughs) So the next issue really isn't that significant either.

Larry 50:09

Correct. The next issue, (scoffs) the problem I see on the next issue is the "advance notice of international travel". But as it's written, it actually benefits the offender because it says 21 "business days", rather than what the Walsh Act requires, which is 21 "calendar days". Now, I know I'm kind of retarded, but I can figure out that 21 business days is going to be more than 21 calendar days, so that inures to your benefit. But the problem I run into, since I didn't see where they defined what a business day is, would be if you'd miscalculate. Say you do a miscalculation on a business day and you get down there to the West Virginia PFR office and you say, "Well, here's my international travel notice." They look at the calendar and say, (speaking West Virginian) "Yeah, you reported it, but this don't quite work out because you counted business days that weren't really countable, and you two days late."

Andy 51:08

Right. You could count, you could skip a holiday, perhaps.

Larry 51:13

So I would prefer that, for simplicity, that you keep that consistent with what's required under the Adam Walsh Act, which is what you're trying to comply with. The proposed language is okay, but I would prefer that we use what's in the provision of the Walsh Act, so that we don't have the confusion.

Andy 51:38

I'm guessing that the next one would be a deal-breaker. It would be for me.

Larry 51:43

Indeed it is. These other things can be fixed, that I pointed out. And remember I didn't do the tier alignment, the tier alignment couldn't be a deal breaker as well. But since I didn't do that, I'm not going to comment about the tier alignment. But this imposes residency restrictions. On page 16, lines 17 through 20 it states: "Effective January 1, 2026, during the duration of the registration period, no registrant may reside within 2,500 feet of any public or private school or daycare facility. Any registrant that is found to be

residing within 2,500 feet of a public or private school or daycare facility shall be subject to the penalty provided pursuant to §15-12-8 (d) of this code." Based on the current law, this would apply, retroactively, to all registrants because it says "Effective January 1, 2026, during the period of registration". I don't see any wiggle room. This would apply both retroactively and prospectively. If you look at West Virginia law, it says that the PFR Registration Act applies "both retrospectively and prospectively". This means that registrants would be forced out of their existing homes. Such attempts to displace registrants have been repeatedly held unconstitutional by both federal and state courts. Beyond that, homeless registrants are far more difficult to monitor and track, which makes citizens less safe. And most importantly, residency restrictions are not contemplated, thought about, suggested, recommended, or any part of, the Adam Walsh Act! So I'm gonna ask people, "If you have a state that has residency restrictions, I would go make a deal with them and say, Look, we'll do the whole damn Adam Walsh Act, but no more. Got a deal?" And they say "Yes" because they don't realize that this is not a part of the Adam Walsh Act. And I'd say, "Guess what? We have to strip out all these restrictions, prohibitions, exclusion zones, all this stuff, all this stuff comes out. Because if you're only doing the Adam Walsh Act, all this stuff is not a part of it."

Andy 53:47

And I understand that the West Virginia NARSOL affiliate sent an analysis to the House Judiciary Committee. What did you think of their analysis?

Larry 53:56

Overall, it was actually quite good. Unfortunately, they made some of the common strategic mistakes. First of all, it was too long to send via email because it isn't likely to be read. And second, it contained a sentence that I strongly urged that they remove, and appears that they did not.

Andy 54:15

What was that sentence?

Larry 54:16

It says, "West Virginians for Rational Sexual Offense Laws (WVRSOL) is a West Virginia nonprofit association, an affiliate of the National Association for Rational Sexual Offense Laws (NARSOL) conditionally supports House Bill 5502 because one (1) it aligns West Virginia more closely with the Adam Walsh Child Protection and Safety Act of 2006 (SORNA Substantial Implementation Review) and (2) it provides for registry relief for a group of registrants not previously available." You would never want to include the second part of that in this sentence.

Andy 54:16

Oh I see, because it makes it -- yeah. No one wants to be highlighted, spotlighted for being nice to PFRs.

Larry 55:05

Let me put my spin on it. Let's just say that House Judiciary Committee has 15 members, and say there's someone on that committee who's as nutty as I am. You remember the story I told you about coming to the office at like 10 o'clock on a Friday night, and I was going through phone calls and emails, and a person had called about that parking bill that was gonna make it where you'd have to notify the person with certified mail? Yes. Well there might be, of that 15, there might be someone as nutty as I am out there. Would you agree with that? There might be one?

Andy 55:39

There may be one, I don't know about as many, but close. In the ballpark.

Larry 55:42

Okay. Suppose that nut actually reads this analysis, even though he or she doesn't recognize where this is coming from and they see "it provides for registry relief for a group of registrants not previously available." And let's just suppose that nut is in a contested seat, where it's not a sure-fire winner. There might be a few seats in the West Virginia assembly that are competitive. And so, that person tells their senator or their representative (with a West Virginian drawl), "Hey, now I saw this, and this West Virginians RSOL, this group looks like this is a bunch of sex uhffendah advocates? And I saw in here it says it 'provides registry relief for registrants not previously available.' And I don't know what that means, but that's a good question y'oughta ask." So, when the committee is hearing the bill, that person's gonna say, "Mista Chairman? I looked at this analysis that came through heah? From this West Virginia RSOL thingy? And it says it 'provides relief for a group of registrants not previously available'? Can we get some input here from the state Po-po to explain to us: who gets relieved? What the offenses were that they committed? When do they get that relief and how's that gonna work? And is that gonna make us safer here in West Virginia?"

Andy 55:46

Right.

Larry 55:47

Why would you invite that to be a part of the dialogue?

Andy 56:04

I can see that. Would you also just address it as being from you, and not from your organization?

Larry 57:12

No, the organization would be okay. But I would have been, organizationally, I would have been in opposition to the bill. And then with my personal relationships, I would be telling them, "Pass it, pass it, pass it. It's okay, pass the bill. But we're gonna be steadfast against it." Because the last thing an elected official is gonna want to do is vote for something that the sex offenders are for.

Andy 57:36

Sure. Yep. I got you on that one. All right, then. Do you want to cover anything else? Do you want to cover this article real quick? Or do you want to just call it?

Larry 57:48

I think we've done a great job, running off what audience we have left, going through this stuff here from West Virginia. And I apologize for my horrible accent, but I was trying to talk like a West Virginian that used to work in the coal mines.

Andy 58:02

I totally understand that. I don't think that's how the West Virginians sound, and that's definitely not how Louisianians sound. We're gonna have to get Brian in Louisiana to send us a voicemail with a full-on Bayou Cajun, Houma, Louisiana accent because it's something special.

Larry 58:20

Well now, I have been in West Virginia two or three times in my life, and they don't sound much different than what I was imitating there, particularly in the parts where they used to mine coal before they shut all that down. They sound pretty hillbilly out there.

Andy 58:37

They definitely sound hillbilly. We need some banjo picking music, too.

Larry 58:41

So, but yes, they did a great job on the analysis. It's way too long, but if it gets read, they succinctly identified -- he did kind of a hybrid version of what I did. On the first page he put the seven bullet-pointed concerns that he has. He did that very succinctly. On the remaining pages he explained in great detail what it would take to fix those. If they at least read page one, barring that sentence that I think was left in there (it appears to be left in, in the copy that I got) if that sentence was in there, that is potentially a problem that

shouldn't have been left in there. You don't go out and say, "Hey, we're gonna give people a pathway off the registry."

Andy 59:22

Right, right. Right, right. Well, before we head out, Larry, I'm assuming I haven't heard from you about any snail mail subscribers lately, but we did get two new patrons! Joshua and Seth, thank you so very much. Welcome to the family. If you want to link your Patreon account to your Discord account, then you'll have all those things opened up on the Discord server, to listen to the show live and whatnot. So anything else Larry, before I close things out?

Larry 59:48

I don't think we have anything else. But, since we've not got our partner here, now you can ask me how much longer I'm going to stay. Because you need me. You need me now.

Andy 59:58

We need you. Yeah (laughs) we have to compensate for that knucklehead that's galivanting across the globe ...

Larry 1:00:11

So I was hoping he would give me some downtime because he's such a good, soothing voice without all the snark that I have. I figured that people could have a week of snark, and in a week without it, and they could compare the two.

Andy 1:00:24

Very good. Well, so head over to registrymatters.co for the show notes, and where you can get the podcast and all that stuff. And I'm just going to leave it all there because OBS has decided to crash on me, and I'm not able to change screens anymore. I'm just going to call it from there, technical difficulties. Larry, I hope you have a great night. Everyone else, have a great weekend and thanks for hanging out. I see already people leaving, which is really tragic. But I will talk to you soon my friend. Good night.

Larry 1:00:51

Good night.

Announcer 1:00:53

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