



Registry Matters Podcast

Episode 295

Recorded 3-2-24

Announcer 0:00

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Andy 0:17

Recording live from FYP studios, east and west, transmitting across the internet, this is episode 295 of Registry Matters. Good evening fine sir. How are you?

Larry 0:28

Doing awesome. I am really glad that you had me back, one more time.

Andy 0:32

So again, you know, I have this cadre of people and I just start going down the list and, you know, there's Leah, and there's Rocky, and there's all these people that I try, and I say, "Hey, do you want to be on the show?" And they all say no. And on the last line, it says "Larry". So, I had to call you. Again. It's very sad.

Larry 0:50

It is indeed, for the audience. Because I can do my best to alienate a couple tonight, I'm sure.

Andy 0:57

(laughs) I'm sure! And that's without even trying. You're trying to actually play it down to not offend them, and they'll still be offended. Just think if you turned it up a notch!

Larry 1:07

So, I do pretty well already.

Andy 1:09

Well, you know the drill, make sure that you press Like and Subscribe. Remember to show your support by hitting those buttons, or leave a five-star rating in your favorite 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, or be offended by! If you're feeling generous, Patreon support would also be incredibly valued. Thank you for being a part of our community. Somebody started echoing back, who was that?

Larry 1:09

It was me.

Andy 1:14

Alright, anyway. Why are you messing up the intro, Larry?

Larry 1:43

I was getting paid big bucks to do it. I was bribed by a competing podcast.

Andy 1:48

I could see that actually. All right, but then download the show as a podcast and listen on your favorite podcast app. Larry! It's your time. What is our agenda for this evening?

Larry 1:58

Well, mostly we're going to be doing legislative advocacy. That bill from Oklahoma that we talked about last week, there were two of them, and one was quite lengthy. We're going to get into that, and possibly going over to West Virginia. Not much has happened there. And then any backfilling we need to do on our New Mexico session. Also, we have some articles, if time permits. Then you got a phone call! Or a voicemail, anyway you got from somebody who had some issues. What was that name? Alex, right?

Andy 1:58

Yeah, Alex.

Larry 2:34

Yeah, that was quite a message. We're gonna dig into that and find out if it could help other registrants who might encounter something along those lines. But yeah, we've got this big bill from Oklahoma that we're gonna get into, as deep as we can. It was so long, I didn't feel like doing all the work, so I plagiarized on this episode.

Andy 2:56

(gasps) Shame! You should be ashamed of yourself. Well, do you want me to play this voicemail?

Larry 3:03

I do. I can't wait to hear it.

Andy 3:09

(snickers) You don't lie well, Larry.

Alex 3:10

Hi, my name is Alex. I'm calling from eastern Pennsylvania. I listen to your show all the time but this is my first call. I'm scared about something that happened to me two days ago. My family and I were deciding on dinner when our dogs went crazy barking. They usually bark at the mailman,

but this time it was different. I looked at our doorbell camera and saw two people outside. One had a police badge. They had a weird car blocking our driveway. I panicked. Even though I moved to Pennsylvania to be near my family, and I'm not on that list anymore, seeing police made me really anxious. I thought being off the list meant I could finally relax. But here I was, wondering if I should run again. We didn't answer the door. They even walked around back to see if we were home. Then I remembered something. Last week my son joked to his doctor that I beat him. We wrestle sometimes, like how we used to watch wrestling on TV. Now I realized why the police and someone else were here, to check on us! I'm calling to share my story and get some advice. I don't need a lawyer but I'm worried about what happens next. Should this get worse, do I need to pull all of my money and leave town? I love your show. You give a voice to people who feel left out and misunderstood. Thank you for listening and maybe helping me out. Oh, and I donate to your show too. FYP (which, I don't even know what FYP means).

Andy 3:21
Do you want to explain that real quick?

Larry 4:48
Explain what FYP means?

Andy 4:50
Yes. I like when you explain it.

Larry 4:53
Well, imagine that there's a knock at your door, and you choose to answer it, and there's a person standing there with a clipboard. They say that they would like to have the names of the people who are living in that residence. You look at them really strange and say, "You'd like to have what?" They say, "We want the names of all the people who live here." You say, "Are you crazy?" They say, "We have a right to the information. We have the right to know who lives here." What would your response be to them? If it was not a pleasant response, what would it be? That's what FYP means.

Andy 5:32
Might they need to use "FYP" in their response?

Larry 5:39
That's what I think that anybody with half a brain would say under that scenario. It arises from this imagined "right to know" who lives someplace. That's how the registry is based, that there's a so-called right to know. There is no right to know. Anyone who received a knock at their door demanding a list of the residents of the house, and they asserted a right to know, the average person would not be very polite to them. They would not recognize such a right.

Andy 6:11
Just out of curiosity, isn't that what the census people do? They don't demand to know. They don't say they have a right to know, but isn't that what they're doing?

Larry 6:17
That is exactly what they're doing. They're doing it under a statute that's demanded every ten years that a census be taken. And if you happen to be one of those selected for the "long form", you're gonna get a lot more inquisition into your life. If it's the short form, they're basically taking mostly a head count, and maybe some demographic data, but if it's the long form, they're going to ask you a lot more.

Andy 6:46
I see. All right, well, then let's tackle this individual's voicemail. And, like, I guess, maybe the first question would be, "If the person was released from the registry (and they didn't tell us which state they came from, but they were released from the registry), assuming that they did all the proper procedures and whatnot, they believe that they're off the registry, and they move, should they believe that they're ... done?"

Larry 7:18
Well, it almost sounds like that was either a voice disguise or that was somebody from the South. Wouldn't you agree with that?

Andy 11:14
I believe so. Yeah.

Larry 7:28
Okay, so someone decided to leave the South, well, we can narrow it down because in a lot of southern states, there's no pathway off the registry. If they were in Mississippi, Louisiana, Florida, they probably wouldn't have gotten off there. So they're from North Carolina, Georgia, one of those states that they can get off the registry. But if you get off the registry, and you're not being handed off, by virtue of being an existing registrant and you move, you could live in the state for quite some period of time, maybe the rest of your life. But that's not really the question you're asking. You're asking, "Are you done?" Well, the answer is, legally, you're not, because each state decides how to define who's covered under their registration. It's rational for you to think that you are. I give this example so often when I have conversations, which I think people can relate to: When you get a divorce, you file a petition for a dissolution of marriage or something similar, depending how it's styled in the various states and your marriage is dissolved. You're granted some form of shared custody, or maybe a single parent gets custody, or whatever. But you have a child custody plan, and a marital assets division plan. All those

things are adopted in the court that you filed for your divorce in. It would be very irrational to think that, when you move to a new state -- so if that person got divorced in Alabama and they moved to Pennsylvania -- they wouldn't have to get a divorce all over again. That order would be recognized under the Full Faith and Credit Clause as being a valid order. Now, if the order had ongoing components to it, meaning that if the child was a minor, you would have to "domesticate" that order in the new state, possibly. But that order is very much valid. Logically, you would think the same thing when you filed your removal petition. I'm assuming he filed a petition. I don't know of any southern states that come to mind where they just "time-off". If he was granted a court order that says, "By the order of this court, your obligations have been terminated to register as a sex offender", I can't imagine why you would think you'd have to continue to register, even if you're in a new state, no more than you would expect you would have to get a new divorce. So therefore, it would be very unlikely that if you were ever discovered, that you would be prosecuted for that, because you had been dutifully terminated, and you, in good faith, believed that you had no obligation. They would likely notify you of a duty to register, if they believe that you had a duty, regardless of what had happened in the previous state. But they're not going to try to put you in prison for the rest of your life, because you wouldn't have had any expectation that you had to continue to register, after you had been terminated. So that would be my thoughts. I don't advise anybody to take any particular course of action, but I can tell you that in all the history of NARSOL, and all the history that I've been in the legal business, since the registry has been running, I have not found a single instance of a person who's been dutifully terminated from registration by a process, who has ever been prosecuted if they were discovered in a new state. In fact, we have just the opposite. We have done episodes where they have been "apprised" of a duty to register. We've had this very situation where they tell them, "Well, we know you're here now. You gotta register." So, speaking on my own behalf, if I had gotten dutifully removed from registration, I cannot fathom why I would present myself to a brand new state for registration. I would wait and see if they found me. That's what I would do.

Andy 11:28

And to maybe put it in your court, so what would you do that would draw attention that they would come visit you? Not that you went and visited their office, but do you think that getting into a little fender bender might draw enough attention for them to actually run enough of a background check for them to report to the local registry people that you are a known quantity, but you're not registered here, and you should be? Do you think that is enough of a trigger?

Larry 12:06

I think it would be very department-specific for the level of work they have and the level of boredom that exists. But as I've been talking to officers over the decades, and in the Capitol, I spend a lot of time talking to officers because we have downtime waiting for legislation to be called. They tell me that they want a couple of things from that NCIC when they run it. They want to know if you're wanted, if there's an active "wowant" out for you. They want to know if you're under active supervision so they can notify your probation officer if there's anything peculiar about what you're doing. And they want to know if you have a concealed carry permit because they want to know if your vehicle's full of guns. Those are the things that they're looking for. They are not telling me that they're running criminal histories. Does that mean that they're lying to me? Possibly. But I've gotten that consistent answer, "What we're doing is looking for are warrants." ... for "'wowants", I should say.

Andy 13:05

(laughs) I'm sorry, what? What word is this?

Larry 13:09

Wowant!

Andy 13:11

How do you spell wowant? Is that "want"??

Larry 13:14

No, it's not "want". Want is W-A-N-T. Wauwant would be W-A-U-W-A-N-T.

Andy 13:22

(laughs) Okay, all right, Mr. transcriptionist. There you go. There's your spelling for it. [thanks]

Larry 13:28

So, that's what they tell me that they're doing. But, say you've gotten pulled over in a place where they don't have a lot of activity going on and the officer's bored or he doesn't like you because of something that you've said, the way you're speaking to the officer. He or she may decide to dig a little bit deeper, but that's what they tell me. I would guess, in our vast audience of tens of thousands, that people get pulled over and probably you get pulled over -- those of you who live in smaller communities -- by officers you might know. Ask them what they're doing! The way I learn things is by asking questions. Ask them. Say, "What are you running, officer? What are you looking for?" They'll tell you.

Andy 14:09

I guess one of the questions that I'm asking though, is there, on their display on their computer, is there like a "bing! bing! bing!" going off, saying "Sex Offender"?

Larry 14:19

If you're actively registered, I understand there is. That's one of the things that there's an "active registrant" area in them. There's like 17, 18, 19 different fields of the NCIC that they look for. There's some "person" fields, and then there's like, for stolen property, and I can't name all of them, but there's more than a dozen things. And those things are popping up to them. So if you're actively registered, it will tell them. They're not going to mention it to you, if you're actively registered. But this person said he was "done".

Andy 14:49

Yeah, and again, we're taking this individual at their word. I don't want to try to put words in his mouth, because we only have so many details to cover in this little segment anyway.

Larry 14:59

Yeah, well, he says he was done. So that's what I suspect happened based on the phone call. This was probably an investigation by Child Protective Services because there's an obligation to report abuse and neglect. If the physician was told something that didn't sound quite right, the physician would have filed a report. Child Protective Services, which that's under our Children, Youth and Families Department, CYFD, is obligated to do an investigation. They would have been coming out, possibly to do an investigation. But what is possible is that, I'm guessing, that that child is in school. I mean, would that be too far-fetched to guess?

Andy 15:47

I mean, why else with Child Protective Services be checking? I mean, if the kid was 18, they wouldn't be engaged. If the kid's still in high school, then maybe, but I'm thinking the kid's not 18.

Larry 15:58

Yeah, well, if the kid is under 18, everybody that's enrolled in schools, to my knowledge, they have to have some guardian, or parent identified to enroll them. With the information the school has, they could have run the parental backgrounds. It could be a "dual" visit. They're coming out to figure out if that person has a registration obligation, as well as, to do their obligatory investigation. Do we have any idea how old the child is? Was that anywhere that I missed?

Andy 16:30

I didn't hear it anywhere in there, just that it was the annual exam. We don't really have anything from there. Can we

center this for a minute around what the "home visit" situation would be about? If that's what it is? I mean, what are they trying to do? Are they going to come in with like twelve officers in the whole tactical gear, shields, and whatnot, and go ransack the place?

Larry 16:54

Not for an investigation by Child Protective Services. More often than not, and this was not my practice area of law -- it's only peripheral for us.

Andy 17:06

You know All Things though.

Larry 17:08

But more often than not, it's not even a law enforcement investigation. If it is a law enforcement investigation, it's only because there was something serious alleged, and they're ready to actually start the possibility of bringing charges against the person. "Wrestling around" doesn't sound like anything that would merit prosecution, unless we're talking about a 300-pound guy wrestling around with a 60-pound nine-year-old, which you could easily hurt the person. If we're talking about a 16, 17, 18 year-old, we're talking about an average-sized adult. I don't think it's anything other than they just have a duty. They can't blow it off. When something goes to protective services, they cannot just close the file and say "this is too stupid" because, if something happened to that minor, then that report would come back to haunt them. So, they're gonna come out, and without any guns, maybe an officer as backup. If they determine that a parent has some sort of criminality, they might have an officer as backup. It's gonna be done by Child Protective Service workers. They're going to try to find out what the parent's version of the events are, then they're gonna look at the evidence they have, and try to figure out if there's anything there. Depending on the age of that child, this likely isn't gonna go anywhere. As kids get older, they're more difficult to place. The biggest threat that the state can hold over you is, "If you don't cooperate with our investigation, we will temporarily take your kid." Well, if you're talking about a five-year-old, it's fairly easy to find placement for any child that's a newborn, all the way up to beginning grade school. As they get older and older, it's more difficult to find parents. And if it's a teenager, it's increasingly difficult.

Andy 18:54

So kinda like puppies at the pound. Adult dogs never get adopted.

Larry 18:57

Yes. So when you're threatening to pull a minor, if you're threatening to pull a teenager, you're going to have a difficult time placing the teenager. Also, in the court standards, they look at a teenager as more able to protect themselves, and to be savvy and alert. What would be egregious enough to pull a teenager would be a little higher threshold to meet than what would be egregious enough to pull a five-year-old. A five-year-old can't prepare their own food. If you're talking about a 16-year-old, I mean we were babysitting and making money, and going out and doing things for our own, back in the day. When I was 14, 15, 16, it expected that kids like that participate in doing things for the good of the family.

Andy 19:45

I don't think that's the case now, Larry. I think 16 and 17-year-olds today can barely like get out of bed and brush their teeth on their own, without their mom wiping their ass.

Larry 19:53

Is that right??

Andy 19:54

(laughs) I have seen things! Um, then, do you imagine that this could have been triggered ... I think you already said that this could have triggered the "dual" side of it, that there is a CPS connection of the Child Protective Services, whatever it's called in your state. But then also of like, "Oh! This person is supposed to be registered here and they're not."

Larry 20:22

It would be possible. It would depend on the person's last name. See if you can run that call, figure out what the person's last name is. If their name is John Smith, you're just not going to have enough information to run a background check. You're gonna need some information additional to that. I've not registered a kid for school. Do they take your date of birth, as a parent? Because you need at least a date of birth to run somebody, unless their name is really, really uncommon, you're going to need a date of birth. It could have triggered if they had enough information to run their background. If they ran the background as a part of the Child Protective Service investigation, and they see, "Oh, this person has a conviction for that type of offense," it could be a dual investigation then. It very well could be. But my opinion would be that, if they think that person has to register, all they're gonna do is tell them, "You need to get registered. We ran your background. We think our law covers you." And if I were that person, I would say, "Well, I don't think it does. I got this 'oadah' [order] here from" -- whatever state it is. I'm guessing he's from Georgia or North Carolina. "I got

this order" -- No, not order -- "I got this oahduh here from the Superior Court in Wayne County, North Carolina, and it says I don't have to register no more as a sex offender."

Andy 21:39

It sounds like you're saying "odor", Larry. You got this smelly thing from the court in North Carolina? O'dah?

Larry 21:47

No, it's aw-duh.

Andy 21:49

(laughs) But, on that then, so the person said that they live somewhere in Pennsylvania, and aren't there possible conditions that the person could be in Pennsylvania and *not* have to register, if they had been de-registered on their way out the door of their state? I hope I worded that right.

Larry 22:10

I think what you're asking is, does the person have a credible claim not to register due to all the litigation in Pennsylvania? And I would say yes, because there's been a plethora of litigation in Pennsylvania.

Andy 22:22

They call 'em, like "Megan's one and two" or "SORNA one and two". I can't remember what they're called. We've covered them here and I just can't remember what they're called.

Larry 22:29

Yes. So, depending on, again, that we don't have enough details from that call. Depending on the age of the conviction, it might be that they're not covered by registration. Your first line of defense is going to be, to neutralize any possibility of arrest, is, "I got a copy of this court order here. And in my mind, I thought I was done." There's nothing they can come back with at that. Nothing. I mean, what would you say in response to that?

Andy 23:00

"I'm sorry, I'll have to get back to you." (laughs) When we talked about one of Georgia's cases where there was a claim that they -- I don't remember which county -- they were harassing people on the registry; going and visiting them at weird hours, knocking on the door and checking them. I think that these individuals even were only annual registrants, but they're coming by either monthly or quarterly. You're asking for evidence, documentation of "what time did they come by?" and no one has a lick of a piece of paper that says, "Officer so-and-so" or "Cop visited on 12/19 at 2 a.m." There was nothing that could be gathered to support the claim.

Larry 23:50

You know, you're gonna set me off on a path that I'm not gonna be able to recover from because that was one of the most frustrating experiences of my life. People tell me the registry is the most horrible thing that's ever happened to them and that every right that can be imagined is being violated. I ask them for proof of these things because -- you're talking about in Cobb County, Georgia, the sheriffs were telling them that they had to do things they didn't have to do, that wasn't in statute, they were inventing things -- and I asked them, "Okay, well, what are they telling you? Who's telling you? When did they tell you that? What did they tell you the consequences would be if you didn't do these things?" Like, you had to report things that are not required by law.

Andy 24:35

You had to report your job schedule or something!

Larry 24:37

Yes, there were all kinds of additional requirements. I asked them, "Well, what do you have?" "Well, they're coming out and visiting me once a month!" I said, "Are you keeping track of the visits? How do you know it's once a month?" "Well, I know it's purty regular." "But did you track the date? Did they leave anything when you weren't there?" "Well, yeah, they left this flier." "What did you do with it?" "I threw it away."

Andy 25:05

Threwed?

Larry 25:08

"Threwed". I said, "Well, why would you if this is the most horrible thing that's happening to you in your life, and every constitutional thing that you can imagine is being violated, why are you throwing all the documentation in the wastebasket?" And nobody will tell me.

Andy 25:24

By extension, I'm bringing that up as an example though, but then by extension, you expect an individual that has been released -- they have an "awduh" -- I'm sorry, what was that word?

Larry 25:35

Ohdah [order].

Andy 25:37

Ohdah from where they were registered. They have an "ohdah" from the judge saying they are no longer required to register and you want them to carry that around? Laminated in their wallet or something?

Larry 25:53

I would strongly urge anybody who has been removed by either a petition process or simply timing out, in those states where you just time-out, I would encourage you to keep that document, and make copies of that document, and be ready to present that document if the need ever arises because this is one of those situations where the first thing he'd want to do, when they do come back again ... I'm assuming he's going to call us next week or so and say they came back, and we're going to find out the rest of the story. But he would need to be able to hand that to the officer and say, "Well wait a minute now. Before we go too far into this, I want to show you that I've got an order from the Superior Court of Wayne County, North Carolina." And they're going to be shocked. Not a soul has ever done that, and they're going to have to run that up to their command, to figure out what to do with it. And, even without all that, they're still not going to arrest him. They're going to tell him, "We think you have to register, and we're giving you ten days" or five days or whatever the period of time is. But when you have that order, they're gonna have to go run that past command, and command is not going to know either. Command is gonna say, "Look, we have to run it past the county attorney" or whatever, through their legal department and they're going to have to investigate all that. They're going to get back to you. So that's what I would tell every person: "Keep a copy of your order or your termination letter handy. Make multiple copies. Have one in your glove compartment, have one in your house, have one in your office, make sure that that's available to you because you may be in a situation where you have to explain why you didn't register and you need to be able to say, 'Well, I have this ohdah here!'"

Andy 27:29

And back to the -- I can't do anything other than call it "home invasion" -- then back to the home invasion of them furiously knocking at the door. What is your posture in dealing with them? Do you open the door politely and kindly? He said something about the dog, so he's gonna have to deal with that first. But then, open the door and go, "Hi, may I help you?" Do you come out the door with guns blazing? And I don't mean literal guns. But I mean, do you come out with an obstinate kind of disrespectful attitude?

Larry 28:02

Absolutely not. These officers and the Child Protective workers, they're all doing their jobs. You treat them with the utmost of respect. Even if they're marginally respectful to you, you treat them with the utmost respect and cooperativeness. Remember though, you do not ever have to incriminate yourself. You do not have to ever admit anything, you don't forfeit that right. Treat them cordially and professionally. You don't have to let them search your house. I would much prefer to have the conversation in my

living room than at my front door, with every dog barking, with people wondering what's going on, particularly if they're in uniforms, marked cars and stuff like that. I would much prefer that they'd be inside. You might as well invite 'em in, be cordial, try to get to the bottom of it. That cordiality is gonna translate. They're gonna go back and say, "You know, we got to run this past legal. Yeah, we never encountered anything like this before."

Andy 28:02

Karl asks, "Would you keep a PDF of the order on your phone?" I have a problem with that one.

Larry 29:02

I don't think it would be a bad idea to have a copy of it. Digital documents are being more and more accepted. Officers are now accepting a digital insurance card, rather than you having to have the paper cards. I don't think there's anything wrong with that.

Andy 29:25

The problem is that you're then handing your device to law enforcement. I've got to think that they can then start swiping where you didn't intend them to, to go investigate your phone.

Larry 29:36

I have never been comfortable handing my device to a stranger, but having it on your device is a good thing because at least you can say, "Look, I'll text this thing to you."

Andy 29:44

Yeah, yeah yeah. I gotcha on that. Um, we should probably move on. We've been on this for a little while. Is there any closing thoughts you could think of, just randomly?

Larry 29:58

No closing thoughts, but I hope Alex calls us back and tells us what's happened in a little bit more detail, because this is fun!

Andy 30:00

This is fun ... funny or just fun? (laughs)

Larry 30:03

It's just fun because it will prove my point in terms of what I believe would happen for a person who's been dutifully removed from registration. If he's been dutifully removed, he's gonna tell us what they said, if it deals with registration.

Andy 30:16

Very well.

Announcer 30:18

Registry Matters Promo Deleted

Andy 31:07

Next, we carried over a bill from Oklahoma, because you had been lazy and just doing nothing, because I don't know, you were like doing your legislative stuff two weeks ago, and you weren't prepared to discuss it. So, are you ready now?

Larry 31:25

Well, thanks to Sandy and NARSOL, I'm as ready as I'll ever be. Sandy and I discussed this proposal in detail and she wrote a blog. I helped her with the blog. I figured that since I helped her with that, I can borrow from it. If you've seen some of these statements before, it's because they have been out there already.

Andy 31:48

I see. And this is House Bill 3992. Tell us what is the purpose of 3992?

Larry 31:56

Oh, it's to protect children from the horrors of sexual abuse. The legislation purports to offer such protection. But it's often that these types of things are proposed in response to rare and horrific situations. That's exactly what happened in Oklahoma.

Andy 32:17

Everything is about protecting the children. I mean, you could say, I don't know, well you could say, "We have to put up this water tower to protect the children, from like ..." you could come up with the most ridiculous thing and you say, "... but it's to protect the children!" Then you're a piece of crap for not supporting something that would protect the children.

Larry 32:33

That is correct.

Andy 32:35

All right. Well, in all of that, then do you think that this can be killed?

Laugh Track Audio Clip 32:39

(laughter)

Larry 32:39

(laughs) I don't think I have to answer it now. Is that a good enough answer?

Andy 32:50

I think that might be enough answer, but could you possibly elucidate our fine audience on what else you might think about it?

Larry 32:56

Thinking it's unlikely, but I'd actually prefer to quote an Oklahoma advocate because I have reached out to an advocate over there who posted something on the affiliate listserv, and I'm going to quote him. That way, you can be mad at *him*.

Andy 33:13

Okay.

Larry 33:14

He says, "I do not see any way to stop this bill, considering the media attention to the overall situation by the fact that the Republicans control the Oklahoma Legislature." Remember that's Mark, not me, saying that. "The only time that we have affected any legislation is in the Committee stage. Once it's on the floor, they're going to pass whatever they have against us. House Bill 3992 has passed the House of Representatives Criminal Judiciary Committee by a vote of 6 - 0." I verified that by pulling the Judiciary report, "The committee report does not show any changes to the language as it was originally proposed. And therefore, the next step is to go to the House Floor 'as is'. We must assume it will pass the House Floor. The legislators could change some language there. (Good or bad). Then it will go to the Senate, where it will be assigned to a Senate committee," which will likely be Judiciary as well. "If we want to make any changes to this bill, the Senate committee is the only time we can do it. It's my personal opinion that there's no way to stop it in the Senate committee. The most we could do is get some language changed." Now that's the end of the quote from the Oklahoma advocate. I agree with him. That's why I called him on the old-fashioned phone, and we had about an hour and thirty-seven minute conversation last night.

Andy 34:32

You said "about" and then gave me a very precise amount of time.

Larry 34:35

Well, we had two calls. I remember the last one was an hour and thirty-seven minutes and we had another brief conversation. So yeah, we talked quite a while.

Andy 34:44

And tell me more of the driving forces behind the legislation.

Larry 34:48

Well, the impetus for the bill was a tragedy for several families. This guy named Jesse McFadden, who had served 16 years for a sexual offense, and was due in court on the day of the tragedy for another one, shot his wife, her three children, and two teenage girls who had spent the night with McFadden's stepdaughters, before killing himself. So, you kind of had carnage behind this. The families of the visiting girls proposed this set of demands. They contacted an Oklahoma legislator about sponsoring legislation based on those demands, and that's how we got to where we are. [Henryetta Families Advocate for "Knight's Law" in Wake of Tragic Murders, Tighter Laws on Sex Offenders: <https://www.newson6.com/story/64ffc705cff90f072a6e4b0b/henryetta-families-advocate-for-knights-law-in-wake-of-tragic-murders-tighter-laws-on-sex-offenders>]

Andy 35:28

Wow. Um. Okay. And, like, that's even just hard to like listen to. That would then be a significant tragedy that is driving the bus. You have a one-off event that's going to then drive legislation that impacts everybody. I always love those, Larry.

Larry 35:45

Indeed, yes, the major elements represented under this bill, HB3992 [<https://legiscan.com/OK/text/HB3992/2024>] are persons found guilty for the first offense for six different sexual crimes against minors under 18, would be required to serve 100% of their sentence by the court, with no good-time credits. Persons found guilty of the same crimes against minors who were parents or guardians of those minors -- as perpetrators of these offenses often are -- would be given sentences of life without parole. Remember, this is a state that believes in fiscal responsibility, and looking at every dollar that they spend very critically, but who's talking about that? A second conviction could render a person eligible for the death penalty -- although there's a separate bill pending (that has no chance of passing) that's going to declare a moratorium on all executions, and it's in the House of Representatives [<https://oklahomavoice.com/2024/02/28/house-committee-advances-bill-to-halt-all-oklahoma-executions/>].

Andy 36:41

I read that these penalties apply in most circumstances to all six crimes, including simple possession of CP.

Larry 36:51

That appears to be the case, but I'm going to tread lightly because it's such a long bill and I really still was not able to fully wrap my brain around it. But the bill also mandates a sentence of life without parole for first degree rape of an adult, first offense, and someone accused of raping a child under 14 a second time could face the death penalty.

Andy 37:14

I'm sorry, the death penalty? What is the fixation with the death penalty? There are a number of states that already have death penalty legislation pending this year. In fact, there was one in your neck of the woods.

Larry 37:27

We did indeed have such a bill. Fortunately, such bills have no chance of passing here due to staunch opposition from virtually all Democratic legislators and the Democratic Party has strong majorities here. So that doesn't have any chance of passing here.

Andy 37:44

What would be the results of the bill then? Most people are convicted under plea deals with no trial and still our court system is clogged. But then with this bill, isn't it more likely that accused persons will insist on a jury trial? That a guilty plea will result in the same punishment as a guilty verdict at trial? Or do you think prosecutors are unlikely to offer a much-reduced charge, since the purpose of the legislation is either to kill or incarcerate forever the people who committed these kinds of crimes?

Larry 38:12

Well, you're zeroing in on what the problem is. This is to get tough on offenders. So, prosecutors, since they're elected in most jurisdictions, including Oklahoma, they're not going to come in after this passes and start offering sweetheart deals. They couldn't because they would be out of office on the next election cycle. They're going to have to push forward under the spirit and faith of this bill, to give the people what the people want. The people right now need to be standing up if this is not what they want. They need to be contacting their representatives; as this is on the House calendar, waiting to go to the floor for debate. They need to be saying, "Don't vote for this." But there's not likely to be any leniency because they will be vilified, those prosecutors. They'd say, "Well, wait a minute. Now you've done cut a sweetheart deal with this man here and he's supposed to be getting life without parole. And you done bypassed the will of the people. What are you doing?" So yes, you would expect that there would be no deals offered, and more people would go to trial if you cannot induce a plea by rewarding the person for the plea. You got nothing to lose if you're gonna have to serve 100% of your sentence and you can't plead it down to a lesser charge, why not go to trial?

Andy 39:35

Tell me about the mentality here, being that this would be a very "fiscally conservative" state, why would they enact something that's going to cost them 50,000 bucks a year, times the number of convictions, for forever?

Larry 39:49

Well, you're actually finally beginning to see through their hypocrisy, which I try to point that out all the time. It's like, folks, hold your team accountable. When they run on platforms of being fiscally responsible, and trying to keep government small, make sure you remind them of that when they're debating something like this. Make sure you tell them this is not consistent with your views, that you don't believe that locking up everybody is gonna be the solution. But I guess we have to ask the people how many prisons can Oklahoma afford to build? They will be needed to contain the plethora of men, and maybe even some women, who will see life inside prison. And what will happen with taxes? Will Oklahoma's other services have to be reduced in order to pay for this ever-escalating Department of Corrections? And see, it's not just the Department of Corrections that's the blunt of the result, because the end result will be much longer sentences, but you're also talking about the entire criminal justice apparatus. You'll have more need for court personnel because if you don't do as many pleas, you need more judges. You need prosecutors to cover the courtrooms. You need support staff to build the cases to get ready for trial. You need defense attorneys, which we're going to get into an article about the shortage of defense attorneys in another state. So, you will end up putting stress all across the system with something like this. But remember, this is conservatives up here. I'd hate to see what would happen if they were a bunch of liberals!

Andy 39:53

Isn't something like this, just like most things that are so far complicated and nuanced that, how would you communicate to the voting population of this trade-off of dealing with these kinds of convictions, therefore, we're going to need all these extra places to put the people, along with the whole support system to prosecute. To put them somewhere, we need to increase taxes by -- I don't know, whatever that number would be, 100 million dollars a year or whatever, and we're going to have to tax you more, and then everyone, their answer would be "Yes, please tax me more"?

Larry 42:09

No, that would not be their answer. That would not be their answer at all. People have gotten so negative about government, they believe that everything is crooked, corrupt, and a lot of waste and fraud and abuse. They've heard that, coming from conservative circles for so long, that if government was just run like a business, then we would have plenty of money. Even though our taxes are lower here than every country that we tried to compare ourselves to, our taxes are lower. But they believe that if they would just cut out the waste. "See, what we need to

do, that money that Biden's trying to get for Ukraine, we need to spend that here in America. That money for Israel? We need to spend that here."

Andy 42:10

Yeah, until they want to go spend it somewhere else.

Larry 42:15

But see, the funny thing is those are not recurring expenses. No one believes we're going to be in these wars in perpetuity. Prisons live in perpetuity. If you put someone in for life, you know, depending on the age of the person, you're talking about decades ... too many decades. But people don't believe that the money is not there. They believe that there's just all this slush out there because they've heard for so long about how wasteful the government is. There *is* waste in government, just as there's waste in private business. There's nothing that you couldn't go in and cut. Any government, any company of any size, you could go in and find ways to reduce overhead. But there's not enough money in the Oklahoma budget to significantly increase what you're spending on corrections, prosecutions, and defense, without having some impact on other services or taxation.

Andy 43:52

And just that, what you've just brought up, is the waste in Human Resources is pretty much incalculable. The majority of those serving out full sentences are in prison until their deaths, will be based on just a first conviction? And what of the children, the reason behind all this? Are they actually safe now? Years of data from countless studies across the country show several things about sexual offenses against children, approximately 96% of all sexual crime is committed by those with no prior convictions -- just like the ones who will be filling up Oklahoma's penal institutions. Between 95 and 98% of those with "CM" (child molestation) charges are the relatives, or other authority figures, peers of the victim, just like the ones that are already locked up. So, it's not like you're preventing the future, because the vast majority of them are somebody that's known to the family, but not to the criminal justice system.

Larry 44:47

Correct. And this is where Sandy really helped, I would never have thrown out those statistics -- you know how I think about recidivism, all this data and stuff.

Andy 44:53

I've heard your comments.

Larry 44:55

But this is an appropriate use of it. In this particular debate, this is a very appropriate use of this data. I wouldn't have had this, but this is absolutely true. We can achieve the same result without putting people in prison for life. We

can do what we need to do. This McFadden is an anomaly. Just like the person that shot up Vegas, what was it, 71 people or whatever it was, a few years ago, that shot up the Strip?

Andy 45:28

The one from the window with the bump stock?

Larry 45:30

Yeah.

Andy 45:30

He injured 500 people!

Larry 45:32

But I'm talking about, there was dozens of deaths, but that was an anomaly. That doesn't happen every day. This is going to be a one-time thing. There'll be decades go by before something like this happens again in Oklahoma. There's no need for all this legislation. But, that's what they're doing. Anyway, I'm reading from NASOL's most recent posts, "Jesse McFadden was an anomaly. He murdered six victims before taking his own life. The victims of those families want justice. They deserve justice. However, justice does not involve using the horror he created to enact laws that will not prevent such tragedies from occurring in the future. It does not involve bankrupting Oklahoma's coffers to forever warehouse more and more first-time offenders. Justice is designed to bring some degree of closure. Rather than helping with closure, House Bill 3992 would create a nightmare for individuals, families, Oklahoma's court and legal system, and the entire state for generations to come."

Andy 46:39

I have a question for you, Mr. Policy Man. Are there any ... I don't know what the right word would be ... could there be a trigger in here, to see what the impact is after X years? We'll say five, even ten years after something like this is enacted, to force them to go look at "Has there been any changes?" And if not, kill it?

Larry 47:08

You know that track you just played?

Andy 47:10

(laughs) Maybe I should play this one just to comment on it.

Ronald Reagan Audio Clip 47:16

"Run by the strangest collection of misfits, Looney Tunes, since the advent of the Third Reich!"

Andy 47:23

That would be me in this case. I would be the bunch of Looney Tunes.

Larry 47:28

So, it would be very difficult to do that, but you're not totally off your rocker. There are pieces of legislation that "sunset," meaning that the legislation has a termination date, but this would not be one that would be in that category. Can you imagine the uproar that would happen if you pass something like this, and had a ten-year review that was gonna sunset without the proof of efficacy? Can you imagine what the victims' advocates apparatus would do, to anybody who dared.

Andy 48:01

Yeah, they would lose their minds.

Larry 48:03

They would come in and say, "Now we're having to be victimized again! We thought we fixed this back in 2024. Here we are in 2034, and these gutless, spineless, weak-kneed politicians are ready to take away what we worked so hard to do." So that's not a very likely thing to do. Although it does make some sense.

Andy 48:23

I'm trying to remember, is it Nancy Yates, I can't remember the woman's name, the one that offed all of her children in postpartum depression. Like that is an incredibly traumatic, one-off experience that I don't know how you could build any sort of societal policies, legislation, anything, to try and track that kind of event and prevent it because it's just so far outside of the norm that there's like nothing that you could do about it. I just don't see how you could do anything about it.

Larry 48:51

Yeah, her name was Yates. I don't remember her first name. But yeah, that's the one that drowned the kids, right?

Andy 48:56

Yes. I was trying to be nice and like, not describe that.

Larry 49:01

Yes, it's very difficult though, in this mass media age we're in, when you have so much publicity as McFadden generated, to tell victims, "Sorry, this was a one-off. Get used to being without your loved ones." It's very tough politically to do that.

Andy 49:24

Certainly. Well, all right then. So get ready, Oklahoma. There you go. You guys asked for it. Maybe not You Guys, but they did.

Larry 49:34

Oh, I have one other funny thing. When I was talking to the Oklahoma advocate, he said that a Democrat member of the House... Remember the Democrats are virtually extinct in Oklahoma, but there are places, like in Norman, anywhere there's a university presence, you might have a Democrat slip into office. He said that a Democrat was going to try to amend the worst parts out of the bill on the House Floor. We've got a clip for that, about what his chances would be, to take all this bad stuff out with House Floor amendments. You want to play that again?

Andy 49:36

Which one am I playing?

Larry 50:18

The first one we played.

Andy 50:20

Oh. That?

Laugh Track Audio Clip 50:20
(laughter)

Andy 50:25

Alright. I hate that laugh.

Larry 50:26

That's about the chance of a Democrat, with a state that has virtually non-existent Democrats, being able -- Floor amendments are already tough to do, and trying to make dramatic changes with floor amendments, when you're in the minority party -- and not just a minority party, but an extreme minority party -- would be almost impossible.

Andy 50:33

Isn't it a supermajority in Oklahoma?

Larry 50:50

Supermajority. I was explaining to him, I said, "Well, the first thing, the way it's gonna go down, if he offers floor amendments, if that representative from Norman offers floor amendments, the first thing that will happen is they'll actually pass out printed copies like they did in the old-fashioned days. They'll go round handing each member a printed copy of the proposed amendment. The majority leader, which will be a Republican, will look at the sponsor's seat. The sponsor will give him a signal, basically usually a thumbs-up or thumbs-down, that's either friendly or unfriendly. I cannot imagine that the sponsor of the bill would give the thumbs-up to an amendment that would weaken the legislation, coming from the minority side of the aisle. I just can't see that happening. So therefore, that's why that laugh-track is appropriate. It would be very unlikely that a minority member could effect any

meaningful amendment. Now, if a majority member were to make that proposal, and if he or she were to talk to the sponsor first, because you always look to the sponsor when something's being amended. The sponsor determines whether it's friendly or unfriendly. If the sponsor has already had a heads-up, and there's been discussion, oftentimes they'll say, "Yeah, we consider that a friendly amendment." But I just don't see that there's gonna be any dramatic changes to weaken this legislation. It's not likely because it's just too hot-potato over there.

Andy 52:13

Right, right, right, right. Very well. Well, You People, you put an article in here from The Daily Chronicle, and it's "Washington's public defender system is breaking down, communities reeling", and this is from the state of Washington. According to the article, "When you're charged with a crime that could put you behind bars, and you don't have enough money to pay an attorney to defend you, the government is supposed to provide you with one. But that isn't happening in some of these communities in Washington state, at least not right away." So isn't that like, you have the right to remain silent, your Miranda rights? Like if you can't afford an attorney, one will be appointed to you? That's the thing that they say?

Larry 52:54

That is correct, and you do have that right.

Andy 52:56

So what's happening in Washington?

Larry 53:00

Not sure. But according to the article, Judge Paul Tanner told one defendant, "We have a shortage of public defenders. That's why we're in a jam." So basically, just sit tight and get used to it.

Andy 53:10

(laughs) And the right to an attorney is rooted in the US and Washington's constitution. This sounds bad to me.

Larry 53:22

Indeed, it is bad. As the article points out, "There are consequences. In some instances, people presumed innocent are languishing in jail without counsel. In others, prosecutions have been delayed or dismissed because defendants lack representation, potentially putting crime victims and others at risk. And still other defendants are getting short changed because their attorneys are too busy." Now, folks, we just attacked a conservative state. Now we're going after a more liberal state because it doesn't matter whether you're liberal or conservative. If you're not doing what you're supposed to do, FYP doesn't cut you any slack.

Andy 53:57

(laughs) The article stated, "cash strapped counties are watching their expenses soar, with minimal support from the legislature. Some counties are actually suing the state over that reality. And experts say it's only a matter of time before an unrepresented defendant also sues, alleging their rights have been violated." Can you dig into that? Like, what grounds, what charge? What would you bring? If you are not afforded this attorney and whatever? What's the scenario and what do they charge back with?

Larry 54:31

Well, I didn't see what the basis of what they think the lawsuit would be. But one would be, since you're presumed innocent, you certainly have the right to a speedy resolution. And you would say that the detention is not justified or warranted because there's no evidence been presented to merit your continued detention because the judge has told him, "Just sit tight. We're short-staffed." And how long should you sit tight in custody?

Andy 54:58

Right? And couldn't they just somewhat throw this back on the judge, to put people out on bond? O.R. bonds, perhaps?

Larry 55:09

I think that'd be a risky proposition, depending on the nature of the charges. And I don't know if the judge would have that kind of political will or even the authority to do that, to just simply start O.R.'ing people but "We're at the precipice of collapse", according to Franklin County Administrator, Mike Gonzalez, "and it's not just affecting us. It's the whole state." Things were so bad last year, Larry Jefferson, the director of the Office of Public Defense, begged the Washington State Supreme Court for relief. He asked the court justices for a 90-day moratorium on attorney assignments for out-of-custody defendants, in order to clear the backlog of clients who are already in jail. He asked the justices to immediately lower caseload limits for the public defenders, partly to keep the overburdened attorneys from quitting and the justices surprisingly denied all of Jefferson's requests. Isn't that shocking to you?

Andy 56:07

Well so we, god, like very early you hammered home the point that the individual that controls the court calendar is the prosecutor. They could just take "accused of murder" kind of charges and "accused of shoplifting a candy bar" and say, we're not going to prosecute, or you know, slap on the wrist, whatever that means. They could kind of handle this just in house? Do I have that sort of right?

Larry 56:39

You do. I've said that, and I don't deviate from that. The prosecutors ultimately control the calendar. But picture this

scenario. You already have a heightened sensitivity because the Conservatives are already trying to convince people that crime is out of control, since the pandemic, remember, you've heard about how horrible these liberal-run cities are, and how the crime is just off-the-charts, right?

Andy 57:01
Yep, yep yep.

Larry 57:02
Okay, well picture a prosecutor saying, "Well, I'm not going to prosecute charges because those who I would be prosecuting are not going to have attorneys because there's a shortage of cash, and there's a shortage of staff. We're just gonna prosecute only certain offenses, And too bad, so sad, there's not enough defenders around here." Can you imagine how long their career would be, if they took that posture?

Andy 57:27
(laughs) Sure. Sure sure sure. I have a novel idea, Larry. Why don't we get like those that are in school trained up to be like interns? And they could be the ones that represent you, as your public defender? Does that sound like a good idea?

Larry 57:45
That was actually mentioned in this article. You must have read the article!

Andy 57:48
(laughs) I may have, Larry. Do you think that would be a fix?

Larry 57:53
I think it's a good possibility. I don't think you'd want to assign really serious cases to rookie attorneys.

Andy 58:00
I guess they'd get experience handling cases!

Larry 58:03
Yes. But you run the risk of ineffective assistance of counsel, and you have a risk of verdicts being overturned with an inexperienced attorney on significant cases. I would not put those "Guppy" attorneys on very significant cases.

Andy 58:04
Guppy. (laughs) Advocates say communities should reduce pressure on public defenders, and the entire system, by scaling up alternatives to prosecution, especially for non-violent and lower-level crimes.

Larry 58:28
Well, I agree with that. The article eloquently points out that defender shortages and unrealistic caseloads are

posing a threat to rights cemented in court decisions like 1963's *Gideon vs. Wainwright*, where an unrepresented Florida man challenged his state conviction, and he went all the way the US Supreme Court, and he won. The underlying principles are simple. Anyone charged with a serious crime needs an attorney and, to be effective, that attorney needs a reasonable workload. But those principles crumble when public defenders are scarce. Defendants have no one to talk with about their case options, to argue for their release so they can keep their jobs and the custody of children. They need to be able to interview witnesses, to participate in their defense, to help secure evidence like surveillance videos and so forth. All this kind of stuff is important. And if you sit languishing in jail with no attorney, it's hard to do all those things that are necessary for effective trial preparation.

Andy 59:31
What about a person's right to a speedy trial, which sounds vague to me. What does "speedy" even mean? Is there a definition of speedy?

Larry 59:39
There is, and it varies, according to this article. That's a good point. The right to a speedy trial is within 60 or 90 days of being arraigned in Washington, depending on whether defendant's in custody or not. But that also gets twisted when the public attorneys are scarce, leaving the people in custody. In Benton County, I think that's what the article said, they're faced with choices. They're told that they can either move closer to trial without representation, or they can "pause" the speedy trial clock, meaning sign a waiver while they're waiting for a defender. Now, that's a horrible option because if you waive speedy trial, guess what? They're never gonna bring you for trial!

Andy 1:00:24
Then that just lets you languish then in the county jail?

Larry 1:00:28
That's what could happen if you waived your right to speedy trial. So that's not fair, according to Sheri Oertel, a resource attorney for the nonprofit Washington Defender Association.

Andy 1:00:43
The article states that "Washington's challenges are distinctly thorny, partly because its system is decentralized, with each county court administered locally. Most other states pay for public defense services, whereas Washington covered 3% of those costs through grants and special programs in 2022, according to data collected by the Washington State Association of Counties." Sounds as though a centralized state public defender system might be

a better approach, not necessarily the best, but a better approach.

Larry 1:01:12

Well, I agree. But most counties that responded to a survey last December, reported vacancy rates of anywhere from 10% to 67%. Now you have to admit a 67% vacancy rate is funny.

Andy 1:01:25

(laughs) No, I'm not saying -- Larry, nothing you ever tell me is funny!

Larry 1:01:31

If there's two thirds of the staff positions vacant, that would all but shut most businesses, or most operations down!

Andy 1:01:40

Yes.

Larry 1:01:40

And 34 reported recruiting and retention issues, up from 31 in 2022. But larger counties simply employ staff defenders and smaller counties rely on independent contractors in Washington. It seems like the smaller counties are having the most difficult problem because there's not enough attorneys available to take those contracts. More spending on public defense and lower caseloads may not even be adequate to solve this crisis, given its severity and the magnitude of the cost involved, according to some of the advocates working on it.

Andy 1:02:12

Larry, I have a solution to this that would be easy as pie. Have Bill and Jeff pay for it. It's their state. They could afford it!

Larry 1:02:22

Who's Bill and Jeff?

Andy 1:02:24

Bill Gates and Jeff Bezos!

Larry 1:02:26

Oh okay, duh!

Andy 1:02:27

Between the two of them, they've got like 300 billion dollars.

Larry 1:02:32

That's a great idea.

Andy 1:02:33

See? Piece of cake. See, I solved it just right here! World Hunger is next.

Larry 1:02:38

Let's talk to Bill and Jeff about that.

Andy 1:02:41

We'll do that. We'll get them on the horn and have them as guests next week. Is there anything else that we should cover before we get out of here? We're pretty much over time.

Larry 1:02:43

I think we've done a great job. I was glad to be with you.

Andy 1:02:52

Good grief, Larry. You dropped like 75 articles in here! How did you think we would have time for this?

Larry 1:02:58

You never know.

Andy 1:02:59

Oh my god. Anywho. Go over to registrymatters.co and you can find all of the episodes, and that will link you over to FYPEducation.org where you can find the show notes, et cetera. And, as Alex did earlier, he left voicemail at (747) 227-4477. That's (7-4-7) 2-2-7, 4-4-7-7. Someone asked me like "You said that too fast." Like just rewind it, you could play it again. Or, as I said before, go to registrymatters.co, you can find it there. Also RegistryMattersCast@gmail.com if you want to send us an email message, and of course, if you would like to support us, which is much appreciated. For all of those that support us, thank you so very much. But that is over at patreon.com/registrymatters. I got nothing else sir. And if you have anything else, then let me know what you want to say. And there we go.

Larry 1:03:49

We'll see you in a week.

Andy 1:03:51

Take care, my friend.

Larry 1:03:52

Goodnight.

Announcer 1:03:55

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