



Registry Matters Podcast

Episode 315

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Announcer [00:00:00]:

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Andy [00:00:13]:

Recording live from FYP Studios east and west and more west transmitting across the Internet, this is episode holy moly, Andy, I told somebody today, I think we're on like 308 maybe, but it's 315 this time. This is actually episode 315 of Registry Matters. Good evening. Has it cooled off yet over there?

Larry [00:00:35]:

Absolutely. It's only like 85.

Andy [00:00:37]:

I mean, compared to whatever. What did you have? Like, what was the top that you saw? 110.

Larry [00:00:42]:

Well, not this season. Maybe 103, but it has been as high as 108 or 109 since I've lived here.

Andy [00:00:49]:

And have you gotten your heater fixed? Because you know that that's coming soon. Are you going to still try to teach it a lesson?

Larry [00:00:56]:

No. Since natural gas is so cheap right now, I'm going to have it fixed because you can heat with natural gas for virtually nothing right now.

Andy [00:01:06]:

Wait, I thought inflation, everything. Wouldn't that make all the things really expensive?

Larry [00:01:13]:

Oh, natural gas is dirt cheap right now. We've got a glut of it with all the oil. It's a byproduct of production of oil. There's so much natural gas on the market right now, it's really cheap.

Andy [00:01:25]:

All right, well, moving over to the more west to Chance. Good evening, sir. How are you? That's, that's amazing. You know, I forgot to launch my other screen that will move the screen to your screen when we're going. So, I'm going to, we're going to start the show and I'm going to try and figure this thing out. But before I get all of that situated, make sure that you leave a five-star rating and show some love. There's some goofy thing over on, on Apple stuff where in a podcast app, you have to do something with follow. Like, I don't, can you go into your Apple app, whoever has an apple, and press that button that says follow this podcast so that it looks good on the numbers. And if you're feeling super generous, head over to patreon.com and support the program for as little as a dollar a month. That would be most appreciated. And so, Andy, what are we doing tonight?

Larry [00:02:16]:

We have some good stuff for this episode, I think. We have a couple of listener questions. We have some clips from the late Supreme Court Justice Antonin Scalia sharing his wisdom. We have a case from the Illinois appellate court dealing with civil commitment, and Chance is back with us again this week. So we have a California court which actually extends beyond California because it deals with attorney selection.

Andy [00:02:46]:

Wow. All right. Well, then I believe that you have decided to give us another Andy's general rules this week and shall I play the clip or shall I not play the clip?

Larry [00:02:59]:

Play a little bit of the clip, but I'll set it up. People criticized me. I got an email saying that you're always picking on dumb criminals. Why don't you do something that's funny? I said, okay, I'll look for something funny. So, I think this is funny.

Andy [00:03:12]:

All right, well, tell me when you want me to stop and I'll have to press lots of buttons to make it stop, but it's only a minute long.

Larry [00:03:18]:

Okay, go for it.

Audio Clip [00:03:22]:

The Kroger executive admits to price gouging according to reports by Bloomberg and Newsweek. It happened in a hearing for an antitrust trial. Newsweek says Andy Groff told regulators that Kroger raised the prices of milk and eggs beyond the level of inflation. The report cites an internal email from Groff showing the price of those items were higher than necessary to turn a profit given the rate of inflation. In response, Kroger tells CBS News Detroit, quote, this cherry-picked email covers a specific period and does not reflect Kroger's decades long business model to lower prices for customers by reducing its margins. It goes on to say retail prices include the cost to run a grocery store, including labor, transportation, advertising, and other costs. We work relentlessly to keep prices as low as possible for customers in our highly competitive industry. This is especially true for essential products like milk and eggs. Now this comes as Kroger is trying to merge with its competitor Albertsons, the FTC, and some states argue that would drive up prices. Kroger claims it would help them compete with retail giants like Walmart.

Andy [00:04:28]:

Now I just got to ask you though, this is not Economics Weekly. This is Registry Matters.

Larry [00:04:36]:

It was for the humor. I thought it would be funny because I'm always picking on dumb criminals with Larry's general rules. So, my general rule for this episode would be be very careful when you send an email. But beyond that, if you're in the midst of an antitrust investigation where you have numerous challenges trying to block the merger, it's probably not a good idea to send an email

acknowledging that you're recovering prices above inflation when that's one of the chief arguments being used to block the merger. Therefore, that email should not have been sent. And so, mister Kroger executive, don't send stupid emails.

Andy [00:05:25]:
Who's the arbiter of what's a stupid email or nothing.

Larry [00:05:29]:
If it can do something detrimental like this will have the potential to do. It's not going to block the merger. It's eventually going to be approved. They'll probably have to do some divestiture if they're going to have a large market share. For example, if Kroger and Albertsons are in markets where would have a huge, more than 50% of the market, after they merge, they'll probably have to create a shell company and divest those stores. So, the merger is going to happen. Why did you want to bring extra scrutiny on yourself by putting out an email that admits that you're raising prices above inflation? Don't do stupid things, man. You're paid good money to be smart.

Andy [00:06:06]:
Isn't it because it's the most efficient form of communication ever?

Larry [00:06:10]:
Well, I suppose it is, but the fallout is not so efficient.

Andy [00:06:16]:
Maybe it is efficient. All right, well, then move along. What is up with some Scalia clips?

Larry [00:06:24]:
Yes, we've had some people who misunderstand some of what is said on the podcast because we have new listeners and what we've played over the years is not really in their memory. We're going to play just a couple tonight and maybe sprinkle in a few going forward for new listeners and new supporters. But we have this one here about the constitution is dead. Justice Scalia was one of those who believe that the Constitution does not evolve, that the words mean exactly what they meant 240 years ago when the constitution was written. And listen carefully, because this is not Registry Matters saying this, this is a conservative icon expressing what he believes about the evolution of the Constitution.

Andy [00:07:17]:
Very well.

Speaker [00:07:26]:
"The constitution that I interpret and apply is not living, but dead." Close quote, explain that one.

Antonin Scalia
Much of the harm that has been done in recent years by activist constitutional interpretation is made possible by a theory which says that unlike an ordinary law, which doesn't change, it means what it meant when it was enacted and will always mean that. Unlike that, the constitution changes from decade to decade to comport with, and this is a phrase we use in our 8th amendment jurisprudence, we, the court does to comport with, quote, the evolving standards of decency that mark the progress of a

maturing society. In other words, we have a morphing constitution. And of course, it's up to the court to decide when it morphs and how it morphs. That's generally paraded as the quote living constitution. And unfortunately, that philosophy has made enormous headway, not only with lawyers and judges, but even with John Q. Public.

Andy [00:08:55]:
Well, first off, why do you put these things in here?

Larry [00:08:59]:
Well, I'm wanting the people to understand that we're about to have an election here in less than 60 days. And if you believe that it's important that the constitution be interpreted differently, then you're going to have to elect someone who will appoint judges and justices who believe that way. The appointments that were made in the last administration would be in alignment with Scalia's point of view. And if you believe that the Constitution does evolve with our standards of decency of a maturing society, then you probably would want to make a different choice. But if you heard the way he said that, there was just slithering sarcasm when he did the evolving standards of decency that mark maturing society, or whatever it was, he said, and I don't know that I can fault his logic. I only wish that people who proclaimed that philosophy, if they employed it consistently, because there's been plenty of activism from the court in recent years. It's just activism in areas different than what, where we would like to see that activism. But there are plenty, plenty of activism, activist decisions coming out of the Supreme Court right now. So. But yes, we have another clip here of activist versus originalist, part two.

Andy [00:10:31]:
Can I ask Chance a question real quick, sir?

Larry [00:10:34]:
Sure.

Andy [00:10:34]:
Yeah. I'm just. I know that you're from the super liberal, pointy-head state of California, but there has to be cases where you think a textual interpretation is the right way to go.

Chance [00:10:46]:
Well, you know, sometimes that's true. I do think that. But, you know, that's. That is part and parcel with the argument that the document's dynamic. I am opposed to seeing that document as just sitting in place and stale, like over 200 and some odd years old society. It isn't static or stale. It's dynamic. And in order to make that piece of paper live and apply to what's going on today, it has to move, too. And sometimes there are some very good precepts that need to be followed and precedents that need to be followed. And other times, because things have changed so dramatically, we need to move on. And that's the beauty of that document. So, uh, I do not think the constitution is dead.

Andy [00:11:44]:
But there are mechanisms in place to change it, either by law or by amendment.

Chance [00:11:50]:

Not going to happen. And the reason it's not going to happen is just take a look at where we're living now. I mean, you know, no one can get anything done even in the, even in the most simplistic terms. That is a major heavy lift. So that document has to be dynamic. And anybody who says that, you know, the originalists stay original is wrong. And as Larry just said, you know, when it's convenient for them to be active, they're activists. And if it's not, they're originalists. I say, you know what? Get, you know, the middle and perhaps the edge is to agree on something that's dynamic or apply a principle. But, you know, let's be consistent in what we do.

Andy [00:12:32]:

Gotcha. All right. Well, then here is the next clip.

Scalia [00:12:35]:

You would think there would be some consensus on what we think we're doing when we interpret the constitution. You know, I mean, these are wildly divergent views. Are we taking broad concepts such as equal protection and due process and asking, what should these concepts mean today? That's one view. Or on the other hand, are we saying, what did these concepts mean when they were adopted? Now, as for the difficulty of figuring that out, the historical problem, yes, there is. I'm not pretending that doing it by text and the original meaning of that text is perfect, that it's going to solve every problem, but it solves an awful lot of problems, especially the most controversial ones. It doesn't take a whole lot of history to figure out that nobody thought the Bill of Rights stopped a state from prohibiting abortion. Nobody thought that the Bill of rights prohibited a state from criminalizing sodomy. Nobody thought that the Bill of Rights prohibited states from prohibiting assisted suicide. So many of the most controversial questions, it's a piece of cake to decide it.

Larry [00:13:50]:

And that's where I wanted to comment about this. I left the death penalty off because of the. It was too far out in the video. This is the conservative philosophy about things, including the death penalty. They say we should look at what the words meant at that time and that what people were thinking at the time, they put the constitution together. And you just heard him say that no one believed that these laws, the constitution would have, would have imposed anything that would prevent states from prohibiting abortion, prohibiting same sex relationships and all these things. He said that. And that's what we will get depending on how you vote in 60 days, because there will inevitably be more openings on the Supreme Court. The nine we have serving now will not be serving indefinitely. If this is what you want, vote exactly this way. But this is what you're going to get. So that was the whole point with.

Chance [00:15:01]:

One caveat, and that is that when it's convenient and you want to lift somebody above the law. When you say nobody's above the law, but you want to lift somebody above the law, even though the constitution or the Bill of Rights doesn't say that, then you do that because it's a tribal call. This is the inconsistency of it all, and that's part of what you're going to get when you vote a certain way. So, you know, I agree with you Larry. If you want things done and you want to make sure that they're done with today in mind

and what's best for all of us, then that parchment's got to be dynamic.

Larry [00:15:41]:

Well, since words don't change, just out of curiosity, if you were living in 1974 and you said the word browser, what would the average person have thought in 1974 had they heard the word browser?

Chance [00:16:01]:

That would be referring to a peeping time, for Christ's sake?

Larry [00:16:04]:

Well, the reason why that came up, because I was thumbing through a yearbook from the 1970s, and I saw a furniture company that was advertising browsers needed looking for browsers. Now, the last furniture store closed about 30 years ago. Everybody does everything online. And I'm exaggerating, of course, but if words didn't change in their meaning, how come browser, the way it's used today, no one would ever think about someone browsing in a store. If you use the term browser day, what would come to your mind if you said browser today?

Andy [00:16:43]:

You obviously think of a computer web browser.

Chance [00:16:47]:

That's a good point.

Larry [00:16:49]:

But Justice Scalia says what you would do is you would go look at what browser meant in 1974, if that was when it was written. And you would afford that document, that law, that provision, the meaning that it had in 1974. That's what he says. That's what you would do in his judicial philosophy.

Chance [00:17:09]:

Yep.

Andy [00:17:09]:

But we have the ability to go back and change them, so can't we?

Larry [00:17:14]:

We could if. If we had the will. But amending the constitution was intended to be very difficult. That's why it's only been amended a small number of times.

Chance [00:17:23]:

Correct.

Larry [00:17:24]:

It's intended to be very difficult, and passing laws is much easier, and that's what's happening. States are passing laws protecting the right to choice for women. They're doing things as a result of the Supreme Court decision. But that's getting way off topic. The topic is that if this is the philosophy you like, vote this way. We don't tell you how to vote. I'm just giving you information because we're an education business here. This is what you're going to get. If you vote the same way when they say, I'm going to appoint textless judges, I'm going to appoint originalists, this is what you're going to get. And you shouldn't be shocked when we don't get the

kind of relief we're looking for on the litigation that we're undertaking, because no one would have ever thought that merely providing your name to law enforcement would have been cruel and unusual punishment, as that term was understood back in colonial times. No one would have ever imagined that putting your name on a list of some sort would be, would be remotely cruel or unusual punishment. So, you never get where you're trying to, trying to go.

Chance [00:18:31]:

And as Scalia says, there's nothing, there's nothing about that there in the bill of rights. So, you know, you're out of luck.

Larry [00:18:39]:

So. All right, well, enough of that on Scalia. I've probably run off about half of our audience now.

Andy [00:18:44]:

That's fine. All right, well, we can now move over to this listener question sent by a person named Richard? I was registered in New Mexico for about eight years. Then I moved back to California and was removed from the registry. I'm working with an attorney to have my felony dropped to a misdemeanor and then dismissed. I can't get a straight answer from anyone, but do you think New Mexico would make me register if I were to move back after my felony has dropped and dismissed? Any info is appreciated. And then thank you. And that was, like I said by Richard. Interesting question. And it's also interesting that it involves both of you.

Larry [00:19:26]:

It is interesting. I wonder what kind of quack attorney he had. But I think that was what he's referring to as a wobbler that we talked about a few episodes back where it can be a misdemeanor or felony. Right.

Chance [00:19:39]:

He had a damn good attorney. Looks like he cleaned them up in California. Wow.

Larry [00:19:44]:

So. But I can answer the question. The answer would be, if you had to register in New Mexico eight years ago, there would be one determinative factor. Did they make an equivalency determination? We don't have a substantially similar requirement. It has to be equivalent. Did they find your California conviction to be equivalent? If they did not do an equivalency determination, then you would have the option of coming, moving here, and thanks to our litigation and work that we've done here, we've got a protection in place for people who are not put on the public facing if they don't believe that their crime is equivalent, or if they believe it is equivalent, but it's one that doesn't put them on the interface of the Internet. So, you've got all sorts of protections in place here, but if you are equivalent, you will register here. And that's a two-prong analysis. They look at the offense first to see if this, if the statute language lines up with the out of state offense, if the elements are exactly the same, it's equivalent. But if the elements are not the same, then we have to look at the conduct. I don't think, regardless of how good your attorney was in California, that you're going to be able to erase what the conduct was. So, the conduct, as Scalia says, would be the determinant factor. It was the same conduct that happened. Therefore, if it

were something that was registerable, it would still be registerable today. You will not be able to erase the conduct facts. I don't think that then the removal process, we've got a California attorney here. Do you get to go back and get a factual redetermination of what the underlying facts were that predicated that the plea rested upon? And you could, can you change those facts in a removal process or any of these processes? I don't think so. But I'm asking the expert, without a factual change, you would have to register here. Can you change the facts, Chance?

Chance [00:21:53]:

Well, no, you really can't. But here's the caveat. The caveat is that it depends whether or not there's any stipulated facts to begin with. Some pleas don't have any. Sometimes a plea is done without that. I mean, it does happen. So, you know, you really have to look at what they're going to look at in assessing that. Let's just say the elements don't line up and you don't have any stipulated facts? That puts you into a different box. So, you've got to, you know, so that there's, there's a bit more, so it's a bit more intricate. But, you know, as to your question letting you know, you can't change the facts. The issue is, you know, what facts were exactly stipulated to or found as the foundation for the plea.

Larry [00:22:34]:

Well, in my decades of unauthorized practice of law, every felony plea that's accepted, there has to be a factual basis, and the judge has to address the defendant in open court and determine that if those facts are correct and that if they're doing the plea willingly and they go through all that stuff about drugs and stuff, are you telling me that judges in the great state of California are so lazy that they accept a plea without any factual basis to support the plea, whether it occurred in the jurisdiction or whether there were facts that would merit accepting a plea.

Chance [00:23:08]:

Well, most. Most of them have very good factual foundations for the plea, and they make sure that when the plea is given, they go through all this on the record and do that doesn't happen all the time. Sometimes there's mistakes made. Sometimes things are left out. Sometimes generalizations are made which. Where you can't really determine what facts here are being stipulated to. So, you really need a close analysis of what you're doing before you do it. And that's why California, and I see this from other states as well. The states where, you know, those who've been convicted in other states want to come to California, and they get into the whole, you know, analysis that you just described with the California DOJ, same thing happens. It's not something that's consistent or automatic or always there. You know, there could be glitches or flies in the ointment. And that's what I'm pointing out.

Larry [00:24:01]:

Well, once the California process is complete, if he wants to contact me for a nominal fee, I'll be happy to help him with what he's going to be facing. But I think I'll probably know it as well as anybody here, since I had a big hand in developing our process. So, I know what. How we do it here.

Chance [00:24:20]:

Good.

Larry [00:24:21]:
How do you.

Andy [00:24:22]:
How do you do that?

Larry [00:24:24]:
How do we do what?

Andy [00:24:25]:
How do you have a big hand in doing stuff?

Larry [00:24:28]:
Because I'm an activist here.

Andy [00:24:31]:
Let me frame that a different way. You were just a moment ago talking about there's an election in just. Did you say 60 days and just under.

Larry [00:24:38]:
Just under 60 days. Yes. So, I have served in the capacity of supporting an elected official here, but I've also been before that, I was decades in public policy formulation. It's not just in the last decade or so that I've worked for a state senator.

Andy [00:24:55]:
And so along with that, though. But people, I think they generally think and Chance chime in, people think that once they go vote, their involvement in government policy pick all the terms after that, that's the end of their civic duties.

Chance [00:25:17]:
They think that people believe. They believe that. Yeah, they do. It's a generalization, but, yeah, I think in general, people do think that.

Andy [00:25:29]:
There was a NARSOL call during the week that I helped produce. And there was one particular individual, and he was adamant that Pennsylvania is a terrible place to be on the registry. And he's wondering what anyone is going to do to fix it. And I'm just thinking to myself, first of all, check yourself. What are you doing? I mean, are you donating money to any of the advocacy organizations? Are you going down to the state capitol and testifying and doing those things like, what are you doing before you go call on everyone else to go help save you? But then I was like, holy moly. You think Pennsylvania is bad? You should go try, I don't know, Alabama, Mississippi and Florida.

Larry [00:26:08]:
Yep. Well, it's all relative to what you people think, that Vermont is bad and Vermont is really not very bad at all.

Andy [00:26:18]:
All right, move along to this brochure.

Larry [00:26:21]:
Let's do it. We have another question here.

Andy [00:26:23]:
Okay, well, and I'm sorry that if you can't see what's on the screen, I can't help you. It's very small letters. Would you describe this? Well, anyway, so I guess I'll just start with this. I ran, I ran into this brochure. And so since Mister Doom and gloom, actually, I'm reading this as Jay. Jay wrote and he thought of Andy, mister Doom and gloom, and would love to pick this apart. This is the only state that I know of with a registry for other than SO offenses. Oh, a registry for other than SO offenses. I was offered, I was offered a paralegal job in Kansas. So, like always, I researched the laws, and I found this a bit disturbing, as always. FYP. Cause they're even talking about some kind of like law enforcement person registry so that you don't have some crooked cop going to a different jurisdiction. There's domestic abuse. There are animal abuse ones.

Larry [00:27:16]:
Indeed, there's, there are a lot of states. Montana has the sexual offenders and violent offender's registry. It's not unique to Kansas.

Andy [00:27:24]:
Um, so Jay has requested that you pick apart the Kansas registration act stuff. So, do you have any problem with their requirements?

Larry [00:27:34]:
Many.

Andy [00:27:35]:
Would you please? So, we like put a counter up on the screen. One, two, three. Would you begin?

Larry [00:27:42]:
Okay. All offenders must register four times a year in person at the registering law enforcement agency in any county where they reside, maintain employment, or attend school. This means that Kansas has far exceeded the very rigorous requirements of the federal Adam Walsh act. Only tier three offenders are required by that federal Adam Walsh act to register four times a year. Yet this is, you know, the feds get the bad rap for all these bad things. And here's an example of your state did it, not the federal government. Next, they must report in the month of their birthday and every third and 6th and nine months thereafter. They must also be photographed, pay a registration fee of \$20.00, and complete the registration form with all the information.

Andy [00:28:33]:
Out of curiosity, with something like this, what happens if you live and work in two different counties? Are you required to register in both?

Larry [00:28:39]:
Based on this brochure, it appears that you do.

Andy [00:28:42]:
Oh my God. So not only do you have to register four times a year, you have to register eight times a year?

Larry [00:28:47]:
Potentially that's what it appears to be. But I'm not gonna, I'm not gonna say for sure because I don't, I don't live there, but it sure appears that way.

Andy [00:28:54]:
God. All right, well, so besides that, what else annoys you?

Larry [00:28:59]:
Well, the offenders must register in person at the registering law enforcement agency within three days of changes to the registration information. This includes changes of residence, employment and school attendance. This also includes such information as vehicles owned or operated, tattoos and license information. Now folks, we live in the digital era. Allow them to update electronically. This would be far more efficient.

Andy [00:29:29]:
I mean, if you can go to rocket mortgage or whatever and press a handful of buttons and submit enough paperwork to get a mortgage and sign your life away for 30 years, I would think that you could upload a photo and do these different changes on a web form and just press the button and go back to sleep on your Sunday morning and watch your cartoons or whatever, don't you think?

Larry [00:29:49]:
Indeed.

Andy [00:29:52]:
So could this in person requirement be designed to make it even more difficult?

Larry [00:29:59]:
Yes, there could be a sinister motivation behind this. Indeed.

Andy [00:30:03]:
So, you have extreme consternation on how states treat homeless PFRs, but what does Kansas do?

Larry [00:30:13]:
According to their brochure, if an offender is transient, they're required to report in person with the registering law enforcement agency every 30 days or I emphasize here more often at the discretion of the registering law enforcement agency. They're also required to provide a list of places where they may be contacted and where they intend to sleep, and frequent during the period of time till the next registration date. This, more frequent than every 30 days at the discretion of law enforcement is probably unconstitutional because it's void for vagueness. One of the primary considerations is the language has to be sufficiently clear for a person of ordinary intelligence to be able to conform their behavior to the requirements of law. So, this language says every 30 days. That's pretty clear. We can 30 days as Scalia would tell you, hasn't changed. 30 days is 30 days, but, or more often at the discretion of the registering law enforcement agency is not clear. Does that mean every single day during the 30, does, what does that mean? And the other component of that constitutional test is whether it would lend a hand to law enforcement for arbitrary and capricious enforcement. I can visualize that this might very well if they didn't like a particular homeless offender, and they wanted to

run them to the next county and get them out of their county. They say, boy, you gonna have to come on in here even though the law says every 30 days, we need you in here every week. So yes, I think this is probably unconstitutional.

Andy [00:31:45]:
I just want to clarify that the reason why I laugh hysterically at these things because it's just so awful and all I could, I guess the other thing I could do is pound my fist and cuss, but it's just so over the top ridiculous. And that's why I end up laughing.

Larry [00:31:59]:
Yep.

Andy [00:32:00]:
Well, what do you, what would you like to see challenged in all of this?

Larry [00:32:05]:
Oh, I'd like to see that provision challenge for sure.

Andy [00:32:07]:
And so how does, how does Kansas handle out of state convictions?

Larry [00:32:14]:
Well, this is even funnier. If an offender is convicted or adjudicated and required to register another state, Kansas will honor that registration requirement. The duration of registration will be the length of time the other state requires or what would be required under Kansas offender registration for a comparable offense, whichever is longer. Whichever is longer is quite funny to me. So, they don't really believe in reciprocal treatment, although that's what they're trying to present here. They're saying that we will honor the registration requirement, meaning we're reciprocating. They believe in discouraging anyone from moving to Kansas. They don't believe in the equal protection clause. Those people who pound that podium and say what conservative constitutionalists they are that run Kansas, which is a pretty red state, they really don't believe in any of that stuff because we've got a serious equal protection issue here. If you move to Kansas because you were convicted of making obscene phone calls to a minor, Kansas shouldn't register you because that is not a Kansas registerable offense. So, they're giving you unequal treatment. If you came from Georgia and you had a car that you had to spend dollar 200 a year on an admission inspection, and they didn't have that inspection regime in Kansas, they went and say, well, you came on in here, son, without your car, we don't have to go ahead and get you to run the same kind of stuff here that you do in Georgia. You got to do that. That's crazy. So yes, they missed. Kansas is all over the top in many ways with this. So, keep going.

Andy [00:33:44]:
All right, well, one of the bigger issues that people would have, I think, is marking licenses, driver's licenses. So, does Kansas do that?

Larry [00:33:55]:
Yes, they do. PFRs are required to renew their Kansas driver's license or state identification identification card annually. Remember, equal protection though, you got to do it annually

where they, I'm sure they have at least a four or maybe eight-year license. The driver's license identification card shall indicate that they're a registered offender. In addition, if the PFR maintained their, maintains their primary residence in Kansas, he or she must surrender all other driver's licenses and identification cards from other states, territories, and the District of Columbia.

Andy [00:34:28]:

Of course, if they're putting it on your license, then what about your email and Internet restrictions? Do they exist?

Larry [00:34:35]:

Another potential constitutional challenge. Registered offenders must report to the registered law enforcement agency any and all email addresses, online identities, membership in any and all personal webpages or social networks and Internet screen names. So yes, I think this Kansas regime has got a lot of potential for challenge.

Andy [00:34:58]:

Does an expungement remove the obligation to register?

Larry [00:35:04]:

No, it does not. According to the KORA brochure, an expungement for the crime that requires registration does not terminate the registration obligation.

Andy [00:35:18]:

That's insanity. Um, I, I, then I just have to ask. With all of Mister doom and gloom and the unshidification of the registry here, uh, in these rules, is there anything positive in Kansas?

Larry [00:35:30]:

Uh, not much, other than there are no residency restrictions or employment prohibitions in their law.

Andy [00:35:35]:

I suppose if you're fearful of water, there's not much chance of a flood if you're in Kansas. Well, no, there are probably rivers that flood in Kansas. Never mind, I was just thinking of oceans.

Larry [00:35:45]:

So probably not much hurricane damage in Kansas.

Andy [00:35:49]:

But they do have tornadoes.

Larry [00:35:52]:

Indeed, they do.

Andy [00:35:53]:

Wasn't that where wizard of Joliet? I can't remember the name with. That's definitely where Toto was from. Chance, did you happen to see the question I posted there to give you some heads up?

Chance [00:36:05]:

Yeah, I kind of did, but I'm not exactly sure what that all means, but explain it to me.

Andy [00:36:11]:

Well, that's what I'm asking if you can explain it, because you're the lawyer.

Larry [00:36:14]:

I just did. Did you not like mine?

Chance [00:36:16]:

No. I mean, I'm looking at this. And I'm saying explain voice for voice.

Andy [00:36:22]:

I'm sorry, I spelled it wrong there, there you go.

Chance [00:36:25]:

Yeah, Andy did explain that. But, you know, I can add to that rather than re explain what Andy said. Look, you know, it goes back to what Larry said originally and that is that, you know, in, in a state where, you know, there's not much about this in the Bill of rights, you know, due process equals what, you know, your, your norms are going to be socially. And if that social dynamic doesn't, doesn't move or evolve, you know, then you know what you're going to get these kinds of restrictions. So, you know, caveat emptor. You know, you've got, you've got a vote, and you've got a way of making a change and you can get involved and, you know, you can do something about this.

Andy [00:37:07]:

Gotcha. Well, anything else about Totoland before we move on?

Larry [00:37:12]:

No. Let's get to Illinois. This is the main event.

Andy [00:37:15]:

Alright, well, the main event. All right.

Speaker A [00:37:18]:

Registry Matters Promo Deleted.

Andy [00:38:02]:

You have this article that you wrote for the NARSOL newsletter. The title is Hope for Civil Commitment Reform in Illinois. What is this about?

Larry [00:38:17]:

It's a recent decision from the Illinois Appellate court, District One. The case is In Re Commitment of Johnny Butler, number 1-23-0567 the case offers some hope for those confined in Rushville. As a point of reference, the appellate court is the intermediate court of appeals for the state of Illinois, directly under the Illinois Supreme Court.

Andy [00:38:44]:

Well, let me set up the case, if you don't mind. Shortly before Butler's scheduled release from prison in 2008, the state filed a petition for commitment under the Sexually Violent Persons Commitment act. The petition stated that clinical psychologist doctor Ray Quackenbush evaluated Butler in May 2008 and diagnosed him with a paraphilia not otherwise specified, non-consenting persons, and personality disorder not otherwise specified with antisocial features. The state alleged that Butler was

dangerous to others as he suffered from mental disorders that made it substantial, substantially probable that he would engage in acts of sexual violence. The jury found Butler to be sexually violent. Excuse me. Found Butler to be a sexually violent person, and the circuit court entered a judgment on the verdict and committed Butler. Now, did I do it at least a remotely decent job there.

Larry [00:39:37]:

Yes, you did. Johnny Butler is now 70 years old and was committed to a secure treatment facility pursuant to the act from 2008 until he finally obtained conditional release in 2023.

Andy [00:39:50]:

All right, so finally, at age 70, he was finally released. So that's good, then. What's wrong?

Larry [00:39:58]:

That's where it becomes funny.

Andy [00:40:00]:

And I. Yeah, there's not going to be anything funny about this, but okay, in your terms of funny, tell us what's funny.

Larry [00:40:07]:

Butler was granted conditional release under a plan approved by the circuit court of Cook County. The release plan included 68 enumerated conditions, including no Internet access. Butler's failure to abide by the conditions could and likely would be grounds for revocation of his conditional release.

Andy [00:40:24]:

Now, for context, I had 23 special conditions of probation, and most of them were pretty ridiculous, but this guy's got, like, three ish times more than that. 68. So, you said 68 conditions?

Larry [00:40:37]:

I did, and that's where it's beginning to be funny. Despite the fact he had been in a secure treatment facility for many years, the proposed plan provided that Butler will be referred to for specialized sex offender treatment and an initial assessment for alcohol and substance abuse treatment. Now, please admit that's funny. You've been in a secure facility that only houses sexual offenders, and they're referring you after 15 or 16 years for specialized sex offender treatment? Can you please admit that that's funny?

Andy [00:41:10]:

What was he getting during the decade and a half that he was in the secure facility?

Larry [00:41:15]:

That's what I'm trying to figure out. So that's why it's funny. But among other things, the Department of Human Services and Liberty Healthcare established a case management team to manage and contain Butler during his conditional release, and he will be subject to global positioning system tracking and random home visits. Butler was required to agree to abide by all of the conditions, and failure to do so would result in revocation of his conditional release.

Andy [00:41:42]:

And you mentioned no Internet. No interwebs.

Larry [00:41:46]:

Correct. No Internet access. But Butler filed objections to the proposed conditional release plan. He argued that the specified conditions: A, operated as unconstitutional, prior restraint or free speech, and B, were unconstitutionally over broad or vague, and C, could punish him for inadvertent innocuous conduct, and D, did not comply with the mandatory versions of the conditions set forth in the act, and E, were unreasonable as they imposed additional restrictions beyond the Act's requirements without demonstrating the need for such restrictions.

Andy [00:42:25]:

These appeals are generally futile. What's the legal standard for this? What do you call that standard? What's the standard of review?

Larry [00:42:33]:

Yes, that is generally true. The administrative imposition is usually reviewed with a very low, I mean, a very high tolerance, very low Chance of overturning it. But the appellate court noted, when considering an SVP's challenge to the imposition of certain conditions in his conditional release plan, the Illinois appellate court in the case of *In Re Commitment of Holt*, and that was a 2022 case from the same court, noted that noted the varying standards of review at issue. For example, a circuit court's decision regarding conditional release should generally be reviewed for abuse of discretion, whereas a de novo standard review applies to determination of whether individual constitutional rights have been violated. And de novo means a brand-new review without any deference to the previous decision. But the abuse of discretion means that they're looking at it with a high level of deference, and unless there's a demonstration that the judge abused the discretion, it'll stand.

Andy [00:43:34]:

Now, you know, as soon as you start saying the whatever page number and paragraph, my eyes start rolling in the back of my head, and then I know that legal mumbo jumbo is coming up, so I just kind of tune out. So, what constitutes a reasonable condition?

Larry [00:43:47]:

Well, that would be dictated by Holt in that decision that was in that mumbo jumbo. The Holt court held to be reasonable, a condition must not be overly broad when viewed in the light of desired goal or the means to that end.

Andy [00:44:02]:

And you told me in show prep that Butler had won, and you mentioned something about laziness contributed to the outcome. Is this laziness on his part, the attorney's part, judge's part?

Larry [00:44:13]:

No, it's on the state's part. The case appears to have been reversed due to sloppiness or possibly laziness. The appellate court stated, quote, "our concern, however, is that the conditional release plan prepared for respondent Butler in this case appears to be adopted almost verbatim from the conditional release plan of another SVP. The circuit court case number of the other SVP

was typewritten and then crossed out by hand on the initial page of the respondent's conditional discharge plan, meaning Butler's plan. Respondent Butler's plan also included a notation on each page that the plan was revised on 722, even though the circuit court herein did not order preparation of conditional release plan until August, which is the 8th month of 2022." And that's on page eight to nine of the opinion. They simply inserted the conditional release plan of another person rather than individually tailoring the conditions to Mister Butler. Now, please, I want you to. Can you admit that that's funny?

Andy [00:45:13]:

Not funny, Andy. You know, I should go back to the live recording at the conference and capture where they say, not funny, Andy, and have that on a speed button.

Larry [00:45:23]:

It's funny to anyone that has a sense of humor. But anyway, the appellate court stated, based on our review of the record in the instant case, we are uncertain whether the plan submitted by Liberty Healthcare and DHS and approved by the circuit court, was properly designed for the control, care and treatment of respondent butler in the least restrictive manner, consistent with the requirements, and in accordance with the commitment order. And that's on page nine.

Andy [00:45:50]:

I see in the court's conclusion where they stated the act requires DHS to arrange for respondents' control, care and treatment in the least restrictive manner consistent with his requirements and the commitment order. What happens next?

Larry [00:46:06]:

Well, he gets to go back to the circuit court, and they must reexamine the case. And the appellate court stated, to the extent that it may be questionable whether respondent's plan complied with express mandate of Holt and otherwise provided for treatment in the least restrictive manner consistent with the requirements and the commitment order, we are compelled to remand this matter to the circuit court for additional proceedings. Judge, circuit Court, do your job. Individually tailor a plan to Mister Holt. Don't accept a cut and paste job that's got scratch marks through it. They pay you good money and do your job Judge.

Andy [00:46:48]:

And ultimately, this is great news for those in Rushville.

Larry [00:46:53]:

Yes, but you missed a paragraph there.

Andy [00:46:55]:

Oh, that's all? Oh, I did. I jumped down too far. So, we've not discussed the Internet prohibition. What did the appellate court have to say about that?

Larry [00:47:04]:

Well, they stated any provisions of the plan regarding respondent's Internet access must comply with Holt. As the Holt court noted, respondent's conditional team can monitor and limit his Internet usage in many ways while running afoul of his rights. Furthermore, as discussed above, the circuit court may impose

conditions in addition to those explicitly enumerated in section 40 of the act. The conditions should be drafted such that the respondent may understand exactly what conduct the conditional release plan may prohibit, restrict, or require, and should be narrowly tailored to that desired goal. It's not that hard, folks.

Andy [00:47:46]:

And now it's great news for those in Rushville.

Larry [00:47:49]:

It's good news. I think I'd tone it down a little bit. It means that if you are in the posture of possibly getting conditional release, they will not be able to cut and paste 68 conditions. They will have to abide by Holt. I don't think that the, the appellate division is going to want to see another case like this. Chance, you could probably expand on that. But they've, they've decided Holt now they've remanded a case based on Holt. I don't think they're going to be amused if another case comes with a cut and paste job. What do you think, Chance?

Chance [00:48:23]:

No, no, I don't think they're going to be amused about that. The jack's already out of the box here.

Larry [00:48:29]:

So, so, yes, they're going to have to do their work. So, it means that these people are going to have a Chance to have an individualized, individually tailored release plan constructed for them.

Andy [00:48:41]:

Well, I guess we can now head over to the infamous California corner. Are you ready, chance, for some California cornering? All right, well, today we're going to, today we're going to discuss an important topic, the steps to take when selecting a lawyer for your criminal case. Now let's dive right in. Chance, what's the first step someone should take when researching and evaluating attorneys?

Chance [00:49:05]:

Yeah. Well, this section is how to avoid 68 freaking conditions. Let's talk about the first step. Okay. First step is to evaluate their experience. The more experience a lawyer has in criminal law, for instance, the more likely they are to succeed in your case. So experienced lawyers have seen it all and know how to handle even the biggest obstacles, from the pre-arraignment investigative phase to post conviction cleanup.

Larry [00:49:30]:

Well, that makes sense but how can someone properly assess an attorney's level of experience? They don't have that tattooed on their forehead.

Chance [00:49:37]:

No, they don't. That's a good question. So, you, as a good consumer, have to ask the following questions. For instance, is criminal law and this is what you ask them, you know, because you're being a good consumer and you're, you're interviewing this attorney. They are. Chance: You should ask the following questions: Is criminal law one of the main practice areas they focus on as a lawyer? How many years has the attorney been handling these types of cases? Does the attorney have extensive

trial experience. When I ask, does the attorney have extensive trial experience, especially if you have issues that may be or may end up going to trial, you want to make sure that they know how to, how to pull the trigger, because if they don't have trial experience and you're headed toward a trial, then you'll get short shirtd and often the worst deal in the whole world. And then you'll be calling me saying, my attorney screwed me. So, you don't want to do that. You want to ask that question. Also. You might want to ask, are they well recognized and well respected in the criminal law community? Now, not that that's a necessary thing, but it's always good to know. And you can do this by scanning the Internet, whether or not they've made some headway and have shown some, some leadership in some way and have, and have maybe carved out some things in the law that are seminal. I mean, if you're looking for someone who's going to do something for you and they have that kind of recognition, that is really good. And also, have they ever been disciplined by the state bar? If so, for what reason? I mean, you know, there's all kinds of discipline. But look, if they've been disciplined for fraud or they've been disciplined for case mismanagement or they've been disciplined for, you know, commingling funds and doing those types of things, I think you want to avoid them like the plague.

Andy [00:51:44]:
Specifically on that last one, how would you do that? Is there like the lawyer registry, so to speak?

Chance [00:51:52]:
That's a good question, Andy, and the answer is, of course, we're in the California corner, and the California state bar provides all that information upfront and it's easy to access it. So that's the answer here in this state. And I'm sure other states have their ways, too, but that's a big assumption. California puts it right out in front.

Andy [00:52:13]:
Well, okay, so with all those great questions that we just had, what's the next step in the lawyer selection process?

Chance [00:52:19]:
Okay. The next step is to ensure that they have a strong track record for success. Experience alone isn't enough. You need to know if they've consistently met their client's objectives. So, review their evaluations posted online, if they have any, and ask yourself, have they consistently met their client's objectives? Are their former clients satisfied with the results? And this is perhaps the most important thing because client satisfaction is, of course, a direct reflection of what the client wanted in the first place. And thirdly, would their former clients recommend them to others. Those are really important questions you have to ask yourself after looking at all the information you can glean on the Internet and anywhere else you can find it.

Larry [00:53:09]:
Well, I like where you're headed with that. It is certainly crucial and important to know that attorney has history of success. We talked a little bit about newbies, but what should someone look for in terms of how an attorney engages with them? Suppose it's a relatively new attorney, and so what would you look for in terms of how that attorney is engaging with you when you're trying to make that decision?

Chance [00:53:33]:
This is probably one of the most important questions you can ask, and I think this is what I think. But, you know, everybody has their own way of assessing things, but you want to pay attention to how they engage you. Trust your own judgment. The attorney-client relationship is so important, so make sure you like the way you're being communicated with and treated by that attorney. Consider asking these questions of yourself. Are they ready and willing to answer any questions you have. Are they friendly and professional? Are they strong communicators? Do they seem genuinely concerned about your well-being?

Andy [00:54:13]:
Communication is key in any relationship, especially with your attorney. What about understanding their payment model?

Chance [00:54:20]:
That's a good question, too. And it's an essential question because, I mean, that's where the rubber meets the road. It's essential to understand their payment model, which means read the fine print carefully to ensure there are no surprises later. Ask questions like, do they offer a free initial consultation? Do they work on a flat fee basis? What costs, if any, are not covered by that flat fee?

Larry [00:54:48]:
Well, and that's good advice as well, because in this complicated era we're living in with forensics and expertise needed in so many cases. So, what additional resources should someone consider when selecting an attorney? We're not in 1967 now. We're living in a totally different world. So, what else should they consider about the law firm or the attorney's resources.

Chance [00:55:11]:
When you're considering what additional resources they offer. Think about it this way. Some criminal law firms provide a higher level of assistance with various elements of the case, creating a smoother experience overall. So, ask, do they have professional, do they have a professional investigator they use to help you prepare a defense early on? This is really important in the investigative phase, pre-arraignment, and they help you find a psychological evaluator who is well respected in local legal culture. What do I mean by that? I mean that when you take that evaluation before a judge, the judge doesn't just think it's someone that, you know, you hired to write this thing, and you told them what to write. It's someone who's well respected for their opinion and is able then to be persuasive when you're trying to work out some kind of disposition. Ask this, can they assist with referrals for additional services related to your case to achieve postconviction relief? That is vision, and that is the type of thing you need to ask upfront because you don't want to be stuck with something that's going to get you nowhere.

Larry [00:56:15]:
Well, I've got, I've got another question here. Is it better to have a lawyer that's experienced with your type of case or a lawyer who's more familiar with a specific court you'll be heard in? I have my own opinion, but this is your show here. So, what do you think?

Chance [00:56:30]:

Well, I think that it's kind of a hybrid of both. I think, one, it's a necessity to have a lawyer who's experienced in your type of case, because if you don't, the outcome is going to go south and you're going to call me and say, my attorney screwed me. What can you do to help me out? The other thing is that it's nice for an attorney to be familiar with the specific court that the case is going to be heard in. Every court in every different place has a different legal culture. Those legal cultures exist in a way that outside lawyers coming into that culture don't understand. But there are some lawyers who understand how to plug into those cultures and get that information through association so that they can step into that court and be familiar with it. So, you want to get someone who's so experienced, one, they know, they know and they have handled your type of case. And two, they know how to plug into that legal culture no matter what court it's in and get the best result possible for you.

Andy [00:57:36]:

To sharpen that question a little bit because this came off of discord, is that the person is trying to do a petition to remove for removal from the registry. I would think that you would want as local to where it all went down as possible. You don't want somebody that in your case like lives, I don't know, what, 700 miles north in the north part of the north part of the state?

Chance [00:57:55]:

Well, it depends who that is. I mean, there are some people who live 700 miles north that know exactly what to do in your particular case for your particular removal, and it's worthwhile hiring them. [Andy: probably more expensive.] Not necessarily. And here's, here's the reason why, if we're talking about California, we're talking about the possibility of a remote hearing. And the most important thing in a removal process is all the pre-hearing stuff you do in order to get to the objective outcome before you have to have a hearing so that you don't have one. Think about it.

Andy [00:58:31]:

I'm with you. I'm with you on that. Is there anything else before we close this out?

Larry [00:58:37]:

Well, I would just like to expand on that. I think it's in my opinion, although Chance, you said it very well. It depends additionally. There are cases where you do not want to bring in an outsider because that community is so close minded and there's an inherent bias, and you would railroad your client. And you've got to be mature enough to analyze that. If I come in here in this rural community as somebody who doesn't talk the way, address the way these people do, that can be a problem. And on the other hand, if on a removal petition, the way the process works in most of the jurisdictions except California is somewhat unique. You're kind of in a buddy system to some, at some level. An attorney who's well connected to that local culture and how things are done and knows everybody might have a slight advantage, assuming you have good facts. If you have crappy facts, it's not going to matter. But it's one of those things where you have to evaluate whether an insider or an outsider would be better. And so there'd be instances where you could go either way, because it

would be dependent on the facts of the case, whether an insider or an outsider would be better.

Chance [00:59:50]:

And, Larry on all fours, you are absolutely correct. That is a correct assessment.

Larry [00:59:58]:

All right.

Andy [00:59:59]:

As always, Chance, thank you for sharing these super valuable insights. And it's so important how to select the right lawyer. And it's a critical step in ensuring the best possible outcome for your case.

Chance [01:00:10]:

You are absolutely welcome. Well said.

Andy [01:00:14]:

Andy, you have like 400 articles here.

Larry [01:00:19]:

We're doing none of them tonight.

Andy [01:00:21]:

I didn't think so, and I did not have time. I got held up at dinner in a conversation with some out-of-town guests. And I'm putting together the new patrons because we had three, I think. Yes, we have a John. Oh, boy. Where was the other one? I think I'm trying to remember. I'm trying to remember. I'm trying to remember. And I'm sorry I don't have your names super handy. But you've been recognized, and we appreciate you. Is that good enough? Andy?

Larry [01:00:56]:

We do indeed. And we need more of them because FYP is trying to grow, we're trying to serve more people. And of course, it's more inspiring when we have more income, but it's also it's inspiring to know that our reach is growing.

Andy [01:01:14]:

What could we do if we had more money?

Larry [01:01:18]:

We could party.

Chance [01:01:20]:

Yeah. Yeah, right.

Andy [01:01:24]:

So, there was a Michael, a JT, and I guess that's it. The other one goes back far enough. So, it was just two, I suppose. I think someone changed their, their contribution. Yeah, that must be what it was.

Chance [01:01:36]:

All right.

Larry [01:01:36]:

Someone did.

Andy [01:01:37]:
Yes. Okay. And so that's all we got, right? Are we done?

Larry [01:01:41]:
We're done.

Andy [01:01:43]:
I'm a little discombobulated because, like, I had to get set up super fast and it's just been kind of a whirlwind of a show and clips didn't go right. Anywho, hey, we're back. Thanks, guys. I appreciate you coming out and all the people in chat. We had a whole bunch of people in chat. Head over to registrymatters.co for the show notes. And then also, I never say this, but go over to FYP education for the transcript. And I post, I've been trying to but it's hard to do. I post blog posts and some other things. And then there are extra YouTube clips that come out every now and then. You can leave a voicemail for us at 747 227-4477. Send an email to cranky Larry. Just kidding. It's registrymatterscastmail.com. And then you again, I said it before, support us on [patreon@patreon.com/registrymatters](https://patreon.com/registrymatters) for just a buck a month. And you can listen to us live. And I will guarantee you that I will get you into ask Chance and Larry questions when we record live. So, without anything else, gentlemen, is there anything else that I can

offer you and we could talk about for 10 seconds? Andy, 10 seconds.

Larry [01:02:51]:
I'm ready to say good night to the massive studio audience.

Andy [01:02:55]:
All right, well, your time's up. Chance, you can take ten minutes if you want.

Chance [01:02:59]:
Concur. Thank you so much for joining us. That's all I want to say.

Andy [01:03:05]:
Great. Thanks, guys, very much. I appreciate it. And again, thank you, everyone, for listening live, and we will see you in a week. Have a great night, everybody, and we'll talk to you soon.

Announcer [1:04:05]:
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