

0:00

Hey Larry, what's up?

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Hey Andy. I'm just having a blast this Saturday afternoon. Yes,

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we we have been having a very interesting conversation leading up to now. Should we? Should we recap it for anybody?

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I'm not sure this is good for family program.

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Well, we've got we've got we've got people all ages listening, you know, probably not all ages, but many of them.

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I don't I don't really consider this from from 18 to 70 or maybe even older than 70 maybe 80. Yeah. laughs It's not eight to 80 now said 18th at

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I know it was just all ages we probably don't have the eight year olds we probably don't probably don't have too many teenagers either. But and we probably don't want the eight year olds

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I would think not please consider

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making us part of your podcast diet you can find us at registry matters on your smart speaker or podcast app of choice like Google podcasts for Apple podcast also if you like what you hear please write a review if you don't forget everything I just said and before we get into anything thank you to our new Patreon supporters rate and Michael A. Thank you for your support. Super Duper awesome. And a super special thank you to Michael in Florida, your pledges. Fantastic. Thank you very much. Your support help keeps the show going. YouTube can support the podcast and Patreon dot com slash registry matters. Well, to kick things off, we got a couple of voicemail messages. And the first one is from William

1:34

Yes, my name is William and I am a registered citizen in the state of Tennessee. And I wanted to I wanted to know if you guys could address some of the issues that deal with offenders like myself, who have completed their prison sentences, but our steel own lifetime supervision and even though some of us are allowed to have the internet we have to have a monitoring and filtering software package in place. And even after packing him versus North Carolina, those of us who are on state supervision are told that that ruling does not apply to us. But we are still banished from social media without regard to whether or not we ever use social media to commit our offenses. And also I have I want to talk about the required polygraphs that lifetime supervision registrants in Tennessee are subjected to have a great day so really

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good question and he brings up some interesting points What do you think

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that was that was a lot I was trying to take notes because it was so such a such a question the

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power polygraph we can we can. I think I'd like to do the supervision for life. I have heard from a number of people in Tennessee that that are subject to this supervision for life regime. And Tennessee is not the only state New Jersey there are others who I'm aware of that that they don't call it

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not actual parole. They call it community supervision and I think grow new jersey calls it CSL community supervision for life.

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But it's essentially the same thing they color William described. They pretty much have the same restrictions. If you were on your regular standard parole supervision.

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I've talked to one attorney in Tennessee, and he was not terribly optimistic that that challenging that would gain a lot of traction. But we don't give up with one attorney. We continue to explore what can be done in view of the shifting judicial landscape.

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But punishment is something that the legislature cannot fix. And the only constitutional prohibition as if it is cruel, unusual,

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and I don't know if we have misheard me before but when I talk about cool, unusual punishment, cruel and unusual punishment is German interpreted is if you take the conservative view, that's the constitutional framers, we take it literally as, as the words were understood at the time, and cruel and unusual punishment was something really horrendous, the death penalty even it's not considered cool, unusual in colonial times, it was quite widely accepted, sure being in the stockade and having thrown at you in the in the city square. That probably wasn't considered cruel and unusual

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either.

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It might have been might have been. But it took a lot to rise to the level of cruel, unusual had to be something that's very torturous, and any new man and the liberal progressive view is that we have evolving standards of decency and a society evolves to standards evolve, and what we would have accepted, we will no longer accept, but you have a tug of war right now between the conservatives and the liberals. So they're more and more conservatives being see it on the Supreme Court and on the on the appellate level courts and even on the trial level course to federal level, because the

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last two years of the Obama presidency, the Republicans control the Senate, and therefore they did not confirm very many federal judges. I don't say they didn't confirm anything, because I don't know if I could validate that, but they come from very few, if any, and for the appellate courts, Albert stopped confirming judges, which means that the Trump administration has got more than 100 benches to feel 100 judicial vacancies and they've been filling them at breaking it base because they they're concerned that they might lose control the Senate in 2018, which would mean

that they would no longer be able to railroad their conference confirmation through bottom line is in the conservative judicial climate,

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it's going to be tough to get to where he wants to go through litigation. If the legislature and good citizens of Tennessee have decided they want to supervise people for life and they're willing to fund that a judicial remedy may be beyond our reach. And that's not me saying I agree with it. But it's a policy decision on the courts are don't exist to the side public policy. It depends on how much the people Tennessee are willing to spend to supervise what size population for the remainder of their life and when they decide they've had enough just like what prison Well, how many people are incarcerating sub states are deciding that that they've reached a tipping point where they need to find alternatives, but I'm just not overly optimistic that the courts are going to be able to resolve that and that's what our attorney has told us in Tennessee and to loop back around to the Senate where Mitch McConnell has said that it is like his objective to fill as many of those seats as he can in the time that they have I mean to get all of them filled with the most conservative justices that they can find

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that is correct and that is his prerogative try to do that now he's breaking all courts sorts of traditions in terms of the slip the judges appointed from a particular state to serve if any if either senator objected retribution how's that that that that person didn't go forward but McDonald's decided doesn't tradition to jettison where I mean, we're in some peculiar times in terms of long term presidents have been broken the the Merrick Garland nomination was stalled for almost a complete year

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by mitch mcconnell saying that that was his prerogative to do that. And he was rewarded by continue controlling the senate so apparent with the people have no objection to that being done. But it's unprecedented to have a president not even have this nominee considered, they could have declined to confirm the person but they didn't even bother. I will give George Carlin into consideration in terms of the social media there. I'm more optimistic for William that something can be done about that. But you got to read the Supreme Court decision and packing him with some caution. They didn't say that that everybody has on an unlimited right to use social media, they said they were particularly appalled by people who were having these restrictions who would pay their debt in full, right. So I have a guest to Tennessee Department of Corrections has taken that Dickens as well that the US Supreme Court clearly carved out an exception for us to do what we want. I don't read it that way. I read it, the Supreme Court was appalled by North Carolina trying to apply to everybody. But they express great trepidation about a blanket ban trip for everyone, which is apparently what Tennessee and other states are doing. And if it is, in fact, a blanket bound without any regard to the individual determination and a bit of an individual determination or analysis, I think there might be something that could be done there, because that would blanket ban has no merit to say that we just pronounced the fact that you were required to have a registry or a registration obligation, therefore, you're you're banned from social media while you under supervision, I think that would be problematic from from from from the courts, though, if they, if they argued, packing him took that to federal court, I think there's a good chance that they will gain some traction on that issue. And as with nearly all of these things, though, you have to have some sort of, you have to have someone with skin in the game, someone that says, hey, I'm going to do this thing, and then get in trouble for it before it can. Or you have to find someone that is being harmed, maybe like a business owner that's trying to use social media for their business, and they can, so they are able to bring litigation because they're being harmed by that you would, you would need some more standing. And yeah, and I would argue that anybody who's under supervision, but have the requisite standing, but then you've got to convince a law firm that that this case is powerful enough, very few people have the resources to fund these challenges themselves. The advocacy groups are very, very sparsely funded, they don't have gobs of money

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which means that you're looking to do this on a on a recovery to and as a rebellion party and a federal civil rights action an attorney that's got a sense a solo practitioner and then you're really up to up the wall because the fighting fighting the government they can wear you down with, with lots of lots of papers, we call it taken paper you to death. Yeah, and a solo practitioner, when he comes home, he's got his family saying, Our Why are you spending all this time on this thing? Well, it's a matter of principle, but we can't pay our mortgage Well, it's a matter of principle, by golly, I'm going to do it. And and it's a you have to get into a larger firm if you're going to wear more than one attorney where they can possibly have hope of carrying this to its conclusion. Because the state will fight tooth and nail

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to preserve what they're doing and they have almost limitless resources. And that creates a problem for us because William probably has even spoken to an attorney all the chaos and the attorney have been lukewarm because they're going to be up against a state bureaucracy that's well funded the Attorney General Tennessee and they're not anxious to take all that and not be able to get paid for maybe years if at all, but you do feel optimistic that that is and then they're on the heels of that there's the West Virginia decision that was roughly similar not roughly similar but at least in the same ballpark about restricting internet access that they can't just do it and but I guess his questions more about

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monitored about the usage that he's doing it

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well he said that his message that that that is explicitly said packing him doesn't apply and that that I can still forbid him from it. That's the way I understood okay and packing him God supplies the US Supreme Court their decisions or or the law of the land right but packing him was addressing a person who had paid their debt to society, right. They're concerned about the about the blanket prohibition that that there's a good chance that the lower courts would interpret the same way that was that Virginia, West Virginia, I think it was West Virginia that was West Virginia with the second one,

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I think there's a good chance for for William, which means that the people in Tennessee, though are registered citizens of Tennessee, it would behoove them to come together and try to muster some financial resources that may be contact artful and safe. We can, we can come up with some matching funds to undertake this action. We, we don't have the resources to go in and fund things. But we can sometimes help with fundraising. And we can, we can help, we can help facilitate a good good cause of action. But it requires that the offender population also put a little skin in the game, right. And that's been where we've been failing on getting getting getting a lot of offenders to recognize the benefit. The attitude is, if I can't personally benefit, I'm not going to deliver a contribute to to a cause that doesn't personally benefit me.

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It's funny that you bring that up, I was having a conversation with someone on Twitter, and I was trying to rally the troops about, you know, we have to, I guess I was using a logical fallacy or cognitive bias. It's the bystander effect, where you're just sitting there waiting for someone else to make some sort of action. And the more people that you see in the room, the less likelihood there is anybody that's going to do it, because you're always sitting there going, well, he'll probably do it, or she'll do it or somebody else would do it. Why does it have to be me? If you arrive on the crash scene, and there's no one around Well,

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no one can do it. But me I'm the only one here and my point was, is that we are the ones that are standing there the room with everyone else, looking on the sidelines, waiting for someone else to do it. And but the person was pushing back saying, why can't we hire attorneys? Why can't we get these national organizations to step in and help us and it's because it's expensive, and we don't fund it. The national organizations if you put the three prominent national

organizations combined, we could only make a small dent in the iceberg of things that are to be challenged and needing to be challenged that are good, viable challenges that go one done because of lack of funding. And

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but his his his last point at least the way of rugged Elvis regarding polygraphs again there is I feel the member absolute right that's in our Constitution and not to incriminate oneself. And we've talked about that I think at least one on a couple podcasts. Yeah well I think we've talked about that before and the question becomes what do you do about it and there was a case out of the 10th circuit us versus Ion bearing color case that that case give some guidance in terms of of the law of the 10th circuit about there has to be a bonafide threat of prosecution If you answer those particular questions and people when they solve on bearing they jumped to the conclusion that it said you didn't have to take a polygraph that is not what they say they said that you could decline to answer questions where there was a clear threat of a bit of information that would potentially resulted prosecution but you can't not answer a question like what is your name What is your address where you employed Are you here with me today you have to answer those but when they did you do something bad with that little kid down the street whatever you did your you can then plead the fifth well you if it's related to the to the to the charge under supervision for you've already been adjudicated for that so there would be no threat of prosecution okay of that of that particular but undetected involved Barry he was undetected criminality and without a without immunity the person was

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risking additional prosecutor what was less clear on the barbaric decision is as is a violation of supervision terms as that sufficient feed, invoke two fields as well because you're educated for the offensive that's required the supervision of the polygraph. And if I asked you have you violated correctly, or any of your technical conditions that you saw refuse to answer that bond bearing doesn't give us much guidance on that right in terms of in terms of whether whether I mean, clearly, if they file a petition to revoke you your your face in jeopardy, but you're already you've already been adjudicated will manifest so I'm hesitant to tell people that they can decline to answer I would encourage everyone to talk to an attorney about this particular solvent it knows a little bit but the fifth member but but they could they can certainly provide the attorney with the Barbarian case the citation to that case

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they could they could review it and see exactly how far that you might push this issue. But don't decline detector tests. That is not a wise move. If you say you say I'm just gonna take your test. That's not good and well for you. I think we've got a history of that in the state of Georgia that we can that we can talk

17:09

what about the financial side of it, where these things typically cost you a book, you know, to 25 or 250 for a polygraph that comes out of your pocket.

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I'm concerned about that as well. Clearly the legislators don't want to get taxpayers to have to pay for that. But when you combine all these oppressive calls with that's just a tip of the iceberg. There's the treatment Yeah, there's the supervision costs

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that the Parsons assigned us those costs are all tax against the against the defense against the supervisor person. And those things can be enormous. I've I've heard very and figures but it can be many hundreds of dollars a month for supervision and court costs. I did particularly the South but even outside the south, or states who really rack up fees or the conviction when you look at all judgment a couple years ago on a Pennsylvania and I thought my state was bad and my state is very mild compared to what I saw in Pennsylvania. But when they have all these fees that they tackle on to your conviction, you're talking about a significant financial obligation and there again from a constitutional perspective could you argue it's cool unusual punishment you could argue it but does and I'm not sure

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I'm not sure that that that you're going to get gain any traction with arguing that tells what public policy decisions and then what do they do if you don't pay those calls. If you don't pay the \$250

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I have not seen any one and this is not me saying it's not happening. No one has shown me a petition to revoke supervision where it says accused of being super offender unable to pay polygraph calls therefore we're moving to revoke if anybody has one of those

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I'd like to see it I can only tell you an anecdotal about a friend of mine that that was unable to pay the treatment provider said she would remove him from treatment that would be a breach of his probation and that would violate them now he went out and title pond his car which is ridiculous but that's where it went and his PTO gave him a month one month extension before you had to do it but he turned around and did it and title pond his car

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and what that that's that's the treatment provider going to drop him from treatment and if he's dropped from treatment because he can't afford it there again I'd like to see I'd like to see how they carefully craft the petition if if you're if you're refusing to participate in treatment that's one thing but you can't afford treatment that's quite another so it'd be interesting if I were on the defense side of that I would go in and fight that on the merits and say well it's not that he's not cooperating retreat but instead he can't afford all the costs associated with treatment yeah this

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is a bloody can this guy was making eight nine bucks an hour or something like that and then paying 23% and Child Support then also tacking on the the polygraph stuff on top it was it was he was literally is like I have to eat ramen soups because I can only afford 35 cents for dinner

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but if there are examples out there in our listening audience where it clearly says petition revolt basis for revocation could not pay for polygraph I'd like to see that I'd like to see the one it says failed polygraph no one has been able to produce either one of those examples for me

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challenging someone to step up and do it I've asked him to step

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up because it helps us to build a possible cause of action right it's one thing if you if they tell you you show deception on a polygraph and you confess which is what people always do right but I tell them that well yeah I did skip curfew. Yes, I did watch I went to the strip show or whatever. But but I have not seen a petition revoked that says spaces for revocation show deception on polygraph end of requests I have seen them where they said basis for revocation was it after a periodic maintenance polygraph tests offender admitted XY and Z I've seen several of those but not one where I just said a show deception and therefore we've moved to revolt and I'm hoping that someone can show me one cuz cuz I have to see it to know how to proceed. They might have a call to action here because the polygraph alone. I don't believe it's going to be sufficient. And if someone got revoked merely all that evidence without anything else I'd like to know about it. So

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here's a voicemail from Buzz

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Buzz Aldrin. No not that would be a different one.

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Hi, yes, my name is a buzz and I listen to your podcast religiously. I enjoyed Episode 25 a great deal. I just wanted to make a couple of comments one of the things that you and Larry frequently talk about is how the government is just responding to what the people want one of the things that I learned in skin school is that the reason we have a republic and not independent democracy is that the representatives are supposed to be smart enough not to succumb to the mob rule in other words if we just had a democracy we would have kind of them majority rule on everything and no mature and no minority rights in other words the reasons we're Republic is so that you had enjoy you know heading representatives that generally represent the people but that are smart enough to also understand the rights of the minority and not just succumb to mob rule.

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So let's stop there for just a second because that's what happened in California with the judge right

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that is correct and I agree with buzz on everything he said just now he's absolutely right The only problem is is a lot of our processes have been hijacked and that I forget which founder said we've got about we've got we've got a republic if we can keep it

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that was a quote we were gradually letting letting the beautiful system we have be taken away from us and that that that but he's right. I mean, like the like the filibuster rule that that filibuster rule was designed for a reason that's to take the most deliberative body of the United States government, this US Senate, but you only have to face the wrath of the voters every six years and to make sure that things that are radical changes required more than just a simple majority that was desolate example of that the electoral college is another example of that, to make sure that we don't have a president simply just cater to those who live in urban areas. without any regard to the rule. America there's, there's so many things that that were, were designed to make sure that the rights of the minority were protected. But we're getting away from that because it's inconvenient. Our government is inconvenient for a lot of people that they find it to be problematic that they're not able to get what they want. And we're willing to give up a lot of things as an example of national security, we're willing to give up a lot of rights for for to to feel safe, and that's dangerous. That quote was from Benjamin Franklin,

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and could you get a bit more succinctly than what I did I kind of messed it up. No, you

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had it, it was a well, what do we have a republic or a monarchy. And he responds, we have a republic, if you can keep it where if we can keep it up? Yes,

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he had great concerns that we would not be able to keep it

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here 200 and whatever, 50 years later, and struggle.

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So so that's one point I had. The other point I had, is that like, how do you cleaned up your language, I used to be a professional myself, I used to be an electrical engineer with the East work for Cisco CCA, just as a point of reference that cc IE is, is almost like a p HD of networking stuff. And they are paid very high wages

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used to make well over six figures. And now I'm struggling to find a minimum wage job

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and some welding classes because I had heard that 90 welding is a way to get in there somewhere small enough, it'll it'll take you without worrying so much about the registry. The third thing I had is that it would be great he could offer some hints to register and so on how to live life in a more productive way on every episode because I think that's one thing that's missing there's a lot of Colonel you know, whining about or talking about different issues. But if we could also add a segment like for example, one of the register set talk to tell me a neat trick for fun job is to use the registry against them is to go to the registry look at the on the registry in your area, look at their work address do a reverse Google search on the work address and find out where it is and then that way you've already found some places that will hire registered so maybe if we use that against them they realize that and hey we'll take the look addresses off which would help me a lot because two companies wouldn't hire me just because of that anyway I like to show thank you

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I tried to do something similar but not all states post work addresses on the registry

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I would say I agree again with what we said and I'm going to give a shout out to my friend Don analysis with Titus house here in New Mexico they they work with the green ring offenders from prison and and Don spent hours doing that very thing going through the registry and compiling every employer that that that was listed wow change and and and then we we were no to a new problem is trying to figure out how to use utilize it without hurting the very people we're trying to help. Right. The employees are already taking grief about having their information on the registry in Texas was able with assistance of the business community to get that information off the website. But if we how do we make that available to help the offenders without hurting them. Because if we if unless we have a close list, which is essentially where we have the information we were afraid that having information readily available, what's going to cause the employers to be ridiculed for hiring

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former offenders and then that we were going to cause more harm than good but I agree with William way we would like to help people reintegrate was with with any type of assistance and only how to find a job it's a big part of the requirements because you have to be gainfully employed to do any of this stuff.

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Mostly, yes. So so out of the thousands of people that listen to the the show, if you have any tips, email them, Twitter, voicemail feel free, we will distribute them and pass out all the ones that we can come up with the two of us have been in the game you have significantly longer than me that you probably have a lot more little tips and tricks. Actually, let me throw this one out there. Let me there's there's an app I think it's only on Android. This came out in the the new magazine and I'm going to try and remember the name while I think about this, but the app on the phone is called si es z free. So Charlie, Sierra November free, and that will overlay thousand foot or 2500 foot circles over addresses that you type in to let you and it will tell you where there are churches, schools, daycares, things of that nature, in that area, that might prevent you from working. We're living at an address si es z free child safety zone free is what it is.

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I have never heard of that app. Andy, it's a

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I only learned of it with that first, the the original, the initial issue of that magazine that will puts out help me remember the name, I covered it on episode 10 or something on the podcast lifetime lifetime. Like I got it from there. And yes, so go over and check out lifetime magazine. And like I said, the first episode, they've only done two episodes. But it was in the first one that I learned that it's kind of a neat, it's ads so that the guy that wrote it is trying to do ad supported stuff. So you know, click on ads, stop the guy make a couple bucks. But otherwise, the app is free. And it's kind of neat to look up addresses and it draws the circles for you.

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But to go with that information from buzz about earning very high wages to then barely being able to make it I was listening to a financial podcasts this weekend, or this week called the Phil Ferguson show hosted by a guy that you'll never guess his name's Phil Ferguson, and he had an expert on so security on there. And while I feel I'm pretty knowledgeable about so security, and I'm sure you you have your information covered, Larry, the one thing that I didn't know exactly is how do they calculate how much you're going to get, and they use the 35 years of your highest earnings average that together and that's what your your rate comes out to be. And, but so you have, I don't know, like 50 years of working time from the time that you're a teen, and you start doing your first job to the time that you're in your 60s or 70s before you stop. But if you spend 10 or 20 years behind bars, those are all going to be a bunch of zeros. And those zeros are going to horrendously impact the amount that you're going to collect. And so security. So not only did you lose your family, and your job, and your life savings, and all the stuff when you went to prison, you also had all those years that you weren't earning any money, you know, possibly planning for retirement and saving, then when it does come time for you to retire, you're going to likely get less money, you have put in less money into security. And I just thought that, hey, let's just top this whole thing off and screw you over. In the end, Yes, you did your crime or you pled out, I get it. But

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it's a rough situation. And up when you're 65, and you're going to get you know, I don't know, 500 or \$1,000 less than you possibly would have had you kept turning the higher income.

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Well, let's just let's just break it down. For folks. If you had if you had, you only have to have 10 years of of earnings to be eligible for Social Security retirement, which is four credits per year, you can earn these to be four quarters. But for credits, so you need 40 and say you are in \$40,000 a year for 10 years, and you got \$400,000 and you ever set you average it over 35, because they average doesn't matter really worked in Europe, they average about 35, you've got an end you've got an annual earnings of \$14,000, which you base your benefits. If you had earned \$40,000 for the entire 35 years, then you can see your average you benefit would be a whole lot better. You want to keep as many zeros out of the equation as you possibly can.

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And and they went down to zero. so hurt us if you're in a period of disability. They don't give you zeros during that period of time.

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But but most people are not determined to be disabled. Whether in prison that doesn't constitute a disability and has to be a physical or mental disability impairment. But But yeah, your your your average benefit would, your average Jordans would be very low if you had a large period of incarceration, particularly if you've or moderate wage order to start with. And so

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if you want to find out how much you're going to earn, go to SS a dot gov slash my account and you can sign up there easy free, they ask a couple questions to confirm your identity. And you can see how much you will earn at retirement or you know, 65 whatever. And so I just wanted to pass that along because I thought that 35 year average thing was something that I that was new to me and I wanted to push out because those years in prison could really really a few up on their backside when you start trying. So security. Well, what zeros I'm gonna hurt you too bad, but a whole lot of them what would what would be detrimental? Well then. So the first article is from the Herald Sun Durham police investigates sexting report at high school. The reason I wanted to bring this up is twofold. 27% of teens report sending a text but only 15% report receiving one

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there's a disparity in there, you know, 12 ish percent of people saying that they sent them and so today send them nowhere. I'm kidding, of course, but people are just not reporting receiving a message. But more importantly, the article says that there are no specific laws in North Carolina dealing with sexting the behaviors punished by more severe penalties. That brings up the situation where two teens were sending photos of each other. And the male was being charged as an adult for distributing CP. But the CP was of himself and I just can't quite wrap my head around how you are charged as distributing child when it is you distributing yourself and you're being charged as some as an adult for that activity. That just hurts me hurts my head

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while I read the article. And I had a slightly different take the the, the, the way I read the article was that it was a female who had voluntarily been

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exposed herself and did not know that there was going to be a recording disseminated and it was disseminated all over the school.

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But But

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there again, the laws haven't haven't really evolved in some instances to take into account the unique situation society would agree that you probably don't want images of teenagers floating around. But unless they carved out a particular exception for for those that the personal Sins of themselves that are there that are privately intended as private content or for for their boyfriend or girlfriend, then the prosecutor and their desire to to put a stop to this outrageous behavior looks at, well, how can we bring charges? Well, it is against the law to send to transmit pictures of minors over the internet. And there's not an exception for people who do it. If there's not an exception in the law, it doesn't exist. I mean, prosecutorial discretion, you could say, I'm going to choose not to prosecute this, but they have that tool available to them. If you're not happy with that, then you need to get your people down in Raleigh. And you need to pass a law that carves out an exception for private transmission of images were were teenagers are sexting among themselves. If this was offensive to you did something about it.

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The interesting thing about sending stuff over the internet is you might cross state lines. And then that brings you into federal jurisdiction.

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Well, arguably, the feds say the day and time you that you send something that they that they can't have jurisdiction. I'm not aware of the fence prosecuting teenagers for transmitting it among themselves. But I think this went beyond the transmission between I think this this this configuration was that was being disseminated all over the school and

the girl was not comfortable with, with everything being distributed everybody it was a private showing that she had granted sure and two ish three ish years

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ago there was a big uproar and a pretty affluent area in Colorado where the kids had little vaults on their on their phones to where they could store the images and it looked like a calculator app and they're just they're just sharing pictures of all of each other there's like 100 people sharing pictures of each other all around the school and I think that one just went away I never heard anything beyond that after it came to light I think they like you know the affluent community kind of like the

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pressure on the property to stop it

36:53

this this could be slightly different because this the this likely was being re disseminating disseminated, but this is an area where I think you might get some bipartisan traction because whether you conservative or liberal, oftentimes you're going to have offspring and most people don't want to see their offspring subjected to a harsh penalties for for juvenile behavior, which allows you to go whether you're talking to a conservative or liberal and say we need to carve out exception of the statute so that people who are doing this cannot be prosecuted. We don't want to allow just a good discretion of a prosecutor because sometimes they don't have good discretion. Yeah, and we want to make sure that they cannot do like do what we did we've got a model for you here at our state if you have trouble coming up with a model we've got it where they can't prosecute it draws our attorney general crazy he's just doing all he can to try to change that because he said we're leaving children vulnerable to exploitation and then we need to we need to allow that discretion well we we've learned that too much discretion is not a good thing when it comes to charging people to criminal conduct sure

37:59

so as are

38:02

we decided to do something about it and we we tied their hands for they can't do it

38:07

and wouldn't tell me again what you thought about the the speaker at the conference and his use of the word so

38:14

well I don't know if you've been able to go through his recordings but I'd like to hear the hair he'll Italian

38:21

it was a it was a great speech, every movie but he had a quite a few souls.

38:29

But it's just so easy to say that and I catch myself all the time trying to try to be more conscious and stop it. I do too. And I've noticed myself doing it a lot tonight. So from the Washington Post voters remove judge who sends Brock Turner to six months in Stanford assault case. The supporters that argued that removing a duly elected judge over disagreement with a controversial but lawful assault sins would both erode the democratic process and coached judges everywhere to impose lengthier sentences for fear public backlash this was the article was no more in

39:07

condemning the action of removing the lawfully lawfully in place judge there in California and that sentiment is just rings home that now now you subjected judges who should be more

39:22

nonpartisan should just be kind of removed from the whole political process in general but now they're going to be scared to death that there's going to be as the caller said mob rule and forcing judges out

39:34

think we took away discuss this on Leslie's we did we didn't know we we talked about this my fear is that they're going to there will be similar to the DWI monitoring it takes place in various courts around the country where you have really strong Mothers Against Drunk Driving affiliates or they have a lot of volunteers are willing to sit in your room and Telly judges my fear is that we're gonna have the same thing started happening with crimes and the the three year mandatory minimum that has been passive result of this a California yeah will become the new which will cause judges even for those who are not under this mandatory minimum because people who are already in the system before the mandatory mammals passed their their contact would be under the previous law which would allowed for would have allowed for a lesser sentence like what Brock Turner got the judge is going to feel compelled to impose at least a minimum and even there can be reluctant on that because they're going to that debt becomes to do benchmark of leniency Well, he already imposed a minimum sentence was minimum three year but it was only the minimum right and so by my fear is we're going to have linked their sentences across the board and and I don't know how many states have the possibility of removing judges, through the process Sibrel what California but if there are states that have similar process, you could expect that the that the victims advocates little take advantage of that.

40:55

And a quote from George Persky is as a prosecutor, I fought vigorously for victims and as a judge, my role is to consider both sides. California law requires every judge to consider rehabilitation and probation for first time offenders. It's not always popular but it's the law and I took an oath to follow it without regard to public opinion or my opinions as a former prosecutor

41:18

this is this is really problematic and I don't want to cover it for very long because we covered it last week but I did the article came up and it was a you know

41:27

an article talking on the counter points of having removed so I wanted to bring up those issues

41:35

well i i have great great year I think that this is going to do a tremendous amount of damage and I think that linked your sentences will be the likely result and and I believe that the public doesn't give a I believe that the average for me is reflected in the vote. It was 6040 Yeah,

41:52

was not very close.

41:55

Hey, kid, can we

41:56

cover something real quick? I the Supreme Court decision about the the Colorado Baker I want to clarify a term real quick and they said quote unquote, a narrow decision and when I first heard of like 72, statistically is not very narrow, can you can you clarify that

42:14

I can see the decision they carefully crafted it to be narrow in its impact. And they they ruled on the Civil Rights Commission of what about target they call it in Colorado was a procedural they found bias in the End The End The End administrative process and therefore you cannot really infer anything from all the merits of of what a maker can or cannot do. You can infer that that Baker that particular Baker wasn't treated fair by an agency that was supposed to be impartial and they had apparently hostility towards his religious views narrowness of means that decision will apply only to him okay

43:00

when they use a phrase like narrowly decided you know a five to four which are frequent and sessions with a with the ideological balance we have right now decisions are oftentimes five to four and that would be a narrow decision because one vote would have swayed at the other direction but in this context they will the narrowness of the application of their ruling they worked very hard to make sure they did set precedent at this time they there they're gonna wait for another day got it got it yeah so

43:28

we're packing him has very broad sweeping impact this has almost zero sweeping impact

43:36

it has impact on that Baker alone and people who want to use that process in Colorado that that till their rights are being violated that commission will probably a little more careful about short open hostility towards to a person's religious beliefs that's that's the limitation of the ruling we don't know

43:56

yet whether you can refuse to provide that service well you can't you can't conclude from that that decision that one way or the other which way the courts leaning got

44:06

it

44:08

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44:31

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44:47

we want

44:47

to send out a big heartfelt support for those on the registry. Keep fighting without you. We can't succeed you make it possible. This next article comes from the conversation calm offender registry is reinforcing inequality. And one of the reasons why I wanted to bring this up is the author is an assistant professor of sociology at Alabama State University of New York. His name is Trevor hop or hope I'm not really sure which way I should pronounce his name The reason so, in the article he talks about that punishment scholar Jonathan Semin argues that the rise of offender registry is the result of lawmakers efforts to govern through crime. In other words, today's lawmakers assert their authority by

enforcing order and promoting fear of crime. This approach differs from say politicians who secure 30 by promoting a social welfare agenda and social safety net

45:42

the guy the articles felt to me just another angle of looking at how the registry is so impactful across different boundaries. And that is creating a class of people that are impacting first and can never reenter society they've never been can never be treated they can never live past it. They're not a whole person they're just a monster for perhaps committing one one crime

46:14

I agree with I didn't actually read this article. But I agree with what I'm hearing the but it's not new week. We do that in America. Our system is designed to allow us to govern through fear I mean, we had the McCarthy scare back in the 50s and loaded with the Red Scare although the investigations and and we've been on this thing, you know, we haven't been attacked for what better part of 20 years now and we we we create boogie man. Yes. And although crime has been declining precipitously for 25 years, the average person doesn't know that. And I in fact, did a presentation on the conference couple years ago in Atlanta, Georgia, where the statistics from the FBI Bureau of Justice Statistics although screen and he's a Nope, nope, nope, flies. Head exploding. Nope, can't be right. And we, we, we like, like, for example, the immigration and I don't want to get into immigration debate. But we're at the lowest level of illegal entry in modern times. But yet we all this hoopla about securing the border. Well, the borders more secure than it's been in modern history. But I technology and the deployment we have on the border where we have a very secure border compared to where we were 15 years ago. The funniest thing about that particular subject is another podcast.

47:32

Trust me, I listen to like 50 something podcasts, but a guy named Malcolm Gladwell, who is an award winning I think, New York Times or New Yorker columnist. And he did a

47:45

his podcast is, Oh, God, I can't remember the name of it. It's I'll get to the name here in a second. But the reason why we have such a problem with quote unquote, illegal immigrants is because we have a secure border, the people have come in, and now we've made a situation where they can't leave. So they have to stick around if we would create some sort of process for them to be green card and come in, do the work and go home to go back to their families, they left their families back home, why don't we let them come and go in a sort of legal process where we could get taxes, etc, and have some documentation on them. They're here illegally because they crossed and then we close the door and now they can't, they can't get out.

48:25

Well, there's there's some truth in that. And actually, during the after the recession after the like economic crash of 2008, we had a net Exodus people self deported because the the economy shrank for a period of time and and employment opportunities. When construction collapse. It was a big segment. And construction was a big segment of document and construction and hospitality and service industries. And when tourism and things collapse, a lot of those companies, those industries cut back, we had an out migration, but we don't have we don't have a serious problem relative to what we had 15 years ago. Yeah, in terms of the number of people crossing the border illegally is down dramatically. But the average person doesn't know that they think that Trump is preventing a tidal wave of

49:15

illegal entry. And it's not true. Now, we did have a tidal wave in 2014, 15

49:21

of unaccompanied minors, and I cannot explain the reason for that other than civil unrest. A lot of the countries in Latin America and people wanted to get their kids with just safety. I think that that would be normal. If you thought your life was in danger. You at least want to save your kid go someplace where it's not happening.

49:39

But but but in terms of the overall immigration, we don't have a problem. But my point is to bring it back full circle to this issue of crime. It's easy to frighten people if they don't understand because people were easily soundbite it if you say certain sound bites, secure the border that resonates except for it's actually fairly secure already.

50:00

Yeah, it's not an easy thing to traverse. And,

50:03

and you can never have a I would I tell people if America The only reason why people would want to quit coming to America would be if we come such a I don't want to get you as Trump's term. shithole. But unless we become my shovel, p people are not going to want to unless they don't want to live here. America is always going to be a magnet for people to want to come to we should be happy about that. Yeah, we

50:28

have created a prosperous lifestyle and this is where they want to come from all over the world. They choose the United States because we have economic prosperity we have great education's makes sense why wouldn't we welcome them

50:40

in there, but they're going to want to come no matter how much we try to secure the border they're going to want to come and that's a good thing Don't wait they will stop wanting to come would be if we come and like say don't what he says Tara but since he's used it it was a shithole country they're gonna want to come here we're not gonna be able to stop that

50:59

the party cast is called revisionist history by Malcolm Gladwell. Go check out it's called a

51:05

episode is general Chapman's last stand it's it's an interesting episode that will you know flip your brain over on on what you think about the immigration issue

51:15

well the offender registry is not keeping people safe or there's statistically all the evidence that's needed to do to show that we can't show it hasn't saved one well we can show statistically it's doing no good and we can show is doing in Miss harm yeah we we are we are harming the children of the registrants we're harming the economic opportunity the prosperity for the people be integrated productive taxpaying citizens it's a disaster but yet it makes people feel good and it's like I'm saying we we have we were able to cause people to fear things that they really shouldn't fear we have them fearing an escalating crime where it right when crime is going down. We have fearing terrorism when the terrorists are on the run

52:01

their their their networks are being dismantled and we have people fearing offenders when most of the fear for offences comes from within the circle of friends not no stranger danger to speak out. We just have all these fears are unfounded. And that was my point I didn't want to really get into an immigration

52:18

no and I'm with you. But if you're going back to this specific article where this guy the Associate Professor of College of New York is several studies of registered offenders have revealed how registries reinforced class inequality by creating patterned experiences of unemployment, harassment, homelessness I'm going to take just the idea that this guy maybe he knows someone on the registry but he comes to the registry through honest investigation through research whatever that he sees these people having these problems what is the cause of it the cause of it is the registry yes you committed a crime that's how you found yourself on the registry however all those other things kick in like you said with the children and then how are you saying putting yourself and society as a whole later down the line is going to end up to some degree taking care of you because if you don't have enough money in retirement to take care of yourself when you go to the doctor you're going to need assistance from society as a whole it seems in our best interest that we will try and elevate as many people up as high as we could as fast as possible to contribute more to the general pool than to be pulling from it

53:25

I agree Do you think do you think that people like this author of this article Do you think there's more of it out there now of just average Joe's seeing the damage on this side of it that public opinion will further change and there won't be such this vigilante aspect to it

53:46

I'm seeing more understanding

53:50

when what I network with people I never run into someone who has a friend or though so on the registry and they they say it Dells gross things and that that that person does it doesn't but they seem to localize it to that person okay that they they they they they draw a distinction between that person and they think that the rest of the registry as people who deserve it but their friend or their equations I've I have a lot of difficulty getting to the next level is no one deserves this. No one deserves this.

54:23

Just like that lady on that conference call we had when I first got involved that her son wasn't a offender.

54:30

Yes, that that's that's the attitude is yes, I I know someone and he shouldn't be on the list. But the rest of the creepers deserve it. And I'll say, unequivocally No one deserves to have this done to them. If they're this bad, then they shouldn't be out walking the streets. Yeah, once they pay their debt to society. No one deserves this humiliation I can't help it, if they were found again, will lock him up again.

54:52

But until they offend again, they're allowed to go on with their life and be forgotten. But is it worth squashing their civil liberties in the thoughts? They might do it again?

55:02

Absolutely not.

55:04

We don't do anticipatory punishment in the United States of America. I think that's called thought crime. And they do that in the movie Minority Report, which you admittedly have never seen.

55:16

But we don't do predictive modeling and brain punish people for something that may do we punish people for what they have done. And once that punishment is ended, they should be allowed to resolve their normal life and if they have fit again, we will punish you again

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probably without sure my people when people

55:30

ask me what's the alternative I tell them is very simple. We do what we do with all other offenses when they offend again, we punish again and probably get some

55:39

more severe

55:43

but that's what we do.

55:46

Let's next article comes from the New York Times should statutes of limitations for at be abolished. With the passage of time memories fade evidence is lost or destroyed, and witnesses become unreliable or difficult to locate. Since 2000 to at least 29 states have amended their prosecution deadlines. So victims of child abuse have more time to pursue criminal cases as adults, including 15 states that have now no cut off for prosecuting any felony assault of a minor according to Marcy Hamilton. She's one of our super duper awesome friends. She's the one that debated Emily Horowitz at the I can't remember what the venue was up in New York. And yeah, in New York City.

56:27

And the 10 states are listed now have no time limit for filing charges for all or nearly all felony assaults, no matter the victims age. And I guess one question I have is in regards to DNA evidence is that it only confirms that person A and Person B met. It doesn't have any It doesn't mean that there was any force or coercion or anything that sort of just mean it confirms that the two work together but even that I remember hearing something kind of nefarious, where I want to say was, Israel had some sort of way of almost like fabricating DNA, and they could plant DNA someplace where you'd never, ever even considered going. And I bring that up just to say that, and we talked about this earlier, I am not suggesting that there's DNA, their planted in the women's parts, but it is a possible explanation for how it got there. I'm not saying it's at all any sort of prevalence, but it's a possible way out there. But if there's a kit or something, then you have some sort of you have evidence that an event occurred.

57:33

So where am I wrong?

57:36

Well, if you're, if you're talking about DNA, in terms of being in a body cavity, that there's DNA that is collected a lot of places or not in a body cavity, but if you had DNA that was in the body cavity that would be strongly suggested that the owner of that DNA, the donor, that the owner, adult or whatever, they referred to it, that they that they've been there, that would, that would be true, but that doesn't mean that they've been there without permission. does it know that

58:00

that was sort of the way that I was trying to explain this in a convoluted way, right.

58:04

But there's DNA and in criminal investigations, where they're not removed from a cavity is removed from proximity, those blocks in the DNA way it could be, it could be on the person's clothing. And I think I gave the example in Episode Three, and I'm pulling that out of air. But I thought, if I'm, if I'm driving across the country, and I pick up someone who's hitchhiking there, they're going to get my DNA in a likely if they said, my cars I've been driving for 15 years, wouldn't you agree? It's gonna

58:33

pick a DNA, they're going to pick up skin cells.

58:36

Okay, so I've been driving the car for 15 years and my DNA and what happens when the next really nice person that picks them up hitchhiking? That's not so nice. And that person's never been apprehended for a crime never been charged with a crime. There's not in not in not in the system, the DNA database and the last person's DNA that showed up Yeah, is dead. What

58:58

it doesn't prove that I can guilty person to proves that you were together at some point.

59:05

That's correct. But getting back to the statute limitations regardless of the of the DNA, whether it was a cavity or whether it was proximity DNA, the witnesses that we get back the same part about the statute limitations depending on how much time has passed, any witness could that might possibly explain us stuff may not be available, which makes it only the accuser that that guest gets to participate in the process. Because if, if anybody who can who can be of assistance to the accused is not available, because three decades of past Is that a fair confrontation is

59:47

not a fair confrontation. I I struggle with this one so hard, Larry, because I think and I'm trying to been like, trying to self analyze, to figure out where my like the foundation thought is, I think in American culture, and probably others around the world.

1:00:05

As soon as you are accused, you are guilty. That's just you're already done. You wouldn't the DA wouldn't have brought up any sort of indictment or anything

1:00:15

unless you were already there was some level of evidence This is your guilty, so therefore, you're guilty. It's over. Just Just lay down,

1:00:24

okay, well, okay, well, let's take my hitchhiking. I'm a I'm a nice guy. And I pick up the person and I drive them 100 miles up the road, and I stopped and I bombed live

1:00:35

at a cafe or something, and I have a conversation with with the owner of the diner, and he or she is 64 years old. And I say, I pick up this young lady or young man, whatever the case may be, and I feel bad, but she's trying to get to Toledo. And I'm only going I'm only going a little long can you keep it out? Or? Well, if that if that young person turns up dead by DNA is on the person and the person who would have been able to be a firm My story is long gone. Is that fair to me that I'm accused of murder because my days there because 30 years past and they finally decide that I'm the one who did it and I was the last person with them, and I can't I can't have my fair trial because the person has gone now murderers. And as as an extreme example, because the person in most instances there is no statute

limitations, and most states revert, but suppose it was an assault occurred, I suppose, suppose it was underreported assault because the person was so traumatized that they didn't report it. So there was no physical collection of DNA and it was the widow and the only evidence that they have was the DNA that was collected from proximity. Well, my

1:01:45

DNA is there, the person says, that's what that hitchhiker the person picked them up when they were hitchhiking is the one who assaulted them, unfortunately, what's the next person who picked him up? Is that fair to me, my witnesses. Dad, I was thinking about the earlier and a house that I lived in, in New Orleans is no longer there. I went there a few years later in the house had been torn down. So there would be that evidence to

1:02:09

that. That's my point. Well, the person who was assaulted as a result of hitchhiking unfortunately, should have come forward. And there's a lot of things that we pay a price for not doing at our lives, and you can't get justice if you don't complain, if you wait 30 years to complain. My answer is, I'm terribly sorry. But we can't do anything for you at this point. Because the statute of limitations has run and the person we're going to accuse cannot get a fair trial. It is not all about you. It's about the fairness that everybody this system is designed to be fair, and you want to have it where it's only fair to you and I'm sorry, it doesn't work that way that that politically will not get you any points. If you do that you'll have every movement, you'll have every victims advocate organization, putting out hit pieces on into political campaign, and you will cease to hold office, which means what I just said is not going to happen. But that's that's that's how I feel

1:03:06

about it. I'm trying to frame it. I'm trying to frame it differently, that while the two people involved in prosecuting and defending as in the victim and the defendant are the two people that are impacted by the event that is not what is being on trial, what I mean it is the person defending is on trial. But what is at stake or what is in the game is the evidence and the proof of the evidence and the accuser has the burden of proof with beyond a reasonable doubt that it has occurred otherwise, you should go home that the defendant should get out of there, they have to be able to prove beyond a reasonable doubt and that is a very high level of evidence to prove that the victim had done to them what the defendant is accused of.

1:03:59

Well the victims somehow get mad when you remind them that that that is yours accusing party you bear the burden whether it be in a civil proceeding or the criminal proceeding to prove it I didn't make those rules boys and girls those are the rules our forefathers established that if the government's going to attempt to put you in a cage they have to prove by a very high standard called beyond a reasonable doubt that that that that the person engaged in that unlawful behavior and it's not intended to be victimization of you it's intended so that we don't put people in cages without very strong evidence it's it's very difficult to live your life in a cage particular if you don't belong there if you ever been in one

1:04:42

me personally yes

1:04:44

yes well it's it's an awesome thing to be able to put someone in a cage and particularly if they are if they're not guilty of what they're being accused

1:04:52

of yeah i i totally see your point I just jumped trying to figure out how to frame it in a way that the only way that seems to make sense to me at this point is where what is actually be I don't I don't know the right words but the trial the evidence itself is what is being ruled upon there is a victim kind of sort on both sides but there's the victim of the crime

and then there's the defendant of the accused dr but what is happening is the evidence is being brought and that's what is being judged

1:05:25

that is correct they evidence that the Parsons accusation is evidence it is one component of they have an injury trial

1:05:32

but they're no different than a bloody knife or a kit they are a piece of the evidence they

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are a component of evidence with the victims advocates would tell you that they should be the only component of evidence when it comes to crimes that it could be 30 4050 hundred years later their their most recent line is justice should not have an expiration date you'll be hearing that quite a bit going forward justice shouldn't have an expiration date nice little catchphrase they've got talking points

1:05:58

we've been we've been talking talking about that lately what message what uh. What message do you want to put out there

1:06:06

talking points

1:06:08

talking points for our side but just in general just you know how do you message How do you bring up the talking points What are you trying to focus on what is your signature issue or you know your couple little tag lines but yeah that was that was just a shouldn't have a expiration date that's a that that's catchy

1:06:23

well that and that's what they're doing abolishing the statute limitations because it's hard when you've got them sitting in committee and the accusers don't have anybody sitting there we don't have people that can afford to take off work and go sit in the capital and wait and hot room for a bill to be heard and it's been day after day there and when when the bill is heard there's there's the governmental apparatus which includes the prosecutors the law enforcement that which he goes a district attorney so pleased to share ours they're all they're saying how hello how horrible it is and there's what maybe what liberal do gutter from the from the accused side from from the Defenders Association if they can afford to send somebody saying whoa whoa slow down the train here and it's just very difficult because they're very compelling you know they tell they they they come across very emotionally and we should get justice as the call reported out this is essentially mob rule

1:07:26

that's that's what this is if we eradicate all due process that we've got mob rule and I feel very uncomfortable where I see is headed because anybody's gonna be able to be accused of anything and the fact that the accusation I think our next article is going to get into this a little bit what I will, but but any accusations Don't be sufficient to put someone away for a long time.

1:07:48

Which brings us up to the article and we have a couple from the New York Law Journal. This is the first one this one's kind of fun though bill to create prosecute

1:07:58

prosecutorial misconduct Commission approved by New York State Assembly. The association representing New York State's district attorneys is urging members of the state assembly to vote against a bill that would create a commission to investigate misconduct by prosecutors.

1:08:14

These are the this is the body that is trying to bring charges against people and find the evidence to lock away the bad people wouldn't they want to have some sort of commission that helps keep them from doing nefarious things also,

1:08:32

well, if you were to blame that prosecutors are

1:08:36

pure if the wind driven so and that they always use ethical means to prosecute people yes, that is exactly what they would want those theaters prosecutors are not pure as the driven snow and they use very questionable tactics included withholding evidence and dubious search warrants and all sorts of, of coercive tactics to to secure convictions. This is actually the assembly of New York and it's already past this and I think it's sitting on the governor's desk I think they have this weird process where this is going to have to go through a constitution but it has to pass to assemblies and I think it's going to pass the second time if I read the article correctly but this is the state assembly expressing a desire to fix what they perceive as a problem of prosecutorial misconduct and the prosecutors say our current system works and assembly saying well gee did we wouldn't be in this predicament where we're having so much so much Miss misconduct but the prosecutors are saying that everything's fine with the status quo and assembly saying that everything's not fine it was a pretty lopsided majority that that passed and it looks like the conservatives were opposed to in which I'm not surprised the conservatives are usually in favor of all the police hours I guess individual that can be that there can be unless it has to do with rights and then magically they're against that but but even with with conservative opposition at palace and you got a relatively liberal Governor Cuomo and it was a good chance that he'll sign it i'd don't think he was he's got to succumb to the prosecutor so

1:10:04

pressure to to veto on I'm not expecting a veto but

1:10:08

I think it has to pass the second time if I read it correctly and our New York list of somebody can correct me if I'm wrong Do you think though how how do you think that this would go into play of finding the actions that were missed conducting it's probably not even a word but how would you How would you identify the prosecutorial misconduct to begin with it's not let's not an open panel it's not the

1:10:35

was the defense attorney would be most these defense attorneys know what the prosecutors engaging unethical and in a proper conduct sometimes you don't if they withheld key evidence and you don't you don't know that they've withheld it you don't know that

1:10:49

so then so during the trial you find out that they've done something that was you know

1:10:54

if you if you if you find out later that could be used for for setting aside the conviction but then nothing happens to the prosecutor and that's what this whole thing is designed to do is that as to hold the prosecutor accountable so that there is a penalty if you get your misconduct there is a penalty we've talked about this before that prosecutors face no

1:11:17

no. No dereliction of duty punishment the face no punishment for dereliction of duty of doing those things or just

1:11:27

they they hold all the cards almost there they're entirely driving the bus

1:11:31

in

1:11:33

in in filling up the jails in who they're charged with crimes etc and but there's no oversight of that of that element that there's no oversight of that body

1:11:46

what you mean by that well there's no oversight well I mean just like the this New York is creating commission to go look at prosecutor prosecutorial misconduct what would the means be in another state to to try and handle this well

1:12:03

prosecutors are attorneys that are subject to the rules of discipline of the of their local bar that's a State Bar what we found is that that state bars are usually Holly reticent and hesitant to to question or prosecutors decision they're much more likely to get on the defense attorney for mismanaging their trust account I know that's that's certainly in our state But prosecutors or given such broad discretion because the the disciplinary people believe that they're hot they're they're accountable to higher authority that's the elected selecting public which which which makes them I mean I figure a prosecutor wins by a significant margin and then you have these bunch of do gooders that are that are on the the disparate our council come in and remove and neutral prosecutor which we talked about old a few episodes back about where a prosecutor was not going to be allowed to prosecute because even that the case that was that was on appeal to the higher court and the prosecutor was was without authority because the disparate air council head suspended heaven without one I do not remember that

1:13:13

but but these these these existing bodies are very hesitant to to do to a prosecutor because they're elected by the people and they're accountable to the people right

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but there's not I guess part of that though is that there's nobody out there other than when the elections come around again someone saying hey this guy did this to this person there's not some like there's there's media

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strike track campaigning on that try to campaign and say that a prosecutor was

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go out and say I've run against this guy because he disregarded and accused rights and find out how many votes that kitchen

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that's my point though so there you don't you don't get a lot of political credit for smearing the guy for not convicting somebody

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well well beyond beyond the point of not convicting of saying he was not he or she prosecutor was not abiding by the rules and they were trampling they accuse rights find out how well it go out and take a poll in your area and find out how many people care about that.

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So you need some sort of independent body to then go investigate those outside of the scope of the political ramifications and that's exactly what the Assembly in New York is trying to create with this commission which goes back to my question of how many states then do this sort of thing well

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as far as I know this is the first right

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that was that was a long way to get around to that

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so but that but you can follow with existing framework you can file a complaint on a prosecutor with with the disciplinary Council and your state and

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they have the authority but I'm just saying they're hesitant to use that authority because the person is elected and there was something in Georgia there was a three person commission and that got squashed and handful election cycles ago I can't remember what it was called. But it was something along those lines I think that was related to judges though not necessary prosecutors I can't remember what that was. Let's move on a second really this is the last article that we have like what we're going to talk about to this is also from the New York Law Journal what is clear and convincing evidence in offender registration sore what is the a and sore a offender registration, a sore hearings, and this is by Lorca Morello has been an appellate attorney for more than 20 years and has litigated saara hearings. A teenager testify that when she was 11 years old, she had with her uncle. During a visit to her grandmother, her uncle and grandmother testified that no such thing had occurred. The people presented an expert to explain why the girl showed knows physical signs of having. Another expert to explain why she waited so long before saying anything limitations, the jury nevertheless rejected her story and acquitted the uncle of felony charges. But in an apparent Something must have happened. Compromise, they returned a guilty verdict of the misdemeanor of mouth to contact. I've never heard of such a thing, it's kind of silly sounding a correct point assessment based on Britain's misdemeanor conviction and lack of criminal history would have put them on the lowest risk level. The people argued, however, that he should be scored additional points for the offenses of which he was acquitted there by elevating his classification from low to moderate and putting him on the internet offender registry for life. Although the only evidence that occurred was testimony expressly rejected by the jury. The Appellate Division held that it met the clear and convincing standard to be to be clear and convincing evidence must be a firm belief or conviction of the truth of the allegations by being sued, clear, direct, and waited excuse me weighty and convincing as to enable the fact fighter to come to a clear conviction conviction without hesitancy of the truth of the precise facts at issue that is some gobbledygook language. Right there.

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It is deeply troubling that the Court of Appeals has upheld the inflating of a person's risk level based on discredited testimony. Unlike many jurisdictions that simply correlate offenses offenders future risk level to the offensive conviction, New York requires an individualized jurist judicial determination, as Rivera stated, Rivera stated the source statute holds the people to the high end clear and convincing evidence burden for the very reason that a defendants Liberty interest is at stake and the risk level determination has severe consequences but a judicial determination is meaningless if of course jettison basic evidence, three principles sorry that I had to read all that that's but there's a lot

going on there. As far as that the person was acquitted of the actual alleged crimes, they have a serious serious crime where they were convicted of a lesser crime and that was a

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crime. And you

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want to bring this up because of risk the risk assessment method Well,

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I wanted I wanted this is this is the podcast is designed to educate people. And there are people who believes the risk system is to cure all end all to all problems. And this is an example of where I think we had this on previous podcast of a similar case where where the where there was a conviction of some sort the the, the conviction of the mouth, the contact was enough with them the need to be risk assessed. The other case was the guy was going to have to incriminate himself while he was appealing the low level conviction, but this just brought him with them, though risk assessment process and they don't know verbatim what the risk assessment looks like in New York, but I know that they can take into account your proclivities and the fact that that the jury did not believe in convict does not mean that that didn't happen. That's not a founding of of innocent, it's a finding of not guilty, and those are two different things. They didn't pronounce it Madison they they pronounced a state deficient and if it's evidence that it presented, according to Vic, is that would have been enough because she said it happened, but they didn't find it convincing. Therefore, they refused to convict on the serious charges. But he was going back to the offense, he was required to go to a registration evaluation for his registry leveling. And he went to that and the trial court, which is the same court that that the conductor's a trial

1:19:56
the object of education chief of the charges that they believed that it was a lesser standard and what's not beyond reasonable doubt. So the trial judge said under the lesser standard, I believe that he did this this offense, therefore, he gets extra points constitutionally, there's nothing flawed about that decision. You may not like it, but there's that that's that's the way it is. I don't you hate that, but that was that was within the zone of when when appellate courts look at evidence, evidence, the insufficiency of evidence, which is what the question this whether there was sufficient evidence to merit the risk level that they given, they are very hesitant to overturn the trial judge who sat there and heard the evidence, the Trier of fact is as the as is believed to be best capable of evaluating the nuances of the evidence, the credibility of the of the witness and make an interpretation of where that evidence is believable. And therefore, they went into this looking at it as an appellate tribunal of trying to uphold the trial judge, the trial judge found her evidence credible enough under the lesser evidentiary standard to believe that that he committed that crime. Therefore, he gets the points End of discussion that almost sounds like what we talked about before of thought crime, they

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they maybe it doesn't, because they found that something happened just not every not necessarily everything that she had alleged.

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And but what would be what would be the review process to figure out what level he should be at not just not just that that there was something to crime happened tape, tape, tape, tape tape and put a smile on her that's what they found. And do you think he went through like a psychosexual eval Well,

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that's what the judge will do it the judge I mean, I don't know if I would imagine that any court that's going to do a risk level like what required that but but the judge had the prerogative to believe that accuser because the standard

evidence is not beyond a reasonable doubt, the standard evidence is clear and convincing, but just one notch below that, okay,

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that's what that's what's a constant any people, the jury didn't find him innocent, they found him not guilty. They said, prosecutor you didn't give us enough evidence to believe beyond a reasonable doubt that he did that, therefore, we're going to do our duty and found him not guilty, but they didn't find a medicine and then through the additional process of the the the review board, they found him of risk assessment determination, which is, which is what the judge decided that the judge apparently does the risk of determination in New York, but I don't think he just arbitrarily did it. I would hope that that there was a risk assessment done, but the prosecutor we got to come and argue that you should consider this and the judge agreed. The judge found that that that I find her testimony credible and convincing, therefore, I'm giving him points for that, that there's nothing structurally wrong with that

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firm belief or conviction of the truth of the allegations. And the judge says he has a foreign belief of the truth of the allegations. I'm trying to unpack those words and comprehend them digest them. That's what I'm trying to get. The judge firmly

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believes that he did the crime, it's an oj simpson things they ate, the jury found not guilty. The Civil jury came in with a lesser evidence, your standard and said You killed Ron Goldman and Nicole Simpson.

1:23:27

Right.

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Interesting. And that would be a drawback of the risk assessment side. So the other side of that is, here's the crime you were convicted of. If they only went by that, then he would have been evaluated at the lowest level where if,

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if, if that were the case, but see, that's people wanting to have it both ways. Yeah, I'm with you. And I always try to be intellectually honest, if you want to have it both ways. And you have to be honest, that, hey, I want to have a risk assessment, but as soon as the purposes and then I want to tie the state's hands, so maybe you have a hybrid model you safe, it's a misdemeanor conviction. We don't get to consider anything else. But right now, it doesn't matter what's a misdemeanor conviction, they get to consider your proclivities and the evidence that would suggest that your higher risk and they consider the evidence that he actually did the full

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gamut even though he was a convicted and they gave him points for that.

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All right. Alright. The final thing is, there's this uh. I'm just going to call him a knucklehead, there's a politician in Pennsylvania. And his name is Tom Mahaffey, maybe and he has decided that he wants to propose a 5000 foot living restriction for those people on the registry. This doesn't necessarily mean you're convicted last year, this could mean that you were convicted in 1970, and you're going to have a 5000 foot that is a gigantic circle, that where you wouldn't be able to live, what we wanted to then try and unpack would be if this was your state, how you would possibly go about challenging this to bring to gum it up to prevent it to however, however, we're going to negotiate this process to keep this thing from happening. This is just a we're going to assume it's a proposed bill and Larry being the expert at gumming up making things worse Have at it,

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well, this Pennsylvania, their processes are different, they have longer sessions. So the techniques that I use here would not be completely applicable, because I've got time on my side. And if you have long year round, or very long sessions, time doesn't work to your advantage. The way does here time time is my friend,

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you've got a very limited amount of it. And you've got a lot of hurdles. And I'm going to try to give you a major hurdles as I can, when you have a bad bill. So that we run out the clock. But But what I would do if I were in a state that had a longer session or time is not as much of an ally as it is, for us, I would, I would, I would get to know my leadership, I would make sure I knew the majority leader of the Senate and the majority leader of the house, I'd make sure I knew the majority whip and the man

1:26:12

of the house and the majority of the leaders were key. And I would make sure I was good friends with a committee chair that that that legislation is typically assigned to, and I'll make sure that I was good friends with the analyst, that they're huge team of analysts, depending on the size of the assembly, but I would get to know if you're in Pennsylvania is gonna go to House Judiciary Committee, I would try to find out who I am the store and I would make sure that that that I provide them at all the evidence I could about the the efficacy of residence restrictions and the actual adverse consequences of states like Iowa, that if that have pulled back from from them, and and I would make sure the analysts get good information and I would talk to committee chairs or their staffers and the Lord your states where you may have more access problems, you know, the access I take for granted a small state, New Mexico be much more difficult in California be a lot more difficult in New York,

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Pennsylvania, probably Pennsylvania is not a gigantic state, you could probably have some reasonable access in Pennsylvania. But I would make sure that that I that I like to be friends with committee chairs and I would go with them without emotion, take your emotion and leave it at home and go with them with this is bad public policy and give them two or no more than three reasons why and leave your binder of exhibits and videos and all that stuff alone at home and tell them why this is bad public policy and if you can get them to derail this as slow it down there was a there was a variety of techniques that you could that you could use to keep that bad legislation from moving but that's what I would do is to try to keep it from ever moving from ever moving say the light of day and that's that's been absolutely no time with that represented he's he's not doing this for rational reasons. He's doing this for political reasons, he may be on a heated reality campaign he by a perceived that he needs to shave off a half a point and you can use your slave off a half a point or appointed a close race by doing something naughty, because there are people who respond favorably to nutty stuff. And as an accredited assertion,

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he may he may feel like in a close race, and it's hard to know exactly where you are in a legislative race, because the polling data is just not out there. Sure You have to do it you have to do it internally you have the commission and pay for yourself and you have to try to figure out where you are but if he perceives that he's at a self reelection campaign he may be trying to shave off appointed to to get to the finish line and he may very well know that this is not going to go anywhere he may know that it's absurd but but it may be enough to get worried he may he may have an agenda and like I say people were responding to it people responded to it and his district it may be that that that he's getting more favorable response the negative he's

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been in place since since 2017 so he's been there is something of a year 18 months he

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said his first two reelection apparently go to your door but he's up for reelection one of the homeless so

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the article that I'm reading I think is almost like it's almost like the bill proposal the way it's written and statistics overwhelmingly show that people commit crimes against children do not respond well to treatment programs and will likely continue to offend perpetrators of these crimes must not be permitted to roam freely near children the risk is too great How do you deal with that particular statement right off the bat

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it's tough because it's it's emotion to make you hard won books I don't want to the clip she played that they said it was a no brainer that that that that people should be kept away from children that's a that's a committed a offense you remember that? I do absolutely yeah. It's it's very it's very tough because intuitively people think that they know it just makes sense that that crimes to the average person as a child if you on the registry. So clearly, if you're a child, you should be kept away from children. I mean, it's very rational to the average person, which goes to the rational basis test,

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if you say so.

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Well, I mean, I mean, like you just said, it's a rational statement. Okay. I mean, I guess that makes sense. So that passes the rational basis test. Yes, it

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does. The fact that you want to keep the community safe, it's rational.

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But as Jim defeat it, I think is his name. He said, Show me the study, give me the evidence of the study, I talked to Gail Kolenda at the conference and they totally prepped him for that interview with him. And the Florida Action Committee had pushed all of their evidence of of the low recidivism rate and all that so that he had evidence on his side to backup the argument where Ron book has no evidence. And again, this guy is just making the statement saying that they don't do well with treatment, and they're just likely going to reoffend again but that's not what the evidence shows so then do you then give your the people that you just spoke about the whip and the the researchers and all that stuff do you give them the evidence that says contrary to what knucklehead here saying

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you that's more of a positive thing for an analyst to have him in their and their report the the, the Atlas is going to be best suited for getting those dreams and statistics, they even they don't want room statistics. You're gonna you're going to win, you're going to win this if you went it by other means of communication, which would be it just it's just so ridiculously absurd that nobody be living and where that's that's a mile 5000 feet is a mile it is yeah, you basically you would make everybody and no bad. Yeah,

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I'm wondering if you plot it out across the state. Do you make it effective statewide banishment, 5000 feet is ginormous. Well, they

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would they would make it would make it would be urban banishment all together. Yeah,

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it would be for sure, yeah, you'd be living in the hills of Pennsylvania,

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and you should be able to get conservatives to support you, and that they would want all the urban people coming out to the, to the rural areas. And then, like, we covered an article where the 18 offenders moved in overnight, then those people would be because, like, Oh

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my god, they snuck him in here at the cup, you know, the cover of darkness?

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Yes. I remember that.

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Another point is my legislation would prohibit Megan's Law registrants from residing within 5000 feet of any public school, private school, parochial school or preschool same thing.

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Same thing that's

1:32:37

I can't even at least it doesn't sit me schools are not nearly as prevalent as churches. Every time I think about this being in Georgia there's a there's a church everywhere you'll out in the middle of nowhere. And all of a sudden there's this little frickin tent somewhere or single wide trailer and it's the local church so you could live near there.

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currently under Pennsylvania law, there's no residency restriction for offenders other than the requirement to notify the school district that a predator resides within a one mile radius. So in Pennsylvania, you only have to tell them that you're in the area but they can't they can't prevent you from living there. 5000 feet is huge.

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It is it is it is scary that that in this day of people knowing better that Mr. Mahaffey is out there pushing bad public policy that will actually help support they'll have a fair amount of support certain hopefully not hopefully not enough but there'll be people who will sign on to this

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i don't know i he is in the hundred six the district i don't know i saw the town that he's in. I'm not really sure that doesn't resonate with me as it's not a like a widely named area. You know, it's not like he's in Pittsburgh or he's in Philadelphia, it's nothing he's not one of those areas for sure. But

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I mean, if he gets co supporters because co sponsors and they pass it in the governor signs it it's a done deal then

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then this would be I would be very surprised if he can move this through this and whether of the Eva Eva Eva the other under conservative domination. I don't see him getting this through the assembly, although he'll have support so it's House Bill 1952. You think that he'll have supporters, but you don't think it'll go through? I don't I don't I don't see him passing one mile prohibition. I bet I Britain, I wouldn't advise the people in

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Pennsylvania just sit on your laurels and hope for the best. But but I just don't see that there's there's got to be more sanity in Pennsylvania.

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And if it made it to waltz desk. I would I would say

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I would see a problem bill to veto I usually don't predict details. But I think him being more urban oriented. he would he would he would see the pitfalls of people would have nowhere to live. Right.

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But in if they made it retro then you're making people that committed the crime in 1970 move 5000 feet away. And you have an ex post facto claim, right?

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Yeah, I don't think they would make it retro. So it would only be from this day forward. Yes.

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So I'm looking at the district profile. It's 83% White, 7.8%

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black

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where isn't

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con comm wake can Lago, waco township

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township I saw that that's why it didn't resonate as meaning. Yeah,

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that sounds like it, either Royalton, more so, Taro and sort of sorta as part of slow Terrell township all these names I'm butcher I apologize. I just never

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special Native American names of that way. Um, you know, they've had

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as far back as I can see, since this dish is being created. It's been under republican

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since 96. Nine, it's already had a republican holding the office. So it tells me it's a conservative area to circle back around to cover a frequent question of people. This is not part of AWS, this is not part of Megan's Law. This is not part of any of those things. This is totally this guy expanding out and going beyond the call of duty of what is federally required as a minimum standard, which and I should be, I should say, federally suggested as a minimum standard. That is correct. And I'm looking at his election.

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He didn't even have an opponent in the last election.

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He just won by default. He showed up any rate, we got 100% of the vote. But the last time there was like contest was in 2012, and the democrat got 64 point 7070 miles will say 60 opposite of vote. I mean, the republican got 60 talks about democrat got 35% that's a pretty much a landslide. So it's a it's a republican leaning district. So you guys that are conservative in our audience which significant number are call it Mr. Mahaffey and tell him he's wrong. You live in his district, tell him that this is not what you want,

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but there are only four people that live in his district.

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Well, no, actually not. He got they got 21,900 votes. Okay. So there's one of

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the population of the district is 64,000 people. Wow, that's the voting age population is 49,000.

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Wow. Okay. So there are no schools there, then.

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All right. Well, I think in a in a district 50,000, I'd be quite a few schools. I thought I thought, though, you said the age population is 49,000, the total population of 65,000.

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Yeah, so 15,000, perhaps going to school. That's also like zero to six year olds that haven't really started school yet to

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so you like these, like, they take there's 15,000 schoolchildren at a population of 65,000,

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I'm doing that backwards of 65,000, total 50,000 some photos, the rest would be school kids, right

1:38:02

under everybody, everybody, that's the red living there. Sort of voting age. But but but so you're, you're extrapolate your ear, so I played it to 50,000 that are not voting voting age would be would be in school, right?

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Um, but I'm saying that they're under 18, so they're likely school age fish, Okay, I see how you get there. And then so under six, so take out another third of that. So now you've got 10,000 that are school age. So that's not a huge school population. I don't think anyway, that's, that's a crazy weird tangent to go on.

1:38:34

And I'm just being just being silly. And picking on that particular area of avoidance of well well, I can say is in South Central PA, and I can't pronounce the townships but but even if you live close by the district call and I tell him this doesn't represent us,

1:38:47

right,

1:38:48

let let their phone ring and let them hear opposition. They never hear opposition going on. And his phone is ringing right now, as people who saw this on it in the news and on the TV and in the papers. So therefore, it they're saying Way to go, Attaboy. Well, we've got to get out of here. We're almost at a we're about an hour and 50 minutes. Do you have anything else?

1:39:09

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and follow us on twitter registry matters on Twitter. I think that's everything and our and our audience is growing every week, isn't it? We have an international audience. How about that money? What country

1:40:01

it was England? Well, welcome. Welcome aboard. from across the pond across the pond. Yep, yep, yep. She was following article from guy Hamilton Smith who is very prolific on Twitter and she found us through that so that is pretty awesome welcome. And we really appreciate the phone call messages. You see your leave them and we played them. Yep. And they're fun. They're interesting aspects to answer your questions. So have a great night. Maybe I'll talk to you soon. Good night.

1:40:30

Thanks and bye.