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Hey, Larry, how are you tonight?

0:02

doing? Great, Andy, how are you? I am well, I spent the day in Atlanta. It was his birthday recently. And he had a really traumatic situation. It was obviously has time to go register. And though, you know, the way the Georgia law reads is that you have to register within 24 hours, 72 hours prior to your birthday. And he lives in a smallish kind of county. And it ended up that he goes up there like two days prior, but that's not the day that they register. And then just the way the time schedule works out, he's been technically late registering and he's seriously freaking out that he might end up the minimum sentences to go back to jail for a year. And it's a massive, stressful PTSD kind of situation, trying to just cover your butt that you were there, but you couldn't do all the things and I bring this up because we have talked about a much more benign registry scheme of like Vermont where you just send in a card Why do

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You have to go in and person to get booked you could do it so many other ways

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well you have to do that because it's a part of the intended invisible but yet intended humiliation of the of the program that slides and law enforcement rather than in a See I want to put it in a regulatory environment which if we're going to have something we call a regulatory scheme I think it should be handled by in state of Michigan for example would be the secretary of state they do that they do the motor vehicles self but in my state of being more vehicle division we would we would want to put it in for a clearly regulatory environment then they wouldn't they wouldn't have to be rock racist set up to do the humiliation they would simply says you like to do when you come through to get a license plate renewal or driver's license renewal you would go in and hand in a paperwork and be on your way and pay your fees if they're worried. Hopefully it would not be fees for the regulatory scheme but but it's a part of the humiliation process it's a kind of an I got you say if you build a 72 hour timeline it it

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presents the opportunity for that type of failure because who likes to go on their birthday to, to be booked, and to be humiliated and be degraded. Or even still, like a longish weekend, where there's a holiday, your registration day is, let's say, on a Tuesday, so you have to do it prior to but then you have a Monday holidays and they're not going to be open Saturday and Sunday, you were screwed right out of the gate. Because you can't that 72 hours. That is correct. Now in the county he lives in, they're typically a lot more laid back there. And unless they're out to get him particularly Yeah, probably won't be an issue. But if he's given me any type of what they would call non compliant attitude, and non compliant means doing anything that they impose on you whether or not it's in the statutory scheme, like they tell you that you have to call them when they leave that right floor on your door. You don't have to call them unless in the statutory scheme they they impose these things are not attached to our scheme. And then if you don't go on and cooperate then you are non compliant if he's been non compliant and their estimation that they may attempt to try to make something out of it.

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But in that particular county, I don't think it's going to yield any problem. But we'll find out in the coming days. So.

3:07

All right, well, please consider making us part of your podcast diet. You can search for us at registry matters on your smart speaker or podcast app of choice like Google podcasts or Apple podcasts. Also, if you like what you hear, please write a review. And if you don't just forget everything I just said.

3:24

And this show is supported by our patrons. You guys and gals are amazing. You rock and we'd like to thank our new patron Justin. He writes, thank you. I've been enjoying your podcasts and I feel that you're giving out really good information and having good guests on your show. That helps. So I wanted to do my part to help and I'd like to say so your blue ball will be in the mail on Monday. And thank you so much. Again, I would say the same thing. Justin, thank you so much for the support and confidence. It's a lot of work to put these together, believe it or not, and to receive a compliment I've realized that some people may not agree with me and I really appreciate

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That you find value in what we're doing. That's the whole idea of doing the podcast. Yep. And also I was having a conversation with another one of our patron Patreon Patreon supporters Patreon Patreon supporters and Mike in Florida and he says hey but keep on doing what you're doing. One thing I've learned is that this is a marathon. Not a sprint. People in this world can be total dirtbags. But I know what it's like to suffer and lose it all we need people like you. educating people like me, what you're doing is important and in my opinion, really groundbreaking and bad ass and takes big balls to put yourself out there like you do. That's a total badass move in my opinion. So thank you, Mike. And so if you would like to support us, please head over to Patreon dot com slash registry matters. Every little contribution helps and we really appreciate our patrons. What is the minimum that a person could do to support the podcast in terms of financial if you wanted to do \$1 that would be awesome. I don't think you can do less than \$1. I don't think the system allows for less than that. But you could sign up

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support level. So a person can sign up \$1 a month? Absolutely, absolutely. And I would just, I would adore it if we had 10,000 people giving us \$1 not not to get \$1. But just to show that the appreciation of the sport of the, of the show and also show that they're out there absorbing the information that were that were pumping out which in many cases, people this is the first time they've heard it, there was a perspective that I know I present that that is completely different than what the average person who's grown up in a middle class background larger tended to be in a conservative family. They have not heard my perspective and I'm, I'm hoping to open some eyes. I've heard their perspective. I grew up in conservative I was a conservative and I was a very conservative person at one time and and I've evolved and so I'm hoping that as we go through some of these things, and people begin to click and say, Gee, I need to rethink that position. That's the whole point of this. We're not trying to we're not trying to be a little anyone's beliefs. We're trying to expand the universe of knowledge. I am

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your host

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Little someone's please.

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Alright, so let's move on. And I would like to welcome Roy Fleming. Rory Fleming. Sorry and you are the founder of fog light strategies in Minneapolis Minnesota. And I would like to give you a great big FYI p welcome. And how are you very Thank you. I'm doing wonderful. Thank you for asking. Um, yeah just just another day in paradise outstanding. But one of the reasons why I wanted to bring you on the show is that you have more Twitter followers than we do but it also had seen that you and Larry could throw around political strategy ideas back and forth I was just looking at some of the campaigns and it looks like YouTube would be able to dig into all kinds of strategies and techniques of trying to to move the ball into the into the direction that you wanted to go Yeah, most definitely. So tell me tell us about fog light strategies and you you the only campaign that I really was familiar with is the Genevieve Jones right in for San Diego da right. That's correct. Yeah.

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So um I worked as a research consultant on that campaign for about five months so I was there almost the entire time and it was a very exciting race and at one point we were pretty close in the running you know with Genevieve Jones right who is a African American progressive public defender versus the incumbents who is now you know she was the interim da at the time now she got her first four year term a summer Stephen who is a quite you know, um, I would say a conservative Republican da a lot of cheap prosecutors in California are a lot more quote unquote tough on crime than one might expect. It's, you know, not too much of a surprise though, if you look back to history and see how California had horrible prison overcrowding. And until just very recently, though, it doesn't come into effect until 2021, one of the four states that had a lifetime registration for any level of

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crime, which is just terrible, and in contrary to public safety, but yes, so, um, we ended up losing that race, largely, it seems, according to the political consultant on the other side, because that was one of the reasons that George Soros pumped a ton of money into. And the Republican political consultant did a lot of work to poison the well on that. So basically,

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you know, deliver the sort of panic, so to speak, and, and it worked. But I think that it really generated a conversation on criminal justice reform that really did not exist in San Diego County in the mainstream until very recently,

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so that was cool. Otherwise, I've done work in Charlotte, North Carolina. I've been worked in Boston. I'm doing work in a rural county in Wisconsin,

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and I have a couple of other things in the pipeline that are you know, a little bit controversial a little bit sorry. Um.

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confidential? Well, that's fine, that's fine.

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How How does this are you? Are you focused on educating the candidates on criminal justice issues or in a whole broad spectrum of topics? So it depends um, word like a lot of what I do, I I tend to pick candidates who I know are relatively evolved in their stances on criminal justice reform type issues. Obviously that's going to depend a lot on area and political demography and things like that

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in that some counties are more conservative on criminal justice issues and others even with say democrats are rare you know Colonel justice reform is relatively bipartisan but in the in the DA world it's you know, it's it's complicated. It's not so much a republican democrat thing though I've only worked with Democrats so far. It's more of a

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you know, all of them like pie.

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Management who who likes punishment more or less is essentially the dividing line a lot so the candidates often know though that I work with you know a lot of the the hot button issues right now like you day which a lot of the hot button issues are going to be like bail reform you know there's a growing BB bipartisan consensus that cash bail especially is just an important system right of course there's a big debate going on of what the alternative is because you know not everyone's happy with the idea of risk assessment models and I completely understand that and so so that's a complicating wrinkle but that's one of the big ones in in a lot of the South and the West the death penalty is a big deal

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and I you know in some places even all life without parole is something that's come up but also just like you know like obviously lighter stuff like what do you do with just basic drug offenses registry stuff doesn't come up too much because it's obviously a political football yeah

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It's something that I'm I've had a good bit of experience talking to people just in the criminal justice reform community but also prosecutors and Sheriff candidates and spoke like da spokes people in media people who have who have told to be in confidence. I won't name any names but like, you know, hey, you know, we know like in California for instance, there was somebody who worked up in a DA his office was like, you know, we know that the lifetime scheme is BS.

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This is something that like a lot of law enforcement California gets but it's politically taboo and inappropriate to say basically because it's it's not it's something that's extremely difficult to convince like, you know, general public who doesn't know about the complexities and the wrinkles in these issues that it's something we're talking about. Um, so I though I think that they'll obviously there is some progress like for instance, Jackie.

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Lacey is the Los Angeles district attorney, that's the biggest da his office in the country. It's 10 million people. He was the only da in California to support getting rid of the lifetime registry and replacing it with the general

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wife scheme, which obviously is not ideal, but by American standards, so it's a lot better than the life thing. You know.

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And she's actually generally she she sometimes opposes criminal justice reform bills, but often she just refuses to talk about it. She is not like an ally to general reform. So in some ways, I think that was why Governor Jerry Brown and California was convinced that it was something he should sign because I was shocked frankly, when I saw that she's generally you know, notice very quote unquote politically careful Um, so, so that was a really positive development I think and and I you know, anecdotally from researching district attorneys across the country and my old job that

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you know, I

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I tried to find it again I haven't found the article but I've seen for instance there was a DA out in Idaho I think it was where he was actually doing a first time offense statutory rape diversion with like young adult offenders beacon to prevent them from getting on the registry for first time offense which I thought was great I mean like that's something that you know rarely is like done or especially talked about in the media I also know that the outgoing boulder colorado da like he I don't know if it translated to policy but he definitely had some media statements talking about like you know, I I don't necessarily know

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I was shocked that he said that'd be the thing is I I can obviously see how it's taboo but he was talking about how like

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in the context of an article about registry requirements and stuff like that, that he considered say

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24 year olds sleeping with a 15 year old is way different than like a 50 year old sleeping with a 15 year old or whatever you know and like that that's something that is often say you know and so I was like huh that's really interesting but I think that there's a lot more nuance behind the scenes and that's why you know like you know people who work in the the DA reform area with the prosecutor chief prosecutor area will talk about how prosecutorial discretion is such a big deal and

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you know yeah so they have a lot of power to take cases on a case by case basis and decide like what exactly they're going to do like diverted or prosecuted or like what charge to bring and things like that got it Hey Larry, why don't you jump in here and toss some ideas around

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Well, I he's doing such a fine job I don't I don't see any any anything to add

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the DH race I agree with him on the point about it is it comes more down to conservative versus liberal the party label.

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You can you can sink your ship running for da if you're too too liberal for your, for your district. And as I've said so many times on this podcast and on other platforms that it all reflects on who we are as a people when when people start demanding diversions and alternatives to prisons, they will get that but apparently in San Diego that whatever whatever consultant that Republicans roll down, and labels like it's a more of a conservative versus liberal, they use their scare tactics, which they do quite well. You go back to if you go back to Willie Horton and 1988 presidential campaign and you can just look at time after time they scare people to death about about imaginary Boogeyman right now as a flood of immigrants that are coming over the border but it's actually an all time low but but that that can sink the ship of the candidates trying to be progressive because the people are not there yet. The people are the problem. It's not the candidates. That's the problem. It's the people who bought into the nonsensical message of gloom and doom for some reason.

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Americans like to be afraid of non existent threats are miserable existence right what's crime going down that people are terrified of being victims when you're safer now than any point in modern times

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right and i agree with that and I think that there's a couple of interesting things that I wanted to say to add to that one with the San Diego thing

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I you know just to give you an idea of how tricky some of the the registry reform stuff can be but I obviously evaluated important effort it was really interesting because one of the things that they seized on with their anti George Soros and anti my candidate ads was this idea that my candidate was not going to prosecute sex crimes anymore and like on the website that they made the like hit website they were basically like will not prosecute sex crimes you know, and so all that they were riffing on there was

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literally that summer Stephen is the the queen of

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conflating sex trafficking and just normal prostitution and which is like largely an ideological thing that has definitely become something that a lot of more conservative tough on crime the A's have seized upon as a way to justify all of their harshness

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this there's a lot of obviously if we're talking about like you know a situation where like a gang is kidnap somebody in there holding a gun to their head and like being like you know like ordering hurting like get raped all day basically that's a lot different than say you know like an escort or whatever you know but like to summer Stephen in California that's not the case Genevieve Jones right decided to take the risky but I think important tack that these things are not missing and it's worth looking at the data and talking to the women who work in it who do sex work for a living and like actually get their perspectives of what's going on and

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In a county, like San Diego with a lot of

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conservative do gooders, or like, quote, unquote, new gutters, they were like, you know, they need something to dedicate their, their advocacy energy to, and so not even paying attention to what's actually going on with sex trafficking. And just assuming that, like, you know, anything that anyone says about it is real with the pack, you know, it just like I thought that that was a big thing that probably, like helped sink us there. Um, but yeah, so. So the other thing I was going to say too, is I think that media ecology matters a lot. And I think it's really important that this podcast exists because I used to work with the fair punishment project, which is a joint project of the heartbeat of Harvard Law School's Charleston handle. Charles Hamilton Houston Institute in the criminal justice Institute there

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and one of the major things that we did was creating that media he calls

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For people to actually be more exposed in national outlets to what the criminal justice system actually looks like day to day, and we did a lot of just digging into the records of, of the A's and kind of just exposing like a lot of the nasty stuff that happens behind the scenes in these offices that just like never gets reported on and and so that's a really big deal because a lot of people don't realize how

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hyper draconian the American justice system often is.

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Can you expand on that notion right there on hyper draconian? Yeah sure. So, um,

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so obviously we have with you know, the one of the common taxes that are like, you know, it's, it's, it's something that often comes up and reform does for us, but it's also factually true, which is we have approximately 25% of the world's prisoners and 5% of the world's population we continue to have

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The highest incarceration rate per capita which is like based on like, you know, like comparing how many people are incarcerated but divided by the population, we have the highest rate in the world. Um, and obviously it's hard to get data from Russia and China but like or in countries like that but even so like based on what we have that's that's the indicator and often you see this an individual sentencing cases where say, I'll give you a really pertinent example. Um, there's a case out of St. Paul, Minnesota where I it's Minneapolis area, but St. Paul's the other Twin City.

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Yeah, and so there was a case that happens that was going through the court system and I think is still pending before the state supreme court. The court of appeals, I just heard it when I moved here and a couple of years ago, and it involved a African American young man who was like 19 or 20 when he had sex with a 15 year old girl It was like factually consensual the obviously a statutory rape charge and so he got a suspended sentence or not.

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wasn't even a suspended sentence, it was probation. He got it was like a long turbo probation which the Minnesota court system really likes and where we are one of the least incarcerated states in the nation. We're in the bottom five. But we have like, tremendous and limitless probation terms. So somebody can get probation for like, you know, 30 years or whatever, you know, kinda kinda like the federal system. And so he got like 10 years probation or something. The max prison sentence for the offense was 10 years and then he he violated probation. But his his technical violation is probably the most dehumanizing violation I've ever seen. send somebody to prison ever, which was he was homeless app like after his case. I guess his parents either lives too close to a school or want nothing to do with them or whatever. And he was trying to find work but he wasn't able to. And his PTO said his probation officer said,

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find work so you can pay for your sex offender treatment for

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Or I'm going to like write you up preparation violation and he said I can't get a job and so the PO says, Then why don't you just sell your plasma for \$40 a week or something like that will cover it and he said no I'm not going to like basically sell my body the poor this like bogus treatment or whatever right and so he ended up being sent to prison for four year service

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which is just impossible and insane to me. I mean like this yeah and and and i mean obviously you know, this is not just a problem in sex cases you know, the people get over sentence especially in like the south and southwest for drugs for instance all the time and and in other states especially if they have prior fences but and the fed the federal system with the US sentencing guidelines and and such is just, you know, basically a charge is tantamount to a conviction and you're going to go to prison for significant amount of time on virtually everything right and

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I mean that's just not how things are in like say Europe by contrast and likes a lot of other nations

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a lot of other countries laws are more lenient on a lot of things I mean if you look at even like European murder sentencing versus ours like a lot of countries throughout Europe will pin a murder sentence that like somewhere between like 14 to 20 years whereas here we had to put like without parole as like a rubber stamp plea bargain option to tell people that it's not okay morally to kill people basically and so those are just like kinds of the things that I mean when I say hyper draconian um but it was really interesting one time I talked to a reporter here who actually wrote an article about that case and he had no like in in Minnesota child pornography possession cases or first time offenses is almost guaranteed to be perfect like just straight up permission, which I think makes sense um, obviously that

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You know I I had and I have actually argued in a mitigation case that I worked on in Florida with some really bizarre facts you know I told I wrote to the judge and I wrote that this is a thing in Minnesota and we're also ranked number one for like a you know a child quality of life or and safety or something you know like by like US News and I think the judge like did find that interesting I he commented on the letter I wrote in court

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but my point is that like I told the reporter here he doesn't look at federal anything that nowadays you know somebody happens to get federally charged with the same crime including in Minnesota they're looking at like five or seven years or like you know mandatory 10 if they have a prior fans and like you know when it when it comes to like the the very muddled law between distribution receipt and possession with the modern internet you know the feds can just charge you with like distribution and recede and

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You know, get like 15 years for a non contact crime that, you know, even the 1970s or something would have been seen as a thought crime.

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And it's obviously complicated. Um, but. But the point is that, you know, that there's a lot of geographic arbitrariness there's a lot of like seat federal arbitrariness but in like every single state in the country were more draconian and more punitive than virtually every country on the planet you know, and that that I think says something and I think it says something going to the point that was made about who we are as a people I think that there is a strong desire for retribution revenge in American culture and I think that it's that's a much different more difficult question on how to change that and I think that um, education is a big part of that obviously,

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my whole

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Go ahead. I was gonna chime in. I think that that what what feeds into that there's no there's never just one magic solution to to who we are as Americans but Americans are all about the individual and the Europeans are more about the community right and Americans americans believe fervently that they built this all themselves right if they're successful, they don't believe that that that the educational system and infrastructure and the law and order system the clean air and all the things that makes American society work they don't they somehow belief that they built that themselves

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and the end the Europeans are much more likely and I had a number of years of property manager or I dealt with a significant foreign student population and they could not get over the individualization of how Americans believe that it's all about them and that was shocking, appalling to the European students is like a we as a society are degraded if we have

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Under educated underperforming homeless people America would think we talked about West pot podcast 1970, we had eradicated homelessness for all practical purposes, because we had we had address homelessness with a comprehensive of Great Society programs. Some of them were less successful than others, but a part of what causes us to be that way about crime. Is that what they're American who made it who who's doing okay, and you try to explain it, there's poverty factors in there, there's the the inner city, the problems of the inner city will help you make what you want of life and they they make these choices and by golly, they live with the consequences and they don't see the need or desire to bring that individual back into the fold, so to speak, in the community of love the family that it's just that individual mentality that really drags America down we don't think about about the benefit of the collective whole we think about us we're selfish Yeah, I think I think that that's very true. I

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And and one thing I actually wrote an op ed in min post which is kind of you know like the well you know it's like a political like a bit high minded political scene in Minnesota about Minnesota politics and related issues I wrote an article imploring our US senators and Minnesota club HR and Tina Smith that they should support the first step act which

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had you know, the first step act as a is the very limited prison reform bill that is pushing through Congress slowly right now that has the backing of

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gosh, how am I forgetting his name? I'm

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George Bush. not kosher. Yeah, I was gonna say like the son in law. Um, but anyway, um, yeah. So. So he had a father who was incarcerated in the federal system for some kind of white collar political fraud related thing.

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And but even so, it definitely made an impact on him and his family. And so I it seems like he's relatively thoughtful on these issues. And so what the bill does, I mean essentially, you know, there's some grab bag stuff like, it means like no more shackling of pregnant women which, you know, stuff like that that's just, like, obviously awful Why do we do that in our system, but, um, the the key provision that has been really debated is that increases by about 10 days or so the amount of days that can be calculated as good time in the federal system until you can go into a halfway house or, you know, the anon car circle alternative to incarceration and in the federal system, because you have to serve 85% your sentence and there's no parole that that's pretty cool. You know, and like my, one of my core arguments, even though some people are really upset about potential propagation. So systemic quality is because of risk assessment models that are included.

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And I am sympathetic to those concerns. But essentially, my argument is that because of a couple of the, you know, victories of reform oriented prosecutors in certain, you know, liberal cities throughout America, that people in the reform community have lost sight of the fact that that's often not the reality, and certainly not the reality and US Congress. And but but,

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you know,

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at the same time, I have this line in the article that says, To fix mass incarceration, we require a greater understanding that our prisoners, even those who have previously committed violent acts are part of us, they are our communities, children and adults and whatever. You know, there are people too, and I think in American society, you know, we do have a lot of diversity. That's really wonderful. And a lot of, you know, countries with much more humane prison systems like Sweden or Norway, are you

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Know It, generally you walk down the street, everyone looks like you. Like everyone looks like they could be your uncle or whatever, I'm not so much anymore. But that's, like, largely so the case. Um, but I think that, that,

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that doesn't even have to that that shouldn't be how we, we see things like like it should be, um, regardless of similarities to ourselves, like everyone in this nation is a part of the same, you know, body of people and we should

watch out for each other and realize that when people commit crimes often there are systemic aspects of how we have failed them as a community. It's not simply

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a personal responsibility model. And,

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and obviously, you know, in my opinion, if we looked at it like that, I think we'd have much better statistics in terms of recidivism and things like that, but it's hard to convince people of that obviously,

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but anyway, sorry if that was long and attend but All right,

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so now but i would i would agree with that the Europeans they don't

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They don't turn a blind eye to criminality but they they go into it with wanting to better the human person and the American model is we want to humiliate integrate and punish and makes a unit suffer you can look at the Florida or you go and get the prisons in Texas where they believe that well you can look at Joe pile the recent part of the president who believes it's okay to just just humiliate people to know in and make them suffer and suffer with no hot water in the summertime in the tent and put about in the blazing desert Texas does an air conditioner institutions I think there was a few privatized once where they might be ventilated but but that that that comes from the American people if the American people were calling the sexes assembly and saying How dare you put our our fellow human beings and this is on inhumane to do this day would stop doing it yeah that's not what they're hearing i think that that that with sheriff's it's interesting because our Pio actually did get kicked out of office by

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Maricopa County after after 30 years pretty yeah things have obviously changed over the decades and people finally soured on the Soros donation to the moderate opponent to our pie Oh definitely didn't hurt either but yeah I mean um. You know that's just like that like there's a local democracy aspect to that I think that people are intimidated by the giant bureaucracy of the state do sees the Department of correction and I think that when they're not you know obviously there's a lot of secrecy but also you know

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I'm willing to throw them under the bus again this guy is blocked me on facebook but uh. The actually the entire Pennsylvania Department of Corrections has blocked not Facebook sorry Twitter for criticizing them because they're their chief data researcher is brilliant, but he's also like, just really, really hateful, racist, disgusting guy and I complained about and so I got blood

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But yeah so that that do see Secretary john what's little is renowned as like a criminal justice reform or and he he does have some good things like looking at data and trying to better the system by data but we're like and he talks about how mandatory minimums are bad Of course he does he has limited wait on that area you know but when it comes to stuff that he does have direct control over like us the solitary confinement solitary has actually gone up tenure and like there's still tremendous racial disparities he's bought in court to keep all of the death row prisoners on on in solitary forever and things like that like mental illness for solitary as punishment and even so john Jay College of Criminal Justice will invite him to reform or conferences and a lot of my colleagues and I are just like why you know.

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So I think that being honest about like how much better the prison system can be is definitely important because I think there's a lot of unfortunately defeatism sometimes even from the reform community.

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of what we can do but of course there is definitely that aspect of like the you know like even though his secretary corrections are officials are not elected, there is an aspect of the public will and like if people did care more, they may like call up their governor like write letters and be like, and I they do to some degree, but like a lot more than they do and be like, This is outrageous. Like, how can you not like air conditioned the prisons, you know, people are dying. There has been more media on the subject now, which is good.

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Before we move on. I have one last question. Feel free, both Larry and Rory. I'm curious how would you bring issues of change to the politicians to that would resonate specifically with people on the registry? Is it particularly one that is very much not on board I don't care whether that's left or right. Doesn't matter to me, but one that isn't already on board with some kind of criminal justice reform issues.

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Yeah, that's a really interesting question. I actually

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things sometimes because and you guys may have seen this but i i have a lot I had I definitely have had a lot of anecdotal experience pointing to a pretty weird in my opinion and convergence between um. You know, kind of like an identity politics driven and social justice minded thing to prison reform that you know it's kind of like the thing where you have to abide by all of the like liberal progressive planks you know like and so it's like you sometimes I think it's actually easier to bring it up to like, say a republican legislator behind closed doors about like, Hey like the registry doesn't make sense from a public safety perspective than say asking like leaders in the criminal justice the general criminal justice reform immediate like the registry is unfair and they may turn around and say like, you know, like shocking things about like say oh my gosh like like the 19 year old who hits on a 17 year old is a pedophile or whatever. It's like, Oh my god, you know, so.

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But I think that really it depends what level you're talking on. on the state level. I think that that

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I think one thing is that, um,

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gosh, where to start? Um,

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it's really it's a question about messaging or tactics, more so than I mean, you know, my, my big hot button would be about residency restrictions or work restrictions, and that to have to have somebody have any level of safety and security in society, like they have to have a job, right. And if you prevent them from living places are working places, then they can't function and they end I mean, you know, you end up just cutting grass for the rest of your life. And that's, that's gonna be hard when you're 50 and you live in the south and it's on 95 80%

37:50

humidity. I think. I would like to see more business owners who have hired registrants and who have had good experiences but again

38:00

become brave enough to talk about that in the public sphere in the legislature and talk about how, you know, you know, like say if there

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maybe they had an employee once who was getting kicked out of their house because of a change in like, say a school was built nearby or something. And so they had to miss work and also like, they have like a, like a family like a wife and kids and, you know, the kids suffered and like, you know, like, I think that a lot of that stuff is known below the surface but isn't those stories aren't told, especially by people who aren't

38:38

directly impacted or the direct family members so like business people and like other folks like that I've hired a registered before and I had a wonderful experience and I think that that's one thing. I think that with residency restrictions, there's definitely

39:00

competing interests and obviously this cuts somewhat on political lines but um. Different states have different laws about how much autonomy city and municipal units have and create creating their own law and most states have a certain on essentially you know for our purposes a low bar like say they could say like oh the residency restrictions can be up to 2000 and then like you know all these cities like in California will be like okay like like here we're going to like draft this thing and so

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you know obviously in California what's happened is the city council's try to pass these things that are you know sometimes blatantly unconstitutional um and then advocate attorneys will go in and and Sue which is great I think that unfortunately it's it's way better to have to be able to prevent these things from happening in the first place and I think that that's Are you probably going to

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happened because obviously other cities will look this stuff up and have a deterrence now because they know that there's been these court decisions in other areas of their state or whatnot. But I think that, you know,

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um, when it comes to talking to say the legislature to change these things, I don't think the residency restrictions are going to go away anytime soon just by the political process but I think that it's just a matter of like really continuing to hammer them on the fact that like, this is this has no scientific benefit, you know, like and, and obviously, that argument only goes so far with a lot of people but really it you know, there are strong arguments that being worried about the, you know, person who committed a statutory rape as a young person or like say, look that naked teens on the internet a decade ago versus, you know, like,

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like ours, is there any real risk there, um, you know, there's studies that show that after 10 years of not reinventing the sex

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Defense like risk will effectively become modified statistically to that of a normal let you don't know sorry for I don't mean normal but like you know the test group the

41:14

noise Oh what the background noise I mean you know do you just become part of the typical population and so I think that those sorts of things are compelling I think that it's important for people from both sides of the aisle to continue this discussion that's been really good about how Anthony justice Anthony Kennedy who is now retiring

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did pen that Supreme Court opinion from oh three that really started to just give carte blanche to the states on

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creating these sorts of restrictions I believe that was the last cookie dough decision

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the uh. He he has the quote in there that has started to be behind in places including New York Times in New York Magazine and stuff like that of like the quote unquote

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frightening and high thing for re offense which not only did you just pull that out of like pop like a pop psychology magazine but the actual author of of that study um. It which I had I think happened in like the 80s or 90s he has since the candid or or at least like said that like the study should be recanted he was actually interviewed by this journalist Joshua Vaughn who writes at the Cumberland Sentinel in Pennsylvania who's a really really good criminal justice reporter and he's he's written some national outlet outlets like the keel which is a project that came out of the fair punishment project umbrella but originally but um. But he interviewed the guy and yeah the guy was straight up like yeah the frightening and I think was kind of just bogus you know like I think he didn't like um. I think that he noted flaws in the methodology and his own like either personally

43:00

bias or I think that like maybe he had some kind of monetary bias like I think that he was he may have been some kind of like sex offences therapist or something so like it was more business for him right like if that was the case I don't remember exactly what it was but it's definitely worth hunting that article down

43:17

and the point is like you know and that's that's not just him like like Patty

43:23

Wetterling. Jacob Wetterling mom has also been like you know the registry has like completely become this like bureaucratic monster that has like way over in common slight like over encompass like groups that like should have never really been on this in the first place and it's like completely life destroying and there's no restraint so i think i think that that like I know that's a lot of like dancing around the question because I there's no easy answer um. I think that uh. I I know I do my part by talking to like trying to tell as many

44:00

people

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as I can who like have some kind of you know level of potential sways so like my wife has a doctor and and so sometimes like these sorts of conversations come up like I'll make sure to educate the the other physicians because they're science minded people there they're rational and reasonable even though like you know obviously like you know if we're talking like a sex offense like a violent rape or something that offends like everybody you know but like they they're also willing to look at the data you know and and i that's really I don't know how to convert that into political action but I definitely think that talking to people who may not immediately seem like they could be helpful for

the political process especially if they have some kind of like medical or psychological Prudential because so much of the registry is is like as as an idea of something that's okay to do to people is based on on these false

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unscientific ideas about risk and and like like

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lack of mental capacity for people who have committed any kind of sex events to stop which is completely not true but like

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i think that like trying to talk to those sorts of people and getting them involved yet he including if they don't have somebody like who's a loved one or a family member or a significant other who's directly impacted could be really helpful because I think that unfortunately it's not fair but I think that a lot of legislators

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and I say this from anecdotal experience from talking to some advocates who do some legislative work in this area if they have somebody who they have this close to them like that I think that the legislators suspect bias and they they're worried about what it could look like if they like agree with them basically. But if it's like a doctor or something then it's just like oh, her doctor you know uh. Yeah so that's that's

46:00

Something that I I've thought about sure i would i would yeah i would i would like to jump in here on that

46:08

your your question was at home did enough but there was a button on mind push to what Smith versus dough and Justice Kennedy I'd like to get back to some point but but in terms of in terms of the message you there that's a question that cannot be answered Andy because you have to tell me what you want me to do.

46:26

When you say reform I need to know what reform you want it and use it in a little bit on terms of residence restrictions, but I have relationships with politicians that's probably beyond what the average listener is ever going to have. And the one thing that that they will eventually tell you when you have that type of relationship is you showed me how to keep my constituents from Kelly mail this issue and I'll help you

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and you can never do that when you go in because you know, you can fall back on yourself the right thing to do I've got to get killed politically, but it's right thing to do, but I'm going to get killed politically and you never can help them.

47:00

To overcome the fear that that I'd be, they don't get like to the office because they want to make the life of sex offenders better. So they get elected office because they're concerned about education. They're concerned about public infrastructure, they're concerned about a whole variety of environmental issues,

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teachers, pensions or whatnot. There's so many things that a state government does that they're involved in. And this is kind of a minor distraction as far as they're concerned, they didn't run on a platform I'm going to make better life for sex offenders and you when you when you can't tell them specifically what your plan is and how to keep them from being killed politically you're not going to get much traction so so i i do want to hop in real quick to just say that I think that

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that part of this is why I'm and this is true of a lot of criminal justice issues, not just the registry, but I think that the registry is the most difficult to win on the legislative front this is why I think that

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and you know, I'm not gonna say that I'm an expert at this myself but I think that

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I would really like to see some of the reform minded district attorneys who have been cognizant of unfair sentencing and unfair you know cause I punishments like cash bail in other types of scenarios to you know at least start some like ideas like say um and I again would love to find out who that da was you had like a statutory rape diversion but like you know I'm

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the A's have an incredible amount of authority and discretion and people may be upset with individual things that they do but they already do things that are way more

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rankling to people like you know just as part of the job like regardless of their reform status like for instance there is this there's a relatively respected da out in California somewhere in the the valley I'm not gonna say her name because she like you know like I don't want to

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I think overall she's a good da but like this this was

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A bit of a I don't know how I

49:03

feel about it, to say the least. But like there was a case that she got a lot of heat on because she there is it was a case where a very rich like 70 something year old man raped a five year old and got like, ah, gosh, I think it was like straight up maybe like 90 days house arrest and that was it. Like, not even the registry and we're talking I mean like virtually like any like, I don't know what happened in the case maybe the evidence was incredibly weak or something like it or you know, but, you know,

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the only thing that was identified in the record was he's basically Um, and so, um, but like, you know,

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she didn't even have a challenger like in and and honestly by 2022 she probably won't like, you know, like unless maybe that victim's family like talks about a lot or something and I'm not necessarily saying like, That's right but the point is that like, you know, you can't judge it.

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Da based on like one case or something but if like if I'm right about that and she doesn't like basically get knocked out of office like for that alone or something then like why can't a DA do like a you know a indecent exposure for the mentally ill diversion or something you know it's like give them another chance to like not have their life completely destroyed or like statutory rape or like non contact CP offense diversion or or something like that I mean you know yeah I mean there

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let's go back to Larry Larry wanted to circle back around to the Alaska decision oh

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yeah now the Smith Smith versus doe that pushed a button of mine because it's clearly misunderstood by a lot of people oh yeah the facts facts are established by variety of mechanisms and when cases are litigation the frightening and high recidivism was established by the parties and that

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case they establish that by moving for summary judgment and when a party moves for summary judgment, which was what happened to the court below the the the party that moves for summary judgment and they say if I recollected may have been there was a joint motion for summary judgment will be the parties move for summary judgment whichever party is adverse to the motion to not moving party has the entitlement did everything that they could conceivably present as a defense to why they have the statutory scheme is resolved in favor of them because there was not a fact finding mission that takes place because department saying we don't need a trial. So therefore, when the parties moved for summary judgment, the trial court was handed a fact that Lascaux said if we were to go to trial artifacts would be the recidivism is frightening and high. And since the parties were arrogant and didn't want to go to trial, and they wanted a summary judgment, the court was handed a fact that there was high and frightening recidivism and they had to defer to that fact unless they wanted to say no

52:00

We don't want summary judgment and appropriate there were material facts and dispute but otherwise just was a fact it was established by the parties and I kind of object to the court being blamed for something that the parties conceded to and stipulated to, you can have stipulated fact you can have proven facts and you can have well Well, this was the fact that was determined before the case ever reached the Supreme Court that Alaska's defense was that it would be that there was frightening high recidivism and that was what the court had to defer to because it was a summary judgment disposition below I I will jump into saying that i

52:35

i embarrassingly admit that I actually didn't know that like about Smith is Smith Vito and you know i part of the reason that I do the political work that I do rather than just go practice law I mean it's one because I think I have a more macro impact to this way I'm reformed but to you know, I the the nitty gritty of like a case dispositions and stuff is not always the thing that's most interesting.

53:00

seem to be. But in that case, that's a really big

53:02

fan. I really

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think I've seen that in any articles. No, I learned about like a month ago. Well, well, I keep I keep saying, but I don't have a big enough platform that there were things that could have been done better. But the the parties that you got to realize that this was late 90s litigation, but time recent Supreme Court had been underway for years, but because of the trajectory getting to the High Court, but it was like late 90s, and no one conceived of if I were an attorney had been licensed. At that time, I would have just intuitively thought what they did what clear this is an ex post facto application, but they didn't bother to read Kennedy versus Mendoza Martinez from 1963, which is where the seven point analysis goes in terms of whether despite you call it civil regulatory weather and inflicts punishment and the Supreme Court,

contrary to everybody on our side who believes that they said something they didn't say that you can do any register scheme you can imagine. They said based on what we see in the Lascaux scheme today It does.

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impose any disabilities restraints, that doesn't have any occupational departments. It doesn't restrict the person from traveling. Therefore, this is much like a regulatory scheme related to automobile or something of a common accepted regulatory scheme. They didn't say legislators go out and do anything you want to do. Did you have carte blanche that that's what legislators have done? But that's not what the court said. They said that there are boundaries, they said, they said,

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Look at these seven factors. And the Sixth Circuit did look at those seven factors. And they said, we find that this evolution of registration requirements particular in 2006 and 2011 memos to Michigan sore has tipped it beyond what was permissible under the smack versus though analysis and people need to get over this thing about the the, the frightening high recidivism and they did to get on with the business of proving that the registry has evolved and an influx punishment it it's no longer the same analytical framework and they need to distinguish their facts from the space versus doe facts and they need to get over it and move

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All I completely agree with that, you know, I actually I'll never forget in law school I did a paper about

55:07

what happens when somebody with a serious felony conviction or some other kind of like you know nominally serious conviction applies to try to become an attorney with the state bar and one of the most fascinating cases to me was chance over scenes in California be you know, like he committed an offense that wouldn't be an offense in the you know, the majority of states but in California was registered and it was a non violence like such story rate type of thing. And you know, he had to wait like 10 years that I mean, I know that you you guys probably know about them, but like just you know, for anyone who doesn't know a lot of people don't know what go so go ahead. Yeah, yeah. So he essentially so he was a

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defense like public defender in Orange County, California is like early to mid 30s and he slept

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With a 16 year old, which, you know, would be legal in most of the country, he was put on the registry on a felony felony statutory rape charge. And he, you know,

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spent 10 years doing like, odd jobs. Like he, I remember in one of the articles I read, he, you know, like,

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drove like a 18 Wheeler for a while, and some other stuff he like. And so after a lot of time, like about a decade, he assembled a portfolio of about like, 200 character references and went to the California State Bar and was like, extremely remorseful. He's like, Oh, my God, like, I'm so sorry for like what I did, and like, you know, it was here and they believed he was sincere, and they gave him his bar license back even while he was actually on the registry. There was a brief time he ended up getting off I like six months or a year later or something. And so now he practices today to challenge some of the most onerous residency restrictions and stuff like that. But one of the things he told to me was that when I interviewed him for my paper about

57:00

He's it some of these issues was that he, his life goal is to someday see the Alaska veto decision overturns and you know, I think that the reality is yeah I mean 2018 and beyond is just way different than the late 90s I mean, you know, like anyone who you know, I even remember and I'm a relatively young guy Um, so in my like late 20s I you know the internet when I was first you know, experimenting with it in the in the late 90s as as a teenager like it was just like the slow is beep boop like awful dial up connection ever. Like Yeah, okay back then. Maybe it was like if somebody's really really worried about like some like, like unsavory behavior from a neighbor or whatever they can check it or whatever but it'll take two hours now it's like you know virtually the first time you Google anybody if they happen to be on the registry that's going to be like the first thing that pops up and unless that

58:00

A you know somebody with like a lot of like journalistic by lines or like a you know, like some kind of re entry story that has gotten a lot of press it may be the only thing that pops up talking about them which is a pretty damning thing. Like when when people see that and they freak out and they don't care about what the offenses and everyone gets treated the same, which means getting a job is extremely difficult and things like that. Yeah, and I mean, I think that like anyone who's being honest about the facts will see that things have changed immensely in the last 20 years. In terms of technology and what how the stigma as

58:40

I am with you, let's, uh, let's move on. Unless Larry, did you want to know we're good, we're good, where we're not gonna have time to get to all these lovely articles. I know that I know that I'm talking a lot It's okay. We can we can run this for seven hours if you want to

58:59

listen.

59:00

Yeah that's the problem.

59:03

We received a Patreon voicemail as well. And this is from my

59:07

Alright, this is my day I'm one of your Patreon subscribers I have a question for you I'm a truck driver thankfully I got this job what types of laws do I have to worry about traveling between states? I mean that would be a good topic for a podcast for a lot of people who want to travel thank you

59:30

i love i love that question. Yeah it's got an impact a pretty fair number of people

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so if you want nobody to go first you know Larry go ahead and go first please. Okay, the the the travel

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you run into you run into two issues will travel and you run into

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state requirements of both sides. The state that you're leaving may have a requirement in the registry scheme that if you're going to be absent from your from your primary residence.

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For X number of days that you have to notify them,

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my state doesn't have that, although law enforcement wishes they did, and they tell people that they have that requirement and they they they they

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bamboozle people into giving them information about their plans to leave the state. But but there's no such requirement and statute, but then you have to be worried about the state that you're in, because you can run into a number of hours that would trigger registration requirement like in Nevada would be in C with 48 hours and you would have a registration obligation and although I do not believe that you would have a massive burst of radiation, an isotope stint with Steve from your body on the 49 hours you were in Nevada, there are those who believe that they would want to be compliant because the the consequences are so extreme so in Nevada for example, if you were going to drop a load and there wasn't gonna be another load for you until until the 49th hour, you would technically have a registration obligation whether or not the state that you traveled from required you to give them notice that you were going to be gone so you have a

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Plexus and where you have to potentially notify the state that you live in, it's going to be absolute, we could conceivably have to notify the state that you're in that you're there and have and have to registry have to register excuse me, and you may register and state like Florida where they would never remove your name from the list. And if you're if you were registered in Vermont, and you went down to Florida, although robot will remove you Florida will never remove yourself, the vestiges of the registry would follow you through a range of your days unless the Florida law changes. Let me ask you this question, though. And Nevada being a pretty vast state that this would be harder to do. But if you could have a place like Reno where you're really close to the edge of it, could you conceivably go drop your load and then drive out of the state and like touch the next state over and then come back and now you have reset the 48 hour clock?

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You could argue that I'd have to look at the Nevada statute yeah to give a les opinions about licensed to practice but you could certainly argue that and sometimes we don't know the answer to questions people say, Well, why don't you know the answer because that has

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litigating it's a matter of first impression, does the statute say 48 continuous hours? Or does it say 48 hours to keep up with it? What does it mean? It may be that no one knows. But But I know I know the fear of some that they really are paranoid about the seven we had the conference in Cleveland, and there are people who left on the 74 star or because they they they didn't want to be in violation of the 72 hour window that they thought they would have to register recording their interpretation of Ohio law and just something to bring up is that this is a podcast with two non lawyers and you should never take legal advice from definitely to non lawyers, but we're just giving you our best guess you know what, but

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um, but yeah, no, I what I have to add to that is Yeah, I was actually thinking the same thing and i think that uh, well, I mean, you know, obviously a lot of things would have to, you know,

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the planets would have to align, so to speak and that you'd have to

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Have a DA thinking that it's worth charging somebody and then also save somebody just like, you know what, up to the 49 hour or something. And then laughs um, yeah. I mean, like, like, why would they do that? And also, like, what did they discover it like five years later, like, different states have like different statutes of limitations for those sorts of crimes. I know that North Carolina for instance, is really bizarre, because there's actually no felony statute of limitations period, every single felony in the book can be prosecuted for ever her which is just super weird. It's only state that I know of that's like that. So

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I was just gonna say, so if you if you did this, sort of, you know, concocted a you know, if you were there for the 49th hour, whatever Maryland has, but you're in a state that has removed the statute of limitations and someone comes up like oh my god, you were in the state for 49 hours. And they discovered this 10 years later. They could ostensibly say we're coming after you they could it would be free.

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I mean, like, I think that any da, who would even try, that would probably be just trying to course, a plea deal, which, you know, obviously, virtually all cases do come out on plea deal. But the thing is with with, you know, registry violation offenses tend to be a low level felony, which, like, you know, depending on criminal record may see a couple of years on the state level, the feds are definitely going to get present time, but they would never they would be I would be shocked if they took a case like that. So it would probably just be like an overzealous da trying to make their name for themselves. And but if the person turned around and said, I'm not playing to jack right, then they had to take that to trial. I mean, I can't imagine unless you had somebody who was literally stalking somebody for 49 hours, which would in of itself likely be a criminal offense depending on the circumstances or it could be arguably like I saw me but we've we've talked about the statute of limitations here before and how it's just such a really bad idea I'd never really considered like this little kind of benign situation of

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You trying to juggle the whole situation of trying to literally do a job and you end up internet of the state, possibly crossing the line by a minute or an hour and 10, 2050

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years later, you're sitting there, you know, in your old age home, rocking back to some some Golden Girls reruns and they come knock on your door and lock you up because of something you did when you were 20 driving a truck from a sexual offense. Right? I have to imagine that like part of is that the legislators, you know,

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like I've heard from some graduate students that are

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friends and colleagues that they do suspect that part of it is them just, you know, obviously trying to make life as miserable as possible and like, who knows, maybe a lot of the legislators legislators don't even want people on the registry to work they just want them to sit there and be miserable and like have no money but that's also extremely foolish like let alone just like the human dignity like like issues and like, you know

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Just cynical view of society yeah it's a hard it's a horrible view and it's not a practical view it also does not comport with American Valley there oh i i agree i agree that this will be a long shot prosecution but what I've learned being in the law for number of years is that anything that can happen will happen there will be a thing he said overzealous prosecution there will be there will be would tools or misused if you give them something in their arsenal it's been my experience that that Arsenal will be discharged at some point and then my philosophy is don't give them a tool in their arsenal because we cannot trust them when anytime will prosecutor says give us discretion we want abuse it you

should run for the hills and and i would respond one thing about the the that being a relatively low level felony you're comparing relatively progressive Minnesota with relative progressive New Mexico where it's a low level felony so it's it's it's a low of villain in both of our seats and it's largely

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Going to be a probate is sentence here but go to Oklahoma you got a mandatory minimum I believe a three years for for abolish the registry in Oklahoma you may be off it may be two years but there's a mandatory incarceration in some of these states so it's not such a little surprise me consider I mean like you know like even you know they're there are obviously some liberal states where you know on certain kinds of crimes generally involving like like sex crimes or guns or whatever where certain punishments are like you know higher than say in some conservative states but generally across the board to say like Oklahoma is you know just going to try to lock up everybody for as long as possible and I mean you know it is interesting they they did just take over from Louisiana as the most incarcerated state and the most incarcerated nation in the world yes that happened was that a final fell down the number two now according to our guests on the podcast, but but it's it's a serious felony like at our status specifically, it cannot be used as a ritual you can have 38 felony convictions or whatever number you could pause.

1:08:00

Right up in your life and if you get charged with with a registry abolishing there is no habitual for that that is carved out as an exemption it since it's a regulatory scheme but in most states have examine it can be lumped in together so if you have to prior felonies they can use it or whatever whatever triggers habitual

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and yeah yeah yeah they can't they can't do that with registry now the violation itself is has a self enhancer on the second violation they can they can charge you with one degree felony it's rather run for three they can charge us a third but they largely bargain that back down to the first if you'll please they'll say well we got you on a third degree which we can give you up to three years if your plea will give you a fourth degree and we'll give you 18 months which will do nine and but but it's it's mostly probation in our state if it's if it's a technical violation of sometime like you've missed the number of days before your update if you totally have scaled from from registering and they have to go out and track you down you might get jail time but it's large recreated was probate Yeah.

1:09:00

Basically you'd have to try it for it Yeah. And and I think that like those disparities you know, it's it's it's a big problem with the way that laws are written in different states priorities and different state legislator lectures. But I think that the thing is going back to kind of just like the DA issue is that you know, it's there's also a lot of discretion on how they apply these sorts of things, you know, really somebody especially somebody who

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like regardless of whether or not one believes in any kind of registry, um, you know, they have discretion on how they charge that and like, what they're going to charge and like, you know, if it's like somebody literally just like forgets or makes a mistake or something. No, there's there's literally no reason that any da should be asking for incarceration for that that absolute unless it's mandatory in the statute,

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even if it's mandatory in the statute. Why is it mandatory in the statute?

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Well, well, I still say accepted state for this mandatory incarceration, but if they don't break

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The charge then there's no incarceration. Exactly. That's my point. Yeah. But but but there again, it reflects to who we are as a people. We had a candidate 2016 that ran for president and said I will be the last order candidate and his attorney general is reversing every policy that was only place to reduce the prison, incarceration, everything from counseling contracts with reintegration halfway houses to closing halfway houses to filing the maximum charge seeking the maximum penalty and falling every habitual enhanced with it that's what he said he was going to do well he won the election that's what happens when you're like the district attorney you got two candidates who got one saying that I'm a little more of a progressive but I won't look for alternatives you got another one saying I believe they should pay dearly and I'm going to prosecute and sick the maximum Why is it to the one that seeks the maximum always gets elected except in rare instance like in Philadelphia and a few cases for word for the word progressive why is it that the people

1:11:00

elect the one who promises to be the harshest is that not who we are right i think the tide is slowly starting to change because of you know really really good reporting and you know advocacy and podcasts and other sorts of media regarding how broken our criminal justice system is but I think it's obviously very very slow I think that

1:11:23

that's

1:11:25

you if you are right about Jeff Sessions I mean that that is and you're you're definitely right about like what President Trump said the ironic thing and you know there's been some more revelations and one could believe them or not uh. But like the thing is you know I don't necessarily think that the prosecution would be appropriate in in in the stuff I've heard if that's all that was going on. But like you know, in a lot of places you know, if he were just a normal dude he could have been charged I mean, like, you know, California has a law where you know, if somebody like it's basically written from my understanding at least a

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It's like the child annoying statute. But it's like, you know, like sexual stuff.

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And I think that the registration is discretionary. I'd have to check. But the point is, it's basically like, Did you hit on somebody under 18? Regardless of your knowledge? They were under 18? Like,

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what I'd be like, like, under that law. It's a misdemeanor, but still like, yeah, I mean, like, Trump probably could have been prosecuted for that if he were in California when he like, you know, hit on like, the 15 year old by, you know, a team like USA models or whatever. But like he's the president. the ironic thing is, I wish that people would like people like didn't Well, not sorry, the ironic thing is that people don't seem to care basic. Well, of course, I'm not. I don't only hit Trump on his policies. I don't I don't get into all the stuff about what he might have done right squarely on policy. I disagree with Mr. Trump on his policies. I don't criticize for for millennia what her jacket said or what she bought.

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be eating or what her jewelry, my kind of things I did about Obama. I disagree.

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I disagree with him on his policies that he's pursuing. He's pursuing policies that have failed in every way that they've been tried. And we're cocking our head and hoping we're going to get different results as time massive task tax cuts, followed by massive increase in spending has always driven the deficit through the sky, it will do so again,

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it will it will lead to inflation overheating, the economy will go into recession, just like we did in 2008. The question is when his his criminal justice stuff is going to lead to a larger prison population, more people incarcerated, more people disenfranchised I disagree with Mr. Trump on his policies, his selection of Attorney General It has nothing to do with with him about what he might have done who you might have pitched although if eating those allegations are true. I find them distasteful but I disagree with him on policy. Oh yeah. And I try to focus into the policy rather than that all these nuances that they hit Obama about his tan suit or or that that

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Things that they that they tried to find that he might have been a Muslim or all this kind of stuff or whether he was a citizen or whether he was born in Hawaii at all. I mean, it was just non stop attacks. I don't I don't find that to be a productive and I'm not going to do that against President Trump. I'm going to attack us policies I disagree with this policy soon. So I just want to clarify quickly that you know, I I meant that as a non political statement in the sense that like, hypothetically, if somebody of immense wealth and political influence, you know,

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like one person could do something that overzealous da could construe as a criminal offense that they wouldn't again somebody have a certain social stature but may go after like the the stupid you know 18 year old that no one cares about or something you know that that's that's my point like and I think that like those sorts of arguments, it definitely is the kind of thing that applies more to the liberal base than like the conservative base when it comes to criminal justice, politics especially.

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I really wish that we could be more like even more nonpartisan about it i think that that there is often a lot of arguing past each other but I do think that there is potential for growth and I do believe that it's it should genuinely be a nonpartisan I agree with that wholeheartedly and I agree that that we we probably should move on but they articles or we're gonna really go go long

1:15:27

yeah

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ready to be a part of registry matters get links it registry matters dot CEO

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if you need to be discreet about it contact them by email registry matters cast at gmail. com You can call or text a ransom message to 747-227-4477 want to support registry matters on a monthly basis. Head to Patreon dot com slash registry matters not ready to become a patron give us

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five star review at Apple podcasts for stitcher for tell your buddies that your treatment class about the podcast we want to send out a big heartfelt support for those on the registry keep fighting without you we can't succeed you make it possible well let's move on so but we have oddly we have two good articles good news articles tonight and the first one is from that Texas observer making the case against banishing sex offenders The cool thing in this article it some you know just magically tied into what was being discussed tonight is is you know political suicide for a politician to say yes I'm pro sex offender but in this article they are going after it from a judicial side and gaining success in that direction

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so and and we should give a shout out to Mary Sue who have supported this article Mary's rather Molnar and Robin from from our soul and Mary Sue from

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Texans voices we

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don't know where to start. I mean it's just such a comprehensive article about how none of this stuff works but yet

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we keep doing it but I got it I got a quote for you and I think you'll you'll know what it is and it's it's just like the football coach said I'm just trying to win football games if our objective is to reduce the impact of the registry It doesn't matter whether you beg borrow or steal but you know if you can get it done at the legislature great if you can legislate chore great if you can get it done in the judicial side then that's great too

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that's correct and and they're doing a little bit of a little bit of both and they they won some challenges in Texas which the legislature properly on dead by giving the general all cities the power to do what the home real cities I believe what they're called, the larger cities were able to do they they gave up the same powers and so now they rather than than being able to preempt them through the lack of

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the general office

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It is having that power now they're going to have to attack them through through judicial process because it's very difficult to come in and tell and I told him this little losing hand when they argued this day is very difficult to come in and say well the big city should be able to do it but the smaller cities showed that that's not a winning hand when you're dealing with with elected politicians the rule voters don't understand why they should have those powers of sex Fred was so dangerous that Dallas and Houston CAD CAM cam I bet where they live Why can't we one thing that was brought up in the article I'm trying to find exactly where I copied the clip but it's um they talked about that this touches the banishment and shaming and does that gain any ground at the judicial level where you are effectively making a whole area off limits does that become on constitution I think we've talked about that that it's not exactly unconstitutional it's a tough sell because with the literal interpretation if you if you its traditional doctrine if you believe in the evolving standard.

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of decency in terms of how the constitution should be interpreted did you're likely at least for this issue to be more of a liberal progressive and that's the Earl Warren a voters, the liberal wing of the court that believed that that that we evolved a conservative like a Neil Gorsuch or Antonin Scalia will say we're sorry but the constitution doesn't evolve. We look at what those words were and what they would have meant at the time they were written. And the conservative view would be that banishment. If you look at that, and say, argue banishment, you would have to look at what banishment as it was understood by the founders. And banishment would have been what a person was forbidden to be in the community. Well, these prohibitions don't. I mean, you were told to leave town never come back, or something bad's going to happen, you're banished. You couldn't come shop, you couldn't come to anything well, well, the residency restrictions don't tell you that you can't shop and spend your

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Money there,

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there's a bouncy house there you might be, you can come spend \$30,000 and buy yourself a vehicle. If you have it, you can, you can do a lot of things, you just can't live on the the solution. So that is not badge but in the conservative viewpoint if you take a literal view of interpreting the Constitution. So the Fifth Circuit Court of Appeals based in New Orleans, which covers Texas, with the city of Lewisville versus

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the case Duarte, which Richard glides attorney that was feeling with Texas voices. He litigated that case all the way to the Fifth Circuit and follow the cert petition with US Supreme Court and they didn't find 97 98%

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of Lewisville. Big off limits constituted banishment, because they said we look at the literally meaning of what banishment man and those days that's the same view the 11th circuit is likely to take on the case where the similar arguments they have made in the case of McGuire out of Alabama

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So if you believe in conservative judicial doctrine you're probably not going to get the outcome you're wanting from the courts of this issue because banishment is not banished but in terms of what co founders were thinking when they when they use those words worry

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yeah no i think that that is definitely true I do think that that there had been some interesting

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when there has been more than one issue like you know or what more than one demographic that can be afflicted potentially by well

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okay sorry cut that I'm trying to say that

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you know, I was shocked and and pleasantly surprised when there was a nine oh decision in a North Carolina came back and exactly where the took an evolving standard of, you know, first amendment rights and what it means to actually have a voice in the public discourse.

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to essentially say that that

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people on the registry should be allowed to be on social media because that's essentially the major place where political discourse happens nowadays and and so the the opposing argument to that was actually I mean, you know, like what you'd expect,

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you know, the conservative legal base to to buy into, which is this idea of, well hey, like the new york times as a common section for like teens or something and and he like even the conservative justices in that case were like nope that's that's absurd like like who actually like you know chooses to only dialogue on the New York Times and like who reads those comments versus like you know checking Facebook or Twitter like a normal person well let's there's an article coming up that sort of touches on this too. There are many places that will require you like they'll do Facebook authentication so you can only comment on the blog if you have a Facebook account. Well, most of our people cannot

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Have a Facebook account, we are excluded from that from that.

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Well, just just remember, just remember that the

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server wing of the court did caution about expansiveness of that packing hammer when they were not happy with the liberals being nice because they said this is run away dicta here that's got to come back on us because the liberals so the conservatives were very cautious I mean they they they did their credit I have to go credit they were on the right side of the issue in terms of their blanket prohibition but they were very cautious about big because they realize we're going to use packing how to do a health law litigation and were chomping at the bit to use that dicta but but but

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but that was the difference between the liberal wing and the conservative when the conservative we would have put we probably will still got a victory but we weren't have an expansive vector like we think we have with packing him right as we make we're gonna be able to do a lot of good things like that over the last couple years. True. And let's hop on down to the next one, which is has plea bargaining.

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Push the Sixth Amendment right to sue me right to trial to the brink of extinction. And this is from witness LA. com

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there's a there's a captured a paragraph in here. It says defendants still have the choice of whether or not to go to trial. But of course, excuse me, they have the right to go to trial of course. But according to the studies and exoneration data, the report points to the fears and pressures defendants commonly face in the plea bargaining process are so overwhelming that in an alarming number of instances innocent people decide to plead guilty to crimes they did not commit

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that just drives me crazy man that's just scary.

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And I I've met I've met a good number of people that they say they're interested, I don't care what you know, they say they are I just take it with that and they took a plea deal because the DA was throwing say 40 years at them and they just took a 10 year plea deal instead better to take the 10 you know, versus the risk of the the 40 that you don't

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Right, certainly no, it's certainly true and a lot has been made out of the concept of the trial penalty. And I think when it comes to sex cases in particular even with the horrible aspects and all the horrible implications of being on the registry, which, you know, I think that unfortunately a lot of people don't know unless they're like a legal policy junkie or like somebody who knows somebody directly affected like how very terrible it is a boosted but uh. But you know like they're say they're told Hey you could like go home or like I'm going to prosecute you to the fullest extent and recommend like 10 years if you're found guilty on this one charge or something and I mean of course somebody is going to take probation the registry I mean even if they know like how awful it is like you know they may think like like naive Lee in most cases like oh like you'll get fixed someday and like that's just like fortunately not like that's that's you know rarely how it works I'm there What do you have

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I was just going to chime in on the the numbers, people think the numbers are so dramatically different. And according to a report released by the National Association of criminal defense lawyers, 3% of cases in the federal system, go to trial and 6% of the state go to trial. The so it's not I mean, it's twice as many. It's 100% more, let's three and 6% not not a large amount. But even 30 years ago, it was only one fifth of the cases if you go down, they say that 30 years ago, federal dependents chose to go to trial 20% of time. But that was right about the time when we did the

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criminal justice reform act of the early 80s which fully kicked in and late 80s but they started working on it around the round at 84, the

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the

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parole was abolished. Good time was all been abolished 50 to 54 days per year 85% what a person serves and and the the the the penalty for going to

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Was it was enhanced by that's under the sentencing guidelines. That's a denial of responsibility. So if you go to trial and get convicted, then you're still in denial and haven't accepted responsibility. So you get additional points on the citizen grid that the feds came up with. And that was all done in the 80s during the Reagan administration and it's unfortunate it's going to be very difficult to undo that they were making some progress in 2016 until that progress halted in the campaign when the law and order president surface this being the likely nominee some good republicans that were willing to stick their neck out backed away when they when they realized that the likely nominee did not support that it's going to be tough this this this lock up, throw away the key mentality and punish people we're going to trial you're not gonna see those numbers go up anytime soon.

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I think. I think you just refer to it as the as the penalty the trial penalty. Yeah, it's just astronomical. If you if you go to trial and lose you have the certainty

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But what really troubles me on this is that as bad as it is for felonies and believe me it's plenty bad it's even worse for misdemeanors because the brightness neck paste that they push misdemeanor cases through means that you probably see your attorney if you're in a job on the day that you're going to do the plea you have precious little time to talk about collateral consequences and misdemeanors can have extreme collateral consequences get a domestic violence and find out what happens to you in terms of your gun your precious gun ownership rights they get and then any Mr. Mayor can be a be a deportation ticket and particular under this administration because they they've been instructed the department justice to the board anybody for anything and to have a no holds barred approach so so all these misdemeanor instead of pleading guilty because they want to get a jail they had a \$500 bond which goes back to the earlier segment where you talking about trying to do with way with cash bail to replace it with an expensive GPS monitoring system of course.

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And can't afford while they're on pre trial, which is another conversation for another podcast. But but they like they couldn't pay the \$500,000 bond. So they think they plead guilty to credit time served, they find themselves deported or they find themselves with a collateral consequence that last for life that no one told them about rights.

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It's exactly right.

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Um, yeah, and I mean, there's, there's a lot of misdemeanors out there that are that are register ball and, you know, in the four states Well, now three if you don't count California though, that's not going to kick into effect until 2021, I believe. Um, yeah, so like those four states, it's like, oh, somebody you know, has one indecent exposure misdemeanor on their record and, you know, we've decided that that is the you know, that the worst case scenario with that charge entails a year in jail rather than, you know, any kind of felony level penalties which are over a year

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and even so, we're going to label somebody for life.

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Like just completely obliterate like you know a lot of the opportunities and you know relationships that they would otherwise have over that you know and so that's I yeah and and you know like people just you know often in the sex offense round will be will be given the you know here's the felony that I can you know probably get you a trial for you know if for nothing else the jury wants to convict you on this

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and jury selection is a very complex thing but you know it's it's pretty it's pretty rigged system like you know if you have jurors who express skepticism about the fairness of the justice system they're going to be out of there in a second um. And or you could just like lead to this misdemeanor and yeah and yet probation for a year but you know say goodbye to a normal life anyway

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so all right well, we have an article it shows just how wonderful group of people we are, and it's from the intercept again, Tennessee

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plans to restart executions by killing a man with a mental illness. And I don't, I don't want to discount that the guy did a pretty horrendous crime. But if you are a person that grows up in an environment where your mom ties you up with a rope and beats you, I don't necessarily know that that's an enriching environment, that you could expect someone to grow up and be an overly productive person in society. But then here we are, he's on death row and he is possibly going to be executed later this year with a controversial drug to go with it. Everybody think

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I put that article in there for that very reason. There was an underlying sexual offense like a draw

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we connection but it speaks more to who we are as a people and I get death threats every time I say this, but a compassionate society and Europe would ever consider executing a person like this course I don't execute people in European nations anyway, but but it's

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says something about who we are in this country when 30 so much states still have the death penalty on their books. I think it is I mean we we every couple years we might get another state to add to it no death penalty list but to put a person debts has this type of condition to death to me is beneath the dignity of America but yet we're going full steam ahead to do it. And and I think that kind of reflects if we can if we can't bring ourselves the sex offender community is perceived as being the most despised of all criminals. And I guess somebody who done murder and a sex offense I would make you Double Indemnity. But But if if we can't find ourselves in our heart to have a little bit of compassion for

this situation to our cause isn't going to go very far coast society if we're that harmless, there's not gonna be any room for a lot of reform for having for having second chances.

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For people who have transgressed sexual offense of some type sure hey we're

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like kind of quick I want to go through these last couple articles before we tip the timer scale right for sure that makes perfect sense i think that that's

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I agree with some of that I think that

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the capital murder statutes tend to be pretty clinical about and you know this is because of legislation they generally squabble over what qualifies as aggravating factors that are appropriate for da to seek the death penalty based on yeah and generally murder of a child is going to be one of them sexually or motivated murder is yet another one and yeah I mean like frankly you know I've gone over hundreds of capital cases when I was at fair punishment project it continues to be a big area of interest for me and yeah I mean like that's going to be a really difficult case to to get on any kind of like you know a light verdict regardless of the the horrible

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Life that this person has lived with severe mental illness but I think that that even though people don't necessarily talk about it you know they're there are a lot more people I there maybe maybe not but I I suspect that there are more people who would be okay with this guy being executed then say somebody having their life obliterated for us like you know one flashing conviction or a statutory rape or like looking at a couple of you know nudes of like a 16 year old or something along those lines now if it's a more serious offense yeah obviously that's a more difficult sell but I think that that there and I think that's a you know that definitely like a difficulty on like how to approach registry reporting as well and it's not really I don't really see it is like my

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place you know,

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to recommend like

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What like I think because I'm not somebody who's directly impacted by these laws but and I think that they're unfair for people who have committed even much more serious offenses in a lot of cases um. But basically um. Yeah it's like the do we do piecemeal to try to like knock certain like low level sex offenses off the registry rosters or do we try to abolish it in general and you know it's like that whole debate and I don't really want to wait into that but i think that that yeah it's I do it does

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definitely depressed me that we don't some you know have have at least some compassion at least in some states for people who have like schizophrenia or bipolar or something and commit a murder I you But I will say that over the last several years we have definitely truncated how often the death penalty is being used where it used to be like hundreds of death sentences a year it's now I

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like in the 30s generous short

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Which is a big improvement, generally speaking.

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And on the last article, this is the second good article of the night and is a from the York Times New

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from the York news times. That's hard to say when you're used to seeing New York Times sex offender residency restrictions drop by Council. And this comes from a friend of the show who sent in the article by email. And the article talks about an ordinance that would have banned convicted registered sex offenders from living within 500 feet. It's just it's such a low number from my perception, but 500 feet of a school or child care facility in New York was given a second public reading, but then it was dropped. And I think that Larry you could chime in with some really interesting points about this. The data was looked at by the the city council and they just said it doesn't do anything to make the community safer but not being on the ground and York I don't know exactly what

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happened um. I'm hoping that that the Nebraska is unafraid

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went and talked to the counselors prior to the meeting and and shared

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another point of view with them and the evidence and the evidence is both as crystal clear now what what they were looking at that was troubling the person who won the ordinance was that the number of sex offenders living in New York had doubled from 15 to 31 and that means we're being overrun with them as a way to do something to protect our children York City just off interstate 80 I've been through their number of times and it is a small place couple hotels but but not not a very large city and and they looked at it and said we've got better things to do kudos to the council for for common sense prevailing and looking at the evidence and and thanks for the work that hopefully was done by the

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group in Nebraska I think they call themselves Nebraska and center for

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Excellent. Um, and one thing that stood out to me in the article is that the child schools and child care facilities people would be displaced. And that would be a problem for families said council member matt Wagner, there's no evidence that they are recommending these crimes. Excuse me, there's just no evidence that what they're recommending that they do that these crimes were found to be actually more detrimental by imposing the restriction and I guess, but essentially going back to the whole banishment conversation we had, yeah, yeah.

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And he's talking about recidivism there. So. So yeah,

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there's no evidence that they are re committing the crimes and so why displaced people and make them you know, just miserable, more miserable for no reason, basically. Yeah. And yeah,

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I think that's a really impressive decision. And I think that it took it took some level of political bravery and I think that hopefully it's a sign of things to come when when more city councils are having this information put before them and they're actually reading so

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I suspect that they wouldn't have come to the conclusion unless, like Larry said the affiliate or the group up there, if they hadn't presented them with the information, they wouldn't have sought it. Yeah, I know, there was a, there was a sex success story in Texas where there was a suburb of Houston, what your name is escaping me. But they had a symbol ordinance table that had been sponsored by everybody. And then once they look at the evidence, thanks for the work that Texas voices did, once they looked at it, the sponsors backed away from it, it these these battles can be one thankfully, we don't have to fight the miracles, cities and counties don't have the authority to do that under our state statute or scheme. They're not allowed to have such ordinances. So we don't spend one ounce of energy trying to prevent these things for passing cuz they don't possess the power to pass them. Right. That makes sense.

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Well, that's all I have. Larry, is there anything else that you wanted to cover?

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Well, I always want cover things but we don't have any more time on this.

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I've gotten I've gotten some good face.

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back about the interstate translation. A couple people said it was very helpful to have those complicated. Oh,

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that is some propeller head stuff right there. It really is. It shouldn't be that complicated. God is. Well, I I've got to write an article for the new newsletter, but we got a couple comments

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directly to me. But I don't know what you might have gotten from from from through the regular channels. I got a whole lot of FYI. PS.

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What's a FYI p? I can't say that's a family program. Oh,

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yeah.

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Oh, yeah. Yeah, that's all this is fit.

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But we Yeah, we need to save ourselves like the beat network broadcast. We need to we need we need to be the FL IP network. I absolutely am going to go incorporate that. Well, thank you for joining us. I really appreciate it. How can people reach out to you and get in touch with you? Yeah, for sure.

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So I'm on Twitter at Rory Fleming at a at symbol Rory Fleming with one and a

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and I'm pretty visible on their

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website. Yeah. And so my website for fog light strategy is my consulting firm is fog light fo g Li gh t st strategies. Se Ra te e g i b e s dot org it should really be a dot com but but I do also have my blog on medium the protectors I dress which often what I do there is

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essentially you know, talk about

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what prosecutors across America are doing and what their records look like which I think that there has been some move to to make that a that kind of information or public but it's it's a lot less out there than people might expect in terms of like, you know, people actually

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writing this stuff I think a lot of people fear writing about the space it quite frankly um. So that's the digest on on medium or you also known as the protectors digest that's on Twitter as you can find out my age. Outstanding. Well thank you again so much for joining us and for all of you out there you can share please share the podcast with those you know, and we can continue to grow our audience and we continue to receive a lot of positive feedback and really appreciate it and we will talk to you soon. Have a good night, Larry. Thank you again, Rory. Of course. My pleasure. Thank you so much for having me on the show. Thank you.

1:42:36

Goodnight. Goodnight, Andy. Bye.