

How ‘Pseudoscience’ Turns Registrants into Permanent Outlaws

Risk assessment instruments are biased toward finding maximum danger

By “Appellate Squawk”

From The Crime Report.org

A New York Appeals court has rejected the notion that risk prediction under the state’s Sex Offender Registration Act (SORA) should have a scientific basis. According to the July 2017 decision in *People v. Curry*, courts must not only adhere to a risk assessment instrument (RAI) that has been repeatedly exposed as pseudo-scientific humbug, they may not even *consider* a scientifically validated instrument such as the Static-99.

It wasn’t the first time. For the twenty years since NY’s SORA was enacted, its courts have used the RAI to classify individuals after they’ve completed their sentences for a designated “sex offense.” The classifications purport to show the person’s likelihood of committing another sex offense in the future. Persons adjudicated as level 2 or 3 are thought to be very dangerous indeed, and must register with law enforcement for the rest of their lives.

Their photographs, addresses, and a description of the past offense are made publicly available online at the sex offender registry. They may legally be denied jobs and housing, including shelters. They may be evicted, fired or hounded from the neighborhood by civic-minded vigilantes such as Parents for Megan’s Law.

This looks an awful lot like advance punishment for a future crime, like the science fiction film *Minority Report*. It also looks like a second punishment for a past offense—a practice the Constitution frowns on in the Double Jeopardy Clause. Not at all, say the courts. SORA isn’t punishment, but merely a regulatory measure to protect public safety. As one legislator put it, it’s like affixing warning labels to toxic substances.

In that case, you’d think everyone would be deeply concerned to make sure that the label is as accurate as possible. It hardly contributes to public safety to broadcast over the Internet that Mr. Jones might commit a sex offense at any minute, when in fact he presents no such risk. But that’s not how some courts think, especially if they adopt the rationale of over-zealous prosecutors.

Risk level under SORA is determined through an adversarial hearing in criminal court where the prosecutor proffers the RAI and typically seeks the highest possible classification. The RAI is a chart, cobbled together by employees of the Department of Parole, that adds up points for factors such as whether the past offense involved contact over or under clothing, or whether the victim was under age eleven or over 62. The more points, the higher the risk level.

Defense attorneys have repeatedly proffered **peer reviewed research** and the uncontested expert testimony of

psychologists specializing in sex offender recidivism showing that the RAI is based on the facile but discredited assumption that “if he did it before he’ll do it again.” The instrument takes no account of the scientific consensus that recidivism isn’t correlated to the perceived heinousness of the past offense.

“The RAI is heavily biased towards a finding of maximum risk.”

The scientific articles cited by the RAI are not only outdated; they don’t remotely stand for the conclusions for which they’re cited. Although the RAI purports to be an objective scientific instrument, it uses its own idiosyncratic system of assigning and weighing points that’s heavily biased towards a finding of maximum risk.

We’ve proffered instruments such as the **Static-99** and the SVR-20 which, unlike the RAI, have been tested and validated by mental health professionals. In contrast, *nobody* except New York judges and district attorneys uses the RAI.

The judicial response ranges from numb indifference to sputtering indignation. The outstanding exception is Daniel Conviser, a trial judge in Manhattan, who issued a 100-page opinion in 2010 after hearing expert testimony. After analyzing the RAI in detail, he concluded that the instrument is so arbitrary that it violates due process. Unfortunately, his decision isn’t binding on other courts and has been ignored.

It’s like a drug test that can’t tell the difference between coffee and cocaine. Even courts that recognize that the RAI may not be “the optimal tool” initially reasoned that there’s no harm in using it because it’s “only a recommendation.” But the Court of Appeals subsequently held that the RAI is so “presumptively reliable” that courts are bound by its conclusions unless the defendant can somehow prove that it overestimates his future risk.

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From the Director's Desk

By Wayne Bowers

Civil Commitment is a serious topic for us. Through interaction with residents, court cases and media reports, we find a disturbing similarity among the 20 states and federal facilities that enforce these unjust and draconian programs. This letter from Martin in Texas provides us with yet another expression of the pain and futility CC causes for those confined and their families.

“Thank you very much for the **Washington Spectator** (article by Barbara Koepfel on civil commitment). Articles and other such news brings with it hope for all the men. You already know that civil commitment means that a person(s) is suffering. The men here remember you and they send their regard to you as well as the rest of the people involved in the struggle.

We continue litigation against this system’s scheme via our attorney, pro se, and public relations. We do what we can. It is a David and Goliath battle, but we believe that God’s favor is with us. A few of the cases we are petitioning are Out Patient Final Judgement that was violated under SB 746. We are also petitioning GPS, 33% taxation on gifts, and other non-income(s), in essence, the taxation scheme equals extortion and it is punitive.

There are multiple lawsuits pertaining to medical treatment. And as for therapy, it is without recognition and there is high turnover of therapist and staff. The documentation related to therapy is a mess, i.e., documents are lost; therefore, the men have to start over. Another problem is inaccurate or exaggerated documentation by these so-called therapists. What they write affects the resident/prisoner in a myriad of ways and for a long time. I could go on and on; to summarize, there is a culture of corruption, ineptness, and lack of compassionate leadership. I’m certain those confined as we are in other jurisdictions feel exactly the same way.

Yes, the men are suffering, and men continue to die behind this iron curtain. It is our prayer that the true spirit of the U.S. Constitution will be recognized soon.

On a personal note, last year in November my wife filed to divorce me after 25 plus years. I would have written sooner, but I was heartbroken. I believe it was April when I started to come around. I never stopped working for our cause, but it slowed me down tremendously. Prison couldn’t break my marriage, unfortunately, the condition and situation of civil commitment did. This situation is difficult for all our families and friends.”

*The article the writer mentions is titled **Sex Crimes and Criminal Justice** and was published on May 4. It describes how legislatures across the nation have responded to several highly publicized sex crimes and public fears by adopting statutes that allow the continued imprisonment of sex offenders after they have completed their sentences under the pretense that they require continuing treatment before they can safely re-enter their communities. But, she notes, the so-called rehabilitation is often a dead-end and rarely leads to the outcomes these laws are premised upon. Veteran investigative reporter Barbara Koepfel has spent the past 12 months reporting on this third rail of the criminal justice system. The link to the article in the Washington Spectator’s website is <https://washingtonspectator.org/koepfel-sex-crimes-and-criminal-justice>. The writer is an investigative reporter based in Washington, DC. (If you would like a copy of the article, contact CURE-SORT.)*

CURE-SORT NEWS

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How come nowadays the word “honesty” is so often preceded by “old-fashioned”?

The Power of Choice

By Anthony C.

We are all faced with a myriad of choices every day. We choose when to get up, what to wear, and what we eat. We make so many choices throughout the day that it is impossible to count them. Most of our choices are perfectly mundane, but some can be life-altering, especially those related to sexual misconduct and recovery from the same.

Quite often the choice to act out our offensive behavior is rooted in cultivated habit. At times, the temptations we've faced may have held such influence over our wills that we've decided we had no choice at all. Beware of this lie! When faced with the power of temptation, there is a desire to choose self-indulgence. Many people have exclaimed they could not resist but the truth is—they could indeed, they simply "chose" not to.

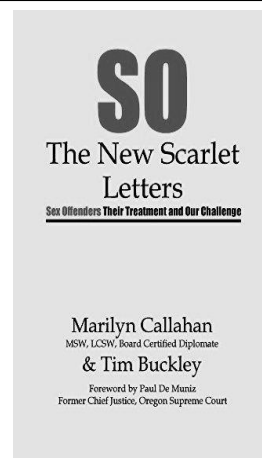
This is where the God-given power of choice comes into play. Even though a person may have been overcome by temptation time after time, it needn't always be thus. There is a choice that is made to submit to temptation; a person must be made to see that nothing short of a moral renovation is necessary if they are to be freed to make healthful and positive choices. Without a moral compass, we drift along a sea of selfish and immoral decisions.

It is said that those who fail to prepare are preparing to fail. This holds true for our resolve to make moral choices so we take great care in preparations that help prevent broken resolutions which only undermine confidence in our own sincerity. As sex offenders, the moral bar is now set even higher than normal and we have a moral obligation to prevent the cycles that lead to acting out. Our power to do so lies in choice. Many sex offender programs have taught us to identify our triggers to offending behavior as part of cycles in our acting out decisions. It is these cycles I refer to as "cultivated habit." We learn how escape tactics can break these cycles, but the real power is in our choice not to engage in a cyclical behavior. We let *that* choice become our default response, because even were we able to have each and every possible trigger and escape tactic written down, life is rarely so scripted that we could live out of such a playbook.

A renewed integrity of moral character is often the result of a spiritual experience and will help us have pride in our personal program. It is my prayer this be granted to all, but you shouldn't feel limited by this. You will always have the freedom of choice. It is not enough just to want to do right, we must choose to do so—and by the power of choice we are enabled.

Anthony C. is a frequent contributor to this newsletter. He is presently incarcerated in Arkansas. If you'd like to send him a letter of thanks, support or encouragement, please address it to the publisher.

One trouble with the world is that so many people who stand up vigorously for their rights fall down miserably on their duties.



BOOK REVIEW

S.O. The New Scarlet Letters: Sex Offenders, Their Treatment and Our Challenge

In Puritan America, a married woman's illicit affair with a minister landed her in jail. After her release, Hester Prynne was sentenced to forever wear a big red "A" on her dress. Nearly 375 years later, the U.S. continues to be scandalized, tantalized, and perplexed by sex. This book offers - former offenders - inspiration and hope - neighbors and families - knowledge and courage - public agencies - best practices, leading to improved safety - Professionals - better outcomes for clients - victims of assault - understanding and empowerment - lawmakers - ideas about fair, effective policies. It's time to bring the subject of sex crime out of the Dark Ages, time to help victims shed the shame and trauma of their experience. It's also time to allow offenders an opportunity to show they can change, make amends, and start to earn back trust and acceptance from society. The two reviews below are confirmed amazon.com reviews.

A welcome introduction to the sex crime punishment industry.

This new book offers a welcome introduction into the challenges of treating sexual offenders and understanding the myriad of causal factors. Society tends to stereotype sexual offenders and marginalize them, rather than seeking to understand people as individuals who have experienced their own traumas in life and who have not been socialized and educated to interact with others in a healthy and loving manner. This book asks some fundamental questions of how the criminal justice system should deal with these complex issues and asks us to begin the dialogue of finding truly effective treatment, reformation, and rehabilitation. We need to take a serious look at current treatment models, post-prison care and management, and whether mandatory minimum sentences really work. Are they just part of an incarceration and punishment industry?
Review by Neal Lemery.

Comprehensive understanding of causes and solutions of sex crimes

Here is a book everyone should read. After working at Folsom Prison in the 80's and realizing there were "people" in there, I could never look away again. As a long-time prison volunteer, I've forever wished that everyone could have both

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perspectives, like I do, and more information, instead of pretending that we know how to handle these crimes by isolation and retribution alone. As a victim myself (as many prisoners are too), I didn't have the usual reaction of seeking punishment, incarceration and a "throw away the key" mentality. I just wanted NO CHILD to ever have to endure what I and others in my family endured. After decades of searching for answers and finding some truths, I've nonetheless been chagrined by the realization that as a society, we are not getting closer to the intended outcome of no more crimes! **Every chance I get**, I work with victims and offenders, and read about the causes of sexual offenses, to try and prevent future crimes! That's what I appreciate about Callahan and Buckley. They have nailed the causes and solutions and wrapped up their substantial combined knowledge in this impressive package, and all you have to do is read it! You don't have to spend forty years trying to figure it out like I did. **Marilyn Callahan** has used her education and experience with an open mind, to apply what her extensive education taught, applying it to solutions which could actually prevent sex offenses, and to keep the myths from preventing progress! She and **Tim Buckley** have brought education, empowerment and reason to this subject, and they have surely prevented crimes you will never hear about. Tim is one of the most intuitive counselors I've ever met, and both authors have the irrefutable credentials to speak eloquently and accurately, which they do in this groundbreaking accomplishment. I have waited more than forty years for a book such as this to be written by enlightened, educated, experienced people who don't have an agenda other than learning and sharing the causes and solutions for our most feared (and least understood) crime. Never again plead ignorance! **Review by Sandra L. Meyer**

Paperback: 270 pages, \$14.95 paperback; published January 2018 **Publisher:** Glass Spider Publishing (www.glassspiderpublishing.com)

Google Group Update

In Autumn 2017, CURE-SORT implemented the use of a Google Group to enhance our communications and reduce some of the costs associated with delivering our newsletter via snail mail. As of July 1st, we have 249 members who take advantage of the Group. We have started seeing members and friends submitting their news items and thoughts as well as sharing items posted by others.

With the unfortunate passing of eAdvocate earlier in January, we are hoping that we can provide some of the information he would have distributed to the community advocating on behalf of those with dealing with the consequences of a sexual offense. Going forward, we will be using the Google Group to provide links to additional information for articles posted in the newsletter, more items of interest in a timely manner and news from other organizations who share our fight for justice. In the year ahead, we hope for even deeper interaction with those participating in the Group. We must all learn for one another and share stories for our collective inspiration.

If you are not already on the Google Board, just submit a request to be added at info@cure-sort.org.

Conference Calls Gaining Popularity

A program begun three years ago by National CURE is gaining strength in both a coalition developing and information being shared. A monthly conference call welcoming anyone concerned with civil commitment continues to grow in material presented by various participants and a feeling of unity by all that participate.

There are some civil detainees who can participate if their state facility allows them to make the call. Actually, that is a difference in the various 20 states and the federal system as some allow those held to make and receive phone calls, while some are not allowed to make or receive such calls.

Prison work is difficult, especially for those working with sex offenses, and to find like-minded folks concerned about the conditions and policies of the civil commitment facilities gives a feeling of strength. Several participants are either paralegals or have devoted their lockup time to becoming a self-made legal expert. Their information to various call-in participants ranges from assistance in a concern of some condition to a suit toward seeking release.

These calls always occur on the first Saturday of each month with the start at 10 a.m. (EST) and then compute to each time zone accordingly. The call-in number is 605-472-5381, access code 491204#. If you wish to be added to an email list to receive a reminder note from Eldon, contact our office. Anyone is welcome to join on the call.

From **Pseudoscience** Page 1

The obvious course, until now, was for the defendant to show that a scientifically tested and validated instrument such as Static-99 put him at a lower risk. No dice, says the Appellate Division. Why? Because although the Static-99 measures the probability of re-offending, it doesn't say what offense the person will commit if he re-offends which conveniently ignores that no matter what the RAI claims, it doesn't *accurately predict anything*.

It's hard to see how this implacable rejection of science squares with the notion that SORA isn't punishment but merely a regulatory measure to protect public safety. So long as risk prediction is based on the perceived heinousness of the past crime, it's nothing but punishment under an alias.

There are now over 40,000 New Yorkers on the sex offender registry, most of whom have been adjudicated as tier 2 or 3 based on the RAI. Public safety isn't served by creating a permanent, ever-growing underclass of people who will remain forever barred from normal civic life based on a pseudo-scientific instrument.

Editor's note: One of the ways SOR reform advocates have been successful, at least in some limited ways, is in arguing that the labeling and classifying offenders solely by their crime (as opposed to their future propensity to commit a new offense) is unfair and not indicative of future conduct. Yet, if RAIs are biased and accomplish the same thing, then our reform efforts must include challenging the integrity of RAIs themselves.

Appellate Squawk is the pseudonym of an appellate attorney in New York City, and the author of a [satirical legal blog](#) of that name.

From the Editor's Desk

By Joseph Ajlouny

This month my column was going to be about how much encouragement I still feel when I meet with others who share our crusade for justice. Instead I am sharing with you a similar expression of hope from a fellow crusader. She and her husband John are tireless workers for our cause.

"I attended the 10th National Conference of the National Association for Rational Sexual Offense Laws (NARSOL.org) in mid-June in Cleveland. I have attended about half of their conferences. Being among so many other people who are working to change our nation's extremely harmful laws about sex always inspires me. This conference was particularly impressive because there were presentations by current and past politicians who are on our side. Two current senators, John Eklund and Michael Skindell, from opposite sides of the aisle, were willing to take the time to tell us how we can better lobby for our cause. A former attorney general, Marc Dann, gave a speech about the politics behind the Adam Walsh Act in Ohio, and even apologized for his role in getting it adopted.

"I am also impressed by people who have no direct stake in this issue, but who want to help anyway. They are just plain good people. At the conference I met one, a woman from Maine, who learned about the unfairness of these laws from one of her students, a man on the registry. She came to the conference to learn more about this issue, so she can go back to Maine and try to change things.

"From my view, there were somewhat fewer than 200 attendees. My only regret is that the numbers are not increasing faster. On the other hand, there are now three annual national conferences by different organizations, when NARSOL's used to be the only one.

"NARSOL posts videos of its conferences on its website. I urge you to take the time to view them and maybe they will energize you and encourage you to spread the word."

Kathie Gourlay
Michigan Citizens for Justice

(Editor's Note: A description of each of these conferences was featured in our Spring issue. The third and final conference is presented by Women Against the Registry in St. Louis on August 17-19. Registration and hotel info is available at this link:

<https://www.womenagainstry.org/event-2789713/Registration>

Kathie Gourlay
Michigan Citizens for Justice

The wise man has his follies no less than the fool, but herein lies the difference—the follies of the fool are known to the world, but are hidden from himself; the follies of the wise man are known to himself, but are hidden from the world. C. C. Colton



George Torsilieri

Judge Upends Sex Offender Registration

By
Michael Rellahan
Daily Local News

WESTCHESTER, PA: A Common

Pleas Court judge has ruled that a West Goshen man convicted of forcing himself sexually on a sleeping woman will not have to register as a sex offender for the rest of his life.

In an order signed July 10, Judge Anthony Sarcione found that the law that defendant George Torsilieri was required to report to state police as a sex offender was unconstitutional. He said the law, the Sexual Offenders Registration and Notification Act (SORNA), violated the fundamental right to reputation under the state Constitution, as well as federal guarantees of due process.

The ruling came on the motion of Torsilieri's attorney, Marni Snyder of Philadelphia. She had argued that the SORNA requirements added an undue secondary punishment on her client, a young bio-medical engineer who had no prior record before his arrest in 2015 for attacking the woman.

Snyder had said in a motion to preclude Torsilieri from having to register as a sex offender for the rest of his life that the SORNA statute, "constitutes criminal punishment" without a chance to challenge its imposition.

Sarcione's decision follows another decision in June by a Montgomery County judge, William Carpenter, overturning the registration requirements. The state Supreme Court had ruled earlier that the first version of the state's SORNA law had become so onerous that it was unconstitutional. A new version signed into law by Gov. Tom Wolf is having little success in standing up to judicial scrutiny.

The June 22 ruling by Judge William Carpenter was hailed by defense attorney John McMahon Jr., who represented a man who had been previously sentenced to prison and registration in 1997 for a sexual offense.

"**Judge Carpenter wholly agreed** with our argument, that notwithstanding certain less onerous yearly registration provisions of the new 'SORNA' and the opportunity for a lifetime registrant to petition to terminate the registration requirements after 25 years, the longer, the retroactive registration requirements and other provisions were still punitive, severable and unconstitutional," McMahon said in a statement.

"It appears likely that the 'SORNA' related litigation will not end soon as thousands of previously convicted sexual offenders are greatly impacted by this unconstitutional Pennsylvania statute that has been repeatedly and unsuccessfully revised to try and pass constitutional muster for over a decade," the veteran defense attorney said.

See **Judge Page 6**

Renewal Letters Mailed or E-Mailed:

In the past month there have been a substantial number of members who have received a renewal letter, either by mail or e-mail. Our operation depends on donations of all kinds and membership is a major part of that. If you receive your newsletter by mail, there is an expiration date listed after your name. That is not possible by e-mail. We would appreciate your response to this reminder as all donations assist us greatly.

At the same time as his ruling freeing Torsilieri from having to report as a sex offender, Sarcione denied a motion by the prosecution to reconsider an earlier decision that effectively curb the number of months Torsilieri would have to spend behind bars. First Assistant District Attorney Michael Noone said that his office had filed a notice of appeal of Sarcione's decision on the constitutionality of the SORNA provisions.

Torsilieri was found guilty of felony aggravated indecent assault and indecent assault after a jury trial last year in which a woman who he had just met said that he assaulted her sexually while she slept in the West Chester apartment of a mutual friend where they were staying overnight. He claimed that he thought the woman had consented to having sex with him, although she contended at trial that she told him "no" and said "stop."

He is currently serving his 18-month prison sentence at Chester County Prison.

Featured Website

The National Center on Sexual Exploitation (www.endsexualexploitation.org) is an organization that describes itself as "exposing the connections between all forms of sexual exploitation." Based in Washington D.C., NCOSE offers information and programs to companies, schools and other institutional stakeholders for creating strategies to change the culture of sexual harassment, abuse and assault.

Among the major topics it addresses are sexual exploitation (SE) in the military, on college campuses, in pornography, prostitution, human trafficking, violence in sexual relationships and gender objectification. A major effort of the organization is identifying and addressing forms, often seemingly benign, of sexually exploitive policies by corporations and media companies that are winked at without thought of the damage they create. A major initiative is The Dirty Dozen List of facilitators of SE that range from the website Backpage.com to HBO and from Roku to Snapchat. The website also includes a blog, videos and a list of successes.

Goodwill is achieved by many actions; it can be lost by one.

Sex Offender Specific Treatment

By Dr. JoEllen Wiggington
Pacific Professional Associates
Member of CURE-SORT Board

As our mission is to promote the importance of counseling for the recovery of those who have sexually offended, when appropriate, a discussion will be held in our issue along this topic. This is the 12th article in this series. As said, this is a program of Dr. Wiggington and is not available by correspondence.

This issue, part of an ongoing series describing my outpatient sex offender specific treatment program, deals with intimacy, loneliness and attachments in relationships.

According to Morin and Levenson (2002) many of those who commit sexual offenses feel alone even when they are with someone or married. Our adult relationships are often patterned on our early experiences and how we attach to others early in life. When our caregivers are neglectful, indifferent or hostile they fail to provide adequate emotional support to infants and can hamper efforts to meet normal adult needs for love and belongingness; Experiences in Close Relationships Scale. The ECR scale was created in 1998 by Kelly Brennan, Catherine Clark and Phillip Shaver. It groups people into four different categories on the basis of scores along two scales.

Readings and exercises from *The Road to Freedom* (Morin and Levenson, 2002) are then assigned and completed work is presented to and discussed in group sessions. The first exercise deals with feelings related to treatment and the bonds formed with the therapist and group members.

Clients then examine their communications patterns, identify any fears related to direct communication, identify their historical relationship style (with input from the ECR) and identify any distorted basic beliefs about relationships.

Many studies show that re-offense prevention is strongly impacted by individuals meeting their basic needs in pro-social ways, including relational needs. Needless to say, strong supportive relationships are an integral part of any healthy lifestyle and worth working on for anyone!

The next issue will deal with sexual interests.

Technical Violations Alarming as Lack of Actual Charges is Occurring

Correspondence received by CURE-SORT reveals a consistent and alarming trend in the cause of registered citizens who are presently incarcerated. They are being charged with a new crime, but not with a new sex offense (as we have noted in the past, all research demonstrates that recidivism rates are actually very low). The new charges are for technical violations of SOR requirements. And most often it is a failure to register or update information charge. In some states a first such offense is a misdemeanor but in others it is a felony.