The Legal Pad
Volume 6, Issue 6
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"Beware of those in whom the will to punish is strong." – Friedrich Nietzsche

In This Issue:

Important Note

Nothing in this edition is anti-treatment. To the extent you need treatment, get it. This issue is simply anti-mythology and anti-needless permanent confinement. Who would be for such things?

Coming Soon:

- ✓ Residency & Employment Restrictions: No Impact on Recidivism. Just Politics
- ✓ Banishment by a Thousand Laws
- ✓ Packingham – Wayne Logan's Take
- ✓ Remorse Bias — What's THAT?
- ✓ A Little History Yields Deja Vu
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- ✓ MnSOST-4, SAPROF, Survival Analysis, etc.—Talking Smack about Junk
- ✓ Lie-Detector Interrogation & Peter Meter Testing: Keeping You Down by False Hope, Fear, & Shame
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- ✓ Conscience Confrontation of Legislators (Real Psychopaths)
- ✓ Predicting Sex Crimes as to Those Without Any (We did warn you!)
- ✓ RFID Microchip Implants in SOs for Life Proposed (Yup: Ditto.)
- ✓ So much to learn, you'll need a cranial 40 TB solid-state drive!

Feedback? News? Write!

TLP Editor Address
(Exactly & Only as Below):

Cyrus P. Gladden II
1111 Highway 73
Moose Lake, MN 55767-9452

Anti-SOCC Cause Gains Academic Legitimacy; SOCC Scourged in Watershed University Conference.

by Cyrus Gladden

On Friday, April 8, 2022, a free, daylong conference open to the public was held at the Metro State University Auditorium, 387 Maria Ave, St. Paul, MN, on the subject of sex offender commitment and MSOP. The formal title of the conference was "Understanding and Responding to Mass Incarceration 2022 Conference," ("URMI 2022"), being the eighth in an annual series by that name.

Each of this series of conferences addressed a separate topic related to that title. The 2022 conference bore the explanatory subtitle, "The 'Sex Offender': Why Should We Care?".

According to the pre-conference invitation, this year's conference brought "special focus" to bear "on the Minnesota Sex Offender Program (MSOP), a little known civil commitment program through which 740 people in Minnesota are currently confined – *after serving their prison sentences* – with very little hope of release. URMI 2022 will break from simplified media narratives of the 'sex offender' to ask: how can communities reinvest in restorative justice and primary prevention to address root causes of sexual violence, and also transform our current ineffective system of prevention? This daylong conference will include keynote addresses, presentations by subject experts, panel discussions, breakout sessions, and more."

The conference was organized by David Boehnke and the statewide organization he chairs advocating an end to sex offender civil commitment in Minnesota and closure of the Minnesota Sex Offender Program with its system of unlimited confinement of those committed – to date, in the case of at least 92 among those committed, until their deaths.

The conference was co-sponsored by Metro State University and the Sex Offense Litigation and Policy Resource Center at Mitchell Hamline School of Law.

Speakers and presentations covered these topics:

- An Introduction to Civil Commitment
- Public Health Approaches to Sexual Violence Prevention
- Addressing Biases and Broken Systems
- The Re-Entry Solution: What Does It Look Like?
- Family Experiences with Incarceration and MSOP
- The Intersection of State and Sexual Violence
- The Problems with MSOP
- Treatment, Research, and Practice
- Legislation Stagnation
- MSOP and Guantanamo
- Shadow Prisons: What Are They?
- Restoring Harm and Breaking the Cycle
- Sexual Orientation, Race, and Minority Overrepresentation at MSOP

Headliner presenters included Prof. Eric S. Janus of Mitchell Hamline School of Law and its Resource Center mentioned above, as well as a former therapist in MSOP. Each provided jaw dropping revelations calling into question the entire rationale for sex offender commitment as well as the actual practices in place in its actual systems in place in the 20 states with such laws.

Lunch was provided to participants and attendees in Metro State's New Main Building, Great Hall. Breakout sessions were held in various classrooms in the St. Paul campus of Metro State University. Preliminary estimates indicate that more than 200 people were in attendance, and that attention and participation was strong throughout the day's sessions.

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A Personal Account by a Conference Participant from the Belly of the Beast.

by Daniel Wilson

"On April 8, 2022, 'my people,' 'Padron's people' and others from the public went to Metro State University to the event: 'Understanding and Responding to Mass Incarceration 2022 Conference: The Sex Offender: Why Should We Care?' This annual conference has historically focused on the prison system. This year it focused on MSOP.

From 9 a.m. to 4 p.m., our supporters met to educate over 200 people on the harm MSOP causes. It was reported that Eric Janus, Professor and former Dean at Mitchell Hamline School of Law, was 'animated' and 'livid' that MSOP was still in operation. He again – as he always has – made it clear that MSOP needs to go. Others that were present include Bill Dobbs (NY lawyer, who publishes 'The Dobbs Wire'), Coalition members Sara, Ruby, Tiffany, David, Christian, and others. Thomas Webber, Russell Hatton, and myself (Daniel Wilson) spoke as exemplars of those committed to MSOP.

Here is what I experienced: I called a coalition member at 2:05 p.m. Although he expected my call, he did not answer. I later found out that his phone was broken. I called two or three more times with no answer. Confused and irritated, I called a different coalition member and she picked up right away. She said, 'We've been waiting for you. Russ is speaking, so hang on a minute.' I could hear Russ on the speaker system, but could not make out many words. Then I heard the applause. By the clapping, I estimated at least 100 people were in an auditorium. I later learned it was at least twice that number.

I spoke very clearly and deliberately. I began, 'First of all I want to thank everyone for showing up and for showing an interest in this important issue. This issue can be complex, but it is not impossible to understand. The claim is that we are mentally ill patients. But recently leaked documents prove that MSOP administration knows that we are not mentally ill. We have known for years, but now we know that they know.

Ninety-two people have died here. I have been here for 31 of those deaths. No 'treatment' center has a death rate like this. This is a death camp – not a treatment center. There are twice the amount of African Americans than there should be. African Americans make up 12% of the population of MSOP, whereas they make up 6% of the population in Minnesota. MSOP is systematically targeting the LGBTQ+ community, which makes up 49% of the MSOP population, including 23 transgender women.'

It was around this time that Bill Dobbs asked me, 'What was [MSOP's] reaction to the hunger strikes?' I answered, 'Retaliation. I ended up in a semi-segregation unit for 4½ months, and they tried to send me to prison a few times. Now they have attacked our First Amendment rights. We cannot print or even say what we want about the program unless it's positive and puts the program in a positive light. I encourage everyone to get involved. Get connected with the Coalition. There is a lot to learn, but from Harvard to Cato Institute to Prof. Janus, MSOP has been condemned. It must be abolished, but it will take citizens to demand it.' Jannine Hebert, Kathryn Lockie and Jim Berg [all from MSOP administration] were there as well. This was my experience.

Feel free to use any of what I write here."

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Moving On

Metro State U, cont'd

An In-Depth Interview with Someone Who Should Know

by Cyrus Gladden

One of the presenters at the Metro State University's conference on Friday, April 8, 2022, "The 'Sex Offender': Why Should We Care?" was a former therapist in MSOP who left in disgust after more than three years on the job there.

She granted an interview to this writer, on condition of withholding her name to avoid unwelcome contact and harassment. For easy reference, she will be called "Athena" in this article. Her answers to the questions posed comprise quite a revelation about the true nature of sex offender civil commitment and of facilities that hold those committed under such laws. Read on and receive your epiphany.

The conference was convened to discuss the issue of what should be done with sex offender civil commitment in Minnesota and in particular with the Minnesota Sex Offender Program ("MSOP.")

One of the founding premises for the legislative enactment in 1994 of laws permitting that unique type of commitment was a then-claimed high tendency on the part of sex offenders to repeat such offenses many times. However, this claim was never accurate; the rate of re-offense among sex offenders based on recidivistic crimes committed in the 1980s and early 1990s was never higher than 17% (compared to average recidivism of all other criminals at about 67%).

Recent decades have dramatically reduced that former 17% rate. Athena cites a sex-crime recidivism rate of less than 3% in Minnesota as determined in 2012.

But even more to the point, she acknowledges a study (*Daniel Montaldi*, "A Study Of The Efficacy Of The Sexually Violent Predator Act In Florida," 41 *Wm. Mitchell Law Rev.* 780-865, at 811, 818, 843 [2015]), which found that sex offenders released from commitment or who were unsuccessfully petitioned for commitment were only as likely as the 'base rate' for later sex crimes by all those released from prison after serving only one sentence for a sex crime (average: ca. 3.5%)). In light of the lack of any significant difference, she observes, correctional post-release intensive supervised release ("ISR") is clearly more cost-effective at preventing recidivistic sex crimes than commitment is.

Further, among those committed or considered for commitment, there is no difference in recidivism regardless of whether they undergo treatment or not. *Montaldi, id.*, at 843, explains: "no form of treatment -- inpatient or outpatient -- shows a clearly measurable effect in reducing risk for offenders recommended for commitment in Florida," adding at 845: "...[T]here appears to be no discernible risk-reducing effect coming from progressing in treatment or completing it....," and concluding at 862-63l "...With rates as low as they are, even for untreated offenders, it is unlikely that any intervention can significantly lower rates any further." Athena points out that, in any event, treatment longer than 3 years is clearly counterproductive and toxic. Yet treatment that drags on for many years, typically more than a decade and often 20 years or more, is common in sex offender commitment facilities.

Athena points out that that modern-day multiple-decade sentences for sex crime exert a powerful deterrent effect regardless of treatment. Going even further, she observes that modern police technology doesn't allow for sex-crime recidivism anymore. That is, no offender can be comfortable recidivating now, given that technology makes identification of the perpetrator highly likely no more than days after report of the crime. Once this is achieved in a given case, modern ubiquitous surveillance makes apprehension inevitable and typically very quick.

Athena agrees that the current very low rate of sex-crime recidivism appears to reflect the 'criminal calculus' of the very low likelihood of getting away with a sex crime. In turn, this reflects nearly-universal cautious deliberation of whether or not to commit a sex crime. This deliberative process blows a gaping hole in the claim that sex offenders are out-of-self-control.

While Athena states that disorders always need treatment, this does not suggest that an offender, whether or not suffering a disorder, is out of control. In only rare cases is there any problem with control of one's sexual actions. Current research by forensic psychologists and criminologists negates the notion that there is any identifiable sub-class of sex offenders that lack such self-control.

Further, the vast majority of sex crimes are not spur-of-the-moment occurrences, but instead are the result of long deliberation and careful planning in advance. Athena adds that sex crimes-of-opportunity are almost always "chemically driven" (that is, when either drunk or drug-intoxicated at the time). This is not the same as an inability to control oneself. The decision to intoxicate oneself is simply a means to hide from one's desire and intent.

According to research she has, 93% of first-time sex offenders had no prior convictions of any kind, and hence would not have been possible to spot ahead of time from a criminal record as potential offenders, even if a past record were a reliable predictor (it is not) of future sex crimes.

Since far and away, most sex crimes are committed by such first-timers, criminal record is no indicator of future sex crimes. Most who are convicted of a sex crime do not commit another one, and almost all who are convicted of a later sex crime do not go on to commit a third.

The notion of an army of unstoppable serial sex criminals with dozens of brand new, hitherto undetected sex crimes is simply false. The government is wasting a stupendous sum on this claimed quest to prevent sex crimes through singling out a few for long term or permanent lockup beyond their already-long sentences under rubric of civil commitment. Instead, society should invest more resources into heading off sex crimes before they happen, says Athena.

One topic the conference addressed was bias against sex offenders, particularly against those tried for commitment and those actually committed. The first inflection point in the system at which bias plays a role against the former offender is the commitment process, including its trial. Athena cites evaluator bias, plus biased actuarial tools. She adds that prediction of the future behavior of individual humans is an impossibility in any event.

Athena sees bias as a drain on the system and a heavy burden on offenders and on their families. In light of all this bias, sex offender commitment, already subject to great question, cannot remotely be said to be a fair system at all. Given the politically condemnatory role on the public stage of sex offender commitment proceedings, and the urge on the part of all its players to posture as protectors of the public, Athena believes that there is probably no way to eliminate such bias. "All players need to preserve their image," she concludes. Believing that sex offender commitment is reliant in anti-sex offender bias, Athena adds, sharply, "It simply wouldn't be possible to operate without any bias."

In discussion of the greatly elevated commitment of homosexually oriented individuals, as opposed to sex offenders whose crimes reflect a heterosexual orientation, Athena commented, "Actuarials are biased against the whole LGBTQ community, whose members have a five-times overrepresentation in sex offender commitment." Noting that at least a few of the main so-called "actuarial instruments" to assess likelihood of sexual re-offense use crimes against minor males (as opposed to those against minor females) as supposed indicators of likelihood of re-offense, Athena said she has lots of research showing beyond question that this premise of higher recidivism by those having minor male victims is false. Therefore, those tools are very inaccurate, as well as biased.

When will we stop inventing excuses

Similarly, commitment rates also reflect a disproportionate rate of commitment for racial and ethnic minorities. Nothing could possibly justify this, says Athena. This too is just sheer bias at work.

Recalling that Athena used to be a therapist in MSOP, I asked her what she thought of MSOP's treatment plan, which stretches over a decade and more, as compared to other approaches to sex offender treatment performed outside of commitment facilities, where treatment is completed by participants within no more than three years and often as little as half that time? Athena stated that she learned more in her first year giving therapy (elsewhere) than she did in the entire 3½ years she worked in MSOP's Clinical Dept. MSOP doesn't teach real therapy, she explained. There is no other treatment program Athena knows of that takes more than 3 years to complete.

"You're familiar, I said to Athena, with 'ATSA' (the Association for Treatment of Sexual Abusers). Recently, three clinicians from MSOP have gained directive, executive, or consultative positions on with ATSA. Coincidently or not, ATSA has since then praised the MSOP treatment approach. What do you derive from this?" Athena answered: "ATSA is purely an organization for promoting sex offender commitment. Their meetings are simply fests of spouting the typical myths about monstrous sex offenders & sexual offending, including the myth of sex offenders being out of self-control. This is the pure 'party-line.'"

While the number cited fluctuates frequently, it is often stated that the current inmate population of MSOP is about 750. Against this, MSOP currently releases only about 25 inmates a year, almost all only to "provisional discharge." MSOP claims that it can't release more than this, citing an insufficient number of therapists and a lack of space and other resources to engage in faster treatment as main causes, plus their concern that more and faster releases, specifically without prior treatment progression through most of Phase 3, would create a risk of sexual crimes after release.

I asked Athena what she thought of this rationale for MSOP's policy of 'slow walking' releases? According to her, MSOP administrators are simply operating MSOP for their own personal profit, including a 'permanent employment act'

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for all employees. "If you think it's just a cover story," I asked, "what do you see as really going on, and why?" Athena explained, "This is just continuation of the original pitch for a claimed 'need' for MSOP, but it is a myth MSOP knows is false. The motive is just to collect fat paychecks; they don't really care at all whether the confinees are ever released."

MSOP claims that even inmates who have become aged over the years who never completed treatment remain a current danger of sexual recidivism if released. Studies have consistently shown that the general criminological principle of desistance through aging applies to former sex offenders just as it does to other classes of criminals. In consequence from MSOP's rejection of this research and MSOP's policy of non-release of the aged, there have been 92 deaths in MSOP since its inception, a figure more than twice the number of all provisional discharges to date.

So I asked Athena, "Do you agree that such confinement of the elderly is necessary?" "No," she answered. "Now, the oldest confinee is age 89." She laughed. "You could walk past him and get away from him."

"What should be done about this problem?", I asked. Athena suggested release of the aged to offenders' families, or to nursing homes if they need such care. If neither of these settings apply, she added, simply let them go home. It is simply inconceivable that people of that age could be deemed a threat of sexual assault or abuse of anyone.

"Everyone talks about the annual operating costs of MSOP as being somewhere around $100 million per year. But," I asked, "what can you tell us about the other costs, such as the costs to the judicial system of the commitment process itself, plus the costs of running the SRB/CAP process, and the continuing costs of debt service and amortization for the construction of MSOP-Moose Lake and the additional bonding costs and appropriations for additions to the St. Peter Campus of MSOP and CPS?" By way of answer, Athena said she knows, for instance, that the cost of the recent refurbishment in St. Peter for greater MSOP occupancy cost $65 million by itself. While she doesn't have exact SRB/CAP costs handy, she said she knows they are "ridiculously high." Separately, she noted, it costs about $400 per day to keep someone on provisional discharge, versus about $23 per day to keep someone on I.S.R. after prison release.

"If those committed were instead working members of society, supporting themselves, paying taxes, and producing value to our economy through production or service work," I asked her, "what do you think the increased profit to the economy from all 750 of these workers would be?" She said, "In the current economy crying out for workers, it would be huge for the economy to liberate all MSOP confinees so they could work and support themselves." "Isn't depriving the economy," I pressed, "of the positive effect of these additional workers another hidden cost of commitment?" Athena emphatically agreed.

"What other elements of cost in economic terms impact the families of those committed beyond the lost wages that would have supported the families?", I asked. "Even phone calls can be too costly for poor families," Athena stated. "Visits are simply financially impossible, especially due to the fact that most families are 200-plus miles distant from the MSOP facility their loved one is kept in." I asked, "What would be a reasonable estimate of the average of such family impacts (per family per year)?" "This is similar to the jail scenario," Athena responded, "where families find themselves strapped to pay for their inmate-loved one's needs."

"Which of these hidden costs place drains upon government funded resources?" "They all do," Athena answered. "In effect, all other programs lose out." I pursued: "If you add up all of the things we have discussed here to that raw operating cost figure of $100 million, what do you believe the true overall costs to the State of Minnesota are of sex offender commitment each year?" She had no ready figure, but simply summarized: "Probably sky high."

The invitation to the 2022 URMI Conference asks, "How can communities reinvest in restorative justice and primary prevention to address root causes of sexual violence, and also transform our current ineffective system of prevention?" So I asked Athena, "What do you see that should be done toward these ends instead with the money currently spent by the State of Minnesota to lock people up in MSOP and to keep them there? She answered, "Money needs to be shifted to the front end. That is, to research for the preceding causes of sexual offending. Once this is known, pre-crime intervention with provision of basic needs (where that's an issue) and free therapy as apt, can end a drift toward sexual offending before any resulting crimes occur."

As to "primary prevention" activities already in pilot project stages or which could be launched fully if only funding were available, I asked her which would likely have a serious reducing impact on the incidence of sex crimes? Athena cited MnCASA's approach (i.e., at the 'front end') as a good example of forward thinking in action.

Conversely, as to crimes already committed, Athena asserted that "restorative justice" as it applies to sex offenders is "definitely significant" and is an "integral part" of the solution. In opposition to sex offender commitment, I asked, "What other approaches, including standard measures of intense supervision, can be applied to sex offenders to ensure that they do not reoffend while the recidivism-reducing effects of treatment or counseling are taking effect? She said she thinks a "combination" of approaches is needed. This includes ISR, but also includes treatment and being supplied with needed resources during the period when employment may not be possible full time.

"In your understanding," I asked, "taken together, how effective are the primary prevention techniques, restorative justice and circles of accountability programs, and the intense supervision methods we have already discussed at preventing recidivistic sex crimes?" Athena responded that, while exact numbers are not available, she is certain that it is definitely more effective than the way things are now. If all such primary and recidivism prevention measures were fully funded and operating, Athena thinks that sexual recidivism would be "significantly reduced." Asked how the aggregate cost of all of these prevention measures would compare to the total current costs of Minnesota's present system of sex offender commitment, she said that there would be substantially less cost and undeniably "more bang for the buck."

Then I asked, "What has been the reason or reasons, in your view, for the utter failure by the state legislature to grapple with the disaster that is MSOP?" She answered, "Fear of political suicide, also some bias on the part of specific legislators."

"Can these problems be removed, so that any legislative responses can be made, or is there simply no legislative solution attainable at all?" Athena said, "It is just a matter of needing to find the right pressure to apply.' She sees this as a work in progress.

Athena reports having been impressed by the number of experts, academics, and professionals in attendance at the conference. She was especially pleased by sheparding of the conferees by Metro State's own Raj Sethuraju.

As explained in the companion article, the conference included collective sessions, in which various addresses and presentations were given, and also "breakout" sessions of more focused interest. Athena led one of these. She was particularly impressed by Prof. Eric Janus's slide show-based comprehensive presentation, the impactful breakout session with Berma Bushie setting forth the indigenous American perspective on the various issues involved, and the equally impactful statements and answers provided by three current MSOP confinees, Russell Hatton, Daniel Wilson, and Thomas Webber (by phone connection).

How big must protests be before we concede a problem exists & that something must be done?

The conference was mostly conducted in a calm and academic manner fitting the collegiate context in which it was held. However, an informal delegation of officials from MSOP, including Jannine Hebert, Jim Berg, and Kathryn Lockie were present during at least some of the proceedings. At one point, Hebert stated that many of the facts presented were incorrect, defending MSOP's practices. This prompted an outburst reaction from an attending Anoka County representative, who looked square into the eyes of the MSOP delegation and called what MSOP was doing in confining those committed for many years and sometimes their remaining lifetimes "absolutely atrocious." Referring to one media outlet with a strong exposé interest in the issue of sex offender civil commitment and MSOP, she added, "KARE 11 is coming for you!"

Athena reports that, as the day's proceedings ended and attendees began to disperse, the general thinking expressed among attendees was about ways to bring MSOP and sex offender commitment in Minnesota to an end. In essence, a 'what's next' question seemed to hang in the air about the nature of a better plan to reduce and hopefully eliminate sexual offending.

I premised a conclusion by saying, "A comparison has been made between sex offender commitment and other governmental indefinite holding of groups of people, such as the Japanese internment during World War II, commitment of homosexuals in the early half of the 20th century, claimed fears of recidivistic crimes as a ground to deny bail and relegate defendants to as much as several years of jail awaiting long-delayed trials, the Guantanamo reaction to feared terrorists acts by those thought to be extremists, and even the early-20th century forced boarding school abduction of thousands of indigenous American children to force them to become 'Americanized' out of a fear of their actions as adults otherwise." Then I asked her, "With the strong questioning to which claims rationalizing sex offender commitment have been subjected after research of the last two decades, in your view is there any basis to raise above those appalling actions the moral status of such inhumane post-imprisonment deprivation of freedom in shadow prisons

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that is now imposed upon former sex offenders?" Athena answered bluntly, "It's all the same phenomenon of social bias."

In parting, Athena provided this positive thought: "It would be helpful overall for those confined by MSOP to realize that there exists a lot of support, not just by relatives and friends, but also by good people everywhere, for ending civil commitment and providing reasonable and helpful solutions for former sex offenders."

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Virginia Report, # 13

Assessment: Application of Science, or Just a Witch Hunt?

G. Commitment 'Assessment' and 'Expert' Testimony about It

So-called "expert" reports and "expert" testimony advanced in support of sex offender commitment under said enactment are unscientific in derivation, contrary to academic knowledge, and unprofessional — in short, merely junk science. In many instances, the expert witness has never even met the sex offender in question. All such expert testimony, reports, and evidence offered in conjunction with such testimony in sex offender commitments are inherently either clinical ("clinical risk assessment" — "CRA") or actuarial ("actuarial risk assessment" — "ARA") in nature.

Yet a correct and accurate grounding in science of the evidence in such proceedings is indispensable to provide due process to the one under such petition. See, e.g., *Erica Beecher-Monas & Edgar Garcia-Rill*, "Danger at the edge of Chaos: Predicting Violent Behavior in a Post-Daubert World," 24 *Cardozo L. Rev.* 1845, 1873 (2003). Therefore, at a minimum, all actuarial instruments proposed for evidence in such cases must have been determined to comport with either the *Frye* test or the *Daubert* test (as applicable) before such evidentiary admission is allowed. See, e.g., *People v. Taylor*, 782 N.E.2d 920 (Ill. App. 2002). Anything less deprives the committed person of procedural due process. Notably, in the case of some RAIs or "tools" claimed to function as RAIs, no data has been released upon which peer review can take place or only insufficient data for that purpose has been released by test developers. In the absence of true peer review, such tests/tools cannot satisfy either the *Frye* or the *Daubert* tests for admissibility, and hence their admission in evidence violates procedural due process.

Tyler Quanbeck, "Preventing Partisan Commitment: Applying *Brady* Protection to the Civil Commitment of Sex Offenders," 65 *Case W. Res. L. Rev.* 209, 238-9 (Fall 2014), explains the significance of this:

"...Typically courts have applied one of two standards in determining the admissibility for expert testimony. The first comes from the 1923 case of *Frye v. United States* [293 F. 1013 (D.C. Cir. 1923)], which held that expert testimony is acceptable if it has 'gained general acceptance in the particular field in which it belongs.' [*Id.*, at 1014]. The second standard comes from *Daubert v. Merrell Dow Pharmaceuticals, Inc.* [509 U.S. 579 (1993)], which focused on whether the evidence in question can be tested, whether it has been subjected to peer review, and whether it has a known rate of error, among other factors. [Id. at 593-95]. However, in SVP commitment proceedings, courts tend not to adopt either of these well-known standards. Instead, courts tend to take any concerns they may have about the reliability of the evidence into consideration when calculating the weight of the evidence as a whole...." Adding, at p. 243: "[W]hether guided or unguided, clinical opinions are generally accepted by the court, allowing the defendant's fate to be decided by 'judgments that ultimately rest on the arbitrary opinion of a mental health professional.'"

Thus, e.g., *Andrew J. Harris*, "The Civil Commitment of Sexual Predators: A Policy Review," in *Sex Offender Laws: Failed Policies, New Directions 340, 357 (Richard G. Wright, ed., 2009)*, notes that in SVP commitment proceedings courts have rarely applied *Frye* or *Daubert* admissibility rules with any real force.) *John Matthew Febian*, "To Catch a Predator, and Then Commit Him for Life: Sexual Offender Risk Assessment – Part Two," *The Champion*, Mar. 2009, 32, at 38-39, similarly notes that while *Daubert* may be the applicable standard "state courts hearing sexually violent predator (SVP) cases have consistently admitted clinical judgment testimony establishing low levels of reliability in the courtroom"). Courts generally do not analyze any actuarial risk/future dangerousness assessments under *Daubert*, and there has been minimal critique of the quality of actuarial assessments. The only such critiques typically come in the form of lone dissents or concurrences. *Melissa Hamilton*, "Public Safety, Individual Liberty, and Suspect Science: Future Dangerousness Assessments and Sex Offender Laws," 83 *Temp. L. Rev.* 697, 704 (2011), at 738.

A mirage worthy of Don Quixote

H. Forensic Evidence And Testimony Claimed To Support SOCC Commitment Are So Utterly Unscientific And Anti-Scientific As To Render All Such Commitments Sheer Modern-Day Witch-Trials, In Complete Disregard Of Substantive Due Process.

Judges are extremely deferential to expert evaluations. In practice, commitment hearings tend to be 'non-adversarial episodes' in which judges appear to 'rubber stamp' the recommendations of clinical expert witnesses. Studies show that judicial agreement with expert witnesses ranges from 79 to 100 percent and most frequently exceeds 95 percent. (See, e.g. *Bruce J. Winick, Civil Commitment: A Therapeutic Jurisprudence Model*, 143 (2005); *Norman G. Polythress*, "Mental Health Expert Testimony: Current Problems," 5 *Jour. Psychiatry & Law* 201, 213 tbl. 2 (1977); see also: *E. Janus & R. Prentky*, "Forensic Use of Actuarial Risk Assessment with Sex Offenders: Accuracy, Admissibility, and Accountability," 40 *Am. Crim. L. Rev.* 1443, 1448-49 (2004) (finding that frequently the liberty-deprivation decision comes to a credibility judgment between the clinical assessments of two competing expert witnesses). Unfortunately, in a context where there is no scientific knowledge to support such 'expert' opinions, judges are typically unwittingly relying on nothing more than *ipse dixit* assertions by those speaking outside of their area of expertise. Where there is no science, there can be no expertise. As will be shown in the immediately following two subsections of this Subsection P, no known technique of "assessment" can validly, reliably state a scientifically defensible probability of sexual re-offense in the future as to any individual.

It should not escape note that Standard 1.06 of the *Ethical Standards* of the American Psychological Association requires that psychologists "rely on scientifically and professionally derived knowledge when making scientific or professional judgments...." As will appear *infra* within this section, there is effectively no science supporting technique of either "clinical risk assessment" or "actuarial risk assessment" from which any accurate estimate of probability of sexual re-offense can be derived as to any sex offender. Therefore, claims made in testimony or "reports" by any psychologist of any such estimate flatly violate this mandatory professional standard.

Deirdre M. Smith, "Dangerous Diagnoses, Risky Assumptions, and the Failed Experiment of 'Sexually Violent Predator' Commitment," 67 *Oklahoma Law Rev.* 619 (No. 4, Summer 2015), discusses this problem at pp. 619 et seq.:

"In its 1997 opinion, *Kansas v. Hendricks*, the U.S. Supreme Court upheld a law that reflected a new model of civil commitment. The targets of this new commitment law were dubbed 'Sexually Violent Predators' (SVPs), and the Court upheld indefinite detention of these individuals on the assumption that there is a psychiatrically distinct class of individuals who, unlike typical recidivists, have a mental condition that impairs their ability to refrain from violent sexual behavior. And, more specifically, the Court assumed that the justice system could reliably identify the true 'predators,' those for whom this unusual and extraordinary deprivation of liberty is appropriate and legitimate, with the aid of testimony from mental health professionals.

"This Article evaluates those assumptions and concludes that, because they were seriously flawed, the due process rationale used to uphold the SVP laws is invalid. The 'Sexually Violent Predator' is a political and moral construct, not a medical classification. The implementation of SVP laws has resulted in dangerous distortions of both psychiatric expertise and important legal principles, and such distortions reveal an urgent need to reexamine the Supreme Court's core rationale in upholding the SVP commitment experiment."

(Text, p. 623): "The Court's most consequential error was its failure to acknowledge that the category of the 'Sexually Violent Predator' is a political and moral construct, not a medical classification. Mainstream psychiatry has never claimed an ability to accurately predict who is at risk of committing acts of sexual violence and has never conceptualized sexual aggression as the product of volitional impairment. Indeed, the American Psychiatric Association (APA), the leading professional organization in American psychiatry, and other voices from within the mental health profession have vociferously opposed SVP laws since their enactment precisely because of the role assigned to psychiatric expertise to identify those who should be committed."

(p. 625): "The problems seen in the use of expert evidence in these proceedings cannot be avoided through technical fixes. Indeed, they reveal that there are no means to implement SVP laws consistent with notions of due process and individual liberty. A sexual predator is a legal classification that depends on medical line-drawing to be constitutionally sound. But because *there is no concept in psychiatry resembling a 'sexual predator,'* the implications of this incongruence go to the essential question of the constitutionality of the SVP laws. Written opinions reveal that courts base SVP commitments largely on the respondents' criminal records because the expert opinions themselves are based on little

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else. As a result, expert opinions in SVP cases are not in fact 'medical' but moral. And because such conclusions are essentially normative ones, courts are improperly delegating commitment decisions to psychiatric professionals, which flies in the face of both legal principles and psychiatric practice. This is not merely a problem of labels and professional realms; this experiment has resulted in the indefinite detention of thousands of people at an enormous monetary cost to governments and an enormous personal cost to those committed and their families."

(pp. 628-29): "...[C]ommentators within psychiatry attacked the 'sexual psychopath' legal classification, as there was no agreed-upon definition or basis to attach this label to any individual. [citing: *Chas. P. Ewing, Justice Perverted: Sex Offender Law, Psychology, and Public Policy* 8 (2011); *Tamara Rice Leve*, "Only Yesterday: The Rise and Fall of Twentieth Century Sexual Psychopath Laws," 69 *La. L. Rev.* 549, 581-82 (2009). See generally *Group for the Advancement of Psychiatry, Psychiatry and Sex Psychopath Legislation: The 30s to the 80s* 839-44 (1977) [hereinafter *Group for the Advancement of Psychiatry, Psychiatry and Sex Psychopath Legislation*].

"...The Group for the Advancement of Psychiatry (GAP) Committee on Forensic Psychiatry concluded in a 1977 *report that there was little real prospect* for effective treatment of sexual offenders and that the 'discrepancy between the promises in sex statutes and performances have rarely been resolved.' [*Psychiatry and Sex Psychopath Legislation, supra* note 45, at 935. 'In retrospect,' the GAP Committee reported, 'we view the sex psychopath statutes as social experiments that have failed and that lack redeeming social value. These experiments have been carried out by the joint participation of the psychiatric and legal professions with varying degrees of acquiescence by the general public. [*Id.* at 840]. The GAP Committee acknowledged the 'unjustified optimism' at the time of the laws' enactment regarding the 'effectiveness of clinical approaches in identifying and predicting' those who posed a risk of engaging in sexual violence. [*Id.* at 853-54]. The profession could not separate out the mentally ill sex offenders from the others, and there was little psychiatry could provide in the way of treatment once the men were committed. The report went on to starkly and unambiguously state:

'The notion is naïve and confusing that a hybrid amalgam of law and psychiatry can validly label a person a 'sex psychopath' or 'sex offender' and then treat him in a manner consistent with a guarantee of community safety. The mere assumption that such a heterogeneous legal classification could define treatability and make people amenable to treatment is not only fallacious, it is startling. [*Id.* at 935].'

"Remarkably, however, only a short time after the sexual psychopath laws were discarded, the states resurrected them in a new, more extreme form of experiment, one also 'carried out by the joint participation of the psychiatric and legal professions' –this time completely disregarding the psychiatric profession's own conclusions."

(p. 634): "...At the time the rise of SVP laws occurred, data already indicated that the significant majority of sex crimes were in fact committed not by stereotypical 'predators' who stalked, lured, and pounced on random hapless victims, but, rather, and particularly in the case of the sexual assault of children, by family members and acquaintances of the victims. Similarly, studies indicated that, contrary to popular belief, *sexual offenders did not have unusually* high levels of recidivism.

(p. 655): "...In dismissing Young's challenge based upon an as-applied theory, the Court noted in dictum that, if a person is detained for the purpose of incapacitation and treatment, then 'due process requires that the conditions and duration of confinement under the Act bear some reasonable relation to the purpose for which persons are committed.... [*Seling v. Young*, 531 U.S. 250, 265 (2001)]. ...[S]ocial scientists have yet to reach anything approaching a consensus on whether the various kinds of inpatient treatment programs administered to SVPs prevent recidivism. *Chas. P. Ewing, Justice Perverted: Sex Offender Law, Psychology, and Public Policy* 52-55 (2011)"

(p. 668): "...The DSM-III included language in the forward noting a distinction between deviance and disorder and the lead editor of the manual, Robert Spitzer, acknowledged that the term 'disorder ...always involves a value judgment.' *Andreas De Block & Pieter R. Adriaens*, "Pathologizing Sexual Deviance, a History," 50 *Jour. Of Sexual Research* 276 (2013), at 288

(pp. 668-69): "This emphasis on personal distress and impaired functioning became more apparent with the publication of the DSM-IV in 1994. Under the diagnostic criteria for the paraphilias, conduct based upon these urges could be criminal, but not pathological, in the absence of distress or limited functioning. [*Id.* at 291. This change was part of a "system-wide effort" to incorporate "clinical significance criterion" to diagnoses throughout the DSM-IV. *Michael B. First*, "DSM-5 Proposals for Paraphilias: Suggestions for Reducing False Positives Related to Use of Behavioral Manifestations," 39 *Arch. Sex. Behav.* 1239, 1240 (2010).] With this revision, that edition further clarified that clinicians could not consider child sex offenders to be mentally ill unless their deviant behavior caused such distress or impairment. [DSM-IV at 528. This modification was also consistent with revisions made throughout DSM-IV to ensure that only conditions that caused harm, one of the essential components for a clinically-significant medical "disorder," were included. *Jerome C. Wakefield*, "DSM-5 Proposed Diagnostic Criteria for Sexual Paraphilias: Tensions Between Diagnostic Validity and Forensic Utility," 34 *Int'l Jour. L. & Psychiatry* 195 (2011), at 201-02.] This modification, however, which moved the notion of paraphilia away from the problematic normal-abnormal dichotomy [*Michael B. First & Robert L. Halon*, "Use of DSM Paraphilia Diagnoses in Sexually Violent Predator Commitment Cases," 36 *J. Am. Acad. Psychiatry & L.* 443, 445 (2008). The editions retained the list of paraphilias, however,...], *elicited outrage* among certain conservative groups who claimed that this would de-pathologize nondistressed pedophiles [*Michael B. First & Allen Frances*, "Issues for DSM-V: Unintended Consequences of Small Changes: The Case of Paraphilias," 165 *Am. J. Psychiatry* 1240, 1240 (2008). The specific protest cited by the authors apparently came from "Exodus International," an anti-gay Christian organization. "Exodus International Shuts Down: Christian Ministry Apologizes to LGBT Community and Halts Operations," *Huffington Post* (June 21, 2013), http://www.huffingtonpost.com/2013/06/20/exodus-international-shuts-down_n_3470911.html.] and give an 'ego-syntonic well-functioning paraphiliac a free pass as far as disorder goes.' [*Wakefield, supra* note 313, at 202.] Robert Spitzer later referred to the blowback as a 'public relations disaster,' [*Robert Spitzer*, "Sexual and Gender Disorders: Discussions of Questions for DSM-V," in *Sexual and Gender Diagnoses of the Diagnostic and Statistical Manual (DSM): A Reevaluation* 111, 115 (Dan Karasic & Jack Dreacher eds., 2005).] and the APA reversed the amendment (referred to as a 'misinterpretation' by the editors) for those paraphilias 'involving nonconsenting victims' to allow a diagnosis of paraphilia based upon either the individual's acting on paraphilic urges with said victims or experiencing distress caused by such urges. [DSM-IV-TR at 566; *First & Frances, supra* note 315, at 1240.] In the 'text revision' of DSM-IV six years later [2000], the editors modified the criteria to make clear that acting on paraphilic urges could itself satisfy the 'harm' requirement for the diagnosis of pathology, even if such activity was unaccompanied by 'distress or interpersonal difficulty' for the person so diagnosed. [DSM-IV-TR, at 566 ("The person has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty.")]

(pp. 669-70): "Another significant change in the DSM-IV was to the 'A Criterion' part of each paraphilia diagnosis to allow clinicians to base a diagnosis on 'recurrent, intense sexually arousing fantasies, sexual urges, or behaviors.' [DSM-IV-TR, at 566. The criteria for each paraphilias are divided into "A" and "B: sections, both of which must be satisfied in order to apply the diagnosis to an individual.] This revision was a technical adjustment required by changes in wording made in the other part of the diagnostic criteria for each paraphilia. [*First, supra* note 312, at 1240.] It was only in hindsight that the editors and other commentators noted that the use of 'or behaviors' as a disjunctive, in combination with the amendment regarding the 'harm' requirement, could allow *prosecution* experts in SVP cases to assign a diagnosis of mental abnormality to sexual offenders 'based only on their having committed sexual offenses (e.g., rape).' [*First & Frances, supra* note3 315, at 1240; *Allan Frances et al.*, "Defining Mental Disorder When It Really Counts: DSM-IV-TR and SVP/SDP Statutes," 36 *J. Am. Acad. Of Psychiatry & Law* 375 (2008), at 380; *Wakefield, supra* note 313, at 201-02. As the DSM-IV's *lead editor, Allan Frances, noted* recently: "This one stupid slip contributed to the unconstitutional preventive detention of thousands of sex offenders. I have no pity for criminals, but do have great concern when their constitutional rights are violated just because I made a dumb wording mistake." *Allan Frances*, "DSM-5 Writing Mistakes Will Cause Great Confusion," *Huffington Post* (June 11, 2013), http://www.huffingtonpost.com/allen-frances/dsm5-writing-mistakes-will_b_3419747.html.]

The DSM editors have asserted repeatedly that this broad reading of the A Criterion is inconsistent with the basic conceptualization of paraphilias in the DSM: criminal conduct alone, even if it appears to be based on an underlying paraphilia, cannot establish a diagnosis for such a paraphilia. [*First & Halon, supra* note 314, at 445-47 ("It had never been anticipated that any clinician would interpret the addition of 'or behaviors' in Criterion A as indicating that the deviant behavior, in the absence of evidence of the presence of fantasies or urges causing the behavior, would justify a diagnosis of a paraphilia.").] Given that the 'core construct' of a paraphilia is the presence of 'deviant arousal,' a clinical diagnosis must be based upon information beyond an instance of criminal conduct alone. [*Id.* at 447-48. The authors

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indicate that such other information can be gleaned from interviews, questionnaires, a detailed history of the individual's sexual behavior, use of pornography, and testing of physiological responses. Id.; see also *Wakefield*, *supra* note 313, at 198 ("Paraphilias are disorders of sexual arousal and desire, not matters of behavior and action undertaken for other reasons...").] As *Michael First*, one of the DSM-IV editors, explained in a 2010 editorial" 'A paraphilia is ...fundamentally a disturbed internal mental process (i.e., a deviant focus of sexual arousal) which is conceptually distinguishable from its various clinical manifestations....' [*First*, *supra* note 312, at 1240.] Since, the best indicators of a sexual arousal pattern are a patient's 'self-reports' of fantasies, urges, and actions, obtained through a diagnostic interview, the criteria should not be interpreted in a way that would permit a clinician to 'skip this crucial step' in the diagnostic process. [*Id.*] To base a diagnosis on a person's acts alone, therefore, 'conflate[s] the underlying phenomenology of a paraphilia with its clinical manifestations.' [*Id.*; see also *Fred S. Berlin*, "Pedophilia and DSM-5: The Importance of Clearly Defining the Nature of a Pedophilic Disorder," 42 *J. Am. Acad. Psychiatry & L.* 404, 404 (2014) ("Many in society are likely to equate pedophilia with child molestation. They are not the same.").]

Deirdre M. Smith, "Dangerous Diagnoses, Risky Assumptions,..." *supra*, at 707 *et seq.* (No. 4, Summer 2015), eloquently sums up the inevitable problem with enlistment of psychological so-called 'expertise' in this business of asserting predictions of future human behavior, especially in the emotionally charged context of sex crimes and past sex offenders:

"As Allan Frances has implored: 'SVP courts must insist on good science.' [*Robert A. Prentky et al.*, "Sexually Violent Predators in the Courtroom: Science on Trial," 12 *Psychol. Pub. Pol'y & L.* 357 (2006), at 386....] The controversial nature of psychiatric diagnoses discussed above, combined with the significant liberty interest at stake in SVP proceedings, suggest that trial courts in such proceedings should exercise particular vigilance in the 'gatekeeping' role. However, the case law reveals a significant abdication of this responsibility by the courts.

(pp. 707-08): "...Samantha Godwin has labeled psychiatry a 'pseudoscience' that lacks sufficient reliability to be considered at all in involuntary commitment hearings. [*Samantha Godwin*, "Bad Science Makes Bad Law: How the Deference Afforded to Psychiatry Undermines Civil Liberties," 10 *Seattle J. Soc. Just.* 647, 647 (2012).]

(pp. 713-14): "This review of law and practice in SVP proceedings has demonstrated that the prevalent use of psychiatric evidence in such proceedings is a distortion of medical views of pathology of sexual violence – including appropriate diagnostic methods and prediction of future conduct – and also legal principles regarding the admissibility of expert opinion. This distortion includes cases where expert opinion is based on unreliable methodology or data that runs counter to predominant views of the psychiatric field and risks misuse by, or the misleading of, the fact finder. [*Melissa Hamilton*, "Adjudicating Sex Crimes as Mental Disease," 33 *Pace L. Rev.* 536 (2013), at 556-72; see also *Prentky et al.* supra, at 456.] These fundamental and extensive distortions of sound science and justice are the inevitable and unavoidable result of the courts' experiment with SVP laws. These distortions also demonstrate that many in the psychiatric field accurately predicted the dangers of SVP laws when the SVP experiment began."

(pp. 720-21): "The sharpness of the debates regarding the use of psychiatric diagnostic assessments and ARA instruments in SVP proceeding, with strong but conflicting evidence on both sides, encourages a significant third perspective: the entire SVP commitment model, with the essential role it assigns to forensic assessment of the likelihood of recidivism, is inherently unworkable. [See *Michael B. First*, "DSM-5 and Paraphilic Disorders, 42 *J. Am. Acad. Of Psychiatry & L.* 191 (2014), at 20 ("Paraphilic disorders, by virtue of their forensic import, exemplify the difficulty of integrating psychiatric concepts and concerns with those of the legal system and society in general.").] Because findings of mental abnormality and dangerousness are constitutionally required in such proceedings, the question of whether we can reliably assess the relevant pathology and risk directly implicates the committed person's liberty interests. [*Prentky et al.* supra note 355, at 371; see also *Janus & Prentky*, "Forensic Use of Actuarial Risk Assessment with Sex Offenders: Accuracy, Admissibility, and Accountability," 40 *Am. Crim. L. Rev.* 1443 (2003), at 1458. This is not to suggest that clinical judgment and ARAs are the only methods proposed for predicting risk of sexual violence. For example, legal scholar Adam Lamparello has advocated use of neuroscience to predict violent behavior. *Adam Lamparello*, "Using Cognitive Neuroscience to Predict Future Dangerousness," 42 *Columbia Hum. Rts. L. Rev.* 481, 488-92 (2011). However, at this time, there have been no studies of the use evaluating brain activity through functional MRI imaging to predict such violence. Moreover, it is by no means

Breakthrough!

clear that such technology will correct any of problems inherent in the SVP commitment model discussed herein. See generally *Steven K. Erickson*, "The Limits of Neurolaw," 11 *Hous. J. Health L. & Pol'y* 321 (2012).] What these debates reveal is that neither approach – clinical judgment or actuarial instruments –is sufficiently reliable to ensure that SVP laws are not sweeping too broadly. The making of predictions generally, not the methodology used to make them, is the problem."

(p. 719): "...The most significant problem with the use of ARAs in SVP proceedings is that these tools are designed only to assess the statistical risk of recidivism, not, as required by the Hendricks-Crane standard, the existence of volitional impairment. Nor are ARAs designed to assess the presence of 'mental disorder,' another core requirement of the SVP statutes and a component of their constitutional floor. Moreover, because these instruments largely use information that can be gleaned simply from a review of a respondent's records alone – without an interview—the forensic examiners employing them, like those who misuse paraphilia diagnoses as discussed above, are constructing a state of underlying volitional impairment based solely on a selective record of past actions."

(p. 723): "...[T]he medical, and therefore legal, legitimacy of the prosecution of these laws depends on the testimony of mental health professionals weighing in on the question of respondents' pathology and volitional control. That testimony, however, is inherently problematic: it is unreliable at best and, at worst, hollow.

"Since the crucial medical opinions offered in SVP proceedings regarding who is a 'predator' with a 'volitional impairment' – as distinct from a 'typical recidivist' – are routinely based on conclusions drawn from reviewing the record of a respondent's prior acts of sexual violence, those opinions are, in effect, tautologies. [See also *John Q. La Fond*, "Sexually Violent Predator Laws and the Liberal State: An Ominous Threat to Individual Liberty," 31 *Int'l J.L. & Psychiatry* 158, (2008), at 162 ("The primary evidence for all of these elements – mental disorder, volitional impairment, and dangerousness – is the same: an offender's past history of committing sex crime(s). Simply put, a sex offender who has committed a qualifying sex crime thereby provides evidence that is legally sufficient to be committed as a SVP." (alteration in original)).] The term 'sexual predator' has no psychiatric meaning; it is used simply to name a group of sexual offenders from whom we want to protect the public. It is like the term 'weed,' which has no botanical meaning but which we use simply to refer to plants of which we want to rid our gardens. In the absence of a scientific basis for determining whether or not a person is a 'sexual predator,' the task assigned to forensic experts in SVP proceedings is to make a normative determination; this delegation of moral decision-making to psychiatry is inconsistent with core notions of due process. Accordingly, the constitutionality of such laws is, in fact, far from settled."

Deirdre M. Smith, "Dangerous Diagnoses, Risky Assumptions,..." *supra*, also speaks to "Basing Opinions on Records and Inadmissible Evidence" at pp. 697 *et seq.*:

"...[M]ental health professionals have condemned such practice by forensic psychiatrists as a specific violation of professional ethics. [*Prentky et al.*, *supra* note 355, at 370.]

"...One medical dictionary defines 'clinical judgment' as 'the application of information based on actual observation of a patient combined with subjective and objective data that lead to a conclusion.' [*Mosby's Medical Dictionary* 380 (9th ed. 2013) (emphasis added).] What the panel in McGee failed to note was that the two testifying forensic experts had in fact never had the opportunity to use their 'clinical judgment' when arriving at their conclusions about McGee's condition, including what they testified as to his diagnosis and volitional impairment, since they had never observed the 'patient.'"

(pp. 699-700): "The disturbing trends seen in the methods used by experts testifying on behalf of the government in SVP cases reflect that they have no scientific foundation on which to assess 'volitional impairment,' and therefore necessarily base their conclusions largely on the respondents' history of criminal behavior. Indeed, courts apply little scrutiny to an expert's assessment of the respondent's volitional impairment as such. [For example, the New York Appellate Division upheld an SVP commitment against a challenge based on insufficient evidence where the state's expert opined that the respondent had difficulty controlling his behavior because he was aware that he "had a problem" with exposing himself to people yet continued to do so. *State v.*

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Richard VV, 74 A.D.3d 1402, 1493-04 (2010). Curiously, the forensic expert also considered the fact that the respondent met most of the diagnostic criteria for ASPD to be further indication that he was unable to control his behavior. *Id.* However, there is nothing in that diagnosis that is associated with volitional impairment. See also *Eric S. Janus*, "Sex Offender Commitments: Debunking the Official Narrative and Revealing the Rules-in-Use," 8 *Stan. L. & Pol'y Rev.* 71, 83-84 (1997).] Where experts rely primarily upon law enforcement or prosecution files, such as witness statements or criminal histories, to render an opinion about volitional impairment, they engage in essentially the same process and use the same information as ordinary lay fact finders do when they evaluate evidence offered by the state at trial. This raises the question of what 'helpful' opinion testimony such experts actually bring to the courtroom and, conversely, whether they are simply doing the fact finder's job (albeit from an arguably biased perspective) under the guise of offering their 'expertise.'

(pp. 700–01): "Given the variability and unreliability of expert testimony in SVP proceedings, it is not surprising that, overall, mental health professionals' predictions of recidivism by SVPs appear to be no more accurate than those made by laypersons on the basis of general knowledge. Empirical studies confirm what psychiatrists themselves have long stated to be the case: their predictions of recidivism by SVPs are little better than chance. [*Rebecca Jackson et al.*, "The Adequacy and Accuracy of Sexually Violent Predator Evaluations: Contextualized Risk Assessment in Clinical Practice," 3 *Int'l J. Forensic Mental Health* 115 (2004), at 124; see also *Erica Beecher-Monas & Edgar Garcia-Rill*, "Danger at the Edge of Chaos: Predicting Behavior in a Post-Daubert World," 24 *Cardozo L. Rev.* 1845, 1869-71 (2003).] A 2004 study concluded that experts were accurate in predicting future sexual violence about one-half of the time. [*Jackson et al., supra* note 514, at 124, 127.] This study also confirmed many other concerns about the reliability of expert opinion in SVP cases, such as the emotional impact of reviewing victims' statements and other information in criminal records on the development of an evaluator's opinion and the existence of an overall bias favoring 'locking up' prior offenders regardless of the actual risk they pose. [*Id.* at 125. Another factor in the poor results was the fact that most of the terms in the applicable legal standards were not sufficiently "operationalized," meaning that the specific terms are poorly defined (if they are defined at all). *Id.*]

"These findings are consistent with prior studies of clinical judgment that have long established that, due to the operation of a range of cognitive biases, such judgment, even by intelligent, ethical, and well-trained professionals, is significantly inaccurate. [*Daniel Kahneman*, Thinking, Fast and Slow, 238-42 (2011); *Carol Tavris & Elliot Aronson*, *Mistakes Were Made (But Not by Me): Why We Justify Foolish Beliefs, Bad Decisions, and Hurtful Acts* 97-126 (2007).] For example, where a professional fails to grasp the complexity of the circumstances that can lead to various outcomes, the degree of confidence she feels in her conclusion, rather than being a measure of its accuracy, may indicate just the opposite. [*Kahneman, supra* note 517, at 212.] Also, it appears that the very act of predicting the likelihood of a rare event, because it involves visualizing the possibility of an event, leads to overestimating the risk of its occurrence [*Id.* at 333.] As psychologist Daniel Kahneman has observed: 'Errors of prediction are inevitable because the world is unpredictable,' and yet 'we resist our limited ability to predict the future.' [*Id.* at 217-20.] We are easily misled by both hindsight bias (i.e., we overestimate the extent to which we can identify causal relationships but base decisions on the assumption that we have identified them correctly) and by a 'readiness to ascribe propensity to behavior' (i.e., we see behaviors that may be strongly affected by context as reflections of underlying inclinations). [*Id.* at 199-201.] Both of these general cognitive tendencies can influence the thinking of testifying experts, and both can influence the way fact finders weigh expert testimony in making SVP commitment determinations."

(p. 702): "...The appropriateness of the use of tools such as the 'Static-99,' Rapid Risk Assessment for Sexual Offense Recidivism (RRASOR), or Sex Offender Risk Appraisal Guide (SORAG) as a basis for expert opinions in support of SVP commitment is an unsettled question in the courts. [*Melissa Hamilton*, "Public Safety, Individual Liberty, and Suspect Science: Future Dangerousness Assessments and Sex Offender Laws," 83 *Temp. L. Rev.* 697, 721-25 (2011) (explaining how Static-99 and RRASOR were developed and are administered).]"

(p. 703): "...[T]he tools are not psychological tests. [Indeed, one study of evaluation procedures noted how less frequently psychological testing is used in the SVP context as compared with other forensic evaluations, such as for insanity and competency. [*Rebecca L. Jackson & Derek T. Hess*, "Evaluation for Civil Commitment of Sex Offenders: A Survey of Experts," 19 *Sexual Abuse*, 425 (2007), at 437-38. nor are they predictors of an individual's specific likelihood to re-offend.... The tools also shed no light on the questions of abnormality or volitional impairment."

(pp. 703-04): "...[A]s other commentators have stressed, there are reasons to approach the use of ARAs in SVP proceedings with considerable caution. The use of ARAs is highly controversial among legal and mental health professionals, and critics of ARAs have noted their limited effectiveness. [*Daniel A. Krauss et al.*, "Dangerously Misunderstood: Representative Jurors' Reactions to Expert Testimony on Future Dangerousness in a Sexually Violent Predator Trial," 18 *Psychol., Pub. Pol'y & L.* 18 (2012), at 20; *Saleh et al., supra* at note 366, at 366.] One of the biggest shortcomings of the Static-99 and similar instruments is that they assess risk based on a series of 'static' factors that do not change (such as the age of first offense, characteristics of the victims etc.) over an offender's lifetime. [*Tamara Rice Lave*, "Controlling Sexually Violent Predators: Continued Incarceration at What Cost?" 14 *New Crim. L. Rev.* 213, 240-45 (2011); see also *Hamilton, supra* note 525, at 724-25.] They therefore may fail to account for dynamic factors such as life circumstances and participation in treatment, because the instruments are based on the assumption that one's risk never changes, even if one makes choices to address the underlying propensity. [*Krauss et al.* supra note 541, at 20.] As a result, other than perhaps a decrease due to aging, a person's score will not change significantly. A person's score could be the same the day of release from incarceration and ten years later, even after leading an entirely law-abiding life during the interim. [For an example of how the use of an ARA can have an impact on risk assessment of a person who commits a crime at a young age, see *Nora Hertel*, "Sex Offender Awaits Second Chance, *Wisconsin Watch* (Feb. 4, 2014), http://wisconsin watch.org/2014/02/sex-offender-awaits-second-chance/.] Such an approach to risk assessment fails to take into account not only the passage of time, but also the events that occurred (or did not occur) during such time, thus rendering any such assessment severely liable to inaccuracy. [*Prentky et al. supra* note 355, at 378.] Some instruments do not even consider the mitigating effect of age on risk of recidivism. [*Id.* at 375.]"

(pp. 705-06): "...Many commonly used ARAs have been criticized for being unreliable. For example, the SVR-20 (at least as of 2000) used only broad categories of risk (High, medium, and low), and there were no inter-rater reliability rates for specific factors. [*Terence W. Campbell*, "Sexual Predator Evaluations and Phrenology: Considering Issues of Evidentiary Reliability," 18 *Behav. Sci. & L.* 111, 120-21 (2000).] There is also no consensus what level of predictive validity is sufficient for the instruments to be considered a useful tool for predicting recidivism. [*Paul Good & Jules Burstein*, "A Modern Day Witch Hunt: The Troubling Role of Psychologists in Sexual Predator Laws, 28 *Am. J. Forensic Psych.* 23 (2010), at 34.]

"ARAs, even at their best, can still be used poorly. [*Eric S. Janus & Robert A. Prentky*, "Forensic Use of Actuarial Risk Assessment with Sex Offenders: Accuracy, Admissibility, and Accountability," 40 *Am. Crim. L. Rev.* 1443 (2003), at 1493-97.] Although the instruments are ostensibly objective, the evaluators who administer them are not immune from common failings of human judgment and bias, and the concept of 'risk' is itself a construct subject to different understandings. [*Beecher-Monas & Garcia-Rill, supra* note 514, at 1871.] A simple difference in how the outcome of a risk is presented, in terms of a probability versus a frequency, can affect how high a professional assesses the risk. [Risks phrased in the form of the probable occurrence of specific events are evidently less "vivid" than ones phrased in the form of a frequency. *Kahneman, supra* note 517, at 330 ("Experienced forensic psychologists and psychiatrists are not immune to the effects of the format in which risks are expressed.")] Also, the objective factuality of some of the individual factors considered in the instruments may not be as clear as initially assumed. For example, a factor such as participation in or compliance with treatment can be a complex question where there is limited access to treatment, [*Prentky et al., supra* note 355, at 379.] where the treatment is cursory, or where the treatment requires disclosure or other actions by the committed person that could lead to lengthier commitment in the absence of Fifth Amendment protections. The use of instruments or set 'factors' can also lead to 'cherry picking' the factors to be considered in the analysis, which can also lead to skewed results. [*Id.* at 378-79' *Good & Burstein, supra*, note 554, at 30-31 (arguing that ARAs for SVPs may be "systematically biased").] Some scholars suggest that experts' practice of making individualized 'adjustments' to scores may be little more than 'dressing up clinical judgment with actuarial science.' [*Prentky et al. supra* note 355, at 380.] Given such problems, several scholars have suggested that the use of ARAs by examiners in SVP proceedings is unethical. [*Campbell, supra* note 553, at 128.]"

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Uncivil Commitment

by Matt Feeney

"One of the foundations of a civilized society is the precept that people who do wrong need to be held to account for their crimes. It follows that once a person has served their prison sentence, they have earned the right to be free and return home.

What would you think about a slick scam that legally circumvents such justice? A system where, after years in prison and within days before release, the State asks for an *additional* sentence to keep that individual incarcerated for the rest of their life? This is what the criminal justice system calls 'civil commitment' and it is quietly still occurring in 20 States, including Minnesota. Only these States have such laws. No other country but the United States commits sex offenders after their prison sentence.

After a man has completed his entire prison sentence (usually at or close to the maximum allowed by law) for a crime of a sexual nature committed many years (if not decades) ago, instead of being released, this inmate is singled out by some junk-science statistical algorithmic formula and subjected to a second trial to determine whether he should be released. The State claims this avoids the double jeopardy prohibition because this second trial is held in a civil court. This court hears the same evidence heard by the original criminal trial court, but now the State can present additional hearsay and allegations, along with State-owned or -rented experts, who opine that they can predict the future. These 'expert' fortune tellers are paid to testify under oath that this individual *may* commit another crime sometime in the future.

If the moral injustice of this doesn't upset you, maybe this will help: Civil commitment costs taxpayers between $100,000 to $268,000. Per year. Every year. *Per person confined.* For the rest of the inmate's natural life. Many were juvenile offenders and many are now disabled senior citizens. In Minnesota, more people have died in civil commitment than have been released. There are nearly 7,000 souls being held captive under civil commitment sentences in the 20 States that have these laws and, because so few ever get released, this number only increases.

The 20 States with sex offender civil commitment laws are: Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin, as well as the District of Columbia. The Pennsylvania law is unique in that it applies only to youth adjudicated for a sexual offense who are 'aging out' of the juvenile justice system. New Hampshire apparently has no one currently committed under its law. In recent years, Washington State and North Dakota have released more than half of those committed under their laws of this type, now down to confined populations of 150 and 35, respectively.

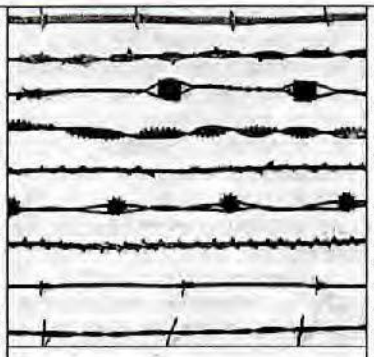
In contrast, Minnesota (second in committed sex offender population only to California and four times the number of confinees per capita of total State population of the next highest State in that metric) continues to commit just as many as all of those who have died in confinement and those released. (Releasees: 49; deaths: 92. Currently confined: 750 -- about 15 more than in 2016, before releases began. The number released just from 2016 to date is 48. Deaths confined in this same period are 35. Therefore, the number committed to Minnesota's MSOP sex offender commitment system just from 2016 to date is 15 + 48 + 35, or 98 total). Note that the original projection of ultimate capacity of MSOP when the law allowing sex offender commitments was legislatively deliberated in 1994 was only 75.

Since the mid-1990s, the rate of recidivistic sex crimes per year has been in a downward tailspin. Yet sex offender commitments increased, while releases were nonexistent for many years, and did not increase to the comparative regular annual trickle (about a dozen) until the *Karsjens* challenge to MSOP was on appeal by the State-employee defendants.

Earlier, MSOP had predicted that its confinee population would exceed 2,100 by the year 2020 and subsequently sought construction funding for the anticipated bed space need. The State legislature turned down that request repeatedly in ensuing years.

The uncanny lockstep by which at least every bed emptied by either death or release is immediately re-filled, and an additional quantum of new commitments is added seems to suggest that an unspoken agenda of prosecutors and MSOP may exist to keep MSOP at least at its present size regardless of any increased rate of releases over time in the future, while adding enough additional commitments in an attempt to lever at least some additional bed construction out of the legislature. Apparently, the aim of this conjectured strategy is to pose a standing argument for the never-ending 'need' for sex offender commitment.

Rather than release a substantial number of confinees from "CPS" (the last phase of MSOP confinement), MSOP has finally managed to talk the legislature into funding construction that will increase the number of beds in that last phase by an additional 70. This will



serve to allow MSOP to retain confinees longer still than now, claiming (often after 20 years of treatment), that its confinees are not 'ready' to be released.

In such so-called civil commitment, people are housed in a prison-like facility with chain link fences topped by razor wire and patrolled by uniformed armed guards, restrictive approval of visitors, monitored phone calls and mail, forbidden books and movies, and numerous other restrictions. The only difference between a prison and a commitment facility is that a prisoner has a scheduled release date.

These civil commitment laws were passed starting in the early 1990s as a knee-jerk reaction to several highly publicized heinous sex crimes that fueled a volatile environment founded on fear, hatred and falsehoods. This so-called 'war on sex offenders' must end.

Civil commitment is based on the false premise that it is possible to accurately predict whether or not someone *might* commit a future crime. Based on hypothetical predictions, the person is then considered guilty and imprisoned for life for crimes some algorithm predicted they might commit.

This is done by using actuarial tools and psychological tests that attempt to give scientific credibility to the fairy-tale art of predicting the future.

But pretending to predict the future is junk science. Instead of scrying over a crystal ball, the scientists use a battery of tests and so-called actuarial 'tools' with impressive-sounding acronyms, like Static-99, RRASOR, VRAG, SORAG, and MnSOST. Even more impressively, these scored checklists produce objective numbers, often to the second decimal place, leading an unsuspecting person to believe the resulting prediction must be unnervingly accurate.

In particular, the MnSOST's various versions have produced wildly inconsistent predicted recidivism rates. Although the MnSOST 4.0 has drastically lowered certain of its insanely high claims of recidivism, this change only applies to some, effectively just narrowing the spotlight onto other unfortunates still baselessly asserted to be near-certain future recidivists. MnSOST's creators have refused to divulge any data from the (very small) research studies on which the MnSOST was based and even the formula by which MnSOST scores are calculated, thwarting all attempts at academic review and replication of MnSOST procedures, factors, and calculations.

Most critically, MnSOST 4.0 *cannot* be applied to any sex offender facing a petition for commitment or already under commitment, since the factor of age at anticipated release cannot be known. Yet this 'carve-out' dictated by the MnSOST itself is regularly ignored by raters eager to use it on this cohort because of its handy condemnatory calculation of extreme probabilities using mathematical manipulation alone.

People are naturally biased toward believing 'objective' numbers provided by a 'scientifically designed' algorithm as 'fact' despite the reality that one study found flipping a coin results in the same accuracy in predicting future offending as do these 'scientific' tests.

The United States Supreme Court has ruled that civil commitment would be illegal *but for* the fact that their claimed intent is not to punish but to provide treatment. Yet these facilities offer an endless treatment program that can never be completed. Hence, these 'static' checklists give no reduction in predicted recidivism for sex offender treatment completion. In fact, they list *only* 'factors' claimed to make recidivism *more* likely, and *none* that reduce that likelihood. Moreover, because they are purely based on past events, the prediction numbers created by these recidivism prediction tools never go down and the person remains incarcerated forever.

Studies have shown that treatment longer than 3 years becomes detrimental and counter-productive. Some of those confined by MSOP have been continuously engaged in psychological treatment programs for over 20 years, still with no hope of release in sight.

Needing to provide treatment in order to remain constitutional, MSOP has struggled to invent new class materials for its so-called 'psychoeducational modules,' including 'Cinema Therapy' (which had clients watching Tom & Jerry cartoons and attempting to derive therapeutic lessons from them) and to invent new names for common things, such as calling yard and recreation time 'therapeutic hours" and clients scrubbing toilets and showers as 'vocational training.' With a high staff turnover rate, clients are forced to start over to some degree every time they are assigned a new primary therapist. Further, treatment participants often must repeat assigned modules – sometimes many times. These circumstances eventually produce loss of all hope by confinees. And remember: this is being done at a cost approximately five times that of prison.

The State wants it both ways, saying

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people who commit sex offenses are sane and hence should serve their entire prison sentence, but, as they approach their release dates, suddenly become so mentally disabled they must be warehoused for life via civil commitment.

Some people passionately proclaim the old adage, "once a sex offender, always a sex offender ...there is no cure." If that were true, every sex offender would reoffend every chance they get. Both statistical evidence and the results of individual surveillance over countless thousands of cases disprove that notion emphatically and beyond question. People who commit sex offenses actually have the very lowest of recidivism rates, both as compared to any other type of crime, and in absolute numbers. A 2007 study by the Minnesota Department of Corrections found that sex-crime recidivism occurs only 3.2% of the time. More recent studies by other States have found parallel rates even lower than that, now centering on 2.0%. Mathematically, this means that 98% of sex offenders (including prior recidivists) never commit another sex crime after being released from prison. They simply resolve to live a crime-free life and return to being a productive part of society. Intense studies of desistance from further criminality by former sex offenders proves that this is the aim of *at least* this 98%.

But also, the reality is that sex-crime recidivism is not just very low, it now continues to diminish even more, almost to the point of vanishing quite on its own, mostly in response to modern investigation methods that make sexual assault and abuse impossible to get away with, and sentences so long that, for a recidivist, they spell the functional end of life.

Modern research has universally proven that, almost to a man, sex offenders are not compulsive, but to the contrary are the longest-deliberating and most extensive crime-planning of all criminals. Considering this, why waste hundreds of thousands of dollars per person each year pretending to treat these individuals, as if the mere fact of a record of two or more sex crimes *before* all of the modern changes mentioned in the immediately preceding paragraph occurred signified lack of self-control, instead of simply reflecting obsolete decisions based on expected evasion of detection for those crimes – decisions that they would not now make again?

People may ask, 'What do we do with the very small statistical percent of sex offenders who may reoffend?' But remember: We don't know who that might be – and there is no way to tell. So the answer is simple: Do what we already do: use the criminal justice system that's already in place. Charge the person with a new crime and, if convicted, give him a rational sentence following the State's approved sentencing guidelines (which already elevate the sentencing range based on the defendant's past criminal record) or a jury-approved upward departure in line with the severity of the crime. Under either approach, sentence him to prison with a known 'out date' (however far off), instead of paying millions to warehouse him for life just on the unlikely bet that he might be the one (after that long sentence) to commit another sex crime.

I hear the mobs screaming, 'We can't just let sex offenders go free to do whatever they want!' They're right. But remember, most of these people have already completed their entire prison sentence. Everyone who has ever committed a sex offense already has their DNA and fingerprints listed in a national digital database. They are subject to parole, probation, Intensive Supervised Release (ISR), yearly sex offender registration (SOR), travel restrictions, GPS monitoring, and/or conditional release – some of these burdensome 'collateral consequences' for life. Typically, such conditions, restrictions, and requirements include extreme restrictions governing where they can live and work. These people committed a crime *and served their time* ...now they deserve a chance to become productive members of society.

Even the pre-crime 'pre-cogs' in the fictional movie *Minority Report* were unable to accurately predict the future. No one should be locked up for future crimes some computer forecasts they *may* someday commit, but which in fact *may never occur at all*. Despite the fact that our justice system is supposedly founded on the basic premise of 'innocent until proven guilty,' civil commitment is pre-emptive punishment for crimes a person has not committed, *and, by the numbers, probably will never commit* – essentially, an attempt at 'preventive detention' on pure guesswork. That is simply not allowed under the United States Constitution, a prohibition that protects all.

In a Federal class action in Minnesota titled *Karsjens et al. v. Harpstead et al.* (No. 0:11-cv-0-03659), presiding Judge Donovan Frank called Minnesota's civil commitment of sex offenders 'draconian.' That term is surely apt: To date, only a handful of the roughly 850 who were committed to MSOP have ever been fully discharged from that commitment program.

Based on its European Convention on Human Rights (ECHR), the European Union has rejected sex offender post-prison commitment. Courts there – including the highly respected High Court of the United Kingdom -- have refused to honor extradition requests by the U.S. to drag back its citizens who have fled there to avoid such commitment.

Closer to home, the American Psychiatric Association (APA) vigorously opposes civil commitment of sex offenders after prison. Paul Applebaum, M.D., Chairman of the APA's Task Force on Sexually Dangerous Offenders, concluded, 'We were concerned that psychiatry was being used to preventively detain a class of people for whom confinement rather than treatment was the real goal. This struck many people as a misuse of psychiatry.'

We need to end this atrocity. The most accurate indication of a civilized society isn't how we honor our heroes, but how we treat our most disfavored prisoners. Civil commitment detention centers like MSOP are an archaic symbol of our society's darker days whose time ended long ago.

Ours is a noble society, not a devolved tribe of raging barbarians. Be on the right side of history. Act with compassion and positivity. The 750+ men indeterminately now held by Minnesota's unconstitutional and unprincipled commitment program at MSOP are clearly, desperately crying out to the world, 'I can't breathe!'

To those in the free world capable of protest and the political change it can bring, I say: Raise your voice now to demand an immediate end to this callous cruelty!

For additional information anywhere on this misuse of civil commitment as additional punitive, lifetime detention, please visit www.cure-sort.org or www.ajustfuture.org."

A legislative solution?

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A Protest in Littlefield

(Editor), "A Special Announcement," Texas Tea Newsletter, Vol. 1, No. 4 (March 2022), p. 8

Text:

"Mark your calendars!@ There will be a PUBLIC AWARENESS EVENT on April 9th at 10:30 A.M. outside of the Texas Civil Commitment Center ["TCCC"] at 2600 South Sunset Avenue, Littlefield, TX 79339. This event will be to raise awareness for the injustices and unconstitutional acts that take place within this 'treatment facility.' Be sure to notify any and all friends, family members, and prominent figures to help us in making this rally truly impactful. We appreciate all of the support and encouragement we have received thus far, and this will be the first of many gatherings to enact change within this corrupted system. If you need any additional information, please contact Jennifer Williams at jlouwilliams2010@yahoo.com or Mandi Harner at mandiharner@gmail.com."

Separately, by email dated Feb. 28, 2022 to Eldon Dillingham of CURE-SORT and others, Mandi Harner added that "permission was by a county judge to Jennifer Williams" for that event. In response, longtime anti-SOCC activist Derek Logue suggested that members of other Texas advocacy organizations for those incarcerated or confined under such SOCC commitments join in, and that representatives of other organizations, both nationwide and including at least one such anti-SOCC organization in Minnesota, join that protest as well in solidarity.

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CURE-SORT Comes Out Loud, Clear and Angry Against SOCC.

(Editor), "Civil Commitment: What It Is and Why You Should Care...," *CURE-SORT*, Brochure

Excerpts:

"What Is Civil Commitment?

Civil commitment is additional incarceration often after a person's entire prison sentence for a sex offense has been served.

People live in a prison-like facility consisting of chain-link fences [in some cases lethally electrified] topped by razor wire and patrolled by uniformed armed guards, [with] background checks for visitors, monitored phone calls & mail and numerous other restrictions. Some civil commitment facilities offer sex offender treatment that [can] never be completed.

Civil commitment started in the late 1980s when 20 states' legislatures, the Federal government, and the District of Columbia enacted these knee-jerk laws in reaction to several heinous crimes.

Civil commitment is based on the false premise that it is possible to predict whether or not someone might commit a future crime. The person is then considered guilty and imprisoned for crimes they have not committed.

The Facts

- Unlike criminal court, unfounded allegations and hearsay can be used in civil commitment proceedings.
- In some states, you can be committed even if you have no criminal record.
- Almost all civil commitments amount to lifetime sentences.
- This incarceration is ...beyond [and

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after] the original criminal sentence (often the 'maximum' allowed under state law) which the person already served in prison.

- Civil commitment costs taxpayers $100,000 - $300,000 each year, PER PERSON! This is 5-10 times the average cost of prison.
- There are almost 7,000 people currently being held in the United States under civil commitment laws.
- People have been committed for life for simple technical parole violations like being late for curfew or losing their job.
- Civil commitment facilities are cloaked with secrecy and hide their activities behind [the] HIPAA [act], claiming it is a 'mental health care facility.' [These facilities refuse to identify their confinees or o acknowledge whether any given person inquired about is confined there. Effectively, their confinees are simply 'disappeared.']

Frequently Asked Questions

Once a sex offender, always a sex offender... There is no cure.

If that were true, then why waste hundreds of thousands of dollars per year for treatment? According to the [U.S.] Department of Justice, those with sex offenses actually have one of the lowest recidivism rates [current figures: 1% to 4%, depending on measurement method], compared to 67% average for all other crimes.

What do we do with those who may reoffend?

Do what authorities already do: charge the person with a new crime and. If convicted, give him/her a rational sentence following governing sentencing guidelines (which already factor in additional time for prior offenses). Sentence them to prison with a clear 'out date' instead of paying millions to warehouse them for life for the sheer possibility of future crimes.

But we can't just let sex offenders go free!

They already served their prison time. All those with sex offenses already have their DNA and fingerprints listed in a national database. They are subject to parole, probation, intensive supervised release (ISR) [conditions], sex offender registration (SOR), travel restrictions, GPS monitoring, and/or conditional release (often for life). Each of those already includes extreme restrictions that govern where they can live and work. These are more than any other type of charge [imposes].

Listen to the Experts

Our tax dollars are not being used effectively. It is time to revise current ineffective state statutes by listening to nationally recognized experts in the field of sex offenses. Sustainable restorative justice that restores individuals to productive lives must be supported.

The American Psychiatric Association vigorously opposes civil commitment after a prison sentence has been served.

'We were concerned that psychiatry was being used to preventively detain a class of people for whom confinement rather than treatment was the real goal. This struck many people.' (Paul Applebaum, M.D., Chairman of the APA's Task Force on Sexually Dangerous Offenders)

'First we stigmatize a group ...then we restrict that group's rights ...then we take their persons ..then we try to eliminate them through lack of care in hopes they die. ...That is the final step. This is the only step left for those accused of sex offenses.' (Arthur Miller, Historian)

What Can I Do?

The first is to educate yourself about the issues; reading this ...is a good start!

This is a sensitive topic, but talk about it and share the facts with others.

Speak up when media outlets and politicians use fear as a means of leveraging harsher laws and greater restrictions, which are almost all ineffective and create a false sense of security.

The more informed the general public is about civil commitment, the better the chances for serious reform!"

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New Orientation-and-Support Site for Families & Friends

We Come in Peace!

Editor's explanation: The following is the self-introduction offered by a recently founded website, with the interesting name, https://peculiari-crimen.org. As a summary and an invitation, it declares: "This site is designed to give families and friends of those incarcerated for sexual offenses a non-judgmental perspective. The site makes no excuses but is meant to clear away many of the misconceptions surrounding the issues of sexual offenses. Please suggest this resource to those who may benefit from it."

Text:

"Support for family & friends of men incarcerated for sexual offenses & registrants

Having a family member or friend imprisoned for a sex offense involving a minor (or for pornography involving someone under 18) can bring up many difficult feelings, among them

- anger
- shame
- rejection
- guilt
- regret
- depression
- fear of ostracism
- embarrassment
- feelings of protectiveness
- anger at an often unjust or vengeful criminal-justice system
- an impulse to reject the accused son or brother or father or friend
- fear for the future

This site is for family and friends of those incarcerated or who have lost their civil rights through the registry. It offers a place to debunk harmful myths, to reflect, to learn more about the issues at stake. As well, this site points to helpful resources and ways to usefully channel concern and frustration. What has happened to a loved one or friend has also – in a different way – happened to those around him. We welcome your own experiences and reflections.

With a broad brush, sex offenses today are singled out as the 'worst of crimes.' In the U.S. offenders face punishments – registries, civil commitment, residency restrictions, lifetime public shaming – faced by no other category of law breaker, not even murders. Since the 1980s, a separate – and highly unequal – legal system has developed in this area, exempt from most normal safeguards, such as constitutional prohibition on ex post facto punishment and normal rules of evidence. Not just guilty people get caught up in this system, and even those who've committed misdeeds often face far more punishment than they deserve. What has happened bears comparison to the reactions in the U.S. South around race after the Civil War, and often for reasons just as dubious – to channel and cultivate pubic rage.

But at the same time, protecting people – especially the young, and girls and women generally – from sexual violence and unwanted sexual attention is a vital function every society recognizes.

Even if you believe that the person you are close to deserves some sort of retribution, you may agree that in most cases the punishment is not only grossly disproportionate but wholly ineffective.

It hardly needs saying that sexual drives – most urgently felt by young men – can lead to terrible and destructive acts. So can crimes motivated by any appetites – such as lust for money or revenge. An irony of the sexual liberation since the 60s – the decriminalization of homosexuality, pre- and extramarital sex and abortion, and the welcoming given to transgender people – is that these openings have gone hand-in-hand with a new intolerance of acts or forms of desire that remain illicit. The trend has gone so far that even victimless crimes – possessing a cartoon drawing or a story about imaginary characters who appear under 18 – can now be punished with years in prison and lifetime ostracism.

Sex offenses cover a wide range of severity and harm. Some are essentially 'thought crime' without any victim at all. But the tendency today in the U.S. is to lump all offenses with the most harmful acts. Vital distinctions are lost, with long sentences meted out to adolescent boys involved in 'Romeo and Juliet' cases, minors who produce 'child pornography' by sexting amongst friends, for possessing illicit cartoons, or merely for sharing fantasies online.

The U.S. has begun to confront the immense harm caused by a generation of mass incarceration – the U.S. with 4% of the world's population has some 25% of its prisoners. Among the approaches gaining traction are moves toward restorative justice, bail reform, sealing criminal records, restricting or eliminating solitary confinement, reopening cases where the likely innocent have been condemned. There's a new recognition, even from conservatives, that the criminal justice system needs to embrace concepts such as proportionality, restoration, redemption – and not just wallow in vengeance and retribution. These reforms have only trickled a little into those labeled 'sex offenders.' As the injustice, expense, and the sheer waste of lives – family and friends of those targeted by extreme laws can help push vital reforms and also help their loved ones. This site aims to point in the useful directions for learning, organizing, and action."

The site offers a wide array of categories to explore:

- Age of consent
- Anti-miscegenation laws
- Heterosexuality
- Homosexuality
- Mass incarceration
- Pederasty
- Pedophilia
- Pornography
- Recidivism
- Registry
- Resources
- Restorative justice
- Sex crime
- Sex offender
- Sodomy laws
- Uncategorized
- Vigilantism,
- War on drugs
- War on sex
- Witch hunts

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