The Legal Pad
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"Whoever fights monsters should see to it that in the process he does not become a monster." – Joelle Moreno

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Feedback? News? Write!

TLP Editor Address (Exactly & Only as Below):

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CAP Vents Exasperation, Threatens to Shutdown SRB

To: Those interested
From: Michael Benson
Date: June 24, 2022
Re: SRB/CAP backlog on cases

Hey, Gentlemen:

I talked to my attorney, Michael Biglow, because he had a meeting along with a number of other attorneys with Chief Judge Jay Quam from the Judicial Appeal Panel (now known as the "Commitment Appeal Panel," or "CAP"). The meeting was brainstorming on how to best clear up the backlog of cases that are pending at the CAP. The main answer was to eliminate the "Special Review Board" ("SRB"), get more resources with which to process cases, and triple the number of CAP judges. The attorneys at the meeting were Michael Biglow, Doug McGuire, Dan Kufus, Jennifer Thon, Jill Avery, Cheri Templeman, Mark Gray, and Dan Wexler.

Judge Quam had already met with the examiners and informed them that delays and continuances were no longer an option. He told them if the report is needed in 30 days they should have the report done in three weeks.

Judge Quam had previously met with the DHS officials and Attorney General's representatives for ideas, but they were not forthcoming with information. Nonetheless, he stated he will meet with them again and give them his ideas that he expects to get results from.

Everyone was in agreement that the delays are Procedural Due Process violations. Hence, Mr. Biglow expects that this issue will be seriously being addressed – and soon. He stated that resources is the problem (but not ours) and that the removal of the SRB would have to be done by the Legislature.

That's it. Let your mind muddle on this for a moment.

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Using Headlines to Spur Rage Against a Past Sex Offender for Suffering a Grave Health Peril — How Vicious Is That?

Glenn Christie & David Rangaviz, "Making Headlines," https://inquest.org/topic/insitutions-practices/ April 8, 2022

Text excerpts:

"The death threats started almost immediately. On April 3, 2020, *The New York Post* published the story of our case under an impossibly salacious headline: 'Child rapist ordered released to keep him safe from coronavirus.' The article was no better, describing the underlying crime in vivid detail while underplaying how its subject's multiple, severe medical issues made him vulnerable to COVID, and that the sentence being served was not actually for the crime itself, but rather for so-called 'technical' violations of probation. The *Post* had apparently noticed earlier articles in *The Appeal* and *The Boston Globe* – which had both rightly emphasized the obvious injustice and life-threatening danger at the heart of the case – and decided to take the story in another direction. It was that version of the story that spread around the world, from Peru to Brazil to Italy,...

At the outset of our ordeal, one of us, David, an attorney for the public defender agency in Boston, had repeatedly filed motions to secure the release of the other, Glenn Christie, one of his clients, who was at heightened risk of contracting Covid. Specifically, we had filed a motion for his release in the state supreme court on March 17, 2020, which was denied the next day; a second motion in the state superior court on the same day the prior motion was denied, which was denied five days later; and a motion to renew the original motion in the state supreme court filed the day after that denial, which was then reported to the full court, which issued a groundbreaking opinion 24 hours after oral argument granting a new hearing, which resulted in Glenn's release two days later – the same day the Post published its article. Harassment and death threats on twitter were the reward for fighting, and winning, for a client whose health was already compromised.

Glenn, the coauthor here, was held at the first detention facility in Massachusetts with a confirmed Covid outbreak as the virus entered his dormitory and killed multiple people. Every day in custody during a Covid outbreak is terrifying – incarcerated people were left completely in the dark about what was happening and the facility was on the verge of panic. As the outbreak started, in the very first days of the pandemic almost exactly two years ago, the prison behaved in ways that would be unimaginable today. One correctional officer said people with symptoms would not get tested; a nurse told a man with a temperature of 100.7 degrees to lie down and take Tylenol; some guards refused to wear masks; a sick man working in food service was not diagnosed for days; no special sanitizing or segregation was done; temperatures were not checked without symptoms, but there was no census for symptoms; receipt of medication required standing in a 50-person line – three times per day, with no masks and no social distancing -- placing the most vulnerable people at the greatest risk. In a time of uncertainty and ignorance, the first outbreak was the most dangerous.

And Glenn was among the most vulnerable. Although he walked into prison, he eventually became reliant on a wheelchair due to severe, months-long medical neglect of the Massachusetts Department of Corrections and its failure to treat a rapid narrowing of his spinal column. When the pandemic began, he was also in the process of testing for a potential recurrence of thyroid cancer. Were partial paralysis and cancer not enough, Glenn also suffers from three serious pulmonary conditions. Of course, Covid19 is a virus that attacks the lungs. His facility, the so-called Massachusetts Treatment Center, was anything but. Despite its name, the treatment center is not a clinical environment, but a carceral one. It was not until Glenn's release, as he entered quarantine and awaited the spinal surgery he so desperately needed, that he saw the *New York Post* headline and the threats that followed.

Public attention was meant to help. The articles in *The Appeal* and *The Boston Globe* were by design; we were desperate. And the case did get people's attention, resulting in a state supreme court decision that both authorized Glenn's release and helped many other people incarcerated in Massachusetts win theirs. But our publicity plan had both worked and backfired: Glenn was a free man, but now his name and face – and the details of his conviction – will live on the internet forever.

....[A]fter speaking to the reporter at *The Boston Globe*, he feared retaliation for his efforts to publicize what was happening during the outbreak at his prison.

His fears were well founded. Within 24 hours, his area of the dormitory was shaken down and searched. A few days later, the superintendent of the treatment center pulled Glenn aside and told him to 'stop telling lies.' And when the judge ordered Glenn's release

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on the morning of Friday, April 3rd, administrators at the treatment center refused to release him. Instead, they moved Glenn into the facility's general population – during an active outbreak. The guards kept telling him they had not received his discharge paperwork, even though the court clerk had told his attorney the papers had been sent and received. We feared he might be held over the weekend. His niece waited in the parking lot for him for *eight hours* before his release late in the evening. And that day-long stay in general population is probably what resulted in Glenn contracting Covid on his way out the door. Released due to his vulnerability to Covid, he was soon hospitalized and continues to suffer lingering long-haul symptoms. Thankfully, he received quality medical care at a hospital that he never would have gotten in custody....

Despite the exceptional nature of Glenn's circumstances, the system's treatment of his case was exceptionally unexceptional – the draconian punishment, lengthy delays, and casual cruelty. Without the intervention of the pandemic, Glenn's was lost cause. Thousands of people are crushed by the criminal legal system every day without ever making headlines. Glenn was nearly one of them. We are numb to this injustice because it's common. Mass incarceration must be met by mass outrage.

The criminal legal system tried its best to destroy a life, but it thankfully failed. A sensationalist headline added insult to very serious injuries, but today Glenn is healthy and resilient. Hopefully, anyone who sees the Post headline will also see this one – and read the full story of a man who lost so much only because he fought for his freedom and won."

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Impacts of Confinement in SOCC Facility, Based on Questionnaire Responses from Committed SOs

Jon Thompson & James Hunter, "The Psycho/Social/Spiritual Impact of Being Held in a 'Treatment Center' for Sex Offenders: Reflections on the Outcome of a Brief Questionnaire Administered to a Group of Civilly Committed Men, [as excerpted in] 31(2) *CURE-SORT News* 4 (2d Quarter 2022)

Text Excerpts:

p. 4: * Introduction

In an attempt to give a 'voice' to a demonized segment of the American population that is seldom heard from, Every Farthing Publications, with support from the Percy Foundation, sent out a questionnaire (Hunter, 2018) to incarcerated people who expressed an interest in sharing personal beliefs and autobiographical information with the general public.

[Excerpted text]

Beyond the stigma that pervades our society, and that is concentrated with an even greater intensity in prisons, the treatment program itself adds another level to the stigma. Social research has not been able to establish a profile of the 'typical' sex offender. Except that they have broken the law, there is nothing that reliably distinguished members of this group from a random selection of people in the population. They are not more stupid, more insensitive, or more anything than anybody else. Nevertheless, treatment techniques at *****, as in most sex-offender programs, are clearly based on the assumptions that members of this group lack empathy, are incapable of love, are manipulative, are dishonest, lack insight, and are highly sociopathic. And they are treated accordingly. So this negative view of who sex offenders are is added to the already overwhelming stigma that the offenders live with. This is hardly helpful to men who are drowning in socially induced self-hatred.

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The underlying assumption of sex offender treatment programs is that if a person has violated one of society's sexual laws, this justifies denying the person's cognitive and emotional autonomy as well as his behavioral autonomy. The person with a sex offense must be forced to think and feel correctly or be punished severely.

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In civil commitment people are imprisoned for what they feel, for what they believe, for what they dream and for what they might do. The primary thing that a person must do in order to have any hope of release is to convince a group of treatment providers what the providers can never know for sure – that the prisoner now believes and feels what he is supposed to believe and feel and is not just faking it.

Conclusion

The notion of death has become somewhat problematic in modern life. For example, is a person still 'alive' if there is no brain activity, but all the major organ systems – with the aid of technological devices – continue to function? Perhaps we could gain an enhanced understanding of what it means to 'be alive' if we expanded our frame of reference a step further. From a phenomenological point of view we function on a variety of levels. These can be designated as the biological, psychological, social, and spiritual. I would suggest that the primary indication of psychological life is agency. We feel alive psychologically when we believe that the locus of control of our decisions and actions is, at least to a significant extent, within oneself. We feel ourselves to be socially alive when we exist as a valued member of a social group. We feel spiritually alive when we feel that we are making a contribution to life that goes beyond our limited selves.

The treatment of the sex offender in 'treatment' centers is a logical extension of the manner in which the offender is treated by the larger society. He is a member of the most hated, vilified and shunned group in American society. He is ruthlessly attacked psychologically, socially, and spiritually. He is allowed to continue living biologically but only as a burned out shell with the road to a meaningful existence effectively blocked at multiple points. All of the prejudices and hatred that one finds in the larger society are brought, unmodified by professional insight, into the treatment facility. The effects of treatment on the psychological, social, and spiritual life of the individual are devastating. One has to ask whether the broad attack on the personhood of one with a sex offense can be defended as 'best practice' by psychiatry, psychology, social work or any other component of the mental health movement. If not, why is it tolerated?

Is an individual who has been crushed psychologically, socially, and spiritually less likely to re-offend should he be released? And given the high level of improbability that he will be released from civil commitment in any case, what exactly is the point of forcing any regime of therapy on him?"

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An Important Preface to Raise Your Consciousness

Prof. Janus' View: 'Frames' That We Unwittingly Hold Suppress Our Ability to Address Sexual Violence in an Optimal Way.

Eric S. Janus, "Holding Our Sexual Violence Policy Accountable," in: *Sexual Violence Evidence Based Policy and Prevention* (Elizabeth L. Jeglic & Cynthia Calkins, eds., 2016)

Abstract: "The choices we make in designing sexual violence policy are consequential. These choices are deeply rooted in the way we structure our thinking about the problem, what I refer to as our 'frames.' Our frames shape the questions we ask about how to prevent sexual violence and the assumptions we make about the nature of sexual violence and sex offenders. If we get the frames wrong, we will ask the wrong questions and get the wrong answers. Once we begin asking the right questions, we have a much better chance of designing the most effective prevention policies. In this chapter, I argue that we need to change our frames, to ask different and better questions about sexual violence prevention, to base our policies more on science than on intuition and fear-based stereotypes. There is solid evidence that some of the current approaches cause adverse changes in the efficacy of the criminal justice system and an increase in sexual violence recidivism. There is also strong evidence that other approaches – tried and true supervision and treatment, primary prevention strategies – can have a much greater impact on decreasing sexual violence. In contrast, our current approaches have limited success in their stated purpose of protecting against recidivistic sexual violence. Our prevailing frames are depressing our ability to address sexual violence in the most optimal way."

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Summary, Excerpts, Slides Tell It Like It Is.

Prof. Janus' Presentation at Metro State U.

by Cyrus Gladden

At the April 8, 2022 Metro State University (St. Paul, MN) academic conference on sex offender commitment, clearly the most academically analytical presentation given was that by Professor Eric Janus of the Mitchell Hamline School of Law. In a mere 45 minutes, Professor Janus provided a fast-paced blizzard of concepts and facts explaining and supporting his highly critical view of sex offender civil commitment ("SOCC"). In considerable part, he focused on the grave removal of both human rights and constitutional rights that every American takes for granted from those labeled as committable sex offenders.

However, taking a distinct tack not often presented, he also argues that SOCC programs, which only lock up a certain number of former sex offenders, do not effectively provide any significant prevention against sex crimes and, on the contrary, consume many millions of dollars that could far more effectively be applied to "primary" prevention programs that have already proven their worth.

Prof. Janus avoided focusing on officials and staff of Minnesota's "MSOP" program (Minnesota Sex Offender Program), which is the state entity confining committed sex offenders. Instead, he framed the problem of SOCC as one of how we as a society in the United States treat the problem of how we handle sexual offending.

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Using MSOP as an example, however, he repeatedly cited the annual operating cost figure of $100 million for MSOP. While Janus did not mention it, additional costs pervade the SOCC system in Minnesota, as everywhere else. These costs include the extreme cost of the commitment process itself, comprised of court costs, prosecutorial costs, appointed attorney costs, expert witness fees, and even 'hidden costs.' These include the substantial costs to the Minnesota Department of Corrections in conducting its initial review and evaluation of certain sex offenders in their final year of imprisonment and providing that department's recommendation to the relevant prosecutor as to filing of a commitment petition.

Separately, bond servicing costs as to original and episodic construction and building renovation for space for the MSOP program remain a fiscal drain.

Other costs of MSOP are effectively internal, but do not show on its operating budget books. These include: welfare costs of General Assistance and Medical Assistance for MSOP confinees; unreimbursed, substantial medical costs for confinees not covered by any governmental medical coverage program; and operating costs of Minnesota State Industries and the Minnesota State Operated Services (in conjunction with work programs for confinees and work-pay bookkeeping); and service by 'MN IT' to maintain the "Client Network" of computers furnished for confinee use, all of which are paid by separate agencies of the State of Minnesota or its counties.

While close estimation of the totality of these additional costs is too difficult for anyone except accountants, it is clear that addition of all those costs to the general operating budget of MSOP easily brings the total outlay annually to operate MSOP and the SOCC system of which it is merely a part to at least $200 million per year. Determining the underlying goal of SOCC, as well as other programs, as being to prevent sex crimes, one fundamental theme of Prof. Janus's presentation is the ineffectiveness of, and wasted resources consumed by SOCC. This amounts to an entirely distinct argument against SOCC.

Janus makes the point that SOCC is wielded against those who committed sex crimes long ago and, in the interim, have already been incarcerated, usually for prison terms of one or more decades. This is a 'downstream' focus that cannot provide much prevention going into the future, especially given the 'aging out' factor that is typically already strongly in effect by time middle-aged or even old-aged sex offenders finally arrive at their mandatory prison release dates.

Further, this focus on a tiny subset of past sex offenders tends to perpetuate a myth that draws an artificial division between a "them" and the rest of past sex offenders and, more broadly, all others who cannot be ruled out from possibly committing a sex crime in the future.

Distinctly, Janus warns that use of SOCC inherently implies acceptance of a dangerous legal proposition: acceptance of legal and moral legitimacy of defining certain classes as purportedly a reviled and degraded 'other' claimed to be so different from other humans as to be subject to loss of all rights and in particular, to indefinite, perhaps permanent confinement only for what society fears they might do in the future -- in other words, on a sheer prediction of complete uncertainty and no defensibility when applied to the unpredictability of individual human behavior years in the future. In no other context than SOCC has American law outside of criminal sentencing ever countenanced locking up someone for merely feared crimes in the future. For this reason, SOCC represents a bad tear in the fabric of the constitutional concept of individual liberty.

Janus notes that only 20 U.S. jurisdictions (one of which is the federal government) currently have SOCC laws. Indeed, this count may be one high. One of the 20 states usually cited as having SOCC (Pennsylvania) has a law limiting its use to former juveniles who committed sex crimes as such, once they attain the age of majority. And another (New Hampshire) has an SOCC law on the books, but only ever committed just one individual many years ago, never had an actual SOCC facility, and ultimately terminated his commitment, effectively rendering that SOCC law a 'blue law' with no enforcement. Most states do not have such laws at all.

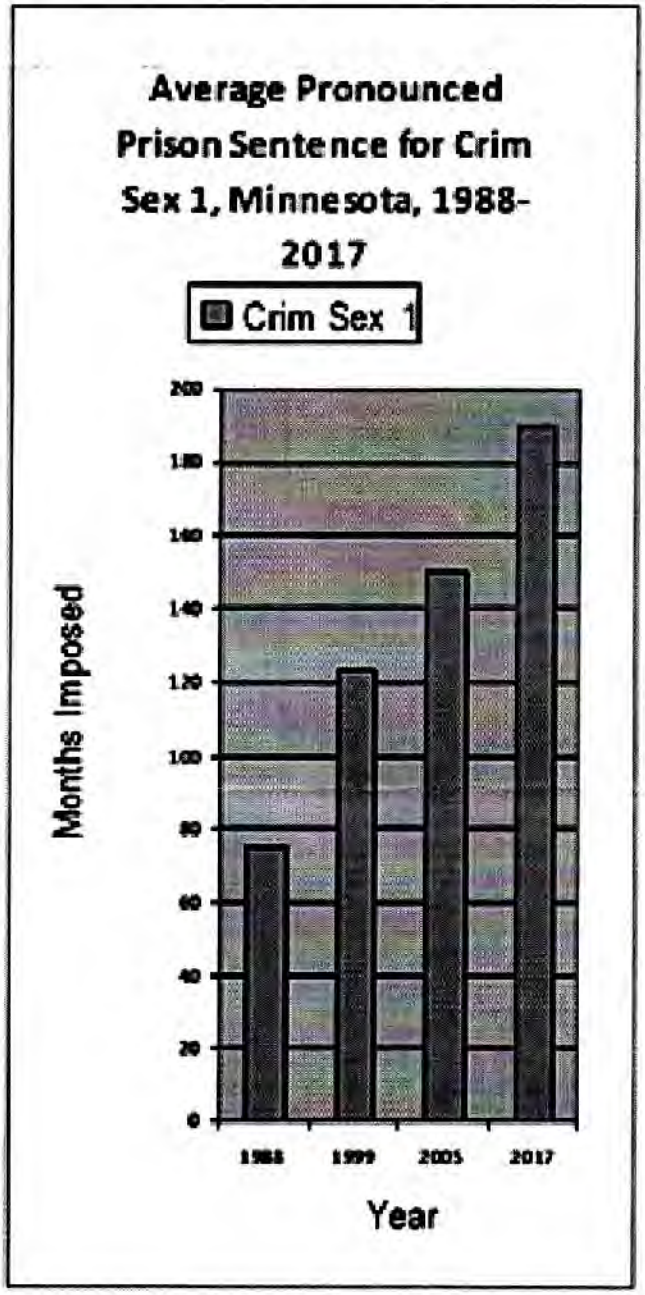
'Modern' laws of this type are applied exclusively to sex offenders who are about to be released from prison, and serve as a means to effectively extend the confinement that was previously served by their term in prison – a term set by a sentencing judge in consideration of what he or she already determined then was the particular offender's likelihood of future sexual reoffending. SOCC involves almost exclusively, a re-hashing of that same debate.

Thus, despite SCOTUS assertion to the contrary, SOCC is clearly effectively another go at re-sentencing the offender for his past crimes, as part of the calculus of whether or not he may be deemed likely to reoffend later. That insistence by SCOTUS that this does not comprise just a veiled method of infliction of double jeopardy is one of the most glaring instances of judicial intellectual dishonesty in American jurisprudence. Such judicial denials of the obvious to reach a desired end-result greatly reduce the law's respectability as a means of resolving disputes.

Legislatures passing such SOCC legislation sought to justify it as simply another form of mental health commitment. However, other types of involuntary civil commitment involve severe mental illness. In contrast, this standard of malady becomes merely any "mental abnormality." Further, unlike severe mental illness, whose symptoms are undeniably evident, with hallucination and other forms of current lack of self-control offering ample evidence of danger of imminent violent conduct if released without treatment, an attempted commitment of a sex offender claimed to present an unreasonable risk of future sexual criminal action must make a prediction of that individual's future behavior based only on the past actions of others to whom the individual is then likened – a prediction the judge must rely upon, despite lack of any scientific knowledge of whether or not this individual would or would not follow that past behavior pattern by others.

Prof. Janus thus points up the "elastic" nature of these criteria, respectively, of what comprises a 'mental abnormality,' and whether it can be concluded to a degree of scientific certainty that this past offender presents a high probability of committing sex crimes in the future. Janus implicitly lines up with all of the scientific authorities set forth in past *TLP* editions that debunk every attempt to claim any scientifically valid and reliable means of making the latter determination of highly likely future sex crimes.

Janus separately attacks SOCC for its lack of any adherence to the "durational



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principle," i.e., to the obligation to release a committed person as soon as he no longer exhibits a qualifying 'mental abnormality" or as soon as the "dangerousness" justification for the commitment no longer exists or has subsided to a degree rendering the level of danger or harmful behavior in the future less than "high." In the case of most SOCC laws and their use, including in the MSOP system in Minnesota, the durational principle is not even set forth in the statute, and even where it is, it is regularly ignored when considering motions by committed individuals for release and termination of their commitments.

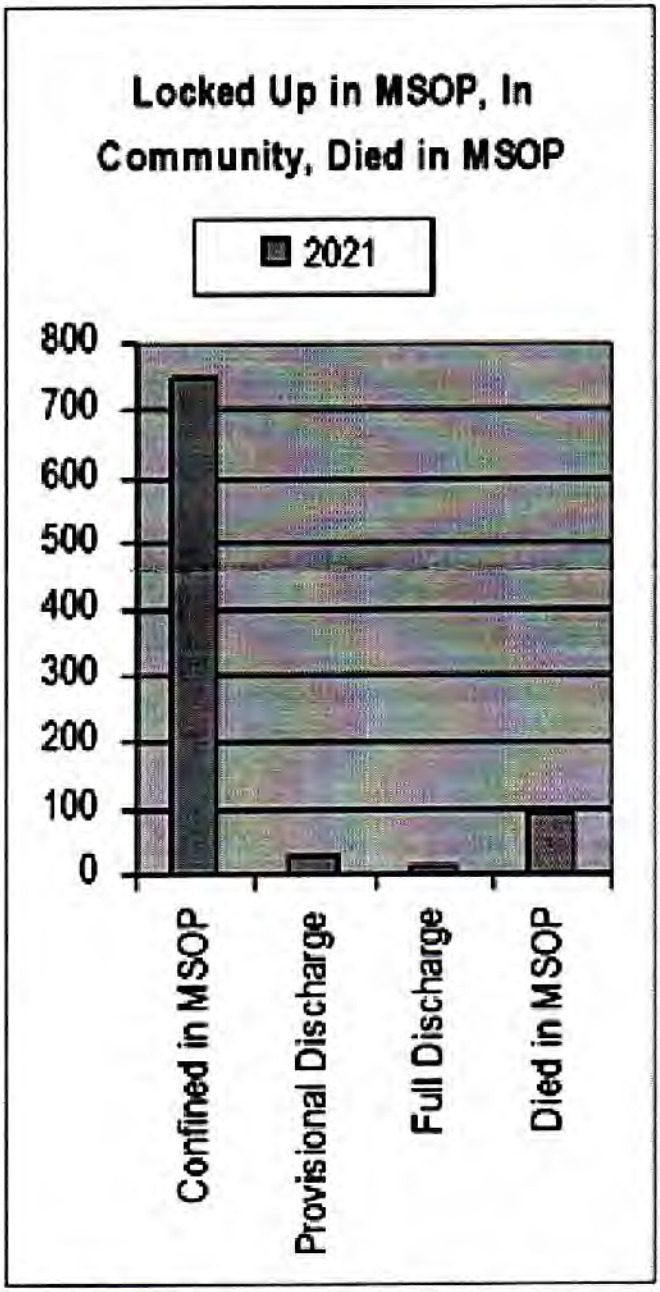
The legislative deliberation over the then-proposed bill which would become Minnesota's SOCC statutes included claims that such commitments would be relatively short – about 3 years -- and also that commitment was intended only as a stopgap measure, until the Legislature could later revisit sex crimes with an eye to increasing criminal penalties, thus rendering commitment unnecessary.

Yet, after enactment of SOCC, none of the committed were ever released until 2016, 22 years after that law's passage, despite criminal amendments exponentially raising sentences for all sexual crimes. Including those on provisional discharge, the annual "client census" showed 200 under MSOP commitment in 2003, but 771 as of 2021 due to that lack of releases. This is not a "short" commitment program.

The fact that SOCC commitments reached a high peak in 2007-08 seemed to follow and track public outrage over a specific rape-murder crime by a released sex offender. For the first and (so far) only time, former sex offenders long past their prison releases and some even past the expiration of the remainder of their sentence on parole were literally accosted on the street and subjected to SOCC commitments with no current indication of sexual dangerousness, often tearing them away from their established families and jobs or businesses. This plainly showed that SOCC is politically responsive, not a result of scientific evidence and careful legal reasoning.

Referrals by DOC officials in 1995 for SOCC commitment numbered only 19, but rose to 41 in 2020, notwithstanding an intervening quarter-century of pancaking sex crime rates and in particular recidivistic sex crime rates. This again shows political pressure. Wide variation in numbers of SOCC commitments from one county to another (34% committed from referrals in one judicial district; 67% in another) adds further proof that political pressures varying from place to place in the state account for greater or lesser numbers of commitments.

The further facts that currently, about 750 individuals remain confined in MSOP and another 93 have died thus far in MSOP confinement, while only 26 to 30 are on "provisional discharge" and only 13 have ever gained "final discharge," confirms that politics also bars the door to release and discharge for almost all SOCC victims in Minnesota. The still further facts that MSOP has: (1) more SOCC confinees than any state other than California; and (2) a per-capita rate (130, compared to Texas with only 20 on the low end) of commitment (as a ratio to total state population) that leaves all other SOCC states far behind, points up that this political pressure to commit and retain sex offenders makes Minnesota truly a national outlier even among other SOCC states.



Conversely, with only 13, Minnesota is near the bottom in terms of full discharges to date, as contrasted to 564 to date in Florida, at the top end. Likewise, Minnesota currently has only 26 verifiable individuals living in the community on provisional discharge, as contrasted with 248 on comparable status in Virginia and 117 in New York. There is nothing that would suggest that Minnesota's committed sex offenders are especially dangerous or exceptionally disordered; therefore, this again simply shows the impact of politics in stymying releases.

Then, Prof. Janus took a different turn, examining whether SOCC has had any true impact toward reducing sex crime incidence. Statistics extracted from a 2013 article (*T. Lave & J. McCrary*, "Do Sexually Violent Predator Laws Violate Double Jeopardy or Substantive Due Process? An Empirical Inquiry," *Brooklyn Law Review*, Summer 2013) show findings of a greater reduction in sex crimes in non-SOCC commitment states than in SOCC states. Therefore, any reductions in SOCC states' sex-crime rates were not due to their SOCC laws, but instead to other factors impacting all states. Hence, the argument that SOCC laws make states that have them safer from sex crimes is simply false.

Examining an article by Grant Duwe of the Minnesota Dept. of Corrections, Janus found that a total of about 1200 sex offenders per year reached their mandatory release dates each year. Of these, only an average of 20 per year were being committed in the period studied. Despite a low rate (2.8% base rate) of released sex offenders who sexually reoffended, this came to an average of 37 actual recidivistic convictions each year from among those annual releasees.

In contrast, despite a somewhat higher claimed rate of predicted sex crimes by committed offenders if they had been released in that time frame instead of being committed yielded only an average of 2 forecast recidivistic convicted offenses per matching year. That small figure reflects a ratio of only about one out of 19 recidivistic sex crimes (2 versus 37) that were arguably (but not certainly) prevented by those commitments.

Therefore, from a sex-crime prevention standpoint, this means that the vast amount of cash and other resources focused on SOCC commitment in Minnesota each year could far better be spent preventing sex crimes by all releasees than preventing only two annual offenses (versus that 37 annual, actual re-offenses) by locking up 750 sex offenders for the 27 years since enactment of Minnesota's SOCC law.

A related but distinct point is that recidivistic sex crimes are only a small piece of the total picture of sex crimes each year. Minnesota determined that only 7% of all sex crimes were perpetrated by someone with an existing record of one or more past sex crimes. These percentages appear fairly consistent from coast to coast; New York experienced a 5% figure for such recidivistic share among all of its annual sex crimes. Using the latter figure for simplicity, this means that recidivistic sex crimes are only one-twentieth of all sex crimes in any given year; the other 19 are committed by persons with no prior sex crime record at all. This means that any exclusive focus on only recidivists as possible perpetrators of future sex crimes would ignore the danger posed by all others.

When you combine these two ratios (1 out of 19, focused solely on committing the few, times 1 out of 20 for just past sex offenders), we find that SOCC states like Minnesota have spent countless hundreds of millions of dollars each trying to combat just 1/380th of the prob-

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lem of sex crimes, while spending next to nothing on the other 379/380ths! Janus asks the question this way: Is it worth the $100 million (really, $200 million) per year spent on MSOP confinement to prevent just two predicted sex crimes per year, when that same money could be spent instead on sex-crime prevention strategies of proven effectiveness that could, with sufficient funding, prevent the vast majority of all sex crimes that occur each year?

These other approaches to sex-crime prevention, incidentally, are the following:

* Primary prevention
* Institutional reform
* Law enforcement improvement
* Removing barriers and disincentives to sex-crime reporting
* Re-entry programs

At least in the case of MSOP (and probably in most other SOCC systems) MSOP does not allow people to be released when they no longer meet commitment criteria. A good example of this, because of its undeniable recidivism-extinguishing impact is advancing age.

Separately, even as to those MSOP does not block from release pointlessly, the MSOP release process is extremely and needlessly dilatory. A large part of this delay is in the two-stage release decision process itself.

A prospective releasee must first apply to the "Special Review Board", whose only function is to hear evidence and make a recommendation to the actual release-deciding "Commitment Appeal Panel court ("CAP") – which then must hear the matter completely all over again ("de novo") at the request of the party disappointed by that recommendation. In effect, this always happens, whichever party was disappointed.

MSOP itself calculates that the period from petition to the SRB to CAP court decision is 625 days. However, a recent case (*Folson*) examined the actual average delays, finding that in Folson's case, the delay was close to five full years. It should not escape notice that Folson actually received a recommendation by the SRB for his release, but still was forced to undergo that excessive delay before his actual release. Janus pointed out that this isn't just about a denial of an individual's right to restoration of liberty; it also is a tremendous misallocation of precious dollars that could have been used more efficiently in primary sex-crime prevention programs.

In conclusion, the cost amount of MSOP is expected to increase year-upon-year going forward, even if MSOP were not to gain still more committed individuals each year (but it surely will). Meanwhile, the annual cost of primary prevention programs are mere pittances, measured in budgets of single-digit millions of dollars or less per program.

Overall, Janus concludes, SOCC embodies a dangerous jurisprudence without bounds in which declared "degraded others" are forced to inhabit an alternative and diminished legal system in which they have next to no rights. This is not a new notion: Forced sterilization (e.g., *Buck v. Bell*) of the very early 20th century; the Japanese internment of World War II; Jim Crow laws (legal apartheid in the United States, which commenced at the end of the Reconstruction period following the Civil War and persisted up through the 1960s) – all involved "degraded others".

One serious consequence of this is America's loss of respect among other first-world countries for its system of laws. The *Sullivan* extradition case in the United Kingdom exemplifies this loss of respect. The UK High Court for crimes declined to extradite Mr. Sullivan on child-sex charges out of a reasonable expectation that, following any prison term he would receive for those crimes themselves, he would likely be committed under Minnesota's SOCC law. The UK, then a member of the European Union, was bound by its European Convention on Human Rights not to allow any confinement not as a criminal sentence or while awaiting a criminal trial. Hence, the High Court declined the request by U.S. authorities for Sullivan's extradition.

An additional travesty is the fact that SOCC includes overrepresentations of racial minorities and sexual minorities (the entire array of gay, bi-, etc. sexual orientations and those in transition). These disparities again point up political influences at work by misuse of SOCC.

Janus poses the question: Why should we care about the whole SOCC problem? The first answer, apart from the above, is that SOCC laws are an extremely poor foundation for sexual violence policy. Really, they are a substitute, filling in for the lack of such policy, and they embody a deliberate, tacit political choice not to have such a policy.

Another reason to care is that SOCC involves fictions that distort our country's policies and our understanding of sexual violence. Consider these impactful fictions as seriously harmful examples:

* Rapists are psychologically abnormal.
* Sexual violence is "beyond the control" of the perpetrator.
* The problem is "them" – not us.

We should care because:

* $100 million in prevention and support is at stake.
* SOCC is not a sound foundation for our sex-crime prevention efforts.
* If we make the wrong choices, we are allowing additional victimizations.
* The politics has made rational discussion of the problem of sex crimes and how best to prevent such crimes almost impossible.

Why do these laws persist? "Crime Control Theater" (citing *Danial A. Krauss et al.*, "The Public's Perception of Crime Control Theater Laws: It's Complicated," 27(3) *Psychology, Public Policy, and Law* 316-327 [2021]), offers a sharp analysis of the temptation to fictionalize the problem and non-solutions as solutions for political gains, at the expense of alternatively available effective policies.

Most of all, we must care because preventing sexual violence is too important to leave to the obstructive theatrics of "gotcha politics." The paramount question is: How can we stop both such political posturing and sexual violence itself?

Janus proposes:

* We engage in a collaborative problem-solving effort (see below).
* People who care about prevention, accountability, survivor support, re-entry of former offenders into society, and human rights should be enlisted into this collaborative effort.
* And a special discussion of how to get 'gotcha politics' out of the discussion.

Janus wants to apply to this effort the well-developed, general "Collaborative Problem Solving Process" of the MN Dept. of Administration's Office of Collaboration and Dispute Resolution. At the least, this is a new idea certainly worth trying.

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Virginia Report, # 16

Problems with Actuarial Risk Assessment, continued

VI. H. 3. At Best, Actuarial Risk Assessment ("ARA") Is Approximately as Incorrect as Pure Chance, Embraces the Very Worst, Most Unscientific 'Tool' Misused for Such ARA Purposes, Namely, the MnSOST-3.1, and Also Embraces Static-99R/2002R Use Without Restriction to Its "Routine" Table, All Depriving Sex Offender Commitments of Any Real Scientific Basis. (continued)

f. All ARAIs Fail to Account for the Decay in the Predictive Ability of a Prior Criminal Event.

Offenders can and do change, such that offense history information decreases in relevance as it fades into the individual's past. (*R.K. Hanson, A.J.R. Harris, L. Helmus & D. Thornton*, "High Risk Sex Offenders May Not Be High Risk Forever," 29 *Jour. of Interpersonal Violence* 2792-2813, doi: 10.1177/088626051452 6062 (2014). See also: *Joanna Amirault & Patrick Lussier*, "Population Heterogeneity, State Dependence and Sexual Offender Recidivism: The Aging Process and the Lost Predictive Impact of Prior Criminal Charges over Time," 39(4) *Jour. of Criminal Justice* 344-354 (July-Aug. 2011), at Abstract [subsection:] Highlights: "...Prior offending in early adulthood loses its predictive value with the passage of time." In other words, even the most "static" risk indicators are actually time-dependent (i.e., dynamic) indicators.

Melissa Hamilton, "Back to the Future...." *supra* at 123-25, addresses this ridiculously anti-scientific mis-counting thus:

"...Risk assessment technologies generally qualify a past criminal act no matter how dated. The practice undercuts scientific principles as recidivism studies consistently show that the predictive ability of a prior offense decays over time and that many offenders actually desist from further criminal activities. The typical failure to place any statute-of-limitations-type of time restriction on prior crimes also ignores the age-crime curve in which people often naturally age out of criminal law violations. Further, risk assessment tools that do not consider dynamic factors ignore rehabilitation successes that should realistically drive down individual recidivism risk."

pp. 124-25: "Correspondingly, studies show significant decay in the predictive ability of a prior criminal event. A past crime's predictive salience fades over time.[235] Thus, the record of a criminal event appears to provide mainly a short-term correlation to recidivism.[237] Of even more import, the longer the person remains crime-free, the risk of criminal offending greatly decreases as time passes, though the degree obviously varies depending on the type of crime and history of the individual.[238] This pattern of declining risk profiles applies even to categories of offenders that risk assessment tools often consider high-risk, like sex offenders.[239] In general, the empirical picture regarding patterns of recidivism indicates that most offenders who have remained offense-free for any appreciable period will eventually become low risk.[240] Indeed, with sufficient time elapsed, the non-recidivist's risk of reoffending becomes roughly equivalent to the risk of those in the public who have never offended.[241]."

[Notes 236-41:

236 *Joanna Amirault & Patrick Lussier*, "Population Heterogeneity, State Dependence and Sexual Offender Recidivism: The Aging process and the Lost Predictive Impact of Prior Criminal Charges over Time," 39 *J. Crim. Just.*, 344, 351 (2011)

237 *Megan C. Kurlychek et al.*, "Enduring Risk? Old Criminal Records and Predictions of Future Criminal

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Involvement," 53 *Crime & Delinq* 64, 80 (2007) ("The problem is that a recent criminal record seems to be far more predictive of short-term future behavior than older criminal records from many years ago."); *Rappaport*, *supra* note 230, at 592 ("[T]he utilitarian has a ready and plausible explanation – the predictive effect of a prior record likely diminishes with age. Common sense suggests that a recent prior record is more likely to indicate future risk than a crime committed twenty years ago, followed by a long period of apparently law-abiding conduct.").

238 *Megan C. Kurlychek et al.*, "Long-Term Crime Desistance and Recidivism Patterns – Evidence from the Essex County Convicted Felon Study," 50 *Criminology* 71, 71 (2012) (finding evidence of a trajectory of desistance in a sample of felons in a northeastern county); *Alfred Blumstein & Kiminori Nakamura*, "Redemption in the Presence of Widespread Criminal Background Checks," 47 *Criminology* 327, 350 (2009) ("Younger starting age generally points to a longer time necessary to become comparable with a person of the same age from the general population."), at 327 (concluding from recidivism study of offenders first arrested in New York in 1980 for robbery, burglary, or aggravated assault that "[r]ecidivism probability declines with time 'clean', so some point in time is reached when a person with a criminal record, who remained free of further contact with the criminal justice system, is of no greater risk than a counterpart of the same age – an indication of redemption from the mark of crime").

239 *R. Karl Hanson et al.*, "High-Risk Sex Offenders May Not Be High Risk Forever," 29 *J. Interpersonal Violence* 2792, 2792 (2014) (finding "sexual offenders' risk of serious and persistent sexual crime decreased the longer they had been sex offense-free in the community" and "[w]hereas the 5-year sexual recidivism rate for high-risk sex offenders was 22% from the time of release, this rate decreased to 4.2% for the offenders in the same static risk category who remained offense-free in the community for 10 years").

240 *Blumstein & Nakamura*, *supra* note 238 at 349 ("The risk of recidivism declines with time clean, so we know that a person who has stayed clean for an extended period of time must be of low risk.").

241 [R]isk of recidivism for a cohort of offenders returning to the community peaks fairly quickly and then diminishes considerably with the passage of time. Based on this consistently observed empirical pattern of criminal recidivism, we suggest that there may be a point at which the risk of a new criminal event among a population with a prior record becomes similar to the risk of a criminal event among individuals who have not offended in the past. *Kurlychek et al.*, *supra* note 238, at 70.]

g. All ARAIs Fail to Account for the Well-Known Phenomenon of Desistance – Both Generally and Through 'Aging-Out.'

Melissa Hamilton, "Back to the Future...." *supra* at 126-28, points up the unaccounted-for impact of desistance, which naturally occurs both through general reconsideration of further criminality and also through the vicissitudes of aging, thus:

p. 126: 2. Desistance

"A concept closely associated with the decaying risk level is the idea of desistance.[245] The slight difference is that desistance is viewed as a process in which the recidivism rate continues to decrease over time to a point where a crime-free existence becomes a stable trait.[246] Desistance is considered generally achieved when the recidivism rate declines to near zero.[247] A Bureau of Justice Statistics study of prisoners release in 30 states in 2005, perhaps the best embodiment of a nationally representative sample to date, found an overall pattern of desistence with risk of recidivism steadily declining over time after release.[248] Positively, the general tendency for recidivism risk to decline over time is among the best replicated results in empirical criminology.'[249]"

pp. 126-27:

"...[I]f a person with a criminal record remains crime free for a period of about [seven] years, his or her risk of a new offense is similar to that of a person without any criminal record.[250]

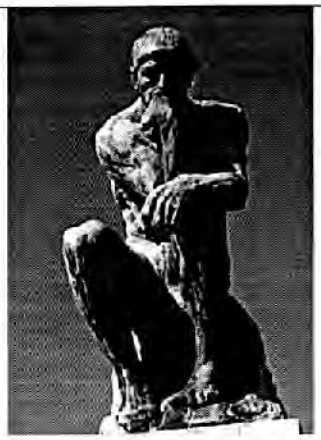
Interestingly, other investigators have concurred with the seven-year tolling. Desistance research indicates that risk profiles at the seven-year mark of a crime-free life for known offenders are similar to those of persons without prior convictions.[251] As further explained by a legal academic, the

...'reasons why these outdated sentences [should] not [be] counted is rather simple: they do not capture the individual's current threat matrix, and an individual's desert for prior crimes has grown stale. Put in individual autonomy terms, the older sentences may not be indicative of the internal progress that the offender has made over time.'[252]

i. Age-Crime Curve

"Age is also highly relevant in decay and distance models. For a variety of offenses, studies indicate consistent and distinct patterns in terms of aging. Young people are far more likely to commit most types of crimes and the risk usually declines thereafter.[253] Still, the pattern is not entirely linear across the lifespan. The 'age-crime curve' accurately assesses research findings:

"The work on age-crime curves shows



that very large percentages of young people commit offenses; rates peak in the mid-teenage years for property offenses and the late teenage years for violent offenses flowed by rapid declines. For most offenders, a process of natural desistance results in cessation of criminal activities in the late teens and early 20s.'[254]

"Overall, 'a common theme of life course criminology is the finding that a majority of one-time offenders do not go on to lead lives of crime but indeed age out of, or otherwise desist from, criminal activity.'[255] For this reason, the United States Sentencing Commission has suggested that factoring criminal history along with age would improve the predictive validity for recidivism.[256]"

p.128: "...Several instruments increase risk rating to adjust for a youthful age.[258] Few, though, control for the back-end to materially reduce risk scores as offenders approach or exceed middle-age.[259] Institutional practices remain entrenched in reifying criminal history as a whole in recidivism predictions with a presumption that evidence of a criminal past retains value over a lifespan. Yet, the results are inconsistent with a true-evidence-based culture and lead to the unnecessary incapacitation of many offenders who would otherwise have simply desisted as they aged."

[Notes 245-59:

245 For more information about the theories and empirical studies concerning criminal career trajectories and desistance, see generally *John F. MacLeod et al.*, *Explaining Criminal Careers: Implications for Justice Policy* (2012); *Keith Soothill et al.*, *Understanding Criminal Careers* (2009).

246 *Kurlychek et al.*, *supra* note 238, at 72.

247 *Kurlychek et al.*, *supra* note 238, at 73.

248 *Matthew R. Durose et al.*, "Recidivism of Prisoners Released In 30 States," *Dept. of Just., Bur. Of Justice Statistics* 7 fig. 2 (2014), http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf

249 *Kurlychek et al.*, *supra* note 238, at 75.

250 *Kurlychek et al.*, *supra* note 238, at 80.

251 *Julian V. Roberts & Orhun H. Yalincak*, "Revisiting Prior Record Enhancement Provisions in State Sentencing Guidelines," 26 *Fed Sent'g Report* 177 (2014) at 184 (citing *Lila Kazemian*, "Assessing the Impact of a Recidivist Sentencing Premium on Crime and Recidivism Rates," in *Previous Convictions at Sentencing* 227 (Julian V. Roberts & Andrew von Hirsch eds., 2010)) (indicating research has "demonstrated that offenders with seven crime-free years are no more likely to reoffend than people with no prior convictions. In other words, [prior history] enhancements beyond the seven-year-mark carry no crime preventative benefits, although they may well exacerbate disproportionate minority offender impacts.

252 *Dawinder S. Sidhu*, "Moneyball Sentencing," 56 *Boston Coll. L. Rev.* 671 (2015)

253 *Gary Sweeten et al.*, "Age and the Explanation of Crime, Revisited," 42 *J. Youth & Adolescence* 921, 921 (2013).

254 *Michael Tonry*, "Sentencing in America: 1975-2025," 42 *Crime & Just.* 141 (2013), at 182.

255 *Kurlychek et al.*, *supra* note 238, at 69.

256 "Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines." *U.S. Sentencing Comm'n* 16 (2004)

258 *Federal Pretrial*, *supra* note 141, at 10 (variable for age at interview); *Office of Prob. & Pretrial Servs.*, "Federal Post Conviction Risk Assessment: Scoring Guide" § 1.7 (2011) (containing a category for young age at onset of current supervision); *Andrew Harris et al.*, "STATIC-99 Coding Rules: Revised – 2003," *STATIC-99* at 23 (2003) (increased risk rating for young age at interview).

259 But see *Quinsey et al.*, *supra* note 140, at 239 (containing factor to deduct points as the offender's age at index offense increases with increments of -1 age 28-33, -2 age 34-38, -3 over age 38); *Susan Turner et al.*, "Development of the California Static Risk Assessment (CSRA): Recidivism Risk Prediction in the California Department of Corrections and Rehabilitation," *UC Irvine Ctr. For Evidence-Based Corrs* 5 tbl. 3 (2013) (indicating decreasing number of risk points in a linear fashion).]

Montaldi, *supra* at 845, concludes, "...the inverse association between age and recidivism rates – the age effect – is yet to be adequately accounted for, even with the revision of actuarial instruments.

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h. The ARA Technique of Merely Adding Integer Points for Factor-Scores to Derive a Total Score for Conversion into a Probability Percentage Is Ridiculously Unscientific.

Criticizing the "integer point addition" technique of scoring all RAIs, *P. Lussier & Garth Davies*, "A Person-Oriented Perspective on Sexual Offenders, Offending Trajectories, and Risk of Recidivism: A New Challenge for Policymakers, Risk Assessors, and Actuarial Prediction?", 17 *Psychol., Pub. Pol'y & L.* 530, 533 (2011), confirms that "[t]he scoring of these instruments is based on the long tradition of Burgess's (*Burgess*, 1928) technique of adding the scores of different risk factors included in the instruments." This ancient, simplistic technique defies all principles of modern statistics.

More specifically, academic psychological literature and federal cases addressing the specific actuarial instruments used in sex-offender commitment cases include the following representative sample:

ARA assigns a score — typically a one — to each factor on the checklists. If some record indication exists of the presence of a given factor as to a given sex offender considered for commitment, that sex offender gets assessed that point, and so on for all factors given RAI checklist. All such points are then added together. This point total is compared to a vertical two-column table simply stating an asserted percentage of predicted likelihood of future sexual re-offense for each possible point total. The percentage of purported likelihood is reported as the ARA conclusion for that sex offender. However, at least five grave flaws have been pointed out to this method of prediction.

First, no science exists to support this 'integer point addition' method of compiling a total score. The percentage predictions of recidivism in a given RAI table of totals were derived from every sex offender who was assigned that adverse score level, regardless how comprised of different individual factors. That point total and its corresponding percentage prediction have nothing to do with any specific factor or its relationship (causal or merely coincidental) to recidivism. *A fortiori*, that point total and percentage prediction from any RAI is not specific to any particular combination of factors found present as to the sex offender under scrutiny. Effectively, any such offender subjected to ARA in a commitment proceeding is being penalized by the inclusion in the calculation of that score of myriad other combinations of factors (i.e., not his combination), including factors not present in his case or history.

This point of criticism also includes the unscientific practice of adding probabilities, as RAIs effectively do in deriving a percentage probability associated with a point total for all factors. Rather than being purely cumulative, such probabilities for individual factors can, and almost certainly do overlap, a fact ignored in this pure totaling ARA method. This could create tremendous overstatement of the probability of future sex crime(s) in any individual's case, with no way to be certain. In general, most RAIs lack any academically acceptable level of peer review, and have poor cross-validation. The general low base rates for sex-crime recidivism multiply each inaccuracy, generating more false-positive predictions than correct ones.

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An Inspiration to Confined Advocates Everywhere

In an Anti-SOCC Activism Turnabout, NARSOL's 2022 Convention Included an Anti-SOCC Workshop by Advocates Wilson and Hatton.

How Two Detainees from Minnesota Organized a Workshop in North Carolina

by Daniel A. Wilson & Russell J. Hatton

On Saturday, June 19, 2022 the National Association for Rational Sex Offense Laws (NARSOL) held their annual 2022 convention in Raleigh, North Carolina. Russell J. Hatton and I developed one of their workshops even though we are two detainees from one of the most draconian and egregious so-called commitment programs in the nation. How we managed to create a workshop for a national convention in another state is a lesson in determination and faith.

Before we even knew what NARSOL was, both Russell and I had developed an intense focus for freedom, making it our number one priority. We are both fathers, brothers, sons, and uncles. We both feel an intense responsibility to do everything in our power to get home to our loved ones. Our focus on freedom occupies the majority of our time, energy, and finances. From the moment we wake up to the moment we go to bed, freedom is on our minds ... NOT treatment, NOT X-Box, NOT the women that work here ... FREEDOM. Everything else is secondary. Developing our focus for freedom was the first step that led to the workshop in North Carolina.

After we began to focus on freedom, we discovered blatant corruption and malpractice at the institution. We shed light on these issues and began to ask Shadow Prison administrators for answers. When no honest answers were forthcoming, we organized peaceful protests that were attended by over 100 fellow detainees. The protesting had very little effect until Shadow Prison administration reacted. When they blatantly retaliated with terrorizing oppression in response to our peaceful assemblies, journalists, civil rights advocates, and other supporters came out of the woodwork. When most of the men at the institution thought the movement was dead in the water, that is actually when waves of support came rushing in. One of those waves was NARSOL. This is when we were invited to coordinate a workshop to teach the public about why these Shadow Prisons must be abolished. Initially, we were overwhelmed by the idea. We obviously could not personally attend, and were not sure if we could send anyone. However, we knew Father God, the Great Spirit, would help us if we tried.

First, we had to find someone to physically go to North Carolina. We asked many supporters, but two months before the event, there were still no takers. Finally, about six weeks before the event, we found two individuals who volunteered to conduct our workshop.

The first person was Professor Trevor Hoppe, Assistant Professor of Sociology at the University of North Carolina in Greensboro, North Carolina. We met Professor Hoppe after providing input for an academic article he co-authored for UCLA in 2020, "Civil Commitment of People Convicted of Sex Offenses in the United States." We are acknowledged at the end of that article for our input in the final publication. This report was actually referenced by Senator Ted Cruz in the confirmation hearings of Ketanji Brown Jackson. Professor Hoppe did not seem particularly delighted to have Senator Cruz reference his article. But it says something about Hoppe's work that the article would end up at the White House. Professor Hoppe is also the author of the book, "*Punishing Disease*" and the co-author of another book, "*The War on Sex.*"

The second volunteer was Christian Dogget. Mr. Dogget is a member of NARSOL and has organized a support group called "Fearless," to provide a supportive community for persons who are required to register. We met Mr. Dogget after an anti-civil commitment rally held in St. Paul, Minnesota in July 2021.

Waves of Support

While Professor Hoppe only had to drive a few hours to get to the workshop, we needed to find travel funds for Mr. Dogget, who lives in Minneapolis. Round-trip plane tickets from Minneapolis to Raleigh were about $385, but were projected to be $900 by the end of May. Time was not on our side and we had only a few weeks to raise the money.

Fortunately, an angel advocate offered to loan the money for the plane ticket, which by that time had gone up to $533. This particular angel advocate was not someone random. He is a fellow abolitionist who we worked with for over two years and built a professional relationship with.

Because he had witnessed our integrity and hard work towards the cause of abolishing SVP commitment, this individual felt comfortable lending the money. Many guys seem to think this kind of stuff just happens. They don't realize that every dime of our own money, and anything donated, goes directly to this cause.

Finding the money for the plane ticket was the easy part. From when the angel advocate agreed to lend the $500 to the time Mr. Dogget bought the plane ticket was just under three weeks. It took dozens of phone calls and text messages and even one make-shift Zoom call to complete this critical element of the project. These gentlemen have lives and yet they find room in their day for us. It's remarkable. Doing this work reminds us that life is complicated in the real world. This work keeps us grounded and keeps us from becoming institutionalized.

After countless phone calls and months of preparation, it was finally the day of the workshop. When the workshop began, NARSOL founder, Paul Shannon, introduced Professor Hoppe first.

Hoppe told the crowd that in Minnesota hearsay can be used to civilly commit anyone with a clean record. When the professor said that SVP commitment is indefinite, an audible gasp rose from the audience. The professor spoke about the racial and sexual-orientation disparities within SVP commitment, with African American and gay men more likely to be committed than any other demographic. Hoppe said that when it comes to SVP commitment, there are "baked-in homophobic standards." Hoppe also stated that the terms "mental abnormality" and "Paraphilia Not Otherwise Specified," which are used to commit people, are not legitimate medical terms. After Professor Hoppe concluded his presentation, he introduced NARSOL member, Christian Dogget.

Mr. Dogget presented a PowerPoint that we wrote. Mr. Dogget has a calm and personal presentation style that

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makes him easy to listen to. In the presentation, Mr. Dogget described us as 'SVP civil commitment abolitionists." The presentation spoke on the two Truths that motivate us: 1) Those who support SVP civil commitment support sexual violence because SVP civil commitment programs take billions of taxpayer dollars away from programs that actually prevent sexual violence in our communities; and 2) SVP civil commitment is preventive detention, which flies in the face of our American value that we are all innocent until proven guilty. The presentation urged listeners to start similar movements to abolish SVP commitment in other states.

After Mr. Dogget's presentation, we called in to speak to the audience. I spoke about how witnessing 32 deaths in 5 years has motivated me to find ways to create awareness.* I also spoke about when I met Russell, we had a conversation about whether or not SVP commitment was actually preventing sexual assault in Minnesota. It then became our primary focus to shed light on the ineffectiveness of SVP commitment and what should replace it.

When I finished these remarks, I introduced Russell, who spoke about how in his Native tradition, he dances for those who cannot dance. He now fights for those who cannot fight. When Russell discovered that the Shadow Prison "treatment program" is not legitimate, he began to resist the institution. He quit treatment in 2013 and began studying neuroscience and psychology to find ways to help his peers at the institution. When the pandemic hit, Russell had time to study the DSM and law reviews that pertained to the medical aspects of SVP commitment. He then began to educate his peers. Naturally, other detainees raised the issue of misdiagnosis to facility staff. When these legitimate concerns were ignored, we began to organize peaceful assemblies, hunger strikes, and protests.

566 people around the world heard our message — including a man from the Netherlands who, during the presentation emailed us and said, "I want to join. How can I help?" We are in communication with him now.

When we were asked to partner with NARSOL, we felt a high like no other. Speaking at the NARSOL Convention on behalf of all detainees is a real honor. We realize that we are not only speaking for those in the Minnesota Shadow Prison, we want to be a voice for the many preventively detained across our nation. We do not see ourselves as better than or less than, we see ourselves as equals to others. This is what makes us human. When we need to refocus on our mission, we often go back to that first conversation we had about whether or not these institutions are protecting the public. We began this journey together with every thought rooted in empathy for victims of sexual assault and for the men confined. We have advanced this empathy into compassion, action, and a powerful movement. We will continue to condemn SVP commitment and promote effective prevention programs that actually protect our communities.

We seek to inspire detainees to discover their own unique ways of getting involved. At the risk of sounding harsh, we must be honest about something: When our peers believe that we are more capable than they are, they are giving themselves an excuse to do nothing. I say that with love. Every detainee has unique gifts they can utilize. None of us have any excuses. Guys would be amazed at just how much they are loved by our outside supporters. However, we cannot expect others to do more than we are willing to do. We must all lead the way.

Together, we will end SVP commitment across the nation. We are bringing dignity back to the mental health field, and securing the freedom of Americans for future generations. We have supporters in the free world who are more than willing to stand up for us, but only if we are willing to stand up for ourselves. Our freedom is our responsibility – no one else's, and if we don't find ways to work together, we will die together.

There are two simple ways you can help advance this cause: First, encourage your friends and family members to become Facebook followers at Faceook.com/endmsop. These days, social media is one of the best ways to connect with likeminded people and to stay informed on future events for the cause. Second, donate to the cause at thevoicesofocean.net/donations. All proceeds are tax exempt and processed through a non-profit program.

Note:

*: There has been a sharp rise in the death rate in the last 5 years of the MSOP "program": there were 61 deaths in the first 22 years. That is a death every 133 days. In contrast, there were 32 deaths in the last five years. That is a death every 62 days. Therefore, although the "program" has existed for 27 years, 1/3 of the overall deaths have occurred in just the last five years.

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Butner Redux Study Discredited

Wollert, Richard & Skelton, Alexander., "Egregious Flaws Discredit the Butner Redux Study: Effective Policies for Sentencing Federal Child Pornography Offenders Require Findings Based on Valid Research Principles," "in: *L.A. Dubin & E. Horowitz* (Eds.), *Caught in the Web of the Criminal Justice System* (pp. 185-214), London, UK: Kingsley" 2017

Abstract excerpts:

"The Pornographic Attraction Theory ('P-A-T') was prominently paraphrased in a *Journal of Family Violence* article (Bourke & Hernandez, 2009) alleging that child pornography offenders (CPOs) treated at the Butner Federal Correctional Institution disclosed committing many undetected contact sex offenses before being convicted on child pornography charges. ...[T]heir results are merely artifacts of methodological flaws known as 'demand characteristics.' The present article describes this problem and reviews credible research with federal and non-federal CPOs showing they are less dangerous and more responsive to apprehension than the Butner results and the PAT suggest. Other methodological flaws are enumerated that may produce sensational but invalid claims about prior contact sex offenses...."

Text excerpts:

"...[S]cience has been unable to show that it is possible for professionals or laypersons to use [legal concepts of "sexually dangerous persons" or "sexually dangerous predators"] reliably to identify individuals who meet the criteria (Ewing, 2011; Prentky, Janus, Barbaree, Schwartz, & Kafka, 2006; Wollert, 2007).

The methods that Hernandez (2000a) and Bourke and Hernandez (2009) used to elicit data from their supervisees and the findings they obtained have been criticized on various grounds from different quarters. Psychological researchers Seto, Hanson, and Babchisin (2011) characterized the contact sex offense rate reported in Butner Redux as an 'outlier' (p. 133) that far exceeded each of the rates in 23 other projects, including studies based on self-report that examined the same issue (pp. 128-130). CPOs who were Butner residents have disseminated a report accusing the study of being a 'fraudulent execution of the Adam Walsh Act' (Neuhauser, Francis, & Ebel, 2011) and quoting psychiatrist Dr. Richard Krueger as alluding to 'SOTP's treatment participants' "incentive to lie"' (p. 8). ...Federal Judge Robert Pratt, after hearing testimony from Iowa behavioral scientist Dr. Dan Rogers on the methodological inadequacy of the Butner procedures, held that the 'Court can find no error in (the) conclusion that the Butner Study ... "doesn't meet scientific standards for research, and is based upon, frankly, an incoherent design for a study"' (*U.S. v. Johnson*, 2008). Another federal judge who was told by government attorneys that civil commitment respondent Markis Revland 'admitted' to 149 incidents of 'hands-on sexual abuse' in his PHQs concluded he 'invented the 149 incidents' because he was fearful of being returned to prison where he had been raped and stabbed. The judge further observed that Revland's PHQ was 'unbelievable on its face' (*U.S. v. Revland*, 2011). Regarding the reason for this, journalist Rachel Aviv (2013) reported that

'At a professional workshop, Hernandez explained that he created a climate of "systematic pressure," so that inmates would "put all card on the table," abandoning a "life style of manipulation." Patients were required to comprise lists of people they had sexually harmed, which they updated every few months. At daily community meetings, when offenders insisted they had nothing left to disclose, other prisoners accused them of being in denial or "resistant to change." If they failed to accept responsibility, they were expelled from the program.'

Aviv was also told by former Butner participant Clyde Hall that he was encouraged by 'patients who had been formally designated "mentors"' to augment his confessions. He told Aviv he submitted his complete list of self-reported crimes to the Butner staff on three occasions but that the 'third plan came back to me with basically the same note, saying, "We want more information."'

Members of our research team have repeatedly criticized the Butner Studies in a technical report (Wollert, 2008), a presentation at the annual meeting of the Association for the Treatment of Sexual Abusers (ATSA; Wollert, Waggoner, and Smith, 2009), a book chapter (Wollert et al., 2012), and in testimony before the USSC (Wollert, 2012). Like Judge Pratt and others, we have argued that the methodology underlying the Butner Projects does not meet standards for research to be considered 'scientifically reliable' in federal courts of law (*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 1993). On the contrary, our view is that the validity controls in the Butner studies were inadequate, that their implementation produced a high error rate, and that the results have not achieved acceptance by the scientific community....

...[A]lthough Butner Redux has been published, its quality falls so far below that of the average professional journal article that the Journal of Family Violence should now publish a retraction or corrective article that adequately describes the study's unacceptable flaws. We submitted an original article with this end in mind to JOFV's current editor Bob Geffner and negotiated with him for several years regarding its publication. He ultimately declined to publish it but indicated he would consider a 'commentary' or 'letter to the editor' in its stead.

...The remaining sections of this chapter are part of an alternative strategy for achieving this goal. The first describes

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the methodology and results of the Butner Projects. The second explains how the results of these projects were artifactually produced by demand characteristics that fatally contaminated the procedures used by Bourke and Hernandez for data collection. The third and fourth sections review the results from credible research with federal and non-federal CPOs that show they are not mentally ill or dangerous as the Butner results suggest....

...[S]taff members at Butner ... apparently expected all treatment participants to make new disclosures on an ongoing basis and to pass a polygraph indicating they had 'fully disclosed' their sex offenses....

One very troubling feature was that the welfare of Hernandez' 'subjects' was dependent on their standing in his program. From interviewing or counseling CPOs who had been at Butner, we learned they were fearful of program termination. If this happened, it was possible that they would be returned to the general population of prisoners from which they were referred, where they would be harassed as sex offenders.

...[A]nother problem that several Butner patients revealed was that staff members pressured them to overestimate their offenses or disclose new offenses on an ongoing basis.... Finally, Butner patients were also expected to pass the full disclosure polygraph that Bourke and Hernandez (2009) described in the 'Measures' section of their paper (p. 186). This holds significant implications for a study based on self-report data because a technique that is widely used to pass this exam entails 'overestimating the number of possible victims' (Abrams, 1991, p. 259).

...This explanation [by Bourke and Hernandez] relied heavily on the fact that subjects in psychological experiments will act the way a researcher wants them to act if they know what the researcher hopes to find. Aspects of a data collection situation that tip subjects off to this agenda are referred to as 'demand characteristics' (Fillenbaum, 1966; Orne, 1962). It was a simple matter for offenders who stayed in the Butner program to figure out what Hernandez wanted from them and offenders who stayed in the program were likely to comply with this demand because its existence was reinforced by polygraph examinations, repeated PHQ administrations, and the fact that many participants were expelled after 'we ...put the heat on them' even though all admissions were 'prescreened' and 'went through me' (Hernandez, 2000b). Over-disclosure was also encouraged by the adoption of data collection procedures that made it impossible to verify the accuracy of disclosures.

This analysis led us to conclude that almost any offender faced with the pressures built into the Butner Program would generate so many possible false disclosures as to make it very difficult to differentiate cohort members in terms of their treatment needs, culpability, or dangerousness.....

Our initial concerns arose when one of us wrote a technical report (Wollert, 2008) after a couple of former Butner participants in his sex offender counseling program claimed they were pressured to make false confessions. After finishing that report he discussed his findings with Dr. Jason Smith, who was the Director of the Iowa Civil Commitment Unit for Sex Offenders and also supervised an outpatient program that provided counseling services to CPOs referred to him per a federal contract. Dr. Smith indicated he had heard the same allegations from some of his clients. We alluded to these disclosures in our ATSA presentation (Wollert et al. 2009) and subsequently received 7 unsolicited confirmations that they were correct – one from C.S., two from other Butner inmates, one from a Butner releasee, and three from the authors of the 'Fraudulent Butner Study' (Neuhauser, Francis, & Ebel, 2011). Prior to testifying before the USSC, one of us also had the opportunity to interview and evaluate two CPOs at Butner after reviewing several thousand pages of file materials. In the course of carrying out these procedures it became evident that one man was expelled for not disclosing more offenses after failing a polygraph. Although his counterpart completed the program, he spontaneously observed that 'a lot of times you had stuff in the PHQ just to make the staff happy so they didn't kick you out ...they dangled that over your head the whole time.' Another psychologist who evaluated whether other Butner inmates met the SVP criteria had reached the same conclusion and told us that the number of sex offenses in the files of his evaluees 'were all highly inflated, out of programmatic expectation. ...In order to remain in the program, it was expected that you would disclose new victims on quarterly progress reports. ...You can imagine how the numbers "grew"....'

Overall, we have periodically collected data for five years from many sources that point to the conclusion that at least 14 Butner participants felt compelled to overdisclose victims or were expelled from the program because their disclosures were considered inadequate. A number in this group have sworn, under penalty of perjury, that their allegations were inflated during court proceedings. This evidence, and Dr. Hernandez' admission about his 'climate of pressure,' confirms that overt demand characteristics had a clear and robust impact on the number of offenses reported in Bourke and Hernandez' article....

...Comparing British child molesters with CPOs, Webb reported that '... internet offenders appear to be extremely compliant with community treatment and supervision' (Webb, Craissati, & Keen, 2007, pp. 462-463). ...Endrass and his research team (Endrass et al., 2009) documented a similar pattern after studying an exhaustive sample of 231 CPOs from Zurich. In particular, they stated that

> '...[T]he consumption of child pornography alone does not seem to represent a risk factor for committing hands-on sex offenses in the present sample – at least in those subjects without prior conviction for hands-on sex offenses.'

In 2009, after studying the history of the federal guidelines for sentencing child pornography offenders, the Commission concluded that the guidelines had reached a crossroads in their evolution (U.S. Sentencing Commission, 2009, p. 54). ...[I]t pointed out that Congress had a 'continued interest' in increasing criminal penalties for child pornography offenses. Some of this interest, as we have suggested, is probably due to the dissemination via professional channels of sensationalized findings based on weak research designs such as those in Table 1. On the other hand, the Commission observed that the downward depar-

(Continued on page 10)

Table 1: Research Design Flaws That Produce Artifactual Estimates of Prior Contact Sex Offenses (PCSOs) for Federal CPOs

Type of Flaw	*Definition*	*Example (Artifactual Effects in Parentheses)*	*Possible Solutions*
Misleading dependent measures	An outcome is underestimated by a narrow definition or inflated by a broad definition.	The definition of a PCSO includes sex between a 19 year-old and a 16 year-old. (This produces high rates in both offender and non-offender samples.)	Have experts specify definitions. Compare a full range of outcomes.
Nonrepresentative sampling	Data are collected from subjects who come from the extremes of a reference group.	An ad solicits interviews from "pedophiles" and the PCSO rate they report is attributed to federal CPOs. (The rate for CPOs is misestimated because a minority of CPOs are pedophiles.)	Carefully define the reference group. Use procedures to select representative samples.
Obvious demand characteristics	Research procedures are adopted that are so transparent that subjects know the results that researchers hope to obtain.	Counts of PCSOs are based on unverified self-reports from patients in treatment programs where a premium is placed on high levels of disclosure. (Clients give their therapists whatever they want.)	Minimize demands. Compile disclosure rates for different procedures. Verify disclosures.
Masked effects	Data from different offender populations are averaged.	Four of 25 CPOs report a PCSO. Sixty of 100 convicted molesters do. The data are pooled and a 51% rate is reported. (The high rate for the molesters hides the lower rate for the CPOs.)	Test if groups differ on the data. Report data separately if groups differ.
Overinterpretation	Data collected from a single group are treated as though they are valid and uniquely characterize the group.	A sample of CPOs is called "dangerous" after a 25% rate of PSOs is obtained. (The rate may be seen in a different light if it is reported by non-sex offenders.)	Compare data for non-offenders and non-sex offenders with CPO data.
Lack of cross-validation	The accuracy of a test for detecting individuals with a target problem is calculated without replication.	A test identifies 89% of those CPOs with a PCSO in a developmental sample. (Accuracy is almost always overestimated when a test is developed.)	Collect data from other samples and compare accuracy rates.

(Continued from page 9)

ture rates of sentencing courts signaled that many judges perceived the guidelines as too severe."

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RIT Study is Just Butner Redux Deja Vu

Michael M., "RIT Study is Butner Redux Deja Vu," (*Titus House Newsletter*, Feb., 2019, p. 3, quoting *NARSOL Digest*)

Text

"A recent study conducted by researchers at the Rochester Institute of Technology, or 'RIT,' is already being cited in Federal Court cases to support the false presumption of a high rate of unreported child molestations by those convicted of child pornography offenses. This is despite the fact that it suffers from exactly the same serious flaws and inaccuracies as the infamous and thoroughly discredited 'Butner Redux' study, which first appeared in the *Journal of Family Violence* in 2009.

For those who may be unfamiliar with the Butner Redux controversy, here are some of the basics. There were actually two studies conducted in FCI Butner. The 'First Butner Study,' a preliminary study done in 2000, suggested a significantly higher rate of hands-on offenses among the population of child pornography offenders than had been known at the time of sentencing. That study involved just 62 people in a Sex Offender Treatment Program (SOTP) group, whose crimes involved the production, distribution, receipt, and possession of child pornography, or involved luring a child and traveling across state lines to sexually abuse a child.'

Butner Study Redux, or the second study, was conducted between 2002 and 2005. It began with 201 SOTP participants and concluded with 155. The 46 exclusions were for voluntary withdrawals, expulsions, and one death. The results of the study suggested that at sentencing, 26% of the study subjects were known to have committed a hands-on offense against a minor. By the end of their SOTP treatment, 85% had admitted to molesting at least one child. The study's conclusions were widely circulated in the media and cited by prosecutors in court cases to justify longer prison terms for CP defendants.

Almost immediately, the Butner studies came under intense scrutiny and criticism for institutional bias, sloppy methodology, misrepresentational sampling, flawed date gathering, and subject coercion.

First, let's examine how this 'peer reviewed study' first appeared in the *Journal of Family Violence*. From their submission guidelines: 'Pay $3000 for Springer Open Choice [Plan] to have articles made available with full, open access.' The guidelines also state: 'All manuscripts are assigned to an editor who will manage the external peer review process. The Journal encourages authors to recommend individuals who could be considered as reviewers [and] are given the opportunity to request the exclusion ...of individuals.' In other words, the author gets to pick who does – and doesn't – conduct the so-called 'peer review.'

Second, let's take a look at the *subjects* of the study Each had been convicted of at least one federal sex crime which involved child pornography and was incarcerated in a federal prison. To characterize this sample as being typical of all persons in the general population outside of prison who have ever viewed child pornography would be somewhat akin to comparing those in federal prison for larceny with everyone who has ever stolen a candy bar.

Next, consider the way SOTP works. The foundational purpose of SOTP is to get participants to overcome denial, admit their wrongdoing, take responsibility for it, and commit to never offending again. It is typically, for all intents and purposes, a one-size-fits-all curriculum that unfortunately treats all sex offenders like violent rapists. It is extremely ill-equipped to address non-contact crimes such as internet crimes or child pornography. As a result, this often results in group facilitators and participants attempting to 'shoehorn' non-contact crimes into a 'hands-on' criminal context for lesson plans and exercises.

Participants who minimize or justify their crimes are shamed or berated. Anyone who claims to have been wrongly convicted is reprimanded and may be thrown out of the program. On the other hand, participants who *admit* to wrongdoing – *any* wrongdoing – even hypothetical acts or fantasizing about them – get rewarded.

One should also keep in mind the fact that the facilitator gets to define 'sex crimes' however he or she likes. I once had an SOTP facilitator tell me that spooning with my wife while she sleeps is a sex crime, since she cannot give consent to being touched while sleeping! Participants were instructed by facilitators that their recollections didn't need to be accurate and, in fact, *shouldn't* be so accurate that they could result in being *charged* with additional crimes. Participants were even encouraged to include incidents that occurred when they were very young children.

In the end, many prison SOTP participants tell program facilitators exactly what they want to hear, since successful completion of SOTP can lead to their eventual freedom. The system is highly coercive and gives participants every reason to exaggerate or lie about any previously unreported offenses. After all, they have nothing to lose by doing so and everything to gain. In statistical terms, studies utilizing such methodologies suffer from 'researcher demand characteristics.'

Fast forward to 2018, and researchers at the Rochester Institute of Technology have used exactly the *same* flawed methodology as Butner to conclude, 'More than half of the men on federal probation in western New York for child pornography possession had instances of sexual contact with children that were previously unknown to legal authorities.'

Respected researchers and statisticians should thoroughly examine the RIT study immediately and critically before it becomes another Butner 'blunt force object' to be used by prosecutors nationwide to paint all CP defendants with the label of 'unindicted child molester.'"

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