The Legal Pad
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"Mere public intolerance or animosity cannot constitutionally justify the deprivation of a person's physical liberty." —
O'Connor v. Donaldson, 422 U.S. 563, 575 (1975)

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— And a ton of new excerpts are coming. Stay Tuned!

Feedback? News? Write!

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Home of Patrick Henry Puts Its Foot Down Against Tyranny.

Baughman Wins Long Righteous Fight for Freedom.

Editor's Note: You could say that Galen Baughman's successful fight against tyranny stands for many things. Chief among these are all of the following:

(1) the vicious moral and ethical wrongness of misusing sex offender 'civil commitment' as a means to lengthen incarceration of its victims;

(2) the legal wrongness of misusing civil commitment to discriminatorily heap extra punishment on gay 'sex offenders' with relatively minor crimes whose parole restriction violations were purely technical and trivial;

(3) the prosecutorial abuse of singling out individuals for deliberately unfair use of every trick to drag out incarceration purely as retaliation for standing up for one's rights; and

(4) the unethical willingness of forensic psychologists to offer up for hefty pay any claimed 'expert opinion' 'made to order' to the advance specifications of a prosecutor to provide 'justification' for lifetime incarceration for those whose sentences have ended.

I have corresponded and spoken with Galen Baughman for roughly the last five years. Galen is one of the most sincere and guileless people I have ever known, the kind of person who leaves you with the belief that you must have known him for twice as long — it is that easy to come to a full understanding of the man. His history of volunteering to assist others caught under the grinding wheels of unjust discrimination speaks volumes more than room to print allows here.

This makes it easy to understand why the LGBTQ+ community rallied so resolutely and unflaggingly in Galen's defense over the years. Yet Galen's case is not just a 'gay issue' by any means.

His story resonates with anyone in extended confinement for sex crimes with known, willing teens — a scenario known to about half of all victims of the fake commitment used to hold us all, while captors and propagandameisters continue to spin horrific fictions to justify that permanent endungeonment.

Thus, Galen's story stands as a fundamental testament that all this: manipulated hysteria and rage, official abuse, and crass deliberate assertion of junk science disguised as psychology must be forcefully, immediately brought to a full stop, permanently. It is the end of justice and an ominous precedent for future expansion to all wider applications to anyone else who can be vilified or miscast as compulsive. These wider applications are even now being proposed; I have seen the 'blueprints' and have mentioned some specifically in these pages. Toward this end, Galen Baughman stands as a hero, but not, I am happy to report, as yet another martyr to the cause. Thank you, Galen!

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Just Future Project, "Victory in Supreme Court of Virginia against Out-of-Control Prosecution,' Gmail, Weds., Sept. 20, 2022 to William Dobbs <duchamp@mindspring.com>, forwarded to End MSOP msop.fam@lists.riseup.net (source: https://ajustfuture/org/baughman-supreme-court-win/

Text:

"Justices Declare Effort Targeting Leading Advocate Illegal, Ending 5-Year Court Battle.

On Thursday, the highest court in Virginia ended the Commonwealth's 13-year campaign to indefinitely detain a prominent advocate on criminal matters, Galen Baughman. In a victory for justice the Supreme Court ruled that the petition filed against Baughman in 2017 was illegal.

A Short History of Baughman's Fight

Baughman has been targeted by the Virginia attorney general's office under the state's civil confinement schama since 2009 when prosecutors filed a petition to send him to Virginia's shadow prison in Burkeville shortly before his release from a seven-year prison sentence for consensual adolescent sexual conduct. That initial petition went to trial in 2012 and a jury voted unanimously in his favor. Baughman describes that trial in a 2015 TED Talk. In 2017, less than 24 hours before his release from a 20-month sentence for an alleged first-time technical violation, the attorney general's office petitioned a *second* time to have Baughman indefinitely detained past his release date. The Supreme Court's ruling last week dismissed that 2017 petition because it was based on the testimony of an expert who was prohibited from testifying under 'the plain language of the statute.'

Outrage Against Injustice

Virginia legislator Patrick Hope described the situation in an op-ed published immediately before Baughman's *second* trial in 2019:

'The [Virginia Department of Behavioral Health and Developmental Services (DBHDS)]-hired psychologist found Baughman did not meet the criteria and recommended his release. The attorney general's office ignored that finding, went outside the law and hired a *second* expert. This expert did not interview Baughman, but nonetheless claims that Baughman meets the statutory criteria. At trial, Baughman's defense attorneys may not present the results of the 2012 civil commitment trial or the results of the DBHDS psychological assessment, nor can they present qualified psychological expert testimony. His trial ...serves as a prime example of how the SVP laws are unjust and unfair.'

The Baughman case was closely watched by lawyers, activists, and civil and human rights organizations. Amicus briefs were filed by the National Association of Criminal Defense Lawyers (NACDL) joined by Del. Patrick Hope (D-Arlington), law professors and scholars, as well as a coalition of LGBTQ+/HIV rights advocates and organizations. Baughman was represented by a pro bono team from KaiserDillon PLLC, a notable boutique firm in Washington D.C. (Jonathan Jeffress, Emily Voshell, and William Zapf), supported by the Washington Lawyers' Committee for Civil Rights & Urban Affairs.

Orwellian Civil Commitment Assessment Process

Catherine Hanssens, founder ...of Center for HIV Law & Policy (CHLP), was especially instrumental in bringing this issue to the forefront by organizing an LGBTQ+ sign-on letter to attorney general Mark Herring (D-Virginia) in this case. KaiserDillon also sent successive letters to AG Herring (in 2018 and 2020) asking him to stand down from this obviously illegal action – on the same grounds that the Supreme Court ultimately used to dismiss the petition. CHLP's amicus brief 'describes the deep homophobic bias embedded in an already-Orwellian civil commitment assessment process, and in the drive to confine him as a dangerous predator in the absence of credible evidence.'

Ruling Dramatically Limits State Scheme

The Court also addressed claims by the attorney general's office that a judge could find probable cause that someone suffers from a 'mental abnormality or personality disorder' based on conviction history alone. 'As the trial court had no evidence regarding Baughman's mental state, it could not have found that there was probable cause to believe that he was a sexually violent predator,' the Supreme Court said. 'Accordingly, the trial court should have dismissed the commonwealth's petition.'

Because the *second* petition was unlawful from its inception, the Court decided 'the other matters that Baughman raised in his appeal [i.e., the trial court's decision to exclude the testimony of his expert witnesses, its denial of his motion for summary judgment and its failure to dismiss the petition based on res judicata)] are ...rendered moot.' Regrettably, the justices declined to address these other important issues that might have made a significant difference in the lives of other individuals targeted by Virginia's pre-crime preventative detention program – those questions remain unsettled by the court.

Prosecution Overreach & Judicial Activism

The Baughman case is a stunning win that beats back a disturbing attempt by the Virginia attorney general and an activist judge to

(Continued from page 1)

dramatically expand the scope of involuntary civil commitment. If the state had gotten its way, prosecutors would be able to shop for experts until they find someone willing to give whatever opinion they wanted and judges would be encouraged to proceed with a putatively 'mental health' commitment case absent any psychological evidence.

A Sustained and Systemic Constitutional Violation to Get Outraged About

Virginia is one of 20 states (and the federal government) with laws allowing indefinite confinement of persons after the completion of a prison sentence for a sex-related crime. At least 7,000 people in the U.S. are presently held in prison-like facilities under the guise of involuntary psychiatric confinement based on a past sex-related conviction. While many facilities have begun to release people to an Orwellian form of 'conditional release' as states begin hitting the practical ceiling that comes from a system designed to lock up more people every year without ever letting anyone out, for many, 'civil commitment' for the purposes of 'treatment' remains a life sentence.

Systems of pre-crime preventative detention have been under fire ever since their inception in 1990. The American Psychiatric Association formally opposes so-called 'sexually violent predator' laws and has described these legislative schemes as a 'misuse of psychiatry' designed to 'preventively detain a class of people for whom confinement rather than treatment was the real goal.' In 2015, legal scholar David Post quipped for the Washington Post, 'If you're looking for a sustained and systematic constitutional violation to get outraged about, may I suggest this one?'

Impact of Baughman Supreme Court Win

The decision from the Virginia Supreme Court makes plain that the attorney general's office flagrantly violated the 'plain language of the statute.' Even with top-notch lawyers, it took Baughman 5 years to reverse this unlawful action – resulting in 40 months of unnecessary incarceration past his release date in a punitive carceral setting at the Arlington County Detention Facility (ACDF), and another year and a half of draconian conditions including being restricted from leaving Arlington County and house arrest for up to 18 hours per day.

Baughman is a leading advocate bringing to light the flawed rationale and human rights implications of efforts to lock up people prospectively for what they might do in the future. Baughman's case should be a warning to any defenders of due process and freedom that so-called 'sexually violent predator' laws lend themselves to wild misuse by unscrupulous government officials. The fact that Virginia was able to very nearly get away with committing someone who clearly does not suffer from any volitional impairment-causing psychological conditions – but had no trouble finding and using an expert willing to cavalierly misrepresent the psychological literature for pay – should be terrifying to us all.

The Next Battle for Defenders of Human Rights

In 2021, Virginia became the first state in the U.S. to consider abolishing its system of post-sentence 'civil' confinement. *Baughman v. Commonwealth* clearly illustrates the need to abandon laws and policies designed to incarcerate people for imaginary future crimes based on deeply dubious predictions.

'The Commonwealth of Virginia's case against Galen was morally and legally indefensible,' said Jonathan Jeffress, partner at KaiserDillon representing Galen Baughman. 'It appealed only to the worst in people and their prejudices. I know I speak for everyone at KaiserDillon in saying that, although we are proud to have brought Galen's case to a successful end, there is still much work to do, including reforming – or better yet, abolishing – Virginia's broken, corrupt, and unconstitutional system of civil confinement.'"

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Presentation by Maker of Static-99R Debunks Myths of High SO Recidivism

[Eds.], "Webinar – Sex Offense Recidivism Risk: Not What You Think It Is," *CURE-SORT News*, Vol. 31, Issue 3, pp.2-3 (3rd Quarter 2022)

"One Standard of Justice (OSJ) is a NARSOL Affiliate in Connecticut who hosted a presentation in May 2021 by Dr. Karl Hanson, the inventor of the Static-99R, a tool you probably see referenced in ALL ...adult male psychosexual evaluations. [This presentation] is in plain language to make it easier to understand.

You might even want to cite it or play it for your judges – it definitely takes away some of the fear associated with reports of 'average' or 'above-average' sexual recidivism risk, especially if the behavior was long ago, and shows how extremely low 'lower' risk people are.

There's even a part where he explains how the highest risk category that is used to describe general criminal recidivism does not even exist in the population who has committed a sexual offense because nobody sexually reoffends as often as other criminal populations reoffend.

...The 78-minute video can be accessed here: https://onestandardofjustice.org/sex-offense-recidivism-risk-not-what-you-think/"

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Perlin & Cucolo, Part 2: Sexual Violent Predator Legislation Continues to Shame the Constitution

Editor's Note: In this edition, *TLP* continues a series of excerpts from a capstone book by Michael Perlin and Heather Ellis Cucolo – both long-time legal experts of individual liberty under the U.S. Constitution. This time, we begin Chapter 2, which we will finish in the next edition, followed by further excerpts from other chapters in later *TLP* editions.

Michael L. Perlin & Heather Ellis Cucolo, Shaming the Constitution: The Detrimental Results of Sexual Violent Predator Legislation (Philadelphia: Temple University Press, 2017)

Excerpts:

"Chapter 2: The Key Factors

p. 11: "It is impossible to make conceptual sense of the relationship between mental disability and any aspect of the law without an understanding of four critical factors that dominate – and control – this relationship. ...What is most vexing is that these factors often exercise this domination in an invisible manner. We have been writing about these factors – sanism, pretextuality, heuristics, and 'ordinary common sense' – in different guises for twenty-five years and continue to write about them in different contexts to this date. [Ed.: The last two factors will appear in the next *TLP* edition.]

Unless and until we fully understand the malignancy of sanism and pretextuality, and the ways that heuristic reasoning and false 'ordinary common sense' cause us to make and to reinforce biased and irrational judgments, we are doomed to repeat the errors that we continue to make in the way we deal with questions that relate to the treatment and institutionalization of sexual offenders....

p. 12: **Sanism**

–Sanism is an irrational prejudice of the same quality and character of other irrational prejudices that cause (and are reflected in) prevailing social attitudes of racism, sexism, homophobia and ethnic bigotry. It infects both our jurisprudence and our lawyering practices. Sanism is largely invisible and largely socially acceptable. It is based predominantly upon stereotype, myth, superstition, and deindividualization and is sustained and perpetuated by our use of alleged 'ordinary common sense' (OCS) and heuristic reasoning in an unconscious response to events both in everyday life and in the legal process....

Judges are not immune from sanism. '[E]mbedded in the cultural presuppositions that engulf us all,' judges reflect and project the conventional morality of the community; judicial decisions in all areas of civil and criminal mental disability law continue to reflect and perpetuate sanist stereotypes, a global error that is most critical in the sorts of cases we are discussing in this book. Judges are not the only sanist actors. Lawyers, legislators, jurors and witnesses (both lay and expert) all exhibit sanist traits and characteristics. Until system 'players' confront the ways that sanist biases (selectively incorporating or misincorporating social science data) inspire such pretextual decision making, mental disability jurisprudence will remain incoherent.

p. 13: **Pretextuality**

Sanist attitudes lead to pretextual decisions. 'Pretextuality' means that courts accept (either implicitly or explicitly) testimonial dishonesty and engage similarly in dishonest (and frequently meretricious) decision making, specifically where witnesses, especially expert witnesses, show a high propensity to purposefully distort their testimony in order to achieve desired ends. This pretextuality is poisonous; it infects all participants in the judicial system, breeds cynicism and disrespect for the law, demeans participants, and reinforces shoddy lawyering, blasé judging, and, at times, perjurious ...corrupt testifying.

Pretextual devices such as condoning perjured testimony, distorting appellate readings of trial testimony, subordinating statistically significant social science data, and enacting purportedly prophylactic civil rights laws that have little or no 'real world' impact dominate the mental disability law landscape. Judges in mental disability law cases often take relevant literature out of context, misconstrue data or evidence being offered, and read such data selectively and/or inconsistently. Other times, courts choose to flatly reject or ignore the existence of the data. In other circumstances, courts simply 'rewrite' factual records to avoid having to deal with social science data that are cognitively dissonant with their view of how the world 'ought to be.'

pp. 13-14: As is demonstrated throughout this book, decision making in SVPA cases – whether at the trial level in cases of which little note has been taken or whether at the U.S. Supreme Court – reflects this damaging pretextuality that controls the entire SVPA process believe it is impossible to understand sexual offender law without acknowledging this.

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Virginia Report, #19: Critiquing Specific RAIs

s. Unscientific Nature of the Leading RAIs

The 'MnSOST-3/3.1/3.12/4'

Grant Duwe and Pamela Freske, two of

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the authors of the MnSOST-3 and 3.1 series of tools, acknowledge that these are not risk assessment instruments, but only just "tools" (*G. Duwe & P.J. Freske*, "Using Logistic Regression Modeling to Predict Sexual Recidivism: The Minnesota Sex Offender Screening Tool – 3 (MnSOST-3)," *Sexual Abuse, A Jour. of Research and Treatment*, Vol. ___, No.___, pp. 1-28 (2012). They note that the MnSOST-3 "contains nine items, six of which are new." (*Id.*, p. 1). This makes Version 3 a completely new and different "tool" (not an ARAI) than previous MnSOST versions. Hence, it gains no support from those earlier versions, and attempts by the creators of Version 3 to draw support by appropriating sample populations from those earlier versions are misplaced and non-scientific.

The MnSOST-3, 3.1, and 3.12 were all developed from the same data and with only trivial differences. Because version 3.1 appears to be in most prevalent use among these three, it will be exclusively referenced here. However, the flaws and shortcomings mentioned here apply to all three of these versions. These versions have rendered the former MnSOST-R obsolete. Hence, it will be mentioned here only to the extent that its flaws have been carried forward into the foregoing versions. To preface that carry-forward, it should be noted that the MnSOST-R was repudiated by its developers, such that one of that tool's strongest advocates, Dr. Amy Phenix, testified that she discontinued its use because she no longer found it to be sufficiently reliable, *United States v. Johnson*, 856 F. Supp. 2d 768 (E.D. N.C. 2012) at footnote 1. *United States v. Antone*, 2012 US Dist LEXIS 138492 (E.D. N.C. 2012), found the MNSOST-R to be invalid (Footnotes 33 and 39) after the examiner testified that he no longer uses the MnSOST-R because, among other reasons, it has a low sample rate and it has a high false positive rate, and the data on which it is based has not been updated.

Like the MnSOST-R, nonetheless, the MnSOST-3/3.1/3.12 tools are based on extremely small development samples and on a high claimed base rate. *Duwe & Freske, supra*, acknowledge this:"...[T]he development sample for the MnSOST-R oversampled for sexual recidivists, producing an artificially high baseline rate (*Wollert*, 2002)." The MnSOST-R, for instance, was based on a base rate figured at between 27 and 35% recidivism. In fact, even in those earlier, comparatively-higher-recidivism years, average Minnesota sex-crime recidivism was only 14%. As a result, MnSOST percentage figures for probability of recidivism as to every category (low-, medium-, or high-probability predictions) were vastly inflated.

Duwe & Freske concede "the similarity in reoffense rates between higher risk (i.e., those with higher MnSOST-R values) and lower risk (i.e., those with lower MnSOST-R values) offenders, using sexual recidivism as the measure to assess the predictive accuracy of the MnSOST-R on a contemporary sample of the Minnesota sex offenders yields relatively low AUC (area under the curve) values. Indeed, as shown ...in Table 3, the MnSOST-R has an AUC value of 0.55 for the 2,315 sex offenders released from Minnesota prisons between 2003 and 2006." Four points emerge from this:

a. This is nearly pure-chance (0.50) prediction.
b. These 2,315 sample members were released, not committed. Hence, the impact of large-scale (for Minnesota) commitment in earlier years does not affect this near-chance, unsuccessful prediction.
c. The MnSOST-R failed to reckon with the admitted impact (as per the Minnesota Dept. of Corrections report on sex offender recidivism in 2007) of "post-release constraints" on sex offenders, identified (other than as to those committed) by the *Duwe & Freske* article (p. 4) as being: "more time under post-prison community supervision"; "increased ...use of intensive supervision with sex offenders"; "more likely to ...have their parole revoked for a technical violation"; and being (upon such revocation) "incarcerated for longer periods of time." Currently, as to sex offenders on "intensive supervised release," the rate of parole revocation during the whole period of parole is 58% of releasees – almost all of which revocations are for "technical" violations, not new sex crimes. This high rate of revocation and consequent reimprisonment, alone, shows how vastly inaccurate this failure to reckon with such figures of post-release "constraints" makes the recidivism figures.
d. In light of these points, MnSOST-R, at AUC = 0.55, was an utter failure at predicting recidivism. Note: Using the same, newer Minnesota sample, with lowered recidivism statistics, so too are all current ARAIs reduced to near-chance prediction. So, development of the MnSOST-3 series was not an improving 'tweak' on an already-good test; on the contrary, it was a desperate attempt to replace it with a "tool" that could salvage some higher-than-chance predictive value. However, in light of the current similarity in high-risk and low-risk offenders in terms of actual recidivism outcomes, this is utterly futile

Page 8 declares, "...three of the MnSOST-R items [including] age at release – were transformed into continuous variables [for purposes of this cross-check function on the 3.1 version]." However, if this is true as to age in the "multiple regression analysis," it was reversed in the final 3.1 version, in which age is only a dichotomous cutoff only above/below age 30. The effect of this incongruity is to falsely appear to justify higher recidivism predictions for releases over age 30, with a greater impact on such probabilities as ages increased upward from age 30.

At page 9, we learn that scores on some items allowing for more than one point each depending on circumstances such as number of convictions or victims are capped in the 3.1 version. Nonetheless, this multiple-score method, even though capped, is still unscientific, as not reflecting any known incremental risk elevation for more than one conviction (which could have been for the same victim) or victims of a certain type (male, rather than female).

Page 13 of that booklet declares that bootstrap resampling was used "to develop a more parsimonious prediction model. This apparently refers to iterative recalculations intended to make the apparent statistical difference in terms of recidivism probability appear more extreme than it really is between the great mass of offenders and outliers with higher scores. This is how a small number of offenders were cast as supposedly extremely likely to reoffend, contrary to all other actuarial tools.

Also at page 13, a discussion appears regarding use of a "relatively high threshold" for retention of recidivism predictors. But the test creators never considered the possibility of 'factor overlap.' To the contrary, use of that 70% (high) threshold unwittingly paired factors that are closely logically related to each other, ensuring such overlap, and hence, double-counting toward a grossly inaccurately inflated probability prediction.

Duwe & Freske, Table 4, at p. 16, and *MnSOST-3.1 booklet*, pages 19-20 divulge that, even as low as the 8% recidivism probability level (i.e., as the tool calculates, the top 10% of offenders), "For every true positive, (i.e., recidivist) identified at the 8 percent cut point, there were nearly four false positives (non-recidivists)." This 4X number of false positives to true positives even at the comparatively low probability level of 8% (only twice the 4% overall probability) shows the mathematical inability of this model to accurately 'capture' all recidivists, but only recidivists. Its inaccuracy is unacceptably low (even at such low deviations from a low base rate. This is a classic illustration of Wollert's 'low base rate problem' of making accurate predictions. Given that the inaccuracy is four false-positives out of 5 predictions at 8%, just think how high the false-positive ratio must be at the highest level of 40%! Note: It appears quite clear that this document employs some nonstandard math (unspecified) to claim its True-False Positive Ratio. Those figures show that the false-positive rate decreases as the probability prediction rises toward the top. This is absolutely backward to *Wollert*'s truism of geometrically rising false positives as the probability prediction percentage rise toward the top. So something is very wrong with the calculations here.

Particularly telling for commitment use of the MnSOST-3 is this excerpt from *Duwe & Freske, supra*, at p. 17: "The average MnSOST-3 value for the 134 civilly committed [sex] offenders [who, but for commitment, would have been in the 2005-06 sample] was 10.5%,.... Only four of the [134] offenders (3%), however, had an upper 95% confidence interval (CI) that exceeded 50%...." (Note that the 4 offenders were subsumed within that 9 offenders, making 7% the most generous estimate in comparison to a '50% standard' for commitment, which this report erroneously postulates. In legal fact, it actually is a "highly likely" standard, which should be interpreted as requiring a percentage vastly in excess of 50%, such as 70% or higher.) This shows that most committed in Minnesota actually have a recidivism rate (10.5%) only modestly above the overall average, meaning that nearly nine who would not have recidivated (at least within that first four-year period of the study) were committed for every one who would have recidivated, but for commitment.

This excerpt both concedes the non-utility of the MnSOST-3-series in other states, and also points up how extreme the folly is of committing prospective releasees with less than 50% probabilities of recidivism, and at the same time, how MnSOST is prone to over-prediction of recidivism, even in Minnesota.

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NARSOL Blows the Whistle on Rushville.

Sandy Rozek, "Letter to Rushville Civil Commitment Facility in Illinois," NARSOL website, https://narsol.org/ (Oct. 11, 2022)

Text Excerpt:

"The forced detainment of individuals after they have finished serving a sentence for a sexual crime is abhorrent. A significant number of states allow this. The men – always males, as far as we can determine – find their incarceration continued, due to a determination that they MIGHT commit another crime in the future. The purpose of such a practice is SAID to be for treatment and rehabilita-

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tion so that the persons can be returned to society. The very existence of such a practice is abhorrent enough; the failure to provide treatment and rehabilitation is unconscionable; the failure to provide them when funds have been given for the express purpose of providing them might be considered by some to be criminal. NARSOL has been alerted, initially by a detainee there, that a serious lack of rehabilitative and educational programs exists at Rushville, a facility operating in Illinois under the Department of Human Services. After diligent research into this facility, *the concerns are a reality.*

NARSOL has written this letter to the administration of Rushville with copies going to the governor of Illinois; appropriate administrative staff at the Dept. of Human Services, which is Rushville's governing body; and the *Chicago Tribune*. We will update this as needed.

'October 11, 2022

Dear Administrators of the Rushville, Illinois Civil Commitment Facility,

It has come to our attention that the patients at your facility have few if any programs in the way of vocational technological, or educational training.

The Rushville facility is exclusively for persons who need treatment, and the purpose for their involuntary commitment, as we understand it, is to prepare them for release into the community. Most returning to society from a lengthy period of confinement, experience difficulty finding employment. Those whose encounter with the legal system was for a sexual offense experience this difficulty even more.

This employment difficulty is compounded by the fact that many with sexual offenses are young men, often still in their teens, and they had not yet become established in a profession or received the education necessary to pursue a career. Their prison terms before being committed were their punishment, and that is completed. The current confinement is intended to be focused on treatment and rehabilitation, and we want to know what you are providing in these areas. Without them, the technological advances that have occurred during these lost years compound their lack of ability to function and survive in a society that has passed them by.

Our organization is committed to optimizing the success for persons on the registry, shown in numerous studies to contribute to a lack of recidivism, which leads to a safer society. Without appropriate classes and programs while they are confined, all chances for a favorable outcome for these individuals are erased; their chances of success, rather than being optimized, are without doubt severely diminished.

It is our understanding that the state of Illinois receives a significant amount of funding and grants for the purpose of providing these educational opportunities for Rushville's patients. Is there a board of governors or oversight committee or any entity or person who is monitoring what is done with that money?

Please correct this unconscionable failure of your institution and let us know what steps you are taking to rectify this untenable position.

Sincerely,

Sandy Rozek, Secretary and Communications Director, on behalf of the NARSOL Board of Directors

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PA Judge Throws Out PA's SORNA Law as Punitive; No Support from Claimed Justifications.

Steven F. Fairlie, "Chester County Pennsylvania Judge Declares SORNA Unconstitutional," *CURE-SORT News*, Vol. 31, Issue 3, p.1 (3rd Quarter 2022)

"Note: A copy of Judge Royer's 28-page ruling can be found here: *Commonwealth v. Torsilieri* – Aug. 2022 ruling.

Chester County Judge Allison Bell Royer has determined that SORNA is unconstitutional on many grounds in a blockbuster opinion. In *Commonwealth v Torsilieri*, the Pennsylvania Supreme Court had remanded the case back to Chester County Court for a determination of how five factors from [SCOTUS case] *Kennedy v. Mendoza-Martinez* applied to the application of SORNA. The Court struck down SORNA as being unconstitutional on its face and also as applied to Mr. Torsilieri.

The Court found that SORNA creates an irrebuttable presumption that defendants convicted of sex-related crimes will re-offend and that the presumption is not universally applicable. The logical extension from that is that people who will not reoffend are being treated as though they will. This puts such people at a serious disadvantage in life and the Court found that to be inherently unfair.

The Court next found that the punitive nature of SORNA offends the doctrines espoused in [SCOTUS cases] *Alleyne* and *Apprendi*. Punishment cannot exceed the maximum sentence for the crime, so if SORNA is viewed as punishment and lasts longer than the statutory maximum for the crime it is unconstitutional under the two aforementioned cases. Thus, SORNA is unconstitutional and cannot be applied.

The Court further found that SORNA violates Federal and state proscriptions against cruel and unusual punishment. SORNA can have a dramatic, life-altering impact on someone's ability to gain employment or housing, travel, be around children, and function in society Given the severe impact it imposes, the Court determined it was cruel and unusual punishment, especially since many of the crimes that trigger it can have no basis whatsoever in sex crimes, or a very limited connection to sex crimes. Imagine a relatively immature 20-year-old who has sex with a 15-year-old. Should that person be labeled as a sex offender for life with notification and registration requirements? Or is that cruel and unusual punishment?

Finally, the Court found that SORNA violates the separation of powers clause and thus there was one more ground to have it declared unconstitutional. The Pennsylvania Supreme Court reversed the *LaCombe* decision. *Torsilieri* case breathes new life into challenges against SORNA, which were largely given up on after *LaCombe*.

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A Thumbnail History of Texas SOCC

Derek Logue, "A History of the Texas Civil Commitment Program," *CURE-SORT News*, Vol. 31, Issue 3, p.1 (3rd Quarter 2022)

"...The Texas civil commitment program has a long history of corruption and mismanagement. The program was once an outpatient program heralded as the cost-effective alternative to costly inpatient civil commitment, but that program was undermined by a corrupt specially appointed judge and the housing crisis and mismanagement of funds by the various entities tasked to run this program.

Today, the Texas program is a long-term extension of prison with many of the same problems plaguing the Minnesota program, and others. The facility is an old prison, run by a private company, relies heavily on solitary confinement as punishment, and its confinees are called inmates, yet we're supposed to believe this is a 'treatment' facility.

.. The Report can be found on the CURE-SORT website[www.cure-sort.org]."

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Latest SOCC Protest News from TX

[Ed.], "Let's Spill the Tea," *Texas Tea Newsletter* Issue # 10 (September 2022)

Text Excerpt:

p. 1: "...It has been a busy time for us here at TTN as we just completed our second Public Awareness Event, held at the Capitol of Texas. Members of F.AC.T.S., Texas Tea Newsletter, Texas Voices, and many others travelled near and far to spread the word. We were joined by fellow advocates and friends Phil Taylor, Mary Sue, and for the second time, award winning photojournalist Alan Pogue. Not to be left out is advocate Derek Logue of OnceFallen from Nebraska. Several people gave speeches and addressed violations taking places from inside the TCCC. Many were filled with powerful emotions and tears were shed.

We feel like this Public Awareness Event was a huge success, as this was a great opportunity for networking and education. We have formed our own 'family,' and when we fight for our own, we fight for all."

TLP Editor's observations: Pages of this edition of *TTN* were filled with photos of demonstrators displaying protest signs. Many of those statements could easily have been written about SOCC in Minnesota, for instance: "Since 2015, More Men Have Left Civil Commitment Dead Than Alive"; "My Son Has Been in Civil Commitment Longer Than in Prison"; "Fact: Sex Offenders Have the Lowest Reoffend Rate Out of ALL Criminal Offenders"; "I Need My Brother. He Paid His Debt to Society."; "Defund T.C.C.O. – Wasted $$$"; "Free Men Doing Time"; "30 Out of 50 States Don't Waste Taxpayers' $$$$"; "Medical Neglect in TCCC"; and "Reform, Rehab, Release". Clearly, these protesters came prepared to argue to end sex offender civil commitment in their state. Let's hope this movement spreads from states like Texas and Minnesota to other states with SOCC.

The issue goes on to describe a meeting of the governing agency (the "T.C.C.O.") of the TCCC facility in Littlefield attended in the small audience by several protesters of and allied with Texas Tea. Effectively, day-to-day operation of that facility is relegated to a private contracting firm, "MTC." A number of revelations were made in that meeting in a completely blasé manner by TCCO officials who, on the whole, looked bored and importuned by the need to even simply attend this public meeting. In turns, they joked with each other and talked on their cell phones throughout the meeting, scarcely paying any attention to the proceedings.

One of these revelations was that 67 of Littlefield's 418 confinees suffered Covid infections Yet staff are not required to wear masks when working in that facility or to be vaccinated against Covid, and almost none choose to do so. Since visits to that remote facility are infrequent, there is little room for question that the infections were brought into the facility by staff. Twelve Littlefield confinees died from Covid during the pandemic.

SOCC commitments in Texas are proceeding at an all-time high (4 per week), while releases remain virtually rare. TCCO Executive Director McLane stated that she expected that by the end of 2023, the population of the Littlefield

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facility will expand to 490. (At the rate per week cited above, this seems a gross underestimate.) MTC Littlefield Administrator Wayne Schmoker looked forward enthusiastically to this expansion in population. The mean age of Littlefield confinees is 55.

Meanwhile, due to a lack of licensed therapists, McLane continued, at TCCO prompting, 'treatment' sessions are now being self-led by confinees.

TCCO officials at the meeting complained of rising medical costs, despite "savings" in overall operations cost (perhaps due to not having to pay nonexistent therapists?). However, one item of projected increased spending: for confinee cremations and burials. The entire budget for 2023 Littlefield operation was approved at $19 million – strongly telegraphing that virtually no services are provided to confinees, who apparently exist on slim provisions. Yet Executive Director McLane proclaimed that Littlefield operation was "satisfactory." The Red Queen (from *Alice in Wonderland*) would be proud.

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NJ SOCC Confinee Roy Marcum Gets Internet Airtime, Tells It As It Is, Holding Little Back.

Joshua T. Berglan, "Live from Special Treatment Unit New Jersey," Joshua, The World's Mayor", *Live Mana Network*, Multimedia Broadcast, livemanaworldwide.org (Oct. 11, 2022)

Live Mana Network Preface:

"Joshua 'The World's Mayor' is joined in this broadcast by Mr. Roy Marcum, who is locked away inside of the shadow prison disguised as a hospital, under the controversial civil commitment law [specific to sex offenders].

The Special Treatment Unit in New Jersey is one of many Civil Commitment facilities in the United States, and of all the interviews we have done in these facilities, this may be the most informative and believe it or not entertaining.

Roy does a wonderful presentation and answers some very challenging questions like...

- What motivates the sex offender?
- Why are violent criminals being released in various states but Civil Commitment institutions are expanding and building more rooms to house their prisoner patients?
- How are sex offenders and sex addicts different?

The answers may surprise you..."

Transcript Excerpts:

"*Berglan*: ...[W]e're very passionate about what we do, being a voice for the voiceless, but also elevating voices for the voiceless. And today, we have somebody that's, well, I mean, in some ways had his voice taken. But now he's getting his voice by being on this program. And now he has also been a voice for other people that are locked away in shadow prisons known as hospitals." We've talked a lot recently about civil commitment laws. Mr. Roy Marcum is joining us today from the Special Treatment Unit in New Jersey. And he's got quite a story to tell. I've gotten to know him a little bit over the last month. He's really, it's hard to imagine this guy committing any crime. It just is. He just seems like a lovable guy. It's like your favorite cousin. It's just the vibe about him. ...I'm very excited to hear his story and hear what he has to say. And to my understanding, he has been locked away for 20 years with no hope of getting out. And this is after he already served his time. This is going to be a very horrific story for some people to hear, and may confuse people. But at the same time, I just ask that you have an open heart and open mind. He will not be on video today. So you'll be hearing from him. ...So with that said, let's bring on Mr. Roy Marcum. Roy, how are you doing, man?

Marcum: Good, Josh. ...I'm grateful for this interview. I think it's gonna become obvious during the [interview] that there's a lot of confusion and a lot of ignorance, quite frankly, out there about what sex offender civil commitment is. And I'm glad to have the chance to put the story out there for people to get it straight.

[I'm] speaking to you from a civil commitment center for sex offenders. This is a place where people come after they've done their prison time, supposedly for treatment. But primarily, the idea is that people have been selected as highly likely to commit some kind of an offense in the future. Now, the particular one I'm in is located in New Jersey.

The basic thrust is this: It started in Washington [state] in the 1980s. There was a series of sex crimes that were widely publicized, and that scared a lot of people. And ...they started looking for a way to indefinitely sentence people. In other words, people weren't satisfied with the 5-, 10-, 15-, 20-year, and in some cases life sentences that people were getting. Lock them up forever, was the idea of it, and unfortunately this caught on. In a Supreme Court case called *Kansas v. Hendricks*, the [justices] approved of this type of civil commitment.

And the reason they call it civil commitment is that it's related to the normal mental health civil commitment laws for people who are mentally ill and are considered dangerous. Except for this: you don't actually have to have a mental illness; you only have to have what's very loosely called a mental abnormality or personality disorder.

So they have what they call a very broad diagnostic catchment. Think of it this way: If schizophrenia is pneumonia, and bipolar disorder is severe flu, this is a case of sniffles. Virtually anybody walking down the street can be diagnosed with some type of mental abnormality.

[I]n paramilitary operations, like police or something, they use a term called mission creep. When you start out with one objective and you say, well as long as we're doing this, let's move over a little here. Well, let's clean up a little bit in this area too. ...Then pretty soon you've lost the focus of what you've done, and what you started out to do.... And this is what happened in the field of mental health and behavior. You got what some people are calling "diagnostic creep," you got to the point where you're trying to medicalize every aspect of human behavior. You're trying to treat things that are personality quirks or behavior problems, or crimes, or just really evil people as though it were a disease or a medical condition. This is inappropriate, problematic, and dangerous.

The second thing is that there is no certainty. Even if you look at the DSM-5, I think that now they talk about a lot of things that are culturally determined and that are dependent on a person's interaction with society and dependent on deviating from cultural norms and expectations. ...So everybody is locked up not for what they've done, but for what someone thinks they might do. And as a matter of fact, in at least two states that I know of, Illinois and Kansas, you don't even have to have a conviction. You could simply have an accusation of a sex offense, where the charges were dropped, or you were found not guilty, or the accusation just never pans out into any kind of criminal conviction. And you can still be put into these places.

You know the old saying about sex offenders having the highest recidivism rate of any group of criminals, but the fact is just the opposite; it's absolutely not true. Sex offense reoffending rates have been measured as low as 2%.

Most sex offenders are actually fairly ordinary people. One of the reasons these laws have been put in place is that people want to distance themselves from impulses that virtually all of us have at one time or another.

A lot of the people who were brought into the situation have literally not committed a sex crime in over 20 or 30 years. There's two things that people in society get caught up in: (1) when they think or hear of something that scares one, that's called the "availability heuristic." Right now in our society, while news people are eager to broadcast or print any news of some sexual assault or sex-crime scandal, the number to report has actually gone way down from past decades. Why then does everyone think the sex crime rate is much higher? It's because the more lurid tales capture your attention and brand themselves into your memory, making them easier to recall and to represent every subsequent crime of the same category, even if it is far less shocking than the one you recall. It makes you think that truly terrible sex crimes are common, but in fact, a lot are extremely uncommon.

(2) In some states, you can be doing time for a completely unrelated offense that has no sexual connotations. And yet, at the end of that sentence, you can be civilly committed for the rest of your life under these so-called sexual predator laws. We have a guy in here who violated the conditions of his probation by joining a social media app. Now, first of all, within five years of his being brought here, that law was struck down. Now what he did is perfectly legal for people on parole and probation in New Jersey. He never had another conviction, another accusation, or anything. He was living a successful life as a tractor trailer driver.

I don't mean to be cavalier about these things. Nobody is minimizing the suffering of victims of sex crimes.

I want to tell everybody out there that's got a relative or friend, or was able to listen to this if they're in a sexual commitment setting themselves that 90% of what you're being told has absolutely nothing to do with getting the right treatment; it's just a way to troll for a little bit of further information to sustain your commitment during the following year.

The things that go on in these places under the name of treatment are just constant abuse. The browbeating, the false accusations, the lack of due process, the continual harassment ...In some states, they'll give you a list of [the only] people you can call. And they hand you a bill for all this as they lock you up year after year for the rest of your life. They bill you $100,000 a year, to kind of freeze you into bankruptcy for the rest of your life if you ever get out.

No matter what they tell you in therapy, no matter what they tell you in treatment, all they're doing is pushing your buttons and jerking you around to the point where they want to beat you down to make you passive, so ready to accept their views. ...Its allegedly based on cognitive behavioral therapy, which, let me tell you, it's not. Cognitive Behavioral Therapy (CBT) requires an alliance between the treatment provider and the patient. ...They want you to react with compliance, no matter how ridiculous something they tell you. They want you to sit there and hit you whatever it is. They want to hear your acquiescence to a green one on Tuesday, but on Wednesday morning, they'll look you dead in the eye and tell you it's red. And

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you're supposed to say, yes, but on Friday, they'll tell you it's purple. And by next Monday it's green again. But you're supposed to sit there and just say that this is what's actually going on.

There was a guy named Dr. Padilla, who had worked for one of the sex offender commitment centers in California. His research findings showed that there was little if any effect from treatment, it simply didn't accomplish anything. Now mind you, this was a study that had been commissioned by the State of California. He went on to testify about his findings. They tried to use HIPAA, they tried to use other things to prevent him from testifying. California went to great lengths to suppress this information.

This is what's going on everywhere. I've seen treatment providers suit there and lie to people right in their face about things that they had said. ...This is a bad and dangerous law for so many reasons. It locks you up for what people think you will do. ...I mentioned Dr. Roger Lancaster's book, Sex Panic and the Punitive State. His central point is that sex has always had this bizarre place in American culture – the same country that was founded by a puritanical sect that was actually whipping Quakers.

Berglan: ...I know you've answered the question, but like in a sentence or two: Why should the public care about these institutions? Shadow prisons, soul-life-sucking facilities? Why should people care enough to fight? Or to get involved to help shut them down? Why should people care?

Marcum: It goes back to one of the things I said at the beginning. The simpler version is that if it can happen to me today, it can happen to you tomorrow. As we [all] move farther and farther away from rationality, compassion, and actually thinking about what we're doing, [we become] motivated by fear and anger, and a desire to inflict pain on someone else. That eventually chews up everyone. Laws like this make people feel good for a while.

Now look at the degree of irrationality, it's worked its way into the public discourse. I really believe that in many ways, this was one of the scenes that grew into the malignant growth that's just taking over all of our public discourse, [making us] become a more divisive, angry, intolerant society.

Once it gets ahold of us -- look at you now, talking about registration. You have over a million people that are registered as sex offenders in this country. There's only 7,000 of us behind these walls, but there are a million people that the tentacles of this thing are touching – anyone could be picked up or almost anyone, anyone when it comes to New Jersey, can be picked up at any time.

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VR Offers More Accurate & Efficient SO Assessment & Treatment Methods. Why Are We Kept in the Dark Ages?

Peter Fromberger ,et al., "Behavioral Monitoring of Sexual Offenders against Children in Virtual Risk Situations: A Feasibility Study," 9 Frontiers in Psychology Article 224 (March 6, 2018))

Abstract:

"The decision about unsupervised privileges for sexual offenders against children (SOC) is one of the most difficult decisions for practitioners in forensic high-security hospitals. Facing the possible consequences of the decision for society, a valid and reliable risk management of SOCs is essential. Some risk management approaches provide frameworks for the construction of relevant future risk situations. Due to ethical reasons, it is not possible to evaluate the validity of constructed risk situations in reality. The aim of the study was to test if behavioral monitoring of SOCs in high-immersive virtual risk situations provides additional information for risk management. Six SOCs and seven non-offender controls (NOC) walked through three virtual risk situations, confronting the participant with a virtual child character. The participant had to choose predefined answers representing approach or avoidance behavior Frequency of chosen answers were analyzed in regards to knowledge of the participants about coping skills and coping skills focused on during therapy. SOCs and NOCs behavior differed only in one risk scenario. Furthermore, SOCs showed in 89% of all cases a behavior not corresponding to their own belief about adequate behavior in comparable risk situations. In 62% of all cases, SOCs behaved not corresponding to coping skills they stated that therapists focused on during therapy. In 50% of all cases, SOCs behaved in correspondence to coping skills therapists stated that they had focused on during therapy. Therapists predicted the behavior of SOCs in virtual risk situations incorrect in 25% of all cases. Thus, virtual risk scenarios provide the possibility for practitioners to monitor the behavior of SOCs and to test their decisions on unsupervised privileges without endangering the community. This may provide additional information for therapy progress. Further studies are necessary to evaluate the predictive and ecological validity of behavioral monitoring in virtual risk situations for-real life situations."

Peter Fromberger, Kirsten Jordan, Jurgen L. Muller, "Virtual Reality Applications for Diagnosis, Risk Assessment and Therapy of Child Abusers," 36(2) *Behavioral Science & the Law* 235-244 (March 2018)

Abstract:

"Despite the successful application of virtual reality (VR) in a wide variety of mental disorders and the obvious potentials that VR provides, the use of VR in the context of criminology and forensic psychology is sparse. For forensic mental health professionals, VR provides some advantages that outrun general advantages of VR, e.g., ecological validity and controllability of social situations. Most important seems to be the unique possibility to expose offenders and to train coping skills in virtual situations, which are able to elicit disorder-relevant behavior -- without endangering others. VR has already been used for the assessment of deviant sexual interests, for testing the ability to transfer learned coping skills communicated during treatment to behavior, and for risk assessment of child abusers. This article reviews and discusses these innovative research projects with regard to their impact on current clinical practice regarding risk assessment and treatment as well as other implementations of VR applications in forensic mental health. Finally, ethical guidelines for VR research in forensic mental health are provided."

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Politicians' Ignorance & Animus and Constituents' Fears & Rage Drive Sex Offender Registry Laws

Sandy Jung et al., "Sex Offender Registries: Exploring the Attitudes and Knowledge of Political Decision-Makers," 27(_) *Psychiatry, Psychology and Law* ___ (2020).

Abstract Excerpts:

"Sex offender registries (SORs) were established due to policies and practices intended to protect the public from individuals who commit sexually violent acts, and yet the empirical literature does not show that public SORs reduce or prevent sexual crimes. ...[One-third [of participating political decision-makers] believed SORs helped to protect the public.

Text Excerpts:

"...In Canada, there are two registries (Ontario Sex Offender Registry, OSOR; National Sex Offender Registry, NSOR), which are not available to the public, and both were implemented to assist law enforcement agencies in the investigations of sexual violence cases (Murphy, Federoff, & Martineau, 2009). ...It is already known that partisanship plays a strong mediator role in shaping both attitudes and policies (see Blank & Shaw, 2015; Suhay & Druckman, 2015, for further discussion). ...The unfortunate problem with the influential role of partisanship and community opinions is that less weight is placed on sound policy decisions and scientific knowledge. Instead, emotional reactance to news stories about sexual crimes often takes precedence.

...[T]he findings suggest that the non-public SOR in Canada has little to no impact on reintegration into the community (Murphy & Federoff, 2013).

...A study carried out with university and community samples of participants revealed that compared to Canadians, more Americans endorsed a public SOR, which is consistent with United States laws (Jung et al., 2018) ..Canadians were more punitive in their evaluations of sexual offense perpetrators and more stereotypical in their views of sexual offenders (i.e. predatory and unable to control their offending behavior). In addition to the lay public, views of law enforcement have been examined. Tewksbury and Mustaine (2013) reported that, although most law enforcement officers (62.1%) did not believe that SORs effectively prevented sexual offending, two-thirds (63.1%) reported that all sex offenders should be placed on an SOR....

The view of politicians on sex offender policies were examined among a small sample of 25 politicians in the United States. Meloy, Boatwright, and Curtis (2013) found that U.S. politicians had more negative attitudes towards rehabilitation of sexual offenders than those who worked in the criminal justice system, despite similar proportions of each group believing that laws served to increase public safety. Their findings led to concerns about their devaluation of rehabilitation and preference for punitive sanctions, especially in light of studies that show that personal opinions of public officials have a significant influence on legislative decisions (e.g., Sample & Kadleck, 2008).

Method

Participants

Twenty-six political members from Canada and the United States participated in the study. Ten participants were from the United States (38.5%), and 16 participants were from Canada (61.5%) .... A majority of participants identified as White or Caucasian (n = 25, 92.3%), with only one participant identifying as black (3.8%) and one Asian (3.8%). With regards to education, one participant completed high school (3.8%), and most completed post-secondary education, which included a technical certificate (n = 9, 34.6%), associate degree (n = 2, 7.7%), undergraduate degree (n = 3), 11.5% and graduate or professional degree (n = 11, 42.3%).

Opinions on SORs

...[M]any believed that SORs should be available to the public (61.5%). However, less than half believed that SORs

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help to protect the public (38.5%) and even fewer believed that SORs help prevent sexual offenders from committing sexual offenses (7.7%) or non-sexual offenses (26.9%). When asked if they believed SORs helped offenders live in the community, very few endorsed this belief (11.5%). We also asked a separate question regarding whether politicians believed that sexual offenders should have residential restrictions placed on them, and 76.9%% reported that they agreed or partly agreed.

When the means for each opinion are compared to the views of community members from both respective countries as reported in a previous study (Jung et al. 2018), we found that two significant differences emerged. Politicians were less inclined to support SOR availability to the public than community members... Also, politicians were less likely to believe that SORs helped to protect the general public than community members.

Opinion correlates

To further examine what attitudinal variable may correlate with stakeholder opinions, we conducted Spearman correlational analyses between the responses on each opinion question and each scale and subscale measuring [belief in a] just world (BJW), attitudes towards sexual offenders (Community Attitudes Towards Sex Offenders/CATSO) and political attitudes (Survey of Political Attitudes/SPA)....

The total score from the BJW scale was positively correlated with views about SORs helping offenders live in the community, indicating that the more one believes that people get what they deserve, the more they believe that SORs help offenders reside in the community []. Further, the BJW was positively correlated with views on residential restrictions, suggesting that the more one believes that people get what they deserve, the more they believed that sex offenders should be restricted in where they live [] ....

When the CATSO was examined, the Social Isolation and Capacity to Change subscales demonstrated positive correlations with a few of the politicians' opinions. The Social Isolation subscale correlated with view that SORs help offenders reside in the community, showing that the more one views sex offenders as isolative loners lacking in social skills, the more SORs are perceived as helpful to offenders who reside in the community []. The Capacity to Change subscale was significantly and positively associated with several subscales, indicating that the more one perceives sex offenders as unwilling or unable to control their sexual behavior, therefore deserving of severe punishment and infringement of their civil rights, the more one believes that SORs (a) should be available to the public [], (b) should be available to law enforcement [], and (c) help protect the public [], and that (d) residential restrictions should be placed on sex offenders [].

Correlations between the SPA total score and three subscales with the seven opinion questions were examined. The overall SPA total was significantly and negatively correlated with the three perspectives about the SOR, indicating that overall liberal perspectives were related to views that SORs should not be made available to the public [], should not be available to police [], and do not help offenders reside in the community []. Further liberal views were associated with beliefs that residential restrictions should not be placed on offenders [].

Subscales measuring liberal perspectives about individual rights (i.e. views on abortion rights, legalization of marijuana, separation of church and state, and same-sex marriage), political compassion (i.e. views on minimum age, the environment, military action and universal health care) and wealth distribution (i.e. views on taxation, government spending and social security) were correlated with several opinions. Liberal views on all three subscales were associated with less support for making SORs available to the public [] or law enforcement [], the view that SORs help offenders live in the community, and the view that residential restrictions should be placed on sex offenders []. Furthermore, the liberal-leaning perspectives of political compassion was negatively, correlated with the opinion that SORs prevent non-sexual offenses [], and liberal-leaning perspective of wealth distribution was negatively correlated with the opinion that SORs protect the public [].

Discussion

...Our study revealed that, of our sample, two-thirds of politicians endorsed views that SORs should be made available to the public.... Despite these beliefs in making SORs more available, most of our participating politicians did not believe that SORs helped to prevent sexual or nonsexual offenses from being committed. Percentages were similar to those of other criminal justice professionals, particularly police officers surveyed in past studies. A small proportion of surveyed police officers (23.3%) believed that SORs deterred sexual offending (Tewksbury & Mustaine, 2013), while a slightly higher proportion, although still half or less, believed that SORs prevented reoffending (54.2%, Harris et al. 2015; 37.9, Tewksbury & Mustaine, 2013). These numbers contrast from community member studies, where a larger proportion believed that SORs helped to prevent sexual offending (64%, Schiavone & Jeglic, 2009). It is then curious why politicians, along with other criminal justice professionals, seem to support SORs when they do not always perceive SORs to be related to reductions in sexual crimes. It is possible that there are other reasons for politicians' endorsement of SOR availability to the public, and particularly to law enforcement. Such reasons may be less focused on rehabilitation or management of offenders, which would seemingly lead to reductions in sexual violence, and more focused on punitive reasons (e.g., may believe that sexual offenders should be monitored as part of their loss of freedom for their crimes). Reasons could also be related to listening to the concerns of the public and hence supporting the public's view that SORs should be made public....

When politicians were asked about their views regarding residential restrictions placed on sex offenders, a large proportion agree that they should have such conditions. This latter finding was interesting in light of the empirical evidence that shows that residential restrictions do not have an impact on reducing sexual crimes (e.g., Mercado, 2008). Other studies have found that half or more of criminal justice professionals such as police (70.6%, Tewksbury & Mustaine, 2013), correctional staff (50.4%, Tewksbury, Mustaine, & Payne, 2011), and parole board members (42.3%, Tewksbury & Mustaine, 2012), believe that residential restrictions helped to prevent offenders from victimizing others. When told that there is no scientific evidence to support residential restrictions, more police (81.5%, Tewksbury & Mustaine, 2013) still supported the policy, and the number of correctional staff (41.5%, Tewksbury et al. 2011), and parole board members (36.6%, Tewksbury & Mustaine, 2012) who supported it was slightly reduced. A more recent study by Harris et al. (2015) found that 26.7of the police surveyed said residential restriction laws should be expanded and/or applied to a larger group of offenders. There seems to be a tendency for criminal justice professionals, along with politicians in the current study, to support the use of residential restrictions in managing sexual offenders....

Given the plethora of research examining the influence of political attitudes on policies and receptiveness to scientific knowledge (e.g. Blank & Shaw, 2015; Suhay & Druckham, 2015), we examined the association between political perspectives and opinions about SORs. Overall, we found that liberal-leaning attitudes (SPA) were associated with views that SORs are not helpful (i.e., for offenders to live in the community and preventing offending) and should not be made available to the public or law enforcement. Furthermore, liberal attitudes were also associated with the tendency to be less supportive of residential restrictions. Our findings are consistent with a recent study that found right-wing conservatives to be a strong predictor of negative attitudes towards sexual offenders (e.g. recidivism, social distancing, etc.; DeLuca et al. 2019). Contrary to expectation, our study also showed that accurately identifying sexual crimes that would be placed on the SOR was associated with more conservative attitudes. However, a limitation of our study is that a larger proportion of scenarios were in the affirmative direction (i.e., saying 'yes' about a case was more likely to lead to a correct response); hence it would be expected that more conservative-leaning politicians would tend to guess that most cases involving sexual relations would lead to the individual on an SOR, and liberal-leaning politicians would tend to be more cautious when guessing about a case.

...An unfortunate but common finding is the tendency for those who do not directly carry out professional work with sexual offenders to view them as a homogeneous group. In their survey of Florida residents, Levenson, Brannon, Fortney, and Baker (2007) found that there was a consistency in how residents viewed sexual offender reoffending behavior as homogeneous regardless of their risk level. Similar findings can be seen in several studies in Canada and abroad (e.g. Olver & Barlow, 2010; Willis, Malinen, & Johnston, 2013)."

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Internet Lawsuit

MN SOCC (MSOP) Confinees Seek Summary Judgment Ordering MSOP to Provide Them Internet Access

By Cyrus Gladden

Sometimes actions with great historical significance start slowly and quietly, only to gain notice later when matters finally come to a head. Here in "MSOP", Minnesota's sex offender civil commitment (SOCC) system, a lawsuit was filed in federal court many months back seeking to force MSOP to provide all of its confinees internet access.

Right now, by regulations instituted nearly two decades back, MSOP does not allow any of its confinees internet access for any reason. This even includes a ban on incoming and outgoing email.

Principally, the suit contends that deprivation of internet access to confinees in the modern age is a denial of confinees' right to communication and other First Amendment rights that can only be fully honored by internet access.

This lawsuit, titled *Daywitt et al. v. Harpstead et al*, has gradually wended its way past initial judicial clearance to proceed, past an unsuccessful motion to dismiss the case, and through a discovery process, and has now come up to the stage of summary judgment motions.

The Plaintiffs managed to gain over 4,000 pages of discovery materials, greatly supporting their factual claims. The factual development of the case has been somewhat unusual for two reasons, both of which favor Plaintiffs' position.

First, Defendants have not secured an expert witness on the nature of the internet as such nature affects Plaintiffs' contention of its necessity for everyone living in the modern age, regardless if incarcerated in a 'shadow prison' masquerading as a mental health facility.

Instead, in a response to a discovery inquiry, defense counsel explained that Defendants would move to gain expert witness status for the highest MSOP executives on the claimed lack of internet necessity and on the converse claim of supposed adverse effects on sex offender treatment from internet access.

However, it is important to note that the suit does not seek access to illegal pornographic imagery or even any 'near-porn' legal images, and that the suit acknowledges the power of a sex offender treatment facility to use filtration to bar access to web pages with sexually posed depictions of humans aimed to spark criminal sexual motivations.

To the contrary, the suit points out that filtration software has gotten so good at weeding out such web pages that this fear no longer poses a reasonable fear. Plaintiffs' expert has called such current filtration methods "foolproof." Hence, the old argument that internet access could not be provided to committed sex offenders lest such imagery be downloaded is now obsolete.

The second reason favoring Plaintiffs is a very lucky success: they have managed to retain a preeminent expert on the internet who has specifically worked in the sub-field of internet filtration and all related topics of rendering the internet 'safe' even for children, without having to sacrifice access to any non-prurient content. This expert will testify to the relevant facts on this and to his expert opinion that there is no reasonable fear of adverse consequences from simple access to any other aspects of the internet.

The expert will also outline why deprivation of internet access in the modern age reduces those deprived of virtually all access to:

- being able to communicate effectively with loved ones;
- learning about and dialoguing/debating about public/governmental/political matters;
- social conversation and broadening social acquaintances and friendships;
- countless vast storehouses of information on any academic and any technical topics;
- modern commerce/shopping;
- all forms of entertainment, from streaming to downloading and even to buying for physical delivery (for instance, physical books, CDs, and DVDs, all vetted first by receiving staff at the confinement facility in question);
- modern banking; and
- interaction with government offices (as in applications for benefits or needed permissions for various actions).

We will take a closer look at the testifying expert's view below, thereby discovering the overwhelming merit of this lawsuit for internet access.

Formal and informal education and training are widely available, but only on the internet as well. The very long list of such helpful aspects only available online – especially to those who are confined – means that there is no population anywhere with a more urgent and complete need for internet access than those in SOCC facilities such as those of MSOP.

The *Daywitt v. Harpstead* lawsuit also asks for a court order forcing MSOP officials to allow MSOP confinees to buy, own and possess computing equipment necessary for internet access and for storage of downloaded materials, so that internet communication can be meaningful and effective to the purposes given as examples above. Currently, MSOP confinees cannot possess any computing or communicating equipment. It has been reported that Nancy Johnston, the current Executive Director of MSOP, has vowed that MSOP confinees will never have computers anytime during her tenure in that chief official position.

Yet discovery proceedings in the case have revealed that Defendants know of no evidence that any level of emotional or mental disturbance, sexual or otherwise, would be aggravated by internet access, or that any danger, whether within the confinement facilities or to the public at large (now or after release from confinement) would be created or increased by internet access.

In sum, Plaintiffs contend that, whatever legitimate problems (if any exist) posed by internet access that Defendants may gin up in the case do not present the defense that the current complete ban on internet access is the least restrictive means to fix or reduce such problems in any reasonable way.

Against that defense contention, Plaintiffs assert that "modern technology" has become as necessary to being a member of society as reading and writing is to functioning independently. They add that the internet has become such an essential and integral necessity of life in the United States today that it should be regarded as a fundamental necessity for survival in the modern world, whether inside a general mental hospital, or inside the facilities of the Minnesota Sex Offender Program (MSOP).

Beyond this, the *Daywitt* Plaintiffs have also complained that MSOP, through measures like deprivation of internet access, is failing to prepare its aging population and other confinees for the challenges of today's society. Without any internet experience, patients will have difficulty navigating the world once released. Ironically, their inability to navigate the world is one reason often advanced to deny confinees such release.

Specifically without internet access in advance of release or even simply any prior experience in using cell phones (also banned to MSOP confinees), say the Plaintiffs, releasees will have grave difficulty finding work, seeking education, obtaining housing, and learning the necessities of daily life. Plaintiffs themselves, and other confinees as well require training and experience in these areas to become proficient in use of modern technology.

President Biden, paraphrasing earlier sentiments by past President Obama, said, "High-speed Internet service is no longer a luxury – it's a necessity" for every American as an essential and mandatory part of life in the United States. Almost all communication is now digital; traditional 'snail mail' is a quaint thing of the past, not regarded as an earnest attempt to communicate seriously in commerce or with government. Snail mail letters are now typically ignored, especially when there is no available digital means of reply (which unfortunately is true of MSOP).

Defendant MSOP Executive Director Johnston agrees that access to modern technology is necessary for communication, and that her own life would be much more difficult without such means of communication. Interestingly, she also concedes that implementation of computers, cell phones, and internet access could uncover new avenues and means of treatment in SOCC treatment facilities.

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Despite all this, Defendants have not looked into the possibility of providing internet access to confinees at all and appear to be resolutely, categorically opposed to it. Thus, they have not engaged in an act of professional judgment, but instead have simply been biased and arbitrary.

Plaintiffs point to *Packingham v North Carolina*, a 2017 SCOTUS case striking down a criminal law banning a registered sex offender from using social media (e.g., *facebook*) on the internet. Quoting *Ashcroft v. Free Speech Coalition* (2002), the *Packingham* court reasoned, "...[T]he government may not suppress lawful speech as the means to suppress unlawful speech." That decision continued, "... [T]o foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights ...Even convicted criminals and in some instances especially convicted criminals might receive legitimate benefits from these means for access to the world of ideas, particularly if they seek to reform and to pursue lawful and rewarding lives." The *Daywitt* Plaintiffs add, "Note that *reform* is the only legitimate reason for Plaintiffs' confinement at all."

It is indisputable that the Defendants' program-wide ban on modern technology of communication restricts Plaintiffs "from communicating with hundreds of millions and perhaps billions of adults and their companies despite the fact that the communication has nothing whatsoever to do with "sexual crime or other nefarious activities." *Doe v. Nebraska*, 898 F. Supp.2d 1086, 1111 (D. Neb. 2012).

In addition to a "freedom of speech" claim relating to communication via the internet, Plaintiffs also tie-in abridgement of their right to free exercise of their respective religions by pointing out that the gradual ongoing end-of-paper-publication of religious periodicals and documents means that resort to the internet to continue access to same is increasingly becoming indispensable.

Comparatively, it has proven incredibly difficult, and in certain cases impossible, for MSOP to find clerics or approved lay preachers or instructors willing to visit MSOP (sometimes by having to travel great distances weekly) to provide religious services or even just counseling to MSOP confinees wishing to receive same. It should be instantly apparent to outsiders that internet access would very quickly locate online religious services of every conceivable religion and sect.

Within their right to communication under the First Amendment, Plaintiffs also contend that their right to participate in political speech on the internet – and even their simple right to access political speech by others who already post on websites or operate such sites on behalf of organizations is almost entirely cut off by blocking internet access by them. This especially impacts access to local political matters that typically do not receive TV or radio news coverage, and also leaves minor political parties and independent candidates and commentators without any practical means of communication to, or receipt of inquiries by the majority of MSOP confinees who can vote or will be able to do so in the next few years. On a related note, Plaintiffs also point out that in Minnesota, the only way now to stay current or in daily contact with State Capitol politics is online.

The internet is distinctly vital to access information about current events, to check ads for employment, to speak and listen in the modern digital equivalent of the now defunct physical "public square, and otherwise to explore the vast realms of human thought and knowledge. *Packingham* at 1737-38. The *Daywitt* Plaintiffs observe on this: "In Minnesota, modern technology and the internet have become the public square." This includes gathering medical information, which MSOP itself does not provide to any significant extent to any of its confinees – and then not until the confinee in question is already ill or has some diagnosed condition that may be grave.

In a 2021 case arising from Minnesota itself, SCOTUS held that it is the government's burden to show that the proposed method of meeting people's needs won't work, not the plaintiff's burden to show that it will *Mast v. Fillmore Cty, Minn.*, 141 S.Ct. 2430, 2422; 210 L. Ed. 2d 985; 2021 US LEXIS 3586; 89 U.S.L.W. 3447 (2021). Interestingly, the *Mast* plaintiffs were Amish seeking not to have to avail themselves of modern technology, not *vice versa*. Nonetheless, the principle remains the same. See more squarely as to First Amendment concerns, *Fulton v. Philadelphia*, 593 U. S. ___, 2021 U.S. LEXIS 3121, 141 S. Ct. 1868; (2021).

The *Daywitt* Plaintiffs contend that the total ban on any internet access imposed by MSOP is clearly not the least restrictive way to bar digital entry into MSOP facilities of material thought to encourage rape or child sexual abuse. They adapt a quote from *Jones v. Stanford*, 489 F.Supp3d 140, 152 (E,D.N.Y. 2020), citing *Ward v. Rock Against Racism*, 491 U.S. 781, 800 n.7 (1989): By defendants "applying the Ban to a broad swath of protected activities that do not necessarily involve [sexual abuse], the Ban fails to pinpoint the source of the evils [the defense] seeks to eliminate without at the same time banning or significantly restricting a substantial quantity of speech that does not create the same evils." Plaintiffs in the *Daywitt* case hasten to add that the Defendant's justification "must be genuine, not hypothesized or invented *post hoc* in response to [preconceived notion]." *United States v. Virginia*, 518 U.S. 515 at 533 (1996).

The Supreme Court and the federal appellate Circuits, coast to coast, are in agreement that sweeping internet restrictions and total bans from the internet trigger constitutional protection. *Packingham v. North Carolina*, 582 U.S. ___, 137 S. Ct. 1730, 198 L.Ed.2d 273 (2017); *United States v. Voelker*, 489 F.3d 139 (3d Cir. 2007) *United States v. Ellis*, 984 F.3d 1092 (4th Cir, 2020); *United States v. Holm*, 326 F.3d 872 (7th Cir. 2003); *United States v. LaCoste*, 821 F.3d 1187 (9th Cir. 2016) and *Doe v. Jindal*, 853 F.Supp.2d 596 (M.D. La. 2012).

The *Daywitt* Plaintiffs distinguish prison regulations that limit or even effectively ban internet access on the ground that "persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish." *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982) (noting that civilly committed persons "may not be punished at all" [*id.*, 315-16]). Hence prison cases such as *Turner v. Safley* and *Thornburgh v. Abbott* have no true application to 'civil commitment' facilities like those of MSOP.

Returning to the Daywitt Plaintiffs' expert witness (name withheld by request at this juncture), his credentials are truly stellar. He has a Bachelor's degree in computer science from New York University, and a Master's degree in Business Administration from Hofstra University (summa cum laude) and is currently working on a law degree as well.

Meanwhile, he sold an internet social media website business for $45 million, and completed seven IT security certifications with internationally accepted certifying organizations. In sum, he has 35 years of post-college hands-on industry experience, from programming and developing software to being the Chief Technology Officer and CEO of his own internet corporation.

He has worked in telecommunications, transportation, and internet industries and has founded other business startup firms. His internet applications experience includes networking, media, education, legal, and dating fields, and many other internet e-commerce applications.

Through many experiences in his career, he has carried out tasks concerning filtering blocking, and monitoring internet content. One of his certifications, CISSP (Certified Information Systems Security Professional) often concerns this large subfield of information security.

He has more specifically already testified as a computing and internet expert in federal courts in the 1st, 2nd, 3rd, and 5th Federal Circuits.

The first finding by this expert witness is perhaps the most provocative: MSOP itself already uses content filtering, blocking, and monitoring software for its own employee IT system. That software is Cisco Umbrella, a content filter, blocker and monitor with AI-driven threat protection built on DNS layered filtering. In addition to DNS-layer security and secure web gateway, mentioned above, it also includes cloud-delivered firewall, cloud access security broker (CASB), and interactive threat intel functions.

Even so, MSOP/MNIT leadership was unaware of the technology used in its own program or could not discuss any details of it in a knowledgeable way.

From the expert's investigations, it emerged that the software used by MSOP's Provisional Discharge program is the same as used by the MN Dept. of Corrections for supervision of sex offenders' use of the internet while on parole. That software is known as Internet Probation and Parole Control and is provided by a firm by the name of IPPC Technologies. It makes four tools available to probation/parole officers to use, including computer content scanning, monitoring computer/internet activity, cell phone usage and a secure learning environment.

Since the extant computer system provided for internal use by confinees is an adjunct of the same overarching Cisco system, it appears ludicrous for MSOP to claim that it lacks sufficient expertise to provide adequately filtered and blocked internet service to confinees' computers. In fact, networking personally owned confinee computers offers the strong advantage of being able to constantly monitor not just internet interactions as they occur, but also the files added to any such given computer.

Further, MSOP has already informed SOCCPN that they do not supervise access to communicative technology, but have content restriction and monitoring already in place as to confinee use of such technology. Interestingly, the expert has proposed a solution so inexpensive that it costs less than what MSOP currently spends on mail processing.

The expert's pre-trial report explains that internet content blocking can occur at many points, among which are: search filtering; having automated observation of traffic content by the network (such as MSOP's) block it in real-time as it is attempted to be downloaded, and software loaded into each computer used by confinees.

In all, this combination can provide these five internet blocking techniques: (1) Search filtering; (2) DNS blocking; (3) IP blocking; (4) URL blocking; and (5) deep packet inspection for forbidden content. Most secure probably is a secure web gateway, based on a web proxy that sees and inspects all web connections, including all files and complete URLs. The expert witness rates this as "highly effective."

In sum, there are many products/solutions that can do what Plaintiffs

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request while effectively providing security and filtering to the MSOP system through which their internet access will be intermediated. The expert suggests these exemplary firms for their highly effective products for this purpose: IPPC Technologies; WebTitan; [Content]Watch, Cisco Umbrella; DNS Filter; Barracuda; CurrentWare; perimeter 81; WeoWatcher; Net Nanny; and Websense

Specifically, the expert recommends a "solution" to resolve the MSOP internet access dispute using WebTitan platform and software tools needed. He reports that "it will filter, block, and monitor Plaintiffs' internet activity [as] required to satisfy the Defendants." This web filter software protects users from online threats by blocking access to dangerous website categories, including malware, phishing, spam, anonymizer sites, and objectionable or prohibited content.

WebTitan allows adherence to the entity's web usage policies by blocking access to categories such as adult, pornography, hate speech, and nudity; or creating usage policies to ensure resource protection, controlling or limiting access to social media, video, or streaming sites.

The expert's report favorably compares WebTitan over CISCO Umbrella, citing one religious organization that moved from Umbrella to WebTitan for reasons of superior protection and reduced cost.

The report goes into some surprisingly intricate detail in its proposal to the court It addresses mobile devices as a special topic. Overall, it provides a lengthy, detailed "Recommended Step-by-Step Implementation."

His report makes this incisive observation: "The [MSOP] scenario ...is far more of a technical issue than a psychological/ clinical issue. Yet, after reading the depositions, key MSOP decision-makers could not explain the technology or offer any science-based reason for their MSOP program-wide ban on the internet for civilly-committed clients."

Probably more for this than for any other reason, that recommended implementation proposes that the court appoint a Special Master to oversee rollout of the MSOP implementation The expert explains the need for such an official thus: "...[A] bureaucracy (from my experience and as indicated in the Defendants' depositions), typically will do everything possible to cause a project like this to fail. Furthermore, the Plaintiffs may need immediate recourse with the Court should they encounter such impedance from MSOP, MNIT and DHS personnel."

The most controversial portion of the proposed implementation, Step 1, would allow confinee access only to web sites on a very limited prearranged list. Whether confinee input would be allowed as to which sites would be on this very limited list is not currently decided. However, Step 2 allows somewhat broader access than Step 1, based on a per-confinee decision. In Step 2, confinees can 'nominate' sites to be added to their permitted list. Finally, in Step 3, WebTitan's general filtering and categories would be used (that is to say, the limited list would go away). Details of filtering and categories to be used would be specific to each confinee.

Just as this article was being researched, MSOP officials announced that "tablets" have arrived in their Moose Lake, MN facility in which this writer is confined. As everyone in the modern world knows, a "tablet" is a small version of a portable personal computer. However, in this instance the reference is to a device not actually offering most features expected in a personal computer. These "tablets are furnished by "GTL" (originally short for "Global Tel-Link"), a firm specializing in delivery of telephony services to prisoners.

I'll get back to where this piece fits into the overall jigsaw puzzle of the current case demanding internet access below. However, first a little backstory is required to be able to perceive the big picture.

Unlike prisoners, those in most mental health institutions under 'traditional' civil commitment for mental conditions depriving them of an ability to function adequately in society (such as hallucinatory schizophrenics) have been allowed access to the internet within the institutions confining them, except when, on a case-by-case basis, exposure to the internet so confused them that they reacted with emotional outbursts. However, those confined in the unique and much more prison-like facilities of SOCC have never been granted this right of internet access.

Thus, ever since the Millennium, both prisoners and those in SOCC confinement facilities have begun to realize that complete bans by their captors on internet access have put all of these confinees at a disadvantage compared to members of free society in terms of ease of communication and the other uses of internet connectivity.

Initially, such internet bans were so total that they even barred email use. However, over time, even prisons have eased these restrictions to make accommodation for email use, albeit not through direct internet access by prisoners, but instead through intermediary services (such as GTL's earliest offerings in this regard), which receive a prisoner's incoming and outgoing emails, vet them, and then send on approved emails either to the prisoner recipient or from the prisoner to the outside recipient of prisoner emails. The delays in this vetting process bog the process down greatly. For this, such intermediaries charge the prisoner typically 50 to 60 cents per 1-page email.

Beyond this service, these intermediaries usually only provided music downloads for an over-market price per-song or per-album. "J-Pay" (a firm created to service the federal prisons market) was first with such handheld devices with 4-inch screens and no keyboards. Obviously such devices were never intended to support any internet access at all. The email function, where allowed, was fulfilled by the inmate typing (with a typewriter) or handwriting an email message, submitting it to prison staff, who would input it and pass it along to the provider (such as J-Pay or GTL). Obviously, this cumbersome process deprived email of its most useful attribute: instantaneous speed.

At some point in the most recent few years, firms like GTL and its competitors in the prison telephony market realized that a demand existed on the part of prisoners for other internet services, and thus began to offer a few such other services (mostly just extremely limited internet shopping at a few designated – and often subsidiary – sites specific only to the incarcerated market, and still only on an intermediated basis).

A growing number of prison systems around the country have been adopting these expanded service packages for their inmates. Nonetheless, in short, due to restrictions imposed by correctional authorities, these services cannot truly be classed as "internet portals" (à la early AOL service), much less "internet access." Instead, it is far more accurate to conceive of these services as 'internet-access substitutes' – and very pale fictional substitutes at that.

However, no SOCC confinement system to this writer's knowledge has yet embraced even so much as this extremely limited 'faux internet' substitute service. Apparently, at least all SOCCPN and ATSA member SOCC systems have accepted the scientifically-baseless assertions by former SOCCPN Clinical Director Jannine Hebert and MSOP Executive Director Nancy Johnston that any internet access presents an unacceptable risk of un-interdictable criminal misconduct by SOCC confinees.

Sometime around 2016, MSOP finally allowed J-Pay to establish service kiosks in its facilities. However, it did not permit J-Pay to operate any email intermediary service, effectively limiting J-Pay's service in MSOP to nothing more than selling songs and musical albums to confinees.

About three years ago, MSOP apparently realized in the wake of the 2017 *Packingham* decision and later decisions quickly spreading its impact to those on parole that the right of internet access would eventually be applied even within prisons and other confinement facilities such as MSOP.

Hence, they invited GTL and J-Pay to submit proposals to MSOP to provide service packages including extremely limited and intermediated internet access to MSOP confinees. J-Pay's proposal was initially accepted by MSOP. However, once MSOP officials realized that some (albeit tightly restricted) actual internet access was involved, they rescinded that contract, which J-Pay saw as a breach of contract. Long negotiations ensued, but did not result in MSOP accepting any package of service by J-Pay, since even its most limited package included some small aspects of actual internet use (i.e., only of given websites).

When cases such as *Daywitt* started to crop up insisting on internet access as a First Amendment right, MSOP hastened to invite GTL (under its parent name, "Securus Technologies") to submit an updated version of its proposal, but under strict limitations by MSOP to prevent such direct (not intermediated) internet access

It would appear that the aim here was to provide MSOP with an argument presentable in court that it was proceeding prudently to provide as much in the way of internet access as it felt comfortable doing, hoping that a presiding judge would agree, upholding MSOP's categorical ban on 'true' internet access of the type now sought by the *Daywitt* Plaintiffs.

Apparently simultaneous with *Daywitt* Plaintiffs' motion for summary judgment, MSOP has announced to confinees at last in its Moose Lake facility that the Securus tablets which will provide these intermediated services will be made available to at least some confinees on a loaner basis effective in early-November 2022.

Hence, it seems clear that this gambit will be part of MSOP's defense against this summary judgment motion and, if successful, in defense at trial of the whole case. Meanwhile, at the last possible moment, the *Daywitt* Defendants have launched their own summary judgment motion, short on science but long on ominous-but-baseless predictions of internet misbehavior.

Thus, all spectators to this judicial version of a pugilistic contest now await ringing of the second-round bell.

Will acknowledgement and judicial enforcement of rights of those in SOCC confinement be served in keeping with the long arc of First Amendment case law solidifying internet access rights for all?

Or will the lone 'carve-out' exception (outside of the punitive environment of prisons) that MSOP urges should be applied to its confinees (who it persists in trying to style as "dangerous" monsters) be accepted by judges who should know better, but who find it more comfortable to go with, disregarding the damage to the First Amendment itself that such a ruling inherently inflicts?

Obviously, a road to one of two very different future histories will be paved in this case. Momentous is not too strong a word to use. Stay tuned for further developments.

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