the Legal Pad

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"Truth has no special time of its own. Its hour is now – always." – Albert Schweitzer, Out of My Life and Thoughts (1949)

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— & New articles arrive like rain!

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Feedback? News? Write!

tLP Editor Address (Exactly & **Only** as Below):

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

Hold the Presses—This Just in:

8th Circuit Panel Sweeps Aside 3rd *Karsjens* Appeal in Complete Victory for Defendants-Appellees.

by Cyrus Gladden

At the periodic RAFC meeting in MSOP-Moose Lake on Saturday, July 15, New York City attorney Bill Dobbs, community RAFC member and long-time advocate against sex offender civil commitment, announced that he had learned that the judicial panel handling the *Karsjens* third appeal had issued an order, apparently on Tuesday or Wednesday (July 11 or 12) deciding the appeal issues tersely in favor of the state-official defendants-appellees and had dismissed the remaining counts of the underlying *Karsjens* Third Amended Complaint. He then read aloud that order or at least the crucial portions from it that have this effect.

Because this information was not available until later on Saturday afternoon, immediate second-source confirmation was not available. However, the following day, Steven Love, an MSOP-ML confinee announced that one of his supporters in freedom checked the website of the 8th Circuit Court of appeals and had discovered a notation in the case record that confirmed that this outcome has been decided upon.

The only possible recourse in the 8th Circuit would be to seek "en banc" review of that decision. Thus far in the *Karsjens* appeals, that particular option has never met with success; further, it is rarely successful in all cases in the 8th Circuit. Hence, it is an unlikely choice for attorneys for the *Karsjens* plaintiff class at this point.

The only other option left in the *Karsjens* case now is a petition for "certiorari" (discretionary review) by the United States Supreme Court. Such petitions are also very seldom granted.

Hence, at this writing, it is not certain what decisions will be made as to the *Karsjens* case. If no action is taken, the *Karsjens* case will be at a permanent end this time.

No further details or other facts are known at time of this 'hold the presses' writing. Those with internet access can log onto the official Eighth Circuit website, www.ca8.uscourts.gov, for clarification.

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McDeid & Garry Case:

Minnesota Supremes Rule MSOP Officials & Staff Have No Lawsuit Damages Immunity. Case Goes Back for Trial.

by Cyrus Gladden

The Minnesota Sex Offender Program (MSOP) operates the 'shadow prison' system of two facilities in this state confining sex offenders committed when their prison terms have ended. The law that created that so-called 'civil commitment' system was passed in 1994 in great haste, specifically to avert the imminent release of one sex offender whose determinate prison sentence was about to end and another criminal whose probationary sentence was also nearing its end for a crime of child abuse that, although not then designated as a sex crime was seen as sexually motivated.

Two later confinees were Ricky ("Rick") McDeid and Shane Garry. However, both had gradually been approaching the point at which they would qualify for release to an interim status known as "provisional discharge" ("PD").

MSOP, as decreed by state statutes, has a specific system governing the process that a confinee must go through to be declared to be ready for such release. That preparatory program is known as Community Preparation Services ("CPS"), located in the compound known as the St. Peter Regional Treatment Center, tightly abutting the high-security portion of MSOP's St. Peter facility, also within that regional center.

While PD and CPS were always part of the statutory framework for the MSOP system, they had not been meaningfully activated until the years 2012 through 2015, when the federal class action known as the "*Karsjens* case" withstood a motion to dismiss, received approval as a class action, and ultimately achieved victory after trial to the federal district court.

Only then did significant numbers get sent to CPS, and eventually out the door to relative freedom in various communities throughout the state (typically where the respective offenders had previously resided).

Even presently, only about 100 former confinees of the MSOP system — roughly equal to the number who died while confined — have ever gotten that far. In contrast, MSOP now holds roughly 750 inmates in confinement, a number that has been fairly stable during the last five years or so.

Part of the reason for this stability despite releases is the curious phenomenon of prosecutors using sex offender commitment as a political re-election tool; they have come to regard MSOP as something like a gas tank that can be 'topped off' when releases liberate formerly occupied beds in confinement.

This practice effectively treats those selected for commitment as just so much fodder for a system that has everything to do with politics and virtually nothing to do with preventing sex crimes.

A two-tier system involving an administrative board (the "Special Review Board" or "SRB") and a reviewing specialized court (the "Commitment Appeal Panel" or "CAP" court) is statutorily mandated to make all decisions promoting a confinee to CPS status and freeing those committed to PD and possibly to "Final Discharge" (FD). However, to date, only 18 former confinees have ever made it to this final end to commitment in Minnesota's sex offender commitment system.

That is, the SRB makes a recommendation to the CAP court, which then makes a *de novo* decision of such CPS promotion or to one of those two release statuses (PD or FD).

In any case ruled upon by the CAP court, the losing party can appeal to the all-purpose Minnesota Court of Appeals. From there, a petition for discretionary review can be filed by the loser on appeal to the Minnesota Supreme Court. These last two appeal stages are shared in common with any civil court case in Minnesota, a fact whose relevance to this story will emerge presently.

Once a confinee is 'promoted' to CPS status, he is moved to a building outside the high-security double-fence topped with razor wire that surrounds all other portions of the MSOP compounds at both Moose Lake and St. Peter, MN.

CPS residents are allowed to leave that building and move around on foot or by supplied bicycles throughout the park-like CPS grounds, delimited only by a single fence from the free world. They can also re-enter the high-security portion of MSOP-St Peter, as happens typically daily for various treatment, administrative, or class needs.

CPS residents can, with specific approval, be escorted to the downtown district of the city of St. Peter on approved shopping trips and other approved errands. It is noteworthy that there has never been an escape from CPS, essentially due to lack of motivation and the deterrence posed by the heavy consequences which would then follow.

CPS capacity was originally very small, but began expanding shortly after admissions to that program were first granted in earnest by CAP in 2016. Expansions brought capacity from 39 to 89 to 109, to 129, and finally by enlistment of an entirely separate, much

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larger building with total additional capacity (once its refurbishing is complete) of an additional 175 beds or so.

However, CAP, officially not under the aegis of MSOP itself, accelerated grants of CPS status faster than beds would be available in the near future. Confinees McDeid and Garry received their CPS grants in this phase. Consequently, rather than being immediately moved to CPS, they were relegated to a waiting list. This required them to stay in high-security confinement.

After waiting, respectively for 1.75 years and 2.1 years with no end in sight, McDeid and Garry concluded they could only make headway by suing. Dismayed by the observation that lawsuits for injunction by other MSOP confinees had failed or had been put on a 'slow walk' track consuming years before a decision even by the trial court, McDeid and Garry chose to sue for damages, believing this would get faster action. In fact, it did, although all Minnesota lawsuits tend to have inbuilt delays.

As in all suits against state entities and employees, their suit was met with a dismissal motion contending that their suit did not fully set forth all that was needed for the two to win. Specifically, defendants claimed that they didn't have a right to either substantive or procedural due process capable of being violated by that delay in transfer to CPS. Surprisingly, defendants in that case, notably decision-makers within MSOP, were saying that a CAP-court order for CPS placement of a given confinee did not require immediate obedience by them, but that it supposedly implicitly left to them decisions about how and when to comply.

Various legal reasons were advanced for this. One in particular claimed that MSOP personnel were entitled to qualified ("good faith") immunity. The trial court ruled that, even though McDeid and Garry had properly alleged all factual elements needed to win otherwise, they were blocked by that qualified immunity defense. Accordingly, the trial court dismissed the suit.

McDeid and Garry appealed to the Minnesota Court of Appeals. However, that court sided with the trial court's decision. McDeid and Garry then immediately petitioned the MN Supreme Court for review on this issue, complaining that to apply the doctrine of qualified immunity so broadly in circumstances like theirs would effectively deprive them completely of their right to seek relief for a known injury.

In Solomonic fashion, the Supreme Court ruled that the *substantive* element of their suit was correctly dismissed. However, the *procedural* due process claim, said that court, was validly pleaded because MSOP personnel could not avail themselves of qualified immunity.

It reasoned that because of the ruling by the CAP court ordering both to be transferred to CPS — an order that by court rule was to be appealed within 15 days — and which order MSOP officials had not appealed, that ordered transfer became a "clearly established right" once that 15 days had elapsed. MSOP personnel had no legal right to delay that transfer. Accordingly, they had no qualified immunity for their failure to promptly comply. Effectively, this ruling rejected the 'discretionary how and when' defense that had been advanced.

This meant that the McDeid-Garry suit could at last go forward. This ruling by the state Supreme Court was issued at the beginning of last February.

However, the case was remanded to the Court of Appeals for one last determination whether the procedural due process claim was *otherwise* completely pled as required.

The new ruling by the Court of Appeals on July 10th concluded that it was, and thus sent the case back to the trial court for the usual further proceedings. Those proceedings will begin with setting a scheduling order, which will provide a period for the usual discovery in civil lawsuits, followed by potential summary judgment motions and, if not granted, by a trial.

The significance of this case to other MSOP confinees and indeed, to confinees in other similar programs in the other 19 states that have similar commitment laws involves the fact that all such systems and their officials tend to wrap themselves in shielding fire-blankets of such claims of qualified immunity.

Recent years have seen important limits placed on qualified immunity. See, for instance, *Kingsley v. Hendrickson* (2015), wherein SCOTUS emphasized that an objective standard involving "professional judgment" by an ethical and fully trained professional must be used, rather than merely subjective decisions in-the-moment by indifferent, untrained employees.

Yet the argument by the defendant officials in the *McDeid-Garry* case was an attempt to end-run procedural due process protections altogether by allowing officials unbridled discretion to decide how and when, in their convenience, they would eventually honor that court decision. This was just too much for the legal community.

As a result, amicus curiae briefs were filed in this appeal by the Jones law firm (a leading appointed representative of many CAP-court petitioners), by Prof. Eric Janus and others involved in Mitchell-Hamline Law School's respected Sex Offense Litigation and Policy Resource Center (SOLPRC), and even the typically reserved Minnesota Civil Liberties Union.

Intriguingly, that last entity, mostly quiet in cases on sex offender rights, stepped up with unexpected vigor and unflinching language in its amicus brief, insisting that if procedural due process is to have any meaning and impact at all, this attempted dodge by administrative officials cannot be allowed to stand.

The ruling in February by the MN Supreme Court had drawn a clear line by observing that, under the governing statute and court rules, McDeid and Garry had a "clearly established right" to prompt transfer into CPS, following the CAP court order directing such transfer.

The practical impact within the case is that, facts at trial supporting their claim, the two plaintiffs will have a right to money damages for the delay. This is no small matter. The ability of both to get on with their lives has been forestalled by delaying their entry into this immediately pre-release program.

Hence, damages can be estimated by looking to what they might have been able to earn in that period of delay once free, plus 'quality of life' damages based in large part on what, if totally free, they might have been able to personally accomplish otherwise in that period in their personal lives, including by their social rehabilitation efforts. All of this on the back-end was delayed by the defendants' decision to delay compliance with that CAP court order.

As intimated above, the impact of this decision for other confinees in MSOP and elsewhere is that flippant disregard of court decisions by officials who find them inconvenient will not be tolerated. This will govern wherever any confinee has a "clearly established right" under a court order to whatever kind of relief was sought.

Thus, this marks an end to cavalier, imperious behavior by administrators of sex-offender commitment programs. From now on, rights of confinees must be respected, and court orders dictating actions that officials must take to do so must be taken promptly.

This may have maximum impact on private profiteers who run such programs or their facilities under contract to the state in question. Since any qualified immunity they may have is also an extension of that qualified immunity of those who act on behalf of the state, this legal doctrine limiting qualified immunity also applies to such firms and their employees.

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Change of MN's DCT Division to Department: What Will This Mean to MSOP?

by Cyrus Gladden

(1) News Coverage:

Ryan Faircloth, "After years of Scrutiny, DHS Will Be Broken Up," *Star Tribune*, July 2, 2023, pp. B1-B2

Text Excerpt:

"Minnesota's largest and most scrutinized state agency will be split up in the coming years as the result of legislative action meant to reduce bureaucracy and costly errors. The Department of Human Services' massive Direct Care and Treatment division will spin off into its own agency and take roughly 5,000 employees with it....

State lawmakers talked for years about breaking up the DHS, their discussions intensifying after the agency made a string of costly financial mistakes and received scathing reviews from the state's legislative auditor. Some felt that the agency, which has more than 7,000 employees and an annual budget that exceeds $20 billion, was too large to effectively manage....

The creation of the new Department of Direct Care and Treatment takes effect Jan. 1, 2025, according to the human services funding bill passed by the Legislature in May.

Republican Sen. Jim Abeler, who ... supported the separation, [observed]. ...'It's the governor's influence on all his departments, and by virtue of the commissioners he chooses, that really decides the outcomes of any department,. ...I think merely rearranging some of the duties may have a huge effect or it may be minimal. It's still all up to the administration to make it work.'

The Direct Care and Treatment division currently within DHS operates a specialized behavioral health care system that includes psychiatric hospitals, substance abuse treatment facilities, group homes for people with disabilities and sex offender treatment facilities....

Once separated, Harpstead said the new Department of Direct Care and Treatment will look 'much more like a hospital system with a CEO reporting to a board.' Marshall Smith, the current CEO of the division, will stay on to head the department. Smith was not available for an interview.

The Department of Human Services and the Direct Care and Treatment agency will keep their respective employees, Harpstead said.

The cost of breaking up the two entities will mostly be covered by their existing budgets, said DHS spokesman Christopher Sprung. However, Sprung said the agency expects to spend an additional $4 million a year through 2027 to set up the Department of Direct Care and Treatment's board of directors and hire new HR, compliance, legal and communications employees...."

(2) Significant Sections of the Act:

Minn Laws of 2023, Chapter 61 (SF2934)

Section 8 is the core provision estab-

(Continued on page 3)

lishing the new DCT Department. Section 9 specifies that the 'executive board" DCT have "no more than" five members, and that all be "appointed" by the Governor. This sole appointing authority, in combination with determination of the size of that board being implicitly left to the Governor through simply only appointing a lesser number, strengthens gubernatorial control over the DCT Department.

Section 8 specifically includes those confined under Minn. Stat. Chapter 253D, leaving no room for doubt that all MSOP confinees are covered by the DCT Department. Interestingly this section also directs the DCT Dept. to "provide direct care and treatment services in coordination with counties and other vendors." In fact, immediately following the expected reference to "specialized inpatient programs at secure treatment facilities" Section 8 adds direction to provide "community preparation services; regional treatment centers; enterprise services; consultative services; aftercare services; community-based services and programs; transition services; nursing home services; and other services consistent with the mission of the Department of Direct Care and Treatment." Recalling the mention in the article above of emphasis for DCT of community-based facilities, it would seem that MSOP confinees may be ultimately made eligible for "less-restrictive facilities" in-community.

Section 3 allows the Dept. of Direct Care and Treatment (DCT) to hire new upper-level administrative employees as needed. These will be political appointees, not classified positions. As noted in the article above, this will include new HR, compliance, and legal officials. This appears intended to make those in these positions directly responsible to the governor as ultimate appointing authtority.

The question is how many current employees in these positions will be shown the door and be replaced by those with political views more in line with the governor's stances. This could impact MSOP hiring practices, its attorneys, and policy drafting officials.

It is a double-sided sword, however, since changes of such administrative staff now which could be helpful to MSOP confinees could later become unfavorable when replaced by an unfriendly governor.

However, two certain facts are that: (1) this change makes the process of appointment and periodic political review transparent, instead of surreptitious; and (2) that it stops MSOP from being effectively self-governing, without accountability to gubernatorial control — something most DHS divisions and their agencies had been enjoying at the expense of unauditability and without control from above. On balance, this seems to be the controlling factor.

Section 4 allows the DCT Commissioner to lease out property not used by DCT for its purposes (which includes MSOP operation). This authority includes such leasing to "clients and employees of the department for the provision of community-based services."

However, the most interesting fact is that, beyond these specific authorizations, there is no limit to this leasing authority. This also might apply, for instance, if the DCT Commissioner finds the Moose Lake MSOP facility is no longer needed by MSOP, in the event of eventual massive reduction of MSOP population of those confined.

See also Section 12 on this, which allows the DCT Commissioner to build or to buy buildings, so long as "at least a portion of" such buildings is "used for state-operated, community-based programs." This could include residential buildings for use by those released from MSOP confinement.

The intriguing point is that there is no limitation only to those still on PD release. While there is a requirement that "[p]rograms must be adaptable to the needs of persons with developmental disabilities, again, there is no limitation of occupants to those with such disabilities.

Finally, of some comfort, these residential programs and their buildings must be "homelike." This would seem to eliminate restrictive, locked 'halfway-house'-type programs.

Yet the most mysterious, and perhaps most ominous of all provisions in this Act is Section 11, which creates new Section 246C.05 of the statutes. Subdivision (c) (6) of that new statute permits "transfer[] [of] ownership or control of any of the facilities, services, or operations of the Department of Direct Care and Treatment to another entity, whether private or public, by subcontracting, sale, assignment, lease, or other transfer...."

This could include such transfer of MSOP operation to a private contractor, such as Liberty Health Care or Wellpath, both of which I have repeatedly cited for their notoriously outrageous abuses of sex-offender commitment confinees in other states which have already opted for such private contracting of such programs or their facilities.

Even worse, apparently to save public coffers by 'wiping their feet on the doorsill' as they leave such programs, Subdivision (d) exempts the state and its officers and agents from liability or action against any of same "for any action or inaction of any entity acquiring ownership or control of any facilities, services, or operations of the Department of Direct Care and Treatment."

Effectively, if MSOP were thus contracted out and tortious acts — even deliberate misdeeds — were perpetrated by such contractor employees or officers, the absence of state responsibility for same could easily deprive confinees of any real recourse, particularly if the contracting firm simply filed for bankruptcy protection after draining the firm of all cash and fungible assets.

In all likelihood, employees actually engaging in such wrongdoings would be 'judgment–proof' or nearly so, leaving no 'pockets' from which damages could be extracted after a lawsuit judgment.

Even worse, Section 1983 actions apply to government wrongdoing, not to wrongdoing by such contractors. Therefore, this section of the Act appears to be a way of depriving MSOP confinees from using such actions to gain relief, whether damages or injunctions (by elimination of all "causes of action" against the state).

Since the contractor may not be a "state actor" for Section 1983 purposes, even the contractor and its employees may not be valid Section 1983 defendants (see, e.g., *Cox v. Liberty Healthcare Corp.*, 622 F. Supp. 2d 487[E.D. Ky. 2008]).

(3) A Meeting with MSOP-ML Administrators That May or May Not Reflect an Underlying Change in Philosophy of System Operation Under the New DCT Dept. – Dan Lunsford's Report:

In a conversation with this writer on July 2, 2023, MSOP confinee Dan Lunsford reported attending a meeting recently held by MSOP administration with all Unit Reps, plus about 10-15 Tier 5 confinees.

The subject was an intended change in theme of MSOP operation away from being punitive toward a purely therapeutic approach to facility management and operation. Themes of transparency and consistency were discussed in surprisingly frank and open contexts.

The change of DCT from being merely a division of the Department of Human Services (DHS) to being a coequal department of its own was mentioned. Administration told confinees present that this will happen over an extended period of time on a stepwise basis. However, administrators present said they simply did not know what changes to MSOP operations might be needed at any step of the conversion process.

This lack of knowledge or comment also applied to the future of the 'Matrix-based' treatment modality currently in use in MSOP (but nowhere else).

Administrators were able to say, however, that one aim they have become aware of is moving toward a return to the 'clinical model' of MSOP operation, which was replaced by a 'security model' starting more than 15 years ago. When asked whether this would include a return to application of the 'full' Patients' Bill of Rights to MSOP, administrators simply couldn't answer, as this is a statutory matter.

At least a trend toward some consistency with policies and practices in other agencies of the DCT will be a consideration in changes to come associated with DCT becoming a department.

The administration pitch to confinees in attendance was to work together to restore staff-confinee harmony so that these changes can work and be permanent. Some confinee responses were made to the effect that, in order to achieve such harmony, current policies and practices seen as essentially punitive in character need to be rescinded.

In sum, about all that can be said with certainty is that this DCT conversion will have effects in MSOP, but that their precise nature and extent remain murky at present.

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Out of the Jaws of Victory

The MN Federal Court Erased Darrin Rick's Commitment. Now the 8th Circuit Says Not So Fast. Will It Justify the Unjustifiable?

by Cyrus Gladden

In the last edition of *tLP*, I reported that Darrin Scott Rick had achieved victory in federal District Court in his habeas corpus case. That case was based on the fact that, in his 2004 commitment case, two testifying experts had claimed that Rick met the requirements for commitment as a so-called "Sexually Dangerous Person" (SDP), but that, when confronted with a new assessment by a leading expert in the field of forensic assessment of sex offenders, they both reversed their original testimony, agreeing that he actually did not then meet the SDP statutory requirements for commitment.

Based largely on this reversal, plus further evidence that Rick still does not meet those standards, the federal District Judge ruled that Rick's commitment was invalid *ab initio*, and directed that the commitment be dissolved and that Rick be freed immediately.

However, the Assistant Hennepin County Attorney, who defended that commitment in the habeas corpus case, appealed that ruling and sought a stay of that order freeing Rick.

Earlier that very day, however, Rick had already been released. He went to his parent's house to make preparations to begin his life anew. However, by the end of the day, a judge of the federal Eighth Circuit Court of Appeals granted the stay the prosecutor requested.

Upon learning of this grant, which

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effectively reinstated his commitment during that appeal by the prosecutor, Rick had his parents drive him the next morning the 150 miles back to the Moose Lake facility of the Minnesota Sex Offender Program (MSOP) which he had left just the day before.

This was an act of great valor by Rick under circumstances that would have tested the mettle and willingness-to-comply of any long-time inmate of the MSOP program, which has reneged so many times on claims and promises that many treatment graduations and releases would be forthcoming (but which never materialized beyond more than a comparative trickle).

Rick's attorney, stunned by that *ex parte* motion and its lightning-quick grant upon judicial reading of it, nonetheless moved for reconsideration of that stay order. Again, however, the same judge of that appellate court immediately denied reconsideration, leaving the stay in effect and leaving Rick under confinement during the pendency of the appeal.

That denial appears ill-founded, since the District Court's judgment dissolving Rick's commitment was firmly based on the undisputed evidence. An age-old judicial standard governing appeals is that trial-court decisions based on factual findings, rather than on points of law, should not be overturned on appeal unless there was effectively no support in the facts before the trial court for those factual determinations reached by that trial court.

Yet in Rick's case, the facts that he presented to show the scientific baselessness of his commitment were so strong and one-sided in his favor that there was effectively no significant prosecutorial evidence which could refute that factual showing presented by Rick's attorney. Under such exceptional circumstances, it is inconceivable that the now-pending appeal could fairly result in reversal of the judgment in Rick's favor.

This factual differential is so strong that it also shows that the very stay-pending-appeal itself should not have been granted. This is confirmed by the great faith in the system and willingness to comply with judicial direction evinced by Rick's immediate self-return to his incarceration upon learning that the appellate judge had ruled that he had to remain so during the appeal.

Darrin Scott Rick is a man of great faith and patience. However, most MSOP confinees, particularly those, like Rick, who have remained locked up for two decades or more, are mindful of the 8th Circuit's 2017 outrageous misapplication in the *Karsjens* class-action appeal of a standard demanding that plaintiffs confined on the commitments of all of us show that Minnesota sex offender confinements "shock the conscience" of all judges.

In that appeal, the assigned 8th Circuit judges callously and unbelievably insisted in disregard of the clear facts shown in that case that their consciences were not shocked, and therefore that all of us should remain confined, regardless of the nigh-impossibility of almost all of us to ever attain freedom through the extreme discretion of a system clearly bias-bound NOT to release any of us.

Therefore, the *Rick* case is effectively a test — not of Rick's ability and willingness to be law abiding in future — which any fool can see — or of his right to an end to the travesty of his baseless, even fraudulent commitment — about which the facts of his habeas case speak so profoundly beyond cavil, but of the question of whether there ***any*** justice in any courts of our land for former sex offenders who have long-since reached the end of their prison terms and yet remain in the chains of a rage-fueled system that denies the obvious impossibility of foretelling whether any of us will ever sexually reoffend again, yet perpetually confines us with the rabid, but baseless obsession that we surely will. This, of course, must end — now. Believe that this case will be watched as a bellwether of what must become of the American judiciary so that justice can be attained by anyman.

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Lie Detectors - Junk Science We Tolerate Despite the Harms They Inflict.

Katrina Gulliver with *Reason*, "Lie Detectors Are Junk Science, But We Keep Using Them," *Reason* (March 7, 2023), excerpted from *Texas Tea Newsletter*, Issue No. 16 (March 2023) (reviewing book: *Tremors in the Blood* by Amit Katwala)

Text Excerpts:

You've probably seen a lie detector in a movie or TV show, its stylus scratching an ink line across a scrolling page and jumping when the subject lies....

Amit Katwala, a reporter at *Wired*, tackles the lie detector's early history in *Tremors in the Blood*. He focuses on its origins in Berkeley, California in the 1920s and on some case that both brought it to prominence and raised questions about its validity....

...[T[he lie detector is just the 20th-Century version of witch pricking, revealing a 'truth' that isn't there. The National Academy of Sciences has dismissed the polygraph's validity, and the American Psychological Association says there is 'little evidence' that it works....

Critics regard it as junk science. One of those critics is Katwala, who states firmly that the polygraph 'does not work.' In the final chapter, he explores modern lie-detecting variants, based on eye movement tracking or fMRI scans. None of these can be shown to really work either, but the market for them continues..."

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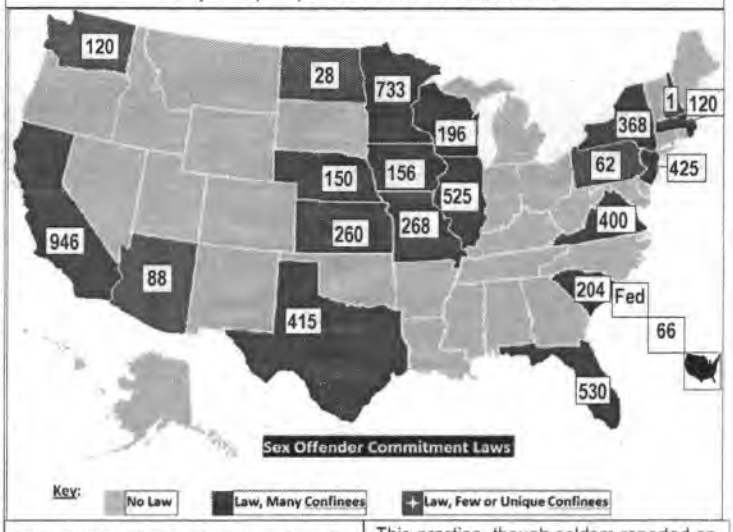
More than 6,000 people across 20 states were confined through punitive 'civil commitment' systems in 2022.

These states and the federal government have laws allowing the confinement of people convicted of sexual offenses in prison-like 'treatment' facilities *after* completing their criminal sentences – often indefinitely. This practice has been likened to 'double jeopardy' or repeat punishment for the same crime.



"Civil Commitment" of Past Sex Offenders: Just Further Incarceration Under Alias

Emma Peyton Williams, "What Is Civil Commitment? Recent Report Raises Visibility of This Shadowy Form of Incarceration", *Prison Policy Initiative*, http://prisonpolicy.org (May 2023)

Text Excerpts:

"As if serving a prison sentence wasn't punishment enough, 20 states and the federal Bureau of Prisons detain over 6,000 people, mostly men,[1] who have been convicted of sex offenses in prison-like 'civil commiment'[2] facilities beyond the terms of their criminal sentence . Around the turn of the millennium , 20 states[3] Washington D.C., and the federal government passed 'Sexually Violent Persons'[4] legislation that created a new way for these jurisdictions to keep people locked up – even indefinitely – who have already served a criminal sentence for a 'sex offense.' In some states, people are transferees directly from prison to a civil commitment facility at the end of the sentence. In Texas, formerly incarcerated people who had already come home from prison were rounded up in the middle of the night and relocated to civil commitment facilities without prior notice. This practice, though seldom reported on, made some news in 2017 when the U.S. Supreme Court declined to hear a case from Minnesota after a federal judge deemed the practice unconstitutional. The Prison Policy Initiative has included civil commitment in our *Whole Pie* reports on U.S. systems of confinement, but here we offer a deeper dive, including recently published data from a survey of individuals confined in an Illinois facility under these laws.

Two critiques of 'civil commitment'

Some advocates call civil commitment facilities 'shadow prisons,'[5] in part because of how little news coverage they receive and how murky their practices are. In Illinois, for example, the Department of Corrections (DOC) facilities are overseen by the John Howard Association, an independent prison watchdog organization. But Rushville Treatment and Detention Facility, a civil commitment center that opened after Illinois enacted its own Sexually Violent Persons Commitment Act in 1998, is not subject to the same kind of oversight because it is housed under the Department of Human Services and is not technically classified as a prison.[6] This is true in many states that have 'Sexually Violent Persons' laws on their books, and consequently, horrific medical neglect and abuse proliferate in these shadowy facilities. For instance, a New Jersey civil commitment facility was one of the deadliest facilities at the beginning of the COVID-19 pandemic.

Similarly, Rushville is not held to the same reporting requirements as DOC facilities, so gathering data about people's movement in and out of the facility is only possible by filing an open records request. Reportedly, the Bureau of Justice Statistics intends to begin collecting data about indefinite post-sentence 'civil' com-

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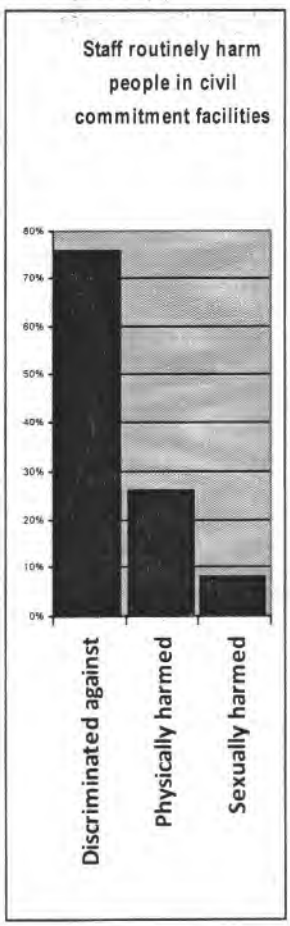
mitments in June 2023. Until that happens, it's only possible to get aggregated counts of how many people are civilly committed – nothing like the individual-level information prison systems are expected to provide in the service of transparency and accountability. This is true across the U.S., as civil commitment facilities are housed under different agencies from state to state, which makes it exceedingly difficult to measure the full scope of these systems on a national level. As a result, estimates about how many people are currently civilly committed vary from 5,000 to over 10,000 people.[7] Increased accountability and oversight must be chief among efforts to address this broken turn-of-the millennium policy trend.

A second critique of this system is reflected in another term advocates use to describe it: 'pre-crime preventive detention.' Civil commitment (unlike other involuntary commitment practices, such as for the treatment of serious mental illness) can be seen as 'double jeopardy' repeat punishment for an initial crime,[8] or preventive detention for a theoretical future crime that has not occurred. Advocates rightly critique the fact that one of the primary justifications for civil commitment is the predicted risk that detained individuals will 're-offend,' even though people who have been convicted of sex offenses are less likely to be re-arrested than other people reentering society after incarceration.



Regardless, in many states, people who have been convicted of sex offenses are transferred from DOC facilities to civil commitment facilities at the end of their sentences and held pretrial, then re-sentenced by the civil courts. The length of these sentences is often indeterminate, as release depends on progress through mandated 'treatment.' But neither 'risk assessment' nor 'progress through treatment' are objective measures. In fact, advocates and people who have experienced these systems argue that risk assessment tools are used to rationalize the indefinite confinement of identity-specific groups, and that assessing progress through treatment is a highly subjective process determined by a rotating cast of 'therapeutic' staff.

New data: A survey of individuals held in a 'civil commitment' facility

A recent report from Illinois (which I co-authored) goes beyond the numbers and reports that for many, civil commitment seems like a life sentence. This 2022 report, based on a 2019 study of residents at Rushville Treatment and Detention Facility (one of Illinois' two civil commitment facilities), exposed demographic disparities, discrimination and abuses inside, and flaws with the broader framework of civil commitment. Like the broader carceral system, civil commitment disproportionately impacts Black and Brown people. In particular, the Illinois report noted an overrepresentation of Black, Indigenous and multiracial people at Rushville. This is in line with the findings of the Williams Institute's 2020 report, which found that, on average, Black people were detained in civil commitment facilities at twice the rate of white people in the states studied.

Biased admission criteria lead to disproportionate consequences for select groups.

Further, the overrepresentation of LGBTQ+ and disabled people in these facilities reflects obvious biases that are 'baked into' the civil commitment decision-making process. Many states use risk assessment evaluations to assess whether or not one should be civilly committed. These actuarial tools use outcome data from previously incarcerated people and conclude that, because past studies found *groups* with specific characteristics are more likely to re-offend, *individuals* that match those criteria must be continually confined. Risk assessment tools are generally problematic and frequently make incorrect predictions. Chicago attorney Daniel Coyne says that in sex offense cases, risk assessment tools are 58% accurate, or 'not much better than a coin toss.'

Illinois and many other states use the Static-99/99R, which predicts individuals' risk using data about groups that come from overwhelmingly unpublished studies. This risk assessment tool is notably homophobic, as it assigns a point (and thus, a higher risk value) to those who have a 'same-sex victim.'[9] The Williams Institute writes:

> In addition to normalizing violence against women, this *a priori* assigns gay, bisexual, and MSM (men who have sex with men), who are more likely to have a male victim, a higher score, marking them as more dangerous than men who have female victims regardless of any other characteristics of the offense.

The evaluations also consider those who have never lived with a romantic partner to be at higher risk of reoffending, which means that LGBTQ+ people who may not be able to safely live with a partner in a homophobic area and young people who may not have had the opportunity to live with a partner yet would receive higher scores. Accordingly, representation of LGBTQ+ people in Rushville was drastically higher than in the general public [table omitted due to space constraints].

Criteria for detention usually include diagnosis with a 'mental abnormality,' in particular, a personality disorder or a 'paraphilic' disorder that indicates 'atypical sexual interests.' 'Paraphilic' is a problematic category that relies heavily on scrutinizing and pathologizing human sexuality.10 Further, the act of civilly committing people to a 'treatment; facility implies that there is a mental health issue or 'nonnormative' sexual behavior to be treated and/or cured. This is especially alarming given that the American Psychiatric Association completely disavows the practice, saying, 'Sexual predator commitment laws represent a serious assault on the integrity of psychiatry.'11

Since having a 'mental abnormality' is a criterion for admission, measuring the overrepresentation of disabled people in these facilities is challenging. By the logic of civil commitment, 100% of people inside have a psychiatric disability, compared with 21% of the Illinois population. Low levels of educational attainment (i.e., having a high school degree or less) were also very high, at 48%. Anecdotally, survey respondents reported that many of their peers inside could not complete the survey because they were illiterate or had cognitive impairments that prevented them from reading and filling out a paper questionnaire, so disabled respondents' voices are likely underrepresented.

Indefinite and punitive detention with no evidence of efficacy.

Agencies that control civil commitment often insist that civil commitment is treatment, not prison. Texas Civil Commitment Center staff even went so far as to instruct detainees 'to call their living quarters "rooms," not prison cells.' But advocates question whether or not civil commitment can be considered therapeutic. Can forced confinement inside facilities with high rates of violence, controlled by staff who use the same punitive measures that are common inside prisons, ever be healing?

Two-thirds of respondents inside Rushville in Illinois report that they have been sent to solitary confinement, a (potentially permanently) psychologically damaging practice. Rushville, like other civil commitment facilities across the U.S., also uses archaic treatment and evaluation technologies, including the penile plethysmograph, a 'device [that] is attached to the individual's penis while they are shown sexually suggestive content. The device measures blood flow to the area, which is considered an indicator of arousal.' Rushville detainees are subjected to chemical castration, or hormone injections that inhibit erection and have been linked to long-term health impacts. Further, their progress through treatment is measured using a variety of highly questionable evaluation tools, including polygraph lie detector test results which have been inadmissible in Illinois courts since 1981. The technologies that these facilities rely on look a lot more like medieval torture devices than the supposed 'therapeutic tools' that they claim to utilize.

Even if we buy into the myth that civil commitment facilities provide the treatment they claim to offer, there is minimal evidence that this supposed treatment works, and moving through treatment tiers is difficult, if not impossible. Even staff inside report that they receive pushback when trying to advance people toward release. One review from a past employee of Rushville's contracted mental health care service, Liberty Healthcare Corporation, reported, 'The hardest part of the job is fighting for residents who should be on conditional release and dealing with the outcome when refusing to act in unethical ways.' Progress through treatment is dependent on a regularly fluctuating staff, often made up of graduate students who are finishing their residencies and then moving on to another facility. Residents inside report being demoted to earlier tiers of treatment by new residents who disagreed with previous staff members' assertions.

With little transparency about or consistent standards regarding how to progress through treatment, many people inside say that civil commitment feels like a *de facto* life sentence. At Rushville, the average length of detention was 9.5 years and counting. According to a 2020 FOIA response from the Illinois Department of Human Services, more than twice as many people had died inside than had ever been released. Similar circumstances have been reported from Texas, where only five men were released in the facility's first two and a half years of operation, four of whom were sent to medical facilities where they died

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shortly thereafter. A 2020 article about Rushville included the following findings:

> Slightly more than half of the total population [has] been held for 10 years or more. Fifty-one people in Rushville have been held in civil commitment for 20 years or more, and 12 have been in civil commitment for 22 or more years, meaning they've been in civil commitment since the statute was implemented in 1998.

People inside reinforce these findings. One Illinois survey respondent reported, 'This is a life sentence after the completion of a criminal sentence. We are treated worse [than] prisoners. This is a sentence of death by incarceration. Not a revolving door program.' Indefinite sentences that are contingent on progress through treatment that feels unhelpful and opaque contribute to distress inside. This distress can result in violence and a hateful culture, between detainees and for staff to detainees. Three-quarters of detainees report being discriminated against by staff, and one-quarter report being physically harmed by staff. 8% of detainees said they were sexually harmed by staff. Anecdotally, respondents shared a number of stories about experiencing physical or sexual harm from other residents. Though civil commitment facilities are tasked with 'treating' sexual violence, they actually create physical environments that foster sexual, physical, and emotional violence.

Civil commitment facilities are not only legally and ethically dubious, they also fail to deliver on the very objectives that justified their creation. Even still, the trend toward preventive and 'therapeutic' forms of detention that are fueled by biased and error-filled algorithms and risk assessment tools is growing. As one reporter from Texas notes:

> Critics of private prisons see in the Texas Civil Commitment Center the disturbing new evolution of an industry. As state and federal inmate populations have leveled off, private prison spinoffs and acquisitions in recent years have led to what watchdogs call a growing 'treatment industrial complex,' a move by for-profit prison contractors to take over publicly funded facilities that lie somewhere at the intersection of incarceration and therapy.

In an era where lawmakers frequently champion 'evidence-based' punishment, the public must remain vigilant in questioning whether these practices actually accomplish their supposed goals. Do they reduce the mass incarceration of hyper-policed communities? Do they minimize the ongoing harms of the criminal legal system? Do they reduce the number of people entering prisons or increase the number of people exiting them? In the case of civil commitment, the answer to all of these questions is no.

Though under-resourced, the movement to address harmful civil commitment policies is longstanding. A variety of advocates[12] are leading campaigns to address ineffective sex offense policies across the U.S. (including the sex offender registry system). Other organizations support ongoing litigation campaigns like the one that was considered by the U.S. Supreme Court in Minnesota. Advocates inside and outside agree that civil commitment facilities fail to deliver meaningful safety and healing.

It's time for policymakers to close these facilities that leverage pseudoscience to keep people under state control. Instead, we must invest in initiatives that actually prevent child abuse and sexual violence, including measures advancing economic justice, accessible non-carceral mental healthcare, comprehensive sex education, and consensual, community-based restorative and transformative justice initiatives."

Notes:

1 This data was provided by the Sex Offender Civil Commitment Network.

2 We use the term "civil commitment" throughout because it has widespread name recognition, and because it accurately characterizes the civil legal system's commitment of individuals to various facilities, but as we will discuss further, advocates often use more descriptive terms such as "shadow prisons"' and 'pre-crime preventive detention."

3 These states include Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin.

4 We reference these laws by name so that they are easier for readers who want to look up the statute to find, but do not endorse using this language to refer to people.

5 For more information about the movement to change vocabulary around civil commitment, please see:

https://ajustfuture.org/communications/ and

https://ajustfuture.org/wp-content/uploads/2018/11/promoting language.pdf

6 Illinois also has a second commitment center within Big Muddy River Correctional Center. This program was created by the Sexually Dangerous Persons Act and it is run by the Illinois Department of Corrections.

7 The Sex Offender Civil Commitment Program Network requests aggregate numbers from each state regularly – and these annual survey counts are what we use in our Whole Pie reports – but some advocates believe this is an underestimation because how one defines who is civilly committed varies between reporting agencies. For example, should those on "conditional release," who are not confined but still subjected to stipulations of their state's Sexually Violent Persons Act, be considered free?

8 Defenders of civil commitment practices argue that civil commitment does not violate the Double Jeopardy Clause because the civil commitment proceedings are not re-litigating the initial criminal case, but using the criminal case as evidence in a subsequent civil case.

9 For further critiques of risk assessment, the logic behind it, the inherent racism to its process, and its inaccuracies, see: https://www.aclu.org/news/privacy-technology/eight-problems-police-threat-scores ; https://fivethirtyeight.com/features/prison-reform-risk-assessment/ ; https://jaapl.org/content/38/3/400.long .

10 From the Williams Institute report: "Critics have also noted the potential misuse of paraphilic disorders, a group of psychiatric diagnoses related to 'atypical sexual interest.' This category is extremely broad and includes pedophilic disorder as well as consensual sexual 'kinky' behaviors such as sexual masochism and sadism. The critique is that such diagnoses can be used [as] justification for civil commitment for a wide range of offenders. Paraphilic disorders diagnoses are so broad that they could be used to characterize as mentally ill many practitioners of kink, bondage, sadomasochism, or any sexual practice perceived to be deviant. This may have important implications for gay and bisexual men and [men who have sex with men], whose sexual cultures may be viewed as kinky or otherwise nonnormative due to stigma and prejudice")[pages 2-3).

11 *American Psychiatric Association*, Dangerous Sex Offenders: A Task Force Report of the American Psychiatric Association (1999).

12 These groups include (but aren't limited to) the Inside Illinois Civil Commitment project, Just Future Project, the National Association for Rational Sexual Offense Laws, Illinois Voices, The Chicago 400 Alliance, Women Against the Registry, and CURE-SORT.

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Shaming the Constitution, Part 10: – Ch. 7 Excerpts, Part 1 of 2

Michael L. Perlin & Heather Ellis Cucolo, Shaming the Constitution: The Detrimental Results of Sexual Violent Predator Legislation (Philadelphia: Temple Univ. Press, 2017), Chapter 7: "International Perspectives" (Part 1 of 2)

Editor's Note: This is the tenth in a series of excerpts from *Shaming the Constitution*, a watershed book dispelling the fraud of sex offender civil commitment (SOCC) and calling for its immediate repeal everywhere. In this chapter, topics discussed include relevant international treaties and conventions, comparative law of other countries, and international human rights law, as well as the impact of the International Megan's Law.

Text excerpts:

p. 143: **International Treaties and Conventions**

"Our sexual offender laws violate a host if international conventions and treaties, including, but not limited to, the International Covenant on Civil and Political Rights, the Convention Against Torture and, perhaps most importantly, the Convention on the Rights of Persons with Disabilities.[11] This Convention must be 'in play' in any conversation about sexual offender law, given the Supreme Court's decision in *Kansas v. Hendricks* that pedophilia is a 'mental abnormality.'[12] We do not believe that any commentators or scholars have, as of yet, noted this connection.

ICCPR

The United States ratified the International Covenant on Civil and Political Rights (ICCPR) in 1992.[13] That Covenant safeguards individual rights against governmental interference.... Right to liberty and security of the person are emphasized by a ban on arbitrary detention.[16]

pp. 143-44: Convention Against Torture[18]

In 1988, the United States ratified the UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT);[19] because this treaty was not self-executing, Congress passed domestic legislation to make it enforceable under domestic law.[20] The purpose of the Convention was to establish a comprehensive scheme with the aim ultimately to end torture around the world,[21] and it was motivated by a desire 'to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world.[22]

p. 144: The CAT defines the term *torture* to any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or

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incidental to lawful sanctions.[23]

The Convention Against Torture was intended to strengthen existing prohibitions on torture in international law.[24] It must be noted, however, that such torture must be 'severe' and requires a specific intent to cause severe pain and suffering.[25]

CRPD[26]

pp. 144-45: The Convention on the Rights of Persons with Disabilities (CRPD) ...describes disability as a condition arising from the 'interaction [of persons with disabilities] with various barriers [that] may hinder their full and effective participation in society on an equal basis with others.'[34] Instead of inherent limitations, the description reconceptualizes mental health rights as disability rights[35] and extends existing human rights to take into account the specific rights experiences of persons with disabilities.[36] To this end, it calls for 'respect for inherent dignity'[37] and 'non-discrimination.'[38]

p. 145: ...The ratification of the CRPD marks the most important development ever seen in institutional human rights law for persons with mental disabilities. Its goal is clear: to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms of all persons with disabilities and to promote respect for their inherent dignity.[43] Whether these goals can actually be accomplished is still far from a settled matter.

Although the United States has not yet ratified the CRPD, President Obama signed the Convention over five years ago.[44] Under such circumstances, 'a state's obligations under it are controlled by the Vienna Convention of the Law of Treaties ...which requires signatories "to refrain from acts which would defeat the Disability Convention's object and purpose."'[45] Domestic courts in New York have thus cited the CRPD approvingly in cases involving guardianship matters.[46] In one such case, Surrogate Judge Kristen Booth Glen noted that the CRPD was entitled to '"persuasive weight" in interpreting our own laws and constitutional protections.'[47] As we discussed extensively earlier in this book,[48] the U.S. Supreme Court's decision in *Kansas v. Hendricks*[49] hinged, in large part, on the determination that pedophilia – Leroy Hendricks's clinical condition – was a 'mental abnormality'[50] under the prevailing Kansas statute. Recall that the Supreme Court specifically stated:

> 'Contrary to Hendricks' assertion, the term "mental illness" is devoid of any talismanic significance. Not only do "psychiatrists disagree widely and frequently on what constitutes mental illness," but the Court itself has used a variety of expressions to describe the mental condition of those properly subject to civil commitment.[51]'

pp. 145-46: Pedophilia, the Court reasoned, was classified by 'the psychiatric profession' as a 'serious mental disorder'; this disorder – marked by a lack of volitional control, coupled with predictions of future dangerousness – 'adequately distinguishes Hendricks from other dangerous persons who are perhaps more properly dealt with exclusively through criminal proceedings'[52] Hendricks's diagnosis as a pedophile, which qualifies as a 'mental abnormality' under the Act, thus 'plainly sufficed' for due process purposes.[53]

Human Rights Day, celebrated resolutely, lovingly, with moral certainty, by some future men on the far side of our small planet. Courage is not the deeds of some superhero. It is undertaking to do the right and caring thing, no matter the cost or peril.

p. 146: At the time *Hendricks* was decided, one of us [MLP] argued that it 'missed the point captured clearly and concisely by the Kansas Supreme Court':

> 'Mental illness is defined in K.S.A. 59-2902(h) as meaning any person who: "(1) is suffering from a severe mental disorder to the extent that such person is in need of treatment; (2) lacks capacity to make an informed decision concerning treatment; and (3) is likely to cause harm to self or others." Here, neither the language of the Act not the State's evidence supports a finding that "mental abnormality or personality disorder," as used in 59-29a02(a), is a "mental illness" as defined in 549-2902 (h).[54]'

We believe this is just as true today as it was two decades ago, but it is also necessary to point out that the Supreme Court, by doing this, has hoist itself on its own petard. As long as pedophilia is a 'mental abnormality,' then anyone with this diagnosis is covered by the CRPD. The CRPD specifically does not define 'disability' but rather extends its protections to 'those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.'[55] In fact, the Secretariat for the CRPD acknowledged on his official website, *UN Enable*, that the Article 1 definition is not an exhaustive definition for individuals who might be able to claim relief under the CRPD.[56]

How Sexual Offender Laws Violate International Human Rights Law[57]

p. 147: Interestingly, there has been extensive literature in *Australia* about the issue of human rights violations of sexual offenders[67] but virtually none in the United States.[68] Professor Patrick Keyser, by way of example, has argued that legislation in New South Wales – very much like most of the current SVPA laws in the United States – inflicts arbitrary detention and double punishment contrary to Articles 9 and 14 of the International Covenant on Civil and Political Rights.[69]

In an earlier law review article, we focused on this overlap.[70] As indicated above, Article 17 of the International Covenant on Civil and Political Rights states, 'No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.'[71] Everyone has the right to the protection of the law against such interference or attacks. Consider now this Article in the context of residency restrictions that prevent individuals who have committed sexual offenses from living within specific proximities to schools, parks, and other areas where children congregate.[72] These ordinances are aimed at prohibiting offenders from residing within particular areas and inevitably within particular cities.[73] A number of scholarly articles have found that these strict residency ordinances result in a state of affairs that is the modern equivalent of the medieval sanction of banishment.[74]

Interestingly, only the United States and South Korea impose blanket restrictions on where sexual offenders may live post-incarceration.[75] Residency restrictions banishing undesirable individuals from our communities are supported by the fear and belief that individuals will undoubtedly reoffend. Sexual offenders are banished to neighboring counties or states and often corralled into poor neighborhoods and placed in boarding houses to reside solely with other sexual offenders.[76] Dr. Paul Applebaum clearly describes the fallout and potential harms in a 2008 column discussing community notification:

> pp. 147-48: Given the consternation aroused by sex offenders, it can hardly be unexpected that the typical consequences of such disclosure are loss of housing, jobs, and friends. Yet these are just the kind of supports that can anchor a released offender in a community and reduce recidivism. Numerous reports have surfaced of offenders being threatened, harassed, and in rare cases killed after community notification. Suicide also has been reported. Perhaps most disturbing is the large number of states that fail to limit disclosures to predatory offenders, instead extending the process to everyone convicted of a sexually related offense. Swept up in this net are people who have committed noncontact crimes, such as exhibitionism or peeping, those whose only offense occurred as children, and persons who engaged in consensual sex with a somewhat younger girlfriend or boyfriend and were convicted of statutory rape.[77]

These harsh containment and control mandates employed in the United States – as opposed to practices in most other nations[78] – ensure a consistent and ongoing track record of human rights violations and over-inclusive restrictions

Sexual offenders are regularly shamed and humiliated. In an article with another co-author, one of us (MLP) has written extensively about how government 'condones the use of humiliation as a remediative tool through sex offender zoning restrictions and registries that bar sex offenders from residing in certain communities or residing within a certain distance from schools, parks, churches, recreational areas, or libraries.[79] There is no question that such registries are intended to shame these offenders.[80] Registries and zoning restrictions stigmatize sexual offenders, denying them meaningful opportunities for rehabilitation.[81] The CRPD declares a right to 'freedom from ...degrading treatment or punishment,'[82] and 'respect for inherent dignity.'[83] Our treatment of sexual offenders flaunts these Convention proscriptions and prescriptions, and in doing so, 'contravenes international human rights law.'[84]

Conditions in facilities for persons found to be SVP are similarly degrading. In one case, in 1997, the clinical director of the state of Washington's commitment program admitted that the conditions of a sexual offender's confinement were 'certainly more restrictive than a state hospital' and were 'similar to incarceration.'[85] In the most important litigation yet brought (this against the Moose Lake facility in Minnesota), during the pre-trial proceedings, the federal district judge rejected defendants' motions to dismiss; in so doing, he concluded that plaintiffs' claims – if proven – could lead to legal relief as to both the punitive nature of their confinement and institutional officials' failure to provide adequate treatment.[86] In its opinion, the court concluded:

> As is evident from the law cited throughout this opinion, Minnesota may not constitutionally confine individuals at MSOP for punishment or deterrent purposes. Given the prison-like conditions described by Plaintiffs, and the lack of treatment and essentially no-exit regime alleged in this case, it may well be that, with a fully developed record, the Court will find the totality of the MSOP [Minnesota Sex Offender Program] system to be unacceptably and unconstitutionally punitive. ...That those committed and confined to MSOP are sex offenders, who may be subject to society's opprobrium, does not insulate the system from a fair and

(Continued on page 8)

probing constitutional inquiry. If the program violates the Constitution, the Court will so find and act accordingly.[87]

The decision ended with these ominous words: 'The politicians of this great State must now ask themselves if they will act to revise a system that is clearly broken, or stand idly by and do nothing, simply awaiting Court intervention.'[88]

The conditions such as those alleged in the Moose Lake case violate the human rights Covenants and Conventions discussed earlier in this chapter.[89]

Our colleague, Astrid Birgden, has underscored the main point: 'The meaning of "therapeutic" is a human rights approach to offenders.'[90] As one of us (HEC) has written, 'Sex offenders need to be treated as human beings who are legitimately part of the moral and political community and should be acknowledged as both rights holders and rights violators.'[91] In the words of Tony Ward and his colleagues (including Birgden), 'A significant advantage of a human rights approach is that it is able to integrate the value and capability aspects of offender treatment.'[92]

Notes:

11 It should be noted that there is nothing new or radical about the use of international human rights law in U.S. courts. See generally *Michael W. Lewis & Peter Margulies*, "Interpretations of IHL in Tribunals of the United States," in *Applying International Humanitarian Law in Judicial and Quasi-Judicial Bodies* (Jinks et al. eds, 2014) (demonstrating how U.S. courts have been interpreting international human rights law ever since the nation was founded).

12 521 U.S. 346, 360 (1997).

13 However, the ICCPR is not self-executing, nor has it been implemented by Congress. See Senate Resolution of Ratification of International Covenant on Civil and Political Rights, 102d Cong., 138 Cong. Rec. S47881-01, S4784 (April 2, 1992) (noting that "the United States declares that the provisions of Articles 1 through 27 of the [ICCPR] are not self-executing") [hereinafter ICCPR]. See 999 U.N.T.S. 171 (ratified June 8, 1992).

16 Id. Art. 9.

19 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984), S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S/ 85, available at http://www.un.org/documents/ga/res/39/a39r046.htm [hereinafter UN Convention Against Torture]. See also *Michael L. Perlin & Alison Lynch*, "'The Distant Ships of Liberty': Why Criminology Needs to Take Seriously International Human Rights Laws That Apply to Persons with Disabilities,' available at http://papers.ssrn.com/sol3//papers.co=fm?abstract_id=2692109.

The Convention Against Torture is based principally on Article 5 of the Universal Declaration of Human Rights and Article 7 of the Covenant of Civil and Political Rights. See *David Weisbrodt & Isabel Hörtreiter*, "The Principle of Non-refoulement: Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Comparison with the Non-refoulement Provisions of Other International Human Rights Treaties," 5 *Buff. Hum. Rts. L. Rev.* 1, 6 (1999).

20 *Jeffrey H. Fisher*, "Detainee Transfers after *Munaf*: 43 *Ga L. Rev.* 953, 960 (2009); *Jane C. Kim*, "Nonrefoulement under the Convention Against Torture: How U.S. Allowances for Diplomatic Assurances Contravene Treaty Obligations and Federal Law," 32 *Brook. J. Int'l L.* 1227. 1235 (2007).

21 *Christopher Keith Hall*, "The Duty of States Parties to the Convention Against Torture to Provide Procedures Permitting Victims to Recover Reparations for Torture Committed Abroad, 18 *Eur. J. Int'l L.* 921, 921 (2007).

22 U.N. Convention Against Torture, *supra* note 19.

23 Id. art 1.

24 *J. Herman Burgers & Hans Danelius*, *The United Nations Convention Against Torture: A Handbook on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* 1 (1988).

25 *Mario Silva*, "Extraordinary Rendition: A Challenge to Canadian and United States Legal Obligations Under the Convention Against Torture," 39 *Cal. W. Int'l L. J.* 313, 334-35 (2009).

34 G.A. Res. 61/611, U.N.GAOR, 61st Sess.. Supp. No. 49, U.N. Doc. A/61/611 (Dec. 6, 2006) [hereinafter CRPD], art. 1.

35 *Phillip Fennel*, "Human Rights, Bioethics, and Mental Disorder, 27 *Med. & L.* 95 (2008).

36 See *Frederic Megret*, "The Disabilities Convention: Toward a Holistic Concept of Rights," 12 *Int'l J. Hum. Rts.* 261, 268 (2008); see also *Michael L. Perlin*, *International Human Rights and Mental Disability Law: When the Silenced are Heard* 143-58 (2011).

37 CRPD art. 3(a).

38 Id., art. 3(b).

43 CRPD art. 1.

44 See *Michelle Diament*, "Obama Urges Senate to Ratify Disability Treaty," *Disability Scoop* (May 18, 2012), http://www.disabiltyscoop.com/2012/05/18/Obama-Urges-Senate-Treatry/15654/.The Senate failed to ratify the CRPD on Dec. 4, 2012, for lack of a super-majority of votes. See The Convention on the Rights of Persons with Disabilities, *U.S. Int'l Council on Disabilities*, http://usicd.org/index.cfm/crpd.

45 See *In re Mark C.H.*, 906 N.Y.S.2d 419, 433 (Sur. Ct. 2010) (citing Vienna Convention on the Law of Treaties, art 18, May 23 1969. 1155 U.N.T.S. 331), as discussed in *Henry Dlugacz & Christopher Wimmer*, "The Ethics of Representing Clients with Limited Competency in Guardianship Proceedings," 4 *St. Louis J. Health L. & Pol'y* 331, 362-63 (2011).

46 See, e.g., *Mark C.H.*, 906 N.Y.S.2d at 435 (holding due process required that the guardianship appointment be subject to a requirement of periodic reporting and review); *In re Guardianship of Dameris L.*, 956 N.Y.S.2d 848, 854 (Sur. Ct. 2012) (holding that substantive due process requirement of adherence to principle of least restrictive alternative applies to guardianships sought for mentally ill persons); *Matter of Michelle M.*, 52 Misc.3d 1211(A), 20167 N.Y. Misc. LEXIS 2719 (Sur. Ct. 2016) (rejecting guardianship appointment petition in case of woman with Down Syndrome living in the community).

47 *Dameris L.*, 956 N.Y.S.2d at 855; see *Perlin, supra* note 26, at 1178 n. 97 (discussing *Dameris L.* in this context. See generally, *Michael L. Perlin & Meredith R. Schriver*, "'You Might Have Drugs at Your Command': Reconsidering the Forced Drugging of Incompetent Pre-Trial Detainees from the Perspectives of International Human Rights and Income Inequality," 8 *Albany Gov't L. Rev.* 381, 387 (2015).

48 See *supra* Chapter 3.

49 521 U.S. 346 (1997).

50 Id. at 360.

51 Id. at 359.

52 Id. at 360.

53 Id.

54 *Michael L. Perlin*, "'There's No Success Like Failure/ and Failure's No Success at All': Exposing the Pretextuality of *Kansas v. Hendricks*," 92 *Nw U. L. Rev.* 1247, 1273 (1998).

55 CRPD art 1.

56 Secretariat for the Convention on the Rights of Persons with Disabilities, Focus of the Convention, U.N. Enable, http://www.un.org/disabilities/default.asp?id=216, as discussed in *Kathryn D. DeMarco*, "Disabled by Solitude: The Convention on the Rights of Persons with Disabilities and Its Impact on the Use of Supermax Solitary Confinement," 66 *U. Miami L. Rev.* 523, 549 (2012).

57 See generally *Eric S. Janus*, "Preventive Detention of Sex Offenders: The American Experience versus International Human Rights Norms," note," 31 *Behav. Sci. & L.* 328 (2013).

67 See, e.g., *Patrick Keyzer & Bernadette M. McSherry*, "The Preventive Detention of 'Dangerous' Sex Offenders in Australia: Perspectives at the Coalface," *Int'l J. Criminology & Soc.* 296 (2013); *Bernadette M. McSherry & Patrick Keyzer*, *Sex Offenders and Preventive Detention: Politics, Policy and Practice* (2009); *Patrick Keyzer*, "The 'Preventive Detention' of Serious Sex Offenders: Further Consideration of the International Human Rights Dimensions," 16 *Psychol. Psychiatry & L.* 262 (2009).

68 But see Janus, supra, note 57.

69 *Keyzer, supra* note 67. And see *id.* at 267, rebuking the Australian Attorney General for criticizing an Australian sexual offender detainee for seeking an international human rights remedy through the United Nations Human Rights Committee ("A person -- particularly a person who is presently susceptible to the coercive power of the state – ought not be vilified because he has taken legal action.").

70 *Heather Ellis Cucolo & Michael L. Perlin*, "Preventing Sex-Offender Recidivism Through Therapeutic Jurisprudence Approaches and Specialized Community Integration," 22 *Temp. Pol. & Civ. Rts. L. Rev.* 1, 22-26 (2012).

71 International Covenant on Civil and Political Rights, 1966, art. 17. U.S. Reservations, Declarations, and Understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (1992). Note, however, *Sosa v. Alvarez-Machain*, 542 U.S. 692, 735 (2004) (holding that the ICCPR is not self-executing and does not confer a private cause of action: "Although the Covenant does bind the United States as a matter of international law, the United States ratified the Covenant on the express understanding that it was not self-executing and so did not itself create obligations enforceable in the federal courts.")

72 *Cobb v. State*, 437 So.2d 1218, 1220 (Miss. 1983) (upholding a probation condition requiring the defendant to "stay out of Stone County.").

73 *Steven Brown et al.*, "What People Think about the Management of Sex Offenders in the Community," 47 *How. J. Crime & Just.* 259 (2008) (public does not necessarily agree with punitive conditions but is insecure as to the effectiveness of community containment and concerned about the reality of reintegration.).

74 *Corey Rayburn Yung*, "Banishment by a Thousand Laws: Residency Restrictions on Sex Offenders," 85 *Wash. U. L. Rev.* 101 (2007); *Shelley Ross Saxer*, "Banishment of Sex Offenders: Liberty, Protectionism, Justice, and Alternatives," 86 Wash. U. Rev. 1397 (2009); *Richard Gary Zevetz & Mary Ann Farkas*, Sex Offender Community Notification: Assessing the Impact in Wisconsin, *U.S. Dept. of Justice, National Inst. of Justice Research in Brief* 9 (2000), available at www.ncjrs.gov/pdffiles1/nij/179992.pdf.

75 *Human Rights Watch*, No Easy Answers: Sex Offenders in the U.S. 118 (2007), available at www.hrw.org/reports/2007/us0907webwcover.pdf.

76 See, e.g., *Michael J. Duster*, "Out of Sight, Out of Mind: State Attempts to Banish Sex Offenders," 53 *Drake L. Rev.* 711, 712 n. 2 (2005).

77 *Paul Appelbaum*, "Law & Psychiatry: Sex Offenders in the Community: Are Current Approaches Counterproductive?",

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59 Psychiatric Services 352, 353 (2008)

78 See generally *Mark D. Kielsgard & Jack Burke*, "Post-Incarceration Supervision of Pedophile Offenders: an International Comparative Study," 51 *Crim. L. Bull., ART 1* (#1, 2015).

79 Michael L. Perlin & Naomi Weinstein, "'Friend to the Martyr, a Friend to the Woman of Shame': Thinking about the Law, Shame and Humiliation," 24 *So. Cal. Rev. L. & Soc. Just.* 1, 42 (2014); see also *Michael L. Perlin & Alison J. Lynch*, "'To Wander Off in Shame': Deconstructing the Shaming and Shameful Arrest Policies of Urban Police in Their Treatment of Persons with Mental Disabilities," in Power, Humiliation, and Conflict (Daniel Rothbart, ed.) (forthcoming 2017), available at http://ssrn.com/Abstract=28349820.

80 *Id.*, citing *Anne-Marie McAlinden, The Shaming of Sexual Offenders: Risk, Retribution and Reintegration* 118 (2007).

81 *Perlin & Weinstein, supra* note 79, at 44-45.

82 CRPD art. 15. See also ICCPR art. 7.

83 CRPD art. 3(a).

84 *Perlin & Weinstein, supra* note 79, at 50.

85 *Seling v. Young*, 531 U.S. 250 (2001), Respondent's Brief at 5.

86 *Karsjens v. Jesson*, 6 F. Supp. 3d 916 (D. Minn. 2014).

87 *Id.* at 952-54.

88 *Id.* at 956.

89 See, e.g., ICCPR art. 9; CRPD art. 15. See *Ian Evans*, "Britain Denies Extradition of Minnesota Sex Suspect," *Star Trib.* (Minn.), June 28, 2012, available at http://www.startribune.com/local/160704485.html (reporting that the Minnesota program made international news when a London [U.K.] High Court refused to return an alleged sexual offender to Minnesota to face criminal charges after officials in Minnesota counties refused to guarantee he would not be committed to the state's controversial sexual offender program, because such institutionalization 'would be a "flagrant denial" of [the offender's] human rights under Article 5 of the European Convention on Human Rights.").

90 *Astrid Birgden*, "Maximizing Desistance: Adding Therapeutic Jurisprudence and Human Rights to the Mix," 42 *Crim. Just. & Behav.* 19, 27 (2005).

91 *Astrid Birgden & Heather Ellis Cucolo*, "The Treatment of Sex Offenders: Evidence, Ethics, and Human Rights," 23 *Sexual Abuse: J. Res. & Treatment* 295 (2011)

92 *Tony Ward, Theresa A. Gannon, & Astrid Birgden*, "Human Rights and the Treatment of Sex Offenders," 19 *Sexual Abuse: J. Res. & Treatment* 195, at 195 (2007)

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Sandell Urges MN House Committee to Put MSOP on Hold & Assess It.

"April 12, 2023

To: Members, House Ways and Means Committee

Re: Minnesota Sex Offender Program

cc: Human Services Vice Chair Bahner
Minority Lead Neu Brindley
Speaker Hortman
Rep. Cha
Sen. Mitchell

Thanks very much for taking time to read this note and consider its appeal. I've written to some of you during the session and testified at both the House and Senate Human Services Committees regarding the Minnesota Sex Offender Program, a complex, ineffective, and deeply flawed project administered by DHS.

MSOP has been the subject of repeated critical reviews in professional, media, and legislative studies during the last 35 years. Its costs have risen in every biennium – now at $210 million dollars. There is no regular independent assessment of the program. Legislative discussion has been avoided due to the nature of its subject. Minnesota's program is the largest and most expensive in the country. The number of individuals incarcerated (now at 750) continues to rise. The average length of stay is the longest in the country [and for most of those confined effectively is lifetime]. Yet it has had no statistical effect on reducing sexual aggression and assault in Minnesota.

Few legislators are familiar with MSOP, yet should the Omnibus bill pass out of your committee as it is, your DFL members will vote to endorse the program and spend another $210 million dollars for this grab-bag of ineffective policy and practice.

It is just irresponsible to continue spending more taxpayers' money every year just because legislators find the subject politically threatening. ***You can change that!***

Before passing the Health and Human Services Finance Bill out of your committee, strip the bill of its MSOP appropriation, suspend its allotment until the 2024 session, and require Human Services Committee members to attend a series of discussions based on a contemporary assessment of MSOP during the interim.

Let's pay attention to preventing sexual aggressions, supporting victims and their families, paying attention to issues of mental health leading to assault, search for the most effective treatment and therapy for offenders, and re-evaluate the process of commitment and rehabilitation."

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RM 3d Excerpt

We Are Morally Obligated to Reject the SP Regime Indoctrination.

The SP has groomed us for resistance. First, they 'treated' almost every man in the facility with their bogus treatment. Then they refused to allow an equal chance for each man to advance. Now there are more men 'treated' than what their system can absorb. There is a bottleneck in St. Peter and there is nowhere to go.

Why did they do this? For them, at least in the short term, the advantages are obvious. If you are going to allow men to rise up from the underprivileged mass but are never quite allowed to join the over-privileged elite, you force them to adopt a rigid loyalty to the system.

The most reliable way to do this is to set Detainees against each other in a savage competition that most will lose. As the Detainees climb over one another, kicking and clawing their way toward a sharply limited number of positions, any weakness they display becomes a weapon in the hands of the SP. They can count on getting the most obedient. The 'candidates' will be earnest, idealistic, committed, ambitious, if that's what the SP wants them to be. Ask them to be something else and they will get that too. Because under the smiling and well-groomed façade you have a bunch of panicked conformists, terrified that they will somehow fail to please their masters.

However, that is the short term. In the long term, rational men will eventually abandon their 'master' and begin to revolt. Look at the long history of revolutions and you will find that far more often than not, the people who overthrow governments and bring Nations crashing down are the losers in this situation....

Perhaps you believe in 'mental illnesses.' We are not here to change your beliefs about that. However, a Resister should stay open-minded and consider alternative viewpoints. After all, the detained man has witnessed first-hand the tyrannical consequences of being diagnosed with a 'mental illness,' whether it is a legitimate diagnosis or not.

pp. 21-22: Since the first edition of the DSM the number of disorders voted into the DSM has grown to 374. The DSM-5 is ten times the size of the first DSM. This is because they are creating 'mental illnesses.' Julian Whitaker, M.D. said, 'all these so-called diseases are made up.... They're fictions of psychiatric imagination.... They get together and they vote. Is this a disease? All in favor say "I".

Dr. Ron Leifer, psychiatrist, says 'It's not as if there's some study of tissue or some study of matter. These are all categories that are made up. They're simply made up. They don't exist in nature. They're decided upon by psychiatrists and voted on.'....

p. 22: ...In other words, the SP is willing to let you die [here] in the name of a myth. Dr. Edzard Ernst, researcher and emeritus chair of Complementary Medicine at the University of Exeter in Great Britain said: 'When science is abused, hijacked, or distorted in order to serve political or ideological belief systems, ethical standards will eventually stop. The resulting pseudoscience is a deceit perpetrated on the weak and the vulnerable. We owe it to ourselves and to those who come after us to stand up for the truth, no matter how much trouble this might bring.'

The name of the program is so inflammatory to the public ear, critical thinking dissolves and emotions take over. ...The stigma has permeated almost every institution, the press, the merchants, the historian, and the churchmen. It has blinded the therapist and the social worker. The term has made everyone who hears it stupid with hate. The term has almost a magical effect that has hypnotized people. The stigma is so strong, you can label any innocent person with the title and make that person hated. The worst part about the magical term is that it seems to make Detainees believe there is something wrong with them, which in turn compels them to participate in the SP's treatment.

There is an obvious influx in treatment participation each time there is a small victory in the courts. For instance, when Judge Donovan Frank ruled that the SP is unconstitutional, more men joined treatment. When the Department of Justice submitted their amicus curiae, even more men joined. 'Things are changing,' they say, 'I want to be at the front of the line when it's time to go.'

This is foolish logic. Both Frank and the DOJ denounced the SP's treatment program. When the hammer comes down, Resisters will not be indoctrinated with an incorrect ideology. We believe that Resisters are just as likely to be at the 'front of the line' as any treatment participant or sympathizer. The only difference is that we will not need to be deprogrammed.

Resisters are men of conviction. We are convinced that the program is bogus. We are not under the illusion that the SP is a 'world class treatment program.' The only thing 'world class' about the SP is that it is the laughingstock of the world in terms of treatment facilities. We are not convinced that the only way out is 'through the program.'

(Continued on page 10)

We are convinced that we are ending the program through diplomatic and peaceful means. We will gain our freedom without SP indoctrination. We dive deeper into the depths of resistance every day. If fear comes from the unknown, then faith comes with revelation and education. The more knowledge we gain about the true nature of the SP, the easier it will be to become independent. The more we know, the more we believe we are doing the right thing.

p. 23: Any man or woman who ruminates on unhealthy thoughts should seek help from a credible and ethical practitioner. But they should NOT turn to the SP regime for help. For any Detainee who struggles with such thoughts while detained at the SP, we suggest he develop his own self-help strategy, or seek outside help that does not contribute to the victimization of other people.

What this looks like is to be determined by each individual, but working with others is beneficial. A healthy lifestyle means enriching your identity, pursuing an education, building a foundation of traditions and beliefs – spiritual, academic, or both.

We understand that quitting treatment will be a difficult choice to make. There will be consequences for doing so. [W]e understand that consequences are part of resistance. ...[F]or the following reasons we must reject the SP treatment:

- The SP regime fails to prevent crime. Instead, it robs over $100 million every year from effective programs that have been up to 88% effective at preventing crime. Therefore, the SP puts Minnesotans – especially women and children – at risk of being harmed. Resisting the SP will make Minnesotans safer.
- According to the CATO Institute, the SP does not treat the men based on their individual needs, does not train their staff, fails to progress individuals, does not discharge or release individuals who have successfully completed treatment or who no longer meet the commitment requirement, and fails to conduct regular risk assessments to ensure individuals continue to meet the test for civil commitment. The CATO institute made the point that it is not clear to them what the SP actually does.
- In addition to the CATO Institute, the SP regime fails to align with the expectations of experts and professionals. Independent evaluators as well as former and current SP officers denounce the program. In addition, the Minnesota Office of the Legislative Auditor, Minnesota Appellate Court Judge R.. Randall, Harvard Law School, the American Psychiatric Association, the United States Department of Justice, the courts of the Federal Republic of Germany, and Lord Justice Moses of the High Court of Justice Queen's Bench of England, have all denounced the SP regime for various reasons.
- The SP regime is in violation of the European Convention on Human Rights, the United Nations Standard Minimum Rules for the Treatment of Prisoners, the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.
- pp. 23-24: The SP regime is not accredited by any recognized, independent entity. The Matrix Factors Scoring Guide fails to meet minimal requirements for a psychological test as promulgated by the joint APA-AERA Guidelines for Psychological and Evaluation Testing. The SP did not provide training to all SP officers on the Matrix Factors until 2013 and did not provide any training on the Matrix scoring until 2014, nearly 20 years after the SPO's conception. The lack of urgency reflects the SP's lack of rigor and, ultimately, its lack of purpose. The SP regime invented the Matrix Factors and is the only Shadow Prison (SP) in the country using the Matrix Factors. There have not been any scientific investigations of the Matrix Factor tool to establish its reliability or its validity. The Matrix factors are not modified for Detainees with severe mental illness.
- The SP regime does not provide annual psychiatric evaluations. SP administrators admit that the vast majority of the men DO NOT have a mental illness.
- The SP regime is inherently competitive. There is physically nowhere for men to go once they have 'progressed' in the program. This creates a bottleneck system. Men have to sabotage their peers in a Hunger Games-like fashion and simultaneously appease their captors just to increase their chances of survival.
- The SP regime refuses to release men who have completed every element of their 'program.' More men exit the SP as a result of death than through successful application of the facility's treatment plan.
- The SP makes a pathetic and sadistic pitch for freedom, while holding the man's mind in subjugation. This is a form of slavery that feeds on the mind and invades the soul. It destroys a man's loyalties and establishes allegiance to the very forces that destroy him. It hires the men detained – giving them money and privileges – in exchange for operating the treatment which makes them worse, rather than better, by brainwashing them, making them believe they are 'mentally ill' and 'dangerous.'

p. 26: ...[C]ivil confinement is reserved for those who lack volitional control. We are in volitional control. Therefore, we are entitled to release. This is a matter of objective fact – not opinion. Anyone who rejects Truth to promote his own agenda is a tyrant.

Change means movement. Movement means friction. All new ideas form friction between the sacred ideas of the past and the inspired present. The Resister draws a line in the sand, making up his mind that he will not compromise his principles, even at great personal cost. This is sacrifice. The Resister is controversial. There can be no such thing as a 'non-controversial' issue. When there is agreement there is no issue. Issues arise only when there is disagreement or controversy. When those prominent in the status quo turn and label us 'agitators' they are completely correct. That is, in one word, our function – to agitate to the point of peaceful conflict.

p. 31: *The Role of the Church in Resistance*

Karl Marx likened religion to a drug because it dulls the pain of life for the masses. This causes them to turn away from the Truth that they have the power to overturn the social order that oppresses them. ...The religion of Matrix Factors, X-Box, quarterly meals, clothing, mattress covers, and other physical amenities is the religion that Marx spoke of. These creature comforts relax the Detainee so he will ignore the oubliette.

p. 36: *There Are No 'Cool Staff' at the SP*

We will not be baited into emotional traps. When SP officers are especially nice, we do not feel obligated to conform. We do not accept sideline offers, favors, or other concessions that are outside the scope of the intended purpose of legitimate civil commitment. Many claim they are just 'doing their job.' But those who blindly follow the party line are the worst kind of wolves in sheep's clothing – corrupt teachers wearing the wool robes of a prophet and devouring the sheep of the flock under the cover of disguise. These are determined rebels against the Truth. C.S Lewis wrote: 'Those who torment us for our own good will torment us without end for they do so with approval of their own conscience....'

SP administration, clinical, and security officers are not smart people. They are emotional people who happen to have stumbled into power. The 'cool staff' is the greatest cog in the murder machine. Some of these 'cool staff' will even admit that their job is to make our lives easier here. What is good about this? The 'cool staff' keep the machine in operation by pacifying the Detainees. Without them, there would be no SP. They inspire others in the local community to work here. Their friendliness quenches the embers of revolution by providing a mirage of 'emotional support' while the tyranny slowly kills the Detainee. There are no 'cool staff' at the SP.

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A Long, Hot Summer in Coalinga?

James Hydrick, long-time "patient" at CSH (California State Hospital-Coalinga, that is, California's sex offender civil commitment shadow prison/gulag, says that he believes that there might be some mass action by all/most confined there on such commitments. A plan for a hunger strike, disrupted by the recent wave of infections of the latest strain of Covid-19, is now back on schedule to begin later this summer.

Hydrick cites a recent mass resignation by approximately 400 staff disillusioned about the lack of significant progress of patients toward release through treatment and shoddy treatment of those employees by their superiors. This was especially true of clinical employees who recently have been reduced to caretaking duties, rather than actual treatment activities.

Also, beyond the low percentage of participation by confinees in treatment in Coalinga from the beginning, recently 70 patients have quit treatment in reaction to the same disillusionment. So far, only a comparative few have been released over the years. Further, these were released by court action finding that those released did not meet commitment requirements currently or originally or whose rights were violated by delays in some cases spanning many years by being forced to wait for a final judgment on commitment in the first place, rather than through any positive effect of treatment. One of the contemplated mass actions is a class action for failure to treat and release within any reasonable time period. As in MSOP in Minnesota and in almost all other commitment shadow prisons/gulags, those committed in the earliest years of those systems who promptly entered treatment are still in treatment, with no end and no projected release in sight.

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