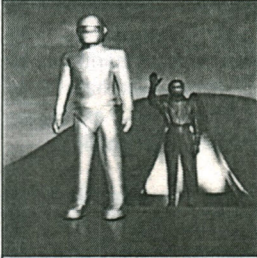


In This Issue:

- 1. Characteristically, Pope Francis Says Something Truly Profound and Truly Applicable: We Are Part of the Greater Whole. 1-2
- 2. Laura Lee of KBJR-TV: Bearing Witness to the Reality of SOCC as Exemplified by MSOP-ML. 2



Gort Approves.

Coming Soon:

- ✓ Remorse Bias — What's THAT?
- ✓ RNR vs. Good Lives vs. Virtue Ethics vs. Desistance: Any bets?
- ✓ Lie-Detector Interrogation & Peter Meter Testing: Keeping You Down by False Hope, Fear, & Shame
- ✓ Findings Change Everything.
- ✓ Bayes, Monahan, Chaos, Uncertainty — Oh My!: Actuarial Prediction? Good Luck with That!
- ✓ Is "Machine Bias" a Bias Machine?
- ✓ Do You Need a Union for a Hunger Strike?
- ✓ Free Speech on Campus — & in Civil Commitment Facility
- ✓ Sex Offender Residence and Employment
- ✓ Can Intention-Reading Tools Used by Fed Anti-Terrorists Supersede Sex-Crime Predictive Tools?
- ✓ Collaborative Justice: Oxymoron or Way Out of This Mess?
- ✓ Panic in the Statehouse: Bad Policy by Panicked Legislation
- ✓ 'All Except for' Blanket Exclusions of SOs from Justice Reforms
- ✓ PPG Validity Refuted
- ✓ Stupple on Disgust, Dehumanization of SOs & the Courts (Sorry! Next Time)
- ✓ Virtual Reality Coming Soon: Diagnosis, Assessment, Therapy
- ✓ Inter-Offender Associations—Better Than Isolation
- ✓ Algorithmic Risk Assessment assessed
- ✓ Banishment by 1000 Laws
- ✓ Estimating # of Unreported Sex Crimes Is Junk Science
- ✓ COMPAS: Using 'Guess Factors'?
- & Many more to come!

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Brothers All

Pope Francis, "Encyclical Letter FRATELLI TUTTI on Fraternity and Social Friendship," The Vatican, Rome, Italy (2023) (endnotes omitted)

Editor's Introduction: At considerable risk of being reflexively accused of unwarranted departure from the main subjects of the *Legal Pad* and of appearing to (but not actually) endorse a specific religion, I bring you the following excerpts from a papal "encyclical" (an official discussion document by a reigning pope). I do so for the following reasons.

First, recent decades have seen a rise in armed conflicts and even wars at a sustained pace unprecedented in modern times. While causes for specific conflicts have varied, the unifying commonality is a substantially lessened willingness to see things through the eyes of the other party to a dispute. In some cases, conflicts have erupted over matters that are close to existential, and some (to the horror of the Creator, if you believe in one) are fought even over matters of faith and sociological views of different religions, all of which views are, ironically, held in the hope that they will improve the lives and spirits of adherents of the given religion under scrutiny.

Differences of every kind and description, from *modus vivendi* to such superficial matters as physical appearance attributes have been baselessly but angrily claimed to justify not just hatreds, but in some cases a sense that the "other" ethnic group is not quite fully human and that their presence — even their very existence — somehow pollutes life of those in the group inflicting this disdain on the other group.

On a personal level, individuals in most of the world's largest societies have begun considering that the best — perhaps the only — way to resolve disputes is with violence or at least the implicit threat of violence. In far too many cases, some individuals who, for whatever grievances, have come to feel that they cannot be accepted and heard or that certain others (often seen as some vague group) will never relent from perceived mistreatment of the aggrieved one, have taken up frightful arms and have slaughtered large numbers of their fellow humans in a moment of erupting rage.

It is all too easy to simply shrug this off as the work of singular mentally ill individuals. But it is actually a symptom of a far larger emotional malaise that we all are now starting to come down with. Its leading symptom is an unwillingness to accord compassion or even just the dignity of their humanity to others we may encounter

or about whom we may hear something unfavorable and unfair in its mischaracterization and stereotypification.

When this frame of emotional repulsion spreads and ferments into hate, an entire society can be shredded by such perceptions of irresolvable and putatively intolerable differences. From things such as this, entire cultures can collapse, leaving all of their inhabitants with little safety and almost no sense of brotherly love. This is a mournful and hopeless way to attempt to live. It is one of the very worst things that can happen to humanity.

Pope Francis, a truly exceptional person to serve in his post, holds deep in his heart a great allegiance to the fabric of human society and its need for a sense of universal brotherhood among even the most divergent members of society. In short, it is clear from his thoughts in this encyclical, whose title translates to "Brothers All," that Francis is greatly concerned, as was Dionne Warwick more than a half century ago, that "What the world needs now, is love, sweet love, no, not just for some, but for everyone." Rather than merely being just a dose of smarm, this sentiment, it has turned out, is extraordinarily prophetic and, in our time, of unparalleled importance to the welfare of every human on the planet.

This explains why Francis departed from the typical historical role of encyclicals as addressing only members of the Roman Catholic faith and sometimes only certain subsets of people within that faith, such as priests and other church office holders. In this case, Francis chose to address, not even just all Christians, but in fact *all humans everywhere, regardless of their creeds or beliefs*. The importance of compassion, understanding, and the sense of all of being in this together that can be called universal brotherhood, is indeed that universal, and even larger, since the entire future of humanity depends upon it.

But the greatest of social, moral, and spiritual lessons applicable to all are of no effect if no one finds out about them. And this in turn calls upon all who hear the meaning and urgency of this message of universal beneficent love for all of one's fellow human beings — the real agape of Pope Francis's chosen namesake — to gently but pleadingly draw the attention of everyone within the reach of their communicative outreach to ponder closely this message: To ask all of us to simply extend to our brothers and sisters everywhere that simple minimum of human rights the same behaviors and attitudes and warm feelings as we would wish to receive from others. In this spirit and moved by the

ineffably profound importance of this message, I now give you at least some of Pope Francis's thoughts on all this.

For the sake of all, for the sake of everyone you may ever interact with, for yourself, and for the future of all of humanity as a unified whole, ponder these thoughts, and then do *whatever you can* to bring about the universal brotherhood we all need. After all, we are *Fratelli Tutti*.

Text excerpts:

"...The following pages do not claim to offer a complete teaching on fraternal love, but rather to consider its universal scope, its openness to every man and woman. I offer this social Encyclical as a modest contribution to continued reflection, in the hope that in the face of present-day attempts to eliminate or ignore others, we may prove capable of responding with a new vision of fraternity and social friendship that will not remain at the level of words. ...I have sought to make this reflection an invitation to dialogue among all people of good will.

...It is my desire that, in this our time, by acknowledging the dignity of each human person, we can contribute to the rebirth of a universal aspiration to fraternity. Fraternity between all men and women. 'Here we have a splendid secret that shows us how to dream and to turn our life into a wonderful adventure. No one can face life in isolation.... We need a community that supports and helps us, in which we can help one another to keep looking ahead. How important it is to dream together.... By ourselves, we risk seeing mirages, things that are not there. Dreams, on the other hand, are built together.' Let us dream, then, as a single human family, as fellow travelers sharing the same flesh, as children of the same earth which is our common home, each of us bringing the richness of his or her beliefs and convictions, each of us with his or her own voice, brothers and sisters all.

...Once more we are being reminded that 'each new generation must take up the struggles and attainments of past generations, while setting its sights even higher. This the path. Goodness, together with love, justice and solidarity, are not achieved once and for all; they have to be realized each day. It is not possible to settle for what was achieved in the past and complacently enjoy it, as if we could somehow disregard the fact that many of our brothers and sisters still endure situations that cry out for our attention.'

...It frequently becomes clear that, in practice, human rights are not equal for all. Respect for those rights 'is the preliminary

(Continued on page 2)

condition for a country's social and economic development. When the dignity of the human person is respected, and his or her rights recognized and guaranteed, creativity and interdependence thrive, and the creativity of the human personality is released through actions that further the common good'. ...While one part of humanity lives in opulence, another part sees its own dignity denied, scorned or trampled upon, and its fundamental rights discarded or violated.' What does this tell us about the equality of rights grounded in innate human dignity?

...[W]e no longer have common horizons that unite us; indeed, the first victim of every war is 'the human family's innate vocation to fraternity.' As a result, 'every threatening situation breeds mistrust and leads people to withdraw into their own safety zone.' Our world is trapped in a strange contradiction: we believe that we can 'ensure stability and peace through a false sense of security sustained by a mentality of fear and mistrust.

Paradoxically, we have certain ancestral fears that technological development has not succeeded in eliminating; indeed, those fears have been able to hide and spread behind new technologies. Today too, outside the ancient town walls lies the abyss, the territory of the unknown, the wilderness. Whatever comes from there cannot be trusted, for it is unknown, unfamiliar, not part of the village. It is the territory of the 'barbarian,' from whom we must defend ourselves at all costs. As a result, new walls are erected for self-preservation, the outside world ceases to exist and leaves only 'my' world, to the point that others, no longer considered human beings possessed of an inalienable human dignity, become only 'them.' Once more, we encounter 'the temptation to build a culture of walls, to raise walls, walls in the heart, walls on the land, in order to prevent this encounter with other cultures, with other people. And those who raise walls will end up as slaves within the very walls they have built. They are left without horizons, for they lack this interchange with others.'

...[W]e do not ignore the positive advances made in the areas of science, technology, medicine, industry and welfare, above all in developed countries. ...[T]ogether with these historical advances, great and valued as they are, there exists a moral deterioration that influences international actions and a weakening of spiritual values and responsibility. This contributes to a general feeling of frustration, isolation and desperation.' We see 'outbreaks of tension and a

buildup of arms and ammunition in a global context dominated by uncertainty, disillusionment, fear of the future, and controlled by narrow economic interests.' We can also point to 'major political crises, situations of injustice and the lack of an equitable distribution of natural resources.... In the face of such crises that result in the deaths of millions of children - emaciated from poverty and hunger - there is an unacceptable silence on the international level.' This panorama, for all its undeniable advances, does not appear to lead to a more humane future.

In today's world, the sense of belonging to a single human family is fading, and the dream of working together for justice and peace seems an outdated utopia. What reigns instead is a cool, comfortable and globalized indifference, born of deep disillusionment concealed behind a deceptive illusion; thinking that we are all-powerful, while failing to realize that we are all in the same boat. This illusion, unmindful of the great fraternal values, leads to 'a sort of cynicism. For that is the temptation we face if we go down the road of disenchantment and disappointment.... Isolation and withdrawal into one's own interest are never the way to restore hope and bring about renewal. Rather, it is closeness; it is the culture of encounter. Isolation, no; closeness, yes. Culture clash, no; culture of encounter, yes.'

...Technology is constantly advancing, yet 'how wonderful it would be if the growth of scientific and technological innovation could come with more equality and social inclusion. How wonderful it would be, even as we discover faraway planets, to rediscover the needs of the brothers and sisters who orbit around us.'

True, a worldwide tragedy like the Covid-19 pandemic momentarily revived the sense that we are a global community, all in the same boat, where one person's problems are the problems of all. Once more we realized that no one is saved alone; we can only be saved together....

All too quickly, however, we forget the lessons of history, 'the teacher of life.' Once this health crisis passes, our worst response would be to plunge even more deeply into feverish consumerism and new forms of egoistic self-preservation.

...[A]fter all this, we will think no longer in terms of 'them' and 'those,' but only 'us.' If only this may prove not to be just another tragedy of history from which we learned nothing. If only we might keep in mind all those elderly persons who died for lack of respirators, partly as a result of the dismantling, year after year, of

healthcare systems. If only this immense sorrow may not prove useless, but enable us to take a step forward towards a new style of life. If only we might rediscover once and for all that we need one another, and that in this way our human family can experience a rebirth, with all its faces, all its hands and all its voices, beyond the walls that we have erected.

Certain populist political regimes, as well as certain liberal economic approaches, maintain that an influx of migrants is to be prevented at all costs. ...One fails to realize that behind such statements, abstract and hard to support, great numbers of lives are at stake. Many migrants have fled from war, persecution and natural catastrophes. Others, rightly, 'are seeking opportunities for themselves and their families. They dream of a better future and they want to create the conditions for achieving it.'

...[In] some host countries, migration causes fear and alarm, often fomented and exploited for political purposes. This can lead to a xenophobic mentality, as people close in on themselves, and it needs to be addressed decisively.' Migrants are not seen as entitled like others to participate in the life of society, and it is forgotten that they possess the same intrinsic dignity as any person. Hence they ought to be agents in their own redemption....

I realize that some people are hesitant and fearful with regard to migrants. I consider this part of our natural instinct of self-defense. Yet it is also true that an individual and a people are only fruitful and productive if they are able to develop a creative openness to others. I ask everyone to move beyond those primal reactions because 'there is a problem when doubts and fears condition our way of thinking and acting to the point of making us intolerant, closed and perhaps even - without realizing it - racist. In this way, fear deprives us of the desire and the ability to encounter the other.'

Oddly enough, while closed and intolerant attitudes towards others are on the rise, distances are otherwise shrinking or disappearing to the point that the right to privacy scarcely exists. Everything has become a kind of spectacle to be examined and inspected, and people's lives are now under constant surveillance. Digital communication wants to bring everything out into the open; people's lives are combed over, laid bare and banded about, often anonymously. Respect for others disintegrates, and even as we dismiss, ignore or keep others distant, we can shamelessly peer into every detail of their lives.

Digital campaigns of hatred and de-

struction, for their part, are not - as some would have us believe - a positive form of mutual support, but simply an association of individuals united against a perceived common enemy....

Even as individuals maintain their comfortable consumerist isolation, they can choose a form of constant and febrile bonding that encourages remarkable hostility, insults, abuse, defamation and verbal violence destructive of others, and this with a lack of restraint that could not exist in physical contact without tearing us all apart. Social aggression has found unparalleled room for expansion through computers and mobile devices.

...Nor should we forget that 'there are huge economic interests operating in the digital world, capable of exercising forms of control as subtle as they are invasive, creating mechanisms for the manipulation of consciences and of the democratic process. The way many platforms work often ends up favoring encounter between persons who think alike, shielding them from debate. These close circuits facilitate the spread of fake news and false information, fomenting prejudice and hate.'

Those who raise walls will end up as slaves within the very walls they have built.

...True wisdom demands an encounter with reality. Today, however, everything can be created, disguised and altered. ...A mechanism of selection then comes into play, whereby I can immediately separate likes from dislikes, what I consider attractive from what I deem distasteful. In the same way, we can choose the people with whom we wish to share our world, Persons or situations we find unpleasant or disagreeable are simply deleted in today's virtual networks; a virtual circle is then created, isolating us from the real world in which we are living.

...[T]oday's world is largely a deaf world.... At times, the frantic pace of the modern world prevents us from listening attentively to what another person is saying. Halfway through, we interrupt him and want to contradict what he has not even finished saying. We must not lose our ability to listen.'

...Wisdom is not born of quick searches on the internet nor is it a mass of unverified data. That is not the way to mature in the encounter with truth. Conversations revolve only around the latest data; they become merely horizontal and cumulative. We fail to keep our attention focused, to penetrate to the heart of matters, and

(Continued on page 3)

to recognize what is essential to give meaning to our lives. Freedom thus becomes an illusion that we are peddled, easily confused with the ability to navigate the internet. The process of building fraternity, be it local or universal, can only be undertaken by spirits that are free and open to authentic encounters.

...The recent pandemic enabled us to recognize and appreciate once more all those around us who, in the midst of fear, responded by putting their lives on the line. We began to realize that our lives are interwoven with and sustained by ordinary people valiantly shaping the decisive events of our shared history: doctors, nurses, pharmacists, storekeepers and supermarket workers, cleaning personnel, caretakers, transport workers, men and women working to provide essential services and public safety, volunteers, ... They understood that no one is saved alone.

I invite everyone to renewed hope, for hope 'speaks to us of something deeply rooted in every human heart, independently of our circumstances and historical conditioning. Hope speaks to us of a thirst, an aspiration, a longing for a life of fulfillment, a desire to achieve great things, things that fill our heart and lift our spirit to lofty realities like truth, goodness and beauty, justice and love.... Hope is bold; it can look beyond personal convenience, the petty securities and compensations which limit our horizon, and it can open us up to grand ideals that make life more beautiful and worthwhile.' Let us continue, then, to advance along the paths of hope.

...Someone is assaulted on our streets, and many hurry off as if they did not notice. People hit someone with their car and then flee the scene. Their only desire is to avoid problems; it does not matter that, through their fault, another person could die. All these signs of an approach to life that is spreading in various and subtle ways. What is more, caught up as we are with our own needs, the sight of a person who is suffering disturbs us: It makes us uneasy, since we have no time to waste on other people's problems. These are symptoms of an unhealthy society. A society that seeks prosperity but turns its back on suffering.

May we not sink to such depths! ... [W]e are called to direct society to the pursuit of the common good and, with this purpose in mind, to persevere in consolidating its political and social order, its fabric of relations, its human goals. ...[T]he existence of each and every individual is deeply tied to that of others: life is not simply time that

passes; life is a time for interactions.'

...[A] community can be rebuilt by men and women who identify with the vulnerability of others, who reject the creation of a society of exclusion, and act instead as neighbors, lifting up and rehabilitating the fallen for the sake of the common good. At the same time, it warns us about the attitude of those who think only of themselves and fail to shoulder the inevitable responsibilities of life as it is.

...[W]e were created for a fulfillment that can only be found in love. We cannot be indifferent to suffering; we cannot allow anyone to go through life as an outcast. Instead, we should feel indignant, challenged to emerge from our comfortable isolation and to be changed by our contact with human suffering. That is the meaning of dignity.

...Sooner or later, we will all encounter a person who is suffering. Today there are more and more of them. The decision to include or exclude those lying wounded along the roadside can serve as a criterion for judging every economic, political, social and religious project.

How wonderful it would be, even as we discover faraway planets, to rediscover the needs of the brothers and sisters who orbit around us.

...Now there are only two types of people: those who care for someone who is hurting and those who pass by; those who bend down to help and those who look the other way and hurry off. Here, all our distinctions, labels and masks fall away: it is the moment of truth. Will we bend down to touch and heal the wounds of others? Will we bend down and help another to get up? This is today's challenge, and we should not be afraid to face it. In moments of crisis, decisions become urgent. It could be said that, here and now, anyone who is neither a robber nor a passer-by is either injured himself or bearing an injured person on his shoulders.

...The complaint that 'everything is broken' is answered by the claim that 'it can't be fixed,' or 'what can I do?' This feeds into disillusionment and despair, and hardly encourages a spirit of solidarity and generosity. Plunging people into despair closes a perfectly perverse circle: such is the agenda of the invisible dictatorship of hidden interests that have gained mastery over both resources and the possibility of thinking and expressing opinions....

Each day offers us a new opportunity, a new possibility. We should not expect everything from those who

govern us, for that would be childish. We have the space we need for co-responsibility in creating and putting into place new processes and changes. Let us take an active part in renewing and supporting our troubled societies. Today we have a great opportunity to express our innate sense of fraternity, to ...bear the pain of other people's troubles rather than fomenting greater hatred and resentment. ...[W]e need only have a pure and simple desire to be a people, a community, constant and tireless in the effort to include, integrate and lift up the fallen. We may often find ourselves succumbing to the mentality of the violent, the blindly ambitious, those who spread mistrust and lies. Others may continue to view politics or the economy as an arena for their own power plays. For our part, let us foster what is good and place ourselves at its service.

...Let us seek out others and embrace the world as it is, without fear of pain or a sense of inadequacy.... Difficulties that seem overwhelming are opportunities for growth, not excuses for a glum resignation that can lead only to acquiescence. Yet let us not do this alone, as individuals. ... [W]e are called to unite as a family that is stronger than the sum of small individual members....

Love also impels us towards universal communion. No one can mature or find fulfillment by withdrawing from others. By its very nature, love calls for growth in openness and the ability to accept others as part of a continuing adventure that makes every periphery converge in a greater sense of mutual belonging....

Some peripheries are close to us, in city centers or within our families. Hence, there is an aspect of universal openness in love that is existential rather than geographical. It has to do with our daily efforts to expand our circle of friends, to reach those who, even though they are close to me, I do not naturally consider a part of my circle of interests. Every brother or sister in need, when abandoned or ignored by the society in which I live, becomes an existential foreigner, even though born in the same country. They may be citizens with full rights, yet they are treated like foreigners in their own country. Racism is a virus that quickly mutates and, instead of disappearing, goes into hiding, and lurks in waiting.

I would like to mention some of those 'hidden exiles' who are treated as foreign bodies in society. Many persons with disabilities 'feel that they exist without belonging and without participating.' Much still prevents them from being fully enfranchised.

Our concern should be not only to care for them to ensure their 'active participation in the civil and ecclesial community. That is a demanding and even tiring process, yet one that will gradually contribute to the formation of consciences capable of acknowledging each individual as a unique and unrepeatable person.' I think, too, of 'the elderly who, also due to their disability, are sometimes considered a burden.' Yet each of them is able to offer 'a unique contribution to the common good through their remarkable life stories.' Let me repeat: we need to have 'the courage to give a voice to those who are discriminated against due to their disability, because sadly, in some countries even today, people find it hard to acknowledge them as persons of equal dignity.'

Social friendship and universal fraternity necessarily call for an acknowledgment of *the worth of every human person*, always and everywhere. If each individual is of such great worth, it must be stated clearly and firmly that 'the mere fact that some people are born in places with fewer resources or less development does not justify the fact that they are living with less dignity'....

Every human being has the right to live with dignity and to develop integrally; this fundamental right cannot be denied by any country. People have this right even if they are unproductive, or were born with or developed limitations. This does not detract from their great dignity as human persons, a dignity not based on circumstances but on the intrinsic worth of their being. Unless this basic principle is upheld, there will be no future either for fraternity or for the survival of humanity....

The world exists for everyone, because all of us were born with the same dignity. Differences of color, religion, talent, place of birth or residence, and so many others, cannot be used to justify the privileges of some over the rights of all. As a community, we have an obligation to ensure that every person lives with dignity and has sufficient opportunities for his or her integral development.

Recognizing that all people are our brothers and sisters, and seeking forms of social friendship that include everyone, is not merely utopian. It demands a decisive commitment to devising effective means to this end. Any effort along these lines becomes a noble exercise of charity. For whereas individuals can help others in need, when they join together in initiating social processes of fraternity and justice for all, they enter the

(Continued on page 4)

'field of charity at its most vast, namely political charity.' This entails working for a social and political order whose soul is social charity....

Each of us is fully a person when we are part of a people; at the same time, there are no peoples without respect for the individuality of each person. 'People' and 'person' are correlative terms....

'Social love' makes it possible to advance towards a civilization of love, to which all of us can feel called. Charity, with its impulse to universality, is capable of building a new world. No mere sentiment, it is the best means of discovering effective paths of development for everyone. Social love is a 'force capable of inspiring new ways of approaching the problems of today's world, of profoundly renewing structures, social organizations and legal systems from within.'

Charity is at the heart of every healthy and open society, yet today 'it is easily dismissed as irrelevant for interpreting and giving direction to moral responsibility.' Charity, when accompanied by a commitment to the truth, is much more than personal feeling, and consequently need not 'fall prey to contingent subjective emotions and opinions.' Indeed, its close relation to truth fosters its universality and preserves it from being confined to a narrow field devoid of relationships.' Otherwise, it would be 'excluded from the plans and processes of promoting human development of universal range, in dialogue between knowledge and praxis.' Without truth, emotion lacks relational and social content. Charity's openness to truth thus protects it from 'a fideism that deprives it of its human and universal breadth.'

Charity needs the light of the truth that we constantly seek. ...Yet it also respects the development of the sciences and their essential contribution to finding the surest and most practical means of achieving the desired results. For when the good of others is at stake, good intentions are not enough. Concrete efforts must be made to bring about whatever they and their nations need for the sake of their development.

There is a kind of love that is 'elicited': its acts proceed directly from the virtue of charity and are directed to individuals and peoples. There is also a 'commanded' love, expressed in those acts of charity that spur people to create more sound institutions, more just regulations, more supportive structures. It follows that 'it is an equally indispensable act of love to strive to organize and structure society so that one's neighbor will not find himself in poverty.' It is an act

of charity to assist someone suffering, but it is also an act of charity, even if we do not know that person, to work to change the social conditions that caused his or her suffering. If someone helps an elderly person cross a river, that is a fine act of charity. The politician, on the other hand, builds a bridge, and that too is an act of charity. While one person can help another by providing something to eat, the politician creates a job for that other person, and thus practices a lofty form of charity that ennobles his or her political activity.

This charity, which is the spiritual heart of politics, is always a preferential love shown to those in greatest need; it undergirds everything we do on their behalf. Only a gaze transformed by charity can enable the dignity of others to be recognized and, as a consequence, the poor to be acknowledged and valued in their dignity, respected in their identity and culture, and thus truly integrated into society. '...How sad it is when we find, behind allegedly altruistic works, the other being reduced to passivity' What are need are new pathways of self-expression and participation in society. Education serves these by making it possible for each human being to shape his or her own future. Here too we see the importance of the principle of *subsidiarity*, which is inseparable from the principle of *solidarity*.

These considerations help us recognize the urgent need to combat all that threatens or violates fundamental human rights. Politicians are called to 'tend to the needs of individuals and peoples. To tend to those in need takes strength and tenderness, effort and generosity in the midst of a functionalistic and privatized mindset with its situations of utter marginalization and anguish, and being capable of bestowing dignity upon it. It will likewise inspire intense efforts to ensure that 'everything be done to protect the status and dignity of the human person.' Politicians' ...biggest concern should not be about a drop in the polls, but about finding effective solutions to the phenomenon of social and economic exclusion.

'Life, for all its confrontations, is the art of the encounter.' I have frequently called for the growth of a culture of encounter capable of transcending our differences and divisions. ...The image of a polyhedron can represent a society where differences coexist, complementing, enriching and reciprocally illuminating one another, even amid disagreements and reservations. Each of us can learn something from others. No one is useless and no one is expendable. This also means find-

ing ways to include those on the peripheries of life. For they have another way of looking at things; they see aspects of reality that are invisible to the centers of power where weighty decisions are made....

Social peace demands hard work, craftsmanship. It would be easier to keep freedoms and differences in check with cleverness and a few resources. But such a peace would be superficial and fragile, not the fruit of a culture of encounter that brings enduring stability. Integrating differences is a much more difficult and slow process, yet it has the guarantee of a genuine and lasting peace. That peace is not achieved by recourse only to those who are pure and untainted, since 'even people who can be considered questionable on account of their errors have something to offer which must not be overlooked.'

All this calls for the ability to recognize other people's right to be themselves and to be different. This recognition, as it becomes a culture, makes possible the creation of a social covenant. Without it, subtle ways can be found to make others insignificant, irrelevant, of no value to society. While rejecting certain visible forms of violence, another more insidious kind of violence can take root: the violence of those who despise people who are different, especially when their demands in any way compromise their own particular interests....

Consrut individualism has led to great injustice. Other persons come to be viewed simply as obstacles to our own serene existence; we end up treating them as annoyances and we become increasingly aggressive.

...Individuals who possess this quality [of kindness] help make other people's lives more bearable, especially by sharing the weight of their problems, needs and fears. This way of treating others can take different forms: an act of kindness, a concern not to offend by word or deed, a readiness to alleviate their burdens. It involves 'speaking words of comfort, strength, consolation and encouragement' and not 'words that demean, sadden, anger or show scorn.'

Working to overcome our divisions without losing our identity as individuals presumes that a basic sense of belonging is present in everyone. Indeed, 'society benefits when each person and social group feels truly at home. In a family, parents, grandparents and children all feel at home; no one is excluded. If someone has a problem, even a serious one, even if he brought it upon himself, the rest of the family comes to his assistance; they support him. His problems are theirs.... In families, everyone contrib-

utes to the common purpose; everyone works for the common good, not denying each person's individuality but encouraging and supporting it. They may quarrel, but there is something that does not change: the family bond. Family disputes are always resolved afterwards. The joys and sorrows of each of its members are felt by all. That is what it means to be a family! If only we could view our political opponents or neighbors in the same way that we view our children or our spouse, mother or father! How good this would be! Do we love our society or is it still something remote, something anonymous that does not involve us, something to which we are not committed?'

Often, the more vulnerable members of society are the victims of unfair generalizations. If at times the poor and the dispossessed react with attitudes that appear antisocial, we should realize that in many cases those reactions are born of a history of scorn and social exclusion.

The important thing is not to fuel anger, which is unhealthy for our own soul and the soul of our people, or to become obsessed with taking revenge and destroying the other. No one achieves inner peace or returns to a normal life in that way. The truth is that 'no family, no group of neighbors, no ethnic group, much less a nation, has a future if the force that unites them, brings them together and resolves their differences is vengeance and hatred. We cannot come to terms and unite for the sake of revenge, or treating others with the same violence with which they treated us, or plotting opportunities for retaliation under apparently legal auspices.' Nothing is gained this way and, in the end, everything is lost.

To be sure, 'it is no easy task to overcome evil with good and by cultivating those virtues which foster reconciliation, solidarity and peace.' In this way, 'persons who nourish goodness in their heart find that such goodness leads to a peaceful conscience and to profound joy, even in the midst of difficulties and misunderstandings. Even when affronted, goodness is never weak but rather, shows its strength by refusing to take revenge.' Each of us should realize that 'even the harsh judgment I hold in my heart against my brother or my sister, the open wound that was never cured, the offense that was never forgiven, the rancor that is only going to hurt me, are all instances of a struggle that I carry within me, a little flame deep in my heart that needs to be extinguished before it turns into a great blaze.'

(Continued on page 5)

Politicians' ...biggest concern should not be about a drop in the polls, but about finding effective solutions to the phenomenon of social and economic exclusion.

All ...people of good will are today called to work not only for the abolition of the death penalty, legal or illegal, in all its forms, but also to work for the improvement of prison conditions, out of respect for the human dignity of persons deprived of their freedom. I would link this to life imprisonment.... A life sentence is a secret death penalty."

Laura Lee, KBJR-TV Bears

Witness to the Reality of SOCC

Laura Lee, "MSOP Moose Lake: Behind Bars," *Northern News Now - KBJR6* (aired in three parts: October 31, November 1-2, 2023: <https://www.northernnewsnow.com/2023/11/01/msop-moose-lake-behind-barbed-wire/> (7:14); <https://www.northernnewsnow.com/2023/11/02/msop-moose-lake-behind-barbed-wire-pt-2/> (7:49); <https://www.northernnewsnow.com/2023/11/03/msop-moose-lake-behind-barbed-wire-part-3/> (7:59).

Editor's Introduction: In the most in-depth exposure to date of what actually goes on in Minnesota's sex-offender civil commitment ("SOCC") program, the Minnesota Sex Offender Program ("MSOP"), Duluth TV station KBJR-6, through its news subsidiary, Northern News Now, aired a three-part news feature program revealing surprising findings about MSOP, long known as one of Minnesota's most secretive state-government entities.

Even the MSOP-Moose Lake (ML) facility itself is secluded behind a forest, thus invisible from the turnoff, 3-blocks distant, from the state highway to it and also invisible from the abutting I-35 corridor (from which traffic sounds can be heard in the facility's exterior areas) that connects the Twin Cities metro area of Minneapolis and St. Paul to Duluth. The buildings comprising the facility are of modular pre-cast concrete, only thinly disguised by faux-stone veneers - a theme of deceptive appearances well-applied.

A recently resurfaced parking lot filled with recent-year non-economy-model vehicles belonging to well-paid employees greets visitors, as does well-kept shrubbery of the administration building through which entrance

is gained by visitors. Between the buildings of the facility, along walkways trod by carefully herded tours, are flowers tended by confinees paid half the minimum wage. The actual main motivation of these underpaid confinee workers instead is to curry the favor of their captors toward support for their eventual release. By the numbers, only a trickle of them will ever be granted that release. To visiting outsiders, everything appears neat and orderly, suggesting that everything is as it should be. MSOP is about nothing if not appearances.

But KBJR's extensive investigation included interviews of a past staff member, the current head of MSOP, a county attorney simplistically defending SOCC as a practice and seemingly unconcerned with whatever happens after the freshly committed person is hustled off to MSOP-ML, and a law-professor who has deeply researched the entire phenomenon of SOCC and has concluded it is both extremely wasteful and ineffective at preventing sex crimes, as well as being a total denial of basic human rights.

Most importantly, these program segments included interviews of MSOP-ML "clients," confined behind razor-wired double high fence-lines under circumstances and an austere rule structure comparable to Minnesota's only 'supermax'-custody prison. Each of these so-called 'clients' have earnestly strived to achieve release, only to be denied it time and again after one to two decades, and sometimes more, of what MSOP claims is intensive treatment, but which, unlike treatment programs elsewhere, neither results in graduation nor ends in more than a minimal release rate and a downright-infinitesimal final discharge rate. Except for the rare lucky ones who are granted provisional discharge, almost all treatment participants eventually give up on ever getting released and hence, resign from treatment, often as they enter old age. Then, in the absence of a physician in regular attendance, instead often not diagnosed at all or misdiagnosed by nurses, they contract undetected lethal cancers and/or lung diseases in numbers suggesting possible clusters with un-investigated pathogenic, environmental causes and they ultimately die in what amounts to a form of non-consensual euthanasia.

We now join the transcripts of this series to the extent our limited space here allows readers to learn facts illustrating this grim and cruel 'second incarceration' imposed on these individuals, almost always decades after their crimes were committed and their convictions were imposed, and only after their prison terms were finally

completed.

We hope these excerpts with commentary will allow you to decide whether this 'treatment as extra punishment' is just and compassionate, or is sheer unspeakable infliction of incarceration without assured end except death as raw vengeance after the retribution of a criminal sentence has already been suffered.

In this series, News Anchor Laura Lee went inside this high-security facility and talked to those confined there who say they are losing hope of ever rejoining society and living a life worth living. Ms. Lee also traveled to the state capital to question officials of the state's Department of Human Services in charge of the program. She also sat down with legal experts who argue that the current \$112 million (next year: \$129 million) used to fund the program can better serve communities of the state to achieve protection from sex crimes in other ways and she challenged why Minnesota is such an outrageous outlier when it comes to civil commitment in the country.

Text excerpts:

"Northern News Now Anchor Laura Lee investigates the claims made by some clients inside MSOP who say they are being given life sentences for crimes they have already served [long sentences]. The desperation of some of [the confined people] is reaching a boiling point....

[Ms. Lee discussed the case of Nicholas Aron-Jones, a confinee at the facility who, while already in a segregation unit, attacked a passing security staff person, claiming that his motivation in doing so was verbal abuse by that staff person on a previous security round. Aron-Jones said "he was mistreated" inside [MSOP] and said that committing murder was his only ticket out. That security attendant survived, but was badly injured. Aron-Jones was given an 18-year sentence.]

'People should look into why people are trying to escape a treatment center to go to prison; that should be alarming,' said Dan Wilson. [Aron-Jones will be returned to MSOP-ML when his prison sentence is completed.] Dan Wilson is a current 'client' inside [MSOP-ML]. He says what happened with Aron-Jones has happened before and may happen again.

'The less hope we have, the more the courts don't want to pay attention, and the more the public doesn't pay attention, the less hope we're going to have; that's a recipe for disaster,' said Wilson.

Just a week after the Aron-Jones attack, MSOP 'clients'/confinees attacked four other staff members.

'There is a pattern of clients going to extreme lengths to get out of here and go to prison - not to go home; they've given up on that, because it's not going to happen, but to get out of here to go to prison and be left alone and not abused over and over again,' he said.

In another ruthless attack, in 2019, MSOP 'client' George Mack Jr. used a razor blade to slash the throat of a clinician. He was sentenced to 20 years for attempted murder and assault. [He too will be returned to MSOP when his prison term ends.]

In a letter written to Lee from the Stillwater prison, Mack writes, 'I'm not going to sit there and do life for something I might do. If I'm going to do life, it's going to be because I did something.'

He goes on to write, 'I'd rather die in prison respected and feared, than die there as the sexual monster that I know I'm not.'

The recent unrest and violence inside MSOP have catapulted another look at the controversial program. Clients want the public to take a hard look at MSOP and challenge its effectiveness.

'We're not asking for a break, we're asking for someone to pay attention,' said Wilson.

In the past decade, the prisonlike treatment center has been under fire after a class action lawsuit was filed by nearly 800 clients inside [the *Karsjens* case]. They argue the program violates their constitutional rights by handing them pseudo-life sentences after they have already completed their prison terms.

Because of its historically low release rate, in 2015 a federal judge [in the *Karsjens* case] agreed and ruled the program was unconstitutional. However, in 2016 that decision was reversed by the Eighth Circuit U.S. Court of Appeals [in a decision excoriated by many legal commentators country-wide for its blatant bias and departure from Supreme Court jurisprudence].

...Minnesota is one of 20 states in the country with civil commitment [of sex offenders]. In a 2013 MSOP task force report, Minnesota had the highest number per capita of civilly committed sex offenders of any state. [It still does.]

According to the Department of Human Services, in 30 years of MSOP operation in Moose Lake, only 21 clients have been fully discharged from the program.

Neighboring Wisconsin and Iowa both have civil commitment programs. Both have less than half of the clients compared to Minnesota,

(Continued on page 6)

yet both have higher release rates -- more than 50 percent release rates for each state respectively, compared to Minnesota's release rate of just 3 percent.

However, Johnston argues the courts are granting at least 12-15 [provisional release, but less than 10 in 2017 and only 7 in 2019, according to the latest (2022) MSOP Annual Report (p. 7)] petitions a year [out of MSOP's total population: 750].

[Also according to that 2022 Annual Report (*ibid.*), in its entire history, MSOP has only released 78 clients to provisional discharge ["PD"], and of these, only 17 have reached full discharge. The difference is 61. Of these, MSOP is now supervising 44 on provisional discharge. The difference between these last two figures is 17. Because these 17 have not (as of the end of 2022) reached full discharge, their absence from community supervision necessarily implies that their provisional discharge was revoked and that they were, at that time, back in MSOP confinement. That Annual Report also confesses that, while in the five years, 2018 - 2022 there were 71 releases to provisional discharge, during those same years there were 95 new commitments and an additional 8 "new admissions" not explained. 22 of these 103 total new admissions in that last-5-year period occurred in 2022 -- while only 19 were actually released to PD that year. In 2022, 14 clients were discharged to "other DHS Program." The only circumstance allowing "discharge" to such a different program from an MSOP commitment is when the person was later committed as mentally ill and dangerous. This seems to suggest that MSOP is literally driving at least that many of its clients crazy and violent each year. That Annual Report did not reveal the number who died in 2022 while under MSOP confinement or on hospice transfer to the Forensic Nursing Facility at St. Peter Regional Treatment Center in grave or terminal condition. Nor did it reveal the number whose MSOP commitment cases ended in dismissal, the number of Dept. of Corrections parole revocations, or new criminal sentences as transfers. In sum, these figures from that recent report depict MSOP as just barely treading water, certainly not succeeding at completing treatment of any appreciable number of its 'clients,' and, rather than reducing its burgeoning population, instead growing the number of its confinees. These statements are also rife with secrets that MSOP chooses to keep to itself, reducing the public's ability to trust what MSOP does say. Finally, Johnston does not explain why Minnesota's

committed sex offenders must be kept confined in such a greater percentage and for massively longer periods than those in Iowa and Wisconsin. There are no scientific findings that support any such difference among sex offenders in various states.]

According to the Department of Human Services, clinical treatment is provided to all clients. In fact, participation in treatment is the only way clients can move through the program. However, some clients claim ...they are not being allowed to move through the program.

In part two of our investigation series, we talk to a former MSOP therapist who claims she was ordered to reduce assessment scores, so clients do not move through the phases of treatment.

[Part Two] The high-security [MSOP] facility ...opened in 1995 and one of the first 'clients,' as they're called, was Daniel Larsen, who is now 62 years old.

'Did you think you were going to be with this program for this long?' asked Lee of Larsen.

'No,' he said. Daniel Larsen was 16 years old when he was civilly committed.... According to court documents, in 1976, Larsen was accused of raping a 10-year-old girl. He was never convicted of the crime.

The incident was reported after he witnessed the murder of his mother and another woman inside a Minneapolis apartment in 1971. After months of going in and out of Minnesota's Security Hospital in St. Peter, the courts determined he was mentally ill and ordered his civil commitment.

'I had some problems as a kid and after the loss of my mother and I never got any help from professionals to deal with it as a child,' said Larsen.

He and several other clients inside the treatment program agreed to sit down with us and share their stories.

Dan Wilson and Dan Larsen are a couple of the men who have petitioned the courts for their release. They claim they are being held not for crimes they have done, but for crimes they 'might' do.

'Anyone that likes to claim that Minnesota doesn't have the death penalty, I'd argue with them all day,' said Dan Wilson.

The Department of Human Services ('DHS'), which operates the Minnesota Sex Offender Program, says clients participate in a three-phase treatment program.

According to DHS 440 clients are in the Moose Lake facility, 177 are in the St. Peter secured facility, and 130 are in Community Preparation Services [CPS] in St. Peter. [As designed, the intended progression is from Moose

Lake to St. Peter, to CPS, to Provisional Discharge, and ultimately to Final Discharge. Contrary to the suggestion in its name, many have been retained in CPS for several years or more.]

[More than a hundred] clients are not participating in treatment at all, including Russell Hatton, who was civilly committed in 2007. After 16 years, he says he is still in Phase One of the program.

'It goes back to hopelessness,' said Hatton, '...I have seen guys do the work and it has gotten them nowhere.'

'They have no intention of letting them go home,' said Ruby Brewer.

Brewer is a Behavioral Therapist. She was hired to work for MSOP in 2016. She was a primary therapist for some of the clients inside the program. The former therapist says it didn't take long for her to notice something wasn't right.

'When I was working there, I had two different supervisors that would force me to lower scores on quarterly and annual treatment reports because if the scores were too high then it looked like the clients were doing well and they would need to progress and they did not want them to progress,' said Brewer.

She says when she started to question the program and press her supervisors, she claims DHS launched an investigation. The state agency confirms with us Brewer was reprimanded for 'insubordination.'

'They wanted me out because I wasn't following what they wanted me to follow,' said Brewer.

In a statement to Northern News Now, Nancy Johnston said, 'any claim that MSOP supervisors would direct therapists to lower assessment scores so that clients could not progress through treatment is false. Such professionally unethical behavior would not be - and is not - tolerated at MSOP.' [However, in addition to Brewer's account above, Dr. Nicole Elsen made similar allegations in testimony in the 2015 trial in that *Karsjens* class action by those confined in MSOP. Further, other therapists who asked to remain anonymous recently made identical allegations to Laura Lee in her investigation culminating in this series of TV broadcasts. See below on this.]

Brewer resigned after three years in 2019.

'Why do you take it upon yourself to do this even though it comes with risks?' asked Lee of Brewer.

'I know how wrong it is,' she said.

'There are individuals that are in wheelchairs, on oxygen, that can barely walk and stand, and somehow MSOP convinces people these are the worst of the worst,' said Brewer.

Of the 747 clients inside MSOP, 117 are senior citizens. The oldest client is 89 years old. Committed as a juvenile, Larsen has lived [all of his adult life in civil commitment and almost all of those decades] ...behind the walls of this facility.

'You're crying now, why?' asked Lee.

'I miss my mom,' said Larsen [the 62-year-old former juvenile].

'Do you think you are going to leave here?' asked Lee.

'I think, unless I get a miracle, which I doubt, from our governor or politicians, I'm going to die here.'

...In 2011, Larsen petitioned for his release and a panel denied his request. Larsen is not alone in feeling that hopelessness.

Wilson and Hatton also believe they will live out the remainder of their lives inside MSOP.

'We're sorry for the people that we've harmed, not just the victims, but the larger society,' said Hatton. 'We need the opportunity to reintegrate back into society.'

'It's just not realistic for me to believe that I will get out any other way except a body bag,' said Wilson.

We did some checking. Since the program started in the 1990s, DHS says 94 people have died while in the program. [This is inaccurate; the true total is 100 as of November 2023, per a database kept by MSOP-ML confinees with names, dates, and causes of death.] That's compared to the 21 people who have fully completed treatment.

Since these interviews, we have heard from several other former staff members, who want to remain anonymous for fear of retaliation by MSOP, who echo the same concerns as Brewer about mistreatment of some clients.

In the final part of our 3-part series, to understand the complex program, it's important to understand how these clients get in and the current statutes regarding MSOP. To house these men, it costs the state \$175,000 a year per client....

[Part Three] The controversial Minnesota Sex Offender Program was ruled constitutional by an appeals court in 2016 [in the *Karsjens* case]. Since then, the Department of Human Services says more people are being released than ever before [failing to mention that, before the *Karsjens* case, there were zero releases]. [This modest increase from dead zero is very insufficient to even make a dent in total MSOP population, which - despite those releases - has modestly grown since 2016, as more continue to be committed. Compared against

(Continued on page 7)

the current population of 750, current release rates are only an insignificant trickle – between 12 and 15 per year.]

To understand the complex program, it's important to understand how these offenders, or 'clients' as they are called, get in.

'We have learned what it means to be a healthy individual and the healthiest versions of ourselves and we need the opportunity to reintegrate back into society,' said Russell Hatton.

[As an example,] Russell Hatton has been inside the MSOP program for 16 years. ...[Many MSOP clients] claim they have participated in treatment but are not moving through the three-phase program and they fear they never will.

'I went to prison for four years, [Wilson said.] ...But to masquerade [another] prison as a treatment center is ...dishonest,' said Wilson.

[More specifically, it's a dishonest dodge of the prohibition on double jeopardy, which bars imposing a second sentence on anyone for the same crime. However, that is only half the objection. In 1994, the Minnesota sex-offender commitment law was proposed to stop a sex offender who had already spent a total of nearly 30 years in prison from getting out. Legislators in hearing discussions openly acknowledged that use of commitment to keep him detained would accomplish that very end-run to avoid double jeopardy.¹ It was deliberate ducking of one of the most important rights of the Bill of Rights simply by disguising it with nothing more than a form of words. Courts that have considered the unconstitutionality of this legislation in ensuing years have ratified that dishonest abdication from the Constitution simply by ignoring this critically important, deliberate nature of that double jeopardy violation.

Distinctly, it should not escape critical note that those 1994 legislators also said that another reason the law was needed was to merely hold people in confinement until the next legislative session could pass a bill lengthening sentences for sex crimes. In fact that is what happened, but the commitment law was not then repealed as no longer needed. In further fact, sentences for sex crimes have been repeatedly further increased at various times since then, now even reaching natural-life sentences in many repeat or aggravated circumstances. In Minnesota, even first-time sex offenders now can face a maximum sentence for First Degree Criminal Sexual Conduct of 30 years.

It so happens that, during all these intervening years, the rate of sexual offending throughout the country has fallen through the floor, such that

present rates of sexual crime are far and away the lowest that have ever been measured. This has had nothing to do with sex offender commitment laws, which are in effect in only 20 out of the 50 states.

Instead, this reduction has occurred at roughly identical rates in every state. This reduction has been the product of two trends: (1) the aforementioned great increases in sentences for such crimes has been universal in all states; and (2) several new or at least greatly improved technologies for gathering proof of the commission of such crimes and the identity of the perpetrator (think DNA forensics, for instance) have made investigation and prosecution of suspects close to a slam-dunk affair.

Consequently, almost all who are tempted to commit a sex crime now, upon contemplation of the near certainty of being caught and the permanently freedom-ending penalty that will then be faced, are obviously declining that temptation. In turn, this fact proves a reality long incorrectly believed not to be true.

For decades, it was wrongly believed that sex crimes were a product of irresistible impulse. In fact, this near-extinction of sexual offending, compared to far higher rates in the second half of the 1900s, clearly shows that sexual offending is in fact governed by pre-crime careful deliberation by a would-be perpetrator of the odds of evading detection and apprehension and the penalty faced if caught.²

Careful scientific research in the last 20 years has examined rates of recidivism by convicted sex offenders. This research has established that rates of such recidivism have dropped in all cases at least as much as the rate of crimes by first-time sexual offenders, and often at even steeper rates of decline. This squares with common sense, since any released sex offender knows that the penalty he will face for a recidivistic crime will be far worse than for a first-timer.

And this is the punch-line of relevance here: In studies done of recidivism by those who have been subjected to commitment, but later released, either on judicial dismissal of a commitment petition or after complete or substantial treatment in commitment, the rate of recidivism by such releasees has always been no higher than the rate for those released from prison after such crimes, and in some cases has been even less, sometimes even completely nonexistent on the part of such commitment releasee samples.³

This means that, in the absence of any indication that recidivism by those committed is any worse than those

passed over for commitment and released straight from prison at the end of their sentences, the conclusions that must be drawn are that: (1) committed sex offenders are not "dangerous," since they have either no chance of recidivism at all or at worst, present only a tiny chance of recidivism⁴; and (2) are every bit as capable both: (a) of governing themselves and clearly weighing both probability of detection and apprehension; and (b) of being deterred by that and by the very likely natural-life sentence upon even just one more conviction.⁵

Civil commitment is aimed at those who cannot govern their actions and who cannot be deterred by the criminal law and law enforcement technology. Yet the foregoing shows that committed sex offenders surely can control their actions and are quite responsive to deterrence, at least as much (if not more) than others who might contemplate such a crime. Since these are absolute, forceful and unbending facts, they must be borne in mind in considering the rest of the statements advanced in this series on this subject.

Because these changes in the meantime have effectively cured the problem of rampant sex crimes, sometimes by former repeat offenders, the Minnesota Legislature should finally make good on its 1994 promise to repeal sex offender commitment when increased penalties and other factors prove the lack of continued need for sex offender commitment.]

The Minnesota Sex Offender Program is a treatment center for mentally ill and sexually dangerous people operated by the Department of Human Services. These are individuals who have already completed their prison term, and some have no criminal convictions according to the DHS.

According to a study by the Williams Institute, the UCLA School of Law, more than 6,300 sex offenders are detained in civil commitment programs across the country. Of the 20 states with civil commitment programs, Minnesota has the highest number per capita of civilly committed sex offenders of any state.

'In its time, if the theory is that we are moving people through treatment, we should be seeing those results, but we're not?' asked Lee of Eric Janus.

'Some people may say it's because of the particular people and it's the program doing its job keeping them out of communities, but in reality, Minnesota is an outlier,' said Janus.

Eric Janus is President and Dean Emeritus of Mitchell Hamline School of Law. He has more than two decades of legal and scholarly experience with a focus on sexual violence prevention.

He is currently the Director of the Sex Offense Litigation and Policy Resource Center. He says that even if we accept the premise of what MSOP is, he says Minnesota is operating the program poorly.

'Under our American system, if they are convicted of a crime, they can be sentenced to a sentence that is authorized by law, that's appropriate, that's accountability, retribution, no problem with that,' said Janus, 'but once they fulfill that sentence though, our American Constitution says they cannot be punished anymore; that's called double jeopardy.'

Janus was one of nearly two dozen people including judges and lawmakers selected to be part of the Sex Offender Civil Commitment Task Force in 2013. They were ordered to examine the program when a federal judge ruled it unconstitutional after a class action lawsuit was filed by the clients inside. The bases of those claims were reversed by an appeals court in 2016 and the program was ruled constitutional.

'One of the things the task force said was we need to have a comprehensive approach to sexual violence, what we have now is not a comprehensive approach, we have a single arrow in our quiver and that is MSOP,' said Janus.

He says one of the key findings was that too many clients were locked up for too long.

'There are constitutional limits on preventive detention, locking people up in anticipation for a crime they may commit in the future and we as Americans should be very afraid of that kind of government overreach,' said Janus.

'You [must get] through a three-judge panel to be fully discharged, there is a question about whether it should be that rigorous on the front end; should there be a three judge panel as well [to be committed]?' asked Lee.

But Janus argues the way into MSOP should be just as rigorous with a clear policy of standard to commit someone.

'We can start by clarifying what level of risk justifies taking away someone's liberties,' said Janus. He says the current statute is too vague and can leave room for county attorneys to have different standards of review.

This is something Johnston agrees with, 'with 87 different counties and 87 different judges making those decisions, you end up with a wide range of folks.'

Folks like Wilson and Hatton who say they've served their sentences, but those sentences never meant life

(Continued on page 8)

behind barbed wire."

Notes:

1. 1994 MCCTA Legislative Recordings, Set 1, Disk 4, Joint Hearing of the Senate Judiciary & Crime Prevention Committees & House Judiciary Committee, Proceedings of August 24, 1994, Comments of Senator Anderson, Start Time: 09:40.
2. "Psychiatric research has not demonstrated that paraphilic disorders are associated with volitional impairment or impulse control." *Margo Kaplan*, "Taking Pedophilia Seriously," 72 *Wash. & Lee L. Rev.* 75, at 152 (Winter 2015).
3. See, e.g., *Daniel Montaldi*, "A Study Of The Efficacy Of The Sexually Violent Predator Act In Florida," 41 *Wm. Mitchell Law Rev.* 780-865 (2015).
4. *Duwe, Grant* "To What Extent Does Civil Commitment Reduce Sexual Recidivism?" Estimating the Selective Incapacitation Effects in Minnesota," *Jour. of Crim. Justice*, 42: 193-202 (2014).
5. *Deirdre M. Smith*, "Dangerous Diagnoses, Risky Assumptions, and the Failed Experiment of 'Sexually Violent Predator' Commitment," 67 *Oklahoma Law Rev.* 619, 675 (No. 4, Summer 2015).

Editor's Observations:

Although not discussed in this KBJR-TV series, the following facts strongly support the position that MSOP so-called 'treatment' is in fact just a sham, and that MSOP leadership has from the start used MSOP as a cloaked device simply to additionally, permanently incarcerate all who are committed to it.

One method to determine whether the treatment program is a 'sham' or 'placebo' would be to look at the focus of the treatment program. The focus of the treatment program at MSOP appears to be preventing breaches of security and only tangentially on treatment.

Only 11% of the annual MSOP budget is allocated to treatment. Likewise, only 11% of its staff is involved in treatment. The largest component of the high operating cost of MSOP-ML is that of security staffing (almost a one-to-one ratio with detainees). However, security staffing needed to monitor the new Complex One and the projected Complex Two units is minimal, due to open sight-lines in their design.

Second, in 2011, MSOP administrators declared that no releases were anticipated anytime in the foreseeable future. MSOP's projected number of detainees in 2020 was based solely on current rates of commitment, with no deduction for any projected releases. In that MSOP Report, MSOP boasted

that it offers 'the longest treatment durations,' apparently as a goal in and of itself (*id.*, p. 9). This supports the inference that, as its goal and that of the legislature, MSOP intends to keep its detainees confined for as long as possible.

In that circumstance especially, such endless, pointless treatment becomes apparent as 'adopted as a sham or mere pretext' (*Kansas v. Hendricks*, *supra*, at 521 U.S., p. 371), leaving only lifetime preventive detention, a subject exclusively for criminal sentencing.

Third, on a factual level, in sharp distinction from Kansas' assertion of 31.5 hours per week of treatment of Mr. Hendricks, Minnesota's MSOP currently provides only 2-4 hours of such 'treatment' weekly—effectively nothing more than a 'show' of what really is just a pretense of earnest treatment.

"Without careful judicial scrutiny to root out ineffective treatment programs, SVP commitment becomes indistinguishable from lifetime imprisonment." *Eric S. Janus & Wayne Logan*, "Substantive Due Process and the Involuntary Confinement of Sexually Violent Predators," 35 *Conn. L. Rev.* 319, 370 (Winter 2003). "Medical treatment [is] the *raison d'être* of the mentally disordered sex offender law, it is its sole justification." (*Id.* at 386) Moreover, 'adequate and effective treatment is constitutionally required because, absent treatment, the hospital is transformed "into a penitentiary where one could be held indefinitely for no convicted offense.'" *People v. Feagley*, 565 P.2d 373, 387 (Cal. 1975), quoting *Wyatt v. Stickney*, 325 F.Supp. 781, 784 (M.D. Ala. 1971).

To set the reasonableness benchmark, courts can look first to empirical data on sex offender treatment duration. In the correctional setting, most state-run sex-offender treatment programs extend for no more than three years [*Mary West et al.*, *State Sex Offender Treatment Programs (50-State Survey)* 4 (2000)]. The treatment program in Kansas, for instance, was designed to be completed in eighteen months. [*McCune v. Lile*, 122 S.Ct. 2017, 2025 (2002) (noting that the Kansas Sexual Abuse Treatment Program lasts for eighteen months).] Similarly, the well-known program implemented by the California Dept. of Mental Health – the Sex Offender Treatment and Evaluation Project [SOTEP] – involves a "comprehensive cognitive-behavioral treatment program" with an inpatient phase of approximately two years (fourteen to thirty months). [*Janice K. Marques, et al.*, "Effects of Cognitive-Behavioral Treatment on Sex Offender Recidivism: Preliminary Results of a Longitudinal Study," 21

Crim. Just. & Behav. 28, 36 (1994).] A survey of Minnesota sex-offender treatment programs in prisons and community settings showed that the average length of treatment ranged from 2.5 months to 37 months [*Minnesota Office of the Legislative Auditor*, "Sex Offender Treatment Programs" 55-58 (1994)].

Thus, three years appears to be a rough benchmark for treatment judged by professionals to achieve some treatment efficacy, if any is forthcoming. Social science data suggest that beyond that point at best only a small correlation exists between length of treatment and reductions in sexual offending recidivism. [See *R. Karl Hanson & Monique T. Bussiere*, "Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies," 66 *J. Consulting & Clinical Psychol.* 348, 352 (1998) (noting the median correlation of "length of treatment" and recidivism as .00)], raising the question of whether anything other than the interest of incapacitation is being served.

Distinctly, under Minnesota's SOCC law, as upheld by authoritative state appellate court rulings, the duration of commitment in any event extends through middle- and old-age, stages of life by which all known statistics demonstrate unequivocally that sex-crime recidivism has dropped to negligible levels of statistical probability, even for prior recidivists. This violates the precept that, to comport with substantive due process, commitment must last no longer than reasonably necessary to achieve its non-punitive rationale. If such rationale is deemed to be to protect public safety, and assuming strictly *arguendo* that said rationale is not simply another term for inherently punitive preventive detention, then this established inverse statistical correlation as to recidivism as age advances past age forty proves that commitment under said Act, with detention in and beyond middle-age, inherently loses its relation to that rationale, thereby depriving substantive due process to all Plaintiffs in that age range.

MSOP employs undefined, unspecific "matrix" standards to justify overly conservative, subjective evaluation by clinicians that deliberately thwart treatment advancement and prevent release. MSOP relies on a 'treatment Matrix' to purportedly assess detainees' needs and progress in treatment. No other sex offender commitment or treatment program uses this 'Matrix,' as found by the *Karsjens* trial court. For years, outside experts have warned MSOP executives and staff that there was confusion over how to apply the Matrix factors, inconsistent

application of those factors, subjective application among evaluators (exacerbated by staff turnover), and that the required matrix factor scores for phase progression were too high. (*Karsjens* evidentiary submissions).

'Matrix' standards are undefined or ill-defined, lack specific examples of application, and are highly subjective. Many therapists report that the Matrix is not being uniformly applied and that standards for interpreting the Matrix are lacking, allowing a wide range, from impossible-perfection standards to very lenient standards, from one therapist to the next. A mere glance at some of the factors used in various 'behavioral areas' of the Matrix confirms this subjective vagueness: 'negative social influences,' 'poor self-regulation,' 'general hostility,' and 'antisocial attitudes and behavior.'

In this connection, Judge Frank, writing in the *Karsjens* case, concluded: "The Court has already concluded that the MSOP "treatment program's structure has been an institutional failure and there is no meaningful relationship between the treatment program and an end to indefinite detention."

In the *Karsjens* trial, Dr. Michael Miner testified that "[T]he Matrix factors scoring guide doesn't meet minimal requirement for a psychological test as promulgated by the joint APA-AERA Guidelines for Psychological and Educational Testing. It doesn't include a lot of information that would be required in a guide or in a manual.... It's been criticized for being unreliable..."

More pragmatically, Dr. Dean R. Cauley testified that the Matrix factors at MSOP don't "serve a larger purpose of assessing risk."

MSOP Executive Clinical Director Jannine Hébert testified that "there's no best practices with regard to the Matrix factors specifically." Effectively, this means that any way that MSOP chooses to use Matrix factor scoring is deemed by MSOP clinical leadership as perfectly acceptable despite the utter lack of any scientifically accepted protocol for such use. Hébert further admitted in testimony that MSOP's Matrix factors and their usage are under "extreme criticism"

MSOP assessments of risk (as when prepared for use in SRB proceedings seeking release or CPS advancement) rely heavily on determinations of presence at that time of "dynamic factors" allegedly affecting probability of future sexual re-offense. "Dynamic factors" in sex offender assessment are typically limited by assessors only to negative factors (e.g.,

(Continued on page 9)

"criminogenic needs"). More often than not, such "dynamic" factors have no basis in science, but have been adopted by assessors simply because, on a purely intuitive, heuristic level, they seem like they should make a difference. However, almost all dynamic factors that have been subjected to statistical research have been proved to have only incremental predictive significance, and then only about 50% of the time. In the rest of the cases examined, the dynamic factor under scrutiny turns out to have significance in the contrary direction. This is not science at all.

According to the Minnesota Sex Offender Program (MSOP) "Program Theory Manual," "Overview Of Treatment For Sexual Abusers" section, MSOP adheres to the triad of principles known as "risk, need, and responsibility" ("RNR"). "Responsivity" refers simply to claimed effectiveness of certain treatment approaches. However, "risk" and "need" refer to various factors about individuals committed to MSOP that are deemed by treatment staff to increase the likelihood of recidivism by that individual. These 'RNR' factors are supposed to be dynamic, however, studies of these have found that most of them intertwine with "static" factors, therefore saying nothing beyond static factors and worse, not being subject to treatment's effects at all. Indeed, RNR-based treatment has most recently been found ineffective compared to non-treated sexual offenders. *Katharina Seewald, "Effectiveness of a Risk-Need-Responsivity-Based Treatment Program for Violent and Sexual Offenders: Results of a Retrospective, Quasi-Experimental Study," 23 Legal and Criminological Psychology 85-99 (2020).*

The scientific consensus is that risk of sexual recidivism decreases with age. See *Robert Prentky, Howard Barbaree and Eric Janus, Sexual Predators: Society, Risk and the Law* (Routledge, 2015) at 106-113 (citing studies showing that age-related "reductions in recidivism among sex offenders are consistent across studies and are very similar to reductions in recidivism (both violent and nonviolent) in the aging non-sexual criminal population," and describing the "aging effect" as "one of the most robust findings in the field of criminology.") See these additional works confirming this recidivism-reducing effect of all ages from age 40 up: *Amirault, J. & Lussier, P. (2011). "Population Heterogeneity, State Dependence and Sexual Offender Recidivism: The Aging Process and the Lost Predictive Impact of Prior Criminal Charges over Time." 39 Jour. Of Criminal Justice 344-54; and*

Barbaree, H., Langton, C., Blanchard, R., & Cantor, J. (2009). "Aging Versus Stable Enduring Traits as Explanatory Constructs in Sex Offender Recidivism: Partitioning Actuarial Prediction into Conceptually Meaningful Components." 36 Crim. Just. & Behav. 443-65..

Daniel Montaldi, "A Study Of The Efficacy Of The Sexually Violent Predator Act In Florida," 41 Wm. Mitchell Law Rev. 780-865 at p. 811, 818 (2015), found that "[t]he most dramatic difference comes from offenders who were age sixty or older at time of recommendation (ninety-three). Out of this group, no one obtained a new charge or conviction for either rape or child molestation (0%)", adding, at 861: Age may be cancelling out history as a risk discriminator.... [E]specially when criminal history is far in the past, even "bad" people may not be currently dangerous. Recent data are showing this. No doubt, history-dominated evaluations will continue to be done. Juries at least will continue hearing the message of a "bad guy" deserving commitment. This is the inherently punitive element of forced hospitalization for criminal offenders that the Supreme Court did not consider."

Even using the samples of the original Static-99 (a recidivism actuarial tool for sex offending eventually abandoned because of its gross overestimates of likelihood of future sexual re-offense, and especially as to older sex offenders), a study by Richard Wollert, a noted psychological researcher with excellent statistical analytical skills, ("Low Base-Rates Limit Expert Certainty When Current Actuarials Are Used....," 12 *Psychology, Public Policy and Law* 56 (2006) determined that past sex offenders at age 60 back in the 1990s had only a 3.6% probability of re-offense -- effectively regardless of how extensive their past records of sex crimes were. He further was able to determine that, by age 70, this probability had fallen to zero percent (completely extinguished).

Each current risk-prediction tool vastly overstates recidivism probability for those ages 50 and up (a "90%" error-rate as to those aged 60-69, per *Wollert (2006)*, at p. 71).

In light of such aging-out -- reducing recidivism probability to low single digit percentages if not less at age 60 and beyond, committing Plaintiffs at and beyond age 60 or continuing to detain them after that age so defies known science as to deprive Plaintiffs of both substantive and procedural due process.

The *Prentky, Janus, Barbaree, Schwartz & Kafka* quote, *supra* ("Sexually Violent Predators in the

Courtroom...") described the *Hanson (2005)* study of the validity of the Static-99 with older sex offenders, concluding that recidivism was a mere 2% for offenders age 60 or older. Statisticians studying that data could not find any instances of sex-crime recidivism past age 69. Yet instances abound of SPP/SDP commitments of senior citizens abound -- two, for instance, at ages 84 and 88. The implication that commitment is pure additional retribution for past crimes is clear and undeniable from this particular perspective. This aging-out phenomenon is so universal and massive in recidivism-curtailed effect that *Wollert (2006)* urged new trials for all those beyond age 50, since any "high likelihood" of recidivism in that overall bracket is simply mathematically impossible.

Most fundamentally of all, by age 60, the natural reduction in systemic testosterone and in its associated hormones and endocrine chemicals (most notably adrenaline -- the unsung delivery mechanism of strong urge and unrestrained impulse) has become so extreme that the combination of both testosterone and adrenaline that provides both strong attraction and the tendency to act upon it simply no longer exists to any appreciable degree.

Hence, at and beyond that watershed age, all sex offenders, whether pedophiles (hereinafter "pedosexuals") or rapists or those with various paraphilias -- even those from any of these categories who still may not have any compensatory heightened self-control -- have simply 'retired' from sexual offending because of such loss of physical drive mechanism.

In sum, sexual recidivism at age 60 is, on the whole, rare. Effectively then, the current system of commitment of sex offenders confines those in their 40s and beyond, almost always to death of old-age causes in ages 70s and beyond. It is blind to the fact that this confines those least likely to ever recidivate in the future. This more than anything else shows the folly of, and unwarranted, draconian, and patently supplementally punitive true nature of such commitments.

Under Minnesota's SOCC law, prosecutors greatly disproportionately commit middle-age and old-age former sex offenders. Those age 50 and up account for one-third of all sex offender commitments in Minnesota. This is in defiance of all known recidivism data for sex offenders in that age range.

Daniel Montaldi, "A Study of the Efficacy of the Sexually Violent Predator Act in Florida," supra at 41 Wm. Mitchell L. Rev. 845, found in 2015 that "The most dramatic difference comes from offenders who were age sixty or

older at time of recommendation (ninety-three). Out of this group, no one obtained a new charge or conviction for either rape or child molestation (0%)."

Most states having sex offender commitment laws have provisions calling for ending a given sex offender's commitment whenever he no longer meets the commitment standard. Minnesota has no such provision. Indeed, in Minnesota, MSOP's provisional release standard (not to entirely end the commitment) is far more restrictive than the standard for commitment. This standard requires successful treatment completion plus demonstrated "meaningful change" (a vague and subjective term at best), with recidivism risk reduced to very low levels. After decades of treatment of individuals, the near-uniform conclusion is that each individual remains 'too dangerous to release' (even despite advancing age, as explained above).

Thus for instance, as to pedosexuals ("pedophiles"), MSOP will always say in excusing its refusal to release same, even after a decade or more of its treatment, that the detainee continues to have pedophilic attractions, and therefore presents some level of risk of re-offense -- and hence does not possess a "guarantee" of public safety. This is reminiscent of so-called "conversion therapy" meant to change sexual orientation -- debunked and condemned by organized psychiatry and psychology. Therefore, MSOP is simply a thinly disguised, artificially 'treatment justified' permanent (natural-life) preventive detention scheme.

Of course, the only "guarantee" of public safety would be if the probability of recidivism were reduced to zero percent. No treatment of sex offenders known to humanity makes any claim to be able to achieve such a result -- or anything close to it. This includes the other states' commitment programs, which aim for lesser, arguably achievable goals. Minnesota's MSOP stands alone in insisting upon such an absolute guarantee of public safety before releasing any given detainee.

Thus, the 'zero-percent' "public safety guarantee" that MSOP demands for release effectively means that one must die while still detained in MSOP in order to present a zero-percent probability of re-offense. This is simply lifetime permanent preventive detention with just some insincere treatment layered-on as disguise, both for legal appearances and for placating the detained through fraudulently held-out hope of release.

(Continued on page 10)

Even MSOP clients who (rarely) are declared to complete treatment have sometimes been declared not to have sufficiently "meaningfully changed" notwithstanding treatment to qualify for release. Since according to MSOP the only way achieve "meaningful change" is through treatment, these individuals are then remanded to repeat treatment, sometimes even from the beginning. Hence, MSOP "treatment" does not function as, and apparently is not intended to rehabilitate any committed sex offender to a point of release. To the contrary, treatment as thus designed and operated is purely a time-consuming mandatory merry-go-round, to occupy the time and attention of those committed while the true intended natural-life term of their commitment, as pure preventive detention, gradually lapses at each detainee's death.

MSOP policies and practices governing release are virtually unattainable by any MSOP client, and are driven by political control and influence, rather than by any universally accepted and applied academic professional standards for release, effectively amounting to an unattainable 'zero percent' of recidivism "guarantee of public safety." This unattainability of release, regardless of intensity, or duration of treatment confirms the true permanent preventive detention nature of sex offender commitment a la MSOP.

Unlike other states having sex-offender commitment laws, Minnesota lacks a requirement for a periodic report to the committing court regarding each sex offender's allegedly continuing need to remain committed, and its law provides no way for the committing court to rule that the conditions found to originally merit commitment (including the minimal constitutional requirements for it) have ended or lessened in severity so as no longer to support commitment, and to accordingly terminate that commitment.

Some such 'commitment states' require an annual court hearing, while others only hold such a hearing if controverted allegations so require. In some states, the state is required to re-prove the commitment case in court periodically.

In order to gain provisional release, a detainee must be approved by the "Special Review Board" ("SRB") of the Minnesota Department of Human Services, appointed by the Commissioner of that Department. The proposed release must then be approved by the "Commitment Appeal Panel" ("CAP"). However, SRB relies heavily on MSOP treatment team reports and on an MSOP risk assessment in making its recommendations to CAP. In turn, CAP itself also relies greatly on

MSOP's assessments of its detainees. Both that Board and that Court have been 'trained' by MSOP on its "treatment theory" and neither will consider any matters outside of that theory and the matters considered by MSOP and such assessors (who in turn limit their inquiry to whether such treatment theory elements have been satisfied by a given 'client'). Thus, any contentions, for instance, that a given client does not now fulfill the constitutional minimal requirements for commitment, or that an aged client no longer presents any significant remaining risk of re-offense will never be considered by those tribunals.

MSOP therapists have stated that public pressure is being exerted on both SRB and CAP to be extraordinarily conservative in release decisions. However, MSOP's own refusal to prepare any release plans (except for the two token releases in 2012-13), demonstrates that MSOP itself also is extraordinarily conservative in decision-making about release. In sum, it is no wonder why very few ever achieve even just provisional release from MSOP confinement. The gate is set far too narrow and the bar is unachievably high.

In this light, especially because MSOP does not have the confidence in its own treatment to release more than 20 clients to date of its approximately 750 detainees currently, it is clear that MSOP has no effectiveness at treatment and that MSOP's only claim of recidivism reduction is by reason of sheer preventive detention.

In the *Karsjens* trial, Jannine Hébert, the Executive Clinical Director of MSOP, testified for the defense, declaring: (a) "deviance" is the leading indicator of future sex-crime recidivism; and (b) no one in MSOP can safely be released unless/until he is no longer deviant. She complained that most MSOP detainees remain "invested" in their deviance and have not made significant progress toward change toward a non-deviant sexual attraction or at least toward extinguishing their deviance, making them still an unacceptable risk of re-offense if released.

This is so unscientific, indeed, anti-scientific, that it is difficult to decide where to start refuting it.

To begin, with only rare exception, there are basically just two types of sex offenders in MSOP: rapists (typically of adult women), and pedosexuals. "Deviance" is a term used by the DSM-5 to describe any sexual responses other than attractions to standard sexual activities with adult women or men. These atypical sexual attractions or interests are called "paraphilias" in the DSM-5.

By the numbers, by far the largest category of individuals in the overall paraphilia category are "pedophiles" (pedosexuals, claimed to suffer from a sexual "disorder" termed "pedophilic disorder"). Almost all committed to MSOP whose rationales for commitment involved a claim of "paraphilia" are in fact pedosexuals. Only a handful of other paraphilias (such as window peepers or 'flashers') are represented in the MSOP population of detainees.

In contrast, attempts over the years by various psychologists to declare a different sexual disorder comprised of an urge specifically to rape someone, claiming that the motivation is sexual pleasure derived from the imposition of terror and physical pain upon the victim, have been repeatedly rebuffed by the editors of the DSM, as it has evolved through its various editions. Their latest rejection of such a 'rape syndrome' as a sexual disorder was particularly emphatic and final.

Thus, in a desperate attempt to retain jurisdiction over rapists, MSOP and other commitment systems have tried to re-style them as having a 'catchall' "Paraphilia Not Otherwise Specified - Nonconsent." That attempt was panned as being nothing more than "rapism" - an attempt to resurrect the crime of rape as a sexual disorder. It was specifically rejected by the editors of the Paraphilia section of the DSM-5.

In the wake of that rejection, the disappointed advocates seized upon the fact that most prisoners have a condition known as Anti-Social Personality Disorder (ASPD) to claim that a diagnosis of this condition would be sufficient to justify sex-offender commitment.

However, most states having such commitment laws require that the mental malady be a sexual disorder specifically, or at least a disorder recognized as causing heightened probability of sex crimes specifically being committed by the individual under scrutiny.

As it happens, although ASPD causes hostility and violence in general, research has never established that it causes sex crimes in particular. Because of this, a wave of rejection of ASPD as a ground for SOCC began throughout SOCC states from coast to coast.

One of the first cases reaching this result was *In re Donald DD* (N.Y. Court of Appeals, October 2014, reported in *Rochester Democrat & Chronicle*, quoted in *CURE-SORT News*, Vol. 24, No. 1, pp. 4-5 [Winter 2015]), holding that a multiple rapist could not remain committed on a sole diagnosis of Anti-Social Personality Disorder (ASPD), since that diagnosis conveys no prob-

lem in controlling one's behavior, and simply indicates a propensity to commit crimes in general.

However, roughly two-thirds of all MSOP detainees were committed instead on the basis of sex crimes involving children. Most of these crimes are motivated only by such pedosexual attractions, and do not involve rape or any aim to hurt or traumatize a child. Instead, most child 'molestation' only involves manual stimulation of the child's genitals and/or oral sex upon the child by agreement or acquiescence by the child. This is not to deny traumatization, but simply to distinguish these crimes as not being physically forcible and typically not involving coitus at all.

While some child rapes occur from time to time, they are usually perpetrated by 'sexual opportunists.' These are not really pedosexuals, but rather those who simply see a child as a rape 'target of opportunity.' While this is reprehensible, it is not pedosexuality. Hence, the misdeeds of such opportunists should not be blamed on pedosexuals.

Nonetheless, since Ms. Hébert's testimony did not discriminate between pedosexuals on one hand and rapists on the other, it seems clear that she incorrectly equates "deviance" with any record of sex crimes. That is the first unscientific point.

However, as to pedosexuality and indeed all other non-standard sexual orientations, that is simply what they are. All sexual orientations are discovered by individuals at or shortly after puberty, or at the latest in young adulthood, as a general matter. However, whenever first experienced, they are in fact a permanent part of the psychological makeup of the individual. No more than recent, failed attempts to beat homosexuality out of gay men, there is simply no way to ever 'erase' a pedosexual orientation or to replace it with another orientation not previously existing in that individual. Therefore, Ms. Hébert's assertions are merely a thinly disguised claim that pedosexuals represent an inherent, unacceptable threat of recidivism. This is false on at least three different levels.

First, research has studied the comparative rates of recidivism as between pedosexuals, on one hand, and rapists on the other. The results of these studies have invariably ascertained that those comparative rates are nearly identical, that is, within one or two percentage points at any specific offender age range. Richard Wollert's 2006 research, *supra*, track-

(Continued on page 11)

ing recidivism by age brackets, and comparing rates for rapists, on one hand, and pedosexuals on the other, firmly establishes this, using R. Karl Hanson's own samples for the Static-99. So the fact is that "deviance" does not pose any risk level of recidivism beyond that reflected by a past sex crime of any kind. In short, the notion of "deviance" as a factor predictive of more likely recidivism is just a false myth. This is strongly buttressed by the observations on the point of pedophilic sexual attractions set forth in the Report of Class Member Cyrus Gladden II in Reply to '706 Experts' Report (on file with the author; further pertinent excerpts available). I reprint here an excerpt from pages 86-87 thereof pertinent to that point:

Second, "...[S]everal studies have found that a significant percentage of members of the general public, report sexual attraction to prepubescent children. *John Briere & Marsha Runtz, "University Males' Sexual Interest in Children: Predicting Potential Indices of 'Pedophilia' in a Non-Forensic Sample,"* 13(1) *Child Abuse and Neglect* 65-75 (1989), surveyed 200 university males and found that 21% reported some sexual attraction to small children, 9% experienced sexual fantasies involving children, 5% had masturbated to fantasies of children, and 7% said they might have sex with a child if not caught. In another sample with 100 male and 180 female undergraduate students, 22% of males and 3% of females reported feelings of sexual attraction to a child (*K. Smiljanich & J. Briere, "Self-Reported Sexual Interest in Children: Sex Differences and Psychosocial Correlates in a University Sample,"* 11 *Violence and Victims* 39-50 (1996)).

'...Green pointed to five studies that measured penile arousal in men who were recruited from community samples. These studies found that 17-58% of the men had measured arousal when shown images of prepubescent girls. For example, *G.C.N. Hall, R. Hirschman, & L.L. Oliver, "Sexual Arousal and Arousability to Pedophilic Stimuli in a Community Sample of Normal Men,"* 26 *Behavior Therapy* 681-694 (1995), found that, in a community sample of 80 men with no history of pedophilic behavior, 26.25% showed penile arousal when shown slides of prepubescent girls. These researchers reported that their findings replicated the findings of four other studies reported within the previous 6 years.' (*Thomas K. Zander, "Civil Commitment Without Psychosis: The Law's Reliance on the Weakest Links in Psychodiagnosis,"* 1 *Jour. Of Sexual Offender Civil Commitment:*

Science and the Law 17, at 37-38 (2005)).

"Generally on this point, see also these: *Claude Crepault & Marcel Couture, "Men's Erotic Fantasies,"* 9 *Archives of Sexual Behavior* 565 (1980) (sampling ninety-four men, finding sixty-two percent reported fantasizing about sexually initiating with a young girl and three percent with a young boy); and *Terrell L. Templeman & Ray D. Stinnett, "Patterns of Sexual Arousal and History in a 'Normal' Sample of Young Men,"* 20 *Archives of Sexual Behavior* 137 (1991) (surveying sixty college men where five percent expressed an interest in sex with a girl under twelve)."

Thus, were Ms. Hébert's claim scientifically correct, all of these members of the public would be sex-crime committing machines. Obviously, there is no such widespread epidemic of actual sex crimes with children. Clearly then, a pedophilic attraction ("deviance") simply does not present a propensity for such crimes.

Third, the editors of the DSM-V have warned against assuming volitional impairment merely because of a pedophilia diagnosis. *Michael B. First & Robert L. Halon, "Use of DSM Paraphilia Diagnoses in Sexually Violent Predator Commitment Cases,"* 36 *J. Am. Acad. Psychiatry & L.* 443, 450 (2008).

Hence, a claimed diagnosis of pedophilia will have no causative or indicative relation to any claimed future probability of re-offense. For this reason, there is no 'inherent' 'inadequate control' of sexual behavior that can be inferred from such a diagnosis/orientation.

MSOP's demand that clients 'admit' denied alleged and even previously unsuspected offenses at anytime in their lives thwarts treatment and is used to prevent release. "Treatment" within MSOP, in which those committed under said Act are detained, requires that a given committed sex offender "admit" each sex crime which MSOP officials believe that the offender committed.

This requirement is enforced as a condition to further participation in such treatment and to advance through the respective "phases" and "modules" of that treatment regimen, and also by means of demotion of that sex offender to a less-advanced phase or module as punishment for declining to make such admission.

This applies to hearsay and to uncharged accusations and to mere general suspicions of non-reported additional crimes categorically, as well as to convictions of each offender.

Even as to a false, wrongful conviction, that demand for 'admission' of a

crime which never happened is the most blatant deprivation of one's freedom of conscience and one's right not to speak as dictated to speak. This violates the First Amendment to the United States Constitution.

The scientific reality is that "...Contrary to what is commonly assumed, those sexual offenders who denied their offenses were no higher risk [of sexual re-offense] than other offenders." *R. Karl Hanson, Predictors of Sexual Offender Recidivism: A Meta-Analysis, 1996-04* (Public Safety and Emergency Preparedness Canada), p. 12. Therefore, this insistence upon admission by MSOP is scientifically baseless. Worse, it turns the therapeutic relationship into one of interrogator versus suspect. Moreover, because refusal to admit such additional charged, uncharged, or unknown claimed instances of sexual crimes is used by MSOP as a ground for denial of treatment advancement, and even for treatment demotion, such refusal leads to extension of the time needed to complete treatment, in turn preventing release from MSOP. All of this denies this aspect of substantive due process to all Plaintiffs.

In fact, recent research has concluded that denial of past crimes, whether convicted, charged, or merely alleged, does not adversely affect the therapeutic alliance or "climate" in sex offender treatment. *Jayson Ware, "Therapeutic Climate Within a Treatment Program for Categorical Deniers,"* 62 *Int'l Jour. Of Offender Therapy & Comparative Criminology* 2216-2235 (Issue 8, June 2018).

Even prison-based sex offender treatment programs have been held to violate the self-incrimination right and distinctly, also due process, by demanding admission of unadjudicated prior sex crimes. (*State ex rel. Morrow v. LaFleur*, 577 N.W.2d 226, 228, n. 1 (Minn. Ct. App. 1998); *Carrillo v. Fabian*, 701 N.W.2d 763 (Minn. 2005)).

Documents generated during treatment can be used in court in an effort to lengthen the confinement of the participating patient or as a basis for new criminal charges. Since statutes of limitation applicable to sex offenses have been drastically lengthened and in some cases eliminated entirely, such charges can be prosecuted even decades after a criminal event is alleged to have happened. However, the right against self-incrimination is not limited to the context of a criminal prosecution, and 'civil' demands that one relinquish that right equally violate that Fifth Amendment right. See *David Heim*, Note: 'Damned if You Do, Damned if You Don't - Why Minnesota's Prison-Based Sex Offender Treatment Program Violates the Right

Against Self-Incrimination,' 32 *Wm. Mitchell L. Rev.* 1217 (2006). Under Minnesota law, there is no privilege between any sex offender and any assessor or therapist as to any previously undisclosed sex crimes. Obviously, then, disclosure of previously unadjudicated sex crimes can lead to prosecution or to a greater likelihood of continued commitment.

Further, MSOP's misuse of polygraphy and of penile plethysmography ("PPG") thwarts treatment and deliberately prevents release. *Howard Zonana, et al., Dangerous Sex Offenders: A Task Force Report of the American Psychiatric Association* (1999), at p. 156, explains: "There are three objective means of determining sexual interest in sex offenders: penile plethysmography, visual reaction time assessment, and polygraphs.... None of the three methods provides a level of validity that meets any of the prevailing standards required for admissibility in court as scientific evidence." Each of these three methods is in use in MSOP. Analysis of each of these methods follows.

First, polygraphy has proven unreliability at measuring deception. *Anthony Accurso, "New Lie Detectors Are on the Way, But Are They Better Than the Old One?,"* 3(4) *Criminal Legal News* 43 (Apr. 2020), notes that "...Several studies have shown that the 'sensitivity' of the [polygraph] test is around 76 percent - meaning that of 100 liars, only about 76 will be detected. If that wasn't alarming enough, the 'specificity' of the device is around 52 percent - meaning that of 100 people telling the truth, only 52 will be identified as having done so while 48 will be branded as liars. That's a whole lot of false positives." Accord: *William G. Iacono and Christopher J. Patrick*, writing Chapter 19: "Employing Polygraph Assessment" (pp. 612-651), in *I.B. Wiener & R.K. Otto* (eds.), *The Handbook of Forensic Psychology* (4th ed., Hoboken, NJ: John Wiley & Sons, 2014) at pp. 616-7, specifically noting that the CQT [control question test in polygraphy] is biased against truthful persons. The CQT polygraphy technique is what is used in MSOP.

Second, there is no evidence that post-conviction polygraph testing of sex offenders reduces later reoffending. The real measure of usefulness or utility of any correctional treatment or program is whether it delivers the desired change in whatever behavior it is trying to affect. So the question upon which the justification of using polygraph turns is: Does post-conviction polygraph testing reduce further offending? Research on this

(Continued on page 12)

point as to sex offenders has found that polygraph has no positive effect in this regard, and indeed, has significant adverse effects on treatment clients. (McGrath, Cumming, Hoke, and Bon-Miller, 2007, finding that field violations or prison-return rates were higher in the polygraph group for any new offense (39.4% vs. 34.6%), field violations (54% vs. 47%) and prison returns (47% vs. 39%).

The type of polygraph testing in MSOP is almost invariably "multiple-issue" utility testing," which the American Polygraph Association regards as an unprofessional misuse of polygraphy. According to leading experts in polygraphy, this 'dragnet' method of polygraph misuse is no more accurate than pure chance, and actually invites errors.

As to the second progression, a "full disclosure polygraph" must also be taken "to verify an agreed-upon sexual history." (MSOP Clinician's Guide, p. 15). In fact, however, the result of each of this full-disclosure polygraph test must indicate no deception as to each relevant question. Even an "inconclusive" outcome on any such polygraph is not sufficient and is taken as a sign of deception in answering. Dr. Elsen testified that, to her knowledge, no treatment participant has ever been advanced from Phase II to Phase III who has not passed the full disclosure polygraph. (Karsjens Trial Tr., v. 7, p. 1349). Obviously, passing does not include an "inconclusive" test result. Dr. Pasucci admitted that such polygraph results are considered in assessment as to provisional discharge (Trial Tr., v. 8., p. 1657).

Distinctly, MSOP misuses penile plethysmography (PPG) and 'Abel' testing without scientific basis and in defiance of the inescapable fact of immutability of sexual orientation to thwart treatment progress and to prevent release. Also at that second progression, "a PPG or Abel/ABID assessment" must be taken, and the results of these tests must be "address[ed] ...in treatment." Like the polygraph outcome, a satisfactory result on the PPG/Abel assessment, reflecting no deviant arousal or at most only very low deviant arousal, is required to advance to Phase 3. Also unstated here, the PPG is the test primarily relied upon, with the Abel/ABID test being administered only when a failing outcome is reported from the PPG.

"...The DSM-IV-TR ...describes the PPG as a procedure for which 'the reliability and validity ...in clinical assessment have not been well-established.' (p.567)." Accord: *Richard Wollert & Elliott Cramer,*

"Sampling Extreme Groups Invalidates Research on the Paraphilias: Implications for DSM-5 and Sex Offender Risk Assessments," 29 *Behav. Sci. Law* 554, at 562 (2011). Nor is the PPG accepted by the medical profession as a reliable or valid diagnostic tool. *U.S. v Guy Randy White Horse*, 177 F. Supp. 2d 973, 976 (D. S.D. 2001). *Howard Zonana, et al., Dangerous Sex Offenders: A Task Force Report of the American Psychiatric Association* (1999), at p. 58, bluntly explains: "...[L]aboratory responses cannot be used to predict or validate behaviors outside the laboratory. Each of us, at times, has arousal that, if we acted on it, could be quite problematic. Having arousal, be it paraphilic or non-paraphilic, does not mean that we necessarily act on that arousal.

Penile plethysmography as used in MSOP incorrectly declares an erection to be present when in fact none existed. Many who have taken the PPG exam in MSOP have complained that false reports have resulted, claiming that erections occurred when none did, or that some penile movement toward an erect state was detected when none was experienced by the test subject. Accusations of fraud have been leveled against examiners. This is not to disagree with such accusations.

However, as it happens, there is a deeper, inherent problem with the circumferential method of determining whether the human penis is flaccid or erect. The technical details of this flaw are too lengthy to recount here, but can be found at: "PPG - Revelations from a ' Sleeper,'" *The Legal Pad*, Vol. 1, No. 13, pp. 8-9 (2017), discussing article by *Jason R. Odesho*, "Of Penology and Perversity: The Use of Penile Plethysmography on Convicted Child Sex Offenders," *Temple Political & Civil Rights Law Review*, Vol. 14, page 1, at 7 (2004). In a nutshell, the gist of this problem arises from the fact that human penises have an inverse relationship between length and circumference that shows up in two circumstances: (1) the initial few seconds of an erectile response; and (2) a response to shocking or repugnant stimuli wherein the penis attempts to drain itself of as much blood as possible (i.e., 'shrivels up'), as part of a 'fight or flight' reaction (which is about as opposite as one can get from sexual excitement). In the latter case, the outrushing of that much blood causes a transient increase in girth that resembles the later stage of an erection reaction.

Because the circumferential PPG device cannot distinguish between these two scenarios, but only measures all girth increases as pre-

sumed erections, a false reading of an erection when in fact the opposite emotional reaction has occurred is very common. While no studies of the numbers has apparently ever been performed, it appears highly likely that, over the many years that the circumferential method has been in use, countless thousands of men have been falsely concluded to have been aroused by all manner of extremely repulsive deviant and shocking stimuli which they were not attracted to in the slightest. It is unknown what happened to such men because of such false readings, but the impacts in their personal lives cannot have been good from this. Note must be made that no video monitoring of penile reaction is ever used as a veracity check in this circumferential method.

In addition, MSOP makes considerable use of the Abel assessment of sexual interest and other visual attention tests. Each of these tests also has accuracy/reliability problems and is subject to operator manipulation of test results. Further, Dr. Abel's study used no control groups, and that there was no attempt to perform detection of study faking. *U.S. v. Jeremy Birdsbill*, 243 F. Supp. 2d 1128, 1133-34 (D. Mont. 2003). Beyond this, even were results of these tests accurate and reliable, they focus on the wrong thing. Basically, for instance, a committed pedosexual/pedophile whose test results reflect that orientation will never be released by MSOP because that sexual orientation is permanent. That is not treatment; it is permanent condemnation. The real question, for public safety purposes, obviously ignored by, and unanswerable by such testing, is whether, if released, a given pedosexual/pedophile will or will not commit further sex crimes.

The OLA Report, p. 76 (see: *Office of the Legislative Auditor, State of Minnesota, "Evaluation Report: Civil Commitment of Sex Offenders"* (March 2011), available at <http://www.auditor.leg.state.mn.us/ped/pedrep/ccso.pdf>), reported that to advance in treatment, one must pass a penile plethysmograph ("PPG") test and the "Abel assessment of sexual interest." Since a pedosexual will always retain that orientation, he is forever preordained to fail treatment. All pedosexuals will remain confined in MSOP until death, if MSOP continues to decide the issue. This is the very heart of preventive detention.

Professor *Bill Glaser*, writing in "Therapeutic Jurisprudence: An Ethical Paradigm for Therapists in Sex Offender Treatment Programs," 4 *W. Criminol. Rev.* 143, 145-46 (2003), lists multiple ways that the ethical guidelines governing psychology practice

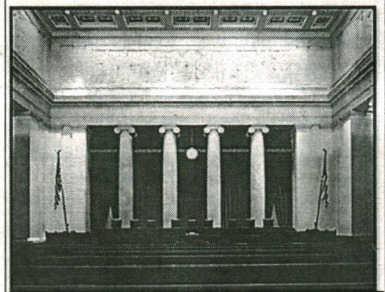
are breached by sex offender laws:

- The primary measure of treatment success is protection of society rather than alleviation of the offender's suffering.
- Treatment, to be effective, must usually be involuntary.
- Effective treatment requires that confidentiality be breached.
- Generally, the offender must not be allowed any choice of therapy or therapist.
- Offenders may be forced to accept therapy from non-clinicians or unqualified staff, and
- Effective therapy requires multiple other infringements on an offender's dignity and autonomy.

To at least some degree, as has already been seen from all of the above, all of these ethical breaches are practiced in MSOP.

In sum, there does not appear to be any way to simply overhaul MSOP operation to cure all of its ills and to modify its treatment theory and modality to make treatment completion in a reasonable time possible. Instead, MSOP as a program must simply be closed, and clients must be placed in community-based programs for competent treatment in keeping with the various points raised herein and in the interview series recounted above.

The State must not be permanently tasked with indefinite and mostly lifetime 'pre-crime' preventive detention masquerading as *parens patriae* psychological treatment. It must not continue subjecting its "clients" to a post-sentence death penalty on the installment plan.



Is a curtain-rendering coming?

the Legal Pad

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