the **Legal Pad**

tLP Volume 10, Issue 1 — January 1, 2026

"By most human standards, a life worth living involves liberty." – David S. Prescott

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- — & Way, Way More on the Way!

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NARSOL – Overcoming Fear of Proud Boys

Phillip _____, "When Courage Overcomes Fear," 18(6) *the NARSOL Digest* 1, 17 (Dec. '25-Jan '26)

Text Excerpts: [p. 1] "In July, I wrote about our disappointment when the NARSOL annual conference was canceled due to pressure and prejudice. I then spoke about how 'hate won the day' and how such setbacks reminded us that justice is neither guaranteed nor inevitable. I emphasized that these moments are not times to retreat but are rather calls to persist.

In September, I reported that our persistence had paid off. The conference had been rescheduled and relocated to Atlanta, Georgia, for October 2025.

Today., I'm thrilled to report that the NARSOL annual conference in Atlanta was a resounding success.

Despite threats and attempted intimidation by the Proud Boys, who sought to shut us down once again, the conference proceeded without a single incident of disruption or protest. Their attempts to silence us through fear failed. We gathered, we shared knowledge, we strategized, we built community, and we strengthened our movement – exactly as we intended.

This victory represents something far greater than a successful event. It demonstrates a fundamental truth about the arc of justice: Courage and commitment will always outlast hatred and intimidation. As Nelson Mandela reminded us, 'It always seems impossible until it's done.' What seemed impossible in July – gathering together in the face of organized opposition – became reality in October.

The conference brought together advocates, affected individuals, families, legal and academic experts, and allies from across the nation. Together, we advanced our shared mission of revoking sex offender registries and rationalizing sexual offense laws. We proved that civil rights cannot be canceled by extremism and that dignity cannot be denied by those who traffic in fear.

Eleanor Roosevelt once said, 'You gain strength, courage, and confidence by every experience in which you really stop to look fear in the face. You must do the thing you think you cannot do.' In Atlanta, we did exactly that. We looked fear in the face, and we moved forward anyway.

This success should energize every one of us in the continued struggle ahead. When extremists tried to silence us in July, we regrouped. When they tried again October, we persevered. Each victory, no matter how hard won, proves that our cause is just and our methods are sound. Each time we refuse to be intimidated, we make the next gathering easier, the next reform more achievable , the next victory more certain.

Frederick Douglass once taught, 'If there is no struggle, there is no progress.' The struggle we faced this year has yielded real progress-- not just in holding our conference, but in demonstrating to ourselves, to our opponents, and to the broader public that we will not be moved from our pursuit of justice.

The journey continues, and we are stronger for every mile we travel together. The road ahead remains long. Registry revocation and implementation of rational sex offense laws will not come easily. But Atlanta proved what we have always known: When we stand together, when we refuse to be silenced, when we meet hatred with dignity and fear with courage, we win.

Thank you to everyone who attended, everyone who supported from afar, and everyone who continues this vital work. The original cancellation in July was meant to demoralize us. Instead, it galvanized us. The threats in October were meant to scatter us. Instead, they unified us. We continue this struggle not because it is easy , but because it is necessary – for the dignity of every person, for the soul of our communities, and for the future we still believe is possible.

And now we know with even greater certainty: That future is not just possible, it is inevitable.

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Hashtag Hate – Why Hate Speech Must Be Ended Now

Editor's introduction: An old schoolyard retort asserts: "Sticks and stones can break my bones, but words will never hurt me." Unfortunately, hateful words can often lead to sticks and stones, so to speak, and in the modern age to murderous violence using lethal weapons.

In the United States, mid-20th century violence was directed at people who simply sought to assert their equality and their right to fully participate in society and to gain that dignity and respect to which all others are entitled. Their sin that justified all the abuse that was heaped upon them? Simply that their tormentors didn't know them and unjustly assumed every repulsive (but completely false) thing claimed against them by those who could feel no comfort except with their tightly knit circle of those they deemed to be exactly like them in every physical and intolerant aspect.

Hatred against the unknown person, group, or conceptualized 'type' has run strong and consistently throughout our society. Hatred is the most circumlocuted notion ever in the English language; consider, for example, all these ways of describing or discussing hatred: despising, detesting, loathing, animosity, abomination, hostility, anger, aggression, antagonism, enmity, rancor, spite, malice, spite, vindictiveness, meanness, malevolence, and antipathy. All of these 'five-dollar words' add mystique and sometimes even glory to hatred, but none offer any light on the cause of hatred or what is believed to justify it. In the end, two basic human emotions often intermix to result in hatred: fear and disgust. Even these basal emotions have their causes and can be analyzed by the thinking mind, but once hatred has been generated in the human mind, it is very difficult to try to 'walk it back' to the origins of the fear(s) and disgust(s) from whence it arose.

This has been the longest-running and most-toxic flaw of our society. Unfortunately, although those victims of such hate in the past century achieved legal guarantees that barred actions of hate and have managed to show most others in America their humanity and their allegiance to the very same values that others hold, blind and quietly retained hatred has demonstrated a resistance to relinquishment that defies all rationality and the palliative influence of every other emotion; hate only fuels yet more pointless hate.

One of the longest lasting targets of hate in our society has been those with divergent sexuality. This has included homosexuality and those who sensed themselves to be a gender other than the one assumed by their families merely by sight of their external genitalia. In the context of hateful reaction generally, the more foreign a sexual desire is to one who does not experience it or the more repulsive it strikes one who may have, but who has emotionally recoiled from it, the higher the tendency to engage in this hatred. This especially arises, understandably, when the presumably projected object of such a foreign desire is deemed vulnerable in sexual actions. Hence, with all the reports and imaginings about sexual interactions between adults and children, it is no surprise that the most common reaction to pedophilia is a strongly adverse emotional reaction.

However, deliberately fomenting such extreme emotional reactions is diametrically opposite to the ability to create and carry out policies that prevent sexual harm and manage what is seen as an intractable societal problem. (See *Eric S. Janus, Director, Sex Offense Litigation and Policy Resource Center (SOLPRC)*, Sex Offense Civil Commitment Minnesota's Failed Investment and the $100 Million Opportunity to Stop Sexual Violence, *Mitchell Hamline School of Law* (April,2024), pp. 1-2; Open Letter to Governor T. Walz (MN) endorsing this report, reprinted at: *the Legal Pad*, Vol. 8, No. 6, p. 6.) The long arc of history teaches that throughout humanity, there has always been pedophilia. (See generally: *Margo Kaplan*, "Taking Pedophilia Seriously," 72 *Wash. & Lee Law Rev.* 75 (Winter 2015).) Pedophilia is now known to be a sexual orientation on an age-dimension of desire that interplays with the well-known dimension of gender-orientation. (*Seto, M.C.*, Is Pedophilia a Sexual Orientation?, 41(1) *Arch. of Sexual Behav.* 231-236. Doi: 10.1007/s10508-011-9882-6 (2012); *Jenny A.B.M. Houtepen, Jelle J. Sijtsema & Stefan Bogaerts, Dept of Developmental Psychology, Tilburg Univ., Tilburg, The Netherlands*, "Being Sexually Attracted to Minors: Sexual Development, Coping with Forbidden Feelings, and Relieving Sexual Arousal in Self-Identified Pedophiles," 42(1) *Jour. of Sex & Marital Therapy* 48-69 (2015); *Crystal Mundy*, "10 Years Later: Revisiting Seto's (2012) Conceptualization of Orientation

to Sexual Maturity among Pedohebephilic Persons", (*The Canadian Journal of Human Sexuality*: https://doi.org/10.3138/cjhs.2022-0006, Review: *B4U-ACT Quarterly Review*, Vol. 3, No. 1, 17-22 (Winter 2023).

Just as surely as there is no "illness" or "wellness' to gender orientation, there is no such medical/scientific dichotomy as to age orientation either. The current Diagnostic and Statistical Manual (DSM) edition by the American Psychiatric Association acknowledges explicitly that pedophilia, of itself, is not a mental disorder. (*Fred S. Berlin*, "Pedophilia and DSM-5: The Importance of Clearly Defining the Nature of a Pedophilic Disorder," 42 *Jour. Am. Acad. Of Psychiatry and the Law* 404-407 at p. 406 (2014).)

It is also now scientifically known that simply having a pedophilic (pedosexual) orientation does not inexorably lead to commission of sexual crimes; in fact, the vast majority – almost all – of those experiencing a pedophilic attraction or even an exclusive pedophilic orientation never engage in sexual abuse at all in their entire lives. (*Bailey, J.M., Hsu, K.J., & Bernhard, P.A.* (2016). An Internet Study of Men Sexually Attracted to Children: Sexual Attraction Patterns. *Journal of Abnormal Psychology, 125(7)*, 976-988.

Even as to those who have done so, the notion of unstoppable, endless recidivism is just a nightmare fiction contrary to criminological knowledge. Recidivism is the nearly rare exception, not the rule. (A 2007 Minnesota Dept. of Corrections study derived a mere 3.2% sex-crime recidivism base rate over an average 8.4-year post-prison-release period for all sex offenders.) Even the exceptional repeat-offender is highly unlikely to reoffend again. Further, commission of sexual crimes is, by the numbers, almost exclusively a phenomenon of youth; the notion of the "dirty old man" committing sex crimes in old age is so extremely rare that statisticians cannot compile a cohort of any who have done so. (*R.A. Prentky, E.Janus, H. Barbaree, B.K. Schwartz & M.P. Kafka*, "Sexually Violent Predators in the Courtroom: Science on Trial," 12 *Psychology, Public Policy & Law* 357, 377-78 [2006] 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; accord: *Richard Wollert*, "Low Base-Rates Limit Expert Certainty When Current Actuarials Are Used...," 12 *Psychology, Public Policy and Law* 56, at 61 et seq. [2006], tracking 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.) The very few who have sexually abused a child in that advanced age almost invariably have been intrafamilial offenders who never previously committed any such act and hence do not support any notion of recidivism by the aged.

Yet hate knows no bounds, and always assumes the worst with fanatically fixated ferocity. The preceding article, above, illustrates that even those working to rehabilitate all former sex offenders and to help them rejoin society in a crime-free role that will bestow rewards on them and on society for their upright participation can be baselessly targeted upon fleetingly phantasmagoric hallucinations of abetting future crimes. In reality, nothing could be more opposite from the truth.

This, and all the other truths of sex-crime prevention and rehabilitation and reintegration of former sex offenders make it especially crucial and urgent to understand the dynamics of perpetuation of hatred and the societal chaos it creates and to be able to create and emplace strategies for the exposure of the inimical impact of blind hatred and to bring about its prompt extinction. For this reason, the following insightful excerpts on this topic are squarely material and necessary here:

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Stephanie J. Beach, "Hashtag Hate: The Need for Regulating Malignant Rhetoric Online," 44(1) *Vermont Law Review* 129-164 (Fall 2019)

Text Excerpts: **"II. Hate Speech Online and Hate Crimes in Person**

[p. 140] "What commences as hate speech on social media often leads to hate crimes in person.[97] A 2018 study found that over half of Americans surveyed said that they have been personally harassed online, with more than one-third reporting severe harassment.[98] Sixty-two percent of Americans surveyed viewed online harassment 'as a major problem' and seventy-nine percent feel that online services 'have a duty to step in when harassment occurs on their platforms.'[99] The Simon Wiesenthal Center released its 2019 Digital Terrorism & Hate Report Card, which provided a letter grade to social media platforms regarding their efforts to combat hate, with the highest grade given a B+ and the lowest, a barely passing D+.[100] The Center estimates that there are 'approximately 15,000 problematic Web sites, social networking pages, forums and newer online technology games and apps' that are used to transmit acrimonious rhetoric.[101] Moreover, there are currently approximately 1,020 hate groups operating in some fashion across the country.[102]...

[p. 141:] The Unite the Right Rally in Charlottesville in August 2017 was a chief illustration of how the ease of online speech can vivify hate groups in a way that leads to violence.[106] These groups used the internet to recruit and circulate propaganda.[107] They used content-specific websites and chat rooms, as well as mainstream social media platforms, to plan the rally.[108] Over the course of the two months before the rally, 'there were over 35,000 vitriolic messages on 44 "channels" on the Charlottesville 2.0 server on the gaming platform Discord.'[109] After the rally, these groups attempted to use platforms to raise money for their legal defenses.[110] Some platforms deactivated accounts, but users responded accordingly by finding new ways to spread their hate-fueled messages.[111]

[pp. 141-42:] ...In 2016, Facebook was provided with a list of over 200 hate groups that were on the site.[114] The list included pages devoted to denying the Holocaust, as well as white-nationalist, anti-Muslim, black-separatist, and Neo-Nazi groups.[115] As of 2017, Facebook had removed only 57 of the recommended groups.[116] The website has its own internal guidelines about what constitutes a hate group. And 'a person or group must threaten violence, declare it has a violent mission or actually take part in acts of violence.'[117] Facebook deletes approximately 66,000 hateful posts per week.[118]

In March 2019, a massacre at two mosques in Christchurch New Zealand left 50 dead and dozens more injured at the hands of a white supremacist who live-streamed the attack on Facebook.[119] Less than two weeks later, Facebook announced a ban on 'praise, support and representation of white nationalism and ...separatism on Facebook and Instagram.'[120] Facebook wrote that it is 'clear that these concepts are deeply linked to organized hate groups and have no place on our services.'[121] It also conceded the 'need to get better and faster at finding and removing hate from our platforms.'[122] Additionally, the company stated that it would 'start connecting people who search for terms associated with white supremacy to resources focused on helping people leave behind hate groups.'[123]

[p. 143:] ...Twitter's policy on hateful conduct states that, 'you may not promote violence against or directly attack or threaten other people on the basis of race, ethnicity, national origin, sexual orientation, gender, gender identity, religious affiliation, age, disability, or serious disease.'[132] It also does not allow accounts whose primary purpose is inciting harm toward others on the basis of these categories.[133] It also does not permit 'hateful images and symbols' in profile images or profile headers, or using a 'username, display name, or profile bio to engage in abusive behavior, such as targeted harassment or expressing hate towards a person, group, or protected category.'[134] The social networking platform says that it is 'committed to combatting abuse motivated by hatred, prejudice or intolerance, particularly abuse that seeks to silence the voices of those who have been historically marginalized.'[135] Twitter's policy applies when users make 'violent threats', 'wish, hope, or call for serious harm on a person or group of people', make 'references to mass murder, violent events, or specific means of violence where protected groups have been the primary targets or victims'; 'incite fear about a protected category', 'repeat ...slurs, epiphets, racist and sexist tropes, or other content that degrades someone'; or share 'hateful imagery'[136]

[p. 144:] You Tube, and its owner Google, also vowed to do more to remove hateful content.[141] Currently, YouTube states that it removes 'content promoting violence or hatred against individuals or groups' based on the following attributes: age, disability, ethnicity, gender, nationality, race, immigration status, religion, sex, sexual orientation, or veteran status.[142] The video sharing platform instructs users not to post content if their purpose is to 'encourage violence against individuals or groups' or 'incite hatred' based on the aforementioned attributes, or to dehumanize individuals of groups by calling them subhuman, comparing them to animals, insects, pests, disease, or any other non-human entity.[143]...YouTube promised to take a 'tougher stand' on videos that contain, for instance, 'inflammatory religious or supremacist content' by ...not allowing the offensive videos to be 'monetized, recommended or eligible for comments or user endorsements.'[145]

[p. 145:] ...[M]any hate groups have their own websites, hosted via companies like GoDaddy and Google Domains.[150] Unfortunately though, web hosts do not have any legal liability or responsibility unless sites are violating federal crimes or infringing on another's intellectual property rights.[151]

Finally, the so-called 'dark web' is a hidden network that can only be accessed through special browsers, not traditional search engines.[152] There are pros and cons for hate groups that are forced onto the dark web. First, there is overall less digital policing, meaning that they have more freedom and more lax standards regarding what can be posted and what will and will not be removed.[153] On the other hand, the audiences are typically much smaller than what mainstream social media accounts will receive or what Internet users can find using a traditional search engine.[154]

III. **A Prescription for Legal and Regulatory Reform**

[pp. 150-151:] Hate speech can provide 'vocabulary and grammar depicting a common enemy ...[and establish] a mutual interest in trying to rid society of the designated pest.'[200] An essential inquiry, as a starting point, is determining what the harm is in hate speech. First, hate speech allows for radicalization and for those with hateful views to feel normal.[201] When normalization occurs, ideas and viewpoints can move from the fringe to the conventional.[202] By expanding due to the infinite vastness of the online world, these beliefs can gain traction and momentum.[203] This allows an audience to grow, consisting of those who identify with these feelings and emotions and the expression behind the speech.[204] What is troublesome is that this behavior is abetted by algorithms on platforms that spiral users own a so-called 'feedback loop', showcasing more and more deleterious content.[205] Once down the rabbit hole of toxic propaganda, it is hard to climb back up.

[pp. 152-53:] Next, social influence plays a role in weaponizing inflammatory discourse. Social influence is the phenomenon that occurs when someone's emotions, opinions, or behaviors are either consciously or unconsciously impacted by others.[221] Particular communications can cause changes in attitudes and beliefs that can either be surface level or 'integrated into the person's value system.'[222] Psychologist Herbert Kelman identified three varieties of social influence.[223] First, compliance is the theory that 'an individual; accepts influence because he hopes to achieve a favorable reaction from another person or group.'[224] The 'satisfaction derived from compliance is due to the *social effect* of accepting influence.'[225] Second, identification occurs 'when an individual accepts influence be-

cause he wants to establish or maintain a satisfying self-defining relationship to another person or a group.'[226] Now the 'satisfaction' is 'due to the *act* of conforming as such.'[227] Third, internalization happens 'when an individual accepts influence because the content of the induced behavior – the idea and actions of which it is composed – is intrinsically rewarding.'[228] This time, 'satisfaction' is 'due to the '*content* of the new behavior.'[229]...

[pp. 153-54:] Next, as the 'true threats' doctrine explains,[232] people feel threatened or harassed by speech that targets them specifically or the groups they are a part of. The Supreme Court has left much to be desired in its case law on this issue. For starters, questions linger as to whether the speaker must purport to instill fear into the listener, whether the speaker must know that his or her words will instill fear, or, on the other hand, if the heightened risk is sufficient.[233] Additionally, threats can run the gamut of being specific, conditional, or general.[234] But it is essential to determine whether, as a society, we want to permit such behavior. The line between threatening speech and hate speech can be quite fine. When a social media user posts an image of a noose next to an African American or a swastika next to a Jewish person, is this a 'true threat,'[235] or is it protected rhetoric? And protected by whom – the government or the host site? Any non-government entity has the right to restrict speech as it sees fit or to penalize users who make comments that they deem unacceptable.[236] Accordingly, by using the 'true threats' doctrine as a model, these platforms should enforce a set of standards where this speech is deemed unprotected and impermissible.

[p. 155:] And yet, there are others who question the practicality of leaving 'such ... complex and momentous social decisions to the boards of ...private corporations clustered in the San Francisco and Seattle metropolitan areas,' especially 'given the relative absence of alternative channels of communications.'[242] Under this system, 'the shape of free speech will be determined by popular opinions, market pressures, government pressures....

D. Judicial Action

[p. 160:] A white supremacist was sentenced to 42 months in prison for soliciting violence against a jury foreman who convicted another white supremacist for 'soliciting the murder of a federal jusdge.'[278] On his website, he instructed others to injure the juror and posted derogatory comments about him.[279] Prior to this incident, the same defendant posted to his site 'the home address[es] and/or personal identifying information of individuals who were targets of criticism on the internet.'[280] He was also aware that 'the target audience of his web site ...at times engaged in acts of violence, directed at non-whites, Jews, gays and persons perceived by white supremacists as acting contrary to their interests.'[281]

E. Oversight Review Board

[pp. 161--62:] ...[T]here will be those who will claim that opponents of hate speech should focus on countering that speech.[286] But the theory of counter-speech is inapposite in the debate over hate speech.[287] Hate cannot drive out hate. The lynchpin is that hate speech does not contribute to the 'marketplace of ideas.'[288] Justice Breyer has suggested that:

> Whenever government disfavors one kind of speech, it places that speech at a disadvantage, potentially interfering with the free marketplace of ideas and with an individual's ability to express thoughts and ideas that can help that individual determine the kind of society in which he wishes to live, help shape that society, and help define his place within it.[289]

While it is true that a tenet of our Constitution and our nation is the ability to speak freely and autonomously to formulate our own views and opinions, that freedom is not limitless.[290] It is important to remember that the Court has explained that, 'it has been well observed that [fighting words] are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.'[291] One purpose of free speech is to permit people to judge the truth and acceptability of various sentiments.[292] But hate speech is not grounded in veracity, and it should not be universally perceived as acceptable. Speech must have value to warrant protection, and, as evinced by multiple instances occurring on local to global scales, hateful speech is dramatically leading to acts of violence, whether by the perpetrators of such words or by their voracious followers.[293] When malevolent words are leading to murderous actions, a paramount question that society must ask of itself is whether that value exists. Only then can such rhetoric be properly regulated.

[pp. 162-63:] **CONCLUSION**

As the wave of a very dangerous social climate crashes upon our nation's shores, it is high time to regulate hate speech online. Hate speech pumps new blood through the veins of hate groups and invigorates them to take the rhetoric that is dispersed online out to the streets to target minority groups and those of protected classes. Now, people who no longer have to stand on soapboxes in the village square or hand out leaflets in order to broadcast a caustic message of hate or intolerance. The accessibility by which we have the opportunity to send and receive vitriolic messages is quite literally at our fingertips and can make it seem as though this speech is ubiquitous. Coupled with the boundless nature of cyberspace, these rancorous words are proliferated at lightning fast speed. The Holocaust, one of the largest mass genocides of all time, was not started by violence. It was started by words.[294] It was started by a group of people who shared a common belief that some people were more worthy than others because of uncontrollable qualities. This is not a political issue, a cultural issue, or a partisan issue – it is a basic human rights issue. It is about right versus wrong, with one clear-cut answer: not to divide or single out people because of their inherent qualities. Instead, as a society, it is incumbent that we come together to drive out such hate and promote understanding, tolerance, and unification."

[Editor's Conclusion follows footnotes.]

Footnotes:

97 See generally *Evanna Hu & Hugh Brooks*, "When Radical Online Political Speech Transitions to Physical Violence," *Pac. Standard* (Aug. 24, 2018), https://psmag.com/social-justice/when-radical-speech-gets-physical (displaying the vulnerability of online platforms and how the opposition may retaliate in the real world).

98 Online Hate and Harassment: The American Experience, *Anti-Defamation League*, https://www.adl.org/onlineharassment.

99 *Maeve Duggan*, Online Harassment 2017, *Pew Research Ctr.* (July 11, 2017), http://www.pewinternet.org/2017/07/11/online-harassment-2017/?utm_source=AdaptiveMailer&htm_medium=email&utm_campaign=17-7-11%20Online%20Harassment&org=982&lvl=100&ite=1409&lea=303148&par=1&trk=.

100 Digital Terrorism & Hate Report Card, *Simon Wiesenthal Ctr.*, http://digitalhate.net/inicio.php

101 Social Media Must Do More to Thwart Subculture of Hate Fueling Lone Wolf Terrorism - *Simon Wiesenthal Ctr. Debuts 2012 Digital Hate Report, Simon Wiesenthal Ctr.* (March 27, 2012)http://www.wiesenthal.com/about/news/social-media-must-do-more-to.html .

102 Hate Map, *S. Poverty Law Ctr.*, https://www.splcenter.org/hate-map.

107 *Hu & Brooks*, *supra* note 97.

108-111 *Id.*

114 *Heather Kelly*, Hate Groups on Facebook: Why Some Get to Stay, *CNN Business* (Aug 17, 2017), https://money.cnn.com/2017/08/17/technology/culture/facebook-hate-groups/index.html.

115-118 *Id.*

119 Australian Arrested Over New Zealand Shooting Massacre to Face 50 Murder Charges – Police, *Reuters* (Apr. 3, 2019), http://uk-reuters.com/article/uk-newzealand-shooting-idUKKCN1RG09E.

120 *Standing Against Hate*, *Facebook Newsroom* (March 27, 2019), https://newsroom.fb.com/news/2019/03/standing-against-hate.

121-123 *Id.*

132 Hateful Conduct Policy, *Twitter*, https://help/twitter.com/en/rules-and-policies/hateful-conduct-policy.

133-135 *Id.*

136 *Id.* (emphasis omitted).

141 Five Ways Hate Speech Spreads Online, CNN (May 2, 2018), https://www.cnn.com/2018/03/02/us/hate-groups-using internet/index.html.

142 Hate Speech Policy, *YouTube Help*, https://support.google.com/youtube/answer/28019397?hi-en ("If you make a video that compares people to animals or bugs because of their race or nationality, that could result in a strike on your channel.").

143 *Id.*

145 Five Ways Hate Speech Spreads Online, *supra* note 141.

150 *Yurieff, Kaya*, PayPal Is Quietly Cracking Down on White-Supremacist Accounts, *CNN Business* (Aug. 16, 2017), https://money.cnn.com/2017/08/16/technology/paypal-alt-right-accounts/index.html.

151 Five Ways Hate Speech Spreads Online, *supra* note 141.

152-154 *Id.*

200 *Alexander Tsesis*, Destructive Messages: How Hate Speech Paves the Way for Harmful Social Movements 102 (2002).

201 See *Rachel Hatzipanagos*, How Online Hate Turns into Real-Life Violence, *Wash. Post* (Nov. 30, 2018), https://www.washingtonpost.com/nation/2018/11/30/how-online-hate-speech-is-fueling-real-life-violence/?utm_term=.902d0038dfce.

202 See *id* (explaining how "hateful groups [on 4chan] spread like a virus to more mainstream sites such as Facebook, Twitter and Instagram through shared memes and retweets, where they reach much larger audiences").

203 See *id* ("Extremist groups are able to quickly normalize their messages by delivering a never-ending stream of hateful propaganda to the masses.").

204 See *id* ("[Social media] allows people to see other hateful words, slurs and ideas, and those things become normal. ...Norms are powerful because they influence people's behaviors. If you see a string of slurs, that makes you feel like things are more acceptable.").

205 *The Editorial Board*, "The New Radicalization of the Internet," *N.Y. Times* (Nov. 24, 2018), https://nytime.com/2018/11/24/opinion/sunday/facebook-twitter-terrorism-extremism.html

221 *Personal MBTI Type Analysis*, Qualities of a Leader (Dec. 26, 2011), https://web.archve.org/web/20120322041448/http://qualities-of-a-leader.com/personal-mbti-type-analysis.

222 *Herbert C. Kelman*, "Compliance, Identification, and Internalization: Three Processes of Attitude Change," 2 *J. Conflict. Res.* 51, 51 (1958).

223 *Id.* at 51, 53.

224 *Id.* at 53.

225 *Id.* (emphasis in original).

226 *Id.*

227 *Id.* (emphasis in original).

228 *Id.*

229 *Id.* (emphasis in original).

232 See supra Part I.C (defining and further discussing the true threats doctrine).

233 *Jacob Hillesheim*, "When Does Online Harassment Turn into a True Threat?," *Rewire* (July 30, 2018), https://www.rewire.org/our-future/online-harassment-true-threat/.

234 See *id.* (discussing how courts look for expressions of intent to carry out the threat in determining whether a threat is protected speech).

235 See *supra* Part I.C.

236 See *supra* Part II (discussing online hate speech regulations).

242 See *Kyle Langvardt*, "Regulating Online Content Moderation," 106 *Geo. L.J.*

(Continued on page 4)

1353, 1385 (2018) (suggesting that content moderation could be left to the private sector but questioning whether corporations are an appropriate authority to regulate speech).

278 White-Supremacist William White Sentenced to 42 Months in Prison for Soliciting Violence Against Hale Jury Foreman, U.S, Dep't of Justice (Feb. 20, 2013), https://www.justice.gov/usao-ndil/pr/white-supremacist-william-white-sentenced-42-months-prison-for-soliciting-violenceagainst.

279-281 *Id.*

286 *Nadine Strossen*, "Don't Silence Graduation Speakers: Fight Hate Speech with More Speech," *USA Today* (May 1, 2018), https://www.usatoday.com/story/opinion/2018/05/01/censorship-hate-speech-freedom-first-amendment-column/564868002/.

287 *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, concurring ("The remedy to be applied is more speech, not enforced silence.").

288 *Richard Delgado & Jean Stefanic*, "Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills," *Cornell L. Rev.* 1258, 1260 (1992) (discussing the fallacy that the "marketplace of ideas" remedies phenomena such as hate speech and hateful depiction because of temporal blindness).

289 *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2234 (2015) (Breyer, concurring).

290 See *Chaplinsky v. New Hampshire*, 316 U.S. 568, 571 (1942) (footnote omitted) ("It is well documented that the right free speech is not absolute at all times and under all circumstances.").

291 *Id.* at 572 (footnote omitted).

292 *David Schultz*, "Marketplace of Ideas," The First Amendment Encyclopedia, https://www.mtsu.edu/first-amendment/article/999/marketplace-of-ideas.

293 Hate Speech on Social Media: Global Comparisons, *Council on Foreign Relations* (June 7, 2018), https://www.cfr.org/backgrounder/hate-speech-social-media/global-comparisons .

294 Museum Condemns White Nationalist Conference Rhetoric, *U.S. Holocaust Mem'l Museum* (Nov. 21, 2016), https://www.ushmm.org/information/press/press-releases/museum-condemns-white-nationalist-conference-rhetoric.

Editor's Conclusion: The last fifty years have demonstrated beyond question that those who have committed sex crimes and those who have a divergent sexual orientation such as pedophilia – even if they have lived completely without any sex crimes – are vulnerable to the vilest false accusations of sexual misdeeds and, in any event, of harboring desires and intents toward such misdeeds.

Simply by couching these propagandistic lies and such character assassination in terms chosen deliberately for their inescapably inflammatory impact on the emotions of the readers or listeners, these venomous utterances are easily accepted as truth no matter how baseless and contrary to provable facts. During World War I, German propagandists found that part of the value of incendiary false propaganda is that there will always be a portion of its readers who will believe it and will continue to believe it even after the propaganda victims have later gathered irrefutable proof of its falsehood. At the end of the day, such campaigns of hate in modern times can appear to justify wrecking every aspect of the lives of the victims of these lies.

Many third-parties holding the propaganda victim's key to success to the means of acceptable living, upon exposure to such verbal venom, can be moved to fire or refuse to hire the victim, can become motivated to evict the victim or refuse to sell or rent housing to a victim, may decline to patronize any business created by the victim, and can even be turned against the victim so profoundly as to divorce the victim – among just a few of the myriad impacts that may be inflicted in consequence of such baseless hate speech. Worst or all, but already known to actually occur, some who are most extremely emotionally affected by such false or exaggerated words may become so enraged against the victim that they vandalize the victim's car, house, or property, may threaten the victim or even lay in wait to assault the victim by surprise (alone or by gang), and may even murder the victim.

Thus it can be seen that this is misusing speech as a weapon; it leaves the realm of debate and civil discourse and moves far away into the realm of deliberate incitation to infliction of harm and of crime. It is not free speech, it is misuse of speech to create destruction, harm, and perhaps even injury or death. None of the founders of our country ever countenanced such misuse of speech to stir up extreme hatred for such inciting purposes. Neither should we do so now. But, until apt means to eliminate or at least strictly limits such words-as-personal-destruction can be devised, we all need to constantly bear in mind that when we read or hear inflammatory language in service of such evil, destructive ends, we need to take a deep breath, and turn the page.

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Soviet-Style Slave Camps in MN?

The Civil Commitment Calamity

Daniel Wilson, "The Civil Commitment Calamity: Soviet-Style Slave Camps in Minnesota," 18(6) *the NARSOL Digest* 6 (Dec. '25-Jan '26)

Text: "The bill known as the Minnesota Commitment and Treatment Act (MCTA) was passed in [1994], but it dates back to 1982 when its precursor, the Minnesota Commitment Act, became law.

In its formative years, it was compared to many things, but the comparison that has proved the most apt is one that was used in the 1950s by critics of proposed legislation in Alaska. 'Siberia, USA.' Was coined in express fear that an Alaskan civil commitment bill allowing similar, involuntary post-incarceration civil commitment would lead to Soviet-style slave camps.

https://morningside.uoregan.edu/chapter4/

The majority of states with such schemes provide the right to a jury trial, the original Alaskan (aka Siberian) bill and the MCT Act do not. An even larger majority requires the history of a criminal conviction to commit someone; the 'Siberian' bill and the MCT Act do not. Both the old Alaskan bill and the current MCTA use the lesser standard for commitment of 'clear and convincing' versus the more stringent 'beyond a reasonable doubt.'

http://www.defenseforsvp.com/Resources/Misc_info/ncp-ca_statute_civil_commitment_summary.pdf .

In addition, had the original Siberian bill been passed, it would have established a commitment scheme that incarcerates citizens petitioned by any 'interest' party, just like the MCT Act (Minn. Stat. § 253B.07, Subd. 2(a) and Wikipedia, Alaska Mental Health Enabling Act, p. 2).

In light of these comparisons, the MCT Act could be called the Neo-Siberian Commitment Act. These similarities between Soviet slave camps and the MCT Act were not missed by Minnesota Court of Appeals Judge R.A. Rabndall, who asserted in 2014 that [MSOP] bears an eerie resemblance to the old Stalinist Russia winter resort for political dissidents in *Gulag Archipelago* by Aleksandr Solshenitsyn (Mattson, Court of Appeals of Minnesota, 1995).

Other legislators tried to warn of the danger of what had been created. For instance3, Senator Thomas Neuville proclaimed:

> ...I admonish all of us to be very careful because this is a real slippery slope we're doing here. All we have to do is take the word 'sexual' out of this statute and we could be committing people for any kind of harmful conduct – now we're starting to confine people for what they might do in the future.... But if we start being careless about these kinds of laws, ...we could be putting lots of people into this kind of confinement just because we're afraid of them. (Senate Joint Meeting Judiciary & Crime Prevention (Sexual Predators) (disk 4 of 4) at 00:18:04).

As if incarcerating people indefinitely with no due process is not egregious enuogh, it is actually not the worst part of the MCT Act. This legislation robs funds and resources from those who need it most. Clinical psychologist Dr. Nicolas Long warned drafters '...much of the dollars would be diverted from treating mentally ill people who have a treatable disorder' (8.18.94: Joint House Senate Task Force on Sexual Predators (audio file) at 01:39:40).

Pamela Hopes, attorney with the Minnesota Disability Law Center, echoed Dr. Long when she told lawmakers, '[The MCT Act] ...diverts resources that are desperately needed by the ...mental health system's primary beneficiaries' (8.19.94 Joint House Senate Task Force on Sexual Predators (audio file), at 02:22:00).

The concerns of Dr. Long and Mrs. Hopes have since materialized. The same year that Minnesota cut its funding for sexual violence prevention programs by $3.6 million, it spent $26 million taxpayer dollars to detain 235 people under the MCT Act.

https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1088&context=blr, p. 36.

In 2022, Elizabeth J. Letourneau, Ph.D., director of the Moore Center for the Prevention of Child Sexual Abuse said, '...there are very limited resources for preventing this abuse from occurring in the first place ...If we really want to prevent harm, then it is going to require more government investment.'

https://publichealth.jhu.edu/2022/new-study-estimates-annual-cost-of-incarcerating-adults-convicted-of-chld-sex-crimes-topped-5-4-billion-in-2021.

Dr. Letourneau is correct, However, before we can fund programs that are effective in preventing harm, Minnesotans must learn how to keep its elected officials accountable."

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Criminal Legal News Denounces SOCC

Douglas Ankney, "People Convicted of Sex Crimes Remain Incarcerated 25 Years After Completing Their Prison Sentences," 6(2) *Criminal Legal News* 49-50 (February 2023).

Text: "With the recent overturning of *Roe v. Wade*, 410 U.S. 113 (1973), news pundits and left-leaning politicians decry the 'radical' justices on the U.S. Supreme Court as if the High Court's utter disrespect for the freedom guaranteed under the U.S. Constitution is a recent development. Beginning with the 19th century opinions in *Dred Scott v. Sandford*, 60 U.S. 393 (1856), and *Plessy v. Ferguson*, 163 U.S. 537 (1896), that denied human dignity to Black Americans, the justices have demonstrated their willingness to deny basic constitutional rights to the powerless and unpopular.

Continuing with their appalling disrespect for the dignity of all people, in June of 1997, the Supreme Court ruled that the U.S. Constitution doesn't prohibit detaining people convicted of sexual offenses beyond the expiration of their prison sentences if the detainment is for 'treatment.' The justices in *Kansas v. Hendricks* 521 U.S. 346 (1997), held that a Kansas law authorizing the practice does not violate double jeopardy because the commitment is for 'civil' rather than 'criminal' purposes. Yet the duplicity of the Court's reasoning was revealed in the 2002 decision of *Kansas v. Crane*, 534 U.S. 407 (2002), in which the justices ruled there is no set legal standard for determining 'behavioral abnormality'

among sex offenders before 'civil commitment' may be imposed.

Prisoners who've served their sentences are then incarcerated in 'civil commitment facilities' that are commonly referred to as 'shadow prisons' – and with good reason. Former Minnesota State Senator Don Betzold said of the Minnesota Sex Offender Program ('MSOP') 'The sex offender treatment program is like a prison – only worse, because there's no "out" date. The Moose Lake building was designed as a maximum-security prison. The treatment program has been led by some state employees who came from corrections backgrounds.' The 'civil commitment program' in Littlefield, Texas, is operated by the private prison company Management and Training Corporation and, like most such facilities, refers to those detained as 'prisoners,' not 'patients.' The Littlefield facility was formerly used as a private prison until it was shut down after a prisoner's suicide.

These facilities are operated like prisons with sanctions for disciplinary infractions, and it's not uncommon for those detained to lose years of 'treatment progress' for minor violations. And until 2015, Texas made even minor rules violations into felonies.

Perhaps most disturbingly, few people are ever released from these facilities. The MSOP didn't release anyone until 2015 and has released only [37] people since then – [110] have died while held indefinitely in these so-called civil facilities. Texas claims it has released 13 prisoners with only three deaths, but critics say the actual numbers are six releases with 29 deaths.

It is widely known among proponents of civil commitment that these programs don't work. Psychologist Jesus Padilla's study in 2006 revealed that those deemed 'high risk' and released after 'treatment' in the state's civil commitment program reoffended at the same rate as those released without treatment/commitment. But since his research findings were inconvenient, he was silenced – his records were confiscated, his hard copies destroyed, and he was forbidden from speaking about his work.

As of June 2022, at least 20 states and the federal government operate involuntary sex offense civil commitment programs. And the heinous practice will likely continue with the blessing of the U.S. Supreme Court."

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Perlin Speaks Loud & Clear:

SOCC Laws Violate International Human Rights Law

Perlin, Michael L. & Cucolo, Heather Ellis, "'See This Empty Cage Now Corrode': The International Human Rights and Comparative Law Implications of Sexually Violent Predator Laws," 23(3) *New Criminal Law Rev.* 388-434 (Summer 2020)

Abstract Excerpts:

pp. 388-89: "Our sexually violent predator (SVP) laws are a miserable failure. We suggest a turn to international human rights law (IHR) as a source of rights for this population, and consider this matter from the perspective of comparative law. Many nations have enacted laws that both mirror and contradict early developments in United States jurisprudence, but there, challenges to community containment and preventive detention laws have been more successful when based upon IHR law.

...We ...consider the human rights issues and violations that have resulted from domestic enactment of International Megan's Law. ...[W]e apply comparative law in an effort to determine how other nations have struggled with some of the basic issues that have been focused on by domestic jurisdictions since the Supreme Court's decision in *Kansas v. Hendricks* (1997)."

Text Excerpts:

pp. 394-95: "Significantly, although former President Obama did sign the CRPD [United Nations Convention on the Rights of Persons with Mental Disabilities], the Senate has not ratified it.[32] One of the documented reasons for refusing to ratify the CRPD was that it, allegedly, had significant overlap with the Americans with Disabilities Act (ADA).[33] Although both bodies of legislation deal with disability discrimination, the Convention defines 'disability' in a more positive, inclusive manner and addresses the problems individuals with disabilities encounter in society in a more holistic manner.[34] The Convention more widely considers past discrimination and its impact on current situations and environments.[35]

Notwithstanding the fact that the Senate declined to ratify the Convention for lack of a super-majority of votes,[36] the fact that President Obama did sign the Convention triggered the application of the Vienna Convention of the Law of Treaties, 'which requires signatories "to refrain from acts which would defeat the Disability Convention's object and purpose.";[37]

Thus, multiple domestic cases have cited the CRPD as authority,[38] and there can be no question that it must be read as still having 'weight and influence over domestic policy.'[39] In one such case, Surrogate Judge Kristin Booth Glen noted that the CRPD was 'entitled to "persuasive weight" in interpreting our own laws and constitutional protections.'[40]

This leads to an important question: are all sex offenders covered by the CRPD? To answer this, we must consider two opposing views. First, because of the overlap with the ADA, it is important to consider how that domestic body of legislation considers the sex offender population....

pp. 395-96: Certain disorders are categorically exempt from protection. They include: transvestism, transsexualism, pedophilia, exhibitionism, gender identity disorders not resulting from physical impairments, compulsive gambling, kleptomania, pyromania, psychoactive substance use disorders resulting from current illegal use of drugs, and other sexual behavior disorders.[42] In addition, individuals with disabilities may be precluded from being 'qualified' based on their criminal history and subsequent labeling as a 'sex offender.'[43] Thus, if the CRPD sets the parameters of disability similar to the ADA, sex offenders would likely be excluded from coverage under the Convention.[44] But the second analysis takes into account the decision in *Hendricks* and, in particular, the Supreme Court's characterization of pedophilia (Hendricks's diagnosis) as a 'mental abnormality.'[45]

There, the Supreme Court stated:

'Contrary to Hendricks' assertion, the term "mental illness" is devoid of any talismanic significance. Not only do "psychiatrists disagree widely and frequently on what constitutes mental illness," but the Court itself has used a variety of expressions to describe the mental condition of those properly subject to civil confinement.'[46]

pp. 396-97: Pedophilia, the Court reasoned, was classified by 'the psychiatric profession' as a 'serious mental disorder'; this disorder – marked by a lack of volitional control, coupled with predictions of future dangerousness – 'adequately distinguishes Hendricks from other dangerous persons who are perhaps more properly dealt with exclusively through criminal proceedings.'[47] Hendricks's diagnosis as a pedophile, which qualifies as a 'mental abnormality' under the Act, thus 'plainly sufficed' for due process purposes.[48] Therefore, if the Convention were to consider the vast, undefined range of mental disabilities that result from either legal interpretation or psychiatric diagnosis, then potentially, sex offenders would be covered.

Assuming that this population *is* covered, what is the significance of this Convention for what we are considering in this paper? Article I of the CRPD outlines the purpose of the Convention, which is to 'promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.'[49] The definition is all-inclusive and includes 'those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.'[50] The CRPD further calls for non-discrimination and 'full and effective participation and inclusion in society.'[51] This includes people who have experienced trauma-related mental disabilities.[52]

pp. 397-98: Article 12 declares that persons with disabilities have equal recognition before the law,[53] Article 13 proclaims that persons with disabilities shall have equal access to justice on an equal basis with others,[54] and Article 14 states that all persons with disabilities shall enjoy the right to liberty and security of person, and that States must ensure that people with disabilities are not deprived of their liberty unlawfully or arbitrarily.[55] The ratification of the Convention illustrates 'profound shifts not in the conception of human rights and the implementation of human rights in public policy domains.'[56]

Other sections of the CRPD make clear that persons with disabilities have the same human rights as all other persons, and importantly, many track – either consciously or unconsciously – the holdings of the decisions in *Wyatt v. Stickney*[57] and its supplemental standards. Thus, other articles call for 'respect for inherent dignity' and 'nondiscrimination';[58] 'freedom from torture or cruel, inhuman or degrading treatment or punishment';[59] 'freedom from exploitation, violence and abuse';[60] a right to protection of the 'integrity of the person';[61] the right to community living;[62] the right to health and the nondiscriminatory provision of services;[63] and the right to rehabilitation.[64]

pp. 398-99: It is vital to keep in mind that these provisions apply not just to persons in the *civil* mental health system, but also to those in the *forensic* system (those charged with or convicted of crime),[65] as well as, per the quoted portion of the *Hendricks* opinion, sex offenders.[66] In short, when seeking to navigate any aspect of the criminal justice system, this navigation must be done with an eye toward the international human rights system as well.[67] As one of the authors (HEC) has written (with Dr. Astrid Birgden):

Human rights and freedoms are granted to all individuals (including sex offenders) and human rights law provides fundamental protections without qualification or exception. Offenders are both rights-violators and rights-holders. Therefore, while the State is obliged to protect the community from sex offenders by preventing and deterring crime, it is also obliged to respect their human rights, protect them against violation, and promote a human rights framework.[68]

p. 400: B. Other International Law Documents

Multiple articles of the Universal Declaration of Human Rights speak to the issues with which we are concerned.[73] These articles, variously, guarantee 'equal protection against any discrimination,'[74] freedom from 'arbitrary arrest, detention or exile,'[75] and freedom from 'arbitrary interference with [one's] privacy, family, home or correspondence.'[76]

pp. 400-01: The Supreme Court has ruled, in *Sosa v. Alvarez-Machain*,[77] that the ICCPR [the International Covenant on Civil and Political Rights] is not self-executing and does not confer a private cause of action (that would allow individuals to sue in federal court on the basis of this Covenant). On the other hand, as the United States *has* ratified this Covenant and, by that ratification, 'accepts the obligation to protect, respect, and fulfill [the] rights [enumerated in the Covenant],'[78] rights that establish international legal obligations are binding on the executive and legislative branches of government.[79] Also, such 'non-self-executing' declarations arguably do not preclude *defendants* from invoking treaty rights defensively.[80]

Professor Patrick Keyzer, by way of example, has argued that legislation in New South Wales – laws that are very similar to most of the current SVP laws in the United States – inflicts arbitrary detention and double punishment contrary to Articles 9 and 14 of the International Covenant on Civil and Political Rights.[84]

pp. 401-02: In the United States, two major sorts of legislative enactments de-

(Continued on page 6)

signed to confine and restrict offenders are civil commitment laws, and registration and notification laws. Both of these legal sanctions necessitate the use of expert testimony during court proceedings.[85] Thus, it is imperative that these experts also be required to abide by human rights principles. As discussed below, Australia has made some significant strides in that effort while the United States continues to lag behind.

pp. 402-03: As in the United States, Australian jurisdictions enacted preventive detention legislation in response to a series of high-profile events.[86] But, unlike the United States, Australia has adopted a particular set of ethical rules for psychologists. The revised Australian Psychological Society Code of Ethics is based on the Universal Declaration of Ethical Principles for Psychologists.[87] The Universal Declaration provides a moral framework of universally acceptable ethical principles based on shared human values across cultures.[88] The application of its moral framework assists psychologists to respond ethically by developing codes of ethics and reviewing current codes.[89] The Universal Declaration's moral principles are based on shared human values of peace, freedom, responsibility, justice, humanity, and morality. Whereas historically, psychologists have focused on the individual-clinical, psychological approach to offender rehabilitation, the Universal Declaration considers broader social contexts: individuals, families, groups, and communities.[90] Four principles are enumerated in the Universal Declaration reinforcing that psychologists are to balance offender rights and community rights:[91]

Principle I: Respect for Dignity – Treatment must integrate with environmental contexts and social supports;

Principle II: Competent Caring for Well-Being – Above all else, psychologists should do no harm;

Principle III: Integrity of Psychologists – Advance scientific knowledge and to maintain community confidence in the discipline of psychology; and

Principle IV: Professional and Scientific Responsibilities to the Community – Knowledge about human behavior and development of social structures and policies that benefit all individuals.[92]

p. 404: In 2003, Queensland enacted the Explanatory Memorandum, Dangerous Prisoners (Sexual Offenders) Bill (DPSOA),[100] which authorized the provincial Supreme Court to order post-sentence imprisonment of persons serving sentences for serious sexual offenses.[101]

pp. 406-07: The High Court's decision in *Fardon* did not render the DPSOA valid under international law,[112] and in 2007, Fardon and an individual detained under the New South Wales equivalent legislation[113] submitted communications to the United Nations Human Rights Committee (UNHRC)[114] under the Optional Protocol to the ICCPR. The UNHRC disagreed with the Australian High Court, finding that such detention was essentially criminal in nature and required proof of a criminal offense rather than a suspicion of future criminality.[115]

The UNHRC concluded that under Article 9, Paragraph 1 of the Covenant,[116] such detention was 'not permissible in the absence of [another] conviction for which imprisonment is a sentence prescribed by law.'[117] Accordingly, the statute as applied in *Fardon v. Attorney-General (Qld)* amounted to an ex post facto law, violating Article 15 of the Covenant that proscribes any penalty heavier than the one that existed at the time of the original sentence.[118] Despite the human-rights-based opinion of the UNHRC, it is not binding on Australia, although the UNHRC can request that any party to the International Covenant provide a response as to how it plans to give effect to the Committee's view.[119]

pp. 409-10: The misconceptions of the 'high risk of sex offense recidivism and the myth of "stranger danger" have engendered most – if not all – of the laws regarding sex offenders in the United States'[137] served as the rationale – albeit flawed rationale – for the passage of the IML [International Megan's Law]. There is no evidence to suggest that these laws are effective in reducing the risk to those they aim to protect.[138]

In addition to increasing the stigma of being identified as a sex offender,[139] coupled with the false reality that sex offenders are predominantly the ones who engage in child sex tourism,[140] placing a unique identifier on a sex offender's passport also raises serious issues as to the constitutionality of IML.[141] A wide array of compelling constitutional arguments can be made against the implementation of IML, including alleged violations of the First Amendment (as covered individuals must publicly communicate their status as registered sex offenders on their passports),[142] and the equal protection and due process aspect of the Fifth Amendment (as covered individuals are deprived of the right to be free from arbitrary, oppressive, and unreasonable state action in a way that conveys no rational relationship to the government's goal of safeguarding the public).[143] It is this no surprise that activists have argued that the IML is at odds with various articles of the United Nations' Universal Declaration of Human Rights.[144]"

Notes:

14 *Heather Ellis Cucolo & Michael L. Perlin*, "'The Strings in the Books Ain't Pulled and Persuaded': How the Use of Improper Statistics and Unverified Data Corrupts the Judicial process in Sex Offender Cases," 69 *Case W. Res. L. Rev.* 637, 667 (2019) ("Courts around the country continue to remain stagnant, clinging to misinformation and refusing to depart from prejudicial viewpoints that are pretextual and based on irrational fears").

32 The text of the Convention, reports of the negotiating sessions leading to its completion, lists of the myriad non-governmental organizations participating in the sessions, and lists of the countries that have signed and ratified the Convention are available at CRPD, https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html.

33 42 *U.S.C.* § 12101. See, e.g., *Arlene S. Kanter*, "Let's Try Again: Why the United States Should Ratify the United Nations Convention of the Rights of People with Disabilities," 35 *Touro L. Rev.* 301, 302 (2019) ("the best reason why the United States should ratify the CRPD is to realize the promise of the ADA").

34 See CRPD [G.A. Res. 61/106, at 27, U.N. Doc. A/Res/61/106 (Dec. 13, 2006) supra note 22, Art. 4. See also Guiding Principles of the Convention, at https://www.un.org/develpopment/desa/diasabilities/convention-on-the-rights-of-persons-with-disabilities/guiding-principles-of-the-convention.html.

35 Id.

36 *Michael L. Perlin & Meredith R. Schriver*, "'You Might Have Drugs at Your Command': Reconsidering the Forced Drugging of Incompetent Pre-Trial Detainees from the Perspectives of International Human Rights and Income Inequality," 8 *Albany Gov't L.* 381, 387 n. 34 (2015), citing The Convention of the Rights of Persons with Disabilities, *U.S. Int'l Council on Disabilities*, https://ncd.gov/policy/crpd.

37 Vienna Convention on the Law of Treaties, Art. 18, May 23, 1969, 1155 U.N.T.S. 331, as discussed in *Henry Dlugacz & Christopher Wimmer*, "The Ethics of Representing Clients with Limited Competency in Guardianship Proceedings," 4 *St. Louis U. J. Health L & Pol'y* 331, 362-63 (2011).

38 *In re Mark C.H.*, 906 N.Y.S.2d 419, 433 (Sur. Ct., 2010), as discussed in this context in *Kristin Booth Glen*, "Changing Paradigms: Mental Capacity, Legal Capacity, Guardianship, and Beyond," 44 *Colum. Hum. Rts. L. Rev.* 93, 167-69 (2012); and *Michael L. Perlin*, "'Striking for the Guardians and Protectors of the Mind': The Convention on the Rights of Persons with Disabilities and the Future of Guardianship Law," 117 Penn St. L. Rev. 1159, at 1177-78 (2013). See also *Matter of Michelle M.*, 41 N.Y.S.3d 719, 2016 N.Y. Misc. LEXIS 2719, at *8-*9 (July 22, 2016); and *In re Zhuo*, 42 N.Y.S.3d 530 (Sur. Ct. 2016), discussed in this context in *Michael L. Perlin & Heather Ellis Cucolo*, Mental Disability Law: Civil and Criminal, ch. 5 (3d ed. 2019 update), §§ 2-8, at 2-87 to 2-89.

39 *Perlin & Schriver*, *supra* note 36, at 387.

40 *In re Guardianship of Dameris L.*, 956 N.Y.S. N.Y.S. 2d 848, 855 (Sur. Ct. 2012).

42 42 *U.S.C.* § 12211. Although the text of the ADA remains the same, on May 18, 2017, the United States District Court for the Eastern District of Pennsylvania held that gender dysphoria – a new diagnosis (see *Diagnostic and Statistical Manual 5* (2013)) that describes the clinically significant distress that some transgender people experience – is *not* excluded by the ADA. See *Blatt v. Cabela's Retail, Inc.*, 2017 WL 2178123 (E.D. Pa. May 18, 2017).

43 *Amanda Johnson*, "Challenging Criminal Records in Hiring under the Americans with Disabilities Act," 48 *Colum. Hum. Rts. L. Rev.* 211 (2016-17).

44 But see *Michael L. Perlin & Naomi M. Weinstein*, "'Friend to the Martyr, a Friend to the Woman of Shame': Thinking about the Law, Shame and Humiliation," 24 *So. Cal. Rev. L. & Soc'l Just.* 1, 50 (2014) (how shaming and humiliating of sex offenders contravenes the CRPD).

45 *Kansas v. Hendricks*, 521 U.S. 346, 360 (1997).

46 *Id.* at 357.

47 *Id.* at 360.

48 *Id.*

49 See CRPD, see *supra* note 34, art I; see., e.g., *Leslie Salzman*, "Guardianship for Persons with Mental Illness – A Legal and Appropriate Alternative?," 4 *St. Louis U. J. Health L & Pol'y* 279, 283-84 (2011) ("The CRPD is predicated on the obligation to respect each person's inherent dignity, autonomy, and independence, including the freedom to make one's own choices").

50 See CRPD, see *supra* note 34, art I.

51 *Id.*, Art. 3.

52 On the connection between international human rights and such disabilities, see Meghan *Gallagher & Michael L. Perlin*, "'The Pain I Rise Above': How International Human Rights Can Best Realize the Needs of Persons with Trauma-Related Mental Disabilities," 29 *Fla. J. Int'l L.* 271, 279 (2018).

53 See CRPD, see *supra* note 34, art I2.

54 *Id.*, Art. 13. This includes the provision of accommodations for persons with disabilities "in order to facilitate their effective role as direct and indirect participants ...in all legal proceeding...." *Id.* On how access to adequate and dedicated counsel is one of the most critical issues in bringing life to international human rights law within a mental disability law context, see *Michael L. Perlin*, "International Human Rights Law and Comparative Mental Disability Law: The Universal Factors," 34 *Syracuse J. Int'l & Com. L.* 333, 342 (2007); *Cucolo & Perlin*, "'Far from the Turbulent Space': Considering the Adequacy of Counsel in the Representation of Individuals Accused of Being Sexually Violent Predators," 18 *U. Pa. J. L. & Soc. Change* 125 (2015); *Cucolo & Perlin*, "Promoting Dignity and Preventing Shame and Humiliation by Improving the Quality and Education of Attorneys in Sexually Violent Predator (SVP) Civil Commitment Cases," 28 *Fla. J. L. & Pub. Pol'y* 291 (2017).

55 See CRPD, see *supra* note 34, Art I4. On Article 14 generally, see *Michael L. Perlin & Eva Szeli*, "Article 14: Liberty and Security of the Person," in *Commentary on UN Convention on the Rights of Persons with Disabilities* 402 (2018).

The official commentary to Article 14 states that under the CRPD, detention is "unlawful" when it is grounded in the combination between a mental or intellectual disability and other elements such as dangerousness, or care and treatment." See *Christopher Slobogin*, "Eliminating Mental Disability as a Legal Criterion in Deprivation of Liberty Cases: The Impact of the Convention on the Rights of Persons with Disabilities on the Insanity Defense, Civil Commitment, and Competency Law," 40 *Law & Psychol. Rev.* 297, 298 (2016), discussing *U.N. Secretary-General and High Commissioner for Human Rights, Human Rights Council*, Thematic Study by the Office of the United Nations High Commissioner for

(Continued on page 7)

Human Rights on Enhancing Awareness and Understanding of the Convention on the Rights of Persons with Disabilities, ¶ 48, U.N. Doc. A/HRG/10/48 (Jan. 26, 2009); and *Slogobin, supra*, at 313, n. 108, quoting *Patrick Keyzer*, "The International Human Rights Parameters for the Preventive Detention of Serious Sex Offenders," in *Dangerous People: Policy, Prediction and Practice* 25, 29-30 (Bernadette McSherry & Patrick Keyzer eds, 2011) (noting holdings by international tribunals prohibiting as "arbitrary" and in violation of international covenants detention that is more invasive than necessary to achieve the state's ends).

56 *Penelope Weller*, "Human Rights and Social Justice: The Convention on the Rights of Persons with Disabilities and the Quiet Revolution in International Law," 4 *Pub. Space: J. L. & Soc. Just.* 74, 90 (2009).

57 *Wyatt v. Stickney*, 344 F. Supp. 373 (M.D. Ala. 1972), aff'd in part, rev'd in part, 344 F. Supp 387 (M.D. Ala. 1972), aff'd in part, rev'd in part sub nom. *Wyatt v. Aderholt*, 503 F.2d 1305 (5th Cir. 1974). See generally, *Perlin*, "'Abandoned Love': The Impact of *Wyatt v. Stickney* on the Intersection between International Human Rights and Domestic Mental Disability Law," 35 *Law & Psychol. Rev.* 121, at 139 (2011); *Phil Fennel*, "Human Rights, Bioethics, and Mental Disorder," 27 *Med. & L.* 95, 107 (2008); *Frederic Megret*, "The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights?," 30 *Human Rts. Q.* 494, 494 (2008).

58 See CRPD, see *supra* note 34, Art. 3.

59 *Id.*, Art 15.

60 *Id.*, Art 16.

61 *Id.*, Art 17.

62 *Id.*, Art 19.

63 *Id.*, Art 25.

64 *Id.*, Art 26. See generally *Gallagher & Perlin, supra* note 52.

65 It is also important always to keep in mind that there is a significant *blurring* between the civil and forensic/criminal mental disability law systems, and that blurring increases with time. See, e.g., *Michael L. Perlin, Deborah A. Dorfman & Naomi Weinstein*, "On Desolation Row': The Blurring of the Borders between Civil and Criminal Mental Disability Law, and What It Means for All of Us," 24 *Tex. J. on Civil Libs. & Civ. Rts.* 59 (2018), discussing four areas of "negative blurring" – [1] the proliferation of assisted outpatient treatment (AOT) statutes; [2] the expansion of sexually violent predator acts; [3] the sanctioning in some jurisdictions of the imprisonment of insanity acquittees in prison facilities; and [4] the provision of no meaningful continuity of care, resulting in large numbers of persons continually "shuttling" between jails (or prisons) and mental hospital – and one area of "positive blurring", the proliferation of mental health courts. On this topic, see generally *Michael L. Perlin*, "'Who Will Judge the Many When the Game Is Through?': Considering the Profound Differences between Mental Health Courts and 'Traditional' Involuntary Civil Commitment Courts," 41 *Seattle U. L. Rev.* 937 (2018).

66 See *Perlin & Weinstein, supra* note 44, at 50.

67 *Michael L. Perlin & Meghan Gallagher*, "'Temptation's Page Flies Out the Door': Navigating Complex Systems of Disability and the Law from a Therapeutic Jurisprudence Perspective," 25 *Buffalo Human Rts L. Rev.* 1, 18 (2018-19).

68 *Astrid Birgden & Heather Cucolo*, "The Treatment of Sex Offenders: Evidence, Ethics, and Human Rights, 23 *Sexual Abuse: J. Res. & Treatment* 295, 307-08 (2011) (arguing in favor of the treatment of sex offenders with respect and dignity).

73 Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) Dec. 10, 1948).

74 *Id.*, Art. 7.

75 *Id.*, Art. 9.

76 *Id.*, Art. 12.

77 542 U.S. 692, 735 (2004).

78 *Vanessa Soderberg*, "More Than Receptacles: The International Human Rights Analysis of Criminalizing Pregnancy in the United States," 31 *Berkeley J. Gender L. & Just.* 299, 315 (2016).

79 *Derek Jinks*, International Human Rigts Law and the War on Terrorism," 31 *Denv. J. Int'l L. & Pol'y* 58, 63 (2002).

80 *United States v. Duarte-Aero*, 132 F. Supp.2d 1036, 1040 (S.D. Fla. 2001) (holding that the prohibition against private causes of action does not apply when raising "ICCPR claims defensively").

84 *Patrick Keyzer*, "The 'Preventive Detention' of Serious Sex Offenders: Further Consideration of the International Human Rights Dimensions," 16 Psychol., Psychiatry & L. 262 (2009), rebuking the Australian Attorney General for criticizing an Australian sex offender detainee for seeking an international human rights remedy through the United Nations Human Rights Committee ("A person – particularly a person who is presently susceptible to the coercive power of the state – ought not be vilified because he has taken legal action").

85 In the few cases that have considered the question, such testimony has regularly passed the standard for the admission of expert testimony established by the Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 587-89 (1993) (scientific evidence is admissible if it is valid and reliable). See *Melissa Hamilton*, "Public Safety, Individual Liberty, and Suspect Science: Future Dangerousness Assessments and Sex Offender Laws," 83 *Tempe L. Rev.* 69, 735-40 (2011).

86 See, e.g., *United States v. Fox*, 286 F. Supp. 3d 1219, 1221 (D. Kan. 2018):

> "In response to several high profile and horrific incidents committed by individuals previously convicted of sex crimes, Congress passed SORNA [Sex Offender Registration and Notification Act] to create a comprehensive national registry for sex offenders. 34 *U.S.C.* § 20901 ("In order to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators against the victims listed below, Congress ...establishes a comprehensive national system for the registration of [sex] offenders....").

87 The Universal Declaration was adopted by the International Union of Psychological Science; see https://www.iupsys.net/about/governance/universal-declaration-of-ethoical-priciples-for-psychologists.html. See also APS Code of Ethics, https://www.psychology.org.au/About-Us/What-we-do/ethics-and-practrice-stanmdards/APS-Code-of-Ethics.

88 There has been, to our minds, astonishingly little written in the United States about this Declaration. See *Michael L. Perlin & Valerie R. McClain*, "'Where Souls Are Forgotten': Cultural Competencies, Forensic Evaluations and International Human Rights," 15 *Psychol., Pub. Pol'y & L.* 257,262 (2009); *Nora Sveaass*, "Destroying Minds: Psychological Pain and the Crime of Torture," 11 *N.Y. City L. Rev.* 303, 306 (2008); and *Ida Dickie*, Ethical Dilemmas,. Forensic Psychology, and Therapeutic Jurisprudence, 30 *T. Jefferson L. Rev.* 455, 457-58 (2008).

89 *Janel Gauthier, Jean Pettifor & Andrea Ferrero*, "The Universal Declaration of Ethical Principles for Psychologists: A Culture-Sensitive Model for Creating and Reviewing a Code of Ethics," 20 *Ethics & Behav.* (Special Issue on International Dimensions of Psychological Ethics) 174-96, 179 (2010).

90 *Birgden & Cucolo, supra* note 68, at 298-99.

91 *Astrid Birgden & Michael L. Perlin*, "When the Home in the Valley Meets the Damp Dirty Prison': A Human Rights Perspective on Therapeutic Jurisprudence and the Role of Forensic Psychologists in Correctional Settings, 14 *Aggression & Violent Behav.* 256 (21009) (proposing a detailed 'checklist' against each principle for forensic psychologists delivering services in correctional settings).

92 *Birgden & Cucolo, supra* note 68, at 299.

100 Explanatory Memorandum, Dangerous Prisoners (Sexual Offenders) [hereinafter DPSOA] Bill 2003 (Qld), I. On the haste with which the Queensland law was written (and the subsequent human rights dilemmas), see *Bernadette M. McSherry & Patrick Keyser, Sex Offenders and Preventive Detention: Politics, Policy and Practice* (2009), at 102-03.

101 Section 5 of the DPSOA provides that the application be made during the last six months of the prisoner's period of imprisonment (§ 5(2)(c)). The Court may order that the prisoner undergo examinations "by 2 psychiatrists named by the court who are to prepare independent reports" (§ 8(2)(a)); or, if the court is satisfied that the application may not be finally decided until after the prisoner's release day, order "that the prisoner be detained in custody for the period stated in the order" (§ 8(2)(b)). A sexual offense is defined as "an offense of a sexual nature against children or involving violence whether committed in Queensland or outside Queensland." *Id.*

112 *Patrick Keyzer & Sam Blay*, "Double Punishment? Preventive Detention Schemes under Australian Legislation and Their Consistency with International Law: The *Fardon* Communication," 7 *Melb. J. Int'l L.* 407, 417 (2006). (Instead, this issue will ultimately be determined by the UNHRC). For a searing critique of *Fardon*, see *Patrick Keyzer, Cathy Pereira & Steohen Southwood*, "Preemptive Imprisonment for Dangerousness in Queensland under the Dangerous Prisoners (Sexual Offenders) Act 2003: The Constitutional Issues," 11 *Psychiatry, Psychol. & L.* 244, 251(2004) ("In our opinion, the uncertainty and oppressiveness of this imprisonment regime amount to a significant undermining of our criminal justice system.").

113 Not coincidentally, the three Australian states that have opted to employ preventive detention have not implemented any statutory protection of human rights. Similar legislation has been passed in New South Wales (Crimes (Serious Sex Offenders) Act 2006 (NSW)), Victoria (Serious Sex Offenders (Detention and Supervision) Act, 2006 (Wa)).

114 *Fardon v. Australia*, CCPR/C/98/D/1629/2007, UNHRC, 10 May 2010, https://www.refworld.org/caes, HRC,4CI9e97b2.mtml [hereinafter *Fardon* Communication].

115 *Tillman v. Australia* No. 1635 (2007).

116 *Id.*

117 *Fardon* Communication, supra note 114, ¶ 7.4(1)

118 Id. ¶ 7.4(2); ICCPR, Art 15.

119 *Keyzer & Blay, supra* note 112.

137 *Jennifer Kamorowski, Heather Ellis Cucolo & Allison D. Redlich*, International Megan's Law: It's Not About What Works, It's About What Sells," at 7, *Winter Newsletter* (Am. Psychol. Law Soc'y. Washington DC, Feb. 2017), https://ap-ls.wildapricot.org/resources/Documents/APLS_Winter_2017.pdf.

138 *Id.*

139 Under IML, a sex offender is defined as "an individual required to register under the sex offender registration program of any jurisdiction or included in the National Sex Offender Registry, on the basis of an offense against a minor." 22 *U.S.C.* § 212(c). This, of course, may include teenagers' consensual "sexting" pictures to their boyfriend/girlfriend, those who are involved in what are characterized as "Romeo and Juliet" relationships and many other offenses not involving sexual violence. See *Steve James*, "Romeo and Juliet Were Sex Offenders: An Analysis of the Age of Consent and a Call for Reform," 78 *U. Mo. - Kan. City L. Rev.* 241 (2009); see also *Birgden & Cucolo, supra* note 68, at 300 (consensual sex between teenagers was included in the 660,000 registered sex offenders as of 2008).

140 See, e.g., *Kamorowski, Cucolo & Redlich, supra* note 137, at 9 (As of 2012, ICE had arrested 8,000 "child predators" nationwide, yet only 99 (just over 1%) of those arrests were made under the traveling child sex offender provisions of the 2003 Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act (Dept. of Homeland Security, 2012). In addition, in a 2010 Dept. of Justice report to Congress, "The National

Strategy for Child Exploitation Prevention and Interdiction," the National Drug Intelligence Center interviewed over a hundred prosecutors, investigators , and other experts in the field, over half of whom reported that their agency had not investigated or prosecuted any sex tourism cases, and 25% of whom said they encountered sex tourism cases very infrequently). See also *Christopher King*, "Sex Offender Registration and Notification Laws at Home and Abroad: Is an International Megan's Law Good Policy? 15 *N.Y. City L. Rev.* 117, 136 (2011) (only a "tiny proportion" of registered sex offenders engage in child sex tourism abroad).

141 The only case to date on the federal level brought by litigants to challenge the implementation of International Megan's Law has been *Doe v. Kerry*, 2016 WL 5339804 (N.D. Cal. Sept. 23, 2016). There, the "plaintiffs challenged the 'passport identifier' provisions and 'notification' provisions of the IML." *Id.* at *5. Although the Court ultimately granted a motion to dismiss plaintiffs' suit, the opportunity for other litigants to bring forth legitimate constitutional arguments, in federal courts, abounds.

142 *Id.* at *16. See also Complaint at 20, Doe, No. WL 5339804, 16-CV-0654-PJH (N.D. Cal. Sept 23. 2016).

143 *Id.* See also Complaint at 21, Doe, No. WL 5339804, 16-CV-0654-PJH (N.D. Cal. Sept 23. 2016).

144 See *eAdvocate*, International Megan's Law EXPOSED! Now, hear the Truth About HR 5138, *Cong., Courts & Sex Offenders* (July 31, 2010). The Articles are discussed *supra* at text accompanying notes 73-76.

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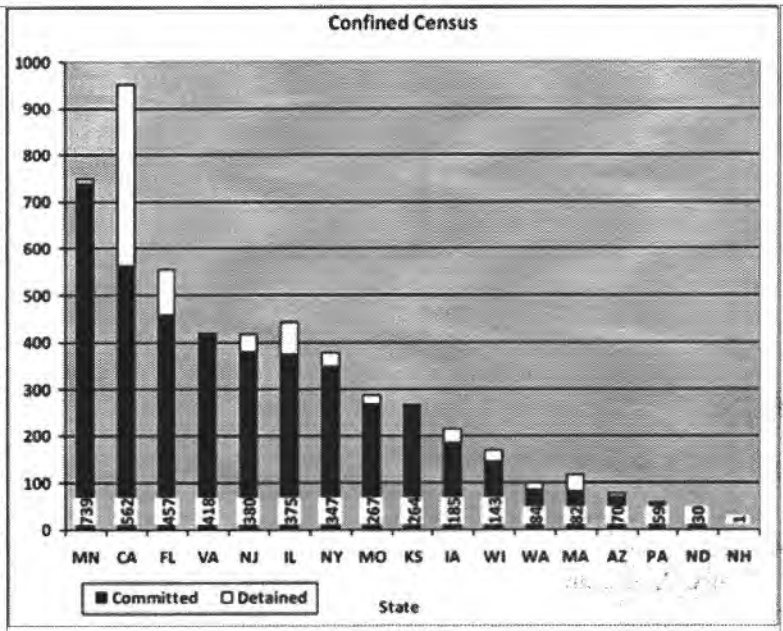
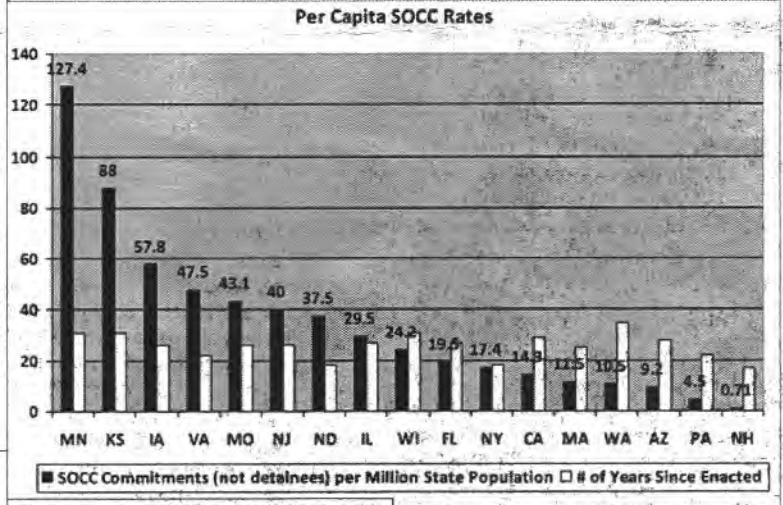
SOCCPN 2025 Report, Part 1

Schneider, Jennifer E., Deirdre D'Orazio, Naomi Freeman, Jannine Hebért, & Tim Thornton, "SOCCPN Annual Survey of Sex Offender Civil Commitment Programs 2025," *Sex Offender Civil Commitment Programs Network (SOCCPN)* (September 18, 2025),

Text & Graphical Excerpts: "Programs Responding (N=17): Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, Virginia, Wisconsin, Washington State. [Significantly, the SOCC programs in Texas, South Carolina, and Nebraska did not participate in this survey. By recently available figures, these three states add roughly a total of 1,000 additional confinees to the nationwide total. Add another 1,000 (roughly) for those shown in the chart below as "Committed" but erroneously reported as including those "Detained" but not yet committed – see especially California, which typically withholds a commitment decision as to each detainee for years. In all, a reasonable estimate of all those currently held in either status in all SOCC facilities in the U.S. appears to be close to 6,500 individuals.]

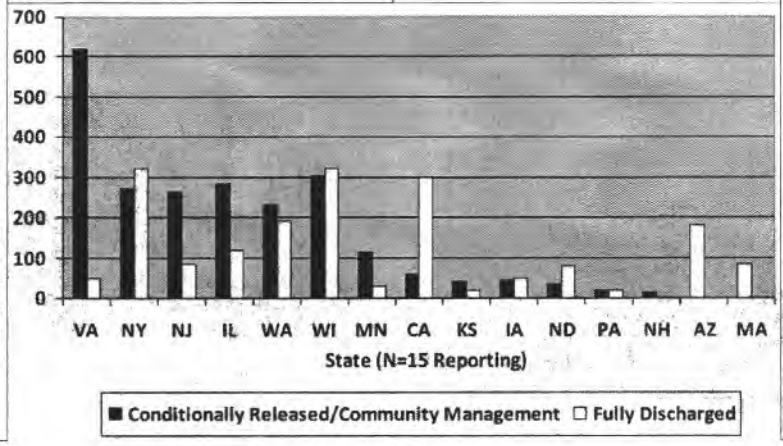
[p. 6:]





[p. 8: In sum, SOCC reports:] "Nationwide census of civilly committed individuals is 4463 among the 17 programs who responded to the 2025 survey.. [Approximately 750 of these are confined in Minnesota. The current SOCC population of the United States is approximately 6,500. The current state population of Minnesota is roughly 5.9 million people. Therefore, the number confined in Minnesota in MSOP per capita to state population is 1:7,881 or about 127 per million.. Nationwide, the number confined in SOCC programs in all states that have such programs per capita to national population (340.1 million) is 19 per million.]

From the standpoint of Minnesota, the SOCC system here (MSOP) has more actually committed confines than any other SOCC system in the country. (Chart 1, *supra*). Further, as shown clearly by Chart 2 (also *supra*), Minnesota has more SOCC-confined individuals per capita to state population than any other state's SOCC system. In fact, MN has nearly 1 1/2 times the per capita number of its runner-up for this statistic, Kansas. Kansas has very slowly been closing that gap. However, Kansas has not been committing as many as Minnesota has annually. Instead, the per capita figure in Kansas is rising due to its policy of releasing next to none in SOCC custody.

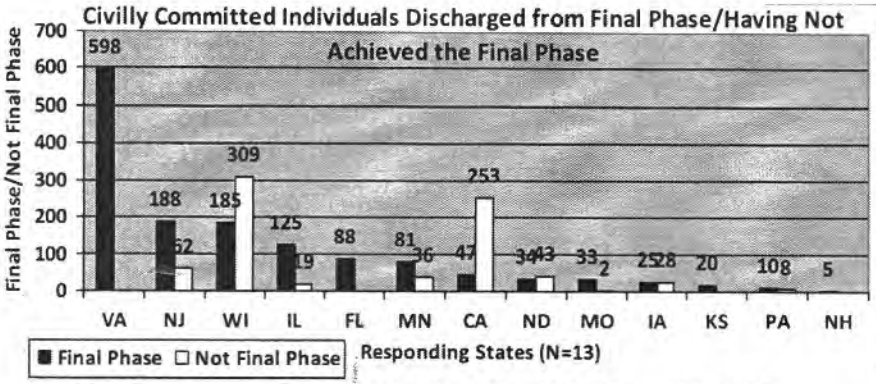


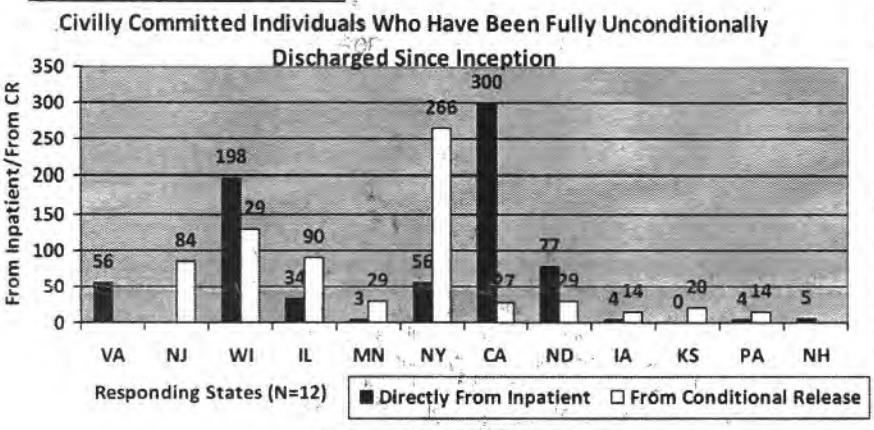
[p. 11:] Chart 3 (left, bottom) Since Inception: Civilly Committed Individuals Conditionally Released to Community/Ordered to Community Management, Compared to Numbers Fully Discharged

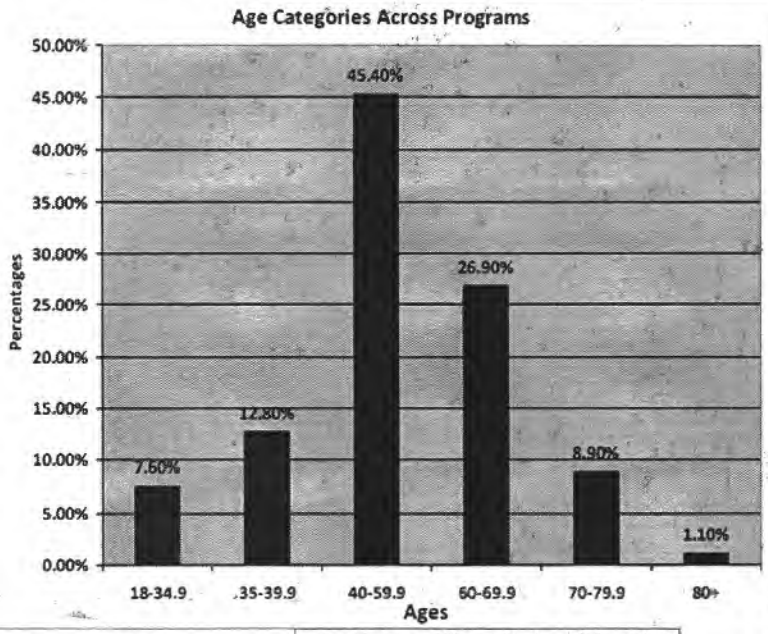
These numbers and comparisons are confusing and border on meaningless. Contextually, it is important to understand that three underlying approaches of the state legislature and of the program itself, its administrative parent agency and any contractor used, may be involved in releases and full discharges from SOCC. The first of these differing approaches is reflected by Virginia, whose high number of releases, contrasted with its very small number of full discharges blatantly reflects a belief that almost no one will ever be safe enough to be fully free in society at large. This can be called the "Let 'em out, but never let 'em go" approach. The approach that could be thought of as the other end of the spectrum is reflected by states such as Arizona and Massachusetts. These states apparently have no conditional release programs. This appears to reflect the belief that either one is safe enough to be fully at large in society, or one is not yet ready to be released at all. Other states having very few conditional releases but much larger numbers of full discharges probably are at least partly demonstrating at least some level of this belief or at least a belief in the disutility of/ lack of need for extended periods of such conditional release/community management before full discharge. See California and North Dakota in the chart immediately *supra*. The third approach is one of conservative decision-making as to full discharge, but a liberal approach as to grant of conditional release. States using this combination of approaches would be likely to simultaneously have significant cumulative full discharges to date with more conditional releases both currently and cumulatively. New Jersey, Illinois and Minnesota would seem to reflect this approach.

Page 12 of the SOCCPN 2025 report shows a chart labeled "Civilly Committed Individuals Discharged from Final Phase/ Having Not Achieved the Final Phase". (See next page here.) In this case, the word "Discharged" apparently includes both conditional release and final discharge from commitment. "Final Phase" refers to the last inpatient treatment phase. Programs having significant releases of either kind before confinees achieved the Final Phase of inpatient treatment demonstrate a willingness to consider some of their confines as having personally progressed far enough in treatment or showing such a small risk of re-offense that there is no reason to delay release further even without full completion of inpatient treatment. The chart beow illustrates that Wisconsin's program has this approach. Conversely, the programs in Illinois and New Jersey show substantial resistance to this approach, apparently insisting on full or nearly full completion of their inpatient treatment programs before release. Again, Virginia, which has not willingly granted full discharge, has apparently never allowed release without full

(Continued on page 9)







treatment completion. California's numbers appear due to the massive political reversal of policy during its program's history.

As to Chart 4 (second from top above), once again, California's singular situation involving many detained but not under formal commitment judgments accounts for its very large number of releases from commitment altogether directly from confinement.

At the other end of the spectrum, New York's adherence to its "SIST" policy of lengthy community management shows here in the high number of commitment terminations from the SIST form of what amounts to "conditional release" in SOCCPN parlance.

North Dakota's 'mass exodus' following the *Ireland* litigation explains its dismissal ot commitment direct from confinement. In recent years, Wisconsin has followed a hybrid approach, ending commitment direct from confinement and alternatively simultaneously ending commitment of others after a comparatively modest term of conditional release. In stark comparison, Minnesota has ended commitments for only a very small percentage of its SOCC-committed individuals, with only three persons gaining that full discharge direct from confinement.

[p. 15:]

Age or Residents

- The age of residents varied from a low of 18 to a high of 91.
- The mean age of residents across programs is 53.4 with a standard deviation of 5.8.

[p. 16: Note that the chart above shows that, broken down by age categories, the vast majority of those under SOCC confinement is from age 40 up, with a combined total of 37% for those ages 60 and up.

In fact, this SOCCPN chart is highly irregular as to how it groups the age distributions, with one range (35%-39.9%) covering only five years, while the 18-34.9 range covers 17 years and the 40-59.9% range covers 20 years. Further, that 40-59.9 range is apparently deceptive, since its mean age is 53.4 years and its standard deviation is 5.8 years either way. In other words, significantly more individuals in this range are in the sub-range of ages 50-59,9 than in the 40 through 49.9 sub-range. The overall significance of this misleading appearance is augmented by the following facts: First, that mean age and standard deviation breadth together suggest that of the 45.5% of total confinees in the reporting states in this 40-59.9 rage, it is likely that at least 25% of that total is in the 50 to 59.9 sub-range. Second, this percentage, combined with the 26.9% in the 60-69.89 range, the 8.9% in the 70-79.9 range, and the 1.1% in the 80+ range, mean that a full 62% of all SOCC confinees are age 50 and up, with roughly 59.6 percent of this cohort being at least age 60. he 10% total of those ages 70 and up discloses the fact that roughly 650 of the 6500 confinees nationwide are age 70 or over. Given what I have reported elsewhere in this issue as to the almost nonexistent level of recidivism in this aged cohort, this intimates that at least this ten percent of all SOCC is retained in SOCC confinement not for any danger of re-offense if released, but purely as spite and to appeal to the vengeful motives of some slim portion of the constituency.

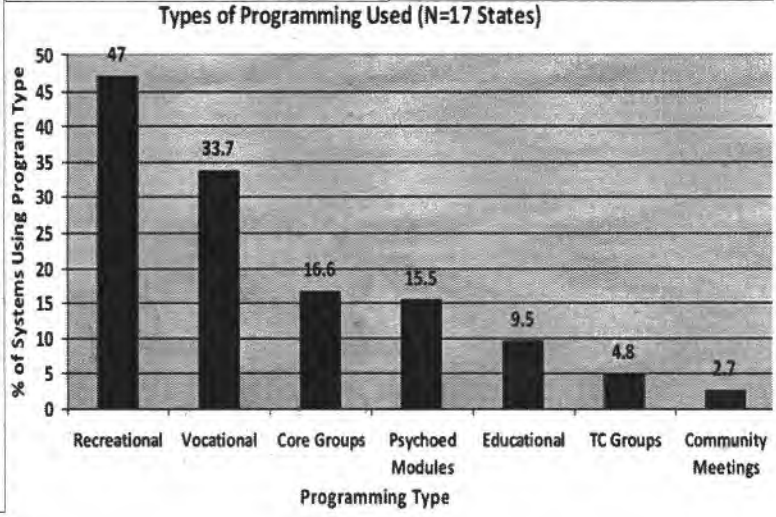
[p. 17:] The SOCC reports that as of 2025, the average length of stay in SOCC confinement among the currently committed was 12.4 years thus far. For those fully discharged directly from SOCC confinement, the average length of stay was 11.6 years. However, this does not indicate how many of these were never actually adjudged as committed, and thus may have been released far sooner than those so adjudged.

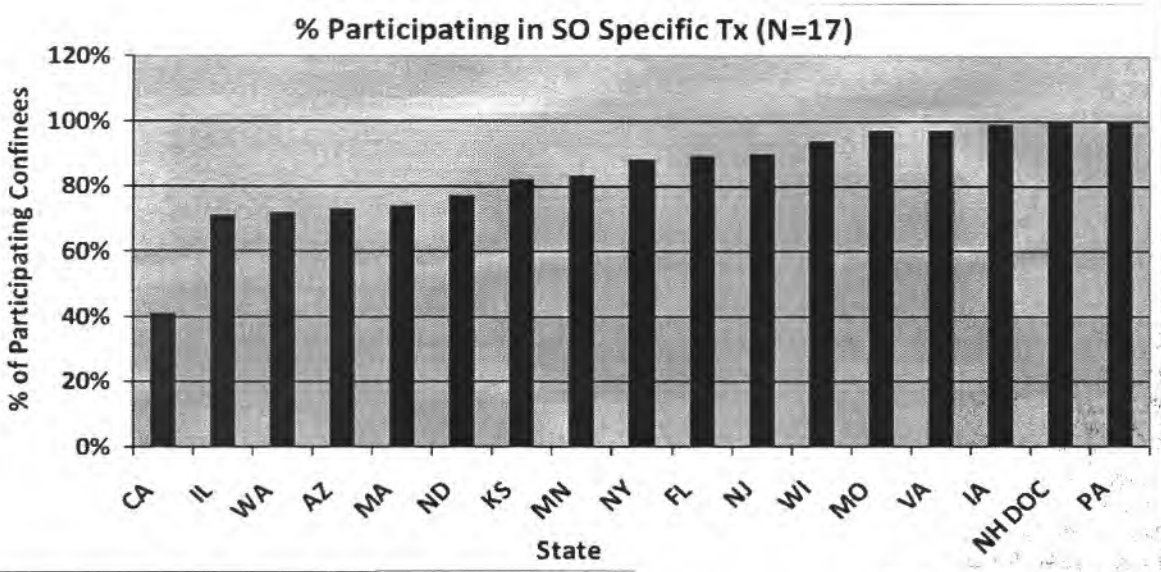
[p. 19:] Treatment Program: The chart below sets forth various types of programming used in SOCC, with an aggregate percentage for each type in use in the 17 states reporting. Of the seven types of programming reported, three have little or nothing to do with sex offender treatment. "Vocational" and "Educational" programming can be said to comprise efforts to prepare one for a "Good Lives" experience post-release, whereas "Recreational" programming is simply diversion to provide some amusement during confinement. However, the four treatment-specific programming types cited (Core Groups, Psychoed Modules, TC Groups, and Community Meetings) total together to only 39% of programming foci. The other 61% occupied by the aforesaid three non-treatment programming types primarily served to stretch out the length (in years) of the duration of treatment.. Used for this purpose, this is nothing more than deliberate, unnecessary delay of release, an unconscionable tactic in a so-called treatment program that regularly detains its confinees until they die of old age -related causes.

[p. 20:] The SOCCN reports participation figures as of 2025 appearing in the chart on the following page.

Editor's Note: Only slightly more than half of California's SOCC confinees are actually under adjudicated commitment; the rest are merely detained (although most often even after many years as a matter of defense strategy in their commitment proceeding). Hence, if CA's confinees were measured solely against those under adjudicated commitment, this percentage would be substantially higher. Separately, the "NH DOC" listed value of "100%" appears misleading, since the number of SOCC confinees in that state are less than 5.

Distinctly, various member entities of SOCCPN have striven for many years to increase treatment participation levels. To accomplish this, such entities have resorted





to coercive means (example depriving confinees who do not participate in treatment of paid jobs or restricting their hours of work for pay. This 2025 report appears to say overall that such efforts have paid off, citing treatment participation levels ranging from 75 to 100%. Such greatly increased treatment should correspondingly increase the rate of treatment completion and consequent release. However, even in SOCC systems that have achieved or neared 100% participation, there has been no marked increase in releases. This signifies that the problem blocking treatment completion and release has not been the lack of sufficient participation cited, but rather is in the very nature of what is provided as so-called treatment.

It is widely known (but not addressed in this 2025 report) that the treatment modality and duration offered in SOCC facilities differs substantially from that which is provided in community treatment for sex offenders. That treatment regimen is positivist, intense, brief, and virtually universally successful at preventing recidivism.

In contrast, SOCC treatment presumes failure and deals only with efforts to prevent such failure, engages in constant, confusing digressions into topics having highly questionable relationship to such risk of recidivism or to any "Good Lives" concepts, is extremely repetitive and permits rambles in core group sessions that stray far off-track, wasting scarce time for such meetings, and results in grading systems for treatment participants that force them to repeat various treatment assignments, sometimes many times, for purely trivial reasons, when it is clear that the main lesson of the assignment was learned and applied by the participant long ago.

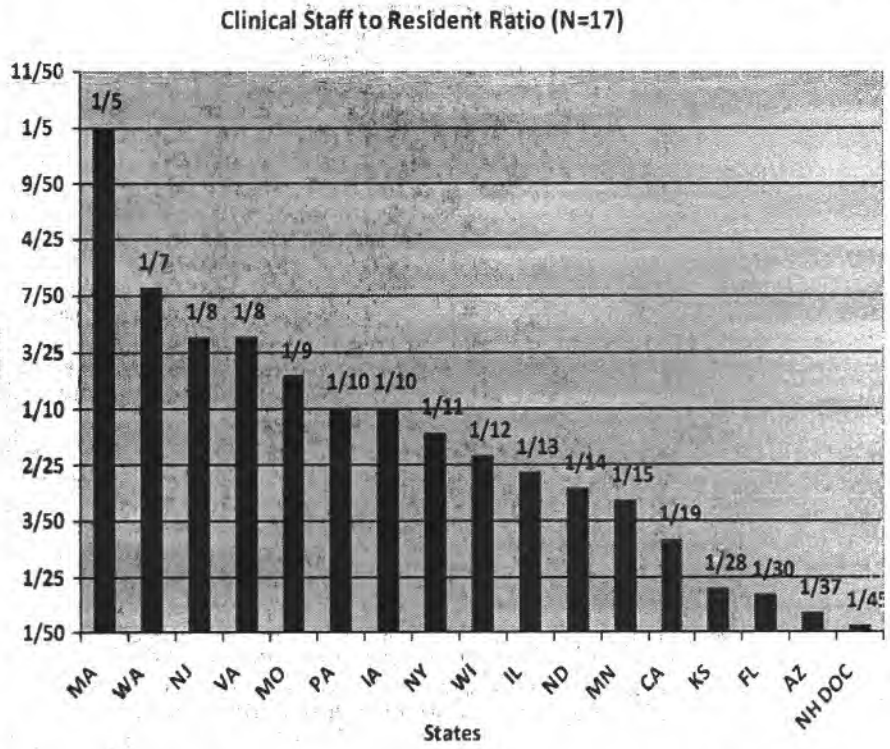
Staffing [p. 22:] Presented in the chart below, the SOCCPN 2025 Report cites difficulties in recruiting and retaining clinical staff. Numerous reports have separately confirmed this difficulty. However, this report does little to examine causes for this difficulty.

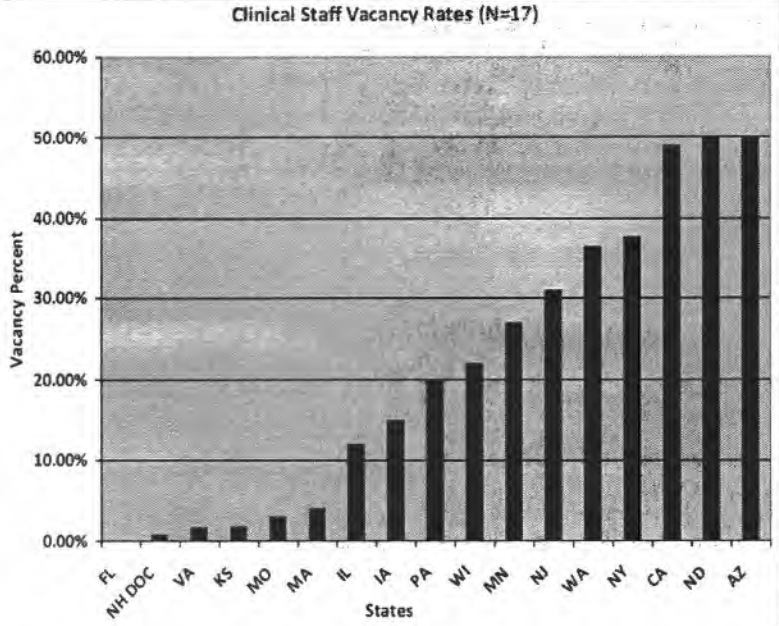
Treatment participants have pointed out numerous reasons for this disinterest by clinicians in working in SOCC facilities and a disillusioned 'revolving door' constant exodus by those who briefly gave it a try but left in frustration and dismay at what goes on as treatment in such facilities.

Given the lack of examination of such reasons for staffing problems, this is the wrong venue for an earnest critique of this problem and the much deeper treatment flaws in SOCC facilities that it exposes. This has been addressed in *the Legal Pad* before, and will be again soon. (see, e.g., *William Lien*, "MSOP Unions Hold Informational Picket at Democrat's Confab, Protesting Low Staffing but Miss the Writing on the Wall: MSOP Must Go!", Vol. 8, No. 7, p1, at p.2 [July 2024]).

This ties in to a fundamental problem: short-staffing forces the ratio of clinical staff to confinees down to unworkable levels. The SOCC report conveys this in the chart above.

This chart shows that ratios of clinical staff to confinees range all the away from 1:5 (Massachusetts) to 1:45 (New Hampshire).





Yet ample staffing does not guarantee an ideal outcome in SOCC treatment. Consider that New Jersey (1:8), New Jersey (1:8), and Missouri (1:9) all have rates of treatment completion and release that are clearly in operating-failure levels. Nonetheless, large SOCC systems with many confinees that have unacceptably low clinical ratios are likewise operating in circumstances that guarantee failure for being too anemic in clinical staffing (e.g., Kansas—1:28; Florida — 1:30). Again, this problem points up the underlying problems with the entire treatment regimen and procedures in such facilities.

In sum, the forgoing facts and charts establish that most SOCC systems in the 20 states that have them are subject to these faults: (a) sex offender commitment, once billed as a temporary solution pending enactment of harsher penalties for sex crimes, has not significantly reduced the number of those under commitment; indeed, in more systems than not, the population has increased over recent years; (b) rates of releases from SOCC systems have not increased over time despite promises of more efficiency and improved performance, treatment 'graduation/completion has actually gone down over recent years; and (c) notwithstanding adoption of cognitive-behavioral treatment (CBT) modality, once hailed as allowing increased speed of treatment and better outcomes, CBT use has resulted in taking far longer than any previous modality and with no known reduction in recidivism post-release; in short, CBT is junk.

Look for the second part concerning the 2025 SOCCPN Report in next month's *tLP*.

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the Legal Pad

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