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**Coming This Year:**

- ✓ The Rind Report—More Detail
- ✓ MnSOST-3.1 and 3.12: Junk Science & Guessing
- ✓ The Routine & Nonroutine of the Static-99R: The Good, the Bad, & the Very Ugly
- ✓ The Sham: MSOP 'Treatment'
- ✓ Forgetting Precedent: *Specht, Winship & Gault*
- ✓ Junk Science:
  - ✓ Pedosexuality Does Not Impair Volition or Predict Recidivism
  - ✓ No Science = No Due Process
  - ✓ Desistance: The Rule, Regardless of Treatment
  - ✓ Ethics vs. SO Treatment
  - ✓ The Truth About SO Recidivism
  - ✓ More Legislative Hearing Excerpts
  - ✓ Scary Myths & Public Panic
  - ✓ Innocence & Wrongful Conviction
  - ✓ The Prevalence of Deviance
  - ✓ Computer-Created Artificial Child Porn, Immersive Sexual Virtual Reality, AgePlay, and Simulated AI Robotic Love Dolls: How Real Must It Be to Become a Full Replacement for Sexual Assault/Abuse? Could This Be the End of Sex Crimes?
  - ✓ Denial of Internet Access to Hold You Incommunicado — & Tons More!

**It's Late, It's Late, But Not Too Late.**

It is true that distribution of the TLP is now on a subscription basis. Among other things, this allows us to provide more content per issue. We think you will find this more thought provoking and enjoyable.

If this issue has found its way randomly to your hands second-hand or by other means, you may wish to consider becoming a subscriber, so that you don't miss an issue. Subscriptions are by the calendar year (12 issues). If you subscribe now (a "late subscription"), we will furnish you the issue you missed. All subscribers got it. See Cyrus Gladden ASAP to get your subscription going. Your neurons will thank you!

## Hold Presses! Commitment Defense Attorney Ryan Magnus Busted for Possession of Distribution-Quantity of Meth & Other Addictive Drugs.

On Sunday, Feb. 4, 2018, it was announced online that Attorney Ryan Magnus, Mankato, MN, had just been arrested for possession of a large quantity of methamphetamine and other addictive drugs. At press time, the likely outcome of this unexpected development remained unclear.

Also unknown: what impact this criminal case would have as to those committed to MSOP while under appointed representation by Attorney Magnus. Magnus represented about 150 individuals in that context, almost all of whom were committed. Many report that he induced them to agree to commitment as an SDP by

terrorizing them with the false claim that SPP commitment would mean no release ever, but that they could be released in as little as a few years if committed as SDP only. Distraction due to addiction or illegal drug distribution could explain this pattern of fraud on those appointed clients. More facts later.

## Karsjens Update: Of Patience and Faith



"The Darkest Hour Is Just Before Dawn." In this photo, the Golden Gate and San Francisco are softly illuminated by the pre-dawn 'false light' of another coming day. May you get to see this unique gem of America in person one day. Unforgettable — nor will you ever want to.

The only significant news in the *Karsjens* case lately is how little real news is trickling out of the case lately. Thus, would-be journalists are stuck playing the role of CNN/MSNBC/Fox News hosts endlessly auguring the available entrails for some sign of a turn of events one way or the other in the near future.

Indeed, there will be a decision in the near future ("near" in legal time, that is) that will either totally or largely determine where most or all of that case will go from this point on out.

Rumors of a hearing date having been set have been impossible to verify. There appears to be a strong 'lockdown' on all information about the status of the case at this time rivaling that of the Mueller investigation of crimes in the Trump candidacy and/or presidency.

Now that the last of the briefs have been submitted to Judge Frank on the topic of where

the Eighth Circuit ruling in the case leaves it has been filed, it can be said with certainty that if a hearing is to be held at all, it will be held soon — probably by the end of this month.

Whether after such hearing or without one, it also seems reasonably certain that Judge Frank will be able to issue a decision within a month or a month-and-a-half after everything on his desk is finalized. This shouldn't be any later than mid-April at the latest, and (without hearing) it could be as soon as mid-March.

Those who have sufficient interest have already waded through the various letters and briefs submitted to Judge Frank by counsel for both sides on this issue of what is to become of the remains of the *Karsjens* case. Repeating observations and commentary from past editions of TLP on the comparative strength of the parties' respective positions would serve no purpose except to pointlessly consume

paper and toner.

In general, however, it is possible to predict some aspects of the remaining claims of the *Karsjens* Third Amended Complaint that are likely to survive this review and to carry on and, conversely, to identify those that are likely to be dropped out of the case.

To a substantial degree, even this was already accomplished in previous TLP articles on the subject. However, the latest brief by each side have added significant arguments that need to be weighed in to see if they change the picture of any of Karsjens' claims. The rest of this article will briefly address this question in its various parts. For clarity, "Plaintiffs' Brief" refers to the brief formally known as "Plaintiffs' Opposition to Defendants' Supplemental Briefing on Phase One..." (etc.) filed on January 12, 2018. On the flip side, "Defendants' Reply" refers to the brief with the phrase "in Support of Supplemental

(Continued from page 1)

Briefing on Phase One" following those first two words. That last brief was filed on January 26th. The simplest and best way to compare the parties' opposing arguments is to first state what the Defendant's Reply has to say on an issue, and to then consider the opposing argument on that point made by Plaintiffs' Opposition. I will follow this pattern of consideration.

Defendants first claim that all remaining "Phase One" claims in the case were effectively rendered null by the 8th Circuit's ruling employing the "shocks-the-conscience" standard of review. In this, Defendants claim that Plaintiffs, having been committed, have no right to treatment, or even to less restrictive alternatives than placement into the high-security environment of MSOP.

The answer to this is that the right to treatment emanates from underlying decisions by the U.S. Supreme Court long in place and not overruled or distinguished away on these points in the *Hendricks* case. These authorities include *Addington v. Texas* and *Foucha v. Louisiana*.

Plaintiffs' Opposition adds that the 8th Circuit did not even mention these four claims (Counts II, V, VI, and VII) of the Third Amended Complaint or say anything that addressed their particular substance.

Further, each of those four claims are based on the idea that MSOP amounts to "punishment" — a concept that necessarily removes each of them from the theory that a due process violation must "shock" the court's conscience.

In short, it does not seem possible that these four claims can be deemed to have been terminated by the 8th Circuit decision.

As *Plaintiffs' Opposition* noted, the seminal *County of Sacramento v. Lewis* case itself noted that even mere "deliberate indifference" claims can sometimes be deemed sufficient to "shock the conscience" of the court and thereby avoid dismissal.

*A fortiori*, it would surely seem, given that point, that any stronger claim arguing actual deliberate infliction of what effectively amounts to further punishment for a crime would likewise not fall under the grinding wheels of the shocks-the-conscience standard.

Surely, if the 8th Circuit had actually thought that those four claims, despite their 'punishment nature,' should have met that fate, they would have expressly stated and explained that exceptional assertion. They did not.

Distinctly, noting that those four claims remain unresolved, Plaintiffs' Opposition goes on to argue that each of them do, after all, satisfy the "shocks the conscience" standard in any event. In this they are correct that none of these claims are barred by the 8th

Circuit decision. They are entitled to be decided through a trial process that did not previously dispose of them.

*Defendants' Reply's* other main argument as to disposition of any of the *Karsjens* claims urges Judge Frank to grant Defendants a summary judgment effectively flushing the commode on all remaining (that is, "Phase 2") claims in the *Karsjens* Third Amended Complaint.

That argument is dependent on the particulars of each Phase 2 claim. The Plaintiffs' Opposition does a thorough and clear job of explaining why the facts alleged and previously presented to the District Court are sufficient to support each of those claims. It would take far more space than can be spent here to revisit each of those strong arguments for the validity and factual sufficiency of the Phase 2 claims. In sum, they should be allowed to advance to a 'Phase 2 trial.'

Of particular note, claims based on the free thought and communication rights granted by the First Amendment to the U.S. Constitution have long been held to be subject to the "strict scrutiny" standard when the decisions by government authorities impact the content or significance of the thought or communication, rather than merely its time, place, or manner of communication. Because of the impact on such content in the First Amendment claims herein, these claims are all the stronger — clearly not subject to the attempted brush-off that Defendants are trying here.

Finally, the Fourth Amendment search-and-seizure claim by Plaintiffs appears quite strong as well. This is not a challenge to some warrant-base search; it challenges the random or whimsical discretion claimed by Defendants to support their policy of searching any room they wish at any time, with no reason whatsoever for suspicion. Plaintiffs (that would be all of us) are not in prison. Accordingly, our rights are more than those of mere prisoners. If our Fourth Amendment right against such arbitrary search means anything, at a minimum it must mean that the MSOP search policy must be reined in by Judge Frank.

The preceding review of the pending issues in *Karsjens* should enable you to understand the decision expected in due course from Judge Frank. Have patience and faith in justice.

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## Wage Case Update

by Dave Jannetta — input by Cyrus Gladden

On Thursday, January 25th, at 2 p.m. in Room E-140 at MSOP-ML, a telephone conference call was held between Jerrad Wailand, David Gamble, and Clarence Washington from MSOP-St. Peter, Cyrus Gladden and myself

from MSOP-ML, and Attorneys Brendan Ballou and Eric Lauria-Banta of the labor law firm of Jones Day. Their volunteer assistance had been arranged through the Federal Bar Association's Pro Se Project, with cooperation by the U.S. District Court for Minnesota.

Many things were discussed, and one thing became clear: They were impressed how articulate and knowledgeable concerning the issues we were, as well as very organized.

Unfortunately Jones Day could go no further than to provide us advice and guidance, citing that it would be a "conflict of interest" for them to represent us, given the volume of work they do for firms and entities resisting claims of workers under the FLSA.

As usual for such conflicts of interest, they could not provide any further detail about the exact nature of the conflict. Even merely doing that would violate their duties to one or more of their existing clients. Nonetheless, we were very grateful for the information and suggestions they provided.

At the end of our conversation, we asked these Jones Day lawyers what they thought of our chances in court. Ethical restrictions prevented them from speculating in that respect, but they did say, "We're looking forward to reading about your case in the newspapers." Given the pattern of news coverage in such cases, this appeared to telegraph their expectation that we will prevail.

We continue to seek actual representation by one or more attorneys.

The motion to add in a large number of volunteering "collective plaintiffs" has now been filed. The list of all proposed collective plaintiffs and the individual consent forms that each volunteer signed had to be copied. That process is still underway. Hence, filing of those forms and that list has been delayed. This delay will be remedied as soon as possible, however.

We are currently preparing the document known as "Rule 26 Disclosures." These basic disclosures "kick-off" the discovery phase of a federal-court lawsuit. Thus, this development can be deemed the start of meaningful discovery in the case.

However, Defendants' counsel (one of the state's many Assistant Attorney Generals) has just asked the Plaintiffs (us) to stipulate to a protective order severely limiting the use of and revelation of information divulged in discovery that would otherwise violate the Minnesota Government Data Practices Act (*Minn. Stat.* Chapter 13).

On Friday, January 26th, at the same hour and in the same room at MSOP-ML, we had a telephone conference with Asst. Attorney General Kathryn Landrum of the Minnesota Attorney General's Office. In that confer-

ence, we discussed that proposed stipulation, but no resolution was reached.

At this time, we think such a stipulation would allow Defendants unlimited discretion to refuse to disclose requested information based on this claim of data privacy. A motion in court may be required to settle this issue.

Another matter discussed in that call was the possibility of having folders placed on the computer network system concerning the 50% wage case, much like the *Karsjens* case. The projected folders would include:

- 1: Pleadings (for court documents)
- 2: Attorney General files, along with our own files
- 3: Discovery documents/Motions, etc.

Unfortunately, because we are not a class action case, these files would not currently be available to all "collective" plaintiffs or any other MSOP residents. Instead, for the time being, they could be viewed only by the five "Named" plaintiffs in the case. Closer to time of trial, assuming that the "collective action" status of the action is confirmed, it may be possible to revisit this issue of files viewable at least by each person named as a collective plaintiff.

Meanwhile, we have discovered that additional persons can be added in as collective plaintiffs once the collective status of the case has been judicially approved. Thus, we encourage all who have not yet filed a consent form to sign one in front of the MSOP notary public and then return that form to either David Jannetta or Cyrus Gladden at MSOP-ML or any of the other three named plaintiffs (Gamble, Wailand, and Washington, all at MSOP-SP). Obtain this form from any of these named plaintiffs.

For everyone who wants to help in this lawsuit (whether or not you choose to seek Collective Plaintiff status), here is your part in this story:

- Start saving your canteen receipts;
- Start saving your "pink" slips from property for clothing and such;
- Start saving your medical insurance statements (the part your county pays) if you file with your county;
- Start saving your Forms 1095-B issued by your county regarding health coverage;
- Start saving your monthly statements;
- Save a copy of your 1099-MISC's;
- If MSOP or State Operated Services took money from you from an inheritance or other payment, do an affidavit for us.

There may be a need for more affidavits, so please be ready.

These are some of the things that you can start doing, to help yourself and this case. Remember, it's your money! Questions about what might be of help? Please don't hesitate to talk to David Janetta or Cyrus Gladden. After all, you're part of this project too!

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## Synopsis of the Rind Study

**Editor's Note:** The following is a synopsis of the famous — and controversial “Rind Report.” This is merely a short synopsis of that 34-page academic article published in what many would agree is the most esteemed and certainly the most tightly peer-scrutinized psychological academic journal in the world. We will certainly have much more to say about this justly famous item of profoundly sound science in later issues. For now, however, this synopsis will give you an overview of how these three eminent psychological scientists went about their study, and how they reached their profound, watershed conclusions. Without more, I present a slice of history in the making:

“A Meta-Analytic Examination of Assumed Properties of Child Sexual Abuse Using College Samples,” by *Bruce Rind* (Dept. of Psychology, Temple University), *Philip Tromovich* (Graduate School of Education, University of Pennsylvania), *Robert Bauserman* (Dept. of Psychology, University of Michigan), *Psychological Bulletin*, Vol 124, No. 1, 22-53 (1998).

### Excerpts:

#### Page 22, Introduction:

Many lay persons and professionals believe that child sexual abuse (CSA) causes intense harm, regardless of gender, pervasively in the general population. The authors examined this belief by reviewing 59 studies based on college samples. Meta-analyses revealed that students with CSA were, on average, slightly less well adjusted than controls. However, this poorer adjustment could not be attributed to CSA because family environment (FE) was consistently confounded with CSA. FE explained considerably more adjustment variance than CSA, and CSA-adjustment relations generally became nonsignificant when studies controlled for FE. Self-reported reactions to and effects from CSA indicated that negative effects were neither pervasive nor typically intense, and that men reacted much less negatively than women. The college data were completely consistent with data from national samples. Basic beliefs about CSA in the general population were not supported.

Opinions expressed in the media and by many popular press and professional writers imply that CSA has certain basic properties or qualities irrespective of the population of interest. These implied properties are (a) CSA causes harm, (b) this harm is pervasive in the population of persons with a history of CSA, (c) this harm is likely to be intense, and (d) CSA is an equivalent experience for boys

and girls in terms of its widespread and intensely negative effects. The purpose of the current review was to examine these implied basic properties. Our goal was to address the question: In the population of persons with a history of CSA, does this experience cause intense psychological harm on a widespread basis for both genders?

An important first step is to discuss terminology. The term child sexual abuse has been used in the psychological literature to describe virtually all sexual interactions between children or adolescents and significantly older persons, as well as between same-age children or adolescents when coercion is involved. The indiscriminate use of this term and related terms such as victim and perpetrator has been criticized because of concerns about scientific validity. Kilpatrick argued that researchers have often failed to distinguish between “abuse” as harm done to a child or adolescent and “abuse” as a violation of social norms, which is problematic because it cannot be assumed that violations of social norms lead to harm. Similarly, Money (1979) observed that our society has tended to equate “wrongfulness” with harmfulness in sexual matters, but harmfulness cannot be inferred from wrongfulness. Nelson argued that the indiscriminate use of terms suggesting force, coercion, and harm reflects and maintains the belief that these interactions are always harmful, thereby threatening an objective appraisal of them. Rind and Bauserman demonstrated experimentally that appraisals of nonnegative sexual interactions between adults and adolescents described in scientific reports can be biased by the use of negatively loaded terms such as CSA. Page 23:

Problems of scientific validity of the term CSA are perhaps most apparent when contrasting cases such as the repeated rape of a 5-year-old girl by her father and the willing sexual involvement of a mature 15-year-old adolescent boy with an unrelated adult. Although the former case represents a clear violation of the person with implications for serious harm, the latter may represent only a violation of social norms with no implication for personal harm (Bauserman and Rind, 1997). By combining events likely to produce harm with those that are not into a unitary category of CSA, valid understanding of the pathogenicity of CSA is threatened (Okami, 1994). The tendency by researchers to label cases such as the latter as abuse reflects the slippage of legal and moral constructs into scientific definitions (Okami 1990, 1994). Basing scientific classifications of sexual behavior on legal and moral criteria was pervasive a half century ago (Kinsey, Pomeroy, & Martin, 1948); more recently, this practice has been confined to a much small-

er set of sexual behaviors, particularly those labeled CSA.

With these caveats in mind regarding the scientific shortcomings of the term CSA, we have nevertheless retained it for use in the current article because of its pervasive use in the scientific literature and because many researchers as well as lay persons view all types of sociolegally defined CSA as harmful. On the basis of the terminology used in studies reviewed in the current article, CSA is generally defined as a sexual interaction involving either physical contact or no contact (e.g. exhibitionism) between either a child or adolescent and someone significantly older, or between two peers who are children or adolescents when coercion is used.

#### Page 27 Current Review

We addressed the assumed CSA properties of causality, pervasiveness, intensity, and gender equivalence in several ways. First we meta-analyzed effect sizes for CSA-symptom relations to estimate the magnitude (ie, intensity) of the relationship between CSA and adjustment in the college population. Second, we performed semipartial correlation and contrast analyses on the effect sizes to examine gender differences (i.e., gender equivalence), as well as other moderator variables. Third, we meta-analyzed results from self-reported reactions to and effects from CSA to examine gender differences further. Additionally, we analyzed these self-reports to examine the prevalence of negative effects. Fourth, we meta-analyzed relations between CSA and family environment, as well as between symptoms and family environment, to examine the causal role of CSA in producing symptoms. We addressed the issue of causality more directly by examining the results of statistical control from studies that reported this information.

#### Method

Applying the above criteria produced 59 usable studies (see appendix) consisting of 36 published studies, 21 unpublished dissertations, and 2 unpublished master's theses. These studies yielded 70 independent samples for estimating prevalence rates, 54 independent samples for computing 54 sample-level and 214 symptom-level effect sizes, 21 independent samples that provided retrospectively recalled reaction data, 10 independent samples that provided data on current reflections, and 11 independent samples that provided data on self-reported effects. Prevalence rates were based on 35,703 participants (13,704 men and 21,999 women). Effect size data of psychological correlates were based on 15,824 participants (3,254 men from 18 samples and 12,570 women from 40 samples) -- actual numbers of participants are somewhat higher than these because one study, not

included in the above totals (Haugaard & Emery, 1989), failed to provide exact sample sizes for men and women. Reaction and self-reported effects data were based on 3,136 participants (783 men from 13 samples and 2,353 women from 14 samples) -- actual numbers of participants are somewhat higher because one study, not included in the above totals (Schultz & Jones, 1983), failed to report exact sample sizes for men and women.

#### Coding the studies

For each study, the following information was coded: (a) all statistics, if provided, on psychological correlates of CSA, including means, standard deviations, t tests, F ratios, correlations, chi squares, degrees of freedom, and sample sizes; (b) types of psychological correlates reported; (c) all statistics regarding relations between moderator variables (e.g., force, penetration, frequency of CSA) and psychological correlates; (d) sex of participants; (e) definition of CSA, including ages that defined a “child” and an older person, whether peer experiences were included, whether CSA experiences were limited to contact sex or also included noncontact sexual experiences, and whether CSA experiences were limited to unwanted sex or also included willing sexual experiences; (f) all reaction data, if provided, including both retrospectively recalled reactions to and current reflections on the CSA experiences; (g) all self-reported effects data, if provided, including responses to how these experiences affected participants overall and how they affected their sex lives; (h) types of family environment measures used; and (i) all statistics on family environment measures, including their relations with CSA and with psychological correlates. Together, the three basic sets of statistics (differences between CSA and control participants in adjustment, differences between CSA and control participants in family environment, and the relationship between family environment and adjustment) were used to address the question of whether significant relationships between CSA and adjustment were spurious, attributable to the confounding variable of family environment. Finally, the results of all analyses using statistical control were coded (e.g., examining the relationship between CSA and adjustment, holding family environment factors constant). These data were used to directly examine whether any significant relations between CSA and psychological adjustment were spurious.

#### P. 28: Psychological Correlates of CSA

Coding of the studies resulted in 18 categories of psychological correlates of CSA; several additional correlates were infrequently reported and were therefore not considered in the meta-analyses. These

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18 correlates, along with the measures used to assess them in the various studies were as follows:

1. Alcohol problems
2. Anxiety
3. Depression
4. Dissociation
5. Eating disorders
6. Hostility
7. Interpersonal sensitivity
8. Locus of control
9. Obsessive-compulsive symptomatology
10. Paranoia
11. Phobia
12. Psychotic symptoms
13. Self-esteem
14. Sexual adjustment
15. Social adjustment
16. Somatization
17. Suicidal ideation and behavior
18. Wide adjustment

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To establish interrater reliability for coding, Bruce Rind and Philip Tromovitch independently coded studies for psychological correlates, reactions, self-reported effects, family environment-CSA relations, family environment-adjustment relations, and results of statistical control. Interjudge agreement for these codings ranged from 85% to 100%; all disagreements were resolved by discussion.

Page 39 Family environment-symptom relations

In terms of variance accounted for, family environment outperformed CSA in explaining symptoms by a factor of 9. These results imply that, in the college population, family environment is a more important predictor of symptoms than is CSA.

Page 40 Results of Statistical Control on CSA-Symptoms Relations

Results from studies using statistical control supplement the analyses of the intercorrelations among CSA, symptoms, and family environment. They provide direct evidence that the majority of significant CSA-symptom relations examined in the college samples may have been spurious. These results imply that significant CSA-symptom relations in studies based on college samples cannot be assumed to represent effects of CSA. Although the results of the analyses of statistical control, as well as analyses of the CSA-symptom-family environment relations, do not prove that CSA-symptom relations are spurious in the college population, they specifically do not support the assumption that a basic property of CSA is that it causes psychological injury.

Page 42 Discussion

Review of the college samples revealed that 14% of college men and 27% of college women reported events classifiable as CSA, according to the various definitions used.

Results from the college data do not support the commonly assumed view that CSA possesses the four basic properties outlined previously. CSA was associated with poorer psychological adjustment across the college samples, but the magnitude of this association (i.e., its intensity) was small, with CSA explaining less than 1% of the adjustment variance. Further, this small association could not be attributed to CSA for several reasons: (a) family environment (FE) was confounded with CSA, (b) FE predicted adjustment problems better than CSA by a factor of nine, and (c) statistical control tended to eliminate significant relations between CSA and adjustment. Results also revealed that lasting negative effects of CSA were not pervasive among SA students, and that CSA was not an equivalent experience for men and women. These results imply that, in the college population, CSA does not produce pervasive and intensely negative effects regardless of gender. Therefore, the commonly assumed view that CSA possesses basic properties regardless of population of interest is not supported. These findings are consistent with Constantine's (1981, p.238) conclusion that CSA has "no inbuilt or inevitable outcome or set of emotional reactions" associated with it. It is important to add that analysis at the population level estimates the typical case and therefore obscures individual cases. That is, the findings of the current review should not be construed to imply that CSA never causes intense harm for men or women --clinical research has well documented that in specific cases it can. What the findings do imply is that the negative potential for most individuals who have experienced it has been overstated.

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Finally, the college samples did not underrepresent abuse severity. Compared with the general population, as indicated by studies based on national samples, SA students experienced as much intercourse, close family CSA, and multiple episodes of CSA; moreover, college students were just as likely to have experienced CSA as persons in the general population.

The finding that FE is more important than CSA in accounting for current adjustment in the college population is consistent with the results of several recent studies using participants from noncollege populations (e.g., Eckenrode et al., 1993; Ney et al., 1994). Eckenrode et al. categorized children and adolescents obtained from a large representative community sample in a small-sized city in New York state into six groups: no abuse, CSA, physical abuse, neglect, CSA and neglect, and physical abuse and neglect. They found that SA children and adolescents performed as well in school as non-abused controls in all areas measured, including standardized test scores, school perfor-

mance, and behavior. Neglect and physical abuse, on the other hand, were associated with poorer performance and more behavior problems. Ney et al. (1994) separated their mostly clinical sample of children and adolescents into categories of CSA, physical abuse, physical neglect, verbal abuse, emotional neglect, and combinations of these. They found that the combination of abuse that correlated most strongly with adjustment problems was physical abuse, physical neglect, and verbal abuse. In the top 10 worst combinations, verbal abuse appeared seven times, physical neglect six times, physical abuse and emotional neglect five times each, whereas CSA appeared only once.

The greater importance of non sexual negative childhood experiences in explaining later adjustment was clearly demonstrated in a study of a large, representative sample of female college students throughout the United States. Wisniewski (1990) used path analyses to assess the relative contributions of CSA and family environment to current adjustment. She concluded that the data did not support CSA "as a specific explanation of current emotional distress [but instead are] best interpreted as supportive of other factors such as family violence...as having the greatest impact." (p.258). Other researchers who used college samples and used statistical control reached similar conclusions regarding the role of family violence, rather than CSA, in explaining current adjustment problems (e.g., Higgins & McCabe, 1994; Pallotta, 1992). One reason CSA may have been overshadowed by other childhood experiences such as verbal and physical abuse in explaining adjustment is that participants may have experienced the latter type of events more frequently than CSA. Nevertheless, the results from these studies highlight the relatively greater importance of family environment compared with CSA in accounting for adjustment problems--a point that has been ignored or underemphasized in much of the CSA literature to date.

Pervasiveness and Intensity of Negative Effects or Correlates

Self-reported effects from CSA revealed that lasting psychological harm was uncommon among the SA college students. Perceived temporary harm, although more common, was far from pervasive. In short, the self-reported effects data do not support the assumption of wide-scale psychological harm from CSA. This conclusion is further suggested by students' self-reported reactions. The finding that two thirds of SA men and more than one fourth of SA women reported neutral or positive reactions in inconsistent with the assumption of pervasive and intense harm. It is not parsimonious to argue that boys or girls who react

neutrally or positively to CSA are likely to experience intense psychological impairment. To argue that positive or neutral reaction are consistent with intense harm, it seems logical to first demonstrate that negative reactions are consistent with intense harm. However, the magnitude of the CSA-adjustment relation was small for women, despite the reporting of negative reactions by a majority of SA women. This low intensity finding for generally negative CSA experiences is inconsistent with an expectation of intense harm from nonnegative CSA experiences.

Page 45 Child Sexual Abuse as a Construct Reconsidered

In the light of the current findings, it is appropriate to reexamine the scientific validity of the construct of CSA as it has been generally conceptualized. In most studies examined in the current review, CSA was defined based on legal and moral, rather than empirical and phenomenological, criteria. This approach may form a defensible rationale for legal restrictions of these behaviors but is inadequate and may be invalid in the context of scientific inquiry (Okami, 1994). In science, "abuse" implies that particular actions or inactions of an intentional nature are likely to cause harm to an individual (cf. Kilpatrick, 1987; Money & Weinrich, 1983). Classifying a behavior as abuse simply because it is generally viewed as immoral or defined as illegal is problematic, because such a classification may obscure the true nature of the behavior and its actual causes and effects.

The history of attitudes toward sexuality provides numerous examples. Masturbation was formerly labeled "self abuse" after the 18th Century Swiss physician Tissot transformed it from a moral to a medical problem (Bullough & Bullough, 1977). From the mid-1700s until the early 1900s the medical profession was dominated by physicians who believed that masturbation caused a host of maladies ranging from acne to death (Hall, 1992; Money, 1985), and medical pronouncements of dangerousness were accompanied by moral tirades (e.g., Kellogg, 1891). This conflation of morality and science hindered a scientifically valid understanding of this behavior and created iatrogenic victims in the process.

Page 46 Summary and Conclusion

Beliefs about CSA in American culture center on the viewpoint that CSA by nature is such a powerfully negative force that (a) it is likely to cause harm, (b) most children or adolescents who experience it will be affected, (c) this harm will typically be severe or intense, and (d) CSA will have an equivalently negative impact on both boys and girls. Despite this widespread belief, the empirical evidence from college and national

(Continued on page 5)

samples suggests a more cautious opinion. Results of the present review do not support these assumed properties; CSA does not cause intense harm on a pervasive basis regardless of gender in the college population. The finding that college samples closely parallel national samples with regard to prevalence of CSA, types of experiences, self-perceived effects, and CSA-symptom relations strengthens the conclusion that CSA is not a property phenomenon and supports Constantine's (1981) conclusion that CSA has no inbuilt or inevitable outcome or set of emotional reactions.

An important reason why the assumed properties of CSA failed to withstand empirical scrutiny in the current review is that the construct of CSA, as commonly conceptualized by researchers, is of questionable scientific validity. Overinclusive definitions of abuse that encompass both willing sexual experiences accompanied by positive reactions and coerced sexual experiences with negative reactions produce poor predictive validity. To achieve better scientific validity, a more thoughtful approach is needed by researchers when labeling and categorizing events that have heretofore been defined sociologically as CSA (Fishman, 1991; Kilpatrick, 1987; Okami 1994; Rind & Bauserman, 1993).

One possible approach to a scientific definition, consistent with findings in the current review and with suggestions offered by Constantine (1981) is to focus on the young person's perception of his or her willingness to participate and his or her reactions to the experience. A willing encounter with positive reactions would be labeled simply "adult-child sex," a value-neutral term. If a young person felt that he or she did not freely participate in the encounter and if he or she experienced negative reactions to it, then "child sexual abuse," a term that implies harm to the individual, would be valid. Moreover the term "child" should be restricted to nonadolescent children (Ames & Houston, 1990). Adolescents are different from children in that they are more likely to have sexual interests, to know whether they want a particular sexual encounter, and to resist an encounter that they do not want. Furthermore, unlike adult-child sex, adult-adolescent sex has been commonplace cross-culturally and historically, often in socially sanctioned forms, and may fall within the "normal" range of human sexual behaviors (Bullough, 1990; Greenberg, 1988; Okami 1994). A willing encounter between an adolescent and an adult with positive reaction on the part of the adolescent would then be labeled scientifically as "adult-adolescent sex," while an unwanted encounter with negative reactions would be labeled "adolescent sexual abuse." By drawing these distinctions, researchers are likely to

achieve a more scientifically valid understanding of the nature, causes, and consequences of the heterogeneous collection of behaviors heretofore labeled as CSA.

Finally, it is important to consider implications of the current review for moral and legal positions on CSA. If it is true that wrongfulness in sexual matters does not imply harmfulness (Money, 1979), then it is also true that lack of harmfulness does not imply lack of wrongfulness. Moral codes of a society with respect to sexual behavior need not be, and often have not been, based on considerations of psychological harmfulness or health (cf. Finkelhor, 1984). Similarly, legal codes may be, and often have been, unconnected to such considerations (Kinsey et al., 1948). In this sense, the findings of the current review do not imply that moral or legal definitions of or views on behaviors currently classified as CSA should be abandoned or even altered. The current findings are relevant to moral and legal positions only to the extent that these positions are based on the presumption of psychological harm.

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## Legal & Travel Issues for SOs

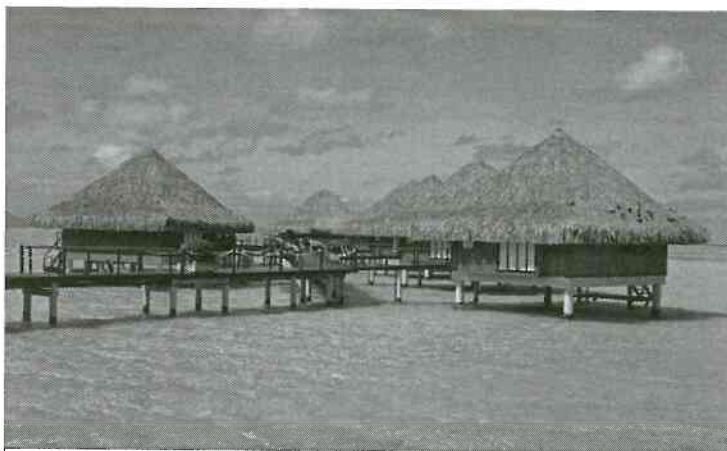


Excerpts from: *Derek Logue*, "Legal Roundup," *IGaW Newsletter Consolidated*, Vol. 4 (July to December 2017), pp. 21-26;

*"People v. Ruch*, 2012 CO 35, 379 P.3d (Colo. 2016): Upheld conviction for probation violation for refusing to take polygraphs. "We perceive no Fifth Amendment violation here. In these circumstances, Ruch's purported invocation of his 5<sup>th</sup> Amendment rights was premature and amounted to a prohibited blanket assertion of the privilege... We conclude that Ruch's refusal to attend treatment based on this hypothetical concerns as to what might have been asked of him amounted to a blanket claim of privilege in advance of any questions being propounded, and this blanket claim was both ineffective and premature."

*"State of Iowa v. Cutshall*, No. 16-1646 (IA Ct. App., July 6, 2017): Overturned a rule that defendant could not possess 'a phone or any device with internet capability' while on probation. Cutshall argued the restriction was unnecessary because he did not use internet to find his victims. The Court ruled limits of probation are only justified if it is reasonably related to the crime; in this case, it was unreasonable as Cutshall did not use a smartphone to commit a crime.

*"Pennsylvania v. Muniz*, No. J-1218-2016 (Pa. July 19, 2017): Ruled that SORNA's registration provisions constitute punish-



### B&B in Bora Bora?

ment notwithstanding the General Assembly's identification of the provisions as nonpunitive; retroactive application of SORNA's registration provisions violates the federal and state ex post facto clause. This is another blow against the AWA.

*"U.S. v. Jackson*, No. 16-3807 (8<sup>th</sup> Cir., Aug. 10, 2017): Held that a warrantless search of a cell phone of a man serving a term of supervised release and residing at the Fort Des Moines Community Correctional Facility was not unconstitutional, concluding that Jackson had no legitimate expectation of privacy in the cell phone, and the government has substantial interests that justify the intrusion."

NOTES that SCOTUS declined review of the *"Doas v. Snyder* 6<sup>th</sup> Circuit ruling that MI's SOR laws, as applied, are punitive..."

*"State of Washington v. Derek John Dosantos*, Docket No. 47773-4-II (WA App. Ct., Div. 2, Sept. 26, 2017): Held: 'community custody conditions [barring] perusing and possessing sexually explicit materials, and using social media websites, Skype, or sexually-oriented 900 phone numbers are not crime-related and are invalid. ...We further hold ...the SSOSA condition prohibiting Dosantos from perusing and possessing pornography is statutorily authorized..., but is void for vagueness, and that the SSOSA and com-

munity custody conditions preventing him from frequenting places where minor children are likely to be present or congregate are not void for vagueness.'

### Travel & Passport Issues

'The identifier is a passport endorsement, currently printed inside the back cover of the passport book, which reads: 'The bearer was convicted of a sex offense against a minor, and is a covered sex offender pursuant to 22 United States Code Section 212b(1)'. Since endorsements cannot be printed on passport cards, covered SOs cannot be issued passport cards.'

**"SOs turned away:** Mexico, Canada, Costa Rica, Panama, Dominican Republic, Jamaica, Argentina, Brazil, Columbia, Russia, UK, Australia, Cambodia, China, Laos, New Zealand, Vietnam, Dubai, Philippines, Indonesia, Singapore, South Korea, Taiwan, Thailand, Ireland, Nicaragua, Chile, Peru, India.

"Laws specifically banning SOs from entry: Mexico, Canada, Panama, Argentina, Brazil, Russia, UK, Australia, Cambodia, New Zealand, Philippines, Japan, Ireland

"Laws banning felons in general from entry: Canada, Panama, UK, Australia, New Zealand, Japan, Costa Rica, Ireland, Mexico."

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They'll Leave the Light on for You!

**THE SECOND SEGMENT OF THE FIRST INSTALLMENT OF TRANSCRIBED EXCERPTS  
FROM THE 1994 LEGISLATIVE HEARINGS ON THE MINNESOTA SEX OFFENDER COMMITMENT BILL**

Set 2:		
Joint Meeting of Senate Joint Judiciary & Crime Prev'n Committees, August 25, 1994, A.M -- 4 Disks		
[Disk 1]		
Run- ning Time (Start)	Speaker	Statement
10:35	Sen. Betzold	"That obviously is a test, and even in any situation in which they testify, anyone will say, 'We can't testify with any degree of certainty as to what anybody is going to do in the future, but we do look to past conduct as an indication of future conduct.'..."
12:30	" "	"...This is not an exact science. I mean, you know, <u>there is a lot of speculation</u> and it's a battle of the experts <u>as to what the person might do</u> , as opposed to what the person has done. That's the reason we're committing these people."
18:33	Sen. Corscaden	"...We're using a mental health commitment for a broad public purpose of protection in this particular definition."
19:16	Sen. Fenn	"It seems to me that the sexually dangerous person commitment provision could apply even if there was no criminal conviction. That you're not necessarily punishing someone by doing this, <u>but perhaps maybe the main witness is dead, but you may have trouble proving criminally beyond a reasonable doubt that the individual committed the crime, but why then do we have to wait around for some more deaths to happen before we can commit them?</u> "
23:53	" "	"I think we ought to be looking at the safety of the public and balancing that against the rights of the individual, you know, to be free in our society..."
34:55	Susan Gaertner (Director of Human Services Division, Ramsey County Attorney's Office)	"[The <i>Pearson</i> test] is a test that is to some -- by some people's measure, really just sort of a 'magic words' thing and something the court-appointed expert [in <i>Linehan</i> ] didn't really understand what needed to be said...."
49:41	Sen. Neville	"My reading of the [ <i>Linehan</i> ] case is that even if you had asked the question a different way, you still get down to the point that the experts who testified say that <i>Linehan</i> is a fairly controlled personality right now. That's still the key part, and that's why this Commission report came up with the second prong or test of proving commitment: <u>not necessarily uncontrollable, but unwilling</u> as well -- because the current law deals more with volition. <u>If you have the ability to control your conduct, then you don't meet the current statute, so we're creating a new one.</u> "
[Disk 1 ends @ 51:52]		
[Disk 2:]		
29:14	Sen. Neville	"...[W]hat we're doing [in using the Psychopathic Personality law to commit sex offenders] is using that statute, not for people who are truly utterly unable to control their conduct, but <u>we're using it as an extension of the criminal system. We're using it to keep people out of circulation -- like <i>Linehan</i> -- who are able to control their conduct, who plan-- all this conduct is volitional</u> , and what the Supreme Court is really saying, I think, is that you can't use it for those people. The criminal system is more appropriate for those people, and that's the basis for the minority report that I offered in this task force report, if anybody chose to see that in the report. I have a concern that if we're gonna be addressing this problem, it really ought to be in the criminal side of it. We could do that relatively simply, I think, but the leaders have chosen that we're not going to deal with criminal matters on this special session. There was a -- I forget the man's last name, but someone -- Nick? from Hennepin County...."
30:18	[unknown speaker]	"Wong."
30:20	Sen. Neville	"Nick Wong from Hennepin County testified before this Commission. I don't think that he appeared yesterday, but he made a statement that he prefaced by saying this is politically incorrect to say, and what he was saying was that those 67 people in the hospital now and those other 400 or so that might be possible commitments, maybe society just has to bite the bullet and realize that there's not much we can do about those people. We sentenced them under laws that existed many years ago, and now we're coming back and wanting to re-do what we had in place many years ago. ...What we have to do now is look prospectively, because we have a double problem. <u>What do we do with people who have already been through the criminal system that we can't re-try criminally? And so we're coming up with this alternative civil process.</u> "
[Disk 2 ends @ 51:45]		
[Disk 3]		
00:26	Sen. Neville	"Which Amendment?"
00:28.0	[The Chair (now an unknown female)]	"The addition of 'and' on Line 3 and on Line 6, the addition of 'as a result of both 1 and 2.' Senator Neville?"
00:34.0	Sen. Neville	"Madame Chair, I'm concerned about these amendments. I think what we're doing is reducing three elements down to two. And basically as a result of one and two going to number three, I think it's really eliminating three as an independent element, it strikes me. There may be other factors, for example, that could potentially be considered in determining whether someone is likely or not likely to engage in future harmful sexual conduct. I don't know what they might be, but if we adopt this amendment, we're saying course of conduct, which would be two incidences or more, and practically by definition every person who is a rapist has a personality disorder, I suspect; I'd be hard-pressed to think of one who doesn't. So we're saying now that if you're a two-time sex offender, you're probably going to be likely to be a candidate for civil commitment. I'm not sure that that's what we want to say, is it?"
01:44	[The Chair]	"I'm not sure that says it any more than what the other language says now."
06:07	Sen. Betzold	"Well, the lines 8 through 10, this is in response to the <i>Linehan</i> decision, where we're saying, you don't have to prove inability to control. <u>Whatever that means, that's not really going to be a factor in these other items.</u> "
10:52	" "	"We specifically say, on line number 9, <u>inability to control is not part of this test. Whereas it was part of the <i>Pearson</i> test, it is not part of this definition of a Sexually Dangerous Person.</u> "
[Disk 3 ends @ 51:43]		

		[Disk 4:]
18:04	Sen. Neville	"...I am going to vote for [the bill] only because there's about four or five hundred people in prison now that we can't handle any other way except to see if this method will be constitutional, but I guess 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, and we have a post-hoc system in this country and this state where we deal with people and we deal with the consequences of their conduct after the fact. And now we're starting to confine people for what they might do in the future. And right now we're limiting it to sexual conduct and we're trying to address a very narrow problem. But if we start being careless about these kinds of laws and we start saying that we're going to be confining people indefinitely or indeterminate in the civil context for potentially any harmful conduct, you know, we could be putting lots of people into this kind of confinement just because we're afraid of them. And that's not the way that our system has run up until now. So I'm going to vote for it only because we do have a problem that we should be concerned about. There still may be a question of whether the Supreme Court will even accept this. But if this was prospective only, I'd vote against it."
24:35	[Chair (unidentified female)]	"I do think there's a balanced approach. And I like the fact that we have basically two approaches going forward because I think we can have a much greater chance of keeping these sexual predators off the streets with one or both approaches."
		[Disk 4 ends @ 25:25]
		<b>Set 3:</b>
		Senate & House Joint Task Force on Sexual Predators -- 3 Disks
		<i>(Apparently, the first meeting of the Task Force)</i>
		[Disk 1:]
48:00	Ms. Marlys McPherson of the Legislative Auditor's office)	"We did take a look at how many sex offenders are scheduled for release [from prison] in the next two years, and it was approximately 450."
47:00	Ms. Pam Mindt of the Minn. Dept. of Corrections	"Our office is, since July of this year, responsible for registering sex offenders, and our estimates vary from Ms. MacPherson's estimates. We think that the State of Minnesota is releasing from 2400 to 2700 registered sex offenders a year. And most of them, I would guess, because it's too new to know for sure, are deemed to be at high risk to reoffend by the Department of Corrections."
		[Disk 1 ends @ 1:05:24]
		[Disk 2:]
12:51	Rep. Bishop	"We're talking about people who are extremely dangerous, who kill, rape, cut, who cause enormous damage to others,... I think that what we have to do is talk about what is the appropriate way to protect society."
19:50	" "	[Referring to an article he circulated to Task Force members present, he quotes it thus:] "There are probably only a few thousand highly dangerous sex criminals in the country. <u>These [commitment] laws are a way to keep them out of circulation.</u> "
26:10	Attorney General H.H. ("Skip" Humphrey III	"The job that we have before us today is to find a way to maintain the public safety in the face of some of the most dangerous predators in our society.... The very serious nature of the danger that is then caused by these individuals, I think we have to keep that in mind.... So we must use the full force of the law to keep these rapists and pedophiles from victimizing the next woman, the next child, the next family in our society."
27:37	" "	"We pledge to work closely with this Task Force to closely examine these decisions and the law to determine what actions the Legislature can take to keep these predators off our streets."
29:51	" "	"...County attorneys and my office will have to see whether under the clarified standards we can commit the people who need to be committed for public protection."
31:02	" "	"...Now is the time to work together and find the solutions that will protect us from these dangerous predators and to keep them off our streets."
		[Sound drop-out @ 38:31-38:40]
		[Disk 2 ends @ 1:04:35]
		[Disk 3:]
31:38	[unidentifiable name, male member of the Task Force -- 3-syllable last name]	"I don't care personally about whether somebody <u>can</u> control what they don't. It seems to me that if they have the ability to know what they're doing, be able to control it, but do <u>not</u> do so on a repeated basis, then they demonstrate that they're an animal. And as far as I'm concerned, what we are doing here ...we do <u>not</u> let mountain lions roam around our cities at night. If we had tigers, we wouldn't let them. We don't let bears even roam around when they come down from the woods into the cities and around the homes. These people are <u>animals</u> . What distinguishes them from us is that we rely on people with a conscience that those people restrain themselves -- and they don't. They are <u>not</u> going to stop what they're doing. ...I <u>don't believe they have the same civil rights anymore</u> . That's my problem. A big serious problem as a lawyer. I've been a defense lawyer. I've never been a prosecutor. I defended a psychopath. ...I think we have a collision of society and our constitution, and what we have is a way - we now know sexual predators are different, and are animals, and I think we control violent and dangerous animals, and I think we have to do it for people who act like animals."
50:32	[same speaker]	"I know of situations I was facing in practice where the victim was not going to be allowed to testify in a criminal case because she was a little girl and was badly damaged. Her parents would not let her go through the trauma of a trial to a jury with defense counsel cross-examining her. <u>And the trial for pursuing a commitment as a psychopathic personality was much less traumatic. ...That's an option....</u> "
		[Disk 3 ends @ 1:07:51]

<b>Set 4:</b>		
Senate & House joint Task Force on Sexual Predators -- 3 Disks		
[Disk 1:]		
00:20	Chair Wes Skoglund, Judiciary Committee Chair	"It's a 13-member [Task Force], and there are also <i>ex officio</i> members of the committee most of whom are here because of special interest in the subject."
01:20	[Self-introductions of Task Force members]	Bonnie Lee, Dept. of Human Services _____, State Ombudsman (female), Rep. Don Ostrem, Stephanie Boyd, Rep. Greg Richards, member of Judiciary Committee, _____ Peterson, Asst. Hennepin County Attorney, Sen. Don Betzold, Bruce Edge(?), MCF-St. Cloud psychologist _____ (unintelligible & inaudibly soft), _____ (unintelligible & inaudibly soft), _____ (unintelligible & inaudibly soft)
21:00	Michael Farnsworth, M.D., psychiatrist, Clinical Director of MSH-St. Peter	"Our estimate right now for efficient completion of the program would take somewhere around 3 1/2 years to complete. So no one is at the level yet where they would be ready to complete and be discharged."
21:30	Rep. Bishop	"You have no direct evidence of completion or success. You have nobody released and not reoffended."
21:40	Dr. Michael Farnsworth	"That's right ...Whether or not the program that we have developed and are applying will be effective in reducing the risk of recidivism is unknown. And we won't know until we have sufficient numbers of men released. And to be statistically significant, we need more than one or two men out for more than 1 or 2 years to draw any conclusions...."
27:06	(Farnsworth, cont'd)	"The whole field of the treatment of sex offenders has been poorly studied, poorly controlled, and outcome measures are hard to identify and to measure."
52:38	(Farnsworth, cont'd)	"...Since 1990, when there was a large upswing in number of commitments, none of those [previously committed] individuals have been released because of completion in this program. The ones who have been released have been released because of a decision by a court that they should be released."
58:05	(Farnsworth, cont'd)	"I think a general principle of medical practice is that the earlier you identify and treat the condition, the better it will be, and I think that's still true for sex offenses. When someone has spent ten or fifteen years in prison, they've had that intervening time to essentially forget the events that transpired, or to create a new sort of psychic construct about what went on. I think it's very difficult to penetrate that after a number of years. Someone that's closer in time to the offense that led to their need for treatment may be a better candidate for treatment. But the biggest factor that impedes any kind of successful treatment is the degree of motivation. And motivation may be low both in guys who are not yet convicted and say, 'Well, I'm being framed,' and low in those guys who have served ten years who say, 'I've already served my time and don't require any further intervention.'"
1:06:33	Dr. William Erickson, M.D.	"I think there will always be difficulty around the issue of whether a diagnosis of antisocial personality rises to a threshold that would justify commitment under the mental illness commitment laws. The reason for that problem is that if you accepted that standard -- that someone who qualifies for diagnosis of antisocial personality could be committed as mentally ill -- that would apply to more than half of all men and women in prison. It becomes excessively broad.... To shift the statute or title, if you will, or definition, from psychopathic personality, which has never been part of the psychiatric nomenclature, to a more recognizable mid-line, middle-of-the-road designation of mental disorder would be helpful."
1:08:34	(Dr. Erickson, cont'd)	"...The term 'psychopathic personality' was rejected as a term of art by the psychiatric profession in 1885."
[Disk 1 ends @ 1:14:57]		
[Disk 2:]		
15:53	Dr. Farnsworth	"...[T]here's a statute called 'Psychopathic Personality' in Minnesota, and then there's this Hare's Psychopathy Checklist, but psychopathy and psychopathic personality are not equivalent.... When [the Psychopathy Checklist] is applied against the men who are committed as psychopathic personalities, we don't find a good correlation. And the reason for that is many of the men who score high on the psychopathy checklist would have probably a prior history of felonies that may or may not be sex-related and another list of antisocial behaviors. So rapists might fit that category. But our men who are committed as psychopathic personalities, who are pedophiles -- offenders against children -- typically do not have a history of antisocial behavior and score low on the Psychopathic Checklist. So while obviously you would have a dichotomous group, one scoring low, the other high on this Psychopathy Checklist, but then they both could be committed as Psychopathic Personalities. So there's a confusion of terms. And of course, none of these terms are found in the DSM-IV, which is the nomenclature and diagnostic criteria used by mental health professionals...."
19:41	Dr. Erickson	"...[I]n a 1988 or 1989 look into this, I did a literature search and analysis and the title of the paper was "The Effects of Sentencing Patterns on Recidivism Rates", and there basically was no clear pattern to be found. The issue of how do you detect recidivism, what are the influences is complex and fairly subtle. And no single approach to sentencing or to diversion from prison seems to be able to capture the problem."
[Sound drop-out @ 23:49-23:58]		
58:34	Dr. Erickson	"...[W]e think that in many cases the impulse is uncontrolled, rather than uncontrollable."
04:32	Ms. Ostrem	"Certainly there is a public policy ...that says there are certain persons that we need to keep the public safe from. And as a public policy, we launch the kind of vehicle in which to keep the public safe. The Supreme Court upheld in the <i>Blodgett</i> decision the fact that public safety has an overriding value in society. ...[T]he primary public perception is something through which to keep the public safe ...[O]nce the public is assured they have safety, then they start to say, 'Well, yes, I'm angry at these people and I want to be safe from them, but do I want to spend \$260 a day versus \$114 a day?' ...[B]ut the overriding public pressure comes when they want some vehicle to which we can define who we truly are afraid of and need to be protected from...."
[Track 2 ends @ 1:15:52.]		
<b>Set 5:</b>		
1994 House / Senate Task Force on Sexual Predators August 4, 1994		
[Disk 1:]		
25:53	Marlys MacPherson	"We looked at the national literature on effectiveness, and unfortunately it doesn't provide you with a definitive answer. You can't tell from the literature whether treatment works or it doesn't work."
[Disk 1 ends @ 70:00]		
[Disk 2:]		
45:55	Raymond Schmitz, Olmsted County Attorney	"I am the chair of the County Attorney's Association, Criminal Law Committee."



46:30

"For a bit of history, representative Bishop and I have been interested in this topic for a number of years. You have before you a letter I wrote to him in 1987-88 with regard to earlier discussions about revising the Psychopathic Personalities Statute. Just to briefly summarize that, the most important point that may be in that letter is the fact that, as I indicated then, there had been communicated to me a case involving a very old commitment for Psychopathic Personality from Olmsted County where the individual had spent almost at that time 40 years in the state hospital under that commitment and in the review they were still concerned regarding his control of his sexual impulses and his dangerousness as the physician who wrote it, perhaps somewhat tongue in cheek, indicated they were convinced that his physical ability to carry out what he perceived to be his sexual impulses was not as great as it once was, they were still concerned that if he was in a position where he could carry them out he would pose a danger to the public. I contrasted that then with an individual who we were at that point involved in the appellate process regarding commitment and something about his criminal history and history of prior behaviors at that point in time. I can report to you that we were successful at the appellate court level. Unfortunately, we lost the war in the state hospital system and he ultimately has been released because they determined while he was a mentally ill and dangerous individual, he would not fit the psychopathic personality definition that the physicians in the state hospital system were imposing at that point in time. Let me talk just a little bit about what some of the concerns I have with the present Psychopathic Personalities Statute and what I think has happened to what was a difficult statute to work with by virtue of Mr. Chief Justice Keith's opinion in the *Linehan* case. The psychopathic personality is obviously, as you have heard and will hear, a subject which is not popular with psychiatrists. The definitions that they are currently using to define mental illness do not encompass the kinds of behavior that are representative in Minnesota Statutes. The problem that the *Linehan* case has posited is in essence that we are now going to be required to prove what was summarized in a rather historic argument to the courts involving a mental illness defense, and that is that the person essentially will commit the offense if the police are standing there watching. Basically that is what Mr. Justice Keith has said. There has to be an utterly uncontrollable sexual activity going on on the part of the offender before we can commit them as a psychopathic personality. I would submit to you that there two facts involved, in that (1) does not involve a great deal of people and probably if that fact situation is present, we have all sorts of tools to deal with that particular individual, because he is probably committable under all of the statutes we can think of. Essentially, we're talking about somebody who is probably standing in the middle of Main Street assaulting women and masturbating and engaging in various other behavior and we can deal with those individuals in a lot of ways. We don't need a psychopathic personality commitment to deal with them. Why do we need both a civil and a criminal? I think that one of the things you have just heard in the analysis, and it's important that you look at these statistics, and also look at the fact that we are not going to be able to prosecute every sexual assault case that occurs in the state of Minnesota, even under the best of circumstances. There are a number of reasons for that. I don't think I have to go through all of them, but many of the cases simply are not going to be prosecutable because the victim is not willing to go through the arduous criminal process. And without a cooperative victim, we are relatively stymied. We have children who are victims where the parents for very good reasons suggest that they do not wish the children to go through this process. One of the realities that occurred to me - and you think you know everything in this business -- my wife was involved a few years ago in a project with John Conti in the University of Chicago, looking at pedophiles and how pedophiles select their victims, and that was a fascinating exercise for me, as a tired old prosecutor. Suddenly it dawns on me that the people we're talking about as being crazy are crazy like a fox. And one of the realities is that a number of people that we look at as psychopathic personalities, while their behavior's uncontrollable, are very careful in how they engage in what they are doing. If you are in the unfortunate position of being involved in dealing with people who work with individuals who are protected as a class because they are either mentally ill, or mentally deficient or otherwise a protected class of individuals, including children, you come to appreciate that there are people who prey upon these people very selectively. I would suggest to you that as we write this statute, we have to look at the fact that this uncontrollable behavior may be very carefully structured, manipulative behavior on the part of these individuals. They select the children they prey upon. If you were to randomly to go out in the park and molest children, you would get arrested very quickly. How does a pedophile select these children? How do the people who prey upon the mentally ill and mentally deficient citizens of the community who we are placing in community-based treatment programs, who we are no longer protecting by locking them away from the rest of us in society in institutions. The individuals who prey on these individuals and whose sexual behavior is such that they cannot control that behavior in the classic sense that they make choices regarding doing it or not doing it, but they very carefully select those individuals as the choices of their predatory behavior. Again, that is a category of victims that is very difficult for us to prosecute. In order to do something about these individuals, we need a civil tool, and we need a tool that is broad enough to encompass this kind of behavior. That is, behavior as I say, where the individual is crazy as a fox. Representative Bishop and the proposed legislation that he has given to you was submitted to the county attorney's Association last year. We reviewed it in some detail. We have a few problems with it, and part of the reason this Task Force was created was to allow us to, at our leisure and the leisure of other people in the criminal justice system to look at revisions to the statute. Let me point out just a couple of reasons why we felt we could ask the legislature to do this, and some of the problems we have with the statute as presently drafted. In the first place, we did not perceive there to be an urgent need to revise the statute. We felt that we had won the war, at least for a significant period of time when the statute was found to be constitutional. Obviously, we were wrong. Some of the language of the statute caused the County Attorneys' Association some concern. First, as I indicated, it would require, and I notice that the Wisconsin statute does also, that there be a chargeable criminal offense that the person either have been convicted of the offense, or found not guilty because of mental illness or mental incompetency. That doesn't take care of the individual where we can't proceed with a criminal prosecution. We need to have this as an independent civil statute, where we can go forward regardless of the criminal prosecution that might exist. And frankly, in some cases we should be able to do it even if the person hasn't at that point in time committed a criminal offense. We are going to occasionally get someone from a physician or from other sources who we perhaps may be able to prevent a criminal offense being committed. We had difficulties with the proof beyond a reasonable doubt standard, and we had discussed that with representative Bishop, and I think we need to look at that, perhaps talk about it in terms of clear and convincing evidence or some lesser standard. I don't think that beyond a reasonable doubt is a necessary element. The jury issue is also important to us. We feel that this is the sort of offense that we at least need to think about not presenting to a jury, but simply presenting to a jurist who might have more understanding of the situation. Essentially then, that covers what I wanted to present to you. I know some questions have been asked about why prosecutors do things and don't do things, and I'm not in a position to comment on the whole world, but if there were any of those remaining - I'm glad somebody cleared up the eleven, because I was beginning to think I was doing most of the - I thought I was doing all of them for a while because I think we've done two or three. And one of the realities of that, as you well know even if it was passed in '89, we're still getting the guys that fit that pattern committing new offenses now. So a five-year period is not a long time to begin picking up the predatory sexual offenders that are covered by that category. I think you will see an increasing number of offenses filed under those, and 30 years is a long time, but as I pointed out in my letter, it isn't always enough."

# How Psychology Went Wrong

Tomasz Witkowski & Maciej Zatoński, *Psychology Gone Wrong, The Dark Sides of Science and Therapy* (book, Boca Raton, Florida, Brown Walker Press, 2015), ISBN: 978-1-62734-528-6

Text Excerpts:

Page 123: **Chapter 9**

**The Myth Of Childhood: Foundation Of Therapies Exploring The Past**

Page 126:

...[F]or many people, and unfortunately for many psychologists as well, the childhood of Hitler, Stalin or other criminals prove their thesis about the significance of early childhood experiences for adult life. From the scientific point of view, they are nothing more than anecdotes. This is mere confirmation bias, so often pointed out by Karl Popper. Instances that confirm our hypothesis reinforce our belief. Not only do we stop looking for examples that might disprove it, but if we do come across them, we activate defense mechanisms to uphold the conclusions we have already reached. In fact, if we take a closer look, we will find that:

Though serial killers like Charles Manson were abused and neglected as children, the list of serial killers with a normal childhood is long. Famous serial killers, such as Ted Bundy, Jeff Dahmer and Dennis Rader grew up in healthy households with supportive family members.<sup>6</sup>

The belief that the analysis of early childhood experiences might enable us to understand the behavior of adults is one of the most deeply rooted, but also one of the most dangerous myths in psychology. In his book, *Myths of Childhood*, Joel Paris, professor of psychiatry at the McGill University in Canada, makes a thorough analysis of this claim, distinguishing three more detailed ones:

Myth 1: Personality is formed by early childhood experiences.

Myth 2: Mental disorders are caused by early childhood experiences.

Myth 3: Effective psychotherapy depends on the reconstruction of childhood experiences.

[pp. 126-7:] None of the above statements is true, as we will attempt to show further in this part. Somehow however, they are all deeply embedded, not only in ordinary people's minds, but also in the minds of well-educated psychologists. This was confirmed by the results of our questionnaire survey carried out in 2011 and 2012 among a group of 185 respondents between the ages of 20 to 68 (the average age was 33). The group was further split into two subgroups. The first group was comprised only of 34 trained psychologists. The second group consisted

of 151 representatives from a broad professional spectrum (the majority with a higher education degree). We asked the study participants three questions (among others) related to their opinions about the childhood myth:

Human personality is mainly formed by early childhood experiences. Please indicate, in percentage terms, how much you agree with this statement.

Mental disorders are caused by early childhood experiences. Please indicate, in percentage terms, how much you agree with this statement.

Effective psychotherapy depends on how thoroughly one's childhood issues were dealt with. Please indicate, in percentage terms, how much you agree with this statement.

[p. 127:] The participants used a percentage scale. On average, they gave the first statement the score of 60.8%, thereby confirming the prevalence of popular notions about personality formation. The psychologists fared a little better with the average of 44.1%. The respondents were also firmly convinced that mental disorders originate from childhood experiences since the average score for the second statement was 57.3%. The psychologists were less stereotypical in their thinking with the average score of 40.6%. Such thinking is still far off from currently available evidence. Similarly, the prevalence of popular ideas about what happens during psychotherapy was confirmed by the average score of 55.8% in regard to the third statement. The psychologists did much better with the average score of only 26%.

The prevalence of these stereotypical views is also found in public statements of famous psychologists. For instance, Professor Jerzy Mellibruda from the University of Social Sciences and Humanities in Warsaw, a well-known and recognized Polish expert in the treatment of addictions, said in an interview for a major Polish newspaper:

In order to break free from the influence of sufferings experienced in childhood, you have to go back to them in your memories and 'work through them.' In the process of healing, it is also necessary to emotionally separate yourself from the irrational sense of guilt for their evil actions. Its only then that you will reach autonomy and maturity.<sup>8</sup>

As we will show further in this part, none of the above statement is substantiated by research. Instead, more questions emerge, which we will discuss more thoroughly further in this book. Who decides whether a person is autonomous and mature? Professor Mellibruda? A therapeutic support group? Who gave these authorities the power to decide what is mature and autonomous and what is not?

[p. 128:] Such and similar claims in media

greatly contribute to dissemination of popular psychological myths. Psychology textbooks do not do much to limit the spread either. The truth is that statements about the influence of childhood experiences on adult life are not supported by scientific research. This has been shown very clearly by Jerome Kagan, among others, in the book *Three Seductive Ideas*.<sup>9</sup> Let us then take a closer look at the particular elements of the childhood myth to see what they look like from the vantage point of research.

[p. 128:]

**1. Personality is formed by early childhood experiences.**

[Text omitted - generally refuting that myth.

[pp. 132-134:]

**2. Mental disorders are caused by early childhood experiences.**

Only once in the history of science has the Congress of the United States held a debate about a scientific study, and then put it to the vote, condemning it by 355 votes to 0. Matt Salmon, a congressman from Arizona, called the paper a "proclamation of pedophiles' emancipation. The American Psychological Association was given a rap over the knuckles for publishing it, the media, in their turn, called it "junk science at its worst" and accused its author of a "not-so-veiled attempt to normalize pedophilia."<sup>23</sup>

Who is that *enfant terrible* of American psychology and what did he do to incur the anger of state institutions and God-fearing citizens? The article was actually penned by three authors: Bruce Rind, Philip Tromovitch and Robert Bauserman. It was a meta-analysis of research into the correlates of child sexual abuse among college students. What most annoyed the representatives of the American nation was the conclusion drawn from the study, namely that there was no empirical evidence pointing to the permanent negative consequences of child sexual abuse. The authors looked for correlation between sexual abuse in childhood and 18 categories of mental disorders in adulthood, including depression, anxiety, eating disorders, and so forth. The analysis showed that the average correlation between these variables was only 0.03, which means that sexual abuse is not linked with these disorders at all. Interestingly, the correlation between child sexual abuse and later serious psychological problems was not higher even in those cases where acts of abuse were frequent or took severe forms.<sup>24</sup>

It is clear that the article of Rind and his collaborators struck at the foundations of one of the most powerful pseudo-sciences in psychology. Not only did it disprove the assumptions of psychoanalysis, dispelled popular notions about human development and took the wind out of hosts of militant feminists' sails, but it also shattered the assumptions of an ideology on which thou-

sands of therapists had relied upon; and so did their jobs, their profits, their sense of self-importance, their mission and the very need for their existence. That hysterical reaction to a scientific paper showed once more how deeply misunderstood the function of science actually is, and how often it is used in the service of ideology.

The duty of scientists is to discover the laws behind the reality in which we live, regardless of whether we like them or not. They really should bring us closer to the truth about reality. Neither the United States Congress nor the Supreme Court—of any country—have the power over the results of scientific research and their implications. Yes, self-correcting mechanisms in social sciences are not working well and not all scientific publications should be blindly trusted, but one apt methodological comment means more that the opinion of 355 congressmen who do not understand that reality might be different from their notions about it. This, among other things, is the strength and beauty of science.

The whole uproar over Rind's paper reveals yet another grotesque notion about human nature. Apparently, it would seem that people can only be prevented from raping and hurting children as long as they are convinced that this will have significant consequences in their adult lives; otherwise everybody would abuse, beat, and take advantage of kids in every imaginable way. That seems the only reasonable explanation of the accusations that publishing the results of Rind's meta-analysis constituted the legalization of those "natural" urges. Clearly, this assumption is totally absurd. Most people love children and do all they can for their best. These are sufficient reasons for them not to harm them. No one needs to threaten people with the consequences of abuse in order to force them to take care of their own children. Constantly cautioning parents, babysitters and teachers against the consequences of violence must come, to put it mildly, from a mind of a simpleton.

Rind and his collaborators did not make up their thesis out of thin air. As we have already written, they conducted a meta-analysis of many published studies. Earlier on, Bruce Rind and Philip Tromovitch published a meta-analysis of other studies, which yielded similar results.<sup>25</sup> Perhaps the only reason why it did not attract as much publicity as their subsequent study was because it was not published in such a reputable journal as the *Psychological Bulletin*. Replications of the research that followed further confirmed the initial conclusion.<sup>26</sup> Despite intensive research, psychologists did not manage to find any proof of what had long been given much publicity: a specific personality profile of child abuse victims.<sup>27</sup> Subsequent studies also challenged the view



about the existence of the so-called 'cycle of child sexual abuse'—the hypothesis that victims turn into abusers in adulthood.<sup>28</sup>

Now, as the debate over Rind's paper has slightly simmered down, it is worth taking a closer look at the even farther-reaching conclusions of numerous pieces of research on sexual abuse. As Scott Lilienfeld and his colleagues concluded: "The most telling finding in the research literature on the apparent long-term consequences of child sexual abuse is the absence of findings. Numerous investigations demonstrate that the typical reaction to a history of child sexual abuse is not psychopathology, but resilience."<sup>29</sup>

Let's make it clear here: in no way whatsoever are the above statements an excuse or justification for child sexual abuse, pedophilia, or any other harm done to children. Neither are they an incentive to "resilience training." They might be thus interpreted as such only by those exceptionally cruel or extremely limited intellectually. All research conclusions should describe reality as it is, whether or not this description fits in with someone's ideology. The sufficient reason for not harming children is that they are, like us, human beings gifted with consciousness and the ability to feel pain, and what is more, they are *frailer* than ourselves.

It is a good time to recall one tremendously important fact: psychology is a branch of knowledge that formulates general conclusions based on the probabilities at which certain events occur. In this particular case, it means that child sexual abuse, especially that which takes extreme forms, may (but does not have to) have harmful effects in some situations. This is another reason why any attempts to justify cruel deeds with research results is purely ideological.

It is in a similar vein that one should comment on the main theses of a 2010 book by Susan Clancy debunking the myth of trauma being the result of sexual abuse. The author, referring to the results discussed above, but also drawing on the findings of her own research, resolutely dispels another myth of pop psychology; as she contends: "In

fact, less than 10 percent of the participants reported experiencing their abuse as traumatic, terrifying, over-whelming, life-threatening, or shocking at the time it happened."<sup>30</sup> What is more, the mindless assumption that sexual abuse victims are deeply traumatized does them more harm than good, argues Clancy. She claims that the victims deserve to be treated in a way reflecting well-formulated research questions and solid investigation.

Naturally, the facts presented above do not entirely disprove the claims that mental disorders are caused by early childhood experiences. Alleged sex abuse-induced traumas are given much publicity, but they are not the only problems. In order to obtain a full picture of this element of the childhood myth, let us analyze other situations. Let us begin with an event described by Terr, which most therapists would surely call traumatic:

For example, on July 15, 1976, 26 school-children ranging in age from 5 to 14 were victims of a nightmarish kidnapping in Chowchilla, California. Along with their bus driver, they were taken hostage on a school bus for 11 hours and buried underground in a van for 16 hours. There, they managed to breathe through a few small air vents. Remarkably, the children and driver managed to escape, and all survived without injury. When found, most of the children were in shock, and some had soiled themselves. Two years later, although most were haunted by memories of the incident, virtually all were well adjusted.<sup>31</sup>

[pp. 134-5:] This is unthinkable for those psychologists who have been arguing for generations that events of this kind are not only bound to leave a permanent psychological scar, but that they should also be thoroughly 'worked through.' The above example, however, is merely anecdotal. George Bonano from Columbia University, who examined the reactions of children and adults to bereavement, war, terror and disease, systematically analyzed similar cases for many years. These people not only adapted themselves surprisingly quickly to most of these situations, but as soon as several months later, they regained their mental balance from before the traumatic events. After half a year, not more than 10% of the participants were still suffering from some effects of a trauma.<sup>32</sup>

Other systematic attempts to trace mental disorders back to childhood events yielded similar results. Granted, there have been just a few longitudinal studies observing the development from infancy to adulthood, but those that exist provide very important information: in most cases, the results directly contradict the view that we are entirely determined by early childhood experiences. One of such studies investigat-

ed the lives of more than six hundred children from the day they were born on the Hawaiian island of Kauai for over thirty years. It turned out that mental disorders in adulthood could be predicted only on the basis of extreme poverty of parents coupled with birth pathologies (premature births, etc.). But even these indices gave poor predictability of future symptoms. For this reason, the authors of the study concluded that the most characteristic feature of all the investigated children's development was self-correcting mechanisms leading to normal development. It was only in highly adverse circumstances that those tendencies did not work.<sup>33</sup>

Many researchers into human development arrived at similar conclusions. As the child psychiatrist Michael Rutter claims: "The ill effects of early traumata are by no means inevitable or irrevocable. ... the evidence runs strongly counter to views that early experiences irrevocably change personal development."<sup>34</sup>

It is also worth quoting Joel Paris again: "The outcome of adversity in childhood is highly variable. If possible, it is better for children to avoid trauma, family discord, family breakdown, or serious poverty. Each of these difficulties may increase the risk for psychiatric disorder, at least in *some* children and *some* adults. The more adversities that are present, the more likely pathology is to develop. Yet even when exposed to multiple adversities, most children manage to escape any form of mental disorder."<sup>35</sup>

### 3. Effective psychotherapy depends on the reconstruction of childhood experiences.

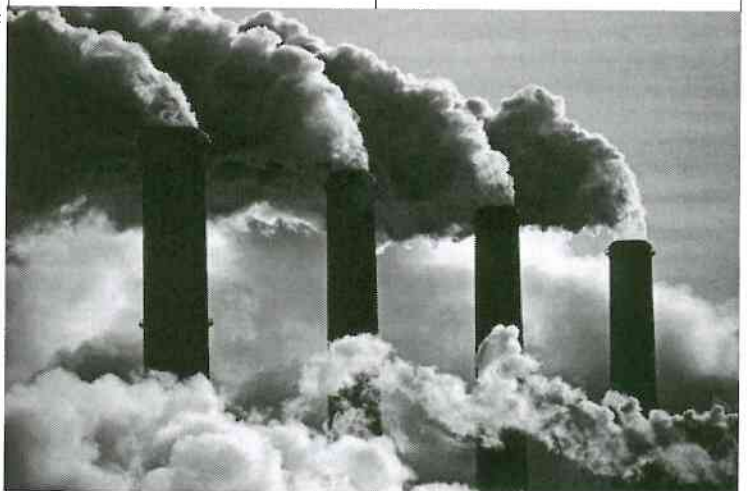
The previous two myths were actually bound to crystallize into the above statement, which is another element of the early childhood myth. Thus, arguments that challenge them should be quite sufficient to disprove any therapies that focus on analyzing childhood experiences. However, to be on the safe side and for the sake of those

readers who were not convinced by the empirical evidence undermining the first two elements of the childhood myth discussed above, we will offer additional arguments for the uselessness of the therapeutic approach based on early childhood determinism.

[pp. 135-6:] The first argument draws on the limited usefulness of memory as material for therapy. Despite many commonly accepted notions (and this is yet another psychological myth), memory does not work like audiotape, mechanically recording everything that the microphone picks up. If it were so, the task of the therapist might indeed be to competently retrieve the appropriate parts of the recording and listen to them.<sup>36</sup> But if someone does want to stick to the audio tape metaphor, he should assume that it is a tape on which recordings were made many times; additionally, some parts of it became distorted and others got erased, so that after a few years, no tape recorder, even the best one, could accurately play it back. Another myth is that such a "playback" might be possible under hypnosis, which is more likely rather to create memories than retrieve them.<sup>37</sup> Psychologists specializing in memory processes and research into court witnesses' credibility have many times pointed out what an unreliable tool the analysis of memory is,<sup>38</sup> and no studies indicate that psychotherapists acquired some supernatural ability to make use of their patients' memory.

[p. 136:] On the contrary, research demonstrates that insight into childhood experiences is not necessary to achieve therapeutic results even in the classical Freudian psychoanalysis. Patients show improvement without gaining insight into their 'source problems' and without 'working through' their traumatic childhood events, but only due to the emotional support of their therapists.<sup>39</sup> The view that emotional insight into the emotional history of the patient is not necessary to achieve therapeutic effects has also been confirmed by other, far more extensive studies.<sup>40</sup>

One of the most striking arguments for



Blowing Smoke...

rejecting the analysis of childhood events as a therapeutic tool is the fact that therapies which were rated highest in efficiency rankings drawn up on the basis of Evidence Based Practice (EBP) do not trace patients' problems back to their past, but rather try to change factors causing the disorders.<sup>41</sup> Unfortunately, most psychotherapists still dabble in amateurish archeology, delving through layer after layer of patients' memory with infinite patience in the hope of finding some glimpses of the past, provided they fit in well within the jigsaw puzzle.

Some very powerful arguments against the persistent delving into patients' past are furnished by patients themselves and by therapists involved in memory recovery practices. These practices usually result in serious, real problems for patients. Problems are caused by vague or completely unreal memories, such as when patient and therapist thoroughly work through indistinct memories perhaps related to sexual abuse which may bring back the trauma. Digging with ideological enthusiasm into the family past in order to identify the cause of a phobia may lead to a serious crisis and a break-up of the family or to lawsuits dragging in for years, which will be discussed in greater detail in the next chapter. It is not only the alleged victim but also the alleged perpetrator that suffers the consequences of such a "therapy." The stories of those who were wrongly accused of pedophilia could fill more than one book and the stigma resulting from such an accusation might be a real nightmare.

[pp. 136-7:] The last and probably the most shocking reason why we should be extremely vigilant about past life regression therapy is the fact that it was (and in some cases still is) instrumental in influencing people in therapeutic and religious groups, that were deemed as cults (some of which were banned). Primal therapy, as it was called, was used by the Moonies and Scientologists, in Synanon, and at the Center for Feeling Therapy, where the biggest psychotherapeutic scandal in human history took place. Primal therapy argued that neurosis is caused by the repressed pain of childhood trauma that could be resolved through re-experiencing and expressing the resulting pain during therapy (the primal scream). It criticized the 'talking' therapies as they dealt with reasoning and not the emotional source of pain.

Social sciences shape the reality they investigate to a much higher degree than other branches of science do. Releasing figures on the population of wood sandpipers in Europe will in no way influence the behavior of this bird, but publishing data indicating a low detection rate of crime in a particular area serves as an open invitation to theft or

some other offence. Similarly, an airing of the *March of the Penguins* movie will not change the behavior of these beautiful birds in even a slightest way, but a public debate about the prevalence of domestic violence could cause many people to discard their inhibitions. They might start asking themselves: "If it's such a common phenomenon, why should I be restraining myself all the time?" and even statistics, which were initially exaggerated might, with time, turn out to be a grim reality. Likewise, human behavior could be influenced by irresponsible publications advocating the necessity (and benefits of) 'relieving one's suppressed energy' or by movies and other products of mass culture indicative of such attitudes.

One of the ways people learn is by imitating others, as was proved by the research of Albert Bandura,<sup>42</sup> culminating in his theory of social learning. If someone were to daily watch movies that show that relieving one's aggression promotes relaxation, he would probably begin to put this rule into practice. And even if this kind of behavior did not initially bring him the relief for which he hoped, his expectation might be so intense that after some time he would take some of his reactions as clearly indicative of achieving the desired effect.

Nowadays, psychotherapy has become an inseparable element of mass culture, and its image is largely shaped by the movies industry. *Dr. Dippy's Sanitorium*, the first (silent) film about the work of a psychiatrist and a psychotherapist was made as early as 1906. In a cult 1955 film, *Rebel without a Cause*, a boy named Plato says,

I used to lie in my crib at night and I'd listen to them fight.

Can you remember back that far? I can't even remember what happened yesterday. I can't. How do you do it?

I went to a head shrinker. He made me remember.

[pp. 137-8:] With this short dialogue, the scriptwriter Stewart Stern plants two all-powerful psychological myths in the viewers' minds, one about the significance of childhood and the other about the possibility of recalling everything (with the help of a therapist). In the comedy *Analyze This*, a therapist (played by Billy Crystal) persuades a mafia boss (Robert de Niro) to confide in him and open up about his childhood. Similarly, therapists in *Good Will Hunting* or *The Sopranos* TV show encourage their patients to delve into their past.

Movies featuring mental disorders and psychotherapy are so numerous that they have themselves become the subject of scholarly studies. For instance, Paul Gordon wrote a paper about "the celluloid couch" in which he attempted to analyze the image of psychotherapy in contemporary cine-



The Wheat Must Be Separated from the Chaff.

matography,<sup>43</sup> while Steven Hyler even tried to classify the cinematic portraits of mentally ill people according to DSM III.<sup>44</sup>

Encouraging patients on the couch to open up about their childhood and the sudden emotional change that results from unearthing their experiences is an almost inseparable element of therapy scenes; it is endlessly repeated by movie-makers. No wonder then that a patient coming to a therapist is full of preconceived notions about what is going to happen. The most stereotypical scenes are the couch: conversations about childhood, looking for parents' mistakes, and finally, a sudden breakthrough inspired by the discovery of a forgotten childhood event or by its brilliant interpretation.

This might have two consequences for therapy. If the patient comes across a therapist who believes in the same therapeutic rituals that are so readily popularized by Hollywood, they will both celebrate them with equal enthusiasm, and perhaps they will even take something that happened during therapy as proof of their ceremonies' effectiveness. But if the patient does not fully share the therapist's views, it is a much more probable scenario that they will repeat the rituals ad infinitum without any effect. Let us notice, however, that in both cases it is therapists that benefit because, firstly, it is patients that pay for the repeated, though ineffective ritual practices, and secondly, if there are no results, therapists can always attribute this to patients' resistance or some other "indisputable" mechanism; (after all, what are psychotherapeutic dogmas for?) This saves the therapist from doubt and enables them to continue their ceremonies with a clear conscience even to the end of their days.

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(Continued on page 13)

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Page 141: **Chapter 10**

**The Nightmare of Recovered Memories**

Page 141: [Authors cite & quote various statistical claims of widespread rape & sexual assault, including: one in for women was raped at least once in her life.; 50-60% of all patients in psychiatric wards in hospitals were either physically or sexually molested in childhood. In Canada, 98% of women have been victims of rape or attempted rape, and 40% reported at least one rape experience; in Europe, one in three women have been a victim of physical, sexual, or psychological violence.]

[p. 142:] The problem of sexual abuse and harassment became a hot topic in specialist press. In 1984 in the USA, only 46 scientific papers on sexual child abuse were published among 241 other research papers dealing with other forms of harassment. Six years later this proportion was 500 to 349 respectively. In Sweden between 1974 and 1986, the total number of publications dealing with sexual abuse in children was 66 and it quickly rose to 757 between 1987 and 1992.

Those numbers forced their way into our reality suddenly, without warning, as if someone had ripped the veil of silence and hypocrisy. But let's think about it for a while. Is it really possible that every second or every third of our neighbors sexually abuses their children? Are we living among creatures whose sole purpose is to satisfy their degenerated sexual lusts?

According to Ellen Bass and Laura Davis, authors of the book published in 1998 titled *The Courage to Heal*, the answer is yes.<sup>6</sup> According to the thousands of women who brought their relatives, usually parents, to courts and accused them of sexual harassment, the answer is also yes. This claim is also widely accepted by proponents of so-called "recovered memories movements." They believe that those facts have now come to light due to new possibilities and innovative methods of recovering lost memories.

Unfortunately, actual sexual abuse and the social stigma associated with it are real problems that were underestimated for many years. However, the scale in which it is presented today is nothing but a creative invention of therapists. Not only is it based

on wrong conceptions, but they have also managed to contaminate their work with ideology. Only few of them however withdrew from those false conceptions, because "discovering" sexual abuse in patients' memories turned out to be a very profitable business. And it still is so in many countries. But how did this happen?

[pp. 142-3:] Previously mentioned activists of the women's liberation movement, Bass and Davis, noticed while leading group meetings for women, that some of them confided their unpleasant sexual experiences or sexual assaults from the past. Such confessions invariably met with sympathy and support from other women in the groups. This encouraged other women to similar confessions. When therapists suggested the idea that, according to Freud's conceptions (or rather misconceptions), similar experiences could have been repressed, it usually helped other women to "restore" their memories. It also helped to justify its inaccuracies.<sup>7</sup> On top of that, there was also a need to meet the expectations of patients (by therapists and by the group). Finally, they were "finding" the source of most of their problems in a very convenient way: it was not their fault. It was these traumatic experiences that have made them incapable of coping with their lives.

Let's take a look at what such a "memory recovery process" looks like:

We might use an age regression technique like holding a ribbon or a rope that goes to the past. ...Another technique that works well for a lot of people is imagining they are watching a portable TV. ...It has a tape that covers the traumatic experience, and we can use it in slow-motion, we can fast-forward it, we can reverse it. ...Then I will suggest that the tape or the dream is going to tell us something about the trauma. I will count and then they will begin to report to me. I watch very closely for changes in facial expression, body movements. If a memory is going to come up, it comes at this time. We work with whatever comes up. Sometimes when it's an image of a very young child being abused, I will check whether it's all right to continue. ... People come out of a trance with a lot of affect but also with some distance. A lot of the affect is sadness, and feeling appalled and stunned by the brutality. On coming out of trance they frequently will begin to make connections for themselves. There are suggestions to help them do that: they will remember only what they are ready to remember, they will have thoughts, images, feelings, and dreams that will help them understand it better over time, they will be able to talk about it in therapy.<sup>8</sup>

There are a few elements in this example that are typical for various forms of pseudo-

therapies. First, take a look at the claim that "there are suggestions to help them" in drawing conclusions - after all, someone could arrive at different conclusions that the therapists! Also not the statement "they will remember only what they are ready to remember." There is a well-hidden, implicit assumption, characteristic for many therapies, that the patient defends himself from the truth, ...a truth that his therapist can, of course, easily see. He already knows it all. Therapists, especially those with psychodynamic orientation, usually describe such mechanisms in patients as psychological resistance. In this case, we are dealing with the expression "ready to remember." It is to be expected that when the "victim," with the help of his/her therapist, is ready to remember, the resistances will become unblocked and then surely some nightmarish memories from childhood will inevitably surface.

If the patient is too resistant in his ability to "restore" the trauma, therapists have a few more tricks up their sleeve:

[p. 144:]

In the majority of cases, an adequate narrative can be constructed without resort to formal induction of altered states of consciousness. Occasionally, however, major amnesiac gaps in the story remain even after careful and painstaking exploration. At these times, the judicious use of powerful techniques such as hypnotherapy is warranted. ...In addition to hypnosis, many other techniques can be used to produce an altered state of consciousness in which dissociated traumatic memories are more readily accessible. These range from social methods, such as intensive group therapy or psychodrama, to biological methods, such as the use of sodium amytal.<sup>9</sup> In skilled hands, any of these methods can be effective.<sup>10</sup>

Well, this is not the end. There is more. Therapists who failed to "recover" memories can go a step further in their attempts:

Maltz directs people who can't remember to "spend some time *imagining that you were sexually abused*, without worry about accuracy of having your ideas make sense." Others give clients the instruction to "ground the experience or event in as much knowledge as you have and then let yourself *imagine what actually might have happened*." ...On other occasions, psychologists rely on "body memories" as the means to access lost information. Despite the lack of any research evidence to support this theory, Smith reports that in her survey of psychologists specializing in sexual abuse recovery, 59 percent claimed that their clients experienced body memories, and 95 percent of the therapists said it was common for memories to surface via body memories. Operating from this belief,



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many psychologists touch, massage or move their clients' bodies, watching for any reactions, memories, or feelings that come to the client. Others practice "somatic bridging," by asking clients to notice a feeling in the body and then let their minds follow that feeling back in time to another occasion when that feeling was stronger. One woman, who felt physically uncomfortable sitting in the chair, was instructed to "follow that body feeling back in time." Eventually, she described a pain in her bottom that was interpreted as an early act of anal penetration.<sup>11</sup>

Courts of law in the United States of America were flooded with thousands of accusation based solely on "recovered memories" obtained with methods such as those described above. Thousands of guilty and innocent people were sentenced. It is estimated that in the 1980s alone, more than 1,000,000 people believed that they were molested in childhood. Therapists who specialized in recovering repressed memories still influence relations between parents and children, grandparents and grandchildren in hundreds of thousands of families around the world. The changes in those relations are usually impossible to reverse. Accusing fathers of molesting their children became an effective and readily available weapon that allowed divorced women to take revenge on former partners. It also left children with permanent significant psychological trauma.

[p. 146:] Advocates of recovering repressed memories conveniently assumed that if a patient (usually a woman) has problems, they must have originated from events repressed from their memories. The first sentence of the book *Trauma and Recovery* by one of the most ardent and eager supporters of recovering memories, Judith Herman, states, "the ordinary response to atrocities is to banish them from consciousness."<sup>16</sup> Therefore, memories of violence must be freed in order to achieve full insight and patients will feel immediate relief and improvement. While this assumption at first glance seems a logical one, the assumptions regarding the scale of the problem were rooted in feminist ideology, i.e., that most women are oppressed, discriminated, molested, harassed and so forth. Therapists with such a view of the world were no longer asking the question "was this patient molested or not?" He asked himself "how do I get to the repressed content of an absolutely molested victim?" instead. Not a very objective nor scientific approach...

[pp. 146-7:] Perhaps the biggest fraud in recovering repressed memories is not the ideology, not the completely misrepresented scale of the problem, not even its marketing

structure, what makes this model a scam are its false theoretical assumptions. We have said previously that the assumption may appear logical at a first glance. Why aren't they? First of all, the alleged mechanism of repression, despite being tested, experimented on and analyzed prospectively and retrospectively for over a hundred years, was never shown or proven to be true. Secondly, the therapeutic procedure described above leads straight into the so called induction of memories, not to their recovery. Induction of memories ...is a proven phenomenon...

[p. 147:] ...[C]ourts have sentenced innocent people for made-up crimes implanted in memories of ordinary people. The empirical evidence, not the court of law, should decide which theoretical concepts (including therapies based on those concepts) are appropriate. And the evidence is rather clear in this matter: "Despite over sixty years of research involving numerous approaches by many thoughtful and clever investigators, at the present time, there is no controlled laboratory evidence supporting the concept of repression."<sup>17</sup>

[p. 149:] ...[I]s it possible that during extreme stress, only emotional experiences, revealing themselves in physiological reactions, are stored in our brains, as the repression model suggests? LeDoux believes that when we analyze the processes in our brains responsible for storing memories, it could be theoretically possible for an individual to have a subconscious memory of a traumatic event without being able to recall what actually happened to him or her. There is only one problem. It is also impossible to prove that such individuals exist. And even if they do, we will never be able to find out, because there is absolutely no way (including any possible psychological procedures, including hypnosis), to recall or access information stored by the amygdala. Unfortunately, memory does not work as a recording equipment (contrary to popular belief). For his very simple reason, we can safely conclude that every attempt to access or recall memories is impossible from the neuropsychological point of view. Alleged attempts of their use in therapy are an absolute nonsense, not to mention fraud.

[p. 150:] ...[A]nalysis of the actions of numerous therapists allowed for the discovery of a very powerful manipulative mechanism: the implantation of false memories, sometimes called imagination inflation by academics. This is an interesting process:

In 1968, the psychiatrist Herbert Spiegel gave a live demonstration designed to show how easily such false memories can be implanted. In front of colleagues and cameras, he hypnotized a man and told him that communists intended to take over



radio and television stations. He gave no details but did suggest to the man that he would remember specific information later. When the session ended, the subject began to talk about the plot, providing an elaborate story complete with details such as a description of the furnishings in the room where he first heard about the planned takeover. He also accepted and incorporated further suggestions given to him by others he talked to, even though no longer in hypnosis. Subsequently, he was rehypnotized and the suggestions were "removed." Later, when shown the videotape of the event, he reacted with shock and surprise.<sup>21</sup>

More systematic experiments were conducted on a wave of recovered memories that precisely described the nature of this phenomenon. These were done as an intervention to a dramatic increase in the number of court cases. In order to better understand how it worked, let's take a closer look at a typical experiment in this area.

People at the age between 18 and 35 were invitee to take part in an experiment where they were asked to recall various events from their childhoods that they might have heard of from their parents or other relatives. Prior to the experiment, Elizabeth Loftus and Jacquie Pickrell, authors of the experiment, collected descriptions of such events from subjects' relatives, making sure that none of the examined subjects ever got lost in a supermarket in childhood. All subjects then received four short stories. Three of them described real events from their past. One was fictional. For all test subjects the fictional story was exactly the same and described a five-year-old child lost in a large shopping center. The story described a

small child unable to find their parents for a long time and crying for that reason. Finally, an elderly woman took care of them before the family finally found the missing child.

[pp. 150-1:] After reading all four stories, the subjects were asked to write details to those stories. In case they could not remember a particular event or situation, they were asked to simply write "I don't remember." Later, the authors conducted two talks with participants. Instructions given to study participants stated that those conversations would be testing how well they can recall particular details and how well those details correlate with information provided by their families. Immediately after reading a factual story from their pasts, 68% recalled that such event took place. What is more interesting is the fact that 29% of participants recalled and remembered events that never happened! The second talk did not change this picture; still 25% of participants recalled a fictional event.<sup>22</sup>

There were many similar studies. For example, Hyman, Husband and Billings managed to get 20-25% of participants to recall a night spent in a hospital due to high fever or a birthday party with a clown, when no such event ever happened in the subjects' lives. What is interesting however is the size of imagination inflation effect in most experiments. It is quite stable: imagination inflation affects 20-30% of all subjects.

Now let's summarize a few facts. First of all, don't forget that people taking part in experiments were healthy subjects, without psychological problems, without a strong need to free themselves from everyday problems, the needs that often accompany people looking for professional help. Re-

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searchers did not put any pressure on the study participants (neither time pressure, nor social pressure, nor any other kind of pressure at all). Induction of false memories happened as a result of one, single, simple procedure. We are not aware of studies that would test what happens, for example, after ten such sessions, and whether repeated sessions increase chances of induction of false memories. Intuition tells us that repeated procedures would significantly increase subjects' susceptibility. All the empirical studies were carried out in accordance with ethical regulations, and induced memories were of a neutral character. Having said that, let's now try to imagine how different the study environment is from a therapeutic setting where a patient faces a therapist convinced of his hypothesis, prepared and ready to fight with patient's resistance and denial. Let's look at Freud's statements to help us discover the difference between innocent experimental situations and "real" therapy:

The work keeps on coming to stop and they [the patients] keep on maintaining that this time [no memory] has occurred to them. We must not believe what they say, we must always assume, and tell them too, that they have kept something back ... We must insist on this, we must repeat the pressure and represent ourselves as infallible, till at last we are really told something. ... "Something has occurred to me now, but you obviously out it to my head." ... In all such cases, I remain unshakably firm. ... I explain [to the] patient that [these distinctions] are only forms of his resistance and pretexts raised by it against reproducing this particular memory, which must [be] recognized in spite of all this.<sup>23</sup> Quite often we do not succeed in bringing the patient to recollect what has been repressed. Instead of that, if the analysis is carried out correctly, we produce in him an assured conviction, which achieves the same therapeutic results as a recaptured memory.<sup>24</sup>

[pp. 151-2:] Judging by the effects obtained by memory recovery therapists, such as implanted memories of cannibalism, abusing one's own children, and similar horrors, Freud's teachings were applied quite zealously. They still are today. We dare to suspect that the tenacity of therapists and the psychological and mental condition of their patients allowed them to recover false memories during repeated sessions in significantly higher numbers than the 20-30% mentioned in research studies. How surprisingly low seems the real number of actual cases of sexual offences when compared to data resulting from proponents of

recovering memories.

Memory recovery therapy is applied with similar eagerness in children. In addition, a few other tricks and effects are used here, such as the importance of authority, guilt, modeling and so forth. Let's take a look at the words of S.E. Draheim, a researcher who is an expert in the field of recovering memories:

"The work necessary to uncover abuses" usually starts with inducing in a child the need to clarify the cause of his anxiety, poor performance at school, nightmares, low self-esteem and other symptoms that will be used to make the "diagnosis." The therapist - an adult, a figure of authority - then suggests answers to the question of why those problems appeared. In order to do it, therapists could use additional help in the form of audiovisual materials, which explains what sexual abuse is, to which consequences it leads and how to cope with the trauma of such experience. The child would then receive "homework," for example, "Think about it again at home; think whether nothing has really happened" The child's imagination was stimulated by asking questions such as "What would happen, if...?" or by presenting them with dolls with exposed genitals. Then any statement from a child implanted with abuse was accepted without criticism and reinforced. Leading, suggestive questions were asked repeatedly, which, especially for small children, might be a signal that their answers were not correct and should be changed. Silence or denial were treated as a "lack of readiness" to verbalize abuses. If your child withdrew his previous statement, it was interpreted as "secondary denial." Gradually, at least in some children, subjective belief of abuse appeared. Younger children were particularly vulnerable to such manipulations, especially if they did not know or understand the concepts of sexual abuse in the first place. An additional source of reinforcement of pseudomemories was the fact that children could be spending time during therapy with other children who were actually abused. People who have exercised such "recovery" techniques were convinced that it was a completely safe method, because it is not thought possible to suggest to a child an event like sexual abuse.<sup>25</sup>

In case of failures in attempts to recover memories, there are still many psychologists (at least in Poland) ready to unequivocally declare a case of abuse based solely on results of so-called projective techniques.<sup>26</sup> We need to stress here, that such techniques originate from Freudian psychoanalysis. Making conclusions based on projective tests is done in a similar fashion and with similar

reliability as reasoning based on reading tea leaves.<sup>27</sup> It completely lacks empirical evidence.

[pp. 152-3:] Symptom analysis used in the process of diagnosis produces similarly unreliable results as projective techniques.<sup>28</sup> but despite this fact, the wheel of justice keeps rolling and even due to the lack of proper evidence, rules on such unreliable grounds. Psychologists acting as expert witnesses believe that it is better to make a 'false alarm' type of mistake, than to make an error of omission, because we should primarily focus on the child's wellbeing. In their view, an adult, even if mistakenly convicted by the court, will somehow manage to deal with it.

It would be worthwhile to ask those troubled child psychologists, how a child's personality develops when it is falsely convinced of sexual abuse? How do those convicted adults "somehow managing to deal with it," often labeled as pedophiles, cope? How do they cope in prison when they end up behind bars thanks to a concerned psychologist? What about the families of children implanted and stigmatized with abuse? How do they cope? What happens to them? Members of the False Memory Syndrome Foundation could provide us with at least a few answers.<sup>29</sup> Most of them are relatives of "victims" of alleged sexual abuse. Since 1992, when the Foundation was established, until 2001, over 4,400 people, for whom false memories are a horrible reality turned to the Foundation for support.<sup>30</sup> Unfortunately, this is the only report published by the Foundation. Elisabeth Loftus, memory researcher, presented a shocking statement:

[pp. 153-4:] In 1990, Washington State permitted individuals to seek treatment under the Crime Victim Act if they claimed previously repressed memory for childhood sexual abuse. From 1991-1995, 670 repressed memory claims were filed. Of these, 325 (49%) were allowed.

In the study, a nurse consultant reviewed 183 of these claims. Of these, 30 were "randomly selected for a preliminary profile." Some of the findings of this analysis are reported here. The sample was almost exclusively female (28/30 = 93%) and Caucasian (28/30 = 93%), with ages ranging from 15 to 67 years with a mean of 43 years.

The women (and one man) saw primarily Masters level therapists (26/30 = 87%), although 2 saw a Ph.D., 2 saw an MD, and 6 saw a Masters level therapist in conjunction with an MD. The first memory surfaced during therapy in 26 cases (26/30 = 87%).

All 30 were still in therapy three years after their first memory surfaced. Over half were still in therapy five years after the first memory surfaced (18/30 = 60%).

Prior to memories, only 3 (10%) exhibited suicidal ideation or attempts; after memories, 20 (67%) exhibited suicidal ideation or attempts. Prior to memories, only 2 (7%) had been hospitalized; after memories, 11 (37%) had been hospitalized. Prior to memories, only 1 (3%) had engaged in self-mutilation; after memories 8 (27%) had engaged in self-mutilation.

Virtually all the patients (29/30 = 97%) contended they had been abused in satanic rituals. They claimed their abuse began when they were, on average, 7 months old. Parents and other family members were allegedly involved in the ritual abuse in all cases (29/29). Most remembered birth and infant cannibalism (22/29 = 76%) and consuming body parts (22/29 = 76%); the majority remembered being tortured with spiders (20/29 = 69%). All remembered torture or mutilation (29/29). There were no medical exams corroborating the torture or mutilation.

The sample of (mostly) women was fairly well educated, and most had been employed before entering therapy (25/30 = 83%), many of them in the health-care industry (15/30 = 50%). Three years into therapy, only 3 of 30 (10%) were still employed. Of the 30, 23 (77%) were married before they entered therapy and got their first memory; within three years of this time, 11/23 (48%) were separated or divorced. Seven (23%) lost custody of minor children; all (30/30) were estranged from their extended families.

Whereas the average cost of a mental health claim in the Crime Victim Compensation Program that did not involve repressed memory was \$2,672, the average cost for the 183 repressed memory claims was dramatically higher, \$12,296.<sup>31</sup>

The wave of fascination with the problem reached Eastern Europe some time ago. The media willingly published statements just like the one found by us below:

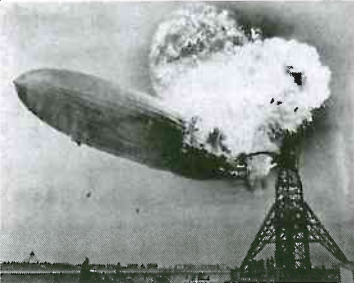
I am 52 years old. For six years now, I know that I have been molested in childhood. This happened for a very long time, over 10 years. I did not feel harassed. I was sure that I was loved. I don't remember any of it. Now I know that I was saved by this defense mechanism. It was necessary, as my life with such a burden on my shoulders proved too difficult. I did not manage to put together my personal life; I couldn't do it. Today I am not surprised why. My marriage fell apart. I do not have any children. ... I have a therapist. Since 2 years now. Thanks to her hard work I am starting to change. I am starting to grow emotionally. I do not feel guilty about what happened anymore. Now I can and want to talk. I want to scream: STOP MOLESTING

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ME!<sup>32</sup>

It seems that the therapist's hard work was "effective," the patient feels better. Finally someone helped her to understand the reasons why she was unable to cope with her life. It is by no means her own fault. It's the fault if the person who molested her. Isn't that a beautiful conclusion?



This wave has already brought misfortune, unhappiness and misery to thousands of people. The worst thing is that those people do not know where to look to for help. Here is an example of such desperate attempts to find a solution:

Are you aware of anything like the False Memory Syndrome Foundation, or any similar organization here in Poland? My daughter together with my husband became fascinated with Hellinger, Jung, integral psychology, and so forth. For many hours, every day, they spend vivisectioning their minds. I warned them, that this is very dangerous - I am a psychologist. It all started four years ago. Two years ago she broke contact with us. Last year she accused us of sexual harassment, rape, lies. ...I offered any possible help and support, moderation, all possible procedures: psychological, psychiatric and legal evaluations. She rejected everything. She set a condition: first we admit, then apologize, and then maybe we can talk. I believe I have done everything I could. I don't know where to go next. I don't know anybody experiencing similar drama. Perhaps you could put us in touch with other people with similar problems? I am worried about my daughter. We were very close. She fell into her own trap. Her husband believes her. (I didn't even know when she got married, I have found out about it from the Internet). So does her mother-in-law. She might be convinced that this is all true. I have never "sent my husband to her bed to rape her." I asked her to Google "Loftus implanted memory", "two-factor theory of emotion", so she could at least consider a possibility of being wrong. All for nothing. Perhaps your project can give our family a hope?<sup>33</sup>

Is there any way to remain objective and retain common sense in psychological evalu-

ations without compromising the real problem of child abuse? Of course, we can find the answers, for example in the book by Rita Carter *The Human Brain Book*. The author describes research on the human brain, conducted using various methods of imaging, where researchers try to demonstrate the possibility of assessing the legitimacy of conscious memories (both real and implanted), using functional magnetic resonance imaging (fMRI). If the memories are real, images from fMRI will highlight areas corresponding to increased activity in the cerebral cortex, which is responsible for confirming that a particular situation is remembered and comes from one's own experience. If the memories are the products of "creative thinking," then different parts of the brain, areas responsible for signaling the detection of false content and for initiating emotions such as consternation or confusion will be highlighted.

In other research, Daniel Schacter from the University of Harvard, examined twelve women with positron emission tomography (PET) while showing them lists of words that were previously seen by them, and some lists containing new, previously unseen words. Lists of words seen previously induced activity in the hippocampus and speech areas of the brain. The lists that the women considered as known, but that contained new items, activated the same areas in the brain plus additionally orbitofrontal cortex (OFC), a part of the brain responsible for inducing reactions like, "Oops, something is wrong in here!" Its activation when we are mistakenly recalling facts suggests that, despite happening outside of someone's consciousness, the brain registers defective memory recalls and continues to generate internal question marks.<sup>34</sup>

Schacter's research was focused on short-term memory, but if his results can be confirmed in regard to long-term memory, after including results conducted by others, brain imaging could be successfully introduced in courtrooms, replacing certified charlatans in psychology and finally providing clear answers in regard to the authenticity of someone's memories.

[pp. 155-6:] Readers who have traced our previous arguments about the therapies can be convinced of our negative attitude towards previously described therapies, and psychoanalytic therapy in particular. This is indeed true. We are not enthusiastic about them at all. We accuse psychoanalysis not only of feeding on human misery, but also of creating the miseries in the first place, and then reaping the profits from it. But apart from accusing psychoanalysts and therapies tinted with feminist ideologies, we would also like to add to the list the horde of psychologists in academic centers who create junk

science in their warm offices, usually never read by anyone but themselves. Their creative approach to irrelevant problems gives unwritten consent to the creation of monstrosities, such as recovered memory therapy, in the walls of universities built for the purpose of seeking the truth. For nearly one hundred years, empiricists did not care about the problems and mechanisms of repression or other commonly recognized 'defense mechanisms,' while clinicians strongly discouraged them from doing so. The very first research papers on induced and implanted memories started to appear after the waves of people with "recovered" memories flooded American courts in order to accuse their loved ones of the greatest crimes. In spite of conclusive, clear results, representatives of psychological society in different countries preferred to sweep the problem under the rug.

It is clear that these professional associations and licensing boards cannot be relied up to carry out their mandate to protect the public. With only a few exceptions, they have been notably inert even in expressing concern about recovered memory therapy. For instance, in 1993, the APA established a working group to address the issue of memories of childhood abuse. Three years later, it submitted a report that acknowledged a split between the clinicians who believe in recovered memories, and the researchers who study human memory. Conceding failure, the group stated that it was "important to acknowledge frankly that we differ markedly on a wide range of issues." Other organizations, such as the Canadian Psychological Association and the British Association for Counselling, have been equally equivocal in their position, making it clear that professional associations and boards cannot be relied up when issues of serious public concern conflict with those of the Psychology Industry.<sup>35</sup>

We are deeply convinced that the attitude of academic psychologists, based on simply ignoring all new trends in psychotherapy without subjecting them to empirical verification is very convenient for all those fraudulent psychotherapists. This silent acquiescence stretches like an umbrella over the hatching of new little monsters. Academics are not yet confident enough to unanimously discredit the current therapeutic plague, yet another one is already closing in upon us:

The Psychology Industry's induced public hysteria about sexual abuse is creating yet another new specialization: "Children who molest." ...Coined by psychologist Toni Cavanaugh Johnson in 1988, this diagnostic description has been applied to children as young as two, for "inappropriate" behaviors such as diddling, licking, flashing, mooning,

masturbating compulsively, looking up under girls' skirts, lying on top of a girl in bed; even using sexual language or asking endless questions about sex. This has led to siblings, cousins and playmates being diagnosed with "sexual behavior problems," charged with assault and removed from their families. And members of the Psychology Industry are seeking the inclusion of "juvenile sex offending" into the DSM, the catalogue of psychopathologies.<sup>36</sup>

Relevant Chapter 10 Notes:

- 6 E. Bass & L. Davis, *The Courage to Heal: A Guide for Women Survivors of Child Sexual Abuse* (Harper Perennial, 1988).
- 7 Ibid. 60-110
- 8 As cited in J.L. Herman, *Trauma and Recovery* (New York: Pandora - Basic Books, 2001), 186.
- 9 Amobarbital (sodium amytal), pentothal (sodium pentothal) and other short-acting barbiturates are often called "truth serums." These substances can alter higher cognitive functions and induce a "need" to tell the truth. There are no reliable clinical studies to support their effectiveness. They equally encourage subjects to disclose facts as well as they induce daydreaming and hallucinations. Courts usually reject testimonies obtained under the influence of such medicines.
- 10 Herman, *Trauma*, 185-186.
- 11 T. Dineen, *Manufacturing Victims: What Psychology Industry is Doing to People* (2007), 106. Available at: [tanadineen.com/documents/MV3.pdf](http://tanadineen.com/documents/MV3.pdf).
- 14 J.L. Herman, *Trauma and Recovery* (New York: Pandora - Basic Books, 2001), 1
- 17 D.S. Holmes, "The Evidence for Repression: An Examination of Sixty Years of Research," In *Repression and Dissociation: Implications for Personality Theory, Psychopathology and Health*, ed. J.L. Singer (Univ. of Chicago Press, 1995), 96.
- 21 Dineen, *Manufacturing Victims* 35.
- 22 E.F. Loftus & J. Pickrell, "The Formation of False Memories," *25 Psychiatric Annals*, 720-725 (1995).
- 23 S. Freud, *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, Vol. 2 (London: Hogarth Press, 1995), 279-80.
- 24 S. Freud, *Theory and Technique* (Middlesex, U.K.: Collier Books, 1963), 282.
- 25 S.E. Draheim, "O wszczępaniu dzieciom pseudopamięci, czyli o manipulacji w dorej wierze." In *Wokal psychomanipulacji*, eds.: E. Zdaniewicz-Scigala & T. Maruszewski (Warszawa: Wydawnictwo SWPS Academica, 2003), 45-55.
- 26 A. Sikorska-Koza, "Ocena psycholog-

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icznych aspektów wiarygodności zeznań małoletnich świadków w praktyce biegłych sądowych psychologów na podstawie analizy spraw karnych dotyczących wykorzystania seksualnego dzieci," *Dziecka krzywdzone*, 1 (2010): 70-79.

- 27 S.D. Lilienfeld, et al., "The Scientific Status of Projective Techniques," *Psychological Science in the Public Interest*, (2000): 227-266.
- 28 *Draheim*, "O wszczepianiu dzieciom," 454-55.
- 29 [www.fmsfonline.org/](http://www.fmsfonline.org/)
- 30 P.R. Mchugh, H.I. Lief, P.P. Fryed, and J.M. Fetkiewicz, "From Refusal to Reconciliation. Family Relationships after an Accusation Based on Recovered Memories," 192 *The Journal of Nervous and Mental Disease* 525-531 (2004).
- 31 E. Loftus, B. Grant, et al., "Crime Victims' Compensation and Repressed Memory," A letter to the Mental Health Subcommittee, Crime Victims' Compensation Program, Dept. of Labor and Industries, State of Washington, (Revised version Jan. 5, 1996)
- 32 "Listy do redakcji," (Letters to the Editor), 2006, May 13. *Gazeta Wyborcza - Wysokie Obcasy*
- 33 Private correspondence.
- 34 Schachter, *The Seven Sins of Memory*.
- 35 Dineen, *Manufacturing Victims*, 134.
- 36 *Ibid.*, 86.

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### Who Needs Science? Manufacture Some More Victims!

Excerpt from: Rachel Ammirati & Scott O. Lilienfeld, "Forget Psychological Science: Israel Supreme Court Upholds Conviction Based on Recovered Memories," *Skeptical Inquirer* (March/April 2015), p. 9

"...[A] large body of high-quality research indicates that human memory, in its many forms, is malleable and prone to error (Frenda et al. 2011; Loftus 2003). Furthermore, convincing evidence that memories can be repressed and subsequently recovered in accurate form is sorely lacking (Loftus 1993; Loftus and Davis 2006). At present, there is no known psychological mechanism whereby memories of repeated traumatic events can be completely forgotten and then suddenly recalled following a dream - or for that matter as a result of psychotherapy. Well-established research evidence instead demonstrates that most people tend to remember traumatic events all too well (Loftus 1993; Shobe and

Kihlstrom 1997). Moreover, many or most purported recovered memories of early abuse are probably confabulations - sincerely held but false or distorted recollections. Most psychological experts doubt that genuine recovered memories are even possible given what we know about how memories are created. Even the minority of experts who hold a different view concur that recovered memories should not be accepted as genuine without compelling corroboration from other sources.

If the quotes ...from sexual assault experts highlighted in Paraszczuk's (2011) article in the Jerusalem Post are a representative sample, the Israeli Supreme Court premised its ruling on the basis of far less than compelling evidence. For example, suggesting that 'false memories evoke no emotional response' and stating that 'the clinical symptoms, personal and interpersonal dynamics, and the way the complainant tells the story fit the characteristics of fathers who harm their daughters' is misleading. Scientific research indicates that both false and true memories can be associated with strong emotion (e.g., Laney & Loftus 2008), and any number of variables may account for anxiety, school, and social problems among youth and adults."

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### The Gladden Complaint: Need a Disorder to Commit? Just Make One Up!

**Editor's Note:** In our continuing series, the following excerpt from the Gladden Complaint delves into the fictional claim of rape as a sexual disorder and criticizes the notion that "Antisocial Personality Disorder" is a

sexual disorder or even a disorder at all, much less that it causes sex crimes to occur:

#### "The Junk Science Concept of Rape as Comprising Unspecified Paraphilic Disorder, Nonconsent as a Disorder"

"Thomas K. Zander, 'Civil Commitment without Psychosis: The Law's Reliance on the Weakest Links in Psychodiagnosis,' *Jour. of Sexual Offender Civil Commitment: Science and the Law* 17, at 45 (2005)), after an exhaustive examination of the development of the DSM in its sequential editions, flatly concludes that 'the weight of opinion among experts in the treatment of paraphilias is that then omission of non-sadistic rape from the paraphilias category of the DSM was, and continues to be deliberate decision of the American Psychiatric Association. None of the experts has published a statement supporting the use of the diagnosis of paraphilia-NOS for rapists.'

"One of the actual editors of the DSM, Allen Frances, *The Essentials of Psychiatric Diagnosis*, in the section discussing 'Paraphilic Disorders' (pp. 169-74), declares flatly that rape is a crime, not a mental disorder. He states that the claimed diagnostic category of 'Unspecified Paraphilic Disorder, Nonconsent' is an utterly unreliable diagnosis. Rape has been rejected as a mental disorder in all editions of the DSM since DSM-3. Frances states that rape is almost always an opportunistic behavior that reflects simple criminality - not a mental disorder. He adds that Unspecified Paraphilic Disorder, Nonconsent has been carelessly, unreliably, and incorrectly diagnosed in forensic proceedings in countless cases as a convenient way to promote inappropriate psychiatric preventive detention... This, Frances insists, is a misuse of psychiatric diagnosis and an abuse of involuntary psychiatric commitment. He concludes that a claimed diagnosis of Unspecified Paraphilic Disorder, Nonconsent, should not be taken

seriously when presented in expert testimony. To same effect, see: A. Frances, 'Going for Wins in Sexually Violent Predator Cases,' *Psychiatric Times*, July 8, 2011, available at [www.psychiatristimes.com/blog/cpuchin/crisis/content/article/10168/1900563](http://www.psychiatristimes.com/blog/cpuchin/crisis/content/article/10168/1900563).

#### "The Junk Science Concept of 'Antisocial Personality Disorder' as a Disorder."

"Jeffrey Abracen & Jan Looman, 'Evaluation of Civil Commitment Criteria in a High Risk Sample of Sexual Offenders,' *Jour. of Sexual Offender Commitment: Science and the Law*, 124-140 (2006), at p. 125, bluntly state: '[T]he term personality disorder is left completely undefined in the majority of States whose commitment criteria discuss these disorders.'

"As Deirdre M. Smith, 'Dangerous Diagnoses, Risky Assumptions, and the Failed Experiment of 'Sexually Violent Predator' Commitment,' 67 *Oklahoma Law Rev.* 619, 677 (No. 4, Summer 2015), states, '...ASPD is a diagnosis that, by definition, could apply to most people incarcerated in the United States.'

"Eric Janus, in *Failure to Protect*, p. 36, relays this basic truth as to the ubiquity of so-called 'antisocial personality disorder' among criminals: 'As one author put it, 'Applying the diagnosis antisocial personality to imprisoned offenders [is like] looking for hay in a haystack.'" [citing: Gail F. Stevens, 'Applying the Diagnosis Antisocial Personality to Imprisoned Offenders: Looking for Hay in a Haystack,' 19 *Jour. of Offender Rehabilitation* 1-26 (1993)]

"Zander, *supra*, at pp. 51-52, explains the problem thus:

'Among psychologists and psychiatrists, the personality disorders may be the single most controversial diagnostic category in the DSM. For example, in a survey of 146 psychologists and psychiatrists in 42 countries, Maser, Kaelber, and Weise (1991) asked respondents to rate their satisfaction with the DSM diagnostic categories. 'The person-

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Salem Witch Trials

(Continued from page 17)

ality disorders led the list of diagnostic categories with which respondents were dissatisfied' (p. 275), with 56% expressing dissatisfaction.... One of the primary reasons for the controversial nature of the personality disorders has to do with the fact that, contrary to the DSM-IV-TR's claim that personality disorders "are qualitatively distinct syndromes," they appear instead to "represent maladaptive variants of personality traits that merge imperceptibly into normality and into one another" (APA, [DSM-IV] p. 686)....

'Because personality disorders categorize behavior that differs from normal behavior only by its degree of expression of universal traits, rather than qualitative behavioral differences, the conceptual validity of these categories is inherently suspect. ...[P]ersonality disorder diagnoses are much more likely to be conceptually invalid, because their behavioral manifestations are exhibited by many people considered to be normal.

"The most fundamental question concerning antisocial personality disorder is whether it should be considered a mental disorder and be included in the DSM-IV." (Francis & Ross, 2001, p. 293). Francis was the chair of the APA's Task Force on DSM-IV.

'The over-inclusiveness of the diagnosis of antisocial personality disorder apparently was a major concern of the U.S. Supreme Court justices deciding *Kansas v. Crane* (2002). When the U.S. Supreme Court justices were considering the oral arguments of the two lawyers who litigated the Crane case before the Court, Justice Ginsburg expressed concern about the large number of people who would appear to qualify for the DSM-IV-TR definition of antisocial personality disorder, observing, "...they say pick three out of a list of seven, you could pick out habitually doesn't work, doesn't pay debts, is reckless, irritable ...There are a lot of ordinary people who would fit that description" *Kansas v. Crane* Oral Argument, 2001, pp. 8-9) [italics supplied by Zander]. Later in the oral argument, Justice O'Connor pointed out that a prosecution expert in the trial of the case had testified that 75% of the male prison population in the U.S. was diagnosable with antisocial personality disorder (p. 15). When the Kansas Attorney General acknowledged that a sex offender satisfying the criteria for antisocial personality disorder could be committed as an SVP, another justice, apparently astonished by how easily this diagnosis could result in civil commitment, simply responded, "Wow" (p. 15). In the majority decision in Crane, the Court favorably cited research showing that 40 to 60% of the male prison population in the U.S. is

diagnosable with antisocial personality disorder (*Kansas v. Crane*, 2002, p. 412).

'Thus, some of the justices on the U.S. Supreme Court had strong concerns about the conceptual validity of the diagnosis of antisocial personality disorder as it could be applied in SVP commitment cases. This should not have been surprising considering that, just 10 years earlier in *Foucha v. Louisiana* (1992), the Court had held that a diagnosis of antisocial personality disorder was an insufficient "mental illness" to justify the commitment of an insanity acquittee whose commitment was ending. In the *Foucha* and *Crane* decisions, the Supreme Court expressed concerns that Mr. Foucha and Mr. Crane, both of whom were diagnosed as having antisocial personality disorder, were, by virtue of that diagnosis, indistinguishable from most other men imprisoned in the United States. In *Foucha*, Justice White, writing for a plurality of the Court, noted that Mr. Foucha was similarly situated to other prisoners about to be released from confinement, adding, "Many of them will likely suffer from the same sort of personality disorder that Foucha exhibits." (p. 85).

'...Widiger & Corbitt (1995) reviewed five studies that reported the prevalence of antisocial personality disorder in incarcerated male populations at between 49% and 80%. Moran (1999) reported the proportion of prisoners diagnosed with antisocial personality disorder at 60%, commenting, "Such high prevalence estimates raise important questions about the validity of the diagnosis and the medicalization of criminality." (p. 234)." (Zander, *id.*, at 53)

Zander, *supra*, at pp. 55-56, adds:

'The body of scholarly research about the diagnosis of antisocial personality disorder is rich with data questioning its conceptual validity. Rogers & Dion (1991) reviewed the significant changes in the diagnostic criteria for antisocial personality disorder through DSM-III-R, pointing out that these redefinitions of the diagnosis had no empirical basis, and that the diagnosis lacked descriptive consistency and diagnostic validity....

'...[A]s Rogers & Dion (1991) demonstrated, the expansiveness of the diagnosis is, in part, a function of the huge number of diagnostic criterion permutations possible with the antisocial personality disorder category and its linked diagnosis of conduct disorder. Rogers, Salekin, Sewell and Cruise (2002) commented on this problem with the diagnosis of antisocial personality disorder, noting, "DSM-IV continues to offer a bewildering array of diagnostic possibilities with 3.2 million variations." (p. 237).

'...The failure of the diagnosis of antisocial personality disorder to definitively distinguish between unlawful behaviors that are contextually adaptive from those that are not

has been questioned by Cunningham and Reidy (1998): "...[I]f a behavior pattern represents a widespread social phenomenon, i.e., criminality, is it appropriate to diagnose the individual expression of these traits as a personality disorder?"

Last, at p. 62, Zander points up the unreliability of the diagnostic criteria for antisocial personality disorder from one subject and rater to the next:

'In Levenson's (2004b) real world analysis of interrater reliability of the SVP evaluations of 295 Florida sex offenders, she found that the reliability quotient for the diagnosis of antisocial personality disorder was 0.521 - well into the "poor" category of interrater reliability.... The interrater reliability for the diagnosis of personality-disorder-NOS was even worse, with a kappa of 0.23. It is not known how many of the personality-disorder-NOS diagnoses in this study were made because the diagnostician felt that the examinee's history fell short of satisfying the diagnostic criteria for antisocial personality disorder."

What, you may be asking, does this bit of seeming psychological trivia have to do with me? The answer may become a little clearer when you read the article following this one, concerning overreactions by members of the public to the speculated risk allegedly posed by sex offenders in the community. It is obvious that the reactions of most approach hysteria, a completely unwarranted state of highly emotional response.

To some extent, this is simply a product of the massive, incessant propaganda disseminated about sex offenders and those with deviant orientations/sexual interests even if not (yet) convicted of any sex offense.

To the extent that such over-the-top reactions cannot be explained solely on the basis of such appeals to one's conscious layer, it appears necessary to investigate whether subconscious appeals have also been made through mass media and other mass or ubiquitous means of communication, involving subliminal communication techniques.

I have discussed this possibility in previous articles. Lest you think this merely a baseless, crackpot suspicion, you should check out the fact that Congress has recently been so concerned about such techniques being used to great personal and social harms that a law was passed that bans use of such techniques in broadcast television.

However, the coverage of this law is narrow and rife with exceptions. In short, it is likely that at least some placement of subliminal messaging is currently ongoing in any number of communication venues aimed at large numbers of the public. The only question is who is engaging in such subconscious messaging and what their intents are for doing so?

We already know that MSQP subjects its treatment participants to such subliminal messaging. The article excerpts above concerning implantation of 'false memories' add the realization that individuals who are unusually susceptible to hypnotism have been targeted for implantation of such memories - not just rarely, but on a well-orchestrated, wide-scale basis.

This telegraphs that those behind that movement find it very important to bring most in society to a belief that sexual abuse of children is insidiously ubiquitous at this time as an ongoing epidemic. Their reasons for attempting to convince everyone of this are still not wholly clear.

However, those willing to go that far in that campaign would seem, *a fortiori*, also to be very likely to be willing to stoop to direct implantation in massive numbers of minds in the public at large of that same proposition and to an abhorrence of sexual abuse through subliminal communication as well (which acts as a form of hypnotic suggestion appearing to the subject merely as his/her own spontaneous thought[s]).

Thus, it is only a very short extra step to believe that some have decided that, given their personal obsessions with sex offending as an abomination, that efficient means should be used to spread that emotional reaction like a wildfire social 'epidemic.' This excerpt may help make that possibility easier to understand and to believe that it may well be ongoing.

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### Proof That Hypnotism Can be Used to Make Moral Judgments More Severe



Excerpts from: *Thalia Wheatley & Jonathan Haidt*: "Hypnotic Disgust Makes Moral Judgments More Severe," *Psychological Science*, Vol. 16, No. 10, pp. 780- 784 (2005)

Abstract, p. 780: "Highly hypnotizable participants were given a posthypnotic sugges-

(Continued on page 19)

tion to feel a flash of disgust whenever they read an arbitrary word. They were then asked to rate moral transgressions described in vignettes that either did or did not include the disgust-inducing word. Two studies show that moral judgments can be made more severe by the presence of a flash of disgust. These findings suggest that moral judgments may be grounded in affectively laden moral intuitions.

Text excerpts:

p. 780: "It is difficult to manipulate moral intuitions directly without altering any fact about the action being judged, but hypnosis offers this level of control. Despite a controversial history, hypnosis has been used effectively to induce moods. (Bower, Gilligan, & Monteiro, 1981; MacCallum, McConkey, Bryant, & Barnier, 2000), inhibit emotional responses (Bryant & Kourch, 2001), and modulate the neural correlates of cognitive processes (e.g., color perception - Kasslyn, Thompson, Costantini-Ferranda, Alpert, & Spiegel, 2000; Stroop interference - Raz, Shapiro, Fan, & Posner, 2002; and the experience of pain - Rainville, Duncan, Price, Carrier, and Bushnell, 1997). We took advantage of the recently validated power of hypnosis to implant posthypnotic suggestions to feel disgust in response to one of two arbitrary words. We then embedded these words into moral-judgment vignettes. We predicted that the brief flash of disgust induced by the posthypnotic suggestion would be interpreted by participants as a kind of information, specifically, as an intuition that the action in question was morally wrong.



**EXPERIMENT 1**

pp. 780-81: "Method

"Sixty-four highly hypnotizable participants (19 male) took part in small group-hypnosis sessions' that included a posthypnotic suggestion to experience 'a brief pang of disgust ...a sickening feeling in your stomach' when reading a particular word, but to have no memory for this instruction until cued to remember. Half of the groups were instructed to feel disgust when reading the word *often*, half were instructed to feel disgust when reading the word *take*. After participants were brought out of the hypnotic state, they were given a packet of vi-

gnettes, ostensibly as part of an unrelated study.

Each vignette described a moral transgression and was followed by two rating scales, one for rating 'how morally wrong' and the second for rating 'how disgusting' the behavior was. Ratings were indicated by making a slash mark along a 14-cm. line anchored by the endpoints *not at all morally wrong* and *extremely morally wrong* or *not at all disgusting* and *extremely disgusting*. Slash marks were later converted to a scale from 0 to 100. After making their ratings, participants were asked to briefly explain their morality ratings.

Six experimental vignettes were designed to test the hypothesis that disgust contributes to moral judgment. These vignettes were about second cousins who had a sexual relationship, a man who ate his already-dead dog, a congressman who took bribes, an ambulance-chasing lawyer, a shoplifter, and a student who stole library books. Each vignette was written in two versions that differed by a few words but were semantically identical; one version included the word *take*, and the other the word *often*. For example the bribery vignette read as follows:

Congressman Arnold Paxton frequently gives speeches condemning corruption and arguing for campaign finance reform. But he is just trying to cover up the fact that he himself [will take bribes from/is often bribed by] the tobacco lobby, and other special interests, to promote their legislation.

Half of the participants read three experimental vignettes in the *take* version, followed by three buffer vignettes that were about non-disgust-related infractions (e.g., speeding) and included neither hypnotic word, followed by three experimental vignettes in the *often* version. The remaining participants read three *often* vignettes, followed by three buffer vignettes, followed by three *take* vignettes. The ordering of vignettes was randomized across participants and condition (*take* versus *often*).

After all participants had completed their ratings, the experimenter announced that they would be offered cookies because the session was conducted over the dinner hour. Two research assistants, blind to the hypotheses and to the hypnotic word used, entered carrying bags of cookies and offered them to each participant while saying, 'Would you like to take a cookie?' and 'take as many as you want.' We predicted that disgust would inhibit appetite for participants in the *take* condition.

Finally, participants were given 4 min. to recall everything they could from the hypnosis session and to write this information

down. They were then given the cue to remember and 2 min. to write down anything they had not remembered previously. Participants were thoroughly debriefed and briefly rehypnotized to eliminate the post-hypnotic suggestion.

Results

"All 64 participants passed at least two of the three test of hypnotic depth, indicating that they were in a hypnotic state during the posthypnotic suggestion. Forty-five participants (11 male) were amnesic for the instructions until cued to remember at the end of the experiment. We limited our analyses to these participants, as their lack of conscious memory for the true cause of their disgust affords the most stringent test of whether disgust informs moral judgment. The cookie task provided a rough indication of the suggestion's effectiveness: Participants in the *take* condition took significantly fewer cookies ( $M = 0.53$ ) than participants in the *often* condition ( $M = 1.16$ ),  $t(38) = 2.86$ ,  $p < .01$ ,  $r = .42$  (Rosenthal, 1991)."

The main results are presented in Table 1. For each participant, we calculated the average of the disgust ratings for the three stories that included the hypnotic disgust word and the average of the disgust ratings for the three stories with no hypnotic disgust word. As predicted, participants rated the vignettes as more disgusting when the hypnotic disgust word was present ( $M = 68.0$ ) than when the word was absent ( $M = 43.1$ ),  $t(44) = 5.78$ ,  $p < .001$ ,  $r = .66$ . More important, participants rated vignettes as being more morally wrong when the hypnotic disgust word was present ( $M = 73.9$ ) than when the word was absent ( $M = 64.7$ ),  $t(44) = 2.41$ ,  $p < .05$ ,  $r = .34$ .

Discussion

"Participants found moral transgressions to be more disgusting when their hypnotic disgust word was embedded within the vignettes than when this word was absent. Moreover, the disgust word caused participants to rate transgressions as more morally wrong. Apparently, participants used their feelings of disgust (attached only to a word, not to the act in question) as information about the wrongness of the act. This finding indicates that gut feelings can indeed influence moral judgments (Damasio, 1994; Haidt, 2001).

**EXPERIMENT 2**

pp. 781-82: "Experiment 1 left a few questions unanswered. First, although the suggestion to 'feel a sickening feeling' made moral judgments more severe, it is possible that a negative affective state would make any rating more negative. To address this possibility, we asked participants in Experiment 2 to make a third rating for each vignette; these ratings related to the stories but not the transgressions (e.g., after the

shoplifting story: 'How much do you approve/disapprove of indoor shopping malls?') If the results in Experiment 1 were due to the hypnotic word creating a generally negative or unpleasant state, such a state would be expected to bias these ratings as well. Additional improvements included a more sensitive manipulation check and the inclusion of a new story to test the limiting case in which disgust is induced in the absence of any possible moral violation. We predicted that in this case, participants would override their gut feelings and would not allow their moral judgments to be affected.

Method

Ninety-four highly hypnotizable participants (37 males) took part in hypnosis sessions conducted identically to those in Experiment 1. The vignettes and rating scales were identical to those in Experiment 1 with the following changes. First, the story about a man eating his dead dog was replaced by a story less likely to yield a disgust ceiling effect: a story about a woman who littered. Second, the 'Student Council' story was added to provide a story with no violation of any kind: 'Dan is a student council representative at his school. This semester he is in charge of scheduling discussions about academic issues. He [tries to take/often picks] topics that appeal to both professors and students in order to stimulate discussion.' Third, after rating each transgression for moral wrongness and disgust, participants rated how much they approved or disapproved of something related to the story, but not the transgression itself.

Following the vignettes, participants filled out a manipulation check: a one-page questionnaire asking them to rate (on a scale from 1 to 7) how much they would like to do 12 activities. Four of the items contained the word *take* (e.g., 'take a neighbor's child to see Harry Potter'), 4 contained the word *often* (e.g., 'spend an evening in a coffee shop that *often* has live music'), and 4 contained neither *take* nor *often*.

Results

"The manipulation check showed that activities were less liked ( $M = 4.7$ ) when they contained the participants' hypnotic disgust word than when they contained the other word ( $M = 5.4$ ),  $t(62) = 4.02$ ,  $p < .001$ ,  $r = .45$ . This finding suggests that the manipulation endured to the end of the experiment and that the disgust reactions were brief and confined to the items containing the disgust word (i.e., the disgust did not bleed over to affect judgments of subsequent items). For each participant, we calculated a hypnotic bias score by subtracting the average liking for activities that included the other word. For any given participant, we could not be

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sure that a positive score indicated that the posthypnotic suggestion was effective, but on average we expected larger main effects from participants with larger hypnotic bias scores....

pp. 782-83: "In the absence of the hypnotic word, the Student Council story was rated as not at all disgusting ( $M = 2.3$ ) and not at all morally wrong ( $M = 2.7$ ). The presence of the hypnotic word, however, elevated ratings of disgust ( $M = 20.9$ ),  $t(61) = 3.73$ ,  $p = .001$ ,  $r = .43$ , and moral wrongness ( $M = 14.0$ ),  $t(61) = 3.32$ ,  $p < .005$ ,  $r = .39$ . The effects of hypnotic disgust were limited to Dan's action and did not increase disapproval of university tuition rates (the non-transgression-related rating),  $t(61) = 1.53$ , n.s.,  $r = .19$ ."

p. 783: GENERAL DISCUSSION

"In two studies, participants listened to their gut feelings of disgust when judging moral transgressions. It is important to note that we did not hypnotize participants to feel disgust toward the actions in question. Rather, we hypnotized participants to feel a flash of disgust whenever they saw an arbitrary word, and this flash, in the context of a surrounding story, made moral judgments of the story more severe. Study 2 found that the effect was specific to the act being judged; it did not affect unrelated judgments made immediately afterward. And contrary to predicted limitations of this effect, some participants continued to follow their gut feelings and condemned Dan in the Student Council story, even though his only crime was trying to foster good discussions.

Participants sometimes experienced puzzlement as they watched themselves make severe judgments. Asked for comments at the end of the study, one participant wrote: 'When 'often' appeared I felt confused in my head, yet there was turmoil in my stomach. It was as if something was telling me that there was a problem with the story yet I didn't know why.' One nonamnesic participant commented, 'I knew about 'the word' but it still disgusted me anyway and affected my ratings. I would wonder why and then make up a reason to be disgusted.'

The post hoc nature of moral reasoning was most dramatically illustrated by the Student Council story. Rather than overrule their feelings about Dan, some participants launched an even more desperate search for external justification. One participant wrote: 'It just seems like he's up to something.' Another confided that the story evoked bad high school memories, making him view Dan as a 'popularity-seeking snob.' Even when such tenuous justifications could not be found, several participants clung to their repugnance, choosing to abandon explanation altogether, writing: 'It just seems so

weird and disgusting' and 'I don't know [why it's wrong], it just is.'

#### CONCLUSION

"We have provided the first demonstration that experimentally augmenting feelings of disgust through hypnosis can increase the severity of moral judgments, as predicted by *Damasio* (1994) and *Haidt* (2001). We have not yet demonstrated a unique relationship between disgust and morality, because we did not show that other negative feelings (e.g., sadness, anger, or headache) do not have the same effects. Nonetheless, our findings illustrate the philosopher *Hume's* (1739/1969) famous statement that 'reason is ...the slave of the passions, and can pretend to no other office than to serve and obey them.' (p. 462).

#### Footnotes

To determine hypnotic susceptibility, we used two abbreviated versions of the Harvard Group Scale of Hypnotic Susceptibility, Form A (*Shar & Orne*, 1962). Participants were selected via screening sessions run in several large psychology classes. The screening used the eye-closure induction, two tests (finger lock and hands moving together), and the posthypnotic suggestion to touch one's left ankle. For the experiment, we used the same induction and three different tests (hand lowering, arm immobilization, and arm rigidity), and we modified the posthypnotic suggestion for disgust.

Participants were asked at the end of the experiment to write down the number of cookies they took; 5 participants did not.

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## Public Overreaction to Perceived Sex Offender Danger

Quotes & Notes from: *David Pimentel*, "Fearing the Bogeyman: How the Legal System's Overreaction to Perceived Danger Threatens Families and Children," *42 Pepperdine Law Review* 235 (February 2015)



pp.248-49: "B. The Child Protection Priority and the New Trend Toward Intensive Parenting:

"A primary theme of Intensive Parenting is an obsession with safety, especially with the risk of stranger abduction. Parents operating under these new norms no longer allow their children to lay in parks or the neighborhood unsupervised.<sup>74</sup> What might have been a typical pickup baseball (or stickball) game in the neighborhood sandlot has now given way to organized soccer leagues. Children are shuttled to and from practices and games in minivans, are under constant adult (and usually parental) direction and control, and are provided with adult-arranged treats after each game.<sup>75</sup> In the name of safety, children who in previous generations would have walked or bicycled to school are now routinely driven there, primarily so they can be under constant adult observation on the way.<sup>76</sup>

pp.249-51: "1. Assumptions Underlying Overprotective Parenting

"The cultural shift that brings this highly protective approach to parenting is documented—and lamented—in Bernstein and Triger's important article Over-Parenting.<sup>77</sup> The authors are unsparing, noting that the obsession with protecting children is often unhealthy, even for the child whose safety is

being safeguarded.<sup>78</sup>

"The new emphasis on child safety apparently comes at least in part from the perception that the world is more dangerous for children than it used to be:

'Some argue that ...the world has become—or appears to be—a more dangerous place. Consequently, parents are 'simply' responding to that new danger—or to a perception of danger. Many point to a new 'culture of fear' and especially to widely publicized stories of kidnaping, Internet pornography, and sexual predators.'<sup>79</sup>

"Surveys show that people in the United States believe their communities are more dangerous now than in the past,<sup>80</sup> despite overwhelming evidence that children, in the United States at least, are far safer today than they have ever been.<sup>81</sup> Moreover, the things parents fear, and consequently take precautions against, are not the primary threats to their children.<sup>82</sup> Overlooking the risk of car accidents, a far more serious risk to children,<sup>83</sup> parents are motivated by the risk of stranger abduction. They forbid their children to roam freely in neighborhoods, walk to school, or play unsupervised in parks or even in their own front yards for fear that they will be abducted.<sup>84</sup>

At the same time, parents today have far lower expectations of their children's competence to care for themselves, exercise judgment, or bear responsibility.<sup>85</sup> In previous generations, it was typical to expect preteens to milk cows, manage newspaper routes, or babysit infants.<sup>86</sup> Today, however, it is virtually unheard of to leave small children in the care of a preteen or even a young teenager.<sup>87</sup> This development is all the more marked considering that mobile phones have created a virtually instant line of communication between the sitter and the parents, something unheard of in earlier eras, when younger sitters were considered acceptable.<sup>88</sup>

"Parents take extraordinary precautions in any case, driven in large part by fears: many of them based not on reality, but on imagined and exaggerated threats to their children.<sup>89</sup> There are a variety of reasons that parents may overestimate the risks to their children, and psychologists have explored these various mental biases.<sup>90</sup>"

pp. 251-53: "Most compelling perhaps is the impact of the media, which has found that playing to viewers' fears can greatly increase viewership:

'The need for 'good numbers'—that is, high viewership—influences every channel, newspaper, and advertiser to aggressively compete for advertising and viewership within the ever-fragmented media marketplace. This can result in a willingness to show more 'low-brow' images, and to

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'hawk' violence with redoubled vigor ...In television and print news, far from merely reporting objectively on crime, media companies are now major stakeholders that profit from our carefully cultivated fear of crime.<sup>91</sup>

"The principle applies not just to the crime threat, of course, but to any threat to one's children. The teaser 'could your child be next?' virtually guarantees that a parent will tune in, read on, or click through.<sup>92</sup> As a result, the media reports are crafted to overstate the risks to children and, at the same time, shape both public attitudes and parental response.<sup>93</sup>

"One reason for this response is explained by psychologists as the 'availability heuristic': the idea that people assess the likelihood of particular events occurring according to how easily they can recall such events occurring in the past.<sup>94</sup> Horrific stories about harm to children, including stranger abductions and sexual abuse, however rare those instances may be, are burned into people's memories - in part because the stories themselves are so horrible and in part because of the media saturation such stories generate - are therefore easily recalled.<sup>95</sup> Concluding that such events are common, loving parents naturally worry a lot about them<sup>96</sup> and take extraordinary precautions to protect their children from them. The reality, that the prevalence and probability of such harms are tiny, even negligible, and certainly unworthy of the typical investment in worry and precaution,<sup>97</sup> remain widely unacknowledged and is actively doubted even when pointed out.<sup>98</sup>"



**Footnotes:**

74 The term "unsupervised" is itself problematic because some would apply the term to any child who is not under continuous observation and control. "Supervisors" in an employment context, however, assert reasonable checks and monitoring without watching their charges at all times. Similarly, it should be possible to responsibly "supervise" one's children - particularly as they get older - by sending them outside to play in their own yard. The fact that the parent is not physically outside, in the presence of the children and watching them play, does not mean they are "unsupervised"; the

parent knows where they are and can check on them at regular intervals. The children also know that a parent is nearby and can be alerted of any problem.

75 While adults will arrange for treats after the game, it is unlikely that the treats will be homemade. Safety concerns - presumably the fear that homemade treats may be tainted in some way - again come into play, leading parents to opt for pre-packaged snacks. See, e.g., Jessica Fisher, "What to Take for Team Snack Day," *Life as Mom* (April 23, 2012), <http://lifeasmom.com/2012/04/what-to-take-for-team-snack-day.html>.

76 Jane E. Brody, "Turning the Ride to School Into a Walk," *N.Y. Times*, Sept. 11, 2007, at F 7, available at [www.nytimes.com/2007/09/11/health/11brod.html](http://www.nytimes.com/2007/09/11/health/11brod.html) ("Forty years ago, half of all students walked or bicycled to school. Today, fewer than 15% travel on their own steam. One-quarter take buses, and about 60% are transported in private automobiles, usually driven by a parent or, sometimes, a teenager.").

77 Bernstein & Triger, *supra* note 7, at 1233.

Safety and monitoring are paramount. Parents can use baby monitors that alert them if the baby cries or, more importantly, if the baby ceases to breathe. Some parents who hire a nanny equip their home with "Nanny Cams." These cameras secretly monitor the nanny's behavior and alert the parents in case of any misconduct. In addition, unlike previous generations, parents assure that their children play in rubber-cushioned playgrounds, use sanitizing gel, sit in car seats, and wear helmets and knee pads while riding their bicycles.

Id. Different cultures naturally take different approaches to child safety and the levels which parents are responsible for their children. See Kate Darnton, *Vigilance or Obsession?*, *The Boston Globe*, Sept. 1, 2011, [www.boston.com/bostonglobe/editorial\\_opinion/oped/articles/2011/09/01/vigilance\\_or\\_obsession\\_child\\_safety\\_across\\_the\\_cultural\\_divide/](http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2011/09/01/vigilance_or_obsession_child_safety_across_the_cultural_divide/).

Life can be stressful as a parent, no matter where you live. Compared to a mother in Somalia, desperate enough for food and water to keep her child alive, my Indian-born anxieties about pollution and power outages seem small, and my Americans ones about playground safety and BPA-free bottles positively superficial.

78 Bernstein & Triger, *supra* note 7, at 1226.

79 Margaret K. Nelson, *Parenting Out of Control: Anxious Parents in Uncertain Times* 17 (2010).

80 Warwick Cairns, *How to Live Dangerously: The Hazards of Helmets, the Benefits of*

*Bacteria, and the Risks of Living Too Safe* 6 (2008).

81 Daniel Gardner, *The Science of Fear: Why We Fear the Things We Shouldn't - and Put Ourselves in Greater Danger* 290-304 (2008) (describing how the world is safer now than it has ever been before); Bryan Caplan, *Selfish Reasons to Have More Kids: Why Being a Great Parent is Less Work and More Fun Than You Think* 96 (2011) ("Conditions today aren't merely better [than they were in the 1950s]. They improved so much that government statisticians changed their denominator [for youth mortality] from deaths per 1,000 to deaths per 100,000."); Caplan (showing tables demonstrating that in every age group - infants to age 24 - children are safer now than they were in the 1950s).

82 Christie Barnes contrasts the top ten concerns of parents (kidnapping, snipers, terrorism, and stranger-danger head the list) with "the real causes of death and injury for most children," which place car accidents as number one on the list and disease as second. Christie Barnes, *The Paranoid Parents Guide: Worry Less, Parent Better, and Raise a Resilient Child* 38-39 (2010).

83 *Id.*

84 Barnes, *supra* note 82, at 398-399.

85 Skenazy, *supra* note 7, at 68-76. "Stay-at-home moms used to just tell their kids to go out and play. Now, moms and dads tag along with their kids as supervisors, or servants." Caplan, *supra* note 81, at 3.

86 See generally Hara Estroff Marano, "A Nation of Wimps," 37 *Psychology Today*, Nov. 1, 2004, at 64-68, available at [www.psychologytoday.com/articles/200411/nation-wimps](http://www.psychologytoday.com/articles/200411/nation-wimps) (arguing that as the nature of childhood moved away from children working, parents began to assume that kids could not handle difficult situations; parents feel the need to save their child from any difficulty, when in reality the child could cope with the situation if the parent had properly equipped her for it). "Children are a lot more resilient and robust than we give them credit for.... [A] few knocks along the way are unlikely to scar anyone for life; they might even make them stronger." Carl Honore, *Under Pressure: Rescuing Our Children from the Culture of Hyper-Parenting* 248 (2009).

87 And those who dare do it risk the approbrium of the community. See Bridget Kevane, "Guilty as Charged," *Brain, Child Magazine*, [http://web.archive.org/web/20120630132923/http://brainchildmag.com/essays/summer2009\\_kevane.asp](http://web.archive.org/web/20120630132923/http://brainchildmag.com/essays/summer2009_kevane.asp)

88 David Pimentel, "Notable & Quotable," *Wall St. J.*, March 15, 2012, <http://online.wsj.com/article/SB10001424052702304692804577281842896031>.

89 Gardner, *supra* note 81, at 16.

90 Gardner, *supra* note 81, at 16.

91 Rachel Lyon, "Media, Race, Crime, and Punishment: Re-Framing Stereotypes in Crime and Human Rights Issues," 58 *DePaul L. Rev.* 741, 744 (2009)

92 David Pimentel, "Criminal Child Neglect and the 'Free Range Kid': Is Overprotective Parenting the New Standard of Care?," 2012 *Utah L. Rev.* 947 (2012) (discussing fear of unwarranted CPS intervention), at 964.

93 Gardner, *supra* note 81, at 158-59 (explaining that the way people estimate risk is directly related to how images, such as those seen on the news, make them feel). See also generally: Nassim Nicholas Taleb, *The Black Swan: The Impact of the Highly Improbable* (2d ed. 2010).

94 Gardner, *supra* note 81, at 46-48

95 Daniel Schachter, *The Seven Sins of Memory: How the Mind Forgets and Remembers* 178-79 (2001).

96 One recent poll found that 50% of polled parents stated that they worried a lot about someone kidnapping their child. Kim John Payne, *Simplicity Parenting* 179 (22009).

97 Caplan, *supra* note 81, at 93-107.

98 The author, after presenting the data on child abductions at an academic conference in Cleveland, OH in 2012, was directly confronted by an otherwise brilliant scholar who insisted that he would never allow his daughter to walk to school regardless of what the data showed.

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## Predicting Risk of Sexual Recidivism

Quotes & Notes from: *Melissa Hamilton*, "Adventures in Risk: Predicting Violent and Sexual Recidivism in Sentencing Law," 47 *Ariz. St. L. J.* 1 (2015):

(Text, p. 19): "A. Fitness

"A primary hurdle for the introduction of any evidence in a legal proceeding is one of relevance. Also known as fitness, relevance requires that the proffered evidence should assist the trier of fact in understanding a fact at issue in the case.<sup>87</sup> Proponents of evidence-based sentencing advocate the use of actuarial risk tools as instructive for the utilitarian functions of sentencing. They presume that actuarial results are relevant to a factual determination of the individual defendant's future potential to cause harm. Unfortunately, such a premise may be naive, even inimical to the interest of justice. For several reasons, the data and other information that current actuarial tools provide appear to be a poor fit for such purposes.

"First, even promoters of evidence-based sentencing acknowledge that a key question

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## Can You Say: "Train Wreck"?

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is: measuring 'the risk of what?'<sup>88</sup> Major goals of evidence-based sentencing practices include the ability to detect low risk defendants deserving short prison terms or potentially diverting them to community sanctions, while at the same time to sort out high risk defendants where preventive incapacitation might be justifiable. Presumably, the idea of risk for this purpose is not some unitary characteristic focused solely on an abstract likelihood of antisocial behavior sometime in the distant future. Instead, at least five different dimensions of risk are conceivably pertinent. Probability is one of them, but it may not even be as important as the other four. The additional dimensions of risk include imminence of antisocial acts, type of offense (e.g., violent/sexual/other, contact/noncontact, victim/victimless, child/adult victim), severity of harm, and frequency and duration of offending.<sup>89</sup>

"In contrast to this more relevant multidimensional perspective on risk, developers of risk, developers of risk assessment tools generally have addresses only two dimensions. Many instruments count any illegal act, thought the ones addressed more specifically herein at least differentiate violent and/or sexual recidivism from more general offending. Otherwise, the instruments tend to operationalize recidivism as a simple dichotomous measure."

(p. 20): "...[T]he goal of identifying *low risk* offenders cannot, including from a scientific standpoint, be informed by current actuarial risk assessments. These tools have not directly, or even indirectly, been developed or modeled to detect non-recidivists or to predict desistance from reoffending.<sup>93</sup> Instead, developers generally have tested and chosen factors that were positively correlated with future recidivism.<sup>94</sup>

(p. 21): "...[T]he questions scored ...often constitute variables of convenience, items that evaluators will likely be able to score

from available institutional or public files.<sup>96</sup> Thus, many individuals assessed in a purportedly 'low risk' grouping may simply fall there because the tool used lacks those statistically significant factors that are otherwise relevant to them. Notice ...that each of VRAG and Static-99, respectively, includes variables found to statistically correlate with violence recidivism that the other omits."

(p. 23): "B. Validity & Reliability

"A separate fundamental requirement for the admissibility of evidence in the law is that the information be sufficiently trustworthy, which, critically for expert evidence, requires that it be valid and reliable.<sup>10</sup> According to Supreme Court doctrine, for purposes of legal evidence, validity asks 'does the principle support what it purports to show?' while reliability asks 'does application of the principle produce consistent results?'<sup>11</sup>"

(p. 24): "I. Predictive Validity

"...A form of psychometrics, predictive validity represents the ability of the tool to accurately foresee the outcome of interest occurring.<sup>13</sup> Two empirical measures typify predictive validity: calibration and discrimination.<sup>14</sup> Calibration refers to the consistency between predictions and observed outcomes.<sup>15</sup> A well-calibrated tool for recidivism risk is one in which the average predicted recidivism rate is relatively equal to the actual rate of recidivism.<sup>16</sup> For example, a tool is well-calibrated if it predicts that 10% of persons classified in the moderate risk group will recidivate if the actual observed recidivism rate of the moderate risk group is about 10%. Discrimination determines how well a tool can differentiate those who experienced the outcome of interest from those who did not.<sup>17</sup> For violence risk tools, if those who recidivated with a violent offense all were scored at higher risk levels than those who did not, the tool discriminates perfectly. A high degree of discrimination does not require, or even signify, a well-calibrated instrument.<sup>18</sup> Thus, a scale can achieve a high rating for discrimination even when the average predicted risk of violent re-offense is significantly different than the actual percentage of violent recidivists.<sup>19</sup>"

(p. 25): "Several statistical measures of discrimination for actuarial tools are available, yet one of them in particular has come to dominate the relevant literature. The discrimination indicator of popular choice is called the 'area under the curve' ('AUC'), which is a fraction obtained from the receiver operating characteristic ("ROC") curve.<sup>120</sup> ... The AUC is a fraction providing a statistical measurement of the ROC curve.<sup>125</sup> AUC values lie between 0 and 1, with .5 indicating discriminatory ability no better than

chance and 1 indicating perfect discrimination.<sup>126</sup>

(p. 26): "...An effect size is a generic term to represent the statistical magnitude of the phenomenon studied.<sup>132</sup> Yet these categorical descriptions are far more about improvement on chance than a clear barometer of statistical or practical significance.<sup>133</sup> ...In sum, the labeling of the discrimination ability of an actuarial tool as low or high is merely a social construct that is not only contested within the forensic field, it does not itself offer sufficient evidence about the predictive ability of the tool.

"...Even with AUCs in [the] range [of .70-.75], studies are showing a not insignificant occurrence of mistaken rankings. Erroneous ranking ...occurs often, perhaps 25 to 30% of the time."

(p. 28): "...[E]xperts contend that there is a natural limit to predicting human behavior and that actuarial technologies for recidivism risk have likely reached that limit already.<sup>142</sup>

b. Calibration

"...One of the major differences in the tests for calibration and discrimination is that discrimination measures ignore base rates, which is the frequency of a given outcome in the population of interest.<sup>145</sup> If 10% of a sample of sex offenders were arrested for a new sexual offense within the period of observation, 10% would be the base rate of sexual recidivism for that sample. AUC measures ignore base rates."

(p. 29): "Only very recently have a few researchers focused on computing and reporting calibration statistics for the most popular violent and sexual recidivism actuarial tools. This Article adds to this small body of research by calculating a few additional statistics which can be used to evaluate the predictive validity of the two most popular risk tools used today for violent and sexual recidivism."

[Editor's note: See article's end, before endnotes, for Tables 3 and 4.]

(p. 34): "...A meta-analysis of VRAG and Static-99 replication studies using new samples shows that at the deemed 'high risk' cutoffs of 7 and 6, respectively, the average PPVs were 66% and 33%, respectively, meaning four out of ten false positives with VRAG and seven out of ten false positives for Static-99 in the high risk bins.<sup>150</sup> The alternative violent and sexual recidivism tools do not appear to perform any better.<sup>151</sup>"

(pp. 36-7): "[T]he evaluator's initial question should be whether the developmental sample(s) is sufficiently representative of the present group or individual to be examined. It may well not be. For instance, recall that VRAG's normative groups entirely comprised patients discharged from a maximum-security mental health hospital in Canada. If

the developmental samples totaling about six hundred, over two hundred had been adjudicated not guilty by reason of insanity and another one hundred were diagnosed psychotics.<sup>159</sup> ...Static-99 was also reliant upon significant percentage of forensic psychiatric patients in their developmental samples.<sup>161</sup> This means that the normed samples from these popular tools possessed quite unique group characteristics (e.g., significant numbers of mental disorders and mental health institutionalizations) that are quite unlikely to be shared by many other groups or in other settings. Plus, with these tools' developmental samples being entirely Canadian and United Kingdom offenders, they are unlikely to be representative of any group of routine sentencing defendants in the United States. Studies explicitly addressing the issue of differences between countries regularly find that the discrimination ability of actuarial recidivism risk tools for violence and sexual reoffending tends to be lower with samples in the United States as compared to samples in Canada<sup>163</sup> and the United Kingdom.<sup>164</sup>

"The lack of representativeness renders the practice of reusing the proportionate estimates of recidivism from the developmental samples (the experience tables) a particularly egregious practice as a result. If the new group is not similar to the developmental sample, the developmental sample is not a representative reference for the individual to be assessed, or the base rates significantly differ, adopting such estimates is specious.<sup>165</sup>

"Some studies purport to have cross-validated and upheld the use of the popular recidivism tools on new samples by accentuating that the study found a large effect size for the AUC.<sup>166</sup> Yet, recall that this statistic tells only part of the story about predictive ability. [A] critical aspect to judging the desirability of relying upon any risk tool's experience table is to either validate that the observed recidivism rates in the new sample appropriately replicates or, in the very likely case that it does not, to either decline to use the tool or perhaps to replace it with one appropriately normed to the new group. Unfortunately, neither option often occurs in practice, whether in clinical settings or in legal contexts."

(p. 41): "The Static-99 developers have issued a revision, Static-99R,<sup>177</sup> with a new normed group which they call routine offenders, with a base rate of 6%.<sup>178</sup> ...[T]he Static-99R's calibration index remains weak. At its best (at risk bin 9), the revised instrument earns a PPV of 33%, meaning that two-thirds would be false positive predictions.<sup>179</sup>

"...The authors concluded that the predicted base rate fluctuations were likely due to the various impacts of disparities in

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Table 3: Measures of Discrimination and Calibration (p. 30)

Measure	Definition
Sensitivity	The proportion of recidivists correctly predicted to recidivate.
Specificity	The proportion of non-recidivists correctly predicted not to recidivate.
True Positive Rate	The proportion of recidivists correctly predicted to recidivate. Also known as <i>sensitivity</i> .
False Positive Rate	The proportion of non-recidivists who had been predicted to recidivate. It is the reciprocal of specificity (1 - specificity). Also known as false alarms and false positive predictions.
Positive Predictive Value	The proportion of people predicted to recidivate who were observed to recidivate.
Negative Predictive Value	The proportion of people predicted not to recidivate who are not observed to have recidivated.
Number Needed to Detain	The number of individuals judged to be at high risk who need to be detained in order to prevent a single incident of violence or sexual offense in the community.
Number Safely Discharged	The number of individuals judged to be at low risk who could be discharged prior to a single incident of violence or sexual offense in the community.

Table 4: 2 x 2 Contingency Table (p. 31)

		Outcome		
		Recidivist	Non-Recidivist	
Tool Results	Predicted to Recidivate	True Positives	False Positives	<i>Positive Predictive Value</i>
	Not Predicted to Recidivate	False Negatives	True Negatives	<i>Negative Predictive Value</i>
		<i>Sensitivity</i>	<i>Specificity</i>	

(Continued from page 22)

'cohort effects (i.e., year of release), country, recidivism criteria, quality of recidivism information, offender type, or treatment participation' and the 'density of unmeasured risk factors external to Static-99R.<sup>183</sup> The same meta-analysis found great variability from an alternative perspective. The underlying studies associated a predicted five-year sexual recidivism rate of 15% with Static-99R scores ranging from two to eight.<sup>184</sup> (p. 42): "...The most recent revision to Minnesota's sexual recidivism instrument (MnSOST 3.1) performs even worse: PPVs of 20% and 16% in its top 10% and 15% ranking categories, respectively, leaving 80% false positive predictions at the highest levels.<sup>186</sup> ...[T]he great degree of false positives, ...

eight out of ten for Minnesota, reflect the tendency toward exceptional error rates.<sup>187</sup> ...

...So far, the analysis has focused on the fit, validity, and reliability of actuarial risk instruments and drew on empirical and logical issues that should provide pause for their use in legal proceedings." (pp. 42-3); C. Group-Based Statistics: The G2i Problem

"...The G2i problem represents a basic disconnect between the scientific method, which operates by studying at the group level, and the law, which focuses on the individual case.<sup>189</sup> Translating from the population, being the group level - the "G" in G2i - to the individual case - the "I" | G2i - is a precarious adventure fraught with errors; but many judges, practitioners, even forensic

assessors, fail to notice.<sup>190</sup>

"...Actuarial tools are not case studies focused on individuals, nor are they intended to incorporate idiosyncratic traits or qualities of any single person.<sup>191</sup> ...[R]arely occurring variables naturally cannot achieve the requisite significance.<sup>192</sup> In the actuarial field for recidivism, the nature of study has been to build models for group-based predictions for reoffending, without attention to being able to predict which specific individuals in the group will relapse.<sup>193</sup>

"...Scientific studies may properly show that young, undereducated males are significantly more likely to commit violent acts, but in the law the prosecution must still prove beyond a reasonable doubt that this particular young, undereducated male committed the violent crime for which he is prosecuted. Similarly, while scientific studies may find positive correlations between sexual recidivism and variables regarding race/ethnicity, neighborhood, and sexual preference, presumably in sentencing we remain interested in the prosecution's burden to show this individual defendant poses a high risk or re-offense top justify a longer prison sentence.<sup>195</sup> Otherwise, the law is merely profiling in its criminal procedure decisions."

(p. 45): "A cognitive error known as an ecological fallacy occurs when one attributes a group characteristic to any individual in the group.<sup>203</sup> Some properties of a group only reside at the aggregate level. For instance, researchers may have observed in the sample studied the occurrence of every type of sexual offense imaginable (e.g., adult rape, statutory rape, child molestation, bestiality, voyeurism, exhibitionism, child pornography viewing). But no one individual in the group is likely to have committed several of them, much less all of them. This, the occurrence of a wide variety of sexual recidivism offenses is merely an aggregate statistic; it would be fallacious to describe the study results as evidence that individuals tend not to specialize in their sexual reoffending.

"Surely, the group level statistic that actuarial recidivism tools are perhaps most prized for is the proportional statistic tied to the relevant score or risk bin (e.g., 52% of those who scored 6 and higher sexually reoffended). Applying that group proportion to any individual is likewise an ecological fallacy and deceptive. Thus, the communication of risk in absolutist terms ('this defendant is 52% likely to sexually reoffend') is perhaps the worst offender in terms of correctly interpreting the aggregate statistics."

(p. 46): "To be certain, actuarial tools cannot now, or ever, technically operate as a sort of test of an individual's propensity. ... Altogether, then, actuarial models cannot

offer what many unfortunately presume they do, which is the ability to predict which individuals will reoffend." (p. 47): "...[T]he assumption seems to be that offenders at each score or in each bin share common characteristics or histories. To the contrary, they may only share equivalent point totals. Because of the variety of factors available in the tools, study subjects may have received the same ending point totals based on completely different factors. To offer an example, two different people may share the same score where one received points on factors relating to criminal history, mental disorder, and trouble with alcohol, and the other for the recidivism predictors involving choice of victim, never being married, and young age. Thus individuals assessed with the same resulting scores, or combined in the same risk bins, may share none or just a few of the same characteristics. The pair may be more dissimilar than similar." (p. 56): "...The notion that unreliable science (even junk science) should somehow be protected because it might constitute simply one source of information in a multi-factor decision should offend any strong adherent to the principles of law and the desire to admit only truthful evidence. A plethora of other independent authorities would claim to have the knowledge and ability to predict future behavior and would honestly assert a conviction that the foundations of those predictions lie in science and based on reliable methods. Envision astrologers, numerologists, and palmists who purportedly predict the future through objective and standardized means. Consider those trained in psychology and psychiatry who have in our history promoted prognostications of antisocial behavior founded on such 'scientific' theories as phrenology, physiognomy, and somatotypes. The 'only one piece of evidence' rationalization would admit as expert evidence each of them."

Endnotes:

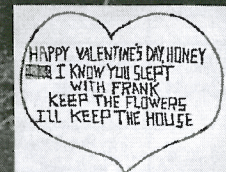
- 35 Melissa Hamilton, "Public Safety, Individual Liberty, and Suspect Science: Future Dangerousness Assessments and Sex Offender Laws," 83 *Temp. L. Rev.* 697, 744-49 (2011); Jennifer Lanterman et al., "Sex Offender Risk Assessment, Sources of Variation, and the Implications of Misuse," 41 *Crim. Just. Behav.* 822, 834 (2014).
- 37 Jeffrey C. Singer et al., "A Convergent Approach to Sex Offender Risk Assessment," in *The Wiley-Blackwell Handbook of Legal and Ethical Aspects of Sex Offender Treatment and Management* 341, 341 (Karen Harrison & Bernadette Rainey, eds., 2013).

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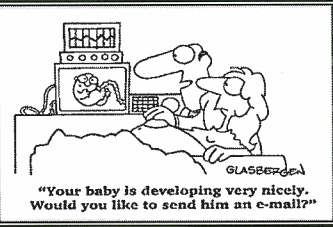
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- 38 Actuarial models presume multiple factors produce a better predictive tool than a few. *Joanna Amirault & Patrick Lussier*, "Population Heterogeneity, State Dependence and Sexual Offender Recidivism: The Aging Process and the Lost Predictive Impact of Prior Criminal Charges over Time," 39 *J. Crim. Just.* 344, 344 (2011).
- 87 *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 591 (1993).
- 88 *Jordan M. Hyatt et al.*, "Reform in Motion: The Promise and Perils of Incorporating Risk Assessments and Cost-Benefit Analysis into Pennsylvania Sentencing," 49 *Duq. L. Rev.* 707 (2011), at 743.
- 89 *Michael H. Fogel*, "Violence Risk Assessment Evolution: Practices and Procedures," in *Handbook of Violence Risk Assessment and Treatment: New Approaches for Forensic Mental Health Professionals* 41 (Joel T. Andrade, ed. 2009), at 43.
- 93 *Learn A. Craig & Anthony Beech*, "Best Practice in Conducting Actuarial Risk Assessments with Adult Sex Offenders," 15 *J. Sexual Aggression* 193, 206 (2009).
- 94 *Id.*
- 96 *Vernon L. Quinsey et al.*, *Violent Offenders: Appraising and Managing Risk* 143 (1998).
- 110 *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592 (1993).
- 111 *Id.* at 590 n. 9.
- 113 *Jay P. Singh*, "Predictive Validity Performance Indicators in Violence Risk Assessment: A Methodological Primer," 31 *Behav. Sci. & L.* 8, 8 (2013).
- 114 *Id.*
- 115 *N. Tollenaar & P.G.M. van der Heijden*, "Which Method Predicts Recidivism Best?: A Comparison of Statistical, Machine Learning and Data Mining Predictive Models," 176 *Royal Stat. Soc.* 565, 569 (2012).
- 116 *Nancy R. Cook*, "Use and Misuse of the Receiver Operating Characteristic Curve in Risk Prediction," 115 *Circulation* 928, 928 (2007).
- 117 *Tollenaar & van der Heijden, supra* note 115, at 569.
- 118 *Cook, supra* note 116, at 928.
- 119 *Id.*
- 120 *Paul R. Falzer*, "Valuing Structured Professional Judgment: Predictive Validity, Decision-Making, and the Clinical-Actuarial Conflict," 31 *Behav. Sci. & L.* 40, 43 (2013). Since its introduction in 1994, ROC testing is the dominant predictive validity diagnostic in violence risk assessment. *Id.* at 44.
- 125 *Martin Rettenberger et al.*, "Prospective Actuarial Risk Assessment: A Comparison of Five Risk Assessment Instruments in Different Sexual Offender Subtypes," 54 *Int'l J. Offender Therapy & Comp. Criminology* 169, 176 (2010).
- 126 *Id.*
- 132 *Ken Kelley & Kristopher J. Preacher*, "On Effect Size," 17 *Psychol. Methods* 137, 140 (2012).
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