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- ✓ Polygraph Problems, Inaccuracy — & Tons More!

**What's Different in This Issue?**

There are a few subtle differences in this issue. These are minor experiments, to see how these things are received.

First, you will note that a series of excerpts all relating to the same topic have been brought together under an overarching article title reflecting that topic (pedophilia).

Second, we are trying out a new feature focusing on one of us each issue (a volunteer) to personalize the psychological and legal abuse that puts us here and keeps us here.

Finally, you will also find a number of 'mini-articles.' Some of these relate back to topics covered in previous editions of *TLP*; others are new points, but require or merit attention separate from larger comprehensive topics.

Let us know how you like these changes!

Still Just Ice....

## What's LEFT of Karsjens?

### First: My View, Which Had to Wait for This Issue

After the last issue of TLP, I spoke with Dave Goodwin at Gustafson Gluek. Based on that conversation, I drew up a memo to the file. Unfortunately except for isolated personal conversations, there was no way to disseminate the news that emerged from that conversation. Hence, now at last, let's start with that forecast of mine:

March 13, 2018  
 To: Newsletter inserts folder  
 Re: *Karsjens v. Piper & Gladden v. Swanson*: TC w/Dave Goodwin 3/13/18

This memorializes the aforementioned very brief TC between David Goodwin & myself.

First, Goodwin stated that his firm has recently responded to the letter brief by Defendants' counsel. That response, he reported, basically asks the judge to determine whether class action proceeding is apt on Phase 2 claims in *Karsjens*,

given that the facts comprising those claims vary so much from MSOP inmate to MSOP inmate. If Frank rules it is not apt to continue on these claims as a class action, then Plaintiffs ask for voluntary dismissal of those counts in their entirety. (Contrary to what I had previously conjectured, this is not limited only to state-law claims in those counts.) Goodwin feels that such dismissal is likely. In this scenario, individuals would then have to bring their own individual actions on those Phase 2 counts. Goodwin did not mention the residual Phase 1 counts that allege that the Minnesota sex offender commitment regime is deliberately, predominantly punitive. Those claims remain alive in *Karsjens*. I assume that Gustafson Gluek would continue to press them forward, whether in *Karsjens* alone, or via seeking joinder with the *Gladden* case.

Goodwin also spoke of getting the *Gladden* case going at long last. We discussed how best to get additional named plaintiffs from the ranks of MN DOC prisoners who might be vulnerable to commitment. Goodwin mentioned having continued to occasionally receive letters from those in "jail" (apparently including prisons) inquiring about the case, apparently interested in joining in that representative plaintiff status. I asked Goodwin to send me their names, OIDs, and the prison/jail they are in, with its address. When I get them, I will send them the recently updated form memo explaining the case, and who we are looking for as named plaintiffs (beyond myself), and asking them to again contact Gustafson Gluek if they are convinced they probably would be a good fit in that role....

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### Second: The Official Confirmation: No 2nd Phase

Far later in March, Gustafson Gluek posted on our computer network a letter they sent to Judge Frank on the matter. Here's the pertinent excerpt from that letter:

As this case has progressed through discovery, trial, and appeals, it has become apparent that

class treatment is not appropriate for the Phase Two claims. For these claims, which are based on the application of various MSOP policies to committed individuals, Defendants' actions or failures to act "[do not] apply generally to the class." Fed. R. Civ. P. 23(b)(2). Given the differing circum-

stances of each Plaintiff and Class member with regards to the impact of various MSOP policies, the Court has a duty to decertify the Class for the Phase Two claims and allow Plaintiffs and Class member to pursue any claims they may have on an individual basis.

(Continued from page 1)

The upshot: There will be no Phase 2 in the *Karsjens* case.

Nonetheless, a couple of claims remain from Phase 1 that Gustafson Gluek insist were not disposed of by the 8th Circuit ruling in *Karsjens*. These claims argue that both the MCCTA itself and the MSOP commitment system it created are "punitive" in effect as to all who get committed under that law.

Judge Frank must decide whether those two claims remain viable despite that 8th Circuit ruling. If so, further proceedings will probably take place in *Karsjens* on those claims. If not, then (except for any appeal), *Karsjens* will end.

Of significant note: the *Gladden* case has long included a similar argument (not a separate count of its own in the Complaint, but rather a part of the Bill of Attainder and Substantive Due Process counts. Thus, either of two alternative procedural possibilities may come into play. First, rather than carry on within *Karsjens* on just that one remaining theory of punitivity, it could be amended into the *Gladden* complaint, either as supporting parts of these two existing counts. Second, the *Karsjens* case could be consolidated with the *Gladden* case, effectively achieving the same result.

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## What Else Does the Gladden Case Need Right Now? And How YOU Can Help!

In 2014, Gustafson Gluek asked me to seek out some DOC sex-offender inmates who might make good additional named (representative) plaintiffs in the *Gladden* case.

I carried out this request with the help of about a dozen contacts of mine still held by the MN DOC. However, because that firm was then preoccupied with proceedings in the *Karsjens* case, nothing was done with the expressions of interest that brief campaign generated.

In time, all of those persons who replied to

us about this either got committed or simply left prison and went off to everyday lives in freedom with no continuing interest.

Now, in order to revitalize the *Gladden* case, we must again approach those who now may be good candidates to become such additional named plaintiffs in the case. This is where you come in (I hope).

Unfortunately, I never was a 'social butterfly,' so I didn't have that many imprisoned correspondents even back when I got here. Since then, most of the ones I had have likewise been released and worse, have disappeared without a trace.

Frankly, I am hoping that some among you have old prison friends that you still trade letters with.

Some of them might be sex offenders who may have to face the DOC's evaluation process aimed at identifying some who they think should be considered for commitment. Some may already have been recommended for commitment. And still others may actually already be under a commitment petition seeking to commit them as either SPP, SDP, or both. Others may not even be nearing that evaluation yet, but nonetheless have extensive sex crime records that suggest their vulnerability to eventual commitment. All of these are potential candidates for consideration as extra named plaintiffs in the *Gladden* case. Therefore, I ask you to write to your imprisoned correspondents who are sex offenders, asking them if they may be the kind of person we are seeking. If so, please have them start by writing to me. To save our lawyers time, I have been asked to screen those who express interest to be sure that they are qualified.

Some of your correspondents may not be suitable candidates for these named-plaintiff slots, but they may know others who may be ideal candidates who could be eager to be one of those selected, if only they find out about this opportunity. To cover this possibility, please ask your correspondents to also mention this possibility to such others who may qualify.

In all, we will need at least six additional name plaintiffs. Experience teaches that, to get that final number, we will have to look at about 25-30 candidates. So this will take some considerable effort. That effort starts with you simply sending one or more letters to your old friends. Please do this, and then we'll see where it goes this time. Below, I reprint a sample form letter that worked fairly well before to garner some volunteers to come forward. Please consult this sample letter to see what we are looking for. Remember, your freedom could well depend on doing your share to help gain these extra named plaintiffs. In the *Gladden* case, if we win, we all go home right away, free of any 'strings.' So this really is that big a deal.

Thanks much!

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(Sample letter)

You and I have never met, and you may not ever have heard of me. I am currently committed under Minnesota's sex offender commitment law. More importantly, to date, I am also the only "Named Plaintiff" in the above-cited lawsuit in federal court that seeks class action certification. My proposed Class Action Complaint challenges Minnesota's sex offender commitment law as being outrageously unconstitutional and asks for a judicial ruling striking down that law and voiding all commitments under it, in effect resulting in everyone committed under that SPP/SDP law being set free.

Now a lucky break: The federal judge presiding over the somewhat similar *Karsjens et al. v. Jasson et al.* class action has determined that my case is a "related case" and should therefore be considered and decided after the *Karsjens* case. Because this was the judge's own idea, it means that my claims of unconstitutionality are being taken VERY seriously - and that is a very good thing. The Court has also appointed the same law firm representing the *Karsjens* plaintiff class to represent named plaintiffs in my case.

However, those lawyers have aptly pointed out that, to be more representative of those not yet committed under that law, one or more additional named plaintiffs are needed who either: (1) are already "referred" by the Dept. of Corrections to a prosecutor for possible petition for commitment; or (2) due to their record of sex crimes or for other reasons, can probably expect to be referred for such commitment, or at least to be scrutinized closely for such possible referral. I write to you about this because one or more individuals under commitment here in MSOP mentioned you as someone who just may fit either of these two categories. If this is incorrect, please accept my apology for troubling you.

However, if you do fit in either category, this is to request that you consider joining this lawsuit as an additional Named Plaintiff. This will not cost you anything and your actual participation will be minimal. If you are willing to join me in this important

effort to preserve your own rights and those of other sex offenders against permanent preventive detention masquerading as psychiatric commitment based on science, please write to me at the return address above, stating facts about your current situation sufficient to determine whether you fall into either of the categories described in the last paragraph above. I will then reply, advising you on how to dialog with the law firm handling this case and answering any questions you may have. Time is short, so please write this letter to me at your very earliest opportunity.

Whether or not you choose to do so, please also feel free to show this letter to anyone else you believe may fit either of these two categories of those in peril of SPP/SDP commitment who might be interested in helping to bring down this outrageous law. Please encourage him or them to write to me right away.



Get On Board!

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## Wage Case Update

In the last edition of *TLF*, discussion centered on our motion to establish a "collective action" by as many MSOP "patient workers" as may wish to join in as "collective plaintiffs" (that is, everyone who has held a job in MSOP since September 1, 2009).

Unfortunately, the federal District Court ruled against us on that motion. Rather surprisingly, the judge insisted that, to qualify for such a collective action, we needed a lawyer. We did not have one. Hence, that motion was denied.

Gaining collective action status is a hugely important goal in an FLSA-based case for recovery of unpaid minimum wages for a





number of reasons, the most significant of which is that the overall damages in such a case are enormous, when compared against the relative pittance that an individual employee could recoup.

That's why getting a lawyer to take a case with only a few such individuals is nearly impossible. For the same reason, securing an expert witness is impossible unless enough money is in the case to pay for such expert testimony. It's something of a 'Catch 22.'

Nonetheless, we launched a phone and letter campaign to 32 labor lawyers in and around Minnesota who have handled FLSA cases. From these, we received expressions of interest from a few.

The first of these to reply appears to have very strong experience in this specific field. He is convinced our case is strong. Consequently, he is willing to work on a contingency fee basis. This means (as the TV ads say): no recovery, no fee.

Further, it is possible in such a collective action that the court can make the defendant employer pay a substantial portion of that fee. This would increase the percentage of the recovery that each collective plaintiff would get to keep (as compared to a recovery where the whole attorney's fee had to be deducted from that overall recovery first).

We are still in the process of finalizing the retainer agreement with this FLSA-expert lawyer. Therefore, for the moment, we think it wise to withhold his identity. However, assuming all goes as expected, full details will be available in the next edition.

The first order of business will then be to renew the motion for conditional grant of

collective action status. We believe that this time we should succeed on that motion.

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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### 'Meth Magnus': Mr. Big?

Editor's Note: We have been covering the drug bust case of Attorney Ryan Magnus because of his aggressive cultivation of legal business as appointed attorney for perhaps as many as 200 of those petitioned for sex offender commitment in Minnesota. Magnus drove to counties all over most portions of the state to gain these appointments.

In doing so, he held himself out as an especially highly qualified expert attorney within this area of specialization. It is probable that he received at least \$10,000 per case of this kind for his services. Despite his claims of such expertise, I have not been able to confirm any case in which he actually managed to achieve either dismissal of the commitment petition or to obtain a judgment finding the "respondent" he represented to be not subject to commitment.

On the contrary, all such cases he represented resulted in either a stipulated plea to at least one kind of commitment (invariably, the SDP count) or, when the case was tried, in a total loss to the respondent (on both counts where both SPP and SDP had been claimed by the prosecutor).

As previously stated, many individuals here in MSOP-ML have related that Magnus

told them that, if they insisted on going to trial, they would be found to meet both SPP and SDP grounds for commitment, and that the end result would be a natural-life duration of that commitment. Magnus would then add that, if a plea deal could be arranged with the prosecutor, he would only have to stipulate to an SDP-based commitment, and that the outcome in that case would be a period of confinement lasting only 4-5 years, with release at that point. Of course, no such assurance appeared in the stipulation.

These men are still confined in MSOP, some for as many as over 20 years at this point, and not particularly close to graduation from treatment. Each of them feel that they were duped into pleading to SDP commitments simply so that Magnus could earn his fee for the case faster, and thereupon be able to close the case in record time.

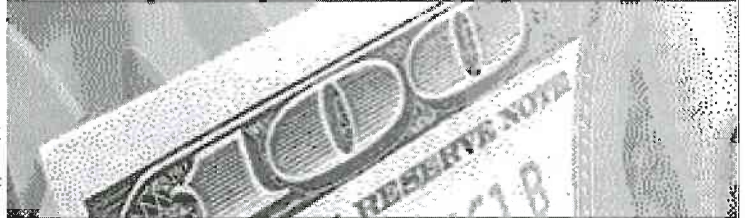
Doing the math on that per-case estimated fee, it appears that Magnus was paid approximately \$2 million over the years for such minimal mere deal-making representation, in which he had no intent of trying the case in earnest. As will be seen from the probable cause portion of the criminal complaint against Magnus, it further appears that Magnus used a considerable portion of those aggregate fees as a fund from which to finance purchases of wholesale amounts of methamphetamine, most of which was sold at retail, presumably by his confederate, Rothmeier, who apparently was sleeping with Magnus.

Here is the probable cause statement, insofar as pertinent:

dog began barking from the inside, which led to a male, later identified as Rothmeier, to answer the door. It was announced to Rothmeier that law enforcement was executing a search warrant for the residence and that he was being detained. Ogden was located in an upstairs bedroom and also detained. When asked if anyone else was in the residence, law enforcement was advised that Magnus was working at the time.

Ogden admitted that she had methamphetamine in her bedroom. An amount was found, and Ogden was transported to the Blue Earth County Jail. Agents located an amount of methamphetamine in a backpack associated with Rothmeier as Rothmeier's Minnesota driver's license was near it along with Rothmeier's jacket. Rothmeier was transported to the Blue Earth County Jail. Officers later arrested Magnus at the residence at approximately 1:00 p.m.

Agent Isaacson noted the following items of evidentiary value were located throughout the residence: in the main floor bedroom associated with Magnus and Rothmeier: a backpack with a GNC bottle that contained the following: an amount of white crystal-like substance that field tested positive for methamphetamine in two black baggies; two baggies with a green, leafy substance; a neon scoop with weight amounts written on it; multiple black baggies and one white baggie with white residue that field tested positive for methamphetamine; a digital scale with white residue that field tested positive for meth-



#### STATEMENT OF PROBABLE CAUSE

On January 30, 2018, Agent Isaacson of the Minnesota River Valley Drug Task Force obtained a search warrant for the residence located at \_\_\_\_\_ in the City of Mankato. Through investigation, it was known to Agent Isaacson that the residence was owned by Ryan Blair Magnus, D.O.B. 6-6-1972. Agent Isaacson also knew that Robert Lee Rothmeier, D.O.B. 7-14-1982, and Sarah Marie Ogden, D.O.B. 3-12-1973, may also reside at the residence. The search warrant was reviewed and signed by a judge of the Fifth Judicial District Court.

On January 31, 2018, a preoperational briefing was held with all law enforcement personnel present. At approximately 10:08 a.m., the search warrant was executed. When law enforcement got to the back door of the residence that faces the garage, a

amphetamine; and documents from Magnus and Rothmeier. In the upstairs bedroom associated with Ogden, the following items were located: two gem baggies with an amount of crystal-like substance that field tested positive for methamphetamine, suspected psilocybin mushrooms in a gem baggie, a glass pipe with white residue along with a red straw, medication for Ogden, and a cell phone with blue case. In a downstairs bathroom, the following items were located: a Yeti container with a plastic bag containing an amount of white, crystal-like substance that field tested positive for methamphetamine; an unknown liquid in a glass vial with eye dropper; hypodermic syringes; and a bag that contained the following: two medications for Magnus, a small gem baggie with crystal-like substance, a metal pipe made into

a smoking device, a container containing two gem baggies with a crystal-like substance, and a plastic baggie with a green, leafy substance. In the downstairs utility room, the following items were located: an amount of crystal-like substance on top of the table that field tested positive for methamphetamine, Lorazepam .5 mg for J.B., multiple small gem baggies located up in rafters, glass pipes with burn marks and white residue inside, documents for Magnus, and a black gem baggie containing two small gem baggies with an amount of crystal-like substance.

Agent Isaacson transported the items of evidentiary value back to the Blue Earth County Law Enforcement Center for processing. The following are weights on the purported narcotics located throughout the residence. The two black baggies containing crystal-like substance from the GNC bottle located in the bedroom associated with Magnus and Rothmeier showed a weight of 42.2 grams on a non-certified scale and also tested positive for methamphetamine using a NIK U test. Agent Isaacson noted Agent Isaacson weighed two black baggies similar in size and zeroed out the scale which showed -2.1 grams. Two plastic baggies containing green, leafy substance from the GNC bottle located in the bedroom associated with Magnus and Rothmeier showed a weight of 8.0 grams with packaging in non-certified scale and also tested positive for THC using a NIK E test. A white crystal-like substance located in a Yeti can from downstairs bathroom showed weight with packaging of 58.0 grams on non-certified scale and also tested positive for methamphetamine using a NIK U test. Three gem baggies located in bag on downstairs bathroom floor were emptied into a zeroed out evidence bag at -3.5 grams. The evidence bag with crystal-like substance content showed 1.3 grams on a non-certified scale and also tested positive for methamphetamine using a NIK U test. Gem baggie with green, leafy substance located in bag on downstairs bathroom floor showed 10 grams with packaging on a non-certified scale. The two gem baggies located in the utility room showed a weight with packaging of 18.1 grams on a non-certified scale and also tested positive for methamphetamine using a NIK U test. Crystal-like substance located on the table in the utility room was placed on a zeroed out evidence bag at -3.5 grams. Evidence bag with substance used .2 grams on a non-certified scale. The two gem baggies with crystal-like substance located in Ogden's bedroom showed a weight of 1.6 grams with packaging on a non-certified scale and also tested positive for methamphetamine using a NIK U test. Gem baggie with suspected

psilocybin mushrooms showed a weight of 1.8 grams with packaging on a non-certified scale. Agent Isaacson also noted that Agent Isaacson placed the neon scoop with the weight of 14.93 g written on it on the non-certified scale and showed a weight of 15 grams.

On January 31, 2018, Agents Ruch and Isaacson interviewed all three suspects after informing them of their rights. Agent Isaacson provided a brief synopsis of the interviews.

Ogden providing the following information: Ogden was upstairs in her bedroom. Just a little bit of meth, a pipe, and shrooms would be located in her bedroom. The mushrooms have been there for a long time. Ogden has lived with Magnus since September of 2017. Rothmeier has been to [the Magnus House] but doesn't live there. Rothmeier has been

meets people and introduces them to Rothmeier. Ogden's boyfriend most likely got the stuff located in her room from Rothmeier or Magnus as he hangs out with them. Rothmeier and Magnus share a bedroom.

Rothmeier provided the following information. Rothmeier and Magnus have been partners since 2010 and shared a bedroom. Rothmeier had a backpack and jacket in the room. Rothmeier said "yup" when asked about his backpack with the GNC bottle that contained the meth. Rothmeier has access into the utility room with the door lock. Rothmeier knew what law enforcement would have found in the utility room. Rothmeier didn't know what would be found in the bathroom. Rothmeier said he would take responsibility for everything found in the house. Rothmeier said it was never



there quite a bit. Rothmeier could only be in the house if Magnus let him in or if the door is open; Rothmeier didn't have a key and Ogden wouldn't let him in. Magnus is Ogden's best friend but she can't "save him." The stuff found in her room was a guy she sees but understands that was still in her possession. Ogden is able to bring her boyfriend to the house. Ogden would test clean on her UA.

When asked why she would hang out in a house where they deal meth, Ogden responded she came back for the job and wasn't aware that would be happening and as it was happening she didn't have anywhere else to go. Ogden provided the following additional information. She didn't know when it started to happen but explained it would take place in the basement where she wouldn't go. Ogden knew things weren't good and begged Magnus to get rid of Rothmeier and deal with his own problems. Ogden believes everything is Rothmeier's. It's a possibility that Magnus

supposed to be like this. Rothmeier didn't know Magnus was doing drugs back when Magnus purchased the house in 2015. After moving in the Magnus, they both used meth and got high and since then life has been a nightmare. Magnus introduced meth into their relationship, but Rothmeier doesn't blame him for it. Rothmeier would take part of the blame for what Magnus will go through. When asked about how Magnus introduces people to Rothmeier, Rothmeier paused and said Rothmeier will only answer if Magnus was in the room.

Magnus provided the following information. Rothmeier stays there, has been there 4-5 days. Ogden has lived at the house since September 2017. Magnus and Rothmeier have access to the utility room with key pad. Magnus has an idea but doesn't know what would have been in the utility room. When asked what he thought, Magnus said he is addicted to methamphet-

amine. Magnus said he just uses and doesn't know how much; he guessed maybe a quarter to half gram a day. Agent Isaacson told Magnus that more than a user amount of meth was located in the utility room where Magnus said he uses. When asked how he gets meth, Magnus said it's "usually around" and "it shows up basically." Magnus isn't buying so that's why he doesn't know how much he uses. Whatever is at the house Magnus can use, but he said it's not that much. When told there is more than a user amount in his house, Magnus said it isn't possessed by him though. Magnus knows it's there, but doesn't know the quantity. If Magnus has meth, it's very small amounts for himself. Magnus doesn't doubt there was more than small amounts. When asking about the liquid in the basement bathroom, Magnus thought it may be BDD or some chemical related to GHB. Magnus had the liquid for some time and was only personal use.

Magnus provided the following information. Magnus had no idea on volume or access to any. Magnus doesn't know where it is when it's around or how much is around. When asked, if he doesn't have access to it, how he supports his habit, Magnus said he has to ask for it. Rothmeier is bringing in the meth. Magnus agreed that people just don't give hundreds of dollars of meth away without some type of agreement. When asked if Rothmeier sells drugs from his house Magnus said no. When asked if he was sure, Magnus said he wasn't sure but doesn't think he is. Magnus knew Rothmeier was there today and knew Rothmeier sleeps in his bedroom but wouldn't know where the meth would have been in the room. Magnus understood it doesn't look good when he's the only one in the house with a job and over \$1,000 worth of meth was located throughout the house. Magnus admitted to having a little tiny baggie of "shit" in his backpack in the bathroom downstairs. Magnus admitted to using on January 30, 2018, at his house. Magnus told Agent Isaacson Magnus has information about where it comes from and how it goes from A to B and who's doing what with what. Magnus couldn't answer how a half a gram to a gram user would know all the ins and outs of a larger organization on the selling of methamphetamine. Magnus said it's his proximity to Rothmeier. Magnus said he's been around and knows things and sees things. Magnus denied being involved in with what Rothmeier does and said he's a reliable source of "shit." Magnus said he's not a dealer but understands how it looks with having access to credit but sees himself as a mark and naive. Magnus said this isn't his sales or possession. Magnus denied using others to sell dope for him and said there's



no evidence of that. Magnus said Rothmeier has said Magnus is the big dealer because he's abusive and wants to destroy Magnus. Magnus admitted that he has been places with Rothmeier on his own and knows what's going on, but he's not "driving the bus." Magnus has heard Rothmeier talk about getting pounds but doesn't know if he's been with when transporting or has never seen it. When told Rothmeier and Magnus are running around as a team, Magnus said they are not. It was brought up that Magnus just said he has been with Rothmeier and knows what he is doing though. Magnus said he has ridden sometimes when he has gone. The agents told Magnus that he knew what was happening and Magnus said "right." Magnus said it doesn't make him possess it though. Magnus said he's just an addict and is an owner of a house where the "shit" is at sometimes. Magnus said he knows it's there when Rothmeier is there. Magnus has never authorized Rothmeier to bring it in the house unless it's on his person. Magnus wasn't surprised law enforcement didn't have to look hard for drugs since Rothmeier was there.

Agent Isaacson referred charges including Controlled Substance Crime in the First Degree-Sale (Possession with Intent to Sell) and Controlled Substance Crime in the First Degree-Possession for Magnus and Rothmeier as well as a charge of Controlled Substance Crime in the Fifth Degree-Possession for Ogden.

Court records indicate Rothmeier and Ogden have been convicted of felony-level Chapter 152 drug offenses.

There is a great deal of contradiction between the statements of Magnus, Rothmeier, and Ogden reported in the foregoing probable cause statement. Nonetheless, the substantial amount of methamphetamine that agents found in the search of the Magnus house clearly bespeaks a sizable ongoing drug dealing operation, verging on distribution to retail dealers.

Magnus was the only apparent source of money to fund the large purchases of meth involved. Clearly, he was at the head of the operation. Funds he provided came from fees in his law practice — a large portion of which were pocketed from his appointed 'representation' of sex offenders petitioned for commitment to MSOP.

Now, almost all of those individuals are here in MSOP, having been conned by Magnus into taking an adverse plea deal to an SDP commitment on the claim that doing so would get them out in only a few years. Good luck with that!

Meanwhile, Magnus has been living the life of a millionaire, parlaying his ill-gotten gains from such 'quickie commitments through such fraud on his clients into an even larger fortune through drug distribution.

Even apart from those frauds on clients, Magnus admitted that he himself had become addicted to meth. Also, as that operation grew, it surely must have consumed an ever-larger portion of his time and attention. Between these two factors, it is difficult to believe that he could have had any significant amount of time or attention left to devote to defense of his commitment clients.

Yet it is the nature of sex offender commitment cases to consume huge volumes of attorney time and intellectual focus. This is especially true due to the need to rip down the claims of opposing expert witnesses with devastating effectiveness through long hours of research into the forensic science claimed to support such expert opinions, and the tandem need to prepare for, present, and defend favorable expert testimony in defense of the commitment client through similar lengthy 'homework' by the defense lawyer — all in advance of trial.

Yet Magnus' performance in the comparatively few trials he actually conducted in such commitment cases was purely perfunctory, showing no signs of such long hours of hard research work through application of such sharp intellectual focus. No, his performance, by all accounts, clearly bespeaks only a man stumbling and shuffling through his court role

through nothing more than habit — as effective a defender as a hamster on the wheel, only simply seeking his next dose of meth in place of feed.

This is the character of the 'defense' that the courts foist upon us in this matter of a commitment to the Black Hole of MSOP, presumably for the rest of our lives. They con us into giving up our rights and mislead us into marching as confidently into MSOP's one-way gates — as did Dachau arrivals into showers badly needed after a ride in a tightly packed cattle car on the eisenbahn.

Surely, one is compelled to think, the judges before whom Magnus demonstrated his lack of preparation and presented such grossly questionable stipulation 'deals' must have been able to see the indicia of pulling a 'fast one' on the client sex offender, and failure to create and advance any credible defense. If it was possible at all for a sex offender in a commitment case to get a fair shake, Magnus' conduct as a supposed advocate nailed shut that exit door, sealing his clients' fate.

Frankly, the most likely inference is that most of those judges simply didn't care about the life of the human being in front of them, thinking instead only of whether the case could be closed in time for a 2:00 tea time. Some may even have been on Magnus' route for delivery of his dubious product, and thereby have become complicit, if not compelled by craving, in that overriding enterprise.

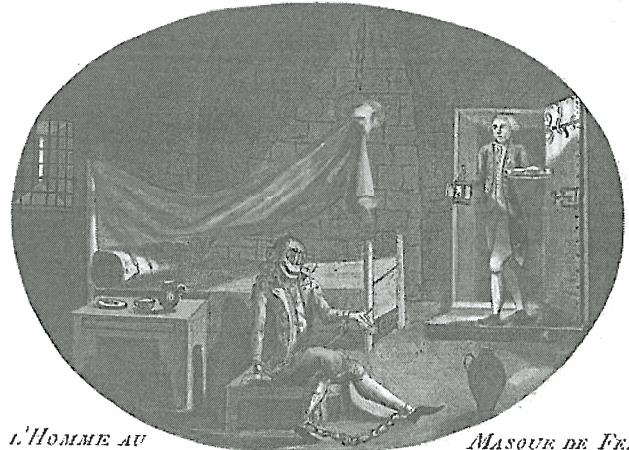
There is no room in the halls of justice for such misconduct as that of Magnus. Those who choose such enslaving masters have no place in the bar of advocates upon whose dedication and arduous and intellectually excelling efforts ride the fates of those entrusted to them as clients. But this case is not just about the defrocking of a single lawyer or solely about getting his due for a criminal business that enriched him at huge cost to those left addicted in its wide wake.

It is about reform crying out to be effected in a sacred quest for justice that clearly has been corrupted by many nefarious influences, from rank politics to vicious bias and hired-gun whoring by those who hold themselves out as psychological experts but in reality are only hatchet-wielding character-assassins.

— And now this: the ultimate physical and mental enslavement device by self-administered means by those who feel a need to fill an undefinable hole — some *je ne sais quoi* that surely must be missing from their lives, and in the process abandoning all allegiance to such notions of duty, loyalty, and diligence, even when the future course of a human life depends on it.

In short, it is time to clean up the whole of this mess, to restore the justice process to what it was intended to be, to ensure fairness and the right to an effective defense, even in the face of witch-hunting masquerading as science. Those unwilling to take dedicated part in this should stay home, and those who would seek to deliberately sell their own clients short and in the process corrupt the whole search for a just, fair, and compassionate outcome must be ejected firmly from the arena. We, the victims of such corruption wait in fervent prayer for such urgent reform.

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L'HOMME AU

MASQUE DE FER.

Il y avait un homme qui se nommait le Masque de Fer, et qui était un grand seigneur de la cour de Louis XIV. Il avait été condamné à mort pour un crime, et son corps avait été jeté dans un puits. Mais un jour, un homme qui se nommait le Comte de Mazarin, et qui était un grand seigneur de la cour de Louis XIV, le trouva et le fit sortir du puits. Le Comte de Mazarin le fit garder dans une prison, et on lui mit un masque de fer sur le visage. On ne savait pas qui il était, et on le garda ainsi pendant plusieurs années. Un jour, un homme qui se nommait le Comte de Mazarin, et qui était un grand seigneur de la cour de Louis XIV, le trouva et le fit sortir du puits. Le Comte de Mazarin le fit garder dans une prison, et on lui mit un masque de fer sur le visage. On ne savait pas qui il était, et on le garda ainsi pendant plusieurs années.

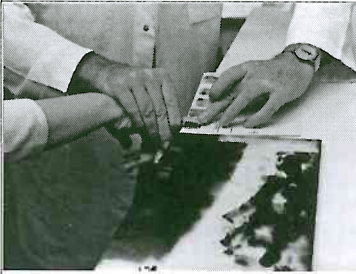
The Man in the Iron Mask Magnus

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

1:06:25	Senator Betzold	"It is my experience as a defense attorney in these areas handling mentally ill and dangerous -- I've always felt that these were life sentences... And in my experience dam near anytime anybody has ever petitioned for discharge, it is opposed by the county attorney's office... And I would suspect that, although, there aren't very many PP's in this process right now, I would suspect it's going to be comparable; that it's going to be dam difficult, if not impossible, to even get out of the system, once you get the label put on you. So, I'm sorry, <u>I do happen to believe that it's a life sentence.</u> "
1:09:05	John Kinwin, Ass't Attorney General	"It seems to me that <u>what this system is about -- the civil commitment system -- is filling in the gaps, the places where the criminal system hasn't provided a sufficient level of protection for society.</u> It's predicted that after the next few years the use of the civil commitment statute will fall off because the enhanced criminal sentences that we saw a few years ago will start to take greater effect. But it seems to me that until that happens, and probably even after it happens, in my view <u>we're still going to need a civil commitment system for the relatively few cases, compared to the number of cases that are handled through the criminal system, the very small number of cases, where the public deserves and demands some extra level of protections.</u> "
		[Disk 3 ends @ 1:10:41]
		[Disk 4:]
		(No relevant excerpts in Disk 4)
		[Disk 4 ends @ 1:09:18]
		[Disk 5:]
		(No relevant excerpts in Disk 5)
		[Disk 5 ends @ 59:27]
		<b>Set 7</b>
		-- 4 CD's -- Total: 6 tape sides -- (LAST set of batch 1)
		State House / Senate Task Force on Sexual Predators 8/16/94
		[Disk 1:]
08:32	Janice Luebbbers, (Citizen)	"Surely you -- no one -- wants sexual predators on the streets. So what is the problem? I don't understand the problem. My feeling is this: The government ... we've lost our focus. We're focusing entirely too much on the rights of criminals. We've forgotten about the citizens and we've forgotten about the good of the community. <u>The good of the community, it seems to me, takes precedence over any rights of individuals. And the rights of individual citizens certainly take rights over sexual predators.</u> And I would propose that <u>sexual predators or any perpetrators of violent crime be not released from prison until they've - their time is finished and also until there's absolutely no chance of repeat crimes and until the community majority is willing to take them back....</u> "
10:38	Senator Betzold	"Now one the things that's been done in recent years is use of the commitment laws to say that some of these people need treatment, but we can only hold them as long as they're deemed, you know, to be in need of treatment."
11:59	Rep. Bishop	"As a parent of four daughters, grandparent now of three granddaughters, I have lived with that concern. <u>Approximately twenty years ago a psychopath threatened my daughters...</u>
12:37	" "	"...The Supreme Court of Minnesota, has said the language of the law to lock someone up...because of their inherent danger... But they don't fit a definition in the psychiatrist's hand book of mentally ill. So we have to have some other category that the psychiatrists will support, <u>to keep them locked up, when they're not being locked up because of their crime. They're being locked up because of the future possibilities of repeating the crime...</u> "
14:17	" "	"...I personally put in a bill in January to <u>try to contain these people on a civil basis until they could prove themselves not to be dangerous...</u> "
14:45	" "	"What we need to do is to frame the language that will meet the new standards of the Supreme Court of Minnesota and perhaps the Supreme Court of the United States <u>to keep someone locked up, not for a crime that they have committed, but for a crime that we expect them to commit, and to keep them locked up because of their danger and their habitual dangerousness.</u>
15:24	" "	"...Perhaps after we have some new legislation to keep psychopaths and sexual predators locked up, we may find that science discovers that this has a chemical basis similar to schizophrenia. But until that time, these men are tigers! And we have to keep them locked up."
15:46	Janice Luebbbers, (Citizen)	"Yes. Absolutely!"
16:10	Tom Magnon, (Citizen)	"I do believe there's a plague of violence, a plague of lawlessness infecting our core cities and which is spreading outward to the nicest, most comfortable suburbs and exurbs. People can be stalked and bludgeoned to death just as readily in Chanhassen as in Powderhorn Park [Mpls.] This plague of violence and lawlessness must be stopped. Today you and others are concerned with sex predators and I am too. But I want to make the point about the role of the law in stopping sex predators and this plague... I do not expect the courts, especially the State Supreme Court, to listen to Professor Janus. The fact that it does leaves me with an ice-cold feeling of rage. I believe the law and the courts are becoming increasingly irrelevant in the community. I think the courts are a triumph of form over function. The courts concern themselves with the silliest detail, the minutest procedure, as they work to find every accused not guilty. The courts have become theatre, or perhaps a spectator sport. I once worked with a corporate lawyer -- very good, very expensive, very bright. And we'd be discussing a detail, and I would point out that the law in this case didn't seem to make sense, it didn't even make common sense, and he would respond, 'The law doesn't make sense, the law is the law.' Well, I understand he was trying to save me money, but I think that a comment like this is the law's epitaph. The law -- and by this I do not mean the specific law with sex predators, but the law of the land -- I think that the law must make sense. I think that any law that allows Linehan to go free is simply wrong. Today, the court's must focus on the rights of the individual and not on minute procedure. The law must make sense. If it is not changed, I think that the members of the community will start to work to protect themselves. I have not bought a gun, I understand all of the risks associated with buying a gun. If Linehan is allowed to stay free, I will buy a gun. We will take the courses in self-defense, as we already have for our daughters -- without guns. But at some point and the time for me is now, that the risk of owning a gun is less than the risk of not owning a gun. I hope you do your jobs. I agree with my wife. It's pointless to come here -- you should know this, this should not be hard. Good luck."

25:47	Tom Foley, Ramsey County District Attorney	"Apparently, in the [Minnesota Supreme] Court's view, Linehan's conduct was calculated, planned and therefore was not the behavior of a psychopathic personality. In my view, Dennis Linehan is the definition of a psychopathic personality, a predator who will in all likelihood rape again. If this man does not, in the Court's view, fit the statutory definition, the statutory definition must change. Dennis Linehan may be able to control his sexual impulses, but he has clearly been unwilling to. The result is the same: violent sexual behavior. The statute must change to reflect that reality. Members of the Minnesota County Attorneys Association, working with the draft proposal submitted by the Hennepin County Attorney's Office, have crafted language which reflects modern psychological concepts, language which we would permit prosecutors to indefinitely commit sexual predators such as Dennis Linehan who choose not to control their sexual impulse."
41:55	Russ Stricker, V.P. of Minn. Citizens' Council on Crime & Justice	[cites Rand Corp. study of Department of Corrections I.S.R. Program, which they report has shown that intensive supervision of S.O. can effectively preserve public safety]
		[Disk 1 ends @ 1:10:14]
		[Disk 2:]
56:41	Senator Spear (Chair)	"I notice that you want to include the word 'impulsiveness' of behavior in the term psychopathic personality. One of the things that we've been learning about these sexual predators, these sexual psychopaths is it isn't necessarily so impulsive, meaning just at the moment they decide to do this. Some of them will stalk their victims and enjoy the stalking of their victims for a long period of time before they finally pounce and prey on their victim. Does that word 'impulsiveness' imply: 'I'm impulsed this minute, so I'm going to act this minute,' or does 'impulsiveness' imply this planning process that many of them go through in stalking their victims?"
57:27	James Back- strom, Dakota County District Attorney (replying)	"Mr. Chair, I think it can be argued that the overall impulsiveness of the behavior itself is so overwhelming that that controls the person's goals, and they may well plan to carry out that impulsive sexual impulse that they have, that overwhelming impulse..."
		[Disk 2 ends @ 1:09:45]
		[Disk 3:]
5:35	Senator Newville	"Now, the next question I have is, take a person with facts like Linehan, ...how are you going to prove inability and unwillingness when there's been a long period of time where he's been under supervision where a person has been under control, or maybe phrased in the converse, how is somebody going to be able to defend, and say 'I'm not unable or unwilling?' If a person has committed some very serious, heinous offense, sexual misconduct in the past, will it ever be possible for them to prove the negative, that 'I won't be unable; I won't be unwilling'?"
06:34	James Back- strom, Dakota County District Attorney (replying)	"... That's the crux of the issue, obviously. We're changing some of the language to conform with what we feel is more modern day approach to this particular issue, and to allow the experts of today to come in that can evaluate these particular issues to give us the evidence that we need to prove these particular points..."
07:56	Senator Newville	"Do you think it would be possible for the County Attorney's Association to come up with objective criteria to prove inability and unwillingness, rather than just leave it to subjective expert opinion? I mean, would it be possible to define that, in terms of, well, if you this, this, and this, you've established inability and unwillingness?"
8:18	James Back- strom, Dakota County District Attorney (replying)	"I think it would be difficult to come up with that language. ...We would prefer to be able to prove that with the expert opinions that are offered to evaluate it..."
28:59	Senator Spear	"I want to focus a little bit more, although, on this word, 'impulses', because I worry that it's going to be interpreted as like a bolt of lightning makes them do it all of a sudden. And it's not what we've heard these people are... To stay consistent, is that the reason we want to use 'impulses' on the proposal on page two? Or would we be better off if we were to use the word 'drives' or 'behaviors' or something like that? Would that be more descriptive, or would that just start a new argument?"
29:49	Caroline Peter- son, Assistant Hennepin County Attorney	"...The word, sexual 'impulses' was offered as a general term to describe urges, drives, or behaviors. The way the statutory language ...is worded that we have, the inability or unwillingness to control is something that the person would have demonstrated in their course of sexual misconduct. So it is something that we anticipate would be demonstrated in the behavior..."
34:30	John Kerwin	"In the Attorney General's draft, we did in the phrase that talks about inability or unwillingness; we do use the '...phrase,' 'To control the person's sexual behavior,' Which we thought was a better way to get at the issue."
		[Disk 3 ends @ 1:10:03]
		[Disk 4:]
		(Nothing relevant ; just technical matters of procedure)
		[Disk 4 ends @ 1:19:21]

## Register Now!



Recently, someone has posted an anonymous page on at least one table in Unit 1-A claiming that registration as a sex offender as a consequence of being committed to MSOP is not required under Minnesota Statutes during the term of one's commitment.

It is critical to understand that this assertion is incorrect. The obligation to register as a committed sex offender in Minnesota is summarized in the "Address Verification Form" that we are each sent every quarter-year after initially registering here. That summary simply states:

"12. I understand that I am required to register for life in Minnesota if I am under civil commitment pursuant to M.S. § 253B.185 or a similar law of another state on or after 8/01/2000....

"18. I understand that if I am civilly committed pursuant to M.S. § 253B.185 or a similar law of another state, I am required to return four Verification Forms each year....

"26. I understand that if I do not comply with my registration requirements as outlined above, I can be charged with a felony. I understand that it is also a felony to provide false information on this or any other registration documents." (emphases added)

You might be tempted to think that this summary was merely penned by some wild-eyed fanatics down at the MN BCA; however, in fact, it was authored by attorneys of the Attorney General's Office. It is their considered legal opinion of the lay of Minnesota's sex offender registration law as it applies to sex offenders committed to MSOP. Ask yourself whether you honestly really believe that those legal scholars are likely to be wrong about such an obvious point of law.

Let's briefly examine the governing state, Minn Stat. § 243.166. Subdivision 1b (c) clearly directs: "(c) A person also shall register under this section if the person was committed pursuant to a court commitment order under Minnesota Statutes 2012, section 253B.185, chapter 253D, Minnesota Statutes 1992, section 526.10, or a similar law of another state or the United States, regardless of whether the person was convicted of any offense."

Subdivision 1b (d)(3) just as clearly adds: "(d) A person also shall register under this

section if:

(3) the person was committed pursuant to a court commitment order under section 253B.18 or a similar law of another state or the United States."

In other words, regardless which ground of commitment you are committed to MSOP by, you must register.

Subdivision 6 Paragraph (d)(4) clearly sets the period of registration as to those committed under those same statutes (that is, all sex offender commitment grounds) at life thus: "(d) A person shall continue to comply with this section for the life of that person:

(4) if the person is required to register under subdivision 1b, paragraph (c), following commitment pursuant to a court commitment under Minnesota Statutes 2012, section 253B.185, chapter 253D, Minnesota Statutes 1992, section 526.10, or a similar law of another state or the United States."

Subdivision 6, Paragraph (a) may initially cause a little confusion, but once properly understood, it does not introduce any ambiguity into this lifetime registration period for anyone who is or has been under commitment (as long as that commitment is not later completely invalidated retroactively from the time of the judgment imposing it).

Paragraph (a) actually refers to the ten-year period applicable to the sex offense, not the commitment. In full, Subdivision 6, Paragraph (a) reads as follows: "Notwithstanding the provisions of section 609.165, subdivision 1, and except as provided in paragraphs (b), (c), and (d), a person required to register under this section shall continue to comply with this section until ten years have elapsed since the person initially registered in connection with the offense, or until the probation, supervised release, or conditional release period expires, whichever occurs later. For a person required to register under this section who is committed under section 253B.18, Minnesota Statutes 2012, section 253B.185, or chapter 253D, the ten-year registration period does not include the period of commitment." (emphases added for clarity).

This portion of Paragraph (a) was intended to cover cases in which just such invalidation of a commitment occurs later. This 'fallback' provision may be unconstitutional, but it will still apply to you unless and until you can get a judge to declare that applying it to you in that circumstance is unconstitutional.

In the event of your noncompliance with either the ten-year (fallback) or the (main) lifetime registration obligation as to those committed under sex-offender commitment legislation, these same attorneys of the A.G.'s Office will similarly advise the prosecutor considering charges against you that you have deliberately violated a clear felony

statute establishing that registration requirement. It is difficult to believe that you will not then be charged, and very likely convicted of that violation, and that, as a result, you will be returned to prison to serve a new sentence (and afterward, to be returned here). The maximum sentence is five years, with a one-year mandatory minimum term (two years for a second or subsequent registration failure). Further, you will have a new period of conditional release imposed upon you.

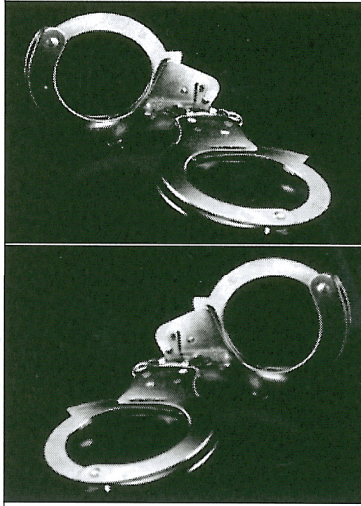
Adding insult to that injury, registration noncompliance also invokes its own separate registration requirement. You might think, "What's the difference? They're already telling me to register for the rest of my life." True enough - for the moment.

However, do not overlook the fact that the *Gladden* case is trying to eradicate sex offender commitment under the 1994 legislation that established it. That effort is very sound and will probably ultimately succeed. If so, the lifetime registration requirement that accompanies it will be eradicated along with the commitment itself.

However, if meanwhile you are convicted of failing to register while you were under commitment, you will then still have the continuing registration requirement created by that failure-to-register conviction.

Hence, for your safety, I implore you: if you are already registering, continue to do so. If you have not been doing so, or if you did at first, but have stopped, start/resume registering immediately, and continue doing so in the future (including filling out and returning each quarterly address verification form the BCA will then send you).

No matter how inconvenient and irritating you may consider this to be, it is worth abiding in the interest of avoiding further imprisonment and imposition of future governmental supervision and demands.



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## Gladden Complaint Excerpt: Junk Science — Hebephilia Is NOT a Disorder.

*Allen Frances, The Essentials of Psychiatric Diagnosis*, in the section discussing "Paraphilic Disorders" (pp. 169-74), notes that the DSM-5 has explicitly rejected the concept of "Hebephilia" (i.e., the proposition that it is a sexual disorder to have sexual attraction to post-pubescent minors. *Frances* flatly states that it "is important to restrict the Pedophilic Disorder diagnosis to men who have a ...need for prepubescent children as objects of sexual excitement." In other words, those attracted to pubescent or post-pubescent minors cannot be diagnosed as pedophiles.

"...[R]esearch shows that sexual attraction to adolescent girls is displayed by one-third of nonoffending adult men (Barbaree & Marshall, 1988) ...

"Second, there is no professional consensus that the adult-adolescent sexual behavior that *Doren* diagnoses as paraphilia-NOS-hebephilia is a paraphilia at all.... [T]he classic textbook, *Sexual Deviance: Theory, Assessment, and Treatment*, edited by *D. Richard Laws and William D'Donohue* (1997), and authored by 36 of the leading experts on paraphilias, has 500 pages of detailed discussion of every paraphilia identified in DSM-IV-TR, but there is no mention of either hebephilia or what *Doren* (2002) referred to as 'sexually attracted to adolescents' (p. 80) being a basis for a diagnosis of paraphilia-NOS or any other diagnosis." (*Zander, supra*, at pp. 47-48)

*A. Frances, "Going for Wins in Sexually Violent Predator Cases," Psychiatric Times*, July 8, 2011, available at [www.psychiatrytimes.com/blog/cpuchincrisis/content/article/10168/1900563](http://www.psychiatrytimes.com/blog/cpuchincrisis/content/article/10168/1900563) declares:

The second most common mistake was to declare idiosyncratically that sex with a post-pubescent teenager indicates Paraphilia. Statutory rape is a crime. It is not included anywhere in the DSM-IV as a mental disorder and should not be considered grounds for diagnosing one.

The history of psychiatry and of medicine is littered by the rapid emergence then the equally rapid disappearance of silly fad diagnoses. This will undoubtedly be the well-deserved fate of 'Paraphilia NOS, nonconsent and 'Paraphilia NOS, Hebephilia.' Sooner or later bad ideas are condemned to be found out or to die of their own foolishness. ...The miscarriage of justice occasioned by misdiagnosis in SVP

(Continued on page 9)



cases is a grave embarrassment to both psychiatry and to the law, as well as being a violation of the civil rights of the people subjected to it. Every SVP case that is based on a misdiagnosis of 'Paraphilia NOS' should be vigorously challenged until this bogus diagnosis is no longer considered permissible as expert testimony.



Karen Franklin, "Hebephilia: Quintessence of Diagnostic Pretextuality," 28 *Behavioral Sciences and the Law* 751 (2010), declares, at 764-65:

"Intentionally or not, expanding the definition of pedophilia - a diagnosis with already poor inter-rater reliability (Marshall, 1997) - into a broader construct of pedohebephilia has the potential to dramatically increase the scope and power of the sex offender civil commitment industry. The inherent vagueness of the construct, in turn, will invite arbitrary application, bias, or pretextuality.

"Law professor Michael Perlin defines pretextuality as courts' acceptance and/or encouragement of testimonial dishonesty, especially when expert witnesses 'purportedly distort their testimony to achieve desired ends.' Perlin asserts that the mental disorder requirement in SVP civil commitment proceedings insidiously encourages pretextual testimony and decision-making, corroding the entire system:

"This pretextuality is poisonous; it infects all participants in the judicial system, breeds cynicism and disrespect for the law, demeans participants, and reinforces shoddy lawyering, blasé judging, and, at times, perjurious and/or corrupt testifying. (Perlin, 2007, p. 341, see also Perlin, 1998.)"

[Editor's Note: This excerpt from the *Glad-den* Complaint is shorter than usual this time for two reasons. First, the next section, "Pedophilia," is huge by comparison. There-

fore, it should be presented alone in the next issue (or more likely, divided into two issues in sequence). Second, The bulk of other materials in this issue precludes pressing forward into that second sizable topic in this issue.]

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**The Texas Shuffle:  
How 200 Men Were  
Locked Up All at One  
Time in High Security  
SO Commitment  
by Sheer Government  
Decree  
~ Do We Take Comfort  
in This Showing That  
Things Could Be  
Worse, or Alarm from  
This Showing of Possible  
Things to Come? ~**

Excerpts from: *Michael Barajas*, "Prison by Any Other Name - How Texas created a new for-profit lockup, which it really doesn't want you to call a 'prison,'" *Texas Observer*, Feb. 12, 2018, [www.texasobserver.org/author/michael-barajas/](http://www.texasobserver.org/author/michael-barajas/)

In early September 2015, guards fanned out across Texas with orders to round up about 200 men, rousing some from bed as early as 3 a.m. and demanding they stuff whatever they wanted to keep into black Hefty bags.

The men weren't hard to find. They'd all completed lengthy prison sentences for sex crimes. The state calls them 'sexually violent predators,' men required not only to publicly register their whereabouts but also to participate in a court-ordered monitoring and treatment program meant to cure them of 'behavior abnormalities' and safely reintegrate them back into society after they've done their penance. At the time of the roundup, most were living in boarding homes and halfway houses...."

[These 200 men] were frisked, loaded into vans and prison buses and driven hundreds of miles to Littlefield, a remote, sparsely populated corner of the Texas Panhandle, where guards shuffled them into the Bill W. Clayton Detention Center, a prison that had been empty for six years.

Once inside those old prison walls, the men surrendered their IDs, Social Security cards, birth certificates and credit cards, along with cash and coins. Guards dug through the Hefty bags, tossing out all sorts of personal items now considered contraband. They went from living in

halfway houses that looked like motels to windowless cells with cinderblock walls, hard steel bunks and metal toilets. But officials at the detention center were adamant: This wasn't a prison. They instructed the men to call their living quarters 'rooms,' not prison cells....

Two and a half years after the Texas Civil Commitment Center opened its doors, only five men have been released - four of them to medical facilities where they later died....

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

[T]he state [of Texas] and Correct Care have found creative ways to squeeze more money from the 277 men now incarcerated in the Littlefield facility, or rather from their families and friends on the outside. While state law allows the program to take a third of any income the men receive in order to help pay for their treatment and confinement in Littlefield, people who send packages to the facility say the company has now applied the concept to gifts. Anyone sending a package to an inmate must submit a receipt for whatever's inside so officials can charge the sender a third of whatever it's worth.

Some of the men are still required to help pay for ankle monitors, despite their new home being surrounded by a perimeter of two security fences topped with concertina wire....

The "not-a-prison" prison operates with more secrecy than most supermaxes. For months I've asked to tour the detention

center and interview inmates about the conditions there. The agency that oversees the program, the Texas Civil Commitment Office, has refused to answer many of my questions, including why they won't let reporters inside the for-profit lockup....

Critics of [sex offender commitment] compare it to "The Minority Report", the short story by Philip K. Dick [8 movie], where police predict the future and preemptively arrest people for crimes that haven't yet happened. ...In civil commitment, authorities use polygraphs, plethysmographs (a device that tracks blood flow to the penis to measure arousal) and any number of risk-assessment tools - most of which have come under academic and legal scrutiny - to determine whether sex offenders are dangerous enough to detain, even after they've served their time....

The civil commitment program that Texas created in 1999 was unique in that it committed sex offenders only to treatment, not detention. Over time, however, the program grew more restrictive, requiring most men to live in halfway houses and boarding houses under contract with the state....

Going into the 2015 legislative session, experts questioned whether Texas-style civil commitment was even constitutional after investigations ...revealed that roughly half of the men in the program cycled back into prison for minor rule violations. Not a single offender had ever graduated from treatment in the history of the program. Nobody under civil commitment had ever been charged with committing another sexually violent act.

'Rachel' [a nurse hired on at the Littlefield facility], quit, ...because she was appalled by the conditions inside the lock-up, particularly the poor medical care.

(Continued on page 10)



"Round up the usual suspects."

(Continued from page 9)

'People were not getting the treatment they needed. ...A lot of these guys were really old. The clinic was always running out of medications or never had the right ones....'  
...[T]he Texas Civil Commitment Office predicted it will run out of space at the Littlefield lockup by 2019 and either have to expand the facility or build a second one."

Editor's End-Note: Well, How about it? Are you reassured? I'm not. What do you suppose are the odds that MSQP could further devolve into something like the Texas facility?

Or even worse, if any of us can eventually achieve "provisional discharge" - or even final discharge, what guarantee do we have that we too won't later be snapped up, individually or en masse, placed in chains, and bussed off to some dusty far corner of Minnesota to an incommunicado prison from hell masquerading as a 'treatment center'? Any thoughts you'd like to share?

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## Four Articles on Pedosexuality: 1. Terrorism, Panic, & Pedophilia

Excerpts from: Daniel M. Filler, "Terrorism, Panic, and Pedophilia," 10 *Virginia Jour. of Social Policy & Law* 345 (Spring 2003)

Text, p. 349: "...[T]wo models of social panic: moral panic and risk society panic. During moral panic, the public comes to see highly publicized crimes as examples of a greater social crisis. Moral entrepreneurs, using strategic rhetoric, then seek to convince people that a particular individual or group, a "folk-devil," is to blame for the problem. During risk society panics, which often follow technological or industrial disasters, public blame is more diffuse, and may be directed at powerful institutions such as government and industry..."

pp. 360-61: "Moral panic scholars have often suggested that social anxiety is triggered, in substantial part, by the strategic rhetoric of either interest groups or political elites.<sup>74</sup> These opinion makers, sometimes termed 'moral entrepreneurs,' help direct public anger and anxiety towards marginal individuals or groups.<sup>75</sup> Three rhetorical moves are particularly effective in helping to generate these panics. First, in order to solidify hostility towards the offenders, claims-makers use melodramatic language that demonizes them, creating a stark contrast between the 'evil' deviants and the 'good' society.<sup>76</sup> This rhetoric also serves to

glorify society, creating pride in its fundamental goodness.<sup>77</sup> Second, in order to heighten concern and promote consensus, they emphasize the randomness of the underlying incident, suggesting that anyone, anywhere might become the next victim.<sup>78</sup> Third, in order to sustain public outrage and, more pragmatically, to maintain their central role in public debates, claims-makers engage in domain expansion, identifying incidents substantially different than the triggering event as further examples of the underlying crisis.<sup>79</sup>

"Concern over child abuse and pedophilia has been a frequent site of moral panic. The swift, nationwide adoption of Megan's Laws - sexual offender community notification provisions - is the result of one such panic. In 1994, seven-year-old Megan Kanka was abducted and murdered by a neighbor, Jesse Timmendequas.<sup>80</sup> Timmendequas was a twice-convicted sexual offender.<sup>81</sup> The media focused intense attention on the story, and activists soon argued that stranger child sexual abduction was a national crisis. The number of stranger child abductions was relatively low,<sup>82</sup> so claims-makers expanded the category of offenders in various ways to enhance their statistical claims. In the Congressional debates over federal sexual offender legislation, one legislator argued that 65,000 state prisoners admitted to "victimizing" a child<sup>83</sup> while another argued that in 1995, 50,000 children suffered abuse or neglect.<sup>84</sup> No matter that these numbers shed little light on the extent of the sort of stranger child abduction and sexual abuse typified by the Kanka killing. Legislators insisted that crimes, such as the abduction and killing of Megan Kanka, were not only common; they were random and could happen anywhere.<sup>85</sup> Who committed these offenses? Whatever the scientific debate about the efficacy of sexual offender treatment programs, people who committed these crimes were 'a very special rank of evil, far, far, beyond the human territory that is bounded by terms like "rehabilitation" and "law-abiding," or even normal punishment.<sup>86</sup> Even the language used to describe sexual offenders - terms such as 'monsters,' 'toxic waste,' and the now ubiquitous animal metaphor, 'sexual predators' - reinforced the claim that such individuals were an evil, brutal 'other.'<sup>87</sup>"

pp. 368-69: "...[S]omething happened on the way to mass demonization of Muslims: many citizens joined government officials and the media to wage an active campaign aimed at diffusing anger targeted towards Muslims. Americans were repeatedly told they should not demonize Muslims.<sup>84</sup> President Bush spoke out, arguing that terrorists were part of 'a fringe movement that perverts the peaceful teachings of



Ted Kaczynski Gets His.

Islam.<sup>85</sup> The media reinforced this message with its coverage and opinion pieces.<sup>86</sup>

"The Administration and the media may have had a number of reasons for urging such caution. First, they may have honestly believed this to be morally correct advice. Americans are now very sensitive to racial classifications and stereotyping, a sensitivity produced by the Civil Rights movement, modern critiques of such race-based legal policies as internment of Japanese citizens during World War II, and the racial increase in national diversity - and particularly racial and ethnic diversity - that has occurred since the Second World War. Second, the Administration may have realized that any war against terrorism would require the help of many Muslim nations, including, most prominently, Pakistan and Saudi Arabia. Demonization of Muslims by the administration, or even by high-profile individuals outside of government, could produce serious international political difficulties.<sup>87</sup> Finally, some may have called for restraint out of their own wariness of spurring a moral panic.<sup>88</sup>"

p. 375: "...When activists describe pedophiles as predators, they are not arguing that these offenders are actually animals; rather they are suggesting that pedophiles are like beasts, a lesser form of human, incapable of change, and not worthy of respect. A similar process occurs when Muslims and terrorists are termed pedophiles. A public that views terrorists and Muslims as comparable to pedophiles will presumably view terrorists and Muslims as inhuman: opportunistic, incapable of change, and in need of incapacitation.

"...The move to signify pedophiles as predators was reflexive. Not only did the redefinition of pedophiles cause us to see pedophiles as predators, but it also caused us to see pedophiles differently. Twenty years ago, the word 'predator' might have evoked images of

animals; today, it also evokes the image of a child molester. Thus, the successful application of the metaphor 'pedophile = predator' inherently implied the inverse metaphor 'predator = pedophile.'..."

p. 377: "... We do not deal with pedophilia through diagnosis and treatment, as we might address schizophrenia. We treat pedophiles as we might treat roaming animal predators. We track them and we cage them."

Notes:  
74 See Sheldon Unger, *Moral Panic Versus the Risk Society: The Implications of the Changing Sites of Social Anxiety*, 52 *Brit. J. Social.* 271, 276-77 (2001); Joel Best, *Random Violence: How We Talk about New Crimes and New Victims* (1999), at 22-44.

75 Unger, at 284. (noting that moral entrepreneurs "exercise social control by amplifying deviance and orchestrating social reactions so that the panic becomes a consensus generating envoy for the dominant ideology.")

76 James E. Hawdon, *The Role of Presidential Rhetoric in the Creation of a Moral Panic: Reagan, Bush and the War on Drugs*, 22 *Deviant Behav.* 419, 426-27 (2001).

77 Id., at 427.

78 Best, *Random Violence*, AAT 1-7.

79 Joel Best, *Threatened Children* 80-81 (1990).

80 John J. Goldman, *Sex Offender Guilty of Killing Megan Kanka*, *L.A. Times*, May 31, 1997, at A1.

81 Thomas Zambito, *New Hearings Will Determine if Wickoff Rapist Can be Freed*, *Bergen Record* (N.J.), Aug. 4, 1994, at A3.

82 A 1990 study commissioned by the United States Office of Juvenile Justice and Delinquency Prevention concluded that in 1988 there were between 200 and 300 "stereotypical kidnapping" cases involving

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stranger abductions where a child was taken a large distance, kept overnight, ransomed, or murdered. See *David Finkelhor et al., Missing, Abducted, Runaway, and Thrownaway Children in America: First Report: Numbers and Characteristics National Incidence Studies* 66-67 (1990).

83 142 *Cong. Rec.* 18,765-66 (1996) (statement of Sen. Hutchinson).

84 142 *Cong. Rec.* 10, 313 (1996) (statement of Rep. Jackson-Lee).

85 For example, New York State Assemblyman Robin Schimminger argued that "what tragically happened to little Megan Kanka in New Jersey this summer ... can happen anytime, anywhere." *Robin Schimminger; Law Would Publicize Sex Predators.* *Buffalo News*; Sept. 16, 1994, at 2.

86 *Midge Decter; Megan's Law and the 'New York Times.'* *Commentary*, Oct. 1994, at 61.

87 For a discussion of the dehumanizing language used in the Megan's Law legislative debates, see *Daniel M. Miller; Making the Case for Megan's Law: A Study in Legislative Rhetoric.* 76 *Ind. L.J.* 315 (2001), at 338-40. A wide array of scholarship indicates the important role of metaphors in political discourse. See *Jeffrey S. Mia, Metaphor and Politics*, 12 *Metaphor & Symbol* 113, 117-26 (1997). Otto Santa Ana provides a brief description of how metaphors actually work in this context. See *Otto Santa Ana, 'Like an Animal I Was Treated': Anti-Immigrant Metaphor in U.S. Public Discourse*, 10 *Discourse & Society* 191, 194-96 (1999).

134 *Carter Dougherty, Bush Says Most Arabs, Muslims Are Patriots, Cautions Against a Backlash.* *Wash. Times*, Sept. 14, 2001, at A13.

135 See Pres. Bush's Address on Terrorism Before a Joint Meeting of Congress. *N.Y. Times*, Sept. 21, 2001, at B4.

136 See, e.g., *Debarahi Alexander; Law, Clergy Calling for Tolerance.* *Omaha World-Herald*, Sept. 22, 2001, at 8b; Cf.: *Johann Hari, How to Divide 'Us' from 'Them'.* *New Statesman*, Nov. 19, 2001 (stating that in British press "there has been an unspoken media consensus since 11 September that we must avoid inflaming anti-Muslim opinion").

137 *Eric Muller, 12/11 and 9/11: War, Liberties, and the Lessons of History*, 104 *W. Va. L. Rev.* 571, 591 (2002). In the aftermath of Sept. 11, a number of non-governmental officials have been quite critical of Saudi Arabia. Saudi Arabian sensitivity to these comments shows that even unofficial criticism has the potential to affect foreign policy.

138 *Angela McRobbie & Sarah L. Thornton, Rethinking 'Moral Panic' for Multi-National Social Worlds*, 46 *Brit. J. Sociol.* 559

(1995).

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## 2. Pedophilia Under the DSM-5

Excerpt from: *Fred S. Berlin, "Pedophilia and DSM-5: The Importance of Clearly Defining the Nature of a Pedophilic Disorder."* 42 *Jour. Am. Acad. Of Psychiatry and the Law* 404-407 (2014)

p. 405: "Viewing Child Pornography  
"From both a clinical and an actuarial statistical perspective, an early retrospective study conducted at a Federal Civil Commitment Facility in Butner, North Carolina, inferred an association between accessing child pornography and hands-on sexual offending. That study has been criticized regarding its methodology and lack of scientific rigor. More recent prospective data have questioned the contention that there is a correlation between accessing child pornography and hands-on offending. For example, one such study found that less than one percent of 231 men who had viewed child pornography (but with no evidence of a prior hands-on sexual offense) had gone on to commit a hands-on sexual offense. From a purely statistical standpoint (all else being equal), individuals with no history of a hands-on sexual offense against a child, but who have accessed child pornography, are at low risk as a group of committing a hands-on sexual offense in the future."

p. 406: "Pedophilia as a Sexual Orientation

"DSM-5 did not err in referring to Pedophilia as a sexual orientation. ...The term sexual orientation ordinarily reflects an individual's subjective awareness of the category (or categories) of persons toward whom he or she is erotically attracted. Clinically, there are individuals (many of whom are described as having Pedophilia) who report a subjective awareness of being erotically attracted (either exclusively or in part) toward a category of individuals comprised of prepubescent children. Many report experiencing those attractions as unchosen in a fashion that seems very much like an orientation. That such attractions are often unwanted does not alter their resemblance to an orientation.

"...Publicly acknowledging Pedophilia as a sexual orientation that can be distinguished from a criminal mindset might ...have been useful.

"...DSM-5 has properly concluded that experiencing a recurrent sexual attraction toward children does not by itself constitute evidence of a disorder, unless those attractions also cause distress or some other significant difficulties."



Sexual Orientations Need to Be Drummed Out of the DSM

### Selected Citations:

*Bourke, M.L., Hernandez, A.E.*: "The 'Butner Study' Redux: A Report on the Incidence of Hands-On Child Victimization by Child Pornography Offenders." *J. Fam. Violence* 24:183-91, 2009

*Kaufman, A.*: "The Butner Study: A Report on the Fraudulent Execution of the Adam Walsh Act by the Federal Bureau of Prisons (BOP)." Available at <http://cfcamerica.org>

*Seto, M.C., Hanson, R.K., Babchishin, K.M.*: "Contact Sexual Offending by Men with Online Sexual Offenses." *Sex Abuse* 23:124-45, 2011

*Endrass, J., Urbaniak, F., Hammermeister, L.C., et al.*: "The Consumption of Internet Child Pornography and Violent Sexual Offending." *BMC Psychiatry* 9:43, 2009. Available at <http://biomedcentral.com/1471-244X/9/43>

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## 3. Pedosexuality: An Orientation

Excerpts from: *Jenny A.B.M. Houtepen, Jelle J. Sijtsema & Stefan Bogaerts.* Dept of Developmental Psychology, Tilburg Univ., Tilburg, The Netherlands. "Being Sexually Attracted to Minors: Sexual Development, Coping with Forbidden Feelings, and Relieving Sexual Arousal in Self-Identified Pedophiles," 42(1) *Jour. of Sex & Marital Therapy* 48-69 (2015)

p. 48-49: "...[P]edophilic interest seems more common in contemporary society than may be expected. It is estimated that 3% to 9% of males in community samples are in some way sexually attracted to children (*Wurtele, Simons & Moreno*, 2014). Furthermore, *Seto* (2012) showed recently that pedophilia has many similarities with sexual gender orientation (i.e., heterosexual and homosexual feelings), such as the early age of onset, the fantasy or desire to engage in

romantic behavior, and the stability of this sexual preference over time. Therefore, *Seto* (2012) suggested that pedophilia may be better considered as a sexual age orientation instead of a mental health disorder or a sexual preference that is chosen or somehow learned."

pp. 50-51: [Here the authors described their research method, which amounts to interviewing 15 volunteering, non-clinical self-identified pedophiles/pedosexuals, all Dutch except for 1 Belgian. However, two of these were better described as hebephiles.] However, the interview questionnaire was developed "on the basis of information that we had previously collected from exploratory interviews with law enforcement and mental health professionals who specialize in sexual offending ...We conducted these interviews in order to get a fuller understanding of what is currently known about pedophiles in the forensic field...."

[NOTA BENE: This shows an unconscious institutional bias to 'frame' pedosexuals and "pedophilia" in terms of *a priori* notions inculcated throughout so-called forensic psychology about the age-orientation toward pre-pubescents). By structuring the interview and framing specific questions from this frame of reference so reliant upon all those fallacious beliefs, the outcome of this research was doomed to be incorrectly skewed toward confirmation of ingoing bias regardless of the facts. Additionally, as is the case with all other current so-called "research" into pedosexuality and pedosexuals, even if/ to the extent that researchers realize in the course of such interviewing that their biases are incorrect, they experience self-censorship in reporting the outcome of their research in the interest of preserving their careers in the field of forensic sexology (for

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fear of being 'blacklisted' from the field if they candidly report their whole, actual findings, when they are at odds with widely disseminated false claims about pedosexuality and pedosexuals. In short, it is not possible currently to find true, accurate reporting of findings about this topic; rather, the question comes down only to how much the tendency to bow to preexisting institutional biases will censor or skew what is reported from such interviewing or other procedures. Nonetheless, since, comparatively, this article appears less impacted by such coercive biasing than are other articles, it is worth extracting its quotes/paraphrases of self-proclaimed pedosexuals and the conclusions and conjectures of these researchers about these few pedosexuals. It is also worth noting that Stefan Bogaerts was one of these three researchers. Bogaerts has previously been known to be more impartial as to pedosexuals and pedosexuality than almost all others in this academic field.]

p. 53: Background Characteristics  
 "[Of the 15.] Nine participants were highly educated [at least one college degree], ...and [only] two had less than a high school education. Three were married or in a relationship at the time of the interviews, and two were divorced. Five participants had never been involved in a serious adult relationship. Three participants reported having children.

"Two of the 15 participants could better be described as having hebephilic feelings. Aside from the distinction between being attracted to prepubescent or pubescent children, there was still large variation in preferred sexual age orientation between participants. For example, some participants with an interest in prepubescent minors acknowledged being sexually attracted to children from 5 years old, whereas others preferred minors who were in the transition to puberty. Furthermore, not all participants had an exclusive sexual interest in children; nine were also attracted to adult males and/or adult females. Finally, eight

participants were solely attracted to boys, three to girls, and four were attracted to both sexes.

p. 53: Content of Sexual Interest  
 "Ten participants acknowledged that their attraction to minors was not solely sexual, but that romantic feelings were also present. They reported falling in love with a child, and/or had fantasies about having a real romantic relationship with a minor. Also, when asked what that found particularly attractive in minors, eight acknowledged that it was a combination of both physical characteristics, such as "their beauty" or "bodily shapes," and behavior, such as "openness," spontaneity," "honesty," or "naivete," whereas only four referred solely to children's appearances.

"Moreover, 10 participants stated that having close relationships with children (e.g., friendship or adult coaching role) was highly satisfying, for example, because it provided them with the opportunity to make children happy."

p. 60: DISCUSSION  
 "...In concordance with Seto's study (2012), we found that individuals with pedophilic interest often recognized the onset of sexual attraction in puberty that remained rather stable over time...

References:  
 Seto, M.C. Is Pedophilia a Sexual Orientation?, 41(1) *Arch. of Sexual Behav.* 231-236. Doi: 10.1007/s10508-011-9882-6 (2012)  
 Wurtele, S.K., Simons, D. & Moreno, T., "Sexual Interest in Children among an Online Sample of Men and Women: Prevalence Correlates," 28(6) *Sexual Abuse* 546-568. DOI: 10.1177/1079063213503688 (2014)

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#### 4. Taking Pedosexuality Seriously

Excerpts from: *Marga Kaplan*, "Taking Pedophilia Seriously," 72 *Wash. & Lee Law Rev.* 75 (Winter 2015):

p. 75: "...[S]exually violent predator statutes expand state power to civilly commit individuals by distorting the concept of pedophilia as a mental disorder..."

p. 82: "...The current approach to pedophilia denies individuals living with pedophilia critical civil rights protections that would allow them ...to maintain employment, and openly take part in society..."

"...Researchers estimate that approximately one percent of the male population - and an unknown but presumably smaller percentage of the female population - lives with pedophilia.... [citing: *Wesley Stephenson*, "How Many Men Are Pedophiles?," *BBC News* (July 29, 2014), <http://www.bbc.com/news/magazine-28526106> (discussing research by

Seto and Cantor on the prevalence of pedophilia); *Michael C. Seto*, "Is Pedophilia a Sexual Orientation?" 41 *Archives Sexual Behav.* 231, 232 (2012) (examining the prevalence of pedophilia in men); *Nat. Inst. Of Mental Health*, *The Numbers Count: Mental Disorders in America* (2012) (reporting estimated percentages of Americans with various mental disorders).]

p. 83: "Interestingly, some attraction to prepubescents seems even more common. Studies of sexual arousal indicate that a surprising proportion of the population, particularly among men, has fantasized about prepubescent children during intercourse or masturbation or may become aroused upon viewing images of prepubescents." [citing: *Lea H. Studer & A. Scott Aylwin*, "Pedophilia: The Problem with Diagnosis and Limitation of GBT in Treatment," 67 *Med. Hypotheses* 714, at 775 (2006) (examining the prevalence of pedophilia in men); *Michael C. Seto*, *Pedophilia and Sexual Offending Against Children* (2008), at 7 (citing several studies). At Note 46, adding: "One study found 62% of men had fantasized about young girls and 3% about young boys, while another found that 9% had fantasized about sex with young children, with 7% indicating some likelihood that they would have sex with a child if they were guaranteed that they would not be identified or punished." *Seto, supra*, at 7."

pp. 84-85: "Sexologists, psychiatrists, and legal scholars usually associate pedophilia with one of two categories: (1) a mental disorder or (2) a form of sexual orientation called 'erotic age orientation.'"

pp. 86-87: "Pedophilia need not entail any behavior; one may be a celibate pedophile, similar to how one may have sexual desires for adults while remaining celibate."

p. 91: "The role of impulsivity in pedophilia and pedophilic behavior is also subject to debate. It is commonly assumed that individuals living with pedophilia simply 'can't help themselves' and are unable to control their impulses to molest children. [citing: *Ryan*

*C.W. Hall & Richard C.W. Hall*, "A Profile of Pedophilia: Definition, Characteristics of Offenders, Recidivism, Treatment Outcomes, and Forensic Issues," 82 *Mayo Clinic Proc.* 457 (2007), at 462 (noting that, although people with pedophilia often report difficulty controlling their behavior, it is rare for them to spontaneously molest a child.); "Six Misconceptions about Pedophiles," *Discovery News* (Nov. 18, 2011, 3:00 AM), <http://news.discovery.com/humna/psychology/miscconceptions-pedophilia-111118.htm> (dispelling the misconception that people with pedophilia cannot help attempting to molest a child whenever the opportunity arises)] Yet individuals with pedophilia rarely spontaneously molest children, and the vast majority of sexual abuse of children is premeditated. [citing *Hall & Hall, supra*, at 462 (arguing that, because 70% to 80% of sex offenses against children are premeditated, the notion that people with pedophilia lack self-control is untenable)] A recent study found no connection between pedophilia and impulse-aggressive traits and in fact found more evidence of inhibition, passive-aggression, and harm avoidance. [citing: *Lisa J. Cohen et al.*, "Impulsive Personality Traits in Male Pedophiles Versus Healthy Controls: Is Pedophilia an Impulsive-Aggressive Disorder?," 43 *Comprehensive Psychiatry* 127, 132-33 (2002). At note 63 adding: "These researchers proposed that pedophilia may be compulsive rather than impulsive - that is, driven by the desire to avoid harm and relieve negative feelings rather than to gain pleasure and positive feelings. The research on this is limited, however, by the fact that it targets sex offenders with pedophilia, excluding non-offenders."] Similarly, MRI studies have found no evidence to suggest any differences in the parts of the brain that relate to self-control or impulsivity." [citing: *James M. Cantor*, "Understanding MRI Research on Pedophilia," [http://individual.utoronto.ca/james\\_cantor/](http://individual.utoronto.ca/james_cantor/)

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Pedosexuals Being "Retained" to Be Attracted to Adults

blog2.html]. [So: volitional impairment can be ascertained; if brain parts are intact, no impulsivity or volitional control problem.]

p. 92: "Treatment cannot convert sexual interests; therapy to redirect sexual attraction away from children toward adults has fared no better with pedophilia than it has with same-sex attraction." [citing *M. Seta*, *Pedophilia and Sexual Offending Against Children* (2008), at 175-76 (discussing the efficacy of therapy aimed at changing a pedophile's interest in children and noting that it is unclear whether the therapy results in actual changes in interest or greater control over pedophilic sexual arousal); *Alice Dreger*, "What Can Be Done about Pedophilia?", *The Atlantic* (Aug 26, 2013, 9:42 AM), <http://www.theatlantic.com/health/archive/2013/08/what-can-be-done-about-pedophilia/279024/> ("We have not yet found a way to convert pedophiles into non-pedophiles that is any more effective than the many failed attempts to convert gay men and lesbians into heterosexuals.")

p. 104: "Changing social mores, including prejudices, often inform judgments of what desires are pathological. [stating, at note 122: "For example, same-sex attraction was once considered pathological. *Andreas De Block & Pieter R. Adriaens*, "Pathologizing Sexual Deviance: A History," 50 *J. Sex. Res.* 276, 287-89 (2013); *Charles Maser*, "Paraphilia: A Critique of a Confused Concept," in *New Directions in Sex Therapy: Innovations and Alternatives* 91 (Peggy J. Kleinplatz, ed. 2001), at 96. Psychiatrists also diagnosed slaves that attempted to escape with a psychological disorder called drapetomania. *Patrick Singy*, Letter to the Editor, "What's Wrong with Sex?," 39 *Archives of Sexual Behav.* 1231 (2010)."] The DSM's current definition of a paraphilia is oddly broad and archaic, entailing "any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners." [citing: *DSM-Vat* 685]

p. 105: "Distress and interpersonal difficulty are also questionable criteria because they may be caused by the individual's shame and fear of societal response rather than the sexual desire itself. [citing: *Agustin Malón*, "Pedophilia: A Diagnosis in Search of a Disorder," 41 *Arch. Sexual Behav.* 1083 (2012) at 1084 (discussing the criteria of distress in a pedophilic disorder diagnosis); *Alan W. Shindel & Charles A. Maser*, "Why Are the Paraphilias Mental Disorders?," 8 *Jour. Sexual Med.* 927, 928 (2010) (explaining that an individual with a paraphilia may experience distress because of societal discrimination). The DSM attempts to avoid this problem by requiring that the distress and

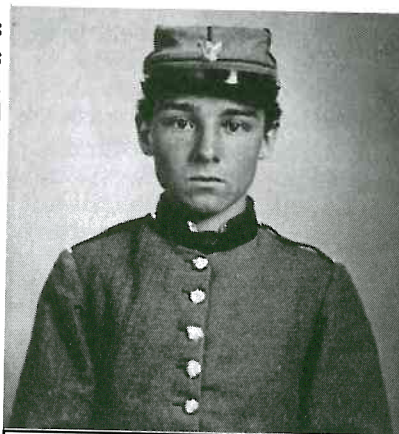
impairment be caused by the paraphilia as opposed to societal response. But it is impossible to tease out causation in this way. All distress likely has some internal and external cause. An individual may be repulsed by his sexual interest for children in part because he finds it morally repugnant and in part because he knows society condemns it as morally repugnant." ...As one critic notes, "[i]t does not seem possible for a person sexually interested in children not to be socially impaired in some way because societal norms dictate that it is abnormal for a person to be sexually interested in children." [citing: *Wm. T. O'Donohue et al.*, "Problems with the DSM IV Diagnosis of Pedophilia," 12 *Sexual Abuse: J. Res. & Treatment* 95, 102 (2000).]

p. 107: 2. Erotic Age Orientation:

Pedophilia as a Sexual Orientation

"The fifth edition of the DSM, as originally published in October 2013, referred to pedophilia as a sexual orientation. [*DSM-V*, at 698] It specifically stated that an intense and persistent sexual interest in prepubescent children that is not acted on or accompanied by distress or impairment is better characterized as a sexual orientation than a mental disorder." [*ibid.*, stating that if individuals "have never acted on their impulses, then these individuals have a pedophilic sexual orientation but not a sexual disorder."]

pp. 108-09: "While sexual orientation is commonly used to describe the gender to which one is attracted, several scholars and advocates argue for a more expansive definition. [citing: *Elizabeth M. Glazer*, "Sexual Reorientation," 100 *Geo. Law Jour.* 997, 1057-58 (2012) (arguing for a broader definition of sexual orientation); *Ann E. Tweedy*, "Polyamory as a Sexual Orientation," 79 *U. Cin. L. Rev.* 1461, at 1479-1509 (2011) (discussing expanding sexual orientation to include the preference of polyamorous relationships); *Michael D. Storms*, "Theories of Sexual Orientation," 38 *Jour. Personality & Soc. Psychology* 783, 783-91 (1980) (discussing the limits of common theories regarding the nature of sexual orientation); see also: *Elizabeth F. Emens*, "Compulsory Sexuality," 66 *Stan. L. Rev.* 303, 338-344 (2014) (proposing additional axes by which to measure asexuality).] Some have proposed, for example, that sexual orientation should include an axis of sexuality versus asexuality - the extent to which one experiences sexual urges or interest at all. [citing: *Emens, supra*, at 338-340 (discussing asexuality using existing models of sexual orientation); *Storms, supra*, at 783-91 (positing asexuality as a distinct sexual orientation).] Sexual orientation might also consider the extent to which one focuses sexual interest on others as opposed to autoeroticism. [See *Emens,*



Pvt. Edwin F. Jemison, Louisiana (later killed in battle); unidentified Massachusetts drummer boy in training. Victimization is nothing new and most often is not sexual.



*supra*, at 341-42 (discussing asexuality along an autoerotic axis); *Glazer, supra*, at 1054-55 (arguing for separation of sexual orientation into general orientation and specific orientation.) Other scholars have proposed expanding it to include the extent to which individuals are polyamorous as opposed to monogamous. [See *Tweedy, supra*, at 1482-1509 (discussing polyamory as a sexual orientation.) More controversial definitions of the term might also include whether one is attracted to humans, non-human animals, or inanimate objects. [See *Jesse Bering, Perry: The Sexual Deviant in All of Us* (2013) at 117-18 (discussing sexual attraction to non-human animals and inanimate objects).]

"Those who argue that pedophilia is a type of sexual orientation distinguish between different types of sexual orientations; sexual gender orientation, the focus of most research on sexual orientation, is but one. [See *M. Seta*, at 231 (defining sexual gender orientation).] This view places pedophilia on a larger spectrum of erotic age orientation, which describes how individuals experience sexual attraction to age groups ranging from infants to the elderly. [See *Seta*, at 3-4 & n. 1, 231 (explaining age orientation); *Bering, supra*, at 169 (discussing erotic age orientation); *Hall & Hall, supra*, at 458 (same).] Erotic age orientation contains at least five categories of sexual interest: (1) pedophilia (attraction to prepubescents); (2) hebephilia (attraction to minors in early puberty); (3) ephhebophilia (attraction to sexually mature persons); and gerontophilia (attraction to the elderly). [*Bering, supra*, at 169 (noting the different categories of sexual interest); *Seta, supra*, at 3-4 & n. 1 (defining the types of sexual interest); *Hall & Hall, supra*, at 458 (discussing categories of sexual interest within erotic age orientation).] Some also categorize nepiophilia (attraction to infants) as a separate type of erotic age orientation rather than as a subset of pedophilia. [*Seta, supra*, at 4 ("It is

not clear if sexual preference for infants ... represents variants of pedophilia or instead represent different paraphilias.".)]

pp. 109-10: "One difficulty in determining whether pedophilia should be considered a type of sexual orientation is that, despite over a century of social science research and legal analysis, there is no one accepted definition of sexual orientation. [See *Emens, supra*, at 339-44 (discussing various models of sexual orientation); *Jessica A. Clarke*, "Inferring Desire," 63 *Duke Law Jour.* 525, 541 (2013) (noting that "there is no unitary definition"); *Randall L. Sell*, "Defining and Measuring Sexual Orientation: A Review," 26 *Archives Sexual Behav.* 643, 644-49 (1997) (describing confusion surrounding the conceptual definition of sexual orientation).] Several means of organizing individuals into categories of sexual orientation based on sexual interests or behaviors have been proposed, accepted, and subsequently rejected and replaced throughout history. [See *Clarke, supra*, at 541-42 (noting that the understanding of sexual orientation has fluctuated over time.) The concept of homosexuality has transformed over the past century from a tendency to engage in same-sex sexual behavior, to a type of gender deviance, to an abnormal personality and mental disorder, and finally to an affirmative social identity. Still, terms such as 'homosexual' and 'bisexual' do not have universally accepted characteristics. Nor are these terms even widely accepted by the very communities they identify; those who prefer to identify as gay, lesbian, or queer, for example, reject the word 'homosexual.'

pp. 110-11: "Modern conceptions of sexual orientation generally share certain characteristics. Perhaps most prominently, sexual orientation generally involves a type of sexual interest. [Some researchers also distinguish different types of psychological components, such as sexual interest versus affection and love. See *Sell, supra*, at 648-49 (discussing various psychological compo-

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nents.) It also requires sexual interests have a certain breadth and depth. [Tweedy, *supra* at 1466-68 (discussing the concept of sexual orientation as an identity), and at 1482-83 (discussing importance of "embeddedness").] It implies something stronger than, say, an individual's interest for individuals with green eyes or dimples. Comparing a sexual orientation to this type of preference trivializes sexual orientation's depth and its role in the individual's psyche. Erotic age orientation is similarly defined by sexual interest. Such sexual interests must be intense and persistent in order to fall into a category; a fleeting attraction to a child is insufficient to qualify as pedophilia."

"Sexual orientation is also widely accepted as immutable, unchosen.... [See *Jahn Money, Gay, Straight and In-Between* II (1988) (stating sexual orientation is not a choice or preference)]. Sexual gender orientation is something that one discovers rather than acquires and which cannot be reoriented.... [See *Seta*, at 231 noting that "reorientation therapies have not worked for homosexual men"). Indeed, reorientation therapy has been so discredited and its attendant risks so high that some states have banned such therapy for minors.]

p. 112: "There is also evidence that erotic age orientation is ...immutable.... [Studer & Aylwin, *supra* at 776 (describing arguments that "pedophilia," like heterosexuality or homosexuality, represents sexual arousal to a particular identifiable group, and is not voluntarily decided); *Dreger, ibid*]

#### IV. Rethinking the Law's Approach to Pedophilic Disorder

##### ...B. Civil Commitment Law

###### ...1. Civil Commitment: Justifications and Limitations

pp. 139-40: "...The Supreme Court has held that civil commitment is unconstitutional unless the individual has a valid mental disorder; otherwise, it might be construed as punishment for future crimes. [Foucha, see *David J. Gottlieb*, "Preventive Detention of Sex Offenders," 50 *U. Kan. L. Rev.* 1031 (2002), at 1037-38 (describing *Foucha* and the invalidity of preventive detention)]. The American Psychiatric Association supports this limitation and recommends that civil commitment be limited to persons who have a 'severe mental disorder' and 'lack of capacity to make a reasoned treatment decision.' Many state civil commitment statutes imply that psychosis, which entails some sort of loss of contact with reality, is required for such commitment. Prior to the 1990s, civil commitment proceedings were almost exclusive to persons with psychosis."

pp. 141-42: "Most criminal law scholarship distinguishes and justifies civil commitment

on the grounds that it is non-punitive. Civil commitment is limited to those who are unable to exercise their autonomy. Retributivism therefore, generally requires that the state limit civil commitment to those who have mental illnesses that significantly compromise their ability to choose to act in accordance with the law. [(Discussing the 'quarantine' model of commitment): "As both *Schulhofer* and *Gottlieb* have noted, we ought not to civilly commit an infectious individual who is able to control disease transmission purely on the grounds that we fear he will not act responsibly. See *Stephen J. Schulhofer*, "Two Systems of Social Protection: Comments on the Civil-Criminal Distinction, with Particular Reference to Sexually Violent Predator Laws," 7 *Jour. Contemp. Legal Issues* 69 (1996), at 91 (arguing that quarantining an infectious individual who can control transmission of the disease would violate her autonomy as a responsible person); .... Such quarantine would amount to preventive detention based on our fear about their future choices and would not adequately respect their autonomy. See *Schulhofer* at 91 (If we simply fear that she may choose to ignore the sanctions deployed to prevent such misconduct, then a decision to quarantine her in advance is a decision to ...violate her autonomy....").] Failure to make this distinction could result in the detention of individuals out of fear of the choices they will make. As preventive detention, this would fail to respect the individual's autonomy to decide whether to commit an offense; as punishment, it would improperly punish an individual who has not yet committed a culpable act." [See *Schulhofer, supra*, at 92-93 ("[A] free society should never resort to regulatory confinement measures that bypass the individual's capacity for autonomous choice."); *Kimberly Kessler Ferzan*, "Beyond Crime and Commitment: Justifying Liberty Deprivations of the Dangerous and Responsible," 96 *Minn. L. Rev.* 141 (2011), at 177-78 ("Pure prevention ...fails to take people's autonomy seriously, to announce rules, to give individuals opportunities to comply, and to treat individuals as responsible agents when we punish them.".)]

p. 149: "A diagnosis of pedophilic disorder raises the odds of civil commitment by approximately 4,500%...." [citing: *Jill S. Levenson & John W. Marin*, "Factors Predicting Selection of Sexually Violent Predators for Civil Commitment," 50 *International J. of Offender Therapy & Comp. Criminology* 609, 622, tbl. 3 (2006)].

p. 151: "At present, the concept of volitional impairment is highly questionable in both law and psychiatry. [See *Robert A. Prentky et al.*, "Sexually Violent Predators in the Courtroom," 12 *Psychol. Pub. Pol'y & L.* 357 (2006), at 363 ("[I]t is problematic, and perhaps

impossible, to distinguish between impulses that are irresistible and impulses that simply are not resisted."); *Thomas K. Zander*, "Civil Commitment Without Psychosis: The Law's Reliance on the Weakest Link in Psychodiagnosis," 1 *J. Sexual Offender Civ. Commitment: Sci. & L.* 17 (2005), at 65-66 (examining the issues in determining volitional impairment in paraphilia cases.)] Psychiatric literature is rife with ambiguity and uncertainty about the concept of volitional impairment and self-control in general, and with concerns about its use in SVP proceedings. [See *Zander, supra*, at 65-66 ("[N]one of the paraphilias require any type of volitional impairment or inability to control impulses to make a diagnosis."); *Prentky, et al., supra*, at 363-64 ("The volitional dysfunction standard as applied in insanity defenses is rarely appropriate in the SVP context.".)]

"For these reasons, the APA cautioned against assuming impaired impulse control from a psychiatric diagnosis for the sake of legal proceedings." [See *DSM-V, supra*, at 25 (cautioning the use of *DSM-V* diagnostic criteria when making legal decisions); *Stephen J. Morse*, "Preventive Confinement of Dangerous Offenders," 32 *J. L. Med. & Ethics* 56 (2004), at 640-65 (discussing the problems inherent in measuring lack of control); *Allen Frances et al.*, "Defining Mental Disorder When it Really Counts: DSM-IV-TR and SVP/SDP Statutes," 36 *J. Am. Acad. Psychiatry & L.* 375, 378 (2008), at 379 (discussing use of the DSM in forensic settings).]

p. 152: "Yet psychiatric research has not demonstrated that paraphilic disorders are associated with volitional impairment or impulse control. ...Research has also questioned the relationship between pedophilic disorder and long-term recidivism. [See *Anthony R. Beech & Leigh Harkins*, "DSM-IV Paraphilia: Descriptions, Demographics, and Treatment Interventions," 17 *Aggression & Violent Behav.* 527 (2012), at 529 (citing research that found a pedophilic diagnosis was unrelated to long-term recidivism).]



The Feared Image of the Unknown Sex Offender

"...Most states allow courts to assume the actor has difficulty controlling his actions from the defendant's mental disorder and his past acts. [See *Kenneth W. Gaines*, "Instruct the Jury: Crane's 'Serious Difficulty' Requirement and Due Process," 56 *S.C. L. Rev.* 291, 300-01 (2004) (arguing that Arizona, California, Illinois, Massachusetts, Minnesota, South Carolina, Texas, Washington, and Wisconsin fail to require a separate finding of lack of control); *Janine Pierson*, Comment, "Construing Crane: Examining How State Courts Have Applied Its Lack-of-Control Standard," 160 *U. Pa. L. Rev.* 1527, 1537-46 (2012) (arguing that ten states do not require a separate showing of lack of control, and either ignore the requirement or inappropriately conflate it with the mental abnormality requirement).] This practice essentially allows courts to conflate pedophilic disorder and other paraphilic disorders with volitional control, a presumption that is not supported by scientific evidence. [See *Michael B. First & Robert L. Halon*, "Use of DSM Paraphilia Diagnoses in Sexually Violent Predator Commitment Cases," 36 *J. Am. Acad. Psychiatry & L.* 443, 450 (2008) (describing the distinction between diagnosis of paraphilia and volitional impairment). Courts' willingness to assume volitional impairment, despite lack of evidence, may in fact be tied to the disgust pedophilic disorder instills. Historically, the determination that a sexual urge creates an impulse control problem has been linked to whether the underlying interest is considered acceptable. It was at one time commonly accepted that individuals could suffer from 'compulsive homosexuality' and 'compulsive masturbation' because same-sex attraction and masturbation were in themselves viewed as problematic. See *Moser, supra*, at 323 ("[C]ompulsive masturbators and compulsive homosexuals began to disappear once those behaviors were no longer seen as signs or symptoms of psychopathology."); *Moser, supra*, at 92 (detailing the history of and problems with paraphilia as a concept). Similarly, courts may be presuming that individuals with sexual interest in children must lack control over their actions.]

p. 153: "...SVP statutes allow civil commitment of individuals who are able to understand and control their actions based on fear of the decisions they will make. [See *Gottlieb, supra*, at 1037, 1045 (arguing that preventive detention of sane individuals is not constitutional); *Schulhofer, supra*, 94-95 (arguing that SVP commitments should be impermissible without proof of mental illness).] This undermines the justifications central to the constitutionality of civil commitment. See *Gottlieb, supra*, at 1037-38, 1045 (arguing that there are constitutional limits to how far

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criminal and civil sanctions may overlap.) pp. 153-54: "...SVP statutes use mental illness to civilly commit individuals who can rationally choose their behavior. An individual in the throes of sexual interest does not act on reflex. He feels an interest, forms an intent, and acts on it. [See *Morse, supra*, at 63 (examining how desire and control influence action and responsibility).] Refusing to engage in the sexual activity might be more difficult for an individual who desires it than for an individual who does not in that the former will suffer from frustration, tension, or loneliness. But these negative consequences do not prevent the individual from controlling his actions... [ See *ibid.*] "A desire is simply a desire...there is no literal physical compulsion, as there is in cases of reflex, spasm and the like.")]

"...[A] deprivation of liberty - particularly one so complete and indefinite as civil commitment - should not be undertaken lightly. [ See *Melissa Hamilton, "Adjudicating Sex Crimes as Mental Disease," 33 Pace L. Rev.* 536 (2013), at 541 (arguing SVP statutes are a human rights issue because civil commitment infringes on liberty and privacy).] It should not allow for the detention of those whose mental disorders might simply predispose them to choose to commit offenses. [See *Gottlieb, supra*, at 1045 (arguing that the state must show why civilly committed individuals differ from other criminals who commit sex crimes); *Schulhofer, supra*, at 94-95.] Otherwise, states may use civil law to circumvent constitutional limits on criminal law. [See *Gottlieb, supra*, at 1035 ("If the government may simply recast its criminal proceedings as civil, it may be able to accomplish the goals it might otherwise achieve only through punishment by a simple change in nomenclature.")]. We must also take care not to detain people based on assumptions with questionable scientific merit, even with the best of intentions."

**Final Thoughts**

p. 169: "...At present, our laws and policies often isolate individuals with pedophilia from

resources that prevent abuse, exacerbating public health and criminal law problems. The rights of individuals with pedophilia, however, are in themselves an appropriate concern for the law. We should not ignore inconsistent or unjust laws simply because they only affect those who provoke revulsion."

**Selected notes:**

28 "...Some researchers argue that child-adult sexual experience does not inevitably result in psychological harm. See *Zander, supra*, at 39 (outlining this research).

115 "As a result, the psychiatric community and its critics have spent the last century debating what constitutes a mental illness. See *Michael S. Moore, Law and Psychiatry*, at 155-216 (providing an extensive discussion about the definition of mental illness); *Zander, supra*, at 28 ("Debates about the validity of the construct 'mental illness' and 'mental disorder' have raged for the past half-century."); *Massimiliano Aragona, "The Concept of Mental Disorder and the DSM-V," 2 Dialogues Phil. Mental Neuro. Sci.* 1 (2009), at 1-13 (providing an example of scholarship that rejects a definition of mental disorder and argues mental disorder is best understood as a construct, which cannot provide a clear-cut demarcation between what is and is not a disorder). Some theorists argue that mental illness rarely reflects illness at all. But instead reflects subjective lay concepts and value judgments, and that the process of being labeled abnormal and ill causes psychological and social harms rather than identifying them. Such skeptics warn that psychiatry justifies coercive interventions to impose social norms rather than treat legitimate illness. See *Moore, supra*, at 155-81 (challenging these views); *Zander, supra*, at 28-29 (describing the debate about the validity of the construct of mental disorder); *Thomas Szasz, The Myth of Mental Illness: Foundations of a Theory of Personal Conduct* (1961) (arguing against classifying psychological problems as diseases or illnesses); *Eric J. Dammann, "The Myth of Mental Illness: Continuing Controversies and Their Implications for Mental Health Professionals," 17 Clinical Psychol. Rev.* 733

(1997) (summarizing Szasz's views and the views of Szasz's critics)."

126 "...*De Block & Adriaens, supra* at 278 (discussing the medicalization of aberrant sexual behavior steered by the use of physicians and psychiatrists as forensic experts to help ensure the state's control over private morality)."

201 "See *Zander, supra*, at 37-40 (summarizing 'debate about the conceptual validity of the diagnosis of pedophilia'); *Studer & Aylwin, supra*, at 776-78 (advocating that future DSM editions should drop pedophilia as a category); *Malin, supra* at 1086 (discussing controversy surrounding the appropriateness of considering paraphilias as mental disorders); *Shindel & Moser*, at 928 (arguing that all paraphilias should be removed from the DSM); *Moser, supra*, at 92-93 (stating paraphilias are 'a pseudoscientific attempt to regulate sexuality'); *Prentky et al., supra*, at 366 (citing controversy regarding diagnostic validity); *Richard Green, 'Is Pedophilia a Mental Disorder?,' 31 Arch. Sexual Behav.* 467 (2002), at 469-70 (questioning validity of diagnosis of pedophilia)."

294 "...As both *Schulhofer* and *Gottlieb* have noted, we ought not to civilly commit an infectious individual who is able to control disease transmission purely on the grounds that we fear he will not act responsibly. See *Schulhofer, supra*, at 91 (arguing that quarantining an infectious individual who can control transmission of the disease would violate her autonomy as a responsible person.);... Such quarantine would amount to preventive detention based on our fear about their future choices and would not adequately respect their autonomy. See *Schulhofer, supra*, at 91 ("[I]f we simply fear that she may choose to ignore the sanctions deployed to prevent such misconduct, then a decision to quarantine her in advance is a decision to...violate her autonomy...")."

295 "See *Schulhofer, supra*, at 92-93 ("[A] free society should never resort to regulatory confinement measures that bypass the individual's capacity for autonomous choice."); *Ferzan, supra*, at 177-78 ("[P]revention fails to take people's autonomy seriously, to announce rules, to give individuals opportunities to comply, and to treat individuals as responsible agents when we punish them.")"

328 "*Beech & Harkins, supra*, at 529 (describing the correlation between pedophilic disorder and civil commitment); *Zander, supra*, at 36 (describing the statistical connection between pedophilia diagnosis and civil commitment); *Hamilton, supra*, at 553-54 (examining statistically the role diagnoses of sexual deviance play in imposing preventive detention)."

331 "See, e.g., *Shindel & Moser, supra*, at

927 (stating that paraphilia diagnoses have been misused in criminal and civil commitment proceedings as indication that individuals cannot control their behavior); *Hamilton, supra*, at 554-55 (describing cases in which pedophilia was analogized to lifelong addiction); *Commonwealth v. Stephens*, 74 A.3d 1034, 1040-42 (Pa. Super. Ct. 2013) (referring to expert testimony that defendant was likely to re-offend because pedophilia was incurable, lifelong disorder); *United States v. Wetmore*, 766 F.Supp.2d 319, 336-37 (D. Mass. 2011) (citing expert testimony that the defendant was likely to re-offend because of pedophilia diagnosis); *In re Kennedy*, 578 S.E.2d 27, 29 (S.C. Ct. App. 2003) (finding pedophilia diagnosis alone sufficient to demonstrate sufficient likelihood of re-offending)."

344 "See *Morse, supra*, at 64-65 (discussing the problems inherent in measuring lack of control)."

345 "See *Francesca et al., supra*, at 375-76 (describing the shortcomings of SCP definitions applied broadly by state statutes)."

361 "See *Schulhofer, supra*, at 94-96 ('Preventive incapacitation of [individuals who are capable of choosing to act and responding to sanctions], as a substitute for reliance on the criminal process, is inconsistent with the core guarantees of a free society...')."

390 "See *Beech & Harkins, supra*, at 529 (citing studies concluding that a pedophilic diagnosis is unrelated to long-term recidivism); *Robin J. Wilson et al., 'Pedophilia: An Evaluation Of Diagnostic and Risk Prediction Methods,' 23 Sexual Abuse* 260, 268-70 (2011) ('However, individuals who met DSM-IV-TR-based diagnoses of pedophilia were no more likely to be convicted of a new sexual offense than those who failed to meet the DSM-IV-TR diagnostic criteria for pedophilia...'); *Heather M. Moulden et al., 'Recidivism in Pedophiles: An Investigation Using Different Diagnostic Methods,' 20 J. Forensic Psychiatry & Psychology* 680, 693 (2009) ('The results suggest that those individuals diagnosed as pedophiles do not recidivate more often or more quickly than non-pedophiles.').; see also *Hamilton, supra*, at 579-80 ('Nor is a DSM diagnosis of pedophilia correlated with sexual recidivism. Actually, a study using a regression analysis method indicates that a DSM diagnosis of pedophilia is not even a significant predictor for sexual recidivism.')."

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What Is the Distance and the Slope Between Here and There?

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## Follow-up: Aging & Lost Predictive Impact of Sexual Convictions or Charges from Earlier Adulthood

Editor's Note: I offer this brief excerpt from the Abstract of the following article simply as further support for a theme I have already covered in previous issues of TLP, namely aging-out and desistance.

Excerpt: *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(4) *Jour. of Criminal Justice* 344-354 (July-Aug. 2011)

Abstract [subsection:] "Highlights: ...Prior offending in early adulthood loses its predictive value with the passage of time. ... Offender age at release and educational achievement were associated with recidivism. Risk assessment should consider both the age and the passage of time to assess risk of reoffending."

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## Victim of the Month — Dan Larson

Daniel Leland Larson is an apt example of what's been wrong and what still is wrong with the MSOP. Currently at age 57, he is one of about 740 detainees in MSOP. In 1977, at age 16, Larson molested two girls (4<sup>th</sup> and 5<sup>th</sup> grade).

Even though these were his only sex crimes, he was promptly committed to the Minnesota Security Hospital in St. Peter, MN as "mentally ill and dangerous." Later, a prosecutor petitioned a court to change the commitment to one based on "psychopathic personality" (a statute that has been on the books since the 1930s, when it was enacted in knee-jerk reaction to a statistical 'bubble' of such cases). Without even being brought before the judge, Larson's commitment was changed.

In Larson's commitment case, some lip service was paid by a prosecution-hired expert to the vague mumbo-jumbo standards in that statute. However, effectively, Larson

was committed on nothing more than the commission of those crimes, solely out of fear that, in the absence of that commitment, he would have simply been placed in a juvenile facility until age 21, and then released. In short, Larson's commitment was a substitute for longer imprisonment that was unavailable at the time for defendants of that young age.

The 1994 enactment modestly updated that psychopathic personality statute and added an alternative, even more elusively nebulous formulation known as the "sexually dangerous persons" law. In 1995, Larson's commitment was simply turned over to MSOP, even though Larson was not committed under that new statute. Along with most others previously committed for sex crimes, he was sent to the new MSOP facility then just being built in Moose Lake.

Larsen has been in the MSOP-Moose Lake facility ever since then, and has watched as the total population of MSOP (in both that facility and the St. Peter facility) has swollen from about 75 to about 740 presently. Between the statutory creation of MSOP and 2012, no one at all was released.

Since then, given the pendency of two very earnest and soundly based federal-court challenges to the unconstitutional nature of those commitments and that no-release practice, a small trickle of releases has finally opened like a crack in MSOP. However, this amounts to a running average of about two releases per month. At this rate, were no one ever again committed to MSOP, it would take about 30 years to empty MSOP.

Most MSOP detainees believe that this trickle has only been to impress the courts that MSOP is finally doing something to address its failures over the years. The detainees largely suspect that, if those federal court challenges both eventually fail or otherwise come to nothing, the crack will once again be sealed and releases will cease.

These fears gain extra fuel from MSOP's choice of which detainees to release. Thus far, most releasees have far worse and more recent records of sex crimes than those like Larson. Detainees like Larson mutter to each other the possibility that those likeliest to recidivate have been selected for release so that, assuming they do so, MSOP will have an excuse to permanently weld the 'exit gate' shut.

Larsen's case and his continuing, lifetime plight stemming from it reveal a system of arbitrary incarceration by pure judicial whim and political posturing. Had Larson been sentenced as an adult and sent to prison back then, he would have achieved release decades ago.

While it is long overdue, Larson should now be granted the humanity of restoration

to freedom on the presumption that, after all these years, he has been rehabilitated, or at least that time itself has, in his current late middle-age, so slaked his sex drive as to make sex crimes driven by strong passions a thing of young-man fantasies now only in his distant past.

On a more general level, Larson's situation only reflects that of many others in MSOP who have been detained, either in lieu of incarceration or as a supplement to incarceration in prison -- now for as many as ten, twenty, or more years -- purely due to someone's fear that they might commit another sex crime if released.

In reality, the statistics say the contrary. True, in some cases, long-past records of multiple sex crimes suggest that, at one time, one might indeed have been the 'worst of the worst.' Nevertheless, nothing about the present lives of those held in MSOP for so many years suggests that they are currently in such states of extreme, irresistible sex drive. Nor does anything in the present suggest, or that, given some slight prompt (such as mere sight of some potential victim of choice), driven by utterly overwhelming compulsion, they would pounce -- the original, panicked speculation about sex criminals that drove enactment of that arbitrary incarceration.

MSOP itself and the board and courts governing release from it all act as a sort of exceedingly cynical parole board, demanding that one detained prove, to a high degree of certainty, that he is 'safe' to release. However, the only adequate proof of such safety is time after such release without commission of a new sex crime -- the ultimate 'Catch 22.'

Both MSOP and these tribunals deliberately choose to ignore "desistance" -- the well-known tendency away from committing further sex crimes, especially after many years (even when spent incarcerated), and

"aging-out" -- the even more undeniable sex-crime recidivism-extinguishing impact of increasing age.

That aging-out effect can be seen in reduced recidivism statistics starting at age 30. By time one encounters middle age, chances of another sex crime are minimal even if one was the proverbial sex-crime committing machine as a young man. Yet half of those committed to MSOP are nearly age 50 at that time. Once one attains age 60, currently applicable odds of recidivism have shrunk to less than 1%, even for such earlier recidivists. If one were truly assessing sex offenders for "dangerousness" (that is, risk of re-offense), one should release every MSOP detainee who attains age 60.

The sole obstruction to such rationally justified release is the political fear of public dismay. There is something fundamentally immoral about politicians who have knowingly built their careers partly on the strength of baselessly whipping up the public into a state of unwarranted fear of suggested sex-crime committing 'monsters,' later relying on that same baseless fear they themselves created as supposed justification for denying release to those they have unjustly detained for so many years.

Then too, there is the immorality of MSOP clinicians building a permanent employment plan on the myth of sex crime monsters who supposedly remain irredeemably dangerous despite decades of treatment. Daniel Larson is a good example of this as well. Therapists have had since 1995 to treat Larson. Despite this, they still claim that he resembles a raving lunatic who is completely beyond of self-control. Anyone who has ever spent even just a few minutes in conversation with Larson can see that he is one of the mildest, most fully self-controlled individuals you would ever meet anywhere. The fact is that

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How Can You Be Sure This Boy Is Not a Future Sex Offender?  
How Can You Be Sure? How Can You Be Sure?



if you met Dan Larsen on the street of any small town in Minnesota, you would believe that he has been there his whole life. His relaxed mode of conversation fits right in with the rest of the charm of "Minnesota nice." This is no act; it is simply the man himself.

The hard fact is that MSOP clinicians spend far more time and attention to concocting lies about their detainees in an effort to pile-on still more claimed justification to retain each of them than those clinicians spend on treatment.

An even worse, but undeniable fact concerns the very design of MSOP treatment. Sex offender treatment elsewhere is simple, efficient and fast. (Two- to four-year programs are the rule.) Such programs boast the largest claims of reduced recidivism by their graduates. (As it happens, however, sex-crime recidivism has diminished sharply over the last 20 years by the sheer deterrence of current extreme sentences for such crimes, especially for those who repeat their crimes. Because of this, the impact of treatment cannot be clearly delineated in this time of statistically insignificant rates of sex-crime recidivism.)

Yet in sharp contrast, MSOP has constructed a treatment program calling for mastery of 32 different areas of skills having to do with social insight, the perspectives of others, etc. These are inculcated in various "modules" that must be taken in academic "quarters" (four per year) at a rate of two or three per quarter.

Often, modules must be repeated by a given detainee. Sometimes this can happen when a clinician feels that mastery of the modules was not demonstrated, or that the material has been forgotten to some degree. Alternatively, it can also happen simply when other modules are full, so that at least that quota of two modules per quarter can be assigned -- even if it is unneeded repetition.

Finally, elevated versions of the same module have also been created. These must be taken by those in the advanced "phases" of treatment. In summary, this entire "module" system constitutes an extreme consumption of years to complete.

Further, the contents of such modules must be applied to one's own persona, case background, and present situation in reporting and discussions in one's "core group" sessions (in addition to the module meetings themselves). Even though these dialogs often amount to someone else telling you what you are thinking or feeling, any failure to agree with such assertions or any insistence on the truths of one's own experiences and perceptions (as opposed to those 'cookie cutter' module theories) will result in downgrading one's treatment performance, thereby delaying one's eventual 'graduation' from

treatment.

Distinctly, the MSOP treatment hierarchy has become enraptured with the concept known as "risk, needs, responsibility." This concept relies heavily on matters known as "dynamic risk factors." Chiefly, this reliance is used in cases where the "actuarial risk assessment" based on factors beyond one's control ("static factors") shows that one's re-offense risk is low. In such cases, a new justification for retention in commitment must be manufactured.

"Dynamic risk factors" offers a fertile field from which to harvest some claimed reason(s) why the standard static-factor analysis of low risk should not be believed as to a specific detainee. Over time, the list of such dynamic factors has mushroomed exponentially. Currently, myriad claimed dynamic factors exist, amounting to one for every conceivable situation, such that at least some bad things can be said about any given sex offender. (Very few of the dynamic factors in use are "protective," that is, factors making future recidivism less likely -- other than the existence of grave physical illnesses or whole-person disabilities so extreme as to preclude mobility).

Partly because of the lack of standardization as to dynamic factors, very little research has been done on more than a few of them, leaving gaping questions as to their validity and reliability over different groups. Even less peer-reviewed research has been done into whether different assessors ("raters") would reach the same conclusions as to a given sex offender on any given dynamic factor.

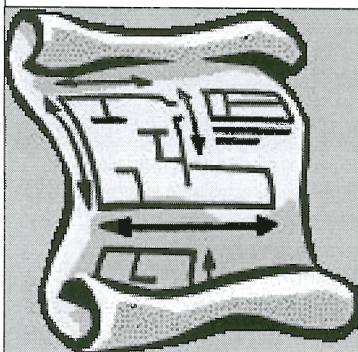
Even worse, no exact standards exist; the scenarios to which a given dynamic factor might be said to have any application vary greatly; and exactly how those factors should be applied to each such situation is purely a matter of widely varying impression. Due to these unscientific aspects, use of dynamic factors mostly amounts merely to resurrection of the original "clinical impression" (non-actuarial) assessment that was found to be 90% incorrect in studies conducted starting in the late 1990s.

In sum, MSOP's own practice of sex-crime risk assessment is apparently aimed at finding any remotely plausible reason to assert that any given MSOP detainee presents some elevation of risk over the risk level derived from standard actuarial risk assessment instruments. It is also the case that most note-taking by therapists in MSOP core group sessions seizes upon statements deliberately taken out of context to cast inaccurate characterizations of detainees as evincing attitudes, beliefs, emotional states or inclinations, etc. All this aims to create the abiding appearance of unacceptable risk of sex-crime recidivism and even appearanc-

es of nonexistent psychopathology or of grossly exaggerated psychopathology.

Overall then, MSOP so-called "treatment" is based on a modality not accepted or even recognized anywhere else. In reality, it amounts mostly to an endless Herculean repetitious series of assigned tasks simply to forestall completion of treatment forever, or at least, very close to forever.

The outcome of this is that treatment which should have been concluded in two to four years is drawn out by MSOP to twenty years or more, and more often never results in completion at all. Yet so-called treatment



The MSOP Treatment Modality?

greatly increases MSOP's annual cost of operation. Currently, that cost of operation, per detainee, comes to about five times the per-prisoner average cost of operation of Minnesota's prisons. Clearly, more money does not equal better treatment. Based on outcomes, MSOP is a tremendous waste of Minnesota's taxpayer dollars -- unless the surreptitious goal of MSOP treatment is not to enable one to be released and to live a crime-free life, but instead only to find a succession of excuses never to release any of its detainees.

Back at the time of the enactment of Minnesota's current sex offender treatment law, one of Larsen's lawyers, John Grzybek, declared bluntly, "The state is not interested in treatment. That's a ruse. That gives the state the excuse to use the statute. They want these people off the street. They want to throw away the key."

Dan Larsen has been locked up supposedly for treatment with an eye toward release for the last 40 years, drawing ever closer to a half-century. Surely any rational and compassionate state would earnestly inquire whether, at age 57, Dan Larsen should finally get his chance to live an adult life in some semblance of freedom, as others do.

Surely, the same rational, compassionate state would not continue to operate a system using sex offenders as fodder to supplement incarceration simply as political salve to the fears of the populace that someone else someday will surely commit a sex crime

-- somewhere, sometime, and unpredictably. Commitment is the wrong answer, which simply does not address that residual problem. Natural-life, post-imprisonment preventive detention masquerading as commitment is even worse: it is unconscionably cruel and unusual misconduct through the brute force of unchecked governmental power as endlessly repeated retribution. That is not the government we learned about when we were young.

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## Sex Offender Commitment Unmasked as Incapacitation of Those Feared to Be Dangerous

Editor's Note: Incapacitation is a known aim of sentencing in the criminal law and is typically categorized as part of the larger aim of deterrence from committing future crimes. Sheer preventive detention, as incapacitation from committing such crimes, has been held to be an improper aim of civil commitment. Hence the importance of the terse declaration in the following article.

Excerpt: *American Psychiatric Ass'n Task Force on Sexually Dangerous Offenders, Dangerous Sex Offenders* (report, 194 pgs., paperbound, 1999).

(Tracing the history of "sexual psychopath laws," and noting the "purpose" of such laws as shifting from "therapeutic" to "incapacitative".)

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## Crime Control Theater

Excerpt: "Counterfactual Thinking About Crime Control Theater..." *22 Psychology, Public Policy and Law* 349 (Nov. 2016):

"Crime control theater refers to policies enacted as a response to a moral panic, based on folk beliefs about crime; such policies are perceived as more effective than they really are."

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## Government Illegality

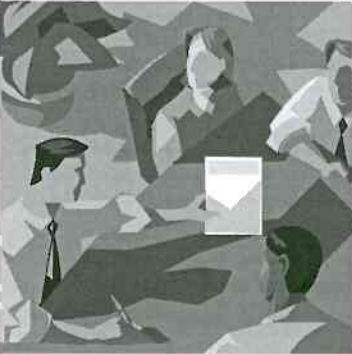
A measure of government illegality is now a well-accepted weapon in the war against crime. It was not always so clear, and it is worth recalling the views of two of our most eminent jurists on this issue -- for the principle they enunciate, while not the law, is nonetheless a powerful reminder that there are and should be judicially enforced due

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process limits on government conduct in fighting crime. Justice Brandeis, dissenting in *Olmstead v. United States*, 277 U.S. 438, 472, 72 L. Ed. 944, 48 S. Ct. 564 (1928), put the point with characteristic eloquence:

Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means -- to declare that the government may commit crimes in order to secure the conviction of a private criminal -- would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face.



Justice Holmes, in the same case, put the point more simply and succinctly:

"We have to choose, and for my part, I think it a lesser evil that some criminals should escape than that the government should play an ignoble part." *Id.* at 470; see also *Casey v. United States*, 276 U.S. 413, 423-25, 48 S. Ct. 373, 72 L. Ed. 632(1927) (Brandeis, J., dissenting)."

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**In Memoriam**  
**Steven Fitzpatrick**  
**D.O.B.: 10/10/1952**  
**D.O.D.: 3/18/2018**

Steven Fitzpatrick had been living in Beta Unit for quite some time before he passed away. He had been suffering from kidney disease and was on a kidney transplant list

for a prolonged period. No donor kidney became available by the time he began suffering from complete bilateral kidney failure. This forced him onto ongoing dialysis in order to sustain his life. Apparently, this sapped his will to live. He succumbed to his condition on Sunday, March 18, 2018, after opting to forgo further dialysis. He "graduated" by giving up. Rest in peace, Steven.

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### Helping Hands Policy

Helping Hands Volunteers Policy #310-5226ML (in reference to Jannetta Affidavit concerning attempt to comfort Steve Fitzpatrick during his final days. (see below)

"PURPOSE: To establish a process for MSOP clients to provide support to and receive personal cares from their peers.

DEFINITIONS:

Helping Hands volunteer - a client participating in the Helping Hands Volunteer program who provides hands on personal cares to clients facing end of life.

Hospice - a specific, programmatic model for delivering palliative care support services, resources, or medications to terminally ill clients.

PROCEDURES:

D. Health Services coordinates and schedules Helping Hands client volunteers.

I. Health Services will maintain documentation of clients' facility training and hospice training through Essentia Health Hospice Volunteer program.

2. Helping Hands Volunteers:

a) are assigned by Health Services and may not choose their assignments;

b) are not paid;

c) give a one-year commitment as a volunteer;

d) provide hands on care to clients, which may include:

(1) hand/back massages;

(2) emptying of urinary catheter/drainage bag;

(3) oral cares;

(4) feeding of client's liquids;

(5) re-positioning of oxygen cannulas or masks;

(6) other cares designated by nursing staff;

e) sign a Helping Hands Volunteer Confidentiality Agreement (310-5226dML)."

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How Can You Be Sure?

### Text of David Jannetta Affidavit on His Thwarted Effort to Provide Aid to Steven Fitzpatrick in His Final Two Days

I am under sex offender commitment under the laws of the State of Minnesota, and I am in the custody of the Minnesota Sex Offender Program ("MSOP"), and I am confined in the MSOP facility located at 1111 Highway 73, Moose Lake, MN 55767.

In that capacity, I am a member of the Helping Hands Program, assisting the elderly living on Unit Beta, also acting as a "Crest Guide" on Unit Alpha, and assisting those individuals in the process of passing on within the confines of the hospice program under the authority of Helping Hands.

That on Friday, March 16th, after the 1630 count, I was called to Health Services.

That upon arriving at Health Services, I was informed - in my capacity as a Helping Hands volunteer - that Steven Fitzpatrick would be moved to the isolation room due to failing health.

Helping Hands volunteers are assigned by Health Services.

Upon receiving this information, I proceeded to "Unit Beta" where I signed into the "Helping Hands" book - stating the date, time, and the person to which I would be attending.

That while waiting for Mr. Fitzpatrick to be moved, I sat with him in his room, and held his hand until nursing staff moved Mr. Fitzpatrick off his living unit Beta to the Isolation Room.

At that point Mr. Fitzpatrick was transferred to the Isolation Room, late Friday evening, I signed out of Unit Beta and returned to my own assigned living unit, Unit I-C.

Mr. Fitzpatrick was given liquid Morphine at one hour intervals.

Saturday, March 17, 2018, I was approached by Anthony Garnett, a Native resident of the Minnesota Sex Offender program, who requested that I take a "Native Offering," which included: a Medicine Bag, and a Dream Catcher, to assist him in his passing, as Mr. Fitzpatrick was of the Native community. (According to Mr. Fitzpatrick, it was the Micmac Nation.)

I accepted this, and upon arriving at Unit Beta and signing into the living unit by way of the Helping Hands sign-in sheet, went to the isolation unit where I conversed with the security person (Don Giles) guarding Mr. Fitzpatrick.

The staff on duty (Don Giles) stated that he was not sure that Mr. Fitzpatrick would be

allowed to receive these "Native" items. Mr. Giles stated that I would need the permission of the officer of the day (OD), Mr. Phillip Olsen.

At that time, I and Mr. Tony Garnett, a Native resident of the Minnesota Sex Offender Program, explained the purpose of this offering.

Mr. Olsen stated that he would check with Sandra Bryant, the Religious Coordinator as to the appropriateness of providing Mr. Fitzpatrick these Native items.

After a few hours, it was stated by Mr. Olson based on the information by Sandra Bryant, that Mr. Fitzpatrick would not be allowed these items - he could have them after his death.

I returned to Unit Beta, to attend Mr. Fitzpatrick, and was told by Officer Don Giles that "Helping Hands" was not wanted, and that "Helping Hands was not needed."

At this point, I was not allowed back into the isolation unit to help Mr. Fitzpatrick.

In returning to Unit Beta, I was waiting for the security staff to read the policy and procedures for the Helping Hands Program.

I then returned to the living Unit Beta, after the 1630 count - again with the hope that security staff read the policy and procedure for Helping Hands - this was never done by security staff who was attending the bubble, which controls all locked doors.

On Sunday, March 18th, 2018, two security staff familiar with Helping Hands Program were on duty in the isolation room for Mr. Fitzpatrick.

In addition, Mr. Michael Zimmerman was contacted, and he cleared up the issues related to the purpose and intent of the Helping Hands Program.

On Sunday, March 18th, 2018, in the evening, Mr. Fitzpatrick passed on.

At 0600 on Monday, March 19th, 2018, I went to work in the Kitchen.

At that time, I noticed there was no "food tray" scheduled for the isolation room. I then assessed that Mr. Fitzpatrick had passed on.

Upon completing my work assignment in the Kitchen, I met with another Helping Hands Program volunteer, Mr. Edward Dooley, who also took care of Mr. Fitzpatrick.

At that time we went to Unit Beta, wearing our Helping Hands Identification Badges.

Our intent was to inform the "treatment" staff of the way Mr. Fitzpatrick was treated, and the way Mr. Dooley and I were treated by staff on Saturday.

We asked for permission to attend their morning meeting, we were granted entry by Ms. Debra Barrons. Also in attendance were Mary Ward, Michael Zimmerman, and others.

At no time did anyone use profanity, disrespectful language or act in an intimidating

(Continued on page 19)

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manner - such behavior would have triggered an "ICS" (Incident Command System) and the AS-Team would have responded to address any inappropriate behaviors.

At no time was Mr. Dooley or Mr. Jannetta prompted to leave the area.

At no time was Mr. Dooley or Mr. Jannetta prompted that they were in an unauthorized area.

At no time was Mr. Dooley or Mr. Jannetta prompted that they were out of behavioral control.

At no time was Mr. Dooley or Mr. Jannetta prompted that they were using inappropriate language.

At no time did anyone involved with the Helping Hands Program (Mr. Dooley and Mr. Jannetta) were informed that Mr. Fitzpatrick had passed on.

At no time had any assistance [been] offered to those who attended Mr. Fitzpatrick in his passing to deal with adverse emotional issues related to his passing.

After attending the staff meeting, staff were thanked for their time and both Mr. Dooley and I left living Unit Beta.

After 1400 on Monday, March 19, 2018, I received a BER (Behavioral Expectation Report) for being in an "Unauthorized Area" by way of attending the Morning Meeting on Unit Beta.

An Incident Report was authored by Michael Zimmerman and Debra Barrons, and written by Gwen L. Peterson - not a Helping Hands Program officer or participant - that I was described as "screaming," "abusive," "out of control," and "cursing" all while attending that morning meeting.

On Tuesday, March 20, 2018, I was offered a plea deal by Corrine Halverson of the Behavioral Expectation Unit (BEU): 7 days of restrictions, which would be reduced to 3 days which included a treatment assignment to explain my distorted thinking which must be presented in the core group and in a community meeting.

This offering was refused in favor of a BEU Board hearing.

This action by MSOP staff is intended to transfer responsibility for the inappropriate behaviors of some security staff, surrounding the maltreatment of Mr. Fitzpatrick during his passing on. And have no advocate to speak or defend them while living or dying.

Residents of the Minnesota Sex Offender Program, and Helping Hands Program including myself are not allowed any representation when addressing rule infractions brought against them.

I was informed by a staff person who has agreed to be deposed relating to this issue that the facts presented in this affidavit are true and correct.

That this same person will attest to and confirm that this/these actions taken by MSOP staff are further in retaliation against myself having followed an assigned task given to him with respect to the Helping Hands Volunteer Program.

That I have been, and continue to be punished for the inappropriate behaviors of the staff of the Minnesota Sex Offender Program.

That I have, and continue to act in an honorable and respectful manner to all staff of the Minnesota Sex Offender Program.

That this affiant has requested - and been denied - assistance by the clinical team of the Minnesota Sex Offender Program to deal with any emotional issues or support for processing the passing on of Mr. Fitzpatrick (no grief counseling).

That I am fully competent to attest to the facts presented in this affidavit.

That I did, on the 23 day of March at 1100 hours, meet with Nichole Boder (Health Services) to explain what transpired on the previous weekend regarding Mr. Fitzpatrick.

That I was, on March 23, 2018, between the hours of 1030 and 1130 confronted no less than 5 times by security staff (Joss Anderson) to accept the offer made by the Behavioral Expectations Unit Officer, Corrine Halverson.

That at 1130 hours, I was confronted by Corrine Halverson to again accept the offer she made.

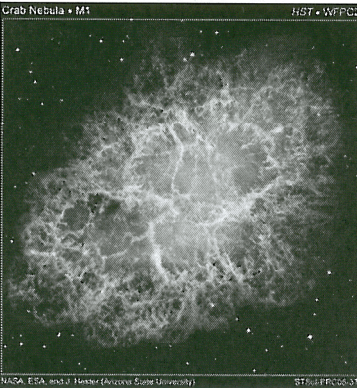
That I did explain and again request a hearing regarding this matter to present evidence of no wrongdoing.

That on March 24, 2018, at 09:50, Mr. Josh Anderson of Unit I-C staff again began stating to myself that I should have taken the "deal," and that things would be "bad for me."

I reserve the right to amend or append this affidavit as information and/or facts are made available.

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### An Interesting Insight from Albert.



"A human being is a part of the whole called Universe, a part limited in time and space.

He experiences himself, his thoughts and feelings, as something separated from the rest, a kind of optical delusion of his consciousness. This delusion is a kind of prison for us, restricting us to our personal desires and to affection for a few persons nearest us. Our task must be to free ourselves from this prison by widening our circle of compassion to embrace all living creatures and the whole of nature in its beauty."

Albert Einstein



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## Desistance: A Research Review

Farmer, Mark, McAlinden, A.M., & Maruna, S., "Understanding Desistance from Sexual Offending: A Thematic Review of Research Findings," 62(4) *Probation Journal* 320-35 (2015)

### Text Excerpts:

"There is no longer any debate in the field... that criminality is a pattern of behavior from which most individuals eventually desist. For non-sexual offenders this is illustrated by the 'age/crime curve' (e.g., Farrington, 1986; Sampson and Laub, 2003), which broadly demonstrates that crime is mainly committed by people in their teens and twenties, after which offending rates decrease with age.

### Desistance from Sexual Offending

A similar phenomenon appears to be the case for sexual offenders as well, despite widespread beliefs about the nature of sexual offending. Although the age-sex crime curve peaks later and tails off less dramatically than the age-crime curve for non-sexual crime, sex offending also decreases with age, contradicting the perception that sex offenders' risk levels are high, stable, and linear (Lussier et al., 2010). Indeed, numerous studies now show that recidivism rates amongst sexual offenders are low (e.g., Kruttschnitt et al., 2000; Harris and Hanson, 2004; Thornton, 2007; Barnett et al., 2010), in fact lower than recidivism rates for other forms of non-sexual crime. Most people who have committed sexual offences, therefore, appear to desist from further sexual offending.

Despite this consistent finding in the literature, there has been little published research

into how and why people desist from sexual crime. Kruttschnitt et al. (2000) conducted a retrospective study of 556 sexual offenders, looking at whether informal social controls, specifically employment and marriage, predicted desistance, and whether such bonds are conditioned by formal social controls such as probation and treatment. They found that job stability significantly reduced the probability of re-offending, but marital status had no significant effect...

More recently, Harris (2014) conducted a qualitative investigation into desistance amongst a group of 21 sexual offenders deemed to be desisting from crime. Harris found evidence that small number (n=3) had simply aged out of crime, a process she referred to as 'natural desistance.' This group of individuals had considerable criminal histories, including sexual offending and other types of offending. The biggest group of desisting offenders (n=18), however, attributed their desistance to cognitive transformations, ranging from a simple recognition that the offender had caused harm, through to a full creation of a new, non-offending identity, combined in some cases with a desire to assist others to avoid crime.

### Methodology

In our own research, we have sought to explore both the structural and the cognitive changes associated with desistance from sexual offending against children. For the purposes of this research, this is defined as those who have at least one conviction for sexual offences against children. The sample group is described in more detail below; it includes offences ranging from rape and indecent assault of minors to indecent exposure and engaging in sexual activity in the presence of a child. Individuals convicted of sexual assaults with adult victims were not included in the research as the literature considers these two types of sexual offending to be qualitatively different enough as to require separate treatment (see e.g., Blumenthal et al., 1999; Hanson, 2001). A sample of 32 individuals were interviewed, all of whom had in the past been convicted of such offences. Our goal was to better understand how they were able to desist from re-offending, exploring both the social context of their post-conviction lives and, in particular, their cognitive framing of this context.

...[A]s previous research (e.g. Hanson et al., 2014) has shown that sexual recidivism rates approximately halve after 5 years crime free in the community, and halve again after 10 years...

### A Re-Appraisal of the Pros and Cons of Offending

Participants said that in the early stages of desistance they made a rational choice about their behavior based on a growing realization

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of the disadvantages of persistence. For some, this arose from concerns about the likelihood of being caught, for others it was related to a growing realization of the harm they were causing. Simplistic versions of rational choice theory as an explanation for crime and desistance have been criticized (e.g. Farrall, et al. 2014) for assuming that people can simply decide to stop crime and then stop, without any further process taking place. However, the desisting narrators' Accounts in this research shared considerable themes with these rational choice accounts. Indeed, such a theme is largely consistent with the other aspects of the desistance narratives we heard. For example, when motivation is situational, when offending is not part of a general antisocial lifestyle, and when the stakes and consequences for detection are high, then a rational choice to desist may indeed carry much more weight than in other circumstances.

This self-narrative is consistent with Paternoster and Bushway's (2009) distinction between an individual's 'working identity' as a person who will commit criminal acts, and their 'future possible self.' In this model, the start of the desistance process occurs when the identity of offender becomes less satisfying and fears of a bleak and unsatisfying future arise. Thus, it is a rational choice, of sorts, when the individual is forced to contemplate between two, possible futures: that of the *positive possible self* and that of the *feared possible self* (Paternoster and Bushway, 2009: 103). Where our participants' self-narratives differed from Paternoster and Bushway's theory is in the degree of change required. Paternoster and Bushway argue in favour of substantial cognitive change preceding desistance. In the current research study interviewees said they reverted to a previous, non-offending and conventional lifestyle.

Moreover, detection and conviction appear to have carried with them a significant deterrent effect, sufficient to start the process of cognitive transformation necessary for desistance. Interviewees repeatedly said that they were "shocked" into changing not just their behaviors but also their views about the abuse they were perpetrating and precipitated an end to any consideration of further abuse. A number of participants vividly described their shock at being arrested. Several said that arrest acted as a turning point after which they ceased offending.

#### Rehabilitation

The narratives of desisting offenders were also pro-rehabilitation. Desisting offenders were likely to describe how they took ad-

vantage of rehabilitative efforts provided for them. This manifested itself in several sub-themes in the research and is probably related to a willingness to change and an ability to make use of formal 'turning points' provided by the criminal justice system (see Giordano et al., 2002). Many of the desisting group talked generally about the usefulness of probation; in particular they seems appreciative of probation officers who were concerned about them but firm and realistic. Indeed, the personal characteristics of the probation officer seemed to be important, unsurprisingly those who showed a personal interest in the individual were perceived as particularly helpful. Others talked in a positive way about what they had learned in prison. Some participants described using prison as a 'college' to obtain qualifications and knowledge they would not otherwise have had access to. This can be seen as a form of a 'redemption script' (Maruna 2001) in which the individual seeks to make the most of a bad situation, cognitively turning it to their advantage.

Many of the desisting group talked about the usefulness of sex offender treatment programmes, sometimes provided in prison but mostly the men referred to those provided by probation. This may have been because the programmes provided by probation were more recent, and so easier to bring to mind, or it may be a reflection of the relative utility of community programmes compared to those run in prisons. They particularly appreciated the skills they learned from such programmes. One man who had undertaken his programme some time ago was nevertheless able to recall the tactics he had learned on the course. However, others talked about learning or being reminded of values, and understanding the perspectives of other people. A small number of the group reported disliking having to attend sex offender programmes, one stating he found hearing other men talking about their crimes to be "repulsive."

It is of note that participants talked, on the whole, of the advantages of probation at this stage. In some ways this appears at odds with the findings of Farrall et al. (2014). In their study, participants were not able to identify the usefulness of probation until some years after their initial desistance. Farrall et al. attribute this to a readiness to be receptive to the advice of probation officers - some individuals, who are not ready to receive this advice, nevertheless mentally 'store' such advice until they are more receptive to change. For our group the stakes associated with reoffending were particularly high, and to reoffend would be contrary to the positive self-image they were trying to develop and maintain. It could be that the shock associated with conviction described above led to a desire to conform

to rehabilitation efforts that were offered to the individuals.

#### Planning for the future

One feature of the desisting sexual offenders' stories was that they nearly all contained substantial evidence that the participant had a clear sense of their future lives, where they wanted to be and what they wanted to do. In many cases, these aspirations and the expression of tangible goals related to finding employment or maintaining existing or building new relationships. In a way there was a sense of optimism similar to that of Maruna's (2001) desisting offenders. Although optimistic, most of the narratives contained plans for the future that were reasonably achievable and consistent with the individual's abilities and social capital. There was a sense of hope for the future that seemed to be related to desistance. Further support for this idea that planning contributes to desistance comes from the work of Willis and Grace (2009), who found worse recidivism outcomes for a group of prison leavers who did not have firm plans for the future, compared with those who did. This suggests that the ability to form plans and maintain optimism is an important part of desisting from sexual crime.

#### The Importance of Work

Research into desistance from non-sexual offending has consistently pointed to the importance of work in the initial stages of desistance (Farrington et al. 1986; Sampson and Laub, 1993; May, 1999). Work is said to help provide meaning to individual lives and give individuals "Something to lose" by getting in trouble with the law again. Employment also involves new forms of new routine activities, informal social controls, social supports and the possibility of meeting role models who are not involved in crime.

Indeed, employment and careers did play a highly important role in the narratives of the desisting men in this study (and the potentially active ones as well). Almost all of them described lives that revolved around work of various forms. Some of them had built substantial careers from which they gained considerable satisfaction and financial gain. Others had a series of jobs, and seemed to recover from redundancy easily. In all cases, though, work seemed to be of primary importance to the men in the sample. Indeed, when asked to describe their lives, many of the group described little more than their work lives, as though they hardly existed outside of their work.

Overall most of the desisting group related employment to happiness and life satisfaction - they pointed to job satisfaction and occupying their time as key factors in this sense of satisfaction, but others also mentioned the social aspects of work and opportunities for advancement. One common

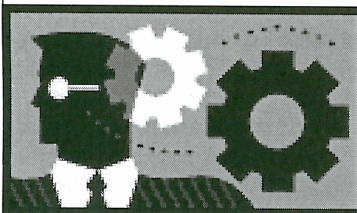
theme was the importance of keeping busy, and the relationship between this and the earlier themes relating to the situational nature of the sexual offending, in that keeping one's self busy could be an important part of desistance for some. This seemed to be particularly the case for men who had offended over the internet. These men were aware that if they were sitting at home doing nothing there would be temptation to access the internet in unhelpful ways.

Most of the desisting men in the study, therefore, wished to be seen as active people, not willing to waste their lives, and wanting to engage in a lifetime of work. Surprisingly, though, gaining employment did not seem to be related to desistance from crime in a direct way for most of the group. First, most of them had careers prior to and during their sexual offending. Second, several described desisting from further criminal activity despite losing their jobs as part of their convictions. Consistent with the literature (Brown et al., 2007), a number of participants reported the difficulties they had in obtaining work following their conviction. Some of them reported how employers would reject them when they learned of their conviction, and some had a resigned helplessness that they would never work again. However, this did not seem to affect the fact that they were desisting, and some men described quite innovative forms of self-employment they had devised in order to compensate for not being able to obtain formal work. Third and most importantly, comparison group (non-desisting) interviewees also described considerable attachment to employment in their self-understandings. Therefore as central as work was in their personal narratives, it is not clear that work played a necessary and sufficient role in the explanation of their ability to desist from crime.

#### The Role of Relationships

In the same way that employment has been found to be significant in promoting desistance from non-sexual crime, so have relationships with significant others (e.g. Laub et al. 1998; Maruna, 2001). The factors underlying the importance of relationships for non-sexual offenders are thought to be similar to those described above for work - relationships give people a sense of meaning in their lives, and an emotional investment that they do not wish to lose. New relationships can disrupt routine activities and provide a form of informal control (as in "if you do that again, I'll leave").

It is not surprising that relationships featured heavily in the narrative accounts of the men in the study. Most of the desisting group described lengthy relationship histories, which clearly had great significance for them and their life stories. However, the



“While the preponderance of current work has centered on “risk” factors and examining why sex offenders re-offend, this study has inverted the risk paradigm by seeking to draw out why is it that they don’t.”

relevance of these relationship histories for desistance was by no means clear, and was certainly not as clear-cut as the linear relationships between forming a relationship and desisting as suggested by some of the research into non-sexual crime. The preponderance of desistance research suggests that forming new and meaningful relationships can be the start of the desistance process, giving individuals the social capital they need to begin a crime free life. This did not seem to be the case for the desisting offenders in this study. Their offences were committed alone, not as part of organized crime involving others, therefore the idea that severing links with criminogenic relationships assisted desistance was not relevant. Furthermore, the crime and subsequent detection for some men resulted in the ending of relationships that otherwise might have acted as a protective factor. Overall many of the men in the desisting group had lengthy relationship histories but also seemed to have experienced relationship breakdown on at least one, and sometimes numerous occasions. On the other hand, where relationships had continued (that is, where significant others had “stuck by them”), this seemed to have been of great importance to the individual. Several participants were concerned with the impact of their offending, and the stigma associated with it, on their family, principally their wife or partner. This apparent concern with the well-being and reactions of intimates may lend tentative support to Braithwaite’s (1989) “reintegrative shaming” theory which emphasizes the role of “significant others” in the process of reintegration and desistance. This is an area we intend to explore further.

**Conclusion**

...These emerging findings have a number of potential implications for current frameworks around sex offender risk assessment, management and treatment, and in particu-

lar for how professionals perceive of and respond to “risks” posed by sex offenders. While the preponderance of current work has centered on “risk” factors and examining why sex offenders re-offend, this study has inverted the risk paradigm by seeking to draw out why is it that they don’t. As noted at the outset of the paper, the relevance of these research findings on desistance from sexual crime relate to the determination of the best and most effective means of working with people convicted of sexual offences. ...[T]he desisting narratives in this study which appear to be shaped by conventional lifestyles and planning for the future, ...tend to support a move away from confessional, backward-looking approaches towards future-focused therapeutic interventions with sex offenders with an emphasis on optimism and hope.”

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**How Can You Be Sure?**

**The Punitive ARAI Blues: Overlapping Categories, Unconvicted/Uncharged Accusations, & Disregard of Age-Out Desistance**

Excerpts from: *Melissa Hamilton, “Back to the Future: The Influence of Criminal History on Risk Assessments,” 20 Berkeley J. Crim. L. 75 (Spring 2015):*  
Text, p. 98: “Many risk instruments assign points more than once for a single prior criminal event, particularly those that maintain numerous and overlapping criminal offending items in their scoring sheets.”<sup>15</sup> For instance, six of the nine variable in a sexual recidivism risk tool with the acronym Mn-SOST developed in Minnesota (and used in other jurisdictions) may have overlapping consequences as all involve convictions, events in prison, and release conditions. A hypothetical offender convicted of stalking

and forcing sexual contact with a male victim in a public place and who was released after serving time without supervision would be scored in six of the nine categories.<sup>16</sup> This risk scoring represents a sextuple effect of the same course of conduct.

“...Static-99, the popular sexual recidivism instrument, tallies separately the number of prior sex offenses, any convictions of non-contact sexual offenses, number of prior sentencing dates, convictions for non-sexual offenses, and convictions of non-sexual violence.”<sup>19</sup>  
p. 103: “...[C]ritics have recognized, with the support of research studies, that incarceration often is criminogenic itself, and thus may actually exacerbate recidivism risk.”<sup>134</sup> Other experts acknowledge the likely diminishing returns of the increased rate of imprisonment with reductions in crime.<sup>135</sup> At the same time, recidivist premiums may operate to increase the risk of future reoffending by interfering with successful reentry.<sup>136</sup>

Consider the case of likely recidivists who are disproportionately denied parole or sentenced under enhanced statutes and are therefore disproportionately represented in prisons. The symbolic message associated with this disproportionate representation – that is, with the correct perception that prisons are ‘filled with recidivists’ – is the following: ‘If you offend once, you are likely to offend again; if you offend twice, it’s all over.’ The result is a powerful symbolic message that turns convicts into even worse offenders – in the public imagination, but also in the reentry context. This too will have the effect of a self-fulfilling prophecy, reducing employment and education opportunities upon reentry.<sup>137</sup>

pp. 104-05: **“B. Nonadjudicated Criminal History**

“Formal recidivist premiums usually require official convictions to trigger them. Most risk tool measures of past offending do not limit themselves to convictions. Depending on the instrument, a variety of measures are counted, including arrests<sup>140</sup>, charges<sup>141</sup>, parole/probation revocations<sup>142</sup>, other types of supervision violations<sup>143</sup>, incarceration<sup>144</sup>, other official records<sup>145</sup>, or self-report<sup>146</sup>. Generally, coding rules for many instruments do not exclude counting any of the aforementioned even if the individual was otherwise officially exonerated, such as via an acquittal, police decision not to arrest, or prosecutorial declination based on insufficient evidence. In other words, risk instruments tend to presume that any evidence – even circumstantial – of prior offending behavior must be truthful and accurate as proving the occurrence of such behavior, and according-

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ly deserves to be tallied to increase the risk profile. This scenario is generally the case regardless of the evidence actually obtained and/or events occurring afterward that might refute such allegations.

"...[R]isk instruments generally permit coding for criminal history measures without requiring convictions. Hence, the potential for weak, if not entirely inaccurate, information to guide risk assessment outcomes is real."

p. 105: "I. Evidentiary Inadequacy

"As the coding for criminal history in actuarial tools often does not require a formal conviction, individuals may score positively for criminal acts that they did not commit. In the law, a simple arrest is insufficient proof that the arrestee actually committed the criminal offense alleged.<sup>147</sup> Arrests frequently 'happen to the innocent as well as the guilty.'<sup>148</sup> ...Outside of conviction data, recordkeeping can be sketchy or the evidence too thin to reasonably score as criminal history events. Thus, counting anything other than convictions when the legal and practical consequences to the defendant may be significant renders risk instrument coding for criminal history variables as subjective, unreliable, and unjust.<sup>149</sup>"

pp. 115-16: "I. Preventive Detention

"Risk assessments are used in punitive determinations such as whether to incarcerate, lengthen a sentence, deny parole, enhance restrictions, or require registration. Yet critics argue that it seems unfair to penalize a person just for the potential of future behavior.<sup>150</sup> From a theoretical perspective, these future risk-based practices deny the specific deterrence ability of the immediate conviction, sentence, or programming. They tend to negate broader notions of free will as well. Humans are fundamentally unpredictable. There can be no certainty as to whether a person will or will not commit some speculative future act. A policy that permits aggravated discipline for a hypothetical, future offense is akin to an informal scheme of inchoate crimes. Imperfectly, such a policy disregards criminal law's otherwise fundamental elements of proving a culpable mental state (*mens rea*) coupled with voluntary conduct (*actus reus*). The crime is merely hypothetical; the consequences to the individual, however, are very real...."

p. 119: "Virtually all research that presents a scheme to predict dangerous behavior (be it future offending, violence, substance use, or another undesirable outcome) is not technically predictive. Rather, ...these are better thought of as 'post-diction' studies, in which offenders are retrospectively

classified into groups based on measures of past behavior.<sup>151</sup>

"...The actual method compares similarities of an individual's profile to the combined knowledge of the past events of a convicted group of offenders. An individual may share some, but typically not all, of the characteristics of the original sample. Hence, applying the results of an actuarial scale to an individual can have the effect of reducing the predictive accuracy of the scale. This is known as the "statistical fallacy effect."<sup>152</sup>

"A related complaint regarding the GZI challenge applies to criminal justice penalties based on risk: the person is not necessarily being sanctioned on his own merits. Penalizing a person by a risk assessment arrived from group data means that punishment becomes situated on shared group characteristics and thereby is too de-individualized.<sup>154</sup> The scheme is akin to punishing someone for what other, purportedly statistically-matched persons have done.<sup>155</sup>

pp. 119-20: "C. Punishing Status

"An alternative construction to framing the idea of sanctioning the hypothetical crime via the proxy of criminal history is to conceive of the issue as one of penalizing an individual for his status. Here, the criminalizing status is one presumed to be indicative of future dangerousness. A couple of overlapping frames can be explored in this idea of exploiting incapacitating options based on perceived status. The status-oriented per-

spectives are that of a 'criminal' or one based on his (assumed) deviant character. Each potential status is formed on the existence of past offending behavior, is presumed causative of future antisociality, and is deemed fixed in nature.

*Being a 'Criminal' - A Status Offense?*

"Two constitutional issues arise with criminalizing an individual for his status. The United States Supreme Court in the case of *Robinson v. California* held that it was constitutionally impermissible to impose criminal punishments based on mere status.<sup>156</sup> ...One of the Court's aversions appeared to be the state's concession that a person could be continuously guilty of a criminal offense that targeted one's chronic status.<sup>158</sup> ..."

p. 122: "[A] person with a criminal record is presumed dangerous, one especially deserving contempt and fear. The criminal is conceived 'in terms of degeneracy, avarice, malice, and lust.'<sup>157</sup>

pp. 122-23: "A debate among retributivists exists on the legitimacy of this character-based approach. A prominent retribution theorist suggests that a second-time offender bears greater culpability by demonstrating a 'character trait' in repeatedly disregarding others' rights.<sup>160</sup> 'This approach views a prior record as a factor used to assess the defendant's character, presumably on the assumption that character has some relatively fixed quality that can be measured. The question, in short, is reduced to whether this defendant has an evil character, and how evil.'<sup>161</sup> Others disagree on retributivist

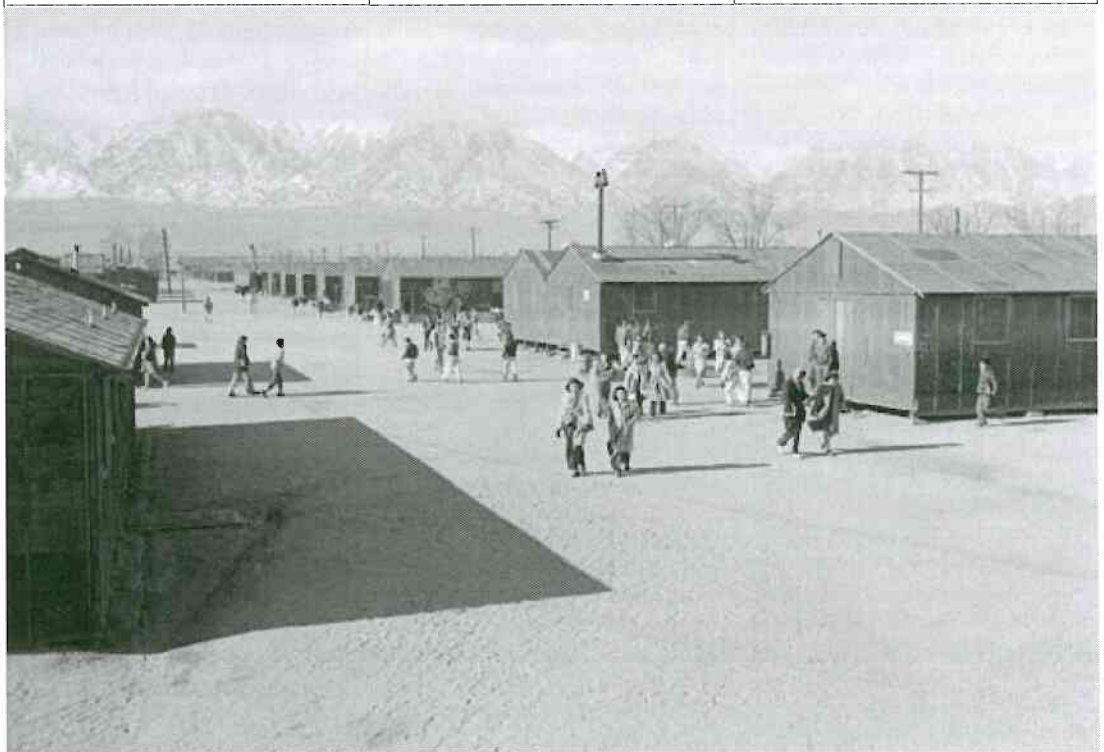
grounds. One author contends that a character-based approach would be a slippery slope: such an approach would likewise authorize evidence in addition to criminal history that could attest to character, a regime in which strict just desert philosophers would likely disapprove.<sup>162</sup>"

p. 123: "D. Informal Statute of Limitations

"...Risk assessment technologies generally qualify a past criminal act no matter how dated. The practice undercuts scientific principles as recidivism studies consistently show that the predictive ability of a prior offense decays over time and that many offenders actually desist from further criminal activities. The typical failure to place any statute-of-limitations-type of time restriction on prior crimes also ignores the age-crime curve in which people often naturally age out of criminal law violations. Further, risk assessment tools that do not consider dynamic factors ignore rehabilitation successes that should realistically drive down individual recidivism risk."

pp. 124-25: "Correspondingly, studies show significant decay in the predictive ability of a prior criminal event. A past crime's predictive salience fades over time.<sup>163</sup> Thus, the record of a criminal event appears to provide mainly a short-term correlation to recidivism.<sup>164</sup> Of even more import, the longer the person remains crime-free, the risk of criminal offending greatly decreases as time passes, though the degree obviously varies depending on the type of crime and

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The Barracks at the WW II U.S. Internment Camp at Manzanar, CA for Japanese Persons/Families

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history of the individual.<sup>238</sup> This pattern of declining risk profiles applies even to categories of offenders that risk assessment tools often consider high-risk, like sex offenders.<sup>239</sup> In general, the empirical picture regarding patterns of recidivism indicates that most offenders who have remained offense-free for any appreciable period will eventually become low risk.<sup>240</sup> Indeed, with sufficient time elapsed, the non-recidivist's risk of reoffending becomes roughly equivalent to the risk of those in the public who have never offended.<sup>241</sup>

p. 126: *2. Desistance*

"A concept closely associated with the decaying risk level is the idea of desistance.<sup>245</sup> The slight difference is that desistance is viewed as a process in which the recidivism rate continues to decrease over time to a point where a crime-free existence becomes a stable trait.<sup>246</sup> Desistance is considered generally achieved when the recidivism rate declines to near zero.<sup>247</sup> A Bureau of Justice Statistics study of prisoners release in 30 states in 2005, perhaps the best embodiment of a nationally representative sample to date, found an overall pattern of desistance with risk of recidivism steadily declining over time after release.<sup>248</sup> Positively, the 'general tendency for recidivism risk to decline over time is among the best replicated results in empirical criminology.'<sup>249</sup>

pp. 126-27: "[...] a person with a criminal record remains crime free for a period of about [seven] years, his or her risk of a new offense is similar to that of a person without any criminal record."<sup>250</sup>

Interestingly, other investigators have concurred with the seven-year tolling. Desistance research indicates that risk profiles at the seven-year mark of a crime-

free life for known offenders are similar to those of persons without prior convictions.<sup>251</sup> As further explained by a legal academic, the ...reasons why these outdated sentences [should] not [be] counted is rather simple: they do not capture the individual's current threat matrix, and an individual's desert for prior crimes has grown stale. Put in individual autonomy terms, the older sentences may not be indicative of the internal progress that the offender has made over time.<sup>252</sup>

"i. Age-Crime Curve

"Age is also highly relevant in decay and distance models. For a variety of offenses, studies indicate consistent and distinct patterns in terms of aging. Young people are far more likely to commit most types of crimes and the risk usually declines thereafter.<sup>253</sup> Still, the pattern is not entirely linear across the lifespan. The 'age-crime curve' accurately assesses research findings:

The work on age-crime curves shows that very large percentages of young people commit offenses; rates peak in the mid-teenage years for property offenses and the late teenage years for violent offenses flowed by rapid declines. For most offenders, a process of natural desistance results in cessation of criminal activities in the late teens and early 20s.<sup>254</sup>

"Overall, 'a common theme of life course criminology is the finding that a majority of one-time offenders do not go on to lead lives of crime but indeed age out, or otherwise desist from, criminal activity.'<sup>255</sup> For this reason, the United States Sentencing Commission has suggested that factoring criminal history along with age would improve the predictive validity for recidivism.<sup>256</sup>

p.128: "...Several instruments increase risk rating to adjust for a youthful age.<sup>258</sup> Few, though, control for the back-end to materially reduce risk scores as offenders approach or exceed middle-age.<sup>259</sup> Institutional prac-

tices remain entrenched in reifying criminal history as a whole in recidivism predictions with a presumption that evidence of a criminal past retains value over a lifespan. Yet, the results are inconsistent with a true-evidence-based culture and lead to the unnecessary incapacitation of many offenders who would otherwise have simply desisted as they aged."

Footnotes:

115 Office of Prob. & Pretrial Servs., Federal Post Conviction Risk Assessment: Scoring Guide §§ 1.1-1.7 (2011) (scoring on juvenile arrests; prior misdemeanor and felony arrests; varied offending pattern; supervised release violation; institutional misconduct; age at first admission).

116 Minnesota Sex Offender Screening Tool - 3.1 (MnSOST-3.1) Coding Rules, Minn. Dept. of Corrs. 24 (2012), <http://www.doc.state.mn.us/pages/files/large-files/Publications/MnSOST3-IDOCReport.pdf> (scoring (1) predatory offense sentence, (2) felony sentence, (3) stalking, (4) unsupervised release, (5) male victim, (6) crime in a public place).

119 R. Karl Hanson & David Thornton, "Improving Risk Assessments for Sex Offenders: A Comparison of Three Actuarial Scales," 24 *Law & Human Behav.* 119, at 122 (2000).

134 See Francis T. Cullen et al., "Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science," 91 *Prison J.* 48S, 48S (Supp. 2011) (reviewing studies, concluding "the use of custodial sanctions may have the unanticipated consequence of making society less safe"); Daniel P. Mears et al., "Gender Differences in the Effect of Prison on Recidivism," 40 *J. Crim. Just.* 370, 375 (2010) (finding imprisonment produced modest criminogenic effect); Robert Defina & Lance Hannan, "For Incapacitation, There Is No Time Like the Present: The Lagged Effects of Prisoner Reentry on Property and Violent Crime Rates," 39 *Soc. Science Res.* 1004, 1013 (2010) (concluding "any crime-reducing benefits of increased incarceration are completely wiped out by the crime-promoting effects associated with the increasing prevalence of ex-inmates").

135 Franklin E. Zimring, "The Great American Crime Decline 51-52 (2007); Anne Morrison Piehl & Bert Useem, "Prisons," in *Crime and Public Policy* 532, 542 (James Q. Wilson & Joan Petersilia eds., 2011).

136 Bernard E. Harcourt, *Against Prediction: Profiling, Policing, and Punishing in an Actuarial Age* (2007) at 164.

137 *Id.* At 30.

140 James L. Johnson et al., "The Construction and Validation of the Federal Post Conviction Risk Assessment (PCRA)," 75 *Fed. Probation* 16, 26 app. 2 (2011); N.S.W.

Dept. of Corrective Servs., LSI-R Training Manual, at 19-20 (2002); Vernon L. Quinsey et al., *Violent Offenders: Appraising and Managing Risk* at 239 (1998).

141 *Federal Pretrial Risk Assessment Instrument: User's Manual and Scoring Guide, Off. Of Prob. And Pretrial Servs.* (2013) at 7; MnSOST, supra note 116; *Validation of Risk Scale, PA. Comm'n on Sent'g* tbl. 1 (2013); Hanson & Thornton, supra note 119

142 N.S.W. Dept. of Corr. Servs. supra note 140, at 15; Quinsey et al., supra note 140, at 238; Christopher D. Webster et al. *HCR -20, Assessing Risk for Violence* (1997)

143 Johnson et al., supra note 140; Thomas Blomberg et al., "Validation of the Compas Risk Assessment Classification Instrument," *Ctr. for Criminology and Pub. Policy* 15 (2010); N.S.W. Dept. of Corr. Servs. supra note 140, at 19-20; Quinsey et al., supra note 140, at 238.

144 N.S.W. Dept. of Corr. Servs. supra note 140, at 19-20.

145 *Federal Pretrial*, supra note 141; *Office of Prob. & Pretrial Servs.*, Federal Post Conviction Risk Assessment: Scoring Guide § 1.1 (2011) ("Count all contact with law enforcement resulting from criminal conduct or status offenses [truancy, curfew violations, run-away], Count arrests and referrals to court for all offenses [including traffic]. Consider official records and self-report."); N.S.W. Dept. of Corr. Servs. supra note 140, at 15.

146 Shannon Toney Smith et al., "Adapting the HCR-20<sup>93</sup> for Pre-trial Settings," 13 *Int'l J. Forensic Mental Health* 160, 169 (2014); Fed. Pretrial, supra note 145, at 7; *Office of Prob. & Pretrial Servs., Federal Post Conviction Risk Assessment: Scoring Guide* § 1.3 (2011)

147 Michael Edmund O'Neill et al., "Past as Prologue: Reconciling Recidivism and Culpability," 73 *Fordham L. Rev.* 245, 267 (2004).

148 *United States v. Zapata-Garcia*, 447 F.3d 57, 60 (1<sup>st</sup> Cir. 2006)

149 O'Neill, supra note 147.

198 Kelly Hannah-Moffat, "Actuarial Sentencing: An 'Unsettled' Proposition," 30 *Just. Q.* 270 (2013), at 271; Michael Marcus, "MPC - The Root of the Problem: Just Deserts and Risk Assessment," 61 *Fla. L. Rev.* 751, 754 (2009)

212 Kathleen Auerhahn, "Conceptual and Methodological Issues in the Prediction of Dangerous Behavior," 5 *Criminology & Pub. Poly* 771, 772 (2006).

213 Leam M. Craig & Anthony Beech, "Best Practice in Conducting Actuarial Risk Assessments with Adult Sexual Offenders," 15 *J. Sexual Aggression* 193, 203 (2009).

214 Hannah-Moffat, supra note 198, at 277.

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In Case You Were Wondering: Yes, Research Can Be This Long, Detailed, and Complex.

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215 *J.C. Olesen*, "Risk in Sentencing: Constitutionally Suspect Variables and Evidence-Based Sentencing," 64 *S.M.U. L. Rev.* 1329 (2011), at 1390.

216 *Robinson v. California*, 370 U.S. 660, 666-667 (1962).

218 *Id.* at 666.

227 *Harcourt*, *supra* note 136, at 190.

230 *Aaron J. Rappaport*, "Rationalizing the Commission: The Philosophical Premises of the U.S. Sentencing Guidelines," 52 *Emory L.J.* 557, at 599 (2003) (regarding Andrew von Hirsch).

231 *Id.*

232 *Id.* at 600.

236 *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, 351 (2011)

237 *Megan C. Kurlychek et al.*, "Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement," 53 *Crime & Delinq.* 64, 80 (2007) ("The problem is that a recent criminal record seems to be far more predictive of short-term future behavior than older criminal records from many years ago."); *Rappaport*, *supra* note 230, at 592 ("[T]he utilitarian has a ready and plausible explanation - the predictive effect of a prior record likely diminishes with age. Common sense suggests that a recent prior record is more likely to indicate future risk than a crime committed twenty years ago, followed by a long period of apparently law-abiding conduct.")

238 *Megan C. Kurlychek et al.*, "Long-Term Crime Desistance and Recidivism Patterns - Evidence from the Essex County Convicted Felon Study," 50 *Criminology* 71, 71 (2012) (finding evidence of a trajectory of desistance in a sample of felons in a northeastern county); *Alfred Blumstein & Kiminari Nakamura*, "Redemption in the Presence of Widespread Criminal Background Checks," 47 *Criminology* 327, 350 (2009) ("Younger starting age generally points to a longer time necessary to become comparable with a person of the same age from the general population."), at 327 (concluding from recidivism study of offenders first arrested in New York in 1980 for robbery, burglary, or aggravated assault that "[r]ecidivism probability declines with time 'clean', so some point in time is reached when a person with a criminal record, who remained free of further contact with the criminal justice system, is of no greater risk than a counterpart of the same age - an indica-

tion of redemption from the mark of crime").

239 *R. Karl Hanson et al.*, "High-Risk Sex Offenders May Not Be High Risk Forever," 29 *J. Interpersonal Violence* 2792, 2792 (2014) (finding "sexual offenders' risk of serious and persistent sexual crime decreased the longer they had been sex offense-free in the community" and "[w]hereas the 5-year sexual recidivism rate for high-risk sex offenders was 22% from the time of release, this rate decreased to 4.2% for the offenders in the same static risk category who remained offense-free in the community for 10 years").

240 *Blumstein & Nakamura*, *supra* note 238, at 349 ("The risk of recidivism declines with time clean, so we know that a person who has stayed clean for an extended period of time must be of low risk").

241[R]isk of recidivism for a cohort of offenders returning to the community peaks fairly quickly and then diminishes considerably with the passage of time. Based on this consistently observed empirical pattern of criminal recidivism, we suggest that there may be a point at which the risk of a new criminal event among a population with a prior record becomes similar to the risk of a criminal event among individuals who have not offended in the past. *Kurlychek et al.*, *supra* note 238, at 70.

245 For more information about the theories and empirical studies concerning criminal career trajectories and desistance, see generally *John F. MacLeod et al.*, *Explaining Criminal Careers: Implications for Justice Policy* (2012); *Keith Soothill et al.*, *Understanding Criminal Careers* (2009).

246 *Kurlychek et al.*, *supra* note 238, at 72.

247 *Kurlychek et al.*, *supra* note 238, at 73.

248 *Matthew R. Durose et al.*, "Recidivism of Prisoners Released 1-30 States, Dept. of Just., Bur. Of Justice Statistics 7 fig. 2 (2014), <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>

249 *Kurlychek et al.*, *supra* note 238, at 75.

250 *Kurlychek et al.*, *supra* note 238, at 80.

251 *Julian V. Roberts & Orhun H. Yalincak*, "Revisiting Prior Record Enhancement Provisions in State Sentencing Guidelines," 26 *Fed Sent'g Report* 177 (2014) at 184 (citing Lila Kazemian, "Assessing the Impact of a Recidivist Sentencing Premium on Crime and Recidivism Rates," in *Previous Convictions at Sentencing* 227 (Julian V. Roberts & Andrew von Hirsch eds., 2010)) (indicating research has **"demonstrated that offenders with seven crime-free years are no more likely to reoffend than people with no prior convictions. In other words, [prior history] enhancements beyond**

**the seven-year-mark carry no crime preventative benefits**, although they

may well exacerbate disproportionate minority offender impacts.

252 *Dawinder S. Sidhu*, "Moneyball Sentencing," 56 *Boston Coll. L. Rev.* 671 (2015)

253 *Gary Sweeten et al.*, "Age and the Explanation of Crime, Revisited," 42 *J. Youth & Adolescence* 921, 921 (2013).

254 *Michael Tonry*, "Sentencing in America: 1975-2025," 42 *Crime & Just.* 141 (2013), at 182.

255 *Kurlychek et al.*, *supra* note 238, at 69.

256 "Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines," *U.S. Sentencing Comm'n* 16 (2004)

258 *Federal Pretrial*, *supra* note 141, at 10 (variable for age at interview); *Office of Prob. & Pretrial Servs., Federal Post Conviction Risk Assessment: Scoring Guide* § 1.7 (2011) (containing a category for young age at onset of current supervision); *Andrew Harris et al.*, "STATIC-99 Coding Rules: Revised - 2003," *STATIC-99* at 23 (2003) (increased risk rating for young age at interview).

259 But see *Quinsey et al.*, *supra* note 140, at 239 (containing factor to deduct points as the offender's age at index offense increases with increments of -1 age 28-33, -2 age 34-38, -3 over age 38); *Susan Turner et al.*, "Development of the California Static Risk Assessment (CSRA): Recidivism Risk Prediction in the California Department of Corrections and Rehabilitation," *UC Irvine Ctr. For Evidence-Based Corrs* 5 tbl. 3 (2013) (indicating decreasing number of risk points in a linear fashion).

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### How Can You Be Sure?

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Some have heard me mention the old saying (in Latin), "Dum Spiro Spero." Few know its meaning or significance. The exact English translation is: "While I breathe, I hope." However, a more meaningful translation from the true context in which it was originally spoken is: "As long as I am still breathing, I still have hope."

It seems a Roman general, faced with what appeared to be imminent defeat in battle, was advised of that fact by his chief lieutenants. In response, he defiantly answered with those Latin words, and kept on fighting, even more desperately than before. (In those days, generals often fought at the side of their troops.) Those words spread like a slogan throughout his legions, who, inspired by his courage, in turn fought ever harder as well. In the end, they won that battle. That quote has been famous ever since. The above emblem shows that it has been adopted by South Carolina as a state motto. The additional word in that emblem ("Spes") is simply the noun form of the word "Hope."

Although we live in challenging times in an adverse place, we should never give up our hope or our self-advocating spirit. We should adopt this saying as our own.



Orson Welles at his best, in *Citizen Kane*, in the newspaper business