The Legal Pad — Volume 3, Issue 2 — February 20, 2019

"The chronically faithful search less for truth than for justification of a belief system that would be too painful to abandon."
– CURE-SORT News, Vol. 24, Issue 3 (Summer 2015), p. 4

In This Issue:

Coming Soon:

- ✓ The Routine & Nonroutine of the Static-99R: The Good, the Bad, & the Very Ugly Got Much Worse in 2015.
- ✓ The Math behind the MnSOST-3.1 Pushed Pencil-Whipping into a Whole New Dimension
- ✓ Interesting Factoids & Implications from 2018 SOCCPN Annual Survey of Commitment Facilities
- ✓ Far More from the *Gladden* Complaint
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- ✓ Polygraphs for the Defense
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- ✓ Sex Offender Rights Organizations: What Do They Do Right/Wrong?
- ✓ MnSOST-4: Still Junk Science
- ✓ Janus—Everyone Has Difficulty Controlling Behavior, So Everybody Should Be Locked Up.
- ✓ The Troublesome 'Ethics' of Sex Offender Treatment

— & Tons More!

No News Yet Dept.

The briefs are now all filed in the second appeal in the *Karsjens* case. This appeal is based on an argument that Minnesota SPP/SDP commitment is effectively punitive in nature. The oral argument date has not been set yet. However, based on general practice, it will probably not be held until at least April, and more likely, later than that.

Again, the *Gladden* case remains on hold for the time being.

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Do You Know the Way to Understanding, Peace and Progress?

Anatomy of an Attempted Murder

Editor's Note: The immediately following excerpts are from a Star Tribune article about an armed attack by George Mack, a committed individual in MSOP, on a treatment supervisor. In turn, the Editor's Supplement will close coverage on this matter.

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Chris Serres, "Sex Offender Attacks Staff with Razor, Faces Charges," *Star Tribune*, Friday, Feb. 1, 2019, p. B2:

"A sex offender housed at Minnesota's state treatment facility in Moose Lake has been charged with attempted murder after allegedly using a makeshift knife to slash the throat of a staff member there.

George Mack, Jr., 42, was charged with first-degree attempted murder and fourth degree assault of secure treatment facility personnel, both felonies.

The assault left a clinician at the Minnesota Sex Offender program (MSOP) with two gashes to his throat, while a staff member who intervened also suffered injuries, according to the criminal complaint. Mack is being held in the Carlton County jail in lieu of $500,000 bail.

...According to video footage of the incident, Mack lunged at a clinician who was leading a community meeting in an open area of the MSOP facility. Mack grabbed the clinician from behind and made at least two slashing motions across the front of his throat, the criminal complaint says. The clinician was able to avoid further injury by jumping out of his chair and running from Mack, the complaint says.

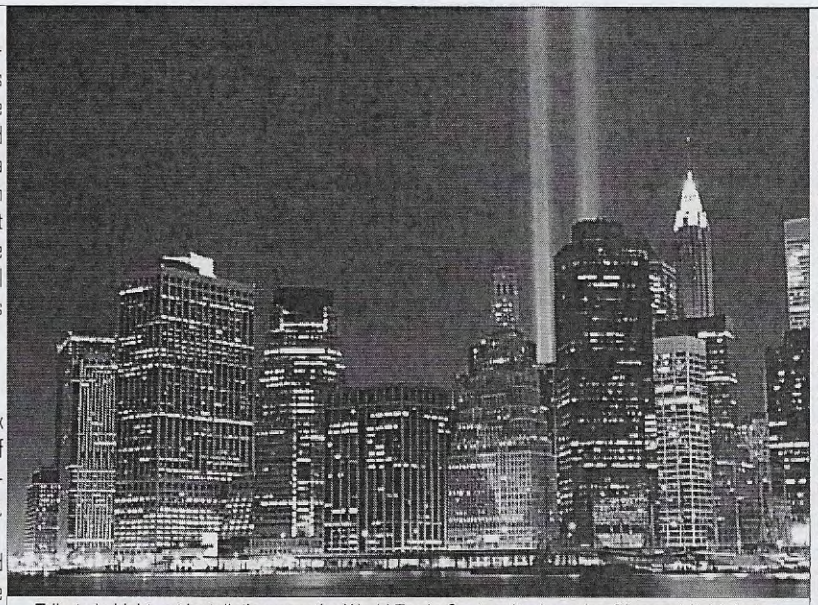
Another employee intercepted Mack, sustaining several blows and ribs. Mack was then subdued by several staff members.

...This is the second time since 2014 that Mack has been charged with assaulting a staff member at the MSOP facility. Mack also has three convictions for criminal sexual assault between 1996 and 1998, according to state court records."

———————————————

Editor's Supplement:

When I started covering this story, I was certain there must be a much deeper tale to tell about how this kind of incident could take place. And indeed, I still have that feeling, more than ever. However, two impediments have prevented me from getting to the whole truth in this case.



Tribute in Light, art installation near the World Trade Center site, beaming 88 searchlights in two vertical columns in remembrance of the victims of the September 11, 2001, terrorist attacks. Everyone is a victim. All are punished. Fate is the true enemy. Humanity must stick together. Understanding is the essential requisite for the future.

The first is that there is a 'wall of silence' in place in the residence hall (Unit IC) in which the incident took place, such that numerous MSOP residents with probable knowledge of the circumstances are simply 'clamming up' when asked about the incident or its antecedents. Others have been willing to offer their perspective, but the narratives given by these include troubling inconsistencies that drive into the very heart of the meaning of the incident, making it very hard to derive any overarching essential truth from it.

Thus, only bits and pieces of a much larger picture are currently available. Even as to these, only certain aspects can yet be stated with any reasonable certainty. In this current state of greater ignorance than knowledge, any real analysis, much less derivation of any larger moral(s) from the whole of this matter must wait until the proverbial smoke has cleared and the dust has settled. To speak authoritatively at this premature moment would do a disserving injustice to all concerned.

The second impediment is the 'chilling effect' arising from the fear that MSOP officials may not understand my aim in this inquiry into this matter and perhaps may be driven by an 'us versus them' stance that has often been known to result from violence in an institution, no matter how isolated.

However, to the contrary, I hope by this frank coverage to defuse tensions and to dispel notions of hostile opposition on the part of all understandably concerned. For it is only by putting ourselves in the shoes of others that we come to understand them, and thereby to achieve both peace and progress. So let us begin to unravel this incident as best we can to achieve such understanding.

Some threads to this starter-fabric-on-the-loom already show to some degree, if not yet plainly. There is clarity, for instance, to an intemperate violence within the assailant, George Mack. A string of assaults, most or all on staff, by Mack in prison quickly convinced officials to repeatedly relegate him to the most isolated part of MCF-Oak Park Heights (Minnesota's highest security prison) and to bar him from other prisons.

In 2014, following his commitment to MSOP, Mack also assaulted an MSOP staff. The pattern was clear: Mack deeply resented authority figures and blamed them for all ills and wrongs.

Further telegraphing a problem-in-the-making as to Mack in MSOP is the longstanding MSOP policy of requiring that all MSOP confinees must have a roommate in cells very much resembling, and not appreciably larger than a modern prison cell. After numerous years alone in an isolation cell, Mack could not handle living with a cell-mate, not even a good friend, such as his last MSOP roommate. Even just differing daily schedules between "cellies" sorely irritated Mack.

Knowing that Mack could confront staff over such irritation that could end violently, that roommate sought to move to a different room to gain a change of roommates. However, that move was denied by MSOP staff, leaving Mack and that roommate together in a powder-keg situation.

Meanwhile, a director of the "MSOP-DOC Site" assessment and treatment program in the Minnesota prison right next to the MSOP commitment facility in Moose Lake, MN, generally reputed to be firm but fair, was transferred to the MSOP commitment facility as the treatment supervisor for Unit IC, Mack's residential unit.

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Over time, that particular unit had become the repository for MSOP inmates who rejected treatment, who were categorized as "criminal," or who had demonstrated propensities for violent or predatory behavior. With no disrespect intended, Mack's violent tendency toward authority figures clearly qualified him for placement in Unit IC.

The transferred director took active reins in his new post as a treatment supervisor over sex offenders under commitment only a little more than a week before the incident. On Thursday of that week, in a "community meeting" in that unit, he announced to the residents of that unit that a second unit meeting would be required each week, to be held on Tuesdays.

Apparently, he felt that Unit IC was in a state of malfunction as to treatment, serving only as a 'holding pen' for men resentful that they had been committed and hostile to MSOP and most of its staff. While one can't be certain, he probably hoped that a second weekly meeting could serve to air grievances against unit and other staff.

However incorrectly, Mack apparently read his firmness in stating that this second meeting would occur and that attendance was mandatory amounted to abusively ordering inmates around. It is likely that, either right then or somewhat later, the combination of denial of his cell-mate's request to move out and that impression of the new treatment supervisor's attitude toward inmates caused Mack to 'see red.'

The very next unit meeting was the first of these 'extra' weekly meetings. It was also the setting of the assault. As soon as the meeting was convened, Mack approached the treatment supervisor from behind with a homemade weapon and murderous intent. And the rest of the attack unfolded as stated in the foregoing excerpt.

This all that is known or reasonable to conjecture for now. It is, however, already a profound amount to think upon. I urge all of you to do so with reasonableness and goodwill at heart, and with an intent to build, not to tear down, toward peace, understanding, and progress toward freedom.

And what should happen to George Mack now? In my humble estimation, it was right to commit him, but wrong to commit him here. Someone with such unquenchable, uncontrollable fire in his heart meets the longstanding elements of being mentally ill and dangerous. He needs to be in a facility that can sooth his brow, can tend to his rage, and can give him a single room. The Security Hospital in St. Peter, MN can do all three.

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Wage Case Update

Watch for Official Letter Giving You the Opportunity to Join in the Case; Sign & Send Back the Form or Lose Out!! No Exceptions!!

Recently in the Wage Case (*Gamble et al. v. Minnesota State Operated Services et al.*), the presiding District Judge adopted the *Report and Recommendation* on the subject of who will be allowed to join in the case as "collective plaintiffs."

The details of this ruling aren't important right now. As previously stated, the *R & R* suggested allowing everyone confined in MSOP who earned wages working at anytime from August 12, 2013 to the present to be part of our case as "collective plaintiffs." This particular recommendation was adopted by the District Judge.

To make this possible, the District Judge ordered the Defendants to prepare a list of everyone who worked for pay in that period. Our attorney (Charles Alden) has now received that list. In all, the list comes to approximately 570 names.

In conformity to the usual practice in cases of this type, Attorney Alden is now preparing a form letter which will be addressed and mailed to everyone on that list. Essentially, that letter will ask each recipient if he wishes to become part of this lawsuit as a collective plaintiff. Those who do wish to join in will be asked to use the enclosed reply form, checking off the response stating that wish, signing the form, and then sending it back to the attorney.

When the period for sending that form comes to an end, Attorney Alden will present all such reply forms to the District Court together with a motion to allow all responding parties to join as collective plaintiffs. These motions are only rarely opposed (except in uncommon cases where someone responding affirmatively is later discovered not to be qualified; in such cases, that person's name is simply struck, and everyone else goes forward without him).

Hence, that's basically all there is to it. This is how you can qualify to receive your rightful share of the recovery, which will be based on the difference between wages you actually received and the amount per hour you should have received under the federal minimum wage law.

At this point, let me stress, as I have before and as the title to this article restates again forcefully, if you do not fill out, sign, and return this form to Attorney Alden within the period allowed, you will not be allowed to join in the case as a collective plaintiff. This means that you will not be able to share in the recovery in the case.

Technically, you could file your own case to get just your own money back as a separate matter. However, you would almost certainly not find any attorney working in this kind of law practice who would be willing to represent just yourself unless you paid a very hefty fee (almost certainly more than you would stand to recoup by yourself). Therefore, you would almost certainly have to represent yourself. This is a complex area of law practice, so it is highly unlikely that you could win trying to do things this way.

Hence, in sum, as a practical matter, failing to send in the reply form on time will almost certainly mean that you will never have another chance to recover the unpaid portion of the minimum wages you should have been paid. In other words, it's now or never. Please keep this in mind, and send in that reply form as soon as you get it filled out and signed. That way you won't forget and the reply form won't get mislaid somewhere.

Now a word of lawyer's caution: There are never any guarantees in judicial cases. I can't promise that you will recover the unpaid portion of your rightful wages. However, both we, the initially named plaintiffs, and Attorney Alden agree that our chances of recovering at least some portion of these unpaid wages are very good indeed.

Hence, since there is no risk to you other than the near certainty of not recovering a dime otherwise, you certainly should get into our case at your earliest opportunity.

The main problem is simply that courts move very slowly. Thus, Attorney Alden thinks that it could very easily be late 2021 before any of us actually receive our money. But the good news is that, once you are signed up as a collective plaintiff, all unpaid rightful minimum wages simply add onto the qualifying unpaid wages dating back to 2013. So the amount due you will continue to grow with each new paycheck until your full share is paid then. And, of course, assuming we win, the Defendants will be ordered to permanently pay the federal minimum wages at all times in the future. Hence, just hang onto your job(s) and eventually you will be well paid, and you will be able to save up quite a good amount of money. This should help tremendously if/when you might later get freed.

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Moral Vigilantism – Part 3 of 3 (The End) - Is This Also the End of Justice?

Editor's Note: The last TLP edition printed the second part of the excerpts from the article on this topic. This final installment ends these excerpts and offers closing observations by the editor.

Paul H. Robinson, "The Moral Vigilante and Her Cousins in the Shadows," 2015 *U. Ill. L. Rev.* 401 (2015):

pp. 474-77: C. Blowback and the Downward Spiral

"Unfortunately, the distortions of the criminal justice system inspired by the shadow vigilante impulse, such as police 'testilying' and injustice-guaranteeing mandatory minimums, are only the first act of this sad tragedy of the system's lost credibility. The defendants in drug cases, and others present in the courtroom, obviously know the police are regularly lying in court. Once the practice becomes common knowledge in an area, one could reasonably expect that people would stop trusting the police and the courts. A community that sees a significant portion of its young men sent to prison for long terms by mandatory minimums far beyond what even the larger community thinks is just puishment548 could easily see the criminal justice system as an enemy to be subverted, rather than an institution worth supporting and helping.

"One way in which this discontent plays itself out is through movements like 'Stop Snitchin,' which encourages people not to assist or cooperate with police.549 In some places the movement goes further, to urge intimidation of people who might think of cooperating with authorities. 'Snitches Get Stitches,' the saying goes.550 The antisnitch campaign has been boosted and glorified by popular music and culture.

"Originally mentioned in rap lyrics, the 'Stop Snitchin'' campaign has been fed by a DVD entitled 'Stop Fucking Snitchin', and a clothing line of t-shirts and apparel using that phrase as its logo, as well as a follow-up DVD, 'Stop Snitchin' 2.'551 The DVDs discuss threats and violence against witnesses, together with footage of people discussing their desire to kill those who 'rat.'552 In Newark, New Jersey, T-shirts carry pictures of witnesses that are to be killed, and pilfered witness statements are posted online.553 In Baltimore and Boston, rap artists tell residents not to cooperate with the local authorities.554 Sports stars also give legitimacy to the

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message. When asked how many pro athletes from high-crime areas would help identify criminals, Baltimore native and NBA veteran Sam Cassell said, 'One hundred percent of them would say no. A hundred. If I see five guys doing something [illegal] on the street, I'm going to look the other way and hope I don't see no more.'555

"The norm against snitching has taken hold on the streets of many U.S. cities, including Newark, Baltimore, Philadelphia, Dallas, and Washington DC, and affects all demographics.556

'The Stop Snitching movement has found its tipping point – and is now infectiously sweeping through the public.... This code is being adhered to not only by prisoners, but also by thirteen-year-old girls in school, middle-aged neighbors across the street, and ordinary citizens who would rather run away from the police instead of to them.'557'

In 2005, a witness to a murder was attacked while in protective custody.558 Summoned to the door of his cell, he was seriously burned when sprayed by a mixture of water and baby oil that had been heated in a microwave.559 When asked why he had done it, the attacker replied that he had heard the person was a snitch.560

In Essex County (Newark), people willing to help despite the danger often do so only clandestinely, in some cases leaving notes for detectives in trash cans, or asking to be taken away in handcuffs 'so that neighbors will think that they're in trouble with the police and not cooperating.'561 Investigators report that when they arrive at a crime scene, it is common for bystanders to leave, so as to avoid neighbors thinking that they might cooperate with police.562

Witness intimidation has become so prevalent and expected across major cities that a gang leader in prison in New Jersey awaiting trial for murder was unconcerned about the existence of a potential informant against him: even if the informant 'take[s] his plea deal ...then what? What's he going to do when he gets out? Where's he going to go where no one will be able to find him?'563

In response to the Stop Snitchin' norm in Essex County, prosecutors have adopted an unwritten policy not to pursue cases in which they have a single witness because the person is too likely to be killed or intimidated into silence.564 Even seemingly 'slam-dunk' cases will not be pursued with a single witness, unless the witness' testimony is extensively corroborated by physical and forensic evidence.565 Although witnesses are considered particularly compelling at jury trials, the frequency with which they are intimidated or killed makes police reluctant to rely on them.566 Police detectives in Newark and other gang-violence-prone areas of New Jersey try to avoid using witnesses whenever possible.567 As one state police detective explained: 'if you push someone and they agree to testify, now they're your responsibility ...you've got to keep them from disappearing or getting hurt. Can we protect them? Maybe. But God forbid that two years later you have to tell someone their husband or father got killed.'568 Even the then-Governor of New Jersey suggested that police should 'use civilian witnesses sparingly.'569 While the New Jersey State Police gang unit has prosecuted hundreds of cases statewide over the past five years, it has used civilian witness testimony less than a dozen times in that period.570

The scary truth appears to be that witness intimidation is a pervasive and growing trend in many places.571 A study of witnesses appearing in Bronx County, New York, indicated at least thirty-six percent of witnesses had been directly threatened, and that among those not explicitly threatened, fifty-seven percent feared that they would be subject to reprisals.572 A study conducted by the National Youth Gang Center indicated that eighty-eight percent of urban prosecutors have described witness intimidation as a serious problem.573 In cities such as Baltimore and Boston, prosecutors estimate that witnesses face some kind of intimidation in nearly eighty percent of all homicide cases, while in Essex County, New Jersey, prosecutors claim that at least two-thirds of their witnesses in homicide cases receive direct threats not to testify.574 It is perhaps no surprise that Essex County, with its unspoken rule that single-witness homicides generally will not be prosecuted,575 contains one of the most dangerous cities in the country, Newark, New Jersey.576.

The success of 'Stop Snitchin' only feeds the vicious cycle by making effective prosecution of serious crimes more difficult. With the intimidators winning the battle against authorities over public allegiance, or at least compliance, that power only reinforces the impunity with which they can intimidate further. That, in turn, gives them a freer hand to commit offenses in the first place. In other words, the 'Stop Snitchin' response is a recipe for disaster for the neighborhood. The lack of cooperation reduces the system's crime-control effectiveness, which further damages its reputation, leading to less credibility, and less cooperation, in an endless downward spiral."

VI. CONCLUSION

The current system's apparent insensitivity to the importance of doing justice may not produce many vigilantes in the streets, but it has contributed to disillusionment about the criminal justice system's interests in doing justice. That disillusionment may help people increasingly justify subverting the system. In the spirit of the 1851 Vigilance Committee and the Lavender Panthers, the system's intentional and systemic failures of justice provide the shadow vigilantes with moral justification to 'take the law into their own hands.' They do this not by taking to the streets – typically only Hollywood fantasy does that now – but by manipulating the system to their own ends as they see others doing to escape deserved punishment.

Such shadow vigilantism may be less dramatic than taking to the streets, but it can be pervasive, and ultimately even more damaging to the integrity of the process. The 1851 Vigilance Committee announced themselves and their doings so people would know their effect. Shadow vigilantism provides an unseen and unaccountable corrupting force that contaminates the entire process because one can never know when it is at work.

Yet the criminal justice system currently portrays itself as free to create hostility among the community over failures of justice as it sees fit because there is nothing a disillusioned community can do about it. This is an arrogant and dangerous short game. There is much that a disillusioned and cynical community can do, beyond distracting itself by spending money to see vigilante hero movies. The community can manipulate the system through many avenues to force it to do what it often seems reluctant to do.

The tragedy of this dirty war is twofold. First, it could be avoided simply by being more sensitive to the importance of doing justice. The system could avoid doctrines that will predictably frustrate justice, unless there is a compelling reason to do so and there is no other, less justice-damaging alternative. Second, forcing the disillusioned into shadow vigilantism often produces results that, in the larger perspective, even the shadow vigilantes would find objectionable. Mandatory minimums avoid the problem of unchecked lenient sentencing, but they also produce a set of cases of predictable injustice. We would all be better off – both the offenders and the community – if the criminal justice system earned some reputation for doing justice without the prodding of an outside force being necessary.

Rather than suffer the distortions of shadow vigilantism, it is argued here that the system ought to publicly commit itself to the importance of doing justice (and of avoiding injustice) in a way that will regain the trust of society. That public commitment, backed by action, can undercut the motivations for the unfortunate distortions that shadow vigilantism brings. It could build trust that the system is devoted to doing justice on its own, and need not be manipulated into it.

No criminal justice system can have a perfect reputation for both doing justice and avoiding injustice. Someone will always think the system has improperly allowed a clearly guilty offender to go free, even if the belief is mistaken. But just as the system ought not give up trying to avoid injustice simply because someone will always claim there is more to be avoided, neither should the system give up trying to avoid failures of justice simply because someone will always claim there are more to be avoided. The system can incrementally improve its moral credibility, and thereby its crime-control effectiveness, by reducing its current level of failures of justice (and of instances of injustice).

The cure for vigilantism, direct or shadowed, is a clear public commitment to giving the punishment deserved, nothing more and nothing less. That will require significant reforms to current rules and practices, but such reforms can bring not only greater justice, but also greater stability, respect, and deference to the criminal law in all its work.

Notes:

548 Text accompanying note 542.

549 Jamie Masaten, Ain't No Snitches Ridin' Wit' Us': How Deception in the Fourth Amendment Triggered the Stop Snitching Movement, 70 Ohio St. L.J. 705, 705-07

(Continued on page 4)

Helping You to Make the Right Decision about Your Upcoming Testimony!

(Continued from page 3)

(2009)

550 Julie L. Whitman & Robert C. Davis, Nat'l Ctr. For Victims of Crime, Snitches Get Stitches: Youth, Gangs, and Witness Intimidation in Massachusetts II (2007).

551 Masten, supra note 549, at 705.

552 Id. at 705 n.5.

553 David Kocieniewski, Scared Silent: With Witnesses at Risk, Murder Suspects Go Free, N.Y. Times, Mar. 1, 2007 [hereinafter Kocieniewski, Witnesses at Risk], www.nytimes.com/2007/03/01/nyregion/01witness.html

554 Id.

555 Tom Farrey, 'Snitching' Controversy Goes Well Beyond 'Melo, ESPN ((Jan. 18, 2006), http://sports.espn.go.com/nba/columns/stopry?id=2296590

556 Masten, supra note 549, at 706-07.

557 Id. at 705-07 (emphasis in original).

558 David Kocieniewski, Scared Silent: In Prosecution of Gang, A Chilling Adversary: The Code of the Streets, N.Y. Times, Spt. 19, 2007 [hereinafter, Kocieniewski, Code of the Streets], http:// query.nytimes.com/gst/fullpage.html?res=9C00E5DF173BF93AA2575AC0A9619C8B63&ref=scaredsilent

559 Id.

560 Id.

561 Kocieniewski, Witnesses at Risk, supra note 553.

562 Id.

563 Kocieniewski, Code of the Streets, supra note 558.

564 Anthony Ramirez, 2 Newark Men Charged with Beating Informant, N.Y. Times, March 25, 2007, www.nytimes.com/2007/03/25/nyregion/25witnesses.html?ex=1332475200&en=6d-3ea3138c63818&_r=0

565 Id.

566 David Kocieniewski, Scared Silent: Keeping Witnesses Off Stand to Keep Them Safe, N.Y. Times, Nov. 19, 2007, www.nytimes.com/2007/11/19/nuyregion/19witness.html?ref=scaredsilent

567 Id.

568 Id.

569 Id.

570 Id.

571 Kocieniewski, Code of the Streets, supra note 558.

572 Kelly Dedel, Witness Intimidation, Center for Problem-Oriented Policing, www.popcenter.org/problems/witness_intimidation/

573 Kocieniewski, Witnesses at Risk, supra note 553.

574 Id.

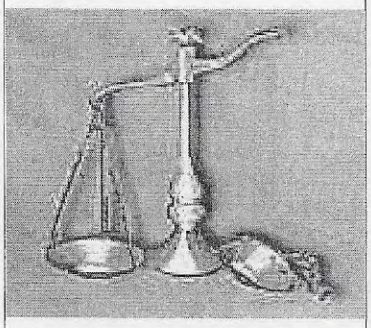
575 Ramirez, supra note 564.

576 Abby Rogers, The 25 Most Dangerous Cities in America, Business Insider (Nov. 4, 2012) www.businessinsider.com/the-25-most-dangerous-cities-in-america-2012-10?op=1

Editor's Closing Commentary: Everyone hopes for justice. Justice helps us make sense of the world. A world without any justice would be chaotic, unpredictable, and frightening in its pseudo-anarchy.

Hence, when we *perceive* an injustice, frustration and anger are understandable reactions. However, what is the definition of an injustice? In the Old West, before widespread civilization set in, hanging cattle rustlers on the spot of apprehension was regarded as justice. Certainly, those who carried out the lynching in *The Oxbow Incident* thought themselves morally justified and effective agents of summary justice — until, that is, they learned that their conclusion of guilt of the ones they hung was incorrect.

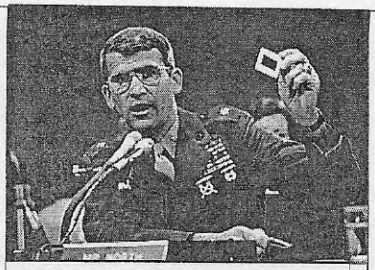
Thus, in modern times instead, we assign determination of what constitutes justice to law and courts. Everyone has some complaint with at least one judicial decision. As an innocent man in my own latest conviction, I certainly do.



Yet even I know that the system of laws and judicial dispensation that we have, flawed though it is, remains the only thing that separates us from roaming lawless bands making life and death decisions about what displeases them and effecting those decisions with murder that they will call "justice."

Almost immediately — probably when it dawns on members of such a gang that justice not based on law and a system of trying facts is just personal emotional reaction, such a gang devolves into seeking personal wants and satisfactions at gunpoint, becoming criminally anarchic. One has to wonder about the true motives of those who, in advance, would advocate for such so-called vigilante justice.

The three-installment article-excerpts just completed address a uniquely insidious form of vigilantism ("shadow vigilantism") that infests or pressures the formal justice system itself, from police who are "sure" of



Oliver North 'Testilying' at Iran Contra Hearing

a suspect's guilt, but cannot prove it beyond a reasonable doubt except by "testilying" (simply, perjury) to those who, in judicial reelection politics, threaten to unseat judges whose decisions they dislike.

In some cases, shadow vigilantism takes the form of individuals taking the place of police in investigating crimes. They even entice those they are "sure" would commit a contemptible crime, such as trying to arrange to meet juveniles for illicit sexual interaction.

For example, Perverted Justice did exactly the latter, digitally posing as teens to entrap pedosexuals into accepting seeming offers to meet up with the 'teen.' When the pedosexual would show up, he would be arrested by police, who had been tipped off by Perverted Justice in advance.

Had police themselves arranged such stings without any advance indication that the pedosexual would have set up such meetings on his own, the sting operation would be deemed "entrapment," and the resulting charge of luring a minor could not have been sustained. Only because the sting was conducted by private citizens were such charges upheld.

Yet this was simply a legal 'dodge': In many cases Perverted Justice vigilantes worked hand-in-hand with police detectives, who guided every step vigilantes took to progressively escalate their campaign of temptation of the pedosexual. Police simply stood by in the wings, as it were, to seem to minimize their involvement in this scheme in order to get a sustainable arrest.

All of this was defended on the justification that "he would have eventually done it anyway." However, as much of the scientific inquiry appearing in the pages of almost every issue of TLP has repeatedly proved, there is no way to know that; in fact, statistical evidence shows that the odds of even the most flagrant pedosexuals actually attempting such a crime are very low, not high.

It serves to emphasize the intensity of the problem that shadow vigilantism about or within the justice system comprises to requote a passage from the article here:

"Shadow vigilantism is generally unseen. Jury nullification, improper exercise of discretion in charging, sentencing and other criminal justice decisions, and support in the voting booth for unjust punishment policies go unseen.

"Further, the level of shadow vigilante action in any given case is unpredictable, dependent as it is on a wide variety of factors, such as publicity and public reaction. That introduces arbitrariness and disparity among cases that can only contribute in the long run to the system's reputation as being less predictable, more arbitrary, more unreliable, and thus less just. In other words, shadow vigilantism only serves to exacerbate the system's moral credibility problem that triggered it.

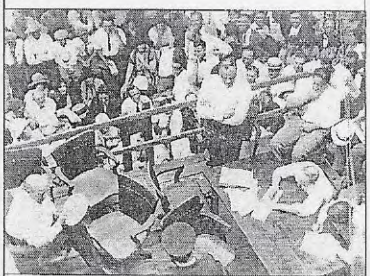
"Thus, ...the system's insensitivity to the importance of doing justice invites a downward spiral. The system's poor reputation prompts shadow vigilantism, which further degrades the system's consistency and predictability, which further undermines its reputation, making it that much easier for people to be provoked to undermine and subvert it."

Even prosecutors engage in abuses of discretion and overtly improper acts sometimes, partly explained in this later passage:

"...[T]o some it may make sense to try to get more liability and punishment than an offender deserves for the case at hand because, given the gross ineffectiveness of the system, the offense at hand is probably just the tip of the iceberg of the offenses he has actually committed."

Again, however, there is no proof or any particularized reason to suspect such undiscovered additional past offenses; the suspicion is merely based on generalized suspicions that criminals generally, or even more alarmingly, criminals of a particular kind, have a high tendency to recidivism. Of course, in actual fact, as statistics for sex crimes prove beyond question, even that much-maligned subset of past offenders turn out to be among the very lowest in likelihood of later re-offense.

The article's summation of the current situation engendered by all of these biased views and their resulting, justice-derailing actions is shocking to all but the most jaded: "...[T]he criminal justice system is no longer about justice. It is simply a system of mutual combat between defense counsel and prosecutors, with winners and losers, the goal of which is always to win and never to lose."



The Scopes Trial— Are We All Made Into Monkeys?

(Continued on page 5)

(Continued from page 4)

Those of us who have experienced the sex-offender commitment process are all too keenly aware that playing fast and loose when defendants' lives are on the line is not limited to criminal law.

Out of Society and Off with Their Heads!

Sex offender commitment as it is actually practiced is simply a means of disposal of humans so extremely disdained as to cause some people to believe that a past sex offender simply cannot live a crime-free lifestyle, and hence, are unfit for life in open society. We who have been relegated to commitment facilities of this type know full well that this is a lie (although sincerely accepted by many).

We also witnessed so-called experts who had never met us hold forth hysterically, predicting that, for cherry-picked unscientific reasons, we supposedly were guaranteed to recidivate sexually at some future time.

> The term 'psychopathic personality' was rejected as a term of art by the psychiatric profession in 1885."
>
> Dr. Erickson, MCCTA Task Force Hearing, August 25, 1994

Even when our lawyers were adept enough to prove to the court that such lies were actually contrary to known science, we heard judges adopt those lies as a supposed basis to chuck us into these modern-day black holes simply as an expedient means to get rid of us and to play to the electorate they hope will re-elect them.

> Using the civil commitment system to confine people like Linehan who are not mentally ill, not incompetent, who are fully accountable of their actions, and should be held fully accountable of their actions, is unconstitutional preventive detention. A law authorizing such detention would in essence establish a 'dangerousness court' authorized to lock people up indefinitely based upon the predictions of mental health professionals about what they think these people might in the future do. Applied to people like Linehan, who have served their criminal sentences, where the law requires that they be released, this is double jeopardy. Preventive detention, dangerousness courts, double jeopardy - these are, in my opinion, anathema to our democratic way of life." —
>
> Prof. Eric Janus,
> MCCTA Hearing, August 24, 1994

Then in turn, we are later informed that such rolling travesties of justice are upheld by appellate judges as supposedly within the "discretion" of the trial judge, even though any honest person would know upon sight that such judicial decisions are nothing more than rank exercises in bias as the true basis to lock one away — presumably for life.

Finally, after landing in one of these facilities, we watch as each of them proclaims loudly and long to the public and their administrative overlord agencies and legislators that they are treating us so as to make us 'safe for release.'

However, in fact, the inapposite gobbledygook they foist upon us as a false façade of treatment is really just aimed at shaming us and making us more considerate and polite individuals. If this is the stuff of why sex crimes are committed, then such instruction and practice at such social skills is something that could be done anywhere, including during the parole that each of us is deprived of through such commitments. And it certainly does not take the 20 years and more that, at a minimum, we remain confined in these facilities to impart those lessons to us.

They do this because, even though they assume that we are 'sick,' they haven't the foggiest how to construct a treatment program that would actually fit their "theory" of why we committed one or more sex crimes all those decades ago, much less their revulsed bias about us that claims that, if released, we would immediately begin a chain of recidivistic sex crimes that we simply could not resist an impulse to do.

Every word in that bias is scientifically baseless; it proceeds from nothing more than the crime(s) we committed so long ago, augmented only by various non-criminal current behaviors that are baselessly ginned up into a claim that, because we do such things, we must be heading toward future sex crimes. That is a pure non sequitur, a pure excuse for the ears of those who stand as arbiters in the doorway to release who really just want to hear such a convenient excuse to never let us go — whether from genuine fear, personal disgust, or just political expedience (or usually, all of these).

> **non se·qui·tur** \ˈnän-ˈse-kwə-tər also -ˈtu̇r\ n [L, it does not follow] : a statement (as a response) that does not follow logically from or is not clearly related to anything previously said
>
> *Merriam-Webster Dictionary and Thesaurus*

While all this goes on in the back rooms, commitment captors utter lies to us about a supposed intention of doing their best to see that we get released in reasonable time, but really, by this they actually just send us round and round the 'treatment merry-go-round' *ad infinitum*, until we get old and die.

A witch trial in Salem: She had a better chance.

Collectively, those first subjected to this disguised system of additional punishment and pure preventive detention (not even justified by the tiny statistics of actual recidivism by sex offenders) fell for it in ignorance or in patient willingness to play along to see where things would go.

But now, some twenty-five years later, this has gone absolutely nowhere. Throughout the various jurisdictions that employ this fake-civil commitment as a means of adding further incarceration after our prison terms have ended, the rates of release, on average, from these insidious systems of confinement -for-its-own-sake are minimal at most, and in some cases, are almost non-existent.

Thus, in countrywide 'commitment' confinement sex offenders are no longer fooled by such empty lies of intention. We know that such captors do not intend to release us, and we know that they know we know. And none of us can afford to continue to accept this abuse of our rights and this deliberate destruction of our humanity.

We must speak loudly and incessantly to all who will listen about this immoral wrong that is inflicted upon us, this permanent incarceration by means of nothing more than sheer character assassination of us.

We will recite the science that this infliction silently but deliberately defies. We will expose what is really being done, citing each death in confinement that is arranged by vicious detention of old men, under malignant medical neglect.

We will seek to defrock all such faux 'experts' from whatever allegedly professional status they have, but which they do not deserve; their anti-scientific frauds demand that they be permanently barred from the helping professions.

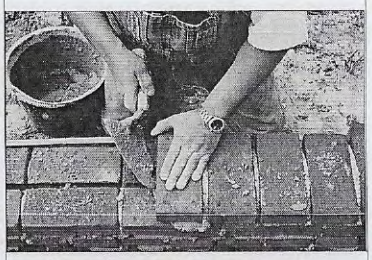
We will share among ourselves the true scientific knowledge, upon which our freedom should turn, and we will meet our captors in court to demand that freedom and to demand just recompense for the years of our lives that they have deprived us of.

We will politically expose and delegitimize all political sponsors of this disingenuous, fraudulent commitment misuse and to seek to unseat them for their part in this crass and knowing conspiracy. Know that the days of such permitted 'testilying' have ended. Those former sponsors will not come to the defense of such character assassins now. Having taken their political gains long ago, they have moved on to other things.

These charlatans never had the right to the 'moral vigilantism' that they have heaped upon us at every turn. All of them were, from the beginning, motivated by their hatred for what they labeled us as representing.

But no one has the right to dehumanize any other person by such hate-speech and such extremist lies. Their days at this are done.

We demand that our lives be legally restored to us. Now.



When will tyrants stop inventing excuses to create more confinement?

* * * * * *

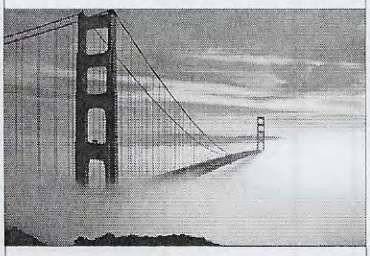
Another Death - # 72

Once again, we have a graduation report — this time the death of Jimmy Ramey, longtime confinee in MSOP, after a prolonged bout with cancer, at the St. Peter, MN MSOP facility. In accordance with its longstanding and unyielding policy, MSOP would not let Mr. Ramey go home to die.

This is Death Number 72 among those confined in MSOP since its inception. In that same period, MSOP has only released two people to final discharge and only approximately 12 to "provisional discharge" (excluding about another 10 awarded such status on paper, but not physically released, on the excuse that no residence willing to accept them is approved by MSOP and local authorities. Thus, the ratio of MSOP deaths to releases is now 83% to 17%.

This is the fourth death in less than the two months preceding this TLP issue.

* * * * * * *



(See next two pages for excerpts from the last 1994 legislative audio recordings, plus closing commentary.)

Excerpts from the Last 1994 Legislative Audio Recordings, Plus Closing Commentary

Start	Speaker	Statement
		1994 MCCTA Legislative Recordings 2nd Installment: 7 Sets (Note: All emphases are editorially supplied, except where marked otherwise.)
		Set 1: 8.18.94 Hearing of the Joint House/Senate Task Force on Sexual Predators
41:35	Carmen Madden, Hennepin County Program Manager	"...[T]hey're getting committed because they are going to do expiration within the next year or two..."
1:33:40	Rep. Bishop	"Dr. Long, what about surgical methods? Have any research been done to your knowledge? ...Any of the journals on the effects of ...a prefrontal lobotomy? ...Is that surgery out?"
1:33:58	Dr. Nicholas Long, Hennepin County Psychologist	"...That particular surgery - I thought you were referring to a different part of the anatomy. -- ...is known to have the consequence of loosening one's ability to control oneself and create very poor social judgments."
1:34:16	Rep. Bishop	"So the prefontal lobotomy loosened controls. So if you did one you'd have to do both."
1:34:19	Dr. Nick Long	"I'm not sure even doing castration would be appropriate. There are less restrictive chemical castration, but I don't know that they are particularly effective."
1:34:30	Rep. Bishop	"That's disappointing. I had that combination in mind as a possible treatment."
1:36:37	Dr. Nick Long	"It basically has to do with the enormous cost to society. ...When a criminal of his own volition commits an act, I don't feel that society is indebted to make things as homelike as possible for that person. When the person commits repeated acts as we're talking about with the sexual predators, and where the treatments that we have available do not have a substantial proven effectiveness, it seems to me to be spending limited tax dollars in a very foolish way. ...[A]s I tried to indicate by reviewing what is going on in Unit 900 at the Security Hospital, we are not talking about treatment; we are talking about a residence for these people that is very costly. And most of the people have rejected offers of treatment, both while in the correctional setting, and now at the treatment setting. ...And I simply do not see why a society is under any obligation to afford this to people who make a conscious choice to engage in terrible behaviors."
1:46:13	John Kirwin, Ass't Attorney General	"...Most protection of the public from persons who are sexually dangerous is going to be done through the criminal system. It is now; that's the way it will continue to be. The laws have been changed so that much more of that will be happening through the criminal system. There will be limited situations where, for one reason or another, the criminal system has not been or is not adequate and a civil confinement system will be necessary..."
1:50:05	Dr. Nick Long	"...As I understand the issue, it comes in sum to Mr. Kirwin's comments about using civil procedures for detention. I think that's a very - some attorneys might say - *slippery slope* and I see it as a dilemma. ...[I]t may be that we simply have to accept the fact that in order to balance the issue of using civil procedures to detain people for basically ...fear of ...criminal acts, that we have to *not* do that, at the risk that these people may come out and perpetrate, then I hope that the criminal laws, if they act again, would be there to prevent them from ever getting out again.... I understand the risk and the fears that the public has, but I think that to expend extraordinary sums of money to prevent something that *might* happen, perhaps we need to step back and take a more balanced view of the public good..."
1:56:50	Richard Hanson, Hennepin County Program Manager	"...for the first time, with the request to screen sexual psychopath cases, I see a problem in that the pre-petition screening program could be considered as simply rubber-stamping all requests going forward to the court. As a Hennepin County employee, as a professional social worker, and as a concerned member of the community, I cannot see us really truly recommending less restrictive alternatives when public safety is at such great risk from these people. I probably am getting myself into a great deal of trouble by admitting that, but the reality would be because we do have more than three people sit in on very important cases, that we would have fourteen or fifteen screeners sitting in on the cases where sexual psychopath cases are being staffed. I would assume that in any of those staffings, I could expect twelve or thirteen or perhaps all of the staff members to want to see that person in a safe setting and go to security hospital.
2:26:00	Sen. Neuville	[As to the relationship between existing criminal law and the then-proposed sex-offender commitment law:] If, let's say [the prosecutor] can't prove beyond a reasonable doubt, then you can still fall back to the patterned sex offender statute, and handle exactly the same factors in the sentencing hearing by the court.... ...If somehow you can't get it under either [regular or patterned sex offender sentencing], you have the backup of the civil commitment when the person serves his criminal sentence...." [Set 1, Disk 1 ends @ 3:28:49]
		Set 2: 8.19.94 Hearing of the Joint House Senate Task Force on Sexual Predators
1:25:05	Emily Shapiro	[Discussing County Attorneys' proposed bill's Article re commitment, particularly the "Sexually Dangerous Person" definition] I think the chairman pointed out the third component, that the person is likely to engage in future acts of harmful sexual conduct again.... The only additional provision in that definition is that it would not be necessary for purposes of a commitment to prove that the person has an inability to control the person's sexual impulses, and I think that that's in the category of a 'read our lips' message to the [State] Supreme Court.... ...[T]his is a direct response to the Court's narrowing of this current standard to require that the person have an utter lack of ability to control sexual impulses, and this simply says that it's the conclusion of the legislature if this were to be enacted that it is not necessary to prove that the person lacks the ability to control those impulses.
27:28	John Kirwin	...Under the current Psychopathic Personality law as it's been interpreted by the Supreme Court, you need a disorder element. Each of these really has three elements: past conduct, a disorder, and a likelihood of future harmful conduct. In the current Psychopathic Personality statute as interpreted by the Supreme Court, the disorder element may be the inability to control one's sexual behavior or something along those lines - or at least that's part of the disorder element. What this new definition does - this new standard - is it would say that the disorder element is the manifestation of a sexual, personality, or other mental disorder or dysfunction, and what we're trying to make clear here is that's the disorder element, and you shouldn't read inability to control behavior in as another part of that disorder element. But what we recognize here is that perhaps, constitutionally, there's a requirement here that this kind of commitment be limited to people who have some sort of disorder or dysfunction.
1:45:26	Sen. Betzold	...That's basically the reason why we want to commit them: because we think they're going to do it again.
2:22:14	Ms. Hoopes	...I must object on the record to the aspects of the draft bill that broaden the scope of the present psychopathic personality statute, ... My objections are based on several factors, all of which I think are familiar to the Task force members. First of all, the current statute was found constitutional by our Supreme Court, but only by a bare majority, and I don't think we can ignore the strong dissent in Blodgett which did find the statute unconstitutional on the basis of substantive due process considerations. I also think we are all well aware of the strong dissent in the Linehan decision by Justice Gardebring that raised other fundamental fairness concerns about the statute in its application. Subsequently, some appellate justices have also expressed grave concern with the use of the civil commitment statute to confine sexual predators. Many justices appear to feel that these are essentially criminal matters and should be dealt with through changes in the criminal system. I think that for the legislature to proceed to change and work with the statute without addressing these very serious concerns of the judiciary is simply asking for challenges and reversals in whatever statutes are passed. Several witnesses, including Hennepin County Attorney Freeman and Hennepin County Psychologist Nicholas Long also stated that they believed that in the long term, the appropriate way for society to deal with the public threat caused by these sexual predators is through the criminal justice system, not through the mental health system. I believe Carmen Madden's testimony further pinpointed many of the very difficult issues of trying to fit essentially a criminal population into a mental health or disability model of treatment. As an agency that works with people with disabilities, we are very concerned with the effect of maintaining and broadening the civil commitment of psychopathic personalities within the mental health system on that system. As we've heard from various witnesses and many of the materials we've seen, with rare exceptions, the psychopathic personality committees do not have mental illnesses; they do not have other disabilities, and their confinement under the auspices of the Department of Human Services, where the purpose is essentially to incarcerate them, not to treat them, is a drain on the already-strained resources of the Department. And our fear is that it diverts resources that are desperately needed by the people who are the mental health system's primary beneficiaries: individuals with mental illnesses and disabilities. I'm afraid that to broaden the scope of the commitment process for psychopaths further serves to perpetuate the unfortunate confusion and stereotype in the public's minds between mental illness and criminality. I think even within our own Task Force we've seen some evidence that that is a very pervasive problem in our society.

2:27:03	John Kerwin	...The point of disagreement I would have with [Ms. Hoopes and] some of these speakers is that, at least at the current time, since we have people coming out of the correctional facilities that haven't served those longer sentences [recently enacted], but probably even after the newer sentences become fully effective or even after any changes that might be considered here at some point and enacted by the legislature become fully effective, there will be a few people, a relatively few people, as is the case now, who, for one reason or another, there is going to be an additional need for public protection. And I think for the foreseeable future we're going to need some sort of civil commitment system to deal with this limited group of people.
2:37:15	Ms. Ophaim	With few exceptions, the individuals that have been identified that we're talking about are not mentally ill. The mental health system is being used as the tool to accomplish a goal of keeping these individuals out of society. We do offer treatment; I don't deny that. But there's a lot of people that indicate that nobody knows if it works and many of them don't believe it will work. The mental health system is not designed for that. It is designed for treatment to help persons with mental illness. ...The Department of Human Services relatedly recommended against committing in many of these cases, in recognition that this was not a good fit, these persons weren't mentally ill, and that there was no recognizable treatment for the psychopathic personality. ... [Set 2, Disk 1 ends @ 2:45:00]
		Sets 3-6 8.24.94 House Judiciary Committee Hearing. Hearings: 9.29.94, 10.20.94, 12/06/94 of Joint House Senate Task Force on Sexual Predators. Irrelevant matters
		Set 7 12.13.94 Hearing of the Joint House Senate Task Force on Sexual Predators
1:45:13	Chair W. Skoglund	"...We don't have to get into the theories of determinate sentencing and doomsday devices, and that sort of thing." [Set 7, Disk 1 ends @ 1:55:13.]

Closing Commentary:

Once again, one of the dominant themes in this final segment of recordings was overt hatred for sex offenders. For some participants, such as Representative Bishop (one of the commitment bill's prime two sponsors), this was an overwhelming obsession. Be sure to note his desire for 'treatment' via castration and lobotomizing.

Another abiding theme is that sex offenders act "of their own volition"/as a matter of "choice" in committing sex crimes. (See, for instance, Dr. Long's comments.) This conflicts with the contrary constitutional requirement in the *Hendricks* and *Crane* decisions by SCOTUS (at least "serious difficulty" in controlling sexual impulses). Yet, Emily Shapiro and John Kirwin explain the intent of the 1994 MCCTA to eliminate any statutory need to prove any volitional impairment in order to commit a sex offender. Defiance of the federal Constitution is thus quite clear.

Overall, concessions of a lack of mental illness or even merely of any disorder requirement in the bill appear (as illustrated in this sample). Further voiced was the fear prompting the legislation of deliberate, premeditated criminal recidivism by sex offenders, just as such pre-planning by any other type of criminal.

This illustrates, as Ms. Hoopes complains, that the bill misuses what should be a mental ailment commitment to address what is simply a criminal justice problem, thereby erecting a form of pure preventive detention — utterly apart from any true psychiatric malfunctions that would lead to irresistible sudden impulses.

In response to Ms. Hoopes criticism, Kerwin (one of the actual designer's of the bill) simply cites a shortcoming in sex-crime sentences (not any mental problems) as requiring passage of the bill.

Beyond candid admissions that the bill is just a pragmatic means to inflict permanent preventive detention, rather than any mental health need, the most mysterious utterance is in closing by Task Force Chairperson Wes Skoglund, citing an avoidance of the need to be concerned about "doomsday devices" by passage of the bill. No explanation for this statement was given. Many references are possible, all utterly fascinating.

In conclusion, the various statements contained in both segments of the recordings of legislative deliberations about the 1994 MCCTA bill clearly show time and again that it was intended to serve simply as a preventive detention device to prevent crimes though to be likely at the hands of those to be preventively detained. Because of this aim, the MCCTA of 1994 unquestionably violates the protection intended by the guarantee of substantive due process. Under American constitutional law, it is impermissible to lock people up out of nothing more than fear of future crimes which may be committed by them.

No one has any crystal ball of prediction. Yet virtually every commitment trial under the MCCTA today focuses almost exclusively on exactly such predictions — really just unscientific guessing. If American justice is to retain any respectability at all, it must renounce incarceration outside of criminal sentencing. That is the only proper venue for recidivism concerns. The MCCTA of 1994 must be struck down.

* * * * * * *

Did you choose to take the elevated, or a bus? Or were you so seized by an impulse to take one or the other that you could not resist that impulse? Why would you assume that someone contemplating a crime would act with no decisional process, but only under the power of such an irresistible impulse?

(Continued from page 5)

***Gladden* Excerpt:**

Attainder: Functional Analysis, Part 2 of 3

Grant of Jail Credit for MSOP Detention Shows Its Incarcerative, Punitive Functional Nature.

Confinement in MSOP has been held by the Minnesota Court of Appeals to qualify for "jail credit" in sentencing, implying its nature as incarceration.

Until shortly after the 1994 *Act*, residential amenities in MSOP resembled those of Minnesota's "regional treatment centers." (See for description, e.g.: "Treating Sex Offenders," *supra*). As that article explains: "To support treatment programs and prevent constitutional challenges, MSPPTC [predecessor entity to MSOP] gives the perception – both legal and psychological – that persons committed under SDP law are no longer jailed." Citing its design as being a "'step up' from the architecture of typical detention facilities," with "certain residential amenities that may be unpopular with the public," the article continues:

> "Architectural project manager John Strachota of BWBR Architects says there is another reason for the unique design. 'Patients may be held indefinitely, so we had to make the facility better than any existing prison in the state. If not, it would have been very easy for patients to commit a crime against a staff member or another patient in order to be sentenced and returned to prison, thus effectively getting moved out of the facility,' he says."

However, as the *Karsjens Third Amended Complaint* alleges, in more recent years those amenities have been stripped away, and new housing buildings (Complexes One and Two) have been constructed for occupancy by MSOP detainees, effectively mirroring housing at a maximum-security prison. Thus, notes "Treating Sex Offenders" (*id.*), specifically referring to MSOP, "...if treatment programs are not successful, if current law is stricken down, or if sex offenders start receiving life sentences, state officials say the facility can be converted for use as a prison." (emphasis added).

In *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008), the Minnesota Supreme Court acknowledged the fact that the sex offender commitment facility was "without dispute the functional equivalent of a jail." These functional equivalencies categorically attest to the incarcerative, punitive nature of SPP/SDP commitment.

The Identical Requirement for "Conditional Release," Both from Sex-Crime Sentences and Release from MSOP, Shows the Punitive Nature of Commitment Under the Act.

As opposed to other commitments, a statutory provision applicable only to sex offender commitment under the aforesaid Act requires that anyone released from MSOP must serve ten years thereafter on "conditional release." Every sex offender released from prison must serve that same "conditional release" period as part of the sentence itself for his sex crime(s). Indeed, the requirement for that term of conditional release as to commitment release defines itself by reference to that same requirement in the sex-offender sentencing statute. This means, quite flatly, that at least this part of the MSOP commitment scheme in Minnesota is expressly penal, due to the unquestionably punitive character of that ten-year term of "conditional release." In turn, that punitive character swings wide the door to raising a bill of attainder claim, and indeed, even a double jeopardy claim, against those Minnesota commitment statutes. (Note that double jeopardy requires punitive character, in the sense of criminal penalties, whereas attainder requires only 'penal' character, a much broader term including, e.g., loss of employment.) Therefore, due to the unquestionably punitive character of that ten-year term of "conditional release," commitment to MSOP, including this release conditioning there-

(Continued on page 8)

(Continued from page 7)

from, is also unquestionably punitive in function.

Because No Difference in Sexual Recidivism Has Ever Been Shown to Be Due to Sex Offender Treatment, Such Treatment Does Not Provide a Non-Punitive Function or Aim of Minnesota Sex Offender Commitment Under the Act.

Gregory DeClue, "Avoiding Garbage 2: Assessment of Risk for Sexual Violence after Long-Term Treatment," 33 *Jour. Of Psychiatry & Law* 179 (Summer 2005), summarizes on the lack of any evidence that sex offender treatment works to any significant extent in lowering sex-crime recidivism thus:

p. 188:"...[I]t has been impossible to determine whether treatment has caused a decrease in recidivism risk.

"Consider a recent well-designed study. *Hanson, Broom, and Stephenson* report: 'The treatment program examined in this study did not appear to be effective in reducing recidivism. Although some analyses slightly favored one group or the other, the differences between the treated and untreated groups was virtually zero after controlling for year of release, follow-up time, and static risk factors.' [citing *Hanson, T.K., Broom, & Stephenson, I.M.* (2004). "Evaluating Community Sex Offender Treatment Programs: A 12-Year Follow-Up of 724 Offenders." *Canadian Jour. Of Behavioral Science*, 36(2): 87-96, at 94.]"

p. 189:"...[W]hen one considers currently available research, we do not know whether sex-offender treatment works, we do not know what type of sex offender treatment works (if any)....."

We should not communicate (directly or by implication) that we know more than we do about what – if anything – in sex-offender treatment produces consistent, lasting decreases in risk to reoffend."

Large-scale academic statistical studies, both in Minnesota in 1997 and in California in 2005, have found no significant differences in rates of sexual re-offense between those receiving sex offender treatment and those not. There is no definitive research demonstrating the effectiveness of sex offender treatment in reducing recidivism.

In the early 1990s, when sex offender commitments in Minnesota first began in earnest (under a predecessor law to the current SPP law) and MSOP was proposed as a formal agency, Dr. Michael Farnsworth, then a forensic psychiatrist at St. Peter Security Hospital ("MSH"), led opposition to that proposal and to substantial numbers of sex offender commitments, saying, among other things, that there was no proven technology to treat sex offenders.

Farnsworth more recently added that, in the nearly 20 years of MSOP existence, "there has not been a huge explosion of knowledge or efficacy of treatment" of sex offenders.

In July 2008, a report by the United States Congressional Research Service concluded, "research indicates that there is not enough evidence to definitely prove that treatment for sex offenders works."

In Minnesota sex offender commitment proceedings pursuant to said expert testimony of a diagnosis of a "mental disorder" or "abnormalities," the existence of which is claimed in such testimony to make it difficult or impossible for the commitment respondent to control his criminal behavior, is heavily relied upon by the trial judge in adjudging commitment under said Act.

Treatment effective at eradicating any of these "mental disorders" or "abnormalities" does not exist. MSOP policy and practice deems the continued existence of any of these purported "mental disorders" or "abnormalities" to inherently reflect an elevated risk of sexual re-offense and, pursuant to said policies and practices, thus a bar to release. This makes every MSOP detainee unamenable to effective treatment.

Such ongoing commitment of MSOP detainees unamenable to effective treatment, essentially by definition converting their commitment to pure preventive detention in effect, is therefore purely punitive in function. For this reason, such commitment and detention functionally imposes a bill of attainder upon Plaintiffs, as well as depriving all Plaintiffs herein of substantive due process.

[Next time: the final installment about the functional analysis to determine whether commitment-as-preventive-detention amounts to bill of attainder.]

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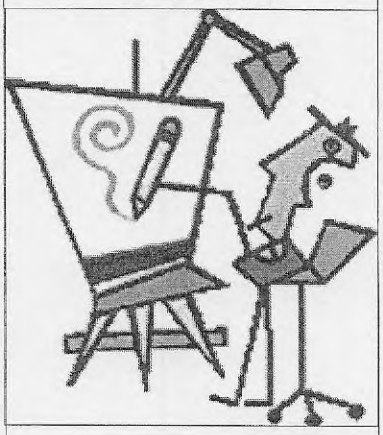
Dynamic Difficulty:
Dynamic Risk Assessment Problems Reveal Conceptual Questions



Sharon Casey, "Dynamic Risk and Sexual Offending: The Conundrum of Assessment," *Psychology, Crime & Law* ___ (published online: Dec. 23, 2015) (http://dx.doi.org/10.1080/1068316X.2015.1111366

Text excerpts:

"[Citing Mann, Hanson &Thornton, 2010), Casey states:] ...the authors offered no explanation regarding the causal nature of these risk factors,...."

"...[E]vidence for a definite link between changes in dynamic risk and reduced recidivism remains limited. (citing, *inter alia*, Hanson & Morton-Bourgon, 2005; Olver & Wang, 2011), This clearly raises questions about the RNR paradigm and, as a corollary, the assessments based on its framework and how these assessments are interpreted."

"...[A[] lack of clarity remains about how we understand the very notion of dynamic risk (see Ward & Beech, 2015)."

"Dynamic Risk Assessment

"The dominant RNR paradigm (Andrews & Bonta,2010) conceptualises dynamic risk as enduring psychological or behavioral features shown not only to correlate with recidivism but, due to their variability, amenable to change following intervention (Bonta, 1996; Hanson & Bussiere, 1998; Hanson & Harris, 2001; Proulx, Perreault & Ouimet, 1999; Thornton, 2002). Dynamic factors are further delineated as either stable or acute. Stable dynamic risk factors are those with a tendency to be persistent characteristics (i.e., stable over time) that change over an extended period of time (e.g., cognitive distortions, deviant sexual arousal). Acute dynamic risk factors, on the other hand, are more fluctuating or rapidly changing (e.g., negative emotional state, substance abuse, and victim acquisition behaviors) and can daily, even hourly. Consequently, acute dynamic risk is said to have the potential to signal the time at which offending is at greatest risk of occurring."

"Beech Deviancy Scale

"The Beech Deviancy Scale (Beech, 1998; Beech & Fisher, 2004) is a psychological typology that distinguishes between high and low deviancy offenders based on the presence of stable dynamic risk factors (i.e., pro-offending attitudes, socio-affective functioning). ...Based on a scoring protocol, High Deviance men display: high levels of cognitive distortions about children, highly distorted attitudes about their victims, sexual obsessions, and self-reported sexual deviance patterns (Beech, 1998). They also report problems forming adult intimate attachments, showing a preference for having their emotional needs met by children, while experiencing other socio-affective difficulties (e.g., low self-esteem, loneliness; Beech, 1998; Beech & Ford, 2006). In contrast, there is an absence of generalized cognitive distortions with Low Deviance men, no evidence of emotional identification with children (in fact, it has been shown to be lower than non-offender groups; see Fisher, Beech, & Browne, 1999). Although Low Deviance men exhibit social inadequacy problems, it is not as marked as that found in High Deviance men."

"Structured Assessment of Risk and Need (Structured Risk Assessment)

"The Structured Assessment of Risk and Need (also known as the Structured Risk Assessment [SRA], Thornton, 2002) is a research-guided, multistep framework that integrates a Static Risk Assessment (RM2000/S; Thornton et al., 2003; or Static-99), an assessment of treatment needs (Initial Deviancy Assessment [IDA] in the SRA) and an evaluation of progress based on treatment response to determine treatment change (see Craig et al., 2007; Tully, Browne & Craig, 2015)."

"...While one can question the impact of environmental or individual factors on psychometric test results, it also raises questions about the efficacy of the test battery."

"Stable 2007/Acute 2007

"The STABLE-2007/ACUTE-2007 (and preceding versions) are the most widely used sexual offender dynamic risk assessment tools in Canada and the US (McGrath, Cumming, Burchard, Zeoli, & Ellerby, 2010). An interview- and file-based tool, the STABLE-2007 is comprised of 13 relatively enduring but changeable factors that reflect five stable dynamic dimensions: (i) significant social influences; (ii) intimacy deficits; (iii) sexual self-regulation problems; (iv) general self-regulation problems; (v) (non)co-operation with supervision (Hanson et al., 2007). Factors are assessed using three-point ratings scales (0 = no problem; 1 =

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some concern/slight problem; 2 = present/ definite concern) with total scores ranging from 0 to 26. Total scores are assigned to one of three empirically derived need categories (Low 0-3; Moderate, 4-11; and High, 12-26). The ACUTE-2007 is comprised of seven rapidly changeable risk factors, which form two discrete factors: sexual preoccupations, victim access, rejection of supervision, and hostility; emotional collapse, collapse of social supports, and substance abuse (Hanson et al., 2007).

Conclusions

"What does the preceding summary of structured dynamic risk tools tell us about their usefulness in the context of assessing sexual offenders? The most telling point is that the majority of risk prediction variance is explained by the static component of the assessment and that the incremental validity of dynamic risk factors is limited. Does this mean that dynamic risk factors fail to tell us anything about the individual? That will depend largely on what position is taken regarding the relationship between static and dynamic risk. If one adopts the aetiological model described by Beech and Ward (2004; Ward & Beech, 2015), clearly the two will be related, although it remains unclear how this model can be used to inform the assessment process... ...Finally, there is the perspective that 'real' dynamic predictors should demonstrate incremental validity to static risk factors and that change on that variable should effect an appreciable change in risk (Harris et al., 2003). However, to demonstrate incremental validity one must first have a clearly operationalized construct and that clearly is not the case. More work is needed in this regard.

"...[T]he strength of the relationship between the dynamic risk factors and recidivism was low even when one takes into account such factors as sample sizes, base rates for reoffending, and variations in population. ...[M]eta-analytic findings show that single risk factors are not strongly enough correlated with sexual recidivism to be sole predictors (Hanson & Bussiere, 1998; Hanson &Morton-Bourgon, 2004, 2005; Mann et al. 2010)....

"One last point that needs to be made both with respect to overall effect size and incremental validity is how these are interpreted. The most commonly used statistical method for establishing predictive accuracy is receiver operating characteristic (ROC) area under the curve (AUC) analysis (Mossman, 1994; Swets, Dawes, & Monahan, 2000). While ROC analysis provides several ways of summarizing prediction accuracy, here we are concerned with two commonly used indices. The first index, the area under the curve (AUC), is a simple summary of overall accuracy which involves a comparison of sensitivity or 'hit rate' (i.e., percentage of reoffenders correctly identified as high risk on assessment) with specificity (i.e., percentage of non-reoffenders correctly identified as low risk). False positives (false alarm rate) is reciprocal to sensitivity (true positives); false negatives (miss rate) is reciprocal to specificity. Calculating the effect size of the prediction method is another way that the overall accuracy of prediction can be summarized. ROC curves and standardized mean differences (Cohen's d) are based on similar statistical models and the convention has become to convert AUC values to Cohen's d using the values of .20, .50, and .80 as small, medium, and large, respectively (Cohen, 1988). In the broad field of behavioral research this has come to represent AUC values of .56, .64, and .71 (Rice & Harris, 2005). By way of comparison, other discipline areas have suggested: .50-.70 rather low accuracy, .70-.90 useful for some purposes, and .90 – 1.0 rather high accuracy (Swets, 1988); or 0.50 no discrimination, .70-.80 acceptable discrimination, .80-.90 excellent discrimination (Hosmer & Lemeshow, 2000).

Crystal gazing: divination of distant or future events based on visions seen in a ball of rock crystal.

Encyclopædia Britannica Ultimate Reference Suite. Chicago: Encyclopædia Britannica, 2013.

"While clearly there is a difference between what is acceptable in the medical sciences in terms of true positives and false negatives, criticism has been levelled at adopting the small, medium, large classification without heeding Cohen's (1988) sentiments when assigning those labels as a rule of thumb (in the estimation of effect sizes). In fact, Cohen pointed out that such arbitrary labels would be problematic (see Mossman, 2013). He stated that'...qualitative concepts as 'large' are sometimes understood as absolute, sometimes as relative; and thus they run a risk of being misunderstood' (Cohen, 1988, p. 12). Rather than being the 'guesstimate' he had proposed, they have become standards by which accuracy is judged. It is worth noting that Rice and Harris (2005) acknowledged that the categories were provided as a tentative rule of thumb. Perhaps researchers have become complacent with seemingly 'strong' effect sizes found on the current battery of assessment tools and willing to accept incremental validity in the range of .02 -.04 as sufficient evidence that the assessment tool is meeting the criteria of evidence-based assessment.

"In conclusion, the way forward in dynamic risk assessment, it seems, is by taking a step back. A step back in terms of theory development, from which can emerge the constructs that might define and explain risk. This should, in turn, inform the development of assessment tools which can be validated according to best practice and evidence-based assessment guidelines."

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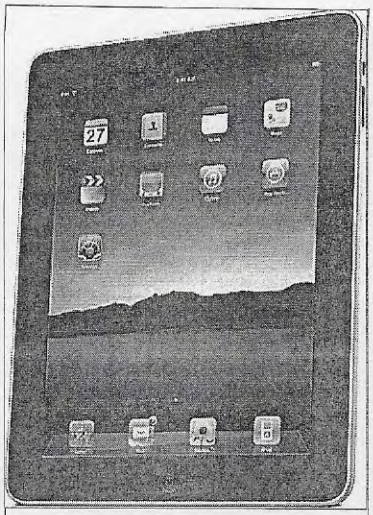
Jpay Exposé—
The Bad News: They Want Your Money. The REALLY Bad News: They're Not Alone.

Editor's Note: Departing somewhat from usual practice, the following excerpts from one main article will be periodically interrupted by congruent excerpts from three other articles on the subject to give a broader view of this problem. A Concluding Note will draw together the theme of how this problem fits in terms of the need to assert our constitutional right to communicate with the free world without being held up by corporate highwaymen for that right.

Michael Waters, "The Outrageous Scam of 'Free' Tablets for the Incarcerated," *The Outline*, Aug 10, 2018:

"...Since 2016, prison telecommunications companies like JPay and Global Tel Link have been giving out thousands of free tablets to inmates in several states, including New York, Florida, Missouri, Indiana, Connecticut, and Georgia. While the tablets are marketed as ways to let inmates educate themselves, prepare to re-enter the workforce, and communicate with their loved ones, the economics behind what has become a free-tablet imbroglio suggest that in some cases the operation is no more than a money grab for every player in the chain, from state governments to the distributors.



The tablets feature each company's unique online marketplace, which is something like an iTunes/Venmo/Gmail mashup, allowing inmates to send emails, video chat, receive money transfers, and download select movies, TV shows, and music. Most tablets block internet access, though in some states inmates are allowed to visit online libraries and news sites....

...[F][or many inmates and their families, that [free] price tag has not panned out as promised. 'It's very misleading to call them free,' said Stephen Raher, a lawyer and volunteer at the Prison Policy Initiative ["PPI"] who researches communication systems in prison. '...[I]f you want to do anything with that tablet, you have to pay, and the prices are eye-raising for anyone,....'

In New York, for example, JPay — which aspires to be the 'Apple of prisons' — gave out 52,000 tablets in February 2018. By 2022, it expects to make all of that money back plus $9 million in profit, according to internal company documents. That's because of the way it has priced even its most basic inmate services.

JPay charges [a] $4.15 service fee to transfer $20 from the outside to an inmate. Sending one email costs $.35, double that to include a photo, and quadruple to include a video. A song can cost up to $2.50, and an album can be — somewhat inexplicably — as much as $46. Chat with a loved one? That'll be $18 per hour. But even these prices fluctuate during busy seasons. For instance, WIRED reported that the price of an email might increase from $.35 to $.47 around Mother's Day, when inmates most want to communicate with loved ones.

'It's prices that are way over market rates, and it just seems like predatory pricing, just pure profit-seeking,' said Raher. 'That's money that needs to come from family members, and usually there's a fee associated with sending it to someone's commissary account. It's a very predatory system.'

[*Wanda Bertram & Peter Wagner*, 'How to Spot the Hidden Costs in a 'No-Cost' Tablet Contract," *Prison Policy Initiative*, July 24, 2018. add: "Providing refunds to incarcerated people when they are released, not in a check, but via a pre-paid debit card rife with fees — such as monthly 'service' fees, fees for checking your account balance, or automatic fines for inactivity. (You can request a check instead—for $10.) [You might be best-off to do so. *Katie Rose Quandt*, "Lawsuit Reveals How Tech Companies Profit Off the Prison-Industrial Complex," *Think Progress, Center for American Progress Action Fund*, cites the case of a California inmate (Joe Reyes) who was released with a JPay debit card containing the balance of his prison account and a $200 statutory 'gate-fee' to help him travel back home. However, once he bought his bus ticket, the card ceased working. Upon inquiry, customer service told him his account was frozen for "suspicious activity." For a full year, Reyes unsuccessfully tried to get JPay to relinquish his money, finally simply being told that the account was "closed." He was forced to sue the firm. His attorney discovered that JPay regularly engaged in such fraudulent practice all around the country of falsely claiming "fraudulent activity" to evade its obligation to pay out releasees' money to them. The latest trick: JPay has inserted language in its "User's Agreement (a document that you will probably never see, even though being bound by it from the first moment you subscribe to JPay and order a tablet), requiring you to take all disputes with JPay to a panel of arbitrators of its choice, with whom you will only be able to communicate through — you guessed it, JPay fee-based services.]

'If it's this easy to encourage vendors to provide free tablets to inmates, why aren't they being provided to our students?' The answer ...is that students would never purchase a fake 'stamp' to send an email to their parents."

[Not all tablets are free, incidentally. *Tonya Riley*, "'Free' Tablets Are Costing Prison Inmates a Fortune," *Mother Jones* (Internet periodical), Oct. 5, 2018, cites Ohio's contract with JPay, under which prisoners must pay $140 for a 7-inch tablet. *Riley* adds that the per-use fees are "for services that are free for non-incarcerated internet users through services like Google and Skype. In some facilities, a simple game like solitaire that would be free on a phone costs up to $7.99, and movie rentals and purchases range from $2 to 25. These rates are on the cheaper end of the market; in other states, such as Indiana, ...GTL charges ...up to $7.99 for 48-hour movie rentals, and $24.99 for a monthly music subscription. [Ask yourself: Is this where the ever-narrower restrictions on disc-based videos here in MSOP are going?] Even premium versions of streaming services Spotify and Apple Music only cost $9.99 a month for those on the outside [with no per-song or per-movie fee], and those plans grant access to millions more songs than what GTL offers. [Riley also notes that FCC limits on per-minute phone call cost, instituted in late 2015, have been struck down by court ruling that Pres. Trump ordered FCC attorneys not to oppose. Trump also appointed as FCC Chairman Ajit Pai, who previously served as Securus' lawyer. Thus, these firms can now charge what they want for calls once again. Use of tablets will likely serve as an excuse to charge fees for calls at rates higher than ever before.]

Ownership of this media can be tenuous. Just this summer, Florida inmates lost about $11.3 million in music downloads after the corrections department switched from JPay

How Much Do 'Free' Tablets Actually Cost Incarcerated People?

- **Loading Fees**
- **Money Transfers**: Deposits less than $20 cost $3.50.
- **Messages**: Emails need 'Stamps' starting at 35 cents.
- **Release Cards**: Debit card activity is laden with fees.
- **Media**: Songs cost $1-$2.50 (above the market rate)

Total: $9 Million to JPay in 5 Years

to a new contractor. Other inmates report media downloads disappearing from their devices for no explained reason. Riley cites countless reports of malfunction/breakdown of the tablets or various apps or other functions in them, with requests for service/repair often going months before response. Facilities using kiosks as an alternative to tablets cite inmates waiting in long lines for a merely 20-minute session, in which to get all of their needs filled. Most users complain that this simply does not get the job done. Riley also mentions that some facilities have done away with all paper-based incoming mail in the wake of J-Pay-type systems. Instead, inmates only get black-and-white scans of incoming mail with — you guessed it — a charge per page.]

[Riley also observes that New York reduced its in-person visiting days from seven down to three after signing on with JPay, which offers video visits at the aforesaid exorbitant fees.]

In a 2016 bid proposal from Securus to ...Nebraska, JPay stated that it served 'more than 1.9 million inmates and released offenders in 34 states' for all of its services.... [emphasis added. In addition to its array of incarceration services, Securus also lists "parolee GPS monitoring," "voice biometrics," "data analytics," and "managed access service (wireless contraband)." Thus, it is clear that Securus plans to cash-in, at your expense, by keeping you tightly in line. The question: if/when released, will you be blocked from Internet access so that JPay or a similar firm, acting in profit-sharing conspiracy with the State, can extract large sums from you for pitiful claimed substitutes?]

[Returning now to *Michael Waters'* article for *The Outline*.]

...Family members of inmates who requested anonymity told *The Outline* that as much as 25 percent of their monthly income went to paying for phone calls, video chats, and digital commissary items like games.

JPay is owned by Securus, a conglomerate of prison tech companies.... Securus' main competitor is Global Tel Link ["GTL"], a powerful telecommunications company.... If recent acquisitions are approved, Securus and GTL will have a combined share of as much as 84 percent of the prison telecommunications market. Securus and GTL are responsible for the predatory pricing of prison phone calls; in some states, a 25-minute phone call can cost as much as $15.

Companies like JPay and GTL often sign contracts with entire state prison systems, and prisoners have no choice but to use whichever company is chosen for them. Many states earn a portion of the revenue generated from prisoners using tablets, so the incentive is to pick the company with the highest prices; the more that a telecommunications company makes off the inmates, the more the prison makes.

Prisons earn back anywhere from 10 to 50 percent of the revenue generated from emails sent by the people they incarcerate. For instance, GTL introduced free tablets in Indiana last year, from which it expects to make $6.5 million —including a sizable cut, $750,000 per year, for the state. Securus, meanwhile, has paid out $1.3 billion in commissions over the last 10 years (a number that includes commissions for non-tablet programs, including phone calls).

Both companies allegedly use that money in exchange for political favors: the Mississippi attorney general accused GTL of bribing the state's main corrections officer with commissions so that he would cut more lucrative contracts with the company . (GTL settled fro $2.5 million in August 2017.)

Even the truly free services offered by the prisons, including online libraries and education programs, have come under fire. Many prisons have scrapped their physical law libraries, but the online libraries that have replaced them often pack the legal resources inmates need.... The legal services offered through the tablets have also malfunctioned so frequently that countless incarcerated people have been left without proper legal aid.

And those education programs are getting similarly negative reviews...

Some telecommunications companies have explicitly marketed the tablets to prisons as a way to uncover inmate crimes. A 2013 report from telecommunications company Telmate noted, 'the more an inmate communicates, the more likely he or she will self-incriminate.'

...Privacy violations are not hypothetical either: in a June 2018 lawsuit, Securus was charged with recording private conversations between incarcerated people and their lawyers and sharing them with prosecutors, a violation of their attorney-client privilege."

Editor's Concluding Note:

All that glitters is not gold. The first lesson from the 'Trojan horse' scheme that JPay and its competitors offer is that such non-Internet tablets only provide a license to spend money — in fact, lots, for very little.

From the standpoint of our captors, this kind of scheme is simply a way to obscure the fact that we are not being given any means of Internet access and instead, are only being placated by the entertainment options and games offered via such tablets. The profit participation of the State in this scheme is the most shameful aspect of this. Rather than protect us, as consumers, from these egregious rip-offs based up our lack of choice and our helplessness in this, the State in this case is deliberately selling us down the river to the waiting clutches of these robber-baron profiteers.

Do not be deceived. These tablet systems do not offer any significant amount of education beyond the kind offered in-person in MSOP's own Education Department. Even the so-called online libraries and news sites offered on these tablets aren't really on the Internet; they are periodically downloaded as a 'snapshot' to the intranet offered by the tablet system.

You have already read my explanation in recent TLP issues of the First Amendment lawsuit now being readied. Among other things, that case seeks access to the real Internet. Effectively, such access will be free. Thus, you will be able to gain access to the very kinds of functionality which the 'tablet system' denies to you or, in a paltry few exceptions, provides to you, but only at exorbitant prices — with no true Internet access.

By the numbers, all but a tiny sliver of content on the Internet as accessible without cost. For those here in MSOP so long that they have never had access to the Internet in your lives, the staggering breadth of subject-matter and the range of view will amaze you. Your sudden access to information of all kinds, as well as to free access to entertainment and to open-participation discussion groups will force you to make choices for lack of time to attend to it all.

Of course, given the secured nature of this facility, a certain minimal level of filtering out of content that could cause security problems or a risk of disruption here will be inevitable. However, unless you purposely seek out such material, you are unlikely to run into such filter-based limits. Such filtration will only do you good in any event; some material on the Internet is illegal. Allowing you to wander into such web sites or related platforms could net you a very serious criminal charge. This function of filtration of websites can actually save your keister from a very abrasive slide.

In sum, I urge you to speak out against administrative consideration of such a tablet system, and even to write to legislators and the governor in opposition to it. This will not give you what you need or want, and will only skin you for many simolions. Instead, join our judicial campaign for true Internet access, and for all of the other First Amendment rights of which we are being deprived by rules now in place in MSOP. Whether from judicial orders or the pressure of these pending legal claims, things in all these regards will change for the better. Start by reading the next article, and go from there.

* * * * * * *

First Amendment Case: A Review of Its Claims — & What You Can Do to Help!

Editor's Opening Note – Why We Need & Should Have Internet Access:

I start this article with this note about the key role that our claim for Internet access will have in this case because of the overwhelming importance that Internet access plays in everyday modern life and because, if we fail to gain Internet access, even if we win every other separate point in our lawsuit, we still will not have even just a shadow of the communicative and informational power that Internet access would give us. With Internet access we live in the modern world even though physically confined. Without Internet access, even were we freed (let's say, to provisional discharge), we would effectively remain locked away in a modern-day black hole of our own, deprived of access to information about jobs, housing options, availability of and great deals on goods, social connections, political and other discussion groups, issues of the day, and myriad other matters. We would be utterly uninformed, and thus, the equivalent of illiterates and the mentally deficient. With these thoughts in mind, let's begin.

The situation in sex offender commitment facilities with regard to access to the outside world is generally grave, as MSOP restrictions attest.

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Visiting restrictions are extreme. No local newspapers can be subscribed to, possessed or read. Video media are extremely restricted. Books and magazines are regularly censored due to content or simply topic.

Computer ownership is barred, along with a host of other electronic devices. No education is provided or even allowed beyond the high school level except with rare permission only by Clinical Department approval for specific reasons thought valid and important by staff of that department. No video visiting is allowed at all.

Phone calls are limited and are inmate-paid. All phone calls are recorded. Mail is read and often subject to censorship. Other First Amendment restrictions apply to every means of communication with the outside world.

The further fact is that print media are now in a mass die-off everywhere, as free Internet distribution of news, opinion, and information of every kind proliferates beyond the power of expensive print distribution to compete. Even traditional 'snail mail' is only seldom used anymore by those having access to email and other connectivity means via Internet.

Now the default means of communication is Internet-based calling and smart phones, allowing simultaneous real-time dialog and sharing of digital documents and files, including spreadsheets and presentations, as well as CG video as design and projection media and as bases for virtual reality and augmented reality means for conceptual visualization brought to real-world scenarios.

The current ban on Internet access is based solely on the claimed fear that sex offenders, as opposed to any other group of prisoners or merely any subset of society, would supposedly abuse access to the Internet in some nonstop slavish search for and acquisition of illegal pornography or a supposed search for victims to exploit and/or sexually abuse online.

The first answer to this is: Even if so, those who do so will be readily apprehended and punished in accordance with the universally applicable criminal law. The forces of law enforcement against such Internet crimes are everywhere in depth, from the F.B.I. to I.C.E., to statewide investigation and enforcement agencies in place in every state, and in all counties and also separately in most mid- or large-size cities. It would be folly for anyone to assume that they could get away with such crimes.

The notion that a known former sex offender could do so successfully — especially from within such extremely monitored and surveilled surroundings as a sex offender commitment facility — transcends into the realm of surreal self-deception. Only relatively rarely does anyone encounter someone here <u>that</u> self-delusive or moronic.

Moreover, by far most here would greatly value the opportunity to learn how to use the Internet for all manner of useful (and legal) tasks and goals. These would not only refrain from engaging in any illegal or questionable activities, they would confront others suspected of attempting to do such things as a threat to continued Internet access for all. Since no one is more suspicious of a sex offender than another sex offender, such confrontations would occur in a high percentage of such attempts, reducing greatly the chances of completing any illegal Internet actions.

In sum, therefore, such fears of rampant Internet crimes are baseless and contrary to the motivational tilt of the vast majority of inmates here.

For all of the foregoing reasons, there is no reason to discriminate against committed sex offenders. Indeed, because each of us have served our prison term before even getting here, we are not to be punished any further. Although Internet connectivity may be withheld in prison under certain circumstances and be justified as such punishment, this cannot be levied upon us here without violating the First Amendment. Thus, as I have already said, we need and have a right to access to the Internet.

<u>A Short Review of Our Claims:</u>

Our general aim in the case will be to strike down all MSOP and DOC interference with free exercise of our First Amendment rights to freedom of speech and press, free receipt of information and entertainment in all media forms, and freedom of thought and emotion.

This Amended Complaint will challenge a vast range of such interference, from denial of Internet access and personal computing equipment, to all media restrictions, to all other restrictions upon means of communication with loved ones, friends, and the outside world in general, to visiting restrictions, and to restrictions on all print media items, including newspaper subscriptions, and mail, and to monitoring and recording of phone conversations, and all 'tier restrictions' on First amendment items and access to communication. The following list will provide a sample of specifics we will challenge and the rationales for each:

1. Complete denial of access to the Internet , as a deprivation of access to information, to communication, to entertainment, to education, and to permitted commerce that it is an unqualified denial of the First Amendment rights.
2. MSOP restriction to only PG-13 and lesser-rated movies, requiring review and case-by-case approval of all R-rated movies and even selected movies of lesser ratings, using criteria far more expansive than simply the criminal bans on illegal pornography and "obscenity."
3. MSOP bars and restrictions on creation, printing, and distribution of newsletters by MSOP inmates, including imposing limits and procedural requirements on such newsletters or their preparation/distribution.
4. The complete MSOP ban on purchase and use of personal computing equipment, thereby confining us to use of MSOP-owned PCs furnished at a rate of six for 98 inmates. This greatly restricts our ability to use computing equipment to communication efficiently with each other and the outside world, to contain thoughts and information in digital storage, and to use helpful application software.
5. MSOP restriction of printed media to only such items reviewed and decided not to transgress any of the same broadly expansive standards.
6. Further, distinct censorship of printed matter for its content based on completely unrealistic claims of threats to institutional security or safety of the public, with no set decisional standards whatsoever.
7. A second, cumulative censorship system operated by Clinical Department personnel of MSOP on a completely undefined standard of whether some item of any printed or video media is 'counter-therapeutic,' even though in complete conformity to all particular media standards, simply due to displeasure by Clinical staff or their supervisors with either innocuous content or only a given topic.
8. Restrictions on visiting hours and circumstances, and rejection of various visiting applicants. This also challenges restrictions or censorship of visits between MSOP inmates and any media representatives.
9. MSOP denial of mail or phone contact or both with any specific correspondent(s)/conversant(s).
10. Deprivation of contact via 'Skype-style,' Internet-carried video and audio communication with outsiders who wish to communicate with us in that way.
11. Monitoring and recording phone conversations, and scanning incoming and outgoing correspondence and retaining digital or paper copies of either.
12. Media review practice by MSOP Clinical Dept. personnel holding media items for unreasonably long periods.
13. The "Tiers" policy authorizes, and results in confiscation of both media and devices for viewing or listening to and of said media items, as punishment for trivial violations of various rules unrelated to permissible media or Property Dept. restrictions upon or requirements of such media playing devices.
14. No legal mail status for mail to/from courts, administrative tribunals, or the MN Attorney General or other elected or appointed officials.
15. Stamping all mail as "from a secure treatment facility" as a HIPAA violation.
16. Exclusion of all "Mail-a-Book" library loan service (including all books and videos).

Why this review of all these claims? Two reasons: First, you may know of some additional wrong having to do with denial of any First Amendment rights of freedom of speech or of the press, or of freedom of thought. We would eagerly welcome any identification and description of such constitutional violations that you can give us. Please write such descriptions up and deliver them to either Charles Stone, Ray Semler, or myself (Cyrus Gladden) or, alternatively, speak to any of us about them. These can be things that have been done or denied to you or to anyone else. These may wind up being new, independent claims of First Amendment violation.

Now the second reason: I'm willing to bet you have been blocked or otherwise deprived of your own First Amendment rights in any one or more of the ways specified above. If so, and you regard the matter as more than trivial, then we want to hear about it. This lawsuit is not just about our personal beefs with the MSOP system; it will be a class action, and hence, it includes the deprivations MSOP has inflicted on everyone in MSOP when it comes to the rights of all of us under the First Amendment. This means that your own deprivations and MSOP reprisals for asserting your First Amendment rights are just as relevant as those of the three of us, as proposed "Named Plaintiffs."

In short, please write up and deliver, or discuss with any of us a short description of each incident that falls within any of the foregoing sixteen categories of unconstitutional actions or deprivations by MSOP staff or officials. We really do want to know. Many of you have factual scenarios that are just as powerful, and perhaps more powerful than those of the three of us toward convincing the federal court that when it comes to First Amendment rights, MSOP is treating us as if we have none at all. This kind of cumulative proof is what we need to successfully convince a judge that we need and deserve a court order forcing MSOP to honor those rights of ours in every way. Your story/stories on any of these points will substantially help toward getting such judicial relief.

So, on both of these reasons, please let us hear from you soon. Thanks!

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Remember, you're unique
— Like everybody else.