The Legal Pad
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"Major Strasser has been shot. Round up the usual suspects."
– Captain Renault, *Casablanca*, 1942

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Pictures? What Pictures?

Regrettably, neither space nor time allow for the usual pictures. Next time!

Coming Soon:

- ✓ What does the SMART Office do, and why should you care?
- ✓ 2019 SOCCPN Conference Participants: Anyone you know?
- ✓ Incapacitation as a 'Core' Criminal Sentencing Consideration
- ✓ Subsequent Punishment - Clear and Present Danger and Other 1st Amendment Tests
- ✓ MnSOST-3 – Retrospective Review of Predictive Accuracy
- ✓ SO Treatment Advocate CURE Concedes Grave Problems with It.
- ✓ Any Lockup is a Prison Sentence
- ✓ The Secret: Forbidden Purpose of Sex Offender Commitment
- ✓ Court Use of Incorrect/Irrelevant Statistics & Unverified Prosecutorial Claims in SO Commitment Cases
- ✓ Why a Sex Offender Demanding a Jury Could Backfire Badly
- ✓ Social Media Bans on Parolees Are Unconstitutional. Hmmm... How Long Have You Been Out?

↳ And (always) much, much more!

Nominations Now Being Taken for Google Group for Minnesota Gulag Activists

This is a closed, members-only group communicating per secured website. You may nominate yourself and/or someone else (outside supports/advocates preferred). However, vouching by a present member or other known activist is required. Sponsored by one of most active national groups advocating to end sex offender commitment. Nominations received at: just-future-minnesota@googlegroups.com or passed along by *TLP* Editor (address below).

Quick! Write this down!
TLP Editor Address:

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Moose Lake, MN 55767-9452

To All Confinees in Every So-Called Sex-Offender Commitment Facility in the U.S.:

Right now, I am trying to collect a centralized list/database of certain sex offenders in each other sex-offender commitment facility as a Committee of Correspondence. The most immediate aim of this Committee will be to frequently share all information significant to us, to foster uniform agreement on positions of critical importance to us, and to compare notes on all developments of importance to all of us, including at least these, for example:

- •challenges to such commitments or possible grounds for such challenges (individually or collectively);
- •comparative conditions of confinement; and
- •efforts through:
  - •litigation,
  - •political appeals to:
  - •legislators,
  - •government executive officials; or
  - •public relations campaigns, or otherwise, to:
- •strike down sex offender commitment;
- •to gain freedom for all through legal attacks on the ruse of treatment as a rubric to supposedly justify our permanent confinement; and/or
- •to challenge all oppressive conditions of confinement, and
- •for all other useful purposes.

One of the roles of this projected Committee will be to ensure that at least one copy of each newsletter generated by one or more confinees at each such facility and seriously addresses any of the subjects listed above is provided to each other facility, for collection there on a lending-library basis, so that all confinees in all such facilities can be current about significant matters going on in every other such facility. This collection in each such facility will also serve as a very useful 'well' of thoughts by those in each facility about how best to advance our interests in common.

Another role of this Committee will be to help coordinate our respective (and perhaps collective) actions for maximum beneficial effect for all of us. There has already been too much helter-skelter litigation and too many ill-advised pleas to the media. Some such actions and public-relations pleas have backfired badly. Frankly, at the very least, we need to 'get our story straight.'

If you wish to be a Committee of Correspondence member for your facility and you possess the resolve to carry out that role seriously and consistently, please respond to this request by direct regular mail to the undersigned at the address listed in the lower-left corner of this page. If you cannot or wish not to take this responsibility on at this time for any reason, please inquire of others in your facility whom you deem apt to fill this role.

If you or anyone else there produces a newsletter addressing any of the topics above, please include in your reply a copy of the latest edition of it that you have. Please also ensure that I am placed on the mailing list for future editions of any such newsletter. I simply cannot afford to send multiple copies of this newsletter to your facility. Hence please lend this to those there who are responsible and considerate borrowers.

I fervently hope that this Committee will dispel demoralization and will bring about sorely-needed organization and a sense of solidarity and among all committed sex offenders. Therefore, please treat this inquiry with the crucial importance it conveys. I believe that this can change everything for us massively for the better. Some of us must step forward to get things rolling forward. I hope that you (or at least someone to whom you will selectively show this article) will prove to be the kind needed to fulfill this role.

I hope that you agree that we simply must remain in contact and that we start to forge an axis of solidarity that I hope we can work into as many of these facilities countrywide as possible. There is strength in numbers, but even more strength in organization and coordinated voices. Are we agreed in principle? I will await your reply eagerly. Thanks!
– Cyrus Gladden, J.D., Editor, *The Legal Pad*
(address mail exactly as at below-left)

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A Just Future?
Only You and Yours Can Make It Happen!

[Editor's Comment: If you are not able to or don't want to sign up with the outfit advertised at lower left, here's another organization, this one rune by Minnesotans exclusively. I'd say it comes down to which one you believe will be more successful.]

by Cyrus Gladden & Chris Krych

Grassroots efforts are built one person at a time. Yet our time on earth is dwindling as this is written.

No one far away is going to wave a wand and miraculously cause us all to be released. Some organizations and prominent individuals are now voicing support for our cause of liberation. This is great, and it was unheard of ten years ago. The impact upon the public of all the hysteric and hate-filled propaganda against former sex offenders has steeply diminished in recent years. Thus, the fear of disapproval of those advocating to end the practice of commitment of sexual offenders has finally waned.

But we must do our part or all of those voices will eventually just die away in the mistaken belief that 'somebody is doing something about ending that misuse of commitment.' Yet we all know that we cannot achieve liberation on our own. Free-world supporters of our cause of preservation of the remainder of our lives through restoration of our liberty are badly needed – NOW! Every supporting individual counts.

This means each of our contacts out there, and everyone they can contact in our support – moms/dads/grandmas/grandpas/wives/adult children/old friend/pen pals – you name it. Mahatma Gandhi once said: "A small body of determined spirits fired by an unquenchable faith in their mission can alter the course of history." And his few initial supporters freed the vast British colony of India – by words alone!

Just a few supporters acting with resolve and the moral certainty that what has befallen us is just plain wrong can recruit others in a snowball-to-snowman effect. Urge your people to tell those who think this is necessary to consider what they will say when this happens to someone in *their* family.

Just imagine a group swelled to 250 deeply concerned people willing to raise their voices against the tyranny of permanent lockup beyond the end of prison sentences out of nothing more than 'pre-crime' fear and loathing. This is how political-legal change happens!

If each member of such a group can merely stand up and say at least one thing in advocacy for us, we can bring down the present commitment system that has confined us all in add-on incarceration -- and which will keep us until we die if not interdicted by outsiders' objections.

TELL YOUR PEOPLE/EVERYBODY YOU CAN CONTACT: SIGN UP & GET TOGETHER WITH EACH OTHER.

No single voices out there can be heard loudly enough to force change. But many voices can work a total change -- Complete repeal of this abomination by which we are ensnared.

Urge everyone to visit ajustfuture.org.

Then have them show their support by signing up at: actionnetwork.org/forms/speak-up-minnesota-2 to join with others to defeat this monstrous system of lifetime 'second sentence' imprisonment of each of us.

Your future is in your hands! Speak up and write to those you know. If not, your own silence will seal your fate!

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MSOP-ML in Facility-Wide Quarantine Due to Influenza Outbreak

On Thursday, February 27, 2020, the MSOP-Moose Lake facility was placed on facility-wide quarantine due to the virulent spread of influenza to many within the facility over the preceding days. This move was made following the earlier and still-ongoing quarantine of two residence units for the same reason. Those two units are contained within the older (Main") building in MSOP-ML and include elderly confinees and those with health problems deemed to make them vulnerable to a flu infection. In all, the population of those two special housing units is estimated at about 40 confinees at this time. Other than those units, the Main Building contains only a set of closed living units ("Omega") reserved for those who MSOP Administration has placed there for disciplinary purposed or other reasons specific to individual confinees.

The expansion of this quarantine to the remaining living units (contained in the newer "Complex" building) signified that spread of influenza infections was not under control and had accelerated. This infective virulence and the surprisingly severe symptomatic 'clout' of this particular flu strain required this public health response.

This quarantine has restricted MSOP-ML confinees to their respective living units, with the sole exception of healthy confinees with jobs in the facility Kitchen. Other confinee employment and all treatment programming have been suspended until this flu crisis has been brought under control. In the last two days, certain steps have relaxed various restrictions a little. As of this writing, a new Administration memo states that the living-unit quarantine will end as of the end of Thursday, March 5, 2020.

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Survey by SOCCPN Reveals Unflattering, Disturbing State of MN & Other SO Commitment Systems

In 2018, a non-governmental organization called "Sex Offender Civil Commitment Programs Network" ("SOCCPN") issued the latest in a periodic series of surveys of the overall state of sex-offender commitment facilities and their treatment programs. The following excerpts from that 2018 SOCCPN Survey may prove of particular interest. Perhaps most startling of all, see the charts following these short excerpts. Those charts will put Minnesota's comparative status and practices in their true, shocking perspective.

Page 9: Over time, Minnesota has committed 851 sex offenders, while detaining another 115 (who presumably were ruled not committed). Comparing this to a 2018 Minnesota committed inpatient population of 736, plus 17 then on provisional discharge and 3 that achieved full discharge (total: 756), the difference (851 – 756 = 95) apparently reflects the real total of deaths while under commitment.

Page 11: Of the 3 Minnesota committed individuals who gained full discharge, 2 did so without regard to treatment participation.

Page 12: Similarly, of the 20 who gained provisional discharge, 15 did so without support by MSOP in the SRB/SCAP process. Taken together, this and the immediately preceding fact imply a complete lack of faith on the part of MSOP itself as to the efficacy of the 'treatment' it provides (over a span of up to two decades or more) to those committed to it.

Page 14: In the aggregate among all states with sex offender commitment, 78% of those committed had at least one child victim; only 22% had only adult victim(s). Nearly half (48%) had only child victim(s). This shows that the entire focus of the correctional screening process and the prosecutorial selection process as to sex offenders nearing the end of their prison terms has been a deliberate attempt to wield commitment as a punitive weapon against pedophiles, rather than repeat rapists. This is ironic, since adult rapists nearly always prey on strangers in their sudden, violent attacks. In contrast, about 9 out of 10 molestations are committed by family members of the victim or at least by someone known to the family of the victim. In this context, the significance of this comparison is that, as compared to a rapist, a released pedophile is far less likely to commit a recidivistic molestation, if only because the 'grooming' process within that clear 'victim pool' that precedes such crimes would be obvious to and interdicted by parole agents or other supervising officials long before any molestation would actually occur. Because this connotes that post-sentence commitment is not needed to avert such crimes, it further indicates that the disproportionate commitment of pedophiles is not public-protective subjection of a pedophile to therapy, but a punitive act filled with emotion-based bias and political posturing by prosecutors and related officials.

Page 31: In SO commitment programs in all states having them, between 2017 and 2018, there was a 20% drop (55% to 35%) in programs requiring a given client to pass a full disclosure polygraph to advance in and complete treatment. Conversely, adding in a 9% reduction in programs that called this question "Not applicable," the percentage of programs affirmatively declaring that such polygraph passage is not required increased between those two years from 30% to 59% (nearly double). This is probably in response to judicial decisions that have recently ruled that involuntary subjection of one to a polygraph exam inquiring about past sex crimes, with refusal resulting in denial of release or treatment toward release, to be a violation of one's Fifth Amendment right against compelled self-incrimination. It also is a trend contributed to by awareness on both the part of treatment administrators and treatment participants that polygraphy is grossly unreliable, with false incriminating outcomes incorrect over one-third of the time. That level of inaccuracy is exacerbated by sets of relevant questions inquiring into multiple, rather than single-event matters, and other questions that inquire conclusorily as to whether any sex crimes were committed by the tested person beyond those of his convictions and any additional ones he has already admitted to.

Page 32: 82.4% of commitment programs conducted "Maintenance/Monitoring" polygraphs, and 29.4% stated that this was necessary for advancement. 64.7% said that they used polygraphy to inquire about masturbatory behavior, but only 11.8% said that this aspect was required for advancement. 76.5% used polygraphy to inquire about unspecified "specific issue(s)," but again, only 5.9% said that this was required for advancement. 47% said that polygraphy was used as to the index offense (presumably mostly in cases of denial of that conviction); again, only 5.9% said that passage on such denials was necessary for advancement. Except for the lack of any self-incrimination violation, everything just observed above also applies here as well. In this regard, the First Amendment right to decline to speak is still transgressed by compelled polygraph testing.

Page 54: Concern on the part of administrators of sex-offender commitment systems points up their awareness of rising legislative and gubernatorial testiness over the extremely high cost of such systems as to a comparatively small number of sex offenders (contrasted to all those in prison or released therefrom), especially in light of the lack of movement through and release from confinement of a significant number of those committed. Yet all proposals to cut costs advanced to date are either illusory or involve a willingness to further diminish (in some cases nearly extinguish) all meaningful treatment efforts. In 2018, the following percentages reflected specific ways explored by the stated portion of commitment programs to reduce operating costs:

Cut staff positions (28%) [almost invariably, therapeutic positions, by far the highest-paid posts]

Contract out services (50%) [to firms that start by laying off 75-90% of therapists, replacing them with rankly unqualified social workers]

Reduce staff overtime hours [combined with the underlying, causative refusal to fund more treatment staff, inherently reducing therapy and hence opportunity for those committed to advance through treatment]

Make clients cover certain costs [illusory due to the poverty of nearly all under commitment]

Page 55: Medical costs are always the inherent apex of expenses of any confinement facility. This is especially true of sex offender commitment facilities that stubbornly retain the elderly, who have long passed any actual dangerousness behind. The expenses of those past age 60 average over four times those of those significantly below that age range. Yet rather than following the simple expedient of releasing elderly individuals, suggestions to attempt to otherwise contain medical costs are fraught with 'backfire potential – notably, lawsuits for malignant medical neglect and deprivation of one's constitutional rights to adequate medical care, and/or adverse media coverage of the resulting inhumane condition of confinement without meaningful medical care. Ways suggested in such facilities to cut medical costs included:

Reduce authorizations for off-site medical procedures (56%)

Use medical review committee to decline services not deemed necessary/urgent (39%).

Contract out medical services (28%)

Apply for Medicaid or Medicare benefits for clients who qualify (56%).

Page 58: Onsite Health Services: Only the following numbers of programs have these onsite medical services:

Laboratories: 1

MRI: 0

Ultrasound: 0

X-ray: 1

Podiatry: 2

Page 59: 44% of those committed to SO programs qualify for Medicare (implying that they are at least age 65).

Page 61: 28% of programs allow their clients to marry one another, but none of them allow married clients to cohabit.

Page 78: As to tools used to measure treatment progress, between 2017 and 2018, these tools had the following notable percentages of use and changes therein as marked:

VRS-SO: Up from 0% to 9.1%

Stable-2007: Down from 72.7% to 45.5%

Acute-2007: Down from 45.5% to 36.4%

SRA-FV: Down from 36.4% to 27.3%

SAPROF: Steady at 0.0%

HCR-20: Steady at 9.1%

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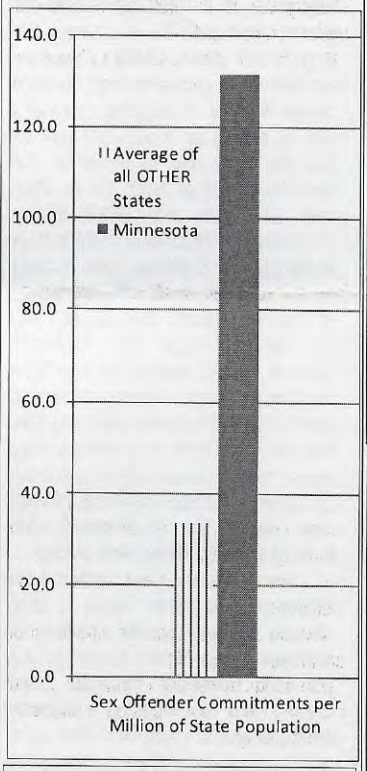
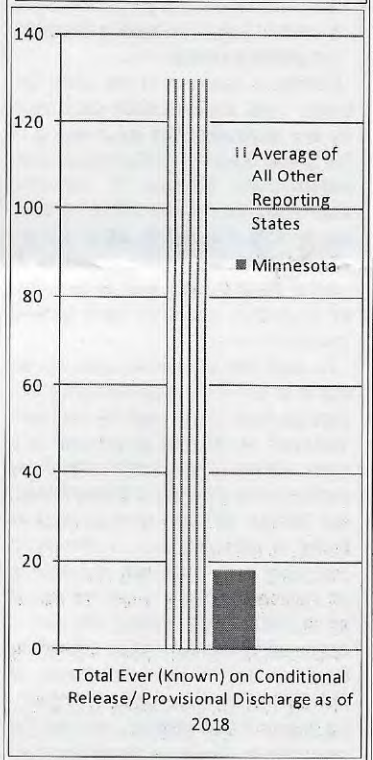
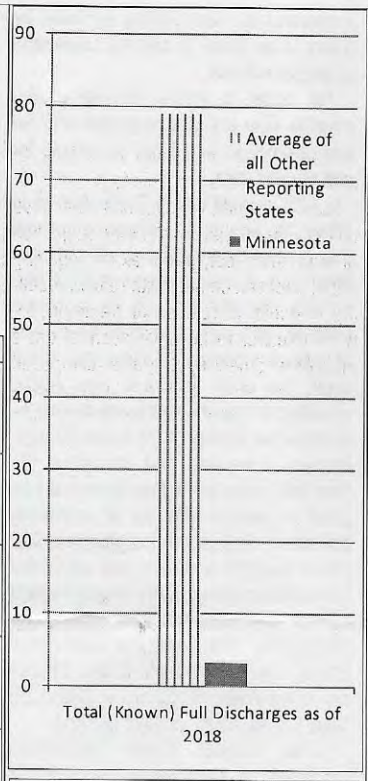
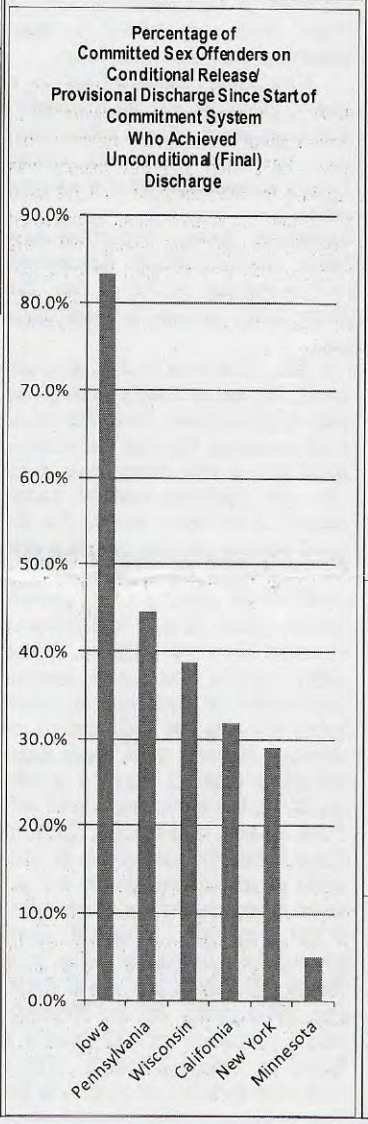
SVR-20: Steady at 0.0%
SOTIPS: Up from 18.2% to 45.5%
No tool used: Up from 18.2% to 36.4%

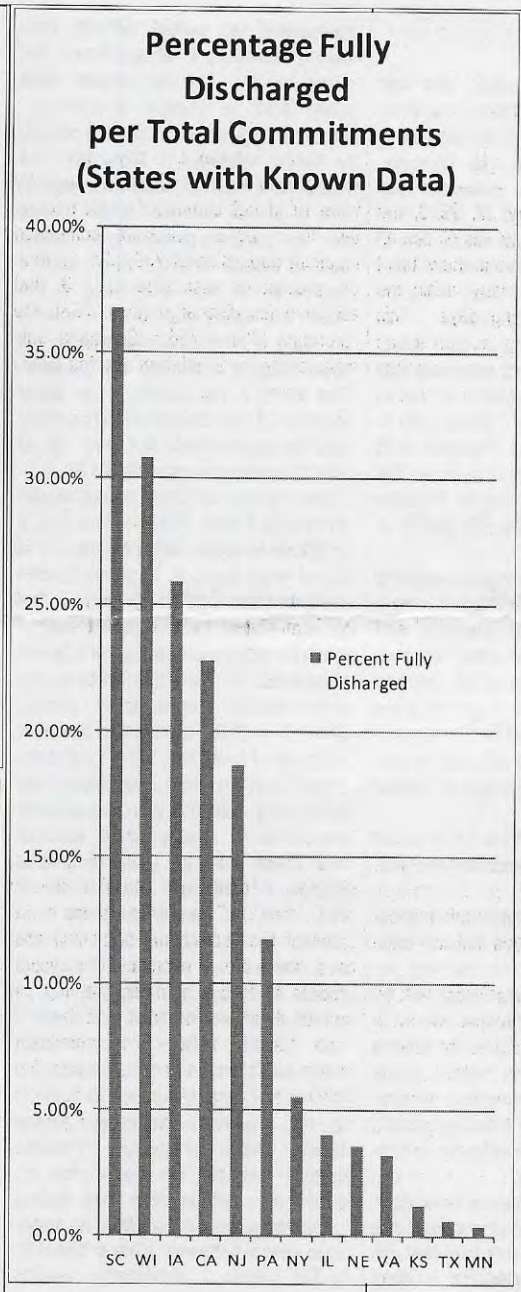
Page 83: As to sexual violations by releases, only 2.4% were re-arrested for a sexual offense. This is no higher than, and indeed, depending on the state, may be significantly lower than the low rates of recidivistic sex crimes by sex offenders released from prisons.











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Gladden Excerpt:

Vagueness & Overbreadth of MN SO Commitment Law as Judicially Expanded Defies Science & Denies Substantive Due Process.

Editor's Note: Continuing from the last TLP edition, this excerpt is the last installment on this topic, examining the role of the vagueness and overbreadth of Minnesota's sex offender commitment law as it stands now.

Meaninglessness of, and Lack of Protection from the Act's Terms, "Impulse" and "Lack of Control"

The Supreme Court spoke in *Kansas v. Crane*, 534 US 407, 413, 151 L Ed 2d 856, 122 S Ct 867 (2002), of the need for "serious difficulty" controlling one's "behavior." *Mary Prescott*, "Invasion of the Body Snatchers: Civil Commitment after Adam Walsh," 71 *U. Pitt L. Rev.* 839, 851 (Summer 2010), explains, "...[T]he *Crane* decision does impose a duty on prosecutors to establish proof of 'serious difficulty in controlling behavior.' (*Crane, ibid.*).... *Crane* essentially served to limit the *Hendricks* decision to its own facts."

Surely, in this statement, the Supreme Court did not mean to include within that explanation of lack of volitional control those who have perfect volitional control, but who deliberately decide to commit a crime and then plan (often at length) how to optimize their chance of getting away with it. This scenario is purely a matter of criminal behavior. Thus, e.g., as to pedophilia – commonly misperceived as uncontrollably impulsive, *Ryan C.W. Hall & Richard C.W. Hall*, "A Profile of Pedophilia: Definition, Characteristics of Offenders, Recidivism, Treatment Outcomes, and Forensic Issues," *Mayo Clin. Proc.* 2007: 82(4): 457-471 (2007), at p. 462, elucidates to the contrary: "...The fact that 70% to 85% of offenses against children are premeditated speaks against a lack of perpetrator control." (emphases supplied).

Yet *Michael Barzee*, "Fifteen Years and Counting: The Past, Present, and Future of Missouri's Sexually Violent Predator Act," 82 *UMKC Law Rev.* 513 (Winter 2014), at p. 526, provides this analysis:

"...An offender cannot at once choose to engage in behavior (culpability) and at the same time be unable to control it (volitional impairment). In essence, the

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legislature wants a person who has committed a sexually violent crime to be treated during the trial phase as having volitional control over his behavior. ...However, when the convicted sex offender nears the end of his prison sentence, the legislature wants him to be treated as though he does not have volitional control and should therefore be civilly committed and treated. Thus, the legislature is having it both ways, which goes against legal reasoning that a person is either in control or not in control of their behavior." (citing *Julia C. Walker*, "Law Summary, Freedom Is to Confinement as Twilight Is to Dusk: The Unfortunate Logic of Sexual Predator Statutes," 67 *Mo. L. Rev.* 993 [2002], at 1013)"

Eric W. Buetzow, "Ignoring the Supreme Court: *State v. White*, The Civil Commitment of Sexually Violent Predators, and Majoritarian Judicial Pressures," 58 *Hastings L.J.* 413 (December 2006), explains the flaw in logic of state court decisions holding that no finding of fact is required on the issue of "serious difficulty in volitional control by a sex offender on trial for commitment:

p. 415: "I. *State v. White* [, 891 So.2d 502 (Fla. 2004)]: A Convenient Interpretation of Crane

"...[An] essential element was whether or not White had serious difficulty controlling his behavior, an element required, the appellate court reasoned, by the United States Supreme Court 's holding in *Crane*. In 2004, the Florida Supreme Court granted review, giving itself occasion to consider whether *Crane* indeed required a finding that the defendant had serious difficulty controlling his or her behavior.

pp. 415-16: "In a four-to-three decision, Florida's high court reversed the appellate court ruling and held that the U.S. Supreme Court's decision in Crane did not require such a finding and thus jury instructions on this point need not be given. [*Id.* at 509] in other words, the court in *White* refused to concede that Crane compelled an explicit volitional impairment finding for the civil commitment of sex offenders in its state. However, after the Supreme Court's decision in Crane, how does the White Court justify this result?

p. 416:

"Problems in Reasoning

"Principally, the court in *White* proffers what appears to be a 'same result' or 'functional equivalent' rationale. That is, that Florida's sexually violent predator statute will in effect only net sexually violent offenders who have difficulty controlling their behavior, thus negating the need for an explicit finding on volition. The court reasoned:

"'Although the *Ryce Act* does not state the standard in terms of whether the respondent has serious difficulty controlling behavior, it accomplishes the same result. The respondent must suffer from a "mental abnormality," which predispose him to commit sexually violent offenses. Moreover, the respondent must be "likely to engage in acts of sexual violence," which means that "the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others." One who fits such a description necessarily will have difficulty controlling his behavior. The terms in the statute, when taken together (if not independently) comply with the requirements of *Crane*.' [*Id.* at 509-10 (quoting Section 394.912)]

"But this view of *Crane* is problematic on multiple fronts. First and foremost, it is difficult to adopt such a conception of *Crane* given the U.S. Supreme Court's statement that '[w]e do not agree ...that the Constitution permits commitment of the type of dangerous sexual offender considered in *Hendricks* without any lack-of-control determination.' [*Crane*, 534 U.S. at 412] Furthermore, the mere 'difficulty' of controlling behavior that the White Court depicts is undoubtedly less demanding than the standard actually articulated in *Crane*, which requires 'that there must be proof of serious difficulty in controlling behavior.' [*Id.* at 413] And, not surprisingly, there is no mention by the Supreme Court in *Crane* of a 'same result' exception that would enable state courts to forgo a lack of control determination. [534 U.S. at 407].

pp. 416-17: "There is no confusion within the Supreme Court as to what the holding in *Crane* demands. In addition to the majority's language, Justice Scalia clearly articulates, '[t]oday's opinion says that the Constitution requires the addition of a third finding ...that the subject suffers from an inability to control behavior.' [*Crane*, 534 U.S. at 423 (Scalia, J. dissenting). Justice Scalia's dissent attacked the correctness and wisdom of requiring proof of volitional impairment, thereby implicitly confirming that imposing this requirement was exactly what the majority opinion accomplished. *Id.* at 421-22.]

p. 417: "Specifically, the *White* Court's view requires a leap in logic that the Court in *Crane* was not willing to make. Under *Crane*, one who suffers from a mental abnormality or personality disorder and is deemed likely to commit future acts of sexual violence cannot be said to necessarily suffer from serious volitional impairment, nor is the perceived likelihood of committing future acts necessarily because of a volitional impairment. ...[A] defendant may suffer from a mental or personality disorder that has the effect of predisposing him or her, at some level, to re-offending, yet simultaneously be able to control his or her behavior to a high degree. Such a person may nevertheless be found by a jury to be 'likely' to commit future acts of sexual violence.

"Yet under a logical reading of the majority view in *Crane*, a person who fits this description would not be eligible for civil commitment.

p. 418: "Recall that in *Crane*, just as in *White*, the jury made affirmative findings that (1) the defendant sex offender suffered from a mental abnormality or personality disorder, and (2) his condition rendered him likely to commit future acts of sexual violence. Unlike the *White* court, the court in *Crane* was clearly unwilling to infer the existence of volitional impairment simply from these findings. Instead, it vacated and remanded the case with instructions that 'there must be proof of serious difficulty in controlling behavior.' This move demonstrates that *Crane* requires states to add additional protections beyond those already implicit in their SVP statutes. [See also *Peter Pfaffenroth*, "The Need for Coherence: States' Civil Commitment of Sex Offenders in the Wake of *Kansas v. Crane*, 55 Stan. L. Rev. 2229, at 2248 (2003).]

"...The original *Crane* instructions contained a substantive definition of 'likely,' which was defined as 'more probable to occur than not to occur.'

"...[T]he Court ultimately rejected a view of *Hendricks* and the Constitution that would permit different judicial treatment for mental impairments already thought to necessarily be of a volitional nature."

Kenneth W. Gaines, "Instruct the Jury: Crane's 'Serious Difficulty' Requirement and Due Process," 56 *S.C. L. Rev.* 291 (Winter 2004), explains in more depth thus:

p. 300: "The trend of state appellate courts, with Justice Scalia's blessing, has been to ignore *Crane*. Most state courts have maintained that their civil commitment laws already commit only those who lack significant volitional control because of the nexus between the targeted disorder and the offender's acts that 'necessarily and implicitly involves proof that the person's mental disorder involves serious difficulty for the person to control his or her behavior. These states concede that *Crane* requires determination of some lack of control before the state can civilly commit an offender. However, these states argue that *Crane* does not require a specific jury finding that a respondent lacks volitional control, because the Court in *Crane* upheld the commitment in *Hendricks* as constitutional despite the absence of any specific jury determination of lack of control. ...Minnesota ...[has] adopted this interpretation [citing *In re Ramey*, 648 N.W.2d 260, 266-67 (Minn. App. 2002) (noting that the Minnesota statute in question implicitly includes a finding of "serious difficulty"]. These state court decisions are contrary to the Court's determination in *Crane*, which required specific proof of 'serious difficulty controlling behavior.'"

p. 316: "The unpublished case of *In re Martinelli*, [2000 Minn. App. LEXIS 973 (Minn. App. 9/12/00)] can dispel any lingering doubt about *Crane*'s meaning. The United States Supreme Court, after granting certiorari, vacated the Minnesota court's opinion [*Martinelli v. Minnesota*, 534 U.S. 1160 (2002)]. The Minnesota court had relied on the reasoning of a 1999 Minnesota Supreme Court case [*In re Linehan*, 594 N.W.2d 867 (Minn. 1999)] to read into the Minnesota statute an implicit lack of control instead of requiring proof of a lack of control as a separate element that the state had to prove for civil commitment of an SVP. [*In re Martinelli*, 2000 Minn. App. LEXIS 973, at *4-5 (citing *In re Linehan*, 594 N.W.2d at 867).] The Supreme Court remanded the case for reconsideration in light of *Crane*. [*Martinelli*, 534 U.S. at 1160.] On reconsideration, the Minnesota Court of Appeals recognized that *Crane* requires a specific finding of 'lack of control based on expert testimony tying that lack of control to a properly diagnosed mental abnormality or personality disorder before civil commitment may occur.' [*In re Martinelli*, 649 N.W.2d 886, 890 (Minn. App. 2002)].

"...The Supreme Court ordered the Minnesota and Illinois Courts to apply *Crane*'s volitional control standard as new law. Thus, *Crane* is distinguishable from *Hendricks*, because *Crane* creates new law requiring a separate finding of lack of volitional control as an additional element of proof from which a court or jury is to make a decision." (emphases supplied)

Nothing in *Crane* or in any other Supreme Court case provides justification for any proposition that the meaning of the United States Constitution has been surreptitiously changed to authorize supplanting the inviolate role of criminal law by such a sweeping use of preventive detention and forced mental treatment of those thought likely to be tempted to commit crimes for such general "criminal thinking."

To avoid this unintended slide into an end to all criminal procedural rights, that passage from *Crane* must be read with "behavior" as referring to behavior in a given moment of opportunity without any such advance planning or premeditation, and "serious difficulty" must be read as limited in reference to such difficulty in controlling one's involuntary response to an impulse to commit a criminal sexual act at that moment. Indeed, this view is confirmed by the explanation offered for the *Crane* majority by Justice *Breyer*, at 534 US 413, that "...a critical distinguishing feature of that 'serious ...disorder' [as discussed in *Kansas v. Hendricks*] con-

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sisted of a special and serious lack of ability to control behavior." In *Hendricks*, at 521 US 374, Justice Breyer stated that "...Hendricks suffers from a classic case of irresistible impulse, namely, he is so afflicted with pedophilia that he cannot 'control the urge' to molest children;...." (emphasis supplied) Illustrating how this is to be applied, Justice Breyer, writing for the majority in *Crane*, continued, at 534 US 414-15, "Hendricks himself stated that he could not 'control the urge' to molest children. 521 U.S. at 360,.... ...[O]ur cases suggest that civil commitment of dangerous sexual offenders will normally involve individuals who find it particularly difficult to control their behavior." This statement is consistent with the concept of inability in the moment to control an impulse, but is inconsistent with the idea that someone merely has a predisposition to commit crimes of a given sexual type generally.

Any broader reading of the requirement for "serious difficulty" sends American law inexorably down the path of sacrifice of all personal rights at the altar of a new "preventive state" of overriding power over all individuals, with the right to invade one's innermost thoughts and secret temptations and to confine one indefinitely in an attempt to eradicate such thoughts and temptations. This is not just madness, it is the ultimate form of tyranny.

In its June 15, 2015 Order, this [MN U.S. District] Court opined that some MSOP detainees "are truly dangerous and should remain confined at the MSOP, but for whom constitutional procedures must be followed...." (*Id.*, p. 70). MSOP detainees all know that the only true standard of such dangerousness for commitment purposes is whether one so utterly lacks control of his own actions in the moment (volitional impairment) that, in that moment, he certainly will act upon an impulse that he simply cannot resist.

Only a few among all 750 who now still survive in MSOP can be fairly argued to lack such self-control. Because that standard of lack of volitional control is already within the parameters of commitment under Minnesota's commitment law for those who are "mentally ill and dangerous," and since such compulsion to act on an impulse is defined as a symptom of mental illness, those few can be committed under that statute; there is no need for a commitment statute specific only to sex offenders.

To avoid this unintended slide into an end to all criminal procedural rights, that passage from Crane must be read with "behavior" as referring to behavior in a given moment of opportunity without any such advance planning or premeditation, and "serious difficulty" must be read as limited in reference to such difficulty in controlling one's involuntary response to an impulse to commit a criminal sexual act at that moment.

On the contrary, sex crimes are almost always the subject of extensive preplanning and even long-term preceding actions (think: grooming, for instance) aimed at setting up an ideal opportunity for the crime(s) to follow. No matter how deplorable anyone finds that conduct, it is the absolute antithesis of lack of self-control. While one may argue that such deviousness and plotting call for harsh criminal penalties, it is illogical to argue that such cunning shows impaired volitional control. Thus, the resistance to mass release of the rest of us, who never had any such problem of control of our actions in any situation, is clearly the product of emotional reaction, rather than any process of dispassionate reasoning.

In point of fact, "the line between an irresistible impulse and an impulse not resisted is probably no sharper than that between twilight and dusk." (*Kansas v. Crane*, 534 U.S. at 421). Short of a persons' own admission that he cannot control his criminal sexual behavior, there is no scientifically accepted means of any certainty of deducing such lack of ability to control such behavior.

Jennifer S. Jason, "Beyond No-Man's Land: Psychiatry's Imprecision Revealed by Its Critique of SVP Statutes as Applied to Pedophilia," 83 *So. Cal. L. Rev.* 1319, 1349-50 (2010), explains that the Supreme Court's decision in *Kansas v. Crane, supra*,

"did not give guidance as to a specific definition of '"lack of control,' stating that 'inability to control behavior" will not be demonstrable with mathematical precision. It is enough to say that there must be proof of serious difficulty in controlling behavior.' After *Crane*, it is now unclear what the notion of volitional control means. Lower court cases since *Crane* have articulated contradictory standards relating to volitional impairment, and there is no clear standard for what qualifies as inability to control.

"Although *Crane* suggests that the SVP evaluations for offenders convicted of having sex with a child consist of three distinct requirements: (1) mental abnormality (pedophilia), (2) volitional impairment, and (3) dangerousness, in practice the volitional impairment component has been collapsed into either the mental abnormality requirement or the dangerousness requirement. The assumption of volitional impairment based on a diagnosis of pedophilia appears rarely used. More often, the volitional impairment step is collapsed with the dangerousness step and thus a statistical risk assessment analysis is used.

"...Risk assessment measures, ...essentially are a measurement of sexual acts."

Norman J. Finkel, "Moral Monsters and Patriot Acts: Rights and Duties in the Worst of Times," 12/2 *Psychology, Public Policy, and Law* 242–277, at 255 (2006), observes:

"...[R]eviews (*Grisso*, 2003; *Melton, Petrila, Poythress, & Slobogin*, 1997: *Nicholson*, 1999; *Wrightsman & Fulero*, 2005) of the prevailing forensic assessment instruments have found that despite improved reliability, there is no valid test to measure whether or not an individual can or cannot control his or her impulses. Normatively, the problem has been that when experts proffer qualitative conclusions that these defendants cannot control their impulses, they are, in effect, impermissibly answering the ultimate opinion question that falls within the jury's province while their answers seem to violate the legal standards for admitting expert testimony."

As *Jackson, Rogers, and Shuman*[, "The Adequacy and Accuracy of Sexually Violent Predator Evaluations: Contextualized Risk Assessment in Clinical Practice," 3 *International Jour. Of Forensic Mental Health* 115-129 (2004)] observed, "...no variables on either the actuarial methods or the structured clinical methods allow the clinician to draw conclusions regarding the volitionality of the offender's behavior' (p. 26)" *R. Prentky, E. Janus, et al.*, "Sexually Violent Predators in the Courtroom: Science on Trial, 12 *Psychology, Public Policy, and Law* 357, 364 (2006)

Of course, statistical analyses can say nothing about a given individual's lack of volitional control. Actuarial methods may attempt to categorize the offender and to apply a past statistic of recidivism by others to him. The inaccuracy and inherent uncertainty of this method is addressed *supra*. However, even assuming accuracy and certainty, a prediction of commission of a sex crime in the future cannot say whether such commission would be a result of inability to control a momentary strong impulse, or simply a deliberate act, perhaps one planned for months in advance. Only the former would offer support for an SPP/SDP commitment. Contrary to *Jason*'s generalization, Minnesota appellate decisions more frequently attempt to rely on a diagnosis of pedophilia as presumed to inherently imply a lack of control. As is discussed *infra*, that presumption is a baseless *non sequitur*.

Eric S. Janus, "Sex Offender Commitments: Debunking the Official Narrative and Revealing the Rules-in-Use," 8 *Stanford Law and Policy Review* 71, 81-82 (Summer 1997) observes that "[t]his concept of 'volitional dysfunction' has consistently baffled judges, forensic professionals, and philosophers. At Footnote 166, *Janus* quotes *Stephen J. Morse*, "Causation, Compulsion, and Involuntariness," 22 *Bull. Am. Acad. Psychiatry Law* 159, 166 (1994): "No consensus about involuntariness exists among 'experts' or laypeople. Although many forensic psychiatrists and psychologists (and lawyers) assume that they possess a good account of involuntariness and of so-called pathologies of the will and volition, no satisfactory and surely no uncontroversial account of any of these topics exists in the psychiatric, psychological, philosophical, or legal literatures."

"Caused Behavior

"...[W]e should not use the concept of 'caused behavior' as a defining characteristic of inability to control, as this concept is often confused for the latter. It is assumed that if certain behavior is 'caused' by a given psychological condition, then the person had no 'control' over the behavior. But this approach proves too much. All human behavior is 'caused,' but we nonetheless insist that humans have control over their behavior, at least in general. It may be that we will want to say that certain kinds of 'caused behavior' evidence inability to control, such as a behavior 'caused' by a particular kind of mental disorder. But then the real work will be done by our characterization of the mental disorder, not by the attribution of causation.,' And just as being 'caused' does not make behavior beyond an individual's control, so too being 'caused by a mental disorder' does not ipso facto justify that ascription:

"[T]he fact that an individual's presentation meets the criteria for a DSM-IV diagnosis does not carry any necessary implication regarding the individual's degree of control over the behaviors that may be associated with the disorder. Even when diminished control over one's behavior is a feature of the disorder, having the diagnosis in itself does not demonstrate that a particular individual is (or was) unable to control his or her behavior at a particular time.'" [Note 41: American Psychiatric Assn., Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994 – "DSM-IV"); also stating, at Note 40, that "the notion that given behavior is 'caused' by a mental disorder is itself an extremely problematic conclusion to draw," citing: *Virginia Adige Hiday*, "Understanding the Connection Between Mental Illness and Violence," 20 *Int'l J. L. & Psychiatry* 399, 412 (1997)]

(*Eric S. Janus*, "Sex Offender Commitments and the 'Inability to Control' – Developing Legal Standards and a Behavioral Vocabulary for an Elusive Concept," Chapter 1 in: *The Sexual Predator: Legal Issues, Clinical Issues, Special Situations* (Vol. II) Anita Schlank, ed. (Civic Research Institute, Kingston, N.J. 2001), at pp. 1:8-1:9)

"APPLICATION TO SEX OFFENDERS

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"The Strong Impulses Model

"Impulsivity; Antisocial Personality

"...The typology of sex offenders Hudson et al. developed includes types that are inconsistent with the strong urges paradigm and makes distinctions between 'appetitively driven' offense pathways and 'impaired-regulation' models of offending. The most frequent type they describe does not fit into the strong urges paradigm because it entails a positive attitude toward offending, involves explicit decisions to offend, arises out of a basically happy affective state and, after the offense, concludes with a commitment (to self) to continue the offending behavior. This description does not fit with the typical 'strong urges' model because there is no growing internal pressure to act, no attempts to control, and no regret or feeling bad afterwards. Rather than representing an impaired ability to control behavior, this pathway, in Hudson et al.'s description, represents an example of 'expert' or skilled performance.

"Paraphilia in the DSM-IV definition is characterized by 'recurrent, intense sexual urges, fantasies, or behaviors ...[that] cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.' This definition accommodates intense 'urges' but could be satisfied by 'intense behaviors' as well, and says nothing about failed attempts to control the urges." (*Id.*, p. 1:13)

"The Problem of Offender Acquiescence to Impulses

"...The normal 'bias' in self-reporting is to minimize responsibility by disclaiming the ability to control. In their study of convicted rapists, for example, Scully and Marolla found that 83 percent of their subjects viewed themselves as 'nonrapists.' More than half of those, while admitting their involvement, 'explained themselves and their acts by appealing to forces beyond their control, forces which reduced their capacity to act rationally and thus compelled them to rape.' [emphases supplied]

"...As Baumeister et al. put it with respect to the unsuccessful dieter: 'Someone may claim that she cannot control her eating, but do her jaws really move up and down to chew the food against her will?'....

'Although it is very difficult to obtain decisive empirical data regarding the issue of acquiescence, we suspect that acquiescence is the norm, not the exception. It is rare that human behavior is the result of inner forces that the person is entirely helpless to stop or control.' [emphases supplied]

"...Of course, the mere fact that there is acquiescence does not mean that the inability-to-control ascription is inapposite. Rather, the presence of acquiescence simply highlights what I have argued earlier, that the standard for a judgment of inability to control contains a heavily normative, or moral judgment." [emphasis supplied] (*Id.*, pp. 1:14-1:15)

"'It is our view that sexual offenders are not suffering from any disease and that their behavior is not out of their control.... In fact, it is clear from an examination of the behavior of these men that their offending is very well controlled.' [*W.L. Marshall, et al.*, "Present Status and Future Directions," in *Handbook of Sexual Assault: Issues, Theories & Treatment of the Offender* 389, 391 (W.L. Marshall, et al., eds., 1990)]

"Pithers ...agrees:

"'Offenders are informed that urges do not control behavior. Rather, giving into an urge is an active decision, an intentional choice for which he is responsible.'" [*William D. Pithers*, "Relapse Prevention with Sexual Aggressors: A Method for Maintaining Therapeutic Gain and Enhancing External Supervision," in Handbook of Sexual Assault: (etc.), *supra*, 343, 345] [Id., p. 1:16; emphases supplied]

[Note 175 adds that: "Prentky et al. state that planning the offense is one of the most frequent precursors to offenses by child molesters, being exhibited by 73 percent of the sample in one study. See: *Robert A. Prentky et al.*, Child Sexual Molestation: Research Issues (U.S. Dept. of Justice, June 1997) at 8." Thus, e.g., *Janus*, "Sex Offender Commitments and the 'Inability to Control' – Developing Legal Standards and a Behavioral Vocabulary for an Elusive Concept," *supra*, at 1:19, describes a "pathway "to sex offending identified by Ward and Hudson as "approach-explicit", which "involves 'conscious, explicit planning and well-crafted strategies that result in a sexual offense.' This pathway involves competent self-regulation but 'inappropriate, harmful' goals, standards, and attitudes."]

"Let us consider a sex offender who falls into Ward and Hudson's approach-explicit category, an offender who desires to continue abusive sex and actively plans for it. How should we classify this person with respect to control capacity?

"There are two sound reasons for refusing to ascribe an inability to control. First, this person exhibits self-regulation skills rather than a self-regulation deficit. He has characteristics that we associate with deliberate, under-control behavior, such as careful planning and explicit decision-making. Second, because he desires to continue offending, there is an absence of evidence from which one could conclude that he lacks the capacity to control his behavior. Since he has not yet tried hard to stop, we have no basis for judging whether he could refrain from offending if he tried 'hard enough.' The only potential basis for ascribing an inability to control to this person is that his offending is so much a part of his personality, so ingrained in his values and personal goals, that he 'could not act otherwise.'

"This, of course, is a rhetorical move that could be made with anyone at any time. We are all, after all, who we are. If we say that the pedophile lacks the ability to control his behavior because his behavior is determined by his personality, then we must say that we all lack that ability. This is a dangerous rhetorical move because it undercuts the general assumption of free will and moral responsibility, absolving the individual of responsibility for his or her own character." (Id., pp. 1:20-21; emphases supplied)

"Meeting the Constitutional Criteria

"...As a general matter, the kinds of self-regulatory failure that characterize sexual offending do not narrow the group eligible for civil commitment, and do not provide a means of distinguishing sex offenders from the great mass of other criminals. In fact, the impulsivity that marks many sex offenders is the hallmark of general criminality. Further, though the consequences of self-regulatory failure among sex offenders are horrendous, [such failures compare to] failures that impair people's ability to obey the law, quit smoking, lose weight, stop gambling, or achieve any difficult, long-horizon goal. As *Baumeister et al.* observe, 'Self-regulation failure has been implicated as possibly the single greatest cause of destructive, illegal, and antisocial behavior.'" [emphases supplied] (*Id.*, p. 1:20)

Eric Janus, Failure to Protect, at p. 41, expands on this, commenting:

"Difficulty controlling' behavior is ubiquitous among 'normal' human beings. Many people have difficulty – serious difficulty – controlling their eating, smoking, gambling, alcohol or drug use, computer gaming, or work hours. ...[T]he point of the 'volitional dysfunction' requirement is to identify some mental characteristic of commitment candidates that distinguishes them from others. Impaired self-control does not accomplish this. The legal standards for volitional impairment are so vague that they are unlikely to provide any kind of guidance or limitation on commitment decisions."

Janus, in Debunking the Official Narrative...., summarizes case law that, even at that early time, had already completely obfuscated the definition and breadth of application of "lack of control." [At Footnote 168, explaining: "In *In re Blodgett* the Minnesota Supreme Court set forth factors that courts should use in evaluating the 'utter lack of power to control' standard:

"'In applying the *Pearson* test, the court considers the nature and frequency of the sexual assaults, the degree of violence involved, the relationship (or lack thereof) between the offender and the victims, the offender's attitude and mood, the offender's medical and family history, the results of psychological and psychiatric testing and evaluation, and such other factors that bear on the predatory sex impulse and the lack of power to control it.' [510 N.W.2d at 915]

"But these factors, though they may well be relevant, give no instruction about how to distinguish lack of capacity to control from failure to control. See *Schopp* [, *Robert F.*, Automatism, Insanity, and the Psychology of Criminal Responsibility (1991)], at 188 (criticizing Blodgett factors as being irrelevant to volitional dysfunction)."]

"The Court of Appeals has not only failed to establish a workable test, it sends conflicting messages that frustrate efforts to extrapolate any coherent pattern. In some of its opinions, it has seemed to focus on impulsiveness as the meaning of 'utter lack of power to control.' [citing *In re Blodgett*, 490 N.W.2d at 642-46.] In others the court has taken pains to explain how behavior that appears planned and deliberate can reflect 'utter lack of power to control.'"

[Footnote 170:] "See *In re Bieganowski*, 520 N.W.2d at 530 (affirming commitment although 'the [pedophilic] grooming process requires time, thus eliminating any 'suddenness' regarding the sexual activity'); *In re Mayfield*, 1995 Minn. App. LEXIS 602, at *8 (approving of expert testimony 'explaining how planning could occur even when the person had an utter lack of control over his sexual impulses'); *In re Young*, 1994 Minn. App. LEXIS 1159, at *6 ('[W]hile Young may show planning and premeditation by his grooming behavior, his behavior is nonetheless impulsive and without volitional control.')"

[Continuing text:] "In some cases, the court has pointed to the individual's lack of acknowledgement that his behavior is wrong."

[Footnote 171:] "*In In re Irwin*, 529 N.W.2d at 375, the court approved of testimony indicating that:

"'An important factor in determining whether one has the power to control sexual impulses is whether the person feels he has a problem; if so, he at least has some control since he knows that he is flawed, and may be more vigilant in seeking assistance.... Without this basic insight, appellant has the utter lack of control required by *Pearson*.'

"See also *In re Fitzpatrick*, 1994 Minn. App. LEXIS 1029, at *3 (Fitzpatrick

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'habitually shifts blame for his actions to others.... [and] fails to appreciate the consequences of his actions'); *In re Adolphson*, 1995 Minn. App. LEXIS 965, at *10 ('Appellant's actions show he has no will to stop sexually assaulting adolescent males. Although appellant is aware that his conduct is against the law, he shows no remorse and expresses no second thoughts.')

[Continuing text:] "In others, the court has found a mental disorder where 'he knows what he is doing and that it is wrong, but he chooses to do it anyway.' [*In re Toulou*, 1994 Minn. App. LEXIS 1067, at *9] ...Finally, in some cases, the court has also suggested that proof that the individual's 'will' is overwhelmed by strong sexual impulses [*In re Kunshier*, 521 N.W.2d at 882 (reciting expert testimony that '[Kunshier's] impulse to rape becomes all intrusive[,] and that his 'behavior was usually "impulse driven past any point of rational control or concern regarding negative impact upon victims or the risk of incarceration"')], or that the individual's behavior is strongly 'compulsive,' points to a mental disorder [Adolphson]. In others, it is the strength of the individual's will to have sex that provides the factual support. Frequently, what supports the finding is simply that the individual has repeatedly engaged in prohibited sexual behavior despite its consequences [*In re Mattson*, 1995 Minn. App. LEXIS 805, at *6 ("When a person engages in behavior despite repeated consequences, it evidences a lack of control.")], a characterization that would apply to all repeat sex offenders.

"Even the two cases in which the court reversed a finding of 'utter lack of power to control' do not help develop a coherent theory. In *In re Schweninger*, the court reversed a commitment of a nonviolent pedophile. The court clearly understood 'utter lack of power to control' as requiring impulsiveness and found that the individual's 'planned and calculated' behaviors were inconsistent with such a finding. [520 N.W.2d at 450 (distinguishing "plotting, planning, seductions, payments, and coercive behavior ...from [an] impulsive lack of control")] The *Schweninger* case came directly on the heels of *Linehan* and appeared to be the beginning of an 'impulsiveness' theory of 'utter lack of power to control.' But the court quickly altered its course. In *In re Bieganowski* and a series of other cases, the court explained that planning and deliberation could be consistent with 'utter lack of power to control.' [citing: *In re Bieganowski*, 520 N.W.2d at 530; In re Mayfield, 1995 Minn. App. LEXIS 602, at *8; *In re Young*, 1994 Minn. App. LEXIS 1159, at *6.]

> *"It is rare that human behavior is the result of inner forces that the person is entirely helpless to stop or control."*
> *(Baumeister et al.)*

(p. 82): "In *Bieganowski* [520 N.W.2d at 530] and *Mayfield* [1995 Minn. App. LEXIS 602, at *8], the court decided that 'uncontrollability' was consistent with 'planning and controlled behavior.' In addition, the court made clear that it did not have in mind any sort of internal pain or internal struggle test. In both *Adolphson* and *Irwin*, the court appears most impressed with the fact that the individuals seemed to view their deviant sexual behavior as acceptable."

[At Footnote 198, amplifying: "Thus, the following passage from the opinion:

"'[A]n important factor in determining whether one has power to control sexual impulses is whether the person feels he has a problem; if so, he at least has some control since he knows that he is flawed, and may be more vigilant in seeking assistance.... Without this basic insight, appellant has the utter lack of control required by Pearson.' *In re Irwin*, 529 N.W.2d at 375; see also *In re Adolphson*, 1995 Minn. App. LEXIS 965.

"There is no suggestion in either *Adolphson* or *Irwin* that the beliefs or desires were so irrational, as opposed to illegal and immoral, that they would satisfy a cognitive based theory of criminal responsibility. See *Morse, supra*..."]

(p. 83): "The underlying theory is that the consequences flowing from misbehavior are so negative and, more importantly, so patent, that all 'rational,' 'volitionally able' individuals would have avoided the misbehavior. However, there are convincing arguments that even this narrowed integrated-self test is not a meaningful account of volitional dysfunction. It is not discriminative, because virtually all repeat criminal behavior fits this test. Thus, it fails to discriminate between those who 'could not' and those who merely did not' control their behaviors." [emphases supplied]

"...[I]t is worth noting that some decisions of the Court of Appeals appear at least implicitly to adopt the environmental-consequences theory. These cases point out that the defendant continued to engage in criminal or anti-social activity despite numerous sanctions for his bad behavior. For example, in *Patterson*, the court referred, with apparent approval, to the state hospital's report that assumed that 'lack of power to control' relates to choosing to commit the offenses despite negative consequences....

[At Footnote 207, adding the following supporting cases: "Similarly, in *In re Sabo*, 1993 Minn. App. LEXIS 947, at *3, Sabo 'received numerous discipline violations for drug use and smuggling, verbal abuse, and threatening others,' which supported a finding that he was unable to control his sexual impulses. See also *In re Holly*, 1994 Minn. App. LEXIS 715, at *5; *In re Mattson*, 1995 Minn. App. LEXIS 805, at *6 (citing with approval expert testimony that 'utter lack of control was demonstrated by the fact that even when appellant was in a structured setting, he had difficulty refraining from the use of pornography'); *In re Fitzpatrick*, 1994 Minn. App. LEXIS 1029, at *4 (lack of control demonstrated by 'recent inappropriate behavior while incarcerated'); *In re Patterson*, 1995 Minn. App. LEXIS 1199, at *8 (offenses committed 'despite negative consequences' also supports a finding of 'utter lack of power to control').")]

[Continuing text:] "If the court had hewed to this environmental-consequences test, its 'utter lack of power to control' jurisprudence might have had some legitimizing discriminative power. But the court's 1995 *Toulou* decision [*In re Toulou*, 1995 Minn. App. LEXIS 623, at *7] demonstrates that the court had no such narrowed test in mind. Turning the theory on its head, the court cited *Toulou*'s conformance to external stimuli as the central evidence supporting the finding of 'utter lack of power to control.' [emphasis in original]

"This analysis shows that the concept of 'utter lack of power to control,' as established by the Minnesota Court of Appeals, has neither discriminatory nor justificatory content. Instead, the court relies on pseudo-reasoning: statements purporting to sound like legal reasoning that are in reality tautological and hence non-explanatory."

(pp. 83-84): "Recall that the central, and most difficult, task of the 'utter lack of power to control' construct is to demonstrate that a mental dysfunction legitimizes sex offender commitments. [emphasis in original] The key move is to infer mental incapacity from behavior. The philosophical theories provide rules for making that transformation, but the Court of Appeals has followed none of them. Consider the following, which the court has proffered as explanations of the inference from behavior to mental incapacity:

- "'He explained that an utter lack of control begins when the individual has an urge that cannot be delayed.' Here, 'experts explained how uncontrollability could occur with planning and controlled behavior.' [*In re Mayfield*, 1995 Minn. App. LEXIS 602, at *4-5]
- "'The psychologists' explanations show that, while Young may show planning and premeditation by his grooming behavior, his behavior is nonetheless impulsive and without volitional control in that he acts upon uncontrollable desires when presented with the opportunity to sexually abuse young girls.' [*In re Young*, 1994 Minn. App. LEXIS 1159, at *6]
- "'The trial court concluded that Patterson "demonstrates an utter lack of power to control his conduct with regard to sexual matters." In support of this finding, Dr. [M] testified that he believed that *Patterson* had an utter lack of power to control his sexual impulses. Once "the impulse has been created," [M] explained, *Patterson* "cannot control over time the need to act upon the urge."' [*In re Patterson*, 1994 Minn. App. LEXIS 1094, at *6]....
- "'Dr. [F] defines the term "utter lack of control" in terms of an impulse control problem in which there is an inability to stop one's behavior despite being in an area of risk of being apprehended or caught."' [*In re Bieganowski*, 520 N.W.2d at 527]

"Though these passages have the rhetorical form of explanations, they simply replace one abstract psychological construct ('utter lack of power to control') with another equally opaque psychological construct ('inability to stop,' 'compelled to do so,' 'cannot control,' uncontrollable desires,' 'cannot be delayed'). They do not explain how 'did not' is transformed into 'could not,' and hence they do not perform the necessary discriminative and justificatory tasks claimed for the mental disorder element."

Dr. Cauley testified that commitment must be limited to those who lack the ability to control their sexual actions. "I think that is very critical in doing an assessment of risk is, does somebody have the capacity to regulate their behavior? If that is not being looked at the referral to commitment, then it has been broadened out as to who would qualify." (*Karsjens* Trial Tr., v. 10. p. 2199).

In practice pursuant to said Act, authoritative Minnesota appellate decisions uphold commitment under said Act on the unscientific non sequitur that a mere records of sex crimes inherently connotes an inability to control one's criminal sexual behavior, ignoring the unpalatable, but completely plausible alternative possibility that, on such prior sex-crime occasion(s), the person may have simply consciously chosen to commit the crime(s).

The tacit presumption by Commitment Case Defendants of inability to control one's behavior deprives Plaintiffs of substantive due process (as well as of procedural due process; see *infra*) and creates an impermissible vagueness, as to utter "lack of control" or "serious difficulty" in control, against which no Plaintiff subjected to commitment proceedings can effectively defend himself.

As *Warren Maas, supra* at 1258, aptly sums up, "Justice Page distinguished

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Blodgett from *Linehan II* on the basis of the intentional absence of a volitional control element."

Additionally, decisions of the Minnesota Court of Appeals have respectively held that (a) pedophiles are inherently at a very high risk of reoffending; and (b) extrafamilial pedophiles are inherently at an even higher risk of reoffending. This effectively equates a past record of any such offenses with satisfaction of either the SDP or SPP standard for commitment. By applying either of these holdings to Plaintiffs with such criminal records, Commitment Case Defendants deprive Plaintiffs of substantive due process.

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Sex Offender Civil Commitment as the Destruction of Human Rights

Earl Yarington, Three-Part Commentary: "Part 1: Civil Commitment and the Destruction of Human Rights," *Baltimore Post-Examiner*, January 1, 8, 14, 2020

Text Excerpts:

"...It may be understandable to hate terrorists and sex offenders, but, you know, the devil is in the details. Who exactly is a terrorist or a sex offender? These labels have become more propaganda than based in reality. It's not only our court system. The courts are political by nature and controlled by lawmakers. Lawmakers pass laws that get them elected. Law in the United States is based on public opinion, uninformed public opinion.

You, Sir, Are Guilty of a Crime You Have Yet to Commit.

We went from a legal system that had to have 'beyond a shadow of a doubt' to 'reasonable suspicion.' The truth is that all of us, including you, dear judge, are reasonably suspicious. All of us, yes, all of us are capable of harming someone else at some point in the future. No psychologist, social worker, or psychiatrist can read the future.

...[L]ocking people up for years or for life after their sentences expire is an egregious overuse of judicial powers.

'Hey, since you like Joe, you may kiss him in the face at some point in the future. We will lock you up indefinitely, until you can prove to the experts, few of which have any knowledge of human sexuality, that you are no longer a danger.'

These Violent Sexual Predators are often diagnosed through the Sexually Violent Predators Act (SVPA) with mental illness. As inmate Michael St. Martin noted in a recent podcast, the court expects those diagnosed with a mental illness to prove to the court that they no longer have one. Keep in mind that 40% of the inmates or 'patients' are illiterate at Coalinga State Hospital where St. Martin has spent 18 years in civil commitment....

Like Us, Lawmakers, Judges, and Prosecutors Are Flawed-Sloppy Creatures.

The Supreme Court's irresponsibility and lack of judgment in such cases involving civil commitment (see also *Kansas v. Hendricks*, 521 U.S. 346) and child pornography is troubling in allowing the prosecution and judges to skew the truth by withholding evidence, preventing the forensic examination of evidence by the defense, and withholding expert testimony.

Justice Gorsuch also references the harsh and concerning treatment defendants get in civil (deportation) and civil commitment cases.

States and localities can choose hand-picked experts (that make a ton of money, by the way), to give them the results they want. Because contrary findings from real experts, like Dr. Fred Berlin's in Galen Baughman's case, noted by civil rights lawyer Philip Fornaci and Roger Lancaster are withheld by the judge. The jury is blinded and will give the verdict the judge and the state want, or the judge does not have to address what he is withholding. In any other profession with an ounce of ethics, the judge and prosecutor would be fired....

...[C]hild neglect and abuse accounts for 75 percent of all child abuse (sex abuse makes up 8%), but where is the panic? Where are the lawmakers demanding justice? Do we have civil commitment for violent offenders, neglectful parents? In fact, there is a connection to domestic abuse and future child sex abuse, but who's paying attention? It's here where the problem lies. Court decisions are not based on research but on fear and a judicial culture that makes little sense....

In Part Two, I will look at two people civilly committed, Galen Baughman and Michael St. Martin. I will address the flaws with the Static-99, the costs and the success rates of these programs. I will also address the movement to criminalize objects and artifacts that look like kids, further criminalizing 'non-existent' victims and thoughts. All such people could end up civilly committed at enormous expense while doing nothing to improve public safety. Issues of public health are not criminal issues.

* *I distinguish child pornography law (CP) from child exploitative material (CSEM) because the first involves real children, real victims; whereas the second involves mostly 'non-existent' victims. Common sense tells us that there is no such thing as a non-existent victim or crime. Such minimizes real sexual abuse and inflates the numbers."*

Comment by Sarah Fiebig: "Research shows that these laws are not working. With all the money and manpower used to entrap viewers of child pornography, the *New York Times* in their Sept. 28, 2019 edition, ran an article stating that the number of CP images and videos online is over 45 million. These sting operations have not put a dent in the problem, while the number of images continues to grow exponentially."

Part II: Civil Commitment and the Courts' Historic March Toward Genocide.

"...Here we will address the troubling myth-building those in power do for personal gain, and the danger mischaracterization and misunderstanding bring to jeopardizing our democratic republic. Such could lead to our next genocide: anyone with 'deviant' sexual thoughts or actions are less than human. This section will not focus specifically on current civil commitment, but it lays out the troubling history that got us there. Part III will have a particularly potent message and follow the personal stories I promised....

Arthur Miller lays out the process: first, we stigmatize a group (sexually deviant), then we restrict that group's rights (skewed and biased court proceedings and laws), then we take their persons (prison, civil commitment, sex offender registry), then we try to eliminate them through lack of care in hopes they die (forcing those out of their homes, lack of meaningful therapy, feeding them only salty carbs, destroying family support); then we kill them all. That is the final step. That is the only step left for those accused or guilty of sex offenses, or what we erroneously call 'pedophiles.' As one person said to a non-offending pedophile on Twitter: 'I hope to God you are slowly tortured and killed. I'd be so happy.'

That is genocide. That is hatred of a stigmatized group. Twitter banned that person. There is hope, but such hope can seldom be found in lawmaking or in profit-driven entertainment media.

Censorship is the precursor to misrepresentation and annihilation. We censor those afflicted or we hate by ripping their tongues out of their mouths. Then we tell their stories for them, cast as a horrific truth, through fiction. We add many falsehoods to the truth.

No, those with sex offenses are not African American, oppressed women, or Jews in Nazi camps, but they are human beings, many of which are child sex abuse and abuse survivors. Many are still kids. The Justice Department reports that nearly 90,000 children are on the sex offender registry. Such often prohibits them from going to school and living with their families. How will this help prevent abuse when this population hardly recidivates in the first place?

The process of genocide is a damning-destructive pattern of thought that we all have, a kind of formula: put the group you hate here, initiate the process of dehumanization, and kill them all. Then claim you killed in the name of Jesus or God. As the Nazi officer said after striking a boy that was kicking a cat, 'Don't you know that it is unkind to be cruel to animals?'

...[P]eople will never stop using drugs. Law enforcement will always fail. I think the same is true about sex. The U.S. is a nation built on sex phobia, and such can make sexual trauma all the worse. Now that we are reducing those imprisoned for drug offenses, we need to replace bodies with other bodies....

What the drug war has in common with the sex offender witch hunt and its lifelong incarceration of SVPs is that a politician first tells the truth and then adds a falsehood onto that truth , as a journalist noted in *The Place I Live In*. We have to look no further than the sex offender or 'pedopanic' to see our Department of Justice's and our courts' troubled history of deliberate abuse and intentional misleading of the public, abuses that are now just one step away from genocide for a targeted population.

The brutal high-profile child murder cases succeeded in making 'pedophiles' and sex offenders the most hated group in America, and the movement, according to Anne Izzi, a law student at Western New England University, allowed the courts to deny basic human rights to anyone with that label.

Most of the U.S. Child exploitation laws were developed when the media focused on horrific and unusual murder and sex cases involving preteen kids. These kids are Jacob Wetterling, Megan Kanka, Amber Hagerman, Jessica Lunsford, and Adam Walsh. There are several glaring problems with this list.

As noted, all are preteen, as if no older kids get abducted. All were murdered horrifically, to the shock of the nation, and all were white....

We also can be civilly committed since the SVPA laws have expanded to include those with non-contact or childhood offenses. ...Canada is happy to go along. We must distinguish who we are pissed off at and who is a danger to our society....

According to my own sex offender therapist training done by the Association for the Treatment of Sexual Abusers (ATSA), treatment does little to nothing for two types of offenders, high-risk ones and those with low risk. In fact, the ATSA notes that giving treatment to low-risk offenders can cause more harm than good.

...Do our lawmakers care about kids? They think they do. If they did, they would actually read the research and stop misinforming the public. Our legal system would base its decisions on valid

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research and unbiased expert opinions, something even the Supreme Court could care less about.

They would stop charging people for having a sex doll, story, or cartoon and pay attention to real disparities that make all children vulnerable and put the billions or even trillions they waste into effective treatment and sex education.

They would stop thinking that only bad people have sexual thoughts about kids and have the courage to see a truth that may challenge their reputation, investments, and resumes. As we will see, civil commitment is totally useless and does nothing to protect children. The evidence is strikingly clear.

Part III will cover case examples, the poor rulings of the higher courts, and the outdated, expensive, and ineffective treatment for those civilly committed."

Part III: Civil Commitment: 'Excuse Me, Your Honor, Some Judicial Maturity, Please?'

"...It is understandable and necessary to protect children and the vulnerable, but the data show that our lawmakers, our justice system is failing badly but still moving at lightning speed to permanently punish and lock up anyone whose sexual interest is determined to be abnormal. For many in law enforcement, the intention was to protect children, but our ignorance of sexuality and the serious study of it led to the disaster we have now....

Though civil commitment currently makes up about 7,000 total inmates or 'patients,' states like Virginia and California and many others are anxious to expand these outrageously expensive facilities. St. Martin (first noted in Part I) claims that California alone has spent approximately 7 billion dollars on Coalinga State Hospital over a twenty-year period. It costs $240,000 per patient annually, and the success rate of 7 people in 20 years. The facility houses 1,200.

That means the hospital fails to treat nearly 100% of its patients. But as noted in Part II, treatment for high-risk offenders has little to no effect, and those statistics come from the Association for the Treatment of Sexual Abusers (https://www.atsa.com/) (ATSA). The states are well aware of this, but as St. Martin and Cross confirm, the courts, including the Supreme Court, say that state facilities are required to offer treatment, but that does not mean the *treatment has to be effective*. If these men are seriously violent, then there is no reason to house them in a hospital, unless lawmakers want to keep people incarcerated after they served their time.

Would you send your child to a 'hospital' that has such a failure rate, to a school, or even to a restaurant? Why would our lawmakers knowingly put billions of taxpayer dollars into worthless programs and facilities?

We have to look no further than the sex offender or 'pedopanic' to see our Department of Justice's and our courts' troubled history of deliberate abuse and intentional misleading of the public, abuses that are now just one step away from genocide for a targeted population.

...[T]he lower courts and politicians have taken advantage of this enormous brush and have widened the definitions of SVPs... In Virginia alone, there are almost 30 categories that can qualify someone as being a violent sexual predator, and these include those that are not violent. In sum, the Supreme Court, at present, uses empirical data for one group and not the other and essentially makes adults with sexual offenses and mental health problems illegal, or at the very least, without protection.

More specifically, the Court allows the states, not expert organizations like the ATSA, to decide what mental abnormality would make people possibly commit a future crime against the overwhelming evidence that recidivism rates for sex offenses don't justify civil commitment in the first place.

This is not a decision that should be made over the meaning of 'civil' and 'punitive' because if a hospital is not really a hospital because it doesn't and can't treat, then what makes a lifetime commitment beyond one's sentence 'civil' and not punishment? Would any Supreme Court Justice, lower court, or prosecutor like to sit in civil commitment? In sum, how can the Supreme Court be serious?...

Galen Baughman's Virginia Case, Commonwealth Retaliation?

Let's take the case of Galen Baughman that is in front of the Commonwealth of Virginia. According to Philip Fornaci and Roger Lancaster, Baughman pleaded guilty to two counts of 'illegal sexual misconduct,' the first when he was 15 and the second when he was 19. He was charged at age 20. He took a plea agreement and spent over 6 years in prison. None of his actions were determined to be violent or deceptive. The victims did not play an active role in him being prosecuted. Most of his time was served in solitary confinement.

When he served his sentence, he was detained for 2.5 years waiting for a civil trial. That trial would determine if he was a violent predator under Virginia's SVPA criteria. According to Fornaci and Lancaster, Ken Cuccinelle, the then district attorney, attempted to make Baughman into a high-risk violent sex offender. The jury did not buy it and Baughman was eventually released from prison and finished serving his probation in 2012.

In that time, as noted by Fornaci and Lancaster, Baughman became an advocate for those civilly committed, particularly in Virginia. He was very critical of the laws. He even won a SOROS Justice Fellowship. He asked probation if he could go to a funeral out of state and got approval. When there, he communicated with a 16-year-old boy that was above the legal age of consent. The texts were not of a sexual nature. The Commonwealth revoked Baughman's probation and the world-renowned expert, Dr. Fred Berlin, testified that Baughman's texts were not grooming. Judge Daniel S. Fiore chose to use his own judgment, though clearly not an expert in sex offenses, that they were evidence of homosexual grooming of a heterosexual youth. It is not out of the question that the Judge is biased against gay people and has little respect for experts he disagrees with. It's best if such a judge is removed from the case.

Baughman's is a technical violation, not a criminal one, and such seldom results in even jail time, note the authors. Even the State's psychologist found that Baughman was not a sexual predator under the State's SVP laws and noted that Baughman should be released.

According to Adam Romanik, the prosecutors for Baughman's next hearing 'ignored Virginia law' and hired psychologist Michelle Sjolinder that gave them what the judge and prosecutor wanted. She, against the recommendations of two other psychologists, one world-renowned and the other, a state psychologist, determined that Baughman is a violent sexual predator. The court also barred Dr. Richard Kruger's findings, a Columbia University psychiatrist, that Baughman had no mental health problems.

Does any of this sound like a fair and democratic justice system to a reasonable person? Maybe it's about time for professional licensing boards to pull licenses from those it finds are acting in a prejudicial and unethical manner?

Oh, and the judge barred the state's psychologist from testifying for Baughman in the next hearing....

Michael St. Martin's Blood Pressure and 'Civil' Disobedience

Martin served 18 years beyond his prison sentence in civil commitment. It is likely that he will be there the rest of his life. In his 30s, he had violent sex offenses. Now he is in his sixties. One day, he felt pretty good, but he was asked to have his blood pressure taken. He refused since he felt fine. When it later came time for his hearing for possible release, he claims that his refusal to have his blood pressure taken was used to show he is a violent sex offender and a danger to the community. They said his refusal shows that he will not follow rules and will go back and reoffend. Martin says that he is now in his sixties and a different person than what he was in his 30s. Refusing to have blood pressure taken is a human right, not a sex offense. If civil commitment is not punishment, then why is he being punished for refusing to get his blood pressure checked?

St. Martin did the numbers on the Registry Report Radio podcast [about his plight]. It costs approximately $240,000 per inmate per year at Coalinga State Hospital, and the facility has about 1,200 patients. Most are sex offenders. In the 20 or so years it has operated, it has cost taxpayers 5-7 billion dollars. The state wants to add more beds, yet the facility, as noted earlier, had only 7 people that were successful in 20 years. Of those that do get released. The recidivism rate is 4.8%.

Something Stinks in Missouri: Alleged Former FBI Agent Revamping SVP Treatment Programs.

Cross-reference a lawsuit that was filed against the Missouri Sex Offender Program that found the civil commitment facility was not treating anyone. In fact, no one had ever been freed from that system and 88 have died while allegedly being treated. Cross spoke to a former FBI agent that was hired to restructure the treatment program:

He let me know the design and intent is to ensure people are locked away from society as long as humanly possible, under the pretext of receiving treatment that leads to eventual release back into society. And so often both politicians and judges turn blind eyes because it is politically unpopular to assure the rights of individuals are not violated.

What credits Cross's claim is that what business is it of a former FBI agent to be revamping a sex offender treatment program? Such an agent is not at all qualified in any way to create a treatment plan, and given what such a former agent would do in the FBI and in our judicial system, locking away people is what they do. They never treat anybody. The State may simply want to skirt the whole lawsuit and make it look like it did something it had no intention of doing.

ATSA, Static-99, and a Judicial-Care-Less Culture

In "A Reasoned Approach," published by the ATSA, the organization made the following comment about current sex offender legislation:

The majority of sex offender legislation has been built upon 'stranger danger,' which now keeps society from looking at the more typical and predominant cases of sexual abuse that are perpetuated within the family and at the broader societal solutions for preventing child sexual abuse. Additionally, the broad application of these legislative policies to every adult, many adolescents, and even children convicted of sexual abuse has created unintended negative consequences.

In sum, '...the broad application of these laws does not make the communi-

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ties safe places for children, protect victims, or encourage the prevention of child abuse.' [ATSA] Civil commitment, based on an undisciplined and biased court system will do nothing to add to the safety and the reduction of child sexual abuse.

In Virginia alone, there are almost 30 categories that can qualify someone as being a violent sexual predator, and these include those that are not violent.

...It's important to remember that, according to the ATSA, the best accuracy under the best conditions is a 50/50 accuracy rate. Is that enough to put someone away for life? Yet, it is highly doubtful that those assessing at these hospitals are anywhere near doing such assessments correctly or using a combination of scales. 'Risk is not static,' as the ATSA notes, and people do change throughout time, unlike previous myths about sex offenders.

In closing, as we expand our laws to make almost everything under the sun child-sexualized, we will only have more and more offenders, more panic, and more lawmakers profiting from this panic. Though such will eventually bankrupt states and destroy the lives of millions of people and their families, a focus on only the victim will also cost victims and survivors of abuse as well. Sex will continue to equal trauma. Victims and offenders have one thing in common: the expectation that neither one will ever get better and heal.

Maybe it's time to hold judges, courts, and prosecutors accountable for their total inability to discipline themselves and have basic critical thinking skills, something I teach at community college. It's not simple for my students because I never want them to do what the judge in Virginia and the Supreme Court are doing. Such is a disgrace to our nation and to the whole judicial system.

Civil commitment is just another form of enhanced interrogation and of alternative truths. It's just another form of punishment disguised as treatment. I think the Bar Association, the American Psychological Association, and the licensing boards should look into professionals that are profiting from unethical behavior. If such is proven, then these individuals should have their licenses suspended. That would be a start without waiting for the courts to wake up, slow down, and show a little judicial maturity, ethics, and discipline.

Stop being so damned political."

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When Is a Court Order Not an Order? Pre-Release Placement, Of Course! — So Says State AG.

By Cyrus Gladden

Shane Garry is one of the many confinees in MSOP, Minnesota's sex-offender commitment program (these explanations for our readers elsewhere).

After years of treatment, Garry petitioned for transfer to a pre-release unit known as the "Community Preparation Services" ("CPS") unit. By Order of the Commitment Appeal Panel ("CAP") dated Jan. 24, 2018, CAP granted that petition.

However, to date (over two years latter), no actual physical transfer of Garry has occurred. Prompting MSOP officials has produced no action, with responses that treated Garry's transfer as an entirely discretionary matter.

Exasperated, Garry went to a court that oversees MSOP, seeking an order to compel MSOP to comply promptly with the January 2018 CAP order. This case is still pending. The State Attorney General's brief makes this noteworthy.

At page 7, that brief surprisingly contends that the CAP Order, notwithstanding its obvious direction to transfer Garry, did not "require Defendants [MSOP officials] to transfer [Garry] to CPS at all," only that "transfer may take place."

Effectively, were that argument law, every order requiring such transfer would require the petitioner to file a second petition for a second order, stating that the first order actually did require the transfer. — This, despite a statutory 15-day stay of the CAP order for transfer.) That statute would make no sense if the transfer order were not otherwise immediately effective on its own, with no need for further court direction later.

It is true that Garry's court Order (like others of its type) stated no specific date or time period by which the transfer must be physically accomplished. However, caselaw provides that in such cases, the ordered action must take place within a "reasonable" time. The AG's brief, however, contends that MSOP has "discretion" to decide what time is reasonable by which to effect the ordered transfer. In Garry's case, MSOP thinks it can obey that Order whenever it finally decides to get around to it.

In this, the AG cites the current lack of bed space for Garry and a lack of expansion funding by the Legislature, noting a waitlist for such CPS beds by others also approved for transfer by CAP.

However, the true cause for the lack of bed space in CPS is that MSOP extremely 'slow-rolls' all releases from CPS to community living, despite the notoriously choke-hold-tight restrictions and 24/7 monitoring-surveillance of all placed on that "provisional discharge" status (itself extending for an average minimum of five years). In the time since Garry's court Order, only about one confinee per month on average has been released from CPS. Most current CPS occupants have been there far longer than that, the earliest as long as 8-10 years.

The true reason for this 'slow-roll' is MSOP's original promise — completely unrealistic — that it can "guarantee" public safety as to all releases. So far, none of its 30 releases (out of about 780 confinees) have reoffended or even merely had their release revoked for 'technical violations.' However, the CAP approval for CPS serves as a judicial determination that a given MSOP confinee no longer presents any significant danger of re-offense (if in fact he ever did). Therefore, all that foot-dragging by MSOP at completing the release process after that approval is needless.

It is clear that MSOP's approach to CPS has been completely political: delaying releases of those fully ready for release, except only for a series of actions by MSOP itself that MSOP claims are needed first. In at least a couple of earlier cases, courts have ordered those obviously ready to be released, completely bypassing the self-gridlocked mire that is CPS. Perhaps Shane Garry might agree that this judicial practice should be reinstated.

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Employment Opportunities for Ex-Cons May Extend to SOs

Editor's Note: It always pleases me to be able to go out on a high note. So here you are:

Heather Higginbottom, "People with Criminal Records Deserve a Second Chance – and Business Can Help Provide it," *The Hill*, posted 11/05/19 (Note: Higginbottom is a spokesperson for JPMorgan Chase.)

Text Excerpts:

...Recently, building on previous efforts to connect people in underserved communities with economic opportunity, JPMorgan Chase announced an expansion of our commitment to give people with criminal backgrounds a second chance by supporting their reentry into the workforce, their communities and their local economies.

...One-third of Americans have a criminal record. A criminal record can be a major barrier to employment. In fact, the unemployment rate is an estimated 27 percent for the five million formerly incarcerated people in the U.S. – more than five times the overall national rate....

First, we [JPMorgan Chase] are taking steps to broaden our applicant pool and ensure that candidates are not immediately disqualified from consideration for jobs only because of their criminal background. Often a criminal background has no bearing on the requirements for the role to which the person is applying. We have 'banned the box' – no longer requiring job seekers to detail criminal records on their application – and are working with community organizations to provide people with criminal or arrest records with the training and mentorship they need to access jobs at our firm. In 2018, roughly 10 percent of our new hires – 2,100 people in the U.S. – were people with criminal backgrounds.

Fortunately, other companies such as Koch Industries, McDonalds, Target and Delta have all led by example in the same manner....

Second, we are investing more than $7 million in community organizations that support people with criminal records. We have identified groups in cities such as Chicago, Detroit, Nashville, New York and Wilmington that focus on career development, financial health and entrepreneurship.

Third, we will push a public policy agenda that reduces barriers to employment. Federal and state policymakers are well positioned to expand employment opportunities for people with criminal records. Here in Washington, we believe it is time to make moderate reforms to hiring rules for the financial services industry. The Federal Deposit Insurance Corporation appropriately limits financial institutions' ability to hire people with specific types of criminal background, and we support updating these rules to increase access to employment for affected workers.

We want to restore Pell grants for incarcerated individuals who are academically eligible. We know that higher education leads to more employment opportunities after release. Additionally, we urge federal and state governments to enact automatic record-clearing given the significant cost and time involved in record expungement. Since a suspended driver's license can severely limit job opportunities, we support reforming fines and fees in the justice system and providing alternative paths to compliance.

We back 'Fair Chance Hiring,' federal and state efforts to require background checks only after conditional offers of employment. And we call for expanded investments in entrepreneurship resources for formerly incarcerated individuals. Through the new PolicyCenter, we will be working in Washington and in state capitals to update rules that need to be changed and build support for critical programs that deserve more resources."

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