

**In This Issue:**

1. Just When You Thought Things Couldn't Get Any More Totalitarian (Or, Friends, Romans, Countrymen, Lend Me Your Amps). RFID Chips: Too Bad They Can't Take Phone Calls.	1-2
2. PPG Scoring Is Set So Low It Can't Tell Whether Little Peter Is Standing Tall Or Recolling in Disgust. But You Will Pay All the Same.	2-3
3. TLP Report to Virginia Rolls On, Demolishing All Myths & Junk Science Behind SOCC Everywhere.	3-7
4. Everything You Didn't Know About Desistance And Why Your Life Depends On It.	7-10



Our Adversaries....

**Coming Soon:**

- ✓ Banishment by a Thousand Laws
- ✓ Looking at the Good Lives Model.
- ✓ Remorse Bias — What's THAT?
- ✓ Risk Assessment – Categorical Report Format Yields Distortion
- ✓ SAPROF's Inaccuracy
- ✓ Ignorance, Animus, Political Pressure & Gaming Dictate SO Policy, in Opposition to Science
- ✓ SO Residence Restrictions & Registration Convolutions
- ✓ A Little History Yields Deja Vu
- ✓ Othering and Resistance. Huh?
- ✓ 'New' SORN Laws Are Punitive
- ✓ The Latest on Anti-SO Vigilantism
- ✓ Beware the Deepfake
- ✓ Janus Speaks Out on the Preventive State Threat
- ✓ COMPAS Illustrates Guessing at Risk
- ✓ Schrodinger Redux: If You Look, It's CP - What Dost They Do?
- ✓ Legislators' Pandering to Fear & Hate Make SO Registry Laws Insane
- ✓ NARSOL: Too Polite?
- ✓ Hold the PPG: More Evidence of Missing the Mark
- ✓ Blanket Exclusions: Redlining against SOs
- ✓ Levine Explains Harmful to Minors
- ✓ Desistance: Harris Book (Pt. 2)
- ✓ What Is E-Carceration?
- ✓ Male Chronophilias: EU: 1; US:0
- ↳ And the torrent is endless!

Feedback? News? Write!

**TLP Editor Address  
(Exactly & Only as Below):**

Cyrus P. Gladden II  
1111 Highway 73  
Moose Lake, MN 55767-9452

**"In a Room Where You Do What You Don't Confess...."\***

**Clinician-Clients Sex Scandal in MSOP-ML Results in Felony Charges and Media Attention, Raises Questions About MSOP and SOCC Itself.**

Chris Serres & Paul Walsh, "Sex Charges for Ex-MSOP Staffer," *Star Tribune*, Fri., April 23, 2021, p. B1

[Text excerpts:]

"A psychologist who worked for more than six years at a state-operated treatment center for sex offenders in northern Minnesota has been charged with sexually assaulting two men while they were in custody at the facility.

The psychologist, Michelle D. Brownfield, 38, of Duluth, was charged with two counts of third-degree criminal sexual conduct involving the men, who were undergoing treatment for sexual offenses....

The assaults occurred between 2016 and early 2018 [in] the state's secure treatment facility in Moose Lake, including in rooms where clients undergo psychological assessments and polygraph tests, according to a criminal complaint filed Wednesday in Carlton County District Court.

[According to Jamey Malcomb, "Psychologist at Moose Lake's Minnesota Sex Offender Program Accused of Sexual Misconduct," *Duluth News Tribune*, April 27, 2021, "...The victim [Client 1] was transferred to the Minnesota Department of Corrections in 2017 and left the facility until returning in 2019. During that time, Brownfield communicated with [him] using his sister as a go-between.

...[O]fficers also learned of an illicit relationship[ between Brownfield and a second MSOP client [Client 2] that began in fall 2017, according to the complaint. ...The pair met and engaged in sexually explicit behavior in the assessment room and in February 2018, the two had sex in the MSOP polygraph room...."]

The charges ...come as Minnesota's sex offender treatment program faces renewed criticism of the historically low rate of release from the program's prisonlike treatment centers in Moose Lake and St. Peter. Some men have been held at the treatment centers for years or even decades after completing their prison terms for sexual offenses.

In February a federal appeals court in St. Louis allowed a group of clients at the program to proceed with a lawsuit challenging the constitutionality of Minnesota's system of confining sex offenders indefinitely after their prison terms – effectively turning the program into what they say is a *de facto* life sentence.

The appellate court's decision, which did not weigh on the merits of the case, followed weeks of unrest at the Moose Lake facility, where early this year detainees went on a two-week hunger strike to protest their indefinite confinements and demand a clear path to-

ward release into the community.

...Before the charges against Brownfield were filed, both her alleged victims told the *Star Tribune* in several interviews that they felt pressured to engage in sexual acts with her because of her position of authority, and fears that she might recommend against their release if they resisted her advances....

'It's insane,' [Client 2], a client at the Moose Lake facility and one of Brownfield's alleged victims, said in one of the interviews. 'I mean, you are talking about the person who does the evaluations of sex offenders. ...That's who we were having sex with.'

...[Client 1], the other client at Moose Lake identified as an alleged victim, said he engaged in more than a dozen sexual acts with Brownfield before the psychologist abruptly ended the relationship.

'I was completely shattered,' [Client 1] said. 'I feel like there's no way that I can ever trust the system moving forward.'

State employment records show that Brownfield was employed at MSOP in Moose Lake from Aug. 8, 2014 to Dec. 21, 2020. Her duties included providing psychological assessment services, including evaluations of sexual arousal, to clients who have been court-ordered to undergo treatment at MSOP. Individuals in her position would share results with authorities in the program and provide expert testimony before state panels that consider whether a client should be discharged or have a reduction in custody.

Her job involved providing 'leadership and clinical direction' to other psychologists and staff at the MSOP, according to state records.

...Daniel Wilson, a client at Moose Lake who co-founded a group of detainees pushing to close MSOP, said program psychologists are in a 'unique position of power' because clients fear that a critical psychological evalu-

ation could result in longer confinements and other retribution.

'A lot of guys would have difficulty saying "no" to sex with any staff member here because they are desperate. They want to go home and they want to be free,' Wilson said. 'This is someone who can write anything she wants about us.'

In court documents, authorities in Moose Lake say they obtained text messages in which Brownfield expressed romantic feelings for [Client 1], describing it as a 'true Romeo and Juliet scenario,' while expressing concern over leading a double life and putting her career in jeopardy.

Authorities say Brownfield's phone contained sexually explicit photos and a booking photo of [Client 1]. Her phone also contained entries in which she described being sexually aroused during evaluations of clients in the program, according to the criminal complaint. [Client 2], meanwhile, told investigators that he had multiple sexual encounters with Brownfield starting in the fall of 2017. The two would meet in an assessment room at Moose Lake and engage in sexual discussions and perform sex acts. In one instance, Brownfield met [Client 2] in a room where polygraph tests are conducted on clients and they engaged in sexual intercourse, according to the complaint.

...Under Minnesota state law, any employee of a secure treatment center who engages in sexual intercourse with a resident or patient is guilty of third-degree criminal sexual conduct. Consent by the client is not a defense under the law.

[Client 2] said Brownfield would seek out opportunities to meet him under the guise of helping him with his treatment. Once the two were behind closed doors, Brownfield would describe her sexual fantasies and would encourage [Client 2] to engage in the explicit conversations, he said.

Later, [Client 2] said that Brownfield attempted to conceal the misconduct by urging him to put pressure on his fellow client and friend, [Client 1], not to reveal any text messages for her. [Client 2] said that Brownfield urged him to use 'any means necessary,' including threats, to keep the texts private.

After being contacted by the Moose Lake police, Brownfield continued to send texts discussing the investigation including reasons she gave to law enforcement to avoid meeting with them, the criminal complaint says.



\*: Gordon Lightfoot, "Sundown"

\*\*\*\*\*

## Revelations from a 'Sleeper' Article

by Cyrus P. Gladden II

I have previously quoted an academic article that serves as a very good general explanation of the major problems with use of plethysmography (PPG) on sex offenders (see: "Plethysmography - Wrongly Testing the Wrong Thing," TLP, Vol. 1, No. 10, pp. 6-8). However, as so often seems true, something always comes to light afterward that requires addition. This is one of those cases.

Many who have taken the PPG exam here in MSOP have complained that false reports have resulted, claiming that erections occurred when none did, or that some penile movement toward an erect state was detected when none was experienced by the test subject (that would be you). Accusations of fraud have been leveled against examiners. This is not to disagree with such accusations. I have addressed the issue of the lack of standardization and of divergent practices as potentially offering a chance for fraudulently falsified outcomes in that earlier article. However, what I have learned may be an overlooked aspect of how the test works that could explain how false interpretations by examiners of starts toward erections may have been arrived at. This is a flaw in the circumference-measuring method of PPG testing that may well be inherent and unavoidable. Bear with the following somewhat-technical explanation.

While closely studying another very helpful article about PPG, "Of Penology and Perversity: The Use of Penile Plethysmography on Convicted Child Sex Offenders," by Jason R. Odesho, *Temple Political & Civil Rights Law Review*,

Vol. 14, page 1, at 7, in particular reading about the details of the "circumferential" version of PPG testing (this is the rubber-like ring around the base of the penis with strain gauge to measure girth expansion as a means to detect erection, I came across the following terse passage:

"Studies have shown ...that arousal results in changes in length before changes in circumference [in the erecting process], and indeed that increases in the penis's length may initially narrow the penis's shaft, thus indicating a reduction of arousal according to the circumferential method.<sup>38</sup> The volumetric method is less commonly used, however, because it is more cumbersome and costly than the circumferential method." Note 38, referring to Note 37 is particularly explanatory: "See, e.g., *Christopher M. Earls & William L. Marshall*, 'The Simultaneous and Independent Measurement of Penile Circumference and Length,' 14 *Behav. Res. Methods and Instrumentation* 447, 449 (1982) (stating that "[i]t is apparent from an inspection [of the data] that the early stages of erection are characterized by a strong inverse relationship between the two penile dimensions: During erection, length increases continually; circumference decreases slightly before increasing."). " (all emphases added for clarifying emphasis).

Now here is where these observations become important: Conversely to that described phenomenon, a lack of arousal, coupled with fear or revulsion in reaction to the particular stimuli used, can cause penis shrinkage in length, in turn causing the girth of the flaccid, shrinking penis to expand. This will give a circumference reading that would incorrectly be interpreted as a 'starter' erection. In other words, you will be incorrectly read as reacting with sexual excitement to stimuli that would actually do no such thing to you, but instead would cause your penis to shrink - quite literally - in horror. This converse phenomenon and its capacity to throw off the accuracy of finding from the circumferential PPG procedure has not been written about in the professional/academic literature (yet, at any rate). However, the effect of such creation or worsening the inaccuracy of that test has certainly been discussed, and indeed, the use of the PPG has been greatly reduced in recent years in large part because of claims of inaccuracy. Thus, for instance, at this time, only 18% of members of ATSA still incorporate PPG use in sex offender treatment. Overall, the number of such treatment programs in North America using the PPG exam dropped from 32% in 1992 to 25% (*Odesho*, id., p. 7).

Other aspects of PPG testing appear to worsen the chance that this misinterpreted reading will be wrongly read as sexual excitement. *Odesho* (p. 9) notes that PPG stimuli maybe presented for varying periods, but sometimes as short as "mere

seconds" per stimulus. In that context, it seems quite likely that full erection would not be achieved in many, perhaps even most cases. Indeed, administration of a PPG exam is not geared toward provoking full and lasting erections. *Odesho* explains:

"...The plethysmograph is capable of measuring changes in tumescence long before the subject himself becomes aware of them. It is very rare for a subject to become fully aroused during an examination. Instead, an increase of about forty percent is considered to indicate a high degree of attraction. An increase of less than ten percent, on the other hand, is typically considered statistically insignificant."

Again, the significance of this is best grasped by pondering the converse of the last phrase, that is, any increase (in girth) of even only ten percent or slightly more is regarded as a significant indicator of a positive excitation response to a given sexual stimulus. To all males, it is intuitively obvious from life's experiences that a 10% transient increase in girth can easily have no sexual prompting cause at all. Therefore, the odds are clearly high of occurrence of the particular phenomenon described here of passing girth expansion, as biologically merely a follow-on from a penis shrinking in length from lack of sexual excitement (especially after excitement is expected, as can be expected occur during a PPG exam).

The foregoing aids in explaining why the PPG's level of scientific validity and reliability are too low for acceptance as evidence. As *Odesho* (p. 10) states, "...[T]he evidence is ultimately too ambiguous, and the procedure vulnerable to too many complications, to be deemed trustworthy.... [S]tudies indicate that PPG's ...test-retest reliability is quite poor." The phenomenon I describe could easily account for most, if not all of this discrepancy, since stimuli selected would likely vary in the retest, or at least, the ordering of their presentation to the subject would almost surely be deliberately jumbled. Unless careful notes are taken to allow matchup of stimulus to the same stimulus in the retest, it would not be possible to determine whether a 'shrinkage reaction' to a given stimulus were the cause of a transient increase in girth to accommodate that length-shrinkage.

In actual PPG practice, "a whole host of factors that affect erectile responses are generally not factored into experiments and assessments using PPG, including age (as offenders age, they are less likely to display deviant erectile responses), intelligence (offenders with lower IQs are more likely to appear deviant than those with higher IQs), and even the time of year during which the test is performed (since testosterone levels, which are believed to affect sexual responding, undergo seasonal fluctuations)." Of these examples, the first two may be



"Time to Strap You Up!"

explained by the fact that those in these two populations of the older and the smarter may well be disparately more greatly impacted by fears as to an erectile response to stimuli. Hence, as members of these two classes are tested with the PPG, the likelihood that their only reactions to such stimuli will be the very length-shrinkage under discussion here. Unfortunately, this would seem to suggest that members of these two populations have a greater likelihood of being severely misread as having experienced some erectile response (when none in fact occurred).

*Odesho* (p. 12) also notes that some men have a capacity to display erectile arousal deliberately when shown stimuli that they do not in fact receive any true sexual excitement from. As he puts it, this can "...allow[] someone with deviant tendencies to appear 'normal'." However, this is more likely encountered when someone with true 'crossover' attractions to both adults and children is tested. Indeed, the PPG is not able to successfully distinguish between incest offenders and rapists. (*Odesho*, Note 76, citing *W.L. Marshall & Y.M. Fernandez*, *Phallometric Testing with Sexual Offenders* 54, at 52 (2003).) A rapist may have interest in rape and other forcible sexual imposition upon both adults and children - perhaps indiscriminately, for instance, but be able to 'force' an erectile response to images of women, while suppressing an erectile response to images of children.

Since this appears to something unlikely to be achieved by 'pure' pedophiles, one might be able to argue that the PPG has more validity to single out that particular type of deviance. However, in fact, "...many researchers have found that a large percentage of non-sex offenders display some degree of arousal to stimuli involving young children." (*Odesho*, p.

(Continued on page 3)



Strict Scrutiny of All Junk Science

(Continued from page 2)  
 12). Oftentimes, "[a]lthough the arousal was slight enough to have remained unknown by the subjects themselves, it was significant enough to be detectable via the plethysmograph." Quoting the first PPG researcher, Freund, *Odesho*, *ibid.*, adds, "[T]he 'number of people sensitive in this regard among males who have non-deviant sexual preferences must be substantial.' Freund's finding might be taken to mean that many 'normal' men actually harbor sexual desire for children and simply fail to act on the desire. Indeed, Freund's finding has led some to suggest that such arousal is not truly deviant. [citing *Lawrence A. Stanley*, "The Child Porn Myth," 7 *Cardozo Arts & Ent. L.J.* 295, 299 (1989) (stating that sexual desire for minors may actually be common and normal among adults)]. But a less controversial and equally plausible interpretation is that physiological erectile responses do not always accurately indicate sexual interest."

However, it appears necessary to juxtapose next to this the finding that "only 50% of child molesters display deviant arousal patterns on the test." Indeed, the "PPG is better at identifying extra-familial child sex abusers than it is at identifying other classes of sex offenders." (*Odesho*, p. 11). It seems a reasonable conjecture that 'pure' pedophiles are more likely to be non-marrying, and thus be seen only as extra-familial sex offenders.

This is a flaw in the circumference-measuring method of PPG testing that may well be inherent and unavoidable.

\*\*\*\*\*

### Third Segment: TLP Report to Virginia Debunks Junk Science Behind All SOCC, Presses Repeal of Its SOCC Law.



Virginian Patrick Henry, of "Give Me Liberty or Give Me Death" fame

Editor's Note: The following is the third excerpt from the *Report to the Virginia*

*State Crime Commission on So-Called "Sex Offender Civil Commitment," Related to Senate Bill 1244 (Session 2021) Proposing Repeal of Virginia Statutes Authorizing Same*, prepared and submitted by Cyrus Gladden, TLP Editor.

Reaction by professional readers of this *Report* continues to be overwhelmingly positive. A word-processable version of the whole report can be downloaded now from <https://ajustfuture.org/wp-content/uploads/2021/03/Cyrus-Gladden-Report-to-Virginia-State-Crime-Commission-21-03-15-OriginalScanNewOCR2.pdf>.

The *Report* is reproduced in serial form in TLP for those without internet access. It is your right to know: (a) how utterly baseless and fraudulent your commitments are; (b) that SOCC has been condemned *in toto* by organized psychiatry; (c) the myth that "treatment" for many years in confinement is necessary to prevent recidivism is debunked by the everyday reality of desistance from sexual offending — regardless of treatment; and (d) the myriad irrefutable facts showing that SOCC inherently deprives you of your constitutional rights and even your human rights recognized everywhere in the world.

Hence, we resume where we left off in the last TLP edition, probing deeply in earnest into this compendium of anti-scientific and immoral wrongs.

#### B. SOCC Laws Are Not Based on Psychological Science, but Instead Are Aimed at Ensuring Public Safety through Indefinite and Most Probably Lifetime Preventive Detention, a Quintessentially Punitive Aim and Effect.

As a lesson from history, *Mary Prescott*, "Invasion of the Body Snatchers: Civil Commitment after Adam Walsh," 71 *U. Pitt L. Rev.* 839, 843 (Summer 2010), recounts:

"...[M]any states chose to abolish sexual psychopath laws in the wake of criticism from the Group for the Advancement of Psychiatry (GAP) and the American Bar Association's Criminal Justice Mental Health Standards. These groups claimed that labeling offenders as 'sexual psychopaths' lacked scientific support, that treatment was essentially ineffective, and that predicting recidivism was unworthy of credence." further explaining at pp. 849, evaluated treatment technique available, how can we hope to satisfy the treatment requirement?"

Consider that, "...[t]o date, there are no rigorous scientifically established means of detecting high risk of sexual reoffending, or whether an individual is a 'sexually violent offender.'" (*James L. Knoll IV*, "The Political Diagnosis," *Psychiatric Times*, Feb. 16, 2010.) "Legislatures

typically devised their own concepts, and then required clinicians to make assessments of those concepts." *Dennis M. Doren*, *Evaluating Sex Offenders: A Manual for Civil Commitments and Beyond* (Sage Publ'ns. 2002), p. 13.

*Eric Janus*, writing in *Failure to Protect: America's Sexual Predator Laws and the Rise of the Preventive State* (Cornell University Press, Ithaca, N.Y., 2006), at p. 27, speaking of attempts to limit who can be committed under sex-offender commitment laws, states, "The limitations of inability to control, of mental disorder, and of dangerousness have proved so permeable that they are no boundary at all."

At pp. 33-4, he concludes: "[Sexually dangerous] predator cases incarcerate people for the status of being a dangerous mentally disordered person, so the relevant 'facts' are psychological constructs, whose only reality is in the expert judgment of mental health professionals."

At pp. 40, *Janus* adds this troubling consideration: "The legal standards set by the courts for risk, mental disorder, and volitional impairment are exceedingly vague, offering little guidance to courts or experts in selecting people for the extraordinary deprivation of liberty."

The competence of psychologists is in the science of psychology, not in politically correct, junk-science hate-and-fear-propaganda legislative concepts. When psychologists purport to testify as to whether a given sex offender meets such unscientific statutory criteria, they are not testifying as experts, but are merely offering lay opinions as to the law. Such lay opinion testimony as to the law and its application in a given case are strictly forbidden in all courts, and no judge can rest a decision in any given case on such lay opinions.

*Eric Janus*, "Examining Our Approaches to Sex Offenders & the Law: Minnesota's Sex Offender Commitment Program: Would an Empirically-Based Prevention Policy Be More Effective," 29 *William Mitchell Law Review* 1083, 1084 [2003], flatly states:

"...[T]he 1996 Interim Report of an American Psychiatric Association Task Force concluded that Sexual Violent Predator ("SVP") laws "misallocate psychiatric facilities and resources, and constitute... abuse... of... psychiatric in the United States: Legislative and Policy Concerns," in *Sexual Coercion: Understanding and Management* (R. Prentky, E. Janus & M. Seto eds., 2003)].

In fact, *Howard Zonana, et al.*, *Dangerous Sex Offenders: A Task Force Report of the American Psychiatric Association* (1999), "Legal Control of Dangerous Sex

Offenders: The Propriety of Civil Commitment," bluntly observes:

"...[U]nlike many of the earlier laws — laws that provided for commitment as an alternative to prison — these new laws typically provide for commitment only after an offender has completed his or her criminal sentence. Thus, their primary purpose would appear to be incapacitative rather than therapeutic." (p. 12)

"Sexual predator commitment statutes are not fundamentally paternalistic. These statutes reflect a backlash against determinate sentencing reform and are devised to extend the punishment of sex offenders and to protect society. To evade constitutional protections against ex post facto laws, to impose indeterminate confinement, and to take advantage of relaxed procedural safeguards, drafters of sexual predator commitment statutes have attempted to cloak their quasi-punitive intent in the language of medical commitment...."

"In the opinion of the Task Force, sexual predator commitment laws represent a serious assault on the integrity of psychiatry, particularly with regard to defining mental illness and the clinical conditions for compulsory treatment. Moreover, by bending civil commitment to serve essentially non-medical purposes, sexual predator commitment statutes threaten to undermine the legitimacy of the medical model of commitment. In the opinion of the Task Force, psychiatry must vigorously oppose these statutes in order to preserve the moral authority of the profession and to ensure continuing societal confidence in the medical model of civil commitment. (p. 2)

"The Misuse of Diagnostic Terminology and Methods

"...[I]n some countries, corrupt governments have wielded the machinery of civil commitment to punish dissidents. In the United States, civil commitments have sometimes been misused to confine social deviants.

"In contrast to the true medical model of commitment, the sexual predator commitment laws do not base the criteria for the 'diagnosis' of sexual predator on psychiatric research or



(Continued on page 4)

(Continued from page 3)

therapeutic findings. Typically, sexual predator status is based on a vague and circular determination that an offender has a 'mental abnormality' that has led him to engage in repeated criminal behavior. Because the element of mental abnormality is so vague, it does little or nothing to qualify the requirement for criminal acts. Thus, these statutes have the effect of defining 'mental illness' in terms of criminal behavior....

"In the opinion of the Task Force, the sexual predator commitment laws establish a nonmedical definition of what purports to be a clinical condition without regard to scientific and clinical knowledge. In doing so, legislators have used psychiatric commitment to effect nonmedical societal ends that cannot be openly avowed. In the opinion of the Task Force, this represents an unacceptable misuse of psychiatry. (p. 3)

**T**here are no rigorous scientifically established means of detecting high risk of sexual reoffending, or whether an individual is a 'sexually violent offender.

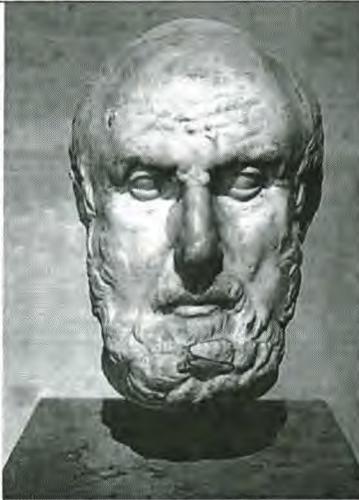
**"Treatment of 'Sexual Predators'**

"Under the medical model, civil commitment is justified when effective treatment is provided....

"Although a body of research indicates that some types of paraphilias may be treatable, this research for the most part concerns patients who are treated voluntarily. ...[T]he task force recognizes that many sex offenders ...refuse available treatment. Thus, there is no evidence regarding the efficacy of available treatments for the group of patients who have little or no motivation for treatment. Moreover, no evidence supports the notion that persons with paraphilias can be treated successfully without their cooperation. Indeed, ...to date there is no clear basis for making the claim that treatment of any class of patients with paraphilias will result in lower rates of recidivism.

"...[T]here is ample anecdotal evidence that those committed as sexual predators cannot benefit from treatment. In many cases, the lack of treatment prospects appears to flow from the lack of a legitimate psychiatric diagnosis. In other instances, it appears that offenders who suffer from paraphilias cannot be treated because they are uncooperative. Regardless of the reason, it is the opinion of the Task Force that confinement without a reasonable prospect of beneficial treatment of the underlying disorder is nothing more than preventive detention and violates the norms of the medical model."

Large-scale academic statistical studies, both in Minnesota in 1997 and in



"First, do no harm," he said.

California in 2005, have found no significant differences in rates of sexual reoffense between those receiving sex offender treatment and those not. [See, e.g., J.K. Marques, M. Wiederanders, D.M. Day, C. Nelson & A. van Ommeren, "Effects of Relapse Prevention Program on Sexual Recidivism: Final Results from California's Sex Offender Treatment and Evaluation Project (SOTEP)," 17 *Sexual Abuse: A Jour. Of Research and Treatment* 79-107 (2005)]. There is no definitive research demonstrating the effectiveness of sex offender treatment in reducing recidivism.

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

Shawn Alexander & Eric Janus, "M. v. Germany: The European Court of Human Rights Takes a Critical Look at Preventive Detention," 29 *Ariz. J. Int'l & Comp. L.* 605 (Fall 2012) recounts the decisions of the European Court of Human Rights, followed by the decision of the German Federal Constitutional Court, in a case challenging Germany's form of sex offender post-imprisonment commitment. Both of those decisions struck down that law (which is less extreme than that in Minnesota). Comparing such U.S. laws to that in Germany, the European Court of Human Rights stated: "The result [in the United States] has been civil commitment standards that have the outward appearance of rules of law, but are, in reality, so vague and uncertain that they provide little legal guidance to shape the application of preventive detention." The European Court of Human Rights went on to consider the "realities of the situation of persons in preventive detention" to determine its nature and purpose. These realities include prison-like conditions, indefinite duration of confinement, and the fact that under German law, only individuals that have repeatedly committed certain serious crimes are subject to

preventive detention. The European Court found that "given its unlimited duration, preventive detention may well be understood as an additional punishment for an offense by the persons concerned and entails a clear deterrent element." Subsequently, the Constitutional Court noted that preventive detention had begun to lack distinction from the execution of prison sentences and, that when retroactively applied to cases prolonging detention beyond the previous ten-year maximum, as was the case in M. v. Germany, violates fundamental liberty rights and the "principle of the protection of legitimate expectations" of those subject to detention. (*M. v. Germany*, No. 19359/04, paras. 7-12 (Eur. Ct. H.R. 2009), available at <http://www.bundesverfassungsgericht.de/en/press/bvg11-031en.html>.

Given the foregoing observations concerning SOCC, it is beyond question that it presents deliberately designed preventive detention, indefinite and presumably for natural life duration.

**III. SOCC LAWS ARE BASED SOLELY ON JUNK SCIENCE AND ARE PURELY THE PRODUCT OF POLITICAL ACTION.**

A. The Typical SOCC Required Element of a Sexual, Personality, or Other Mental Disorder or Dysfunction Calls for Reliance on Testimony Based on Pure 'Junk Science' and Unscientific and Anti-Scientific Definitions Which Are Utterly Vague and Completely Boundless.

All currently prevailing definitions of "paraphilias" of any kind, "psychopathy," "antisocial personality disorder," or any purported sexual or personality "disorder," "dysfunction," "clinical construct," or "abnormality" are vague and lacking in discernible bounds, and are subject to

subjective or impressionistic interpretation or application.

**1. In General**

The element "disorders" is inherently boundlessly vague and in one instance, simply restates a type of sex crime.

"As a general matter, the APA has found a powerful tool in its diagnostic manual. The DSM is known as the 'bible' of psychiatry and is widely influential across professional disciplines. Through the acculturation of the DSM, the APA virtually appropriated the field of mental health. While purportedly based on scientific principles, the DSM is, at its core, a political document; the APA is a professional organization that clearly came to understand its ability to assert its power in the broader world. This is true even for matters otherwise reserved to legal professionals. A particularly relevant strategy was employed when the institution adopted the nomenclature of 'mental disorder,' which allowed the APA to broaden the DSM's coverage and the institution's influence in the law enormously.

"When psychiatry turned away from the term 'mental illness' to the expansive 'mental disorder,' it opened a Pandora's Box whereby almost any behavior can be deemed an affliction of the mind – and used by law to meet its own political ends. If law is a vehicle in which political ideas are executed ...psychiatry has unwittingly given the law the means to achieve politically efficient ends for dealing with many socially and politically difficult problems.

"The APA has, since the adoption of the broader genus offered by the 'mental disorder' terminology, continued to expand its coverage. The DSM originally listed 106 mental disorders in its first edition in 1952. The most current edition, the DSM-IV-TR, lists over 250 disorders. Conceivably, the APA can attempt to encompass virtu-

(Continued on page 5)



This isn't the first time.....

(Continued from page 4)

When psychiatry turned away from the term 'mental illness' to the expansive 'mental disorder,' it opened a Pandora's Box whereby almost any behavior can be deemed an affliction of the mind – and used by law to meet its own political ends.

ally any mental phenomenon within the DSM's taxonomy. With its creation and maintenance of the DSM, the APA now wields enormous power over any person or institution, including the law, willing to be governed by its epistemology and its nosology.

"The APA has asserted its dominion in the criminal justice arena, more specifically, in adjudging deviance as a mental health issue. In propagating and monopolizing its classification system for psychiatry, the APA discovered that 'any behavior that produced discomfort or socially undesirable behavior could be asserted as representing a disordered psyche irrespective of biological evidence.'

Regarding sexual deviance and paraphilias, as cases in point, critics contend that the DSM categorizes them as mental disorders not because of 'some mental degeneration of the brain but because such behavior is socially construed to be a process of a sick mind.' (M. Hamilton, "Adjudicating Sex Crimes as Mental Disease," 33 *Pace L. Rev.* 536-599, 544-45; citations omitted).

Hannah Henkel, "Let Them Fry: Frye Hearings for Determination of 'Mental Disorders' in the Sexually Violent Persons Act," 107 *J. Crim. L. & Criminology* 361 (Summer 2017), confirms Hamilton's observations thus:

p. 371-372: "A large critique of the DSM is the fact that the DSM is a societal and cultural critique, merely establishing what people see as psychopathology during their society.<sup>60</sup> Scholars point to the fact that disorders in the DSM change and become normal behavior in society later on.<sup>61</sup> Laymen do not understand that outside forces affect the DSM, and the DSM focuses on what people view as abnormal or based on political voting on what is abnormal.<sup>62</sup> Because a definition of a mental illness is subject to change, the initial determination used by psychologists for mental illness may not mean a person has a mental disorder under the SVPA."

"Furthermore, the psychologists' updates, changes, and additions or deletions to the DSM lead many to question the DSM's inherent legitimacy and correctness...<sup>63</sup> Changes in the DSM have shifted from symptom-based diagnoses within a clinical practice to a common term for use in pharmaceutical companies, federal grants, and insurance companies.<sup>64</sup> The language changed to laymen's definitions that generalize the psychologist's diagnoses<sup>65</sup> and make mental disorders easy

to find when psychologists are trying to determine a person's mental illness."

pp. 372-73: "The newest version of the DSM, the DSM-V, states that it is not for legal use.<sup>66</sup> 'In most situations, the clinical diagnosis of a DSM-V mental disorder, such as intellectual disability (intellectual developmental disorder), schizophrenia, major neurocognitive disorder, gambling disorder, or pedophilic disorder does not imply that an individual with such a condition meets legal criteria for the presence of a mental disorder or a specified legal standard (e.g., for competence, criminal responsibility, or disability).'<sup>67</sup>

The DSM-V goes on to state it could be 'misused or misunderstood.'<sup>68</sup> ... DSM-IV-TR and the leader of the DSM-IV task force explicitly warn against the use of the manual for forensic purposes, arguing that its 'use in legal contexts poses significant risks that the information will be misused or misunderstood.'

p.389: "Scholars argue that ARAs are better than clinical assessments by psychologists because of their measurable factors which are more reliable than a subjective test influenced by psychologists' biases.<sup>184</sup> ...[H]owever, the Illinois courts have found that each falls within the need for a Frye hearing due to their changes and updates and a psychologist's choice on what factors affect recidivism.<sup>187</sup>"



**Selected Footnotes:**

23 The history of sexual psychopath laws hinged on six assumptions mentioned in the American Bar Association's commentary, specifically: 1) There is a specific mental disability called sexual psychopathy; 2) Persons suffering from such a disability are more likely to commit serious crimes, especially dangerous sex offenses, than normal criminals; 3) Such persons are easily identified by mental health professionals; 4) The dangerousness of these offenders can be predicted by mental health professionals; 5) Treatment is available for the condition; and 6) Large numbers of persons afflicted with the designated disabilities can be cured. (Am. Bar Ass'n: Criminal Justice Mental Health Standards, Commentary to Standard 7-8.1, at 459).

60 *Rebecca A. Johnson*, "Pure' Science and 'Impure' Influences: The DSM at a Scientific and Social Crossroads,"

15 *DePaul J. Health Care L.* 147, 149 (2013), at note 54 (p. 159). With various critiques on the fact that categorization does not work, there has been a higher expanse of using objective classification along with the DSM as a beginning marker. *Id.* at 162. However, this brings up critiques such as a psychologist trying to find specific issues in their objective analysis. This inculcates empirical research into a scheme of predisposing factors. *Id.*

61 See, e.g., *id.* At 167-70 (discussing how the DSM expands and allows for some diagnoses to become 'normal' later in life); *Melissa Hamilton*, "Adjudicating Sex Crimes as Mental Disease," 33 *Pace L. Rev.* 578, 557-58 (2013) (discussing how paraphilias and paraphilic behavior depends on what is "normal," how that changes culturally, and how it vacillates).

62 *Johnson, supra* note 60, at 149-50, 153-54 (noting the different schools of psychiatric thought between Emil Kraepelin and Sigmund Freud and how "Adolph Meyer, a leading intellectual figure in early 20th century American psychiatry" chose the Kraepelin view to look at the patient's specific situations and made them generalizable, and discussing how there was a specific view accepted on the outset and the American system now looks purely at general diagnosis, accepting that instead of the other, more person-specific diagnosis).

63 *Johnson, supra* note 60, at 151. Johnson discusses the fact that the APA has created a bible where the authors are seen as "gods" and there are various questions about if we have a right to question its authenticity when created by an unquestioning person. *Id.*

64 See *Johnson, supra* note 60, at 158-64 (discussing broad issues with the DSM due to its outside forces).

66 *DSM-V*, at xxxiii.

67 *Id.*; see also *Johnson, supra* note 60 at 188; citing *Thomas Szasz*, *The Myth of Mental Illness* (1974). ("The APA argues that this misuse/misunderstanding will occur because of the 'imperfect fit between the questions of ultimate concern to the law and the information contained in a clinical diagnosis.' While clinicians should be interested in diagnostic categories that aid in the design of treatment options, legal professionals should be seeking a related but distinct set of information.")

68 *DSM-V, supra* at xxxiii.

180 See generally *Eric S. Janus & Robert A. Prentky*, "Forensic Use of Actuarial Risk Assessment with Sex Offenders: Accuracy, Admissibility, and Accountability," 40 *Am. Crim. L. Rev.* 1443, at 1495-96 (2003). This is to make sure there is risk assessment in recidivism. *Id.* However, the actual studies and different aspects are fairly



Franz Kafka, author of *The Trial*

subjective to what the psychiatrist wishes to put in as a factor. *Id.* at 1485. It mixes empirical data such as age, weight, along with the psychiatrists view on the person's mental state, home life, and their level of manipulation. *Id.* at 1455. These subjective thoughts mixed with empirical data show that the risk assessment is not perfect for finding out a person is not able to maintain life in society. *Id.*

184 *Janus & Prentky, supra* note 180, at 1453.

185 *Id.* at 1450, 1452.

186 *Id.* at 1464-65. (Describing the measurability, the empirical basis, and the precision that comes with the adequacy of measuring different issues. Further, goes to the authenticity and the transparency instead of clinical risk assessment).

See *People v. Taylor*, 830 N.E.2d 855, 857 (Ill. App. Ct. 2005); *Janus & Prentky, supra* note 180, at 1455

"...SVP commitment statutes use the terms 'mental abnormality,' (Florida, Iowa, Kansas, Massachusetts, Missouri, New Jersey, Pennsylvania, South Carolina, Virginia, Washington), 'mental disorder' (Arizona, California, Illinois, Minnesota, North Dakota, Wisconsin), or 'behavioral abnormality' (Texas) (*Miller, Amenta & Conroy*, 2005, pp. 32-35). Nearly all states link these terms to phrases such as 'that predispose the person to the commission of sexual acts' (Massachusetts) or similar language (*Miller, Amenta & Conroy*, 2005, *ibid.*). As Justice Abrahamson observed, there is circularity to these criteria for civil commitment because the criteria themselves define the outcome. Analogizing to the criminal law, it is as if the elements of a crime were defined by the crime itself, such as defining the crime of burglary as the act of one who burglarizes.

(Continued on page 6)

(Continued from page 5)

".....[T]he terms 'mental abnormality' and 'mental disorder' do not correspond to specific diagnostic categories in DSM-IV-TR. ...[T]he term 'mental disorder' embraces almost all diagnostic categories in the DSM.

"Kutchins and Kirk (1997) summarized ... as follows: 'Mental disorder ... is not a scientific or medical concept, but a lay concept and a value judgment' (p. 29)." Thomas K. Zander, "Civil Commitment without Psychosis: The Law's Reliance on the Weakest Links in Psychodiagnosis," 1 *Jour. Of Sexual Offender Civil Commitment* ... is not a scientific or medical concept, but a lay concept and a value judgment." H. Kutchins & S.A. Kirk, *Making Us Crazy. DSM: The Psychiatric Bible and the Creation of Mental Disorders* (New York: Free Press, 1997), p. 29.

"Most psychiatric disorders are idiopathic conditions with no known causes. The literature is filled with debate about what constitutes a disorder or how one defines a case. Critics question the validity of current diagnostic classifications or nosologies, challenging their fundamental, assumptions or theoretical underpinnings. Because there is no method for externally validating current diagnostic constructs on the constructs themselves), it is likely that the field will be rife with controversy until the causes that lead to the emergence of specific clinical conditions can be determined." E.D. Caine, "Determining Causation in Psychiatry," in K.A. Phillips, M.B. First & H.A. Pincus (eds.), *Advancing DSM: Dilemmas in Psychiatric Diagnosis* (Washington, D.C.: American Psychiatric Association, 2003), p. 1.

"J.C. Wakefield, "Disorder as Harmful Dysfunction: A Conceptual Critique of DSM-III-R's Definition of Mental Disorder," 99 *Psychological Review*, 232-247 (1992), 232, identified the subcategory of psychodiagnostic validity, which he termed conceptual validity, defining it as 'discriminating disorder and nondisorder.' Wakefield explained, 'Criteria that identify all individuals with disorders, and only individuals with disorders, are referred to as a conceptually valid criteria' [J.C. Wakefield, "Sexual Reorientation Therapy: Is It Ever Ethical? Can It Ever Change Sexual Orientation?" 32(5) *Archives of Sexual Behavior* 457-459 (2003)], p. 30 ....

"A critical component of diagnostic validity is reliability. Diagnostic reliability 'concerns the consistency with which diagnoses are employed by different clinicians or on different occasions.' ...



... conceptualized a substantive due process form of conceptual validity for psychodiagnosis. In *Kansas v. Crane* (2002), the Court limited the scope of SVP commitments as follows:

"[T]here must be proof of serious difficulty in controlling behavior. And this, when viewed in light of such features of the case as the nature of the psychiatric diagnosis, and the severity of the mental abnormality itself, must be sufficient to distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case." (p. 413)

"In other words, the justices suggested tutional limits on state power imposed by the Fourteenth Amendment's Due Process Clause, the statute's criterion for committability that specified a mental condition, i.e., 'mental disorder' or 'mental abnormality,' would have to distinguish between persons who have that condition from those who do not...." Thomas K. Zander, "Civil Commitment without Psychosis: The Law's Reliance on the Weakest Links in Psychodiagnosis," 1 *Jour. Of Sexual Offender Civil Commitment: Science and the Law* 17, at 30-31 (2005).

"Although there is general ... consensus that persons who are psychotic are validly conceptualized as being mentally ill, there is much less consensus that persons whose sexual behavior deviates from social norms are so conceptualized." (*Id.*, p. 34)

"The State of Washington, which was the first state to enact an SVP law, did so only 6 years after repealing its sexual psychopathy law [G.H. Morris, "The Evil That Men Do: Perverting Justice to Punish Perverts," 2000(4) *Univ. of Ill. L. Rev.* 1199-1231 (2000)]. Morris (p. 1200) noted that the repeal of sexual psychopathy laws nationally had been based on the inability of mental health professionals 'to identify a specific mental disorder experienced by individuals who should be included within the targeted group and the lack of success-

ful treatment methodologies to improve their condition....'

"How could psychodiagnosis of sex offenders for civil commitment be conceptually invalid in the 1980s, and then suddenly regain validity a few years later? It would be difficult to imagine a physical condition being considered a disease, then being debunked as a disease, only to be relabeled a disease a few years later. Furthermore, the second rationale for repealing the sexual psychopathy laws – a lack of successful treatment methodologies – appears to have equal applicability to current SVP continues to show that treatment has little or no effect on sexual recidivism rates (Marques, Wiederanders, Day, Nelson & van Ommeren, 2005); Losel & Schmucker, 2005). For example, Hanson, Broom, and Stephenson (2005) compared the recidivism rates of 403 treated sex offender to those of 321 untreated sex offenders over a 12-year period and found no significant differences between the two groups as to sexual recidivism, violent recidivism, or general recidivism."

"Thus, we cannot justify conceptualizing the paraphilias as mental disorder by asserting that illegal paraphilic behavior is more amenable to treatment than other criminal behavior... In paraphilic sex offenders from other criminals, SVP commitment proponents may have a difficult time proving that 'the severity of the mental abnormality itself ...[is] sufficient to distinguish the dangerous sexual offender ... from the dangerous but typical recidivist convicted in an ordinary criminal case,' (p. 413) – a form of diagnostic validity required as a matter of substantive due process by *Kansas v. Crane* (2002)." (*Id.*, p. 35). Overwhelmingly, SOCC confinees have only been declared at some point by some psychologist to have a sexual or personality "disorder" or, if not found to fulfill the criteria of some disorder, merely a "dysfunction" based on less than all elements of a disorder and/or on dubious evidence to support any such element. However, all such personality and sexual disorders were established by nothing



What Would Einstein Say?

more than fiat by the American Psychiatric Association, based solely upon the feeling prevailing in that body of psychiatrists that anyone who behaves in a particular way 'must' be suffering from some psychiatric malady.

In the case of sexual "disorders," this is nothing more than echoing down over the last century of the condemnatory accusations by Austrian sexologist Richard von Krafft-Ebing in *Psychopathia Sexualis* (1886) that declared that obviously revulsion-based fiat. Singlehandedly and without any scientific research, Krafft-Ebing simply invented... almost... all the "pedophilia." Not until the DSM-III in 1984 was "paraphilia" even mentioned in earlier DSM editions. Even then, it was described as an "atheoretical, non-pejorative descriptor." (M. Hamilton, "Adjudicating Sex Crimes as Mental Disease," 33 *Pace L. Rev.* 536-599, 545-46, 548). In that entire century plus, no psychiatric/psychological research has ever conclusively determined the actual existence of such sexual "disorders," as opposed to simply variant sexual attractions and variant sexual practices. In sum, the declaration of sexual "disorders" has simply been an exercise in 'medicalizing' motivations and conduct that are sought to be banned by such definitions... law, no mental illness is required. In fact, partly to facilitate such commitments, psychiatrists have invented definitions of mental states and dynamics called 'disorders.' At least one of these (sexual abuse of a child) merely restates the fact of a sex offender's particular crime. A related one (pedophilia) simply states the motivational basis for such a crime. Other such declared 'disorders' lapse into boundless vagueness (e.g., 'antisocial personality disorder,' often panned as nothing more than being a selfish jerk). So-called disorders such as 'antisocial personality' and 'narcissistic personality' are prevalent in any group of criminals. 'Using that standard, you could commit a lot of bank robbers,' observed Dr. Fred Berlin, of Johns Hopkins University. These 'disorders' do not describe mental/emotional states of impulse, much less irresistible impulse, only of attractions and motivations thought reprehensible or which may, if acted upon in ways comprising crimes, result in harm to a victim.

How could psychodiagnosis of sex offenders for civil commitment be conceptually invalid in the 1980s, and then suddenly regain validity a few years later? It would be difficult to imagine a physical condition being considered a disease, then being debunked as a disease, only to be relabeled a disease a few years later.

(Continued on page 7)

(Continued from page 6)



George Orwell

The words 'or dysfunction' were included in the Act's definition to address the situation where a person does not fill all of the diagnostic criteria for the disorder in the DSM-5. The DSM-5 allows an evaluator to use 'clinical judgment' to apply a diagnosis to a person even where all criteria for a given disorder are not met as to that person. For purposes of the an SOCC law, this creates an impermissible vagueness and inherent uncertainty as to the requisite element of a 'disorder or dysfunction', since any evaluator can subjectively decide that any single, or even multiple, lacking element(s) of the definition can be omitted and still call it a 'disorder,' and since different evaluators may disagree, cumulatively thus finding many different elements missing, and yet each may still find that disorder present.

Without more, merely "a paraphilia NOS [not otherwise specified] diagnosis raised the odds of being recommended for commitment by over 10.5%, while a pedophilia diagnosis raised the odds over 4500%." *Melissa Hamilton, "Adjudicating Sex Crimes as Mental Disease," 33 Pace L. Rev. 536 (Spring, 2013), at 555.*

Conceptually, sex crimes can be divided into two categories, (a) those involving children (below or at puberty); and (b) those not. As to the first of these categories, appellate commitment decisions under said Act universally find that such a sex crime involving a child victim inherently bespeaks 'pedophilia,' denoting the particular definition of same in the DSM-5 of a 'sexual disorder' (not a 'mental illness'). Another such 'disorder' in the DSM-5 simply turns on the act of 'sexual abuse of a child.' Effectively, between the unscientific definition-by-fiat of these two disorders and the operation of this element, any sex offender with a crime involving children qualifies for commitment under this element. (F. Berlin quote per L. Oakes, "They're All Close Calls Now," *Star Tribune*, June 8, 2008, p. A1)

While child molestation is an immoral act, there is no medical evidence of it deriving from a mental deficiency; rather, it is a social construction that pedophilia is linked to a sick mind." *Melissa Hamil-*

ton, "Adjudicating Sex Crimes as Mental Disease," *supra*, at 579. See also: *Stephen T. and Ronald M. Holmes, Sex Crimes: Patterns and Behaviors* (3d ed. 2009), at 110, offering a variety of postulated: social learning, psychological, and sociobiological explanations for pedophilia; *Fred S. Berlin, "Commentary of Pedophilia Diagnostic Criteria in DSM-5," 39 J. Am. Acad. Psychiatry & Law 242, 243 (2011)*, conceding that it is disingenuous to suggest that the pedophilia diagnosis in the DSM is not based in part on value judgment. The fact is that "...psychiatry does not have a precise definition of pedophilia...." *Jennifer Jason, "Beyond No Man's Land: Psychiatry's Imprecision Revealed by Its Critique of SVP Statutes as Applied to Pedophilia," 83 S. Cal. L. Rev. 1319, 1331 (2010)*. Although the DSM-5 now requires that substantial "distress" be caused one by actual urgent impulses for sex with a child in order to be diagnosed as a pedophile, this "distress" requirement is regularly ignored by testifying psychologists and the committing courts.

Those whose sex crimes did not involve a child victim can also be deemed to fulfill this element of 'disorder or dysfunction.' The SDP law's reference to '...personality ...disorder' is a buzzphrase invoking the aforesaid alternative 'diagnosis' of an 'antisocial personality disorder.' Thus, in cases of rape of an adult, the hazy definitional terms of that DSM-declared 'disorder' are sufficiently vague as to support such a diagnosis based on such acts alone. Other sexual assault crimes of deliberately shocking sexual effrontery, such as 'flashing' one's genitals, can be said to be similarly antisocial by their very nature as well.

In sum, the element of a 'disorder or dysfunction' in the SDP law is almost inherently applicable in every sex offender commitment petition by the nature of the sexual misconduct itself. Because such 'disorders' are then inherently accepted as proof of 'inadequate control' of presumed 'impulses,' the SDP ground for commitment collapses to nothing more to qualify any Respondent for such SDP commitment than the sheer fact of a past record of sex crimes. This deprives Respondents of substantive due process.

Segment 4 will appear in the July TLP edition (Ed.).



\*\*\*\*\*

## No Matter What Else, Through Treatment or Otherwise, Desistance Will Find You — Inexorably. Maybe It Already Has. Since That Is Your Future, What Will You Do Then? You Should Be Thinking Now. This Will Help.

Editor's Note: What follows is the first installment of excerpts from a seminal book by one of the best of researchers earnestly studying how criminal desistance applies to sex offenders. The persistence of baseless political propaganda that sex offenders are unlike other criminals made it impossible previously to gain fair consideration of this question. However, in the end, science has once again won out.

It is now beyond serious question that permanently desisting from committing crimes applies to sex offenders just as it applies to all other criminals. This includes you.

While the fact of total extinction of criminality is inevitable, what is highly individual is what you will build it upon, and whether that will be a single mode or instead a construction of your own borrowing parts from among distinct modes?

It isn't very often in our circumstance that you get the chance to plan your future life. But this is that chance. Seize it!

The men the author interviewed for her book were pioneers of an unfortunate sort, having to find their way after release through the dark tunnel of their experiences, suffering from their ignorance and from being confronted by limitations at every turn. You can learn from this, paving your future experiences for a far less bumpy ride, as it were. So read on, take notes, and start thinking.

*Danielle Arlanda Harris, Desistance from Sexual Offending: Narratives of Retirement, Regulation and Recovery*, Palgrave MacMillan (2019)

Text excerpts:

Preface: pp. x-xi: [Discussing the experience of an ex-sex offender post-prison] "...Ross [all names fictional] ... completely fits the typical mold of the struggling ex-convict who shared the universal experiences of shame, harassment, discrimination, and oppression as he fights to navigate his way through a community that excludes him at every turn.

'It's unfortunate that the state hates me, and society hates me, and society hates me, and the press and the police perpetuate this hate by creating this monster that's the 'level 3 sex offender.' I live under this stigma all the time of never really being accepted back into society. [I] have to be kept in this position and so that's very difficult to deal with. I end up with this life that's kind of, y'know? I've got a lot of things going for me but this level 3 status, it puts a ceiling on me that I just can't get through.' (Ross)

Ours was one of the longest interviews I conducted. Ross was articulate an eloquent and careful with his words. He wanted to share his story and ensure that I understood it completely. It felt like he held nothing back. He was descriptive and thorough but not provocative or suggestive. He presented as honest and genuine but also critical and self-deprecating. He was very matter-of-fact about his offenses and was equally pragmatic about recommendations for policy solutions.

...[A]s will be demonstrated throughout this book, the present approach by the criminal justice subsystem toward individuals convicted of sexual offenses has, quite frankly, gone too far. Its intended consequences outweigh any chance at achieving the 'heightened community safety' for which we all strive and instead create dangerously criminogenic environments for an already disenfranchised segment of the population.

...Ross nicely articulates another one of the main arguments of this book:

'This cabal of legislatures, law enforcement, and media who perpetuate the myth of, you know, that the mainstream sex offender is actually that 1% guy: the Chester Molester guy that's hiding out in the public restroom or sneaking around the bushes. And I think that they perpetuate that myth that that's who sex offenders are. Because guess what? If you know who they really are, then you know that they're your brothers, they're your fathers, they're your cousins, they're your priests, they're your pastors, they're your policemen, they're your teachers, they're your scoutmasters, and they're your best friends, they're people that you love, they're people that you care about. And if you had to know that that's who these monsters are then guess what? You'd have to find a way to treat them compassionately, wouldn't you?' (Ross).

### Part 1: Introduction Chapter 1: Introduction

p. 3: ...Contrary to popular belief, desistance from sexual offending is an empirical reality. It happens; and it happens most of the time. A quickly growing body of knowledge now demonstrates that most men who commit sexual offenses (like men who engage in general,

(Continued on page 8)

Strategies of Desistance							
Retire		Regulate				Recover	
resign	rebuild	restrict	recluse	resist	rehearse	rehabilitate	resilient

(Continued from page 7)

nonsexual crime) eventually stop behaving that way (Farrall & Calverley, 2006; Gobbels, Ward, & Willis, 2012; Hanson, Helmus, Harris, & Thornton, 2014; Harris, 2014, 2015, 2016; Harris & Cudmore, 2015; Laws, 2016; Laws & Ward, 2011). Although there now exists a robust area of research devoted to understanding, managing, and preventing sexual aggression, we understand comparatively little about the mechanisms of desistance from this type of behavior.

We are observing desistance against a persistent backdrop of assumptions held strongly by practitioners, policymakers, and members of the public that sex offenders seldom if ever stop (Laws & Ward, 2011). It is often assumed that when they are released from custody to the street, recidivism (or 'failure') is the expected result.

p. 4: ...[T]he parallel legislative changes at both a state level and federal level that have banished individuals convicted of sex offenses from their communities, elevated the status of their offenses, and, in many cases, overestimated their dangerousness. ...Especially in the United States, laws are instead influenced by this very powerful (but largely erroneous) assumption of persistence and escalation.

pp. 4-5: Recent research on sex offending samples (Farmer, Beech, & Ward, 2011; Harris, 2014, 2015, 2016) so far concludes that, as a population, recidivism rates are fairly low and desistance is actually the modal outcome of release from custody. In fact, men convicted of sexual offenses appear to be desisting *in spite of* a range of obstacles that generic offenders simply do not face. The restrictions placed on individuals who are convicted of sexual offenses living in the community post release (again, predominantly in the United States) severely limit their ability to pursue or achieve the kinds of informal social controls that criminologists have long linked to desistance from general, nonsexual crime. Specifically, they are seldom able to find stable, paid employment or pursue a fulfilling relationship, let alone find a safe and affordable place to live. Furthermore, the debilitating stigma that accompanies the 'sex offender' label means that the achievement of a new identity or successful cognitive transformation – another compelling explanation of criminal desistance – is equally out of reach.

pp. 11-12: ...Unlike the bulk of research that has so far been conducted on these

populations, I have not found it especially useful (or even interesting) to arrange the men into groups based on their offense or victim characteristics. For example, when it comes to describing their process of desistance, I found virtually no substantive differences between 'rapists' or 'child molesters,' and consistent with my adherence to person-first language, I don't find value in the use of such labels or categories. I did not conclude that men with adult victims or male victims or extra-familial victims were any more likely to desist or to reoffend than those with other victims.

p. 15: The present reality for men convicted of sexual offenses is bleak. Although I found evidence of desistance, behavioral change, and cognitive transformation, in no way could it be viewed as a product of the current restrictive and retributive legal landscape. When I did witness hope or peace or acceptance or gratitude, it was always as glimmers in a much bigger sea of depression, despondence, and despair. In fact, when they were doing well, they were doing so *in spite of* the policy provisions and legislative changes we have passed. The modal emergent themes uncovered substantial social, political, and economic struggles. Sexual recidivism rates continue to be low, and although some of these men might 'graduate' treatment or 'complete' probation, their lives are patently miserable and their pasts haunt them forever.8

#### Chapter 2: Defining and Deconstructing Desistance

pp. 24-5: ...[T]he present sample is taken on a prolific enough group that the need to find 'sufficiently persistent' offenders who had committed 'serious enough' crimes was never a concern. Their offense histories featured a range of circumstances: many incidents committed compulsively, with no identifiable contact victims; multiple occurrences over many months or years with a single victim; or multiple events with different victims over time. So, even if some do not individually meet an empirical definition of 'persistent,' taken together they certainly satisfy any conception of damaging and chronic criminal behavior.

p. 25: The 'When?'

...Despite the central relevance of time and timing to the operationalization of desistance, it is seldom considered in the available literature. Guilt or innocence and charge or conviction, for example, are yes/no, dichotomous questions. That

it happened ten days ago or ten years ago seems to be much less relevant (to the criminal justice system) than that it happened at all. To the men, however, timing is everything.

#### p.26: How Long is Long Enough?

The main way in which time gets considered by most studies of desistance is how long one has been 'desisting' since their most recent release. How long should a 'follow up' period be? Evidently, desistance will be most believable if someone has been 'offense free' for a prescribed period. Follow-up studies in the past have used a range of windows including 12 months, 3 years, 5 years, 10 years, and so on. Of course, there is no agreed-upon length of time required for someone to demonstrate that they have been sufficiently 'offense free.' Follow-up periods vary greatly and appear to depend (among other things) on the author, the sample, the unit/s of analysis, and the method/s of data collection.

For instance, it has been argued that 12 months of crime-free street time is sufficient (Graham & Bowling, 1995; Healy, 2010) and also that a follow-up of 2 years of street time is necessary to capture reconstructions (Cann, Falshaw, & Friendship, 2004; Healy, 2010).

p. 27: As soon as one considers the concept of time as a variable, several related questions emerge.... Perhaps we focus on the point in time at which the offense was committed? But then we might compare two men whose crimes were both committed 20 years ago, where the first was caught immediately, served 18 years, and has been out a few months, and the second took 5 years to get detected, served 5 years, and has been out for 10 years? Perhaps we focus on the length of the sentence? But then we might compare two men who each served 5 years, where the first was released 3 months ago and the second has been out for 15 years?

The practical implications that stem from the conclusions we draw about aging out, knitting off, growing old, waiting to be caught, selective incapacitation, and the age-crime relationship are potentially immense.

#### Chapter 3: Situating the Sample, Meeting the Men, and Telling Their Stories

pp. 58-9: Finding the Men in the Community

...[A]lthough we obtained addresses or phone numbers for the participants, our experience definitely supported the anecdotal concerns of law enforcement that these men live especially transient lives.

Many reported 'bouncing around' or 'couch surfing' extremely frequently between friends and family members, making them difficult to locate. Although many had cellular phones, we quickly learned that they could seldom afford to pay their phone bills or maintain active voicemail accounts. For example, there were 31 confirmed participants of the GRP for whom we found street addresses. We contacted them via the US Postal Service, and 17 letters (55%) were returned because no such address existed, or because no one by that name live at that address. A considerable number of 'addresses' that appeared on public sex offender registry websites in no way corresponded to an actual, physical location or was, according to Google Maps, a vacant lot, parking structure, or nonresidential business. We then sent letters to 53 of the traditionally released men, and 31 of those letters (58%) were returned for the same reasons.

**M**en convicted of sexual offenses appear to be desisting in spite of a range of obstacles that generic offenders simply do not face.

This is somewhat alarming, especially of one (wrongfully) assumes that these interventions and registries have any positive impact on ensuring public safety. Given the long string of unfounded mandates that have been directed at law enforcement over the last decade or so (as a direct response to the fervent wave of sex offense-specific legislation), it is unsurprising that woefully inadequate resources prevent the thorough investigation or validation of these kinds of data. In many jurisdictions, they simply do not have the resources, financial or otherwise, to capably fact check this level of information.

p. 59: ...The men who were hardest to contact were those who were living independently, doing especially well, and who were now employed and/or in a steady relationship. Two such men agreed to participate and completed their interviews. This means that the men who were likely the most successful at leaving the life behind them were also the ones that were least willing to participate. This irony is not lost on me. It remains an unfortunate limitation that I have not been able to connect with more of those men who were doing particularly well. I suspect that their reluctance to talk about their 'old life' might in fact be evidence of an especially powerful kind of resilience

(Continued on page 9)

(Continued from page 8)

and adaptation, or an equally adamant rejection of social stigma and labeling that has likely facilitated their coping upon release. I revisit this hypothesis in the concluding chapters. Like thwarted terrorist attacks, we seldom hear of the 'successes' when sex offenders desist. p. 65: 'Were You Scared?'

...Some participants had committed crimes that attracted considerable media attention and in some cases were so notorious that they were mentioned or referred to by multiple interviewees.

...Even with numerous resources at my disposal, I still always preferred interviewing the men *before* reading their files. Indeed, when I think about what they *did* share, and how completely some of them appeared to commit to the study, I chose to proceed as if they have shared their

Resistance by the Numbers

...[A]fter the interviews, I knew too much to take their official records seriously. If all I had to go on was a rap sheet, that would be one thing. If all I had to go on was a police report, that would be another. But having access, in some cases, to court transcripts, victim impact statements, rap sheets, offender interviews by police, witness accounts of events, police reports, water cooler conversations with therapists, as well as my dantly clear that relying solely on official statistics just would not do.

p. 66: What I hope will be among the biggest contributions of this book is my oft-made argument within it that everything we can possibly know about sexual crime is socially constructed. The impact of the criminal justice system and the specific intervention that occurred for a particular individual, at a particular point in time, are profound and frequently ignored.

pp. 71-2: **Part 2: What They Did**

Part II introduces the reader to the men in the study.

Four offending scenarios are provided below:

...Sexual recidivism: 34 men who experienced interrupted desistance. That is, they were convicted and incarcerated for (at least) a second, sexual offense after having been officially sanctioned and sentenced for an earlier sexual offense.

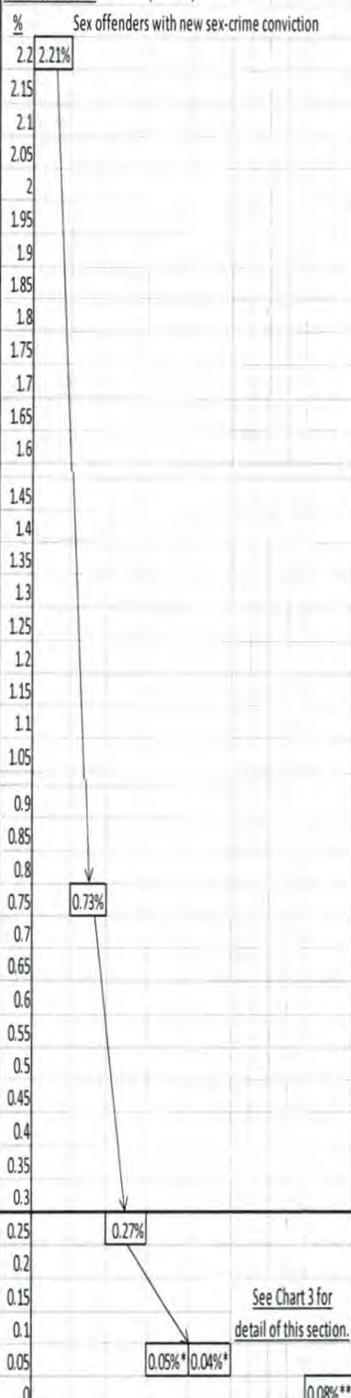
Chapter 5: The Experience of Relapse

pp. 111-12:

Each of the specific strategies of desistance (retirement, regulation, and recovery) was represented by the men who had recidivated, but most of them (60%) fell somewhere in the middle category of regulation. These men were surviving, but they struggled. They

walked through their days attentive to and cautious of the restrictions to which

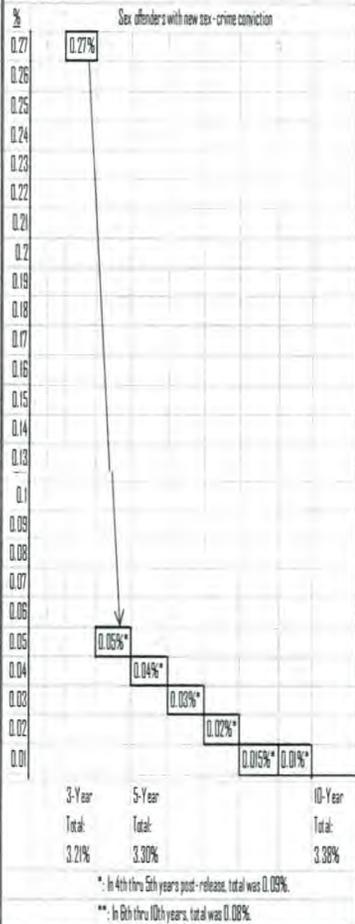
Detailed View #1 (Chart 2)



Cumulatively:	3-Year Total:	5-Year Total:	10-Year Total:
	3.21%	3.30%	3.38%
	* Total of 4th thru 5th years post-release: 0.09%		
	** Total of 6th thru 10th years: 0.08%		

they were subject. ...They were cautious and they lived as if every action they took

Detailed View #2 (Chart 3)



These charts from California study of recidivism among thousands of sex offenders

was carefully monitored and controlled by their parole or probation officers and their treatment providers. In comparison, the retirees were criminally versatile in their youth and had grown old and tired. Their narratives of both offending and desistance were almost entirely in the past tense. They were done. At the other end of the spectrum were the men who embraced the rehabilitative script, tried to demonstrate their total reformation and full recovery, and looked forward to the future. The 'rehabilitated recidivists' were an especially interesting group. They (Brent, etc.) used the language of recovery with conviction, but did so quite unexpectedly behind bars. A separate section in Chapter 8 is dedicated to these seemingly manufactured narratives of recovery (rehabilitation and resilience).

p. 121: ...[F]or the men who were free, regardless of how long they had been living in the community, those who talked most positively about their release con-

sistently shared the theme of 'enjoying the little things':

...I never thought I would go to the beach again and my sister, the second day I was out, ...we went right to the beach. It was in May. The water was freezing but I went right in. I never thought that would happen so that was a big thing to me. I enjoy my life today. (Joel)

p.125: In Hindsight They Weren't Ready for Release, but Things Are Different Now.

Declaring that 'things are different now' was a common script used by the men. Whether they emphasized an internal transformation or the therapeutic benefit of a treatment regime that resonated for them, focusing on the fact that they had changed since the first intervention was very important. Some men blamed the ineffective treatment....:

bäck, and then Good Livés Mödel nōw. When I left for the first time, most treatment was telling me about what not to do, the things I should avoid, but not about the positive things I could do, it left me in an empty space, sort of paralyzed and fearful at the critical moments.... (Jesse)

p. 135: **Part III: How They Stopped**

The *Retirement Strategy* (Chapter 6) emphasizes a natural style of desistance reminiscent of what criminologists call were two specific approaches here: 'resign' and 'rebuild.' Men who 'resigned' simply gave up, very consciously withdrawing from their 'old life' which often featured a prolific and versatile criminal career. The other men who described 'retiring' did so equally voluntarily and straightforwardly but had additionally demonstrated deliberate efforts to 'rebuild' their lives and 'rebound' in a way that invokes the recent literature on post-traumatic growth (Calhoun & Tedeschi, 2006).

pp. 136-7: In Chapter 7, the *Regulation Strategy* characterizes desistance as being a product of the men's ability to navigate and adapt to the increasingly restrictive rules and conditions set forth by law. There were four specific approaches within this strategy: 'restricted,' 'rehearsed,' 'resistant,' and 'reclusive.' The men who described desisting through 'restrictions' did so by very carefully monitoring themselves hypervigilantly and ensuring that they were in strict compliance with the rules to which they were subject. The strategy of 'rehearsal' emphasized a more nuanced but internal locus of control. The rehearsed desisters were active in group therapy and could readily recite the treatment scripts they had been taught, but any true rehabilita-

(Continued on page 10)

(Continued from page 9)

tion was overshadowed by the fear of restrictions and relapse. The men who used the remaining strategies were similarly acquiescent to rules and regulations but were notably either 'resistant' or 'reclusive.' The resistant strategy was characterized by not only the deterrence of further sanctions but also an utter rejection of both the criminal justice system and psychotherapy. The men who used this strategy were extraordinarily pessimistic and almost militant in their blatant disregard for treatment guidelines or probation conditions. Finally, the reclusive desisters demanded isolation and seclusion. They strongly favored solitude and had resolved to obey the law by essentially removing themselves from society. They seldom engaged with their community and almost never left the house.

p. 137: Finally, the men who describe using a *Strategy of Recovery* (Chapter 8) describe their desistance process in two distinct ways: through 'rehabilitation' and through 'resilience.' The men who followed a rehabilitative path reported being profoundly and positively impacted by their experience of therapy and treatment and were especially keen to proselytize about that successful transformation. As per the dictionary definition, they had restored themselves to some degree of normal life through appropriate training. They appeared to have achieved some level of cognitive transformation (albeit with the stigmatized label of 'desister' mentored other men with sexual offense convictions and were motivated to help others and give back. The 'resilient' men demonstrated a similarly commanding confidence to live offense-free lives, but the change was more subtle and internal. They were equally certain of their total recovery, but were insistent that their transformation had occurred largely independently of group treatment and psychotherapy.

Chapter 6: The Retirement Strategy and the Natural Path to Desistance

p. 139: This chapter introduces the men who employed a 'retirement' strategy of those who have simply 'resigned' and those who appear to have resigned but who have also 'rebuilt' themselves or their lives. The men I introduce in this chapter explained that they stopped offending quite organically....

The men whose behavior best represented this natural process of 'desistance by retirement' clearly reflected the standard criminological observation of one maturing out of crime, either by 'aging out' or 'knifing off.' Many of the men frequently and specifically emphasized the process of getting older and growing

up and noticeably did *not* mention any of the characteristics of the other strategies that I refer to as Regulation (Chapter 7) or Recovery (Chapter 8). Although some of these men might have married or partnered since their release and some had managed to find work, it was decidedly *not* the informal social control of their career or their relationship that led to their desistance.

pp. 139-40: The second key element that defined the retirement strategy of desistance (and distinguished it from regulation and recovery) is that their decline in or abstinence from offending transpired entirely outside the influence of the criminal justice system. That is, their behavior changed without (and sometimes in spite of) the actions or influences of any type of correctional program or therapeutic intervention (Laws & Ward, 2011). Farrell (in Healy, 2010) has argued that it is this type of desistance that is perhaps the most profound, but of course, it is also the least well understood.

p. 140: The observation of desistance by retirement has important consequences for those who work within the realm of sexual offending research and treatment. The now ubiquitous treatment and management industry that has emerged alongside the criminal justice system to deliver its often mandatory, long-term, group-based therapy is essentially based on the premise that all men who commit sex offenses are deviant and warrant specific and specialized treatment. Intervention is rarely (if ever) considered possible. Understanding the extent to which this shift might indeed transpire naturally and identifying what steps can be taken to better facilitate that shift is clearly necessary and overdue.

pp. 140-1: Natural Desistance Defined

'Knifing off' and 'aging out' are two distinct but similar processes. 'Knifing off' (Maruna, 2001) is observed when someone divides their life story in two distinct halves. As such, they tend to describe themselves as having lived two very separate and identifiable lives. A hallmark of the language used by men p. 141: When pressed to describe when this shift took place, the men most often mentioned their time in custody, rather than the time of the offense. If the change was sudden, it was the point of arrest, when they were caught. If it was gradual, it almost certainly occurred during prison (but not during treatment, *per se*).

pp. 141-2: Although 'aging out' still captures a behavioral change external to any formal intervention, I see it as distinct from 'knifing off' in that it refers specifically to a narrative where age and maturity

are emphasized. Here, the individual attributes their desistance from crime explicitly to growing older. This notion resonated with many participants:

It's just not in me no more. I'm too old ...I got tired of fighting, y'know? (Caleb)

I was watching my nieces and nephews get older and I was watching, every guy in there was hearing, who did what for the holidays and, I mean, I'm 55 now. I started getting older myself, and then, y'know? I got tired, I was tired. (Todd)

I also think it has to do with age. I'm more mature. I'm not 25 or 35 so, whereas chemically and emotionally I was more impulsive ...I'm not feeling that. (Jeremiah)

Some men in the sample offered age or maturation as the predominant reason they no longer offended. The following excerpts demonstrate a kind of 'offending fatigue' and the conscious decision to leave their criminal lives behind them. Those men who employed a retirement strategy of desistance and described 'aging out' were reminiscent of Presser's (2008) incarcerated participants and also expressed how their values and general perspective on life had completely changed since their youth.

p.143: Those who 'knife off' are sometimes able to describe experiencing a kind of turning point where they suddenly and rationally decided to stop offending. ...Importantly though, that was often exactly how they described it—an immediate change that occurred overnight. The natural processes of maturity, the importance of painstakingly building stakes in conformity, or cognitive shifts that occur over time, during years of psychotherapy. Second, it is challenging to accept from a practical perspective because the resulting implications for policy-makers, correctional officers and treatment providers are evidently limited – if they stop on their own, then there's little to be achieved by professionals trying to intervene or facilitate that apparent change process.

p. 145: The Retirement Strategy

...The desistance strategies of retirement and Koss are quoted in this chapter when they describe aging out or knifing off, but they also appear in Chapter 8, where they seem to have benefitted much more convincingly from the therapeutic and life-changing impact of psychological treatment.

p. 161: The Experience of Treatment and the Chance for Cognitive Transformation

None of the men who described their desistance as the product of retirement admitted to benefitting hugely from treatment. As Todd explained:

To be totally honest with you, I resist-

ed the treatment center. I just was, just sat doing my prison sentence until I was three years into it, I was rebellious. I was still angry. I had people that I associated with which was, I don't want to say 'gangsters,' but people that weren't going with the program.

I was in a group and all that, but it's not so much the therapists that know you, because the guys you live with 24 hours a day, 7 days a week, 365 days a year, those are the people that know you. So, those were the people you want calling you on your issues. Not the therapy, therapists. But you know, when you start hearing this stuff from your friends and things like that, y'know? I said, 'hey, this ain't for me no more, it's time to change.' (Todd)

Their behavior changed without (and sometimes in spite of) the actions or influences of any type of correctional program or therapeutic intervention

pp. 168-69: Retirement in Custody

Most of the men who utilized a retirement strategy of desistance are living in the community. Three, however, were interviewed behind bars and will likely never be released. They indicated that they had stopped offending fairly naturally and wouldn't do it again, but they faced the insult of never being able to prove it. Richard paints a bleak picture of his existence:

I've adjusted to it over the years. I live day by day...I'm mostly just existing with mental and physical characteristics that keep me aware of life. Though I can't participate in the outside, I can pay attention to television, media, and newspapers. I'm deteriorating. It saddens me to know that old age has set in but a lot of people in here have a lot more problems. I anticipated badder times coming. But I count my blessings. That's where I am on a really every day level. Now, on a personal level, every so often, it's a very, this is an unnatural living experience. This is a zoo. This is not a natural place. You wouldn't ask people to live on a long but it saddens me. I'm also aware of my day to day living experiences. So how do you define my living experience? If I cannot look forward with hope and I cannot look back with pride, then I'm just existing. I'm just existing. (Richard)

[The second installment of excerpts from this book will appear in the next edition of *TLP*. Specific modes that may be followed are discussed in detail in that part, so don't miss it!

\*\*\*\*\*