

"An injustice anywhere is a threat to justice everywhere." – Dr. Martin Luther King, Jr.

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Less restrictive alternative

Coming Soon:

- ✓ Residency & Employment Restrictions: No Impact on Recidivism, Just Politics
- ✓ Banishment by a Thousand Laws
- ✓ Inaccurate Prediction of Future Offending: The Real Drilldown
- ✓ Packingham – Wayne Logan's Take
- ✓ Remorse Bias — What's THAT?
- ✓ A Little History Yields Deja Vu
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- ✓ 'New' SORN Laws Are Punitive
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- ✓ Static-99R, MnSOST-4, SAPROF, COMPAS: Survival Analysis & Secret Algorithms, etc.—Talking Smack about Junk
- ✓ Lie-Detector Interrogation & Peter Meter Testing: Keeping You Down by False Hope, Fear, & Shame
- ✓ Hello? Hello?: The Deliberate Disconnection of SOCC Victims as Involuntary Laryngectomy. Why We Desperately Need Internet Access as a Public Voice
- ✓ Conscience Confrontation of Legislators (Real Psychopaths)
- ↳ So much to learn, you'll need a cranial 20 TB solid-state drive!

Feedback? News? Write!
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Result: A High Noon Showdown at the OK Corral Karsjens Case Defendants Refuse to Negotiate Earnestly; Defense Tries, Fails to 'Buy Off' Named 14 Plaintiffs with Personal Outside Reassessment, Release. Oral Argument Held. Prompt Decision Likely; Content Uncertain.

By Cyrus Gladden, Sunday, Jan. 9, 2022:

Reports without official confirmation assert the following as the latest in the *Karsjens v. Harpstead et al.* ("Karsjens") federal case. The federal Eighth Circuit Court of Appeals had remanded the case to Judge Donovan Frank of the U.S. District Court for decision on the remainder of the case.

On November 19, 2021, a subordinate judge ordered the parties to hold a settlement conference. That order was close to unprecedented in its firmness and specific, detailed requirements. The settlement conference took place on Thursday, January 6, 2022.

Positions of the respective sides were extremely far apart. The Named Plaintiffs acted for the whole "class" of Plaintiffs. They insisted that every confined member of the class be evaluated by expert sex offender "assessors" unrelated to MSOP, and that all class members now found not to meet both statutory or constitutionally required elements for sex offender commitment be released and their commitments terminated.

Defendants responded that they would not agree to any class-wide relief. Defense counsel offered such evaluations and possible release pending evaluation outcome only to the 14 Named Plaintiffs themselves, in return for giving up the remainder of the case — essentially an attempted personal 'buy-off' for abandoning the rest of the class. That offer was firmly rejected by the Named Plaintiffs. Negotiations thus failed and were closed.

Pursuant to that outcome, oral argument was held on January 12th. Plaintiffs' counsel, *for the named plaintiffs, for the release of MSOP confinees.* MSOP has all hallmarks of imprisonment and none of a mental hospital.



Those held by MSOP remain confined for at least many years, often until death. MSOP heads concede that MSOP has done nothing to provide qualifying confinees with restrictive alternatives to confinement, and hampers confinees trying to get through treatment. This violates the due process requirement of adherence to scientific principles applied by professional judgment to provide treatment of a reasonably short duration as everywhere else and release at the end of that duration. Even proposed transfer to a less-restrictive, but still-secured facility in Cambridge, MN was gubernatorially vetoed in 2013. No further similar proposals were ever launched by MSOP. After decades of needless confinement, CPS is no alternative, just a weak apology for all that unnecessary confinement.

Assistant Attorney General Aaron Winters contended that the 'shocks-the-conscience' standard of the first *Karsjens* appeal should be applied as to such conditions of confinement as well. Only MSOP's physical environment is prison-like [ignoring MSOP's massive number of austere rules and long, unlimited confinement in secure, often, for, repeat, appeal covered conditions of confinement. Winters conceded it did not.

Judge Frank ended the hearing, saying he would email the parties next week to state when he will issue his order. It is widely expected that this ruling will conclude the case, except for a possible third appeal. The court's final ruling reasonably can be expected to come more quickly than it would in most comparable large-class actions with multiple claims. Some Plaintiff class members speculate that a ruling may be issued six to eight weeks after that argument.

The result of that expected decision is uncertain. The two earlier appeals have left ambiguities, even seeming inconsistencies, that may only be resolved by a third appeal, regardless of which way Judge Frank rules.

Many constitutional scholars have scathed the 'divergent logic' used by the first appeal in rejecting claims for mass reassessments and releases as an unjustified aberration from SCOTUS case law and as placing the Eighth Circuit in opposition to related rulings in other federal circuits. The second appeal seems apologetic as to the first appellate ruling.

Hence, the new decision by Judge Frank could try to resurrect the reassessment-and-release claim by end-running that appellate restriction in a way the 8th Circuit might find hard to overturn with any judicial legitimacy.

On the other end, the *Karsjens* trial focused on facts mostly about the need for such reassessments, not poor conditions of confinement in MSOP. Hence, relief from bad conditions might be attacked on appeal as not fully based on the facts. Yet, since prior appeals did not fault Judge Frank's factual findings — including, no, confinement, conditions, that forthcoming ruling. Stay tuned!

News from Elsewhere Edition

Texas: — Cruel Treatment of Confinees
Lenore Skenazy, "Former Staffers Condemn Cruel Treatment of Inmates at a Texan Prison for Sex Offenders Unfair Treatment of Sex Offenders," Texas Tea Newsletter, 8/12/21.

Text:
 "The men must keep masturbation diaries, wear ankle monitors, and even use penile circumference gauges.

For many men serving time for committing sex offenses in Texas, their prison time never really ends — even if they complete their sentence. That's because they're required to enter a live-in mental health facility before returning to society.



That facility — in Littlefield, Texas — is actually a former maximum security prison in the middle of a dirt field.

'It comes as a surprise,' says Mary Sue Molnar, founder of Texas Voices for Reason

and Justice, a nonprofit dedicated to reforming the state's sex offense laws and registry. 'I often get letters from prisons saying, "Oh my God, they're going to civil commit me. What should I do?"'

Civil commitment is the practice of keeping people locked up past their release date, on the grounds that they are so dangerous they need therapy — years and years if it — before they can safely return to society.

Of course, Molnar notes, if the state really 'wanted them to have treatment and counseling, they had plenty of time to get that done. In some cases, the men served 20 to 25 years' in an ordinary prison before being

civily committed.

This might seem just. But even as we feel great anger and sorrow on behalf of sex crime victims, we can also some that civil commitment is an extra prison sentence by another name.

Originally called *clients* or *residents* when the center opened in 2015, the men have been re-labeled 'inmates' since Management and Training Corporation, a private prison company, took over in 2019.

Mandi Harner, a former security officer said, "I'm not here to tell you that everyone in there is an angel. But there are some men who deserve treatment they're not getting, and also some who did things as teenagers who don't deserve to be there their whole lives."

For their first year or two at the treatment facility, the men are required to wear electronic ankle monitors that they have to pay for, according to Harner. MTC declined a request for comment about this and other claims made by sources in this article, as did the Texas Civil Commitment Office (TCCO), the government agency that oversees the facility.

There is only one way to get out of Littlefield: the men must work their way up through four tiers of treatment before they are allowed to petition for their freedom.

The therapeutic techniques sound hodge-podge. The inmates 'have to admit to all of their offenses and share it with the group,' said one of the founders of Texans Against Civil Commitment (TACC), a former Littlefield therapist who writes under the name 'Murphy' and who claims to have been fired for not seeing 'eye to eye with management.' 'And they have to keep a masturbation log so the therapist knows how often they're masturbating and what they're masturbating about. So she knows whether it's healthy or whether it's deviant.' The men must also record whether or not they climaxed. Those logs are read aloud in group therapy. The prison also employs polygraphs and penile plethysmography, measuring changes in the circumference or volume of the penis as the men watch and listen to different stimuli.

When an inmate moves up a tier, which can take a year, he can find himself demoted for many reasons, including very small infractions. One man who had been at Littlefield for years and made it through all four tiers was finally about to get his release hearing. But he did something wrong – rumor had it he swore at a guard – and was knocked back down to Tier 1, where he would have to start anew, according to Murphy. He went to his cell and hanged himself.

A former Littlefield guard I'll call Frank – who says he quit but wants to stay in

corrections and fears retaliation – said this wasn't the only tragedy he has witnessed there. Another man, he said, castrated himself.

Frank estimates about 15 percent of the men are intellectually challenged, so they will never be able to successfully complete the therapy, because they don't understand it.



The average age of inmates is 58, says Murphy. 'But there are several 80-year-old men. There are several blind men, several that use walkers and wheelchairs.' That's because almost no one ever manages to complete the therapy, according to a 2015 study.

During the height of the Covid-19 pandemic, when the men were locked two to a cell for 23 hours a day for several months, nine men out of about 300 died.

'We were to go with them to the hospital, two officers per resident – and you would just stare at them while on ventilators and get paid for it,' says Harner. And when they knew they were dying, they weren't even allowed to call their mom or dad because TCCO said you can't.'

Until recently, inmates also had to pay a 33 percent tax on any packages they got, further isolating them from any support system they might have on the outside. For instance, if family members sent a pair of jeans and three boxes of Chips Ahoy, they would have to document what it cost and pay another 33 percent to the prison.

'One of our members during Covid-19 sent her son a package of masks and they were valued at \$20,' says Molnar. 'She had to pay 33 percent on top of that to send him those masks.'

That rule was just changed, most likely as a result of pressure from TACC. Now prisoners have to pay a 25 percent fee on any money sent to them from someone other than their spouse, according to Molnar.

Civil commitment rests on the mistaken belief that people who committed sex offenses are incorrigible – despite very low recidivism rates. What's more, no one who serves time for a sex crime enters the community unsupervised after their prison term. They remain under strict supervision for years, sometimes for life, on probation, parole, and often the Sex Offense Registry.

Civil commitment is by no means confined to Texas, and Littlefield's status as a privately operated facility is hardly the

main issue. The problem is bad laws, as well as court decisions that have upheld them: More than 6,000 people are confined under civil commitment in 21 states. While the Fifth and 14th Amendments to the U.S. Constitution prohibit double jeopardy, the Supreme Court has ruled that it is acceptable to effectively imprison sex offenders a second time – not for the crimes they committed, but for future crimes they might commit.

Recently, about 40 men at a civil commitment facility in Minnesota went on a hunger strike to protest, and indefinite Minnesota first began civil commitment in 1994, processing hundreds of men, it has granted only 14 full discharges and 45 provisional discharges.

Meanwhile, back in Texas, Littlefield has become a human 'storage facility,' says Frank.

What This All Amounts to; Subtle Daily Inhumanities Foretell a Future Worse. Text & Excerpts from 2 Letters by Littlefield Confinees:

[Anonymous], "It Is What It Is," Insider News Dept., *Texas Tea Newsletter*, Vol. 1, No. 1 (December 2021) (Nov 15, 2021).

Text:

'By a TCCC Resident
Texas' sex offender civil commitment was created for hate and retribution and used to test the expansion of law.

There have been over 600 sex offender civil commitments since the state legislature enactment in 1999. Less than 20 inmates have been released by appeal, court challenge or token success while more than 275 were sent back to prison for program rule violations [Ed. Note: Many of these were convicted of the "crime" of any such violation by a person under TCCC commitment, a statute specifically enacted to cover only such persons. These 'twice-victimised' individuals are now serving sentences that range from 10 to 20 years for each such violation.] and over 100 have died from inadequate medical care [under] its auspices.

When all of the special interest, legalism and financial gain is taken away [Ed. Note: We wish they all would be!], all that is left is the hate and retribution. There is no professional, moral, or ethical standard practiced in sex offender civil commitment. It has nothing to do with public safety or treatment. There will never be a treat-and-release model, a clear path out or justice done by it. It is nothing more than a collateral life sentence for those of us in it.

Sex offender civil commitment is an *ex post facto*, double jeopardy, cruel and unusual punishment and indefinite sentencing scheme. The sex offender civil commitment scheme is more corrupt than

Guantanamo Bay.

The good news is that when the hype is exposed and dispelled like the threat witchcraft posed in its time, this too will pass. Sadly, when it does, the hundreds of propagandists and supporters pushing this scheme will have done more harm to victims of sexual crimes and undermined public safety than the sex offenders they hated and punished. They will have wasted billions of dollars and resources that would have created public safety and helped victims recover. 22 years and counting of facts [that] speak for below.]

It is what it is!!!"

Littlefield has become a human 'storage facility.'

Richard A. Dunsmore, "Greetings from Hell on Earth -- *Practically*," Insider News Dept., *Texas Tea Newsletter*, Vol. 1, No. 1 (December 2021) (Nov 15, 2021).

Text Excerpt:

...Recently, a private corporation, Management and Training Corporation ("MTC") purchased the Bill Clayton Detention facility, in which the TCCC has been housed since 2015. The corporate officers and probably the facility's administration seem to have gone off the deep end and made decisions about how to house the residents of the already unhealthy, overcrowded facility, based on administrative convenience and financial needs, that can in no way be in compliance with local, state, and federal regulations, that allow MIC to have a certificate of occupancy for the facility to be used as a mental health clients' treatment facility.

First, they wanted to house TCCC residents in a non-climate-controlled gym, with only 1 toilet, 1 urinal, and kind-of-a-shower. This arrangement would not have met TX Admin. Code, Title 25, Chapter 125 or the minimum standards of the 8th Amendment for non-disciplinary housing of mental health clients – This, after our in-dorm recreation area was taken from us, to put way too many ... bunk beds in them, which does not meet the contemporary standards of decency for 'treatment center client housing.' It does not even meet Texas Jail Commission minimum requirements.

Now, MTC wants to convert the canned goods and dry goods food storage room, with no toilet, no urinal, no outside light source, inadequate ventilation and no shower, into 'housing,' for up to 12 bunks. Again, this cannot be in compliance with county or city code(s), state or county health department requirements and anywhere near the contract requirements that MTC signed with the State of Texas to provide adequate and industry-

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standard/appropriate housing, treatment, medical care and food service to the approximately 400 TCCC human beings that MTC is trying to squish in here like sardines.

When all of the special interest, legalism and financial gain is taken away, all that is left is the hate and retribution.

As MTC is doing what they want, I can also say that this ridiculously punitive housing idea cannot meet the spatial requirements for new construction that will be used or the occupancy of human beings. I don't know what deal the City of Littlefield and/or Lamb County have with MTC, but is MTC exempt from the permitting-process and does MTC have waivers Decency for MAMR Client housing?

Example: In the sarcastically termed 'Big Ruckus' (that used to be our on-dorm recreation rooms), residents are too close in proximity, such that they inhale what their neighbor exhales. (This facility is already making a bad - very bad living situation for 90% of the TCCC's residents much, much worse., with every cheapskate idea they come up with regarding our care, housing and treatment. (Except the ones that they like to do dog-and-pony shows with - show off to visiting officials, that have trailers to live in) - like most of us should, if we really have to stay at this crazy place.)

Now, I know there is no way a non-corrupt building inspector and/or code enforcement officer and/or Health Department official would sign off on MTC's current use and occupancy of the food storage room (or a dorm's recreation room or a gym) as resident housing. Maybe TCCO (the believer of draconian treatment of us) will look the other way, but, with the proper inspections and code enforcement, this place could be shut down and/or at a minimum, converted back to the permitted at-time-of-construction condition.

The law is very specific about this. Just because MTC did not plan ahead, and get more residential trailers installed at the TCCC does not permit MTC to use this administrative convenience justification or financial/contractual necessity excuse to improperly house TCCC residents, i.e., Treatment Center clients, contrary to industry standards.

...What's next: putting us in a coat closet?"

Florida: Commitment Petitions Denied, Other Confinees Released

According to A.S. Phoenix, resident of the Florida Civil Commitment Center (FCCC), as of Nov. 12, 2021, "About a total of 20 FCCC residents have had their

[commitment] petitions dropped. Mr. Phoenix clarified, "They all were released from the FCC during the course of 2021." Separately, Phoenix adds, "Four FCCC residents were released from [their] civil commitments just two weeks ago."

Phoenix adds this perspective: "The Miami and Daytona Beach [Florida] civil commitment judges are the most prejudiced against releasing any FCCC residents.



California: Needless Confinement as Cruelty & Veiled Punishment for Being Gay

Investigations, May 23, 2018 <https://typeinvestigations.org>

Text:

Key Findings

- Evaluators believe that bias and subjectivity are widespread in civil commitment processes.
- Admitting to having a male victim on a Static-99R recidivism test may lead to results that indicate an increased risk of reoffending.
- Even civil rights groups avoid civil commitment inmates, which renders them invisible.
- No research exists to suggest the 20 states with civil commitment laws have lower rates of sexual violence or recidivism than the other 30.

"Prison-like public hospital systems are disproportionately packed with gay men who remain locked up even after serving their time.

At Coalinga State Hospital, located in a desolate, dusty part of California's Central Valley, 200 miles north of Los Angeles, 37-year-old Cory Hoch stands out. He's well-liked by other patients, and his dry sense of humor and lively intelligence come across almost immediately. His feathered earring and neon-green sneakers infuse some color into the surroundings, while his khaki scrubs identify him as a patient.

Since the age of 19, Hoch has lived most of his life in some form of cage. He is one of the more than 5,000 people in a hospital system found in 20 states and at the federal level. They are trapped in a

post-prison purgatory for those convicted of sex crimes, a system called 'civil commitment.' While we found that many people with sex offense convictions are released after their sentences are up, some, like Hoch, serve their time and then are held indefinitely, in government-run hospitals, exchanging one form of prison for another.

Under civil commitment, Hoch is supposed to be treated (and held) only until he is considered no longer a 'risk to the public,' according to mental health experts contracted by the state. In reality, he may spend the rest of his life locked up. Perhaps more troubling is the overrepresentation of people like Hoch - gay, bisexual, and queer men - who are trapped in this system.

The World's Gayest Club?

Resident newsletters, media reports of same-sex marriages occurring inside the facilities, estimated and self-reported accounts from people inside, and observations from advocates all point to a disproportionate number of queer men. The March 2010 issue of *The Ally*, Coalinga's newsletter produced by and for people in civil commitment, offers a vivid snapshot:

'Men have recently taken to walking the halls arm,' noted an op-ed. 'Lovers are out and about, walking around with their hands in each other's hip pockets, or just holding hands as they stroll.' Another article references 'conservative estimates' by social workers and psychologists pegging Coalinga's population as 55 to 65 percent gay or bisexual, and 1 percent transgender. In 2012, the national newsletter for Citizens United for the Rehabilitation of Errants ["CURE"], a small national advocacy group for people in civil commitment, surveyed its readership on the 'anecdotal trend we have observed that gay men are being disproportionately targeted for civil commitment.' With 80 responses from 11 states, the survey wasn't scientific or representative, but it found that 11 percent self-identified as gay while another 23 percent stated that they were bisexual.

A 2013 article in the *Star Tribune* of Minneapolis, about the imminent marriage of two male couples at the Moose Lake Treatment Facility of the Minnesota Sex Offender Program, quoted one resident who estimated '30 to 35 percent' of residents were in relationships with each other. Enough residents identify as LGBT that in June 2017, Moose Lake held a pride celebration.

At Larned State Hospital in Kansas, Mark (last name withheld to protect his privacy) estimates that 75 percent of the people at his facility identify as gay or bisexual. Taphatha Strickler, a therapist

who worked at Larned between 2012 and 2014, agrees that 'homosexuals are overrepresented' at the facility, which she compares to a supermax prison.

Michael Bass, until recently confined at the Central New York Psychiatric Center ["CNYPC"] in central New York, said that 'well over 50 percent' of CNYPC's population is out as gay or bisexual. "The library is almost like a gay club," he says - one where there is no music, touching is forbidden, and everyone wears the same tan hospital uniform.

Anecdotal evidence from civilly committed men, institutional medical staff, and advocates for prison reform suggests an overwhelming bias: Nearly 40 percent are men who have sex with other men (MSM), whether or not they self-identify as gay, bi, or same-gender loving. *Common American Men* reporter Willen asked, 'Do you personally identify as lesbian, gay, bisexual, or transgender?' making the vast numbers of gay and bisexual men in civil commitment even more disproportionate.

Men's incarceration in these spaces segregated by gender, convenience inevitably plays a role in sexual partnering (borrowing from pejorative prison lingo, some may be 'gay for the stay'). And unlike general prison records, even basic information about this population is considered confidential under health privacy laws.

No research exists to suggest the 20 states with civil commitment laws have lower rates of sexual violence or recidivism than the other 30.

This makes it almost impossible to determine who is in civil commitment, what they are in for, what treatment they receive, and where bias against LGBT people may emerge in the system, effectively cloaking any discrimination and potential violation of rights.

We spent nearly a year speaking to dozens of medical professionals and people in civil commitment, attempting to confirm what we'd heard from activists and uncovered in the scant media reports on the topic. But backing up our suspicions with hard data about who winds up locked up proved elusive.

Even more perplexing is that there is no clear evidence these costly programs are even effective. No research exists to suggest the 20 states with civil commitment laws have lower rates of sexual violence or recidivism, compared to rates in the 30 states without such laws.

Commonly viewed as the worst of the worst, this population of inmates is invisible. So much so that even civil rights groups avoid them. It is true that many

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people in the category of 'sex offender' have been convicted of significant harm to another person (often a minor), but the definition is alarmingly vague.

The American Psychiatric Association came out firmly against civil commitment laws, finding them to be a 'serious assault on the integrity of psychiatry.'*

Courts can convict a variety of people as sex offenders, including sex workers, men soliciting consensual sex from other men, people who do not disclose their HIV status prior to sexual activity, and people who pee or go nude in public. Though it does not excuse the fact that in many cases the men in civil commitment have harmed minors, a large-scale survey in the journal *Advances in Clinical Child Psychology* looked at data from dozens of sex offender studies and found that 40 to 80 percent of juvenile sex offenders were victims themselves. But the troubling lack of data about the civilly committed means we may never know if men who have sex with other men are being disproportionately targeted for civil commitment.

The 'Pipe Dream' of Freedom

Eric S. Janus, the Mitchell Hamline School of Law Professor who literally wrote the book on civil commitment – *Failure to Protect: America's Sexual Predator Laws and the Rise of the Preventive State* – explains over the phone that he has long 'had a hunch' MSM are overrepresented, but that no one collects such data.

Another reason for this lack of data collection is that civil commitment isn't a typical court process. Before release from prison, evaluators (two forensic psychologists in most states) are tasked with identifying those they believe are likely to reoffend, based on controversial test data, which is key in the civil court decision that decides whether a person is committed.



Gay: You Have the Right to Get Married — and Committed

Shan Jumper is clinical director at both the Illinois Department of Human Services Treatment and Detention Facility, a civil commitment facility in Rushville, Illinois, and at Liberty Healthcare Corporation, a private medical contractor for U.S. prisons. In 2012, Jumper and two colleagues published a profile of the 377 men detained or committed under Illinois' sexually violent predator law between January 1998 and August 2008.

While having a male victim doesn't necessarily mean the person identifies as gay or bisexual, Jumper's study found that almost 40 percent of the civilly committed in Illinois have male victims. (The vast majority of people in civil commitment nationally are male; out of the nearly 1,000 patients in California, only one is female.) The researchers compared these findings with similar studies from Texas, Florida, Wisconsin, Washington, California, Arizona, and Minnesota. Across these states, at least 30 percent and as high as 47 percent of men in civil commitment had at least one male victim.

The informally named 'peter meter' was deemed by a California court in 2006 to be an 'Orwellian procedure.' Yet it's still part of the process that the state uses to justify indefinite confinement.*

Some critics argue that outdated assessments and scientifically inaccurate testing could be to blame. The civilly committed, as well as mental health professionals, believe the specialists and the tests they use can be 'profoundly homophobic,' in the words of forensic psychologist and evaluator Karen Franklin.

Based in California, Franklin has worked as a civil commitment evaluator in her home state, plus in Iowa, in Washington, and at the federal level. Her belief – which five other evaluators we spoke to shared – is that there is widespread 'implicit bias' and 'subjectivity built into every single step of the process.' In 1998, the American Psychiatric Association came out firmly against civil commitment laws, finding them to be a 'serious assault on the integrity of psychiatry.'

The only way to get out is with a tag on your toe.*

Bias seems to be baked into the risk assessment phase. The Static-99R test, a 10-questions checklist created in 1999 consisting of calculations around the mathematical probabilities of recidivism, is based on data about people convicted of sexual offenses: age, nature of conviction, marital status, and whether they reoffended or not. But professional associations, academics, and practitioners have grave reservations regarding its accuracy and effectiveness.

For instance, admitting to having a male victim nets the respondents more points, which reportedly increase their risk of offending. Another question asks: "Ever lived with a lover for at least two years?" An inmate is considered less risky if they have had a two-year live-in relationship prior to imprisonment. Living with a same-sex lover used to be and sometimes still is risky for many in the U.S.

We're going to look back at the turn of the century and realize how wrong we've had it.*

In the Department of Justice's 2014 report *Sex Offender Management Assessment and Planning Initiative*, sex offender evaluator Dr. Phil Rich noted that the prevailing assessment tool for youth under 18 considers as risk factors particular circumstances that are far more prevalent among LGBT youth. Those more likely to score poorly on 'stability of current living situation,' for example, include LGBT youth who may be forced out of their homes and schools due to homophobia.

At age 7 and 8, Hoch was molested by two of his older siblings, giving him a worse score under 'history of physical assault,' which may have negatively affected his chances for release.

Another assessment tool that state courts have called ineffective, yet is still employed, is the penile plethysmograph. Developed in the 1950s, the PPG consists of a device attached to the penis to monitor its width as images are shown to an individual. Even a subtle change can be taken as arousal and thus affect a person's risk determination. Other responses, including turning away or failing to look at the image, can be considered cheating.

There is a line at which the government must stop. Penile plethysmography testing crosses it.

The informally named 'peter meter' was deemed by a California court in 2006 to be an 'Orwellian procedure.' The court further stated, 'There is a line at which the government must stop. Penile plethysmography testing crosses it.' Yet it's still part of the process that the state uses to justify indefinite confinement.

In the over two decades since California's civil commitment program started in 1996, out of a population of more than 1,000, only 272 were ultimately unconditionally discharged. "In many states, lie detector tests (considered unreliable and inadmissible as evidence in criminal courts) are mandated for anyone to move from one stage of treatment to another.

Hoch describes treatment as a 'useless pipe dream,' and he's not the only one. Approximately two-thirds of Coalinga's population refuses to participate in treatment, according to a 2009 report by the California Coalition on Sexual Offending, a group of doctors and law enforcement officials that advises California agencies on sexual abuse.

Other reasons offered for the low buy-in from inmates: a revolving door of therapists; that disclosures made in therapy may be used in arguments against the

men's release; an environment that resembles a prison more than a hospital; the vague criteria for release; and the tiny number of people released – even after being treated for years, or decades.

Courts have also raised concerns. In 2015, a U.S. District Court judge described Minnesota's program as 'draconian' and unconstitutional after advocates highlighted that zero inmates had been released since it launched in 1994. Also in 2015, a British court barred the extradition of an individual charged with a sexual crime in the U.S. In the third case of its kind, the British court cited civil commitment as violating the European Convention on Human Rights. With little transparency and almost no public awareness about civil commitment, it's easy to understand why a resident at Kansas's civil commitment facility told us, 'The only way to get out is with a tag on your toe.'

Approximately two-thirds of Coalinga's population refuses to participate in treatment.

No One Watches the Watchers

Jon Brandt is a Minnesota-based clinician who has assessed and worked with those convicted of sexual violence as well as their victims since the 1980s. He feels for the men who he believes pose no threat but exist in the limbo of an unjust system. A hundred years from now, Brandt says, 'we're going to look back at the turn of the century and realize how wrong – *how wrong* – we've had it.'

At 17, Hoch, who had been adopted as a toddler by a conservative Christian family in Southern California, was sent to the Emily Griffith Home for Boys (now Griffith Centers for Children Chin Up Group Home), a Colorado-residential facility for 'troubled' youth who have been sexually abused and have abused others. He was later imprisoned, at 19, for molesting a 7-year-old boy. He served some of his three-year sentence in solitary confinement, due to his physical disabilities. (Hoch has hydrocephalus: from his condition, he uses a wheelchair, and lives with trauma from being raped by another inmate.) He served his time, but freedom never materialized.

Hoch now has 'mixed emotions' about a lawsuit he filed against Coalinga's administrators for inadequate care, and a trial this summer, when he could be freed under California's compassionate release law for people with disabilities. But he isn't optimistic about his chances. Civil commitment is no one's cause célèbre. Even civil rights groups and prominent LGBT organizations avoid it. For example, a spokesperson for the Human Rights Campaign, told us it 'doesn't do work in this area.' Our face-to-face

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meeting with Hoch was his first with an outsider – not a doctor, nurse or public defender – in his ten years at Coalinga.

Exit Signs

Brandt reports that clinicians he speaks with at gatherings such as the Association for the Treatment of Sexual Abusers' annual conference insist that '20 to 80 percent' of people in civil commitment across the nation 'shouldn't be there.'

The men inside wait on the rest of us to notice. Other countries are developing proactive alternatives to civil commitment. Germany's 'Kein Täter Werden' ('Don't Offend') program, founded in 2005, is revolutionary in inviting people who 'like children in ways [they] shouldn't' to get free and nonstigmatizing treatment before the harm starts. A partner project was launched in Switzerland in 2009, but there is no U.S. equivalent.

Even if he is eventually released, Hoch knows that a conviction for molesting an underage boy will affect his chances on the outside – for employment, housing, and relationships. A few things seem clear in the two-plus years we have known Hoch: A decade at Coalinga hasn't facilitated any rehabilitation – he readily admits he now has more mental and physical health problems than when he entered the hospital. As a preventive measure, or as a deterrent, his seclusion is unproven. As our nation grapples with its massive incarcerated population (2 million locked up and counting), Hoch's government resources need a restructured system that isn't helping to end sexual abuse.

*: [The authors created these insets.]

Wisconsin: Conditions in the Gulag
[Anonymous Wis. SRSTC Confinee]
Letter excerpts:

1. "The Wisconsin Resource Center (WRC) is a DOC prison and was a Wis. Stats. Chapter 980 [SOCC] housing spot prior to SRSTC being built. STRSTC was opened in Aug. 2001 and WRC

continued to house Chapter 980 patients until 2011. ...All new Ch. 980 referrals come here now.

2. Clarifying NGI [not guilty by reason of insanity] and population here: The DHS, Division of Health Services, requires some secure institutions to have wings that can house Mendota patients under Chapter 971 [of WI Statutes]. [Note: "Mendota" is Wisconsin's main mental hospital, located in Madison, WI. Among others, it houses those with major psychoses. Some with such mental illnesses ("Mendota patients") can be transferred to secured facilities elsewhere.] Some of these are sex offenders, others are batshit [sic] crazy and on heavy meds. I am unsure of the sentencing matrix of the Ch. 971 guys. I do know of a few patients being committed to SRSTC [for periods of time as extensions of previous commitments, in all, up to] 30 years?

3. ...A guess of 650+ maybe 750+ committed to SRSTC in all. Discharged? Another guess 150+, those who die here are considered discharged in the total count [Wow! How Devious is THAT!?!] There are 50+ on supervised release and in the revolving door. Some have beat their commitment but are few and far between. I have spoken to others here about the correspondence project but ..we do not get to see them currently except only in passing in the hall. All units are segregated from each other. I have also been able to handoff TLP to one guy and he passes it around. The ll's an' gbuu:~t allow the lacc action within

4. If I am discharged, I am free to do whatever in life; there's no conditions beside registry (WI-SORP) which isn't an issue for me. I have to get settled in society first, then I can help out as I can. I understand the need for contacts and being united to the cause.

5. I will ask my Mom about more advocacy projects on her end. She does do a lot already, and there are issues that she takes on that create that shame issue also, but she tends to overcome it once

people know more about me not just the label of sex offender.

6. ...I know a few guys who have been discharged and found no one cares as long as you are taking care of yourself, paying bills, working, and not harming anyone. They also realize Google, is reality. So being upfront with who you are and your current intentions; and honesty goes a long way.

7. Our system has a level system: A, B, C. C is the highest; B is middle; and A is lowest. This is for everyone here regardless if you're in treatment or not. Everyone is allowed the same property. Curfew is dictated by level also. C is 12 a.m.; B is 10 p.m.; A is 9 p.m. One's level also dictates whether one can engage in outside food ordering, and access to the hobby/music rooms. The treatment has 3 phases. The progression is controlled by the facilitators' vote. Phase 2 offers perks of ordering grocery-type foods and use of refrigerator/freezer only if you are also on Level C. Level drops occur if you get a Behavioral Disposition Report (BDR, a/k/a disciplinary citation) for whatever rule violation – normally a progressive scheme: council, warning, and only the: BDR. A level drop to Level A occurs for a major violation. Then you have to do the time to build back up. A = 5-day review to B; B = 30-day review to C; C = a 30-day review to stay on C.

Excerpts from Letter by Another Wis. SRSTC Facility Confinee, Dated Aug. 20, 2021

"...Some people [here] are still pre-commitments due to various reasons and some 6 years later still haven't been committed yet.

"...In Phase 2 of treatment, the 'meat' of the program, we talk about everything else but the crime itself. We dance around the sexual assault(s); we avoid the topic like the plague.

"...I've seen some things since I've been here, like staff allowing patients to stalk other patients.... A lot of us witness on many occasions patients going to the intensive sanctions unit for violating the rule regarding sexual misconduct, and then literally being transferred to Supervised Release (Phase 4) or somehow get into trouble are viewed as 'getting over on the system,' [and] are held for greater lengths of time, while those who have greater psychopathic scores are released a lot quicker on SR or [full] discharge. Those with higher psychopathic scores have a higher revocation rate than those with lower psychopathic scores. It's all about keeping up [the system's] numbers with padding.

We're told to be 'upfront and honest', which turns out to harm us more than

anything else, when it comes time for the yearly evaluations to come around. The yearly evaluators are supposed to re-evaluate [out of that position] every three years, if we're lucky, but it doesn't happen. The evaluators manipulate what the treatment facilitators write, and add their [tem's] numbers with padding.

The [security officers] around here do as they want. One sleeps at the desk a lot – more often than not. This place looks like, sounds like, and is run just like a prison. One security officer made a flippant comment to the effect that 'I wish they [sex offenders] would all get shot.' He was fired, then somehow re-hired months later.

This place has more cameras than Fort Knox, yet somehow has no money to improve the food. This facility is currently renovating the parking lot, yet we're told that we are in a budget crisis.

Those on SR status can expect to wait 3 years in some cases to actually get released to that status. If the community pitches a fit, your progress on getting to the streets is halted. There's a guy here who's been on SR for nearly 3.5 years, being released to Kenosha County [having been approved to move into a lakeside house]. Yet at the last second, the lake supposedly eroded away the shoreline by 150 feet overnight. [When that didn't work to exclude the guy,] the community then said the lake was a 'park,' thus preventing him from moving in due to an ordinance barring sex offenders living near parks.

[As to] PPG, we're given one to show our ability to suppress the physical reaction and another in which we are told not to suppress it. In the suppression test, if we do well, we are accused of manipulating the test somehow and we are promptly then given a polygraph test, since we must be 'cheating.' They tell us to use our skills, but when we do, we are accused of lying. But if we want a lie detector exam, it will be months before we get it.

Germany:

Beier, Klaus Michael & Amelung, Till, "A German Sexological Perspective on Male Chronophilia," 46(1) Archives of "Comments on an article by M.C. Seto (see record 2016-412000-001). In his article Seto gives a comprehensive overview over male sexual age preferences. His model of multi-dimensional sexual preference resembles the three axial model of Beier, Bosinski, and Loewit. How these three axes manifest determines the stimuli to which each individual is sexually attracted, thus allowing for a huge spectrum of sexual

(Continued on page 6)

possibilities or 'orientations' as Seto puts it. Taken together, from the perspective in Germany, the authors greatly appreciate the effort in the Anglo-American world to establish a concept that is already widely accepted here and the authors look forward to seeing its impact on both the scientific and the public discourse."

"16 July 2021

To: Daniel Wilson, Russell Hatton, Members of OCEAN, and The Men Detained at Moose Lake

We send you heartfelt Greetings from Germany!

After speaking with WAR president Vicki Henry and several other leaders of the Women Against Registry, I was told about your planned assembly and march to the Governor's mansion. In short, I was thrilled to hear that you are putting sary, but inspirational as well.

In 1999, I was one of the first men detained under Florida's involuntary civil commitment law.

[Editor's Summary: The writer states that he decided to try to escape from that facility. He was ultimately caught and imprisoned for many years. He refers to this episode as "a foolish mistake." When ultimately released through legal means, he picks up this personal account as follows:]

I fled the United States and sought political protection in Germany. My claim for asylum was based on European court rulings which have determined that the involuntary civil commitment of people in the United States is violative of established international human rights laws. Relying on these cases, it is safe to say that the nations of Europe believe that every detainee in American civil commitment centers is a victim of human rights abuses.

Similarly, we are currently pursuing a determination from a German court that the American sex offense registries are violative of human right as well. Just as the leaders and members of OCEAN are pushing back against these laws within the United States, we are pursuing the same goal by bringing international attention and condemnation from outside the United States. But talk is not enough.

In the very near future, we will begin the process of incorporating as a not-for-profit organization here in Germany. The organization's purpose will be assisting those who have had their human rights violated by the American sex offense registries or civil commitment laws in emigrating to Europe and assisting them in creating an environment in which reintegration into society is not only possible but encouraged. I mention this to you so that you will know and understand that you are not alone in your struggle. There is a large international movement forming.

Again, I praise your efforts this weekend and to take inspiration from it. You are putting into action your convictions and beliefs. This is important work.

With the very best of hopes and wishes for your success,

Steven 'River' Whitsett, Director of International Relations and Human Rights, Just Future Project
Baden-Wurtemberg, Germany"

Virginia Report, # 10 The Endless Vagueness of Disorders & Immeasurable Meaninglessness of "Impulse" and "Lack

VI. FACTS WHICH ESPECIALLY SUPPORT THE CONTENTION THAT SOCC LAWS VIOLATE THE CONSTITUTIONAL REQUIREMENT FOR SUBSTANTIVE DUE PROCESS

A. "Disorders" Involve Boundless Vagueness and in One Instance, Simply Restate a Type of Sex Crime.

By precedential authority, to be constitutionally valid as a general matter, sex offender laws must require that a commitment defendant be seriously mentally disordered, dangerous to others, provided with treatment, and committed no longer than is reasonably necessary. However, in the regular judicial application of such commitments, each of these four requisite elements are illusory and pose no true guarantee of substantive due process.

In contrast to sex offender commitment under said Act, 'traditional' commitment of the "mentally ill and dangerous" under *Minn. Stat. Chapter 253B* requires a finding of a specific "mental illness," as that term is defined with enumeration of specific types in the *Diagnostic and Statistical Manual* (currently, Version 5, hereinafter, "DSM-5") of the American Psychiatric Association, and such traditional commitment also focuses, in the specific instances of the commitment defendant, on that particular illness' causation of the "dangerous to others" status claimed by the prosecution to exist.

However, in the case of sex offender commitment under said Act, no mental illness is required. In fact, partly to facilitate such commitments, psychiatrists have invented definitions of mental states and dynamics called "disordered." 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.

Prentky, R.A., Janus, E. Barbaree, H, Schwartz, B. & Kafka, M., "Sexually Violent Predators in the Courtroom: Science on Trial," 12 Psychology, Public Policy & Law 357-393 (2006), at 382, bluntly conclude, "the mental disorder legitimacy."



Impressionism is a technique of art, not of science.

Sexual attractions, no matter how repellant to contemplate, are simply orientations, not disorders. Thus, e.g., *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 462, bluntly declares, "...Pedophilia, especially the exclusive type, may be best thought of as its own category of sexual orientation,..." (emphasis supplied)*

Fred S. Berlin, "Pedophilia and DSM-5: The Importance of Clearly Defining the Nature of a Pedophilic Disorder," 42 Jour. Am. Acad. Of Psychiatry and the Law 404-407 (2014) usefully explains at p. 406:

"Pedophilia as a Sexual Orientation
"DSM-5 did not err in referring to Pedophilia as a sexual orientation. ... The term sexual orientation ordinarily reflects an individual's subjective awareness of the category (or categories) of persons toward whom he or she is erotically attracted. Clinically, there are individuals (many of whom are described as having Pedophilia) who

report a subjective awareness of being erotically attracted (either exclusively or in part) toward a category of individuals comprised of prepubescent children. Many report experiencing those attractions as unchosen in a fashion that seems very much like an orientation. That such attractions are often unwanted does not alter their resemblance to an orientation.

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

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

Even if deemed to the contrary as a "significant difficulties" mentioned by Dr. Berlin are internal, not externally imposed, as in criminal prosecution. It would be oxymoronic to claim that the fortuity of such a prosecution would instantly transform what had previously been an orientation into a "disorder."

In sum, "pedophilia," of itself, is simply a sexual orientation, a longstanding sexual attraction; it is not a "disorder" as defined by the DSM-5.

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 aforesaid Act, 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 such may still find that disorder present.

Pedophilia, especially the exclusive type, may be best thought of as its own category of sexual orientation.

By precedential authority, the sex offender targeted for commitment must exhibit a constitutionally adequate mental disorder or abnormality that must produce an inability on the offender's part to control his behavior, at least to a degree sufficient to distinguish him "from other dangerous persons who are perhaps more properly dealt with exclusively through criminal proceedings." As shown through the preceding allegations, in the

(Continued on page 7)

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 "...[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

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."

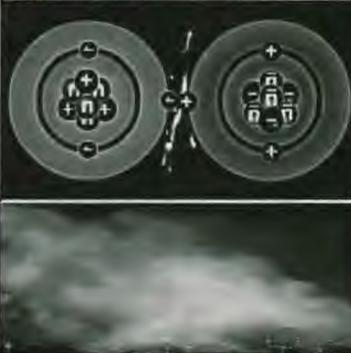
p. 316: "The unpublished case of *In re Martinelli*, [2000 Minn. App. LEXIS 973 (Minn. App. 9/12/00)] can dispel any lingering doubt about *Crane*'s meaning. The United States Supreme Court, after granting certiorari, vacated the Minnesota court's opinion [*Martinelli v. Minnesota*, 534 U.S. 1160 (2002)]. 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 on 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)

The trend of state appellate courts, with Justice Scalia's blessing, has been to ignore *Crane*.

Nothing in *Crane* or in any other Supreme Court case provides justification

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."



Science & Antiscience in contact (conflict), causing destruction of knowledge.

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*] consisted 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 resist it." 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

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.

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 SOCC confines in any state having such legislation 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 traditional commitment laws 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.

On the contrary, sex crimes are almost always the subject of extensive pre-planning 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. Hendricks*, 521 U.S. 374, 384.) 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 (Continued on page 9)

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 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 Sexual Violence Predator... Evaluations: 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 SOCC commitment.

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

Eric S. Janus, "Sex Offender Commitments: Debunking the Official Narrative (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 behavior are 'caused' by a mental disorder, 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' - Concept," Chapter 1 in: *The Sexual Predator: Legal Issues, Clinical Issues, Special Situations* (Vol. II) Anita Schlink, ed. (Civic Research Institute, Kingston, N.J. 2001), at pp. 1:8-1:9)



"APPLICATION TO SEX OFFENDERS

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... decisions, to offend 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.

There is no valid test to measure whether or not an individual can or cannot control his or her impulses.

"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 'noh'rapists: 'more than fair or worse,' 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 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 in to 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]

(Continued on page 10)

[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.'"]

Sexual offenders are not suffering from any disease and their behavior is not out of their control.

"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 re-ascriving 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."

Editor's closing comment: Nothing in this excerpt, or this newsletter edition as a whole, or indeed in any TLP newsletters (to date or projected) aims to defend sex crimes of any kind. Indeed, the aim of this editor is largely to shed light on all aspects of sexual offending for the purpose of providing guidance toward understanding that will lead to eliminating sexual crime. To do this, it is necessary to debunk all myths about sexual offending that pervade society and have clouded

the judgment of those who have created and applied misbegotten laws, such as sex offender commitment, that attack individuals, rather than the problem. The fervent hope behind this newsletter is to spread true knowledge that will enable reparative decision-making that can put our society back on an enlightened track toward actual solutions to the problem of sexual offending.



Spanish Flu pandemic, 1918. Pandemics require an emergency response, including quarantine. But neither sex crimes nor paraphilias are pandemics or even merely transmissible.

Extremely low sex-crime recidivism rates that shrink even further each year post-prison release and each year of increasing age after last crime expose the hysteria about sex offenders as just that.



Tribute in Light, World Trade Center site, in remembrance of the victims of the 2001 terrorist attacks. In the more than 20 years since then, the world has seen many catastrophes, wars and threats of larger wars, the agony of countless millions of human tragedies, megalomaniac leaders, and extremists doing evil in 'certainty' of some 'truth' which science disproves – now capped by a worldwide pandemic of unimaginable proportions.

Everyone is a victim. All are punished. Fear is the true enemy. Humanity must stick together.

Understanding is the essential requisite for the future.