

"If a person acknowledges that there is a risk that he will reoffend, this is taken as an admission of his dangerous propensities.

But if he states that he will not reoffend, this is taken as a lack of insight and is counted as a risk factor."

— Eric S. Janus, *Failure to Protect: American Sexual Predator Laws and the Rise of the Preventive State* (Cornell Univ. Press, 2006), at pp. 33-34.

In This Issue:

- 1. Wall Street Journal Tackles MSOP, but Lacks the Crucial Facts. 1-3
- 2. A Simple, Mild-Mannered Senior Citizen Doesn't Understand the MSOP Agenda Holding Him. 3
- 3. Official MSOP Claims Contradict Claims to Touring Visitors. 3-4
- 4. National Lawyers Guild Criticizes Dehumanization of SOCC. 4
- 5. Shaming the Constitution, Part 12 Tells What Therapeutic Jurisprudence Means to Sex Offenders. 4-7
- 6. New Horowitz Book Says: Base SO Crime Laws on Facts, Not Fear. 7
- 7. RM Penultimate Excerpt 7-8
- 8. Impacts of Sex Offender Commitment — Hint: Not Small, and Not Good. 8-10
- 9. Making Outcasts of Sex Offenders Wreaks Great Harm. 10

Coming Soon:

- ✓ Remorse Bias — What's THAT?
- ✓ RNR vs. Good Lives vs. Virtue Ethics vs. Desistance: Any bets?
- ✓ Lie-Detector Interrogation & Peter Meter Testing: Keeping You Down by False Hope, Fear, & Shame
- ✓ What Does Substantive Due Process Say about PPG Testing?
- ✓ Findings Change Everything.
- ✓ Bayes, Monahan, Chaps, Uncertainty — Oh My! Actuarial Prediction? Good Luck with That!
- ✓ Is "Machine Bias" a Bias Machine?
- ✓ FAC Asks UN to Deem US HPSO Registry Violates UDHR. Quick! You Need More Alphabet Soup!
- ✓ Do You Need a Union for a Hunger Strike?
- ✓ Free Speech on Campus — & in Civil Commitment Facility
- ✓ Sex Offender Residence and Employment
- ✓ Can Intention-Reading Tools Used by Fed Anti-Terrorists Supersede Sex-Crime Predictive Tools?
- ✓ Collaborative Justice: Oxymoron or Way Out of This Mess?
- ✓ Panic in the Statehouse: Bad Policy by Panicked Legislation
- ✓ 'All Except for' Blanket Exclusions of SOs from Justice Reforms
- ✓ PPG Validity Refuted
- ✓ Stupple on Disgust, Dehumanization of SOs & the Courts (cont'd)
- ✓ Wrap-ups: RM & Perlin/Cucolo
- ✓ Compulsory Sex History Interviews of Committed SOs as Self-Incrimination
- & Many more to come!

Free Downloads of all LLP Editions:

* <http://www.cure-sort.org/mn---the-legal-pad.html>

* <http://wapercyfoundation.org/>

Feedback? News? Write!

LLP Editor Address

(Exactly & Only as Below):

Cyrus P. Gladden II

1111 Highway 73

Moose Lake, MN 55767-9452

WSJ Speaks Out Against SOCC & MSOP, but Leaves Too Many Rocks Unturned

Editor's Introduction: The following excerpts (in white text on black) come from an article in the Wall Street Journal (WSJ) about sex offender civil commitment (SOCC), focusing on MSOP in Minnesota. To collective knowledge in MSOP-ML, this article is a first on the subject by WSJ. Given that WSJ is one of the half-dozen most widely circulated and respected newspapers in all of North America, this coverage is welcome.

This article tries to present both sides of the issue of whether SOCC should exist at all. Nonetheless, at many points, the condemnatory facts speak for themselves, yet their significance appears to escape the reporter. It seems clear that this aim to serve that traditional journalistic goal of simply reporting an issue with such pro/con impartiality resulted in this case (as it so often does in the area of sex offender rights and mistreatment) in an inadvertent 'whitewash' of a system and its practices which eclipse notions of quiet brutality by government gone mad in serving the small subset of its citizens most insanely obsessed with hysterical fears and vengeful hate for those who have criminally transgressed fundamental taboos, even though only in the distant past.

In doing so, society and politicians, including judges, fail to see that, in their unceasing campaign of making life unlivable for the ill-chosen targets of their decades-late legal vigilantism, they are stumbling blindly, bashing down all the sacred protections of the civil liberties of everyone that make America special as a bastion of liberty in a world gradually being taken over by creeping totalitarianism.

In further bracketed editorial comments between the following excerpts, I hope to make this clear and to expose the inhuman mistreatment of sex offenders subjected to SOCC.

Joe Barrett, "Some Question Laws That Allow Sex Offenders to Be Locked up after Time Served," *Wall Street Journal*, electronic edition, Saturday, September 9, 2023. (<https://www.wsj.com/politics/policy/some-question-laws-that-allow-sex-offenders-to-be-locked-up-after-time-served-411ba966>).

Subtitle: "Proponents say civil commitment programs protect public; detractors argue they violate civil liberties."

Text Excerpts:

"Minnesota and 18 other states as well as Washington, DC, have similar so-called commitment laws that can effectively extend sex offenders' time in state custody for decades — or even life — after they have served their sentence in prison.

Advocates say the laws protect the public from dangerous sexual predators and provide appropriate treatment.

[In truth, they do neither. All modern studies have proved that those committed or unsuccessfully tried for commitment, despite dire cries of probable re-offense, almost never do so. Their rates of re-offense are always no higher — and

often substantially less — than those released from prison without protest.

Daniel Montaldi, "A Study Of The Efficacy Of The Sexually Violent Predator Act In Florida," 41 *Wm. Mitchell Law Rev.* 780-865, at 845 (2015) ("...[T]here appears to be no discernible risk-reducing effect coming from progressing in treatment or completing it....", explaining at pp. 862-63, "...With rates as low as they are, even for untreated offenders, it is unlikely that any intervention can significantly lower rates any further. This may reflect a kind of statistical floor effect." Montaldi, in his studies of recidivism among Florida sex offenders recommended for commitment but nonetheless later released, found that "[t]he most dramatic difference comes from offenders who were age sixty or older at time of recommendation (n=93). Out of this group, no one obtained a new charge or conviction for either rape or child molestation (0%)." *Id.*)

There are no data that support the notion that any kind of current treatment makes any significant difference in recidivism rates of sex offenders once released. (**Anne R. Izzii,** "Constitutional Law — The Cage a Fetish Can Build: Proposed Legislative Reform for Civil Commitment Procedures in Sexually Violent Predator Laws," 39 *Western New England Law Rev.* 141, at 145-46 (2017), states: "...[T]he facilities that do offer treatment are not beneficial because, as of yet, researchers in the field have not found any successful treatment options.... [T]he issue is not treatment standards, but rather the current lack of any viable treatment methods in the field of sex offender management."

When it comes to recidivism, sex offender treatment is purely just a wash. **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 35 (2005), observes that: "Research regarding the treatment of sex offenders continues to show that treatment has little or no effect on sexual recidivism rates. It is easy to locate well-controlled studies that find no effect of sex of-fender treatment on recidivism likelihood. **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); Losel & Schmucker, 2005). For example, Hanson, Broom, and Stephenson (2005) compared the recidivism rates of 403 treated sex offenders 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."

"...[T]here is no consensus as to the effectiveness of treatment or whether the treatment that is made available to this population has had any real effect on risk reduction. Relatively

little is known about which sex offenders will benefit from treatment, what treatment is most effective, and how treatment affects recidivism. The question then becomes: does treatment hold any verifiable outcome of effectiveness for this population; and if not, then at what point does it become clear that this detention offers no other purpose but for continued confinement post criminal sentence, thus implicating a punitive statutory design?

...Commentators have stated that sex offender "civil commitment, in particular, has been described by civil libertarians as preventive detention masquerading as coerced treatment that threatens rehabilitation, justice, and constitutional values, and legitimizes warehousing." Additionally, treatment providers in these institutions may lack competency and qualification, which supports the notion that treatment is only in place to make the case for continued confinement after prison." **Heather Ellis Cucolo & Michael L. Perlin,** "Preventing Sex-Offender Recidivism Through Therapeutic Jurisprudence Approaches and Specialized Community Integration," 22 *Temp. Pol. Civ. Rts. L. Rev.* 1 (Fall 2012), at 12-14, quoting **Astrid Birgden & H.E. Cucolo,** "The Treatment of Sex Offenders: Evidence, Ethics and Human Rights," 23 *Sexual Abuse: J. Res. & Treatment* 295, 299-300 (2011).

Accord: **Marnie E. Rice & Grant T. Harris,** "The Size and Sign of Treatment Effects in Sex Offender Therapy," 989 *Annals N.Y. Acad. Sci.* 428, 428 (2013) ("We conclude that the effectiveness of psychological treatment for sex offenders remains to be demonstrated."). See also: **Jill S. Levenson et al.,** "Public Perceptions about Sex Offenders and Community Protection Policies," 7 *Analyses Soc. Issues & Pub. Pol'y* 1, 6 (2007), avail. at: <http://ccoso.org/library%20articles/PublicPerceptions%20ASAP%207.pdf> (noting that studies have concluded that recidivism rates of those treated and untreated are undifferentiated....)"

Research that has shown that other post-release matters make a huge difference in re-offense rates — notably the phenomenon of "desistance" — with its promoting circumstances and malleable attitudes of former sex offenders — are largely ignored, apparently out of political considerations that persist in infiltrating so-called current treatment modalities with punitive elements. See, e.g., **Prof. Danielle Arianda Harris,** "A Descriptive Model of Desistance from Sexual Offending: Examining the Narratives of Men Released from Custody," 60(15) *Int'l Jour. Of Offender Therapy and Comparative Criminology*, 1717-1737 (2016); **Tulley, Joanne L.,** "While This Does Not in Any Way Excuse My Conduct...." 60 *Int'l Jour. Of Offender Therapy & Comparative Criminology* 1776-1790 (Issue 15, November 2016); DOI 10.1177/0306624X16668177; **Farmer, Mark, McAlinden, A.M., & Maruna, S.,** "Understanding Desistance from

(Continued on page 2)

Sexual Offending: A Thematic Review of Research Findings," 62(4) *Probation Journal* 320-35 (2015); *Danielle Arlanda Harris*, "Desistance from Sexual Offending: Behavioral Change Without Cognitive Transformation," *Jour. Of Interpersonal Violence*, 1-22 (2015); *Patrick Lussier*, "Desistance from Crime Without Reintegration: A Longitudinal Study of the Social Context and Life Course Path to Desistance in a Sample of Adults Convicted of a Sex Crime," 60(15) *Int'l Jour. Of Offender Therapy & Comparative Criminology* 1791-1812 (Nov. 2016); *Danielle Arlanda Harris*, *Desistance from Sexual Offending: Narratives of Retirement, Regulation and Recovery*, Palgrave MacMillan (2019).

Nowhere is this more visible than in SOCC facilities, where treatment, even when based on prison programs that are relatively short-term and direct in their focus, becomes an elaborate, endlessly circular affair, needlessly consuming many years, even decades of 'tail-chasing' by treatment participants in response to unnecessary, self-shaming assignments repeatedly demanded by therapists.

The MSOP treatment program, for instance, is based on a unique, homemade theory of personal ideas of earlier program leaders without any research support of 'changes' supposedly required to prevent re-offense. This 'Matrix' of 34 requirements of so called 'behavioral change' reads like a strict etiquette rule-book that must be followed exactly minute-by-minute, including self-reporting and self-criticism and criticism by staff and by other treatment participants seeking a leg up for each slip or inadvertent failure of total compliance. This harsh and impossible-to-satisfy system, coupled with often re-demanded 'admissions' (true or merely extorted falsehoods) of still-ongoing drive to commit illegal sexual misconduct amounts to the American Gulag, a Chinese-style "re-education camp" for brainwashing. It is a perfect recipe for keeping every MSOP confinee detained for life, which its original legislative sponsors candidly admitted was its punitive aim.]

Opponents say the laws violate the basic legal principles of double jeopardy

[not to mention both substantive and procedural due process, equal protection, self-incrimination, access to contact with the outside world (e.g., no internet or even merely email), and no right of free expression immune from punishment],

are costly to administer

[a minimum of four times or more the cost of imprisonment per year per person, and 10 to 15 times the cost of even intense parole supervision that is almost totally successful at preventing recidivism],

and are aimed at people responsible for a tiny fraction of sex crimes

[The Montaldi and the Padilla studies from opposite ends of the country prove this even as to those tagged by so-called experts as highly likely to recidivate, but who were nonetheless released in lieu of com-

mitment; almost all of whom simply never reoffended. In all, those two studies covered thousands of former prison inmates. See: *Tamara Rice Love & Franklin E. Zimring*, "Assessing the Real Risk of Sexually Violent Predators: Doctor Padilla's Dangerous Data" 55 *Am. Crim. L. Rev.* 705 (2018); *Daniel Montaldi*, "A Study Of The Efficacy..." (etc.), *supra.*]

There is an effort by people in and outside the Minnesota program to end it....

[This opposition is strong in numbers, is organized, and is rapidly educating the media to the abominable truth: SOCC must be brought to an end.]

About 1,100 registered sex offenders are released from incarceration every year in Minnesota, and around 4% of those are ultimately committed to the program, said Nancy Johnston, executive director of the Minnesota Sex Offender Program. They're pretty high risk to reoffend for the most part....

[While the 4% commitment rate is roughly correct, the claim of high-risk to reoffend is a massive lie. Earlier statistics that sought to claim a difference in certain sex offenders in terms of probability of future sex offenses have been debunked as deceitful manipulations of sample groups chosen and of statistical techniques to radically skew appearance to create false impressions of high recidivism likelihood where none exists. (See, e.g., *Eds.*, "Webinar - Sex Offense Recidivism Risk: Not What You Think It Is," CURE-SORT News, Vol. 31, Issue 3, pp.2-3 (3rd Quarter 2022) (Better late than never: Static-99R maker debunks myths of high so recidivism he capitalized on.) Some so-called actuarial recidivism tools have been created for this express purpose. See, e.g.: *Melissa Hamilton*, "Briefing the Supreme Court: Promoting Science or Myth?", 67 *Emory Law Jour. Online* 2021 (2017) Almost all who have been committed to MSOP have recidivism predictions that do not depart significantly to those of sex offenders passed over for commitment. Actual re-offense rates once released bear this out. MSOP strives to cover this reality up, in order to justify retention in confinement of those committed to it.]

Minnesota has 747 men in its sex-offender program, with most housed at a facility in Moose Lake, Minn.

[The numerical significance of this should not be overlooked. Essentially, this inherently means that the rate of new commitments equals the total of releases plus the number of deaths and a tiny number of parole revocations in any year. In turn, this means that the comparison of new commitment numbers to release numbers alone greatly leans to the larger new-commitment number. This reflects a program that is swelling ever-larger because it deems itself unable to 'graduate' from treatment and release a number of confinees that is anywhere close to the rate of new commitments.]

This might be understandable if the rate of sex crimes were undergoing a chronic rise

over the last 20 years. However, in truth, the rate of sex crimes, both in Minnesota and throughout the country, has radically shrunk since the Millennium. This implies that MSOP and prosecutors have actively 'drafted' new commitment victims by courting the deceptive actions of "assessors" working either for the Department of Corrections or in private practice under contract to such prosecutors to vilify people in order to justify more commitments now than when sex crimes were far more numerous.

At the current time, when both sex crime rates in general and recidivistic sex crime rates have been dropping through the statistical floor, so to speak, this has required such assessors to engage in even more extreme exaggeration than ever before of claims of probability of recidivism completely unwarranted by recent statistics. This is why, for instance, the makers of the Static series of instruments have stuck with sample sets compiled in the 'bad old days' of higher recidivism rates (ending in the 1990s).

In sum, this all shows MSOP and other SOCC programs are now in a phase where they are trying to show that they are 'needed' to prevent sex crimes, when in fact not only were they never needed or effective for that purpose, but the sheer reduction in recidivistic sex-crime rates shows up this claim for the lie that it is. Executives and professional staff of these programs are simply seeking to preserve their careers, regardless of their lack of societal need and their lack of effective impact on sex-crime rates.]

The budget for the program is \$112 million for fiscal year 2024, according to its website.

[Actually, the 2024 appropriation for MSOP operation has increased to \$129 million, on claims by MSOP that it cannot do its job effectively for less. But actually, the problem does not lie in funding sufficiency; it is an insoluble matter of sex crime rates having nothing to do with forcing aging former sex offenders into add-on incarceration (at a time in life when propensity to reoffend is rapidly dwindling to complete extinction).

Further, mumbo-jumbo treatment theories such as the unique "Matrix" theory, based on efforts to brainwash individuals to be more polite members of society generally, have no perceptible impact on re-offense probability at any age. In its *Findings of Fact, Conclusions of Law and Order* dated June 15, 2015 in the federal case, *Karsjens et al. v. Harpstead*, the Court rejected the scientific validity of the so-called "Matrix Factors" in use in MSOP, observing that they "are not used by any other civil commitment program in the country. MSOP's use of these Matrix factors has never been validated on a sex offender population." *Karsjens Trial Tr.*, v. 5, p. 1026. Note also Dr. Miner's testimony as to the Matrix:

"Q. Let's talk about the Matrix factors. Do you take any issue with the Matrix factors scoring guide?"

"A. Yes.

"Q. And tell me about that.

"A. Well, the Matrix factors scoring guide doesn't meet minimal requirement for a psychological test as promulgated by the joint APA-AERA Guidelines for Psychological and Educational Testing. It doesn't include a lot of information that would be required in a guide or in a manual....

"It's been criticized for being unreliable..." (Trial Tr., v. 6, pp. 1183-84).

More pragmatically, Dr. Cauley testified that the Matrix factors at MSOP are: "...sort of an in-house tool that was developed by members of the -- employees at the facility. It serves a purpose perhaps of simply being -- I wouldn't say treatment progress, but it's almost like a checklist of really how somebody is participating in treatment. Okay? So it's a lot of 1 to 5 ratings of things like attending groups, participating in group, that kind of thing. ...And it doesn't serve a larger purpose of assessing risk." (Trial Tr., v. 10, p. 2221). In Findings 83-86, the Court determined that MSOP clinical staff has experienced substantial confusion and inconsistencies in the use and application of the Matrix factors, with Matrix factors scores fluctuating at changes in clinical staffing, such that a lack of inter-rater reliability is presented. (D. McCulloch testimony, Trial Tr. v. 1, pp. 82-83.) Dr. Vietanen put it more bluntly: "...[There isn't any inter-rater reliability in Matrix scoring." (Trial Tr., v. 10, p. 2327). Dr. Nicole Elsen conceded that scoring of the Matrix factors is somewhat subjective. (Trial Tr. v. 7, pp. 1347). Dr. Elsen also admitted that she had, at various times, directed the clinicians under her supervision in MSOP to lower a given treatment participant's Matrix scores, and that such scores were in fact lowered at her direction. (Id., pp. 1347-48.) Yet Dr. Elsen has never approved phase advancement of any MSOP detainee who has not met the Matrix goal requirements for such advancement. (Id., p. 1348).

All of sex offender so-called therapy could easily be replaced by short-course cognitive programs and by simultaneous counseling and assistance toward achievement of desistance goals, eliminating personal recidivism tendencies in short order, saving billions of dollars nationwide, which could then be redirected to primary prevention efforts focused on public education, as recognized by leading experts (see research by Prof. E. Janus et al. on this. See: News Release: "New Study Estimates Annual Cost of Incarcerating Adults Convicted of Child Sex Crimes Topped \$5.4 Billion in 2021," Johns Hopkins University, Categories: Reproductive and Sexual Health, Child and Adolescent Health, contact: Maria Blackburn at mariablackburn@jhui.edu (2022) [Reviewing: *Elizabeth Leloumeau, Travis T.M. Roberts, Luke Malone, and Yi-Sun*, "No Check We Won't Write: A Brief Report on the High Cost of Sex Offender Incarceration", 34 *Sexual Abuse*, slip pages 1-29 (March 2022, cor-

Since its inception, the program has had 946 participants, including 94 who died in the program, officials say.

(Continued on page 3)

rected April 18, 2022)]

[Actually, 100; I have names and dates of death.]

There was only one provisional discharge before 2012. Since then, 21 have been fully discharged, 52 are living outside a facility under supervision and around 10 are waiting for housing under provisional discharge.

[A rate of 20 full discharges in 10 years is two per year. At this rate, it will take about 375 years for MSOP to end commitment of those currently confined. Of course, given that the average age of MSOP confinees is 52 and average lifespan of American males is now about age 75, the mean remaining time by which all confinees will die is 23 years from now. Because in 23 years, only 46 can be expected to gain full discharge, the true ratio of those confined now in MSOP who will gain that status, compared to those who will die first, is only 46/750, or only one out of sixteen (the other fifteen die first.)]

Critics say previously convicted sex offenders account for between 4% and 7% of people charged or convicted of sexual violence, citing various state-level studies.

[These rates are statistically indistinguishable from those for non-committed former sex offenders (that is, whatever the rate found in any state-level study for general sex offender recidivism, the rate by prior recidivists is, on average, the same.)]

In two cases in the 1990s, the U.S. Supreme Court upheld civil-commitment laws for sex offenders diagnosed with psychological abnormalities that pose a threat of future offenses, as long as the programs are therapeutic, not punitive, said Eric Janus, director of the sex offense litigation and policy resource center at the Mitchell Hamline School of Law in St. Paul, Minn. 'There's so much manipulation of this idea of a mental abnormality, Janus said, 'It's a very loosey-goosey standard, and almost anything goes.'

[This is one reason why the U.S. Supreme Court must revisit the issue of sex offender commitment. Another even more powerful reason: The 'swing vote' by Justice Kennedy in that original case (*Kansas v. Hendricks*, 1997) was in great part cast for upholding such commitments because of a baseless, utterly false claim that sex offender recidivism was at least 80% -- a claim concocted from sheer personal guess by a massage-therapist-writer with no academic standing in any relevant social science field. See: *Adam Liptak*, "Did the Supreme Court Base a Ruling on a Myth?", *New York Times*, March 6, 2017, <https://nyti.ms/2mvdQQd>; *Emily Horowitz*, "The Real Monsters - Sex Offender Registries Don't Make Us Any Safer. Abolishing Them Would.", <https://inquest.org/topic/insitutions-practices/>, June 3, 2022. In fact, nationwide, it is about 3% in studies ranging from 5 to 10 years post-release (that is, the controlling finding is that if there is no recidivistic sex crime in the first five years post-release, there probably never will be any).

And the most profound reason why SCO-

TUS should revisit the issue is the misimpression that the existence of a 'sexual disorder' or 'abnormality' (now academically seen instead as simply a variant orientation, such as pedophilia) somehow inherently causes sex crime recidivism. Just to follow the pedophilia example, it has since then been consistently found that as many as 25% of all males have at least some pedophilic orientation, and as many as 9% may be exclusively oriented to sexual attraction to either female or male children or both. *Wurtele, S.K., Simons, D. & Moreno, T.*, "Sexual Interest in Children among an Online Sample of Men and Women: Prevalence Correlates," 26(6) *Sexual Abuse* 546-568. DOI: 10.1177/1079063213503688 (2014).

Yet the fact is that only a minute percentage (somewhere between 0.1% and 0.3%) of this portion of the male population ever act criminally on their exclusive pedophilic orientation. Further, even if they do, the incidence of pedophilic-crime recidivism is, as stated above, limited to 3% probability. So even if "pedophilic disorder" is defined as having acted upon pedophilic attraction, that sliver probability completely belies the notion that such a 'disorder' necessarily bespeaks re-offense.

A related claim used to be that, once a sex offender recidivates, his probability of later recidivism again increases. This too has been debunked; in fact, like all sex criminals, recidivism probability decreases with age, in an ever-more-steeply downward curve ending in total extinction of any percentage of recidivism possibility by time one reaches the senior age of mid-60s.]

Nicholas Kimball, spokesman for the Hennepin County Attorney's office, said civil commitment is distinct from the regular legal process. 'There are people who present a very clear and significant risk to the public and we have to take that seriously and do everything in our power to get them the treatment they need,' he said.

[Based on all that has already been stated above, this is merely the standard hysterical propaganda still spread, though long-debunked.]

Eliseo Padron, 48, said he has been living in the Moose Lake facility since 2012. He says he was convicted of first degree sexual assault against a 21-year-old woman and served six years in prison before being committed to the program as a sexually psychopathic personality and a sexually dangerous person after several parole violations. Court records indicate the attack was extremely violent and followed another assault by Padron when he was a minor.

He said he participated in the programs at the facility for about two years until, he said, he realized he would likely never get out of the facility.

'The reality is that only 20 people have gone home in 30 years and that's not the greatest statistic in the world,' he said.

Johnston said that judges make the ultimate decision about who is committed and who is released from the program.

[This is just avoidance of responsibility for

these decisions. The panel (the "Special Review Board" or "SRB") which is the first tribunal to consider release is an administrative tribunal of the bureaucratic overlord to MSOP. Its members include police officers, prosecutors, anti-sex offender community activists, and sex offender assessors often contracted to prosecutors to support commitment petitions or to oppose releases; all are political appointees. In short, anti-sex-offender bias rules. Some board members were former MSOP staff members. Present and former MSOP officials train SRB members and control the SRB operation, including appointing and determining the number of SRB members. (*Karsjens Trial Tr.*, *supra*, Dr. Naomi Freeman testimony, v. 4, p. 822; PX 177, PEXB 478-479. At a later point in testimony, Dr. Freeman added that she deemed the SRB process unfair to petitioning sex offenders, in that "the State has a risk assessor or an evaluator and the client does not....

...[T]here are clinicians that represent the State or the program [in an SRB proceeding], and the client has nobody except their attorney. They have no clinical professional individual representing them or who has had the opportunity to do an assessment for them.... I think that having a committee of individuals who perhaps are not experts on sex offender management and who are trained by the same individuals who run the program could result in unfairness, yes...." (*Id.*, pp. 899-900).). This last statement also applies to those who assess an MSOP confinee petitioning for release. All of this means that whatever MSOP says about the petitioning confinee will very likely be accepted unquestioningly by that SRB. In other words, MSOP really does have a strong impact on whether the decision to release will be either yea or nay.]

Padron is part of the group of people working to try to end the program through legislation they are drafting and hope to get introduced next year.

Steve Sandell, a former state representative who served two terms, said it could be an uphill battle. He tried to introduce a modest reform bill in 2022 that would reorient the program toward sexual-assault prevention, support and treatment, among other things, but was quickly shot down.

'The institution needs reform. The institution needs leadership. And it is a political football that nobody wants to pay attention to,' he said.'

[And if ever there were an apt closing observation to aid the reader to realize that nothing short of repeal or judicial invalidation of sex offender commitment legislation can end the constitutional monstrosity of reincarcerating people with no new crimes for the rest of their lives under rubric of "commitment" to a "shadow prison" only because someone with obvious bias claims to have a fear of such re-offense if they are not confined, this account of the political impossibility of reform is it.]

Write to Joe Barrett at Joseph.Barrett@wsj.com



Fred Asks:

Why Are We All Still Here?

by Michael ('Fred') Friedrichs

Text excerpt:

"...If this is considered a treatment program, Cyrus, why are very few clients ever discharged back into the community? With 450 clients here [in MSOP-Moose Lake], there should be something like 4 or 5 leaving monthly, if not weekly. How come [this is not happening]? The only way people will leave here is in a body bag. It looks like the way these people work.

My friend is age 79, and can barely walk. MSOP told him he'd be going to an assisted living residence in Duluth. That was two years ago. He is still here."

Is the Truth on Hallway Signs, in a Website, or

Neither?:

MSOP SO Treatment Stats, per DHS

[Eds.], "Sex Offender Treatment" *Minnesota Department of Human Services* (<https://mn.gov/dhs/people-we-serve/adults/services/sex-offender-treatment/>) [as of 7/29/23].

Text Excerpts:

"As of April 1, 2023, MSOP had 745 clients in its treatment facilities. Another 49 clients who had been provisionally discharged by the court were living in Minnesota communities under MSOP supervision. Fewer than 10 more have been granted provisional discharge and were awaiting community placement. Program statistics are updated quarterly.

(<https://mn.gov/dhs/people-we-serve/adults/services/sex-offender-treatment/statistics.jsp>)

Data about clients in the Minnesota Sex Offender Program

As of April 1, 2023,

Total clients granted full discharge by the court:

17

(Continued on page 4)

Total clients granted Provisional discharge by the court: 85 **A**

Total clients currently living in communities: 49
 Total clients awaiting community placement: <10
Total clients in MSOP facilities: 745
 Location of clients:
 Moose Lake 438
 St. Peter (secure perimeter) 177
 St. Peter – Community Preparation Services 130

Age
 18 to 20 0
 21 to 25 <10
 26 to 35 59
 36 to 45 186
 46 to 55 182
 56 to 65 200
 Over 65 113
Average age 52
 Youngest 22
 Oldest 88

Race
 Amer. Indian/Alaska Native 60
 Asian/Pacific Islander <10
 Black/African American 115
 Multiracial <10
 White 525
 Other or unknown 40

Education
 Elementary 16
 Some high school 52
 High school diploma 320
 GED 236
 High school diploma & GED 10
 Some college 24
 Unknown 12

Civil commitment by county
 Hennepin (Mpls.) 136
 Ramsey (St. Paul, etc.) 78
 All 7 Twin Cities metro counties 299
 Non-metro counties 446

Send email to program clients
 MSOP uses a one-way email system that lets clients receive email messages from you, but they cannot send messages. The messages are printed and given to clients after passing through security checks.

The email service is not operated by MSOP. It is provided by a third-party company called JPay. You can send email by creating an account on the JPay website. The cost is about 40 cents per message.

You must know a client's ID number in order to send an email message. Due to privacy laws, we cannot tell you a client's ID number. The client must provide the number to you.

Notes:

*"What Is Truth?",
 Asked Pontius Barnestly.*

- A: Note: 85 – 59 max = 26 min discrepancy – Were they revoked?
- B: Useless at best, given delay in receiving the printout (which is all you get). Not operational at all currently. Even if restored, there is no digital notification to us of receipt of an email. So if the printout is not received (perhaps due to

copyright or harassing staff destruction of that email) the intended recipient will never know of the email.

National Lawyers Guild Editor Aptly Comments:

Sex Offender Dehumanization in the Courts

Editor-in-Chief Nathan Goetting, "editor's preface", *National Lawyers Guild Review*, Vol. 71, No. 3, Fall 2014

Text excerpts:

"...It should go without saying that human sexuality is rife with complexity and mystifying contradictions. It's a puzzle palace from which all sorts of behaviors – routine, bizarre, and sometimes dangerous – can emanate. Yet our criminal laws and procedures regarding sex crimes respond to this swirling welter of incomprehensible impulses with stubborn and self-defeating simplicity. We choose to punish that which we fear to understand, as if learning what motivates the behavior is to show a little too much sympathy and solidarity with 'perverts,' toward whom only contempt can be shown. As with suspected terrorists since 9/11, our mercilessness leaves no room for anything else, not even enlightened self-interest.

I can think of no area of the criminal law, except perhaps international terrorism, into which contemporary American society has terrified itself into more ignorance than this. One of the guiding principles of western philosophy, etched into the same Greek language spoken by Socrates and Plato into Apollo's shrine At Delphi, is the maxim "Know Thyself." When it comes to the darker side of human sexual conduct, we'd rather not. To do so will almost certainly force us to reckon with the fact that many of us aren't the neat and tidy sexual beings we've convinced ourselves we need to be.

For a dangerous minority, certain impulses emanating from this darker side – dark in the twofold sense of being both dangerous and unknown – result in obvious and devastating social harms, especially against children. Such atrocities against the innocent and vulnerable inevitably cause panic and fury among adults charged with protecting them. However understandable these emotions are among those victimized by these crimes, allowing them to form the bases of our law and policy can only be self-defeating. The proper response to these harms is to harness the spirit of inquiry and problem-solving to discern their ultimate causes so as to better prevent them.

The drafting and enforcement of our criminal sexual conduct laws, particularly those targeting crimes against children, are driven by a powerful collective feeling of visceral revulsion. Our shared emotional response to these crimes has created self-defeating policies, unconstitutional laws, and cruel punishments. We aren't reasoning toward justice and prevention. We're raging toward

vengeance – and are abandoning basic constitutional values in the process. We suffer from a problem as ancient as it is apparently incurable – how to prioritize enlightenment over prejudice and devise a system capable of fairly judging a small and intensely hated minority.

Only in this instance the problem is especially acute because the rancor toward the minority group is especially virulent. Sex offenders are the safest and easiest people to hate. Politicians, a category that certainly includes judges, never lose by condemning them and never win by coming to their defense. To argue too forcefully even for core legal protections afforded in other types of criminal cases is, in many contexts, to risk ostracism and raise suspicion. For this reason, politicians routinely lapse into self-serving demagoguery, often deploying morally charged and unhelpful metaphysical terms like 'evil' as substitutes for scientific or clinical concepts that might inform and enlighten. Demonizing sex offenders has become a reliable and effective campaign strategy in judicial elections. To appear 'soft' toward a sex offender is to draft a campaign ad for one's next opponent.

2014 was perhaps the best year yet for cynical judicial campaign ads showing how inflexibly punitive incumbent judges have been toward sex offenders. In my own state, Michigan, a television ad ran on behalf of two sitting state Supreme Court justices, Brian Zahra and David Viviano, entirely devoted to convincing viewers that the justices have 'thrown the book at child predators' and that they will 'keep affirming tough sentences.' Sex crimes represent a tiny fraction of that court's docket, but the ad would have you think that Zahra and Viviano together composed the state's only bulwark against an onslaught of slaving pedophiles.

In 'Disgust, Dehumanization, and the Courts' Response to Sex Offender Legislation,' Alexandra Stupple argues that the fears that such ads engender and exploit are radically out of proportion to the actual dangers we face. Friends and family members are far more likely to sexually abuse children than strangers are. Stranger child predator cases are actually quite rare, especially when measured against public perception, and recidivism rates are lower for these types of crimes than those for many other violent offenses. The popular image of the lurking child molester is largely a 'myth...which serves to distort perceptions of everyday risks.' This isn't to say that such attackers don't exist or that they don't inflict incalculable pain and anguish when they strike. But stranger sex crimes, including those against children, don't occur with the kind of epidemic frequency one would expect given the hysterical laws and practices that have been created to combat them. Stoking panic this way helps judges and legislators get elected. Stupple explains the psychological underpinnings that have caused and continue to sustain the moral panic against child sex offenders.

Just because politicians luxuriate in chest-thumping rhetoric against sex offenders doesn't mean that they don't take their own

message seriously. Stupple argues that the 'disgust' legislators and judges feel toward sex offenders has led to their dehumanization in our courts. This dehumanization has in turn resulted in a failure of the courts' essential function of protecting the individual liberties of criminal defendants. The more despised the accused, the more vital it is to our constitutional scheme that courts protect him or her from any temptations legislators might feel toward circumventing their rights. The failure of the courts in this regard has resulted in the continuation of a host of inhumane and ineffective punishments. These include massive, over-inclusive sex offender registries, which do far more to stigmatize and shame offenders, many of whom pose only a minimal recidivism threat, than protect the public. In many instances, inclusion on the registry is simply an internet-friendly method of public branding, what puritan judges would've done to Hester Prynne had laptops been available.

Judges have also imposed and upheld a vast array of behavioral and residency restrictions on released sex offenders. They've applied broadly and on a massive scale, often in purely punitive ways that make assimilation back into society even more difficult. Perhaps most troubling, both ethically and constitutionally, is the rise of civil commitment laws that redirect inmates who have served their sentences into mental institutions. These laws often function as *de facto* sentence extenders. They turn medical professionals into jailers and punish the same individual twice, and the second time indefinitely, for the same offense. ...[T]he response to this threat has been hysterical, disproportionate, and emotional rather than rational and effective. It has inflicted the double harm of exacerbating old problems, such as mass ignorance, fear, and the reinforcement of stereotypes, while creating new ones, including a metastasizing system of widespread overpunishment. Our legislatures and courts have promoted myths, exaggerated bogeymen, and recklessly fanned the flames of thoughtless rage and panic.

Editor's Note: Serialized excerpts from Alexandra Stupple's comprehensive, compelling and compassionate essay, "Disgust, Dehumanization, and the Courts' Response to Sex Offender Legislation," will begin in the next *ILP* edition.

**Shaming the Constitution, Part 12: –
 Ch. 8 Excerpts,
 Part 1 of 2**

Michael L. Perlin, & Heather Ellis Cucolo, *Shaming the Constitution: The Detrimental Results of Sexual Violent Predator Legislation* (Philadelphia: Temple Univ. Press, 2017), Chapter 8: "Therapeutic Jurisprudence and Conclusion" (Part 1 of 2)

Editor's Note: We now enter the last chapter in the comprehensive book, *Shaming* (Continued on page 5)

the Constitution... As with Chapter seven, this chapter will be presented in two parts to accommodate the wealth of material worth quoting. This final chapter discusses how "therapeutic jurisprudence can guide handling of those who have committed sexual offenses without running roughshod over their human rights and their constitutional rights and with an aim to effect desistance, and rehabilitation with reintegration into community life." Capping the second part of this last chapter, authors Perlin and Cucolo sum up the most important points of the book in its Conclusion, urging the reader to ponder such points and to further explore the issues raised in the book.

Text excerpts:

p. 159: **"What Is Therapeutic Jurisprudence?"**

One of the most important legal theoretical developments of the past two decades has been the creation and dynamic growth of therapeutic justice (TJ).² Therapeutic justice recognizes that the law – potentially a therapeutic agent – can have therapeutic or anti-therapeutic consequences for individuals involved in both the civil and criminal justice systems.³ It asks this question: Can or should legal rules, procedures, and lawyer roles be reshaped to enhance their therapeutic potential while not subordinating principles of due process?⁴ From the outset, one of the creators of this field of scholarship/theory has been clear: the law's use of 'mental health information to improve therapeutic functioning [cannot] impinge upon justice concerns,⁵ a position with which we entirely agree. An inquiry into therapeutic outcomes does not mean that 'therapeutic concerns "trump" civil rights and civil liberties.⁶

pp. 159-60: Therapeutic jurisprudence 'asks us to look at law as it actually impacts people's lives,⁷ focusing on the law's influence on emotional life and psychological well-being.⁸ TJ seeks to inform lawyering practices and influence policy 'by using social science data and methodology to study the extent to which a legal rule, procedure, or practice promotes the psychological and physical well-being of the people it affects.'⁹ It suggests that 'law should value psychological health, should strive to avoid imposing anti-therapeutic consequences whenever possible, and when consistent with other values served by law should attempt to bring about healing and wellness.'¹⁰ In this context, it has been suggested that psychological health is a 'fundamental' legal interest.¹¹

The Significance of Dignity¹²

p. 161: ...Dignity concepts are expansive; by way of example, a Canadian Supreme Court case has declared that disenfranchisement of incarcerated persons violated their dignity interests.³³ Interestingly, although the U.S. Supreme Court decisions about sexual offenders have served to rob the population in question of basic dignity,³⁴ elsewhere the Court has recognized that legislative enactments can result in humiliating consequences and has underscored dignity's important role in the law.³⁵ In several landmark decisions, the Court has struck down both civil and criminal statutes

that humiliate and shame.³⁶ With these cases, the Court has acknowledged the importance of the role of dignity.³⁷ Elsewhere, the Court has specifically recognized the shame that can result when dignity is not present. In *Indiana v. Edwards*, the Court held that 'a right of self-representation at trial will not "affirm the dignity" of a defendant who lacks the mental capacity to conduct his defense without the assistance of counsel.'³⁸ The Court stated that 'to the contrary, given that defendant's uncertain mental state, the spectacle that could well result from his self-representation at trial is at least as likely to prove humiliating as ennobling.'³⁹

One of the key questions that must be answered, then, is this: To what extent, if at all, does the process by which individuals are labeled sexual offenders and then institutionalized on that basis comport with these basic dignity concepts and structures?

p. 162: **On Professor Ronner's Vision**

Given what we have discussed in the preceding chapters, is it remotely possible that Professor Ronner's vision – of voice, voluntariness, and validation⁴⁰ – will be fulfilled? The first question to address is whether sexual offender laws and judicial proceedings promote a vision that is consonant with these principles. The answer to that question, as we have clearly sought to demonstrate throughout this book, is a resounding no. The origins and development of sexual offender law have had a profoundly anti-therapeutic effect. This is so for multiple reasons.⁴¹

- The current universe of sexual offender laws presumes a uniform type of offender with uniform reasons for offending and relatively static strengths and weaknesses. Nothing in the literature supports this assumption.⁴²
- The current universe of sexual offender laws presumes that 'everyone is a recidivist.'⁴³ According to a U.S. Bureau of Justice statistics study ('Recidivism of Sex Offenders Released from Prison in 1994'), just 5 percent of sexual offenders followed for three years after their release from prison in 1994 were arrested for another sex crime.⁴⁴ A study released in 2003 by the bureau found that within three years, 3.3 percent (141 of 4,295) of the released child molesters were arrested again for committing another sex crime against a child. From 3 to 5 percent is hardly a high repeat-offender rate. In the largest and most comprehensive study ever done of prison recidivism, the Justice Department found that sexual offenders were in fact less likely to reoffend than other criminals.⁴⁵ The 2003 study of nearly 10,000 men convicted of rape, sexual assault, and child molestation found that sexual offenders had a rearrest rate 25 percent lower than the rate for all other criminals. Part of the reason is that serial sexual offenders – those who pose the greatest threat – rarely get released from prison, and those who do are unlikely to reoffend.⁴⁶ In short, our laws are based on inaccurate factual presumptions, an

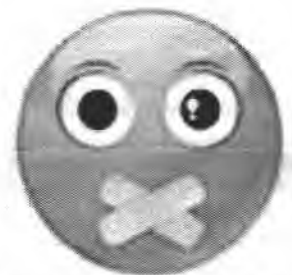
inaccuracy totally contrary to TJ principles.⁴⁷ pp. 162-63:

- The current universe of sexual offender laws presumes that the most likely sexual offense scenario is what is awkwardly often called 'stranger rape.' Statistics, though, indicate that the majority of women who have been raped know their assailant. A 1998 National Violence Against Women Survey revealed that among those women who reported being raped, 76 percent were victimized by a current or former husband, live-in partner, or date.⁴⁸ Also, a Bureau of Justice Statistics study found that nearly none out of ten rape or sexual assault victimizations involved a single offender with whom the victim had a prior relationship as a family member, intimate, or acquaintance.⁴⁹ In the cases of child victims, there is no question that relatives, friends, babysitters, persons in positions of authority over the child, or persons who supervise children are more likely than strangers to commit a sexual assault.⁵⁰
- The current universe of sexual offender laws presumes that registration law and community 'banishment' law minimize reoffending. There is no evidence that such laws are effective in reducing reoffending⁵¹ or that they provide incentives for sexual offenders to undergo treatment in the community or demonstrate a prosocial lifestyle.⁵²
- The current universe of sexual offender laws ignores the multiple ways that the court process and the roles played by defense counsel and the prosecution – as done currently – support cognitive distortions that can be used by sexual offenders as ways of justifying sexual offending⁵³ and, by emphasizing punishment, retribution, and incapacitation, often provide disincentives for sexual offenders to undergo treatment.⁵⁴ Similarly, the confrontational adjudicative process of traditional courts encourages advocacy of innocence, discourages acceptance of responsibility, and influences subsequent acceptance of treatment after sentencing.⁵⁵ There is no question that 'few aspects of the court system ...pertaining to sex offenders are fundamentally aligned with the offender's orientation for transformation and change'; the nature of the court process promotes 'internalized feelings of being incurable and irredeemable.'⁵⁶
- Although there has been speculation that community notification might increase offenders' awareness of their risk, thus facilitating engagement in treatment and risk management,⁵⁷ research shows that aggressive approaches of notification (such as distributing flyers or door-to-door warnings in a community) produced higher frequencies of negative effects and were thus anti-therapeutic.⁵⁸
- An analysis of judicial practices in Washington has concluded that that state's laws⁵⁹ may deleteriously 'affect the motivation of convicted sex offenders to

seek treatment in prison, and ...may affect the motivation of sex offenders to enter guilty pleas,' thus resulting in a 'potentially antitherapeutic impact on areas beyond the sex offender commitment statute itself.'⁶⁰

pp. 163-64:

- In some states, the near-universal ineffectiveness of counsel (or, in some, the absence of counsel)⁶¹ leads to 'trials' bereft of procedural justice⁶² and any modicum of dignity, as they do not give individuals an opportunity to present and hear evidence in a meaningful court procedure;⁶³ it is impossible for such proceedings to provide the basics of therapeutic jurisprudence.⁶⁴ What conclusions have scholars come to in discussing the impact of TJ on sexual offender law?⁶⁵ Virtually uniformly, they have concluded that our law and practices ignore all of the precepts of therapeutic jurisprudence.⁶⁶
- p.164: "...[T]he late professor Bill Glaser listed multiple ways that the ethical guidelines governing psychology practice are breached by sexual offender laws:
- The primary measure of treatment success is that of the protection of society rather than alleviation of the offender's suffering.
- Treatment, to be effective, must usually be involuntary.
- Effective treatment requires that confidentiality be breached.
- Generally, the offender must not be allowed any choice of therapy or therapist.
- Offenders may be forced to accept therapy from non-clinicians or unqualified staff.
- Effective therapy requires multiple other infringements on an offender's dignity and autonomy.⁷²



pp.164-65: Further, John Lafond has argued that sexual offender predator laws are so destructive to individual and community well-being that therapeutic jurisprudence must take a normative stance and assert that the law should be repealed or substantially changed, by 'asserting its primacy and require change regardless of competing values.'⁷³ This insight has led Dr. Astrid Birgden to urge that TJ must 'providing a framework for setting a limit when the law is anti-therapeutic toward offender rights.'⁷⁴ She suggests, by way of example, that alternative monitoring strategies that are more likely to have therapeutic outcomes are available through 'appropriate case

(Continued on page 6)

management, interagency cooperation and community engagement.¹⁷⁵

Notes:

1 This section is partially adapted from Michael L. Perlin & Alison J. Lynch, "In the Wasteland of Your Mind: Criminology, Scientific Discoveries and the Criminal Process," 4 Va. J. Crim. L. 304 (2016).

2 See, e.g., David B. Wexler, *Therapeutic Jurisprudence: The Law as a Therapeutic Agent* (1990); David B. Wexler & Bruce J. Winick, *Law in a Therapeutic Key: Recent Developments in Therapeutic Jurisprudence* (1996); Bruce J. Winick, *Civil Commitment: A Therapeutic Jurisprudence Model* (2005); David B. Wexler, "Two Decades of Therapeutic Jurisprudence," 24 *Touro L. Rev.* 17 (2008); Michael Perlin & Heather Ellis Cucolo, *Mental Disability Law: Civil & Criminal*, § 2-6 (2016). Wexler first used the term in a paper he presented to the National Institute of Mental Health in 1987. See David Wexler, "Putting Mental Health into Mental Health Law: Therapeutic Jurisprudence," 16 *L. Hum. Behav.* 27-27, 32-33 (1992).

3 Michael L. Perlin, "His Brain Has Been Mismanaged with Great Skill: How Will Jurors Respond to Neuroimaging Testimony in Insanity Defense Cases?," 42 *Akron L. Rev.* 885, 912 (2009); Kate Diesfeld & Ian Freckelton, "Mental Health Law and Therapeutic Jurisprudence," in *Disputes and Dilemmas in Mental Health Law* 91 (2006) (for a transnational perspective).

4 Michael L. Perlin, "Everybody Is Making Love/Or Else Expecting Rain: Considering the Sexual Autonomy Rights of Persons Institutionalized Because of Mental Disability in Forensic Hospitals," 83 *Wash. L. Rev.* 481 (2008); Michael L. Perlin, "You Have Discussed Lepers and Crooks": Sanism in Clinical Teaching," 9 *Clinical L. Rev.* 683 (2003) [Hereinafter Perlin, Lepers and Crooks].

On how therapeutic jurisprudence "might be a therapeutic tool in efforts to combat sanism, as a means of 'stripping bare the law's sanist façade," see Michael L. Perlin, "Baby, Look Inside Your Mirror: The Legal Profession's Willful and Sanist Blindness to Lawyers with Mental Disabilities," 69 *U. Pitt. L. Rev.* 589, 591 (2008) [hereinafter Perlin, Mirror], quoting, in part, see Michael L. Perlin, *The Hidden Prejudice: Mental Disability on Trial* 301 (2000). See also Ian Freckelton, "Therapeutic Jurisprudence Misunderstood and Misrepresented: The Price and Risks of Influence," 30 *T. Jefferson L. Rev.* 5875, 585-86 (2006).

5 David B. Wexler, "Therapeutic Jurisprudence and Changing Concepts of Legal Scholarship," 11 *Behav. Sci. & L.* 17, 21 (1993), see also David Wexler, "Applying the Law Therapeutically," 5 *Applied & Preventive Psychol.* 179 (1996).

6 Michael L. Perlin, "A Law of Healing," 68 *U. Cin. L. Rev.* 407, 412 (2000).

7 Bruce J. Winick, "Foreword: Therapeutic Jurisprudence Perspectives on Dealing with Victims of Crime," 33 *Nova L. Rev.* 535, 535 (2009).

8 David B. Wexler, "Practicing Therapeutic Jurisprudence: Psychological Soft Spots and Strategies," in Daniel P. Stolle, David B. Wexler & Bruce Winick, *Practicing Thera-*

peutic Jurisprudence: Law as a Helping Profession 45 (2006 [hereinafter, Stolle]).

9 Keni J. Gould & Michael Perlin, "Johnny's in the Basement/Mixing Up His Medicine": Therapeutic Jurisprudence & Clinical Teaching: Introduction to Therapeutic Jurisprudence: Issues, Analysis, and Applications," 24 *Seattle U. L. Rev.* 339, 353-54 (2000). See also Christopher Slobogin, "Therapeutic Jurisprudence: Five Dilemmas to Ponder," 1 *Psychol. Pub. Pol'y & L.* 193, 197 (1995) (TJ "adopts a preference for laws that promote well-being").

10 Bruce Winick, "A Therapeutic Jurisprudence Model for Civil Commitment," in *Involuntary Detention and Therapeutic Jurisprudence: International Perspective on Civil Commitment*, 23, 26 (Kate Densfeld & Ian Freckelton, eds., 2003).

11 Douglas Marlowe, David DeMatteo & David S. Festinger, "A Sober Assessment of Drug Courts," *Fed. Sentencing Rep.*, 2003 WL 234475495, 153, 155 (2003).

12 This section is partially adapted from Michael L. Perlin & Alison J. Lynch, "Sexuality, Disability, and the Law: Beyond the Last Frontier?" (2016)

13 *Sauvé v. Canada*, [2002] 3 S.C.R. 519, para. 35 (Can.).

14 See, e.g., *supra* Chapter 3, discussing *Kansas v. Hendricks*, 521 U.S. 346 (1997).

15 *Jones v. Barnes*, 463 U.S. 745, 759 (1983) (Brennan, dissenting) (stating that one of the critical functions of counsel in the trial process is to "protect the dignity and autonomy of the person on trial"); see also Philip Halpern, "Government Intrusion into the Attorney-Client Relationship: An Interest Analysis of Rights and Remedies," 32 *Buff. L. Rev.* 127, 172 (1983) ("The right to counsel embraces two separate interests; reliable and fair determinations in criminal proceedings, and treatment of defendants with dignity and respect regardless of the effect on outcome of criminal proceedings.").

16 This is not to say that this line of decisions is unanimous. See, e.g., *Florence v. Bd. Of Freeholders of Cnty. of Burlington*, 132 S. Ct. 1510, 1523 (2012) (holding that suspicionless strip searches of detainees being admitted to the general jail population did not violate the Fourth or Fourteenth Amendment); Julian Simčoč, "Florence, Atwater, and the Erosion of Fourth Amendment Protections for Arrestees," 65 *Stan. L. Rev.* 599, 602 (2013) (detailing how decisions such as *Florence* may heighten the potential risk of abuse by prison officials).

17 E.g., *Lawrence v. Texas*, 539 U.S. 558, 578-79 (2003).

18 *Indiana v. Edwards*, 554 U.S. 164, 176 (2008) (citing *McKaskle v. Wiggins*, 465 U.S. 168, 176-77 (1984) (finding a pro se defendant's Sixth Amendment right to conduct his own defense was not violated by unsolicited participation of standby counsel).

19 *Edwards*, 554 U.S. at 176. See Perlin & Cucolo, *supra* note 2, § 2-6.3.2 (discussing how the Supreme Court's focus on dignity and the perceptions of justice are, perhaps, its first implicit endorsement of important principles of therapeutic justice in a criminal procedure context); see generally

Michael L. Perlin & Naomi Weinstein, "Friend to the Martyr, a Friend to the Woman of Shame": Thinking about the Law, Shame and Humiliation," 24 *So. Cal. Rev. L. & Soc. Just.* 1, 11-18 (2014).

See also *Helen L. v. DiDaño*, 46 F.3d 325, 335 (3d Cir. 1995), cert denied 516 U.S. 813 (1995): "The [Americans with Disabilities Act] is intended to ensure that qualified individuals receive services in a manner consistent with basic human dignity rather than a manner that shunts them aside, hides, and ignores them."

20 See Amy D. Ronner, "The Learned Helpless Lawyer: Clinical Legal Education and Therapeutic Jurisprudence as Antidotes to Bartleby Syndrome," 24 *Touro L. Rev.* 601, 627 (2008).

21 Much of the material accompanying notes 42-65 is adapted from Heather Ellis Cucolo & Michael L. Perlin, "Preventing Sex-Offender Recidivism Through Therapeutic Jurisprudence Approaches and Specialized Community Integration," 22 *Temp. Pol. & Civ. Rts. L. Rev.* 1 (2012).

22 Chrysanthi S. Leon, *Sex Fiends, Perverts, and Pedophiles: Understanding Sex Crime Policy in America* 181 (2011); Paul Noroian & Fabian M. Salah, "Residency Restrictions for Convicted Offenders," 34 *J. Am. Acad. Psychiatry & L.* 422 (2006).

For excellent surveys of all issues, see generally Charles Patrick Ewing, *Justice Perverted: Sex Offense Law, Psychology, and Public Policy* (2011); Robert A. Prentky, Howard E. Barbaree & Eric S. Janus, *Sexual Predators: Society, Risk, and the Law (International Perspectives on Forensic Mental Health)* (2015).

23 Bureau of Justice Statistics, *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics* (2000), available at: <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1147>.

24 Matthew R. Durose, Patrick Langen & Erica L. Schmitt, *Recidivism of Sex Offenders Released from Prison in 1994* (2003), available at: <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1136>.

25 Carl Bialik, "How Likely Are Sex Offenders to Repeat Their Crimes?" *Wall St. J.*, Jan. 24, 2008.

26 Benjamin Radford, "Predator Panic, Reality Check on Sex Offenders," *Live Science* (2006), <http://www.livescience.com/776-predator-panic-reality-check-sex-offenders.html>.

27 On how TJ relies on empiricism, see, e.g., Lorraine E. Ferris, "Using Therapeutic Jurisprudence and Preventive Law to Examine Disputants' Best Interests in Mediating Cases about Physicians' Practices: A Guide for Medical Regulators," 23 *Med. & L.* 183, 187-88 (2004).

28 Patricia Tjaden & Nancy Thoennes, *Stalking in America: Findings from the National Violence Against Women Survey* (National Inst. Of Justice, 1998), available at <http://ncjrs.gov/pdffiles/169592.pdf>.

29 Lawrence Greenfield, *Sex Offenses and Offenders, Bureau of Justice Statistics* (1997), avail. at: <http://bjs.ojp.usdoj.gov/content/pub/pdf/SOO.PDF>; Michael R. Rand &

Lawrence A. Greenfield, *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends and Girlfriends* (1998); see also Emily Horowitz, "Growing Media and Legal Attention to Sex Offenders: More Safety or More Injustice?," 2007 *J. Inst. Just. Int'l Studies* 143, 151-52 (same). On the significance of this reality for the treatment of sexual offenders, see Tony Ward & Gill Moreton, "Moral Repair with Offenders: Ethical Issues Arising from Victimization Experiences," 20 *Sexual Abuse: J. Res. & Treatment* 305 (2008).

Importantly, this does not constitute new data. Thirty-five years ago, (well before this issue was studied nearly as carefully as it is today), it was estimated that no more than 15 percent of sexual abuse of children was committed by non-strangers. See Lucy Berliner & Doris Stevens, *Advocating for Sexually Abused Children in the Criminal Justice System*, in U.S. Dep't of Health & Hum. Services, *Sexual Abuse of Children: Selected Readings* 47 (1980).

30 Howard N. Snyder, *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics* (July 2000), avail. at: <http://www.eric.ed.gov/PDFS/ED446834.pdf>.

31 Marnie Rice & Grant T. Harris, "What We Know and Don't Know About Treating Adult Sex Offenders," in *Protecting Society from Sexually Dangerous Offenders: Law, Justice, and Therapy* 101 (Bruce J. Winick & John Q. LaFond eds., 2003); *Doë v. Baker*, No. 1:05-CV-22675-TWT, 2006 U.S. Dist. LEXIS 67925, at *11 (N.D. Ga. Apr. 5, 2006). The *Baker* court acknowledged that residency restrictions may be analogous to banishment, noting that "a more restrictive act that would in effect make it impossible for a registered sexual offender to live in the community would in all likelihood constitute banishment which would result in an *ex post facto* problem."

32 Astrid Birgden, "Therapeutic Jurisprudence and Sex Offenders: A Psycho-Legal Approach to Protection," 16 *Sexual Abuse: J. Res. & Treatment* 351 (2004). See *supra* Chapter 3, at Federal Regulation and Notification Laws.

33 Birgden, *supra* note 52.

34 William Edwards & Christopher Hensley, "Contextualizing Sex Offender Management Legislation and Policy: Evaluating the Problem of Latent Consequences in Community Notification Laws," 45 *Int'l J. Offender Therapy & Comp. Criminology* 83 (2001).

35 See Astrid Birgden & Heather Ellis Cucolo, "The Treatment of Sex Offenders: Evidence, Ethics, and Human Rights," 23 *Sexual Abuse: J. Res. & Treatment* 295, 300 (2011); Birgden, *supra* note 52.; Jason E. Peebles, "Therapeutic Jurisprudence and the Sentencing of Sex Offenders in Canada," 43 *Int'l J. Offender Therapy & Comp. Criminology* 275 (1995).

36 William Edwards & Christopher Hensley, "Restructuring Sex Offender Sentencing: A Therapeutic Approach to the Criminal Justice Process," 45 *Int'l J. Offender Therapy & Comp. Criminology* 646, 655 (2001). See *supra* Chapter 3 at "Supreme

(Continued on page 7)

Court Decisions Delineating the Elements of Civil Commitment, SVPA Commitment in the Twenty-First Century."

57 See, e.g., Kirk Heilbrun, "Prediction versus Management Models Relevant to Risk Assessment: The Importance of Legal Decision-Making Context," 21 *Law & Human Behav.* 347 (1997).

58 Jill Levenson & Leo P. Cotter, "The Effect of Megan's Law on Sex Offender Reintegration," 21 *J. Contemp. Crim. Just.* 49, 62 (2005).

59 Discussed extensively Chapter 3, *supra*.

60 Jeffrey A. Klotz, et al., "Cognitive Restructuring through Law: A Therapeutic Jurisprudence Approach to Sex Offenders and the Plea Process," 15 *U. Puget Sound L. Rev.* 579, 595 (1992).

61 See generally, Heather Ellis Cucolo & Michael L. Perlin, "Far from the Turbulent Space: Considering the Adequacy of Counsel in the Representation of Individuals Accused of Being Sexually Violent Predators," 18 *U. Pa. J. L. & Soc. Change* 125 (2015)

62 See generally, Michael L. Perlin, *A Prescription for Dignity: Rethinking Criminal Justice and Mental Disability Law* (2013).

63 John J. Enslinger & Thomas D. Liguori, "The Therapeutic Significance of the Civil Commitment Hearing: An Unexplored Potential," 6 *J. Psychiatry & L.* 5 (1978), discussed in Michael L. Perlin, "And My Best Friend, My Doctor/Won't Even Say What It Is I've Got: The Role and Significance of Counsel in Right to Refuse Treatment Cases," 42 *San Diego L. Rev.* 735, 743 (2005).

64 See *supra* Chapter 5, at "Reassessing Ineffectiveness of Counsel."

65 Much of the material *infra* accompanying notes 66-72 is adapted from H.E. Cucolo & M.L. Perlin, "They're Planting Stories in the Press: The Impact of Media Distortions on Sex Offender Law and Policy," 3 *U. Denv. Crim. L. Rev.* 185 (2013).

Therapeutic jurisprudence is not the only external jurisprudential lens to be applied to sex offender law and policy. The utility of the interest-convergent thesis is considered in David A. Singleton, "Kids, Cops, and Sex Offenders: Pushing the Limits of the Interest-Convergence Theory," 57 *How. L. J.* 353 (2013) (the "interest-convergence thesis" posits that "advances achieved by minorities in the United States are defined and determined by their relationship to the interests of dominant cultures"; see Kevin Terry, "Community Dreams and Nightmares: Arizona, Ethnic Studies, and the Continued Relevance of Derrick Bell's Interest-Convergence Thesis," 88 *N.Y.U. L. Rev.* 1483, 1490 (2013); see generally Derrick A. Bell, Jr., "Racial Remediation: An Historical Perspective on Current Conditions," 52 *Notre Dame L. Rev.* 5, 6 (1976). On procedural justice and sexual offender law, see John Q. LaFond & Bruce J. Winick, "Sex Offender Reentry Courts: A Proposal for Managing the Risk of Returning Sex Offenders to the Community," 34 *Seton Hall L. Rev.* 1173, 1187, 1210 (2004). On restorative justice and sexual offender law, see Michael G. Petrunik, "Managing Unac-

ceptable Risk: Sex Offenders, Community Response, and Social Policy in the United States and Canada," 46 *Int'l J. Offender Therapy & Comp. Criminology* 483, 492 (2002).

66 On ways that TJ can integrate the "health care and social control functions of" the mental health system, see Robert F. Schopp, "Sexual Predators and the Structure of the Mental Health System: Expanding the Normative Focus of Therapeutic Jurisprudence," 1 *Psychol., Pub., & L.* 161, 166 (1995).

72 Bill Glasser, "Therapeutic Jurisprudence: An Ethical Paradigm for Therapists in Sex Offender Treatment Programs," 4 *W. Criminology Rev.* 143, 145-46 (2003).

73 John Q. LaFond, "Can Therapeutic Jurisprudence Be Normatively Neutral? Sexual Predator Laws: Their Impact on Participants and Policy," 41 *Ariz. L. Rev.* 375, 378 (1999).

74 Astrid Birgden, "Therapeutic Jurisprudence and Offender Rights: A Normative Stance Is Required," 78 *Rev. Jur. U.P.R.* 43, 51 (2009).

75 Astrid Birgden, "Serious Sex Offenders Monitoring Act 2005 (Vic): A Therapeutic Jurisprudence Analysis," 14 *Psychiatry Psychol. & L.* 78, 87 (2007).

New Horowitz Book Reviewed

Base SO Crime Laws on Facts, Not Fear

Editor, [Review] "From Rage to Reason: Why We Need Sex Crime Laws Based on Facts, Not Fear (Bloomsbury, 2023), by Emily Horowitz," *Titus House Newsletter*, Vol. __, No. __, September 2023, p. 3

Text:

"In this timely and extensively researched book, sociologist Emily Horowitz shows how current sex-offense policies in the United States create new forms of harm and prevent those who have caused harm from the process of constructive repentance or contributing to society after punishment. Horowitz also illustrates the failure of criminal justice responses to social problems. Sharing detailed narratives from the experiences of those on registries and their loved ones, Horowitz reveals the social impact and cycle of violence that results from dehumanizing and banishing those who have already been held accountable.

From Rage to Reason offers a new perspective on how and why false claims about sex offenses became so pervasive and how these myths fostered ineffective policies that have little to do with the reality of most sexual abuse. It argues that to truly prevent sexual abuse, we must unearth the sources of these misunderstandings, debunk these claims in a systematic way, and have frank and genuine discussions about the limits of legal responses to complex social problems."

Reviews: "This may be the bravest book you have ever read. Horowitz's meticulous

interviews with people on sex offender registries returns a modicum of humanity not just to them, but, more importantly, to the rest of us. As she aptly describes, registries are utterly useless for preventing new sex crimes. All they do is sentence to social and civil death people who have already served their time of punishment and labored to repent. We can ill afford to deny rights and humanity to anyone in our culture. To do so cuts us all at an Achilles heel that very few are willing to acknowledge. Horowitz won't let us look away." – Debbie Nathan, prize-winning journalist, author of *Sybil Exposed: The Extraordinary Story Behind the Famous Multiple Personality Case & Satan's Silence: Ritual Abuse and the Making of a Modern American Witch Hunt*.

"The compelling stories Horowitz tells in *From Rage to Reason* bring home, more powerfully than could any statistical analysis, the systematic and gratuitous harms generated by America's unique program of government-sponsored shunning of people who have already been fully punished for a sexual offense. Her stories show how the senseless barriers registry laws erect to gainful employment, adequate housing, and normal parenting often destroy the registrants' families along with their futures, while contributing nothing to public safety. These are stories we need to hear." – Ira Mark Ellman, Distinguished Affiliated Scholar, Center for the Study of Law and Society, University of California, Berkeley.

"*From Rage to Reason* offers an unvarnished look at the crippling realities of life on the sex offense registry. Crafted from over 100 in-depth interviews, *From Rage to Reason* is storytelling at its best, vividly portraying the needless abuse and punishment directed at those society deems to be "others." – Catherine L. Carpenter, Arleigh M. Woods and William T. Woods Chair, Southwestern Law School and President, Alliance for Constitutional Sex Offense Laws."

Source: *From Rage to Reason: Why We Need Sex Crime Laws Based on Facts, Not Fear* (Bloomsbury, 2023), by Emily Horowitz.

RM 5th Excerpt

p. 52: § 2: The Resister's Vow Of Resistance

In his speech at the March on Washington, John Lewis exclaimed, 'We cannot be patient!' Resisters act as if they are running out of time because THEY ARE! We have waited long enough. We are not concerned with promises of reform. When they claim that 'change is coming,' what they really mean to say is, 'We're going to change your mind so that you will give up your demands.' They are wrong.

We are only interested in action. We do not buy into the ruse that it takes the legisla-

ture time to change things. In 1994, the SP was created in 97 minutes. It would take 97 seconds to abolish it. We will not slow down, wait, delay, reschedule, or otherwise suspend our plans for resistance.



U.S. Rep. John Lewis (far right) witnessing the official signing into law of the Civil Rights History Project Act of 2009.

Resisters do not participate with the regime. We do not attend or participate in CORE Groups, Modules, CREST Council Meetings, Quarterly Reviews, Annual Reviews, Mental Health Assessments, Polygraphs, PPGs, or one-to-ones with any SP officers without our attorneys AND our county case managers present. We do not participate in 'vocational' work programs or recreational activities organized by SP officers. We do not seek permission from the SP to be spiritual liaisons. We do not play board games or card games with the enemy. No Games. Only Shame. We only interact with SP officers to conduct day-to-day business, to educate them, to rebuke them, or to shame them. (Business, Educate, Rebuke, Shame: BERS). Only Truth or Silence for Tyrants.

Resisters occasionally file grievances and lawsuits concerning the conditions of confinement of the SP. However, conditions of confinement issues do not take the place of our efforts to get released or to abolish the institution. When a Resister uses his energy to focus on conditions of confinement, grievances and lawsuits, it is strategic. His goal is not actually to become more comfortable. Instead, he is putting added pressure on the Murder Machine that could ultimately lead to abolition if he orchestrates his efforts with precision.

Resisters hold officers accountable for even the smallest transgressions. We report medical neglect, denied medical emergency attention, denied medical items, denied doctor-prescribed medication, verbal, emotional, physical or sexual abuse, or any other type of abuse. Independence takes precedence despite possible social rejection or retaliation. We owe SP officers nothing. We are responsible for our decisions. We hold SP officers accountable for theirs.

p. 54: ...When an SP officer asks 'How are you?' we tell her the Truth. We greet each other with 'End MSOP' so our intentions are never questioned. ...Many men are full of fear and fear will make people do evil things. Those who are afraid always end up worse than those who have courage.

p. 55: ...We also do not lie to ourselves and think we can make a negotiation of peace with evil. It is impossible. To date,

(Continued on page 8)

nearly 100 men have died trying. To abandon facts is to abandon freedom. If nothing is true, then no one can criticize power, because there is no basis upon which to do so. We do not say, write, affirm, or distribute anything that distorts the Truth. We distinguish source credibility and seek out second opinions when necessary. We do not support journalism that distorts or hides the underlying facts. We do not take part in meetings, demonstrations, or other collective actions in which no one can speak the Truth. We walk out of events as soon as we hear a lie, ideological drivel, or shameless propaganda.

p. 56: Resisters use diplomatic means to achieve our goals. We organize activities that draw attention to the evils of the SP. These actions are always peaceful. We use the power of the spoken and written word to offer new perspectives for the public consciousness.

Resisters share their stories. Some of us are juvenile offenders. Some of us have NO criminal record. The vast majority of us do not have a mental illness. Many of us did everything the SP treatment asked us to do but are still confined. Most of us have been lied to by our therapists.

p. 57: Resisters are not afraid to stand out. It feels strange to say or do something different, but without that unease, there is no freedom. Remember Rosa Parks. The moment you set an example, the spell of the status quo is broken.

p. 58: Resisters listen for dangerous words. The way to destroy all rules is to focus on the 'exception.' A Nazi leader outmaneuvers his opponents, by manufacturing a conviction that the times are 'exceptional,' and then transforming that state of exception into a permanent emergency.

Resisters are calm when the unthinkable arrives. James Madison made the point that tyranny arises 'on some favorable emergency.' The Reichstag fire, for instance, initiated the politics of emergency. No one is sure who started the fire, but the Nazis capitalized on it by using it to justify taking over the country. Those sudden disasters are used to justify the end of checks and balances, the dissolution of opposition parties, the suspension of freedom of expression, and the prohibition of the right to a fair trial. Do not fall for this.

Impacts of Sex Offender Commitment-Style 'Treatment'

Jon Thompson & James Hunter, "The Psycho/Social/Spiritual Impact of Being Held in a 'Treatment Center' for Sex Offenders," *You Are Your Story* (<https://yourstory.org/index.php/studies/240-the-psycho-social-spiritual-impact-of-being-held-in-a-treatment-center-for-sex-offenders>).

Text Excerpts:

"Jon Thompson, the coauthor of this paper, is incarcerated in the Federal Civil Commitment Center in the FCI-Butner

federal prison in] Butner, North Carolina. He ...prepared a questionnaire which he distributed to all of the 70 men in the unit. When all the material was collected, he sent it to me. [This questionnaire contains these questions relevant to this article:

- "How many total years have you been incarcerated? (This includes all local, state, federal, and civil commitment time.)"
- Have you ever been released from a civil commitment facility?"
- Can a person in prison have a life worth living before civil commitment, and why?"
- What about during civil commitment and why?"]

RESULTS

...Only one of the 40 who returned filled-out questionnaires felt that it was impossible to find life worthwhile while in an ordinary prison with a fixed release date.

20 (44%) switched from finding life worthwhile to finding it not worthwhile as they moved from an ordinary prison to imprisonment in civil commitment.

17 (42%) of the 40 that returned the questionnaires added information regarding why they did or did not find life in regular prison, and/or civil commitment worthwhile. Having no clear release date was the most common reason given for not finding life worthwhile.

Other reasons for finding life not worthwhile in prison and/or in civil commitment were being socially isolated to an extreme degree, being labeled as monsters, having all communications with people on the outside monitored, and not having access to meaningful work or recreational opportunities. No other reason for finding life devoid of meaning was mentioned nearly as frequently as the perception that the incarceration would never end. Even among the few who said they found life in a treatment center 'worthwhile,' the reason they did so was often that they believed that if they followed the treatment program with sufficient diligence, they would be released.

In summary, by far the most common reason for being able to find life worthwhile - whether in the regular prison or in the continuation of imprisonment in the civil commitment program - was the belief that one will one day be able to get out of prison. It is important to note that this is not the same as finding anything in an incarcerated life as being *intrinsically* worthwhile. The most common perception of incarcerated individuals - whether in the regular prison or in the imprisonment of civil commitment - is that imprisonment is a kind of dead time during which one 'kills time' until real, worthwhile life can resume, upon release....

DISCUSSION

...Self-Adequacy

I am using the term 'self-adequacy' to designate three closely related and overlapping, but still distinct, psychological concepts: (1) Self-esteem, by which I mean a positive image of one's self, (2) Locus of control, which has to do with whether the locus of control for important aspects of one's life are within the self, or external to the self, and (3) Self-efficacy, or the belief

that one has the capacity to effectively achieve one's goals. It is not possible to imagine that a person could have a sense of well-being without a reasonable level of self-adequacy.

A brief digression about where we are

Despite the claim that the civil commitment facility at Butner is 'a hospital and not a continuation of prison, it is understood by the majority of the inmates that this is a fiction that was created to evade a number of constitutional issues having to do with due process....

Respondent #51 describes this environment as a 'prison within a prison.'

The BOP (Bureau of Prisons) has isolated us from the rest of the prison. So for 23 or more hours a day we are imprisoned in the specified cell-block. This is being imprisoned inside a prison. Then the prison staff has the gall to tell us that we are detainees, not prisoners.

The view that we take in this paper is that if it looks like a duck, waddles like a duck, swims like a duck, and quacks like a duck, then probably it is a duck. For all practical intents and purposes the sex-offender treatment program at Butner, NC is a prison. Certainly it is what Erving Goffman called a 'total institution' (Goffman, 1961).

The impact of prison life on self-esteem

...Especially given the fact that the Butner program is actually housed in a physical prison, it is safe to assume that the general prison attitude toward prisoners dominates the mental landscape here. It is astonishing to me that, given their need to pretend that civil commitment is not just a continuation of prison, the authorities continue to house the program in a prison. In any case, in prison, sex offenders are seen as scum. This is confirmed by Respondent #16 who says, in response to the question regarding whether it is possible to have a worthwhile life in the civil commitment program, 'No. It would be very difficult. Now that we are labeled as monsters, that is how they treat us here.' Respondent #43 feels that treatment staff treat the inmates with some respect, but he observes that 'here, prison administration and most of the staff treat us like inmates of the lowest class.'

Beyond the stigma that pervades our society, and that is concentrated with an even greater intensity in prisons, the treatment program itself adds another level to the stigma. Social research has not been able to establish a profile of the typical sex offender. Except that they have broken a law, there is nothing that reliably distinguishes members of this group from a random selection of people in the population. They are not more stupid, more insensitive, or more anything than anybody else. Nevertheless the treatment techniques at Butner, as in most sex-offender programs, are clearly based on the assumptions that members of this group lack empathy, are incapable of love, are manipulative, are dishonest, lack insight, and are highly sociopathic. And they are treated accordingly. So this negative view of who sex offenders are is added to the already overwhelming stigma that the offenders live with. This is

hardly helpful to men who are drowning in socially induced self-hatred.

The impact of prison life on self-efficacy

...Autonomy comes in three flavors: behavioral, emotional and cognitive. Prisons have always restricted behavioral autonomy. They were invented specifically for that purpose. But until fairly recently, an incarcerated person in the United States could say, with some accuracy, 'Well, they can deny me my freedom of movement, but I still own my mind,' or something along that line. For some, this is no longer the case. Sex offenders in treatment are subjected to a powerful attack on the autonomy of the mind.

The rationale of the treatment program is that behavior is 'mediated' by cognition, as the cognitive therapists are fond of expressing it. Therefore, therapy must target the dysfunctional beliefs of the prisoner. There is an element of truth in this perspective. Behavior is the outcome of a number of different forces - physical, social, emotional, and cognitive. But this 'element of truth' does not justify the procedures we find used in sex-offender treatment. I will try to make it clear why this is so.

The underlying assumption of sex-offender treatment programs is that if a person has violated one of society's sexual laws, this justifies denying the person's cognitive and emotional autonomy as well as his behavioral autonomy. The sex offender must be forced to think and feel correctly or be punished severely.

In the Butner facility, joining the treatment program is not required. The carrot that is held out to the prisoner for choosing to participate in the treatment program is the hope for eventual release. That most participants never get to eat this carrot is one of the cruellest and most cynical aspects of the program. Respondent #64 states that 'Joining the program, one's only way of achieving freedom, simply means one might be out in another 4, 5, 6 or more years, by which time one is totally brainwashed.' For reasons totally outside one's control or knowledge, one might remain in therapy forever.

The comment by Respondent #64 raises an important question. Is the 'cognitive' therapy that is imposed on people in sex offender treatment programs actually brainwashing - the term he uses - and not cognitive therapy at all? In order to answer this question, we must begin with clear definitions of brainwashing and cognitive therapy.

Merriam Webster <https://www.merriam-webster.com/dictionary/brainwashing> provides this definition of brainwashing: 'A forcible indoctrination to induce someone to give up basic political, social, or religious beliefs and attitudes and to accept contrasting regimented ideas.'

The American Institute for Cognitive Therapy <https://www.cognitivetherapynyc.com/What-Is-Cognitive-Therapy.aspx> provides this definition of cognitive therapy:

Cognitive-behavioral therapy is a relative-
(Continued on page 9)

ly short-term, focused psychotherapy for a wide range of psychological problems including depression, anxiety, anger, marital conflict, loneliness, panic fears, eating disorders, substance abuse, alcohol abuse and dependence, and personality problems. The focus of therapy is on how you are thinking, behaving, and communicating today rather than on your early childhood experiences. The therapist assists the patient in identifying specific distortions (using cognitive assessment) and biases in thinking and provides guidance on how to change this thinking.

There is a superficial similarity between the two techniques. ...However, there are significant differences. The most important difference has to do with the issue of coercion. With brainwashing, we have a 'forcible indoctrination,' while cognitive therapy endeavors to 'guide' the patient. Brainwashing also attempts to protect the client from competing ideas and it enforces an unnecessary degree of social isolation to protect the client from wrong-think and social influences that are deemed negative. So far as I know, techniques aimed at protecting the client from normal social contacts for fear that they might be exposed to negative cognitions is not a part of any valid cognitive therapy. Nor are clients punished for negative cognitions. With the so-called 'cognitive techniques' used in sex-offender treatment, and this cannot be emphasized enough, wrong-think is punished with continuing imprisonment. Only physical torture would be more coercive. Finally, cognitive therapy is typically a short-term intervention. It cannot possibly take years to teach the few tenets that are the target of the therapy. In sex-offender treatment, the beliefs that treatment leaders consider relevant could be listed on a single page. Why, then, does it take years to teach these simple ideas to the program participants?

In a free society, legal interventions must be limited to behavior

In a free society, the legal system is concerned with whether the behavior of its citizens conforms to the law. Laws that dictate acceptable beliefs or feelings and that allow for the punishment of individuals that deviate from these beliefs and feelings are acceptable only in totalitarian societies. Even if one assumes that sex-offender treatment has a limited but legitimate concern for beliefs that might lead to re-offending, reasons for not re-offending might be quite varied. A person who has committed a sexual offense need not believe any of the 'correct' beliefs in order to decide not to 're-offend.' Let me illustrate this. Four of the 'correct' beliefs that are taught in treatment programs are as follows:

1. Sexual activity between adults and minors is always damaging – profoundly and intrinsically so.
2. To allow a relationship between one's self and a minor to become sexual is motivated by a desire for power, not love.
3. Someone must be 'blamed' for allowing a relationship to become sexual, and this must always be the adult.
4. To allow sexual activity to occur between an adult and a person who is defined as

a child in this society is a symptom of a mental disorder, which must be aggressively treated.

The assumption of the treatment provider is that unless an offender comes to believe these assertions (among others), he will continue to be at risk of re-offending. Is this true? Obviously not. A person who has broken one of society's sexual laws might reject all of the above treatment premises, and simply come to the conclusion that inter-generational sexual behavior, in this society, entails too many risks for both himself and the child, and on the basis of that, he could resolve to not violate the law again. It happens every day.

The law is about behavior – not about either feelings or cognitions. This is as it should be. You can hate me. You can think I'm a despicable person. You can even *want* to punch me in the face. But you cannot actually punch me in the face. If we are to maintain a free society these distinctions between feeling, thinking, and doing must be maintained.

Furthermore, in a free society *even with people who are convicted of crimes, it is not permissible to deny them their freedom of thought and expression.* To establish a set of beliefs to which one must subscribe if he is to avoid being incarcerated is a violation of the constitution. This is precisely what sex-offender treatment does. It doesn't matter if you call it 'hospitalization.' Imprisonment is imprisonment. In sex-offender civil commitment people are imprisoned for what they feel, for what they believe, for what they dream, and for what they might do. The primary thing that a person must do in order to have any hope of release is to convince a group of treatment providers what the providers can never know for sure – that the prisoner now believes and feels what he is supposed to believe and feel, and is not just faking it.

A word needs to be said about faking it. People are not able to simply change their beliefs at will. To demand that they do so is therefore unfair, especially if the consequence for the failure is continuing imprisonment. Suppose that I believe that my car is red, but you want me to believe that it is blue. I cannot change my belief that it is red, even if you threaten to kill me unless I do. The best I can do is fake it, – which, of course, is what I would do if you held a gun at my head. That is precisely the situation with sex-offender treatment. Everybody who hasn't given up on ever having a life outside of prison owns a blue car, whatever color it is.

Another factor that assures that the locus of control will remain outside the prisoner, and that he will have little or no control over his life, is the lack of objective and clear criteria that specify when treatment is successfully completed, and when release from the program can then therefore reasonably be expected. A contract specifying not only what is expected from the prisoner, but what the prisoner can expect as a result of living up to the program's expectations is lacking. A so-called 'contract' saying what is expected from the prisoner, and not what he can expect from compliance is not a

contract at all. It's just a set of orders. A real contract would allow the locus of control to shift back into the prisoner, and would thereby grant him some capacity for control over what happens to him. If I do A, B, C, and D, as the program demands, then I can reasonably expect that consequences E, F, G, and H will follow. Such criteria are totally lacking in the program.

Autonomy is at the very core of what we mean by 'person-hood.' To be a person is to be a free agent. If a person is a danger to others, it may be necessary to limit his or her behavioral autonomy. But when, in addition, we deny a person the right to feel, think, and dream as he will, we attack his personhood – and we violate his soul.

Belonging

Men who have been outed as MAPs (minor-attracted persons) experience the loss of significant relationships. Without any exception that I know of, incarcerated MAPs have been abandoned by many if not all of their friends, family, and significant others. The stigma associated with the social identity of being a 'pedophile' is enormous, and it tends to rub off on significant others who refuse to distance themselves from any MAP with whom they have been on friendly terms. Friends, after all, might be a part of a sex ring and spouses who do not divorce their offending husbands are probably enablers. In self-defense the MAP must be abandoned.

Providing help in dealing with the resulting grief would have to be one of the most important treatment goals of any program that actually had the well-being of the MAP as its primary concern. But of course furthering the well-being of the MAPs who are being treated is not the aim of the treatment. The aim of the treatment is to prevent 're-offending.' Whatever harm is done to the MAP is justified by the protection of possible future victims.

The MAP, like the scapegoats of old, is driven out of the community and, in many cases, is subjected to a condition of almost complete social isolation. He can be found under bridges or in programs that have specifically been setup to prevent the MAP from being in the community by extending his incarceration indefinitely. Whether this social isolation of the MAP protects future victims is a debatable point. Whether increasing his social isolation is harmful to the MAP is not debatable. Simply being placed in a civil commitment program radically constricts a person's social network, and is harmful to that person.

To whom might an incarcerated MAP reach out, and who might be inclined to respond, after family and friends have mostly abandoned him? I would suggest that it is those who have one or both of two characteristics. First, s/he might simply be a person who does not have a mainstream perception of the MAP – one who does not see him as a monster. Second, s/he might be someone who has actually been through the experience him- or (rarely, her-) self, and who is therefore sympathetic to what the incarcerated MAP is going through. Once you have blocked contact with people with these characteristics you have forced

the MAP into a deeper level of psycho/social/spiritual isolation. Let me illustrate how this attack on any meaningful social network operates with an example from my own experience. Not long ago I received the following communication as part of a larger email from an inmate at the Butner Civil Treatment Center:

On a very somber and sobering note, which you will no doubt take very hard, but you need to be aware of for future reference....

They really beat me up over your books in my possession and my personal communications with you and B.C. [a man who provides helpful and very non-radical materials to incarcerated sex offenders]. You might pass this message along to him just so he knows. I haven't actually been in contact with him since I've been here, but that didn't matter a bit....

I told them I wasn't giving up the one person who had befriended me and been a decent person to me in the last 11 years. Then I asked her to set me a euthanasia date. Of course, she refused, but it's in the record now.

By 'beat me up' he was referring, of course, to verbal attack. But it's important to understand the significance of this. The message that was given to him was clear: These people do not support our point of view. Therefore, if you want to ever have a chance of leaving this facility, you must discontinue your contact with them. Notice that the issue here is clearly one of wrong-think and wrong-association. One must question whether it is permissible to use psychotherapy as an excuse for denying people their constitutionally protected rights of freedom of thought, freedom of expression, and freedom of association. Perhaps that needs to be debated in legal journals. Here we are simply making the point that the Civil Commitment Program at Butner does actively press the incarcerated person into an even deeper social isolation than he previously experienced, and is harmful to the person's well-being for that reason.

...Respondent #26 summarized some of the procedures used by staff on the unit to enforce and even increase social isolation: "Our mail is often restricted and heavily scrutinized. We are told who we can and cannot associate with...."

Respondent #32 provided a similar list of socially constricting policies that are enforced on the unit:

...Our mail, both incoming and outgoing, is read and copied – except legal. Anything like magazines, books, or newspapers are screened for inappropriate content whether you are in the [treatment] program or not. We're subjected to more shakedowns, where property is taken but we can't find who took it or why. Pictures of family members are taken or mutilated....

The Justification Of Radical Measures High recidivism rate

The claim that sex offenders have a high recidivism rate is simply and clearly refuted by Barbara Koeppl in her article *Sex Crimes and Criminal Justice: Formerly*

(Continued on page 10)

incarcerated sex offenders say civil commitment programs deny proper rehabilitation (Koepfel, 2008):

Contrary to public beliefs, many lawyers and mental health professionals say released sex offenders do not often commit new sex crimes. According to a 2016 U.S. Bureau of Justice Statistics report titled "Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010," only 5.6 percent of prisoners convicted of rape or sexual assault are arrested for a new rape or sexual assault within five years of release from prison....

The recidivism rate is not this low because any sex offenders were cured of their pedophilia. The fact is that there is no psychological treatment that has cured, or ever will cure pedophilia, no matter how intensely or for how long a period of time it is imposed on an individual. The reason this is true is very nicely summed up by an individual who resides in a treatment facility and who knows the psych/social dynamics of being subjected to the machinations of treatment providers first hand:

...No matter how socially loathed and feared in our society pedophilia may be as a sexual attraction, the fact remains that attraction or orientation is what it is – not a 'treatable' personality, emotional, or sexual malady which will go away with sufficient treatment. There is not 'cure' for the pedophilic orientation, any more than there is a 'cure' for your own orientation, whatever it may be. (Lawyer X, 2013, p. 213).

Nor is the recidivism rate low because society (despite all its efforts) was able to create an individual who was totally devoid of psycho/social agency.

The low recidivism rate derives from the fact that human beings who were still capable of agency chose not to engage in behaviors that are illegal and could therefore lead to dire consequences for both themselves and their younger partners.

CONCLUSION

The notion of death has become somewhat problematic in modern life. For example, is a person still 'alive' if there is no brain activity, but all the major organ systems – with the aid of technological devices – continue to function? Perhaps we could gain an enhanced understanding of what it means to 'be alive' if we expanded our frame of reference a step further. From a phenomenological point of view, we function on a variety of levels. These can be designated as the biological, psychological, social, and spiritual. I would suggest that the primary indication of psychological life is agency. We feel alive psychologically when we believe that the locus of control of our decisions and actions is, at least to a significant extent, within oneself. We feel ourselves to be socially alive when we exist as valued members of a social group. We feel spiritually alive when we feel that we are making a contribution to life that goes beyond our limited selves.

The treatment of the sex offender in 'treatment' centers is a logical extension of the manner in which the offender is treated by the larger society. He is a member of the most hated, vilified, and shunned group

in American society. He is ruthlessly attacked psychologically, socially, and spiritually. He is allowed to continue living biologically but only as a burned-out shell with the road to a meaningful existence effectively blocked at multiple points. All of the prejudices and hatred that one finds in the larger society are brought, unmodified by professional insight, into the treatment facility. The effects of treatment on the psychological, social, and spiritual life of the individual are devastating. One has to ask whether the broad attack on the personhood of sex offenders can be defended as 'best practice' by psychiatry, psychology, social work or any other component of the mental health movement. If not, why is it tolerated?

Is an individual who has been crushed psychologically, socially, and spiritually less likely to re-offend should he be released? And given the high level of improbability that he will be released from civil commitment in any case, what exactly is the point of forcing any regime of therapy on him?"

References

- Goffman, Erving (1961). "On the characteristics of total institutions: Staff-inmate relations." In: Donald R. Cressey (ed.), *The Prison: Studies in Institutional Organization* (Koepfel, Barbara (2008), Sex Crimes and Criminal Justice: Formerly Incarcerated Sex Offenders Say Civil Commitment Programs Deny Proper Rehabilitation. *The Washington Spectator*, May 4, 2008.
- Lawyer X, (2014). *Deviant Justice – The American Gulag*. Yonkers, New York: Mind Glow Media.

The Harm in Making Outcasts of Sex Offenders

Mr. Lynn Adelman (Judge, E.D. WI), Essay: "The Harm in Making Outcasts of Sex Offenders," 42(1) *Raritan: A Quarterly Review* 128-144 (Summer 2022, Rutgers School of Arts and Sciences, New Brunswick, NJ)

[Part One: Sex Offender Commitment]

p 128: "One of the major but not widely discussed scandals in our justice-system is the way we treat individuals who have been convicted of offenses involving sex. In addition to being convicted of a crime and undergoing such consequences as prison and supervision, sex offenders are subject to a range of laws that create unique burdens, which can go on forever. ...[T]he laws I discuss in this essay (which I will refer to collectively as predator laws) are very problematic. First, they are based on the fundamentally mistaken premise that sex offenders repeat their crimes at higher rates than other criminals." Sadly, the Supreme Court endorsed this view in an influential opinion that was based solely on a deeply flawed 1986 article in a glossy nonscholarly magazine, *Psychology Today*. Second, most empirical studies indicate that the laws are ineffective at preventing offenses. Lastly, the laws stigmatize hundreds of thousands of people, creating a world of unnecessary pain.

The predator laws include laws providing

for the involuntary commitment for an indefinite duration (often amounting to life) of offenders who have completed their criminal sentences, laws that require offenders to register and provide extensive information about themselves to local and state governments, which then provide the information to the public via websites and in other ways, and laws restricting where offenders can live and work. Each of these laws has been challenged in the Supreme Court or in federal courts of appeals, but the challenges largely have been rejected.

p. 129: The involuntary commitment laws are known as sexually violent predator (SVP) laws. At present, the federal government and twenty states have enacted such laws; all authorize courts to commit offenders who have completed their sentences yet are regarded as dangerous and suffering from a mental illness that presumably makes them unable to control their impulses. The commitments are ostensibly for treatment in nonpenal facilities, but the individuals committed reside in facilities secured by armed guards, live totally regulated lives, and have no idea when or if they will ever be released. Thousands of men have been committed under these laws, and many have never been released.

The SVP laws were enacted in the 1990s in response to several highly publicized crimes by sex offenders who had been recently released from prison. These offenses created an understandable atmosphere of fear. Yet the SVP laws constituted a deeply flawed response that was based on two erroneous assumptions. One was that incidents involving recidivist offenders assaulting random child victims were relatively common. Offenses of this type, however, were and are extremely uncommon. As Professor Deirdre M. Smith explains, sexual violence is generally circumstantial and contingent and usually involves victims who have a prior relationship to the perpetrator. The Bureau of Justice Statistics advises that family, friends, and acquaintances are responsible for more than 90 percent of all sexual abuse of children. And the Association for Treatment of Sexual Abusers found that 93 percent of sex offenses are committed by first-time offenders. The second erroneous assumption underlying the SVP laws was that experts could identify sexually violent individuals and commit them without sweeping too broadly and forcing others into unwarranted confinement.

pp. 129-30: SVP laws are inconsistent with a basic premise of our constitutional system, namely that a state can take away an individual's physical liberty only if the individual is charged and convicted of specific crime pursuant to strict procedural rules. As Justice Robert Jackson put it in *Williamson v. United States* in 1950, 'Imprisonment to protect society from-predicted but uncommenced offenses is so unprecedented in this country and so fraught with danger of excesses and injustices that I am loath to resort to it.' The challenges to the SVP laws have taken several forms, but the basic argument has been that the laws violated the fundamental constitutional

principle limiting state power to deprive individuals of liberty. Ultimately, in 1997, in a five to four decision in *Kansas v. Hendricks*, written by Justice Clarence Thomas, the Supreme Court upheld the laws. Justices Breyer, Stevens, Souter, and Ginsburg dissented. The majority recognized that civil commitment amounted to a departure from the limits on governmental power to deprive individuals of liberty but nevertheless found the Kansas commitment law constitutional.

p. 130: The Constitution bars both punishing someone twice for the same crime and extending a term of imprisonment after an individual has been sentenced. Thus, the issue in *Hendricks* was whether a commitment constituted punishment. If it did, the law was unconstitutional. The court's majority held that a commitment was not punishment. In order to reach this conclusion, it had to uncritically credit all of Kansas's representations about the law. It first accepted Kansas's mistaken assertion that sex offenders were highly likely to recidivate. It then endorsed Kansas's representation that the purpose of the law was to provide treatment rather than to incapacitate individuals – even though the treatment program seemed weak and half-hearted. And even though the criteria for commitment were very vague, the court then credited Kansas's statement that it would confine only the most dangerous and only those with distinctive mental conditions and only until treatment was completed.

pp. 130-31: However, as Professor Eric Janus and other scholars have pointed out, all of Kansas's assertions were flawed. Sex offenders do not recidivate at higher rates than others. Moreover, SVP laws impact far more than the most dangerous, both because of the absence of meaningful standards for risk assessment, and because it is difficult to predict dangerousness. Further, the mental-disorder limitation was so broad and vague that it was no limitation at all. And the promise of effective treatment and release was belied by the absence of a scientific consensus about the effectiveness of any treatment. In sum, Professor Michael Perlin accurately described both civil-commitment programs and *Hendricks* when he said they were nothing more than 'an authorization for the use of extensive preventive detention dressed up in mental health language.' And the evidence amassed in the three decades since states initiated these programs indicates that they have largely failed. As Professor Janus explains, they have had no demonstrable effect on the incidence of sexual violence.

the Legal Pad

Editor: Cyrus P. Gladden II
Editorial Advisory Board:
Daniel A. Wilson
Peter Lonergan