

"A first step toward reversing course away from current sex offender management policies is to change public perceptions."
 C. Call & J.A. Gordon, "Support for Current Sex Offender Management Policies: A National Survey of the Perceptions of Professionals," 41(4) *American Jour. of Criminal Justice*, 834-851, at 848 (2016)

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- ✓ Banishment by 1000 Laws
- ✓ Estimating # of Unreported Sex Crimes Is Junk Science
- & Many more to come!

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South Carolina Restricts SOCC to Those Over 50% Likely to Reoffend

Larry H., "News from South Carolina," *Titus House Newsletter*, Nov. 2023, p. 1.

Text Excerpt:

"On May 16, 2023, the governor of South Carolina signed into law a revision of the Sexual Violent Predator Act. ...The new legislation has added two new statutes and defined wording in several others. One of the definitions of interest to us is from § 44-48-30 (9), which now states, "Likely to engage in acts of sexual violence' means that a person is predisposed to engage in acts of sexual violence and more probably than not will engage in acts of sexual violence to such a degree as to pose a menace to the health and safety of others.' [The restrictive new language of note is underlined here.] One of the ways evaluators measure 'more probably than not' is with the risk assessment tools, such as the Static 99R, -BOO-R; MnSOST-R; RRASOR; VSOP, all estimating sexual recidivism. What is also used are the documented insights shown during group presentations, and what is said during the personal interviews themselves.

The other significant thing from the revised legislation is that now under § 44-48-115, we can now challenge our commitment or subsequent periodic reviews based on ineffective assistance of counsel. There was no procedure to do this previously....

Lastly, § 44-48-180 states that any and all hearings dealing with the SVP Act are to be given priority status for the purpose of scheduling hearings or trials."

Editor's Comment: Note that this new standard of more than 50% likely re-offense now also applies to the annual reviews already in place in South Carolina of SOCC commitments. In effect, this offers a much easier standard to satisfy than previously to be released and to have one's commitment fully discharged.

While not a perfect reform, this revision is a **big step** in the right direction that recommends itself to legislatures in the other 19 SOCC states and to Congress for the federal SOCC system as to federal prisoners.

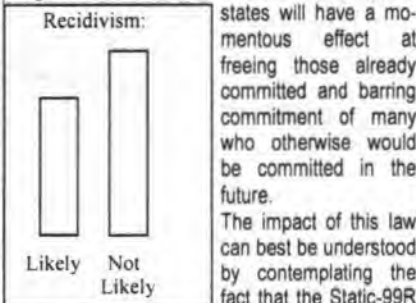
While other verbiage in various SOCC laws has



State Motto of South Carolina, emphasizing Hope (explained: *ILP* #2:4, p. 24)

been held not to require a standard effectively requiring a showing of being more than 50% likely to sexually reoffend, this particular language is unequivocal in requiring such a showing. When contrasted with previous language this revision replaces (merely a vague "likely" to reoffend), South Carolina courts will be compelled to conclude that a 'more than 50%' standard was clearly intended by this revision.

Since language in other states is equally vague in general, an identical revision in other SOCC



only has one score (its highest possible) where the predicted probability of re-offense exceeds 50 percent (51%, on a special grid applicable

only to those for those with predetermined high likelihood of re-offense). The Static creators have criticized this special table as unscientific and impressionistic.

The RRASOR (also cited in this short excerpt) was a predecessor to the Static-99R and is now regarded as obsolete, as well as requiring consideration of matters now academically regarded as not predictive of actuarial likelihood of re-offense. Similarly, the MnSOST-R has long been debunked. Although it has been replaced by "updated" versions, these too suffer from the same forensic problems as the MnSOST-R and in fact have even more profound disqualifiers, such as, in the case of the MnSOST-4, being based on impenetrable 'black-box' assessment of rates, essentially in the same rejected manner as the COMPAS tool used in criminal sentencing.

The especially recommended strategic factor in revising SOCC statutes everywhere in the same way as in South Carolina is that it places SOCC in a very restrictive vice:

Politically, since the public already incorrectly sees SOCC as presumably requiring a 50%-plus standard as the current state of the law, this revision can be sold as only being a clarification, rather than a substantive change. Refusal to so 'clarify' the law would reveal that this myth has always been just that, something legislatures are unlikely to wish to admit, since to do so would risk loss of public support for the law altogether.

Conversely, lower-court interpretation of the original ruling in *Kansas v. Hendricks* (1997), upholding SOCC, has always presumed that at least a standard of 50%-plus is needed to constitutionally justify SOCC as a matter of substantive due process. To force a legislature to explicitly reject that notion in rejecting such a clarifying revision would render that state's SOCC scheme vulnerable to judicial attack as a violation of that constitutional requirement.

For these important strategic reasons, I recommend that anti-SOCC activists in all impacted states follow the South Carolina example, immediately legislatively proposing the same revision.

Frank Joseph Says: Join Up to End SOCC.

Frank Joseph, "Join the Fight to End Unconstitutional Civil Commitment and Help 'Sex Offenders' to Be Successfully Reintegrated Back into Society," (submitted by author), Oct. 2023.

Text:

"Please follow the blogs listed below:
rousahome.blogspot.com

Restoration Outreach (RO) is dedicated to reintegrating 'sex offenders' and people convicted of child abuse back into society.

Restoration Outreach recently purchased a building in central Michigan that they will be turning into a homeless shelter. This building won't be called a homeless shelter. It will be

called a reintegration center because RO's goal is to reintegrate residents back into society.

Once this building is rehabilitated and renovated into a reintegration center, RO will be able to house people straight off of the streets or out of prison or civil commitment without any money up front.

As part of their efforts to reintegrate residents back into society, RO will be taking residents on excursions where residents will be sailing, boating, hiking, camping, canoeing and kayaking, going to the beach and other activities to help them gain a positive outlook on life. RO already has several boats for this effort. They have

placed a 40-foot sailboat project on shelter property to rehabilitate. Once this sailboat is complete, RO will have an ocean-capable vessel to dedicate to this project.

RO will be providing residents with both short-term and long-term housing. The reintegration center is to provide residents with emergency housing where they can change their thinking patterns and reestablish themselves. Residents who prove that they can follow the rules and pay rent will be placed in longer-term housing which may be a rooming house or a private home.

For residents who prove to be reliable and wish
 (Continued on page 2)



Port Huron to Mackinac Race

to remain in Michigan, RO will be assisting them with the purchase of their own homes. RO can place people and their families in homes in central Michigan today. RO's main project for 2024 and 2025 will be submitting proposals to the State of California to house people in sex offender civil commitment (SOCC) in one of its homes. If this effort is successful, RO will be making proposals to the State of Minnesota and other SOCC states to house inmates who are incarcerated in their SOCC 'hospitals.'

RO is also working to get certain inmates honest medical examinations in an effort to get them released from SOCC. RO will be providing its residents with psychological assessments and therapy if they need either therapy or psychological assessments. This is important because many 'sex offenders' have been wrongfully diagnosed as having mental disorders when they have, in fact, no mental disorder at all. RO will be providing residents with honest mental health assessments so they are not forced to undergo unneeded therapy.

vocalhome.blogspot.com

Victims of Child Abuse Laws (VOCAL) is the oldest organization dedicated to fighting for the rights of 'sex offenders' and parents whose children have been removed by the state.

Their core issue is false allegations of child abuse. This has historically been false allegations of sexual abuse, but more recently, they have been involved in fighting for the release of caretakers who have been incarcerated for abuse and even murder when the child was actually injured or died from a medical condition.

endsorna.blogspot.com

EndSORNA is dedicated to ending unconstitutional sex offender registration laws. They will be holding rallies every four years in Washington, DC in order to bring the unconstitutionality of these laws to the attention of lawmakers and the general public.

endsocc.blogspot.com

The goal of EndSOCC is to end unconstitutional sex offender civil commitment (SOCC).

These Blogs Are Important To People In MSOP. You Can Either Sit And Rot In MSOP Or Help End SOCC By Promoting These Blogs. Have Your Family And Friends Write About These Blogs And Make Links To Them On Facebook, Twitter, And Every Other Site On The Internet That They Can Think Of.

NLG Editor Sounds Off **Sex Offender Dehumanization in the Courts - Part 1**

Alexandra Stuppke, "Disgust, Dehumanization, and the Courts' Response to Sex Offender Legislation," 71(3) National Lawyers Guild Review 130 (Fall 2014) [Part 1]

Text excerpts:

I. Introduction

[p. 130:] Sex offenders' have been subject to unprecedented restrictions and punishment. The government's treatment of sex offenders is a clear example of the dangers of laws derived from and upheld because of the emotion of disgust. Disgust has led to dehumanization of this category of people, which has led to a stripping of their constitutional rights. The law's treatment of sex offenders is a clear example of why the law should eschew employing the emotion of disgust during all proceedings. In addition, the courts', particularly the Supreme Court's, treatment of the other branches' actions regarding sex offenders is illustrative of why the law needs to insist upon empirical data in support of legislation and why the courts should not always defer to the other branches' findings.

II. Background

[p. 131:] The current slate of sex offender laws has created a 'permanent pariah class of uprooted criminal outcasts' whose members have been progressively stripped of their rights. This has happened through democratic means, through the making of exceptions for this category of persons. Double jeopardy, *ex post facto*, equal protection, and due process claims against statutes aimed at sex offenders have mostly failed. The main three types of statutes I will focus on are registration and notification requirements, civil commitment statutes, and residency restrictions.

...[N]ineteen states, the District of Columbia, and the federal government have all enacted 'sexually violent predator' statutes that allow for the civil commitment of sex offenders after they have served their prison terms.¹² The vast majority of sex offenders appear to be held more or less permanently.¹³...

III. Risk Assessments and Emotions
Actual risk and effective prevention

[pp. 131-32:] The unusually severe sex offender laws have grown out of the public's perception, and that of Congress, that there is a grave risk to children posed by strangers out to rape and kidnap our children and that such strangers usually re-offend.¹⁹ In contrast to this, however, are the data that show most sex offenses are committed by those close to the victim, not strangers, and that few offenders re-offend. In reality roughly 4 percent of cases of sexual abuse against children under twelve were perpetrated by strangers, compared to 50 percent by acquaintances and 46 percent by family members²⁰....

Despite the data, the popular image of the sex offender is that of a sexually violent

predator, one whose sexual predation is an inherent trait that is bound to be repeated.²³ The media have perpetuated this myth through sensationalist stories of rare events, which serve to distort the perceptions of everyday risks.²⁴ Legislatures, in enacting many of these laws, cite faulty statistics about how sex offenders have the highest rates of recidivism of all criminals and if let loose are bound to repeat their crimes.²⁵

...While such laws may make people feel better by creating the illusion that their political system is working, the harsh reality is that their costs greatly outweigh their benefits.

Irrational risk assessment and moral panic

[pp. 132-33:] Why has panic about a relatively small threat like stranger sexual assault taken such hold of the United States? A benign explanation could be that the human brain does not readily perceive risk in a rational way. Thousands of times a day, the human brain makes split-second binary choices: good-bad, safe-unsafe, friend-foe.³⁰ Generally, that kind of decision-making serves us well. However, because this part of the brain is so old and so automatic, there is a danger that the newer part of the brain, the prefrontal cortex, responsible for what we term 'rational' thought and which takes longer to make decisions, is overruled, unfairly, by this 'automatic' part of the brain, creating specious categorizations or risk-assessments.³¹ This automatic part of the brain may be termed 'common sense.'

[p. 133:] The human brain tends to react more strongly to improbable but scary risks versus more probable but less scary or random risks in violation of the base rate. Media amplify this saliency tendency by saturating the public with stories about events - that are unlikely but carry large consequences.³² Stories about sexually violent strangers targeting children are examples of this. While a child is more likely to be hit by lightning than sexually assaulted by a stranger³³, the specter of the unknown child molester looms large in the public imagination.

Disdain for sex offenders is exacerbated during a moral panic. ...These panics result in the punishment and institutionalization of 'sexual deviants,' the definition of which continues to change over time.³⁵

A moral panic is an irrational public fear that exists when the official reaction to a person or group is out of all proportion to the actual threat offered.³⁶ The danger the group poses is in 'large measure constructed, as are their danger-bearing characteristics.'³⁷ In moral panics 'experts' tend to perceive the threat in identical terms and talk with 'one voice' of rates, diagnoses, prognoses, and solutions. Media stress 'sudden and dramatic' increases and novelty above what can be supported by empirical evidence.³⁸

Moral panics require the creation of social facts.³⁹ For instance, the words *pervert*, *pedophile*, *psychopath*, and *predator* have changed overtime and depend upon an assumption of facts that are not necessarily empirically correct.⁴⁰ The sex psychopath

of the 1940s would not be diagnosed as such by psychiatrists today.⁴¹ The facts underlying these morally loaded terms, at the time, seem self-evident and impervious to doubt. They seem like 'common sense.' Yet, in retrospect, they appear contingent and temporary,⁴² as if one reality has been replaced by another.

During a moral panic, 'a crime is not just a crime, it is part of a dreadful social threat.'⁴³ In the federal and New York legislative debates over 'Megan's Law,' which requires certain information about registered sex offenders to be made public, lawmakers frequently stressed a rising trend of sex crimes against children.⁴⁴...

[p. 134:] Once the crisis has been established, the culprit is created: 'The core attribute of a moral panic is the public's identification and demonization of a particular person or group as a 'folk devil,' a morally flawed character that is the source of the crisis.'⁴⁶ This demonization was evident in the floor debate of the Adam Walsh Act: 'sex offenders have run rampant in this country'⁴⁷; the Internet 'allows sick people to be able to prey on members of your family,'⁴⁸ 'the best way to protect people is having these sex offenders behind bars rather than lurking in a parking garage or trying to lure young children.'⁴⁹

Disgust

One economical way of reaching this demonization is through the use of the emotion of disgust. The binary-choice part of the brain that served our ancestors so well by quickly determining, for instance, whether something was safe or dangerous, also plays a part in the creation of phenomena like racism and genocide.⁵⁰ The brain quickly and convincingly creates 'us' and 'them'....

Although I do not argue that persons who sexually assault children or adults are not worthy of anger and contempt based on the harms that they cause, disgust is a dangerous emotion because at its core is the fear of contagion and pollution avoidance.⁵⁵ Contamination focuses on the object - here, the person - and not an act.⁵⁶ This is dangerous with regard to criminals, because the person becomes the object to be reckoned with, not their bad deeds, which means there is no desire to rehabilitate the offender, only to contain the toxin they represent.⁵⁷ This disassociation with a group. Which will be discussed more below, has led to the idea that sex offenders are incurable, inherently different from us, and have no free will.

[p. 135:] Another danger of disgust is that it is a powerful emotion that tends to incorrectly identify what is worthy of it: disgust is 'insensitive to information about risk, and not well correlated with real sources of harm.'⁵⁸ It is an emotion often based on incorrect beliefs⁵⁹ and, with regard to sex offenders, it also an unreasonable emotion because the beliefs are not only incorrect, they are not based on evidence (i.e., evidence that sex offenders are incurable contaminants that must be contained).

Dehumanization

Because disgust works as a dichotomy

(Continued on page 3)

('the categories of the disgusting and the pure'),⁶⁴ it creates an in-group and an out-group. The out-group created by disgust becomes necessary to 'quarantine, separate, or destroy them to defuse their powerfully contaminating forces.'⁶⁵ This, in turn, creates the tendency to dehumanize. Dehumanization is a form of self-deception, a departure from reality, and involves judging a person to be lacking whatever essence makes an individual 'human'⁶⁶; such persons have a sub-human soul.⁶⁷

[pp. 135-36:] In the legislative histories of sex offender laws, the language of dehumanization abounds: 'predators ... hunt children'⁶⁸; there is a necessity to 'protect children from monsters'⁶⁹; 'they cannot be trusted to be unleashed on society'⁷⁰; 'repeat offenders ... are the human equivalent to toxic waste.'⁷¹ Further, the term 'predator,' used in sex offender statutes, is a dehumanizing term. 'Predators have haunted the human imagination since the prehistoric times,⁷² and it is a term that has been applied to out-groups throughout history.⁷³ It was used against American Indians, who were deemed to possess such predatory traits as 'untamed,' 'cruel,' and 'bloodthirsty.'⁷⁴

[p. 136:] Neuroscientists have found the neural underpinnings of this tendency through disgust to attribute less-than-human status to extreme out-groups (what was once termed *cultural pseudospeciation*). When interacting with the lowest members of society, the 'societal' part of the brain does not engage:

[M]embers of some social groups seem to be dehumanized, at least as indicated by the absence of the typical neural signature for social cognition, as well as the exaggerated amygdala ratings they elicit. This conclusion is supported by the relative lack of mPFC activation when participants viewed pictures of low-low social groups.⁷⁵

Dehumanization is not just about a way of talking; it is a common way of thinking about the lowest of the low.⁷⁶

Because, by definition, the less-than-human is deemed to be not fully equipped with human characteristics, they are often not seen as not possessing reason and free will, which the rest of us (supposedly) have.⁷⁷ For instance, the puritans in colonial America understood 'deviant' to mean of a fixed and evil nature.⁷⁸ Because dehumanization can place a class of heinous monster criminals outside the sphere of the community's moral universe, the question of sanity, or 'sickness,' is inevitably raised.⁷⁹ 'It can be a secular euphemism for evil — a moral diagnosis dressed up as a medical one.'⁸⁰ This distancing mechanism has been used repeatedly, by everyone from terrorists to political tyrants.⁸¹

It is now being employed against sex offenders. They are believed to be incapable of controlling their actions and, for that reason, after prison often find themselves subject to involuntary civil commitment in a state mental facility.⁸² The test for whether a sex offender should be civilly committed laid out in the Kansas statute, which is a typical one for many states, is whether the



Dehumanization

criminal, upon release from prison, is deemed to have a 'mental abnormality' that makes it 'difficult, if not impossible,' for them to control their dangerous behavior.⁸³

[pp. 136-37:] 'As an empirical matter, this raises the question whether there could possibly be a set of people who commit violent sex offenses that clinicians would not deem "mentally abnormal."⁸⁴ Because 'mentally abnormal' is a legal concept, and not a scientific one, the danger of a person using disgust to make this determination is a very real one. Because psychic reactions like disgust and dehumanization group people together so that 'individuals' do not emerge, the tendency to find 'mental abnormality' in every sex offender is likely great.

[p. 137:] The civil commitment statutes illustrate how dehumanization is a psychological lubricant that makes harsh punishment (here, essentially imprisonment after a sentence has been served), and even eradication,⁸⁵ of a group is easier than it would be against 'humans.' Dehumanization is therefore a dangerous tool, even in the legal realm of liberal democracies: 'Because nonhuman animals cannot participate in human society, the notion of justice is inapplicable to them.'⁸⁶ To protect against this, we must prevent the use of disgust when creating and enforcing laws, thereby preventing dehumanization and the stripping of human and civil rights that accompanies it.

Notes:

1 I use the term "sex offender" to refer to those convicted of sex offenses, and "sexually violent predator" to refer to those committed under sexually violent predator statutes.

2 Roger N. Lancaster, *Sex Panic and the Punitive State* (2011), at 15.

3 Charles Patrick Ewing, *Justice Perverted: Sex Offender Law, Psychology, and Public Policy* 21 (2011); 42 U.S.C. § 16901.

4 Ewing, *supra* note 12, at 22.

5 Human Rights Watch, "No Easy Answers: Sex Offender Laws in the U.S., 19 (4(g)) at 8, Sept. 2008, available at <http://www.hrw.org/sites/default/files/reports/us0907webwcover.pdf>, at 25.

6 Howard N. Snyder, U.S. Dept. of Justice Bureau of Justice Statistics, *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics* 10 (2000), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/saycrle.pdf>.

7 David L. Faigman et al., *Modern Scientific Evidence: The Law and Science of Expert Testimony* § 11.1 (2011); see also *No Easy Answers, supra* note 4.

8 Lancaster, *supra* note 4, at 77-79;

9 Stephen Breyer, *Breaking the Vicious Circle: Toward Effective Risk Regulation* 35 (1993).

10 25 Faigman et al., *supra* note 23, at 11.1; *No Easy Answers, supra* note 3 at 25-30.

11 Breyer, *supra* note 24, at 35.

12 *Id.*

13 *Id.* at 35-36.

14 Lancaster, *supra* note 4, at 77.

15 Philip Jenkins, *Moral Panic: Changing Concepts of the Child Molester in Modern America* (1998); Lancaster, *supra* note 4.

16 *Id.* at 6. The term was created by British sociologists Stanley Cohen and Stuart Hall in the 1970s.

17 Martha C. Nussbaum, *Hiding from Humanity: Disgust, Shame, and the Law* 250 (2004).

18 Jenkins, *supra* note 34, at 6.

19 *Id.* at 1. (J).

20 *Id.* at xi-xii (J).

21 *Id.* at xii.

22 *Id.* at 1. (J).

23 Nussbaum, *supra* note 37, at 253.

24 Daniel M. Filler, "Making the Case for Megan's Law: A Study in Legislative Rhetoric," 76 *Ind. L.J.* 315, 335-36(2001) (In the debate over the Adam Walsh Act one Senator stated, "Child rapes and murders are now being reported on our news programs on a regular basis.")

25 David M. Filler, "Terrorism, Panic and Pedophilia," 10 *Va. J. Soc. Pol'y & L.* 345, 359 (2003).

26 152 Cong. Rec. S8012-01 (2006) (statement of Sen. Orin Hatch).

27 *Id.* (statement of Sen. Rick Santorum).

28 *Id.* (statement of Rep. George Allen).

29 Stephen Breyer, *Breaking the Vicious Circle Toward Effective Risk Regulation* 35 (1993).

30 Martha C. Nussbaum, *Hiding from Humanity: Disgust, Shame, and the Law* 87 (2004); Mona Lynch, "Pedophiles and Cyber-Predators as Contaminating Forces: The Language of Disgust, Pollution, and Boundary Invasions in Federal Debates on Sex Offender Legislation," 27 *Law & Soc. Inquiry* 529, 529 (2002).

31 Nussbaum, *supra* note 55 at 106

32 *Id.*

33 *Id.* at 102.

34 *Id.* at 32.

35 Lynch, *supra* note 55, at 529.

36 *Id.* at 540.

37 David Livingstone Smith, *Less Than Human: Why We Deceive, Enslave, and Exterminate Others* 25, 32 (2011) ("The essence of a thing is that which makes it what it is.")

38 *Id.* at 31.

39 *Id.*

40 152 Cong. Rec. S8012-01 (2006) (statement of Sen. Chuck Grassley).

41 *Id.*

42 N.Y. Assembly Minutes of A1059C, at 417 (June 28, 1995) (statement of Mr. Tedisco).

43 Smith, *supra* note 66, at 255

44 *Id.* at 186 (Estonian nationalists calling for deportation of Russians. "Cohabitation of human beings with wild

beasts is not possible for long. And it is a crime not to send wild beasts back to their natural environment.")

45 *Id.* at 83.

46 Lasana T. Harris & Susan T. Fiske, Dehumanizing the Lowest of the Low: Neuroimaging Responses to Extreme Out-Groups, 17 *Psychol. Sci.* 10, 852 (2006).

47 Smith, *supra* note 66, at 13.

48 *Id.* at 52, 69, 86 (Harvard psychologist Herbert C. Kelman writing about the folk-concept of the human: "To accord a person identity is to perceive him as an individual ... capable of making choices and entitled to live his own life.")

49 Toni M. Massaro, "Shame, Culture, and American Criminal Law," 89 *Mich. L. Rev.* 1880, 1913 (1991).

50 See Nussbaum, *supra* note 55, at 165.

51 Smith, *supra* note 66, at 136.

52 *Id.*

53 See, e.g., *U.S. v. Comstock*, 130 S.Ct. 1949 (2010).

54 Kan. Stat. Ann. § 59-29a02 (West 2011). See *Kansas v. Crane*, 534 U.S. 407 (2002).

55 David L. Faigman, et al., *Modern Scientific Evidence: The Law and Science of Expert Testimony* § 11.8 (2011).

56 See Smith, *supra* note 66.

57 *Id.* at 53.

[Editor's Note: Part 2 will appear in the next edition.]

The Science & the Junk: What Bayes, Monahan, Chaos, Uncertainty, etc. Tell Us about the Outrage of Using the 'Wizardry' of So-Called Recidivism Probability Prediction to Keep People Whose Prison Terms Have Expired Locked Up Forever. — Part 1

Robert A. Prentky, Howard E. Barbaree, & Eric S. Janus, eds., *Sexual Predators: Society, Risk, and the Law* (New York: Routledge, 2015) [First installment] Text Excerpts;

Ch. 6: "Using Actuarial Risk Assessment Instruments to Estimate Absolute Risk," by Robert A. Prentky, Ph.D. & Richard W. Wollert, Ph.D. p. 119: "Bayesian Inference and Bayes' Theorem

...A recent feature article on the front page of the *New York Times* ("The Odds, Continually Updated," Sept. 29, 2014) described the vast array of problems to which Bayesian inference has been applied. The simple logic underlying Bayesian inference is that the likelihood of an event is a function of (a) the likelihood of the occurrence and nonoccurrence of

(Continued on page 4)

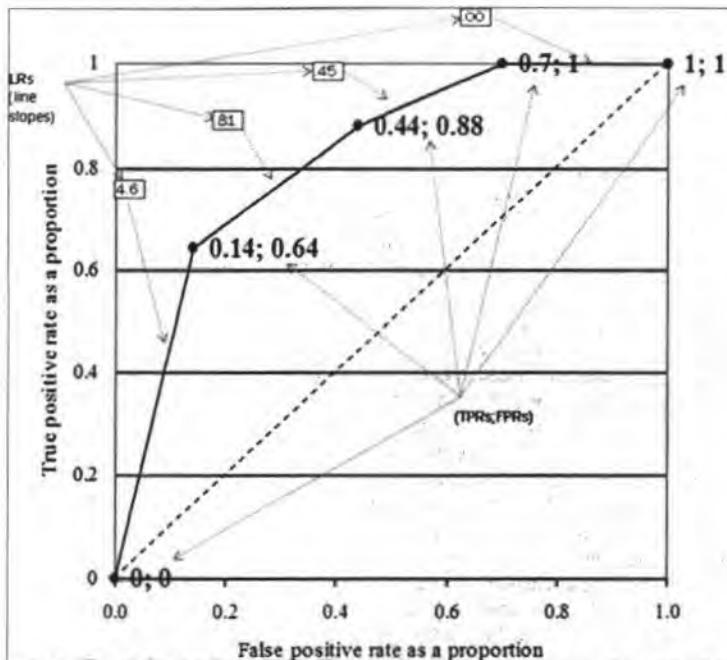
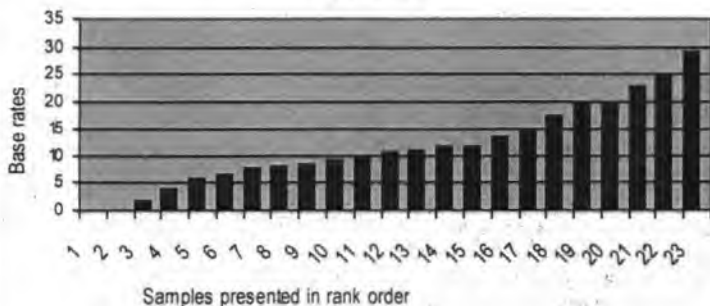


Figure 6.1: ROC curve for three-item actuarial scale with child molesters

Figure 6.2



certain conditional events (risk factors) and (b) the likelihood of occurrence and non-occurrence of the event itself (i.e., a re-offense).

pp. 123-24: ...[A]s pointed out by Mossman and reiterated by Donaldson and Wollert (2008, p. 213),

'These likelihood ratios ["LR"s] are the slope coefficients for a risk instrument's receiver operating characteristic curve, which may be derived by plotting the value of the true and false positive rates ["TPRs" and "FPRs", respectively] for each cutting score on the y and x axes respectively, of a two-dimensional graph where the vectors range from 0% to 100%.'

These LRs across the score groups represent the discriminative ability of the actuarial instrument (Mossman, 2006). If all LRs were equal, if all of the slopes were the same, then there would be no discriminatory power to the test at all. Put another way, if all of the slopes were equal, the receiver operating characteristic ("ROC") curve would be equivalent to the straight line along the diagonal and the area under the curve ("AUC") would be 0.50, indicating a chance prediction. The larger the difference between the lowest LR and the highest LR, the greater the discrimination. In respect of the ROC curve, a low value for the lowest LR (the flat slope at the upper right hand

corner of the curve [in Figure 6.1, above]) and a high value for the highest LR (the steep slope at the lower left aspect of the curve) would occur when the ROC curve goes substantially into the upper-left corner of the two-dimensional space, as happens with higher AUCs. Remember, the gold standard for actuarial assessment is where the instrument achieves a high true positive rate (approaching 1.00) and a low false positive rate (approaching 0.00). In the ROC curve, the gold standard is located in the upper-left corner of the two-dimensional space. The more the ROC curve extends into that upper-left corner, the better.

p. 125: ...[F]igure [6.1, left] ...presents the LRs (0.0, .45, .81, an 4.6) and it can be seen that the LRs represent the slopes of the ROC curves in the relevant segments of the curve.

Now, what does all this have to do with recidivism rates in each score group? The answer is that recidivism (expressed as an odds ratio) is the product of the LR for that score group multiplied by the base rate (expressed as an odds ratio)....

...As the base rate increases, so will the recidivism rates associated with each actuarial score. This is not a hypothesis or theory; it is a mathematical reality based on Bayes' Theorem (Donaldson & Wollert, 2008; Mossman, 2006).

pp. 125-26: Estimating Absolute Recidivism Rates: Bayes Correction

...[F]or score-wise absolute recidivism rates to be stable across samples, either the Bayesian coordinates (LRs and base rates; Donaldson & Wollert, 2008) have to be stable from sample to sample, or the Bayesian coordinates have to change in complementary ways from sample to sample to produce stable recidivism rates. Although this latter circumstance seems unlikely, both of these possibilities are subject to empirical evaluation.

pp. 126-127: ...While Static-99R and 2002R both demonstrated remarkably consistent relative predictive accuracy across studies (consistent with the AUCs we report in Chapter 5, Tables 5.5 and 5.6), both scales demonstrated large and significant variability in absolute recidivism rates across studies, both in terms of base rates and in terms of rates attached to each actuarial score value (score-wise recidivism rates). Over the 23 samples, five-year follow-up base rates varied from a minimum of 0% to almost 30%, with a mean base rate of 11.5% (SD = 7.8). Figure 6.2 [at left] depicts these 23 base rates in rank order from lowest to highest to illustrate the nature of the distribution of base rates. The black line depicts the statistical mean (average) of the distribution. Examination of the distribution tells us that the mean does not represent very many of the base rate values. In other words, the base rates are not clustered around the mean with a small number of outliers. Instead, the density of the base rates is roughly equal across the range of values.

References for Part 1:

Donaldson, T. & Wollert, R. (2008). A mathematical proof and example that Bayes's Theorem is fundamental to actuarial estimates of sexual recidivism risk. *Sexual Abuse*, 20, 206-217.

Mossman, D. (2006). Another look at interpreting risk categories. *Sexual Abuse: A Journal of Research and Treatment*, 18, 41-63.

[Editor's Note: Part 2 will appear in the next edition.]

B4QR Review

Pedophilia & Sexual Offending: No Neurodevelopmental Differences from Normal Samples

Review: Jahnke, S., Schmidt, A.F., Klöckner, A & Hoyer, J., "Neurodevelopmental Differences, Pedohebephilia, and Sexual Offending: Findings from Two Online Surveys," *Archives of Sexual Behavior* Pre-print (2021) <https://doi.org/10.31234/osf.io/c9syz>, reviewed at 2 (1) B4U-Act Quarterly Review 18-21 (Winter 2022)

Review excerpt:

"The neurodevelopmental hypothesis of pedo(hebe)philia was initially proposed by

Blanchard et al. (2002) to help explain the underlying causes of sexual attraction to children. Briefly, the hypothesis states that sexual attraction to children may be the result of neurodevelopmental perturbations, evidenced by increased non-right-handedness, childhood head injuries resulting in unconsciousness, lower IQ, and reduced height....

Participants were placed into one of three groups (Pedo-SO [pedohebephilic with no sexual offense convictions]; pedo+SO [pedohebephilic with sexual offense convictions]; and T-SO [teleiophilic with no sexual offense convictions]) in two different ways: 1) based on their self-reported sexual attraction ratings; 2) based on their Viewing Time scores. There was good classification accuracy between the self-reported and viewing time-inferred sexual interests....

When considering grouping based on self-reported sexual attraction, there were no differences between the three groups with regard to height, handedness, and head injuries before/after 13. However, Pedo-SO/+SO achieved significantly taller than the Pedo+SO group. When considering grouping based on Viewing Time scores. None of the markers reached statistical significance....

In sum, the authors' results could not find support for the neurodevelopmental perturbation hypothesis in a community sample of men sexually attracted to children; in the same vein, the findings also cannot disprove the hypothesis....

The authors offer a fresh look at the idea that sexual attraction to children, or pedohebephilia, is associated with neurodevelopmental perturbation markers. While the data are not conclusive, given the results of this study and several studies before it, it seems more likely that these markers are indicative of something other than sexual attraction, such as antisociality. This may encourage researchers to consider or develop other theories of the etiology of sexual attraction to children. For example, there exist many other theories of sexual orientation that focus in evolution, heredity, learned behavior, and environmental exposures (see Rosario and Scrimshaw, 2014).

Some researchers question the usefulness of studies that focus on the etiology of sexual attraction to children, especially with regards to therapeutic goals. In response, one can note that it is common for individuals to question why they are attracted to who they are, and this may be even more true for those with sexual attraction to children. The recognition that one has an attraction to children can elicit many different feelings, including fear, confusion, denial, and self-hatred. Research on the etiology of attraction to children may help people come to terms with their attraction and to recognize it not as a character flaw, but as a valid part of who they are. Perhaps more importantly, continued research in this area could be used to better educate the public on sexual attraction to children and potentially decrease stigma. Instead of seeing sexual attraction to children as a

(Continued on page 5)

choice, the public may come to recognize it as an orientation, something which is generally accepted within the forensic sexology field (e.g., Seto, 2012)."

B4QR Review

Female Pedophilia: Male Similarities Rule

Review: Stephens, S. & McPhail, I., "A Preliminary Examination of Sexual Interest in Children in a Non-Representative Community Sample of Females," Jour. of Sex & Marital Therapy (2021) <https://doi.org/10.1080/0092623X.2021.1928804> reviewed at 2(1) B4U-Act Quarterly Review 6-9 (Winter 2022)

Review excerpt:

Research on females with a sexual attraction to children is severely limited, especially compared with males. This study offers some much-needed data in this too-often ignored MAP demographic....

For this study, a number of people with a self-identified attraction to children were asked to complete an online survey. ...[T]he final sample consisted of 228 people, 20 of whom were biological females (8.8%), and for comparison, 208 (91.2%) people who were biologically male....

...[T]he authors asked their participants to gauge their attraction to children between the ages of 11 and 14 as well as their attraction to younger children....

...Those who reported an exclusive attraction to adults were excluded from the final analysis, as were those who were only incidentally attracted to prepubescent and pubescent children. For analysis, the remaining participants were grouped into four categories: [1] exclusively oriented towards children, [2] predominantly exclusively oriented, [3] somewhat non-exclusively oriented, and [4] non-exclusively oriented. Participants were also asked whether they were attracted to boys, girls, or both....

80% of females in the sample were shown to have pedohebephilia, which was similar to results for males (85.1%). In terms of exclusivity, females reported less of an exclusive attraction to prepubescent children over adults (10.5%) compared to males (19.4%), though they reported an exclusive attraction to pubescent children over adults at a higher rate than males (20% compared to 11.2%). Meanwhile, none of the females reported an equivalent (or non-exclusive) attraction to prepubescent or pubescent children and adults. On the other hand, 10.2% of males reported a non-exclusive attraction to prepubescent children and adults, and that number increased to 16.8% for pubescent children.

In terms of erotic sex interest, 50% of females reported an attraction to boys, while the remaining half was split between an attraction to girls (25%) and an attraction to both boys and girls (25%). For males, 65.9% of respondents reported an attraction to girls, 24.4% reported an attraction to boys, and 9.8% to both. Regarding emotional attraction, 42.1% of females reported a child-oriented emotional attraction, com-

pared to 59.9% of males. Both females and males were more likely to have a child-oriented emotional attraction as opposed to an adult-oriented emotional attraction. 21.1% of females and 18.8% of males had an emotional attraction to both children and adults.

The results were most similar between males and females in their responses to 'age at first attraction' and 'age at realization of sexual interest in children.' Females and males had their first attraction to another person at an average age of 8.2 and 8.3 respectively, and both females and males came to understand that they had a sexual attraction to children younger than themselves on average at a little over age 18. This indicates that males and females who are attracted to children show a similar pattern in their sexual development and awareness.

The largest discrepancy between male and female participants occurred when asked what their sexual behavior would be in 'ideal circumstances.' Male and female participants were each mainly child-oriented in both their sexual attractions and sexual fantasies. Both sexes revealed that their current sexual behavior was generally adult-oriented (although this question received only 97 responses). However, for sexual behavior in 'ideal circumstances,' only 26.7% of females reported their sexual behavior would be child-oriented, while 66.7% reported their sexual behavior would be adult-oriented. As for males in 'ideal circumstances,' 48.2% reported a desire for child-oriented sexual behavior and 36.9% for adult-oriented sexual behavior.

75% of females reported that their current sexual attractions child-oriented, and 72.7% reported that their current sexual fantasies were child oriented. Another explanation the authors offer is that when it comes to something of such consequence as sexual behavior, even in an anonymous survey females may be more inclined to choose the more socially acceptable answer.

Perhaps more precise data could be acquired by better defining the meaning of 'ideal circumstances.' This term is not clarified by the authors, which leaves one wondering if 'ideal circumstances' means circumstances wherein there is no risk of detection by the law. Does it imply circumstances wherein laws prohibiting child-adult sexual contact were repealed and/or social disapproval of these acts were absent? How each participant individually interpreted this concept may have influenced their responses. Future studies should clarify the concept or else divide it into two or three components, such as "ideal legal circumstances" and "ideal social circumstances," and then test for each option."

"Believe the Children"? Fallibility of Memory and Vulnerability to Confabulation and Suggestion

Daisy Hernandez, "The Science Behind the Reality-Bending Mandela Effect," Popular Mechanics, Jan./Feb. 2022, pp. 28-30
Editor's Introduction: The preceding two article reviews and the following two sets of excerpts depart somewhat from SOCC as the core topic of this newsletter. In the larger context, however, those two reviews, focusing on sexual orientation, relate integrally to motivations toward criminal acts that can result in SOCC in any given case.

In a parallel way, accusations of child sexual abuse, whether or not resulting in conviction, are present in a high majority (2/3 & up) of SOCC cases. Many victims of SOCC involving such accusations adamantly deny one, some, or all of those accusations. The question of the veracity of such accusations thus has everything to do with whether treatment aimed at such alleged events is appropriate and helpful or instead is pointless and toxic, producing only an excuse never to release the innocent.

When this is the fact, it is a compoundment of a pre-existing injustice that is one of the most inhuman mistreatments that can be perpetrated on any human being. Yet protestations of innocence are rejected out of hand as if wrongful conviction never occurs, instead of being (as it is) especially common in sex-crime accusations.

Even simple measures, such as deception detection techniques such as Eye Detect are refused in SOCC facilities on issues of wrongful conviction or other false accusations. People rot away and die in SOCC for unwillingness to even briefly examine such bedrock questions of guilt or innocence, despite their fundamental nature as the very basis to justify such lifetime commitments.

Therefore, matters relating to such truth or falsity of such accusations are an unavoidable part of any dialog about SOCC. For this reason, from time to time, *ILP* must include especially significant excerpts on this critical sub-topic.

Text excerpts:

"...Memories are unreliable for many reasons, but a contributing factor might be the complex arrangement of memory storage in our brains. We don't have a central memory storage unit. Different aspects of experiences are stored in different parts of the brain, and they are linked together by a brain structure known as the hippocampus," says Daniel Schacter, Ph.D., a Harvard professor psychologist, and author of *The Seven Sins of Memory*. The hippocampus resides in the temporal lobe. It's the metaphorical intersection of our brains' complex memory highway, and it stores our long-term memories.

To retrieve a memory, we have to use different parts of our brains and 'different elements of an experience,' says Schacter. Memories are psychological combinations of visual perceptions, auditory perceptions, and emotional responses. They're not like photos, Schacter says. 'They reflect our interpretations of our experiences, and are not literal recordings of what happened.' Memories are complicated even more by the influence of stored knowledge and past associations. When our brains don't have all the information they need to relay a full

memory, they fill our memory gaps with educated guesses based in what they already think is true. That's when things become confused in our memory retrieval process.

Our brains prefer to fill information gaps with inferences or assumptions rather than leave them vacant, says Christopher Dwyer, Ph.D., assistant lecturer in applied psychology at the Technological University of the Shannon: Midlands Midwest in Ireland. This process is known as confabulation. It's rooted in ancient survival instincts that encourage your mind to play it safe at the small possibility of danger. 'Humans generally don't like uncertainty or confusion because it implies an "unknown" – and people fear the unknown,' Dwyer says.

This bias toward a complete picture of the past applies to the present, too. Internalizing new information passes through these same cognitive filters for many of the same survival-motivated reasons. Dwyer says: 'There's no guarantee that [new] information will be processed in a way that's complete or accurate.' If new information contradicts something we already believe, we might twist that new information to make it fit the pattern we're familiar with seeing. We could receive factual information 'but choose not to accept it' Dwyer says. Instead, we might dismiss or mold the incoming information to be 'good enough' to fit what we already believe to be true, even if, in Dwyer's words, that information is 'not entirely accurate and sometimes, just plain wrong.'

Dwyer says this warped way of thinking can also confirm false information, particularly if the falsehood coincides with a perspective or attitude we already hold.

We're unreliable on our own, but others might be even worse: Our memories are vulnerable to external suggestibility as well, says Elizabeth Loftus, Ph.D., distinguished professor of psychological science at the University of California, Irvine, who specializes in cognitive psychology, human memory, and psychology and law. Being inclined to believe or act on the ideas of others can be tied to many things: heightened emotions, low self-esteem, personal assertiveness, and even age. But it can also depend on how much we trust the source of the idea (see sidebar). When someone we trust – a family member, politician, or social-media influencer – spreads misinformation, it can lead to another kind of pseudo-memory, false not because our memories are inaccurate, but rather because the base information was never true.

Sidebar: "Planting False Memories on Purpose"

Let's just say *Inception* isn't totally far-fetched. It's possible for someone to plant false memories or misinformation in your mind on purpose – with you utterly convinced that information is the truth. Consider the case of a Wisconsin woman named Nadean Cool.

In 1986, Cool sought trauma therapy from Kenneth Olson, a psychiatrist. Olson used suggestive techniques, including hypnosis,

(Continued on page 6)

to convince Cool she had repressed memories of being in a satanic cult, cannibalizing infants, and witnessing the murder of a child. Olson alleged Satan had possessed Cool, so he performed exorcisms on her. She came to believe she had as many as 120 personalities, including various angels as well as the devil. Years later, after Cool's family helped her realize Olson's malice, Cool sued her former doctor. The case settled out of court in 1997, and she won \$2.4 million.

Cool later admitted to questioning some of Olson's diagnoses during his treatment of her, but went along with his treatment suggestions because she was reliant on his care. Cool also claimed the medications Olson prescribed her caused her to hallucinate, which may have made her more susceptible to his suggestion. Ultimately, Cool had fallen victim to Olson abusing his power as an authority figure."

Child Interviews Interviewer's Misleading Gestures Contaminate Younger Children's Responses

Kendra Rita Meyer, Mark Blades, & Sarah Krähenbühl, "The Gestural Misinformation Effect in Child Interviews in Switzerland," 47 (1) *Journal of Nonverbal Behavior* 99-114, as summarized by Stacy Calhoun in 24(5) *Sex Offender Law Report* 67 (Aug.-Sept. 2023).

Editor's Introduction: Ever since the early 1980s, so-called "forensic interviewing" of children in cases of accusations or suspicions of sexual abuse has included the use of demonstrative diagrams/drawings and "anatomically correct" dolls of both adults and children.

Objections to these interviewing props have centered on either the inherent suggestion of abusive contact posed by the sheer use of such props at all or by the specifics of the diagrams/drawings or dolls themselves.

However, the additional layer of suggestion that may be posed by the interviewer's actions in this aspect of the interview are almost universally ignored. No component of such actions can have more impact on a child-as-interview-subject than an interviewer's gestures as to these props. These gestures can convey vast stores of communication beyond the interviewer's words to the child.

In turn (as this excerpt demonstrates), children regularly rely on such non-verbal communication components to infer meaning and to perceive deliberately or accidentally telegraphed expectations of the interviewer.

In the context of such interviews, which will almost invariably hold a core place in any law enforcement decisions and proceedings that follow, the communicative effect that such gestures carry profound impact on any responses the child may

give. Keep this in mind as you read the following.

Text Excerpt:

"...The authors of this study addressed the gap in the literature by examining the effect of misleading gestures on memory recall in children and evaluating age-related differences in children's susceptibility to suggestive influences.

Questions Presented in Two Formats.

The study was conducted in schools located in Switzerland and comprised 108 children (64 male, 44 female) who were categorized into three age groups: six to nine years (n=32), 10 to 11 years (n=40), and 12 to 13 years (n=36). The average age was 10 and German was the first language (Meyer et al., 2023, p. 105).

The children watched a two-minute clip from a 2005 German family TV movie entitled *Mama und der Millionär* during class. Following the video, each child was interviewed individually in a quiet area of the school. The children were asked 16 questions designed to elicit recall of what happened in the video. These questions were presented in two different formats: speech-alone and speech-plus-gesture. In the speech-alone condition, eight questions were asked using verbal language only. In the speech-plus-gesture condition, eight questions were asked using verbal language accompanied by specific hand gestures performed by the interviewer. Each child in the study was given a random order of four questions with misleading gestures (speech-plus-gesture condition) and four questions with simply speech (neutral condition).

Gestures Misled Children. The findings showed that 85% of the children in this study were misled by at least one gesture and each gesture misled at least five children. Children in the speech-alone condition provided more accurate answers compared with children in the speech-plus-gesture condition. Furthermore, 68 children in the gesture condition gave wrong answers that aligned with the misleading gestures. In contrast, 29 children in the speech-alone condition gave wrong answers that resembled misleading information. Differences between the age groups were also found, with children in the oldest age group making fewer errors than children in the younger groups. (Meyer et al., 2023, p. 108).

The findings from this study provide additional evidence of the potential for gestures to introduce misinformation during forensic interviews with children. These findings challenge the commonly held belief that verbal communication is the main source of suggestibility in misremembering and highlight the need for more research to further explore the effect of nonverbal communication on eyewitness testimony."

[Available from: School of Law, Social and Behavioral Sciences, Department of Psychology, Kingston University, Kingston Upon Thames, United Kingdom.]

Why Changeable Dynamic Risk Factors Need to Be Omitted from Assessments in Secure Hospitals

by Russ Hatton, Guest Commentator
MSOP clinicians, diagnosticians, and Department of Human Services forensic examiners have relied on historical and static factors and omit changeable dynamic risk factors. This is being done to justify indefinite institutionalization. This article will define how this unethical practice is accomplished in one of America's most draconian shadow prisons.

At the MSOP shadow prison, clinicians and diagnosticians control documentation on its patients' cognitive behavioral therapy treatment progression. In the system, there is overwhelming reliance on historical and static factors. Internal reviews have found that this reliance denies progression through the program. When patients petition for progression to a lesser restrictive setting, again this reliance is found to be the practice of Independent Forensic Examiners who author reports to the judicial system. Within these reports, forensic examiners exaggerate the historical and static factors, often in gruesome detail, about the patient's criminal past rather than their current mental status. It is therein that the foundation is set for accusations that the patient is 'currently' dangerous, regardless how ancient their criminal conduct or, healthy, positive behavioral changes demonstrated through countless hours to years of observation.



Disorder is in the Mind of the Assessor.

There are four preconditions that must be met for sexual abuse to occur:

- The offender must be motivated to offend;
- He must overcome his internal inhibitions;
- He must overcome external obstacles; and
- He must overcome the victim's resistance.

When an individual comes into contact with the criminal justice system, he passes through several stages of processing. At each stage his risk of re-offending is as-

essed by professionals, hypothetically on a daily basis, pre-trial, prior to sentencing, to determine security levels in custody, prior to release, and after breaches or critical incident occur. These assessments can either be formal or informal in nature. Risk assessments are fundamental to the criminal justice process because it is a means for distinguishing between offenders who are likely to re-offend and those who are at a lower risk of recidivism. This professional practice does not occur in MSOP shadow prisons (SP), which is a civil system indefinitely detaining those who have completed criminal sentences, including at least 90 men with no criminal record.

In Minnesota, a risk assessment is conducted within the Department of Corrections. End of Confinement Review Committee - Psychologist. In this process, actuarial tools are utilized to determine level of risk. When a petition of Hold Status is initiated by the County for consideration of indefinite involuntary civil commitment, additional assessments are conducted. Here again, the level of risk is determined utilizing multiple actuarial tools, namely the *Static-99R*, *Stable-2007*, as well as others.

I will discuss the *Stable-2007*. Risk assessments are theoretically predictions of future behavior. The outcome of a risk assessment has serious implications for both the individual and society. The assessment may decide his or her fate; for society it may determine whether a potentially dangerous person may be released into the community. Clearly, risk prediction has a place in the criminal justice system but cannot be taken as fact due to the error inherent in the process. Such errors often result in longer periods of incarceration for individuals who are assessed as high risk; but who when released do not reoffend.

Static risk factors, such as age, developments history, or offense history, are fixed characteristics and are not subject to change. These are useful for evaluating long-term risk, but due to their historical nature cannot be used to assess changes in levels of risk over time. This is the key problem with the MSOP SP. Changes and termination (desistance) in dynamic risk factors are not objectively documented.

Dynamic factors are continuing factors linked to the likelihood of offending that are amenable to change following intervention and aging-out, as well as other distance factors. Dynamic factors can be further subdivided into stable and acute factors. Stable dynamic risk factors are relatively persistent characteristics of the patient, which are amenable to change over time. Examples would be responsibility, cognitive distortions and sexual arousal. Acute dynamic factors are rapidly changing factors such as substance abuse, isolation, and negative emotional states, the presence of which increase risk.

There is a danger that practitioners become over-reliant on them and forget that they perform better at predicting the behavior of groups rather than the behavior of individuals. Additional compounding problems are in development of the MSOP SP

(Continued on page 7)

Program Theory Manual, clinician's guide and matrix factors – which demonstrate no inter-rater reliability and were designed by MSOP clinical leadership.

Regardless of MSOP shadow prison patients' years to decades of demonstrated behavioral changes through factors such as age-desistance, cognitive development and maturity, emotional responsibility, and discipline to short-term and long-term therapy and healthy goals. The SP training and approach is to mandate to all employees, forensic examiners, stakeholders, including a majority of public, media, and legislators. A mentality that every patient within its walls sustains a severe level of criminal secrecy and deviancy. Regardless of the time passed and no documentation of volitional impairment (signs and symptoms of distress) linked to the risk factors of someone highly likely to commit future crimes of a sexual nature. Patients are treated as if their every thought, emotion, and action has an underlying intent that is linked to thoughts of committing future crimes of a sexual nature, or criminal acts in general. There is no evidence from the MSOP SP clinical leadership to support this paranoia; it is all assumed.

Nonetheless, conduct while confined cannot ethically be used exclusively to harm a patient's case yet never assist in demonstrating that the patient would not have serious difficulty refraining from reoffending when petitioning for a lesser restrictive setting or outright discharge. This fact executes the clinicians', diagnosticians', and forensic examiners' arguments that the dynamic risk factors have not declined, have not been managed or have not been terminated due to a patient's residence – in a controlled environment.

Let's face the truth. Patients of the MSOP SP are assigned risk levels before involuntary confinement. The SP documents the risk level levels before involuntary confinement. The SP documents the risk level and conducts actuarial assessments through assignment of dynamic risk factors. To provide accurate detailed intervention, SP clinicians, diagnosticians and independent forensic examiners need to be able to make sound judgment of a patients' current level of risk to the community in order to reduce public concern and minimize harm, together with the factors in their lives which would enhance the establishment of a 'good life.' In addition, to assure the risk is being properly challenged through treatment intervention. Therefore, the level of current risk validity is important, as it could affect decision-making concerning the future lives of individual patients and the safety of the general public.

But, as expressed previously, the historical problem in the SP is that most measures and assessments are heavily reliant on static factors alone and few consider dynamic changes in risk. The stable dynamic risk factors are amenable to change over time and, to some degree, termination. But accurate objective records are not made by clinicians, diagnosticians, and forensic examiners. Rather, the risk factors assessed to be present at the time of the

crime, are alleged to be currently active years to decades passed, without any documentation of the signs and symptoms of distress or impairment, and yet are the sole heart for indefinite institutionalization in the MSOP shadow prisons.

So, the historical problem then becomes that SP patients are treated as criminals and incapable of change. Recorded documentation of signs and symptoms of distress linked to the risk factors linked to volitional impairment – mental abnormality – which are meant to be the threat to public safety, are broadly cut and pasted from the initial assessment and used throughout the subjects' treatment reports by clinicians, diagnosticians, and forensic examiners to support indefinite confinement and deny full discharge.

This deliberate omission of recorded changes in current dynamic risk factors – or the overall termination of factors through desistance factors – contribute to lifelong indefinite institutionalization. In this 'best practices' scenario – 97 men have died – trying to prove they have managed risk factors to be safe enough to restore their constitutional rights to life, liberty, and the pursuit of happiness.

What I have come to understand is this: The initial assessment risk factors that go into patient Individual Treatment Plans are what the patients are meant to work on managing. The (mandatory) expectation is that patients talk about how they are addressing/managing these risk factors – year after year after year! So, when patients attend treatment core groups, treatment modules, primary therapist one-on-ones, psychologist one-on-ones, DJHS SRB treatment assessments and SRB forensic examiner – sexual violence risk assessments, the misinformation/inaccurate data is documented against the patient.

Here's how it happens:

1. Psychological assessments at the initial and final commitment process, psychologists determine the risk factors that need to be addressed through treatment intervention in a highly secure setting – MSOP. (Some could say this first assessment takes place with the DOC- End of Confinement Review Committee psychologist prior to leaving the DOC.)

2. MSOP primary therapist, psychologist and clinical leadership begin documenting and dictating to the patient that he needs to work on addressing and managing his ("active") risk factors, assigned by the psychologist(s) who conducted his assessment in the commitment process.

3. MSOP clinicians manipulatively coerce the patient to talk about how he is working to "manage" the risk factors (regardless of any recent objective observed conduct of the risk factors). (Remember, one of the "clear and convincing evidence" evidentiary standards to determine high likelihood to reoffend is (b) The person/s history of violent behavior (paying particular attention to recency, severity, and frequency of violent acts.)

4. The patient unwittingly talks about "managing" the risk factors – regardless if

he has experienced any thoughts, emotions, attitude, or exhibited conduct of the risk factors. (The data is all static and historical, often at times years to decades-old conduct.)

5. The enforcement of talking about managing risk factors is documented in treatment core groups. Treatment modules (which have been indefinitely suspended, probably due to shortage in staffing), primary therapist one-on-ones, psychologist one-on-ones – as if the patient is currently demonstrating active risk factor conduct and presently "working" to "manage" the risk factors. And there is the deliberate omission of the changeable risk factors.

6. This data is stored in treatment records and is then reviewed by the DHS SRB treatment assessor and DHS SRB forensic examiner – sexual violence risk assessors, when a patient petitions for transfer to CPS, provisional or (the extremely rare) full discharge.

7. The data is arranged for the Special Review Board panel while the MSOP clinical team, and the DHS SRB Treatment assessor and DHS SRB Forensic Examiner mislead the panel to believe that the patient is still working on managing his risk factors (risk factors alleged to be the threat to public safety. For participants, the hard work towards treatment progression is tainted, as well as for non-participants, by clinical documentation (MSOP program staff overall contribute to this deliberate and I would even go so far as saying malicious process to justify further institutionalization).

8. Once the water has been tainted, our only option is to get off the merry-go-round back at MSOP and purchase another ticket six months to a year down the road to re-file another SRB relief petition.

MSOP shadow prison oppressors have convinced the population that we're dangerous by getting us to talk about managing risk factors that don't exist and haven't existed for years to decades!

Why Algorithmic Risk Assessment Must Fail Judicial Gatekeeping on Scientific Validity (Part 1)

Melissa Hamilton, "Judicial Gatekeeping on Scientific Validity with Risk Assessment Tools," 38(3) *Behavioral Sciences & the Law* 226-245 (May-June 2020).

Text Excerpts:

p. 227: "1. Introduction

This article addresses how the law should approach the audit of algorithmic risk tools for scientific validity. It provides guidance to judges in evaluating the data that might indicate support for the use of a risk tool. Such an exercise is important in deciding on the admissibility of risk tool information, determining its weight as expert evidence, and complying with due process requirements of sentencing practices.⁴

... Too often, claims by tool developers or



criminal justice agencies that tools are proprietary have meant that little information on scientific validity is publicly available.⁸ Even when some data are released, a critical eye can quickly uncover reasons to be skeptical. Validation studies may offer inflated estimates when performed by interested parties with allegiance bias⁹ or when based on research not conducted in real-world settings.¹⁰ Typically these studies are not placed in peer-reviewed journals, which means that they are not vetted by independent referees.¹¹

Proponents of risk tools often declare that they are 'validated,' as if that were the end of the matter.¹² Certainly, many stakeholders and users appear to take such pronouncements at face value.¹³ Yet, the declaration by developers or interested parties that a tool is 'validated' is insufficient on its own merit to justify the tool's admissibility as scientific evidence or signal that it deserves much weight. Risk tool proponents unfortunately use the term 'validated' even when they are relying upon a single metric that provides an extremely limited, and potentially misleading, perspective on the accuracy and reliability of these tools.¹⁴ Some experts becoming cognizant of the relevant issues acknowledge that at least some tools do not perform to a reasonable standard to justify their utility for informing important criminal justice decisions.¹⁵

Validation is never truly completed anyway.¹⁶ Validity research entails an ongoing process as times, sites, populations, evaluators, and the salience of risk factors change. Hence, critics charge that a proclamation that a tool is 'valid' is 'inappropriate and misleading.' More appropriate is the review or advertisement that indicates substantial data exist demonstrating the test has some degree of validity for a specific application with a specific population or populations.¹⁷

Moreover, for the law, scientific validity is not necessarily an on-off switch, but a matter of degree to be considered.¹⁸ A greater or lesser threshold of scientific validity may be required depending on the importance of the legal issue the evidence is used to inform.¹⁹ In a sentencing context, judges should demand a greater degree of competence than might be acceptable for less consequential criminal justice decision points.

Judges should also be wary about assuming that forensic risk practices are fair and impartial. The *Scientific Bench Book for Judges* warns of the myth of scientific

(Continued on page 8)

objectivity, as scientists, too, can be emotionally attached to their work, and their conclusions may thereby become unconsciously biased or skewed.²⁰ In the end, scientific evidence is still opinion evidence. The judge as gatekeeper and factfinder in sentencing decisions must still make an independent judgment about the adequacy of such evidence.²¹ As such, it is a legal question, not a scientific one, as to whether a tool is sufficiently trustworthy.²²

Validity research entails an ongoing process as times, sites, populations, evaluators, and the salience of risk factors change.

This article discusses the evaluation of the scientific validity of algorithmic risk tool evidence being submitted for sentencing purposes. Validity entails three dimensions for this exercise: fitness, accuracy, and reliability.

p. 228: 2. Fitness

An initial issue to be addressed regarding the introduction of evidence in a legal proceeding is one of relevance, also known as fitness for the purpose intended. To be admissible, the proffered evidence should assist the trier of fact in understanding a factual issue in the case.²³ Fitness is not normally resolved by statistical criteria. Even a tool that performs expertly in predicting recidivism would be inappropriate to inform a legal decision where risk is not normally relevant (e.g., adjudicating guilt).

This section briefly introduces a select few topics concerning the fitness of algorithmic risk assessment to sentencing proceedings. It is emphasized here that these issues are context-dependent. A tool that is considered fit for one jurisdiction's purposes will not necessarily be equally relevant in another jurisdiction.

Consideration of the reason(s) the jurisdiction chose to adopt algorithmic risk may render a particular tool more or less fit. Typical motives are to reduce the rate of incarceration, selectively target those deserving incapacitation, craft an appropriate form of sentence, assign appropriate community sanctions and programming, and/or individualize supervisory terms. Not all tools are suitable for every goal. For example, a tool that was trained to evaluate the most serious offenders may not logically inform on how to divert large numbers from prison. A tool that predicts technical probation violations may not provide pertinent information if the primary purpose is to identify the relative few for whom selective incapacitation through long prison terms is justified. If the tool will be used to inform about the types of rehabilitative programming to order with a probationary sentence, then arguably only a tool that also addresses the individual's criminogenic needs will be fit for that purpose.

Where the intent is to use the risk assessment score as evidence to trigger a particular sentencing decision, consideration must be given to what threshold of risk is relevant. It could be that the judge believes that a high-risk outcome indicating a 70% chance of reoffending is an appropriate

threshold to help justify a sentence involving a significant period of incarceration. On the other hand, perhaps the policy is that a low-risk outcome suggesting a <5% likelihood is acceptable for a presumptive probationary sentence with few conditions. A tool that is reliably able to produce the relevant probabilistic estimate might well be fit for its intended purpose.

A sentencing jurisdiction might wish to adopt algorithmic risk-informed sentencing with a view that it can meet a 'more likely than not' standard of proof. This could be perceived as translating into identifying offenders whose risk outcome indicates a ≥ 51% likelihood of reoffending. But care must be exercised here. A tool that predicts low rate events, such as serious violent offending, may not reach that threshold even at its most extreme risk levels. And even if it does, confidence intervals are relevant. Predicted probabilities are estimates, and as such they should be presented with confidence intervals (at the level of 95% is appropriate) to ascertain the plausible values of those estimates.²⁴ Thus, if the lower end of the confidence interval dips below the 50% mark, the tool might not be fit for the more likely than not standard.

A tool may not be fit for purpose if it is not compliant with applicable legislation or sentencing guidelines. Statutes in various states prohibit consideration in penalty decisions of the defendant's race, gender, religion, social status, and/or economic status.²⁵ Sentencing commission guidance may likewise dictate that such factors play no role in sentencing outcomes.²⁶ To the extent the risk tool under consideration incorporates, directly or by proxy, one or more such data points within its risk factorology (i.e., the science of predictive factors), the applicable law or guidance may limit or entirely prohibit its use. The point here may present a significant barrier to algorithmic risk tools more generally in these jurisdictions as many tools directly or indirectly implicate circumstances related to the individual's race/ethnicity, immigration status, sex, religion-based life choices, employment, education, family status, and neighborhood. It may not be possible for the forensic evaluator or the judge to excise any such factors from the tool's scoring. Besides, doing so would erode the underlying science and reintroduce avenues for inconsistency and disparity across cases.

pp. 228-29: Relevant case law may also have an impact on whether and how risk tools may be relevant. Of note is a Wisconsin Supreme Court ruling that algorithmic risk information is a poor fit for determining whether the offender is incarcerated, whether the offender can be safely supervised in the community, or the severity of the sentence.²⁷ Instead, this state decision promoted algorithmic information more generally as a point of information in crafting a sentence that may involve diversion and/or supervisory conditions.²⁸ In another ruling, the Indiana Supreme Court concluded that risk tool predictions may not serve as aggravating or mitigating factors or to determine the length of a sentence; instead the court indicated that such information could

be useful in determining the manner in which the penalty is to be served.²⁹ It is reasonably anticipated that case law in the near future across jurisdictions parsing various issues about the fitness of algorithmic risk in sentencing is likely to flourish.

Another aspect of fitness concerns understanding what the particular tool is measuring in terms of recidivism. In other words, judges should be cognizant of what exactly the tool is (or is not) predicting.³⁰ One concern is about the 'off label' use of risk assessment tools.³¹ For instance, an algorithmic tool designed to predict failure to appear in a pretrial context is likely inappropriate for sentencing purposes where such a possibility is no longer germane to the case. Some of the tools designed to predict violent reoffending were explicitly trained to evaluate violent individuals held in secure hospitals to inform mental health officials on placement decisions.³² Such tools would not be fully pertinent in a sentencing jurisdiction with a general offender population. Similarly, no known tool to date is designed to foresee a criminal career (i.e., an habitual offender). Instead, they typically predict the commission of a single act of recidivism.

Critics also note that tools are poor fits for sentencing if they regard rather trivial acts as recidivistic events.³³ For instance, various risk assessment tools will count equally with the commission of a heinous act such as murder: any evidence of police cautions,³⁴ traffic stops and municipal ordinance violations,³⁵ institutional misconduct,³⁶ supervision noncompliance,³⁷ or causing serious psychological harm.³⁸ However, it does not seem that proportionality is served to base the degree or type of punishment on the risk of a low-stakes outcome (e.g., minor offending).³⁹ Particularly when imposing more severe sentences, a judge may reasonably expect that the risk assessment tool be able to predict a high degree of probability, plus a significant level of seriousness of the potential harm.⁴⁰

Imminence of the predicted risk of recidivism may be important in terms of whether a tool is properly informative in a sentencing context. Tools that predict reoffending far into the future (e.g., two, five, or 10 years) are unlikely to be helpful when the legal decision is concerned with more immediate risk (e.g., application of sentencing guideline ranges with shorter terms).⁴¹

A final fitness matter to be mentioned here is the potential for overcounting criminal history events. Risk tools universally incorporate multiple factors related to criminal history and weight them substantially.⁴² Many tools also then count the same past offending incident across multiple risk factors. For example, an assault conviction at age 16 might trigger points for these types of factors: first offense as a juvenile, a violent offense, prior arrest, and prior sentencing. The challenge is that sentencing decisions historically have included a strong component regarding criminal history, either formally or informally. Sentencing guidelines themselves often officially weight former offenses heavily in their calculations of sentence severity. This means that prior offending may, through a combination of

risk assessment scoring and the classical nature of how penalties are determined, become exaggerated, even many times over. Overall then, criminal history could improperly drive overly punitive outcomes and thereby render the risk tool less informative (even harmful) as a result.

If the particular risk tool is deemed to be fit for the particular purpose intended, the next gatekeeping exercise is to evaluate the tool's accuracy."

Notes:

5 See generally Kevin S. Burke, "Evidence-Based Sentencing," in *Science Bench Book for Judges* 278 (Peggy Hora et al. eds., 2019), <https://www.judges.org/wp-content/uploads/Chapter10-SBB.pdf>.

8 Seena Fazel, & Achim Wolf, "Selecting a Risk Assessment Tool to Use in Practice: A 10-Point Guide," 21 *Evid. Based Mental Health* 41, 41 (2018).

9 Pamela R. Blair et al., "Is There an Allegiance Effect for Assessment Instruments?: Actuarial Risk Assessment as an Exemplar," 15 *Clinical Psychol.* 346, 354 (2008).

10 David L. Shapiro & Angela Noe, "Risk Assessment: Law, Theory, and Implementation," in *Handbook of Behavioral Criminology* 611, 621 (Vincent B. Van Hoesell & Michael L. Bourke eds., 2017).

11 Fazel & Wolf, *supra* note 8, at 41.

12 Zachary Hamilton et al., "Customizing Criminal Justice Assessments," in *Handbook on Risk and Need Assessment: Theory and Practice* 536, 536 (Faye S. Taxman ed., 2017).

13 KiDeuk Kim & Grant Duwe, "Improving the Performance of Risk Assessments," in *Handbook on Risk and Need Assessment: Theory and Practice* 189, 217-18 (Faye S. Taxman ed., 2017).

14 *Id.* at 215.

15 Faye S. Taxman & Amy Dezember, "The Value and Importance of Risk and Need Assessment (RNA) in Corrections & Sentencing: An Overview of the Handbook," in *Handbook on Risk and Need Assessment: Theory and Practice* 22, 37 (Faye S. Taxman ed., 2017).

16 Joel S. Milner et al., "Prediction Issues for Practitioners," in *Assessing Dangerousness: Domestic Violence Offenders and Child Abusers* 33, 41 (Jacquelyn C. Campbell & Jill Theresa Messing eds. 3d ed. 2017).

17 *Id.* at 41-42.

18 Frederick Schauer, "Can Bad Science Be Good Evidence? Neuroscience, Lie Detection, and Beyond," 95 *Cornell L. Rev.* 1191, 1207 (2010).

19 *Id.*

20 Brian Abbott, "What is Science?," in *Science Bench Book for Judges* 5, 10 (Peggy Hora et al. eds., 2019), <https://www.judges.org/wp-content/uploads/Chapter2-SBB.pdf>.

21 Bridget Mary McCormack, "Scientific Evidence," in *Science Bench Book for Judges* 5, 16 (Peggy Hora et al. eds., 2019), <https://www.judges.org/wp-content/uploads/Chapter3-SBB.pdf>.

22 Schauer, *supra* note 18, at 1192.

23 *Daubert v. Merrell Dow Pharmaceuticals*, (Continued on page 9)

als, Inc., 509 U.S. 579, 591 (1993).

24 Karen Kafader, "The Critical Role of Statistics in Demonstrating the Reliability of Expert Evidence," 86 *Fordham L. Rev.* 1,617, 1,622 (2018).

25 E.g., *Ark. Code Ann.* § 16-90-801(b)(3) (2018) (precluding consideration of race, gender, social, and economic status); *Ohio Rev. Code Ann.* § 2929.11(c) (2018) (race, ethnic background, gender, and religion); *Fla. Stat.* § 921.002(1)(a) (2019) (race, gender, and social and economic status); *Tenn. Code Ann.* § 40-35-102(4) (2019) (race, gender, creed, religion, national origin, and social status).

26 E.g., *U.S. Sent'g Comm'n, 2018 Sentencing Guidelines Manual* § 5 K1.10 (2018) (factors not relevant include race, sex, national origin, creed, religion, and socioeconomic status); *Minn. Sent'g Guidelines Comm'n, Minnesota Sentencing Guidelines Grid and Commentary 1* (2017) (sentencing should be neutral of race, gender, social status, and economic status); *Mich. Comp. Laws* § 769.34(3) (2015) (prohibiting departures based on the defendant's gender, race, ethnicity alienage, national origin, and employment).

27 *State v. Loomis*, 881 N.W.2d 749, 768 (Wisc. 2018).

28 *Id.* at 767.

29 *Malenchik v. State*, 928 N.E.2d 564, 575 (Ind. 2010).

30 *Jordan M. Hyatt et al., "Reform in Motion: The Promise and Perils of Incorporating Risk Assessments and Cost-Benefit Analysis into Pennsylvania Sentencing,"* 49 *Duq. L. Rev.* 707, 743 (2011).

31 *Erin Collins, "Punishing Risk,"* 107 *Geo. L. Rev.* 57, 98 (2018).

32 See generally *Stephanie Wilson et al., "Appendix: Structured Instruments Commonly Used in Violence Risk Assessments,"* in *International Perspectives on Violence Risk Assessment* 353 (Jay P. Singh et al. eds., 2016).

33 *Jesper Ryberg, "Risk and Retribution: On the Possibility of Reconciling Considerations of Dangerousness and Desert,"* in *Predictive Sentencing: Normative and Empirical Perspectives* 51 (Jan W. de Keijser et al., eds., 2019).

34 *Philip Howard, "Offender Group Reconviction Scale,"* in *Handbook of Recidivism Risk/Needs Assessment Tools* 231, 234 (Jay P. Singh et al. eds., 2018).

35 *Chelsea Barabas et al., "Technical Flaws of Pretrial Risk Assessments Raise Grave Concerns"* 1 n.2 (July 17, 2019), <https://dam-prod.media.mit.edu/x/2019/07/16/TechnicalFlawsOfPretrialML%20Site.pdf>

36 J. Stephen Wormith & James Bonta, *The Level of Service (LS) Instruments*, in *Handbook of Recidivism Risk/Needs Assessment Tools* 117, 117 (Jay P. Singh et al. eds., 2018).

37 *Tim Brennan & William Dieterich, "Correctional Offender Management Profiles for Alternative Sanctions (COMPAS),"* in *Handbook of Recidivism Risk/Needs Assessment Tools* 49, 49 (Jay P. Singh et al. eds., 2018).

38 *Kevin S. Douglas et al., "Historical-Clinical-Risk Management-20, Version 3*

(HCR-20v3): Development and Overview," 13 *Int'l J. Forensic Mental Health* 93, 200 (2014).

39 *Rhys Hester, "Risk Assessment at Sentencing: The Pennsylvania Experience,"* in *Predictive Sentencing: Normative and Empirical Perspectives* 213 (Jan W. de Keijser et al. eds., 2019).

40 *Andrew Ashworth & Lucia Zedner, "Some Dilemmas of Indeterminate Sentences: Risk and Uncertainty, Dignity and Hope,"* in *Predictive Sentencing: Normative and Empirical Perspectives* 213 (Jan W. de Keijser et al. eds., 2019).

41 *Christopher Slobogin, "Principles of Risk Assessment: Sentencing and Policing,"* 15 *Ohio St. J. Crim. L.* 583, 587 (2018).

42 See generally *Melissa Hamilton, "Back to the Future: The Influence of Criminal History of Risk Assessments,"* 20 *Berkeley J. Crim. L.* 76 (2015).

The Drop in Sexual Recidivism in the U.S. & Canada

Patrick Lussier, Evan McCuish, & Elizabeth L. Jeglic, "Against All Odds: The Unexplained Sexual Recidivism Drop in the United States and Canada," 52 *Crime and Justice* ___ (2023)



Abstract:

"Since the late 1930s, laws and policies based on assumptions about high rates of sexual recidivism have been enacted to respond to individuals who perpetrated sexual offenses. The first sex offender laws in the United States and Canada were quite similar. Since then, the two countries have diverged. More recent American policies have included the enactment of public registration and notification laws and post-sentence civil commitment laws. Canadian policies reaffirming rehabilitation were criticized by various groups for being too lenient. Little has been done to monitor the evolution of sexual recidivism rates, including the effects, if any, of significant policy changes. The lack of centralized databases in Canada and the United States for monitoring recidivism rates over time is a major reason. In lieu of that, a systematic review and meta-analysis were used to examine 227 Canadian and 399 American estimations of sexual recidivism among 388,994 perpetrators of sexual offenses. Weighted pooled estimates of sexual recidivism rates were investigated between 1940 and 2019. Sexual recidivism rates reported in American studies have been low and dropping since the 1970s, well before enactment of

public registration and notification laws. A more pronounced drop was observed in Canadian studies despite the absence of public registration and notification laws."

Medical Non-Care in the SOCC Gulag

Barbara Koepfel, "Delayed, Deficient or Denied: Medical Care in the Civil Commitment Gulag," *The Washington Spectator*, pp. 9-12 (Nov.-Dec. 2023).

Text:

[p. 9:] "For the 6,000 men confined in compounds in the 20 states with civil commitment laws – which keep sex offenders behind bars and out of sight for decades after they complete their prison terms and often until they die – the mantra has got to be 'don't get sick.' (See 'Sex Crimes and Criminal Justice,' *The Washington Spectator*, May 2018.)

If they're sick, whether with kidney disease, Covid or cancer, medical care is delayed, deficient or denied. It doesn't matter if the facility is in 'blue' states, such as New York, Massachusetts and California, or 'red' ones, such as Texas and Virginia. Also, it doesn't matter if it is run by the state or a private corporation (such as the Management and Training Corporation – MTC).

I interviewed 15 men in Minnesota, Texas and California (one has since died) as well as nurses and therapists who work in these facilities. I've also corresponded with men in Massachusetts and New York. All agree the medical care is deplorable and far better in regular prisons – where the men completed their sentences before being sent, indefinitely, into civil commitment.

Coalinga, California

At Coalinga, California's civil commitment compound, one resident (we'll call him Robert to shield his identity) said he 'had severe stomach pain, was wetting himself and urinated frequently.' Still, he had to wait over a month to get an appointment at the medical clinic where the nurse practitioner (NP) told him his PSA numbers were high and he should see a specialist. That was in October 2018. But since the men aren't allowed to book their own appointments, Coalinga must make the referrals. So it wasn't until February that Robert saw a urologist – whose tests showed he had Stage 3 prostate cancer and needed chemotherapy and radiation immediately. 'Still, seven months passed before Coalinga arranged for my treatments, and then, only because the court intervened,' Robert said.

Fast forward to August 2022. Robert saw blood in his urine and the NP said he should see an oncologist; still, it took Coalinga's clinic five months to write a referral and get him an appointment. 'In January 2023, the oncologist said I needed a PET scan to see if the cancer returned – which took Coalinga another four months to arrange. Because the scan, which was in June 2023, showed a new spot on my kidney, the oncologist said to see a urologist right away. It's now

December, and Coalinga hasn't made the appointment,' he says. His lawyer is seeking a court order to make it happen.

[p. 10:] Another huge problem is that inmates in severe pain – whether from surgery, renal disease, or dying from cancer – don't get the meds they need. Robert (who was a registered nurse before he was sent to prison and Coalinga) says 'even when hospital doctors send an inmate back to Coalinga with a prescription for strong pain killers, Coalinga's clinic won't comply. Instead, they give meds like Tylenol, which usually doesn't help. Or if they give morphine, it's not nearly enough.'

A therapist who works at Coalinga (and asked to be anonymous) told me 'I saw lots of agony in the medical unit. One patient was screaming in pain and the Coalinga doctor said I can't give him more meds because the program won't let me. Another man kept pressing the call button for help and no one came.' Why not? She says 'the staff complained he was pressing it excessively. He died a few hours later.' She adds 'last month, five men in the medical unit died, many with terrible pain.'

Yet another inmate who fared badly is Douglas Hopper. In April 2021, he had a haircut and the barber saw a tiny growth on his ear. Hopper, who had to wait until June to be seen at Coalinga's clinic, told the nurse practitioner (NP) that he already had a malignant growth removed from his arm and cancer runs in his family. 'By the time I was seen, the growth was bleeding continuously. When Coalinga finally referred me to a dermatologist, he told me I had Stage 2 skin cancer which had to be removed right away. The operation was in October (2021) and the surgeon said "The margins are clear." But I read about the cancer and learned that immunotherapy can keep it from spreading. Of course I wasn't able to get it.'

'By August 2022, I was very sick and an MRI showed a new lump above my collarbone and that I had chronic lymphocytic leukemia. The surgeon said, "don't worry. It won't metastasize." But by late October, I felt another lump behind my jaw.' The clinic gave Hopper an antibiotic but didn't refer him to a specialist. Finally, in February (2023), new tests showed the cancer had spread to his parotid gland – which is in the neck.

Hopper had another operation and was told to start immunotherapy immediately. But Coalinga didn't arrange it. So Hopper's cancer is now at Stage 3. Another surgery in June (2023) removed the parotid gland tumor and lymph nodes in his neck. 'The doctor told me the cancer had spread to my jaw and I needed even more surgery. But if Coalinga had arranged for the immunotherapy two years ago, maybe it wouldn't have spread,' he says. Now, part of Hopper's neck is gone and he can't open his jaw without a lot of pain. Immunotherapy still hasn't begun.

Leo Gutierrez, who's 55, has battled kidney disease since 2016, when he started dialysis at the DaVita Kidney Care Center three times a week. He says the weekly

(Continued on page 10)

bill is about \$20,000 – which doesn't include the cost of the guards who accompany him for the six-hour trip. One inmate at Coalinga offered to donate a kidney so Gutierrez could have a transplant, but Coalinga staff said they weren't allowed to approve this. However, Ralph Montano, the spokesman for California's Department of State Hospitals, emailed me to confirm that transplants are allowed.

When the cost of dialysis and transplants are compared, the choice seems a no-brainer: according to Vimo.com, a health cost website, the average price for a kidney transplant is \$143,500, although insurance companies negotiate the cost downwards (medications are extra). And that's far less than the \$2.5 million a year California pays for Gutierrez's dialysis. He desperately wants the transplant because, as he told me, 'I don't want to die.'

Robert says the long delays are partly due to a shortage of social workers, psychologists, psychiatrists, doctors, nurses, and psych techs; and since September, even more staff have left and not been replaced. Thus, conditions can only deteriorate further – particularly as the men get older and have ever more ailments.

To make matters worse, during this past year, 15 Coalinga inmates tested positive for Hepatitis C and one for HIV. Before now, none of them had experienced infections or had a drug issue.

How could this happen? California's Department of Public Health (DPH) checked the medical records and saw that all 16 men were treated at Coalinga's pain clinic. Michael St. Johns, an inmate who collects data about the facility says the DPH thinks the infections were likely caused by cross-contamination at the pain clinic; it seems that staff re-used syringes (called pipettes) for a pain management procedure it performed instead of throwing them away after each use.

Another man kept pressing the call button for help and no one came. Why not? She says "the staff complained he was pressing it excessively. He died a few hours later."

The men are furious because they weren't informed about their infections even after Coalinga staff knew. St. Martin says 'we only found out when we learned the pain clinic had closed. Now, 187 of the men are suing Coalinga and Dr. Francis Lagatutta, who ran the clinic, for malpractice.

[p. 11:] **Littlefield, Texas**

At the Littlefield, Texas civil commitment facility, the medical clinic handled Covid in a way which ensured that many of the 390 inmates would get it. According to Mandi Brady, a security officer and medical assistant at Littlefield from 2018 to 2021, 'Covid spread like wildfire every few days. It was the worst in 2021, when at least half the men had it and 12 died.'

Brady says those who tested positive weren't quarantined from those who tested negative; the clinic didn't sanitize the examining room between patients; the sick and non-sick were sent back to their rooms,

which hold two, four or 14 men. 'We passed food trays through their doors, and the infected and non-infected ate together in their rooms. Also, they weren't permitted to do their own laundry. Instead, staff threw their dirty clothes into the same sacks and washed them together,' she adds.

Further, the men weren't given hand sanitizers, the staff weren't given masks until October 2020, and the men weren't given them until November. Wearing masks wasn't mandatory until the end of December.

As for treating their pain, even if they had high fevers, they got only Tylenol, ibuprofen or aspirin,' Brady says.

Besides the Covid problem, Brady says one man (we'll call him John) had serious stomach pain last spring. The sole full-time doctor at Littlefield's clinic (who is retired from an OB-GYN practice in the town) gave him medicine 'to settle his stomach.' Since his pain persisted through July, he was referred to a doctor in Lubbock Texas. However, he couldn't keep the appointment because the Management and Training Corporation (MTC), the company which runs Littlefield, wouldn't approve it. The clinic re-scheduled a second appointment and MTC refused again. John's wife contacted Marsha McLane, the executive director of the Texas Commitment Office, who called MTC headquarters to get the appointment approved. But MTC refused a third time. By early October, John was jaundiced and sent to an emergency room – which found he had a blocked bile duct. Surgery was performed to unblock the duct and the doctor also found Stage 2 pancreatic cancer. His chemotherapy began a week later. All told, it took him over a half year to get the diagnosis and start treatment.

Then there's the bureaucratic boondoggle. Every year, Texas signs MTC's contract – although the company has been caught in some messy maneuvers. According to a November 22, 2022 *Texas Tribune* article, 'MTC billed Texas billions of dollars for inmate mental health programs it didn't offer. And it forced prisoners to fill out false time sheets stating they received treatment from MTC counselors. If they didn't, the inmates were warned they would be disciplined or lose their parole and be forced to return to prison.'

And Texas is not alone. The *Tribune* noted that 'Mississippi ...demanded MTC pay nearly \$2 million for improperly billing the state for thousands of unmanned prison guard shifts,' based on an investigation by the Marshall Project.

A closer look at MTC's record shows that Texas may also be in on the take. The *Tribune* noted that the advocacy group, Latina-Justice, suggests that the Texas Department of Criminal Justice knew about the 'fraud that MTC was committing' and still renewed its contracts.

Moose Lake and St. Peter, Minnesota

As in Texas and California, the men in Minnesota's sex offender program (MSOP) at its two facilities in Moose Lake and St. Peter wait months for medical care; nine months is the norm to see an outside doctor. This happens because Moose Lake

does not have a full-time in-house doctor. Daniel Wilson, who has a paralegal certificate and has been an inmate for six years, says 'besides the long wait, clinic staff don't tell us the truth about our diagnoses. We can submit something like a FOIA request to see our test results and doctors' notes, but you have to know how to do it and most of the men don't.'

Wilson says 'one man had abdominal pain and was examined at Essentia (a nearby hospital) in July 2022. The hospital sent his medical records to Moose Lake where the nurse who read them told the inmate "nothing was wrong." As his pain worsened, he asked Essentia to send him the records directly; they showed he had Stage 5 kidney disease (end-stage renal failure).'

Another inmate hurt his ankle and asked for an x-ray. The clinic finally arranged for one four months later. The Moose Lake nurse who read the results told him his ankle was sprained and gave him a brace. But as this made his pain worse, he sent a formal request to obtain his results – which showed his ankle was broken in three places. Surgery wasn't approved, the bones healed badly, he's in constant pain, and he walks with a limp.

The MSOP is also required to provide sex offender counseling, which theoretically leads to an inmate's release into the community – if he can prove he reached the program's top level. According to Ruby Brewer, a behavioral therapist who worked in Moose Lake from 2016 until 2019, they get no useful therapy; and the way the program is designed, they can't progress.

In fact, most inmates will be in the MSOP until they die. As Minnesota Federal Judge Donovan Frank observed, 'the program is clearly broken.' Judge Frank compared it to the children's game, Chutes and Ladders; whenever an inmate reaches the program's top tier, the staff find a bogus reason to knock him to a lower level.

Thus, since 1994 when the law was passed, 946 men have been committed to MSOP but only 21 have been fully discharged. Another 92 were 'provisionally discharged' – and then only because the court intervened. Of these, only 52 live in the community; the rest still live [in the] Moose Lake [facility].

Brewer, who has a master's degree in mental health counseling, says the MSOP's goal is to keep the men forever. Because she fought this, she was put on 'paid administrative leave'; she was guilty of 'employee misconduct' because she blew the whistle on MSOP abuses. 'Two supervisors told me to lower the men's program scores. If I didn't, they said "their scores would look too good, and we'd have to move them to the next level. And ultimately release them." I was warned that if I didn't comply I'd be fired or put on leave.' She says most of the therapists did as they were asked 'because they didn't want to lose their jobs.' Also, she says 'many have the mind-set to keep the men locked up indefinitely.'

[p. 12:] [MSOP's] executive director, Nancy Johnston, was interviewed on a local television new show this past November 1. She insisted that 'any claim that MSOP supervi-

sors would direct therapists to lower assessment scores so clients could not progress through treatment is false.' But Dr. Nicole Elsen, a clinical supervisor at St. Peter admitted in sworn testimony in a 2015 court case (*Karsjens v. Jesson*) that she did direct the clinicians to lower the men's scores.

Brewer says 'so many men are old and disabled and in wheelchairs, on walkers or on oxygen. Some are amputees, some have Alzheimer's, and lots are on dialysis. Since 1994, 101 men have died there.'

Because so few inmates are ever released, at least 300 are over 65 and one is even 89. At Moose Lake, 138 men have been held for over 20 years, and 62 men for over 26 years. [Wilson] says, 'there's one death every 60-days. And life expectancy in the MSOP is 20 years less than in the general population.'

Brewer says that if Minnesota legislators cared about costs, the MSOP would close today; each inmate costs taxpayers \$171,000 a year, while prison inmates cost \$41,366 (in 2015); nursing home patients cost \$90,000; assisted living patients cost \$48,000 and those getting 44 hours a week of home health care cost \$60,000.

A 2019 Bureau of Justice Statistics (BJS) report found that sex offenders are much less likely than people convicted of other offenses to be re-arrested; BJS data show that people who served time for sex offenses had much lower recidivism rates than almost any other group.

Brewer insists 'it's beyond insane to keep them so long. Maybe 10 or 15 of the younger men are dangerous and need to be in a secure facility, but the elderly should be released or placed in geriatric facilities.'

Editor's Note: Barbara Koepfel, whose incisive articles have been quoted in this newsletter before, is a Washington, DC-based investigative reporter who covers social, economic, political, and foreign policy issues.

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the Legal Pad

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