

**In This Issue:**

1. Fund What Works, End the Waste!	1
2. Of Judicial Courage: Justice Page Told Us the Truth Ten Years Ago. Will Officials Listen Now?	1-3
3. How Are Minnesota Sex Offenders Like Washington Juveniles? Does the Term "Political Prisoners" Mean Anything to You?	3-4
4. "Recidivism Prediction," See "Junk Science."	4-5
5. NARSOL Denounces Genocide of Sex Offenders, a Notion Spelling the Rise of the Fourth Reich.	5-6
6. A Trifecta of Tales from These Twisted Times	6-9
7. Misses (as in Perceptions & Conceptions) Feed Punitiveness as Denial. The Contortions of Public Sentiment.	9-10
8. CURE's Opposition Movement Outlines How to End SOCC Everywhere.	

**Coming Soon:**

- ✓ Free Speech in Campus & SOCC
- ✓ Sex Offender Residence and Employment
- ✓ What Does Barring Inter-SO Associations Actually Result in?
- ✓ Estimating # of Unreported Sex Crimes Is Junk Science
- ✓ Good Lives Model vs Virtue Ethics – Moral vs Clinical Decisions
- ✓ Remorse Bias — What's THAT?
- ✓ RNR vs. Good Lives vs. Virtue Ethics vs. Desistance: Any bets?
- ✓ Lie-Detector Interrogation & Peter Meter Testing: Keeping You Down by False Hope, Fear, & Shame
- ✓ 'All Except for' Blanket Exclusions of SOs from Justice Reforms
- ✓ PPG Validity Refuted
- ✓ Is "Machine Bias" a Bias Machine?
- ✓ Banishment by 1000 Laws
- ✓ Levenson on Needs-Preferences of Clients of SO Treatment
- ✓ Dynamic Risk Factors and RNR Theory (2-part series) – Pt 1 - DRFs
- ✓ Due Process Requires Courts to Examine Scientific Evidence Undermining Statutes
- ✓ 'New' SORN Laws Are Punitive
- ✓ RNR or Good Lives Model – Which Better Matches Offender Rehabilitation & TJ
- ✓ Panic in the Statehouse: Bad Policy by Panicked Legislation
- ✓ SO Reintegration - Environmental Ingredients Are Known; Officials Just Need to Use the Cookbook.
- ✓ B4QR Disperses the Notion of "Monsters."
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- ✓ Will CA Expand Tier Reduction for 1000s of Registrants?
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# MN Legislators Still Pour Cash Down the Failed MSOP Rat Hole Instead of Funding Programs of Known Success That Make Minnesota Safer.

*Daniel A. Wilson*, "Lawmakers Fund Failed Program Instead of Ones That Make Minnesota Safer," Direct Contribution, March 31, 2024.

**Text:** "Several programs in Minnesota focus on preventing sexual violence. But while the Minnesota Sex Offender Program (MSOP) is financially thriving, programs that *actually* protect our communities are dying.<sup>1</sup>

Reverend Harry J. Bury served at the side of Mother Teresa in Calcutta and was awarded the key to Ho Chi Minh City for his role in ending the war in Vietnam. When asked about the MSOP. The reverend said:

MSOP is a violent attack on the people of Minnesota... The State claims that MSOP keeps our communities safe. This is a false belief... Taxpayer money could be more effectively used to keep Minnesota safe with programs training police and locals in empathy teams. The results would ... be less sex crimes...<sup>2</sup>

Some of the best prevention programs rely on multiple sources of income and funding is never guaranteed. The Minnesota Department of Health and the Violence Against Women Act both recently awarded grant-money to prevention programs in Minnesota.<sup>3</sup> If the sum of these

two grants were evenly distributed to all 87 counties, each county would only receive about \$47,000 to prevent sexual violence. That's hardly enough to pay one person's salary.

MSOP, however, will get 112.3 million tax dollars in 2024 without a fuss.<sup>4</sup> If lawmakers were to fund the right programs, they could prevent sexual violence. Programs in high schools and colleges that empower others to intervene where violence may occur can significantly reduce rates of sexual violence.<sup>5</sup> Also, programs that teach adolescents the skills they need to maintain safe relationships can reduce sexual violence by 92%.<sup>6</sup>

MSOP, however, is 'less than 1%' effective in preventing sexual violence.<sup>7</sup>

Lawmakers are spending over a hundred million dollars on a 'prevention' program that has done nothing to protect anyone from sexual violence. Meanwhile, evidence-based programs are suffering. This might explain why states with MSOP-like programs have more sexual violence than states without them.<sup>8</sup>

If lawmakers are serious about protecting women, children and other vulnerable populations from sexual violence, they will sunset the MSOP and reinvest the savings in effective

prevention programs throughout the state of Minnesota."

**Notes:**

*Tim Walker*, "State Could Boost Services for Victims of Sexual Assault, Domestic Violence, Child Abuse with \$20 Million Appropriation." *Session Daily*, Feb. 15, 2024.

Personal letter from Reverend Bury dated April 23, 2023 addressed to the author.

*Eric S. Janus*, "The Problem with MSOP," *Metro State University*, April 2022 at 02:37:30.

<https://mn.gov/dhs/people-we-serve/adult/services/sex-offender-treatment/faqs.jsp>, as of Sept. 1, 2023.

*Id.* at 16.

"Sexual Violence Prevention: Resource for Action," *Center for Disease Control and Prevention* at 20.

*Daniel Montaldi*, "A Study of the Efficacy of the Sexually Violent Predator Act in Florida," 41 *William Mitchell Law Review* 780 (2015) at 853.

*Tamara Rice Lave et al.*, "Do Sexually Violent Predator Laws Violate Double Jeopardy or Substantive Due Process? An Empirical Inquiry." 78 *Brooklyn Law Review* 1391 (Summer 2013).

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## In re Ince, Revisited

Excerpt from *In re Civil Commitment of: Cedrick Scott Ince*, 847 N.W.2d 13, 2014 Minn LEXIS 197, A12-1691 (Mn Supreme Court, April 23, 2014), concurrence by Justice Page.

**Editor's Introduction:** In 1994, the Minnesota Legislature passed a bill enacting two alternative commitment standards ("Sexual Psychopathic Personalities" and "Sexually Dangerous Persons" formulations) for civilly committing sex offenders who have committed "sexual harm," whether as adjudicated or merely alleged, under a standard of "clear and convincing" evidence as found by the commitment-case judge.

Twenty years later (2014), in a case commonly referred to as *In re Ince*, the Minnesota Supreme Court vacated and remanded such a commitment of Mr. Ince for further findings that the Supreme Court determined were needed to support such a commitment. That holding is not the focus of this article, however. Instead, Justice Page of the state Supreme Court filed a concurrence. Although agreeing with the need for remand in *Ince*, Justice Page bitterly complained of the unconstitutional shortcomings of that law and the practices that it allows.

In that discussion, Justice Page refers back to a case by that court in 1996 (*Linehan III*), in which he and another justice joined in dissent from the majority holding upholding the constitutionality of that law. It should be noted that *Linehan III* was vacated by the U.S. Supreme Court's decision in *Kansas v. Hendricks* the following year (1997), establishing a standard of constitutional law controlling whether such a sex

offender commitment program is consistent with due process and other provisions of the U.S. Constitution.

After quoting below the pertinent portion of that concurring opinion in *Ince* by Justice Page, an Editor's Conclusion will put that discussion in the context of current circumstances of operation of Minnesota's sex offender commitment system a further ten years beyond the *Ince* decision.

**Text Excerpts with footnotes inserted parenthetically:** [pp. 27-28:] "...I write separately to address the impossible task faced by those committed under Minnesota's Sexual Psychopathic Personality (SPP) and Sexually Dangerous Person (SDP) statutes in attempting to show the existence of a less restrictive alternative to indeterminate confinement at a secure facility.

'Substantive due process forecloses the substitution of preventive detention schemes for the criminal justice system . . . ' *In re Linehan (Linehan III)*, 557 N.W.2d 171, 181 (Minn. 1996), vacated sub nom. *Linehan v. Minnesota*, 522 U.S. 1011 (1997). ...The State cannot civilly commit 'those whom [we] fear[.]' *Linehan III*, 557 N.W.2d at 184, nor can 'mere dangerousness . . . justify civil commitment,' *In re Linehan (Linehan IV)*, 594 N.W.2d 867, 872 (Minn. 1999). ...In *Linehan III*, the State explained 'the substantial commitment the legislature has made to creating adequate facilities and treatment programs for those committed as sexually dangerous or sexual psychopathic personalities,' *Linehan III*, 557 N.W.2d at 187 (emphasis added). It is clear

that the Legislature has failed to live up to that 'commitment.' The Legislature has not created adequate facilities and treatment programs for those civilly committed as SDP or SPP. It is equally clear that we, as a court, have failed in our obligations to ensure that commitment as SPP and/or SDP is not merely a form of preventive detention.

[Footnote 1: In our dissents in *Linehan III*, Justice Tomljanovich and I expressed concern that commitment under the SDP Act would result in impermissible preventive detention. 557 N.W.2d at 199 (Tomljanovich, J., dissenting); *id.* at 201 (Page, J., dissenting). The passage of time has proved our concern well-founded. In 2011, the Minnesota Office of the Legislative Auditor issued a report on the civil commitment of sex offenders. *Office of the Legislative Auditor, Evaluation Report: Civil Commitment of Sex Offenders* (2011) (hereinafter *OLA Report*). The *OLA Report* indicates that in 1990 there were 30 or fewer civilly committed sex offenders in Minnesota. *Id.* at 4. By the year 2000, that number had increased to 149, and by 2010, the number had increased to 575. *Id.* It is estimated that currently there are approximately 698 sex offenders under commitment. *Karsjens v. Jesson*, No. 11-3659 (DWF/JJK), 2014 U.S. Dist. LEXIS 20911, 2014 WL 667971, at \*1 n.4 (D. Minn. Feb. 20, 2014). {As of 2023, there were roughly 750 persons confined in the Minnesota Sex Offender Program (MSOP), i.e., that commitment system.}...

Resuming text:] What the Legislature has creat-

(Continued on page 2)

ed is a single, one-size-fits-all commitment system. [Footnote 2: It is a system that, at times, appears penal and not at all remedial. See *Karsjens*, 2014 U.S. Dist. LEXIS 20911, 2014 WL 667971, at \*4-5 & n.12; OLA Report, *supra*, at 42 (explaining that Minnesota's commitment process results in an "all-or-nothing outcome" due to the lack of options other than secure commitment).] confinement in either one of two secure facilities. ...The Legislature has provided no less restrictive alternatives. True, the person facing confinement in a secure facility can propose "a less restrictive treatment program ...but the absence of any State- or legislatively-approved facilities or programs makes this a hollow option.

[Footnote 3: Placing the burden on the proposed committee to provide his or her own less restrictive alternative to confinement in the State's secure facilities creates its own set of due process problems.]

Of equal concern is the concentration of the State's financial resources into only two secure facilities, which threatens to deprive those programs of a legitimate claim to treatment. See *In re Senty-Haugen*, 583 N.W.2d 266, 270 (Minn. 1998) (Page, J., dissenting) ("To the extent that funding for people committed as SPP/SDP is only made available for their confinement in the most restrictive facilities available, it begins to look like the state is more interested in preventive detention than in treatment."); Office of the Legislative Auditor, Evaluation Report: Civil Commitment of Sex Offenders 42 (2011) (noting the statutory provision for a less restrictive alternative is "of virtually no practical use").

The State's failure to provide any option for the civilly committed sex offender other than confinement in a secure facility leaves Ince in a quandary. The experts testifying at the commitment hearing agreed that Ince -- who had a support system in place, was attending treatment, and attained a prolonged period of sobriety--had adapted to intensive supervision in the community. Yet each expert also testified that only a secure facility would, in addition to treatment, adequately ensure public safety. It cannot be that the only option for nonpunitive, remedial treatment for someone who has demonstrated a measure of volitional control is confinement in a secure facility. ...Put differently, if civil commitment is not just for preventive detention, then the Legislature should provide treatment facilities that provide a measure of public safety short of confinement."

[Underlined passages denote emphases editorially added.]

#### Editor's Conclusion:

At present, the population of MSOP remains at an all-time high, notwithstanding the deaths in that confinement of 103 individuals over the years of its operation.

At this time, treatment programming has been released by half since last year. Several years ago, it was reduced by one-third. Effectively then, the weekly number of treatment hours is now at only one-third the weekly amount at the time of the *Ince* decision. This has been blamed on

MSOP's inability to hire and retain sufficient therapists.

The main reason behind that inability has been the extreme divergence in treatment theory and practice by MSOP as compared to treatment in other sex offender treatment programs. MSOP, for instance, stands alone in providing treatment under a "Matrix" of 32 factors, each of which must be worked on and eventually declared to have been mastered by the confinee in question before MSOP would declare him ready for release.

In practice, this means that, in contrast to sex offender treatment in prisons, where the duration before "graduation" ranges between 2 to 3 years, in MSOP the average time needed to achieve transfer to the pre-release readying program part of MSOP (IF the confinee is ever granted that status -- still a small minority of those now confined in MSOP) is 14 years.

In sum, given the recent reduction in treatment hours cited above, most MSOP confinees now wonder if it will ever be possible in the future to gain release through treatment.

Further obstructions to the assertion of release through treatment being realized by confinees are listed in the *Editor's Conclusion* in the companion article, "Faulty risk assessment and subjective impressions in release decisions," immediately following. When all of these obstructions are considered together in their combined impact, it becomes clear that the chance for an average confinee in MSOP to ever achieve release, much less eventual full discharge of his commitment, are very low and now shrinking fast.

This is everything predicted by Justice Page as a commitment program in utter failure, indeed, quite obviously failure by deliberate design. This is intolerable as nothing more than a lifetime detention program, at best only addressing a claimed 'need' for such permanent preventive detention to prevent speculated future sex crimes by those confinees.

As Prof. Eric Janus points out in his masterful analysis (Chapter 16: "Holding Our Sexual Violence Policy Accountable," in *Sexual Violence: Evidence Based Policy and Prevention* [Eliz. L. Jeglic & Cynthia Calkins, eds., 2016]), the rate of recidivism by former sex offenders is minuscule, compared to recidivism by almost every other kind of criminal. Surprisingly, this applies as well to those selected for sex offender commitment.

In the meantime, the rate of sex offenses throughout society is not diminished at all by the practice of commitment of sex offenders: the rate of sex crimes perpetrated is just as high, indeed, in some case higher, in states without sex offender commitment laws. Therefore, the reality is that sex offender commitment does nothing to diminish the perpetration of sex crimes.

Meanwhile, as Prof Janus further concludes, the enormous budgetary outlays squandered annually supporting such commitment systems are thereby made unavailable to fund primary sex-crime prevention programs with known high rates of success.

Without funding, those programs wither and often simply are forced to close, allowing sex-crimes to proliferate.

In this light, it becomes obvious that sex offender commitment is a practice that actually causes rates of sex crime perpetration to remain higher than they would be if those effective prevention programs had instead been adequately funded.

The best thing the State of Minnesota and other sex-offender commitment states can do to bring sex offending to a halt is to end sex offender commitment and reallocate those funds to those prevention programs. *Janus, id.*

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## MSOP SOCC Reprises Washington's Juvenile Violence Sentence Scheme (Reused There to Create the First SOCC Law Ever) to Deny Prison Release Indefinitely

**Editor's Introduction:** The following article addresses flawed risk assessment and subjective impressions by administrative tribunal judges, both as used in proceedings to free former juveniles held in prison for crimes committed when they were juveniles. Yet parallel comparisons exist to proceedings such as Minnesota's "Special Review Board" ("SRB") that decides whether to release committed sex offenders or to place them in a program to prepare them for such release. These comparisons will be identified after the following excerpts from that article. In both applications, those comparisons point up the failure to adhere to science but instead choosing to simply rely on personal impressions and bias when making these decisions on life and liberty. The arbitrary unfairness of this cannot be more obvious, nor can the indifference of such administrative judges to such unfairness and its death-in-confinement impacts be clearer. MSOP's own practices appear tailor-made to manipulate those release proceedings to thwart release.

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*Maya L. Ramakrishnan*, "Providing a Meaningful Opportunity for Release: A Proposal for Improving Washington's 'Miller-Fix,'" 95 *Washington Law Review* 1053 (2020).

**Text Excerpts:** [pp. 1081-82:] "III. B. What the ISRB Considers in Making Release Determinations 2. *The ISRB Looks to the Psychological Evaluation and Risk Assessments*

The ISRB [Intermediate Sentence Review Board] structured decisionmaking sheet indicates that the ISRB considers several risk assessments conducted as part of DOC's psychological evaluation.<sup>313</sup> These include both a clinical assessment and actuarial risk assessment tools.<sup>314</sup> Clinical risk assessment requires a clinician to make predictions based on their own experience,

judgment, and reasoning.<sup>315</sup> Because clinicians are vulnerable to cognitive biases,<sup>316</sup> this type of unstructured professional judgment is frequently inaccurate.<sup>317</sup> Studies have shown that unstructured clinical predictions of violence are more likely to be wrong than right.<sup>318</sup>

In an attempt to remove bias and improve violent risk assessment, researchers developed actuarial risk assessments.<sup>319</sup> Actuarial risk assessments make predictions based on demographic data.<sup>320</sup> Researchers have serious doubts about whether actuarial risk assessment tools can accurately predict risk for future violence.<sup>321</sup> Although there is some peer-reviewed and published research suggesting that these tools can predict violence,<sup>322</sup> a meta-analysis of published violence risk assessment data found that studies where the developer of the tool studied their own tool, that study was twice as likely to find positive predictive findings.<sup>323</sup>

Two of the actuarial risk assessment tools used by DOC clinicians are the Violence Risk Appraisal Guide (VRAG-R),<sup>324</sup> [and] the revised Psychopathy Checklist (PCL-R).<sup>325</sup> The PCL-R is a twenty-item checklist first published by Dr. Robert Hare in 1980 (revised in 1991 and again in 2003) to detect psychopathic personality disorder.<sup>326</sup> The PCL-R is based on file information and an optional interview. It categorizes personality traits (such as 'lack of remorse' or 'grandiose sense of self-worth') as well as social history into four larger factors (interpersonal, affective, lifestyle, and antisocial).<sup>327</sup> Dr. Hare and other proponents of the PCL-R believe the PCL-R can assess psychopathy and predict recidivism.<sup>328</sup>

There is disagreement about whether psychopathy exists, and whether the PCL-R can effectively test it.<sup>329</sup> Despite an oversized presence of the psychopath in the popular imagination,<sup>330</sup> psychopathic personality disorder does not appear in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM).<sup>331</sup> The closest diagnosis is antisocial personality disorder.<sup>332</sup> Opponents of the PCL-R argue that psychopathy is not a useful diagnostic category and that the PCL-R is unreliable to predict future violence and recidivism and should not be used 'where life and liberty decisions are at stake.'<sup>333</sup> Nevertheless, the PCL-R is widely used in psychiatric and prison settings.<sup>334</sup> In 2011, a guide to 'passing' the PCL-R was published, citing concerns about false positives.<sup>335</sup>

[p. 1083:] The VRAG-R is a purely actuarial tool intended to predict the risk of future violent offenses based on twelve data points about an individual.<sup>336</sup> A higher VRAG-R score indicates a higher risk to reoffend.<sup>337</sup> The VRAG-R is a static tool tied to the date of the underlying offense, meaning that an ISRB petitioner's VRAG-R score will be the same the day they are sentenced as it is twenty years later when they become eligible to seek parole.<sup>338</sup> Scored items include: whether the individual lived with both parents until age sixteen, marital status at the time of the offense, and

(Continued on page 3)

age at the underlying offense.<sup>339</sup> For example, a petitioner who committed a crime at fourteen and was convicted and incarcerated before age sixteen would have a higher VRAG-R score because they did not live with their parents until age sixteen, were presumably unmarried at the time of the offense and were under twenty-six years old at the time of the offense.<sup>340</sup>

Both clinical and actuarial risk assessments lack transparency. The clinician who conducted the examination is not at the ISRB hearing and cannot be cross-examined.<sup>341</sup> The petitioner and members of the board do not know what factors determined the petitioner's risk, or how heavily different factors were weighted.<sup>342</sup>

### 3. The ISRB Assesses Behavior While Incarcerated.

[pp. 1083-84:] The ISRB looks to institutional behavior, including the seriousness and recency of infractions.<sup>344</sup> Serious infractions include violent behaviors, such as committing an aggravated assault, but also include behaviors that would not be considered dangerous behaviors outside of a prison context, such as possessing more than five dollars without permission,<sup>345</sup> organizing or participating in an unauthorized group meeting,<sup>346</sup> or misusing or wasting more than ten dollars' worth of supplies.<sup>347</sup> Minor infractions similarly include conduct that would not be cause for concern in the outside world, such as hugging a visiting relative without permission,<sup>348</sup> or smoking tobacco in the wrong place.<sup>349</sup>

The ISRB also looks to 'responsivity to programming.'<sup>350</sup> Programming includes therapeutic and support programming, such as substance abuse treatment, as well as academic and vocational classes.<sup>351</sup> There is evidence that some programming reduces the likelihood of future criminal behavior – the National Institute of Justice considers cognitive behavioral therapy programs to be effective at reducing recidivism in some cases.<sup>352</sup> Similarly, academic and vocational programming reduces recidivism rates by over 40%.<sup>353</sup>

### [p. 1085:] 4. The ISRB Uses Its Subjective Judgment.

Many of the factors considered on the structured-decisionmaking document rely on the subjective judgments of board members.<sup>360</sup> The ISRB makes determinations about a petitioner's intelligence and the motivation with which a petitioner participates in programming, the petitioner's callousness and social behaviors, and about whether a petitioner's release plan is realistic.<sup>361</sup> These considerations all rely on the subjective judgment of board members.

For example, a board member could find that a petitioner who began to participate in programming after the passage of the Miller-fix bill in 2014 was only motivated by a desire to be released. A different board member could find that the same petitioner reached a certain level of maturity in 2014 and became more interested in programming. One board member could hear a petitioner speak in a detached way about their underlying criminal act and determine that the petitioner is callous or unfeeling. Another board member could hear the

same thing and determine that the petitioner is recalling an event that was traumatic. One board member could determine that a release plan where a petitioner relies on a spouse is realistic, because marriage lowers recidivism rates. Another board member could determine that same release plan is unrealistic, because many prison marriages end in divorce.

Because the ISRB decisionmaking is structured to include these determinations, the ISRB must engage in making subjective judgments in order to make release decisions.

[p. 1087:] IV. A....

...[D]ecisions made by the ISRB about whether a petitioner has been rehabilitated are as unfairly subjective as similar decisions made by sentencing courts, and are additionally unfair in that they lack the procedural protections of sentencing courts.

It is almost impossible to determine what an individual who has spent their entire adult life incarcerated will do in the future on the outside. Predicting future dangerousness to an acceptable degree of certainty may be impossible.<sup>373</sup> All that the ISRB has to make this determination are their own subjective impressions, faulty risk assessment tools, and institutional behaviors that may have no bearing on life outside of prison. For example, if an individual kisses a visiting spouse goodbye without permission, that could result in an infraction, but has little bearing on their dangerousness...."

### Editor's Conclusion:

Only 11% of the annual MSOP budget is allocated to treatment. Likewise, only 11% of its staff is involved in treatment. The largest component of the high operating cost of MSOP-ML is that of security staffing (almost a one-to-one ratio with detainees). However, security staffing to monitor the MSOP-Moose Lake facility's Complex unit housing 75% of MSOP-ML confinees is minimal, due to open sight-lines in its design. During open dayspace hours on any given day, each of the five living units in the Complex is staffed on average by no more than three security officers. Clearly, the vast security staff of MSOP is just an unneeded boondoggle to make MSOP's existence pleasing to residents of the small cities where they are situated.

In 2012, MSOP indicated a range of 6-9 years for a "model client" to progress from Phase I through Phase III. Since then, because so very few have met even the upper end of that range, MSOP no longer provides such an estimate. Currently, the treatment program at the MSOP does not have any delineated end point. There are no clear guidelines as to what constitutes treatment completion or how to attain an MSOP conclusion that one has done so.

After years of criticism of MSOP's endless treatment by legally mandated Site Visit Auditors reports, MSOP simply successfully prevailed upon the state legislature to end those visits and reports. According to one MSOP psychologist, Dr. Elsen, far more MSOP confinees have reached a point of maximum benefit possible from MSOP

treatment than have ever been declared to have completed treatment. Dr. Elsen said these could very likely gain from treatment outside of MSOP confinement, but that MSOP has adamantly refused to allow release of anyone who had not been declared to have successfully completed its interminable treatment program.

Over the years of its operation, MSOP has completely replaced its treatment regimen four times. In each case, the replacement regimen was less successful at graduating treatment participants than the program it replaced. In each case, MSOP insisted that each participant start completely over, as if not in treatment at all previously.

The "Matrix" treatment modality used by MSOP is not used by any other sex-offender treatment program. The vagueness of the Matrix "factors" by which treatment participants are judged, allows for extremely inconsistent, judged wholly by the subjective impressions of clinicians. Worse, an admitted system of review by superiors of those clinicians not involved in treatment and having no familiarity with any given treatment participant often imposes reduction in scores of a given participant's Matrix scores in any treatment period on no basis other than a claimed cursory review of that participant's file.

In sum, the Matrix and the way that its scoring is handled reflect an apparent fanatical adherence by MSOP administrators and clinical supervisors to the unspoken concept that treatment of committed sex offenders 'should' take a long time, on the tacit belief that, to render any MSOP detainee "safe" for release, he must utterly be 're-made' as a different persona than his own. It is this belief, never laid bare, that is behind the decades-long detention and treatment of MSOP's detainees, compelling them to satisfy the Herculean requirements of a practically endless series of "Matrix" "goals" before administrators will consider an individual's release. This is the vehicle by which each treatment-participating MSOP detainee is denied "completion" of treatment over countless years, until they simply give up or die. It is deliberate and cruel.

Just like Washington State, above, Minnesota's commitment program (the "Minnesota Sex Offender program" or "MSOP") will object to releases on the basis of trivial violations of facility rules and will complain of failure by the petitioning confinee to advance in treatment (even though core groups have recently been limited to only one 2-hour session per week, with groups as full as 18 treatment participants each). Yet no matter how much effort and completion of assignments and treatment goals that confinee achieves, the MSOP assessment when he seeks release will accuse him of failing to advance beyond the beginning of whatever phase of treatment he is in.

MSOP sometimes complains that a petitioning confinee has not engaged in education, as a claimed reason not to consider his release. Yet MSOP effectively has no program of college education that can lead to any usable degree or completion certificate, as could be obtained even from a

vocational college of 1- or 2-year programs if living in freedom. Apart from self-instruction, the only post-secondary education offered by MSOP is nothing more than a collection of once-weekly classes of a seminar sort, discussing wise handling personal finances, and personal interest courses such as current events, modern literature appreciation, and the like. In other words, MSOP complains that a petitioning confinee has not taken post-secondary education that does not exist.

On a parallel plane, MSOP will also complain that a petitioning confinee has not availed himself of vocational training on-the-job that would prepare him for successfully making a living and developing a career. Yet the only vocational programs MSOP has involve kitchen food prep, serving and cleaning, and general cleaning assignments in hallways and living units, and various other support positions such as distribution of weekly linen exchanges, laundry cleaning and return, and canteen order distribution, and various small programs such as a vegetable garden (that supplies the kitchen), small, hobby production of 'homemade style' wood furniture items (with poor-quality finishes and some for backyard or cabin use). In short, nothing about this 'on-the job' program prepares anyone for any job making more than minimum wage.

Other specifics of this illusory façade of purported treatment-toward-release, including:

- deliberately sluggish treatment;
  - 'patient' hold-backs and demotions;
  - frequent treatment regimen replacements, requiring patient 'start-overs';
  - the inherent impossibility of extinguishing deviant attractions;
  - ill-conceived, failed attempts at 'brainwashing';
  - refusal to acknowledge any "meaningful change" despite successful treatment completion;
  - lack of MSOP-approved releases through treatment (upon information and belief, 1 to date);
  - duration of confinement through old-age to death for most; and
  - insistence on an unattainable 'zero-percent recidivism risk' "public safety guarantee" before granting release,
- together present an undeniable overall revelation of a commitment scheme intent on natural-life preventive detention, with only the sheerest veil of claimed treatment, in reality not in earnest or even merely good faith. Unquestionably, that sole realistic goal of preventive detention shows the undeniably punitive aim and function of SPP/SDP commitment.

As shown through the preceding allegations, in the case of Minnesota sex offender commitment pursuant to said Act in the regular implementation of such commitments approved by authoritative state appellate court decisions, including the post-commitment confinement and claimed "treatment" of those committed, the reality of MSOP operation is:

(a) to sluggishly conduct over the course

(Continued on page 4)

of a decade or more treatment that could be accomplished within one year;

(b) to invent excuses to demote those in treatment to a lower level of treatment attainment and to alternatively retain those in treatment in the treatment phase or module already completed;

(c) to disqualify from treatment advancement (and thereby from release) all those who deny the commission of a given alleged sex crime or who refuse to be interrogated and tested by polygraph as to any suspected/conjectured past sex crimes never reported, never charged, or never convicted; and

(d) periodically (but before any appreciable number of committed sex offenders can complete the prescribed regimen of treatment) completely replace that regimen with a different regime as discussed above), thereby forcing all treatment participants to start over in that next decade-long replacement treatment regimen.

Despite baseless fear-mongering for decades, it is now known that well over 90% of lifelong pedosexuals never actually sexually offend against children. Research on recidivism has confirmed that even those who have sexually recidivated against either children or adults in the past have no higher later recidivism rates than non-recidivists. The notion of 'revolving door' 'career-repeater' sexual criminals, it turns out, has always been simply a counter-factual myth. Yet MSOP bases all of its decisions not to release its confinees on this inflammatory myth.

Even in the exceptional cases where an MSOP treatment participant is essentially found to have completed all work assigned as to all Matrix factors, he will nonetheless very likely be declared by clinical personnel not to have "changed" or only insignificantly "changed," such that release cannot be granted due to claimed residual "dangerousness" of recidivism in the absence of such "change." However, the term "change" is without any definition that is not circular and amorphously vague and without any standards for achievement. Further, no methods of predicting future recidivism have ever been identified that have significantly better-than-chance odds of turning out retrospectively of having been correct. Even if not based on such vague, impressionistic and standardless notions of "change," such prediction of recidivism amounts to nothing more meaningful than flipping a coin. Yet on such impressions and wizard-like predictions, MSOP denies almost all of its confinees release and even the pitiful remnants of a life. "Change" is just a word used to deny such release.

Whenever a confinee petitions for release, MSOP goes into overdrive to resist such release with everything that it can muster, including misuse of junk science and distortions – even outright lies about the petitioner. As the article points up, there is no experience, judgment, and kind of reasoning that would allow any psychological clinician to make predictions as to whether someone released from prison or a mental health treatment facility would commit crimes, or if so, what type of crimes. Just

like anyone else, clinicians (regardless whether engaged in treatment or assessment) can engage in biases, whether knowingly or completely unwittingly, and may fail to recognize when they have strayed from the science upon which their claimed expertise is based. For this reason, so-called professional judgment is typically frequently just as inaccurate, or more inaccurate, than sheer coin-flipping. Some studies have found such predictions of future criminal actions to be incorrect as much as 9 times out of 10. Nor does reliance on "structured judgment" (simply an attempt to organize one's thinking on this guessing-process cure either the inaccuracy or the bias inherent in it. To force one to undergo such a procedure where one's future freedom depends on such terribly incorrect sheer guessing is simply an unjustifiable denial of basic human rights.

As the article points out, so-called actuarial risk assessment of likelihood of future crimes has many serious flaws that prevent it from having accuracy significantly surpassing that of the same coin flip. Many of these so-called risk assessment "tools" have been scrutinized closely in the pages of *the Legal Pad* throughout the years of its issuance. The suspect fact that so-called "validation" by tool creators is found twice as often as validation by independent academics reeks strongly of dishonesty in such self-validation, yet such tools are often used regardless of this serious doubt of legitimacy. Finally, whether based on *a priori* beliefs in the nature of certain arbitrarily invented classifications of people (such as the notion of "psychopathy") or based on pre-conceptions of high probability of sex-crime re-offense as being the rule, rather than the exception, and then hunting far and wide for samples that include sufficient recidivists to 'prove' that claim (such as the Static-series of claimed actuarial tools), the blatant manipulation of data in service of desired (but probably grossly inaccurate) outcomes in given individual cases cries out for a science-wide investigation of these practices and a ban on every instrument that cannot pass independent testing of its accuracy and freedom from contamination. None to date can pass such scrutiny, yet thousands remain confined on the basis of such "predictions."

No such "tools" have been found devoid of such serious flaws. Most researchers have concluded that it is simply impossible to construct such a recidivism-prediction tool that has no such flaws and has accuracy sufficient to be able to account for the inherent unpredictability of individual human behavior in the unknowable future. This applies to so-called "algorithmic" prediction tools applied to the same task of prediction. Algorithmic tools do not actually avoid bias; they simply cover up the fact that they employ the inbuilt bias of the creators of their mostly demographic "factors." Worse, because they operate on a 'black-box' basis, their process of logically reaching their conclusion in any given case can never be known, much less challenged. Science merely slides off, like fresh stucco in a rainstorm, leaving only a self-

proclaimed wizard in a mud hut, insisting that everyone must accept his assertions as unimpeachable truth.

Comparably to the foregoing article concerning former minors seeking prison release after decades, sex offenders, after serving prison sentences as long as double decades or longer, can be subjected to so-called civil commitment in states like Minnesota having such laws when those prison terms expire. When these individuals subsequently seek to be restored to freedom or at least to be placed upon a path that can lead to freedom later, they first must petition to the aforesaid Special Review Board ("SRB"). That Board makes a recommendation to the "Commitment Appeals Panel," which makes the final administrative decision whether to grant any relief requested by the confined petitioner.

When MSOP confinees petition for such relief, they encounter a process in defiance of the basics of due process – typically based on a presumption against release and involving only a cursory consideration of the confined person's contentions and an imposed inability (due to untrained and underpaid counsel, a denial of true expert witnesses to contest the assessments brought against them to keep them confined, and the quick so-called hearings they are allowed – typically as short as 15-20 minutes before the SRB) to adequately present their case for currently relatively safe release.

It should be no surprise given the foregoing that, even as to well-qualified candidates for release, almost none are ever granted release – even on a "provisional" (parole) basis. In the entire 29-year history of MSOP, despite its current 750 confinees, only 24 have been granted final discharge from commitment (while during that same time, over four times that many (103) have died while confined. Assuming the most likely outcome of a petition to SRB for any relief (that is, denial even of a mere transfer to the release preparation unit before discharge), the confinee must wait for another six months before filing another SRB petition. Such filing will commence a waiting period that ranges from 9 to about 18 months before SRB hearing. This is followed by an appeal by either side to the administrative court (known as the Commitment Appeal Panel or "CAP"), which typically takes anywhere from two to nearly four years to resolve. There is no legal deadline by which the CAP must decide a pending case. The appeal track (again, by either side) next goes to the general-purpose Minnesota Court of Appeals, and by discretionary review to the Minnesota Supreme Court. During all of this, the confined petitioner is barred from filing another SRB petition, and the six-month waiting period starts only from completion of the last of these steps taken by either party. In other words, one complete round of a petition for release can consume a total of five years, during which the sole request for release is the one filed at the start of that period.

In sum, this is not a process of administrative/judicial release. It is a circular process

for wasting years during its pendency and providing an excuse for not allowing a petitioning confinee to seek release during that entire period and for a half-year afterward. It is a means to ensure that only a trickle of confinees will ever be released in any decade and, conversely, to ensure that far more confinees will die in confinement than will ever see a day of freedom before their death.

In 2021, Jacob Sullum, "Civil Commitment of Sex Offenders Pretends Prisoners Are Patients: The Practice Evades Constitutional Restraints by Casting Punishment and Preventive Detention as Treatment," *Reason*, Feb. 10, 2021, reported, "In Minnesota, only 13 detainees have been unconditionally released since the program was established in 1994; more than six times as many have died in custody." That ratio currently remains about the same. To date of this *Editor's Conclusion*, of the approximately 900 who have been committed to MSOP (including at least 103 who have died in such detention), only about 60 MSOP confinees are now on "Provisional Discharge – a status similar to punitive parole. An additional 21 have been judicially granted final discharge from commitment (almost all over the objection of MSOP). All of these 81 in total were confined and in treatment in MSOP for more than 10 continuous years at time of release – most closer to or even beyond 20 years. Currently, not counting those 103 who have died, approximately 750 individuals still remain confined by MSOP.

By the numbers, just as urgently as the State of Washington needs to reform its handling of juveniles who committed a violent crime during their minority, the State of Minnesota needs to completely overhaul, or better, simply repeal the juggernaut monstrosity it created in enacting commitment of sex offenders who were just completing their prison sentences many years, often decades after the crimes for which they were so amply punished. Many other articles in numerous editions of *the Legal Pad* have discussed in detail the tremendous waste or resources that MSOP comprises, when those resources could be redirected to ending sex offenses in Minnesota altogether – not just recidivistic offenses. But more than that, this article and this accompanying conclusion, shows in quick summary the horrific trap that MSOP commitment comprises. It is, in all realistic aspects, simply supplementary imprisonment, under mere guise of being a facility to treat and release. There is no need, nor even any credible excuse for keeping 750 individuals confined until death for their mistaken misdeeds 20 to 50 years ago, when all indications, both personal and by collective criminology of sex offending, present a convincing showing of a lack of any significant likelihood of any further sex offending in their remaining days. In this light, all that transpires in MSOP is cruelty. And for this reason most compellingly of all, it must be brought to an end – now.

Notes:

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(Continued on page 5)

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## Recidivism Prediction Is Junk Science. (Part 5)

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*Robert A. Prentky, Howard E. Barbaree, & Eric S. Janus, eds., Sexual Predators: Society, Risk, and the Law* (New York: Routledge, 2015)  
[Part 5]  
**Text Excerpts:**  
pp. 203-04: Chapman and Chapman (1969) ...noted that in clinical practice the observer is reinforced in his observation of illusory correlations by the reports of his

fellow clinicians, who themselves are subject to the same illusions. Such agreement among experts is, unfortunately, often mistaken as evidence for the truth of the observation.  
pp. 204-05: The effect of illusory correlations is profoundly important (and equally unacknowledged) in forensic risk assessment. Examples are far too numerous to detail, although several that are more common include the effect of a substance abuse history or a history of childhood sexual abuse on recidivism among sex offenders, as well as many clinical variables, such as 'denial,' and lack of motivation for treatment. In the Hanson and Bussiere (1998) meta-analysis, the Pearson correlation (*r* value) between being sexually abused as a child and recidivism was .00, and the correlation of having a negative clinical presentation and recidivism was also .00. In the Hanson and Morton-Bourgon (2005) meta-analysis, which used the average Cohen's *d* value as the effect size indicator, the *d* value denial and recidivism was .02; the *d* value for lack of victim empathy and recidivism was -.08; and the *d* value for low motivation for treatment and recidivism was also -.08. Poor treatment progress/failure to complete treatment, often introduced as aggravating evidence in court, are only weakly associated with recidivism (*r* = -.17 in Hanson and Bussiere, 1998; *d* = .14 in Hanson and Morton-Bourgon, 2005). As a rule, *d* values ≤ .20 reflect a small effect size; thus, *d* = .14 is clearly in the range of a small effect, and *d* values of .02 and -.08 --.14 as probative, or assuming causality based on such evidence, is all too common place in the SVP courtroom.  
A meta-analysis of 58 studies (64 unique samples) of mentally disordered offenders found similar results (Bonta, Law & Hanson, 1998). Bonta et al (1998) used the Pearson correlation coefficient as their effect size indicator, reporting the Z-transformed *r*. For general recidivism, the correlations were: alcohol use (.06); drug use (.09), and substance abuse of any kind was .11. For violent recidivism, the correlation with substance abuse was .08. Bonta et al (1998) also found that the correlation between clinical variables (as a domain) and general recidivism was -.02 (and -.03 for violent recidivism). Clearly, none of these effect sizes justify their use in supporting judgments of risk for recidivism.  
p. 206: ...The affect heuristic, as described by Slovic et al. (2005), is reliance on affective or emotional responses, which may occur rapidly and automatically, in the decision-making process. The characterization of affect as a heuristic can be found in Finucane, Alhakami, Slovic, and Johnson (2000), wherein one's awareness of one's affect provides a cue (a mental shortcut) in arriving at a decision.  
p. 207: ...[W]e evaluate risk not only by our rational estimation of the quantum of risk present but also by how we feel about the risk (Slovic & Peters, 2006).  
p. 213: [Donald] Rumsfeld has been famously quoted as saying at that News Briefing:  
'As we know, there are known knowns;

there are things that we know that we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns, the ones we don't know we don't know.'  
pp. 213-14: *Familiarity And Sexual Crimes*  
Sexual interest in children and sexual crimes committed against children are as disturbing and as cognitively dissonant to forensic mental health professionals as they are to everyone else. We are not immune to feelings of repugnance. When conducting an interview, listening to a child molester recount the details of his offenses, there is a homunculus in our brain that occasionally whispers, 'You did what?!' Hopefully, we are trained to ignore the homunculus and get on with the interview. The presence of that 'inner voice' is a sign of unfamiliarity or dissimilarity – in this case, inability to comprehend at some human level the behavior of the defendant.  
p. 214: Our capacity for holding at bay our emotional responses to clients is instrumental to conducting an unbiased, objective evaluation. Sex offenders often challenge our capacity for unwarping judgment. The more that a client's sexually deviant and offense-related behavior violates the 'norm' and magnifies feelings of unfamiliarity and hence discomfort, the more challenging the task of remaining objective.  
p.220: The potentially 'catastrophic' nature of overconfidence was exemplified in a study by Bedau and Radelet (1987) on 350 cases of wrongful convictions of capital crimes in the US. Among these 350 cases, 5 were satisfactorily resolved, and all others were sentenced to prison: either terms up to 25 years (*n* = 67), life (*n* = 139), or death (*n* = 139), and 23 had been executed (cf., Radelet, Bedau, & Putnam, 1992). Bedau and Radelet (1987) concluded in their *Stanford Law Review* article:  
'We agree with the observation of a supporter of the death penalty who writes: 'To say that someone deserves to be executed is to make a godlike judgment with no assurance that it can be made with anything like godlike perspicacity.' The research presented in this article underscores the all-too-human errors that afflict the actual attempt to render such judgments.' (p. 90)  
**Feedback**  
We have mentioned on several occasions failure to receive feedback as a critical flaw in the learning process of forensic examiners. Feedback or lack of it, is a major cause of expert error, especially in the presence of overconfidence.  
p. 221: *Regression Toward the Mean*  
Regression toward the mean, first reported by Sir Francis Galton in 1886, making reference to 'filial regression toward mediocrity' (p. 246), is a ubiquitous phenomenon. Simply put, it refers to the statistical probability that extreme scores – unusually low or unusually high – will be followed by more average scores. A more technical definition is the difference between a perfect correlation (+/- 1.00) and the linear correlation.  
*(Continued on page 6)*

pp. 221-22: Regression toward the mean explains why exceptional performance in the stock market is often followed to be followed by a slump, why a Tony, Emmy, or Grammy award-winning performance is likely to be followed by less exceptional achievement, and even why superstar athletes and winning teams see a drop in performance right after appearing on the cover of Sports Illustrated (Hastie & Dawes, 2010, Plous, 1993).

p. 223: With respect to [avoiding non-regressive prediction], we place ourselves at 'high risk' to make nonregressive predictions when we neglect relevant base rates. Nonregressive predictions typically come about when predictions are based on a match of attributes or characteristics that are statistical outliers.

#### Groupthink and Herding

... 'Groupthink' refers to a deterioration of mental efficiency, reality testing, and moral judgment that results from group pressures' (Janis, 1982, p. 9). Janis (1982) recounted eight symptoms of groupthink, partitioned into three types of groupthink:

#### Type I – Overestimation of the power and morality of the group

*Symptom 1* – An illusion of invulnerability, excessive optimism, leading to extreme risk-taking, and

*Symptom 2* – An unquestioned belief in the group's morality);

#### Type II – Close-mindedness

*Symptom 3* – Discounting all information that might lead members to reconsider their beliefs, and

*Symptom 4* – Stereotyped views of enemy leaders as evil or weak or stupid; and

#### Type III – Pressure toward uniformity

*Symptom 5* – Self-censorship of deviations from consensus thinking,

*Symptom 6* – Shared unanimity illusion,

*Symptom 7* – Direct pressure on those who express alternative views, and

*Symptom 8* – Emergence of self-appointed mind-guards).

The illusions of unanimity and invulnerability seem to be particularly critical features of groupthink.

pp.224-25: ...[G]roupthink can occasionally be catastrophic. As Silver (2012) further noted, on occasion, 'The blind lead the blind and everyone falls off a cliff. This phenomenon occurs rarely, but it can be quite disastrous when it does.' (p. 358). At its worst, groupthink paved the way for, and ensured the life span of morally bankrupt social institutions, such as slavery and McCarthyism.

Application of the groupthink phenomenon to the realm of sex offender law and assessment may express itself in two ways. The more obvious application is the process of enactment of law as discussed in Chapter 1. Once fear has been aroused by media reports, blogs, and special interest groups, we gravitate toward an amorphous group of similarly alarmed citizens. Initially, other voices of concern provide assurance that we are not alone. As with most groups, a few dominant spokespersons begin to emerge. Their rousing chatter is persuasive, and we are increasingly drawn into the fold as we follow the crowd in decrying the

failures of those who permitted the threat to reach this 'tipping point.' Along with everyone else, we buy into the remedies that the spokespersons have deemed necessary. It takes remarkable forbearance and independence to question the wisdom of the group. Although membership in the group feels emboldening and protective. It produces, as Janis described, insularity and a false sense of authority and invulnerability.

A second less clear application is the ill-defined relationship between forensic examiners who offer opinions for the court on the risk posed by sex offenders and the attorneys that retain them. Attorneys hire experts with an explicit understanding that the expert will assist the attorneys win their case. Although there is an understood obligation of objectivity, there is not bright line between objectivity and advocacy. Grisso and Steinberg (2005) lamented that, 'Scientific credibility demands impartiality, whereas advocacy is never impartial.' (p. 619). Some degree of advocacy, however, is unavoidable. When retained, there is a reasonable expectation of the expert that she/he will support the attorney. Support is a slippery slope, however, and can easily morph into advocacy. As Grisso and Steinberg noted, advocacy comes at a price – sacrificing objectivity. At its worst, advocacy can lead to blind faith, or, stated otherwise, Janis' groupthink.

Most troubling, *evidence*, the indispensable gruel of any forensic evaluation, can become a casualty of blind faith. Information that is supportive of the attorney's client – either finding the client 'low risk/not 'SVP' or finding the client high risk/'SVP' – is likely to be emphasized, while unsupportive information is likely to be ignored or downplayed. The potential casualty of overlooked, unacknowledged, overemphasized, or improperly interpreted information is incalculable. This is all the more problematic given the limited relevant information, and variable quality of relevant information, that the expert must frequently rely upon.

Forensic experts that work predominantly for the defense or for the prosecution can be invaluable with respect to strategizing about how to handle evidence, communicating tips for both direct and crossing opposing experts, recommending responses for anticipated questions, circulating supportive articles among the team, and supportive networking, blogging, and emailing. Legitimate scientific questions having case-specific merit, such as the empirical basis of novel paraphilia diagnoses (Paraphilia NOS: Nonconsent, Paraphilic Coercive Disorder, Hebephilia, Ephebophilia), estimated base rates, how the prior probability changes as a function of new evidence, and the risk-mitigating influence of advanced age or treatment, may be substituted with canned or formulaic arguments and highly selected (biased) literature.

For lack of any clear guidance or canon of professional ethics that draws the proverbial line in the sand, we can at the least describe a continuum of adherence to objectivity: at one end, rigorously protected im-

partiality to impartiality colored by varying degrees of advocacy, to advocacy, at the other end, that is cloaked with a veneer of impartiality. The more that we move toward the end of the continuum that is dominated by advocacy, the more we abandon our primary obligation to conduct a competent, thorough, objective evaluation of the attorney's client. Although we all regard ourselves as principled professionals, the insidious nature of groupthink can go a long way toward compromising our objectivity."

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## NARSOL Calls for Clear Denunciation of Advocacy of Genocide of Sex Registrants

[ed.], "NARSOL Speaks Out," 12(1) *The Broadcast* 1 (Winter 2024)

Text: Background context: *The New York Times* ran a story you may have seen in early December regarding three presidents from prestigious universities, when asked during a congressional hearing if students calling for the genocide of Jews violated their school's code of conduct, would or could not give a simple 'Yes' or 'No' answer. Instead of just saying that calling for genocide of any group is unacceptable, the presidents of Harvard, the University of Pennsylvania, and MIT waffled and said that it would depend upon the context and whether individuals were targeted. In response, Dan Bongino, a former Secret Service agent and popular conservative radio host, responded to the situation in his usual manner on his talk-show December 6. At times becoming verbally abusive in verbiage, tone, and volume level he made his opinion crystal clear: The testimony of the presidents was 'stupid,' 'ignorant,' and 'full of shit,' exemplifying the 'cancer' that has 'metastasized' on college campuses.

On December 8, NARSOL sent Mr. Bongino the following message:

'Dear Mr. Bongino,

Mr. Bongino, we agree with you. Calling for the wholesale destruction of any group of people is an abomination and should not be protected, not even under the guise of free speech. It should be condemned as you have said.

Mr. Bongino, calling for the destruction of any group of people is indeed harassment, criminal, and must be condemned. That is your clear, firm opinion, and NARSOL is in total agreement.

Our organization, the National Association for Rational Sexual Offense Laws, and the people whose civil liberties we defend are all too familiar with various forms of speech calling for the eradication of them as a group. Almost any online article about persons required to register on a sex offender registry close to a million individuals with past convictions ranging from innocent but wrongly convicted to public exposure to rape garners comments calling for exactly that: the wholesale killing of all registrants. Some who post these comments offer up themselves as

willing perpetrators of such massacres. They offer the highest praise for the criminals who have sought out strangers and murdered them based solely on their listing on a state registry.

Our members, as well as their wives and husbands, children, and parents, have seen these comments and worse. They have seen the references to registrants being 'easy targets' as they can't have weapons with which to defend themselves. They see the bumper stickers and window decals and tee-shirts reading, 'Save a deer; shoot a sex offender.' One threat level down from group annihilation, a message on Tik-Tok says, as a backdrop to music and dancing, 'For extra cash consider robbing sex offenders, they're [sic] address is easy to find and they don't own guns.'

Mr. Bongino, we appreciate your indignation at verbiage that targets a definable group of human beings for wholesale destruction. We ask you to join us in public condemnation of language that targets persons with past convictions for sexually-based crimes – some convictions 30 to 40 years old and targets them based on those convictions alone.

May we count on your support? Will you invite a member of our executive board to be a guest on a broadcast? Will you publicly denounce these attacks on registered persons as hate speech, as stupid and ignorant, and as a cancer that has grown out of our nation's sex offender registries?

Thanking you in advance,  
The NARSOL Board of Directors"

Editor's Conclusion: It is appalling that NARSOL, the leading organization for reform of all laws oppressing former sex offenders beyond the terms of their criminal punishment, would feel it necessary to urge internet commentators to take a clear stand against murder of such individuals. Yet, as this article and the three items illustrate, our country has lapsed into a state of mass hysteria and hate that must be confronted explicitly and firmly.

A country that has become obsessed with such destructive emotionality, that has lost its balance and proportionality, cannot last long. When a government becomes a hostage and handmaiden to such hate-mongers, it inevitably loses respect and even its functional capacity. When it fails, all is lost. This bears repeating: ALL is lost. No one wins in chaos. Everything that everyone depends upon becomes unavailable.

By this weakening and endangering the continuing meaningful existence of government – even peacefully and universally supportive organized society itself, beady-eyed politicians who have gained personal power and wealth by peddling this false sense of terror and a need for extremism may not have realized it – or may, but simply didn't care – either way, have played directly into the hands of our sworn enemies across the seas. This neglect (or perhaps intentional sellout) must be

(Continued on page 7)

stopped before it gets too late.

If anything this country has always stood for is to be preserved through these troubled times, the tie-in to such larger issues must be addressed with sweeping reforms. The only thing wrong with NARSOL's plea (above) is that it does not go far enough. I fervently hope you, dear readers, agree. Unfortunately, such tie-in issues are beyond the scope of what can be addressed in the *Legal Pad*.

Nonetheless, I urge you to continue reading here through the final article on page 10. Ending SOCC is important to everyone, so I urge you all to get involved in this crusade.

A country that is willing to demonize any subclass of its populace and to lock them away out of fear and loathing is only a few steps away from mass murder of such victims, as the Nazis taught us in World War II.

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## Twisted Times

**Editor's Introduction:** In recognition of how twisted emotions and thinking have become lately, now I present three items illustrating how disconnected some people are becoming from reality these days.

"Action Alert for MO Residents: Missouri Bill Makes Teachers Sex Offenders If They Accept Trans Kids' Pronouns," *riverfronttimes.com*, quoted in *Titus House Newsletter*, April 2024, p. 2.

### 1. Missouri Bill Makes Teachers Sex Offenders If They Accept Trans Kids' Pronouns.

**Text:** "A new bill introduced in the Missouri House would force teachers to register as sex offenders if they use the names and pronouns of transgender children or otherwise support them and their identity.

HB2885, filed on Thursday, February 29 by state Representative Jamie Gregg (R. Ozark), would make it a Class E Felony for teachers or school counselors to aid the 'social transition' or a child - meaning that a teacher 'provides support, regardless of whether the support is material, information, or other resources to a child regarding social transition.'

The bill defines 'social transition' as:

'The process by which an individual adopts the name, pronouns, and gender expression, such as clothing or haircuts, that match the individual's gender identity and not the gender assumed by the individual's sex at birth.'

Teachers found guilty of 'supporting social transition' would be placed in the same sex offender registration category as Tier 1 sex offenders, which is Missouri's lowest level but includes possession of child porn or attempting a sexual act. And since no Missouri sex offender is permitted to be

within 500 feet of a school or daycare, the bill would effectively end the teacher's career."

### 2. Ethics Prof's Abstract Remarks on Sexual Consent & Pedophilia Get Him Banned from Campus.

Vimal Patel, "A Professor's Remarks on Sexual Consent Stir Controversy, Now He's Banned from Campus", *New York Times* September 13, 2023.

**Text:** "Stephen Kershner, who teaches philosophy, is suing for the right to return to SUNY at Fredonia. The university defends its ban as necessary for safety.

Stephen Kershner, a philosophy professor, is in academic purgatory. He is still employed by the State University of New York at Fredonia, but he has not taught or even been allowed on campus for more than a year - fallout from remarks he made in a 2022 podcast about whether it is ever moral for an adult male to have sex with a 'willing' 12-year-old girl.

"It's not obvious to me that this is, in fact, wrong," he said on the philosophy podcast, as part of a wide-ranging thought experiment about ethics and consent. (As a matter of law, he has said that it should be criminalized.)

His remarks went viral after a right-wing social media account, LibsofTikTok, posted about it.

The president of SUNY Fredonia, Stephen H. Kolison Jr., called the professor's comments 'absolutely abhorrent' and said that Dr. Kershner was being reassigned to duties that did not require contact with students. He announced an investigation and, Dr. Kershner said, directed police to search his office and seize his computer.

That was 19 months ago. Dr. Kershner, a tenured professor who has taught at Fredonia since 1998, is now suing for the right to return to campus, and a hearing in the case began on Wednesday in the Federal District Court for the Western District of New York. His lawsuit says that university leaders have been 'effectuating a social media heckler's veto, allowing momentary public and political reactions to dictate who may teach at a public university.' Dr. Kershner, the lawsuit adds, has never been cited, charged, or arrested by any law enforcement agency, aside from traffic infractions.

Free-speech advocates support him, saying that the university's moves against him are a brazen attack on academic freedom, and they accuse SUNY of invoking safety as a mere pretense. One of his lawyers, Adam Steinbaugh of the Foundation for Individual Rights and Expression, a free speech group, declined to comment for this article.

In court documents, SUNY Fredonia cites threats and defends its ban as necessary for both Dr. Kershner's safety and that of

the campus. 'If he were to return,' Brent S. Isaacson, the campus police chief at the time, said in a July court filing, 'the public's disgust would extend to this campus, and we would again be viewed by many members of the public as sympathetic to Kershner's views and therefore at risk of violence.'

There were other considerations as well: The university said students and alumni had expressed outrage at the remarks, leading to losses of donations and enrollment. A university official declined to comment for this article on the pending litigation.

The case reflects continuing tensions over how universities should handle online conflagrations, freewheeling academic discourse and campus safety. Can public universities, which are bound by the First Amendment, restrict professors from campus because of comments they made on a podcast? Should they do so when threats are involved? And what is the marker of an actual threat, anyway?

In January 2022, Dr. Kershner appeared on a respected philosophy podcast, *Brain in a Vat*. Each episode follows a format: The guest presents a thought experiment, and the hosts spend the rest of the episode questioning the guest about it. Dr. Kershner's thought experiment was explosive.

'Imagine that an adult male wants to have sex with a 12-year-old girl; imagine that she's a willing participant,' he said. 'A very standard, a very widely held view is there's something deeply wrong about this. And it's wrong independent of it being criminalized. It's not obvious to me that it is, in fact, wrong. I think this is a mistake. And I think that exploring why it's a mistake will tell us not only things about adult-child sex and statutory rape, but also about fundamental principles of morality.'

Dr. Kershner has written about this topic in depth for years. In 2017, he published a book entitled '*Pedophilia and Adult-Child Sex: A Philosophical Analysis*.' An abstract of the book describes it as a look into 'the moral status' of such sex, which he said strikes him intuitively as 'sick, disgusting and wrong.'

Dr. Kershner has built his career taking provocative, though rigorously and professionally argued, positions that may horrify or amuse people. Is it morally okay to fake an orgasm? To prefer Asian romantic partners? To not leave a tip? Yes, yes, and no, he has concluded - unless you explicitly tell the server you're not tipping.

Dr. Kershner is a 'Socratic gadfly' who goes around questioning fundamental assumptions, often quite annoyingly, to try to get at a clearer understanding of morality and why something is or is not wrong, said Justin Weinberg, a philosophy professor at the University of South Carolina and the editor of *Daily Nous*, a popular philosophy news website. Controversies surround Dr. Kershner frequently enough that Dr. Weinberg coined a term for them: 'Kershner Cycles.' Like hurricanes, he wrote, they come in varying strengths, but are usually limited to the academic discipline of philosophy.

After *LibsofTikTok* posted clips of Dr. Kershner's podcast remarks on X, formerly

known as Twitter, the university was immediately deluged with demands for action. An undergraduate at SUNY Fredonia started a petition stating that she didn't feel safe on campus and demanding Dr. Kershner's removal. His views, the petition said, are 'directly harmful to a community already dealing with instances of sexual assault and struggles with consent.' It received more than 60,000 signatures online.

Alumni threatened to stop giving money. In court documents, the university wrote that the situation with Dr. Kershner has 'unquestionably' caused a loss of donations and a decline in enrollment. Several members of the New York State Assembly's committee on higher education wrote to the chancellor of the entire SUNY system, calling for the professor's 'immediate removal,' according to the lawsuit.

More troubling, the university received what officials described as threats of violence. One that was quoted in a court filing said, 'On the subject of adult-child relationships, I find a shovel to the head works.' Another said, 'I hope parents tar, feather, cut your innards out, and drag your body through town.'

Mr. Isaacson, who was the campus police chief at the time and is a former F.B.I agent, recommended that Dr. Kershner remain off campus for a 'cooling down' period as police assess the threat. That recommendation remains in place, the university said in the documents, because protecting the professor would take 'an extraordinary and financially prohibitive expansion' of the campus police department.

To critics who said there was no actionable threat of violence, Mr. Isaacson said, 'Hunters don't howl,' meaning that an actual violent actor would not telegraph an attack. Mr. Isaacson recently stepped down, but the new interim police chief agrees with the policy.

Dr. Kershner's lawsuit argued that the messages cited by the university did not represent actual threats that justified barring him from campus. And advocates of academic freedom say it is troubling that a vague possibility of violence could bar a professor from campus indefinitely. 'As soon as you accept that principle,' said Mark Oppenheimer, a lawyer in Johannesburg, South Africa, and a co-host of *Brain in a Vat*, 'you can ban any speech you like.' Philosophy, he said, is especially prone to misunderstanding by the public. Philosophers 'say the wildest stuff and come up with the strangest cases, and an onlooker would go, "But you people are all mad," Mr. Oppenheimer said. 'That's what happened with Steve.'

### 3. Idaho Bill Extends Death Penalty to Child Sexual Abuse Crimes.

Ruth Brown, "Adding Lewd Conduct with a Child as a Crime Punishable by Death Could Be Problematic," *Idaho Reports* (Jan (Continued on page 8)

30, 2024)

**Text Excerpts:** "A proposal to make lewd conduct with a child punishable by death could drastically increase the number of death penalty cases in the state.

In 2022 alone, Idaho prosecutors filed 217 cases charging adults with lewd conduct with a child under 16, a crime currently punishable by up to life in prison.

In January, Rep. Josh Tanner, R-Eagle, introduced HB 405, which would make that crime punishable by death. That bill has not yet received a public hearing. House Judiciary, Rules and Administration Committee Chairman Bruce Skaug, R-Nampa, is a co-sponsor of the bill.

On Tuesday, Skaug told *Idaho Reports* he plans to give the bill a hearing and hasn't heard much negative pushback yet. The bill is modeled after a bill that passed in Florida in 2023....

For comparison, Idaho State Police reported 51 murders statewide in 2022. Not all of those cases would have been first-degree murder, which is the only charge currently punishable by death. Second-degree murder is not punishable by death....

In 2008, the United States Supreme Court found in *Kennedy v. Louisiana* that sentencing a person to death for any crime other than homicide or crimes against the state, such as terrorism, is unconstitutional per the Eighth Amendment's right against the infliction of cruel and unusual punishment. In that case, at the time, Louisiana permitted use of the death penalty in sentencing for the rape of a child younger than 12....

In December of 2023, the state of Florida first utilized its new law when a prosecutor announced plans to seek the death penalty against a man accused of raping a child younger than age 12, according to the Tallahassee Democrat newspaper. The suspect, Joseph Andrew Giampa, is not yet convicted.

Kevin Fixler, "Idaho Bill to Extend Death Penalty Unconstitutional, Aims for US Supreme Court Review," *Idaho Statesman* (Feb 13, 2024).

**Text Excerpts:** "The Idaho House overwhelmingly passed a bill that would allow the death penalty for anyone convicted of certain sex crimes against preteen children Tuesday, even as its sponsor acknowledged that such a law would be unconstitutional. The bill passed the Idaho House on Tuesday in a 56-12 vote. House Bill 515 is designed to challenge decades of U.S. Supreme Court precedent that limited death sentences to defendants who commit murder, said Rep. Bruce Skaug, R-Nampa who co-sponsored the bill with Rep., Josh Tanner, Eagle. With the current supermajority of conservative leaning justices on the nation's highest court, the hope is that the U.S. Supreme Court will review the Idaho bill if it becomes law and issue a decision that expands the eligibility for the death penalty.

...The bill next heads to the Senate for committee review.

The U.S. Supreme Court in 2008 ruled that the Eighth Amendment to the U.S. Constitution prohibits death sentences for

the rape of a child under 12 years old when the victim survived. That decision doubled down on a landmark decision in 1977 that found that a death sentence was 'grossly disproportionate and excessive punishment' for the rape of an adult whose life was not also taken.

The 1977 case, *Coker v. Georgia*, was decided by a 7-2 vote among the justices, while the 2008 ruling in *Kennedy v. Louisiana* came in a 5-4 decision. Three of those justices who dissented in 2008, including Chief Justice John Roberts, remain on the court today along with three other conservative justices....

...[S]aid Skaug, a personal injury attorney, 'I think there will be a very different decision with our present Supreme Court.'

The Idaho bill mirrors a law that took effect in Florida last year, when the governor sought to overturn the U.S. Supreme Court's prior precedent. The first defendant to face the prospect of the new law reached a plea deal in exchange for life in prison without the chance of parole.

'Idaho needs to be like Florida and lead out in this and go, 'We're here to protect these kids, Tanner added. 'At some point in time, we have to be able to say, 'No, enough is enough,' with ...the most severe ones.'

The American Civil Liberties Union of Idaho, which opposes the death penalty, also opposes the newly proposed law in Idaho.

'We think the Legislature has a duty and responsibility to uphold the law and serve the people [in a way] that is constitutional instead of attacking people's constitutional rights,' Rebecca De Leon, spokesman for the ACLU of Idaho, told the Idaho Statesman in a phone interview. 'This is a very irresponsible use of taxpayer funding.'

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## The Impact of Misperceptions, Misconceptions, & Punitiveness on Public Sentiment

Laura L. King, "Perceptions about Sexual Offenses: Misperceptions, Punitiveness, and Public Sentiment," 30(2) *Criminal Justice Policy Review* 254 (March 2019).

**Abstract Excerpt:** "...Sparked by the increased media and legislative attention devoted to sex offenders beginning in the 1990s, researchers began to more closely examine public opinion about sexual offenses. Findings suggest the public adheres to several misconceptions about sexual offenses and supports harsh sanctions for offenders. ...[T]he goal of the present study was to survey Pennsylvania residents to examine the degree to which misconceptions about sexual offenses inform punitiveness. The results supported the hypotheses in that a high level of support for misconceptions and punitiveness was identified, and adherence to misconceptions was the strongest predictor of punitiveness. These findings demonstrate a clear need for educational and aware-

ness efforts to dispel public misconceptions about sexual offending and victimization.

**Text Excerpts:** [p. 255:] "...[F]indings have oscillated over time and vary according to the number of factors such as respondent demographics (e.g., sex, race/ethnicity, education level), offense characteristics, political environment, and media (Applegate, Cullen, & Fisher, 2002; Callanan, 2005; Costelloe et al., 2009); Toch & Maguire, 2014).

### Literature Review

[pp. 255-56:] "[R]esearch indicates not only that public opinion about sexual offenses is indeed heavily influenced by media but also that opinions are frequently riddled with myths and stereotypes (Galeste et al., 2012; Malinen, Willis, & Johnston, 2014; Pickett et al., 2013; Thakker, 2012).

### Misconceptions

A common misconception about sexual offenses is that their occurrence is steadily increasing, particularly those involving child victims and unknown perpetrators (Anderson & Sample, 2008; Fuselier, Durham, & Wurtele, 2002; Galeste et al. 2012; Mears et al., 2008; Pickett et al. 2013; Quinn et al., 2004). For example, over three quarters of the participants in Levenson, Brannon, Fortney, and Baker's (2007) study believed that sex crimes rates were increasing and almost 30% of Craun and Theriot's (2009) sample indicated more concern about a child being sexually victimized by a stranger than by someone they know. Despite these findings, official statistics and victimization data indicate that crime rates, including those for rape and sexual assault, are significantly lower than those observed prior to the mid-1990s (Bureau of Justice Statistics [BJS], n.d.; Federal Bureau of Investigation, n.d.). In addition, research suggests that adults and children are much more likely to be sexually traumatized by someone known to them than by a stranger (Association for the Treatment of Sexual Abusers [ATSA], 2008; Center for Sex Offender Management [CSOM], 2000). There exist a number of misconceptions specifically about sex offenders as well. Some of the most prominent of these include the notions that all sex offenders will recidivate and that treatment is ineffective (Galeste et al., 2012; Levenson, 2003; Quinn et al. 2004; Sample & Bray, 2003). For example, the participants in Fuselier et al.'s (2020) study estimated that most child molesters were recidivists with an average of 11 to 50 assaults and Brown's (1999) survey revealed that while 95% of the sample supported rehabilitation for sex offenders in prison, only 15% strongly believed treatment would actually be effective in reducing recidivism. Reflecting the beliefs that all sex offenders are untreatable, perpetual recidivists, one of the respondents in Brown, Spencer, and Deakin's (2008) study stated, 'The only sure way to control them is to keep them behind bars until they die' (p. 266).

In contrast to these findings about public opinion, research suggests that sex offenders have lower recidivism rates than many other offenders (ATSA, 2008; BJS, 2002; CSOM, 2001; Sample & Bray, 2003; Tewks-

bury, Jennings, & Zgoba, 2012). While sex offenders are more likely than other offenders to recidivate with a sexual offense, the risk remains relatively low, and they are actually more likely to recidivate with a nonsexual offense than a sexual offense (Babchisin, Hanson, & Blais, 2016; BJS, 2002; Hanson & Bussiere, 1998; Tewksbury et al., 2012) ...Furthermore, sex offenders comprise a diverse group of individuals upon which blanket assumptions about risk, recidivism, and treatment amenability are likely to be invalid (CSOM, 2001; Quinn et al., 2004; Tewksbury et al. 2012). Once again, these widely held public beliefs are in stark contrast to empirical evidence.

### Punitiveness

[p. 257:] The adherence to myths about sexual offenses, coupled with the high degree of fear of sexual victimization, has likely fueled the intense punitiveness toward those convicted of sexual offenses (Pickett et al. 2013). ...[S]everal studies have found attitudes toward sex offenders to be significantly more negative and punitive than attitudes toward other types of offenders (Craig, 2005; Hogue, 1993, McCorkle, 1993; Mears et al. 2008; Weekes, Pelletier, & Beaudette, 1995).

...Comartin, Kernsmith, and Kernsmith (2009) reported that almost half of their sample supported a sentence of life in prison for sex offenders, and more than 40% supported castration. Importantly, however, support for these harsh policies was more prevalent among respondents with young children, lower education levels, or lower income levels (Comartin et al. 2009).

[pp. 257-58:] Another measure of punitiveness is support for sex offender management policies such as registration, community notification, and residence restrictions. Research consistently finds strong public support for these laws. For example, more than 80% of the respondents in Phillips's (1998) survey indicated that community notification increased public safety, despite that few reported a change in behavior based on notification.

Similarly, Anderson and Sample (2008) reported that while the majority of the respondents were aware of sex offender registration and reported it made them feel safer, less than 40% had accessed it or taken any precautions based on the information. Kernsmith and colleagues (2009) assessed registration support for different types of sex offenders and found the greatest support for those who had offended against children, though support for all types of offenders was high.

### Method

#### Sample Selection Procedures

[p. 258:] The samples for this study were comprised of Pennsylvania residents.

[p. 259:] ...The final sample was comprised of 400 Pennsylvania residential addresses from both large and small cities/towns across the state.

#### Measures and Variables

...[D]espite its use by several researchers, Hogue's (1993) Attitudes Toward Sexual Offenders Scale (ATS) has been criticized

(Continued on page 9)

for its failure to address stereotypes specific to sex offenders as it was adapted from Melvin, Gramling, and Gardner's (1985) Attitudes Toward Prisoners Scale by simply replacing the word 'prisoners' with 'sex offenders' (Church, Wakeman, Miller, Clements, & Sun, 2008; Willis, Levenson, & Ward, 2010). Another measure that has been frequently used in recent years is the Community Attitudes Toward Sex Offenders Scale (CATSO) developed by Church and colleagues (2008). Unlike the ATS, the CATSO does target perceptions specifically about sex offenders including domains of social isolation, capacity to change, severity/dangerousness, and deviancy (Church et al., 2008). However, similar to the ATS, the CATSO does not include items to measure some of the misconceptions about sexual offenses that were of interest in this study.

Based on these limitations, the 12-item Perceptions about Sexual Offenses Scale (PASO) was created to measure misconceptions and punitiveness. Some of the scale items are similar to those from the CATSO but were altered for the purposes of this study. Scale items intended to measure misconceptions tapped into perceptions about sex crime rates, victim-offender relationship and risk, recidivism, and treatment. Measures of punitiveness examined opinions about harsh prison sentences for sex offenders, registration, community notification, electronic monitoring, and residence restrictions. Each statement was followed by a 5-point Likert-type scale ranging from *strongly agree* to *strongly disagree*. Possible scores ranged from 12 to 60 in which higher scores indicated more misinformed, punitive perceptions.

## Results

### Scale Item Frequencies and Descriptives

[pp. 263-64:] As expected (Hypothesis 1), a large proportion of respondents revealed some misinformed opinions about sexual offenses (Items 1-4). More than 80% agreed that teaching children about stranger danger is one of the best ways to protect them from sexual victimization, and more than 70% agreed that sexual offense rates have increased in recent years. While 63% agreed that almost all sex offenders will recidivate if released from prison, only one quarter of the sample agreed that treatment for sex offenders is a waste of resources.

### [p. 265:] Predicting Punitiveness

It was hypothesized that punitiveness toward sex offenders would be predicted by adherence to misconceptions about sexual offenses (Hypothesis 2). To test this, the PASO items were broken down into two indices: misconceptions (i.e., total scale score on the first four items ranging from 4 to 20) and punitiveness (i.e., total scale score on the last eight items ranging from 8 to 40). A bivariate analysis between these two variables was first run. As expected, a significant, positive correlation was identified between misconceptions and punitiveness...

**Editorial note 1:** The first three items of the misconceptions in the PASO survey were: 1) stranger danger; 2) sex offense rates up recently; and 3) almost all sex

offenders recidivate sexually. Of these three, by far the item having the most agreement among participants, by nearly a three-to-one margin over the next-most agreed-upon item was the third item.]

[p. 266:] ...Education had the greatest impact on the model such that more advanced levels of education resulted in decreased adherence to misconceptions about sexual offenses. In this model, the survey mode variable was significant...

[pp. 267-68:] As anticipated, support for several misinformed perceptions was identified. Consistent with previous research (e.g., Levenson et al., 2007; Pickett et al., 2013), the majority of respondents agreed that sex crime rates have increased in recent years though official statistics and victimization data contradict this notion. More importantly, over three quarters of respondents believed that teaching children about 'stranger danger' is one of the best ways to protect them from sex offenders. These findings are similar to other studies in that the occurrence of stranger assaults is overestimated (e.g., Craun & Theriot, 2009; Levenson et al. 2007). In contrast, research indicates that 80% to 90% of sexually abused children are molested by a friend or family member, and more than 75% of adult rape/sexual assault victims were assaulted by someone with whom they had a previous relationship (ATSA, 2008; CSOM, 2000). This myth in particular distorts the reality of sexual violence and diverts attention away from where the greatest risk lies: friends, relatives, intimate partners, neighbors, and so on.

**Editorial note 2:** Table 5 of this article shows that a number of attributes of participants significantly contributed to endorsement of various misconceptions discussed in the article. Among these were: race differential, sex, being a parent of a minor child/children, whether a sex offender was known, and past direct or indirect sexual victimization. Interestingly, the only factor reducing endorsement of those misconceptions was a higher level of education of the participant.]

...[S]upport for misconceptions was found to be the strongest predictor of punitive attitudes, with misinformed opinions about sex offender recidivism having the greatest impact, followed by opinions about sex offender treatment efficacy, rising sex crime rates, and the utility of teaching children about 'stranger danger.' ... Perhaps the most concerning misconception, which received agreement from more than 80% of the sample, highlighted the importance of teaching children about 'stranger danger' as the most effective way to protect them from sex offenders. This belief could lead to incidents of nonstranger sexual assault, particularly of children, evading detection and appropriate response. Although this survey item applied specifically to protecting children, its implications extend to adults as well in terms of understanding the true nature of sexual victimization risk.

...While incorporating public opinion in the formation and reformation of policy should be evident in any democracy, allowing that

opinion to influence policy when it is based on empirically contradicted information would be inappropriate and irresponsible. Rather, efforts should be made to promote evidence-based policies and practices, and to dispel those commonly held-misinformed beliefs about sexual offenses."

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## Ending SOCC Depends on You!

Eldon Dillingham, "CURE National Civil Commitment" - January-February 2024 Update

Text Excerpts: "During 2023, there has been an increase in the number of family/friends advocating for changes to the civil commitment practices within the twenty 'civil commitment states. While there are others advocating for changes, there has been an online presence via structured Zoom meetings in Minnesota and Kansas, both inviting state advocates to join these meetings. More and more, there is strong agreement that it is not 'change' that is needed, but an effort to abolish civil commitment as we know it today. Ideas are circulating of how best to approach state legislatures to begin the process of ending civil commitment, ideas that provide state elected officials with information that may resonate positively...."

During Zoom meetings, it is unanimously agreed that state elected officials know very little about civil commitment. There is a huge amount of information (books, law school publications, journalism documents, statistical information, etc.) that is available which clearly supports either ending civil commitment or making major modifications. It is generally agreed by all who are closely connected to the issues of civil commitment that there is no 'fix.'

While 'fixes' can be made, the truth is that most of the 20 'civil commitment' states, via the [commitment system] administration will eventually revert back to the conditions prior to any 'fix' made. Most, if not all, civil commitment administrations will fight against changes to their 'closed door' operation, including restricting state elected officials from fully accessing the civil commitment centers. There is simply very little oversight of civil commitment centers, obviously by design of the operators. ...If abolition or even just change is going to occur, we always need more individuals involved, including if possible, family members and/or friends of detained men. Fortunately, there are more folks joining some of our groups.

Elected officials may be willing to engage with us, providing they know exactly what is

occurring in these detention centers. Family and friends should be able to assist in gathering names, addresses, etc., of state elected officials. Write to everyone - tell them your view of being detained, how you feel about that, how it has impacted your life, family life, was, or is treatment beneficial, etc. ...Generally, the state judiciary and budget committees would be a good approach to communicate with.

With regard to communicating with state elected officials, other ideas could include:

- Cost of operating sex offender commitment programs. (While methods of accounting for this cost vary, when all is tallied, it is an enormous annual cost - at least four times the cost of imprisoning sex offenders in prison.) Most sex offender commitment systems do not release more than a handful of their detainees annually. This telegraphs that system operators are convinced that their so-called treatment is ineffective, leaving detainees allegedly too 'dangerous' for release. Yet prisons regularly treat and release sex offenders in large numbers every year, with almost no sex-crime recidivism by them. Their treatment programs obviously have great success at lowering recidivistic tendencies very close to complete extinction. Sex offender commitment officials claim that those who get committed are somehow uniquely dangerous, and lacking in any self-control over sexual desires. Yet sufficiently intensive research has shown time and again that there really aren't any dimensions by which committed sex offenders differ in any meaningful way (recidivism probability, any actual sexual disorders, or lack of ability to control one's sexual actions) from those thousands of sex offenders released from prisons throughout the country every year. Essentially, most who are picked for commitment either were victims of random selection or were tagged for commitment only for petty violations of prison rules or as retaliation for disfavored behaviors not in violation of such rules (such as mail or phone contact with past sex offenders now living in freedom or with those who oppose the severity of current sex-crime laws, etc.) Do you even know any of these facts? Have you reached out to find out the truths on these matters and to gain facts that prove their truth beyond question? How would you ever expect to convince anyone of the lies advanced in support of sex offender commitment if you won't seek out the truths that will support your position in opposition to such commitment?

- No one (to speak of) is moving out of such commitment programs (with only rare exceptions). The figures that prove this are easily available to those not detained. Many professors and other academics have closely studied this point, and their articles (or at least excerpts from them) are easily located. (See discussion below of the CURE-SORT archive of all editions to date of the Legal Pad, with a search-term database you can use to find this data, and all other relevant facts on sex offender civil commitment ("SOCC" for short).

- Confinement conditions in SOCC facilities worse than in prison. Think this is an

exaggeration? Here are four names you should start your research on this point: Littlefield Texas; Rushville, Illinois, Broad River, South Carolina, and Arcadia, Florida. Most of the centers that are operated by private, profiteering contractors are so bad that they have recently started changing their mailing addresses to other cities to make it harder for those trying to investigate such bad conditions to even find those centers. Most state-operated centers aren't much better.

- The destruction of families worked by civil commitment is not a secret at all. In fact, social workers employed by SOCC systems and other social workers simply aware of such a commitment will do all in their power to tear the committed person's family apart (sometimes even trying to deprive parents of their rights and force the minor children into adoption by strangers). At every opportunity, families are discouraged - sometimes even threatened with legal action to cease all contact with the committed person, exactly as if he had died. In such ways, SOCC systems are really headquarters for those who, even though they never knew the committed person before his commitment, will make a nonstop career out of finding ways to inflict such legal, familial, and social damage upon him as further punishment for his crime so long ago, purely out of spite against all sex offenders or against those with a particular type of past sex crime. Long-term, probably permanent confinement of the committed person is, in this perspective, simply to ensure that he can do nothing to defend himself from these uncalled-for, over-the-top abuses that such government or contractor staff-persons take such sadistic delight in.

The foregoing are just a few salient points; the list is endless. The more you read and talk to those in the know about SOCC systems, the more issues you will find.

Among other things you can do, you can publicly call for independent evaluations of the SOCC system in question by professionals in the field. You can request a legislative oversight committee/subcommittee conduct a full investigation of the SOCC system. If no such committee/subcommittee exists, you have a 'soapbox' upon which to demand that one must be created right away to be able to conduct such a full (and overdue) investigation.

There are a host of other things you may want to use in communicating with elected officials. Try to build a positive connection with those folks as they are the only group who can legally abolish or even just change SOCC through statutory repeal or modification. When communicating with appropriate elected officials, try to - as concisely (and appropriately) as possible - provide reasons they should consider abolishing or making changes to SOCC arrangements. Several of our advocates (families, detainees) are getting the attention of elected officials, independent psychologists, judges, and others. However, bear in mind that each of these only know what they are told; this means that everyone must get involved

in communicating with these figures.

Except on legal holidays, monthly CURE Civil Commitment conference calls are held on the first Saturday of each month, at 9:00 a.m., Central Time. These calls are informal and a great opportunity for friends, family, advocates, and other interested individuals to share information, ideas to advocate for abolition or change, and just to meet one another. To obtain call-in information (toll-free) for these monthly calls, send an email to [eldondillingahm@gmail.com](mailto:eldondillingahm@gmail.com).

If you have concerns/questions/issues or comments regarding legal or forensic matters as to SOCC, or challenges which may free you from it, Cyrus Gladden, whose address is at the bottom-left of the front page of each edition of *the Legal Pad* ('tLP') monthly newsletter, has dialogued with many in the 20 states having SOCC laws. He cannot legally represent you, draft legal document for you, or provide legal advice, but can often steer an inquiring correspondent in a direction that may prove useful. However, Mr. Gladden asks that those with outside support persons first have them check the archive of past tLP editions appearing at <http://www.cure-sort.org/the-legal-pad.html> for any obvious answers to your questions by using the word-or-phrase search feature of that database. All tLP editions may be downloaded for free from this web page.

Separately, regular writers of tLP articles are always interested in hearing from people regarding activities, concerns, etc., concerning SOCC and anything related to it. Inquiries/comments will be forwarded on by Eldon Dillingham to any specific writer upon request. We must work as a group, those detained and those not.

GET INVOLVED - STAY INVOLVED ... ENCOURAGE FAMILY AND FRIENDS TO GET INVOLVED WITH OUR MONTHLY CALLS SO THEY CAN BOTH RECEIVE AND SHARE INFORMATION.

Please share the information in this Update and all other information you have available with family, friends, and all others. We need to be involved in whatever capacity they can be. Everyone must be on the same page (and have all the same pages)! We must work together in close and constant cooperation to advocate for abolition and change.

EDUCATE, INFORM, COMMUNICATE. Only the truth can set everyone free, but to make this happen, all controlling officials must learn the truth - That's where YOU come in!

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### An Editorial Explanation

As you can see, this has been an exceedingly full tLP edition. We regret that the usual graphics had to be sacrificed. However, we hope you think the verbal content was as compelling as we did.

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### the Legal Pad

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