

"When I use a word, Humpty Dumpty said in rather a scornful tone, it means just what I choose it to mean – neither more nor less." The question is, said Alice, "whether you can make words mean so many different things." The question is, said Humpty Dumpty, "which is to be master – that's all!"
 – Lewis Carroll, Through the Looking Glass

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- & Many more to come!

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- * <http://www.cure-sort.org/mn--the-legal-pad.html>
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Censorship: Covering the Past, Blockading the Future

by *Cyrus Gladden, Editor*

This is the story of *the Legal Pad* (tLP for short). More particularly, it's the story of official censorship of a monthly newsletter that for eight years has advocated a political proposition, specifically, abolition of the phenomenon of civil commitment of individuals who have past sex crimes. Having convictions dating back to 1988 for sex crimes with young boys earlier in that decade, I can speak from that perspective.

Yet the 1996 conviction that resulted eventually in my own commitment was for an accusation that was utterly false. The perverse irony of that remains bitterly with me to this day. Nonetheless, in life we all continue to move forward despite whatever befalls us in whatever ways we can.

My commitment occurred in early 2014, when I was scheduled for release from prison. Even before the county of my wrongful conviction petitioned for it – in fact as early as 2010, feeling the unfairness of such commitments — in reality just a platform for further incarceration under guise of civil commitment, I commenced factual and legal research in earnest on the topic, and quickly resolved to write a book of my findings on the matter.

I finished writing the book, titled *Deviant Justice — The American Gulag*, under the pseudonym "Lawyer X," in mid-2013. That petition for my own commitment followed about two months later. While I cannot prove any solid connection between the two events, I still suspect that the book had at least something to do with the prosecutorial decision to seek my commitment.

As is the usual situation in other sex offender commitment facilities, I was assigned a "primary therapist" at the time I agreed to participate in sex offender treatment here. In my view, that first primary therapist of mine believed that anyone with any sex offense against a child was subhuman. Hence, from the start, she regarded me with deep suspicion. Because I could see that her bias was making it impossible for me to move forward in treatment, my motivation for treatment was essentially nil.

After being under commitment in this facility of the Minnesota Sex Offender Sex Offender Program (MSOP) for about two and a half years, I founded my newsletter. The title of my newsletter, incidentally, came from my background of having briefly been a practicing lawyer in another state and also for many other years having performed a great deal of professional legal research and ghostwriting for other lawyers. I compose and print my newsletter using a network of computers and a printer provided for confinee use here, providing my own paper.

Right from the start, the administration of this facility insisted on having all proposed editions turned over to a designated reviewer to determine if the facility should censor any content in any forthcoming issue. I believe that the censorship I refer to was imposed by those who sought to perpetuate that peculiar phenomenon known as sex offender commitment and who feared that *the Legal Pad* might sufficiently expose information and ideas about the antiscientific nature



of that phenomenon to spur efforts by many to abolish this odd misuse of commitment, both here and in the other 19 states with similar commitment systems. This belief seemed confirmed by the administration's selection of that first primary therapist of mine to perform that censorship review on each month's tLP edition.

She remained in both positions for the first three years of publication of tLP. During that period, she censored content from three editions — all in that third year, as our reciprocal dislike of each other escalated geometrically.

The article struck by censorship from the first of those three tLP editions was titled "3 Profs Named Mud: The High Cost of Telling a Very Inconvenient Truth -- Condemning the Rind Study to Suppress the Truth." The findings from that academic study of the outcomes of sexual crimes involving boy victims were that: (1) 90% of them reported in early adulthood that they did not suffer any adverse psychiatric effects; and (2) that nearly all of the other 10% (i.e., those with adverse effects) had family members or peers who verbally and socially abused them for their experience, thus concluding that the predominant iatrogenic cause of psychological trauma was actually such after-the-fact mistreatment, more than the sexual abuse itself.

This set of findings created a hurricane of adverse political reaction at the time. However, the reality of this phenomenon is now widely accepted. ("The most telling finding in the research literature on the apparent long-term consequences of child sexual abuse is the absence of findings. Numerous investigations demonstrate that the typical reaction to a history of child sexual abuse is not psychopathology, but resilience." *Lilienfeld et al., 50 Great Myths*, 167; "Clinicians have often observed that the harm of some sexual abuse experiences lies less in the actual sexual contact than in the process of disclosure or even in the process of intervention" — *Finkelhor, David, "The Trauma of Sexual*

Abuse: Two Models," in G. Wyatt & G. Powell (eds.), *Lasting Effects of Child Sexual Abuse*, pp. 77-78; see also: *T.P. Sbraga & W. O'Donohue, "Post Hoc Reasoning in Possible Cases of Child Sexual Abuse: Symptoms of Inconclusive Origins," 10 Clinical Psychology: Science and Practice* 320-334 (2003); *Thomas K. Zander, "Civil Commitment Without Psychosis: The Law's Reliance on the Weakest Link in Psychodiagnosis," 1 J. Sexual Offender Civ. Commitment: Sci. & L.* 17 (2005); *Renaë C. Mitchell & M. Paz Galupo, "The Role of Forensic Factors and Potential Harm to the Child in the Decision Not to Act Among Men Sexually Attracted to Children," 33 (14) Jour. Of Interpersonal Violence* 2159-2179, at 2170 (2018); *Robert F. Schopp & Michael R Quattrocchi, "Tarasaurus Rex: A Standard of Care That Could Not Adapt," 11 Psychol. Pub. Pol'y & L.* 109, 111 (2005)).

In the second act of censorship of the tLP newsletter that year, two articles, respectively titled, "Ever Get the Feeling That Things Are Not Quite What They Seem? You Have NO Ideal! Rape and Molestation Are Not Mental Illnesses." and "Pedophilia Is an Atypical Orientation, NOT a Disorder." were struck. The first of these articles focused on the unreality of "Not Otherwise Specified" diagnoses, while the second spoke to those who have a primary and often exclusive attraction to children as meeting all the attributes of a sexual orientation, such that, in the absence of any criminal sexual misconduct or any life-impacting distress, the attraction alone cannot be considered a disorder.

Both of these propositions now have substantial levels of scientific agreement (and did in 2019 when submitted for publication in tLP). (See, e.g.: *Dawn Pflugradt & Bradley Allen, "A Grounded Theory Analysis of Sexual Sadism in Females," 18(2) Jour. Of Am. Acad. Psychiatry Law* 191-94, at 192-93 (2020) ("...The four different task forces preparing the four different editions of DSM published since 1980 have all concluded that coercive paraphilia has no standing in psychiatric diagnosis and should not be included anywhere in the manual of mental disorders. ... Coercive paraphilia was not included in DSM-IV, and was again proposed and rejected for DSM-5. The repeated rejections have been so complete that coercive paraphilia has never appeared as one of the many examples used to illustrate which diagnoses might be appropriate under other specified paraphilic disorder and has never been considered worthy for inclusion in the DSM appendix listing Conditions for Further Study.") As to the orientation nature of pedophilia, see *Crystal Mundy, supra, and Martijn, F.M., Babchishin, K.M., Pullman, L.E., & Seto, M.C. (2020). "Sexual attraction and falling in love in persons with pedoheophilia", Archives of Sexual Behavior, 49(4), 1305-1318.*

In the third act of censorship, an article titled, "Pedophilia Is a Sexual Orientation. (Unless You Don't Believe Prof. Seto)." was struck from the December 2019 edition of tLP. Professor Seto's article was actually dated 2012. Not long after this act of censorship, further confirmation of the orientation hypothesis was provided by *Crystal*

Mundy in "Pedophilia as Age Sexual Orientation: Supporting Seto's (2012) Conceptualization" (Nov. 2020), peer-reviewed at: *The Canadian Journal of Human Sexuality*: <https://doi.org/10.3138/cjhs.2022-0006>.

reviewed also at: "10 Years Later: Revisiting Seto's (2012) Conceptualization of Orientation to Sexual Maturity among Pedophilic Persons", *B4U-ACT Quarterly Review*, Vol. 3, No. 1, 17-22 (Winter 2023).

Just before those acts of censorship occurred, I had an experience of something I call 'frustration meltdown' in reaction to what I saw as the highly repetitive, overly complex, and largely off-point (as not addressing the actual causes of sex crimes) nature of the treatment regimen we were (and still are) compelled to undergo if we are ever to be released.

As experience was already teaching everyone in that treatment modality – practiced in the world only in MSOP, the length of time required in that program was averaging over ten years before one could be deemed to be ready to seek promotion to the pre-release part of the confinement part of one's commitment (in comparison with average time of treatment-to-completion averaging about 3-4 years in programs for sex offenders elsewhere.

In response to my verbal criticism of that treatment modality in one group therapy session, my first primary therapist terminated my participation in treatment against my will, in turn also causing me to be terminated from my paid work assignments in the facility. About a half-year later, I was reinstated to my regular treatment group and that same therapist, but fortunately I was promoted out of that group not long afterward.

Meanwhile, *tLP* continued to be printed and distributed within the facility to some confinees as well as to persons and entities elsewhere. In the same period, arrangements were made to host *tLP* editions on two websites (which continues to this day, as referenced on the front page of each edition). Through this digital method, circulation of *tLP* has been increased substantially to an estimated 750 copies currently sent, downloaded, or read onsite each month. I am advised that the majority of these 'external' readers are professionals of psychology, other social sciences, or the legal field.

As things happened, in the wind-down of the COVID-19 period, from origins having nothing to do with *tLP*, a protest movement grew up here in the MSOP-Moose Lake facility. This arose from widespread dismay over lack of more than a trickle of releases annually from MSOP confinement (where population of MSOP's two facilities together still remains essentially at or very near an all-time high of 750) and certain attributes of MSOP operation and that of a release board-and-court operation that together have so restricted the flow of those confined out the release door as to effectively all but bar that door.

This protest movement was never violent. Protest leaders were very careful to confine protest activities to polite gatherings in the main yard in an address-and-discussion

group that almost never reached 70 confinees and often was close to half that, walking around the yard and through the two facility buildings open to confinees. When proceeding through the buildings, the groups were silent to avoid disruption to group sessions and other activities going on; this was a visual-only procession indoors. On the yard, some chants were recited while the group walked; all were pre-arranged, non-threatening, and not at high volume, and not personally directed. In all, this was considerably carried out.

However, on exactly one occasion, while the group was walking in the yard, a tour, apparently of potential candidates for MSOP employment, were at a different part of that yard. From yet a third part of the yard a lone voice shouted out something shockingly disparaging apparently directed at the job candidates. The walking protesters were silent at that time, and many of them heard that shout and the direction from which it came, perhaps a hundred feet or more distant from the protesters. On that pleasant summer afternoon, quite a few MSOP confinees not connected with the protest were sitting either on the grass or at picnic tables in the general area from which the shout had come. However no one identified who had uttered that shout. MSOP staff persons then escorting the potential job candidates heard that shout and immediately assumed that it came from the protest procession. They immediately declared the protest ended and the yard closed, and all confinees proceeded inside without delay or incident.

In the wake of that one anonymous angry outburst, MSOP administration barred further protest gatherings and processions until further notice. A few weeks later, one of the two lead organizers of those protests was placed into the longer-term, general-purpose segregation unit called "Omega." He was forced to remain there for about five months, after which he was released to resume living in the general population of the facility. It is not clear among confinees whether he had actually faced any disciplinary charges, or whether he was placed in that segregation unit administratively as a facility safety/security measure.

It would seem ludicrous that one such as he, who had unceasingly counseled peaceful and even downright polite protest would be thought a danger to safety or security of the facility. The seeming unbelievability of this caused many confinees in the facility to speculate that he had been administratively contained in a segregation unit to isolate him, as a means to suppress the protest movement here. Either way, when he emerged from segregation, he seemed changed by the entire saga of the protest and the ensuing confinement-within-confinement.

He began work in due course on a manifesto of a philosophical sort explaining the mental place from which one must come in order to practice resistance to oppression anywhere. This book is not on the list of books deemed contraband by MSOP. It is believed that this opus is currently online, although the URL and the current name

under which the work is presented are unknown to me.

I have seen this work, however. Although it suggests dealing with staff-members in a curtly formal way without any attempt at familiarity or friendliness, I didn't see anything in the passages I read that would amount to suggested words or acts of harassment or disrespect. Further, it would seem from what I read that the work did not allude to acts or directives of specific staff-persons as the referenced oppression, but rather to the overall abiding indefinite-and-probably-lifetime, continued confinement regardless of treatment as the oppression.

Therefore, the resistance, in my understanding, was meant by that work to be to the oppression of lifetime confinement after a full criminal sentence served for the underlying crime or at least the most recent of such crimes by the confinee in question. It is difficult to disagree with the unfairness of this post-imprisonment supplemental confinement on nothing more than fear of later renewed criminality. After all, the entire European Union, as one example of enlightened attitudes about liberty's bedrock guarantees, has banned such sex-offender confinement under rubric of potentially lifetime commitment. (See European Convention on Human Rights, Article 5.1; see also, e.g., in the sex-offender commitment context, *Shawn Sullivan v. The Government of the United States of America*, High Court of Justice of the United Kingdom, Case No. CO/1672/2011, <http://startribune.com/britain-balks-at-extradition-in-minnesota-sex-case/159711685/>).



This manifesto apparently struck most confinees in this facility as too academically deep. Few took the time to read it fully, and even less understood much of it. It didn't motivate more than a handful to identify themselves as resisters or to advocate resistance.

Around this same time, an MSOP-Moose Lake confinee housed in the Omega general segregation unit assailed a security guard with a heavy object causing a near-fatal cranial injury. The confinee claimed he did so in response to repetitive verbal abuse by that guard. When that guard recovered sufficiently to testify at the confinee's criminal trial, he denied any verbal abuse. That confinee was charged with and convicted of a major assault crime and was given a

lengthy new prison sentence. There is no reason to believe that this confinee ever knew of the resistance manifesto or that his assault was motivated by it.

After this, the former protest organizer settled into a pattern of writing and having others read a series of short writings, all concerning various failings or wrongdoings of MSOP. Eventually, one of these included a brief parody of MSOP treatment that suggested fictionally that a sham was taking place instead of actual treatment.

This and other content of some of those circulated writings were cited by MSOP officials to the Minnesota Dept. of Corrections as claimed grounds, along with others, for revocation of his ongoing intensive supervised release/conditional release. After a short hearing, an official of the Dept. of Corrections revoked his release and he was taken to prison to serve the term of that revocation. It is expected that he will be returned to MSOP when that revocation term ends.

His revocation happened in August. Because my September edition of *tLP* went to the staff review stage (a/k/a censorship review) somewhat earlier than usual, that news was not yet available in detail sufficient to justify coverage.

Now some more about *tLP* censorship: As of this December, it was an even five years since any edition of *tLP* had provoked censorship — except for the censorship that befell the October 2024 edition.

As directed by staff, I was always in the practice of submitting my current edition of *tLP* once completed to my primary therapist for review as to possible censorship of any article deemed to contain contraband or "countertherapeutic" content. That is exactly what I did as to the October 2024 edition.

Nothing in any *tLP* article has ever been deemed to constitute "contraband." When it comes to media, that term has a long-established definition focusing primarily on sexually graphic narrations or descriptions. "Countertherapeutic," on the other hand, has no single general definition in any applicable rule or policy of MSOP. Efforts at creating such a definition in specific applications have been so vague and divergent from one another that there does not seem to be any core of common inclusion in the term or clear exclusion from its coverage. This is known in constitutional law as "overbreadth."

I have searched the Policies and Procedures list in our computer network and have only found a few instances of use of the term "countertherapeutic," applying what appear to be *ad hoc*, vague, and apparently differing definitions of the term. Nor is there any central, specific definition of the term "therapeutic" that would seem capable of putting any useful light on what would or would not be countertherapeutic, or that would establish any limit as to the coverage of either "therapeutic" or "countertherapeutic."

The closest the policies come is found in Policy 215-5001: Maintaining a Therapeutic Treatment Environment. But this policy talks about *activities* that disrupt or potentially disrupt the therapeutic community or

the treatment experience of other clients" – itself without definition and vague and breathtakingly expansive. This does give, as an example, "printing, dispersing, or displaying any written communication outside the client's room (without staff prior approval)." However, obviously, distribution of all editions of *the Legal Pad* has been with Primary Therapist approval, consistent without interruption since 2016 except for specific-article censorship as described above through at least four primary therapists of mine (including the October 2024 edition itself and the ensuing November edition, which passed censorship review perfectly). Hence, there is nothing inherent about distribution of my newsletter through the standard, required channel of internal written communication known as "green mail" that would be contrary to that policy.

Sheer reference to "maintaining a therapeutic environment" cannot limit or extinguish the right to "speak out freely," to "correspond freely without censorship," or otherwise to communicate with others (whether within or outside of MSOP). A quick scan of the statutory provisions and various administrative policies involved refutes such authorization.

MSOP acknowledges applicability of Minn. Stat. §144.651 to its "clients" by posting it in the Client Network in MSOP confinement facilities. MSOP's "Advisory: Limitation of Legal Rights of MSOP Clients" states that the rights imparted by §144.651 can only be limited by that statute.

Most specifically, MSOP's own "Bill of Rights (Minn. Stat. 144.651), Summary" Document No. 210-51001 (1/2020) (file titled: "Summary Bill of Rights"), states categorically that "The Patients and Residents of Health Care Facilities; Bill of Rights says you [i.e., MSOP confined clients] have the right to: ...17. • Speak out freely, without suffering punishment, about problems in the facility." This is exactly what the October 2024 *tLP* newsletter was doing that was found to be subject to censorship.

Minnesota Statutes § 253D.19, Subdivision 2 lists certain rights set forth in § 144.651 as subject to such limitation, but none relate to correspondence or any other rights of written or printed communication or expression. Subdivision 2 then turns to rights specified by Minn. Statutes § 253B.03 (as relevant here, only the right to "correspond with others."). No criterion or set of factors are set forth to justify this ban. But even more basically, the permissibility of banning correspondence categorically with a given correspondent is not the same as a censorship on content that, as part of a newsletter, is sent to many, if not myriad recipients – all impacted by such identical content censorship.

Section 253B.03, Subdivision 2 provides: "A patient has the right to correspond freely without censorship." Clearly, this bans content censorship. In any event, DCT and MSOP Policies and Procedures provide such content limits on correspondence only where the content is salacious or threatens institution security or the rights of individuals. See, e.g.: MSOP Division Policies 415-5030, 420-5030, 415-5010, and 420-5230.



Nowhere in all of the foregoing is there any general provision for content censorship of any printed communication by any MSOP confinee to either any other such confinee or any non-confined individual or any entity, simply for being "countertherapeutic."

Further, what is "countertherapeutic" is utterly undefined, even in Minn. Stat. § 253D.02 "Definitions" itself (applicable to § 252D.19). Given that this allows for vague and boundless application of that term, such a censorship policy would, independently, violate the First Amendment to the United States Constitution.

Minnesota Statute § 144.651, Subdivision 1, states that "It is the intent of this section that every patient's civil ...liberties ...shall not be infringed and that the facility shall encourage and assist in the fullest possible exercise of these rights." First Amendment rights are at the core of every person's "civil liberties." Therefore, attempted censorship transgresses this underlying legislative declaration.

So it all boils down to an evaluation of the content of the writing. However, in my understanding, categorical bars or restrictions on content or a "chilling effect" implicitly imposed on categories of topics, themes or viewpoints are the forms of regulation least likely to survive First Amendment challenge, even in confined facilities. At the very least, it would seem that mere criticism of a treatment theory or of some treatment practice or lack, or of failure to release or extreme delay in release, without calling confinee readers to any disruptive action cannot realistically be accused of itself being 'disruptive.' Mere thoughts cannot be banned consistent with the First Amendment, and communication in any form that simply inspires thoughts cannot be barred. Mere thought, even if disfavored, cannot "disrupt" anything, including operation of treatment or of a "therapeutic community." To maintain to the contrary is to demand conformity to 'group-think' at the expense of extinguishing freedom of thought, which is at the very core of the First Amendment's protections.

It is not just a transgression, but truly an impalement of the right of a free press to

claim that only printed article excerpts and commentary on topics not even remotely addressing issues regarding MSOP treatment or operations can be deemed to avoid disruption and hence not be "countertherapeutic" – unless, of course, "treatment" is conceived of as a faith-healing experience where any questioning of blind faith by the patient ruins the effect of treatment. Certain religions espouse such claims, but science does not. Either treatment is effective regardless of whether the patient has doubts, or it would not work even in the complete absence of doubts.

Given the general trend of recent research results, the jury has already returned about whether sex offender treatment contributes at all or significantly to reducing sex-crime recidivism and sex crime perpetration overall. (See, e.g., *Marques, J.K., Wiederanders, M., Day, D.M. et al.* (2005). "Effects of a relapse prevention program on sexual recidivism: Final results from California's sex offender treatment and evaluation project (SOTEP)." *Sexual Abuse: A Journal of Research & Treatment* 17, 79-107 (neither of two randomized controlled trial (RCT) studies showed any effectiveness of sex offender treatment at preventing recidivism); *Rydborg, Jason*, "Civil Commitment and Risk Assessment in Perspective," 16 *Criminology & Public Policy* 935-945 at 939 (Issue 3, Aug. 2017).

"Despite a large literature of individual studies, meta-analyses and commentaries saying that treatments have been shown to reduce risk among adult sex offenders, the currently available evidence is too weak to reject null hypotheses that such treatments have caused no reductions in recidivism. The findings from the strongest studies (a few RCTs) provide no evidence of treatment effectiveness. The most parsimonious interpretation of findings from weaker designs is that pre-treatment differences and other forms of selection bias are responsible for apparent treatment effects. ...Over the past 60 years, the field of sex offender intervention exhibits change where there should be stability; instead of a well-established foundation of effective therapeutic techniques, particular treatments go in and out of fashion in the absence of acceptable evidence as to efficacy. Moreover, the field exhibits stasis where progress should have occurred; the empirical basis underpinning the effectiveness of sex offender intervention, while more voluminous, is negligibly more informative or persuasive now than it was many decades ago. Hypotheses, suggestions and advice aside, essentially nothing is known (in the sense of empirically verified) about which therapeutic or supervisory techniques are effective for which targets in which types of sex offenders. These ongoing failures carry the risk of avoidable harm in the form of inadvertently increasing recidivism and wasting resources." – *Marnie E. Rice & Grant T. Harris*, "Treatment for Adult Sex Offenders: May We Reject the Null Hypothesis?", Chapter 13 in *The Wiley-Blackwell Handbook of Legal and Ethical Aspects of Sex Offender Treatment and*

Management, 1st ed., Karen Harrison & Bernadette Rainey, eds. (John Wiley & Sons, 2013), at 231-32.

From the perspective of sex offender commitment programs, this does not seem to be a good point to hold that debate in a court deciding whether anything meaningful has been disrupted by printed challenges to effectiveness of a particular treatment modality such as the one practiced in MSOP.

Distinctly, even that exceptional policy against disruptive protest specifically exempts "petitioning or communicating with government bodies, courts, legislators, journalists." Many of my outgoing newsletters are addressed to bodies or individuals who fall into these categories, indicating that banning such outgoing mailings would very clearly defy that policy itself, as well as the First Amendment.

More to the point here, the bar on receipt or possession of countertherapeutic materials that I am aware of only covers visual "media" items that MSOP confinees receive and possess.

See, for example, Policy 420-5230, Media Possession by Clients. Specifically, the definition of "Counter-therapeutic media" is limited to such as "relates to the client's sexual offending pattern/history," clearly telegraphing that the ban is aimed at media containing depictions or subject matter that is very likely to have an emotional impact of a prurient type. The categories given in that policy of prohibited matter are all of that type. It certainly doesn't bar discussions of an academic or political type such as articles in *the Legal Pad* typically address, nor has it ever been so applied, to the best of my knowledge, and I don't see how it could.

This vagueness and apparent overbreadth has always been of concern to me, but in the interest of remaining amicable and cooperative, in those long-past few instances when my original therapist objected to specific articles, I removed them from the edition in question, replaced it with other material to which no objection was raised, and, on that basis, I was always allowed to print the edition and distribute and mail it as always.

First Amendment protection for expression by confined individuals to outsiders is effectively close to identical to such expression among outsiders (save only immediate peril to institutional safety and/or security from specific statements to outsiders creating such danger). I am not aware of any such problem posed by any content of this edition – or any *tLP* edition.

However, as on those past few occasions I reference, in this instance as well, I strongly prefer to keep publishing only one edition of *the Legal Pad* for both groups of readers: insiders and outsiders.

In the case of the October 2024 edition of *tLP*, my submission of that issue to my primary therapist was returned approved and clearly marked "OK to print." I proceeded to do so, in sequential sets of prints so as not to block others from printing for more than a dozen or so minutes per set.

(Continued on page 4)

At the time I was making the final set, that unit director in my living unit happened to be present at the unit desk where such prints are made.

Being relatively new to our unit, she was personally unaware of my printing my newsletter each month. So she asked what I was doing. When I explained the process to her, she asked if she could have a copy of that edition. Since there are always a few extra copies each month, I gave her one. I told her that the current edition had been approved. She left without further questions. I gathered the finished prints and also went my own way. I addressed the envelopes needed, both for internal distribution of the newsletter and for mailing out copies going to recipients elsewhere, and stuffed them with a copy apiece. I deposited each into the facility's mail handling system, in the case of the outgoing envelopes with a form attached identifying recipients and requesting affixing of postal meter postage. I thought no more about it, since the matter was concluded as usual.

Two days later, however, the unit director summoned me into a conference room. There, she informed me that, upon reading through the newsletter, she concluded, with concurrence by facility administration, that some articles contained in it were "countertherapeutic." This surprised me because I always take pains to exclude anything from the newsletter that I think would find official objection as inconsistent with the rules and policies of the facility. I politely expressed my surprise. I also reminded her that this edition had been approved in the indicated channel of review and approval. I added that I had already mailed all copies based on that approval.

She responded that the outcome of her conference with upper management was that I would have to seek and obtain the review and approval by the "treatment team" for my living unit before printing and distributing any newsletters to any MSOP confinees henceforth. The treatment team for a given living unit in this facility is comprised of all therapists, the treatment supervisor(s), and other clinical personnel attached to the unit, the unit director, and the lead security officer stationed at the unit desk, and sometimes other personnel who may be invited to attend on a case-by-case basis.

It had occurred to me years before that the reasons why this had not been the approval procedure then were two: 1) the sheer ungainliness of that mass approval (as many as 15 staff persons in all); and 2) the fact that a decision as to what is "countertherapeutic" logically belongs to therapeutic personnel, not including security and other staff (including a unit's administrative director).

The day after that meeting with the unit director, two facility mail clerks brought a cart to me containing bags of mail. They handed me the entirety of that outgoing mailing of copies of that edition. They stated that this was pursuant to the finding of countertherapeutic content and they gave me a directive not to mail these copies again or copies of any future tLP edition to

anyone unless and until the respective edition had been reviewed and approved. It stunned me when mail staff insisted that the assertion by the Unit 1A Director of countertherapeutic content also barred mailing out of the *Legal Pad* edition in question. Personally, I saw no need to bar newsletter mailings to those elsewhere, since they were not subject to MSOP treatment. Nonetheless, to avoid the potential result of effectively different versions of the same month's newsletter created if one or more articles were censored and had to be replaced as to the facility's confinee-recipients, I complied with this edict.

The nominal head of the treatment team is the treatment supervisor of the living unit in question. My unit is one of the two most populous living units in this facility. Therefore, we have two co-equal treatment supervisors. Not certain which might be designated as the treatment team head, I chose to address the senior of the two supervisors, using a memo form known as a Client Request Form (CRF). In about nine days, I received that form back from her, stating that she had happened to be out of the unit the preceding week. She redirected me to the junior treatment supervisor about the matter. I immediately submitted that CRF. I received a response from her in about four days.

She clarified that she had been designated to perform the required reviews, and she identified two articles as the source of objection to the edition. The first of these appeared on the front page of that newsletter. It recounted the aforementioned revocation of that Omega-detained protester's Minnesota parole and his forced return to a state Department of Corrections prison.

I believe that two particular passages in that article in the October tLP edition irritated the unit director and whatever "upper management" was involved in conference about that tLP edition. The first is that, in 70 words, I merely briefly described the aforesaid "parody" written by that lead protester who was later sent back to prison, stressing its fictional nature. I think that these staff who chose to interject themselves into the review process saw even just that one long sentence as being unflattering to his therapist in real life. On the contrary, his parody was actually unflattering to MSOP treatment instead — something my article stressed about that parody piece. The other passage that I believe those staff objected to was that I praised this protester for his "courage."

But I think that the aspect of my article that irked these staff the most was that I reported some of the aspects of MSOP's treatment and operations that troubled that protester — indeed, many confinees in MSOP — most. And my article asked MSOP for meaningful change for the better.

None of these are "countertherapeutic" observations and requests — unless one defines that term as pointing up obvious failings of a system that appears to resist change in spite of such chronic failings. (See the final article in the December 2024 tLP edition quoting U.S. District Judge John Tunheim on this very point.)

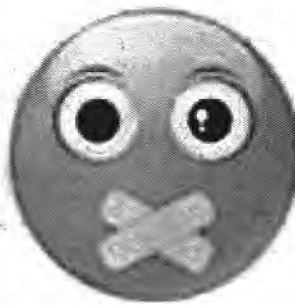
Perhaps the unspoken implication by those staff is that we confinees are inherently disqualified from criticizing the MSOP system that confines us and would gag us as well. But we are the ones who not only see that system in action up close like no outsiders can, we are not disqualified from suffering in it.

We are therefore not disqualified from discussing among ourselves and from exposing to those outside these razor-topped tall barriers our plight and our need for their help to compel change through political action.

The other article in the October edition that was claimed to be countertherapeutic was exactly that political appeal: to the Governor of this state. That appeal by Matthew Feeney was found so eloquent by others that it was previously published in a monthly magazine about recovery.

It is not therapeutic to insist that a confinee who sees the color red must instead steadfastly report it as blue. And it should never be insisted baselessly that one not refuse to do so or must remain silent on the issue in the face of that erroneous insistence. With all due respect, the color is red.

Does This MSOP Rule Bar All Protest and Allow Limitless Censorship?



Excerpts from and editorial comments [in brackets] about:

"Minnesota Sex Offender Program Maintaining A Therapeutic Treatment Environment"

Policy Number: 215-5001

Effective Date: 3/3/22

Policy: Minnesota Sex Offender Program (MSOP) is tasked to provide a safe and secure treatment environment for clients."

["Safety" and "security" have been administrative goals of prisons for time immemorial. For over a century, these two goals have been cited to justify prohibitions on large protest gatherings without official permission. This has not been without factual basis, given the potential for sudden eruption of mass violence in an angry, unruly mob, and the possible rapid transformation into rioting (whether planned or spontaneous) and attempted inmate takeover of a prison or portions of it.

The U.S. Supreme Court has upheld this goal as the ground to bar or severely limit

protest gatherings in prisons notwithstanding the First Amendment's guarantees of free speech and freedom of assembly as well as the right to petition for redress of grievances.

Due to lack of case authority to date, a question lingers whether the very same extent of prohibition/permission requirement applies to mental health secure facilities, or whether the greater legal/constitutional rights of mental health confinees require some judicial restraint of otherwise sweeping authority of prison administrators to use such rules to categorically prohibit all unauthorized gatherings of any size and aim. See, e.g., *Tanya Kessler*, "Purgatory Cannot Be Worse Than Hell: The First Amendment Rights of Civilly Committed Sex Offenders," 12 *N.Y. City L. Rev.* 283, at 321-23 (Summer 2009).

Even in prison, quite apart from protest gatherings, categorical prohibition of all dissent that is limited to conversation or written/printed (or now, alternatively, digital forms), where the character of the words used or their aim or effect is not emotionally inflammatory toward, or advocating physical resistance to authority, is subject to heightened judicial scrutiny.

So, for instance, except for any temporary circumstance where such hostility is already elevated beyond the usual, calm commentary such as the words you are now reading that cannot reasonably be claimed to be intended or likely to inflame hostile passions or even to further stoke any already-heightened hostility, barring such calm commentary is not a constitutionally defensible subject of a ban of expression in any medium. See: *Turner v. Saffley*, 482 U.S. 78, 85 (1987), acknowledging that the holding of *Procunier v. Martinez*, 416 US 396, 40 L Ed 2d 224, 94 S Ct 1800 (1974), is still valid law (that inmate statements which "unduly complain," [or] "magnify grievances") should not have been barred since they did not transgress prison administrators' interests in safety and security). In contrast, the application of the rule in *Turner* was content-neutral (barring all marriages among prisoners and barring all communication with prisoners in other facilities, regardless of content).]

"Authority: Minn. Stat. § 246.014, subd. (d)
Applicability: MSOP program-wide
Purpose: To support and maintain a therapeutic treatment environment for clients.

Definitions: None

Procedures:

A. MSOP clients have avenues to express grievances and address concerns including: MSOP Division Policy 420-5099, 'Client Requests and Grievances'; MSOP Division Policy 130-5700, 'Hospital Review Board,' and/or Direct Care and Treatment (DCT) Policy 110-1015, 'Ombudsman.'

The grievance process only pertains to specific mistakes or misconduct by a specific staff member of MSOP as to a specific confinee in a specific factual situation. Further, as practiced, the staff member whose action/omission is aggrieved by that confinee is assigned to determine whether his/her action/omission was in violation of

(Continued on page 5)

that confinee's rights. It follows that the grievance process does not supplant the need for court-enforced First Amendment rights.

Distinctly, neither the Hospital Review Board nor the Ombudsman have power under state statutes or administrative rules to compel MSOP or any of its staff to redress any complaints by any of its confinees. Hence, complaint procedures before these entities cannot serve as an alternative to First Amendment rights or their judicial enforcement.]

"Nothing in this policy should be construed as preventing or attempting to prevent any client or group of clients from petitioning or communicating with government bodies, courts, legislators, journalists, or participating in the grievance process."

[The First Amendment is not limited to redress of grievances. Hence, merely being able to communicate with any government entities or officials does not satisfy the full guarantees of the First Amendment, which involve the right to communicate to and with all others, individually or in groups. Neither can the mere permission to communicate solely with "journalists" serve as the equivalent of all such other persons. In sum, the ability to communicate with those other particular entities and individuals does not erase the First Amendment right of MSOP confinees to communicate with each other and to communicate with anyone not in MSOP.]

"B. Potential Disruptions to the Therapeutic Environment

1. A client or group of clients who engage in activities that disrupt or potentially disrupts the therapeutic community or the treatment experience of other clients, is subject to disciplinary proceedings according to MSOP Division Policy 420-5010, 'Client Behavioral Expectations' or MSOP Division Policy 225-5025, 'Client Accountability System.'

[This core part of this policy is fraught with inscrutable vagueness and limitless overbreadth. While not the limit of the protections of the First Amendment for expression and communication, either vagueness or overbreadth to fulfill a permissible administrative purpose are fatal under the First Amendment to the enforceability of any administrative prohibition or regulation.

The policy does not create any definitions of any of those terms, nor do either of the two other policies cited above, or the MSOP Behavioral Expectations Handbook 420-5010a, nor, more to the point, does MSOP Division Policy 215-5005, "Treatment Overview", or, apparently, any other MSOP policy. Taken together, this effectively means that the policy may be invoked at the personal whim of any MSOP staff member.

Most critically on this front is that there is no way to determine what a "disruption" to the therapeutic environment is, or even simply to what the "therapeutic environment" consists of, and what its limits are when it comes to the right of MSOP confinees to communicate with each other or others about MSOP, about its staff members' actions or inactions or their apparent stances about matters related to MSOP

operations that may be fairly inferred by such actions and inactions, about treatment as conducted in MSOP, about the subjects more generally of sex offender treatment or sex offender commitment, release of sex offenders from such commitment, or about anything else that some staff member in MSOP may deem on any given day to have some — perhaps unspecified — relationship to MSOP's "therapeutic community," "treatment experience," or — to the extent not within the confines of either of these terms — to the "therapeutic environment," whatever that may be.]

"This includes but is not limited to:

a) printing, dispersing, or displaying any written communication outside the client's room (without staff prior approval);

[Again, this is both overbreadth (for applicability to "any" written communication) and prohibition based on content (for its contextual reference as to "disruptive" matters as to treatment/therapeutic matters.)

"(b) assembling, organizing, or acting in a protest or demonstration, or any other actions that are disruptive to the treatment experience of clients;

c) holding unauthorized meetings; or

d) recruitment materials and/or written materials promoting behaviors that could compromise safety and security and/or the treatment environment..."

In sum, this policy addressing "Maintaining A Therapeutic Treatment Environment" appears to have grave faults under the First Amendment. Further, it would seem that such faults are at their most extreme if applied to written communications addressed to other MSOP confinees and especially to individuals and entities in the public at large.

DRFs & RNR Theory - Pt 2: RNR & Cognitive Theory



by Cyrus Gladden

RNR & Cognitive Theory

According to the Minnesota Sex Offender Program (MSOP) "Program Theory Manual," "Overview Of Treatment For Sexual Abusers" section, MSOP adheres to the triad of principles known as "risk, need, and responsivity" ("RNR"). "Responsivity" refers simply to claimed effectiveness of certain treatment approaches. However, "risk" and "need" refer to various factors about individuals committed to MSOP that are deemed by treatment staff to increase the likelihood

of recidivism by that individual.

The following short excerpts from *Seewald et al* and *Bourgon and Bonta* (immediately *infra*) point up: (1) problems with the concept of "responsivity" (which originally referred to responsivity of the treatment program to the specific needs of each client, but now has curiously shifted to responsivity (typically claimed lack of responsivity) of the client to standardized treatment modalities of a given program; and (2) difficulty in devising research protocols that can isolate and study effects of "responsivity," as originally meant.

An even larger difficulty concerns so-called dynamic factors altogether. The first portion of this series, dealing with such factors, showed in "Table 1" (of the so-called "Central 8" dynamic risk factors) that all but three of those factors of core centrality to the concept of dynamic risk factors were actually more static in nature, and hence no support at all for the theory of the proclaimed importance of dynamic risk factors.

Indeed, RNR-based treatment has most recently been found ineffective compared to non-treated sexual offenders. *Katharina Seewald*, "Effectiveness of a Risk-Need-Responsivity-Based Treatment Program for Violent and Sexual Offenders: Results of a Retrospective, Quasi-Experimental Study," *23 Legal and Criminological Psychology* 85-99 (2020), reports:

p. 85: "...Relapse prevention is an important goal in correctional settings. Although there is strong evidence for the effectiveness of certain treatment programs for juvenile offenders, those for adults lack such evidence. This study evaluated the effectiveness of a risk-need-responsivity (RNR)-based intervention.

...Results: Both groups were observed for an average of 7.9 years. ...[N]one of the group differences was statistically significant.

Conclusion: Our results show that control and RNR-based treatment groups had comparable recidivism rates.

p. 93: Discussion: ...Th[e] difference between groups [in recidivism] was not statistically significant using either a t-test or Cox regression models accounting for varying lengths of follow-up durations and controlling for potential confounding variables such as age, previous criminal record, and risk level."

In essence, as *Astrid Birgden*, "Therapeutic Jurisprudence Principles and Offender Rehabilitation: Which Rehabilitation Theory Is The Best Match?", *3 Int'l J. Therapeutic Juris.* 199 (2018), reports, the problem is that, while RNR has a place in assessment of sex offenders, it really isn't a treatment tool, except to constantly confront the offender in treatment about lack of change to date, without providing useful

A Risky Way to Fly

guidance toward change that the offender can apply. Birgden says:

Abstract Excerpt: "...In this endeavor, two contemporary offender rehabilitation approaches are compared to therapeutic

jurisprudence principles: Risk-Need-Responsivity and the Good Lives Model. The values, treatment targets, and practice strategies within the two offender rehabilitation models are compared....

Conclusion: While RNR is useful for assessing risk of re-offending and case managing offenders, the GLM [Good Lives Model] is better equipped to engage offenders in treatment and management because it is based on an individualized case formulation, balances the individual and environmental context, and includes the participant in setting their goals. These principles are more closely aligned with those of TJ [Therapeutic Justice] as, again, both approaches [i.e., TJ and GLM] are humanistic, delivered within an ethic of care, and aimed at improving well-being. In considering well-being, therapeutic jurisprudence has an interest in considering the evidence-based and ethical aspects of GLM."

Guy Bourgon, James Bonta & Public Safety Canada, "Reconsidering the Responsibility Principle: A Way to Move Forward," *78(2) Federal Probation* 3- (Sept. 2014)

[Text Excerpts:]

(p. 3): "...In the *Andrews, Bonta and Hoge* [1990] paper, four principles were presented with respect to offender treatment. The first three principles dealt with the who, what, and how of offender rehabilitation. The risk principle stated that the intensity of treatment should be matched to the risk level of the offender, with the greatest amount of treatment services being directed to the higher-risk offender. The need principle dictated that treatment goals should be the criminogenic needs that are functionally related to criminal behavior. The responsivity principle directed service providers to use cognitive-behavioral techniques to bring about change while being attentive to individual factors such as personality, gender, and motivation. The fourth principle was the override principle, which called for professional discretion in cases where behavior could not be explained with existing knowledge.

Since 1990 the RNR model has expanded to include many more principles (*Andrews & Bonta*, 2010a; 2010b), but the principles of risk, need, and responsivity remain at the core. Most of the research has focused on the risk and need principles, while the research on the responsivity principle has been a poor cousin. There are many reasons for this situation, two of which are the ease of conducting research on risk and need compared to responsivity and the vagueness of the original conceptualization of responsivity by *Andrews, Bonta, and Hoge* (1990)....
..[W]e review [here] how the responsivity principle has come to mean simply a consideration of client characteristics in the absence of the environment where the work takes place, such as therapist/helper characteristics and skills....

(pp. 7-8): ...Different treatment models may also use different explanatory mech-

(Continued on page 6)

anisms and terminology. For example, Marlatt's Relapse Prevention Framework (1985) and its variations use the concepts of 'triggers,' 'high risk situations,' and 'outcome expectancies,' Beck (1979) talks of 'cognitive distortions' and 'automatic thoughts,' and Yochelson and Samenow (1977) use the language of "thinking errors"....

...Many if not all cognitive-behavioral interventions have labels to assist clients identifying problematic versus non-problematic thinking. They may be referred to as 'thinking errors,' 'cognitive distortions,' or 'neutralizations,' or many other terms, each with similar but not identical definitions and/or underlying meaning for behavior....

...[T]he research support surrounding specific responsibility pales in comparison [to risk/needs research]. ...A problem with responsivity research has been its focus on client attributes that are believed to impact rehabilitation efforts rather than on the characteristics and actions of therapists.

However, note as to the assertion of "cognitive distortions" ('thinking errors') that Gannon, T.A. et al., "Increasing Honest Responding on Cognitive Distortions in Child Molesters: The Bogus Pipeline Revisited," 19 *Sexual Abuse: A Jour. Of Research and Treatment* 5-22, at 21 (2007) (DOI: 10.1007/s11194-006-9033-0), did not find any evidence to support the hypothesis that those who had sexually molested children are cognitively different from non-molesters.

making as a primary aim, and decision-makers place great weight on the degree to which an offender 'takes responsibility' for his or her offending. Yet the relationship between these after-the-fact explanations and future crime is not at all clear. Indeed, the designation of post-hoc excuses as criminogenic may itself be an example of fallacious thinking. After all, outside of the criminal context, post-hoc excuse-making is widely viewed as normal, healthy, and socially rewarded behavior. We argue that the open exploration of contextual risk factors leading to offending can help in the identification of criminogenic factors as well as strengthen the therapeutic experience. Rather than insist that offenders take 'responsibility' for the past, we suggest that efforts should focus on helping them take responsibility for the future, shifting the therapeutic focus from post hoc excuses to offense-supportive attitudes and underlying cognitive schemas that are empirically linked to re-offending.

Text excerpts:

pp. 155-56: "When people are asked why they did a certain thing, their answer usually involves a *causal attribution*: they attribute a *cause* to their behavior by describing what they believe brought about the behavior, or they give a *reason* for their behavior by describing what they were trying to achieve through that behavior (Buss, 1978). These attributions have numerous dimensions on which they can be differentiated (internal/external; intentional/unintentional; specific/global; stable/unstable; controllability/uncontrollability). Weiner and colleagues (1987) define excuses as those explanations that involve dimensions of externality (cause outside the person), uncontrollability (cause beyond the person's control) and unintentionality (the person did not mean to enact the behavior). In other words, excuse making is 'the process of shifting causal attributions for negative personal outcomes from sources that are relatively more central to the person's sense of self to sources that are relatively less central' (Snyder & Higgins, 1988, p. 23).

p. 156: "...In other words, when we humans do bad things, we typically say, 'But it wasn't my fault!'

Faced with such a robust correlation between offending and excuse making,¹ it is no surprise that social theorists have presumed the two processes may be causally related. What is surprising, however, has been the assumption regarding causal direction. Rather than arguing that offending leads to excuse making, a variety of social scientific theories have posited that the relationship is the other way around: excuse making causes – or at least allows for – offending. This idea can be traced back at least to psychoanalytic work on ego defense mechanisms (e.g., Redl & Wineman's 1951 list of guilt evasion techniques), but is usually referred to among criminologists as originating with neutralization theory (Cressey, 1953; Sykes & Matza, 1957). Neutralization theory suggests that 'much delinquency is

based on what is essentially an unrecognized extension of defenses to crimes, in the form of justifications for deviance' (Sykes & Matza, 1957, p. 666). Sykes & Matza identify five neutralization techniques that allow offenders to engage in wrongdoing without suffering from pangs of guilt: denial of responsibility, denial of injury, denial of the victim, condemnation of condemners, and the appeal to higher loyalties. They argue that 'It is by learning these techniques that the juvenile become delinquent.' More recently, Bandura (1990) developed a similar theory of moral disengagement involving the following techniques for avoiding self-sanction: displacement of responsibility, diffusion of responsibility, distorting the consequences of an action, dehumanizing the victim, and assuming the role of victim for oneself.

p. 157: "...[N]owhere has the notion of the criminogenic nature of excuse making had greater influence than the applied world of offender treatment, where excuses and justifications are often assigned the specialist label of cognitive distortion. In his classic article on deviance disavowal, McCaghy (1968) wrote 'Of primary importance to therapists is that offenders assume full responsibility for their behavior without relying on alcohol or other factors as rationalizations' (p. 47). This concern with 'taking responsibility' and not making excuses still characterizes therapeutic efforts with convicted offenders of all types (but particularly sexual and violent offenders). It is consistently recommended in the treatment literature that a primary purpose of a sex offender group is 'to identify and confront cognitive distortions, rationalizations and excuses for offending (Salter, 1988, p. 114). The goal of such confrontations is to encourage offenders to replace externalized accounts with 'internal, stable, global attributions of cause' (Beech & Mann, 2002, p. 265)....

[Anna] Salter [(1988)] ...explain[s] that the goal of therapy must be to eliminate all external explanations and even those internal explanations that are unstable, uncontrollable, and specific in nature (e.g., blaming 'momentary madness'): 'Through therapy, they ...will admit the offenses and assume the responsibility for them' (p. 110). Her advice to those running sexual offender groups is 'to establish peer confrontation, with external, unstable attributions being a specific focus for this type of interaction (see also Sharp, 2000).

p. 158: The overall argument is that criminological psychology may be guilty of committing something akin to the 'fundamental attribution error' (Jones & Harris, 1967) writ large. That is, many of the rationalizations and minimizations offered by offenders may be situational rather than dispositional (see Heckert & Gondolf, 2000). When challenged about having done something wrong, all of us reasonably account for our own actions as being influenced by multiple, external and internal factors. Yet, we pathologize prisoners and probationers for doing the

same thing. In everyday use, excuses are employed as an 'aligning action indicating to the audience that the actor is aligned with the social order even though he or she has violated it' (Felson & Ribner, 1981, p. 138). Pathologizing such aligning techniques when used by criminal justice clients places them in a no-win situation: If they make excuses for what they did, they are deemed to be criminal types who engage in criminal thinking. If, however, they were to take full responsibility for their offenses – claiming they committed some awful offense purely 'because they wanted to' and because that is the 'type of person' they are, -- then they are, by definition, criminal types as well.

p. 159: Examining the term 'cognitive distortions'

The term 'cognitive distortion' seems to have been adopted from the cognitive therapy literature on depression. In this field, the term was originally used to describe 'idiosyncratic thought content indicative of distorted or unrealistic conceptualizations' (Beck, 1963, p. 324).

pp. 160-61: "...[T]he argument that excuses precede and lead to offending (as opposed to just following it) has almost no empirical support (Hanson & Morton-Bourgon, 2005; Pollock & Hashmall, 1991; Quinsey, 1986), and it is difficult to imagine a research design that could conclusively demonstrate this link.³ Certainly, some of the more innovative attempts to establish this chronology retrospectively and longitudinally have been unable to identify any strong link between the acceptance of rationalizations at Time One and criminal behavior measured at Time Two (see, e.g., Hanson & Wallace-Capretta, 2000; Henning & Holdford, 2006; Kropp & Hart, 2000). In recent years, there have been numerous reviews of the research on cognitive distortion theory in the sex offender literature (Drieschner & Lange, 1999; Segal & Stermac, 1990; Ward, Hudson, Johnston, & Marshall) and on neutralization theory in criminology (see especially Maruna & Copes, 2005, for a review of 50 years of this research). These reviews all reach the same conclusion: research on cognition and crime to date has failed 'to distinguish between post-offense cognitions and those that predispose men to offend' (Ward et al., 1997, p. 498). In the most recent systematic review, Gannon and Polaschek (in press) argue that clinical practice has 'run ahead of scientific knowledge' (p. 1) and that there is 'little or no longitudinal evidence to support' (p. 14) the theory behind the idea of cognitive distortions: 'So where has support for the cognitive distortion hypothesis come from? We can only conclude that the popularity of the cognitive distortion hypothesis is due to factors other than its empirical validity' (p. 16).

In short, the concept of cognitive distortion has suffered both from an absence of empirical support and also from a lack of clarity in definition. Over time, this lack of clarity has become increasingly problematic: Authors have broadened the concept

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Bad by Design.

Shadd Maruna & Ruth E. Mann, "A Fundamental Attribution Error? Rethinking Cognitive Distortions," 11 *Legal and Criminological Psychology* 155-177 (2006)...reexamine the role of "cognitive distortions" in excuse making and contend that the original conception of this role is incorrect:

Abstract:

"The notion of 'cognitive distortion' has become enshrined in the offender treatment literature over the last 20 years, yet the concept still suffers from a lack of definitional clarity. In particular, the umbrella term is often used to refer to offense-supportive attitudes, cognitive processing during an offense sequence, as well as *post-hoc* neutralizations or excuses for offending. Of these very different processes, the last one might be the most popular and problematic. Treatment programs for offenders often aim to eliminate excuse-

of cognitive distortion in different ways; for example, using the term to describe general antisocial thinking (Ward, 2000). In clinical practice, the term cognitive distortion has become confused with any causal explanation for offending given by offenders, no matter how valid the explanation might be (Mann & Webster, 2001). Moreover, the cognitive distortion label is used to group together far different phenomena such as attitudes, cognitive products and *post hoc* excuses.

p. 163: Does excuse-making predict recidivism?

Similar to the notion of victim empathy before it (Jolliffe & Farrington, 2004), theoretical assumptions about irresponsibility and excuse-making have been strongly challenged by recent meta-analytic studies of the predictors of reoffending. Meta-analyses by Hanson and Bussiere (1998) and especially Hanson and Morton-Bourgon (2005), for instance, suggest that responsibility-taking has no consistent relationship to recidivism among sex offenders. These striking results 'could provide justification for novel approaches to treating and managing denying offenders, provide a rationale to support a change in standards of practice, or provide a basis for departing from established standards for approaches to the clinical problem of denial' (Lund, 2000, p. 276). Instead, critics of this research (e.g., Lund, 2000; Schneider & Wright, 2004) point to the difficulties in interpreting these results, in particular because of the heterogeneity in the way that denial is measured across the different studies.⁴ Although these concerns are valid, it is still the case that no systematic review of the literature to date has found conclusive evidence of a link between responsibility taking and future recidivism (as opposed to the simple finding that offenders make *post hoc* excuses.

pp. 166-67: It is important to note that, unlike with recidivism, there is a clear, empirical link between minimization of responsibility and treatment attrition rates (e.g., Daly & Pelowski, 2000; Hunter & Figueiredo, 1999). This finding is sometimes interpreted as a rationale for denying treatment to offenders who will not take responsibility for their crimes. As getting offenders to accept responsibility better for their crimes is typically considered a treatment goal, however, this would be 'tantamount to requiring them to ...cure themselves before they can receive treatment' (Schneider & Wright, 2004, p. 7).

p. 167: For instance, it is already generally accepted in the field of offender rehabilitation that confrontational methods are not helpful in assisting motivation and change (Murphy & Baxter, 1997). The series of studies conducted by Marshall and associates (Marshall, Fernandez, et al., 2003; Marshall, Serran, et al., 2003; Serran, Fernandez, Marshall, & Mann, 2003) indicate that a warm, genuine motivational style is more effective at promoting change than a confrontational, judgmental style (see also Beech & Fordham, 1997; Birgden & Vincent, 2000; Kear-

Colwell & Pollock, 1997). As such, treatment programs increasingly are utilizing other techniques such as motivational interviewing (Mann & Rollnick, 1996) or what Jenkins (1990) calls 'an invitation to responsibility' in order to effect a change in thinking styles (see especially Marshall, Thornton, Marshall, Fernandez, & Mann, 2001). Most notable in this regard is the 'good lives' model developed by Tony Ward and his colleagues (see, e.g., Ward & Brown, 2004) that expands the rehabilitative focus from targeting deficits to building strengths. In this final section, we set out some additional alternatives to working with issues of personal responsibility in research and practice.

Consider different ways of taking responsibility

A probable reaction to what we have written is the question: 'How can people change if they do not accept responsibility for the acts they have committed?' One response is that taking responsibility for one's actions is about more than attributions for past behavior. Bovens (1998) differentiates between passive and active responsibility. Whereas passive responsibility means holding someone responsible for something they have done in the past, active responsibility means the virtue of taking responsibility for putting things right for the future (see also Braithwaite & Roche, 2001). Active responsibility is future oriented and forward thinking, focusing on what needs to be done in order to make good or make amends or make it right (see Maruna & LeBel, 2003). Research on ex-prisoners who have been able successfully to desist from crime finds these active responsibility themes to be far more prevalent than internal, stable and intentional attributions for one's past crimes (Maruna, 2001; Stefanakis, 1998).

Brickman and colleagues (1982) suggested a third way in regard to the vexing internalizing-externalizing debate. In what they refer to as a compensatory model of responsibility, individuals do not blame themselves for their problems, but hold themselves responsible for the solutions to the problems. ...Maruna's (2001) desistance research suggested that this compensatory model characterizes the self-narratives of successfully desisting ex-convicts. ...Dividing the concept of responsibility into 'blame for the past' and 'control over the future' then, might be a valuable therapeutic tool (see also Stefanakis, 1998; Ward & Brown, 2004).

At this point, the reader is referred back to the important excerpts from Melissa Hamilton, "Risk-Needs Assessment: Constitutional and Ethical Challenges," 52 *American Criminal Law Review* 231 (Spring 2015), at 240-42, which appeared in the first part of this series, dealing with dynamic risk factor usage.

An illustration of the true MSOP intent never to release its detainees pertains to pedosexuals/pedophiles (to whom MSOP refers collectively as "sexual deviancy"). Two-thirds of MSOP detainees have evinced this attraction. MSOP contends in support of commitment and of denial of



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release that simply being a pedophile presents "criminogenic needs"; that the pedophile must be committed; and that he "needs" treatment, or if he has already had treatment, that he needs more treatment, *ad infinitum* until death. According to MSOP, in order to satisfy the "meaningful change" standard for release from MSOP detention, a pedophile would have to prove that he no longer has pedophilic attractions. Because this is an impossibility, the pedophile will always be deemed to have ultimately "failed" treatment, and will remain locked up in MSOP until death, if MSOP gets its way.

This, of course, defies Prof. Hamilton's observation as to the ubiquity of 'deviant' sexual attractions/interests. Were the MSOP view true, pedophilic crimes would contend in prevalence with 'normophilic' sex acts between consenting adults. Yet, "[i]nterest in illegal sexual interactions (children or nonconsenting persons) can be found in a substantial part of the (male) population. The majority of them, however, never seem to act on these interests." (Hamilton, p. 561)

Indeed, that Report, at p. 15, describes "criminogenic needs" as comprised of "need areas," including "sexual deviancy, antisocial attitudes and beliefs, relationship problems, and problems with self-regulation." In other words, everything that MSOP calls "dynamic" risk factors are all adverse claimed "deficits" that sex offender must 'work on.' The MSOP Report's implication is that only treatment can allow that, and only MSOP will do. That is to say, these things that MSOP calls "dynamic" are things claimed to absolutely require treatment – in other words, 'things to work on' as an excuse to commit and to keep committed!

"Notwithstanding the issue of what objects of interest are irregular, it is evident that fantasy and sexual interest are not always linked to actual sexual activity. A recent study comparing samples of undergraduate males with convicted child molesters showed the former had more fantasies overall and more with sadomasochistic themes, even after adjusting for the potential for the molester group to underreport because of offenders' likelihood to provide biased responses in an attempt to provide socially desirable an-

swers." (M. Hamilton, *supra*, at p. 561)

See also on this point: Kerry Sheldon & Dennis Howitt, 'Sexual Fantasy in Paedophile Offenders: Can Any Model Explain Satisfactorily New Findings from a Study of Internet and Contact Sexual Offenders?', 13 *Legal & Criminological Psychology* 137, 153 (2008) (finding no association between fantasies with children and child molestation).

In summary from this series, the following conclusions have emerged:

1. Basic research is needed to establish what, exactly, truly are dynamic factors which actually contribute to causing future recidivistic sex crimes (rather than simply being concurrent – perhaps only circumstantially coincidental, but not causative).

2. As to factors that are determined through such rigorous scientific research to truly cause sex-crime recidivism, those factors which are already identified as static factors should be excluded from consideration as dynamic factors to avoid 'double-counting' and other confusion.

3. 'Acute' factors which truly contribute to sex-crime causation should be worked on in therapy, but should never be calculated in assessments of recidivism probability, since such assessments are intended to delineate such probability over years, not the mere weeks of the longevity of acute factors.

4. All consideration of the impact of dynamic factors must include the collective effect on recidivism probability of all risk factors, both recidivism-causative and protective. No actuarial or merely 'clinical' (whether 'guided' or merely impressionistic) assessment of the impact of dynamic factors should ever be regarded as ethical without such full and fair collective analysis of all dynamic factors, both risk-enhancing and risk-reducing, and how that analysis is reconciled with static-factor analysis.

5. Any dynamic risk factors that have only a low (i.e. < 25%) mean effect sizes impact on probability of recidivism must be disregarded, even if the scientific evidence of the existence of a causative effect on recidivism probability is strong, because such low mean effect size suggests that there is little likelihood that that factor will have any effect on the individual under consideration.

6. All dynamic risk factors derived merely from professional experience of therapists or assessors, or which are based on heuristic thinking or biases must be discarded as unscientific. Illustratively, this includes factors thought "intuitively" to be probable indicators of more probable recidivism, such as child pornography use or hostility toward women. (Both have been debunked as hands-on sex crime risk factors.) When providing information to decision makers, all professionals must not just be guided by the principle that, given the state of actual science, it is not possible to know whether some claimed factor has any impact on probability of recidivism, but further that, to comport with professional ethics, must proactively inform the decision maker that "we don't know" of any causative relationship of such factor(s) to recidivistic sex
(Continued on page 8)

crimes.

7. Factors that require conclusions about an individual's thoughts, such as "procriminal attitudes," must be rejected as impermissibly vague without any thoroughly documented, highly particularized, and action-compelling thinking process of a reflexive, repetitive, and inflexible nature, and only when all of this is confirmed by scientific research as having a strong mean effect on later recidivism likelihood.

8. Factors that require conclusions about the impact of having "procriminal" associates, friends, or acquaintances must be discarded in the absence of scientific conclusions of high certainty of impact upon recidivism specific to the content of communications by that associate, etc. to the individual under consideration. All presumptions that the mere existence of such relationships create a higher likelihood of recidivism must be rejected as unethical and unconstitutional, as well as not supported by normative reality. The question is not the input by a given associate, but rather the individual's ability to: (a) resist criminogenic suggestions to offend; and (b) to think for himself.

9. More generally, all circumstantially demographic claimed factors must be rejected unless having proven effect at raising sexual recidivism probability (as opposed to mere general impact on probability of criminal recidivism).

10. All assertions of lack of "responsivity" on a treatment-participating sex offender's part to any treatment modalities of a given treatment program must be rejected as a claimed dynamic risk factor because the concept of "responsivity" in science refers to responsivity of the treatment program to the specific needs of each client, as opposed to any level of responsivity of the client to any given treatment modality or its elements. Further, rejection is required because no science currently exists which would support the contention that any lack of success in treatment, much less more specifically, of "responsivity" to it as a characteristic of a given treatment participant, has any verified causative impact on later recidivism probability.

11. The model of "criminogenic needs" must be rejected as implying that any sexually paraphilic/"deviant" orientation/attraction/motivation itself inherently dooms the individual to such future sex crimes. This is required by the existence of a wide, dense, and reliable base of research findings, ranging from the normative prevalence of such divergent sexual motivations in the populace at large, to the lack of scientific understanding of a relationship (if any) of any such orientation/motivation to actual commission of any sexual crimes. Hence, use of the term "criminogenic needs" is merely an unscientific and deliberately incendiary and hence confusing labeling of individuals.

12. More generally, the use of pessimistic "risk" analysis as a basis for sex offender treatment and for assessment must be discarded in favor of the known phenomenon of desistance from commission of further sexual crimes. This also will allow

fostering the ability to ascertain means to enhance its recidivism-extinguishing effect. It also will permit taking advantage of protective factors in creative, specifically offender-centric ways. Unlike the Good-Lives Model, these protective factors, tailor-made in collaboration with the former offender himself, do not restrict the freedom of range of life-choices (as opposed to dictatorial insistence on adherence to externally-imposed restrictions) available to a former offender, but instead enlist the offender's own creativity in creating and executing strategies capable of recidivism-rejection by that offender.

13. All shame-based treatment modalities and techniques must be abandoned to allow all who immutably have complete, or at least some level of sexually divergent/"deviant" orientation/attraction to accept themselves as they are, instead of forcing them to repetitively bash their psyches uselessly and destructively into the wall of that divergence. This change will permit construction of positivist treatment modalities (which foster such self-adjustment in accommodation to society's needs to avert criminal actions) can begin in earnest. This includes reconstructing the very notion of treatment from focus on internal, stable and intentional attributions for one's past crimes to a replacement focus on themes of the former offender's active responsibility to make his future life prosocially consistent with society's needs for rejection of criminality by all of its members.

PPI Report – Inmate Welfare Funds Are Actually Treated as Facility and Employee Slush Funds - Part 2



In some countries they just carry the cash out.

Brian Nam-Sonenstein, "Shadow Budgets: How Mass Incarceration Steals from the Poor to Give to the Prison," Whitepaper, *Prison Policy Initiative* (May 6, 2024)

[Part 2, Text Excerpts:]

"Are welfare funds helpful or exploitative?"

The rationale behind these welfare funds is complicated, controversial, and contested among advocates and incarcerated people.¹² Some believe it's useful for incarcerated people to have a pool of money that can be used for their collective benefit.¹³ and argue that, if these funds are going to exist, incarcerated people should have greater decision-making power over how their money is spent, and officials should be more accountable in terms of their use. Others argue welfare funds should be abolished on the principle that fees and fines should not be extracted from incarcerated people and their communities, and state and local governments should bear the full burden of incarceration. Notably, in some places, incarcerated people seem unaware these funds even exist because their balances and expenditures are not shared with the population.

The widespread lack of oversight and accountability plays a role in all three of these positions. Roughly one-third (17 out of 49) of prison policies do not mention any form of oversight or transparency measures for their welfare funds.¹⁴ Among the 32 other prison systems with welfare funds, policies mandate a range of annual or biannual audits and reports that summarize revenues and expenditures. These audits and reports are variously required to be submitted internally – to wardens, department fiscal offices, or deputy directors, for example – or externally to controllers, comptrollers, governors, legislators, or other bodies. In some cases, there is no clearly defined schedule for reporting: Indiana, for example, specifies that 'periodic audits' be conducted by the State Board of Accounts. In Georgia, reporting is necessary only upon suspicion of fraud, changes in personnel managing the fund, or extensive funding shortages. Meanwhile, just five states – California, Kentucky, Maryland, Nevada, and Washington state – require that prisons post audits publicly within view of the incarcerated population.

Who exactly administers these funds, and how they go about doing that, is also unclear in many of the policies we reviewed. Typically, welfare funds are run by higher-ranking corrections officials, such as a warden, deputy warden, chief administrative officer, superintendent, director, commissioner, or one of their designees. Fourteen prison systems have some form of board or committee that governs the welfare funds, but only three – California, Minnesota, and Vermont – explicitly permit incarcerated representatives to participate. Mississippi, meanwhile, permits a relative of an incarcerated person to serve as a representative. Generally, the fund administrator is in charge of approving or denying expenditures and keeping track of the funds entering and leaving the account. Few policies explain how often these committees are supposed to meet, nor do they go into very much detail about their specific responsibilities – and whether a committee exists in policy is a separate matter from

whether it operates in practice.

Given this context, incarcerated people and their support networks should not be forced to subsidize government responsibilities through welfare funds. Given the general state of (un)accountability in U.S. corrections, it will be a tall order to secure meaningful oversight and decision-making power over these funds. These piles of money seem irresistible to corrections agencies, and the potential for abuse and corruption is high. But in recognition of the lack of consensus about their place in corrections – including among incarcerated people – as well as the wide variation in welfare fund policy, practice, and political context, we offer several policy recommendations to help advocates and lawmakers mitigate their harms. Explained in greater detail in the Recommendations section below, these include:

- Ending exploitative pricing schemes in communications and commissaries;
- Revising policies on permitted uses and prohibitions to be more explicit;
- Implementing independent oversight and granting incarcerated people greater decision-making power; and
- Reducing the need to supplement corrections budgets through decarceration.

How welfare funds subsidize mass incarceration

...Attorney and researcher Stephen Raheer, who has fought the financial exploitation of incarcerated people and their communities for many years, coined the term 'prison retailing' to distill how vendors like phone companies and commissary contractors transform state responsibilities into sources of revenue for themselves and their correctional agency partners. For example, when a prison system takes one of its responsibilities – like providing incarcerated people with phone services – and sells it off to a telecommunications company, it creates a new market. That market operates by charging fees to service users (incarcerated people and their communities), which enriches both the telecom company (in the form of profit) and the prison system (in the form of kickbacks). Prison systems deposit their kickbacks into opaque, unaccountable, and ill-defined funds allegedly intended for the 'general welfare' of the imprisoned population, but which prison administrators can use on practically whatever they want. This carceral sleight of hand displaces the financial responsibilities of jails and prisons onto impacted communities and rebrands it as the selfless goodwill of corrections agencies. And though it may not seem like corrections staff directly pocket revenues from prison retailing, the reality is that subsidizing jail and prison operations contributes to their job security, if not directly funding their actual salaries and benefits.

Herein lies a vicious cycle of exploitation in the form of an arms race for higher commissions: contractors make their money through commissions, and they ensure their future profits by rewarding corrections agencies with kickbacks that will entice them to

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renew their contracts. But bigger kickbacks require vendors to continuously raise prices to keep their profits growing. At the same time, corrections agencies come to rely on kickbacks to supplement costs that should be paid for out of their legislatively appropriated budgets.

Though welfare funds represent a comparatively small proportion of corrections budgets, the millions of dollars sapped from incarcerated people are nonetheless significant sums of money that jails and prisons do not need to secure from lawmakers. Without a transparent public budgeting process, corrections agencies can grow this shadow budget free from scrutiny and oversight. In the end, mass incarceration is to some degree supported by an inversion of welfare for the poor: as scholars Mary Fainsod Katzenstein and Maureen R. Waller explain, 'Instead of serving as a source of support and protection for poor families, the state saps resources from indigent families of loved ones in the criminal justice system in order to fund the state's project of poverty governance' [by incarceration].

Bodycams, bullets, and new jails: Shifting state responsibilities onto incarcerated communities

How do prisons and jails use these funds if not for the 'general welfare' of incarcerated people? And how do they get away with spending the money in these ways? Our analysis shows that, while some policies permit welfare fund dollars to be spent on things that should clearly be funded through a department's general budget, others are written with language so broad that essentially nothing is off limits. For example, some policies will declare that the funds must be 'overall' or 'primarily used for the general welfare of the population, or can be spent on goods and services 'including but not limited to' specific uses. These few words provide significant wiggle room that corrections agencies readily exploit in the absence of meaningful oversight.

In some cases, money collected in the name of the 'general welfare' of jailed populations is actually spent on staff. The Dauphin County (Harrisburg) jail in Pennsylvania, for example, collected \$3.4 million between 2019 and 2023. A review of spending records by journalist Joshua Vaughn for PennLive found that the vast majority of welfare fund expenditures directly benefitted staff, not incarcerated people:

How did the county jail spend incarcerated people's money?

Examples of expenditures from the Dauphin County, Pa., jail's Inmate Welfare Fund from 2019 to 2023:

\$45,000.00: Things that benefit incarcerated people

\$835,000.00: Facility maintenance (including heating system repair & courthouse & other non-jail facilities upgrades)

\$1,639,000.00: Things that benefit staff only (including staff of other county departments; expenditures for: Bodycams, gun range memberships, consultant fees, new staff uniforms, new vehicles, employee appreciation meals, new fridge for staff break room, & fitness trackers for officers.)

...[O]nly a small fraction of welfare fund expenditures from 2019 to 2023 directly benefitted people incarcerated in the jail.

The PennLive article goes on to mention that a county spokesperson defended spending welfare funds on these staff perks, arguing that 'the current job market makes it difficult to retain employees.'

California provides further examples of corrections agencies using welfare funds to subsidize carceral infrastructure and personnel. The Butte County (Chico) Board of Supervisors attempted to use \$650,000 from their jail's welfare fund to build a new jail before the ACLU sued to stop them in 2016. Meanwhile, a 2021 investigation revealed that Sacramento's sheriff spent more than \$15 million in welfare fund dollars on staff salaries, \$1.45 million to purchase a camera system; \$1 million for parking lot improvements; \$900,000 for radio leases, surveillance cameras, and software to track incarcerated people; and \$150,000 for perimeter fences.

News reports and audits have uncovered other questionable uses of welfare funds. ...Arizona's Pinal County (Florence) Sheriff spent over \$4 million of welfare fund money between 2018 and 2023 – at least \$217,000 (or 5.5%) of which was spent on guns, bullets, and vests for law enforcement while less than \$900 (or 0.02%) was spent on books for people detained at the jail. In Colorado, the El Paso (Colorado Springs) County jail's largest expenditure from their fund in 2012 was \$664,000 to 'MH Medical Services' (the sheriff declined to elaborate to reporters what exactly that was). And in Los Angeles, California, a 2021 audit of the jail's welfare fund (which

had a balance of nearly \$26 million) noted that the 'historical practice is to annually allocate and spend at least 51% [of welfare fund revenue] on inmate programs and up to 49% on jail maintenance.'....

The San Diego Sheriff's Department in California used welfare funds to 'pay employee salaries, maintain department vehicles, buy gasoline, pay office expenses and

even buy toilets at one jail's recreational yard.' People jailed there faced sharp increases in commissary prices and obstacles to participation in enrichment programs at the very same time that the department was spending their money on staff cars and paychecks. When local reporters started asking questions, the San Diego sheriff 'defended the spending as appropriate and noted that state law gives the department broad authority over how the fund is administered.'

Gift cards, flowers, and theft: Flagrant abuses of welfare funds

Using welfare funds to pay corrections agency bills is bad enough. But it's arguably much worse to take money from the poorest people in society and spend it on ridiculous staff luxuries. Take the deeply troubled Fulton County jail in Atlanta, Georgia, for example. Last year, it was reported that officials had misused tens of thousands of dollars from the jail's welfare fund:

- \$40,000 purchased gift cards from The Honey Baked Ham Company for a staff holiday party.
- \$5,000 was set aside for a Thanksgiving giveaway.
- \$2,600 was paid to florists.

Additionally, reporters found a range of expenses that included a face painting booth, DJ services, a tropical bounce house, and more 'linked to employee appreciation and community diversion.' When pressed on these outrageous expenditures, Fulton County Sheriff Pat LaBat responded that 'There was no criminal intent and that 'everything that has come out of the inmate welfare fund has been spent on the betterment of the sheriff's office' (our emphasis). Ultimately, it was the incarcerated population that suffered the consequences of this obvious corruption: the county abolished the fund altogether, and as a result, money that was supposed to be spent on blankets and mattresses for indigent people suddenly dried up. The future of all the money that had accrued in that account – incarcerated people's money – remains uncertain as it was sent to the county's general fund.

In Minnesota, prison officials refused to purchase cable television for the incarcerated population using funds collected from people convicted of sexual offenses. Curiously, however, officials saw no problem with using thousands of dollars of welfare fund money to buy Netflix subscriptions that incarcerated people could not access. Officials claimed they couldn't afford the cable subscription but resisted calls for transparency.

In other cases, welfare fund oversight is so lax or nonexistent that officials aren't even sure where the money goes or how it's spent. In Oregon, an investigation into stolen welfare funds ended because so little bookkeeping took place that they could not figure out which staff member ran off with the money....

Sitting on cash while needs go unmet

While in many cases welfare fund dollars are misspent, other times they are not spent at all. This raises two important questions at once: first, are welfare funds even necessary? And second, why are jail and prison

conditions so terribly austere with all this money lying around? Correction agencies frequently push back on efforts to abolish phone and video calling fees or to severely limit kickbacks, warning that doing so would negatively impact people inside – but then we see evidence of those same corrections departments leaving money on the table while incarcerated people are left to languish, their most basic needs unmet.

Arizona's Department of Corrections made this argument in 2015 as the Federal Communication Commission moved to limit kickbacks from phone calls. They argued it would lead to 'reduced educational and job training opportunities... [which would] ... have potentially life altering negative impacts on inmates and their families, not to mention public safety in the community.' But what was actually going on with these funds at the time? Arizona reduced spending on education and programming by nearly 48% in four years – from \$3.2 million in 2010 to \$1.7 million in 2014 – while the department's phone revenues steadily increased by 12% – from nearly \$3.7 million in 2010 to \$4.1 million in 2014. The overall welfare fund balance actually ballooned over this period, growing to \$8.9 million by the end of 2014. So while Arizona complained that limiting kickbacks would negatively impact incarcerated people, the department was sitting on funds that could have covered education and other programs for at least five years before needing to earn a penny more.

Big unused welfare fund balances exist in other jails and prisons across the country: in Marin County (San Rafael), California, a third of the jail's welfare fund balances went 'to the benefit of incarcerated people,' a third went to the 'inmate program coordinator' that manages the fund, and a third stayed in the fund, leaving behind a balance of \$1.3 million. In Sacramento County, the balance stood at \$7 million at the end of 2019. And in Maine, the Department of Corrections had a balance of \$1.5 million across five prisons in 2021, while the York County (Biddeford) jail left nearly half a million dollars sitting in its account. Certainly, good governance necessitates leaving some money behind for unexpected expenses, but sitting on this much money while surrounded by such high levels of need is unconscionable.

Should Welfare Funds Exist at All?

As we've examined throughout this report, welfare funds are as exploitative as they are unaccountable. They are frequently used to shift the financial responsibilities of jails and prisons onto communities impacted by incarceration, subsidizing their own occupational livelihoods in the process. Though in-name, welfare funds are designed to benefit incarcerated populations, as we have seen, they are more often used for the general welfare of corrections agencies.

Let us return to the question of whether these funds should exist at all. On the one hand, they theoretically could be used to accumulate resources that could be used for non-essential goods and services that could make life in jail or prison a bit more

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bearable. On the other hand, they are unaccountable and opaque, making them ripe targets for corruption, whether that be misuse or no use at all. Our research has left us with serious doubts as to whether the promise of welfare funds can ever be fully realized. The immense power imbalance between corrections officials and incarcerated people and the general lack of oversight in correctional spaces make it doubtful that incarcerated people could collectively and reliably be given meaningful control over the use of these funds. And given the disproportionate levels of poverty facing criminalized people, it's even more difficult to justify the financial extraction that supplies welfare funds with money in the first place.

While we think state and local governments should, on principle, be forced to accept full responsibility for the costly policy choice of incarceration, we also realize that these funds may continue to exist in one form or another for some time. Given this reality, we have collected some policy recommendations for dealing with welfare fund corruption and for empowering incarcerated people and their communities in their use.

Recommendations

- Place financial responsibility where it belongs

Incarceration is already experienced as one big financial sanction from arrest forward. So long as they choose to incarcerate, states and local governments must take all necessary steps to avoid offloading the costs of incarceration onto people and their families. Here, we must be explicit: we are not advocating for expanding corrections budgets; instead, we are calling for a change in revenue streams away from the shadowy system of prison retailing and toward existing department budgets that are publicly appropriated by legislatures. This shift alone should somewhat increase transparency and accountability, though it is not enough on its own.

In particular, state and local governments should cover the costs of life's necessities for all incarcerated people – including indigent people – such as sufficient hygiene products, healthcare, nutritious food, and access to regular communication through postage, phone calls, and other technologies. These should not be placed out of reach (or require personal sacrifice) for anyone who is in jail or prison or supports someone who is. This also goes for education, medical care, treatment, and job training. Furthermore, there should be a categorical ban on using these funds for anything related to staff or operations, including staff salaries, benefits, and extracurricular activities, as well as any costs related to facility maintenance or construction.

Money generated from incarcerated labor (excluding wages), interest accrued on trust accounts that is not returned to the account holder, and revenues generated from the sale of hobbycrafts are examples of revenues that we imagine are less problematic to be deposited into welfare funds. Such revenues should not be diverted to departmental, municipal, county, or state general budgets, as sometimes happens, but should

be maintained for the actual benefit of the incarcerated populations. It is their money, and they should be able to use it.

- Give decision-making power to the people who pay into welfare funds.

As we have discussed, some prison systems have created committees to look after welfare funds and approve expenditures. However, these committees are most often entirely made up of wardens and other corrections staff. Though some committees do have incarcerated or family representatives, this is far from the norm, but it should be the bare minimum if incarcerated people are not given full decision-making power over how their own money is spent.

- Impose independent oversight, transparency, and accountability

Jails and prisons are in desperate need of independent, external oversight in general. Until we get there, we can advocate for basic oversight of welfare funds wherever they exist. In some places where giving control to incarcerate communities is not an option, advocates may want to consider removing welfare fund responsibilities from corrections departments entirely, as Mississippi did when it handed control of the fund over to the state treasurer. Regardless of who administers the fund, there must be transparency on revenue sources and expenditures: the incarcerated population should know how much money is coming and going, as should the non-incarcerated public. There should be a public accounting of how much money is leftover in the account from year to year as well.

Policies, in writing and in implementation, should be strengthened with regard to the efficient and effective expenditure of these funds. They should be clearly written, precise, and detail-oriented, rather than vague and completely open to the discretion of corrections officials. Among other considerations, they should not, for example, allow welfare fund dollars to be squandered on projects just for the sake of spending it, or used to make expensive purchases when something less expensive at a similar quality is available. In other words, these funds need and deserve stewardship that works in the best interest of incarcerated people.

Short of this, journalists and members of the public should know that this information is a public record and can be accessed through a public records request. State and local auditors and comptrollers should take a close look at these funds in their jurisdiction – particularly in places that administer funds on the facility level and leave decision-making power to facility leadership.

- Decarcerate

Last but most importantly, if jails and prisons are struggling so badly that they feel the need to draw money from welfare funds to fix their HVAC systems, pay staff salaries, or cover tens of thousands of dollars in ham gift cards, the problem is surely not one of resources but of incarceration as a policy choice. If the more than \$81 billion spent annually on corrections agencies is still not enough to fund the obligations of incarceration – which has at this point little if any discernible effect on crime rates but glaring negative consequences for society – then

perhaps this carceral welfare scheme is a sign that it's long past time to change course. It would be far wiser to embrace the many other approaches to harm and health that we at least know make people safer. Reducing arrests and correctional populations, as well as downsizing the punishment infrastructure, should reduce expenses for corrections agencies while also serving as a stimulus for just about every level of government. At least then there will be money that can be invested into the communities that need it most: the same communities forced to pay into jail and prison welfare funds today."

James Randi Exposes Polygraphy as Scientifically Baseless.

James Randi, A Magician in the Laboratory, as excerpted in *Skeptical Inquirer*, Vol. 41, No. 5, Sept.-Oct 2017

Text excerpts:

[Referring to the polygraph/"lie detector"] "...[I]f I were to be called upon to deny [in court] that this silly device is effective or dependable, I'd have no hesitation in doing so. The evidence is just so much against this technology it's difficult to believe how long it has existed as a supposedly valid notion.

...By measuring and displaying changes in the subject's respiration, heart rate, blood pressure, skin conductivity, and other variables of the human body, a complex series of graph lines is generated, and a technician is – theoretically – able to decide whether ... the answers to a set of questions were honestly given or not....

...The truth is that [the polygraph device] is a useless high-tech assemblage that has consistently failed double-blind tests of its efficacy....

Late in 2002, ...the U.S. National Research Council, a branch of the National Academy of Sciences, issued their official report on the use of the polygraph. ...[T]his report's key findings [were] that the use of the device was unjustified, and thus even dangerous to national security.... In their summary, the Council actually concluded: 'Overall, the evidence [for polygraph validity] is scanty and scientifically weak....

...Regarding polygraph technology in general, the NAS/NRC stated that '...there is essentially no evidence on the incremental validity of polygraph testing, that is, its ability to add predictive value to that which can be achieved by other methods.'

...The history of this farce is long and involved.... [S]ome very strong examples of this error stand out: in 1985, use of the polygraph did not expose the fact that Larry Wu-Tai Chin, a Chinese language translator working for the CIA in a critical capacity, was selling crucial information to China and had done so for 33 years, despite having been regularly subjected during that time to polygraph tests. In 1994, Aldrich Ames, a

high-ranking CIA analyst, routinely passed all his polygraph exams, though for years he was a master Soviet spy who passed information on to his real employers. ...In 2001, Robert Hanssen of the FBI went similarly undetected despite the regular periodic 'screening' of FBI employees using polygraphs....

The fact is that not a single spy has ever been caught by a polygraph screening exam. In 2003, the National Academy of Sciences issued its final report titled *The Polygraph and Lie Detection* that found the majority of polygraph research to be, in their words, 'unreliable, unscientific, and biased' and that in national security matters and for law enforcement use, the level of accuracy drops to such a level that 'its accuracy in distinguishing actual or potential security violators from innocent test takers is insufficient to justify reliance on its use in employee security screening in federal agencies.'

The NAS also found the high rate of false positives obtained with the device to be unacceptable. Physicist and CSI Fellow Bob Parks, with his usual degree of wry humor, reported on this situation: '...[T]he small number of true positives is the real problem. I propose replacing the polygraph with a coin toss. That would identify 50 percent of the double agents compared to zero with the polygraph....'

...In fact, as Bob Parks ... comments, 'The polygraph looks for spikes in blood pressure, heart rate, respiration and perspiration. In other words, you can't tell a lie from the sex act.'

...What should you do if required to take a polygraph test? If you agree to take one, you may be placing your reputation in the hands of an unwitting charlatan who can proclaim you to be guilty or innocent. If you refuse, you are assumed to be guilty. Our government should be pressured to abandon such pseudoscience....'



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