the Legal Pad

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"The practice of violence, like all action, changes the world, but the most probable change is a more violent world."
– Hannah Arendt, quoted in *The Take*

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- ✓ Algorithmic Risk Assessment assessed
- ✓ Static-99 Timeline Tells the Tale
- ✓ Open Minds = SO Rehab Success
- — & Many more to come!

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tLP Editor Address (Exactly & **Only** as Below):

Cyrus P. Gladden II
1111 Highway 73
Moose Lake, MN 55767-9452

No!

No to Sexual Trysts in Chambers: Judge Quam of CAP Retires under Fire.

Editor's Note: Judge Jay Quam partly led the tribunal known as the "Commitment Appeal Panel." ("CAP"), which was responsible for adjudicating petitions by confinees of the Minnesota Sex Offender Program (MSOP) for transfer to a pre-release program ("CPS"), release to the parole-like "Provisional Discharge," or "Final Discharge" from their civil commitment to that program altogether. The irony should not escape notice.

Nic White, 'Sex Crazed Judge Brought Female Clerk into His Chambers — Then Unmistakable Sounds Echoed through Courthouse, *Daily Mail.com*, April 25, 2025 https://www.dalymail.co.uk/news/article-14649039/Minnesota-Judge-Jay-Quam-reprimanded-law-clerk-affair-sexual-harassment.html.

"A judge brought a clerk he was having an affair with into his chambers moments before the sounds of sex echoed through the courthouse where he worked.

Judge Jay Quam was reprimanded by the Hennepin County Court in Minnesota for his affair with the young subordinate and sexually harassing other clerks.

Quam, 62, retired last month after his conduct was exposed in an investigation by the Minnesota Board of Judicial Standards.

The public reprimand issued by the board found he 'abused his authority and tarnished the reputation of the judiciary.'

The judge, who was on the bench since 2006, was married to Kristi Carlson, a senior vice president at Best Buy and a member of the Minnesota Chamber of Commerce board of directors. They have two children.

Quam and the unnamed woman began their relationship while she was his law clerk, but it ended after she stopped working for him.

But years later in 2022, they reconnected and staff began seeing – and hearing – them together in the courthouse for 'no apparent business reason.'

'On at least three occasions, a court staff person overheard explicit sounds of sexual activity while Judge Quam and his former clerk were in his chambers,' the reprimand detailed."

Editor's End Note: While serving as the chief judge of the Commitment Appeal Panel court, Judge Jay Quam always appeared sympathetic to our plight in not being able to achieve release despite our best efforts to satisfy treatment and assessment standards and our demonstrated lack of danger of recidivism. Yet despite such sympathy, Judge Quam always seemed reluctant to act to end our confinement. It would seem that this ongoing secret tryst may have inhibited action by him in our favor by him for fear that such releases of us might prompt closer monitoring of his personal misconduct. Here's hoping that his successor in that role will be a person both of unimpeachable integrity and courage to break through the 'MSOP wall' that blocks our exit to freedom and life.

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No Science Proves Sex Offender Re-offense Danger or Inability to Control Sexual Actions.

Demosthenes Lorandos, § 29:2. "The Rise of Sex Offender Legislation and the Need for Improved Sex Offender Evaluation, Treatment, and Risk Management," In: 3 *Litigator's Handbook of Forensic Medicine, Psychiatry and Psychology* (Dec. 2024 Update).

"...Phrenology,...is an entirely discredited method of personality assessment involving measurements of the shape and curvature of the head. Relying on phrenology, the mental health professional concludes that an individual is – or is not – a dangerous person.

Quite obviously, any court would disallow the testimony of a mental health professional using phrenology in this manner. Phrenology is neither generally recognized, nor generally accepted, for assessing future dangerousness. Instruments used for sex offender risk assessment are obviously more reliable than phrenology. The question remains, however, whether those instruments are sufficiently more reliable than phrenology to allow them into evidence regarding potential for future violence.

...Prior to the late 1970s, mental health professionals assumed they were able to predict violent behavior accurately and actually identified themselves as having this ability.[2] Beginning in the 1970s, however, researchers began to examine the accuracy of predictions of violence and the methods used to make such predictions.[3] Since *Barefoot v. Estelle*,[4] and the *Amicus* Brief of the American Psychiatric Association[5], mental health professionals have been all over the block on dangerousness.[6]

Professional groups and the relevant research describe the serious problem of false positives[7] involved in dangerousness assessments. However, the courts rely on mental health professionals for assessments of dangerousness as never before.

...In contemporary dangerousness assessments, it is the interaction of four elements that concern our courts. These elements are: (1) the magnitude of harm; (2) the probability that the harm will occur; (43) the frequency with which the harm will occur; and (4) the imminence of the harm.[11] For example, a harm which is not likely to occur, but which is very serious, may amount to dangerousness. In the same manner, a relatively trivial harm which is highly likely to occur with great frequency might also amount to dangerousness. On the other hand, a trivial harm, even though it is likely to occur, will not amount to dangerousness.

As valuable as a good working definition of 'dangerousness' is, the cross-examiner must be mindful of the civil rights issues in these assessments. As we point out later in this chapter, *liberty* interests must be carefully considered against the background of the reliability of dangerousness assessments. Several commentators have argued that the value of the dangerousness is actually created in the examination of the patient because there are no valid criteria for how it should be ascertained[12]. Other commentators have argued that across studies, approximately one out of three persons predicted to be violent engaged in some kind of violent or criminal behavior.[13]....

...In *Foucha v. Louisiana*,[50] an insanity acquittee challenged a Louisiana statute calling for civil commitment subsequent to an acquittal by reason of insanity[51]....

Returning to *Addington*, the Court reminded:

Addington v. Texas, 441 U.S. 418, (1970) held that to commit an individual to a mental institution in a civil proceeding, the State is required by the Due Process Clause to prove by clear and convincing evidence the two statutory preconditions to commitment: that the person sought to be committed is mentally ill and that he requires hospitalization for his own welfare and protection of others.[55]

The Court reasoned that '...the Constitution permits the Government, on the basis of the insanity judgment to confine him to a mental institution until such time as he has regained his sanity or is no longer a danger to himself or society.'[56] Put simply,. The Court returned to its *Baxstrom* rationale that 'the acquittee may be held as long as he is both mentally ill and dangerous, but no longer.'[57]

In *Kansas v. Hendricks*,[59] the Court returned to issues concerning sexual predators it had contemplated in *Allen v. Illinois*60, but this time there were noticeable differences. In *Hendricks*, the Court took up a modern sexual predator statute....

In *Kansas v. Hendricks*,[66] the U.S. Supreme Court found it constitutional to indefinitely civilly commit sex offenders after their prison term into state forensic hospital settings for long term inpatient detention, treatment, and care, upholding a Kansas statute that outlined legal procedures to civilly commit sex offenders including whether they had a history of sex offenses, suffered from a 'mental abnormality' as a 'congenital or acquired condition affecting the emotional or volitional capacity which predisposes a person to commit sexually violent offenses to a degree that such person is a menace to the

health and safety of others.'[67] The Supreme Court agreed with the Kansas Act, limiting persons eligible for civil commitment who are not able to control their sexual dangerousness.

In 1997, when the Supreme Court took up *Kansas v. Hendricks*, it reviewed a Kansas law wherein the state's legislature set up a process to evaluate sex offenders prior to release. After that evaluation, the Kansas law specified that a trial would be held to determine, beyond a reasonable doubt, whether the individual was a sexually violent predator.[68] In this case, Hendricks subsequently requested a jury trial to determine whether he qualified as a sexually violent predator under the Kansas law. During that trial, Hendricks' own testimony revealed a chilling history of repeated child sexual molestation and abuse.[69] He actually testified that the only way he '...could keep from sexually abusing children in the future was "to die".[70] Reflecting on the Kansas scheme, the Court opined that the evaluation and trial process: '...narrows the class of persons eligible for confinement to those who are unable to control their dangerousness.'[71]"

Notes:

2 *Rubenstein, L.S.* (1988). The Paradoxes of Professional Liability. 39 *Hospital and Community Psychiatry* 815.

3 *Steadman, H.J. & Halfon, A.* (1971). The Baxstrom Patients: Backgrounds and Outcomes. 3 *Seminars in Psychiatry*376.

4 *Barefoot v. Estelle*, 463 U.S. 880, 103 S.Ct. 3383, 77 L.Ed.2d 1090, 13 Fed. R. Evid. Serv. 449 (1983).

5 "The American Psychiatric Association (APA), participating in this case as *amicus curiae*, informs us that: '[t[]he unreliability of psychiatric predictions of long-term future dangerousness is by now an: established fact within the profession.' Brief for American Psychiatric Association as Amicus Curiae 12 (APA Brief) The APA's best estimate is that *two out of three* predictions of long-term future violence made by psychiatrists are wrong. *Id.*, at 9, 13. The Court does not dispute this proposition..." *Barefoot v. Estelle*, 463 U.S. 880, 103 S.Ct. 3383, 3408, 77 L.Ed. 2d.1090, 13 Fed. R. Evid. Serv. 449 (1983).

6 See generally *Dershowitz, A.* (1970). The Law of Dangerousness: Some Fictions About Predictions. *Journal of Legal Education, 23*, 24. [concluding that each psychiatrist decides for himself or herself what constitutes dangerousness] at p. 43.

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12 *Mestrovic, S.G. & Cook, J.A.* (1986). The Dangerousness Standard: What Is It and How Is It Used?, *Int'l Jour. of Law & Psychiatry*. Vol. 8 pg 443.

13 *Monahan, J.* (1984). The Prediction of Violent Behavior: Toward a Second Generation of Theory and Policy. *American Journal of Psychiatry*. Vol. 141 pg 10.

50 *Foucha v. Louisiana*, 504 U.S. 71, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992).

51 *Id.* at 73.

55 *Id.* at 75-76.

56 *Id.* at 77-78.

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59 *Kansas v. Hendricks*, 521 U.S. 346, 117 S. Ct. 2072, 138 L. Ed. 2d 501 (1997).

66 *Id.*

67 Kan. Stat. Ann. Article 29A, § 59-29a02.

68 *Kansas v. Hendricks*, at 117 S. Ct. 2077.

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70 *Ibid.*

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Important additional note: 65 Legislatures in eight states: Alaska, Florida, Louisiana, Michigan, Mississippi, New York, Texas, and Vermont introduced legislation proposing involuntary commitment schemes for sexual predators in 1995. [Only the three underlined states ultimately enacted such laws.]

* * * * * * * * * * *

No Effect on Sex Offending from CB Treatment.

David L. Faigman et al., "§ 10.34. The Scientific Questions – Does Treatment, Supervision, or Community Notification Reduce the Risk of Recidivism among Sex Offenders? – Cognitive-Behavioral Treatments," 2 *Mod. Sci. Evidence* § 10.34 (2024 -2025 Edition).

Text Excerpt: [¶ 2:] "...We concluded, as had Furby, Weinrott, & Blackshaw[9] about therapies in general, and Quinsy, Harris, Rice, and Lalumiere[10] about cognitive-behavioral treatment in particular, that the effectiveness of sex offender treatment has yet to be demonstrated. Although there have been some studies that have reported positive results (mostly these have been with offenders in the low to moderate risk levels), the existing data provide no evidence about what might have been responsible for any reduction in recidivism. Just as was the case with drug treatments, the data so far are consistent with the conclusion that agreeing to and persisting with treatment over the long term serves as a filter detecting those offenders who are least likely to re-offend, and that the nature of the treatment (so long as it is not exclusively humanistic or psychodynamic) has little or no specific effect on outcome."

Footnotes:

9 *Louise Furby et al.*, "Sex Offender Recidivism: A Review," 105 *Psychological Bull.* 3 (1980).

10 *Quinsey et al.*, "Assessing Treatment Efficacy in Outcome Studies of Sex Offenders," 8 *J. Interpersonal Violence* 512 (1993).

[p. 135:] Research conducted over the past 10 to 15 years raises concerns about the interrater reliability of PCL-R scores made in psycholegal ontexts, and several caselaw reviews have examined the interrater reliability of PCL-R scores in court cases. For example, in their review of United States sexually violent predator (SVP) cases involving use of the PCL-R, DeMatteo et al. (2014a) identified 29 cases in which the same offender was assessed with the PCL-R by two evaluators. In those 29 cases, the ICC_1 was .58, and only 41% of the score differences were within one standard error of measurement (SEM). Further, scores by prosecutor-retained experts were significantly higher than the scores produced by defense-retained experts; prosecution experts reported PCL-R scores of 30 or above in nearly 50-% of the cases, compared with less than 10% of the same cases appraised by defense experts. In a caselaw survey that included 102 criminal cases from Canada the single-rater ICC was .59 for all cases, with an ICC of .66 for cases involving a sexual offense an ICC of .46 for nonsexual offense cases (Edens, Cox, Smith, DeMatteo, & Sörman, 2015).

From a practical perspective, it is useful to note that if the ICC for PCL-R ratings in adversarial legal proceedings do in fact approximate .60 as suggested above, then the corresponding 95% confidence interval around an average PCL score would fall between the 11th and 89th percentiles (Edens & Boccaccini, 2017). This analysis ignores certain important qualifiers, such as the fact that the PCL-R normative data are not normally distributed and that reliability estimates are not constant across the range of possible test score results 9i.e., they tend to decrease the further away an obtained score is from the mean), which may further reduce the expected agreement among raters (Cooke & Michie, 2010).

Taken together, these results reveal two things: First there is a tendency for examiners in adversarial settings to disagree with each other to an extent that is much greater than would be expected based on the ICC values reported in the PCL-R professional manual (Hare, 2003). Second, there is a tendency for prosecution-retained evaluators to report higher PCL-R scores than do defense-retained evaluators in evaluations of the same person, made around the same time, and even when made on the same information base. This tendency for some experts to drift from more objective findings to ratings that better support the party that retained them has been termed *adversarial allegiance* (Murrie & Boccaccini. 2015). Adversarial allegiance has been examined in both field studies and controlled research. In the first field study to examine adversarial allegiance, Murrie, Boccaccini, Johnson, and Jahnke (2008) collected PCL-R scores assigned by petitioner-retained[1] and respondent-retained psychologists in 23 SVP cases in Texas; these cases permitted the examination of PDL-R scores that opposing evaluators assigned to the same offender. There was a large difference between PCL-R scores assigned by petitioner-retained and respondent-retained evaluators (Cohen's d = 1.03) that reflected a low level of interrater agreement across raters ICC = .39). In 14 of the 23 cases (61%), there was a difference of more than 6 points between the two PCL-R total scores; given the SEM of roughly 3.0 points for PCL-R scores, differences of this magnitude should occur by chance in less than 5% of cases. In each case, the petitioner-retained evaluator assigned a higher score than the respondent-retained evaluator. A follow-up study that included 35 SVP cases revealed similar allegiance effects in PCI-R scoring (Murrie et al., 2009).

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No Improved Sex Offender Evaluation, Treatment, and Risk Management

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<u>Important additional note</u>: 65 Legislatures in eight states: Alaska, <u>Florida</u>, Louisiana, Michigan, Mississippi, <u>New York</u>, <u>Texas</u>, and Vermont introduced legislation proposing involuntary commitment schemes for sexual predators in 1995. [Only the three underlined states ultimately enacted such laws.]

* * * * * * * * * * *

<u>No</u> Valid DSM Paraphilia Residual Categories, Say Wollert & Francis

Richard Wollert & Allen Frances, "Use of the DSM-5 Paraphilias Taxonomy and Its Residual Categories in Sexually Violent Predator Evaluations," Chapter 42 in Douglas P. Boer (Ed.), *Vol. 2*, (Leam A. Craig & Martin Rettenberger, Eds. *The Wiley Handbook on the Theories, Assessment, and Treatment of Sexual Offending* , pp. 903-924 (John Wiley & Sons, Ltd., 2016).

<u>Text Excerpts</u>: [pp. 133-34:] "Each modern DSM before DSM-5 (APA, 2013) has included strong cautionary statements about the potential shortcomings of applying the DSM to legal taxonomies. The importance of using caution in forensic proceedings is reflected in the fact that DSM-III-R (APA, 1987), DSM-IV (APA, 1994), and DSM-IV-TR (APA, 2000) each included *two* such warnings. ...First, DSM is a psychiatric taxonomy, or system for the classification of mental disorders, for clinicians and researchers. Second, the DSM taxonomy is not isomorphic with any legislatively defined taxonomy for adjudication. Third, DSM is susceptible to misuse in forensic settings due to this 'disjunction' (First & Halon, 2008, p. 444).

...[No DSM from DSM-III-R forward] has differentiated between the DSM's applicability to the legal taxonomy for mental health civil commitments and its applicability to the legal taxonomy for SVP civil commitments. This is a serious oversight for two reasons. The first is that APA worked diligently with state legislatures to apply psychiatric symptomatology to achieve a workable and close alignment with the former taxonomy (Zander, 2005; Zonana, Bonnie, & Hoge, 2003). It explicitly rejected such an alignment with the SVP taxonomy. The APA Task Force on Dangerous Sex Offenders, for example, concluded that 'Sexual predator commitment laws represent a serious assault on the integrity of psychiatry, particularly with regard to defining mental illness and the clinical conditions for compulsory treatment' (APA, 1999, p. 173).

Another unambiguous example of organized medicine's rejection of the SVP taxonomy occurred in 2012, when the DSM-5 Paraphilias sub-workgroup proposed adding paraphilic coercive disorder (rape), hebephilia, and hypersexuality as specified paraphilias. These terms had frequently been construed as residual subclasses by State experts in SVP trials. APA strongly rejected all of the proposals on the basis of numerous objective criteria summarized by DSM-5 forensic reviewer Paul Appelbaum (2014, p. 137). The depth of negative opinion about these terms was further reflected in decisions to ban each of them from a DSM-5 Appendix A for disorders needing research (Frances, 2012).

The second reason why APA should differentiate between using DSM-5 in mental health versus SVP commitments is that the paraphilias taxonomy is too weak to sustain a valid extension to the SVP taxonomy.

Taxonomic Classification

[p. 905:] *Taxonomic classification* is the process by which a specified set of target objects from the natural world is divided into a pre-existing and non-arbitrary set of classes and subclasses on the basis of shared characteristics (Hempel, 1961; Millon, 1991). The framework is a *taxonomy*, or a *nosology* when mental disorders are the classes, and the set of names for the divisions in a taxonomy is a *nomenclature*. Each subclass, or *taxon*, is ideally defined by whatever conditions a relevant object must have to belong to that particular subclass.

A taxonomy therefore sorts out a specified set of objects into different taxa by applying a set of classificatory concepts *and* terms of definition to these objects. The concepts and terms that are used in a field of science are called its *vocabulary of science* (Hempel, 1961). *Diagnosis* is the process of identifying the state of a mental disorder concept in relation to a patient.

The value of a system for classifying human characteristics depends on how adequately it addresses two scientific challenges. The first is to formulate concepts that allow different observers to sort target objects reliably into distinct categories; vague criteria that elicit subjective judgments undermine reliability. Later, validity evidence needs to be collected indicating that the taxa are linked to other important concepts. Eventually, results derived from theory building rather than observation are expected.

The SVP Taxonomy

[p. 906:] In early 1990, the Washington State Legislature found 'a small but extremely dangerous group of sexually violent predators exists; and passed the first statute in the United States for the post-prison civil commitment of those meeting the legal criteria as SVPs (APA, 1999). According to Section 71.09.020 (1^0 of the Revised Code of Washington, an SVP is defined s 'any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence.'

Although the meaning of a personality

(Continued on page 4)

disorder was not codified when the law was passed, a mental abnormality, per Section 71.09.020 (8), has always been 'a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts'. At trials, the burden of proof is on the state to show that an accused SVP, or 'respondent', meets these criteria: Section 71.09.060 states that 'the court shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator'....

In *Kansas v. Crane* (2002), [the U.S. Supreme Court] considered another case where the Kansas Court reversed a trial court's SVP finding because the court did not make a finding on whether the defendant could 'control his dangerous behavior.' This time, the trial court's verdict was upheld on the logic that a 'lack-of-control determination' was necessary, but all that was required was a showing that the respondent has 'serious difficulty in controlling behavior' (p. 5) and met the other SVP criteria. The *Crane* court did not further clarify what it meant by serious difficulty. It instead decided that a 'contextual' and 'case-specific' approach should be followed because 'States retain considerable leeway in defining the mental abnormalities'....

This decision equated the concept of serious difficulty controlling behavior with a volitional impairment but did not define the meaning of either.

The Paraphilias Taxonomy, PNOS, and SVP Evaluations

[p 907:] ...Wheeler was reticent about using PNOS diagnoses. For example, he cautioned colleagues about overusing PNOS because this 'was not strictly adhering to the DSM-III-R' (p. 3).

[pp. 910-11:] Psychologist Dennis Doren (2002) attempted to effect an unauthorized alignment of the paraphilias taxonomy with the SVP taxonomy that state evaluators could use for diagnosing SVP respondents with PNOS. He presented a five-level argument. *Conceptually*, he cited a DSM-IV passage APA, 1994, pp. 522-23) to claim (Doren, 2002, p. 56) that a paraphilia was defined as (A) 'recurrent, intense sexually arousing fantasies, sexual urges, or behaviors generally involving(1) nonhuman objects; (2) the suffering or humiliation of oneself or one's partner, or (3) children or other nonconsenting persons that occur over a period of 6 months,' and (B) 'the behavior, sexual urges, or fantasies cause clinically significant distress or impairment in social, occupational, or other important areas of functioning'. *Interpretively*, he took the term 'nonconsenting' under item (A)_(3) to mean any non-consenting person who was sexually assaulted and the term 'children' to mean pubescent minors. *Definitionally*, he consistently equated the 'B' criterion of impairment with incarceration for being convicted of a sex crime. *Pragmatically*, he concluded that 'examiners ...need to rely on documentation of the subjects' behaviors alone' (p. 66) because examiners 'do not typically enjoy the benefit of a fully honest disclosure of the subject's fantasies and urges'. Finally, at a *social acceptance* level, he assured readers that a PNOS diagnosis was 'considered just as meaningful by the writers of the DSM-IV as ...any of the individually listed diagnoses' on the *condition* that it included a qualifier that produced a 'differentiation of this specific type of paraphilia from others listed as NOS' (p. 67).

...The addition of behavioral qualifiers per Doren's last proposition produced 'PNOS (nonconsent)' and 'PNOS (hebephilia)'.

Doren's (2002) book was widely circulated. Many state experts accepted his two labels. They also had the ring of science in court. In reality, however, Doren's attempt to extend the paraphilias taxonomy to the SVP taxonomy was a rogue action that did not have APA approval.

Observing that 'there has been a great deal of struggle concerning what the concept of affecting ..."volitional capacity" means,' Doren's book also acknowledged that 'describing the relevant impairment ,,,can be tricky' (p. 15). In a three-page section on this challenge (pp. 14-17), he proposed that evaluators might deal with it by claiming that evaluees who repeated criminal behaviors in spite of their consequences had volitional impairments (Zander, 2005).

[p. 912:] ...[D]ata on 1362 SVPs from five states (Jumper, Babula, and Casbon, 2012) show that 47.3% (n = 645) were assigned a PNOS diagnosis (Jumper et al., 2012). PNOS ranked alongside Pedophilia as the most widely assigned diagnosis in SVP evaluations by state-retained psychiatrists and psychologists.

This history points to three conclusions. First, decisions such as *Hendricks*, *Crane*, *Young*, and *Thorell* have lowered the legal bar for classifying offenders as SVPs. Second, the practice of assigning PNOS diagnoses to SVP respondents has exploded since the adoption of SVP laws. Third, SVP convictions can be obtained with controversial diagnoses that do not require additional proof of impairment.

DSM-5 and the Paraphilias Taxonomy

[p. 913:] ...[A]ll modern DSMs ...shared the problem of not providing a definition for impairment. DSM-5 addresses this oversight in two ways. One is that it discusses the impairment concept in a new section in its Introduction on the 'Criterion for Clinical Significance' (p. 21). The other is that it includes a number of psychosocial assessment instruments for measuring disability and impairment in a new 'Assessment Measures" section (pp. 733-748). These measures clarify that a DSM impairment is a difficulty in adjustive functioning that has been present within one or more of the past 4 weeks due to mental disorder.

The significance of this clarification is reinforced by wording in the PDC Introduction. The last sentence in the next to last paragraph (p. 686), for example, begins with the declaration that 'the distress and impairment stipulated in Criterion B are ... the ...*result of the paraphilia*' (our emphasis). It closes by pointing out that distress and impairment 'may be quantified with multipurpose measures of psychosocial functioning or quality of life'. The only measures meeting this description are in the DSM-5 Assessment Measures section and no other measures for this purpose are recommended. Evaluators who claim to use DSM-5 for diagnostic purposes therefore need to use the DSM-5 Assessment Measures section for the impairment assessment required for the assignment of a diagnosis.

This clarification also refutes Doren's *definitional assumption* that a restriction of liberty due to incarceration is a psychiatric impairment.

The PDC includes five other noteworthy features. One is that its first sentence states the term 'nonconsenting' applies only to 'frotteuristic disorder' and the term 'children' applies only to 'pedophilic disorder' (p. 685). This refutes Doren's (2002) *interpretive assumptions* about the meaning of 'nonconsent' and 'children.'

[p. 914:] The second noteworthy PDC change is that the *paraphilia* concept has been modified by introducing a *paraphilic disorder* concept. In previous DSMs, a paraphilia referred to an authorized diagnosis. A paraphilia is now defined as any sexual interest that is 'greater than or equal to normophilic sexual interests' (p. 685). To meet this A criterion, a person must have non-normophilic 'recurrent and intense arousal' that is 'manifested by fantasies, urges, or behavior' for a 6-month period.

A *paraphilic disorder*, in contrast, is 'a paraphilia that is currently causing distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to others' (pp. 685-686). These negative consequences satisfy the B criterion. Only those who meet both criteria A and B can be diagnosed with a paraphilic disorder.

Regarding the third, the 'Highlights of Changes from DSM-IV to DSM-5' section (p. 816) states that 'an overarching change for DSM-IV is the addition of *in remission*' as a course specifier 'for all the paraphilic disorders' (p. 816). The most general definition of *in remission*', included in all the criteria sets for disorders that often result in incarceration except Pedophilia, is that 'the individual has not acted on the urges (from the A criterion) with a nonconsenting person, and there has been no distress or impairment ...for at least 5 years while in an uncontrolled environment'. This change rules out the assignment of a paraphilic disorder to a person who has lived in the community for 5 years without further problems. The wording of the 'Highlights' section also indicates that the *remission* rule applies to Pedophilia. Its omission is thus an editorial error. A member of the DSM-5 Paraphilias sub-workgroup has verified this. (R. Krueger, personal communication, 10 January 2014).

Regarding the fourth, psychiatrists Michael First and Allen Frances explained (First & Frances, 2008) that an editorial mistake was made when – as DSM-IV Text Editor and Task Force Chair – they moved the behavioral 'has acted on urges' passage from the DSM-III-R B criterion into the A criterion. The B criterion consequently stated that 'the disturbance causes clinically significant distress or impairment... (p. 1240) while the A criterion stated the essential feature of a paraphilia was 'recurrent, intense sexually arousing fantasies, sexual urges, *or behaviors*' (our emphasis). Focusing on the proposed B criterion change, some religious groups voiced concern that DSM-IV did 'not recognize Pedophilia as a mental disorder unless it caused distress'. First reinstated the DSM-III-R B criterion in DSM-IV-TR to settle this dispute but overlooked deleting 'or behaviors' from the A criterion (First & Halon, 2008). An unintended consequence of this inclusionary mistake was that Doren and others used the DSM-IV-TR A criterion 'to justify making a paraphilia diagnosis based solely on a history of repeated acts of sexual violence' and then argued that their diagnosis met the 'statutory mandate for ...a "mental abnormality"' (Frances & First, 2011a, p. 1250).

Although First and Frances (2008) advised that it would be 'important to ...restore Criterion A to its DSM-III-R wording,' DSM-5 did not include this correction. The A criterion and the B criterion for all of the specified paraphilias in DSM-5 could therefore still be satisfied by behavior alone if the current presentation, reflection, and impairment assessment requirements had not been added to DSM-5.

[p. 917:] **Residual Diagnoses Are Associated with Great Diagnostic Certainty**

The LR for PNOS does not differ from 1.0. The level of certainty for making a diagnosis equals the disorder's prevalence when its LR is 1.0 (Wollert, 2007, 2011); Wollert & Waggoner, 2009). The prevalence rate of PNOS does not exceed 10% in studies that have controlled for the inflationary effects of SVP laws (Abel et al., 1988;er et al. 2010). The level of uncertainty for a PNOS diagnosis thus equals 90%. The PDC's insinuation that forensic evaluators are able to assign the residual diagnoses with high levels of diagnostic certainty (p. 685) is mathematically false.

The Residual Paraphilias Have Not Been Empirically Validated.

...No one, to our knowledge, has undertaken such a study of the residual paraphilias in general. Examining rapists and sexual sadists, psychologist Ray Knight (2010) and his colleagues were unable to differentiate a group who might meet the criteria for a PNOS non-consent taxon.

[p. 918:] Many psychiatrists and others have since suggested that the entire PDC should be eliminated from DSM because it either pathologizes cultural and preferential variations in sexual behavior among non-clinical populations or medicalizes criminal behavior (Green, 2002; Hinderliter, 2010; Keenan, 2013; Milner, Dopke, & Crouch, 20078; Moser & Kleinplatz, 2q005; Silverstein, 2009; Tallent, 1977).

It is also the case that empirical studies have not provided compelling evidence for

the validity of even the specified paraphilias.

[p. 919:] Evaluators who assign PNOS or equivalent labels to offendwers in the future ashould inform the court about the total inadequacy of Doren's (2002) assumptions and explain why they believe these diagnoses are authorized for use in SVP proceedings.

Conclusion

...[T]he value of the paraphilias taxonomy for sex offender civil commitment, in contrast, has been fiercely contested since the first law was adopted.

...Organized psychiatry has ...strongly opposed sex offender civil commitments for many years and is likely to continue to do so. There is a good chance that SVP laws will eventually come to be viewed as nothing more than an exercise of the state's police power. This could result in an incrased perception of the SVP laws as unconstitutional becase civil confinement or quarantinerequires nor t just daqngerousness, but dangerrtousness due to illness (Foucha v. Louisiana, 1992). Residual diagnoses that are used 'shoehorn' respondents inappropriately into the mental abnormaility criteriaon man=y be also rejected by the courts. In the firsttest of the admissibilkity of OSPD (non-consent) under the 'Frye' (Frye v. U.S., 1923) criteria, for example, a New York trial court ruled that such a diagnosis was inadmissible vecause the state was unable to identify a genrally accepted set of criteria that defined it and distinguished it from other psychiatric conditions (State of New York v. Jason C., 2016).

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Is All of Psychiatry Just a Junk Science?

Citizen's Commission on Human Rights (ca. 2023), www.cchr.org/bookstore.

Text Excerpts: "The largest health care suit in the United States involved the smallest health sector: psychiatry Paying out $370 million in settlements and criminal fines, National Medical Enterprises dumped its psychiatric division.

Psychiatry is bad business. Bad business for those funding it, but for its victims it is brutal, damaging and deadly.

More than $8 million was awarded to the surviving family of a man who, driven suicidal and homicidal by an antidepressant, shot and killed his wife, daughter and granddaughter.

...Winning a $10.6 million judgment in a 'repressed memory therapy' case, a leading personal injury attorney noted psychiatry's 'junk science, unreliable science,' is its undoing. The labeling of people with mental disorders that have never been scientifically proven, and then administering them dangerous therapies to treat them, means psychiatrists commit fraud and violate the informed consent rights of their patients on a daily basis.

Through rare historical footage and interviews with more than 160 doctors, attorneys, educators, survivors and experts on the mental health industry and its abuses, the riveting Psychiatry: An Industry of Death blazes the light of truth on psychiatry and lets you decide whether it was developed to help or simply to control and harm."

For further information, call 800.869.2247.

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No Science Behind Psychopath Diagnosis, Says Rosenberg-Larsen.

Andrew Cohen (Ed.), Marshall Project, "The problem with 'psychopath' diagnoses," info@themarshallproject.org (June 16, 2025)

"The problem with 'psychopath' diagnoses

The author of a new book says there is little science behind a diagnosis that pervades criminal justice systems across the U.S. Rasmus Rosenberg Larsen says that reliance on this personality disorder by police and prosecutors in criminal cases skews the system toward harsher punishments. At the heart of his argument is what he considers the flawed use of the so-called 'Psychopath Test', a checklist often used by courts to help determine when a person is entitled to parole or deserving of a capital sentence. *TMP*'s Maurice Chammah talked to Larsen and brings us this interview." [Source: *The Marshall Project*}

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Maurice Chammah, Marshall Project, "Have We Been Wrong about Psychopaths'?" In a new book, Rasmus Rosenberg Larsen questions how court as and prisons use psychopathy diagnoses – and whether they should at all. https://www.themarsjhallproject.org/2025/06/16/book-challemnges-ps.... (June 16, 2025)

"Have We Been Wrong about 'Psychopaths'?

One of the most enduring ideas about crime – an violence more broadly – is that a lot of it is committed by people we call 'psychopaths.' If you didn't grow up with procedurals like 'Law & Order: SVU' or movies about serial killers, then you may have seen the more recent cascade of viral explainers. To summarize the various popular and scientific definitions: People with psychopathy lack feelings of empathy and remorse, and can be charming, manipulative an impulsive as they seek to dominate and harm.

But there is shockingly little science behind the diagnosis of psychopathy, according to a new book by Rasmus Rosenberg Larsen, a philosophy and forensic science professor at the University of Toronto. In 'Psychopathy Unmasked: The Rise and Fall o a Dangerous Diagnosis,' Larsen argues that the widespread use of this personality disorder in legal setting has had massive and largely negative consequences in courts and prisons across the world.

Hard numbers are elusive, but Larsen estimates that across the world, hundreds of thousands of people suspected or convicted of crimes have been assessed with some version of the 'Psychopathy Checklist' since its publication in 1991. (It's popularly known as the 'Psychopath Test,' due to the bestselling book by journalist Jon Ronson.) Clinicians score people by reviewing records and interviewing them to assess a range of personality traits

(Continued on page 6)

('glibness,' 'lack of remorse') and behaviors ('pathological lying,' 'juvenile delinquency'). In the U.S., the checklist has informed whether some people in prison make parole and whether others face the death penalty.

But Larsen examined the research literature and found that people who scored high were not,. As many believe, entirely unable to exhibit empathy or benefit from treatment. He found that incarcerated people with high scores were not significantly more likely to commit more crimes after release. Larsen suggests the diagnosis itself may be little more than a way to make some sentences harsher while scaring and titillating the wider public.

Larsen's book will surely be greeted with skepticism by experts who believe they've seen psychopathy in the flesh. 'Every society has found the need to identify and deal with individuals who tend to be habitually violent, take advantage of others, and hoard resources,' says Henry Richards, a Seattle-based forensic psychologist who says ethical clinicians offer evidence behind their scores. Richards told me that Larsen glosses over a lot of nuance in his quest for a takedown, and that plenty of researchers already believe psychopathy can be treated. He says Larsen fails to provide a compelling alternate theory for why a small number of people do commit so many crimes.

But both sides agree, perhaps unsurprisingly, that pop culture can have a distorting effects on juries, judges and members of the public trying to make sense of these ideas. This conversation with Larsen was edited for length and clarity.

I think most people assume they know what a 'psychopath' is. You argue that it's a relatively new idea.

The ideas behind psychopathy – that some people lack empathy and were basically born criminals — emerged as far back as the 1700s, as a handful of doctors wondered just why seemingly normal people would do bad things. But the idea of a 'personality disorder' was controversial back then because it suggested the patient's *soul* was not intact somehow, that God's work was flawed.

The idea grew, however, and in 1941, psychiatrist Harvey M. Cleckley wrote '*The Mask of Sanity*' and popularized the idea of psychopathy. He faced a lot of skepticism, and he was frustrated, until his death in 1984, that most researchers were still just not buying it, or couldn't agree on how to define it. Cleckley was also behind the idea of multiple personalities, which was later questioned as well.

But then Dr. Robert Hare published the psychopathy checklist in 1991 and followed it with a bestselling book called 'Without Conscience.' He described psychopaths as 'social predators who charm, manipulate, and ruthlessly plow their way through life, leaving a broad trail of broken hearts, shattered expectations, and empty wallets.'

I don't want to reduce this story to individual people, but Hare was a great communicator and networker, able to get funding and inspire other researchers. His checklist helped give psychopathy an empirical basis – concrete qualities that can be measured by different researchers, who could look at the same person and often get the same results.

Crime went up in the 1980s, politicians wanted to get 'tough,' and courts and prison officials were hungry for answers about why crime happens. In the 1990s., there also was a rise in talk of 'juvenile superpredators,' which in some ways worked as a synonym for psychopaths of a younger age. Hare decided to let nonresearchers use the checklist.

Judges, parole boards and others in the justice system came to see people with the psychopathy diagnosis as chronic offenders, and could justify keeping them in prison for longer. They could withhold therapy because the emerging theory was that it's a waste of time.

Hare expressed some ambivalence about how his checklist was used. I do not think he had bad intentions,. But he released the tool, which meant he lost control of how it was used, as its use exploded.

You do not dwell on pop culture, but surely that is a big part of this story too, right?

There were movies that introduced some themes of psychopathy in the 1960s and 1970s, like 'A Clockwork Orange' and 'Badlands.' But in 1979, Ted Bundy goes on trial for killing two college students, and it's the first trial to ever be nationally televised. Bundy represents himself, and he's charming and good-looking. Psychiatrists are able to say: This man is living proof of this disorder we've been talking about.

Researchers are human beings. As the notion of psychopathy becomes more popular, it becomes easier to get funding and attention. You pick this topic, and you can control dinner party conversations for the next 10 years!

But people also selectively ignored the parts of the Ted Bundy story that did not quite fit the mold. There were signs he suffered from delusions and heard voices, along with sexual urges and alcohol and drug use. A lot of serial killers actually have mentioned different kinds of urges that they feel can be satisfied by killing. But that's not actually part of the psychopathic personality as researchers describe it.

A natural objection to your argument would be: Look at all of these serial killers. Surely something like psychopathy must explain their behavior.

The connection between serial killers and psychopathy was kind of tacked together once both got popular, but they are distinct. Researchers often claim that psychopathy affects about 1% of the general population, including lots of very successful people. That would be 4 million people in North America right now.

One study says there have been more than 3,600 serial killers since 1900. So if serial killers were a justification for the reality of psychopathy, you'd expect to see far more of them?

And it assumes most of them would meet the diagnosis. One study found many serial killers do not score especially high on the checklist.

People who committed violent crimes have had their brains scanned. People diagnosed with psychopathy have impairments in various parts of the brain, right?

Across more than a hundred studies of brain images, no consistent patterns emerged. Plus, these studies tend to be in prisons, where all sorts of other factors could explain the few patterns that have emerged: head trauma, substance abuse, the effects of solitary confinement. Unfortunately, in most cases, neuroimaging studies do not control properly for such variables, so the research is inconclusive.

There's also a popular idea that someone diagnosed with psychopathy cannot be treated, and that treatment might make them more dangerous. But I've seen a growing number of researchers say they can be treated. You looked at the backstory of this idea.

This idea stems from a 1992 study that looked at people in this one mental health treatment facility, in Canada, and found many committed new crimes after release faster and more violently, compared with a control group. But it later came out that the facility was not really treating these people. It was torturing them. Making them sit in a closet for days. Stripping them naked. Loading them up with hallucinogens. And that study is *still* being cited.

How much is the diagnosis being used across the criminal justice system today? And should we keep using it at all?

We should end the use of the 'psychopathy' diagnosis and the checklist because they are not based on sound evidence and can inflame biases. There are other ways to assess people's risk levels and potential for rehabilitation that are more effective. Many psychiatrists are already using them in courts and prisons. We don't have a good sense of how often the checklist or diagnosis still comes up, but I have noticed, anecdotally, that psychopathy is not the hot topic it once was at academic conferences. Still, I worry that even if the diagnosis fades, something else will replace it: We are always looking for simple explanations for why people commit violence, but the reasons why are almost always pretty complex.

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No Lack of Volitional Control Needed per State Practices, Despite *Hendricks*

David L. Faigman, Edward K. Cheng, Erin E. Murphy, Joseph Sanders & Christopher Slobogin, §10.7. "Constitutional Issues Surrounding Commitment of 'Sexual Predators' – *Kansas v. Hendricks* – Substantive Due Process – The 'Lack of Volitional Control' Test after *Hendricks*: *Kansas v. Crane* – State Practices," in 2 *Mod. Sci. Evidence: The Law and Science of Expert Testimony* (2024-25 Edition, December 2024 Update)

"Despite the *Crane* Court's plain statement that commitment under *Hendricks* requires 'proof of serious difficulty in controlling behavior,'[1] many state courts have largely ignored this injunction.[2] Indeed, many state courts have largely interpreted the constitutional requirement to be closer to Scalia's dissenting view than that of the Court's. Specifically, courts have ruled that juries need not be instructed separately regarding lack of volitional control. To date, the Supreme Court has made no attempt to correct this apparently flagrant disregard of precedent.

The Florida Supreme Court, for example, found that although Florida law 'does not state the standard in terms of whether the respondent has serious difficulty controlling behavior, it accomplishes the same result.'[3] The court explained as follows:

> The respondent must suffer from a 'mental abnormality,' which predisposes him to commit sexually violent offenses. Moreover, the respondent must be 'likely to engage in acts of sexual violence,' which means that 'the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.' One who fits such a description necessarily [wrong!] will have difficulty controlling his behavior. The terms in the statute, when taken together (if not independently), comply with the requirements of Crane.[4]

The Florida court's interpretation of *Crane* is tenuous at best. First of all, Crane requires a finding of '*serious* difficulty in controlling behavior,' contrary to the Florida court's statement of the law. Moreover, the terms of the Florida statute are the very ones that created ambiguity following *Hendricks*. The court's argument that these provisions obviously imply what *Crane* requires is dubious. Indeed, this argument is precisely the one Justice Scalia made in dissent in *Crane*. In effect, Florida has replaced the majority opinion in *Crane* with Scalia's dissent.[5] Florida, however, has considerable company in this revisionist history.[6]

In *Rose v. Mayberg*,[7] for instance, the Ninth Circuit [in a case arising from California] found no error when 'the jury instructions required the jury to consider whether [the defendant] suffered from a "diagnosed mental disorder that makes him a danger to the health and safety of others in that it is likely that he will engage in sexually violent predatory criminal behavior."'[8] According to the court, although the jury thus did not conclude that the defendant 'was completely unable to control his behavior, it did find that [he] suffered from a "diagnosed mental disorder," which "affect[ed] the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting a menace to the health and safety of others."'[9] In effect, therefore, the Ninth Circuit collapsed the two tiered requirement of *Crane* – i.e., (1) mental abnormality manifesting 'serious difficulty in controlling behavior,' and (2) likelihood of future violence – into one finding: '"some" showing of an abnormality that makes it "difficult, if not impossible, for the dangerous person to control his dangerous behavior."'[10] As a factual matter, of course, lack of control (i.e., mental abnormality) and likelihood of future violence are separate

(Continued on page 7)

concepts that present very different empirical, not to mention epistemological issues. The danger that lies in collapsing them is that fact-finders will fail to evaluate the validity of each premise separately, as the majority in *Crane* contemplated. The original point of separating out 'lack of control' in the first place was that it would 'distinguish the dangerous sexual offender whose serious mental illness, abnormality, or disorder subjects him to civil commitment from the dangerous but typical recidivist convicted in an ordinary criminal case.'[11] Collapsing the two *Crane* prongs creates the danger that all dangerous recidivists will be deemed lacking control – after all, if they could control themselves why haven't they? – and thus the mental abnormality prong is doing no work.

[To same effect, see *McGee v. Bartow*[13]. But see contra: Thomas v. State[18].]

...At bottom, *Hendricks* stands for the proposition that the state must establish two facts in order to meet the constitutional minimum for civil commitment of sexual predators. The state must prove that the defendant is mentally abnormal (defined by the court as 'lack of volitional control'), and likely to be violent. Based on the case law, there is considerable reason to wonder whether the first prong is being employed as the Crane Court mandated. As the next section discusses, however, there is also considerable reason to wonder about the operational meaning of 'lack of volitional control.' Specifically, as an empirical or evidentiary matter, how is the trier of fact to know whether the defendant cannot control himself or has repeatedly decided not to control himself?

[See Note 20 *infra* re *Matter of McQuillen* showing the circular logic used by courts to evade the need for evidence of lack of volitional control, instead resting merely on statutory definitions not based on science.]

Notes:

1 *Kansas v. Crane*, 534 U.S. 407, 122 S. Ct. 867, 870, 151 L. Ed. 2d 856 (2002).

2 See generally *Janine Pierson*, "Construing *Crane*: Examining How State Courts Have Applied Its Lack-of-Control Standard," 160 *U. Pa. L. Rev.* 1527 (2012) ("[S]tates have developed numerous approaches, which can be broken down into three groups: First, three states have adopted an implicit lack-of-control approach: courts in these jurisdictions do not actually instruct the jury on the issue of control, but rather subscribe to the idea that proof of a mental abnormality predisposing one to engage in acts of sexual violence, combined with a showing of future dangerousness, necessarily entails proof that the defendant seriously lacks control over his behavior. Second, seven states have adopted a nested lack-of-control approach, in which the court reads the statutory requirement of a mental abnormality or illness as requiring that the abnormality or illness cause the defendant to have serious difficulty controlling his behavior. Finally, eight states have adopted a requirement that the government must prove, separate from the other elements required for civil commitment, that the defendant has serious difficulty controlling his behavior.') (citations omitted); see also *Holly A. Miller, et al.*, "Sexually Violent Predator Evaluations : Empirical Evidence, Strategies for Professionals and Research Directions," 29 *Law and Human Behavior* 29, 46 (2005) ("In addition to the lack of agreed upon methodology to assess 'inability to control,' at present there is no consistently utilized definition of just what is being assessed.").

3 *State v. White*, 891 So.2d 502, 509 (Fla. 2004).

4 *State v. White*, 891 So.2d 502, 509-10 (Fla. 2004).

5 Cf. *In re Bohannon*, 388 S.W.3d 296, 303 (Tex. 2012) ("We conclude that whether a person 'suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence is a single, unified issue.") with *In re Detention of Stenzel*, 827 N.W.2d 690, 701 (Iowa 2013) ("Here the jury needed to find beyond a reasonable doubt that [the defendant] had a mental abnormality causing him a serious difficulty controlling his behavior. It also needed to find beyond a reasonable doubt that [the defendant] was more likely than not to commit a sexually violent offense in the future, absent confinement.") (citations omitted).

6 As to the claimed inherence of lack of control within an SOCC statute's requirements, see: *People v. Williams*, 31 Cal. 4th. 757, 74 P.3d 779, 792 (20023) and *In re Treatment and Care of Luckabaugh*, 568 S.E.2d 338, 349 (S.C. 2002) (both pro that view); *contra: In re Detention of Thorell*, 149 Wash.2d 724, 72 P.3d 708 (2003) ("Because the standard 'to commit' instruction requires the fact finder to find a link between a mental abnormality and the likelihood of future acts of sexual violence if not confined in a secure facility, the instruction requires a fact finder to determine the person seriously lacks control of sexually violent behavior.'); see also these: *In re Detention of Barnes*, 658 N.W. 2d 98 (Iowa 2003); *In re Civil Commitment of Ramey*, 648 N.W.2d 260 (Minn. Ct. App. 2002); *In re Commitment of W.Z.*, 801 A.2d 205 (N.J. 2002); see generally *Pfaffenroth*, "The Need for Coherence: States' Civil Commitment of Sex Offenders in the Wake of *Kansas v. Crane*," 55 *Stan. L. Rev.* 2229, 2248 (2003) (maintaining that *Crane* requires a separate lack of control finding). See also: In re Johnson, 2016 ND 29, 876 N.W.2d 25, 29 (N.D. 2016) (Court held that district court erred in not making specific findings regarding whether the defendant "has serious difficulty controlling [his] behavior making [him] a danger to others.")

7 *Rose v. Mayberg*, 454 F.3d 958, 963 (9th Cir. 2006).

8 *Rose v. Mayberg, supra.*

9 *Rose v. Mayberg, supra.*

10 *Rose v. Mayberg, supra.*

11 *Crane*, 534 U.S. at 413.

13 *McGee v. Bartow*, 593 F.3d 556 (7th Cir. 2010). It is well worth comparing the *McGee* court's analysis of what elements muts be proved to that of the Kansas Supreme Court, with the latter seemingly more faithful to the holding in *Crane*. In *In re Williams*, 253 P.3d 327 (Kan. 2011),the court explained that four elements must be proven [beyond a reasonable doubt] to establish that an individual is a sexually violent predator:

(1) the individual has been convicted of or charged with a sexually violent offense; (2) the individual suffers from a mental abnormality or personality disorder; (3) the individual is likely to commit repeat acts of sexual violence because of a mental abnormality or personality disorder, and 4) the individual has serious difficulty controlling his or her dangerous behavior. (2011 WL 1522363, at *7).

18 *Thomas v. State*, 74 S.W.3d 789 (Mo. 2002).

20 "The Kansas Supreme Court, in *Matter of Quillen*, 481 P.3d 791 (Kan. 2021), provided the following analysis:

'...[B]oth Hendricks and Crane declined to provide a precise standard for this lack-of-control determination, noting that the proof needed to show serious difficulty in controlling behavior would vary depending on the circumstances of each case....'

[But this means that diagnosis of a mental disorder alone cannot satisfy *Crane*'s requirement of specific "circumstances." *Quillen* implies that merely enacting an SOCC statute that declares legislatively that having a given diagnosis inherently means that volitional control is lacking or is subject to serious difficulty of maintaining. Enacting such categorical factual determinations of supposed universal applicability deprives one subject to that statute to deprivation of substantive and procedural due process.]

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Sex Offenders: Enraging Image vs. Reality

Dale C. Spencer & Rosemary Ricciardelli, "Assembling the Chimeric Sex Offender," 23 (3) *New Crim. L. Rev* 366-387 (Summer 2020).

[p. 374:] "The Adam Walsh Child Protection and Safety Act, a federal statute also known as the Sex Offender Registration and Notification Act, was signed in 2006. The legislation is named after a 7-year-old boy, Adam Walsh, who was abducted, raped, and murdered by Otis Toole in Florida in 1981 (Almanzar, 2008). The perpetrator was later found to be a serial killer with a history of kidnapping and murder – i.e., a chronic offender. In essence, the circumstances surrounding the Walsh case reinforced the idea of the sex offender registration process, the logic being that if the serial killer who also committed sex offenses was registered, the perpetrator's actions would be linked, and perhaps they would be caught earlier by police, particularly if the registrants are mandated to check in with police at varying intervals. The legislation divides sex offenders into three tiers, the third including those convicted of the most severe offenses who must then update their whereabouts with police every three months and have lifetime registration requirements. In tier two, updates are every six months for 25 years, and in tier one updates are annually with 15 years of registration (SOIRA, 2020).[4]

[pp. 374-75:} However, sex offender registration and community notification laws have been found to have little effectiveness in reducing sexual offending (Sandler, Freeman, & Socia, 2008). Specifically, in a time series analysis of sexual offense arrest rates to examine the difference before and after the enactment of New York State's Sex Offender Registration Act (SORA, 1995), Sandler and colleagues (2008) found no support for the 'effectiveness of registration and community notification laws in reducing sexual offending by: (a) rapists, (b) child molesters, (c) sexual recidivists, or (d) first time sex offenders' (p. 284). They conclude that because over 95 percent of sex offenses were committed by first time offenders in their study, registration and notification laws may have little effectiveness in reducing sexual offenses (i.e., the laws fail to meaningfully target repeat offenders; see also Adkins, Huff, Stageberg, Prell, & Musel, 2000; Vasquez, Maddan, & Walker, 2008; Zevitz, 2006). Although the effectiveness of registration and community notification does not impact the ensemble that is the chimeric sex offender, it is the process of registration and community notification that informs the sex offender identity – constituting an assemblage with the greater ensemble. The existence of said laws remove any nuance or specificity in interpretations of sex offenders and instead ensures that the sex offenders are understood as a homogenous monstrous entity – that of a population who has committed the most hideous of sex crimes, like those of Otis Toole.

The creation of the registry was not solely a phenomenon in the U.S. In 2004, the Sex Offender Information Registration Act was assented into law in Canada (SOIRA, 2020). The law's purpose remains to 'help police services prevent and investigate crimes of a sexual nature by requiring the registration of certain information relating to the sex offender' (§2(1)). Later, the government of Canada, in their commitment to 'protecting Canadians and keeping our streets and communities safe,' brought forward additional legislation to 'better protect children from sexual predators at home and abroad.' The Tougher Penalties for Child Predators Act, assented in 2015, demonstrates the distrust and hatred society directs toward sex offenders. The law ensured sentence lengths increased for those with sex-related conviction, intensified consequences for violating conditions of release, ensured that risk to the community of reoffending is considered at sentencing, increased information provided to the registry, and created 'a new national, publicly accessible database of high-risk child sex offenders who have been the subject of a public notification in a provincial/territorial jurisdiction' (Government of Canada,. 2015).[5]

[p. 376:] Community notification laws and

the sex offender registry are less motivated by public safety than politics and are highly shaped by the media (Sandler et al., 2008) Although having little deterrence effect, community notification and the registry coalesce as a *ban assemblage* that works to expel bodies from communities. The media reporting and public availability (on the Internet) of those named on the registry (particularly in the United States) manifests a constellation where those bodies labeled as sex offenders are pushed to the margins, often finding it difficult, if not impossible, to secure housing)Spencer, 2009). Indeed, the consequences of the registry are manifold. Sex offenders experience job threats and loss, harassment, and property damage, and their household members suffer (Levenson, D'Amora, and Hern, 2007; Tewksbury, 2005; Tewksbury & Lees, 2006). The ban assemblage, which is part of the larger chimeric sex offender assemblage, is unchallenged as its face is arranged such that the face is often laced with tenets of stories of historical occurrences, thee piecing together of the experience of Kanka, Walsh, and Wetterling – three child victims – into the chimeric sex offender assemblage. Such a ban assemblage is animated by particular affects – disgust, shame, and fear – that states use to weaponize and fold the general population into taking part in the regulatory elements of the chimeric sex offender assemblage.....

[p. 380:] **V. The Dire Implications of the Chimeric Sex Offender Assemblage, or, What the Assemblage Does**

Perhaps, given the chimeric sex offender assemblage, it is then unsurprising that acts of vigilante justice have been committed against bodies signified as sex offenders, although rare, do occur in society. For instance, in 2003, Lawrence Trant, Jr., age 56, attempted to murder eight sex offenders located through a registry in Concord New Hampshire. He stabbed one registrant to death, Lawrence Sheridan, age 34, and set fire to two buildings, a boardinghouse and an apartment building, where other registered sex offenders lived. Hunter (2014) reports that 13 people lived in the boardinghouse, six of which were registered sex offenders; the apartment, however, only housed one registrant, Peter Bruce. Only Sheridan was harmed,. The men were targeted for their crimes, based only on their place in the registry, without any concern about the details of the cases. The reasoning for the attempted murders was reported simply as Trant's growing hatred for sex offenders while in prison. (Hunter, 2014).

In April of 2006, Stephen Marshall, a 20-year-old Canadian, was branded a vigilante after murdering two persons on the Maine sex offender registry on Easter Sunday. His two victims shows both the scope of difference in who is a registered sex offender, and how the registration itself creates a stigma that ignores the nuances of the crimes. Joseph Gray, age 57, had a 1992 conviction of raping a 14-year-old female along with convictions of indecent assault and battery (Ricciardelli & Spencer, 2017; Zoorob, 2012). Gray's convictions are rather unambiguous, his actions are in line with the chimeric sex offender assemblage and leave him most identifiable by his grave action and moral wrongdoing: he victimized the innocent by sexually violating a youth. The challenge, however, arises when we turn our attention to Marshall's other victim, who met the same fate as Gray's victim. William Elliott, age 24, earned his place on the Maine Sex Offender Registry by, at 19 years-old, having sex with his girlfriend at the time. His girlfriend was just shy of her 16th birthday, 16 years being the age of consent in Maine. His victim's father, rather unhappy about the situation , pressed charges, which resulted in Elliott serving four months in prison and a ten-year position on the registry (Zoorob, 2012). Marshall turned his gun on himself before being apprehended by police officers in Boston (Armstrong, 2006). Marshall's victims arte at opposite ends of the continuum of what constitutes a sex offender, yet reveal with clarity that the crime behind the label has no impact on the identity the label imposes in society and in prison.

[p. 381:] Such acts of vigilante 'justice' are also pronounced in prisons. Most recently, for example, Canadian prisoner Jonathan Watson confessed to 'beating two convicted child molesters to death with a waking cane while inside prison,' which he called doing 'everybody a favour,' and is serving a life sentence (Patrick, 2020). Watson, age 41, was serving life with a first degree murder charge, when he murdered David Bobb, age 48, and Graham De Luis-Conti, age 62, both of whom were convicted for the aggravated sexual assault of a child under age 14.

Conclusion: The Virtual and the Actual

[p. 382:] Due to the positioning that the chimeric sex offender holds, a false assumption remains in society , specifically that 'strangers commit most sexual offenses' (Sandler et al., 2008, p. 208). The chimeric sex offender assemblage continuously operates at the virtual level – that sex offenders are strangers in the community and not of the community -- and thereby silences the actualities of the sex offender. In the realm of the actual, sex offenses are most likely to be committed by family members, intimate partners, or acquaintances – not strangers. The tension that arises is, simply put, how can the chimeric sex offender also be someone with whom one has close acquaintance or familiar ties – someone to whom another is related? For instance, in the United States, Snyder (2000) conducted a Bureau of Justice study, funding that a staggering 93 percent of victims of child sexual abuse knew their offender. ...The actuality that such offenders are often known to their victims is a perplexing reality given that the person – the sex offender – often transitions in identity from family member or friend to that of the sex offender, with all the signifiers virtually associated with the chimeric sex offender assemblage. Such an assemblage overcodes that such offenders are strangers, roaming and causing harm, not someone who also provides some semblance of care (i.e., a family member) or intimacy (i.e., a partner)or someone who is familiar, even considered kind.

[pp. 382-83:] The chimeric sex offender assemblage is articulated in community notification and sex offender registration, which are less motivated by public safety than politics (Sandler et al. 2008). Such laws are constitutive of the 'stranger danger' element of the chimeric sex offender assemblage, and operate at the virtual level that, in turn, expresses an inherent risk posed by all strangers in society (Zgoba, 2004). Such laws in actuality cause more harms than benefit, given that they hinder democratic freedoms and rehabilitation by isolated persons convicted of sex offenses. Pratt (2000) argues that public notification and other such strategies in actuality 'humiliate, degrade or brutalize the offender before the public at large' (p. 418), which is part of the affective dimension of the chimeric sex offender assemblage. Further, Levenson, Brannon, Fortney, & Baker (2007) found that, via an empirical study of 193surveyed citizens in Florida, notification is not a successful strategy for reaching the target audiences; the laws did not receive the intended outcomes of increasing the safety of children, although their respondents support the policy and felt safer because of notifications, agreeing that community residents should be informed about any sex offenders living in their neighborhoods (see also Anderson & Sample, 2008). The consequences of the registry for those on it, however, is grave. In actuality, 'Megan's law is experienced by sex offenders as unfair and that it disrupts ties to the community' (Levenson, D'Amora, and Hearn, 2007, p, 600) and as indicated above, contributes to the vigilante 'justice' sex offenders experience in their communities."

Footnotes:

4. Moreover, the legislation denies sex offenders, as well as others with a criminal conviction, entry into Canada without obtaining the proper permit (see Section 36 of the Immigration and Refugee Protection act, S.C. 2001).

5. It should be noted that, in Canada, unlike the United States, only the police can access the registry. Said another way, the public cannot access information about who is on the registry or where they reside; however, those on the registry are not protected from community notification or media scrutiny.

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B4QR Review: Humanizing Pedophilia as Stigma Reduction

(Continued on page 9)

B4QR Review: *Harper, C., Lievesley,R., Blagden, N., & Hocken, K.* "Humanizing Pedophilia as Stigma Reduction: A Large-Scale Intervention Study," (*Journal of Sexual Aggression (forthcoming)* [2021]), 1(3) *B4U-ACT Quarterly Review* 5-8 (Summer 2021).

Review Excerpts: [p. 5:] "Three basic methods of reducing stigma against any 'outgroup' are first discussed: (1) being given direct or indirect contact with the stigmatized person; 2) being given helpful information about the psychological and social situation of the stigmatized; and 3) challenging the very basis for the stigmatization (by stressing the overlap of the outgroup with the general population, or by pointing out the great diversity within the outgroup). For this study, the authors opted for using the first and the second methods with different test groups and comparing the results.

Whereas previous studies on reducing stigma against PWPIs have been conducted with psychology students and professional clinicians, this study explores the possibility of effecting a change of attitudes in the general public. For that purpose. The authors used a crowdsourcing platform to recruit a large cross-section of the public. After various winnowing processes, they ended up with 539 participants, all of whom were British citizens over age 18, evenly divided between male and female. Demographic data was collected, which allowed the authors to divide the participants into two relatively similar groups, each of which was tested with one of the two methods for stigma reduction.

[p. 6:] All of the testing of attitudes was done through online questionnaires. Participants were first given an initial, baseline survey that measured participant attitudes using two instruments: the 30-item Stigma and Punitive Attitudes Scale (SPS), which was developed specifically to examine facets of stigmatization toward MAPs, and the 21-item Attitude to Sex Offenders Scale (ATS-21), use of which was justified on the grounds that 'people typically report completing the ATS-21 with 'pedophiles' or 'rapists' in mind.'

After finishing the test, one-half of the participants were then shown one five-minute video, and the other half were shown a different one. The first video, aiming at 'narrative humanization,' was taken from the UK television documentary 'The Paedophile Next Door.' It presents a man who, 'self-identifying as having non-exclusive pedophilic interest,' provides 'information about his "coming out" as pedophilic, the discovery of his own sexual orientation, and the lack of services available to people like him who would like further support to remain offense free.' The second video took an 'informational' approach and featured psychologist James Cantor speaking about the neurobiological basis of pedophilia.

After viewing the videos, the participants were asked to respond again to the Stigma and Punitive Attitudes Scale (SPS), to see if there had been any change in their attitudes. The ATS was not administered again since its scores were 'reported to be stable over time and resistant to individual experimental influence.' It was found that both video presentations had in general brought about more positive attitudes in the participants. Interested in seeing whether the change would last., the authors administered the SPS test again to the same participants four months later. As a result, they ended up with three measurements for each participant: T1 (baseline, pre-video), T2 (right after the video) and T3 (four months after the video).

The SPS measures people's attitudes regarding MAPs along four scales: perception of dangerousness ('Pedophiles are predatory'), perception of deviance ('Pedophiles are sick'), perception of intention (Pedophilia is something you choose'), and need for punitive measures ('Pedophiles should be pre-emptively detained'). The scales range from 1 (most positive attitude) to 7 (most negative), with 4 being the midpoint; thus, a higher score indicates a more negative attitude.

[pp. 6-7]: The figures comparing the three different times of measures are presented in a series of charts, which distinguish the scores of the participants according to whether they saw the narrative video (the UK documentary) or the informational one (James Cantor). The results can be summarized as follows:

Perception of Dangerousness	T1	T2	T3
Narrative video	5.37	4.63	5.11
Informational video	5.43	4.74	5.18

Perception of Deviousness	T1	T2	T3
Narrative video	5.11	4.92	5.00
Informational video	5.07	5.17	5.03

Perception of Intentionality	T1	T2	T3
Narrative video	4.09	3.70	3.78
Informational video	4.05	3.44	3.65

Need for Punitive Measures	T1	T2	T3
Narrative video	4.31	3.87	4.09
Informational video	4.27	3.84	4.04

[pp. 7-8:] The authors criticize the informational method because it focuses excessively on the biological and medical aspects of the attraction, thus obscuring the rich human dimensions of the person under study and increasing the perception of 'deviance.' They conclude that 'this medicalized view has the potential to reduce an attitude in lay observers that people with pedophilic sexual interests are in some way 'doomed to deviance' by unchosen and unchangeable sexual interests.' We are left with the question, though, as to whether a different type of informational video, one less medicalized and more person-oriented, would have produced very different results.

[p. 8:] ...The [authors] propose that one means of reducing stigma in the general public might be to make MAPs regular characters in TV shows, in the same way that LGBT persons have become visible in the media in recent decades.

The improvements in attitudes were small but measurable, but the intervention itself, a 5-minute video, was also small. This study gives evidence that more intense efforts along these lines would be to the benefit of MAPs and society as a whole."

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Unfinished Sentences

Gary W. Hardy. Ph.D., "Unfinished Sentences: A Call for Human Dignity, Redemption, and Reform," 34(2) *CURE-SORT News* pp. 3-4 (2nd Quarter 2025).

Text:

"1. Why I'm Writing

This is not easy to write. It won't be easy to read. But it matters . Because people matter. I am one of those people – flawed, forgiven, and still becoming. I am also one of thousands whose past convictions have marked us not just with criminal records, but with a lifetime of rejection, exile, and erasure. This is not a plea for pity or a dodge of responsibility. It is a call – to honesty, to mercy, to something better. Because no one should have to prove their right to exist. Not after they've paid the debt. Not forever.

2. A System That Never Ends

In America, certain sentences don't end when the time is served. For some of us, release from prison is just the beginning of another kind of punishment – one that is indefinite, relentless, and socially sanctioned. Registries. Public databases. Residency bans. Permanent online stigmatization. The promise of justice gives way to the machinery of perpetual punishment. We say our system is built on accountability. But what we've built is a system where shame replaces safety and banishment masquerades as protection. No other category of citizen is treated this way. No other sentence is designed to follow someone to their grave.

3. Who Gets Forgotten

Even in reform circles, some of us are left out of the conversation. We are the untouchables – the ones whose crimes make even seasoned advocates hesitate. Especially those whose offenses involve child sexual abuse material. We are talked about, rarely talked to We are legislated against, not listened to. We are written off, even by communities who preach redemption. But ignoring us doesn't make anyone safer. It only drives us further into isolation, despair, and invisibility.

4. What No One Sees

I've seen a man go ten years in prison without a single visitor. I've seen a mother bring her son a bottle of water to the fence because the guards wouldn't give him any. I've walked with men who've served their time but can't rent anapartment, get a job, or even sit in church without fear. You don't hear their voices because they've been told to stay silent. You don't see their struggles because shame keeps them in the shadows. But they are real. We are real. And we are more than the worst thing we've ever done.

5. What Grace Requires

I believe in grace – not as an idea, but as a force. Grace is the power and the ability given to us by God to be who He calls yus to be, to do what He calls us to do, according to His purpose and for His glory. Grace does not excuse harm. It empowers change. It insists on truth. But it never lets the past be the final word. We need a justice system – and a society – that understands this. One that doesn't trade accountability for vengeance or safety for exclusion.

6. The Need for Reform

The system we've built is failing us all. Here's what needs to change:

- Registries don't work. Decades of research show they don't reduce recidivism or increase safety.
- Collateral consequences increase risk. When people can't work, live, or worship freely, they are more likely to despair, isolate, and relapse.
- Treatment is unregulated. Programs vary wildly in quality, oversight, and duration, often driven by fear or politics rather than evidence.
- Reintegration is blocked. There are almost no pathways for those with past offenses to fully rejoin society, no matter how transformed their lives may be.
- Justice must protect, yes. But it must also restore.

7. The Invitation

This is a call to the Church. To the public. To policymakers. To see beyond the label. To believe in something more than fear. I'm not asking for leniency. I'm asking for possibility. The possibility that someone who did real harm can do real good. That someone discarded can be reclaimed. That someone called 'irredeemable' can be redeemed. We don't need easier lives. We need deeper mercy. We need courage – not just to punish, but to restore.

8. A Closing Note

I wrote this not to be heard, but to be joined. If you're still reading, maybe you're already part of the story. There's room at the table for truth and accountability. There's room at the table boundaries and compassion. There's room – if we choose to make it – for healing that is real, redemption that is visible, and grace that leaves no one behind. Let's start there. Let's keep going."

[Editor's Note: Dr. Hardy's book, *Silence in the Face of Injustice: A Vision of Mercy and Hope* is available through online booksellers. The author can be contacted at garywhardyphd@gmail.com.]

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In Remembrance Now

by Tim Crosby

Said To Be 110 Men Dead,
In Remembrance Now,
Most Likely Forgotten Men
Of Past Long Years.

Hundreds Of Men In Cells,
To Live Free Again Or Die.
Citizens Again, They Are Told.
Having Served Sentences.
In Cells,
Told, With Limited Rights.

Efficiencies For
Creating More
Dead Men.
In Remembrance Now.
Government-Types
Of Creative Exploitation.

What Lives Are
And Could Be For
These Men.
Of Their Loving Families.
If Only
Their Earned Releases
Had Happened?

With Authenticities Showing
Lack Of Real
Reintegration-Type
Opportunities.
Trickery Lies.

Reality:
Of Cells.
Of Men's Deaths.
Of Cheap Cardboard Urns.
Of Cremation Business.
It Does Challenge
The Credibility Of
Our Justice Systems.

Tendrils Wrapping Around Years
Taking Men
From Their Family, Friends.
Lost Lives For Graft.

Whether Greed
Or Animosities,
The United States
Has Sacrificed
Its Justice Systems.

Labeled
With Pretend Disorders.
Assigned
Pretend Therapists.
Pretend-Type Facilities.

Civil Rights Dances.
Vulnerable Exploited Persons.
High-Level-Designed
Double Crosses.
What About Section 241
Of Title 18?

Causing Disingenuous Traumas.
Taking Men's Lives.
Designed Lucrative
Charade-Systems
Removing Honesty
From Our Justice Systems.

What Then Are
Communities?
Run By Gangs
Of Thugs, Criminals?
On Such Larger-Level Scales.

Governmental Agencies
With Systems Of
Troubling Dysfunctions.
Money Changing Many Hands.
Laws Designed To Allow
Abusive Exploitation Of
Vulnerable-Type Men.

Intentional Malicious Conduct.
Many Heinous Ripples
Being Done.
Judges' Dishonor. $

Justice Systems
With Maneuvering Betrayals
To Get And Keep
Persons In
Exploitable Confinements.

Anger And Disdain From
Blood Money
Being Made By Many.
An Industry Of
Fake Therapy Facilities. $

With Needs For
Vision To See.
Faith To Believe.
Courage To Do.
Hope Is Strength,
That Some Have.

Different Types Of Losses
For These Men,
Due To Others' Schemes.
All Does Affect
Many Lives.

Unknown Is Unseen Ripples
That Are Created.
What Could Have Been
If Ripple-Type Losses
Had Not Been Allowed
To Happen?

For These Men's Families, Friends
Were
Needlessly Separated
As Well.
The Broken-Apart Type
Separation Ripples.

Blood Money Payroll.
China Reeducation Camps.
Third World Countries.
$ Research Grants $.

Harmful Boondoggle-Designed
Industry.
Big Money.
Human-Type Of
Trafficking.
Releases Not "Realism."

State And Federal Money.
Levels Of Deceit Trickery,
Designed Pain,
Suffering From
Scheme Reasons.

Losses Have Generated
Into These Men's Lives.
Ripples.

Different Ripples Have Created
Many Other Life Ripples.
Will Be Continuing
Into Others' Lives.

Given Lie-Type Excuses
About Public Safety.
Misnomer Ripples
That Create
Other Ripples.

Said To Be 110 Men Dead,
Taken From Others.
In Remembrance Now.
Who Really Looks
True Criminals
Needing Cells?
Money Corrupts.

Men Are Being Kept In Cells
Waiting To Live Free
Again Or Die.
With Potential Lives
That Are Unknown.

Was Separation-Ripple Needed?
Can Anyone
Answer That Question?
Jobs Are Votes Though.
Why Are Schemed-Out Ripples
Government Created?

Needing-Treatment:
Big-Trickery Lie.
Why Are Ripples
Still Happening,
Since Scheme-Out Truth
Is Known?
Old Men in Cells.

Ripples In
These Men's Lives,
Their Families.
Ripples In Time
For Many.

Said To Be 110 Men Dead.
Said To Be 110 Men Dead,
In Remembrance Now.
There Probably
Are Others.

Men Forgotten
In Past Long Years.
We
Must Not Forget Them.

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Lest We Forget.

the Legal Pad

Editor: Cyrus P. Gladden II

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