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Coming This Year:

- ✓ The Routine & Nonroutine of the Static-99R: The Good, the Bad, & the Very Ugly Got Much Worse in 2015.
- ✓ The Math behind the MnSOST-3.1 Pushed Pencil-Whipping into a Whole New Dimension
- ✓ Far More from the Gladden Complaint
- ✓ Denial of Internet Access to Hold You Incommunicado
- ✓ 3 Profs Named Mud: The High Cost of Telling a Very Inconvenient Truth
- ✓ 'Stranger Danger' Debunked
- ✓ Experts Barbaree & Blanchard Lay It Down: on Waning Sexually Deviant Acts by Older Former Sex Offenders
- ✓ Moral Vigilantism - Tool to Deprive Sex Offenders of Their Rights and to Dehumanize Them
- ✓ Commitment as 'Predictive Policing' - 'Precrime'
- ✓ First Amendment & the Internet for Us Post-Packingham
- ✓ MSOP Media Censorship vs. Disconnect between Imagery & 'Hands-on' Sex Crimes
- & Tons More!

Coming the Editor: Notmuchtime-or-space. This time: covers for oshscien cethat could have set you free long since (Where is Jesus when you need him?); questions without answers; Connie Mackspite dangerous old behaviorist; resistance, damnation and desistance; penny perayer uper you; die, reply, die; another stem victim; ready the rack; paranoid catholic parents; & shoes and footless. I mean, what do you want?!

Exposed!:

CA Hid Study Showing Low SVP Recidivism

Tamara Rice Lave & Franklin E. Zimring. "Assessing the Real Risk of Sexually Violent Predators: Doctor Padilla's Dangerous Data". 55 *Am. Crim. L. Rev.* 705 (2018)

p. 705, Abstract: "This Article uses internal memoranda and emails to describe the efforts of the California Department of Mental Health to suppress a serious and well-designed study that showed just 6.5% of untreated sexually violent predators were arrested for a new sex crime within 4.8 years of release from a locked mental facility. ...The Article ...explains how the U.S. Supreme Court and the highest state courts have allowed these laws to exist without requiring any proof of actual danger. It then describes the California study and reconciles its findings with those of a well-known Washington study by explaining the preventive effects of increasing age. Finally the Article explains how these results undermine the justification for indeterminate lifetime commitment of sex offenders."

Text: p. 705: "Introduction

This Article on sexually violent predator (SVP) laws ...is...a narrative of legal and political events that help capture what we consider our legal system's egregious mishandling of the SVP issue, and, as we will elaborate below, the narrative will center on one great unresolved mystery: why a crucial piece of empirical research that could have corrected the system's misapprehension of the dangers of SVPs was suppressed."

p. 707: "In *Kansas v. Handricks*, ...[t]he Court accepted as true the legislature's empirical claims about SVPs: they are 'extremely dangerous'¹⁴; their 'likelihood of engaging in repeated acts of predatory sexual violence is high'¹⁵; 'the prognosis for rehabilitating [them] in a prison setting is poor'¹⁶; and their treatment needs are 'very long term.'¹⁷ The Court did not offer any proof for these assertions, and even though there was a wide body of research studying the recidivism rate of sex offenders, none of it was cited. ...Whatever the reason, ...the Court never asked for proof of the central justifying premise for the law - that an identifiable group of sex offenders is

The Status of Karsjens, Gladden & Wage Cases

This update will be very brief because there is almost no news at all on the front of all three of these pending cases. The *Karsjens* case continues to await a second appeal to the 8th Circuit. The *Gladden* case in turn remains on hold while that appeal is filed, and possibly during the entire pendency of that appeal. The *Wages* case is *not* on hold. However, it awaits an important ruling by the magistrate judge

highly likely to commit new predatory sex crimes if released into the community."

p. 708: "The Court's holding in *Hendricks* has been criticized for a number of reasons.¹⁸ One such criticism focuses on the distinction between civil and criminal law, and whether the SVP law is actually criminal, which would make it an unconstitutional second punishment. *Rollman* argued that various factors show the law is really criminal, including 'the fact that implementation of the Act is delayed until the "anticipated release" of a prisoner, thereby lessening the effect of any treatment while simultaneously maximizing punishment.'²⁰ *Campbell* criticized the majority for allowing states to 'merely redefine any [punitive] measure ...as "regulation," and magically, the Constitution no longer prohibits its imposition.'²¹ *Janus* argued that by inappropriately blurring the line between punishment and civil commitment, SVP laws undermine the Constitution's due process protections.²² *Carlsmith, Monahan, and Evans* conducted experiments to determine how the law should be classified and found that civil commitment of sexually violent predators was primarily motivated by retributive goals, thus demonstrating that it is impermissibly criminal in effect. ...Others have focused attention on the nebulous quality of a 'mental abnormality.' *Morse* argued that 'the term "mental abnormality" is circularly defined ...collaps[ing] all badness into madness.'²³ and *Winnick* contended that the definition of mental abnormality is so broad that it can apply to any behavior.²⁴ In 1999, the *American Psychiatric Association* created a task force to evaluate SVP laws and concluded, '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.'²⁵

pp. 708-09: "Still another line of inquiry focuses on the use of actuarial instruments to prove dangerousness. ...*Waller*²⁷ and *Lave*²⁸ contended that we simply do not have the ability to accurately predict future dangerousness. This means that

on notification to potential collective plaintiffs. Among other inputs into that decision is a tentative (not final) ruling as to how far back in time claims for unpaid full wages can go. A two-tier statute of limitations might exclude claims older than 2 or 3 years. Yet a current debate centers on whether using that limit is unfair, given the defendants' actions over the years. If so, wages taken all the way back to 2009 could be recovered. At press time, that crucial issue remains undecided by the court, but a ruling on it should be issued before the next TLP issue.

due to the low base rate of recidivism, we are locking away people who would not re-offend if released...."

p. 709: "Others have explicitly questioned the laws' empirical justification. *Lave and McCrory* used panel data on U.S. states for the last few decades to examine the impact of SVP laws on the incidence of sex-related homicide, forcible rape, non-fatal child sexual abuse, and gonorrhea, a common proxy for the prevalence of sexual abuse.³² They found that SVP laws had *no* discernible impact on the incidence of sex crimes or gonorrhea, the exact opposite of what would be expected if SVP laws were locking away violent sex offenders. In a related inquiry, *Ellman and Ellman*³³ showed how the Supreme Court relied on misleading and unsubstantiated statements about sex offender danger in upholding what would otherwise be an unconstitutional second punishment³⁴ or an unconstitutional *ex post facto* law.³⁵ Although Justice Kennedy described sex offender recidivism as 'frightening and high,'³⁶ *Ellman and Ellman* pointed to multiple studies that have shown the opposite to be true.³⁷

pp. 709-10: "We expand on these criticisms by telling the story of a serious and well-designed study, the Padilla study, which the California Department of Mental Health quashed after the study showed that untreated sex offenders with all of the risk factors of committed SVPs had just a 6.5% rate of contact sex crimes during an almost five-year exposure in the community.³⁸ Such a low recidivism rate undermines the state's authority to confine these persons under the rationale that they are too dangerous to be released."

p. 719: "[T]he 2003 DOJ [U.S. Dept. of Justice] study found that sex offenders were among the least likely to be rearrested for the same crime. Bureau of Justice Statisticians *Langan and Levin* found that 2.5% of rapists were rearrested for rape within three years of release from prison,¹⁰⁵ and the DOJ found that 3.3% of child molesters were arrested for another sex crime against a child during that same period.¹⁰⁶"

pp. 720-21: "III. The Padilla Study

"In 2000, Dr. Jesus Padilla was hired as a clinical psychologist at Atascadero State Hospital.¹⁴⁴ The institution held all committed California SVPs from the inception of the program in 1995 until September 2005 when they were moved to a new facility. ...Padilla soon began working with ...a social worker named Kabe Russell - on a long-range study of how SVPs who had completed treatment fared in the community as compared with SVPs who had not.

"...Padilla was ...able to study released, untreated SVPs because at the time, California was

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the only state in the country that limited SVP commitment to two-year periods.¹²¹ This meant that every two years, the state had to go through the entire SVP commitment process again for each offender... The recommitment process meant that there were multiple opportunities for people to fall out of the system.

"Padilla collected detailed data on each individual who was released without treatment including their age, criminal history, and where the subject went after leaving the program's control.¹²³"

p. 722: "Padilla also collected data where available on each individual's Static-99 score.¹³¹ ..."

p. 723: "A total of 121 persons left Atascadero without significant exposure to its treatment program. Of these 121 persons, Padilla was able to obtain clear records of extensive time in the community and detailed criminal record information for 93, with an average documented time of 4.71 years living in community settings. ...[J]ust 6.5% were arrested for a contact sex crime. ...This was despite the fact that their average Static-99 score was a six, which the scoring manual equates to a high risk of recidivating.¹³⁴"

"A person with a score of six on the Static-99 was estimated as having a 36% chance of being convicted of a new sexually violent offense within five years of release.¹³⁵ ... That means that the released SVPs performed much better than expected based on their Static-99 score. The difference is that much more striking considering that Padilla used arrests to measure recidivism, and the creators of the Static-99 used convictions. Since many arrests do not result in a conviction, the disparity would have been even greater if they had both used arrests as their basis of measurement."

pp. 724-26: (The article describes in detail the long-lasting efforts by officials of the Atascadero program and its administrative 'parent' agency to quash the Padilla study. These efforts included falsely claiming that Padilla had illegally obtained the records of the offenders in the study, terminating that study without cause and denying any further access to the documents already compiled by the study, including all Excel-based spreadsheets calculating the percentages of recidivism, ultimately destroying such documents and deliberately mangling the Excel files containing such recidivism statistics, refusing to honor formal requests per law for access to state data, and finally, falsely denying that any such study had ever been approved and undertaken.)

p. 727: "Once Padilla testified, DMH [CA's Dept. Of Mental Health] may have realized the study had to be stopped because it threatened the legitimacy of the entire SVP program. As explained earlier, the only constitutionally acceptable rationale for SVP commitment is that offenders are so dangerous that they must be locked away, and this study showed otherwise. If the SVP law were to be declared unconstitutional, it would threaten the \$147.3 million annual budget DMH (and now Department of State Hospitals) receives for the civil commitment program. People have done far worse than bury a study for a hundred million dollars."

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Recidivism

"Although the Padilla results seem surprising, they are actually consistent with other studies of sex offender recidivism. The largest U.S. follow-up study of released sex offenders was published by the DOJ in 2016.¹⁸⁰ It analyzed the recidivism of 20,422 persons released from prison in 2005 from 30 states after conviction for rape or sexual assault.¹⁸¹"

p. 729: "...In 2003, the DOJ published what was then the largest study of American sex offenders.¹⁸⁴ [Both studies reported sexual assault/rape/sex contact crime re-arrests as less than 6%.] Just as with the 2016 study, the measure of possible recidivism is re-arrest rather than reconviction, a much looser standard than proven guilt.¹⁸⁶"

p. 730-31: "...[O]lder age at release in the 2003 DOJ report cuts the re-arrest rate for sex crime almost in half, with 3.3% of the 45-and-over persons released re-arrested for a sex crime versus 5.8% for the three youngest groups.¹⁹⁴"

"Figure 3 compares the ages of persons released from prison for sex crimes in the DOJ study with the average age on entry to the California SVP program and the current average age of a confined SVP.¹⁹⁶ At that time there were 1,334 individuals committed as SVPs in California."

Figure 3: The Median Age of Released Sex Offenders in 15 States and California SVPs

Place	Age
2003 DOJ Study (All States)	35.6
CA SVP - Age @ Commitment	52
CA SVP - Current Age	58

p. 731: "Wilson, Looman, Abracen, and Pake were able to study the recidivism of 31 SVPs who were released into the community after completing treatment in Florida.²⁰⁰ Their average Static-99 score (5.86) was about the same as that in the Padilla study (6), but the mean age at release (45.72) was lower than in the Padilla study (50).²⁰¹ Wilson et al. found that 3.2% (1/31) of the SVPs committed a new sexual offense within 2.54 years of release from the Florida Civil Commitment

Center.²⁰² These recidivism rates were 'considerably below' the 26.2% projected by the Static-99.²⁰³ 'This suggests,' Wilson et al. wrote, 'that even though these two programs may provide treatment to offenders substantively meeting the "high-risk/needs" standard, the attendant actuarial normative data may not apply.'²⁰⁴ In other words, the offenders may meet the criteria associated with being high risk, but the risk of reoffending associated with that criteria may not apply to them."

p. 732: "Duwe studied SVPs who were almost committed in Minnesota.²¹⁰ By state law, the Department of Corrections is required to refer high-risk offenders to counties for civil commitment review.²¹¹ Duwe found that of the 161 persons who were referred for civil commitment but not ultimately committed, just 6.5% were reconvicted of a new sex crime within four years of release.²¹² Duwe wrote, 'What is worth emphasizing, however, is that although referred (but not committed) offenders were more likely to reoffend sexually than the non-referred offenders, their overall rate of reoffending (6.5%) was still low.'²¹³"

p. 735: "Age is a key difference between the groups studied by Padilla and Washington State that can explain the significant difference in recidivism rates.²¹⁴ The Washington group is much younger on average than the SVP population in California, and the effect of age on sex crime risk is huge in the Washington data."

"Here is the age-specific sex offense risk published in detail for the first time in 2007 by the Washington authors in their third report on the project. Only average age of release was published in the 1998 study,²²⁵ and the 2003 study contained no age information at all.²²⁶"

Table 2. Washington Sex Offense Recidivism by Age at Inclusion in Risk Group

Age	Conviction of Sex Felony	Number of Persons in Group
18-29	39%	N=28
30-39	18%	N=57
40-49	29%	N=34
50+	0%	N=16
Total	23% (31)	N=135

pp. 735-6: "The 33% aggregate rate for sex felony combines age groups with radically different risks of sexual recidivism, ranging from 39% to 0%. In the Washington study, no offenders who were 50 or older when

released had any later reconvictions.²²⁸ The reason this extremely low risk group does not have more impact on the aggregate is because the Washington group is a very young one: 63% of the SVP-eligible offenders in this group were under forty, and only 12% were over fifty. Because there were so many more high-risk young offenders than low-risk older ones, the overall recidivism rate was skewed higher." (emphasis supplied)

p. 736: "Once age is accounted for, the California data is perfectly consistent with the Washington data, and California risks are the correct estimates for the current California SVP population. Rather than serving as a basis for confining all these older SVPs, the Washington data suggests they will pose a low risk of sexually offending if they are released into the community."

"The irony is that Padilla and Russell were specifically interested in looking at the impact of age on recidivism when they designed their study. 'We know that the FBI crime data shows that men over 50 have a very low recidivism rate,' Russell wrote,²³¹ 'what we don't know is whether that same trend holds for high risk offenders such as SVPs.'²³² The much higher average age in their 93-person group (and in California's SVP lock up)¹⁹⁶ provides a good test of the sexual dangerousness of older SVPs. The aggregate rate at 6.5% is much more representative of the risks of sexual recidivism posed by the usually older SVP populations."

pp. 737-8: "IV. Why the Padilla Study Matters"

"It would be hard to ignore a study showing that the vast majority of recently released individuals committed under the current SVP regime did not recidivate. The range of sexual danger found in the Padilla study is not substantial enough to justify permanent confinement, and this finding threatens the entire SVP apparatus. If SVPs are no different than the 'dangerous but typical recidivist convicted in an ordinary criminal case,'²³⁷ then the state has no constitutionally permissible reason to continue locking them away."

"And make no mistake; if SVP laws were to be declared unconstitutional, it would have a tremendous financial impact on the institutions used to house and treat SVPs. In 2006, the total civil commitment budget across the country totaled \$454.7 million, with SVP states spending an average of \$94,017 per year on each committed SVP.²³⁸ California's civil commitment budget was the highest at \$147.3 million,²³⁹ and it has grown to at least \$288.8 million per year.²⁴⁰"

"The implications of the Padilla findings extend beyond California. As noted above, an important protective factor against recidivism is advanced age, and the group Padilla studied is similar in age to currently committed SVPs across the country. According to the 2016 SDCCPN report, the age range of

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residents across programs was 19 to 85, and the average age was 52, with a standard deviation of 6.96.²⁴¹ This average includes Pennsylvania, which only has an SVP commitment program for juveniles.²⁴² The average age of residents in Pennsylvania's program is 25.²⁴³ With Pennsylvania subtracted, the average age of SVPs across programs was 53.²⁴⁴

"In addition, we have gathered some age-specific information from several SVP states. Table 3 shows the median age at admission and the median age of all incarcerated SVPs for six states, including Washington."

Table 3: Median Age of Incarcerated SVPs

	Median Age at Admission	Median Age of Currently Confined
Arizona	44	48
Iowa	49	52
Missouri	46	51
New Jersey	42	48
Washington	41	48
Wisconsin	40	47

p. 739. "In all six states, the average SVP was forty or older when admitted to the program, and the median age of these prospectively dangerous person was 48, within two years of the category that demonstrated no risk in the Washington study. A majority of the California, Missouri, and Iowa SVPs were over 50. In Washington, even with the second youngest age at admission of those states we were able to gather data from, the average age in the state program was 48. Almost half of the Washington program population was in the group with no recorded sex re-arrests in the Washington study.

"Even more remarkable is that the Padilla subjects had two characteristics that should have placed them at higher risk of reoffending than currently committed SVPs. First, California law at the time required that a person have two or more sexually violent predatory prior offenses in order to be committed as an SVP. Now every state, including California, requires just one. This difference matters because increased criminal history is correlated with higher risk of recidivating. In addition, the average Static-99 score of currently committed SVPs across the country is actually lower than in

Padilla's sample. According to the Static-99 and 2016 SOCCPN annual report, the average Static-99 score across programs was 4.69,²⁴⁵ which is below the average score from Padilla's study. According to the scoring manual for the Static-99R, a score of five would actually place those individuals at moderate-high risk of reoffending.²⁴⁶ As previously noted, the average score in the Padilla study was six, which equates to a high risk of reoffending. That means that SVPs across the country would be expected to do even better than Padilla's sample if released into the community.

"CONCLUSION

"SVP laws are premised on the fact that they are incapacitating dangerous sex offenders who would be committing sexually violent crimes if released into the community. The only other possible justification - that these individuals deserve to be punished because they committed reprehensible crimes - would violate the Constitution's double jeopardy prohibition.²⁴⁷ Thus, prevention is not merely the most important objective of SVP strategy; it is the *only* legitimate legal objective.

p. 740: "Despite the critical importance of dangerousness, the Supreme Court upheld the constitutionality of Kansas' SVP law without requiring any actual proof that SVPs would commit predatory sex crimes if released. If the justices had looked for empirical proof instead of simply deferring to the assertions of the Kansas legislature, they would have seen that sex offenders actually have a low recidivism rate. Indeed, the DOJ has published three major studies - in 1997, 2003, and 2016 - that have shown that the vast majority of convicted sex offenders do not recidivate once released from prison. Of particular note is the 2016 DOJ study, which found just 5.6% of 20,422 convicted sex offenders were rearrested for rape or sexual assault within five years of release from prison.²⁴⁸

"And yet sexually violent predator laws are necessarily premised on the idea that SVPs are different than run-of-the-mill sex offenders, which means the DOJ studies may be irrelevant in assessing their danger. What we really need then are studies that look specifically at how released SVPs perform in the community, but conducting such a study is difficult because most SVPs are never released. Indeed, we know of only two studies that have examined how released SVPs fare in the community. The Padilla study was shut down after it showed a 6.5% recidivism rate for 4.8 years at risk in the community. The Washington State Institute study, which initially appeared to support the notion that SVPs are extremely dangerous, ended up being consistent with the Padilla results once attention was focused on the offenders' age. "Padilla's study and the statistics in table 2

from the Washington study undermine any theory of fixed levels of sexual violence risk. The men in Washington who were 50 or older when eligible for SVP status had historical records of sex offending that were almost certainly as long as the younger group. When had they become so low risk that no member of the population re-offended? It can't have been that a treatment program succeeded because they weren't treated. Age alone seems to have diminished the propensity to sexually offend. If so, the notion of fixed and immutable danger requires reconsideration.

"Even though most of the SVPs that California locks up are over 50 now, it is unlikely that they will ever be released. Like all other SVP states, California now makes commitment indeterminate²⁴⁹ - in effect presuming that the risk a person poses at the age of 40 remains the same when he is 50, 60, or even 90. The Padilla study demonstrates why states should be required at the very least to prove recidivism danger at regular intervals, as California used to do. Putting the burden on the committed person to prove he is no longer dangerous is not a legitimate alternative. The politics of crime and fear of sex offenders mean that someone like Mr. Hendricks, who is now 83-years-old and confined to a wheelchair, will never prevail.

"The ironic result of allowing state governments to make up their own theories of prospective sexual danger and never to test their hunches goes beyond the wasteful and unjust incarceration of elderly men with histories of sex offenses. Detailed and careful empirical study could provide much better evidence of the age and other characteristics of persons who have significant offending risks. For that reason, we urge the Bureau of Justice Statistics to resurrect and continue the Padilla study with what would now be a significant follow-up period. Until such research is conducted, we will never know whether the true legacy of *Kansas v. Hendricks* includes not just unjust confinement but also an allocation of limited resources with no focus on populations of maximum danger. Justice and community safety demand the truth."

Notes:

14 *Kansas v. Hendricks*, 521 U.S. at 351

15 *Id.*

16 *Id.*

17 *Id.*

19 Robert A. Prentky et al., *Sexual Predators: Society, Risk, and the Law* (2015)

20 Eli M. Rollman, "Mental Illness: A Sexually Violent Predator Is Punished Twice for One Crime," 88 *J. Crim. L. & Criminology* 985, 1013 (1998).

21 Andrew D. Campbell, Note, "Kansas v. Hendricks: Absent a Clear Meaning of Punishment, States Are Permitted to Violate Double Jeopardy Clause," 30

Loyola U. Chi. L.J. 124-129 (1998)

22 Eric S. Janus, *Failure to Protect: America's Sexual Violent Predator Laws and the Rise of the Preventive State* 21-22 (2006)

23 Stephen J. Morse, "Fear of Danger, Flight from Culpability," 4 *Psychol. Pub. Pol'y & L.* 250, 261 (1998).

24 Bruce J. Winick, "Sex Offender Law in the 1990s: A Therapeutic Jurisprudence Analysis," 4 *Psychol. Pub. Pol'y & L.* 505, 525-30 (1998)

25 Am. Psychiatric Ass'n, *Dangerous Sex Offenders: A Task Force Report of the American Psychiatric Ass'n* 173 (1999)

27 Richard Wollert, "Low Base Rates Limit Expert Certainty When Current Actuarials Are Used to Identify Sexually Violent Predators: An Application of Bayes's Theorem," 12 *Psychol. Pub. Pol'y & L.* 56, 72 (2006)

28 Tamara Rice Lave, "Controlling Sexually Violent Predators: Continued Incarceration at What Cost?" 14 *New Crim. L. Rev.* 213, 217 (2011).

32 Tamara Rice Lave & Justin McCrary, "Do Sexually Violent Predator Laws Violate Double Jeopardy or Substantive Due Process?: An Empirical Inquiry," 78 *Brook. L. Rev.* 1391, 1396 (2013)

33 Ira Mark Ellman & Tara Ellman, "Frightening and High: The Supreme Court's Crucial Mistake about Sex Crime Statistics," 30 *Const. Comment.* 495, 496-97, 499 (2015)

34 *McKune v. Life*, 536 U.S. 24, 29, 35-38 (2002)

35 *Smith v. Doe*, 538 U.S. 84, 103-04 (2003)

36 *McKune*, at 34; *Smith*, at 103

37 *Ellman & Ellman, supra*, note 33, at 501-05

38 Deposition of Jesus Padilla at 57-58, *People v. Tighe*, No. MH100903 (Cal. Sup. Nov. 23, 2009) (on file with authors)

105 Patrick Langan & David J. Levin, Bureau of Justice Statistics, NCJ 193427, "Recidivism of Prisoners Released in 1994" 9 (2002)

106 *Id.* at 1

114 Padilla Deposition, *supra* Note 38, at 11, 22-23

121 Ballot Pamp., Gen. Election (Nov. 7, 2006), text of Prop. 83, 127

123 Padilla Deposition, *supra* Note 38

131 Memorandum, from Jesus Padilla and Kabe Russell to Janice Marques 1 (Jan. 5, 2004)

134 According to the scoring manual for the Static-99, a score of 6 is equal to a high risk of reoffending.

136 Memorandum, from Jesus Padilla to Jim McEntee, Oct. 10, 2008

180 Matthew R. Durose et al., Bureau of Justice Statistics, NCJ 244205,

(Continued on page 4)

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"Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010," tbl. 2 (2016)

181 *Id.* at tbl. 1

184 2003 DOJ Study: *Patrick Langan et al.*, Bureau of Justice Statistics, NCJ 198281, "Recidivism of Sex Offenders Released from Prison in 1994" at 1 (2002)

186 *Id.* at 102

194 *Id.* at 25 tbl. 25

196 We computed the age as of May 13, 2014, which was the date that the Dept. of Hospitals generated the data.

200 *Robin J. Wilson et al.*, "Comparing Sexual Offenders at the Region al Treatment Centre (Ontario) and the Florida Civil Commitment Center," 57 *Int'l J. Offender Therapy and Comp. Criminology* 371, 390 (2012)

201 *Id.* at 385

202 *Id.* at 385

203 *Id.* at 390

204 *Id.*

210 *Grant Duwe*, "To What Extent Does Civil Commitment Reduce Sexual Recidivism? Examining the Selective Incapacitation Effects in Minnesota," 42 *J. Crim. Just.* 193, 194 (2014)

211 *Id.* at 194

212 *Id.* at 196-7

213 *Id.* at 197

225 *Donna Schram & Cheryl D. Milloy*, Wash. State Inst. For Pub. Pol'y, "Sexually Violent Predators and Civil Commitment: A Study of the Characteristics and Recidivism of Sex Offenders Considered for Civil Commitment but for Whom Proceedings Were Declined" 1 (1998)

226 *Cheryl Milloy*, Wash State Inst. For Pub. Pol'y, "Six-Year Follow-Up of Released Sex Offenders Recommended for Commitment under Washington's Sexually Violent Predator Law, Where No Petition Was Filed" 1 (June 2003)

228 *Cheryl Milloy*, Wash State Inst. For Pub. Pol'y, "Six-Year Follow-Up of 135 Released Sex Offenders Recommended for Commitment under Washington's Sexually Violent Predator Law, Where No Petition Was Filed" at 6-7 (June 2007)

231 Email from Kabe Russell to mlispcomb@flacc.com, cc. Diane Inrem, Jesus Padilla, rbriody@flacc.com (Mar. 3, 2004)

232 *Id.*

237 *Kansas v. Crane*, 534 U.S. 407, 413 (2002)

239 *Kathy Gaokin*, Wash. State Inst. For Pub. Pol'y, "Comparison of State Laws Authorizing Involuntary Commitment of Sexually Violent Predators: 2006 Update, Revised" 5 (2007)

240 According to the California Sex Offender

Management Board, the inpatient cost to the state of treating SVPs is about \$200,000 per person. *Cal. Sex Offender Mgmt. Bd. Annual Report 2016* 39 (2016). After serving a FPOIA request on the Dept. of State Hospitals, we were provided with an Excel file giving us information about the currently committed SVPs in California. According to that information, there were 1,334 SVPs committed as of May 13, 2014. Confining SVPs at a cost of \$200,000 per person would cost \$266.8 million per year.

242 Under Pennsylvania's program, a determination is made as to whether a juvenile can be released into the community upon turning 21 or whether he should be committed to the state's inpatient civil commitment program. "Frequently Asked Questions," *Pa. Sexual Offenders Assessment Bd.*

243 *Jennifer E. Schneider et al.*, SOCCPN Annual Survey of Sex Offender Civil Commitment Programs (2016)

244 Email from Jennifer Schneider

245 2016 SOCCPN Annual Survey, *supra* Note 243

246 *L. Helmus et al.*, "Static-99R: Revised Age Weights" (2009), <http://static99.org/pdfdocs/static-99randage200981005.pdf>. The creators of the instrument recommend that evaluators switch from the Static-99 to the Static-99R. Regardless of which instrument they choose, they should use the coding rules for the Static-99R. However, the age weights are different between the two instruments. *Amy Phenix et al.*, "Static-99R Coding Rules, Revised-2016" at 4, http://static99.org/pdfdocs/Coding_manual_2016_InPRESS.pdf. The Static-99 instrument was criticized for failing to adequately take into account how advancing age lowers the risk of recidivism. See *Sophie G. Reeves et al.*, "The Predictive Validity of the Static-99, Static-99R, and the Static-2002/R: Which One to Use?" *Sexual Abuse*, at 4 (2017). In 2009, *Helmus et al.* modified the Static-99 to try and address this problem. The Static-99 asks evaluators to score someone on whether they are older or younger than 25, but the Static-99R breaks age into four sub-categories. Evaluators are instructed to add one point to a person's risk score if they are between the ages of 18-34.9, add zero points if they are between the ages of 35-49.9, subtract one point if they are between the ages of 40-59.9, and subtract three points if they are over the age of 60. See *Helmus et al. supra* note 134 at Static-99R Coding Form. The Static-99R does not address the problems raised by this article for two

major reasons. First, many evaluators have not switched from the Static-99 to the Static-99R. Even if they have switched, the Static-99R has only been in existence since 2009, and so many SVPs could only have been committed using the Static-99. Second, the Static-99R has been criticized within the research literature on a number of serious grounds, which calls into question its accuracy in predicting risk. See *Reeves et al. supra* (this note).

247 *Jones v. United States*, 463 U.S. 354, 374 (1983) (Brennan, dissenting)

248 *DuRose et al.*, *supra* note 94, at tbl. 2

249 *Deirdre M. O'Rozia et al.*, Cal. Coal. on Sexual Offending, "The California Sexually Violent Predator Statute: History, Description, & Areas for Improvement" 17 (2009), <https://ccoso.org/sites/default/files/CCOSO%20SVP%20Paper.pdf>.

How Dr Padilla's CA Study Fits into the Larger Picture of SO Commitment for Profit

Florida Action Committee, "Article Reveals Suppressed Data Could Have Changed Sexually Violent Predator Programs," <https://floridaactioncommittee.org/article-reveals-suppressed-data-could-have-changed-sexually-violent-predator-programs/#comment-23838>

Text excerpt: "...It would have cost the DMH [CA Dept. of Mental Health] their \$147 million dollar annual budget [for SO commitment], so at the expense of the lives and liberty of those committed, they suppressed the study - for money. The scam continues today. California's annual budget for their commitment program has since doubled to \$288.8 million per year.

In Florida, we're used to hearing Ron Book and his daughter, Lauren Book, shouting '100% will reoffend!', 'It's not a matter of if, but when!' What's their interest? You guessed it: Money. Ron Book is the lobbyist for CCA, the private, for profit, company that has the contract to run Florida's Civil Commitment Center. The Books (and their counterparts in other states) continue to spew their bullshit in order to make tons of money!

...Much thanks to the UM and UC law professors who put in the time and research to help expose this indignity. They remind us that there are still people out there who care about human rights and the Constitution!"

Committing a 90+ Year-Old: Sheer Hatred and Punitivity!

Ryan Mattek & R. Karl Hanson, "Committed as a Violent Sexual Predator in His 10th Decade: A Case Study," 47:2, *Archives of Sexual Behavior* 543-550 (Feb. 2018)

Abstract (only): "We report a case study of Atypical Offender (AO), a man who was civilly committed as a sexually violent person several years after his 90th birthday. In this article, we review the factors that usually contribute to virtually zero rates of sexual crime among nonagenarians for clues as to why these protective factors did not apply to this exceptional case. Psychological assessments and court records portrayed AO as having many of the features expected of persistent sexual offenders against children (e.g., pedophilic interests, child-oriented lifestyle). What was unusual, however, was AO's exceptional good health and vigor, which was maintained well into his tenth decade.



In what rational world are old men to be feared as lathering sex maniacs simply for not being senile and disabled?

Consequently, we recommend that forensic evaluators of older sexual offenders systematically consider the offenders' health as part of the overall risk assessment."

Editor's End-Note: At least this article got one thing right: If one can find any instances of recidivistic sex crimes by sex offenders in their 90s sufficient to compile statistics of the percentage of such recidivistic crimes, that percentage is so razor-close to absolute zero as to be measured only in hundredths of a single percentage point. That is, the odds of any former sex offender committing another sex crime in his 90s are less than one out a thousand.

If these authors are being earnest in this article, the significance of this fact apparently evades them, most probably because they are biased against sex offenders themselves and are playing to an audience of those desperately seeking any excuse for disregarding such profound statistics so extraordinarily disproving future recidivism effectively beyond a shadow of a doubt.

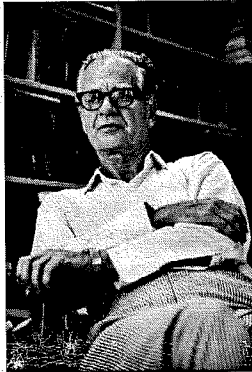
To illustrate how extreme this debunking of recidivism by the aged is, let's turn that statistic around: If the odds of recidivating

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in that tenth decade of life are one out of a thousand, then conversely, the odds of never again committing another sex crime from that age to death are 999 out of that same thousand. If that is not proof of non-recidivism in the future, I can't imagine what would serve as such proof.

Now let's suppose that, instead of being committed, our nonagenarian were freshly convicted of and currently being sentenced for some sex crime committed several decades



B.F. Skinner: Old, but healthy & mentally alert. Dangerous! Lock him up!!

before that had somehow not been attributed to him in all the intervening time until recently. Suppose that the sentencing judge were presented with this same converse statistic (999/1000ths probability) of no further recidivism in the remaining twilight lifespan (months or years) of our former sex offender. While the judge might feel obliged to impose some sentence in recognition of the harm inflicted, so long ago, that judge surely would not deem it necessary to lengthen that sentence on the basis of public safety as a function of recidivism fears. How then does it become appropriate to attempt to impose what surely will be lifetime confinement of this old man in civil commitment on the excuse-making of such recidivism fears?

The excuse advanced in that commitment case to ignore such an extreme statistic of non-recidivism was the man's good health and vigor.

However, this trick itself ignores the fact that current statistics show that once former sex offenders cross the age-threshold into their 60s, their odds of recidivating have already fallen to about 6/10ths of one percent. Expressed in the same mathematical relationship as the statistic for our 90-something gentleman, this equates to a meager 6 out of 1,000. Conversely yet again, this means that, in a group of 1,000 former sex offenders just entering their 60s, 994 of them will never reoffend again -- with this statistic dwindling more with each passing year.

Obviously, this could never be argued to comprise a "high likelihood" of future sexual re-offense, as constitutionally required to be committed. Most troubling, how could any-

one ever identify with any confidence, let alone certainty, which 6 out of that 1,000 cohort of aged sex offenders will reoffend in the future?

While the man in his mid-90s described in this article is truly fortunate to have good health and even some level of "vigor," there has never been any study connecting health and vigor among the aged with sex-crime recidivism. What are these authors actually proposing -- locking away each former sex offender now in his nineties who happens to be in reasonably good health?

Moreover, this was no recent crime wave on his part, but instead ancient sex convictions, followed by a decades-long incarceration. The research cited by the article quoted here on the topic of "persistent sex offenders" studied offenders in their 30s and 40s, not senior citizens. It addressed those who (in decades past) served short sentences and re-offended quickly after their release. Accordingly again, there is no continuing propensity for sex crimes on the part of this long-incarcerated man in his 90s. What prosecutors actually argued at his commitment trial was that, even after all that intervening time, a resurrected, zombie-like sex drive like that of a twenty-year-old would spring up as if by magic on the day of his release. This is hogwash.

This claim again downplays the inevitable, exigent changes wrought by the biological aging process, most especially the long known and completely inevitable withering of libido that occurs in every man, no matter how healthy and vigorous he may be.

Separately, in a prior TLP edition, I have discussed the universally acknowledged phenomenon of "desistance" from sexual offending that occurs over time. An earlier myth that such desistance only occurs after one's release from confinement more recently has been debunked: the trend toward desistance starts after a surprisingly short period into imprisonment and is already a strong resolve in the minds of most sex offenders by the time of release. This is a large part of what accounts for recent reductions in sex crime recidivism even among releasees in their 30s. It stands to reason that the cognitive and emotional factors that drive such 'anticipatory desistance' before release are far stronger still in those whose release is delayed even longer until elder years. This too was ignored by the article quoted above.

Further, the non-criminal habits of this old man ambiguously contended to evince "pedophilic interests" and a "child-oriented lifestyle" are in reality nothing more than a grandfatherly interest in children. Such a benign interest is very often a lifelong lingering epilogue for aged pedophiles. It does not bespeak an intent or even merely a wistful wish to commit further sex crimes with

children. At worst, it is merely the last flickers of dying fantasy that will never be acted upon. Commitment assessors typically omit to acknowledge this critical point, secretly relying upon the fact that younger men and women (whether acting as judges, jurors, prosecutors or defense attorneys) tend to judge the intensity of lust by the standards of their own young lives thus far. They simply do not know how different it is for the aged -- and no one tells them.

Recent research has established that there is no causal connection or even just any correlation between child pornography collection and its masturbatory usage on the part of young pornography defendants and the likelihood of later 'hands-on' sex crimes by those same prison releasees (on average in their 40s and 50s by then). Almost universally, such pornography offenders do not 'graduate' to such in-person victimization. The truth is that pornography use deflated whatever motivations they may have harbored toward children; it was an alternative sexual outlet, not a 'appetite enhancer.'

A fortiori, to claim (without any statistical support) that mere non-criminal habits of an aged former sex offender of watching children on TV and in movies, etc., would exempt him from all demonstrated recidivism reduction effects connected to his advanced age is junk science and pure fear-mongering of the worst sort.

In sum, the claims made against this poor old guy at his commitment trial were shameless appeals to bias, fear, and rank hatred. Unfortunately, they worked: the jury bought into that character assassination and trial-by-innuendo, and brought back a commitment verdict. Once again, this points up the dubious 'value' of the jury-trial option (where allowed by state law, as in Wisconsin, where this case occurred).

In an early TLP edition, I recounted another Wisconsin commitment case of a man near age 90. After hearing evidence that the probability of future sex-crime recidivism by him was less than 1%, followed by the jury's commitment verdict, the judge asked jurors what about the evidence convinced them to commit the aged man. They simply answered that, in their mind, 1% was a "high likelihood" of re-offense. Of course, what this translated to was a hysterical implication that any possibility of re-offense would be deemed an unacceptably high likelihood of re-offense.

Jurors' hysteria such as that is bad enough. It points up the complete lynch-mob reality of such commitment. To read this article by one of the creators of the Static-99 and an assessor working with the Wisconsin Sand Ridge commitment center crowing in the quoted article about how prosecutors had manipulated such hysteria in this way to inflict 'commitment' as sheer added punishment upon a man likely not to outlive his

current, advanced decade of life is unethical and revolting. It should make them ashamed of themselves, but of course it does not, for they are dogmatic iconoclasts and they are making considerable money from spreading their viciously false propaganda. This must be brought to an end.

Gladden Complaint Excerpt:

Damn the Treatment; Full Desistance Ahead!

[Editor's Note: Treatment 'need' is the myth; natural desistance from sexual offending is the widely observed reality, as the following article demonstrates.]

Danielle Arlanda Harris, "A Descriptive Model of Desistance from Sexual Offending: Examining the Narratives of Men Released from Custody," 60(45) Int'l Jour. Of Offender Therapy and Comparative Criminology, 1717-1737 (2016):

(Abstract, p. 1717): "Despite an increasing interest in desistance from sexual offending, a comprehensive theoretical account of the process has yet to be provided. This study examines the narratives of 60 men interviewed in the community, who were incarcerated for sexual offenses and released. Recent findings from this research conclude that men desist from sexual offending, but they seldom follow the processes described by traditional criminology. In many cases, in fact, they desist in spite of their inability to pursue Sampson and Laub's 'informal social controls' or Giordano et al.'s 'hooks for change.' The relentless impact of current public policies such as community notification and electronic monitoring further impedes their likelihood of experiencing Maruna's 'Pygmalion effect' or achieving true cognitive transformation or agentic change. The descriptive model introduced here identifies four styles of desistance from sexual offending: 'age,' 'resignation,' 'rote,' and 'resilience.' Relevant implications are discussed.

(Text, pp. 1717-18): "...[T]he body of literature on desistance from sexual offending remains small (*Farmer, M, Beech, A, & Ward, T. (2012). "Assessing desistance in child molesters: A qualitative analysis." Jour. of Interpersonal Violence, 27, 930-50; Harris, D.A. (2014). "Desistance from sexual offending: Findings from 21 life history narratives." Jour. of Interpersonal Violence, 29, 1554-1578. Doi:10.1177/0886260513511532; Harris, D.A. (2015). "Desistance from sexual offending: Behavioral change without cognitive transformation." Jour. of Interpersonal Violence, (pp. 1-22). Doi:10.1177/0886260515596537; Laws, R. & Ward, T. (2011). *Desistance from Sex Offending: Alternatives to Throwing Away the Keys. New York: Guilford Press.* This is*

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likely due to the persistent emphasis placed on risk and recidivism by the related fields of offender management and research. (D.A. Harris, 2014, *supra*; Willis, G., Levenson, J., & Ward, T., (2010). Desistance and Attitudes Towards Sex Offenders: Facilitation or Hindrance?'. *Jour. of Family Violence*, 25, 545-558.)... pp. 1718-19): "Sixty men were interviewed between 2011 and 2013 in the Northeastern United States. All participants had committed a sexual offense, had served a custodial sentence, and were living in the community. Consistent with much research conducted in the field of sexual aggression, ...almost everyone (88%) identified as White. The men had an average age of 53 years. The average length of their most recent custodial sentence was 10.1 years for a sexual offense, and all participants had been living in the community for a mean of 4.1 years...

"Almost all the participants (86%) had child victims. Most of the men had committed acts of extra-familial child molestation (n=28) or incest(n=14)..."

Results

Desistance by Age

(p. 1724): "The first style resonated particularly well with seven participants but was mentioned to some extent by a number of other men. To be clear, although the concept of maturity was a key component in their interviews, it was certainly not unique to these men. They frequently emphasized the process of getting older and growing up in their explanations of desistance. Noticeably, these men did not mention any of the characteristics of the pother styles mentioned above. They were certain they would never reoffend and attributed that certainty to being old, too tired, and to not having it 'in them' anymore.

"So I guess it was an epiphany. I just finally woke up ...I was tired of doing time ...but now I've decided I just don't want to do it anymore."

"These men tended to use the 'old me/new me' language of knifing off (Maruna, S. (2001). *Making Good: How Ex-Convicts Reform and Rebuild Their Lives*. Washington: Am. Psychol. Ass'n.) and some spoke of having had two lives."

[Describing the three models (other than age) for desistance, the article describes attributes of individuals thus:]

(p. 1726): *Resignation*

"These men ...provided little insight into how or why their crimes had occurred..."

"Many of these men ...were not confident about forming friendships or relationships in the future. They were pessimists with fairly defeatist views of themselves and of their restricted position in the community..."

"...Although they were adamant that they would never reoffend, they could seldom articulate why (beyond wishing to avoid prison). Even though this might be sufficient to effect behavioral change, it did not yet appear to be evidence of discernable cognitive change."

(p. 1727): "...[T]hey ... were very much resigned to the fact that there was no escape and that this [the sex offender registry] was their life now."

(p. 1728): *Rate*

"A quarter of the sample (n=16) were ... adept at 'talking the talk' and parroting buzzwords they had learned during therapy... As a group, they had the most persistent histories of sexual offending with seven men reporting post-release recidivism and having received multiple, separate custodial sentences for their sexual crimes. The dominant themes in these 'rote' narratives included: the value of treatment and the applicability of this therapy to their behavior, but they were often delivered in a rehearsed (or even manufactured) style..."

"...[T]he messages of the Relapse Prevention Model (Pitthers, W.D. (1990). "Relapse Prevention with Sexual Aggressors: A Method for Maintaining Therapeutic Gain and Enhancing External Supervision," in W. Marshall, R. Las & H. Barbaree (eds.), *Handbook of Sexual Assault* (pp. 343-361). New York: Springer.) and the standard 'cycle' of offending resonated strongly with them - they recognized and praised the benefits of treatment; and all spoke highly of their therapists, in a very socially desirable way. During the interviews, they were eager to demonstrate their newly gained insight regarding offending and self-governance. They willingly shared their knowledge of triggers, tools, and risk situations and spoke in the present tense about their ability and commitment to stay safe..."

Like the other styles described above, most of these men were confident that they would not reoffend, but justified this certainty with a newfound personal insight and knowledge of triggers and risk situations:"

(p. 1729): "When discussing the ways they keep themselves from offending, they tended to emphasize the situational nature of their risk and subscribed to a 'routine activities' approach that prioritized daily structure (Harris, D.A. & Cudmore, R. (2015). Desistance from sexual offending, in *Oxford Handbook of Criminology and Criminal Justice* (pp. 1- 15). New York: Oxford University Press, 2015):

"The warning sign for me is when I don't have a structure. Right now I have a structure. Right now I have a full-time job, I come to group, I go to probation, and there's a couple of other things I do during the week. I go and see my grandmother... So for me, my biggest thing is giving myself a structure. 'Cos when I have structure that's when I

succeed. When I lose a piece of my structure, that's when I start screwing up.'

"...The strongest emergent theme and the narrative that really united the rote style was ...the way they described staying safe as a kind of job..."

(pp. 1729-30): *Resilience*

"This final style ...was marked by a strong desire to move on from their offending past as well as emphasizing a demonstrated pattern of success upon release. Like the age desisters, the resilient desisters also spoke of having had two lives and of 'knifing off' (Maruna, 2001, *supra*). Akin to Giordano et al's (Giordano, P. et al. (2002). "Gender, Crime, and Desistance: Toward a Theory of Cognitive Transformation." *American Jour. of Sociology*, 107, 990-1064) 'complete desisters,' these men tended to describe their offending in the past tense, thus placing a 'great deal of distance between the old, discarded selves and those they currently claim.' (pp. 1733-34): *Discussion*

"The process of desistance was articulated ...was most often viewed as a simple and visceral aversion to returning to custody (deterrence) or as a product of extensive sex offender-specific treatment..."

"Almost all participants in the sample described how individual therapy and group treatment meetings had helped them, but at times, the language they used felt forced or manufactured..."

Limitations

(p. 1735): "The important central point is that they each reported living offense-free lives regardless of 'where they were' (or rather, the themes that emerged in their interviews) and if our goal is to prevent sexual abuse, it seems futile to assess whether they have desisted 'enough.' In fact, the fear that they could never again be trusted was a strong emergent theme:

"You've gotta give me the chance. You've gotta give me the opportunity. No one is going to believe me until the day after I die. That's when they'll start trusting me again. That's when they'll look back and go "Wow, he did live another 40 years without doing anything wrong.' But until then, until the day I die, they're gonna keep watching me. And that's a rough way to live."

Conclusion

"...Support was found for natural desistance and aging out.... Of particular interest is the fact that three of the four styles (resignation, rote, and resilience) bore little resemblance to the emphasis in the criminological literature on the achievement of informal social controls or to the psychologically informed explanations of cognitive transformation. Furthermore, that the typical areas of empha-



sis in sex-offender-specific treatment (that emphasizes individual differences and etiology of offending) were seldom valuable is concerning and should be the subject of further study."

(pp. 1735-36): "Some people will desist from offending on their own, without needing formal intervention. Some ...might profit simply from reconnecting with their family of origin, or from the opportunity to earn an honest living. Still others ...may decide quite rationally to never offend again, if only to avoid returning to custody. Furthermore, it seems that only a few appear to truly warrant the kinds of enhanced supervision or protracted treatment to which so many are now subject."

Perpetrator Profiles – The Image & The Reality

[Editor's Note: The following is my response to an assignment in the module "Perpetrator Profiles." It is printed here for its wider significance to all of us.]

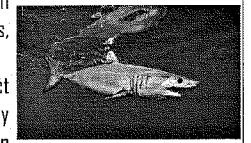
This explanation should clarify my thinking for you (the reader) about the subject of this assignment and the subject matter of this module overall.

First, I do not identify with any of the specific "perpetrator profiles" brought forth as examples



of predatory animals with whom you urge us to identify ourselves, or more specifically, a part of ourselves you claim exists in the present which you label – and try to get us to label, our "perpetrator."

I am not a shark, a spider, a fox, a snake, or any other animal. I am a human being, with all the complexities, lovable qualities and drawbacks, instances of wisdom and of rash thought that any other human is capable of, but with no monstrous, irresistible urge to inflict evil upon any other human being.



Perhaps, if you must have some image to imagine me as, you could think of me as Harvey the rabbit in the movie of that same name. Of course, no more than fictional monsters, there are no six-foot tall invisible rabbits who can silently communicate with intoxicated humans like Jimmy Stewart's character in that film. In more modern times, we might be more concerned than viewers then with the mental health of

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Stewart's character.

However, on its own terms, the fun that Harvey pokes at that character was friendly and sympathetic, not coldly forensic. Stewart's character invented the mental notion of his invisible furry friend as someone to talk to and ask questions of, a conduit of sorts for friendly support and sage advice from his subconscious to his conscious mind - a means to encounter insights that had eluded him, or perhaps that he had avoided facing on his conscious level.

Confined to this role, Harvey was just a friendly, helpful figment of imagination, not some commandeering multiple personality. And thus, Stewart's character was just an eccentric, not a dangerous crazy person.

Think of me then as your Harvey, if you will. I mean no harm to anyone, most especially not to the vulnerable. I hope our respective notions -- when communicated fairly without coercion or overbearing implicit in circumstance, and without shields- and filters-up from tightly clutched biases, preconceptions, revulsions, hatreds, or vile and scary mentally conjured images -- will enlighten each other and add to our respective and collective tranquility, happiness and fulfillment in life.

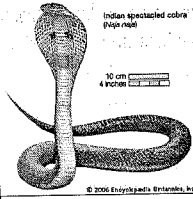
To get to that point, from which true and constructive, trusting dialog can begin, however, it is necessary to set aside such horrific images. We can, of course, strip this forced self-vilification of its embodiment as animals (who, after all, simply occupy their respective niches in the ever turning sphere of nature's biome).

Yet, even without that embodiment, the coercive insistence that we, as persons in this milieu, must identify and distance ourselves from some claimed portion of our respective selves as having - even now and permanently - some monstrous entity within, bent on deliberately doing evil deeds to delight in the victimization of helpless victims, is, at best, highly insulting and, at worst, is itself a vicious form of mental victimization.

I have come to know many here very well. Further, beyond that core of confidantes, almost all here are known well enough to me to be able to state that I know no one holding such vicious intent. Nor, parenthetically do I know anyone here that is so bereft of self-control or so overpowered by lust that they would act in such terrible disregard of the feelings of others without being able to stop themselves. In short, I must tell you that, to the extent you hold such notions and try to foist them onto us as therapy subjects you are chasing nonexistent bogeymen - and creeping us out in the process.

And quite frankly, you will record these self

-appellations (without adding the explanation that these were pressed out of us and do not represent any accurate self-view). When we seek release, you will 'dutifully' report these deleterious, perhaps even horrifying self-characterizations to every board member and judge to whom that request is directed. If you were such a decision-maker, having learned of such self-characterizations, would you ever grant release? Were the press to print them and the applicant were released, who do you think would rent an abode to that releasee, and who would give him a job?



It gets worse: By forcing someone to identify themselves with such evil terms, you cause one to doubt one's morality, eventually giving up on morality altogether. In such a frame of mind, criminal acts of victimization become easier to commit, not more difficult. In short, this forced self-conceptualizing as evil (especially as currently possessing an abiding, un-exorcisable evil) is extremely iatrogenic, not palliative.

This module adds tales of anger as a basis for sexual offending ("Sleeping Beauty") and of shame as a different motivation for sexual offending (The Prince and the Wurm"). In few cases is the former really such a motivation. Most rapists commit rapes as a sexual act in a manner that allows themselves to wield dominance and not to bother with consent or deference to the feelings of the rape victim - not as an act of any particular anger toward the victim.

While no tale is provided as to pedophilia, the module discussion led by the instructor heavily implies that the same motivation and origins of motivation apply in pedophilic acts. Yet this implication runs contrary to all known research on pedophilic sexual orientation. Pedophiles have no such anger against children, nor does that orientation have any origin in shame.

Current research results on sexual attraction to children (both exclusive and non-exclusive types) clearly shows a limitless breadth of individuals who have such an orientation - without any known connection to pre-existing anger and shame. One can develop shame about one's pedophile orientation, but one does not develop such an orientation from such anger or shame.

Similarly, the claim advanced by the narrative known as "Perfect Servant/Vampire" also does not account for sexual offenses. No one doubts that it is emotionally unhealthy to 'stuff' ones unpleasant emotions and thoughts, most especially anger. However, most often, such 'stuffing' results in one simply chronically feeling bad. Occasionally

(most typically, in the case of stuffed anger) one may eventually 'explode' with lashing out at someone (whether verbally, physically with violence, or in some combination of the two).

However, of themselves, these two phenomena have nothing to do with sexual motivations. In the case of anger arising from or in connection with sexual abuse, research has debunked the so-called 'cycle of abuse' theory. Certainly, the notion that any tendency on the part of some child having experienced pedophilic acts, to be attracted once grown up to sexual interaction with prepubescent children is due to unacknowledged anger appears to be the product of therapists who seek to 'prove' the existence of anger on the part of victims because they themselves experience anger at the concept/mental image of such pedophilic behavior, rather than the product of any unprompted, volunteered-expressions of such anger.

The juxtaposed facts that: (1) studies like that of Rind et al. (1998) find anger in adulthood on the part of former children who had such experiences to be the exception rather than the rule, yet (2) those officially accosted for sexually abusing children claim such victimization when children themselves and express anger about it, strongly suggest that the latter phenomenon is a tactic of deflection of criminal-responsibility akin to the proverbial claim that 'the devil made me do it.' - Accepting such claims, at face value is countertherapeutic and allows success in treatment through sheer deception.

True, domestic assaults prove that it is possible to commit violent acts against one's significant other. However, the stuffing of anger that results in such violent outbursts is not motivated by sexual desire. Indeed, the buildup of such anger - even if directed at a lover - actually temporarily suppresses one's sexual attraction to the target of such anger.

While instances of sexual assault have infrequently been included as part of such outbursts, the only individuals who do so are those that fail to sharply divide anger and aggression from sexual desire in the organization of their emotions. In such cases, it does no good to focus upon the 'blow up' scenario.

The cause for a sexual assault, whether in such a scenario or otherwise, is not the anger or its stuffing; it is in such failure of distinction between emotions. Trying to avert sexual assaults by merely addressing scenarios in which anger is stuffed and then explodes, is very akin to swatting a single fly and declaring victory over flying pests while picnicking in a landfill.

These added false bases for sexual offending only confuse things in the minds of treatment participants. None of these false accounts serve as any way to avert recidivism.

In summary, the overview/mission state-

ment of this module is to get attendees to "tak[e] responsibility for the part of themselves that perpetrates on others." I see this as a misstatement of what should be the goal.

If the overall goal of MSOP is to end recidivism by those committed to it (through any means other than retaining those confined for the rest of their lives), then the phrase "take responsibility" should not be deemed to mean accepting culpability for past misdeed, but instead accepting responsibility for the control of the rest of their lives in the future.

Understanding of the aspects of past crimes that deliberately inflicted harm on others and/or that ran thoughtlessly roughshod over the trust, hopes, expectations and/or reliance of others, as well as their emotions more generally, is a key part of resolve to remain offense-free in the future.

However, to treat us as subject to the scarcely controllable presumed drives, and barely consciously contrived immoral, perhaps amoral plots of some alternate persona lurking just beneath the surface of our consciousness is to imply a message to others, but most damagingly to ourselves, that we are easily pushed into a state of loss of self-control and will remain subject to such loss control at any time in the rest of our lives.

This is untrue, and it tends to have a demoralizing effect in the nature of a self-fulfilling prophecy (that is, the more one believes that they could go out of control, the more likely that prospect becomes). Worst of all, if we come to accept that, we will also warn others of that possibility, including those who decide whether we go free or die in MSOP. If you were the judge who heard you concede that, which way would you rule?

Any treatment of sex offenders should be positive and accentuate one's abilities, including that of self-control. Treating us as if we lack such control and will always face a strong challenge to our self-control is toxic. For that reason this module is also toxic.

Therefore, MSOP's so-called "clients" should avoid it if they can, but if not possible, they should refuse to accept its premises and decline to identify themselves as an predatory animal and otherwise decline to describe any "perpetrator style." Such admissions, even though untrue, will be used against you later, will serve as a stepping-stone to later conversations which will reinforce acceptance and implicit admission of your lack of power, to control yourself, and this too will be used against you and will demoralize you, causing you to gradually doubt the ability you so plainly have to do so.



(Continued on page 8)

MSOP's therapists should advocate for the elimination of this module. If you truly mean that MSOP treatment should be positive and should work efficiently toward empowering all clients within MSOP to govern themselves in accordance with the law, then your actions must be congruent to support of those goals.

Reply to Minnesota Sex Offender Program Annual Performance Report 2015, revised — Conclusion

[Editor's Note: This is the final installment of the reprint of the 2016 Reply Report of RAFC to the 2015 MSOP Report Concerning MSOP Treatment.]

21. The Duration of MSOP Detention Lasts Through Old Age.

Eric S. Janus & Wayne Logan, "Substantive Due Process and the Involuntary Confinement of Sexually Violent Predators," 35 *Conn. L. Rev.* 319 (Winter, 2003), lays out the background for this analysis thus:

(at p. 366): "...[U]nlike the criminal law, SVP laws effectively allow confinement based on the 'status' of being a dangerous person" [See, e.g., *People v. Kibel*, 701 P.2d 37, 44 (Colo. 1985) (noting the argument that sex offenders are held based on their status - their dangerous character - rather than an act.)

(at p. 370): "Without careful judicial scrutiny to root out ineffective treatment programs, SVP commitment becomes indistinguishable from lifetime imprisonment."

(at p. 372): "In *People v. Feagley*, [565 P.2d 373 (Cal. 1975)] the California Supreme Court ordered the release of an individual committed under the State's sexually dangerous person statute, holding that 'the effect of a statutory declaration of the right to treatment may be negated by evidence that such treatment is not in fact provided.' [Id. at 396] Without treatment, the court noted, 'nothing remains but bare incarceration "for the protection of society."' [Id.] The court held that 'medical treatment [is] the *raison d'être* of the mentally disordered sex offender law, it is its sole justification.' [Id. at 386] Moreover, 'adequate and effective treatment is constitutionally required because, absent treatment, the hospital is transformed "into a penitentiary where one could be held indefinitely for no convicted offense.'" [Id. at 387 (quoting *Wyatt v. Stickney*, 325 F.Supp. 781, 784 (M.D. Ala. 1971))]

(at pp. 377-78): "To set the reasonableness benchmark, courts can look first to

empirical data on sex offender treatment duration. In the correctional setting, most state-run sex offender treatment programs extend for no more than three years. [*Mary West et al., State Sex Offender Treatment Programs* (50-State Survey), 4 (2000)]. The treatment program in Kansas, for instance, was designed to be completed in eighteen months. [*McCune v. Life*, 422 S.Ct. 2017, 2025 (2002) (noting that the Kansas Sexual Abuse Treatment Program lasts for eighteen months).] Similarly, the well-known program implemented by the California Dept. of Mental Health - the Sex Offender Treatment and Evaluation Project (SOTEP) - involves a 'comprehensive cognitive-behavioral treatment program' with an inpatient phase of approximately two years (fourteen to thirty months). [*Janice K. Marques, et al., "Effects of Cognitive-Behavioral Treatment on Sex Offender Recidivism: Preliminary Results of a Longitudinal Study,"* 21 *Crim. Just. & Behav.* 28, 36 (1994).] A survey of Minnesota sex offender treatment programs in prisons and community settings showed that the average length of treatment ranged from 2.5 months to 37 months. [*Minnesota Office of the Legislative Auditor, "Sex Offender Treatment Programs,"* 55-58 (1994)]. The Minnesota SVP program itself is designed to be completed in a minimum of four years. [E-mail from Anita Schlank, Ph.D., Clinical Director of Minn. Sex Offender Program, to Eric S. Janus (Aug. 19, 2002), (noting that most patients are unable to complete the program in the minimum period)]

"Thus, three years appears to be a rough benchmark for treatment judged by professionals to achieve some treatment efficacy, if any is forthcoming. Social science data suggest that beyond that point at best only a small correlation exists between length of treatment and reductions in sexual offending recidivism. [See *R. Karl Hanson & Monique T. Bussiere, "Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies,"* 66 *J. Consulting & Clinical Psychol.* 348, 352 (1998) (noting the median correlation of '.00'), raising the question of whether anything other than the interest of incapacitation is being served....

(at p. 380): "Courts should evaluate evidence of risk in light of research indicating that 'the most effective known technique for reducing risk of relapse is intensive supervision in the community.' [*Robert A. Prentky & Ann W. Burgess, Forensic Management of Sexual Offenders* 236 (2000)] and that community aftercare can be made sufficiently "tight" to reduce risk to a minimum for many offenders." [Id. at

243] Reasonableness decisions, particularly about SVP detainees who fall at the lower end of the risk scale, need to take into account these methods to achieve public safety in the community, short of full-blown institutional confinement. "Due process demands no less." (at p. 382): "...[A]s time passes - and if SVP regimes continue to be beset with dimly low release rates - the illusory nature of the treatment promise will become undeniable." [Note: this prediction has been fulfilled in Minnesota.]

Distinctly, under the 1994 MCCTA, as upheld by authoritative state appellate court rulings, the duration of commitment in any event extends through middle- and old-age, stages of life by which all known statistics demonstrate unequivocally that sex-crime recidivism has dropped to negligible levels of statistical probability, even for prior recidivists. This violates the precept that, to comport with substantive due process, commitment must last no longer that reasonably necessary to achieve its non-punitive rationale. If such rationale is deemed to be to protect public safety, and assuming strictly arguendo that said rationale is not simply another term for inherently punitive preventive detention, then this established inverse statistical correlation as to recidivism as age advances past age forty proves that commitment under said Act, with detention in and beyond middle-age, inherently loses its relation to said rationale, thereby depriving substantive due process to all Plaintiffs in that age range.

Janus & Logan, supra, expand on this principle and its application in sex offender commitment as follows:

(at p. 351): "Due process commands that the conditions and duration of confinement bear some reasonable relation to its civil purpose - treatment - without which incapacitation serves as mere preventive detention.... When it is clear that the treatment goal is hopeless, release may be required."

[*Dhlinger v. Watson*, 652 F.2d 775, 778 (9th Cir. 1980) ("Adequate and effective treatment is constitutionally required because, absent treat-

ment, appellants could be held indefinitely as a result of their mental illness.")

(at p. 352): "The duration principle requires release when circumstances become constitutionally inadequate to support civil commitment and has been

applied in two types of situations. First, the court has ordered release when the circumstances that originally justified commitment no longer obtain." (citing *O'Connor v. Donaldson*, 422 U.S. 563, at 575 (1975)). "The Court extended the principle to the police power context in *Jones v. United States*," (463 U.S. 354 (1983)). (*Ibid.*) (at pp. 352-53): "The Court first articulated the duration principle in its seminal 1972 decision of *Jackson v. Indiana*, providing that 'at the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.' [406 U.S. at 738] The principle has been recited and applied repeatedly since then [see, e.g., *Young*, 531 U.S. at 265; *Foucha*, 504 U.S. at 79; *Jones v. United States*, 463 U.S. 354, 368 (1983)] and is one characteristic of SVP laws cited to establish and sustain their legitimacy. [See, e.g., *Kansas v. Hendricks*, 521 U.S. 346, 368-69 (1997) (concluding that because state law "permitted immediate release upon a showing that the individual is no longer dangerous or mentally impaired, we cannot say that it acted with punitive intent"); *Martin v. Reinstein*, 987 P.2d 779, 786 (Ariz. App. 1999) (stating that an SVP "must be afforded treatment and must be examined at least annually to determine whether his mental disorder has sufficiently improved that he no longer poses a danger to the public."); *In re Young*, 857 P.2d 989, 997 (Wash. 1993) (en banc) (stating that "committed persons must be released as soon as they are no longer dangerous"); *State v. Post*, 541 N.W.2d 115, 127 (Wis. 1995) ("Thus, the duration of an individual's commitment is intimately linked to treatment of his mental condition.")]

"The duration principle requires release when circumstances become constitutionally inadequate to support civil commitment, and has been applied in two types of situations. First, the Court has ordered release when the circumstances that originally justified commitment no longer obtain. The principle was applied in *Donaldson*, where the Court squarely held that commitment 'could not constitutionally continue after [its justifying] basis no longer existed.' [422 U.S. at 575] The Court extended the principle to the police power context in *Jones v. United States*, [463 U.S. 354 (1983)] where the Court examined the permissible duration of commitment for an insanity acquittee. Rejecting the argument that the defendant's civil commitment could extend no longer than the maximum prescribed criminal sentence, the Court, quoting *Jackson*, observed that "[t]he Due Process Clause "requires that the nature and duration of commitment bear some



George Orwell,
author of 1984.

reasonable relation to the purpose for which the individual is committed." [Jones, at 368, quoting Jackson, 406 U.S. at 378] (pp. 353-4): "The second category of duration cases involves a subtle, but important, difference. Although the state's purpose for commitment remains constitutionally valid, its accomplishment within a reasonable period has become doubtful, and thus the commitment has exceeded its permissible duration. Implicit in these cases is the constitutional expectation that states have only a reasonable period of time to accomplish their legitimate commitment objectives. These cases recognize that the constitutional permissibility of confinement depends not only on the harshness of conditions, but also on duration. Punitiveness is not only a momentary measure, but also a cumulative one. Confinement that is non-punitive, in short, can become punitive if its duration is excessive."

"In Jackson, for instance, the Court invalidated Indiana's right to hold, for an indefinite period, a criminal defendant deemed incompetent to stand trial. [Jackson, at 733] The State, rather, could hold Jackson for the 'reasonable period of time necessary to determine whether there is a substantial chance of his attaining the capacity to stand trial in the foreseeable future.' [Ibid.] And, even though the state's interest in evaluating Jackson and rendering him competent for trial remain unabated, the Court held that Jackson's 'continued commitment must be justified by progress toward that goal.' [Id. at 738] Likewise, in United States v. Salerno, [481 U.S. 739 (1987)] the Court emphasized that the pretrial detention permitted by the federal Bail Reform Act had 'stringent time limitations.' [Id. at 747] This made explicit the connection between duration and punishment, but intimate[d] no view as to the point at which detention in a particular case might become excessively prolonged, and therefore punitive, in relation to Congress' regulatory goal [Ibid., n. 4]"

(at 354): "The Zadvydas majority cited Jackson for the proposition that 'where detention's goal is no longer practically attainable, detention no longer bear[s] [a] reasonable relation to the purpose for which the individual [was] committed. [Zadvydas v. Davis, 533 U.S. 678 (2001) at 690] The Court concluded that a deportee may not be held once it is determined that there is 'no significant likelihood of removal in the reasonably foreseeable future.... And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the "reasonably foreseeable future" conversely would have

to shrink.'" [Id. at 701] [Zadvydas confirms the view of numerous district court and appellate holdings finding serious constitutional problems with indefinite detention by the Immigration and Naturalization Service ("INS"). See, e.g., Ma v. Reno, 208 F.3d 815; 821-22 (9th Cir. 2000) (holding that the INS may not indefinitely hold 'alien' where no reasonable likelihood existed for removal); Koita v. Reno, 113 F.Supp.2d 737, 741 (M.D. Pa. 2000) (stating that mandatory detention requirement of INS may violate substantive due process rights); Kay v. Reno, 94 F.Supp.2d 546, 552 (M.D. Pa. 200) (holding that the INS's mandatory detention requirement violated the alien's substantive due process rights); Duang v. INS, 118 F.Supp.2d 1059, 1067 (S.D. Cal. 2000) (holding that indefinite incarceration of alien violated his substantive due process right); Nguyen v. Fassa, 84 F.Supp.2d 1099, 1100-11 (S.D. Cal. 2000) (holding that, when removal of deportable alien is not foreseeable, detention by the INS becomes punitive after a certain amount of time.)]

(at 355): "These cases teach that punishment comprises not only unduly harsh conditions, but also confinement that is durationally out of proportion to the state's non-punitive purpose. Whether confinement is punitive thus turns on proportionality - which, in turn, can depend on duration. Although the state's interest remains constant (assuming that the need for treatment, evaluation, restoration, deportation, or protection remain unchanged), at some point the cumulative imposition on the individual's liberty outweighs the government's interest, requiring an end to the confinement. In the terminology of Mendoza-Martinez, the confinement has become 'excessive in relation to the alternative purpose assigned.' [Kennedy v. Mendoza-Martinez, 372 U.S. 144, 169 (1963).]

"In the same way, confinement can become excessive in relation to treatment, the 'alternative purpose' that ensures the non-punitiveness of police power commitments. [See, e.g., Thielman v. Leean, 140 F.Supp.2d 982, 1000 (W.D. Wis. 2001) (noting that "because one of the purposes for which sexually violent persons are committed is to receive treatment, the conditions and duration of plaintiff's confinement must be reasonably related to that purpose.");] States are entitled to a reasonable opportunity to achieve a reduction of risk via treatment. Confinement becomes excessive when there is no 'reasonable progress toward that end, and when there is no significant likelihood of ...[risk reduction] in the reasonably foreseeable future.'" [Zadvydas, 533 U.S. at 701]. Like the alternative purposes in the

duration cases, treatment no longer outweighs the cumulative imposition on the individual's freedom.

(at p. 356): "As the cases plainly demonstrate, incapacitation alone supports, at most, confinement that is strictly time limited. That is the lesson of Salerno and Fauch. In Zadvydas as well, the Court stated that dangerousness did not provide a justification for indefinite preventive detention...." [Zadvydas at 691].

(at p. 358): "In other words, the Jackson line of cases suggests a strong right to treatment, one in which effective treatment facilitates real progress toward community reentry." [emphasis in original]

"If otherwise, the state would have no actual purpose beyond incapacitation - which in itself, as discussed, fails to qualify as a long-term, non-punitive purpose sufficient to satisfy due process." [See Dhlinger v. Watson, 652 F.2d 775, 778 (9th Cir. 1980) (stating that "[a]dequate and effective treatment is constitutionally required because, absent treatment, appellants could be held indefinitely as a result of their mental illness.")]

"...[T]he Court has clearly stated that a non-punitive purpose is a constitutional predicate for a civil commitment scheme. Thus, if a state's treatment conduct falls below this weakest threshold - i.e., if it is insufficient to negate the punitive intent - it should be expected that the commitment scheme would be found unconstitutional, and its committees rightfully released. In Young, even Justice Scalia appeared to assume that release from commitment would be appropriate if the state's treatment purpose were negated by appropriate evidence." [See Selig v. Young, 531 U.S. 250, 269-70 (Scalia, concurring)] ("[I]f those proceedings fail, and the state courts authoritatively interpret the state statute as permitting impositions that are indeed punitive, then and only then can federal courts pronounce a statute that on its face is civil to be criminal.")]

(at p. 359): "Finally, we have shown that a strong right to treatment can be derived from the Jackson principle that the duration of confinement must be reasonably related to the purposes of confinement. Confinement that is non-punitive, because it is undertaken with the proper intent, can become punitive if it is excessive in duration, as compared to its purpose. States have only a reasonable period to accomplish their treatment objective, which is the reduction in risk sufficient to allow release. This is an individualized right that is predicated on efficacy. Further, because it implicates the duration of confinement, it is clearly enforceable by release." [emphasis supplied].

Incapacitation alone cannot constitutionally support confinement of long or indefinite duration. "Dangerousness" does not provide a constitutionally valid justification for indefinite preventive detention. Assuming treatment is a sincere purpose of Minnesota's sex offender commitment regime under said Act as implemented, it remains a principle of substantive due process that punitiveness is not a merely momentary measure, but also a cumulative one. Confinement that is non-punitive on a purely momentary basis through provision of adequate treatment can become punitive if the duration of said confinement is excessive. Therefore, the Minnesota sex offender commitment regime under said Act has only a reasonable period of time to accomplish the legitimate commitment objective of effecting through treatment rehabilitation of offenders to allow for their release.

Minnesota's sex offender commitment regime under said Act as implemented through MSOP provides only minimal treatment at a phenomenally glacial pace, such that said treatment is not adequate, and cannot possibly justify the decades-long duration of confinement. The periods of time consumed by MSOP in a claimed effort to deliver effective treatment is extremely unreasonable in duration to that claimed end. Therefore, by this violation of the duration principle, Defendants deprive Plaintiffs of due process.

This institutional MSOP bias against release, reflected by MSOP's provisional release standard itself, and by pronouncement by MSOP of its conservative release policy, comprises yet another substantive due process violation. In cases of detainees who have advanced into middle- or old-age while in MSOP confinement, such a detainee could not currently be committed, due to his aging-reduced risk. Yet that detainee cannot be freed from his commitment of many years ago under the MSOP standard for release. That standard is not satisfied even if a detainee can show that he either no longer has the mental disorder relied upon for his commitment or is no longer highly likely to commit future sex crimes; even so, only "successful completion" of treatment will suffice to allow release. This is so even though MSOP has a risk assessment department whose calculation of current risk of re-offense is reduced by the actuarial impact of such aging. Despite that MSOP is thus well aware of such reduced risk of re-offense, it withholds this vital information from the detainee and his counsel, from SRB, from SCAP, and from everyone else. That is a present denial of due process.

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22. If MSOP Is to Continue at All, Its Treatment (as Described Below) Should Be Brief and Directly to the Point of Convincing Treated Sex Offenders Not to Attempt to Commit Any Further Sex Crimes.

"Treatment" of sex offenders, properly understood, isn't what is commonly understood at all. There is no meaningful role for either individual psychoanalytical treatment or "group therapy" (especially where, as does MSOP, rapists are 'homogenized' in groups-in-common with pedophiles, since the motivations and dynamics that divide these two groups are vast and utterly inconsistent). The Court, in Finding 70, ascertained that MSOP does not attempt to individualize treatment. Dr. Freeman testified that MSOP treatment improperly homogenizes both rapists and pedophiles in the same treatment 'boilerplate' modality. (Trial Tr. v. 4, pp. 881-82).

According to Finding 105, MSOP treatment participants are unaware of, and uncertain as to, how to progress through treatment. Finding 93 determined that motivation to participate in treatment is reduced by the lack of clear guidelines for treatment completion and of projected time lines for phase progression. Reciprocally, the OIA Report found lack of motivation to be a barrier to progression in MSOP treatment. Slow movement through the program was found by Site Visit Auditors to cause demoralization, increased hopelessness, and reduced motivation and engagement. (See also D. McCulloch testimony, Trial Tr. v. 1, p. 84, II. 17-21, p. 102, II. 6-8] Dr. Vietanen testified that she was ethically troubled by her experiences as a treatment therapist in MSOP because "clients didn't move forward or move out, and that it didn't seem possible to do treatment in a way that was going to result in a positive outcome, i.e., returning to the community." (Trial Tr. v. 10, p. 2288). Due to a lack of sufficient staffing and to an onerous emphasis on report-writing, Dr. Vietanen was not allowed to perform individual treatment except in cases of a serious problem at the moment. (Id., p. 2289).

Finding 106 noted that some MSOP detainees have stopped participating in treatment, despite satisfying phase progression requirements, because they knew it was futile and they would never be released. Some detainees for over twenty years have completed the treatment program three times, but now are only in Phase II, simply because of later treatment program changes.

Finding 95 recaps the figures from Exhibit C to the Affidavit of Janine Hébert as to the distribution of MSOP detainees among those

in treatment as opposed to those not, and as to the numbers and percentages of those in the respective phase of treatment. This last set of figures casts a picture of Phase I-heavy distribution. Finding 96 updates these phase percentages through 2014, reflecting a lesser percentage in Phase I, with a correspondingly larger percentage in Phase 2. However, less than 10% were then in Phase 3. It should be noted that the 1% figure of treatment 'refuseniks' is well-known among MSOP detainees to be patently, egregiously false. The true figure is easily at or above 15%. The fact of this falsehood casts all other percentages into equal doubt.

Also note that this estimate of a current 80-85% treatment participation rate among MSOP detainees would not be true were it not for DOC ISR requirements that each parolee committed to MSOP participate in treatment as a condition of not being revoked and returned to prison. Were that not such a requirement, nearly all parolees under commitment to MSOP would cease participating in treatment. Also, recall from discussion supra that most who are under such compulsion to undergo treatment do so in name only, seldom, if ever, attending core group therapy sessions; effectively, this is simply remaining a refusenik indirectly.

Now that MSOP's 'treatment' has been found by the Court to be no recognized form of treatment at all, and has been part of the Court's ruling of denial of substantive due process, shouldn't this requirement of participation also be struck down?

The fact that MSOP clinical officials (along with the great majority of those in charge of sex offender commitment treatment programs elsewhere) have not yet grasped this elemental fact demonstrates the hopelessness of simply "developing" or "adjusting" current treatment regimens. What is needed is complete replacement of the entire theory of sex offender treatment.

What should replace the current conceptualization is a starkly contrasting model of simple, short, candid indoctrination, with completely voluntary adjunctive therapy held out for those who express a need or compelling desire for it, in order to ensure their personal non-reoffending after release. The standard indoctrination should consist of two branches:

- A short course of education into the physical, cognitive, and emotional facts of sexuality, from the perspective of victims, both adult and child. The emphasis here is upon convincing the offenders in this study of the often devastating consequences to victims of their actions and of the impossibility of avoiding infliction of that devastation while continuing to commit sex crimes.
- A short, simple examination of the mas-

sive array of monitoring, surveillance, investigation, and apprehension agencies, their countless, highly dedicated personnel, and their techniques, including high-tech tools, all poised to ensure that no released sex offender will be able to sexually reoffend; and that, when any move toward such perpetration is detected, or merely any attempt is made to evade supervision or registration, the offender will face immediate arrest and many years of further incarceration.

This proposed regimen, easily designed for maximum impact, combined with such post-release measures (which, if only by default, are currently performed very conscientiously by every police department of any area in which any sex offender resides or works, or which he frequents), will ensure non-offense for more effectively than 20 years of MSOP-style 'treatment' aimed at impossibilities and ending only in extreme frustration and rage.

Conclusion

Based on all of the foregoing observations on the true state of affairs in MSOP, the Resident Advisory and Family Council urges the Minnesota Legislature to repeal Minnesota Statutes Chapter 253D in its entirety. The latest MSOP annual performance report casts the impression that 'everything is perfect and beautiful' in MSOP. However, as the foregoing shows, nothing could be farther from the truth.

If you, as legislators, refuse to repeal this abomination unto the guarantee of due process and the protection against bills of attainder, then know what you are doing by perpetuating the monstrosity of MSOP. MSOP embraces "cognitive behavioral therapy" ("CBT") as its centerpiece of treatment of sex offenders. In a nutshell, CBT seeks to change one's thinking about the nature of sex crimes and thereby, through the natural process of cognitive dissonance, to change sex offenders' behavior from sexual offending to living a crime-free lifestyle. To try to change a sex offender's thinking, the typical combination of punishments and rewards of "behavioral" treatment are imposed upon each offender. In other words, CBT is simply a rewrite of traditional "brainwashing" from Korean War days and the War in Vietnam. However, despite years of such brainwashing (especially in the latter war), as soon as the brainwashed were released to return home, all vestiges of such supposed cognitive and behavioral changes disappeared, and the victims returned to life as before, with resumption of previous attitudes, often more emphatically held and expressed. In short, in the long run brainwashing is an utter failure.

This realization is probably why sex offender commitment programs elsewhere in the country are now largely in the process of

giving up on CBT. See Jennifer E. Schneider et al., "SOCCPN Annual Survey of Sex Offender Civil Commitment Programs 2014," SOCCPN, San Diego, Oct. 27, 2014 (The percentage of treatment programs in use in the various commitment programs that use "cognitive behavioral" treatment as an "organizing principle" of their treatment program (as does MSOP) has fallen by half since 2007: (2007: 90%; 2014: 47%); No other treatment program takes several years or more to have any claimed effect on its participants. Such authorities elsewhere are doing so even though there is no 'magic bullet cure' of a replacement treatment program. Obviously, authorities in other states have tired of paying for similar programs that, like MSOP, engage in many years or even decades of treatment only to announce that it has had no effect or insufficient effect to declare its participants now 'safe enough' to release. Thus, such treatment programs in other states actually have substantial release numbers annually, whereas MSOP has almost none - ever.

Continuation of the MSOP so-called treatment program is nothing but ever-thinner attempted cover for what amounts to permanent detention of sex offenders as extended punishment for their past crimes. Even the very notion that such detention is needed as "preventive" against similar future crimes has now been completely dashed against the rocks of science, given that most of these former sex offenders are now in their late fifties and beyond. The recidivism statistics clearly reveal that this category in particular is comprised of those least likely to ever sexually reoffend in the future, and that such likelihood is so low as to be measurable in the low single-digit percentages of probability, if not even lower still.

MSOP thus is effectively nothing more than a permanent employment plan for fanatical haters of sex offenders who have gained college degrees in studies in mutual admiration of such states of hatred. This must cease now. The impact of MSOP on Minnesota's annual governmental budget is extreme (and extremely wasteful, compared to allocation to effective sex crime prevention programs).

Worse yet, the precedent that MSOP sets as a program is frightful in its implication that similar detention/'treatment' programs can be founded to keep all manner of persons confined because some set of the public can be whipped up into a furor of fear and hatred of them. Will this be drunk drivers, or drug addicts and/or alcoholics, or career criminals, or perhaps those with extreme political views, including a belief in a rightful place for political violence and unrest, or

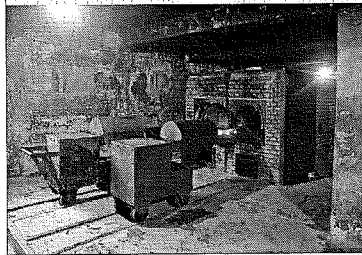
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perhaps those whose lifestyles some find too bohemian or those with unusual religions who are suspected of immorality and generally parasitical business practices?

Looking back at the 1994 creation of commitment of sex offenders in Minnesota, the statements of legislators then and of those who urged them to pass that legislation were emotional and were of the scientifically incorrect belief that sex offenders are driven by an urge to reoffend such that further recidivism is all but certain (the '100% recidivism' myth). Viewed charitably, the best that could be said is that such commitment was an experiment to see if some treatment could reduce this imagined terror of near-certain recidivism to some lesser, societally acceptable level of unlikelihood of recidivism. However, in the fanatical minds of those who administer MSOP and their 'clinical' employees, it is now clear that they, at least believe that no such reduction is even possible, or that it can be achieved by any sex offender only rarely, and only after decades of effort (the 'complete persona makeover' theory).

Consider that numerous legal commentators have objected to sex offender commitment legislation and its administration in practice as a deliberate erosion of the criminal justice process as a means of dealing with crime. Effectively, the main precept of the sex offender commitment movement is that sex offenders cannot be deterred by the



The End for You?

penalties of the criminal law or the likelihood of getting caught for their sex crimes. However, in reality, sex crime statistics show that the incidence of sex crimes, and more particularly, recidivistic sex crimes, has plunged precipitously - literally appearing to fall off a cliff on graphic charts. This is true of Minnesota, as well as elsewhere.

The time period over which this reduction in sex crimes occurred closely tracks that same period in which criminal penalties in Minnesota were repeatedly drastically escalated multiple times (as a matter of sentencing guidelines, for instance). Moreover, during that same period, efforts to investigate sex crimes greatly increased, including the wide availability of DNA PCR technology

making crime-scene DNA comparisons to sex offender databases easily and fairly cheaply possible for the first time. Therefore, it seems quite clear that the reduction in sex crime incidence, and especially a reduction in recidivistic sex crimes, is due to deterrence through fear of detection, apprehension, and criminal punishment.

In other words, contrary to the asserted predictions at the time of the 1994 MCETA in Minnesota, criminal deterrence now works admirably at preventing sex offenses, and particularly at deterring sex-crime recidivism. In this light, the claimed justification for a need to override the primacy of the criminal law as to recidivistic sex crimes has now been proven to be incorrect. It follows that MSOP commitment simply is not necessary for purposes of preventive detention. It simply should be brought to an end now.

Even if the Legislature differs on this, the MSOP program should be limited to a short maximum period of treatment in confinement. Such treatment should consist of the pragmatic matters suggested in the final section of Part 2, supra. Beyond this there simply is no science to support any known therapies.

In any event, there simply is no massive danger of widespread recidivism. It is a proven fact that those sex offenders who are committed are only as likely to commit another sex crime as is any other non-committed sex offender. As stated above, that general rate of sex-crime recidivism is extremely low. Even though one may always argue that there is at least some small danger of recidivism, there simply is no way to determine who will reoffend, versus who will not.

Using the 3% current sex-crime recidivism rate over all offender ages, this means that if 100 sex offenders were seated in an otherwise empty auditorium and a committee of so-called forensic experts were seated on the stage, those experts would not be able to tell which three of those one hundred would reoffend. This fact is undenied and is undeniable. In essence, this signifies that roughly 97 out each 100 sex offenders under commitment in MSOP would never have committed another sex crime even if they had not been committed.

Conversely, it also means that, out of the 730 currently confined by MSOP, only roughly 22 would ever commit another sex crime. Locking up 730 people simply to prevent 22 potential victimizations may have emotional appeal, but it is a terrible waste of tax dollars and it is grievously unfair.

Please end all this now.

Victim of the Month - Jeremy Johnson

Jeremy Johnson was born in December 1980. This means that in 2002 he was already 21 years old. We'll come back to the significance of this fact in a minute, but first, let's sketch in his episode of difficulty with the law.

In June 2006 he was arrested on various sex crimes with a few pubescent and post-pubescent boys. Each of them knew him for some time before the offenses. These crimes including only fondling and fellatio. At worst, these were seductive episodes; no force or overbearing was involved. Jeremy has been in custody ever since that arrest in 2006. At the end of Jeremy's term of imprisonment in 2012, he was committed.

Apparently, the prosecutor was keenly aware that Jeremy's few contemporaneous convictions for such comparatively light-weight sexual misconduct was a very thin basis for commitment. Thus, his commitment petition in the case also cited a long string of non-sexual offenses, and these were incorporated into the judge's supporting findings of fact in Jeremy's order for commitment.

Among these allegations were the following: A juvenile alcohol consumption offense in 2002; charges of possession of drug paraphernalia and a small amount of marijuana, plus damage to property, all later in that same year; and 2007 charges for DWI and underage drinking. Also present were assertions that Jeremy had been evaluated in November 2007 at the Albert Lea Chemical Dependency Center as being chemically dependent, and that he was incarcerated in the Oak Park Heights Prison then.

The only problem: all these allegations were utterly false, apparently derived from records of someone else. Recalling Jeremy's birth year, it is clear that he was already an adult from late 1998 on forward. Hence, all matters alleged as juvenile offenses obviously belonged to someone significantly younger than Jeremy.

Further, at the time of the Albert Lea chemical dependency exam, Jeremy was (and had been for some time) imprisoned by the Dept. of Corrections. However, contrary to that allegation, Jeremy has never been in the Oak Park Heights prison.

During his commitment proceeding, Jeremy informed his attorney (you guessed it, Ryan Magnus) of the falsehood of each of these allegations, yet Magnus did nothing about any of them.

Because the boys Jeremy's crime involved were all pubescent or beyond, he does not qualify for a diagnosis of pedophilia, which his commitment was based on. Even MSOP

(ever the enthusiast for over-diagnosing disorders) has never given that diagnosis to Jeremy. Hebephilia (attraction to teenagers) is not, and has not for quite some time been a disorder per the DSM.

Therefore, the only disorders Jeremy was plausibly diagnosed with by MSOP do not cause sex offenses. Thus, contrary to the legal requirement for MSOP commitment, they cannot create the necessary "high likelihood" of future sex crimes; nor do they create any serious difficulty in controlling one's sexual behavior.

For these reasons and on account of the original reliance on those allegations above that are false as to Jeremy, he is seeking a new trial and meanwhile is awaiting a SCAP hearing (but not until October 2019). He would also appear to be a classic candidate for a state habeas corpus petition.

During his time here, MSOP has put documents pertaining to someone else into Jeremy's file and given him BERs for that other individual's rule violations.

Separately, Clinical has involuntarily paired Jeremy with more than 30 roommates whom Jeremy disliked and who returned such dislike to him. In some cases, some of these roommates inflicted unwanted sexual fondling and/or fellatio on Jeremy. When Jeremy complained, staff acted nonchalant, not separating the roommate in question for a week afterward.

Other clashes, Jeremy experienced with roommates were caused or aggravated by incorrect medications forced upon Jeremy until a different doctor discovered the mistake after years had gone by. Since having those drugs canceled, Jeremy has been fine behaviorally.

In sum, Jeremy is a classic portrait of someone railroaded into commitment, and shafted since he got here. Can you relate?

Paranoid Catholic Parents Embrace Sex Offender Residence Restrictions Most of All.

[Editor's Note: When statistics were the tool of propagandists, exaggerated, distorted, and even falsified, sex offenders as a class were often victims of such twisted and falsified contentions.

Now, however, statistics have largely been policed by conscientious, ethical scientists in service of deflating all those anti-scientific myths about sex crimes and sex offenders. But even honest statistics can be embarrassing. We can only speculate that the

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periodic revelations about certain clerics who have abused their positions of trust by surreptitiously committing child abuse may have understandably made you cynical. No one can blame you for this, of course.

But that phenomenon only shows that anyone can commit sex crimes and that most child sexual abuse is perpetrated by family members or by others known to the child. And it further shows that raptly focusing on those who committed such crimes in the past (often, distant past) and whose imprisonment for it has ended will never extinguish sex offending, since most sex crimes by far are committed by those who have never been caught for any yet.

Therefore, we apologize in advance for the article excerpt below to Catholic parents who happen to remain in the clutches of unreasonable fears about sex crimes and about those who, at some time, have committed a sex crime or crimes. However, facts are facts.]

Kristen M. Budd & Christine Mancini, "Crime Control Theater: Public (Mis)Perceptions of the Effectiveness of Sex Offender Residence Restrictions," 22(4) Psychology, Public Policy and Law 362-374 (Nov. 2016)

Abstract excerpt:

p. 362: "Some crime control policies are ineffective, yet still draw public support. Such laws, labeled 'crime control theater' (CCT), derive their unquestioned public support from moral panics involving mythic narratives, yet little research has actually linked these criteria to support for a theater law. ...Drawing on data from a national random sample of Americans, logistic regression is used to analyze the factors associated with this CCT [residence restriction] law. Results indicate that if community members are Catholic, are a parent of a minor child, and believe in stranger danger, they are more likely to believe that residence restrictions are effective in reducing sex crime recidivism."

Editor's End Note: In point of fact — also a matter of established statistics, such residence restriction laws do not reduce sex-crime incidence or sex-crime recidivism by individual sex offenders or by sex offenders in the aggregate.

Of course, mostly this failure to have an impact is due to the fact that sex crime recidivism is already at an all-time low rate countrywide. Numerous large-scale peer-reviewed studies have confirmed this truth repeatedly, and have even called into serious question earlier unscientific, informal statistical studies claiming higher sex-crime recidivism rates 20 years ago and beforehand. When rates today are approaching zero, it is tough to lower that recidivism rate

further through any means, regardless how draconian.

However, the good news in this is that the streets have never been as safe for America's children as they are right now — and this is true everywhere regardless of where sex offenders may be living or where laws have banned their residence.

So, for your peace of mind, we urge you to find the actual facts and to disregard the still-screaming propaganda by those who would make money and political careers from hysteria that they themselves foment. Stop fretting about some mythical time when things were supposedly "safer." The fact is, we are in that time right now.

So, enjoy your life. Teach your children the basics of safety that have always applied, and then let them enjoy their childhood too. They will practice safety and they will be safe. This isn't rocket science.

What if the Shoe Were on the Other Foot?

Charles Moser, "Paraphilia: A Critique of a Confused Concept," Chapter 5 in: New Directions in Sex Therapy: Innovations and Alternatives 91-108 (Peggy J. Kleinplatz, ed. 2001); separately available at: <http://tempik.webzdarma.cz/literatura/pamoser> p. 97: "...If a law was passed in the United States criminalizing heterosexual behavior, how many previously law-abiding citizens would be able to comply? How many people would find happiness engaging in the now mandated homosexual interactions? How many individuals would engage surreptitiously in criminal heterosexual acts? Would these criminals be seen as dangerous to children and lose their parental rights? The diagnosis of paraphilia has been intertwined with social judgments of normalcy and used to deny civil rights."

Editor's End Note: In the past, homosexuals were subjected to such social and legal abuse. That same tendency to extropunitivity remains alive and well, unfortunately, still lashing out at anyone who can be defined as the feared outsider vulnerable to loathing.

Today, it is those who can be labeled as paraphilic (in street parlance, the 'kinky'). Pedosexuals are the most numerous subset among this labeled group. Like homosexuals, their orientation is lifelong and is not a matter of choice, and there is no known cause or cure. Recent surveys reveal that 1 in 5 adult males are attracted to prepubertal girls, with 6% attracted to boys. Pedosexuality can never be stamped out; it can only be managed if some alternative sexual outlet attractive to pedosexuals remains.

Like homosexuals before, pedosexuals are

subjected to ostracism and denial of the basics of life, including employment and even a place to live, and they are even victimized by vigilante violence and preventive detention under guise of 'treatment' really only intended to make them feel bad about who they are.

The abiding truth of civilization is that we make our own calamities by inventing and goading enemies from people who have lived side by side among us. So now the question: if you were a pedosexual and all this were heaped upon you repeatedly and unceasingly, what would you do?

The reality is that pedosexuals just want what anyone else wants: a peaceful and livable life, and some adequate sexual outlet. (I'll get back to that last point in a minute.)

First, however, another question: If you could be sure that pedosexuals would willingly cease having any sexual interaction with all children, would you be simply willing to afford them the same lot in life that anyone else can get through applying themselves in useful endeavors—just like anyone else?

I submit that, once that fear of sexual victimization becomes obsolete, most in society will no longer cling to such hatred of pedosexuals. I'd like to think that you too would be willing then to lay aside such outdated enmity, in the interest of a universally rewarding and completely cooperational society where fear of strangers and hatred of 'others' no longer cast long shadows over our hearts and minds and everyone can be happy.

Recent research into the behaviors of pedosexuals has discovered that child pornography use does not spur them on to sexual abuse of actual children, but, surprisingly to the contrary, serves as an alternative outlet either replacing such 'hands-on' crimes or, at least, absorbing most of the motivation toward such actual sex crimes.

Child pornography production involves child abuse. But what if some other alternative pedosexual outlet were far more attractive than pornography and inherently does not involve sexual abuse of any child?

In 7/27-7, I wrote of a surprising, innovative proposal, namely, to divert pedosexuals from actual children through allowing a substitute that will prove far more satisfying than would sexual interaction with children. The substitute will be legal acquisition and interaction instead with 'AI-style' simulacra (android) robots in the form of children.

Android robots have lately achieved a fully convincing state — not just appearing, but also behaving just as a human of the kind they perfectly simulate, thus deserving the name "simulacra." These simulacra do not have actual self-aware consciousness, only a behavioral (but very good) simulation of it.

Because these units are merely machines despite their 'anatomically correct' features, absolutely nothing anyone does with such a

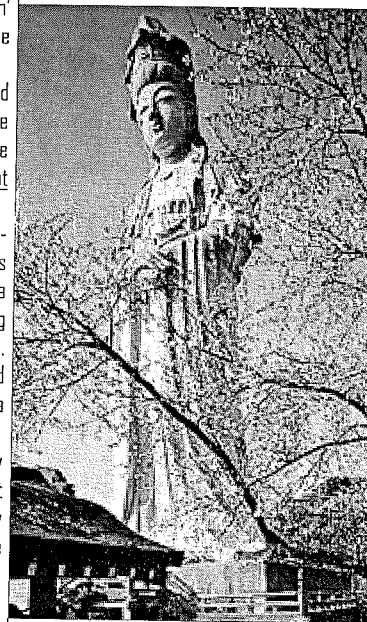
unit can inflict any pain or trauma upon it. Thus, their value as such a 'distractive substitute' is readily apparent and immense. Further, strong emotional attachment by the pedosexual will surely grow in time as the simulation of consciousness fills his need to love and to seem to be loved.

In sum, the simulacron experience of a pedosexual is certain to be far more satisfying and emotionally rewarding than any sex crimes with a real child. The rhetorical question thus becomes: why would a pedosexual ever choose the human option?

Add to this the conflicted realization by the pedophile that a human child will likely suffer trauma or at least emotional sequelae either from such sexual conduct or the reactions of others to it. Then also add the risk of being caught by police and sent to prison for perhaps decades. Given all this on top of the factors cited previously above, with the simulacron option available, the human-child option becomes utterly unthinkable to the pedosexual. And this is exactly what you want.

There will still need to be monitoring to assure that these simulacra remain used solely as intended. However, the need to monitor known pedosexuals already exists anyway. Moreover, by offering this attractive alternative, vastly more previously unknown pedosexuals will be willing to so identify themselves to authorities to be licensed to possess such simulacra.

For these reasons, I hope you will join me in supporting this solution that will give everyone peace of mind.



Kannon, Japanese bodhisattva of compassion