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  - ✓ Prescribing Child Sex Dolls to Prevent Sex with Real Children
  - ✓ MnSOST-3 – Retrospective Review of Predictive Accuracy
- ☞ And (always) much, much more!

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## Special Report: Modern-Day Gulags in the Golden State

by Barbara Koepfel, 45(6) *The Washington Spectator*, 1-8 (2019) (reprinted in entirety by kind permission of the author).

**Editor's Note:** This article first focuses on abuses of detainees by the California sex-offender commitment system and by Coalinga State Hospital ("CSH"), which replaced Atascadero as their repository while committed.

Second, this article also focuses heavily on financial misdeeds by administrators in charge of Coalinga and by certain classes of its employees. Although California once declined to commit a sizable percentage of those petitioned for such commitment, after a change of law a very high percentage of those petitioned are now committed to CSH, and currently, only a trickle of its detainees are released in any given year, despite that nearly twice the number of sex offenders committed in Minnesota are under commitment in California. — But then, California has about eight times the population of Minnesota.

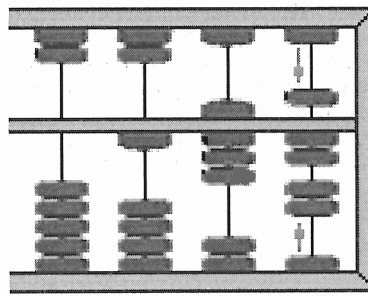
At various points below in the text of the article, [bracketed inserts] will hold comments of interest to those held here in MSOP. Underlined passages indicated emphasis added. [Washington Spectator Editor's Note:] "Modern Day Gulags" is the second installment of veteran reporter Barbara Koepfel's investigation into civil commitment in the United States. Her first piece, 'Sex Crimes and Criminal Justice,' is available at [www.washingtonspectator.org](http://www.washingtonspectator.org). In that report she explores the circumstances of sex offenders in 20 states who, after completing their sentences, are reincarcerated in prisons and hospitals and kept there frequently until they die. Ms. Koepfel lives in Washington, DC."

[Full Text:]

p. 1: "Back in 1997, the Supreme Court ruled that the practice known as civil commitment was legal. This meant that 20 states — which had passed laws permitting the ongoing incarceration of sex offenders — could continue to keep the men confined even after they completed their prison terms. (See "Sex Crimes and Criminal Justice," in the May 2018 issue of *The Washington Spectator*, available online.)

All it took (and still takes) is for two psychologists to claim the men might commit a new crime and a judge to say their cases can move forward. They are then labeled sexually violent predators (SVPs) and reincarcerated in prisonlike facilities until new trials are held — supposedly to determine if they will be civilly committed or released. The result? Some men have been waiting for their day in court for 15 to 20 years. In the meantime, many have died.

No matter that the men already served their prison time. Or that psychologists, psychiatrists and lawyers I interviewed insist that very few should be confined — that instead, the vast majority, many of whom are elderly or ill,



California state auditors' favorite tool, evidently.

should be let out.

Eric Janus, former president and dean of Mitchell Hamline Law School in St. Paul, Minn., says that continuing to incarcerate the men to comfort fearful constituents doesn't make the public safer. The bottom line? 'I've never seen numbers that show there are fewer sex offenses or re-offenses in the 20 states that have the SVP laws than in the other 30 states that don't,' Janus says.

Then why are roughly 2,500 men still stashed away across the country? [Really, the nationwide total is about 7,500. 2,500 may have been a missed typo.] Locking up sex offenders is always good politics, but it is also extraordinarily profitable. And since California has the biggest budget and locks up the biggest number — three times the next three states combined — the Golden State offers the biggest boondoggle to explore.

To document a system awash in double-talk and dollars, I interviewed 45 lawyers, psychologists, psychiatric technicians, rehabilitation therapists, nurses, journalists, prison reform advocates and civilly committed men over eight months. Nearly all feared retaliation and asked not to be named.

### A golden opportunity

When the sex offender laws passed, some California mental health officials instantly grasped that the new measures were solid gold. Melvin Hunter, then director of Atascadero State Hospital, where the SVPs were sent, was elated. "Whoever came up with the term "sexually violent predator" was a marketing genius."

In their wildest dreams, California officials couldn't have guessed just how golden. From 1996 to 2006, when the SVPs were sent to Atascadero, taxpayers coughed up \$716 million to house and supposedly treat them. In 2006, the state opened Coalinga State Hospital, which cost a third of a billion dollars to build and even more than that to outfit. Over the next 13 years, the SVP tab swelled by at least another \$2.1 billion. But who's counting? Locking up sex offenders and throwing away the keys plays well with voters.

Across the country, the scene is the same. In Kansas, the cumulative 25-year tab is now \$255 million to confine roughly 350 SVPs. In New York, it cost taxpayers \$117 million in

2017 alone for 359 SVPs; and in Washington State, nearly \$49 million in 2018 for 211 men. pp. 1-2:

### Costs soar

Each year Coalinga Hospital's operating budget spirals upward. In 2017, it was \$280 million, the next year \$322 million, and this year \$333 million to house 953 SVPs and 370 non-sex offenders, called 'mentally disordered' patients (MDOs).

Though stunning, these totals don't reveal the real numbers, since they exclude capital and legal costs. For example, lawmakers allotted a total of \$15.1 million from 2015 to 2018 to build an activity courtyard; the project was just put out for bid this past February, and not one basketball hoop is yet in place.

The taxpayers' bills for the public defenders, district attorneys, courts, investigators and evaluators that handle SVP cases are enormous. Totals are tough to tally — since the state and counties pay for different services — but a starting figure could be the \$21.8 million the 58 counties together spent in 2011 just for civil commitment hearings (which the state reimbursed). However, Heather Halsey, executive director of California's Commission on State Mandates says this amount 'only covered a tiny part of all SVP legal services.'

Add on the legal fees the state doesn't reimburse: For example, San Diego County Public Defenders' Office estimates the initial commitment hearings alone were \$514,000 in 2011 and \$279,000 the next year.

[Altogether, the legal fees, court costs, MSOP costs, and expert witness fees incurred in Minnesota commitment cases and in efforts by those confined by MSOP seeking release are equally difficult, but not impossible, to tally up, making a nice project for someone with a little outside help available. Rest assured, the total of such annual costs probably rival the annual operating budget for MSOP.]

p. 2:

### Securing funds

How California's Department of State Hospitals (DSH), which runs Coalinga, primes the pump is not particularly novel, but the details are noteworthy. According to a lawyer I'll call David Winters, who handles many SVP cases, the DSH tells lawmakers how much it needs to run Coalinga, and lawmakers fall into line. He says 'It's always more than the previous year. No one ever asks how much it should cost.'

First, the DSH secures a large enough pot so the dollars can be generously doled out — particularly to the key players who have the power to keep the men confined in perpetuity, such as psychologists and psychiatric technicians (called psych techs).

One psych tech I'll call Alicia Torres worked at Coalinga for years but quit because she

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**T**he level of lying and deceitfulness is awful. You have psychologists lying in patients' charts without any moral qualms."

didn't like the way the men were treated. She says, 'The psych techs put negative statements in the guys' records, and the psychologists who evaluate the men don't know them, so they assume the notes are accurate and say the guys must stay.'

The men who are confined call it 'cooking the charts.' Torres says, 'If a man complains about something the psych techs did, they'll write "He's aggressive," even though he isn't. One told me, "When I'm through with his chart, he won't get out anytime soon."

Second, according to a psychologist I'll call Judith Powell who worked at Coalinga both as a consultant and salaried staff, 'administrators send a clear message: "The men are not to be released."' [Sound familiar?]

Another employee I'll call Paul Carter says, 'It's a modern-day gulag.' (Fearing certain retaliation, he asked me not to even mention his profession.) 'There are no memos, but everyone knows what the officials want. They also know the DSH has never recommended even one man to be released in over 20 years.'

The numbers speak loudly: Of the 1,705 SVPs sent to Atascadero and Coalinga since 1996 the Courts dropped the charges for 598 men, 135 have died, and roughly 950 remain.

Carter adds 'If you advocate for the men or criticize Coalinga's policies, you're ostracized or fired. But the pay and benefits are great, and staff get promoted. So they do what's expected.' With his degree and qualifications, Carter says he earns nearly double what he would anywhere else. His concerns were repeated by a Protestant minister who was reprimanded for counseling the men and their families, and told me he stopped visiting inmates at Coalinga before the hospital could discredit him, as had happened to his predecessor.

Powell says that besides the dollar incentives. Most of Coalinga's salaried psychologists have bought into the bias. 'They're supposed to evaluate if a man is progressing, but they never say an SVP should be discharged. If they did, they'd have to defend it in court. That's tough to do, since everyone else says the opposite.'

The psych tech Torres says, 'The staff also buy in because of cronyism and nepotism. Lots of them have family who work here, and they help each other get promotions and overtime.'

As a former Coalinga employee wrote anonymously on *Glassdoor.com*:

'The hospital looks clean and modern. The pay is good. If you want overtime,

you could be a millionaire after a few years.

But the psych techs are very disrespectful of other professionals, such as psychologists, nurses, medical doctors, and they run the place. The level of lying and deceitfulness is awful. You have psychologists lying in patients' charts without any moral qualms. You have staff against staff. And of course, they hate the patients they're supposed to help to improve their conditions.'

Coalinga staff are well known for advancing on thin credentials. For example, Brandon Price, Coalinga's current executive director, started as a truck driver in a California prison, came to Coalinga to work in an office, and steadily moved up. His brother, Stirling Price, was an administrator at two other California state hospitals and is now the DSH's deputy director. [How *Highway 61 Revisited* is that?] p. 3:

**Nudging the numbers**

Coalinga's budget is based on the number of men it holds, which means the figure matters greatly. But the numbers are moving targets – depending on who's counting. At present, I've been told that there are anywhere from 920 to 980 men in confinement, but we'll use the 953 calculated by California's Legislative Analyst's Office. In 2016, Coalinga was budgeted to house 1,294 patients (the men are euphemistically called patients instead of inmates), but the census showed only 1,277: thus, Coalinga was paid for 17 patients it didn't have – which adds several million to its budget.

Drew Soderborg, managing principal analyst for the Corrections Section of the Legislative Analyst's Office, says Coalinga now holds 1,323 men, which includes the SVPs, and 80 more MDOs are expected by July, which will bring the total to 1,403. To house the newcomers, the DSH asked for (and legislators approved) \$11.5 million in 2018 and \$13.7 million this year. So far, only 60 have arrived; thus, adjusting the budget to account for the 20 missing men could theoretically lower costs by several million.

Allen Fletcher (his real name), a licensed fraud examiner who worked for Nike for about 10 years before being remanded to Coalinga after serving his sentence for a sex offense, says the 953 SVP head count is false. 'Some men are away from the hospital for court hearings – kept in county jails during the trials, which can be months – or they're back in prison, which can be years. I personally know four or five who are away.' He calculates that five times the annual cost estimated for each man (Soderborg puts it at \$236,000) could reduce the bill by another \$1 million plus a year.

One such double-counted man is Kevin Chavez (his real name), who was returned from Coalinga to prison for possessing child pornography (smuggled in



George Orwell

this happen for MSOP. Note MSOP's recent escalation of parole revocation instigations, and the fact that DOC revocation hearing officers act like MSOP hand-maidens.]

The number of staff needed is also debatable. The DSH continually claims it is short-staffed. But a 2013 Legislative Analyst's Office report found the 'DSH employed about 35 percent more staff than required under Title 22.'

Soderborg says, 'Title 22 is about the minimum staff needed.' But he adds that the DSH 'should have an independent consultant determine if the staff level is correct. Until this happens, we have to rely on the DSH's numbers.'

In the 2019-2020 Governor's Budget Proposal, the DSH again asked for more staff, citing 'increased violence.' But Ralph Montano, an information officer in the DSH's Office of Communication told me, 'the SVP population ...is often more psychiatrically stable ...and does not need an intensive level of care.'

**Bloated medical bills**

When justifying its budgets, the DSH points to rising costs. This might be credible if we could trust its numbers. But alarms go off when we look at big-ticket items such as medical expenses. According to one man's chart, over a four-year period, a single 81 mg. child's Aspirin was billed at \$38, \$48, \$184, \$238, \$256, and \$266; one 500 mg. vitamin C tablet cost \$19, \$37, and \$47. On another man's record, a 375 mg Naproxen tablet was billed as \$22, \$130, and \$140.

Why the disparity? Montano digresses, offering few facts: 'Items ...vary by price, quantity dispensed and strength.'

Ken Huskey, released two years ago, was charged for treatments that never took place. Huskey has 18 teeth, but over five years ago was billed for 57 fillings (\$615 each), 20 'oral evaluations' (exams) at \$349 each, and 51 'oral hygiene' lessons (\$87 each) 'to tell us how to brush our teeth,' Huskey says. I asked Montano to explain oral hygiene. He said 'I'm not sure if I have to say that oral hygiene instruction entails this, that, and the other thing. I have to check with our Legal office to see if a specific response is a violation of patient privacy.'

Huskey's dental bills also list 'anterior – excluding final res' (\$3,935), four 'periodontal scaling and root' procedures on the same day (\$1,922), and a 'molar, excluding final res' (\$6,558). He was also charged from \$1,955 to \$2,591 for a

by staff). According to a staff person who checked the Coalinga roster, Chavez is still on it. [Obviously, this fattens the budget without any cost. Does

total of four 'new patient eye exams.'

Who foots these bills? They're not a line item in Coalinga's budget, so I asked Montano, who told me to 'ask Medicare.' The San Francisco Medicare office said that program reimburses some charges but wouldn't disclose Coalinga's total reimbursement in one year – due to 'privacy concerns.' Its staff told me to send a Freedom of Information Act request to the national Department of Health and Human Services, which said mine 'didn't qualify for expedited processing based upon compelling need.' HHS suggested I file an appeal. [Compare this to MSOP, where no medical cost coverage, e.g., MA, Medicare, private insurance, means no medical procedures or drugs.]

Coalinga has found ways to extract even more funds. One man confined at the hospital, whom I'll call Joe Smith, says 'Coalinga gets reimbursed for medical appointments whether they happen or not. But it needs to prove the appointments were scheduled. So the staff tells us to sign forms that we missed them – even if we never knew they existed. If we won't, nurses or psych techs write "patient refuses to sign." One nurse (with a master's degree in public health) who worked at Coalinga for years says the men were routinely billed for lab tests they never got. [Maybe you should ask for a copy of the actual blood-work/urine sample test numbers the next time you get a terse announcement that your results were "normal."]

I asked Torres, the psych tech, how often this happens. 'Very often,' she confirmed.

The men themselves are a funding source. Coalinga creates a bank account for each man to withdraw funds as needed. But if his balance tops \$500 – say, someone sends him cash – Coalinga takes anything over that (except from Social Security or Veterans Administration checks). Smith said he was reimbursed \$10,000 for some legal services he canceled, and when a check was sent to his account, Coalinga pocketed \$9,500. When it refused to return his funds, he went to court and won them back.

In addition, California pays the DSH to confine 32 undocumented men at Coalinga who have also completed their prison sentences for committing sex offenses – almost all of whom have asked to be repatriated to their home countries. At the average annual cost of \$236,000 per 'patient' (Soderborg's estimate), the undocumented men generate a windfall for the DSH. According to a 2016 article in the Fresno Bee, the DSH says only the courts can release them from Coalinga. In 2001, one man, Juan Cordero, was ordered deported back to Mexico by the Los Angeles Immigration Court. Yet when the Bee

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**“T**he men themselves are a funding source. Coalinga creates a bank account for each man.... But if his balance tops \$500, Coalinga takes anything over that.”

ran the article 15 years later, he was still waiting there. As Fletcher points out, these undocumented men comprise another \$7.5 million of the DSH gravy train. Although Coalinga's kitty keeps growing, the DSH administrators continue to insist costs must be cut. For example, in 2012, they stopped all educational classes at Coalinga, such as remedial reading, basic Spanish, and General Equivalency Diploma prep programs – although the latter are mandatory in California prisons (since it's a hospital, Coalinga is not considered part of the prison system). Interestingly, the DSH did not cut GED classes in its four other state hospitals. Stephanie Clendenin, its acting director, says these cuts are 'to achieve savings.'

#### A bevy of beneficiaries

So who benefits? Obviously not taxpayers and certainly not the reincarcerated men. Indeed, it's hardly hyperbole to say they're hostage to those who taxi around the trough.

Strikingly, however, contractors and salaried staff do extremely well (more on each later). The DSH, which says it must achieve savings, has not cut fees, wages, benefits or overtime. In fact, some businesses seem truly blessed. For example, a contractor, California Dining Service, runs Coalinga's commissary and two restaurants – one for staff and another for the men. The owner pays Coalinga \$24,000 per year in rent to operate all three; he has no competition and sets the prices he chooses: the canteen sells an 8 ounce jar of Folgers Instant Coffee for \$9.25 and a 2.5 ounce Speed Stick deodorant for \$3.95. (In Safeway, they cost \$8 and \$3.29.) The commissary sells Little Caesars Pizza two days each month: it gets a box that holds eight pieces, for which it pays \$5.99 to \$7.99 (depending on the food store). It then cuts the pieces in half (there are now 16 slices) and sells each for \$2.11.

Walkenhorst's, which Montano says does not have a DSH contract, is nevertheless the sole company from which men can buy Hiteker tablets, the 7-inch mobile computers with touchscreen displays that are one of the few digital devices the men are permitted to use. While they cost \$39 or \$59 online, the men pay \$230 to Walkenhorst's. Montano says the price is higher because the devices are altered to block 'incarcerated people from engaging in inappropriate behavior.' However, a technician familiar with the tablets says it costs almost nothing to modify them. [Why don't we

have tablets?]

Another contractor, Liberty Health Care Corporation, received \$6.3 million in 2017 to oversee 17 men whom the courts placed on 'conditional release' (called ConRep). Liberty must pay for their housing, watch the men 24-7, except when they're at their jobs, and provide a treatment program. Of the men complete the treatment, Liberty may recommend to the court that they be unconditionally released. However, in the 20-plus years since liberty has had the contract, it has only recommended that about 20 men be released. Moreover, when Liberty returns some of the men it is supervising to Coalinga for 'violating' a rule, it need not return any of its \$6.3 million.

One man whom Liberty supervised says his case manager asked for \$1,000 a month toward his housing, offered no receipt. He told me, 'There were rats, roaches and bedbugs where they placed me, and the program was awful, so I asked the court to return me to Coalinga. The judge agreed.'

Another man under Liberty's care tried to commit suicide and was also returned. Psychologist Powell says, 'Liberty is corrupt. They treat the men terribly.'

Soderborg (the legislative analyst) says that, according to the state's contracting rules, 'anything related to Conrep is exempt from competitive bidding.'

Contractors who administer polygraph tests also prosper. One public defender lawyer I'll call Jim Woods told me, 'it behooves them to say the men are lying because the treatment team sends them back for more tests to see if their answers change – even when they're telling the truth.' The price per test in Los Angeles is \$475 to \$750. [Now, you don't suppose....?]

Woods adds, 'Although judges won't allow the lie detector results as evidence, they're put in the men's records, which hurts their chances in court.' [I guess this is the same double-talk everywhere.] This, too, helps to keep Coalinga filled.

Other contractors are the nonsalaried psychologists and psychiatrists who evaluate sex offenders to be considered for release. According to a 2008 Los Angeles Times article, 'State Pays Millions for Contract Psychologists to keep up with Jessica's Law,' business was bustling. The article notes that in 2007, 'among 79 contractors hired by the state ... the top earner, Robert Owen, pulled in more than \$1.5 million.... He worked 100 hours a week for 52 weeks at nearly \$300 per hour. The No. 2 earner, Dawn Starr, ...billed \$1.1 million, including \$17,500 for a single day in April, for five evaluations.'

It also named a psychiatrist, Dr. Mohan Nair, with offices in Beverly Hills and Los Alamitos, who earned nearly \$1 million. The article said he simultaneously 'saw private patients, directed a diagnostic lab, and supervised residents at two medical

centers.'

These revelations provoked little change. Fast-forward to 2017-2018, and Owen again earned the most -- \$808,262 – although others didn't do poorly: the next three earned \$729,500, \$537,600 and \$492,600. All 21 evaluators on the DSH's roster only worked part time.

The DSH says the fees are reasonable since each evaluation takes at least 20 hours to complete. However, Torres says, 'Most evaluators don't even speak to the guys. They look at their records, ask the office staff to copy some pages, and take them home. I've seen them do several cases in one day.'

Further, Powell noticed a troubling pattern: 'The psychologists DSH gives the most cases to are the ones who say that a higher number of men should be committed.' [Where have we heard this before?]

#### Lawyers, district attorneys and the courts

Lawyers – public and private – also thrive. Private lawyers' fees for SVP cases are typically \$100,000 to \$150,000. San Francisco attorney Todd Melnick charged one client a \$100,000 retainer, from the start.

The public defenders, private lawyers, district attorneys, evaluators, investigators, and even the courts all have strong incentives to string the cases out before they go to trial. Each county's legal offices and courts tally their budgets by the number of tasks they perform. Not unexpectedly, they perform a great many tasks.

Justin Boswell (his real name), who helped run a family business before he was confined at Coalinga in 2011, has not yet had a trial. He explains: 'My public defender lawyer, William Markov, attended 64 status hearings' (the brief procedure when lawyers go to court and judges decide if cases should proceed to trial). 'When a judge grants a delay, which is the norm, the lawyers must return for a new hearing. Each hearing equals another task,' says Boswell.

According to Glen Green (his real name), a registered paralegal who worked in San Luis Obispo county for nearly 10 years and is now confined at Coalinga, private lawyers, DAs, and judges are just as likely to request (and get) delays.

Such machinations explain why George Vasquez, a sex offender, lanquished at Atascadero and Coalinga for 17 years (until 2018) without a trial. Los Angeles County Judge Gail Ruderman Feuer cited 'violations of his right to a speedy trial and repeated delays' and released him. Over time, he had been appointed seven public defender lawyers, each of whom asked for delays.

It is estimated that at least another 300 men at Coalinga have never had a trial to decide if they should be civilly committed. Often, when they are first sent to the



Greed does know one bound....

hospital, their lawyers advise them to wait and participate in Coalinga's treatment program because it could cause judges and juries to view them more positively. In fact, participating has little effect: Of the 703 men who were released over 22 years (out of a total of 1,763 who were sent either to Atascadero or Coalinga), only 146 participated and 557 did not.

Many of those incarcerated at Coalinga think that Vasquez's release is a game changer, and that their cases will now move forward. But several lawyers told me this may not happen. They explained that some attorneys will fear that under California law their clients will sue them for negligence (because of the years they've waited) and may continue to delay the cases. Moreover, if new attorneys are appointed, they must start from scratch, which equals more delays.

#### Exceptional earnings

Salaried staff also do well. Some prison guards, now called correctional officers (COs) are employed by the California Department of Corrections and Rehabilitation (CDCR) at the nearby prison (ironically named Pleasant Valley). But they also do high-priced work for Coalinga.

To explain how they secured these plum jobs requires some history. The city of Coalinga (pop. 13,380), located in a desert-like area in the southern part of the state, is one of California's poorest. Before the hospital was built, the only jobs were in agriculture, the oil industry (which was reducing its footprint), and the prison. In the early 2000s, when the city council gave the green light to build the hospital there, unemployment and poverty rates were high, and per-capita incomes were low (40 percent lower than the national average). The hospital would bring badly needed jobs and income to the city.

At the time, Ron Ramsey, a prison guard, was a city councilman; he later became mayor. Whether this mattered is anyone's guess. But Pleasant Valley COs were tapped to patrol the area outside the hospital, screen all visitors, and transport men to outside appointments, such as at courts or hospitals, often one to three hours away. If the men have surgery and stay overnight, the hours mount, since the COs must guard them around the clock. Then there's the return trip to Coalinga. The

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“Often, when [sex offenders] are first sent to the hospital, their lawyers advise them to ...participate in Coalinga’s treatment program because it could cause judges and juries to view them more positively. In fact, participating has little effect.”

number of jobs exploded, as did the overtime costs.

Interestingly, when the hospital opened in 2006, the inmates taken to the same location rode in one vehicle with two COs, one driving and the other guarding the men (whose hands and legs were shackled). A ‘chase car’ usually followed the vehicle, carrying one or more COs.

For reasons unknown, the rules changed. Each vehicle now carries only one man and two COs, with a chase car still bringing up the rear. Was a guard attacked, which would account for this? Montano told me: ‘please contact CDCR, the Department of Corrections.’ But CDCR wouldn’t say, citing ‘security reasons.’ Hugh McCafferty, who was released from Coalinga two years ago, sent a PRA request asking for the ‘number and type of behavior incidents’ to learn if some of the men being transported had acted aggressively. The DSH answered that Coalinga had ‘no documents responsive to this request.’

The transport COs’ salaries are telling. One CO, Lt. James Woodend, had combined pay and benefits of \$178,690 in 2017, and Sgt. Eliseo Navarro earned \$140,912 (base pay of \$104,674, overtime of \$28,269, and ‘other’ of \$7,969). But their wages were modest compared to those of their colleague, Lila Collins, who earned \$224,622. By comparison, the average pay of a California CO is \$76,000 a year.

It’s conceivable the COs’ good fortune is linked to their union’s largesse toward candidates running for office. According to a June 2018 Orange County Register article, the California Correctional Peace Officers Association had plowed \$71 million into political campaigns since 2001, and Wikipedia noted its contributions ‘routinely exceeded that of all other unions in the state.’ Further, legislators approved a 5 percent pay hike in 2017, which, an AP article noted, ‘will cost taxpayers more than \$1 billion over three years.’

Coalinga City still scores poorly when its economic indicators are compared to California and U.S. averages, but the hospital has clearly helped city businesses, buying \$15.1 million’s worth of goods and services from them in 2016.

Besides the COs, other city residents – such as the psych techs, whose median salaries top those of the town’s firefighters, teachers and librarians – also have a

lot at stake. Often the first in their families to go beyond high school, they secure a psychiatric technician certificate after a 12-month course at West Hills, the local community college. [How professional is that?]

The most numerous of all Coalinga staff – at least a third of the total – the psych techs have been promoted over the years and now run the units (supervising nurses, psychologists, and social workers) and the hospital itself.

While the city’s average per-capita income was \$17,892 in 2016, the hospital’s 2014 payroll showed at least 50 psych techs with salaries of \$100,000 to \$200,000 and one with \$347,000.

Such sums were secured with massive overtime. But overtime hours at all five DSH facilities – supported by the booming budget – have been suspect for years. Since the DSH doesn’t use time clocks, the staff enter their hours by hand onto time sheets. As early as 2011, auditors were ‘aware of payroll fraud, past and current, related to overtime.’

Overtime is a huge chunk of Coalinga’s wage bill. Based on a PRA reply in May 2018, salaries and wages were nearly \$12 million, while overtime was \$1.5 million. Montano says these numbers are ‘in alignment when compared to other hospitals.’

Others disagree. In the suggestion section of a staff online publication, where Coalinga employees can offer anonymous observations, one wrote, ‘So many staff...book and erase or cross out staff’s names in order to place their own names for overtime.’

Torres told me, ‘The hours the psych techs write in for when they arrive, leave, and do overtime can be easily cooked because there’s no oversight.’ One nurse says while any staff can enter bogus numbers, it’s easier for the psych techs, since there are so many of them, and it’s hard to know who’s here.”

Further, she says overtime and lack of oversight are tightly linked – which explains how five psych techs at Patton State Hospital, another DSH facility – could embezzle \$800,000 over five years. According to a 2014 San Bernardino Sun article, they were paid for hours they didn’t work from 2007 to 2011 ...and the ‘state controller’s audit revealed sloppy payroll practices.’

Auditors discovered other payroll problems. In 2014, they found that Coalinga’s psychiatrists ‘regularly worked between 22 and 29 hours a week instead of the required 40 hours, costing the state nearly \$300,000 in one year.’

#### Silencing the messengers

The desire to hold the men indefinitely is so strong that the DSH hid some very inconvenient truths. Consider Dr. Jesus Padilla, a psychologist whom it funded in the early 2000s to calculate sex offender recidivism rates (at the time the DSH was



In the end, all are held to account.

known as the Department of Mental Health). Of the men Padilla studied, he found that 4.3 percent committed new sex offenses over five years – far fewer than the 40 to 50 percent many officials claimed. Unhappy with the results, Jon de Morales, the director of Atascadero State Hospital, canceled Padilla’s funds, squashed his study, and forbade him to publish his data. [See TLP, Vol. 2, No. 9, p. 1: “CA Hid Study Showing Low SVP Recidivism.”]

According to Tamara Lave, a University of Miami law professor and author of a 2018 article in American Criminal Law Review, ‘Assessing the Real Risk of Sexually Violent Predators: Doctor Padilla’s Dangerous Data,’ ‘the DMH may have realized the study had to be stopped because it threatened the legitimacy of the entire SVP program.... His data was never returned, and the boxes of documents were destroyed.’

Padilla was not unique. In 1998, the state also funded another psychologist, Dr. Gregory Schiller, to study recidivism rates. Besides finding they were very low (like Padilla) Schiller noticed that the psychologists the DMH hired the most were those who predicted that a higher number of sex offenders would re-offend.

Worse, the lawyer David Winters says, ‘Schiller named the names of the evaluators, which really got the powers-that-be up in arms.’

Silencing the messenger is not just a California custom. In Florida, mental health officials funded a psychologist (who asked for anonymity) to study sex offender recidivism rates in the early 2000s. When he found that the numbers were far lower than officials claimed, the Department of Children and Families didn’t want them used in the evaluators’ training and distanced itself from the research. After that, Florida legislators told the DCF not to do any more research.

Why must the states disappear the data? Winters says, ‘If Coalinga has a large patient population, the DSH can ask for a big budget. The waste is justified because it’s a group no one cares about.’ Another psychologist told me, ‘It’s a psychiatric-industrial complex. Everyone wants to keep it going.’

The men are also at risk. In early 2018,

after many of the men launched complaints, Coalinga administrators put the hospital on ‘lockdown.’ In-house police swept through the rooms, taking documents and electronic devices. Executive Director Price claimed it was to quell an ‘epidemic of child porn.’ But, based on a PRA reply, the epidemic amounted to 20 cases over 19 months, 1 percent of Coalinga’s population.

Andrew Warren (his real name) who has been at Coalinga for over 10 years, cut hair at the hospital’s in-house barber shop. Just last month, Warren called the governor’s and a state senator’s offices to ‘blow the whistle’ over the refusal of the DSH to disclose guards’ disciplinary records and Coalinga’s failure to protect the men from some who, he says, routinely attack those who are weak. Officers searched his room and seized his legal papers and an SD memory card with videos of Vietnam (Warren is Vietnamese-American), which they claimed was ‘contraband.’ The next day, he was fired from his job.

Further, Fletcher and Boswell, who often criticize the budget and urge California legislators to audit Coalinga for what they see as fraud, have been regularly targeted. Early this year, police searched their rooms and took documents. Boswell says, ‘The officer apologized, saying, “This wasn’t our idea. It came from administration.” In a few days, Fletcher was moved to a different unit. Why? ‘I was told “for my safety,” he said. Staff never elaborated.

This past April, a top DSH administrator called Fletcher. ‘He told me, “I know you’re looking into DSH finances, which could cause grief for the hospital and patients. Do you want to go home? We can help or hinder that.” Fletcher reported the call to the legislators, the FBI’s white-collar crime unit, and his lawyer. Boswell, too, was warned: ‘My treatment team leader told me my advocacy “reflected a lack of cooperation.”’

Two weeks later, five psych techs streamed into Boswell’s room, grabbed his legal documents, called the police – who repeatedly hit him – and placed him in isolation, where he was strapped down for several hours. This violence sparked a melee: the men on the unit ran to the halls, demanding Boswell’s release. In the fracas, the fire alarms and sprinkler systems went off. Under pressure, the staff unstrapped him.

Within an hour, a psychiatrist interviewed Boswell, and, hearing his story, filed ‘patient abuse charges’ against a psych tech named Lisa Sansinema, who spearheaded the attack. The next day, however, Boswell was told to retract his statement that he was assaulted and felt threatened.

Boswell refused and was not allowed to leave his unit for four days without some-

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one guarding him. He says other men have also protested Sansinema's abusive treatment.

Sansinema is still at her job. And so it goes.

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### **Gladden Excerpt Sex Offender Commitment Is a Bill of Attainder. (Last Installment: Miscellaneous Factors)**

#### **"E. For Attainder Purposes, No Sex Offender Can Avoid Application of Said Act by Modifying His Conduct.**

Whether a punishment is inflicted by a legislative act is impacted by whether one affected by that act can escape its application by modifying his/her present or future conduct. *Cummings, supra; American Communications Ass'n v. Douds*, 339 U.S. 382 (1950).

It is also clear that anyone within either the SPP or SDP definition cannot [escape] inclusion within that classification-by-description by doing or refraining from doing any particular thing at the time of his release from prison. The subclasses of sex offenders specified by the SPP and SDP definitions, respectively, of said Act simply comprise descriptive categorization as a basis for the infliction of preventive detention under rubric of commitment, thereby fulfilling the 'identification or description by group' element of a bill of attainder. Where a class is defined by past conduct, no valid prohibition or regulation of future conduct is involved, only a way to define a class upon which to inflict attainder penalties. See, e.g., *WMX Technologies, Inc. v. Gasconade County, Missouri*, 105 F.3d 1195 (8th Cir. 1997); *Berry v. Lucas County Board of Comm'rs*, 2010 WL 480181(N.D. Ohio, 2010); *Lee v. City of Villa Rica*, 449 S.E.2d 295 (Ga. 1994).

#### **F. For Attainder Purposes, Judicial Trial Is No Protection; It Merely Serves to Confirm That a Defendant Is in the Claimed Attainted Group(s).**

Notwithstanding that said Act provides for a judicial trial, the sole purpose of said trial is to confirm the fact that the person named is within either the SPP category or the SDP category, i.e., the respective two attainted groups. The existence of such purpose for a trial does not eradicate or alter the attainder purpose of that Act. Moreover, the typical procedural protections attendant to criminal trials – the only other means to reach a judicial judgment including a deprivation of liberty – are barred to a person to whom said

Act is applied. Therefore, the mere existence of a judicial trial to determine whether a given person is within either of the attainted groups is described by said Act does not erase or alter the attainder nature of the Act. See, e.g., *Longmoor v. Nilsen*, 285 F. Supp. 2d 132 (D. Conn. 2003)

A legislature oversteps its authority and blunders into the forbidden province of attainder when it engages in "forbidden fact-finding" about individuals or groups that the Constitution reserves for the judiciary. Both by their express terms and by appellate judicial interpretation, the implication of both SPP and SDP formulations, respectively, is that everyone possessing such characteristics is inherently "highly likely" to commit future sex crimes. This flies in the face of known science to the contrary.

The tyrannical evil of such legislative declaration of such fact-finding without support in, and indeed contrary to known science, and then authorization for judicial imposition of attainder 'penalties'/sanctions/restrictions upon individuals within such categorized groups is that it is simply a thinly disguised imposition of attainder penalties upon any defined category thought worthy of such penalization or merely feared or loathed. The problem, of course, is that any group can be made the victim of such fears and loathing and such categorization upon claimed excuse of probable misconduct or crime. In the 1930s, Nazi Germany's proclaimed rationale for an ever-increasing set of restrictions upon the actions of Jews was the claim that each such freedom had been, and would be abused in some way by any individual Jew or categorically by all Jews collectively. In this country in a somewhat earlier period, "Jim Crow laws" were justified by a claimed rationale that African-Americans were inherently incapable of comporting with laws applicable to all members of society and hence required imposition of special restrictions upon their travel, their right to own and handle property, their ability to engage in business, their participation in the democratic processes of government, etc.

Even currently, it remains theoretically possible to argue that, since crime impacts certain areas of major cities occupied by various ethnic minorities, special restrictions upon the rights of residents of such areas. (See, e.g., *Melissa Hamilton*, "Risk-Needs Assessment: Constitutional and Ethical Challenges," 52 *American Criminal Law Review* 231, 242 [Spring 2015]: "living in a neighborhood with high crime or illegal drug activity.") Thus, *Kimberly Kessler Ferzan*, "Beyond Crime and Commitment: (etc.)," *supra*, at 96 *Minn. L. Rev.* pp. 156-57: points up "naked statistical evidence" applied to an individual merely from a general category of cases. *Ferzan* illustrates with "[a]n eighteen-year-old African American

man who is unmarried and unemployed [who] is statistically more likely to offend than a forty-five-year-old, married soccer mom. The man cannot disprove that he falls within this class – the statistics do it all. The evidence is nakedly statistical because it is information about a category of people or events not evidencing anything relevant in relation to any person or event individually. ...If all that the status or condition does is make it somewhat more likely that the individual will commit the offense, then the State is still relying on statistical evidence. Either way, it is an impersonal prediction...." (emphases supplied)

This, of course, would simply be disguised discrimination against individuals, notwithstanding the statistical validity of the underlying proposition about excessive criminal actions in the aggregate. The invalidity of the categorization and the unfairness of penalization an individual merely for being within the attainted category comprise the evil of attainder. Mere relegation to a court of determining that one is within that invalid category provides no constitutional protection.

Because attainder is concerned with imposition of "punishment"/penalties, the requisite "protections afforded by the judicial process" necessary to avoid a bill of attainder must be those normally attendant to the government's infliction of punishment per the criminal procedures guaranteed to defendants by the United States Constitution. None of these rights is allowed to commitment respondents in the SPP/SDP commitment process, save court appointment of counsel. In fact, even protections for civil litigants, such as the Minnesota Rules of Evidence, are utterly dispensed with in SPP/SDP commitment cases. Thus, truly, there simply are no protections of the judicial process afforded to respondents in such cases.

Further allegations *infra* within this Complaint provide an in-depth examination of the farce of SPP/SDP commitment trials. Commitment trials under said Act amount only to a foregone conclusion based only on such past records and other alleged past acts of the commitment defendant, supplemented only by the rankest 'junk science' opined by prosecution hired-gun psychologists (also as Commitment Case Defendants herein) acting as character assassins.

Coupled with appellate refusal to examine the basis (or lack thereof) for trial judge "findings" and determinations of "credibility" or as to relative credibility, and the appallingly consistent trial-judge bias to credit prosecution expert testimony, regardless how factually baseless and



The Salem defendants had more rights than we did in our trials!

anti-scientific, this utterly negates the protections of a trial, and leaves it completely to the 'discretion' of a judge as to whether to render the individual over to natural-life preventive detention, cloaked only in the transparent sham of supposed release-through-treatment. To be sure, that, and "Arbeit Macht Frei." Therefore, the mere existence of a judicial trial merely to determine whether a given person is within either of the attainted groups described by said Act does not alter or erase the attainder nature of the SPP/SDP law.

#### **G. Comstock Held That the Basis for Sex Offender Commitment Is the Power to Punish.**

Of note to the bill of attainder claim, the Supreme Court, in *United States v. Comstock*, 560 U.S. 126, 130 S.Ct. 1949, 176 L.Ed.2d 878 (2010), held that the sex offender commitment provisions of that analogous federal enactment were authorized to the federal government by the U.S. Constitution's "Necessary and Proper" clause (Article I, Section 8, Clause 18) as stemming from the implied power to punish. This in turn appears to imply that sex offender commitments either are part of punishment for sex crimes or are derivative from such punishment. Nothing could more succinctly express the true, punitive function of laws such as Minnesota's SPP/SDP law.

Further, in *Comstock*, the Supreme Court expressly disavowed making any unsolicited ruling on other challenges it thought possible, including specifically citing due process (substantive and procedural) as such possibilities, not just as to that federal commitment statute's terms, but also alternatively to its "application" (*id.*, p. 886). This implies recognition that even if such a commitment statute, "on its face," was constitutional against such claims, its application under some circumstances might be in violation of due process "as applied." Crucially, this means that the earlier cases, *Kansas v. Hendricks*, 521 U.S. 346(1997); and *Kansas v. Crane*, 534 U.S. 407 (2002), cannot be relied upon as across-the-board rulings of constitutionality of the commitment laws of different states – as they are applied.

#### **H. Other Comparative Observations Further Support the Conclusion That SPP/SDP Commitment Is A Bill Of Attainder.**

A separate point from violation of the Bill of Attainder Clause, but one closely related to it, is that such sex-offender commitment laws also present a violation of substantive due process as "status offense" laws. In this regard, analogously, *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967), involved a juvenile in a "delinquency" proceeding. *Gault* held that, regardless that such proceedings are not "criminal" in nature, the right

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against self-incrimination applied therein. The Supreme Court observed that such proceedings "may lead to commitment to a state institution.... For this purpose, at least, commitment is a deprivation of liberty. It is incarceration against one's will, whether it is called 'criminal' or 'civil.'"

The same considerations apply to sex offender commitments. Minnesota, while physically separating prisons and such sex offender commitment facilities, operates the latter either exactly the same as, or in ways materially indistinguishable from prisons. This supports the view that, effectively, all rights applicable in 'criminal cases' must likewise extend as well to commitment cases.

Among these are the concepts that no one should be punished for a sheer 'status offense,' and that vague provisions in such statutes, because they result in deprivations of liberty, must be held to the most rigorous standard of clarity and specificity, and that proof of the statutory elements required to commit must be proof beyond a reasonable doubt.

In sum, Minnesota's SPP/SDP law comprises a bill of attainder as to the classes thereby made subject to so-called civil commitment as preventive detention.

This is no small matter. There has been a small, but persistent undercurrent advocating this more general 'tyranny of fear.' Consider, for example, this assertion by Edward P. Richards, "The Jurisprudence of Prevention: The Right of Societal Self-Defense Against Dangerous Individuals," 16 *Hastings Const. L. Q.* 329, 329 (1989): "As America moves into the twenty-first century, we must determine to what extent individual liberties must be sacrificed for the common good." See also, Adam Klein & Benjamin Wittes, "Preventive Detention in American Theory and Practice," 2 *Harv. Nat'l Sec. J.* 85, 191 (2011) (claiming, with approval, that government has many preventive detention powers "...to protect the public from serious harms" by "the truly dangerous").

Michael L. Corrado, "Sex Offenders, Unlawful Combatants, and Preventive Detention," 84 *North Carolina L. Rev.* 77 at 114-15, makes the point that, under the precedent of *Hendricks*, any individuals or groups thought "dangerous" can now be indefinitely detained as just such additional instances of preventive detention. This prospect should not be lightly disregarded. Some commentators are eager to extend civil commitment to all offenders deemed by someone to be "dangerous." See, e.g., Justin Engel, Note: "Constitutional Limitations on the Expansion of Involuntary Civil Commitment for Violent and Dangerous Offend-

ers," 8 *U. Pa. J. Const. L.* 841, 871 (2006).

Overlooked though it may be, such preventive detention violates the prohibition on "bills of attainder." To prevent this trend from changing our nation into a totalitarian nightmare along the lines of 1984 and Minority Report, this vanguard of such a return to the tyranny of unrestrained and unrestrainable bills of attainder must be struck down.

Nor is this merely a 'fringe' alarmist view. Prof. Eric S. Janus, in his provocative, yet rigorously analytical book, *Failure to Protect: America's Sexual Predator Laws and the Rise of the Preventive State* (Cornell Univ. Press, 2006), expands upon this very real prospect thus:

"...[Sexual predator] laws allow the establishment of an expansive alternate system of justice, in which radical prevention prevails at the expense of liberty. Sexual predator laws do this by reintroducing and relegitimizing the concept of the degraded other. Membership in this outsider group is then used to rationalize a diminished system of justice, in which the normal protections of the Constitution do not apply....

"Here is the cause for alarm: the predator laws, ...may jump from the relatively narrow realm of sexual violence to the radically broader universe of providing protection from the risk of crime – and terrorism – in general." (*Id.*, pp. 94-95).

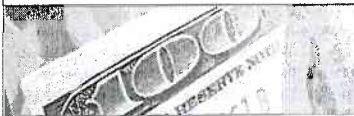
"The preventive state claims the right to deprive people of liberty before criminal action is afoot. Under this approach, it is enough that there is a potential for harm, that the individual's psychological makeup – or political inclinations – poses a grave risk. This attitude rips a large hole in the fabric of our American concept of justice....

"If the government can lock up sexual predators in advance of their (predicted) crimes, why not other criminals? Why not terrorists? Why not political subversives? What is to stop the state from assessing all of us for 'risk' and locking up prophylactically those whose RQ – risk quotient – is assessed above an arbitrary threshold?" (*Ibid.*, pp. 4-5).

Thus, the fundamental question that is inherently implicated in the issue of sex offender commitment is that of governmental powers versus individual liberties. It cannot and should not be ignored in a tunnel-visioned focus solely on the current context itself. It is the question the answer to which will pass down to posterity and will, in large, determine the fate of our American Republic and the future preservation of the very concept of the rights of the individual. And it is the question that must be faced in resolving this issue."

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## Fed Grant Program Partly Pays States' Committed Sex Offender Confinement Costs.



**Editor's Note:** The following federal statute authorizes grants to states to establish sex offender commitment programs for all costs of such commitment, including costs of confining us.

### 34 U.S.C. § 20971. Jimmy Ryce State civil commitment programs for sexually dangerous persons

(a) **Grants authorized.** Except as provided in subsection (b), the Attorney General shall make grants to jurisdictions for the purpose of establishing, enhancing, or operating effective civil commitment programs for sexually dangerous persons.

(b) **Limitation.** The Attorney General shall not make any grant under this section for the purpose of establishing, enhancing, or operating any transitional housing for a sexually dangerous person in or near a location where minors or other vulnerable persons are likely to come into contact with that person.

### (c) **Eligibility.**

(1) In general. To be eligible to receive a grant under this section, a jurisdiction shall, before the expiration of the compliance period--

- (A) have established a civil commitment program for sexually dangerous persons that is consistent with guidelines issued by the Attorney General; or
- (B) submit a plan for the establishment of such a program....

### (3) **Release notice.**

(A) Each civil commitment program for which funding is required under this section shall require the issuance of timely notice to a State official responsible for considering whether to pursue civil commitment proceedings upon the impending release of any person incarcerated by the State who--

- (i) has been convicted of a sexually violent offense; or
- (ii) has been deemed by the State to be at high risk for recommitting any sexual offense against a minor.

(B) The program shall further require that upon receiving notice under subparagraph (A), the State official shall consider whether or not to pursue a civil commitment proceeding, or any equivalent proceeding required under State law.

(d) **Attorney General reports.** Not later than January 31 of each year, beginning

with 2008, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the progress of jurisdictions in implementing this section and the rate of sexually violent offenses for each jurisdiction.

### (e) **Definitions.** As used in this section:

(1) The term "civil commitment program" means a program that involves--

- (A) secure civil confinement, including appropriate control, care, and treatment during such confinement; and
- (B) appropriate supervision, care, and treatment for individuals released following such confinement.

(2) The term "sexually dangerous person" means a person suffering from a serious mental illness, abnormality, or disorder, as a result of which the individual would have serious difficulty in refraining from sexually violent conduct or child molestation...."

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## Desistance Without Cognitive Transformation

Danielle Arianda Harris, "Desistance from Sexual Offending: Behavioral Change Without Cognitive Transformation," *Jour. Of Interpersonal Violence*, 1-22 (2015)

### [Abstract Excerpt:]

"...Although a number of psychological theories of behavioral change and criminological theories of desistance exist, a comprehensive theoretical understanding of desistance from sexual offending is lacking. A theme common across a number of theories of internal desistance is cognitive transformation and specifically, one's readiness for and willingness to change. This study tested the relevance of that particular theme for a sample of 45 men convicted of sexual offenses who are living offense-free lives in the community. In contrast to this theme, long-term desistance was observed in most cases in the absence of any initial desire for intervention. The impact of current approaches such as mandatory treatment is discussed and implications for future research and practice are presented."

### [Text Excerpt:]

p. 2: "...Desistance from sexual offending is an empirical reality demonstrated by consistently low recidivism rates across multiple samples in many jurisdictions (Laws & Ward, 2011). It should follow then that extant explanations of general criminal desistance should explain changes in sexual offending as well. These assumptions inform the present article's position."

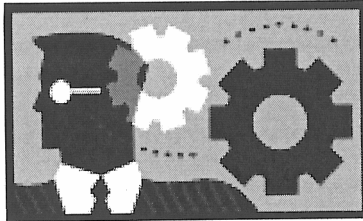
pp. 2-3: "...Extant desistance theories can be usefully arranged into three

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themes: natural desistance (or aging out; Gottfredson & Hirschi, 1990), external desistance (encouraged by informal social controls; Sampson & Laub, 1993), and external desistance (where cognitions, agency, and identity are emphasized; Giordano, Cernkovich & Rudolph, 2002; Maruna, 2001; Paternoster & Bushway, 2009). ...[T]he focus of this article is on the theories of internal desistance. Only a small number of people have examined this at all and they tend to focus on the pursuit of employment and relationships (Kruttschnitt, Uggen & Shelton, 2000, Sampson & Laub, 1993) or on the impact of age on libido (Amirault & Lussier, 2011; Barbaree, Langton, Blanchard, & Cantor, 2009)..." pp. 3-4: "To summarize, each theory of internal desistance features variations on a theme of hitting rock bottom, recognizing a problem, realizing a need to change, and seeking assistance. They all emphasize the importance of the 'up front work' such as an initial intention (Prochaska et al., 1993) or conscious motivation to change (Giordano et al., 2002) that precedes any observable modification in behavior. All the authors argue that intentional self-change is a deeply individualized and cognitive process that must begin *before* any 'hooks for change' (Giordano et al., 2002) or 'informal social controls' (Sampson & Laub, 1993) can be embraced. The responsibility for the cessation of crime is in the hands of the individual and a conscious decision is made in which the offender willfully chooses to change his or her identity, and subsequently, his or her behavior (Prochaska, Norcross, & DiClemente, 1994).

Although those perspectives aptly explain the process of internal change when an individual desires it, this is seldom the case when participants enter into mandated treatment. There remains a gap in our understanding of behavioral modifications that occur *without* any observable internal motivation, or *in spite* of numerous obstacles. The objective of the present work is to understand the process of behavioral change in the absence of any identifiable positive change in one's identity as well as in the face of numerous challenges. It is quite an understatement to note that the recovery narrative available to alcoholics (in which they create a coherent tale of hitting rock bottom and turning a corner) is not available for men convicted of sexual offenses. Evidently, the 'recovery narrative' provides addicts with a model to meaningfully account for their behavior. It offers a neatly packaged 'replacement self' (Giordano et al., 2002) and helps them understand what they did and make sense of why they are not like that anymore (Maruna, 2001). In con-



Cognitive Transformation

trast, what begs explanation in the present sample is how individuals come to change their behavior without being *allowed* to change their identity. And, as will be detailed further below, this behavioral change is being observed and maintained while the men shoulder a permanent label of 'sex offender' and are forced to subscribe to a perpetual, restrictive, and stigmatizing 'risk narrative.'

p. 5: "The men were mostly White (89%) with an average age of 48.9 years (range = 24-79 years). Their most recent custodial sentence was more than 7 years in length (range = 3 months to 30 years) for a contact sexual offense, but many men had spent much longer in custody over the course of their lives. All participants had been living in the community for an average of more than 2 years (range = 4 months to 15 years). Almost everyone in the sample had committed sexual offenses against children. The index offenses were broken down as follows: 20 extra-familial child molestation, 18 intra-familial child molestation (incest), 4 men had abused children both inside and outside their family, and 1 man committed both rape and child molestation."

#### pp. 8-9: "Results

A fairly clear and consistent picture of desistance emerged from the men's interviews. This initial observation was especially important for the simple fact that it represented an opportunity for a disenfranchised group of people to share their so often misunderstood experiences (Lietz et al., 2006). Interestingly, in case after case, their process of behavioral change bore little resemblance to that proposed by the theories of internal, external, or natural desistance. Their desistance process occurred *despite* protracted loneliness, isolation, and social exclusion. Their participation in treatment was almost always mandatory and rarely initiated by a desire to change. Their involvement in therapy left little time for the pursuit of employment, education, avocation activities, or hobbies. Furthermore, abandonment by parents, ex-partners, children and friends; a gaping absence of any useful, immediate familial support; and the pressing challenges of homelessness created additional obstacles to their successful community reentry.

The results are presented in three sections. First, positive and negative evidence for the theme of 'readiness to change' is considered. It is useful to review this evidence as if the men can be

plotted on a continuum from those who actively sought help prior to their arrest, to those who retroactively acknowledged that they needed help, to those who continued to resist or resent assistance. Second, specific examples where behavioral change appears to have been achieved in the *absence* of any cognitive preparation are presented. Finally, the personal consequences of behavioral change *without* the apparently complementary process of cognitive transformation are explored.

The men in the sample seldom began their sex offender treatment with a mindset that was open to change. Many such programs in the United States are mandated by the correctional arm of the criminal justice system, and an individual's attendance (and sometimes, active participation) is usually a required component of their sentence. Therefore, at least in the beginning, they are often attending therapy simply to ensure they avoid further sanction. Being mentally prepared to change was not relevant for the men in the sample because they rarely sought treatment of their own accord. Only 12 men spoke of 'wanting help' and only 3 reported that they actually sought professional assistance for their offending behavior prior to being arrested."

pp. 12-13: "From the evidence provided thus far, the overall theme of cognitive preparation and wanting help is somewhat irrelevant to understanding desistance in this sample. As can be seen, only a small proportion of the men spoke at all as if they wanted (or were ready to receive) help at any time. Furthermore, in the 'help narratives' that were identified above, the extent to which their help-seeking was truly genuine is ultimately unknown. A more important question seems to be how the many other men fared, because it was evidently possible to stop offending *without* any professed openness to change. With that in mind, attention now turns to exploring desistance in the absence of cognitive change. An ongoing question to keep in mind as these criminological theories are considered for a sample of men convicted of sexual offenses is whether the identity transformation that is emphasized in the literature is even necessary for this sample.

At the other end of the spectrum from the help-seeking 'desistance missionaries' described above, were men who had a somewhat limited understanding of both how they had offended in the first place, and how they had come to desist. They were all adamant that they had not and would not reoffend, but were less able to articulate their desistance process..."

p. 13: "When answering the question of why and how they stopped offending, their responses tended toward self-

preservation and avoiding custody, rather than a commitment to living an offense-free life or to not creating another victim. Although it was not the case in every example, the majority of these men were released more recently than those described earlier. These men offered different reasons for their desistance. Most often, they emphasized the deterrence of returning to prison as their main motivation for obeying the law. This deterrence ranged from a visceral objection to ever returning to custody to the fear of leaving their family again or of facing a longer sentence next time."

p. 14: "For these men, the 'risk narrative' provided in treatment did not reflect their experiences or the way they understood their behavior. They struggled to draw parallels between themselves and a 'typical' sex offender..."

The few men who rejected treatment outright were very vocal in their disdain for their therapist, routinely separated themselves from other sex offenders, and resented having to attend and participate in mandatory treatment.

[Discussing sample members who had undergone treatment only because it was required of them] ...These men had achieved behavioral change in the absence of any real psychological transformation. They could eloquently discuss their conscious and calculated behavioral changes at length, seemingly without having undergone any discernible cognitive shift. They described their day-to-day activities with a hyper-vigilance that had been learned during years of therapy."

p. 16: "The emphasis in so many desistance theories on the importance of identity transformation does not prepare us for this result. These men have spent an inordinate amount of time reconsidering how they will literally move through the world upon release, all the while wearing the eternally damning label of 'high risk sex offender.' This includes but is not limited to buying groceries late in the evening to minimize incidental contact with children, avoiding the toy sections of department stores, leaving a train car should it suddenly fill with school-aged children, not using certain public toilets which might be visited by someone below 18, or avoiding a new relationship.

...In most instances, when pressed, this caution was not due to a legitimate fear of reoffending, but rather the crippling fear that they could be wrongly accused or that their behavior would be misconstrued."

pp. 17-8: "...[F]ocusing on emotional well-being within a therapeutic context might provide an opportunity to develop emotional regulation skills and help recognize, monitor, and reduce the impact of negative emotions such as anger, anxiety, or depression. Although this is a venerable goal, it is evidently no small

task, and recent research on the practical applications of the Good Lives Model (Ward & Marshall, 2004), for example, has highlighted the difficulty in helping someone concentrate on their emotional well-being when they are unemployed and homeless. To be sure, many of the men in the sample have more pressing concerns, such as the literal location of their next meal.

### Conclusion

...The seriousness of the present sample's offenses are beyond question, but the global message remains that they do, in fact, desist. In short, most of these men appear to have demonstrated successful desistance *without* the accumulation of any informal social controls, *without* any discernible motivation to change, and *without* any clear opportunity to rewrite one's past, knife off from their previous life of crime, or envision a new identity. The extent to which extant therapeutic approaches assist in such a transformation (in light of the simultaneous impact of labeling) should be the focus of further study."

### References:

Amirault, J. & Lussier, P. (2011). Population Heterogeneity, State Dependence and Sexual Offender Recidivism: The Aging Process and the Lost Predictive Impact of Prior Criminal Charges over Time. 39 *Jour. Of Criminal Justice* 344-54.

Barbaree, H., Langton, C., Blanchard, R., & Cantor, J. (2009). Aging Versus Stable Enduring Traits as Explanatory Constructs in Sex Offender Recidivism: Partitioning Actuarial Prediction into Conceptually Meaningful Components. 36 *Crim. Just. & Behav.* 443-65.

Giordano, P., Cernkovich, S. & Rudolph, J. (2002). Gender, Crime, and Desistance: Toward a Theory of Cognitive Transformation. 107 *Am. Jour. Of Sociology*, 990-1064..

Gottfredson, M. & Hirschi, T. (1990). *A General Theory Of Crime*. Stanford, CA: Stanford Univ. Press

Kruttschnitt, C. Uggen, C. & Shelton, K. (2000). Prediction of Desistance among Sex Offenders: The Interaction of Formal and Informal Social Controls. 17 *Just. Quarterly* 61-87.

Laws, R. & Ward, T. (2011). *Desistance From Sex Offending: Alternatives To Throwing Away The Keys*. New York, NY: The Guilford Press.

Lietz, C., Langer, C. & Furman, R. (2006). Establishing Trustworthiness in Qualitative Research in Social Work. 5 *Qualitative Social Work* 441-458.

Maruna, S. (2001). *Making Good: How Ex-Convicts Reform And Rebuild Their Lives*. Washington, DC: American Psychological Ass'n.

Paternoster, R. & Bushway, S. (2009). Desistance and the Feared Self: Toward an Identity Theory of Criminal Desistance. 99 *Jour. of Crim. Law &*

*Criminology* 1103-1156.

Prochaska, J.O., DiClemente, C.C., Velicer, W.F., & Rossi, J.S. (1993). Standardized, Individualized, Interactive, and Personalized Self-Help Programs for Smoking Cessation. 12 *Health Psychology* 399-405.

Prochaska, J.O., Norcross, J.DiClemente, C.C. (1994). *Changing For Good: A Revolutionary Six-Stage Program For Overcoming Bad Habits And Moving Your Life Positively Forward*. New York, NY: William Morrow.

Sampson, R. & Laub, J. (1993). *Crime In The Making: Pathways And Turning Points Through Life*. London, England: Harvard Univ. Press.

Ward, T. & Marshall, W.L. (2004). Good Lives, Etiology, and the Rehabilitation of Sex Offenders: A Bridging Theory. 10 [special issue: treatment & treatability], *Jour. Of Sexual Aggression* 153-169.

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## Chemical Castration

**Editor's Note:** In the last two weeks, the State of Alabama has enacted a new requirement for parole of sex offenders. Under that enactment, all sex offenders seeking parole must undergo so-called 'chemical castration' during the entire length of such parole. Most often, such paroles last for more than a decade, often for two. The following article explains why this 'treatment' is a barbaric nightmare.

John F. Stinneford, "Incapacitation Through Maiming: Chemical Castration, the Eight Amendment, and the Denial of Human Dignity," 3 *U. St. Thomas Law Jour.* 559 (Spring 2009)

p. 561: "This law requires certain sex offenders to receive, as part of their punishment, long-term pharmacological treatment involving massive doses of a synthetic female hormone called medroxyprogesterone acetate (MPA). MPA treatment is described as 'chemical castration' because it mimics the effect of surgical castration by eliminating almost all testosterone from the offender's system. The intended effect of MPA treatment is to alter brain and body function by reducing the brain's exposure to testosterone, thus depriving offenders of most (or all) capacity to experience sexual desire and to engage in sexual activity. The procedure also carries severe side effects, including drastic reduction in sperm count, irreversible loss of bone mass, diabetes mellitus, pulmonary embolism, and depression, to name a few." (p. 568): "...[L]ong term MPA treatment depletes bone mineral density, so that offenders appear likely to experience osteoporosis and multiple bone fractures

as a result of their treatment." (pp. 572-73): "MPA is a synthetic female hormone marketed under the trade name Depo-Provera. MPA has been FDA-approved for use by women as a contraceptive, and its manufacturer (Pfizer) has warned that the product 'is indicated only for the prevention of pregnancy.' The FDA has not approved MPA for use in men, for any purpose, because there have been no long-term clinical trials that show it to be safe and effective for men. [Fabian M. Saleh & Fred S. Berlin, "Sex Hormones, Neurotransmitters, and Psychopharmacological Treatments in Men with Paraphilic Disorders," 12 *J. Child Sexual Abuse* 233, 240 (2003) (noting that MPA and similar hormone therapies 'are not approved by the U.S. Food and Drug Administration' for suppressing male sex drive because they have 'not been adequately studied' in this context.)] Nonetheless, once a drug has been approved for a particular use, the Food, Drug and Cosmetic Act permits doctors to prescribe it for unapproved uses as well. ...The typical dosage for paraphiliacs ranges from 100 mg/week to 500 week [Saleh & Berlin, *supra*, at 242], whereas the recommended dosage for use as a female contraceptive is '150 mg ... every 3 months (13 weeks)' [Edward A. Fitzgerald, "Chemical Castration: MPA Treatment of the Sexual Offender," 18 *Am. J. Crim. L.* 1, at 2-3 (1990).] In other words, the dosage used to eliminate male sex drive is anywhere from 8.6 to 43.3 times the recommended dose for use as a female contraceptive - a fact which is potentially significant in light of MPA's severe side effects." (pp. 573-74): "By reducing the brain's exposure to testosterone, MPA suppresses 'sexual fantasies, sexual urges, and sexual drive, and thus induces a state of 'erotic apathy.' It has the same effect on 'both deviant and non-deviant sexual behavior.' "...No one knows what causes a person to develop a paraphilic disorder such as pedophilia. It is fairly clear, however, that paraphiliacs do not have abnormal levels of testosterone. "...Like chemical castration, surgical removal of the testes has the effect of eliminating virtually all testosterone from the system, and thus disabling the sex drive. During the Nazi era, the German government surgically castrated all sex offenders convicted of certain crimes...." (p. 575): "Studies of the effect of chemical castration on paraphiliacs have been largely characterized by small sample size, lack of controls, and short follow-up periods. Moreover, these studies have reported a wide variety of recidivism rates, ranging from 0% to 83%. "...[A]ll other things being equal, offenders who stop receiving MPA become just as likely to re-offend as they were before the treatment. "The most significant side effect of MPA



treatment appears to be loss of bone mineral density. On November 14, 2004, Pfizer added a 'black box warning' to the drug label, stating that prolonged use could result in a significant reduction in bone mineral density, a condition that can lead to osteoporosis or bone fracture. The label further warns that 'bone loss is greater with increasing duration of use and may not be completely reversible.' Therefore, even when being administered for its FDA-approved use as a contraceptive, Depo-Provera should not be used over the 'long-term' - meaning more than two years - unless there is no other option.

"Other side effects of MPA treatment include "excessive weight gain, malaise, nightmares, headaches, muscular cramps, dyspepsia, gallstones, diabetes mellitus, ...and pulmonary embolism." [citing Ariel Rösler & Eliezer Witzum, "Pharmacotherapy of Paraphilias in the Next Millennium," 18 *Behavioral Sci. L.* 43, at 47 (2000); see also Saleh & Berlin, *supra*, at 241 ("MPA can cause a number of potentially serious ...adverse effects, including depressive symptoms, breast tenderness and galactorrhea ... weight gain - apparently secondarily to increased fat deposition ...nausea, abdominal pain, nightmares, hot flashes, acne, alopecia [hair loss], hirsutism, hyperglycemia, diabetes mellitus, gallstones hypogonadism, hypospermatogenesis, and hypertension"); T. Howard Stone, William J. Winslade & Craig M. Klugman, "Sex Offenders, Sentencing Laws and Pharmaceutical Treatment: A Prescription for Failure, 18 *Behavioral Sci. L.* 83, at 97 (2000) ("Side effects include weight gain, fatigue, depression, hot and cold flashes, elevated blood glucose, nausea and gynecomastia, ....").] (p. 597): "Chemical castration has two additional characteristics that make it inherently degrading, and therefore cruel and unusual, above and beyond its similarities to surgical castration: It exposes the offender to undue health problems and long-term health risks, and involves administration of a mind-altering drug purely for purposes of incapacitation (as opposed to medical treatment). The Supreme Court has held that the government has a duty, under the Eighth Amendment, not to impose conditions of punishment that inherently impose a severe risk of harm to the offender's

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health and physical well-being. Chemical castration subjects sex offenders to severe immediate and long-term physical harm. As noted above, the intended effect of chemical castration is to impose a severe impairment to body and brain function, reducing or eliminating the offender's capacity to think, perceive, or perform sexually."

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## Punished Enough?

[Roger Lancaster is Professor of Cultural Studies at George Mason University and author of *Sex Panic and the Punitive State*. He is a member of the Board of Directors of the National Center for Reason and Justice, a non-profit organization that educates and advocates for child-protective laws and criminal justice practices based on science, fairness, and good sense. He wrote the following on the occasion of the British premier of the play "Downstate," about a small group of ex-sex-offenders post-prison release, struggling to make new lives while residing in a halfway house.]

Roger Lancaster, "Punished Enough?" (2018)

[Full Text:]

"Downstate confronts questions that date to the time of Plato and the Old Testament: How ought we punish acts that are repugnant to society? Are there lawbreakers who are truly unforgivable? Are there offenses that demand perpetual condemnation, shunning, expulsion – banishment?

We once thought that we knew the answers to such riddles, at least in principle. For much of the twentieth century, jurists and lawmakers progressively tethered law to enlightened ideals: they eschewed punishment-for-the-sake-of-punishment, embraced the idea of contingent redemption – rehabilitation – and imposed limits to punishment. But after the turmoil of the 1960s, American legal history diverged from its historical trajectory – and from the trendlines of other rich democracies – and begins to read like a series of unmodulated rages vented at a shifting cast of incorrigible criminal miscreants. Moral panics, waged through newspapers, magazines, and broadcast media, produced various species of outsize monsters: violent repeat offenders whose predations were exceptional but who were held to stand for much wider classes of offenders. Wars on crime, drugs, gangs, and terror follow in rapid succession, interspersed with ongoing campaigns to protect innocents from harm, especially sexual harm. In the name of the victim, legislatures passed harsher laws, police made more arrests,

prosecutors brought more charges, and judges and juries handed down stiffer sentences. Before we knew it, anonymous numbers had piled up into the largest prison population in the world and the highest per capita prison rates as well.

Liberals and conservatives alike enthusiastically embraced this punitive approach to crime. For who could argue against demands for public safety? Certainly not anyone who wanted to get elected or reelected. The trouble lay not so much in identifying the problem – overall, violent crime rates spiked in the 1960s, plateaued in the 1970s, and remained elevated with scarifying periodic peaks into the early 1990s before declining back to 1950s levels in recent years – as in coming up with proven, modulated strategies for prevention and repair. The approach that prevailed over the late twentieth century was simply this: Brute force is the only language that the lawbreaker will understand. Lock the bad man up in a hellish place and keep him there.

This punitive turn has started to abate. Slowly, cautiously, the U.S. has begun scaling back its harsh drug laws and other practices that caged men for long terms without hope of redemption or reintegration. And oh-so slowly, the prison population has been shrinking since peaking in 2008. But there is one front where the rage to punish remains intact and where penalties continue to intensify.

Laws punishing sex offenses are still becoming harsher and more exacting, even though reported sex crimes are declining – and in fact were already declining well before these laws were passed. In consequence, the numbers keep climbing: people convicted of sex offenses are a rapidly growing segment of the prison population – up to 30% in some states – while beyond the walls of the prison, additional punishments, provisions, and 'collateral consequences' have been added on, virtually all of them based on flawed diagnostics and unsound prognosis.

– Consider the stark legal landscape that provides the background for tonight's play.

Public sex offense registries, mandated by Megan's Law, a federal statute passed in 1996, are rapidly growing: listings have ballooned to 904,000 at latest count. If registrants were a city, they'd rank twelfth largest in the US, just above Jacksonville, Florida, and San Francisco. Other Anglo-phone countries, including the UK, have sex offender registries; these are limited lists available only to law enforcement. Only the US puts its registries on the web, for the general public to peruse – and the US lists much larger numbers of people per capita. Indeed, every revision to registry laws has mandated longer terms of registration for wider classes of

offenders, suggesting that such laws work like a one-way ratchet: they can only intensify surveillance and control, never modulate them.

Public online listings push registrants into poverty and homelessness, rendering them all but unemployable and un-housable. But digital blacklists are only the beginning of added-on penalties and collateral measures. Exclusionary zones in more than thirty states and hundreds of municipalities draw wide rings around schools, parks, bus stops, or other places where children might gather. They restrict where people living on the registry can live, work, shop, or even walk. Compliant places are scarce if they exist at all in downtown areas, effectively banishing registrants to liminal spaces at the interstices of public life. The internationally-famous scene under the Julia Tuttle Causeway gave newspaper readers a glimpse at the effects of such laws. In 2007, a small number of sex offenders took up residency in tents and cardboard boxes under the Miami bridge; authorities charged with monitoring sex offenders allowed this because they could find no other places for the registrants to live. By 2009 the camp had swelled to a sprawling colony of up to 140 squatters. So compliant were local authorities about this refugee camp that they transported sex offenders directly there upon release from prison.

Other forms of tracking and monitoring have spread as well. At last count, forty-four states and the District of Columbia have passed laws that require some sex offenders to be monitored – sometimes for life – with electronic shackling or global positioning devices. The Adam Walsh Act (2006) includes a federal pilot program to use global positioning to keep an eye on sex offenders. In some states, chemical or surgical castration are available as punishment for some categories of sex offenders.

Civil commitment laws allow for the indefinite detention of some sex offenders after the completion of their criminal sentences. Civil libertarians have always objected that such laws violate due process, represent a form of double jeopardy, and are tantamount to indefinite preventive detention. Instead of holding people accountable for past actions, they hold them accountable for imagined future crimes. The Supreme Court has repeatedly swatted aside these objections: civil confinement is not deemed punitive if psychological treatment is provided. Such rationale for such practices would seem to display an inherent illogic: the accused is deemed mentally fit for trial and sentencing but mentally unfit for release. Ongoing court challenges show that in practice, detainees are almost never released; they also show how slippery the term 'sexually violent predator' has become. At the time of this



writing, a gay Virginia man, Galen Baughman, is being held pending civil commitment based on a technical, not criminal, violation of probation terms: his convictions were for consensual sexual acts while he was himself a teenager; he has never been charged with a crime involving violence. Our civil containment practices for sex offenders are so extreme that high courts in the UK and Canada have deemed that they violate international human rights protocols and have blocked defendants' extradition back to the US. Some 6,400 people are currently being held in civil commitment gulags.

Normal laws are usually subject to limits of time and place, but sex offender laws are anything but ordinary. They are undergirded by an unsupported belief that sex is *different* – and by impossible demands to anticipate and impeded any and every possible future violation. And so, the marking and tracking of sex offenders leapt beyond national borders with the enactment of International Megan's Law in 2016. Among other provisions, the new law requires a 'visual designation affixed to a conspicuous location on the passport indicating that the individual is a covered sex offender.' Even the US State Department objected, in advance of its passage, that the law was unnecessary – part of what critics call a 'security theater.'

-- Digital scarlet letters, electronic tethering and practices of banishment have relegated a growing number of people to the logic of 'social death,' a term introduced by the sociologist Orlando Patterson, in the context of slavery, to describe permanent dishonor and exclusion from the wider moral community. The creation of a pariah class of unemployable, uprooted criminal outcasts has drawn attention from human rights activists, and a number of publications, including *The Economist*, have decried our sex offender laws as harsh and ineffective.

Those affected by such provisions are said to be 'the worst of the worst.' Laws bearing the names of child victims invariably invoke 'violent repeat offenders' and 'sexually violent predators.' Repeat rapists and serial offenders do appear on the registries, of course. But in actual practice, the 'typical' sex offender is a less extreme figure. Contrary to the common belief that the registries provide lists of child molesters, the victim need

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not have been a child and the perpetrator need not have been an adult. Up to 41% of child sex abusers are said to be juveniles themselves. According to the Department of Justice there are at least 89,000 minors on the registries. (In New Jersey a neurologically impaired twelve-year-old boy ...was required to register as a sex offender, as Judith Levine details in *Harmful to Minors*. Teens who have engaged in 'sexting,' swapping nude photos of themselves and their partners, have been compelled to register, as a spate of news stories show.) The overwhelming majority of registrants sampled in a 2007 study by Human Rights Watch were nonviolent one-time offenders. These include adults who supplied pornography to teenage minors, young schoolteachers who foolishly fell in love with one of their students, and men who urinated in public or were caught having sex in remote areas of public parks after dark. Culpability and harm vary greatly in these offenses. Some are serious. Some would not be classified as criminal under European laws, which set lower ages of consent than do laws in most American states.

At the beginning of this trend of punitive lawmaking, legislators and jurists cited 'risk,' asserting that men who committed sex crimes were likely to commit new sex crimes, and that minor offenders were likely to escalate acts of violent predation. Careful studies by the Justice Department and other organizations have shown the opposite. Recidivism rates for men convicted of sex crimes are low, much lower than for most other categories of lawbreakers. Meanwhile, scores of careful studies have tried to gauge the effects of public registries, exclusionary zones, and so on. They supply not a shred of evidence that any of these measures are effective at achieving their stated goals - preventing recidivism, protecting children - and some studies suggest that these practices are counter-productive, in that they relegate offenders to a condition of perpetual social exclusion and thus give them no stake in their own rehabilitation.

Do we have a stake in their rehabilitation? America's bloated sex offense regime reflects the power of a series of ongoing moral panics to shape policy. Surely, we all have a stake in just laws and measured penalties. Surely, we have a stake in coming back to our senses."

**"If** [sex offender] registrants were a city, they'd rank twelfth largest in the US, just above Jacksonville, Florida, and San Francisco."

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## Another Advocacy Entity Raises Its Voice, Demanding: A Just Future for All

[reprint from [www.ajustfuture.com](http://www.ajustfuture.com) website], 38(2) *CURE-SORT News*, 2 (Spring 2019)]

[CURE-SORT Editor's Note: "We constantly talk about concerns and problems in programs known in the criminal justice world as civil commitment. A new program emphasizing advocacy work on them is Just Future Project. From their website ([www.ajustfuture.com](http://www.ajustfuture.com)), here is a breakdown of the program:]

[Text Excerpts:]

p. 2: "Who We Are

We are people from diverse backgrounds, professions, and regions who are united by a passion for abolishing these deeply unjust and un-American laws. We do not discriminate against anyone, including discrimination based on historical convictions. We believe everyone is actually innocent of imaginary future crimes.

**Origin Story**

Just Future Project is a new initiative with a long history. We trace our roots to the Civil Commitment Conference Call organized by Charlie Sullivan, president of Citizens United for Rehabilitation of Errants (CURE). Many efforts in the movement to end mass incarceration owe their spark to Charlie's tireless leadership over more than four decades. The conference calls began because Charlie believes in the leadership of the people directly harmed by these systems - leaders he affectionately calls 'jailhouse lawyers' and the phone calls allowed these critical minds to come together and collaborate. Just Future Project is the natural evolution of these early conference calls.

Our website is designed to intensify the conversation focused on dismantling pre-crime preventative detention schemes. We seek to foster a community around this conversation, and develop that community into a politically relevant constituency empowered to demand change. Our movement is growing. We are expanding to create a focal point online for advocacy energy and to bring people together under a common banner. We can only accomplish so much on monthly conference calls. This is the next step. We will publish their next plan of action in the near future.

**What Calls Us To Action**

Many of us come to this cause because we are personally connected to someone who is directly impacted by these laws (i.e., friends, family, loved ones). A growing number of us are allies who feel called to this movement by our values: (i.e., civil rights advocates, faith commu-

nities, formerly incarcerated activists, psychiatrists, criminal justice reform experts, lawyers, lawmakers, social workers, clergy, academics, etc.).

**Where We Came From**

Just Future Project is an independent grassroots organizing initiative supported in collation by Women Against Registry and CURE National. We welcome new partner organizations interested in contributing to the fight to dismantle pre-crime preventative detention schemes. We are especially focused on connecting with and supporting people who are already working to create change in any of the twenty-one systems of pre-crime preventative detention."

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## Curtains for Cable

By Cyrus Gladden

Unless you are a latter-day Luddite, if you live here in MSOP (either facility), you already know that cable TV has already been cancelled by MSOP administration, ostensibly as a cost-saving move.

That last phrase is intriguing. At least one conversation with a staff person at MSOP-ML reported to me included the explanation that Canteen commissions to MSOP have not been paying for the cost of cable TV for the last two years.

According to this assertion, that cost has been coming out of the general MSOP budget. So the claim goes, that budget has been getting stretched too thin, and something had to give.

That assertion is also interesting. For the fiscal year starting on July 1, 2019 - the same date cable TV is no more for us, MSOP sought a substantial increase in its annual budget. Despite some legislative grumbling and a veiled gubernatorial threat of a line-item veto, part of that budget increase was ultimately granted.

Surely, paying for cable now would not strain that enlarged budget. In light of this, only two alternative explanations appear to exist.

First, it is possible that MSOP did not expect to get that budget increase when it notified Mediacom that MSOP was backing out of its contract early. This seems unlikely as a total explanation, since Mediacom would probably welcome MSOP back as a customer on that same contract if MSOP simply retracted its notice of cancelation. Because the cancelation currently remains in effect, this alternative explanation is dubious.

Second, it may be that cable TV cancelation was not based on budgetary concerns at all, but instead on what some MSOP residents see as a long-running gradual campaign to progressively restrict and eventually extinguish the light of the

outside world available to us.

Just contemplate things for a moment: Arranging for visitor clearance is now more difficult and time-consuming, and visiting hours are less now than in earlier years. Newspaper subscriptions are now exorbitant due to a ruling that they must be received via mail. Both newspaper and magazine subscriptions are effectively discouraged by frequent disappearance of editions of both of these print media.

The list of things we can order has been progressively getting restricted, and limiting conditions such as 'new-only' have been added to the goods themselves (including books).

Restrictions on the vendors (e.g., no third-party sellers, no sales even just mentioning eBay or Amazon.com as either underlying distributor to the vendor or as shipper are allowed - despite that two-thirds of all media shipped now originate or pass through an Amazon warehouse), and no shipments accepted with a first initial and last name of the MSOP-confined recipient even when his identity is obvious and the order and payment paperwork are in-hand.

Videos we order are now more restricted than ever, including converting the previously cautionary status of a "counter-therapeutic" ruling to a universally prohibitory "contraband" effect of such a ruling.

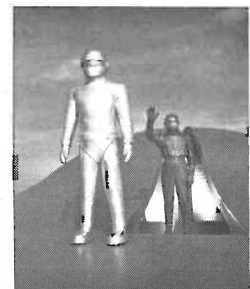
And most recently, despite the ridiculously tiny and very outdated collection of the in-house "library" in each facility, MSOP's administrators have terminated our access to "Mail-a-Book" (an inter-library based service lending us books, videos and CDs).

It hardly needs addition that we have never been granted any access whatsoever (regardless how filtered or restricted) to the internet.

In sum, cutting our cable TV (which every prisoner in the Minnesota Dept. of Corrections receives free - with more and better channels) appears to fit right into this 'full screen picture' of our captors pounding the last nails into our 'information coffins,' effectively burying us alive, away from any access to information from/about the world outside our gates.

Sleep tight tonight. (There's really no reason to stay up late anymore.)

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Klaatu Barada Nicto!