

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943) (Jackson, J.).

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The Shape of Things to Come in 2020

— A Preview of Coming TLP Coverage Topics —

By Cyrus Gladden

Each year, as the current TLP volume closes, I try to give current and future subscribers (Important! See left corner below) a meaningful preview of topics I project covering in these hallowed issues during the coming year. This year, rather than simply sprinkling vague hints here and there, this lead article will serve to draw such previews together in one convenient place. If this meets with reader satisfaction, this pattern will likely become the annual format. Without further ado, the previewed topics, starting with those with direct impact on sex offender commitment, followed by topics of more general concern or interest to sex offenders:

Topics With Direct Impact On Sex Offender Commitment

Profound Flaws & Problems with Leading Actuarial Instruments

Even the de facto 'industry standard' Static-99R and its various derivatives are subject to differing scores of recidivism probabilities based on sheer 'evaluator allegiance' to the party retaining them or that may retain them next time at higher fees. In all likelihood, this will be the prosecution.

Meter's Up! How Long Can a Sex Offender Commitment Remain Scientifically Valid, and What Must Happen When That Validity Expires?

Even if a sex offender commitment is based on scientifically valid and reliable evidence (itself a doubtful proposition), is that supporting evidence subject to loss of supporting value over time? If so, must periodic recommitments be required to preserve the constitutional rights of a committed sex offender? Whose job is it to bring this back to court?

Penile Plethysmography, Focus of Attention, and Sustained Gaze Tests: Do They Test the Wrong Thing?

Recent research reveals that most who harbor deviant sexual orientations/attractions simply choose to never act upon them. This appears equally true between those who spontaneously admit such orientations and those who undergo such testing, resulting in discovery of a deviant orientation. Is there really any hard divider between those who have acted on such attractions and those who have not? If the difference in incidence of sex-crime commission is small between sex-crime ex-cons and those never charged with such crimes, what can such tests of deviance really tell us, if anything, about tendency toward sex-crime recidivism, or even toward a first sex crime? If nothing, then why do them?

Does the "Full Disclosure" of All Deviant Acts over an Offender's Entire Lifetime Really Have Any Significance to Sex Offender Assessment or Treatment, or Is It Only a Forced-Interrogation Tool for Prosecutors Seeking to Inflict Added Punishment upon Sex Offenders or Punitive Excuse-Making for Never Releasing Committed Sex Offenders?



The News: by Telegraph, if We Must!

Prosecutors Seeking to Inflict Added Punishment upon Sex Offenders or Punitive Excuse-Making for Never Releasing Committed Sex Offenders?

For about the last 25 years, an insistence that a sex offender undergoing treatment make a full disclosure of all sex crimes and all additional sexually deviant acts never resulting in charges has been built into all treatment modalities. However, that demand was based on claims without valid scientific support. It still lacks any such support. The weight of modern research into sex crimes strongly questions whether such disclosures from the distant past, or even the fact itself of such offenses in the distant past really have any impact on the question of future sex-crime recidivism. Distinctly, research inquiries into whether even a sex offender's current sex crime must be admitted to derive the same benefit from treatment of the offender throws extra doubt on whether full disclosure of other sex crimes from the distant past has any impact on recidivism or 'amenability' to treatment. These doubts and new scientific research may force discard of the full disclosure model, even apart from its blatant violation of an offender's right against self-incrimination, in light of the modern trend toward massive lengthening, or simply elimination of sex-crimes statutes of limitations.

To Hormone or Not to Hormone: Is That the Question?

While evidence continues to mount that hormonal suppression treatments of sex offenders wreak profound damage upon the bodies of those subjected to such treatments, new research suggests that monitoring natural hormones released in response to sexual stimuli may indicate levels of likelihood of sex crime commission/recidivism. What should we believe, and what should be done?

Scientific Invalidity of Sex Offender Commitment Criteria

We check out what two experts say on the matter, demolishing any connection between science and the homemade legislative concoction of claimed 'elements'.

How Can Volitional Control Be Absent While the Future Perpetrator "Grooms" the Future Victim for Months or More?

A noted expert on volitional impairment examines long-term grooming, finding it inconsistent with the concept of volitional impairment.

Most Judges Are Former Prosecutors.

What Does This Say about Bias?

A new, comprehensive study finds that things are worse — much worse — than you thought.

The Most Powerful Recidivism Protective Factor Ever? You Guessed It: Aging!

A study by Howard Barbaree picks up where Woller's work left off, effectively ruling out recidivism by senior citizens.

Collective Obsessions — You Didn't Know They Are How You Got Here and Why You're Still Here?

This really isn't mystical rocketry. The Encyclopedia Britannica spills the whole bean pot.

Effective Treatment?

Three studies all find negligible treatment impacts on sex-crime recidivism.

Several Articles on First Amendment Rights Show Our Rights Are Trampled.

Find out about the full array of free speech/press rights you have, including your right to receive media.

If Higher Impression Management Scores Really Show You're Faking it, How Come They're Associated with Lower Recidivism Risk Levels?

Gomer would say, "Surprise, surprise, surprise!"

Organizing from Within

Budding efforts in sex offender commitment facilities to organize, both internally and in conjunction with other facilities, prove that sex offenders are not really just selfish or a bunch of cringing cowards.

Countertransference Is a Two-Way Street in Forced Treatment. How Could Treatment Fatigue Not Occur?

Failure to create a therapeutic alliance, countertransference, and treatment fatigue are three powerful blocks to treatment advancement and completion. Is this really your fault, or are we blaming the victim?

Can You Sue the Psychologist Whose Adverse Testimony Got You Committed?

That's a big, fat maybe. But then, you thought it was a categorical no.

Still More Research Comes Down on the Impact of Moral/Sex Panic, Stigma, Hysteria, Bias, and on Vigilantism against Sex Offenders.

The importance of doing all in our power to dissipate those emotional reactions, in order to prevent vigilantism, among lesser adverse outcomes, is underscored by these findings.

Is There Any Consensus Even Among Psychiatrists Whether Sexual Disorders Exist and If So, What They Are?

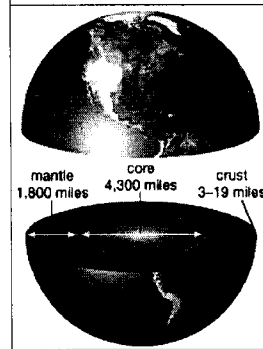
Debate (and confusion) reign supreme over the DSM's inclusion and definitions of sexual disorders, while people are locked away based on partisan views in that muddled debate.

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ATTENTION SUBSCRIBERS!

The print edition of *The Legal Pad* is extremely limited in circulation. Annual subscriptions are always renewed effective January 1st, assuming that we receive your renewal for that new year on or before December 31st. Subscriptions not renewed by then will be deemed abandoned. Vacant subscription 'slots' will then be assigned to others on a first-request basis. Such abandoned slots are usually filled within a few days. Therefore, please let us hear from you as soon as possible before that deadline to preserve your subscription through 2020. Thank you!



Thin Crust

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Compulsory Psychiatric Examination in Civil Commitment and the Right against Self-Incrimination

Why do attorneys regularly counsel their sex offender clients to implicitly waive that right and undergo forensic interviewing?

Does Commitment of Sex Offenders Under Laws Ignoring and Twisting Scientific Fact and the Rigors of Scientific Inquiry, Instead Based on Legislatively Invented Normative Decisions and State-Court Decisions Further Inventing Normative Decisions of Their Own by Sheer Fiat to Defend Such Laws, So Twist the Meaning of Terms of SCOTUS Decisions as to the Permissibility of Such Commitments That Such State Laws and Judicial Decisions Deliberately Circumvent the Constitution, in the Process Subverting and Destroying the Rule of Law?

This is the granddaddy of all legal questions about the constitutionality of sex offender commitment. However, it further implicates the broader question of whether inhabitants of this country are even under constitutional governance anymore. If the meaning and applicability of the words in the Constitution can be thus distorted when such rhetorical devices are deemed necessary or expedient to some personally or politically preferred outcome, then the answer to this show-stopping question appears frightfully clear. Do you want a government acknowledging and enforcing a personal right to liberty, or are you so driven by fears and hatreds of people you think you know only through character assassination that you would choose a different government that makes *ad hoc* arbitrary decisions about anyone's liberty without legal limit, just to salve the angers and obey the momentary thumbs-down whims of the Coliseum crowd *du jour*? Will the Minority Report "precogs" implicate you? Will that crowd *du jour* make its next decision about *your* fate? Is this devolving into nothing more civilized than a constantly ongoing purge? You have the power to decide these questions. Use your freedom of choice and your power of voice. And above all, don't let anyone do your thinking for you!

The Eugenic Origins of the Minnesota Psychopathic Personality Act of 1939

Wait 'til you hear what motivated the passage of the original sex offender commitment act in Minnesota....

The Right to Effective Counsel in Sex Offender Commitment Cases

Is it finally being taken seriously, and can it be examined retroactively?

The Hendricks Take on Double Jeopardy: Is It Time for a New Look, Based on New Knowledge, Experience, Discoveries about Judicial Biases, and Broken Promises?

Twenty-two years after *Hendricks*: (1) much that was relied upon by that SCOTUS opinion has been proven incorrect; (2) new knowledge has replaced old false stereotypes; (3) the very notion of sexual "disorders" has been upended; (4) the myths of high recidivism propensity and compulsive crimes by sex offenders have been popped like balloons; (5) rights of commitment defendants have been elevated dramatically — except for sex offenders; (6) it has since been established that post-prison-release intensive supervision by parole authorities with special training can prevent recidivist sex crimes, eliminating the perceived need for incapacitation of sex offenders by commitment; (6) judicial bias itself has been exposed and studied, now crying out for strong countermeasures; and (7) the former hysteria and rage of mainstream society about sex offenders has subsided, such that no political movement demands supplementary punishment under rubric of commitment anymore. Although not so overtly excused at its time, *Hendricks* was just an emergency measure allowed on that concern only by SCOTUS. It is time for a measured, dispassionate reexamination of the situation that previously was thought to demand an extreme exception only applicable to sex offenders. Will this happen?

Topics Of More General Concern Or Interest To Sex Offenders

Does Remorse Actually Have Any Protective Value Against Sexual Recidivism, or Is It Just Something That People Want to Hear?

Maybe it depends. But then, maybe remorse isn't the right word.

Monitoring and Surveillance of Sex Offenders

If this technology is so good, why do any of us need to be locked up here at all?

Let Us See Some Empathy, or We'll Have to Beat It Out of You!

Questioning the realism of expecting demonstration of empathy by those being severely punished for sex crimes (as by post-prison commitment).

Why Can't Sex Offender Treatment Learn Anything from Studies of Desistance by Sex Offenders?

Wouldn't you think that successful desistance would have some important lessons that responsible treatment designers would want to apply by reconstructing treatment to foster adoption by offenders of the approaches and attitudes of ex-sex offenders who never reoffended again?

Well-Educated People Tend Not to Sexually Offend, and Offenders who Have or Receive Education Are Far Less Likely to Reoffend. So Why Would You Want to Deprive Sex Offenders of Higher Education?

Access to higher education is restricted or denied to committed sex offenders.

Assuming you plan to let them out, why on earth would you do that?

Beyond Punishment: The Penal State

What does this imply? Have we become a society that punishes risk? If so, how much risk does that take, and shouldn't the standard of proof be by proof beyond reasonable doubt of that risk and its severity?

Can Perfect-Replica Androids Eliminate Sex Crimes?

As this is written, the so-called "uncanny valley" is being crossed to androids that are perfect replicas of virtual-reality-designed humans, indistinguishable to the senses from actual humans. Can sex offenders and those with deviant orientations be wooed to exclusively direct their sexual attentions to these "simulacra" possessing only simulated consciousness, thereby ending sexual offending?

Piercing the Wall of Silence: What Useful Information Can Be Learned from Similarities and Differences in Sexual Offending by Females & the Differences in Systemic Responses to It?

Only now are significant numbers of instances of sexual offending by females coming to light. Far more than the historical back-turning on sexual offending by males, the vast majority of sexual crimes by females even today are simply ignored or officially denied despite ample probable cause. Further, even when prosecuted, female sex offenders receive sentences that often amount only to a slap on the wrist. This may be changing, however. Emerging numbers and conjectures of prevalence are so large as to defy disregard. What needs to be learned about this, and what important similarities to and distinctions from sex offending by males might be found? Why does this matter?

How Are American Sex Offender Policies Like the Trojan Horse?

What happened after the horse was brought inside the gate and left unattended? Is the USA like Troy?

What Does It Mean When an Claimed Correlation between Height and Pedosexual Interest Is Transformed into a Claim of Causal Relationship?

The ominous abuse of science that occurs when researchers desire a certain conclusion too much.

Whither Now: The Aging War on Sex Crime and Sex Offenders

Is the public finally tiring of inflammatory

rhetoric and being rabble roused to no end other than never-ending fear and political gain and enrichment of system manipulators they've never heard of? Signs are emerging.

Voice Prints of the Confined and of Others Are Taken and Stored without True Consent

Voice prints, like your fingerprints and photos of you, are something that you have a right to privacy in, and also protected from unreasonable search and seizure. But once in the hands of others, your privacy and anti-seizure rights are lost as a practical matter. Find out who's able to steal yours. — And stop that cold!

What Residence Restrictions and 'No-Go Zones' You May Encounter Out There?

Can you fight city hall? Maybe the question is really whether they can keep on fighting you.

Registration Laws Held Unconstitutional

Current SORNA-compliant sex offender registration laws are burdensome and extremely intrusive on your privacy. Lucky for you, they are falling like dominos now.

Sex Offender Commitment Facilities Are Getting 'Privatized': The Good, the Bad, and the Very Ugly.

Whether for economy or for kickbacks, this movement is now widespread. You can believe it is not for your benefit, but amidst the horror stories, a few weird bright spots exist.

It's a War Out There: The Battlefield That Is the Internet, with All Manner of Players, Most of Which Will Mess Your World Up, and Maybe Kill You. Caveat Emptor!

Your love/hate relationship with the indispensable information and communication appliance of our time dictates that you will use the internet no matter what. Watching out for the bogies on your tail while you do so is a full time job. And privacy and secrets in any data device ever connected to the internet? Fugged-aboutit!

Will You Be Lynched from Your Family Tree?

Why using a DNA sample-based ancestry exploration service is a supremely bad idea.

Were You Framed by a False Memory Caused by Hypnosis or Other Suggestive Techniques Used to Manufacture a Victim?

Have you been sincerely insisting all along that you are innocent? This could be how they framed you.

Have You Been Hypnotized by Sound Shaping?

Listened to any 'relaxation' CDs lately? Have your beliefs, pleasures, repulsions changed lately? These and any other of a host of mental/emotional changes without clear origins may point to being victimized by this technique. Learn

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about it.

Polygraph — They Don't Call It the "Bogus Pipeline" for Nothing.

You probably intuited this already: the polygraph as used in conjunction with sex offender treatment is really just an interrogation device to extract admissions.

Travel Restrictions: A Modern Survey and Discussion about Their Probable Unconstitutionality.

Both within the U.S. and internationally, a host of travel and even emigration restrictions have been enacted against registered sex offenders. How much of this is constitutional?

Artificial Hysteria: Bureaucratic Tipoffs Designed to Thwart Sex Offenders Seeking Residences by Creating Public Outcry Based on Ignorant Fears

Your tax dollars at work: government employees deliberately stirring up rage to prevent sex offenders just trying to find a place to live. Can you sue to stop this and get damages for it?

The Public Should Be Careful What It Asks for: Extreme "Collateral Consequences" Could Become Extremely Adverse Unintended Consequences.

What happens when living life between the lines simply becomes impossible/unendurable? Does the phrase "going off the res" mean anything to you? It could. **Should "Expert" Testimony and Evidence based on Any "Actuarial Risk Assessment" Tool Be Banned?**

With only one exception, Actuarial Risk Assessment ("A.R.A.") tools deliberately ignore the drastic reduction impact of aging on sex-crime recidivism, resulting in its statistical extinction shortly after age 60, if not before through general desistance from such crimes. Nor do any 'static' ARAs consider concepts or specific factors signaling desistance as such additional dampening effect on likelihood of recidivism, among many other omissions. Worse, despite being called out repeatedly with unquestionable science debunking various 'factors' employed by certain ARAs, in only a couple of instances have such factors been withdrawn. Further, whenever science calls into question the validity or reliability of a given ARA, either the makers of that ARA issue a new edition of it or some other individual or entity creates a new one, in either case, replacing the specific criticized factors with others and/or inventing new scoring/weighting formulas claimed as proprietary and hence not exposed for scientific examination or challenge to the statistical results of the new or revised ARA. These are just the tip of the iceberg of countless tactics employed by makers of ARAs in what clearly emerge *in toto* as ARA promotion for crass commercial profit at the expense of scientifically meaningful conclusions about indi-

viduals and hence at the expense of their freedom without any scientifically defensible basis. So-called "dynamic" risk assessment tools use entirely distinct lists of factors, each of which has only extremely thin and tentative statistical support or simply none at all. Hence, these tools are even less scientifically defensible. Many of these dynamic tools are created by those with some connection to the industry of sex offender commitment and/or keeping them committed, raising serious questions of biased aim to justify such confinement, whether for profit, livelihood, or simple personal hatreds. Since in all these years no test has been developed that all involved can agree upon as scientifically valid and reliable, and that does not have significant flaws impacting accuracy of their predictions, and since no ARA builds in any reckoning with the downward adjustment of probability mathematically required for accuracy by the Bayes Theorem, and since the universal practice by ARA makers is to deliberately silently ignore the impact of Bayes' Theorem, reflecting the fact that they are selling claims of high recidivism instead of mathematical accuracy, surely it is time to open a national debate over whether the use of all ARAs created by this corrupt and fraudulent industry must be banned in courts, whether in civil commitments, criminal sentencing, or otherwise, and wherever else and by whoever else for any benefit or deprivation whatsoever (as, for instance, denial of employment or housing).

What If You Win the Lottery?

Hate-motivated political activists have succeeded in getting laws passed that deprive sex offenders of eligibility for countless endeavors and for chances to win money or benefits (including participating in multi-state lotteries) having no relationship to their crime(s), but only on the basis of sheer spite. A national campaign of judicial challenges to such laws is required.

What Is Sexual Orientation; What Is Sexual Disorder; and Who Is to Say?

An academic debate is raging as to what can be regarded as a sexual orientation, and in lockstep, what otherwise (if anything) is a sexual disorder. The question, what is normal, is not regarded as an issue. But politics (and plenty, you bet!) is attempting to skew the outcome of this academic inquiry. Forces of repression see this inquiry as potentially being the end of civilization and certainly being an abomination unto the Lawwwd. Forces of liberation and human potential see this as the falling of longstanding walls of shame and persecution and a fight to free untrammelled science. Controversy! Just what sells newsletters!

What Is "Therapeutic Jurisprudence," and Does It Spell an End to Draconian Punishment and Unnecessary Confinement, or an End to Due Process and Other Constitutional Protections

and to Relegation to Some Personal Fate Just for Who Some Jurist Thinks You Are, Based Only on Official Discretion and Personal Whim?

Using the same phrase, those who espouse each of these diametrically opposed futures have invented competing systems. Will one of these rule the future? Whether yes or no, and if yes, whichever one generally prevails, one thing is clear: psychological science will play a heavy, officially sanctioned role in reaching decisions about people. Scary? Sure. But is the fight one to oppose this altogether, or simply to reform psychology so that this is purely positive and benign, rather than character assassinate and a dealer in the politics of personal destruction of the little guy.

"Burying Our Mistakes": A Startling Law Review Article Appears to Candidly Admit That Prosecutors View Sex Offender Commitment as a Way to Do Just That.

Isn't this an admission of double jeopardy? If this admission is not reckoned with, does double jeopardy retain any meaning at all?



Actually, dead MSOP confinees are incinerated.

What if the Government Censors the Internet?

Other countries without a First Amendment in their constitutions are already doing this. Repression of expression and even thought reigns supreme there. Now certain commentators in this country, seizing upon the accessibility of illegal pornography in the internet, are proposing just such sweeping censorship, extending far beyond such illegal imagery, to advocacy or even just merely intellectual conversation about verboten topics. Seriously? If that proposal flies, what have we become?

You're a Sex Offender. All Businesses in Town Shut Their Doors in Your Face. Practically, This Drives You Out of Town. Should That Be Legal?

Traditionally, the law of discrimination has only addressed governmental actions, with few exceptions. But when one's ability to live daily life is literally shut off by a conspiracy among private individuals to deprive one of the goods needed for life, much less convenience, in an effort to force a privately imposed banishment from a given area, shouldn't there be some legal protection? What must be changed to provide some?

Can an fMRI Pattern Read Your Mind

to Ascertain Your Sexual Orientation?

One researcher says yes. **Are Practices with Dynamic Risk/Protective Factors Assessment Laden with Personal Values of the Assessor?**

Perhaps the question would better be phrased, "To what extent...?" One researcher says lots. And this surprises you why?

Empathy in Pedosexuals: Not So Straightforward a Concept.

Is empathy differently defined by pedosexuals? If empathy is not universal or absolute, what role should it play in risk assessments?

Here's a Switch: A Scale of Individuals' Attitudes Toward Sex Offenders.

Herein lie some surprises.

Getting Old and Dying While Confined

What does this say about the captive and the captor?

Digital Expiungement

Does that exist? How can that work?

Aging Is The Most Powerful Recidivism Factor.

Howard. E. Barbaree et al., "Aging Versus Stable Enduring Traits as Explanatory Constructs in Sex Offender Recidivism: Partitioning Actuarial Prediction into Conceptually Meaningful Components," 36(5) *Criminal Justice and Behavior* 443-465 (2009)

Editor's Note: Last issue, a long excerpt from the seminal work by Richard Wollert, "Low Base Rates Limit Expert Certainty When Current Actuarials Are Used to Identify Sexually Violent Predators: An Application of Bayes's Theorem," was the first to apply that mathematical principle of statistical prediction of yes/no events to the question of future sex-crime recidivism.

In that article, Wollert first pointed out that, in the context of low base rates of re-offense, using Hanson's statistics compiled from releases of offenders in the 1970s-90s, prediction of high re-offense rates for certain specific cohorts of offenders produced error rates that escalated geometrically the farther that those predicted re-offense rates departed from the base rate.

Secondly, Wollert examined recidivism rates over time as the offenders in that large combined sample aged, both before and after release. He found that recidivism probability, even disregarding that error, dwindled from age 30 on, reducing to less than 4% for those released at age 60. No releasees at age 70 reoffended. (Hanson had declared that recidivism rates averaged over all ages at release to about 17.6%.)

Thirdly, Wollert applied Bayes's Theo-

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rem to Hanson's findings broken down by various "risk factors" selected by Hanson. Those findings addressed the question of what percentage of offenders in the category of offenders with that particular risk factor ultimately reoffended during the period of that long-term study.

However, Bayes' Theorem points out that, if you are trying to determine whether a given individual will reoffend (a yes/no question), you cannot simply assign him the percentage figure applicable to that whole category of offenders. This is because in that category, some will reoffend, and some will not. Will the individual in question be among those that do, or among those that do not? Group statistics leave this highly uncertain.

The only way to transform this uncertainty to a predictive probability figure that makes some kind of sense when applied to the individual rather than the group is to reduce his percentage of probability by the portion of that category of persons who ultimately did not reoffend.

So, for instance, if someone is in a category where the average rate of occurrence of re-offense is 20%, any included individual's predicted rate must be reduced by 80% (or 4/5ths) of that average rate, in this example equal to 4% likelihood of re-offense to adjust for the fact that he could just as well be in the non-reoffending portion of that category.

The math is actually more complicated than this, but it is a fair explanation of how this works. Obviously, the error impact of ignoring this mathematical fact is enormous.

Yet no actuarial instrument in use on sex offenders to date reckons in any way with this profoundly important fact. It is a case of knowing your prediction of recidivism is wrong (in the example above, overstating likelihood of recidivism by five times its actual amount), yet fraudulently stating that exaggerated figure with confidence to a court and watching the committed person marched off to probable natural life in committed confinement without whispering a word about the error. This deliberate inflation of recidivism probabilities, when a life depends on that prediction, ought to be a major felony.

Now, with this background firmly in mind, we turn to a study by noted sex-crime recidivism expert Howard Barbaree and other distinguished colleagues to return to just the question posed by Wollert about recidivism probability as age increases. Let's pick this up from here.

Abstract Excerpt: "This study investigates whether sex offenders' age at release from custody affects their likelihood of reoffending. The participants were 468 men with a mean follow-up

(time at risk) of just more than 5 years after release. Items from the *Violence Risk Appraisal Guide* [VRAG], the *Sex Offender Risk Appraisal Guide* [SORAG], the *Rapid Risk Assessment of Sexual Offense Recidivism* [RRASOR], the *Static-99*, and the *Minnesota Sex Offenders Screening Test-Revised* [MnSOST-R] were coded. The results provide a strong counterargument to previous research claiming that aging has no important effect on recidivism risk in sex offenders. A large body of evidence has recently accumulated indicating that recidivism in sex offenders decreases with the age of the offender at the time of his release from custody. Despite the weight of this evidence, aging has not been incorporated as a risk factor into general practice in forensic assessment, either of the sexual or the nonsexual violent offender. This study continued the exploration of the relationship between aging and actuarial risk in the prediction of recidivism in sex offenders. Three predictor scales (antisocial behavior, sexual deviance, and age at release) were constructed, and each were independent of the others. Results show that the predictive ability of items tapping antisocial behavior is inflated by their association with age at release, whereas the predictive ability of items tapping sexual deviance is diminished by that association. An assessment instrument comprising an age-corrected antisocial behavior scale, an age-corrected sexual deviance scale, and an age at release scale predicted recidivism as well as the best existing actuarial instruments. Cox regression analysis shows that age at release provided unique and significant predictive ability over and above age-corrected antisocial behavior and age-corrected sexual deviance combined."

Text Excerpts:

pp. 443-44: "A large body of evidence has recently accumulated indicating that recidivism in sex offenders decreases with the age of the offender at the time of his release from custody (Barbaree, Blanchard & Langton, 2003; Fazel, Sjostedt, Langstrom & Grann, 2006; Hanson, 2002, 2006; Lussier & Healey, in press; Prentky & Lee, 2007; Skelton & Vess, 2008; Thornton, 2006). These reductions in recidivism among sex offenders are consistent across studies (Barbaree & Blanchard, 2008) and are similar to reductions in recidivism (both violent and nonviolent) in the aging non-sexual criminal (Hirschi & Gottfredson, 1983; Moffitt, 1993; Sampson & Laub, 2003). According to Wollert (2006), the aging effect has been recognized as one of the most robust findings in the field of criminology. In a seminal and influential article, Hirschi & Gottfredson (1983) pointed to the 'invariance' of this relationship in that crime rates decreased with age for offender groups who (a) lived in

different centuries, (b) came from different countries, (c) differed with respect to age and gender, (d) were at large in the community or incarcerated, and (e) committed different types of crimes (Wollert, 2006). Age-related reductions in the rate of recidivism in sex offenders are also consistent with a large body of literature examining human sexuality indicating that sexual behavior decreases in the aging male (e.g., Rowland, Greenleaf, Dorfman & Davidson, 1993). In a recent chapter, we (Barbaree & Blanchard, 2008) linked age-related reductions in blood levels of bio-available testosterone to decreases in sexual behaviors as a possible explanation of the effects of aging on sex offender recidivism, and we proposed the addition of 'maturation' as a risk factor distinct from previously specified static and dynamic risk factors (Hanson, Morton & Harris, 2003).

Despite the weight of this evidence, aging has not been incorporated as a risk factor into general practice in forensic assessment, either of the sexual or the nonsexual violent offender. Although some authorities in sex offender risk assessment have identified aging as a mitigating risk factor (Craig, 2008; Hanson, 2006; Thornton & Hanson, 2003) and others have proposed statistical methods for adjusting estimates of actuarial risk based on the older age of the offender (Prentky, Janus, Barbaree, Schwartz & Kafka, 2006; Wollert, 2006), adjustments for age are not widely accepted or in common use (Hanson, 2006)...."

p. 445: "...Hanson (2006) reported that average Static-99 scores decrease significantly with age. This finding prompted Hanson to say of the confound, 'The observation that the Static-99 scores were lower for the older offenders supports the position that the older offenders were different from the younger offenders and not simply equivalent offenders grown up' (p. 352)."

p. 446: "...[T]he effects of aging may detract from the predictive ability of the items that reflect sexual deviance. If older sex offenders are at lower risk for recidivism because of their advanced age, and if traits of sexual deviance are relatively more prevalent in the older sex offender (Barbaree et al., 2007, 2008; Dickey et al., 2002; Hanson, 2002), then their advanced age may reduce their risk below that owing to their level of sexual deviance alone. In this unintended consequence of the development of actuarial instruments, the older ages of the individuals exhibiting this trait may have impaired the ability of these items to predict recidivism and operated against the selection of sexual deviance items for inclusion in actuarial instruments for sex offenders."

pp. 462-63: "...In the present study, in the Cox regression, even after entering

Bayes' Theorem points out that, if you are trying to determine whether a given individual will reoffend (a yes/no question), you cannot simply assign him the percentage figure applicable to that whole category of offenders. This is because in that category, some will reoffend, and some will not. Will the individual in question be among those that do, or among those that do not? Group statistics leave this highly uncertain.

standardized age-corrected antisocial behavior and standardized sexual deviance into the equation in the first block, age at release was found to be a relatively strong predictor of recidivism when entered in the second block.

Finally, the results of the Cox regression support the idea that the shape of the age-recidivism curve is linear and best described as a straight line decrease from the mid-20s to old age. Using a methodology described and used by Hanson (2006), after controlling for age-corrected actuarial risk (Block 1), and after entering age at release (Block 2), age at release squared did not enter the prediction equation (Block 3), indicating that nonlinearity of the age-recidivism curve was nonsignificant. This linear decrease in recidivism over the life span is similar to the reductions seen with aging in criminal behavior, blood levels of testosterone, sexual arousal, and other male sexual behaviors (Barbaree & Blanchard, 2008)."

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Editor's Closing Note: Two things require consideration in light of Barbaree's (2010) conclusion. First, although later in chronology, more recent studies of sex offender recidivism have all found current recidivism rates to be drastically less than those originally reported by Hanson in the 1990s.

Two explanations for this disparity are possible. One possibility is that recidivism rates in the last 30 years have drastically fallen (perhaps in response to astronomically heightened criminal penalties and new techniques of detection of sex crimes and identification of their perpetrators).

The other possibility is that Hanson's statistical methodology was poor, such that his results never did reflect true recidivism rates of sex offenders in the U.S. (Hanson 'cherry-picked' offenders in prisons and mental institutions for extremely violent and blatantly compulsive sex offenders in other countries.)

Modern researchers have concluded that both of these causes combined to produce Hanson's high rates, contrasted with current low rates.

Because Hanson used his high rates to construct all of his Static-99 actuarial instruments, it appears certain that the ensuing sweeping terror of recidivistic sex offenders, including its consequence of the raging demand for further confinement by any means of sex offenders, was caused in part by Hanson's exaggerated recidivism probabilities back then. Static-99 checklists are so common in sex offender risk assessment that virtually every person committed since the year 2000 was subjected to that flawed prediction approach.

The degree to which this mistaken impression was intended by Hanson is unknown, but is a very troubling question deserving of investigation and appropriate professional disciplinary action depending upon the result.

Second, the modern, low rates of sex-crime recidivism are still focused on overall average rates for all sex offenders and for recidivistic sex offenders, and have not yet intensively studied current rates of re-offense by sex offenders not released from incarceration/confinement until age 60 or beyond. Partly, this is due to the fact that so very few offenders in that advanced age range commit any further sex crimes. This makes construction of a statistical cohort for that age group nearly impossible.

Nonetheless, applying the same down-

ward linear curve on the chart in the Wollert excerpt (see TLP 3-11), it seems quite clear that current projected recidivism by those age 60 and above is perhaps about 6/10 of 1%. To call this infinitesimal and a laughable basis upon which to commit someone for purportedly posing a "high risk" of re-offense is outrageous. Yet such commitments continue. Further, those committed at younger ages remain committed despite having long-since passed that line into senior-citizen status.

As I stated above, there is something (really, two things) that require consideration from the Wollert study in light of the Barbaree findings about aging and non-recidivism.

First, the Wollert findings included drastic error on the high side in estimations of recidivism probabilities, indeed geometrically rising levels of error as such estimations depart ever upward from the base rate for all sex offenders in the whole sample. Because modern recidivism studies find such extremely low-recidivism base rates, the error rate is now automatically higher for each claimed departing rate.

Thus, ironically, even for an offender age 60 with an extensive record of prior sex offenses, and hence a comparatively higher Static-99 score and corresponding elevated predicted percentage of recidivism probability, it turns out that the error involved in that prediction is higher than the actual projected probability percentage itself. In other words, there is no scientific validity to that predicted high likelihood beyond the base rate itself.

And it turns out that Wollert's own chart of differences (TLP 3-11, page 5) in actual recidivistic outcomes later between those thought "high risk" from those not showed quite clearly that such differences dwindled as age increased, and utterly disappeared beyond age 60. Stated otherwise, at and beyond age 60, everyone, regardless of criminal record or other Static-99 factors, has the same low rate of re-offense for those of that age (i.e., about 6/10ths of 1% for those at age 60 or over).

Secondly, that 6/10ths of 1% figure derives only from 'raw' base rates not yet adjusted individually by the Bayes' Theorem. Chances are that the Static-99R (which now offers a overly conservative adjustment for age at time of release) still would predict that a former sex offender with a record and other factors totally 6 points (3 points adjusted) still has a re-offense probability of about 15%. That leaves a converse non-recidivism probability for that individual of 85%. Applied to that 6/10ths of 1% 'ordinary' risk rate, an individual's Bayes' adjusted rate would be approximately 9/100 of 1%! This is the perfect point from which to segue to the next excerpt.

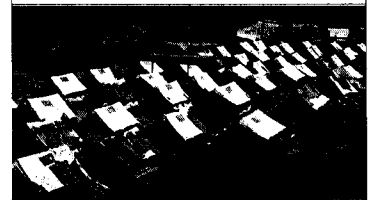
Release from the Sex Offender Label

Rachel E. Kahn, et al., "Release from the Sex Offender Label," 46 *Arch. Sex Behav.* 861-864 (2017)

[Text Excerpt:]

p. 861: "...Given strong evidence that the risk for sexual recidivism declines over time, policies should specify a threshold where the level of risk for a sexual offender reduces to a degree that would warrant exemption from a permanent sex offender label. Inarguably, the risk for sexual recidivism will never correspond to zero for sexual offenders, so setting an absolute threshold of risk to zero would be an unreasonable expectation. An alternative would be to establish a tolerable risk level, one low enough to warrant exempting an individual with a history of sexual offenses from the lifetime label of sexual offender."

Release Just in Time to Die



Proposed MSOP nursing home

Mirko Bagaric, Marissa Florio & Brienna Bagaric, "A Principled Approach to Separating the Fusion Between Nursing Homes and Prisons," 44 *Pepperdine L. Rev.* 957 (May 2017)

[Text Excerpts:]

p. 960: "The rate at which older people are imprisoned has increased considerably despite the fact that this group is far less likely to commit crime than younger people.⁸..."

pp. 962-3: "...[T]here are powerful empirical reasons for sentencing the aged more leniently.²⁹ Incapacitation for community protection is arguably the most important sentencing objective, and it has certainly been a driving force behind sentencing policy in the United States over the last few decades.³⁰ Other than capital punishment, imprisonment should be the most effective way to ensure that offenders do not commit crimes in the community.³¹ Assuming that incapacitation is the goal, it is futile to pursue the incapacitation of offenders who will not reoffend during their term of imprisonment. The futility argument applies more strongly to aged offenders than any other community cohort. It is firmly established that aged offenders reoffend far less frequently than other

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offenders.³² Given the strong correlation between aging and reduced rates of offending, the orthodox approach of using prior criminal offenses as a crude measure of predicting future offenses is inapposite to apply to elderly offenders.³³ Diminishing the emphasis on incapacitating aged offenders logically means that far less aged offenders should be imprisoned."

pp. 967-8: "...[Age] fifty appears to have considerable objective relevance as far as sentencing considerations are concerned.⁷⁵ As discussed below, it is at this point that the rate at which people commit crime and the rate at which they are likely to reoffend decreases markedly.⁷⁶ It is also at about this age that a person's health status and health needs differ considerably from the rest of the population.⁷⁷

In addition, although a fifty-year-old person in the community might not be considered 'elderly,' research establishes that the physiological age of an incarcerated individual is approximately ten to fifteen years older than a nonincarcerated person of the same [chronological] age.⁷⁸ This means that a fifty-year-old prisoner will often display the physical and mental infirmities more typical of a sixty or sixty-five year old.⁷⁹..."

p. 998: "A. Aged Offenders' Recidivism Rates Are Lower.

A key reason for distinguishing between aged and young offenders, so far as decisions regarding the appropriate choice of sanction and length of prison terms are concerned, is the stark differences in reoffending between the cohorts.³⁰³ Studies show that by the age of fifty, the majority of individuals have outgrown the years they are most likely to engage in crime.³⁰⁴ This is known as the 'aging out' phenomenon.³⁰⁵ The relationship between age and criminal activity is supported by extensive empirical studies, which consistently show that older offenders are substantially less likely than younger cohorts to commit additional crime after being released from prison.³⁰⁶ In fact, the aging prison population has the lowest recidivism rate across all prison cohorts.³⁰⁷ The figures are illuminating.³⁰⁸

pp. 1000-01: "Importantly, the [New York Department of Corrections'] report notes very low levels of recidivism for violent and sexual offenses for aged offenders.³²⁵ Offenders aged fifty years or older were most likely to return to prison for committing nonviolent property and other crimes.³²⁶ This accounts for third-degree burglary, forgery, stolen property, grand larceny, driving intoxicated, and miscellaneous other felonies.³²⁷ They comprised 45.6% of prisoners who were returned to prison for such offenses.³²⁸ In contrast, aged prisoners were the least

likely to be re-incarcerated for violent felony offenses (14.6%) and other coercive offenses (11.4%).³²⁹ When the recidivism rate is broken down further, no aged prisoners were returned to prison for murder or rape offenses, of a total of forty-three prisoners newly convicted of these charges.³³⁰

Notes:

- 8 [Nothing]
- 29 [Nothing]
- 30 [Nothing]
- 31 Valerie Wright, *The Sentencing Project*, "Deterrence in Criminal Justice" 6 (2010), <http://www.sentencingproject.org/>
- 32 [Nothing]
- 33 Mirko Bagaric, *The Punishment Should Fit the Crime – Not the Prior Convictions of the Person that Committed the Crime: An Argument for Less Impact Being Accorded to Previous Convictions in Sentencing*, 51 *San Diego L. Rev.* 343, 351-56 (2014).
- 75 [Nothing]
- 76 [Nothing]
- 77 [Nothing]
- 78 *Office of the Inspector General, The Impact of an Aging Inmate Population on the Federal Bureau of Prisons* 1-2 (2015), <https://oig.justice.gov/reports/2015/e1505.pdf> [hereinafter Office of the Inspector Gen.]. Note that this is obviously contingent upon the time they have been incarcerated.

79 supra, note 78, at 1-2

- 303 [Nothing]
- 304 *American Civil Liberties Union*, "The Mass Incarceration of the Elderly" 57 (2012), https://www.aclu.org/files/assets/elderlyprison_report_20120613_1.pdf; *The Osbourne Ass'n, The High Costs of Low Risk: The Crisis of America's Aging Prison Population* 1, 5 (July 21015), http://www.osbourneny.org/images/uploads/print/Media/Osborne_Aging_WhitePaper.pdf; see also *The Pew Ctr on the States, Time Served* 2 (2012), http://pewtrusts.org/~/media/legacy/uploadedfiles/wwwpewtrusts.org/reports/sentencing_and_corrections/prisontimeservedpdf.pdf.

305 *American Civil Liberties Union*, supra note 85, at 21; *KiDeuk Kim & Bryce Peterson*, "Aging Behind Bars: Trends and Implications of Graying Prisoners in the Federal Prison System." 1 *Urb. Inst.* 5 (Aug. 2014), <http://urban.org/sites/default/files/publication/33801/413222-Aging-behind-Bars-Trends-and-Implications-of-Graying-Prisoners-in-the-Federal-Prison-System.pdf>; see also *Office of the Inspector Gen. supra* note 78.

306 *Tina Chia*, "It's About Time: Aging Prisoners, Increasing Costs, and Geriatric Release," *Vera Inst. Just.* (April 2010), [\[Itsabouttime-aging-prisoners-increasing-costs-and-geriatric-release/pdf\]\(http://abouttime-aging-prisoners-increasing-costs-and-geriatric-release/pdf\); *American Civil Liberties Union*, supra note 85; *Kim & Peterson*, supra note 305; see also *Matthew R. Durose, Alexia D. Cooper, & Howard N. Snyder*, "Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010," *Bureau of Just. Stat.* \(Apr. 2014\), <http://www.bhs.gov/content/pub/pdf/rprt05p0510.pdf>.](http://archive.vera.org/sites/default/files/resources/downloads/</p></div>
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307 *The Osbourne Ass'n*, supra note 304.

308 [Nothing]

325 Ryang Hui Kim, *Inmate Releases: Three Year Post-Release Follow-Up*, St. N.Y. Dept Corrections & Community Supervision (June 2014), http://www.doccs.ny.gov/Research/Reports/2014/2010_releases_3yr_out.pdf; see also *American Civil Liberties Union*, supra note 85 (noting that not only were New York's aging released prisoners less likely to recidivate, but they also rarely recidivated by committing violent offenses).

326 *Kim*, supra note 325, at 17.

327 *Id.*

328 *Id.*

329 *Id.*

330 *Id.*

Research establishes that the physiological age of an incarcerated individual is approximately ten to fifteen years older than a nonincarcerated person of the same [chronological] age.

Getting Organized: Committed Sex Offenders in Marcy, NY Form PAC

William Dobbs, "The Dobbs Wire: Organizing Inside! Duchamp@mindspring.com; info@thedobbswire.com

Full Text:
"The Dobbs Wire: Organizing Inside. There's good news out of Marcy [NY] where several hundred men have been locked up indefinitely in New York's sex offense civil commitment facility. Those inside are working collectively to build some influence and, no doubt, draw attention to their plight by forming a political action committee (PAC)! They're locked up not for any crime but on a mere hunch, a guess that they might do something wrong in the future. Note, they've been incarcerated and already paid a price for sexual wrongdoing. New York has been getting away with this robbery of liberty because too many judges and lawmakers have been turning a blind eye to the New York and U.S. constitutions. Kudos and

good luck to those organizing inside Marcy. And thanks to the Albany Times Union for bringing this development to public attention; have a look at Rick Karlin's report linked below. Also below is a link to David Robinson's blockbuster 2018 coverage for the Journal News about conditions at Marcy, the cost to taxpayers and more."



A Time-Honored Tradition

Rick Karlin, "Sex Offenders Form PAC to Try and Gain Political Voice, Contend They Aren't Getting Adequate Treatment in Secure Facilities" *Albany Times Union*, Oct. 11, 2019

Full Text:

"Marcy, New York – Voting blocs, where people support candidates on specific issues, have long played an outsized role in New York politics – from labor unions that focus on workplace rules, to environmentalists who place clean air and water at the top of the list.

But now an unusual bloc is emerging from an unexpected place: the locked sex offenders unit at one of the state's major psychiatric hospitals.

Convicted sex offenders at Central New York Psychiatric Center are joining a PAC, or political action committee, which could conceivably raise money for candidates they favor and serve as a vehicle to mobilize voters.

Rather than gathering cash, however, they are looking to form a voting bloc where they could back state – and even local candidates – based in Oneida County where the Central New York Psychiatric Center is located. The center houses 283 people who have been civilly confined after serving prison terms for crimes such as sexual assault.

Under the state's 12-year-old Sex Offender Management and Treatment Act, convicted sex offenders can be kept in secure psychiatric hospitals indefinitely after their prison terms expire.

That happens if an offender is deemed to have a mental abnormality that makes the person likely to commit another sex

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crime. State officials can go to court and request the offender be indefinitely committed to a hospital.

Creation of a PAC is the latest chapter in ongoing efforts, mostly in court, by some of the confined men and prison reform advocates to protest what they view as vague, open-ended confinement periods after their prison terms have ended.

'We count a little bit here, politically,' said Kerri Kotler, one of CNYPC residents who recently set up the OMH Resident Political action Committee. OMH stands for the state Office of Mental Health which operates the Psychiatric Center and its sex offender unit.

So far, almost 200 residents have signed onto the PAC and Kotler hopes that by writing lawmakers and using the bloc vote he can get some action.

He's not planning to raise money at this point, which means he doesn't yet need to register with the state Board of Elections. Mostly, he sees it as a way to rally voters in the hospital and make sure they are all registered.

Still, those outside the hospital say they can't imagine how elected officials would seek an endorsement or political support from a group of convicted sex offenders.

'I told him I didn't think that was a particularly wise way of going about it,' said Jim Murphy, a Schenectady-area prison reform advocate and member of CURE or Citizens United for the Rehabilitation of Errants, a group that works on behalf of people who are civilly confined.

'It's not going to be a winning issue,' said Murphy.

Kotler has been sending copies of the PAC's mission statement which is 'to secure fair treatment,' to lawmakers.

Like others who have battled OMH in court, he contends they are getting inadequate treatment for the mental illnesses that have landed them in the hospital.

OMH disagrees.

'The health and well-being of the people we serve is OMH's highest priority, and all our facilities are adequately staffed to ensure all our patients get the medical attention and treatment they need,' said an agency spokesman.

Others, though, have successfully argued in court that they have been wrongly confined, since there are specific criteria for holding people after their prison terms expired.

A few have won on those grounds. One resident, for instance, was released in 2014 on grounds that he had 'difficulty,' but wasn't 'unable' to control the urges that drove him to commit sexual assaults.

Another Greene County resident, who had a long and violent history, was released after the state Court of Appeals found that his 'anti-social personality

disorder' didn't met the criteria for civil commitment under the sex offender law.

The plaintiffs in these cases aren't named due to federal patient protections, since they are deemed as mentally ill."

David Robinson, "Death, Assaults and Sex Offenses: Life Behind Central New York Psychiatric Center's Walls," The Journal News (White Plains, New York) via LoHud.com, Feb. 7, 2018, available at:

<https://www.lohud.com/story/news/investigations/2018/02/17/central-new-york-psychiatric-center-crimes/1074161001/Summary-Text-Only>:

"A New York State psychiatric center operated illegally with impunity while two dead bodies, 40 assaults and 25 sex offenses triggered police responses behind its walls from 2012 to 2016, The Journal news/lohud has found. The newly obtained tally of violence, roughly one attack per month, is part of 210 criminal incidents at Central new York Psychiatric Center.

Much of the violence involved the mentally ill men locked up there, and it unfolded without the independent monitor required by law. From rapes and beatings to illicit drug use and falsified treatment records, the incidents offered a rare look into problems inside the closely guarded psychiatric center, according to records obtained by The Journal news/lohud through Freedom of Information Law requests...."

What Effect Does Treatment Have on Sex Recidivism? — Experts Here & Abroad Sound Off

A. The View in the U.S.: There Is No Scientific Consensus or Clear Evidence That Sex Offender Treatment Has Any Significant Impact on Sex-Crime Recidivism.

Anne R. Izzi, "Constitutional Law – The Cage a Fetish Can Build: Proposed Legislative Reform for Civil Commitment Procedures in Sexually Violent Predator Laws," 39 Western New England Law Rev. 141, at 145-46 (2017), states:

"...[T]he facilities that do offer treatment are not beneficial because, as of yet, researchers in the field have not found any successful treatment options.... [T]he issue is not treatment standards, but rather the current lack of any viable treatment methods in the field of sex offender management." [citing: *David Nordsieck, "How the Professional Judgment Standard Could Undermine the Validity of Sexually Violent Predator Laws," 88 Wash. U. L.*

Rev. 1281 (2011)].

When it comes to recidivism, sex offender treatment is purely just a wash. *Thomas K. Zander, "Civil Commitment without Psychosis: The Law's Reliance on the Weakest Links in Psychodiagnosis," 1 Jour. Of Sexual Offender Civil Commitment: Science and the Law 17, at 35 (2005), observes that:*

"Research regarding the treatment of sex offenders continues to show that treatment has little or no effect on sexual recidivism rates. It is easy to locate well-controlled studies that find no effect of sex offender treatment on recidivism likelihood. *J.K. Marques, M. Wiederanders, D.M. Day, C. Nelson & A. van Ommeren, "Effects of Relapse Prevention Program on Sexual Recidivism: Final Results from California's Sex Offender Treatment and Evaluation Project (SOTEP)," 17 Sexual Abuse: A Jour. Of Research and Treatment 79-107 (2005); Losel & Schmucker, 2005). For example, Hanson, Broom, and Stephenson (2005) compared the recidivism rates of 403 treated sex offenders to those of 321 untreated sex offenders over a 12-year period and found no significant differences between the two groups as to sexual recidivism, violent recidivism, or general recidivism."*

"...[T]here is no consensus as to the effectiveness of treatment or whether the treatment that is made available to this population has had any real effect on risk reduction. Relatively little is known about which sex offenders will benefit from treatment, what treatment affects recidivism. The question then becomes: does treatment hold any verifiable outcome of effectiveness for this population; and if not, then at what point does it become clear that this detention offers no other purpose but for continued confinement post criminal sentence, thus implicating a punitive statutory design?"

"...Commentators have stated that sex offender 'civil commitment, in particular, has been described by civil libertarians as preventive detention masquerading as coerced treatment that threatens rehabilitation, justice, and constitutional values, and legitimizes warehousing.' Additionally, treatment providers in these institutions may lack competency and qualification, which supports the notion that treatment is only in place to make the case for continued confinement after prison." *Heather Ellis Cucolo & Michael L. Perlin, "Preventing Sex-Offender Recidivism Through Therapeutic Jurisprudence Approaches and Specialized Community Integration," 22 Temp. Pol. Civ. Rts. L. Rev. 1 (Fall 2012), at 12-14, quoting Astrid Birgden & H.E. Cucolo, "The Treatment of Sex Offenders: Evidence, Ethics and Human Rights," 23 Sexual Abuse: J. Res. &*

Treatment 295, 299-300 (2011).

Accord: *Marnie E. Rice & Grant T. Harris, "The Size and Sign of Treatment Effects in Sex Offender Therapy," 989 Annals N.Y. Acad. Sci. 428, 428 (2003) ("We conclude that the effectiveness of psychological treatment for sex offenders remains to be demonstrated.")*. Accord: *Isaac D. Buck, "The Indefinite Quarantine: A Public Health Review of Chronic Inconsistencies in Sexually Violent Predator Statutes," 87 St. John's Law Rev. 847-897 (2013), at p. 861, n. 69: "...[T]he success of sex offender treatment remains unclear. See Jill S. Levenson et al., 'Public Perceptions about Sex Offenders and Community Protection Policies,' 7 Analyses Soc. Issues & Pub. Pol'y 1, 6 (2007), avail. at: <http://ccoso.org/library%20articles/Public-Perceptions%20ASAP%207.pdf> (noting that studies have concluded that recidivism rates of those treated and untreated are undifferentiated....)"*

Daniel Montaldi, "A Study Of The Efficacy Of The Sexually Violent Predator Act In Florida," 41 Wm. Mitchell Law Rev. 780-865, at 843 (2015), declares:

"At this point in time, no form of treatment – inpatient or outpatient – shows a clearly measurable effect in reducing risk for offenders recommended for commitment in Florida. However, a lack of efficacy does not mean that treatment programming has been poorly designed or administered. It seems more likely that rates for untreated offenders, even those thought by experts to be especially high risk, are already so low that no intervention short of physical incapacitation can reduce rates further, at least not significantly. A kind of statistical "floor" effect in sexual recidivism may be occurring....

Adding at 845: "...[T]here appears to be no discernible risk-reducing effect coming from progressing in treatment or completing it...."

At pp. 862-63, speaking specifically to Minnesota, *Montaldi* concludes on this point:

"...With rates as low as they are, even for untreated offenders, it is unlikely that any intervention can significantly lower rates any further. This may reflect a kind of statistical floor effect. Any group of released sex offenders will have some percentage of offenders going on to reoffend again. It is not realistic to expect any treatment program to produce a zero recidivism rate.

At what point does it become clear that this detention offers no other purpose but for continued confinement post criminal sentence, thus implicating a punitive statutory design?"

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[NOTE: But this 'zero recidivism' 'public safety guarantee' (A. Schlank) is exactly MSOP's true mission!]

"The data support an even stronger conclusion, albeit one that bears further study. Data so far provide little if any evidence of a treatment effect at all for offenders considered by mental health experts to be sexually violent predators, whether inpatient or outpatient. Detainees granted full discharges with no expected treatment have sexual recidivism rates about as low as offenders with settlement agreements and formerly committed offenders...."

"No treatment program will produce a zero recidivism rate."

Michael Barzee, "Fifteen Years and Counting: The Past, Present, and Future of Missouri's Sexually Violent Predator Act," 82 *UMKC Law Rev.* 513 (Winter 2014), offers these observations about the realpolitik of abdicating safeguarding of constitutional rights to treatment professionals:

p. 521: "...[A] nationally-accepted standard of treatment has not been adopted, which is due mostly to the ineffectiveness of these new forms of treatment. The lack of standard has created problems because of how courts use the professional judgment standard in SVP cases."

pp. 523-24: "There is not enough current scientific evidence about the efficacy of sex offender treatments to warrant strict confidence in any set of treatment guidelines." [citing: Gregory DeClue, "Practice Standards and Guidelines for the Evaluation, Treatment, and Management of Sexual Abusers: Bambooze No More," 34 *Psychiatry & Law* 197, 207 (2006)]. "... [S]uch deference to a professional judgment standard becomes a problem, like here, where there is no accepted professional judgment, practice, or standard for the treatment of SVPs...."

"The professional judgment rule presents another problem in that it essentially transfers the safeguarding of constitutional rights from the courts to mental health professionals. [citing: *Sharp v. Weston*, 233 F.3d 116, 1171 (9th Cir. 2000)] 'Courts abandon their obligation to apply the law in a principled manner when they persist in using a standard that fails to provide a reliable metric. This creates a very broad, perhaps effectively limitless zone of discretion' because administrators could see to it that an SVP receives treatment that would be enough to pass judicial scrutiny even though such treatment in actuality would provide no real possibility of resulting in rehabilitation sufficient for release. As a result, administrators, through the use of the professional judgment standard, could detain an SVP indefinitely." (citing: David W. Nordsieck, Note: "How the

Professional Judgment Standard Could Undermine the Validity of Sexually Violent Predator Laws," 88 *Wash. U. Law Rev.* 1281, 1300 [2011].)

p. 525: "Instead of focusing on whether the treatment substantially departed from the non-existent accepted standard, the court could look to factors such as 'the treatment program's effectiveness relative to similar states' programs, whether the chosen treatment decisions are supported by research, whether there has been a history of abuse or improper implementation of the scheme in that state,'..." (citing: Nordsieck, *supra*, at 1305)

As is confirmed by the Minnesota Sex Offender Program (MSOP) Program Theory Manual, MSOP is grounded in "Cognitive-Behavioral Therapy ("CBT"). Jennifer E. Schneider et al., "SOCCPN Annual Survey of Sex Offender Civil Commitment Programs 2014," SOCCPN, San Diego, Oct. 27, 2014, p. 26, reports that "the percentage of treatment programs in use in the various commitment programs that use cognitive behavioral treatment as an organizing principle of their treatment program fell by half between 2007 and 2014 (2007: 90%; 2014: 47%)." This reflects a professional realization that CBT does not work to achieve any end relevant to sex-crime recidivism reduction. Thus, it is clear that, once again, MSOP has spent more than the last decade chasing an experimental treatment theory/modality that was invalid *ab initio* and simply served to consume years of confinement.

Thus, Fredrick E. Vars, "Fear of an Undeterrable Other," 75 *La. L. Rev.* 1 (Fall 2014), concludes:

pp. 13-14: "...[T]he notion that the sex offenders are being medically 'treated' as part of this [preventive detention] program is largely a fiction." (Corey Rayburn Yung, "Sex Offender Exceptionalism and Preventive Detention," 101 *J. Crim. L. & Criminology* 969, 983 [2011]). Treatment, even when sincerely pursued, is usually ineffective. (Fredrick E. Vars, "Delineating Sexual Dangerousness," 50 *Hous. L. Rev.* 855 (2013), at 857 n. 14). Perhaps as a result, very few sex offenders are ever released, leaving prevention as the primary, and perhaps only genuine justification. (John L. Schwab, Note, "Due Process and 'The Worst of the Worst': Mental Competence in Sexually Violent Predator Civil Commitment Proceedings," 112 *Columbia L. Rev.* 912, 917 (2012) ("Of the over 3,000 individuals detained as SVPs since 1990, just fifty have been released because medical professionals deemed them mentally stable and nondangerous enough to re-enter society.")) Hence, sex offender commitment amounts to indefinite preventive detention, like the national security

detentions discussed above. The driving force – fear of an undeterrable Other – is also the same."

And at p. 26: "...[P]reventive detention works only if we can accurately identify individuals who are very likely to commit crimes. Sex offender commitment relies on some of the best actuarial instruments, but few, if any, individuals can be confidently classified as more likely than not to commit an offense. (Fredrick E. Vars, "Rethinking, the Indefinite Detention of Sex Offenders," 44 *Conn. L. Rev.* 161 (2011)). Many – perhaps most – detained sex offenders would not commit a crime if released."

Warren J. Maas, "Erosion of Constitutional Rights in Commitment of Sex Offenders," 29 *William Mitchell Law Review* 1241, 1244 (2003), states:

"...[U]nder the SPP/SDP statutes, substantive due process for persons alleged to be sexual predators has greatly eroded and the rationale for allowing such erosion – the promise of rehabilitation under the SPP/SDP statutes for these men – is of questionable validity.... When the courts ignore the fact that treatment is not working, proposed patients are indeterminately committed to unproven treatment programs, negating one justification for the commitment."

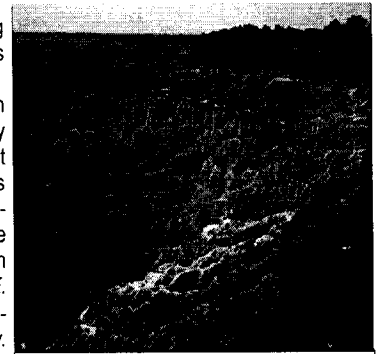
B. The View Elsewhere: There Is Very Little or No Effect at Recidivism Reduction.

Martin Schmucker & Friedrich Lösel, "The Effects of Sexual Offender Treatment on Recidivism: An International Meta-Analysis of Sound Quality Evaluations," *Journal of Experimental Criminology* (2015; vol. & pg. unknown)

At p. 35 of the draft copy at hand, in an "Appendix 2 Relevant studies that appeared more recently," the authors cite these studies that revealed very little or no effect at recidivism reduction by treatment of sex offenders, as compared to a control group not receiving any therapy:

Abracen, J., Looman, J., Ferguson, M., Harkins, L., & Mailloux, D. (2011). "Recidivism among treated sexual offenders and comparison subjects: Recent outcome data from the Regional Treatment Centre (Ontario) high-intensity Sex Offender Treatment Programme." *Journal of Sexual Aggression*, 17, 142-152.: "The treatment was both individual and group based, applied a cognitive-behavioral relapse prevention concept and incorporated the Good Lives Model. ...[T]here was no significant difference in recidivism between [the treatment group] and [the control group]."

Smallbone, S., & McHugh, M. (2010). "Outcomes of Queensland Corrective Services Sexual Offender Treatment Programs." Unpublished Report. Brisbane, Australia: Griffith University. [Australian sex offender sample]. "Analyses controlling for risk only found a



Erosion of your rights?

small and non-significant treatment effect for sexual recidivism...."

Smid, W. J., Kamphuis, J. H., Wever, E. C., & Van Beek, D. J. (2014). A quasi-experimental evaluation of high-intensity inpatient sex offender treatment in the Netherlands. *Sexual Abuse: A Journal of Research and Treatment*. doi: 10.1177/1079063214535817 (2014) [Dutch sample]. "The concept is based on the Risk-Need-Responsivity model. ...The results showed no overall significant treatment effect on sexual recidivism when regressions controlled for risk level, age and ethnicity...."

A Warning: Rise of Neo-Fascism in the United States

Editor's Note: What, you may ask, is an article of this kind doing in a newsletter like this? Well, here it is: All of our struggles for liberty and fair treatment may wind up being completely for naught if those bent on converting our constitutional republic into an empire with rule by whim of an autocrat prevail in the end. It is therefore crucial that we fight against this possibility with all of our might. In order to fight insidious forces that would bring this conversion about, we must learn to recognize the hallmarks of this conversion. Luckily, the excerpt below provides a guide to these signs and trends. Consider the following closely, and remain vigilant to call these trends out for the dangers they represent.

Jim Marrs, *The Rise of the Fourth Reich* [Epilogue Excerpt.]

p. 362: "Fascism's principles are wafting in the air today, surreptitiously masquerading as something else, challenging everything we stand for. The cliché that people and nations learn from history is not only overused, but also overestimated; often we fail to learn from history, or draw the wrong conclusions. Sadly, historical amnesia is the norm," stated author Dr. Laurence W. Britt, in an article for *Free Inquiry*, a long-standing publication of the Council for Secular Human-

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ism....

Following a careful study of the regimes of Nazi Germany, Fascist Italy, Franco's Spain, Salazar's Portugal, Papadopoulos' Greece, Pinochet's Chile, and Suharto's Indonesia, Britt concluded that these fascist governments had observable similarities. 'Analysis of these seven regimes reveals fourteen common threads that link them in recognizable patterns of national behavior and abuse of power,' he noted. 'These basic characteristics are more prevalent and intense in some regimes than in others, but they all share at least some level of similarity.'



"Il Duce," he liked to be called. This egotistical little toady to Hitler put his whole country under his ruthless heel, sent a million Italians to their deaths, and left Italy in smoldering ruins. Fascism is a dangerous mental illness. Never forget this. Do any modern leaders come to mind?

pp. 362-370: "Britt's fourteen characteristics of a fascist regime, many sounding ominously close to what's happening today in the United States, include:

1. Powerful and continuing expressions of nationalism.

From the prominent displays of flags and bunting to the ubiquitous lapel pins, the fervor to show patriotic nationalism, both on the part of the regime itself and of citizens caught up in its frenzy, was always obvious. Catchy slogans, pride in the military, and demands for unity were common themes in expressing this nationalism. It was usually coupled with a suspicion of things foreign that often bordered on xenophobia. Examples of such patriotic zeal may be found in the ever-present yellow ribbons showing support for U.S. troops to the plethora of American flags and bunting at large public events such as the Super Bowl.

2. Disdain for the importance of human rights.

The regimes themselves viewed human rights as of little value and a hindrance to realizing the objectives of the ruling elite. Through clever use of propaganda, the population was brought to accept these

human rights abuses by marginalizing, even demonizing, those being targeted. When abuse was egregious, the tactic was to use secrecy, denial, and disinformation. In November 2007, former federal judge Michael B. Mukasey was sworn in as attorney general of the United States, despite contentious confirmation hearings focused on the issue of torturing prisoners. He replaced Alberto R. Gonzales, who was criticized for his part in crafting the Bush administration's secretive legal arguments permitting the torture of suspects. Mukasey, who served eighteen years as judge of U.S. district court for the Southern District of New York, presided over the trials of Omar Abdel Rahman and El Sayyid Nosair, the convicted bombers of the World Trade Center in 1993; the trial of Jose Padilla, the man declared an 'enemy combatant' by President Bush and the only person convicted in connection with the 9/11 attacks; and the lawsuits between World Trade Center leaser Larry Silverstein and several insurance companies over damages stemming from the 9/11 attacks.

3. Identification of enemies/scapegoats as a unifying cause.

The most significant common thread among these regimes was the use of scapegoating as a means to divert the people's attention from other problems, to shift blame for failures, and to channel frustration in controlled directions. The methods of choice - relentless propaganda and disinformation - were usually effective. Often the regimes would incite 'spontaneous' acts against the target scapegoats, usually communists, socialists, liberals, Jews, ethnic and racial minorities, traditional national enemies, members of other religions, secularists, homosexuals, and 'terrorists.' Active opponents of these regimes were inevitably labeled as terrorists and dealt with accordingly. Examples of such tactics can be heard from the mouths of those who constantly use racial slurs. Afghanistan's former 'freedom fighters' have semantically changed into 'insurgents' then into 'Al Qaeda terrorists' in the news columns, while such epithets as 'rag head' and 'sand nigger' are commonly used in the general population.

4. The supremacy of the military and avid militarism.

Ruling elites always identified closely with the military and the industrial infrastructure that supported it. A disproportionate share of national resources was allocated to the military, even when domestic needs were acute. The military was seen as an expression of nationalism, and was used whenever possible to assert national goals, intimidate other nations, and increase the power and prestige of the ruling elite. The U.S. military budget for many years has consumed the bulk of the national spending. President Bush's 2008 budget provides \$439.3 billion for the Department of De-

fense's base budget - a 7 percent increase over 2006 and a whopping 48 percent increase over 2001. This figure does not include military-related expenditure such as nuclear weapons research or the wars in Afghanistan and Iraq. Neither does it count trust funds, anticipated costs of Social Security, and Veterans Administration costs of services to veterans. 'The government practice of combining trust and federal funds began during the Vietnam War, thus making the human-needs portion of the budget seem larger and the military portion smaller,' according to literature from the War Resisters League (WRL), an antiwar organization founded in 1923. By totaling all government figures relating to the military, the WRL estimated that more than half (51 percent) of all federal spending goes to the military.

5. Rampant sexism.

Beyond the simple fact that the political elite and the national culture were male dominated, these regimes inevitably viewed women as second-class citizens. They were adamantly anti-abortion and also homophobic. These attitudes were usually codified in draconian laws that enjoyed strong support by the orthodox religion of the country, thus lending the regime cover for its abuses. This practice is less prevalent in the United States today, although many women still find it difficult to break through what has been termed the 'glass ceiling,' in which they can see higher positions in the workplace but never seem to get there. Modern America also differs from Nazi Germany and other cultures in that women are beginning to fill the corporate chairs formerly held by men. Many seem agreeable to advancing fascist and globalist philosophy.

6. A controlled mass media.

Under some of the regimes, the mass media were under strict direct control and could be relied upon never to stray from the party line. Other regimes exercised more subtle power to ensure media orthodoxy. Methods included the control of licensing and access to resources, economic pressure, appeals to patriotism, and implied threats. The leaders of the mass media were often politically compatible with the power elite. The result was usually successful in keeping the general public unaware of the regime's excesses. As previously detailed, the American corporate mass media today is essentially in the hands of six giant multinational communications corporations. The owners of these corporations are proponents of 'free trade' in business policies, yet coverage of alternative news and views is mostly ignored. 'One of our best-kept secrets is the degree to which a handful of huge corporations control the flow of information in the United States. Whether it is television, radio, newspapers, magazines, books, or the Internet, a few

giant conglomerates are determining what we see, hear, and read. And the situation is likely to become much worse as a result of radical deregulation efforts by the Bush Administration and some horrendous court decisions,' warned Congressman Bernie Sanders, adding, 'This is an issue that Congress can no longer ignore.'

7. Obsession with national security.

Inevitably, a national security apparatus was under direct control of the ruling elite. It was usually an instrument of oppression, operating in secret and beyond any constraints. Its actions were justified under the rubric of protecting 'national security,' and questioning its activities was labeled unpatriotic or even treasonous. While all Americans should be concerned about national security, many see it as a pretext to strip away constitutional rights. Thoughtful persons also worry about a man like Michael Chertoff, son of a Jewish rabbi, who has been accused of having dual citizenship (American and Israeli) and was a major architect of Bush administration policies, being named secretary of the Homeland Security Department.

8. Religion and ruling elite tied together.

Unlike communist regimes, the fascist and protofascist regimes were never proclaimed godless by their opponents. In fact, most of the regimes attached themselves to the predominant religion of the country and chose to portray themselves as militant defenders of that religion. The fact that the ruling elite's behavior was incompatible with the precepts of the religion was generally swept under the rug. Propaganda kept up the illusion that the ruling elite were defenders of the faith and opponents of the 'godless.' A perception was manufactured that opposing the power elite was tantamount to an attack on religion. Earlier in this work, the obvious parallels have been drawn between the use of religion in Nazi Germany and modern America to support government policies.

9. Power of corporations protected.

Although the personal life of ordinary citizens was under strict control, the ability of large corporations to operate in relative freedom was not compromised. The ruling elite saw the corporate structure as a way to not only ensure military production (in developed states) but also as an additional means of social control. Members of the economic elite were often pampered by the political elite to ensure a continued mutuality of interests, especially in the repression of 'have-not' citizens. According to the Federalism Project of the American Enterprise Institute, a group that conducts and sponsors original research on American federalism, 'Consumer advocates, plaintiffs' attorneys, and state officials argue that broad federal preemption claims - often by

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federal regulatory agencies, without a clear congressional mandate – interfere with the states' historic role in protecting citizens against corporate misconduct. Corporations and federal agencies respond that preemption is often the only viable safeguard against unwarranted state interference with the national economy.' In a 2006 article in the Los Angeles Times, Alan C. Miller and Myron Levin noted how a series of steps by federal agencies were meant to 'shield leading industries from state regulation and civil lawsuits on the grounds that they conflict with federal authority.'

10. Power of labor suppressed or eliminated.

Since organized labor was seen as the one power center that could challenge the political hegemony of the ruling elite and its corporate allies, it was inevitably crushed or made powerless. The poor formed an underclass that was viewed with suspicion or outright contempt. Under some regimes, being poor was considered akin to a vice. As previously noted, anti-labor actions of the Bush administration prompted Jack Heyman, an official of the International Longshore and Warehouse Union, to state that 'Bush is effectively declaring war on the working class here.' Those with long memories know that labor news has largely dropped from the mainstream media's radar screen.

11. Disdain and suppression of intellectuals and the arts.

Intellectuals, and the inherent freedom of ideas and expression associated with them, were anathema to those regimes. Intellectual and academic freedom were considered subversive to national security and the patriotic ideal. Universities were tightly controlled, politically unreliable faculty harassed or eliminated. Unorthodox ideas or expressions of dissent were strongly attacked, silenced, or crushed. To these regimes, art and literature had to serve the national interest or they had no right to exist. In the wake of the 9/11 attacks, many conservative groups on college campuses denounced academic freedom, according to a report by John K. Wilson, coordinator of the Independent Press Association's Campus Journalism Project. Other academics were fired or reprimanded for merely speaking out on the issues of war or questioning the official story of 9/11.

12. Obsession with crime and punishment.

Most of these regimes maintained draconian systems of criminal justice, with huge prison populations. The police were often glorified and had almost unchecked power, leading to rampant abuse. 'Normal' and political crime were often merged into trumped-up criminal charges and sometimes used against political

opponents of the regime. Fear and hatred of criminals or 'traitors' was often promoted among the population as an excuse for more police power. The United States today has a higher incarcerated population than all European jails combined, and in certain areas, such as Washington, DC, police presence is at an all-time high. One visitor to Washington in the summer of 2007 asked a police officer why there were so many cops around. He replied, 'People would rather have security than freedom.'

13. Rampant cronyism and corruption.

Those in business circles and close to the power elite often used their position to enrich themselves. This corruption worked both ways: the power elite would receive financial gifts and property from the economic elite, who in turn would gain the benefit of governmental favoritism. Members of the power elite were in a position to obtain vast wealth from other sources as well: for example, by stealing national resources. With the national security apparatus under control and the media muzzled, this corruption was largely unconstrained and not well understood by the general population. The cronyism and outright nepotism of the Bush administration has been well documented. Elizabeth Cheney, the vice-president's daughter, was named as a deputy secretary of state in late February 2002, and within about a week, her husband, Philip Perry, became chief counsel for the Office of Management and Budget, where he joined director Mitchell Daniels, whose sister Deborah is an assistant attorney general. 'That's just the beginning,' noted Washington Post reporter Dana Milbank. 'Among Deborah Daniels' colleagues at Justice is young Chuck James, whose mother, Kay Coles James, is the director of the Office of Personnel Management, and whose father, Charles Sr., is a top Labor Dept. official. Charles James Sr.'s boss, Labor Secretary Elaine Chao, knows about having family members in government: Her husband is [Kentucky] Se, Mitch McConnell and her department's top layer, Labor Solicitor Eugene Scalia, is the son of Supreme court Justice Antonin Scalia.... Ken Mehlman, the White House political director, regularly calls his younger brother Bruce, an assistant Commerce secretary to get his input.' Former secretary of state Colin L. Powell is the father of Michael Powell, who chaired the Federal Communications Commission. An informal survey of 415 historians conducted by George Mason University's News Network found that eight in ten, or 81 percent, of the responding historians rated Bush's presidency as an overall failure. One respondent to the survey wrote that Bush 'ranks with U.S. Grant as the worst. His oil interests and Cheney's corporate Halliburton contracts smack of the same corruption found under Grant.' Central to

this belief were the numerous Bush administration scandals, including the deceit that preceded the invasion of Iraq; the Abu Ghraib mistreatment of prisoners; pre-9/11 intelligence failures; the \$2.3 trillion missing from the Pentagon, announced by Donald Rumsfeld the day before 9/11; the mishandling of the Katrina disaster, which resulted in the resignation of Bush's appointee Michael D. Brown as director of FEMA; Bush's Medicare prescription drug plan that shifted 6.2 million seniors whose medications had been covered by Medicare over to private insurers; the noncompetition government contracts to Halliburton, Dick Cheney's former employer; and the substitution of political ideals for science. In 2004, the Union of Concerned Scientists issued a statement blasting the administration's politicization of science. Ultimately, this statement was signed by 4,062 scientists, including 51 Nobel laureates, 63 National Medal of Science recipients, and 195 members of the National Academies. Buzzflash.com, which styles itself as marketplace for progressives, after listing several debacles and scandals of the Bush administration, said it operated in a 'culture of cronyism and corruption.'

14. Fraudulent elections.

Elections in the form of plebiscites or public opinion polls were usually bogus. When actual elections with candidates were held, they would, as a rule, be perverted by the power elite to get the desired result. Common methods included maintaining control of the election machinery, intimidating and disenfranchising opposition voters, destroying or disallowing legal votes, and, as a last resort, turning to a judiciary beholden to the power elite. Americans are well aware of the controversies concerning the presidential elections of 2000 and 2004. George W. Bush's first term was decided by the Supreme Court, not the voters. And it was just as bad in 2004. Robert F. Kennedy, Jr., writing in Rolling Stone magazine, stated, 'Republicans prevented more than 350,000 voters in Ohio from casting ballots or having their votes counted – enough to have put John Kerry in the White House.' Controversy over both elections continues today and in 2008 charges of vote fraud were already being voiced in the state primary elections, primarily over computer voting machines.'

pp. 370-71: "It seems that by comparing Britt's characteristics of fascism to current events, the argument can definitely be made that globalist fascists are turning the once free and independent United States into a not-so-profitable subsidiary of their global corporate structure – their empire of the rich.

You are free to accept this idea or not. But when secular humanists, conservative Christians, Jews, liberal Democrats,

bedrock Republicans, and moderates, not to mention the activist fringe elements, all start issuing the same warning against fascism, perhaps it is time to start paying serious attention. Commentators like Noam Chomsky and Gore Vidal have spoken out against the 'national security state' from the left. The late Senator Barry Goldwater and evangelist Pat Robertson have spoken out from the right. Even mainstream centrists, like commentator Bill Moyers and attorney Gerry Spence, have warned of the abuses of a 'secret government.' When historical figures along with concerned citizens from opposite ends of the political spectrum all say the same thing, it is time to consider the true state of the American union. And perhaps time to stand up and be counted for true freedom – freedom from the corporate state.

The Reverend Erwin W. Lutzer, senior pastor of Moody Church in Chicago, wrote: 'We must support our government, but we must be ready to criticize it or even defy it when necessary. Patriotism is commendable when it is for a just cause. Every nation has the right to defend itself, the right to expect the government to do what is best for its citizens. However, if the German church has taught us the dangers of blind obedience to the government, we must eschew the mindless philosophy "My country, right or wrong."

Media critic Michael Parenti observes, 'To oppose the policies of a government does not mean you are against the country or the people that the government supposedly represents. Such opposition should be called what it really is: democracy, or democratic dissent, or having a critical perspective about what your leaders are doing. Either we have the right to democratic dissent and criticism of these policies or we all lie down and let the leader, the fuhrer, do what is best, while we follow uncritically, and obey whatever he commands. That's just what the Germans did with Hitler, and look where it got them.'

p. 374: "National politicians no longer refer to the 'republic,' because modern America has ceased to be one. It is now an empire – a new Reich."

Why is everyone always so sure it won't be them next time?



"If not now, when?"
(U.S. Constitution expert, answering Congressional question if Trump's misdeeds are impeachable.)