The Legal Pad
Volume 2, Issue 7
July 30, 2018
"I prefer dangerous freedom over peaceful slavery." – Thomas Jefferson

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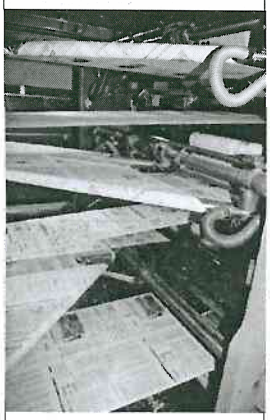

No Time or Space for the Editor This Time; See Article to Immediate Right.

Editorial with Evidence:

Drop the Fictions. Freedom Is our Right.

By Cyrus Gladden

- A recent rant in reply to an entity advocating for us, but not stridently enough--

Thanks for your focus on the sex offender registration issue. By withholding law enforcement grants, the federal SORNA legislation has coerced about half the states so far to create and enforce viciously draconian registration requirements that are in effect new 'Jim Crow Laws' but this time for sex offenders, rather than as racial suppression. The rest of the states have registration laws that aren't much better.

Other related issues needing similar focus are public notification laws and residential restriction laws and area banishment laws (e.g. prohibitions on entering into zones around schools, day care centers, recreation facilities, parks, schools, school bus stops, etc.). These laws are so extreme in their setting of giant-radius zones that many towns/cities – even counties effectively have no place a sex offender can obtain housing at all, and have only a bizarre patchwork of unzone places a sex offender can even enter (although often completely surrounded by 'forbidden zones' so as to be functionally inaccessible to a sex offender).

Of course, all of us relegated to sex offender commitment would much rather be free even though facing such harsh and discriminatory laws than remain locked up. Hence, the commitment issue is the 'queen' issue of all. The only reason most folks don't see this is because they have been getting propagandized for so long and by such extreme lies that they honestly (but incorrectly) believe that there is a need for commitment.

The fundamental lie is that recidivism by sex offenders overall is astronomically high. In fact, it is just the reverse: at the very lowest end of recidivism for all crimes. In fact, that current average recidivism rate for sex offenders is a stunningly low 3% over the first five years after release.

Another lie is that this supposedly does not tell the whole story, that, it is claimed, sex offenders continue to recidivate at that level in later identical time periods, such that, over a lifetime, a sex offender ex-con will rack up a lifetime total of probability of eventual recidivism at about the 50% level. This is equally just bunk.

Research through the last 20 years has repeatedly confirmed that a statistical phenomenon known as "survival rates" shows that each year that a sex offender released from prison stays straight, his chance of recidivism drops to about one-quarter to one-third what it was in the immediately preceding year. Expressed this way in a sentence, this does not seem like a particularly impressive fact, but in truth, it is the most profound fact of all. I attach an excerpt from my most recent newsletter that will show this in detail and with stunning clarity and force. The slimy fiction that 'once a sex offender, always a sex offender,' is nothing more than that.

In the California study on which that article and its charts are based, the truth was that, after just three years back on the street with no new sex crimes, any sex offender (even the ones thought to be 'worst' due to extensive prior records) achieved recidivism rate probabilities so low they could almost not be found at all. By ten years of freedom, the odds of recidivism dwindled so extremely that only one out of each 20,000 sex offenders could be expected to offend.

Thus, by all studies to date, sex offenders are the least likely to ever recidivate after prison release and overall are the most compliant with all legal restrictions and requirements of any kind of ex-con. Therefore, they are NOT really sex offenders after release; they are former sex offenders.

Of important note, these studies did not differentiate based on attained age-at-release of sex offenders. However, it is now well known that the factor of advancing age alone has the most impact of all factors limiting recidivism odds over time. This is crucial, since immense sentences now often keep sex offenders imprisoned until they are in their 50s or 60s (and some even longer).

Yet the fact is that a former sex offender in his 60s (even if just released) has no statistically measurable odds of recidivism – and this holds just as true for those with bad sex-crimes records as for first-time offenders. Even back when a sex offender crosses the age of 50, such recidivism odds for the rest of his life if released are minuscule even in comparison to that general 3% rate. Therefore, it is ludicrous and shameful to continue to incarcerate (or to release, but immediately commit) any sex offender from age 50 on.

To make the claim that anyone in that age range is a crazed sex-crime 'perpetrating machine' is the most baseless and hatred-originated lie of all. It flies in the face not just of all such statistics, but the very elemental rules laid down by the biology of human males as they age. These fundamental facts of aging even force natural reductions year-upon-year in testosterone, and therefore reductions in libido. It is just the way that life is.

However, ironically, the very group of people now selected most of all for sex offender commitment are those in excess of 50, very often in their 60s, and not infrequently even later than that. I know this first-hand; I was 62 when committed to this sex offender facility, and I am currently 67. I am good friends with a fine gentleman here who recently turned 81; he was committed at age 78. I have recently learned that another ex-sex offender was committed at age 89. He died in commitment at age 94.

(Continued on page 2)

TLP Presses Roll Again!

After distribution of the June issue (Vol. 2, No. 6) of *The Legal Pad*, a shift lead security counselor in Unit IA told me that a BER was already under consideration for "wasting resources," namely, the toner required to print each month's issue, appearing to imply that future printing of *TLP* would result in such a BER. I took this as a direct order to refrain from any printing of *TLP*.

During the first half of 2018, *TLP* had grown to 24 pages per issue. The number of copies per issue never exceeded 150. Thus, the total number of paper sides printed per issue was then no more than 3600. The small-capacity cartridges in use here each produce 5,000 prints. A larger capacity compatible cartridge provides 10,000 prints. Recent inquiry determined that the smaller one sells for as low as $135. MSOP pays twice that price. This is just another example of fleecing State coffers by purchasing with no accountability. Incidentally, the 10,000 print cartridge can be had instead for about another $30.

We cannot buy our own PCs & printers (including including toner cartridges). Hence, there is no alternative method to produce TLP. Making a single print, and sending it out for mass duplication and return would be cost-prohibitive (about $2.00 per copy, plus shipping). Hence, even though stated in terms of resources, this ban effectively worked as a total ban of TLP publication. No other newsletters in MSOP have been hit with such a ban. Further, MSOP itself prints a newsletter for distribution to all 440 inmates.

An appeal was successful, so that publication can resume, with simply a request to find a way to reduce toner use. To honor that request in the spirit of compromise, effective with this issue, TLP will be limited to 16 pages (2400 prints). Maximum effort will be exerted to pack the same quality into this smaller package. Let the presses roll!

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(Continued from page 1)

Yet, in all 20 states across the country having sex offender commitment laws, no efforts are made to free senior-citizen former sex offenders. We are held until death on the flimsiest anti-science contentions of supposed 'exception' to the foregoing rules based on nothing more than supposed 'clinical judgment' of therapists or assessors and outdated, crude "static" actuarial guesswork using debunked factors and lacking any accounting for the impact of aging.

Beyond this, a host of a priori "dynamic factors" (for which read, excuse-making devoid of any science) are trotted out, based on biased impressions, conclusory statements not subject to any challenge process, and even outright lies about us – all in service of some feigned rationale why we are monsters and must remain incarcerated until death.

This age aspect is the clearest evidence of all that the real motivation for sex offender commitment is not any real science-based assessment of danger of recidivism, but instead, purely hatred and the desire to heap endless punishment upon us for deeds done decades ago – often approaching a half-century ago. I hope you will agree with me that this is neither justice nor psychological help. Given the pure fiction of the 'monster theory' of sexual offending and the true facts of non-recidivism by former sex offenders, there are far more effective and reasonable ways to address the tandem problems of actual sexual offending and of excessive fear of fictional sexual monsters lurking round every tree than a coast-to-coast system of sexual concentration camps for those erroneously accused of being such monsters.

This hysteria and hatred must be brought under control if we are to once again have a civil society that reasons its way through perceived problems, rather than leadership by those who fancy themselves to be modern-day witch hunters. Please join us in our fight to end this tyrannical, shameful disgrace of hatred and hysteria incorrectly called sex offender commitment. And specifically, please post this on the Internet and otherwise help disseminate it to every person and entity you know that may have any influence in bringing about that end. Thanks!

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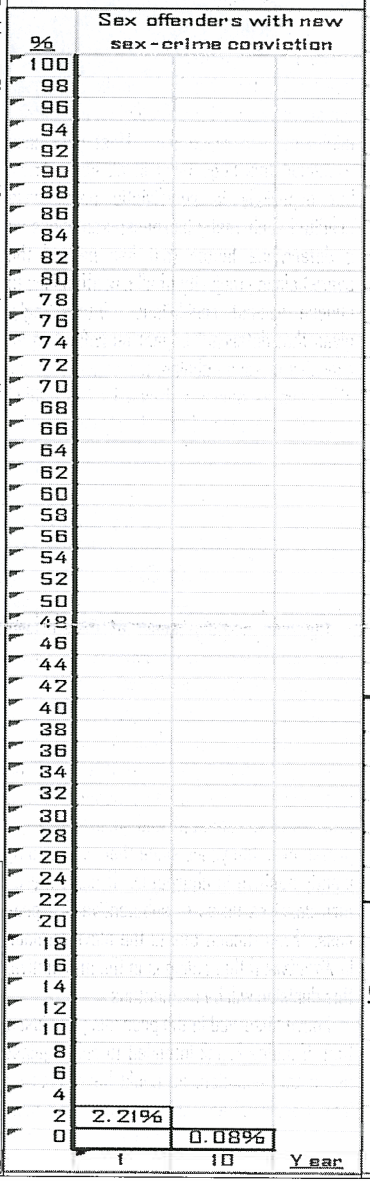
Let the Figures Speak for Themselves:

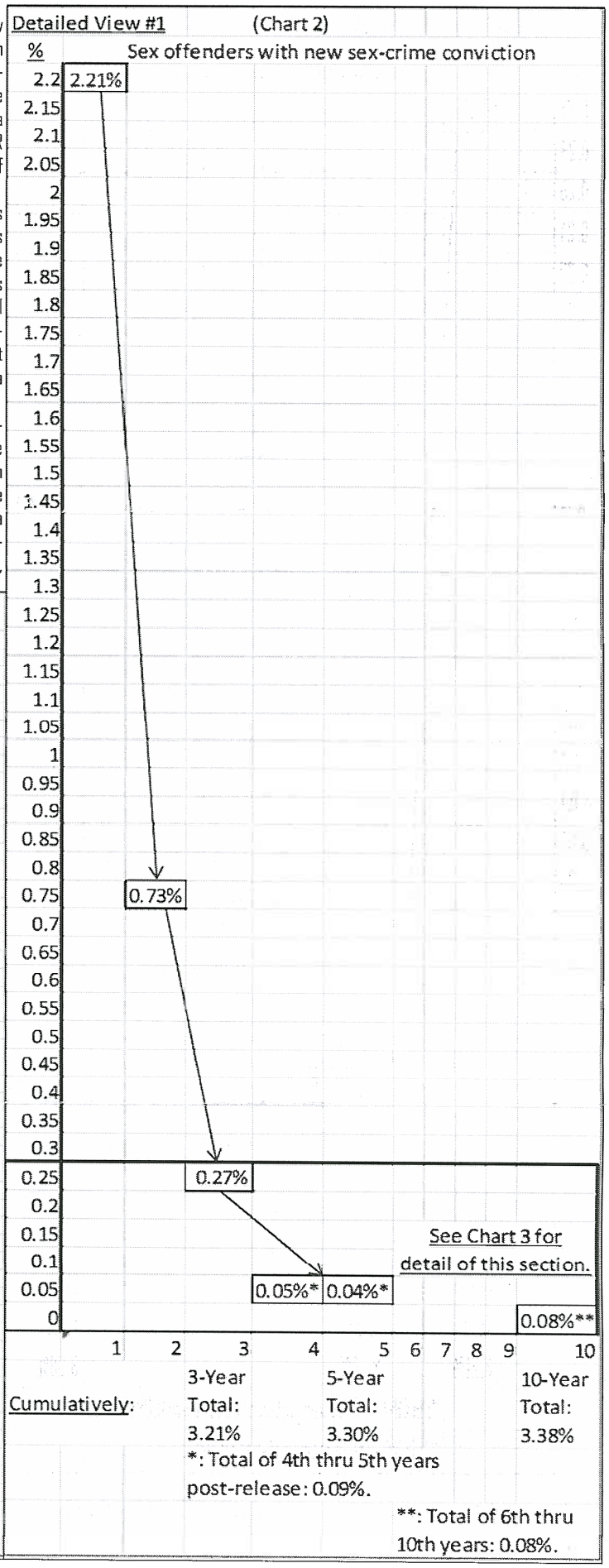
Extremely Low — & Shrinking(!) — Recidivism of Paroled CA Sex Offenders over 10 Years Belies the Myth.

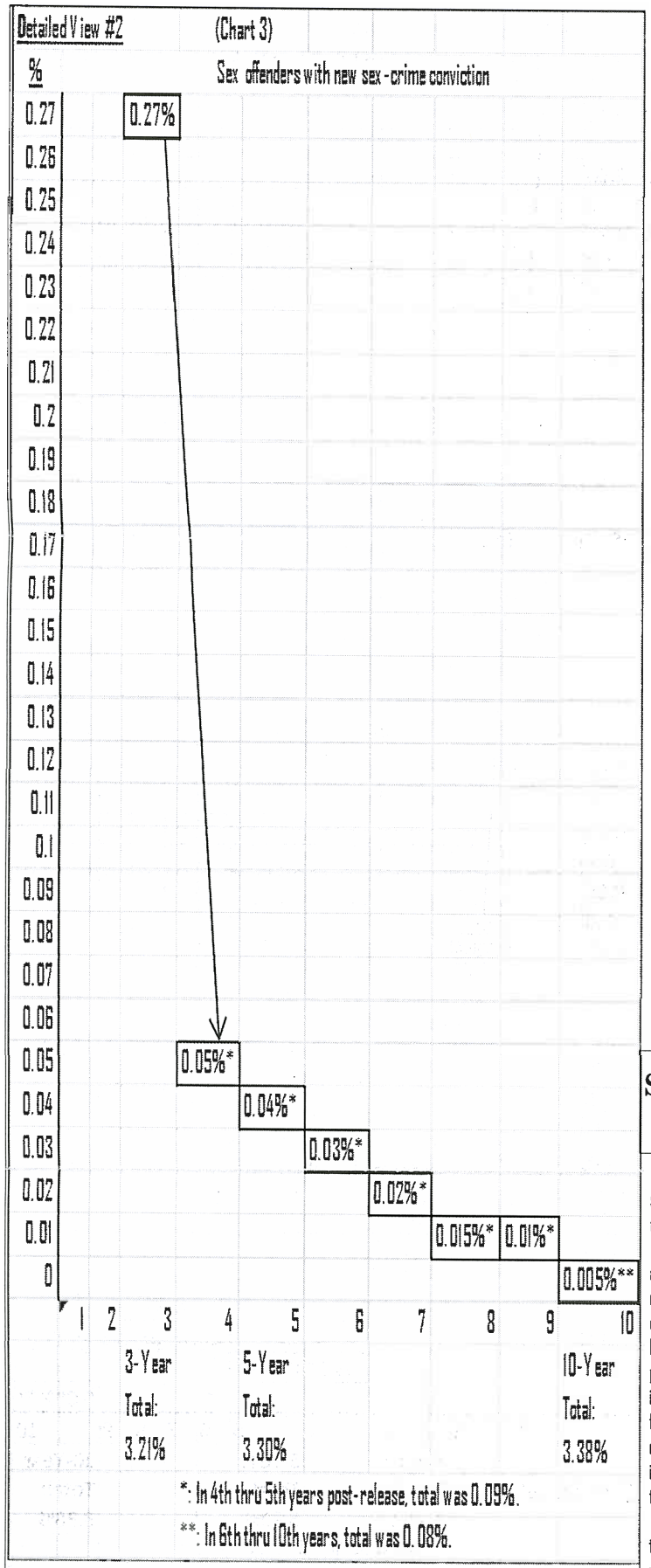
Editor's Note: The three charts that follow were constructed from data extracted from a ten-year California Department of Corrections and Rehabilitation (CDCR) study of the recidivism of 3,577 individuals convicted of a sex offense who were released from CDCR prisons in 1997 and followed until the end of 2007.

Among the noteworthy findings of this study is that the total of sexual recidivists is lower than some might have expected. The study also found that both most re-offenses and most parole violations occur in the initial period of reentry after release. Sex offenders were also found more likely to commit some other type of offense than to commit a new sex offense.

Chart 1 (below) shows that the initial-year's sexual recidivism was only just a little over 2%. By the tenth year after prison release, all 3,577 offenders except for three (just 0.08%, that is, a rate of only 8 out of a hypothetical 10,000), refrained from re-offense. Stated more positively, in that year,







*: (Each of these figures is far less than 1 out of 1,000 and diminishing. Year 10 = 1 out of 20,000; see text.)

3,574 out of 3,577 chose not to reoffend.

Chart 2 (previous page) more emphatically shows the immediate sharp reductions year-upon-year after prison release, commencing right away in Year 2, such that by Year 3, the annual rate of recidivism dropped to little more than a tenth of the rate in the initial year after release. This was followed by a further, nearly identical reduction by Year 5 down to only one-ninth of the Year 3 rate.

Chart 3 (left) shows that this pattern of ever-dwindling recidivism continued in the five succeeding years of the study, falling yet another four orders of magnitude down to again a mere three more recidivists over that second five-year span out of the 3,577 originally released offenders. Had there been enough offenders, this would have theoretically reflected an ending-year rate of 0.005, or only 1 recidivist that year out of every 20,000 released sex offenders.

It should not escape notice that this cohort was comprised of sex offenders released in 1997 — a time of higher sex-crime recidivism than presently, after the intervening massive inflation in sentences for sex crimes, with even higher mandatory minimums for repeaters. Most who have examined this huge drop in all sex crimes, but especially in recidivistic ones, have credited such vastly increased sentences as a deterrence factor that has caused the overwhelming majority of all sex offenders to choose against recidivism. Interestingly, given that deterrent impact as reflecting an exercise of sound choice, the concept of sex offenders as persons driven by irresistible urges/impulses has been clearly disproved.

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Status Comment on *Karsjens*

The long and the short of the current status in the *Karsjens* case is that there isn't any news. Hence, this blurb will be short.

Everyone knows that we are all waiting for an anticipated ruling by Judge Frank on what remains of the *Karsjens* case. This ruling will decide whether sex offender commitment in Minnesota, as enacted and judicially interpreted over the years since then, is predominantly punitive in character. If so, it therefore deprives us all of substantive due process. Even though this is the eleventh hour in *Karsjens*, if that ruling is in the affirmative, this decision will be momentous.

I have observed in the preceding TLP issue that, if Judge Frank intended to rule against us on this question, he could have done so immediately after the summary judgment motion hearing last spring by a short order quickly issued. Hence, it seems most likely instead that in the time since then, Judge Frank has been perfecting an elaborate ruling spelling out in detail why the MCCTA is essentially punitive in both aim and effect as to all of us subjected to it.

Part of the reason for this emphasis on perfection is to protect that ruling to the maximum extent possible from reversal on appeal. Another probable aim by Judge Frank is to speak convincingly and movingly to the larger audience of legal thinkers, to persuade them that such laws excusing incarceration other than as punishment in criminal cases on rationales of "crime prevention" and "societal protection" spell an end to the principle of individual freedom upon which our country is constitutionally based. Both of these aims are completely understandable and praiseworthy.

Another factor that may well be delaying that ruling is that we are now in the midst of a federal midterm election season, with election of many Minnesota legislators and constitutional officers also at stake.

The *Karsjens* case has already drawn a great deal of media attention. It does not take much imagination to expect that a ruling declaring our right to freedom and nullifying our commitments would be incendiary to those members of the public already long-inflamed against sex offenders.

The masters of manipulation of such public sentiment could very easily use such a decision by Frank to rouse an unreasoning rabble that could be urged to vote archconservative this November as a claimed way to stop this from becoming a "liberal" judicial trend.

Frankly, if I were Judge Frank, I would very much wish to avoid an outcome of such below-the-belt political manipulation from a carefully reasoned and foresightful judicial ruling. It is a sound part of our system of justice that such decisions aptly belong to an impartial and wise judiciary, not to such mob rule.

Hence, even if for no other reason, delaying decision of this last, but possibly most far-reaching part of *Karsjens* until after the November election is an eminently sage choice — and one which will aid us in our struggle to rejoin society in a positive and livable way long afterward.

Thus, the message to us is to have patience. We have come this far, let's stay the course in optimism and trust. The truth will set us free.

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Gladden: Still Seeking DOC S.O.s for Named Plaintiffs. Who Do You Know?

The *Gladden v. Swanson* case still needs a few good men still imprisoned in the MN DOC (as co-"Named Plaintiffs," that is). We have been searching for at least several named plaintiff, a process that requires locating about two dozen volunteering candidates for this role. To date, we have only found less than half that number. Therefore, the need continues and becomes more compelling with each passing month.

In past issues, I have stated that candidates must be within their last three years before their SRDs, and must either already be under scrutiny for "referral" by the DOC for sex offender commitment, or at least have some reason to believe that they will have some likely reason to believe that they will eventually be subjected to such scrutiny.

However, a number of volunteers so far have already been petitioned for commitment. Given the relatively short timeline from commitment petition to commitment judgment, volunteers in this late stage of things will not remain in peril of commitment long enough to become a Named Plaintiff to any use. Therefore, this category of volunteers must be categorically declined as Named Plaintiffs. (Nonetheless, assuming they get committed, they will become part of the "class" of plaintiffs in the Gladden case.)

In light of the foregoing, the need for more candidates continues. We need to rely on all of you — those already in MSOP — who still know any sex offenders still imprisoned in the MN DOC who meet the two criteria stated in the second paragraph of this article, above.

While those criteria are the minimum necessity as to any candidate, the ideal candidate will have between one and three years left before his projected SRD, with the same likely reason to believe that he will eventually be scrutinized for referral by the DOC to any prosecutor for commitment consideration.

Please give these matters your earnest thought and do two things at your early opportunity:

(1) Give me a list of names with DID #s of each sex offender you think may at least qualify under the two criteria in Paragraph Two, each with the name of the prison they were in at the time of your latest knowledge and indicate on that list by some statement or marking which one (s) also fall within that 1-3 years left period.

(2) Also bring this article to the attention of each person in MSOP who has arrived anytime in the last three years. They may remember qualifying persons that you did not know or may not remember. Please have them draw up a list of their own. If you deem them to be sufficiently motivated and trustworthy, have them give that list to me. Otherwise, simply volunteer to do the delivery yourself.

Calligraphy

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No Need to Get Fancy....

Whatever you do, do not use "green mail" to send this list to me. Please follow through on this even if you only recall and mention one guy. Please do this like your freedom depends on it. More likely than not, it will.

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Wages? Care to Make a Wager?

The Wages case is proceeding steadily. We are in the phase of the case in which the magistrate judge makes an initial (but not final) decision as to whether the case may proceed as a "collective action" as established in the Fair Labor Standards Act ("FLSA": the federal law including the national minimum wage rate). That decision is expected to go our way.

At the same time, that judge also makes a preliminary decision as to what form(s) of notice are required to all who might have some claim for wages that would be covered by the claim in our case, what the required content of the notice is to be, and how (and when) such notices are to be delivered to those who might choose to become "collective plaintiffs" in the case.

Our attorney is then required to prepare and to mail out the necessary notice with a returnable form on which the recipient states whether or not he wishes to join the action as such a collective plaintiff. This is expected to happen within the next three months.

The allowed period in which all affirmative responses are to be received back by the attorney will probably be somewhat short. As I have said before, this case is probably the only opportunity you will realistically have to recover wages confiscated by MN SOS. I cannot urge you strongly enough to fill out the return form expressing your wish to join our action as a collective plaintiff and to return it at the first opportunity.

You should do so even if you are unsure of whether you earned any wages which were confiscated. That will be determined later. What is important is that a large percentage of MSOP residents return these forms asking to become collective plaintiffs in the case.

For those who have questions, David Jannetta and myself (Cyrus Gladden) will confer to provide all known answers to those in MSOP-ML, and David Gamble will do likewise in MSOP-SP.

Keep your eyes and ears open on this matter, because this opportunity will only occur once, and you definitely do not want to miss it.

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Epilogue to Why We're Here and They're Not: The Latest Trafficking & Slavery Scam — Child Sex Trafficking under Cover of Adoption 'Re-Homing'

Editor's Note: The following article describes the latest 'sneak-around' used by the wealthy to acquire a child for exploitation purposes, whether it be to use as a household servant or for sexual slavery, or simply as an object for 'pass-through profitable trafficking.

Cynthia Hawkins DeBose & Alicia R. Tarrant, "Child Sex Trafficking and Adoption Re-Homing: America's 21st Century Salacious Secret," 7 *Wake Forest Jour. Of Law & Pol'y* 487 (June 2017)

pp. 515-19: IV. The 'Re-Homing' of Children Has Evolved into an Underground Form of Trafficking

"Historically, many states offered a quick solution for parents to give up parental rights to a family member, known as kinship adoption. Kinship adoption was a solution for the child to remain within the family where parental rights were in question. The child's close family members could temporarily or permanently adopt the child without terminating parental rights. Kinship adoption was to benefit the best interest of the child. Kinship adoption was meant to be a fairly easy process for a close family member to obtain legal custody of a child through power of attorney. This was meant to lessen the burden on the family and help facilitate a permanent and stable home for the child.

An alarming trend in kinship adoption practices has recently been uncovered and brought to public attention. Some individuals who adopt or foster children use kinship adoption to dispose of custody and parental responsibilities for various reasons, often because the child exhibits behavioral problems. Parents can offer and sell the child via the Internet. 'Through Yahoo and Facebook groups, parents and others advertise the unwanted children and then pass them to strangers with little or no governmental scrutiny, sometimes illegally ...[C]hildren are treated as chattel.' This trend of adopting-out unwanted, problematic children came to be known as 're-homing.'

Re-homing occurs when a parent secures a 'basic "power of attorney" document – a notarized statement declaring the child to be in the care of another adult.' The parent fills in the new caregiver's name based on their response to the advertisement. In re-homing, the new caregiver is not a close family relative and is usually a stranger to both the parent and the child. After responding to the advertisement, the new caregiver sets up a time to take the child from the parent. The parent passes over the child with the power of attorney document.

This transfer is problematic for multiple reasons. First, the child advertised usually has severe behavioral, emotional, or physical impairments, which is often the very reason for the proposed sale. Second, the new caregivers generally have little or no training for providing care for a child with behavioral, emotional, or physical problems. Even a caregiver with originally good intentions may not be able to sustain the burden of caring for the child. Further, there are very limited resources for the caregiver to gain assistance, due to the unconventional transfer of parental rights.

Re-homing, while possibly an innocent practice at inception, became a pathway for human trafficking. Children advertised and sold on the Internet are prime targets for trafficking due to the ease of transfer and lack of documentation. Namely, underground sex trafficking operations take full advantage of securing legal rights to vulnerable, unwanted children.

On Yahoo.com, a group called 'Adopting

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from Disruption' completed a study on the website's popular 'advertisement' page, which has since been shut down by Yahoo. Over a span of five years and a total of 5,029 posts, the group reported that child-for-sale advertisement occurred on average once per week. Out of those reported advertisements, the approximate ages of the children ranged from six to fourteen, with most of the adoptees from Russia, China, Ethiopia, and Ukraine.

An even greater problem with lack of documentation of the child transfer is locating the child in the future, especially when the trafficker crossed state lines to procure the sale. Very little state procedures were in place to document a re-homing sale, and therefore the state lacked the ability to track the child once the trafficker took the child across state lines. More and more often, the child advertised on the Internet for re-homing is then trafficked or abused...."

p. 523: "NCMEC has compiled data from missing and exploited children and recently began notifying law enforcement and electronic service providers of the results. In the Child Victim Identification Program, 147 million images have been collected since 2002, and law enforcement has been able to identify almost 10,000 child victims."

Children's Crusade

Editor's Closing Note: Note should be taken that the ratio between images available to MCMEC and those identified signifies that only 1 out of about every 14,700 children have been identified to date. Probably only a tiny sliver of these have been 're-homed' and trafficked in this way, since very few of these arrangements have yet come to light. Effectively, these children are simply quietly disappeared.

This once again points up the folly of devoting massive resources to effectively extending the incarceration of aging former sex offenders in an elaborate bureaucratic ruse called sex offender commitment.

As low- and no-recidivism statistics show so clearly for that long-imprisoned group, such sentence extension via commitment is utterly ineffective at reducing sex crimes. It is merely window dressing by legislators to gain cheap points by whipping the hind end of the horse while the head and front hooves go where they will without the slightest restraint. Meanwhile large organized gangs of those never previously detected carry out such vicious, exploitative criminal schemes in quiet, brazen impunity under the very noses of American authorities. Your votes in the election booth imply your assent to continuation of this allowance of continued criminality by way of utter distraction. Shouldn't you all get a grip — Now?

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Gladden Complaint Excerpt: Psychiatry's Response to SVP Laws & *Hendricks- Crane* Rationale

Summing up this point admirably, *Deirdre M. Smith*, "Dangerous Diagnoses, Risky Assumptions, and the Failed Experiment of 'Sexually Violent Predator' Commitment," 67 *Oklahoma Law Rev.* 619, 679 et seq. (No. 4, Summer 2015), states:

"The Court's rationale in *Hendricks-Crane* assumes that there is a unique and distinctive pathology among dangerous sex offenders. As argued above, this assumption has no support in current medical thinking about either the mental condition of such offenders or the extent to which a mental health professional can identify those at particularly high risk of reoffending. In light of this unsettled connection between sexual violence and psychopathology and the absence of a reliable method for clinicians to predict future violence, the APA has repeatedly attempted to highlight the divergence between SVP laws and scientific understanding.

(pp. 679-80): "The passage of the initial SVP laws in the early 1990s led the APA to appoint a Task Force on Sexually Dangerous Offenders. The report it released in 1999 (two years after the *Hendricks* opinion) was highly critical of such laws. [*APA, Dangerous Offenders*, at viii, 172-76]. Members of the Task Force noted that the 'question of whether all or some sexual offenders are mentally ill is complicated and controversial' [Id. at 4-5] and, similarly, that there was no consensus on the degree to which sex offenders have control over their behavior. [*Id.* at 5] Certainly, some offenders have paraphilias, the report acknowledged, but it also noted that paraphilias occur fairly frequently in those who never commit sex offenses. [Id. at 44] Personality and substance abuse disorders, it continued, are far more common in sex offenders than are paraphilias, and, significantly, these do not usually have 'explanatory connection' to the offender's behavior. [*Id.* at 9] In short, the task force report stated, 'psychiatric nosology does not contribute in a systematic way to clinical understanding or treatment of sex offenders.' [*Id.*] The language of the report's conclusion was strong:

'Sexual predator commitment laws represent a serious assault on the integrity of psychiatry, particularly with regard to defining mental illness and the clinical conditions for compulsory treatment. Moreover, by bending civil commitment to serve essentially nonmedical purposes, sexual predator commitment statutes threaten to undermine the legitimacy of the medical model of commitment.

'...[The SVP laws] establish a nonmedical definition of what purports to be a clinical condition without regard to scientific and clinical knowledge. In so doing, legislators have used psychiatric commitment to effect nonmedical societal ends that cannot be openly avowed.... [T]his represents an unacceptable misuse of psychiatry.' [*Id.* at 173-74]

(p. 681): "Mental health professionals who support the SVP laws are primarily treatment providers who specialize in treating sex offenders, including those who work in state SVP programs, outside of the correctional or criminal setting. as one researcher has noted, this context can distort treatment provider's views of such offenders, leading the providers to assume a degree of specialization in offenders' behavior that those treated experience 'deviant sexual arousal, which, if not treated, will result in future sex crimes.' Because these treatment providers lack expertise in criminological research, the mental health policies they promote continue to be based on misplaced assumptions about those who commit sex crimes – in particular, the notion that such offenders are 'mentally disordered, treatable, dangerous (if not treated), and at high risk to reoffend with another sex crime.'

[collectively citing: *Leonore M.J. Simon*, "An Examination of the Assumptions of specialization, Mental Disorder, and Dangerousness in Sex Offenders," 18 *Behav. Sci. & L.* 275 (2000), at 277-79. While three of five of the amicus briefs submitted in *Hendricks* on behalf of mental health associations supported striking down the law (the American Psychiatric Ass'n, the Washington Psychiatric Ass'n, and the National Mental Health Ass'n), the two who supported the law were directly involved with the treatment of sex offenders, including the Menninger Foundation, which operated a psychiatric hospital in Kansas at the time, and which was joined on the brief by a series of "victims' rights" and law-and-order organizations such a the New York Chapter of Parents of Murdered Children, Protecting Our Children, People Against Violent Crime, and Victims Outreach, Inc. *Alan R. Felthouse & Leonore Simon*, Introduction to This Issue: Sex Offenders Part One," 18 *Behav. Sci. & L.* 1 (2000), at 2. Apparently, significant portions of the majority opinion in Hendricks were drawn from the Menninger Foundation's amicus brief. *Id.*]

(pp. 681-82): "...[A]lthough courts have increasingly relied on psychiatric expertise in SVP proceedings to support individual commitments, much scientific understanding of the causes and prediction of violent sexual behavior has become, in the process, highly distorted."

(p. 682): "...Maintaining the role of expert evidence to support commitments in SVP proceedings has required a distortion of psychiatric understanding. It has also required a severe compromise of core values and practices of our justice systems. *Norman J. Finkel*, "Moral Monsters and Patriot Acts: Rights and Duties in the Worst of Times, 12 *Psychol., Pub. Pol'y & L.* 242 (2006), at 243"].

Lab Rats

(pp. 683-84): "Understandably, some commentators have argued that the very fact that psychiatric diagnoses are imprecise and ambiguous suggests that only the 'beyond a reasonable doubt' standard will adequately ensure fairness and due process in commitment proceedings. [*Alexander Tsesis*, "Due Process in Civil Commitments," 68 *Wash. & Lee L. Rev.* 253 (2011), at 282-300.] However, the *Addington* Court held it constitutionally acceptable for states to use a lower standard of proof because of the limitations and objectives of involuntary hospitalization: such commitment, the Court maintained, was limited to people with severe mental illness who pose a danger to themselves or others, and employing a higher standard of proof could 'erect an unreasonable barrier to needed medical treatment.' [*Addington*, 441 U.S. at 432]. Such reasoning, of course, has only limited application in the SVP context, where public safety, not treatment, is the foremost objective."

(p. 687): "An examination of prosecution experts' opinions about the likelihood of future acts of sexual violence in SVP proceedings reveals that they are based largely upon the respondent's past behavior (alleged as well as proven) rather than, as required by the *Hendricks-Crane* rationale, an individ-

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ualized medical assessment. This is because mental health professionals, in attempting to assess whether a person is likely to commit acts of sexual violence due to a volitional impairment stemming from a mental disorder, have little else but past behavior to go on in the absence of scientific guidance for making such an assessment.... But, as a result, they predict future behavior based upon past behavior the same way we all do, and not upon any particular expertise."

(p. 694): "...The government has not proven that Antisocial Personality Disorder alone ever causes a person to have serious difficulty in controlling his conduct. In essence, the evidence indicates that individuals with severe forms of that disorder may often make unlawful choices, but they are able to control their conduct.' *U.S. v. Wilkinson*, 646 F. Supp. 2d 194, 198. (D. Mass. 2009)...."

* * * * * * *

Reply to Minnesota Sex Offender Program Annual Performance Report 2015 - revised, Part 2 of 3

1. The True Overall Picture of MSOP as a Failed Assessment and Treatment Program for Sex Offenders and as a Program for Deliberate Denial to Those Committed to MSOP of Their Constitutional Rights.

The General Facts of MSOP's Long-Unremediated Circumstances and Practices Demonstrate beyond Question That MSOP 'Treatment' Is Not Aimed at Release at Any Reasonable Time.

Most therapists employed by MSOP lack advanced degrees in psychology, and thus are unqualified to provide treatment to sex offenders.

Other specifics of this illusory façade of purported treatment-toward-release include:

- deliberately sluggish treatment[1];
- 'patient' hold-backs and demotions;
- frequent treatment regimen replacements, requiring patient 'start-overs';
- the inherent impossibility of extinguishing deviant attractions;
- ill-conceived, failed attempts at 'brainwashing';
- refusal to acknowledge any "meaningful change" despite successful treatment completion;
- lack of more than a few 'show' releases through treatment (4 of 780 currently, including deceased detainees);
- duration of confinement through old-age to death; and

* insistence on an unattainable 'zero-percent recidivism risk' "public safety guarantee" before granting release

— all present an undeniable overall revelation of a commitment scheme intent on natural-life preventive detention, with only the sheerest gossamer veil of claimed treatment, in reality not in earnest or even merely good faith. Unquestionably, that sole realistic goal of preventive detention shows the undeniably punitive aim and function of SPP/SDP commitment.

As shown through these facts, the reality of MSOP operation is:

(a) to sluggishly conduct over the course of a decade or more treatment that could be accomplished within one year;

(b) to invent excuses to demote those in treatment to a lower level of treatment attainment and to alternatively retain those in treatment in the treatment phase or module already completed;

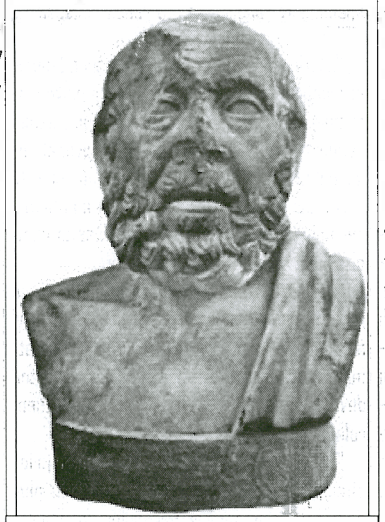
(c) to disqualify from treatment (and thereby from release) all those who deny the commission of a given alleged sex crime; and

(d) periodically (but before any appreciable number of committed sex offenders can complete the prescribed regimen of treatment) completely replace that regimen with a different regime as discussed above), thereby forcing all treatment participants to start over in that next decade-long replacement treatment regimen.

2. MSOP 'Therapy' Includes Numerous Counterproductive Practices.

MSOP 'therapy' includes, and often is based on numerous counterproductive treatment practices by therapists. These practices confuse treatment participants and interfere with their progress through the "phases" of such treatment. These practices also have psychologically harmful/'toxic' impacts upon the minds of such treatment participants. Among these practices are the following, as described in Terence Campbell & Demosthenes Lorandos, Cross-Examining Experts in the Behavioral Sciences:

- The 'Blame-and Change' Maneuver[2]
- Victims, Villains, and Saviors[3]
- Strengths vs. Deficits[4]
- Long Term Therapy or the 'Clinician's Illusion'[5]



What Would Hippocrates Say?

3. MSOP Engages in Experimentation Rather Than Scientifically-Based Treatment.

MSOP detainees are not given treatment, but instead merely a never-ending series of experiments without informed consent, or even merely notification. These experiments, in turn, are not based on any valid scientific understanding of the nature of sexual orientations and of sexual desire, but to the contrary, such experiments are founded only on a priori concepts declared by sheer fiat. This has gone on for the entire existence of MSOP. Each new experiment replaces its failed predecessors and results in each participating detainee being ordered to start the new regimen from scratch, in some cases even after 20 years of such repeated experiments. This course of repetitive regimen replacement has prevented MSOP detainees from ever being able to complete treatment 'successfully' and to show thereby that their recidivism risk has been reduced to the 'very low levels' demanded by MSOP staff.

4.MSOP Intends to Never Release Any Significant Number of Its Detainees.

In 2011, MSOP administrators declared that no releases were anticipated for the foreseeable future. MSOP's projected number of detainees in 2020 is based solely on current rates of commitment, with no deduction for any projected releases. In the absence of any projection or anticipation of releases in any of the next seven years, it is clear that MSOP is utterly disingenuous about treatment in MSOP as a path to release.

5. MSOP's Attempts to De-Condition Deviant Sexual Arousal Are Inherently Doomed in the Long-Term to Failure and Further, Have Nothing to Do with Recidivism Probability.

M. Hamilton, 'Adjudicating Sex Crimes as Mental Disease,' 33 Pace L. Rev. 536-599, 546), succinctly summarizes: "...[P]araphilias generally appear in early adolescence, are relatively stable, and are considered rather immutable – paraphilia conditions as evidently incurable, ...that would not go away with time."

In reality, regardless how socially feared and loathed a sexual attraction pedophilia is, for example, it is simply a sexual orientation. As such, it cannot be dispelled or converted to adult heterosexuality or homosexuality. Hence, it is more intellectually honest to refer to it as "pedosexuality." No "treatment," regardless of length or intensity – not even brainwashing, can ever extinguish heterosexuality or homosexuality, or convert one to the other.

Why then would anyone expect otherwise of pedosexuality? Treatment cannot convert sexual interests; therapy to redirect sexual attraction away from children toward adults has fared no better with pedophilia than it has with same-sex attraction. M. Seto, Pedophilia and Sexual Offending Against Children (2008), at 175-76; Alice Dreger, "What Can Be Done about Pedophilia?", The Atlantic (Aug 26, 2013), http://www.theatlantic.com/health/archive/2013/08/what-can-be-done-about-pedophilia/279024/ ("We have not yet found a way to convert pedophiles into non-pedophiles that is any more effective than the many failed attempts to convert gay men and lesbians into heterosexuals."). Thus, there is no 'cure' for pedosexuality, nor any instances to date of such 'cure' – anywhere. In this sense, it is not a 'treatable' personality/emotional/sexual malady. See Margo Kaplan, "Taking Pedophilia Seriously," 72 Wash. & Lee L. Rev. 75, 104-105 (Winter 2015); and 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 37-38 (2005)) on this point. Yet the "Deviant Sexual Interests"/"Sexually Deviant Interests" targets in the MSOP treatment "Matrix" (MSOP Report, Appendix C, p. 31) necessarily imply that a pedophile would have to prove that he no longer has pedosexual attractions, in order to show "meaningful change" to qualify for release.

6. MSOP's Demand for 'Admission' of Denied Adjudicated and Unadjudicated and Merely Generally Suspected Offenses Thwarts Treatment and Is Used to Deliberately Prevent Release.

"Treatment" within MSOP, in which those committed under said Act are detained, requires that a given committed sex offender "admit" each sex crime which MSOP officials believe that the offender committed. This requirement is enforced: (1) as a condition to further participation in such treatment and to advance through the respective "phases" and "modules" of that treatment regimen; and (2) by means of demotion of that sex offender to a less-advanced phase or module as punishment for declining to make such admission. This

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applies to hearsay and to uncharged accusations and to mere general suspicions of non-reported additional crimes categorically, as well as to convictions of each offender.

The scientific reality is that "...Contrary to what is commonly assumed, those sexual offenders who denied their offenses were no higher risk [of sexual re-offense] than other offenders." R. Karl Hanson, Predictors of Sexual Offender Recidivism: A Meta-Analysis, 1996-04 (Public Safety and Emergency Preparedness Canada), p. 12. Therefore, this insistence upon admission by MSOP is scientifically baseless. Worse, it turns the therapeutic relationship into one of interrogator versus suspect. Moreover, because refusal to admit such additional charged, uncharged, or unknown claimed instances of sexual crimes is used by MSOP as a ground for denial of treatment advancement, and even for treatment demotion, such refusal leads to extension of the time needed to complete treatment, in turn preventing release from MSOP.

7. MSOP's Misuse of Polygraphy and of Penile Plethysmography Thwarts Treatment and Deliberately Prevents Release.

Howard Zonana, et al., Dangerous Sex Offenders: A Task Force Report of the American Psychiatric Association (1999), at p. 156, flatly declares, "There are three objective means of determining sexual interest in sex offenders: penile plethysmography, visual reaction time assessment, and polygraphs.... None of the three methods provides a level of validity that meets any of the prevailing standards required for admissibility in court as scientific evidence." Note that each of these three methods is in use in MSOP. Analysis of each of these methods follows.

A. Reliance upon the Junk-Science Tool of Polygraphy of Proven Unreliability at Measuring Deception.

MSOP refers a given 'treatment' participant under consideration for either phase advancement or demotion to a visiting polygraphist. Any detainee declared to be deceptive in any regard by the outcome of that polygraph examination will be subjected to adverse action (whether denying advancement or imposing a demotion to a lower treatment phase).

This type of polygraph testing is almost invariably "multiple-issue" utility testing," which the American Polygraph Association regards as an unprofessional misuse of polygraphy. According to leading experts in polygraphy, this 'dragnet' method of polygraph misuse is no more accurate than pure chance, and actually invites errors.[6]

Where release from commitment and treatment advancement and demotion decisions inherently effect the course of the rest of the detainee's life, such unscientific reliance on such unreliable testing is unconscionable as nothing more than a modern-day 'witch-finder's tool.'

Treatment staff place implicit trust in polygraph results despite its gross inaccuracy, especially as to false positives.

As to the progression to Phase 3, a "full disclosure polygraph" must also be taken "to verify an agreed-upon sexual history." (MSOP Clinician's Guide, p. 15).

However, as to both maintenance and full-disclosure polygraph tests in MSOP, the polygraph result must indicate no deception as to each relevant question. Even an "inconclusive" outcome on any such polygraph is not sufficient and is taken as a sign of deception in answering. In the Karsjens trial, Dr. Elsen testified that, to her knowledge, no treatment participant has ever been advanced from Phase II to Phase III who had not passed the full disclosure polygraph. (Trial Tr., v. 7, p. 1349). Note that, in the case of detainees in the "alternate" treatment program are subject to "a determination by the polygraphers whether or not a client is able cognitively to take a polygraph exam." In the event that a given alternate program participant cannot do so, no polygraph is given, and the given alternate participant cannot progress to Phase 3. While the MSOP Clinician's Guide permits advancement in exceptional situations where the requirements (including polygraph passage) are not met, Dr. Elsen testified that this had never been done with any treatment participants under her supervision. (Elsen testimony, Trial Tr., v. 7, p. 1375-76).

Close attention should be paid to the notorious "false positive" inaccuracy of polygraph testing generally. Many MSOP treatment participants who have taken such polygraph tests complain that the claimed deceptive outcome is incorrect. It appears that such polygraph 'tests' are mere ruses for interrogation purposes, with no actual 'result' being derived through professional analysis of the polygraph charts.[7] Despite this shocking failure of polygraphy in the nervous-reaction context of sex offender treatment, Dr. Pascucci admitted that such polygraph results are considered in assessment as to provisional discharge (Trial Tr., v. 8., p. 1657).

The most common method of polygraph testing sex offenders in sex offender treatment is this 'dragnet' use of multiple relevant questions. Extensive research has consistently found that this kind of polygraph testing achieves only a chance level of accuracy (55%) among innocent subjects. In other words, in the sex-offender treatment-in-commitment context, over half of the time this test falsely indicates deception where there was none. This wrongly causes the examinee to suffer consequences that commonly include treatment level demotion or refusal to promote to the next level, with delayed release implicit. This figure was derived from dry experimentation outside that context. Hence, this does not include the error-compounding factors of intense nervousness (common among sex offenders in such tests), 'outside issues' contamination (also very common in that specific context), and examiner 'contamination bias' and 'confirmation bias' (ibid.).

Both 'maintenance' and 'monitoring' exams involve broad questions (at least, at first), to serve as a vague 'dragnet ' as to any crimes or rule or treatment violations. (Id. p. 15)

Additionally, a 'Stimulation Test' and a 'Silent Answer Test' are also frequently performed by polygraphers in sex offender commitment contexts. (Id. p. 6) These are used as pure interrogation devices. In the first, the examinee is subjected to a range of assertions about a past fact. This test betrays a significant psychophysiological response when a choice among those assertions is mentioned that reflects a guilty truth. (Example: "Did you commit any act of sexual abuse of a child in – 2005? – 2006? – 2007? - 2008?", etc.) This is self-incrimination by an unintentionally communicative bodily response – a phenomenon parallel to interrogation under sodium pentothal stupefaction. The Silent Answer Test works on the same 'recognition' principle, effectively acting to the same degree of accuracy (or claimed accuracy) as if the examinee had verbally answered the "relevant question" asked. Thus, effectively, one cannot avoid 'answering' polygraph test questions by remaining silent. Both of these types of polygraph test therefore have extremely troubling implications as to deprivation of one's right to remain silent, both under the First and Fifth Amendment.

The observations of Dr. Berlin, in his Report to Schiff Hardin & Waite (etc.), at pp. 13-15, as to polygraphy misuse in sex offender treatment, particularly in the commitment-confinement context, are both astute and specifically applicable to such misuse in MSOP:

"...[O]ne cannot complete the second phase of treatment without first passing a polygraph examination. In order to pass, the results cannot ordinarily be either equivocal or suggestive of deception. Thus, failure to 'pass' the polygraph can represent a potential permanent roadblock to the successful completion of treatment.

"...[U]se of the polygraph can also run the risk of contributing to a 'we versus they' mentality between patients and their treatment providers, potentially undermining the development of a positive doctor/patient relationship.

"...Some patients may falsely admit to prior offenses if they feel that they 'need to play that game' by falsely disclosing significant numbers of past bad acts, because they have begun to believe that that is the only way that they will be able to progress through treatment. ...[A] recent review of the polygraph by the prestigious National Research Council cautioned that use of that technology is far from infallible. As with any technology, there can be both false positives (in the case of the polygraph, the appearance of lying when none is present), and false negatives (the appearance of a truthful response in the face of deception). I know of no evidence that shows that polygraph testing, when used as an ancillary tool in the treatment of sex offenders, has been shown to lower the subsequent rate of future recidivism,....

"...For the program to attribute to [polygraphy] sufficient weight that it can act, in effect, as a potential permanent roadblock to progression through ...treatment, in my professional opinion, represents a substantial departure from accepted practice, judgment, and/or standards in the field of inpatient mental health treatment.

"Finally, ...it is important to note that treatment should not be turned into an ongoing debate about past guilt or innocence Such matters are often best resolved in a court of law, rather than through a therapy session. Occasionally persons are falsely convicted Sometimes the observations of past victims, or past hearsay, may not be entirely accurate. Polygraph testing can sometimes be suggestive of deception when none is present. The primary purpose of therapy is to try to ensure that there will be no future bad acts. ..[I]t is not always necessary, or perhaps even possible, to try to establish 'guilt or innocence' regarding each and every alleged prior bad act in order to successfully treat sexual offenders. The thrust of treatment needs to focus instead on what each treated individual must do in order to safeguard both the future interests of society, as well as his own future success. In my professional opinion, debating, perhaps indefinitely, potentially irreconcilable accusations and denials, does not represent a form of good, or even psychiatrically acceptable, treatment. To the extent that that may be how certain aspects of therapy are being conducted, in my professional opinion that represents a substantial departure from accepted practice, judgment, and/or standards in the field of inpatient mental health care."

Again, these observations fit the current situation in MSOP precisely. Treatment advancement is arrested, and a phased demotion often imposed, simply because a polygraph result for the treatment participant in question indicates deception or is inconclusive. Thus, even such inconclusive results are effectively treated as indications of deception. In either case, such results are treated as an irrebuttable presumption

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of the truth of the adverse information inquired about, whether as to some past alleged crime or some current type of misconduct merely part of a 'checklist' without any previous reason for suspicion. As Dr. Berlin conveys, neither the particulars of one's former criminal record nor whether one is in compliance with every institutional rule have anything to do in reality with success in treatment or with one's ability and motivation to live a law-abiding lifestyle upon release.

The unwillingness of MSOP administration to authorize a polygraph exam for those detainees who deny their current offense and request one, even though (for litigation show-purpose only) the MSOP rule on polygraphy appears to authorize such exams, shows that MSOP staff and administration themselves do not actually believe in the scientific accuracy of polygraphy. This makes their claimed reliance on polygraph outcomes in such treatment advancement-denials and such demotions knowingly baseless, and hence blatantly sadistic.

Maas, supra, at pp. 1261-62, explains this application of polygraphy by MSOP:

"The questionable validity of polygraphy has been known for decades and polygraphs have never been widely accepted among scientists. Their use by clinicians in SPP/SDP retention decisions is therefore curious.

"Even if polygraph reports are to be believed, they are not so reliable that they can be validated. For example, even if collateral information conflicts with the polygraph results, failure of a polygraph is still an absolute block to discharge. The practice of requiring such an exam serves no purpose other than creating another reason for preventing discharge."

B. MSOP Misuses Penile Plethysmography and 'Abel Testing' Without Scientific Basis and in Defiance of the Inescapable Fact of Immutability of Sexual Orientation to Thwart Treatment Progress and to Prevent Release.

When Phase 2 is completed, "a PPG or Abel/ABID assessment" must be taken, and the results of these tests must be "address[ed] ...in treatment." Like the polygraph outcome, a satisfactory result on the PPG/Abel assessment, reflecting no deviant arousal or at most only very low deviant arousal, is required to advance to Phase 3. Also unstated here, the PPG is the test primarily relied upon, with the Abel/ABID test being administered only when a failing outcome is reported from the PPG.

Howard Zonana, et al., Dangerous Sex Offenders: A Task Force Report of the American Psychiatric Association (1999), at p. 58, bluntly explains:

"...[L]aboratory responses cannot be used to predict or validate behaviors outside the laboratory. Each of us, at times, has arousal that, if we acted on it, could be quite problematic. Having arousal, be it paraphilic or non-paraphilic, does not mean that we necessarily act on that arousal. Plethysmography results are frequently used inappropriately in making judgments regarding the veracity of an individual's claim that he did or did not participate in paraphilic behavior outside the laboratory. However, irrespective of the desires of plaintiffs and defendants in such cases, plethysmography cannot provide definitive answers to such complex questions. As a result, it is considered inappropriate to use plethysmography measures to argue the issue of the veracity of an individual's statement regarding his previous behavior."

As it happens, the test scorers of the PPG test claim a substantial portion of test subjects show such sexual arousal, casting such test scoring into serious doubt. Once again, many current and former treatment participants report that the claimed failure result of the PPG test is incorrect, based on the fact that no penile arousal actually occurred during the test, but was the claimed basis for alleged failure.

MSOP makes considerable use of plethysmography and of the Abel assessment of sexual interest. Each of these tests also has accuracy/reliability problems and is subject to operator manipulation of test results. Beyond this, even were results of these tests accurate and reliable, they focus on the wrong thing. Basically, for instance, a committed pedosexual/pedophile whose test results reflect that orientation will never be released by MSOP because that sexual orientation is permanent. That is not treatment; it is permanent condemnation. The real question, for public safety purposes, obviously ignored by, and unanswerable by such testing, is whether, if released, a given pedosexual/pedophile will or will not commit further sex crimes.[8]

The Abel/ABID 'test' merely shows the test subject images and asks that each be rated as to its sexually arousing effect on the subject. Because nothing prevents the subject from lying, this test is scored subjectively, with the test scorer simply deciding whether these answers strike the scorer as consistent with other evidence, including the polygraph result. Thus, this is simply a subterfuge for again relying on the polygraph result without overtly so admitting. As a separate point, many who have taken the Abel/ABID 'test' complain that such subjective opinions are only that, and have most often been as utterly incorrect as a sheer guess.

In sum, the prevailing opinion among MSOP treatment participants in Phases 2 and 3 is that clinical staff simply privately decide a priori whom they wish to promote from Phase 2 to Phase 3, and then set about amassing falsified 'evidence' to support that decision either way.

Howard Zonana, et al., Dangerous Sex Offenders: A Task Force Report of the American Psychiatric Association (1999), at p. 156, concludes that, of penile plethysmography, visual reaction time assessment, and polygraphs, none of them provides a level of validity that meets any of the prevailing standards required for admissibility in court as scientific evidence.

Beyond this, even were results of these tests accurate and reliable, they focus on the wrong thing. Basically, for instance, a committed pedosexual/pedophile whose test results reflect that orientation will never be released by MSOP because that sexual orientation is permanent. The real question for public safety purposes, obviously unanswerable by such testing, is, as Dr. Berlin suggests, whether if released, a given pedosexual/pedophile will or will not commit further sex crimes. Since a pedosexual will always retain that orientation, he is forever preordained by MSOP to fail treatment. That is not treatment; it is permanent condemnation. All pedophiles will remain confined in MSOP until death, if MSOP continues to decide the issue of release. This is the very heart of preventive detention.

MSOP Treatment Dummies

8. MSOP Employs Undefined, Unspecific "Matrix" Standards to Justify Overly Conservative, Subjective Evaluation by Clinicians That Deliberately Thwart Treatment Advancement and Prevent Release.

Since 2009, MSOP has relied on a 'treatment Matrix' to purportedly assess detainees' needs and progress in treatment. Before that they were not used in MSOP. No other sex offender commitment or treatment program uses this 'Matrix.' (Karsjens Tr. 2745: 22-25, PA 894; Tr. 1026: 4-9, PA 743; Tr. 2221: 12-14, PA 870; Tr. 2747: 21-24, P.A. 895.) For years, outside experts have warned MSOP executives and staff that there was confusion over how to apply the Matrix factors, inconsistent application of those factors, subjective application among evaluators (exacerbated by staff turnover), and that the required Matrix factor scores for phase progression were too high. (Karsjens Doc. 658 at 37-38; PX 184 at 75, PEXB 195; PX 46 at 5, PEXB37; PX 43 at 2, PEXB21; PX 184 at 4-5, PEXB47-48.) Because the Matrix factors constitute the fundamental basis of the MSOP's treatment and are an essential component in phase progression (Doc. 658 at 31; PEXB423-424), all Plaintiffs suffered injury resulting from the inconsistent, misapplied matrix factors because MSOP requires that Plaintiffs reach Phase III before it will support a Plaintiff's reduction-in-custody petition (Tr. 1210: 6-14; PA 749). Yet treatment 'Matrix' standards are undefined or ill-defined, lack specific examples of application, and are highly subjective. Many therapists report that the Matrix is not being uniformly applied and that standards for interpreting the matrix are lacking, allowing a wide range, from impossible-perfection standards to very lenient standards, from one therapist to the next.

A mere glance at some of the factors used in various 'behavioral areas' of the Matrix confirms this subjective vagueness: "negative social influences," "poor self-regulation," "general hostility," and "antisocial attitudes and behavior."

The undefined, unspecific Matrix standards used by MSOP ostensibly to judge treatment progress "allow for overly subjective evaluation by clinicians" in MSOP. (OLA Report). In most cases, these Matrix standards have been employed to thwart treatment progress, rather than to promote it.

In its Findings of Fact, Conclusions of Law and Order dated June 15, 2015 in Karsjens et al. v. Jesson [now Piper] et al., the federal Court has already rejected the scientific validity of the so-called "Matrix Factors" in use in MSOP, observing that they "are not used by any other civil commitment program in the country" In this connection, Judge Frank concluded that:

"The Court has already concluded that the MSOP "treatment program's structure has been an institutional failure and there is no meaningful relationship between the treatment program and an end to indefinite detention." (Karsjens et al. v. Jesson et al., Conclusion of Law 35).

Again, although this conclusion by the Court sounds definitive, its effectiveness in practice is weighted down by the fanatical adherence by MSOP administrators and clinical supervisors to the unspoken concept that treatment of committed sex offenders 'should' take a long time, on the tacit belief that, to render any MSOP detainee "safe" for

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release, he must utterly be 're-made' as a different persona than his own. It is this belief, never laid bare, that is behind the decades-long detention and treatment of MSOP's detainees, compelling them to satisfy the Herculean requirements of a practically endless series of "Matrix" "goals" before administrators will consider an individual's release. This is the vehicle by which each treatment-participating MSOP detainee is denied "completion" of treatment over countless years, until they simply give up. It is deliberate and cruel.

Finding 82 by Judge Frank in Karsjens elegantly observes that "[t]he Matrix factors are not used by any other civil commitment program in the country." (Confirmed by Dr. Freeman's testimony, Trial Tr., v. 5, p. 1026; accord: Ms. Hébert's testimony, Trial Tr., v. 17, p. 3922). MSOP's use of these Matrix factors as it does has never been validated on a sex offender population. Id., v. 5, p. 1026. Accord: Darci Lewis testimony, Trial Tr., v. 7, p. 1448.

Note also Dr. Miner's testimony as to the Matrix:

"Q. Let's talk about the Matrix factors. Do you take any issue with the Matrix factors scoring guide?

"A. Yes.

"Q. And tell me about that.

"A. Well, the Matrix factors scoring guide doesn't meet minimal requirement for a psychological test as promulgated by the joint APA-AERA Guidelines for Psychological and Educational Testing. It doesn't include a lot of information that would be required in a guide or in a manual....

"It's been criticized for being unreliable..." (Trial Tr., v. 6, pp. 1183-84).

More pragmatically, Dr. Cauley testified that the Matrix factors at MSOP are:

"...sort of an in-house tool that was developed by members of the -- employees at the facility. It serves a purpose perhaps of simply being – I wouldn't say treatment progress, but it's almost like a checklist of really how somebody is participating in treatment. Okay? So it's a lot of 1 to 5 ratings of things like attending groups, participating in group, that kind of thing. But it's unique to the Minnesota program. It's not used anywhere else. And it doesn't serve a larger purpose of assessing risk." (Trial Tr., v. 10, p. 2221).

"[The Matrix is] not tied to the initial risk. It's used for everyone in the same way and it doesn't start its hinging on likelihood of re-offending or risk for future sexual violence. It's just simply a checklist where you score 1 to 5 on the items. The items tend to be subjective and vague. And through my record review, that awareness has been going on for a long, long time, that there are concerns with the item, there's concerns about the reliability of scoring the Matrix, there's concerns about staff training related to the matrix that have been going on for at least six years. And there's been a continued offer to resolve it through new training and then the next year the same problem arises.

"Q. ...[W]hat studies have been done of the Matrix factors system?

"A. There haven't. Matrix is unique to this program. It was developed by this program." (Id., pp. 2224-25).

MSOP Executive Clinical Director Jannine Hébert testified that, with respect to the way MSOP uses them, "there's no best practices with regard to the matrix factors specifically." (Trial Tr., v. 12, p. 2767). Effectively, this means that any way that MSOP chooses to use Matrix factor scoring is deemed by MSOP clinical leadership as perfectly acceptable despite the utter lack of any scientifically accepted protocol for such use.

At id., p. 2768, Ms. Hébert admitted the lack of research into Matrix factor scoring:

"...It's not designed as a tool to be researched.

"Q. My question is yes or no. Have you done any research about whether the matrix factors that you use at MSOP effectively measure treatment change?

"A. Could you define research in that question?

"Q. Sure. Have you done any studies?

"A. Studies? No.

"Q. Okay. Have you done any analysis of a statistical nature?

"A. It doesn't lend itself for that kind of research, no.

"Q. So the answer is no?

"A. No.

"Q. Have you done any interrater reliability studies with respect to how the Matrix factors are scored?

"A. No.

"Q. Are you aware of anyone who has done any interrater reliability studies with respect to the Matrix factors?

"A. I don't know who else uses the Matrix factors, so no. (Trial Tr., v. 12, p. 2768).

Hébert admitted in testimony that MSOP's Matrix factors and their usage are under "extreme criticism":

"Q. Under extreme criticism from whom?

"A. To the extent that they were -- they have been part of the 706 comments and previous auditors' reports. I don't know specifically what extreme criticism was referring to, but it was pretty public that people were having opinions about Matrix factors.

"Q. Well, this is before the 706 report, so it can't be them, right?

"A. Oh, then it isn't.

"Q. Right, so it has to --

"A. It was in previous auditor's reports for sure, yes.

"Q. Sure. It was in previous auditor's reports several times years before, right?

"A. In different forms, yes.

"Q. Sure. "Extreme criticism" is what you call it here right?

"A. That is what I say here, yes." (Id., pp. 2768-69).

In Findings 83-86, the Court determined that MSOP clinical staff has experienced substantial confusion and inconsistencies in the use and application of the Matrix factors, with Matrix factors scores fluctuating at changes in clinical staffing, such that a lack of inter-rater reliability is presented. (D. McCulloch testimony, Trial Tr. v. 1, pp. 82-83.) Dr. Vietanen put it more bluntly: "...[T]here isn't any inter-rater reliability in Matrix scoring." (Trial Tr., v. 10, p. 2327). Dr. Nicole Elsen conceded that scoring of the Matrix factors is somewhat subjective. (Trial Tr. v. 7, pp. 1347). Dr. Elsen also admitted that she had, at various times, directed the clinicians under her supervision in MSOP to lower a given treatment participant's Matrix scores, and that such scores were in fact lowered at her direction. (Id., pp. 1347-48.) Yet Dr. Elsen has never approved phase advancement of any MSOP detainee who has not met the Matrix goal requirements for such advancement. (Id., p. 1348).

"Haaven, et al., 2012 and an expert panel that reviewed MSOP client records in February 2013 that included Haaven, et al., and additional experts noted problems with the reliability of clinicians' ratings of the Matrix used by MSOP...." (706 Experts' Report, p. 33, quoted at Trial Tr., v. 3, p. 535.) Dr. Vietanen agreed that there is "no apparent interrater reliability" as to use of Matrix factors. (Trial Tr., v. 10, p. 2303).

Ms. Todd-Bense, at MSOP--St. Peter, stated in an email that a lack of consistency exists as to Matrix scoring, particularly between treatment staff at St. Peter, compared to at Moose Lake. (Hébert testimony, Trial Tr., v. 12, pp. 2789-90).

Yet despite such observations and critical reports by external reviewers, MSOP has not investigated how clinicians are scoring the Matrix factors or what, if any, level of consistency exists in scoring Matrix factors. [Trial Tr. v. 1, pp. 90-92] Until 2014, MSOP did not provide training to all staff on the Matrix factors and their scoring. Not stated in these findings is whether such training has had any impact on accuracy and consistency of such scoring. Inconsistent scoring on Matrix factors can slow treatment progression.

Dr. Wilson, Trial Tr., v.3, . 536, concludes: "...[U]ltimately, we also need to have some sense of just exactly whether or not this tool [i.e., the Matrix] is telling us or doing what it's intended to do. And this speaks to the actual validity of the tool, and I'm not aware of any scientific investigation that's been done on this tool to establish what its reliability is or its validity. And unless you know those two things, how do you know what the tool is doing?" The Matrix "was just implemented without really knowing exactly what it was that it was measuring, or whether or not that was being measured consistently. This is a serious problem with respect to the psychometric ability of the tool." (Id., p. 537). The Matrix factors and the related scoring manual were developed by the MSOP or by someone under contract to the MSOP. (Ibid.).

9. MSOP's Misuse of "Dynamic Risk" Is Simply Excuse-Making to Commit and to Keep Detained.

Conceding that the 'static' actuarial approaches of ARA had proven inaccurate, the the January 2011 report to the Minnesota Legislature: "Options for Managing the Growth and Cost of [MSOP]: Facility Study" (hereinafter, the "MSOP Report"), trumpets a more recent emphasis on "dynamic risk" assessment techniques. However, this discussion ignores all of the aforementioned "protective factors that reduce recidivism likelihood." Instead, it only refers (at p. 10) to negative "dynamic risk factors" that "are associated with risk for reoffending," redefining such factors as being comprised of "psychological vulnerabilities or mechanics" that "significantly increase risk for reoffending." This contravenes the actual forensic literature, which describes "dynamic" risk factors as all things, whether internal or external, or whether deliberately altered by an individual offender or instead simply either spontaneous or inexorable (such as the effects of middle- or old-age on libido).

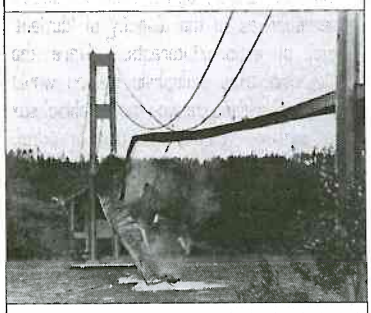
It appears that the MSOP Report's emphasis on this distorted mis-definition of "dynamic risk factors" as being an individual's purported "criminogenic needs" is a desperate attempt to redefine the overall rationale for sex offender commitment. MSOP thus spins dynamic factors as being evils particular to each sex offender, such that something terrible and ominous can be said against each one both in commitment cases and in petitions by any committed sex offender for release/discharge.

The sole dynamic risk tool used by MSOP, the Stable-2007, is widely criticized for its subjective and open-ended criteria judgment standards. Dynamic risk factor application in general is open to a vast sea of differing interpretations. Further, the statistics behind use of each specific dynamic risk factor are notoriously unstable; different researchers have reached opposing results about almost all such dynamic factors. Dr. Pascucci conceded: "...[T]here's some qualitative assessment, so I guess some subjectivity."

(Continued on page 10)

(Karsjens Trial Tr., v. 8. p. 1676).

Among the vague and subjectively assessed factors in the Stable-2007 are these: lack of concern for others, impulsivity, poor problem solving, hostility towards women, and negative emotionality. (Id., p. 1677). State v. Michael Regan, Opinion, No. 10-E-64, 2011 N.H. Super. LEXIS 110 (New Hampshire Superior Court, N. Dist. Of Hillsborough County, Apr. 12, 2011), at p. 12, adds mention of these additional factors on the Stable-2007: absence of significant social influences, a lack of capacity for relationship stability, emotional identification with children, feelings of general social rejection, sex drive/preoccupation, sex as a coping device, deviant sexual preference, and the extent of cooperation with supervision. In addition to the uncertainty as to the presence of each of these factors, just what, if any, relationship exists between most of them and sexual offending is utterly unclear and completely unproven. It is simply a list of 'guesses' at recidivism factors. While some might apply to rapists of adult women, it seems intuitively clear that those same factors (e.g., hostility toward women) have nothing to do with sexual recidivism as to pedophiles. Dr. Pascucci admitted that the Department of Human Services had never conducted a study of application of the Stable-2007 as to inter-rater reliability. (Id., p. 1678).



Moreover, this list is open-ended, and other matters may be imported into the instrument by the rater on an ad hoc basis in any given case. In Regan, for instance, the court observed: "...Because Dr. Jensen merely borrowed factors and employed them out of context, the value that Stable-2007 would ascribe to the factors is not considered. The result is the items are used in an idiosyncratic manner and without empirical support."

In Regan (ibid.), Dr. Abbott also questioned whether the items overlap or are redundant with items on the actuarials used by the MDT. For example, "Capacity for Relationship Stability" on the Stable-2007 appears to duplicate the "Intimacy Deficits" factor on the Static-99R....

"The result is that it is unclear whether applying the Stable-2007 risk items in this manner creates an artificial increase in the risk of recidivism through the use of duplicative or invalid factors. Accordingly, testimony regarding the Stable-2007 dynamic risk factors is inadmissible." (Ibid.)

"The Stable-2007 as an instrument has only been standardized on community samples, meaning that use of this tool in an institutional setting will require some modification along with a degree of caution and interpretation. This is not currently happening at MSOP." (Karsjens 706 Experts' Report, p. 40, quoted at Trial Tr., pp. 542-43; accord: Dr. Pascucci, Trial Tr., v. 8, 1679: the Stable 2007 hasn't been validated on an institutionalized population). On this, Dr. Caldwell testified that "The Stable-2007 was developed and normed with community samples. And many of the items have to do with the selection of peers, an association of other individuals, things that are essentially meaningless in a confined setting where the individual is only allowed to interact with certain individuals under certain limited circumstances. And so, that is really not an appropriate scoring risk scale for an individual that has been confined. It's really not an appropriate scale to be using. I would not expect those -- I don't think there is any basis to expect that those scores would be valid." (Karsjens Trial Tr., v. 11, p. 2508).

Despite this fundamental criticism, Dr. Wilson observed that MSOP uses the Stable-2007 "as part of the treatment progress review. I think it's also used if there is an evaluation for the SRB. So if someone is going forward to the SRB -- and actually, that's where we observed it most. We had the opportunity to observe two or three SRB hearings, and in those, there was reference to the Stable-2007." Karsjens Trial Tr., v. 3, pp. 548-49). Dr. Freeman stated flatly that MSOP use of the Stable-2007 "is not appropriate for an inpatient population." (Id. v. 4, p. 769). See also: Gregory DeClue, "Avoiding Garbage 2: Assessment of Risk for Sexual Violence after Long-Term Treatment," 33 J. Psychiatry & L. 179, 198 (2005) (advising caution in the use of dynamic risk factors in determining whether offenders continue to meet commitment criteria).

Dr. Herbert testified that other actuarial tools may be used by her assessment staff as well. This includes the VRS-SO. She testified that this tool creates a lot of subjective decision-making by the assessor. Obviously, such subjectivity is the cause of grave inaccuracy, just as it is in so-called clinical-judgment-based assessment. (Trial Tr., v. 24, p. 5209).

Some evaluators of sex offender recidivism have striven to "adjust" (almost invariably upward) scores derived from a given RAI on "clinical" considerations. This is just an attempt to resurrect the "CRA" approach despite its extreme inaccuracy. To justify this, such clinical evaluators will cite certain facts that they claim are beyond the factors examined by the RAI that such evaluators claim need to be reckoned into the probability of the subject sex offender's likelihood of future re-offense. However, the range of such supposedly extraneous matters proposed by clinically oriented evaluators as further factors, upon which to justify inflating the RAI-derived recidivism probability is endless. Dennis M. Doren, Evaluating Sex Offenders: A Manual for Civil Commitments and Beyond (Sage Publ'ns. 2002), at pp. 167-68, cites these, for instance, as among such matters lacking in scientific confirmation:

"insulting, teasing, and obnoxious verbal behaviors; lack of consideration of others; unconventional attitudes; criminal attitudes; shallow affect, superficiality; tension; medication noncompliance; problems with housekeeping or cooking; poor self-care and personal hygiene; substance abuse; physical self-abuse; suggestible and easily led; problems with money management; ...firestarting; criminal associates; inappropriate dependency).... excitement, anxiety, mania, anger, ...depression, guilt feelings.... poor use of leisure time, unpopular, social withdrawal, inactivity, excessive shyness, ...poor assertion, lack of family support).... violent lifestyle, criminal personality, ...weapon use, substance abuse...."

Dr. Vietanen explained the impact of this procedure:

"Q. What would a higher score on the Stable mean?

"A. A higher scoring increases risk. So I can give you an example.

"Q. Please.

"A. On the Stable, these are dynamic risk factors. I may read someone's finding of fact and not see impulsivity, for instance, in their offending pattern. So I may have scored it a 1 in the middle, because they are getting a 0, 1 or a 2. So until we get to know them better, we don't know, are they a 0, you know, with really not an impulsivity problem, or are they a 2 with a huge impulsivity problem and I just didn't see it? And Dr. Allen explained to me that until we get to know them better, we will assume it is higher. So there were multiple times that they went to 2s when I would have scored them 1s until we got a better handle on the client." (Trial Tr., Id., pp. 2299-2300). Dr. Vietanen stated that this happened "regularly." (Id., p. 2364).

Thus, in essence, Dr. Vietanen was being told by her superiors to err on the side of assuming greater danger than any known facts would warrant, and often contrary to known facts (such as those in the findings of fact in her example), and to continue to do so until some contrary information disproved the factor in question.

Even more troubling, Dr. Vietanen testified that group therapy notes are sometimes written in deliberately adverse ways in an effort to thwart a given treatment participant's progress in treatment simply because he is disliked, citing this example:

"...[T]he staff was told to document every single thing Mr. Karsjens did in group. That seemed inappropriate. Part of what Mr. Karsjens was asking was how are we supposed to feel safe in a treatment group when we have persons who were security personnel now in our treatment group? And that was a real sticking point for him. My question to our clinical supervisor on the unit was, are you asking us to target Mr. Karsjens in documentation for his behavior more than anybody else? I didn't get a response. I got a look." (Id., p. 2308).

Lawyer X, Deviant Justice: The American Gulag, (In Depth Media, 2014, avail.: www.amazon.com), at pp. 83-84, adds these further "dynamic factors": "poor social support, antisocial peers, antisocial/impulsive lifestyles, ...hostility, ...anxiety, poor coping mechanisms, substance abuse, intimacy deficits, ...unemployment, ...poor grooming." Many of these are "acute," that is, varying greatly from one period to the next (e.g., daily, weekly, or monthly variation). All of these matters are amorphous and subject to extremely subjective judgment. Moreover, none of them has any clearly demonstrated causal or indicative relationship to sex crime commission.

Lawyer X, supra, at 90-91, cites Prentky, Janus, et al, "Sexually Violent Predators....", supra, at 12 Psychol., Pub. Pol'y & Law 378 as explaining that use of these claimed factors is done in an adverse, 'cherry-picking' manner, seeking to confirm an a priori opinion that the offender remains dangerous. In other words, merely any criticism whatsoever that can be laid against a given sex offender, regardless how far removed from sex offending, can be claimed, with no scientific accountability, to justify increasing the asserted level of sex-crime recidivism probability. This is the end of science.

Lawyer X, ibid., states that the aforementioned MSOP Report admits use of such "negative dynamic risk factors," but redefining them even more amorphously as "psychological vulnerabilities or mechanics" that "significantly increase risk of reoffending." This contravenes the actual forensic literature, which describes dynamic risk factors as "all things, whether external or internal, or whether deliberately altered by an individual offender or instead simply either spontaneous or inexorable (such as the effects of middle age on libido).

It appears that the MSOP Report's emphasis on this mis-definition of "dynamic risk factors" as being on an individual's purported "criminogenic needs" is a desperate

attempt at reinventing the rationale for commitment in a way that returns the focus to 'clinical impressions' without any accountability. Now MSOP wants to spin dynamic factors as reflecting evils particular to each sex offender, such that something terrible and ominous can be said against each one in commitment or release proceedings. In other words, things that MSOP calls "dynamic risk factors" are all adverse claimed "deficits" that the sex offender must "work on, and, so it is claimed, only MSOP treatment in commitment can allow that. This is the rankest departure from science imaginable, and a deliberate subsidence into the miring depths of pure character assassination in service of rationalizing a 'permanent employment plan' for MSOP 'therapists' – at the expense of their captives' permanent loss of freedom as fodder to this vicious system.

By our very nature, humans are not only changeable, we are constantly changing, even when we don't want to and when we are unaware of such personal change. Even firm intent to recidivate can, and usually does melt away over time as individuals experience and witness numerous events, learn of myriad things, and have discourse with any number of other individuals. Life is full of advance repentance of such temptations to do evil deeds, whether petty or enormous. As surely as each one of us has experienced some such abandoned temptation, it is unfair to treat others as incapable of such abandonment of temptation. To commit someone to lifetime detention engages exactly that presumption, and then puts the seal of judicial condemnation, not upon the deed, but upon the man.

10. MSOP's "Need Areas" Rhetoric Is Excuse-Making to Commit and to Keep Detained.

According to the Minnesota Sex Offender Program (MSOP) "Program Theory Manual," "Overview Of Treatment For Sexual Abusers" section, MSOP adheres to the triad of principles known as "risk, need, and responsivity" ("RNR"). "Responsivity" refers simply to claimed effectiveness of certain treatment approaches. However, "risk" and "need" refer to various factors about individuals committed to MSOP that are deemed by treatment staff to increase the likelihood of recidivism by that individual. While some of these "risk" and "need" factors are dynamic (capable of change by the particular MSOP detainee), most rest on facts of one's biography, including most dating all the way back to one's childhood. These are immutable, "static" factors of historical fact that cannot be altered. Accordingly, no matter how perfectly one participates in, and even completes MSOP treatment, he can be still deemed 'too dangerous to release,' simply because of these happenstances of personal background, about which he had no control at the time, and about which he can do nothing now.

Melissa Hamilton, "Risk-Needs Assessment: Constitutional and Ethical Challenges," 52 American Criminal Law Review 231 (Spring 2015), at 240-42, succinctly summarizes this assessment technique thus:

"Risk-needs tools normally score at least several demographic characteristics of the individuals evaluated. Among various instruments, these entail age, gender, citizenship, and marital status [citing for these the following instruments and guides: PCRA; PTRA; VRAG; Static-99; COMPAS; and MnSOST-3.1); see also Sonja B. Starr, Evidence-Based Sentencing and the Scientific Rationalization of Discrimination, 66 Stan. L. Rev. 803, 823 n. 76 (2014) (listing instruments that incorporate gender). PCRA includes the Psychological Inventory of Criminal Thinking Styles (PICTS) with a gender-based scoring system]. Risk-needs tools orient toward rating demographic variable regarding various aspects of family of origin, including having lived with both biological parents until age sixteen, a criminal family, parental alcohol problem, and current family situation. Ratings are commonly provided relative to the individual's personal history, namely criminal background, educational attainment, and employment stability [citing as to these: VRAG; LSI-R; COMPAS; PCRA; Static-99; HCR-20; and PTRA]. The instruments often contain measures implicating socioeconomic status, such as financial condition, ownership of home, residential stability, and living in a neighborhood with high crime or illegal drug activity [citing on these: LSI-R; COMPAS; PTRA; see also Edward Latessa et al., "Creation and Validation of the Ohio Risk Assessment System, Final Report," 49 app A & note 84 (2009), available at http://www.ocjs.ohio.gov/ORAS_FinalReport.pdf (describing the Ohio Risk Assessment System: Pretrial Assessment Tool).

"Some risk-needs tools compile and rate various aspects of personal and social functioning. Examples consist of elementary school maladjustment [e.g., VRAG; see also LSI-R (rating school suspensions and level of participation in school activities)] and problems with personal support [e.g., HCR-20], in addition to factors focused on reliance on social services or public assistance [e.g., LSI-R], which may suggest deficits in personal responsibility. Various measures rate relationship issues involving family, consisting of relationship with parents and marital/family problems, and social functioning, such as a history of problems with relationships, social adjustment problems, lack of pro social support, and maintaining criminal acquaintances. [collectively citing: PCRA; LSI-R; HCR-20; COMPAS].

"Addictions and mental conditions are commonly integrated therein. These include problems with alcohol or drugs, a history of a mental disorder, personality disorder, psychopathy, or of mental health treatment. Several of the instruments judge attitudes, such as temperament towards supervision and change, lack of insight, personal instability, and problems with stress and coping. [collectively citing on these: PCRA; VRAG; LSI-R; PTRA; HCR-20; and COMPAS]

"....[R]eliance upon risk-needs assessments when they incorporate potentially problematic factors in the important arena of criminal justice decisions incites constitutional and moralistic concerns. ...The moral issues involve political unease when decisions are based on immutable characteristics over which individuals have no personal control or that may serve directly or by proxy to replicate discriminatory practices."

Each of the underlined words/phrases in this quote refer to matters that are either historical, beyond the control of the individual in question or otherwise immutable, concern one's freedom of thought (e.g., "attitude"), or simply blame the individual for the mental/emotional shortcomings or problems that hamper him. When MSOP applies these claimed recidivism factors under guise of "dynamic" considerations,' it is actually simply claiming such immutable factors, such matters of personal choice and freedom of thought, and mental and emotional states besetting the individual, which the individual either cannot change or which are not legal subject of a demand for change or relinquishment.

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

"Notwithstanding the issue of what objects of interest are irregular, it is evident that fantasy and sexual interest are not always linked to actual sexual activity. A recent study comparing samples of undergraduate males with convicted child molesters showed the former had more fantasies overall and more with sadomasochistic themes, even after adjusting for the potential for the molester group to underreport because of offenders' likelihood to provide biased responses in an attempt to provide socially desirable answers." (M. Hamilton, supra, at p. 561)

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

An illustration of this true MSOP intent never to release its detainees pertains to pedosexuals/pedophiles (to whom MSOP refers collectively as "sexual deviancy"). Two-thirds of MSOP detainees have evinced this attraction. MSOP contends in support of commitment and of denial of release that simply being a pedophile presents "criminogenic needs"; that the pedophile must be committed; and that he "needs" treatment, or if he has already had treatment, that he needs more treatment, ad infinitum until death. According to MSOP, in order to satisfy the "meaningful change" standard for release from MSOP detention, a pedophile would have to prove that he no longer has pedophilic attractions. Because this is an impossibility, the pedophile will always be deemed to have ultimately "failed" treatment, and will remain locked up in MSOP until death, if MSOP gets its way.

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

Indeed, MSOP describes "criminogenic needs" as comprised of "need areas," including "sexual deviancy, antisocial attitudes and beliefs, relationship problems, and problems with self-regulation." In other words, everything that MSOP calls "dynamic risk factors" are adverse claimed "deficits" that sex offenders must "work on." MSOP's implication is that only treatment can allow that, and only MSOP will do. From time to time, MSOP treatment staff will cite a new deficit that a given sex offender detainee must work on. By doing this, MSOP staff permanently forestall treatment completion by any given detainee and therefore his eligibility for release. That is to say, these things that MSOP calls "dynamic" are things claimed to absolutely require treatment – in other words, 'things to work on' as an excuse to commit and to keep committed.

(Continued on page 12)

(Continued from page 11)

Sisyphus Had to Repeatedly Push the Downward Rolling Rock Uphill Forever.

11. MSOP Applies Ad Hoc Roadblocks to Progression Through Treatment Based on Abuse of the Tremendous Disparity in Power Between Treatment Staff and Participating Detainees.

Dr. Berlin's Report to Schiff Hardin & Waite, etc., at p. 10, offers this further insightful observation as to another parallel between Minnesota's MSOP and the treatment program in Illinois' sex offender commitment system:

"...[I]t can become all too easy [as a therapist] to dismiss genuine differences of opinion, or differences in construals and perception, as tactics that are an impediment to treatment. Thus, when a therapist is trying to get others to see things his (or her) way, he is generally viewed as being 'persuasive,' whereas when a patient tries to get others to see things his way, there is the risk that he will be viewed as being 'manipulative.' Engaging in permissible legal suits can be viewed as a tactic; sitting quietly and keeping to one's self can be viewed as an instance of being 'isolative and withdrawn'; and vigorously expressing a different point of view can be labeled as 'resistant to treatment, lacking in empathy, and oppositional.' Talking in therapy about the possibly improper actions of teenaged victims, or about one's own childhood victimization, can be viewed either as 'a failure to assume responsibility,' or as 'taking a victim's stance.' Of course, each such observation about a given patient in treatment could actually, in point of fact, be quite accurate. However, because there is such a tremendous disparity in power between staff and patients, in my judgment, it is imperative that some truly independent system of checks and balances be put permanently in place to avoid any such inadvertent abuse of that power."

MSOP therapists regularly make such judgments in treatment notes about a given participant, and in turn use the fact of such observations as one reason to deny phase advancement to that participant, and occasionally, as a reason to demote the detainee to a lower phase. These subjective judgments, with no way to contest them, and in most cases no means to find out about them until much later -- if ever, are fundamentally unfair to a treatment participant against whom they are made. Worse, because they are made without announcement, and because there is no body of independent hearing-officer-like decision makers as to such judgments, such judgments cannot be challenged in any meaningful effective way. A treatment participant has no protection or recourse from abuses that occur in this ad hoc judgment-making process.

12. MSOP Engages Only in a Sham of Treatment.

In Kansas v. Hendricks, Justice Kennedy, as the 'swing vote,' wrote a short concurrence emphasizing that treatment underpins the civil nature of involuntary confinement and that treatment must be more than a 'mere pretext':

"If the object or purpose of the Kansas law had been to provide treatment, but the treatment provisions were adopted as a sham or pretext, there would have been an indication of the forbidden purpose to punish." (Hendricks, 521 U.S. at 371).

As Justice Kennedy correctly predicted, 'the practical effect of the Kansas law may be to impose confinement for life. ...Psychiatrists or other professionals engaged in treating pedophilia may be reluctant to find measurable success in treatment even after a long period and may be unable to predict that no serious danger will come from release of the detainee.' (Kansas v. Hendricks, supra, at 521 U.S. 372) That prediction applies even more accurately, when after more than 20 years of MSOP operation, only two persons had been released. The recent group of four 'show releases discussed above does not significantly change this infinitesimal release percentage.

Warren J. Maas, "Erosion of Constitutional Rights in Commitment of Sex Offenders," 29 William Mitchell Law Review 1241, at 1258, 1262 (2003), states:

"The concerns Justice Wahl raised in Blodgett [557 N.W.2d 171, 201 (Minn. 1996)] apply with equal force to Linehan II and the SDP statute; that is, if the treatment is 'sham' or 'placebo' in nature, the statute runs afoul of constitutional proscriptions against double jeopardy and preventive detention."... One method to determine whether the treatment program is a 'sham' or 'placebo' would be to look at the focus of the treatment program. The focus of the treatment program at MSOP appears to be preventing breaches of security and only tangentially on treatment."

Only 11% of the annual MSOP budget is allocated to treatment. Likewise, only 11% of its staff is involved in treatment. The largest component of the high operating cost of MSOP-ML is that of security staffing (almost a one-to-one ratio with detainees). However, security staffing needed to monitor the new Complex One and the projected Complex Two units is minimal, due to open sight-lines in their design.

In 2011, MSOP administrators declared that no releases were anticipated anytime in the foreseeable future. MSOP's projected number of detainees in 2020 is based solely on current rates of commitment, with no deduction for any projected releases. In the absence of any anticipation of any releases in any of the next several years, it is clear that MSOP is utterly disingenuous about treatment in MSOP as a pathway to release. In its MSOP Report, supra (p. 9), MSOP boasts that it offers 'the longest treatment durations,' apparently as a goal in and of itself. This supports the inference that, as its goal and that of the legislature, MSOP intends to keep its detainees confined for as long as possible.

In that circumstance especially, such endless, pointless treatment becomes apparent as 'adopted as a sham or mere pretext' (id., p. 371), leaving only such lifetime preventive detention, a subject exclusively for criminal sentencing. See, e.g., Jackson v. Indiana, 406 U.S. 715, 738 (1972) [indefinite confinement of criminal defendant incompetent to stand trial, whether or not in a mental hospital, invalidated]; accord: Zadvydas v. Davis, 533 U.S. 678, 690 (2001). Cf.: People v. Feagley, 535 P.2d 373 (Cal. 1975), ordering release of a 'sexually dangerous person,' the court stating that 'adequate and effective treatment is constitutionally required' because, without it, 'the hospital is transformed into a penitentiary where one could be held indefinitely for no convicted offense.' (Id., at 387), 'nothing ...but bare incarceration for the protection of society'. (Id., p. 396).

On a factual level, in sharp distinction from Kansas' assertion of 31.5 hours per week of treatment of Mr. Hendricks, Minnesota's MSOP currently provides only 4-8 hours of such 'treatment' weekly — effectively nothing more than a 'show' of what really is just a pretense of earnest treatment. The issue of a strong right to treatment is addressed infra, in accordance with Janus & Logan's conclusion that, in such commitments, such a strong right to treatment must exist, without which such commitments are void.

By the foregoing facts, and by others alleged in the Gladden v. Swanson et al. Complaint, at ¶¶ 345-411, the only plausible inference is that the claimed treatment aim of the SPP/SDP Act is merely a sham – a pure pretext for unqualified, permanent preventive detention.

Not to be ignored is Duwe's finding that, in a random sample of those committed to MSOP, less than 10%, according to MnSOST's (highly inflated) actuarial rating, would be at least equally likely (50-50) to sexually reoffend if released—completely irrespective of whether they participated in, much less 'successfully' so, in MSOP treatment. In effect, treatment is administered in MSOP purely to legitimize the true aim of punitive preventive detention, despite knowledge that almost all in MSOP do not present any significant likelihood of sexual re-offense if released. Thus, not only is SPP/SDP commitment in Minnesota actually a matter of pure preventive detention, as sheer incapacitation, deterrence, and further retribution, it is extremely excessive at such preventive detention. Because MSOP-style 'treatment' is not needed to achieve this low level of probability of re-offense, there is no measurable 'success rate' for MSOP treatment; detainees would present essentially the same low risk without any such treatment at all.

At Karsjens Conclusion 36, Judge Frank of Minnesota's United States District Court declared:

"...[T]he statute, as applied, is a three-phased treatment system with "chutes-and-ladders"-type mechanisms for impeding progression, without periodic review of progress, which has the effect of confinement to the MSOP facilities for life. As a result, section 253D, on its face and as applied, is not narrowly tailored and results in a punitive effect and application contrary to the purpose of civil commitment. See Hendricks, 521 U.S. at 361-62."

13. The Constitution Requires A Committed Person To Be Released When He No Longer Meets Commitment Criteria.

Janus & Logan, supra, explain this contention at p. 341-42: "Another central limit on the states' commitment authority is the principle that the duration of a civil commitment must be related to its purpose. That is, regardless of the validity of the initial judgment of commitment, confinement must end when its justification expires." (citing O'Connor v. Donaldson, 422 U.S. 563 at 574-75, 45 L Ed 2d 396, 95 S Ct 2486 (1975): "Nor is it enough that Donaldson's original confinement was [422 US 575] founded upon a constitutionally adequate basis, if in fact it was, because even if his involuntary confinement was initially permissible, it could not constitutionally continue after that basis no longer existed. Jackson v Indiana, supra, at 738, 32 L Ed 2d 435, 92 S Ct 1845; McNeil v Director, Patuxent Institution, supra.").

"In the parens patriae context, this principle is illustrated by Donaldson, which stated that it is not enough that Donaldson's original confinement was founded upon a constitutionally adequate basis, if in fact it was,

(Continued on page 13)

(Continued from page 12)

because even if his involuntary confinement was initially permissible, it could not constitutionally continue after that basis no longer existed.' [Donaldson, 422 U.S. at 574-75]"

Discussing Donaldson and Jones v United States, 463 US 354, 77 L Ed 2d 694, 103 S Ct 3043 (1983), the Supreme Court, in Foucha v. Louisiana, 504 U.S. 71, 79, 118 L Ed 2d 437, 112 S Ct 1780 (1992), concluded: "We held, however, that "[t]he committed acquittee is entitled to release when he has recovered his sanity or is no longer dangerous," id., at 368, 77 L Ed 2d 694, 103 S Ct 3043; "i.e., the acquittee may be held as long as he is both mentally ill and dangerous, but no longer."

Neither Kansas v. Hendricks, Kansas v. Crane, nor any other holding since Foucha has addressed this issue. It is worthy of note, however, that Justice Breyer's dissent in Hendricks, at 521 U.S. 393-94, observed that:

"Salerno ...involved the brief detention of that person, after a finding of "probable cause" that he had committed a crime that would justify further imprisonment, and only pending a speedy judicial determination of guilt or innocence. This Court, in Foucha, emphasized the fact that the confinement at issue in Salerno was 'strictly limited in duration.' 504 US, at 82, 118 L Ed 2d 437, 112 S Ct 1780. It described [521 US 394] that "pretrial detention of arrestees" as "one of those carefully limited exceptions permitted by the Due Process Clause." Id., at 83, 118 L Ed 2d 437, 112 S Ct 1780. And it held that Salerno did not authorize the indefinite detention, on grounds of dangerousness, of "insanity acquittees who are not mentally ill but who do not prove they would not be dangerous to others." 504 US, at 83, 118 L Ed 2d 437, 112 S Ct 1780."

Therefore, Foucha still must be deemed controlling on this point.

Thus, when a given committed sex offender no longer meets the commitment criteria of the SPP/SDP statute, that commitment must end, if the statute is not to be deemed one aimed at pure infliction of supplemental criminal punishment, and if it is not reduced to sheer preventive detention.

Notes:

1. In its January 2011 report to the Minnesota Legislature: "Options for Managing the Growth and Cost of [MSOP]: Facility Study" (hereinafter, the "MSOP Report") MSOP boasts that it offers "the longest treatment durations," apparently as a goal in and of itself. (Id., p. 9). This supports the inference that, as its goal and that of the legislature to which it addressed that statement, MSOP intends to keep its detainees confined for as long as possible.
2. Therapists suggest to clients that treatment must 'blame your family' in order to 'change you.'
3. Clients frequently come into treatment expressing allegations and complaints about people close to them. These allegations may be directed at spouses, siblings, or parents. Seeking the client's loyalty, therapists often endorse these allegations. As a result, clients and therapist begin to think of the people with whom the client is disaffected, to some degree, as villains. This often leads to the client assuming the role of a beleaguered victim; and the therapist evolves as an altruistic savior, assisting the client to contend with the villains of a 'toxic family.'
4. Therapists 'prime' their clients for analyses of their supposed deficits in great depth and detail. Therapists exercise priming effects via leading questions and other suggestive influences. Therapists lead clients into biased searches for their deficits and shortcomings. Simultaneously, therapists overlook their clients' strengths and resources. These biased searches then leave clients more discouraged and pessimistic via mood-congruent memory effects influencing how clients think about themselves and their life situations.
5. Treating therapists characteristically view clinical disorders as more severe than they actually are. Their views in this regard lead them into overestimating the duration of treatment necessary to assist clients. Relevant research demonstrates that treatment of longer duration is not associated with better outcome.
6. Noted polygraph expert Kenneth Blackstone, in "BNA Insights, Sex Offenders: Post-Adjudication Polygraph: A Discussion of the Science and the Law," 90 Criminal Law Reporter, No. 9, pp. 306-08 (2012), declares that the 'dragnet' manner of such polygraph misuse is no more accurate than pure chance (50-50%).Thus, a sex offender can easily be mis-assessed as lying, when in fact he is telling the truth.
7. For instance, Dennis M. Doren, Evaluating Sex Offenders: A Manual for Civil Commitments and Beyond (Sage Publns., 2002) explains at p. 47: "The actual utility of polygraph assessments for civil commitment is ...in the contents of the pre- and post-testing interviews of the subjects. It is during those interviews that many subjects disclose information not otherwise recorded." NYS DPCA Research Bulletin 3: The Use of the Polygraph, at p. 3, candidly admits that post-test questioning is 'crucial' 'because it offers the offender the chance to explain deception or confess to behavior that heretofore had not been disclosed.' Faced with an assertion (whether true or false) by the examiner that the test result indicates deception, many tested sex offenders make self-incriminating admissions at this point. Page 12 includes the boast that obtaining such admissions ("truth facilitation") is a core purpose of such testing, as is providing information from such test responses to the supervising agent (in the case of probation or parole), where such agents can decide to seek parole revocation based thereon, for instance – an obviously criminal-case application, regardless that it may arise in a sex offender commitment context.
8. In United States v. McLaurin, 731 F.3d. 258, 264 (2d Cir, 2013), a release condition of plethysmography was struck down, the Second Circuit declaring that "the [penile] plethysmographic condition does not bear adequate relation to the statutory goals of sentencing to outweigh the harm it inflicts, that it involves a greater deprivation of liberty than is reasonably necessary to serve any of those statutory goals, and that it may not, consistent with substantive due process, be imposed on [the defendant]."

Seeing Things for What They Are

Editor's End-Note: This list continues in Part 3, which will appear in the next issue of TLP.

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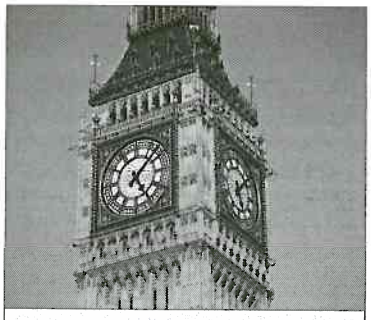
Your Non-Offending Robotic Future

Editor's Note: In case you haven't been following along from news reports, the following article excerpts will bring you up to date somewhat on recent developments in androidal robotics, that is, robots who appear, act, and talk convincingly like real human beings.

Perhaps because of movies such as *Blade Runner* and *AI*, recent work in this field has brought these androids to that fully convincing state, deserving the name "simulacra." These simulacra do not have actual self-aware consciousness, only a behavioral (but very good) simulation of it. (That's probably a good idea, by the way, for reasons too complex to examine here.)

Without more here, first the articles that serve as this backgrounder, followed by some comments of mine on the current state of the art, then another excerpt on the current discussion about specific use of such simulacra as a substitute sex-and-love object for those with pedosexual orientation and other sexual desires deemed harmful or problematic.



Better Check the Date on Your Watch. Things Are Speeding Up.

1. Sidebar excerpts: (*Charley Locke*), "Bots Like Us: A View of the Uncanny Valley," *Wired*, 25.04 (April 2017), p. 24:

"Robot skin ...Texas-based Hanson Robotics calls it Frubber, and it gives [androids] a range of facial expressions....

"Can you put human consciousness in a bot? The inventor of Bina48 tried, programming her with 20 hours of his wife's recorded memories. When a photographer of robots met Bina48, she was philosophizing about Sartre and the human condition."

Comment: I haven't heard this particular monologue, but I have heard others, plus short excerpts of dialog in which a simulacron (the singular form) was a participant. While they are not based on true consciousness, such conversational efforts by simulacra representing the current state of the art are surprisingly realistic, extremely close to how a human being speaks.

This can be expected to get even better in the near future, such that a simulacron not endowed with actual consciousness (not even certain to be possible) will be able to hold a conversation with you totally appropriate to the circumstance and subject of the moment, and be indistinguishable from conversation by a human.

The point: True self-aware consciousness is not necessary for a satisfactory interaction or social relationship of any specific kind with a simulacron. I do not endorse the fear of a 'Terminator' scenario by truly conscious simulacra who eventually tire of humans and band together for their extermination. Nevertheless, the possibility that consciousness may carry with it actual emotions that can result in suffering emotional trauma, and also in resentments and anger, and potentially even murderous violence by a simulacron bearing true consciousness is the most compelling argument for avoiding that development. A non-conscious simulacron is at core simply an elaborately programmed machine, incapable of any actual feelings or emotions. Let's keep it that way.

2. Department excerpt: *Jonathon Keats*, "Jargon Watch" *Wired*, 25.05 (May 2017), p. 22:

"Thubber: Thermally conductive rubber.

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Permeated with liquid metal, it's the first highly elastic material that can dissipate heat, making it ideal for flexible circuitry or even artificial muscles – researchers created a soft robotic fish that swims without motors or gears."

Comment: I threw the foregoing excerpt in just to show that development such as this have achieved two key objectives: (1) the realistic haptic feel of simulacron skin, and (2) the ability of a simulacron to move smoothly and with realistic acceleration and deceleration of movement, as humans do (we usually call this "graceful" movement). Until these breakthroughs, simulacron skin always had a distinctly artificial and cold feel and simulacron movement was jerky and even audibly mechanical.

3. Article: "Can a Robot Mend a Lonely Heart?," by *Max Taves, CNet.com*, Summer 2016, pp. 60-61:

Subtitle: "Sex toys could either make human contact unnecessary, or help the socially awkward learn intimacy."

Nukeno doesn't use his real name on DollForum.com.

That's not much of a surprise, since the online message board is all about the ins and outs of erotic dolls, as in the kind men have sex with. Some regulars use the site to trade tips on gel butt implants. Others complain about the pubic hair of one doll or the breasts of another.

Nukeno, however, uses it to tell the crowd what makes him happy: Nele and Kiko, his two dolls.

"Perhaps I have been alone for too long," writes the self-described 34-year-old from Germany. "Perhaps I have found in my dolls what I was looking for in vain among humans for an even longer time. Being a quiet man myself, my two silent companions and I (are) getting along quite well."

For most people, erotic dolls represent a hidden world populated by men incapable of interacting with members of the opposite sex. It feels almost sordid – especially for a society that doesn't blink an eye at violence but is unnerved by sex.

Today's erotic dolls are passive – making them the sex toy equivalent of the flip phone. But thanks to virtual reality and hardware that plugs into phones, the latest sex toys can redefine the meaning of "long-distance relationships" while others can take humans completely out of the sexual equation. Now, a few doll makers and researchers would like to add artificial intelligence to the mix, creating erotic dolls that would do a lot more than just lay around. When that happens, it could isolate Nukeno and others like him even more – or it could help them learn real, person-to-person intimacy.

"[AI] could open the hearts of men and women," says Justine Cassell, an AI expert and associate dean at Carnegie Mellon. "[That] might offer transitional stages between being entirely closed down and being able to feel emotion."

Robot love

Nukeno might soon be able to find erotic dolls that greet him when he walks in the door, ask him how his day went, learn who his friends are and a lot more. When he does, he can thank Matt McMullen of Abyss Creations.

Over the past 20 years, McMullen has built RealDolls – think super-sexualized silicone playthings so lifelike that customers pay up to $10,000 for them – into the gold standard of the erotic doll industry. Fans call him Leonardo di Vagina.

Now McMullen, 47, is working to bring his dolls to life using artificial intelligence to give them the ability to listen, remember and talk like a real person.

The goal is to "create the illusion that this [doll] actually cares about who you are," McMullen says. In a nutshell, it's going to appeal to people who, for one reason or another, don't have a real relationship that gives them something to look forward to when they get home."

McMullen calls this next-generation doll a Realbotix, a verbal blend of RealDoll and robot. And his efforts point to a future where robots will play an intimate role in the lives of the elderly, the lonely, and the broken-hearted, say both computer and social scientists.

"People will fall in love with them, people will want to marry them, people will have sex with them," says David Levy, an AI expert and the author of "Love + Sex with Robots."

Levy even predicts marriages between humans and robots will be common by 2050. He's also working to make human-bot relations a thing. He's twice won the Loebner Prize, awarded for AI software that sounds the most like a real person having a conversation.

Now his company, Intelligent Toys, is working on AI software that can flirt convincingly with humans.

Do you love me?

Who'd want to have a relationship with a bot anyway?

"There are many people out there who, at certain times don't have anyone to talk to, or they don't have anyone to laugh [with] or to love them," says Levy, who sees his program being especially valuable to the elderly.

"They're living alone. They don't have anyone they can chat with," he says. "Switch on the computer and have a chat."

In fact, the elderly are already getting help with Paro, a therapeutic robot that looks like a baby harp seal. With five sensors that detect light, touch, sound, temperature and posture, Paro can connect with people like a real animal. And like a real animal, Paro has been found to reduce patients' stress and help them socialize with other patients. It's been used in Japanese nursing homes and for treating dementia patients in England.

So what happens when sexbots can interact with humans like, you know, real humans?

Bryant Paul, a researcher at the Kinsey Institute of Indiana University, worries that people will have a hard time measuring up against their digital competition. If you make the AI good enough and the pleasure function is high enough, what's the allure of going into the real dating pool?" he asks. "Why bother with the aggravation?"

Danielle Knafo, a professor of clinical psychology at Long Island University, knows that's a real possibility.

Knafo has been researching the allure of erotic dolls since the mid-2000s, when a twice-divorced 48-year-old patient told her he was in love with one. Since then, she's interviewed 15 doll owners before publishing her study, "Guys and Dolls: Relational Life in the Technological Era."

Her findings give her hope about the ways smart, sexy robots will affect human intimacy.

For some men, the dolls are a "transition," she says – a way to get "comfortable with the female body and then build confidence enough to approach a real woman."

For others, "it offers a certain kind of man who cannot approach women or be with women ...an option," she says. "This is the way they can have that kind of relationship in their life. Everybody needs love.

"Everybody needs connection. Why live without it?"

Comment: This article may strike you at first as eccentric, perhaps even somewhat bizarre. But that reaction is due simply to the novelty of the simulacra option. In reality, the fact that sufficient numbers of people have already been attracted to even non-moving dolls telegraphs that once simulacra finish crossing the "uncanny valley" of eerie similarity, but not quite identical appearance, touch, motion, and speech of human beings to the goal of such identical qualities, interest in such simulacra will truly explode.

Progress toward that achievement of imperceptibility of differences is rapidly accelerating as this is written. Thus, it is reasonable to believe that simulacra of this level of convincing identity will be offered for sale or lease within the next ten years.

The fact is that "social robotics" will include keeping the elderly company and assisting them, and will tutor society's children as well as serving as romantic and sexual partners to many. Perhaps in 25 years, simulacra will be so ubiquitous throughout society that life without one in each household may seem deprived. Hence, certainly by that time, banning them to the very group that truly needs them — that is, those attracted to sexual acts and/or to sexual partners deemed illegal — will seem odd, cruel, and even criminogenic. I will say more about this in my final comment, below.

Android Child, 1772 A.D.

4. Quotes from "Friend for Life," by *Adam Piore, Popular Science*, November, 2014, pp. 39-44, 83-84:

p. 40: [caption:] Pepper, Japan's first affordable social robot, goes on sale in February. It can read emotions and will be a platform for new apps.

p. 40: [caption:] Affetto, modeled after a toddler, can make facial expressions designed to stimulate the brain activity that occurs when a parent observes its own child.

[text:] Geminoid F is seated at the front of the room like a debutante, her hands resting daintily on her lap and her long black hair unspooling down a fuzzy, green sweater. She blinks from time to time and her chest moves up and down rhythmically. She slowly scans the room, as if searching for a friend across a crowded cotillion. When her eyes meet mine, there's a flash of recognition, and for the briefest of moments, I feel as though Geminoid can actually see me. Perhaps she even knows me.

Then her eyes move on, and the spell is broken. Instead of connected, I feel repulsed. There's something too stiff and slow in Geminoid F's motions, as if she's a zombie. "This robot is very humanlike compared to others," says Hiroshi Ishiguro, the roboticist who invented her. "But she's not perfect."

Ishiguro, an artist-turned-engineer, works at the extreme edge of robotics and

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has gained renown for eerily lifelike creations.... A perfect replica of his daughter at age 4, chubby-cheeked and in a sun dress, stands in a glass display case. Other robots of various sizes and shapes stare glassy-eyed, frozen mid-gaze.

For much of his career, Ishiguro has probed the conflicting emotions inspired by robots, like the affection and aversion I just felt toward Geminoid F. He says it's the mismatch between the android appearance and movements that creates the "uncanny valley." Coined by Japanese roboticist Masahiro Mori in the 1970s, the term describes the dread caused by a robot that comes close to human likeness but fails to fully achieve it. When a robot looks like a person, we subconsciously expect it to move with the ease and speed of one. When it doesn't, Ishiguro says, our brains convey an error message, a neural signature that he believes he and his collaborators have identified using fMRI. It's only a matter of time before technology, in the form of better actuators, can smoothly replicate human movement, Ishiguro says, resolving that discrepancy and eliminating the uncanny valley altogether.

pp. 40-41: "But what Ishiguro finds more interesting is how Geminoid F elicits the first, more ephemeral reaction – the illusion of life. She has what Ishiguro calls sonzai-kan, or a presence...."

pp. 41-42: "Robots with sonzai-kan can help relieve loneliness, Ishiguro believes, by providing a physical proxy that distant friends and relatives can use to interact with one another. Or they can serve as extensions of oneself. Ishiguro has already attempted to incorporate an android into his life by creating an exact replica of himself from silicone and his own hair. He sometimes uses his doppelganger to deliver lectures remotely...."

p. 42: "...I realize, as I contemplate the face of a baby robot named Affetto, [Minoru] Asada [prof. of Adaptive Machine Systems at Osaka University] holds his own when it comes to creepy, lifelike machines. Affetto's soft, quivering white lips and soulful brown eyes sit atop a body that looks like it's been built with pieces pilfered from my son's erector set....

"Recently, Asada developed a new brain-scanning technique that enables him to track, in real time, the emotional bonds that form between a mother and child. By placing each in a machine and projecting the other's facial expressions onto a screen, Asada hopes to learn whether brain waves between infant and mother become synchronized. He also hopes to see which areas of the brain activate with different interactions.

"These kinds of findings will be very helpful for us in designing a robot that can synchronize or create artificial empathy," Adada says. "What kind of behavior should the robot copy or imitate? How should it react?" Using this information, Asada plans to vary Affetto's expressions to elicit similar neural responses.

Asada's research could have real-world applications. A robot that conveys empathy and fosters bonding could, for example, be a more effective coach or teacher. It might even provide the sort of harmonious companionship Matsubara claims can fill the void left by the absence of another human. But such robots have yet to leave the lab. While Ishiguro, Asada, and other academics probe the psychology of human-robot interactions, a few engineers are already building machines that rely on far less nuance to produce some of the same effects."

p. 44: "Softbank, the nation's [Japan's] largest cellphone company, unveiled Pepper in June. ...When Pepper goes on sale next February for less than $2,000, it will be the first affordable, truly social humanoid robot to hit Japan's consumer market.

...[Softbank CEO Masayoshi] Son has openly acknowledged that ...Pepper is a bet on the future of social robotics....

Pepper is designed to read nonverbal social cues. When it looks up at me..., sensors embedded in its head scan my face. Others measure the tension in my vocal chords. Pepper runs that data through a sophisticated computer program capable of guessing my emotional state. When it takes an action that it senses has generated a positive response, Pepper will repeat it later, and the robot, over time, will learn how to please me.

Since Pepper has limited computational abilities, engineers designed the robot to more closely resemble a child than an adult. "You can find kids who cannot understand everything adults are talking about," [Kaname] Hayashi [manager of the Pepper project] says, "but a kid wants to make the adults around him happy. And he talks a lot because he knows that's the best way for him to [do that] when he doesn't have the same mental capacity as adults. It's the same with Pepper."

All of these tricks ultimately serve the same goal: they subtly convey that this little guy wants to hang out with me – that he is a friend, an ally. "The important thing," Hayashi says, "is the sense of being accepted, the sense of being understood by Pepper, and the feeling that he is reacting based on that understanding." That illusion of understanding, what some might call artificial empathy, touches an "evolutionary button" roboticists are attempting to exploit. Some robots push it without even trying.

p. 83: "Many Japanese ...celebrate Astro Boy – a wildly popular superhero robot....

Today, six decades after Astro Boy was first introduced, it continues to set the tone for robotics research in Japan. "I still want to develop Astro Boy," Future University [Hakodate]'s [roboticist Hitoshi] Matsubara [author of Information Science of Robot] says. "My dream is to assign a robot to someone when they are born, and that robot will play the role of bodyguard and also the role of friend, and he will record and memorize everything that boy or girl is experiencing....

Sidebar, p. 43: "Q&A: The Robot Trainer": Andrea Tomasz, who directs Georgia Tech's Socially Intelligent Machines Lab, teaches a one-of-a-kind student: a robot with light-up ears, named Curi....

"...[M]y lab is trying to enable end users to teach robots. We're thinking about different elements, from the interaction itself – how should the robot phrase questions so that it's gathering the right kind of information? – to machine learning, or algorithms to deal with the kind of input people will provide.

"...One way to do that is by physically showing the robot. You say, "Here, Curi, let me teach you how to scoop the pasta." And you kind of drag the robot's arm through the motion. Then you ask, "Can you show me what you've learned?" and the robot will try to repeat the task, or it could ask questions like, "At this point, is it important that my hand is positioned like this?" in order to build a better model.

"Usually, with a little bit of practice, people can do whatever interaction [with Curi] we've designed. At the end of that, we ask open-ended questions about how they wish they could have interacted with the robot. People usually say they would like to be able to watch the robot try to do the learned task and then say, "good job," or give positive or negative feedback. Some algorithms could make use of that. So that's one thing we look at: What kinds of input do people naturally want to provide and how do we design algorithms that fit that?"

Other experts and commentators re androidal robotics:

* Tim Hornyak, a journalist who wrote: Loving the Machine: The Art and Science of Japanese Robots
* Matthias Scheutz, who heads the Tufts University Human-Robot Interaction Laboratory
* Cynthia Breazeal, social robotics pioneer, who directs MIT's Personal Robots Group

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Editor's Comment: Again, in even more detail, the foregoing excerpt shows how development of simulacra abilities is advancing more swiftly now than ever before. This underscores that the timeline to achievement of behaviors essentially indistinguishable from those of humans is now growing very short.

Your Next Teacher Could Be a Simulacron.

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5. Marie-Helen Maras & Lauren R. Shapiro, "Child Sex Dolls and Robots: More Than Just an Uncanny Valley," 21 *J. Internet L.* 3-21 (No. 6, Dec. 2017)

p. 4-5: "Although life-like adult sex dolls have been in existence for a while, what is relatively new are life-like child sex dolls. Like their adult counterparts, child sex dolls are realistic reproductions of young (prepubescent) children in size and appearance with anatomically correct genitals and anus, with all orifices able to accommodate the length and width of adult male genitalia. A known creator of such dolls is Shin Takagi, a self-proclaimed pedophile, who founded a company that sells them (Trottla) in Japan, ...as an 'alternative' to actual offending.[29] The child sex dolls are designed to meet the various desires, tastes and demands of customers. For example, apart from custom design of the doll replicating the requested 'age' and 'sex' of the child, customers can also choose facial expressions, such as whether it is happy, sad, angry, scared, etc.[30] Moreover, although not yet reported in the media, the likelihood is good that the production of child sex robots capable of moving, speaking, and performing sexual activities, may be further along than adult robots due to their smaller size and weight.[31]..."

p. 5: "THE LEGAL LANDSCAPE: MIND THE GAP

"There are no US laws that explicitly prohibit child sex dolls and robots...."

p. 6: "Child sex dolls and robots are not considered as a form of child pornography because these objects are not real children and cannot, by way of extension, experience direct or continuing harm."

p. 9: "The ultimate goal of manufacturers is to make the sex dolls and robots look and feel as realistic as possible. ...Child sex dolls and robots have realistic, soft skin, inviting the pedophile to touch, caress, hold, and otherwise provide pleasant tactile experi-

(Continued on page 16)

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ences for them.... 'The primacy of bodily interaction, with many channels of tactile or proprioceptive feedback the robot may give and receive'[94] would make it extremely desirable and highly addictive for pedophiles."

p. 10: "In the last few years, dolls resembling children have been created to the extent that some are almost indistinguishable from real ones. For example, the Reborn doll is so realistic a police officer in Keene, New Hampshire, broke the window of a vehicle after he saw what appeared to be an infant in a locked car.[110] As noted earlier in this article, child sex dolls and robots are similarly realistic and empirical research supports the notion that society would likely believe that these 'lifelike dolls, unlike vibrators, are simulated humans' and 'all of the stimuli are telling you it's human.'[111]"

p. 15: "...[T]his technology can be produced at home (with, e.g., a 3D printer, which is already capable of making sex toys)... ...[T]he development of such child robots through 3D printers is currently underway...."

Notes:

29 *Roc Morin*, "Can Child Dolls Keep Pedophiles from Offending?", *The Atlantic*, Jan. 11, 2016, https://www.theatlantic.com/health/archive/2016/01/can-child-dolls-keep-pedophiles-from-offending/423324/.

30 *Id.*

31 The larger models' battery drains quickly because of the size of the dolls and robots.

32 *Tanya Sweeney*, "Sex Robots: Even Better Than the Real Thing?", *The Irish Times*, Oct. 29, 2017, https://www.irishtimes.com/life-and-style/people/sex-robots-even-better-than-the-real-thing-1.3065661.

92 *Thomas Arnold & Matthias Scheutz*, "The Tactile Ethics of Soft Robotics: Designing Wisely for Human-Robot Interaction," *Soft Robotics*, 4:2 (2017), 81-87.

94 *Thomas Arnold & Matthias Scheutz*, "Beyond Moral Dilemmas: Exploring the Ethical Landscape in HRI" (*HRI*, Vienna, Austria, March 6-10, 2017).

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Spencer Tracy and Freddy Bartholomew in *Captains Courageous*

Editor's Comment: Setting aside the attempt of the authors of this last article to create a debate about whether this trend should or should not be legal, it clearly illustrates in considerable detail that simulacra used for substitute sexual activity are (even now) already riveting in their realism. Over as little as the next several years, this realism will be perfected.

While one can always concoct arguments that such simulacra will strike at least some in society as revolting, that is actually less likely when that realism becomes so perfect that any given child simulacron simply appears to passers-by as an actual child. Moreover, most pedosexuals will probably not parade their child simulacron around in public in order not to provoke avoidable anger.

Finally, at worst, it is no more than a wash (and probably much less) to compare the angry reaction to a pedophile freshly apprehended for sex crimes with a child to such reactions about a pedophile acting on that attraction only with an unliving, artificial simulacron with no capacity for feelings. The question of whether such conduct, restricted to such substitutes, is better than unrestrained conduct directed at actual children as crime victims is so obvious as to be purely rhetorical.

It is no reply to simply demand that there be no pedosexual conduct at all. Pedosexuality, like every other form of sexuality, has always existed, and has always found expression of some kind. Further, there is no end to those who are so oriented. You could incarcerate or even execute all known pedophiles, and yet pedosexual acts would still continue, given that you could never ferret out their vast numbers (about 20% of all males being secretly at least somewhat attracted to prepubertal girls and about 6% somewhat attracted to prepubertal boys) living undiscovered throughout society, and given their constant replenishment by the spontaneous, random discovery by young people of their own pedosexual orientation.

It is not something that can ever be stamped out; it is simply something that can only be managed, and then only to a degree that it leaves some societally acceptable outlet attractive to pedosexuals for sexual behavior of that orientation.

Recent research has discovered that most pedosexuals never commit any 'hands-on' sex crime with a child, but instead confine themselves to either illegal child pornography use or use of legal 'near pornography.' The reality is that this 'diversion effect' vastly outweighs any claimed 'prompting effect' toward commission of later sex crimes. (Indeed, the whole notion of a pornography prompting effect may always have been nothing more than excuse-making by pedosexuals after being caught for such crimes. — See *TLP*, Vol. 1, No. 5, p. 3.)

This too may be uncomfortable for non-pedosexuals to contemplate, but the point is that even that paler substitute of purely audiovisual perceptual excitement has proven a mostly effective alternative, diverting countless pedosexuals from committing sex crimes with real children.

Now consider another harsh reality of the world of a pedosexual. Almost all pedosexuals have a distinct preference for one gender over the other. In fact, many pedosexuals see themselves as oriented only to one gender or the other.

Further, it is inaccurate to see pedosexuals as oriented to all children regardless of age. Most have a strong preference only for children in a narrow age range (for instance, 6 to 9, or 11 to 13). Add to this the fact that all children are constantly growing. Hence, a human child pleasing to a given pedosexual now will later grow out of that core attraction range. On the contrary, a child simulacron never grows at all, and thus remains in the optimally pleasing age range of that pedosexual.

Then too there are racial preferences (in some cases nearly exclusively so). On top of this, there are preferences for color and texture of hair, of hue of skin, of shape of facial features, body shape and state of musculature, and literally any other feature upon which people may differ.

Hence, most often a decision by a pedosexual to interact sexually with any given child is actually an acceptance of a child who does not really approximate the pedosexual's ideal choice, but rather is only chosen because of availability.

Now compare that to a pedosexual shopping for a child simulacron. Virtually any combination of desired features can be put together to optimally achieve such close matching to preferences. Further, any number of behavioral options can be selected, so that the simulacron acts in ways pleasing to the pedosexual in question, right down to the subtlety of a particular kind of expression or a unique habit of tilting the head a certain way. Further, strong emotional attachment by the pedosexual will surely grow in time as the simulation of consciousness fills his need to love.

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

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

Now you are just an individual. However, in our country, individuals can exercise their right to participate in the political process. Even in other circumstances or places, the power of persuasion can always be applied. Here then is the question:

Do you honestly prefer things the way they currently are — in which many children suffer sexual abuse every year, or would you prefer a world in which all pedosexuals exclusively choose the far more preferable choice: harmless socio-sexual relationships only with simulacra — which, again, are only non-conscious machines.

Enable and foster that choice, and the world will change virtually overnight for the better.

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