

ECHOES OF THE GULAG

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Editorial

By Tony Iannalfo

THE COST OF UNNECESSARY CIVIL COMMITMENT

The government has become obsessed with vindictive civil commitment schemes. The news media feeds this frenzy by sadistically reporting on high profile sexual assault cases. What no one looks at is the high cost to taxpayers of locking up people who do not pose a danger to society.

Who are the people the government is civilly committing to state hospitals under the guise of a current mental disorder and public safety?

The majority are people beyond age 50, 60, 70 years old and the greater majority of those people committed sex crimes 10, 15, 20 and 30+ years ago. Most have shown no current signs or symptoms of these so called mental disorders since the actual crimes were committed, but commitments are easily obtained because the term "Sexually Violent Predator" stirs the passion and prejudice of society. Of the tens of thousands of sex offenders in California you ONLY hear about the few who reoffended. Not a single word is printed about the majority who have turned their lives around and are productive citizens.

The average annual cost of civilly committing and incarcerating just one person is about \$110,000.00. By some people's standards over 2/3 of the people committed today are political pawns who should not be committed to state hospitals.

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THE ETHICS OF INVOLUNTARY TREATMENT

In the past year, a rapist and two child molesters - - all of them repeat offenders, designated as "sexually violent predators" by evaluators and juries - - have been released from an eight year old, mandatory treatment program at Atascadero State Hospital in California. Though clinicians said the men were ready to return to the community, under strict supervision and were unlikely to commit new crimes, their attempts to move into northern California communities sparked outrage, picket signs and protests along with wall to wall media coverage.

One of the men - - who'd been convicted of four sexual assaults, including two against teenage boys and had spent 10 years in prison and 6 more at Atascadero - - was driven from motel to apartment to church shelter, from Marin County to Oakland to San Jose. Another man, a serial rapist, hunkered down in his wife's house, while his neighbors staked signs such as "Neutered Animals Still Bite" in their front lawns. In other states, releases from similar programs, where "sexually violent predators" or SVPs are sent at the conclusion of their prison sentences, have also triggered passionate outcries.

These releases shine a spotlight on policies for dealing with sex offenders and raise some provocative questions:

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JUDGMENT DAY

By William King

As most of you should know by now, the Citizens Commission on Human Rights is gearing up to conduct the kind of investigation that caused many staff members to lose their jobs at Metropolitan State Hospital in Los Angeles recently. But, what most people do not know is that the U.S. Attorney General is pursuing [criminal indictments] against a number of staff members at Metropolitan.

The most common criminal offense committed by the staff of mental institutions is that they act in ways that any reasonable person would know is harmful to the [patient]. And, or course, [patient] is a very revealing term here. Because the medical profession has come to realize that some of its practitioners can be callous and reckless when dealing with patients, part of the ethics physician's must embrace admonishes: "Above all else, do no harm". That credo is part of the "primary ethics" that Hippocrates devised over two thousand years ago when he pioneered the science of medicine in ancient Greece.

The problem with people of the medical profession who practice in the so-called "behavioral sciences", such as psychiatry and psychology, is that they usually have such God like power over patients, those usually spaced-out, drugged up inmates are almost always powerless in the face of such overwhelming authority. Consequently, staff have come to feel they can [safely] abuse patients in

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Can treatment actually help sexual offenders change their destructive patterns? And when, if ever, is mandatory hospitalization of sex offenders a valid use of psychiatry?

Like many criminal - justice initiatives, this approach to dealing with hard-core offenders began with a horrific event. In the late '80s, Earl Shiner, a convicted rapist and murderer, bragged to inmates and staff at a Washington State prison that he fantasized about torturing and killing boys. Then he was released and did exactly that, kidnapping, raping and mutilating a 7 year old.

The outcry over Shiner's crime led Washington Legislators to pass a law in 1990 allowing for indefinite civil commitment of repeat sexual offenders judged by mental health experts to be likely to reoffend. Over the next decade, 15 other states and the District of Columbia passed similar laws.

These laws are patterned on long-standing statutes that allow for involuntary commitment of people with severe psychiatric disorders. There's one key difference, however: under the terms of a 1997 Supreme Court decision, "sexual predators" don't need to be diagnosed as -- "mentally ill", but, rather must be repeat offenders who are determined by clinicians to have a "mental abnormality" that makes them likely to reoffend.

Today, 14 years after the passage of the Washington State law, the use of civil commitment for SVPs has almost come to a halt. Legal advocates and mental health professionals have criticized the programs as a hoax--preventive detention masquerading as treatment. An American Psychiatric Association (APA) task force called the programs and the laws that established them, an "assault on integrity of psychiatry."

but they're really about keeping people confined who'd otherwise have to be released," says Lawrence Fitch, director of forensic services for the Maryland Department of mental Hygiene and a member of the APA task force. Most offenders assigned to these programs, including 80 percent of those at Atascadero, refuse to take part in treatment because they believe the programs are unfair.

The release of violent sexual offenders or "predators," men who've repeatedly committed heinous acts against children or adults, evokes raw, visceral reactions from the public. But these men represent only a small slice of the sex-offender population. An estimated 450,000 registered offender--most convicted of less violent offenses, such as exhibitionis-or incestuous fondling--live in communities across the country. Yet people like Shiner and the lurid press coverage that draw, tend to shape the public's perception of all sex offenders as violent recidivists.

That's too simplistic, argue experts like Mickael Miner, a sex-offender researcher at the University of Minnesota. Miner says there are three key elements to the public's view of sex offenders: that most sex crimes are committed by strangers, that sex offenders are highly likely to reoffend and that they can't be effectively treated. "All three of these are wrong," he says.

Miner notes that, in surveys, three out of four victims of sexual abuse say they knew the perpetrator before the assault, while more than half of child sexual abuse is committed by parents or stepparents. Overall, it doesn't appear that most sex offenders commit new sex crimes. A review of 10 studies including 4,724 offenders in the United States, Canada and Great Britain published this year found the 73 percent hadn't committed another

sexual offense 15 years after released from prison. It also found striking differences among different types of offenders: 35 percent of those who molested boys committed another such act within 15 years of leaving prison, compared to 10 percent of those who molested girls. Among rapists, 24 percent committed a new offense. But since many crimes go unreported, such figures are at best, crude estimates.

Today, treatment programs use varying approaches and the intensive-for hard-core offenders SVPs-may-combine-multiple-technique. Offenders may be shown the impact of sex crimes on victims as a way to develop empathy. Cognitive behavioral therapy may be used to expose and challenge distorted thinking. And that is why many doctors continue to be allowed to practice medicine after confronting distortions that permeate the thinking of many offenders and undercut the rationalizations and they tell themselves. Some offenders choose surgical castration or, more commonly, "chemical castration" to cut their testosterone levels and their sexual drive.

At Atascadero, the few offenders who want treatment must accept responsibility for their past offenses in detail, says John Chang, a hospital psychologist. They can then enter the program's second phase, in which they re-examine in great detail the history of their lives and sexual offenses, focusing on the process that led up to the crimes. In the third phase, offenders identify life events that can lead to trouble and discuss their strategies for managing these events.

In the fourth phase, they rehearse ways of dealing with problem triggers likely to arise outside.

Involuntary Treatment.

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Most experts agree that the key to success with sex offenders generally, isn't just psychological treatment or incarceration, but a mix of community-based services and supervision--carrots and sticks--that, together, form what policy works call the "containment model." Under this approach, sex offenders report regularly to probation officers, who insure they follow the rules; to social workers, and to polygraph examiners, who can assess and offender's truthfulness about, say, contacts with children or possession of pornography. "The more structure that's given to a sex offender, the fewer sexual reoffenses occur." Says Charles Onley, a research associate with the Center for Sex Offender management, a technical-assistance group funded by the Department of Justice.

As support wanes for civil-commitment programs like those in Washington and California, other states are exploring different options. Some, like Colorado, are now using a two-step approach. The state has stiffened its criminal sentences for violent sexual offenders, so they'll spend more time in prison for acts of sexual violence. It also requires "lifetime" supervision for the most violent repeat offenders. They must participate in treatment in prison in order to get out and once outside, must be supervised by probation officers and therapists until they're no longer seen as a threat. In trying to balance the public's right to be protected from dangerous people and the offender's right to be treated fairly, the Colorado approach may prove to be a more ethical and effective way to go.

Reprinted from the Psychotherapy Networker and written by Rob Waters, Sept./Oct. 2004.

JUDGMENT DAY

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any way they desire [without] being held accountable for their actions. Because, historically, the mentally ill have had no one to advocate and champion their cause, which is merely to live with human dignity and respect, in [spite] of being "ill".

Staff members have good reason to believe they are immune to the kind of personal accountability most other professionals are routinely subject to, as a matter of law and rules of professional conduct. One reason is that society does not like to even acknowledge that it produces "crazy people", and certainly not to the extent where mental institutions are almost always at full capacity. So, after mentally ill people are processed through the specially constructed mental health court system, the administrators are given a blank check as to how they deal with their patients. Because, society, simply, wants them out of sight and out of mind.

Society, usually, solves this delicate dilemma by appointing judges who are prone to quickly side with the hospital's lawyers, who argue that the state must be given broad powers to treat patients who, by definition, are not mentally competent and who, consequently, are a great danger to themselves and to society at large. This overall mentality has created a de facto license to abuse patients in any way staff members may desire. And we are living witnesses to the fact that they never pass up an opportunity to be so abusive.

But take heart fellow prisoners. Judgment Day is at hand for the evil doers. Jeff Griffin of the Citizens Commission on Human Rights and more importantly, the Department of Justice, is soon to bring to bear all their investigative experience and zeal.

I have, personally been in contact with Mr. Griffin and an agent of the Department of Justice. Each has assured me that they are very close to initiating the investigation. And, the Deputy attorney General has characterized the investigation as being [criminal].

Let me explain the manner in which criminal acts are defined in this context: When a doctor is guilty of mere malpractice, he has only been [negligent] or [honestly mistaken] in the manner in which he treated the injured patient.

Having been found guilty of malpractice dozens of times. The rationale is that a doctor should not be prevented from practicing because of an [honest] mistake. After all we are all humanly prone to make mistakes. But, when a doctor [intentionally] harms his patient, he is not acting negligently but with malice and premeditation. And as you may or may not know these are the legal elements of criminal behavior. And in the professional vein where a doctor may be allowed to continue to practice after malpracticing many times, he is allowed to [intentionally] harm his patient only [once]. When found guilty of that single offense his license is revoked. And usually, it is a permanent revocation. The records kept on patients establish that hundreds of patients have died under suspicious circumstances. There are even more cases where patients, still presently living, have been denied what medical staff [know] is life-saving treatment. The usual reason for these denials of adequate care appears to be a desire to save money. Of course when the people in need of the medical care are those society values the least no one will object when they die whether by neglect or homicide.

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Judgment Day

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But, now, the "medical staff are going to fall victim to the same fate as the staff of Metropolitan. Because they have so arrogantly abused us openly and [on the record], the investigators preparing to descend on them, will have at their disposal all the evidence of wrong doing necessary to criminally prosecute.

In the mean time, I have been personally in contact with the supervising Deputy Attorney General of the investigation. He has instructed me to ask all of you to forward whatever you believe is evidence of wrong doing by staff members. Contact me on Unit 31 and I will instruct you how to do that. So, please, let us all contribute to this most noble cause. The result shall, surely, be a new and more respectful staff and a place that is more amenable to treating people as if they are people instead of like dogs in a kennel.

You can call me on Unit 31 by dialing (805) 468-3158 or writing to WILLIAM KING, AT053690-4 at P.O. Box 7001 U-31, Atascadero, CA. 94323

THE ILLEGAL SCREENING AND COMMITMENT PROCESS FOR SVP's: Part Two: Recommendations for Changes

by Mark Mahoney

The following recommendations were made in the New Jersey SVP Report to "insure that only truly dangerous sex offenders, that 5-10% group that are highly likely to reoffend, be committed, while the constitutional rights of the remaining 90-95% are protected."

A. Adoption of guidelines standards, rules, regulations governing the initial screening process. "the New Jersey department

of Corrections should adopt the Administrative Procedures Rules Act. . . to govern the process of screening. . . with a specification of the qualifications of screeners [in the initial screening process] procedural safeguards for the conduct[ing] of a psychiatric evaluation. . . and a process by which inmates might challenge-the-screening determination prior to the final commitment hearing."

B. Specialized training in Sex Offender Dynamics and treatment for screeners and evaluators. This would again occur in the initial as well as other screening process events. "It defies common sense that inmates would be treated by a professional staff [once committed] in sex offender dynamics. . . yet have the effectiveness of that treatment evaluated by those [in the Dept. of Corrections] with no knowledge, experience or training in psychology, let alone specialization in sex offender issues."

This is also true in California where the California Department of Corrections has virtually NO training of the above kind for its initial screening process. Even the evaluators who are contracted by the state for interviews with inmates receive little more than some seminar training.

C. Independent Doctor's Evaluations: "To minimize the political influence of the Attorney General's Office, county prosecutors, and the risk aversion inherent in evaluations conducted by those who are financially dependent upon agencies with a vested interest in the outcome. . . a panel of independent psychiatrists should be appointed to conduct. . . [the-evaluation] screenings." The members of the panel would be recommended by the New Jersey Board of Medical examiners for fixed terms. Sex offender evaluation for reoffense risk assessment "would be mandatory" and a "criteria established for

evaluation of a panel member performance." California also has such a panel established for the reasons since many evaluators told they "must find for the state and make enormous amount of money for what usually takes a few hours to write a negative opinion of the inmate's past and present behaviors.

D. Mandated recordings of evaluations: "either audio or videotaped" at "no cost to the inmate, a copy provided to their attorney request." These recordings for the prosecution and defense evaluations to "protect the state [the inmate] from frivolous claim representation or distortion in reports." It is noted that in California some judges have allowed inmates have their evaluation interview be recorded.

E. Jury trials/standards of proof process protections: One suggestion is that a grand jury structure could be created "whereby a group of citizens are sworn to civil commitment duty for a period of three months during which time they would convene once a week to hear commitment cases. They would receive training in legal standards to be applied, as well as the scientific evidence that is typically employed in such hearings by a panel of experts selected jointly by the Trial Law Association of the Public Defense Office, and the Attorney General's Office [to ensure balanced training]. Moreover, "since the decision to commit an individual can result in confinement. . . in excess of the original criminal penalty, including possible lifetime confinement, liberty interest are as great, if greater, than a criminal prosecution. The inherent unreliability of psychological /psychiatric diagnosis and prediction, coupled with actual relatively low rate of recidivism [for sex offenders], demand the highest standards of proof."

Also, a higher standard of proof is called for [in jury trial decisions than the 8 of 12], which would then be like that of a criminal trial. Additionally called for was a higher standard of proof "beyond a reasonable doubt."

Commitment decisions are made in the absence of [a] crime, meaning the **quality of evidence in support of a finding is quite poor**" [in SVP cases].

F. [regarding the MnSOST-R] Establishment cut scores that are statistically sound and empirically defensible: "...the cut score of 13 [should be]... restored [instead of 8] as the standard for considering an inmate for possible commitment. Procedures for the selection, administration and interpretation of the actuarial scales should be established in accordance with the Administrative Procedures Act, that are consistent with the legal requirements for the admissibility of expert testimony in the New Jersey Courts."

It should be noted that California does have different procedure acts and some are being challenged in behalf of the SVP's in federal court at the time this report was being written.

G. LRE recommendations: "Given the high cost... [of] civil commitment centers [such as ASH]... estimated at \$85,000 per annum [from \$110,000 to \$140,000 in California] there needs to be "alternatives, to total confinement" as was observed in the Hendrick's decision in the U.S. Supreme Court.

As it now stands, "Kearny [New Jersey's ASH-type commitment center] currently houses a wide range of sex offenders from docile individuals... to extremely violent and highly antisocial personality types." By not creating less restrictive alternatives to total confinement, the SVP law in New Jersey [and other states] "may in fact

threaten [the Hendricks] statutory scheme."

"Notwithstanding-potential constitutional problems, the case for alternatives to confinement... can be made on practical grounds as well. Several exist [in both New Jersey and California], some could be implemented with little additional cost and others, while requiring an infrastructure not currently in place, have been successfully implemented in other jurisdictions [such as using halfway houses in both New Jersey and California low risk offenders]."

Also recommended by the report was the use of control factors, such as high impact probation, urine testing, curfew restrictions, GPS tracking, the use of SSRI inhibitors and other screening devices employed by sex offender therapists. The use of drugs, with their serious side effects, would be tempered, they said, by a careful study of who the drugs should be made available to depending their physical conditions to be given as a choice to the inmates in need and a careful monitoring of the inmates conditions before, during and after their usage. Of course more studies are needed to determine the long term side effects of such drugs and should only probably be used in cases where the inmate no other choices to control his behaviors.

Finally, there is a recommendation for the use of regional psychiatric hospital in the state. New Jersey has twenty three statewide treatment centers. "These treatment centers offer a wide range of services... designed to give special needs to the particular patient in question." [These] "out-patient services could be coordinated to provide out-patient treatment to sex offenders within their community." By using out-patient services, combined with probation/mental health community supervision, the state[s] would not only save millions of dollars otherwise spent on

warehousing-non-threatening individuals, but would have more Moines to spend on surveillance of those already released and not under mandatory community control. By shifting the Moines spent to the other programs, the states could also finally create a law that, unlike the SVPA, would attempt to protect it's citizens by having a law that would watch ALL potentially high risk offenders and not just a few.

Conclusions: "It has been said that if we can't protect the integrity of the system, there is no system. While sex offenders understandably elicit little sympathy or concern, the focus must always be on what the state is doing or trying to do, not on WHO they are doing it to. Whenever the focus has been on the target of state efforts to suspend the rights of and liberties of a particular group, the effort has usually been successful. This has been true whether the targeted group was slaves, who suffered the indignity of the Dred Scott decision, American indians who suffered the "benevolent" paternalism-of-government containment, confinement, suppression [and near genocide], or Japanese Americans during World War II, suspect and sequestered simply because of their heritage, Communists, blacklisted, surveilled and even arrested because of their ideology, or today's Arab-Americans, for whom all constitutional protections evaporate upon the simple signing of an executive order declaring them and enemy combatant.

Each time it has been left to a subsequent generation, separated from the passions of the moment by the passage of time and clear vision of hindsight, to restore the focus on the **process**, on what the government was trying to do, apart from **whom** it was targeting.

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Each time, it is that subsequent generation that has cried foul and reestablished bars to the abuse of state power to ensure the supremacy of considerations of process over passions invoked by individuals, or isolated acts of degeneracy and immorality."

In the meantime, while society ponders the loss of the rights of a few, more rights for the masses are leached away, lost forever until that new generation rises up and forces the government to change its devious, controlling ways. In the meantime, thousands of lives are affected and not just those incarcerated unjustly under the law. It also affects the families, friends and co-workers of those committed simply for crimes they "might" commit. In the meantime, a generation of ordinary people who have been indoctrinated by the government-based propaganda, now are in fear of walking their streets, of living in their homes because of a faceless "someone" who has moved in next door.

"It may be that only when any given generation recognizes first, for itself, the injustice it has wrought, rather than leaving that discovery to its progeny, that we will recognize the democratic ideals embodied in our Constitution and made manifest in our actions as nation and people. The only real question is, will this be **THAT** generation?"

Source: Adult Diagnostic / Treatment Center, Legal Subcommittee, N.J.

What's Been Gained, or Lost?

Mr. Dean's Corner

Have our loses here really hurt us in the long run? Oh maybe, but only we can decide if the changes that we have caused have lost anything at all.

Personally I've seen and felt some of those "lost Things", but again, were they anything that really

hurt me all that much

Sometimes yes, but for the most part they hurt the staff much, much more. How?

Overtime something new happens around this place staff on the line are forced into the Executioner Slot."

Staff are forced to play "Good Cop/Bad Cop" whether they want to or not. Staff are forced to run back and forth cleaning up the mess that is often caused by one of their own trying to ram just a little more crap down our throats.

Documentation is everything, against us or for us everything had to be documented all the way down to that busted lip.

That's why it's so important that we get copies of everything in our files. Recorded on paper isn't a tape, but right now its all we have, and in some cases having it on paper in their own hand writing is better.

For Me having a Gardening slot is all that really matters. Other than loosing My freedom, and My health these wannab pencil pushers can't really hurt me. Other than loosing our freedom, what can they really do? Sure we've lost a few things, but have we lost all that much? How much have they lost, and how much more are they gonna loose in the long run?

This is only My breath, you need not inhale.

My Letter to the Gulag

By Earl s. Johnson

Hi! Guys. I miss you all, but not the Stalag. As some of you know I was once a Gulag prisoner like you. Thanks to my family's prayers and some of yours there, I am no free to breath real air and live like a human again. Though I still have to see the Fresno cops here once a year on my birthday. Its is far better than the hell

hole you guys have to face each there at ASHIWITZ,

Some of you may remember me some may not. Well, don't feel sometime ago I passed a couple of staff on the street (city street some of you that don't remember what streets are,) and even they not recognize me. So go figure I guess it must have been the civilian clothing I was wearing. You think something when you spend seems a life time in ASHiwitz not one goon remembers you or civilized city streets of america! that i would want them too. may accuse me of **stalking** them.

I have visited a few guys there if I had said who, the goons may for me on my next visit. Not that can do anything about it now, so am legally out and can visit who I want, now well over a year. those who remember the big that was raised back in 2001 (SVP living with the Atascadero limits).

Enough of that. Well, keep faith, and yes, I know how hard to so. Even though I am out, it only by God's grace that I spend my second Christmas with family. So God dose hear your for freedom.

My family continues to pray for you all there at ASHiwitz. Also church singles I attend, is praying well. I have been trying to write the guys who have written me with my time being split helping mother and father and tow truck on the side, it gets a bit rough. you have written to me, be a patient. A letter is on it's way.

I also have been trying to find and rulings on the internet again, things a bit slow

I would like to come back to with the permission of the judge there, and encourage you keep a good fight of faith from the edge some day. Continued on page (7)

Johnson's letter

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Always remember, the Great State of California can't keep ya for ever!

Peace to you all. . .

NEW HANSON STUDY SHOWS SEX OFFENDERS OVER AGE 50 HALF AS LIKELY TO RE-OFFEND

By: Gerry Johannes

A new study by leading Canadian researchers Karl Hanson and Andrew Harris have found that sex offenders over the age 50 are **half** as likely to re-offend as younger offenders.

"Sex Offender Recidivism : A Simple Question" (2004) was prepared by Hanson and Harris for the Canadian government. It examined data from 10 follow-up studies involving a total of 4,724 released sex offenders. Most of the sample groups were Canadian but two were from the U.S. and one of those, from California's S.O.T.E.P. program, was easily the largest sample group and its 1,137 inmates comprise almost one quarter of the total. The study results are, therefore, significantly-applicable-to California's aged and aging population of WIC 6600 detainees.

Hanson and Harris found that of sex offenders who were under age 50 at the time of release, 15% had been convicted of a new sex offense within 5 years, a further 6% re-offended after 10 years and an additional 5% after 15 years, for a total of re-offense rate of 26% after 15 years of follow-up. For a total re-offense rate of 12% after 15 years, less than half the 26% figure for the Under 50 group. These findings-have-significant implications for the use of Static 99, and actuarial instrument also developed by Hanson and heavily relied upon by DMH evaluators of

WIC 6600 involuntarily commitments in California. These new figures can be used by defense attorneys to argue that for 6600's over 50 the Static 99 risk percentages should be cut in half. It should also be noted that Hanson's new findings confirm his 2001 study on age and sex offense recidivism, which showed gradual decline beginning at age 45-50 and a re-offense rate of less than 4% by age 60.

Studies by other researchers have produced similar results by DMH evaluators rarely, if ever, adjust their risk predictions to take these findings into account. Someone, no doubt, had DMH evaluators in mind when posting this sign in L.A. County Jails 6600 detention unit: "It is difficult to get a man to understand something when his salary depends on him not understanding it." - Upton Sinclair.

In addition to the findings on age, Hanson and Harris' own study also found significantly lower rates of recidivism for offenders without a previous sex conviction verses those with a sex prior and for offenders who had been offense free for long periods in the community. The study also reported that "boy victims" child molesters re-offended at much higher rate than all other categories of sex offenses, but this finding was based on a sub-group of only 95 men and was considered to have a high rate of potential error.

A copy of this new study may be downloaded from www.psepcspcc.gc.ca. Hanson and his team of researchers have also recently produced a new Meta-Analysis which updates and confirms the data and results of his 1998 Meta-Analysis. This document, "Predictors of Sexual Recidivism: An updated Meta-Analysis." (2004) might be available at the same website.

THE AEDPA ACT PROVISION

By: R.D. Lefort

According to a response from Jonathan Grossman, Staff Attorney for the 6th District Appellate Program. The reference to Chapter 154 does not apply to an SVP (death) sentence, on a habeas corpus petition:

"In other words, the amendments by Congress to [§] 2254 were not contingent upon the state opting in for special treatment in death penalty petitions. The [U.S.] Supreme Court has consistently applied AEDPA to section 2254 habeas corpus petitions from California prisoners challenging state court judgments." (See, e.g. *Piler v. Ford* (2004) 542 U.S. ___, 124 S.Ct. 2441; *Yarborough v. Gentry* (2003) 540 U.S. 1, 124 S. Ct. 1; *Woodford v. Garceau* (2003) 538 U.S. 63, 123 S.Ct. 1166; *Woodford v. Visciotti* (2002) 537 U.S. 19 [This case did not address the AEDPA].

My question is, since these cases concern "prisoners", how can the AEDPA apply to habeas petitions concerning a "civil" commitment under the SVP Act. There is no clear precedent. The difficulty, however, is these precedents, applied to the SVP Act, have not been a model of clarity. See, *Harmelin v. Michigan*, 501 U.S. 957, 965, 111 S. Ct. 2680 (opinion of SCALIA, J.); *id.*, 996-998, 111 S.Ct.2680 (KENNEDY, J. concurring and concurring in judgment).

The U.S. Supreme Court has not established a clear or consistent path for courts to follow in this arena concerning the SVP Act. See *Ewing v. Calif.*, 123 S.Ct. 1179, 1184-1188.

I feel if we keep pushing to issue, one of us will eventually establish a precedent that explains hoe th "AEDPA" does, or does NOT,

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