AN UNACCEPTABLY HIGH COST

An Inside Look At Colorado's Sex Offender Law and Treatment Program

Second Annual Report

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In the SOTMP Phase II Treatment Program

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INTRODUCTION

In our first report, "An Unacceptably High Cost: An Inside Look At Colorado's Sex Offender Law and Treatment Program", we sought to draw attention to the various problems surrounding the Lifetime Supervision Act of 1998, the Department of Corrections' (DOC) implementation of that Act, and the abuses taking place within the DOC's Sex Offender Treatment and Monitoring Program (SOTMP). Since that report was issued in February of 2007, a number of changes have taken place within the SOTMP, and as a result we felt it necessary to compile this follow-up report.

While some positive change has been effected, a variety of new abuses and methods of manipulating the system have arisen within the SOTMP to replace their abandoned techniques. These new methods are, like their old tactics, a consequence of the SOTMP's committment to keep those sentenced under the Lifetime Supervision Act contained at all costs - regardless of how our rights may be violated, and the law flouted, in the process.

As in our previous report, we seek to fairly and accurately represent the experiences and concerns of those currently participating in SOTMP treatment under Lifetime Supervision sentences. We have attempted to thoroughly document our sources, and we are often able to provide firsthand accounts, which are the advantage of "an inside look". We have clearly indicated when any of our assertions are based on opinion, speculation, or hearsay.

We are hopeful that the unique perspective provided by this report will be of assistance to policy makers and others who are diligently seeking to reform the current system, that it might conform to the legislative intent behind the Lifetime Supervision Act, and the interests of justice.

CHANGES IN THE SOTMP SINCE 2007

A number of problem areas addressed in our first report have been the subjects of positive changes over the past year. The first, and one of the most significant, of these areas is termination from the treatment program as a consequence of "deceptive" polygraph results [1]. At the time of our previous writing this was SOTMP policy and common practice. Today, the stated policy is that no one is to be terminated due to polygraph results, and in fact we have seen no such terminations in some time. Individuals are now being given an unlimited number of attempts at passing polygraphs. We know of some who are on their sixth try at the baseline polygraph, unheard of in past years. We are not certain what precipitated this change, although we suspect that the due process protections put in place by the United States District Court for the District of Colorado in its decision in Beebe v. Stommel [2] may have had some influence. We applaud this policy shift as a great step in the right direction. However, the SOTMP has evolved another technique of using the polygraph which is just as effective as termination at preventing those sentenced under the Lifetime Supervision Act from progressing into the community. We will discuss this in more detail shortly. Overall, our observation is that terminations from treatment in general have drastically decreased since last year.

Another positive change involves the facilities to which those individuals who are terminated from the SOTMP are sent. In our previous report we raised concerns that sex offenders terminated from Phase II treatment at Arrowhead Correctional Center were facing serious threats of violence at the facilities to which DOC was sending them [3]. In the past year we have noticed that many more terminated individuals are being retained at Fremont Correctional Facility rather than being sent to private facilities, as was previously common. Since Fremont is predominately populated by sex offenders, it is a much safer environment for us. However, we suspect that motives other than the safety of the individual being terminated (such as the necessity of holding the due process hearings required by Beebe) form the primary motivation for this change.

[1] Jeremy J. Loyd, et al., "An Unacceptably High Cost: An Inside Look At Colorado's Sex Offender Law and Treatment Program", (February 2007), pp. 12-14 [hereinafter "Unacceptably High Cost"].
[2] Beebe v. Stommel, No. 02-cv-01993-WYD-BNB (D.Colo. Nov. 13, 2006).
[3] See "Unacceptably High Cost", supra note 1, at 11-12.

Several additional changes within the SOTMP deserve mention. In our previous report we observed that individuals who became eligible for parole while in Phase I treatment were unable to obtain a recommendation for parole from the treatment team [4]. However, we are now informed that the SOTMP has recently begun granting recommendations to those with sentences such as 2 Years to Life while they are still in Phase I. Our report also noted that only one Phase II treatment program existed in DOC, consisting of 96 beds at Arrowhead, which did not offer anywhere near sufficient capacity to make treatment available to all those sentenced to DOC under the Lifetime Supervision Act [5]. We now understand that the SOTMP is working to open another Phase II program at Fremont, and possibly other facilities as well. Although these new programs are not yet operational, this new capacity will represent progress toward providing those sentenced under the Lifetime Supervision Act with the treatment required by Colorado law [6]. However, as of June 30, 2007, 1,133 individuals were incarcerated in DOC under the Lifetime Supervision Act, while only 157 of them were participating in Phase I or II SOTMP treatment [7]. So there is still much to be done to remedy this problem. Finally, our prior report observed that the treatment formats put in place by the Colorado Sex Offender Management Board (SOMB) were neither recognized nor adhered to by the SOTMP [8]. However, the SOTMP has recently revised its treatment contract to include all three treatment formats, and the therapists now readily recognize the different criteria required by these formats [9].

There have also been a number of positive changes in the legal arena. The most interesting and promising of these was a Colorado Supreme Court ruling issued in 2007 which recognized that the legislative intent of the Lifetime Supervision Act was "to provide for treatment and extended supervision, rather than to punish sex offenders with terms of incarceration longer than those of other felons of the same class" [10]. How this may

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[4] See "Unacceptably High Cost", supra note 1, at 9.
[5] Id. at 4, 5, 10.
[6] Section 18-1.3-1004(3) C.R.S.; Section 16-11.7-103(4)(b) C.R.S.
[7] Colorado Department of Corrections, Colorado Department of Public Safety, & State Judicial Department, "Lifetime Supervision of Sex Offenders: Annual Report" (November 1, 2007), pp. 4, 15 [hereinafter "Lifetime Supervision Report"].
[8] See "Unacceptably High Cost", supra note 1, at 15-16.
[9] The Crossroad To Freedom House: Therapeutic Community Treatment Contract, p. 7 [hereinafter "TC Contract"].
[10] Vensor v. People, 151 P.3d 1274,1278 (Colo. 2007).

apply to DOC's interpretation of the Lifetime Supervison Act, which we discussed in our first report [11], has yet to be determined. The second event of note was the legislature's passage of a bill revising the law surrounding sexually violent predators (SVPs). We previously enumerated multiple abuses resulting from a law which granted authority to the Colorado Parole Board to label individuals as SVPs [12]. The revised law now requires individuals who did not have an SVP determination made at sentencing to be immediately returned to the court for a ruling on the matter [13]. This wisely divests the parole board of the authority to make such decisions. One final legal advance, the passage of a bill requiring DOC to report detailed statistics on the performance of the SOTMP [14], will be discussed in more detail later.

At the conclusion of our first report we offered a number of recommended solutions to the problems which we had addressed. While the changes listed above represent an effort to make some progress toward addressing a few of these problem areas, vast and sweeping reform is still required if the Lifetime Supervision Act is to function as the legislature intended. While we applaud the changes that have been made, we recognize that all of the remaining issues raised in the first document still stand in need of remedy.

Less encouraging are the new tactics we have observed by which the SOTMP seeks to circumvent any positive change and to continue to manipulate the system. We have seen individuals terminated from Phase II for invoking their Fifth Amendment right against self-incrimination. We have seen one therapist (note: SOTMP therapists, once contractors, are now DOC employees) issue a Code Of Penal Discipline (COPD) "write-up" to someone for a violation of the treatment contract. This violation was cast as "disobeying a lawful order", and the individual was suspended from treatment on that basis. We have seen therapists schedule individuals with upcoming parole hearings for a "maintenance" polygraph, when they still needed to pass a "baseline" polygraph to be eligible for a parole recommendation. These actions, which we will discuss further, all arise from a desire on the part of the therapists to uphold the fundamental principle which undergirds the philosophy of the SOTMP: containment at all costs.

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[11] See "Unacceptably High Cost", supra note 1, at 3-4.
[12] Id. at 5-6.
[13] H.B. 08-1247; Section 18-3-414.5(2) C.R.S.
[14] Section 18-1.3-1011 C.R.S.

THE CONTAINMENT APPROACH: THE ROOT OF THE PROBLEM

Containment Principles

The root cause of the DOC's ongoing failure to provide the effective, rehabilitative treatment which is integral to the design of the Lifetime Supervision Act is the philosophy known as the "containment approach". The leading proponents of this approach to sex offender treatment describe their principles as follows:

> At the heart of the [containment] model process is a philosophy that values public safety, victim protection, and reparation for victims as the paramount objectives of sex offender management...In this approach to sex offender management, the client is the community. Under this philosophy, treatment and supervision modalities give priority to community protection and victim safety. [15]

Based on these principles it is only natural that "...the therapist's primary commitment is to the community at large; public safety is paramount"[16]. Thus,

> While a victim-oriented, public safety philosophy seeks to aid victims, it also dictates control of the sex offender. Controlling the sex offender's behavior is obviously vital to the future safety of the victim and the community. [17]

The consequences of the containment approach for sex offender treatment in the SOTMP should be obvious. In a recent report to the Colorado General Assembly, experts on the Lifetime Supervision Act observed:

> The primary goal of treatment under the

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[15] Kim English et al., "Managing Adult Sex Offenders in the Community - A Containment Approach" (National Institute of Justice Research in Brief, NCJ 163387, January 1997).

[16] Kim English, "The Containment Approach to Managing Sex Offenders", Seton Hall Law Review, Vol. 34:1255,1265 (2004).

[17] Kim English et al. eds., Managing Adult Sex Offenders - A Containment Approach, American Probation and Parole Association p. 2:7 (1996) [hereinafter "Managing Sex Offenders"].

> SOTMP's containment-oriented approach to sex offender management is not the rehabilitation of sex offenders. Rather, the primary goal of treatment under the SOTMP's approach is to serve as a mode of interrogation through which the SOTMP may obtain information from offenders concerning their previous sexual behaviors, for use by criminal justice agencies - rehabilitation exists only as a secondary goal. [18]

This certainly comes as no surprise to those of us in SOTMP Phase II treatment, who are experiencing the effects of this approach firsthand. In our previous report we noted how these principles manifested themselves in the SOMB:

> The SOMB, in its standards and guidelines, has laid down a number of "guiding principles" for the treatment and supervision of sex offenders. The first three of these principles, which appear to govern all the others, are instructive, and read as follows:
>
> 1. Sexual offending is a behavioral disorder which cannot be "cured".
> 2. Sex offenders are dangerous.
> 3. Community safety is paramount.
>
> From these premises only one conclusion can be reached. We have a "behavioral disorder" which makes us dangerous to the community. Since we cannot be "cured" we will always be dangerous to the community. The #1 goal of the SOMB and SOTMP is to protect the safety of the community. Therefore, the only reasonable course of action is to keep us out of the community for as long as possible. No wonder that lifetime supervision has become life in prison! [19]

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[18] Diane McDaniel, ed., "A Report to the Colorado General Assembly on the Failure of the Colorado Department of Corrections to Give Effect to the Legislative Intent of the Colorado Sex Offender Lifetime Supervision Act of 1998: Third Annual Report Fiscal Year 2007-2008", Et Alia Paralegal Services (2008). [hereinafter "Report to the Colorado General Assembly]. p. 23.

[19] See "Unacceptably High Cost", supra note 1, at 16.

The Containment Approach & SOMB Criteria

The SOMB is, by its very nature, heavily prejudiced in favor of the containment approach. The composition of the board is laid out in Colorado statutes [20], which specify representatives from the judicial department, the department of corrections, the department of public safety - division of criminal justice, sex offender treatment providers, district attorneys, law enforcement, victim's rights organizations, and polygraph examiners, among others. This composition reflects the clear victim-oriented, criminal justice-centered emphasis of the containment approach. The presence of criminal defense attorneys on the board does very little to counter this bias. The SOMB is tasked with managing sex offenders, yet our interests - rehabilitation, reintegration into the community as safe and functioning members - are simply not represented on the board. This is characteristic of the containment approach, which takes little or no interest in our rehabilitation in the first place.

Not surprisingly, the standards and guidelines promulgated by the SOMB, which govern the SOTMP, are carefully designed to facilitate the containment approach. Colorado law invests the SOMB with the authority to set forth the criteria which Lifetime Supervision offenders must meet in order to be considered a candidate for parole [21]. An individual's ability to meet these criteria therefore directly affects his opportunity to be released from prison. Given the containment ideology adhered to by the SOMB, we would expect its criteria to be crafted in such a way that the SOTMP therapists, rather than the offender himself, would be given control over whether or not the criteria can be met. In this way the SOTMP is able to determine whether or not an individual can be paroled - is able, in other words, to contain him in prison at will. And, when we examine the SOMB criteria, this is precisely what we find.

In reviewing the criteria, the first thing we notice is that several of them are highly subjective, dependant primarily on the opinion of the therapists. For example, the Lifetime Supervision Act requires that individuals "successfully progress" in treatment in order to be paroled [22]. In the SOMB's "Criteria for Successful Progress in Treatment in Prison", the first criterion reads, "The offender must be actively participating in treatment and applying what he or she is learning"[23]. It is not hard to

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[20] Section 16-11.7-103 C.R.S.
[21] Section 18-1.3-1006(1)(a) C.R.S.; Section 18-1.3-1009(1)(a)&(b) C.R.S.
[22] Section 18-1.3-1006(1)(a) C.R.S.
[23] Colorado Sex Offender Management Board, "Colorado Standards and Guidelines for the Treatment, Assessment, Evaluation, Treatment, and Behavioral Monitoring of Adult Sex Offenders- Lifetime Supervision Criteria" LS4.210(A)(1),(B)(1),(C)(1) (June 1999)[hereinafter "Lifetime Supervision Criteria"].

see how a criterion like this depends almost exclusively on the treatment provider's opinion - especially since the terminology is vague and not explicitly defined. Failure to meet this single criterion is sufficient to prevent an individual from receiving a recommendation for parole. Other criteria show similar characteristics of subjectivity [24]. Such criteria enable SOTMP therapists to keep us contained in prison by undermining our parole eligibility on a whim, without need for any justification other than their own "clinical opinion".

Other criteria are designed to be impossible for an individual sentenced under the Lifetime Supervision Act to actually meet himself. Such criteria must be met by the SOTMP therapists, or others outside the individual's control. A good example of this is the criterion for successful progress in treatment which requires an individual to "have, at minimum, one approved support person..."[25]. This means that we must find someone outside of prison who will agree to support us, and who is subsequently approved to do so by the therapists. It should be obvious that it is not within our control to meet this criterion, as we cannot force anyone to agree to support us. Even if we are able to locate someone who chooses to be our support, that is no guarantee that the person will be approved by the SOTMP. So ultimately the therapists, not Lifetime Supervision offenders, have the final say about whether we are able to meet this criterion and thereby receive a recommendation for parole.

A similar situation is created by the criterion requiring "a comprehensive Personal Change contract (relapse prevention plan) which is approved by the SOTMP team"[26]. Obviously we have no control over whether or not the SOTMP team chooses to approve our Personal Change contracts. Again, our ability to meet this criterion depends on the therapists. We have seen a number of men refused recommendations for parole because they were unable to obtain support, or because the therapists refused to approve their support. We have also seen the therapists fail to approve men's Personal Change contracts in time for their parole hearings. Of course, once the hearing was past and they had been denied parole, then their contracts were suddenly approved! We know of some who have waited years for the approval of these contracts after submitting them. By placing the SOTMP therapists in a position to be able to control decisively our ability to meet the conditions for parole under the Lifetime Supervision Act, these SOMB standards serve to facilitate and enable the containment approach.

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[24] See "Lifetime Supervision Criteria", supra note 23, at LS 1.010(A),(B),(C)(1)&(2),G(2).
[25] Id. at LS 4.210(A)(4),(B)(5).
[26] Id. at LS 4.210(A)(3).

Another SOMB criterion which is manipulated by the SOTMP to support containment requires the parole board to consider "victim input" when deciding whether to parole individuals sentenced under the Lifetime Supervision Act [27]. Colorado law establishes the rights of victims [28], and recognizes, as do we, the vital importance of ensuring that victims have both the right to be heard at trial and sentencing, and the continuing right to be heard after sentencing on matters pertaining to the case. After all, these same rights are afforded to the accused. These rights for victims are enforced in order to empower them during the criminal justice process and to aid in their recovery. However, in most cases the victim's influence on proceedings is limited by the law and the ultimate authority of an unbiased decisionmaker - a judge or jury. Regardless of how much weight a victim's input may be given at trial or sentencing, the accused may still not be sentenced beyond what the law allows. Likewise, a victim's input at the offender's parole hearing can typically do no more than prevent early release. It cannot extend his sentence beyond what the court has imposed.

In the case of Lifetime Supervision offenders, however, the situation is quite different. Since we will never be released from prison unless paroled, a victim's input at our parole hearings has the potential to keep us incarcerated for life. This criterion is therefore ripe for manipulation by the SOTMP therapists, who are committed to the containment approach. We have been told by one therapist that the treatment team works through victims' advocate groups to contact victims and solicit input prior to parole hearings. We do not know the content of these conversations. But given the therapists' established pattern of seeking any justification to interfere with our ability to be paroled, and in light of the fact that the victims' input is not offered freely of their own volition but must be solicited, we suspect there is a high likelihood of victims' advocates asking leading questions or otherwise manipualting victims to serve their own agenda. In this way the therapists obtain their opportunity to disrupt an individual's parole, and the containment approach, which claims to be centered around the needs of victims, turns those victims into pawns to be used for its own purpose: keeping us imprisoned at all costs.

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[27] See "Lifetime Supervision Criteria", supra note 23, at LS 1.010(G).
[28] Section 17-2-214 C.R.S.; Section 17-22.5-404(2)(a)(I) C.R.S.

There are several other criteria put in place by the SOMB which directly facilitate the containment approach. These criteria are often used to devastating effect on those sentenced under the Lifetime Supervision Act. For example, the purported victim-centeredness of the SOMB's containment principles has led to a pronounced emphasis on requiring those in treatment to demonstrate "victim empathy" [29]. When one man (currently in Phase II) had his probation revoked and was sentenced to an indeterminate prison term, the court cited as a primary reason that he displayed a "lack of victim empathy". Another major issue is denial of the crime for which an individual was convicted. This can result in termination from (or refusal of) SOTMP treatment [30], and is one factor considered when determining whether an individual is an SVP [31]. "Minimization" is considered a failure to take full responsibility for one's behavior [32], and there is an individual currently in Phase II who was placed on "notice" status in treatment, resulting in his inability to obtain a parole recommendation, because the therapists felt he was "minimizing". An apparent lack of motivation for treatment is also taken into account in SVP assessments [33]. And, of course, lack of progress in treatment can result in denial of a parole recommendation [34] and termination from the SOTMP [35]. For Lifetime Supervision offenders these consequences are dire indeed. But does failure to meet any of these criteria (which we must note are primarily vague and subjective) really merit such consequences? If the failure was a reliable indication that the individual was likely to reoffend, we might agree that serious sanctions were appropriate. Current research, however, shows that this is not the case:

> None of the clinical presentation features were significantly related to sexual recidivism: lack of victim empathy...denial of sex crime...minimization...and lack of motivation

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[29] See "Lifetime Supervision Criteria", supra note 23, at LS 1.010(G).
[30] Id. at LS 1.010(A)(1).
[31] "Colorado Sexually Violent Predator Assessment Screening Instrument (SVPASI)", Part 3A - Sex Offender Risk Scale (SORS)(p.7) and SOMB Checklist (p.10), (June 20, 2007) [hereinafter "SVPASI"].
[32] See "Lifetime Supervision Criteria", supra note 23, at LS 1.010(A)(1).
[33] See "SVPASI", supra note 31, at 7 & 10.
[34] Section 18-1.3-1006(1)(a) C.R.S.; See "Lifetime Supervision Criteria", supra note 23, at LS 1.010(C)(1) & LS 4.200.
[35] See "TC Contract", supra note 9, at 4.

> for treatment (assessed pre-treatment)...For those who completed treatment, poor progress in treatment...was, on average, not significantly related to sexual recidivism. [36]

If none of these criteria are predictors of recidivism, why do the SOMB and SOTMP place such emphasis on them? These criteria, and others like them, are simply plausible-sounding reasons to keep Lifetime Supervision offenders contained in prison indefinitely.

Containment in the SOTMP: Manipulating SOMB Criteria

It would appear that the SOMB criteria are designed to provide SOTMP therapists with a multitude of ways to keep Lifetime Supervision offenders contained. However, this does not seem to be enough for the therapists, who routinely go beyond the SOMB standards, altering, misrepresenting, or misapplying them to suit the program's true objectives.

The radical commitment of the SOTMP to containment principles - to the exculsion of any attempt at a truly therapeutic, rehabilitative approach to sex offender treatment - can be better understood by considering the background of the therapists which the program employs. The first issue in this area which raises concern is the quality of the SOMB requirements for approved treatment providers. In terms of education, experience, and training, the necessary qualifications are not terribly stringent [37]. Certainly, no specialized training in sex offender treatment is required, and it is not difficult for clinical social workers, marriage and family therapists, and addiction counselors to be approved as sex offender treatment providers by the SOMB [38].

To our minds, however, the most unsettling problem is that, as we understand it, several of the SOTMP Phase II therapists have backgrounds in law enforcement (at least one used to be a parole officer) and victims' advocacy. Common sense tells us that having a victims' advocate providing sex offender treatment, and in a position to control, in large part, our opportunity to be released from prison, presents a horrendous conflict of interest. From the perspective of the containment

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[36] R. Karl Hanson & Kelly Morton-Bourgon, "Predictors of Sexual Recidivism: An Updated Meta-Analysis 2004-02", Public Safety and Emergency Preparedness Canada (2004), p. 11 [hereinafter "Predictors of Sexual Recidivism"].

[37] Colorado Sex Offender Management Board, "Colorado Standards and Guidelines for the Treatment, Assessment, Evaluation, Treatment, and Behavioral Monitoring of Adult Sex Offenders", Standards 4.300 & 4.400 (March 2008) [hereinafter "Standards and Guidelines"].

[38] Id. at Standard 4.400(B).

approach, however, it is ideal. The victims' interests (or what the therapists believe to be their interests) trump all, including our need for treatment, rehabilitation, and safe reintegration into society.

These priorities manifest themselves in the way the SOTMP misrepresents the SOMB criteria. For example, the criteria require that a Lifetime Supervision offender "must have defined and documented his or her sexual offense cycle"[39]. The SOTMP has consistently given us the impression that in order to meet this criterion we must complete a Phase II group called "cycles". This group has been known to last a year or more, and consists of a complex presentation of our sexual offense cycles. However, when we contacted the SOMB to ask about the intent of this criterion, we were informed that it referred to a much simpler identification and presentation of the cycle which we had completed during our six months in Phase I. By misrepresenting the intent of this criterion, the Phase II SOTMP therapists require individuals to complete a year or more of additional work before receiving a recommendation for parole - work which the SOMB never designed to be a prerequisite for parole! This tactic allows the therapists to withhold parole recommendations from individuals much longer than actually necessary under the SOMB criteria.

Another example of this sort of manipulation involves the criteria surrounding the Personal Change contract. First, while only one of the three different treatment formats established by the SOMB (the Standard format) requires an individual's contract to be approved by the therapists[40], the SOTMP has consistently given the impression that everyone is required to have an approved contract in order to receive a parole recommendation. In addition, once an individual's contract is approved the SOTMP staff arrange a "family disclosure", at which members of the offender's family who are on his support team meet with him and the therapists to discuss the contents of the contract. There is no SOMB criterion requiring a family disclosure meeting as a prerequisite for a parole recommendation, and when questioned directly some of the therapists have admitted this. However, the family disclosure is typically portrayed as absolutely necessary, and the uninformed among us simply accept this without question.

A personal story will illustrate how the therapists manipulate

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[39] See "Lifetime Supervision Criteria", supra note 23, at LS 4.210(B)(4).
[40] Id. at LS 4.210(A)(3).

these criteria.

(Mark Walker)

I turned in my Personal Change contract in early 2007. Because my sentence is Four Years to Life I fall under the SOMB's Modified Format, which does not require my contract to be approved, but only that I have, "at minimum, one approved support person who has...reviewed and received a copy of" the contract [41]. So I obtained a copy and sent it to my parents, who are my support, for review. I asked them to send letters to myself and my primary therapist indicating that they had reviewed the contract, by which I could demonstrate that I had met this criterion.

When my mother mentioned this to my therapist, she was told not to send the letter, and that she would be able to sign a document certifying that she had reviewed the contract after our family disclosure meeting. So in order to meet this one criterion I am forced to meet two (approval of my contract and family disclosure) which are not required by the SOMB. Meanwhile, as of this writing, with my parole hearing fast approaching, my contract is still not approved, nor is my family disclosure meeting scheduled. Since I meet all the other criteria, it is difficult not to view this run-around as an attempt to prevent me from meeting this final criterion and having a genuine opportunity for parole when I see the board later this year.

Another good example comes from an individual in Phase II who had waited over a year after turning in his Personal Change contract for it to be approved. Approximately four weeks prior to his parole hearing his primary therapist informed him that his contract had been "lost", and that he would have to complete a new one in order to receive a recommendation for parole. Since the contract is a very extensive document, it took this individual every minute of the four weeks leading up to his parole hearing to rewrite the document. This type of behavior is standard practice among the SOTMP therapists: they wait until just prior to an individual's parole hearing, and then suddenly inform him that, for some reason, they will be unable to give him his recommendation, leaving him no time to remedy the problem. It is precisely this sort of behavior which has prompted men in Phase II to begin sending their Personal Change contracts to the therapists by certified mail. This provides proof that they have received the documents in the event that they are mysteriously "lost".

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[41] See "Lifetime Supervision Criteria", supra note 23, at LS 4.210(B)(5).

Containment in the SOTMP: Manipulating the Parole Board

Another method the SOTMP therapists use to further their containment approach involves tactics designed to ensure the desired outcome at the parole board, regardless of whether or not the candidate has met SOMB criteria.

The first such tactic is employed prior to the parole hearing, and involves the use of the polygraph. (We will discuss the SOTMP's use of the polygraph in much greater detail in a later section). Typically, individuals in Phase II are scheduled for maintenance polygraphs once every six months. However, when an offender approaches his parole hearing with a recent non-deceptive polygraph, as required for a parole recommendation [42], the pattern changes. The common practice of the SOTMP is to schedule such individuals for another polygraph, often months ahead of the regular schedule, in order to administer the test immediately prior to the parole hearing. This creates one more possibility for an unfavorable outcome on the polygraph, and if the offender does not pass it the therapists have generated an excuse to withdraw the recommendation which he had otherwise earned. Of course, because his polygraph results come back just prior to the parole hearing, he does not have an opportunity to schedule another test and try to pass it before the hearing is held. The frequency and consistency of this behavior by the therapists convinces us that it is a deliberate tactic employed by the SOTMP to enable them to refuse to grant parole recommendations. Moreover, the high percentage of "inconclusive" results on these pre-parole polygraphs is highly suspicious. Although polygraphers state that such results are meaningless, the wording of the SOMB criteria, which explicitly require "non-deceptive" results [43], allows the SOTMP to deny a recommendation for parole on the basis of an "inconclusive" polygraph. Even if the individual passes the polygraph, as sometimes occurs, the SOTMP contract polygrapher Amich & Jenks, Inc., benefits from the opportunity to conduct an additional polygraph at the expense of the Colorado taxpayer.

Another, even more sinister tactic involves the direct undermining of offenders who have undeniably met all of the SOMB parole criteria. One Phase II therapist, in an unguarded moment, admitted that the treatment team will approach the parole board

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[42] See "Lifetime Supervision Criteria", supra note 23, at LS 4.210(A)(2),(B)(2), &(C)(2).
[43] Id. at LS 4.210(A)(2), (B)(2), &(C)(2).

regarding a candidate for parole, and say that in spite of the fact that he technically has a recommendation for parole, the SOTMP feels that he would benefit from another year in treatment. So regardless of the fact that the offender has worked hard, done everything required of him, and met all of the SOMB criteria, he is still denied parole. This behavior is pure and simple manipulation of the parole board in service of the containment approach. Although Lifetime Supervision offenders may do everything necessary to be paroled under the law, we are kept in prison because SOTMP therapists are able to short-circuit the entire process at will. Since the SOTMP is led by fervent disciples of the containment approach, the ability to prevent us from being paroled by simply saying that we shouldn't be results in unnecessary years in prison for Lifetime Supervision offenders. It is very discouraging to find that, despite doing everything asked of us, we are still unable to be paroled. The detrimental effect of these tactics on our morale and motivation to continue to work hard in treatment can hardly be exaggerated. We have seen one man (not a Lifetime Supervision offender) terminate himself from the treatment program in disgust after being denied parole due to this behavior by the SOTMP therapists. As an individual with a determinate sentence, we believe he has a better chance of being paroled if he is not in treatment, because the therapists will be unable to interfere. This state of affairs certainly seems backward to us! Of course, for Lifetime Supervision offenders there is no possibility of parole outside of participation in the SOTMP [44]. So we find ourselves caught between the SOTMP's containment ideology on the one hand, and a life sentence on the other, with no apparent way out.

Containment in the SOTMP: Manipulating the Treatment Contract

Another favorite weapon in the SOTMP's containment arsenal is the Phase II T.C. contract. As we observed in our first report, this contract is signed by Lifetime Supervision offenders under duress and the undue influence of the therapists, and is therefore voidable [45]. This, however, does not prevent the SOTMP from using this contract as an effective containment tool.

The first observation we must make about the contract is that it is a standard document for all Phase II participants. Although the individuals in Phase II have committed very different crimes

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[44] See Beebe, supra note 2.
[45] See "Unacceptably High Cost", supra note 1, at 9.

and have unique histories, the SOTMP's contract evinces a "one size fits all" approach to treatment. Someone who comitted a crime which amounts to statutory rape signs the same contract, and receives the same treatment, as a serial pedophile or violent rapist. Aside from the recent addition of concessions for the various treatment formats laid out by the SOMB, which are based on an individual's minimum sentence, the treatment program makes virtually no effort to tailor treatment to the unique needs of each participant. This reflects the conventional wisdom of the containment approach, which views all sex offenders as equally dangerous, subjecting us all equally to the same life sentence, the same treatment, and the same containment regardless of what we have done. This approach is naive and simplistic at best, and malicious and destructive at worst. To equate every sex offender with the most heinous cases of kidnapping/child molestation/murder which are sensationalized in the media is deceptive and highly irresponsible. Yet it serves the containment philosophy well. For if a high level of public outrage, fear, and revulsion can be maintained against all sex offenders, an equally high level of public support for the most aggressive possible containment of all sex offenders will inevitably result.

The TC contract also contains a number of provisions specifically designed to facilitate containment. For example, the contract provides as follows:

> I understand that while participating in The CrossRoad To Freedom House my behavior, attitude, motivation and clinical treatment needs are subject to continual assessment. Consequently, staff may determine at any time that my continuation in the treatment program is not appropriate. I agree to abide by the recommendations made by the program staff. [46]

This provision essentially requires us to grant the therapists total control over our ability to continue to participate in treatment, and thereby to be paroled. The contract further reinforces this absolute control by stating:

> I understand that I can be suspended or terminated from the Treatment Community based upon the consensus of treatment staff that I have failed to make sufficient and sustained progress towards meeting my treatment goals. [47]

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[46] See "TC Contract", supra note 9, at 3.
[47] Id. at 4.

These provisions enable the SOTMP therapists to keep Lifetime Supervision offenders contained in prison by giving them the authority to terminate us from treatment essentailly at will, thereby preventing us from being paroled. Yet we are forced to submit to these conditions under threat of being refused treatment if we do not sign the contract, and without treatment we will remain in prison indefinitely.

A final way in which the treatment team uses the TC contract to manipulate Lifetime Supervision offenders is by selectively applying its conditions. For example, one contract provision reads, "I understand that if I am convicted of a Class I COPD violation, I will be terminated immediately. Class II or III COPD violations may result in termination at the discretion of staff"[48]. SOTMP therapists applied this provision to Mark Walker by terminating him from treatment in 2007 for receiving a Class II COPD conviction (he was charged with "count interference" for being asleep in his room during a standing count). This resulted in a year of lost treatment time, a year parole deferment, and the necessity of civil litigation before he was able to return to the TC. Another individual was recently "suspended" from the treatment program after receiving a Class II COPD conviction for "disobeying a lawful order" due to an alleged violation of the TC contract (how "lawful" the contract requirements actually are is very much open to debate!). This individual is currently awaiting his termination review hearing. Yet, at the same time, another offender received a Class I COPD conviction for "tampering with a security device", and in spite of the clear language of the contract was not terminated, and still remains in Phase II. Thus, while the contract itself states unequivocally that offenders "...will not recieve any preferential treatment or extraordinary privileges for any reason"[49], in reality the total discretionary control invested in the therapists by this contract promotes discriminatory and arbitrary enforcement. It therefore becomes yet another tool to be used in pursuit of the containment approach objective of controlling offenders - especially our ability to be paroled!

Containment in the SOTMP: Manipulating the Duration of Treatment

One of the most powerful forms of containment utilized by the SOTMP is the perpetual nature of the Phase II treatment program [50].

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[48] See "TC Contract", supra note 9, at 4.
[49] Id. at 3.
[50] See "Unacceptably High Cost", supra note 1, at 16.

Based on the manifestly absurd premise that "A 'cure' for sex offending is no more available than is a cure for epilepsy or high blood pressure"[51], containment proponents have designed a treatment program of endless duration, touting it as necessary to manage the incurable dangerousness of sex offenders. Since this feature makes it impossible for us to successfully "complete" the program, our performance is instead measured by "successful progress" criteria. So, rather than being able to objectively complete treatment, we are forced into a never-ending program with our success determined by subjective criteria designed to be easily manipulated by the program itself.

This is, of course, the perfect recipie for perpetual containment. As a result there are men in Phase II who have been here for four or five years, or more, and who are still unable to be paroled. Indeed, there is no certainty that they will ever be paroled, as the therapists, should they so choose, are able to retain Lifetime Supervision offenders in the SOTMP indefinitely. As experts on the Lifetime Supervision Act recently observed,

> Under its containment-oriented approach, the SOTMP relies on lifetime incarceration as a norm in the management of offenders incarcerated under the Lifetime Supervision Act, thereby allowing the SOTMP to "treat" Lifetime Supervision offenders without time constraints or fiscal accountability. This aspect of the SOTMP's containment-oriented approach is evidenced by the fact of the SOTMP's use of open-ended rather than time-limited treatment programs in its Phase II Therapeutic Community, and by the ever-increasing population of offenders incarcerated under the Lifetime Supervision Act. [52]

Containment in the SOTMP: Manipulating the Offender

Not content to simply keep sex offenders in prison, the need for absolute control dictated by the containment approach drives the SOTMP therapists to seek ways to manipulate even the details of offenders daily lives.

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[51] Kim English et al., "Managing Adult Sex Offenders in the Community - A Containment Approach" (National Institute of Justice Research in Brief, NCJ 163387, January 1997) [hereinafter "Sex Offenders in the Community"].

[52] See "Report to the Colorado General Assembly", supra note 18, at 26.

A rather disturbing example of this is a man in Phase II (not a Lifetime Supervision offender) who was recently pursuing some legal work on his case. Because he was laboring under a court deadline, this individual was forced to spend a great deal of time at the prison law library researching and preparing his documents in order to complete and submit them on time. However, when he missed some work time due to law library appointments he was fired from his job at the Arrowhead greenhouse, and the therapists placed him on "notice" status in treatment. "Notice" is a sanction status which includes, among other things, a loss of privileges (such as the ability to use your TV, radio, or other electrical appliances), and which constitutes a blanket statement by the therapists that an individual is failing to satisfactorily progress in treatment. This action is a manifestation of a long-standing, deep-seated animosity within the SOTMP toward any offender who has the audacity to assert his rights in court. This attitude, of course, is unsurprising since it is a natural and logical outgrowth of the containment mindset. Here we have the SOTMP deliberately interfering with an individual's right of access to the courts, and punishing him for exercising that right, in furtherance of their containment philosophy.

Another example of this type of manipulation can best be illustrated by a personal story.

> (Jeremy Loyd)
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> In May of 2007 I had a meeting with the SOTMP Phase II Program Manager. I told him that I was disappointed about not being paroled, and even more disappointed by the fact that I had been kept out of the treatment program for years in spite of the fact that I have a minimal sentence (Two Years to Life). He told me there was nothing he could do about those things, but I said there was one thing he could do for me: help me to re-establish contact with my children. He told me a Parental Risk Assessment (PRA) would have to be conducted [53], so he scheduled me for one. The program's evaluator, who was certified to conduct the PRA, quickly completed the paperwork, and said I was a low to moderate risk. He felt it was a good idea, both from a therapeutic standpoint and for the sake of my children, for me to start having contact with them.
>
> However, the evaluator had one final task to complete the PRA: he needed to contact my ex-wife to ensure that she

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[53] See " Unacceptably High Cost", supra note 1, at 9.

supported my having contact with the children. The first obstacle I encountered was that the SOTMP, and my old probation officer, claimed that there was a restraining order in effect between me and my wife. In fact, that order, which had been put in place during our divorce, had been expired for over two years. By the time the evaluator called the court and resolved that issue, however, my ex-wife was moving between states, and he was unable to contact her. He was able to speak with my mother, who assured him that my ex-wife had expressed full support for my re-establishing contact. She said she would have my ex-wife call as soon as possible to discuss the matter.

Meanwhile, the program evaluator was preparing to retire, and I began to worry that my PRA would not be completed. Before he left he assured me that he had everything set up for the new doctor who was joining the program to complete the PRA by conducting the interview with my ex-wife, and that it should be finished in a few weeks. After around two months of waiting, not wanting to rush the process, I finally spoke to the new doctor. He said he would look into it, but told me that he couldn't find my file containing the PRA paperwork completed up to that point. My mother called the doctor and told him that my ex-wife had been waiting to speak with him. The doctor said he couldn't find the file, but that he would redo my entire PRA.

Months passed. In December I was unexpectedly accused by another Phase II participant of some very inappropriate behavior, of which I was not in fact guilty. Despite being aware that my accuser had a history of deceptive behavior and had made false accusations against me in the past, the therapists chose to polygraph me on the issue. The polygraph results came back "deceptive" (see p. 39).

After continuous pressure from my family, the doctor finally called me: he had miraculously "found" the file which had been missing, by that time, for about six months. He said he had spoken to my ex-wife, and that she supported my having contact with my children. However, he told me he would have to rescore one section of the PRA, and the fact that I was now on notice due to the "deceptive" polygraph could greatly increase my score to high risk, which he would have to take into account and would score against me.

Knowing that the previous program evaluator, one of only a few people in DOC at the time who was certified to conduct PRAs, had rated me as a low to moderate risk, I chose not to continue with the PRA at that time in order to avoid being rated a high risk, but would wait until I had cleared up my polygraph.

As of August 2008 I remain on notice, and am still unable to have contact with my children. It has been a year since I started my PRA.

Whether it is our ability to pursue legal action, or to re-establish relationships with our children, or any of a hundred other personal endeavors, those of us in the SOTMP find the ubiquitous tentacles of the containment approach creeping their way into every aspect of our lives.

Conclusion

> The "Containment Approach" to sex offender treatment was originally developed by researchers at the Colorado Division of Criminal Justice as a means of adequately protecting the community and victim safety when sex offenders are placed in the community...The Containment Approach prioritizes community safety over offender rehabilitation needs in order to ensure community safety. The SOTMP's application of the Containment Approach to "Lifetime Supervision" offenders who are already incarcerated, however, is inappropriate, since incarceration itself negates offender risk to community safety. This inappropriate application of the Containment Approach to incarcerated "Lifetime Supervision" offenders encourages an overly authoritarian and punitive treatment environment in which offenders are routinely terminated from treatment instead of actually becoming the focus of additional treatment efforts to address their behavioral problems. [54]

The containment approach not only provides the philosophical underpinnings of the SOTMP, the SOMB, and the Lifetime Supervision Act itself; it also represents a flawed worldview which tends to dehumanize (and demonize) sex offenders and to take advantage of victims to promote its own objectives. As long as proponents of this worldview continue to set the agenda regarding sex offender law and treatment in Colorado, we will never receive the humane and rehabilitative treatment envisioned by the General Assembly when enacting the Lifetime Supervision Act, and the Act itself will not function as the legislature intended.

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[54] Diane Crocher, ed., "A Report to the Colorado General Assembly on the Colorado Department of Corrections' Failure to Adequately Treat Sex Offenders Under the Colorado Sex Offender Lifetime Supervision Act of 1998: Second Annual Report Fiscal Year 2006-2007", Et Alia Paralegal Services (2007), p. 26, n. 31.

TERMINATION HEARINGS: MOCKING THE FEDERAL COURT

In our first report we briefly noted that the United States District Court for the District of Colorado had issued an injuction ordering the SOTMP to put procedures in place to provide offenders with due process hearings prior to terminating them from the treatment program [55]. This ruling threatened the therapists' total control over termination, which had previously been one of their primary means of containing and manipulating Lifetime Supervision Offenders. According to the SOMB,

> Phase II program terminations and completions for Fiscal Year 2006-2007 totaled 40 lifetime offenders; 36 offenders were expelled or removed for lack of progress, 3 offenders progressed to parole or community, and 1 offender was terminated for administrative reasons. [56]

Since the continued ability of the SOTMP to terminate individuals from treatment at will is an essential component of the containment process, the procedures put in place in response to the court order is a mockery of due process and the federal court's ruling. It illustrates the lengths to which this program will go to maintain the total control over offenders required by the containment approach.

The Beebe Ruling [57]

The court's ruling, issued in November of 2006, concerned a civil rights suit brought by Beebe, a sex offender who had been terminated from Phase I SOTMP treatment. He claimed that the treatment requirements of the Lifetime Supervision Act [58] and the DOC's own administrative regulations (ARs) [59] created a liberty interest in sex offender treatment for Lifetime Supervision offenders, because without participation in such treatment it is impossible for us to be paroled under an indeterminate sentence. The court agreed, and ruled on that basis that the SOTMP would have to provide us with due process hearings before

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[55] See "Unacceptably High Cost", supra note 1, at 15.
[56] See "Lifetime Supervision Report", supra note 7, at 11.
[57] See Beebe, supra note 2; see also Beebe v. Heil, 333 F.Supp.2d 1011 (D.Colo. 2004).
[58] Section 18-1.3-1004(3) C.R.S.; see also section 16-11.7-105 C.R.S.
[59] Colorado Department of Corrections, Administrative Regulation 700-19(IV)(G), (September 1, 2004).

they could deprive us of treatment through termination. As part of this ruling the court noted the minimum due process protections set forth by the United States Supreme Court, which included, among other things, "a 'neutral and detached' hearing body" [60]. The court therefore ordered DOC and the SOTMP to "institute new termination procedures that provide appropriate due process protections to inmates sought to be terminated from sex offender treatment."

Undue Process

In response to this ruling DOC and the SOTMP created AR 700-32 to institute and govern termination review hearings. This regulation is designed to leave total control over the termination process in the hands of the SOTMP therapists, and therefore utterly fails to provide individuals with the true due process protections envisioned by the federal court.

For example, the court ruling requires that we receive a due process hearing prior to **termination** from treatment. The AR seeks to circumvent the intent of the ruling by providing for **suspension** from treatment [61]. In practice this means that when an individual in Phase II treatment is served with written notice of his termination review hearing (as is required by due process), he is immediately removed from Phase II and Arrowhead, and is taken to Fremont to await the hearing. This removal from treatment is termed "suspension", although the effect is essentially the same as termination, in that the individual is unable to participate in treatment. In addition, in spite of the fact that the offender has not been officially "terminated", the SOTMP proceeds to immediately fill his bed in the Phase II treatment program! So even if his termination is not upheld at the hearing (a rarity indeed!) he will have to wait for bedspace to become available before he can return to Phase II. This "suspension" looks suspiciously like termination to us!

Moreover, although the timeliness of the hearing is an essential component of due process [62], the AR sets no deadline for conducting the termination review hearing. After serving notice the therapists can therefore wait indefinitely to conduct the actual hearing. We know of men who have waited months for a

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[60] Morrisey v. Brewer, 408 U.S. 471,489 (1972).
[61] Colorado Department of Corrections, Administrative Regulation 700-32(B)(3), (February 15, 2007) [hereinafter "AR 700-32"].
[62] See, for example, U.S. Const. amend. VI.

hearing. And we know of some who were suspended and removed from Phase II, only to be returned to the program months later never having had a hearing at all!

The most blatant mockery of the court's ruling, however, involves the SOTMP's interpretation of a "neutral and detached" hearing body. The AR constructs the termination review panel as follows:

> 1. The SOTMP manager, or designee, is responsible to appoint the members of the SOTMP Termination Review Panel.
> 2. The Panel will consist of three SOTMP therapists, one of which will be trained in due process hearings, will act as chairperson, and conduct the review proceedings. At least one panelist will be a SOTMP unit coordinator, SOTMP quality assurance specialist, or SOTMP manager. In addition, a SOTMP therapist will act as presenter. [63]

The intrinsic bias of this design should be obvious, and makes it utterly impossible for us to receive the fair and impartial hearing envisioned by the court. The SOTMP cannot, however, comply with the intent of the court's order, while at the same time retaining the absolute, unfettered control over sex offenders that is foundational to their containment ideology [64].

A personal story, although admittedly unique, will provide one man's experience with the SOTMP's termination review hearings.

(Mark Walker)

In March of 2007 I had been in SOTMP Phase II treatment for nearly two years. I was doing well and progressing in the program, but I had received some warnings from unit officers for being asleep at standing count time. On March 7, 2007 I was convicted of a Class II COPD violation, "count interference", for being asleep during a standing count. Because the COPD conviction raised my classification points I was removed from Arrowhead and Phase II on March 9, and sent to Fremont. After several days, having spoken to no one from the SOTMP, I was moved to Buena Vista Correctional Facility.

On March 12, the SOTMP treatment team "staffed" my case, and chose to terminate me from the treatment program. On March 20, the team issued a memo informing me that I had been "administratively terminated" from Phase II. I began

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[63] See "AR 700-32", supra note 61, at (IV)(C)(1)&(2).

[64] While we do not currently have access to the details, we understand that the federal court recently held the SOTMP in contempt for their failure to comply with the order in Beebe..

to immediately file a series of grievances, claiming, among other things, that my termination violated the court ruling in Beebe and DOC's own AR, since I had not been given a termination review hearing. My attorney began preparing to file a civil action to address the issue.

Faced with this response, on May 22, I received a "Notice of Right to SOTMP Termination Review", stating that I would be scheduled for a hearing on May 24. However, I was aware that AR 700-32 required the notice to be served "within five working days following the affirmation of the therapists' termination recommendation by the SOTMP Termination Staffing" [65]. Since my termination had been staffed on March 12, and I was not served with notice until May 22, I again filed a series of grievances claiminig that the hearing was not timely and violated the AR. When the hearing itself was held, I simply registered this objection, and at the advice of my attorney said nothing more. Interestingly, the chairman of my review hearing panel, who is also the Sex Offender Treatment Program Manager, had recently denied one of the grievances I had filed regarding my improper termination. So much for "neutral and detached"!

On May 29, I received a copy of the hearing disposition indicating that my termination had been upheld (hardly a surprise). I continued to pursue civil litigation, seeking judicial review of my termination. Around two months later the Phase II program sent me a treatment contract, suggesting that if I signed I would be returned to treatment. So I signed, expecting to be returned fairly quickly.

In late October, still at Buena Vista, I saw the parole board and received a one year deferment because I was not in treatment, even though I had already passed my four year minimum sentence. In December I was finally moved back to Fremont, where I was held for three more months. Then, in March 2008, I was returned to Arrowhead and Phase II. All in all, I was removed from Phase II for just over a year. [66]

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[65] See "AR 700-32", supra note 61, at (IV)(B)(1).

[66] While I was at Buena Vista I was informed by my family that they believed I had suffered from an untreated sleeping disorder since childhood, which may have accounted for some of the problems I was experiencing with waking up for standing counts. When I approached medical about the issue, however, they refused to even attempt a diagnosis, and sent me away with some written materials on proper sleeping habits.

THE POLYGRAPH:
"A DOOMED AMERICAN PSEUDO-SCIENCE" [67]

Probably the most powerful, and most insidious, containment tool available to the SOTMP is the polygraph. This device forms an integral part of the containment approach, and the polygrapher stands on equal footing with the treatment provider and parole or probation officer in community containment techniques. The polygraph is a foundational component of SOTMP Phase II treatment, and we discussed the program's use of the device at some length in our previous report [68]. However, the use of the polygraph in sex offender treatment, and its effect on Lifetime Supervision offenders in particular, is sufficiently disturbing that we feel it warrants a more detailed, in-depth treatment here. Before discussing the SOTMP's use of the polygraph, however, we must consider the device itself.

Lie Detector?

The most essential question to ask about a device that is being used to keep individuals contained in prison is: does it work? In 2002 the National Academy of Sciences issued a report on the polygraph. In its findings the Academy recommended that the federal government discontinue its use of polygraphs to screen for security risks. The study reported:

> Almost a century of research in scientific psychology and physiology provides little basis for the expectation that a polygraph test could have extremely high accuracy. Although psychological states often associated with deception (e.g., fear of being judged deceptive) do tend to affect the physiological responses that the polygraph measures, these same states can arise in the absence of deception. Moreover, many other psychological and physiological factors (e.g., anxiety about being tested) also affect those responses. Such phenomena make polygraph testing intrinsically susceptible to producing erroneous results. This inherent

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[67] Andrew Stephen, "The Truth About the Lie Detector", New Statesman (October 16, 2006) [hereinafter "Lie Detector"].
[68] See "Unacceptably High Cost", supra note 1, at 12-15.

> ambiguity of the physiological measures used in the polygraph suggests that further investments in improving polygraph technique and interpretation will bring only modest improvements in accuracy.
>
> Polygraph research has not developed and tested theories of the underlying factors that produce the observed responses. Factors other than truthfulness that affect the physiological responses being measured can vary substantially across settings in which polygraph tests are used. There is little knowledge about how much these factors influence the outcomes of polygraph tests in field settings. For example, there is evidence suggesting that truthful members of socially stigmatized groups and truthful examinees who are believed to be guilty or believed to have a high likelihood of being guilty may show emotional and physiological responses in polygraph test situations that mimic the responses that are expected of deceptive individuals. The lack of understanding of the processes that underlie polygraph responses makes it very difficult to generalize from the results obtained in specific research settings or with particular subject populations to other settings or populations, or from laboratory research studies to real-world applications. [69] (emphasis added)

Commenting on this study, the Washington Times observed:

> [I]n the words of the study, these devices are "intrinsically susceptible to producing erroneous results." That's academese for "I wouldn't trust one as far as I could throw it"...The same fallibility that renders these machines unusable for employee monitoring makes them dangerous for criminal investigations as well. Police and prosecutors regard polygraph results as the closest thing to a dead-bang certainty. But that faith lacks any foundation...Polygraphs are an instrument that can't be refined...Our medieval forebears had their own lie detector test: Suspected witches were dunked in water, on the theory that the guilty would float and the innocent would sink. Polygraphs aren't quite as preposterous, but they're bad enough. [70]

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[69] National Academy of Sciences, The Polygraph and Lie Detection, Washington, DC: National Academies Press (2002), pp. 2-3.

[70] Steve Chapman, "The Truth is Polygraphs Lie", Washington Times (October 2002).

The American Psychological Association states:

> The accuracy (i.e., validity) of polygraph testing has long been controversial...A particular problem is that polygraph research has not separated placebo-like effects (the subject's belief in the efficacy of the procedure) from the actual relationship between deception and their physiological responses. One reason that polygraph tests may <u>appear</u> to be accurate is that subjects who believe that the test works and that they can be detected may confess or will be very anxious when questioned. If this view is correct, the lie detector might be better called a fear detector...Most psychologists and other scientists agree that there is little basis for the validity of polygraph tests. [71]

A popular introductory college psychology textbook comments:

> [B]ecause physiological response is much the same from one emotion to another, the polygraph cannot distingush among anxiety, irritation, and guilt - they all appear as arousal. Thus, these tests err about one-third of the time. They more often label the innocent guilty - when the relevant question upsets the honest person - than the guilty innocent...Good advice, then, would be never to take a lie-detector test if you are innocent. [72]

And an article in the New Statesman claims:

> [There is] a century-old American fallacy which, at long last, is beginning to crumble: that polygraph (aka lie-detector) tests actually work. Evidence is mounting that, far from being the infallible tools of world-beating American investigative procedures that Hollywood would have us believe, they have actually been responsible for countless miscarriages of justice and have ruined lives. [73]

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[71] American Psychological Association, "The Truth About Lie Detectors", http://www.psychologymatters.org/polygraphs.html, (August 5, 2004).

[72] David G. Myers, <u>Exploring Psychology, 4th Ed.</u>, New York: Worth Publishers, Inc. (1999), p.350.

[73] See "Lie Detector", supra note 67.

This certainly does not paint a flattering picture of the validity of the polygraph. And, it seems, the courts see it the same way. In a foundational ruling on the issue, the Colorado Supreme Court stated:

> We do not believe that the physiological and psychological bases for the polygraph examination have been sufficiently established to assure the validity and reliability of test results. Nor are we persuaded that sufficient standards for qualification of polygraph examiners exist to ensure competent examination procedures and accurate interpretation of the polygram. Further, use of the polygraph at trial interferes with and may easily prejudice a jury's evaluation of the demeanor and credibility of witnesses and their testimony. Accordingly, we conclude that any evidence of polygraph results and the testimony of polygraph examiners is per se inadmissible in a criminal trial. [74]

The United States Supreme Court, discussing the President's adoption of Rule 707, excluding polygraph evidence in all military trials, concurs:

> [T]here is simply no consensus that polygraph evidence is reliable. To this day, the scientific community remains extremely polarized about the reliability of polygraph techniques... [Some] scientific field studies suggest the accuracy rate of the "control question technique" polygraph is "little better than could be obtained by the toss of a coin", that is, 50 percent...Although the degree of reliability of polygraph evidence may depend upon a variety of identifiable factors, there is simply no way to know in a particular case whether a polygraph examiner's conclusion is accurate, because certain doubts and uncertainties plague even the best polygraph exams. [75]

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[74] People v. Anderson, 637 P.2d 354,358 (Colo. 1981).
[75] United States v. Scheffer, 523 U.S. 303, 118 S.Ct 1261, 1265-66, 140 L.Ed.2d 413 (1998).

Having examined a wide variety of sources, it is impossible not to emerge with grave doubts about the validity and reliability of the polygraph. This generates serious concern when we consider how the SOTMP uses this questionable device to manipulate Lifetime Supervision offenders in pursuit of control and containment.

The Polygraph in the SOTMP

The use of polygraphs and polygraph examiners in the treatment of sex offenders is governed by standards set forth by the SOMB [76]. The DOC budget includes $99,569 for polygraph testing in the SOTMP during Fiscal Year 2007-2008 [77]. But what, exactly, is the purpose of polygraphy in the containment approach? If, as seems likely based on the best research, the polygraph is unable to distinguish between truth and deception, why does the SOTMP spend nearly $100,000 per year to polygraph sex offenders? According to containment proponents, "The post-conviction polygraph examination is used to obtain information about the offender that he or she would otherwise likely keep secret." [78] Therefore, "The goal of the polygraph examination is to obtain information necessary for risk management and treatment, and to reduce the sex offender's denial mechanisms." [79] So the polygraph is used in this approach, not to determine whether or not an individual is telling the truth, but rather as an interrogation tool to obtain new information which can be used to control and contain him. As containment advocates explain:

> Obtaining additional information about past victims and about a sex offender's pattern of offending is of significant value to many criminal justice officials...who believe that this knowledge protects victims by increasing the likelihood of managing sex offenders safely in the community. [80]

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[76] See "Standards and Guidelines", supra note 37, at Standard 6.000.
[77] See "Lifetime Supervision Report", supra note 7, at 16.
[78] Kim English et al., "The Value of Polygraph Testing in Sex Offender Management", (Research Report Submitted to the National Institute of Justice, December 2000), p. 14. [hereinafter "Polygraph Testing"].
[79] See "Sex Offenders in the Community", supra note 51.
[80] See "Polygraph Testing", supra note 78, at 18.

Once again, we note that in the containment system's use of the polygraph, as with everything else, rehabilitation for offenders as an objective of "treatment" is not even in view. While lip service is paid to the idea of treatment, the concepts of criminal justice, management, and containment clearly dominate.

However, if the polygraph cannot determine truthfulness, how is it used to obtain information? According to containment approach advocates, "The postconviction polygraph exam...elicits information about past and current relevant behavior because offenders disclose information before and/or after the exam." [81] In reality, then, the supposed value of the polygraph is not the test results themselves, but the confessions examiners hope will be made prior and subsequent to the actual exam.

> Contrary to common understanding, the polygraph is not intended to be used in sex offender treatment as a diagnostic test for deception - the polygraph is instead intended to be utilized as a utilitarian tool for interrogation to elicit admissions from sex offenders concerning their previous behaviors. The information gathered through the use of the polygraph is then utilized by the SOTMP in its containment-oriented approach to "contain" offenders. [82]

What does the containment approach use to motivate individuals to make such admissions during polygraph exams? The answer is twofold: first, convincing the examinee that the polygraph can tell if he is lying, although it clearly cannot; and second, threatening significant consequences if the test results are deceptive. As the National Academy of Sciences notes:

> [T]he value of the polygraph in eliciting true admissions and confessions is largely a function of an examinee's belief that attempts to deceive will be detected and will have high costs. It also likely depends on an examinee's belief about what will be done with a "deceptive" test result in the absence of an admission. Such beliefs are

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[81] Kim English et al., "Sexual Offender Containment - Use of the Postconviction Polygraph", Ann. N.Y. Acad. Sci. 989: 423-24, n. 5 (2003) [hereinafter "Postconviction Polygraph"].

[82] See "Report to the Colorado General Assembly", supra note 18, at 24. See also Id. at 36, n. 48.

> not necessarily dependent on the validity of the test. [83]

Of course, because non-deceptive polygraph results are required by the SOMB criteria [84], the threatened consequence for Lifetime Supervision offenders is the inability to be paroled under an indeterminate sentence. The problems with this polygraph containment approach are obvious: it requires treatment staff to deliberately deceive offenders about the validity of the test; and it requires the imposition of serious consequences based on test results which do not reliably indicate truthfulness or deception. To impose valid consequences for lying based on polygraph results, the polygraph would have to be an accurate diagnostic test for deception, not simply an interrogation tool:

> The difference between these two uses of the polygraph is significant - the polygraph's application as a diagnostic test requires the polygraph to be an accurate and valid test for deception, while its application as a utilitarian tool for interrogation merely requires that offenders <u>believe</u> that the polygraph is an accurate and valid test for deception. [85]

Since the test would not be able to elicit the desired admissions without serious consequences [86], this approach demands that the SOTMP impose devastating sanctions, such as refusing parole recommendations for Lifetime Supervision offenders, based on the results of the polygraph in spite of the fact that the results do not actually indicate anything about the offender's truthfulness or deception. Containment advocates are therefore more than willing to subject truthful offenders to continued confinement in prison based on erroneous test results in order to maintain the threat of consequences necessary to frighten offenders into making confessions.

But what if the looked-for admissions are not forthcoming? Our

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[83] Quoted in "Report to the Colorado General Assembly", supra note 18, at 37, n. 50. See also Kim English, "The Containment Approach to Managing Sex Offenders", <u>Seton Hall Law Review</u>, vol. 34: 1255,1262 (2004)("...information is verified using a polygraph examination, and deceptive findings on the exam lead to a variety of consequences for the offender...").

[84] See "Lifetime Supervision Criteria", supra note 23, at 4.210(A)(2),(B)(2),(C)(2).

[85] See "Report to the Colorado General Assembly", supra note 18, at 24.

[86] Id. at 37, n. 53.

observation has been that the common practice in the SOTMP is roughly as follows: The therapists, whether based on some sort of statistical research or simply on their personal opinion, suspect that an offender is concealing some piece of information. We firmly believe that the therapists then share this suspicion with the polygrapher prior to the offender's examination. If the offender fails to confirm that suspicion by admitting to the information before or after the polygraph, the polygrapher will return a "deceptive" test result. The ongoing threat is that, if the offender does not disclose the desired information prior to his next polygraph it too will be deceptive. Meanwhile, he is placed on sanctions in treatment, and will remain ineligible for a paorle recommendation until he "passes" his polygraph by admitting to the desired information.

Because the polygraph cannot actually detect a lie, this situation creates tremendous pressure on Lifetime Supervision offenders to confess to anything the therapists may think they might have done, whether true or not, in order to "pass" the polygraph and become eligible for a parole recommendation. A good example of this is a man who was in Phase II several years ago. The therapists, for whatever reason, became convinced that he was hiding additional victims, although there was no evidence in his file or criminal history to support this. The man steadfastly and passionately maintained that he had no other victims than those he had already disclosed, and he was therefore totally confused by his inability to "pass" the related question on his polygraph. Eventually, after four consecutive "deceptive" polygraphs on the issue, he was terminated from the treatment program as a result of his unflinching refusal to admit to additional victims. We may never know if he was telling the truth - certainly the polygraph cannot tell! Yet he has now been held out of treatment for over two years under a Lifetime Supervision sentence, and will be refused readmission by the SOTMP until he "passes" the polygraph - in other words, until he admits to additional victims.

This sort of behavior by the SOTMP puts tremendous pressure on us to admit to anything necessary - including additional victims - in order to continue to have an opportunity for parole. We are persuaded that the statistical rates of undisclosed victims, which are purportedly ferretted out by the polygraph [87] in the containment scheme, are significantly artificially inflated by just these sorts of spurious "confessions". Of

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[87] See, in general, "Postconviction Polygraph", supra note 81; and "Polygraph Testing", supra note 78.

course, these questionable statistics are then relied on heavily to justify the continued use of the polygraph in sex offender treatment, and to support the containment philosophy as a whole.

The most distrubing fact, however, is that the therapists are fully aware of the polygraph's unreliability. That is why the SOMB's own standards and guidelines state, "Information and results obtained from polygraph examinations should not be used in isolation when making treatment or supervision decisions." [88] Likewise, even containment proponents assert that "...the results of polygraphs should be utilized only in conjunction with other information when decisions are being made about case management of sex offenders." [89] Yet in spite of these cautions, the SOTMP continues to place offenders on sanctions and withhold their parole recommendations based solely on polygraph results.

When confronted with the polygraph's fallibility, the response of containment advocates is shockingly callous:

> To the observation that polygraph results may not always be accurate, the rejoinder is that they have been found to be significantly more reliable, on average, than offenders' self-reported histories. [90]

An attempt to defend the accuracy of the polygraph is not even made. The response amounts to, "We know the polygraph doesn't work, but it's okay for us to use it because sex offenders are liars". How this justifies using an admittedly ineffective device to keep Lifetime Supervision offenders contained in prison is, we confess, beyond our comprehension.

The Polygraph Examiner

In our discussion of the polygraph we cannot, in good conscience, pass over a brief discussion of the behavior of polygraph examiners in the SOTMP. As we noted in our previous report, the DOC contracts with a single polygrapher, Amich & Jenks, Inc., to provide polygraphs for the SOTMP [91]. We have witnessed a number

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[88] See "Standards and Guidelines", supra note 37, at Standard 6.000.
[89] See "Managing Sex Offenders", supra note 17, at 15.15.
[90] See "Sex Offenders in the Community", supra note 51.
[91] See "Unacceptably High Cost", supra note 1, at 13.

of disturbing behaviors by these polygraphers, which leave us with grave concerns about the propriety of their role in the containment system.

For example, SOMB standards require polygraphers to make audio and video recordings of every polygraph, and to keep these recordings on file for at least three years [92]. However, we know of numerous times when offenders have sought access to these recordings for court proceedings or treatment purposes and have been refused. Reasons given by the polygrapher ranged from claims that the recordings had been lost, to assertions that the recording equipment was not functioning properly during the polygraph in question. Whatever the excuse, the result is typically the same: the recordings, which are meant to keep the polygraphers accountable for their behavior during exams, are often unavailable to offenders when requested for that purpose.

This lack of accountability is exacerbated by the SOMB policy forbidding polygraphers from sharing the actual test results with the individuals being polygraphed [93]. In fact, the SOMB regulation gives almost total discretion to the other containment team members to determine who is able to review the test results. By preventing us from accessing our test results the treatment team makes it impossible for us to seek independent review of the test by an external polygrapher, or even to compare the test results with the report issued to the therapists by the polygraph examiner.

The complete absence of accountability and transparency with the SOTMP polygrapher creates the perfect conditions, not only for the total control required by the containment approach, but also for major errors to go undetected. Recently two individuals in Phase II treatment took polygraphs on the same day. One of these men was being considered for parole by the full parole board, and had a recommendation for parole from the SOTMP. The polygraphers reported to the therapists that his polygraph was deceptive, and the treatment team contacted the parole board and withdrew their recommendation on that basis. However, the offender noticed some discrepancies in the polygrapher's report and raised questions with the therapists. After investigation it was determined that his polygraph results had actually been switched with those of the other offender who had tested the same day. In reality he had passed his polygraph.

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[92] See "Standards and Guidelines", supra note 37, at Standard 6.419.

[93] Id. at Standard 6.163.

Fortunately the error was discovered in time for the SOTMP to reinstate their parole recommendation, and the man was paroled. But what if he had not caught the error? The near total insulation created by the SOMB to protect polygraphers from any type of oversight or accountability would have effectively stymied any attempt to question the test results, and this offender would have lost his opportunity to be paroled. How many errors of this kind have occurred and not been uncovered? How much damage has been done using this device which the containment approach exalts as virtually unassailable? This account leads naturally to consideration of the most treacherous aspect of the polygraph: its effect on our prospects for parole.

The Polygraph and the Parole Board

There are myriad ways in which the SOTMP is able to use the polygraph to keep Lifetime Supervision offenders in prison. At the time our first report was released, the most common was to use "deceptive" polygraph results to justify terminating us from treatment. This termination effectively prevented us from being paroled, because the Lifetime Supervision Act requires the parole board to determine whether we have "successfully progressed" in treatment when deciding whether or not to parole us [94]. As the federal court noted, this means that Lifetime Supervision offenders "...will not actually be paroled by the Parole Board without successful progression in treatment" [95].

As we noted in our introduction, the SOTMP has discontinued the practice of terminating individuals for polygraph results. However, the requirement of the Lifetime Supervision Act that we successfully progress in treatment to be paroled involves much more than simply participating without being terminated. The law gives authority to the SOMB to determine the criteria we must meet in order to successfully progress in the SOTMP [96]. These criteria are set forth in the SOMB's Lifetime Supervision Criteria [97], and require every Lifetime Supervision offender to have non-deceptive polygraphs in order to successfully progress [98]. The therapists, therefore, do not need to resort to termination, since a "deceptive" polygraph means no successful progress, and therefore no parole.

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[94] Section 18-1.3-1006(1)(a) C.R.S.
[95] See Beebe, supra note 2.
[96] Section 18-1.3-1009(1)(b) C.R.S.
[97] See "Lifetime Supervision Criteria", supra note 23, at LS 4.200.
[98] Id. at LS 4.210(A)(2),(B)(2),(C)(2).

Since the SOMB criteria require a complete "non-deceptive" sexual history polygraph, the therapists have found that Lifetime Supervision offenders can be contained in prison with a simple scheduling trick. We know men who, with parole hearings approaching, still needed to pass a sexual history polygraph. The treatment team, however, chose to schedule them for maintenance polygraphs, rather than the needed history exams. This way no matter whether the men passed the polygraphs or not, they still would not have the requisite "non-deceptive" sexual history test to meet the SOMB's successful progress criteria, and to qualify for the possibility of parole. Once again the SOTMP's total control, this time over polygraph scheduling, enables their containment approach.

The idea of using the polygraph to justify termination, however, is not totally extinct. The test results are not used, yet we have seen several individuals accused of attempting to manipulate the test, which is grounds for termination. This allegation requires no concrete evidence, and can be put forth by the therapists at will to justify termination. Even if accused individuals are not terminated, they may be placed on sanctions in treatment, which indicates lack of successful progress, and so precludes a parole recommendation. Given the potential for easy manipulation, we believe this has all the earmarks of a functional containment tactic.

In order to most vividly illustrate the SOTMP's use of the polygraph to contain Lifetime Supervision offenders, however, we must offer a personal story.

(Jeremy Loyd)

My name is Jeremy J. Loyd, inmate registration number 117779, case number 02CR40, Fremont County, Colorado. I have already shared a portion of my own story in our first report [99], but I wanted to go into a little more detail here in order to show how I have been affected by the polygraph exam in particular. I am in no way trying to justify, or minimize, what I have done. I am merely trying to show how the punishment does not fit the crime, and how the polygraph and the containment approach have worked to keep me in prison rather than seeking my rehabilitation.

In 2001 I chose to have inappropriate sexual contact with a 14 year old female. There was no force or violence involved. The State calls this charge Sexual Assault on a Child. I was originally sentenced to 90 days in county jail and 10 Years to Life on probation. After only 19 days on probation I had my probation revoked for a technical violation

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[99] See "Unacceptably High Cost", supra note 1, at 17-18.

and was resentenced to Two Years to Life in prison.

Despite the fact that I am supposed to be a high priority for treatment because of my two year minimum, treatment was withheld from me by the SOTMP for nearly two years, during which time I had to file numerous grievances simply to gain access to the treatment program. Once I had completed Phase I treatment I found I needed to file yet more grievances to gain admission to Phase II at Arrowhead.

Once I reached Phase II, however, I progressed very well in treatment, passing all of my polygraphs and completing nearly every treatment group offered by the SOTMP. In the fall of 2007 another individual in the treatment program began spreading a very inappropriate, sexually explicit rumor regarding one of the SOTMP therapists. He initially blamed myself and several others in the program, claiming that we had been the source of the rumor. Later, however, he was convicted of a Class I COPD violation and was placed in segregation. While there he confessed that he had in fact started the rumor himself, and had lied about my involvement.

In December of 2007 I was unexpectedly called into a special group with a visiting therapist from the Phase I program. During this group the therapist, after several minutes of subtle questioning, began to openly attack me for writing the first report, "An Unacceptably High Cost". His primary concern was how widespread the document was, and who had received copies. He even asked me to write letters of retraction to all the recipients, recanting what I had written in the report. I told him I would do no such thing, that I stood by the contents of the document, and that in writing and distributing it I was simply exercising my First Amendment right to free speech and press. Although the therapist's original attitude seemed one of indignation that anyone would dare speak a word against the program, the tone of the group changed quickly when the other Phase II offenders present began to speak up in my defense. Suddenly, the therapist began claiming that his concern was that I had seemed "hopeless" in the report, and he only wanted to help me.

Less than a week after the group was held, the individual who had previously admitted to spreading rumors about the therapists was released from segregation and returned to Phase II. He promptly accused me of inappropriate behavior toward him during an incident which he claimed had occurred a year and a half prior to that time. When a group was conducted to address the issue, this individual told an obviously inconsistent story, and was unable to answer the questions put to him about the alleged incident in a satisfactory manner.

In spite of the unbelievability of my accuser's story, and his history of fabrication and false accusation, the therapists elected to polygraph me, rather than him, on the issue. When I went to take the polygraph, the examiner had in hand a copy of the first report, "An Unacceptably High Cost", open to the polygraph section. I could see that he had highlighted portions of the document. He proceeded to grill me about the contents of the report, and why I had written what I had. After answering some of his questions, I informed him that I would be happy to continue discussing the paper with him provided that he turned on the video and audio recording equipment so there would be a record of our discussion. At this the examiner promptly stowed his copy of the report and suggested that we begin the polygraph.

After the exam my family and I discussed it with my primary therapist, who said that the preliminary results indicated that the test was fine. However, when the polygrapher's report arrived a couple of weeks later it was a different story. In a typical polygrapher's report the specific questions asked on the test are listed, followed by the examiner's analysis as to whether each individual question was non-deceptive, inconclusive, or deceptive. My test results, however, were quite unique. The report read, "The results were that 'there were general emotional responses indicative of deception.' Also, it is the opinion of the examiner that 'he is not telling the truth to one or more of the above-listed questions. However, due to the general nature of the subject's deceptive reactions, the examiner is unable to isolate the specific areas of deception.'"

I was placed on sanctions in treatment as a result of this bizarre result, and this of course precluded my receiving a recommendation for parole. So I was forced to set my parole hearing back several months, hoping I could resolve the polygraph issue by the time I saw the parole board. Since I knew I was being honest, and that I had passed polygraphs in the past, I hoped this result would be a isolated glitch which I could correct by taking another exam. Sadly this was not to be, and I continued receiving the exact same report from the polygrapher on each exam I took.

I began filing grievances, arguing that my rights were being violated because the tests were interfering with my ability to be paroled. In response the SOTMP stopped giving me specific issue polygraphs targeted at the alleged incident, but continued giving me maintenance polygraphs consisting of questions which were clearly designed to address the same issue in a more general way. During one polygraph the examiner yelled at me, saying that he knew

I had done what I had been accused of, and telling me to just admit to it. I began to be regularly treated in this unprofessional and demeaning manner during polygraph exams, and I concluded that the polygraphers were harboring a great deal of resentment toward me for the things I had written about the polygraph in the first report.

At this point I essentially gave up on passing the polygraph, and even informed the polygrapher that I believed that no matter what questions I was asked, as long as I was testing with him and his company I would not pass an exam. The SOTMP continues to test me with this company, but I have not passed another polygraph since. I have asked to be tested with a different polygrapher, but nothing has been done in response to my concerns.

I saw the parole board, and in spite of having met all the other criteria for successful progress in the SOTMP I was denied parole. I and my family were explicitly informed by treatment staff that the sole reason I was denied a parole recommendation from the treatment team was the results of these polygraph exams. Meanwhile, I continue to remain in prison, and am currently approaching my seventh year of incarceration on my Two Years to Life sentence, as a result of my Class 4 felony which would ordinarily carry a prison sentence of no more than 6 years for any other type of crime. As long as I am unable to pass a polygraph I will continue to be denied parole under the current SOMB guidelines and the requirements of the Lifetime Supervision Act.

I am not the only offender in the SOTMP who is trapped in this sort of situation. The vast array of methods used by the program to keep us contained in prison is virtually insurmountable, and the polygraph is a prime example. If there is anyone reading this report who is able to do anything about this situation I ask you to please help me and others like me. I fear that if nothing is done to change the system I will simply rot in prison indefinitely under this indeterminate sentence. I appeal to any legislator or other government official with the influence to effect positive change: please do not allow the SOTMP to continue to use the polygraph to keep me and others contained in prison at their whim.

To sum up the SOTMP's use of the polygraph, we can do no better than to offer the appropriate comments of retired Colorado Appellate Court judge Frank Dubofsky:

> Routine polygraph tests...are used...as a mind and action control device. Their use presents

serious Fifth Amendment self-incrimination and reliability issues, as well as issues of invasion of privacy and hostility...No other defendants, including murderers, are treated in such a contemptuous and invasive manner. [100]

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[100] Frank Dubofsky, "Reflections on Colorado's Sex Offenders Law", Boulder County Bar Online Newsletter, (November 2004) [hereinafter "Colorado's Sex Offenders Law"].

THE COLORADO PAROLE BOARD

A Changing of the Guard

At the writing of our first report the parole board was a rather grim topic. The board, under the previous chairman, had steadfastly refused to parole virtually any Lifetime Supervision offenders. However, with the new Colorado administration came a new crop of board members, and a new chairman, David Michaud. This new parole board has shown a willingness to begin paroling Lifetime Supervision offenders, especially those who have reached or passed their minimum sentences. Over the last several months we have seen Lifetime Supervision offenders consistently presented to the full parole board, and several have been paroled. This action is almost shocking to us after so many years of stagnation. We enthusiastically applaud the new parole board's efforts to make the Lifetime Supervision Act work as intended, and we thank them for showing us light at the end of a tunnel that appeared, until recently, to be a dead end.

We also recognize the new chairman, Mr. Michaud, for his responsiveness and willingness to work with us. From returning phone calls from our families on the weekends, to sharing his home telephone number with one family, to helping numerous men who had been inaccurately labelled SVPs by the previous board to get the label removed - Mr. Michaud has gone above and beyond the duties of his office to show us and our families respect, to treat us with dignity as human beings, and to correct injustice. We cannot express how grateful we are to him, and to the other new parole board members. They have given us back a measure of hope.

A Strong and Reasonable Probability

The Lifetime Supervision Act, by design, places virtually the entire burden for determining the length of a Lifetime Supervision offender's prison term on the parole board. We detailed our constitutional objection to this in our first report [101]. When deciding whether to release a Lifetime Supervision offender on parole, the law requires the parole board to determine three things: 1) "Whether the sex offender has successfully progressed in treatment"; 2) whether he "would not pose an undue threat to the community if released"; and 3) "whether there is a strong and reasonable probability that the person will not thereafter violate the law" [102]. While the statute requires the SOMB

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[101] See "Unacceptably High Cost", supra note 1, at 2.
[102] Section 18-1.3-1006(1)(a) C.R.S.

to establish objective criteria in order to make the determinations regarding successful progress [103] and undue threat [104], there are no such criteria to guide decisions regarding whether a "strong and reasonable probability" exists that an individual will not violate the law in the future. That determination is left to the individual discretion of the parole board members.

This creates two major difficulties. The first is that this provision of the Lifetime Supervision Act is unconstitutionally vague. It violates the legal "void for vagueness" doctrine [105], which states that a law or provision is unconstitutional if it is sufficiently vague that "persons of ordinary intelligence must necessarily guess at its meaning and differ in its application" [106]. This is becuase such vague laws lead to arbitrary and discriminatory enforcement, which violates fundamental notions of due process [107]. The phrase "strong and reasonable probability", without further definition or the existence of objective criteria, is exactly the sort of vague and subjective provision that the void for vagueness doctrine is designed to prevent. Requiring the parole board members to make this subjective determination cannot do other than result in arbitrary and inconsistent application of the law.

The second major difficulty is that this requirement asks the parole board members to make predictions concerning individuals' future dangerousness. The SOMB itself, however, cites studies which indicate that not even sex offender treatment experts are able to do this with any accuracy:

> [S]tudies...revealed the error rate of clinical prediction was intolerably high. Studies of clinical prediction indicated that experts were wrong in their predictions of dangerousness, on average, two out of three times. [108]

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[103] Section 18-1.3-1009(1)(b) C.R.S.
[104] Section 18-1.3-1009(1)(a) C.R.S.
[105] See, in general, Grayned v. City of Rockford, 92 S.Ct 2294 (1972); Hill v. Colorado, 120 S.Ct 2480, 147 L.Ed.2d 597 (2000); United States v. Agnew. 931 F.2d 1397 (10th Cir. 1991); People v. Matheny, 46 P.3d 453(Colo. 2002); Lorenz v. State, 928 P.2d 1274 (Colo. 1996); People v. Harmon, 3 P.3d 480 (Colo.App. 2000).
[106] See City of Englewood v. Hammes, 671 P.2d 947 (Colo. 1983).
[107] See U.S. Const. amends V & XIV; Colo. Const. art II, 25.
[108] Colorado Sex Offender Management Board, Handbook: Sexually Violent Predator Assessment Screening Instrument (January 2008), p. 73.

Other researchers observed:

> Clinical judgments, based only on personal opinions unsupported by empirical, quantified data, must be regarded with considerable caution and relied upon over statistical information only when there is a credible, compelling, and cogent basis for doing so. [109]

> Until recently, almost all sex offender risk assessments were based on unguided clinical judgment. In these assessments, experts used their experience and understanding of a specific case to make predictions about future behavior. Given that the predictive accuracy of unguided clinical assessments are typically only slightly above chance levels...attention has shifted to empirically based methods of risk assessment. In the empirically-guided approach, evaluators are given a list of research-based risk factors to consider... [110]

In this case, the statute requires the parole board to rely solely on the personal opinions of the board members about the future dangerousness of Lifetime Supervision offenders. If even sex offender experts are unable to do this accurately, certainly the Lifetime Supervision Act is asking far too much in demanding it from the parole board.

The result of all this for Lifetime Supervision offenders is that it is impossible for us to know what we have to do in order to be paroled. Ultimately, it is also impossible for the parole board to know what we need to do before they parole us! Since the parole board plays such a vital role in the proper operation of the Lifetime Supervision Act, the inclusion of this unconstitutionally vague requirement may prove to be a fatal flaw in the law.

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[109] Hollida Wakefield & Ralph Underwager, "Assessing Violent Recidivism in Sexual Offenders", IPT Journal, vol. 10 (1998).

[110] See "Predictors of Sexual Recidivism", supra note 36, at 2-3.

CONCEALING CONTAINMENT: REPORTING FAILURES IN THE SOTMP [111]

In order to monitor the effects of the Lifetime Supervision Act the legislature included in the statute a requirement that an annual report be prepared for the house and senate judiciary committees and the joint budget committee. This report was to include data reflecting the impact of Lifetime Supervision sentences on the prison, parole, and probation systems [112]. These original reporting requirements, however, did not directly target the SOTMP, which subsequently provided as little data as possible on its own performance.

In an attempt to hold the SOTMP accountable and to obtain more extensive and reliable information with which to assess its performance, the legislature added a number of reporting requirements in 2007 [113]. These new requirements target such areas as treatment participation, denial of and termination from treatment, and recommendations for parole or community corrections. The apparent objective is to determine whether or not the vital treatment component of the Lifetime Supervision Act is functioning successfully in the manner the legislature had envisioned.

The truth, however, is that when compared with similar sex offender treatment programs in other parts of the country the SOTMP is a complete failure. "[T]he SOTMP's 'completion rate' was estimated [in Fiscal Year 2005-2006] at 3%, far below the nationwide average completion rate of between 59% and 64% for similar sex offender treatment programs." [114] The recent initiative taken by the parole board in paroling a number of Lifetime Supervision offenders has barely begun to scratch the surface of the problem. Yet, from the perspective of the containment approach, the SOTMP is not a failure but a spectacular success! In a program where the ultimate goal is not completion but containment, a completion rate of 3% indicates that all is functioning just as intended.

The intentions of the containment advocates in the SOTMP, however, are throughly at odds with those of the legislature at this

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[111] See, in general, "Report to the Colorado General Assembly", supra note 18.
[112] Section 18-1.3-1011(1)(a)-(f) C.R.S.
[113] H.B. 07-1004; Section 18-1.3-1011(1)(g)-(n) C.R.S.
[114] See "Report to the Colorado General Assembly", supra note 18, at 13.

point. Being fully aware of this, the treatment program is loath to fully and accurately report the information required by the legislature, and so disclose the full impact of containment ideology on the functioning of the Lifetime Supervision Act. As a result, the first annual report issued after the addition of the new reporting requirements failed to deliver the necessary data [115].

> The sparse data that is provided by the SOTMP in its November 1, 2007 Annual Report is framed by obfuscatory language that makes locating specific statistical data difficult for readers, and that appears to deflect responsibility for the SOTMP's substandard performance back onto the sex offenders whom it is supposed to be treating. The SOTMP's use of obfuscatory and deflective language to present statistical data is troubling, as such language does not explain why the SOTMP is unable to at least match the much-higher national average performance levels for similar sex offender treatment programs. [116]

The attempt to conceal the true data regarding the program's performance is an indicaiton that the leadership of the SOTMP knows full well that their containment approach to sex offender treatment cannot coexist with the legislative intent behind the Lifetime Supervision Act. We believe that as the true nature of the present program becomes clear, the legislature will act to make sweeping changes in order to ensure the proper functioning of the Lifetime Supervision Act. Based on an apparent reluctance to be open and forthright with the legislature, it seems the SOTMP believes this as well. Given that the Fiscal Year 2007-2008 budget includes $2,991,999 for sex offender treatment and related expenses in DOC [117], it certainly seems it would behoove legislators to ensure that the Colorado taxpayers are actually getting what they are paying for from the SOTMP - rehabilitative treatment.

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[115] See, in general, "Lifetime Supervision Report", supra note 7.

[116] See "Report to the Colorado General Assembly", supra note 18, at 13.

[117] See "Lifetime Supervision Report", supra note 7, at 16.

A CASE OF CONTAINMENT:
AN AUTOBIOGRAPHICAL CASE STUDY - RICHARD JENKINS

My name is Richard Jenkins. In 1999 I pleaded guilty to Sexual Assault on a Child. I accepted a sentence of 5 years Community Corrections (COMCOR) as a condition of a 10 Years to Life probation sentence. The sentence was later changed to 5 years COMCOR because the crime occurred in 1995, so the indeterminate sentence did not apply.

After serving all but 5 months of the COMCOR sentence I was regressed for technical violations, and given 5 Years to Life in prison. I committed no new crime, but was given a new sentence as if I had. The only violation that actually occurred is that I had a girlfriend who was a month older than I was. I was accused of many things, such as using drugs, drinking alcohol, using prostitutes, and carrying guns. Some of the accusations were so ridiculous that they were never even mentioned in the report from COMCOR, and all except the one I admit to were proven to be false. I never failed a drug test or a breath-alyzer, nor was I ever found or caught with a single prostitute.

I was pulled in from non-residence status, since by that time I had progressed to the point where I had my own apartment which was checked and approved by COMCOR. Nothing "inappropriate" was ever found there.

I was brought back into residence after another offender failed a urine test and a polygraph and, in what I can only assume was an attempt to save himself from prison, told the staff of what he claimed to know about other individuals. I was brought in, and for three days I was accused, threatened, insulted, harassed, and offered deals - sometimes for hours at a time - by case management and treatment staff. After three full days I was at the end of my rope, thinking that I had only 7 months remaining on my sentence, which I could easily finish in the county jail. So I gave up, and admitted to violating the contract. As I recall, I think I said, "F--- this s---, I did it all, get me outta here!" Which, of course, they did.

I was assigned a public defender who I saw twice during four months at the jail, and one of those times was the day before sentencing. She mentioned the probability of my being sentenced under the lifetime. I told her I had been direct-sentenced to COMCOR - the mittimus showed that, and the date of offense clearly shows July 1995. I explained this to her several times, but she never investigated or looked into it until the day of my sentencing. She looked in the file in the courtroom, and claimed there was no mittimus in the file showing I had a direct sentence. In court I was never permitted to testify, nor was

I ever asked if I had done what I had been accused of doing. I was sentenced to 5 Years to Life in prison.

When I arrived at Fremont Correctional Facility I applied to the court for my records so I could seek post-conviction relief, thinking I could fix the sentencing error with an appeal. When I received the requested minutes the first thing I discovered was four copies of my mittimus - the very document that supposedly couldn't be found during my proceedings.

I tried to obtain help in seeking relief from other prisoners who seemed to know something about the law. I know nothing of it, and only have an 8th grade education. I requested appointment of counsel, and was denied numerous times. Motion after motion was denied, sometimes for ridiculous reasons. One reason given was that I was raising a "legal matter"! Others were things like: I did not provide transcripts (I wasn't required to - I was found to be indigent and it was therefore the trial court's responsibility); I was time barred; I didn't apply soon enough; I didn't seek relief until I was sent to prison. On and on, for over six years - well past completing my original sentence - and into the federal courts, where I again was granted no relief because I was supposedly time barred. All this in spite of case law and obvious violations of the constitution and statutes.

I have basically given up fighting, as I see no possible relief ever being granted to a pro-se, uneducated prisoner while the courts just play frustration games. I have recently been granted parole, but with lifetime parole in front of me I fear this whole process may simply start over again, especially in view of the enormous amount of conditions placed on sex offenders on parole. I have jumped through every hoop placed in front of me for over nine years now. I have never been written up or been a discipline problem. All I ask is that if I am to be held accountable to the law it be applied correctly and fairly.

Rich Jenkins
DOC# 115843

CONCLUSION

The SOTMP appears to be primed for positive change. Over the past year virtually all the therapists left the program (for reasons about which we will not speculate here). The new therapists who have taken their places seem, on the whole, to have a genuine desire to help us. Most do not yet appear to have been co-opted by the disciples of the containment approach. When we indict the SOTMP for its containment practices, it is primarily the leadership - senior therapists, administrators, and management - to whom we refer.

Just as we observe the potential for positive change in the staff, so we recognize that same potential in the program curriculum. Some of the materials we learn in treatment have the makings of powerful tools to aid us in our rehabilitation. Currently, however, all this potential is being nullified by a system and leadership committed to containment over treatment and rehabilitation.

This containment attitude, manifest so clearly in the SOTMP, did not evolve in a vacuum. It is the culmination of a decades-long interplay of unique social, cultural, and political forces. Marie Gottschalk, professor of political science at the University of Pennsylvania, traces this evolution:

> Three decades ago, the United States gave birth to a formidible victims' movement that was highly retributive and punitive. Victims became a powerful weapon in the arsenal of proponents of tougher penal policies. In a way not seen in other Western countries, penal conservatives successfully framed the issue as a zero-sum game that pitted the rights of victims against the rights of offenders...
>
> The accepted conventional wisdom was that crime victims were punitive, even though the limited psychological evidence available at the time suggested that retribution and tougher law enforcement did not address victims' primary needs...Many so-called victims' advocates drew a stark line in the public mind between crime victims and criminals, even though many perpetrators have themselves been victims of violent crime...
>
> As the victims' rights movement took shape, anti-rape activists mimicked some of its key tactics in order to secure legislation and funding. For example, they used storytelling tactics that dramatized accounts of a rape victim's experience. By framing the rape issue around horror stories

> and victimhood, they fed into the victims' movement's compelling image of a society held hostage by a growing number of depraved, marauding criminals. [118]

These forces, brought to bear on Colorado's sex offender laws, resulted in the Lifetime Supervision Act. Retired Colorado Appellate Court judge Frank Dubofsky observed:

> Largely in response to a forceful group of victims' advocates, the Colorado legislature ...created a process for dealing with suspected/ charged (presumed innocent) and convicted sex offenders that is increasingly controversial. The legislature created the Sex Offender Management Board (SOMB) to promulgate rules to govern the "treatment" of sex offenders. These rules reflect an assumption that 100% of sex offenders will offend again and that one treatment/punishment approach fits all. [119]

We have become convinced that the containment model for dealing with sex offenders is based largely on faulty (and in some cases deliberately fabricated) statistics. As Judge Dubofsky notes:

> A primary basis of lifetime probation and sentences from four years to life is the belief that sex offenders always re-offend and are incorrigible. The latest and best evidence indicates that this assumption is incorrect and that the recidivism rate of sex offenders is approximately one-third that of all new offenders ...There is corroborative evidence from the Department of Justice and from Colorado's parole statistics that the recidivism rate of sex offenders is low and mostly involves non-sexual crimes. [120]

Research bears out these assertions:

> Not all sexual offenders...are equally likely to reoffend. The observed sexual recidivism rate

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[118] Marie Gottschalk, "Not the Usual Suspects: The Politics of the Prison Boom", Prison Legal News, vol. 19, no. 7, (July 2008), pp. 1,3,5.
[119] See "Colorado's Sex Offenders Law", supra note
[120] Id.

> among typical groups of sexual offenders is in the range of 10%-15% after 5 years...In the current study, the observed sexual recidivism rate was 13.7% after approximately 5 years... and in both studies, sexual offenders were more likely to recidivate with a non-sexual offence than a sexual offence...the results are consistent with other studies indicating that the overall recidivism rate of sexual offenders is lower than that observed in other samples of offenders. [121]

In spite of this data the containment philosophy dictates an approach to sex offender management which presumes the precise opposite. These presumptions lead containment advocates in the SOTMP to seek to extract the information they expect (not necessarily the truth) from individuals by means of the polygraph. This artificailly obtained information is then utilized to justify and reinforce the containment approach itself. So, in total disregard of all the current research showing that the approach is founded on fallacies regarding sex offenders, containment has found a way to perpetuate itself through the SOTMP and other like-minded treatment programs. Meanwhile, society's interests (and ours) - rehabilitation and safe, successful reintegration - fail to factor into the containment approach in any meaningful way.

One of the most disturbing aspects of containment from our point of view is the sheer cruelty of it. The SOTMP presents itself to Lifetime Supervision offenders, not as a system to keep us contained in prison, but as a treatment program designed to help us to become healthier and ultimately to get out of prison and back to our lives and families. So we come here with hope, expecting treatment, help, and eventual freedom. It sometimes takes a number of incidents such as those recounted in this report, often over a period of years, before we finally begin to realize that we have been deceived. This inevitable disillusionment leads to anger, cynicism, bitterness, and ultimately hopelessness. Such is the true legacy of the SOTMP: on the surface peddling false hopes; beneath, an unyielding system of control and containment disguised as sex offender therapy.

There are indications that, in spite of their principles, even containment advocates are aware of the cruelty of their practices.

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[121] See "Predictors of Sexual Recidivism", supra note 36, at 1,15.

One containment expert writes:

> [T]he constant, overt and necessary use of our official power to manage sex offenders may sometimes violate our own sense of how people should be treated. We may question whether some of our behaviors are abusive. [122]

So how do they justify such behavior to themselves? By telling themselves that "...to be effective with these clients we must temporarily abandon the traditional methods of relating with others" [123]. Why? Because sex offenders are (subhuman?) not like normal people. They are abusive, controlling, deceitful, manipulative, intrusive, intimidating, and dangerous. All of them. All the time. The fact that containment proponents use these imagined qualities of sex offenders to justify exhibiting the same characteristics themselves is disappointing. We are most certain, however, that if these individuals are unable to act confidently and comfortably without questioning their own motives and seeking to justify and rationalize their behavior (by blaming us for it, incidentally), something is seriously amiss. As sex offenders we are painfully familiar with the dangers and consequences of this sort of thinking.

Unfortunately, by permitting the SOTMP to operate under a containment philosophy the state of Colorado is missing a valuable opportunity to actually treat and rehabilitate sex offenders, and to prepare us for healthy, productive, victim-free lives in society. Instead, the state is left with a program that, when compared to other sex offender treatment programs around the country, is an abysmal failure. "As of June 30, 2007, 1,133 offenders were incarcerated for one or more sexual offense convictions sentenced under the Lifetime provisions." [124] As of that same date, there were only 157 Lifetime Supervision offenders participating in Phase I and II SOTMP treatment [125], and only 6 had been progressed to community transitional programs [126]. The SOTMP, in its current form, is unable and unwilling to function as necessary for the Lifetime Supervision Act to work as the general assembly intended: a necessary and unavoidable consequence of the containment approach in action.

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[122] See "Managing Sex Offenders", supra note 17, at 10.5.
[123] Id. at 10.5.
[124] See "Lifetime Supervision Report", supra note 7, at 4.
[125] Id. at 15.
[126] Id. at 7.

RECOMMENDATIONS

As in our first report [127], we now offer a number of recommended solutions to the problems and issues raised in this document. Many of the recommendations made in our previous report have not yet been addressed in any way, so we have imported them, in whole or in part, into the following list. This list is certainly not exhaustive, but rather representative of the types of solutions we believe will be necessary and effective.

1. Review and amend the language of the Lifetime Supervision Act to correct the constitutional problems enumerated in this, and the previous, report. Specifically, amend the unconstitutionally vague language regarding parole requirements for Lifetime Supervision offenders.

2. Give individuals sentenced to prison under the Lifetime Supervision Act a Mandatory Release Date at the expiration of their minimum sentence, and require the SOTMP to demonstrate that such individuals have, through their own fault, failed to meet the applicable criteria before they can be kept incarcerated past the minimum sentence. Such a ruling should be made by the sentencing court.

3. Enforce the language of the law mandating that those sentenced under its provisions "shall" participate in sex offender treatment. Require the DOC to abide by its own regulation, A.R. 700-19(IV)(G), which reqires them to provide Lifetime Supervision offenders with treatment sufficient to make them candidates for parole by the time they complete their minimum sentences. <u>For Lifetime Supervision offenders reading this report:</u> if you are not refusing to take treatment, but the SOTMP is withholding it from you for any reason, we encourage you to file grievances on this issue.

4. Apply the indeterminate sentence only to repeat sex offenders, not first time offenders.

5. Require that the parole board "shall" parole a sex offender who is eligible for parole under the Lifetime provisions, "unless" there is clear and convincing evidence that the offender has, through his own fault, failed to meet the applicable criteria or is otherwise an unacceptably high risk to reoffend. This must be demonstrated on a case-by-case basis, and not assumed due to the nature of the original offense.

6. Provide more space in community corrections for sex offenders.

7. Provide that, unlike new crimes, a technical violation of probation or parole will be punishable by no more than 180 days in county jail or DOC. Continuing to subject individuals to potential lifetime incarceration for such violations should be unacceptable.

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[127] See "Unacceptably High Cost", supra note 1, at 19-21.

8. Enforce the federal court's ruling that the SOTMP must provide due process hearings before a "neutral and detached" hearing body in order to terminate anyone from treatment. This panel should not be made up of individuals who are in any way associated with the SOTMP. Given the massive implications of termination for Lifetime Supervision offenders, the burden of proof on the SOTMP in such cases should be stringent. The argument could be made that the language of the law does not permit termination under any circumstances.

9. Provide that the only acceptable grounds for termination from treatment is proof that the offender being terminated is considered to be a security risk by DOC. The reasons for considering him such a risk should be thoroughly documented.

10. Forbid the SOTMP to remove individuals from the treatment program and facility prior to the completion of thier due process hearing. Moving a Phase II participant from Arrowhead to Fremont under the theory that Fremont is still a "treatment facility" should not be tolerated.

11. Do not permit SOTMP therapists to write COPD reports on treatment program participants as a way of generating grounds for termination.

12. Insist that the SOTMP contract with multiple polygraphers, and allow for appeal and review of polygraph results. Ideally, forbid the use of the polygraph entirely, and allocate the saved funds to pay salaries for additional therapists.

13. Insist that the SOTMP abide by the criteria for parole recommendations set forth by the SOMB. Do not permit them to require additional criteria, such as the family disclosure. Require the SOMB to remove its criteria demanding "non-deceptive" polygraph results and "approved" support people. Ensure that the remaining criteria are explicit and capable of objective measurement.

14. Require the SOTMP to provide us with due process hearings prior to suspending our privileges, or withdrawing our parole recommendations, as a result of treatment sanctions.

15. Require that the SOTMP have a specific and limited duration: we suggest 6 months for Phase I, and 12 months for Phase II, maximum. Once specified classes are completed and criteria met, participants should graduate from the treatment program and receive a certificate of completion. Once finished, they should be paroled.

16. Require that the SOTMP begin clearly, completely, and accurately reporting all the data required by law, in order that the legislature might be able to make more informed decisions regarding the program.

17. Do not permit the SOTMP to force treatment participants to sign a "treatment contract" under threat, duress, coercion, or undue influence.

18. Restructure the SOMB and SOTMP so that they are based on principles which accurately reflect the intent of the Lifetime Supervision Act, and the current scientific data regarding sex offending behavior and recidivism. This would mean, primarily, purging the system of adherents to the containment approach philosophy. It will likely be necessary to appoint some sort of legislative oversight, similar to a court-appointed special master, to oversee the implementation of any restructuring program if any progress is to be made.

19. Simply dissolve the entire system and start over.

ABOUT THE AUTHORS

Jeremy J. Loyd is a 37 year old father of three children. He is approaching his seventh year of a Two to Life sentence, including his county jail time. Since his incarceration he has completed many programs, and has furthered his music studies through an out-of-state correspondance course. He is an active member of the church as the leader of the praise team here at Arrowhead. He has also implemented a custom rod and fly-tying business which employs a total of 12 offenders. Jeremy teaches them to tie flies, and build custom fishing rods of all types. (For articles about Jeremy and this program, see the May/June issue of American Angler; the Sunday, February 29, 2008 issue of the Pueblo Chieftan; and the March 15, 2008 issue of the Aspen Times). This program has been very successful in generating revenue for the state, and in providing a unique vocational training course for offenders. Jeremy has a very large family backing, and a great opportunity to be successful when he is released. He plans on paroling to his loving family in Arizona.

Mark T. Walker is a 32 year old Denver native. His parents, sister, aunt, and grandfather live in the Denver area, and have supported him faithfully through his prison experience. He committed his sexual offense at the age of 24, and was sentenced in 2001 to Ten Years to Life on probation. His probation was revoked in 2003 for technical violations, and he received a prison sentence of Four Years to Life. His conviction originated in Jefferson County, case number 01CR528, and many of the details of his case are public record. He is currently serving his sixth year in prison, and has been in SOTMP treatment for a total of approximately three years overall. Since he has been in prison Mark has pursued his education, teaching himself to read Greek, taking computer aided drafting and machine shop vocational courses, and completing his paralegal certificate through Adams State College in 2008. He committed his life to Jesus Christ in 2003, and is currently applying to pursue a bachelor's of science in biblical studies at Moody Bible Institute. He hopes to go on to seminary, and engage in some sort of full-time ministry (perhaps prison ministry) in the future. He also intends to be socially and politically active in the arena of sex offender issues, and to work toward a system which will provide humane, restorative justice for victims, offenders, and society.

WAIVER OF CONFIDENTIALITY

I, JEREMY J. LOYD, notwithstanding the terms and conditions of any previous contract or agreement, whether expressed or implied, including any conditions of the Arrowhead SOTMP Phase II Therapeutic Community treatment program, do hereby waive my right to confidentiality solely with regard to the above document ("An Unacceptably High Cost - Second Annual Report") and the contents thereof.

I have freely chosen to include in this document personal details of my criminal and treatment history, with the understanding that thay will not be kept confidential. I therefore declare that I will hold the co-author of this document, MARK T. WALKER, harmless from any and all allegations of breach of confidentiality with regard to the information contained herein.

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Executed this 29 day of AUGUST, 2008.

SIGNED Jeremy J. Loyd
Jeremy J. Loyd

WITNESSED Mark Walker

WITNESSED

Subscribed and sworn to before me this 29th day of August, 2008.

Nickie Rocchio
Notary Public

SEAL:

NOTARY PUBLIC Nickie Rocchio STATE OF COLORADO

My comission expires 12/4/2010.

County of Fremont, State of Colorado.

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SIGNED Mark T. Walker
Mark T. Walker

WITNESSED Jeremy J. Loyd

WITNESSED Buck Jackson

Subscribed and sworn to before me this 29th day of August, 2008.

Nickie Rocchio
Notary Public

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NOTARY PUBLIC Nickie Rocchio STATE OF COLORADO

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Executed this 29th day of AUGUST, 2008.

SIGNED _____
Richard Jenkins

WITNESSED _____

WITNESSED _____

Subscribed and sworn to before me this 29th day of August, 2008.

_____
Notary Public

SEAL:

My comission expires 12/4/2010.

County of Fremont, State of Colorado.