

Speak Out! Speak Up! Just SPEAK!

By Sandy

"The only thing necessary for the triumph of evil is for good men to do nothing." (Edmund Burke)

Change "do" to "say," and the statement is just as true. It is time, even past time, to speak up and speak out about what matters to us. It is encouraging to see those who are doing so. Our dear friend Lenore Skenazy, an accomplished journalist, has been speaking up and out against the public registry almost every chance she gets. (<http://reason.com/blog/2014/07/17/i-witnessed-a-man-get-arrested-for-a-sex#.muwrwt:oenv>)

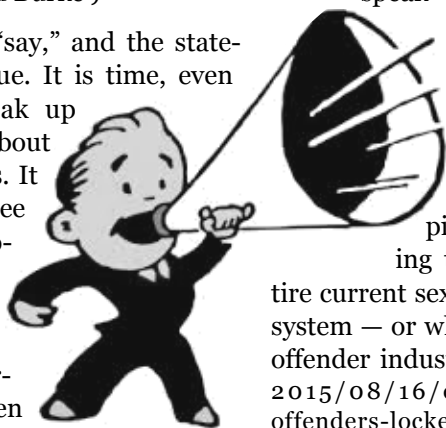
Another dear friend and journalist, Steve Yoder, has devoted an entire blog to speaking out against the registry, (<http://lifeonthelist.org/>) and journalist Radley Balko has been writing about some of the more egregious situations such as juveniles on the registry and the vigilante targeting of registrants for some time now. (<https://www.washingtonpost.com/news/the-watch/wp/2014/04/02/report-its-time-to-take-juveniles-off-the-sex-offender-lists> and <https://www.washingtonpost.com/news/the-watch/wp/2014/04/02/report-its-time-to-take-juveniles-off-the-sex-offender-lists>) See "Read, Read, Read" in this Digest for Steve's and Radley's latest.

A Texas political blog, *Grits for Breakfast*, while covering many criminal justice issues, is very outspoken on our advocacy issues (<http://gritsforbreakfast.blogspot.com>) Put "sex

offender" in the blog search engine to see all related posts.

Mainstream media are beginning to speak up, to publish factual articles dealing with things like recidivism, civil commitment, child porn addictions, and residency restrictions and to print pieces openly questioning the efficacy of our entire current sex offender management system — or what I like to call the sex offender industry. (www.nytimes.com/2015/08/16/opinion/sunday/sex-offenders-locked-up-on-a-hunch.html?_r=0, www.sciencedaily.com/releases/2011/08/110830165016.htm, and nymag.com/scienceofus/2014/08/sex-offender-housing-restrictions-are-pointless.html?hubRefSrc=email#lf_comment=265607072.)

Just a little over a week ago, the SOSEN blog insisted that we "Get Involved." One of Once Fallen's primary themes has always been knowing the facts and speaking them, and With



Calendar of Events

- 9/8 — Board meeting
- 9/9 — RSOL Review *
- 9/22 — Advancing Advocacy
- 10/13 — Board meeting
- 10/14 — RSOL Review *
- 10/27 — Advancing Advocacy

** subject to change; check RSOL website*

Justice for All is also a blog dedicated to knowing and speaking the truth about issues that affect registrants. (sosen.org/blog/2015/08/20/get-involved.html, www.oncefallen.com/, with justiceforall.blogspot.com/)

But, I can hear you saying, I'm not a journalist. I don't have a media outlet or write for one. I don't have a blog and don't want to start one. I can't speak out like all of these people do.

You have family and friends and ac-

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Success at the Summit

By Brenda

We had a VERY successful week at the NCSL (National Council of State Legislatures) Summit. How do we measure success? It is a complex mix of elements. We talked with many, many lawmakers, legislative staff, and other guests and let them know about RSOL's view that registration is bad public policy, that registries are ineffective in terms of public safety, that too many people are on registries, and most are on them for waaay too long.

Three handouts that proved especially useful were a set of charts and facts about registrants, a Hanson study chart showing how even high risk-assessed offenders drop down to the same risk as a non-offender at about 16 years, and a



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Today's Wearer of the Scarlet Letter—The “Sex Offender”

By Susan Walker

Here in Colorado, a local station, 9News, was present at the most recent Sex Offender Management Board (SOMB) Meeting, called there by victim advocates to disrupt a very necessary conversation by the SOMB and the people who are always there in the gallery and who contribute on a regular basis to SOMB Committees and conversations. If you haven't seen the story, you can click here to get the gist of it. (<http://www.9news.com/story/news/local/2015/01/16/should-we-stop-labeling-people-sex-offenders/21891661/>)

Despite what was seen on television and on the website, the discussion was really about what people who have committed a sexual offense ought to be called in the Standards and Guidelines (S & G's) of the Sex Offender Management Board. They are being rewritten, this time supposedly in line with research and best practice principles, both things that have been missing in the past.

Professionals under the purview of the SOMB and its S & G's include: sexual offense specific therapists, sexual offense specific evaluators, and polygraphers. Others that make up the “containment team” that makes a triangle around the person who has offended when they are in the community include parole and probation officers who have their own sets of rules. In Colorado, probation is under the judicial department, and though they technically have oversight, in reality, the P.O., their Chief P.O. and the Judge who is over it all stick together really tightly, so that justice for the person under their purview really lies solely with their P.O. Parole is under the Department of Corrections.

Therapists believe that because they can be grieved, sued under the Standards and Guidelines, and through the



Department of Regulatory Agencies (DORA), the people they are treating ought to ethically be called, and treated like, clients. While sexual offense therapy has some differences from some other therapies, therapists all go through the same programs as other therapists when they attend undergraduate and graduate school and have strong beliefs about their moral and ethical commitments to their clients. Currently the S and G's call them “sex offenders.” Juveniles are called “juveniles who have committed a sexual offense,” and the purpose of this discussion was to help the rewrite committee (which I am on) as it struggles to provide appropriate language for each of the document's sections.

Because the supervising officers present on the containment team (or the CST – Community Supervision Team) are not under the purview of the S & G's and cannot be grieved or sued via the document, therapists feel strongly that they should have more ability to make final decisions re: the treatment progress of the person they are treating, and that the person is their “client.” Some supervising officers, on the other hand, frequently diagnose mental illness, make judgments about the legitimacy of polygraph results and think they know more than the treatment team knows.

The board has been “loaded” with victim advocates, police representatives, judges, D.A.'s or their representatives, and DCJ/DPS representatives; they greatly outweigh the number of therapists present on the Board, and thus enjoy a power majority.

If the victim advocates were smart, they would embrace prevention, education and restoration as the tools for reducing the number of persons who have experienced victimization. Restoration of the person with the offense and the person who has been offended against requires that people work together to find common ground.

It does not take a rocket scientist to figure out that a person who has committed an offense, whether a sexual offense or any other, is going to have a much better chance to succeed post offense, if he/she has a 1) job, 2) support team, 3) home. When you have to tell everyone you talk with about

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RSOL does not in any way condone sexual activity between adults and children, nor does it condone any sexual activity that would break laws in any state. We do not advocate lowering the age of consent, and we have no affiliation with any group that does condone such activities.

The Insiders

By Sandy and Jay

For some time now some of our most valued readers and contributors are a group of incarcerated men who have banded together to support RSOL and our goals. They are the Insiders, and since their inception, they have been led by a man named Jay. Jay has decided that he needs to step back from this role, and he sends us this as his farewell message.

I have decided to step down. I will still support the advocacy efforts, and the 'insiders' will continue, but it will be without me. In this article I will offer one little bit of a suggestion to all of you.

The U.S. Supreme Court will return from their summer break come September 8th, as will Congress. The U.S. Sentencing Commission has moved up the issues related to adjusting the Child Pornography Offenses to Priority Number 7. It is also imperative that the proposed H.R. 2944 be passed, as this bill will have positive implications on some sex offenders. Between the Commission and H.R. 2944, a lot is being talked about, and change is very possible.

It will be up to you guys on the outside to keep the letters going to the Commission and to the members of Congress and the Senate. Both need to hear the impact these sex offender issues are having on the families, especially the children of the offenders. There is also a huge economic impact that does nothing but waste taxpayer dollars to incarcerate non-production offenders for long periods of time. You have to pressure them and let OUR Government know that you, AS THE PEOPLE of this country demand and deserve change and reform at all levels. Never give up on the fight. I believe in you guys.

This will be my final entry as an insider. I thank all of you for your support and the kind words in last month's issue. The guys will still be around, supporting and fighting for change. But I need to focus on other things for now, so I am stepping down.

Thank you everyone and God bless you and your families. And, may God still bless America. Farewell.

Thank you Jay, and blessings to you in all that you do. We hope to hear from you again, and we hope to hear from the Insiders soon.

Scarlet, from p. 2

housing, jobs, and support, "I am a sex offender" or in Colorado's worst case scenario, "I am a sexually violent predator," (a designation that we hope is going to go away soon) your chances of success go way down. To stubbornly stick, as the victims' advocates have done, to a pain and shame gospel for the person who offended for the rest of their lives defeats the purpose of treatment and rehabilitation/restoration. Wearing the "scarlet letter" for the rest of their lives protects nobody. Prevention, education and restoration spread the safety net a lot farther, reducing victimization and enhancing the safety of the public.

In reality, society will never be totally safe, no matter what the Department of Public Safety tells us. We can-

not expect to live in a world where we can walk around inebriated, not lock our cars or put them in a garage, or take large numbers of unnecessary chances in dangerous situations and not suffer the consequences. Does that mean victims are guilty of "causing" these offenses? No it does not. It does mean that we all have to take responsibility, as much as we can, for putting ourselves in dangerous situations or keeping ourselves out of those situations. We could still be hurt, attacked, shamed or killed, but vigilance can enhance our chances of staying safe.

Those with offenses can and should assume responsibility for the pain they have caused, and those of us who have been victimized or may be victimized can take more responsibility

for staying as safe as possible. Victim advocates like to call this "victim blaming" i.e. when we ask people to take care in their daily lives for their own well-being. The two things are not at crosshairs with each other.

The comments posted on 9News comments page show that only a couple of people commenting have any idea what the discussion at SOMB was supposed to be about. The news channel also did not understand, and it's not clear that the victims' advocates or many SOMB Board Members really got the point either. I hope I live to see the day when some clear progress is made in terms of advocacy groups talking with each other for the good of both those who have been and will be victimized, and those that caused and will cause future victimization!

The Legal Corner

This is a reader contribution section that solicits legal questions from our readers. Each month a question will be chosen and answered in the newsletter by a member of our Legal Project. This section is intended for information only. It is by no means to be considered legal advice, and it should never substitute for seeking the services of an attorney.

Please note: We often get specific legal questions about someone's conviction or about state-specific registration obligations. Unfortunately, we can't answer them individually because: (1) no one here at RSOL is licensed to practice law; and (2) we do not have the staff or budget to answer the large volume of incoming mail.

Please send your legal questions to The Legal Corner, RSOL, PO Box 36123, Albuquerque, NM 87176. Your question should focus on only one issue, and it should be a question that has relevance to a wide number of registrants and not specific to just your individual case. **This month's answer is provided by Richard Gladden, attorney from Denton, Texas.**

Question: I am confused about your answer (published in the Legal Corner, RSOL Digest, Volume 8, Issue 8, [August 2015]) regarding the 5th Amendment right not to answer because you said in essence that the 5th Amendment is waived once a person is convicted. Does this mean that they can ask me about undetected crimes that occurred prior to my conviction or even that occurred after for that matter? I always have been taught that a person cannot be forced to provide incriminating evidence against himself. If this polygraph is for treatment, shouldn't I be given immunity before I am forced to incriminate myself?

Answer: After reviewing last month's Legal Corner (August 2015), it appears you are referring to a passage written by my colleague, Barry Porter, which stated that "[c]ourts have held that since an offender was convicted, [an offender seeking parole or currently on parole] no longer has a privilege against self-incrimination...." The foregoing statement was given in answer to the specific question of whether parole may be denied or revoked for refusal to "fess up" or admit to commission of an offense for which a parolee has previously been convicted. Speaking for Mr. Porter, I am certain this statement was not intended to be applied out of context to circumstances that



do not concern the particular question presented last month. Nonetheless, the legal questions you have asked are important ones that warrant discussion, as they surely arise frequently for our readers on probation or parole.

In this connection, you have asked two questions: 1) May a probationer or parolee be compelled to answer questions about undetected crimes that occurred either prior to, or after, the conviction for which he is being subjected to supervision? and, 2) Must a probationer or parolee be granted immunity before being punished for refusal to answer questions that might subject him to further prosecution?

The answer to both of your questions is controlled by the U.S. Supreme Court's decision in *Minnesota v. Murphy*, 465 U.S. 420 (1984). Application of the decision in *Murphy*,

in turn, is best illustrated by an intermediate Texas appellate court decision, *Ex Parte Dangelo*, 339 S.W.3d 143 (Tex.App.-Fort Worth [2nd Dist.] 2010) (op. on reh'g), aff'd, 376 S.W.3d 776 (Tex.Crim.App. 2012).

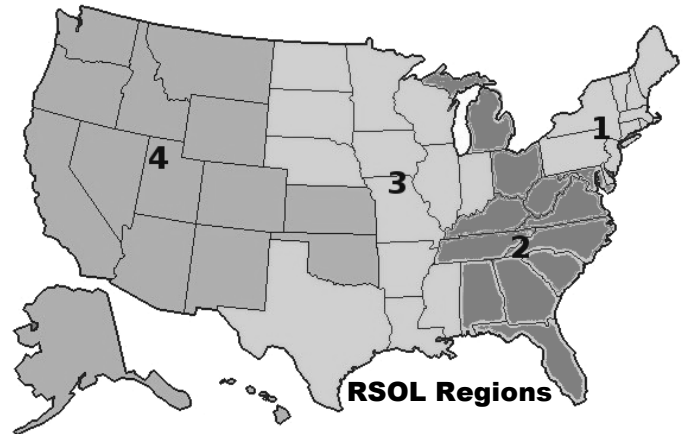
In *Dangelo* the defendant's probation included conditions that required him to "[a]ssume responsibility for [his] offense" and "[s]ubmit to ... and show no deception on any polygraph examination ... as directed by the Court or supervision officer." The defendant's counsel filed written objections to these conditions based on the Fifth Amendment. Thereafter, defendant appeared for a polygraph examination, but his polygrapher reported that he refused to answer the following questions:

- 1) "Since you have been on probation, have you had [sic] violated any of the conditions?";
- 2) "Since you have been on probation, have you had sexual contact with any persons younger than 17?";
- 3) "Since you have been on probation, have you tried to isolate any child for sexual purposes?"; and
- 4) "Since you have been on proba-

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From Our States

From the editor: From time to time we receive a letter or an email asking why there are no reports from a given state. The main reason is that we do not have a contact, advocate, or affiliate in every state. It might also be that our volunteers were too busy or had nothing newsworthy to report. If you want to see more "action," we encourage you to get involved, yourself! Without our volunteers, nothing will happen.



West Virginia

Here in West Virginia I am cataloging WV resources for my use in assisting WV contacts and continuing to compile a WV registered citizens database with the intent to build a list of registered WV citizens and interested parties that I can use for organizational membership, contacts, and future advocacy projects.



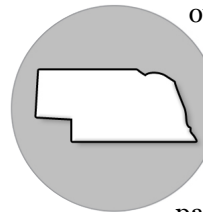
I have volunteered to lead the RSOL project to compile a master State/City Registered Citizens' Residency & Presence Restrictions database. The first draft of the state chart is nearing completion; I have composed a draft to announce the project and recruit research volunteers to continue compiling (see below). Once we have a final working draft, a version will be available via the RSOL web-site.

Ever wanted to have a ready reference of all U.S. states', territories', and cities' registered citizens' residency, employment, volunteering, loitering and presence distance restrictions? Well so have we! Led by our West Virginia State Contact and Advocate Philip Kaso, a project is in the works to do just that. The project is in the forming stage, with an official announcement and research volunteer recruitment call to action coming soon.

Nebraska

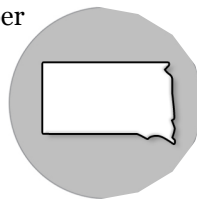
Nebraskans Unafraid celebrated the first anniversary of the FEARLESS group for Registered Citizens, their friends, and their loved ones.

The first weekend retreat for spouses of Registered Citizens will be held over the Labor Day Weekend. Attendees from Nebraska as well as surrounding states have signed up to take part.



South Dakota

South Dakota has reconvened the Jolene Task Force Study meetings which we continue to follow. There are 3 meetings scheduled for this summer: August 18, 2015; September 28, 2015; and October 20, 2015, each starting at 10:00 am in Pierre, SD. You may watch here.



New Mexico

Liberty & Justice Coalition (LJC) will have a general member meeting on September 13 at the UNM Law School in Albuquerque, New Mexico. Details available on our website.

The agenda for the meeting is:

- Building LJC's membership;
- Updating information on our website; and

- Plans for the 2016 legislative session.

The most controversial bill (HB 440) that did not make it to the finish line during the 2015 session will return again in 2016. HB 440, relating to child porn, would have defined a "Unit of Possession" to be each individual image. This legislation is the result of a New Mexico Supreme Court decision which declared the current statute unconstitutionally vague because it fails to define where one episode of possession ends and another begins. See *State v. Olsson*, 2014 -NMSC- 012, 324 P.3d 1230 (N.M. 2014)

Most states treat each image as a separate count which results in extremely long sentences. New Mexico is unique due to the Court's ruling in *Olsson* which now results in multiple images merging into one single count. HB 440 failed in the more liberal Senate due to concern that enactment could easily result in sentences exceeding 100 years.

The Governor and Attorney General are pressing their case that the loophole created by the state supreme court must be closed. LJC is working collaboratively with the Public Defender's Office and others seeking to find some reasonable language other than what was proposed in HB 440.

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Florida

The ACLU has received approval from their legal committee to file an appeal in regard to challenging Miami-Dade County Sex offender Residency restrictions. The legal committee has received a donation from a private client to assist in funding a challenge to Internet Identifiers. FAC will serve as a plaintiff in this litigation.



FAC continues to promote legislation that will serve to create smarter laws in the state for those on the registry. President Gail Colletta is spending many days in the state capitol with scheduled meetings to secure sponsors for proposed legislation. The organization continues to push for increases in both membership and funding. County coordinators have committed to lead the work in many counties with the goal set to have a coordinator for each of the 67 counties within the state.

The August membership call featured Sonya Taylor on the topic of therapy. A separate question and answer session was added. This session was well received by the members. For the future, meet and greets are already scheduled within various locations throughout the state including one exclusively for registered women.

Arkansas

August turned out to be a very interesting month in Arkansas. No doubt by this time everyone knows about the additional revelations concerning Josh Duggar. While he's not the first person to ever be "lead into temptation," that he actively sought extra-marital partners through the Ashley Madison website has just made matters worse for him--and for his entire family. There is little real understanding about what makes "sex offenders" tick--certainly for people who are not affected by current SO laws and the registries. We hope these turns in the

Duggar story will get people to think more realistically—and compassionately—about the pain and the shock and the losses that happen in these situations.



A development that left us all surprised was this month's meeting of the Criminal Justice Oversight Task Force at the Capitol in Little

Rock. This Task Force meets at least monthly to discuss ways to reduce Arkansas prison populations and to better prepare inmates for their release back into the community. This Task Force is mandated to have specific reform proposals for the 2017 legislative session.

The first part of the surprise was the agenda; time was set aside to discuss sex offender-related issues, including getting public feedback! A retired judge from another state, someone who's had plenty of experience with SO issues, spoke at length about the need to extensively reform Arkansas's current system of laws in this area. A second part of the surprise happened when one of the top people involved with our state's SO program spoke openly and in detail about the need for reform.

What really grabbed attention was the blunt call to change residency restriction laws and policies! This person basically admitted the current 2000-foot law has done far more harm than good. If the legislature reduces (better yet, throws out) residency restrictions, more registrants can find a place to live; maybe some half-way houses will become accessible for registrants, too. ATAT CEO Carla Swanson was the last person to address the Task Force; she echoed most of the comments, the input all the earlier speakers had made.

Read, Read Read!

Super article just out from our journalist friend Steve Yoder in *Aljazeera America*: "Collateral damage: Harsh sex offender laws may put whole families at risk" (<http://america.aljazeera.com/articles/2015/8/27/harsh-sex-offender-laws-may-put-whole-families-at-risk.html>)

And in the *Washington Post* by Radley Balko: "The Collateral Damage of Sex Offender Laws" (<https://www.washingtonpost.com/news/the-watch/wp/2015/08/28/the-collateral-damage-of-sex-offender-laws/>)

This stirred up quite a bit of excitement: "The Supreme Court's Crucial Mistake About Sex Crime Statistics" (<https://www.washingtonpost.com/news/the-watch/wp/2015/08/20/how-a-dubious-statistic-convinced-u-s-courts-to-approve-of-indefinite-detention/>)

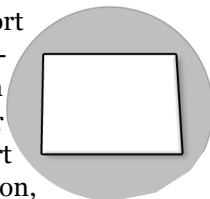
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A final surprise came from one Task Force member, a state senator who ordered the SO program overseers to come up with a list of all current SO laws that need to be changed—in the opinions of the officials. But all of us within ATAT are willing to write up and submit our thoughts and ideas, backed up with peer-reviewed research to the Task Force. We'll also utilize the valuable information we received from other RSOL groups, especially what we learned at the National Conferences. ATAT will try to keep everyone posted about the progress of this most welcome opportunity.

Colorado

The Sunset Review of the Sex Offender Management Board (SOMB) in Colorado, report prepared by the Department of Regulatory Agencies (DORA), is due to appear on the DORA Website the middle of October 2015. Brian Jamison prepared the report under the direction of Mr. Bruce Harrelson, also of DORA. The Sunset Review is usually done every ten years, but in this case was done in five years because the



Colorado Legislature wanted to be sure that the SOMB was making progress on the various issues that the legislature felt were important during the last Sunset Review.

The advocacy groups in Colorado met with Mr. Jamison a number of times. This was to share our thoughts and concerns regarding what the board was doing well in terms of making changes recommended by the legislature and the Outside Evaluators' Reports ordered by the legislature's Joint Budget Committee.

Matters of concern included but were not limited to: assuring dignified and humane treatment from supervising officers and treatment providers, putting to bed the "no known cure" lie, engaging families in the treatment and supervision process, using the polygraph as an "adjunct" tool when appropriate and not for everyone, redoing the denial section of the Standards and Guidelines, and so on. The Board has been busy with a large number of committees working on these and other issues.

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quaintances. You can start slowly. You can start a conversation about whether they believe that all our laws are based on facts and evidence. You can ask them if they believe they should be. Or if they believe that people should be able to have a second chance once they have paid for a crime. Or if they believe that having laws that result in people being jobless and homeless makes society safer.

You can also join National RSOL (nationalrsol.wildapricot.org/join) and your state organization—or start one. You can support those who speak out for you. You can attend our monthly RSOL Review and Advancing Advocacy phone conferences (nationalrsol.wildapricot.org/page-1826279) and hear how others are speaking out and learn some specific strategies for doing so.

Let no one say that evil triumphed because you, a good person, remained silent.

Justice for Zach Anderson? Or Fix the Underlying Problem?

Strict Liability Offense Schemes

By Larry Neely

The case of Zach Anderson has certainly been in the news in recent weeks. In fact, RSOL has joined the crusade for Zach. My opinion is that we are placing far too much emphasis on Zach's individual case and too little attention on the underlying cause, which places thousands of young people in the same situation. The culprit is "strict liability offense" schemes, which are disfavored and possibly unconstitutional according to the U.S. Supreme Court. Before I explain "strict liability" crimes, though, I will say that I am disheartened that Zach is no longer permitted to reside with his family due to restrictions imposed by Indiana authorities. This illuminates the importance for attorneys contemplating pleas for sexually related offenses to determine whether or not the person's proposed residence complies with the law or the policies of the supervising authorities.

Zach was convicted of Criminal Sexual Conduct in the fourth degree, contrary to § 750.520(e) (Michigan Penal Code), a misdemeanor punishable by up to two years' imprisonment. The statute reads in part: "A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exist: (a) That other person is at least 13 years of age but less than 16 years of age, and the actor is 5 or more years older than that other person..."

The problem facing the defense attorney handling Zach's case was that Michigan's Criminal Sexual Conduct statute is a "strict liability" offense, which is nearly impossible to defend. This is because no particular state of mind is required in order to convict Zach of the charges. Of course, Zach's attorney could have rolled the dice and gone to trial in hoping for "jury nullification." Jury nullification occurs when a jury refuses to convict despite the evidence that the person engaged in criminal conduct. Such nullifications are rare. If the gamble failed, Zach more than likely would have been sentenced to a longer period of incarceration, and, depending on the number of counts he was facing, they could have stacked several two-year prison terms consecutively.

What is wrong with "strict liability offense" schemes? They are disfavored and the U.S. Supreme Court has frequently recognized that criminal liability is normally based upon the concurrence of two factors: "an evil-meaning mind and an evil-doing hand." See *United States v. Bailey*, 444 U.S. 394, 402 (1980) (quoting *Morrisette v. United States*, 342 U.S. 246, 251 (1952)). "[T]he failure of Congress explicitly and unambiguously to indicate whether *mens rea* is required does not signal a departure from this background assumption of our criminal law." See *Liparota v. United States*, 471 U.S. 419, 426 (1985). In *United States v. United States Gypsum Co.*, 438 U.S. 422, 438 (1978) the Court observed that "far more than the simple omission of the appropriate phrase from the statutory definition is necessary to justify dispensing with an intent requirement." Id at 438.

Michigan's law was originally enacted in 1974. Much has changed in the world since then, particularly in terms of how relationships develop. Many people these days do use the Internet to arrange dates and begin relationships. In

fact, marriages often result from online relationships. Unfortunately, the law has not evolved to recognize society's dramatic change. My personal preference would be that all felony-level sex offenses be amended to require that the prosecution prove knowledge of age. This is a very lofty goal and unlikely to happen without some successful litigation challenging the constitutionality of strict liability offenses.

The next best outcome would be for these offense schemes to be amended to include some "affirmative defenses" such as a relationship formed based on the other person's misrepresentation regarding age. If such a defense had been available to Zach's attorney, my bet is that he would have rolled the dice and proceeded to trial.

RSOL's Scarlet Legal Action Project has identified the issue of strict liability offense schemes as an important priority and will be working with other legal professionals seeking change.

Quotes of the Month:

"There may be times when we are powerless to prevent injustice, but there must never be a time when we fail to protest."

Elie Wiesel; 1985

"The darkest places in hell are reserved for those who maintain their neutrality in times of moral crisis."

Dante; circa 1316

contributed by Adam J., Insider

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tion, have you intentionally committed any sexual crimes?"

Based on defendant's refusal to answer the foregoing questions, the Trial Court issued a warrant for defendant's arrest and ordered that defendant be held in custody until he submitted to a polygraph examination that included these questions. The intermediate Second Court of Appeals, on defendant's pre-conviction writ of habeas corpus, applied the rulings contained in the Supreme Court's decision in *Minnesota v. Murphy*, supra. It reversed the trial court and held that defendant had a constitutional right, even while on community supervision, to refuse to answer any question that "could lead to criminal charges independent of those that [he] is serving probation for."

Applying this ruling to defendant's case, the Court ruled that compelling defendant to answer questions 2, 3, and 4, as listed above, would violate the Fifth Amendment. However, the

Court upheld against defendant's Fifth Amendment challenge the authority of the Trial Court to require defendant to answer whether he had violated any of the conditions of his community supervision since being placed on probation (Question 1), but only to the extent that such questions asked "about probation violations that do not comprise independent offenses."

With regard to your second question concerning the relevance of "use" or "transactional" immunity, the Second Court of Appeals in *Dangelo* properly ruled that defendant still held a viable Fifth Amendment right not to answer questions 2, 3, and 4, as listed above, because the defendant had not been "immunized" against potential admission of those answers at a future criminal trial against him. In a subsequent decision, *Dansby v. State*, 398 S.W.3d 233 (Tex.Crim.App. 2013), the Texas Court of Criminal Appeals (which is the criminal "court

RSOL Letter Policy

We appreciate the many letters we receive from you, and we do respond to as many of them as possible. We ask that you adhere to the following guidelines when writing to us.

- Keep your letter short and on point (extremely long letters with extensive background are difficult for volunteers to decipher in terms of what you are asking);
- Print or use a typewriter if one is available at your institution;
- Only write on one side of standard size paper so that we may scan the document;
- Make sure that your address is visible on the letter because we do not retain the envelopes;
- We cannot answer letters asking what the registration laws are in a particular state;
- We cannot answer letters asking which state is best for sex offenders to reside in;
- We cannot answer letters seeking legal advice or opinions because no one here at RSOL is licensed to practice law.

of last resort" in Texas), held that a person's probation cannot be revoked for refusing to answer questions that could lead to criminal charges independent of those that he is serving probation for.

Finally, it cannot be emphasized too greatly that in the Texas cases discussed above the defendants affirmatively invoked their rights under the Fifth Amendment. Because the probation and parole contexts have been ruled not to involve the kind of "custody" which would require the reading of one's Miranda rights before questioning, a probationer and parolee, as discussed in *Murphy*, supra, will likely be deemed to have waived his Fifth Amendment right to have his answers excluded from evidence at a future criminal case against him if he does not affirmatively invoke his right not to answer.

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NCSL, from p. 1

half-page “assumptions vs reality” chart. In addition to these, I found myself giving out the LEO brochure by preference because it did better than anything else at summarizing our concerns about registries and our ideas for reform.

It was an eye-opener for some who visited us. Questions ranged from “but don’t they all re-offend?” to “People put CHILDREN on the registry? Is that in my state?” Of course not everyone agreed with us that the laws needed reforming. Virtually nobody was willing to entertain the idea that we should do away with them entirely. This was especially true for those whose jobs kept them close to the very real harm done to victims of sexual assault. They see only the worst situations, they see it first-hand, and it is always fresh. But when we took the time to acknowledge that fact and accept their description of the devastating effects of rape, especially repeated molestation of young children, THEY in turn were able to at least listen to us and usually saw

problems with the broad brush that is currently applied.

Others immediately agreed it was a problem and dove right in to ask us what we would suggest instead. I often would start with our “pie-in-the-sky” of removing registries entirely, knowing this is not a political reality pretty much anywhere. Not surprisingly

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their heads would start shaking. Then I would hand them one of our LEO brochures and mention the possibility of reverting to something for law enforcement (and other critical need-to-

know) only. Their heads would then cock and you could see the gears turning. THAT might actually be possible!

Those legislators and staff who had time to talk with us more in depth all agreed that in order for any serious reform to happen, there must be BI-PARTISAN discussions behind closed doors with consensus THERE on the path to take. That way when everyone walked OUT of the room and started making announcements or introducing a bill, they would all know the others had their backs and their message would be unified when constituents started blasting them.... Because constituents WOULD be blasting.

This confirmed what I often tell other advocates who complain that politicians need to get backbones and “just do the right thing.” Even the most astute, sympathetic and supportive lawmaker cannot help us if she or he is no longer in office! We HAVE to work with them in their world and at a pace they can manage.

It Could Be You Radio Show NEWS

“It Could Be You” host and ATAT member John S wants to let everyone know about a couple of upcoming programs. His scheduled guest for September 9 is Wayne Bowers, one of the driving forces with CURE-SORT.

For September 23 his scheduled guests are with the Center for Sexual Justice, a primarily LGBT-focused group, which also fights for sex offender reform. Possibly in early October he’ll have a followup interview with the National Association of Criminal Defense Lawyers (NACDL) concerning what’s been happening with the NACDL’s Collateral Damage report, which was released a little over a year ago.

To listen to “ICBY” go to www.kabf.org and click on the “Listen Live” link. John has also asked for recommendations and suggestions for future guests and/or topics to discuss. He would also like RSOL members to provide him the names of and general information about independent and community radio stations, particularly any low-power stations, in your area. This has to do with plans for “ICBY,” big plans that we’ll write about as they happen.

Win in Massachusetts

August 28 the highest court in Massachusetts struck down residency restrictions in Lynn, Massachusetts! Kudos to the ACLU of Massachusetts who filed suit to challenge the law in 2012.

National RSOL was right beside them—criticizing the law in a friend-of-the-court (amicus) brief and joined by the Florida Action Committee, the Jacob Wetterling Resource Center and two sex offender treatment groups—the Association for the Treatment of Sexual Abusers and the Massachusetts Association for the Treatment of Sexual Abusers.

This decision will affect the application of residency restrictions in dozens of communities in Massachusetts. Visit our website at nationalrsol.org/blog/2015/08/28/mass-supreme-court-strikes-down-residency-laws-compares-them-to-japanese-internment-camps/ to read related articles and documents.

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