

Quote of the month:

“When you do nothing, you feel overwhelmed and powerless. But when you get involved, you feel the sense of hope and accomplishment that comes from knowing you are working to make things better.”

~~Maya Angelou

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Reform Sex
Offender Laws, Inc.



The Digest-September, 2014

RSOL's Monthly Newsletter



From the Admin Team

We were at the NACDL Conference!

Early in August, we attended the National Association of Criminal Defense Lawyer’s Annual Meeting. There were more than 300 attorneys from all over the country in attendance. RSOL representative Larry Neely attended nearly all the workshops and networked with attorneys from several states, including New York, Pennsylvania, Georgia, Oklahoma, South Carolina, Florida, and Illinois.

Since RSOL is not widely known in the legal community, this networking is extremely valuable if we hope to build future relationship and be considered as both credible and a relevant organization. Every time Larry spoke to one of the attendees about RSOL, they were both surprised and pleased. “I didn’t know you guys were out there!” and “Your advocacy is sorely needed!” were common reactions. Clearly these folks “get” our issue! On display at the conference was NACDL’s latest newsletter, The Champion. Coincidentally, the cover story was “Branded for Life.” This article explained in detail some successful challenges that have been made to overbroad conditions of sex offender supervision and the importance of objecting to

those conditions at sentencing.

The workshops and speakers were excellent. [See here](#) for fuller descriptions.

RSOL is grateful for your donations. They transformed our dream of participating in this event and the upcoming National Conference of State Legislatures (NCSL) "Legislative Summit" into a reality. We intend to return every year. We are also hoping to attend and exhibit at NACDL's 5th Annual "Defending Sex Crimes Conference (see below)." The cost for exhibitor registration is \$1,000, plus travel and lodging for one or two of our representatives. Please consider making a donation to help us fund this extremely important upcoming event.

Again, thank you so very much for getting us to this, and future conferences to educate the wider community about damaging sexual offense laws and the need for reform.

AND the National Conference of State Legislators!

In fact, we only very recently returned from Minneapolis, Minnesota, where the conference ran from August 20-22. This is a huge conference, with hundreds of legislators and legislative staff persons in attendance, not to mention exhibitors of all stripes. We were able to capture contact information for about 55 people from about 26 states, as well as a couple of foreign countries! Many more stopped by our booth but did not wish to leave contact info.

What we heard most was that we had a VERY difficult booth. Many attendees walked by, glanced over our messages on our posters, and kept walking, thinking hard. We will look for some more digestible information to be ready for next year.

A few lawmakers were quite enthusiastic and ready to dive in! I will be sure to pass their names on to state leaders, if we have a leader in that state. If we don't, we may just see about doing some recruiting, or work with that person ourselves!

The million-dollar question from legislators was "What can we do to fix these laws that won't get us crucified during elections?" We agreed that it is very a very tough climate, with the general public screaming for harsher laws. I was able to mention that some states have taken a few small steps back, especially regarding juveniles, statutory offenses, and removal processes. I would love to have sample legislation ready to go next year. Several lawmakers asked about it. Those of you who have successfully introduced bills, I would love to get copies -- even if they were not ultimately passed -- to put in a Bill Bank.

All we spoke to, regardless of their point of view about registries and sexual offenders, agree that legislative change would come much easier if the voting public had a more realistic understanding of offender risk and could see better value in a more preventive approach. Guess what? That means WE need to be pushing that message every chance WE get! It's got to be more than saying registries are bad. We have to be telling everyone we can that there is another way forward!

So let's put our heads together and start getting that message out!

AND we will be at the special NACDL conference in Las Vegas in November!!

This one, unlike their general conference in August, has a specific focus, and that focus is "Zealous Advocacy in Sexual Assault and Child Victims Cases." We cannot imagine a conference more appropriate for RSOL to have a strong presence, and that is our definite intent. We will be sharing more with you about this vital opportunity in the next issue and in a special communication.



This is What I Think

~~by Susan Walker

Each time I see a picture of John Walsh advertising his new show, *The Hunt*, which has begun airing on CNN, I am both angry and sad. Every show/movie I have seen that has to do with "hunting" human beings has been degrading, dehumanizing and demoralizing. While I realize that the media uses words that "tease" people into watching and seem to think that this is okay, it is my belief that they mislead the public regarding the true nature of much of what they indicate is gospel.

If the victim advocate groups are correct, and 80% of those who commit sexual offenses are still free and have not been caught or convicted, shows such as this one paint a false picture of the situation. Instead of acknowledging that sexual offending is a big problem, especially in families, neighborhoods, clubs, teams, schools, churches etc., they make it look as if the majority of people hunted are monsters and anomalies, hardwired differently than the rest of us. In fact, stranger danger and sexual offenses committed by those with severe mental illness happen very infrequently.

The research shows that incest and other offenses that are not necessarily discovered quickly are also quite responsive to treatment. ATSA, The Association for the Treatment of Sexual Abusers, is trying a new education and prevention approach. I believe it is time for us to stop focusing so much money on the 20% of people who have been caught and convicted--we are incarcerating, treating and supervising them way too long at great expense to states. a position supported by the literature in the sexual offending arena--and begin to spend money and human resources on education and prevention as ATSA is advocating!

So, John Walsh, while "The Hunt" is an intriguing name, and will draw a lot of viewers to the show, we would respectfully request that you consider another title and incorporate some of the research that tells the truth about the sexual offending population, the low recidivism rates and the extremely small number of "stranger danger" offenses that actually happen. Because those often horrendous cases get so much press, the public does really begin to believe that they personify the majority of sexual offense cases, and laws are produced as knee jerk reactions to them, laws that so far have done nothing to reduce the number of sexual offenses that take place.



The Legal Corner

Last month we introduced a new 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.

Please send your legal questions to newsletter1940-digest@yahoo.com or mail them to The Legal Corner, RSOL, PO Box 36123, Albuquerque, NM 87176. Be sure that your question focuses on only one issue. This month's question is answered by Larry Neely.

Question:

Does anyone find it odd that the only challenge asserted against sex offender registration is that it is "punitive" thus it violates the ex post facto clause of the United States Constitution? What about loss of so many other freedoms, loss of human dignity, or that it violates a person's right to privacy?

Answer:

Thank you for a really good question. RSOL hopes to have you working on our legal team at some point in the future. Let us begin by putting the issue of a constitutional challenge into the proper context. In order to have even a hope of winning a legal challenge against sex offender registration, the challenger must assert that the registration requirement is contrary to one or more constitutional rights. The most obvious constitutional violation (at the time of the earlier challenges) was that sex offender registration violated the ex post facto clause. RSOL recognizes that much has changed regarding sex offender registration since *Smith v Doe* was decided back in 2003. In fact, most states do impose some restraints in terms of where registered citizens can reside, work, and travel. In addition, the issues regarding privacy were not as much of a factor then as they are today because very little information was publicly disseminated back then. It is likely that the loss of privacy, residency/proximity restrictions, and loss of the right to travel may well play into future challenges. In fact, loss of the right to freely travel weighed heavily in the most recent decisions issued by Maryland's highest court in the case of *Doe v Maryland Department of Public Safety and Correctional Services*.

Everyone should keep in mind that constitutional challenges are very difficult and rarely succeed because: (1) all duly enacted laws are presumed constitutional upon their enactment; (2) the challenging party bears the burden of showing by the "clearest of proof" that the law is invalid; and (3) the attorney general is legally obligated to defend duly enacted laws against all challenges. "Duly enacted" in this context simply means that both the legislative and executive branch have signed off on the law. Another key point to remember is that courts do not exist to save us from bad public policy. In other words, a bad law will not be invalidated by the courts simply because it is not good public policy. And a bad law does not necessarily translate to an unconstitutional law, and courts can only invalidate a law when the law clearly infringes on the

constitution.

There are two types of constitutional challenges that can be asserted. There are “facial” challenges and “as applied” challenges. Facial challenges are the most difficult to win because in order for a law to be facially unconstitutional, the challenger must prove that under no circumstances could the challenged law be valid. That is an almost impossible standard to meet except in some First Amendment cases, thus, any challenge against sex offender registration must be brought as an “as applied” rather than facial challenge. Counsel in previous challenges such as in *Smith v Doe* were cognizant of this very tough legal standard and correctly believed that no court was likely to find sex offender registration schemes to be facially unconstitutional, thus they chose to mount their challenge on the grounds that imposing the registration obligation retroactively violates the ex post facto and asserted that the mere act of registration itself is punitive. The U.S. Supreme Court was not persuaded by the arguments put forth by the challenging party, and they decided by a 6-3 vote that the Alaska law was not unconstitutional. See *Smith v Doe*, 538 U.S. 84 (2003).

That decision was more than 10 years ago. Now let's fast forward from that time to the present. The Supreme Court did not say that it would always find any conceivable registration scheme to be constitutional because they could only opine on the Alaska challenge that was before them at the time. In fact, they stated that they found it constitutional because “The Act imposes no physical restraint, and so does not resemble the punishment of imprisonment, which is the paradigmatic affirmative disability or restraint.” *Hudson*, 522 U.S. at 104. The Act's obligations are less harsh than the sanctions of occupational debarment, which we have held to be non-punitive. And the court went on to state, “The Act does not restrain activities sex offenders may pursue but leaves them free to change jobs or residences.” *Smith v Doe*, 538 U.S. at 100.

RSOL was actively involved in the recent Maryland case and it is our intent to assist with constitutional challenges as opportunities arise provided we have sufficient resources to do so.



This and That

Some outstanding quotes have made their way into print this month; here are several:

"As a whole, I do not find that politicians are interested in actually governing..."
(http://www.mankatofreepress.com/news/local_news/article_4910d224-52a4-52da-aeeb-27b5495e1bb7.html?mode=jqm)

"Emotion and political ambition are not a good combination for strong, effective legislation," and "Laws should be about achieving a clearly stated goal, not as a memorial or fuel for someone's political career." (<http://www.courierpostonline.com/story/opinion/columnists/2014/08/24/ingle->

two-decades-later-megans-law-delivered/14478563/

This month saw a true phenomenon; the week of August 11-15, *Slate* wrote and ran a remarkable five-part series. The title of the first piece, "Sex Offender Laws Have Gone Too Far," sets the mood and the tone for this must-read series by a group of young writers who deserve our thanks and gratitude for daring to step out with the truth that so many seek to keep hidden. Links to the full series are provided at the end of each article and on our website. (<http://nationalrsol.org/blog/2014/08/12/superb-article-series-at-slate/>)

Another amazing publication is written by Jesse Singal and published first at *Science of Us*. Titled "There's Literally No Evidence That Restricting Where Sex Offenders Can Live Accomplishes Anything," this remarkable article **should** be the last word needed on the subject. (<http://nymag.com/scienceofus/2014/08/sex-offender-housing-restrictions-are-pointless.html>)

And then there is the truly horrific. Louisiana lawmakers--at least some of them--are in a tizzy because some districts in the state are not posting registrants' pictures in each and every school in prominent positions where students can freely see them **as mandated by state law!** The only thing good here is that the comments on the article are condemning of this mandate. (<http://www.ktbs.com/story/26372391/confusion-remains-surrounding-sex-offender-photos-law>)



From Our States and Committees



Oklahoma continues to work on fundraising. We hope to meet with a specialist in this field and get some really great ideas.

We are also working on incorporation, keeping up on legislation, support groups, and putting out an end of summer newsletter.

The Sunset Review of the Sex Offender Management Board takes place during the 2015 **Colorado** Legislative Session. Normally the review, which determines whether the Board will continue to be enacted by the legislature, takes place every ten years, but advocates for those who have sexually offended asked for a review in five years.



The agency that reviews the Board's progress is the Department of Regulatory Agencies (DORA). The DORA Report five years ago pointed out many problems with the Sex Offender Management Board's (SOMB) approach – i.e. the No Known Cure, the overuse, misuse and abuse of the polygraph, the lack of space in the Colorado Department of Corrections for treatment required by the legislature under the Lifetime Act of 1998, the containment model, and more. We did not want to give the SOMB ten years to ponder whether to do anything about

challenges the DORA Report identified.

With completion of Joint Budget Committee mandated reviews of both the Colorado Department of Corrections Sex Offender Treatment and Monitoring Program, and the SOMB which monitors the community treatment programs and the reports' dire findings, we look forward to conversations with DORA investigator, Mr. Bruce Harrelson. The Sunset Review brings many issues related to sexual offending, including registration, treatment, supervision, the containment model etc. to the legislature's attention in a way that is not possible during other legislative years!

In the **Dakotas**, we attended a very successful first meeting of Jolene's Study Task Force on



August 5th. I was allowed to speak for 15 minutes, and it was well received. They are a group of professionals and lawmakers and I'm very comfortable with how they are conducting the study and their determination and commitment to find solutions. I have much more to say and will be allowed to speak again when we get to "solutions and recommendations." I asked the study group to please not follow and do

what other states are doing but to take the lead and find solutions. You may listen to the session at <http://www.legis.sd.gov/> - click on bird on the right to listen. The next scheduled meeting is September 15th and we will be there.



We will also be attending the state fair to address the "SD Senator



Candidates" debate on August 29th in Huron, SD, and give them some literature asking for solutions for prevention versus punishment after the fact.

The **Vermont** RSOL group has been active with the Vermonters for Criminal Justice Reform (<http://www.vermontersforcriminaljusticereform.org/>) and now has officially been invited to be on the coalition. Our goal is to bring the issues of registered citizens and their families into the spotlight when criminal justice problems are presented.

- Grassroots Leadership - The RSOL team here in Vermont will be attending a number of conferences in Vermont with the grassroots leadership. These conferences focus on the issue of Vermont inmates being shipped out of state to private prisons. The RSOL team feels that this issue is important to the successful reintegration of registered citizens.
- International Megan's Law - Members of the Vermont RSOL group are in the process of setting up a meeting with members of Senator Patrick Leahy's staff to discuss the legislation that has been assigned to a Senate Judiciary committee.
- Project L.E.O. - Members of the Vermont RSOL team are working out a plan to propose legislation for the next biennium to have some registered citizens be placed on a Law Enforcement Only Registry (L.E.O.). The details are still in the works; more to come.
- Social media - Please feel free to follow Vermont RSOL on twitter (@rsolt), Facebook (Rsol Vermont), or email me and we can connect via Goggle + or LinkedIn

New Mexico's legislature does not convene again until late January, 2015. In preparation for the session, we are taking steps to strengthen our organization and broaden its appeal. We have been searching for a new name for about a year now. The goal was to find a name that would be more inclusive of other offender categories and hopefully will not generate such an initial negative reaction when we introduce ourselves in public. We agreed on the name Liberty & Justice Coalition. RSOL New Mexico members approved the new name and expanded the mission for the organization at a general membership meeting on August 23, 2014. The mission of LJC is to promote public safety through the reform of overly-punitive laws, unjust restrictions, and to seek reform of the criminal justice system. This broader mission includes all felons, not just registered persons and their families, which we hope will lead to an increase in membership/participation. We believe that by protecting other categories of felons from future proposed registries, we will ensure that our battle is contained to only one front, the sex offender registry.



We do anticipate that both the Governor and the Department of Public Safety will be pushing to expand the reach of New Mexico's sex offender registry. They have been presenting proposals for several years now with the intent of moving New Mexico into the column of AWA compliant states. When and if they do introduce their AWA compliant bill, LJC will have an alternative proposal ready so that law enforcement's version is not the only proposal under consideration.

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